E. CONCLUSION REGARDING TRIBUNALS ONTARIO'S LEGAL STATUS

288. From a rigorous textual and teleological analysis of the ATAGA and its attendant regulations (O. Reg. 126/10, O. Reg. 91/11, O. Reg. 90/11, O. Reg. 88/11), it is unequivocally evident that "Tribunals Ontario" exists solely as an administrative nomenclature for a cluster of adjudicative tribunals. It is not, per se, a distinct legal entity, corporation, agency, board, or commission prescribed as an "adjudicative tribunal" or an "**Institution**" within the meaning of *FIPPA*. All statutory obligations regarding accountability, governance, and appointments are ultimately vested in the individual, statutorily designated "adjudicative tribunals" that comprise the cluster. Therefore, while "Tribunals Ontario" functions as an administrative grouping for efficiency, it lacks the legal personality to independently possess or control records subject to *FIPPA* in its own right. Any such de facto control subverts the clear legislative intent of *FIPPA*. The LAT is specifically identified as an "adjudicative tribunal" under Ontario Regulation 126/10. The *ATAGAA* and its attendant regulations impose numerous duties and responsibilities upon the LAT. These include, but are not limited to, the creation and publication of a "mandate and mission statement" (s. 3), a "consultation policy" (s. 4), and a "service standard policy" (s. 5). The LAT is also required to develop "governance accountability documents" such as a "memorandum of understanding" (s. 11), a "business plan" (s. 12), and an "annual report" (s. 13). The LAT's comprehensive failure to respond to the **Appellant**'s request is a direct affront to its duties under the *ATAGAA*. The LAT's duties and the **Head** of the LAT, by so being prescribed by regulation, are not 'one and the same'. By failing to be transparent and accountable in its operations, and by not adhering to its service standards and policies, the LAT is acting in a manner inconsistent with the very legislation that governs its existence and defines its purpose from a protection of privacy standpoint. This breach of statutory duty, distinct from but related to its failure under *FIPPA*, further underscores the urgent need for the OIPC's intervention to compel compliance. The LAT is not merely a passive recipient of requests but an active participant in a system designed for public oversight, and its dereliction of this duty is a matter of serious concern.

VIII. THE TRIBUNALS ADJUDICATIVE RECORDS ACT, 2019 (THE "*TARA*")

289. The *Tribunal Adjudicative Records Act, 2019*, S.O. 2019, c. 7, Sch. 60 (*TARA*), governs the public availability of certain tribunal records. The LAT, being an "adjudicative tribunal" (O. Reg 126/10), is governed by the provisions of *TARA*. The distinction between "adjudicative records" and other records held by a tribunal is critical. *TARA* defines "adjudicative records" as those related to a proceeding, such as applications, notices of hearing, written submissions, evidence, decisions, and orders (*TARA*, s. 1(2)). However, it explicitly excludes "personal notes, draft decisions, draft orders and communications related to draft decisions or draft orders" from this definition (*TARA*, s. 1(3)). The LAT's duty under *TARA* is to make these adjudicative

records "available to the public" (*TARA*, s. 2(1)). This is a statutory obligation independent of *FIPPA*. While there is an overlap in the general principle of public access, the majority of the records sought in this request are not "adjudicative records." The request seeks internal administrative records, communications between the LAT and third parties, and records that fall outside the formal adjudicative process. Therefore, even if the LAT were to claim some of the requested records are "adjudicative records" and subject to the specific rules and confidentiality provisions of *TARA*, this would not justify its failure to respond to the entirety of the request. The blanket non-response is a failure to meet its duties under both statutes and must be rectified.

X. THE AVOIDANCE OF MULTIPLICITY OF PROCEEDINGS AND THE IMPORTANCE OF DETERMINATIONS FOR MULTIPLE PURPOSES – ALL REQUIRED AS OF SEPTEMBER 29, 2025, UNTIL ALL EVIDENCE HAS BEEN RECEIVED BY THE OIPC (SEE: SECTION 54(1) OF FIPPA)

290. In Canadian law, the principle of the "avoidance of a multiplicity of proceedings" is a core objective of civil and administrative procedure, aiming to prevent the waste of judicial and party resources. It seeks to resolve all related issues and claims among the same parties in a single proceeding wherever possible. The principle holds that it is in the interest of justice for a dispute to be heard in a single forum that is clearly the most appropriate one, rather than allowing separate, often duplicative, lawsuits or hearings to proceed in different venues. This helps to prevent inconsistent verdicts, reduce costs for all parties, and ensure the efficient use of the court or tribunal's time. The legal doctrine of forum non conveniens is a prime example of this principle in civil courts, where a court may decline jurisdiction if another forum is clearly more suitable to hear the matter. Similarly, in administrative law, this principle guides decisions on whether to stay or consolidate related matters. The principle is especially critical for tribunals, as it directly addresses the user's point that "justice is not free." Litigants before tribunals, which often include self-represented individuals, face significant costs in time, legal fees, and emotional stress:

a. Cost-Effectiveness and Efficiency: By consolidating similar cases or handling related issues informally, a tribunal can hear evidence and submissions once, rather than repeatedly. This reduces the burden on parties and the tribunal itself. For example, if ten individuals are affected by the same administrative error, a single, consolidated hearing is far more efficient than ten separate ones;
b. Fairness and Consistency: Consolidating proceedings ensures that all affected parties are heard and that the tribunal can reach a single, consistent decision. This prevents the possibility of contradictory rulings on the same set of facts, which would undermine public confidence in the administrative justice system; and
c. Proportionality: This principle aligns with the broader goal of proportionality in administrative law, which dictates that the process and resources used to resolve a dispute should be commensurate with

the nature of the dispute itself. A full-blown, lengthy hearing may not be necessary for every complaint if a consolidated, streamlined process can achieve a just result.

291. The new privacy breach sections of Ontario's *Freedom of Information and Protection of Privacy Act* (*FIPPA*), particularly section 40.1, are a practical embodiment of the principle of "avoiding a multiplicity of proceedings." The law creates a single, consolidated pathway for dealing with privacy breaches:

a. Centralized Reporting and Notification: When a privacy breach occurs, the **Head** of the **Institution** must report it to the Information and Privacy Commissioner (IPC) and notify affected individuals. This single act of reporting centralizes the information about the breach with the regulatory body responsible for oversight;
b. Centralized Complaint Mechanism: Instead of having to initiate separate legal actions, affected individuals are told they have a right to file a complaint with the IPC. This channels all complaints about a single breach to one administrative body; and
c. Efficiency for the IPC: This structured process allows the IPC to investigate all complaints related to a specific breach at once. The Commissioner can conduct a single review of the **Institution**'s practices, assess the harm to all affected individuals collectively, and issue a single set of orders to achieve compliance. This avoids the inefficiency of investigating the same incident and **Institution**al practices multiple times.

292. In essence, *FIPPA*'s new provisions establish a clear and efficient procedure that minimizes the need for separate, individual complaints or lawsuits. By consolidating the issues at the outset under the oversight of a single Commissioner, the law promotes a fair, expeditious, and cost-effective resolution, preventing a "multiplicity of proceedings" and embodying the principles of modern administrative justice. Again language is important, "The **Head** of an **Institution** shall report to the Commissioner any theft, loss or unauthorized use or disclosure of personal information in the custody or under the control of the **Institution**". The theft, loss or unauthorized use OR disclosure of PII must have been in the custody or under the control of the **Institution**. Herein, the LAT is at issue. *But what about when the LAT did not have control or custody of the PII before its theft or loss? Is the LAT absolved? Such a potential complaint could only be answered by having a final access decision.*

XI. DISTINCTION BETWEEN GENERAL RECORD ACCESS AND PII ACCESS

293. As the erudite Justice Tysoe (as he then was) found in 1998, personal information access is distinct from general information record access:

> "It makes imminent sense to have more restrictions on access to general information than on access to personal information. In dealing with general information, the Act must balance the objective of giving the public access to records of public bodies against other legitimate objectives, such as the privacy of personal information of other persons and confidentiality of governmental or business interests. These latter objectives do not generally apply to personal information about the applicant because there are no privacy or confidentiality concerns in releasing to an applicant personal information of that applicant.
>
> (*Mazhero v. British Columbia (Information and Privacy Commissioner)*, 1998 CanLII 6010 (BC SC))

XII. THE LAT MAY NEED TO MAKE OR PRODUCE RECORDS

294. The **Appellant** notes that the definition of "record" under the Act is extremely broad, encompassing

> "any record of information however recorded, whether in printed form, on film, by electronic means or otherwise, and includes: (a) correspondence, a memorandum, a book, a plan, a map, a drawing, a diagram, a pictorial or graphic work, a photograph, a film, a microfilm, a sound recording, a videotape, a machine readable record, any other documentary material, regardless of physical form or characteristics, and any copy thereof, and (b) subject to the regulations, any record that is capable of being produced from a machine readable record under the control of an **Institution** by means of computer hardware and software or any other information storage equipment and technical expertise normally used by the **Institution**; (document)."

CHAPTER #5: NO REOP FOR A THIEF AND THOSE WHO ASSIST, AID AND ABET THE SAME; AND EXCEPTIONS TO PRIVILEGE

CHAPTER #5(A): NO REOP FOR A THIEF OR THOSE WHO AID AND ABET

295. As our ONCA found in *R. v. Van Duong*, 2018 ONCA 115, there is no reasonable expectation for a thief or thieves, and certainly those that encouraged, facilitated and/or acquiesced to the same:

> "[7] Although the application judge found that the **Appellant**s had a subjective expectation of privacy, even this seems too generous to the **Appellant**s. Allowing the **Appellant**s a subjective expectation of privacy, in this instance, would confuse the relevant sense of expectation with desire. "Expectation" can be ambiguous between two meanings, only one of which is relevant to s. 8 analysis. In the first sense, a person has an expectation of privacy where he desires privacy and believes it is unlikely, as a matter of fact, that he will be disturbed. In the second sense, a person has an expectation of privacy where she believes she will be undisturbed because she is entitled to be left undisturbed. In s. 8 jurisprudence, subjective expectation is used in this latter sense. Here, although the **Appellant**s had the desire for privacy, Mr. Van Duong's evidence that he would flee the property if confronted, suggests that the **Appellant**s did not have even a subjective expectation of privacy, even though they very much desired to be left alone and went to some considerable trouble to achieve that end.

> [8] Even if the **Appellant**s had a subjective expectation of privacy, it could not have been objectively reasonable. The application judge did not err in concluding that there can be no reasonable expectation of privacy in circumstances where the **Appellant**s' connection to the property is so tenuous."

296. Consequently, the entirety of the correspondence and records concerning the TDI Group Karat Theft must be produced in the custody and control of the LAT along with the 13 classes subject to any review of the veracity and validity of any privileged document as the theft and its participants and the aftermath have become a matter of objective record. The conspicuous absence of a response from the LAT distancing itself from the aforementioned malfeasance and its ensuing aftermath, constitutes a profound and inexplicable dereliction of its duties. An adverse inference must be drawn. The requested relief is an ineluctable conclusion, serving as the necessary corollary to the LAT's pervasive, inexcusable, and systematic inaction. This is the precise outcome quod erat demonstrandum.

CHAPTER 6: ORDERS SOUGHT DISPOSING OF ALL ISSUES

297. The **Appellant**, Kevin A. McLean, respectfully and unequivocally requests that the Information and Privacy Commissioner/Ontario issue a **peremptory** Order or series of Orders against the Licence Appeal Tribunal that effectuate the complete and definitive disposition of all issues raised in the OIPC Proceeding:

I. Substantive Response & Compliance

- Order 1: Deemed Refusal and Curing the Defect The Head of the Licence Appeal Tribunal (LAT) is compelled to immediately file a legally compliant, substantive access decision regarding the original request within five (5) days of the date of this Order, thereby curing the jurisdictional defect arising from the continued state of deemed refusal.
- Order 2: Final Access Decision Deadline The LAT shall issue its first and final access decision, along with supporting evidence, within seven (7) days of the date of this Order. This Order shall be effective from November 10, 2025.
- Order 3: Summons and examining persons und oath and entry into the site of the LAT: to the extent that the LAT does not comply with the infra or supra, then the Commissioner shall summons the above noted individuals and enter the site of the LAT (wherever that may be at 25 Grosvenor Street, Toronto, Ontario);

II. Record Production & Preservation

- Order 4: Personal Information Disclosure The LAT shall provide copies of all records containing personal information relating to or about the Appellant where the LAT does not contend that any necessary exemptions apply.
- Order 5: Production of Adjudicative Records The Head of the LAT is compelled to immediately produce all adjudicative records requested under the *Tribunals Adjudicative Records Act, 2019 (TARA)*, specifically including the Two Undisclosed Motion Orders, to satisfy its dual statutory obligations.

- Order 6: Public Interest Override & Iniquity Exception The LAT is mandated to produce the contested records pursuant to the Public Interest Override (s. 23) and the iniquity exception, on the finding that the public interest in disclosure of information relating to the alleged promotion of criminal conduct and breaches of fiduciary duties by agents of the LAT decisively outweighs the purpose of any applicable exemption.
- Order 7: Records Preservation The LAT shall immediately take all necessary steps in accordance with section 10.1 and 54(3) of *FIPPA*, and the *Archives and Recordkeeping Act*, to preserve all records relevant to this Appeal, including all thirteen classes of records, to prevent their irretrievable loss.
- Order 8: Comprehensive Index of Records The LAT Institution shall disclose the Sought Records in the form of a comprehensive Index of Records covering the 13 Record Classes by May 30, 2025, or the first date thereafter as decided by the OIPC. The Index shall clearly delineate, via Schedules, between records alleged to be subject to privilege and those that are not, that were in its custody and/or under its control.
- Order 9: Affidavit Requirement for Withholding To the extent the LAT does not produce any records required under the Index of Records (Order 8), the Head of the LAT Institution or their authorized delegate shall provide an affidavit supporting its position, outlining the search methodology and justifications for withholding the records.

III. Further Steps & Relief

- Order 10: Leave for Further Submissions (Initial Review) Upon the Applicant's review of the final access decision (Order 2), the Applicant is granted leave to file additional submissions for further relief under the same OIPC Appeal number.
- Order 11: Leave for Further Submissions (Compliance Review) After the LAT has complied with Orders 6, 7, and 8, the Appellant is granted leave to make further submissions regarding the LAT's compliance, with a limitation of ten (10) pages
- Order 12: any relief that is consistent with the above.

All of which is respectfully submitted on November 4, 2025:

Mr. Kevin A. McLean (BA, JD, CIM)

Appellant

[i]Learned of by the Appellant by way of Notice of Appeal: Notice of Appeal means a document prepared by the IPC confirming that an Appeal has been filed against an **Institution**'s decision concerning a Request under the Act, and includes the names of the Parties, the IPC's file number, and the **Institution**'s file number (if any).

1974

EXHIBIT “J”

TorontoCentralhealthline.ca

Organization:	**Ontario. Ministry of the Solicitor General**
Phone Numbers:	416-326-5000
Toll-Free:	1-866-517-0571
TTY:	416-326-5511 Toll Free : 1-866-517-0572
Fax:	416-326-0498
Website:	www.ontario.ca/page/ministry-solicitor-general
Address:	25 Grosvenor St, 18th Fl Toronto, ON M7A 1Y6
Intersection:	Yonge St and Grosvenor St
Location:	Toronto (Old Toronto)
Accessibility:	Wheelchair Accessible
Executives:	Michael Kerzner - Solicitor General minister.solgen@ontario.ca
Service Description:	Operates and supports Ontario's correctional services, public safety and emergency management, and oversees policing services

Correctional Services

- oversees and operates adult correctional institutions, probation and parole offices
- has jurisdiction over adult offenders under parole supervision, as granted by the Ontario Parole Board
- provides programs and facilities designed to assist in offender rehabilitation

Oversees the following:

- Animal welfare programs
- Centre of Forensic Sciences
- Death investigations
- The Office of the Fire Marshall
- Ontario Provincial Police
- Policing programs
- Private security and investigative services
- Training and development programs

Emergency Management Ontario - Supports municipalities in times of emergency * maintains an extensive emergency management capacity that is coordinated through the Provincial Emergency Operations Centre (PEOC) * PEOC monitors evolving situations inside and outside of Ontario to ensure key decision makers and provincial resources are able to respond as quickly as possible if required

Fees:	None
Application:	
Eligibility / Target Population:	Adults and youth 16 years and older
Languages:	English ; French
Language Notes:	French reception, programs, publications, and website * French interpretation available upon request
Area Served:	Ontario
See Also:	Criminal Justice Outreach
Last Updated:	11/8/2024
Service Profile Web Address:	eng/displayService.aspx?id=14080

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© 2025, thehealthline.ca

1977

Crime Prevention Week
November 6-12, 2022
Safer. Stronger. Together.
#CPweek2022
Ontario

Semaine de la prévention du crime
du 6 au 12 novembre 2022
Prévention : l'union fait la force.
#semainepc2022
Ontario

PeelPolice.ca

Empowering
Against Exploitation
A preventative education program to address on line safety and sexual exploitation in our community.

1978

Wishing you a blessed Christmas

MICHAEL KERZNER

MPP – York Centre

January 13, 2023

The Right Honourable Justin Trudeau
Prime Minister of Canada
Office of the Prime Minister
80 Wellington Street
Ottawa, ON K1A 0A2

Dear Prime Minister Trudeau:

We write to urge that the federal government take immediate action to strengthen Canada's bail system to better protect the public and Canada's heroic first responders.

There have been a growing number of calls for changes to prevent accused persons, who are out on bail, from committing further criminal acts. The justice system fundamentally needs to keep anyone who poses a threat to public safety off the streets. And this starts with meaningful changes to the *Criminal Code*, an area solely within the federal government's jurisdiction.

As you know, this was the subject of an intense discussion at the October 2022 meeting of Federal-Provincial-Territorial Ministers of Justice and Public Safety in Dartmouth. This meeting led to a clear and unified call to action for the federal government to reform Canada's bail system.

A reverse onus on bail must be created for the offence of possession of a loaded prohibited or restricted firearm in s. 95 of the *Code*. A person accused of a s. 95 offence should have to demonstrate why their detention is not justified when they were alleged to have committed an offence where there was imminent risk to the public, as is already the case with several offences involving firearms. A review of other firearms-related offences is also warranted to determine whether they should also attract a reverse onus on bail.

1981

1982

1983

1984

YOUR CAREER IN THE INTERNATIONAL UNION OF PAINTERS AND ALLIED TRADES
THE START OF A LIFETIME
WWW.IUPAT.ORG/JOINUS
PAINTERS AND ALLIED TRADES
ONE UNION
INTERNATIONAL UNION
AFL-CIO
Finishing Trades Institute
INTERNATIONAL
Earn Great Pay!
EXIT
DC 46
YOUR CAREER I
PAINTERS AND ALLIED TRADES
ONE UNION
INTERNATIONAL UNION
AFL-CIO

1985

1987

1988

Tap With Debit or Credit
Coming to the TTC August 15

Protecting our communities

1991

DOMETIC
R.I.D.E.
Reduce Impaired Driving Everywhere
YORK REGIONAL
POLIC
RID

1992

SONY

OPP
MICHAEL S. KERZNER
SOLICITOR GENERAL
2022
S. Cosgrove
11053

1995

1996

1998

Ontario Anti-Hate Security and Prevention Grant

Share the news and find out how to apply at

Ontario.ca/antihatesecurity

Ontario

1999

te Ger
Western

“When we have safe communities, we have everything: a place to live, work, to go to school, to shop, and to pray.”

-Michael Kerzner,
Solicitor General of Ontario

Acts of hate are unlawful. Period.

International Delicatessen Foods was targeted for being Jewish. This is unacceptable in Ontario.

This criminal behaviour must stop now.

Michael Kerzner, Solicitor General of Ontario

2003

Our government has been crystal clear that hate and acts of antisemitism are unacceptable and will not be tolerated in Ontario. April 5th will mark Al Quds Day, which is a day known for displays of hate and antisemitic propaganda. This event causes significant emotional and symbolic harm to the Jewish community.

Engagement in demonstrations that glorify terrorist groups, acts of hatred or calls for the destruction of a nation or ethnic group will be examined to the fullest extent of the law. Under the leadership of Premier Ford, and as Solicitor General, keeping the people of Ontario safe is my top priority.

We all have an inherent right to live in our communities safely and without fear, and we will accept nothing less.

Michael Kerzner, Solicitor General of Ontario

2005

2006

RESTRICTING PHONES

BANNING VAPES

2007

2008

2010

PTSD

Awareness Day

Enhancing safety
with the corrections
canine program

POLICE
POLICE

2013

ב"ה
JNY wishes you Happy Sukkot!
МИЦВА НА ХОДУ!
חג סוכות שמח
THE SPOT
GO!
the JNY
Centre

2015

NESHAMA
HOSPICE

2017

2018

2019

POLICE

9483
TORONTO
POLICE

2021

KING CHARLES III CORONATION
2023
GOD SAVE THE KING
A Message from Michael
In recognition
Marvin Alfred

2023

HAPPY PURIM

MICHAEL KERZNER

MPP - York Centre

BEREAVED
FAMILIES
IDF
SUPPORTING
COMM
ARIO

2025

UJA
WALK
WITH ISRAEL
PROUD & UNITED
RIO CAN
TORONTO POLICE
CHIEF OF POLICE
JEWISH

2026

Building better transit

PROTECT ONTARIO

611
RUNS FOR THEIR LIVES

2028

2029

AM
ISRAEL
CHAI

Huge
Mazel
Tov
and
Mallah

PROTECT ONTARIO
PROTÉGER L'ONTARIO
Ontario

NIAGARA
DETENTION CENTRE

ONTARIO POLICE
INTEGRITY
KNOWLEDGE

Michael Kerzner

Michael Kerzner
Entrepreneur, Ontario PC Party Candidate

Michael, can you please introduce yourself to our readers.
I'm an Ontario Progressive Conservative party candidate for York Centre. I am proud that I have been an active member of the Jewish commmunity for over twenty-five years, and I believe that the most important thing in life is to try to be “a mench” – a decent person, that we should take care of each other, sharing sorrows and joys.

Where does your family come from? What role did Judaism plan in their lives?
My father's parents, Sam and Sarah Kerzner, emigrated to Canada in 1930 from Stopnica, Poland. My grandmother, Sara, insisted on leaving Poland. In my grandfather's family, everyone was killed during the Holocaust. My grandfather and grandmother were religious Jews who observed all traditions. They had to work very hard to adapt in Toronto.
My maternal grandfather, Murray Penwick, was born in Toronto. After graduating from the University of Toronto, he received a degree in Pharmacology, and later opened a pharmacy on Vaughan Road. My maternal grandmother, Tilly Penwick, is from England. She emigrated to Canada in her youth, got married, and helped her husband run a pharmacy. They were Orthodox Jews and were members of the Shaarei Shomayim Synagogue.

Who are your parents by profession? Tell us about them.
My parents are Max and Dolly Kerzner, who are, thank G-d, both alive and well. My father was a chartered accountant who worked in accounting for many years before starting his own business. My mother, who graduated from the University of Toronto, was raising her four children and helping her father in his business. They are members of the Beth Tzedek Synagogue. My parents have always supported us, their children, in everything, and sincerely believed that everyone should contribute to the prosperity of the Jewish community.

Where did you study and work?

In the late 1980s, I enrolled in York University and received a bachelor's degree with honors. After university I started helping my father and his brother, Joe Kerzner, in their joint construction business. I learned how to manage the complex process of building commercial buildings. But then I abruptly changed my field of interest. In 2015, together with my friend, I started doing genetic testing at DNALabs Canada. I have always considered myself an entrepreneur, and am interested in innovative and promising ideas.

How did you and your wife meet?

In 1995, I was invited to the company of close friends of my parents (who turned out to be cousins of my future wife). There I met Rochelle. She was (and remains) very independent and always defends her point of view on important issues of principle. Her family took an active part in the life of the Beth David Synagogue community. My wife and I have many similar views, but above all, we both believe that it is necessary to help those in need. My wife and I have been together for almost twenty-six years, and no one has supported my desire to give back to the community like Rochelle.

We enjoy traveling and visiting new places together. We especially wanted to visit Israel, which we did in 2013. Since then, we have tried our best to return there every year and feel at home there. On our last visit, in 202, we rented a car for the first time and drove around Israel like real Israelis. It was wonderful. Israel is our favorite place to travel with our kids.

Have you ever encountered manifestations of anti-Semitism?

Oddly enough, recently we have witnessed manifestations of aggression against Jews. During the election campaign, going from house to house, from apartment to apartment, we knocked on doors, and some asked: “Are you a Jew?” I always answer, “Yes, I am a Jew and proud of it.” Several times in response I heard an insulting: “Jew!” But we - my family and members of my team - take our identity very seriously and are proud to be Jewish. Our home is a Jewish home. I would also say that in the past we have felt aggression from some of the people with whom we have dealt with our Jewishness. And it was a manifestation of disgusting discrimination.

Just a few weeks ago, at the Passover table, we read in the Haggadah: “What is this service you have?” This question, unchanged for centuries, is an attempt by the younger generation to understand the elders and better appreciate what the heritage they have inherited. What are we doing to change our lives? I feel compelled to help our community address urgent Jewish needs – to secure effective funding for Jewish education, including pre-school, and to be vigilant against those who seek to divide us in our fight against anti-Semitism. I advocate finding a way to help those in need. I am a proud Jew who is possibly the first person to wear a kippah at all times in the Legislative Assembly, who went to a Jewish day school for education, who attends

synagogue, who serves the community and believes in service above self. This is what our Haggadah teaches us, and I live by it.

WIKIPEDIA
The Free Encyclopedia

Michael Kerzner

Michael Shawn Kerzner ECO MPP is a Canadian politician who was in June 2022 was named Solicitor General of Ontario. He was elected to the Legislative Assembly of Ontario in the 2022 provincial election. He represents the riding of York Centre as a member of the Progressive Conservative Party of Ontario.[1]

Biography

Kerzner is Jewish.[2] His parents are Max and Dolly Kerzner.[2] His father was a chartered accountant.[2] His father's parents, Sam and Sarah Kerzner, emigrated to Canada in 1930 from Stopnica, Poland.[2] Everyone in his grandfather's family was killed during the Holocaust.[2] His maternal grandfather, Murray Penwick, was born in Toronto where he opened a pharmacy.[2] His maternal grandmother, Tilly Penwick, is from England, and emigrated to Canada in her youth.[2]

Kerzner attended York University, graduating with a B.A. (Hons.) in 1986.[2] After university he worked in the construction business, building commercial buildings, and then in 2015 started doing genetic testing at DNALabs Canada.[2] He is a bioscience and technology entrepreneur.[3] He lives in York Centre.[4]

Kerzner succeeded to the seat of independent MPP Roman Baber. Baber had been elected as a Progressive Conservative but was expelled from the PC caucus on January 15, 2021, for his COVID-19 lockdown stances. It was expected that Baber would run against Kerzner in the general election, but Baber instead opted to run in the 2022 Conservative Party of Canada leadership race.[5][6]

On June 24, 2022, Kerzner was named Solicitor General of Ontario by Premier Doug Ford.[7]

The Honourable
Michael Kerzner
ECO MPP

Kerzner in 2024

Solicitor General of Ontario

Incumbent

Assumed office
June 24, 2022

Premier	Doug Ford
Preceded by	Sylvia Jones

Member of the Ontario Provincial Parliament for York Centre

Incumbent

Assumed office
June 2, 2022

Preceded by	Roman Baber

Personal details

Born	Michael Shawn Kerzner
Political party	Progressive Conservative
Spouse	Rochelle Kerzner

Residence(s)	North York, Ontario, Canada
Education	York University
Profession	Politician, Businessman

Electoral history

2025 Ontario general election					
Party		**Candidate**	**Votes**	**%**	**±%**
	Progressive Conservative	Michael Kerzner	16,416	54.06	+8.03
	Liberal	Sam Nestico	10,823	35.64	+3.70
	New Democratic	Natalie Van Halteren	1,700	5.60	–8.39
	Green	Courtney Martin	658	2.17	–0.67
	New Blue	Johnny Blythe	309	1.02	–0.44
	Special Needs	Lionel Poizner	212	0.70	+0.26
	Populist	Jeffrey Anisman	140	0.46	*N/A*
	Moderate	Parviz Isgandadrov	111	0.37	+0.09
		Total valid votes	30,369	98.88	+0.07
		Total rejected, unmarked and declined ballots	345	1.12	–0.07
		Turnout	30,714	39.67	+0.73
		Eligible voters	76,546		
	Progressive Conservative **hold**			Swing	+2.17
Source: Elections Ontario[8][9]					

2022 Ontario general election: York Centre						
Party		**Candidate**	**Votes**	**%**	**±%**	**Expenditures**
	Progressive Conservative	Michael Kerzner	12,947	46.03	−4.12	$79,866
	Liberal	Shelley Brown	8,984	31.94	+10.54	$74,566
	New Democratic	Frank Chu	3,935	13.99	−9.45	$16,511
	Green	Alison Lowney	799	2.84	+0.55	$0
	Ontario Party	Nick Balaskas	679	2.41		$988
	New Blue	Don Pincivero	411	1.46		$0
	None of the Above	Mark Dewdney	169	0.60	−0.67	$0
	Special Needs	Lionel Wayne Poizner	124	0.44		$0
	Moderate	Parviz Isgandarov	80	0.28	−0.09	$780
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		Eligible voters	72,576			
	Progressive Conservative **gain** from Independent			Swing	−7.33	
Source(s)						

References

1. Andrew Palamarchuk (June 2, 2022). "PC candidate Michael Kerzner wins York Centre riding" (https://www.toronto.com/news/provincial-election/pc-candidate-michael-kerzner-wins-york-centre-riding/article_9f8a818a-8859-54c7-8217-b608b47b54e0.html). *Toronto.com*.
2. "Michael Kerzner - JRCC.org" (https://www.jrcc.org/templates/articlecco_cdo/aid/5539652/jewish/Michael-Kerzner.htm).
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External links

- Twitter page (https://twitter.com/i/flow/login?redirect_after_login=%2Fmppkerzner)
- "Q&A with Solicitor General Michael Kerzner," (https://issuu.com/policeassocon/docs/dispatch_winter23_issue_elec/s/17739716) *The Dispatch*.

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2045

Ronald B. Moldaver
Called to the bar: 1971 (ON); K.C.1982 (ON)

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Michael Kerzner

Michael Kerzner
Entrepreneur, Ontario PC Party Candidate

Michael, can you please introduce yourself to our readers.
I'm an Ontario Progressive Conservative party candidate for York Centre. I am proud that I have been an active member of the Jewish commmunity for over twenty-five years, and I believe that the most important thing in life is to try to be “a mench” – a decent person, that we should take care of each other, sharing sorrows and joys.

Where does your family come from? What role did Judaism plan in their lives?
My father's parents, Sam and Sarah Kerzner, emigrated to Canada in 1930 from Stopnica, Poland. My grandmother, Sara, insisted on leaving Poland. In my grandfather's family, everyone was killed during the Holocaust. My grandfather and grandmother were religious Jews who observed all traditions. They had to work very hard to adapt in Toronto.
My maternal grandfather, Murray Penwick, was born in Toronto. After graduating from the University of Toronto, he received a degree in Pharmacology, and later opened a pharmacy on Vaughan Road. My maternal grandmother, Tilly Penwick, is from England. She emigrated to Canada in her youth, got married, and helped her husband run a pharmacy. They were Orthodox Jews and were members of the Shaarei Shomayim Synagogue.

Who are your parents by profession? Tell us about them.
My parents are Max and Dolly Kerzner, who are, thank G-d, both alive and well. My father was a chartered accountant who worked in accounting for many years before starting his own business. My mother, who graduated from the University of Toronto, was raising her four children and helping her father in his business. They are members of the Beth Tzedek Synagogue. My parents have always supported us, their children, in everything, and sincerely believed that everyone should contribute to the prosperity of the Jewish community.

Where did you study and work?

In the late 1980s, I enrolled in York University and received a bachelor's degree with honors. After university I started helping my father and his brother, Joe Kerzner, in their joint construction business. I learned how to manage the complex process of building commercial buildings. But then I abruptly changed my field of interest. In 2015, together with my friend, I started doing genetic testing at DNALabs Canada. I have always considered myself an entrepreneur, and am interested in innovative and promising ideas.

How did you and your wife meet?

In 1995, I was invited to the company of close friends of my parents (who turned out to be cousins of my future wife). There I met Rochelle. She was (and remains) very independent and always defends her point of view on important issues of principle. Her family took an active part in the life of the Beth David Synagogue community. My wife and I have many similar views, but above all, we both believe that it is necessary to help those in need. My wife and I have been together for almost twenty-six years, and no one has supported my desire to give back to the community like Rochelle.

We enjoy traveling and visiting new places together. We especially wanted to visit Israel, which we did in 2013. Since then, we have tried our best to return there every year and feel at home there. On our last visit, in 202, we rented a car for the first time and drove around Israel like real Israelis. It was wonderful. Israel is our favorite place to travel with our kids.

Have you ever encountered manifestations of anti-Semitism?

Oddly enough, recently we have witnessed manifestations of aggression against Jews. During the election campaign, going from house to house, from apartment to apartment, we knocked on doors, and some asked: “Are you a Jew?” I always answer, “Yes, I am a Jew and proud of it.” Several times in response I heard an insulting: “Jew!” But we - my family and members of my team - take our identity very seriously and are proud to be Jewish. Our home is a Jewish home. I would also say that in the past we have felt aggression from some of the people with whom we have dealt with our Jewishness. And it was a manifestation of disgusting discrimination.

Just a few weeks ago, at the Passover table, we read in the Haggadah: “What is this service you have?” This question, unchanged for centuries, is an attempt by the younger generation to understand the elders and better appreciate what the heritage they have inherited. What are we doing to change our lives? I feel compelled to help our community address urgent Jewish needs – to secure effective funding for Jewish education, including pre-school, and to be vigilant against those who seek to divide us in our fight against anti-Semitism. I advocate finding a way to help those in need. I am a proud Jew who is possibly the first person to wear a kippah at all times in the Legislative Assembly, who went to a Jewish day school for education, who attends

synagogue, who serves the community and believes in service above self. This is what our Haggadah teaches us, and I live by it.

WIKIPEDIA
The Free Encyclopedia

Michael Kerzner

Michael Shawn Kerzner ECO MPP is a Canadian politician who was in June 2022 was named Solicitor General of Ontario. He was elected to the Legislative Assembly of Ontario in the 2022 provincial election. He represents the riding of York Centre as a member of the Progressive Conservative Party of Ontario.[1]

Biography

Kerzner is Jewish.[2] His parents are Max and Dolly Kerzner.[2] His father was a chartered accountant.[2] His father's parents, Sam and Sarah Kerzner, emigrated to Canada in 1930 from Stopnica, Poland.[2] Everyone in his grandfather's family was killed during the Holocaust.[2] His maternal grandfather, Murray Penwick, was born in Toronto where he opened a pharmacy.[2] His maternal grandmother, Tilly Penwick, is from England, and emigrated to Canada in her youth.[2]

Kerzner attended York University, graduating with a B.A. (Hons.) in 1986.[2] After university he worked in the construction business, building commercial buildings, and then in 2015 started doing genetic testing at DNALabs Canada.[2] He is a bioscience and technology entrepreneur.[3] He lives in York Centre.[4]

Kerzner succeeded to the seat of independent MPP Roman Baber. Baber had been elected as a Progressive Conservative but was expelled from the PC caucus on January 15, 2021, for his COVID-19 lockdown stances. It was expected that Baber would run against Kerzner in the general election, but Baber instead opted to run in the 2022 Conservative Party of Canada leadership race.[5][6]

On June 24, 2022, Kerzner was named Solicitor General of Ontario by Premier Doug Ford.[7]

The Honourable
Michael Kerzner
ECO MPP

Kerzner in 2024

Solicitor General of Ontario

Incumbent

Assumed office
June 24, 2022

Premier	Doug Ford
Preceded by	Sylvia Jones

Member of the Ontario Provincial Parliament for York Centre

Incumbent

Assumed office
June 2, 2022

Preceded by	Roman Baber

Personal details

Born	Michael Shawn Kerzner
Political party	Progressive Conservative
Spouse	Rochelle Kerzner

Residence(s)	North York, Ontario, Canada
Education	York University
Profession	Politician, Businessman

Electoral history

2025 Ontario general election					
Party		**Candidate**	**Votes**	**%**	**±%**
	Progressive Conservative	Michael Kerzner	16,416	54.06	+8.03
	Liberal	Sam Nestico	10,823	35.64	+3.70
	New Democratic	Natalie Van Halteren	1,700	5.60	–8.39
	Green	Courtney Martin	658	2.17	–0.67
	New Blue	Johnny Blythe	309	1.02	–0.44
	Special Needs	Lionel Poizner	212	0.70	+0.26
	Populist	Jeffrey Anisman	140	0.46	*N/A*
	Moderate	Parviz Isgandadrov	111	0.37	+0.09
		Total valid votes	30,369	98.88	+0.07
		Total rejected, unmarked and declined ballots	345	1.12	–0.07
		Turnout	30,714	39.67	+0.73
		Eligible voters	76,546		
	Progressive Conservative **hold**			Swing	+2.17
Source: Elections Ontario[8][9]					

2022 Ontario general election: York Centre						
Party		**Candidate**	**Votes**	**%**	**±%**	**Expenditures**
	Progressive Conservative	Michael Kerzner	12,947	46.03	−4.12	$79,866
	Liberal	Shelley Brown	8,984	31.94	+10.54	$74,566
	New Democratic	Frank Chu	3,935	13.99	−9.45	$16,511
	Green	Alison Lowney	799	2.84	+0.55	$0
	Ontario Party	Nick Balaskas	679	2.41		$988
	New Blue	Don Pincivero	411	1.46		$0
	None of the Above	Mark Dewdney	169	0.60	−0.67	$0
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References

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7. Jones, Allison (June 24, 2022). "Ford names new cabinet, with Jones as health minister and a role for his nephew" (https://www.cp24.com/news/ford-names-new-cabinet-with-jones-as-health-minister-and-a-role-for-his-nephew-1.5961226). *CP24*. Retrieved June 24, 2022.
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External links

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- "Q&A with Solicitor General Michael Kerzner," (https://issuu.com/policeassocon/docs/dispatch_winter23_issue_elec/s/17739716) *The Dispatch*.

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CITATION: Shelana Holdings Ltd. v. Max Kerzner Investments Inc., 2010 ONSC 2356
COURT FILE NO.: 10-8667-00CL
DATE: 20100422

SUPERIOR COURT OF JUSTICE - ONTARIO

RE: SHELANA HOLDINGS LTD. and 21134813 ONTARIO LIMITED, Applicants

AND:

MAX KERZNER INVESTMENTS INC., JOSEPH KERZNER, ANN ZARETSKY and WOBURN PLAZA INC., Respondents

BEFORE: Justice Cameron

COUNSEL: *Geoff R. Hall*, for the Applicants/Responding Party

Ronald B. Moldaver, Q.C., for the Respondents/Moving Party

HEARD: April 21, 2010

2010 ONSC 2356 (CanLII)

ENDORSEMENT

[1] This is a motion for removal of McCarthy Tétrault from the record because they represented the Respondents Max Kerzner and Joseph Kerzner, as well as Albert Kerzner, in 2006 for a month or so in respect of the sale of the same property between the same five co-tenants. The 2006 matter was ultimately settled.

[2] Michael Kerzner swore, on information and belief, that they gave confidential information relevant to strategy and property operations, including management and investment strategies which they disclosed and discussed with Mr. Harry Underwood of McCarthy Tétrault.

[3] Mr. Underwood said it could not be confidential information as against Albert Kerzner because Albert was at their meeting on June 14, 2006.

[4] However, Mr. Underwood's dockets show telephone conversations with "Mr. Kerzner" on 13 June, 15 June, and 21 June 2006, as opposed to "A. Kerzner" with whom he spoke on 15 June and 21 June, 2006. On 3 July and 10 July, 2006 he spoke with "Mr. Kerzner" as opposed to "A. Kerzner". On 12 July, 2006, he spoke with Max Kerzner.

[5] McCarthy Tétrault did not agree to a cross-examination by Mr. Moldaver but then filed Mr. Underwood's affidavit sworn April 19, 2010 for use on this hearing.

[6] In *Martin v. Gray*, [1990] 3 S.C.R. 1235 at p. 1260, Sopinka J., speaking for a majority of 4 judges, and the test for a conflict turns on two questions:

1. Did the lawyer receive confidential information attributable to a solicitor and client relationship relevant to the matter at hand?

2. Is there a risk that it will be used to prejudice of the client?

[7] With respect to Question 1, in this case the answer is possibly "Yes". It is then on the solicitor to satisfy the court that no relevant information was imparted. I am not satisfied that "Mr. Kerzner" in the dockets did not refer to Max Kerzner or Joseph Kerzner and that they did not impart confidential information.

[8] As to the second question, if the solicitor has, or could have, relevant information the disqualification is automatic.

[9] Cory J. at p. 1264, speaking for 3 other judges, would impose a stricter standard. If there was a previous relationship sufficiently related to the retainer from which it is sought to remove the solicitor, the court would infer that confidential information was imparted unless the solicitor satisfied the court that no information was imparted which could be relevant.

[10] McCarthy Tétrault says that delay which lulls the Applicants into believing there is no problem and creates hardship is a factor in deciding these matters: *Moffat v. Wetstein* (1996), 29 O.R. (3d) 371; McLaughlin v. Falconbridge Ltd. (1998), 16 C.P.C. (4th) 183.

[11] The Application was commenced in December, 2009. Mr. Moldaver reminder McCarthy Tétrault of the conflict and the need to retain other counsel. McCarthy Tétrault recommended bringing this motion on January 11, 2010 and putting the case on the Commercial List.

[12] The cross-examinations on the Application have been held.

[13] This motion date was set on March 17, 2010 by Morawetz J. The Motion Record is dated April 8 and the Responding Materials were filed on April 19. No cross-examinations were held.

[14] There has obviously been some delay and the Applicant will be deprived of counsel of his choice but, considering the circumstances, the delay is not enough to overcome the dangers of a conflict of interest continuing to the possible prejudice of a client. In this case the delay was not more than two months.

ORDER

[15] The Applicant shall forthwith change to another counsel.

[16] On consent, the Main Application will proceed on the basis that the following statements are struck from the affidavit of Albert Kerzner dated December 8, 2009:

2010 ONSC 2356 (CanLII)

a) paragraph 24 in its entirety;

b) in paragraph 26, the words “other than the sketchy information Mr. Hall was able to obtain from Mr. Moskorie and the letter agreement”; and

c) in paragraph 30, the words “I am advised by Mr. Hall that he has received no response to this letter”.

COSTS

[17] If the parties cannot agree, the Respondent will file its submissions within 15 days and the Applicant will respond in 10 days.

CAMERON J.

Date: April 22, 2010

2010 ONSC 2356 (CanLII)

CanLII

Zaretsky v. Zaretsky et al., 2022 ONSC 3165 (CanLII)

Date: 2022-05-26
File number: CV-19-00005256-00ES
Citation: Zaretsky v. Zaretsky et al., 2022 ONSC 3165 (CanLII), <https://canlii.ca/t/jpk96>, retrieved on 2025-11-10

CITATION: *Zaretsky v. Zaretsky et al.*, 2022 ONSC 3165
COURT FILE NO.: CV-19-00005256-00ES
DATE: 20220526

ONTARIO

SUPERIOR COURT OF JUSTICE

BETWEEN:	
Rhonda Zaretsky Applicant	*Jeffery Kaufman and Victoria Pileggi*, for the Applicant
– and –	
Marlene Zaretsky and Harley Zaretsky Respondents	*Melanie Yach and Stephanie D'Amico*, for th e Respondents
	HEARD: January 6 – 14, 2022

HOOD J.

REASONS FOR DECISION

Overview

[1] Anne Zaretsky (Anne) died on October 15, 2018, at the age of 92. She had three children, Marlene, the oldest; Harley, the middle child; and Rhonda, the youngest.

[2] During most of her lifetime, Anne basically owned three assets: her home at 151 Regina Avenue, Toronto; her 20% interest in Woburn Plaza Inc., which owned and operated a small retail plaza; and a sizeable GIC of approximately $800,000.

[3] On October 13, 2015, Anne moved out of her home into Amica Senior Lifestyles Thornhill, a retirement home facility. On October 26, 2015, her home was sold, with the closing taking place on December 4, 2015. Shortly after closing, the net proceeds of sale were divided equally between her three children along with most of the GIC.

[4] On October 28, 2015, she signed her last will and testament for excluded property. Other than a specific bequest of her diamond ring to a granddaughter, she divided her interest in Woburn Plaza Inc. equally between her three children. She also appointed her three children as her estate trustees. Also on October 28, 2015, she appointed her three children to be her powers of attorney for both the management of property and for her personal care and revoked all previous powers of attorney. Under the new powers of attorney, decisions were by a majority. Under a second will for non-excluded property, also dated October 28, 2015, she left her remaining property to be divided equally between her three children.

[5] Under a previous will for excluded property, dated August 7, 2013, other than the same specific bequest of her diamond ring to a granddaughter, she left her interest in Woburn Plaza Inc. to Rhonda. She appointed Marlene and Rhonda to be her estate trustees. Under a will for non-excluded property, also dated August 7, 2013, she left her home at 151 Regina Avenue, Toronto to Rhonda with the balance of her property to be divided equally between her three children. She appointed Marlene and Rhonda to be her estate trustees under this will as well.

[6] Rhonda is challenging the October 2015 will for excluded property. She argues that Anne lacked the knowledge and approval of the 2015 will, that she lacked testamentary capacity, and that there were suspicious circumstances at the time the instructions were given for the 2015 will and at the time of its execution. While Rhonda had also alleged that there was undue influence exerted by the respondents upon Anne in relation to the creation of the 2015 will, during closing argument Rhonda advised that she was no longer relying upon this as an argument. Rhonda also raised the issue of ademption. If successful in setting aside the 2015 will, the proceeds of sale from the sale of the home have already been distributed and the provision in the non-excluded will of 2013 that the home is to go to Rhonda cannot be met. Rhonda argues that ss. 36 to 38 of the Ontario *Substitute Decisions Act, 1992*, S.O. 1992, c. 30 apply and that Marlene and Harley should be required to repay the proceeds they received from the sale of the home.

[7] Marlene and Harley argue that Anne had the requisite knowledge and approval of the 2015 will, had testamentary capacity and that there were no suspicious circumstances or were insufficient suspicious circumstances, so as to shift the burden upon them to prove that Anne knew and approved of the contents of the 2015 will and had the necessary testamentary capacity. They also argue that the issue of ademption does not arise as the 2015 will is valid but even if not valid, there is no basis to order the return of the sale proceeds paid out in December 2015.

[8] The interest in Woburn Plaza Inc. was sold following Anne's death for approximately $2.4 million, after tax. The proceeds are being held in trust. If successful, Rhonda will receive the totality of the proceeds. If unsuccessful, she will receive a third or approximately $800,000.

Decision

[9] For the following reasons the Application is dismissed.

The Law

[10] In order to have testamentary capacity or a sound disposing mind a testator requires an understanding of 1) the nature and effect of a will, 2) the extent of one's assets, 3) the extent of what one is giving away, 4) who might be expected to benefit from the will and 5) the nature of the claims of those excluded from the will: see *Hall v. Bennett* (2003), 2003 CanLII 7157 (ON CA), 64 O.R. (3d) 191, at para. 14. Rhonda conceded that Anne understood the nature and effect of a will. As well, no one who might have a claim was excluded from the will. So, the points to consider here are whether Anne had an understanding of points 2, 3 and 4.

[11] While recognizing the importance of testamentary freedom and autonomy, which should not be interfered with lightly, at the same time courts recognize that there could be situations where testators, even where there is no undue influence, lack a sound and disposing mind. The issue then becomes as to who has the burden of proof. Is it for the one attacking the will to prove a lack of a sound and disposing mind or is it for the propounder of the will to prove the presence of a sound and disposing mind?

[12] Upon proof that a will has been duly executed and was read by or read to a testator who appeared to understand it, absent suspicious circumstances, a testator is presumed to have known and approved of the will's contents and to have possessed the necessary testamentary capacity: see *Vout v. Hay*, 1995 CanLII 105 (SCC), [1995] 2 S.C.R. 876, at para. 26. This does not mean that every word must be read but that the sense of the will, what was being disposed of, and how and to whom, was read or reviewed by the testator.

[13] Where there are suspicious circumstances regarding knowledge and approval then the propounder of the will has the legal burden of proving knowledge and approval. Where there are suspicious circumstances relating to mental capacity then the propounder of the will reassumes the legal burden of establishing testamentary capacity: see *Vout*, at para. 27.

[14] As a general rule, the testator must have the necessary testamentary capacity on the date the will is signed. This general rule does not apply where the execution of the will takes a two-step process, with the testator giving instructions on one day and the will reflecting those instructions being signed at a later date and time. In this case, the testator need not have full testamentary capacity on the date of execution provided she understands that she is signing a will and that the will gives effect to the previous instructions: see *Yeas v. Yeas*, 2017 ONSC 7402, at paras. 244, 314.

Analysis

[15] The parties agreed that there is no issue as to Anne's testamentary capacity until August 2015.

[16] On August 24, 2015, Anne was admitted to Mount Sinai Hospital in Toronto suffering from trigeminal neuralgia, or severe facial pain. While in the hospital she was given hydromorphone, a narcotic, as needed for the pain and carbamazepine, an anticonvulsant specifically used to treat trigeminal neuralgia. She was discharged on August 28, 2015.

[17] Rhonda's position is that from that point on Anne was a changed person. Whereas before she was feisty and active, she now was weak, frail, foggy and confused. That she was weak, frail, foggy and confused from her discharge from Mount Sinai in August 2015 became Rhonda's mantra throughout her testimony.

[18] Marlene and Harley disagreed. While Anne had mobility issues and issues with her eyesight, in their view, there were no issues with her mental capacity from the time she left Mount

Sinai until she signed the 2015 wills on October 28, 2015. As far as they were concerned, she was completely capable of making decisions.

[19] Of those who knew her and gave evidence, at least up until her initial stay in Mount Sinai in August 2015, Anne is described pretty much the same way. While some of the adjectives are different, they all point in the same direction. According to Rhonda, she was feisty, a people-person, a walker, and always active. According to Marlene, she was warm, social, fun loving and feisty. According to Harley, she was strong willed, talkative and opinionated. According to Dr. Hotz, her long-time, family doctor, she was very lively, forthcoming, entertaining, energetic and sharp. According to Michael Kerzner, one of her nephews, she was lively, feisty, loud and intense. According to Jeffery Schwartz, who witnessed her 2015 wills and was the partner and son of her long-time lawyer Saul Schwartz, she was boisterous, loud and a presence.

[20] While they all acknowledge that she changed following her initial stay at Mount Sinai, only Rhonda testified that she had in effect lost her mental faculties and believed that she was incapable of thinking for herself, no longer able to make decisions, and no longer possessing the mental capacity to determine what she wished to do with her property upon her death.

[21] Following her discharge from Mount Sinai, it became clear that Anne could no longer manage her home and she decided in September 2015 that she should move into a retirement home. On October 1, 2015 she visited Amica and was interviewed by Ms. Sikich, the director of care, who interviewed all of the prospective residents to determine whether Amica could accommodate their needs.

[22] As part of the process, Ms. Sikich also reviewed a form completed by Dr. Hotz. Ms. Sikich concluded that Amica would be appropriate for Anne. Because Anne needed some assistance with her care and was not completely comfortable with her memory, Ms. Sikich felt that the assisted living floor in Amica would be appropriate.

[23] Anne moved to Amica on October 13, 2015. Less than a week later 151 Regina was listed for sale.

[24] Rhonda, Marlene, and Harley all agree that they were notified on October 22, 2015 of the meeting at Saul's office on October 23, 2015. They agree that they knew it was to be a family meeting. They disagree over what was discussed at the meeting as well as what was agreed to.

[25] While Rhonda testified that they were told by Saul that Anne wanted to make a few changes to her will she stated that the changes were not discussed. Despite this, she says that she insisted that Anne had to have a competency test. She also insisted that Anne said very little and that everyone agreed, presumably Anne included, that Anne would have a competency test to be arranged by Saul.

[26] Marlene testified that they were told that the new will would be a return to an equal distribution and that there was discussion about the executors and powers of attorney with Harley insisting that he not be the sole executor or power of attorney. As to the assessment, while Rhonda was insisting upon one, Marlene and Harley did not think one was necessary, but that Rhonda was free to arrange one if she wanted. Anne, however, was offended by Rhonda's demand and refused to have one. Marlene also testified that Rhonda was in a foul mood throughout the meeting.

[27] Harley testified that it was clearly discussed with Anne present that all of Anne's estate was to be divided equally between the three of them including that the term deposit and house proceeds were to be divided in three ways. He stated that he did not want to be the sole executor and that after Saul discussed this with Anne, it was agreed that there would be three executors with a majority deciding. Saul questioned Anne throughout the meeting as to her wishes and she always responded that that was the way she wanted it. As to the assessment, he said that it was up to Anne and that if she wanted it, it would happen but that if she did not, it would not. He also testified that

Anne was upset by Rhonda's insistence upon an assessment and suggested that Rhonda herself needed to be assessed. This was more of a rhetorical response from Anne.

[28] I accept Marlene and Harley's version of the meeting. While their testimony was not identical, they did agree upon the major issues – that the equality of division was discussed, that changes were to be made as to the executors, and that while Marlene and Harley were not opposed to an assessment being done it would be Anne's decision whether to have one or not. There was no agreement that an assessment would be done or that Saul was to arrange it. Their versions also agree, not only with Saul's notes of the meeting, but with what happened next, namely that the wills and powers of attorney were both changed, that there was no assessment, and that when 151 Regina was sold that the proceeds of sale and the term deposit were divided three ways after $180,000 was set aside for Anne's ongoing costs. Their version of the meeting also agrees with Michael Kerzner's recollection of a conversation with Anne where she told him what had transpired at the meeting at Saul's office.

[29] Rhonda's testimony as to what was discussed at the meeting or more importantly what was not discussed, namely the equal division of Anne's estate, is somewhat preposterous. How likely would it be for Saul to gather the entire family together and to tell them that Anne wished to change her will and then not have the changes made known. If the changes were not made known why would Rhonda then insist upon an assessment of Anne's competency? To be so insistent for an assessment would only have occurred if Rhonda knew what the changes were going to be and that her interest in Anne's estate was going from most of the estate to 33%.

[30] It was made clear at the meeting what Anne's wishes were. Anne refused an assessment and was offended by Rhonda's insistence that one take place. In accordance with Anne's instructions Saul drafted new wills and powers of attorney for Anne. He clearly must have had no concern with her ability to give instructions. He was an experienced estates lawyer and was Anne's long-time lawyer and knew her and her family intimately. There was nothing in his notes from the meeting indicating that he had a concern about Anne's competency to give instructions. His bigger concern seemed to be whether Anne's assets, including her term deposit, should be divided now or at a later date.

[31] Anne did distribute a large portion of her estate prior to her death with the concurrence of her three children including Rhonda. 151 Regina had been listed on October 19, 2015 and was sold on October 26, 2015 for $861,000 with a closing of December 4, 2015. Rhonda signed the agreement of purchase and sale as the sole power of attorney for Anne.

[32] Later, on December 1, 2015 for the purposes of the closing, Rhonda signed a declaration of possession on behalf of Anne along with Marlene and Harley, as the other powers of attorney. The declaration stated that Anne was the absolute owner of 151 Regina and that there was no one else with an interest in 151 Regina.

[33] Also, for the purposes of the closing, she signed an acknowledgment re power of attorney on the same day. It named all three children as the powers of attorney. It should have been clear to Rhonda that while she had been the sole power of attorney from July 2011 that by December 1, 2015, that was no longer the case and that all three were now powers of attorney as had been discussed at the meeting of October 23, 2015.

[34] Moreover, the acknowledgment, which Rhonda confirmed, stated that to the best of her knowledge, information and belief, the power of attorney was lawfully given. The only power of attorney this could refer to was the one signed by Anne on October 28, 2015 when she also signed her new wills. Rhonda clearly was prepared to acknowledge the validity of the power of attorney in order to close the real estate sale.

[35] When asked in her re-examination about the acknowledgement, she testified that she was asked to sign the acknowledgement, so she did, and that she did not know what she was signing.

Pointedly, she was not asked, and she did not testify that she did not know what she was signing with respect to the declaration of possession.

[36] Following the closing of the sale of 151 Regina, Rhonda and Marlene decided how the sale proceeds and the term deposit should be distributed. In an email to Marlene, Rhonda specifically referred to the instructions that Anne had given as to how the proceeds were to be divided. There was no evidence of the actual amount of closing proceeds or what was the actual amount of the term deposit. The amount of the term deposit was variously described as being $800,000 and $740,000. In any event, the parties all testified that they each received $470,000 from the equal division of the term deposit together with the sale proceeds after first setting aside $180,000 from the total amount for Anne's ongoing expenses.

[37] While not ultimately asserting that she was the owner of 151 Regina, Rhonda gave evidence that the home was supposed to be transferred to her as a joint tenant with Anne in May 2015. She claimed that in May 2015 everything that needed to be signed for the transfer had been done. However, the transfer did not occur. There was no evidence as to why it did not take place.

[38] Rhonda submits in response to her anti-ademption argument that if the 2015 wills are invalid then Marlene and Harley should be ordered to return their portion of the share of the house proceeds, as she should have been the joint owner of 151 Regina at the time of the sale and the payment to Marlene and Harley of the net sale proceeds were paid by mistake. She alleges in argument that Schwartz & Schwartz were negligent in not having the home transferred into joint tenancy.

[39] I am unable to accept Rhonda's argument that there was a mistake in the payment to Marlene and Harley and that she did not know that she did not own 151 Regina as a joint tenant with Anne. The agreement of purchase and sale clearly states, and the words were added in, that Rhonda was the seller as the power of attorney for Anne. It does not say that she and Anne were the joint owners. The declaration of possession, which Rhonda swore to, clearly states that only Anne was the owner of 151 Regina and that no one else had a claim or interest in it. Rhonda never raised a concern with Saul or Jeffery Schwartz, or anyone else at the firm, that the transfer that had at one time been contemplated in May 2015 to make her a joint owner had not taken place. The transfer in fact had never happened. Again, there was no evidence as to why it did not.

[40] I am unable to accept that Rhonda has any claim with respect to any interest in the term deposit or proceeds from the sale of 151 Regina paid to Marlene or Harley even if I were to find that the 2015 wills were not valid. Rhonda was a direct participant in the sale and the ultimate distribution. She made no objection at the time. She did more than acquiesce to the making of the payments, in fact she facilitated them.

[41] With the distribution of the sale proceeds and term deposit, Anne's remaining asset was her interest in Woburn Plaza. Under her will for excluded property this interest was divided equally among her three children.

[42] Anne was no stranger to the preparation and execution of wills. Twelve sets of wills were put into evidence before me covering a period of time from November 1975 to the contested wills of October 28, 2015. In addition, over the years, Anne executed numerous powers of attorney for personal care and property and various codicils to her wills.

[43] In the first will put before me, she left everything to her husband, except for anything which she might get from her father, Sam Kerzner's estate, or her mother, Sarah Kerzner's estate, which was to be divided equally among her three children. In her next will in 1981 everything was divided equally between her children. In 1983 Harley was given a life interest in her home at 151 Regina, with everything else divided equally between the three. In 1986 it reverted to the equal division. In 1991 Marlene was to receive a condominium, Harley and Rhonda were to receive 151 Regina, with appraisals being done, with the other assets being divided equally. In a 1994 will, the

specific bequests were removed, and everything was to be divided equally, with the request that her interest in Woburn Plaza be held for 5 years before being sold. In 2000 everything was to be divided equally. In 2008 the condominium and 151 Regina were to go to Marlene and Rhonda and the balance being divided equally among the three. In 2011 Woburn Plaza was to go to Rhonda, the condominium and 151 Regina to Marlene and Rhonda and the balance divided equally among the three. In 2011, Anne began signing multiple wills including a will for excluded property, namely Woburn Plaza. In a 2012 will, Woburn Plaza was to go to Marlene and Rhonda, 151 Regina to Rhonda, and the balance divided equally among the three. As previously indicated, in the 2013 will Woburn Plaza and 151 Regina were to go to Rhonda and the balance divided equally among the three and in the 2015 will everything was divided equally.

[44] All of Anne's wills were prepared by Saul Schwartz. Many, including the 2013 and 2015 wills, were witnessed by Saul's son and law partner Jeffery who practiced 33 years with his father. Saul died on November 8, 2015, at the age of 91. It was unfortunate that Saul was not available to give evidence at trial as he had a long relationship with Anne and his evidence as the drafting solicitor would have been very helpful.

[45] There was a great deal of evidence from Rhonda, Marlene and Harley about their respective relationships with Anne and each other, going back years, and much of it was conflicting. For example, Rhonda testified that she was the most involved in Anne's life and saw her daily, whereas Marlene saw Anne twice a month and Harley only occasionally. Both Marlene and Harley disagreed with this and said that they talked to and saw Anne more frequently than what Rhonda had testified, especially following Anne's hospitalization at Mount Sinai.

[46] There was much evidence about their respective financial situations and what Anne had done for each of them over the years. There was much evidence about their own relationships with each other. There was evidence presented in order, it would seem, to justify why Anne made the provisions that she did in her various wills from time-to-time. Most of this evidence was irrelevant to the ultimate issue before me – whether Anne had the necessary testamentary capacity when she made the 2015 wills.

[47] Where all of this evidence does assist is in determining whether there were suspicious circumstances relating to the 2015 wills.

[48] In my view, there were no suspicious circumstances so as to place the legal burden on Marlene and Harley regarding knowledge and approval of the 2015 wills by Anne. The sharing of her estate equally among her three children was not such a departure from past bequests so as to raise any suspicion. This was not a bequest that had never been considered before.

[49] Ultimately Anne decided that it was appropriate to share her one remaining asset equally between her children just as she had shared her other assets, her home and her term deposit.

[50] I accept that a testator does not require a reason for who her beneficiaries are to be and the amount each are to receive. However, if there is a rationale for a testator's decision that will minimize any suggestion of suspicious circumstances and support the finding of testamentary capacity. Here, Anne had reverted to what had been a common disposition by her for many years.

[51] No one can truly know Anne's motivation other than an obvious desire to treat her children equally as expressed in the will itself. Perhaps she remembered how she felt when she was excluded from her own mother's will in the early 1990's. Perhaps it was the more recent exclusion from her brother Joe's will following his death in January 2015.

[52] According to Marlene she was devastated when she was left out of her own mother's will. In cross-examination Rhonda agreed that Anne was upset by this.

[53] According to her nephew, Michael Kerzner, Anne viewed her exclusion from her brother Joe's will as inequitable. Michael testified that Anne told him that while she understood that her children were in different financial positions, she did not want to go to her grave with her children fighting and believed that changing her will back to what it had been before, namely an equal distribution would make what had been a wrong, right.

[54] I accept Michael's evidence. It was consistent with the evidence of Jeffery Schwartz, and Marlene and Harley as to what Anne wanted. Michael was close to his aunt Anne. He saw and talked to her regularly. There was no reason for him to say what he said other than telling the truth. He was an admitted friend of Harley but was also close to Marlene and Rhonda and had been close with Anne.

[55] The onus was on Rhonda to prove that Anne lacked the knowledge and approval of the 2015 wills and she has failed to meet this onus. I accept the evidence of Jeffrey Schwartz that the wills were reviewed with Anne before they were signed. Moreover, the wills accorded with Anne's instructions given to Saul during the family meeting just a few days before the wills' execution.

[56] The wills, like all previous wills were exceedingly straightforward. Anne had basically three assets. They were to be divided equally among her children. It is clear from the testimony of Marlene and Harley about the meeting of October 23, 2015 what Anne wanted to do. This was supported by the notes of Saul. I am unable to accept Rhonda's testimony that Anne did not disclose her wishes at the meeting. Not only is it contrary to all of the other evidence and what actually happened after the meeting it is simply illogical to have all of the children meet with Anne's lawyer and not discuss what was on everyone's mind.

[57] This was not a situation where a new lawyer, unfamiliar with the testator and her family and her prior wills, was retained to prepare a will that was a departure from previous wills. This was not a situation where the testator found a new and perhaps recent beneficiary for her estate. Nor was this a situation where the testator prepared her will in secret with no notice to any of the beneficiaries. Nor was this a will done in a hurry as the testator lay dying in a hospital. To the contrary, this was a situation where the testator arranged for and attended a specific meeting with the beneficiaries and made her wishes known. While Harley transported Anne to Saul's office on the day the wills were executed, he did not stay. This is a far cry from saying that he, as a beneficiary, was instrumental in the preparation of the wills.

[58] This leaves the issue of Anne's mental capacity. Based upon the totality of the evidence I find that there is no compelling evidence of suspicious circumstances relating to Anne's mental capacity and that Rhonda has failed to prove that Anne lacked the mental capacity to instruct Saul with respect to the wills on October 23, 2015 or to execute the wills on October 28, 2015.

[59] As already indicated, everyone agrees that there was no issue with Anne's mental capacity prior to her admission to Mount Sinai in August 2015. Rhonda disagrees with everyone about Anne's mental capacity following her discharge.

[60] Upon her discharge from Mount Sinai and up to the execution of the wills on October 28, 2015, Rhonda testified that Anne was weak, frail, foggy and confused and that she never recovered. Rhonda went even further and testified that, in her view, Anne lost her short-term memory at the same time that she moved into Amica and that she never recovered it.

[61] This was contradicted by anyone else who knew Anne. To Marlene, while she had slowed down and needed a walker, which did not make her happy, she was the same person, feisty and delegating chores to her three children as required. To Harley she still "directed traffic" for others and made her own decisions. To Michael Kerzner, she was incredibly sharp and fiery. He described her as Margaret Thatcheresque. He thought that she had a clear mind at the end of

October 2015. Jeffery Schwartz was not asked about whether she had changed although he was asked specifically about his meeting with her on October 28, 2015, at the will signing.

[62] Jeffrey testified that Anne did not appear dazed, confused, sedated or in an altered state. While she talked more slowly than in the past, she did not say or do anything which suggested that she had any cognitive issues. While he had on occasion refused to prepare wills for clients where he was concerned about their testamentary capacity, he had no concerns when Anne executed her wills that day. They talked about her assets that she was bequeathing, namely the ring and her interest in Woburn Plaza, and what it was like living in Amica. Anne discussed her family and specifically her father and her brother Joe who had recently died. She confirmed that she wanted to divide her estate equally among her children.

[63] Rhonda's position was also disagreed with by Anne's long-time family doctor, Dr. Hotz. While Dr. Hotz' evidence was not perfect, and contradictions in some of it was pointed out, he never resiled from his ultimate position that Anne had mental capacity and did not have dementia during the critical period of October 2015.

[64] In his encounter notes from September 4, 2015 and September 10, 2015 Dr. Hotz described Anne as foggy, weak (sic), with nausea, frail and confused. He testified that he believed this was a result of the carbamazepine and he reduced her dosage before eliminating it on September 10th. In his testimony, when asked about the notes, he said that, from his examination of Anne, she was more drowsy and not confused with a memory problem or dementia. In his encounter note of September 16, 2015 he was concerned about a possible stroke and he ordered tests which turned out to be negative. While Anne was less alert and engaged, he did not view this as progressive and believed it would pass.

[65] On September 26, 2015 he completed a form on behalf of Anne to provide to Amica. In it he indicated that Anne presently had mild delirium, but as he testified, that was based upon his last encounter on September 16, 2015 and he did not know if she had recovered. On the area of the form dealing with Anne's cognitive function he put question marks beside Dementia and Confusion. As he testified, he believed that any issues Anne had at that time were reversible and were a result of the carbamazepine and that if he had a true concern with dementia he would have checked the appropriate boxes and ordered more tests. When he saw Anne next on November 18, 2015 he had no concerns with her cognitive function. He continued to treat Anne through the balance of her life and never diagnosed her with dementia.

[66] In cross-examination he agreed that dementia is progressive. However, he maintained that in his view Anne never had dementia as it had to be sustained to be dementia and that her issues were specific arising from other causes such as her medication or anemia.

[67] The other person who met Anne in October 2015 was Ms. Sikich of Amica, who completed the October 1, 2015 Amica intake forms.

[68] The intake forms for Amica certainly do not lead to a conclusion that Anne had dementia or lacked mental capacity. Based on Amica policy, Anne would not have been allowed to reside in Amica if she had dementia or any cognitive disorder. The fact that she was living there dispels any suggestion that she had either. The fact that she was in assisted living was explained by Ms. Sikich. Anne needed some assistance with her care and was not completely comfortable with her memory. That is a far cry from having dementia or suffering from delirium. As Ms. Sikich testified, when she interviewed Anne there was no indication of either.

[69] I give no weight to the notes from Amica that on October 28, 2015, the day of the will signing, she was "groggy". No one testified as to what was meant by that. It could have been Anne's explanation for why she fell as much as anything and provides no evidence as to her mental state. I also give no weight to the patient assessment form from the pharmacy as to Anne's

cognitive impairment. Again no one testified on behalf of the pharmacy. The form appears to have been prepared to assist in the dispensing of medication and was not a true assessment of Anne.

[70] I also place no weight upon the cancellation of the Baycrest referral from Dr. Hotz to Baycrest by Marlene on October 5, 2015. It is not a suspicious circumstance. This was well before the October 23, 2015 meeting where Anne made her wishes known to her children and where she re-confirmed her instructions to Saul to prepare new wills for her execution. Marlene was under the impression that the referral from Dr. Hotz was for a physio assessment as Anne was having balance issues and was terrified of falling, and that had been the issue she had raised with Dr. Hotz. She did not raise any issue with him over Anne's cognition. She cancelled it, at Anne's request, as Anne was no longer having balance issues, she had had the Amica interview and was moving into Amica. Dr. Hotz was not concerned when he found out about the cancellation.

[71] Dementia was defined as a sustained and irreversible impairment of judgment, insight and memory.

[72] There is only one witness, other than perhaps Rhonda, who says that Anne had dementia at the time she executed her wills: Dr. Richard Shulman.

[73] Dr. Richard Shulman is a geriatric psychiatrist who was retained by Rhonda to perform a retrospective analysis of Anne's testamentary capacity.

[74] A retrospective analysis is done by reviewing some of the court material, some of the discovery transcripts and various medical records and then forming an opinion based on this. A retrospective opinion is made without the person providing the opinion ever meeting, examining or assessing the individual in question. One has to rely on what is provided, and as pointed out elsewhere by others faced with this sort of evidence the expert has to form their opinion based upon material that is less than complete, perhaps inaccurate and where coming from one of the parties themselves, biased.

[75] Here Dr. Richard Shulman, while provided with the examinations for discovery of Harley and Marlene, was not provided with the examination for discovery of Rhonda. Nor was he provided with the transcript of the cross-examination of Jeffrey Schwartz. He did say that he tried to emphasize the medical data rather than the evidence of lay witnesses, however, he did not review the will-say statement of Anne's personal physician Dr. Hotz and he did not review the medical data after October 28, 2015 in great detail.

[76] Dr. Richard Shulman stated that there was insufficient clinical information in the Mount Sinai records from August 25, 2015 to confirm whether Anne had suffered a delirium, which is an acute decline in attention and cognition. However, he suspected that she had suffered a delirium while in Mount Sinai based upon Dr. Hotz's progress notes, presumably the ones from September 4 – 10, as he did not specifically identify which ones.

[77] It should be remembered that Dr. Hotz in his testimony downplayed these notes, felt the issues were temporary based upon the carbamazepine and that Anne was not confused, and did not have a memory problem or dementia.

[78] In his report, Dr. Richard Shulman, stated that delirium is potentially reversible but may also unmask dementia associated with Alzheimer's disease, or accelerate cognitive or functional decline in a person with pre-existing Alzheimer's disease or in hospitalized seniors. There was no evidence presented that Anne at any point had pre-existing Alzheimer's disease or Alzheimer's disease. She was only hospitalized for five days at Mount Sinai, months before the October 2015 wills and upon discharge there was no mention of delirium or dementia. He also agreed that the carbamazepine can potentially provoke delirium.

[79] Dr. Richard Shuman concluded that Anne was suffering from dementia in October 2015 because of two concerns. Firstly, in his view she could no longer live independently and secondly, she was no longer managing her property because the sale of 151 Regina was being done by others.

[80] He came to this conclusion while acknowledging that the medical evidence did not warrant a finding that Anne had dementia in October 2015. Dr. Hotz concluded that she did not. There was nothing in the discharge statements from Mount Sinai in October 2015 suggesting that Anne had any cognitive issues. There was nothing in the consult notes of Dr. Patel from Mount Sinai of November 21, 2015 suggesting any cognitive issues. To the contrary, Dr. Patel specifically wrote that she did not appear to be confused or delirious.

[81] In my view, very little weight should be given to Dr. Richard Shulman's opinion when it is based not upon any medical evidence but more so on his two above mentioned concerns and what was really a legal analysis of whether the evidence supports a finding of a lack of testamentary capacity. That is the court's function. If there was medical evidence that needed to be interpreted for the court, that is one thing, but for him to undertake the very analysis that the court is tasked to do, is quite another. Moreover, there were plausible explanations given for both of his concerns – Ms. Sikich explained why Anne was in the assisted living section, and Anne was not part of the house sale because she had vision issues and actively delegated the mechanics of the sale to others.

[82] It would appear that I am not the only one who has raised concerns with retrospective assessments such as this. Gans, J. in *Kates Estate*, 2020 ONSC 7046 raised concerns over the weight to be given to a retrospective analysis of testamentary capacity. Dr. Richard Shulman provided a report in that matter as did Dr. Kenneth Shulman, who also gave evidence before me. It is unclear from a reading of the *Kates* decision what position the respective Drs. Shulman took as to the testamentary capacity of the deceased, but Gans, J. appeared to give little weight to the retrospective reports before him.

[83] Dr. Kenneth Shuman is also a geriatric psychiatrist. He was retained by Marlene and Harley to also perform a retrospective analysis of Anne's testamentary capacity.

[84] His conclusion was that while Anne had some cognitive impairment, he was satisfied that she did not have dementia and was not so impaired that she could not execute her wills in October 2015. He focused on the medical records and was comforted by the will-say statement of Dr. Hotz which clarified his encounter notes from September 2015 wherein he concluded that Anne at no time was suffering from dementia.

[85] He testified that he was very hesitant to find dementia in a retrospective report and in commenting on Dr. Richard Shulman's report testified that just because Anne could not function independently anymore should not lead to the conclusion that she had cognitive impairment. There could be other reasons for the loss of independent living, such as a loss of mobility or trigeminal neuralgia, and whereas cognitive impairment could lead to a loss of independence, a loss of independence was not necessarily proof of cognitive impairment. Loss of independence could be a symptom of cognitive impairment but was not proof of it.

[86] In cross-examination, while he acknowledged that it would have been better if a formal assessment had been done, there was none. He was also unable to comment on the diagnoses of dementia from the October 2018 medical records other than pointing out there was no such diagnosis in the November 2015 medical records from Mount Sinai.

[87] He also pointed out in cross-examination that some of the comments in the Amica notes when Anne first moved there are the normal phenomena associated with an 89-year-old changing their living arrangements and entering a retirement home. He placed little weight on them. This was also the evidence of Ms. Sikich who stated that it was not unusual for a new resident in a new

environment, like a retirement home, to be confused and that after some time they become more comfortable. Also, the Amica notes from October 28, 2015 stating that Anne fell and felt "groggy" do not necessarily lead to the conclusion that she was not capable of signing a will that day.

[88] While I have the same concern overall with Dr. Kenneth Shulman's retrospective report because he never met, examined or assessed Anne, his opinion appeared to be based more on the medical records than on speculation upon the surrounding circumstances leading up to the October 2015 wills. I prefer his evidence over that of Dr. Richard Shulman's.

[89] Having said that, I prefer the evidence of Dr. Hotz and Jeffrey Schwartz, the two professionals who actually dealt with Anne. The two based their impressions on their knowledge of Anne and their direct personal experiences with her. Dr. Kenneth Shulman's opinion buttresses their evidence as does the evidence from Ms. Sikich and Michael Kerzner who were independent and uninterested witnesses. As to the parties, I found Marlene and Harley's evidence to be tempered and in line with the documentary evidence whereas Rhonda's was exaggerated, directed towards the result she desired and was contrary to the documentation. Her position was also inconsistent. Rhonda was prepared to follow the October 2015 power of attorney in order to facilitate the sale of 151 Regina and specifically acknowledged its validity. As a result, she received $470,000 following the sale and the division of the net proceeds and the term deposit. Yet, when it came to the will, executed the same day, she took the position that Anne lacked the necessary testamentary capacity.

[90] There are insufficient suspicious circumstances to place the onus of proving testamentary capacity on Marlene and Harley. However, even if I had found that there were sufficient suspicious circumstances so as to place the burden upon Marlene and Harley, they, on the evidence, have also met that burden on a balance of probabilities. I am satisfied that on October 23, 2015 when Anne gave the instructions, and on October 28, 2015 when she signed the wills prepared pursuant to those instructions, Anne had the necessary testamentary capacity.

[91] Because I find the wills to be valid, the issue of anti-ademption does not arise. However, as I indicated earlier in my decision, even if the wills were found to be invalid, the provisions of s. 36 of the *Substitute Decisions Act* cannot apply where the alleged insufficiency of the residue in the estate was created on consent under the direction of the party now seeking the relief of the section.

[92] I have received the Bill of Costs of both the applicant and the respondents. The amounts set out in each Bill, while not the same, are close. I would hope that the parties would be able to reach an agreement on costs, but if unable to do so, the respondents are to upload and serve their cost submissions of no more than 10 typed, double-spaced pages, with any necessary offers and caselaw attached within three weeks of today's date. I am giving extra time in order to discuss the resolution of costs. If the parties do reach an agreement, I am to be informed of the fact of the agreement by email to my assistant maria.kolliopoulos@ontario.ca . The applicant is to provide her cost submissions subject to the same directions within two weeks of the service of the respondents' submissions. The respondents may provide reply submissions of no more than 5 typed double-spaced pages within one week thereafter.

_____

Justice Hood

Released: May 26, 2022

CITATION: *Zaretsky v. Zaretsky et al.*, 2022 ONSC 3165
COURT FILE NO.: CV-19-00005256-00ES
DATE: 20220526

ONTARIO

SUPERIOR COURT OF JUSTICE

BETWEEN:

Rhonda Zaretsky

Applicant

– and –

Marlene Zaretsky and Harley Zaretsky

Respondents

REASONS FOR JUDGMENT

Hood J.

Released: May 26, 2022

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Fees

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Documents Required

May vary; contact for information

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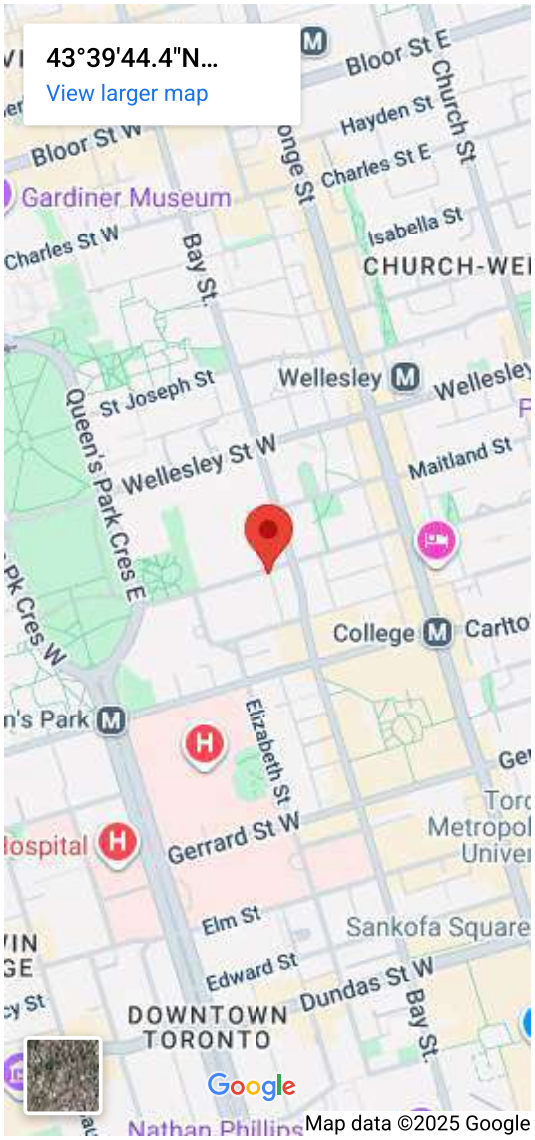
Last Updated On

September 25, 2025



Address

25 Grosvenor St, 19th Fl
Toronto, ON, M7A 2G6
Cross street: Bay St and College St W
Open in Google Maps

Hours of Operation

Mon	8:30 am to 4:30 pm
Tue	8:30 am to 4:30 pm
Wed	8:30 am to 4:30 pm
Thu	8:30 am to 4:30 pm
Fri	8:30 am to 4:30 pm

Mon-Fri 8:30 am-4:30 pm

Service Area(s)

Ontario

Gmail Kevin McLean <mrkevinalexandermcleanbajdcim@gmail.com>

PIPEDA REQUEST OF "TRIBUNALS ONTARIO" - JULY 30 2025

Kevin McLean <mrkevinalexandermcleanbajdcim@gmail.com> Mon, Sep 29, 2025 at 1:27 PM
To: "Access.TO-TDO (MAG)" <Access.TO-TDO@ontario.ca>, sean.weir@ontario.ca, Nicole.Watson@ontario.ca, Mahnoosh.Hadizad@ontario.ca, ann-marie.tsai@ontario.ca, Harry.Gousopoulos@ontario.ca, mira.gamsa@ontario.ca

Dear Sirs/Mesdames/Other Gender-Neutral Pronouns: I confirm the auto-reply of Mr. Gousopolos and I have added the individual operating in his absence. I remain available should you need clarification of the above. I will upload the relevant email to the OPCC dropbox in the near future.

Appendix

mira.gamsa@ontario.ca

On Mon, Sep 29, 2025 at 1:14 PM Kevin McLean <mrkevinalexandermcleanbajdcim @gmail.com> wrote:

REPLY TO THE ATTENTION OF: Mr. Kevin A. McLean (BA, JD, CIM)
REPLY BY EMAIL: mrkevinalexandermcleanbajdcim@ gmail.com

Classification: Private and Confidential - EXCLUSIVELY FOR PURPOSES OF *PIPEDA*
Sending Method: Via Electronic Transmission
Creation Method: Dictated with Voice Recognition Software (Subject to reservation of rights concerning grammatical, syntactical, qualifying, or negatory correction)
Date: September 28, 2025

TO:

Organization Name:
Tribunals Ontario
19th floor
25 Grosvenor Street
Toronto, Ontario

Attention: Mr. Sean Weir, Mr. Gousoupolos *et al*

Summary of this Instrument:

a. OPCC file number: ***PIPEDA*-050708**

b. Sender: Mr. Kevin A. McLean (BA, JD, CIM)
c. Recipient: Tribunals Ontario
d. Style of Cause, Parties and/or Interested Persons Involved: McLean v. "Tribunals Ontario" (The "Correspondence");
e. Type of Document(s) Submitted: Formal Notification of Regulatory Action (via Electronic Transmission) with enclosures;

Subject I: Formal Notification of Requisition for Investigation pursuant to the Personal Information Protection and Electronic Documents Act, S.C. 2000, c. 5 ("*PIPEDA*")

Subject II: Postulation of Ineluctable Federal Jurisdictional Ascendancy over the Organization designated as "Tribunals Ontario"
(Collectively, the "Correspondence": "Subjects", "Foci", or "Themes").

I. PROLEGOMENON AND JURISDICTIONAL POSTULATION

I cordially write regarding the above **Subjects** of this **Correspondence**. I proffer my gratitude *ab initio* for your time and judicious consideration of this **Correspondence** and its pertinent attachments (by reference or inclusion). I am demonstrably cognizant of your finite yet **valuable resources**, which is precisely why I have devoted **immense** and exhaustive **time** to the meticulous **research** and **application** of the **legal principles** herein to the factual antecedents herein. The preparation of this voluminous instrument, demanding an **exacting concordance** between **factual particulars** and **statutory requirements**, is intended to facilitate a **perspicacious review**, thereby conserving both the public and private *fisc* through the application of **intellectual diligence** *ab initio*.

I confirm the **unambiguous adoption** of all definitions established in previously, indirectly or directly, cited correspondence, *mutatis mutandis*, for the purposes of this **instrument's construction**.

I hereby formally transmit **notification of the lodging** of a **Requisition for Investigation** pursuant to the *Personal Information Protection and Electronic Documents Act*, S.C. 2000, c. 5 (**"*PIPEDA*"**), which has been duly submitted to the esteemed **Office of the Privacy Commissioner of Canada** (**"OPCC"**). For the purposes of precise recordkeeping and adherence to procedural exactitude, the following **particulars** are herein provided:

1. Reference Numeration (OPCC): *PIPEDA*-050708
2. Intake Authority: Office of the Privacy Commissioner of Canada, 30 Victoria Street, Gatineau, Québec K1A 1H3

II. THE INELUCTABLE APPLICABILITY OF FEDERAL MANDATE

I remain steadfastly ensconced in the **uncontroverted legal position** that the administrative **Organization** designated as "**Tribunals Ontario**" is demonstrably and **ineluctably subject** to the prescriptive authority of ***PIPEDA***. This enduring **postulation** is predicated upon all previously and exhaustively **espoused legal principles** and **factual antecedents**, which have been duly tendered to the **OPCC** for its judicious consideration and **formal investigation**. I have appended copies of **Exhibits "A" to "C"** for your **expeditious reference** and in the spirit of a collaborative **access partnership**.

The Imperative Mandate of Statutory Construction under the *Interpretation Act*

The foundational premise for this jurisdictional assertion is reinforced, *a fortiori*, by the canonical rules of **statutory interpretation** established by the ***Interpretation Act, RSC 1985, c I-21***. This federal enactment mandates the **definitive construction** of all federal legislation, including ***PIPEDA***, thereby dictating the non-permissive nature of the **Organization's** obligations.
Specifically, the Act stipulates concerning the construction of legislative commands:

1. §11. The expression **"shall"** is to be construed as **imperative** and the expression **"may"** as **permissive**.
2. The voluminous recurrence of the term **"shall"** throughout ***PIPEDA***'s **Schedule 1**—delineating the **53 distinct "shall" clauses** (Appendix IV)—thus assumes an **unassailable imperative character**. These are not hortatory recommendations; they are **mandatory duties**, the contravention of which constitutes a **breach *per se***.
3. Furthermore, the paramount **remedial object** of federal law is assured by:

4. §12. Every enactment is deemed **remedial**, and **shall** be given such **fair, large and liberal construction and interpretation** as best ensures the **attainment of its objects**.

This provision is the constitutional **bulwark** compelling a **broad and expansive interpretation** of ***PIPEDA***'s jurisdictional reach, ensuring that its objects—the robust protection of personal data—are not defeated by the technicalities of a provincial administrative structure. This **interpretive lens** is essential to foreclose the possibility of any entity existing as an **unaccountable repository** of sensitive information within the federal sphere.

B. Provincial Exclusion and the Regulatory *Lacuna*

It is an established statutory and jurisprudential **truth** that "**Tribunals Ontario**" is not an "**institution**" within the definitive ambit of the *Freedom of Information and Protection of Privacy Act, R.S.O. 1990, c. F.31* (**"FIPPA"**). This **conspicuous omission** from the exhaustive enumeration within the relevant provincial regulation (*R.R.O. 1990, Regulation 460, General*) triggers the legal maxim of *expressio unius est exclusio alterius*—the express mention of one thing (the constituent tribunals) excludes all others (the administrative umbrella organization). Consequently, the **Organization** is legally **precluded** from acceding to access requisitions tendered pursuant to the said provincial **enactment**, and the **OIPC Ontario** is *ipso facto* rendered **incompetent** to adjudicate appeals stemming from this legislative **lacuna**. "**Tribunals Ontario**" maintains a structural separation, occupying a distinct administrative **domicile** and **spatial demarcation** from its **constituent adjudicative tribunals** (as substantiated by Exhibit B, detailing its 19th-floor location), yet it **conspicuously evades** the definitional parameters of an **institution** under **FIPPA**. The resulting regulatory **void** is not a realm of freedom, but a *terra incognita* demanding the supremacy of the federal law to ensure the uninterrupted protection of personal information.

The **Organization's avoidance** of a definitive *FIPPA* response may be interpreted as a **tacit admission** of its regulatory ambiguity. It is **trite** in **jurisprudence** that if "**Tribunals Ontario**" harboured a subjective, defensible conviction that it was **subjected** to the strictures of *FIPPA*, it would have definitively provided a comprehensive, compliant response regarding the same, but this **Organization** has conspicuously **failed** to do so. This recalcitrance compels the application of the **Paramountcy Doctrine**, ensuring that the federal legislative object—the robust protection of personal data—is not **thwarted** by an anomalous provincial administrative structure.

Through an **advanced syllogism** and **extrapolation** of fundamental **legal principles**, the **inescapable conclusion** is rendered self-evident: "**Tribunals Ontario**" must necessarily be subjected to some form of **access to information** and/or **privacy legislation** within our constitutional **jurisprudence**. An administrative entity that aggregates and centrally manages sensitive **Personal Information** (**PII**) and **Personal Health Information** (**PHI**) derived from adjudicative proceedings cannot exist as an **unaccountable repository**. A *fortiori*, should the application of **provincial government legislation** prove **inapposite**, and acknowledging its demonstrable exclusion from federal government exceptions (as confirmed by the MOU, Exhibit C, which explicitly disclaims its status as a **Crown Agency**), the **residual locus of regulatory authority** must repose in the **federal laws governing the collection, utilization, and disclosure of personal information**. This is the ***sine qua non*** of accountability, reflecting the quasi-constitutional status afforded to privacy entitlements in the Canadian legal architecture. The principles of the ***Interpretation Act***, particularly §12, further compel the application of ***PIPEDA*** as the governing *lex generalis* in the absence of an applicable *lex specialis*.

Furthermore, the **systematic centralization** of IT, human resources, and records management functions under the banner of "**Tribunals Ontario**" constitutes a **commercial character** for the purposes of ***PIPEDA***. This comprehensive logistical and transactional operation, encompassing the procurement and maintenance of complex, multi-million dollar data infrastructures, falls within the expansive definition of an "**organization**" engaged in a "**commercial activity**," regardless of its non-profit or quasi-governmental status. The collection, utilization, and disclosure (**CUAD**) of this sensitive information in the course of

managing these shared services inherently activates the federal statute's jurisdiction, thereby closing the jurisdictional **black hole** that **Tribunals Ontario** currently purports to inhabit.

III. AMPLIFICATION OF JURISDICTIONAL ARGUMENTS, FACTUAL EXTRAPOLATIONS, AND STATUTORY DEFICIENCIES

A. Non-Technical Access Objective and Mandatory Compliance

This requisition, addressed to **Tribunals Ontario** at the **19th floor** of 25 Grosvenor Street, to the attention of Mr. Sean I ir (Executive Chair) and Mr. Harry Gousoupolos (Executive Director), is grounded in the non-derogable obligations of federal statute. While the *FIPPA* statutory framework requires that each and every access request explicitly references the specific provincial enactment, ***PIPEDA*** operates upon a broader, principle-based model and imposes no such technical requirement. Without being overly technical, my immutable objective remains the comprehensive procurement of any and all **Personal Information** (**PII**) and **information** (see: §9(4) of *PIPEDA* for an example of an **override section** for disclosure) that **Tribunals Ontario** has held, is holding, has used, has accessed (see: §7 of *PIPEDA* for definitional guidance), and a detailed, comprehensive list of disclosures that **Tribunals Ontario may** have engaged in. The emphasis placed upon the word "**may**" is critical, reflecting the accountability principle's extension to potential, as well as actual, third-party disclosures. In this regard, I note that the **53 distinct "shall" clauses** enumerated under ***PIPEDA***'s **Schedule 1** (as contained in **Appendix IV**) constitute the minimum, non-derogable standards of compliance.

B. The Juridical Status of Legal Counsel and Organizational Control

It is a **telling observation** that **numerous legal counsel** are engaged to provide legal advice to the **Executive Chair of Tribunals Ontario**, but *not* to **Tribunals Ontario itself** *qua* legal entity. This is most distinct from a legal counsel, notably of its employer, providing legal advice directly to **Tribunals Ontario** itself, thereby implicating a profound difference in the locus of the client-privilege relationship. This is particularly relevant when juxtaposed against the hypothetical scenario raised in *Derenzis* (Justice Mundane), where the Executive Chair, arguably switching hats, reported a lawyer to the Law Society of Ontario (**LSO**). In such an instance, the switching of capacities, from administrative head to private complainant or regulatory reporter, renders the disclosure and its underlying documentation subject to divergent privacy and access regimes, creating an **epistemological conundrum** regarding the applicability of *FIPPA* versus ***PIPEDA*** depending on the Executive Chair's current capacity.

The problem is further compounded when advice is provided not to the Executive Chair in his prescribed capacity as the **"head of institution"** under a *FIPPA* General Regulation involving a specific, independent constituent tribunal, but rather generally to him in his overarching capacity as Executive Chair of **Tribunals Ontario**. An even more acute issue arises when purported advice is provided to an Executive Director or other higher-ranking official of **Tribunals Ontario** who holds **no statutory or prescribed denotation** as the head of an institution.

C. The Factual and Statutory Disassociation from the Crown

I continue to **repeat and rely upon** the usage of language by our **Legislature** in referencing "**a tribunal**" and "**multiple tribunals**," consistently avoiding a definitive legal designation for the administrative collective, **Tribunals Ontario**. Moreover, as per the **Memorandum of Understanding** (**MOU**) between the Attorney General of Ontario (**AGO**) and the **Executive Chair of Tribunals Ontario** in his **professional capacity** (not personal, domestic, or for literary or artistic purposes), this document, summarized as follows, **demonstrates yet again** that the **Government of Ontario** does not **control, own, or operate** (**COO**) **Tribunals Ontario**:

Contract Summary	Details
Contract Type	*Memorandum of Understanding*
Parties	The Attorney General of Ontario (**"Minister"**) and The Executive Chair of Tribunals Ontario (**"Executive Chair"**)
Effective Date	**December 22, 2022**
Termination Clause	The Minister may terminate the MOU at any time with **30 days' written notice**. The MOU expires five years from its effective date unless renewed or replaced.
Audit Rights	The Minister may direct audits; the Ontario Internal Audit Division or Auditor General may conduct audits. Tribunals Ontario must provide reports.
Payment Terms	**Tribunals Ontario** is funded by the Government of Ontario through the Consolidated Revenue Fund. The *Licence Appeal Tribunal - Automobile Accident Benefits Service* charges back its costs to the insurance industry.
Liability	**Tribunals Ontario** is covered for commercial general liability risks under the *Government of Ontario's General and Road Liability Protection Program*.
Confidentiality	**Legal advice** provided to **Tribunals Ontario** related to **adjudicative matters** is treated as confidential between **Tribunal Counsel** and **Tribunals Ontario**.

This MOU, executed in **December 2022** (Exhibit "C"), coupled with the public record (specifically the "Sunshine List"), confirms that while Mr. Weir was previously denoted as employed by the **AGO** between 2020 and 2022, his employer name switched to **Tribunals Ontario** in 2024. This change is **not coincidental** and serves as compelling **extrinsic evidence** that the *Crown Agency Act*'s **COO** test is not met, further negating any potential exemption from ***PIPEDA***.

D. The Commercial Activity Test and *Ubi Jus, Ibi Remedium*

The issue of what constitutes a **"Commercial Activity"** for the purposes of ***PIPEDA*** remains without definitive and binding jurisprudence specifically involving **Tribunals Ontario**. However, the ***Federal Interpretation Act*** necessitates a broad interpretation. While there is no dispute that **Tribunals Ontario** is not a non-profit or charity, previous case law, such as *Cusack v. The Lawyers' Professional Indemnity Co., 2013 ONSC 5511* (Justice E. Morgan), albeit *obiter* regarding LawPro's regulatory function, confirms that even entities operating outside a purely competitive commercial sphere may be subjected to ***PIPEDA*** where their activities involve **CUAD** of personal information. The overarching **Latin expression** that underscores "*ubi jus, ibi remedium*" (where there is a right, there must be a remedy) is activated. Given that our **Legislature** has specifically **excluded Tribunals Ontario** from *FIPPA*, and our **Parliament** has implicitly excluded it from the federal *Privacy Act*, **Tribunals Ontario** must *a fortiori* be subjected to the **residual privacy legislation**.

Unlike British Columbia and Alberta, which have enacted specific provincial legislation to **exempt** *Organizations* from ***PIPEDA*** where their **CUAD** activities are contained **intra** the borders of those provinces, our Legislature has chosen **not to do so** as it relates to **Personal Information**. Furthermore, while the Legislature has passed legislation related to the collection of **PHI**, it is strictly **constrained** to the

CUAD involving designated healthcare providers, leaving a significant gap regarding administrative bodies like **Tribunals Ontario**.

E. The Confluence of Statutory Gaps and Mandatory Breach Notification

The core issue of the privacy lacuna is exemplified by the statutory divergence concerning breach notification. The privacy breach provisions under §40.1 of *FIPPA* relate to theft, loss, and unauthorized **CUAD** involving a *FIPPA*-designated institution (e.g., a constituent tribunal). For example, where the Licence Appeal Tribunal (**LAT**) collects **PII** under §280(2) of the *Insurance Act*, it does **not** state that **Tribunals Ontario** is *also* collecting, using, or disclosing that information. Therefore, a privacy breach at the **LAT** is distinct from a breach at **Tribunals Ontario**.

Imagine a situation wherein a representative of the **LAT** improperly disclosed **PII** to **Tribunals Ontario** (rendering **Tribunals Ontario** an unauthorized subsequent collector), which was then stored in a filing cabinet on the **19th floor** of 25 Grosvenor. If a **theft** then occurred on the **19th floor**, **Tribunals Ontario** would have **different obligations** under ***PIPEDA*'s Breach of Security Safeguards** (**BSS**) provisions (specifically, the duty to notify all affected individuals subject to a **Real Risk of Significant Harm** (**RROSH**)). The constituent tribunal's obligations under *FIPPA* would be different from **Tribunals Ontario**'s obligations under ***PIPEDA***.

Furthermore, where there is a **conflict on its face** between federal and provincial legislation so deeply embedded, our governmental system operates in a manner where the **federal trumps the provincial**. The immunity provisions offer no succour:

- §6 of the *Tribunal Adjudicative Records Act, 2019* (***TARA***) only relates to **protection from personal liability** for a **member or an employee of a tribunal**, *not* a non-employee or non-member of **Tribunals Ontario**.
- This distinction is crucial because the *Crown Liability and Proceedings Act, 2019* (***CLPA***) at §8(3) applies the negation or limitation of liability for an officer/employee of the Crown to the **Crown** itself. If the person who committed the breach was **not** a member or employee of the *tribunal*, the qualified immunity is **inapplicable**.

Before any tort action can even be contemplated, the requestor must be able to exercise rights under a privacy or access to information statute. This has been the established law since McInerney v. MacDonald, 1992 2 SCR 138 (SCC), which affirmed that randomly and hopefully suing individuals for breaches of duty would lead to unnecessary floodgates of litigation without first exercising established access rights. The ***PIPEDA*** framework is the only **available locus** to exercise such rights.

Finally, consider the rogue employee of **Tribunals Ontario** (not a constituent tribunal member) who obtains information and uses it to make a false police complaint to the Toronto Police Service (**TPS**), which is governed by the *Municipal Freedom of Information and Protection of Privacy Act* (**MFIPPA**), not *FIPPA*. In this scenario, the initial unauthorized disclosure (oral or otherwise—***PIPEDA*** applies to **oral conversations**; *FIPPA* generally does not) is committed by a **Tribunals Ontario** employee. The constituent tribunal would likely claim it has no custody or control of the information, whereas **Tribunals Ontario** would retain *control* of certain **PII** by way of **CUAD**. This necessitates the clear application of ***PIPEDA*** as the safety net of accountability.

IV. PERORATION AND CONCLUSION

I respectfully **adjure** you to ensure the **citation** of the ***PIPEDA* complaint file number** (***PIPEDA*-050708**) in all future **Correspondence** emanating from your **Organization**, thereby ensuring **terminological consistency** and **procedural fidelity** across all relevant **fora**.

Furthermore, to ensure that these **apparently novel issues of law** (*terra incognita*) are subjected to **forthwith investigation** and subsequently afforded the opportunity to be **heard and decided** by the esteemed **Federal Court of Canada** (**"FCC"**), a copy of this **Correspondence** will be duly submitted to

the **OPCC Dropbox**. This decisive action is necessary to resolve the **jurisdictional conundrum** for all Ontario residents subject to the **Organization**'s administrative **architecture**.

CONCLUSION

The **Organization's protracted silence** subsequent to the **temporal ambit** provided in our formal requisition is herein construed as a **wilful contravention** of **statutory obligations**. The deliberate **inattention** to the **mandamus clauses** within ***PIPEDA*'s Schedule 1** (as enumerated in Appendix IV) constitutes not merely a procedural default, but a **systemic failure** indicative of an absence of a functional **Privacy Management Program** (**PMP**). The inevitable conclusion, predicated upon the Organization's **structural complexity** and **demonstrable regulatory default**, is that "**Tribunals Ontario**" is an **Organization** under ***PIPEDA***, and its **dereliction** in furnishing a compliant response constitutes a **fundamental breach of its primordial accountability duty**. This protracted failure compels the **OPCC's intervention** to restore **regulatory equilibrium** and protect the individual privacy **entitlements** of the Complainant. It is submitted that the **FCC** must ultimately issue a definitive judicial declaration—a *coup de grâce*—to resolve this matter and ensure the **unfettered accountability** of the **Organization** under the federal statute.

We shall know soon enough if the OPCC investigator accepts jurisdiction or not. If the latter, I will marshal the matter forward to the FCC and I cordially remind you of section 8(8) of *PIPEDA*.

Yours most **appreciatively** and **gratefully**,

/Mr. Kevin A. McLean (BA, JD, CIM)

Mr. Kevin A. McLean (BA, JD, CIM)

APPENDIX IV: ENUMERATION OF MANDATORY *PIPEDA* ACCOUNTABILITY OBLIGATIONS (THE "SHALL" CLAUSES)

Number	Shall Clause Description	Reference to *PIPEDA* Clause	Other; Organizations
1	Accountable Individuals: An Organization shall designate an Individual or Individuals who are accountable for the Organization's compliance.	Principle #1	Compliance
2	The identity of the designated Individual(s) shall be made known upon request.	Principle #1	Applicable
3	The Organization shall use contractual or other means to provide a comparable level of protection for information processed by a Third Party.	Principle #1	Applicable
4	Organizations shall implement policies and practices to protect Personal Information.	Principle #1	Implementing procedures to protect PI
5	Organizations shall implement policies and practices to establish procedures to receive	Principle #1	Applicable

	and respond to complaints and inquiries.		
6	Organizations shall implement policies and practices to train staff and communicate information about the Organization's policies and practices.	Principle #1	Applicable
7	Organizations shall implement policies and practices to develop information to explain the Organization's policies and procedures.	Principle #1	Applicable
8	The purposes for which Personal Information is collected shall be identified by the Organization at or before the time the information is collected.	Principle #2	Applicable
9	The Organization shall document the purposes for which Personal Information is collected.	Principle #2, Clause 4.8, Clause 4.9	Applicable
10	When Personal Information is to be used for a purpose not previously identified, the new purpose shall be identified prior to use.	Principle #2	New purpose requires consent
11	Organizations shall make a reasonable effort to ensure that the Individual is advised of the purposes for which the information will be used.	Principle #3	Applicable
12	To make the consent meaningful, the purposes must be stated in such a manner that the Individual can reasonably understand how the information will be used or disclosed.	Clause 4.3.2	Applicable
13	An Organization shall not, as a condition of the supply of a product or service, require an Individual to consent to the collection, use, or disclosure of information beyond that required to fulfil the explicitly specified, and legitimate purposes.	Principle #3	Applicable – Supply – Product or Service
14	In determining the form of consent to use, Organizations shall take into account the sensitivity of the information.	Principle #3	Applicable
15	Consent shall not be obtained through deception.	Principle #3	Applicable

16	The collection of Personal Information shall be limited to that which is necessary for the purposes identified by the Organization.	Principle #4	Applicable
17	Information shall be collected by fair and lawful means.	Principle #4	Applicable
18	Organizations shall NOT collect Personal Information indiscriminately.	Principle #4	Prohibited – collect PI – careless manner
19	Both the amount and the type of information collected shall be limited to that which is necessary to fulfil the purposes identified.	Principle #4	Applicable
20	Organizations shall specify the type of information collected as part of their information-handling policies and practices.	Principle #4, Clause 4.8	Applicable
21	Personal Information shall NOT be used or disclosed for purposes other than those for which it was collected, except with the consent of the Individual or as required by law.	Principle #5	Exceptions: Consent of the individual; or required by law
22	Personal Information shall be retained only as long as necessary for the fulfilment of those purposes.	Principle #5	Applicable
23	Organizations using Personal Information for a new purpose shall document this purpose.	Principle #5, Clause 4.2.1	Applicable
24	Personal Information that has been used to make a decision about an Individual shall be retained long enough to allow the Individual access to the information after the decision has been made.	Principle #5	Applicable
25	Organizations shall develop guidelines and implement procedures to govern the destruction of Personal Information.	Principle #5	Applicable
26	Personal Information shall be as accurate, complete, and up-to-date as is necessary for the purposes for which it is to be used.	Principle #6	Applicable
27	The extent to which Personal Information shall be accurate, complete, and up-to-date will depend upon the use of the	Principle #6	Applicable

	information, taking into account the interests of the Individual.		
28	Information shall be sufficiently accurate, complete, and up-to-date to minimize the possibility that inappropriate information may be used to make a decision about the Individual.	Principle #6	Applicable
29	An Organization shall NOT routinely update Personal Information, unless such a process is necessary to fulfil the purposes for which the information was collected.	Principle #6	"No Routine Update"
30	Personal Information shall be protected by security safeguards appropriate to the sensitivity of the information.	Principle #7	Applicable
31	The security safeguards shall protect Personal Information against loss or theft, and unauthorized access, disclosure, copying, use, or modification.	Principle #7	POPI - Loss or theft; Unauthorized Access, use, copying, modification or disclosure
32	Organizations shall protect Personal Information regardless of the format in which it is held.	Principle #7	Applicable
33	Organizations shall make their employees aware of the importance of maintaining the confidentiality of Personal Information.	Principle #7	Applicable
34	Care shall be used in the disposal or destruction of Personal Information to prevent unauthorized parties from gaining access to the information.	Principle #7	Applicable
35	An Organization shall make readily available to Individuals, specific information about its policies and practices relating to the management of Personal Information.	Principle #8	Applicable
36	Organizations shall be open about their policies and practices with respect to the management of Personal Information.	Principle #8	Applicable
37	Individuals shall be able to acquire information about an Organization's policies and practices without unreasonable effort.	Principle #8	Applicable

38	This information shall be made available in a form that is generally understandable.	Principle #8	Applicable
39	Information made available shall include the name/title/address of the accountable person.	Principle #8	Applicable
40	Information made available shall include the means of gaining access to Personal Information held by the Organization.	Principle #8	Applicable
41	Information made available shall include a description of the type of Personal Information held by the Organization, including a general account of its use.	Principle #8	Applicable
42	Information made available shall include a copy of any brochures or other information that explain the Organization's policies, standards, or codes.	Principle #8	Applicable
43	Information made available shall include what Personal Information is made available to related Organizations (e.g., subsidiaries).	Principle #8	Applicable
44	Upon request, an Individual shall be informed of the existence, use, and disclosure (EUD) of his or her Personal Information.	Principle #9	EUD
45	Upon request, an Individual shall be given access to that information.	Principle #9	Applicable
46	An Individual shall be able to challenge the accuracy and completeness of the information and have it amended as appropriate.	Principle #9	Applicable
47	Upon request, an Organization shall inform an Individual whether or not the Organization holds Personal Information about the Individual.	Principle #9	Applicable
48	The Organization shall allow the Individual access to this information.	Principle #9	Applicable
49	The Organization shall provide an account of the use that has been made or is being made of this information and an account of the Third Parties to which it has disclosed it.	Principle #9	Historical Use, Current Use, Third Party Disclosure

50	Information provided by an individual to permit an Organization to provide an account of the existence, use, and disclosure of Personal Information shall only be used for this purpose.	Principle #9	Applicable
51	Where an Organization cannot provide a specific list of actual disclosures, it shall provide a list of Organizations to which it may have disclosed information.	Principle #9	Applicable
52	An Organization shall respond to an Individual's request within a reasonable time and at minimal or no cost.	Principle #9	Applicable
53	The requested information shall be provided or made available in a form that is generally understandable, with explanations for any abbreviations or codes used.	Principle #9	Applicable

On Mon, Aug 4, 2025 at 2:38 PM Kevin McLean <mrkevinalexandermcleanbajdcim @gmail.com> wrote:

Dear Sirs/Mesdames et al: I confirm receipt of the auto-reply and I have added the copied name: ann-marie.tsai@ontario.ca

On Mon, Aug 4, 2025 at 1:59 PM Kevin McLean <mrkevinalexandermcleanbajdcim @gmail.com> wrote:

August 4th, 2025

Via Electronic Mail

DICTATED AT FIRST INSTANCE (kindly excuse any errors of an administrative nature - reserve the right to amend for the same)

EXCLUSIVELY FOR THE PURPOSES OF *PIPEDA*

To: "Tribunals Ontario"
15 Grosvenor Street, Ground Floor
Toronto, ON M7A 2G6

Attention: Mr. Weir et al.

Subject: Requisition or Request for Access to Personal Information and Personal Health Information and Ancillary Matters Pertaining to Statutory Compliance under *PIPEDA*

Esteemed Sirs, Mesdames, or other Gender-Neutral Designations:

This epistolary communication is tendered with respect to the aforementioned subject matter. It is my profound hope that this exchange will be characterized by a spirit of collaborative access partnership, fostering an environment conducive to intellectual discourse and the meticulous examination of complex legal principles. Such a cooperative endeavour, I contend, is paramount for the betterment of the public interest and the unwavering administration of justice, in strict adherence to the venerable rule of law.

I write to unequivocally affirm, consequent to a meticulous computation predicated upon the exigencies of the *Personal Information Protection and Electronic Documents Act*, S.C. 2000, c. 5 (hereinafter, "*PIPEDA*"), that an organization, when furnishing a response to an access request thereunder, is statutorily allotted a period of thirty (30) calendar days from the precise date of reception of said written access requisition. I hereby reassert that the quantum of detail provided was demonstrably ample to facilitate a comprehensive and exhaustive search for all appurtenant personal information and personal health information pertaining to my person, which "Tribunals Ontario" may have obtained, collected, utilized, accessed, and/or disclosed subsequent to its initial acquisition. It is imperative to acknowledge the discernible shift in the locus of control pertaining to certain segments of my personal information, a development underscored by the judicial pronouncement in *Derenzis v. Gore Mutual et al.*, rendered by the Honourable Justice Mundhane in May 2025, within the Superior Court of Justice (Central West Region), Brampton Courthouse. This decision, *inter alia*, brought into sharp relief the fundamental question of whether the adjudicative tribunals, by virtue of their structural integration within "Tribunals Ontario", can genuinely maintain their requisite independence.

Furthermore, it is an unequivocal legal extrapolation that "Tribunals Ontario" is indubitably subject to the purview of some form of privacy legislation. *A priori*, given its demonstrable exemption from the strictures of the *Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. F.31 (hereinafter, "*FIPPA*"), it necessarily follows, through a process of deductive reasoning, that *PIPEDA* must govern its operations. This conclusion is further buttressed by the conspicuous absence of any explicit exemption for "Tribunals Ontario" within the ambit of Ontario's *Personal Health Information Protection Act, 2004*, S.O. 2004, c. 3, Sched. A (hereinafter, "*PHIPA*"). Moreover, "Tribunals Ontario" does not fall within the definitional parameters of "provision of health care" when engaged in its multifarious commercial undertakings, thereby precluding its subjugation to the specific purposes articulated within *PHIPA*.

Subsequent to exhaustive and comprehensive jurisprudential and statutory research, I have re-confirmed that while "Tribunals Ontario" may not constitute a distinct legal persona *per se*, it is nonetheless demonstrably classifiable as an "organization" within the interpretative framework of *PIPEDA*. It is acknowledged that "Tribunals Ontario" functions as a collective of thirteen (13) adjudicative tribunals, integral components of the governmental apparatus of the Province of Ontario. As an administrative body, "Tribunals Ontario" furnishes logistical and coordinative support to these individual tribunals, each of which purportedly maintains its distinct legal jurisdiction and ostensible adjudicative autonomy. This proposition, however, presents a challenging epistemological and practical quandary, particularly when juxtaposed against the demonstrable conduct of the Executive Chair of "Tribunals Ontario", as evinced in the *Derenzis* matter. It is crucial to underscore that the Ministry of the Attorney General (MAG) and "Tribunals Ontario" are not, in legal or operational reality, "one and the same," a distinction that bears significant implications for accountability and statutory compliance. Furthermore, it is pertinent to note that while the Licence Appeal Tribunal (LAT), the Human Rights Tribunal of Ontario (HRTO), LECA, and the Landlord and Tenant Board (LTB), *inter alia*, are expressly designated as public bodies under Ontario Regulation 336/07 of the *Archives and Recordkeeping Act, 2006*, S.O. 2006, c. 34, "Tribunals Ontario" itself is conspicuously absent from this enumeration.

Moreover, it is imperative to highlight that even under the *Ministry of Government Services Act*, R.S.O. 1990, c. M.25, the definition of "public body" is circumscribed to include:

Service provider organizations
Designation
17.1 (1) The Lieutenant Governor in Council may, by regulation, designate a ministry of the Government of Ontario, part of such a ministry or a person or entity as an organization to provide services to members of the public on behalf of the Government or a public body. 2006, c. 34, Sched. F, s. 2.
Definitions

(2) In this section,
"public body" means,
(a) a related government,
(b) the corporation of any municipality in Ontario,
(c) a local board, as defined in the Municipal Affairs Act, and any authority, board, commission, corporation, office or organization of persons some or all of whose members, directors or officers are appointed or chosen by or under the authority of the council of the corporation of a municipality in Ontario,
(d) such other persons and entities as may be prescribed; ("organisme public")
"related government" means,
(a) the Government of Canada and any ministry or agency thereof and the Crown in right of Canada and any agency thereof,
(b) the Government of any other province or territory of Canada and any ministry or agency thereof and the Crown in right of any other province of Canada and any agency thereof; ("gouvernement lié")

Upon rigorous examination, it is unequivocally clear that "Tribunals Ontario" does not meet the definition of a "related government." Furthermore, "Tribunals Ontario" does not align with the definition of the corporation of any municipality in Ontario, nor does it satisfy the criteria for a local board under the *Municipal Affairs Act*, or any authority, board, commission, corporation, officer, or organization chosen by the council of a municipality. Crucially, there exists no provision within the regulations promulgated under the *Ministry of Government Services Act* that would prescribe "Tribunals Ontario" as a "Public Body." As such, "Tribunals Ontario" is neither a "public body" under the *Ministry of Government Services Act* or the *Archives and Recordkeeping Act, 2006*, nor an "institution" under *FIPPA*. As previously articulated, "Tribunals Ontario" is not an institution under the *Adjudicative Tribunals Accountability, Governance and Appointments Act, 2009*, nor is it a tribunal or institution under the *Tribunals Adjudicative Records Act, 2019*.

Notwithstanding the foregoing, the existence of a Memorandum of Understanding between the Ministry of the Attorney General of Ontario and the Executive Chair of "Tribunals Ontario" (rather than "Tribunals Ontario" *qua* entity) necessarily implies that "Tribunals Ontario" operates through the Executive Chair in a manner akin to a corporate entity lacking distinct legal personality. Given that the regulatory landscape dictates that any organization, or its purported director or chair of the board of directors, must be subject to some form of privacy legislation, especially concerning an ostensible Ontario entity such as "Tribunals Ontario", its subjection to *PIPEDA* becomes an inescapable conclusion. Consequently, the stipulated deadline for your comprehensive response, in strict accordance with *PIPEDA*, inclusive of the mandatory "shall" clauses enumerated in its Schedule 1, is hereby confirmed as **August 28th, 2025**.

For the sake of absolute clarity and precision, the statutory definitions of "personal health information" (hereinafter, "PHI") and "personal information" (hereinafter, "PII") are herein reiterated:

- Personal health information, with respect to an individual, whether living or deceased, means:
(a) information concerning the physical or mental health of the individual;
(b) information concerning any health service provided to the individual;
(c) information concerning the donation by the individual of any body part or any bodily substance of the individual or information derived from the testing or examination of a body part or bodily substance of the individual;
(d) information that is collected in the course of providing health services to the individual; or
(e) information that is collected incidentally to the provision of health services to the individual. (renseignement personnel sur la santé)
- **Personal information** means information about an identifiable individual.

While I readily acknowledge that the question of *PIPEDA*'s applicability to "Tribunals Ontario" constitutes a jurisprudential *terra incognita* – a novel issue necessitating judicial determination absent an explicit admission from "Tribunals Ontario" – I posit that the following principles constitute the proverbial linchpins or decisive factors:

- **(i) Access to Information Rights as Democratic Imperatives:** The fundamental purpose of access to information ("ATI") rights is to foster democratic participation and transparency;
- **(ii) Quasi-Constitutional Status of Privacy Legislation:** Legislation safeguarding individual privacy concerning the collection, use, access, and/or disclosure ("**CUAD**") of their PII possesses a quasi-constitutional character, thereby demanding a broad and purposive interpretation;
- **(iii) Narrow Construction of Exceptions:** Exceptions to ATI rights are precisely that: exceptions. They must be interpreted restrictively and invariably in favour of the requestor's right of access. Where ATI rights intersect with PII rights, such exceptions are either non-existent or presumptively construed with an even greater bias towards the requestor;
- **(iv) Burden of Proof on the Institution:** The onus of demonstrating the applicability of any asserted exception invariably rests upon the institution seeking to invoke it;
- **(v) Compelling State Interest for Privacy Compromise:** Individual privacy rights may only be legitimately compromised when a compelling state or institutional interest demonstrably necessitates such an encroachment;
- **(vi) Oversight Mandate of the Commissioner:** The Commissioner, as an independent oversight body, is explicitly tasked with ensuring compliance with the aforementioned purposes and objects enshrined within each piece of legislation, as typically delineated in the "purposes section" of a statute that has received Royal Assent from either Parliament or a provincial legislature; and
- **(vii) Mandatory Nature of Statutory Language:** The terms "shall," "compliance," and "duty" are indicative of mandatory, rather than permissive, obligations.

It is noteworthy that while the Province of Ontario (the "Legislature") has enacted new statutory provisions governing privacy breaches, these provisions primarily pertain to instances where an institution has experienced a theft, loss, or unauthorized use or disclosure of personal information under its custody or control. For instance, such an "institution" could encompass one of the thirteen (13) adjudicative tribunals directly relevant to my person, or indeed another distinct entity. However, "Tribunals Ontario", *qua* entity, is not designated as an "institution" subject to these novel privacy breach reporting requirements. The inherent incongruity lies in the fact that the ostensible "head" of each adjudicative tribunal is, in essence, the Executive Chair of "Tribunals Ontario" – a designation that, in this specific matter, does not align with the individual "heads" of the Licence Appeal Tribunal (LAT), the Human Rights Tribunal of Ontario (HRTO), the Landlord and Tenant Board (LTB), or Law Enforcement Complaints Agency (LECA). It is particularly concerning that in the LAT proceeding, adjudicators and vice-chairs frequently demonstrated unfamiliarity with the complete record of proceeding, a deficiency that directly impacts the integrity of the adjudicative process.

Furthermore, if "Tribunals Ontario" functions as the central repository for all pertinent records, as was demonstrably the case in *Derenzis*, then a technical "unauthorized disclosure of personal information at first instance" by the institution itself may not occur, precisely because the institution (i.e., the individual tribunal) is never the initial holder, possessor, controller, or custodian of the personal information in record form. It is conceivable that, with "Tribunals Ontario" acting as the ultimate custodian of all personal information contained within records (e.g., pertaining to my various engagements with the LAT, LTB, ERT, and HRTO), there may be no "loss" *per se*. Moreover, the term "theft" carries a distinct connotation, often implying criminal or quasi-criminal conduct, which may lead "Tribunals Ontario" to guide each individual tribunal to conclude that no "theft" of personal information has transpired. It is also crucial to delineate the distinct legal concepts of "personal information" and "personal health information." In this context, it is pertinent to observe that the new *FIPPA* provisions address "unauthorized use," a concept distinct from "unauthorized access," the latter being the specific focus of *PIPEDA*.

I now adduce the salient provisions of subsection 40.1 of *FIPPA* (Ontario), effective July 1st, 2025:

Breach of privacy safeguards
40.1 (1) The head of an institution shall report to the Commissioner any theft, loss or unauthorized use or disclosure of personal information in the custody or under the control of the institution if it is reasonable in the circumstances to believe that there is real risk that a significant harm to an individual would result or if any other prescribed circumstances exist. 2024, c. 24, Sched. 2, s. 6.
Report requirements
(2) The report mentioned in subsection (1) must contain the prescribed information and must be made in the prescribed form and manner as soon as feasible after the head determines that the theft, loss or unauthorized use or disclosure has occurred. 2024, c. 24, Sched. 2, s. 6.
Notification to individual
(3) Unless otherwise prohibited by law, the head of an institution shall notify an individual of any theft, loss or unauthorized use or disclosure of the individual's personal information that is in the custody or under the control of the institution if it is reasonable in the circumstances to believe that there is a real risk of significant harm to the individual or if any other prescribed circumstances exist. 2024, c. 24, Sched. 2, s. 6.
Contents of notification
(4) The notification mentioned in subsection (3) must contain a statement that the individual is entitled to make a complaint to the Commissioner and any other prescribed information and must be made in the prescribed form and manner as soon as feasible after the head determines that the theft, loss or unauthorized use or disclosure of personal information has occurred. 2024, c. 24, Sched. 2, s. 6.
Complaints — time limit
(5) A complaint mentioned in subsection (4) must be made in writing and filed with the Commissioner within one year after the subject-matter of the complaint first came to the attention of the complainant or should reasonably have come to the attention of the complainant, whichever is the shorter. 2024, c. 24, Sched. 2, s. 6.
Extension of time limit
(6) Despite subsection (5), a complaint may be filed with the Commissioner after the time limit set out in that subsection if,
(a) the Commissioner is satisfied that the significance of the matter warrants a time extension and that the time extension would not result in any prejudice to any person; or
(b) the time limit set out in subsection (5) presents a barrier, as defined in the Accessibility for Ontarians with Disabilities Act, 2005, to the complainant and the Commissioner is satisfied that the time extension is reasonably required in the circumstances to accommodate the complainant for the purpose of making the complaint. 2024, c. 24, Sched. 2, s. 6.
Real risk of significant harm — factors
(7) The factors that are relevant to determining whether a theft, loss or unauthorized use or disclosure of personal information creates a real risk of significant harm to an individual include,
(a) the sensitivity of the personal information;
(b) the probability that the personal information has been, is being or will be misused;
(c) the availability of steps that the individual could take to,
(i) reduce the risk of the harm occurring, or
(ii) mitigate the harm should it occur;
(d) any direction, recommendation or guidance provided by the Commissioner pertaining to what constitutes a real risk of significant harm; and
(e) any other prescribed factor. 2024, c. 24, Sched. 2, s. 6.
Records
(8) The head of an institution shall, in accordance with any prescribed requirements, keep and maintain a record of every theft, loss or unauthorized use or disclosure of personal information reported under subsection (1). 2024, c. 24, Sched. 2, s. 6.
Provision to Commissioner
(9) The head of an institution shall, on request, provide the Commissioner with access to, or a copy of, the record. 2024, c. 24, Sched. 2, s. 6.

Definition
(10) In this section,
"significant harm" includes bodily harm, humiliation, damage to reputation or relationships, loss of employment, business or professional opportunities, financial loss, identity theft, negative effects on the credit record and damage to or loss of property. 2024, c. 24, Sched. 2, s. 6.
Regulations
(11) The Lieutenant Governor in Council may make regulations respecting anything in this section that is referred to as being prescribed. 2024, c. 24, Sched. 2, s. 6.

Ergo, a careful examination of the legislative enactments of 2019, including the *Adjudicative Tribunals Accountability, Governance and Appointments Act, 2009*, S.O. 2009, c. 33, Sched. 5, and the *Tribunals Adjudicative Records Act, 2019*, S.O. 2019, c. 7, Sched. 6, along with their associated regulations, reveals that all incumbent obligations pertain exclusively to the requirements imposed upon an adjudicative tribunal, each of which is unequivocally designated as an "institution" under *FIPPA* and its corresponding General Regulation. "Tribunals Ontario", however, does not fall within this specific categorization. Consequently, "Tribunals Ontario" is legally precluded from engaging in conduct that falls outside the purview of these statutes. While it may be colloquially referred to as a "cluster" of the thirteen (13) adjudicative tribunals, each possessing individual designation numbers under *FIPPA* and its General Regulation, this nomenclature does not confer upon it the legal authority to engage in the unauthorized use of personal information. It is crucial to underscore the distinct categorization of "personal information" and "personal health information" within *PIPEDA*. This bifurcation creates a *lacuna* or a conflict of laws, wherein certain linguistic nuances present in *PIPEDA* are conspicuously absent from *FIPPA*. Therefore, in matters involving personal health information, such as those pertaining to the LAT, LTB, ERT, and HRTO concerning my person, where my filings with each of these bodies entailed the collection of personal information, a jurisprudential void emerges.

Given the imperative for a broad and liberal interpretation of *PIPEDA* to safeguard my personal information and personal health information as an Ontario resident from unauthorized access and disclosure, including theft or loss, it is patently evident that any disclosure by "Tribunals Ontario", or by Mr. Weir if he is indeed to be considered the *alter ego* of "Tribunals Ontario", necessitates immediate notification of a breach of security safeguards. The prevailing investigative protocols of the Office of the Privacy Commissioner of Canada (OPC) typically involve a standard notification period of approximately three (3) months. This stands in stark contradistinction to the obligations incumbent upon entities such as the LAT, ERT, LTB, and HRTO concerning any unauthorized use or disclosure emanating from them. It is axiomatic that "disclosure" entails making information available to a person other than the data subject. Consequently, where a disclosure occurs from the LTB to Mr. Weir, acting as the *alter ego* of "Tribunals Ontario", an unauthorized disclosure has transpired, as I have not provided my consent to such disclosure *ab initio*. For instance, while the *Licence Appeal Tribunal Act, 1999*, S.O. 1999, c. 12, Sched. G, stipulates the collection of my LAT appeal pursuant to subsection 282 of the *Insurance Act*, R.S.O. 1990, c. I.8, it makes no provision for the collection of such information by "Tribunals Ontario". Therefore, Mr. Weir, acting in his capacity as the head of "Tribunals Ontario" (a designation derived from regulation, not necessarily from a power conferred by a Memorandum of Understanding, which functions as an agreement or contract between the Ministry of the Attorney General and Mr. Weir personally, albeit on behalf of a non-distinct legal entity), likely bears multiple statutory obligations to provide privacy breach notifications. His obligations concerning privacy breaches or breaches of security safeguards under *PIPEDA* relate to the theft, loss, unauthorized access, and disclosure of my personal information in various instances where there exists a reasonable risk of significant harm to my person, particularly where sensitive personal information has been, is being, or will be subjected to unauthorized access or disclosure. Given that all information pertaining to the LAT, ERT, HRTO, and LTB is inherently sensitive, I demand immediate notification, pursuant to the breach of security safeguards provisions under *PIPEDA* and the associated *Breach of Security Safeguards Regulations*, S.O.R./2018-19. I respectfully request that you furnish me with the requisite breach of security safeguards notifications concerning "Tribunals Ontario" forthwith,

particularly given that more than three (3) months have elapsed since these unauthorized accesses and disclosures of my personal information and personal health information transpired.

I shall continue to conduct exhaustive research into this matter, particularly concerning the definitional and interpretative nuances of "commercial activities" and the applicability of *PIPEDA* to an "organization" within its statutory framework. Nevertheless, it is more than conceivable that an organization not explicitly designated as an "institution" under the *Privacy Act*, R.S.C. 1985, c. P-21, or under the provincial *FIPPA* or *PHIPA*, must invariably be subject to some form of privacy legislation *per se*. In this regard, it is plausible that an institution such as the HRTO, LAT, or LTB would be subject to reporting requirements for a privacy breach under *PHIPA* for any unauthorized use or disclosure, or for the loss of personal information that was legally required to be in its custody and control subsequent to its initial collection of each piece of personal information and personal health information. However, any subsequent disclosure thereafter must remain consistent with the principles often encapsulated within the tort of breach of confidence, wherein subsequent unauthorized possessors of personal information are obligated to return such information to the sole authorized possessor of the personal information of first instance.

Should you elect to proffer a commentary or present a competing jurisprudential opinion, I shall receive the same with due consideration. Indeed, I welcome such intellectual debate, for it is through rigorous examination and diverse perspectives that the most robust legal frameworks are forged, ultimately serving the public interest and enhancing the administration of justice. *Ad interim*, I shall steadfastly maintain the position that "Tribunals Ontario" is unequivocally subject to *PIPEDA*. I hereby expressly reserve the right to invoke the doctrine of adverse inference should you fail to provide a substantive response within thirty (30) calendar days. In such an eventuality, it is my firm intention to advance the complaint and seek an immediate discontinuance of the matter, along with an order to bring this issue to the immediate attention of the Federal Court of Canada for a definitive resolution of all matters pertaining to any allegations or potential infringements of solicitor-client privilege, litigation privilege, settlement privilege, and/or other common law privileges.

Furthermore, I expressly reserve the right to rely upon this meticulously drafted document for any and all purposes, including, but not limited to, the recovery of costs in the Federal Court of Canada (the "FCC") under the Federal Court Rules, should it become necessary or incumbent upon me to initiate an application before that esteemed tribunal under the auspices of *PIPEDA*, encompassing any potential issues that may have arisen under the *Canada Evidence Act*, R.S.C. 1985, c. C-5, and/or the *Secure Electronic Signature Regulations*, S.O.R./2005-30, if applicable.

I cordially remind of the amendments to *PIPEDA* by reference to the *Digital Privacy Act* (2015) which makes directors of an "organization" to be liable for any failures to comply with sections 8(8), section 10.1 and 10.3 of *PIPEDA*.

In closing, the **Licence Appeal Tribunal (LAT)** appears to have issues with its record-keeping, which could be affecting its ability to make fair decisions. The core problem seems to be a disconnect between the LAT and Tribunals Ontario regarding control of case records.

In February 2025, the LAT Registrar, through a case manager, was still trying to figure out how to compile my case's record of proceedings. This suggests that the LAT itself doesn't have direct access to these records. If they did, they wouldn't need to go through this process; they could simply compile the documents themselves.

Further evidence of this issue comes from observing other tribunal cases. Adjudicators often reference emails by number or a similar metric rather than citing the actual document. This aligns with my experience where the LAT provided an index of documents but couldn't produce the documents themselves.

This problem is also consistent with the actions of Mr. Boyce, designated counsel for the LAT. He failed to file the record of proceedings promptly and then, in an attempt to justify the delay, claimed a non-existent waiver on my part. A waiver of this kind would require the consent of all parties and would be superseded by section 10 of the ***Judicial Review Procedure Act*** **(JRPA)** anyway.

A tribunal that only has an index of documents ("index-knower") is not the same as a tribunal that actually holds the records ("record holder"). An adjudicator or vice-chair may know what documents have been filed, but if the tribunal lacks access to the underlying records, it cannot make decisions based on them. The same logic applies to designated counsel acting on behalf of the tribunal.

If adjudicators can't access the records, how are they making decisions? The most plausible explanation is that they are seeking instructions from Tribunals Ontario, which acts as their client and is managed by the executive chair, executive officer, and their team.

Consequently, a tribunal like the LAT cannot comply with section 10 of the JRPA, which requires it to file a record of proceedings. It must rely on Tribunals Ontario to provide the necessary records. This reliance suggests the current setup is in breach of section 10 of the JRPA, not just for the LAT but likely for other tribunals as well.

Thank you for your prompt attention to this grave matter.

Sincerely,

Mr. Kevin A. McLean (BA, JD, CIM)

On Thu, Jul 31, 2025 at 7:48 AM Kevin McLean <mrkevinalexandermcleanbajdcim @gmail.com> wrote:

> July 31st, 2025
>
> To:
>
> "Tribunals Ontario"
> Kind attention: Mr. Weir
>
> And to:
>
> Nicole Watson Executive Advisor to the Executive Chair Phone: 437-230-3207 Email: Nicole.Watson@ontario.ca
>
> Copy:
>
> Mahnoosh Hadizad Executive Coordinator
> Phone: 416-451-1499 Email: Mahnoosh.Hadizad@ontario.ca
>
> **Subject: Formal Acknowledgment of Correspondence and Affirmation of Legal Principles Pertaining to Data Governance under our privacy laws in Canada**
>
> Dear Sirs/Mesdames et al:
>
> This correspondence serves to formally acknowledge the receipt of Mr. Weir's automated electronic reply. Please be advised that Ms. Hadizad and Ms. Watson are being apprised of this communication

for the express purposes delineated herein, ensuring comprehensive awareness and facilitating a cohesive understanding of the pertinent legal and procedural considerations.

Unless explicit notification to the contrary is received, it is our firm presumption, predicated upon the established jurisprudential framework, that you concur with the unequivocal position that the directives articulated by Parliament through *PIPEDA* possess binding authority and are demonstrably applicable to Tribunals Ontario. This applicability is particularly salient in instances where personal information of individuals who are not citizens of Canada but are residents of Ontario has been collected, utilized, accessed, and/or disclosed within the provincial jurisdiction. Furthermore, with respect to the disclosure of such information, it is hereby affirmed that any and all disclosures, whether effectuated within or beyond the geographical confines of Ontario and Canada, unequivocally invoke the prescriptive jurisdiction of the *Personal Information Protection and Electronic Documents Act* (*PIPEDA*). The logical extrapolation of this principle mandates that the trans-border flow of personal data necessitates adherence to the most stringent privacy protocols, thereby safeguarding individual entitlements *ab initio*.

Consequently, we shall be formally requiring comprehensive access to all personal information and personal health information appertaining to the undersigned. This exigency extends to the data held by any and all of your service providers, encompassing their entire storage and repository infrastructure. This includes, but is not limited to, platforms such as Amazon Web Services, which, while maintaining offices within Ontario, also operate extensive facilities internationally. The imperative for such access is rooted in the fundamental right of an individual to scrutinize the integrity and disposition of their personal data, thereby ensuring its lawful and appropriate stewardship.

Moreover, it is imperative to underscore, inter alia, that Section 8(8) of *PIPEDA* unequivocally mandates the perpetual retention by Tribunals Ontario of all personal information and personal health information. The destruction or unauthorized disposition of such data is expressly prohibited, with any contravention thereof subject to severe statutory penalties. This provision constitutes a foundational pillar of data accountability, ensuring the enduring availability of records for legitimate oversight and individual recourse.

Faithfully,

Kevin A. McLean

On Wed, Jul 30, 2025 at 10:31 PM Kevin McLean <mrkevinalexandermcleanbajdcim @gmail.com> wrote:

> Date: July 30, 2025
>
> ***VIA EMAIL***
>
> ***EXCLUSIVELY FOR THE PURPOSES OF PIPEDA***
>
> To:
> “Tribunals Ontario”
> 25 Grosvenor Street,
> Toronto, Ontario
>
> AND TO:

The Executive Chair of Tribunals Ontario
Mr. Sean Weir

Subject: Formal Request for Personal Information and Accountability Pursuant to the Personal Information Protection and Electronic Documents Act (*PIPEDA*)

Esteemed Sir/Madam,

This correspondence constitutes a formal and comprehensive requisition for access to my personal information, meticulously grounded in the foundational principles and statutory obligations enshrined within the Personal Information Protection and Electronic Documents Act (*PIPEDA*). Given the singular and potentially unprecedented nature of this exigency for Tribunals Ontario, I shall endeavor to proffer an exposition of exceptional thoroughness and jurisprudential precision.

Volume I: Prolegomenon and Foundational Principles

A critical and indispensable distinction must be meticulously drawn between the universal applicability of the Canadian Charter of Rights and Freedoms (hereinafter "the Charter") to governmental entities and the specific, enumerated application of Ontario's Freedom of Information and Protection of Privacy Act (hereinafter "FIPPA") to designated "institutions." While "Tribunals Ontario" functions as an overarching administrative umbrella, a mere nomenclature for thirteen adjudicative tribunals, it is not expressly enumerated as an "institution" within the exhaustive Schedule to R.R.O. 1990, Regulation 460, *General*, which delineates the precise ambit of FIPPA's applicability. This conspicuous lacuna in statutory designation carries profound implications for accountability and information governance, thereby necessitating a rigorous examination of alternative legislative frameworks.

It is indisputable that Tribunals Ontario is subject to the Charter by virtue of Section 32 of that instrument. Section 2(b) of the Charter acts as a constitutional bulwark, meticulously safeguarding the Open Court Principle, a cornerstone *sine qua non* of any robust democratic society. This principle, which ensures unfettered public access to judicial and quasi-judicial proceedings, has been unequivocally affirmed by the seminal decision in *Toronto Star Newspapers Ltd. v. Attorney General of Ontario*, 2018 ONSC 2586 (hereinafter "the Toronto Star Decision"), to apply with equal jurisprudential force to both conventional courts and administrative tribunals. However, "Tribunals Ontario" is not an adjudicative tribunal *per se*; consequently, it cannot legitimately possess adjudicative records or be governed by the Tribunal Adjudicative Records Act, 2019 (hereinafter "*TARA*"). *TARA* was enacted to establish a novel statutory framework for access to adjudicative records held by prescribed tribunals, thereby rectifying the constitutional infirmities identified in the Toronto Star Decision. *TARA* establishes a default presumption of openness for adjudicative records for proceedings commenced on or after July 1, 2019. Nonetheless, "Tribunals Ontario" is not a "tribunal" as defined under *TARA*, thus precluding its direct application thereto, but rather to the individual adjudicative tribunals. This stands in stark contradistinction to the

adjudicative tribunals themselves, such as the Human Rights Tribunal of Ontario (HRTO), the LAT, and the LTB, which are rigorously compelled to adhere to stringent standards of openness and procedural fairness.

Volume II: The Fictional Persona of "Tribunals Ontario"

A rigorous textual and teleological analysis of the Adjudicative Tribunals Accountability, Governance and Appointments Act, 2009 (hereinafter "ATAGA") and its attendant regulations unequivocally demonstrates that "Tribunals Ontario" subsists solely as an administrative nomenclature, a mere *ad hoc* designation for a cluster of legally distinct adjudicative tribunals. It is not, in and of itself, a distinct legal entity, corporation, agency, board, or commission prescribed as an "adjudicative tribunal" or an "institution" within the meaning of FIPPA.

The ATAGA defines an "adjudicative tribunal" as an entity that is "prescribed" by regulation. O. Reg. 126/10 explicitly enumerates various agencies, boards, and commissions, *inter alia*, the Human Rights Tribunal of Ontario, as prescribed adjudicative tribunals, but it designates "Tribunals Ontario" merely as a "cluster" of these tribunals. This designation does not, *ipso facto*, confer upon the cluster the status of a distinct legal personality, nor does it elevate it to the echelon of an "adjudicative tribunal" itself. Rather, it constitutes a functional administrative arrangement of existing, prescribed adjudicative tribunals.

All statutory obligations pertaining to accountability, governance, and appointments are ultimately vested in the individual, statutorily designated "adjudicative tribunals" that comprise the cluster. For instance, the ATAGA mandates that every adjudicative tribunal develop an "ethics plan," an obligation placed squarely upon the individual tribunal, not the amorphous cluster. The appointment process also consistently refers to the "adjudicative tribunal" as the entity to which members are appointed, further underscoring its distinct legal identity. Therefore, while "Tribunals Ontario" may function as an administrative grouping for purposes of efficiency, it demonstrably lacks the legal personality to independently possess or control records subject to FIPPA in its own right. Any *de facto* arrangement whereby "Tribunals Ontario" purports to exercise such control constitutes an impermissible circumvention of FIPPA's clear legislative intent and thereby engenders an opaque and legally precarious environment for the management of public information.

Volume III: The Ineluctable Applicability of *PIPEDA*

As previously articulated, "Tribunals Ontario" is not enumerated as an "institution" under the regulations that define the precise scope of FIPPA's applicability. This conspicuous absence of statutory designation signifies that "Tribunals Ontario" cannot legitimately assume the mantle of "custody or control" over records that, by statutory imperative, fall within the purview of a FIPPA-designated institution such as the HRTO. The retention of records by a non-FIPPA entity for a FIPPA-regulated institution engenders a jurisdictional mismatch that fundamentally undermines

the statutory scheme intended to provide access and safeguard privacy within the provincial public sector.

Since Ontario has not enacted any legislation that would exempt it from certain provisions of *PIPEDA*, and given that "Tribunals Ontario" falls within the expansive definition of an "organization" engaged in a "commercial activity" under *PIPEDA*, it must *a fortiori* be subject to this federal legislation. A "commercial activity" encompasses, *inter alia*, the collection, utilization, or disclosure of personal information in the course of such activities. The fact that the Office of the Privacy Commissioner of Canada (OPC) has, at times, assumed jurisdiction over charities and non-profits further illustrates the broad jurisdictional scope of *PIPEDA*. As elucidated by the Canadian Bar Association (CBA) in their August 2019 submission, "Transfers of Information for Processing," the determination of whether an organization's activities are "commercial" is fact-dependent, and many non-profit entities, through activities such as the sale of goods and services, increasingly fall within *PIPEDA*'s purview. Thus, the ostensible non-profit status of Tribunals Ontario does not *ipso facto* preclude the application of *PIPEDA* where its activities involve the handling of personal information in a commercial context.

Volume IV: The Imperative of Electronic Communication and Breach Notification

Under the *Digital Privacy Act*, which meticulously amended *PIPEDA* in 2015, organizations are now unequivocally mandated to report a data breach to the OPC and to notify affected individuals if the breach poses a "real risk of significant harm" (RROSH). Furthermore, organizations are obligated to maintain a comprehensive record of all security incidents involving personal information for a period of twenty-four months, even if such incidents do not attain the threshold for mandatory reporting. The OPC is explicitly empowered to demand these records. The Act also established augmented penalties for organizations that knowingly fail to report a breach or to notify affected individuals.

This statutory imperative, coupled with the quasi-constitutional nature of *PIPEDA*, necessitates that Tribunals Ontario adopt a robust and auditable system of communication. In light of contemporary technological standards and the critical need for a reliable, time-stamped record of all communications, Tribunals Ontario is compelled to communicate with me via electronic mail regarding this formal request. This ensures a transparent and verifiable trail of all exchanges, a fundamental component of accountability under *PIPEDA*. Any dereliction in this regard, or a subsequent data breach that compromises my personal information, would *ergo* trigger the mandatory breach reporting and notification obligations under the *Digital Privacy Act*.

Volume V: The Mandate of the "Shall" Provisions: A Lexical Analysis

A meticulous examination of *PIPEDA* reveals that the word "shall" appears a remarkable 127 times, with 53 distinct and independent obligations enumerated under Schedule 1 alone. These "shall" provisions constitute an unequivocal and mandatory framework for organizations. My request for the existence, utilization, and disclosure (EUD) of my personal information, as well as unhindered access to that information, constitutes a direct invocation of these non-derogable obligations.

For instance, an organization "shall" respond to an individual's request within a reasonable temporal ambit and at minimal or no pecuniary cost. It "shall" apprise an individual as to whether or not it retains personal information concerning them. Furthermore, it "shall" furnish a comprehensive account of the utilization and disclosure of that information to third parties. The information thus provided must be rendered in a "generally understandable" form, with any abbreviations or codes meticulously elucidated. The onus is squarely upon the organization to provide these comprehensive explanations. This request, therefore, is not a mere inquiry but a formal legal demand for compliance with a litany of statutory duties. The failure to adhere to any of these 53 "shall" provisions would constitute a breach of *PIPEDA*, thereby triggering my indefeasible right to lodge a formal complaint with the Commissioner.

Volume VI: The Inviolable Right to Existence, Use, and Disclosure (EUD) and Access

Pursuant to Principle 4.9 of Schedule 1 of *PIPEDA*, an individual, upon request, "shall" be informed of the existence, utilization, and disclosure of their personal information and "shall" be granted access to that information. This is not merely a courtesy but a fundamental, *sui generis* right. The organization "shall" inform the individual whether or not it holds personal information concerning them, and if so, "shall" provide unencumbered access to that information.

The organization must provide a comprehensive account of the utilization that has been made or is currently being made of the information and a detailed account of the third parties to which it has been disclosed. In circumstances where it is not feasible to provide a definitive enumeration of organizations to which the information was disclosed, the organization "shall" provide a list of organizations to which it "may" have disclosed the information. The requested information "shall" be provided in a generally understandable form. Furthermore, an organization must retain the personal information for such duration as is necessary to permit the individual to exhaust any recourse under *PIPEDA*. This paramount obligation overrides any regular deletion or retention practices.

Volume VII: The Expansive Ambit of "Personal Information"

PIPEDA defines "personal information" as "information about an identifiable individual." Jurisprudence in the federal public sector has consistently interpreted this definition in a broad and expansive manner. Information is "about" an individual if it relates to or concerns them. An

individual is "identifiable" if there exists a "serious possibility" that they could be identified through the utilization of that information, either in isolation or in combination with other data.
The information is not predicated upon being recorded to be considered personal information; this encompasses, *inter alia*, oral conversations and real-time surveillance. The absence of a recording may pertain to the issue of collection, but it does not alter the fundamental characterization of the information as personal information. Notably, information retains its designation as personal information even if it is publicly available. This expansive definition embraces subjective information, even if its verisimilitude is not absolute. It also extends to information within a business or professional context, such as an individual's cellular telephone records, electronic mail addresses, and facsimile numbers. Financial information, *e.g.*, bank account numbers and transaction histories, also unequivocally constitutes personal information. Examples of personal information in a technological context include biometric data, photographic representations of an individual's domicile, and video surveillance. An Internet Protocol (IP) address can constitute personal information if it can be unequivocally associated with an identifiable individual, such as a customer's subscriber identification.

Volume VIII: The Pre-Emptive Rejection of Specious Claims of Privilege

It is notable that while Mr. Weir has taken upon himself to report other lawyers to the LSO, he is no longer a practicing lawyer with the LSO.

This request is not susceptible to a claim of refusal predicated upon a litany of common exceptions, including, *inter alia*, solicitor-client privilege, litigation privilege, or confidential commercial information.

- **First**, solicitor-client privilege is demonstrably inapplicable because Tribunals Ontario and the other organizations implicated are not legal professional entities. A blanket policy asserting privilege for all documents generated from incidents is unlawful and fails to satisfy the requisite legal tests.
- **Second**, litigation privilege is also inapposite, as there was no ongoing or reasonably contemplated litigation at the time the documents in question were created, and the dominant purpose of their genesis was not to prepare for litigation. A mere privacy request does not *ipso facto* constitute litigation.
- **Third**, confidential commercial information is not being sought. The standard for withholding information on this basis is exceptionally high, and "raw data" concerning an individual does not fall within this circumscribed exemption.
- **Finally**, the information was not generated in the course of a "formal dispute resolution process." An internal ombudsman office or a medical evaluation designed to assist an insurer, for example, does not constitute a formal dispute resolution process under *PIPEDA*.

Volume IX: The Nexus of Transfers for Processing and Accountability: A Jurisprudential Exegesis

The precise legal characterization of "transfers for processing" under *PIPEDA* has been a subject of considerable jurisprudential discourse. As meticulously articulated by the Canadian Bar Association (CBA) in their August 2019 submission, "***Transfers of Information for Processing***," a fundamental tenet of *PIPEDA*'s architecture is that a transfer of personal information for processing, wherein the original organization maintains control, constitutes a "use" of that information, rather than a "disclosure." This critical distinction is rooted in Principle 4.1 of Schedule 1, the Accountability Principle, which unequivocally stipulates that an organization retains responsibility for personal information under its control or possession, even when such information is transferred to a third party for processing. The third party, in this context, acts merely as an agent, performing services on behalf of the transferring organization, without acquiring independent ownership or control over the data. This relationship, *mutatis mutandis*, is akin to that between a principal and an agent, where the agent's actions are attributable to the principal.

The CBA's comprehensive review of inter-jurisdictional approaches, encompassing the General Data Protection Regulation (GDPR) in Europe and various provincial health and privacy statutes across Canada (including PHIPA in Ontario, PIPA in Alberta, and FOIP in Saskatchewan, *inter alia*), consistently reinforces this interpretation. These legislative frameworks generally treat transfers to service providers as a continuation of "use," provided that the transferring entity retains significant control, typically through robust contractual arrangements. The essence of a "disclosure," by contrast, implies a transfer of control and possession to a third party for its own independent purposes, thereby necessitating the data subject's consent.

Furthermore, the CBA's analysis of the *Equifax Report of Findings* is particularly illuminating. The OPC's investigation into Equifax Canada and its U.S. affiliate, Equifax Inc., while ostensibly concerning cross-border data flows, was fundamentally a case of a profound dereliction of accountability, transparency, and meaningful consent. The core issue was not the mere transfer of data across borders, but rather the misleading representation to consumers regarding who was actually in control of their personal information and the failure to implement adequate safeguards. The CBA cogently argues that this unique factual matrix should not serve as a pretext for a sweeping reinterpretation of *PIPEDA*'s consent requirements for routine transfers for processing, which are characteristic of modern globalized economies.

In instances where consent is deemed requisite for outsourcing arrangements or transborder transfers, the Supreme Court of Canada's decision in *Royal Bank of Canada v. Trang*, 2016 SCC 50, provides a critical framework for the application of "implied consent." The Court adopted an objective "reasonable person" test, emphasizing that the appropriateness of implied consent is a

contextual determination, balancing privacy interests with legitimate business concerns. The purpose clause of *PIPEDA* (Section 3) itself underscores the need for organizations to collect, use, or disclose personal information for purposes that a reasonable person would consider appropriate. Therefore, if an organization diligently adheres to its accountability obligations, maintaining effective control over the personal information and implementing robust contractual or other protective mechanisms, reliance on implied consent for ordinary business outsourcing, even across international borders, is eminently justifiable. To demand express consent in such scenarios would lead to an absurd outcome, particularly when contrasted with Section 7.2 of *PIPEDA*, which permits wholesale transfers of information in business transactions with mere notice, not explicit consent. This would create an illogical disparity in the stringency of consent requirements.

Moreover, a **Memorandum of Understanding** (MOU), while often perceived as less formally binding than a traditional contract, is fundamentally akin to a contractual agreement between two parties in its underlying intent and practical effect. An MOU, *inter alia*, serves as a documented expression of mutual assent (*consensus ad idem*) and delineates the respective roles, responsibilities, and expectations of the signatories. It establishes a framework for collaboration and accountability, creating a moral and, in many contexts, a quasi-legal obligation to adhere to its provisions. While it may lack the full enforceability mechanisms of a formal contract, its very existence signifies a commitment to a particular course of action and a shared understanding of governance relationships. In essence, it is a *pacta sunt servanda* for the parties involved, demonstrating a meeting of the minds regarding operational parameters and accountability structures, even if not strictly a *lex specialis* in the realm of contract law. Therefore, the MOU established by "Tribunals Ontario," while not superseding legislation, unequivocally delineates an agreed-upon operational framework that carries significant weight in assessing accountability for information governance.

Volume X: Peroration and Exigent Demands

In light of the foregoing comprehensive exposition, it becomes unequivocally apparent that "Tribunals Ontario" is a fictional entity, a mere administrative construct that lacks independent legal personality. It is, *de facto*, an administrative "cluster" or a "moniker" for a collection of legally distinct adjudicative tribunals. While a Memorandum of Understanding (MOU) has been established to delineate accountability and governance relationships, this document explicitly states that it does not supersede the provisions of any legislation. Furthermore, it explicitly confirms that each of the Constituent Tribunals is a designated adjudicative tribunal and a non-board governed provincial agency.

I confirm my involvement as an applicant in three distinct adjudicative tribunal proceedings which I believe Mr. Weir on his own or through agents was responsible for affecting and may continue to affect, where applicable, which makes now an opportune time to address Tribunals Ontario’s

CUAD of my personal information and personal health information in each of those, but not limited, to adjudicative tribunal proceedings.

The Executive Chair of Tribunals Ontario is the designated "institution head" for the purposes of FIPPA, but as meticulously established herein, "Tribunals Ontario" is not an institution under that Act. This creates a profound jurisdictional conundrum that can only be resolved by the judicious and ineluctable application of *PIPEDA*. While the Executive Chair of Tribunals Ontario is denoted as the head of thirteen adjudicative tribunals, this designation does not detract from the fundamental fact that Tribunals Ontario is an "Organization" under *PIPEDA*, especially as it relates to residents of Ontario. The veil of this quasi-corporate body must, therefore, be dispelled to hold the responsible parties fully accountable for any derelictions in complying with their *PIPEDA* obligations. Nonetheless, Tribunals Ontario is an Organization under *PIPEDA*. I may supplement the above, but nonetheless, the Organization of "Tribunals Ontario" is required to provide a compliant response under *PIPEDA*. It is also notable that FIPPA primarily addresses the control and custody of records, whereas *PIPEDA* comprehensively addresses the collection, utilization, access, and disclosure of personal information, including a meticulous accounting of the same, whether in oral or documentary form. It is particularly pertinent to underscore that the Office of the Privacy Commissioner of Canada (OPCC) and the Federal Court of Canada have historically asserted and assumed jurisdiction over organizations operating beyond Canadian borders, as exemplified by cases such as *KLM* and *Accusearch*, thereby establishing a clear precedent for jurisdictional reach in matters pertaining to personal information. To the extent that you disagree with the foregoing analysis or the applicability of *PIPEDA* in this precise context, I kindly request that you apprise me forthwith of your position, thereby enabling me to seek the independent opinion of the Office of the Privacy Commissioner of Canada (OPCC) and its subsequent investigation report. Whatever the ultimate status of this matter, subject to any potential settlement under the auspices of *PIPEDA*, it will unequivocally constitute a matter necessitating a comprehensive hearing and considered adjudication by our esteemed Federal Court of Canada.

The failure to provide a complete and timely response to this formal request would constitute a breach of numerous mandatory "shall" provisions under *PIPEDA*. The exigency for this information is critical, as my life, health, and security have been imperiled as a direct consequence of an unfortunate incident and will continue to be so until I am granted unhindered access to this personal information. I therefore implore you to respond with the utmost diligence and in strict accordance with the mandates of *PIPEDA*, providing the entirety of the requested information no later than thirty (30) days from the verifiable delivery of this formal requisition; namely this *PIPEDA* request.

Yours faithfully,
/KAM

Kevin A. McLean

--

My best regards to you,

Kevin A. McLean (B.A., J.D., CIM)
Chartered Investment Manager
E (personal and confidential): mrkevinalexandermcleanbajdcim@ gmail.com

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Gmail Kevin McLean <mrkevinalexandermcleanbajdcim@gmail.com>

Automatic reply: PIPEDA REQUEST OF "TRIBUNALS ONTARIO" - JULY 30 2025

Tsai, Ann-Marie (MAG) <Ann-Marie.Tsai@ontario.ca> Mon, Sep 29, 2025 at 1:17 PM
To: Kevin McLean <mrkevinalexandermcleanbajdcim@gmail.com>

Thank you for your email.

Please note that I will be away from the office from Wednesday, September 24, 2025, to Wednesday, October 1, 2025, inclusive. During this period, I will not have access to email and voicemail but will respond to you at the earliest opportunity upon my return on Wednesday, October 1, 2025. If you have an urgent inquiry, kindly connect with the Public Appointments Team at TO-TDO.appt-nom@ontario.ca or the Professional Development and Training Team at TO-TDO.pd-dp@ontario.ca.

Continued thanks,

Ann-Marie

Ann-Marie Tsai

Manager

Public Appointments and Professional Development & Training

Tribunals Ontario

(647) 920-7506

ann-marie.tsai@ontario.ca

tribunalsontario.ca

Tribunals Ontario/Tribunaux décisionnels Ontario Logo

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Confidential message which may be privileged. If received in error, please delete the message and advise me by return email.

Message confidentiel dont le contenu peut être privilégié. Si reçu par erreur, veuillez supprimer ce message et aviser l'expéditeur par retour de courriel.

EXHIBIT “L”

Kevin McLean <mrkevinalexandermcleanbajdcim@gmail.com>

Formal Requisition for the Immediate Production of Undisclosed Adjudicative Records Pursuant to the Tribunals Adjudicative Records Act, 2019, S.O. 2019, c. 7, Sched. 6

1 message

Kevin McLean <mrkevinalexandermcleanbajdcim@gmail.com> Sat, Oct 4, 2025 at 8:29 PM
To: "LATregistrar (MAG)" <LATregistrar@ontario.ca>, sean.weir@ontario.ca

PRIVATE AND CONFIDENTIAL

Via Electronic Transmission

Date: October 4, 2025

Creation Method: Dictated with Voice Recognition Software (reservation of rights to correct any grammar, syntax, important qualifiers or improper double negatives)

To:

The Office of the Registrar

Licence Appeal Tribunal (LAT)

The Designated Head of the LAT (Mr. Sean Weir, Designate under Freedom of Information and Protection of Privacy Act (FIPPA, R.S.O. 1990, c. F.31))

Subject I: Formal Requisition for the Immediate Production of Undisclosed Adjudicative Records Pursuant to the Tribunals Adjudicative Records Act, 2019, S.O. 2019, c. 7, Sched. 6

Subject II: McLean v. SNIC and TDGIC (File No. 23-015662/AABS): The “Correspondence,” “Subjects,” “Foci,” or “Themes”

I. Initiation of Correspondence and Incorporation by Reference

Correspondence is formally tendered concerning the aforementioned **Subjects** that constitute the **Foci** of this transmission. Appreciation is extended *in anticipo* for the allocation of time and the profound consideration afforded to this instrument and its attendant attachments (whether by reference or inclusion). Cognizance is taken of the finite yet valuable nature of the resources possessed by the Tribunal, a factor which has necessitated the extensive expenditure of effort for the exhaustive research of the legal issues and their meticulous application to the attendant facts. All definitions previously, indirectly, or directly cited within antecedent correspondence are hereby formally adopted and incorporated by reference.

II. Factual and Procedural Antecedents

This communication is directed toward the compulsory procurement of two (2) specific judicial directives, hereinafter defined as the **“Undisclosed Motion Decisions.”** These **Undisclosed Motion Decisions** are, by way of a *simulacrum* (a formal representation), clearly delineated within the procedural record pertaining to the matter of *McLean v. SNIC and TDGIC*, which bears the official File Number **23-015662/AABS**.

The antecedent record of proceedings, which is more comprehensively detailed in the **Appendix** appended hereto and thus incorporated by reference, evidences the promulgation of the following final motion orders:

1. A final motion order, officially dated **July 24, 2024**, which is denoted by a specific file identifier (refer to **Appendix**); and
2. A subsequent final motion order, officially dated **August 16, 2024**, which is similarly identified by a discrete file identifier (refer to **Appendix**).

It is acknowledged that the pursuit of these documents is currently engaged via a concurrent request submitted pursuant to the *Freedom of Information and Protection of Privacy Act* (*FIPPA*, R.S.O. 1990, c. F.31). Notwithstanding the *FIPPA*

mechanism, the present requisition is rigorously grounded upon the distinct, and patently more explicit, statutory framework enshrined within the *Tribunals Adjudicative Records Act, 2019* (*TARA*, *S.O. 2019, c. 7, Sched. 6*).

III. Statutory Exegesis of the *Tribunals Adjudicative Records Act, 2019*

The **Foci** of the instant analysis rests predominantly upon the interpretative scope of the definition of **"adjudicative record,"** as that term is prescribed in **Subsection 1(2)** of *TARA*, *S.O. 2019, c. 7, Sched. 6*.

A. Definition of Adjudicative Record

The relevant statute explicitly enumerates records that constitute an **"adjudicative record"** for the purposes of the legislation. **Paragraph 6** of **Subsection 1(2)** of *TARA* conclusively defines such a record to encompass:

> *"6. A decision or an order made by a tribunal and any reasons for the decision or order."*

The **Undisclosed Motion Decisions** are, *de jure* (by law), final **orders** emanating from the Tribunal; the statutory phrase **"an order made"** does not, *prima facie* (at first sight), impose a condition precedent of dissemination or receipt upon the parties. Instead, the language suggests that the requisite characterization as an **adjudicative record** is established at the precise moment the order is officially executed or rendered by the adjudicative body.

B. Differentiation from Excluded Records

It is cognizable that **Subsection 1(3)** of *TARA* delineates specific categories of excluded records that are expressly exempted from classification as **adjudicative records**. **Paragraph 1** of that subsection excludes:

> *"1. Personal notes, draft decisions, draft orders and communications related to draft decisions or draft orders that are created by or for a member of a tribunal in connection with a proceeding before the tribunal in which the member is presiding."*

Given that the **Undisclosed Motion Decisions** are logged within the record of proceeding as final **Motion Orders**, a circumstance demonstrated unequivocally by the **Appendix**, a definitive distinction from the excluded category of **"draft orders"** is warranted; consequently, they are not susceptible to being deemed outside the statutory ambit of mandatory production.

IV. Requisite Production and Remedial Resolution

In light of the foregoing, the ineluctable conclusion is that the **Undisclosed Motion Decisions** constitute **adjudicative records** that are legally appurtenant to the parties of record in this proceeding, necessitating their production. Notwithstanding the contemporaneous **FIPPA** application, the Tribunal possesses a distinct and self-evident obligation under *TARA* to effectuate the immediate release of these **Orders**.

Formal requisition is hereby submitted for the furnishing of the aforementioned **Undisclosed Motion Decisions** by the Tribunal's administrative apparatus to the undersigned **forthwith**.

In the interest of effecting pragmatic **resolution** and securing the conservation of all involved parties' **finite yet valuable resources**, notification shall be duly provided to the **OIPC** (Office of the Information and Privacy Commissioner) that this decisive step toward **resolution** has been conscientiously undertaken. Should the **Orders** be provided herein, this cooperative action will effectively and supererogatorily truncate the Tribunal's outstanding production obligations under the extant **OIPC** request, thereby resolving an issue that has not yet been subjected to administrative or judicial scrutiny.

Transmission of the aforementioned documentation ought not to be deferred beyond Monday, October 6, 2025, with dispatch to be effected via the current electronic communication channel, given the temporal exigency and the minimal administrative burden involved in its execution.

Respectful acknowledgements are herein offered for consideration of this matter.

/Mr. Kevin A. McLean (BA, JD, CIM)

Mr. Kevin A. McLean (BA, JD, CIM)

Appendix

Date	Time	Description	File Identifier

2024-07-24	3:04 PM	Motion Order	2M_-*Motion_Order-20190710*-Final.2024-07-24_15-04-56
2024-08-16	1:26 PM	Motion Order	2M_-*Motion_Order-20190710*-Final.2024-08-16_13-26-16.docx

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My best regards to you,

Kevin A. McLean (B.A., J.D., CIM)
Chartered Investment Manager
E (personal and confidential): mrkevinalexandermcleanbajdcim@gmail.com

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Gmail

Kevin McLean <mrkevinalexandermcleanbajdcim@gmail.com>

RE: 23-015662/AABS - Kevin McLean - Action Required: Invitation to the Sensitive Content Management (SCM) Service

Kevin McLean <mrkevinalexandermcleanbajdcim@gmail.com> Mon, Nov 10, 2025 at 7:42 AM
To: "LATregistrar (MAG)" <LATregistrar@ontario.ca>, hannah.lee@ontario.ca
Cc: sean.weir@ontario.ca, david.corbett2@ontario.ca, ryan.freeston@ontario.ca, attorneygeneral@ontario.ca, Tanya.Buraglia@ontario.ca

Subject: Formal Confirmatory Requisition and Notice of Non-Compliance Pertaining to Undisclosed Adjudicative Orders: File No. 23-015662/AABS

To: Registrar, Licence Appeal Tribunal (LAT)

Electronic Address: LATregistrar@ontario.ca

Physical Address (For Record): 25 Grosvenor Street, Toronto, Ontario M7A 1T6

Cc: Mr. David Corbett, Deputy Attorney General of Ontario

Electronic Address: david.corbett2@ontario.ca

Physical Address (For Record): 720 Bay Street, Toronto, Ontario M7A 1T6

Cc: In his capacity as the Head of the Institution (LAT) (sean.weir@ontario.ca)

I. Introduction and Mandate of Confirmation

This correspondence is formally tendered as a confirmatory instrument, the singular purpose of which is to establish a definitive and unimpeachable record regarding the extant status of the material requisition for two (2) specific, conclusive Motion Orders, hereinafter denominated as the "Undisclosed Adjudicative Orders." This notification is being concurrently transmitted to the Deputy Attorney General (DAG) as a necessary function of the overarching accountability framework, which is institutionally governed by the subsisting Memorandum of Understanding (MOU) executed between the Executive Chair of Tribunals Ontario and the Honourable Minister of the Attorney General of Ontario. This invocation is not a procedural formality but a substantive appeal to the mechanism established for the preservation of institutional rectitude and the maintenance of public confidence in the quasi-judicial administration of justice. The persistent administrative *défaillance* concerning the immediate disclosure of these judicial directives necessitates this formal, escalated invocation of oversight.

II. Factual Antecedents and Continuing Non-Production

A. The Undisclosed Adjudicative Orders and the Integrity of the Record

The Undisclosed Adjudicative Orders in question represent two finalized judicial directives, previously and meticulously identified by their date of promulgation: the order dated **July 24, 2024**, and the subsequent order dated **August 16, 2024**. These instruments, which resolve determinative procedural matters within the adjudicative chronology, are unequivocally recorded within the Tribunal's procedural ledger—a document transmitted to the undersigned and referred to in antecedent communications. Their inclusion within this official compendium renders the orders *res ipsa loquitur* (the thing speaks for itself) as integral, non-severable components of the complete and authentic Record of Proceeding. The absence of these definitive procedural rulings introduces a structural vitiation of the Record, effectively rendering the documented history incomplete and inherently susceptible to challenge.

B. Status of Delivery, Due Diligence, and Chronological Delineation

As of this morning's temporal demarcation, a punctilious and exhaustive examination of the SCM portal (W Delivery Slip URL) and all auxiliary electronic transmission modalities confirms, incontrovertibly, that the aforecited Undisclosed Adjudicative Orders remain entirely **undisclosed** and have not been effectuated into the custody or possession of the Applicant. While the undersigned shall continue to exhaust all of his rights under any statute or process, he confirms that nothing is contained in the SCM portal (W Delivery Slip URL). The necessity of undertaking this confirmatory due diligence is employed solely to foreclose any potential administrative defence predicated upon a doctrine of constructive notice or inadvertent delivery. Should this conclusive finding be erroneous, the Tribunal is formally required to correct this factual assertion forthwith, identifying the precise moment and mechanism of disclosure. This sustained lacuna in the

documentation renders the Record demonstrably incomplete, thereby precipitating an undeniable and severe impediment to the Applicant's capacity to fully exercise the fundamental precepts of procedural fairness, inclusive of the inalienable and constitutional right to pursue comprehensive and well-informed judicial review or appellate recourse based upon a whole and unexpurgated foundation of fact and law. This administrative failure constitutes a *de facto* denial of the Applicant's entitlement to the Record.

III. Syllogistic Extrapolation of Legal Obligation and Conclusive Necessity

The statutory obligation for the immediate and unmitigated production of these final Orders does not derive from a discretionary administrative grace but is, rather, an **immutable ministerial function** predicated upon an advanced syllogism of legal principles and constitutional imperatives.

The logical extrapolation begins with the foundational premise that a final order, having adjudicated an ancillary or substantive matter, possesses the *force majeure* of a determinative instrument, the disclosure of which is inextricably linked to the **Rule of Law**. The *Tribunals Adjudicative Records Act, 2019, S.O. 2019, c. 7, Sched. 6*, establishes an unambiguous legislative mandate that such orders constitute "adjudicative records" that are appurtenant to the parties of record. This Act is a public manifestation of the principle of open justice, demanding transparency in the Tribunal's issuance of its judgments and rulings. The persistent and prolonged withholding of these documents thus elevates the issue from a mere administrative *délai* to a potential and demonstrable contravention of the overarching accountability architecture stipulated in the aforesaid MOU. This deliberate non-production, spanning an unwarranted temporal duration, compels the inevitable conclusion that the Tribunal's administrative apparatus is either beset by systemic deficiencies regarding its record maintenance, verging on the *ultra vires* of its procedural jurisdiction, or is engaged in an untenable interpretation of its statutory obligations concerning public accountability and the **duty of candour** owed to litigants. *Cessante ratione legis cessat ipsa lex*—when the reason for the law ceases, the law itself ceases; the original administrative reason for non-production, if one ever existed, has long ceased to be justifiable, and the continued concealment now actively compromises the principle of *audi alteram partem*.

IV. Formal Conclusion and Reservation of Rights

In light of the preceding analysis, and predicated upon the self-evident necessity of these Undisclosed Adjudicative Orders for the integrity of the judicial process, I hereby issue a formal, non-negotiable **requisition for the forthwith transmission** of these two documents.

Be definitively advised that, due to the protracted temporal exigency and the resultant prejudice to my substantive rights, I explicitly reserve, in full, all attendant legal and procedural rights, including, but not limited to, the initiation of extraordinary judicial remedies such as an application for a writ of *mandamus* to compel compliance with this fundamental entitlement. The contents and assertions of this formal correspondence shall be relied upon in any subsequent submission before the Tribunal or in any superior judicial forum within the Province of Ontario (Canada).

Respectful acknowledgements are herein offered for the profound and expedited consideration anticipated in the resolution of this critically exigent matter, the resolution of which is foundational to the continuance of the adjudicative process itself.

Sincerely and Respectfully Submitted,

Mr. Kevin A. McLean (BA, JD, CIM)

Chartered Investment Manager

Applicant of Record

Electronic Address: mrkevinalexandermcleanbajdcim@ gmail.com

File No.: 23-015662/AABS

On Tue, Nov 4, 2025 at 8:33 PM Kevin McLean <mrkevinalexandermcleanbajdcim @gmail.com> wrote:

> # Formal Legal Communication: Disclosure Demands Outstanding
>
> ## I. Notification of Submissions and Jurisdiction
>
> To: The **Licence Appeal Tribunal** (the "LAT"):
>
> This correspondence is formally tendered to advise of the commencement of collateral administrative proceedings. Please be unequivocally informed that a comprehensive seventy-seven-page **compendium of legal and evidentiary**

submissions (the "Factum") has been duly filed with the **Office of the Information and Privacy Commissioner of Ontario** (OIPC). Concurrently, this exhaustive document has been meticulously served upon the **Head of the LAT** and upon the **LAT** as an entity. The filing aspect is something the LAT failed to do at the Divisional Court to my benefit discovered post facto.

The central gravamen of the Factum pertains to systemic deficiencies and substantial legal questions arising from the **LAT's** omission to furnish the Applicant with certain **requisite and relevant documentation**.

II. The Substantive Disclosure Deficiency

The principal issue necessitating this exceptional invocation of administrative oversight involves your persistent, and thus far, **unjustifiable omission** to provide the **aforementioned, requisite *Undisclosed Motion Orders*** (the "Orders"). This course of conduct stands in direct contravention of the express and authoritative assurances previously conveyed through official correspondence issued by the Tribunal, specifically under the imprimatur of **Ms. Lee**.

The non-disclosure of the Orders constitutes not merely a breach of administrative representation, but potentially jeopardizes the fundamental tenets of **procedural fairness** and the principle of **natural justice** by withholding essential adjudicative material. A core syllogism in administrative law dictates that an individual's rights cannot be justly determined without full and complete access to the instruments of decision (the *Quicquid plantatur solo, solo cedit* principle, extrapolated to the necessity of procedural documentation). The self-evident conclusion is that the Orders, being instruments of the Tribunal's authority, are indispensable to the just determination of the Applicant's position.

III. Stipulation of Imperative and Consequence

Pursuant to the foregoing, the Tribunal is hereby issued a **firm stipulation of time** regarding its obligation to effect the required disclosure.

Should an affirmative determination regarding the provision of the *Undisclosed Motion Orders* not be unequivocally transmitted to the Applicant, formal notification of this final refusal is stringently required by **12:00 P.M. (Noon) Eastern Standard Time (EST)** on the ensuing calendar day.

Absent the receipt of either the Orders themselves or the aforementioned notification of refusal by the stipulated deadline, the singular, compelling inference shall be that the Applicant must formally **execute recourse** under the auspices of the ***Freedom of Information and Protection of Privacy Act*** (**FIPPA**), alongside any and all ancillary or supervening legal and administrative avenues that are legitimately available to remedy this prejudicial withholding.

IV. Conclusion and Demand

Your immediate, definitive, and **unequivocal written response**, confirming either affirmative compliance with the prior assurances or reasoned refusal to disclose the *Undisclosed Motion Orders*, is hereby requested. This matter demands resolution without further protraction.

Thank you kindly.

On Fri, Oct 31, 2025 at 5:07 PM Kevin McLean <mrkevinalexandermcleanbajdcim @gmail.com> wrote:

> Dear Sirs/Mesdames/Other Gender-Neutral Pronouns
>
> I write to confirm that it is now past five p.m. and I have not had a response or production in the SCM portal. I confirm the sole auto-reply of Ms. Buraglia. Thank you.
>
> On Fri, Oct 31, 2025 at 11:42 AM Kevin McLean <mrkevinalexandermcleanbajdcim @gmail.com> wrote:
>
> > CLASSIFICATION: Private and Confidential
> > SENDING METHOD: Via Electronic Transmission
> > CREATION METHOD: Dictated with Voice Recognition Software (Subject to reserved rights for the correction of any deficiencies in grammar, syntax, salient qualifiers, or improper double negatives.)
> > **Date:** Friday, October 31, 2025
> >
> > To:
> > The Registrar, Licence Appeal Tribunal (LAT)
> > Attention: Ms. Hannah Lee, Case Management Officer
> > Copy to: Mr. Sean Weir, Head of the LAT

Copy to: The Ministry of the Attorney General (MAG)
Copy to: Deputy Attorney General ("DAG" or "DMO") email: david.corbett2@ontario.ca
Copy to: Chief counsel to the DAG or DMO email: ryan.freeston@ontario.ca

Subject I: Follow up regarding the above

Dear Sirs/Mesdames/Other Gender-Neutral Pronouns:

I. Formal Introduction and Adoption of Precedent Definitions

I cordially write regarding the aforementioned Subjects of this correspondence. Grateful acknowledgment is extended *in limine* for the judicious allocation of time and considered attention to this official communication and its appended evidentiary documentation (whether cited by mere reference or physical inclusion, hereinafter collectively referred to as the **"Instrument Set"**). The profound appreciation for the constraints imposed upon finite, yet invaluable, institutional resources serves as the *raison d'être* for the immense preparatory expenditure dedicated to the profound research of the legal issues herein and their scrupulous application to the extant factual matrix.
All definitions, stipulatory pronouncements, and operative terms derived from previously, either indirectly or directly, cited correspondence and instruments are hereby formally adopted *in toto* (hereinafter, the **"Adopted Definitions"**).

II. Institutional Precepts, Supervisory Mandates, and the Pursuit of Administrative Resolution

This highly formal missive is respectfully tendered to the Honourable Tribunal concerning an immediate **administrative exigency** predicated upon the required conveyance of essential adjudicative instruments (hereinafter, the **"Motion Orders"**). The substantive necessity for this communication is exclusively derived from the Tribunal's antecedent, **binding institutional undertaking** (*pacta sunt servanda*) to furnish the aforementioned documentary records.
The present requisition is executed with the **paramount objective** of rigorously conserving the exiguous administrative resources incumbent upon both the Applicant and the Licence Appeal Tribunal, thereby assiduously promoting the fundamental tenet of procedural efficacy. **The inclusion of the Ministry of the Attorney General in this distribution is a regrettable but necessary measure** undertaken to secure comprehensive supervisory accountability and ensure the unimpeded, immediate resolution of this outstanding matter, *pursuant to the General Regulation under the Freedom of Information and Protection of Privacy Act* and the overarching principles of administrative due diligence.

III. Substantiation of Secure Document Repository Status and Administrative Lacuna

Exacting scrutiny has been applied to the dedicated client interface of the Secure Document Transmission Repository, which is formally denominated as the **"W Delivery Slip Account."** Notwithstanding this meticulous investigative exercise, the Repository's operative module currently manifests a **complete absence of documentary propagation** regarding the instruments in question.

- Sub-Section A: Validation of Account Operability and Precedent
  The affirmation of the account's operational integrity is necessitated, pro tanto, for the purpose of absolute clarity. This viability is unequivocally substantiated by the antecedent reception of official administrative instruments originating from various Ontario ministries, alongside the Tribunal's own preparatory correspondence, formally styled as the "Welcome Letter with the Checklist for Electronic Submission," the stipulated requirements of which were duly and timeously satisfied by the Applicant during the current administrative cycle.

IV. Formal Requisition for Adjudicative Instruments and Extrapolation of Legal Principle (*Ab Initio* Requisite)

A **binding institutional commitment**, amounting to a formal legal admission, was previously affirmed by the Tribunal to effectuate the transmission of the two specific Motion Orders conditional upon the Applicant's presentation of the formal Electronic Submission, which has been duly deposited via the designated electronic mail modality. The Applicant notes that this requisition is further substantiated by the *Court Transcripts Practices Standards Manual, issued by the Ontario*

Government, effective October 2024 (Enclosure 2), which outlines governmental standards for document dissemination.

- Sub-Section A: Advanced Syllogistic Extrapolation of Binding Legal Principle

  The imperative for the immediate production of these two judicial instruments is manifestly self-evident, constituting an ab initio requisite that is fundamental to the principled management of the ensuing proceeding. A core syllogism dictates that where a Tribunal is judicially obliged to furnish an Order, and the recipient is procedurally prepared to receive it, any systemic failure to effectuate transmission constitutes a demonstrable administrative lacuna (hereinafter, the "Administrative Lacuna"), which operates ipso jure to impair the Applicant's capacity to prosecute the matter effectively. The only conceivable conclusion is that the Tribunal is formally entreated to remit authenticated facsimiles of the two referenced Motion Orders forthwith. The unduly rudimentary and simplistic nature of the delay in providing only two essential records has necessitated this extraordinary and formal level of procedural escalation.

V. Conclusion and Proposition for Administrative Economy

The Applicant respectfully solicits notification regarding the **precise temporal parameters** anticipated for the successful and complete upload of the aforementioned adjudicative instruments to the designated Secure Document Transmission Repository. The prompt provision of the Motion Orders, evidenced by the **Instrument Set** (including *Transcript Order Form*, Enclosure 1) is now paramount.
Such prospective advisement shall operate as a preclusion against the necessity of recurrent, **supererogatory inquiry** and subsequent procedural follow-up, thereby fostering a judicious allocation of administrative resources and ensuring mutual deference for the professional commitments of all involved parties, in strict alignment with the **foundational tenets of administrative and judicial economy**. The Tribunal's prompt and unequivocal compliance with this fundamental administrative demand is anticipated and gratefully appreciated.
Yours most appreciatively and gratefully,

/s/Mr. Kevin A. McLean (BA, JD, CIM)

Mr. Kevin A. McLean (BA, JD, CIM) (he/him)

Enclosures

On Thu, Oct 30, 2025 at 1:15 PM Kevin McLean <mrkevinalexandermcleanbajdcim @gmail.com> wrote:

> Dear LAT (Ms. Lee) et al:
>
> Have you provided the requested two motion orders to the SCM portal? Thank you
>
> On Wed, Oct 29, 2025 at 12:20 PM Kevin McLean <mrkevinalexandermcleanbajdcim @gmail.com> wrote:
>
> > October 29, 2025
> >
> > To the Honourable Licence Appeal Tribunal
> >
> > (Attention: Ms. Lee, Registrar's Office)
> >
> > ## Subject: Formal Requisition for Two Motion Orders denoted in the attachment pursuant to Case Number 23-015662/AABS
> >
> > ### I. Introduction and Procedural Context
> >
> > This formal correspondence is respectfully tendered in reference to the aforementioned matter, the particulars of which are explicitly denoted in the caption above. The Applicant seeks to compel the immediate production of two specific judicial instruments.

II. Institutional Compliance and Statutory Entitlement

The Applicant observes, *prima facie*, that the transmission of the two specifically requisitioned records—the two Motion Orders—involves a minimal quantum of administrative effort; assuredly, the process of uploading and subsequent dissemination via electronic mail, or via the prospective Strategic Case Management (SCM) Portal (the latter of which remains presently inchoate), should not necessitate a temporal span exceeding a few minutes.

Consequently, to ensure due diligence and secure compliance with the Applicant's inherent entitlements, particularly those enshrined within the *Freedom of Information and Protection of Privacy Act* (*FIPPA*), the institutional Head, Mr. Weir, has been included in the distribution roster. This measure is effectuated to guarantee the timely procurement of the aforementioned instruments.

While I note the language in *TARA* regarding the definition of "adjudicative records" (i.e. orders that have been issued), the provision of the Two Undisclosed Motion Orders are by your index provided in February 2025 subject to, prima facie, immediate provision and by the law of admissions et al.

III. Requisition for Judicial Instruments and Comity

Notwithstanding any putative administrative expectation or requirement that the Applicant furnish antecedent submissions in a specific *pro forma*, such preliminary correspondence was nonetheless tendered *ex gratia* and in the spirit of procedural comity. The Applicant maintains that the necessity for the production of judicial orders is self-evident, being fundamental to the principled management of the proceeding.

This Honourable Tribunal is thus formally entreated to effectuate the **forthwith** provision of authenticated facsimiles of the two judicial Motion Orders, which were duly promulgated by the Tribunal on the dates expressly designated in the prior indices provided to the Applicant.

IV. Prerogative of Institutional Escalation

In the regrettable and unforeseen event that a definitive communication is not promptly furnished, specifically one that unequivocally addresses the intended mechanism of conveyance—whether by immediate electronic transmission or by subsequent upload to the SCM portal—the Applicant shall, *a fortiori*, proceed to exercise his undisputed and permissible prerogative to engage the appropriate institutional escalation protocols to ensure administrative accountability and prompt resolution of this matter.

I will check the SCM account in the next few hours to see if they have been delivered therein.

The Applicant appreciates the Tribunal's immediate attention to this pressing administrative exigency.

On Mon, Oct 27, 2025 at 11:04 AM Kevin McLean <mrkevinalexandermcleanbajdcim @gmail.com> wrote:

> **PRIVATE AND CONFIDENTIAL**
>
> Date: October 27, 2025
>
> Sending Method: **Via Electronic Transmission** ONLY
>
> Creation Method: Dictated with Voice Recognition Software (Reservation of rights to correct any grammar, syntax, important qualifiers, or improper double negatives)
>
> To: The Licence Appeal Tribunal
>
> 25 Grosvenor Street
>
> Toronto, Ontario
>
> ## Subject I: Requisition for Tribunal Motion Orders Integral to *FIPPA* Appeal
>
> ## Subject II: Insistence Upon Electronic Modality of Conveyance Due to Privacy Concerns
>
> (the **"Subjects"**)
>
> Dear Sirs/Mesdames/Other Gender-Neutral Pronouns:

I. Formal Commencement and Adoption of Definitions

I cordially write regarding the above **Subjects** of this correspondence. I thank you in advance for your finite yet valuable resources which is why I have taken immense time to research the legal issues herein and apply them to the facts herein. I appreciate your time and consideration of this correspondence and its attachments (by reference or inclusion). I adopt all definitions from previously, indirectly or directly, cited correspondence.

II. Clarification Regarding Modality of Document Transmission

It is incumbent upon me to respectfully controvert the premise, as allegedly posited by the Licence Appeal Tribunal (**"LAT"**) in prior discourse, that I explicitly solicited transmission of documentation pertaining to the within matter via the **Tribunals Automated Records Access ("TARA")** system utilizing a physical courier or standard postal delivery method. Furthermore, I must affirm that I have received no tangible documentation subsequent to any alleged dispatch via said modalities.

This clarification is proffered out of an abundance of caution and in a spirit of *bona fides* (good faith), with the objective of ensuring that the factual matrix underpinning our respective positions remains unequivocally accurate and honestly depicted for current or future forensic or administrative exigencies.

III. Requisition for Specific Adjudicative Orders

Pursuant to the foregoing, I have subsequently furnished a formal and unequivocal **Requisition** (the **"Requisition"**) for two specific adjudicative **Motion Orders** which I have never seen or received (the **"Orders"**). These **Orders** are germane and integral to my pre-existing application and appeal under the *Freedom of Information and Protection of Privacy Act* (**"*FIPPA*"**) but nonetheless adjudicative records by your binding admission.

The particulars of the requested **Orders** are formally itemized and enumerated within the attached document, styled as **McLean TARA Request - Two Motion Orders - Applicant - July 24 2025 - August 16 2024 - Mr McLean - 27-Oct-2025.pdf** (the **"Attachment"**), which is hereby incorporated by specific reference.

Upon the prompt and efficacious provision of these **Orders**, the necessity for their continued inclusion on the current roster of outstanding documentation will be *pro tanto* (to that extent) extinguished. I will confirm a safe receipt when they are delivered to me via SCM which casts much doubt on why they were sent via email with a complete absence of email confirmation.

IV. Preclusive, Agreed and Required Preference for Electronic Conveyance

Given the inherent risks associated with physical document transmission to multi-unit dwelling addresses, particularly regarding the potential for the unintended or unauthorized disclosure of **Sensitive Personal Information** (the **"SPI"**) to a third-party intermediary, such as a concierge, I respectfully implore that you effectuate their transmission **solely** via electronic mail.

This insistence upon electronic conveyance mitigates the substantial privacy risks that would otherwise arise, as the absence of my authenticated signature and physical **(Receipt of Document)** upon delivery via courier or post renders the chain of custody tenuous. The elevated vocabulary and intricate sentence structure herein serve to underscore the gravity of the privacy concerns, which, *res ipsa loquitur* (the thing speaks for itself), demand the most scrupulous adherence to security protocols.

Courtesy and Reservation of Rights

I proffer this correspondence as a courtesy and out of an abundance of caution to ensure that all documents are truly, accurately, and honestly depicted and referenced for current or future purposes.

I reserve the right to rely on this correspondence for any lawful purpose.

Thank you in advance for your anticipated compliance.

Sincerely and Cognitively,

Mr. Kevin A. McLean (BA, JD, CIM)

On Tue, Oct 14, 2025 at 5:02 PM LATregistrar (MAG) <LATregistrar@ontario.ca> wrote:

> Good afternoon,
>
> The size and volume of documents filed on 23-015662/AABS are too large to share using email. For this reason, the Tribunal sent an email invitation for you to join the Secure Content Management Service. This application allows the Tribunal to send large files that cannot be sent by email. Please confirm once registration is complete.
>
> This email is to confirm that an invitation to the new Sensitive Content Management (SCM) service will be sent to you shortly. Attached to this e-mail is the registration steps for the new SCM service and if you have not received the SCM invitation by the end of day please check your junk or spam folder before requesting another invitation.
>
> SCM serves as an alternative method for submitting large electronic materials up to 100 GB in size containing confidential, personal, health and financial information. Please note the Tribunal continues to accept submissions through e-file and regular email.
>
> LAT-AABS (Automobile Accident Benefits Service) e-File is the simpler and preferred method to file applications, responses, and other documents up to 35 MB.
>
> Should you have any questions or need assistance, please don't hesitate to reach out to latregistrar@ontario.ca. We are here to support you throughout this transition.
>
> We appreciate your cooperation and understanding during this transition.
>
> Thank you for your continued partnership with us.
>
> **Best Regards,**
>
> **Hannah Lee (Pronouns: she/her)** (learn more)
>
> Case Management Officer
>
> Licence Appeal Tribunal
>
> Phone: 647-463-8220
>
> Local 416-326-1356 / Toll free 1-888-444-0240
>
> LATregistrar@ontario.ca
>
> tribunalsontario.ca

Tribunals Ontario
Tribunaux décisionnels Ontario

Confidential message which may be privileged. If received in error, please delete the message and advise me by return email.

Message confidentiel dont le contenu peut être privilégié. Si reçu par erreur, veuillez supprimer ce message et aviser l'expéditeur par retour de courriel.

--

My best regards to you,

Kevin A. McLean (B.A., J.D., CIM)
Chartered Investment Manager
E (personal and confidential): mrkevinalexandermcleanbajdcim@ gmail.com

DISCLAIMER

1. *The content of this email is confidential and intended for the recipient specified in message only. It is strictly forbidden to share any part of this message with any third party, without a written consent of the sender. If you received this message by mistake, please reply to this message and follow with its deletion, so that we can ensure such a mistake does not occur in the future.*
2. *Due to being an accident, this email may be dictated in part or full with voice recognition software. Kindly excuse any errors for grammar, syntax or spelling.*

--

My best regards to you,

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Chartered Investment Manager
E (personal and confidential): mrkevinalexandermcleanbajdcim@ gmail.com

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My best regards to you,

Kevin A. McLean (B.A., J.D., CIM)
Chartered Investment Manager
E (personal and confidential): mrkevinalexandermcleanbajdcim@ gmail.com

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2. *Due to being an accident, this email may be dictated in part or full with voice recognition software. Kindly excuse any errors for grammar, syntax or spelling.*

--

My best regards to you,

Kevin A. McLean (B.A., J.D., CIM)

Chartered Investment Manager
E (personal and confidential): mrkevinalexandermcleanbajdcim@ gmail.com

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2. *Due to being an accident, this email may be dictated in part or full with voice recognition software. Kindly excuse any errors for grammar, syntax or spelling.*

--

My best regards to you,

Kevin A. McLean (B.A., J.D., CIM)
Chartered Investment Manager
E (personal and confidential): mrkevinalexandermcleanbajdcim@ gmail.com

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2121

*Required field

Electronic Submission Checklist

***Submitting To:** Automobile Accident Benefits Service (AABS) ***Submission Date:** 10/27/2025

***Case Title:** McLean v. Security National Insurance Company (forme

Case Number: 23-015662/AABS

Contact Information

*Submission By: Applicant If Other, please specify:

Address:

Phone #: (647) 370-9354 Fax #:

Email : mrkevinalexandermcleanbajdcim@gmail.com

Submissions

*File Name(s)	*Brief Description(s)
2M_-_Motion_Order_20190710	Final.2024-07-24_15_04_56.docx
2M_-_Motion Order_....	2M_-_Motion_Order-2019071 0_-Final.2024-08-16_ 13-26-16.docx

Requirements (Please review Requirements Guideline)	Yes	No	N/A
1. Combine copies of submissions and evidence into a single PDF document	○	◉	
2. Include page numbers, hyperlinks and bookmarks within PDF document	○	○	
3. OCR PDF to make text searchable	○	◉	
4. If applicable, combine photos into the PDF document	○	○	◉
5. If applicable, convert videos to .AVI format	○	○	◉

Send confirmation to other party before submitting with SCM

Additional Information

The first document was referenced in an index provided by the LAT which referenced a time of 2024-072-24 at 3:04 p.m.
The second document was referenced in an index provided by the LAT which referenced a time of 2024-08-16 at 1:26 p.m.
Please provide via email or the SCM portal as I already have an account prior to your invitation but thank you nonetheless.

Ver. 2 (2024/02)

Reset Form

EXHIBIT “M”

Name: Kevin McLean | DOB: 25/3/1983 | MRN: 103638675 | PCP: Raphael Benzaki | Legal Name: Kevin McLean

MRI Spine Lumbar Trauma OR Spondylitis

Results

Study Result

Narrative & Impression

HISTORY: I LBP radiates into likely previous S1 disc protrusion

TECHNIQUE: Multiplanar multisequence imaging through the lumbar spine without gadolinium

FINDINGS:

Spinal segmentation is conventional.
Conus medullaris is normally situated.

L1-2: No spinal stenosis.
No foraminal stenosis.

L2-3: No spinal stenosis.
No foraminal stenosis.

L3-4: Mild degenerative disc desiccation. No disc herniation or spinal stenosis. Mild bilateral facet arthritis slightly more severe on the right side.
No significant foraminal stenosis.

L4-5: No spinal stenosis.
Borderline mild bilateral foraminal stenosis.
Mild facet arthritis bilaterally.

L5-S1: Concentric disc bulge causing mild spinal stenosis.
Mild bilateral facet arthritis. Very mild retrolisthesis.
Severe bilateral foraminal stenosis.

IMPRESSION:

Mild spinal stenosis at L5-S1 with severe bilateral foraminal stenosis.

Borderline mild foraminal stenosis bilaterally at L4-5.

EXHIBIT “N”

Kevin McLean <mrkevinalexandermcleanbajdcim@gmail.com>

My outstanding request for court records of the Court involving undisclosed Indictment/Information and Signed Arrest Warrant (The Honourable Madam Justice Shore) - new discovery as of today's date - Mr. Sinnadurai as counsel to Madam Justice Shore

1 message

Kevin McLean <mrkevinalexandermcleanbajdcim@gmail.com>

Tue, Nov 11, 2025 at 4:38 PM

To: "Sinnadurai, Ananthan (MAG)" <Ananthan.Sinnadurai@ontario.ca>, Benita.Kwok@ontario.ca

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November 12, 2025
TO:
Counsel
Crown Law Office-Civil Law, 8th Flr.

720 Bay St.

Toronto, Ontario M7A 2S9

Phone: 416-326-4008
Fax: 416-326-4181
Email: ananthan.sinnadurai@ontario.ca

SUBJECTS OF CORRESPONDENCE

Subject I: My outstanding request of the COURTS for court documents and information, along with Information Assets (see: CJC dossiers and publications by the esteemed Dr. Felsky (JD, PHD) of the CJC), involving the improperly withheld and undisclosed to myself **“signed arrest warrant”** involving Madam Justice Shore in, on or around, September 2024
Subject II: my discovery as of today’s date that you were counsel to Justice Shore in her defence of claims from one Mr. McIntosh in 2023 -and the obvious self-evident corollary of the same to my request for records in the custody and control of the originating courthouse and court level involving the undisclosed criminal proceeding and court information, documents, information/indictments and the admitted “signed arrest warrant” or “endorsed arrest warrant” (the **“Subjects”**)

Dear Mr. Sinnadurai:

I cordially write regarding the above **Subjects** of this correspondence. I thank you in advance for your time and consideration of this correspondence and its attachments (by reference or inclusion). I appreciate your finite yet valuable resources which is why I have taken immense time to research

the legal issues herein and apply them to the facts herein, thereby ensuring that my current **epistolary requisition** is grounded in **substantive and procedural exactitude**.
I adopt all definitions from previously, indirectly or directly, cited correspondence, including the case *McIntosh v. Shore* ("*McIntosh*") which is appended hereto (Enclosure 3 and 4) and your preceding letters of June 25, 2025 (Enclosure 1) and July 4, 2025 (Enclosure 2).

REITERATION OF JUDICIAL ANTECEDENCE AND NON-DISCLOSURE

I must **reiterate and rely unequivocally upon** my prior **propositions, factual predicates, and legal stances** concerning Madam Justice Shore's **antecedent and unavowed judicial participation** in the **undisclosed *ex parte in camera* hearings** ("UEICH") that culminated in the issuance of the **"Signed Arrest Warrant"** within the context of the **undisclosed criminal proceedings** ("UCP"). *Nota Bene*: A **UCP** is legally initiated upon the filing or laying of a *Criminal Code* Form 2 Information ("Form 2 Information") or a *Criminal Code* Form 4 Indictment ("Form 4 Indictment"). This **non-disclosure**, whether **deliberate or inadvertent**, **indubitably** casts a long shadow upon the fundamental principles of **judicial impartiality and procedural fairness** that underpin the administration of justice. The kernel of my inquiry has consistently revolved around the identity of the **mystery and undisclosed judge** who was involved in the issuance of the **"warrant in the first"** ("Signed Arrest Warrant").
This query, which **transcends mere curiosity** and delves into the **critical sphere** of public accountability, arose in Spring 2025 upon my discovery of the **False Information Package**, which encompassed the Court Officer (Toronto Region) Mrs. Frugoni-Rojas's Form 2 Information and the *Intake Court Endorsement* ("Intake Endorsement") authored by Justice of the Peace Jiri. It is crucial to underscore that the **Signed Arrest Warrant**, as a **juridical instrument**, represents the highest exercise of state power against an individual's liberty, and its origins and supporting documents demand **absolute transparency and meticulous archival integrity**. The lack of such integrity, as evinced by the present lacuna, is a matter of **profound constitutional concern**.
I acknowledge your **concession**, memorialized in your correspondence of July 4, 2025 (Enclosure 2), that the Form 2 Information pertaining to the aforementioned Court Officer **was not formally lodged or exhibited** within the *Ontario Court of Justice* ("OCJ") from August to October 2024, **ergo** it was **indubitably** filed subsequent to that temporal juncture. This temporal discontinuity **mandates** a thorough and documented accounting of the entire **inception and issuance process** of the **Signed Arrest Warrant**, particularly given the **critical period** of non-filing and the subsequent necessity of locating the true **source jurisdiction** and **judicial authorization**. The **presumption of regularity** (*omnia praesumuntur legitime facta donec probetur in contrarium*) is severely undermined by these admitted factual discrepancies concerning the **filing chronology** and the **judicial signatory**.

ANCILLARY PROCEEDING DISTINCTION AND COUNSEL CONFLICT

I shall **eschew** a **post-mortem** delineation of the concessions and **representations** previously proferred by yourself, acting as counsel for the Ministry of the Attorney General (Civil Law), in addressing my requisitions for judicial records. These prior communications, while initially appreciated, have ultimately served to **narrow the investigative aperture**, leading to the **irrefutable conclusion** that the matter rests solely with the presiding SCJ Judge, Madam Justice Shore.
My adherence to your **prohibition** on communicating directly with the judiciary **was regrettably rescinded** subsequent to your **prolonged reticence** once I had **surmised** that Madam Justice Shore constituted the **undisclosed Superior Court of Justice Judge** ("SCJ Judge") implicated in the *Intake Endorsement*—a **deduction** that was necessitated when you represented that the SCJ Judge was *not* Madam Justice Shore. This series of events **prima facie** suggests a **strategic attempt to obfuscate** the judicial identity, thus creating an **untenable position** where my pursuit

of essential court records was intentionally **channelled** through the representative of the very entity (the judicial officer) whose antecedent involvement was being **covertly shielded**.
It is **incumbent** upon me to clarify that my **raison d'être** herein is **not** to **conflate** this matter with that of Mr. McIntosh, wherein a civil suit was **instituted** against, **inter alia**, Madam Justice Shore. The **distinction is material**: Mr. McIntosh's action was a **civil *delict* claim** against the judge's alleged public conduct; my **pre-eminent focus** is not the **promulgation** of a civil suit but the **effectuation** of setting aside the impugned steps, documents, and orders involved in the **UCP** based on the **tenable grounds** of newly arising or discovered facts and/or fraud discovered *post facto* ("Post-Facto Discovery"). The **evidentiary bar** for **Post-Facto Discovery** is rigorously high, and my efforts to **unravel the procedural steps** taken *in camera* are indispensable to meeting this threshold and ensuring that the **coram non judice** doctrine does not apply.

- ***Parenthically***: I was **wholly unaware** until today of your prior retention as counsel to Madam Justice Shore in the *McIntosh* matter, where she was the principal defendant regarding her impugned conduct. The **convergence** of your previous role as her counsel in a defensive posture and your subsequent role as the sole conduit for information regarding her *unavowed* judicial acts in my matter creates an **incontrovertible appearance of a conflict of interest** that necessitates immediate and complete transparency. While I do not endorse the claims made by Mr. McIntosh, the discovery that Madam Justice Shore would have been the author of a particularized email, if true, is **prima facie** unsettling and reinforces the necessity of exploring **any prior judicial *nexus*** between the parties. The principle of **natural justice** (*nemo iudex in causa sua*) demands that judicial officers avoid even the **scintilla of bias** or the **appearance thereof**.

CONSISTENCY OF JUDICIAL DICTION AND LACK OF COMPLIANCE

I can inform you that I discerned her judicial **diction** and **vernacular** yet again on October 10, 2025, when the SCJ Regional Manager's Office confirmed that my retained and authorized Transcriptionists of Ontario ("ATO") were **entitled** to the "tapes and materials required for transcription" from the **antecedent hearings** related to this matter, contingent upon judicial **acknowledgement**. The SCJ RMO's position **conclusively established** my *legal entitlement* to the recordings.
On that now **notorious** date, Madam Justice Shore, exhibiting what appears to be a **deficient understanding** of civil litigation (distinct from Family Law litigation) and an **apparent disregard** for established court protocols, **represented** that the court does not provide said materials. She then further **represented** that no audio or transcripts could be provided. This writing style, characterized by a **distinctive cadence and peculiar phraseology**, is **most analogous** to that of the *Intake Endorsement* and previous writings directly attributable to her. This **stylistic *nexus*** constitutes a **significant factual premise** in my **deductive reasoning** concerning the undisclosed judge's identity. Furthermore, her reliance on a purported *Divisional Court* practice that was, at best, **antiquated** and, at worst, **patently misleading**, demonstrates a clear **lack of compliance** with both the *Judges Act* and the express stipulations of the *Court Transcripts Practices Standards Manual* ("Transcripts Manual"). The **unjustifiable denial** of access to the official court record, which is the **substrate** upon which all appellate review is predicated, constitutes a **grave impediment** to the pursuit of justice and an **infringement** of the applicant's right to an effective remedy. Such an action **exposes** the judiciary to legitimate scrutiny regarding its adherence to the very procedural canons it is tasked with upholding.

THE IMPERATIVE OF DISCLOSURE REGARDING DOCUMENT DISPOSITION

As you are **cognizant**, it had dawned upon me, through a series of **epiphanies of deductions** arising from the admissions and **representations** of the OCJ and SCJ (particularly Ms. Azim, who did not controvert the inference that Madam Justice Shore was the presiding judge in the *ex parte in camera* hearing involving the issuance of an arrest warrant), that she was the judge in question.

This deduction was **substantiated** by your representation that the court does not retain copies of **“signed arrest warrants”** and that I should contact the Toronto Police Service ("TPS"), a representation which, while potentially reflecting a practice of Madam Justice Shore, is **flatly erroneous** as a matter of universal court record policy, as articulated in the *MAG CSD Court Information Access Guide* ("Access Guide"). It was this exchange, where the **Crown's representative** directed me away from the **judicial source** to a **police service repository**, that **precipitated** your subsequent silence, thereby **solidifying** the inference of a deliberate suppression of the judicial trail.

If your **position** is that Madam Justice Shore **effectuated the destruction** of the **“signed arrest warrant”** or that the Deputy Attorney General of Ontario (Mr. David Corbett) **mandated** such **disposition**, which was **sanctioned** by the Chief Justice of the SCJ, **I respectfully request unequivocal confirmation of said event.** This request extends not only to the **“signed arrest warrant”** by Madam Justice Shore but also to the filed criminal proceeding document (i.e., a Form 4 Indictment). This process, which can only be **described as an “Ex Parte In Camera Unrecorded Hearings Unretained Indictment Process”**, is **patently inconsistent** with the **open court principle** enshrined in our *Charter of Rights and Freedoms*, s. 2(b), and the right of the accused to the **full evidentiary record** of the proceedings concerning their liberty. The implied practice of **non-retention** of crucial criminal process documents by a court of **Superior Criminal Jurisdiction** is a **fundamental breach** of the *Rule of Law* and the necessary **audit trail** required for judicial accountability.

In this manner, we need not **protract** the expenditure of valuable time concerning my request for the judiciary (originating courthouse and originating court level) and the judge of the *Superior Court Of Criminal Jurisdiction* (Madam Justice Shore). Should you confirm the destruction, I shall then be **entitled** to **presume** the court destroyed the same, thereby **shifting the burden of proof** regarding the documentation's existence and facilitating the next procedural steps. This crucial clarification will permit me to **reorient** the relief I am seeking and to **focalize** my extant privacy requests and complaints against various ministries of the Ontario government (i.e., regarding their custody and control of the same), along with a requisition to the Archives of Ontario (“AOO”) for it to, *inter alia*, designate certain records of **Archival Value** and to provide a response under the *Archives And Recordkeeping Act* (Ontario) ("*ARA*"). The records of a **Signed Arrest Warrant** and the **Form 4 Indictment** are **manifestly** records of **Archival Value** and their destruction, if admitted, must be **justified** by reference to the **Judicial Records and Retention Schedule** and **Ministerial Direction**, providing the **exact date and authority** for such an extraordinary **expunction**.

It is somewhat **befuddling** that the Ministry of the Attorney General ("MAG"), and yourself **specifically**, would **profess** to represent a judge of the SCJ, given the **constitutional separation** of the Executive and Judicial branches. Nonetheless, this remains a **non-issue** herein as you requested that I communicate with you regarding the provision of records in a **Non-FOI request** of the courts (as the courts are not subject to *FIPPA*), which I am **statutorily entitled** to access as per the *Access Guide* and the *Transcripts Manual*.

I am due:

1. A copy of the Indictment or Information filed or laid in the relevant courthouse, of which you have confirmed that there was no Form 2 Information in the OCJ, and to which I was **entitled** and **am entitled** to without charge and upon request; and
2. A copy of an endorsement without charge, which would include a **“signed arrest warrant”**, which you have **represented** that the courts do not retain.

Now that it has been **for all intents and purposes confirmed** that Madam Justice Shore was the presiding judge in the aforementioned **“Ex Parte In Camera Unrecorded Hearings Unretained Indictment Process”**, which is **patently inconsistent** with the **open court principle** and procedural transparency, **kindly inform me immediately and without further equivocation** whether:

- The originating courthouse, which could *de facto* have been the SCJ 361 University Courthouse (where said Madam Justice Shore was the Family Team Leader as per the

McIntosh decisions in which you were retained counsel) or the *Divisional Court* at 130 Queen Street West, Toronto, Ontario, has **destroyed or disposed of** the Form 4 Indictment.
- The **"signed arrest warrant"** has been **destroyed or disposed of** by the court or the presiding judge, Madam Justice Shore.
- If so, **when** did such destruction or disposition occur, and **pursuant to what specific legal authority or retention schedule directive**?

The **maintenance of public confidence** in the judiciary is **intrinsically linked** to the **uncompromising integrity** of its records. Your definitive response to the destruction query is therefore not merely a **ministerial formality** but a **substantive requirement** for the resolution of this matter.

Nonetheless, you have been acting as the mouthpiece of Justice Shore, at the very least, in relation to my request for records of the court which the court must have custody and control of the same unless they were destroyed. It is most notable that it was only the SCJ 361 University Avenue Courthouse (intake) was the court office that did not respond to my requests. Nonetheless, the SCJ RMO was most helpful in excluding The Honourable Madam Justice Kraft but solely confirming the issue with my Transcript Order Form was that of a date range involving Justice Shore's presiding over the ex parte in camera hearing(s) involving myself.

Thank you for your **prompt and meticulous attention** to this matter of **material consequence**.
Yours most appreciatively and gratefully,

/s/Mr. Kevin A. McLean (BA, JD, CIM)

Mr. Kevin A. McLean (BA, JD, CIM) (he/him)

ENCLOSURES:

1. Your letter dated June 25, 2025 (*Enclosure 1*)
2. Your letter dated July 4, 2025 (*Enclosure 2*)
3. *McIntosh v. Shore*, 2023 ONSC 3575 (CanLII) - *Counsel: Sinnadurai* (*Enclosure 3*)
4. *McIntosh v. Shore*, 2023 ONSC 3575 (CanLII) - *Sinnadurai on Motion* (*Enclosure 4*)

--

My best regards to you,

Kevin A. McLean (B.A., J.D., CIM)
Chartered Investment Manager
E (personal and confidential): mrkevinalexandermcleanbajdcim@gmail.com

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4 attachments

2023 ONSC 3575 (CanLII) _ McIntosh v Shore _ CanLII-Motion-Sinnadurai counsel to Justice Shore.pdf
183K

2025 07 04 - McLean - Letter re request for information.pdf
275K

2025 06 25 - McLean - Letter re Request for Records.pdf
186K

2023 ONSC 3575 (CanLII) _ McIntosh v Shore _ CanLII-Counsel to Justice Shore-SInnadurai-Enclosure 3.pdf
183K

Tab 5

Court File No.
DC-24-00000718-00JR

ONTARIO COURT OF JUSTICE (DIVISIONAL COURT)

BETWEEN:

KEVIN ALEXANDER MCLEAN

APPLICANT

- and -

TD HOME AND AUTO INSURANCE COMPANY, SECURITY NATIONAL INSURANCE COMPANY, TD GENERAL INSURANCE COMPANY, EXECUTIVE DIRECTOR, LICENCE APPEAL TRIBUNAL,
HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO, REPRESENTED BY EXECUTIVE CHAIR OF TRIBUNALS ONTARIO IN MR. SEAN WEIR, THE ATTORNEY GENERAL OF ONTARIO

RESPONDENTS

NOTICE OF APPLICATION TO DIVISIONAL COURT FOR JUDICIAL REVIEW

TO THE RESPONDENTS:

A LEGAL PROCEEDING HAS BEEN COMMENCED by the Applicants. The claim made by the Applicants appears on the following pages.

THIS APPLICATION for Judicial Review will come on for a hearing before the Divisional Court on a date to be fixed by the Registrar at the place of hearing requested by the Applicants. The Applicants request that this application be heard at Osgoode Hall, 130 Queen Street West, Toronto, Ontario, MSH 2N5.

IF YOU WISH TO OPPOSE THIS APPLICATION, to receive notice of any step in the application or to be served with any documents in the application, you or an Ontario lawyer acting for you must forthwith prepare a notice of appearance in Form 38A prescribed by the Rules of Civil Procedure, serve it on the Applicants' lawyer or, where the Applicants do not have a lawyer, serve it on the Applicants, and file it, with proof of service, in the office of the Divisional Court, and you or your lawyer must appear at the hearing.

IF YOU WISH TO PRESENT AFFIDAVIT OR OTHER DOCUMENTARY EVIDENCE TO THE COURT OR TO EXAMINE OR CROSS-EXAMINE WITNESSES ON THE APPLICATION, you or your lawyer must, in addition to serving your notice of appearance, serve a copy of the evidence on the Applicants' lawyer or, where the Applicants do not have a lawyer, serve it on the Applicants, and file it, with

proof of service, in the office of the Divisional Court within thirty days after service on you of the Applicants' application record, or not later than 2 p.m. on the day before the hearing, whichever is earlier.

IF YOU FAIL TO APPEAR AT THE HEARING, JUDGMENT MAY BE GIVEN IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO DEFEND THIS PROCEEDING BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

Date: November 15, 2024

Issued by

Jessa-Marie Clegg
Digitally signed by Jessa-Marie Clegg
Date: 2024.11.22 10:11:31 -05'00'

Address of Local Registrar court office Divisional Court

Superior Court of Justice
Osgoode Hall
130 Queen Street West
Toronto, ON MSH 2N5

TO: ATTORNEY GENERAL OF ONTARIO
Crown Law Office — Civil
8th Floor, 720 Bay Street
Toronto, ON

AND TO:

Respondent Insurance Companies (addresses particularized and identified along with counsel in the record of proceeding and the civil claims submissions portal)

APPLICATION

Volume #1: Relief Sought

1.The Applicant adopts his definitions from the record of proceeding, including the hearing record in NOM #13 to #15 and NOM #16 and they have the same meaning herein as they do therein.

2.The Applicant makes the application for the following relief in the form of any orders, declarations, findings, determinations or directions with great respect to the License Appeal Tribunal and gratitude to the ONSC (Divisional Court) for its consideration of the same:

a. An Order that this JRPA proceeding be declared as public interest litigation;

b. An order that no costs are awarded against the Applicant in any event of the cause;

c. An Order compelling Vice Chair Morrissette or the Tribunal to decide the Applicant's motion (defined as "NOM #16" which was served on SNIC, TDHA, and TDGIC and filed in September 2024) or confirm with the Applicant, copied to this ONSC (Divisional Court), that it is declining to exercise its jurisdiction or discretion under section 21.1 of the SPPA;

    i. An Order, thereafter the Tribunal complying with the above order, that Vice Chair Lake either amend her reconsideration decision (the "RD") or confirm, with a copy to this court, that she is declining to exercise her jurisdiction or discretion;

        1. An Order that the 30 day time limit under the JRPA does not commence until the above orders are complete;

d. A preliminary or procedural order that this judicial review is heard before a single sitting judge pursuant to section 6(2) of the *JRPA*;

e. A procedural and preliminary order that the limitation period for judicial review involving the final orders involving NOM #14 and NOM #15 does not commence until the Licence Appeal Tribunal/AABS issues its order regarding the Applicant's section 21.1 of the SPPA motion ("NOM #16") (filed in September 2024 but "in "progress" as of November 15, 2024, to the LAT/AABS) and the Tribunal issues any amended decision regarding the Applicant's likely amended reconsideration motion;

f. An Order that the Applicant may add and include fresh evidence when it becomes available to him through any lawful means including the LAT and/or any privacy requests that are outstanding at the time of this JRPA Application;

g. A procedural and preliminary order that no responsive materials are required from the Respondent Insurers and they are not entitled to participate without leave as they chose not to participate in the underlying motions subject to the Respondent Insurers participating in any of aforementioned amended motions arising out of the Applicant's NOM #16;

h. An order in the nature of mandamus requiring the Tribunal to comply with its requirements regarding the provision of hearing notices to any and all parties prior to issuing decisions;

i. An Order in the nature of mandamus requiring the Tribunal to comply with its specific rules, effective August 21, 2023, with particular reference to granting non-parties the right to make submissions prior to the issuance of a decision;

j. A declaration that certain specific rules in the LAT Rules are ultra vires the Tribunal which will be specified in the Applicant's factum;

k. An Order that the relief sought in the Applicant's motions (see: NOM #14 (August 3, 2024) and NOM #15 (August 21, 2024)) (see: Appendices #1 and #2) including his reconsideration motion, dated September 27, 2024, is granted in substantially the same form:

    i. An Order quashing or in certiorari and/or varying the orders of Vice Chair Morrissette ("**VCM**") decision on September 12, 2024, to the substantive orders sought therein; and

    ii. An Order quashing or in the nature of certiorari and/or varying the orders in the Vice Chair decision on involving the Applicant's reconsideration motion;

l. More specifically, the Orders sought by the Applicant shall be granted in full or substantially the same form as he sought them at the time:

    i. An Order cancelling the decisions and orders of the Adjudicator in NOM #14 and NOM #15;

    ii. An Order varying the decision of the Appellate Tribunal as follows:

        1. Granting the relief sought in NOM #14 (see: Hearing Record, Tab 1, page 3; see also: Appendix #1 herein); and

        2. Grant the relief in NOM #15, paragraph #3 (see: Appendix #2 herein);

m. A Declaration and Order that TDHA, FSRA registration number 1063, is declared the "**First Insurer**" pursuant to Reg 283, and such an order shall remain as it relates to the Applicant (also defined as the "Insured Person" or "Disabled Individual" arising out of no-fault car accident on August 31, 2022);

n. An Order compelling the LAT to provide and disclose any and all records involving who was the first respondent denoted in its LAT/AABS e-filing system;

o. An Order quashing VC Lake's Reconsideration Decision on grounds of conflict of interest and/or reasonable apprehension of bias;

p. Such injunctive or interlocutory relief as may be sought by the Applicant, until such time this application can be determined on its merits;

q. Costs in favour of the Applicant; and

r. Such other relief that the Applicant may advise and this Court may allow.

Volume #2: The Grounds for the Application

3.This judicial review can be disposed of on one legal ground and error, while there are broader errors in the VCM decision in the **First Insurer Motions** which include the following statement: "[27] .....The initial respondent [sic], TDGIC, and the current respondent, SNIC accepted priority over the applicant's [sic] insurance policy".

4.Therefore, if SNIC and TDGIC accepted priority of the Insurance Policy, as found by the Adjudicator, and the Appellant did not make any such offer to either for them to 'accept priority of the Insurance Policy' and/or neither SNIC nor TDGIC first received the **Appellant's Completed Application**, then TDGIC had to receive that offer of "priority" (as the Adjudicator puts it) from the "**First Insurer**".

5.As a matter of law, could TDHA offer "priority" to SNIC and TDGIC? The question answers itself.

6.As the Applicant, along with SNIC, TDHA and TDGIC, are awaiting the decision from Vice Chair Morrissette in NOM #16, the Applicant took the time to advance this judicial review application so that it is filed and then can be amended after receiving the NOM #16 decision. Moreover, it may be affecting the reconsideration decision of Vice Chair Lake. Unlike an appeal under *LATA*, the underlying matter is not stayed.

7.The Appellant is a disabled individual residing in Toronto, Ontario. At the time of the Accident, he was 39 years old with a G2 license. At the time of these submissions, he is 41 years old with a G license. The Appellant is the spouse of the individual insured (Nicole Artopoulos) and the Insured Automobile was leased from the lessor BMW Financial Services Inc. Since April 2018, the Appellant and Ms. Artopoulos have resided at 775 King Street West, Toronto, Ontario, M5V 2K3. Ms. Artopoulos, in Spring 2018, obtained an exclusive automotive insurance policy through SNIC as her being a University Of Toronto alumnus for a previous BMW leased vehicle. In October 2019, the same insurance policy was transferred to the Insured Automobile.

8.Security National Insurance Company ("SNIC") was incorporated under the CBCA in 1934, then continued under the federal *Insurance Act* with its head office in Montreal, Quebec. At the time of the Accident, SNIC was licensed with the FSRA to provide six (6) classes of insurance in Ontario and its FSRA registration number if 397. From 2018 to the time of the Accident and thereafter, SNIC's Ontario office has been the McNabb Building in Markham, Ontario. The primary area code for phone and fax lines in

Markham is “905”. At the time of the Accident, SNIC provided the return mailing address of the Markham McNabb Building but, in error, provided a “416 area code” fax number. The head tenants at the Markham McNabb Building are: (I) TD Bank; and (ii) General Motors. SNIC and Primmum Insurance Company (“Primmum”) (FSRA reg. #1396), by virtue of them not having “TD” in their corporate names, operate under the colloquial business name of “TD Insurance Meloche Monnex” under two licensed trademarks from TD Bank and Meloche Monnex Inc. in: (i) “TD Insurance”; and (ii) “Meloche Monnex”. SNIC, through TDIMM, issues policies under the “Professionals and Alumni Program” and Primmum, through TDIMM, issues policies under the “Employer Group Program”. In October 2023, upon the Appellant’s return to Canada after obtaining requisite MRIs, examinations, assessments and reports, the Appellant learned that SNIC had purported to change its physical address and fax number to: (i) the Burlington Address; and (ii) 905 Fax Number. The Burlington Address is 91 km from SNIC Markham (McNabb Building), where Meloche Monnex Inc. has its registered records office. The “Ontario Business Directory” lists the Burlington Address and 905 Fax Number as being the business of “TD Insurance”. The “Ontario Business Directory” also lists the head office associated with the Burlington Address as the Victoria Park Building (see: Affidavit #29, Exhibit “A”, page 1 and 2).

9. In the SNIC Response, SNIC did not list the 416 Fax Number as a fax number for service. With the benefit of hindsight and labyrinthian investigations, the only factual contact information that SNIC provided to the Appellant was its mailing address at the Markham McNabb Building. Neither the 416 Fax Number (which is the material mistake as it relates to whom is the **First Insurer**) nor the 905 Fax Number were fax numbers for SNIC as a recipient. Further, the Burlington Address was not an address for receipt of documents from the Appellant for SNIC.

10. TD Home And Auto Insurance Company (“TDHA”) is an insurance company that is licensed, by the FSRA, to provide three classes of insurance including automotive insurance. TDHA’s FSRA registration number is 1063. At the time of the Accident, the lead tenant(s) at the Victoria Park Building were denoted as “TD Insurance” by the property manager at the VP Building in Collies International. From 2018 to present, the “Ontario Business Directory” has listed the fax number of 416-774-3120 (the “416 Fax Number”) as the fax number for TDHA. The 416 Fax Number is a landline, owned by Bell Canada Inc., which is grounded at the Victoria Park Building. In the HCAI Portal, the Appellant’s TD Claim #3, contrary to the information he provided his physiotherapists as the return mailing address in documents, prima facie, sent to him by SNIC, auto-populated the name of the adjuster and a branch address for SNIC

of 304 The East Mall, 6th floor, Etobicoke, Toronto, Ontario, M9B 6B7 (the "**Etobicoke East Mall Address**") (see: Affidavit #21, Exhibit "A", page 20 to 22 for "branch names" as being "independent" of the licensed insurer. Yelp, another online business directory, lists the Etobicoke East Mall Address as the address for TDHAIC (see: Tab 18, page 340 to 343). While SNIC never, in letter to the Appellant, represented that its address was the Etobicoke East Mall Address, it is now clear that said address, created by SNIC for this TD Clam #3, was independent of SNIC, and an address for TDHA.

11. On or around September 1, 2022, the Appellant notified SNIC of his intention to apply for accident benefits. Due to an error in his postal code, the Appellant did not received an application benefits package from SNIC until late September 2022. On October 13, 2022, the Appellant fax delivered his OCF-1 (also defined as "Completed Application") to the 416 Fax Number. The Appellant also delivered the OCF-2, on his behalf by his employer, to the 416 Fax Number. On November 3, 2022, his attending medical doctor for his post-Accident impairments, completed and signed his portions of the OCF-3, and faxed the completed OCF-3 to the 416 Fax Number. 90 days from October 13, 2022 was January 10, 2022. The Appellant did not receive any dispute notice from SNIC or any other insurance company by January 10, 2023, pursuant to Reg 283. From January 11, 2023, to October 2023, the Appellant continued to fax the 416 Fax Number with all confidential information and other OCF forms regarding TD Claim #3. In October 2023, the Appellant attempted to fax some of his documents to the 905 Fax Number, with a copy to the 416 Fax Number, but the 905 Fax Number would more regularly, than the 416 Fax Number, block his faxes and/or drop them during the sending process. In November 2023, the Appellant fax delivered the completed OCF-19. On December 24, 2023, the Appellant filed this Appeal and served the duly signed Appeal to the 416 Fax Number. For some context along the way, in March 2023, the Appellant received a request from SNIC via mail wishing to communicate via email. The Appellant faxed the 416 Fax Number with his decline regarding the same and the reasons therein (i.e. PIPEDA issues and absence of compliance by whom he presumed was SNIC).

12. In April 2023, the Appellant received the "Spam Faxes" wherein an unknown person or company represented to him that it (after receipt of faxes at the 416 Fax Number but not from the 416 Fax Number) had no record of his TD Claim #3. The Appellant promptly faxed the 416 Fax Number (attention: Ms. Nurse) to alert SNIC to the issue of the "Spam Faxes" and his dismay that said recipient had no record of his TD Claim #3. In early May 2023, the Appellant received the purported attempt by SNIC to partially approve and partially reject the Dhaliwal OCF-18 (April 6, 2023) with the Forged Nurse Signature. After being successful in his NOM #8, by order on June 21, 2024, of the Tribunal, the Appellant filed his NOM

#13 for non-party production and disclosure by the Fictitious Respondent (TDGIC) on July 9, 2024. The Appellant hand delivered the NOM #13 hearing brief to the listed address for the Fictitious Respondent, which was the Victoria Park Building which only became known to the Appellant for TDGIC in February 2024 (as it was not in the SNIC Response as an address for SNIC or previously), and learned that TDGIC had misrepresented its address to the Tribunal as it had not been a tenant for over a year (i.e. July 2023). The building manager for the VP Building represented that TDGIC had moved to the Markham McNabb Building. The building manager for the VP Building did NOT represent that TDGIC had moved to any of the following addresses: (i) the Burlington Address; or the (ii) the Etobicoke East Mall Address. From July 26 to July 31, 2024, the Appellant provided notice to TDHA, with a copy to SNIC, that the evidence was uncontroverted that the 416 Fax Number, the 905 Fax Number, the Burlington Address, and the East Mall Address were contact information exclusively for TDHA. Neither TDHA nor SNIC denied the same. From August 1 to 2, 2024, the Appellant sought the consent of SNIC and TDHA to add TDHA as a party, and neither TDHA nor SNIC responded. As of August 3, 2024, TDHA has never responded to the Appellant despite the Appellant sending faxes to the 416 Fax Number, 905 Fax Number, and through authorized submissions to HCAI, the East Mall Address. SNIC has not started any section 7(1) of Reg 283 arbitration. SNIC and the Appellant consented since January 2024 to the Email Communication Protocol

13. The question of fact to be answered in NOM #14 are on a balance of probabilities:

    a. a) *Who was the owner of the **416 Fax Number**, which is a landline located at the Victoria Park Building in Toronto, in October 2022? (b) Was the address of 304 The East Mall, 6th Floor, Etobicoke, Toronto, Ontario (the "East Mall Address"), which is denoted by auto-population in HCAI after TD Claim #3 is inputted therein, an address for an address for SNIC, the address of TDHA, SNIC or another insurance company? And (c) Which insurance company holds the file for the **Fictitious TD Claim Number**?*

14. The issue of law to be answered in this NOM #14 on a balance of probabilities is

    whether TDHA was the **First Insurer** (i.e. the insurance company to receive the Appellant's Completed Application on October 13, 2022)?

15. The substantial amendments to Reg 283 became effective in September 2010. Reg 283 is designed to keep priority disputes out of the courts (see: *Zurich 2024*, paragraph 6). Reg 283 is also purposed to prevent SABS claims, including vital treatments and income benefits, from being delayed while insurers fight over priority dispute under section 268(2) of the *Insurance Act* (see: *Zurich 2024*, paragraph 16). SABS and Reg 283, having undergone major amendments in 2010 after being submitted to industry consultations and amendments before proclamations, they reflect important policy choices to ensure order and stability in regulated industries (see: *Bristol-Myers Squibb v. Canada (AG)*, 2005 1 SCR 533 at paragraph 99-100).As a matter of principle, there is difference between an insurer's failure to pay under section 2 of Reg 283 and a failure to pay under any provision of SABS (see: *Zurich 2024*, paragraph 54). While a **First Insurer** may have never received insurance premiums from the insured person (claimant) may seem intuitively wrong but the Legislature and LGIC's intent are to be respected. There is no, per se, harshness to be alleviated by a sophisticated insurance company, with endless resources, who receives a faxed OFC-1, who fails to investigate within three months and provides a notice to an insured person and other insurers under section 3 of Reg 283. The provisional first-insurer rule under the regulation and the priority regime under the statute operate ***differently*** (see: Zurich, paragraph 8). As long as a claimant for accident benefits completes all required fields (see: SABS, ss. 66 and 67) and signs the OCF-1, the **First Insurer** that receives an OCF-1 application MUST pay benefits in accordance with SABS (see: Reg 283, ss. 2.1(6)). If the **First Insurer** does not take any issue, within ten business days (approximately 15 calendar days) of receipt of the Completed Application, the **First Insurer** has 75 days from then to provide a notice of dispute that it is required to pay the benefits of the claimant in which it received a Completed Application. Irrespective of whether the claimant is an "insured person" or not in the subjective mind of the **First Insurer**, the **First Insurer** must respond to the Completed Application and the claimant (see: Reg 283, ss. 2.1(6)). Acceptance during the 90-day period is merely provisional (see: *Zurich 2024*, paragraph 29). If the **First Insurer** does not dispute, within 90 days, its liability to pay all benefits, in accordance with SABS, of the claimant, there is no other process for the **First Insurer** to transfer, dispute

and recover any paid or to be paid benefits to the claimant. **First Insurer**'s calculus to not accept a claim for whatever subjective reason can turn out to a costly and permanent mistake (see: Zurich, paragraph 10). As of 2015, in *Zurich 2015*, the SCC held that Chubb ought to have responded to the SABS claim immediately on a 'pay first and dispute later' basis (see: *Zurich 2024*, paragraph 12). long as the Completed Application by the claimant was not arbitrary, there is a nexus between the claimant and the **First Insurer** (i.e. the one to receive the Completed Application) (see: *Zurich 2024*, paragraph 14). In *Zurich 2015*, the SCC (see: 2015 SCC 19) restored Goldstein J (ONSC (Divisional Court)) in adopting the dissent of Juriansz J.A.: 2014 ONCA 400. a vague recollection about seeing an insurer's name at a rental car office was sufficiently non-arbitrary to require the **First Insurer** (Chubb in *Zurich 2015*)) to step into the shoes as a "**First Insurer**" for the purposes of section 2(1) of Reg 283 (see: *Zurich 2024*, paragraph 15). long as the **First Insurer** providers automobile insurance in Ontario at the time of receipt of the Completed Application there is a sufficient nexus between a claimant and the **First Insurer** (see: *Zurich 2024*, paragraph 16). The policy behind the inflexible rule that an insurer (like TDHA) fails to pay benefits and fails to put other insurers on notice after receipt of a Completed Application, when there is *SOME* nexus, being permanently responsible for the claimant's benefits is to promote compliance with the statutory scheme. It is not an issue herein of this Appellant and TDHA but rather the greater public interest and ongoing and future compliance by all other similarly situated '**First Insurer**s' (see: *Zurich 2024*, paragraph 31, where the second arbitrator cited paragraph 62 from the decision of Strathy J. (as he then was) in Lombard Canada Ltd., 2008, 94 O.R. (3d) 62 (Ont. S.C.J.)The ONSC in *Zurich 2024* has settled the law in the above regards as follows: (i) breach of section 2 of Reg 283, according to the case law, does not result in the an insurer being required to pay benefits to the claimant permanently; BUT, (ii) the failure TO AVAIL itself of section 3 does. TDHA's permanent liability for paying benefits was a self-inflicted consequence of its failure to adhere to the requirements of both section 2 and s. 3 of Reg 283. The combination of provisions in Reg 283 transformed TDHA's provisional liability into a permanent

one (see: *Zurich 2024*, paragraph 64). For TDHA to not be declared as the **First Insurer** would mean that there were no consequences for the conduct (or inaction) of TDHA by receipt of the Completed Application and by continuing to have its former branch office address (East Mall Address) auto-populate in HCAI, and it would defeat the legislation's public policy: "*pay now and dispute later*".[i]

16. "Arbitrary" means: determined by impulse rather than reason. The Appellant faxed the Completed Application solely based on the reason that SNIC represented that its fax number was the 416 Fax Number when it could not have been based on SNIC's physical location at SNIC Markham. Therefore, the Appellant did not make an "arbitrary decision" to fax his Completed Application to the 416 Fax Number. "Receipt" means: "to get possession of". TDHA got possession of the Completed Application as the **First Insurer** on October 13, 2022. There is now no dispute that the Spam Faxes, which SNIC could not produce in the face of a demand from the Appellant for the same, were on behalf of TDHA and its attempt to steer the Appellant away from the 416 Fax Number and its representation it [TDHA] had no record of its claim. TDHA would NOT have had a "record" of the Appellant's TD Claim #3 as it the TD Claim #3 was likely created by SNIC but when the Appellant faxed the Completed Application, as opposed to mailing to SNIC Markham, to the 416 Fax Number, TDHA became the **First Insurer**.

17. The 416 Fax Number was the fax number for TDHA in September and October 2022. TDHA has been an adjusting insurance company, by reference to the East Mall Address which has been exclusively represented to the public as TDHA's address, of the Appellant's TD Claim #3, including by way of the Fictitious TD Claim Number, since it was so denoted in the HCAI portal as such. The 905 Fax Number and the Burlington Addresses were, at the material times post receipt of the Appellant's OCF-1, OCF-2, OCF-3, OCF-6's and OCF-18 (Dhaliwal), address for receipt of documents and confidential information of the Appellant (albeit unbeknownst to him) by TDHA.

18. TDHA was the **First Insurer**, pursuant to Reg 283, and it is solely and permanently liable for the Appellant's claims for benefits pursuant to SABS. The Tribunal must grant ancillary orders compelling TDHA to provide the Appellant with the current address and fax number for TDHAIC along with an adjuster that is authorized for TDHA along with amendments to the HCAI portal for accuracy purposes for any and all ongoing or day-to-day matters. SNIC must remain as a party as it may be liable for some of the costs in this **SNIC Proceeding** to be dealt with at the hearing proper.

19. It is the word "accept" that is conspicuous, marked and eye-catching. Whatever acceptance of priority of the applicant's [sic] insurance policy was and is of no consequence in law as per Reg 283, section 4(1), 5(1) and (2). The Appellant never received any notice of "assignment, sharing or transfer of priority". It is trite that TDGIC's fax was in the LAT orders as early of February 2024 and SNIC resiled from the 416.774.3120 fax number by no later than Summer of 2023. TDHA was the **First Insurer** and received the Completed Application at first instance, and all other OCF documents. It is understandable why certain adjusters at SNIC, and then Mr. Nieuwland for TDGIC, were so unfamiliar with the documents and claimed to be missing certain documents like MRI reports, Brain MRI UHN Notification and others. It may be the most clichéd phrase in the history of law: "offer, acceptance, consideration." Prior to the 'acceptance' by SNIC and TDGIC over the insurance policy, as found by the Adjudicator, there had to be an offer from another person. There are four automotive insurance companies in "TD Insurance", as per its public website and URL for "legal", which are: (i) SNIC; (ii) TDGIC; (iii) TDHAIC (TDHA); and (iv) Primmum. SNIC and Primmum, without any reference TD in their names, operate under the banner of two distinct yet combined trademarks which are: (i) TD Insurance," which is owned by "The TD Bank"; and (ii) "Meloche Monnex," which is owned by Meloche Monnex Inc. (not to be confused with Meloche Monnex Financial Services Inc. or other brokers or agents with permutations of the name). Ironically, TDGIC and TDHA do not have "TD Insurance" in their name as the "insurance" word comes after "General" and "Auto" sequentially for the aforementioned.

20. There is no dispute that SNIC was the Sole Underwriter of the Insurance Policy. SNIC delivered an accident benefits package to the Appellant in late September 2022. SNIC represented its address as the SNIC Markham Office with a fax number of 416.774.3120. On May 2, 2024,3 in relation to NOM #4 and NOM #6, Nieuwland (with Karat appearing as the ADR Specialist for SNIC) orally represented, contrary the April 11 submissions (supra) solely on behalf of TDGIC, 8 that SNIC and TDGIC were and are "one and the same". The Appellant objected and reserved his rights.

21. "One And the Same" is defined, by Collins Dictionary as "When two or more people or things are thought to be separate and you say that they are one and the same, you mean that they are in fact one single person or thing."

22. While there is no dispute what Nieuwland thought and meant on May 2, 2024, his thoughts and meanings, while unambiguous, are contrary to the statute (Ins. Act) in which this **SNIC Proceeding** arose and FSRA Enforcement Decisions have found that the SABS Insurer (SNIC) and TDGIC are separate persons.

23. The now finding by the Tribunal that SNIC and TDGIC accepted priority over the insurance policy means that they agreed (which is possible in fact but not in law) to accept an offer from another regarding priority. This is not only the logical explanation for what transpired and why TDHA, an automotive insurer in Ontario which is the only required element for a non-underwriter of an insurance policy to be the provisional **First Insurer** and then potentially the permanent **First Insurer**, has not been responded and paid the benefits due and owing to the Appellant despite receipt of the same from the Appellant via fax. This also explains the Spam Fax in Spring 2023 which was nearly or identical to the August 2024 letter (see: Affidavits #34 and Affidavit #35).

24. It is unfortunate, from an access to justice standpoint and for the benefit of the public, for the Adjudicator to rush this decision, as it was not available when the Appellant inquired on September 11, 2024, as to the date of the hearing for the NOM #13. With the greatest of respect, the Adjudicator was unfamiliar with the facts, which one can empathize with if she was new to this LAT proceeding but she granted the most consequential motion in this proceeding so far, and basic one at that such as the first order in this proceeding of her fellow Vice Chair (VC Lake). Adjudicator Morrissette was of the mistaken view that the Tribunal changed, at some unknown time, the IDENTITY of SNIC to TDGIC after January 30, 2024, but some time before February 19, 2024. One can understand not being able to pinpoint an exact date when identities are changed or swapped in a cyber-attack or ransomware plot, but the Adjudicator found that it was THE TRIBUNAL that changed the identity from SNIC to TDGIC. It appears that the Adjudicator was implying that an administrative individual employed by the License Appeal Tribunal in the AABS division somehow on off-time engaged in some administrative identity swapping without notice to the litigants in the proceeding. The Appellant is not attempting to be hyperbolic or histrionic in any way, but the License Appeal Tribunal is one of 13 tribunals part of Tribunals Ontario and it is a division or sub-body within the office of the most important ministry as it pertains to the law: THE MINISTRY OF ATTORNEY GENERAL. And the Appellant is merely finding out about this in September 2024? This is beyond concerning and beyond the Appellant's immediate interest. Perhaps, Adjudicator Morrissette meant December 30, 2023, to January 19, 2024? This would make more sense in that an administrator or case manager would have reviewed the Appeal and attached documents and countless references to TD SNIC and Security National Insurance Company and input SNIC as the respondent. Then, likely someone informed Mr. Grant to change the name from SNIC to TDGIC. This, of course, would have required such a change as the Appellant had already filed two motions by January

8, 2024. The Appellant only objected for six months, and this appears to have been the strategy by SNIC and then TDGIC of which neither were **First Insurer**s.

25. A "Respondent" is a party in a LAT Proceeding. Legislative definitions are sometimes counter-intuitive and defy common sense. In Ontario, "legislation" includes "legislation and regulations", but a statute is distinct from a regulation. Section 5 of the SPPA: "The parties to a proceeding SHALL be: (i) the persons specified as parties by/under the statute17 under which the proceeding arises; OR (ii) if, not so specified, persons entitled BY LAW18 to be parties to the proceeding19. One would have thought with the benefit of Adjudicator Morrissette who expressly dealt with a party issue in NOM #8, such a misstatement of law or query from her would have been obsolete. By law is an ambiguous phrase which is not to be confused with a municipal by-law. "Source law" is a definition under the Legislation Act 2006, and it includes regulations. Tribunals in Ontario and Canada have held that persons who are not expressly required by statute to be parties may be added as parties pursuant to section 5 (*SPPA*) if s/he or it have a substantial and direct interest in the proceeding's outcome.

26. A final order disposes of the litigation, or finally disposes of part of the litigation: *Ball v. Donais* (1993), 1993 CanLII 8613 (ON CA), 13 O.R. (3d) 322 (C.A.). An interlocutory order disposes of the issue raised, most often a procedural issue, but the litigation proceeds: Hendrickson v. Kallio, 1932 CanLII 123 (ON CA), [1932] O.R. 675 (C.A.), at p. 678.The interlocutory order from which there is no appeal is an order which does not determine the real matter in dispute between the parties – the very subject matter of the litigation, but only some matter collateral (see: Hendrickson v. Kallio, 1932 CanLII 123 (ON CA), [1932] O.R. 675 (C.A.)

27. In *Smerchanski v. Lewis* (1980), 1980 CanLII 1699 (ON CA), 30 O.R. (2d) 370 (C.A.), at para. 18: This Court has held that an order made in a contest between a party to an action and someone who is not a party is a final order, appealable without leave, if the order finally disposes of the rights of the parties in the issue raised between them. In M.E. v. Ontario, 2021 ONCA 718: We conclude that M.E. was seeking to add new causes of action. An order refusing leave to amend pleadings to plead a new cause of action is final: Atlas Construction Inc. v. Brownstones Ltd. (1996), 46 C.P.C. (3d) 67 (Ont. Gen. Div.). So is an order dismissing a motion to add a party, which M.E. also appears to have been trying to do Bryson v. Kerr (1976), 1976 CanLII 867 (ON SC), 13 O.R. (2d) 672 (Ont. Div. Ct.). Accordingly, leave to appeal is not required and an appeal lies as of right to the Court of Appeal: Courts of Justice Act, R.S.O. 1990, c. C.43, s. 6(1)(b).

28. In Vavilov, the SCC attempted to clear up complexities and uncertainty brought on by Dunsmuir. 22 The SCC cited three (3) non-exhaustive examples in Vavilov where the correctness standard must be applied by a review tribunal or court: (i) constitutional questions (ii) general questions of law of central importance to the legal system as a whole; and (iii) questions regarding jurisdictional boundaries between two or more administrative bodies.

29. The Supreme Court in *Housen* found an error of law including the: (i) application of an incorrect legal standard; (ii) a failure to consider a required element of a legal test; or (iii) the mischaracterization of the standard.

30. A tribunal errors in law when it improperly approaches the evidence such as by misapprehending evidence, ignoring relevant evidence or relying on irrelevant evidence or irrelevant factors in reaching its decision 30 (see: Nguyen). In *Drewlo Holdings v. MPAC*, 33 the ONSCJ (DC) cited its decision in Yatar34

where, at ¶28, the Court confirmed a finding of fact can constitute an error of law: “is when a finding of fact on a material point is based on no evidence.

31. The failure to identify or consider the legal criteria that govern (the “Identification Failure Governing Legal Criteria”) the exercise of discretion may constitute an error of law.

32. In *Gega,* the Divisional Court applied a novel yet functional determination of when an issue was one of law as opposed to one of 'mixed fact and law': “[19] This issue is a matter of law...argue this issue is a matter of mixed fact and law, but there are no factual findings that need to be made by me to consider this question.”

33. In *Kawa Arab,* the Divisional Court found an administrative decision of statutory interpretation as a matter of law. At ¶ 19, Tzimas J. found “[19] ..... If an Adj. ignores evidence that the law requires to be considered to arrive at a DECISION, that will amount to an error in law.

34. In *Bassline*, VC Lamoreux found in 201846 at ¶ 20, “Therefore, I am satisfied that the Tribunal erred by determining that it had no jurisdiction to consider the issues raised in the Notice.”

35. In *Lapcevich*, the ONSCJ49 found: “We agree with the appellant, Registrar, that the Licence Appeal Tribunal erred in its approach to the statutory framework and exceeded its jurisdiction; and it did not make the necessary threshold determinations, as required by the statute. In Sparks, the Divisional Court found that inconsistent findings of facts as “errors of law.”

36. In Glencore, the FCA considered a second appeal wherein it stated the applicable SOR for extricable legal issues in that no deference is owed to the overall conclusion (see: ¶ 22).

37. In *THMR*, ONCA found that when hearing below is in writing that the correctness standard applies.

38. The case of *Fatemea Rezaiezadeh v. State Farm Mutual Automobile Insurance Company*, 2016 ONFSCDRS 59 ("*Reza*") stands for the proposition below. The Appellant notes the case of Reza (for short) wherein, albeit under the FSCO, the arbitrator found the following: "The Appellant concedes there is no explicit procedure in the Code or the *Statutory Powers Procedure Act*, R.S.O. 1990, c. S.22, as amended, to permit a party to continue a proceeding against a non-party." The "Dispute Resolution Code" is no longer applicable as it only applied with the FSCO. Even where State Farm Automobile Insurance Company was bought out by Certas and Desjardins regarding its Canadian operations, State Farm remained as the party as it was the underwriter at the time of the accident therein. Therefore, this is yet another reason that the decision of the Adjudicator and now the decision of the Appellate Tribunal (LAT) is one that finally disposes of the Appeal even when it is not in favour of the Appellant. If the Appellant does not have the **First Insurer** as the primary and liable party for the main issues between the Appellant and it (with SNIC only therein for costs as a result of it filing the sole Response (SNIC Response) to date but only as a result of the LAT Rules which is a distinction between present times and a case like Volfson), then all of the protections under SABS are illusory.

39. The provisional "**First Insurer** rule" (the "**First Insurer** Rule") under the regulation and priority regime under the statute operate differently (see: *Zurich 2024*, paragraph 8). If a claimant for accident benefits completes all required 'fields' (see: SABS, ss. 66 and 67), duly signs the OCF-1 and then sends via mail or fax, the **First Insurer** that receives an OCF-1 application MUST benefits in accordance with SABS (see: Reg 283, ss. 2.1(6)). If the **First Insurer** does not take any issue, within ten business days of receipt of the Completed Application, the **First Insurer** has approximately 75 days from then to provide a notice

of dispute that it is required to pay the benefits of the claimant in which it received a Completed Application. Irrespective of whether the claimant is an "insured person" or not in the subjective mind of the **First Insurer**, the **First Insurer** must respond to the **Completed Application** and the claimant (see: *Reg 283*, ss. 2.1(6)).

40. Acceptance during the 90-day period is merely provisional (see: *Zurich 2024*, paragraph 29). If the **First Insurer** does not dispute, within 90 days, its liability to pay any and all benefits, in accordance with SABS, of the claimant, there is no other process for the **First Insurer** to transfer, dispute and recover any paid or to be paid benefits to the claimant. A **First Insurer**'s calculus to not accept a claim for whatever subjective reason can turn out to be a costly and permanent mistake.60 This is full answer to the Adjudicator's query about whether the Tribunal had authority to add the **First Insurer** to this LAT Proceeding, which is oddly required as a matter of law.

41. As of 2015, in *Zurich 2015*, the SCC held that Chubb ought to have responded to the SABS claim immediately on a 'pay first and dispute later' basis (see: *Zurich 2024*, paragraph 12). As long as the Completed Application by the claimant was not arbitrary, there is a "nexus" between the claimant and the **First Insurer** (i.e. the one to receive the Completed Application) (see: *Zurich 2024*, paragraph 14). In *Zurich 2015*, the SCC (see: 2015 SCC 19) restored Goldstein J's decision (ONSC (Divisional Court)) in adopting the dissent of Juriansz J.A.: 2014 ONCA 400. A vague recollection about seeing an insurer's name at a rental car office was sufficiently non-arbitrary to require a '**First Insurer**' (Chubb in *Zurich 2015*)) to step into the shoes as a "**First Insurer**" for the purposes of section 2(1) of Reg 283 (see: *Zurich 2024*, paragraph 15). If the **First Insurer** provides automobile insurance in Ontario at the time of receipt of the Completed Application there is a sufficient nexus between a claimant and the **First Insurer** (see: *Zurich 2024*, paragraph 16). The policy behind the inflexible rule is that an insurer who fails to pay benefits and fails to put other insurers on notice after receipt of a Completed Application, when there is

SOME nexus between the claimant and the **First Insurer**, being permanently responsible for the claimant's benefits is to promote compliance with the statutory and regulatory scheme.

42. No power to pursue a non-party under statute is answered above. As a matter of principle, there is NO difference between an insurer's failure to pay under section 2 of Reg 283 and a failure to pay under any provision of SABS (see: *Zurich 2024*, paragraph 54). As the Tribunal is required to decide this LAT Proceeding in accordance with SABS as a matter of statute (see: section 280(4) of the *Insurance Act*), then it was not a matter of discretion for Adjudicator Morrissette but a requirement upon her to ensure that the Appellant had the correct and liable party (see also: *Insurance Act*, ss. 268(3)) before the Tribunal and in the future for not only himself but his service providers. While there is an ability of a party to "request an expedited hearing" in the dropdown menu of Tribunals Ontario e-filing portal, there is a dearth of jurisprudence regarding the same with LAT/AABS matters. As of 2010, the amendments to Reg 283 led to an absence of listed fax numbers for insurance companies and for good reason: some unsavory insured persons may deliberately manipulate the system by faxing their OCF-1's to an incorrect insurance company with no record of them as insured persons leading to those insurance companies in receipt of confidential information with an inability to dispute that they were not liable along with which insurance company may be liable. This could lead to an insurance company, who had not received premiums with no previous interaction with such an unsavory insured person, being liable to respond and pay benefits to said unsavory insured person.

43. It is important to note that the actual relief sought in the hearing record was slightly different in language but a distinction with a difference at Order #5: [5] Any further relief that is consistent with the above and in accordance with Reg 283, SABS, and Reg 664. The issue of adding the party TDHA as the **First Insurer** is one that the Adjudicator was required to answer (see: Rio Tinto, SCC 2010 SCC 43). However,

even if the Adjudicator had granted Order #1 that would have been sufficient as a decision (order, declaration, determination and/or finding) that would have finally disposed of the Appeal, as it was currently constituted on September 13, 2024.

44. Again, the Reconsideration Decision references that the appellant did not cite to any binding case law or legislative authority regarding adding a second respondent. The Tribunal has yet again misunderstood the Appellant's argument in that TDHA would be the First Insurer and SNIC would remain solely as it relates for costs in the proceeding prior to TDHA being the First Insurer. In relation to binding case law, Zurich 2024 as per Justice Akazaki unequivocally found that a breach of Reg 283 or SABs were a distinction without a difference. The decision of VCM in mid-September 2024 is not only an incorrect decision but a dangerous decision. It must be corrected forthwith for the benefit of the general public, the insurance industry and the relevant participants.

45. Moreover, had the Adjudicator determined the factual issue at Order #3 in NOM #15, this would have been a decision that finally disposes of the Appeal. In this regard, the Tribunal issued a Notice of Motion Scheduling Order on Thursday, September 12, 2024, that fond that SNIC was located at the Burlington Office: "[3] preliminary finding, determination, or order, that the fax number 416-774-3120 was a landline phone number utilized as a fax number on the 4th floor of the building situated at the premises municipally known as 3650 Victoria Park Avenue, North York, Toronto, Ontario, M2H 3P7. The decision of Vice Chair Lake on reconsideration suffers from the same issues but remains premature considering not having NOM #16 decided in advance of the same. Once NOM #16 is decided, it will allow for the Applicant (Appellant) to be able to advance this judicial review in accordance with having final decisions on all the same.

Volume #3: Documentary Evidence

46. The following documentary evidence will be used at the hearing of the application:

(a) The Motion Hearing Record for NOM #14 which includes the affidavits of the Applicant therein (see: Appendix #3)

(b) The Motion Hearing Record for NOM #15 of the Applicant which includes the affidavits of the Applicant therein (see: Appendix #4);

(c) The Motion Hearing Record for NOM #13 of the Applicant which includes the affidavits of the Applicant therein;

(d) The decision of Vice Chair Morrissette in relation to NOM #13 to #15 of the Applicant;

(e) The decision of Vice Chair Lake in relation to the Applicant's reconsideration motion;

(f) The record of proceeding in ***AABS File Number*****: "23-015662/AABS"**

(g) Such other affidavit material and evidence as counsel may advise and this

Honourable Court may deem proper.

November 15, 2024

Mr. Kevin A. McLean (B.A. J.D., CIM)
775 King Street West
Suite 410
Toronto, Ontario
M5V 2K3
(e): mcleansettlement@gmail.com

Appendix #1

The actual relief sought The Appellant seeks the following orders, without consent of SNIC and TDHA, as follows:

Order #1: **First Insurer** Declaration 1. An Order, Declaration, determination and/or finding that TD Home And Auto Insurance Company, FSRA registration number 1063 ("TDHA" or "TDHAIC") was the **First Insurer** to receive, pursuant to Reg 283, the Appellant's fax delivered Completed Application (see: Reg 283, s. 1) to the fax number, provided to him by SNIC as a return address [sic] for SNIC, of 416-774-3120 (the "416 Fax Number") on October 13, 2022; Order #2: East Mall Address (Branch Office): Determination of which licensed insurer carried on business at said branch office

2. An Order, Declaration, determination or finding the physical address, which is apparently denoted as a branch office of SNIC in HCAI, municipally known as 304 The East Mall, Floor 6, Etobicoke, Toronto, Ontario, M9B 6B7 (the "Etobicoke East Mall Address") was or is an address or branch office of TDHA and not SNIC;

Orders #3 and #4: Adding TDHA as a Party 3. An Order adding TDHA as a respondent party to this LAT proceeding herein; 4. An Order requiring TDHA, should it wish to oppose the relief sought in the Appellant's Appeal, file and serve a Response to the Appellant's Appeal within 14 days of the date of the orders herein;

Order #5: Ancillary Relief 5. Any further relief that is consistent with the above and in accordance with Reg 283, SABS, and Reg 664; and Order #6: Costs against SNIC pursuant to section 17.1 of the SPPA and Rule 19 of the LAT Rules.

Appendix #2

Schedule “A” for NOM #15 The Appellant seeks the following remedies, without the consent of SNIC, as follows: 1. An Order that NOM #14 is heard in an expedited fashion and by no later than August 28, 2024 or, in the alternative, at the earliest date available for a Vice-Chair or adjudicator to determine the same; 2. An Order that if the Respondent Party (SNIC), TDHA or any other non-party or interested person wishes to oppose NOM #14, it must provide notice, via filed letter, to the Tribunal by no later than Wednesday, August 21, 2024; and 3. A preliminary finding, determination, or order, that the fax number 416-774-3120 was a landline phone number utilized as a fax number on the 4th floor of the building situated at the premises municipally known as 3650 Victoria Park Avenue, North York, Toronto, Ontario, M2H 3P7; a. In the alternative, an order that said issue of fact is added to the hearing of NOM #14; 4. An Order that NOM #13 is set for hearing three (3) weeks after the final decision of the Tribunal in NOM #14; and 5. An Order that the Appellant shall tender his hearing brief for his potential motion regarding document production and disclosure from SNIC (the “SNIC Document Production Motion”) within one week after the decision of NOM #14 with a notice of scheduled hearing date to be issued by the Tribunal regarding exchange of responsive and reply briefs; 6. An Order that NOM #13 (Non-Party production by TDGIC) and the SNIC Document Production Motion (if applicable) shall be heard together three weeks after the decision in NOM #14; and Costs against SNIC for this motion herein if it opposes the same

Appendix #3: Index for NOM #14

Chapter #1: Notice of Motion Form
1. Notice of Motion Form (with Schedule "A"), signed by the Appellant on August 2, 2024 ["Motion
Form" or "NOM #14"]
a. (see pages 1 to 3);

Chapter #2: Reg 283 and Cited authorities (prior to *Zurich 2024*]
2. Disputes Between Insurers, O Reg 283/95 ["Reg 283"]
a. (see pages 4 to 9)
3. Cankaya v. Unifund Insurance Company, and Cankaya v. Intact Insurance Company, 2015
ONFSCDRS 214 (as per Delegate Blackman of the former Financial Services Commission of
Ontario ["FSCO"]) ["Cankaya 2015"]
a. (see: pages 10 to 31)
4. Cankaya v. Unifund Insurance Company, and Cankaya v. Intact Insurance Company, 2016
ONFSCDRS 255 (as per Arbitrator Marshall Schnapp, "Decision on a Preliminary Issue")
["Cankaya 2016"]
a. (see: pages 32 to 45)
5. Economical v. Intact, 2021 ONSC 3249 (as per Mr. Justice Chalmers) ["Economical Group"]
a. Applicant (Respondent in Appeal): The Economical Insurance Group
b. Respondent (Appellant in Appeal): Intact Insurance
c. (see: pages 46 to 56)
6. Macko v. Aviva Insurance Company, 2023 CanLII 72650 (decision before Adjudicator Kaur)
["Macko"]
a. (see: pages 57 to 61)
7. Macko v. Aviva Insurance Company, 2023 CanLII 116487 (Reconsideration Decision before Vice
Chair Kaur) ["Macko Reconsideration"]
a. (see: pages 62 to 66)

Chapter #3: Reg 664 and SABS
8. R.R.O. 1990, Regulation 664 ["Reg 664"], ss. 9.1, 9(1) and 10
a. (see: pages 67 to 69)
9. Statutory Accident Benefits Schedule, O Reg 34/10, effective September 1, 2010 et seq ["SABS"
or the "Schedule"]

a. (see: pages 70 to 132)

Chapter #4: Pleadings; *Insurance Act*; and UDAP Rule
10. Application of an Injured Person for auto insurance dispute resolution pursuant to the Insurance
Act, filed by the Appellant on December 24, 2023 (the "Appeal")
a. Served on the recipient of the fax number of 416-774-3120 (the "416 Fax Number");
b. (see: pages 133 to 142)
11. Response filed by SNIC (the "SNIC Response")
a. solely signed, filed and served by Mr. David Karat, ADR Specialist for SNIC, on January
25, 2024
b. (see: pages 143 to 145)
12. *Insurance Act*, RSO 1990 c. I 8, section 268 [the "Act" or the "*Insurance Act*"]

a. (see: pages 146 to 148)
13. Unfair or Deceptive Acts or Practices Rule, effective 2022 (the "UDAP Rule")
a. (see: pages 149 to 161)
Chapter #5: Further Authorities
The Chubb v. Zurich cases (2015 and 2024);
TD General Insurance Company v. Markel
Intact v. Bateman: "Re: two files with two different file numbers for one claimant (insured person)
(although unlawful – not unprecedented)
14. Chubb Insurance Co. of Canada v. Zurich Insurance Company, 2024 ONSC 2929 (as per The
Honourable Justice Akazaki) ["*Zurich 2024*"]
a. (see: pages 162 to 179)
15. TD General Insurance Company v. Markel Insurance Company, 2014 ONSC 6461 (as per Justice
Lederman) ["Markel"]
a. (see: pages 180 to 194)
16. Zurich Insurance Co. v. Chubb Insurance Co. of Canada, 2015 SCC 19 ["*Zurich 2015*"]
a. (see: pages 195 to 198)
17. Intact Insurance Company v. Bateman, 2014 ONFSCDRS 14 (as per Delegate Blackman)
a. (see: pages 199 to 214)

Chapter #6: Affidavits
18. Affidavit #30 of the Appellant, made on July 31, 2024 (filed: August 1, 2024; served on SNIC and
TDHA: August 1, 2024) ["Affidavit #30"]
a. (see: pages 215 to 358)

19. Affidavit #3 of the Appellant, made on October 31, 2024 (select pages only) (filed: listed and
attached document in Appeal on December 24, 2023) [“Affidavit #3”]
a. (see: pages 359 to 488);
20. Affidavit #29 of the Appellant, made on July 25, 2024 (select pages only)
a. (see: page pages 489 to 500)

Chapter #7: Motion Submissions (pursuant to LAT Rule 15: six pages, double spaced, size 12 font (except
for evidence, appendices and authorities)
21. Motion Submissions of the Appellant dated August 3, 2024 (served on SNIC and TDHA: August
3, 2024)
a. (see: pages 500 to 511)

Chapter #8: Additional evidence in pictorial form of the East Mall Address (August 4, 2024) and emails
to TDHA and SNIC confirming the same pursuant to, inter alia, section 15 of the SPPA
1
st Amended Inclusion (August 5, 2024)
22. Additional evidence: the East Mall Address
a. (see: pages 512 to 551)

Chapter #9: Costs against SNIC
Appellant’s served and filed Costs Submissions on Thursday, September 5, 2024 (includes
LAT Rule 19.1: affidavit evidence in support of the Appellant have reasonable and probable grounds
to believei
that SNIC has conducted itself in relation to NOM #14 in an unreasonable, vexatious, frivolous and/or in bad faith
LAT Rule 19.2: written costs submissions by the Appellant before the decision or order is released
in relation to NOM #14;
LAT Rule 19.3: written costs submissions seeking $1,000 against SNIC in favour of the Appellant,
payable forthwith in any event of the result of NOM #14;
LAT Rule 19.4: Appellant has provided the reasons (authorities, statutes, regulations, LAT Rules)
and the particulars of SNIC’s impugned conduct that have been, are and will continue to be
unreasonable, frivolous, vexatious, and in bad faith;
LAT Rule 19.5: Appellant has provided all relevant factors including but not limited to: (i) seriousness of SNIC’s misconduct; (ii) SNIC’s conduct in breach of orders (implicitly) and LAT

Directions issued by the Tribunal; (iii) how SNIC's conduct has interfered with the Tribunal's
ability to carry out a fair, efficient, and effective process; and (iv) the resultant prejudice to the
Appellant.
LAT Rule 19.6: the Appellant has sought $1,000 for the NOM #14 hearing
23. Costs submissions of the Appellant, filed and served on Thursday, September 5, 2024 with e-receipt
a. (see: pages 552 to 640)
i. Appendix #1: Glossary (see: pages 565 to 570)
ii. Appendix #2: Evidentiary And Authorities Chronology: from the time of SNIC's incorporation in 1934 to August 21, 2024 (see: pages 571 to 647); and
iii. Endnotes (see: pages 648 to 650).

Chapter #9: Materials For Reconsideration of the decisions involving NOM #14 and NOM #15
Fresh Evidence: not available to the Adjudicator in the Hearing Record (albeit in record of proceeding
in relation
24. Affidavit #34 of the Appellant of August 29, 2024 (see: pages 651 to 676)
25. Affidavit #35 of the Appellant of September 12, 2024 (see: pages 677 to 769)
26. Affidavit #36 of the Appellant of September 18, 2024 (see: pages 770 to 789)
27. Affidavit #37 of the Appellant of September 19, 2024 (filed under seal) (see: pages 790 to 832)
28. Reconsideration Form with Motion Submissions of September 30, 2024 (see: pages 833 to 856)

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Tab 6

Court File No. DC-24-00000718-00JR

ONTARIO COURT OF JUSTICE (DIVISIONAL COURT)

BETWEEN:

KEVIN ALEXANDER MCLEAN

APPLICANT

- and -

TD HOME AND AUTO INSURANCE COMPANY, SECURITY NATIONAL INSURANCE COMPANY, TD GENERAL INSURANCE COMPANY, EXECUTIVE DIRECTOR, LICENCE APPEAL TRIBUNAL,
HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO, REPRESENTED BY EXECUTIVE CHAIR OF TRIBUNALS ONTARIO IN MR. SEAN WEIR, THE ATTORNEY GENERAL OF ONTARIO

RESPONDENTS

APPLICANT'S FACTUM

VOLUME # #1: STATEMENT OF JUDICIAL REVIEW APPLICATION

1. This ***JRPA* Application** involves the challenge to two (2) issued decisions of the Licence Appeal Tribunal ("**LAT**" or "**Tribunal**")[1]on September 13, 2024, and October 16, 2024, and two potentially unmade decisions involving the same. In the absence of any analysis of the statutory scheme[2] (i) by Vice Chair ("**VC**") Morrissette ("**VCM**"); and (ii) VC Lake ("**VCL**"), on reconsideration (the "**RD**"), relying on the newly passed language, as of August 21, 2023[3], in the *LAT Rules*, which is non-legislation,[4] the reviewing or appellate court is required to start afresh. Since 2019, the SCC settled the judicial review landscape in declaring *Dunsmuir*[5] to no longer be the law of our land and provided factual and/or legal situations where the reasonableness standard of review is rebutted. The focus herein of where the presumptive reasonableness standard is rebutted is where the rule of law ("**ROL**") requires that the standard of correctness be applied.

2. The rule of law is a theme in this ***JRPA Proceeding*** as per, some events that occurred or issues that were catalyzed after the filing of the ***JRPA* Application**, which were, including but not limited to: (i) Tribunal counsel (Ms. Boyce) raising the prematurity doctrine on a preliminary basis; (ii) counsel (Mr. Nieuwland) to TDGIC and SNIC[6], but not TDHA, in the **LAT Proceeding** not filing an appearance notice *forthwith* but purporting to file said purported notice of appearance (the "**Purported Appearance**") that was defective whilst in his cover email making a similar misstatement of law to the one he made on behalf at the nullity case conference on May 2, 2024, that "SNIC" was 'one and the same' as two other insurance companies (see: 'also referred to as' TD Home And Auto [sic] and TD General Insurance company [sic]"; and (iii) others.[7]

3. The Applicant has also sought the consent of SNIC to adjourn the hearing proper with the LAT scheduled for January 25, 2024, predicated on a nullity pre-hearing conference before Vice Chair Painchaund (the "**Hearing Proper**"). TDGIC has no entitlement to participate herein as NOM #13 was an interlocutory order and it did not even attempt to participate in it. NOM #14 and #15 squarely raise issues between SNIC and TDHA. Neither SNIC nor

TDHA sought to tender any materials, despite being duly served with NOM #14 and NOM #15.

4. The matter remains one where the delay will *likely*[8] involve a failure of justice being an affront to the rule of law and subspecies of the rule of law that involve: (i) general questions of law of central importance to the legal system as a whole; (ii) questions related to the jurisdictional boundaries between two or more administrative bodies; and (iii) the relationship between the legislature and the other branches of the state, which require a final and determinate answer from the courts (the "**Final Answer Requirement**"). The rule of law requires courts to have the final word (the "**Final Word Requirement**") with regard to general questions of law that are of central importance to the legal system as a whole because they require uniform and consistent answers (the "**Uniform Answers Requirement**" or "**Vertical *Stare Decisis***").[9] The rule of law requires courts to intervene where one administrative body has interpreted the scope of its authority in a manner that is **incompatible** with the jurisdiction of another administrative body since the rule of law cannot tolerate conflicting orders and proceedings where they result in a *true operational conflict* between two administrative bodies ("**Intolerance Conflicting Orders Requirement**").[10]

5. Whether affiliate or related insurance companies can accept priority, without any independent notices (see: (i) notice of transfer; (ii) notice of a potential agreement between insurers; and/or (iii) notice of arbitration) to an insured person or absolute noncompliance with *Reg 283*, over an applicant's [sic] insurance policy [sic] (not a *SABS* claim) is a question that must be answered by this ONSC on an urgent basis[11].

6. Some of the pertinent principles regarding the rule of law herein are: (i) *equality before the law*[12]; (ii) *accountability*[13]; and (iii) *access to justice*[14]. While administrative tribunal independence and absence of bias is not a constitutional principle, like that which is present pursuant to section 96 to 101 of the *Constitution Act* involving courts, conflicts of interest, bias and independence are presumed to be absent or at least reasonably perceived to be. The **VCM Decision** was not only incorrect and unreasonable[15] but it was counter to the

ROL requirement of "*equality before the law*" to which the Applicant and, by extension, his service providers were so entitled. The **VCM Decision** lacked *"accountability to the law"* as it was opaque in not only substance but process as: (i) it failed to reference any uncontroverted filed and served evidence; (ii) it failed to reference the binding "source law" wherein the Tribunal was required to decide all questions of law and fact before it in accordance with *Reg 283*, *SABS* and *Reg 664*[16]*;* and (iii) it failed to reference any jurisprudence that was binding upon it.

7. The jurisprudence involving *JRPA* (ss. 6(2)), *Reg 283*, the prematurity doctrine, "double jeopardy doctrine" (*res judicata* and issue estoppel), and standard of review all invoke the same principles in the middle of that archetypal "Venn diagram". While there is no dispute on the law that the orders in NOM #14, and to some extent NOM #15, are ***final orders***, irrespective of their lack of correctness, those principles fatefully contain similar language in relation to the legal thresholds for this ONSC to decide the legal issues herein on an expedited and urgent basis: (i) rule of law; (ii) *standing in the shoes of another*; (iii) bringing the administration of justice into disrepute; (iv) urgency; (v) failure of justice; and (vi) avoidance of repetition of proceedings before this ONSC and the Tribunal.

8. If the **Purported Nieuwland Appearance** is struck and there is no validity to the LAT's preliminary objection in the form of the "prematurity doctrine" to reviewing final orders of the Tribunal,[17] then government counsel cannot defend this JRPA Proceeding. As noted by *Jia*[18] by this ONSC (Div. Court): "We would exercise our discretion to hear an appeal from the conflict decision, because it is evasive of appeal and it is potentially a matter of general practice important in proceedings before LAT." The ONSC (Divisional Court) referred, in *Harold The Mortgage Closer*[19] (paragraph 37), citing *Volochay*[20] (paragraph 68[21]) wherein the ONCA referred to the prematurity doctrine and impugned *interlocutory relief* as synonymous or quasi-synonymous.[22]

9. Section 138 of the *CJA* codifies the principle that a multiplicity of proceedings must be avoided.[23] This leaves the sole issue being one of timing. Unlike the applicant, Sanscon Construction Ltd.,[24] in *Sanscon v. City of Toronto* ["*Sanscon*"], which failed to comply with some of the elementary requirements of pleadings, notice *et al*, this Applicant paid,

filed and served the *JRPA* Application in accordance with the requirement that it commence before the Divisional Court, he pleaded the material facts as to why he sought relief under section 6(2) of the *JRPA*, and why a failure to have this ***JRPA Proceeding*** heard urgently would *likely* lead to a failure of justice.

10. Like many ***unlawful*** schemes, it is not the 'what, when and how', but the '*why'*. The "why" herein was to circumvent multiple ***valid*** statutory schemes including: (i) FSRA investigatory and enforcement powers under the *Insurance Act* and the *UDAP Rule*; (ii) *Law Society Act* and its *By-Laws*; (iii) *PIPEDA*; and (iv) others. TDHA, as of 2019, while remaining as a licensed automobile insurer in Ontario, became a non-reporting insurance company to the FSRA for the purposes of the sub-category of insurance in the "**Private Passenger Market**". Only three insurance companies, within the TDI Group, issued automotive insurance polices in Ontario in the **Private Passenger Market**: (i) Primmum Insurance Company (FSRA registration number 1396)[25] ("Primmum"); (ii) SNIC; and (iii) TDGIC. [26] The motive for why SNIC would engage in such intentional conduct and why TDHA would be complicit with the same is to "kill or limit the paper trail" of what can be investigated by the FSRA, the LSO, and OPCC. [27]

11. To determine the unlawful scheme, it required analytical precision, after much review, into the various sections of the *Insurance Act* as to whom, what, when and how an insurance company, including certain individuals in specified situations, could be investigated. Moreover, the FSRA's investigatory, search, seizure, citation and enforcement powers are not only curtailed but eliminated if an insurer like TDHA is not a reporting insurance company in the "**Private Passenger Market**" of automobile insurance. By SNIC's intentional action of having TDHA be the recipient insurer of his OCF-1 application, it controls what documents and activities are subject to investigation during the *SABS* claim processes. The corroborating evidence of the unlawful scheme was, *inter alia*, the following: (i) the **Spam Fax** in March 2023 from an unknown insurance company to the Applicant's fax number; (ii) SNIC providing notice of change of address, in Spring or Summer of 2023 from Markham to Burlington along with changing its fax number from the TDHA Fax Number to the Burlington Fax Number; (iii) a forged and invalid signature

of "As per A. Nurse" under Ms. Nurse's name in an OCF-18; (iv) TDGIC substituting itself as the sole respondent in the LAT Proceeding; and (iv) other references in the **AR** or record of proceeding depending on any agreement between the entitled parties to participate herein.

12. By having TDGIC being the "sole respondent of record", albeit SNIC filing the sole "Response" in the LAT Proceeding (the "**SNIC Response**"), with the sole signature of a non-licensee (Mr. Karat) in breach of LSO By-Law 7.1, ss. 6(1)(b) and (d)[28], which does not meet a specified document to be included in the "record of proceeding" under the *SPPA*, SNIC controls or eliminates any investigation into its activities during the LAT Appeal temporal period. For example, if the FSRA sought to investigate issues involving SNIC, it could claim that it was not the insurer and that TDGIC was the solely responsible insurer for the Applicant's *SABS* claim (TD Claim #3), and the FSRA investigative and market conduct team would be misdirected. As the Applicant never faxed a document to the TDGIC fax number (416.774.3629) prior to the filing of the LAT Appeal and thereafter, there would be little to no evidence for the FSRA to investigate.

13. Moreover, by having a non-licensee self-titled "ADR Specialist" (non 'adjuster' under the *Insurance Act*), SNIC, along with TD Insurance Staff Legal, further limited the reach of the LSO into activities subject to its legislative powers and its by-laws which have legislative force[29]. By having Mr. Nieuwland solely act for TDGIC by filing a DOR, whilst having a P1 holder (not providing legal services) in Ms. Michelle Moraes masquerade as his legal assistant for three months before one Ms. Ortiz (his actual legal assistant) surfaced, it further curtailed the investigatory powers of the LSO and the FSRA. There was also evidence, albeit in a PIPEDA response of SNIC in 2024, that there were multiple files of these insurance companies involving a single claimant.

14. This Court must also rule on this ***JRPA Proceeding*** because the findings of VCM invoke the Applicant's [sic] Insurance Policy [sic] and a clandestine and undisclosed subsequent contract between SNIC and TDGIC (collectively, the "**Offerees**") by way of being offerees, to the surreptitious and unrevealed offer by TDHA (the "**Offeror**") as the First Insurer pursuant, to its prescribed jurisdiction, of *Rule 14.05(3)(d)*[30] to hear this matter since it

involves the determination of rights that depends upon contractual interpretation. This court has, at least, two contracts to review in determining the rights of all involved: (i) the Insurance Policy; and (ii) the unrevealed contract between TDHA (as one party) "and" SNIC and TDGIC ("counterparties").

VOLUME #1(B): Background Facts to this public interest litigation: *JRPA* Application

15. The Applicant was injured as the driver occupant in an automobile accident ("**Accident**") on August 31, 2022 (the "**DOL**"), through no fault of his own, which rendered the Insured Automobile with a police reporting file and some $6,000 in damage to the Insured Automobile. The **Insured Automobile** was propelled involuntarily some 30 feet forward from a stopped position north of St. Clair Avenue and south of Heath Road, on the Spadina Avenue. From the DOL to January 11, 2023 (the "**Material Time**"), the Insurance Policy associated with the Insured Automobile that he was operating was a leased vehicle from BMW Financial Services Inc. ("**BMW FSI**") and his spouse, a University of Toronto alumnus, was the individual named insured. The Applicant suffered a variety of impairments that were readily outside of the MIG, including but not limited to: (i) a grade 1 retrolisthesis; (ii) degenerative disc disease; (iii) S1 nerve issues; and (iv) a concussion.

16. The sole underwriter (the "**Sole Underwriter**") in the Insurance Policy and "pink cards" was Security National Insurance Company ("**SNIC**") which was an out-of-province insurer that had six classes of insurance with the FSRA. On September 1, 2022, the Applicant orally notified (the "**Oral Notification**") SNIC of the **Accident** and his intention to apply for accident benefits pursuant to the *Schedule* making SNIC the "**First Notified Insurer**".

17. SNIC provided the Applicant, in late September 2022, the OCF-1 application (the "**OCF-1 Application**" or "**Application**" pursuant to *Reg 283*, section 1). In the "return this form to" field, SNIC provided a mailing address of the 2nd floor, 101 McNabb Street, Markham, Ontario (the "**Markham Office**") and a fax number of *416.774.3120*. Unbeknownst to the Applicant, the said fax number was not a telephone number in Markham but rather in North

York, Toronto, and after lengthy investigations[31] the only evidence before the Tribunal was that the said fax number was a landline number, issued by Bell Canada Inc. (not Bell Mobility) at the 4th floor-3650 Victoria Park Avenue, North York, Toronto. In 2024, the only evidence before the Tribunal was that, in October 2022, it was controlled, assigned and belonged to TD Home And Auto Insurance Company (FSRA registration number 1063) ("**TDHA**").

18. **TDGIC**'s fax number, as per the Tribunal's notice of motion hearing orders, was the telephone number that was used solely as fax number, of 416.774.3629 and it was located on the 9th floor of the **VP Building**.

> **VOLUME #1(B)(I):** The LAT Registrar Order that confirmed that: (a) SNIC was not located at the Markham Office; (b) located in Burlington; and (c) with the 905 Fax Number (not a 416 fax number)

19. Further, *before* the issuance (September 13, 2024) of the VCM Decision, the Tribunal (not VCM herself but the LAT Registrar) on September 12, 2024, had issued another order that SNIC's address for service was 5th floor-5045 South Service Road, Burlington, Ontario ("**SNIC Burlington Office**").

> **VOLUME #1(B)(II):** *Why would VCM backdate VCM Decision to September 6, 2024?*

20. The self-evident and overwhelming inference is that by the LAT Registrar providing the, in fact, address of SNIC in Burlington, this provided an *additional* binding ground, by way of a decision of the administrative body, as to why TDHA was the First Insurer. Simply put, SNIC solely provided its name with a false address and false fax number.

> **VOLUME #1(B)(III):** *Why were there so many palpable errors in the VCM Decision?*

21. The obvious inference was that she rushed her decision-making process to pretend that her decision was issued on September 6, 2024, and not subject to or inconsistent with the LAT Registrar's order finally providing the, in fact, address of SNIC being the **SNIC**

Burlington Office. VCM was required to review all materials in the record of proceeding prior to issuing her order, and the LAT Registrar order, received by the parties, was a binding order upon her. The VCM Decision was inconsistent with said order.

22. SNIC had provided the said physical address, absent a floor number, from Spring or Summer 2023 until the time of the Applicant's filing of the LAT Appeal on December 24, 2023. SNIC's fax number at the SNIC Burlington Office was that **905 Fax Number**. Ergo, SNIC only complied with the requirements under *Reg 283* of providing its name but failed to comply with the requirements, at the **Material Time**, that it provide its mailing address and fax number.

VOLUME #1(B)(IV): Obligation to pay benefits triggered upon receipt

23. On October 13, 2022, the Applicant not only faxed his completed application pursuant to *Reg 283* and *SABS*, ss. 32 (the "**McLean Completed Application**") to the **TDHA Fax Number**, which was a landline on the **4th Floor VP Building**, albeit unknowingly, but he also faxed a completed and signed OCF-2 on his behalf ("**Completed OCF-2**"). On November 3, 2022, the Applicant paid the section 25 of *SABS* fees for the OCF-3, and the said duly and doubly signed OCF-3 was delivered to the **4th Floor VP Bldg. Fax Number**.[32]

VOLUME #1(B)(V): The New Brunswick response to a *PIPEDA* request of SNIC and the SPAM Fax: February to April 2023

24. Further, there was additional evidence before the Tribunal that the Applicant had made a *PIPEDA* request of SNIC in February 2023, via email to the TD privacy email, but received an apparent *PIPEDA* response via mail from an unknown corporate sender located in New Brunswick. With further investigations in the Summer of 2024, the Applicant filed evidence with the Tribunal that while TDGIC operated in the **Private Passenger Market** in Ontario but did not operate in the **Private Passenger Market** in New Brunswick, TDHA did not in Ontario but did in New Brunswick along with SNIC and Primmum.

25. Around the same time (March 2023), while SNIC had never faxed the Applicant in reply to any of his delivered faxes to the **TDHA Fax Number**, again unknowingly to him, and only sent ostensible responses the Applicant received a fax from an unknown sender that "it" had no record of the Applicant's TD Claim #3 and to send his faxes with information, already in each fax, to one of the various locations (see: Calgary, Ontario, Montreal, Nova Scotia and New Brunswick) across Canada. There were two fax numbers in Ontario: Burlington (905 Fax Number) and North York (the 4th Floor VP Building Fax Number). The Applicant was already faxing to the **416.774.3120** and he did not reside in Burlington but he was perplexed by the "North York" reference. Consequently, the Applicant promptly blocked the sender, on account of it being "spam" (defined as the "**Spam Fax**"). The Applicant notified the 416.774.3120 fax number presuming still he was faxing SNIC regarding the misidentification of said fax number being grounded, by landline phone number, in North York, although the Applicant was incorrect in that regard at said time by way of detrimental reliance on the representations made to him by SNIC, of the issue and continued to fax the said telephone (fax) number. Shortly thereafter, SNIC had correctly, albeit missing a floor number, provided the Applicant, via mail, with a notice of change of address from the Markham Office to the Burlington Office, and, most notably, from the VP Building 4th Floor Fax Number to the 905 Fax Number.

VOLUME #2: Overview of the binding precedents in relation to the Governing Statutes, Governing Regulations *et al*

26. *SABS* and *Reg 283*, having undergone major amendments in 2010 after being submitted to industry consultations and amendments before proclamations, they reflect important policy choices to ensure order and stability in regulated industries. Said "order and stability" in the regulations must be matched by this ONSC by reference to the **Final Word Requirement**, **Final Answer Requirement**, **Uniform Answers Requirement**, **Vertical *Stare Decisis***, and **Intolerance Conflicting Orders Requirement** pursuant to the ROL.

27. *Reg 283* is designed to keep priority disputes out of the courts.[33] *Reg 283* is also purposed to prevent *SABS* claims, including vital treatments and income benefits, from being delayed while insurers fight over priority dispute under section 268(2) of the *Insurance*

Act.[34] As a matter of principle, there is NO[35] difference between an insurer's failure to pay under section 2 of *Reg 283* and a failure to pay under any provision of *SABS*. [36] [37]

28. While a **First Insurer**, like TDHA, may have never received insurance premiums from the insured persons, or be deemed to have received the same pursuant to the Insurance Act after a determined insured person was an occupant in said 'insured automobile' may seem intuitively wrong, the Legislature, by passage of statutes with *Royal Assent*, and LGIC's intent, must be respected. There is no, *per se*, harshness to be alleviated by a sophisticated insurance company, with endless resources, who received the **McLean Completed Application**, who fails to investigate within three months and provide a notice, in form A143, to an insured person and other insurers under sections 3 and 4 of *Reg 283*. The provisional first-insurer rule under the regulation and the priority regime under the statute operate ***differently***.[38] Irrespective of whether a claimant is an "insured person" or not in the *subjective* mind of the **First Insurer**, the **First Insurer** must respond to the Claimant and pay benefits where applicable and required (see: *Reg 283*, ss. 2.1(6)). Acceptance during the 90-day period is merely provisional.[39] If the **First Insurer** does not dispute, within 90 days, its liability to pay all benefits, in accordance with *SABS*, of the claimant, there is *no other process* for the **First Insurer** to transfer the *SABS* claim, dispute the same and recover any paid or to-be-paid benefits to the claimant.[40]A **First Insurer**'s calculus to not *accept* a claim for whatever subjective reason can turn out to a costly and permanent mistake.[41] The lack of acceptance in this regard is functionally equivalent to "*not accepting service of a claim*," which is distinct from not accepting an offer in relation to a proposed contract.

VOLUME #3: Requirement to "step into the shoes" of Sole Underwriter[42]

29. In *Zurich 2015*[43], the SCC held that Chubb ought to have responded to the *SABS* claim immediately on a 'pay first and dispute later' basis.[44] If the sending of the **Completed Application** by the claimant was not arbitrary, there is a *nexus* between the claimant and the **First Insurer**.[45] The SCC restored Goldstein J.'s judgment (ONSC) ["*Zurich 2012*"[46]] in its verbatim adopting[47] the dissent of Juriansz J.A. ["*Zurich 2014*"][48], as he then was before retiring after an illustrious legal and judicial career in 2021,[49]: **2014 ONCA 400**[50].

A vague recollection about seeing an insurer's name at a rental car office was sufficiently non-arbitrary to require the **First Insurer** (Chubb in *Zurich 2015*[51]) to "*step into the shoes"* of another insurance company(ies) that was liable under a "contract of insurance" for the purposes of section 2(1) of *Reg 283*.[52] The policy behind the inflexible rule that an insurer (like TDHA), which fails to: (i) respond provisionally to a claimant; (ii) fails to pay benefits provisionally to the claimant; (iii) fails to put other insurers on notice; and (iv) fails to put the insured person on notice of a potential transfer of the insured person's claim to other insurer(s), after receipt of a Completed Application, when there is *SOME* nexus, being permanently responsible for the claimant's benefits is to promote compliance with the *validly binding* statutory scheme.

30. The ONSC in *Zurich 2024*[53] (May) settled the law in the above regards as follows: (i) breach of section 2 of *Reg 283*, according to the case law, does not result in an insurer being required to pay benefits to the claimant permanently; BUT (ii) the *failure* TO AVAIL itself of section 3 does. Section 3 dovetails to section 4 which requires the First Insurer (TDHA) to provide notice to the insured person. Section 5 of *Reg 283* provides the consequences for an insured person not delivering its objection notice to the First Insurer within 14 days of receipt of the dispute notice form (A143) from the First Insurer. A143 requires the First Insurer, which receives the same, to fill out the form correctly and have a representative sign the same.

31. Herein, there is some incredibly prejudicial and fatal evidence, as it relates to any defence by TDHA that it could not meet the 90-day requirement to provide an A143 notice, and that is the signature block of Mr. Karat wherein he, as an ADR specialist, represented, multiple times, in 2024, that he was authorized to represent, "SNIC, TDGIC, Primmum, and TDHA".

32. TDHA's permanent liability for responding to the *SABS* Applicant and paying benefits to him was a *self-inflicted consequence* of its failure to adhere to the requirements and protections of section 2 to 4 of *Reg 283*.The combination of provisions in *Reg 283* transformed TDHA's provisional liability into a permanent one.[54] For TDHA to not be declared as the **First Insurer** would mean that there were no consequences for the conduct

(or inaction) of TDHA by receipt of the **McLean Completed Application** and by continuing to have its former branch office address (**East Mall Address**) auto-populate in HCAI, without Mr. McLean having access to the same as he was not a "service provider" and no ability for any service provider to amend the same, it would defeat the legislation's public policy: "*pay now and dispute later"*. The consequence would be that the "rule of law" would not matter and the LGIC's proclaimed amendments to *Reg 283* and *SABS* had *no teeth* and were of no force and effect. Put another way, the mandatory provisions therein would become discretionary based on the arbitrary and subjective beliefs and whims of insurance companies within a group of insurers. There would be no stability and consistency in the application of *Reg 283*, and the **Uniform Answers Requirement** or what is more commonly known as "horizontal and vertical *stare decisis*" in our provincial common law (judge made law) jurisdictions.

VOLUME # #4: Issues, Law and Argument

VOLUME # #4(A): Issues

33. The Applicant frames the general legal issues as follows:

    a. **Issue #1**: What is the standard of review of the **VCM Decision** and the VCL Reconsideration Decision as it relates to VCM's orders in NOM #14 and NOM #15?
    b. **Issue #2**: As TDHA was the first insurance company to receive the McLean Completed Application, was it possible, at law, for SNIC and TDGIC to accept priority over the Applicant's [sic] insurance policy [sic] without any notice to him?
        i. If the answer to said issue is in the negative, what is the legal effect of the same?
    c. **Issue #3**: what orders must this ONSC fashion with respect to the public interest remedies that are evasive of the JRPA Application and of great importance to the procedure, practice, substance and the ROL in LAT proceedings where similar issues may arise?

VOLUME #4(B): Law

VOLUME ##4(B)(I): Jurisprudence

34. The ONSC in *Beasley*[55] was unequivocal in its language that the fiduciary duties of an insurance company, whether they are provisional or permanent, are triggered by the obligation to pay benefits (if any) wherein the Honourable Justice Moore found: "[34] The

relationship between an insured and an insurer in accident benefits matters involves a duty of good faith, **a fiduciary obligation**; the relationship between plaintiff and defendant in a tort action does not. The obligation, if any, *to* **pay accident benefits** is very different from the exposure, if any, that a defendant faces in a tort action."

35. The ONSC (Divisional Court) in *Jia* found, in upholding the reconsideration decision of VC Trojek[56], in a priority dispute case between CAA (insurance company) and The Personal Insurance Company, and *SABS* proceeding between a male widow and daughter without his wife and her mother respectively due to the fatal car accident against The Personal Insurance Company, found at paragraph 6: "[6] It is established law that insurers may not use the same counsel in statutory benefits cases and in tort cases brought against them by the same insured. This is because the duties of an insurer (and therefore of its counsel) are different in these contexts, and as an accident benefits insurer, the insurer is entitled to receive, and is required to keep confidential, a great deal of sensitive personal information from claimant." [57] [58]

VOLUME # #4(B)(II): Legislation

36. Section 280 of the *Insurance Act* contains six subsections, which were passed in 2014, of which only four are potentially relevant herein. [59] [60]The *SPPA* provides who may be parties to a proceeding which is by "statute" or "by law". The *Insurance Act* does not define or delineate who may be parties so the relevant part of section 5 is the "by law" component of the legislative section. TDHA, as the First Insurer on a provisional basis from October 13, 2022, to January 10, 2023, (the "**Provisional Period**") and then on a permanent basis from January 10, 2023, to present and in perpetuity (the "**Permanent Period**"), is the only insurance company in the TDI Group that, "by law", that was and *is* entitled to be the respondent party. Of note, the Applicant sent his LAT Appeal to the **TDHA Fax Number** and it was received by TDHA.

VOLUME # #4(B)(II): Regulations

37. **Benefits**" means *SABS* as defined under section 224(1) of the *Act*.[61] An insurer shall *promptly* provide an OCF-1 and any other appropriate *forms* in accordance with the

Schedule to an applicant who notifies the insurer [a "First Notified Insurer"] that she wishes to apply for benefits: 2.1(2) of *Reg 283*.[62] A *SABS* applicant shall use the Application provided by the insurer and shall send the Completed Application to only one insurer: ss. 2.1(4) of *Reg 283*.[63] An insurer that provides an application [a "**First Notified Insurer**"] under subsection (2) to an applicant shall: [1] not take *any* action *intended*: (i) to prevent; or (ii) stop, the applicant from submitting a completed application to *the insurer*; and [2] shall not: (i) refuse to accept the completed application *or* (ii) redirect the applicant to another insurer (see: ss. 2.1(5) of *Reg 283*). [64]

VOLUME # #4(B)(II)(c): Disputes between Insurers: independent breaches by **First Notified Insurer** and First Insurer under section 2.1 of *Reg 283*

38. Conceivably, the "First Notified Insurer" and "First Insurer" (not the "First Party Insurer" under *Insurance Act* as referenced in *Reg 664*[65]), could independently and disjunctively breach different subsections under section 2.1 of the *Reg 283*. For example, the First Notified Insurer could breach section 2.1(5) of the *Reg 283*, by taking some action intended to prevent or stop the 'applicant" from even *submitting* a completed application to "the insurer". "The insurer" may or may not be the First Notified Insurer. Under the last part of the sentence in subsection 2.1(5) of *Reg 283*, "an insurer" may breach section 2.1(5) by refusing to ***ACCEPT***[66] the Completed Application OR redirecting the same to *another* insurer. Ergo, a **First Notified Insurer** could conceivably breach sections 2.1(2), 2.1(3) and (5) of *Reg 283*. [67] [68] [69]

VOLUME # #4(B)(II)(d): First Insurer: how could such an insurance company breach section 2 of *Reg 283*? Which subsections of section 2 of *Reg 283* did TDHA breach?

39. Juxtaposed to that, the First Insurer may not be First Notified Insurer wherein an individual contacts, delirious after the Accident, and notifies the insurance company it believes to be a sole underwriter for the vehicle in which she was injured. However, after complying with that seven-day notification requirement under section 32 of *SABS*, an individual may, perhaps after the benefit of ILA, realize that said **First Notified Insurer** is not ***the insurer*** that has a duty to respond to her and pay benefits in accordance with the *Schedule*. As seen

in much of the jurisprudence, wherein insurance companies are willing to engage in a litigation for over nearly two decades, she may have multiple policies that could apply. She then submits her Completed Application to "the insurer" (not "an insurer" or the "**First Notified Insurer**") wherein the First Notified Insurer and First Insurer are distinct and separate entities (not "*one and the same*"). The First Insurer may fail to commence paying benefits in accordance with the provisions of *SABS pending* the resolution of any dispute as to which insurer is required to pay benefits (*nota bene*: the "**First [Recipient] Insurer**" in its capacity as the "**First Provisional Insurer**"). Such a First Insurer may breach section 2.1(6) on a provisional basis and only during the provisional period and/or beyond.

VOLUME # #4(B)(II)(e): Consequences of Non-Compliance[70] (ss. 2.1(7) of *Reg 283*) and distinction between section 2(1) (LGIC proclamation in 1995) and ss. 2.1 (LGIC proclamation in 201)

40. The word "reasonable" utilized by the LGIC indicates the objective person test. Therefore, the threshold and quantum for the fees under legal, adjusting, admin or disbursements is what a reasonable person would find in terms of whether they are owed and in what quantum. The only difference (see: *supra*, "the statute and regulation operate differently" as per Justice Akazaki) between section 2(1) and 2.1(6)[71] is that the former references the requirement to pay benefits under section 268 of the *Insurance Act* whereas section 2.1(6) reference the requirement of that **First [Recipient] Insurer** to pay benefits in accordance with the provision of the *Schedule*.

VOLUME # #4(III): Argument

41. Vice Chair Morrissette obviously knows more than the Applicant as to what was represented to the Tribunal in written or oral form – not that which is correct at law – "behind the scenes". [72]There is no prescribed right of insurance companies, irrespective of whether they may or may not be affiliated within a group of insurance companies, to accept priority over an "insurance policy". No such right exists in relation to a claim for accident benefits after a Completed OCF-1 is received by AN insurance company. NIC did not refuse to accept the **Completed Application** as it did not receive the **Applicant's Completed Application** *first*. It is unclear if it even received it second or in what order or if at all. The reference to "it at all" is grounded in the record of proceeding and the denial

letters in that SNIC never enclosed a copy of the initial OCF-1 delivered to TDHA at first instance or other documents but rather would reference them in a vague and ambiguous manner.[73] To encapsulate the application of the uncontroverted evidence to ss. 2.1(5) of *Reg 283*, SNIC was the only insurance company that provided the OCF-1 but it cannot be found to have prevented the Applicant from submitting his Completed Application to "the insurer" but rather *encouraged* him to do so by providing a North York, Toronto, fax number (**VP Building 4th Floor Fax Number**) of TDHA which was an "*in province*" insurer licensed in the class of automobile insurance. Therefore, there was a nexus between the Applicant and TDHA as he did not select TDHA on a whim but was exclusively directed to it by SNIC – at least "on paper".

42. TDHA was the First Insurer as the only two lead tenants at the Victoria Park Ave Building were that of TDGIC and TDHA. TDGIC occupied floors 7 to 9 with the 9th floor being its mailing address and TDHA occupying floors four to six with the four floors being its mailing address. Once the Applicant had honed in on the deception, the mathematical computation of how Bell Canada Inc. had assigned the numbers within the building was rather rudimentary. The area code of 416 was only for Toronto-based locations. 774 was assigned as a "prefix" to numbers within the District of North York and then within the VP Building, the 3 was a common feature to many landlines of tenants therein. The "120" was a string of three digits with numerical value of "1" being on the fourth floor and the numerical string of "629" with "six" being on the 9th floor. For sake of completeness: "2" was on the fifth floor; "3" was on the sixth floor; "4" was on the seventh floor; "5" was on the eighth floor; and "6" was on the ninth floor. The Tribunal's notice of hearing orders are orders at law and subject to judicial review, and neither SNIC nor TDGIC sought to challenge them by a section 21.1 of the *SPPA* motion or judicial review and/or appeal. It is trite that if those fax numbers that the Tribunal had found were to be for service of documents to SNIC and TDGIC were not their fax numbers, they would have objected or confirmed the same with the Tribunal.[74]

43. Therefore, SNIC had no provisional obligation to respond to the Applicant and pay benefits as its obligation to respond was merely the provision of forms and explanation of benefits

as a mere stakeholder in the insurance industry, but rather TDHA had that obligation to respond and pay benefits. Therefore, pursuant to section 280(4), the LAT was required to resolve the LAT Proceeding in accordance with *SABS* and *Reg 283*.

44. In order for the Tribunal to determine the *JRPA* Applicant's claims under *Reg 664*, s. 10 (Dispute Resolution under section 280 of the *Insurance Act*).[75] Conceivably, s.10 of *Reg 664* could involve two insurers because a provisional First Insurer could have delayed commencing paying benefits and further delayed during the provisional period, and a different agreed to, with or without the consent of an insured person subject to said claimant receiving notice or notices pursuant to *Reg 283*, or declared insurer, by arbitrator or subsequent court decisions[76] could have delayed or withheld benefits thereafter. [77]

45. The Applicant complied with section 268(5) of the *Insurance Act* and ss. 32(1) of the *Schedule* by SNIC became the "First Notified Insurer". Pursuant to section 32(2) of *Schedule* and *Reg 283*, ss. 2.1(2) SNIC provided the Applicant with an OCF-1 Application (see: *Reg 283*, s.1) and some other forms that related to the *Schedule*. SNIC breached part of ss. 2.1(3) of *Reg 283* by not providing its accurate mailing address and fax number. The Applicant complied with ss. 2.1(4) of *Reg 283* by using the "OCF-1 Application" provided by SNIC and sent the Completed Application to only one insurer (TDHA).

VOLUME # #4(III)(A)(i): Subsection 2.1(6)

46. TDHA was the **First Insurer** that received a Completed Application for benefits from this *JRPA* Applicant (*SABS* Applicant) and was duty bound, by the LGIC's 2010 proclamations, which were the subject of extensive industry wide consultations, to commence paying the benefits in accordance with the provisions of the *Schedule*.

VOLUME # #4(III)(A)(ii): Subsection 2.1(7)

47. As SNIC and THDA are both "insurers", distinct at law, they have both failed to comply with various sections under subsection 2.1 and are required to reimburse each other for any fees (adjusting and legal), costs *et al* that were reasonably incurred by the other insurer as a result of the non-compliance. However, that is an issue between them and not for the

Applicant. The Applicant is not entitled to any payment of any incurred legal fees, adjuster's fees, administration costs and disbursements but he is entitled to benefits and payment of section 25 fees incurred.

VOLUME # #4(III)(A)(iii): Sections 3 to 4 of *Reg 283* and ss. 268(3) of the IA

48. An insurer against whom a person has recourse for the payment of statutory accident benefits is liable to pay the benefits: ss. 268(3) of the *Insurance Act*. Where an insurer has given notice under section 3 of *Reg 283*, said insurer must also give notice to *the insured person* using a form approved by the CEO of the FSRA: ss. 4(1) of the *Reg 283*. Said form is denoted below at Appendices and it is a A143.[78] TDHA did not even engage in the pretense of doing so.

VOLUME # #4(III)(A)(iv): Section 5 of *Reg 283*

49. The Applicant never received notice under section 4 of *Reg 283* so he did not have any obligation under section 5(1) of *Reg 283*. Ergo, the Applicant could not, in fact, advise the insurer paying benefits in writing within 14 days that he objected to the transfer of the claim to the insurers referred to in a non-existent notice. According to VCM, the transfer of his TD Claim #3, clandestinely occurred at some unparticularized time by some void ab initio agreement between the First Insurer when TDGIC, in conjunction with SNIC, accepted priority over the Applicant's [sic] Insurance Policy [sic]. VCM was clearly not referring to a "decision" but a *subsequent agreement* by her deliberate word choice of "acceptance". For "acceptance" to have occurred by two other insurers, where neither could be the First Insurer (TDHA), an offer had to be made. For an agreement to have been consummated, there had to be return consideration in the form of a fulfilled promise from the offerees to the offeror (TDHA). In order for that proposed contract, which could be at best an "agreement to agree", it required notice to the JRPA Applicant and his consent or his silence AFTER receipt of the prescribed notices.[79]

VOLUME # #4(III)(A)(v): Subsection 5(3) of *Reg 283*

50. Ss. 5(3) of *Reg 283* has a "despite" or "subject to" clause in said subsection but it relates to the Fund initiating arbitration so it is not germane to the issues herein.

VOLUME # #4(III)(A)(vi): *Void Ab Initio* Agreement and deprivation of three different rights: (i) right to object to transfer of his claim to other insurers; (ii) right to object to proposed agreement between insurers; and (iii) right to file notice of arbitration

51. While the Applicant did not receive any section 4 notice pursuant to *Reg 283* and was deprived of his rights which the LGIC provided similarly situated accident victims, to object to the transfer of his TD Claim #3 to SNIC and TDGIC on an apparently joint basis, he was also deprived of his arbitration participatory rights in any subsequent proceeding to *settle* the dispute. Most importantly, whatever clandestine, underhanded and surreptitious agreement was negotiated and consummated between TDHA with SNIC and TDGIC, had no legal effect and was not merely void but void *ab initio*. It amounts to an irremediable nullity.[80]

VOLUME # #4(III)(A)(vii): Consent vs. Non-Opposition – risks of allowing the Tribunal to decide the Hearing Proper with the "musical defence chairs" between SNIC, TDGIC and TDHA

52. Leaving aside that Mr. Nieuwland's purported Notice of Appearance was and remains defective, Mr. Nieuwland is apparently engaged in similar past conduct that was not only rejected by the Tribunal but the FSRA (two administrative tribunals created under different statutes with boundaries that regularly intersect) with respect to his misguided "*one and the same representation*" regarding SNIC and TDGIC being the same corporate entity. Such a misrepresentation was counter to the FSRA certificates of status involving each, their distinct license classes approved by the FSRA, the corporate history of TDGIC and SNIC, and the rule in *Foss v. Harbottle*. Mr. Nieuwland now wishes this ONSC to accept a filing, which was not forthwith, but wherein his cover email misrepresented that he was acting for SNIC and two distinct companies *also referred to as [sic]* as "TD Home and Auto [sic]" and "TD General Insurance company [sic]". It was a tantamount to a "triple down" on his previous "double down" at least "numerically". For the purposes of clause 4.3 of *Schedule* 1, the consent of an individual is only valid if it is reasonable to expect that an individual to whom the organization's activities are directed would understand the nature, purpose and consequences of the collection, use or disclosure of the

personal information to which they are consenting: s. 6.1 of *PIPEDA*. It is trite that the OCF-1 and PIPEDA operate harmoniously and in tandem.

VOLUME #4(III)(B): "Mr. Nieuwland and co" – up to old tricks

53. Not opposing the relief in a motion, as TDGIC did by way of written email by Mr. Nieuwland on behalf of TDGIC on June 6, 2024, is not the legal equivalent of "consent". Such a statement of law is a trite one but the history of how SNIC and TDGIC have abused the process of the LAT Proceeding is precisely why this ***JRPA Proceeding*** must be decided *prior* to the Hearing Proper. After Mr. Karat, a non-licensee, signed and filed a Response on behalf of SNIC on January 25, 2025, (the "SNIC Response") contrary to LSO By-Laws, TDGIC purported to be the sole respondent without even the pretense of filing a pleading. NOM #8 was not granted until June 20, 2024, which then required another section 21.1 of the *SPPA* motion as the clarity and precision of some of the findings of fact, contrary to the record of proceeding, by yet again VCM, were incorrect. The Applicant sought the consent of TDGIC to remove itself as the sole respondent and the consent of SNIC, the only insurance company that filed a Response, to substitute itself for TDGIC. Mr. Nieuwland, for TDGIC, was unequivocal that TDGIC would NOT oppose any such relief from the Applicant after opposing said relief for nearly six months. Mr. McLean is not so self-aggrandizing to think that his NOM #8 was of such superb calibre that it was the sole catalyst for the change in legal position. Rather, it was, admittedly, bold move to serve the FSRA with NOM #8 and invite its submissions by way of *amicus curae.* 128 days passed from the time of the Nieuwland DOR on behalf of TDGIC to the time of his email where TDGIC would not oppose the relief that the Applicant had been seeking, with formal motions and at the case conference. SNIC did not respond to NOM #8 even though its sole representative, at the time, in Mr. Karat had responded to emails in May 2024. Consent for removal of TDGIC and substitution of SNIC for it would have required a "three party agreement" between the JRPA Application, TDGIC and SNIC.

VOLUME # #4(III)(C): *Res judicata* and Issue Estoppel

54. The Applicant could then be caught by the doctrines of *res judicata* and issue estoppel.

VOLUME # #4(III)(C)(i): *Res judicata*

55. In *Said v. Northbridge General Insurance Company, 2024 ONSC 5248* (Div. Court), the Honourable Justice DL Corbette with oral reasons considered *res judicata* in an administrative context where it was found that a LAT decision is final and authoritative subject to a party's rights of reconsideration or appeal from that decision.[81]TDHA and SNIC are not "one and the same" as it has already been found by the FSRA, through its issuance of the certificates of status in June 2024, that "TDGIC and SNIC were not one and the same".

VOLUME # #4(III)(C)(ii): Issue Estoppel

56. Issue estoppel has been articulated as follows in *Kazen v. Whitten & Lublin Professional Corporation,* 2020 ONCA 325[82]: (i) the same question has been decided; (ii) the judicial decision which is said to create the estoppel was final; and (iii) the parties to the judicial decision or their privies were the same persons as the parties to the proceedings in which the estoppel is raised [or] their privies. The ONCA in *Victoria University (Board of Regents) v. GE Canada Real,* 2016 ONCA 646 found the following: "[97] It holds that a party may not relitigate an issue that was finally decided in prior judicial proceedings between the same parties or those who stand in their place. However, even if these elements are present, the court retains discretion to not apply issue estoppel when its application would work an injustice."

57. It is the "mutuality principle" that would be at issue as to whether THDA and SNIC are "privies". However, even the slight chance, however remote, is enough to ensure that a decision is issued as to whom the First Insurer was – as there is no finding that TDHA was not the First Insurer and SNIC was the "Frist Insurer". Since there are no findings in this regard to overturn, no deference is required and the ONSC can decide the issue "de novo" or at least in a manner that resembles a "de novo hearing". It is yet another reason why the respondent insurance companies must not be entitled to participate herein. The Applicant would not be bound by *res judicata* and/or issue estoppel because SNIC and TDHA are privies but because of Mr. Nieuwland's recent representation in his "received" filing (purported NOA) that SNIC are "also referred to as" as TDHA and TDGIC.

VOLUME # #4(III)(D): *Reza vs. State Farm* and s. 19 of *SPPA*

58. The case of *Fatemea Rezaiezadeh v. State Farm Mutual Automobile Insurance Company*, 2016 ONFSCDRS 59 ("*Reza*")[83] stands for the proposition below wherein an arbitrator found the following: "The Appellant concedes there is no explicit procedure in…the *Statutory Powers Procedure Act*, R.S.O. 1990, c. S.22, as amended, to permit a party to continue a proceeding against a non-party." While *Reza* was a decision before the FSCO, the Legislature has not amended the *SPPA* in any manner that would change that precedential statement of law. The Applicant will also be deprived of his rights under section 19 of the SPPA in relation to enforcement of a monetary order.[84]The Applicant cannot continue the LAT Proceeding as currently constituted against TDHA as per the **VCM Decision**. Moreover, the Applicant would be proceeding against as a "Non-First Insurer" that does not have any obligation to respond and to pay benefits.[85]

VOLUME # #4(III)(D)(i): Does the argument that SNIC would merely cut a cheque assuage any concerns and/or should the Applicant have to even take such a risk?

59. In *Reza*[86], the following excerpt has extreme relevance to why this ***JRPA Proceeding*** must proceed expediently before a single justice and, if it fails, then before the ONSC (Div. Court): "The Appellant's apparent concern is that if she is successful on appeal and obtains a monetary award, if the Respondent does not pay, whose property does the sheriff seize? The Respondent submits that Certas would respond to any "valid" judgment by cutting a cheque because of its contractual obligation with State Farm. This did not seem to reassure the Appellant."[87]

VOLUME # #4(III)(D)(ii): Not merely the entitled insured person and the obligated insurance company (First Insurer) but *issues*

60. The danger of not deciding this ***JRPA Proceeding*** on an expedited basis before a single justice, is outlined, to some degree, in 2015 ONCA 851[88]. The ONCA briefly set out the elements required for issue estoppel to apply to bar the re-arguing of *an issue*, and some useful comments on when parties meet the "mutuality principle". The applicable principle is that "litigation is conclusive upon *issues actually brought before the court* and upon any

issues which the parties, exercising reasonable diligence, should have brought forward on that occasion".[89] The ONCA at paragraph nine raised some of the **indicia** that would make corporate parties privies of each other and the address aspect is one that cuts both ways:

> "[9] ….. All corporate appellants, except Committee of Certified Acupuncturists of Ontario, share the same registered address and they all share *many* of the same directors and officers, including the two individual appellants. In the context of these proceedings, this constitutes a sufficient degree of identification among the parties "to make it just to hold that the decision to which one was a party should be binding in the proceedings to which the other is a party".[90] In any event, even if the same parties' requirement for issue estoppel is not strictly met, permitting the appellants to re-litigate the issue that was determined by the Divisional Court would amount to an abuse of process.

VOLUME # #4(III)(D)(v)): "Would respond" is antithetical and counter to the purposes of *Reg 283* and *SABS* [they are imperatives]

61. As found by the Honourable Mr. Justice Akazaki, a former president of the OBA no less, in *Zurich 2024*[91] the purpose of *SABS* is and remains that those injured persons receive vital treatments and income replacement benefits. SNIC is even on worse footing than Certas, vis-à-vis the defunct State Farm, as noted in *Reza*[92], as it relates to automobile insurance benefits in Ontario, because there is no evidence of SNIC having a contractual relationship to TDHA to respond and pay on its behalf for its obligations under *Reg 283* and *SABS*. However, this inharmoniously bolsters a variety of points: (i) SNIC may take the position that it was *standing in the shoes* of TDHA; (ii) SNIC and TDHA are privies because of the "*standing in the shoes argument*"; (iii) without a decision herein, SNIC may take the position, even post hearing, that the Applicant was advancing his arguments not only against SNIC, but TDGIC and TDHA, and be without any recourse against TDHA as the First Insurer; (iv) SNIC does not have a duty to respond and pay benefits because it was not the First Insurer but the Applicant's LAT Appeal is dispositive of all issues against not only SNIC but TDHA; (v) to the extent that the Applicant advanced a separate LAT Appeal against TDHA, he would be abusing the process of the Tribunal because the underlying evidence would be similar or the same as he had faxed the seminal documents and correspondence to 416.774.3120 on a primary level; and (v) others.

VOLUME # #4(III)(E)(i): No ***effective remedy*** left for the Applicant

62. The prematurity doctrine has no applicability. The Applicant may or may not obtain a remedy against a non-liable insurance company as a matter of the governing statute in *Insurance Act*, ss. 268(3) and the binding regulations in *Reg 283*, *SABS* and *Reg 664*. Judicial review is a discretionary remedy. However, in *Awada*[93], Corbett J. by setting out the legal principle or precedent that courts should not interfere with ongoing administrative proceedings until after they are completed *or* until effective remedies are exhausted. It is not that a claimant has exhausted remedies but effective remedies. "Effective" is synonymous with "actual, real, or operative". Any remedies against SNIC are ineffective, futile or useless. The ineffectiveness of any remedies, absent costs against SNIC in the LAT Proceeding, is further bolstered by the mature and stable jurisprudence that an order adding or dismissing a motion to add a party is a final order.

VOLUME # #4(III)(E)(ii): The Ultimate Appeal argument

63. The ONSC outlined the legal test in *Mansuri*[94] wherein it stated, "To the extent that there are "alleged deficiencies" arising from the Initial Decision, the applicants have not established that they "cannot be cured on an ultimate appeal. Put another way, the applicants have not established that the alleged prejudice to the applicants outweighs the benefits of a single court proceeding once the underlying Tribunal proceedings are complete" (see: *Mansuri v. Dominion of Canada General Insurance Company*, 2023 ONSC 5764[95] at paragraph 43).[96] Even in an "ultimate appeal", no curing could occur as TDHA is not the solely liable respondent party in the LAT Appeal.

VOLUME # #4(III)(E)(iii): The corollaries in *Ontario Nurses Association*

64. The ONSC in *Sudbury and District Health Unit v Ontario Nurses' Association*, 2023 ONSC 2419 ["*Ontario Nurses*"][97], found as follows at paragraph 29: "…. Resolution of this application does not resolve the outstanding issues before the Arbitrator. In addition, the court has been clear that this is not an exceptional circumstance that would lead it to hear a judicial review application on an interlocutory decision." The deductive reasoning is rather rudimentary: (i) if resolution of a *JRPA* Application resolves outstanding issues

before the Tribunal, then a *JRPA* Application is not premature; and (ii) if not an interlocutory decision, then this militates in favour of hearing this *JRPA* Application.[98]

VOLUME # #4(III)(E)(iv): Court May ALWAYS intervene - Inherent Jurisdiction of its Superior Court Status

65. The court noted that "if there is a prospect of *real unfairness* through denial of natural justice or otherwise, a superior court may always exercise its inherent supervisory jurisdiction to put an end to the injustice before all the alternative remedies are exhausted…the unfairness in this case is so obvious that it would be inappropriate to put the officer through a trial before a tribunal that lost jurisdiction through a denial of natural justice.[99] This madness needs to be put to an end. The Tribunal is not even correctly distinguishing between the law of consent and "non-opposition". *What next by way of extrapolation of legal principles?* Sexual assault victims need not consent to sexual acts but their lack or absence of opposition to sexual acts is functionally and legally equivalent to consent. This Tribunal should be ashamed of itself by tossing around, in some irresponsible manner, that "consent" and "non-opposition" are "*one and the same*".[100]

VOLUME # #4(III)(E)(v): Concerns about this decision maker in VCM

66. Further, the total absence of a foundation for a finding of fact is an error of law. Moreover, it is the findings of VCM that are so particularly concerning that raise incredible integrity issues and conduct. It is not the first time that this former adjudicator, since promoted to Vice Chair, has been involved in serious breaches of conduct with knowledge. Her apparent knowledge, not in the record of proceeding, of what transpired, was not only affront to the *LAT Rules* of all parties being copied on correspondence, but this ONSC can take judicial notice of some issues involving this Tribunal of yesteryear.

67. Vice Chair Morrissette had to obtain this "knowledge" that TDGIC and SNIC accepted priority over the Applicant's [sic] insurance policy [sic] from some place, repository *et al*. The activities of VCM, prior to assuming her role as an adjudicator and now VC, are of great concern on a general but a specific level herein (see: https://lobbycanada.gc.ca/en/investigations/reports-on-investigation/the-lobbying-activities-of-trina-morissette/).[101] [102]

VOLUME # #4(III)(E)(vi): The conduct of this Tribunal is bringing the rule of law into disrepute: exceptional circumstances.

68. In *Harold the Mortgage Closer Inc. v. Ontario* (Financial Services Regulatory Authority, Chief Executive Officer), 2024 ONSC 446 [103] , this ONSC found: "[49] Exceptional circumstances are ones that bring the rule of law into disrepute which goes beyond breaching procedural fairness or even acting without jurisdiction: *Dugré*, at para. 35."

VOLUME # #4(III)(E)(vii): Risk of repeating proceedings and potential prejudice

69. Referring to the exceptions to the prematurity doctrine, which are analyzed when interlocutory relief is challenged by way of judicial review which has no applicability herein, "…It will only be permitted in rare cases where the *potential* prejudice of the risk of repeating proceedings after review" (see: *Lourenco*[104]). This JRPA Application will be repeated if the prematurity doctrine and arguments of the Tribunal are accepted.

VOLUME # #4(III)(E)(viii): Broader implications, Test Cases and Concurrent Jurisdiction

70. In *London District Catholic School Board v. Weilgosh*, 2024 ONSC 3857[105], the concepts of broader implications and test cases caused the ONSC to hear the judicial review even on an interim order, which the **VCM Decision**s are not, before the conclusion of that proceeding. Even more forcefully, the issues herein are even more important because they will determine a *Reg 283* and *SABS* issue in a "test case" where they have not been decided before against the backdrop of some alarming issues involving this Tribunal which appear to be related to previous concerns about this Tribunal. This outcome and decision herein have broad implications for insured persons with various insurance companies in any "insurance group" and whether there is a systemic issue involving providing false contact information, which may or may not involve intentional breaches, and may be merely a technological error like the "four insurance companies" had in the FSRA Enforcement Decisions for SNIC[106], TDGIC[107], Primmum[108], and TDHA[109] . Nonetheless, it must be addressed forthwith before further prejudice occurs to the public.

VOLUME #5: Conclusion and Orders Sought

VOLUME #5(A): Why the prematurity doctrine has no applicability

71. History cannot repeat itself and the JRPA Applicant is acting not only in relation to "final orders" but in accordance with the "rule of law" and being pre-emptive by filing this factum and asking, with great respect and appreciation, for an urgent hearing. The obvious 'devil's advocate' position to the JRPA Applicant's submissions regarding being technically correct in following *Reg 283,* which dovetails with SABS and Reg 664, is that SNIC will claim that it will be bound by any decision of the Tribunal and not advance any positions contrary to the same or at the "11th hour". However, there is nothing, with the findings in the impugned orders and decisions of VCM on September 12, 2024, (contrary to the September 6, 2024 inscription), to take the position that it [SNIC] is not obligated to respond and pay benefits pursuant to *SABS* because it was NOT the "First Insurer". There is also nothing that would preclude SNIC from doing so after the Hearing Proper and prior to the issuance and release of a decision of the Tribunal in relation to the Hearing Proper as the Tribunal would not be *functus officio* until that time. SNIC could seek leave post Hearing Proper and advance that argument all while relying on the finding, god willing such a finding would not be issued by this ONSC Divisional Court, that the JRPA Application was premature. It would then leave the Applicant with no recourse regarding the final orders to NOT add TDHA as the First Insurer and not only no effective remedy against insurance companies within the TDI Group but no insurance company with a duty to respond and pay any benefits. In effect, it would be a return to the unlawful *status quo* where the Applicant communicates with the purported adjusters for SNIC and they do not respond to him despite the digital communication protocol that was consummated by consent between SNIC and the Applicant on January 23, 2024.

VOLUME #5(B): Preliminary Orders

72. With great respect and appreciation for the ONSC's time on this matter, the Applicant seeks, by way of this factum, the following orders on a preliminary basis: (a) Striking Nieuwland Purported NOA on behalf of three insurance companies; (b) An order that the Applicant is entitled to be heard on the issue of leave before a single justice of the ONSC

at the earliest opportunity of this ONSC and prior to January 15, 2025; and (c) An Order dispensing with the need for any case management conference.

VOLUME #5(C): Public Interest Remedies: Declarations Of Law

73. The Applicant seeks the following public interest remedies, orders, declarations or findings for the benefit of the public along with this ONSC solidifying the required stability and uniformity involving *Reg 283*, which the Applicant respectfully seeks an endorsement or finding of the same, are the following syllogisms for accidents post September 1, 2010:

a. A **Declaration of Law** that there cannot be any binding agreement, at law, between a First Insurer and another insurer or insurer(s), where an insured person has not received notice from the First Insurer (see: section 3(1));
b. A **Declaration of Law** that there cannot be any binding agreement, at law, between a First Insurer and another insurer or insurer(s), where an insured person has not *selected* the First Insurer (see: section 7(2) of *Reg 283*);
c. A **Declaration of Law** that there cannot be any binding agreement, at law, between a First Insurer and another insurer or insurer(s), at first instance or subsequent, under *Reg 283* if the insured person, in her capacity as an Applicant having sent a Completed Application that was received by an insurer, making said insurer the "First Insurer", did not receive a notice of dispute or transfer pursuant to *Reg 283*;:
d. A **Declaration of Law** that there cannot be any binding agreement between a First Insurer and another insurer or insurer(s), at first instance or subsequent, under *Reg 283* if the insured person, in her capacity as an Applicant having sent a Completed Application that was received by an insurer making said insurer the "First Insurer", objected to any transfer of her claim pursuant to section 5(1) of *Reg 283* and said "agreement" was made without the consent of the insured person applicant who has seen and read the agreement;
e. A **Declaration of Law** that there cannot be any binding agreement, at law, between a First Insurer and another insurer or insurer(s), at first instance or subsequent, under *Reg 283* if the insured person, in her capacity as an Applicant having sent a Completed Application that was received by an insurer making said insurer the "First Insurer", where:
    i. an insured person has received notice of the potential transfer of the claim by the First Insurer to another insurer or insurers, the insured person has objected to the transfer within 14 days of receiving notice, received a copy of the proposed agreement, objected to said proposed agreement and has initiated arbitration within 14 days of being notified of an agreement under the *Arbitration Act, 1991* (see: section 7(2) of *Reg 283*);
f. A **Declaration of Law** that there cannot be any binding agreement, at law, between a First Insurer and another insurer or insurer(s), where an insurer does NOT commence or initiate arbitration within one year after the day the insurer paying

benefits gives a section 3 notice to the other insurers and, by corollary, a section 4 notice to the insured person applicant (see: section 7(4)); and

g. A **Declaration of Law** that there cannot be any binding agreement, at law, between a First Insurer and another insurer or insurer(s), whereby the insurer paying benefits was not the First Insurer if the First Insurer does not give notice in accordance with section 3(1) of *Reg 283* because the First Insurer is bound by its failure to give a section 3 notice to every other insurer because even if the First Insurer does so, section 4 requires a more formal notice under section 4 in the requisite form (A143).

VOLUME #5(D): Judicial Review Final Orders vis-à-vis Mr. McLean and TDHA

74. The Applicant seeks the following final orders:

1. An order quashing, in the nature of certiorari, and setting aside the **VCM Decision**;
2. An order quashing, in the nature of certiorari, and setting aside the **VCL Reconsideration Decision**;
3. An order granting the Applicant's orders sought, stylized as #1 and #3 in his NOM #14 (see: page 12 of the **Application Record**);
4. Costs in favour of the Applicant in NOM #14 and #15 against the then sole respondent in SNIC and fixed at $2,000;
5. Costs in favour of the Applicant in this ***JRPA Proceeding*** against any of the respondents herein that oppose the relief herein;
6. Such other further relief that this Honourable Court may grant pursuant to its inherent jurisdiction; and
7. Leave to the Applicant to file and serve any further documents, including amended submissions, that arise from the above or become known to him and/or based upon any agreement or order regarding the filing of the record of proceeding.

VOLUME #5(E): A full answer to the prematurity doctrine by way of legal bases

75. Lastly, there is a full answer to why the issue of who the First Insurer was and is, and who the correct liable and obligated respondent party must be and that is section 56 of SABS:

> **"Time limit for proceedings**
> **56.** An application under subsection 280 (2) of the Act in respect of a benefit shall be commenced within two years after the insurer's refusal to pay the amount claimed. O. Reg. 44/16, s. 6."

76. The LAT Appeal (a section 280(2) of the Insurance Act 'Application') was filed and served on the TDHA Fax Number, albeit unbeknownst to the Applicant as being the TDHA Fax Number, on December 24, 2023. SNIC filed its Response on January 25, 2024. VCM could not have reviewed the pleadings because she would have known by both pleadings that it was NOT the Applicant's Insurance Policy.

77. In *R.M. v CAA Insurance*, 2020 CanLII 94775[110], Vice Chair Shapiro found in relation to section 56 of the Schedule:

> "[5] Section 56 of the *Schedule* provides that an application to dispute a denial of a benefit must be commenced within two years of the insurer's refusal to pay. Section 64 allows the denial notice to be sent by regular mail or faxed to an insured's lawyer. Once a proper denial has been properly sent, if an insured does not appeal within that period, the Tribunal can not hear it as it is "time-barred".

78. This, in turn, makes the precise point that SNIC, at least prima facie, has sent "denial letters" to the Applicant but TDHA has not. Parenthetically, TDGIC never sent a denial letter to the Applicant which was the Applicant's primary reason for continuing to seek the relief to substitute SNIC for TDGIC – not the unsupported findings of VCM. Therefore, the "record of proceeding" will be unequivocally different between SNIC and TDHA. It is not merely a "cosmetic difference" but a substantive one.

79. All of which is respectfully submitted to the ONSC (Div. Ct.) at first instance on Tuesday, December 10, 2024:

Mr. Kevin A. McLean (B.A. J.D., CIM)
Self-represented, the Applicant herein

APPENDICES OF THE JRPA APPLICANT'S FACTUM

APPENDIX #1: Errors in **VCM Decision** as referenced by NOM #18 in the NOM #18 Motion Forom and Schedule therein

The Appellant seeks the following orders as follows pursuant to section 21.1 of the *SPPA* (but not LAT Rule 17) by way of strikethrough for deleting the word therein and underlining for proposed additions in substantially the same form:

a. An Order correcting the "date of the order" from September 6, 2024 to September 13, 20242;

b. An Order correcting **paragraph 2** from "was issued to the parties" to the following in substance "was issued to the Appellant and TDGIC, which was and is a non-party pursuant to the retroactive nature of my order issued on June 20, 2024, and released on June 21, 2024. As a parenthetical note, the Appellant sought clarification of my order in relation to this NOM #8 to confirm that the retroactive nature of the ordered changes from TDGIC to SNIC only related to documents and orders issued by the Tribunal and not those of TDGIC from January 30, 2024, to June 21, 2024. I confirmed the same in my reasons for decision in relation to the Appellant's order seeking clarification, which was his NOM #10;

c. An Order correcting **paragraph #2**, **sentence #2**: [this is corrected by the change above in Order #2];

d. An Order correcting **paragraph #3** to: from "on consent of the parties" to "by TDGIC not opposing the relief sought in NOM #8 (except costs) and the Appellant proceeding with his motion unopposed";

e. An Order correcting **paragraph #5** as follows in substance: [to be consistent between sentence #1 and sentence #2 as sentence #1 references twelfth, thirteenth, and fourteenth and sentence #2 references "NOM #13, NOM #14, and NOM #15"];

f. An order correcting the *"similar error" [technical deficiency error]*, in the form of incorrect language, at **paragraph 12**, as submissions are not affidavit evidence. Further, an order specifically correcting paragraph 12, sentence #2, from "He submits that he made demands..." to "He swore affidavit evidence that he made demands upon TDHA and exhibited the emails he sent to TDGIC along with filing a certificate of service that delivered the hearing brief, which was indexed, tabulated and consecutively numbered pursuant to *LAT Rule 9.4.5.*, on July 11, 2024. As the Tribunal did not provide TDGIC with an opportunity for submissions, contrary to LAT Rule 9.2.2., the Tribunal did not have the benefit of any written submissions, affidavit evidence or authorities."

g. An order correcting paragraph #18 as follows with the inclusion of the technically correct language and facts: was TDGIC. While TDGIC was the

respondent party at the time, the effect of my order on June 6, 2024, operated retroactively.

h. An order correcting paragraph #19 as follows: removing sentence #1 and replacing with the language in the underlying hearing brief and record at the time "The reasons that SNIC was required to be the sole respondent party, as cited in NOM #8, were not only because of the Appellant's reasons but compliance with the *SPPA, SABS, Reg 283,* FSRA requirements, LATA, consistency with the *LAT Rules* and others.

i. An Order that **paragraph 22**, sentence #1 is corrected as follows: "TD Insurance letterhead" to "TD Insurance Meloche Monnex letterhead" with the return address of 200-101 McNabb Street, Markham, Ontario"

j. An Order that **paragraph 22, sentence #3** is removed in its entirety in favour of the facts within the record of proceeding as follows in substance with the below:

i. Within the filed Appeal, the Appellant utilized the definition of TD SNIC. While the Appellant could not input the entirety of TD Insurance Meloche Monnex (Security National Insurance Company), he used TD Insurance with the definition of "TD SNIC" within the pleading for further specification. Attached to his pleading with the required
listed key documents were four pre-pleading affidavits that all referenced TD SNIC, which contained the "Denial Letters" therein.

i. On December 24, 2023, the Appellant served the Appeal to the fax number provided to him by SNIC in September 2022, which was 416.774.3120. The said fax number is grounded and wired to the building located at 3650 Victoria Park Avenue, North York, Toronto, Ontario. The Appellant was unaware that said fax number was not that of SNIC Markham. Whichever insurance company was so located on the 4th floor of the Victoria Park Building at the time of October 13, 2022, was served with the Appeal.

ii. On January 3, 2024, the Appellant filed his NOM #1 with the Tribunal.

iii. On January 8, 2024, the Appellant filed his NOM #2 with the Tribunal. On the same day, the Appellant received communications from one Mr. Josh Grant, case manager, of the LAT/AABS requesting that the Appellant provide copies of the denial letters that he had received in relation to his TD Claim #3 and LAT Proceeding. The Appellant did so on January 8, 2024, which contained denials letters exclusively from SNIC at its alleged offices of SNIC Markham and the Burlington Office Building (absent a floor number). The denial letters that the Appellant provided were already contained within the pre-pleading affidavits that particularized the key documents for the Appeal.

iv. On January 14, 2024, the Appellant filed NOM #3.

v. In each of the three motions denoted above, the Appellant denoted the respondent as "TD Insurance Meloche Monnex" (Security National Insurance Company).

vi. On January 16, 2024, Vice-Chair Lake issued written reasons for decision in all three motions, without the party receiving any notice of the written hearings, section 6, declining to decide the same. In Vice Chair Lake's order, she even references TD SNIC but continued with the finalization of her reasons for decision with TDGIC as the Respondent.

vii. For context as to how TD General Insurance Company became the sole respondent on January 8, 2024, in the LAT/AABS system, when Mr. Josh Grant, case manager for the SNIC Proceeding, was assigned to the same, Mr. Grant emailed the Appellant, Mr. Nieuwland, who was then counsel to TDGIC, and Mr. Karat, ADR Specialist to SNIC, on May 6, 2023, in response to the Appellant's May 6, 2024, email requesting, *inter alia*, copies of the documents and information as it relates to who provided the Tribunal with information regarding TDGIC on or around the deadline for filing a Response to the Appellant's Appeal. The Appellant's query arose after May 2, 2024, at the combined case conference and set hearings for his NOM #4 and NOM #6, when he objected, prior to and during the case conference, to TDGIC being the sole respondent or a respondent at all as it was never disclosed to him as an insurance company; it was not the underwriter in the Appellant Spouse's insurance policy, that had any duties in relation to his TD Claim #3. Moreover, the Appellant needed to know the information because *SABS* requires the insurance company that refused to pay any amounts claimed for benefits or any refusal seeking increased benefits to be named (see: section 56 of *SABS*3). Mr. Grant kindly noted that the Appellant did list TD Insurance as the Respondent but **mistakenly** stated that the denial letters the Appellant filed also referenced only TD Insurance when the denial letters bore the two trademarks of "TD Insurance Meloche Monnex" and the return address of Security National Insurance Company (see: affidavit #38, Exhibit "A" pages 31 to 45). Mr. Grant's explanation was that, after receiving the denial letters, which did not reference "TD Insurance" (or TD General Insurance Company), that the information, in his view, provided in the Appeal, plus pre-pleading listed and attached documents, provided him with only two options for entry of the respondent party insurer, when SNIC was in the upper-right hand corner of each document along with the author being "TD Insurance Meloche Monnex", in: (i) TD General Insurance Company; or (ii) TD Home And Auto Insurance Company.

viii. Mr. Grant noted that "If there was a concern that the Security National Insurnace Company, not TDGIC, being named as the Respondent party, please advise if the parties agree that a
change should be made. The Appellant sought TDGIC's consent, but it did not respond. It was not until after the Appellant found the FSRA enforcement decisions and Mr. Nieuwland's representation of SNIC in the Syed Decisions, could he disprove Mr. Nieuwland's representations that SNIC and TDGIC were one and the same and "this is how they always do it" [in relation to SNIC being the sole underwriter, responding insurance company *et al* and then TDGIC becoming the sole respondent]. The Appellant again sought the consent of TDGIC when he obtained the FSRA's confirmation that he could obtain status certificates at a cost for expedited receipt. TDGIC did not respond. It was not until after some six months of TDGIC refusing to be removed as the sole Respondent, and SNIC not responding to the overtures to be the sole respondent and opposing relief from the Appellant in motions and unlawfully appearing as the sole respondent at the case conference, that TDGIC, through Mr. Nieuwland confirmed in writing on June 6, 2024, that it would not oppose the Appellant's relief sought in NOM #8. The Appellant obtained those status certificates on June 19, 2024, and filed them

with the Tribunal. On June 21, 2024, with a litany of reasons as to why SNIC was required to be the respondent instead of TDGIC, as TDHA was unknown to the Appellant, NOM #8 was granted in the Appellant's favour.

k. An Order that **paragraph 23**,

> ix. sentence #1 is corrected from "Respondent's counsel" to "current respondent's counsel and former counsel to TDGIC", from "noting that he was representing the insurer "TDGIC" to "declaring that he was representing the insurer "TDGIC" but only after Mr. Karat, the ADR Specialist, who represented to the Appellant, on January 23, 2024, via email, with Mr. Nieuwland copied as "counsel", that he was assigned to be the ADR and representing the Security National Insurance Company, and then on January 25, 2024, Mr. Karat signed and filed the Response for SNIC ("SNIC Response") whilst serving the Appellant;
>
> x. sentence #2 is corrected by the removal of the entire sentence with the facts as above in substance subject to the writing style of Vice Chair or an adjudicator;

l. An Order that **paragraph 24** is corrected to the following:

i. Sentence #2: removing the entire sentence and adding the following, "Consistent with the documents, the Appellant refuted Mr. Nieuwland's misrepresentations4 that SNIC and TDGIC were "one and the same" and that TD Insurance Staff Legal always substituted or changed the identity of TDGIC for SNIC in LAT proceedings, which was counter to the very representations Mr. Nieuwland made representing SNIC in those *Syed Decisions* in LAT file number:
ii. Sentence #4: changing the following from "dated June 20, 2024, and released the following day on Friday, June 21, 2024,"5 and from "on consent of the respondent" to "by email dated June 6, 2024, TDGIC, through Mr. Nieuwland, confirmed it [TDGIC] would not oppose the relief sought";
m. An Order the following sentences in paragraph #27 are amended as follows:
i. Sentence #2: changing from "The initial respondent, TDGIC, and the current respondent, SNIC accepted priority over the applicant's spouse's insurance policy"
n. An Order that the following paragraph 35, sentence two is amended as follows:
i. From "curtail" to "circumvent";6; and

APPENDIX #2: REG 283

ONTARIO REGULATION 283/95

DISPUTES BETWEEN INSURERS

Last amendment: 126/19.

This Regulation is made in English only.

0.1 In this Regulation,

"application" means an application for accident benefits (OCF-1) approved by the Superintendent for the purposes of the *Schedule*;

"benefits" means statutory accident benefits as defined in subsection 224 (1) of the Act;

"completed application" means a completed and signed application;

"Fund" means the Motor Vehicle Accident Claims Fund continued under subsection 2 (1) of the *Motor Vehicle Accident Claims Act*;

"Schedule" means, in respect of an accident, the *Statutory Accident Benefits Schedule* as defined in subsection 224 (1) of the Act that applies in respect of the accident. O. Reg. 38/10, s. 1.

1. All disputes as to which insurer is required to pay benefits under section 268 of the Act shall be settled in accordance with this Regulation. O. Reg. 283/95, s. 1.

2. (1) The first insurer that receives a completed application for benefits is responsible for paying benefits to an insured person pending the resolution of any dispute as to which insurer is required to pay benefits under section 268 of the Act. O. Reg. 283/95, s. 2.

(2) Subsection (1) applies in respect of benefits that may be payable as a result of an accident that occurs before September 1, 2010. O. Reg. 38/10, s. 2.

2.1 (1) This section applies in respect of benefits that may be payable as a result of an accident that occurs on or after September 1, 2010. O. Reg. 38/10, s. 3.

(2) An insurer shall promptly provide an application and any other appropriate forms in accordance with the *Schedule* to an applicant who notifies the insurer that he or she wishes to apply for benefits. O. Reg. 38/10, s. 3.

(3) The application provided by the insurer must include the insurer's name, mailing address and telephone and facsimile numbers. O. Reg. 38/10, s. 3.

(4) The applicant shall use the application provided by the insurer and shall send the completed application to only one insurer. O. Reg. 38/10, s. 3.

(5) An insurer that provides an application under subsection (2) to an applicant shall not take any action intended to prevent or stop the applicant from submitting a completed application to the insurer and shall not refuse to accept the completed application or redirect the applicant to another insurer. O. Reg. 38/10, s. 3.

(6) The first insurer that receives a completed application for benefits from the applicant shall commence paying the benefits in accordance with the provisions of the *Schedule* pending the resolution of any dispute as to which insurer is required to pay the benefits. O. Reg. 38/10, s. 3.

(7) An insurer that fails to comply with this section shall reimburse the Fund or another insurer for any legal fees, adjuster's fees, administrative costs and disbursements that are reasonably incurred by the Fund or other insurer as a result of the non-compliance. O. Reg. 38/10, s. 3.

(8) In subsection (7),

"insurer" does not include the Fund. O. Reg. 38/10, s. 3.

3. (1) No insurer may dispute its obligation to pay benefits under section 268 of the Act unless it gives written notice within 90 days of receipt of a completed application for benefits to every insurer who it claims is required to pay under that section. O. Reg. 283/95, s. 3 (1).

(1.1) If the dispute relates to an accident that occurred on or after September 1, 2010, a notice required under subsection (1) must also be given to the Fund if the insurer claims the Fund is required to pay benefits. O. Reg. 38/10, s. 4.

(2) An insurer may give notice after the 90-day period if,

(a) 90 days was not a sufficient period of time to make a determination that another insurer or insurers is liable under section 268 of the Act; and

(b) the insurer made the reasonable investigations necessary to determine if another insurer was liable within the 90-day period. O. Reg. 283/95, s. 3 (2).

(2.1) If the dispute relates to an accident that occurred on or after September 1, 2010, the Fund may give a notice under subsection (1) after the 90-day period and is not required to comply with subsection (2). O. Reg. 38/10, s. 4.

(3) The issue of whether an insurer who has not given notice within 90 days has complied with subsection (2) shall be resolved in an arbitration under section 7. O. Reg. 283/95, s. 3 (3).

3.1 (1) This section applies to disputes relating to accidents occurring on or after September 1, 2010. O. Reg. 38/10, s. 5.

(2) Before giving a notice to the Fund under section 3, an insurer must,

(a) complete a reasonable investigation to determine if any other insurer or insurers are liable to pay benefits in priority to the Fund; and

(b) provide particulars to the Fund of the investigation and the results of the investigation. O. Reg. 38/10, s. 5.

4. (1) An insurer that gives notice under section 3 shall also give notice to the insured person using a form approved by the Chief Executive Officer. O. Reg. 283/95, s. 4; O. Reg. 305/98, s. 1; O. Reg. 126/19, s. 2.

(2) Despite subsection (1), if the insurer that gives notice under section 3 is the Fund, no notice shall be given to the insured person under subsection (1). O. Reg. 38/10, s. 6.

5. (1) An insured person who receives a notice under section 4 shall advise the insurer paying benefits in writing within 14 days whether he or she objects to the transfer of the claim to the insurers referred to in the notice. O. Reg. 283/95, s. 5 (1).

(2) If the insured person does not advise the insurer within 14 days that he or she objects to the transfer of the claim, the insured person is not entitled to object to any subsequent agreement or decision to transfer the claim to the insurers referred to in the notice. O. Reg. 283/95, s. 5 (2).

(3) Subject to subsection 7 (5), an insured person who has given notice of an objection is entitled to participate as a party in any subsequent proceeding to settle the dispute and no agreement between insurers as to which insurer should pay the claim is binding unless the insured person consents to the agreement or 14 days have passed since the insured person was notified in writing of an agreement and the insured person has not initiated an arbitration under the *Arbitration Act, 1991*. O. Reg. 283/95, s. 5 (3); O. Reg. 38/10, s. 7.

6. (1) The insured person shall provide the insurers with all relevant information needed to determine who is required to pay benefits under section 268 of the Act. O. Reg. 283/95, s. 6.

(2) Upon request by the first insurer that receives a completed application for benefits, the insured person shall submit to one examination under oath for the purpose of determining who is required to pay benefits under section 268 of the Act. O. Reg. 16/13, s. 1.

(3) No other insurer is entitled to require the insured person to submit to an examination under oath for the purpose of determining who is required to pay benefits under section 268 of the Act. O. Reg. 16/13, s. 1.

(4) The scope of the examination under oath is limited to matters that are relevant to determining who is required to pay benefits under section 268 of the Act. O. Reg. 16/13, s. 1.

(5) The insured person is entitled to be represented at his or her own expense at the examination under oath by such counsel or other representative of his or her choice as the law permits. O. Reg. 16/13, s. 1.

(6) The insurer shall make reasonable efforts to *Schedule* the examination under oath for a time and location that are convenient for the insured person and shall give him or her reasonable advance notice of the following:

1. The date and location of the examination.

2. The insured person’s entitlement to be represented in the manner described in subsection (5).

3. The reason for the examination.

4. The fact that the scope of the examination is limited to matters that are relevant to determining who is required to pay statutory accident benefits under section 268 of the Act. O. Reg. 16/13, s. 1.

7. (1) If the insurers cannot agree as to who is required to pay benefits, the dispute shall be resolved through an arbitration under the *Arbitration Act, 1991* initiated by the insurer paying benefits under section 2 or 2.1 or any other insurer against whom the obligation to pay benefits is claimed. O. Reg. 38/10, s. 8.

(2) If an insured person was entitled to receive a notice under section 4, has given a notice of objection under section 5 and disagrees with an agreement among insurers that an insurer other than the insurer selected by the insured person should pay the benefits, the dispute shall be resolved through an arbitration under the *Arbitration Act, 1991* initiated by the insured person. O. Reg. 38/10, s. 8.

(3) The arbitration may be initiated by an insurer or by the insured person no later than one year after the day the insurer paying benefits first gives notice under section 3. O. Reg. 38/10, s. 8.

(4) Despite subsection (3), the arbitration may be initiated by the Fund at any time before or after the expiry of the time limit set out in subsection (3) if the Fund is paying benefits in respect of an accident that occurred on or after September 1, 2010. O. Reg. 38/10, s. 8.

(5) No insured person is entitled to initiate or participate as a party to an arbitration under this section if the insurer paying benefits is the Fund. O. Reg. 38/10, s. 8.

(6) If the dispute relates to an accident that occurred on or after September 1, 2010, the failure of an insurer other than the Fund to comply with section 2.1 or 3.1 may be the subject of a special award made by the arbitrator. O. Reg. 38/10, s. 8.

8. (1) Except as provided in this Regulation, the *Arbitration Act, 1991* applies to an arbitration under this Regulation. O. Reg. 283/95, s. 8 (1).

(2) The following rules apply with respect to an arbitration of a dispute relating to an accident that occurs on or after September 1, 2010:

1. If an insurer to whom a notice to initiate arbitration is delivered does not respond to the notice within 30 days, the insurer is deemed to have accepted the jurisdiction of the arbitrator proposed in the notice.

2. A pre-arbitration hearing must be *Schedule*d and take place no later than 120 days after the appointment of the arbitrator.

3. Subject to paragraph 4, once a date for the arbitration is *Schedule*d, the arbitration must be conducted on that day.

4. The arbitrator may grant an adjournment on such terms as the arbitrator considers appropriate, but only if there is cogent and compelling evidence of the reasons why the hearing cannot proceed on the *Schedule*d day.

5. Unless consented to by all parties, the hearing of the arbitration must be completed within two years after the commencement of the arbitration. O. Reg. 38/10, s. 9.

(3) The decision of an arbitrator made under this Regulation must be made public. O. Reg. 38/10, s. 9.

(4) If the decision relates to an accident that occurred on or after September 1, 2010, the decision must be made public,

(a) by the insurer that the arbitrator finds to be liable to pay the benefits; and

(b) in a manner and form specified by the Chief Executive Officer. O. Reg. 38/10, s. 9; O. Reg. 126/19, s. 2.

9. (1) Unless otherwise ordered by the arbitrator or agreed to by all the parties before the commencement of the arbitration, the costs of the arbitration for all parties, including the cost of the arbitrator, shall be paid by the unsuccessful parties to the arbitration. O. Reg. 283/95, s. 9 (1).

(2) The costs referred to in subsection (1) shall be assessed in accordance with section 56 of the *Arbitration Act, 1991*. O. Reg. 283/95, s. 9 (2).

10. (1) If an insurer who receives notice under section 3 disputes its obligation to pay benefits on the basis that other insurers, excluding the insurer giving notice, have equal or higher priority under section 268 of the Act, it shall give notice to the other insurers. O. Reg. 283/95, s. 10 (1).

(2) This Regulation applies to the other insurers given notice in the same way that it applies to the original insurer given notice under section 3. O. Reg. 283/95, s. 10 (2).

(3) The dispute among the insurers shall be resolved in one arbitration. O. Reg. 283/95, s. 10 (3).

11. References in this Regulation to a form approved by the Chief Executive Officer are deemed to include the last form approved by the Superintendent for the purposes of the relevant provision prior to the day section 22 of *Schedule* 13 to the *Plan for Care and Opportunity Act (Budget Measures), 2018* came into force until the Chief Executive Officer approves a subsequent form for the purposes of the relevant provision. O. Reg. 126/19, s. 1.

APPENDIX #3: THE SCHEDULE (NOTA BENE: FOCUSED ON THE WORD "RECEIVE" OR "RECEIVES")

Statutory Accident Benefits Schedule, O Reg 34/10, <https://canlii.ca/t/56cm2> retrieved on 2024-12-10

PART VIII
PROCEDURES FOR CLAIMING BENEFITS

General

Notice to insurer and application for benefits

[nota bene: duties of a person – insured person – or potentially insured person]

32. (1) A person who intends to apply for one or more benefits described in this Regulation shall notify the insurer of his or her intention no later than the seventh day after the circumstances arose that give rise to the entitlement to the benefit, *or* as soon as practicable after that day. O. Reg. 34/10, s. 32 (1).

[Nota bene: Duties of the First Notified Insurer]

(2) The insurer shall promptly provide the person with,

(a) the appropriate application forms;

(b) a written explanation of the benefits available;

(c) information to assist the person in applying for benefits; and

(d) information on the election relating to income replacement, non-earner and caregiver benefits, if applicable. O. Reg. 34/10, s. 32 (2).

(3) If an insurer that is subject to a Guideline referred to in subsection 64 (7) determines, acting reasonably, that there is a likelihood that the person may, in connection with the accident, deliver one or more documents referred to in that subsection, the insurer shall provide the following information to the central processing agency referred to in that subsection:

1. The name, address, gender and date of birth of the person.

2. The date of the accident.

3. Particulars of the automobile insurance policy under which the person asserts he or she is entitled to a benefit or benefits, including,

i. the name of the insurer,

ii. the policy number, and

iii. the name of the person to whom the policy was issued.

4. The claim number assigned by the insurer.

5. Any other information reasonably required by the central processing agency to enable it to carry out its obligations to the insurer under this Regulation. O. Reg. 34/10, s. 32 (3).

(4) An insurer's obligation to provide the information referred to in subsection (3) may be discharged by,

(a) providing the information to the central processing agency; or

(b) confirming, correcting or supplementing the information previously provided to the central processing agency. O. Reg. 34/10, s. 32 (4).

[Nota bene: duties of the applicant submitting a completed application within 30 days after receipt of application forms]

(5) The applicant shall submit a completed and signed application for benefits to the insurer within 30 days after receiving the application forms. O. Reg. 34/10, s. 32 (5).

[Nota bene: Duties of the First Insurer]

(6) If an insurer receives an incomplete or unsigned application, the insurer shall notify the applicant within 10 business days after receiving the application and shall advise the applicant of the missing information that is required or that the applicant's signature is missing, as appropriate. O. Reg. 34/10, s. 32 (6).

(7) The insurer shall not give a notice under subsection (6) unless,

(a) the insurer, after a reasonable review of the incomplete application, is unable to determine, without the missing information, whether a benefit is payable; or

(b) the application has not been signed by the applicant. O. Reg. 34/10, s. 32 (7).

(8) If subsection (6) applies in respect of an incomplete application, no benefit is payable before the applicant provides the missing information or signs the application, as the case may be. O. Reg. 34/10, s. 32 (8).

(9) If an applicant is required by an insurer to submit an additional application in respect of a benefit that the applicant is receiving or may be eligible to receive, the applicant shall submit the additional application to the insurer within 30 days after receiving the additional application forms from the insurer. O. Reg. 34/10, s. 32 (9).

(10) Despite any shorter time, limit in this Regulation, if an applicant fails without a reasonable explanation to notify an insurer under subsection (1) within the time required under that subsection,

the insurer may delay determining if the applicant is entitled to a benefit and may delay paying the benefit until the later of,

(a) 45 days after the day the insurer receives the completed and signed application; or

(b) 10 business days after the day the applicant complies with any request made by the insurer under subsection 33 (1) or (2). O. Reg. 34/10, s. 32 (10).

Claim for Income Replacement Benefit, Non-Earner Benefit, Caregiver Benefit or Payment for Housekeeping or Home Maintenance Services

Application

36. (1) In this section and section 37

(4) Within 10 business days after the insurer receives the application and completed disability certificate, the insurer shall,

(a) pay the specified benefit;

(b) give the applicant a notice explaining the medical and any other reasons why the insurer does not believe the applicant is entitled to the specified benefit and, if the insurer requires an examination under section 44 relating to the specified benefit, advising the applicant of the requirement for an examination; or

(c) send a request to the applicant under subsection 33 (1) or (2). O. Reg. 34/10, s. 36 (4).

(5) If the insurer sends a request to the applicant under subsection 33 (1) or (2), the insurer shall, within 10 business days after the applicant complies with the request,

(a) pay the specified benefit; or

(b) give the applicant a notice described in clause (4) (b). O. Reg. 34/10, s. 36 (5).

(6) If the insurer fails to comply with subsection (4) or (5) within the applicable time limit, the insurer shall pay the specified benefit for the period starting on the day the insurer received the application and completed disability certificate and ending, if the insurer subsequently gives a notice described in subsection (4) (b), on the day the insurer gives the notice. O. Reg. 34/10, s. 36 (6).

(7) If the insurer requires the applicant to undergo an examination under section 44, the insurer shall, within 10 days after receiving the report of the examination,

(a) give a copy of the report to the applicant and to the person who completed the disability certificate submitted with the application; and

(b) provide the applicant with a notice indicating the amount, if any, that the insurer agrees to pay in respect of the specified benefit, the amount, if any, the insurer refuses to pay in respect of the

specified benefit and the medical and any other reasons for the insurer's decision. O. Reg. 34/10, s. 36 (7).

(8) Within 10 business days after delivering the notice under clause (7) (b), the insurer shall pay the amount, if any, that the insurer agrees to pay in respect of the specified benefit. O. Reg. 34/10, s. 36 (8).

(9) Every income replacement benefit, non-earner benefit or caregiver benefit shall be paid at least once every second week, subject to any prepayment of the benefit by the insurer. O. Reg. 34/10, s. 36 (9).

[Nota bene: Hence, why the Applicant has sworn evidence or submitted that he has never received any IRB as it was required to be paid by TDHA].

[Section 64 of *SABS* not relevant as it relates to that regulation and not *Reg 283*]

APPENDIX #4: INSURANCE ACT, SECTIONS 224 AND 268

[SQUARE BRACKETS ARE THE APPLICANT'S]

PART VI
AUTOMOBILE INSURANCE

Interpretation, Part VI

224 (1) In this Part,

"statutory accident benefits" means the benefits set out in the regulations made under paragraphs 9 and 10 of subsection 121 (1); ("indemnités d'accident légales")

Fees and Regulations

Regulations

121 (1) The Lieutenant Governor in Council may make regulations,

9. establishing benefits for the purposes of Part VI that must be provided under contracts evidenced by motor vehicle liability policies and establishing terms, conditions, provisions, exclusions and limits related to such benefits;

10. requiring insurers to offer optional benefits in excess of the benefits that must be provided under paragraph 9 prescribing the circumstances in which the optional benefits are to be offered and establishing terms, conditions, provisions, exclusions and limits related to such benefits;

10.1 prescribing coverages and endorsements in respect of contracts of automobile insurance that insurers or a class of insurers are required to offer, deeming the benefits provided by the coverages and endorsements not to be statutory accident benefits for the purpose of Part VI, and prescribing the circumstances in which the coverages and endorsements shall be offered;

10.2 prescribing rules for interpreting the regulations made under paragraphs 9 and 10 or any provision of those regulations;

10.3 prescribing functions to be performed by a committee appointed under section 7;

10.4 governing the procedure for determining <u>who is liable</u> to pay statutory accident benefits under section 268, including requiring insurers to resolve disputes about liability through an arbitration process established by the regulations and requiring the interim payment of benefits pending the determination of liability;

[nota bene: subsection 10.4 is yet another example of how the Legislature provided an extremely broad grant of authority to the LGIC for governing the procedure of determining how insurers are liable to pay *SABS* under section 268 which then dovetails to Reg 263]

Statutory accident benefits

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

Liability to pay

(2) The following rules apply for determining who is liable to pay statutory accident benefits:

1. In respect of an occupant of an automobile,

i. the occupant has recourse against the insurer of an automobile in respect of which the occupant is an insured,

ii. if recovery is unavailable under subparagraph i, the occupant has recourse against the insurer of the automobile in which he or she was an occupant,

iii. if recovery is unavailable under subparagraph i or ii, the occupant has recourse against the insurer of any other automobile involved in the incident from which the entitlement to statutory accident benefits arose,

iv. if recovery is unavailable under subparagraph i, ii or iii, the occupant has recourse against the Motor Vehicle Accident Claims Fund.

Liability

(3) An insurer against whom a person has recourse for the payment of statutory accident benefits is liable to pay the benefits. R.S.O. 1990, c. I.8, s. 268 (3); 1993, c. 10, s. 1.[111]

Choice of insurer

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

[nota bene: upon Mr. McLean's discovery of whom the First Insurer (TDHA) was, he, at law, only has recourse against one insurer and that is TDHA per se. To the extent that Mr. McLean has recourse against more than one insurer, it is only the obligation to pay benefits (see: *Beasley* and

Jia) which triggers the fiduciary duties owed by an insurance company to him. It would be against his own self-interest, as a matter of law, to choose an insurer which does not have a duty to respond and pay. It is not a matter of contract but a matter of statute and regulations. Moreover, the duties of the insurer that first received the Completed Application are also delineated and detailed in the OCF-1 itself which also dovetail to *PIPEDA*. Mr. McLean has not and is not revoking his consent to TDHA having received the same but that has provided notice to it that it must comply with its oblgiations therein as a matter of law or "by law" which are under the following: (i) *Insurance Act*; (ii) Legislation Act; (iii) *SPPA*; (iv) *PIPEDA*; and regulations: (i) *Reg 283*; (iii) *SABS*s *et al*.

Same

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

Same

(5.1) Subject to subsection (5.2), if there is more than one insurer against which a person may claim benefits under subsection (5), the person, in his or her discretion, may decide the insurer from which he or she will claim the benefits. 1993, c. 10, s. 26 (2).

Same

(5.2) If there is more than one insurer against which a person may claim benefits under subsection (5) and the person was, *at the time* of the incident, an occupant of an automobile in respect of which the person is the named insured or the spouse or a dependant of the named insured, the person shall claim statutory accident benefits against the insurer of the automobile in which the person was an occupant. 1993, c. 10, s. 26 (2); 1999, c. 6, s. 31 (10); 2005, c. 5, s. 35 (14).

[nota bene: There is no dispute that Mr. McLean attempted to claim benefits from SNIC but he nearly did not receive his accident benefits package by an incorrect postal code therein whilst his spouse did receive the same. Moreover, he did *attempt to claim benefits* from SNIC but it was intentional redirection, by way of fax number and potentially address (mailing), to a "different insurance company(ies)"

Payments pending dispute resolution

(8) Where the *Statutory Accident Benefits Schedule* provides that the insurer will pay a particular statutory accident benefit pending resolution of any dispute between the insurer and an insured, the insurer shall pay the benefit until the dispute is resolved. R.S.O. 1990, c. I.8, s. 268 (8); 1993, c. 10, s. 1.

[nota bene: said subsection 268(8) was passed in 1990 and amended in 1993 which predated *Reg 283* in its initial form and certainly well before its "amended form" in 2010. Nonetheless, a breach

of *SABS* and *Reg 283* is legally equivalent in the year of 2024 so said section overrides the above subsections 268(5) as that is a contractual (policy) issue. By the **VCM Decision**, paragraph 27, her finding that TDGIC, as the "initial respondent" [sic] and SNIC accepted priority over the applicant's [sic] insurance policy invokes the analysis of priority and not an insurance policy because priority cannot be decided in relation to an insurance policy per se when there is only one insurer. It certainly cannot add a "party" (i.e. language of "First Party Insurer" under *Reg 664* which is distinct from *Reg 283* with "First Insurer") to a contract WITHOUT the consent of a party to the Insurance Policy. Moreover, while the Applicant was statutorily deemed to have given consideration therefor under the Insurance Policy, the adding of an additional insurance company to a contract would have required the consent of all parties to that contract with "new consideration" or "additional consideration". Therefore, while subsection 2.1 of *Reg 283*, passed in 2010, is more analytically relevant to this *JRPA* Application, TDHA is still obligated to pay the benefits to the Applicant pursuant to section 2(1) of *Reg 283*).

APPENDIX #5: Changes to Ontario Regulation 283/95: Disputes Between Insurers
Bulletin No. A-07/10 – Auto Property & Casualtyhttps://www.fsrao.ca/media/7866/download

With this Bulletin, the Financial Services Commission of Ontario (FSCO) is highlighting the recent changes to Ontario Regulation 283/95: Disputes Between Insurers, to ensure compliance by all insurers. The changes are effective September 1, 2010. Background Ontario Regulation 283/95 sets out a mandatory process for private arbitration of all disputes between insurers over which insurer is liable to pay accident benefits to a claimant. This regulation is intended to ensure that claimants receive accident benefits (e.g., medical and income replacement benefits) in a timely fashion while these disputes are being resolved. Ontario Regulation 283/95 was established in 1995 following several years of experience with the no-fault accident benefits system. During the past several years, a number of procedural issues and disputes over the interpretation of Ontario Regulation 283/95 have led to delays in paying claimants' benefits. In addition, the Motor Vehicle Accident Claims Fund (MVACF) has frequently had to get involved to ensure that benefit payments to injured persons were not delayed – even if a private insurer was obliged to make the payments. As part of the automobile insurance reforms which resulted from FSCO's Five Year Review of Automobile Insurance, effective September 1, 2010 Ontario Regulation 283/95 is amended by Ontario Regulation 38/10. These amendments were made to ensure that claims are not deflected and that claimants receive payments without delay in cases where there may be a dispute regarding which insurer is liable to pay statutory accident benefits. Insurers that do not comply with this regulation will be subject to appropriate

Key Regulation Changes 1. Deflection of Applications for Accident Benefits a) Upon request, an insurer must provide a claimant timely access to OCF-1: Application for Accident Benefits (OCF-1 application). (Section 2.1(2)) Individuals who are injured in automobile accidents often contact the insurance company that they believe is liable to pay accident benefits before they complete and send their OCF-1 application to the insurer. In many cases, claimants are not aware of the priority rules that determine which insurer is liable to pay them benefits. The Statutory Accident Benefits *Schedule* (*SABS*) requires an insurer to provide an OCF-1 application to an injured person who expresses an intention to make a claim for benefits. This requirement is now reinforced by section 2.1(2) of Ontario Regulation 283/95. b) An insurer must not impede claimants from submitting OCF-1 applications or redirect them to other insurers or the MVACF. (Section 2.1(5)) When a claimant first contacts an insurer following an accident, it is not always clear, based on information reported by the claimant, if that insurer is responsible for paying the accident benefits in accordance with the priority rules. It is inappropriate for the insurer to discourage the injured person from filing an OCF-1 application, for example on the grounds that there is no insurance coverage (e.g., due to a cancelled insurance policy), or that there is another insurer to whom the person should make his or her claim. Insurers must provide claimants who express an intention to make an accident benefits claim with an OCF-1 application and not direct them to file it with MVACF or another insurer. Section 2.1(5) of Ontario Regulation 283/95 prohibits the deflection of OCF-1 applications. This includes deflection on the grounds that it is not clear which insurer is

required to pay accident benefits. c) The first insurer that receives an OCF-1 application must pay accident benefits in accordance with the *SABS*. (Section 2.1(6)) In order to prevent delays in payments, Ontario Regulation 283/95 requires the first insurer that receives a completed OCF-1 application to pay the accident benefits, as long as the claimant meets the requirements of the *SABS*. Although an insurer may believe that it is not responsible for paying accident benefits under the priority rules, the process to transfer, dispute and recover paid benefits is set out in Ontario Regulation 283/95. d) An insurer that fails to comply with this section will reimburse the MVACF or another insurer all related legal fees, administrative costs and disbursements. (Section 2.1(7) Section 2.1 (7) has been added to Ontario Regulation 283/95 to confirm the ability to recover costs incurred by the MVACF or an insurer in the administration of a claim (including adjusting costs) from the non-compliant insurer. 2. Definitions of "First Insurer" and "Completed Application" Several amendments are intended to provide clarity on issues that have arisen since the release of Ontario Regulation 283/95 in 1995; such as what is a "first insurer" and "completed application". a) A "completed application" is defined as a completed and signed OCF-1 application. (Section 0.1) b)The insurer that first receives a completed OCF-1 application is the "first insurer" for the purposes of Ontario Regulation 283/95. (Section 2.1(6)) A "first insurer" may not refuse to respond to the application on the basis that the application is not from an "insured person", or that there was no relevant policy in place on the date of the accident (e.g., the insurance policy was cancelled, expired or never existed). c) The applicant shall complete the OCF-1 application that is provided by the insurer and send it to only one insurance company. (Section 2.1(4)) Claimants are required to submit a completed OCF-1 application to only one insurer. This is intended to avoid potential disputes over which insurer first received a completed application, rather than creating confusion by submitting OCF-1 applications to more than one insurer. 3. Time Limitations for Notifying Other Insurers of Liability a) Before initiating a dispute against the MVACF, an insurer is required to complete a reasonable investigation to determine if any other insurer(s) is/are liable to pay benefits in priority to the MVACF and provide the MVACF with the particulars and results of the investigation. (Section 3.1(2)(a) and (b)) Section 3 of Ontario Regulation 283/95 provides the first insurer 90 days from the receipt of the completed application to conduct a reasonable investigation. This time frame allows the insurer to conduct an investigation to determine whether another insurer is liable to pay benefits, and to deliver written notice to other insurers if it believes they are liable to pay for accident benefits under the priority rules. Ontario Regulation 283/95 provides an extension beyond 90 days only if the first insurer has made reasonable investigation of the claim but cannot reach a decision within the 90-day period. Section 3.1 requires an insurer that wishes to put the MVACF on notice of a dispute to first complete a reasonable investigation and provide the results of the investigation to the MVACF.

Due to the unique nature of the claims that are submitted directly to the MVACF, in many cases another policy is discovered only after an extended period of investigation. As a result, this time limit does not apply to OCF-1 applications that are submitted first to the MVACF. (Section 3(2.1)) To facilitate the early resolution of disputes between insurers, a dispute about which insurer is responsible

for payments must go to arbitration within one year of providing notice to the other insurer. See section 7 for the specific rules that need to be followed. Enforcement Note that in addition to

sections 2.1(7) and 7 (6), actions contrary to Ontario Regulation 283/95 will be subject to appropriate enforcement or regulatory action in accordance with section 441 of the *Insurance Act* and Ontario Regulation 7/00: Unfair or Deceptive Acts or Practices. Publication of Arbitration Decisions involving Disputes Between Insurers Amendments to Ontario Regulation 283/95 have been made to ensure that arbitration decisions involving disputes between insurers are both timely and publicly available. The amendments require the insurer that is found by the arbitrator to be liable to pay benefits to make the arbitrator's decision public in a manner and form specified by the Superintendent. (Section 8(4)) The specified form and the process by which insurers will need to comply with this requirement will be the subject of a future Property & Casualty – Auto Bulletin. Effective Date The effective date of the Ontario Regulation 283/95 amendments is September 1, 2010. All insurers need to ensure that their claims and underwriting staff, plus any other staff who may be affected by these amendments, are informed of these changes. In addition, insurers are to ensure that they make any operational changes needed to implement the reforms by the effective date. Copies of Regulations The *Insurance Act* and Ontario Regulations 283/95 and 38/10 can be downloaded from the e-laws website at www.e-laws.gov.on.ca. Phil Howell Chief Executive Officer and Superintendent of Financial Services May 13, 2010

APPENDIX #6:AF-143, “Notice to Applicant of Dispute between Insurers”

Fillable/saveable:

AF-143E

Form details

Form number:	AF-143
Form title:	Notice to Applicant of Dispute Between Insurers
Sector:	Auto
Category:	Other - Auto
Last update:	1995-04-01

Notice to Applicant of Dispute Between Insurers

Name of Applicant

Mr. ☐ Mrs. ☐ Ms. ☐ Last Name First Name

Street Address

City Province Postal code

Date of Accident Day / Month / Year

This notice is to inform you that the insurer to whom you have applied for accident benefits claims that another insurer is responsible for paying these benefits. You may be required to assist the insurers in resolving their dispute by providing them with any information that may be needed to determine which insurer should be paying your accident benefits claim.

You will continue to receive accident benefits that you are entitled to from the insurer that you applied to while the insurers attempt to resolve their dispute.

You also have the right to object to your claim being transferred to another insurer. If you wish to object please complete Part 5 of this form and send it within 14 days to the insurer that is currently paying you accident benefits. If you object, you are entitled to participate in any proceeding that may take place to determine which insurer is responsible for paying accident benefits to you. If you do not object, you will not be permitted to dispute the transfer of your claim to another insurer.

If you have any questions about this notice, or about the process that insurers use to determine who is responsible for paying your claim, please contact the representative of the insurance company that is paying your accident benefits claim. The name and telephone number of the representative is listed in Part 1.

Part 1: Insurer that You Applied to for Accident Benefits

Company Name

Mailing Address

City Province Postal code

Contact Person/Representative Phone No. ( )

Part 2: Insurer(s) Notified to Pay Benefits (by Insurer listed in Part 1)

First Company Name

Mailing Address

City Province Postal code

Contact Person/Representative Phone No. ( )

Attach additional sheets if necessary. ☐ Additional sheets attached.

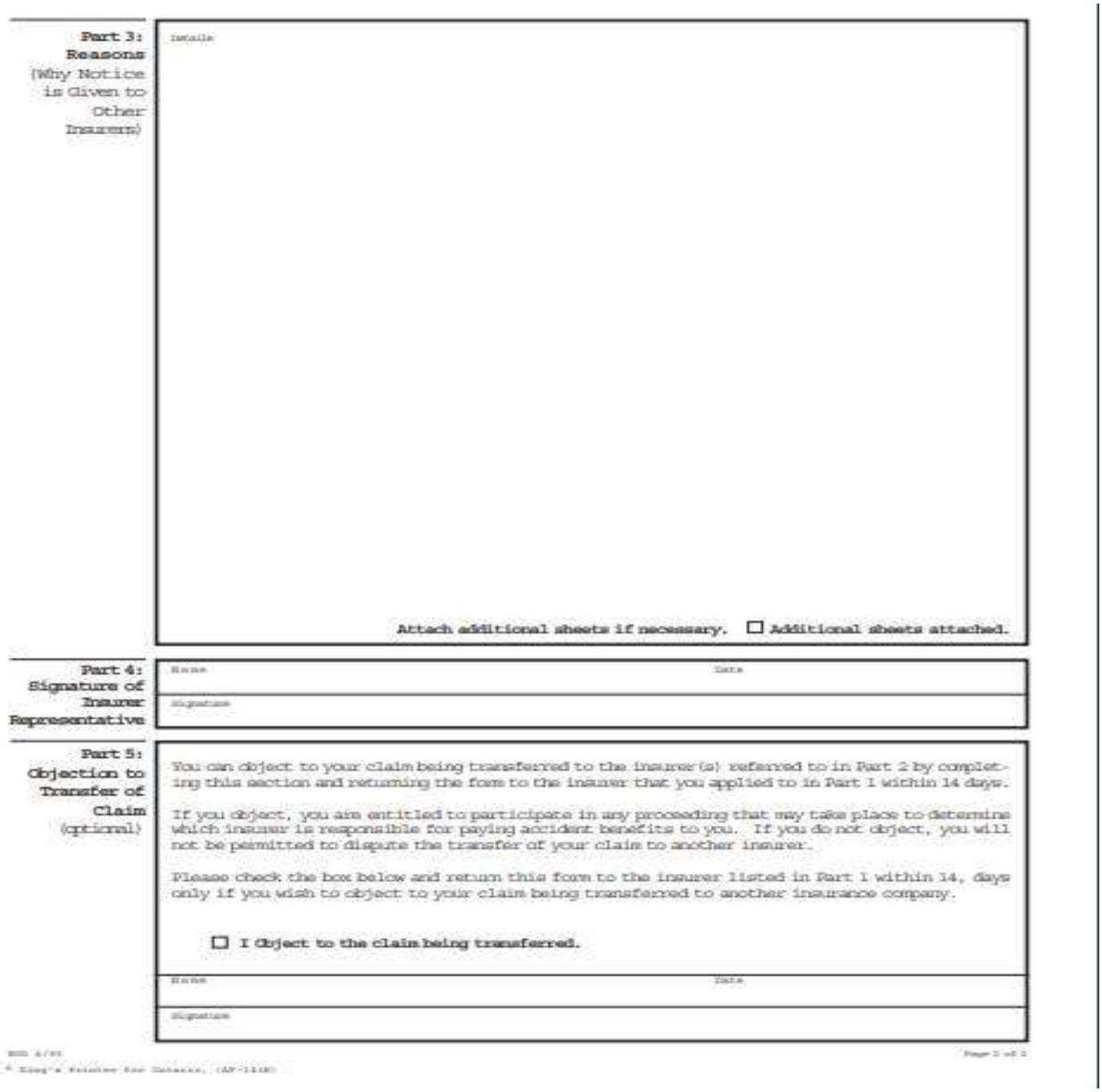
Second Company Name

Mailing Address

City Province Postal code

Contact Person/Representative Phone No. ( )

Attach additional sheets if necessary. ☐ Additional sheets attached.



Part 3: Reasons (Why Notice is Given to Other Insurers)

Details

Attach additional sheets if necessary. ☐ Additional sheets attached.

Part 4: Signature of Insurer Representative

Name Date

Signature

Part 5: Objection to Transfer of Claim (optional)

You can object to your claim being transferred to the insurer(s) referred to in Part 2 by completing this section and returning the form to the insurer that you applied to in Part 1 within 14 days.

If you object, you are entitled to participate in any proceeding that may take place to determine which insurer is responsible for paying accident benefits to you. If you do not object, you will not be permitted to dispute the transfer of your claim to another insurer.

Please check the box below and return this form to the insurer listed in Part 1 within 14, days only if you wish to object to your claim being transferred to another insurance company.

☐ I Object to the claim being transferred.

Name Date

Signature

[Copied and pasted] [square bracketing is the Applicant's for ease of reference]

For ease of searchability by the ONSC and the participating parties at the ONSC (Divisional Court level or by way of single justice on an expedited basis), the following are copied and pasted from the A143 Form at the following pages with endnoting for ease of application of the facts to the law:

[page 1]

"This notice is to inform you that the insurer[112] to whom you have applied for accident benefits claims[113] that another insurer[114] is responsible for paying[115] these benefits. You[116] may be required to assist the insurers[117] in resolving their dispute by providing them with any information that may be needed to determine which insurer[118] should be paying your accident benefits claim. You will continue to receive accident benefits that you are entitled to from the insurer[119] that you applied to while the insurers attempt to resolve their dispute.

[Applicant's transfer of claim objection rights]

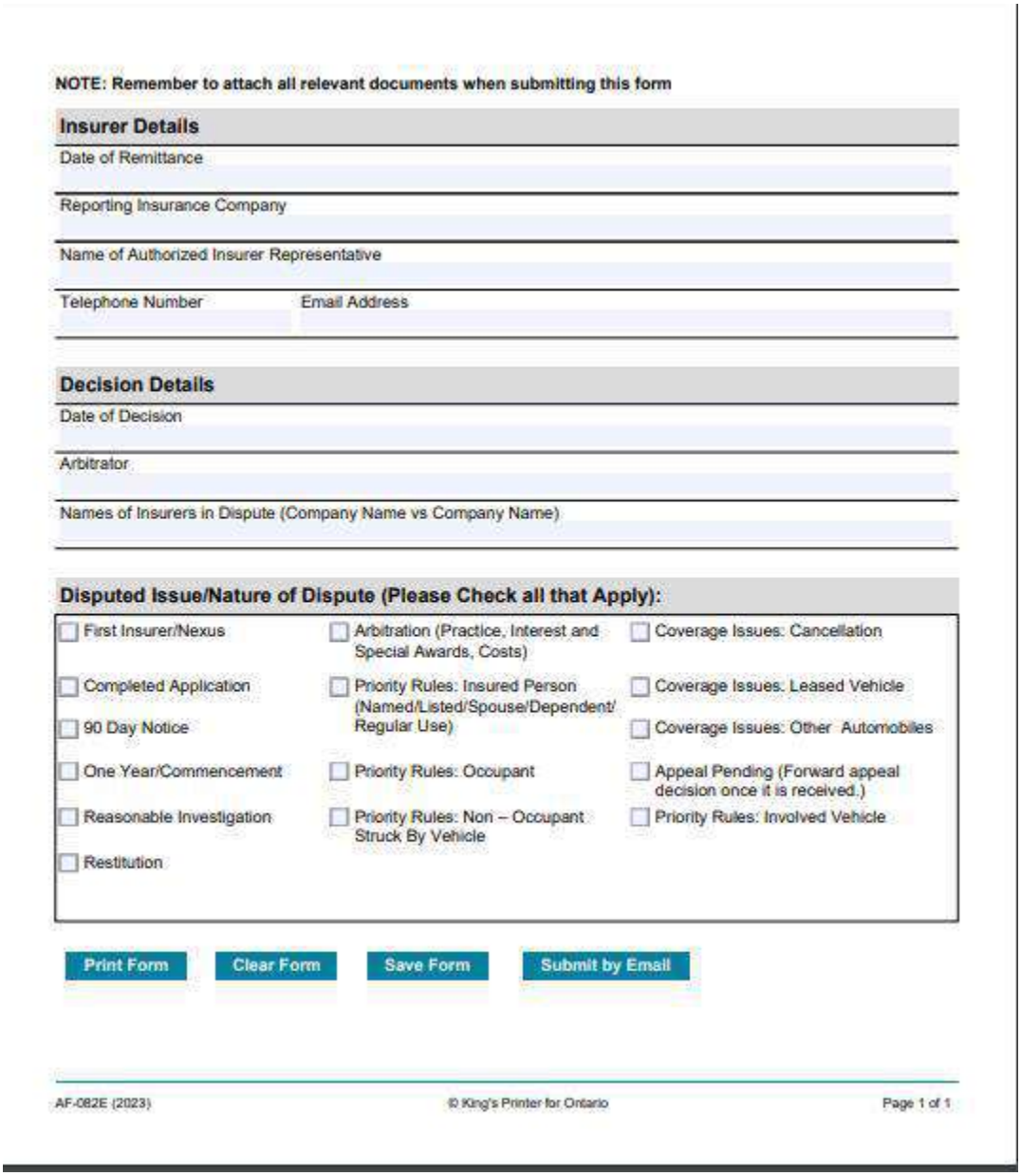
You also have the right to object to your claim being transferred[120] to another insurer[121]. If you wish to object please complete Part 5 of this form and send it within 14 days to the insurer that is currently paying you accident benefits[122].

[Applicant's arbitration participatory rights]

If you object, you are entitled to participate in *any* ***proceeding***[123] that may take place to determine which insurer is responsible for paying accident benefits to you. If you do not object, you will not be permitted to dispute the transfer of your claim to another insurer.

If you have any questions about this notice, or about the process that insurers use to determine who is responsible for paying your claim, please contact the representative of the insurance company that is paying your accident benefits claim. The name and telephone number of the representative is listed in Part 1.[124]

APPENDIX #7: REMITTANCE FORM PURSUANT TO FSRA REQUIREMENT



NOTE: Remember to attach all relevant documents when submitting this form

Insurer Details

Date of Remittance

Reporting Insurance Company

Name of Authorized Insurer Representative

Telephone Number | Email Address

Decision Details

Date of Decision

Arbitrator

Names of Insurers in Dispute (Company Name vs Company Name)

Disputed Issue/Nature of Dispute (Please Check all that Apply):

- ☐ First Insurer/Nexus
- ☐ Completed Application
- ☐ 90 Day Notice
- ☐ One Year/Commencement
- ☐ Reasonable Investigation
- ☐ Restitution
- ☐ Arbitration (Practice, Interest and Special Awards, Costs)
- ☐ Priority Rules: Insured Person (Named/Listed/Spouse/Dependent/ Regular Use)
- ☐ Priority Rules: Occupant
- ☐ Priority Rules: Non – Occupant Struck By Vehicle
- ☐ Coverage Issues: Cancellation
- ☐ Coverage Issues: Leased Vehicle
- ☐ Coverage Issues: Other Automobiles
- ☐ Appeal Pending (Forward appeal decision once it is received.)
- ☐ Priority Rules: Involved Vehicle

Print Form | Clear Form | Save Form | Submit by Email

AF-082E (2023) © King's Printer for Ontario Page 1 of 1

Endnotes

[1]AABS division
[2] Along with the interplay between the enabling statute (*Insurance Act*) and binding pieces of legislation (regulations) in *Reg 283*, *SABS* and *Reg 664*:
[3]Effective date
[4](see: *Legislation Act*, wherein a statute and regulations are both "legislation"),
[5]*Dunsmuir v. New Brunswick*, 2008 SCC 9 (CanLII), [2008] 1 SCR 190, <https://canlii.ca/t/1vxsm>, retrieved on 2024-12-10
[6]Mr. Nieuwland filed a DOR on behalf of SNIC on June 28, 2024.
[7](iii) concerns about the Tribunal's undue influence or lack of independence, even subconsciously, from the insurance companies due to it being the only non-state funded Tribunal of the 13 tribunals in "Tribunals Ontario"; and (iv) an investigation report involving Ms. Trina Morrissette from the federal government regarding her conduct as a lobbyist for the Canadian Red Cross ("CRC").[7] The Applicant says her conduct amounts to "similar fact evidence" and contextual evidence that arises as a result of the **VCM Decision**.
[8]Balance of probabilities standard: is it more likely than not that there will be a failure of justice by the delay.
[9]Mr. Nieuwland's recent email to this ONSC (Divisional Court) has reignited the subsequent issues: (i) whether insurance companies in a group of insurers are 'one and the same', 'also known as' or 'also referred as'; (ii) the rule in *Foss v. Harbottle*; (ii) the FSRA guidance on affiliated entities only have an exemption on the non-adjuster broker side, and (iv) the motives for why such insurance companies in the TDI Group would engage in such misconduct.
[10]In this regard, the **VCM Decision** has again put two administrative bodies, at least, in the FSRA and the Tribunal against each other when they operate under the same enabling statute (*Insurance Act*) and the participants (insured persons, service providers and insurance companies) must comply with the *UDAP Rule* (2022 *et seq*).
[11]The Applicant is seeking by his factum to be heard before a single justice of the ONSC, with leave, due to the urgency of the issues herein.
[12]all people are equal under the law and have the right to equal protection and benefits with SABS benefits for all similarly situated persons to this Applicant
[13]all people, institutions, and entities are accountable to the law; (iii) *transparency*: the law-making process is transparent
[14]people have access to justice through independent and impartial courts
[15] (and patently unreasonable)
[16](with no distinction between a breach of *SABS* and *Reg 283* (see: *Chubb Insurance Co. of Canada v. Zurich Insurance Company*, 2024 ONSC 2929 (CanLII), <https://canlii.ca/t/k4tln>, retrieved on 2024-12-10 ["*Zurich* 2024"],
[17]on account of technicalities in the language of the LAT Rules which was different from the time this ONSC (Div. Court) upheld the reconsideration decision of VC Trojek in *Jia*
[18]*The Personal Insurance Company v. Jia*, 2020 ONSC 6361 (CanLII), <https://canlii.ca/t/jb7qm>, retrieved on 2024-12-10
[19]*Harold The Mortgage Closer Inc. v. Chief Executive Officer of the Financial Services Regulatory Authority of Ontario*, 2024 ONSC 2236 (CanLII), <https://canlii.ca/t/k43bl>, retrieved on 2024-12-10
[20]*Volochay v. College of Massage Therapists of Ontario*, 2012 ONCA 541 (CanLII)
[21]*Volochay v. College of Massage Therapists of Ontario*, 2012 ONCA 541 (CanLII), at para 68, <https://canlii.ca/t/fsdgd#par68>, retrieved on 2024-12-10 https://canlii.ca/t/fsdgd#par68
[22](see: [U]nless exceptional circumstances exist, a court should not interfere in an administrative proceeding until it has run its course. The principle has particular force where adequate alternative remedies are available under the administrative scheme. Ordinarily an affected individual must pursue these remedies before seeking relief from the court. The Federal Court of Appeal has endorsed this approach as well in Dugré v Canada (Attorney General), 2021 FCA 8, at para 37, framing the rule against prematurity, or interlocutory relief, as "next to absolute".).
[23]Herein, a multiplicity of proceedings will be avoided and the law will be clarified and settled, while avoiding a return by this Applicant to make the same arguments that he would even if all of his benefits and quantum were found in his favour because the wrong party would be liable for the same and required to respond *post-facto* the conclusion of the Hearing Proper. In this regard, the Applicant herein confirms, by his authorized signature, that he would bring the same *JRPA* Application and he respectfully submits that the principle of mootness, cited by the SCC in *Borowski*,

would not be applicable because the important legal issues would not only not be decided but the decision of the LAT would be in conflict with the governing statutes, governing regulations and its own *LAT Rules*.

[24] *Sanscon Construction Ltd. v. City of Toronto*, 2021 ONSC 6409 (CanLII), <https://canlii.ca/t/jjn4p>, retrieved on 2024-12-10

> [16] Sanscon's Application was not brought before the Divisional Court, contrary to the Consolidated Practice Direction.
>
> [17] Sanscon's factum does not seek leave under s. 6(2) of the JRPA to have this matter heard, nor is it in the Notice of Application. It does not reference this court's jurisdiction or address why the Application was not brought before a single judge of the Divisional Court, sitting as a judge of the Superior Court of Justice.

[25]SNIC and Primmum operate under the trade name, which is a combination of two registered trademarks in "TD Insurance Meloche Monnex", with the 'TD Insurance" owned by TD Bank and the Meloche Monnex owned by Meloche Monnex Inc. SNIC issues automobile (and home) insurance policies to alumni of various universities and those part of professional associations (the "**Alumni Professional Program**"). Primmum issues insurance policies to "employer groups".

[26]TDGIC issues insurance policies, by part of its namesake, to the "general public". Toronto has 416 area code landline telephone and fax numbers but not 905 telephone and fax numbers, and Burlington (and Markham) have 905 landline telephone and fax numbers but not 416 numbers. Mr. James V. Russell was appointed as the CEO of "TD Insurance Group" in the 2010's, and one of his stated goals was to increase the market share for "TD General" (TDGIC). This evidence provides the motive for why SNIC would allow TDGIC to be substituted for it *during* the LAT Proceeding without the name of TDGIC ever being present in a single communication since the MVA date of loss (the "Date Of Loss" or "DOL").

[27]If an Insured Person, who is also an injured person and often a lay litigant encountering the complexities of a *SABS* claim, may not keep completely accurate records of each and every fax that she has sent to an insurance company, the purported liable insurer can claim that it does not have the documents to which an injured person claims to have sent. In fact, herein this occurred with the initial adjuster for SNIC in Ms. Nurse claiming to not have certain documents that the Applicant delivered via fax. The Applicant obviously not your quintessential lay litigant had everything reduced to paper copy and saved in binders along with cloud storage whilst using an e-fax number. Affidavit #3 is an example of that attention to detail and record-keeping.

[28]https://lso.ca/about-lso/legislation-rules/by-laws/by-law-7-1

[29]LSA, ss. 62(2): (2) The by-laws made under this section shall be interpreted as if they formed part of this Act. R.S.O. 1990, c. L.8, s. 62 (2); 1998, c. 21, s. 29 (13).

[30](d) the determination of rights that depend on the interpretation of a deed, will, contract or other instrument, or on the interpretation of a statute, order in council, regulation or municipal by-law or resolution

[31]in part because of SNIC not participating in the LAT Appeal after filing a Response and allowing TD General Insurance Company ("**TDGIC**") to be substituted for it,

[32]Factually on many levels, this is not an *JRPA* Application, like the flurry of arbitral, judicial review and appellate decisions involving *Zurich v. Chubb* from 2009 to 2024 (the "*Zurich Decisions*") in that TDHA did not merely receive one completed OCF-1, like Chubb Insurance Company through some innocent mistake by an injured individual (Ms. Singh) involving her rental of vehicle and seeing the name of "Chubb" inside the car rental office. TDHA received the *SABS* Applicant's completed OCF-1, OCF-2, OCF-3, OCF-6 and OCF-19. It is also uncontroverted that TDHA, by being the only former commercial tenant at the **East Mall Address (Etobicoke)** received all the Applicant's OCF-18's that were submitted through HCAI.[32]

[33] *Chubb Insurance Co. of Canada v. Zurich Insurance Company*, 2024 ONSC 2929 (CanLII), <https://canlii.ca/t/k4tln>, retrieved on 2024-12-10 (see: *Zurich 2024*, paragraph 6 (see: https://canlii.ca/t/k4tln#par6)).

[34] *Chubb Insurance Co. of Canada v. Zurich Insurance Company*, 2024 ONSC 2929 (CanLII), <https://canlii.ca/t/k4tln>, retrieved on 2024-12-10 (see: *Zurich 2024*, paragraph 16 (see: https://canlii.ca/t/k4tln#par16)).

[35]The Applicant erred in omitting said word in his JRPA Application and he apologizes to this ONSC Div. Court and the respondents for the same.

[36] *Chubb Insurance Co. of Canada v. Zurich Insurance Company*, 2024 ONSC 2929 (CanLII), <https://canlii.ca/t/k4tln>, retrieved on 2024-12-10 (see: *Zurich 2024*, paragraph 54 (see: https://canlii.ca/t/k4tln#par54)

[37](see: paragraph 15 of the ***JRPA* Application**).

[38] *Chubb Insurance Co. of Canada v. Zurich Insurance Company*, 2024 ONSC 2929 (CanLII), <https://canlii.ca/t/k4tln>, retrieved on 2024-12-10 (see: *Zurich 2024*, paragraph 8).
[39] *Chubb Insurance Co. of Canada v. Zurich Insurance Company*, 2024 ONSC 2929 (CanLII), <https://canlii.ca/t/k4tln>, retrieved on 2024-12-10 (see: *Zurich 2024*, paragraph 29).
[40]Herein, there was no evidence that TDHA paid any benefits but there was also no evidence that TDHA disputed its liability and obligations.
[41] *Chubb Insurance Co. of Canada v. Zurich Insurance Company*, 2024 ONSC 2929 (CanLII), <https://canlii.ca/t/k4tln>, retrieved on 2024-12-10 (see: *Zurich 2024*, paragraph 10).
[42]on a provisional basis but with an ability to step out of those shoes if the First Insurer avails itself to the *Reg 283* protections and obtain reimbursement from the liable insurer after provisionally responding to the Claimant (i.e. legal fees, disbursements, administration fees et al)
[43]*Zurich Insurance Co. v. Chubb Insurance Co. of Canada*, 2015 SCC 19 (CanLII), [2015] 2 SCR 134, <https://canlii.ca/t/gh85t>, retrieved on 2024-12-10
[44] *Chubb Insurance Co. of Canada v. Zurich Insurance Company*, 2024 ONSC 2929 (CanLII), <https://canlii.ca/t/k4tln>, retrieved on 2024-12-10 (see: *Zurich 2024*, paragraph 12).
[45] *Chubb Insurance Co. of Canada v. Zurich Insurance Company*, 2024 ONSC 2929 (CanLII), <https://canlii.ca/t/k4tln>, retrieved on 2024-12-10 (see: *Zurich 2024*, paragraph 14).
[46]Zurich Insurance v. Chubb Insurance, 2012 ONSC 6363 (CanLII), <https://canlii.ca/t/ftr4c>, retrieved on 2024-12-10
[47]As this ONSC will know, that is such a unique event by our SCC where they do not even wish to put any such amendments or clarity to a dissenting decision of the ONCA. While the justices in our province are not in the "business of counting their press clippings", it is a testament to how analytically sound The Honourable Justice Jurianz was in those dissenting reasons.
[48]Zurich Insurance Company v. Chubb Insurance Company of Canada, 2014 ONCA 400 (CanLII), <https://canlii.ca/t/g6vrk>, retrieved on 2024-12-10
[49]https://www.torontomu.ca/criminaljusticefirsts/courts/Russell-Juriansz/
[50]Zurich Insurance Company v. Chubb Insurance Company of Canada, 2014 ONCA 400 (CanLII), <https://canlii.ca/t/g6vrk>, retrieved on 2024-12-10
[51]Zurich Insurance Co. v. Chubb Insurance Co. of Canada, 2015 SCC 19 (CanLII), [2015] 2 SCR 134, <https://canlii.ca/t/gh85t>, retrieved on 2024-12-10
[52](see: *Zurich 2024*, paragraph 15).
[53]*Chubb Insurance Co. of Canada v. Zurich Insurance Company*, 2024 ONSC 2929 (CanLII), <https://canlii.ca/t/k4tln>, retrieved on 2024-12-10
[54] *Chubb Insurance Co. of Canada v. Zurich Insurance Company*, 2024 ONSC 2929 (CanLII), <https://canlii.ca/t/k4tln>, retrieved on 2024-12-10 (see: *Zurich* 2024, paragraph 64).
[55]Beasley et al. v. Barrand, 2010 ONSC 2095 (CanLII), <https://canlii.ca/t/2984g>, retrieved on 2024-12-10
[56]wherein he overturned the decision of the adjudicator in the initial decision
[57]In this *JRPA* Application, the issue of whether a lawyer like Mr. Nieuwland could act for TDGIC for six months then act for SNIC when NOM #8 was granted in the Applicant's favour, despite six months of opposition and then non-opposition [not consent], thereafter, is not at issue *per se*. However, the backdrop regarding the same is an important one.
[58]What about, as a "test case", the duties of insurance companies (and their counsel) in relation to their holding, controlling and/or possession (solely, jointly or constructively) that are: (i) neither an underwriter nor a First Insurer, and masquerade as the liable insurance company in the LAT Proceeding; (ii) the obligations of a First Insurer who remains anonymous until effectively caught as having the mailing address and/or fax number that provides unequivocal proof that it was a First Insurer; and (iii) the obligations of an underwriter, who was not the First Insurer, who carries on as the solely liable insurance company but then does not participate after filing the sole Response, pursuant to section 280(2) of the *Insurance Act*, in a LAT proceeding?
[59]Pursuant to section 280(1) of the *Insurance Act*, "this section applies with respect to the resolution of disputes in respect of an insured person's entitlement to statutory accident benefits *or* in respect of the amount of statutory accident benefits to which an insured person is entitled." Pursuant to ss. 280(2) of the *Insurance Act*, "The insured person *or* the insurer *may* apply to the Licence Appeal Tribunal to resolve a dispute described in subsection (1)". No person may bring a proceeding in any court with respect to a dispute described in subsection (1), other than an appeal from a decision of the Licence Appeal Tribunal or an application for judicial review: ss. 280(3) of the *Insurance Act*. The dispute shall be resolved in accordance with the *Statutory Accident Benefits Schedule*
[60]. 2014, c. 9, Sched. 3, s. 14: ss. 280(4) of the *Insurance Act*.

[61](see: "statutory accident benefits" mean the benefits set out in the regulations made under paragraphs 9 and 10 of subsection 121 (1) of the *Insurance Act*; see: section 121(a): "121 (1) The Lieutenant Governor in Council may make regulations").
[62]The Applicant notified SNIC, pursuant to the *Schedule*, s. 32, in early September 2022, that he wished to apply for benefits making SNIC not only the Sole Underwriter but the First Notified Insurer.
[63]The Applicant, in his capacity as a *SABS* applicant, sent the Completed Application [OCF-1] to the **North York Fax Number** on October 12, 2022. Ergo, at law, the *SABS* Applicant sent, or "served" only one **Completed Application** to only one insurer in TDHA. TDHA was the sole insurer that first received (the "First Insurer") the ***SABS* Applicant's Completed Application**.
[64]In fact, and at law, SNIC did not stop the Applicant from submitting his Completed Application to TDHA in that it provided him with the **TDHA Fax Number**. It is the word "accept" that is so pivotal in this ***JRPA* Application** by VCM's choice of language at paragraph 27 therein.
[65]"first party insurer" means the insurer responsible under subsection 268 (2) of the Act for the payment of statutory accident benefits; ("assureur de première part"): Automobile Insurance, RRO 1990, Reg 664, s 9, <https://canlii.ca/t/tlw#sec9>,
[66]The word "accept" is of great importance considering the finding by VCM, without any evidence in the record of proceeding to support the same, that TDGIC and SNIC jointly ***accepted*** priority of the Applicant's [sic] insurance policy [sic] (see: paragraph 27 of the **VCM Decision**).
[67]As SNIC was the Sole Underwriter in the Insurance Policy, the Applicant has alleged that SNIC (as First Notified Insurer) breached section 2.1(5) of *Reg 283* by taking action, with intent (as it knew that its fax number was not the **North York Office Fax Number**), to prevent or stop the Applicant from submitting his Completed OCF-1 to it [SNIC] as it is an out-of-province insurer.
[68]In relation to the lack of promptness, SNIC somehow sent the Applicant's accident benefits package to the wrong postal code address yet his Spouse received her accident benefits package to the correct postal code when they lived in the same residence
[69]Further, the Applicant provided uncontroverted evidence that SNIC failed to provide its correct facsimile address in the Completed Application but instead provided the fax number of TDHA and thereby breached subsection 2.1(3) of *Reg 283*.
[70]Reimbursement by the non-compliant insurer during the period of non-compliance (see: ss. 2.1(7) of *Reg 283*): (i) legal fees; (ii) adjuster's fees; (iii) administrative costs; and (iv) disbursements
[71]Subsection 2.1 of *Reg 283* applies to this judicial review as the Accident occurred on August 31, 2022, which was after September 1, 2010.
[72]Whether SNIC was to remain for costs purposes in the McLean LAT Proceeding was a matter of discretion, but the sole respondent insurance company as a matter of obligations under *Reg 283*, *SABS* and *Reg 664* was not. However, the Applicant's argument was encapsulated by a rhetorical question: *why should he not have any ability to seek costs against SNIC for its conduct in the LAT Proceeding that he alleged and alleges was unreasonable, frivolous, and in bad faith?* Costs are not a matter that relate to the *Insurance Act*, and the binding regulations herein (*SABS* and *Reg 283*), as the Tribunal passed them under a different statute: section 17.1 of the SPPA. Put another way, is the Applicant's time not worth anything when it required hundreds of hours to obtain the order in NOM #8?
[73]Even when the OCF-19 was fax delivered, in November 2023, to the VP Bldg. 4th Floor Fax Number, and when SNIC's fax number (**Burlington 905 Fax Number**) was blocking the same, SNIC responded by misidentifying one of the legal tests for a duly completed OCF-19 and merely enclosed a copy of a blank OCF-19. Moreover, when considering the **Forged Signature** in the OCF-18, last page only, it could not have been SNIC, although it appeared that way in HCAI by insurer name but NOT physical address, with the "As per A. Nurse", it was TDHA's address (East Mall Etobicoke Address) that received the duly completed OCF-18 at first instance. Perhaps, this is why Ms. Nurse, an adjuster, was not amenable to executing the same.
[74]The same would have been applicable to TD Staff Legal and Mr. Nieuwland with its fax and his listed fax number with the LSO. Said unappealed findings are determinative that *neither* SNIC nor TDGIC were the First Insurers by way of the fax served Completed Application upon the 4th Floor VP Building Fax Number which was TDHA.
[75]"If the Licence Appeal Tribunal finds that an insurer has unreasonably withheld or delayed payments, the Licence Appeal Tribunal, in addition to awarding the benefits and interest to which an insured person is entitled under the Statutory Accident Benefits *Schedule*, may award a lump sum of up to 50 per cent of the amount to which the person was entitled at the time of the award together with interest on all amounts then owing to the insured (including unpaid interest) at the rate of 2 per cent per month, compounded monthly, from the time the benefits first became payable under the *Schedule*. O. Reg. 43/16, s. 4.".

[76](like the vacillation of findings and orders of the arbitrator, ONSC (Goldstein J. in the ONSC), reversed by the ONCA, and the ONCA reversed by the SCC adopting the dissent of Justice Jurianz)
[77]It is trite that while the Tribunal is required to determine whether Mr. McLean was entitled to certain benefits and in what amounts, it also must determine which insurance company was and is liable for certain benefits and at what times. It can only do that if that the First Insurer is found to be TDHA and that decision must come from the ONSC.
[78] There was no evidence and none in the Application Record that TDHA, or any insurer, ever did so. Even on the convoluted, tortuous, unsupported and absurd logic of VCM that SNIC and TDGIC accepted priority over the Insurance Policy, there was some form of "transfer of the claim" to TDGIC which would have required notice to, at least, TDGIC and the *SABS* Applicant. No evidence was ever provided of such written notice to either.
[79]Mr. McLean was also entitled to object to SNIC (and TDGIC as he had done previously) having any control or possession of his TD Claim #3 relating to "confidential information" and documents not subsequently received by it in accordance with standardized language in the OCF-1 and *PIPEDA*. There is no dispute that TD Claim #3 was transferred from TDHA to TDGIC and SNIC. SNIC claimed to have received documents but not directly from the Applicant. SNIC purported to respond or did respond to the Applicant in relation to some communications but not all communications. TDGIC then surfaced at the LAT Proceeding but only after inclusion by the Tribunal without the consent of the Applicant or without any legal authority. SNIC filed its Response ("SNIC Response") on January 25, 2024, and then Mr. Nieuwland filed a DOR on behalf of TDGIC – not SNIC. The charade continued for six months until Mr. McLean, relying on Mr. Nieuwland's misrepresentations in non-transcribed case conference, which was yet another irremediable nullity and without statutory power as TDGIC was a non-party, that SNIC and TDGIC were "one and the same" and "this is how we always do it" (in relation to TDGIC being some sort of insurance company that came "off the bench" to provide a "spark" to the "defence" for SNIC as if it were some kind of sporting event). While there is no dispute of some form of transfer from TDHA to SNIC and, of course, with some unknown terms and conditions involving TDGIC on some basis perhaps on a joint level but more likely some form of "staggered interventions" based on unknown terms and conditions in this "subsequent clandestine agreement", there are no particulars in the decision of VCM. Moreover, any such transfer was without notice to Mr. McLean, and without compliance with *Reg 283*. The scheme of *Reg 283* requires substantive and procedural compliance and TDHA along with SNIC and TDGIC intentionally breached *Reg 283* without any form of attempt to cure the same. The required FSRA form did not matter to TDHA. The closest evidence that this ONSC has is a fax from an unknown fax number to Mr. McLean that TDHA had no record of his claim as of March 2023 (and then another letter in August 2024 albeit after NOM #14 and NOM #15). It was a fax without any semblance of compliance with *Reg 283*, and *SABS* to some degree, and the FSRA Form 143. It directed Mr. McLean to other fax numbers in Calgary, Montreal, New Brunswick and Burlington without reference to any insurance company. Mr. McLean was entitled, after lengthy investigation and fortuitous discoveries, was entitled to object and required to bring the issue forward as to TDHA not complying with its duties to respond and to pay benefits as the First Insurer.
[80]Due to the public importance of the issues herein, the Applicant respectfully, yet forcefully, notes that the LGIC did not create any ability for an insured person (applicant) to consent or sanitize the breaches that have occurred herein. Put another way, the LGIC did not pass any provisions that would authorize an insured person to sanitize or remedy such clandestine breaches to provide post-facto consideration that cure such non-compliance with *Reg 283*. Therefore, this undisclosed agreement by the respondent insurance companies, known to the Tribunal but not the Applicant, has no legal force or effect. The purposes of the inflexible prescribed regulations are to promote compliance with the statutory scheme and not to assist insurance companies and insured persons in isolated incidents so that an "insured person" can assist delinquent and felonious activities. To not set aside the VCM Decision and replace it with a correct decision, while the ONSC commences *ab initio*, would represent a precedent that contains a "slippery slope". Perhaps, "insurance companies" like this collection of respondent insurance companies may send a late notice with a semi-contemporaneous phone call to an insured person that may be in the form of a bribe so that the "checks and balances" of various regulatory bodies (FSRA, LSO, OPCC et al) do not catch "wind of the unlawful scheme".
[81][3] .... The test for *res judicata* was applied by the Adjudicator as follows (Decision, para. 12). In my view, the four preconditions for *res judicata* are satisfied. The parties are the same in both proceedings. The prior claim was within the jurisdiction of the Tribunal. The decision in the first application was based on the merits. The Tribunal reviewed the submissions and evidence and found that the applicant was not entitled to the IRB or found that the applicant was not entitled to IRBs for the period of January 14, 2020 to date and ongoing. Moreover, he was not entitled to payment for the November 9, 2019 accounting report. The first decision was a final decision because he did <u>not</u> file a reconsideration request and nor did he appeal the decision.
[5] A LAT decision is final and authoritative, subject to a party's rights of reconsideration or appeal from that decision. A party that disagrees with a LAT decision may not ignore that decision and recommence the same claims all over again. That is what the Appellant has done in this case. Even if the LAT erred in the first decision

and decided the case on the basis of an issue that was not before it, that error would not have deprived the LAT of jurisdiction. The LAT's second decision is correct in law; this appeal fails on the merits.

[82]*Kazen v. Whitten & Lublin Professional Corporation*, 2020 ONCA 325 (CanLII), <https://canlii.ca/t/j7z9n>, retrieved on 2024-12-10 ["*Kazen*"]

[83]*Fatemea Rezaiezadeh v. State Farm Mutual Automobile Insurance Company*, 2016 ONFSCDRS 59 (CanLII), <https://canlii.ca/t/jq9fm>, retrieved on 2024-12-10 ["*Reza*"]

[84]It is trite that the Sheriffs in Ontario operate in different jurisdictions. TDHA's known address, when utilizing the fax number (landline phone number) of 416.774.3120, was that of 4th floor of the VP Building (North York) which is in the City of Toronto. The Tribunal found that SNIC's address for service in the LAT Proceeding was that of the Burlington Office Building (5th floor) which was tied to the 905 Fax Number. This was consistent, albeit absent the floor number, to SNIC's "switch" or "change" from the Markham Office Address to the Burlington Office Address which was only *after* the Applicant received the March 2023 fax that an unknown insurance company, presumably TDHA, did NOT have any record of his TD Claim #3 after responding to one of his earlier faxes to 416.774.3120. Further, the Tribunal found repeatedly that TDGIC's address was 9th floor-3650 Victoria Park Avenue, North York, Toronto, Ontario, with a fax number of 416.774.3629. Therefore, the Applicant could be wedged in an unsolvable, unfathomable and impenetrable conundrum and a perjury trap. In relation to the latter, if the Applicant was required to swear evidence for the Sheriff regarding enforcement of an order against SNIC, it would force Mr. McLean into a "perjury trap".

[85]This ONSC can take judicial notice that SNIC and TDGIC could not even correctly represent the amount of benefits paid to the Applicant in May 2024 which leaves only one other insurance company, by reference to the fax number of 416.774.3120, that would correctly know the same.

[86]*Fatemea Rezaiezadeh v. State Farm Mutual Automobile Insurance Company*, 2016 ONFSCDRS 59 (CanLII), <https://canlii.ca/t/jq9fm>, retrieved on 2024-12-10 ["*Reza*"]

[87]A change in the title of proceeding in this case potentially affects every Commission case involving the present insurer. At present there is no suggestion that this appeal is a nullity or that it should be stayed pending an order to continue as would happen under Rule 11.01 of the *Rules of Civil Procedure*. In the absence of any case law regarding a presently hypothetical concern, I defer to any further or other appellate officer the question of amending the title of proceeding in this appeal proceeding in the event there is any difficulty in the enforcement of this appeal order. I leave to arbitration any amendment of the title of proceeding at that level."

[88]*College of Traditional Chinese Medicine Practitioners and Acupuncturists of Ontario v. Federation of Ontario Traditional Chinese Medicine Association (Committee of Traditional Chinese Medicine Practitioners & Acupuncturists of Ontario), 2015 ONCA 851 (CanLII), <https://canlii.ca/t/gmf92>, retrieved on 2024-12-10*

[89]Las Vegas Strip Ltd. v. Toronto (City), 1996 CanLII 8037 (ON SC), <https://canlii.ca/t/1vttp>, retrieved on 2024-12-10

[90]EnerNorth Industries Inc. (Re), 2009 ONCA 536 (CanLII), <https://canlii.ca/t/249wt>, retrieved on 2024-12-10.

[91]*Chubb Insurance Co. of Canada v. Zurich Insurance Company*, 2024 ONSC 2929 (CanLII), <https://canlii.ca/t/k4tln>, retrieved on 2024-12-10

[92]*Fatemea Rezaiezadeh v. State Farm Mutual Automobile Insurance Company*, 2016 ONFSCDRS 59 (CanLII), <https://canlii.ca/t/jq9fm>, retrieved on 2024-12-10 ["*Reza*"]

[93]Awada v. Allstate, 2021 ONSC 8108 (CanLII), <https://canlii.ca/t/jl6vv>, retrieved on 2024-12-10

[94]Mansuri v. Dominion of Canada General Insurance Company, 2023 ONSC 5764 (CanLII), <https://canlii.ca/t/k0nrz

[95]Mansuri v. Dominion of Canada General Insurance Company, 2023 ONSC 5764 (CanLII), <https://canlii.ca/t/k0nrz

[96]Of note, the Applicant is not challenging the decision of the Tribunal that did not find a reasonably perceived conflict of interest as a preliminary issue therein but rather he is challenging the decisions and orders of VCM that did not add TDHA as a party – at the very least so the Applicant could advance the argument of which insurance company was liable to respond and pay benefits. Since SNIC was and is not the First Insurer, as, in fact, found by the Tribunal or not found to not be, and TDGIC was already removed by non-opposition by TDGIC, then it leaves Primmum and SNIC. Primmum and SNIC have a bond with respect to the "TD Insurance Meloche Monnex" programs. The only insurance company in the TDI Group that was located at the **Material Time** at the **VP Building** with the fax of 416.774.3120 was TDHA. Former case manager Mr. Grant even admitted, on May 6, 2024, as a matter of optics, how the Tribunal viewed "TD Insurance" as being one of two companies: (i) TDGIC; and (ii) TDHA.

[97]*Sudbury and District Health Unit v Ontario Nurses' Association*, 2023 ONSC 2419 (CanLII), <https://canlii.ca/t/jxgwc>, retrieved on 2024-12-10

[98]The Applicant is not making any argument in costs savings but avoidance of having two JRPA proceedings before this ONSC with the identical challenges to NOM #14 and #15.
[99]*Gage v. Ontario (Attorney General)*, 1992 CanLII 8517 (ON SCDC), <https://canlii.ca/t/gbkgx.
[100]This is particularly the case when the Applicant has drawn it to the attention of not only the Tribunal but VCM when she made the same mistake previously.
[101]In November 2017, one Ms. Karen E. Shepard wrote to then The Honourable Speaker Furey (Senate of our Parliament), "Pursuant to section 10.5 of the *Lobbying Act*, I have the honour of presenting to you a Report on Investigation on the lobbying activities of Trina Morissette for tabling in the Senate. The investigation was conducted in accordance with the provisions of section 10.4 of the Act." A key duty of government officials is to interact with citizens. The *Lobbying Act* ensures that Canadians and public office holders know who is communicating with the government and on what subject.
[102]While similar fact evidence is presumptively inadmissible and must be pleaded in civil court proceedings, being one of the exceptions to pleading evidence, this was not a court proceeding and the probative value of the similar fact evidence of an adjudicator and Vice Chair who is fashioning decisions with pejorative language, slights at the Applicant, and sanctimoniously accusing him of abusing the process. The **VCM Decision** almost rings in a covert threat to stay away from "pandora's box". For the Court's edification, Mr. McLean doubled down on his FIPPA request including Mr. Sean Weir, Executive Chair of Tribunals Ontario, but without a response. He then tripled down by including the Attorney General Of Ontario in Mr. Downey as the LAT is a body of MAG and based on the recent, publicly available, MOU, Mr. Weir was delegated the authority of an "institutional head" by the AGO. How shameful can it get when the LAT requests payment of fees to obtain records and has 30 days to provide a response, then does not provide one, then the adolescent excuses flowed with "technical difficulties" and then stonewalling. It may perhaps be a fresh evidence matter. The conduct involving Ms. Morrissette was of such a serious nature that one Ms. Shephard had to immediately suspend her investigation and refer the matter to the Royal Canadian Mounted Police: "An administrative review concerning this matter was opened in February of 2015. It involved interviews, a review of correspondence and other materials and an examination of Ms. Trina Morissette's work on behalf of the Canadian Red Cross (CRC). In November of 2015, I opened an investigation based upon information provided to me in an administrative review report prepared by the Investigations Directorate of my Office. In accordance with subsection 10.4(8)[102] of the Act, I immediately suspended my investigation and referred this matter to the Royal Canadian Mounted Police (RCMP), as I had reasonable grounds to believe that a breach of the *Lobbying Act* had occurred. In December of 2016, I was informed by the RCMP following their investigation that no charges would be laid in the matter. The RCMP had determined that it was not in the public interest to prosecute Ms. Morissette." The RCMP did not find that she had not breached the Criminal Code, which is an astonishing matter considering it involved Ms. Morrissette's activities as a lobbyist for a well-known charity in the Red Cross, but it was not in the public interest to prosecute. That is an entirely different finding than there were not reasonable and probable grounds to charge. Ms. Morrissette was subject to the five-year prohibition and restrictions on lobbying after being a designated public office holder which implies that she had a role in government prior to her switch to the charitable activities of the CRC. "Prior to starting work as the CRC's manager of Government Relations in 2014, Ms. Morissette had worked as a member of a federal minister's staff from 2009 to 2013. Her final day as a member of a minister's staff was on June 14, 2013Investigator Shephard found: "I have concluded that Ms. Morissette was in breach of Rule 2 (Accurate Information) of the *Lobbyists' Code of Conduct* (1997), as well as the Principles of Professionalism and Integrity and Honesty in the Code." There are some obvious inaccuracies in the **VCM Decision** and she was given a chance to correct the same by the Applicant's section 21.1 of the *SPPA* motion and she has apparently decided not to correct the same despite carrying on with other rulings in this LAT Proceeding. It would quite one thing if VCM cross-referenced her findings to evidence in the record of proceeding or even an email that she found between Mr. Grant and another individual or representative of @tdinsurance.com but there is not even a scintilla of the same. Under the "Lessons Learned", Investigator Shepard found: "the purpose of the five-year prohibition is to ensure that designated public office holders do not use information and personal connections derived from those positions to the advantage of interests that they lobby on behalf of. This is in the public interest because it ensures that Canadians can have confidence in the integrity of government decision-making." LAT is a body of government and the MAG no less. It is where this court has to exercise its supervisory jurisdiction to ensure the conduct of VCM and to some extent VCL, who was on notice of a potential conflict of interest relayed to one Mr. Grant but then snapped out a decision in relation to NOM #7 and then was presumed gone until October 2024, is realigned with the integrity and professionalism requirements of a decision maker with the Tribunal. However, lobbying public office holders should be done in a transparent manner and in conformity with high standards of conduct (see: Investigator Shepard). The same applies to the decision-making process of the LAT. She worked for the CRC for approximately 16 months as she returned to the Minister of Health in late 2014. It is unclear if she was fired. Pursuant to subsection 10.11(1) of

the *Lobbying Act*, when Ms. Morissette ceased being a designated public office holder from 2013 until her return to work as a ministerial exempt staff in October of 2014, she was subject to the prohibition on lobbying. As of November 2017, she no longer worked in the public sector, "Ms. Morissette no longer works in the public sector". However, she returned to the provincial public sector at some point thereafter by of being an adjudicator at LAT. "Although officials of the Canadian Red Cross and Ms. Morissette indicated that her position with the CRC was initially to be "behind the scenes," they recalled having discussed the topic of lobbying during her interview. Once she was employed by the CRC, Ms. Morissette was asked to lobby on behalf of the organization. In fact, the CRC submitted monthly communication reports in the Registry of Lobbyists for meetings in which Ms. Morissette was the only representative of the organization. Ms. Morissette's employment description, the CRC letter of disclosure to the OCL and other information obtained during the investigation indicate that, on the occasions when Ms. Morissette communicated with designated public office holders, she did so on behalf of her employer, the CRC." "Although officials of the Canadian Red Cross and Ms. Morissette indicated that her position with the CRC was initially to be "behind the scenes," they recalled having discussed the topic of lobbying during her interview. Once she was employed by the CRC, Ms. Morissette was asked to lobby on behalf of the organization. In fact, the CRC submitted monthly communication reports in the Registry of Lobbyists for meetings in which Ms. Morissette was the only representative of the organization. Ms. Morissette's employment description, the CRC letter of disclosure to the OCL and other information obtained during the investigation indicate that, on the occasions when Ms. Morissette communicated with designated public office holders, she did so on behalf of her employer, the CRC. "In her letter of response to me, she acknowledged her obligations as a former designated public office holder and recognized that there could be consequences arising from her mistake. She confirmed that once she discovered that she had made an error [sic] regarding the application of the five-year prohibition to her, she took steps to remedy her error. She offered to disclose the fact of her error to my Office, and she offered to resign as an employee of the CRC." It is unclear whether that offer came to fruition. "When Ms. Morissette provided information about the *Lobbying Act* to the Canadian Red Cross, relying, in part, on her own interpretation of the *Lobbying Act*, Ms. Morissette provided information that was inaccurate to her employer. Ms. Morissette did not use proper care to avoid providing that inaccurate information regarding the application of the five-year prohibition on lobbying. As a result, Ms. Morissette was in breach of Rule 2 (Accurate information) of the *Lobbyists' Code of Conduct*." Vice Chair Morrissette has been given a chance to clarity and correct errors in the **VCM Decision**s but she has not done so. The fact that her decision was apparently dated on September 6, 2024, being the same date as the Applicant paying fees to the LAT privacy division is rather ironic and suspicious considering the decision is signed on September 12, 2024. Following Ms. Morissette's inquiries to the OCL concerning the application of the five-year prohibition to her lobbying activities, Ms. Morissette continued to engage in lobbying."" By engaging in registrable lobbying activity while prohibited from lobbying under the *Lobbying Act*, Ms. Morissette did not observe the highest professional and ethical standards. The breach of Rule 2 (Accurate information) and of the prohibition on lobbying do not meet the high standards for lobbyists that are necessary to ensure Canadians that lobbying is conducted transparently and ethically in accordance with the *Lobbying Act*. As a result, Ms. Morissette was in breach of the Principle of Professionalism in the Code.

[103]*Harold the Mortgage Closer Inc. v. Ontario (Financial Services Regulatory Authority, Chief Executive Officer*), 2024 ONSC 4464 (CanLII), <https://canlii.ca/t/k68mf>, retrieved on 2024-12-10
[104]*Lourenco v. Hegedus*, 2017 ONSC 3872 at para. 6
[105]London District Catholic School Board v. Weilgosh, 2024 ONSC 3857 (CanLII), <https://canlii.ca/t/k3gpr>, retrieved on 2024-12-10
[106]https://teao.fsrao.ca/?searchRequired=true&searchText=Security+National&enfActions=false&warnings=false&hasRelatedFiles=false&selectedStatus=0&startDate=&endDate=
[107]https://teao.fsrao.ca/?searchRequired=true&searchText=TD+General&enfActions=false&warnings=false&hasRelatedFiles=false&selectedStatus=0&startDate=&endDate=
[108]https://teao.fsrao.ca/?searchRequired=true&searchText=Primmum&enfActions=false&warnings=false&hasRelatedFiles=false&selectedStatus=0&startDate=&endDate=
[109]https://teao.fsrao.ca/?searchRequired=true&searchText=TD+Home+And+Auto&enfActions=false&warnings=false&hasRelatedFiles=false&selectedStatus=0&startDate=&endDate=
[110] *R.M. v CAA Insurance, 2020 CanLII 94775* (ON LAT), <https://canlii.ca/t/jbwwr>, retrieved on 2024-12-10
[111][nota bene: TDHA is an insurer. Mr. McLean has recourse for the payment of *SABS* against TDHA as TDHA is bound by *Reg 283*. A breach of *Reg 283* is legally equivalent to a breach of *SABS*. Moreover, various sections of *SABS* reference the "first insurer" (i.e. receipt of the Completed Application) which imposed, and continues to impose obligations upon TDHA, to: (i) respond; and (ii) pay.

[112]TDHA: October 13, 2022, by way of fax from Mr. McLean to TDHA albeit unbeknownst to him until August 2024
[113]In this hypothetical, it would have been TDHA
[114]Singular
[115]Duty to pay, albeit the updated A07 Bulleting from 2010 (May) which was the bases for the amendments to *Reg 283* in 2010 includes the duty to respond.
[116]In this hypothetical, it would have been McLean
[117]Based upon the VCM Decision, paragraph 27, it would have been a dispute between TDHA, as First Insurer, and SNIC, the Sole Underwriter and First Notified Insurer, and TDGIC, neither an underwriter nor a First Insurer and not even a First Notified Insurer but a "Fictitious Respondent" in the LAT Proceeding.
[118]One of three
[119]THE INSURER: TDHA
[120]Not "having already been transferred after October 13, 2022"
[121]Transfer of a claim objection rights
[122]Had TDHA sent the notice, then it would have been SNIC that was paying at the time, so it would have been a challenge to SNIC paying while TDHA was the First Insurer
[123]The LAT Proceeding is "any proceeding". The JRPA Application is "any proceeding". Although Mr. McLean did not have any "claim transfer objection rights" as TDHA failed to extend the same to him. Moreover, Mr. McLean did not have any "proceeding participation rights" as it relates to any potential arbitration before an arbitration pursuant to the Ontario legislation or statute known as the "Arbitration Act, 1991". Moreover, TDHA could not advance an arbitration without having paid any benefits to Mr. McLean. If TDHA was the payor of some or all of the $1499.98, then it could technically advance an arbitration claim but only after it provided a notice of potential transfer of claim pursuant to A143. However, it would be, if it did so in the month of December 2024, some 700 days late. Pursuant to *Reg 283*, section 2 and Zurich 2024, TDHA was provisionally liable to pay benefits from October 13, 2022, to January 10, 2023, (the "Provisional Payment Period"), and then permanently liable after January 10, 2023, subject to giving it notice of a transfer claim (A143) and then providing clear, cogent and convincing evidence as to why the 90 day period was insufficient to make a determination that *another insurer* or insurers (nota bene: conceivable could be two under section 268 per se) is liable under section 268; AND the insurer [TDHA] made the reasonable [nota bene: objective person standard] investigations necessary to determine if another insurer was liable within the 90 day period (see: section 3(2) of the *Reg 283*, passed in 1995, which was the year that *Reg 283* was passed by its namesake, "*Reg 283*/95". Where there is a dispute as to whether a First Insurer, like TDHA, had not given notice to other insurers and an Applicant pursuant to its receipt of a Completed Application by fax or mail, shall be resolved in an ARBITRATION pursuant to section 7 of *Reg 283* (see: ss. 3(3) of *Reg 283*). Pursuant to ss. 7(1) of *Reg 283*, it is ONLY an insurer that *has been* paying benefits under section 2 (nota bene: reference to section 268 of the Insurance Act (1990) and *Reg 283* passed in 1995) OR section 2.1 (nota bene: relating to an Accident (see: SABS, definition section), that occurred after September 1, 2010 and requires the dispute to be resolved in accordance with the Regulation 283 (not Insurance Act)) OR any other insurer against who the obligation to pay benefits is *claimed*. Subsection 3(3) dovetails to subsection 7(3) with a one year prescribed limitation period but that is tied to the insurer, 'first giving notice' under section 3 which is the insurers that it believes are liable to pay the benefits and the insured person, in his or her capacity as an "Applicant" after sending a Completed Application and it being *received* first by an insurance company making said insurance company the "First Insurer". However, if the First Insurer does not give a notice, pursuant to section 3(1) of *Reg 283* within 90 days (often means counting the "first day" and "last day"), it loses all of its dispute rights to pay benefits subject to overcoming the strenuous legal test under section 3(2) of *Reg 283*. It is here where TDHA, would hypothetically speaking, never be able to overcome said test by a decision of any reasonably-minded arbitrator rending a decision regarding the application of the facts to the legal test under ss. 3(2) of *Reg 283*. TDHA is an Ontario based insurer (not an out of province insurance company) and was the co-tenant with TDGIC at the "Spark Building", "North York Office Building" or the "VP Building" located at 3650 Victoria Park Avenue, District of North York, City of Toronto, where TDHA was located on the 4th floor (4th to 6th floors) with a fax of 416.774.3120 and its co-tenant in TDGIC had a fax number of 416.774.3629 and it was the commercial tenant on floors 7 to 9. By review of the information scribed on the Application (OCF-1), it had a sufficient period of time to make a determination that another insurer or insurers were liable under section 268 of the Act.
[124]Hence, by SNIC intentionally, as sworn by McLean, redirecting the Applicant to TDHA at first instance, and then purportedly paying benefits (unclear if that name is correct), TDHA became the First Insurer by McLean faxing of the same to it on October 13, 2022. However, if TDHA was the "actual payor" of the direct deposits at said time then it could have provided this notice to McLean. It was then caught in another dilemma by the fact that the representative known to McLean was that of Ms. Nurse of SNIC. Therefore, TDHA would have had to provide a phone number and representative for TDHA which would have caused issues and concerns for McLean.

TAB 7

Court File No. DC-24-00000718-00JR

ONTARIO COURT OF JUSTICE (DIVISIONAL COURT)

BETWEEN:

KEVIN ALEXANDER MCLEAN

APPLICANT

- and -

TD HOME AND AUTO INSURANCE COMPANY, SECURITY NATIONAL INSURANCE COMPANY, TD GENERAL INSURANCE COMPANY, EXECUTIVE DIRECTOR, LICENCE APPEAL TRIBUNAL,
HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO, REPRESENTED BY EXECUTIVE CHAIR OF TRIBUNALS ONTARIO IN MR. SEAN WEIR, THE ATTORNEY GENERAL OF ONTARIO

RESPONDENTS

CERTIFICATE OF PERFECTION OF THE APPLICANT

I, Mr. Kevin A. McLean, the Applicant, certify by his signature below on the below date:

1. the **JRPA Application**, **Factum** (which includes the book of authorities by reference and hyperlinking therein), and **Application Record** have been filed herein with the ONSC Divisional Court; and

2. no other persons[i] than those denoted above are entitled by any statute (as defined and interpreted under the *Legislation Act*, 2006, SO 2006, c 21, Sch F (the "*Legislation Act*") or by an order *Rules of Civil Procedure*, RRO 1990, Reg 194 (the "*Civil Rules*", "*Rules*" or "*Rules of Procedure*") to notice[ii] and/or to be heard on this **JRPA Application**.

DATE: December 13, 2024

Mr. Kevin A. McLean (B.A. J.D., CIM)
Self-represented, the Applicant herein

FOR SERVICE AND NOTICE PURPOSES

TO [1]:

Licence Appeal Tribunal
15 Grosvenor Street
Toronto, Ontario
M7A 2S8

AND TO (its counsel):

Mr. Jesse Boyce
LSO number: 72486F
25 Grosvenor, 4th Floor
Toronto, Ontario,
M7A 2S8
Email: jesse.boyce@ontario.ca

TO [2]:

The Ministry of the Attorney General of Ontario

Attention: Ms. Judie Im
8-720 Bay St
Toronto, Ontario,
M7A 2S9
Email: judie.im@ontario.ca

FOR PURPOSES OF COURTESY COPY TO RESPONDENT INSURANCE COMPANIES
(who did not participate in the motions before the Tribunal that are subject to judicial review)

Insurance Companies subject to NOM #14 and #15 (judicial review)

To: the "First Insurer"

Address for service tied to the fax number of 416.774.3120 provided by the First Notified Insurer, which was the fax number of TDHA at the Material Time, in September 2022,

TD Home and Auto Insurance Company ["**TDHA**"]
FSRA Registration Number 1063
4th Floor-3650 Victoria Park Avenue
District of North York
City of Toronto
Ontario, M2H 3P7

Fax: 416.774.**3120**

To: The **First Notified Insurer** and **Sole Underwriter** in the Insurance Policy of the Applicant's former Spouse

Address for service provided by the Tribunal in the LAT Proceeding by LAT Order on September 12, 2024

Security National Insurance Company ("**SNIC**")
FSRA Registration Number 397
5th Floor-5045 South Service Road
Burlington, Ontario,
L7L 5Y7

Fax: 905-315-1074

Courtesy copy to the insurance company (non-party) subject to NOM #13 in part of the VCM Decision (*nota bene*: NOM #13 is not subject to JRPA Application as it was a document production motion and it was interlocutory unlike the NOM #14, which were final orders as they sought to add a party, amend the cause of action against the said a non-party *et al*)

Address for service provided by the LAT in the LAT Proceeding for TDGIC by LAT Orders commencing on or around February 13, 2024

TD General Insurance Company ("**TDGIC**")

FSRA Registration number 353
9th FLOOR-3650 Victoria Park Avenue
District of North York
City of Toronto
Province of Ontario
M2H 3P7

Fax: 416.774.**3629**

Attention: Mr. Matthew Nieuwland and Ms. Heather Paquini[iii]

Address for Mr. Matthew Albert Nieuwland

Law Society Number: 71405A
Business Name: TD Insurance Staff Legal
66 Wellington St W.,
Toronto, Ontario
M5K 1A2
Email Address: matthew.nieuwland@tdinsurance.com

Divisional Court File DC-24-00000718-00JR

McLean v. TDHA, the Licence Appeal Tribunal et al

DIVISIONAL COURT, SUPERIOR COURT OF JUSTICE

Proceedings commenced at Toronto, Ontario

Divisional Court Toronto
Osgoode Hall
130 Queen Street W., Rm 174
Toronto, ON M5H 2N5
Phone: (416) 327 5100

CERTIFICATE OF PERFECTION

Mr. Kevin A. McLean (B.A., J.D, CIM)
The JRPA Applicant
Self-represented or appearing *Pro Se*
410-775 King Street West
Toronto, Ontario,
M5V 2K3
(e): mcleansettlement@gmail.com

[i]With my position being, based upon the law that I have read including secondary source material and issued documents from The Honourable ONSC Divisional Court that only those persons that participated in the hearing (specifically, NOM #14 and NOM #15 which are subject to review by way of the relief that I have sough to quash the orders of VCM in NOM #14 and substitute VCM's orders with the orders that I sought in NOM #14 and to some extent NOM #15) that is subject to review or "on review" are entitled to participate as a right subject to the requirement of notice to the AGO and Tribunal and the rights of participation by the AGO and the Tribunal (as represented by their selected counsel)

[ii]The Applicant's position being, consistent with the Factum, that the Nieuwland Purported NOA or Nieuwland Purported Appearance was not filed forthwith and it remains defective.

[iii]*Nota bene*: a different legal administrative assistant that Mr. Nieuwland had and has in the Tribunal Proceeding

TAB 8

Court File No. DC-24-00000718-00JR

Form 4E
Courts of Justice Act

Requisition

ONTARIO COURT OF JUSTICE (DIVISIONAL COURT)

BETWEEN:

KEVIN ALEXANDER MCLEAN

APPLICANT

- and -

TD HOME AND AUTO INSURANCE COMPANY, SECURITY NATIONAL INSURANCE COMPANY, TD GENERAL INSURANCE COMPANY, EXECUTIVE DIRECTOR, LICENCE APPEAL TRIBUNAL,
HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO, REPRESENTED BY EXECUTIVE CHAIR OF TRIBUNALS ONTARIO IN MR. SEAN WEIR, THE ATTORNEY GENERAL OF ONTARIO

RESPONDENTS

REQUISITION

TO THE LOCAL REGISTRAR at The Ontario Superior Court of Justice (Divisional Court) Toronto, Osgoode Hall, 130 Queen Street W., Rm 174 (or any other room situate within said building and lands at the ONSC Divisional Court (Toronto) where the Registrar is so located), Toronto, ON, M5H 2N5 (the "**Toronto Divisional Court**") Phone: (416) 327 5100

I REQUIRE, with due respect and out of an abundance of caution, pursuant to *Rules Of Civil Procedure*, Rule 4.08[i], that the Registrar provide myself and the named respondents in the **Filed Certificate Of Perfection** (see: *infra*), with a Notice of Listing For Hearing in Form 68(B) pursuant to *Rules of Civil Procedure*, Rule 68, "**PROCEEDINGS FOR JUDICIAL REVIEW"**, Rule 68.05, "*Certificate of Perfection*", sub rule (2)[ii], pursuant to my filing and payment of the required fee for the **Certificate of Perfection** on December 15, 2024, (the "**Filed Certificate Of Perfection**").

December 24, 2024

Mr. Kevin A. McLean
775 King Street West,
Suite 410
Toronto, Ontario
M5V 2K3
(e): mcleansettlement@gmail.com

Mr. Kevin A. McLean (B.A. J.D., CIM)
Self-represented or appearing *Pro Se*, the Applicant herein

RCP-E 4E (July 1, 2007)

---

[i] **4.08** Where a party is entitled to require the registrar to carry out a duty under these rules, the party may do so by filing a requisition (Form 4E) and paying the prescribed fee, if any. R.R.O. 1990, Reg. 194, r. 4.08.

[ii] (2) When the certificate of perfection has been filed, the registrar shall place the application on a list for hearing and give notice of listing for hearing (Form 68B) by mail to the parties and the other persons named in the certificate of perfection. R.R.O. 1990, Reg. 194, r. 68.05 (2).

Court File No. DC-24-00000718-00JR

Form 4E
Courts of Justice Act

Requisition

ONTARIO COURT OF JUSTICE (DIVISIONAL COURT)

BETWEEN:

KEVIN ALEXANDER MCLEAN

APPLICANT

- and -

TD HOME AND AUTO INSURANCE COMPANY, SECURITY NATIONAL INSURANCE COMPANY, TD GENERAL INSURANCE COMPANY, EXECUTIVE DIRECTOR, LICENCE APPEAL TRIBUNAL,
HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO, REPRESENTED BY EXECUTIVE CHAIR OF TRIBUNALS ONTARIO IN MR. SEAN WEIR, THE ATTORNEY GENERAL OF ONTARIO

RESPONDENTS

REQUISITION

TO THE LOCAL REGISTRAR at The Ontario Superior Court of Justice (Divisional Court) Toronto, Osgoode Hall, 130 Queen Street W., Rm 174 (or any other room situate within said building and lands at the ONSC Divisional Court (Toronto) where the Registrar is so located), Toronto, ON, M5H 2N5 (the "**Toronto Divisional Court**") Phone: (416) 327 5100

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December 24, 2024

Mr. Kevin A. McLean
775 King Street West,
Suite 410
Toronto, Ontario
M5V 2K3
(e): mcleansettlement@gmail.com

Mr. Kevin A. McLean (B.A. J.D., CIM)
Self-represented or appearing *Pro Se*, the Applicant herein

RCP-E 4E (July 1, 2007)

---

[i] **4.08** Where a party is entitled to require the registrar to carry out a duty under these rules, the party may do so by filing a requisition (Form 4E) and paying the prescribed fee, if any. R.R.O. 1990, Reg. 194, r. 4.08.

[ii] (2) When the certificate of perfection has been filed, the registrar shall place the application on a list for hearing and give notice of listing for hearing (Form 68B) by mail to the parties and the other persons named in the certificate of perfection. R.R.O. 1990, Reg. 194, r. 68.05 (2).

TAB 9

Civil Submissions Online

Confirmation

Thank you for submitting document(s) through the Portal for filing and/or issuance with the Superior Court of Justice in your civil (or Divisional Court) proceeding.

You will be notified by the Court Registrar about whether your document(s) have been accepted for filing and/or issuance. This notice will be sent to you by email **within 5 business days.** Your credit/debit card will only be charged once the filing has been accepted.

If your documents are rejected, you will receive an email from the court office to tell you they have not been filed, the reason(s) for the rejection, and confirming that your credit/debit card has not been charged.

If you need to file or issue documents for a court hearing that is 5 business days or less away or you need to meet a timeline for a step in the proceeding established by legislation, court rules, court practice direction or a court order and the timeline is 5 business days or less away, your request may not be processed in time. Contact the court office for more information.

Please ensure that your computer system can accept emails from the court (for example, by adjusting your spam filter to ensure that you receive all emails from court staff with "@ontario.ca" addresses). If you are expecting an email and have not received one, please check your junk mail folder before contacting the court office.

Court file number
DC-24-00000718-00JR
Submitted to the Divisional Court, Superior Court of Justice in
Toronto
Confirmation number
2787650
Date and time
24-Dec-2024 02:57 PM
Document(s) submitted
File Name
Form 4E: Requisition

Case specific questions and questions about your submission should be directed to the court office where your documents were submitted.

You can find a list of courthouse addresses and phone numbers on the Ministry of the Attorney General's website.

To help us improve our services, please provide us with feedback on your online experience. The information collected is for research purposes only. Your responses are completely confidential.

Rate Our Service

Court File No. DC-24-00000718-00JR

Form 4E
Courts of Justice Act

REQUISITION

ONTARIO COURT OF JUSTICE (DIVISIONAL COURT)

BETWEEN:

KEVIN ALEXANDER MCLEAN

APPLICANT

- and -

TD HOME AND AUTO INSURANCE COMPANY, SECURITY NATIONAL INSURANCE COMPANY, TD GENERAL INSURANCE COMPANY, EXECUTIVE DIRECTOR, LICENCE APPEAL TRIBUNAL,
HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO, REPRESENTED BY EXECUTIVE CHAIR OF TRIBUNALS ONTARIO IN MR. SEAN WEIR, THE ATTORNEY GENERAL OF ONTARIO

RESPONDENTS

REQUISITION
(SET DOWN URGENT APPLICATION FOR HEARING)

(To set down hearing pursuant to ss. 6(2) of the *JRPA*, Rules 38.02[i], 38.03(3.1) of the *Rules of Civil Procedure*, section 18 of the *Courts of Justice Act et al*)

TO THE LOCAL REGISTRAR at The Ontario Superior Court of Justice (Divisional Court) Toronto, Osgoode Hall, 130 Queen Street W., Rm 174 (or any other room situate within said building and lands at the ONSC Divisional Court (Toronto) where the Registrar is so located), Toronto, ON, M5H 2N5 (the "**Toronto Divisional Court**") Phone: (416) 327 5100

I REQUIRE and respectfully request that this *JRPA* Application is set down for hearing pursuant to section 6(2) of the *JRPA* on the basis of urgency and that the delay required for an application to the Divisional Court is likely to involve a failure of justice, Rule 38.03(3.1), "Urgent Applications"[ii] before a justice of the Ontario Superior Court of Justice who may hear my application for leave thereof, and if granted, then the hearing of my *JRPA* Application pursuant to my filed and delivered materials, at first instance to the ONSC Divisional Court pursuant to section 6(1) of the *JRPA*.

I request that my request for leave of an ONSC justice pursuant to ss. 6(2) of the *JRPA* and my *JRPA* Application are heard on any day in the week of Tuesday, January 14, 2025, or Thursday, January 16, 2025, before a single justice of the ONSC Toronto Region (see: Appendix #1) who is not currently in his or her rotation[iii] as a sitting justice of the ONSC Divisional Court. I request further, or in the alternative, that my request for leave of an ONSC single justice and my *JRPA* Application (if leave is granted) be heard on any date in the week of January 13, 2025, to January 17, 2025, after the date of January 14, 2025 inclusive.

Pursuant and consistent with the following: (i) "*Consolidated Practice Direction for Divisional Court Proceedings*, Effective June 15, 2023, Part V: Guidelines to Determine Mode of Hearing"; and (ii) "*Consolidated Civil Provincial Practice Direction*, Amended February 1, 2024, C. Presumptive guidelines to determine mode of proceeding in civil matters, xiii. Appeals to the Divisional Court and applications for judicial review"[iv], I respectfully request that this hearing be conducted electronically by teleconference.

I further REQUIRE and respectfully request that I receive from the ONSC Divisional Court an invite or link to Case Center (formerly Case Lines) pursuant to the "ONTARIO SUPERIOR COURT OF JUSTICE GUIDE TO JUDICIAL REVIEW IN DIVISIONAL COURT".[v]

I estimate that I will require 35 minutes in initial oral argument (inclusive of my request for leave and of the hearing of my *JRPA* Application) and ten minutes in reply. I estimate that the total hearing time will be *less* than two hours.

December 24, 2024

Mr. Kevin A. McLean
775 King Street West,
Suite 410
Toronto, Ontario
M5V 2K3
(e): mcleansettlement@gmail.com

Mr. Kevin A. McLean (B.A. J.D., CIM)
Self-represented or appearing *Pro Se*, the Applicant herein

Appendix #1:

https://www.ontariocourts.ca/scj/judges/current/judges/#Judges_of_the_Toronto_Region

Justices of the Toronto Region

The Honourable R. Lee Akazaki
The Honourable Jasmine T. Akbarali
The Honourable Suhail A.Q. Akhtar
The Honourable Beth A. Allen
The Honourable Nancy L. Backhouse
The Honourable Joan M. Barrett
The Honourable Peter Bawden
The Honourable William Black
The Honourable Susanne Boucher
The Honourable Carole J. Brown
The Honourable Michael F. Brown
The Honourable Lisa Brownstone
The Honourable Kelly P. Byrne
The Honourable John Callaghan
The Honourable Kenneth L. Campbell
The Honourable R. Philip Campbell
The Honourable Peter J. Cavanagh
The Honourable Robert Centa
The Honourable William S. Chalmers
The Honourable Michael Code
The Honourable Barbara A. Conway
The Honourable David L. Corbett
The Honourable Katherine B. Corrick
The Honourable Bonnie L. Croll
The Honourable George Czutrin
The Honourable Breese Davies
The Honourable James F. Diamond
The Honourable Bernadette Dietrich
The Honourable Jane O. Dietrich
The Honourable Michael Dineen
The Honourable Grant R. Dow
The Honourable Todd Ducharme
The Honourable Sean F. Dunphy
The Honourable Mario D. Faieta
The Honourable Maureen D. Forestell
The Honourable Cory A. Gilmore
The Honourable Benjamin T. Glustein
The Honourable Robert F. Goldstein
The Honourable Susan G. Himel
The Honourable Kenneth G. Hood
The Honourable Carolyn J. Horkins

The Honourable Jane E. Kelly
The Honourable Jessica Kimmel
The Honourable Markus Koehnen
The Honourable Melanie Kraft
The Honourable Freya Kristjanson
The Honourable Janet Leiper
The Honourable Richard A. Lococo
The Honourable Carissima Mathen
The Honourable Wendy M. Matheson
The Honourable Rita-Jean Maxwell
The Honourable Heather McArthur
The Honourable John B. McMahon
The Honourable Loretta P. Merritt
The Honourable Anne M. Molloy
The Honourable Edward M. Morgan
The Honourable Frederick L. Myers
The Honourable Shaun S. Nakatsuru
The Honourable E. Llana Nakonechny
The Honourable Apple C. Newton-Smith
The Honourable Sandra Nishikawa
The Honourable Shaun O'Brien
The Honourable Alfred J. O'Marra
The Honourable Brian P. O'Marra
The Honourable Peter J. Osborne
The Honourable Eugenia Papageorgiou
The Honourable Ira G. Parghi
The Honourable Jennifer Penman
The Honourable Michael A. Penny
The Honourable Andrew Pinto
The Honourable Andra Pollak
The Honourable Jill Presser
The Honourable Audrey P. Ramsay
The Honourable Catherine H. Rhinelander
The Honourable Gillian E. Roberts
The Honourable Nathalie Des Rosiers
The Honourable Harriet E. Sachs
The Honourable Mary A. Sanderson
The Honourable Andrew A. Sanfilippo
The Honourable Paul B. Schabas
The Honourable P. Andras Schreck
The Honourable Mohan Sharma
The Honourable Linda A. Shin
The Honourable Julia Shin Doi
The Honourable Sharon Shore
The Honourable Nancy J. Spies
The Honourable Jana Steele
The Honourable Colin P. Stevenson
The Honourable David G. Stinson
The Honourable P. Tamara Sugunasiri

The Honourable Susan Vella
The Honourable Marie-Andrée Vermette
The Honourable Benita Wassenaar

Endnotes

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[i]"the absence of any practice direction for scheduling of involving the same"
[ii]"An urgent application may be set down for hearing on any day on which a judge is scheduled to hear applications, even if a lawyer estimates that the hearing is likely to be more than two hours long
[iii]S. 18(3) says that judges who have been appointed to the Superior Court of Justice may also hear cases at the Divisional Court. In practice, Superior Court of Justice judges rotate through the Divisional Court (see: Courts of Justice Act Chapters, 4. Divisional Court, Sections 18 - 21, 1st ed, 2021 CanLIIDocs 2074)
[iv]**Single judge hearings**: All single judge hearings in the Divisional Court will be held virtually unless a party requests that it be held in person and the Court agrees or the Court directs that it will be held in person.
[v]See: https://www.ontariocourts.ca/scj/files/pubs/guide-div-ct-judicial-review-EN.pdf; "After you have brought an application for judicial review, you will receive an email to register for CaseLines and upload your materials"

TAB 10

Court File No. DC-24-00000718-00JR

FORM 37A

Courts of Justice Act

NOTICE OF MOTION

ONTARIO SUPERIOR COURT OF JUSTICE (DIVISIONAL COURT)

BETWEEN:

KEVIN ALEXANDER MCLEAN

APPLICANT

- and -

TD HOME AND AUTO INSURANCE COMPANY, SECURITY NATIONAL INSURANCE COMPANY, TD GENERAL INSURANCE COMPANY, EXECUTIVE f, LICENCE APPEAL TRIBUNAL,
HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO, REPRESENTED BY EXECUTIVE CHAIR OF TRIBUNALS ONTARIO IN MR. SEAN WEIR, THE ATTORNEY GENERAL OF ONTARIO

RESPONDENTS

NOTICE OF MOTION

The Applicant will make a motion to the court on Thursday, January 30, 2025, at 9:30 a.m. or as soon after that time as the motion can be heard.

PROPOSED METHOD OF HEARING: The motion is to be heard:

□ In writing under subrule 37.12.1 (1) because it is *(insert one of* on consent, unopposed *or* made without notice*)*[i];

□ In writing as an opposed motion under subrule 37.12.1 (4);

□ In person;

X By telephone conference;

□By video conference.

at the following location

Address of Local Registrar court office Divisional Court

Superior Court of Justice
Osgoode Hall

130 Queen Street West
Toronto, ON MSH 2N5

THE MOTION IS FOR the following relief:

1. An Order that the delegated or presiding motion judge (not an "associate judge" pursuant to 37.02(2)(f) of the *Rules Of Civil Procedure* and section 4 of the *JRPA*) shall not be the Honourable Madam Justice Shore and/or any other justice that was employed by Epstein Cole and/or was a partner in the limited liability partnership of Epstein Cole LLP during the time from Fall of 2017 to present;

2. An Order compelling the Licence Appeal Tribunal (the "**Tribunal**") to file the Record of Proceeding forthwith and in accordance with, *inter alia*, section 10 of the *JRPA* and in accordance, from a content standpoint with section 20 of the *SPPA*;

3. An Order that the Tribunal is prohibited from any form of participation in this JRPA Proceeding until it does so in full and strict compliance with aforementioned legislative sections in Order #2;

4. Costs in favour of the Applicant against the Tribunal on a substantial indemnity basis to be determined by this Honourable Court after providing leave to the Applicant to provide a costs outline or written argument within three days of the pronouncement of the orders herein and limited to three pages double spaced; and

5. Such other orders that are consistent with the above.

THE GROUNDS FOR THE MOTION ARE:

1. The above noted statutes but more specifically, but not limited to, the following statutory subsections;

    a. Section 9(2) of the *JRPA*;

    b. Section 10 of the *JRPA*;

    c. Section 20 of the *SPPA*;

2. The *Courts of Justice Act* (the "CJA");

3. *Rules Of Civil Procedure*s including but not limited to the following rules:

    a. Rule 1.02(1.)(3);

    b. Rule 1.03 with respect to the following definitions:

i. "applicant" means a person who makes an application;

ii. "application" means a proceeding commenced by notice of application;

iii. "court" means the court in which a proceeding is pending and, in the case of a proceeding in the Superior Court of Justice, includes an associate judge;

iv. "deliver" means serve and file with proof of service, and "delivery" has a corresponding meaning;

v. "document" includes data and information in electronic form;

vi. "hearing" means the hearing of an application, motion, reference, appeal or assessment of costs, or a trial;

vii. "motion" means a motion in a proceeding or an intended proceeding;

viii. "moving party" means a person who makes a motion;

ix. "person" includes a party to a proceeding;

x. "proceeding" means an action or application;

xi. "respondent" means a person against whom an application is made or an appeal is brought, as the circumstances require;

xii. "responding party" means a person against whom a motion is made;

xiii. "statute" includes a statute passed by the Parliament of Canada; and

xiv. "substantial indemnity costs" mean costs awarded in an amount that is 1.5 times what would otherwise be awarded in accordance with Part I of Tariff A, and "on a substantial indemnity basis" has a corresponding meaning.

c. Rule 1.04;

d. Rule 1.05;

e. Rule 1.06;

f. Rule 1.08[ii];

g. Rule 2.03;

h. Rule 3.02;

i. Rule 4.01;

j. Rule 37 with particular reference to the following:

i. Rule 37.01;

ii. Rule 37.02;

iii. Rule 37.03;

iv. Rule 37.04 (by way of judge and not "associate judge" or "registrar")

k. Rule 39;

l. Rule 57 and 58;

m. Rule 59;

n. Rule 68;

4. The doctrine of paramountcy (wherein statutory language prevails over language in regulations, and any "practice directions"); and

5. The statutes, regulations and authorities cited herein but not limited to:

Authorities (hyperlinked to the case itself and paragraphs to be relied upon)

The Seminal Decision in Payne

i. *Payne v. Ontario Human Rights Commission*, 2000 CanLII 5731 (ON CA), [2000] O.J. No. 2987, 136 O.A.C. 357 (C.A.) ["*Payne*"], at paragraphs 79 [the record of proceeding when the decision was made], paragraph 160, and paragraph 161[iii];

Payne cited with approval by ONSC Divisional Court in 2024

ii. *Lachance v. Solicitor General of Ontario*, 2024 ONSC 975 (CanLII) as per Stewart, Myers, and Leiper JJ of the Divisional Court at paragraph 37 [copied by link to highlight as no hyperlink available on CanLII]

General Principles

iii. *Jacko v. McLellan*, 2008 CanLII 22921 (ONSCDC) ["*Jacko*"] at paragraph 18)[iv];.
iv. *Rew v Association of Professional Engineers of Ontario (Discipline Committee)*, 2016 ONSC 4043 (CanLII) ["*REW*"], https://canlii.ca/t/gs5t9 as per Dambrot, J. (orally) at paragraph 8;
v. *Pritchard v. Ontario (Human Rights Commission)*, 2004 SCC 31 ["*Pritchard*"] https://canlii.ca/t/1h2c4

Endicott Decisions

vi. *Endicott v. Ontario (Independent Police Review Office)*, 2014 ONCA 363 ["*Endicott ONCA*"] at paragraph 1, paragraph 18 ['upon receipt of a judicial review application]; paragraph 44 (citing *Payne*[v]),
vii. *Endicott v. Independent Police Review Director*, 2013 ONSC 2046 ["*Endicott ONSC*"] at paragraph 20,

Cases involving privacy or medical (contextual)

viii. *Batacharya v. The College of Midwives of Ontario*, 2012 ONSC 1072 ["*Batacharya*"] at paragraph 13 to 15;
ix. *LifeLabs LP v. Information and Privacy Commr. (Ontario)*, 2022 ONSC 5751 ["*Lifelabs LP*"] at paragraph 13 [citing *Payne* and *Endicott*]

Legal principle and precedent: All materials in the record of proceeding that predate the VCM Decision

b. *UFCW Canada v. Rol-Land Farms Limited*, 2008 CanLII 6652 (ON SCDC), (see: https://canlii.ca/t/1vtm5) ("*Rol-Land Farms*") at paragraph 38[vi];

Right to bring a motion where record of proceeding filed but underinclusive; and importance of bringing a motion to be able to raise the issue

c. *Reflection Productions v. Ontario Media Dev. Corp.*, 2022 ONSC 64 ["*Reflection Productions*"] at paragraph 74 and 75[vii];

THE FOLLOWING DOCUMENTARY EVIDENCE will be used at the hearing of the motion are all filed documents with the ONSC Divisional Court and any documents that have been tendered for filing including but not limited to:

1. Affidavit #2 of the Applicant made on December 30, 2024 ("Affidavit #2");
2. Affidavit #4 of the Applicant made on January 18, 2025 ("Affidavit #4");
3. The JRPA Application of the Applicant of November 15, 2024 (the "JRPA Application");
4. The Applicant's Factum of December 10, 2024 (the "Factum");
5. The Applicant's Application Record of December 12, 2024 (the "Application Record");
6. The Applicant's filed and issued Certificate of Perfection (the "Certificate Of Perfection") and affidavit of service filed with the ONSC Divisional Court (the "Affidavit #1" or "AOS");
7. The Applicant's tendered requisitions herein;
8. Brief and succinct oral outline or speaking notes of the Applicant (the "Speaking Notes") or written factum in accordance with Rule 37; and
9. Such other material as the Applicant may advise and this Honourable Court, by way of a judge, may accept.

The Applicant estimates ten minutes in opening oral argument and two minutes in reply (if applicable).

January 22, 2025:

DULY EXECUTED IN ELECTRONIC FORM BY THE JRPA APPLICANT ON THE DATE ABOVE:

Mr. Kevin A. McLean (B.A. J.D., CIM)
775 King Street West
Suite 410
Toronto, Ontario
M5V 2K3
(e): mcleansettlement@gmail.com

TO:

Licence Appeal Tribunal/AABS

By way of attention to its declared representative (see: section 1 and 10 of the *SPPA*) at the following address as denoted in Affidavit #3 of the Applicant (copied and pasted herein):

Jesse Aaron Boyce
Assumed Name
Jesse A. Boyce
Law Society Number
72486F
Class of Licence Definitions
Lawyer (L1)
Real Estate Insured †
No
Status Definitions
Practising Law - Employed
Business Name
SLASTO
Business Address
25 Grosvenor[viii] 4th FloorToronto, OntarioM7A 2S8
Phone
1 437 997 1235 Ext.
Trusteeships
None
Current Practice Restrictions
None
Current Regulatory Proceedings
None
Regulatory History

None

RCP-E 37A (September 1, 2020)

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[i]To the extent that the Tribunal consents to the same or does not oppose, and/or comply with its obligations forthwith, the Applicant seeks relief to convert the mode of hearing from telephone conference to a brief written argument with a draft order to be provided, vetted by the Registrar, for immediate entry.

[ii]Denoted *supra*

[iii][161] An applicant for judicial review has the right to have a full and accurate record of what went on before the tribunal put before the court. This is an aspect of the superior court's inherent powers of judicial review. A superior court may insist upon the production of an adequate record of the proceedings before the tribunal being reviewed. As stated by Denning L.J. in R. v. Medical Appeal Tribunal ex p. Gilmore, [1957] 1 Q.B. 574 at 583 (C.A.): "The court has always had power to order an inferior tribunal to complete the record ... [A] tribunal could defeat a writ of certiorari unless the courts could order them to complete or correct an imperfect record. So the courts have the power to give such an order". See also R. v. Northumberland Compensation Appeal Tribunal, ex p. Shaw, [1952] K.B. 338 at 352–54 (C.A.); *Canadian Workers Union v. Frankel Structural Steel Ltd.* (1976), 1976 CanLII 829 (ON SC), 12 O.R. (2d) 560 at 577 (Div. Ct.) per Reid J.; F.G. *Spencer Ltd. v. Prince Edward Island (Labour Relations Board)* (1970), 1970 CanLII 960 (PE SCAD), 16 D.L.R. (3d) 670 (P.E.I.S.C.); *Battaglia v. British Columbia (Workmen's Compensation Board)* (1960), 1960 CanLII 334 (BC SC), 22 D.L.R. (2d) 446 (B.C.S.C.). A statutory body subject to judicial review cannot immunize itself or its process by arriving at decisions on considerations that are not revealed by the record it files with the court.

[iv]The purpose of requiring a tribunal or adjudicator to file a "record of proceedings" is to ensure that when the court reviews the tribunal's decision, it has the information and evidence as it appeared before the tribunal in the first instance. A court reviewing an adjudicative decision may look at decisions to admit evidence, submissions of witnesses, and other evidence and may substitute its judgment for that of the court [or tribunal] of first instance

[v]An applicant for judicial review has the right to have a full and accurate record of what went on before the tribunal put before the court. This is an aspect of the superior court's inherent powers of judicial review. A superior court may insist upon the production of an adequate record of the proceedings before the tribunal being reviewed. As stated by Denning L.J. in *R. v. Medical Appeal Tribunal, Ex parte Gilmore*, [1957] 1 Q.B. 574 (Eng. C.A.) at 583:

The court has always had power to order an inferior tribunal to complete the record … [A] tribunal could defeat a writ of certiorari unless the courts could order them to complete or correct an imperfect record. So the courts have the power to give such an order.

[vi][38] Thus, the content of volume 3 is not properly part of the record required to be filed pursuant to s. 10 of the *JPRA*, as it post-dates the decisions under review. Moreover, it is not relevant to the issue of reasonable apprehension of bias before this Court, as it responds to an issue of actual bias.

[vii]Ergo, pursuant to s. 10 of the Judicial Review Procedure Act, it was available to the applicant to bring a motion seeking production of documents it alleges were relied on by the decision-maker but are not contained in the record: see, for example *K.D. v. Peel Children's Aid Society*, 2017 ONSC 7392 (Div. Ct.) at paras. 16-17). The applicant failed to do so. As a result, it is precluded from raising this issue for the first time on judicial review.

[viii]Where Mr. McLean's FIPPA request was delivered

1. Case information

• **Email address**	mcleansettlement@gmail.com
• **Type of proceeding**	Existing proceeding
• **Selected court**	Toronto
• **Has this submission previously been rejected by the Court?**	Yes
• **Previous confirmation number**	2846172
• **Identify the court file number**	DC-24-00000718-00JR

2. Filing Party information

• **The document(s) are being filed on behalf of:**	MCLEAN , KEVIN , Appellant

3. Uploaded Document(s)

Form 37A: Notice of Motion	Motion_1_JRPA_ROP_Applicant_McLean_22-Jan-2025_FILED.pdf
Form 16B: Affidavit of Service	Affidavit of Service - Applicant - McLean - 23-Jan-2025_signed_notarized_filed_served.pdf
Are any of the documents in this submission required to be filed and/or issued for a hearing or deadline 6 or 7 business days away?	Yes

4. Fee

Form 37A: Notice of Motion	$339.00
• **Court fee(s) to be paid:**	$339.00

Civil Submissions Online

Confirmation

Thank you for submitting document(s) through the Portal for filing and/or issuance with the Superior Court of Justice in your civil (or Divisional Court) proceeding.

You will be notified by the Court Registrar about whether your document(s) have been accepted for filing and/or issuance. This notice will be sent to you by email **within 5 business days.** Your credit/debit card will only be charged once the filing has been accepted.

If your documents are rejected, you will receive an email from the court office to tell you they have not been filed, the reason(s) for the rejection, and confirming that your credit/debit card has not been charged.

If you need to file or issue documents for a court hearing that is 5 business days or less away or you need to meet a timeline for a step in the proceeding established by legislation, court rules, court practice direction or a court order and the timeline is 5 business days or less away, your request may not be processed in time. Contact the court office for more information.

Please ensure that your computer system can accept emails from the court (for example, by adjusting your spam filter to ensure that you receive all emails from court staff with "@ontario.ca" addresses). If you are expecting an email and have not received one, please check your junk mail folder before contacting the court office.

Court file number
DC-24-00000718-00JR
Submitted to the Divisional Court, Superior Court of Justice in
Toronto
Confirmation number
2850250
Payment reference number
31640502
Payment method
VISA
Credit card number

**********0538

2257

Date and time

23-Jan-2025 04:56 PM

Total fee

$339.00

Document(s) submitted

File Name

Form 37A: Notice of Motion

Motion_1_JRPA_ROP_Applicant_McLean_22-Jan-2025_FILED.pdf

Form 16B: Affidavit of Service

Affidavit of Service - Applicant - McLean - 23-Jan-2025_signed_notarized_filed_served.pdf

Case specific questions and questions about your submission should be directed to the court office where your documents were submitted.

You can find a list of courthouse addresses and phone numbers on the Ministry of the Attorney General's website.

To help us improve our services, please provide us with feedback on your online experience. The information collected is for research purposes only. Your responses are completely confidential.

Rate Our Service

Civil Submissions Online

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Court file number
DC-24-00000718-00JR
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Confirmation number
2850250
Payment reference number
31640502
Payment method
VISA
Credit card number

**********0538

2259

Date and time

23-Jan-2025 04:56 PM

Total fee

$339.00

Document(s) submitted

File Name

Form 37A: Notice of Motion

Motion_1_JRPA_ROP_Applicant_McLean_22-Jan-2025_FILED.pdf

Form 16B: Affidavit of Service

Affidavit of Service - Applicant - McLean - 23-Jan-2025_signed_notarized_filed_served.pdf

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Please ensure that your computer system can accept emails from the court (for example, by adjusting your spam filter to ensure that you receive all emails from court staff with "@ontario.ca" addresses). If you are expecting an email and have not received one, please check your junk mail folder before contacting the court office.

Court file number
DC-24-00000718-00JR
Submitted to the Divisional Court, Superior Court of Justice in
Toronto
Confirmation number
2846172
Payment reference number
31626955
Payment method
VISA
Credit card number

**********0538

2261

Date and time

22-Jan-2025 03:49 PM

Total fee

$339.00

Document(s) submitted

File Name

Form 37A: Notice of Motion

Motion_1_JRPA_ROP_Applicant_McLean_22-Jan-2025_FILED.pdf

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Rate Our Service

Court File No. DC-24-00000718-00JR

ONTARIO SUPERIOR COURT OF JUSTICE (DIVISIONAL COURT)

BETWEEN:

KEVIN ALEXANDER MCLEAN

APPLICANT

- and -

TD HOME AND AUTO INSURANCE COMPANY, SECURITY NATIONAL INSURANCE COMPANY, TD GENERAL INSURANCE COMPANY, EXECUTIVE f, LICENCE APPEAL TRIBUNAL,
HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO, REPRESENTED BY EXECUTIVE CHAIR OF TRIBUNALS ONTARIO IN MR. SEAN WEIR, THE ATTORNEY GENERAL OF ONTARIO

RESPONDENTS

THE MOTION PARTY'S (JRPA APPLICANT) MOTION RECORD INDEX
DATE: JANUARY 23, 2025

MOVING PARTY (see: Rule 1.03, "Definitions" under Rules of Civil Procedure):

JRPA APPLICANT

Mr. Kevin A. McLean (B.A. J.D., CIM)
775 King Street West
Suite 410
Toronto, Ontario
M5V 2K3
(e): mcleansettlement@gmail.com

RESPONDING PARTY (see: Rule 1.03, "Definitions" under Rules of Civil Procedure):

LICENCE APPEAL TRIBUNAL (the "Tribunal")
AABS Division
15 Grosvenor Street,
Ground Floor
Toronto, ON M7A 2G6

Kind attention: it declared counsel in this JRPA Proceeding herein

Jesse Aaron Boyce

Assumed Name
Jesse A. Boyce
Law Society Number
72486F
Class of Licence Definitions
Lawyer (L1)
Real Estate Insured †
No
Status Definitions
Practising Law - Employed
Business Name
SLASTO
Business Address
25 Grosvenor[i] 4th FloorToronto, OntarioM7A 2S8
Phone
1 437 997 1235 Ext.
Trusteeships
None
Current Practice Restrictions
None
Current Regulatory Proceedings
None
Regulatory History
None

Re: Motion to compel the Tribunal to comply with its statutory duties under section 10 of the *JRPA* and section 20 of the *SPPA*

- Date of Tribunal's **receipt** of the JRPA Application: November 15, 2024
- Date of Attorney General's receipt of the JRPA Application: November 15, 2024
- Date of Tribunal's filing of Notice of Appearance: November 27, 2024
- Date of Attorney General's filing of a Notice of Appearance: none
- Date of Applicant's factum being filed (via urgent email filing) and served: December 10, 2024
- Date of Applicant's Application Record being filed (via urgent email filing) and served: December 12, 2024
- Date of JRPA Application being perfected: December 13, 2024
- Date of failure or neglect of Tribunal to file a factum and application record in accordance with Rule 68: January 11, 2025[ii]
- Number of days that Tribunal has failed to comply with its statutory requirement under section 10 of the JRPA: 69 days as of today's date

- Number of days that Tribunal will have failed with its statutory requirement under section 10 of the JRPA as of date of motion hearing: 76 days

INDEX

1. Notice of Motion (Form 37(A)) of the Applicant of January 22, 2025[iii]
2. Confirmation of Motion (Form 37(B)) of the Applicant of January 23, 2025[iv]
3. JRPA Application of November 15, 2024[v]
4. Applicant's Factum of December 10, 2024[vi]
5. Certificate of Perfection filed and paid for on December 13, 2024[vii]
6. Affidavit #2 of the Applicant, made on December 30, 2024
7. Affidavit #4 of the Applicant, made on January 18, 2025

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[i]Where Mr. McLean's *FIPPA* request was delivered
[ii]Which was a Saturday
[iii]Filed and paid for on said date. Served on said date.
[iv]Filed and served on said date.
[v]Paid for and filed on said date
[vi]The Applicant's Application Record was filed and served on December 12, 2024
[vii]Filed and paid for on said date.

Tab 1:

Re: Applicant’s Motion Record for Motion #1 (Compel the Tribunal to forthwith file the record of proceeding): Court File No. DC-24-00000718-00JR

Court File No. DC-24-00000718-00JR

FORM 37A

Courts of Justice Act

NOTICE OF MOTION

ONTARIO SUPERIOR COURT OF JUSTICE (DIVISIONAL COURT)

BETWEEN:

KEVIN ALEXANDER MCLEAN

APPLICANT

- and -

TD HOME AND AUTO INSURANCE COMPANY, SECURITY NATIONAL INSURANCE COMPANY, TD GENERAL INSURANCE COMPANY, EXECUTIVE f, LICENCE APPEAL TRIBUNAL,
HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO, REPRESENTED BY EXECUTIVE CHAIR OF TRIBUNALS ONTARIO IN MR. SEAN WEIR, THE ATTORNEY GENERAL OF ONTARIO

RESPONDENTS

NOTICE OF MOTION

The Applicant will make a motion to the court on Thursday, January 30, 2025, at 9:30 a.m. or as soon after that time as the motion can be heard.

PROPOSED METHOD OF HEARING: The motion is to be heard:

□ In writing under subrule 37.12.1 (1) because it is *(insert one of* on consent, unopposed *or* made without notice*)*[i];

□ In writing as an opposed motion under subrule 37.12.1 (4);

□ In person;

X By telephone conference;

□By video conference.

at the following location

Address of Local Registrar court office Divisional Court

Superior Court of Justice
Osgoode Hall

130 Queen Street West
Toronto, ON MSH 2N5

THE MOTION IS FOR the following relief:

1. An Order that the delegated or presiding motion judge (not an "associate judge" pursuant to 37.02(2)(f) of the *Rules Of Civil Procedure* and section 4 of the *JRPA*) shall not be the Honourable Madam Justice Shore and/or any other justice that was employed by Epstein Cole and/or was a partner in the limited liability partnership of Epstein Cole LLP during the time from Fall of 2017 to present;

2. An Order compelling the Licence Appeal Tribunal (the "**Tribunal**") to file the Record of Proceeding forthwith and in accordance with, *inter alia*, section 10 of the *JRPA* and in accordance, from a content standpoint with section 20 of the *SPPA*;

3. An Order that the Tribunal is prohibited from any form of participation in this JRPA Proceeding until it does so in full and strict compliance with aforementioned legislative sections in Order #2;

4. Costs in favour of the Applicant against the Tribunal on a substantial indemnity basis to be determined by this Honourable Court after providing leave to the Applicant to provide a costs outline or written argument within three days of the pronouncement of the orders herein and limited to three pages double spaced; and

5. Such other orders that are consistent with the above.

THE GROUNDS FOR THE MOTION ARE:

1. The above noted statutes but more specifically, but not limited to, the following statutory subsections;

    a. Section 9(2) of the *JRPA*;

    b. Section 10 of the *JRPA*;

    c. Section 20 of the *SPPA*;

2. The *Courts of Justice Act* (the "CJA");

3. *Rules Of Civil Procedure*s including but not limited to the following rules:

    a. Rule 1.02(1.)(3);

    b. Rule 1.03 with respect to the following definitions:

i. "applicant" means a person who makes an application;

ii. "application" means a proceeding commenced by notice of application;

iii. "court" means the court in which a proceeding is pending and, in the case of a proceeding in the Superior Court of Justice, includes an associate judge;

iv. "deliver" means serve and file with proof of service, and "delivery" has a corresponding meaning;

v. "document" includes data and information in electronic form;

vi. "hearing" means the hearing of an application, motion, reference, appeal or assessment of costs, or a trial;

vii. "motion" means a motion in a proceeding or an intended proceeding;

viii. "moving party" means a person who makes a motion;

ix. "person" includes a party to a proceeding;

x. "proceeding" means an action or application;

xi. "respondent" means a person against whom an application is made or an appeal is brought, as the circumstances require;

xii. "responding party" means a person against whom a motion is made;

xiii. "statute" includes a statute passed by the Parliament of Canada; and

xiv. "substantial indemnity costs" mean costs awarded in an amount that is 1.5 times what would otherwise be awarded in accordance with Part I of Tariff A, and "on a substantial indemnity basis" has a corresponding meaning.

c. Rule 1.04;

d. Rule 1.05;

e. Rule 1.06;

f. Rule 1.08[ii];

g. Rule 2.03;

h. Rule 3.02;

i. Rule 4.01;

j. Rule 37 with particular reference to the following:

   i. Rule 37.01;

   ii. Rule 37.02;

   iii. Rule 37.03;

   iv. Rule 37.04 (by way of judge and not "associate judge" or "registrar")

k. Rule 39;

l. Rule 57 and 58;

m. Rule 59;

n. Rule 68;

4. The doctrine of paramountcy (wherein statutory language prevails over language in regulations, and any "practice directions"); and

5. The statutes, regulations and authorities cited herein but not limited to:

Authorities (hyperlinked to the case itself and paragraphs to be relied upon)

The Seminal Decision in Payne

i. *Payne v. Ontario Human Rights Commission*, 2000 CanLII 5731 (ON CA), [2000] O.J. No. 2987, 136 O.A.C. 357 (C.A.) ["*Payne*"], at paragraphs 79 [the record of proceeding when the decision was made], paragraph 160, and paragraph 161[iii];

Payne cited with approval by ONSC Divisional Court in 2024

ii. *Lachance v. Solicitor General of Ontario*, 2024 ONSC 975 (CanLII) as per Stewart, Myers, and Leiper JJ of the Divisional Court at paragraph 37 [copied by link to highlight as no hyperlink available on CanLII]

General Principles

iii. *Jacko v. McLellan*, 2008 CanLII 22921 (ONSCDC) ["*Jacko*"] at paragraph 18)[iv];.
iv. *Rew v Association of Professional Engineers of Ontario (Discipline Committee)*, 2016 ONSC 4043 (CanLII) ["*REW*"], https://canlii.ca/t/gs5t9 as per Dambrot, J. (orally) at paragraph 8;
v. *Pritchard v. Ontario (Human Rights Commission)*, 2004 SCC 31 ["*Pritchard*"] https://canlii.ca/t/1h2c4

Endicott Decisions

vi. *Endicott v. Ontario (Independent Police Review Office)*, 2014 ONCA 363 ["*Endicott ONCA*"] at paragraph 1, paragraph 18 ['upon receipt of a judicial review application]; paragraph 44 (citing *Payne*[v]),
vii. *Endicott v. Independent Police Review Director*, 2013 ONSC 2046 ["*Endicott ONSC*"] at paragraph 20,

Cases involving privacy or medical (contextual)

viii. *Batacharya v. The College of Midwives of Ontario*, 2012 ONSC 1072 ["*Batacharya*"] at paragraph 13 to 15;
ix. *LifeLabs LP v. Information and Privacy Commr. (Ontario)*, 2022 ONSC 5751 ["*Lifelabs LP*"] at paragraph 13 [citing *Payne* and *Endicott*]

Legal principle and precedent: All materials in the record of proceeding that predate the VCM Decision

b. *UFCW Canada v. Rol-Land Farms Limited*, 2008 CanLII 6652 (ON SCDC), (see: https://canlii.ca/t/1vtm5) ("*Rol-Land Farms*") at paragraph 38[vi];

Right to bring a motion where record of proceeding filed but underinclusive; and importance of bringing a motion to be able to raise the issue

c. *Reflection Productions v. Ontario Media Dev. Corp.*, 2022 ONSC 64 ["*Reflection Productions*"] at paragraph 74 and 75[vii];

THE FOLLOWING DOCUMENTARY EVIDENCE will be used at the hearing of the motion are all filed documents with the ONSC Divisional Court and any documents that have been tendered for filing including but not limited to:

1. Affidavit #2 of the Applicant made on December 30, 2024 ("Affidavit #2");
2. Affidavit #4 of the Applicant made on January 18, 2025 ("Affidavit #4");
3. The JRPA Application of the Applicant of November 15, 2024 (the "JRPA Application");
4. The Applicant's Factum of December 10, 2024 (the "Factum");
5. The Applicant's Application Record of December 12, 2024 (the "Application Record");
6. The Applicant's filed and issued Certificate of Perfection (the "Certificate Of Perfection") and affidavit of service filed with the ONSC Divisional Court (the "Affidavit #1" or "AOS");
7. The Applicant's tendered requisitions herein;
8. Brief and succinct oral outline or speaking notes of the Applicant (the "Speaking Notes") or written factum in accordance with Rule 37; and
9. Such other material as the Applicant may advise and this Honourable Court, by way of a judge, may accept.

The Applicant estimates ten minutes in opening oral argument and two minutes in reply (if applicable).

January 22, 2025:

DULY EXECUTED IN ELECTRONIC FORM BY THE JRPA APPLICANT ON THE DATE ABOVE:

Mr. Kevin A. McLean (B.A. J.D., CIM)
775 King Street West
Suite 410
Toronto, Ontario
M5V 2K3
(e): mcleansettlement@gmail.com

TO:

Licence Appeal Tribunal/AABS

By way of attention to its declared representative (see: section 1 and 10 of the *SPPA*) at the following address as denoted in Affidavit #3 of the Applicant (copied and pasted herein):

Jesse Aaron Boyce
Assumed Name
Jesse A. Boyce
Law Society Number
72486F
Class of Licence Definitions
Lawyer (L1)
Real Estate Insured †
No
Status Definitions
Practising Law - Employed
Business Name
SLASTO
Business Address
25 Grosvenor[viii] 4th FloorToronto, OntarioM7A 2S8
Phone
1 437 997 1235 Ext.
Trusteeships
None
Current Practice Restrictions
None
Current Regulatory Proceedings
None
Regulatory History

None

[i]To the extent that the Tribunal consents to the same or does not oppose, and/or comply with its obligations forthwith, the Applicant seeks relief to convert the mode of hearing from telephone conference to a brief written argument with a draft order to be provided, vetted by the Registrar, for immediate entry.

[ii]Denoted *supra*

[iii][161] An applicant for judicial review has the right to have a full and accurate record of what went on before the tribunal put before the court. This is an aspect of the superior court's inherent powers of judicial review. A superior court may insist upon the production of an adequate record of the proceedings before the tribunal being reviewed. As stated by Denning L.J. in R. v. Medical Appeal Tribunal ex p. Gilmore, [1957] 1 Q.B. 574 at 583 (C.A.): "The court has always had power to order an inferior tribunal to complete the record ... [A] tribunal could defeat a writ of certiorari unless the courts could order them to complete or correct an imperfect record. So the courts have the power to give such an order". See also R. v. Northumberland Compensation Appeal Tribunal, ex p. Shaw, [1952] K.B. 338 at 352–54 (C.A.); *Canadian Workers Union v. Frankel Structural Steel Ltd.* (1976), 1976 CanLII 829 (ON SC), 12 O.R. (2d) 560 at 577 (Div. Ct.) per Reid J.; F.G. *Spencer Ltd. v. Prince Edward Island (Labour Relations Board)* (1970), 1970 CanLII 960 (PE SCAD), 16 D.L.R. (3d) 670 (P.E.I.S.C.); *Battaglia v. British Columbia (Workmen's Compensation Board)* (1960), 1960 CanLII 334 (BC SC), 22 D.L.R. (2d) 446 (B.C.S.C.). A statutory body subject to judicial review cannot immunize itself or its process by arriving at decisions on considerations that are not revealed by the record it files with the court.

[iv]The purpose of requiring a tribunal or adjudicator to file a "record of proceedings" is to ensure that when the court reviews the tribunal's decision, it has the information and evidence as it appeared before the tribunal in the first instance. A court reviewing an adjudicative decision may look at decisions to admit evidence, submissions of witnesses, and other evidence and may substitute its judgment for that of the court [or tribunal] of first instance

[v]An applicant for judicial review has the right to have a full and accurate record of what went on before the tribunal put before the court. This is an aspect of the superior court's inherent powers of judicial review. A superior court may insist upon the production of an adequate record of the proceedings before the tribunal being reviewed. As stated by Denning L.J. in *R. v. Medical Appeal Tribunal, Ex parte Gilmore*, [1957] 1 Q.B. 574 (Eng. C.A.) at 583:

The court has always had power to order an inferior tribunal to complete the record … [A] tribunal could defeat a writ of certiorari unless the courts could order them to complete or correct an imperfect record. So the courts have the power to give such an order.

[vi][38] Thus, the content of volume 3 is not properly part of the record required to be filed pursuant to s. 10 of the *JPRA*, as it post-dates the decisions under review. Moreover, it is not relevant to the issue of reasonable apprehension of bias before this Court, as it responds to an issue of actual bias.

[vii]Ergo, pursuant to s. 10 of the Judicial Review Procedure Act, it was available to the applicant to bring a motion seeking production of documents it alleges were relied on by the decision-maker but are not contained in the record: see, for example *K.D. v. Peel Children's Aid Society*, 2017 ONSC 7392 (Div. Ct.) at paras. 16-17). The applicant failed to do so. As a result, it is precluded from raising this issue for the first time on judicial review.

[viii]Where Mr. McLean's FIPPA request was delivered

Tab 2:

Re: Applicant's Motion Record for Motion #1 (Compel the Tribunal to forthwith file the record of proceeding): Court File No. DC-24-00000718-00JR

Court File No. DC-24-00000718-00JR

Form 37B

Courts of Justice Act

CONFIRMATION OF MOTION

ONTARIO SUPERIOR COURT OF JUSTICE (DIVISIONAL COURT)

BETWEEN:

KEVIN ALEXANDER MCLEAN

APPLICANT

- and -

TD HOME AND AUTO INSURANCE COMPANY, SECURITY NATIONAL INSURANCE COMPANY, TD GENERAL INSURANCE COMPANY, EXECUTIVE DIRECTOR, LICENCE APPEAL TRIBUNAL, HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO, REPRESENTED BY EXECUTIVE CHAIR OF TRIBUNALS ONTARIO IN MR. SEAN WEIR, THE ATTORNEY GENERAL OF ONTARIO

RESPONDENTS

CONFIRMATION OF MOTION

Note: If the information on this form changes, you have a duty to give the court and the other parties a corrected version of the form (rule 37.10.1(3)). If you wish to abandon the motion after it has been confirmed, a notice of abandonment may be delivered (rule 37.09(1)).

Part A:

I, Mr. Kevin A. McLean, the moving party, confirm that I have conferred or attempted to confer with the other party, the Licence Appeal Tribunal (the "**Tribunal**") (attention: Mr. Boyce with a copy to his legal assistant(s)) and confirm that the motion to be heard on January 30, 2025, will proceed on the following basis:

[X] for a hearing of the following issues only *(specify)*:

1. An order granting the following relief exclusively related or directed to the Licence Appeal Tribunal:

a. An Order that the delegated or presiding motion judge (not an "associate judge" pursuant to 37.02(2)(f) of the *Rules Of Civil Procedure* and section 4 of the *JRPA*) shall **not** be the Honourable Madam Justice Shore and/or any other justice that was employed by Epstein Cole LLP and/or was a partner in the limited liability partnership of Epstein Cole during the time from Fall of 2017[1] to present;

b. An Order compelling the Licence Appeal Tribunal (the "**Tribunal**") to file the Record of Proceeding forthwith and in accordance with, *inter alia*, section 10 of the *JRPA* and in accordance, from a content standpoint with section 20 of the *SPPA*;

c. An Order that the Tribunal is prohibited from any form of participation in this JRPA Proceeding until it does so in full and strict compliance with aforementioned legislative sections in Order #2;

d. Costs in favour of the Applicant against the Tribunal on a substantial indemnity basis to be determined by this Honourable Court after providing leave to the Applicant to provide a costs outline or written argument within three days of the pronouncement of the orders herein and limited to three pages double spaced; and

e. Such other orders that are consistent with the above.

f. An order granting the Applicant leave to speak to costs in the form sought in the Notice of Motion.

The presiding motion judge will be referred to the following materials:

1. The documents filed and served on the respondents in this *JRPA* Proceeding herein including but not limited to:

   a. Affidavit #2 of the Applicant made on December 30, 2024 ("**Affidavit #2**");
   b. Affidavit #4 of the Applicant made on January 18, 2025 ("**Affidavit #4**");
   c. The *JRPA* Application of the Applicant of November 15, 2024 (the "***JRPA* Application**");
   d. The Applicant's Factum of December 10, 2024 (the "**Factum**");
   e. The Applicant's Application Record of December 12, 2024 (the "**Application Record**");
   f. The Applicant's filed and issued Certificate of Perfection (the "**Certificate Of Perfection**") and affidavit of service filed with the ONSC Divisional Court (the "**Affidavit #1**" or "**AOS**");
   g. The Applicant's relevant, to this motion hearing, tendered requisitions herein;
   h. Brief and succinct oral outline or speaking notes of the Applicant to be provided at the relevant time and if applicable (the "**Speaking Notes**");
   i. The statutes, regulations and authorities cited in the Notice of Motion of January 22, 2025 including but not limited to the following authorities:

Authorities (hyperlinked to the case itself and paragraphs to be relied upon)
The Seminal Decision in Payne

i. *Payne v. Ontario Human Rights Commission*, 2000 CanLII 5731 (ON CA), [2000] O.J. No. 2987, 136 O.A.C. 357 (C.A.) ["*Payne*"], at paragraphs 79 [the record of proceeding when the decision was made], paragraph 160, and paragraph 161[2];

Payne cited with approval by ONSC Divisional Court in 2024

ii. *Lachance v. Solicitor General of Ontario*, 2024 ONSC 975 ["*Lachance*"] as per Stewart, Myers, and Leiper JJ of the Divisional Court at paragraph 37 [copied by link to highlight as no hyperlink available on CanLII]

General Principles

iii. *Jacko v. McLellan*, 2008 CanLII 22921 (ONSCDC) ["*Jacko*"] at paragraph 18)[3];.
iv. *Rew v Association of Professional Engineers of Ontario (Discipline Committee)*, 2016 ONSC 4043 ["*REW*"], https://canlii.ca/t/gs5t9 as per Dambrot, J. (orally) at paragraph 8;
v. *Pritchard v. Ontario (Human Rights Commission)*, 2004 SCC 31 ["*Pritchard*"] https://canlii.ca/t/1h2c4

Endicott Decisions

vi. *Endicott v. Ontario (Independent Police Review Office)*, 2014 ONCA 363 ["*Endicott ONCA*"] at paragraph 1, paragraph 18 ['upon receipt of a judicial review application]; paragraph 44 (citing *Payne*[4]),
vii. *Endicott v. Independent Police Review Director*, 2013 ONSC 2046 ["*Endicott ONSC*"] at paragraph 20,

Cases involving privacy or medical (contextual)

viii. *Batacharya v. The College of Midwives of Ontario*, 2012 ONSC 1072 ["*Batacharya*"] at paragraph 13 to 15;
ix. *LifeLabs LP v. Information and Privacy Commr. (Ontario)*, 2022 ONSC 5751 ["*Lifelabs LP*"] at paragraph 13 [citing *Payne* and *Endicott*]

Legal principle and precedent: All materials in the record of proceeding that predate the VCM Decision

j. *UFCW Canada v. Rol-Land Farms Limited*, 2008 CanLII 6652 (ON SCDC), (see: https://canlii.ca/t/1vtm5) ("*Rol-Land Farms*") at paragraph 38[5];

Right to bring a motion where record of proceeding filed but underinclusive; and importance of bringing a motion to be able to raise the issue

k. *Reflection Productions v. Ontario Media Dev. Corp*., 2022 ONSC 64 ["*Reflection Productions*"] at paragraph 74 and 75[6];

Note: Parties are responsible for ensuring that all materials in the above list are (a) filed with the court and (b) uploaded to Case Center by the applicable deadline in rule 4.05.3 of the *Rules of Civil Procedure*.

I estimate that the time required for the motion will be 20 minutes or less.

Dated: January 23, 2025

DULY EXECUTED IN ELECTRONIC FORM BY
THE *JRPA* APPLICANT ON THE DATE ABOVE:

Mr. Kevin A. McLean (B.A. J.D., CIM)
775 King Street West
Suite 410
Toronto, Ontario
M5V 2K3
(e): mcleansettlement@gmail.com

TO:

Licence Appeal Tribunal

By way of attention to its declared representative at the following address as denoted in Affidavit #3 of the Applicant (copied and pasted herein) and confirmed to be the same, despite Mr. Boyce's unilateral and without notice removal of the same on a date known to him in 2025, by the LSO (Directory Services Department) on January 22, 2025:

Jesse Aaron Boyce
Assumed Name
Jesse A. Boyce
Law Society Number
72486F
Class of Licence Definitions
Lawyer (L1)
Real Estate Insured †
No
Status Definitions
Practising Law - Employed
Business Name
SLASTO
Business Address

25 Grosvenor[7] 4th FloorToronto, OntarioM7A 2S8
Phone
1 437 997 1235 Ext.
Trusteeships
None
Current Practice Restrictions
None
Current Regulatory Proceedings
None
Regulatory History
None

[1]Please see (if applicable): the court file with respect to the Applicant's Respectful Requests (defined therein) regarding the reasonable apprehension of a conflict of interest, bias and/or lack of independence involving Madam Justice Shore and one Mr. Andrew Papadimitropoulos (a client of Epstein Cole LLP) who was not removed as a representative (see: *LSA*, section 1(7)) by the Applicant's motions before the Tribunal (see: NOM #6 and NOM #9 in the Record of Proceeding)

[2][161] An applicant for judicial review has the right to have a full and accurate record of what went on before the tribunal put before the court. This is an aspect of the superior court's inherent powers of judicial review. A superior court may insist upon the production of an adequate record of the proceedings before the tribunal being reviewed. As stated by Denning L.J. in R. v. Medical Appeal Tribunal ex p. Gilmore, [1957] 1 Q.B. 574 at 583 (C.A.): "The court has always had power to order an inferior tribunal to complete the record ... [A] tribunal could defeat a writ of certiorari unless the courts could order them to complete or correct an imperfect record. So the courts have the power to give such an order". See also *R. v. Northumberland Compensation Appeal Tribunal*, ex p. Shaw, [1952] K.B. 338 at 352–54 (C.A.); *Canadian Workers Union v. Frankel Structural Steel Ltd.* (1976), 1976 CanLII 829 (ON SC), 12 O.R. (2d) 560 at 577 (Div. Ct.) per Reid J.; F.G. *Spencer Ltd. v. Prince Edward Island (Labour Relations Board)* (1970), 1970 CanLII 960 (PE SCAD), 16 D.L.R. (3d) 670 (P.E.I.S.C.); *Battaglia v. British Columbia (Workmen's Compensation Board)* (1960), 1960 CanLII 334 (BC SC), 22 D.L.R. (2d) 446 (B.C.S.C.). A statutory body subject to judicial review cannot immunize itself or its process by arriving at decisions on considerations that are not revealed by the record it files with the court.

[3]The purpose of requiring a tribunal or adjudicator to file a "record of proceedings" is to ensure that when the court reviews the tribunal's decision, it has the information and evidence as it appeared before the tribunal in the first instance. A court reviewing an adjudicative decision may look at decisions to admit evidence, submissions of witnesses, and other evidence and may substitute its judgment for that of the court [or tribunal] of first instance

[4]An applicant for judicial review has the right to have a full and accurate record of what went on before the tribunal put before the court. This is an aspect of the superior court's inherent powers of judicial review. A superior court may insist upon the production of an adequate record of the proceedings before the tribunal being reviewed. As stated by Denning L.J. in *R. v. Medical Appeal Tribunal, Ex parte Gilmore*, [1957] 1 Q.B. 574 (Eng. C.A.) at 583:

The court has always had power to order an inferior tribunal to complete the record … [A] tribunal could defeat a writ of certiorari unless the courts could order them to complete or correct an imperfect record. So the courts have the power to give such an order.

[5][38] Thus, the content of volume 3 is not properly part of the record required to be filed pursuant to s. 10 of the *JPRA*, as it post-dates the decisions under review. Moreover, it is not relevant to the issue of reasonable apprehension of bias before this Court, as it responds to an issue of actual bias.

[6]Ergo, pursuant to s. 10 of the Judicial Review Procedure Act, it was available to the applicant to bring a motion seeking production of documents it alleges were relied on by the decision-maker but are not contained in the record: see, for example *K.D. v. Peel Children's Aid Society*, 2017 ONSC 7392 (Div. Ct.) at paras. 16-17). The applicant failed to do so. As a result, it is precluded from raising this issue for the first time on judicial review.
[7]Where Mr. McLean's *FIPPA* request was delivered

Tab 3:

Re: Applicant's Motion Record for Motion #1 (Compel the Tribunal to forthwith file the record of proceeding): Court File No. DC-24-00000718-00JR

Court File No.

ONTARIO COURT OF JUSTICE (DIVISIONAL COURT)

BETWEEN:

KEVIN ALEXANDER MCLEAN

APPLICANT

- and -

TD HOME AND AUTO INSURANCE COMPANY, SECURITY NATIONAL INSURANCE COMPANY, TD GENERAL INSURANCE COMPANY, EXECUTIVE DIRECTOR, LICENCE APPEAL TRIBUNAL,
HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO, REPRESENTED BY EXECUTIVE CHAIR OF TRIBUNALS ONTARIO IN MR. SEAN WEIR, THE ATTORNEY GENERAL OF ONTARIO

RESPONDENTS

NOTICE OF APPLICATION TO DIVISIONAL COURT FOR JUDICIAL REVIEW

TO THE RESPONDENTS:

A LEGAL PROCEEDING HAS BEEN COMMENCED by the Applicants. The claim made by the Applicants appears on the following pages.

THIS APPLICATION for Judicial Review will come on for a hearing before the Divisional Court on a date to be fixed by the Registrar at the place of hearing requested by the Applicants. The Applicants request that this application be heard at Osgoode Hall, 130 Queen Street West, Toronto, Ontario, MSH 2N5.

IF YOU WISH TO OPPOSE THIS APPLICATION, to receive notice of any step in the application or to be served with any documents in the application, you or an Ontario lawyer acting for you must forthwith prepare a notice of appearance in Form 38A prescribed by the Rules of Civil Procedure, serve it on the Applicants' lawyer or, where the Applicants do not have a lawyer, serve it on the Applicants, and file it, with proof of service, in the office of the Divisional Court, and you or your lawyer must appear at the hearing.

IF YOU WISH TO PRESENT AFFIDAVIT OR OTHER DOCUMENTARY EVIDENCE TO THE COURT OR TO EXAMINE OR CROSS-EXAMINE WITNESSES ON THE APPLICATION, you or your lawyer must, in addition to serving your notice of appearance, serve a copy of the evidence on the Applicants' lawyer or, where the Applicants do not have a lawyer, serve it on the Applicants, and file it, with

proof of service, in the office of the Divisional Court within thirty days after service on you of the Applicants' application record, or not later than 2 p.m. on the day before the hearing, whichever is earlier.

IF YOU FAIL TO APPEAR AT THE HEARING, JUDGMENT MAY BE GIVEN IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO DEFEND THIS PROCEEDING BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

Date:

Issued by

Address of Local Registrar court office Divisional Court

Superior Court of Justice
Osgoode Hall
130 Queen Street West
Toronto, ON MSH 2N5

TO: ATTORNEY GENERAL OF ONTARIO
Crown Law Office — Civil
8th Floor, 720 Bay Street
Toronto, ON

AND TO:

Respondent Insurance Companies (addresses particularized and identified along with counsel in the record of proceeding and the civil claims submissions portal)

APPLICATION

Volume #1: Relief Sought

1.The Applicant adopts his definitions from the record of proceeding, including the hearing record in NOM #13 to #15 and NOM #16 and they have the same meaning herein as they do therein.

2.The Applicant makes the application for the following relief in the form of any orders, declarations, findings, determinations or directions with great respect to the License Appeal Tribunal and gratitude to the ONSC (Divisional Court) for its consideration of the same:

a. An Order that this JRPA proceeding be declared as public interest litigation;

b. An order that no costs are awarded against the Applicant in any event of the cause;

c. An Order compelling Vice Chair Morrissette or the Tribunal to decide the Applicant's motion (defined as "NOM #16" which was served on SNIC, TDHA, and TDGIC and filed in September 2024) or confirm with the Applicant, copied to this ONSC (Divisional Court), that it is declining to exercise its jurisdiction or discretion under section 21.1 of the SPPA;

    i. An Order, thereafter the Tribunal complying with the above order, that Vice Chair Lake either amend her reconsideration decision (the "RD") or confirm, with a copy to this court, that she is declining to exercise her jurisdiction or discretion;

        1. An Order that the 30 day time limit under the JRPA does not commence until the above orders are complete;

d. A preliminary or procedural order that this judicial review is heard before a single sitting judge pursuant to section 6(2) of the *JRPA*;

e. A procedural and preliminary order that the limitation period for judicial review involving the final orders involving NOM #14 and NOM #15 does not commence until the Licence Appeal Tribunal/AABS issues its order regarding the Applicant's section 21.1 of the SPPA motion ("NOM #16") (filed in September 2024 but "in "progress" as of November 15, 2024, to the LAT/AABS) and the Tribunal issues any amended decision regarding the Applicant's likely amended reconsideration motion;

f. An Order that the Applicant may add and include fresh evidence when it becomes available to him through any lawful means including the LAT and/or any privacy requests that are outstanding at the time of this JRPA Application;

g. A procedural and preliminary order that no responsive materials are required from the Respondent Insurers and they are not entitled to participate without leave as they chose not to participate in the underlying motions subject to the Respondent Insurers participating in any of aforementioned amended motions arising out of the Applicant's NOM #16;

h. An order in the nature of mandamus requiring the Tribunal to comply with its requirements regarding the provision of hearing notices to any and all parties prior to issuing decisions;

i. An Order in the nature of mandamus requiring the Tribunal to comply with its specific rules, effective August 21, 2023, with particular reference to granting non-parties the right to make submissions prior to the issuance of a decision;

j. A declaration that certain specific rules in the LAT Rules are ultra vires the Tribunal which will be specified in the Applicant's factum;

k. An Order that the relief sought in the Applicant's motions (see: NOM #14 (August 3, 2024) and NOM #15 (August 21, 2024)) (see: Appendices #1 and #2) including his reconsideration motion, dated September 27, 2024, is granted in substantially the same form:

    i. An Order quashing or in certiorari and/or varying the orders of Vice Chair Morrissette ("**VCM**") decision on September 12, 2024, to the substantive orders sought therein; and

    ii. An Order quashing or in the nature of certiorari and/or varying the orders in the Vice Chair decision on involving the Applicant's reconsideration motion;

l. More specifically, the Orders sought by the Applicant shall be granted in full or substantially the same form as he sought them at the time:

    i. An Order cancelling the decisions and orders of the Adjudicator in NOM #14 and NOM #15;

    ii. An Order varying the decision of the Appellate Tribunal as follows:

        1. Granting the relief sought in NOM #14 (see: Hearing Record, Tab 1, page 3; see also: Appendix #1 herein); and

        2. Grant the relief in NOM #15, paragraph #3 (see: Appendix #2 herein);

m. A Declaration and Order that TDHA, FSRA registration number 1063, is declared the "**First Insurer**" pursuant to Reg 283, and such an order shall remain as it relates to the Applicant (also defined as the "Insured Person" or "Disabled Individual" arising out of no-fault car accident on August 31, 2022);

n. An Order compelling the LAT to provide and disclose any and all records involving who was the first respondent denoted in its LAT/AABS e-filing system;

o. An Order quashing VC Lake's Reconsideration Decision on grounds of conflict of interest and/or reasonable apprehension of bias;

p. Such injunctive or interlocutory relief as may be sought by the Applicant, until such time this application can be determined on its merits;

q. Costs in favour of the Applicant; and

r. Such other relief that the Applicant may advise and this Court may allow.

Volume #2: The Grounds for the Application

3.This judicial review can be disposed of on one legal ground and error, while there are broader errors in the VCM decision in the **First Insurer Motions** which include the following statement: "[27] .....The initial respondent [sic], TDGIC, and the current respondent, SNIC accepted priority over the applicant's [sic] insurance policy".

4.Therefore, if SNIC and TDGIC accepted priority of the Insurance Policy, as found by the Adjudicator, and the Appellant did not make any such offer to either for them to 'accept priority of the Insurance Policy' and/or neither SNIC nor TDGIC first received the **Appellant's Completed Application**, then TDGIC had to receive that offer of "priority" (as the Adjudicator puts it) from the "**First Insurer**".

5.As a matter of law, could TDHA offer "priority" to SNIC and TDGIC? The question answers itself.

6.As the Applicant, along with SNIC, TDHA and TDGIC, are awaiting the decision from Vice Chair Morrissette in NOM #16, the Applicant took the time to advance this judicial review application so that it is filed and then can be amended after receiving the NOM #16 decision. Moreover, it may be affecting the reconsideration decision of Vice Chair Lake. Unlike an appeal under *LATA*, the underlying matter is not stayed.

7.The Appellant is a disabled individual residing in Toronto, Ontario. At the time of the Accident, he was 39 years old with a G2 license. At the time of these submissions, he is 41 years old with a G license. The Appellant is the spouse of the individual insured (Nicole Artopoulos) and the Insured Automobile was leased from the lessor BMW Financial Services Inc. Since April 2018, the Appellant and Ms. Artopoulos have resided at 775 King Street West, Toronto, Ontario, M5V 2K3. Ms. Artopoulos, in Spring 2018, obtained an exclusive automotive insurance policy through SNIC as her being a University Of Toronto alumnus for a previous BMW leased vehicle. In October 2019, the same insurance policy was transferred to the Insured Automobile.

8.Security National Insurance Company ("SNIC") was incorporated under the CBCA in 1934, then continued under the federal *Insurance Act* with its head office in Montreal, Quebec. At the time of the Accident, SNIC was licensed with the FSRA to provide six (6) classes of insurance in Ontario and its FSRA registration number if 397. From 2018 to the time of the Accident and thereafter, SNIC's Ontario office has been the McNabb Building in Markham, Ontario. The primary area code for phone and fax lines in

Markham is "905". At the time of the Accident, SNIC provided the return mailing address of the Markham McNabb Building but, in error, provided a "416 area code" fax number. The head tenants at the Markham McNabb Building are: (I) TD Bank; and (ii) General Motors. SNIC and Primmum Insurance Company ("Primmum") (FSRA reg. #1396), by virtue of them not having "TD" in their corporate names, operate under the colloquial business name of "TD Insurance Meloche Monnex" under two licensed trademarks from TD Bank and Meloche Monnex Inc. in: (i) "TD Insurance"; and (ii) "Meloche Monnex". SNIC, through TDIMM, issues policies under the "Professionals and Alumni Program" and Primmum, through TDIMM, issues policies under the "Employer Group Program". In October 2023, upon the Appellant's return to Canada after obtaining requisite MRIs, examinations, assessments and reports, the Appellant learned that SNIC had purported to change its physical address and fax number to: (i) the Burlington Address; and (ii) 905 Fax Number. The Burlington Address is 91 km from SNIC Markham (McNabb Building), where Meloche Monnex Inc. has its registered records office. The "Ontario Business Directory" lists the Burlington Address and 905 Fax Number as being the business of "TD Insurance". The "Ontario Business Directory" also lists the head office associated with the Burlington Address as the Victoria Park Building (see: Affidavit #29, Exhibit "A", page 1 and 2).

9. In the SNIC Response, SNIC did not list the 416 Fax Number as a fax number for service. With the benefit of hindsight and labyrinthian investigations, the only factual contact information that SNIC provided to the Appellant was its mailing address at the Markham McNabb Building. Neither the 416 Fax Number (which is the material mistake as it relates to whom is the **First Insurer**) nor the 905 Fax Number were fax numbers for SNIC as a recipient. Further, the Burlington Address was not an address for receipt of documents from the Appellant for SNIC.

10. TD Home And Auto Insurance Company ("TDHA") is an insurance company that is licensed, by the FSRA, to provide three classes of insurance including automotive insurance. TDHA's FSRA registration number is 1063. At the time of the Accident, the lead tenant(s) at the Victoria Park Building were denoted as "TD Insurance" by the property manager at the VP Building in Collies International. From 2018 to present, the "Ontario Business Directory" has listed the fax number of 416-774-3120 (the "416 Fax Number") as the fax number for TDHA. The 416 Fax Number is a landline, owned by Bell Canada Inc., which is grounded at the Victoria Park Building. In the HCAI Portal, the Appellant's TD Claim #3, contrary to the information he provided his physiotherapists as the return mailing address in documents, prima facie, sent to him by SNIC, auto-populated the name of the adjuster and a branch address for SNIC

of 304 The East Mall, 6th floor, Etobicoke, Toronto, Ontario, M9B 6B7 (the "**Etobicoke East Mall Address**") (see: Affidavit #21, Exhibit "A", page 20 to 22 for "branch names" as being "independent" of the licensed insurer. Yelp, another online business directory, lists the Etobicoke East Mall Address as the address for TDHAIC (see: Tab 18, page 340 to 343). While SNIC never, in letter to the Appellant, represented that its address was the Etobicoke East Mall Address, it is now clear that said address, created by SNIC for this TD Clam #3, was independent of SNIC, and an address for TDHA.

11. On or around September 1, 2022, the Appellant notified SNIC of his intention to apply for accident benefits. Due to an error in his postal code, the Appellant did not received an application benefits package from SNIC until late September 2022. On October 13, 2022, the Appellant fax delivered his OCF-1 (also defined as "Completed Application") to the 416 Fax Number. The Appellant also delivered the OCF-2, on his behalf by his employer, to the 416 Fax Number. On November 3, 2022, his attending medical doctor for his post-Accident impairments, completed and signed his portions of the OCF-3, and faxed the completed OCF-3 to the 416 Fax Number. 90 days from October 13, 2022 was January 10, 2022. The Appellant did not receive any dispute notice from SNIC or any other insurance company by January 10, 2023, pursuant to Reg 283. From January 11, 2023, to October 2023, the Appellant continued to fax the 416 Fax Number with all confidential information and other OCF forms regarding TD Claim #3. In October 2023, the Appellant attempted to fax some of his documents to the 905 Fax Number, with a copy to the 416 Fax Number, but the 905 Fax Number would more regularly, than the 416 Fax Number, block his faxes and/or drop them during the sending process. In November 2023, the Appellant fax delivered the completed OCF-19. On December 24, 2023, the Appellant filed this Appeal and served the duly signed Appeal to the 416 Fax Number. For some context along the way, in March 2023, the Appellant received a request from SNIC via mail wishing to communicate via email. The Appellant faxed the 416 Fax Number with his decline regarding the same and the reasons therein (i.e. PIPEDA issues and absence of compliance by whom he presumed was SNIC).

12. In April 2023, the Appellant received the "Spam Faxes" wherein an unknown person or company represented to him that it (after receipt of faxes at the 416 Fax Number but not from the 416 Fax Number) had no record of his TD Claim #3. The Appellant promptly faxed the 416 Fax Number (attention: Ms. Nurse) to alert SNIC to the issue of the "Spam Faxes" and his dismay that said recipient had no record of his TD Claim #3. In early May 2023, the Appellant received the purported attempt by SNIC to partially approve and partially reject the Dhaliwal OCF-18 (April 6, 2023) with the Forged Nurse Signature. After being successful in his NOM #8, by order on June 21, 2024, of the Tribunal, the Appellant filed his NOM

#13 for non-party production and disclosure by the Fictitious Respondent (TDGIC) on July 9, 2024. The Appellant hand delivered the NOM #13 hearing brief to the listed address for the Fictitious Respondent, which was the Victoria Park Building which only became known to the Appellant for TDGIC in February 2024 (as it was not in the SNIC Response as an address for SNIC or previously), and learned that TDGIC had misrepresented its address to the Tribunal as it had not been a tenant for over a year (i.e. July 2023). The building manager for the VP Building represented that TDGIC had moved to the Markham McNabb Building. The building manager for the VP Building did NOT represent that TDGIC had moved to any of the following addresses: (i) the Burlington Address; or the (ii) the Etobicoke East Mall Address. From July 26 to July 31, 2024, the Appellant provided notice to TDHA, with a copy to SNIC, that the evidence was uncontroverted that the 416 Fax Number, the 905 Fax Number, the Burlington Address, and the East Mall Address were contact information exclusively for TDHA. Neither TDHA nor SNIC denied the same. From August 1 to 2, 2024, the Appellant sought the consent of SNIC and TDHA to add TDHA as a party, and neither TDHA nor SNIC responded. As of August 3, 2024, TDHA has never responded to the Appellant despite the Appellant sending faxes to the 416 Fax Number, 905 Fax Number, and through authorized submissions to HCAI, the East Mall Address. SNIC has not started any section 7(1) of Reg 283 arbitration. SNIC and the Appellant consented since January 2024 to the Email Communication Protocol

13. The question of fact to be answered in NOM #14 are on a balance of probabilities:

    a. a) *Who was the owner of the **416 Fax Number**, which is a landline located at the Victoria Park Building in Toronto, in October 2022? (b) Was the address of 304 The East Mall, 6th Floor, Etobicoke, Toronto, Ontario (the "East Mall Address"), which is denoted by auto-population in HCAI after TD Claim #3 is inputted therein, an address for an address for SNIC, the address of TDHA, SNIC or another insurance company? And (c) Which insurance company holds the file for the **Fictitious TD Claim Number**?*

14. The issue of law to be answered in this NOM #14 on a balance of probabilities is

    whether TDHA was the **First Insurer** (i.e. the insurance company to receive the Appellant's Completed Application on October 13, 2022)?

15. The substantial amendments to Reg 283 became effective in September 2010. Reg 283 is designed to keep priority disputes out of the courts (see: *Zurich 2024*, paragraph 6). Reg 283 is also purposed to prevent SABS claims, including vital treatments and income benefits, from being delayed while insurers fight over priority dispute under section 268(2) of the *Insurance Act* (see: *Zurich 2024*, paragraph 16). SABS and Reg 283, having undergone major amendments in 2010 after being submitted to industry consultations and amendments before proclamations, they reflect important policy choices to ensure order and stability in regulated industries (see: *Bristol-Myers Squibb v. Canada (AG)*, 2005 1 SCR 533 at paragraph 99-100).As a matter of principle, there is difference between an insurer's failure to pay under section 2 of Reg 283 and a failure to pay under any provision of SABS (see: *Zurich 2024*, paragraph 54). While a **First Insurer** may have never received insurance premiums from the insured person (claimant) may seem intuitively wrong but the Legislature and LGIC's intent are to be respected. There is no, per se, harshness to be alleviated by a sophisticated insurance company, with endless resources, who receives a faxed OFC-1, who fails to investigate within three months and provides a notice to an insured person and other insurers under section 3 of Reg 283. The provisional first-insurer rule under the regulation and the priority regime under the statute operate ***differently*** (see: Zurich, paragraph 8). As long as a claimant for accident benefits completes all required fields (see: SABS, ss. 66 and 67) and signs the OCF-1, the **First Insurer** that receives an OCF-1 application MUST pay benefits in accordance with SABS (see: Reg 283, ss. 2.1(6)). If the **First Insurer** does not take any issue, within ten business days (approximately 15 calendar days) of receipt of the Completed Application, the **First Insurer** has 75 days from then to provide a notice of dispute that it is required to pay the benefits of the claimant in which it received a Completed Application. Irrespective of whether the claimant is an "insured person" or not in the subjective mind of the **First Insurer**, the **First Insurer** must respond to the Completed Application and the claimant (see: Reg 283, ss. 2.1(6)). Acceptance during the 90-day period is merely provisional (see: *Zurich 2024*, paragraph 29). If the **First Insurer** does not dispute, within 90 days, its liability to pay all benefits, in accordance with SABS, of the claimant, there is no other process for the **First Insurer** to transfer, dispute

and recover any paid or to be paid benefits to the claimant. **First Insurer**'s calculus to not accept a claim for whatever subjective reason can turn out to a costly and permanent mistake (see: Zurich, paragraph 10). As of 2015, in *Zurich 2015*, the SCC held that Chubb ought to have responded to the SABS claim immediately on a 'pay first and dispute later' basis (see: *Zurich 2024*, paragraph 12). long as the Completed Application by the claimant was not arbitrary, there is a nexus between the claimant and the **First Insurer** (i.e. the one to receive the Completed Application) (see: *Zurich 2024*, paragraph 14). In *Zurich 2015*, the SCC (see: 2015 SCC 19) restored Goldstein J (ONSC (Divisional Court)) in adopting the dissent of Juriansz J.A.: 2014 ONCA 400. a vague recollection about seeing an insurer's name at a rental car office was sufficiently non-arbitrary to require the **First Insurer** (Chubb in *Zurich 2015*)) to step into the shoes as a "**First Insurer**" for the purposes of section 2(1) of Reg 283 (see: *Zurich 2024*, paragraph 15). long as the **First Insurer** providers automobile insurance in Ontario at the time of receipt of the Completed Application there is a sufficient nexus between a claimant and the **First Insurer** (see: *Zurich 2024*, paragraph 16). The policy behind the inflexible rule that an insurer (like TDHA) fails to pay benefits and fails to put other insurers on notice after receipt of a Completed Application, when there is *SOME* nexus, being permanently responsible for the claimant's benefits is to promote compliance with the statutory scheme. It is not an issue herein of this Appellant and TDHA but rather the greater public interest and ongoing and future compliance by all other similarly situated '**First Insurer**s' (see: *Zurich 2024*, paragraph 31, where the second arbitrator cited paragraph 62 from the decision of Strathy J. (as he then was) in Lombard Canada Ltd., 2008, 94 O.R. (3d) 62 (Ont. S.C.J.)The ONSC in *Zurich 2024* has settled the law in the above regards as follows: (i) breach of section 2 of Reg 283, according to the case law, does not result in the an insurer being required to pay benefits to the claimant permanently; BUT, (ii) the failure TO AVAIL itself of section 3 does. TDHA's permanent liability for paying benefits was a self-inflicted consequence of its failure to adhere to the requirements of both section 2 and s. 3 of Reg 283. The combination of provisions in Reg 283 transformed TDHA's provisional liability into a permanent

one (see: *Zurich 2024*, paragraph 64). For TDHA to not be declared as the **First Insurer** would mean that there were no consequences for the conduct (or inaction) of TDHA by receipt of the Completed Application and by continuing to have its former branch office address (East Mall Address) auto-populate in HCAI, and it would defeat the legislation's public policy: "*pay now and dispute later*".[i]

16. "Arbitrary" means: determined by impulse rather than reason. The Appellant faxed the Completed Application solely based on the reason that SNIC represented that its fax number was the 416 Fax Number when it could not have been based on SNIC's physical location at SNIC Markham. Therefore, the Appellant did not make an "arbitrary decision" to fax his Completed Application to the 416 Fax Number. "Receipt" means: "to get possession of". TDHA got possession of the Completed Application as the **First Insurer** on October 13, 2022. There is now no dispute that the Spam Faxes, which SNIC could not produce in the face of a demand from the Appellant for the same, were on behalf of TDHA and its attempt to steer the Appellant away from the 416 Fax Number and its representation it [TDHA] had no record of its claim. TDHA would NOT have had a "record" of the Appellant's TD Claim #3 as it the TD Claim #3 was likely created by SNIC but when the Appellant faxed the Completed Application, as opposed to mailing to SNIC Markham, to the 416 Fax Number, TDHA became the **First Insurer**.

17. The 416 Fax Number was the fax number for TDHA in September and October 2022. TDHA has been an adjusting insurance company, by reference to the East Mall Address which has been exclusively represented to the public as TDHA's address, of the Appellant's TD Claim #3, including by way of the Fictitious TD Claim Number, since it was so denoted in the HCAI portal as such. The 905 Fax Number and the Burlington Addresses were, at the material times post receipt of the Appellant's OCF-1, OCF-2, OCF-3, OCF-6's and OCF-18 (Dhaliwal), address for receipt of documents and confidential information of the Appellant (albeit unbeknownst to him) by TDHA.

18. TDHA was the **First Insurer**, pursuant to Reg 283, and it is solely and permanently liable for the Appellant's claims for benefits pursuant to SABS. The Tribunal must grant ancillary orders compelling TDHA to provide the Appellant with the current address and fax number for TDHAIC along with an adjuster that is authorized for TDHA along with amendments to the HCAI portal for accuracy purposes for any and all ongoing or day-to-day matters. SNIC must remain as a party as it may be liable for some of the costs in this **SNIC Proceeding** to be dealt with at the hearing proper.

19. It is the word "accept" that is conspicuous, marked and eye-catching. Whatever acceptance of priority of the applicant's [sic] insurance policy was and is of no consequence in law as per Reg 283, section 4(1), 5(1) and (2). The Appellant never received any notice of "assignment, sharing or transfer of priority". It is trite that TDGIC's fax was in the LAT orders as early of February 2024 and SNIC resiled from the 416.774.3120 fax number by no later than Summer of 2023. TDHA was the **First Insurer** and received the Completed Application at first instance, and all other OCF documents. It is understandable why certain adjusters at SNIC, and then Mr. Nieuwland for TDGIC, were so unfamiliar with the documents and claimed to be missing certain documents like MRI reports, Brain MRI UHN Notification and others. It may be the most clichéd phrase in the history of law: "offer, acceptance, consideration." Prior to the 'acceptance' by SNIC and TDGIC over the insurance policy, as found by the Adjudicator, there had to be an offer from another person. There are four automotive insurance companies in "TD Insurance", as per its public website and URL for "legal", which are: (i) SNIC; (ii) TDGIC; (iii) TDHAIC (TDHA); and (iv) Primmum. SNIC and Primmum, without any reference TD in their names, operate under the banner of two distinct yet combined trademarks which are: (i) TD Insurance," which is owned by "The TD Bank"; and (ii) "Meloche Monnex," which is owned by Meloche Monnex Inc. (not to be confused with Meloche Monnex Financial Services Inc. or other brokers or agents with permutations of the name). Ironically, TDGIC and TDHA do not have "TD Insurance" in their name as the "insurance" word comes after "General" and "Auto" sequentially for the aforementioned.

20. There is no dispute that SNIC was the Sole Underwriter of the Insurance Policy. SNIC delivered an accident benefits package to the Appellant in late September 2022. SNIC represented its address as the SNIC Markham Office with a fax number of 416.774.3120. On May 2, 2024,3 in relation to NOM #4 and NOM #6, Nieuwland (with Karat appearing as the ADR Specialist for SNIC) orally represented, contrary the April 11 submissions (supra) solely on behalf of TDGIC, 8 that SNIC and TDGIC were and are "one and the same". The Appellant objected and reserved his rights.

21. "One And the Same" is defined, by Collins Dictionary as "When two or more people or things are thought to be separate and you say that they are one and the same, you mean that they are in fact one single person or thing."

22. While there is no dispute what Nieuwland thought and meant on May 2, 2024, his thoughts and meanings, while unambiguous, are contrary to the statute (Ins. Act) in which this **SNIC Proceeding** arose and FSRA Enforcement Decisions have found that the SABS Insurer (SNIC) and TDGIC are separate persons.

23. The now finding by the Tribunal that SNIC and TDGIC accepted priority over the insurance policy means that they agreed (which is possible in fact but not in law) to accept an offer from another regarding priority. This is not only the logical explanation for what transpired and why TDHA, an automotive insurer in Ontario which is the only required element for a non-underwriter of an insurance policy to be the provisional **First Insurer** and then potentially the permanent **First Insurer**, has not been responded and paid the benefits due and owing to the Appellant despite receipt of the same from the Appellant via fax. This also explains the Spam Fax in Spring 2023 which was nearly or identical to the August 2024 letter (see: Affidavits #34 and Affidavit #35).

24. It is unfortunate, from an access to justice standpoint and for the benefit of the public, for the Adjudicator to rush this decision, as it was not available when the Appellant inquired on September 11, 2024, as to the date of the hearing for the NOM #13. With the greatest of respect, the Adjudicator was unfamiliar with the facts, which one can empathize with if she was new to this LAT proceeding but she granted the most consequential motion in this proceeding so far, and basic one at that such as the first order in this proceeding of her fellow Vice Chair (VC Lake). Adjudicator Morrissette was of the mistaken view that the Tribunal changed, at some unknown time, the IDENTITY of SNIC to TDGIC after January 30, 2024, but some time before February 19, 2024. One can understand not being able to pinpoint an exact date when identities are changed or swapped in a cyber-attack or ransomware plot, but the Adjudicator found that it was THE TRIBUNAL that changed the identity from SNIC to TDGIC. It appears that the Adjudicator was implying that an administrative individual employed by the License Appeal Tribunal in the AABS division somehow on off-time engaged in some administrative identity swapping without notice to the litigants in the proceeding. The Appellant is not attempting to be hyperbolic or histrionic in any way, but the License Appeal Tribunal is one of 13 tribunals part of Tribunals Ontario and it is a division or sub-body within the office of the most important ministry as it pertains to the law: THE MINISTRY OF ATTORNEY GENERAL. And the Appellant is merely finding out about this in September 2024? This is beyond concerning and beyond the Appellant's immediate interest. Perhaps, Adjudicator Morrissette meant December 30, 2023, to January 19, 2024? This would make more sense in that an administrator or case manager would have reviewed the Appeal and attached documents and countless references to TD SNIC and Security National Insurance Company and input SNIC as the respondent. Then, likely someone informed Mr. Grant to change the name from SNIC to TDGIC. This, of course, would have required such a change as the Appellant had already filed two motions by January

8, 2024. The Appellant only objected for six months, and this appears to have been the strategy by SNIC and then TDGIC of which neither were **First Insurer**s.

25. A "Respondent" is a party in a LAT Proceeding. Legislative definitions are sometimes counter-intuitive and defy common sense. In Ontario, "legislation" includes "legislation and regulations", but a statute is distinct from a regulation. Section 5 of the SPPA: "The parties to a proceeding SHALL be: (i) the persons specified as parties by/under the statute17 under which the proceeding arises; OR (ii) if, not so specified, persons entitled BY LAW18 to be parties to the proceeding19. One would have thought with the benefit of Adjudicator Morrissette who expressly dealt with a party issue in NOM #8, such a misstatement of law or query from her would have been obsolete. By law is an ambiguous phrase which is not to be confused with a municipal by-law. "Source law" is a definition under the Legislation Act 2006, and it includes regulations. Tribunals in Ontario and Canada have held that persons who are not expressly required by statute to be parties may be added as parties pursuant to section 5 (*SPPA*) if s/he or it have a substantial and direct interest in the proceeding's outcome.

26. A final order disposes of the litigation, or finally disposes of part of the litigation: *Ball v. Donais* (1993), 1993 CanLII 8613 (ON CA), 13 O.R. (3d) 322 (C.A.). An interlocutory order disposes of the issue raised, most often a procedural issue, but the litigation proceeds: Hendrickson v. Kallio, 1932 CanLII 123 (ON CA), [1932] O.R. 675 (C.A.), at p. 678.The interlocutory order from which there is no appeal is an order which does not determine the real matter in dispute between the parties – the very subject matter of the litigation, but only some matter collateral (see: Hendrickson v. Kallio, 1932 CanLII 123 (ON CA), [1932] O.R. 675 (C.A.)

27. In *Smerchanski v. Lewis* (1980), 1980 CanLII 1699 (ON CA), 30 O.R. (2d) 370 (C.A.), at para. 18: This Court has held that an order made in a contest between a party to an action and someone who is not a party is a final order, appealable without leave, if the order finally disposes of the rights of the parties in the issue raised between them. In M.E. v. Ontario, 2021 ONCA 718: We conclude that M.E. was seeking to add new causes of action. An order refusing leave to amend pleadings to plead a new cause of action is final: Atlas Construction Inc. v. Brownstones Ltd. (1996), 46 C.P.C. (3d) 67 (Ont. Gen. Div.). So is an order dismissing a motion to add a party, which M.E. also appears to have been trying to do Bryson v. Kerr (1976), 1976 CanLII 867 (ON SC), 13 O.R. (2d) 672 (Ont. Div. Ct.). Accordingly, leave to appeal is not required and an appeal lies as of right to the Court of Appeal: Courts of Justice Act, R.S.O. 1990, c. C.43, s. 6(1)(b).

28. In Vavilov, the SCC attempted to clear up complexities and uncertainty brought on by Dunsmuir. 22 The SCC cited three (3) non-exhaustive examples in Vavilov where the correctness standard must be applied by a review tribunal or court: (i) constitutional questions (ii) general questions of law of central importance to the legal system as a whole; and (iii) questions regarding jurisdictional boundaries between two or more administrative bodies.

29. The Supreme Court in *Housen* found an error of law including the: (i) application of an incorrect legal standard; (ii) a failure to consider a required element of a legal test; or (iii) the mischaracterization of the standard.

30. A tribunal errors in law when it improperly approaches the evidence such as by misapprehending evidence, ignoring relevant evidence or relying on irrelevant evidence or irrelevant factors in reaching its decision 30 (see: Nguyen). In *Drewlo Holdings v. MPAC*, 33 the ONSCJ (DC) cited its decision in Yatar34

where, at ¶28, the Court confirmed a finding of fact can constitute an error of law: "is when a finding of fact on a material point is based on no evidence.

31. The failure to identify or consider the legal criteria that govern (the "Identification Failure Governing Legal Criteria") the exercise of discretion may constitute an error of law.

32. In *Gega,* the Divisional Court applied a novel yet functional determination of when an issue was one of law as opposed to one of 'mixed fact and law': "[19] This issue is a matter of law...argue this issue is a matter of mixed fact and law, but there are no factual findings that need to be made by me to consider this question."

33. In *Kawa Arab,* the Divisional Court found an administrative decision of statutory interpretation as a matter of law. At ¶ 19, Tzimas J. found "[19] ..... If an Adj. ignores evidence that the law requires to be considered to arrive at a DECISION, that will amount to an error in law.

34. In *Bassline*, VC Lamoreux found in 201846 at ¶ 20, "Therefore, I am satisfied that the Tribunal erred by determining that it had no jurisdiction to consider the issues raised in the Notice."

35. In *Lapcevich*, the ONSCJ49 found: "We agree with the appellant, Registrar, that the Licence Appeal Tribunal erred in its approach to the statutory framework and exceeded its jurisdiction; and it did not make the necessary threshold determinations, as required by the statute. In Sparks, the Divisional Court found that inconsistent findings of facts as "errors of law."

36. In Glencore, the FCA considered a second appeal wherein it stated the applicable SOR for extricable legal issues in that no deference is owed to the overall conclusion (see: ¶ 22).

37. In *THMR*, ONCA found that when hearing below is in writing that the correctness standard applies.

38. The case of *Fatemea Rezaiezadeh v. State Farm Mutual Automobile Insurance Company*, 2016 ONFSCDRS 59 ("*Reza*") stands for the proposition below. The Appellant notes the case of Reza (for short) wherein, albeit under the FSCO, the arbitrator found the following: "The Appellant concedes there is no explicit procedure in the Code or the *Statutory Powers Procedure Act*, R.S.O. 1990, c. S.22, as amended, to permit a party to continue a proceeding against a non-party." The "Dispute Resolution Code" is no longer applicable as it only applied with the FSCO. Even where State Farm Automobile Insurance Company was bought out by Certas and Desjardins regarding its Canadian operations, State Farm remained as the party as it was the underwriter at the time of the accident therein. Therefore, this is yet another reason that the decision of the Adjudicator and now the decision of the Appellate Tribunal (LAT) is one that finally disposes of the Appeal even when it is not in favour of the Appellant. If the Appellant does not have the **First Insurer** as the primary and liable party for the main issues between the Appellant and it (with SNIC only therein for costs as a result of it filing the sole Response (SNIC Response) to date but only as a result of the LAT Rules which is a distinction between present times and a case like Volfson), then all of the protections under SABS are illusory.

39. The provisional "**First Insurer** rule" (the "**First Insurer** Rule") under the regulation and priority regime under the statute operate differently (see: *Zurich 2024*, paragraph 8). If a claimant for accident benefits completes all required 'fields' (see: SABS, ss. 66 and 67), duly signs the OCF-1 and then sends via mail or fax, the **First Insurer** that receives an OCF-1 application MUST benefits in accordance with SABS (see: Reg 283, ss. 2.1(6)). If the **First Insurer** does not take any issue, within ten business days of receipt of the Completed Application, the **First Insurer** has approximately 75 days from then to provide a notice

of dispute that it is required to pay the benefits of the claimant in which it received a Completed Application. Irrespective of whether the claimant is an "insured person" or not in the subjective mind of the **First Insurer**, the **First Insurer** must respond to the **Completed Application** and the claimant (see: *Reg 283*, ss. 2.1(6)).

40. Acceptance during the 90-day period is merely provisional (see: *Zurich 2024*, paragraph 29). If the **First Insurer** does not dispute, within 90 days, its liability to pay any and all benefits, in accordance with SABS, of the claimant, there is no other process for the **First Insurer** to transfer, dispute and recover any paid or to be paid benefits to the claimant. A **First Insurer**'s calculus to not accept a claim for whatever subjective reason can turn out to be a costly and permanent mistake.60 This is full answer to the Adjudicator's query about whether the Tribunal had authority to add the **First Insurer** to this LAT Proceeding, which is oddly required as a matter of law.

41. As of 2015, in *Zurich 2015*, the SCC held that Chubb ought to have responded to the SABS claim immediately on a 'pay first and dispute later' basis (see: *Zurich 2024*, paragraph 12). As long as the Completed Application by the claimant was not arbitrary, there is a "nexus" between the claimant and the **First Insurer** (i.e. the one to receive the Completed Application) (see: *Zurich 2024*, paragraph 14). In *Zurich 2015*, the SCC (see: 2015 SCC 19) restored Goldstein J's decision (ONSC (Divisional Court)) in adopting the dissent of Juriansz J.A.: 2014 ONCA 400. A vague recollection about seeing an insurer's name at a rental car office was sufficiently non-arbitrary to require a '**First Insurer**' (Chubb in *Zurich 2015*)) to step into the shoes as a "**First Insurer**" for the purposes of section 2(1) of Reg 283 (see: *Zurich 2024*, paragraph 15). If the **First Insurer** provides automobile insurance in Ontario at the time of receipt of the Completed Application there is a sufficient nexus between a claimant and the **First Insurer** (see: *Zurich 2024*, paragraph 16). The policy behind the inflexible rule is that an insurer who fails to pay benefits and fails to put other insurers on notice after receipt of a Completed Application, when there is

SOME nexus between the claimant and the **First Insurer**, being permanently responsible for the claimant's benefits is to promote compliance with the statutory and regulatory scheme.

42. No power to pursue a non-party under statute is answered above. As a matter of principle, there is NO difference between an insurer's failure to pay under section 2 of Reg 283 and a failure to pay under any provision of SABS (see: *Zurich 2024*, paragraph 54). As the Tribunal is required to decide this LAT Proceeding in accordance with SABS as a matter of statute (see: section 280(4) of the *Insurance Act*), then it was not a matter of discretion for Adjudicator Morrissette but a requirement upon her to ensure that the Appellant had the correct and liable party (see also: *Insurance Act*, ss. 268(3)) before the Tribunal and in the future for not only himself but his service providers. While there is an ability of a party to "request an expedited hearing" in the dropdown menu of Tribunals Ontario e-filing portal, there is a dearth of jurisprudence regarding the same with LAT/AABS matters. As of 2010, the amendments to Reg 283 led to an absence of listed fax numbers for insurance companies and for good reason: some unsavory insured persons may deliberately manipulate the system by faxing their OCF-1's to an incorrect insurance company with no record of them as insured persons leading to those insurance companies in receipt of confidential information with an inability to dispute that they were not liable along with which insurance company may be liable. This could lead to an insurance company, who had not received premiums with no previous interaction with such an unsavory insured person, being liable to respond and pay benefits to said unsavory insured person.

43. It is important to note that the actual relief sought in the hearing record was slightly different in language but a distinction with a difference at Order #5: [5] Any further relief that is consistent with the above and in accordance with Reg 283, SABS, and Reg 664. The issue of adding the party TDHA as the **First Insurer** is one that the Adjudicator was required to answer (see: Rio Tinto, SCC 2010 SCC 43). However,

even if the Adjudicator had granted Order #1 that would have been sufficient as a decision (order, declaration, determination and/or finding) that would have finally disposed of the Appeal, as it was currently constituted on September 13, 2024.

44. Again, the Reconsideration Decision references that the appellant did not cite to any binding case law or legislative authority regarding adding a second respondent. The Tribunal has yet again misunderstood the Appellant's argument in that TDHA would be the First Insurer and SNIC would remain solely as it relates for costs in the proceeding prior to TDHA being the First Insurer. In relation to binding case law, Zurich 2024 as per Justice Akazaki unequivocally found that a breach of Reg 283 or SABs were a distinction without a difference. The decision of VCM in mid-September 2024 is not only an incorrect decision but a dangerous decision. It must be corrected forthwith for the benefit of the general public, the insurance industry and the relevant participants.

45. Moreover, had the Adjudicator determined the factual issue at Order #3 in NOM #15, this would have been a decision that finally disposes of the Appeal. In this regard, the Tribunal issued a Notice of Motion Scheduling Order on Thursday, September 12, 2024, that fond that SNIC was located at the Burlington Office: "[3] preliminary finding, determination, or order, that the fax number 416-774-3120 was a landline phone number utilized as a fax number on the 4th floor of the building situated at the premises municipally known as 3650 Victoria Park Avenue, North York, Toronto, Ontario, M2H 3P7. The decision of Vice Chair Lake on reconsideration suffers from the same issues but remains premature considering not having NOM #16 decided in advance of the same. Once NOM #16 is decided, it will allow for the Applicant (Appellant) to be able to advance this judicial review in accordance with having final decisions on all the same.

Volume #3: Documentary Evidence

46. The following documentary evidence will be used at the hearing of the application:

(a) The Motion Hearing Record for NOM #14 which includes the affidavits of the Applicant therein (see: Appendix #3)

(b) The Motion Hearing Record for NOM #15 of the Applicant which includes the affidavits of the Applicant therein (see: Appendix #4);

(c) The Motion Hearing Record for NOM #13 of the Applicant which includes the affidavits of the Applicant therein;

(d) The decision of Vice Chair Morrissette in relation to NOM #13 to #15 of the Applicant;

(e) The decision of Vice Chair Lake in relation to the Applicant's reconsideration motion;

(f) The record of proceeding in ***AABS File Number*: "23-015662/AABS"**

(g) Such other affidavit material and evidence as counsel may advise and this Honourable Court may deem proper.

November 15, 2024

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Appendix #1

The actual relief sought The Appellant seeks the following orders, without consent of SNIC and TDHA, as follows:

Order #1: **First Insurer** Declaration 1. An Order, Declaration, determination and/or finding that TD Home And Auto Insurance Company, FSRA registration number 1063 ("TDHA" or "TDHAIC") was the **First Insurer** to receive, pursuant to Reg 283, the Appellant's fax delivered Completed Application (see: Reg 283, s. 1) to the fax number, provided to him by SNIC as a return address [sic] for SNIC, of 416-774-3120 (the "416 Fax Number") on October 13, 2022; Order #2: East Mall Address (Branch Office): Determination of which licensed insurer carried on business at said branch office

2. An Order, Declaration, determination or finding the physical address, which is apparently denoted as a branch office of SNIC in HCAI, municipally known as 304 The East Mall, Floor 6, Etobicoke, Toronto, Ontario, M9B 6B7 (the "Etobicoke East Mall Address") was or is an address or branch office of TDHA and not SNIC;

Orders #3 and #4: Adding TDHA as a Party 3. An Order adding TDHA as a respondent party to this LAT proceeding herein; 4. An Order requiring TDHA, should it wish to oppose the relief sought in the Appellant's Appeal, file and serve a Response to the Appellant's Appeal within 14 days of the date of the orders herein;

Order #5: Ancillary Relief 5. Any further relief that is consistent with the above and in accordance with Reg 283, SABS, and Reg 664; and Order #6: Costs against SNIC pursuant to section 17.1 of the SPPA and Rule 19 of the LAT Rules.

Appendix #2

Schedule “A” for NOM #15 The Appellant seeks the following remedies, without the consent of SNIC, as follows: 1. An Order that NOM #14 is heard in an expedited fashion and by no later than August 28, 2024 or, in the alternative, at the earliest date available for a Vice-Chair or adjudicator to determine the same; 2. An Order that if the Respondent Party (SNIC), TDHA or any other non-party or interested person wishes to oppose NOM #14, it must provide notice, via filed letter, to the Tribunal by no later than Wednesday, August 21, 2024; and 3. A preliminary finding, determination, or order, that the fax number 416-774-3120 was a landline phone number utilized as a fax number on the 4th floor of the building situated at the premises municipally known as 3650 Victoria Park Avenue, North York, Toronto, Ontario, M2H 3P7; a. In the alternative, an order that said issue of fact is added to the hearing of NOM #14; 4. An Order that NOM #13 is set for hearing three (3) weeks after the final decision of the Tribunal in NOM #14; and 5. An Order that the Appellant shall tender his hearing brief for his potential motion regarding document production and disclosure from SNIC (the “SNIC Document Production Motion”) within one week after the decision of NOM #14 with a notice of scheduled hearing date to be issued by the Tribunal regarding exchange of responsive and reply briefs; 6. An Order that NOM #13 (Non-Party production by TDGIC) and the SNIC Document Production Motion (if applicable) shall be heard together three weeks after the decision in NOM #14; and Costs against SNIC for this motion herein if it opposes the same

Appendix #3: Index for NOM #14

Chapter #1: Notice of Motion Form
1. Notice of Motion Form (with Schedule "A"), signed by the Appellant on August 2, 2024 ["Motion
Form" or "NOM #14"]
a. (see pages 1 to 3);

Chapter #2: Reg 283 and Cited authorities (prior to *Zurich 2024*]
2. Disputes Between Insurers, O Reg 283/95 ["Reg 283"]
a. (see pages 4 to 9)
3. Cankaya v. Unifund Insurance Company, and Cankaya v. Intact Insurance Company, 2015
ONFSCDRS 214 (as per Delegate Blackman of the former Financial Services Commission of
Ontario ["FSCO"]) ["Cankaya 2015"]
a. (see: pages 10 to 31)
4. Cankaya v. Unifund Insurance Company, and Cankaya v. Intact Insurance Company, 2016
ONFSCDRS 255 (as per Arbitrator Marshall Schnapp, "Decision on a Preliminary Issue")
["Cankaya 2016"]
a. (see: pages 32 to 45)
5. Economical v. Intact, 2021 ONSC 3249 (as per Mr. Justice Chalmers) ["Economical Group"]
a. Applicant (Respondent in Appeal): The Economical Insurance Group
b. Respondent (Appellant in Appeal): Intact Insurance
c. (see: pages 46 to 56)
6. Macko v. Aviva Insurance Company, 2023 CanLII 72650 (decision before Adjudicator Kaur)
["Macko"]
a. (see: pages 57 to 61)
7. Macko v. Aviva Insurance Company, 2023 CanLII 116487 (Reconsideration Decision before Vice
Chair Kaur) ["Macko Reconsideration"]
a. (see: pages 62 to 66)

Chapter #3: Reg 664 and SABS
8. R.R.O. 1990, Regulation 664 ["Reg 664"], ss. 9.1, 9(1) and 10
a. (see: pages 67 to 69)
9. Statutory Accident Benefits Schedule, O Reg 34/10, effective September 1, 2010 et seq ["SABS"
or the "Schedule"]

a. (see: pages 70 to 132)

Chapter #4: Pleadings; *Insurance Act*; and UDAP Rule
10. Application of an Injured Person for auto insurance dispute resolution pursuant to the Insurance
Act, filed by the Appellant on December 24, 2023 (the "Appeal")
a. Served on the recipient of the fax number of 416-774-3120 (the "416 Fax Number");
b. (see: pages 133 to 142)
11. Response filed by SNIC (the "SNIC Response")
a. solely signed, filed and served by Mr. David Karat, ADR Specialist for SNIC, on January
25, 2024
b. (see: pages 143 to 145)
12. *Insurance Act*, RSO 1990 c. I 8, section 268 [the "Act" or the "*Insurance Act*"]

a. (see: pages 146 to 148)
13. Unfair or Deceptive Acts or Practices Rule, effective 2022 (the "UDAP Rule")
a. (see: pages 149 to 161)
Chapter #5: Further Authorities
The Chubb v. Zurich cases (2015 and 2024);
TD General Insurance Company v. Markel
Intact v. Bateman: "Re: two files with two different file numbers for one claimant (insured person)
(although unlawful – not unprecedented)
14. Chubb Insurance Co. of Canada v. Zurich Insurance Company, 2024 ONSC 2929 (as per The
Honourable Justice Akazaki) ["*Zurich 2024*"]
a. (see: pages 162 to 179)
15. TD General Insurance Company v. Markel Insurance Company, 2014 ONSC 6461 (as per Justice
Lederman) ["Markel"]
a. (see: pages 180 to 194)
16. Zurich Insurance Co. v. Chubb Insurance Co. of Canada, 2015 SCC 19 ["*Zurich 2015*"]
a. (see: pages 195 to 198)
17. Intact Insurance Company v. Bateman, 2014 ONFSCDRS 14 (as per Delegate Blackman)
a. (see: pages 199 to 214)

Chapter #6: Affidavits
18. Affidavit #30 of the Appellant, made on July 31, 2024 (filed: August 1, 2024; served on SNIC and
TDHA: August 1, 2024) ["Affidavit #30"]
a. (see: pages 215 to 358)

19. Affidavit #3 of the Appellant, made on October 31, 2024 (select pages only) (filed: listed and
attached document in Appeal on December 24, 2023) ["Affidavit #3"]
a. (see: pages 359 to 488);
20. Affidavit #29 of the Appellant, made on July 25, 2024 (select pages only)
a. (see: page pages 489 to 500)

Chapter #7: Motion Submissions (pursuant to LAT Rule 15: six pages, double spaced, size 12 font (except
for evidence, appendices and authorities)
21. Motion Submissions of the Appellant dated August 3, 2024 (served on SNIC and TDHA: August
3, 2024)
a. (see: pages 500 to 511)

Chapter #8: Additional evidence in pictorial form of the East Mall Address (August 4, 2024) and emails
to TDHA and SNIC confirming the same pursuant to, inter alia, section 15 of the SPPA
1
st Amended Inclusion (August 5, 2024)
22. Additional evidence: the East Mall Address
a. (see: pages 512 to 551)

Chapter #9: Costs against SNIC
Appellant's served and filed Costs Submissions on Thursday, September 5, 2024 (includes
LAT Rule 19.1: affidavit evidence in support of the Appellant have reasonable and probable grounds
to believei
that SNIC has conducted itself in relation to NOM #14 in an unreasonable, vexatious, frivolous and/or in bad faith
LAT Rule 19.2: written costs submissions by the Appellant before the decision or order is released
in relation to NOM #14;
LAT Rule 19.3: written costs submissions seeking $1,000 against SNIC in favour of the Appellant,
payable forthwith in any event of the result of NOM #14;
LAT Rule 19.4: Appellant has provided the reasons (authorities, statutes, regulations, LAT Rules)
and the particulars of SNIC's impugned conduct that have been, are and will continue to be
unreasonable, frivolous, vexatious, and in bad faith;
LAT Rule 19.5: Appellant has provided all relevant factors including but not limited to: (i) seriousness of SNIC's misconduct; (ii) SNIC's conduct in breach of orders (implicitly) and LAT

Directions issued by the Tribunal; (iii) how SNIC's conduct has interfered with the Tribunal's
ability to carry out a fair, efficient, and effective process; and (iv) the resultant prejudice to the
Appellant.
LAT Rule 19.6: the Appellant has sought $1,000 for the NOM #14 hearing
23. Costs submissions of the Appellant, filed and served on Thursday, September 5, 2024 with e-receipt
a. (see: pages 552 to 640)
i. Appendix #1: Glossary (see: pages 565 to 570)
ii. Appendix #2: Evidentiary And Authorities Chronology: from the time of SNIC's incorporation in 1934 to August 21, 2024 (see: pages 571 to 647); and
iii. Endnotes (see: pages 648 to 650).

Chapter #9: Materials For Reconsideration of the decisions involving NOM #14 and NOM #15
Fresh Evidence: not available to the Adjudicator in the Hearing Record (albeit in record of proceeding
in relation
24. Affidavit #34 of the Appellant of August 29, 2024 (see: pages 651 to 676)
25. Affidavit #35 of the Appellant of September 12, 2024 (see: pages 677 to 769)
26. Affidavit #36 of the Appellant of September 18, 2024 (see: pages 770 to 789)
27. Affidavit #37 of the Appellant of September 19, 2024 (filed under seal) (see: pages 790 to 832)
28. Reconsideration Form with Motion Submissions of September 30, 2024 (see: pages 833 to 856)

Tab 4:

Re: Applicant’s Motion Record for Motion #1 (Compel the Tribunal to forthwith file the record of proceeding): Court File No. DC-24-00000718-00JR

Court File No. DC-24-00000718-00JR

ONTARIO COURT OF JUSTICE (DIVISIONAL COURT)

BETWEEN:

KEVIN ALEXANDER MCLEAN

APPLICANT

- and -

TD HOME AND AUTO INSURANCE COMPANY, SECURITY NATIONAL INSURANCE COMPANY, TD GENERAL INSURANCE COMPANY, EXECUTIVE DIRECTOR, LICENCE APPEAL TRIBUNAL,
HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO, REPRESENTED BY EXECUTIVE CHAIR OF TRIBUNALS ONTARIO IN MR. SEAN WEIR, THE ATTORNEY GENERAL OF ONTARIO

RESPONDENTS

APPLICANT'S FACTUM

VOLUME # #1: STATEMENT OF JUDICIAL REVIEW APPLICATION

1. This ***JRPA* Application** involves the challenge to two (2) issued decisions of the Licence Appeal Tribunal ("**LAT**" or "**Tribunal**")[1]on September 13, 2024, and October 16, 2024, and two potentially unmade decisions involving the same. In the absence of any analysis of the statutory scheme[2] (i) by Vice Chair ("**VC**") Morrissette ("**VCM**"); and (ii) VC Lake ("**VCL**"), on reconsideration (the "**RD**"), relying on the newly passed language, as of August 21, 2023[3], in the *LAT Rules*, which is non-legislation,[4] the reviewing or appellate court is required to start afresh. Since 2019, the SCC settled the judicial review landscape in declaring *Dunsmuir*[5] to no longer be the law of our land and provided factual and/or legal situations where the reasonableness standard of review is rebutted. The focus herein of where the presumptive reasonableness standard is rebutted is where the rule of law ("**ROL**") requires that the standard of correctness be applied.

2. The rule of law is a theme in this ***JRPA Proceeding*** as per, some events that occurred or issues that were catalyzed after the filing of the ***JRPA* Application**, which were, including but not limited to: (i) Tribunal counsel (Ms. Boyce) raising the prematurity doctrine on a preliminary basis; (ii) counsel (Mr. Nieuwland) to TDGIC and SNIC[6], but not TDHA, in the **LAT Proceeding** not filing an appearance notice *forthwith* but purporting to file said purported notice of appearance (the "**Purported Appearance**") that was defective whilst in his cover email making a similar misstatement of law to the one he made on behalf at the nullity case conference on May 2, 2024, that "SNIC" was 'one and the same' as two other insurance companies (see: 'also referred to as' TD Home And Auto [sic] and TD General Insurance company [sic]"; and (iii) others.[7]

3. The Applicant has also sought the consent of SNIC to adjourn the hearing proper with the LAT scheduled for January 25, 2024, predicated on a nullity pre-hearing conference before Vice Chair Painchaund (the "**Hearing Proper**"). TDGIC has no entitlement to participate herein as NOM #13 was an interlocutory order and it did not even attempt to participate in it. NOM #14 and #15 squarely raise issues between SNIC and TDHA. Neither SNIC nor

TDHA sought to tender any materials, despite being duly served with NOM #14 and NOM #15.

4. The matter remains one where the delay will *likely*[8] involve a failure of justice being an affront to the rule of law and subspecies of the rule of law that involve: (i) general questions of law of central importance to the legal system as a whole; (ii) questions related to the jurisdictional boundaries between two or more administrative bodies; and (iii) the relationship between the legislature and the other branches of the state, which require a final and determinate answer from the courts (the "**Final Answer Requirement**"). The rule of law requires courts to have the final word (the "**Final Word Requirement**") with regard to general questions of law that are of central importance to the legal system as a whole because they require uniform and consistent answers (the "**Uniform Answers Requirement**" or "**Vertical *Stare Decisis***").[9] The rule of law requires courts to intervene where one administrative body has interpreted the scope of its authority in a manner that is **incompatible** with the jurisdiction of another administrative body since the rule of law cannot tolerate conflicting orders and proceedings where they result in a *true operational conflict* between two administrative bodies ("**Intolerance Conflicting Orders Requirement**").[10]

5. Whether affiliate or related insurance companies can accept priority, without any independent notices (see: (i) notice of transfer; (ii) notice of a potential agreement between insurers; and/or (iii) notice of arbitration) to an insured person or absolute noncompliance with *Reg 283*, over an applicant's [sic] insurance policy [sic] (not a *SABS* claim) is a question that must be answered by this ONSC on an urgent basis[11].

6. Some of the pertinent principles regarding the rule of law herein are: (i) *equality before the law*[12]; (ii) *accountability*[13]; and (iii) *access to justice*[14]. While administrative tribunal independence and absence of bias is not a constitutional principle, like that which is present pursuant to section 96 to 101 of the *Constitution Act* involving courts, conflicts of interest, bias and independence are presumed to be absent or at least reasonably perceived to be. The **VCM Decision** was not only incorrect and unreasonable[15] but it was counter to the

ROL requirement of "*equality before the law*" to which the Applicant and, by extension, his service providers were so entitled. The **VCM Decision** lacked *"accountability to the law"* as it was opaque in not only substance but process as: (i) it failed to reference any uncontroverted filed and served evidence; (ii) it failed to reference the binding "source law" wherein the Tribunal was required to decide all questions of law and fact before it in accordance with *Reg 283*, *SABS* and *Reg 664*[16]*;* and (iii) it failed to reference any jurisprudence that was binding upon it.

7. The jurisprudence involving *JRPA* (ss. 6(2)), *Reg 283*, the prematurity doctrine, "double jeopardy doctrine" (*res judicata* and issue estoppel), and standard of review all invoke the same principles in the middle of that archetypal "Venn diagram". While there is no dispute on the law that the orders in NOM #14, and to some extent NOM #15, are ***final orders***, irrespective of their lack of correctness, those principles fatefully contain similar language in relation to the legal thresholds for this ONSC to decide the legal issues herein on an expedited and urgent basis: (i) rule of law; (ii) *standing in the shoes of another*; (iii) bringing the administration of justice into disrepute; (iv) urgency; (v) failure of justice; and (vi) avoidance of repetition of proceedings before this ONSC and the Tribunal.

8. If the **Purported Nieuwland Appearance** is struck and there is no validity to the LAT's preliminary objection in the form of the "prematurity doctrine" to reviewing final orders of the Tribunal,[17] then government counsel cannot defend this JRPA Proceeding. As noted by *Jia*[18] by this ONSC (Div. Court): "We would exercise our discretion to hear an appeal from the conflict decision, because it is evasive of appeal and it is potentially a matter of general practice important in proceedings before LAT." The ONSC (Divisional Court) referred, in *Harold The Mortgage Closer*[19] (paragraph 37), citing *Volochay*[20] (paragraph 68[21]) wherein the ONCA referred to the prematurity doctrine and impugned *interlocutory relief* as synonymous or quasi-synonymous.[22]

9. Section 138 of the *CJA* codifies the principle that a multiplicity of proceedings must be avoided.[23] This leaves the sole issue being one of timing. Unlike the applicant, Sanscon Construction Ltd.,[24] in *Sanscon v. City of Toronto* ["*Sanscon*"], which failed to comply with some of the elementary requirements of pleadings, notice *et al*, this Applicant paid,

filed and served the *JRPA* Application in accordance with the requirement that it commence before the Divisional Court, he pleaded the material facts as to why he sought relief under section 6(2) of the *JRPA*, and why a failure to have this ***JRPA Proceeding*** heard urgently would *likely* lead to a failure of justice.

10. Like many ***unlawful*** schemes, it is not the 'what, when and how', but the '*why'*. The "why" herein was to circumvent multiple ***valid*** statutory schemes including: (i) FSRA investigatory and enforcement powers under the *Insurance Act* and the *UDAP Rule*; (ii) *Law Society Act* and its *By-Laws*; (iii) *PIPEDA*; and (iv) others. TDHA, as of 2019, while remaining as a licensed automobile insurer in Ontario, became a non-reporting insurance company to the FSRA for the purposes of the sub-category of insurance in the "**Private Passenger Market**". Only three insurance companies, within the TDI Group, issued automotive insurance polices in Ontario in the **Private Passenger Market**: (i) Primmum Insurance Company (FSRA registration number 1396)[25] ("Primmum"); (ii) SNIC; and (iii) TDGIC. [26] The motive for why SNIC would engage in such intentional conduct and why TDHA would be complicit with the same is to "kill or limit the paper trail" of what can be investigated by the FSRA, the LSO, and OPCC. [27]

11. To determine the unlawful scheme, it required analytical precision, after much review, into the various sections of the *Insurance Act* as to whom, what, when and how an insurance company, including certain individuals in specified situations, could be investigated. Moreover, the FSRA's investigatory, search, seizure, citation and enforcement powers are not only curtailed but eliminated if an insurer like TDHA is not a reporting insurance company in the "**Private Passenger Market**" of automobile insurance. By SNIC's intentional action of having TDHA be the recipient insurer of his OCF-1 application, it controls what documents and activities are subject to investigation during the *SABS* claim processes. The corroborating evidence of the unlawful scheme was, *inter alia*, the following: (i) the **Spam Fax** in March 2023 from an unknown insurance company to the Applicant's fax number; (ii) SNIC providing notice of change of address, in Spring or Summer of 2023 from Markham to Burlington along with changing its fax number from the TDHA Fax Number to the Burlington Fax Number; (iii) a forged and invalid signature

of "As per A. Nurse" under Ms. Nurse's name in an OCF-18; (iv) TDGIC substituting itself as the sole respondent in the LAT Proceeding; and (iv) other references in the **AR** or record of proceeding depending on any agreement between the entitled parties to participate herein.

12. By having TDGIC being the "sole respondent of record", albeit SNIC filing the sole "Response" in the LAT Proceeding (the "**SNIC Response**"), with the sole signature of a non-licensee (Mr. Karat) in breach of LSO By-Law 7.1, ss. 6(1)(b) and (d)[28], which does not meet a specified document to be included in the "record of proceeding" under the *SPPA*, SNIC controls or eliminates any investigation into its activities during the LAT Appeal temporal period. For example, if the FSRA sought to investigate issues involving SNIC, it could claim that it was not the insurer and that TDGIC was the solely responsible insurer for the Applicant's *SABS* claim (TD Claim #3), and the FSRA investigative and market conduct team would be misdirected. As the Applicant never faxed a document to the TDGIC fax number (416.774.3629) prior to the filing of the LAT Appeal and thereafter, there would be little to no evidence for the FSRA to investigate.

13. Moreover, by having a non-licensee self-titled "ADR Specialist" (non 'adjuster' under the *Insurance Act*), SNIC, along with TD Insurance Staff Legal, further limited the reach of the LSO into activities subject to its legislative powers and its by-laws which have legislative force[29]. By having Mr. Nieuwland solely act for TDGIC by filing a DOR, whilst having a P1 holder (not providing legal services) in Ms. Michelle Moraes masquerade as his legal assistant for three months before one Ms. Ortiz (his actual legal assistant) surfaced, it further curtailed the investigatory powers of the LSO and the FSRA. There was also evidence, albeit in a PIPEDA response of SNIC in 2024, that there were multiple files of these insurance companies involving a single claimant.

14. This Court must also rule on this ***JRPA Proceeding*** because the findings of VCM invoke the Applicant's [sic] Insurance Policy [sic] and a clandestine and undisclosed subsequent contract between SNIC and TDGIC (collectively, the "**Offerees**") by way of being offerees, to the surreptitious and unrevealed offer by TDHA (the "**Offeror**") as the First Insurer pursuant, to its prescribed jurisdiction, of *Rule 14.05(3)(d)*[30] to hear this matter since it

involves the determination of rights that depends upon contractual interpretation. This court has, at least, two contracts to review in determining the rights of all involved: (i) the Insurance Policy; and (ii) the unrevealed contract between TDHA (as one party) "and" SNIC and TDGIC ("counterparties").

VOLUME #1(B): Background Facts to this public interest litigation: *JRPA* Application

15. The Applicant was injured as the driver occupant in an automobile accident ("**Accident**") on August 31, 2022 (the "**DOL**"), through no fault of his own, which rendered the Insured Automobile with a police reporting file and some $6,000 in damage to the Insured Automobile. The **Insured Automobile** was propelled involuntarily some 30 feet forward from a stopped position north of St. Clair Avenue and south of Heath Road, on the Spadina Avenue. From the DOL to January 11, 2023 (the "**Material Time**"), the Insurance Policy associated with the Insured Automobile that he was operating was a leased vehicle from BMW Financial Services Inc. ("**BMW FSI**") and his spouse, a University of Toronto alumnus, was the individual named insured. The Applicant suffered a variety of impairments that were readily outside of the MIG, including but not limited to: (i) a grade 1 retrolisthesis; (ii) degenerative disc disease; (iii) S1 nerve issues; and (iv) a concussion.

16. The sole underwriter (the "**Sole Underwriter**") in the Insurance Policy and "pink cards" was Security National Insurance Company ("**SNIC**") which was an out-of-province insurer that had six classes of insurance with the FSRA. On September 1, 2022, the Applicant orally notified (the "**Oral Notification**") SNIC of the **Accident** and his intention to apply for accident benefits pursuant to the *Schedule* making SNIC the "**First Notified Insurer**".

17. SNIC provided the Applicant, in late September 2022, the OCF-1 application (the "**OCF-1 Application**" or "**Application**" pursuant to *Reg 283*, section 1). In the "return this form to" field, SNIC provided a mailing address of the 2nd floor, 101 McNabb Street, Markham, Ontario (the "**Markham Office**") and a fax number of *416.774.3120*. Unbeknownst to the Applicant, the said fax number was not a telephone number in Markham but rather in North

York, Toronto, and after lengthy investigations[31] the only evidence before the Tribunal was that the said fax number was a landline number, issued by Bell Canada Inc. (not Bell Mobility) at the 4th floor-3650 Victoria Park Avenue, North York, Toronto. In 2024, the only evidence before the Tribunal was that, in October 2022, it was controlled, assigned and belonged to TD Home And Auto Insurance Company (FSRA registration number 1063) ("**TDHA**").

18. **TDGIC**'s fax number, as per the Tribunal's notice of motion hearing orders, was the telephone number that was used solely as fax number, of 416.774.3629 and it was located on the 9th floor of the **VP Building**.

> **VOLUME #1(B)(I):** The LAT Registrar Order that confirmed that: (a) SNIC was not located at the Markham Office; (b) located in Burlington; and (c) with the 905 Fax Number (not a 416 fax number)

19. Further, *before* the issuance (September 13, 2024) of the VCM Decision, the Tribunal (not VCM herself but the LAT Registrar) on September 12, 2024, had issued another order that SNIC's address for service was 5th floor-5045 South Service Road, Burlington, Ontario ("**SNIC Burlington Office**").

> **VOLUME #1(B)(II):** *Why would VCM backdate VCM Decision to September 6, 2024?*

20. The self-evident and overwhelming inference is that by the LAT Registrar providing the, in fact, address of SNIC in Burlington, this provided an *additional* binding ground, by way of a decision of the administrative body, as to why TDHA was the First Insurer. Simply put, SNIC solely provided its name with a false address and false fax number.

> **VOLUME #1(B)(III):** *Why were there so many palpable errors in the VCM Decision?*

21. The obvious inference was that she rushed her decision-making process to pretend that her decision was issued on September 6, 2024, and not subject to or inconsistent with the LAT Registrar's order finally providing the, in fact, address of SNIC being the **SNIC**

Burlington Office. VCM was required to review all materials in the record of proceeding prior to issuing her order, and the LAT Registrar order, received by the parties, was a binding order upon her. The VCM Decision was inconsistent with said order.

22. SNIC had provided the said physical address, absent a floor number, from Spring or Summer 2023 until the time of the Applicant's filing of the LAT Appeal on December 24, 2023. SNIC's fax number at the SNIC Burlington Office was that **905 Fax Number**. Ergo, SNIC only complied with the requirements under *Reg 283* of providing its name but failed to comply with the requirements, at the **Material Time**, that it provide its mailing address and fax number.

VOLUME #1(B)(IV): Obligation to pay benefits triggered upon receipt

23. On October 13, 2022, the Applicant not only faxed his completed application pursuant to *Reg 283* and *SABS*, ss. 32 (the "**McLean Completed Application**") to the **TDHA Fax Number**, which was a landline on the **4th Floor VP Building**, albeit unknowingly, but he also faxed a completed and signed OCF-2 on his behalf ("**Completed OCF-2**"). On November 3, 2022, the Applicant paid the section 25 of *SABS* fees for the OCF-3, and the said duly and doubly signed OCF-3 was delivered to the **4th Floor VP Bldg. Fax Number**.[32]

VOLUME #1(B)(V): The New Brunswick response to a *PIPEDA* request of SNIC and the SPAM Fax: February to April 2023

24. Further, there was additional evidence before the Tribunal that the Applicant had made a *PIPEDA* request of SNIC in February 2023, via email to the TD privacy email, but received an apparent *PIPEDA* response via mail from an unknown corporate sender located in New Brunswick. With further investigations in the Summer of 2024, the Applicant filed evidence with the Tribunal that while TDGIC operated in the **Private Passenger Market** in Ontario but did not operate in the **Private Passenger Market** in New Brunswick, TDHA did not in Ontario but did in New Brunswick along with SNIC and Primmum.

25. Around the same time (March 2023), while SNIC had never faxed the Applicant in reply to any of his delivered faxes to the **TDHA Fax Number**, again unknowingly to him, and only sent ostensible responses the Applicant received a fax from an unknown sender that "it" had no record of the Applicant's TD Claim #3 and to send his faxes with information, already in each fax, to one of the various locations (see: Calgary, Ontario, Montreal, Nova Scotia and New Brunswick) across Canada. There were two fax numbers in Ontario: Burlington (905 Fax Number) and North York (the 4th Floor VP Building Fax Number). The Applicant was already faxing to the **416.774.3120** and he did not reside in Burlington but he was perplexed by the "North York" reference. Consequently, the Applicant promptly blocked the sender, on account of it being "spam" (defined as the "**Spam Fax**"). The Applicant notified the 416.774.3120 fax number presuming still he was faxing SNIC regarding the misidentification of said fax number being grounded, by landline phone number, in North York, although the Applicant was incorrect in that regard at said time by way of detrimental reliance on the representations made to him by SNIC, of the issue and continued to fax the said telephone (fax) number. Shortly thereafter, SNIC had correctly, albeit missing a floor number, provided the Applicant, via mail, with a notice of change of address from the Markham Office to the Burlington Office, and, most notably, from the VP Building 4th Floor Fax Number to the 905 Fax Number.

VOLUME #2: Overview of the binding precedents in relation to the Governing Statutes, Governing Regulations *et al*

26. *SABS* and *Reg 283*, having undergone major amendments in 2010 after being submitted to industry consultations and amendments before proclamations, they reflect important policy choices to ensure order and stability in regulated industries. Said "order and stability" in the regulations must be matched by this ONSC by reference to the **Final Word Requirement**, **Final Answer Requirement**, **Uniform Answers Requirement**, **Vertical *Stare Decisis***, and **Intolerance Conflicting Orders Requirement** pursuant to the ROL.

27. *Reg 283* is designed to keep priority disputes out of the courts.[33] *Reg 283* is also purposed to prevent *SABS* claims, including vital treatments and income benefits, from being delayed while insurers fight over priority dispute under section 268(2) of the *Insurance*

Act.[34] As a matter of principle, there is NO[35] difference between an insurer's failure to pay under section 2 of *Reg 283* and a failure to pay under any provision of *SABS*. [36] [37]

28. While a **First Insurer**, like TDHA, may have never received insurance premiums from the insured persons, or be deemed to have received the same pursuant to the Insurance Act after a determined insured person was an occupant in said 'insured automobile' may seem intuitively wrong, the Legislature, by passage of statutes with *Royal Assent*, and LGIC's intent, must be respected. There is no, *per se*, harshness to be alleviated by a sophisticated insurance company, with endless resources, who received the **McLean Completed Application**, who fails to investigate within three months and provide a notice, in form A143, to an insured person and other insurers under sections 3 and 4 of *Reg 283*. The provisional first-insurer rule under the regulation and the priority regime under the statute operate ***differently***.[38] Irrespective of whether a claimant is an "insured person" or not in the *subjective* mind of the **First Insurer**, the **First Insurer** must respond to the Claimant and pay benefits where applicable and required (see: *Reg 283*, ss. 2.1(6)). Acceptance during the 90-day period is merely provisional.[39] If the **First Insurer** does not dispute, within 90 days, its liability to pay all benefits, in accordance with *SABS*, of the claimant, there is *no other process* for the **First Insurer** to transfer the *SABS* claim, dispute the same and recover any paid or to-be-paid benefits to the claimant.[40]A **First Insurer**'s calculus to not *accept* a claim for whatever subjective reason can turn out to a costly and permanent mistake.[41] The lack of acceptance in this regard is functionally equivalent to "*not accepting service of a claim*," which is distinct from not accepting an offer in relation to a proposed contract.

VOLUME #3: Requirement to "step into the shoes" of Sole Underwriter[42]

29. In *Zurich 2015*[43], the SCC held that Chubb ought to have responded to the *SABS* claim immediately on a 'pay first and dispute later' basis.[44] If the sending of the **Completed Application** by the claimant was not arbitrary, there is a *nexus* between the claimant and the **First Insurer**.[45] The SCC restored Goldstein J.'s judgment (ONSC) ["*Zurich 2012*"[46]] in its verbatim adopting[47] the dissent of Juriansz J.A. ["*Zurich 2014*"][48], as he then was before retiring after an illustrious legal and judicial career in 2021,[49]: **2014 ONCA 400**[50].

A vague recollection about seeing an insurer's name at a rental car office was sufficiently non-arbitrary to require the **First Insurer** (Chubb in *Zurich 2015*[51]) to "*step into the shoes"* of another insurance company(ies) that was liable under a "contract of insurance" for the purposes of section 2(1) of *Reg 283*.[52] The policy behind the inflexible rule that an insurer (like TDHA), which fails to: (i) respond provisionally to a claimant; (ii) fails to pay benefits provisionally to the claimant; (iii) fails to put other insurers on notice; and (iv) fails to put the insured person on notice of a potential transfer of the insured person's claim to other insurer(s), after receipt of a Completed Application, when there is *SOME* nexus, being permanently responsible for the claimant's benefits is to promote compliance with the *validly binding* statutory scheme.

30. The ONSC in *Zurich 2024*[53] (May) settled the law in the above regards as follows: (i) breach of section 2 of *Reg 283*, according to the case law, does not result in an insurer being required to pay benefits to the claimant permanently; BUT (ii) the *failure* TO AVAIL itself of section 3 does. Section 3 dovetails to section 4 which requires the First Insurer (TDHA) to provide notice to the insured person. Section 5 of *Reg 283* provides the consequences for an insured person not delivering its objection notice to the First Insurer within 14 days of receipt of the dispute notice form (A143) from the First Insurer. A143 requires the First Insurer, which receives the same, to fill out the form correctly and have a representative sign the same.

31. Herein, there is some incredibly prejudicial and fatal evidence, as it relates to any defence by TDHA that it could not meet the 90-day requirement to provide an A143 notice, and that is the signature block of Mr. Karat wherein he, as an ADR specialist, represented, multiple times, in 2024, that he was authorized to represent, "SNIC, TDGIC, Primmum, and TDHA".

32. TDHA's permanent liability for responding to the *SABS* Applicant and paying benefits to him was a *self-inflicted consequence* of its failure to adhere to the requirements and protections of section 2 to 4 of *Reg 283*.The combination of provisions in *Reg 283* transformed TDHA's provisional liability into a permanent one.[54] For TDHA to not be declared as the **First Insurer** would mean that there were no consequences for the conduct

(or inaction) of TDHA by receipt of the **McLean Completed Application** and by continuing to have its former branch office address (**East Mall Address**) auto-populate in HCAI, without Mr. McLean having access to the same as he was not a "service provider" and no ability for any service provider to amend the same, it would defeat the legislation's public policy: "*pay now and dispute later"*. The consequence would be that the "rule of law" would not matter and the LGIC's proclaimed amendments to *Reg 283* and *SABS* had *no teeth* and were of no force and effect. Put another way, the mandatory provisions therein would become discretionary based on the arbitrary and subjective beliefs and whims of insurance companies within a group of insurers. There would be no stability and consistency in the application of *Reg 283*, and the **Uniform Answers Requirement** or what is more commonly known as "horizontal and vertical *stare decisis*" in our provincial common law (judge made law) jurisdictions.

VOLUME # #4: Issues, Law and Argument

VOLUME # #4(A): Issues

33. The Applicant frames the general legal issues as follows:

    a. **Issue #1**: What is the standard of review of the **VCM Decision** and the VCL Reconsideration Decision as it relates to VCM's orders in NOM #14 and NOM #15?
    b. **Issue #2**: As TDHA was the first insurance company to receive the McLean Completed Application, was it possible, at law, for SNIC and TDGIC to accept priority over the Applicant's [sic] insurance policy [sic] without any notice to him?
        i. If the answer to said issue is in the negative, what is the legal effect of the same?
    c. **Issue #3**: what orders must this ONSC fashion with respect to the public interest remedies that are evasive of the JRPA Application and of great importance to the procedure, practice, substance and the ROL in LAT proceedings where similar issues may arise?

VOLUME #4(B): Law

VOLUME ##4(B)(I): Jurisprudence

34. The ONSC in *Beasley*[55] was unequivocal in its language that the fiduciary duties of an insurance company, whether they are provisional or permanent, are triggered by the obligation to pay benefits (if any) wherein the Honourable Justice Moore found: "[34] The

relationship between an insured and an insurer in accident benefits matters involves a duty of good faith, **a fiduciary obligation**; the relationship between plaintiff and defendant in a tort action does not. The obligation, if any, *to* **pay accident benefits** is very different from the exposure, if any, that a defendant faces in a tort action."

35. The ONSC (Divisional Court) in *Jia* found, in upholding the reconsideration decision of VC Trojek[56], in a priority dispute case between CAA (insurance company) and The Personal Insurance Company, and *SABS* proceeding between a male widow and daughter without his wife and her mother respectively due to the fatal car accident against The Personal Insurance Company, found at paragraph 6: "[6] It is established law that insurers may not use the same counsel in statutory benefits cases and in tort cases brought against them by the same insured. This is because the duties of an insurer (and therefore of its counsel) are different in these contexts, and as an accident benefits insurer, the insurer is entitled to receive, and is required to keep confidential, a great deal of sensitive personal information from claimant." [57] [58]

VOLUME # #4(B)(II): Legislation

36. Section 280 of the *Insurance Act* contains six subsections, which were passed in 2014, of which only four are potentially relevant herein. [59] [60]The *SPPA* provides who may be parties to a proceeding which is by "statute" or "by law". The *Insurance Act* does not define or delineate who may be parties so the relevant part of section 5 is the "by law" component of the legislative section. TDHA, as the First Insurer on a provisional basis from October 13, 2022, to January 10, 2023, (the "**Provisional Period**") and then on a permanent basis from January 10, 2023, to present and in perpetuity (the "**Permanent Period**"), is the only insurance company in the TDI Group that, "by law", that was and *is* entitled to be the respondent party. Of note, the Applicant sent his LAT Appeal to the **TDHA Fax Number** and it was received by TDHA.

VOLUME # #4(B)(II): Regulations

37. **Benefits**" means *SABS* as defined under section 224(1) of the *Act*.[61] An insurer shall *promptly* provide an OCF-1 and any other appropriate *forms* in accordance with the

Schedule to an applicant who notifies the insurer [a "First Notified Insurer"] that she wishes to apply for benefits: 2.1(2) of *Reg 283*.[62] A *SABS* applicant shall use the Application provided by the insurer and shall send the Completed Application to only one insurer: ss. 2.1(4) of *Reg 283*.[63] An insurer that provides an application [a "**First Notified Insurer**"] under subsection (2) to an applicant shall: [1] not take *any* action *intended*: (i) to prevent; or (ii) stop, the applicant from submitting a completed application to *the insurer*; and [2] shall not: (i) refuse to accept the completed application *or* (ii) redirect the applicant to another insurer (see: ss. 2.1(5) of *Reg 283*). [64]

> ***VOLUME # #4(B)(II)(c):*** Disputes between Insurers: independent breaches by **First Notified Insurer** and First Insurer under section 2.1 of *Reg 283*

38. Conceivably, the "First Notified Insurer" and "First Insurer" (not the "First Party Insurer" under *Insurance Act* as referenced in *Reg 664*[65]), could independently and disjunctively breach different subsections under section 2.1 of the *Reg 283*. For example, the First Notified Insurer could breach section 2.1(5) of the *Reg 283*, by taking some action intended to prevent or stop the 'applicant" from even *submitting* a completed application to "the insurer". "The insurer" may or may not be the First Notified Insurer. Under the last part of the sentence in subsection 2.1(5) of *Reg 283*, "an insurer" may breach section 2.1(5) by refusing to ***ACCEPT***[66] the Completed Application OR redirecting the same to *another* insurer. Ergo, a **First Notified Insurer** could conceivably breach sections 2.1(2), 2.1(3) and (5) of *Reg 283*. [67] [68] [69]

> ***VOLUME # #4(B)(II)(d):*** First Insurer: how could such an insurance company breach section 2 of *Reg 283*? Which subsections of section 2 of *Reg 283* did TDHA breach?

39. Juxtaposed to that, the First Insurer may not be First Notified Insurer wherein an individual contacts, delirious after the Accident, and notifies the insurance company it believes to be a sole underwriter for the vehicle in which she was injured. However, after complying with that seven-day notification requirement under section 32 of *SABS*, an individual may, perhaps after the benefit of ILA, realize that said **First Notified Insurer** is not ***the insurer*** that has a duty to respond to her and pay benefits in accordance with the *Schedule*. As seen

in much of the jurisprudence, wherein insurance companies are willing to engage in a litigation for over nearly two decades, she may have multiple policies that could apply. She then submits her Completed Application to "the insurer" (not "an insurer" or the "**First Notified Insurer**") wherein the First Notified Insurer and First Insurer are distinct and separate entities (not "*one and the same*"). The First Insurer may fail to commence paying benefits in accordance with the provisions of *SABS pending* the resolution of any dispute as to which insurer is required to pay benefits (*nota bene*: the "**First [Recipient] Insurer**" in its capacity as the "**First Provisional Insurer**"). Such a First Insurer may breach section 2.1(6) on a provisional basis and only during the provisional period and/or beyond.

VOLUME # #4(B)(II)(e): Consequences of Non-Compliance[70] (ss. 2.1(7) of *Reg 283*) and distinction between section 2(1) (LGIC proclamation in 1995) and ss. 2.1 (LGIC proclamation in 201)

40. The word "reasonable" utilized by the LGIC indicates the objective person test. Therefore, the threshold and quantum for the fees under legal, adjusting, admin or disbursements is what a reasonable person would find in terms of whether they are owed and in what quantum. The only difference (see: *supra*, "the statute and regulation operate differently" as per Justice Akazaki) between section 2(1) and 2.1(6)[71] is that the former references the requirement to pay benefits under section 268 of the *Insurance Act* whereas section 2.1(6) reference the requirement of that **First [Recipient] Insurer** to pay benefits in accordance with the provision of the *Schedule*.

VOLUME # #4(III): Argument

41. Vice Chair Morrissette obviously knows more than the Applicant as to what was represented to the Tribunal in written or oral form – not that which is correct at law – "behind the scenes". [72]There is no prescribed right of insurance companies, irrespective of whether they may or may not be affiliated within a group of insurance companies, to accept priority over an "insurance policy". No such right exists in relation to a claim for accident benefits after a Completed OCF-1 is received by AN insurance company. NIC did not refuse to accept the **Completed Application** as it did not receive the **Applicant's Completed Application** *first*. It is unclear if it even received it second or in what order or if at all. The reference to "it at all" is grounded in the record of proceeding and the denial

letters in that SNIC never enclosed a copy of the initial OCF-1 delivered to TDHA at first instance or other documents but rather would reference them in a vague and ambiguous manner.[73] To encapsulate the application of the uncontroverted evidence to ss. 2.1(5) of *Reg 283*, SNIC was the only insurance company that provided the OCF-1 but it cannot be found to have prevented the Applicant from submitting his Completed Application to "the insurer" but rather *encouraged* him to do so by providing a North York, Toronto, fax number (**VP Building 4th Floor Fax Number**) of TDHA which was an "*in province*" insurer licensed in the class of automobile insurance. Therefore, there was a nexus between the Applicant and TDHA as he did not select TDHA on a whim but was exclusively directed to it by SNIC – at least "on paper".

42. TDHA was the First Insurer as the only two lead tenants at the Victoria Park Ave Building were that of TDGIC and TDHA. TDGIC occupied floors 7 to 9 with the 9th floor being its mailing address and TDHA occupying floors four to six with the four floors being its mailing address. Once the Applicant had honed in on the deception, the mathematical computation of how Bell Canada Inc. had assigned the numbers within the building was rather rudimentary. The area code of 416 was only for Toronto-based locations. 774 was assigned as a "prefix" to numbers within the District of North York and then within the VP Building, the 3 was a common feature to many landlines of tenants therein. The "120" was a string of three digits with numerical value of "1" being on the fourth floor and the numerical string of "629" with "six" being on the 9th floor. For sake of completeness: "2" was on the fifth floor; "3" was on the sixth floor; "4" was on the seventh floor; "5" was on the eighth floor; and "6" was on the ninth floor. The Tribunal's notice of hearing orders are orders at law and subject to judicial review, and neither SNIC nor TDGIC sought to challenge them by a section 21.1 of the *SPPA* motion or judicial review and/or appeal. It is trite that if those fax numbers that the Tribunal had found were to be for service of documents to SNIC and TDGIC were not their fax numbers, they would have objected or confirmed the same with the Tribunal.[74]

43. Therefore, SNIC had no provisional obligation to respond to the Applicant and pay benefits as its obligation to respond was merely the provision of forms and explanation of benefits

as a mere stakeholder in the insurance industry, but rather TDHA had that obligation to respond and pay benefits. Therefore, pursuant to section 280(4), the LAT was required to resolve the LAT Proceeding in accordance with *SABS* and *Reg 283*.

44. In order for the Tribunal to determine the *JRPA* Applicant's claims under *Reg 664*, s. 10 (Dispute Resolution under section 280 of the *Insurance Act*).[75] Conceivably, s.10 of *Reg 664* could involve two insurers because a provisional First Insurer could have delayed commencing paying benefits and further delayed during the provisional period, and a different agreed to, with or without the consent of an insured person subject to said claimant receiving notice or notices pursuant to *Reg 283*, or declared insurer, by arbitrator or subsequent court decisions[76] could have delayed or withheld benefits thereafter. [77]

45. The Applicant complied with section 268(5) of the *Insurance Act* and ss. 32(1) of the *Schedule* by SNIC became the "First Notified Insurer". Pursuant to section 32(2) of *Schedule* and *Reg 283*, ss. 2.1(2) SNIC provided the Applicant with an OCF-1 Application (see: *Reg 283*, s.1) and some other forms that related to the *Schedule*. SNIC breached part of ss. 2.1(3) of *Reg 283* by not providing its accurate mailing address and fax number. The Applicant complied with ss. 2.1(4) of *Reg 283* by using the "OCF-1 Application" provided by SNIC and sent the Completed Application to only one insurer (TDHA).

VOLUME # #4(III)(A)(i): Subsection 2.1(6)

46. TDHA was the **First Insurer** that received a Completed Application for benefits from this *JRPA* Applicant (*SABS* Applicant) and was duty bound, by the LGIC's 2010 proclamations, which were the subject of extensive industry wide consultations, to commence paying the benefits in accordance with the provisions of the *Schedule*.

VOLUME # #4(III)(A)(ii): Subsection 2.1(7)

47. As SNIC and THDA are both "insurers", distinct at law, they have both failed to comply with various sections under subsection 2.1 and are required to reimburse each other for any fees (adjusting and legal), costs *et al* that were reasonably incurred by the other insurer as a result of the non-compliance. However, that is an issue between them and not for the

Applicant. The Applicant is not entitled to any payment of any incurred legal fees, adjuster's fees, administration costs and disbursements but he is entitled to benefits and payment of section 25 fees incurred.

VOLUME # #4(III)(A)(iii): Sections 3 to 4 of *Reg 283* and ss. 268(3) of the IA

48. An insurer against whom a person has recourse for the payment of statutory accident benefits is liable to pay the benefits: ss. 268(3) of the *Insurance Act*. Where an insurer has given notice under section 3 of *Reg 283*, said insurer must also give notice to *the insured person* using a form approved by the CEO of the FSRA: ss. 4(1) of the *Reg 283*. Said form is denoted below at Appendices and it is a A143.[78] TDHA did not even engage in the pretense of doing so.

VOLUME # #4(III)(A)(iv): Section 5 of *Reg 283*

49. The Applicant never received notice under section 4 of *Reg 283* so he did not have any obligation under section 5(1) of *Reg 283*. Ergo, the Applicant could not, in fact, advise the insurer paying benefits in writing within 14 days that he objected to the transfer of the claim to the insurers referred to in a non-existent notice. According to VCM, the transfer of his TD Claim #3, clandestinely occurred at some unparticularized time by some void ab initio agreement between the First Insurer when TDGIC, in conjunction with SNIC, accepted priority over the Applicant's [sic] Insurance Policy [sic]. VCM was clearly not referring to a "decision" but a *subsequent agreement* by her deliberate word choice of "acceptance". For "acceptance" to have occurred by two other insurers, where neither could be the First Insurer (TDHA), an offer had to be made. For an agreement to have been consummated, there had to be return consideration in the form of a fulfilled promise from the offerees to the offeror (TDHA). In order for that proposed contract, which could be at best an "agreement to agree", it required notice to the JRPA Applicant and his consent or his silence AFTER receipt of the prescribed notices.[79]

VOLUME # #4(III)(A)(v): Subsection 5(3) of *Reg 283*

50. Ss. 5(3) of *Reg 283* has a "despite" or "subject to" clause in said subsection but it relates to the Fund initiating arbitration so it is not germane to the issues herein.

VOLUME # #4(III)(A)(vi): *Void Ab Initio* Agreement and deprivation of three different rights: (i) right to object to transfer of his claim to other insurers; (ii) right to object to proposed agreement between insurers; and (iii) right to file notice of arbitration

51. While the Applicant did not receive any section 4 notice pursuant to *Reg 283* and was deprived of his rights which the LGIC provided similarly situated accident victims, to object to the transfer of his TD Claim #3 to SNIC and TDGIC on an apparently joint basis, he was also deprived of his arbitration participatory rights in any subsequent proceeding to *settle* the dispute. Most importantly, whatever clandestine, underhanded and surreptitious agreement was negotiated and consummated between TDHA with SNIC and TDGIC, had no legal effect and was not merely void but void *ab initio*. It amounts to an irremediable nullity.[80]

VOLUME # #4(III)(A)(vii): Consent vs. Non-Opposition – risks of allowing the Tribunal to decide the Hearing Proper with the "musical defence chairs" between SNIC, TDGIC and TDHA

52. Leaving aside that Mr. Nieuwland's purported Notice of Appearance was and remains defective, Mr. Nieuwland is apparently engaged in similar past conduct that was not only rejected by the Tribunal but the FSRA (two administrative tribunals created under different statutes with boundaries that regularly intersect) with respect to his misguided "*one and the same representation*" regarding SNIC and TDGIC being the same corporate entity. Such a misrepresentation was counter to the FSRA certificates of status involving each, their distinct license classes approved by the FSRA, the corporate history of TDGIC and SNIC, and the rule in *Foss v. Harbottle*. Mr. Nieuwland now wishes this ONSC to accept a filing, which was not forthwith, but wherein his cover email misrepresented that he was acting for SNIC and two distinct companies *also referred to as [sic]* as "TD Home and Auto [sic]" and "TD General Insurance company [sic]". It was a tantamount to a "triple down" on his previous "double down" at least "numerically". For the purposes of clause 4.3 of *Schedule* 1, the consent of an individual is only valid if it is reasonable to expect that an individual to whom the organization's activities are directed would understand the nature, purpose and consequences of the collection, use or disclosure of the

personal information to which they are consenting: s. 6.1 of *PIPEDA*. It is trite that the OCF-1 and PIPEDA operate harmoniously and in tandem.

VOLUME #4(III)(B): "Mr. Nieuwland and co" – up to old tricks

53. Not opposing the relief in a motion, as TDGIC did by way of written email by Mr. Nieuwland on behalf of TDGIC on June 6, 2024, is not the legal equivalent of "consent". Such a statement of law is a trite one but the history of how SNIC and TDGIC have abused the process of the LAT Proceeding is precisely why this ***JRPA Proceeding*** must be decided *prior* to the Hearing Proper. After Mr. Karat, a non-licensee, signed and filed a Response on behalf of SNIC on January 25, 2025, (the "SNIC Response") contrary to LSO By-Laws, TDGIC purported to be the sole respondent without even the pretense of filing a pleading. NOM #8 was not granted until June 20, 2024, which then required another section 21.1 of the *SPPA* motion as the clarity and precision of some of the findings of fact, contrary to the record of proceeding, by yet again VCM, were incorrect. The Applicant sought the consent of TDGIC to remove itself as the sole respondent and the consent of SNIC, the only insurance company that filed a Response, to substitute itself for TDGIC. Mr. Nieuwland, for TDGIC, was unequivocal that TDGIC would NOT oppose any such relief from the Applicant after opposing said relief for nearly six months. Mr. McLean is not so self-aggrandizing to think that his NOM #8 was of such superb calibre that it was the sole catalyst for the change in legal position. Rather, it was, admittedly, bold move to serve the FSRA with NOM #8 and invite its submissions by way of *amicus curae.* 128 days passed from the time of the Nieuwland DOR on behalf of TDGIC to the time of his email where TDGIC would not oppose the relief that the Applicant had been seeking, with formal motions and at the case conference. SNIC did not respond to NOM #8 even though its sole representative, at the time, in Mr. Karat had responded to emails in May 2024. Consent for removal of TDGIC and substitution of SNIC for it would have required a "three party agreement" between the JRPA Application, TDGIC and SNIC.

VOLUME # #4(III)(C): *Res judicata* and Issue Estoppel

54. The Applicant could then be caught by the doctrines of *res judicata* and issue estoppel.

VOLUME # #4(III)(C)(i): *Res judicata*

55. In *Said v. Northbridge General Insurance Company, 2024 ONSC 5248* (Div. Court), the Honourable Justice DL Corbette with oral reasons considered *res judicata* in an administrative context where it was found that a LAT decision is final and authoritative subject to a party's rights of reconsideration or appeal from that decision.[81]TDHA and SNIC are not "one and the same" as it has already been found by the FSRA, through its issuance of the certificates of status in June 2024, that "TDGIC and SNIC were not one and the same".

VOLUME # #4(III)(C)(ii): Issue Estoppel

56. Issue estoppel has been articulated as follows in *Kazen v. Whitten & Lublin Professional Corporation,* 2020 ONCA 325[82]: (i) the same question has been decided; (ii) the judicial decision which is said to create the estoppel was final; and (iii) the parties to the judicial decision or their privies were the same persons as the parties to the proceedings in which the estoppel is raised [or] their privies. The ONCA in *Victoria University (Board of Regents) v. GE Canada Real,* 2016 ONCA 646 found the following: "[97] It holds that a party may not relitigate an issue that was finally decided in prior judicial proceedings between the same parties or those who stand in their place. However, even if these elements are present, the court retains discretion to not apply issue estoppel when its application would work an injustice."

57. It is the "mutuality principle" that would be at issue as to whether THDA and SNIC are "privies". However, even the slight chance, however remote, is enough to ensure that a decision is issued as to whom the First Insurer was – as there is no finding that TDHA was not the First Insurer and SNIC was the "Frist Insurer". Since there are no findings in this regard to overturn, no deference is required and the ONSC can decide the issue "de novo" or at least in a manner that resembles a "de novo hearing". It is yet another reason why the respondent insurance companies must not be entitled to participate herein. The Applicant would not be bound by *res judicata* and/or issue estoppel because SNIC and TDHA are privies but because of Mr. Nieuwland's recent representation in his "received" filing (purported NOA) that SNIC are "also referred to as" as TDHA and TDGIC.

VOLUME # #4(III)(D): *Reza vs. State Farm* and s. 19 of *SPPA*

58. The case of *Fatemea Rezaiezadeh v. State Farm Mutual Automobile Insurance Company*, 2016 ONFSCDRS 59 ("*Reza*")[83] stands for the proposition below wherein an arbitrator found the following: "The Appellant concedes there is no explicit procedure in…the *Statutory Powers Procedure Act*, R.S.O. 1990, c. S.22, as amended, to permit a party to continue a proceeding against a non-party." While *Reza* was a decision before the FSCO, the Legislature has not amended the *SPPA* in any manner that would change that precedential statement of law. The Applicant will also be deprived of his rights under section 19 of the SPPA in relation to enforcement of a monetary order.[84]The Applicant cannot continue the LAT Proceeding as currently constituted against TDHA as per the **VCM Decision**. Moreover, the Applicant would be proceeding against as a "Non-First Insurer" that does not have any obligation to respond and to pay benefits.[85]

VOLUME # #4(III)(D)(i): Does the argument that SNIC would merely cut a cheque assuage any concerns and/or should the Applicant have to even take such a risk?

59. In *Reza*[86], the following excerpt has extreme relevance to why this ***JRPA Proceeding*** must proceed expediently before a single justice and, if it fails, then before the ONSC (Div. Court): "The Appellant's apparent concern is that if she is successful on appeal and obtains a monetary award, if the Respondent does not pay, whose property does the sheriff seize? The Respondent submits that Certas would respond to any "valid" judgment by cutting a cheque because of its contractual obligation with State Farm. This did not seem to reassure the Appellant."[87]

VOLUME # #4(III)(D)(ii): Not merely the entitled insured person and the obligated insurance company (First Insurer) but *issues*

60. The danger of not deciding this ***JRPA Proceeding*** on an expedited basis before a single justice, is outlined, to some degree, in 2015 ONCA 851[88]. The ONCA briefly set out the elements required for issue estoppel to apply to bar the re-arguing of *an issue*, and some useful comments on when parties meet the "mutuality principle". The applicable principle is that "litigation is conclusive upon *issues actually brought before the court* and upon any

issues which the parties, exercising reasonable diligence, should have brought forward on that occasion".[89] The ONCA at paragraph nine raised some of the **indicia** that would make corporate parties privies of each other and the address aspect is one that cuts both ways:

> "[9] ….. All corporate appellants, except Committee of Certified Acupuncturists of Ontario, share the same registered address and they all share *many* of the same directors and officers, including the two individual appellants. In the context of these proceedings, this constitutes a sufficient degree of identification among the parties "to make it just to hold that the decision to which one was a party should be binding in the proceedings to which the other is a party".[90] In any event, even if the same parties' requirement for issue estoppel is not strictly met, permitting the appellants to re-litigate the issue that was determined by the Divisional Court would amount to an abuse of process.

VOLUME # #4(III)(D)(v)): "Would respond" is antithetical and counter to the purposes of *Reg 283* and *SABS* [they are imperatives]

61. As found by the Honourable Mr. Justice Akazaki, a former president of the OBA no less, in *Zurich 2024*[91] the purpose of *SABS* is and remains that those injured persons receive vital treatments and income replacement benefits. SNIC is even on worse footing than Certas, vis-à-vis the defunct State Farm, as noted in *Reza*[92], as it relates to automobile insurance benefits in Ontario, because there is no evidence of SNIC having a contractual relationship to TDHA to respond and pay on its behalf for its obligations under *Reg 283* and *SABS*. However, this inharmoniously bolsters a variety of points: (i) SNIC may take the position that it was *standing in the shoes* of TDHA; (ii) SNIC and TDHA are privies because of the "*standing in the shoes argument*"; (iii) without a decision herein, SNIC may take the position, even post hearing, that the Applicant was advancing his arguments not only against SNIC, but TDGIC and TDHA, and be without any recourse against TDHA as the First Insurer; (iv) SNIC does not have a duty to respond and pay benefits because it was not the First Insurer but the Applicant's LAT Appeal is dispositive of all issues against not only SNIC but TDHA; (v) to the extent that the Applicant advanced a separate LAT Appeal against TDHA, he would be abusing the process of the Tribunal because the underlying evidence would be similar or the same as he had faxed the seminal documents and correspondence to 416.774.3120 on a primary level; and (v) others.

VOLUME # #4(III)(E)(i): No ***effective remedy*** left for the Applicant

62. The prematurity doctrine has no applicability. The Applicant may or may not obtain a remedy against a non-liable insurance company as a matter of the governing statute in *Insurance Act*, ss. 268(3) and the binding regulations in *Reg 283*, *SABS* and *Reg 664*. Judicial review is a discretionary remedy. However, in *Awada*[93], Corbett J. by setting out the legal principle or precedent that courts should not interfere with ongoing administrative proceedings until after they are completed *or* until effective remedies are exhausted. It is not that a claimant has exhausted remedies but effective remedies. "Effective" is synonymous with "actual, real, or operative". Any remedies against SNIC are ineffective, futile or useless. The ineffectiveness of any remedies, absent costs against SNIC in the LAT Proceeding, is further bolstered by the mature and stable jurisprudence that an order adding or dismissing a motion to add a party is a final order.

VOLUME # #4(III)(E)(ii): The Ultimate Appeal argument

63. The ONSC outlined the legal test in *Mansuri*[94] wherein it stated, "To the extent that there are "alleged deficiencies" arising from the Initial Decision, the applicants have not established that they "cannot be cured on an ultimate appeal. Put another way, the applicants have not established that the alleged prejudice to the applicants outweighs the benefits of a single court proceeding once the underlying Tribunal proceedings are complete" (see: *Mansuri v. Dominion of Canada General Insurance Company*, 2023 ONSC 5764[95] at paragraph 43).[96] Even in an "ultimate appeal", no curing could occur as TDHA is not the solely liable respondent party in the LAT Appeal.

VOLUME # #4(III)(E)(iii): The corollaries in *Ontario Nurses Association*

64. The ONSC in *Sudbury and District Health Unit v Ontario Nurses' Association*, 2023 ONSC 2419 ["*Ontario Nurses*"][97], found as follows at paragraph 29: "…. Resolution of this application does not resolve the outstanding issues before the Arbitrator. In addition, the court has been clear that this is not an exceptional circumstance that would lead it to hear a judicial review application on an interlocutory decision." The deductive reasoning is rather rudimentary: (i) if resolution of a *JRPA* Application resolves outstanding issues

before the Tribunal, then a *JRPA* Application is not premature; and (ii) if not an interlocutory decision, then this militates in favour of hearing this *JRPA* Application.[98]

VOLUME # #4(III)(E)(iv): Court May ALWAYS intervene - Inherent Jurisdiction of its Superior Court Status

65. The court noted that "if there is a prospect of *real unfairness* through denial of natural justice or otherwise, a superior court may always exercise its inherent supervisory jurisdiction to put an end to the injustice before all the alternative remedies are exhausted…the unfairness in this case is so obvious that it would be inappropriate to put the officer through a trial before a tribunal that lost jurisdiction through a denial of natural justice.[99] This madness needs to be put to an end. The Tribunal is not even correctly distinguishing between the law of consent and "non-opposition". *What next by way of extrapolation of legal principles?* Sexual assault victims need not consent to sexual acts but their lack or absence of opposition to sexual acts is functionally and legally equivalent to consent. This Tribunal should be ashamed of itself by tossing around, in some irresponsible manner, that "consent" and "non-opposition" are "*one and the same*".[100]

VOLUME # #4(III)(E)(v): Concerns about this decision maker in VCM

66. Further, the total absence of a foundation for a finding of fact is an error of law. Moreover, it is the findings of VCM that are so particularly concerning that raise incredible integrity issues and conduct. It is not the first time that this former adjudicator, since promoted to Vice Chair, has been involved in serious breaches of conduct with knowledge. Her apparent knowledge, not in the record of proceeding, of what transpired, was not only affront to the *LAT Rules* of all parties being copied on correspondence, but this ONSC can take judicial notice of some issues involving this Tribunal of yesteryear.

67. Vice Chair Morrissette had to obtain this "knowledge" that TDGIC and SNIC accepted priority over the Applicant's [sic] insurance policy [sic] from some place, repository *et al*. The activities of VCM, prior to assuming her role as an adjudicator and now VC, are of great concern on a general but a specific level herein (see: https://lobbycanada.gc.ca/en/investigations/reports-on-investigation/the-lobbying-activities-of-trina-morissette/).[101] [102]

VOLUME # #4(III)(E)(vi): The conduct of this Tribunal is bringing the rule of law into disrepute: exceptional circumstances.

68. In *Harold the Mortgage Closer Inc. v. Ontario* (Financial Services Regulatory Authority, Chief Executive Officer), 2024 ONSC 446 [103] , this ONSC found: "[49] Exceptional circumstances are ones that bring the rule of law into disrepute which goes beyond breaching procedural fairness or even acting without jurisdiction: *Dugré*, at para. 35."

VOLUME # #4(III)(E)(vii): Risk of repeating proceedings and potential prejudice

69. Referring to the exceptions to the prematurity doctrine, which are analyzed when interlocutory relief is challenged by way of judicial review which has no applicability herein, "…It will only be permitted in rare cases where the *potential* prejudice of the risk of repeating proceedings after review" (see: *Lourenco*[104]). This JRPA Application will be repeated if the prematurity doctrine and arguments of the Tribunal are accepted.

VOLUME # #4(III)(E)(viii): Broader implications, Test Cases and Concurrent Jurisdiction

70. In *London District Catholic School Board v. Weilgosh*, 2024 ONSC 3857[105], the concepts of broader implications and test cases caused the ONSC to hear the judicial review even on an interim order, which the **VCM Decision**s are not, before the conclusion of that proceeding. Even more forcefully, the issues herein are even more important because they will determine a *Reg 283* and *SABS* issue in a "test case" where they have not been decided before against the backdrop of some alarming issues involving this Tribunal which appear to be related to previous concerns about this Tribunal. This outcome and decision herein have broad implications for insured persons with various insurance companies in any "insurance group" and whether there is a systemic issue involving providing false contact information, which may or may not involve intentional breaches, and may be merely a technological error like the "four insurance companies" had in the FSRA Enforcement Decisions for SNIC[106], TDGIC[107], Primmum[108], and TDHA[109] . Nonetheless, it must be addressed forthwith before further prejudice occurs to the public.

VOLUME #5: Conclusion and Orders Sought

VOLUME #5(A): Why the prematurity doctrine has no applicability

71. History cannot repeat itself and the JRPA Applicant is acting not only in relation to "final orders" but in accordance with the "rule of law" and being pre-emptive by filing this factum and asking, with great respect and appreciation, for an urgent hearing. The obvious 'devil's advocate' position to the JRPA Applicant's submissions regarding being technically correct in following *Reg 283,* which dovetails with SABS and Reg 664, is that SNIC will claim that it will be bound by any decision of the Tribunal and not advance any positions contrary to the same or at the "11th hour". However, there is nothing, with the findings in the impugned orders and decisions of VCM on September 12, 2024, (contrary to the September 6, 2024 inscription), to take the position that it [SNIC] is not obligated to respond and pay benefits pursuant to *SABS* because it was NOT the "First Insurer". There is also nothing that would preclude SNIC from doing so after the Hearing Proper and prior to the issuance and release of a decision of the Tribunal in relation to the Hearing Proper as the Tribunal would not be *functus officio* until that time. SNIC could seek leave post Hearing Proper and advance that argument all while relying on the finding, god willing such a finding would not be issued by this ONSC Divisional Court, that the JRPA Application was premature. It would then leave the Applicant with no recourse regarding the final orders to NOT add TDHA as the First Insurer and not only no effective remedy against insurance companies within the TDI Group but no insurance company with a duty to respond and pay any benefits. In effect, it would be a return to the unlawful *status quo* where the Applicant communicates with the purported adjusters for SNIC and they do not respond to him despite the digital communication protocol that was consummated by consent between SNIC and the Applicant on January 23, 2024.

VOLUME #5(B): Preliminary Orders

72. With great respect and appreciation for the ONSC's time on this matter, the Applicant seeks, by way of this factum, the following orders on a preliminary basis: (a) Striking Nieuwland Purported NOA on behalf of three insurance companies; (b) An order that the Applicant is entitled to be heard on the issue of leave before a single justice of the ONSC

at the earliest opportunity of this ONSC and prior to January 15, 2025; and (c) An Order dispensing with the need for any case management conference.

VOLUME #5(C): Public Interest Remedies: Declarations Of Law

73. The Applicant seeks the following public interest remedies, orders, declarations or findings for the benefit of the public along with this ONSC solidifying the required stability and uniformity involving *Reg 283*, which the Applicant respectfully seeks an endorsement or finding of the same, are the following syllogisms for accidents post September 1, 2010:

a. A **Declaration of Law** that there cannot be any binding agreement, at law, between a First Insurer and another insurer or insurer(s), where an insured person has not received notice from the First Insurer (see: section 3(1));
b. A **Declaration of Law** that there cannot be any binding agreement, at law, between a First Insurer and another insurer or insurer(s), where an insured person has not *selected* the First Insurer (see: section 7(2) of *Reg 283*);
c. A **Declaration of Law** that there cannot be any binding agreement, at law, between a First Insurer and another insurer or insurer(s), at first instance or subsequent, under *Reg 283* if the insured person, in her capacity as an Applicant having sent a Completed Application that was received by an insurer, making said insurer the "First Insurer", did not receive a notice of dispute or transfer pursuant to *Reg 283*;:
d. A **Declaration of Law** that there cannot be any binding agreement between a First Insurer and another insurer or insurer(s), at first instance or subsequent, under *Reg 283* if the insured person, in her capacity as an Applicant having sent a Completed Application that was received by an insurer making said insurer the "First Insurer", objected to any transfer of her claim pursuant to section 5(1) of *Reg 283* and said "agreement" was made without the consent of the insured person applicant who has seen and read the agreement;
e. A **Declaration of Law** that there cannot be any binding agreement, at law, between a First Insurer and another insurer or insurer(s), at first instance or subsequent, under *Reg 283* if the insured person, in her capacity as an Applicant having sent a Completed Application that was received by an insurer making said insurer the "First Insurer", where:
    i. an insured person has received notice of the potential transfer of the claim by the First Insurer to another insurer or insurers, the insured person has objected to the transfer within 14 days of receiving notice, received a copy of the proposed agreement, objected to said proposed agreement and has initiated arbitration within 14 days of being notified of an agreement under the *Arbitration Act, 1991* (see: section 7(2) of *Reg 283*);
f. A **Declaration of Law** that there cannot be any binding agreement, at law, between a First Insurer and another insurer or insurer(s), where an insurer does NOT commence or initiate arbitration within one year after the day the insurer paying

benefits gives a section 3 notice to the other insurers and, by corollary, a section 4 notice to the insured person applicant (see: section 7(4)); and

g. A **Declaration of Law** that there cannot be any binding agreement, at law, between a First Insurer and another insurer or insurer(s), whereby the insurer paying benefits was not the First Insurer if the First Insurer does not give notice in accordance with section 3(1) of *Reg 283* because the First Insurer is bound by its failure to give a section 3 notice to every other insurer because even if the First Insurer does so, section 4 requires a more formal notice under section 4 in the requisite form (A143).

VOLUME #5(D): Judicial Review Final Orders vis-à-vis Mr. McLean and TDHA

74. The Applicant seeks the following final orders:

1. An order quashing, in the nature of certiorari, and setting aside the **VCM Decision**;
2. An order quashing, in the nature of certiorari, and setting aside the **VCL Reconsideration Decision**;
3. An order granting the Applicant's orders sought, stylized as #1 and #3 in his NOM #14 (see: page 12 of the **Application Record**);
4. Costs in favour of the Applicant in NOM #14 and #15 against the then sole respondent in SNIC and fixed at $2,000;
5. Costs in favour of the Applicant in this ***JRPA Proceeding*** against any of the respondents herein that oppose the relief herein;
6. Such other further relief that this Honourable Court may grant pursuant to its inherent jurisdiction; and
7. Leave to the Applicant to file and serve any further documents, including amended submissions, that arise from the above or become known to him and/or based upon any agreement or order regarding the filing of the record of proceeding.

VOLUME #5(E): A full answer to the prematurity doctrine by way of legal bases

75. Lastly, there is a full answer to why the issue of who the First Insurer was and is, and who the correct liable and obligated respondent party must be and that is section 56 of SABS:

> **"Time limit for proceedings**
> **56.** An application under subsection 280 (2) of the Act in respect of a benefit shall be commenced within two years after the insurer's refusal to pay the amount claimed. O. Reg. 44/16, s. 6."

76. The LAT Appeal (a section 280(2) of the Insurance Act 'Application') was filed and served on the TDHA Fax Number, albeit unbeknownst to the Applicant as being the TDHA Fax Number, on December 24, 2023. SNIC filed its Response on January 25, 2024. VCM could not have reviewed the pleadings because she would have known by both pleadings that it was NOT the Applicant's Insurance Policy.

77. In *R.M. v CAA Insurance*, 2020 CanLII 94775[110], Vice Chair Shapiro found in relation to section 56 of the Schedule:

> "[5] Section 56 of the *Schedule* provides that an application to dispute a denial of a benefit must be commenced within two years of the insurer's refusal to pay. Section 64 allows the denial notice to be sent by regular mail or faxed to an insured's lawyer. Once a proper denial has been properly sent, if an insured does not appeal within that period, the Tribunal can not hear it as it is "time-barred".

78. This, in turn, makes the precise point that SNIC, at least prima facie, has sent "denial letters" to the Applicant but TDHA has not. Parenthetically, TDGIC never sent a denial letter to the Applicant which was the Applicant's primary reason for continuing to seek the relief to substitute SNIC for TDGIC – not the unsupported findings of VCM. Therefore, the "record of proceeding" will be unequivocally different between SNIC and TDHA. It is not merely a "cosmetic difference" but a substantive one.

79. All of which is respectfully submitted to the ONSC (Div. Ct.) at first instance on Tuesday, December 10, 2024:

Mr. Kevin A. McLean (B.A. J.D., CIM)
Self-represented, the Applicant herein

APPENDICES OF THE JRPA APPLICANT'S FACTUM

APPENDIX #1: Errors in **VCM Decision** as referenced by NOM #18 in the NOM #18 Motion Forom and Schedule therein

The Appellant seeks the following orders as follows pursuant to section 21.1 of the *SPPA* (but not LAT Rule 17) by way of strikethrough for deleting the word therein and underlining for proposed additions in substantially the same form:

a. An Order correcting the "date of the order" from September 6, 2024 to September 13, 20242;

b. An Order correcting **paragraph 2** from "was issued to the parties" to the following in substance "was issued to the Appellant and TDGIC, which was and is a non-party pursuant to the retroactive nature of my order issued on June 20, 2024, and released on June 21, 2024. As a parenthetical note, the Appellant sought clarification of my order in relation to this NOM #8 to confirm that the retroactive nature of the ordered changes from TDGIC to SNIC only related to documents and orders issued by the Tribunal and not those of TDGIC from January 30, 2024, to June 21, 2024. I confirmed the same in my reasons for decision in relation to the Appellant's order seeking clarification, which was his NOM #10;

c. An Order correcting **paragraph #2**, **sentence #2**: [this is corrected by the change above in Order #2];

d. An Order correcting **paragraph #3** to: from "on consent of the parties" to "by TDGIC not opposing the relief sought in NOM #8 (except costs) and the Appellant proceeding with his motion unopposed";

e. An Order correcting **paragraph #5** as follows in substance: [to be consistent between sentence #1 and sentence #2 as sentence #1 references twelfth, thirteenth, and fourteenth and sentence #2 references "NOM #13, NOM #14, and NOM #15"];

f. An order correcting the *"similar error" [technical deficiency error]*, in the form of incorrect language, at **paragraph 12**, as submissions are not affidavit evidence. Further, an order specifically correcting paragraph 12, sentence #2, from "He submits that he made demands..." to "He swore affidavit evidence that he made demands upon TDHA and exhibited the emails he sent to TDGIC along with filing a certificate of service that delivered the hearing brief, which was indexed, tabulated and consecutively numbered pursuant to *LAT Rule 9.4.5.*, on July 11, 2024. As the Tribunal did not provide TDGIC with an opportunity for submissions, contrary to LAT Rule 9.2.2., the Tribunal did not have the benefit of any written submissions, affidavit evidence or authorities."

g. An order correcting paragraph #18 as follows with the inclusion of the technically correct language and facts: was TDGIC. While TDGIC was the

respondent party at the time, the effect of my order on June 6, 2024, operated retroactively.

h. An order correcting paragraph #19 as follows: removing sentence #1 and replacing with the language in the underlying hearing brief and record at the time "The reasons that SNIC was required to be the sole respondent party, as cited in NOM #8, were not only because of the Appellant's reasons but compliance with the *SPPA, SABS, Reg 283,* FSRA requirements, LATA, consistency with the *LAT Rules* and others.

i. An Order that **paragraph 22**, sentence #1 is corrected as follows: "TD Insurance letterhead" to "TD Insurance Meloche Monnex letterhead" with the return address of 200-101 McNabb Street, Markham, Ontario"

j. An Order that **paragraph 22, sentence #3** is removed in its entirety in favour of the facts within the record of proceeding as follows in substance with the below:

i. Within the filed Appeal, the Appellant utilized the definition of TD SNIC. While the Appellant could not input the entirety of TD Insurance Meloche Monnex (Security National Insurance Company), he used TD Insurance with the definition of "TD SNIC" within the pleading for further specification. Attached to his pleading with the required
listed key documents were four pre-pleading affidavits that all referenced TD SNIC, which contained the "Denial Letters" therein.

i. On December 24, 2023, the Appellant served the Appeal to the fax number provided to him by SNIC in September 2022, which was 416.774.3120. The said fax number is grounded and wired to the building located at 3650 Victoria Park Avenue, North York, Toronto, Ontario. The Appellant was unaware that said fax number was not that of SNIC Markham. Whichever insurance company was so located on the 4th floor of the Victoria Park Building at the time of October 13, 2022, was served with the Appeal.

ii. On January 3, 2024, the Appellant filed his NOM #1 with the Tribunal.

iii. On January 8, 2024, the Appellant filed his NOM #2 with the Tribunal. On the same day, the Appellant received communications from one Mr. Josh Grant, case manager, of the LAT/AABS requesting that the Appellant provide copies of the denial letters that he had received in relation to his TD Claim #3 and LAT Proceeding. The Appellant did so on January 8, 2024, which contained denials letters exclusively from SNIC at its alleged offices of SNIC Markham and the Burlington Office Building (absent a floor number). The denial letters that the Appellant provided were already contained within the pre-pleading affidavits that particularized the key documents for the Appeal.

iv. On January 14, 2024, the Appellant filed NOM #3.

v. In each of the three motions denoted above, the Appellant denoted the respondent as "TD Insurance Meloche Monnex" (Security National Insurance Company).

vi. On January 16, 2024, Vice-Chair Lake issued written reasons for decision in all three motions, without the party receiving any notice of the written hearings, section 6, declining to decide the same. In Vice Chair Lake's order, she even references TD SNIC but continued with the finalization of her reasons for decision with TDGIC as the Respondent.

vii. For context as to how TD General Insurance Company became the sole respondent on January 8, 2024, in the LAT/AABS system, when Mr. Josh Grant, case manager for the SNIC Proceeding, was assigned to the same, Mr. Grant emailed the Appellant, Mr. Nieuwland, who was then counsel to TDGIC, and Mr. Karat, ADR Specialist to SNIC, on May 6, 2023, in response to the Appellant's May 6, 2024, email requesting, *inter alia*, copies of the documents and information as it relates to who provided the Tribunal with information regarding TDGIC on or around the deadline for filing a Response to the Appellant's Appeal. The Appellant's query arose after May 2, 2024, at the combined case conference and set hearings for his NOM #4 and NOM #6, when he objected, prior to and during the case conference, to TDGIC being the sole respondent or a respondent at all as it was never disclosed to him as an insurance company; it was not the underwriter in the Appellant Spouse's insurance policy, that had any duties in relation to his TD Claim #3. Moreover, the Appellant needed to know the information because *SABS* requires the insurance company that refused to pay any amounts claimed for benefits or any refusal seeking increased benefits to be named (see: section 56 of *SABS*3). Mr. Grant kindly noted that the Appellant did list TD Insurance as the Respondent but **mistakenly** stated that the denial letters the Appellant filed also referenced only TD Insurance when the denial letters bore the two trademarks of "TD Insurance Meloche Monnex" and the return address of Security National Insurance Company (see: affidavit #38, Exhibit "A" pages 31 to 45). Mr. Grant's explanation was that, after receiving the denial letters, which did not reference "TD Insurance" (or TD General Insurance Company), that the information, in his view, provided in the Appeal, plus pre-pleading listed and attached documents, provided him with only two options for entry of the respondent party insurer, when SNIC was in the upper-right hand corner of each document along with the author being "TD Insurance Meloche Monnex", in: (i) TD General Insurance Company; or (ii) TD Home And Auto Insurance Company.
viii. Mr. Grant noted that "If there was a concern that the Security National Insurnace Company, not TDGIC, being named as the Respondent party, please advise if the parties agree that a
change should be made. The Appellant sought TDGIC's consent, but it did not respond. It was not until after the Appellant found the FSRA enforcement decisions and Mr. Nieuwland's representation of SNIC in the Syed Decisions, could he disprove Mr. Nieuwland's representations that SNIC and TDGIC were one and the same and "this is how they always do it" [in relation to SNIC being the sole underwriter, responding insurance company *et al* and then TDGIC becoming the sole respondent]. The Appellant again sought the consent of TDGIC when he obtained the FSRA's confirmation that he could obtain status certificates at a cost for expedited receipt. TDGIC did not respond. It was not until after some six months of TDGIC refusing to be removed as the sole Respondent, and SNIC not responding to the overtures to be the sole respondent and opposing relief from the Appellant in motions and unlawfully appearing as the sole respondent at the case conference, that TDGIC, through Mr. Nieuwland confirmed in writing on June 6, 2024, that it would not oppose the Appellant's relief sought in NOM #8. The Appellant obtained those status certificates on June 19, 2024, and filed them

with the Tribunal. On June 21, 2024, with a litany of reasons as to why SNIC was required to be the respondent instead of TDGIC, as TDHA was unknown to the Appellant, NOM #8 was granted in the Appellant's favour.

k. An Order that **paragraph 23**,

> ix. sentence #1 is corrected from "Respondent's counsel" to "current respondent's counsel and former counsel to TDGIC", from "noting that he was representing the insurer "TDGIC" to "declaring that he was representing the insurer "TDGIC" but only after Mr. Karat, the ADR Specialist, who represented to the Appellant, on January 23, 2024, via email, with Mr. Nieuwland copied as "counsel", that he was assigned to be the ADR and representing the Security National Insurance Company, and then on January 25, 2024, Mr. Karat signed and filed the Response for SNIC ("SNIC Response") whilst serving the Appellant;
>
> x. sentence #2 is corrected by the removal of the entire sentence with the facts as above in substance subject to the writing style of Vice Chair or an adjudicator;

l. An Order that **paragraph 24** is corrected to the following:

i. Sentence #2: removing the entire sentence and adding the following, "Consistent with the documents, the Appellant refuted Mr. Nieuwland's misrepresentations4 that SNIC and TDGIC were "one and the same" and that TD Insurance Staff Legal always substituted or changed the identity of TDGIC for SNIC in LAT proceedings, which was counter to the very representations Mr. Nieuwland made representing SNIC in those *Syed Decisions* in LAT file number:
ii. Sentence #4: changing the following from "dated June 20, 2024, and released the following day on Friday, June 21, 2024,"5 and from "on consent of the respondent" to "by email dated June 6, 2024, TDGIC, through Mr. Nieuwland, confirmed it [TDGIC] would not oppose the relief sought";
m. An Order the following sentences in paragraph #27 are amended as follows:
i. Sentence #2: changing from "The initial respondent, TDGIC, and the current respondent, SNIC accepted priority over the applicant's spouse's insurance policy"
n. An Order that the following paragraph 35, sentence two is amended as follows:
i. From "curtail" to "circumvent";6; and

APPENDIX #2: REG 283

ONTARIO REGULATION 283/95

DISPUTES BETWEEN INSURERS

Last amendment: 126/19.

This Regulation is made in English only.

0.1 In this Regulation,

"application" means an application for accident benefits (OCF-1) approved by the Superintendent for the purposes of the *Schedule*;

"benefits" means statutory accident benefits as defined in subsection 224 (1) of the Act;

"completed application" means a completed and signed application;

"Fund" means the Motor Vehicle Accident Claims Fund continued under subsection 2 (1) of the *Motor Vehicle Accident Claims Act*;

"Schedule" means, in respect of an accident, the *Statutory Accident Benefits Schedule* as defined in subsection 224 (1) of the Act that applies in respect of the accident. O. Reg. 38/10, s. 1.

1. All disputes as to which insurer is required to pay benefits under section 268 of the Act shall be settled in accordance with this Regulation. O. Reg. 283/95, s. 1.

2. (1) The first insurer that receives a completed application for benefits is responsible for paying benefits to an insured person pending the resolution of any dispute as to which insurer is required to pay benefits under section 268 of the Act. O. Reg. 283/95, s. 2.

(2) Subsection (1) applies in respect of benefits that may be payable as a result of an accident that occurs before September 1, 2010. O. Reg. 38/10, s. 2.

2.1 (1) This section applies in respect of benefits that may be payable as a result of an accident that occurs on or after September 1, 2010. O. Reg. 38/10, s. 3.

(2) An insurer shall promptly provide an application and any other appropriate forms in accordance with the *Schedule* to an applicant who notifies the insurer that he or she wishes to apply for benefits. O. Reg. 38/10, s. 3.

(3) The application provided by the insurer must include the insurer's name, mailing address and telephone and facsimile numbers. O. Reg. 38/10, s. 3.

(4) The applicant shall use the application provided by the insurer and shall send the completed application to only one insurer. O. Reg. 38/10, s. 3.

(5) An insurer that provides an application under subsection (2) to an applicant shall not take any action intended to prevent or stop the applicant from submitting a completed application to the insurer and shall not refuse to accept the completed application or redirect the applicant to another insurer. O. Reg. 38/10, s. 3.

(6) The first insurer that receives a completed application for benefits from the applicant shall commence paying the benefits in accordance with the provisions of the *Schedule* pending the resolution of any dispute as to which insurer is required to pay the benefits. O. Reg. 38/10, s. 3.

(7) An insurer that fails to comply with this section shall reimburse the Fund or another insurer for any legal fees, adjuster's fees, administrative costs and disbursements that are reasonably incurred by the Fund or other insurer as a result of the non-compliance. O. Reg. 38/10, s. 3.

(8) In subsection (7),

"insurer" does not include the Fund. O. Reg. 38/10, s. 3.

3. (1) No insurer may dispute its obligation to pay benefits under section 268 of the Act unless it gives written notice within 90 days of receipt of a completed application for benefits to every insurer who it claims is required to pay under that section. O. Reg. 283/95, s. 3 (1).

(1.1) If the dispute relates to an accident that occurred on or after September 1, 2010, a notice required under subsection (1) must also be given to the Fund if the insurer claims the Fund is required to pay benefits. O. Reg. 38/10, s. 4.

(2) An insurer may give notice after the 90-day period if,

(a) 90 days was not a sufficient period of time to make a determination that another insurer or insurers is liable under section 268 of the Act; and

(b) the insurer made the reasonable investigations necessary to determine if another insurer was liable within the 90-day period. O. Reg. 283/95, s. 3 (2).

(2.1) If the dispute relates to an accident that occurred on or after September 1, 2010, the Fund may give a notice under subsection (1) after the 90-day period and is not required to comply with subsection (2). O. Reg. 38/10, s. 4.

(3) The issue of whether an insurer who has not given notice within 90 days has complied with subsection (2) shall be resolved in an arbitration under section 7. O. Reg. 283/95, s. 3 (3).

3.1 (1) This section applies to disputes relating to accidents occurring on or after September 1, 2010. O. Reg. 38/10, s. 5.

(2) Before giving a notice to the Fund under section 3, an insurer must,

(a) complete a reasonable investigation to determine if any other insurer or insurers are liable to pay benefits in priority to the Fund; and

(b) provide particulars to the Fund of the investigation and the results of the investigation. O. Reg. 38/10, s. 5.

4. (1) An insurer that gives notice under section 3 shall also give notice to the insured person using a form approved by the Chief Executive Officer. O. Reg. 283/95, s. 4; O. Reg. 305/98, s. 1; O. Reg. 126/19, s. 2.

(2) Despite subsection (1), if the insurer that gives notice under section 3 is the Fund, no notice shall be given to the insured person under subsection (1). O. Reg. 38/10, s. 6.

5. (1) An insured person who receives a notice under section 4 shall advise the insurer paying benefits in writing within 14 days whether he or she objects to the transfer of the claim to the insurers referred to in the notice. O. Reg. 283/95, s. 5 (1).

(2) If the insured person does not advise the insurer within 14 days that he or she objects to the transfer of the claim, the insured person is not entitled to object to any subsequent agreement or decision to transfer the claim to the insurers referred to in the notice. O. Reg. 283/95, s. 5 (2).

(3) Subject to subsection 7 (5), an insured person who has given notice of an objection is entitled to participate as a party in any subsequent proceeding to settle the dispute and no agreement between insurers as to which insurer should pay the claim is binding unless the insured person consents to the agreement or 14 days have passed since the insured person was notified in writing of an agreement and the insured person has not initiated an arbitration under the *Arbitration Act, 1991*. O. Reg. 283/95, s. 5 (3); O. Reg. 38/10, s. 7.

6. (1) The insured person shall provide the insurers with all relevant information needed to determine who is required to pay benefits under section 268 of the Act. O. Reg. 283/95, s. 6.

(2) Upon request by the first insurer that receives a completed application for benefits, the insured person shall submit to one examination under oath for the purpose of determining who is required to pay benefits under section 268 of the Act. O. Reg. 16/13, s. 1.

(3) No other insurer is entitled to require the insured person to submit to an examination under oath for the purpose of determining who is required to pay benefits under section 268 of the Act. O. Reg. 16/13, s. 1.

(4) The scope of the examination under oath is limited to matters that are relevant to determining who is required to pay benefits under section 268 of the Act. O. Reg. 16/13, s. 1.

(5) The insured person is entitled to be represented at his or her own expense at the examination under oath by such counsel or other representative of his or her choice as the law permits. O. Reg. 16/13, s. 1.

(6) The insurer shall make reasonable efforts to *Schedule* the examination under oath for a time and location that are convenient for the insured person and shall give him or her reasonable advance notice of the following:

1. The date and location of the examination.

2. The insured person’s entitlement to be represented in the manner described in subsection (5).

3. The reason for the examination.

4. The fact that the scope of the examination is limited to matters that are relevant to determining who is required to pay statutory accident benefits under section 268 of the Act. O. Reg. 16/13, s. 1.

7. (1) If the insurers cannot agree as to who is required to pay benefits, the dispute shall be resolved through an arbitration under the *Arbitration Act, 1991* initiated by the insurer paying benefits under section 2 or 2.1 or any other insurer against whom the obligation to pay benefits is claimed. O. Reg. 38/10, s. 8.

(2) If an insured person was entitled to receive a notice under section 4, has given a notice of objection under section 5 and disagrees with an agreement among insurers that an insurer other than the insurer selected by the insured person should pay the benefits, the dispute shall be resolved through an arbitration under the *Arbitration Act, 1991* initiated by the insured person. O. Reg. 38/10, s. 8.

(3) The arbitration may be initiated by an insurer or by the insured person no later than one year after the day the insurer paying benefits first gives notice under section 3. O. Reg. 38/10, s. 8.

(4) Despite subsection (3), the arbitration may be initiated by the Fund at any time before or after the expiry of the time limit set out in subsection (3) if the Fund is paying benefits in respect of an accident that occurred on or after September 1, 2010. O. Reg. 38/10, s. 8.

(5) No insured person is entitled to initiate or participate as a party to an arbitration under this section if the insurer paying benefits is the Fund. O. Reg. 38/10, s. 8.

(6) If the dispute relates to an accident that occurred on or after September 1, 2010, the failure of an insurer other than the Fund to comply with section 2.1 or 3.1 may be the subject of a special award made by the arbitrator. O. Reg. 38/10, s. 8.

8. (1) Except as provided in this Regulation, the *Arbitration Act, 1991* applies to an arbitration under this Regulation. O. Reg. 283/95, s. 8 (1).

(2) The following rules apply with respect to an arbitration of a dispute relating to an accident that occurs on or after September 1, 2010:

1. If an insurer to whom a notice to initiate arbitration is delivered does not respond to the notice within 30 days, the insurer is deemed to have accepted the jurisdiction of the arbitrator proposed in the notice.

2. A pre-arbitration hearing must be *Schedule*d and take place no later than 120 days after the appointment of the arbitrator.

3. Subject to paragraph 4, once a date for the arbitration is *Schedule*d, the arbitration must be conducted on that day.

4. The arbitrator may grant an adjournment on such terms as the arbitrator considers appropriate, but only if there is cogent and compelling evidence of the reasons why the hearing cannot proceed on the *Schedule*d day.

5. Unless consented to by all parties, the hearing of the arbitration must be completed within two years after the commencement of the arbitration. O. Reg. 38/10, s. 9.

(3) The decision of an arbitrator made under this Regulation must be made public. O. Reg. 38/10, s. 9.

(4) If the decision relates to an accident that occurred on or after September 1, 2010, the decision must be made public,

(a) by the insurer that the arbitrator finds to be liable to pay the benefits; and

(b) in a manner and form specified by the Chief Executive Officer. O. Reg. 38/10, s. 9; O. Reg. 126/19, s. 2.

9. (1) Unless otherwise ordered by the arbitrator or agreed to by all the parties before the commencement of the arbitration, the costs of the arbitration for all parties, including the cost of the arbitrator, shall be paid by the unsuccessful parties to the arbitration. O. Reg. 283/95, s. 9 (1).

(2) The costs referred to in subsection (1) shall be assessed in accordance with section 56 of the *Arbitration Act, 1991*. O. Reg. 283/95, s. 9 (2).

10. (1) If an insurer who receives notice under section 3 disputes its obligation to pay benefits on the basis that other insurers, excluding the insurer giving notice, have equal or higher priority under section 268 of the Act, it shall give notice to the other insurers. O. Reg. 283/95, s. 10 (1).

(2) This Regulation applies to the other insurers given notice in the same way that it applies to the original insurer given notice under section 3. O. Reg. 283/95, s. 10 (2).

(3) The dispute among the insurers shall be resolved in one arbitration. O. Reg. 283/95, s. 10 (3).

11. References in this Regulation to a form approved by the Chief Executive Officer are deemed to include the last form approved by the Superintendent for the purposes of the relevant provision prior to the day section 22 of *Schedule* 13 to the *Plan for Care and Opportunity Act (Budget Measures), 2018* came into force until the Chief Executive Officer approves a subsequent form for the purposes of the relevant provision. O. Reg. 126/19, s. 1.

APPENDIX #3: THE SCHEDULE (NOTA BENE: FOCUSED ON THE WORD "RECEIVE" OR "RECEIVES")

Statutory Accident Benefits Schedule, O Reg 34/10, <https://canlii.ca/t/56cm2> retrieved on 2024-12-10

PART VIII
PROCEDURES FOR CLAIMING BENEFITS

General

Notice to insurer and application for benefits

[nota bene: duties of a person – insured person – or potentially insured person]

32. (1) A person who intends to apply for one or more benefits described in this Regulation shall notify the insurer of his or her intention no later than the seventh day after the circumstances arose that give rise to the entitlement to the benefit, *or* as soon as practicable after that day. O. Reg. 34/10, s. 32 (1).

[Nota bene: Duties of the First Notified Insurer]

(2) The insurer shall promptly provide the person with,

(a) the appropriate application forms;

(b) a written explanation of the benefits available;

(c) information to assist the person in applying for benefits; and

(d) information on the election relating to income replacement, non-earner and caregiver benefits, if applicable. O. Reg. 34/10, s. 32 (2).

(3) If an insurer that is subject to a Guideline referred to in subsection 64 (7) determines, acting reasonably, that there is a likelihood that the person may, in connection with the accident, deliver one or more documents referred to in that subsection, the insurer shall provide the following information to the central processing agency referred to in that subsection:

1. The name, address, gender and date of birth of the person.

2. The date of the accident.

3. Particulars of the automobile insurance policy under which the person asserts he or she is entitled to a benefit or benefits, including,

i. the name of the insurer,

ii. the policy number, and

iii. the name of the person to whom the policy was issued.

4. The claim number assigned by the insurer.

5. Any other information reasonably required by the central processing agency to enable it to carry out its obligations to the insurer under this Regulation. O. Reg. 34/10, s. 32 (3).

(4) An insurer's obligation to provide the information referred to in subsection (3) may be discharged by,

(a) providing the information to the central processing agency; or

(b) confirming, correcting or supplementing the information previously provided to the central processing agency. O. Reg. 34/10, s. 32 (4).

[Nota bene: duties of the applicant submitting a completed application within 30 days after receipt of application forms]

(5) The applicant shall submit a completed and signed application for benefits to the insurer within 30 days after receiving the application forms. O. Reg. 34/10, s. 32 (5).

[Nota bene: Duties of the First Insurer]

(6) If an insurer receives an incomplete or unsigned application, the insurer shall notify the applicant within 10 business days after receiving the application and shall advise the applicant of the missing information that is required or that the applicant's signature is missing, as appropriate. O. Reg. 34/10, s. 32 (6).

(7) The insurer shall not give a notice under subsection (6) unless,

(a) the insurer, after a reasonable review of the incomplete application, is unable to determine, without the missing information, whether a benefit is payable; or

(b) the application has not been signed by the applicant. O. Reg. 34/10, s. 32 (7).

(8) If subsection (6) applies in respect of an incomplete application, no benefit is payable before the applicant provides the missing information or signs the application, as the case may be. O. Reg. 34/10, s. 32 (8).

(9) If an applicant is required by an insurer to submit an additional application in respect of a benefit that the applicant is receiving or may be eligible to receive, the applicant shall submit the additional application to the insurer within 30 days after receiving the additional application forms from the insurer. O. Reg. 34/10, s. 32 (9).

(10) Despite any shorter time, limit in this Regulation, if an applicant fails without a reasonable explanation to notify an insurer under subsection (1) within the time required under that subsection,

the insurer may delay determining if the applicant is entitled to a benefit and may delay paying the benefit until the later of,

(a) 45 days after the day the insurer receives the completed and signed application; or

(b) 10 business days after the day the applicant complies with any request made by the insurer under subsection 33 (1) or (2). O. Reg. 34/10, s. 32 (10).

Claim for Income Replacement Benefit, Non-Earner Benefit, Caregiver Benefit or Payment for Housekeeping or Home Maintenance Services

Application

36. (1) In this section and section 37

(4) Within 10 business days after the insurer receives the application and completed disability certificate, the insurer shall,

(a) pay the specified benefit;

(b) give the applicant a notice explaining the medical and any other reasons why the insurer does not believe the applicant is entitled to the specified benefit and, if the insurer requires an examination under section 44 relating to the specified benefit, advising the applicant of the requirement for an examination; or

(c) send a request to the applicant under subsection 33 (1) or (2). O. Reg. 34/10, s. 36 (4).

(5) If the insurer sends a request to the applicant under subsection 33 (1) or (2), the insurer shall, within 10 business days after the applicant complies with the request,

(a) pay the specified benefit; or

(b) give the applicant a notice described in clause (4) (b). O. Reg. 34/10, s. 36 (5).

(6) If the insurer fails to comply with subsection (4) or (5) within the applicable time limit, the insurer shall pay the specified benefit for the period starting on the day the insurer received the application and completed disability certificate and ending, if the insurer subsequently gives a notice described in subsection (4) (b), on the day the insurer gives the notice. O. Reg. 34/10, s. 36 (6).

(7) If the insurer requires the applicant to undergo an examination under section 44, the insurer shall, within 10 days after receiving the report of the examination,

(a) give a copy of the report to the applicant and to the person who completed the disability certificate submitted with the application; and

(b) provide the applicant with a notice indicating the amount, if any, that the insurer agrees to pay in respect of the specified benefit, the amount, if any, the insurer refuses to pay in respect of the

specified benefit and the medical and any other reasons for the insurer's decision. O. Reg. 34/10, s. 36 (7).

(8) Within 10 business days after delivering the notice under clause (7) (b), the insurer shall pay the amount, if any, that the insurer agrees to pay in respect of the specified benefit. O. Reg. 34/10, s. 36 (8).

(9) Every income replacement benefit, non-earner benefit or caregiver benefit shall be paid at least once every second week, subject to any prepayment of the benefit by the insurer. O. Reg. 34/10, s. 36 (9).

[Nota bene: Hence, why the Applicant has sworn evidence or submitted that he has never received any IRB as it was required to be paid by TDHA].

[Section 64 of *SABS* not relevant as it relates to that regulation and not *Reg 283*]

APPENDIX #4: INSURANCE ACT, SECTIONS 224 AND 268

[SQUARE BRACKETS ARE THE APPLICANT'S]

PART VI
AUTOMOBILE INSURANCE

Interpretation, Part VI

224 (1) In this Part,

"statutory accident benefits" means the benefits set out in the regulations made under paragraphs 9 and 10 of subsection 121 (1); ("indemnités d'accident légales")

Fees and Regulations

Regulations

121 (1) The Lieutenant Governor in Council may make regulations,

9. establishing benefits for the purposes of Part VI that must be provided under contracts evidenced by motor vehicle liability policies and establishing terms, conditions, provisions, exclusions and limits related to such benefits;

10. requiring insurers to offer optional benefits in excess of the benefits that must be provided under paragraph 9 prescribing the circumstances in which the optional benefits are to be offered and establishing terms, conditions, provisions, exclusions and limits related to such benefits;

10.1 prescribing coverages and endorsements in respect of contracts of automobile insurance that insurers or a class of insurers are required to offer, deeming the benefits provided by the coverages and endorsements not to be statutory accident benefits for the purpose of Part VI, and prescribing the circumstances in which the coverages and endorsements shall be offered;

10.2 prescribing rules for interpreting the regulations made under paragraphs 9 and 10 or any provision of those regulations;

10.3 prescribing functions to be performed by a committee appointed under section 7;

10.4 governing the procedure for determining who is liable to pay statutory accident benefits under section 268, including requiring insurers to resolve disputes about liability through an arbitration process established by the regulations and requiring the interim payment of benefits pending the determination of liability;

[nota bene: subsection 10.4 is yet another example of how the Legislature provided an extremely broad grant of authority to the LGIC for governing the procedure of determining how insurers are liable to pay *SABS* under section 268 which then dovetails to Reg 263]

Statutory accident benefits

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

Liability to pay

(2) The following rules apply for determining who is liable to pay statutory accident benefits:

1. In respect of an occupant of an automobile,

i. the occupant has recourse against the insurer of an automobile in respect of which the occupant is an insured,

ii. if recovery is unavailable under subparagraph i, the occupant has recourse against the insurer of the automobile in which he or she was an occupant,

iii. if recovery is unavailable under subparagraph i or ii, the occupant has recourse against the insurer of any other automobile involved in the incident from which the entitlement to statutory accident benefits arose,

iv. if recovery is unavailable under subparagraph i, ii or iii, the occupant has recourse against the Motor Vehicle Accident Claims Fund.

Liability

(3) An insurer against whom a person has recourse for the payment of statutory accident benefits is liable to pay the benefits. R.S.O. 1990, c. I.8, s. 268 (3); 1993, c. 10, s. 1.[111]

Choice of insurer

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

[nota bene: upon Mr. McLean's discovery of whom the First Insurer (TDHA) was, he, at law, only has recourse against one insurer and that is TDHA per se. To the extent that Mr. McLean has recourse against more than one insurer, it is only the obligation to pay benefits (see: *Beasley* and

Jia) which triggers the fiduciary duties owed by an insurance company to him. It would be against his own self-interest, as a matter of law, to choose an insurer which does not have a duty to respond and pay. It is not a matter of contract but a matter of statute and regulations. Moreover, the duties of the insurer that first received the Completed Application are also delineated and detailed in the OCF-1 itself which also dovetail to *PIPEDA*. Mr. McLean has not and is not revoking his consent to TDHA having received the same but that has provided notice to it that it must comply with its oblgiations therein as a matter of law or "by law" which are under the following: (i) *Insurance Act*; (ii) Legislation Act; (iii) *SPPA*; (iv) *PIPEDA*; and regulations: (i) *Reg 283*; (iii) *SABS*s *et al*.

Same

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

Same

(5.1) Subject to subsection (5.2), if there is more than one insurer against which a person may claim benefits under subsection (5), the person, in his or her discretion, may decide the insurer from which he or she will claim the benefits. 1993, c. 10, s. 26 (2).

Same

(5.2) If there is more than one insurer against which a person may claim benefits under subsection (5) and the person was, *at the time* of the incident, an occupant of an automobile in respect of which the person is the named insured or the spouse or a dependant of the named insured, the person shall claim statutory accident benefits against the insurer of the automobile in which the person was an occupant. 1993, c. 10, s. 26 (2); 1999, c. 6, s. 31 (10); 2005, c. 5, s. 35 (14).

[nota bene: There is no dispute that Mr. McLean attempted to claim benefits from SNIC but he nearly did not receive his accident benefits package by an incorrect postal code therein whilst his spouse did receive the same. Moreover, he did *attempt to claim benefits* from SNIC but it was intentional redirection, by way of fax number and potentially address (mailing), to a "different insurance company(ies)"

Payments pending dispute resolution

(8) Where the *Statutory Accident Benefits Schedule* provides that the insurer will pay a particular statutory accident benefit pending resolution of any dispute between the insurer and an insured, the insurer shall pay the benefit until the dispute is resolved. R.S.O. 1990, c. I.8, s. 268 (8); 1993, c. 10, s. 1.

[nota bene: said subsection 268(8) was passed in 1990 and amended in 1993 which predated *Reg 283* in its initial form and certainly well before its "amended form" in 2010. Nonetheless, a breach

of *SABS* and *Reg 283* is legally equivalent in the year of 2024 so said section overrides the above subsections 268(5) as that is a contractual (policy) issue. By the **VCM Decision**, paragraph 27, her finding that TDGIC, as the "initial respondent" [sic] and SNIC accepted priority over the applicant's [sic] insurance policy invokes the analysis of priority and not an insurance policy because priority cannot be decided in relation to an insurance policy per se when there is only one insurer. It certainly cannot add a "party" (i.e. language of "First Party Insurer" under *Reg 664* which is distinct from *Reg 283* with "First Insurer") to a contract WITHOUT the consent of a party to the Insurance Policy. Moreover, while the Applicant was statutorily deemed to have given consideration therefor under the Insurance Policy, the adding of an additional insurance company to a contract would have required the consent of all parties to that contract with "new consideration" or "additional consideration". Therefore, while subsection 2.1 of *Reg 283*, passed in 2010, is more analytically relevant to this *JRPA* Application, TDHA is still obligated to pay the benefits to the Applicant pursuant to section 2(1) of *Reg 283*).

APPENDIX #5: Changes to Ontario Regulation 283/95: Disputes Between Insurers
Bulletin No. A-07/10 – Auto Property & Casualtyhttps://www.fsrao.ca/media/7866/download

With this Bulletin, the Financial Services Commission of Ontario (FSCO) is highlighting the recent changes to Ontario Regulation 283/95: Disputes Between Insurers, to ensure compliance by all insurers. The changes are effective September 1, 2010. Background Ontario Regulation 283/95 sets out a mandatory process for private arbitration of all disputes between insurers over which insurer is liable to pay accident benefits to a claimant. This regulation is intended to ensure that claimants receive accident benefits (e.g., medical and income replacement benefits) in a timely fashion while these disputes are being resolved. Ontario Regulation 283/95 was established in 1995 following several years of experience with the no-fault accident benefits system. During the past several years, a number of procedural issues and disputes over the interpretation of Ontario Regulation 283/95 have led to delays in paying claimants' benefits. In addition, the Motor Vehicle Accident Claims Fund (MVACF) has frequently had to get involved to ensure that benefit payments to injured persons were not delayed – even if a private insurer was obliged to make the payments. As part of the automobile insurance reforms which resulted from FSCO's Five Year Review of Automobile Insurance, effective September 1, 2010 Ontario Regulation 283/95 is amended by Ontario Regulation 38/10. These amendments were made to ensure that claims are not deflected and that claimants receive payments without delay in cases where there may be a dispute regarding which insurer is liable to pay statutory accident benefits. Insurers that do not comply with this regulation will be subject to appropriate

Key Regulation Changes 1. Deflection of Applications for Accident Benefits a) Upon request, an insurer must provide a claimant timely access to OCF-1: Application for Accident Benefits (OCF-1 application). (Section 2.1(2)) Individuals who are injured in automobile accidents often contact the insurance company that they believe is liable to pay accident benefits before they complete and send their OCF-1 application to the insurer. In many cases, claimants are not aware of the priority rules that determine which insurer is liable to pay them benefits. The Statutory Accident Benefits *Schedule* (*SABS*) requires an insurer to provide an OCF-1 application to an injured person who expresses an intention to make a claim for benefits. This requirement is now reinforced by section 2.1(2) of Ontario Regulation 283/95. b) An insurer must not impede claimants from submitting OCF-1 applications or redirect them to other insurers or the MVACF. (Section 2.1(5)) When a claimant first contacts an insurer following an accident, it is not always clear, based on information reported by the claimant, if that insurer is responsible for paying the accident benefits in accordance with the priority rules. It is inappropriate for the insurer to discourage the injured person from filing an OCF-1 application, for example on the grounds that there is no insurance coverage (e.g., due to a cancelled insurance policy), or that there is another insurer to whom the person should make his or her claim. Insurers must provide claimants who express an intention to make an accident benefits claim with an OCF-1 application and not direct them to file it with MVACF or another insurer. Section 2.1(5) of Ontario Regulation 283/95 prohibits the deflection of OCF-1 applications. This includes deflection on the grounds that it is not clear which insurer is

required to pay accident benefits. c) The first insurer that receives an OCF-1 application must pay accident benefits in accordance with the *SABS*. (Section 2.1(6)) In order to prevent delays in payments, Ontario Regulation 283/95 requires the first insurer that receives a completed OCF-1 application to pay the accident benefits, as long as the claimant meets the requirements of the *SABS*. Although an insurer may believe that it is not responsible for paying accident benefits under the priority rules, the process to transfer, dispute and recover paid benefits is set out in Ontario Regulation 283/95. d) An insurer that fails to comply with this section will reimburse the MVACF or another insurer all related legal fees, administrative costs and disbursements. (Section 2.1(7) Section 2.1 (7) has been added to Ontario Regulation 283/95 to confirm the ability to recover costs incurred by the MVACF or an insurer in the administration of a claim (including adjusting costs) from the non-compliant insurer. 2. Definitions of "First Insurer" and "Completed Application" Several amendments are intended to provide clarity on issues that have arisen since the release of Ontario Regulation 283/95 in 1995; such as what is a "first insurer" and "completed application". a) A "completed application" is defined as a completed and signed OCF-1 application. (Section 0.1) b)The insurer that first receives a completed OCF-1 application is the "first insurer" for the purposes of Ontario Regulation 283/95. (Section 2.1(6)) A "first insurer" may not refuse to respond to the application on the basis that the application is not from an "insured person", or that there was no relevant policy in place on the date of the accident (e.g., the insurance policy was cancelled, expired or never existed). c) The applicant shall complete the OCF-1 application that is provided by the insurer and send it to only one insurance company. (Section 2.1(4)) Claimants are required to submit a completed OCF-1 application to only one insurer. This is intended to avoid potential disputes over which insurer first received a completed application, rather than creating confusion by submitting OCF-1 applications to more than one insurer. 3. Time Limitations for Notifying Other Insurers of Liability a) Before initiating a dispute against the MVACF, an insurer is required to complete a reasonable investigation to determine if any other insurer(s) is/are liable to pay benefits in priority to the MVACF and provide the MVACF with the particulars and results of the investigation. (Section 3.1(2)(a) and (b)) Section 3 of Ontario Regulation 283/95 provides the first insurer 90 days from the receipt of the completed application to conduct a reasonable investigation. This time frame allows the insurer to conduct an investigation to determine whether another insurer is liable to pay benefits, and to deliver written notice to other insurers if it believes they are liable to pay for accident benefits under the priority rules. Ontario Regulation 283/95 provides an extension beyond 90 days only if the first insurer has made reasonable investigation of the claim but cannot reach a decision within the 90-day period. Section 3.1 requires an insurer that wishes to put the MVACF on notice of a dispute to first complete a reasonable investigation and provide the results of the investigation to the MVACF.

Due to the unique nature of the claims that are submitted directly to the MVACF, in many cases another policy is discovered only after an extended period of investigation. As a result, this time limit does not apply to OCF-1 applications that are submitted first to the MVACF. (Section 3(2.1)) To facilitate the early resolution of disputes between insurers, a dispute about which insurer is responsible

for payments must go to arbitration within one year of providing notice to the other insurer. See section 7 for the specific rules that need to be followed. Enforcement Note that in addition to

sections 2.1(7) and 7 (6), actions contrary to Ontario Regulation 283/95 will be subject to appropriate enforcement or regulatory action in accordance with section 441 of the *Insurance Act* and Ontario Regulation 7/00: Unfair or Deceptive Acts or Practices. Publication of Arbitration Decisions involving Disputes Between Insurers Amendments to Ontario Regulation 283/95 have been made to ensure that arbitration decisions involving disputes between insurers are both timely and publicly available. The amendments require the insurer that is found by the arbitrator to be liable to pay benefits to make the arbitrator's decision public in a manner and form specified by the Superintendent. (Section 8(4)) The specified form and the process by which insurers will need to comply with this requirement will be the subject of a future Property & Casualty – Auto Bulletin. Effective Date The effective date of the Ontario Regulation 283/95 amendments is September 1, 2010. All insurers need to ensure that their claims and underwriting staff, plus any other staff who may be affected by these amendments, are informed of these changes. In addition, insurers are to ensure that they make any operational changes needed to implement the reforms by the effective date. Copies of Regulations The *Insurance Act* and Ontario Regulations 283/95 and 38/10 can be downloaded from the e-laws website at www.e-laws.gov.on.ca. Phil Howell Chief Executive Officer and Superintendent of Financial Services May 13, 2010

APPENDIX #6:AF-143, “Notice to Applicant of Dispute between Insurers”

Fillable/saveable:

AF-143E

Form details

Form number:	AF-143
Form title:	Notice to Applicant of Dispute Between Insurers
Sector:	Auto
Category:	Other - Auto
Last update:	1995-04-01

Notice to Applicant of Dispute Between Insurers

Name of Applicant

Mr. ☐ Mrs. ☐ Ms. ☐ Last Name First Name

Street Address

City Province Postal code

Date of Accident Day / Month / Year

This notice is to inform you that the insurer to whom you have applied for accident benefits claims that another insurer is responsible for paying these benefits. You may be required to assist the insurers in resolving their dispute by providing them with any information that may be needed to determine which insurer should be paying your accident benefits claim.

You will continue to receive accident benefits that you are entitled to from the insurer that you applied to while the insurers attempt to resolve their dispute.

You also have the right to object to your claim being transferred to another insurer. If you wish to object please complete Part 5 of this form and send it within 14 days to the insurer that is currently paying you accident benefits. If you object, you are entitled to participate in any proceeding that may take place to determine which insurer is responsible for paying accident benefits to you. If you do not object, you will not be permitted to dispute the transfer of your claim to another insurer.

If you have any questions about this notice, or about the process that insurers use to determine who is responsible for paying your claim, please contact the representative of the insurance company that is paying your accident benefits claim. The name and telephone number of the representative is listed in Part 1.

Part 1: Insurer that You Applied to for Accident Benefits

Company Name

Mailing Address

City Province Postal code

Contact Person/Representative Phone No. ( )

Part 2: Insurer(s) Notified to Pay Benefits (by Insurer listed in Part 1)

First Company Name

Mailing Address

City Province Postal code

Contact Person/Representative Phone No. ( )

Attach additional sheets if necessary. ☐ Additional sheets attached.

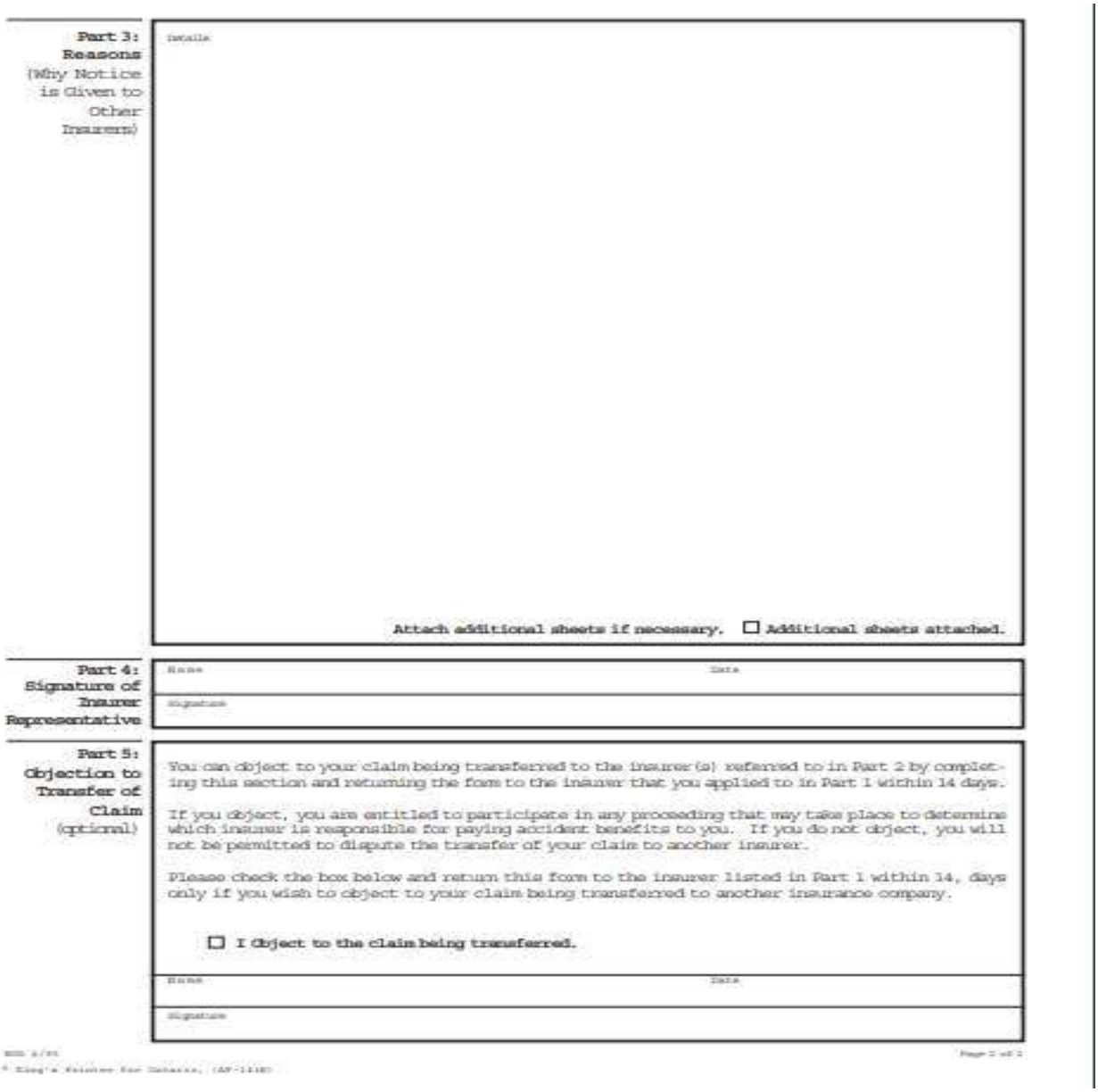
Second Company Name

Mailing Address

City Province Postal code

Contact Person/Representative Phone No. ( )

Attach additional sheets if necessary. ☐ Additional sheets attached.



Part 3: Reasons (Why Notice is Given to Other Insurers)

Details

Attach additional sheets if necessary. ☐ Additional sheets attached.

Part 4: Signature of Insurer Representative

Name Date

Signature

Part 5: Objection to Transfer of Claim (optional)

You can object to your claim being transferred to the insurer(s) referred to in Part 2 by completing this section and returning the form to the insurer that you applied to in Part 1 within 14 days.

If you object, you are entitled to participate in any proceeding that may take place to determine which insurer is responsible for paying accident benefits to you. If you do not object, you will not be permitted to dispute the transfer of your claim to another insurer.

Please check the box below and return this form to the insurer listed in Part 1 within 14, days only if you wish to object to your claim being transferred to another insurance company.

☐ I Object to the claim being transferred.

Name Date

Signature

[Copied and pasted] [square bracketing is the Applicant's for ease of reference]

For ease of searchability by the ONSC and the participating parties at the ONSC (Divisional Court level or by way of single justice on an expedited basis), the following are copied and pasted from the A143 Form at the following pages with endnoting for ease of application of the facts to the law:

[page 1]

"This notice is to inform you that the insurer[112] to whom you have applied for accident benefits claims[113] that another insurer[114] is responsible for paying[115] these benefits. You[116] may be required to assist the insurers[117] in resolving their dispute by providing them with any information that may be needed to determine which insurer[118] should be paying your accident benefits claim. You will continue to receive accident benefits that you are entitled to from the insurer[119] that you applied to while the insurers attempt to resolve their dispute.

[Applicant's transfer of claim objection rights]

You also have the right to object to your claim being transferred[120] to another insurer[121]. If you wish to object please complete Part 5 of this form and send it within 14 days to the insurer that is currently paying you accident benefits[122].

[Applicant's arbitration participatory rights]

If you object, you are entitled to participate in *any* ***proceeding***[123] that may take place to determine which insurer is responsible for paying accident benefits to you. If you do not object, you will not be permitted to dispute the transfer of your claim to another insurer.

If you have any questions about this notice, or about the process that insurers use to determine who is responsible for paying your claim, please contact the representative of the insurance company that is paying your accident benefits claim. The name and telephone number of the representative is listed in Part 1.[124]

APPENDIX #7: REMITTANCE FORM PURSUANT TO FSRA REQUIREMENT

NOTE: Remember to attach all relevant documents when submitting this form

Insurer Details

Date of Remittance

Reporting Insurance Company

Name of Authorized Insurer Representative

Telephone Number | Email Address

Decision Details

Date of Decision

Arbitrator

Names of Insurers in Dispute (Company Name vs Company Name)

Disputed Issue/Nature of Dispute (Please Check all that Apply):

- ☐ First Insurer/Nexus
- ☐ Completed Application
- ☐ 90 Day Notice
- ☐ One Year/Commencement
- ☐ Reasonable Investigation
- ☐ Restitution
- ☐ Arbitration (Practice, Interest and Special Awards, Costs)
- ☐ Priority Rules: Insured Person (Named/Listed/Spouse/Dependent/ Regular Use)
- ☐ Priority Rules: Occupant
- ☐ Priority Rules: Non – Occupant Struck By Vehicle
- ☐ Coverage Issues: Cancellation
- ☐ Coverage Issues: Leased Vehicle
- ☐ Coverage Issues: Other Automobiles
- ☐ Appeal Pending (Forward appeal decision once it is received.)
- ☐ Priority Rules: Involved Vehicle

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Endnotes

[1]AABS division
[2] Along with the interplay between the enabling statute (*Insurance Act*) and binding pieces of legislation (regulations) in *Reg 283*, *SABS* and *Reg 664*:
[3]Effective date
[4](see: *Legislation Act*, wherein a statute and regulations are both "legislation"),
[5]*Dunsmuir v. New Brunswick*, 2008 SCC 9 (CanLII), [2008] 1 SCR 190, <https://canlii.ca/t/1vxsm>, retrieved on 2024-12-10
[6]Mr. Nieuwland filed a DOR on behalf of SNIC on June 28, 2024.
[7](iii) concerns about the Tribunal's undue influence or lack of independence, even subconsciously, from the insurance companies due to it being the only non-state funded Tribunal of the 13 tribunals in "Tribunals Ontario"; and (iv) an investigation report involving Ms. Trina Morrissette from the federal government regarding her conduct as a lobbyist for the Canadian Red Cross ("CRC").[7] The Applicant says her conduct amounts to "similar fact evidence" and contextual evidence that arises as a result of the **VCM Decision**.
[8]Balance of probabilities standard: is it more likely than not that there will be a failure of justice by the delay.
[9]Mr. Nieuwland's recent email to this ONSC (Divisional Court) has reignited the subsequent issues: (i) whether insurance companies in a group of insurers are 'one and the same', 'also known as' or 'also referred as'; (ii) the rule in *Foss v. Harbottle*; (ii) the FSRA guidance on affiliated entities only have an exemption on the non-adjuster broker side, and (iv) the motives for why such insurance companies in the TDI Group would engage in such misconduct.
[10]In this regard, the **VCM Decision** has again put two administrative bodies, at least, in the FSRA and the Tribunal against each other when they operate under the same enabling statute (*Insurance Act*) and the participants (insured persons, service providers and insurance companies) must comply with the *UDAP Rule* (2022 *et seq*).
[11]The Applicant is seeking by his factum to be heard before a single justice of the ONSC, with leave, due to the urgency of the issues herein.
[12]all people are equal under the law and have the right to equal protection and benefits with SABS benefits for all similarly situated persons to this Applicant
[13]all people, institutions, and entities are accountable to the law; (iii) *transparency*: the law-making process is transparent
[14]people have access to justice through independent and impartial courts
[15] (and patently unreasonable)
[16](with no distinction between a breach of *SABS* and *Reg 283* (see: *Chubb Insurance Co. of Canada v. Zurich Insurance Company*, 2024 ONSC 2929 (CanLII), <https://canlii.ca/t/k4tln>, retrieved on 2024-12-10 ["*Zurich* 2024"],
[17]on account of technicalities in the language of the LAT Rules which was different from the time this ONSC (Div. Court) upheld the reconsideration decision of VC Trojek in *Jia*
[18]*The Personal Insurance Company v. Jia*, 2020 ONSC 6361 (CanLII), <https://canlii.ca/t/jb7qm>, retrieved on 2024-12-10
[19]*Harold The Mortgage Closer Inc. v. Chief Executive Officer of the Financial Services Regulatory Authority of Ontario*, 2024 ONSC 2236 (CanLII), <https://canlii.ca/t/k43bl>, retrieved on 2024-12-10
[20]*Volochay v. College of Massage Therapists of Ontario*, 2012 ONCA 541 (CanLII)
[21]*Volochay v. College of Massage Therapists of Ontario*, 2012 ONCA 541 (CanLII), at para 68, <https://canlii.ca/t/fsdgd#par68>, retrieved on 2024-12-10 https://canlii.ca/t/fsdgd#par68
[22](see: [U]nless exceptional circumstances exist, a court should not interfere in an administrative proceeding until it has run its course. The principle has particular force where adequate alternative remedies are available under the administrative scheme. Ordinarily an affected individual must pursue these remedies before seeking relief from the court. The Federal Court of Appeal has endorsed this approach as well in Dugré v Canada (Attorney General), 2021 FCA 8, at para 37, framing the rule against prematurity, or interlocutory relief, as "next to absolute".).
[23]Herein, a multiplicity of proceedings will be avoided and the law will be clarified and settled, while avoiding a return by this Applicant to make the same arguments that he would even if all of his benefits and quantum were found in his favour because the wrong party would be liable for the same and required to respond *post-facto* the conclusion of the Hearing Proper. In this regard, the Applicant herein confirms, by his authorized signature, that he would bring the same *JRPA* Application and he respectfully submits that the principle of mootness, cited by the SCC in *Borowski*,

would not be applicable because the important legal issues would not only not be decided but the decision of the LAT would be in conflict with the governing statutes, governing regulations and its own *LAT Rules*.

[24] *Sanscon Construction Ltd. v. City of Toronto*, 2021 ONSC 6409 (CanLII), <https://canlii.ca/t/jjn4p>, retrieved on 2024-12-10

> [16] Sanscon's Application was not brought before the Divisional Court, contrary to the Consolidated Practice Direction.
>
> [17] Sanscon's factum does not seek leave under s. 6(2) of the JRPA to have this matter heard, nor is it in the Notice of Application. It does not reference this court's jurisdiction or address why the Application was not brought before a single judge of the Divisional Court, sitting as a judge of the Superior Court of Justice.

[25]SNIC and Primmum operate under the trade name, which is a combination of two registered trademarks in "TD Insurance Meloche Monnex", with the 'TD Insurance" owned by TD Bank and the Meloche Monnex owned by Meloche Monnex Inc. SNIC issues automobile (and home) insurance policies to alumni of various universities and those part of professional associations (the "**Alumni Professional Program**"). Primmum issues insurance policies to "employer groups".

[26]TDGIC issues insurance policies, by part of its namesake, to the "general public". Toronto has 416 area code landline telephone and fax numbers but not 905 telephone and fax numbers, and Burlington (and Markham) have 905 landline telephone and fax numbers but not 416 numbers. Mr. James V. Russell was appointed as the CEO of "TD Insurance Group" in the 2010's, and one of his stated goals was to increase the market share for "TD General" (TDGIC). This evidence provides the motive for why SNIC would allow TDGIC to be substituted for it *during* the LAT Proceeding without the name of TDGIC ever being present in a single communication since the MVA date of loss (the "Date Of Loss" or "DOL").

[27]If an Insured Person, who is also an injured person and often a lay litigant encountering the complexities of a *SABS* claim, may not keep completely accurate records of each and every fax that she has sent to an insurance company, the purported liable insurer can claim that it does not have the documents to which an injured person claims to have sent. In fact, herein this occurred with the initial adjuster for SNIC in Ms. Nurse claiming to not have certain documents that the Applicant delivered via fax. The Applicant obviously not your quintessential lay litigant had everything reduced to paper copy and saved in binders along with cloud storage whilst using an e-fax number. Affidavit #3 is an example of that attention to detail and record-keeping.

[28]https://lso.ca/about-lso/legislation-rules/by-laws/by-law-7-1

[29]LSA, ss. 62(2): (2) The by-laws made under this section shall be interpreted as if they formed part of this Act. R.S.O. 1990, c. L.8, s. 62 (2); 1998, c. 21, s. 29 (13).

[30](d) the determination of rights that depend on the interpretation of a deed, will, contract or other instrument, or on the interpretation of a statute, order in council, regulation or municipal by-law or resolution

[31]in part because of SNIC not participating in the LAT Appeal after filing a Response and allowing TD General Insurance Company ("**TDGIC**") to be substituted for it,

[32]Factually on many levels, this is not an *JRPA* Application, like the flurry of arbitral, judicial review and appellate decisions involving *Zurich v. Chubb* from 2009 to 2024 (the "*Zurich Decisions*") in that TDHA did not merely receive one completed OCF-1, like Chubb Insurance Company through some innocent mistake by an injured individual (Ms. Singh) involving her rental of vehicle and seeing the name of "Chubb" inside the car rental office. TDHA received the *SABS* Applicant's completed OCF-1, OCF-2, OCF-3, OCF-6 and OCF-19. It is also uncontroverted that TDHA, by being the only former commercial tenant at the **East Mall Address (Etobicoke)** received all the Applicant's OCF-18's that were submitted through HCAI.[32]

[33] *Chubb Insurance Co. of Canada v. Zurich Insurance Company*, 2024 ONSC 2929 (CanLII), <https://canlii.ca/t/k4tln>, retrieved on 2024-12-10 (see: *Zurich 2024*, paragraph 6 (see: https://canlii.ca/t/k4tln#par6)).

[34] *Chubb Insurance Co. of Canada v. Zurich Insurance Company*, 2024 ONSC 2929 (CanLII), <https://canlii.ca/t/k4tln>, retrieved on 2024-12-10 (see: *Zurich 2024*, paragraph 16 (see: https://canlii.ca/t/k4tln#par16)).

[35]The Applicant erred in omitting said word in his JRPA Application and he apologizes to this ONSC Div. Court and the respondents for the same.

[36] *Chubb Insurance Co. of Canada v. Zurich Insurance Company*, 2024 ONSC 2929 (CanLII), <https://canlii.ca/t/k4tln>, retrieved on 2024-12-10 (see: *Zurich 2024*, paragraph 54 (see: https://canlii.ca/t/k4tln#par54)

[37](see: paragraph 15 of the ***JRPA* Application**).

[38] *Chubb Insurance Co. of Canada v. Zurich Insurance Company*, 2024 ONSC 2929 (CanLII), <https://canlii.ca/t/k4tln>, retrieved on 2024-12-10 (see: *Zurich 2024*, paragraph 8).
[39] *Chubb Insurance Co. of Canada v. Zurich Insurance Company*, 2024 ONSC 2929 (CanLII), <https://canlii.ca/t/k4tln>, retrieved on 2024-12-10 (see: *Zurich 2024*, paragraph 29).
[40]Herein, there was no evidence that TDHA paid any benefits but there was also no evidence that TDHA disputed its liability and obligations.
[41] *Chubb Insurance Co. of Canada v. Zurich Insurance Company*, 2024 ONSC 2929 (CanLII), <https://canlii.ca/t/k4tln>, retrieved on 2024-12-10 (see: *Zurich 2024*, paragraph 10).
[42]on a provisional basis but with an ability to step out of those shoes if the First Insurer avails itself to the *Reg 283* protections and obtain reimbursement from the liable insurer after provisionally responding to the Claimant (i.e. legal fees, disbursements, administration fees et al)
[43]*Zurich Insurance Co. v. Chubb Insurance Co. of Canada*, 2015 SCC 19 (CanLII), [2015] 2 SCR 134, <https://canlii.ca/t/gh85t>, retrieved on 2024-12-10
[44] *Chubb Insurance Co. of Canada v. Zurich Insurance Company*, 2024 ONSC 2929 (CanLII), <https://canlii.ca/t/k4tln>, retrieved on 2024-12-10 (see: *Zurich 2024*, paragraph 12).
[45] *Chubb Insurance Co. of Canada v. Zurich Insurance Company*, 2024 ONSC 2929 (CanLII), <https://canlii.ca/t/k4tln>, retrieved on 2024-12-10 (see: *Zurich 2024*, paragraph 14).
[46]Zurich Insurance v. Chubb Insurance, 2012 ONSC 6363 (CanLII), <https://canlii.ca/t/ftr4c>, retrieved on 2024-12-10
[47]As this ONSC will know, that is such a unique event by our SCC where they do not even wish to put any such amendments or clarity to a dissenting decision of the ONCA. While the justices in our province are not in the "business of counting their press clippings", it is a testament to how analytically sound The Honourable Justice Jurianz was in those dissenting reasons.
[48]Zurich Insurance Company v. Chubb Insurance Company of Canada, 2014 ONCA 400 (CanLII), <https://canlii.ca/t/g6vrk>, retrieved on 2024-12-10
[49]https://www.torontomu.ca/criminaljusticefirsts/courts/Russell-Juriansz/
[50]Zurich Insurance Company v. Chubb Insurance Company of Canada, 2014 ONCA 400 (CanLII), <https://canlii.ca/t/g6vrk>, retrieved on 2024-12-10
[51]Zurich Insurance Co. v. Chubb Insurance Co. of Canada, 2015 SCC 19 (CanLII), [2015] 2 SCR 134, <https://canlii.ca/t/gh85t>, retrieved on 2024-12-10
[52](see: *Zurich 2024*, paragraph 15).
[53]*Chubb Insurance Co. of Canada v. Zurich Insurance Company*, 2024 ONSC 2929 (CanLII), <https://canlii.ca/t/k4tln>, retrieved on 2024-12-10
[54] *Chubb Insurance Co. of Canada v. Zurich Insurance Company*, 2024 ONSC 2929 (CanLII), <https://canlii.ca/t/k4tln>, retrieved on 2024-12-10 (see: *Zurich* 2024, paragraph 64).
[55]Beasley et al. v. Barrand, 2010 ONSC 2095 (CanLII), <https://canlii.ca/t/2984g>, retrieved on 2024-12-10
[56]wherein he overturned the decision of the adjudicator in the initial decision
[57]In this *JRPA* Application, the issue of whether a lawyer like Mr. Nieuwland could act for TDGIC for six months then act for SNIC when NOM #8 was granted in the Applicant's favour, despite six months of opposition and then non-opposition [not consent], thereafter, is not at issue *per se*. However, the backdrop regarding the same is an important one.
[58]What about, as a "test case", the duties of insurance companies (and their counsel) in relation to their holding, controlling and/or possession (solely, jointly or constructively) that are: (i) neither an underwriter nor a First Insurer, and masquerade as the liable insurance company in the LAT Proceeding; (ii) the obligations of a First Insurer who remains anonymous until effectively caught as having the mailing address and/or fax number that provides unequivocal proof that it was a First Insurer; and (iii) the obligations of an underwriter, who was not the First Insurer, who carries on as the solely liable insurance company but then does not participate after filing the sole Response, pursuant to section 280(2) of the *Insurance Act*, in a LAT proceeding?
[59]Pursuant to section 280(1) of the *Insurance Act*, "this section applies with respect to the resolution of disputes in respect of an insured person's entitlement to statutory accident benefits *or* in respect of the amount of statutory accident benefits to which an insured person is entitled." Pursuant to ss. 280(2) of the *Insurance Act*, "The insured person *or* the insurer *may* apply to the Licence Appeal Tribunal to resolve a dispute described in subsection (1)". No person may bring a proceeding in any court with respect to a dispute described in subsection (1), other than an appeal from a decision of the Licence Appeal Tribunal or an application for judicial review: ss. 280(3) of the *Insurance Act*. The dispute shall be resolved in accordance with the *Statutory Accident Benefits Schedule*
[60]. 2014, c. 9, Sched. 3, s. 14: ss. 280(4) of the *Insurance Act*.

[61](see: "statutory accident benefits" mean the benefits set out in the regulations made under paragraphs 9 and 10 of subsection 121 (1) of the *Insurance Act*; see: section 121(a): "121 (1) The Lieutenant Governor in Council may make regulations").
[62]The Applicant notified SNIC, pursuant to the *Schedule*, s. 32, in early September 2022, that he wished to apply for benefits making SNIC not only the Sole Underwriter but the First Notified Insurer.
[63]The Applicant, in his capacity as a *SABS* applicant, sent the Completed Application [OCF-1] to the **North York Fax Number** on October 12, 2022. Ergo, at law, the *SABS* Applicant sent, or "served" only one **Completed Application** to only one insurer in TDHA. TDHA was the sole insurer that first received (the "First Insurer") the ***SABS* Applicant's Completed Application**.
[64]In fact, and at law, SNIC did not stop the Applicant from submitting his Completed Application to TDHA in that it provided him with the **TDHA Fax Number**. It is the word "accept" that is so pivotal in this ***JRPA* Application** by VCM's choice of language at paragraph 27 therein.
[65]"first party insurer" means the insurer responsible under subsection 268 (2) of the Act for the payment of statutory accident benefits; ("assureur de première part"): Automobile Insurance, RRO 1990, Reg 664, s 9, <https://canlii.ca/t/tlw#sec9>,
[66]The word "accept" is of great importance considering the finding by VCM, without any evidence in the record of proceeding to support the same, that TDGIC and SNIC jointly ***accepted*** priority of the Applicant's [sic] insurance policy [sic] (see: paragraph 27 of the **VCM Decision**).
[67]As SNIC was the Sole Underwriter in the Insurance Policy, the Applicant has alleged that SNIC (as First Notified Insurer) breached section 2.1(5) of *Reg 283* by taking action, with intent (as it knew that its fax number was not the **North York Office Fax Number**), to prevent or stop the Applicant from submitting his Completed OCF-1 to it [SNIC] as it is an out-of-province insurer.
[68]In relation to the lack of promptness, SNIC somehow sent the Applicant's accident benefits package to the wrong postal code address yet his Spouse received her accident benefits package to the correct postal code when they lived in the same residence
[69]Further, the Applicant provided uncontroverted evidence that SNIC failed to provide its correct facsimile address in the Completed Application but instead provided the fax number of TDHA and thereby breached subsection 2.1(3) of *Reg 283*.
[70]Reimbursement by the non-compliant insurer during the period of non-compliance (see: ss. 2.1(7) of *Reg 283*): (i) legal fees; (ii) adjuster's fees; (iii) administrative costs; and (iv) disbursements
[71]Subsection 2.1 of *Reg 283* applies to this judicial review as the Accident occurred on August 31, 2022, which was after September 1, 2010.
[72]Whether SNIC was to remain for costs purposes in the McLean LAT Proceeding was a matter of discretion, but the sole respondent insurance company as a matter of obligations under *Reg 283*, *SABS* and *Reg 664* was not. However, the Applicant's argument was encapsulated by a rhetorical question: *why should he not have any ability to seek costs against SNIC for its conduct in the LAT Proceeding that he alleged and alleges was unreasonable, frivolous, and in bad faith?* Costs are not a matter that relate to the *Insurance Act*, and the binding regulations herein (*SABS* and *Reg 283*), as the Tribunal passed them under a different statute: section 17.1 of the SPPA. Put another way, is the Applicant's time not worth anything when it required hundreds of hours to obtain the order in NOM #8?
[73]Even when the OCF-19 was fax delivered, in November 2023, to the VP Bldg. 4th Floor Fax Number, and when SNIC's fax number (**Burlington 905 Fax Number**) was blocking the same, SNIC responded by misidentifying one of the legal tests for a duly completed OCF-19 and merely enclosed a copy of a blank OCF-19. Moreover, when considering the **Forged Signature** in the OCF-18, last page only, it could not have been SNIC, although it appeared that way in HCAI by insurer name but NOT physical address, with the "As per A. Nurse", it was TDHA's address (East Mall Etobicoke Address) that received the duly completed OCF-18 at first instance. Perhaps, this is why Ms. Nurse, an adjuster, was not amenable to executing the same.
[74]The same would have been applicable to TD Staff Legal and Mr. Nieuwland with its fax and his listed fax number with the LSO. Said unappealed findings are determinative that *neither* SNIC nor TDGIC were the First Insurers by way of the fax served Completed Application upon the 4th Floor VP Building Fax Number which was TDHA.
[75]"If the Licence Appeal Tribunal finds that an insurer has unreasonably withheld or delayed payments, the Licence Appeal Tribunal, in addition to awarding the benefits and interest to which an insured person is entitled under the Statutory Accident Benefits *Schedule*, may award a lump sum of up to 50 per cent of the amount to which the person was entitled at the time of the award together with interest on all amounts then owing to the insured (including unpaid interest) at the rate of 2 per cent per month, compounded monthly, from the time the benefits first became payable under the *Schedule*. O. Reg. 43/16, s. 4.".

[76](like the vacillation of findings and orders of the arbitrator, ONSC (Goldstein J. in the ONSC), reversed by the ONCA, and the ONCA reversed by the SCC adopting the dissent of Justice Jurianz)
[77]It is trite that while the Tribunal is required to determine whether Mr. McLean was entitled to certain benefits and in what amounts, it also must determine which insurance company was and is liable for certain benefits and at what times. It can only do that if that the First Insurer is found to be TDHA and that decision must come from the ONSC.
[78] There was no evidence and none in the Application Record that TDHA, or any insurer, ever did so. Even on the convoluted, tortuous, unsupported and absurd logic of VCM that SNIC and TDGIC accepted priority over the Insurance Policy, there was some form of "transfer of the claim" to TDGIC which would have required notice to, at least, TDGIC and the *SABS* Applicant. No evidence was ever provided of such written notice to either.
[79]Mr. McLean was also entitled to object to SNIC (and TDGIC as he had done previously) having any control or possession of his TD Claim #3 relating to "confidential information" and documents not subsequently received by it in accordance with standardized language in the OCF-1 and *PIPEDA*. There is no dispute that TD Claim #3 was transferred from TDHA to TDGIC and SNIC. SNIC claimed to have received documents but not directly from the Applicant. SNIC purported to respond or did respond to the Applicant in relation to some communications but not all communications. TDGIC then surfaced at the LAT Proceeding but only after inclusion by the Tribunal without the consent of the Applicant or without any legal authority. SNIC filed its Response ("SNIC Response") on January 25, 2024, and then Mr. Nieuwland filed a DOR on behalf of TDGIC – not SNIC. The charade continued for six months until Mr. McLean, relying on Mr. Nieuwland's misrepresentations in non-transcribed case conference, which was yet another irremediable nullity and without statutory power as TDGIC was a non-party, that SNIC and TDGIC were "one and the same" and "this is how we always do it" (in relation to TDGIC being some sort of insurance company that came "off the bench" to provide a "spark" to the "defence" for SNIC as if it were some kind of sporting event). While there is no dispute of some form of transfer from TDHA to SNIC and, of course, with some unknown terms and conditions involving TDGIC on some basis perhaps on a joint level but more likely some form of "staggered interventions" based on unknown terms and conditions in this "subsequent clandestine agreement", there are no particulars in the decision of VCM. Moreover, any such transfer was without notice to Mr. McLean, and without compliance with *Reg 283*. The scheme of *Reg 283* requires substantive and procedural compliance and TDHA along with SNIC and TDGIC intentionally breached *Reg 283* without any form of attempt to cure the same. The required FSRA form did not matter to TDHA. The closest evidence that this ONSC has is a fax from an unknown fax number to Mr. McLean that TDHA had no record of his claim as of March 2023 (and then another letter in August 2024 albeit after NOM #14 and NOM #15). It was a fax without any semblance of compliance with *Reg 283*, and *SABS* to some degree, and the FSRA Form 143. It directed Mr. McLean to other fax numbers in Calgary, Montreal, New Brunswick and Burlington without reference to any insurance company. Mr. McLean was entitled, after lengthy investigation and fortuitous discoveries, was entitled to object and required to bring the issue forward as to TDHA not complying with its duties to respond and to pay benefits as the First Insurer.
[80]Due to the public importance of the issues herein, the Applicant respectfully, yet forcefully, notes that the LGIC did not create any ability for an insured person (applicant) to consent or sanitize the breaches that have occurred herein. Put another way, the LGIC did not pass any provisions that would authorize an insured person to sanitize or remedy such clandestine breaches to provide post-facto consideration that cure such non-compliance with *Reg 283*. Therefore, this undisclosed agreement by the respondent insurance companies, known to the Tribunal but not the Applicant, has no legal force or effect. The purposes of the inflexible prescribed regulations are to promote compliance with the statutory scheme and not to assist insurance companies and insured persons in isolated incidents so that an "insured person" can assist delinquent and felonious activities. To not set aside the VCM Decision and replace it with a correct decision, while the ONSC commences *ab initio*, would represent a precedent that contains a "slippery slope". Perhaps, "insurance companies" like this collection of respondent insurance companies may send a late notice with a semi-contemporaneous phone call to an insured person that may be in the form of a bribe so that the "checks and balances" of various regulatory bodies (FSRA, LSO, OPCC et al) do not catch "wind of the unlawful scheme".
[81][3] .... The test for *res judicata* was applied by the Adjudicator as follows (Decision, para. 12). In my view, the four preconditions for *res judicata* are satisfied. The parties are the same in both proceedings. The prior claim was within the jurisdiction of the Tribunal. The decision in the first application was based on the merits. The Tribunal reviewed the submissions and evidence and found that the applicant was not entitled to the IRB or found that the applicant was not entitled to IRBs for the period of January 14, 2020 to date and ongoing. Moreover, he was not entitled to payment for the November 9, 2019 accounting report. The first decision was a final decision because he did <u>not</u> file a reconsideration request and nor did he appeal the decision.
[5] A LAT decision is final and authoritative, subject to a party's rights of reconsideration or appeal from that decision. A party that disagrees with a LAT decision may not ignore that decision and recommence the same claims all over again. That is what the Appellant has done in this case. Even if the LAT erred in the first decision

and decided the case on the basis of an issue that was not before it, that error would not have deprived the LAT of jurisdiction. The LAT's second decision is correct in law; this appeal fails on the merits.

[82]*Kazen v. Whitten & Lublin Professional Corporation*, 2020 ONCA 325 (CanLII), <https://canlii.ca/t/j7z9n>, retrieved on 2024-12-10 ["*Kazen*"]

[83]*Fatemea Rezaiezadeh v. State Farm Mutual Automobile Insurance Company*, 2016 ONFSCDRS 59 (CanLII), <https://canlii.ca/t/jq9fm>, retrieved on 2024-12-10 ["*Reza*"]

[84]It is trite that the Sheriffs in Ontario operate in different jurisdictions. TDHA's known address, when utilizing the fax number (landline phone number) of 416.774.3120, was that of 4th floor of the VP Building (North York) which is in the City of Toronto. The Tribunal found that SNIC's address for service in the LAT Proceeding was that of the Burlington Office Building (5th floor) which was tied to the 905 Fax Number. This was consistent, albeit absent the floor number, to SNIC's "switch" or "change" from the Markham Office Address to the Burlington Office Address which was only *after* the Applicant received the March 2023 fax that an unknown insurance company, presumably TDHA, did NOT have any record of his TD Claim #3 after responding to one of his earlier faxes to 416.774.3120. Further, the Tribunal found repeatedly that TDGIC's address was 9th floor-3650 Victoria Park Avenue, North York, Toronto, Ontario, with a fax number of 416.774.3629. Therefore, the Applicant could be wedged in an unsolvable, unfathomable and impenetrable conundrum and a perjury trap. In relation to the latter, if the Applicant was required to swear evidence for the Sheriff regarding enforcement of an order against SNIC, it would force Mr. McLean into a "perjury trap".

[85]This ONSC can take judicial notice that SNIC and TDGIC could not even correctly represent the amount of benefits paid to the Applicant in May 2024 which leaves only one other insurance company, by reference to the fax number of 416.774.3120, that would correctly know the same.

[86]*Fatemea Rezaiezadeh v. State Farm Mutual Automobile Insurance Company*, 2016 ONFSCDRS 59 (CanLII), <https://canlii.ca/t/jq9fm>, retrieved on 2024-12-10 ["*Reza*"]

[87]A change in the title of proceeding in this case potentially affects every Commission case involving the present insurer. At present there is no suggestion that this appeal is a nullity or that it should be stayed pending an order to continue as would happen under Rule 11.01 of the *Rules of Civil Procedure*. In the absence of any case law regarding a presently hypothetical concern, I defer to any further or other appellate officer the question of amending the title of proceeding in this appeal proceeding in the event there is any difficulty in the enforcement of this appeal order. I leave to arbitration any amendment of the title of proceeding at that level."

[88]*College of Traditional Chinese Medicine Practitioners and Acupuncturists of Ontario v. Federation of Ontario Traditional Chinese Medicine Association (Committee of Traditional Chinese Medicine Practitioners & Acupuncturists of Ontario), 2015 ONCA 851 (CanLII), <https://canlii.ca/t/gmf92>, retrieved on 2024-12-10*

[89]Las Vegas Strip Ltd. v. Toronto (City), 1996 CanLII 8037 (ON SC), <https://canlii.ca/t/1vttp>, retrieved on 2024-12-10

[90]EnerNorth Industries Inc. (Re), 2009 ONCA 536 (CanLII), <https://canlii.ca/t/249wt>, retrieved on 2024-12-10.

[91]*Chubb Insurance Co. of Canada v. Zurich Insurance Company*, 2024 ONSC 2929 (CanLII), <https://canlii.ca/t/k4tln>, retrieved on 2024-12-10

[92]*Fatemea Rezaiezadeh v. State Farm Mutual Automobile Insurance Company*, 2016 ONFSCDRS 59 (CanLII), <https://canlii.ca/t/jq9fm>, retrieved on 2024-12-10 ["*Reza*"]

[93]Awada v. Allstate, 2021 ONSC 8108 (CanLII), <https://canlii.ca/t/jl6vv>, retrieved on 2024-12-10

[94]Mansuri v. Dominion of Canada General Insurance Company, 2023 ONSC 5764 (CanLII), <https://canlii.ca/t/k0nrz

[95]Mansuri v. Dominion of Canada General Insurance Company, 2023 ONSC 5764 (CanLII), <https://canlii.ca/t/k0nrz

[96]Of note, the Applicant is not challenging the decision of the Tribunal that did not find a reasonably perceived conflict of interest as a preliminary issue therein but rather he is challenging the decisions and orders of VCM that did not add TDHA as a party – at the very least so the Applicant could advance the argument of which insurance company was liable to respond and pay benefits. Since SNIC was and is not the First Insurer, as, in fact, found by the Tribunal or not found to not be, and TDGIC was already removed by non-opposition by TDGIC, then it leaves Primmum and SNIC. Primmum and SNIC have a bond with respect to the "TD Insurance Meloche Monnex" programs. The only insurance company in the TDI Group that was located at the **Material Time** at the **VP Building** with the fax of 416.774.3120 was TDHA. Former case manager Mr. Grant even admitted, on May 6, 2024, as a matter of optics, how the Tribunal viewed "TD Insurance" as being one of two companies: (i) TDGIC; and (ii) TDHA.

[97]*Sudbury and District Health Unit v Ontario Nurses' Association*, 2023 ONSC 2419 (CanLII), <https://canlii.ca/t/jxgwc>, retrieved on 2024-12-10

[98]The Applicant is not making any argument in costs savings but avoidance of having two JRPA proceedings before this ONSC with the identical challenges to NOM #14 and #15.
[99]*Gage v. Ontario (Attorney General)*, 1992 CanLII 8517 (ON SCDC), <https://canlii.ca/t/gbkgx.
[100]This is particularly the case when the Applicant has drawn it to the attention of not only the Tribunal but VCM when she made the same mistake previously.
[101]In November 2017, one Ms. Karen E. Shepard wrote to then The Honourable Speaker Furey (Senate of our Parliament), "Pursuant to section 10.5 of the *Lobbying Act*, I have the honour of presenting to you a Report on Investigation on the lobbying activities of Trina Morissette for tabling in the Senate. The investigation was conducted in accordance with the provisions of section 10.4 of the Act." A key duty of government officials is to interact with citizens. The *Lobbying Act* ensures that Canadians and public office holders know who is communicating with the government and on what subject.
[102]While similar fact evidence is presumptively inadmissible and must be pleaded in civil court proceedings, being one of the exceptions to pleading evidence, this was not a court proceeding and the probative value of the similar fact evidence of an adjudicator and Vice Chair who is fashioning decisions with pejorative language, slights at the Applicant, and sanctimoniously accusing him of abusing the process. The **VCM Decision** almost rings in a covert threat to stay away from "pandora's box". For the Court's edification, Mr. McLean doubled down on his FIPPA request including Mr. Sean Weir, Executive Chair of Tribunals Ontario, but without a response. He then tripled down by including the Attorney General Of Ontario in Mr. Downey as the LAT is a body of MAG and based on the recent, publicly available, MOU, Mr. Weir was delegated the authority of an "institutional head" by the AGO. How shameful can it get when the LAT requests payment of fees to obtain records and has 30 days to provide a response, then does not provide one, then the adolescent excuses flowed with "technical difficulties" and then stonewalling. It may perhaps be a fresh evidence matter. The conduct involving Ms. Morrissette was of such a serious nature that one Ms. Shephard had to immediately suspend her investigation and refer the matter to the Royal Canadian Mounted Police: "An administrative review concerning this matter was opened in February of 2015. It involved interviews, a review of correspondence and other materials and an examination of Ms. Trina Morissette's work on behalf of the Canadian Red Cross (CRC). In November of 2015, I opened an investigation based upon information provided to me in an administrative review report prepared by the Investigations Directorate of my Office. In accordance with subsection 10.4(8)[102] of the Act, I immediately suspended my investigation and referred this matter to the Royal Canadian Mounted Police (RCMP), as I had reasonable grounds to believe that a breach of the *Lobbying Act* had occurred. In December of 2016, I was informed by the RCMP following their investigation that no charges would be laid in the matter. The RCMP had determined that it was not in the public interest to prosecute Ms. Morissette." The RCMP did not find that she had not breached the Criminal Code, which is an astonishing matter considering it involved Ms. Morrissette's activities as a lobbyist for a well-known charity in the Red Cross, but it was not in the public interest to prosecute. That is an entirely different finding than there were not reasonable and probable grounds to charge. Ms. Morrissette was subject to the five-year prohibition and restrictions on lobbying after being a designated public office holder which implies that she had a role in government prior to her switch to the charitable activities of the CRC. "Prior to starting work as the CRC's manager of Government Relations in 2014, Ms. Morissette had worked as a member of a federal minister's staff from 2009 to 2013. Her final day as a member of a minister's staff was on June 14, 2013Investigator Shephard found: "I have concluded that Ms. Morissette was in breach of Rule 2 (Accurate Information) of the *Lobbyists' Code of Conduct* (1997), as well as the Principles of Professionalism and Integrity and Honesty in the Code." There are some obvious inaccuracies in the **VCM Decision** and she was given a chance to correct the same by the Applicant's section 21.1 of the *SPPA* motion and she has apparently decided not to correct the same despite carrying on with other rulings in this LAT Proceeding. It would quite one thing if VCM cross-referenced her findings to evidence in the record of proceeding or even an email that she found between Mr. Grant and another individual or representative of @tdinsurance.com but there is not even a scintilla of the same. Under the "Lessons Learned", Investigator Shepard found: "the purpose of the five-year prohibition is to ensure that designated public office holders do not use information and personal connections derived from those positions to the advantage of interests that they lobby on behalf of. This is in the public interest because it ensures that Canadians can have confidence in the integrity of government decision-making." LAT is a body of government and the MAG no less. It is where this court has to exercise its supervisory jurisdiction to ensure the conduct of VCM and to some extent VCL, who was on notice of a potential conflict of interest relayed to one Mr. Grant but then snapped out a decision in relation to NOM #7 and then was presumed gone until October 2024, is realigned with the integrity and professionalism requirements of a decision maker with the Tribunal. However, lobbying public office holders should be done in a transparent manner and in conformity with high standards of conduct (see: Investigator Shepard). The same applies to the decision-making process of the LAT. She worked for the CRC for approximately 16 months as she returned to the Minister of Health in late 2014. It is unclear if she was fired. Pursuant to subsection 10.11(1) of

the *Lobbying Act*, when Ms. Morissette ceased being a designated public office holder from 2013 until her return to work as a ministerial exempt staff in October of 2014, she was subject to the prohibition on lobbying. As of November 2017, she no longer worked in the public sector, "Ms. Morissette no longer works in the public sector". However, she returned to the provincial public sector at some point thereafter by of being an adjudicator at LAT. "Although officials of the Canadian Red Cross and Ms. Morissette indicated that her position with the CRC was initially to be "behind the scenes," they recalled having discussed the topic of lobbying during her interview. Once she was employed by the CRC, Ms. Morissette was asked to lobby on behalf of the organization. In fact, the CRC submitted monthly communication reports in the Registry of Lobbyists for meetings in which Ms. Morissette was the only representative of the organization. Ms. Morissette's employment description, the CRC letter of disclosure to the OCL and other information obtained during the investigation indicate that, on the occasions when Ms. Morissette communicated with designated public office holders, she did so on behalf of her employer, the CRC." "Although officials of the Canadian Red Cross and Ms. Morissette indicated that her position with the CRC was initially to be "behind the scenes," they recalled having discussed the topic of lobbying during her interview. Once she was employed by the CRC, Ms. Morissette was asked to lobby on behalf of the organization. In fact, the CRC submitted monthly communication reports in the Registry of Lobbyists for meetings in which Ms. Morissette was the only representative of the organization. Ms. Morissette's employment description, the CRC letter of disclosure to the OCL and other information obtained during the investigation indicate that, on the occasions when Ms. Morissette communicated with designated public office holders, she did so on behalf of her employer, the CRC. "In her letter of response to me, she acknowledged her obligations as a former designated public office holder and recognized that there could be consequences arising from her mistake. She confirmed that once she discovered that she had made an error [sic] regarding the application of the five-year prohibition to her, she took steps to remedy her error. She offered to disclose the fact of her error to my Office, and she offered to resign as an employee of the CRC." It is unclear whether that offer came to fruition. "When Ms. Morissette provided information about the *Lobbying Act* to the Canadian Red Cross, relying, in part, on her own interpretation of the *Lobbying Act*, Ms. Morissette provided information that was inaccurate to her employer. Ms. Morissette did not use proper care to avoid providing that inaccurate information regarding the application of the five-year prohibition on lobbying. As a result, Ms. Morissette was in breach of Rule 2 (Accurate information) of the *Lobbyists' Code of Conduct*." Vice Chair Morrissette has been given a chance to clarity and correct errors in the **VCM Decision**s but she has not done so. The fact that her decision was apparently dated on September 6, 2024, being the same date as the Applicant paying fees to the LAT privacy division is rather ironic and suspicious considering the decision is signed on September 12, 2024. Following Ms. Morissette's inquiries to the OCL concerning the application of the five-year prohibition to her lobbying activities, Ms. Morissette continued to engage in lobbying."" By engaging in registrable lobbying activity while prohibited from lobbying under the *Lobbying Act*, Ms. Morissette did not observe the highest professional and ethical standards. The breach of Rule 2 (Accurate information) and of the prohibition on lobbying do not meet the high standards for lobbyists that are necessary to ensure Canadians that lobbying is conducted transparently and ethically in accordance with the *Lobbying Act*. As a result, Ms. Morissette was in breach of the Principle of Professionalism in the Code.

[103]*Harold the Mortgage Closer Inc. v. Ontario (Financial Services Regulatory Authority, Chief Executive Officer*), 2024 ONSC 4464 (CanLII), <https://canlii.ca/t/k68mf>, retrieved on 2024-12-10
[104]*Lourenco v. Hegedus*, 2017 ONSC 3872 at para. 6
[105]London District Catholic School Board v. Weilgosh, 2024 ONSC 3857 (CanLII), <https://canlii.ca/t/k3gpr>, retrieved on 2024-12-10
[106]https://teao.fsrao.ca/?searchRequired=true&searchText=Security+National&enfActions=false&warnings=false&hasRelatedFiles=false&selectedStatus=0&startDate=&endDate=
[107]https://teao.fsrao.ca/?searchRequired=true&searchText=TD+General&enfActions=false&warnings=false&hasRelatedFiles=false&selectedStatus=0&startDate=&endDate=
[108]https://teao.fsrao.ca/?searchRequired=true&searchText=Primmum&enfActions=false&warnings=false&hasRelatedFiles=false&selectedStatus=0&startDate=&endDate=
[109]https://teao.fsrao.ca/?searchRequired=true&searchText=TD+Home+And+Auto&enfActions=false&warnings=false&hasRelatedFiles=false&selectedStatus=0&startDate=&endDate=
[110] *R.M. v CAA Insurance, 2020 CanLII 94775* (ON LAT), <https://canlii.ca/t/jbwwr>, retrieved on 2024-12-10
[111][nota bene: TDHA is an insurer. Mr. McLean has recourse for the payment of *SABS* against TDHA as TDHA is bound by *Reg 283*. A breach of *Reg 283* is legally equivalent to a breach of *SABS*. Moreover, various sections of *SABS* reference the "first insurer" (i.e. receipt of the Completed Application) which imposed, and continues to impose obligations upon TDHA, to: (i) respond; and (ii) pay.

[112]TDHA: October 13, 2022, by way of fax from Mr. McLean to TDHA albeit unbeknownst to him until August 2024
[113]In this hypothetical, it would have been TDHA
[114]Singular
[115]Duty to pay, albeit the updated A07 Bulleting from 2010 (May) which was the bases for the amendments to *Reg 283* in 2010 includes the duty to respond.
[116]In this hypothetical, it would have been McLean
[117]Based upon the VCM Decision, paragraph 27, it would have been a dispute between TDHA, as First Insurer, and SNIC, the Sole Underwriter and First Notified Insurer, and TDGIC, neither an underwriter nor a First Insurer and not even a First Notified Insurer but a "Fictitious Respondent" in the LAT Proceeding.
[118]One of three
[119]THE INSURER: TDHA
[120]Not "having already been transferred after October 13, 2022"
[121]Transfer of a claim objection rights
[122]Had TDHA sent the notice, then it would have been SNIC that was paying at the time, so it would have been a challenge to SNIC paying while TDHA was the First Insurer
[123]The LAT Proceeding is "any proceeding". The JRPA Application is "any proceeding". Although Mr. McLean did not have any "claim transfer objection rights" as TDHA failed to extend the same to him. Moreover, Mr. McLean did not have any "proceeding participation rights" as it relates to any potential arbitration before an arbitration pursuant to the Ontario legislation or statute known as the "Arbitration Act, 1991". Moreover, TDHA could not advance an arbitration without having paid any benefits to Mr. McLean. If TDHA was the payor of some or all of the $1499.98, then it could technically advance an arbitration claim but only after it provided a notice of potential transfer of claim pursuant to A143. However, it would be, if it did so in the month of December 2024, some 700 days late. Pursuant to *Reg 283*, section 2 and Zurich 2024, TDHA was provisionally liable to pay benefits from October 13, 2022, to January 10, 2023, (the "Provisional Payment Period"), and then permanently liable after January 10, 2023, subject to giving it notice of a transfer claim (A143) and then providing clear, cogent and convincing evidence as to why the 90 day period was insufficient to make a determination that *another insurer* or insurers (nota bene: conceivable could be two under section 268 per se) is liable under section 268; AND the insurer [TDHA] made the reasonable [nota bene: objective person standard] investigations necessary to determine if another insurer was liable within the 90 day period (see: section 3(2) of the *Reg 283*, passed in 1995, which was the year that *Reg 283* was passed by its namesake, "*Reg 283*/95". Where there is a dispute as to whether a First Insurer, like TDHA, had not given notice to other insurers and an Applicant pursuant to its receipt of a Completed Application by fax or mail, shall be resolved in an ARBITRATION pursuant to section 7 of *Reg 283* (see: ss. 3(3) of *Reg 283*). Pursuant to ss. 7(1) of *Reg 283*, it is ONLY an insurer that *has been* paying benefits under section 2 (nota bene: reference to section 268 of the Insurance Act (1990) and *Reg 283* passed in 1995) OR section 2.1 (nota bene: relating to an Accident (see: SABS, definition section), that occurred after September 1, 2010 and requires the dispute to be resolved in accordance with the Regulation 283 (not Insurance Act)) OR any other insurer against who the obligation to pay benefits is *claimed*. Subsection 3(3) dovetails to subsection 7(3) with a one year prescribed limitation period but that is tied to the insurer, 'first giving notice' under section 3 which is the insurers that it believes are liable to pay the benefits and the insured person, in his or her capacity as an "Applicant" after sending a Completed Application and it being *received* first by an insurance company making said insurance company the "First Insurer". However, if the First Insurer does not give a notice, pursuant to section 3(1) of *Reg 283* within 90 days (often means counting the "first day" and "last day"), it loses all of its dispute rights to pay benefits subject to overcoming the strenuous legal test under section 3(2) of *Reg 283*. It is here where TDHA, would hypothetically speaking, never be able to overcome said test by a decision of any reasonably-minded arbitrator rending a decision regarding the application of the facts to the legal test under ss. 3(2) of *Reg 283*. TDHA is an Ontario based insurer (not an out of province insurance company) and was the co-tenant with TDGIC at the "Spark Building", "North York Office Building" or the "VP Building" located at 3650 Victoria Park Avenue, District of North York, City of Toronto, where TDHA was located on the 4th floor (4th to 6th floors) with a fax of 416.774.3120 and its co-tenant in TDGIC had a fax number of 416.774.3629 and it was the commercial tenant on floors 7 to 9. By review of the information scribed on the Application (OCF-1), it had a sufficient period of time to make a determination that another insurer or insurers were liable under section 268 of the Act.
[124]Hence, by SNIC intentionally, as sworn by McLean, redirecting the Applicant to TDHA at first instance, and then purportedly paying benefits (unclear if that name is correct), TDHA became the First Insurer by McLean faxing of the same to it on October 13, 2022. However, if TDHA was the "actual payor" of the direct deposits at said time then it could have provided this notice to McLean. It was then caught in another dilemma by the fact that the representative known to McLean was that of Ms. Nurse of SNIC. Therefore, TDHA would have had to provide a phone number and representative for TDHA which would have caused issues and concerns for McLean.

Tab 5:

Re: Applicant's Motion Record for Motion #1 (Compel the Tribunal to forthwith file the record of proceeding): Court File No. DC-24-00000718-00JR

Court File No. DC-24-00000718-00JR

ONTARIO COURT OF JUSTICE (DIVISIONAL COURT)

BETWEEN:

KEVIN ALEXANDER MCLEAN

APPLICANT

- and -

TD HOME AND AUTO INSURANCE COMPANY, SECURITY NATIONAL INSURANCE COMPANY, TD GENERAL INSURANCE COMPANY, EXECUTIVE DIRECTOR, LICENCE APPEAL TRIBUNAL,
HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO, REPRESENTED BY EXECUTIVE CHAIR OF TRIBUNALS ONTARIO IN MR. SEAN WEIR, THE ATTORNEY GENERAL OF ONTARIO

RESPONDENTS

CERTIFICATE OF PERFECTION OF THE APPLICANT

I, Mr. Kevin A. McLean, the Applicant, certify by his signature below on the below date:

1. the **JRPA Application**, **Factum** (which includes the book of authorities by reference and hyperlinking therein), and **Application Record** have been filed herein with the ONSC Divisional Court; and

2. no other persons[i] than those denoted above are entitled by any statute (as defined and interpreted under the *Legislation Act*, 2006, SO 2006, c 21, Sch F (the "*Legislation Act*") or by an order *Rules of Civil Procedure*, RRO 1990, Reg 194 (the "*Civil Rules*", "*Rules*" or "*Rules of Procedure*") to notice[ii] and/or to be heard on this **JRPA Application**.

DATE: December 13, 2024

Mr. Kevin A. McLean (B.A. J.D., CIM)
Self-represented, the Applicant herein

FOR SERVICE AND NOTICE PURPOSES

TO [1]:

Licence Appeal Tribunal
15 Grosvenor Street
Toronto, Ontario
M7A 2S8

AND TO (its counsel):

Mr. Jesse Boyce
LSO number: 72486F
25 Grosvenor, 4th Floor
Toronto, Ontario,
M7A 2S8
Email: jesse.boyce@ontario.ca

TO [2]:

The Ministry of the Attorney General of Ontario

Attention: Ms. Judie Im
8-720 Bay St
Toronto, Ontario,
M7A 2S9
Email: judie.im@ontario.ca

FOR PURPOSES OF COURTESY COPY TO RESPONDENT INSURANCE COMPANIES
(who did not participate in the motions before the Tribunal that are subject to judicial review)

Insurance Companies subject to NOM #14 and #15 (judicial review)

To: the "First Insurer"

Address for service tied to the fax number of 416.774.3120 provided by the First Notified Insurer, which was the fax number of TDHA at the Material Time, in September 2022,

TD Home and Auto Insurance Company ["**TDHA**"]
FSRA Registration Number 1063
4th Floor-3650 Victoria Park Avenue
District of North York
City of Toronto
Ontario, M2H 3P7

Fax: 416.774.**3120**

To: The **First Notified Insurer** and **Sole Underwriter** in the Insurance Policy of the Applicant's former Spouse

Address for service provided by the Tribunal in the LAT Proceeding by LAT Order on September 12, 2024

Security National Insurance Company ("**SNIC**")
FSRA Registration Number 397
5th Floor-5045 South Service Road
Burlington, Ontario,
L7L 5Y7

Fax: 905-315-1074

Courtesy copy to the insurance company (non-party) subject to NOM #13 in part of the VCM Decision (*nota bene*: NOM #13 is not subject to JRPA Application as it was a document production motion and it was interlocutory unlike the NOM #14, which were final orders as they sought to add a party, amend the cause of action against the said a non-party *et al*)

Address for service provided by the LAT in the LAT Proceeding for TDGIC by LAT Orders commencing on or around February 13, 2024

TD General Insurance Company ("**TDGIC**")

FSRA Registration number 353
9th FLOOR-3650 Victoria Park Avenue
District of North York
City of Toronto
Province of Ontario
M2H 3P7

Fax: 416.774.**3629**

Attention: Mr. Matthew Nieuwland and Ms. Heather Paquini[iii]

Address for Mr. Matthew Albert Nieuwland

Law Society Number: 71405A
Business Name: TD Insurance Staff Legal
66 Wellington St W.,
Toronto, Ontario
M5K 1A2
Email Address: matthew.nieuwland@tdinsurance.com

Divisional Court File DC-24-00000718-00JR

McLean v. TDHA, the Licence Appeal Tribunal et al

DIVISIONAL COURT, SUPERIOR COURT OF JUSTICE

Proceedings commenced at Toronto, Ontario

Divisional Court Toronto
Osgoode Hall
130 Queen Street W., Rm 174
Toronto, ON M5H 2N5
Phone: (416) 327 5100

CERTIFICATE OF PERFECTION

Mr. Kevin A. McLean (B.A., J.D, CIM)
The JRPA Applicant
Self-represented or appearing *Pro Se*
410-775 King Street West
Toronto, Ontario,
M5V 2K3
(e): mcleansettlement@gmail.com

[i]With my position being, based upon the law that I have read including secondary source material and issued documents from The Honourable ONSC Divisional Court that only those persons that participated in the hearing (specifically, NOM #14 and NOM #15 which are subject to review by way of the relief that I have sough to quash the orders of VCM in NOM #14 and substitute VCM's orders with the orders that I sought in NOM #14 and to some extent NOM #15) that is subject to review or "on review" are entitled to participate as a right subject to the requirement of notice to the AGO and Tribunal and the rights of participation by the AGO and the Tribunal (as represented by their selected counsel)

[ii]The Applicant's position being, consistent with the Factum, that the Nieuwland Purported NOA or Nieuwland Purported Appearance was not filed forthwith and it remains defective.

[iii]*Nota bene*: a different legal administrative assistant that Mr. Nieuwland had and has in the Tribunal Proceeding

Tab 6:

Re: Applicant’s Motion Record for Motion #1 (Compel the Tribunal to forthwith file the record of proceeding): Court File No. DC-24-00000718-00JR

Court File No. DC-24-00000718-00JR

FORM 4D

Courts of Justice Act

AFFIDAVIT

ONTARIO COURT OF JUSTICE (DIVISIONAL COURT)

BETWEEN:

KEVIN ALEXANDER MCLEAN

APPLICANT

- and -

TD HOME AND AUTO INSURANCE COMPANY, SECURITY NATIONAL INSURANCE COMPANY, TD GENERAL INSURANCE COMPANY, EXECUTIVE DIRECTOR, LICENCE APPEAL TRIBUNAL, HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO, REPRESENTED BY EXECUTIVE CHAIR OF TRIBUNALS ONTARIO IN MR. SEAN WEIR, THE ATTORNEY GENERAL OF ONTARIO

RESPONDENTS

Affidavit #2 of Kevin A. McLean in this *JRPA* Proceeding

(Affidavit in support of the request for leave under section 6(2) of the *JRPA*)

I, **Kevin Alexander McLean**, Disabled (B.A., J.D., CIM) of **Toronto, Ontario, SWEAR** THAT:

Volume #1: Sworn Under Oath; under the Penalty of Perjury; and Introduction

1. I am the individual *JRPA* Applicant herein and I swear, under the pains and penalties of perjury, the following facts to be true. Where I have stated or sworn information on my belief(s), I have cited the source of my belief(s) by references, citations, end-noting or otherwise. When I have used the expressions (including any permutations) of "in my view", "in my opinion", or "belief", I am not drawing or making any conclusion of law or swearing a conclusion of law but rather citing my position and opinions as a matter of fact.

2. I commenced drafting this affidavit on December 30, 2024.

3. Where double underlining has been utilized, the double underlining is mine and added for emphasis.

4. Where I have copied and pasted or quoted from my "Oral Outline" (currently in draft form), which is cross-referenced to the Oral Compendium, which has a hyperlinked and bookmarked index, I have not done so to make any legal argument but to provide context for my positions.

5. I adopt the definitions from this *JRPA* Proceeding herein and they have the same meaning herein as they do therein.

6. This is my second affidavit in this *JRPA* Proceeding herein. My first affidavit was the affidavit of service that was filed and served after the filing of my certificate of perfection (the "**Certificate Of Perfection**").

7. I repeat and rely upon the facts in my correspondence to the ONSC Divisional Court with copies to counsel for the various respondents herein. I adopt the facts therein as my evidence herein on a factual level but in relation to my positions that I have advanced, am advancing and will advance in a hearing before a single justice of the ONSC.

8. I filed and paid for my *JRPA* Application on November 15, 2024. I served the same on the Tribunal, AGO, and the **Respondent Insurance Companies.**

9. When referring to the "**Respondent Insurance Companies**" in relation to this *JRPA* Proceeding and particularly SNIC and TDHA as it relates to NOM #14 and #15.

10. I have not made any judicial review application regarding NOM #13 which was a document production motion involving TDGIC.

11. The **Respondent Insurance Companies** did not, in my view and my belief, file a notice of appearance on a forthwith basis. I raised an objection in relation to the same.

12. I filed and served my factum (the "**Applicant's Factum**" or "**Factum**") on December 10, 2024.

13. I filed and served my application record on December 12, 2024 (the "**Application Record**").

14. In relation to my **Factum**, I included all of the authorities that I intended to and intend to rely upon in relation to the merits of the hearing of my *JRPA* Application.

15. Since that time, I have, *inter alia*, put the respondents on notice that my reading of the *JRPA* is that the Tribunal was required to file the record of proceeding forthwith (see: section 10 of the *JRPA*) but I have not had a responsive email or letter in relation to the same.

16. On Friday, December 13, 2024, I filed and paid for my certificate of perfection (the "COP" or "**Certificate of Perfection**"). I also filed and served an affidavit of service on or around the same day.

17. As a result of the same, I am including in my oral argument for the urgent hearing before a single justice of the ONSC authorities that relate to the same.

18. I have also included further authorities in relation to the test for leave pursuant to section 6(2) of the *JRPA*.

19. For ease of reference, I copy and paste from the *JRPA* section 6:

> **Application to Divisional Court**
>
> **6** (1) Subject to subsection (2), an application for judicial review shall be made to the Divisional Court. R.S.O. 1990, c. J.1, s. 6 (1).
>
> **Application to judge of Superior Court of Justice**
>
> (2) An application for judicial review may be made to the Superior Court of Justice with leave of a judge thereof, which may be granted at the hearing of the application, where it is made to appear to the judge that the case is one of urgency and that the delay required for an application to the Divisional Court is likely to involve a failure of justice. R.S.O. 1990, c. J.1, s. 6 (2); 2006, c. 19, Sched. C, s. 1 (1).
>
> **Transfer to Divisional Court**
> (3) Where a judge refuses leave for an application under subsection (2), he or she may order that the application be transferred to the Divisional Court. R.S.O. 1990, c. J.1, s. 6 (3).
>
> **Appeal to Court of Appeal**
> (4) An appeal lies to the Court of Appeal, with leave of the Court of Appeal, from a final order of the Superior Court of Justice disposing of an application for judicial review pursuant to leave granted under subsection (2). R.S.O. 1990, c. J.1, s. 6 (4); 2006, c. 19, Sched. C, s. 1 (1).

20. I pleaded the relief sought under section 6(2) of the *JRPA* in my *JRPA* Application. I made my *JRPA* Application to the ONSC Divisional Court at first instance. I am seeking the relief that in the event that the ONSC (single justice) does not grant leave that the *JRPA* Proceeding is transferred to the Divisional Court (ONSC) for hearing.

21. For ease of reference, I quote from **Part 1: Divisional Court Proceedings**, Part F of the Practice Direction

26. Within two weeks after an application or appeal is commenced, or a motion is filed, the parties shall send an email to the court setting out,

    a. any preliminary issues;
    b. a draft proposed or agreed schedule for the exchange of court documents; and
    c. the proposed hearing length required (e.g. half a day for panel hearings).

22. I now note, after review of my emails with the ONSC Divisional Court and the respondents that I do not have a copy of the positions of the **Respondent Insurance Companies** in relation to the required information relating to, *inter alia*: (i) any preliminary objections, (ii) exchange of documents; and (iii) length of hearing.

23. For ease of reference, this is the only email that I have from Mr. Nieuwland in this *IRPA* Proceeding:

Nieuwland, Matthew Tue. Dec 3, 4:52 PM

to Heather, SCJ-CSJ. Jesse, me, Milene, Connor, Judie

Good evening,

Please find attached the Notice of Appearance of the respondent, Security National Insurance Company (otherwise referred to as TD Home and Auto and TD General Insurance company), served in accordance with the *Rules of Civil Procedure*.

Thank you,

Matthew Nieuwland | Lawyer | Claims Litigation Services | **TD Insurance**
66 Wellington Street West, 38th Floor, Toronto, Ontario, M5K 1A2
T: 905-201-4092 | F: 416-599-7439
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Legal Assistant: Christiana Ortiz | T: 416-486-2547 | E: christiana.ortiz@tdinsurance.com

Privileged and/or Confidential"

24. While I appreciate the request by the Tribunal for a case conference, I have opposed the same. I also note, for the benefit of the ONSC Divisional Court, that the references in the Practice Direction to "parties" attending the case conference. My position is that until the Respondent Insurance Companies have complied with the requirement

of providing the ONSC Divisional Court with the above, that having a case conference without knowing the preliminary objections (if any) of the Respondent Insurance Companies, and their time estimate, that it would be futile and wasteful of resources.

25. I now copy and paste from the Practice Direction:

"G. Triage and Case Management

31. All applications, appeals, and motions in Divisional Court, and all steps in those proceedings, may be subject to judicial case management. The purpose of case management is to facilitate access to justice through the timely adjudication of proceedings in Divisional Court in a cost-effective and proportional manner."

26. While I have asked Mr. Nieuwland via email, with the ONSC Divisional Court copied along with the other respondents, if we could hear from him regarding the same, I have not received any response.

27. My position, after review of the jurisprudence including but not limited to *Hutchinson v. Aviva*[1], *Drewlo Holdings Inc.*[2], *Birani v. Tarion Warranty Corporation*, *Ontario (Energy Board)*, *Goodis*, *Northwestern Utilities*, *Leon's Furniture*, *et al*, that the Tribunal, particularly the LAT in AAB5 matters, has been limited to the following participatory rights:

a. The record and explaining it in relation to said LAT proceeding;
b. Any procedural fairness that have arisen (but not bias or natural justice per se);
c. 15 page factum;
d. 15 minute oral argument;
e. No seeking of costs by the Tribunal;
f. Avoidance of any duplication of the respondent insurance company(ies) arguments;
g. No argument on the merits of this *JRPA* Application;
h. No arguments on the outcome of this *JRPA* Application;
i. the limitation of the appeal to questions of law or an extricable question of law from a finding of mixed fact and law;
j. the applicable standard of review of correctness within the context of the Board's specialized function,
k. procedural fairness as it relates to the tribunal's ability to make procedural choices and the extent to which the Board may consider law or argument not raised by the parties, and
l. Others listed in my Oral Outline and Oral Compendium.

28. I further note in order to avoid any duplication of arguments by the Tribunal of the Respondent Insurance Companies, the Respondent Insurance Companies will need to

file and serve a copy of their Factum (if any). If they are not intending to respond to my Factum and Application Record, then I believe, in accordance with the principles of having timely adjudication of this *JRPA* Proceeding in a cost-effective manner, that the Respondent Insurance Companies must notify all interested parties and persons including the ONSC Divisional Court.

29. I note in relation to section 10 of the *JRPA*, and by reference to section 20 of the SPPA, that the Tribunal has not, based on my understanding of the word "forthwith", filed the record of proceeding (the "Record Of Proceeding") forthwith.

30. I have reason to believe that the Tribunal does not have possession of the entire Record Of Proceeding or each and every filed document that would constitute the Record Of Proceeding as it is interpreted by jurisprudence that has interpreted section 20 of the SPPA.

31. I ground my belief based upon the following current submission in my Oral Outline (Draft Version):

> "[35] With great respect to the former case manager in Mr. Grant, his explanations regarding why he apparently input TDGIC do not pass muster. He requested that the Applicant provide the denial letters, which were already contained in the LAT Appeal by way of pre-LAT Appeal affidavits, and they contained the sole of SNIC with its two locations of Markham and Burlington and neither location housed the landline fax number of 416.774.3120. The mere fact that Mr. Grant would be responsible for the "parties' names are correct" is a scary cogitation. This is the same Mr. Grant that represented to the SABS Applicant that he could not file, when his file number was not recognized in the e-filing portal that it was due to a "power outage". It was about as believable as his previous representations about why he input TDGIC as the sole respondent over the very name in the "denial letters". The Applicant also notes that at various times thereafter that Mr. Grant sent the Applicant, with SNIC copied after the granting of NOM #8 (which was not by consent as VCM found), the style of cause of "McLean v. TDGIC" (or permutations of the same).
>
> [36] Why is the Tribunal remaining in a state of non-compliance with its statutory duties to forthwith file the record of proceeding? The Applicant respectfully submits that the question answers itself. "

32. I also provide this affidavit #2 to ensure that I have provided notice to any parties or interested persons that I will have be advancing the argument on said date, by way of reference to my "Oral Outline", that not only am I entitled to leave to have the merits determined in such fashion but that the **Respondent Insurance Companies** (SNIC and THDA) are bound by the **Keeprite** standard ("Keeprite Standard"), as interpreted in the case of Keeprite and the Tribunal's standing and participation rights are limited.

33. I am also taking the position currently and will take the position that since the Tribunal has not filed a record of proceeding forthwith that it is not entitled to participate until it has done so. I am advancing the alternative position, which has only arisen as a result of the non-compliance with the *JRPA* and other statutes, enactments, policies and/or guides since the filing of the Applicant's Factum, that if the Tribunal is entitled to participate in this *JRPA* Proceeding.

34. To the extent that the Tribunal does not file the Record Of Proceedings or is unable to do so, my position will be that it cannot speak about the "record" to the ONSC (single justice) or the ONSC Divisional Court if I am not able to obtain leave.

VOLUME #2: URGENCY AND FAILURE OF JUSTICE (ON BELIEF): TIMING AND STRUCTURE OF THIS AFFIDAVIT

35. Due to the urgency of this case and that the Hearing Proper before the Tribunal in the LAT Appeal is set for January 25, 2024, I may provide an additional affidavit with exhibits.

36. I believe, without making any legal argument, herein that that this case is urgent based upon the facts pleaded in my *JRPA* Application, the facts in my Factum, correspondence, and that the Hearing Proper is set for January 25, 2025, and it involves, as submitted, the Sole Underwriter (SNIC) that did not first receive my Completed Application (OCF-1) on October 13, 2022.

37. I believe and allege, without making any legal argument, that there will be a failure of justice.

38. In my "Oral Outline" (draft form) that is cross-referenced to Oral Compendium, I have defined the following as [endnotes removed]:

a. "**Urgent**" means "requiring immediate action or attention";
b. "**Likely**" involves the balance of probabilities standard;
c. "**Failure**" means the "omission of occurrence or performance"; and
d. "**Justice**" is defined as: the quality of being just, impartial, or fair: the quality of conforming to law; and conformity to truth, fact, or reason : **correctness.**

39. In my "Oral Outline" (draft), I have for purposes of the test under section 6(2) of the *JRPA* and noting that evidence may need to be lead in relation to obtaining leave before a single justice, I have relied (implicitly or explicitly) on the following cases which I now copy and paste:

> *Her Majesty the Queen*, 2013 ONSC 6418, "[11] While Mr. Borton did not file an affidavit saying that he had lost his home, it seems obvious to me that Mr. Borton is suffering economically and that the uncertainty of a hearing date in the Divisional Court creates a real risk of there being

a failure of justice. The prejudice to Mr. Borton grows with each passing day: prejudice he can only mitigate by capitulating or by finding an available day for argument."

Cureatz v. Progressive Party of Canada, [1997] O.J. No. 2309 (Gen. Div.), LaForme J., as he then was, accepted jurisdiction to determine the matter, sitting as a single judge of the Divisional Court pursuant to s. 6(2) of the *JRPA*, while adopting various authorities, found: "In view of the fact that the Divisional Court is not able, in general, to deal with a question of urgency ... I take the view that s. 6(2) should be *liberally construed*. Thus, to my mind, the time that might be taken up before the Divisional Court can hear the matter is an important factor: *Universal Settlements International v. Duscio*, 2010 ONSC 6547 (CanLII), at para 6.

Universal Settlements International, the ONSC noted the stay of Justice Stinson was a factor in not granting leave and that stay remaining in effect while said *JRPA* application was transferred to the ONSC Divisional Court pursuant to section 6(3).

In *Savone*, the Justice TD Ray found, at paragraph 8, that where a judicial review involves only interlocutory orders and decisions, then it is **unlikely** leave will be granted. The unassailable corollary is when final orders are at issue or to be determined a failure of justice is *likely* if the single justice of the ONSC does not assume jurisdiction.

The merits of an application are important factors in determining whether there will be a failure of justice: *Savone*.

VOLUME #2(A): RECORD OF PROCEEDING

40. I am concerned that with the Tribunal's failure to file the Record of Proceeding forthwith and that it may be attempting to delay the timely adjudication of this *JRPA* Proceeding and/or it does not have the full and accurate Record Of Proceeding. I provide the source of my beliefs above.

VOLUME #3: MERITS (AS A FACTOR IN CONSIDERATION THE SECTION 6(2) OF THE JRPA

VOLUME #3(A): FINAL ORDERS VS. INTERLOCUTORY

41. While I am not making any legal argument herein, I provide the ONSC Divisional Court by way of this affidavit #2, to be filed and served, in support of my request, wherein I have filed and served Requisition #2 on December 24, 2024, to be heard in front of a single justice of the ONSC pursuant to section 6(2) of the *JRPA*, my current submissions in the Oral Outline regarding the above heading:

However, the adding of the party of TDHA as the First Insurer, along with the concomitant sought orders pursuant to the declaratory relief along the addition of those "causes of action" against "another". "Causes of action" is defined as: "a fact or facts that enable a person to bring an action against another".

As SNIC and TDGIC were not "one and the same", neither are SNIC and TDHA. Therefore, the dismissal of NOM #14 and NOM #15 by VCM, absent any analysis of the statutory scheme were decisions and orders that were final in nature: *ME v Ontario*" citing *Atlas, Kerr* et al.

Further authorities of our Ontario courts unequivocally support the unequivocal common law principles and precedents that ***to refuse*** relief to add a party, cause of action, and/or amendment of pleadings are final orders. Even motions that were dismissed that sought leave to issue third and fourth party claims were **FINAL** (see: *Khalil et al v. United Investment Services Ltd. et al.*, 1975 CanLII 490 (ONSC) ["*Khalil*"]. In *Hollinger*, an order maintaining a sealing order ***FINALLY*** determined that a newspaper could not exercise its right to have access to the court file and was thus **FINAL** for the purposes of appeal (see: *Hollinger Inc. v. Rawelston Corp.*, 2008 ONCA 207 ["*Hollinger*"].

Even further, where a question of law is at issue, even when the ongoing inferior tribunal proceeding is ongoing, is a final order or decision. An order dismissing a motion for summary judgment on **a question of law**, where the only genuine issue is the question of law should probably be regarded as giving rise to *res judicata* and, hence, a ***FINAL* order** (see: David *Polowin Real Estate Ltd. v. Dominion of Canada General Insurance Co.*, 2004 CanLII 39916 (ON CA) ["*Polowin*"]).

Where the doctrines of *res judicata* or issue estoppel are at issue, an order during proceedings, not at its conclusion, is a final order. As there is a live issue of issue estoppel herein, where a motion, that is summary disposition in nature is dismissed, it will be ***FINAL*** if it involves a *substantive issue* like issue estoppel (see: *Almrei v. Canada (Attorney General)*, 2011 ONCA 779).

The natural corollary is that orders that **grant** the adding of a party, causes of action and/or amendments to pleadings are ***interlocutory***. **Permitting** amendments to pleadings are generally ***interlocutory*** (see: *Dynasty Furniture Manufacturing Ltd v*

Toronto-Dominion Bank, 2015 ONCA 137 ["*Dynasty Furniture*"]). Order **granting** leave to amend a statement of claim was ***interlocutory*** **(see:** *Merling v. Southam Inc.*, et **al**, 2000 CanLII 5621 (ONCA) **[**"Merling"**]**). An order ADDING a defendant **is *interlocutory*** *(nota bene*: supra, order refusing or denying the addition of a proposed party is ***FINAL*** which is trite in the sense that if a party has a cause of action and can seek relief against said proposed party, the refusal ***FINALLY*** disposes of that substantive right) (see: *Prescott & Russell (United Counties) v. David S Luftamme Construction Inc.*, 2018 ONCA 495 **[**"*Prescott*"**]**). Order granting leave to amend paragraphs in a statement of claim was **interlocutory (see:** *Natario v. Rodriguez*, 2015 ONCA 227 ["*Natario*"]).

VOLUME #3(B): THE NON-JUSTICIABILITY DOCTRINES AND THEIR EXCEPTIONS

42. While my position remains that the prematurity doctrine raised by Mr. Boyce for the Tribunal is meritless, I have in my Oral Outline (Draft) provided the other non-justiciability doctrines and the exceptions to the same. I now copy and paste from the Oral Argument (Outline):

> "It is trite that the two decisions in NOM #14 and #15, and the reconsideration decisions, that are subject to judicial review, and the orders contained therein are final decisions and orders. With those orders and decisions being final, the doctrine against interlocutory judicial review or interlocutory appeals (also defined as "**Non-Justiciability ["NJ"] Interlocutory Doctrine**") is obsolete. As there has been much discussion by legal scholars and courts about the merger of the **NJ Interlocutory Doctrine** and the adequate, alternative and available[iv] remedy doctrine (the "**AAAR Doctrine**"), there cannot be any non-frivolous preliminary objection by a respondent insurance company or the **Tribunal** (see: section 9(2) **of the** *JRPA*) or the AGO (see: section 9(4) of the *JRPA*).
>
> The same is applicable to the exhaustion doctrine as that is predicated upon an applicant seeking judicial review exhausting **all AAAR**. If the potential party that is an applicant avers, with supporting evidence, is subject to a cause of action is not added by decision of an administrative decision maker who becomes *functus officio*[v], and reconsideration fails, then he or she has exhausted any available, alternate and adequate remedies [AAAR] *before the **Tribunal***. While reconsideration is not an absolute prerequisite to judicial review, (*Ellis-Don Ltd. v. Ontario (Labour Relations Board)*, 2001 SCC 4 (CanLII)), the Applicant did so and received the three page decision where VCL, a decision-maker that he had drawn a potential and *prima facie* conflict of interest between him and her to the attention of the former case

> manager in Mr. Grant, wherein she took issue with the *ME v. Ontario* precedential statements of law.
>
> An exceptional circumstance is a final order or decision predicated on an 'exceptional discovery' wherein the respondent insurance companies naturally went into a shell and curled into a ball. Where a respondent insurance company is the only insurer, due to passage of time, that could be the first insurer, then the LAT decision-maker is required, absent discretion as the Tribunal is a creature of statute (see: I would note that the primary argument advanced by the Appellant in this case focuses on a transfer of "jurisdiction" from the Superior Court to the LAT. As explained in *Keulen*, exclusive jurisdiction over *SABS* claims has been removed from the Superior Court of Justice and the Financial Services Commission of Ontario and has been placed in the LAT. This is the effect of the language in s. 280 of the *Insurance Act*. The authority granted to the LAT is circumscribed by the *Insurance Act*, the *SABS* and the applicable regulations. The LAT has no inherent jurisdiction (see: Lundy v. Peel) and any decision outside its authority is *ultra vires* (without authority or jurisdiction), to have added such party; section 280 of the *Insurance Act* (must decide in accordance with SABS)."

43. With respect to the exceptions to the Non-Justiciability Doctrines, I now copy and paste from the Oral Outline (Draft):

Even here decisions or orders are interlocutory, which they are not herein, and a SABS applicant has adequate, alternative, and available remedies before the Tribunal, which this *JRPA* Applicant does not, this ONSC Divisional Court and other similarly situated courts have intervened in the following circumstances:

a. *Repetition of judicial review proceedings*: where the potential prejudice of the risk of repeating proceedings ***after*** review outweighs the prejudice to the general orderly processing of administrative proceedings without interruption until their conclusion: *Lourenco v. Hegedu;*
b. *Real unfairness*: if there is a prospect of *real unfairness* through **denial** of natural justice or otherwise, a superior court may always exercise its inherent supervisory jurisdiction to put an end to the injustice before all the alternative remedies are exhausted… (paragraph 65 of the Applicant's Factum citing *Gage*);
c. *Natural justice breach – clear and obvious application succeeds:* "Where the court is being asked to determine whether a particular breach of natural justice rises to an "exceptional" circumstance, the court may consider whether it is "*clear and obvious*" that the application will be successful: *Unimac-United Management Corp. v St. Clare's-Manaco Place*, 2015 ONSC 4760 (CanLII) at paras. 16 and 17.);
d. **Override of interlocutory**:

i. "The Decision has broad implications for human rights disputes arising between unionized employers and employees throughout the province. Delaying this application until the conclusion of the hearing on the merits, which does not depend on any evidence or law relevant to the jurisdictional issue, will result in uncertainty for employers, employees and unions. This is an appropriate case for this court to exercise its discretion to hear this judicial review": *London District Catholic School Board v Weilgosh 2024 ONSC 3857* (CanLII)

ii. This Court has stated that it will review an interlocutory decision of a tribunal where a process is fatally flawed (*Roosma v. Ford Motor Co. of Canada* (1988), 1988 CanLII 3633 (ON SCDC), 66 O.R. (2d) 18 at 25-26).

e. *Lack of jurisdiction:* judicial intervention may be warranted in situations where the tribunal clearly lacks jurisdiction to proceed, privacy rights at issue or where proceeding with the hearing [proper] would result in an unfair hearing or a breach of natural justice: *Rowe v. College of Nurses of Ontario and al.*, 2023 ONSC 6414;

f. *Judicial Intervention even at the preliminary" stages of an administrative proceeding:*

i. "Judicial review is a discretionary remedy, and the Divisional Court has taken the position that it should not fragment proceedings before administrative tribunals. Absent exceptional circumstances demonstrating that the application should be heard, the Court will not intervene at a PRELIMINARY STAGE in proceedings. However, where the preliminary decision will likely result in a fundamental failure of justice, the Court may exercise its discretion to hear the application (*Ontario College of Art v. Ontario (Human Rights Commission)* (1993), 1993 CanLII 3450 (ON SCDC), 11 O.R. (3d) 798 (Div. Ct.) at pp. 2-3; *Howe v. Institute of Chartered Accountants of Ontario* (1994), 1994 CanLII 3360 (ON CA), 19 O.R. (3d) 483 (C.A.) at 490; *Gage v. Ontario (Attorney General)* (1992), 1992 CanLII 8517 (ON SCDC), 90 D.L.R. (4th) 537 (Div. Ct.) at 553).

VOLUME #3(C): KEEPRITE STANDARD

44. I now copy and paste from my Oral Outline (Draft) the relevant paragraphs involving the Keeprite Standard:

> Judicial review is not an opportunity to re-argue the case, but rather to show that the decision-maker failed to properly exercise its decision-making powers. Judicial review is not documentary discovery. However, compliance with section 10 of the *IRPA* is a requirement or obligation upon the **Tribunal**. As the **Tribunal** is not entitled to duplicate arguments of the respondent insurance companies, the respondent insurance companies will need to file their responsive factum *prior to* January 10, 2025, so the **Tribunal**

has notice of the same and can adjust accordingly so, *inter alia*, avoid any duplication of submissions of the Tribunal.

In Ontario, this is known as the "**Keeprite Standard**" (by reference to *Keeprite Workers' Independent Union et al. and Keeprite Products Ltd.*, 1980 CanLII 1877 (ON CA), <https://canlii.ca/t/g14jm>) wherein in 2013 Madam Justice Swinton (who received supernumerary status in 2013) summarized the **Keeprite Standard** on judicial review regarding the impermissible inclusion of materials that were not before the decision maker:

> "[18] The ***Keeprite Standard*** for the admission of affidavit evidence on judicial review has been applied in numerous decisions involving labour boards and labour arbitrators. These cases have held that affidavit evidence can be admitted either to show an ***absence of evidence*** on an essential point *or* to disclose a ***breach of natural justice*** that cannot be proven by a mere reference to the record."

Affidavit evidence containing material that was **not** before the decision-maker is not admissible on judicial review **unless** it: a) provides non-argumentative background information; b) demonstrates that the decision-maker decided an essential point without any evidence; or c) demonstrates the decision-maker breached the *Rules* of natural justice (see: *Sticky Nugz Inc. v. Alcohol and Gaming Commission of Ontario*, 2020 ONSC 5916 as per **Swinton, Lederer, Penny JJ**).

Issue #3, Volume #3(II): Application of the Law to the Facts

Mr. Nieuwland, as now counsel to TDHA in this *IRPA* Application and counsel to SNIC in the LAT Appeal and former counsel to TDGIC, is in a blatant conflict of interest by his mere appearance on behalf of all three. They are separate and distinct insurance companies with separate FSRA registration numbers with

Like the Tribunal in *Dankha* and *Mosa*, this ONSC (whether Divisional or not), cannot condone blatant conflicts of interest particularly where TDHA, while still an automotive insurer, is no longer in the sub-category of private passenger market, and SNIC have entirely balance sheets, financial statements, goodwill et al, and are "at odds" (not *ad idem*) as per the FSRA and OSFI

requirements. Mr. Nieuwland, after still not having signed a pleading on behalf of SNIC, wishes for the ONSC (Divisional Court) to somehow believe that SNIC is also referred to as "TD General insurance company [sic]" and "TD Home And Auto [sic]".

Certainly, Mr. Boyce's decisions (as an adjudicator or Vice Chair) delineated between the various insurance companies that are apparently in the TDI Group. This does not mean that TDHA and SNIC are not entitled to have counsel represent their interests but they cannot provide any additional evidence to the Tribunal let alone any of benefit. To do so would be tantamount to intentionally including inadmissible affidavit evidence and subject to a costs award. Further, while SNIC or TDHA is entitled to oppose the relief sought, submissions are not evidence and they cannot overcome the balance of probabilities test

For objectivity purposes, the Applicant does not take issue with SNIC and TDHA separately arguing the standard of review for the questions and issues to be determined herein. However, that would be in essence a five to ten page argument and five to ten minutes in oral argument. This leaves (pardon the pun) with this oral outline where the Applicant is some 30 minutes in "reading time" and subject to questions on the salient points, it will likely be less. Vis-à-vis the Applicant and the respondent insurance companies, it is a total of approximately 35 minutes when considering reply to submissions of the Applicant to the respondent insurance companies.

VOLUME #3(D): MY INCREASING CONCERNS ABOUT INSTITUTIONAL AND SYSTEMIC ISSUES REGARDING THE LAT AND THE IMPUGNED DECISION MAKERS ALONG WITH A CONCERNING TREND INVOLVING MR. BOYE AND THE RESPONDENT INSURANCE COMPANIES: FURTHER GROUNDS FOR SECTION 6(2) OF THE JRPA

45. In light of the occurrence involving former Vice Chair Ms. Therese Reilly wherein she had accepted a conditional offer of employment from Aviva Insurance Company while employed by the SLASTO and LAT, and then issued a variety of decisions in favour of Aviva prior to her departure to work for Aviva, I have raised the below issues as soon as I became aware of them.

46. I have also found an additional authority as what I say the correct procedure is at this time for having this *JRPA* Application heard on its merits in a manner that is expeditious, cost-effective and just which is copied below (with my introductory submissions therein):

In *Taylor v. Pivotal Integrated HR Solutions*, 2021 ONSC 7720, The applicant, Paul Taylor, moved pursuant to s. 21(5) of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, to set aside the orders of Sachs J. made October 8, 2020. The motion judge made orders adding the Workplace Safety and Insurance Appeals Tribunal as a party to Mr. Taylor's judicial review application and dismissing the application for extreme delay

In *Taylor*, ONSC Divisional Court (Toronto) as per The Honourable Justices Ryan Bell, Nishikawa, and Shore JJ., made the seminal statements of law relating to the overarching discretion of the ONSC (whether Divisional or otherwise) with respect to the Tribunal's participation:

> "[18] Section 9(2) of the *JRPA* does not affect this court's supervisory jurisdiction. It does not shield administrative tribunals such as the Tribunal from curial scrutiny entirely; rather, s. 9(2) permits tribunals to bring relevant matters to the attention of the court.
>
> [19] Allowing an administrative tribunal such as the Tribunal to participate on an application for judicial review does not give rise to "unjust opposition" as Mr. Taylor contends. To the contrary, the presence of the administrative tribunal as a party *may* help to ensure that the court hears both sides of a dispute where there is no other well-informed party standing in opposition to the party challenging the tribunal decision: *Ontario (Energy Board) v. Ontario Power Generation Inc.*, 2015 SCC 44, at para. 54.
>
> [20] *Once* a tribunal is a party, the court still has discretion as to the scope of participation to be accorded to the tribunal *during the hearing*. This involves balancing the need for fully informed adjudication against the importance of maintaining tribunal impartiality: *Hydro Ottawa v. Ontario (Workplace Safety and Insurance Appeals Tribunal)*, 2019 ONSC 4898 (Div. Ct.) at para. 6. This court is under no obligation to accept the submissions of a tribunal that appears before it.

The three part legal test from *Ontario Energy Board* is as follows:

> In accordance with the foregoing discussion of tribunal standing, where the statute does not clearly resolve the issue, the reviewing court must rely on its discretion to define the tribunal's role on appeal. While not exhaustive, I would find the following factors, identified by the courts and academic commentators cited above, are relevant in informing the court's exercise of this discretion:

> (1) If an appeal or review were to be otherwise unopposed, a reviewing court may benefit by exercising its discretion to grant tribunal standing.
> (2) If there are other parties available to oppose an appeal or review, and those parties have the necessary knowledge and expertise to fully make and respond to arguments on appeal or review, tribunal standing may be less important in ensuring just outcomes.
> (3) Whether the tribunal adjudicates individual conflicts between two adversarial parties, or whether it instead serves a policy-making, regulatory or investigative role, or acts on behalf of the public interest, bears on the degree to which impartiality concerns are raised. Such concerns may weigh more heavily where the tribunal served an adjudicatory function in the proceeding that is the subject of the appeal, while a proceeding in which the tribunal adopts a more regulatory role may not raise such concerns.

47. As Mr. Nieuwland's clients have not complied with the Practice Direction (Information Submitted to the Court) within the two week time period since the bringing of the *JRPA* Application, I feel compelled to argue each of the above in the primary, secondary and tertiary based on the various hypotheticals.

48. I also note the following which I copy and paste from the Oral Outline (Draft):

> When the questions or issues to be decided are ones that do not require leave and/or subject to the correctness standard, the justice of the ONSC, pursuant to ss. 6(2) of the *JRPA*, is required to start afresh and/or "in the shoes" of the initial decision maker which was VCM. However, the Applicant requires leave by filing his requisition to set the hearing pursuant to *Rule* 38.03(3.1) which is done by request and not motion.
>
> Applications for judicial review are intended to be summary proceedings, and preliminary motions add greatly to the cost and time required to deal with such matters and are therefore to be **discouraged.**[vii]
>
> A party may not rest on allegations in its pleadings on a motion for summary judgment. The party must "put its best foot forward" or "lead trumps or risk losing" (*Caplan v. Atas*, 2021 ONSC 670, the Honourable Justice DL. Corbett paragraph 106). The principle is applicable herein to the NOM #14 and #15 being summary type hearings and this *JRPA* Proceeding.

49. To the extent that Mr. Nieuwland's clients do not oppose and/or participate in this *JRPA* Proceeding, I believe that will be another factor that will militate in favour of a shortened time for the hearing of my section 6(2) of the *JRPA* leave request and, if leave is granted, the arguing of the merits of the *JRPA* Application.

VOLUME #3(E): MY INCREASING CONCERNS REGARDING MR. BOYCE AND HIS VARIOUS ROLES AND WHETHER THE PREMATURITY OBJECTION IS A BONA FIDE OBJECTION – FOR: (I) NOTICE PURPOSES; AND (II) PRE-EMPTIVE PURPOSES

50. However, I am deeply concerned with the record of Mr. Boyce and his role as a former adjudicator and Vice Chair as it relates to how he had decided in favour of the Respondent Insurance Companies and his objection on behalf of the LAT. I now copy and paste from the "Appendices" and I address the same with further sworn evidence:

Appendix #4: LAT decisions where Mr. Boye, as he then was Vice Chair Boyce (adjudicative capacity between two parties), he issued decisions, orders, finding and determinations that were all in favour of the three respondent insurance companies.

(nota bene: Put another way, not one individual who was an insured person and injured in an automobile accident was successful on a single issue before him.

(nota bene #2: these decisions also provide further direct evidence that TDHA (First Insurer) has been involved in LAT/AABS matters)

SUMMARY: TOTALS INVOLVING THE RESPONDENT INSURANCE COMPANIES THAT ARE AT ISSUE IN THIS *JRPA* APPLICATION WHERE MR. BOYCE WAS THE DECISION MAKER

- SNIC (includes FDIMM) AND TDHA COMBINED:
  - 14-0-1

Security National Insurance Company (FSRA Registration number 397)

- 4 in favour of SNIC and one split decision
- Total 4-0-1

1. Mr. Boyce issued the following decisions involving SNIC (5)

   a. *A.P. vs Security National Insurance Company*, 2020 CanLII 14480 (ON LAT)
      i. [3] A.P. has not demonstrated that his impairments warrant treatment beyond the MIG. Accordingly, the treatment plans in dispute are not reasonable and necessary and no interest is payable.

b. *Security National Insurance Company v. Balyshin*, 2021 CanLII 18916 (ON LAT).
   i.] Security National is entitled to a repayment of IRB in the amount of $3,257.14, plus interest, due to the respondent's failure to notify it of her return to work.
c. *Ndukwe v. Security National Insurance Company*, 2021 CanLII 50784 (ON LAT
   i. [3] The applicant has not met her burden of demonstrating that removal from the MIG is warranted or that the treatment plan is dispute is reasonable and necessary.
d. *I.G. v Security National Insurance Company*, 2019 CanLII 110085 (ON LAT).
   i. [5] I find I.G. is statute-barred from proceeding with her claim for attendant care but she may proceed with her claims for non-earner benefits and medical benefits before the **Tribunal**.
e. *M.B. v Security National Insurance Company*, 2019 CanLII 130379 (ON LAT) [note bene: a closer look at said case demonstrates that SNIC was primarily successful on the amounts sought and amounts]
   i. [5] I find, on a balance of probabilities, that the home modification treatment plan in dispute is partially reasonable and necessary. Specifically, I find the cost of the accessible kitchen package and closet organizers proposed by ADL to be reasonable and necessary.

TDHA (FSRA registration number 1096)
▪ 4 in favour of TDHA ▪ One reversal in favour of Applicant but solely based on decision of ONCA (but for decision, it would have been in favour of TDHA) ▪ One finding in favour of Applicant on CAT but no entitlement to any benefits ▪ 5-0 on substantive issues ▪ 5-1 (objectively speaking for the successful reconsideration on a preliminary issue)

2. Mr. Boyce has issued decisions involving the First Insurer herein (TDHA) (6):

a. *Polat v. TD Home and Auto Insurance Company*, 2021 CanLII 35573 (ON LAT).
   i. Decided in favour of TDHA;
b. *C.L. v TD Home and Auto Insurance Company*, 2019 CanLII 126182 (ON LAT
   i. [4] C.L. is statute-barred from proceeding with his application at the **Tribunal** until he attends the IEs scheduled by TD.
c. Applicant v. TD Home and Auto Insurance Company, 2020 CanLII 30438 (ON LAT) [reconsideration in favour of the Applicant solely based upon the ONCA decision in *Tomec*]:
   i. [3] [The applicant]'s request for reconsideration is granted. I reverse the Tribunal's previous decision on the preliminary issue and find [the

applicant] may proceed to the Tribunal with his claim. [still not a substantive benefit or quantum in favour of the applicant insured person]

d. *18-000169 v TD Home and Auto Insurance Company*, 2019 CanLII 22189 (ON LAT
   i. [6] I find that K.S. sustained a catastrophic impairment as a result of the accident.
   ii. [7] I find that K.S. is not entitled to a post-104 IRB as he does not suffer a complete inability to work in his pre-accident employment. While I find K.S. is entitled to an IRB for the post-accident period, no amount is payable. TD's claim for repayment is denied.
   iii. [8] I find that K.S. is not entitled to ACBs or housekeeping for the period in dispute as he has not demonstrated that his service provider suffered an economic loss
   iv. [9] I find that an award in this matter is not appropriate as TD did not unreasonably withhold or delay payment of benefits. Accordingly, as no benefits are overdue, no interest is payable.
   v. [24] For these reasons and on a balance of probabilities, I find that K.S. suffered a catastrophic impairment as a result of the accident.

e. 17-008493 v TD Home and Auto Insurance Company, 2019 CanLII 76874 (ON LAT)
   i. [7] SC's appeal is statute-barred pursuant to s.51 of the Schedule.

f. *17-008493 v. TD Home and Auto Insurance Company*, 2019 CanLII 63361 (ON LAT)
   i. [1] The applicant, the insured in this proceeding, has requested reconsideration of an interlocutory motion decision dated January 16, 2019. On that motion, the applicant was unsuccessful in obtaining an adjournment of a hearing on a preliminary issue until a similar issue has been decided by the Court of Appeal.
   ii. [3] For the reasons that follow, I deny this request for reconsideration.
   iii. Adjournment: [19] I agree with the respondent that a hearing should only be delayed because a party is pursuing a civil action on similar issues in exceptional circumstances. The applicant is not pursuing a civil action in this case, he is relying on the outcome of an appeal in *Tomec* as a reason to postpone the hearing of this matter.

TD Insurance Meloche Monnex [no FSRA registration number]
▪ 5 decisions ▪ 4 in favour of TDIMM ▪ 1, prima facie, split decision (but solely on technicality based on cost on completing OCF-18 and 19 forms i.e. section 25 expenses) so marked as in favour of TDIMM
○ 5-0 TDIMM over insured persons

3. Mr. Boyce has issued decisions involving a non-insurance company in TD Insurance Meloche Monnex and a "Mennox" (nota bene: it remains unclear from these decisions

whether the underwriter was Primmum (#1396) or SNIC (#397)) (5) [nota bene #2: for all intents and purposes, former Vice Chair Boyce decided all in favour of "TD Ins. Meloche Monnex" for a 5-0 total]

a. *Bagla v. TD Insurance Meloche Monnex*, 2021 CanLII 35579 (ON LAT)
   i. [7] The applicant is limitation-barred on both ACB claims.
b. *Scheltgen and TD Ins. Meloche Monnex*, 2022 CanLII 23403 (ON LAT)
   i. [3] The applicant's request for reconsideration is dismissed.
c. Scheltgen v TD Insurance Meloche Monnex, 2021 CanLII 124041 (ON LAT)
   i. [3] The applicant is statute-barred from proceeding with his application under s. 55(1)2 because he failed to attend a properly scheduled s. 44 IE
d. O.A. v TD Insurance Meloche-Mennox, 2020 CanLII 87965 (ON LAT) [nota bene: in effect a decision fully in favour of "TD Insurance Meloche Mennox [sic as it relates to the same and not a corporate entity]]
   i. [7] O.A. is entitled to an additional $400.00, representing the cost of completing the OCF-18 and OCF-19 forms, as they are reasonable and necessary and were not captured by TD's partial approval of January 29, 2019.
   ii. [8] O.A. is not entitled to payment for any of the remaining unapproved items in the OCF-18, as they are not reasonable and necessary.
e. *I.R. v. TD Insurance Meloche Mennox* [sic], 2020 CanLII 87968 (ON LAT),
   i. [4] I find I.R. has not satisfied his burden to prove that his accident-related impairments warrant removal from the MIG. The remainder of the treatment plan in dispute is not payable, no interest applies, and an award is not appropriate.

51. I am also concerned that Mr. Boyce is located at the same office as VCL and presumably the same office as VCM (albeit she appears to not have updated her contact information with the LSO). I distinguish the same with the office location of Ms. Im, counsel to Ministry of Attorney General. I now copy and paste from the Appendices of my Oral Outline (Draft):

> **Order in Council 1421/2023**
> On the recommendation of the undersigned, the Lieutenant Governor of Ontario, by and with the advice and concurrence of the Executive Council of Ontario, orders that:
> Whereas Jesse Boyce was reappointed as full-time member and vice-chair of the Licence Appeal Tribunal for a fixed term of three years, effective November 12, 2022, by Order in Council O.C. 1319/2022;
> And whereas Jesse Boyce was reappointed as part-time member of the Ontario Civilian Police Commission for a fixed term of five years, effective February 21, 2023, by Order in Council O.C. 67/2023;

And whereas Jesse Boyce tendered his resignation effective August 21, 2023;

Therefore, pursuant to subsection 2(3) of the *Licence Appeal Tribunal Act, 1999*, subsection 21(2) of the *Police Services Act* and subsection 16(4) of the *Adjudicative Tribunals Accountability, Governance and Appointments Act, 2009*, Orders in Council O.C. 1319/2022 and 67/2023 be revoked effective August 21, 2023.

Ministry of the Attorney General

Approved and Ordered: September 28, 2023

LSO Directory

Jesse Aaron Boyce
Back to resultsNew SearchPrint
Assumed Name
Jesse A. Boyce
Law Society Number
72486F
Class of Licence Definitions
Lawyer (L1)
Real Estate Insured †
No
Status Definitions
Practising Law - Employed
Business Name
SLASTO
Business Address
25 Grosvenor St 4th FloorToronto, OntarioM7A 2S8
Phone
1 437 997 1235 Ext.
Trusteeships
None
Current Practice Restrictions
None
Current Regulatory Proceedings
None
Regulatory History
None

Appendix #2: Location of Vice Chair Lake and Vice Chair Morrissette

Lindsay Nicole Lake

Back to resultsNew SearchPrint
Assumed Name
Lindsay Lake
Law Society Number
535668
Class of Licence Definitions
Lawyer (L1)
Real Estate Insured †
No
Status Definitions
Not Practising Law - Employed
Business Name
Licence Appeal Tribunal(AABS)
Business Address
25 Grosvenor Street19th FloorToronto, OntarioM7A 1R2
Phone
1 416 627 0430 Ext.
Email Address
lindsay.lake@ontario.ca
Trusteeships
None
Current Practice Restrictions
None
Current Regulatory Proceedings
None
Regulatory History
None

Ms. Morissette has the incorrect address for the LAT (it is Grosvenor Street)

Trina Karen Morissette
Back to resultsNew SearchPrint
Assumed Name
Trina Morissette
Law Society Number
449427
Class of Licence Definitions
Lawyer (L1)
Real Estate Insured †
No
Status Definitions
Not Practising Law - Employed
Business Name
Licence Appeal Tribunal
Business Address

5-20 Dundas St WToronto, OntarioM5G 2C2
Phone
1 613 462 9237 Ext.
Trusteeships
None
Current Practice Restrictions
None
Current Regulatory Proceedings
None
Regulatory History
None

JUXTAPOSED TO MS. IM WHOSE EMPLOYER IS MAG AND SHE IS AT 720 BAY STREET

Judic Yung-Mi Im
Back to resultsNew SearchPrint
Assumed Name
Judic Im
Law Society Number
44577V
Class of Licence Definitions
Lawyer (L1)
Real Estate Insured
No
Status Definitions
Practising Law - Employed
Business Name
Ministry of Attorney General
Business Address
8-720 Bay StToronto, OntarioM7A 2S9
Phone
1 416 427 4611 Ext.
Email Address
judic.im@ontario.ca
Trusteeships
None
Current Practice Restrictions
None
Current Regulatory Proceedings
None
Regulatory History
None

52. I further note that some of the issues that I had raised relating to the apparent or impugned backdating of the VCM Decision may relate to the following as cited and found by the ONSC (Divisional Court) in Shuttleworth:

> Issue #4, Volume #4(I)(E): Has this Tribunal learned anything since Shuttleworth?

While Shuttleworth is well-known to the ONSC (Divisional Court), which was upheld by the ONCA, the paragraphs from its decision are most compelling [double underlining is the Applicant's and single underlining is that of the court]:

> ***The Decision Review Process***
> [24] In-house counsel for the LAT swore an affidavit explaining that the executive chair implemented a decision review process at the LAT. The stated reason was to maximize the quality of the tribunal's decisions. The peer review process has not been adopted formally. No written policy was provided but counsel swore that, "generally, the LAT decision review process for final decisions is, and at all material times in this case was" as follows:
>
> First, there is peer review: After drafting a decision, an adjudicator ***is expected to send the decision for peer review by the Duty Vice-Chair***. The Duty Chair offers suggestions to improve clarity, reasoning and readability and might also evaluate, for example, whether the correct legal test has been applied and whether any related case law that was not mentioned might be helpful.
>
> Second, there is legal review: The SLASTO Legal Services Unit reviews the decision to ensure that the **correct legal test** has been applied and to identify any related case law that was not mentioned that might be helpful.
>
> Third, there is a second peer review by the executive chair: "In some rare instances – such as when a decision involves a novel, contentious,

> precedent-setting, or high profile issue – ***the Legal Services Unit will send the decision to the Executive chair for her review***. In these instances, the Executive chair serves, in essence, as a second peer reviewer and accordingly will order the same kinds of comments that the author would typically receive during the initial peer review."
>
> Fourth, there is a review by the file's case management officer: The case management officer acts as an intake officer and primary point of contact for the parties. This review involves examining the decision's format, correcting grammatical and spelling errors, and ensuring that the template and parties' names are correct. [Emphasis added.]

The hallmark of the above is that where the "*Rule* of Law" is at issue. Where a **Tribunal** such as this one is back to its old "bad habits" like it was in *Shuttleworth* and the recent discovery that a former adjudicator in Therese Reilly (LSO number 28621D; "not practising law" with "contact information withheld"[ix]) had received a conditional job offer from Aviva in 2022 and then proceeded to apparently issue 13 decisions in favour of Aviva before embarking on her in-house legal position.[x] Ms. Reilly's reply to the bias allegation a frightening one: "Reilly has told media her decisions in the insurance cases were fact-based and untainted by bias. She claims LAT disclosure procedures should be tightened up to prevent any appearance of bias." In effect, an experienced Vice Chair of the Tribunal's position is that the public should not known of a "conditional offer" of employment with an insurance company where she inevitably worked for a period thereafter (i.e. avoid these "disclosures" and have less transparency). The prejudice experienced by these injured person is denoted in a case like *Nagesu v Traders General Insurance Company*, 2024 CanLII 23453 (ON LAT) where Associate Chair had to cancel the decisions of former adjudicator Ms. Reilly. The position of Aviva is perhaps even more concerning: "Aviva Canada said it was unaware Reilly was involved in insurance cases for LAT after the insurer hired her." It is rather disingenuous or intentionally misleading considering it was a "conditional offer of employment" and, of course, Vice Chair Reilly could not be involved in insurance cases for LAT *after* the hiring.

Upon investigation by the LAT, it was, in fact, only four decisions wherein Vice Chair Reilly had issued decisions after her acceptance of an offer of conditional employment. Mr. Boyce, counsel to the Tribunal herein and a former Vice Chair of the Tribunal with the same employer or payor of his

wages (see: Appendix #2). "batted a better record" for the TDHA and SNIC as his time as a Vice Chair. Involving SNIC and TDHA, they were 14-0-1 when Vice Chair Boyce, as he then was, was the decision maker (see: **Appendix #3**). Is this Mr. Boyce's 'cooling off period' before joining the likes of Mr. Nieuwland as counsel at ID Insurance Staff Legal? Is this why Mr. Nieuwland and his clients have remained silent? Is Mr. Boyce seeking to, in good faith, raise prematurity or is this a circuitous route for him to defend the advice he provided to the Tribunal before the VCM Decision was issued?

The opties are not pleasant on the eyes or ears. The rule of law requires the ONSC, by a single justice, to intervene judicially to immediately put an end to the real unfairness to not only this *IRP4* Applicant but others similarly situated.

Issue #4, Volume #4(I)(E)(i). Application of the LAT structure to these facts

In-house counsel for the Tribunal would be the likes of a Mr. Boyce.

With great respect to the former case manager in Mr. Grant, his explanations regarding why he apparently input TDGIC do not pass muster. He requested that the Applicant provide the denial letters, which were already contained in the LAT Appeal by way of pre-LAT Appeal affidavits, and they contained the sole of SNIC with its two locations of Markham and Burlington and neither location housed the landline fax number of 416.774.3120. The mere fact that Mr. Grant would be responsible for the "parties' names are correct" is a scary cogitation. This is the same Mr. Grant that represented to the SABS Applicant that he could not file, when his file number was not recognized in the e-filing portal that it was due to a "power outage". It was about as believable as his previous representations about why he input TDGIC as the sole respondent over the very name in the "denial letters".

Why is the Tribunal remaining in a state of non-compliance with its statutory duties to forthwith file the record of proceeding? The Applicant respectfully submits that the question answers itself.

Issue #4, Volume #4(I)(F):The issues remain ongoing

The issues have not stopped there as per this article, "OLTA Pushes for Urgent LAT Review" (see: https://www.lawtimesnews.com/practice-areas/personal-injury/olta-pushes-for-urgent-licence-appeal-tribunal-review/389679)

> "The association cited "disturbing trends" drawn from an inHEALTH analysis
>
> > OTLA noted that the success rate for insured applicants bringing their disputes to LAT has fallen over the years, with just 10% getting a win in 2023 compared to 2017's 33%.
>
> "Our members have voiced concerns that the LAT's process is overly rigid, is fraught with procedural unfairness, and fails to accommodate requests, even when both parties agree. This also raises important questions about the qualifications and training of LAT adjudicators." Purewal said. "The LAT is an arm of our justice system. Injured Ontario citizens should feel confident that they are getting a fair hearing and that justice is being done. Unfortunately, with the recent declining trends in success rates for applicants and the overwhelming success of insurers is raising significant questions for our membership."

VOLUME #3(F): ADDITIONAL AUTHORITY OF ROL-LAND FARMS LIMITED

53. I will also be relying on an additional authority of *Rol-Land Farms Limited* for the purposes of my Requisition #2:

> *Rol-Land Farms Limited* (paragraph 44): party issue is a discrete issue that has been finally determined

The Divisional Court (ONSC) found, while drawing similarities to *Great Atlantic v. Minister of Citizenship (Ontario)* in *Rol-Land Farms Limited* as follows at paragraph 44 while

> **[44]** In this case, as in *Great Atlantic & Pacific Co. of Canada Ltd. v. Ontario (Minister of Citizenship)*, [1993] O.J. No. 4179 (Div. Ct.), the question whether Ms. Harold was properly added as a party should be addressed as an interlocutory matter. The issue of party status is a ***discrete issue*** that has been ***FINALLY DETERMINED*** by the **Tribunal**. The full record upon which the **Tribunal** made its decision is before this Court.

Under the sub-heading, the converse is also true: putting the *JRPA* Applicant, in his capacity as a SABS Applicant, to the expense and time of proceeding against a non-First Insurer runs the risk of repeating this *JRPA* Proceeding again on the exact same legal issues.

At paragraph 45, **LEITCH r.s.j., GREER and Swinton JJ.B.** found as follows:

> "[45] Failure to address the issue of party status at this time will subject Ms. Harold to considerable prejudice. The proceedings before the **Tribunal** are expected to last between 20 and 25 days. While the respondents have suggested that Ms. Harold need not participate, that argument is without merit, given that she risks having findings made against her. Before she should be put to the trouble and expense of a hearing, the correctness of the **Tribunal**'s decision to add her as a party should be determined. Therefore, this is one of the exceptional cases in which the application for judicial review of the interlocutory decision should be determined.

The above language in *Rol-Land Farms Limited* and section 6(2) of the *JRPA* are ironically similar in that the ONSCDC used the following: "where the preliminary decision will likely result in a fundamental failure of justice" and section 6(2) of the *JRPA* utilizes the language of "where it is made to appear to the judge that the case is one of urgency and that the delay required for an application to the Divisional Court is likely to involve a failure of justice. R.S.O. 1990, c. J.1. s. 6 (2); 2006, c. 19, Sched. C, s. 1 (1)"

The common or similar words between the jurisprudential statement of law and the legislative language in the *JRPA* are:

a. Likely;
b. Result vs. involve; and
c. Failure of justice.

The statement of law in *Rol-Land Farms Limited* and *JRPA*, ss. 6(2) both relate to a timing issue as follows:

a. The ONSC deciding a *JRPA* Application at a certain time where the underlying administrative proceeding is going (i.e. whether or not it is premature to do so); and
b. The ONSC deciding the *JRPA* Application before a single justice as opposed to having a three judge panel of the ONSC Divisional Court decide the same later (i.e. whether or not the delay in waiting for the ONSC Divisional Court to decide it later will likely, albeit only appearance, result in a failure of justice).

VOLUME #4: CONCLUSION AND JURAT

54. I believe, without making any legal conclusion, that I have provided, in addition to my filings, evidence where it has been made to appear that the case is urgent and the time to make any application to the ONSC Divisional Court will likely involve a failure of justice.

55. I do not tender any of the above evidence to castigate any of the above individuals but I have done so to draw to the attention well in advance of January 14 or 16, 2025, that I will be further raising these issues in my leave request under section 6(2) of the *JRPA*. In this manner, I believe I have provided them with sufficient time to make any necessary adjustments. I have done so, in my view, as a courtesy and out of respect for the resources of the ONSC.

56. While I will continue to condense my Oral Outline so it meets the requirement of "succinctness", I have provided the above excerpts in such form for the above purposes. I will now cross-reference my Affidavit #2 to the Oral Outline.

57. I could argue the section 6(2) of the *JRPA* request and merits at this time in person, via phone, or Zoom.

58. I swear this Affidavit #2 so I have "led evidence" in relation to the test for a request for leave of an ONSC single justice pursuant to section 6(2) of *JRPA*.

59. I swear this **Affidavit #2** for no improper purpose and for the above purposes.

Sworn before me at **Toronto, Ontario**
On this 30th day of December 2024

Mr. Kevin A. McLean (B.A., J.D., CIM)

Vinh Thu Tran, Esq.

Unlimited. No Expiration.
NO T&A PROVIDED.
Identification Confirmed.

---

[i] *Hutchinson v. Aviva General Insurance Company*, 2022 ONSC 7136, Justice Nishikawa

[ii] Cited in my letters (emails) to the ONSC Divisional Court (Madam Clerk and Ms. Lawrence) with copying of the respondents' counsel

[iii] As per the endnote in this subheading, the plaintiff (appellant at the ONSC Divisional Court and appellant at the ONCA) had a rather baseless claim marked by ludicrous, absurd and baseless attacks against any and everyone. She was seeking criminal convictions against various government bodies and employees *in absentia*. However, the relief sought to add parties, which included six lawyers no less, which was dismissed by The Honourable Justice Vella of the ONSC, sitting as a case management judge dismissed the motion on grounds of abuse of process, frivolous, vexatious et al pursuant to Rule 2.01 of the Civil Rules. The ONCA, with a three judge panel as Justice Simmons of the ONCA was concerned that while the Divisional Court's decisions and orders were final, the motions judge's (as the ONCA referred to Justice Vella, although more precisely a case management judge) order may not have been interlocutory. The corollary of the same was that the M.E. would not have required leave to appeal the order of Justice Vella but rather would have been able to bring an appeal without leave. As Simmons J.A. could not determine the same as a single justice of the ONCA, she adjourned the leave motion to the ONCA to ME, to a three justice panel. In 2021, the ONCA found as follows.

> [1] This matter has a long procedural history. For present purposes, it is sufficient to focus on the motion brought by M.E. on October 9, 2020, wherein she sought to add additional causes of action and new parties to the action. The motion judge dismissed the motion as frivolous, vexatious, and an abuse of process under r. 2.1.01: *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194. M.E. then sought leave to appeal the motion judge's order to the Divisional Court. A panel of the Divisional Court dismissed that motion.
>
> [2] On May 17, 2021, M.E. applied to this court for leave to appeal the Divisional Court's order. The Registrar has repeatedly informed her that her materials do not comply with the Rules and practice directions. On July 5, 2021, M.E. filed the underlying" Notice of Motion for Non-Compliance." Simmons J.A. heard the motion on July 27, 2021. She adjourned the matter to a full panel, noting that while the Divisional Court's order was final, the motion judge's order concerned a motion to add causes of action, which may not be interlocutory. As a single judge, Simmons J.A. could not determine this issue.
>
> [3] We conclude that M.E. was seeking to add new causes of action. An order refusing leave to amend pleadings to plead a new cause of action is final: *Atlas Construction Inc. v. Brownstones Ltd.* (1996), 46 C.P.C. (3d) 67 (Ont. Gen. Div.). So is an order dismissing a motion to add a party, which M.E. also appears to have been trying to do: *Bryson v. Kerr* (1976), 1976 CanLII 867 (ON SC), 13 O.R. (2d) 672 (Ont. Div. Ct.). Accordingly, leave to appeal is not required and an appeal lies as of right to the Court of Appeal: *Courts of Justice Act*, R.S.O. 1990, c. C.43, s. 6(1)(b).
>
> [4] We order that the appeal of the motion judge's order of October 9, 2020 may proceed in this court. Costs of this motion are reserved to the panel hearing the appeal."

"(i) "**Adequate**" is defined as: lawfully and reasonably sufficient." This connotes an objective person test by the word "**reasonably**". "**Sufficient**" is defined as: *enough* to meet the needs of a situation or a proposed end. "**Lawfully**" is defined as: being in harmony with the law; (iii) "**Alternative**" is defined as: "offering or expressing a choice"; and "**Available**" means "**present** or ready for immediate use".

[v] The general common law rule is that a decision-maker is functus officio when they make a final decision in respect of the matter before it": *Chandler v. Alberta Association of Architects*, 1989 CanLII 41 (SCC), [1989] 2 S.C.R. 848, at p. 861. In Chandler, the Supreme Court held that:"As a general rule, once a tribunal has reached a final decision in respect to the matter that is before it in accordance with its enabling statute, that decision cannot be revisited because

the tribunal has changed its mind, made an error within jurisdiction or because there has been a change of circumstances. It can only do so if authorized by statute or if there has been a slip or error within [certain] exceptions…." Ergo, while it is always prudent and responsible, like the Applicant did, to bring forth a reconsideration motion, VCM was functus officio when she executed the VCM Decision.

[xi] definition of "preliminary", denoting an action or event preceding or done in preparation for something fuller or more important.

[xii] *Canada Bell Laboratories (Canada) Inc. v. Pharmacia Inc.*, 1994 CanLII 3529 (FCA) (F.C.A.); *Ravlam v. Western Logistics Inc.*, 2021 FCA 241 at paras. 23, 27-30.

[xiii] Where Mr. McLean's FIPPA request was delivered

[xiv] https://lso.ca/public-resources/finding-a-lawyer-or-paralegal/directory-search/member?MemberNumber=38621D

[xv] https://www.canadianunderwriter.ca/risk/advise-and-order-adjudicator-under-investigation-for-conflict-of-interest-allegations-1004236762/

Tab 7:

Re: Applicant's Motion Record for Motion #1 (Compel the Tribunal to forthwith file the record of proceeding): Court File No. DC-24-00000718-00JR

This is the 4th affidavit of Mr. Kevin A. McLean in this JRPA Proceeding and it was made on January 18th, 2025

Court File No. DC-24-0000718-00JR

FORM 4D

Courts of Justice Act

AFFIDAVIT

ONTARIO SUPERIOR COURT OF JUSTICE (DIVISIONAL COURT)

BETWEEN:

KEVIN ALEXANDER MCLEAN

APPLICANT

- and -

TD HOME AND AUTO INSURANCE COMPANY, SECURITY NATIONAL INSURANCE COMPANY, TD GENERAL INSURANCE COMPANY, EXECUTIVE DIRECTOR, LICENCE APPEAL TRIBUNAL,
HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO, REPRESENTED BY EXECUTIVE CHAIR OF TRIBUNALS ONTARIO IN MR. SEAN WEIR, THE ATTORNEY GENERAL OF ONTARIO

RESPONDENTS

In a matter under the *Judicial Review Procedure Act*, RSO 1990, c J.1 et seq

Affidavit #4 of Kevin A. McLean in this *JRPA* Proceeding

(Affidavit in support of Applicant's Notice of Motion #1, compelling the Tribunal to comply with its statutory duties – forthwith filing of the Record of Proceeding pursuant to section 10 of *JRPA* and section 30 of the SPPA – other relief (see: Schedule "A")

I, Kevin Alexander McLean, Disabled (B.A., LL.B., CIM) of **Toronto, Ontario, SWEAR THAT:**

Volume #1: Sworn Under Oath; under the Penalty of Perjury; and Introduction

1 I am the JRPA Applicant and I swear under penalty of perjury that the following facts are true. When stating my beliefs, I verily believe these beliefs to be true and, as such, I have

cited their sources. When using phrases like "in my view," "in my opinion," or "belief," I express my factual position and opinions and I am not making any legal conclusions.

2. I put the respondents to strict proof of any and all of their positions and allegations as of today's date. I ask that the ONSC draw an adverse inference against any respondent, party (where applicable) or person where I have sworn evidence that has been provided to them and they have not countered;

3. Where double underlining has been utilized, the double underlining is mine and added for emphasis

VOLUME #2: MR. BOYCE'S PREVIOUS CONTACT INFORMATION ON THE LSO DIRECTORY WEBSITE

4. I now copy and paste from my Affidavit #2 which was the contact information that I copied and pasted on or around December 30, 2024, from the LSO directory. For sake of completeness, I have copied and pasted the identical language from paragraph 51 of my Affidavit #2.

> "I am also concerned that Mr. Boyce is located at the same office as VCI, and presumably the same office as VCM (albeit she appears to not have updated her contact information with the LSO). I distinguish the same with the office location of Ms. Im, counsel to Ministry of Attorney General. I now copy and paste from the Appendices of my Oral Outline (Draft):
>
> > **Order in Council 1421/2023**
> > On the recommendation of the undersigned, the Lieutenant Governor of Ontario, by and with the advice and concurrence of the Executive Council of Ontario, orders that:
> > Whereas Jesse Boyce was reappointed as full-time member and vice-chair of the Licence Appeal **Tribunal** for a fixed term of three years, effective November 12, 2022, by Order in Council O.C. 1319/2022;
> > And whereas Jesse Boyce was reappointed as part-time member of the Ontario Civilian Police Commission for a fixed term of five years, effective February 21, 2023, by Order in Council O.C. 67/2023;
> > And whereas Jesse Boyce tendered his resignation effective August 21, 2023,
> > Therefore, pursuant to subsection 2(3) of the *Licence Appeal* ***Tribunal*** *Act, 1999*, subsection 21(2) of the *Police Services Act* and subsection 16(4) of the *Adjudicative* ***Tribunals*** *Accountability, Governance and Appointments Act, 2009*, Orders in Council O.C. 1319/2022 and 67/2023 be revoked effective August 21, 2023.
> > **Ministry of the Attorney General**
> > **Approved and Ordered:** September 28, 2023
>
> LSO Directory

Jesse Aaron Boyce
Back to results New Search Print
Assumed Name
Jesse A. Boyce
Law Society Number
72486F
Class of Licence Definitions
Lawyer (L1)
Real Estate Insured [1]
No
Status Definitions
Practising Law - Employed
Business Name
SLASTO
Business Address
25 Grosvenor 4th FloorToronto, OntarioM7A 2S8
Phone
1 437 997 1235 Ext.
Trusteeships
None
Current Practice Restrictions
None
Current Regulatory Proceedings
None
Regulatory History
None

[end of quotation]

5. I served the Tribunal with a copy of my filed and paid for JRPA Application of November 15, 2024, on November 15, 2024, by way of emails to the case manager of the LAT Proceeding in Ms. Hannah Lee. I also filed a copy of the same on or around November 15, 2024, in the LAT (AABS) e-filing portal.

6. I did not know Mr. Boyce until I became aware that the Licence Appeal Tribunal had purported to serve me, albeit at the incorrect address for service (i.e. mcleansnicklat@gmail.com) as opposed to the email on file with the ONSC Divisional Court of appeals@elements.email.com) with a copy of the Notice of Appearance on behalf of the Tribunal.

7. For ease of reference, the email from Ms. Maciel, law clerk at Tribunals Ontario (but perhaps not in a specialized role with the LAT or LAT/AABS) stated as follows:

[beginning of quotation]

From: Maciel, Milene (MAG) <Milene.Maciel@ontario.ca>
Sent: Wednesday, November 27, 2024 2:52 PM
To: mcleansnicklat@gmail.com; Matthew.Nieuwland@tdinsurance.com
Cc: Boyce, Jesse (MAG) <Jesse.Boyce@ontario.ca>; Collie, Connor (MAG) <Connor.Collie@ontario.ca>; Cloc-Reception (MAG)

<Cloc.Reception@ontario.ca>; SCJ-CSJ Div Court Mail (JUD) <scj-csj.divcourtmail@ontario.ca>
Subject: LAT's Notice of Appearance : McLean v. TD Home and Auto Insurance et al. : 718'24

Good Afternoon,

Please find attached the Licence Appeal Tribunal's Notice of Appearance and covering letter which are being served in accordance with the Rules of Civil Procedure

Best Regards,

Milene Maciel (Pronouns: she-her) (learn more)

Law Clerk

Tribunals Ontario: Legal Services

P: 416-272-8057

E: milene.maciel@ontario.ca

W: tribunalsontario.ca

Tribunals Ontario
Tribunaux décisionnels Ontario

[end of quotation]

8 I believe that the Tribunal forwarded him a copy of my JRPA Application.

The confirmation of receipt and filing by Madam Clerk or Madam Registrar (Ms. Clegg)

9. I now copy and paste the same from the response of Madam Registrar at the time below:

"On Wed, Nov 27, 2024 at 3:11 PM SCJ-CSJ Div Court Mail (JUD) <scj-csj.divcourtmail@ontario.ca> wrote:
Hello Ms. Macnel,

Received and file [sic]

Thanks.

JESSA-MARIE CLEGG
Clerk
Divisional Court, Toronto Region
(416) 327-5169
(416) 327-5569 (Fax)
130 Queen Street West, Toronto ON
M5H 2N5
Osgoode Hall - Room 124

10. I note that this set a precedent, in my view, that the respondents and I could file and serve ("deliver" under the Civil Rules) via email as, inter alia, my JRPA Application was denoted as urgent along with pleading section 6(2) of the JRPA

11. Mr. Boyce's signature block so states

[beginning of quotation]

Jesse A. Boyce (he/him)

Counsel

Tribunals Ontario – Legal Services Branch

(437) 997-1235

jesse.boyce@ontario.ca

tribunalsontario.ca

[end of signature]

12. I note that the phone number in Mr. Boyce's signature block and his information on the LSO directory website as of December 30, 2024, are identical

13. I have only found jurisprudence where Mr. Boyce has acted, in his role as counsel (a lawyer licensee representative (see: section 1 and 10 of the SPPA) for the Licence Appeal Tribunal.

14 I copy and paste the following from the Tribunals Ontario website[4].

> "INTRODUCTION
> The Licence Appeal Tribunal (LAT or "the Tribunal") is an adjudicative tribunal included within the Safety, Licensing Appeals and Standards Tribunals Ontario (SLASTO). SLASTO is a cluster of adjudicative tribunals created on April 1, 2013. SLASTO is designated as a cluster pursuant to s. 15 of the *Adjudicative Tribunals Accountability, Governance and Appointments Act, 2009* and s. 4 of Ontario Regulation 126/10.
>
> The constituent tribunals of SLASTO are:
>
> Animal Care Review Board (ACRB)
>
> Fire Safety Commission (FSC)
>
> Licence Appeal Tribunal (LAT)
>
> Ontario Civilian Police Commission (OCPC)
>
> Ontario Parole Board (OPB)
>
> LAT adjudicates matters in a variety of diverse areas such as alcohol and gaming regulation, motor vehicle impoundments and driver's licences, new home warranties, consumer protection, regulation of various occupations and businesses, and starting on April 1, 2016, in relation to automobile insurance Statutory Accident Benefits Schedule (SABS) disputes. LAT conducts proceedings pursuant to the following statutes:
>
> Insurance Act
>
> You may contact LAT by mail at:
>
> Licence Appeal Tribunal
>
> 15 Grosvenor Street, Ground Floor
>
> Toronto, Ontario
>
> M7A 2G6

> Please note that AABS maintains a separate mailing address from the main LAT address. Please check the website referenced above for current AABS mailing address."

15. I note that Vice Chair Lake has represented on the LSO Directory that she is employed by LAT/AABS and located at 25 Grosvenor Street, Toronto, Ontario.

16. I note that Mr. Boyce represented on the LSO Directory that he was employed by SLASTO, which I believe is a cluster or sub-cluster within the cluster of the 13 tribunals that make up Tribunals Ontario.

17. I confirm that when I attempted to deliver my application fee for my access request of the LAT in September 2024 (ironically, in my view, the same date that VCM represented that the VCM Decision was dated albeit discrepantly with the signed copy of the same) that I could not enter 15 Grosvenor Street as it denoted that said building was closed to the public since the pandemic. I then attended the building and premises at 25 Grosvenor Street and was able to deliver the same to the privacy division of LAT.

VOLUME #3: SOCIETY OF ONTARIO ADJUDICATORS AND REGULATORS: PUBLIC INFORMATION: JOB POSTING[3]

18. I repeat and rely upon my references to *Shuttleworth* in my affidavit #2, paragraph 52.

19. I rely upon he above hyperlinked job posting regarding said job posting regarding a manger of legal services at SLASTO:

> "Manager, Legal Services - Safety, Licensing Appeals and Standards Tribunals Ontario (SLASTO)
> Posted on February 9, 2018 - 12:47pm
> The Safety, Licensing Appeals and Standards Tribunals Ontario (SLASTO) has a challenging opportunity for a strategic thinker with highly developed leadership skills to manage the provision of legal and strategic policy advice to the Executive Chair, SLASTO and its constituent tribunals.
>
> What can I expect to do in this role?
>
> Reporting to the Executive Lead and accountable to the Executive Chair, your duties will include:
>
> • Serving as counsel to the Executive Chair, SLASTO within a solicitor-client relationship
>
> • Leading a team of highly skilled legal professionals (in both unionized and excluded positions)

• Providing expert legal advice to provide quality assurance and maintain and enhance the consistency and coherence of Tribunal decisions, adjudicative processes and dispute resolution processes

• Overseeing investigations and prosecutions under the Police Services Act at the direction of the Executive Chair, SLASTO

• Representing, or overseeing the representation of SLASTO and its tribunals before the Courts, for appeals, judicial review applications and various court-related matters

• Reviewing and/or drafting contracts, agreements and internal policies and ensuring that they are in compliance with all statutory or legal requirements

• Monitoring trends in decisions and evolving jurisprudence for use in adjudicator training, and for targeting emerging legal and policy issues

• Providing leadership and direction in the preparation and delivery of orientation sessions and continuing education for Tribunal Members, Vice-Chairs and staff, including topics such as: legislation, rules and practice directions, case law, conduct of hearings, and decision writing

• Representing SLASTO at public symposia, conferences, and provincial and national meetings of organizations/practitioners, and other fora involving issues related to SLASTO, establishing contacts/networks, and delivering presentations

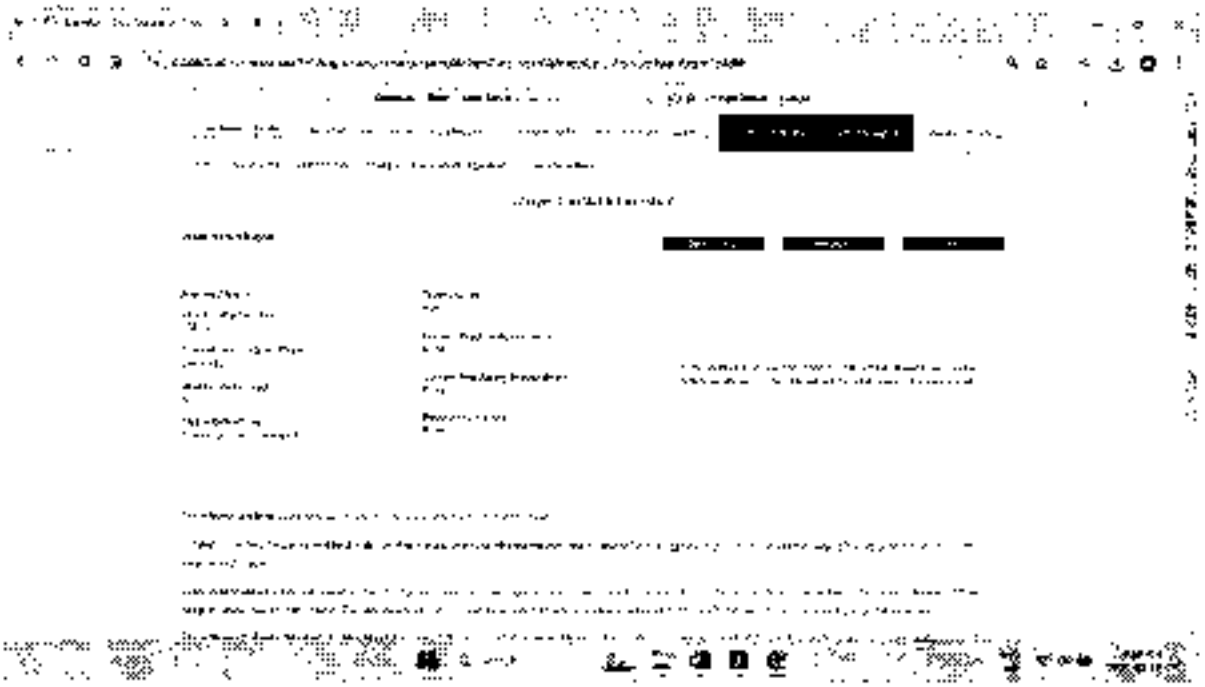
• Developing, managing, and growing complex relationships with multiple constituencies on behalf of SLASTO

• Cultivating a work environment that values respect, diversity and inclusion

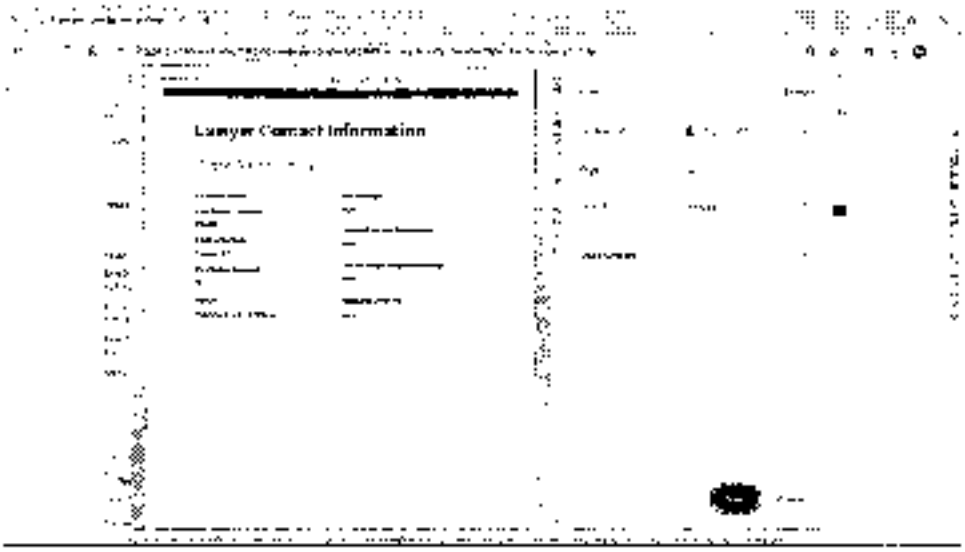
• Contributing as a key member of the SLASTO executive management team"

VOLUME #4: MR. BOYCE'S CURRENT CONTACT INFORMATION

20 I now attach or copy and paste a screenshot from the LSO Directory website from Saturday, January 18, 2025, at approximately 9:38 a.m.:



2 I also copy and paste a screenshot of Mr. Boyce's revised contact information, on a date unknown to me but I believe at some time after December 30, 2024



22. For ease of reference, the missing components therein are:
    a. Employer; and
    b. Address.

VOLUME #5: COPY OF SELECT RELEVANT PARAGRAPHS FROM MY DRAFT ORAL OUTLINE AND ORAL COMPENDIUM

23. I now copy and paste from my oral outline (draft), contained at Tab 1 therein, which I have attempted to adhere to the principles in *Robertson*,

[start of quotation]

ISSUE #4: Footnote #4[(c)(ii)]: Two competing interests: fully informed adjudication of issues vs. tribunal impartiality

The two most important considerations, drawn from those cases, were the (i) "importance of having a fully **informed** adjudication of the issues before the court" (para. 15); and (ii) "the importance of maintaining tribunal **impartiality**" (para. 38). The principle of impartiality is implicated by tribunal argument on appeal, because decisions may in some cases be remitted to the tribunal for further consideration. Stratas J.A. found that "[s]ubmissions by the tribunal in a judicial review proceeding that descend too far, too intensely, or too aggressively into the merits of the matter before the tribunal may disable the tribunal from conducting an impartial redetermination of the merits later": *Quadrion*, at para. 16.[1] [see paragraph 30 of Ontario Energy Board]

Finality, the principle whereby a tribunal may not speak on a matter again once it has decided upon it and provided reasons for its decision, is discussed in greater detail below, as it is more directly related to concerns surrounding "functus", rather than agency standing itself. The court should limit tribunal participation if it will undermine future confidence in its objectivity. The court identified a list of factors, discussed further below, that may aid in determining whether and to what extent the tribunal should be permitted to make submissions: paras. 36-38 of *Goodis*[1]. If the judicial review application involves only questions of law or primarily questions of law (or the limitation of the appeal to questions of law or an extricable question of law from a finding of mixed fact and law and/or findings of fact unsupported by evidence which are questions of law) in relation to certain decisions and orders, then the participation (not necessarily intervention) of the Tribunal in this ***JRPA Proceeding*** is not particularly necessary or relevant."

[END OF QUOTATION]

VOLUME #5(A) MY NOW POSITION, IN LIGHT OF MR. BOYCE'S CHANGE OF POSITION INVOLVING HIS EMPLOYER (SLASTO) AND ADDRESS AND OBFUSCATION OF THE SAME

24. The Applicant's now stated and formal position, by the provision of notice to SLASTO, LAT and Mr. Boyce including any other potential counsel (lawyer licensee representative) is encapsulated in the current draft in the Oral Outline (draft form):

[start of quotation]

ISSUE #4: Footnote #4[(c)(ii)]: Mr. Boyce's admission, by conduct, in January 2025, has disabled the Tribunal from adjudicating the matter any further and Mr. Boyce must be prohibited from acting in this JRPA Proceeding

The prime principle of impartiality is implicated by tribunal argument in this JRPA Application at, because decisions may in some cases be remitted to the tribunal for further consideration. The LSO public-purpose management resources and By-Laws, which have legislative force, are of great import. From the ONSC – *Applewood v. Ealing* as per Gordon J. of the Central West Region, articulated the legal principles in relation to the ONSC (which the ONSC Divisional Court is the intermediate appellate court or "court of review").

This Court's jurisdiction to remove Bennett Jones LLP as counsel for Talisman on the basis of a conflict of interest is an inherent one. It is not derived from any particular legislation or rule. It is grounded in the Court's objective to safeguard the proper administration of justice. Pahl v. Katz Group Canada Ltd., [2006] O.J. No 4596 (S.C.J.) at paragraph 23

> [14] The question is whether these Defendants have established on a balance of probabilities that a fair minded and reasonably informed member of the public would conclude that the removal of Bennett Jones LLP as counsel for Talisman is necessary for the proper administration of justice. MacDonald Estate v. Martin, 1990 CanLII 32 (SCC), [1990] 3 S.C.R. 1235 at paragraph 47.
>
> [14] The question is whether these Defendants have established on a balance of probabilities that a fair-minded and reasonably informed member of the public would conclude that the removal of Bennett Jones LLP as counsel for Talisman is necessary for the proper administration of justice. MacDonald Estate v. Martin, 1990 CanLII 32 (SCC), [1990] 3 S.C.R. 1235 at paragraph 47.
>
> [15] In analyzing the question, the Court may consider any applicable rules of professional conduct. Where there is a rule or guideline or ethical principle directly on point, the Court ought to consider it but is not bound by it. MacDonald Estate, supra, at paragraph 21

As it relates to a lawyer, which Mr. Boyce is albeit he must have taken active steps to hide his address and employer name of SLASTO after the conflict of interest was drawn to his attention on December 30, 2024. Mr. Boyce also made up a new version of the law that there was some kind of reservation for the Tribunal to file the record of proceeding within 60 days of an applicant, in a JRPA matter bringing her JRPA application. Apparently, Mr. Boyce's views and practices are more important and take precedence and/or are parametral to that of a well-functioning democratic society under the rule of law by a democratically elected members of the Legislature. In any event, he has not even followed his created non-law requirement

Mr. Boyce, the SLASTO cluster, Tribunal (LAT) and the divisional AABS will now have to face the evidence that there is a systemic issue if the LAT wishes to obtain leave to file its factum and application record past the deadline imposed by our Lieutenant Governor under the Rules of Civil Procedure. Moreover, there cannot be a case conference in ANY TIME with Mr. Boyce as counsel to the LAT because he would be in breach of his professional obligations and duties as an officer of the court.

Moreover, without a record of proceeding, to the extent that "prematurity" needed to be "discussed" (whatever that means in fact or in law – leaving aside another conflict of interest, albeit without any where near the allegations made and directly aimed at the Tribunal and Mr. Boyce) such discussions cannot be in the abstract. Mr. Boyce in his undated imaging are of emails with this DNSC (Divisional Court) copied not only the Applicant and other respondents and their counsel, which, with the benefit of hindsight bias and retrospection had self evident purposes, relied on Awanda and Hoogstra. Awanda's legal principles are in the Applicant's factum. Hoogstra has about as much relevance here to Mr. Boyce's representation of the Tribunal herein considering his representation of the Tribunal, and provision of legal advice to it involving the LAT Proceeding.

Mr. Boyce has an overriding duty as an officer of the court. Lawyers are officers of the court in Canada. This means that lawyers are part of the legal system and have a role in the administration of justice. The Applicant forcefully notes the overlap between the jurisdiction of this court to remove counsel to the Tribunal for disrupted its arguments pursuant to *In Taylor*, ONSC Divisional Court (Toronto) as per The Honourable Justices Ryan Bell, Nishikawa, and Shore JJ and the role of a lawyer, as an officer of the court in the administration of justice.

Lawyers are officers of the court when they appear in court on behalf of a client. They are expected to uphold the authority and dignity of the court, and to serve the cause of justice.

In 2010, Chief Justice Winkler, in the "Remarks of Chief Justice Warren K. Winkler on the Occasion of the Law Society of Upper Canada's Call to the Bar Ceremony Toronto, Ontario June 15, 2010"[3] stated the following:

> "The privilege of call up yourself a lawyer comes with many perquisites. You will be treated with respect and deference not only by your clients, but also by the public generally. You will be recognized as an officer of the court whose job is not

> In a courtroom. You will have the distinction of being gowned, as you are today, whenever you appear in court on behalf of a party. The gown is itself a special distinction, a powerful sign or manifestation of dignity and worth. You will have the pleasure and satisfaction of being referred to as "counsel" by judges and opposing lawyers.

It is now notable that the one thing that Mr. Boyce has had no interest in doing is that of "appearing in the courtroom" and filing a factum and application record on behalf of the Tribunal within 30 days of December 12, 2024. Moreover, from the outset, the Tribunal, through Mr. Boyce, has not complied with its statutory duty to file forthwith the record of proceeding.

With that in reliance of this Oral Outline and other filed documents with this ONSC Divisional Court, will be the communication of the formal adjournment request (as per Ms. Hannah Lee representing to the Applicant it could be made two days before January 24, 2025), with supporting materials, relying upon, inter alia, that the Tribunal must address a motion as to whether it has lost jurisdiction based upon, inter alia, Mr. Boyce's contemplated dual roles of providing legal advice to the Tribunal regarding decisions to be issued and providing advice to the Tribunal in this very JRPA Proceeding. Parenthetically, it does not mean that such conflict of interest does not arise in a LAT Act Appeal but it is more obvious and glaring when there is no stay of the underlying LAT proceeding. For the Court's benefit, there are other grounds and not squarely on Mr. Boyce and his displayed employer SLASTO (LAT), at the very same office building of adjudicators and vice chairs for the LAT in that in relation to a document production motion, partly granted in favour of the SADS Applicant, one Mr. Kanji purporting to comply with the same provided documents, non-responsive to the order of the Tribunal, on behalf of "TDGLC" with an email title of "Melanie v. TDGLC". It is rather ironic twist considering the decision of VCM in NOM 413 involving a non-party in TDGLC – of which said decisions and orders therein (not in NOM 414) is not under judicial review.
As per the ONSC in Talisman, rules of professional conduct are most instructive:

Duties owed to third persons can created conflicts of interest. It is trite that the more important, by a considerable distance, persons with respect to duties is that of the ONSC Divisional Court which includes its staff, and those orders de facto ordre former lawyers turned judges, with compared to that of the JRPA Applicant. Nonetheless, there are multiple third persons to which Mr. Boyce owes duties.

A conflict of interest exists when there is a substantial risk that a lawyer or paralegal's loyalty to or representation of a client would be materially and adversely affected by competing duties to another party or competing interests between the client(s) and the licensee. Because even well-intentioned licensees may not realize that the performance of their duties has been impaired, the rules address the risk of impairment rather than actual impairment. Substantial risk means a significant and plausible risk. It need not be certain or even likely, but it must be more than a mere possibility. Conflicts of interest may fall into one of the below categories:[1]

A client cannot waive a COI where the lawyer may be a witness (see *Wheeler v. Taylor*, 2021 ONSC 818 as per Justice Dietrich. At paragraph 31, Justice Dietrich, citing *Dingwall v. Aiden Estate*, found as follows whilst citing the SCC and another one of the historically great legal minds to come to the Ontario bench in The Honourable Mr. Justice Perrell, formerly of Osler who had written, as a lawyer, a vast amount of analytically precise secondary source articles:

> [31] As stated by Gillese J. (as she then was) in *Dingwall v. Aiden Estate*, [999] O.J. No. 4816 (Ont. S.C.), at para. 27:
>
> When counsel appears as a witness on a contentious matter, it causes two problems. First, it may result in a conflict of interest between counsel and his client. That conflict may be waived by the client .... The second problem relates to the administration of justice. The dual roles serve to create a conflict between counsel's obligations of objectivity and detachment, which are owed to the court, and his obligations as his client to present evidence in as favourable a light as possible. This is a conflict that cannot be waived by the client as the conflict is between counsel and the court/justice system.
>
> [32] The Law Society of Ontario *Rules of Professional Conduct* similarly state that a lawyer who appears as advocate shall not testify or submit their own affidavit evidence before the tribunal unless

permitted to do so on a purely formal or uncontroverted matter. s. 5.2-1.

[53] While the courts are not bound by the codes of conduct applicable to lawyers, the Supreme Court of Canada stated at *MacDonald Estate*, at p. 124n, that "an expression of a professional standard in a code of ethics relating to a matter before the court should be considered an important statement of public policy."

[54] In *Re: Brayko Parenteau Trustee*, 2018 ONSC 4103, at para. 56, Farrell J. confirmed that a lawyer who is a material witness should not be permitted to continue acting as counsel even if they do not intend to testify in the case.

Mr. Boyce is (and has been the same time since his adoption as formal counsel of record herein) now in a conflict between himself and the ONSC (Divisional Court) or the ONSC (if the matter proceeds by urgent application before a single just as of the ONSC) there to setting.

To even allow Mr. Boyce to discuss another matter, formally or informally (note here it is self-evident why he was bringing out of emails with the ONSC Divisional Court) would be contrary to his duties to the court.

What other reason would Mr. Boyce have for requesting the amendment of his information with the LSO?

It is herein that Tribunal counsel is rightfully charged with providing an overview of the filed record of proceeding and the context of *the proceeding before the Tribunal*. Is Mr. Boyce, in light of his surveillance and obfuscation of his employer (SLASTO) and his address (in contact with the public LSO Directory, able to discharge these duties in accordance with his duties to this Court as an officer of the Court? The question answers itself.

The more compelling public interest question is whether any lawyer (in-house (see reference in the affidavit provided by in-house counsel in *Mandenewski*)) who is employed by SLASTO able to do so? The Applicant says that optically, by reasonable perception, is that it is impossible for any lawyer to do so whether or not they are or were, in fact, providing advice to the Tribunal in any specific decisions involving any JRPA applicant. The Applicant's registrant submission on this point is grounded in ONSC common law precedent.

There is a *strong* concern that licensees who work together share confidences especially where they work under a "group" wall of internal confidentiality screens are in place (see *Mahmangeli*, [2004] OJ 3082 (Ont Sup. Ct.). Where confidential information exchanged on a prior related matter or file (or related to a current retainer the "licensees" MUST rebut inference confidential information was exchanged (see *Mahmangeli*, [2004] OJ 3082 (Ont Sup. Ct.).

The first obvious counter-query is are the adjudicators licensees? They are indeed in the VC Lake and VC Morrissette are licensees but "not practising law." The second counter is that Mahmangeli related to confidential information between potential shared between a prior related matter to a current retainer.

However, that is of no assistance to the LAT, Mr. Boyce and any potential future counsel (Applicable herein) when considering the participation scope that the Tribunal would be entitled to by virtue of having some form of general party status pursuant to section 9(2) of the JRPA. Moreover, the ONSC has a supervisory and residual discretion to not accept arguments from the Tribunal whether there is any pre-hearing motion or case conference about its defined scope of participation. Each Tribunal must be analyzed distinctly but this Tribunal, the LAT under the SLASTO, is admittedly, or at least by representation to the public, a quasi-judicial tribunal. The context is most important in various cases. However, a case conference, even by telephone, is an "appearance before the Court" which is fatal to Mr. Boyce and this Tribunal.

Therefore, Mr. Boyce has to rebut the inference and provide contextual explanations to this Court as to why he did what he did in changing his address after receipt of the Applicant's affidavit #2 and perhaps affidavit #2 (and perhaps after the deadline under Rule 68.01(4) of the Civil Rules). Timing is everything.

Moreover, the SLASTO Tribunal and Mr. Boyce, and any potential legal counsel, who works for the SLASTO, would have to provide evidence of the confidentiality screens. Are there confidentiality screens between the adjudicators of LAT and legal counsel of LAT? It is where the *Mandenewski* decision comes back to haunt this Tribunal in that the very Court documents are sent to the SLASTO

Legal Unit – Mr. Boyce's employer that he has only in the last two or so weeks had from the "public record"

As Mr. Boyce is the only individual, on behalf of another client, that raised the preliminary objection of "prematurity" without him being able to participate on behalf of the Tribunal, and the Tribunal not filing any factum or application record, the Applicant is entitled to proceed and not wait around for the SLASTO to "clean up his house" and manipulate addresses on the back-end of the LSO portal for public removal.

Mr. Boyce only raised prematurity because he wanted to delay the inevitable result in this JRPA Proceeding, at least as it relates to the Jurat Issues' issue, so that he could give more advice to the Tribunal in relation to other decisions. It is now likely he was giving advice on it all along the way after November 19, 2024, in relation to the outstanding motions and how to navigate the same.

This does not mean that every other tribunal in this province or other provinces in Canada cannot have representation at the Tribunal but it leads to the inevitable conclusion that when the likes of Tribunal members counsel are at the same physical location as adjudicators and vice chairs, and where they share the same domain name with the same hosting under the same web-site, and they admit an *Ehrentreund* that the LAT's practice explicitly involves the SLASTO legal unit (the very employer name that Mr. Boyce removed from the LSO Directory as that would change the actualities of what occurs "behind the scenes"):

> Second, there is legal review: The SLASTO Legal Services Unit reviews the decision to ensure [paraphrase] that the correct legal test has been applied and to identify any related case law that was not mentioned that might be helpful."

The Tribunal will now get the opportunity to determine whether it should grant an adjournment, at least on cost ground, as to whether it has lost jurisdiction to hear any further matters because of Mr. Boyce's dual role of providing advice to it in the McLean LAT Proceeding and then to the Tribunal in the McLean JRPA Proceeding. This is different than the legal ground so referenced above involving the Tribunal descending too far into legal argument.

To allow Mr. Boyce to even discuss, however informal, the preliminary objection of prematurity, irrespective of its lack of merit, would be counter to the inherent jurisdiction of this Honourable Court, and it is an obvious and disabling conflict of interest between Mr. Boyce (and any future counsel of the LAT who seeks to act as a proxy or a "proxy upon proxy" (i.e. proxy for another) and this Court (whether on direction by three justices) or "general direction" (by a single justice) on a motion, leave request or merits.

The legal scholars in this area have suggested a potentially preferred route for counsel to tribunals and courts to have judicially appointed amicus curiae appear on behalf of tribunals, particularly government ones that are self-espoused as quasi-judicial. In the following article[1], Mr. Lorne Sossin[2] (see: JD (Victoria), LL M (McGill), PhD (Cambridge); Member of the Law Society of Upper Canada[3]; Associate Professor Thompson Rivers University Faculty of Law) espoused the following whilst cross-referencing with authorities at 126 AM. BAR A. LAW REVIEW (2016) 54.1, page 8 thereon:

> "Courts may also appoint amici curiae as part of their inherent jurisdiction where it is necessary to assist the court in discharging its work.[4] The public advocate or amicus curiae could gather specialist information and present it in a more detached and informed manner to the court. Such a system would assist protect public confidence in administrative impartiality as it would interpose a layer, akin to an "institutional arms"[5] between the tribunal and the reviewing court."

The only competing principle to tribunal impartiality is "having fully informed adjudication of the issues before the reviewing court". Mr. Boyce cannot do the same and no other counsel employed by the SLASTO (LAT) can do the same – not only not on these facts.

The Tribunal is not discharged of its statutory duties to a full record of proceeding under the JRPA. However, I agree with the essence in this urgent JRPA and hence the Applicant's motion of Friday, January 10, 2025. While this JRPA Application had numerous public issues before Mr. Boyce "bait and switch" or "intentional hiding of his address of employment and employer", it has more now.

The JRPA Applicant still has the burden of proving, on a balance of probabilities, that the VCM Decisions and VCM Orders for failure to even address certain issues and orders sought, was incorrect and must be substituted, and this ONSC Court, like the Tribunal, has found many times, cannot force the Tribunal or the respondent insurance companies, who had no interest in complying with the Practice Direction regarding "Information Submitted to the Court", cannot force respondents to file notices of appearances, factums and application records. However, actions or inactions come with consequences and that is the complete deprivation of participation rights. However, the Tribunal must still be compelled to file the record of proceedings. The only "silver lining" is that it makes scheduling easier."

[end of quotation]

VOLUME #6: JURAT

25. I swear, under the penalty of perjury, that I have raised the issues above as soon as they become known to me and then commenced the drafting of this affidavit for filing with the ONSC and for service upon the Tribunal and the respondent insurance companies.

26. I most sincerely hope that this affidavit is of assistance to SLASTO, Tribunal, Mr. Boyce and any other potential counsel that the former two may seek to retain herein and in any future unrelated JRPA or LAT Act appeal proceedings. I have no personal animus to any of the counsel for the respondents but I felt compelled to draw this to their attention so I was not seen to have waived or acquiesced to the same. I object on the above grounds to Mr. Boyce or any counsel at the LAT (SLASTO) engaging in any form of representation of the LAT herein. As the respondent insurance companies did not participate in NOM #14 and #15, and have not filed a factum and application record, I remain ready, willing and able to proceed on any date commencing next week.

27. I swear this **Affidavit #4** for no improper purpose and for the above purposes.

Sworn before me at **Toronto, Ontario**
On this 18th day of January of 2025

Mr. Kenneth McLean (B.A., J.D., CIM)

Vinh Tan Tran, Esq.

Notary Public for Ontario
Expiration:
NO EXPIRY
Identification Confirmed

Schedule "A": the served (or exchanged) motion of the Applicant on Friday, January 17, 2025

Court File No. DC-24-00000718-40JR

FORM 37A

Courts of Justice Act

NOTICE OF MOTION

BETWEEN:

KEVIN ALEXANDER MCLEAN

APPLICANT

- and -

TD HOME AND AUTO INSURANCE COMPANY, SECURITY NATIONAL INSURANCE COMPANY, TD GENERAL INSURANCE COMPANY, EXECUTIVE C, LICENCE APPEAL TRIBUNAL,
HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO, REPRESENTED BY EXECUTIVE CHAIR OF TRIBUNALS ONTARIO IN MR. SEAN WEIR, THE ATTORNEY GENERAL OF ONTARIO

RESPONDENTS

NOTICE OF MOTION

The Applicant will make a motion to the court on Wednesday, January 22, 2025, at 9:30 a.m. or as soon after that time as the motion can be heard.

PROPOSED METHOD OF HEARING: The motion is to be heard.

☐ In writing under subrule 37.12.1 (1) because it is *(insert one of* on consent, unopposed *or* made without notice*)*[2];

☐ In writing as an opposed motion under subrule 37.12.1 (4);

☐ In person;

X By telephone conference;

☐By video conference.

at the following location

Address of Local Registrar court office Divisional Court

Superior Court of Justice
Osgoode Hall
130 Queen Street West
Toronto, ON M5H 2N5

THE MOTION IS FOR the following relief:

1. An Order abridging the time, prescribed under Rule 37 and 39 of the *Rules Of Civil Procedure*[1], for this motion to be heard on the date above;

2. An Order abridging the time for any requirement for the Applicant to provide a confirmation of his motion in the prescribed form from three days under (Rule 37.10.1(1)) to the day before the motion hearing or the day of the hearing including any orders of a "nunc pro tunc" applicable generally and specifically;

3. An Order that the date of the receipt of this unfiled yet served motion shall be deemed to be the date of **delivery**[14] of this motion and/or by operation of the "*nunc pro tunc*" principle.

4. An Order dispensing with the need for the delivery of any motion record;

5. An Order that the delegated or presiding motion judge (not an "associate judge" pursuant to 37.02(2)(t) of the *Rules Of Civil Procedure* and section 4 of the *JRPA*) shall not be the Honourable Madam Justice Shaw and/or any other justice that was employed by Epstein Cole and/or was a partner in the limited liability partnership of Epstein Cole LLP during the time from Fall of 2017 to present;

6. An order compelling the Licence Appeal Tribunal (the "**Tribunal**") to file the Record of Proceeding forthwith and in accordance with, inter alia, section 10 of the *JRPA* and in accordance, from a content standpoint with section 20 of the *SPPA*;

7. An Order that the Tribunal is prohibited from any form of participation in this JRPA Proceeding until it does so in full and strict compliance with aforementioned legislative sections;

8. An Order dispensing with the need for the signature on behalf, "as per", "per procurationem", by proxy or agent of the Licence Appeal Tribunal and a forthwith

endorsement of the pronounced order by the Honourable presiding judge on this notice of motion, any amended[15] notice of motion or the delivered[15] notice of motion (if applicable);

9. Costs in favour of the Applicant against the Tribunal on a substantial indemnity basis to be determined by this Honourable Court after providing leave to the Applicant to provide a costs outline or written argument within three days of the pronouncement of the orders herein and limited to three pages double spaced; and

10. Such other orders that are consistent with the above.

THE GROUNDS FOR THE MOTION ARE:

1. The above noted statutes but more specifically, but not limited to, the following statutory subsections;

    a. Section 9(2) of the *JRPA*;

    b. Section 10 of the *JRPA*;

    c. Section 20 of the *SPPA*;

2. The *Courts of Justice Act* (the "CJA"),

3. *Rules Of Civil Procedures* including but not limited to the following rules.

    a. Rule 1.02(1.)(3);

    b. Rule 1.03 with respect to the following definitions.

        i. "applicant" means a person who makes an application.

        ii. "application" means a proceeding commenced by notice of application;

        iii. "court" means the court in which a proceeding is pending and, in the case of a proceeding in the Superior Court of Justice, includes an associate judge;

        iv. "deliver" means serve and file with proof of service, and "delivery" has a corresponding meaning;

        v. "document" includes data and information in electronic form;

        vi. "hearing" means the hearing of an application, motion, reference, appeal or assessment of costs, or a trial;

vii. "motion" means a motion in a proceeding or an intended proceeding;

viii. "moving party" means a person who makes a motion;

ix. "person" includes a party to a proceeding;

x. "proceeding" means an action or application;

xi. "respondent" means a person against whom an application is made or an appeal is brought, as the circumstances require;

xii. "responding party" means a person against whom a motion is made;

xiii. "statute" includes a statute passed by the Parliament of Canada; and

xiv. "substantial indemnity costs" mean costs awarded in an amount that is 1.5 times what would otherwise be awarded in accordance with Part I of Tariff A, and "on a substantial indemnity basis" has a corresponding meaning.

c. Rule 1.04;

d. Rule 1.05;

e. Rule 1.06;

f. Rule 1.08[1];

g. Rule 2.03;

h. Rule 3.02;

i. Rule 4.01;

j. Rule 37 with particular reference to the following:

i. Rule 37.01;

ii Rule 37.02;

iii Rule 37.03;

iv. Rule 37.04 (by way of judge and not "associate judge" or "registrar")

k. Rule 39,

l. Rule 57 and 58;

m. Rule 59;

n. Rule 68;

4. The doctrine of paramountcy (wherein statutory language prevails over language in regulations, and any "practice directions"); and

5. *Payne v. Ontario Human Rights Commission*, 2000 CanLII 5731 (ON CA), [2000] O.J. No. 2987, 136 O.A.C. 357 (C.A.), at para. 12, *Jacko v. McLellan*, 2008 CanLII 22921 (ON SCDC) at paragraph 18).[18]..

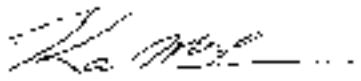
THE FOLLOWING DOCUMENTARY EVIDENCE will be used at the hearing of the motion are all filed documents with the ONSC Divisional Court and any documents that have been tendered for filing including but not limited to:

1. Affidavit #2 of the Applicant made on December 30, 2024;
2. Affidavit #3 of the Applicant made on January 8, 2025;
3. The JRPA Application of the Applicant of November 15, 2024;
4. The Applicant's Factum of December 10, 2024;
5. The Applicant's Application Record of December 12, 2024;
6. The Applicant's filed and issued Certificate of Perfection;
7. The Applicant's tendered requisitions herein;
8. The Applicant's written submissions of January 16, 2025, with respect to the 'requests' sought therein;
9. The Applicant's Oral Compendium, including Oral Outline, to be filed (subject to any discharge of obligations by any persons between now and the time of the hearing or any consent or non-opposition by the Tribunal);
10. Any "Oral Outline" or "Speaking Notes" of the Applicant that may be filed and served (or merely exchanged between the Applicant and the Tribunal); and
11. Such other material as the Applicant may advise and this Honourable Court, by way of a judge, may accept.

The Applicant estimates five minutes in opening oral argument and two minutes in reply (if applicable).

January 17, 2025:

DULY EXECUTED IN ELECTRONIC FORM BY THE JRPA APPLICANT ON THE DATE ABOVE:



Mr. Kevin A. McLean (B.A. J.D., CIM)
775 King Street West
Suite 410
Toronto, Ontario
M5V 2K3
(e): mcleansettlement@gmail.com

TO:

Licence Appeal Tribunal/AABS

By way of attention to its declared representative (see: section 1 and 10 of the *SPPA*) at the following address as denoted in Affidavit #3 of the Applicant (copied and pasted herein).

Jesse Aaron Boyce
Assumed Name
Jesse A. Boyce
Law Society Number
72486F
Class of Licence Definitions
Lawyer (L1)
Real Estate Insured †
No
Status Definitions
Practising Law - Employed
Business Name
SLASTO
Business Address
25 Grosvenor[10] 4th FloorToronto, OntarioM7A 2S8
Phone
1 437 997 1255 Ext.
Trusteeships
None
Current Practice Restrictions
None
Current Regulatory Proceedings
None
Regulatory History
None

Schedule "B"- particulars involving the Applicant's claim under Reg 283 and SAABS from August 31, 2022

Insurance Policy #: #0010135[1806
Insurance Program: *"TD INSURANCE MELOCHE MONNEX" (Alliance And Professional Program)*
Broker: *Meloche Monnex Financial Services Inc.*
Underwriter/Insurer: *Security National Insurance Company; FSRA registration number of 397 (location determined be that of SNIC was the SNIC Burlington Address with a fax number provided by SNIC of 905.305.1074)*
First Insurer *(insurance company to first receive the Completed Application): TD Home And Auto Insurance Company; FSRA registration number 1063 (note here: TDHA acquired Liberty Mutual Insurance Company of Canada in 2005)*
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")
Fictitious TD Insurance Claim # provided when Mr. Karat (an non-licensee who had been listed as an AOR Specialist in conjunction with Mr. Andrew Papadimitropoulos on public reported decisions involving Security National Insurance Company) *purported to respond to the Applicant's PIPEDA request on January 16, 2024 of SNIC and so referenced by Mr. Mirandola, on behalf of TDGIC, in response to the Applicant's COI motion (NOM #7 and NOM #9) wherein he represented that Mr Papadimitropoulos had never been involved in the Applicant's claim or access request:* **035425790-3**
AABS File Number: **"23-015662/AABS"**

[1] Where Mr. McLean's PIPPA request was delivered
[2] https://mclean-law.ca/wp-content/uploads/2024/01/Letter-to-Insurer-re-Request-for-Information-under-PIPEDA-2024-01-16.pdf
[3] https://canlii.ca/t/glb07
[4] Ontario (Energy Board), v. Ontario Power Generation Inc., 2015 SCC 44 (CanLII), [2015] 3 SCR 147, at para 50, <https://canlii.ca/t/glb07#par50>, retrieved on 2024-12-25

[3]Ontario Lawyers Board, v. Ontario Power Generation Inc., 2015 SCC 44 (CanLII), [2015] 3 SCR 147, at para 48, <https://canlii.ca/t/gk607#par48>, retrieved on 2024-12-25

[4]https://www.ontariocourts.ca/coa/about-the-court/archives/becoming-a-professional/#:~:text=The%20privilege%20of%20dealing%20yourself,interesting%20and%20stimulating%20and%20challenging.

[5]https://abcanlaw.ca/media-supports-student-request-to-postpone-the-law-society-tribunals-ip-conflicts-of-interest-hearing/

[6]https://abcanlaw.ca/wp-content/uploads/2024/08/2024-08-19-Letter-to-LSO-re-Request-to-Postpone-Hearing.pdf

[7]Now, the LSO

[8]Footnote 48 therein: For a discussion of the role of amici curiae see Ontario v. Criminal Lawyers' Association of Ontario, 2013 SCC 43, [2013] 3 SCR 3 at para 47 [emphasis in original], where the Supreme Court of Canada observes that, in the criminal law context, "amici should be used sparingly and with caution, in response to specific and exceptional circumstances" at para 47. The corollary is that this is not the criminal context

[9]Footnote 49 therein: This language was used by the Supreme Court of Canada when it imposed a commission process to separate the judiciary from the government in relation to salary negotiations to better protect judicial impartiality: *Reference re Remuneration of Judges of the Provincial Court of Prince Edward Island; Reference re Independence and Impartiality of Judges of the Provincial Court of Prince Edward Island*, [1997] 3 SCR 3 at para 170.

[10]To the extent that the Tribunal consents to the same or does not oppose, and/or comply with its obligations forthwith, the Applicant seeks relief to convert the mode of hearing from telephone conference to a brief written argument with a draft order to be provided, vetted by the Registrar, for immediate entry.

[11]With particular reference to the following rules: (1) Rule 37.07: (a) Where a motion is made on notice, the notice of motion shall be served at least seven days before the date on which the motion is to be heard; and (ii) (2) Where a motion or application is made on notice, the affidavits on which the motion or application is founded shall be served with the notice of motion or notice of application and shall be filed with proof of service in the court office where the motion or application is to be heard at least seven days before the hearing.

[12]Please see: Rule 1.3

[13]While there does not appear to be a provision under the Rules of Civil Procedure, an implicit order therein granting leave to the Applicant to amend this notice of motion in accordance with the Rules of Civil Procedure or by analogy

[14]Not merely "exchanged" and not merely a "material" or "materials"

[15]Denoted *supra*

[16]The purpose of requiring a tribunal or adjudicator to file a "record or proceedings" is to ensure that when the court reviews the tribunal's decision, it has the information and evidence as it appeared before the tribunal in the first instance. A court reviewing an adjudicative decision may look at documents to admit evidence, submissions of witnesses, and other evidence and may substitute its judgment for that of the court [or tribunal] of first instance

[17]Where Mr. McLean's FTPPA request was delivered

TAB 11

Court File No. DC-24-00000718-00JR

FORM 59A

Courts of Justice Act

ORDER

ONTARIO SUPERIOR COURT OF JUSTICE (DIVISIONAL COURT)

_____ _____

[SEAL]

BETWEEN:

KEVIN ALEXANDER MCLEAN

APPLICANT

- and -

TD HOME AND AUTO INSURANCE COMPANY, SECURITY NATIONAL INSURANCE COMPANY, TD GENERAL INSURANCE COMPANY, EXECUTIVE f, LICENCE APPEAL TRIBUNAL, HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO, REPRESENTED BY EXECUTIVE CHAIR OF TRIBUNALS ONTARIO IN MR. SEAN WEIR, THE ATTORNEY GENERAL OF ONTARIO

RESPONDENTS

ORDER

THIS MOTION, made by the Applicant, Mr. Kevin A. McLean, for the relief sought in the Applicant's Notice of Motion of January 22, 2025 (see: **Schedule "A"**), was heard by telephone conference on January 30, 2025.

ON READING the following materials in support of the Applicant's Notice of Motion (see: **Schedule "A";** the Motion Record, filed and served upon the Respondents on January 23, 2025, and **Schedule "B"**) and on hearing the submissions of the Applicant in attendance *pro se* and Mr. Boyce in attendance for the Tribunal:

1. THIS COURT ORDERS, DECLARES AND CONFIRMS THAT the delegated or presiding motion judge (not an "associate judge" pursuant to 37.02(2)(f) of the *Rules Of Civil Procedure* and section 4 of the *JRPA*) for this motion was not the Honourable Madam Justice Shore and/or any other justice of the ONSC Superior Court, in his or her rotation with the Divisional Court pursuant to the *Courts of Justice Act*, that was employed by Epstein Cole and/or was a partner in the limited liability partnership of Epstein Cole LLP during the time from Fall of 2017 to present;

2. THIS COURT DECLARES THAT the Licence Appeal Tribunal (the "**Tribunal**") has failed or neglected to comply with section 10 of the *JRPA* and section 20 of the *SPPA* and THIS COURT ORDERS THAT the Tribunal forthwith file the record of proceeding, in accordance with section 10 of the *JRPA* and section 20 of the *SPPA*, before Vice Chair Morrissette as it was from December 24, 2023[i], to the date of September 12, 2024, inclusive[ii] ;

3. THIS COURT ORDERS THAT the Tribunal is prohibited from any form of participation, where permissible by law, in this JRPA Proceeding until it strictly and fully complies with Order #2;

4. THIS COURT ORDERS THAT if the Tribunal is unable to comply with Order #2 herein, it shall advise this Court, with a copy to the Applicant, the respondents, and any other interested persons as to the reasons why it is unable;

5. THIS COURT ORDERS THAT the Applicant is entitled to seek any ancillary or consequential relief relating to the above if the Tribunal does not comply with Order #2 by written submissions to the presiding motion judge, with service upon the Tribunal with a copy to the respondents, by way of email to the ONSC Div. Ct. Registrar to my attention; and

6. THIS COURT ORDERS THAT that the Applicant is entitled to costs of this motion in any event of the cause and payable forthwith with the amount to be determined by agreement between he and the Tribunal or if no agreement is reached between them, this COURT ORDERS THAT that the Applicant may provide written submissions, limited to three pages, on such quantum entitlement within two days of not reaching any agreement between he and the Tribunal and within five days after the pronouncement of this order. THIS COURT FURTHER ORDERS THAT that the Tribunal may provide any responsive quantum costs submissions, limited to three pages, within three days of being served with the same.

Date of issuance …… _____

SCHEDULE “A”

SCHEDULE "B"

The Applicant relied upon the materials in the court file as of January 30, 2025, prior to the commencement of the hearing of his motion (defined as "**Motion #1**") which were specifically emphasized by the Applicant as follows:

a. The Motion Record, filed and served on January 23, 2025 (the "NOM #1 Motion Record" or "Motion Record");
b. The *JRPA* Application of the Applicant of November 15, 2024 (the "***JRPA* Application**");
c. The Applicant's Factum of December 10, 2024 (the "**Factum**");
d. The Applicant's Application Record of December 12, 2024 (the "**Application Record**");
e. The Applicant's filed and issued Certificate of Perfection (the "**Certificate Of Perfection**") and affidavit of service filed with the ONSC Divisional Court (the "**Affidavit #1**" or "**AOS**");
f. Affidavit #2 of the Applicant made on December 30, 2024 ("**Affidavit #2**");
g. Affidavit #4 of the Applicant made on January 18, 2025 ("**Affidavit #4**");
h. The Applicant's tendered, filed and served requisitions herein;
i. The Applicant's oral outline for his motion or "speaking notes of the Applicant, dated January 29, 2025, and filed with the ONSC Divisional Court and served upon the Tribunal prior to the commencement of the hearing of NOM #1 (the "**Speaking Notes**"); and
j. The statutes, regulations and authorities cited in the Applicant's Notice of Motion of January 22, 2025, and cited in the Applicant's Oral Outline For NOM #1.

ENDNOTES

[i]The JRPA Applicant, in his capacity as an applicant or appellant before the Tribunal, filed his "application pursuant to section 280(2) of the *Insurance Act* for automobile insurance dispute resolution" and served on the insurance company with the fax number of 416.774.3120 (which he defined as his "LAT Appeal" in his Factum)

[ii]the date of Vice Chair Morissette's decisions and orders involving the Applicant's judicial review application ("JRPA Application") certain orders sought in NOM #14 and NOM #15 that were dismissed or refused and/or not determined by the Vice Chair Morrissette of the LAT (i.e. Vice Chair Morisette refused to exercise his statutory power of decision in relation to Orders #1 and #2 in NOM #14 and Order #4 in NOM #14.

TAB 12

Court File No. DC-24-00000718-00JR

WRITTEN SUBMISSION (NON-PRESCRIBED FORM BUT ELIGIBLE DOCUMENT FOR FILING AND SERVING IN JSO PORTAL)

ONTARIO SUPERIOR COURT OF JUSTICE (DIVISIONAL COURT)

BETWEEN:

KEVIN ALEXANDER MCLEAN

APPLICANT

- and -

TD HOME AND AUTO INSURANCE COMPANY, SECURITY NATIONAL INSURANCE COMPANY, TD GENERAL INSURANCE COMPANY, EXECUTIVE DIRECTOR, LICENCE APPEAL TRIBUNAL,
HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO, REPRESENTED BY EXECUTIVE CHAIR OF TRIBUNALS ONTARIO IN MR. SEAN WEIR, THE ATTORNEY GENERAL OF ONTARIO

RESPONDENTS

APPLICANT'S WRITTEN SUBMISSION
RE: APPLICANT'S MOTION #1
HEARING DATE: JANUARY 30, 2025 VIA TELECONFERENCE

BRIEF OVERVIEW/SUMMARY

The document is a written submission by Mr. Kevin Alexander McLean regarding his Motion #1 in a judicial review proceeding against several respondents, including TD Home and Auto Insurance Company and the Licence Appeal Tribunal.

- **Overview of Motion #1**: The Applicant seeks orders related to the compliance of the Licence Appeal Tribunal with statutory duties in forthwith filing of the record of proceeding before the Tribunal from December 24, 2023 to September 12, 2024.
- **Orders Sought**: The Applicant requests several specific orders, including the identification of the presiding motion judge, the Tribunal's compliance with filing requirements, and the prohibition of Tribunal participation until strict statutory compliance is achieved by it.
- **Legal and Factual Issues**: The submission delineates issues of law and fact, such as the Tribunal's duty to compile and file the record of proceedings and the timeline of the Applicant's interactions with the Tribunal.
- **Answers to Issues of Fact**: The Applicant provides detailed answers to the issues of fact, including the dates of filing applications, hearings, and decisions by the Tribunal.
- **Legal Bases**: The submission discusses relevant statutes such as the Judicial Review Procedure Act and the Statutory Powers Procedure Act, and their application to the case with reference to the Divisional Court’s inherent jurisdiction which has been codified by the Legislature in the CJA.
- **Jurisprudence References**: The Applicant cites various legal precedents to support his arguments, including decisions from *Payne*, *Rol-Land Farms Limited*, and *Reflection Productions*.
- **Conclusion and Orders Sought**: The Applicant concludes that he is entitled to the relief sought due to the Tribunal's non-compliance with statutory duties, and requests the court to grant the orders as specified including leave to speak to costs.

VOLUME # #1: ORDERS SOUGHT

1. These are the Applicant's written submissions for the teleconference hearing for his Motion #1 herein.

2. The Applicant seeks the orders in his draft order of January 29, 2025. For ease of reference, they are as follows:

    1. THIS COURT ORDERS, DECLARES AND CONFIRMS THAT the delegated or presiding motion judge (not an "associate judge" pursuant to 37.02(2)(f) of the *Rules Of Civil Procedure* and section 4 of the *JRPA*) for this motion was not the Honourable Madam Justice Shore and/or any other justice of the ONSC Superior Court, in his or her rotation with the Divisional Court pursuant to the *Courts of Justice Act*, that was employed by Epstein Cole and/or was a partner in the limited liability partnership of Epstein Cole LLP during the time from Fall of 2017 to present;

    2. THIS COURT DECLARES THAT the Licence Appeal Tribunal (the "**Tribunal**") has failed or neglected to comply with section 10 of the *JRPA* and section 20 of the *SPPA* and THIS COURT ORDERS THAT the Tribunal forthwith file the record of proceeding, in accordance with section 10 of the *JRPA* and section 20 of the *SPPA*, before Vice Chair Morrissette as it was from December 24, 2023[1], to the date of September 12, 2024, inclusive[2] ;

    3. THIS COURT ORDERS THAT the Tribunal is prohibited from any form of participation, where permissible by law, in this *JRPA* Proceeding until it strictly and fully complies with Order #2;

    4. THIS COURT ORDERS THAT if the Tribunal is unable to comply with Order #2 herein, it shall advise this Court, with a copy to the Applicant, the respondents, and any other interested persons as to the reasons why it is unable;

    5. THIS COURT ORDERS THAT the Applicant is entitled to seek any ancillary or consequential relief relating to the above if the Tribunal does not comply with Order #2 by written submissions to the presiding motion judge, with service upon the Tribunal with a copy to the respondents, by way of email to the ONSC Div. Ct. Registrar to my attention; and

    6. THIS COURT ORDERS THAT that the Applicant is entitled to costs of this motion in any event of the cause and payable forthwith with the amount to be determined by agreement between he and the Tribunal or if no agreement is reached between them, this COURT ORDERS THAT that the Applicant may provide written submissions, limited to three pages, on such quantum entitlement within two days of not reaching

any agreement between he and the Tribunal and within five days after the pronouncement of this order. THIS COURT FURTHER ORDERS THAT that the Tribunal may provide any responsive quantum costs submissions, limited to three pages, within three days of being served with the same.

3. Order #1 is relief that is being sought by the Applicant's NOM #2 but provided herein for pre-emptive, precautionary and pre-emptive purposes.

4. Order #2 is the primary order sought herein which has remained the Licence Appeal Tribunal's (AABS Division) statutory duty(ies[3]) since November 15, 2024. It is now January 30, 2025, and the Tribunal, through its counsel in Mr. Boyce, have not filed a single document from the record of proceeding (as defined under the *SPPA*).

5. Orders #3 and #4 is an order that invokes this Court's inherent jurisdiction to control its processes and prevent abuses of its processes.

6. Order #5 seeks anticipatory relief in the event the Tribunal continues on its course of breaching its statutory duties.

7. Order #6 seeks leave of this ONSC Divisional Court to provide submissions on costs in the event that the Applicant is successful.

8. The Applicant provides these written submissions as a courtesy to this ONSC Honourable Court such that any teleconference hearing time is well utilized, efficient, cost-effective and productive for all involved. If the Tribunal does not have a full and accurate record of proceeding, it is crucial that the Applicant, the respondents other than the Tribunal, the Divisional Court et al know the same as that will affect the entire course and outcome of this *JRPA* Proceeding.

9. Where double underlining has been used in the quotations from statutes, regulations and jurisprudence, the emphasis is that of the *JRPA* Applicant.

***VOLUME #2*: STATEMENT OF ISSUES**

10. The issues are delineated into the following issues of law, issues of fact and issues of mixed fact and law.

11. The issues of law are:

    a. *When is a Tribunal's duty to compile a record of proceeding triggered?*
    b. *When is the Tribunal's duty to file the Record Of Proceeding with the ONSC Divisional Court triggered?*
        i. *Is a tribunal or administrative decision maker required to file the record of proceeding even if it is not participating in a JRPA Proceeding?*
    c. *Is the Tribunal required, by statutes, to serve the Record of Proceeding?*
    d. *What is the purpose of the record of proceeding?*
    e. *From what time period is a Tribunal required to file a record of proceeding?*
    f. *How should a tribunal's right to participate be limited when it does not comply with its statutory duties at first instance?*

12. The issues of fact are:

    a. *When did the Applicant file his statutory application for auto insurance dispute resolution with the Tribunal?*
    b. *When was the first hearing held before the LAT?*
    c. *When did the Tribunal receive a copy of the Applicant's JRPA Application?*
    d. *When did the Tribunal file and serve its Notice of Appearance?*
    e. *When did Vice Chair Morrisette issue and sign her decision that was subject to reconsideration by the LAT and now judicial review?*

VOLUME #4: Answers to the Issues of Fact

13. The Applicant filed his section 280(2) of the Insurance Act for automobile insurance dispute resolution on December 24, 2023. The Applicant served the fax number of 416.774.3120. on the same date.

14. The first hearing, which was a "written hearing", was heard and decided on January 16, 2024, by Vice Chair Lake.

15. The *JRPA* Applicant, after paying for and filing his *JRPA* Application on November 15, 2024, provided copies to the Tribunal (LAT), Vice Chair Morrisette and Vice Chair Lake.

16. The Tribunal filed its Notice of Appearance on November 27, 2024, by Mr. Boye signing on behalf of (or "as per") the Tribunal.

17. Vice Chair Morrissette signed the final decisions and final orders involving the Applicant's motions #13 to #15 on September 12, 2024. Only four orders from NOM #14 and one order from NOM #15 are being challenged on judicial review herein as they are final orders and final decisions within that 11 page document issued and signed by VCM.

***VOLUME* #4: LEGAL BASES**

***VOLUME* #**4(A): *Judicial Review Procedure Act* ("*JRPA*"), the Statutory Powers Procedure Act ("*SPPA*")

18. The *JRPA* was passed in 1990. It appears to have been amended several times since 1990 but the provisions or subsections at issue herein have remained the same since 1990: ss. 9(2) of the *JRPA* and s. 10 of the *JRPA*.

19. For the purposes of an application for judicial review in relation to the exercise, refusal to exercise or proposed or purported exercise of a statutory power, the person who is authorized to exercise the power *may* be a party to the application: section 9(2) of the *JRPA*. "May" is permissive. The statutory subsection herein does not clearly resolve the Licence Appeal Tribunal's scope of participation. As such, the scope of the Tribunal's participation herein (if any) is determined by reference to the jurisprudence like Ontario (Energy Board), Drewlo Holdings, Hutchinson v. Aviva, and others (addressed infra).

20. Section 10 of the *JRPA* states:

> **"Record to be filed in court**
>
> **10** When notice of an application for judicial review of a decision made in the exercise or purported exercise of a statutory power of decision has been served on the person making the decision, such person **shall *forthwith* FILE** in the court for use on the application the record of the proceedings in which the decision was made. R.S.O. 1990, c. J.1, s. 10.

21. While the *SPPA* underwent some substantial and significant amendments in 2006, by reference to the omnibus bill known as the Access to Justice Act, 2006, section 20 of the *SPPA* has remained the same since 1990.

22. Section 20 of the *SPPA* defines the content of the record of proceeding by way of reference to its compiling duties in which a hearing has been held. Section 20 of the *SPPA* states:

> **"20** A tribunal shall compile a record of any proceeding in which a hearing has been held which shall include,
>
> (a) any application, complaint, reference or other document, if any, by which the proceeding was commenced;
>
> (b) the notice of any hearing;
>
> (c) any interlocutory orders made by the tribunal;
>
> (d) all documentary evidence filed with the tribunal, subject to any limitation expressly imposed by any other Act on the extent to or the purposes for which any such documents may be used in evidence in any proceeding;
>
> (e) the transcript, if any, of the oral evidence given at the hearing; and
>
> (f) the decision of the tribunal and the reasons therefor, where reasons have been given. R.S.O. 1990, c. S.22, s. 20."

23. "Hearing" under the *SPPA* is defined under section 1 of the *SPPA* which states: "hearing" means a hearing in any proceeding.

24. The Ontario Rules of Civil Procedure use the word "forthwith" in relation to the required filing of a 'Notice of Appearance' if any administrative decision maker or other respondent wishes to receive notice of every step in a judicial review proceeding (see: Rule **38.07** "(1) A respondent who has been served with a notice of application shall FORTHWITH deliver a notice of appearance (Form 38A). R.R.O. 1990, Reg. 194, r. 38.07 (1)).

25. "Deliver" is defined under the *Rules of Civil Procedure* as: "deliver" means serve and file with proof of service, and "delivery" has a corresponding meaning: Rule 1.03(1).

Volume #4(A)(I): Application of the above statutory subsections to the uncontroverted facts herein

26. The Tribunal was required to compile a record of proceeding from the date of January 16, 2024 and onwards.

27. The Tribunal was required to file (not necessarily serve) the record of proceeding immediately after receipt of the *JRPA* Application. For mathematical and dating purposes, the Tribunal was required to file the record of proceeding in the week of November 18 to 22, 2024.

28. The duty of the Tribunal to file the record of proceeding is an independent one from its right of an undefined scope of participation as a party in an application for judicial review or judicial review proceeding.

29. It is easily discernible why the Legislature, which passed sections 10 and 20 of the *SPPA* in the same year, requires a statutory administrative body to forthwith file the record of proceeding without any reference to the size, volume or complexity of the record of proceeding. The obvious inference or easy discernment for the forthwith filing requirement is that an administrative body would have had initial and ongoing compiling duties in the

underlying proceeding before an inferior decision maker or decision making body to that of the ONSC Divisional Court.

30. In this modern day of technology, along with the specific filings herein that it involve a LAT/AABS e-filing portal, all of the filed materials would be compiled and organized in a manner that it could not take the LAT more than a day to prepare an index with tabulations for the delineated different classes of filed documents and then enumerate the same before filing the record of proceeding with the ONSC Divisional Court.

31. As per the definition of "deliver" under the Rules of Civil Procedure versus the sole requirement of forthwith 'filing" under the *JRPA*, the LAT is only required to file the same with the ONSC Divisional Court.

32. But for any sealing orders, even the public can obtain certified copies of each and every document filed in a proceeding: combination of section 137 of the *CJA* and Rule 4.03(1) of the *Rules of Civil Procedure*.

33. Therefore, any administrative tribunal in this province that is subject to being served with a 'notice of application for judicial review' is only required to file the record of proceedings forthwith, after having compiled the same if there was a hearing before it. Put another way, there is no requirement upon any administrative body to participate in any judicial review after it has filed the record of proceeding forthwith. It is not even required, by statute, to serve the applicant with a copy of the same or any other respondents or interested persons.

VOLUME #4(B): How does the decision in Payne clarify the above statutory requirements

34. The content of the court record for an application for judicial review is defined by the *Judicial Review Procedure Act,* R.S.O. 1990, c. J-1 and by the Rules of Civil Procedure. The process begins with the notice of application: r. 68.01(1). Upon being served with the notice of application for judicial review, the decision-maker is required by s. 10 of the *Judicial Review Procedure Act,* to file with the Divisional Court "the record of the proceedings in which the decision was made". The "record" is not defined by the *Act*: Payne, at paragraph 160.

VOLUME #4(C): While the Record Of Proceeding is for the Court's use in the *JRPA* Application – Applicant's Rights to Record of Proceeding

35. An applicant for judicial review has the right to have a full and accurate record of what went on before the tribunal put before the court: Payne at paragraph 161.

36. The reason for the Applicant being entitled to the same is not grounded in the statutory sections but the ONSC Divisional Court's inherent jurisdiction: Payne at paragraph 161 (sentence 2)[4].

VOLUME #4(D): Underlying reasons for the ONSC Divisional Court derived inherent jurisdiction – ordering production of the record of proceeding

37. As early as 1952, Lord Denning in *R.* v. *Medical Appeal Tribunal ex p. Gilmore,* [1957] 1 Q.B. 574 at 583 (C.A.) found the following as a basis the common law and/or equitable powers of the English courts upon which our common law and courts of equity are founded "The court has always had power to order an inferior tribunal to complete the record ... [A] tribunal could defeat a writ of *certiorari* unless the courts could order them to complete or correct an imperfect record. So the courts have the power to give such an order".

38. The ONCA adopted the same in 2000 in its decision in Payne at paragraph 161 where it also cited other jurisprudence: See also *R.* v. *Northumberland Compensation Appeal Tribunal, ex p. Shaw,* [1952] K.B. 338 at 352–54 (C.A.); *Canadian Workers Union* v. *Frankel Structural Steel Ltd.* (1976), 1976 CanLII 829 (ON SC), 12 O.R. (2d) 560 at 577 (Div. Ct.) per Reid J.; *F.G. Spencer Ltd.* v. *Prince Edward Island (Labour Relations Board)* (1970), 1970 CanLII 960 (PE SCAD), 16 D.L.R. (3d) 670 (P.E.I.S.C.); *Battaglia* v. *British Columbia (Workmen's Compensation Board)* (1960), 1960 CanLII 334 (BC SC), 22 D.L.R. (2d) 446 (B.C.S.C.). The ONCA further beautifully articulated the following statement of law which has been the law in Ontario for the last 25 years:

> "A statutory body subject to judicial review cannot immunize itself or its process by arriving at decisions on considerations that are not revealed by the record it files with the court."
>
> (see: paragraph 161 of Payne (ONCA)).

39. The Superior Court of Justice has all the jurisdiction, power and authority historically exercised by courts of common law and equity in England and Ontario: ss. 11(2) of the *CJA*.

40. Courts shall administer concurrently all rules of equity and the common law: section 96(1) of the *CJA*.

41. Where a rule of equity conflicts with a rule of the common law, the rule of equity prevails: section 96(2) of the *CJA*.

Volume #4(E): Divisional Court's statement of law: the temporal period of a "Record of Proceeding

42. The erudite justices in *Rol-Land Farms Limited* for the Divisional Court in 2008 reaffirmed the legal precedent that the temporal period for which documents, evidence, and decisions must be included in the forthwith filing by an administrative decision maker with the ONSC Div. Ct. at paragraphs 37 and 38:

> "[37] As indicated in an oral ruling during the hearing, volume 3 of the Record of Proceedings is not admissible. Section 10 of the JRPA requires a tribunal to file its record of proceedings when served with an application for judicial review of a decision. It is the record of proceedings relating to the particular decision that is to be filed, as is clear from the words of s. 10:
>
> > When notice of an application for judicial review of a decision made in the exercise or purported exercise of a statutory power of decision has been served on the person making the decision, such person shall forthwith file in the court for use on the application, the record of proceedings **in which the decision is made**. (emphasis added)

[38] Thus, the content of volume 3 is not properly part of the record required to be filed pursuant to s. 10 of the JRPA, as it post-dates the decisions under review."

VOLUME #4(F): What is a JRPA Applicant to do when a Tribunal is non-compliant with its statutory duties?

43. It is not only that an applicant for judicial review should seek the records from the Tribunal by way of request or demand and then bring a motion if the Tribunal is non-compliant but there is also much risk for this JRPA Applicant is he did not do so.

44. In Reflection Productions v. Ontario Media Dev. Corp., 2022 ONSC 64, the ONSC Div. Ct (as per **MORAWETZ C.J., VARPIO, KRISTJANSON JJ.)** found as follows at paragraphs 74 and 75:

[74] Section 10 of the *Judicial Review Procedure Act*, R.S.O. 1990, c. J.1 provides:

> **Record to be filed in court**
> When notice of an application for judicial review of a decision made in the exercise or purported exercise of a statutory power of decision has been served on the person making the decision, such person shall forthwith file in the court for use on the application the record of the proceedings in which the decision was made.

[75] Ergo, pursuant to s. 10 of the *Judicial Review Procedure Act*, it was available to the applicant to bring a motion seeking production of documents it alleges were relied on by the decision-maker but are not contained in the record: see, for example *K.D. v. Peel Children's Aid Society*, 2017 ONSC 7392 (Div. Ct.) at paras. 16-17). The applicant failed to do so. As a result, it is precluded from raising this issue for the first time on judicial review.

VOLUME #4: Unassailable Conclusions and Orders Sought

45. The purpose of requiring a tribunal or adjudicator to file a "record of proceedings" is to ensure that when the court reviews the tribunal's decision, it has the information and

evidence as it appeared before the tribunal in the first instance. A court reviewing an adjudicative decision may look at decisions to admit evidence, submissions of witnesses, and other evidence and may substitute its judgment for that of the court [or tribunal] of first instance: *Payne v. Ontario Human Rights Commission*, 2000 CanLII 5731 (ON CA), [2000] O.J. No. 2987, 136 O.A.C. 357 (C.A.), at para. 23; *Jacko v. McLellan*, 2008 CanLII 22921 (ON SCDC) at paragraph 18).

46. This very ONSC Divisional Court, but less than a year ago in *Lachance* (as per the Honourable Justice Myers, Stewart and Leiper), explicitly adopted the legal precedent in Payne in articulating the following at paragraph 37 and 38:

> "[37] I agree with the finding of Ryan Bell J. that by bringing this application for judicial review the applicants became entitled to receive all documents concerning their claims. Ryan Bell J. adopted the words of Sharpe JA in *Payne v. Ontario Human Rights Commission*, 2000 CanLII 5731 (ON CA) at paragraph 161
>
> > An applicant for judicial review has the right to have a full and accurate record of what went on before the tribunal put before the court. This is an aspect of the superior court's inherent powers of judicial review. A superior court may insist upon the production of an adequate record of the proceedings before the tribunal being reviewed.
>
> [38] When met by a reluctant decision-maker, the applicants always had the ability to obtain the documents that they needed to advance their claim. They just had to initiate this application."

47. This *JRPA* Applicant has done much more than "initiate the *JRPA* Application" but that is the scope of this Motion #1.

48. As the Tribunal has not opposed this Motion #1 or challenged the sufficiency of the Motion Record so filed and served, the Applicant, his capacity as a moving party, is entitled to the relief sought with leave to speak to costs by way of written submissions.

49. The *JRPA* Applicant respectfully submits that, subject to the motions judge not being the above noted justice (through no fault of her own), the Applicant is entitled to the relief sought above at Order #2.

50. To the extent that the Tribunal now files the record of proceeding after the unnecessary expense and costs of this Motion #1, then orders #3 to #5 become moot. This leaves the issue of costs for the wasted expense on behalf of the Applicant and that of the ONSC Div. Ct. and its court staff by a statutorily non-compliant Licence Appeal Tribunal.

51. To the extent that the Tribunal does not, the JRPA Applicant, in his capacity as a moving party, respectfully submits that the draft order submitted should follow in substantially the same form subject to the Court's discretion as it relates to the language in those orders.

52. All of which is respectfully submitted to the ONSC (Div. Ct.) (motions judge by way of teleconference) on January 30, 2025:

Mr. Kevin A. McLean (B.A. J.D., CIM)
Self-represented, the Applicant herein

Endnotes

[1]The *JRPA* Applicant, in his capacity as an applicant or appellant before the Tribunal, filed his "application pursuant to section 280(2) of the *Insurance Act* for automobile insurance dispute resolution" and served on the insurance company with the fax number of 416.774.3120 (which he defined as his "LAT Appeal" in his Factum)
[2]the date of Vice Chair Morissette's decisions and orders involving the Applicant's judicial review application ("*JRPA* Application") certain orders sought in NOM #14 and NOM #15 that were dismissed or refused and/or not determined by the Vice Chair Morrissette of the LAT (i.e. Vice Chair Morisette refused to exercise his statutory power of decision in relation to Orders #1 and #2 in NOM #14 and Order #4 in NOM #14.
[3]Technically, the Tribunal has duties under the *JRPA* and *SPPA*.
[4]This is an aspect of the superior court's inherent powers of judicial review.

TAB 13

Court File No. DC-24-00000718-00JR

ONTARIO SUPERIOR COURT OF JUSTICE (DIVISIONAL COURT)

BETWEEN:

KEVIN ALEXANDER MCLEAN

APPLICANT

- and -

TD HOME AND AUTO INSURANCE COMPANY, SECURITY NATIONAL INSURANCE COMPANY, TD GENERAL INSURANCE COMPANY, EXECUTIVE f, LICENCE APPEAL TRIBUNAL,
HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO, REPRESENTED BY EXECUTIVE CHAIR OF TRIBUNALS ONTARIO IN MR. SEAN WEIR, THE ATTORNEY GENERAL OF ONTARIO

RESPONDENTS

THE MOTION PARTY'S (JRPA APPLICANT) MOTION RECORD INDEX
DATE: JANUARY 31, 2025

MOVING PARTY (see: Rule 1.03, "Definitions" under Rules of Civil Procedure):

JRPA APPLICANT

Mr. Kevin A. McLean (B.A. J.D., CIM)
775 King Street West
Suite 410
Toronto, Ontario
M5V 2K3
(e): mcleansettlement@gmail.com

RESPONDING PARTIES (AFTER AGO CONFIRMS HE WILL NOT PARTICIPATE IN THE MATTER AND NO FURTHER NEED FOR ANY SERVICE OF DOCUMENTS)

RESPONDING PARTY[i] (1)

LICENCE APPEAL TRIBUNAL (the "Tribunal")
AABS Division
15 Grosvenor Street,
Ground Floor
Toronto, ON
M7A 2G6

Kind attention: it declared counsel in this JRPA Proceeding herein

Mr. Jesse Aaron Boyce[ii]
Lawyer licensee with the LSO
Jesse.Boyce@ontario.ca

RESPONDING PARTY (2): TDHA

TD HOME AND AUTO INSURANCE COMPANY ("TDHA")
FSRA Registration 1063
Last known address and addresses (mail and fax) at the time of its receipt of the Applicant's completed OCF-1 pursuant to Reg 283 (the "**McLean Completed Application**")
4th Floor-3650 Victoria Park Avenue,
North York, Toronto, Ontario
FAX: 416.774.3120

Attention (its declared counsel herein):

Mr. Matthew Nieuwland
Lawyer Licensee with the LSO
66 Wellington Street West, 38th Floor, Toronto, Ontario, M5K 1A2
T: 905-201-4092 | F: 416-599-7439
Email: Matthew.Nieuwland@tdinsurance.com
Legal Assistant: Christiana Ortiz | T: 416-486-2547 | E: christiana.ortiz@tdinsurance.com

RESPONDING PARTY (3): SNIC

SECURITY NATIONAL INSURANCE COMPANY ("SNIC")
FSRA Registration 397
Addresses provided after Applicant's notification of his intention to apply for accident benefits after the August 31, 2022, no fault accident (the "Accident" or "MVA")
Suite 200-101 McNabb Street
Markham, Ontario
No fax number provided for it or said physical address

Address provided by SNIC after fax recipient at 416.774.3120 sent fax to Applicant that it did not have any record of his claim number at said fax address

5054 South Service Road
[no floor or suite number provided]
Burlington, Ontario
L7L 5Y7
Fax: 905-315-1074

Adress found to be the correct address for SNIC in Tribunal proceedings by way of issued orders (no reconsideration sought):

5th floor-5045 South Service Rd ,
Burlington, ON
L7L 5Y7
Fax: 905-315-1074

Attention (its declared counsel herein):

Mr. Matthew Nieuwland
Lawyer Licensee with the LSO
66 Wellington Street West, 38th Floor, Toronto, Ontario, M5K 1A2
T: 905-201-4092 | F: 416-599-7439
Email: Matthew.Nieuwland@tdinsurance.com
Legal Assistant: Christiana Ortiz | T: 416-486-2547 | E: christiana.ortiz@tdinsurance.com

RESPONDING PARTY (4): TDGIC

TD General Insurance Company
FSRA registration number 353

Address found by Tribunal in issued orders for TDGIC despite no provision of the same to the Applicant during TD Claim #3 process, in any filed documents by TDGIC or otherwise:

3650 Victoria Park Ave
Floor 9,
North York, ON
M2H 3P7
FAX: 416.714.3629

Attention (its declared counsel herein):

Mr. Matthew Nieuwland
Lawyer Licensee with the LSO
66 Wellington Street West, 38th Floor, Toronto, Ontario, M5K 1A2
T: 905-201-4092 | F: 416-599-7439
Email: Matthew.Nieuwland@tdinsurance.com
Legal Assistant: Christiana Ortiz | T: 416-486-2547 | E: christiana.ortiz@tdinsurance.com

INDEX[iii]

1. Notice of Motion (Form 37(A)) of the Applicant of January 31, 2024;
2. JRPA Application of November 15, 2024;
3. Notice of Appearance by the Tribunal of November 27, 2024;
4. Notice of Appearance by TDHA, SNIC and TDGIC on December 3, 2024;
5. Applicant's Factum of December 10, 2024;
6. Requisition filed by the Applicant on December 24, 2024
7. Affidavit #2 of the Applicant, made on December 30, 2024
8. Affidavit #3 of the Applicant made on January 8, 2025
9. Affidavit #4 of the Applicant, made on January 18, 2025
10. Affidavit #7 of the Applicant, made on January 24, 2025
11. Affidavit #8 of the Applicant, made on January 27, 2025;

[i] (see: Rule 1.03, "Definitions" under Rules of Civil Procedure):
[ii]Address in LSO Directory before Mr. Boyce's removal of the same at some time after receipt of Affidavit #2 of the Applicant
Assumed Name
Jesse A. Boyce
Law Society Number
72486F
Class of Licence Definitions
Lawyer (L1)
Real Estate Insured †
No
Status Definitions
Practising Law - Employed
Business Name
SLASTO
Business Address
25 Grosvenor[ii] 4th FloorToronto, OntarioM7A 2S8
Phone
1 437 997 1235 Ext.
Trusteeships
None
Current Practice Restrictions
None
Current Regulatory Proceedings
None
Regulatory History
None
[iii]Lengthier and voluminous materials (of relevance) will be provided in Compendium in bookmarked and hyperlinked fashion in accordance with the Rules of Civil Procedure

TAB 1:

Court File No. DC-24-00000718-00JR
Applicant's Motion #2 (Motion in Writing; Request to Convert Motion into Motion for Judgment)

Court File No. DC-24-00000718-00JR

FORM 37A
Courts of Justice Act
NOTICE OF MOTION

ONTARIO SUPERIOR COURT OF JUSTICE (DIVISIONAL COURT)

BETWEEN:

KEVIN ALEXANDER MCLEAN

APPLICANT

- and -

TD HOME AND AUTO INSURANCE COMPANY, SECURITY NATIONAL INSURANCE COMPANY, TD GENERAL INSURANCE COMPANY, EXECUTIVE f, LICENCE APPEAL TRIBUNAL,
HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO, REPRESENTED BY EXECUTIVE CHAIR OF TRIBUNALS ONTARIO IN MR. SEAN WEIR, THE ATTORNEY GENERAL OF ONTARIO

RESPONDENTS

NOTICE OF MOTION

(URGENT MOTION PURSUANT TO RULE 37.05(3))
(MOTION PURSUANT TO RULE 37.12(4) AND 37.13(2)(A))

The Applicant will make a motion to the court on Friday, February 14, 2025, at 9:30 a.m. (to be heard in writing)

PROPOSED METHOD OF HEARING: The motion is to be heard:

X In writing as an opposed motion under subrule 37.12.1 (4);
at the following location

Address of Local Registrar court office Divisional Court
Superior Court of Justice
Osgoode Hall
130 Queen Street West
Toronto, ON MSH 2N5

THE MOTION IS FOR the following relief:

Order #1: Preliminary order (if applicable)

1. A preliminary delegation by the ONSC Div. Ct. (Chief Justice) that the delegated or presiding motion judge (not an "associate judge" pursuant to 37.02(2)(f) of the *Rules Of Civil Procedure* and section 4 of the *JRPA*) for this written motion shall not be the Honourable Madam Justice Shore and/or any other justice that was employed by Epstein Cole and/or was a partner in the limited liability partnership of Epstein Cole LLP during the time from Fall of 2017 to present;

Order #2: Motion #1 (if applicable)

2. An Order that to the extent that some or all of the relief in his motion #1 (see: Schedule "A"), originally returnable on Thursday, January 30, 2025, or as soon thereafter has not determined by teleconference that it is heard and decided in this motion #2 by the presiding motion judge (in writing). A further order that the Applicant (moving party) shall advise the Court (Registrar) to the attention of the presiding justice with the following information one day before February 14, 2025;
    a. The status of motion #1;
    b. The attempts to have motion #1 heard;
    c. The status of the Tribunal's filing of the record of proceeding with the Divisional Court;
    d. What documents contained in the record of proceeding are not accounted for in the Applicant's Application Record, filed affidavit material herein, and the application records of the respondents to the motion in writing; and
    e. Any other information of assistance to this Court.

Order #3: The Disqualification of Madam Justice Shore or Recusal of Madam Justice Shore

3. An Order that Mr. Papadimitropoulos and Epstein Cole LLP provide copies of the separation agreement between Mr. Papadimitropoulos and Ms. Nicole Artopoulos (the named individual insured individual) and the divorce decree between them for review by the Court "in camera" to assess the issue of a reasonable apprehension of conflict of interest and bias involving Madam Justice Shore on account of Mr. Papadimitropoulos being a client of her former law firm in 2018 in Epstein Cole LLP. Further, Orders consistent with the following relief (see: SCHEDULE "B") in the Applicant's COI Recusal Submissions as follows:
    a. The Honourable Madam Justice Shore is disqualified from any further involvement in this *JRPA* Proceeding (the "**Disqualification Request**" or the "**Recusal Request**");
    b. The Case Management Appearance Requirement is declared as void and void *ab initio* (not merely voidable) (the "**Nullification Request**");
    c. A general and indefinite adjournment of the case conference pursuant to 77.04(1)(b) of the *Civil Rules* by the Associate Justice (the "**Adjournment Request**");
    d. A direction by the Honourable Chief Justice, pursuant to section 76 of the *CJA*, that the Registrar shall accept all outstanding requisition filings and provide confirmation of the same to the *JRPA* Applicant and respondents; and
    e. A direction by the Honourable Chief Justice, pursuant to section 76 of the *CJA*, that the Registrar comply with her duties (by law), pursuant to 68.05(2) of the *Civil Rules*[i], and provide the parties with a "Notice of Listing For Hearing".

("d" and "e" together, the "**Staff Direction Requests**").

(collectively, the "**Respectful Requests**" or "**Requests**").

Order #4: Converting the "motion in writing" to a "motion for Judgment"

4. An Order converting this motion into a motion for **Judgment** and the Applicant is entitled to judgment in accordance with the relief sought in his JRPA Application, Factum, and further particularized and referenced in the Oral Compendium with "Outline";

a. In the alternative, an Order that that the Court in accordance with Rule 37.13(2)(b) that the JRPA Application is heard and decided on a date in February 2025 that is within the approximate range provided by the Registrar as per a Form 68(B)

Administrative and Costs Orders

5. An Order abridging or shortening any prescribed time requirement to have this motion heard in writing on February 14, 2025, including any orders that allow for filing of any amendments to the Notice of Motion #2, Motion Record #2, Draft Order for Motion #2, and "Factum For Motion in Writing and Converting Motion to Motion for Judgment" by way of amendment, newly discovered evidence or fresh evidence, any filing of the record of proceeding by the Tribunal and/or inclusion of documents to be included in the record of proceeding by the Applicant or any other person in control or possession of the same for benefit of the court, by way of "reply submissions" or "reply evidence" and/or the status of motion #1 at any time thereafter. A further Order that any orders so granted at the time of the hearing of NOM #2 (in writing) are granted nunc pro tunc;

6. An Order that the respondent insurance companies, each and all, have not raised a preliminary objection in this JRPA Proceeding herein by not complying with the Practice Direction, specifically the section regarding "Information Submitted to the Court";

7. An Order that the respondents, excluding the AGO, have contravened Rule 68.04(4) of the Rules of Civil Procedure. A further order that if the respondents have not provided a proposed factum by way of affidavit at the hearing of this motion #2 herein, they are precluded from seeking leave of this Court to file their factums and application records one month after the prescribed time requirement;

8. An Order granting leave to the Applicant to file any responsive submissions or reply evidence and such order shall be granted nunc pro tunc;

9. An Order dispensing with the requirement for the Applicant to upload any filed documents to Case Center if he does not receive an invitation to Case Center prior to the prescribed time to discharge his obligation pursuant to the Civil Rules. Further, an Order that the court file shall be provided to the presiding motions judge (in writing) prior to February 14, 2025;

10. Costs against any of the respondents that do not consent and oppose motion #2.

THE GROUNDS FOR THE MOTION ARE:

1. The Applicant repeats and relies upon the facts contained in the following:
    a. The JRPA Application;
    b. Applicant's Factum of December 10, 2024;
    c. Applicant's Application Record of December 12, 2024;
    d. The Applicant's Motion Record for motion #1;
    e. The Applicant's Motion Record for motion #2;
    f. Applicant's Factum For Motion In Writing;
    g. Applicant's Oral Compendium and Oral Outline to be uploaded to Case Center by way of invitation in accordance with the Divisional Court Judicial Review Guide or contained within the Court File prior to February 14, 2025; and
    h. Other filings, that are duly served on the respondents or interested persons, that may be tendered and accepted by the Court.

Summary of the Evidence

2. The Applicant's summary of the evidence in the Tribunal is denoted in his JPRA Application, Applicant's Factum, Applicant's Application Record, record of proceeding (to have been filed forthwith by the Tribunal), affidavits filed herein, motion record #1, motion record #2 et al.

3. The Applicant's evidence for motion #2 is further particularized in the "Applicant's Factum For Motion in Writing and "Factum For Conversion to Motion For Judgment"

Legal Bases

4. The above noted statutes but more specifically, but not limited to, the following statutory subsections;

    a. Section 9(2) of the *JRPA*;

    b. Section 10 of the *JRPA*;

    c. Section 20 of the *SPPA*;

5. The *Courts of Justice Act* (the "CJA");

6. *Rules Of Civil Procedure*s including but not limited to the following rules:

    a. Rule 1.02(1.)(3);

    b. Rule 1.03 with respect to the following definitions:

        i. "applicant" means a person who makes an application;

        ii. "application" means a proceeding commenced by notice of application;

        iii. "court" means the court in which a proceeding is pending and, in the case of a proceeding in the Superior Court of Justice, includes an associate judge;

        iv. "deliver" means serve and file with proof of service, and "delivery" has a corresponding meaning;

        v. "document" includes data and information in electronic form;

        vi. "hearing" means the hearing of an application, motion, reference, appeal or assessment of costs, or a trial;

        vii. "motion" means a motion in a proceeding or an intended proceeding;

        viii. "moving party" means a person who makes a motion;

ix. "person" includes a party to a proceeding;

x. "proceeding" means an action or application;

xi. "respondent" means a person against whom an application is made or an appeal is brought, as the circumstances require;

xii. "responding party" means a person against whom a motion is made;

xiii. "statute" includes a statute passed by the Parliament of Canada; and

xiv. "substantial indemnity costs" mean costs awarded in an amount that is 1.5 times what would otherwise be awarded in accordance with Part I of Tariff A, and "on a substantial indemnity basis" has a corresponding meaning.

c. Rule 1.04;

d. Rule 1.05;

e. Rule 1.06;

f. Rule 1.08[ii];

g. Rule 2.03;

h. Rule 3.02;

i. Rule 4.01;

j. Rule 37 with particular reference to the following:

i. Rule 37.01;

ii. Rule 37.02;

iii. Rule 37.03;

iv. Rule 37.04 (by way of judge and not "associate judge" or "registrar")

k. Rule 39;

l. Rule 57 and 58;

m. Rule 59;

n. Rule 68;

7. The Applicant relies on the statues, regulations and authorities for this "Motion #2" that are contained within the JRPA Application, Factum, and Factum For Motion his Factum Motion in Writing.

8. The statutes, regulations and authorities cited and/or cross-referenced in the JRPA Application, Factum, Application Record, COI Recusal Submissions, Motion #1 (Motion Record), Motion #2 (Motion Record) and Oral Compendium (to be uploaded to Case Center once or if the Applicant receives invitation from the ONSC Divisional Court, or to be provided to the presiding motion justice from the court file if no such invitation is ever provided).

THE FOLLOWING DOCUMENTARY EVIDENCE will be used at the hearing of the motion are all filed documents with the ONSC Divisional Court and any documents that have been tendered for filing including but not limited to:

1. The JRPA Application of the Applicant of November 15, 2024 (the "JRPA Application");
2. The Applicant's Factum of December 10, 2024 (the "Factum");
3. The Applicant's Application Record of December 12, 2024 (the "Application Record");
4. Affidavits of service of the Applicant in this JRPA Proceeding;
5. Affidavits of the Applicant in the Motion Record #2
6. The Applicant's tendered requisitions herein; and
7. Such other material as the Applicant may advise and this Honourable Court, by way of a judge, may accept.

January 31, 2025:

DULY EXECUTED IN ELECTRONIC FORM BY THE JRPA APPLICANT ON THE DATE ABOVE:

Mr. Kevin A. McLean (B.A. J.D., CIM)
775 King Street West
Suite 410
Toronto, Ontario
M5V 2K3
(e): mcleansettlement@gmail.com

TO:

Licence Appeal Tribunal/AABS

By way of attention to its declared representative (see: section 1 and 10 of the *SPPA*) at the following address as denoted in Affidavit #3 of the Applicant (copied and pasted herein):

Jesse Aaron Boyce
Assumed Name
Jesse A. Boyce
Law Society Number
72486F
Class of Licence Definitions
Lawyer (L1)
Real Estate Insured †
No
Status Definitions
Practising Law - Employed
Business Name
SLASTO
Business Address
25 Grosvenor[iii] 4th FloorToronto, OntarioM7A 2S8
Phone
1 437 997 1235 Ext.
Trusteeships
None
Current Practice Restrictions
None
Current Regulatory Proceedings
None
Regulatory History
None

TO:

TD Home and Auto Insurance Company
FSRA Registration Number 1063

Attention: Mr. Nieuwland

AND TO:

SECURITY NATIONAL INSURANCE COMPANY
FSRA REGISTRATION NUMBER 397

Attention: Mr. Nieuwland

AND TO (by way of courtesy):

TD General Insurance Company
FSRA Registration Number 353

AND TO:

Interested Persons

TO:

Mr. Andrew Papadimitropoulos
Via email: Andrew.papadimitropoulos@tdinsurance.com
Via email: Andrew.papadimitropoulos@td.com

AND TO:

EPSTEIN COLE LLP

Attention: Managing Partner in Ms. Tsao

SCHEDULE "A": Motion Form for NOM #1

Court File No. DC-24-00000718-00JR

FORM 37A

Courts of Justice Act

NOTICE OF MOTION

ONTARIO SUPERIOR COURT OF JUSTICE (DIVISIONAL COURT)

BETWEEN:

KEVIN ALEXANDER MCLEAN

APPLICANT

- and -

TD HOME AND AUTO INSURANCE COMPANY, SECURITY NATIONAL INSURANCE COMPANY, TD GENERAL INSURANCE COMPANY, EXECUTIVE f, LICENCE APPEAL TRIBUNAL,
HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO, REPRESENTED BY EXECUTIVE CHAIR OF TRIBUNALS ONTARIO IN MR. SEAN WEIR, THE ATTORNEY GENERAL OF ONTARIO

RESPONDENTS

NOTICE OF MOTION

The Applicant will make a motion to the court on Thursday, January 30, 2025, at 9:30 a.m. or as soon after that time as the motion can be heard.

PROPOSED METHOD OF HEARING: The motion is to be heard:

□ In writing under subrule 37.12.1 (1) because it is *(insert one of* on consent, unopposed *or* made without notice*)*[iv];

□ In writing as an opposed motion under subrule 37.12.1 (4);

□ In person;

X By telephone conference;

□By video conference.

at the following location

Address of Local Registrar court office Divisional Court

Superior Court of Justice
Osgoode Hall
130 Queen Street West
Toronto, ON MSH 2N5

THE MOTION IS FOR the following relief:

1. An Order that the delegated or presiding motion judge (not an "associate judge" pursuant to 37.02(2)(f) of the *Rules Of Civil Procedure* and section 4 of the *JRPA*) shall not be the Honourable Madam Justice Shore and/or any other justice that was employed by Epstein Cole and/or was a partner in the limited liability partnership of Epstein Cole LLP during the time from Fall of 2017 to present;

2. An Order compelling the Licence Appeal Tribunal (the "**Tribunal**") to file the Record of Proceeding forthwith and in accordance with, *inter alia*, section 10 of the *JRPA* and in accordance, from a content standpoint with section 20 of the *SPPA*;

3. An Order that the Tribunal is prohibited from any form of participation in this JRPA Proceeding until it does so in full and strict compliance with aforementioned legislative sections in Order #2;

4. Costs in favour of the Applicant against the Tribunal on a substantial indemnity basis to be determined by this Honourable Court after providing leave to the Applicant to provide a costs outline or written argument within three days of the pronouncement of the orders herein and limited to three pages double spaced; and

5. Such other orders that are consistent with the above.

THE GROUNDS FOR THE MOTION ARE:

9. The above noted statutes but more specifically, but not limited to, the following statutory subsections;

    a. Section 9(2) of the *JRPA*;

    b. Section 10 of the *JRPA*;

    c. Section 20 of the *SPPA*;

10. The *Courts of Justice Act* (the "CJA");

11. *Rules Of Civil Procedure*s including but not limited to the following rules:

    a. Rule 1.02(1.)(3);

b. Rule 1.03 with respect to the following definitions:

i. "applicant" means a person who makes an application;

ii. "application" means a proceeding commenced by notice of application;

iii. "court" means the court in which a proceeding is pending and, in the case of a proceeding in the Superior Court of Justice, includes an associate judge;

iv. "deliver" means serve and file with proof of service, and "delivery" has a corresponding meaning;

v. "document" includes data and information in electronic form;

vi. "hearing" means the hearing of an application, motion, reference, appeal or assessment of costs, or a trial;

vii. "motion" means a motion in a proceeding or an intended proceeding;

viii. "moving party" means a person who makes a motion;

ix. "person" includes a party to a proceeding;

x. "proceeding" means an action or application;

xi. "respondent" means a person against whom an application is made or an appeal is brought, as the circumstances require;

xii. "responding party" means a person against whom a motion is made;

xiii. "statute" includes a statute passed by the Parliament of Canada; and

xiv. "substantial indemnity costs" mean costs awarded in an amount that is 1.5 times what would otherwise be awarded in accordance with Part I of Tariff A, and "on a substantial indemnity basis" has a corresponding meaning.

c. Rule 1.04;

d. Rule 1.05;

e. Rule 1.06;

f. Rule 1.08[v];

g. Rule 2.03;

h. Rule 3.02;

i. Rule 4.01;

j. Rule 37 with particular reference to the following:

i. Rule 37.01;

ii. Rule 37.02;

iii. Rule 37.03;

iv. Rule 37.04 (by way of judge and not "associate judge" or "registrar")

k. Rule 39;

l. Rule 57 and 58;

m. Rule 59;

n. Rule 68;

12. The doctrine of paramountcy (wherein statutory language prevails over language in regulations, and any "practice directions"); and

13. The statutes, regulations and authorities cited herein but not limited to:

Authorities (hyperlinked to the case itself and paragraphs to be relied upon)

The Seminal Decision in Payne

i. *Payne v. Ontario Human Rights Commission*, 2000 CanLII 5731 (ON CA), [2000] O.J. No. 2987, 136 O.A.C. 357 (C.A.) ["*Payne*"], at paragraphs 79 [the record of proceeding when the decision was made], paragraph 160, and paragraph 161[vi];

Payne cited with approval by ONSC Divisional Court in 2024

ii. *Lachance v. Solicitor General of Ontario*, 2024 ONSC 975 (CanLII) as per Stewart, Myers, and Leiper JJ of the Divisional Court at paragraph 37 [copied by link to highlight as no hyperlink available on CanLII]

General Principles

iii. *Jacko v. McLellan*, 2008 CanLII 22921 (ONSCDC) ["*Jacko*"] at paragraph 18)[vii];.

iv. *Rew v Association of Professional Engineers of Ontario (Discipline Committee)*, 2016 ONSC 4043 (CanLII) ["*REW*"], https://canlii.ca/t/gs5t9 as per Dambrot, J. (orally) at paragraph 8;

v. *Pritchard v. Ontario (Human Rights Commission)*, 2004 SCC 31 ["*Pritchard*"] https://canlii.ca/t/1h2c4

Endicott Decisions

vi. *Endicott v. Ontario (Independent Police Review Office)*, 2014 ONCA 363 ["*Endicott ONCA*"] at paragraph 1, paragraph 18 ['upon receipt of a judicial review application]; paragraph 44 (citing *Payne*[viii]),
vii. *Endicott v. Independent Police Review Director*, 2013 ONSC 2046 ["*Endicott ONSC*"] at paragraph 20,

Cases involving privacy or medical (contextual)

viii. *Batacharya v. The College of Midwives of Ontario*, 2012 ONSC 1072 ["*Batacharya*"] at paragraph 13 to 15;
ix. *LifeLabs LP v. Information and Privacy Commr. (Ontario)*, 2022 ONSC 5751 ["*Lifelabs LP*"] at paragraph 13 [citing *Payne* and *Endicott*]

Legal principle and precedent: All materials in the record of proceeding that predate the VCM Decision

b. *UFCW Canada v. Rol-Land Farms Limited*, 2008 CanLII 6652 (ON SCDC), (see: https://canlii.ca/t/1vtm5) ("*Rol-Land Farms*") at paragraph 38[ix];

Right to bring a motion where record of proceeding filed but underinclusive; and importance of bringing a motion to be able to raise the issue

c. *Reflection Productions v. Ontario Media Dev. Corp*., 2022 ONSC 64 ["*Reflection Productions*"] at paragraph 74 and 75[x];

THE FOLLOWING DOCUMENTARY EVIDENCE will be used at the hearing of the motion are all filed documents with the ONSC Divisional Court and any documents that have been tendered for filing including but not limited to:

8. Affidavit #2 of the Applicant made on December 30, 2024 ("**Affidavit #2**");
9. Affidavit #4 of the Applicant made on January 18, 2025 ("**Affidavit #4**");
10. The JRPA Application of the Applicant of November 15, 2024 (the "**JRPA Application**");
11. The Applicant's Factum of December 10, 2024 (the "**Factum**");
12. The Applicant's Application Record of December 12, 2024 (the "**Application Record**");
13. The Applicant's filed and issued Certificate of Perfection (the "**Certificate Of Perfection**") and affidavit of service filed with the ONSC Divisional Court (the "**Affidavit #1**" or "AOS");
14. The Applicant's tendered requisitions herein;
15. Brief and succinct oral outline or speaking notes of the Applicant (the "Speaking Notes") or written factum in accordance with Rule 37; and
16. Such other material as the Applicant may advise and this Honourable Court, by way of a judge, may accept.

The Applicant estimates ten minutes in opening oral argument and two minutes in reply (if applicable).

January 22, 2025:

DULY EXECUTED IN ELECTRONIC FORM BY THE JRPA APPLICANT ON THE DATE ABOVE:

Mr. Kevin A. McLean (B.A. J.D., CIM)
775 King Street West
Suite 410
Toronto, Ontario
M5V 2K3
(e): mcleansettlement@gmail.com

TO:

Licence Appeal Tribunal/AABS

By way of attention to its declared representative (see: section 1 and 10 of the *SPPA*) at the following address as denoted in Affidavit #3 of the Applicant (copied and pasted herein):

Jesse Aaron Boyce
Assumed Name
Jesse A. Boyce
Law Society Number
72486F
Class of Licence Definitions
Lawyer (L1)
Real Estate Insured †
No
Status Definitions
Practising Law - Employed
Business Name
SLASTO
Business Address
25 Grosvenor[xi] 4th FloorToronto, OntarioM7A 2S8
Phone
1 437 997 1235 Ext.
Trusteeships
None
Current Practice Restrictions
None

Current Regulatory Proceedings
None
Regulatory History
None

SCHEDULE "B": COI RECUSAL SUBMISSIONS EMAIL FILED ON JANUARY 16, 2025

ADF

Court File No. DC-24-00000718-00JR

ONTARIO COURT OF JUSTICE (DIVISIONAL COURT)

BETWEEN:

KEVIN ALEXANDER MCLEAN

APPLICANT

- and -

TD HOME AND AUTO INSURANCE COMPANY, SECURITY NATIONAL INSURANCE COMPANY, TD GENERAL INSURANCE COMPANY, EXECUTIVE DIRECTOR, LICENCE APPEAL TRIBUNAL,
HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO, REPRESENTED BY EXECUTIVE CHAIR OF TRIBUNALS ONTARIO IN MR. SEAN WEIR, THE ATTORNEY GENERAL OF ONTARIO

RESPONDENTS

Applicant's Submissions for his RESPECTFUL REQUESTS

To:

The ONSC Divisional Court
130 Queen Street West, Toronto, Ontario
Toronto, Ontario

Kind attention: ONSC Divisional Court Registrar (Madam Clerk Clegg)

AND TO: (pursuant to the Courts of Justice Act, (s. 75(1)(3)),) and section 76

The Honourable Geoffrey B. Morawetz
Chief Justice of the Superior Court of Justice

AND TO:

The Honourable Faye E. McWatt
Associate Chief Justice of the Superior Court of Justice

With a copy to:

The Honourable Stephen E. Firestone
Regional Senior Judge for the Toronto Region

With a copy to:

The Honourable Madam Justice Shore

COPIED TO THE RESPONDENTS AND THEIR COUNSEL

AND COPIED TO (FOR NOTICE PURPOSES):

Andrew Papadimitropoulos
Law Society Number
58696I
Class of Licence Definitions
Lawyer (L1)
Real Estate Insured †
No
Status Definitions
Practising Law - Employed
Business Name
TD Insurance
Business Address
101 Mcnabb St
Markham, Ontario
L3R 4H8
Phone
416 983 5467 Ext.
Email Address
andrew.papadimitropoulos@tdinsurance.com

VOLUME # #1: STATEMENT OF RECUSAL REQUEST, NULLIFICATION REQUEST, ADJOURNMENT REQUEST (SOLELY IN RELATION TO SHORE J. APPEARANCE REQUIREMENT) AND STAFF DIRECTION ORDERS (SEE: SECTION 76 OF THE CJA)

1. Which Canadian jurist represented the following to the federal committee responsible for judicial appointments in her sworn and signed questionnaire to it, "Vital to the Canadian system is the impartiality of a judge. This is different than the system in the United States. In Canada, judicial independence is viewed as vital to fostering public confidence in the fairness and objectivity of the justice system. The Supreme Court of Canada has described judicial independence as "the cornerstone, a necessary prerequisite for judicial impartiality."

2. None other than The Honourable Madam Justice Sharon Store.

3. The Honourable Sharon Shore of our ONSC (not the Federal Court) also made a statement to that same federal committee that this Applicant certainly agrees with as follows

> Last, but not least, is integrity. I have always tried to conduct my personal and professional life with integrity. One of the lessons I learned from my mentors is that it takes a lifetime to build your reputation, and only minutes to destroy it.

4. Public confidence in our legal system is rooted in the belief that those who deliver legal judgments do so without bias or prejudice to one side or the other. In this regard, the appearance of justice is just as important as the reality.[xii]

5. Judges often disqualify themselves where the matter before them involves former clients or law partners. Herein, we have a situation of a former client of Epstein Cole LLP where Madam Justice Shore was a partner.

6. Lord Hewart C.J.'s aphorism that "it is not merely of some importance but is of fundamental importance that justice should not only be done, but should manifestly and undoubtedly be seen to be done" (The King v. Sussex Justices, Ex parte McCarthy, [1924] 1 K.B. 256, at p. 259). To put it differently, in cases where disqualification is argued, the relevant inquiry is not whether there was in fact either conscious or unconscious bias on the part of the judge, but whether a reasonable person properly informed would apprehend that there was. In that sense, the reasonable apprehension of bias is not just a surrogate for unavailable evidence, or an evidentiary device to establish the likelihood of unconscious bias, but the manifestation of a broader preoccupation about the image of justice. As was said by Lord Goff in Gough, supra, at p. 659, "there is an overriding public interest that there should be confidence in the integrity of the administration of justice" (see: paragraph 66 of *Weykaum*). The last is the most demanding for the judicial system, because it countenances the possibility that justice might not be seen to be done, even where it is undoubtedly done – that is, it envisions the possibility that a decision-maker may be totally impartial in circumstances which nevertheless create a reasonable apprehension of bias, requiring his or her disqualification (see: paragraph 67 of *Weykaum*).

7. The law of judicial bias is founded on two basic legal maxims: audi alteram partem ("listen to the other side") and nemo judex in sua causa ("no-one should be a judge in his own cause"). The former requires that parties affected by a decision have the right to be heard and that the decision-maker must not have pre-judged the issue. The latter prohibits the adjudicator of the case from

having an interest in the decision, thus safeguarding the right of the parties to be treated impartially and without prejudice. In other words, bias represents a predisposition or a state of mind which sways judgment.

8. Unlike tribunals, judicial impartiality is guaranteed by our *Constitution* under section 96 to 101 (see: *Ocean Port Hotel* (SCC)).

Volume #1(A): The Anticipatory Counter to Justice Shore taking a similar position to Binnie J. in *Weykaum*

9. While the SCC has found that there is a distinction with a difference between government lawyers and private practice, the following statement of law is apropos. 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).

VOLUME #1(B): BY ANALOGY

10. The Applicant (also defined as the "**Requestor**") repeats and relies upon his letter in Appendix #1.

11. If a judge is aware of any relationship or personal interest that raises a reasonable apprehension of bias, it is generally desirable that disclosure is made in advance of a hearing, so that the case may be reassigned.

12. Under the Ontario *Courts of Justice Act* (s. 75(1)(3)), it is the Chief Justice of a court or one of the Associate Chief Justices who is responsible for the assignment or reassignment of cases.

13. Pursuant to the *Civil Rules*, the following is applicable to the Case Management Appearance Requirement:

> 77.04 (1) A judge or associate judge may,
>
> (b) adjourn a case conference;
>
> (2) A judge or associate judge may, on his or her own initiative, require the parties to appear before him or her or to participate in a conference call to deal with any matter arising in connection with the case management of the proceeding, including a failure to comply with an order or the rules. O. Reg. 438/08, s. 64; O. Reg. 383/21, s. 15.
>
> (3) For greater certainty, the powers set out in subrules (1) and (2) are in addition to any other powers set out in this Rule. O. Reg. 438/08, s. 64.

14. For sake of completeness, Rule 77(1) and (2) state the following:

RULE 77 CIVIL CASE MANAGEMENT

Purpose and General Principles

Purpose

77.01 (1) The purpose of this Rule is to establish a case management system that provides case management only of those proceedings for which a need for the court's intervention is demonstrated and only to the degree that is appropriate, as determined in reliance on the criteria set out in this Rule. O. Reg. 438/08, s. 64.

General Principles

(2) This Rule shall be construed in accordance with the following principles:

1. Despite the application of case management under this Rule to a proceeding, the greater share of the responsibility for managing the proceeding and moving it expeditiously to a trial, hearing or other resolution remains with the parties.

2. The nature and extent of the case management provided by a judge or associate judge under this Rule in respect of a proceeding shall be informed by any relevant practices, traditions, customs or judicial resource issues that apply locally in the region in which the proceeding is commenced or to which it is transferred. O. Reg. 438/08, s. 64; O. Reg. 383/21, s. 15.

15. The Canadian Judicial Council considers recusal inappropriate where no other adjudicator can be constituted to hear the case or where, as a result of an emergency, withdrawal would lead to a miscarriage of justice. Still, the exercise of judicial discretion is at the heart of judicial independence, and judges are presumed to have acted in good faith.

16. The urgency is in favour of the Applicant having his requisitions filed and receiving a Form 68(B) which is most outstanding despite requisitions for the same.

17. It is rather coincidental that there are 93 justices in the Toronto region and somehow the one justice who was a partner who acted, and remains as the sole law firm to have represented one Mr. Andrew Papadimtripoulos

18. It is current counsel to the three respondent insurance companies in Mr. Nieuwland who unequivocally admitted, as a matter of law, that there was a conflict of interest when TDGIC represented in a purported but unlawful response to the Applicant's *PIPEDA* request of SNIC in January 2024 that Mr. Andrew Papadimtripoulos had not been involved in any way with this claim or access request. However, the claim number provided therein was 035325709-04 [sic] (see: **page 66** of the **Oral Compendium**).

VOLUME #2: RELIEF SOUGHT IN THE RECUSAL REQUEST, NULLIFICATION REQUEST AND REASSIGNMENT REQUEST

19. The Requestor seeks the following relief as follows:

f. The Honourable Madam Justice Shore is disqualified from any further involvement in this *JRPA* Proceeding (the "**Disqualification Request**" or the "**Recusal Request**");
g. The Case Management Appearance Requirement is declared as void and void *ab initio* (not merely voidable) (the "**Nullification Request**");
h. A general and indefinite adjournment of the case conference pursuant to 77.04(1)(b) of the *Civil Rules* by the Associate Justice (the "**Adjournment Request**");
i. A direction by the Honourable Chief Justice, pursuant to section 76 of the *CJA*, that the Registrar shall accept all outstanding requisition filings and provide confirmation of the same to the *JRPA* Applicant and respondents; and
j. A direction by the Honourable Chief Justice, pursuant to section 76 of the *CJA*, that the Registrar comply with her duties (by law), pursuant to 68.05(2) of the *Civil Rules*[xiii], and provide the parties with a "Notice of Listing For Hearing".

("d" and "e" together, the "**Staff Direction Requests**").

(collectively, the "**Respectful Requests**" or "**Requests**").

VOLUME #2(A): A note on section 76 of the *CJA*, "Direction of Court Staff"

20. For ease of reference, Section 76 of the *CJA* states:

> 76 (1) In matters that are assigned **by law**[xiv] to the judiciary, registrars, court clerks, court reporters, interpreters and other court staff shall act at the direction of the chief justice of the court. 2006, c. 21, Sched. A, s. 14.

21. The following outlines the facts material to the ***JRPA* Application** and the LAT Appeal as it relates to the various requests herein. Painstaking detail is required because of the Tribunal's failure to comply with section 10 of the *JRPA* and to fill the lacunas creates by that intentional and egregious statutory non-compliance by the Tribunal. These submissions are provided in support of the **Requests** as a means of ensuring compliance and on the continued basis of urgency. The further details of the below are bookmarked and hyperlinked in the Applicant's oral compendium and oral outline that shall follow.

VOLUME #3: FACTS

22. The underlying facts in this ***JRPA* Application** are contained within the record of proceeding with reference to the filed documents such as the ***JRPA* Application**, Factum, Application Record, and Affidavit #2.

23. The Ontario Superior Court of Justice Guide to Judicial Review in Divisional Court, effective by its metadata which states, "Scarciolla, Claudia (JUD)" (author) and 11/24/22 (date) (the "*JRPA* Guide") which states [emphasis it the Applicant's]:

> "After you have brought an application for judicial review, you will receive an email to register for CaseLines and upload your materials. There is no fee to use CaseLines."

24. The ***JRPA* Applicant** tendered his ***JRPA* Application** and paid the requisite fees on November 15, 2024.
    a. After receipt of the issued ***JRPA* Application**, from the Registrar, with thanks, the ***JRPA* Applicant** did not receive an invitation to Case Center.

25. The ***JRPA* Applicant** delivered[xv] (served) and filed his **Factum**[xvi] on December 10, 2024.

26. The ***JRPA* Applicant** delivered (served) and filed his **Application Record** on December 12, 2024.

27. The ***JRPA* Applicant** filed and paid for the Certificate of Perfection on December 13, 2024;

28. The ***JRPA* Applicant** also filed the requisite affidavit of service thereafter;

29. The ***JRPA* Applicant** received confirmation of his filing thereafter;

30. The ***JRPA* Applicant**, based on his review of what has been received, has not received any mail or email of the Form 68(B) which was required to be delivered to the parties after the ***JRPA* Applicant** had filed and paid for the Certificate Of Perfection with an approximate date of the hearing. Based upon a reasonable interpretation of the relevant Civil Rule, which is 68.05(2) (see: (2) When the certificate of perfection has been filed, the registrar shall place the application on a list for hearing and give notice of listing for hearing (Form 68B) by mail to the parties and the other persons named in the certificate of perfection. R.R.O. 1990, Reg. 194, r. 68.05 (2).”), the Registrar was required to place the Applicant’s ***JRPA* Application** on a list for hearing and give notice of listing for hearing on or around Tuesday, December 17, 2024.

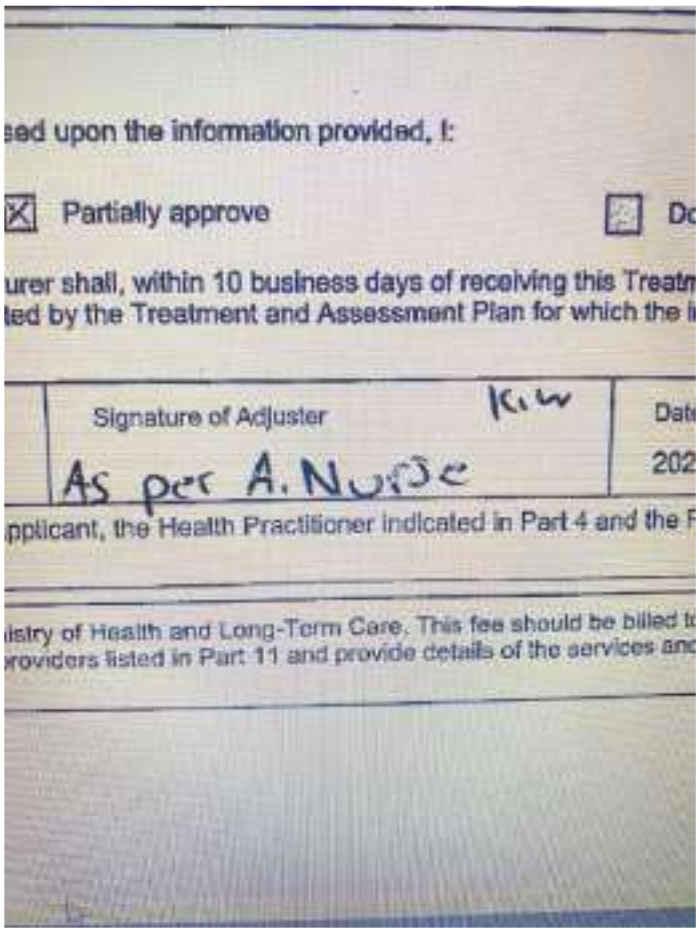
31. Despite filing his requisition #1 on December 24, 2024 (see: **Confirmation number 2787308**) requesting and requiring the Registrar to comply with her duties, there is currently no evidence that any such steps have been taken in this regard. Moreover, the ***JRPA* Applicant**, by usage of said service, was entitled to have any filing processed within five business days, which may be accepted or rejected. Five business days from December 24, 2024, was January 2, 2025.

32. Relevant to this Recusal Request and Nullification Request, on June 28, 2024, in relation to the Applicant’s NOM #6 and NOM #9, the Tribunal dismissed the Applicant’s COI motion and Mr. Andrew Papadimtripoulos (the “**Epstein Cole Client**”) remained as a representative of SNIC. The timing could not be more important because on June 20, 2024, the Tribunal granted the Applicant’s NOM #8 which removed the Fictitious Respondent (TDGIC) as the sole respondent party.

33. 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).

VOLUME #3(A): THE FORTUITOUS DISCOVERY

34. The fortuitous discovery which merely solidified the Applicant’s uncontroverted evidence was the finding of an anniversary card penned to his ex wife presumably in 2015 and 2016 under the bed where the Applicant slept and where Mr. Papadimitropoulos used to reside. The evidence remains uncontroverted in the record of proceeding;



sed upon the information provided, I:

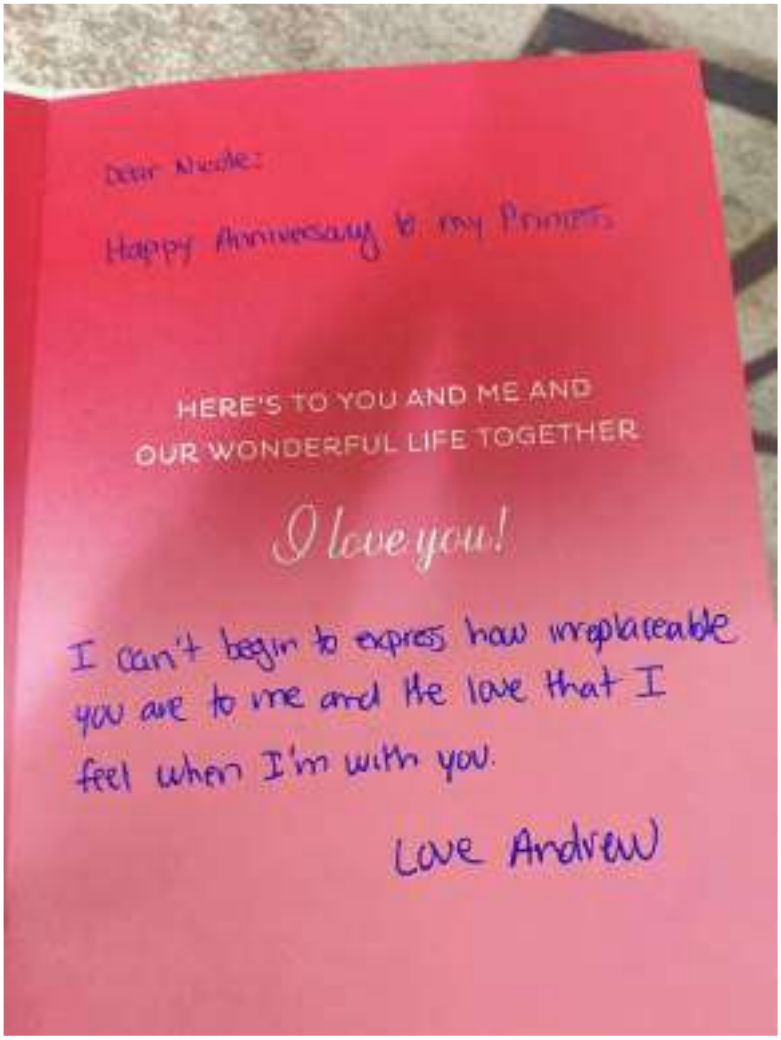
☒ Partially approve ☐ Do

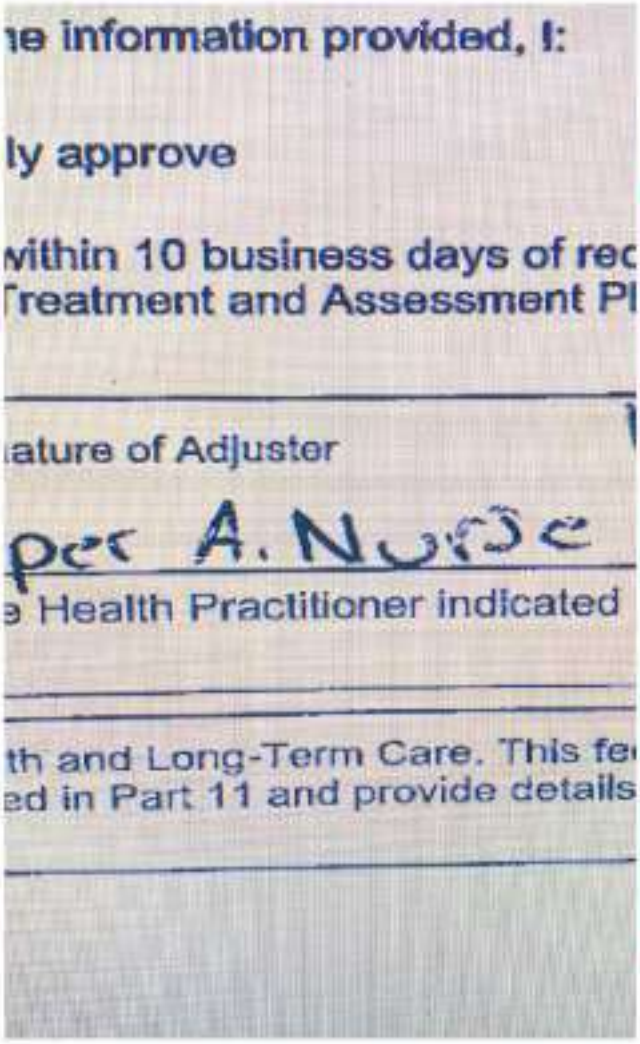
urer shall, within 10 business days of receiving this Treatm
ted by the Treatment and Assessment Plan for which the i

Signature of Adjuster	Dat
As per A. Nurse KW	202

pplicant, the Health Practitioner indicated in Part 4 and the F

istry of Health and Long-Term Care. This fee should be billed t
roviders listed in Part 11 and provide details of the services and


Dear Nicole:
Happy Anniversary to my Princess
HERE'S TO YOU AND ME AND
OUR WONDERFUL LIFE TOGETHER
I love you!
I can't begin to express how irreplaceable
you are to me and the love that I
feel when I'm with you.
Love Andrew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Happy Anniversary to my Prince

HERE'S TO YOU AND ME AND
OUR WONDERFUL LIFE TOGETHER

I love you!

I can't begin to express how irreplace
you are to me and the love that I
feel when I'm with you.

Love Andrew

(see: Affidavit #3, Exhibit "A", pages 274 to 279, which was affidavit of the Applicant on September 19, 2024,

35. No handwriting expert was required with that glaring obvious similarities.

36. The backdrop to this Forged Signature of an adjuster with SNIC is that the cover letter therein (not a public interest issue per se) confirmed and represented that SNIC had approved the sum of approximately $2080 in medical and rehab benefits ($1995 +$85.87). However, it never issued a cheque for the same to the Applicant's relevant health practitioners. The only reasonable inference is that SNIC did not want to take further steps in affirmation of the fraud, forgery, false document and uttering of a false document. Does that it make it lawful? The question answer itself.

VOLUME #3(B): NO ONE HAS MORE TO LOSE THAN MR. ANDREW PAPADIMITROPOULOS

37. It is the very exhaustion of each and every avenue that has karmically come to save this Applicant at the most fortuitous of times. The dismissal of his NOM #6 and NOM #9 (which was repurposed and filed after the nullity case conference and the change of the style of cause) is what kept Mr.

Andrew Papadimitropoulos as a representative of SNIC from his post in Markham for "TD Insurance" but now has caused a further light to be shined on his misconduct whilst being a client of Epstein Cole and at the very least a continued address for notices within a separation agreement.

VOLUME #5: ISSUES

38. The Applicant frames the general legal issues as follows:

b. Is there a ROAB involving the Madam Justice Shore in light of her being a partner at Epstein Cole LLP at the time when Mr. Andrew Papadimtriopoulos retained Epstein Cole LLP along with the admission of law by counsel of record in this *JRPA* Proceeding to the three distinct insurance companies that Mr. Andrew Papadimitropoulos could not be involved in the Applicant's SABS Claim and LAT Appeal by his contractually agreed requirement that he not have any indirect or direct contact Ms. Nicole Artopoulos (spouse of the Applicant at material times) (see: Oral Compendium, page 66)?
c. Pursuant to the common law in Canada that a RAOB cannot be remedied, what order must be granted in relation to the Shore J. Case Management Appearance Requirement?
d. Pursuant to the *Civil Rules* and the common law requirement that justice must not just be done but seen to be done, what steps should and must the Associate Justice take after the Nullification Request is granted?
e. In light of the delays experienced by the *JRPA* Applicant and the public interest along with the continued urgency of the Applicant's ***JRPA* Application**, what directions must the Chief Justice take as per section 76 of the *CJA*?

VOLUME #6: LEGAL BASES: RELATING TO THE LICENSEES AND CAST OF CHARACTERS BELOW

Volume #6(A): Law Society Act

39. To fully elucidate and outline the underlying conflict of interest and, bluntly, fraudulent conduct of one Mr. Andrew Papadimtriopoulos in executing documents for adjusters but in their name of "as per" (see: As per A. Nurse") (by way of the fortuitous discovery (see: Affidavit #3 herein), the underlying legal bases involving the non-licensee, Mr. Karat, acting contrary to the *LSA* and the LSO *By-Law*s is required.

40. Moreover, there is ostensibly some persistent discord between the decisions of Vice Chair McGee and Vice Chair Maedel in Dankha and Mosa respectively and the decisions of Vice Chair Morrissette and Vice Chair Lake (see: NOM #5 and reconsideration decision of Vice Chair Logan). As this Court would have seen had the Tribunal complied with its statutory obligation under the *JRPA*, the Applicant had to get most "creative" and "lucky" (see: the "one and the same" misrepresentation by Mr. Nieuwland at the May 2, 2024, nullity case conference) to have the Tribunal to comply with the law (which is completely antithetical to the consumer protection nature of the statutory scheme of the Insurance Act, SABS, Reg 283) to obtain the orders that he did in his NOM #8 (nota bene: which changed the style of cause while removing a party and adding a party i.e. the granting of the same which is interlocutory in nature whereas the refusal of the same is a final order and final decision):

41. For clarity as to the Applicant's positions regarding some of the other decision makers at the quasi-judicial tribunal known as "LAT" like Vice Chair McGee, Vice Chair Maedel and some others, they are clearly very articulate and have high legal acumen. The decisions of Vice Chair McGee in Dankha was yet another beautifully written and analytical precise decision wherein she ensured that the Tribunal did not condone the breaches of the *LSA* and LSO *By-Law*s by a paralegal engaging in the practice of law (not provision of legal services)

42. 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.

43. Ms. Watson, a lawyer licensee in good standing with the LSO, made the following arguments which were all rejected by Vice Chair McGee:
    a. Mr. Grabar submitted documents under the advisement of Mr. Faletta (a now suspended lawyer);
    b. Mr. Faletta oversaw Grabar's handling of the file; and
    c. A new lawyer (Watson) had recently took carriage of the file.

44. Mr. Karat was and is on far worse grounds that Mr. Grabar as Mr. Grabar was a licensed paralegal.

VOLUME #6(A)(I): LSA, SECTIONS 1(5) AND (6)

45. 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*)

46. 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*).

VOLUME #6(A)(II): SECTION 1(7) OF THE LSA: REPRESENTATION IN A PROCEEDING

47. 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")

48. 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.

49. "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*").

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

VOLUME #6(B): THE "ADR REPRESENTATIVE" [NOT AN "OFFICER"]: KARAT – CONDUCT SOLELY IN RELATION TO SNIC

51. Karat is a NON-licensee and unlicensed representative of SNIC in this **LAT Proceeding** before an adjudicative body (LAT/AABS) when measured against the *LSA* and its *By-Law*s. 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

52. 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 Mr. Papadimitropoulos) affiliates with a non-licensee, he remained exclusively liable for his professional practice when so affiliating. The Conflicted Lawyer (Mr. Papadimtriopoulos) has also acted for "TD Insurance Meloche Monnex" in *Mensah* (see: 2022 CanLII 452) and 18-00161 v. SNIC, 2019 CanLII 9628.

53. Notably, the Conflicted Lawyer (Mr. Papadimtriopoulos) 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.

54. 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 **LAT Proceeding**.

55. 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.

56. 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)).

57. 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). **Mr. Karat** regularly confirmed by that auto-reply that is not authorized for **SNIC** (but for Primmum, TD Home & Auto, and ***NON-SABS INSURER***).

Volume #6(C): 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[xvii], 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. 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 The **Appellant** also urged Mr. **Nieuwland** provide an affidavit if Ms. Moraes was his legal assistant. **Nieuwland** did not respond to the request

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

62. While, again, it matters not of the underlying facts and minutia of the relationships per se and the **EPSTEIN COLE** Client's involvement in representing SNIC, by reference to the As per A. Nurse signature and beyond as the Tribunal found that Mr. Andrew Papadimitropoulos was fully entitled to remain as a representative in the LAT Appeal, the Applicant provides the same primer no the LSO *By-Law*s in relation to the cast of characters. Put another way, the *JRPA* Applicant provides the same as per each case being determined on its own facts and out of abundance of caution.

63. 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 **LAT 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.

64. 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 (nota bene: **SNIC**'s head office is in Montreal, Quebec); and
b. Licensee: includes a permitted group of licensees

65. "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.

66. The *JRPA* Applicant now copies and pastes from his speaking notes, filed with the Tribunal and later appended to an affidavit to meet the definition of record to be included in a record of proceeding under section 20 of the *SPPA*, as follows:

> "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 Mr. Papadimitropoulos 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.
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. The Mr. Papadimitropoulos meets the definition of an "officer" under the Insurance Act by his title of "Consequence Management".

133. As of January 2024, the Mr. Papadimitropoulos 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 (Mr. Papadimtriopoulos) and Karat were joining would have met the definition of "regular basis".

> 134. While the Conflicted Lawyer (Mr. Papadimtriopoulos) 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 (Mr. Papadimtropoulos)) 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 (Mr. Papadimtropoulos) could not have his name (publicly associated) with this TD Claim #3 and this **LAT Proceeding**. He could not covertly have be involved in the "handling" of TD Claim #3 and this **LAT 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 **LAT 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 (Mr.Papadimtropoulos).

67. While Mr. Karat and Mr. Nieuwland had different clients for nearly six months and at the time of the case conference (with a bit of irony herein), SNIC in filing the SNIC Response had to act through an authorized representative or be directed by a "direct mind" – however clandestine and secret it may have been.

68. **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"). However, the *LSA* prohibited Mr. Karat from "signing" the SNIC Response as the sole representative at the time.

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

70. 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*). While the **Mr. Papadimitropoulos** is not a "trustee" or "director" of **SNIC**, he does hold himself out as a "manager" and involved in "consequence management". **Mr. Papadimitropoulos** would meet the requirements of a licensee, officer and manager of **SNIC** at **SNIC Markham**. 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 Mr. Papadimitropoulos for the particulars in affidavit evidence previously which are uncontroverted. 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.

71. Even more compelling was that Mr. Karat signed the Purported SNIC Response without any reference to Nieuwland, and then served the Appellant (as defined in the LAT Appeal) 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. The author of the cover letter was "TD Insurance Meloche Monnex" with Security National Insurance Company as the return address albeit allegedly in Markham, Ontario.

VOLUME #6(D): KAISER

72. While the Divorced Husband Conflicted Lawyer (Mr. Papadimtriopoulos) is NOT the declared tribunal advocate for SNIC and not declared herein at the *JRPA* Proceeding, 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). It does not matter if the individual, admittedly in irreconcilable conflict of interest, is the "tribunal or court" advocate as found by the ONSC in Talisman. There is codification of the same under section 1(7) of the *LSA*.

VOLUME #6(E): PUHL, TALISMAN, AND YELLOW CEDAR

73. 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*).

74. 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

VOLUME #6(F): SEMINAL POINT – COI COMING TO PASS FOR JUSTICE SHORE AS A RESULT OF THE MISCONDUCT, MISCHIEF AND FRAUD OF MR. PAPADIMITROPOULOS

75. To belabour the point, the decision of the Tribunal dismissing the Applicant's COI Motion allowed Mr. Papadimitropoulos to remain as a representative whether or not he was in the forefront or back-office, declared or not. However, the difference now is that none of the tribunal decision makers were his counsel in a matrimonial litigation spanning some three years and ending in a divorce decree, and then issuing decisions involving him. However, that COI has come to pass on or around January 8, 2024.

Volume #6(G): Martin – the administration of justice

76. 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 individual – in this matter being a justice - is necessary for the proper administration of justice (see: *MacDonald Estate v. Martin*, 1990 CanLII 32 at paragraph 47).

77. The expression "substantial risk" in the definition of "conflict of interest" describes the *likelihood* of impairment as opposed to nature and severity. substantial risk is one that is significant and plausible EVEN IF it is NOT certain or even probably that it will occur. There must be more than a "mere possibility" that impairment will occur. Ergo, not a "mere possibility" but a "possibility".

VOLUME #6(F): DUTIES TO THIRD PERSONS MATTER UNDER THE LSO BY-LAWS AND RULES OF PROFESSIONAL CONDUCT

78. Moreover, the *ROPC,* section 3.4 does not solely relate to whether the **Conflicted Lawyer (Mr. Papadimtropoulos)** 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".

79. 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*

80. 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 #6(G): FAMILY LAW AND FAMILY LAW FIRMS INVOKE DIFFERENT PRINCIPLES

81. 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."

82. It is most fitting to note there are ongoing obligations arising from a "family dispute" between the Divorced Husband Conflicted Lawyer (Mr. Papadimtriopoulos) and the Individual Policyholder that are in perpetuity.

VOLUME #7: THE LEGAL BASES RELATING TO A REASONABLE APPREHENSION OF A BIAS ("RAOB") INVOLVING A JUSTICE

VOLUME #7(A): THE TEST FOR RAOB

83. The test for a reasonable apprehension of bias is fairly straight forward. It was first articulated by Supreme Court of Canada in Committee for Justice and Liberty v. National Energy Board, as follows:

> ". . . what would an informed person, viewing the matter realistically and practically — and having thought the matter through — conclude. Would he think that it is more likely than not that [the decision-maker], whether consciously or unconsciously, would not decide fairly."

84. This test — what would a reasonable, informed person think — has consistently been endorsed and repeated by the Supreme Court of Canada, most recently in *Yukon Francophone School Board, Education Area #23 v. Yukon* (*Attorney General).*

85. As such, the possibility of bias is not assessed from the perspective of the reviewing judge or the litigants themselves. Rather, the assessment of bias must be holistic and contextual, requiring "a careful and thorough examination of the proceeding", 6 to determine what a reasonable, neutral observer would see. The court reviews the ***FULL RECORD*** in its entirety "to determine the cumulative effect of any transgressions or improprieties".

86. By the Applicant being deprived of his right to upload his filed documents into Case Center, contrary to the explicit language in the JR Divisional Court Guide, it is unclear if Justice Shore had access to the Applicant's Filed Documents which an Originating Process, Factum, Application Record, Affidavit #1 and #2, and others.

VOLUME #7(B): POTENTIAL GROUNDS FOR BIAS

87. There are six potential grounds for bias by which the impartiality of judges and administrative decision-makers can be brought into question under Canadian law.

88. This typology has been adapted from the categories formulated by Bryden, Philip, and Jula Hughes. "Legal Principles Governing the Disqualification of Judges." Available at SSRN 2473557 (2014) ["*Bryden & Phillips, Legal Principles of Disqualification*"].

a. Pecuniary or Personal Interest;
b. Personal Relationships;
c. **Past Associations** with Litigants or their Representatives; and
d. Prior judicial involvement with litigants.

89. There is no dispute that pursuant to the *LSA*, as a result of the substantial amendments in 2006 pursuant to the *Access To Justice Act, 2006*, that a representative need not be counsel of record. However, as per the record of proceeding in the LAT Appeal, pursuant to the contents required by the *SPPA*, section 20, the decision that allowed Mr. Papadimitropoulos remain as a binding one herein. If not a COI then, then certainly a COI came to pass now.

VOLUME #7(C): RECUSAL PROCEDURE

90. For example, in *Benedict v. Ontario* the provincial Crown moved to disqualify the motion judge on a reasonable apprehension of bias, as the motions judge was a plaintiff in an ongoing wrongful dismissal action against the Crown in a case similar to the employment-related claim before her. The Crown appealed after the judge refused to recuse herself. The Ontario Court of Appeal disqualified the judge, holding that any decision she reached which was unfavourable to the Crown could be perceived as advancing or vindicating her own claim.

VOLUME #7(D): PERSONAL RELATIONSHIPS

91. This class of bias relates to situations where the adjudicator has a sufficiently close relationship with a person involved in the proceeding (e.g. witnesses, parties, counsel, etc.) that renders him or her incapable or potentially incapable of judging impartially. In these instances, the impartiality can be in the form of favouritism[xviii] or personal animus[xix] depending on the history of the relationship.[xx]

92. Three considerations are important here: (1) whether it is a current or a previous relationship (existing relationship give rise to greater apprehension of bias); (2) The nature of the relationship (i.e. friendship, family, professional, or business); and (3) The depth of the relationship (i.e. cordial, formal, social, intimate). [xxi]

VOLUME #7(E): PERSONAL RELATIONSHIPS WITH LITIGANTS AND THEIR REPRESENTATIVES

93. Judges often disqualify themselves where the matter before them involves former clients or law partners.

94. The SCC found in its seminal case of *Weykaum* Indian Bank at paragraph 65:

> "Second, when parties say that there was no actual bias on the part of the judge, they may be conceding that the judge was acting in good faith, and was not consciously relying on inappropriate preconceptions, but was nevertheless unconsciously biased. In R. v. Gough, [1993] A.C. 646 (H.L.), at p. 665, quoting Devlin L.J. in The Queen v. Barnsley Licensing Justices, [1960] 2 Q.B. 167 (C.A.), Lord Goff reminded us that:
>
> Bias is or may be an unconscious thing and a man may honestly say that he was not actually biased and did not allow his interest to affect his mind, although, nevertheless, he may have allowed it unconsciously to do so. The matter must be determined upon the probabilities to be inferred from the circumstances in which the justices sit."

95. Put another way, is it more likely than not that it can inferred, from an objective person's perspective, that Madam Justice Shore was not actually biased and did not allow her interest as being a partner of the law firm of Epstein Cole LLP during the time of a firm's representation of Mr. Papadimitropoulos but nonetheless the appearance of mischief and misconduct is one that this ONSC (Divisional Court) must distance itself from an appearance standpoint.

96. What would an informed person, viewing the matter realistically and practically – and having thought the matter through – conclude? Would this person think that it is more likely than not that Binnie J., whether consciously or unconsciously, did not decide fairly?

97. There are no textbook instances.

98. Whether the facts, as established, point to financial or personal interest of the decision-maker; present or past link with a party, counsel or judge; earlier participation or knowledge of the litigation; or expression of views and activities, they must be addressed carefully in light of the entire context. There are no shortcuts.[xxii]

99. The fact that a judge would have recused himself or herself ex ante cannot be taken to be determinative of a reasonable apprehension of bias ex post.[xxiii]

100. The following statement of Laskin C.J., in *Committee for Justice and Liberty v. National Energy Board*, *supra*, at p. 388:

> "Lawyers who have been appointed to the Bench have been known to refrain from sitting on cases involving former clients, even where they have not had any part in the case, until a reasonable period of time has passed. *A fortiori*, they would not sit in any case in which they played any part at any stage of the case. This would apply, for example, even if they had drawn up or had a hand in the statement of claim or statement of defence and nothing else (see: paragraph 80 of *Weykaum*).

101. While commending Madam Justice Shore for being ready, willing and able, she (and this Court) must live by the very representations that she made to the Judicial Advisory Committee for it to rely upon in determining her high level qualification to become a justice and ensure not only the impartiality of her actions but the *appearance of the same*.

102. It is not the grounds for automatic disqualification but it serves as a strong evidentiary foundation. It suggests that a reasonable and right-minded person would likely view unfavourably the fact that the judge acted as counsel in a case over which he or she is presiding, and could take this fact as the foundation of a reasonable apprehension of bias (see: paragraph 81 of *Weykaum*).

VOLUME #7(F): GOVERNMENT PRACTICE IS DIFFERENT THAN PRIVATE PRACTICE

103. Furthermore, in assessing the potential for bias arising from a judge's earlier activities as counsel, the reasonable person would have to take into account the characteristics of legal practice within the Department of Justice, as compared to private practice in a law firm. See the *Canadian Judicial Council's Ethical Principles for Judges*, supra, at p. 47.

VOLUME #7(G): JUDGES' VOLUNTARY RECUSAL

104. In Canada, the vast majority of recusal decisions are made by judges on their own motion. Judges are under an ethical and legal obligation to recuse themselves, if they believe they will be unable to judge impartially. In carrying out this responsibility, a judge is not required to consul with any other person, including with his or her Chief Justice.

105. If a judge is aware of any relationship or personal interest that raises a reasonable apprehension of bias, it is generally desirable that disclosure is made in advance of a hearing, so that the case may be reassigned.

VOLUME #7(H): COURTS OF JUSTICE ACT: REASSIGNMENT

106. Under the Ontario *Courts of Justice Act* (s. 75(1)(3)), it is the Chief Justice of a court or one of the Associate Chief Justices who is responsible for the assignment or reassignment of cases. However,

pursuant to section 77.04(1), the case management conference was required to be in front of the **same judge** who self-initiated (however coincidentally or unlikely, probabilistically speaking, that may seem) the same. As such, said Case Management Attendance Requirement must be nullified as per the Nullification Request. It is void and void *ab initio* not merely voidable.

107. In the alternative, it must be adjourned generally and indefinitely while all other duties and obligations of not only the Applicant but the respondents, and, where applicable, the staff of the ONSC (Divisional Court) must be complied with forthwith. There is no requirement of a case conference to be held in any proceeding let alone a judicial review proceeding which are to be summary in nature.

VOLUME #7(I): NO UNIFORM PRACTICE BUT BEST GUIDANCE: "SEEK SUBMISSIONS"

108. More obviously, the CJC notes that judges should not recuse themselves where the potential conflict of interest is "trifling" or unlikely to raise plausible basis for disqualification. However, where the potential for disqualification is arguable, or when an unexpected issue arises shortly before or during the proceeding, the judge is advised to make disclosure and to seek submissions from counsel.

VOLUME #7(J): NO UNIFORM PRACTICE BUT BEST GUIDANCE: "OBJECT PROMPTLY"

109. The Supreme Court of Canada affirmed in *Canada (Human Rights Commission) v. Taylor*, that where a party reasonably apprehensive of bias fails to allege a violation of natural justice at "the earliest practicable opportunity", there is an implied waiver of any future right to complain about bias. Cartwright J. put the rule as follows, by way of dicta, in delivering the Supreme Court judgment in *Ghirardosi v. Minister of Highways for British Columbia*:

> "There is no doubt that, generally speaking, an award will not be set aside if the circumstances alleged to disqualify an arbitrator were known to both parties before the arbitration commenced and they proceeded without objection.

110. Where both criteria are established, the reviewing court will often look to the failure to object or raise with suspicion, indicative of tactic to hold an objection in reserve in the event of an unfavourable ruling. This is especially the case where allegations of bias are raised on appeal at first instance. For instance, in *Eckervogt v. British Columbia (Minister of Employment and Investment)*, the Court of Appeal noted that it is "most unsatisfactory" for the court to hear an allegation of bias in the first instance:

> "I do not think it is proper for a party to hold in reserve a ground of disqualification for use only if the outcome turns out badly. Bias allegations have serious implications for the reputation of the tribunal and
> in fairness they should be made directly and promptly, not held back as a
> tactic in the litigation. Such a tactic should, I think, carry the risk of a

finding of waiver. Furthermore, the genuineness of the apprehension becomes suspect when it is not acted on right away.[emphasis added]."

111. Hence the critical importance to formally note objections in the record. The *JRPA* Applicant has been anything but "silent" but ensuring that he had objected, reserved his rights and promptly notified the ONSC Registrar.

VOLUME #7(J): NO UNIFORM PRACTICE BUT BEST GUIDANCE: MOTION OR REQUEST

112. ***Mullan and Boyle*** suggest that objections to an adjudicators presence should be made in writing, preferably by way of a formal motion to recuse, "or at the very least by an unambiguous request, and not just by way of general expressions of potential concern".

113. In the context of a "non-endorsement" or "non-order" by Justice Shore, the Applicant respectfully submits that a request, as opposed to a motion, is most appropriate considering the same. The Applicant, the "Requestor" herein, will provide a "record" so it can be stamped accordingly on the same or by way of separate document at the election of the Court.

114. In this manner, Rule 59.06 of the Civil Rules need not be addressed and it is unlikely it could be addressed on strict reading of the same but would have, hypothetically speaking but for the RAOB herein, by analogy under the Civil Rules.

VOLUME #8: CONCLUDING REMARKS WITH THANKS TO THIS COURT FOR DECIDING THE RESPECTFUL REQUESTS

VOLUME #8(A): MISUSE OF CONFIDENTIAL INFORMATION: NORMALLY NOT SUSCEPTIBLE TO PROOF (OR DISPROOF)

115. This principle, legal in nature, is cited for the purposes that the ***JRPA* Applicant** cannot prove or disprove what was shared in a privileged setting between **Epstein Cole LLP** and Mr. Andrew Papadimitropoulos. All that he can prove is that current counsel of record in this ***JRPA* Proceeding** admitted (but misrepresented) that Mr. Papadimtripoulos could not be involved in the LAT Appeal. If he could not be involved in any way in the LAT Appeal, then there is agreement between the Applicant and the respondent insurance companies that his legal relationships, caused by a separation and a final divorce decree in 2019, along with his continuing duties pursuant to contract to cease and desist in any form of direct (Ms. Nicole Artopoulos (the "Named Individual Insured" in the **Insurance Policy** (the very "insurance policy" cited by VC Morrissette at paragraph 27 of the VCM Reasons (see: Oral Compendium, Tab 1, page 9) or indirect contact (which would be the Applicant)).

116. Litigation is not a "tea party". That being said, this Court's time need not be wasted in the minutia of the unlawful and, frankly, rather frightening conduct (from a mental health standpoint) that he engaged in by reference to affidavit #3 of the *JRPA* Applicant, made on January 8, 2025, by appending the very affidavits in the record of proceeding that he relied upon in support of his COI Motion.

117. It is now established on a balance of probabilities that **Karat** derived his assignment to this LAT Dispute for **SNIC** from the **Conflicted Lawyer (Mr. Papadimtriopoulos)**. 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.

118. With the benefit of hindsight, the Applicant's submissions in Spring 2024 were now somewhat prophetic:

> "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)."

119. It was prophetic because of the reference to 'future related proceedings" and it has come to roost yet again.

120. It is not in the Applicant's DNA or makeup to feel sorry for himself so nobody else needs to.

121. His primary concern is preventing this type of conduct from happening again (if systemic) to others who do not have the ability, determination, and/or skill to take on a collection of bullies.

122. To the extent that it is idiosyncratic to the *JRPA* Applicant, then it bolster the Applicant's respectful submission that the Recusal Request, Nullification Request, Adjournment Request, and Staff Direction Requests must be granted.

123. 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. Unfortunately, this Tribunal, unlike the sound reasons for decision by Vice Chair McGee in *Mansuri* (which is well known to this Court by way of subsequent judicial review), did not decide in accordance with the law at that time. However, it turned out to be to the detriment to the respondent insurance companies considering their failure to comply with filing (not 'exchanging of materials' whatever that means in fact or at law) deadline of the *Civil Rules*.

124. In fairness to the Tribunal, the Applicant did not have said evidence of the mischief with respect to the forger of the "As per A. Nurse" 'signature' (used only for reference and not in the legal sense or any admission of its validity). The Applicant framed the legal issues as follows:

> *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* ***LAT Proceeding*** *and any Future Related LAT Proceedings of the Mr. Papadimitropoulos, 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?*

125. Simply put, since the record of proceeding is replete with only uncontroverted evidence of the Applicant regarding this rather fortuitous discovery (see: images above) for his self-interest and counter to that of the initial adjuster for SNIC and Mr. Andrew Papadimtriopoulos, Mr. Nieuwland's representations in defiance and response to the COI orders sought in NOM #6 and NOM #9 now bear heavily on Justice Shore recusing herself through no per se fault of her own but solely based on her former partnership status at **Epstein Cole LLP**. However, said law firm agreed to represent this "individual" and with that comes potential consequences that follow lawyers into retirement and into the bench. Simply put, the law firm cannot have it both ways where they accept funds for services and not have to bear the consequences (which is merely herein that Justice Shore cannot adjudicate this JRPA Proceeding in any fashion even at the triage or case management phase)

VOLUME #9: RECAP OF RELIEF SOUGHT

126. As opposed to making a public spectacle of the above with a reported decision, the Applicant sincerely trusts that this Honourable Court appreciates resolving the above issues with findings, orders or granting of the Requested Relief in the Respectful Requests on an expedited basis:

1. The Honourable Madam Justice Shore is disqualified from any further involvement in this *JRPA* Proceeding (the "**Disqualification Request**" or the "**Recusal Request**");
2. The Case Management Appearance Requirement is declared as void and void *ab initio* (not merely voidable) (the "**Nullification Request**");
3. A general and indefinite adjournment of the case conference pursuant to 77.04(1)(b) of the *Civil Rules* by the Associate Justice (the "**Adjournment Request**");
4. A direction by the Honourable Chief Justice, pursuant to section 76 of the *CJA*, that the Registrar shall accept all outstanding requisition filings and provide confirmation of the same to the *JRPA* Applicant and respondents; and
5. A direction by the Honourable Chief Justice, pursuant to section 76 of the *CJA*, that the Registrar comply with her duties (by law), pursuant to 68.05(2) of the *Civil Rules*[xxiv], and provide the parties with a "Notice of Listing For Hearing".

("d" and "e" together, the "**Staff Direction Requests**").

(collectively, the "**Respectful Requests**" or "**Requests**").

127. In support of the Respectful Requests, the JRPA Applicant relies on the filed materials in the record of proceeding herein and those documents that the JRPA Applicant has tendered for filing which remain in "processing status" and/or are required to be issued or deemed filed by the ONSC Divisional Court Registrar with reference to Rule 4.08 and/or section 76 of the *CJA*.

128. All of which is respectfully submitted (with the filed affidavit #3 of the *JRPA* Applicant on January 8, 2025, as "materials" in support of the same) to the ONSC (Div. Ct.) (Chief Justice and Associate Chief Justice (where applicable above)) on Thursday, January 16, 2025:

Mr. Kevin A. McLean (B.A. J.D., CIM)

Appendices of the *JRPA* Applicant's Factum

APPENDIX #1

January 16, 2025

VIA EMAIL

URGENT – NOTICE

Court file number: Court File No. DC-24-00000718-00JR
Type of document: email (three outstanding requisitions)
Short title of proceeding: McLean v. TDHA et al
Party: Mr. Kevin A. McLean, self-represented, Applicant, e: mcleansettlement@gmail.com;

Re: confirmation of the correct or preferred procedure to address my nullification request of Justice Shore initiated case management appearance requirement (the "**Case Management Appearance Requirement**") (the "**Nullification Request**") (see: affidavit #3 herein)

Re #2: recusal request of Madam Justice Shore (the "**Recusal Request**")

Re #3: to the extent applicable – dependent on other factor – the assignment request or reassignment

Re #4: Materials to follow today

Dear Madam Registrar Clegg:

1. I write regarding the above. I remain of the view and position, with great respect, that Justice Shore must recuse herself and withdraw her self-initiated Case Management Appearance Requirement.

2. You will kindly recall that I kindly informed you that I would review the law with respect to the preferred procedure. In that vein, There is no uniform practice in Canada with regard to raising the allegation of bias or a reasonable apprehension of bias at trial. Thus, the exact procedure to be followed in Ontario is unsettled (see: Paul Perell, "The Disqualification of Judges and Judgments on the Grounds of Bias or Reasonable Apprehension of Bias" (2004), 29 The Advocates' Quarterly 102, at 114 [Perell, "The Disqualification of Judges"].

3. Pursuant to our Courts of Justice Act, section 75(1) is relevant:

> Powers re sittings and assignment of judicial duties
>
> 75 (1) The powers and duties of a judge who has authority to direct and supervise the sittings and the assignment of the judicial duties of his or her court include the following:
>
> 1. Determining the sittings of the court.
>
> 2. Assigning judges to the sittings.
>
> 3. Assigning cases and other judicial duties to individual judges

4. As such, my request will be directed to the Honourable Chief Justice of the ONSC The Honourable Geoffrey B. Morawetz Chief Justice of the Superior Court of Justic and The Honourable Faye E. McWatt.

5. As noted, I have already filed my affidavit #3 on January 8, 2025, in support (i.e. materials exchanged already in support but also filed) of my Nullification Request and Request.

6. As noted by our SCC in *Newfoundland Telephone Co. v. Newfoundland (Board of Commissioners of Public Utilities)*, 1992 CanLII 84 (SCC), the damage caused by the reasonable apprehension of bias ("RAOB") cannot be remedied by Justice Shore. The only solution is the withdrawal of her Case Management Appearance Requirement.

7. The materials shall follow in short order which will be in the nature of a request with reliance on affidavit #3.

8. In relation to The Honourable Madam Justice Shore, and which will be relied upon in my requests of this Honourable Court, and as a brief "sneak preview" to the main argument, I note the following and certainly agree with Justice Shore's representations to the federal courts judicial appointment committee [hyperlinked to the specific paragraph for ease of reference]:

> "Vital to the Canadian system is the impartiality of a judge. This is different than the system in the United States. In Canada, judicial independence is viewed as vital to fostering public confidence in the fairness and objectivity of the justice system. The Supreme Court of Canada has described judicial independence as "the cornerstone, a necessary prerequisite for judicial impartiality."
>
> The Honourable Sharon Shore of our ONSC also made a statement to the Judicial Advisory Committee[xxv] that this Applicant certainly agrees with as follows:
>
> Last, but not least, is integrity. I have always tried to conduct my personal and professional life with integrity. One of the lessons I learned from my mentors is that it takes a lifetime to build your reputation, and only minutes to destroy it.

9. I repeat and rely upon the previous supra in this email thread and explicitly repeat and rely upon section 76 of the *CJA*. I note the importance of the record of this proceeding being complete, accurate and up-to-date for a variety of purposes not limited to the requirement it be so for my requests.

10. Thank you in advance for drawing this email and my affidavit #3 to the attention of the Chief Justice of the ONSC and the Associate Justice of the ONSC with the proviso that my written argument for my above noted requests will follow today.

Endnotes

[i]68.05(2) When the certificate of perfection has been filed, the registrar shall place the application on a list for hearing and give notice of listing for hearing (Form 68B) by mail to the parties and the other persons named in the certificate of perfection. R.R.O. 1990, Reg. 194, r. 68.05 (2).

[ii]Denoted *supra*

[iii]Where Mr. McLean's FIPPA request was delivered

[iv]To the extent that the Tribunal consents to the same or does not oppose, and/or comply with its obligations forthwith, the Applicant seeks relief to convert the mode of hearing from telephone conference to a brief written argument with a draft order to be provided, vetted by the Registrar, for immediate entry.

[v]Denoted *supra*

[vi][161] An applicant for judicial review has the right to have a full and accurate record of what went on before the tribunal put before the court. This is an aspect of the superior court's inherent powers of judicial review. A superior court may insist upon the production of an adequate record of the proceedings before the tribunal being reviewed. As stated by Denning L.J. in R. v. Medical Appeal Tribunal ex p. Gilmore, [1957] 1 Q.B. 574 at 583 (C.A.): "The court has always had power to order an inferior tribunal to complete the record ... [A] tribunal could defeat a writ of certiorari unless the courts could order them to complete or correct an imperfect record. So the courts have the power to give such an order". See also R. v. Northumberland Compensation Appeal Tribunal, ex p. Shaw, [1952] K.B. 338 at 352–54 (C.A.); *Canadian Workers Union v. Frankel Structural Steel Ltd.* (1976), 1976 CanLII 829 (ON SC), 12 O.R. (2d) 560 at 577 (Div. Ct.) per Reid J.; F.G. *Spencer Ltd. v. Prince Edward Island (Labour Relations Board)* (1970), 1970 CanLII 960 (PE SCAD), 16 D.L.R. (3d) 670 (P.E.I.S.C.); *Battaglia v. British Columbia (Workmen's Compensation Board)* (1960), 1960 CanLII 334 (BC SC), 22 D.L.R. (2d) 446 (B.C.S.C.). A statutory body subject to judicial review cannot immunize itself or its process by arriving at decisions on considerations that are not revealed by the record it files with the court.

[vii]The purpose of requiring a tribunal or adjudicator to file a "record of proceedings" is to ensure that when the court reviews the tribunal's decision, it has the information and evidence as it appeared before the tribunal in the first instance. A court reviewing an adjudicative decision may look at decisions to admit evidence, submissions of witnesses, and other evidence and may substitute its judgment for that of the court [or tribunal] of first instance

[viii]An applicant for judicial review has the right to have a full and accurate record of what went on before the tribunal put before the court. This is an aspect of the superior court's inherent powers of judicial review. A superior court may insist upon the production of an adequate record of the proceedings before the tribunal being reviewed. As stated by Denning L.J. in *R. v. Medical Appeal Tribunal, Ex parte Gilmore*, [1957] 1 Q.B. 574 (Eng. C.A.) at 583:

The court has always had power to order an inferior tribunal to complete the record … [A] tribunal could defeat a writ of certiorari unless the courts could order them to complete or correct an imperfect record. So the courts have the power to give such an order.

[ix][38] Thus, the content of volume 3 is not properly part of the record required to be filed pursuant to s. 10 of the *JPRA*, as it post-dates the decisions under review. Moreover, it is not relevant to the issue of reasonable apprehension of bias before this Court, as it responds to an issue of actual bias.

[x]Ergo, pursuant to s. 10 of the Judicial Review Procedure Act, it was available to the applicant to bring a motion seeking production of documents it alleges were relied on by the decision-maker but are not contained in the record: see, for example *K.D. v. Peel Children's Aid Society*, 2017 ONSC 7392 (Div. Ct.) at paras. 16-17). The applicant failed to do so. As a result, it is precluded from raising this issue for the first time on judicial review.

[xi]Where Mr. McLean's FIPPA request was delivered

[xii]https://www.canlii.org/en/commentary/doc/2015CanLIIDocs5022#!fragment//BQCwhgziBcwMYgK4DsDWszIQewE4BUBTADwBdoByCgSgBpltTCIBFRQ3AT0otokLC4EbDtyp8BQkAGU8pAELcASgFEAMioBqAQQByAYRW1SYAEbRS2ONNWpA:~:text=Public,reality.

[xiii]68.05(2) When the certificate of perfection has been filed, the registrar shall place the application on a list for hearing and give notice of listing for hearing (Form 68B) by mail to the parties and the other persons named in the certificate of perfection. R.R.O. 1990, Reg. 194, r. 68.05 (2).

[xiv]Ironically, the same language under section 5 of the SPPA that is at issue in the JRPA Proceeding

[xv] "deliver" means serve and file with proof of service, and "delivery" has a corresponding meaning (see: Rule 1.03)

[xvi] "factum" includes a book of authorities, if one is required by rule 4.06.1 (see: Rule 1.03(1));

[xvii]These references are to the "hearing book" or "hearing record" at the time and are part of the "record of proceeding" which remains the obligation of the Tribunal to file the same forthwith.

[xviii]See G.W.L. Properties Ltd. v. W.R. Grace & Co. of Canada Ltd., 1992 CanLII 934 (BC CA). (There was no RAOB where brother of a pre-trial management judge was associated with the plaintiff's law firm in a major product liability case. The interlocutory nature of the judge's role, short period remaining until trial, and inconvenience of recusal were relevant factors).

[xix]See Blanchette v. C.I.S. Ltd., [1973] SCR 833, 1973 CanLII 3 (SCC). (The trial judge sitting an insurance defence matter was disqualified for a RAOB as he had actively pursued claims against the defendant-insurer on behalf of members of his family

[xx]Kligman, "Bias", supra note 17 at 1-6.

[xxi]Bryden & Phillips, Legal Principles of Disqualification", supra note 15 at 58-63.

[xxii]https://canlii.ca/t/51pj#par77

[xxiii]https://canlii.ca/t/51pj#par78

[xxiv]68.05(2) When the certificate of perfection has been filed, the registrar shall place the application on a list for hearing and give notice of listing for hearing (Form 68B) by mail to the parties and the other persons named in the certificate of perfection. R.R.O. 1990, Reg. 194, r. 68.05 (2).

[xxv]Under the new judicial application process introduced by the Minister of Justice on October 20, 2016, any interested and qualified Canadian lawyer or judge may apply for federal judicial appointment by completing a questionnaire. The questionnaires are then used by the Judicial Advisory Committees across Canada to review candidates and submit a list of "highly recommended" and "recommended" candidates for consideration by the Minister of Justice (see: https://www.canada.ca/en/department-justice/news/2018/12/the-honourable-sharon-shores-questionnaire.html)

TAB 2:

Court File No. DC-24-00000718-00JR
Applicant's Motion #2 (Motion in Writing; Request to Convert Motion into Motion for Judgment)

Court File No.

ONTARIO COURT OF JUSTICE (DIVISIONAL COURT)

BETWEEN:

KEVIN ALEXANDER MCLEAN

APPLICANT

- and -

TD HOME AND AUTO INSURANCE COMPANY, SECURITY NATIONAL INSURANCE COMPANY, TD GENERAL INSURANCE COMPANY, EXECUTIVE DIRECTOR, LICENCE APPEAL TRIBUNAL,
HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO, REPRESENTED BY EXECUTIVE CHAIR OF TRIBUNALS ONTARIO IN MR. SEAN WEIR, THE ATTORNEY GENERAL OF ONTARIO

RESPONDENTS

NOTICE OF APPLICATION TO DIVISIONAL COURT FOR JUDICIAL REVIEW

TO THE RESPONDENTS:

A LEGAL PROCEEDING HAS BEEN COMMENCED by the Applicants. The claim made by the Applicants appears on the following pages.

THIS APPLICATION for Judicial Review will come on for a hearing before the Divisional Court on a date to be fixed by the Registrar at the place of hearing requested by the Applicants. The Applicants request that this application be heard at Osgoode Hall, 130 Queen Street West, Toronto, Ontario, MSH 2N5.

IF YOU WISH TO OPPOSE THIS APPLICATION, to receive notice of any step in the application or to be served with any documents in the application, you or an Ontario lawyer acting for you must forthwith prepare a notice of appearance in Form 38A prescribed by the Rules of Civil Procedure, serve it on the Applicants' lawyer or, where the Applicants do not have a lawyer, serve it on the Applicants, and file it, with proof of service, in the office of the Divisional Court, and you or your lawyer must appear at the hearing.

IF YOU WISH TO PRESENT AFFIDAVIT OR OTHER DOCUMENTARY EVIDENCE TO THE COURT OR TO EXAMINE OR CROSS-EXAMINE WITNESSES ON THE APPLICATION, you or your lawyer must, in addition to serving your notice of appearance, serve a copy of the evidence on the Applicants' lawyer or, where the Applicants do not have a lawyer, serve it on the Applicants, and file it, with

proof of service, in the office of the Divisional Court within thirty days after service on you of the Applicants' application record, or not later than 2 p.m. on the day before the hearing, whichever is earlier.

IF YOU FAIL TO APPEAR AT THE HEARING, JUDGMENT MAY BE GIVEN IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO DEFEND THIS PROCEEDING BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

Date:

Issued by

Address of Local Registrar court office Divisional Court

Superior Court of Justice
Osgoode Hall
130 Queen Street West
Toronto, ON MSH 2N5

TO: ATTORNEY GENERAL OF ONTARIO
Crown Law Office — Civil
8th Floor, 720 Bay Street
Toronto, ON

AND TO:

Respondent Insurance Companies (addresses particularized and identified along with counsel in the record of proceeding and the civil claims submissions portal)

APPLICATION

Volume #1: Relief Sought

1.The Applicant adopts his definitions from the record of proceeding, including the hearing record in NOM #13 to #15 and NOM #16 and they have the same meaning herein as they do therein.

2.The Applicant makes the application for the following relief in the form of any orders, declarations, findings, determinations or directions with great respect to the License Appeal Tribunal and gratitude to the ONSC (Divisional Court) for its consideration of the same:

a. An Order that this JRPA proceeding be declared as public interest litigation;

b. An order that no costs are awarded against the Applicant in any event of the cause;

c. An Order compelling Vice Chair Morrissette or the Tribunal to decide the Applicant's motion (defined as "NOM #16" which was served on SNIC, TDHA, and TDGIC and filed in September 2024) or confirm with the Applicant, copied to this ONSC (Divisional Court), that it is declining to exercise its jurisdiction or discretion under section 21.1 of the SPPA;

i. An Order, thereafter the Tribunal complying with the above order, that Vice Chair Lake either amend her reconsideration decision (the "RD") or confirm, with a copy to this court, that she is declining to exercise her jurisdiction or discretion;

1. An Order that the 30 day time limit under the JRPA does not commence until the above orders are complete;

d. A preliminary or procedural order that this judicial review is heard before a single sitting judge pursuant to section 6(2) of the *JRPA*;

e. A procedural and preliminary order that the limitation period for judicial review involving the final orders involving NOM #14 and NOM #15 does not commence until the Licence Appeal Tribunal/AABS issues its order regarding the Applicant's section 21.1 of the SPPA motion ("NOM #16") (filed in September 2024 but "in "progress" as of November 15, 2024, to the LAT/AABS) and the Tribunal issues any amended decision regarding the Applicant's likely amended reconsideration motion;

f. An Order that the Applicant may add and include fresh evidence when it becomes available to him through any lawful means including the LAT and/or any privacy requests that are outstanding at the time of this JRPA Application;

g. A procedural and preliminary order that no responsive materials are required from the Respondent Insurers and they are not entitled to participate without leave as they chose not to participate in the underlying motions subject to the Respondent Insurers participating in any of aforementioned amended motions arising out of the Applicant's NOM #16;

h. An order in the nature of mandamus requiring the Tribunal to comply with its requirements regarding the provision of hearing notices to any and all parties prior to issuing decisions;

i. An Order in the nature of mandamus requiring the Tribunal to comply with its specific rules, effective August 21, 2023, with particular reference to granting non-parties the right to make submissions prior to the issuance of a decision;

j. A declaration that certain specific rules in the LAT Rules are ultra vires the Tribunal which will be specified in the Applicant's factum;

k. An Order that the relief sought in the Applicant's motions (see: NOM #14 (August 3, 2024) and NOM #15 (August 21, 2024)) (see: Appendices #1 and #2) including his reconsideration motion, dated September 27, 2024, is granted in substantially the same form:

    i. An Order quashing or in certiorari and/or varying the orders of Vice Chair Morrissette ("**VCM**") decision on September 12, 2024, to the substantive orders sought therein; and

    ii. An Order quashing or in the nature of certiorari and/or varying the orders in the Vice Chair decision on involving the Applicant's reconsideration motion;

l. More specifically, the Orders sought by the Applicant shall be granted in full or substantially the same form as he sought them at the time:

    i. An Order cancelling the decisions and orders of the Adjudicator in NOM #14 and NOM #15;

    ii. An Order varying the decision of the Appellate Tribunal as follows:

        1. Granting the relief sought in NOM #14 (see: Hearing Record, Tab 1, page 3; see also: Appendix #1 herein); and

        2. Grant the relief in NOM #15, paragraph #3 (see: Appendix #2 herein);

m. A Declaration and Order that TDHA, FSRA registration number 1063, is declared the "**First Insurer**" pursuant to Reg 283, and such an order shall remain as it relates to the Applicant (also defined as the "Insured Person" or "Disabled Individual" arising out of no-fault car accident on August 31, 2022);

n. An Order compelling the LAT to provide and disclose any and all records involving who was the first respondent denoted in its LAT/AABS e-filing system;

o. An Order quashing VC Lake's Reconsideration Decision on grounds of conflict of interest and/or reasonable apprehension of bias;

p. Such injunctive or interlocutory relief as may be sought by the Applicant, until such time this application can be determined on its merits;

q. Costs in favour of the Applicant; and

r. Such other relief that the Applicant may advise and this Court may allow.

Volume #2: The Grounds for the Application

3.This judicial review can be disposed of on one legal ground and error, while there are broader errors in the VCM decision in the **First Insurer Motions** which include the following statement: "[27] .....The initial respondent [sic], TDGIC, and the current respondent, SNIC accepted priority over the applicant's [sic] insurance policy".

4.Therefore, if SNIC and TDGIC accepted priority of the Insurance Policy, as found by the Adjudicator, and the Appellant did not make any such offer to either for them to 'accept priority of the Insurance Policy' and/or neither SNIC nor TDGIC first received the **Appellant's Completed Application**, then TDGIC had to receive that offer of "priority" (as the Adjudicator puts it) from the "**First Insurer**".

5.As a matter of law, could TDHA offer "priority" to SNIC and TDGIC? The question answers itself.

6.As the Applicant, along with SNIC, TDHA and TDGIC, are awaiting the decision from Vice Chair Morrissette in NOM #16, the Applicant took the time to advance this judicial review application so that it is filed and then can be amended after receiving the NOM #16 decision. Moreover, it may be affecting the reconsideration decision of Vice Chair Lake. Unlike an appeal under *LATA*, the underlying matter is not stayed.

7.The Appellant is a disabled individual residing in Toronto, Ontario. At the time of the Accident, he was 39 years old with a G2 license. At the time of these submissions, he is 41 years old with a G license. The Appellant is the spouse of the individual insured (Nicole Artopoulos) and the Insured Automobile was leased from the lessor BMW Financial Services Inc. Since April 2018, the Appellant and Ms. Artopoulos have resided at 775 King Street West, Toronto, Ontario, M5V 2K3. Ms. Artopoulos, in Spring 2018, obtained an exclusive automotive insurance policy through SNIC as her being a University Of Toronto alumnus for a previous BMW leased vehicle. In October 2019, the same insurance policy was transferred to the Insured Automobile.

8.Security National Insurance Company ("SNIC") was incorporated under the CBCA in 1934, then continued under the federal *Insurance Act* with its head office in Montreal, Quebec. At the time of the Accident, SNIC was licensed with the FSRA to provide six (6) classes of insurance in Ontario and its FSRA registration number if 397. From 2018 to the time of the Accident and thereafter, SNIC's Ontario office has been the McNabb Building in Markham, Ontario. The primary area code for phone and fax lines in

Markham is "905". At the time of the Accident, SNIC provided the return mailing address of the Markham McNabb Building but, in error, provided a "416 area code" fax number. The head tenants at the Markham McNabb Building are: (I) TD Bank; and (ii) General Motors. SNIC and Primmum Insurance Company ("Primmum") (FSRA reg. #1396), by virtue of them not having "TD" in their corporate names, operate under the colloquial business name of "TD Insurance Meloche Monnex" under two licensed trademarks from TD Bank and Meloche Monnex Inc. in: (i) "TD Insurance"; and (ii) "Meloche Monnex". SNIC, through TDIMM, issues policies under the "Professionals and Alumni Program" and Primmum, through TDIMM, issues policies under the "Employer Group Program". In October 2023, upon the Appellant's return to Canada after obtaining requisite MRIs, examinations, assessments and reports, the Appellant learned that SNIC had purported to change its physical address and fax number to: (i) the Burlington Address; and (ii) 905 Fax Number. The Burlington Address is 91 km from SNIC Markham (McNabb Building), where Meloche Monnex Inc. has its registered records office. The "Ontario Business Directory" lists the Burlington Address and 905 Fax Number as being the business of "TD Insurance". The "Ontario Business Directory" also lists the head office associated with the Burlington Address as the Victoria Park Building (see: Affidavit #29, Exhibit "A", page 1 and 2).

9. In the SNIC Response, SNIC did not list the 416 Fax Number as a fax number for service. With the benefit of hindsight and labyrinthian investigations, the only factual contact information that SNIC provided to the Appellant was its mailing address at the Markham McNabb Building. Neither the 416 Fax Number (which is the material mistake as it relates to whom is the **First Insurer**) nor the 905 Fax Number were fax numbers for SNIC as a recipient. Further, the Burlington Address was not an address for receipt of documents from the Appellant for SNIC.

10. TD Home And Auto Insurance Company ("TDHA") is an insurance company that is licensed, by the FSRA, to provide three classes of insurance including automotive insurance. TDHA's FSRA registration number is 1063. At the time of the Accident, the lead tenant(s) at the Victoria Park Building were denoted as "TD Insurance" by the property manager at the VP Building in Collies International. From 2018 to present, the "Ontario Business Directory" has listed the fax number of 416-774-3120 (the "416 Fax Number") as the fax number for TDHA. The 416 Fax Number is a landline, owned by Bell Canada Inc., which is grounded at the Victoria Park Building. In the HCAI Portal, the Appellant's TD Claim #3, contrary to the information he provided his physiotherapists as the return mailing address in documents, prima facie, sent to him by SNIC, auto-populated the name of the adjuster and a branch address for SNIC

of 304 The East Mall, 6th floor, Etobicoke, Toronto, Ontario, M9B 6B7 (the "**Etobicoke East Mall Address**") (see: Affidavit #21, Exhibit "A", page 20 to 22 for "branch names" as being "independent" of the licensed insurer. Yelp, another online business directory, lists the Etobicoke East Mall Address as the address for TDHAIC (see: Tab 18, page 340 to 343). While SNIC never, in letter to the Appellant, represented that its address was the Etobicoke East Mall Address, it is now clear that said address, created by SNIC for this TD Clam #3, was independent of SNIC, and an address for TDHA.

11. On or around September 1, 2022, the Appellant notified SNIC of his intention to apply for accident benefits. Due to an error in his postal code, the Appellant did not received an application benefits package from SNIC until late September 2022. On October 13, 2022, the Appellant fax delivered his OCF-1 (also defined as "Completed Application") to the 416 Fax Number. The Appellant also delivered the OCF-2, on his behalf by his employer, to the 416 Fax Number. On November 3, 2022, his attending medical doctor for his post-Accident impairments, completed and signed his portions of the OCF-3, and faxed the completed OCF-3 to the 416 Fax Number. 90 days from October 13, 2022 was January 10, 2022. The Appellant did not receive any dispute notice from SNIC or any other insurance company by January 10, 2023, pursuant to Reg 283. From January 11, 2023, to October 2023, the Appellant continued to fax the 416 Fax Number with all confidential information and other OCF forms regarding TD Claim #3. In October 2023, the Appellant attempted to fax some of his documents to the 905 Fax Number, with a copy to the 416 Fax Number, but the 905 Fax Number would more regularly, than the 416 Fax Number, block his faxes and/or drop them during the sending process. In November 2023, the Appellant fax delivered the completed OCF-19. On December 24, 2023, the Appellant filed this Appeal and served the duly signed Appeal to the 416 Fax Number. For some context along the way, in March 2023, the Appellant received a request from SNIC via mail wishing to communicate via email. The Appellant faxed the 416 Fax Number with his decline regarding the same and the reasons therein (i.e. PIPEDA issues and absence of compliance by whom he presumed was SNIC).

12. In April 2023, the Appellant received the "Spam Faxes" wherein an unknown person or company represented to him that it (after receipt of faxes at the 416 Fax Number but not from the 416 Fax Number) had no record of his TD Claim #3. The Appellant promptly faxed the 416 Fax Number (attention: Ms. Nurse) to alert SNIC to the issue of the "Spam Faxes" and his dismay that said recipient had no record of his TD Claim #3. In early May 2023, the Appellant received the purported attempt by SNIC to partially approve and partially reject the Dhaliwal OCF-18 (April 6, 2023) with the Forged Nurse Signature. After being successful in his NOM #8, by order on June 21, 2024, of the Tribunal, the Appellant filed his NOM

#13 for non-party production and disclosure by the Fictitious Respondent (TDGIC) on July 9, 2024. The Appellant hand delivered the NOM #13 hearing brief to the listed address for the Fictitious Respondent, which was the Victoria Park Building which only became known to the Appellant for TDGIC in February 2024 (as it was not in the SNIC Response as an address for SNIC or previously), and learned that TDGIC had misrepresented its address to the Tribunal as it had not been a tenant for over a year (i.e. July 2023). The building manager for the VP Building represented that TDGIC had moved to the Markham McNabb Building. The building manager for the VP Building did NOT represent that TDGIC had moved to any of the following addresses: (i) the Burlington Address; or the (ii) the Etobicoke East Mall Address. From July 26 to July 31, 2024, the Appellant provided notice to TDHA, with a copy to SNIC, that the evidence was uncontroverted that the 416 Fax Number, the 905 Fax Number, the Burlington Address, and the East Mall Address were contact information exclusively for TDHA. Neither TDHA nor SNIC denied the same. From August 1 to 2, 2024, the Appellant sought the consent of SNIC and TDHA to add TDHA as a party, and neither TDHA nor SNIC responded. As of August 3, 2024, TDHA has never responded to the Appellant despite the Appellant sending faxes to the 416 Fax Number, 905 Fax Number, and through authorized submissions to HCAI, the East Mall Address. SNIC has not started any section 7(1) of Reg 283 arbitration. SNIC and the Appellant consented since January 2024 to the Email Communication Protocol

13. The question of fact to be answered in NOM #14 are on a balance of probabilities:

    a. a) *Who was the owner of the **416 Fax Number**, which is a landline located at the Victoria Park Building in Toronto, in October 2022? (b) Was the address of 304 The East Mall, 6th Floor, Etobicoke, Toronto, Ontario (the "East Mall Address"), which is denoted by auto-population in HCAI after TD Claim #3 is inputted therein, an address for an address for SNIC, the address of TDHA, SNIC or another insurance company? And (c) Which insurance company holds the file for the **Fictitious TD Claim Number**?*

14. The issue of law to be answered in this NOM #14 on a balance of probabilities is

    whether TDHA was the **First Insurer** (i.e. the insurance company to receive the Appellant's Completed Application on October 13, 2022)?

15. The substantial amendments to Reg 283 became effective in September 2010. Reg 283 is designed to keep priority disputes out of the courts (see: *Zurich 2024*, paragraph 6). Reg 283 is also purposed to prevent SABS claims, including vital treatments and income benefits, from being delayed while insurers fight over priority dispute under section 268(2) of the *Insurance Act* (see: *Zurich 2024*, paragraph 16). SABS and Reg 283, having undergone major amendments in 2010 after being submitted to industry consultations and amendments before proclamations, they reflect important policy choices to ensure order and stability in regulated industries (see: *Bristol-Myers Squibb v. Canada (AG)*, 2005 1 SCR 533 at paragraph 99-100).As a matter of principle, there is difference between an insurer's failure to pay under section 2 of Reg 283 and a failure to pay under any provision of SABS (see: *Zurich 2024*, paragraph 54). While a **First Insurer** may have never received insurance premiums from the insured person (claimant) may seem intuitively wrong but the Legislature and LGIC's intent are to be respected. There is no, per se, harshness to be alleviated by a sophisticated insurance company, with endless resources, who receives a faxed OFC-1, who fails to investigate within three months and provides a notice to an insured person and other insurers under section 3 of Reg 283. The provisional first-insurer rule under the regulation and the priority regime under the statute operate ***differently*** (see: Zurich, paragraph 8). As long as a claimant for accident benefits completes all required fields (see: SABS, ss. 66 and 67) and signs the OCF-1, the **First Insurer** that receives an OCF-1 application MUST pay benefits in accordance with SABS (see: Reg 283, ss. 2.1(6)). If the **First Insurer** does not take any issue, within ten business days (approximately 15 calendar days) of receipt of the Completed Application, the **First Insurer** has 75 days from then to provide a notice of dispute that it is required to pay the benefits of the claimant in which it received a Completed Application. Irrespective of whether the claimant is an "insured person" or not in the subjective mind of the **First Insurer**, the **First Insurer** must respond to the Completed Application and the claimant (see: Reg 283, ss. 2.1(6)). Acceptance during the 90-day period is merely provisional (see: *Zurich 2024*, paragraph 29). If the **First Insurer** does not dispute, within 90 days, its liability to pay all benefits, in accordance with SABS, of the claimant, there is no other process for the **First Insurer** to transfer, dispute

and recover any paid or to be paid benefits to the claimant. **First Insurer**'s calculus to not accept a claim for whatever subjective reason can turn out to a costly and permanent mistake (see: Zurich, paragraph 10). As of 2015, in *Zurich 2015*, the SCC held that Chubb ought to have responded to the SABS claim immediately on a 'pay first and dispute later' basis (see: *Zurich 2024*, paragraph 12). long as the Completed Application by the claimant was not arbitrary, there is a nexus between the claimant and the **First Insurer** (i.e. the one to receive the Completed Application) (see: *Zurich 2024*, paragraph 14). In *Zurich 2015*, the SCC (see: 2015 SCC 19) restored Goldstein J (ONSC (Divisional Court)) in adopting the dissent of Juriansz J.A.: 2014 ONCA 400. a vague recollection about seeing an insurer's name at a rental car office was sufficiently non-arbitrary to require the **First Insurer** (Chubb in *Zurich 2015*)) to step into the shoes as a "**First Insurer**" for the purposes of section 2(1) of Reg 283 (see: *Zurich 2024*, paragraph 15). long as the **First Insurer** providers automobile insurance in Ontario at the time of receipt of the Completed Application there is a sufficient nexus between a claimant and the **First Insurer** (see: *Zurich 2024*, paragraph 16). The policy behind the inflexible rule that an insurer (like TDHA) fails to pay benefits and fails to put other insurers on notice after receipt of a Completed Application, when there is *SOME* nexus, being permanently responsible for the claimant's benefits is to promote compliance with the statutory scheme. It is not an issue herein of this Appellant and TDHA but rather the greater public interest and ongoing and future compliance by all other similarly situated '**First Insurer**s' (see: *Zurich 2024*, paragraph 31, where the second arbitrator cited paragraph 62 from the decision of Strathy J. (as he then was) in Lombard Canada Ltd., 2008, 94 O.R. (3d) 62 (Ont. S.C.J.)The ONSC in *Zurich 2024* has settled the law in the above regards as follows: (i) breach of section 2 of Reg 283, according to the case law, does not result in the an insurer being required to pay benefits to the claimant permanently; BUT, (ii) the failure TO AVAIL itself of section 3 does. TDHA's permanent liability for paying benefits was a self-inflicted consequence of its failure to adhere to the requirements of both section 2 and s. 3 of Reg 283. The combination of provisions in Reg 283 transformed TDHA's provisional liability into a permanent

one (see: *Zurich 2024*, paragraph 64). For TDHA to not be declared as the **First Insurer** would mean that there were no consequences for the conduct (or inaction) of TDHA by receipt of the Completed Application and by continuing to have its former branch office address (East Mall Address) auto-populate in HCAI, and it would defeat the legislation's public policy: "*pay now and dispute later*".[i]

16. "Arbitrary" means: determined by impulse rather than reason. The Appellant faxed the Completed Application solely based on the reason that SNIC represented that its fax number was the 416 Fax Number when it could not have been based on SNIC's physical location at SNIC Markham. Therefore, the Appellant did not make an "arbitrary decision" to fax his Completed Application to the 416 Fax Number. "Receipt" means: "to get possession of". TDHA got possession of the Completed Application as the **First Insurer** on October 13, 2022. There is now no dispute that the Spam Faxes, which SNIC could not produce in the face of a demand from the Appellant for the same, were on behalf of TDHA and its attempt to steer the Appellant away from the 416 Fax Number and its representation it [TDHA] had no record of its claim. TDHA would NOT have had a "record" of the Appellant's TD Claim #3 as it the TD Claim #3 was likely created by SNIC but when the Appellant faxed the Completed Application, as opposed to mailing to SNIC Markham, to the 416 Fax Number, TDHA became the **First Insurer**.

17. The 416 Fax Number was the fax number for TDHA in September and October 2022. TDHA has been an adjusting insurance company, by reference to the East Mall Address which has been exclusively represented to the public as TDHA's address, of the Appellant's TD Claim #3, including by way of the Fictitious TD Claim Number, since it was so denoted in the HCAI portal as such. The 905 Fax Number and the Burlington Addresses were, at the material times post receipt of the Appellant's OCF-1, OCF-2, OCF-3, OCF-6's and OCF-18 (Dhaliwal), address for receipt of documents and confidential information of the Appellant (albeit unbeknownst to him) by TDHA.

18. TDHA was the **First Insurer**, pursuant to Reg 283, and it is solely and permanently liable for the Appellant's claims for benefits pursuant to SABS. The Tribunal must grant ancillary orders compelling TDHA to provide the Appellant with the current address and fax number for TDHAIC along with an adjuster that is authorized for TDHA along with amendments to the HCAI portal for accuracy purposes for any and all ongoing or day-to-day matters. SNIC must remain as a party as it may be liable for some of the costs in this **SNIC Proceeding** to be dealt with at the hearing proper.

19. It is the word "accept" that is conspicuous, marked and eye-catching. Whatever acceptance of priority of the applicant's [sic] insurance policy was and is of no consequence in law as per Reg 283, section 4(1), 5(1) and (2). The Appellant never received any notice of "assignment, sharing or transfer of priority". It is trite that TDGIC's fax was in the LAT orders as early of February 2024 and SNIC resiled from the 416.774.3120 fax number by no later than Summer of 2023. TDHA was the **First Insurer** and received the Completed Application at first instance, and all other OCF documents. It is understandable why certain adjusters at SNIC, and then Mr. Nieuwland for TDGIC, were so unfamiliar with the documents and claimed to be missing certain documents like MRI reports, Brain MRI UHN Notification and others. It may be the most clichéd phrase in the history of law: "offer, acceptance, consideration." Prior to the 'acceptance' by SNIC and TDGIC over the insurance policy, as found by the Adjudicator, there had to be an offer from another person. There are four automotive insurance companies in "TD Insurance", as per its public website and URL for "legal", which are: (i) SNIC; (ii) TDGIC; (iii) TDHAIC (TDHA); and (iv) Primmum. SNIC and Primmum, without any reference TD in their names, operate under the banner of two distinct yet combined trademarks which are: (i) TD Insurance," which is owned by "The TD Bank"; and (ii) "Meloche Monnex," which is owned by Meloche Monnex Inc. (not to be confused with Meloche Monnex Financial Services Inc. or other brokers or agents with permutations of the name). Ironically, TDGIC and TDHA do not have "TD Insurance" in their name as the "insurance" word comes after "General" and "Auto" sequentially for the aforementioned.

20. There is no dispute that SNIC was the Sole Underwriter of the Insurance Policy. SNIC delivered an accident benefits package to the Appellant in late September 2022. SNIC represented its address as the SNIC Markham Office with a fax number of 416.774.3120. On May 2, 2024,3 in relation to NOM #4 and NOM #6, Nieuwland (with Karat appearing as the ADR Specialist for SNIC) orally represented, contrary the April 11 submissions (supra) solely on behalf of TDGIC, 8 that SNIC and TDGIC were and are "one and the same". The Appellant objected and reserved his rights.

21. "One And the Same" is defined, by Collins Dictionary as "When two or more people or things are thought to be separate and you say that they are one and the same, you mean that they are in fact one single person or thing."

22. While there is no dispute what Nieuwland thought and meant on May 2, 2024, his thoughts and meanings, while unambiguous, are contrary to the statute (Ins. Act) in which this **SNIC Proceeding** arose and FSRA Enforcement Decisions have found that the SABS Insurer (SNIC) and TDGIC are separate persons.

23. The now finding by the Tribunal that SNIC and TDGIC accepted priority over the insurance policy means that they agreed (which is possible in fact but not in law) to accept an offer from another regarding priority. This is not only the logical explanation for what transpired and why TDHA, an automotive insurer in Ontario which is the only required element for a non-underwriter of an insurance policy to be the provisional **First Insurer** and then potentially the permanent **First Insurer**, has not been responded and paid the benefits due and owing to the Appellant despite receipt of the same from the Appellant via fax. This also explains the Spam Fax in Spring 2023 which was nearly or identical to the August 2024 letter (see: Affidavits #34 and Affidavit #35).

24. It is unfortunate, from an access to justice standpoint and for the benefit of the public, for the Adjudicator to rush this decision, as it was not available when the Appellant inquired on September 11, 2024, as to the date of the hearing for the NOM #13. With the greatest of respect, the Adjudicator was unfamiliar with the facts, which one can empathize with if she was new to this LAT proceeding but she granted the most consequential motion in this proceeding so far, and basic one at that such as the first order in this proceeding of her fellow Vice Chair (VC Lake). Adjudicator Morrissette was of the mistaken view that the Tribunal changed, at some unknown time, the IDENTITY of SNIC to TDGIC after January 30, 2024, but some time before February 19, 2024. One can understand not being able to pinpoint an exact date when identities are changed or swapped in a cyber-attack or ransomware plot, but the Adjudicator found that it was THE TRIBUNAL that changed the identity from SNIC to TDGIC. It appears that the Adjudicator was implying that an administrative individual employed by the License Appeal Tribunal in the AABS division somehow on off-time engaged in some administrative identity swapping without notice to the litigants in the proceeding. The Appellant is not attempting to be hyperbolic or histrionic in any way, but the License Appeal Tribunal is one of 13 tribunals part of Tribunals Ontario and it is a division or sub-body within the office of the most important ministry as it pertains to the law: THE MINISTRY OF ATTORNEY GENERAL. And the Appellant is merely finding out about this in September 2024? This is beyond concerning and beyond the Appellant's immediate interest. Perhaps, Adjudicator Morrissette meant December 30, 2023, to January 19, 2024? This would make more sense in that an administrator or case manager would have reviewed the Appeal and attached documents and countless references to TD SNIC and Security National Insurance Company and input SNIC as the respondent. Then, likely someone informed Mr. Grant to change the name from SNIC to TDGIC. This, of course, would have required such a change as the Appellant had already filed two motions by January

8, 2024. The Appellant only objected for six months, and this appears to have been the strategy by SNIC and then TDGIC of which neither were **First Insurer**s.

25. A "Respondent" is a party in a LAT Proceeding. Legislative definitions are sometimes counter-intuitive and defy common sense. In Ontario, "legislation" includes "legislation and regulations", but a statute is distinct from a regulation. Section 5 of the SPPA: "The parties to a proceeding SHALL be: (i) the persons specified as parties by/under the statute17 under which the proceeding arises; OR (ii) if, not so specified, persons entitled BY LAW18 to be parties to the proceeding19. One would have thought with the benefit of Adjudicator Morrissette who expressly dealt with a party issue in NOM #8, such a misstatement of law or query from her would have been obsolete. By law is an ambiguous phrase which is not to be confused with a municipal by-law. "Source law" is a definition under the Legislation Act 2006, and it includes regulations. Tribunals in Ontario and Canada have held that persons who are not expressly required by statute to be parties may be added as parties pursuant to section 5 (*SPPA*) if s/he or it have a substantial and direct interest in the proceeding's outcome.

26. A final order disposes of the litigation, or finally disposes of part of the litigation: *Ball v. Donais* (1993), 1993 CanLII 8613 (ON CA), 13 O.R. (3d) 322 (C.A.). An interlocutory order disposes of the issue raised, most often a procedural issue, but the litigation proceeds: Hendrickson v. Kallio, 1932 CanLII 123 (ON CA), [1932] O.R. 675 (C.A.), at p. 678.The interlocutory order from which there is no appeal is an order which does not determine the real matter in dispute between the parties – the very subject matter of the litigation, but only some matter collateral (see: Hendrickson v. Kallio, 1932 CanLII 123 (ON CA), [1932] O.R. 675 (C.A.)

27. In *Smerchanski v. Lewis* (1980), 1980 CanLII 1699 (ON CA), 30 O.R. (2d) 370 (C.A.), at para. 18: This Court has held that an order made in a contest between a party to an action and someone who is not a party is a final order, appealable without leave, if the order finally disposes of the rights of the parties in the issue raised between them. In M.E. v. Ontario, 2021 ONCA 718: We conclude that M.E. was seeking to add new causes of action. An order refusing leave to amend pleadings to plead a new cause of action is final: Atlas Construction Inc. v. Brownstones Ltd. (1996), 46 C.P.C. (3d) 67 (Ont. Gen. Div.). So is an order dismissing a motion to add a party, which M.E. also appears to have been trying to do Bryson v. Kerr (1976), 1976 CanLII 867 (ON SC), 13 O.R. (2d) 672 (Ont. Div. Ct.). Accordingly, leave to appeal is not required and an appeal lies as of right to the Court of Appeal: Courts of Justice Act, R.S.O. 1990, c. C.43, s. 6(1)(b).

28. In Vavilov, the SCC attempted to clear up complexities and uncertainty brought on by Dunsmuir. 22 The SCC cited three (3) non-exhaustive examples in Vavilov where the correctness standard must be applied by a review tribunal or court: (i) constitutional questions (ii) general questions of law of central importance to the legal system as a whole; and (iii) questions regarding jurisdictional boundaries between two or more administrative bodies.

29. The Supreme Court in *Housen* found an error of law including the: (i) application of an incorrect legal standard; (ii) a failure to consider a required element of a legal test; or (iii) the mischaracterization of the standard.

30. A tribunal errors in law when it improperly approaches the evidence such as by misapprehending evidence, ignoring relevant evidence or relying on irrelevant evidence or irrelevant factors in reaching its decision 30 (see: Nguyen). In *Drewlo Holdings v. MPAC*, 33 the ONSCJ (DC) cited its decision in Yatar34

where, at ¶28, the Court confirmed a finding of fact can constitute an error of law: "is when a finding of fact on a material point is based on no evidence.

31. The failure to identify or consider the legal criteria that govern (the "Identification Failure Governing Legal Criteria") the exercise of discretion may constitute an error of law.

32. In *Gega,* the Divisional Court applied a novel yet functional determination of when an issue was one of law as opposed to one of 'mixed fact and law': "[19] This issue is a matter of law...argue this issue is a matter of mixed fact and law, but there are no factual findings that need to be made by me to consider this question."

33. In *Kawa Arab,* the Divisional Court found an administrative decision of statutory interpretation as a matter of law. At ¶ 19, Tzimas J. found "[19] ..... If an Adj. ignores evidence that the law requires to be considered to arrive at a DECISION, that will amount to an error in law.

34. In *Bassline*, VC Lamoreux found in 201846 at ¶ 20, "Therefore, I am satisfied that the Tribunal erred by determining that it had no jurisdiction to consider the issues raised in the Notice."

35. In *Lapcevich*, the ONSCJ49 found: "We agree with the appellant, Registrar, that the Licence Appeal Tribunal erred in its approach to the statutory framework and exceeded its jurisdiction; and it did not make the necessary threshold determinations, as required by the statute. In Sparks, the Divisional Court found that inconsistent findings of facts as "errors of law."

36. In Glencore, the FCA considered a second appeal wherein it stated the applicable SOR for extricable legal issues in that no deference is owed to the overall conclusion (see: ¶ 22).

37. In *THMR*, ONCA found that when hearing below is in writing that the correctness standard applies.

38. The case of *Fatemea Rezaiezadeh v. State Farm Mutual Automobile Insurance Company*, 2016 ONFSCDRS 59 ("*Reza*") stands for the proposition below. The Appellant notes the case of Reza (for short) wherein, albeit under the FSCO, the arbitrator found the following: "The Appellant concedes there is no explicit procedure in the Code or the *Statutory Powers Procedure Act*, R.S.O. 1990, c. S.22, as amended, to permit a party to continue a proceeding against a non-party." The "Dispute Resolution Code" is no longer applicable as it only applied with the FSCO. Even where State Farm Automobile Insurance Company was bought out by Certas and Desjardins regarding its Canadian operations, State Farm remained as the party as it was the underwriter at the time of the accident therein. Therefore, this is yet another reason that the decision of the Adjudicator and now the decision of the Appellate Tribunal (LAT) is one that finally disposes of the Appeal even when it is not in favour of the Appellant. If the Appellant does not have the **First Insurer** as the primary and liable party for the main issues between the Appellant and it (with SNIC only therein for costs as a result of it filing the sole Response (SNIC Response) to date but only as a result of the LAT Rules which is a distinction between present times and a case like Volfson), then all of the protections under SABS are illusory.

39. The provisional "**First Insurer** rule" (the "**First Insurer** Rule") under the regulation and priority regime under the statute operate differently (see: *Zurich 2024*, paragraph 8). If a claimant for accident benefits completes all required 'fields' (see: SABS, ss. 66 and 67), duly signs the OCF-1 and then sends via mail or fax, the **First Insurer** that receives an OCF-1 application MUST benefits in accordance with SABS (see: Reg 283, ss. 2.1(6)). If the **First Insurer** does not take any issue, within ten business days of receipt of the Completed Application, the **First Insurer** has approximately 75 days from then to provide a notice

of dispute that it is required to pay the benefits of the claimant in which it received a Completed Application. Irrespective of whether the claimant is an "insured person" or not in the subjective mind of the **First Insurer**, the **First Insurer** must respond to the **Completed Application** and the claimant (see: *Reg 283*, ss. 2.1(6)).

40. Acceptance during the 90-day period is merely provisional (see: *Zurich 2024*, paragraph 29). If the **First Insurer** does not dispute, within 90 days, its liability to pay any and all benefits, in accordance with SABS, of the claimant, there is no other process for the **First Insurer** to transfer, dispute and recover any paid or to be paid benefits to the claimant. A **First Insurer**'s calculus to not accept a claim for whatever subjective reason can turn out to be a costly and permanent mistake.60 This is full answer to the Adjudicator's query about whether the Tribunal had authority to add the **First Insurer** to this LAT Proceeding, which is oddly required as a matter of law.

41. As of 2015, in *Zurich 2015*, the SCC held that Chubb ought to have responded to the SABS claim immediately on a 'pay first and dispute later' basis (see: *Zurich 2024*, paragraph 12). As long as the Completed Application by the claimant was not arbitrary, there is a "nexus" between the claimant and the **First Insurer** (i.e. the one to receive the Completed Application) (see: *Zurich 2024*, paragraph 14). In *Zurich 2015*, the SCC (see: 2015 SCC 19) restored Goldstein J's decision (ONSC (Divisional Court)) in adopting the dissent of Juriansz J.A.: 2014 ONCA 400. A vague recollection about seeing an insurer's name at a rental car office was sufficiently non-arbitrary to require a '**First Insurer**' (Chubb in *Zurich 2015*)) to step into the shoes as a "**First Insurer**" for the purposes of section 2(1) of Reg 283 (see: *Zurich 2024*, paragraph 15). If the **First Insurer** provides automobile insurance in Ontario at the time of receipt of the Completed Application there is a sufficient nexus between a claimant and the **First Insurer** (see: *Zurich 2024*, paragraph 16). The policy behind the inflexible rule is that an insurer who fails to pay benefits and fails to put other insurers on notice after receipt of a Completed Application, when there is

SOME nexus between the claimant and the **First Insurer**, being permanently responsible for the claimant's benefits is to promote compliance with the statutory and regulatory scheme.

42. No power to pursue a non-party under statute is answered above. As a matter of principle, there is NO difference between an insurer's failure to pay under section 2 of Reg 283 and a failure to pay under any provision of SABS (see: *Zurich 2024*, paragraph 54). As the Tribunal is required to decide this LAT Proceeding in accordance with SABS as a matter of statute (see: section 280(4) of the *Insurance Act*), then it was not a matter of discretion for Adjudicator Morrissette but a requirement upon her to ensure that the Appellant had the correct and liable party (see also: *Insurance Act*, ss. 268(3)) before the Tribunal and in the future for not only himself but his service providers. While there is an ability of a party to "request an expedited hearing" in the dropdown menu of Tribunals Ontario e-filing portal, there is a dearth of jurisprudence regarding the same with LAT/AABS matters. As of 2010, the amendments to Reg 283 led to an absence of listed fax numbers for insurance companies and for good reason: some unsavory insured persons may deliberately manipulate the system by faxing their OCF-1's to an incorrect insurance company with no record of them as insured persons leading to those insurance companies in receipt of confidential information with an inability to dispute that they were not liable along with which insurance company may be liable. This could lead to an insurance company, who had not received premiums with no previous interaction with such an unsavory insured person, being liable to respond and pay benefits to said unsavory insured person.

43. It is important to note that the actual relief sought in the hearing record was slightly different in language but a distinction with a difference at Order #5: [5] Any further relief that is consistent with the above and in accordance with Reg 283, SABS, and Reg 664. The issue of adding the party TDHA as the **First Insurer** is one that the Adjudicator was required to answer (see: Rio Tinto, SCC 2010 SCC 43). However,

even if the Adjudicator had granted Order #1 that would have been sufficient as a decision (order, declaration, determination and/or finding) that would have finally disposed of the Appeal, as it was currently constituted on September 13, 2024.

44. Again, the Reconsideration Decision references that the appellant did not cite to any binding case law or legislative authority regarding adding a second respondent. The Tribunal has yet again misunderstood the Appellant's argument in that TDHA would be the First Insurer and SNIC would remain solely as it relates for costs in the proceeding prior to TDHA being the First Insurer. In relation to binding case law, Zurich 2024 as per Justice Akazaki unequivocally found that a breach of Reg 283 or SABs were a distinction without a difference. The decision of VCM in mid-September 2024 is not only an incorrect decision but a dangerous decision. It must be corrected forthwith for the benefit of the general public, the insurance industry and the relevant participants.

45. Moreover, had the Adjudicator determined the factual issue at Order #3 in NOM #15, this would have been a decision that finally disposes of the Appeal. In this regard, the Tribunal issued a Notice of Motion Scheduling Order on Thursday, September 12, 2024, that fond that SNIC was located at the Burlington Office: "[3] preliminary finding, determination, or order, that the fax number 416-774-3120 was a landline phone number utilized as a fax number on the 4th floor of the building situated at the premises municipally known as 3650 Victoria Park Avenue, North York, Toronto, Ontario, M2H 3P7. The decision of Vice Chair Lake on reconsideration suffers from the same issues but remains premature considering not having NOM #16 decided in advance of the same. Once NOM #16 is decided, it will allow for the Applicant (Appellant) to be able to advance this judicial review in accordance with having final decisions on all the same.

Volume #3: Documentary Evidence

46. The following documentary evidence will be used at the hearing of the application:

(a) The Motion Hearing Record for NOM #14 which includes the affidavits of the Applicant therein (see: Appendix #3)

(b) The Motion Hearing Record for NOM #15 of the Applicant which includes the affidavits of the Applicant therein (see: Appendix #4);

(c) The Motion Hearing Record for NOM #13 of the Applicant which includes the affidavits of the Applicant therein;

(d) The decision of Vice Chair Morrissette in relation to NOM #13 to #15 of the Applicant;

(e) The decision of Vice Chair Lake in relation to the Applicant's reconsideration motion;

(f) The record of proceeding in ***AABS File Number*: "23-015662/AABS"**

(g) Such other affidavit material and evidence as counsel may advise and this Honourable Court may deem proper.

November 15, 2024

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Appendix #1

The actual relief sought The Appellant seeks the following orders, without consent of SNIC and TDHA, as follows:

Order #1: **First Insurer** Declaration 1. An Order, Declaration, determination and/or finding that TD Home And Auto Insurance Company, FSRA registration number 1063 ("TDHA" or "TDHAIC") was the **First Insurer** to receive, pursuant to Reg 283, the Appellant's fax delivered Completed Application (see: Reg 283, s. 1) to the fax number, provided to him by SNIC as a return address [sic] for SNIC, of 416-774-3120 (the "416 Fax Number") on October 13, 2022; Order #2: East Mall Address (Branch Office): Determination of which licensed insurer carried on business at said branch office

2. An Order, Declaration, determination or finding the physical address, which is apparently denoted as a branch office of SNIC in HCAI, municipally known as 304 The East Mall, Floor 6, Etobicoke, Toronto, Ontario, M9B 6B7 (the "Etobicoke East Mall Address") was or is an address or branch office of TDHA and not SNIC;

Orders #3 and #4: Adding TDHA as a Party 3. An Order adding TDHA as a respondent party to this LAT proceeding herein; 4. An Order requiring TDHA, should it wish to oppose the relief sought in the Appellant's Appeal, file and serve a Response to the Appellant's Appeal within 14 days of the date of the orders herein;

Order #5: Ancillary Relief 5. Any further relief that is consistent with the above and in accordance with Reg 283, SABS, and Reg 664; and Order #6: Costs against SNIC pursuant to section 17.1 of the SPPA and Rule 19 of the LAT Rules.

Appendix #2

Schedule “A” for NOM #15 The Appellant seeks the following remedies, without the consent of SNIC, as follows: 1. An Order that NOM #14 is heard in an expedited fashion and by no later than August 28, 2024 or, in the alternative, at the earliest date available for a Vice-Chair or adjudicator to determine the same; 2. An Order that if the Respondent Party (SNIC), TDHA or any other non-party or interested person wishes to oppose NOM #14, it must provide notice, via filed letter, to the Tribunal by no later than Wednesday, August 21, 2024; and 3. A preliminary finding, determination, or order, that the fax number 416-774-3120 was a landline phone number utilized as a fax number on the 4th floor of the building situated at the premises municipally known as 3650 Victoria Park Avenue, North York, Toronto, Ontario, M2H 3P7; a. In the alternative, an order that said issue of fact is added to the hearing of NOM #14; 4. An Order that NOM #13 is set for hearing three (3) weeks after the final decision of the Tribunal in NOM #14; and 5. An Order that the Appellant shall tender his hearing brief for his potential motion regarding document production and disclosure from SNIC (the “SNIC Document Production Motion”) within one week after the decision of NOM #14 with a notice of scheduled hearing date to be issued by the Tribunal regarding exchange of responsive and reply briefs; 6. An Order that NOM #13 (Non-Party production by TDGIC) and the SNIC Document Production Motion (if applicable) shall be heard together three weeks after the decision in NOM #14; and Costs against SNIC for this motion herein if it opposes the same

Appendix #3: Index for NOM #14

Chapter #1: Notice of Motion Form
1. Notice of Motion Form (with Schedule "A"), signed by the Appellant on August 2, 2024 ["Motion Form" or "NOM #14"]
a. (see pages 1 to 3);

Chapter #2: Reg 283 and Cited authorities (prior to *Zurich 2024*]
2. Disputes Between Insurers, O Reg 283/95 ["Reg 283"]
a. (see pages 4 to 9)
3. Cankaya v. Unifund Insurance Company, and Cankaya v. Intact Insurance Company, 2015 ONFSCDRS 214 (as per Delegate Blackman of the former Financial Services Commission of Ontario ["FSCO"]) ["Cankaya 2015"]
a. (see: pages 10 to 31)
4. Cankaya v. Unifund Insurance Company, and Cankaya v. Intact Insurance Company, 2016 ONFSCDRS 255 (as per Arbitrator Marshall Schnapp, "Decision on a Preliminary Issue") ["Cankaya 2016"]
a. (see: pages 32 to 45)
5. Economical v. Intact, 2021 ONSC 3249 (as per Mr. Justice Chalmers) ["Economical Group"]
a. Applicant (Respondent in Appeal): The Economical Insurance Group
b. Respondent (Appellant in Appeal): Intact Insurance
c. (see: pages 46 to 56)
6. Macko v. Aviva Insurance Company, 2023 CanLII 72650 (decision before Adjudicator Kaur) ["Macko"]
a. (see: pages 57 to 61)
7. Macko v. Aviva Insurance Company, 2023 CanLII 116487 (Reconsideration Decision before Vice Chair Kaur) ["Macko Reconsideration"]
a. (see: pages 62 to 66)

Chapter #3: Reg 664 and SABS
8. R.R.O. 1990, Regulation 664 ["Reg 664"], ss. 9.1, 9(1) and 10
a. (see: pages 67 to 69)
9. Statutory Accident Benefits Schedule, O Reg 34/10, effective September 1, 2010 et seq ["SABS" or the "Schedule"]

a. (see: pages 70 to 132)

Chapter #4: Pleadings; *Insurance Act*; and UDAP Rule
10. Application of an Injured Person for auto insurance dispute resolution pursuant to the Insurance
Act, filed by the Appellant on December 24, 2023 (the "Appeal")
a. Served on the recipient of the fax number of 416-774-3120 (the "416 Fax Number");
b. (see: pages 133 to 142)
11. Response filed by SNIC (the "SNIC Response")
a. solely signed, filed and served by Mr. David Karat, ADR Specialist for SNIC, on January
25, 2024
b. (see: pages 143 to 145)
12. *Insurance Act*, RSO 1990 c. I 8, section 268 [the "Act" or the "*Insurance Act*"]

a. (see: pages 146 to 148)
13. Unfair or Deceptive Acts or Practices Rule, effective 2022 (the "UDAP Rule")
a. (see: pages 149 to 161)
Chapter #5: Further Authorities
The Chubb v. Zurich cases (2015 and 2024);
TD General Insurance Company v. Markel
Intact v. Bateman: "Re: two files with two different file numbers for one claimant (insured person)
(although unlawful – not unprecedented)
14. Chubb Insurance Co. of Canada v. Zurich Insurance Company, 2024 ONSC 2929 (as per The
Honourable Justice Akazaki) ["*Zurich 2024*"]
a. (see: pages 162 to 179)
15. TD General Insurance Company v. Markel Insurance Company, 2014 ONSC 6461 (as per Justice
Lederman) ["Markel"]
a. (see: pages 180 to 194)
16. Zurich Insurance Co. v. Chubb Insurance Co. of Canada, 2015 SCC 19 ["*Zurich 2015*"]
a. (see: pages 195 to 198)
17. Intact Insurance Company v. Bateman, 2014 ONFSCDRS 14 (as per Delegate Blackman)
a. (see: pages 199 to 214)

Chapter #6: Affidavits
18. Affidavit #30 of the Appellant, made on July 31, 2024 (filed: August 1, 2024; served on SNIC and
TDHA: August 1, 2024) ["Affidavit #30"]
a. (see: pages 215 to 358)

19. Affidavit #3 of the Appellant, made on October 31, 2024 (select pages only) (filed: listed and
attached document in Appeal on December 24, 2023) ["Affidavit #3"]
a. (see: pages 359 to 488);
20. Affidavit #29 of the Appellant, made on July 25, 2024 (select pages only)
a. (see: page pages 489 to 500)

Chapter #7: Motion Submissions (pursuant to LAT Rule 15: six pages, double spaced, size 12 font (except
for evidence, appendices and authorities)
21. Motion Submissions of the Appellant dated August 3, 2024 (served on SNIC and TDHA: August
3, 2024)
a. (see: pages 500 to 511)

Chapter #8: Additional evidence in pictorial form of the East Mall Address (August 4, 2024) and emails
to TDHA and SNIC confirming the same pursuant to, inter alia, section 15 of the SPPA
1
st Amended Inclusion (August 5, 2024)
22. Additional evidence: the East Mall Address
a. (see: pages 512 to 551)

Chapter #9: Costs against SNIC
Appellant's served and filed Costs Submissions on Thursday, September 5, 2024 (includes
LAT Rule 19.1: affidavit evidence in support of the Appellant have reasonable and probable grounds
to believei
that SNIC has conducted itself in relation to NOM #14 in an unreasonable, vexatious, frivolous and/or in bad faith
LAT Rule 19.2: written costs submissions by the Appellant before the decision or order is released
in relation to NOM #14;
LAT Rule 19.3: written costs submissions seeking $1,000 against SNIC in favour of the Appellant,
payable forthwith in any event of the result of NOM #14;
LAT Rule 19.4: Appellant has provided the reasons (authorities, statutes, regulations, LAT Rules)
and the particulars of SNIC's impugned conduct that have been, are and will continue to be
unreasonable, frivolous, vexatious, and in bad faith;
LAT Rule 19.5: Appellant has provided all relevant factors including but not limited to: (i) seriousness of SNIC's misconduct; (ii) SNIC's conduct in breach of orders (implicitly) and LAT

Directions issued by the Tribunal; (iii) how SNIC's conduct has interfered with the Tribunal's
ability to carry out a fair, efficient, and effective process; and (iv) the resultant prejudice to the
Appellant.
LAT Rule 19.6: the Appellant has sought $1,000 for the NOM #14 hearing
23. Costs submissions of the Appellant, filed and served on Thursday, September 5, 2024 with e-receipt
a. (see: pages 552 to 640)
i. Appendix #1: Glossary (see: pages 565 to 570)
ii. Appendix #2: Evidentiary And Authorities Chronology: from the time of SNIC's incorporation in 1934 to August 21, 2024 (see: pages 571 to 647); and
iii. Endnotes (see: pages 648 to 650).

Chapter #9: Materials For Reconsideration of the decisions involving NOM #14 and NOM #15
Fresh Evidence: not available to the Adjudicator in the Hearing Record (albeit in record of proceeding
in relation
24. Affidavit #34 of the Appellant of August 29, 2024 (see: pages 651 to 676)
25. Affidavit #35 of the Appellant of September 12, 2024 (see: pages 677 to 769)
26. Affidavit #36 of the Appellant of September 18, 2024 (see: pages 770 to 789)
27. Affidavit #37 of the Appellant of September 19, 2024 (filed under seal) (see: pages 790 to 832)
28. Reconsideration Form with Motion Submissions of September 30, 2024 (see: pages 833 to 856)

TAB 3:

Court File No. DC-24-00000718-00JR
Applicant's Motion #2 (Motion in Writing; Request to Convert Motion into Motion for Judgment)

Divisional Court File No.: 718/24

ONTARIO SUPERIOR COURT OF JUSTICE
(DIVISIONAL COURT)

B E T W E E N:

KEVIN ALEXANDER MCLEAN

Applicant

– and –

TD HOME AND AUTO INSURANCE COMPANY, SECURITY NATIONAL INSURANCE COMPANY, TD GENERAL INSURANCE COMPANY, EXECUTIVE DIRECTOR, LICENCE APPEAL TRIBUNAL, HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO, REPRESENTED BY EXECUTIVE CHAIR OF TRIBUNALS ONTARIO IN MR. SEAN WEIR, THE ATTORNEY GENERAL OF ONTARIO

Respondents

NOTICE OF APPEARANCE

The Licence Appeal Tribunal intends to respond to this application.

November 27, 2024

Licence Appeal Tribunal
Tribunals Ontario, Legal Services
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Divisional Court File No.: 718/24

MCLEAN Applicant	- and -	TD HOME AND AUTO INSURANCE COMPANY ET AL. Respondents

ONTARIO SUPERIOR COURT OF JUSTICE
(DIVISIONAL COURT)

PROCEEDING COMMENCED AT TORONTO

NOTICE OF APPEARANCE

Licence Appeal Tribunal
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TAB 4:

Court File No. DC-24-00000718-00JR
Applicant's Motion #2 (Motion in Writing; Request to Convert Motion into Motion for Judgment)

Divisional Court File No.: 718/24

ONTARIO SUPERIOR COURT OF JUSTICE
(DIVISIONAL COURT)

BETWEEN:

KEVIN ALEXANDER MCLEAN

Applicant

– and –

TD HOME AND AUTO INSURANCE COMPANY, SECURITY NATIONAL INSURANCE COMPANY, TD GENERAL INSURANCE COMPANY, EXECUTIVE DIRECTOR, LICENCE APPEAL TRIBUNAL, HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO, REPRESENTED BY EXECUTIVE CHAIR OF TRIBUNALS ONTARIO IN MR. SEAN WEIR, THE ATTORNEY GENERAL OF ONTARIO

Respondents

NOTICE OF APPEARANCE

The Respondents, TD HOME AND AUTO INSURANCE COMPANY, SECURITY NATIONAL INSURANCE COMPANY and TD GENERAL INSURANCE COMPANY, intend to respond to this Application.

Date: December 3, 2024

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Respondents

Divisional Court File No.: 718/24

ONTARIO SUPERIOR COURT OF JUSTICE
(DIVISIONAL COURT)

PROCEEDING COMMENCED AT TORONTO

NOTICE OF APPEARANCE

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TAB 5:

Court File No. DC-24-00000718-00JR
Applicant's Motion #2 (Motion in Writing; Request to Convert Motion into Motion for Judgment)

Court File No. DC-24-00000718-00JR

ONTARIO COURT OF JUSTICE (DIVISIONAL COURT)

BETWEEN:

KEVIN ALEXANDER MCLEAN

APPLICANT

- and -

TD HOME AND AUTO INSURANCE COMPANY, SECURITY NATIONAL INSURANCE COMPANY, TD GENERAL INSURANCE COMPANY, EXECUTIVE DIRECTOR, LICENCE APPEAL TRIBUNAL,
HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO, REPRESENTED BY EXECUTIVE CHAIR OF TRIBUNALS ONTARIO IN MR. SEAN WEIR, THE ATTORNEY GENERAL OF ONTARIO

RESPONDENTS

APPLICANT'S FACTUM

VOLUME # #1: STATEMENT OF JUDICIAL REVIEW APPLICATION

1. This ***JRPA* Application** involves the challenge to two (2) issued decisions of the Licence Appeal Tribunal ("**LAT**" or "**Tribunal**")[1]on September 13, 2024, and October 16, 2024, and two potentially unmade decisions involving the same. In the absence of any analysis of the statutory scheme[2] (i) by Vice Chair ("**VC**") Morrissette ("**VCM**"); and (ii) VC Lake ("**VCL**"), on reconsideration (the "**RD**"), relying on the newly passed language, as of August 21, 2023[3], in the *LAT Rules*, which is non-legislation,[4] the reviewing or appellate court is required to start afresh. Since 2019, the SCC settled the judicial review landscape in declaring *Dunsmuir*[5] to no longer be the law of our land and provided factual and/or legal situations where the reasonableness standard of review is rebutted. The focus herein of where the presumptive reasonableness standard is rebutted is where the rule of law ("**ROL**") requires that the standard of correctness be applied.

2. The rule of law is a theme in this ***JRPA Proceeding*** as per, some events that occurred or issues that were catalyzed after the filing of the ***JRPA* Application**, which were, including but not limited to: (i) Tribunal counsel (Ms. Boyce) raising the prematurity doctrine on a preliminary basis; (ii) counsel (Mr. Nieuwland) to TDGIC and SNIC[6], but not TDHA, in the **LAT Proceeding** not filing an appearance notice *forthwith* but purporting to file said purported notice of appearance (the "**Purported Appearance**") that was defective whilst in his cover email making a similar misstatement of law to the one he made on behalf at the nullity case conference on May 2, 2024, that "SNIC" was 'one and the same' as two other insurance companies (see: 'also referred to as' TD Home And Auto [sic] and TD General Insurance company [sic]"; and (iii) others.[7]

3. The Applicant has also sought the consent of SNIC to adjourn the hearing proper with the LAT scheduled for January 25, 2024, predicated on a nullity pre-hearing conference before Vice Chair Painchaund (the "**Hearing Proper**"). TDGIC has no entitlement to participate herein as NOM #13 was an interlocutory order and it did not even attempt to participate in it. NOM #14 and #15 squarely raise issues between SNIC and TDHA. Neither SNIC nor

TDHA sought to tender any materials, despite being duly served with NOM #14 and NOM #15.

4. The matter remains one where the delay will *likely*[8] involve a failure of justice being an affront to the rule of law and subspecies of the rule of law that involve: (i) general questions of law of central importance to the legal system as a whole; (ii) questions related to the jurisdictional boundaries between two or more administrative bodies; and (iii) the relationship between the legislature and the other branches of the state, which require a final and determinate answer from the courts (the "**Final Answer Requirement**"). The rule of law requires courts to have the final word (the "**Final Word Requirement**") with regard to general questions of law that are of central importance to the legal system as a whole because they require uniform and consistent answers (the "**Uniform Answers Requirement**" or "**Vertical *Stare Decisis***").[9] The rule of law requires courts to intervene where one administrative body has interpreted the scope of its authority in a manner that is **incompatible** with the jurisdiction of another administrative body since the rule of law cannot tolerate conflicting orders and proceedings where they result in a *true operational conflict* between two administrative bodies ("**Intolerance Conflicting Orders Requirement**").[10]

5. Whether affiliate or related insurance companies can accept priority, without any independent notices (see: (i) notice of transfer; (ii) notice of a potential agreement between insurers; and/or (iii) notice of arbitration) to an insured person or absolute noncompliance with *Reg 283*, over an applicant's [sic] insurance policy [sic] (not a *SABS* claim) is a question that must be answered by this ONSC on an urgent basis[11].

6. Some of the pertinent principles regarding the rule of law herein are: (i) *equality before the law*[12]; (ii) *accountability*[13]; and (iii) *access to justice*[14]. While administrative tribunal independence and absence of bias is not a constitutional principle, like that which is present pursuant to section 96 to 101 of the *Constitution Act* involving courts, conflicts of interest, bias and independence are presumed to be absent or at least reasonably perceived to be. The **VCM Decision** was not only incorrect and unreasonable[15] but it was counter to the

ROL requirement of "*equality before the law*" to which the Applicant and, by extension, his service providers were so entitled. The **VCM Decision** lacked *"accountability to the law"* as it was opaque in not only substance but process as: (i) it failed to reference any uncontroverted filed and served evidence; (ii) it failed to reference the binding "source law" wherein the Tribunal was required to decide all questions of law and fact before it in accordance with *Reg 283*, *SABS* and *Reg 664*[16]*;* and (iii) it failed to reference any jurisprudence that was binding upon it.

7. The jurisprudence involving *JRPA* (ss. 6(2)), *Reg 283*, the prematurity doctrine, "double jeopardy doctrine" (*res judicata* and issue estoppel), and standard of review all invoke the same principles in the middle of that archetypal "Venn diagram". While there is no dispute on the law that the orders in NOM #14, and to some extent NOM #15, are ***final orders***, irrespective of their lack of correctness, those principles fatefully contain similar language in relation to the legal thresholds for this ONSC to decide the legal issues herein on an expedited and urgent basis: (i) rule of law; (ii) *standing in the shoes of another*; (iii) bringing the administration of justice into disrepute; (iv) urgency; (v) failure of justice; and (vi) avoidance of repetition of proceedings before this ONSC and the Tribunal.

8. If the **Purported Nieuwland Appearance** is struck and there is no validity to the LAT's preliminary objection in the form of the "prematurity doctrine" to reviewing final orders of the Tribunal,[17] then government counsel cannot defend this JRPA Proceeding. As noted by *Jia*[18] by this ONSC (Div. Court): "We would exercise our discretion to hear an appeal from the conflict decision, because it is evasive of appeal and it is potentially a matter of general practice important in proceedings before LAT." The ONSC (Divisional Court) referred, in *Harold The Mortgage Closer*[19] (paragraph 37), citing *Volochay*[20] (paragraph 68[21]) wherein the ONCA referred to the prematurity doctrine and impugned *interlocutory relief* as synonymous or quasi-synonymous.[22]

9. Section 138 of the *CJA* codifies the principle that a multiplicity of proceedings must be avoided.[23] This leaves the sole issue being one of timing. Unlike the applicant, Sanscon Construction Ltd.,[24] in *Sanscon v. City of Toronto* ["*Sanscon*"], which failed to comply with some of the elementary requirements of pleadings, notice *et al*, this Applicant paid,

filed and served the *JRPA* Application in accordance with the requirement that it commence before the Divisional Court, he pleaded the material facts as to why he sought relief under section 6(2) of the *JRPA*, and why a failure to have this ***JRPA Proceeding*** heard urgently would *likely* lead to a failure of justice.

10. Like many ***unlawful*** schemes, it is not the 'what, when and how', but the '*why'*. The "why" herein was to circumvent multiple ***valid*** statutory schemes including: (i) FSRA investigatory and enforcement powers under the *Insurance Act* and the *UDAP Rule*; (ii) *Law Society Act* and its *By-Laws*; (iii) *PIPEDA*; and (iv) others. TDHA, as of 2019, while remaining as a licensed automobile insurer in Ontario, became a non-reporting insurance company to the FSRA for the purposes of the sub-category of insurance in the "**Private Passenger Market**". Only three insurance companies, within the TDI Group, issued automotive insurance polices in Ontario in the **Private Passenger Market**: (i) Primmum Insurance Company (FSRA registration number 1396)[25] ("Primmum"); (ii) SNIC; and (iii) TDGIC. [26] The motive for why SNIC would engage in such intentional conduct and why TDHA would be complicit with the same is to "kill or limit the paper trail" of what can be investigated by the FSRA, the LSO, and OPCC. [27]

11. To determine the unlawful scheme, it required analytical precision, after much review, into the various sections of the *Insurance Act* as to whom, what, when and how an insurance company, including certain individuals in specified situations, could be investigated. Moreover, the FSRA's investigatory, search, seizure, citation and enforcement powers are not only curtailed but eliminated if an insurer like TDHA is not a reporting insurance company in the "**Private Passenger Market**" of automobile insurance. By SNIC's intentional action of having TDHA be the recipient insurer of his OCF-1 application, it controls what documents and activities are subject to investigation during the *SABS* claim processes. The corroborating evidence of the unlawful scheme was, *inter alia*, the following: (i) the **Spam Fax** in March 2023 from an unknown insurance company to the Applicant's fax number; (ii) SNIC providing notice of change of address, in Spring or Summer of 2023 from Markham to Burlington along with changing its fax number from the TDHA Fax Number to the Burlington Fax Number; (iii) a forged and invalid signature

of "As per A. Nurse" under Ms. Nurse's name in an OCF-18; (iv) TDGIC substituting itself as the sole respondent in the LAT Proceeding; and (iv) other references in the **AR** or record of proceeding depending on any agreement between the entitled parties to participate herein.

12. By having TDGIC being the "sole respondent of record", albeit SNIC filing the sole "Response" in the LAT Proceeding (the "**SNIC Response**"), with the sole signature of a non-licensee (Mr. Karat) in breach of LSO By-Law 7.1, ss. 6(1)(b) and (d)[28], which does not meet a specified document to be included in the "record of proceeding" under the *SPPA*, SNIC controls or eliminates any investigation into its activities during the LAT Appeal temporal period. For example, if the FSRA sought to investigate issues involving SNIC, it could claim that it was not the insurer and that TDGIC was the solely responsible insurer for the Applicant's *SABS* claim (TD Claim #3), and the FSRA investigative and market conduct team would be misdirected. As the Applicant never faxed a document to the TDGIC fax number (416.774.3629) prior to the filing of the LAT Appeal and thereafter, there would be little to no evidence for the FSRA to investigate.

13. Moreover, by having a non-licensee self-titled "ADR Specialist" (non 'adjuster' under the *Insurance Act*), SNIC, along with TD Insurance Staff Legal, further limited the reach of the LSO into activities subject to its legislative powers and its by-laws which have legislative force[29]. By having Mr. Nieuwland solely act for TDGIC by filing a DOR, whilst having a P1 holder (not providing legal services) in Ms. Michelle Moraes masquerade as his legal assistant for three months before one Ms. Ortiz (his actual legal assistant) surfaced, it further curtailed the investigatory powers of the LSO and the FSRA. There was also evidence, albeit in a PIPEDA response of SNIC in 2024, that there were multiple files of these insurance companies involving a single claimant.

14. This Court must also rule on this ***JRPA Proceeding*** because the findings of VCM invoke the Applicant's [sic] Insurance Policy [sic] and a clandestine and undisclosed subsequent contract between SNIC and TDGIC (collectively, the "**Offerees**") by way of being offerees, to the surreptitious and unrevealed offer by TDHA (the "**Offeror**") as the First Insurer pursuant, to its prescribed jurisdiction, of *Rule 14.05(3)(d)*[30] to hear this matter since it

involves the determination of rights that depends upon contractual interpretation. This court has, at least, two contracts to review in determining the rights of all involved: (i) the Insurance Policy; and (ii) the unrevealed contract between TDHA (as one party) "and" SNIC and TDGIC ("counterparties").

VOLUME #1(B): Background Facts to this public interest litigation: *JRPA* Application

15. The Applicant was injured as the driver occupant in an automobile accident ("**Accident**") on August 31, 2022 (the "**DOL**"), through no fault of his own, which rendered the Insured Automobile with a police reporting file and some $6,000 in damage to the Insured Automobile. The **Insured Automobile** was propelled involuntarily some 30 feet forward from a stopped position north of St. Clair Avenue and south of Heath Road, on the Spadina Avenue. From the DOL to January 11, 2023 (the "**Material Time**"), the Insurance Policy associated with the Insured Automobile that he was operating was a leased vehicle from BMW Financial Services Inc. ("**BMW FSI**") and his spouse, a University of Toronto alumnus, was the individual named insured. The Applicant suffered a variety of impairments that were readily outside of the MIG, including but not limited to: (i) a grade 1 retrolisthesis; (ii) degenerative disc disease; (iii) S1 nerve issues; and (iv) a concussion.

16. The sole underwriter (the "**Sole Underwriter**") in the Insurance Policy and "pink cards" was Security National Insurance Company ("**SNIC**") which was an out-of-province insurer that had six classes of insurance with the FSRA. On September 1, 2022, the Applicant orally notified (the "**Oral Notification**") SNIC of the **Accident** and his intention to apply for accident benefits pursuant to the *Schedule* making SNIC the "**First Notified Insurer**".

17. SNIC provided the Applicant, in late September 2022, the OCF-1 application (the "**OCF-1 Application**" or "**Application**" pursuant to *Reg 283*, section 1). In the "return this form to" field, SNIC provided a mailing address of the 2nd floor, 101 McNabb Street, Markham, Ontario (the "**Markham Office**") and a fax number of *416.774.3120*. Unbeknownst to the Applicant, the said fax number was not a telephone number in Markham but rather in North

York, Toronto, and after lengthy investigations[31] the only evidence before the Tribunal was that the said fax number was a landline number, issued by Bell Canada Inc. (not Bell Mobility) at the 4th floor-3650 Victoria Park Avenue, North York, Toronto. In 2024, the only evidence before the Tribunal was that, in October 2022, it was controlled, assigned and belonged to TD Home And Auto Insurance Company (FSRA registration number 1063) ("**TDHA**").

18. **TDGIC**'s fax number, as per the Tribunal's notice of motion hearing orders, was the telephone number that was used solely as fax number, of 416.774.3629 and it was located on the 9th floor of the **VP Building**.

> **VOLUME #1(B)(I):** The LAT Registrar Order that confirmed that: (a) SNIC was not located at the Markham Office; (b) located in Burlington; and (c) with the 905 Fax Number (not a 416 fax number)

19. Further, *before* the issuance (September 13, 2024) of the VCM Decision, the Tribunal (not VCM herself but the LAT Registrar) on September 12, 2024, had issued another order that SNIC's address for service was 5th floor-5045 South Service Road, Burlington, Ontario ("**SNIC Burlington Office**").

> **VOLUME #1(B)(II):** *Why would VCM backdate VCM Decision to September 6, 2024?*

20. The self-evident and overwhelming inference is that by the LAT Registrar providing the, in fact, address of SNIC in Burlington, this provided an *additional* binding ground, by way of a decision of the administrative body, as to why TDHA was the First Insurer. Simply put, SNIC solely provided its name with a false address and false fax number.

> **VOLUME #1(B)(III):** *Why were there so many palpable errors in the VCM Decision?*

21. The obvious inference was that she rushed her decision-making process to pretend that her decision was issued on September 6, 2024, and not subject to or inconsistent with the LAT Registrar's order finally providing the, in fact, address of SNIC being the **SNIC**

Burlington Office. VCM was required to review all materials in the record of proceeding prior to issuing her order, and the LAT Registrar order, received by the parties, was a binding order upon her. The VCM Decision was inconsistent with said order.

22. SNIC had provided the said physical address, absent a floor number, from Spring or Summer 2023 until the time of the Applicant's filing of the LAT Appeal on December 24, 2023. SNIC's fax number at the SNIC Burlington Office was that **905 Fax Number**. Ergo, SNIC only complied with the requirements under *Reg 283* of providing its name but failed to comply with the requirements, at the **Material Time**, that it provide its mailing address and fax number.

VOLUME #1(B)(IV): Obligation to pay benefits triggered upon receipt

23. On October 13, 2022, the Applicant not only faxed his completed application pursuant to *Reg 283* and *SABS*, ss. 32 (the "**McLean Completed Application**") to the **TDHA Fax Number**, which was a landline on the **4th Floor VP Building**, albeit unknowingly, but he also faxed a completed and signed OCF-2 on his behalf ("**Completed OCF-2**"). On November 3, 2022, the Applicant paid the section 25 of *SABS* fees for the OCF-3, and the said duly and doubly signed OCF-3 was delivered to the **4th Floor VP Bldg. Fax Number**.[32]

VOLUME #1(B)(V): The New Brunswick response to a *PIPEDA* request of SNIC and the SPAM Fax: February to April 2023

24. Further, there was additional evidence before the Tribunal that the Applicant had made a *PIPEDA* request of SNIC in February 2023, via email to the TD privacy email, but received an apparent *PIPEDA* response via mail from an unknown corporate sender located in New Brunswick. With further investigations in the Summer of 2024, the Applicant filed evidence with the Tribunal that while TDGIC operated in the **Private Passenger Market** in Ontario but did not operate in the **Private Passenger Market** in New Brunswick, TDHA did not in Ontario but did in New Brunswick along with SNIC and Primmum.

25. Around the same time (March 2023), while SNIC had never faxed the Applicant in reply to any of his delivered faxes to the **TDHA Fax Number**, again unknowingly to him, and only sent ostensible responses the Applicant received a fax from an unknown sender that "it" had no record of the Applicant's TD Claim #3 and to send his faxes with information, already in each fax, to one of the various locations (see: Calgary, Ontario, Montreal, Nova Scotia and New Brunswick) across Canada. There were two fax numbers in Ontario: Burlington (905 Fax Number) and North York (the 4th Floor VP Building Fax Number). The Applicant was already faxing to the **416.774.3120** and he did not reside in Burlington but he was perplexed by the "North York" reference. Consequently, the Applicant promptly blocked the sender, on account of it being "spam" (defined as the "**Spam Fax**"). The Applicant notified the 416.774.3120 fax number presuming still he was faxing SNIC regarding the misidentification of said fax number being grounded, by landline phone number, in North York, although the Applicant was incorrect in that regard at said time by way of detrimental reliance on the representations made to him by SNIC, of the issue and continued to fax the said telephone (fax) number. Shortly thereafter, SNIC had correctly, albeit missing a floor number, provided the Applicant, via mail, with a notice of change of address from the Markham Office to the Burlington Office, and, most notably, from the VP Building 4th Floor Fax Number to the 905 Fax Number.

VOLUME #2: Overview of the binding precedents in relation to the Governing Statutes, Governing Regulations *et al*

26. *SABS* and *Reg 283*, having undergone major amendments in 2010 after being submitted to industry consultations and amendments before proclamations, they reflect important policy choices to ensure order and stability in regulated industries. Said "order and stability" in the regulations must be matched by this ONSC by reference to the **Final Word Requirement**, **Final Answer Requirement**, **Uniform Answers Requirement**, **Vertical *Stare Decisis***, and **Intolerance Conflicting Orders Requirement** pursuant to the ROL.

27. *Reg 283* is designed to keep priority disputes out of the courts.[33] *Reg 283* is also purposed to prevent *SABS* claims, including vital treatments and income benefits, from being delayed while insurers fight over priority dispute under section 268(2) of the *Insurance*

Act.[34] As a matter of principle, there is NO[35] difference between an insurer's failure to pay under section 2 of *Reg 283* and a failure to pay under any provision of *SABS*. [36] [37]

28. While a **First Insurer**, like TDHA, may have never received insurance premiums from the insured persons, or be deemed to have received the same pursuant to the Insurance Act after a determined insured person was an occupant in said 'insured automobile' may seem intuitively wrong, the Legislature, by passage of statutes with *Royal Assent*, and LGIC's intent, must be respected. There is no, *per se*, harshness to be alleviated by a sophisticated insurance company, with endless resources, who received the **McLean Completed Application**, who fails to investigate within three months and provide a notice, in form A143, to an insured person and other insurers under sections 3 and 4 of *Reg 283*. The provisional first-insurer rule under the regulation and the priority regime under the statute operate ***differently***.[38] Irrespective of whether a claimant is an "insured person" or not in the *subjective* mind of the **First Insurer**, the **First Insurer** must respond to the Claimant and pay benefits where applicable and required (see: *Reg 283*, ss. 2.1(6)). Acceptance during the 90-day period is merely provisional.[39] If the **First Insurer** does not dispute, within 90 days, its liability to pay all benefits, in accordance with *SABS*, of the claimant, there is *no other process* for the **First Insurer** to transfer the *SABS* claim, dispute the same and recover any paid or to-be-paid benefits to the claimant.[40]A **First Insurer**'s calculus to not *accept* a claim for whatever subjective reason can turn out to a costly and permanent mistake.[41] The lack of acceptance in this regard is functionally equivalent to "*not accepting service of a claim*," which is distinct from not accepting an offer in relation to a proposed contract.

VOLUME #3: Requirement to "step into the shoes" of Sole Underwriter[42]

29. In *Zurich 2015*[43], the SCC held that Chubb ought to have responded to the *SABS* claim immediately on a 'pay first and dispute later' basis.[44] If the sending of the **Completed Application** by the claimant was not arbitrary, there is a *nexus* between the claimant and the **First Insurer**.[45] The SCC restored Goldstein J.'s judgment (ONSC) ["*Zurich 2012*"[46]] in its verbatim adopting[47] the dissent of Juriansz J.A. ["*Zurich 2014*"][48], as he then was before retiring after an illustrious legal and judicial career in 2021,[49]: **2014 ONCA 400**[50].

A vague recollection about seeing an insurer's name at a rental car office was sufficiently non-arbitrary to require the **First Insurer** (Chubb in *Zurich 2015*[51]) to "*step into the shoes"* of another insurance company(ies) that was liable under a "contract of insurance" for the purposes of section 2(1) of *Reg 283*.[52] The policy behind the inflexible rule that an insurer (like TDHA), which fails to: (i) respond provisionally to a claimant; (ii) fails to pay benefits provisionally to the claimant; (iii) fails to put other insurers on notice; and (iv) fails to put the insured person on notice of a potential transfer of the insured person's claim to other insurer(s), after receipt of a Completed Application, when there is *SOME* nexus, being permanently responsible for the claimant's benefits is to promote compliance with the *validly binding* statutory scheme.

30. The ONSC in *Zurich 2024*[53] (May) settled the law in the above regards as follows: (i) breach of section 2 of *Reg 283*, according to the case law, does not result in an insurer being required to pay benefits to the claimant permanently; BUT (ii) the *failure* TO AVAIL itself of section 3 does. Section 3 dovetails to section 4 which requires the First Insurer (TDHA) to provide notice to the insured person. Section 5 of *Reg 283* provides the consequences for an insured person not delivering its objection notice to the First Insurer within 14 days of receipt of the dispute notice form (A143) from the First Insurer. A143 requires the First Insurer, which receives the same, to fill out the form correctly and have a representative sign the same.

31. Herein, there is some incredibly prejudicial and fatal evidence, as it relates to any defence by TDHA that it could not meet the 90-day requirement to provide an A143 notice, and that is the signature block of Mr. Karat wherein he, as an ADR specialist, represented, multiple times, in 2024, that he was authorized to represent, "SNIC, TDGIC, Primmum, and TDHA".

32. TDHA's permanent liability for responding to the *SABS* Applicant and paying benefits to him was a *self-inflicted consequence* of its failure to adhere to the requirements and protections of section 2 to 4 of *Reg 283*.The combination of provisions in *Reg 283* transformed TDHA's provisional liability into a permanent one.[54] For TDHA to not be declared as the **First Insurer** would mean that there were no consequences for the conduct

(or inaction) of TDHA by receipt of the **McLean Completed Application** and by continuing to have its former branch office address (**East Mall Address**) auto-populate in HCAI, without Mr. McLean having access to the same as he was not a "service provider" and no ability for any service provider to amend the same, it would defeat the legislation's public policy: "*pay now and dispute later"*. The consequence would be that the "rule of law" would not matter and the LGIC's proclaimed amendments to *Reg 283* and *SABS* had *no teeth* and were of no force and effect. Put another way, the mandatory provisions therein would become discretionary based on the arbitrary and subjective beliefs and whims of insurance companies within a group of insurers. There would be no stability and consistency in the application of *Reg 283*, and the **Uniform Answers Requirement** or what is more commonly known as "horizontal and vertical *stare decisis*" in our provincial common law (judge made law) jurisdictions.

VOLUME # #4: Issues, Law and Argument

VOLUME # #4(A): Issues

33. The Applicant frames the general legal issues as follows:

    a. **Issue #1**: What is the standard of review of the **VCM Decision** and the VCL Reconsideration Decision as it relates to VCM's orders in NOM #14 and NOM #15?
    b. **Issue #2**: As TDHA was the first insurance company to receive the McLean Completed Application, was it possible, at law, for SNIC and TDGIC to accept priority over the Applicant's [sic] insurance policy [sic] without any notice to him?
        i. If the answer to said issue is in the negative, what is the legal effect of the same?
    c. **Issue #3**: what orders must this ONSC fashion with respect to the public interest remedies that are evasive of the JRPA Application and of great importance to the procedure, practice, substance and the ROL in LAT proceedings where similar issues may arise?

VOLUME #4(B): Law

VOLUME ##4(B)(I): Jurisprudence

34. The ONSC in *Beasley*[55] was unequivocal in its language that the fiduciary duties of an insurance company, whether they are provisional or permanent, are triggered by the obligation to pay benefits (if any) wherein the Honourable Justice Moore found: "[34] The

relationship between an insured and an insurer in accident benefits matters involves a duty of good faith, **a fiduciary obligation**; the relationship between plaintiff and defendant in a tort action does not. The obligation, if any, *to* **pay accident benefits** is very different from the exposure, if any, that a defendant faces in a tort action."

35. The ONSC (Divisional Court) in *Jia* found, in upholding the reconsideration decision of VC Trojek[56], in a priority dispute case between CAA (insurance company) and The Personal Insurance Company, and *SABS* proceeding between a male widow and daughter without his wife and her mother respectively due to the fatal car accident against The Personal Insurance Company, found at paragraph 6: "[6] It is established law that insurers may not use the same counsel in statutory benefits cases and in tort cases brought against them by the same insured. This is because the duties of an insurer (and therefore of its counsel) are different in these contexts, and as an accident benefits insurer, the insurer is entitled to receive, and is required to keep confidential, a great deal of sensitive personal information from claimant." [57] [58]

VOLUME # #4(B)(II): Legislation

36. Section 280 of the *Insurance Act* contains six subsections, which were passed in 2014, of which only four are potentially relevant herein. [59] [60]The *SPPA* provides who may be parties to a proceeding which is by "statute" or "by law". The *Insurance Act* does not define or delineate who may be parties so the relevant part of section 5 is the "by law" component of the legislative section. TDHA, as the First Insurer on a provisional basis from October 13, 2022, to January 10, 2023, (the "**Provisional Period**") and then on a permanent basis from January 10, 2023, to present and in perpetuity (the "**Permanent Period**"), is the only insurance company in the TDI Group that, "by law", that was and *is* entitled to be the respondent party. Of note, the Applicant sent his LAT Appeal to the **TDHA Fax Number** and it was received by TDHA.

VOLUME # #4(B)(II): Regulations

37. **Benefits**" means *SABS* as defined under section 224(1) of the *Act*.[61] An insurer shall *promptly* provide an OCF-1 and any other appropriate *forms* in accordance with the

Schedule to an applicant who notifies the insurer [a "First Notified Insurer"] that she wishes to apply for benefits: 2.1(2) of *Reg 283*.[62] A *SABS* applicant shall use the Application provided by the insurer and shall send the Completed Application to only one insurer: ss. 2.1(4) of *Reg 283*.[63] An insurer that provides an application [a "**First Notified Insurer**"] under subsection (2) to an applicant shall: [1] not take *any* action *intended*: (i) to prevent; or (ii) stop, the applicant from submitting a completed application to *the insurer*; and [2] shall not: (i) refuse to accept the completed application *or* (ii) redirect the applicant to another insurer (see: ss. 2.1(5) of *Reg 283*). [64]

VOLUME # #4(B)(II)(c): Disputes between Insurers: independent breaches by **First Notified Insurer** and First Insurer under section 2.1 of *Reg 283*

38. Conceivably, the "First Notified Insurer" and "First Insurer" (not the "First Party Insurer" under *Insurance Act* as referenced in *Reg 664*[65]), could independently and disjunctively breach different subsections under section 2.1 of the *Reg 283*. For example, the First Notified Insurer could breach section 2.1(5) of the *Reg 283*, by taking some action intended to prevent or stop the 'applicant" from even *submitting* a completed application to "the insurer". "The insurer" may or may not be the First Notified Insurer. Under the last part of the sentence in subsection 2.1(5) of *Reg 283*, "an insurer" may breach section 2.1(5) by refusing to ***ACCEPT***[66] the Completed Application OR redirecting the same to *another* insurer. Ergo, a **First Notified Insurer** could conceivably breach sections 2.1(2), 2.1(3) and (5) of *Reg 283*. [67] [68] [69]

VOLUME # #4(B)(II)(d): First Insurer: how could such an insurance company breach section 2 of *Reg 283*? Which subsections of section 2 of *Reg 283* did TDHA breach?

39. Juxtaposed to that, the First Insurer may not be First Notified Insurer wherein an individual contacts, delirious after the Accident, and notifies the insurance company it believes to be a sole underwriter for the vehicle in which she was injured. However, after complying with that seven-day notification requirement under section 32 of *SABS*, an individual may, perhaps after the benefit of ILA, realize that said **First Notified Insurer** is not ***the insurer*** that has a duty to respond to her and pay benefits in accordance with the *Schedule*. As seen

in much of the jurisprudence, wherein insurance companies are willing to engage in a litigation for over nearly two decades, she may have multiple policies that could apply. She then submits her Completed Application to "the insurer" (not "an insurer" or the "**First Notified Insurer**") wherein the First Notified Insurer and First Insurer are distinct and separate entities (not "*one and the same*"). The First Insurer may fail to commence paying benefits in accordance with the provisions of *SABS pending* the resolution of any dispute as to which insurer is required to pay benefits (*nota bene*: the "**First [Recipient] Insurer**" in its capacity as the "**First Provisional Insurer**"). Such a First Insurer may breach section 2.1(6) on a provisional basis and only during the provisional period and/or beyond.

VOLUME # #4(B)(II)(e): Consequences of Non-Compliance[70] (ss. 2.1(7) of *Reg 283*) and distinction between section 2(1) (LGIC proclamation in 1995) and ss. 2.1 (LGIC proclamation in 201)

40. The word "reasonable" utilized by the LGIC indicates the objective person test. Therefore, the threshold and quantum for the fees under legal, adjusting, admin or disbursements is what a reasonable person would find in terms of whether they are owed and in what quantum. The only difference (see: *supra*, "the statute and regulation operate differently" as per Justice Akazaki) between section 2(1) and 2.1(6)[71] is that the former references the requirement to pay benefits under section 268 of the *Insurance Act* whereas section 2.1(6) reference the requirement of that **First [Recipient] Insurer** to pay benefits in accordance with the provision of the *Schedule*.

VOLUME # #4(III): Argument

41. Vice Chair Morrissette obviously knows more than the Applicant as to what was represented to the Tribunal in written or oral form – not that which is correct at law – "behind the scenes". [72]There is no prescribed right of insurance companies, irrespective of whether they may or may not be affiliated within a group of insurance companies, to accept priority over an "insurance policy". No such right exists in relation to a claim for accident benefits after a Completed OCF-1 is received by AN insurance company. NIC did not refuse to accept the **Completed Application** as it did not receive the **Applicant's Completed Application** *first*. It is unclear if it even received it second or in what order or if at all. The reference to "it at all" is grounded in the record of proceeding and the denial

letters in that SNIC never enclosed a copy of the initial OCF-1 delivered to TDHA at first instance or other documents but rather would reference them in a vague and ambiguous manner.[73] To encapsulate the application of the uncontroverted evidence to ss. 2.1(5) of *Reg 283*, SNIC was the only insurance company that provided the OCF-1 but it cannot be found to have prevented the Applicant from submitting his Completed Application to "the insurer" but rather *encouraged* him to do so by providing a North York, Toronto, fax number (**VP Building 4th Floor Fax Number**) of TDHA which was an "*in province*" insurer licensed in the class of automobile insurance. Therefore, there was a nexus between the Applicant and TDHA as he did not select TDHA on a whim but was exclusively directed to it by SNIC – at least "on paper".

42. TDHA was the First Insurer as the only two lead tenants at the Victoria Park Ave Building were that of TDGIC and TDHA. TDGIC occupied floors 7 to 9 with the 9th floor being its mailing address and TDHA occupying floors four to six with the four floors being its mailing address. Once the Applicant had honed in on the deception, the mathematical computation of how Bell Canada Inc. had assigned the numbers within the building was rather rudimentary. The area code of 416 was only for Toronto-based locations. 774 was assigned as a "prefix" to numbers within the District of North York and then within the VP Building, the 3 was a common feature to many landlines of tenants therein. The "120" was a string of three digits with numerical value of "1" being on the fourth floor and the numerical string of "629" with "six" being on the 9th floor. For sake of completeness: "2" was on the fifth floor; "3" was on the sixth floor; "4" was on the seventh floor; "5" was on the eighth floor; and "6" was on the ninth floor. The Tribunal's notice of hearing orders are orders at law and subject to judicial review, and neither SNIC nor TDGIC sought to challenge them by a section 21.1 of the *SPPA* motion or judicial review and/or appeal. It is trite that if those fax numbers that the Tribunal had found were to be for service of documents to SNIC and TDGIC were not their fax numbers, they would have objected or confirmed the same with the Tribunal.[74]

43. Therefore, SNIC had no provisional obligation to respond to the Applicant and pay benefits as its obligation to respond was merely the provision of forms and explanation of benefits

as a mere stakeholder in the insurance industry, but rather TDHA had that obligation to respond and pay benefits. Therefore, pursuant to section 280(4), the LAT was required to resolve the LAT Proceeding in accordance with *SABS* and *Reg 283*.

44. In order for the Tribunal to determine the *JRPA* Applicant's claims under *Reg 664*, s. 10 (Dispute Resolution under section 280 of the *Insurance Act*).[75] Conceivably, s.10 of *Reg 664* could involve two insurers because a provisional First Insurer could have delayed commencing paying benefits and further delayed during the provisional period, and a different agreed to, with or without the consent of an insured person subject to said claimant receiving notice or notices pursuant to *Reg 283*, or declared insurer, by arbitrator or subsequent court decisions[76] could have delayed or withheld benefits thereafter. [77]

45. The Applicant complied with section 268(5) of the *Insurance Act* and ss. 32(1) of the *Schedule* by SNIC became the "First Notified Insurer". Pursuant to section 32(2) of *Schedule* and *Reg 283*, ss. 2.1(2) SNIC provided the Applicant with an OCF-1 Application (see: *Reg 283*, s.1) and some other forms that related to the *Schedule*. SNIC breached part of ss. 2.1(3) of *Reg 283* by not providing its accurate mailing address and fax number. The Applicant complied with ss. 2.1(4) of *Reg 283* by using the "OCF-1 Application" provided by SNIC and sent the Completed Application to only one insurer (TDHA).

VOLUME # #4(III)(A)(i): Subsection 2.1(6)

46. TDHA was the **First Insurer** that received a Completed Application for benefits from this *JRPA* Applicant (*SABS* Applicant) and was duty bound, by the LGIC's 2010 proclamations, which were the subject of extensive industry wide consultations, to commence paying the benefits in accordance with the provisions of the *Schedule*.

VOLUME # #4(III)(A)(ii): Subsection 2.1(7)

47. As SNIC and THDA are both "insurers", distinct at law, they have both failed to comply with various sections under subsection 2.1 and are required to reimburse each other for any fees (adjusting and legal), costs *et al* that were reasonably incurred by the other insurer as a result of the non-compliance. However, that is an issue between them and not for the

Applicant. The Applicant is not entitled to any payment of any incurred legal fees, adjuster's fees, administration costs and disbursements but he is entitled to benefits and payment of section 25 fees incurred.

VOLUME # #4(III)(A)(iii): Sections 3 to 4 of *Reg 283* and ss. 268(3) of the IA

48. An insurer against whom a person has recourse for the payment of statutory accident benefits is liable to pay the benefits: ss. 268(3) of the *Insurance Act*. Where an insurer has given notice under section 3 of *Reg 283*, said insurer must also give notice to *the insured person* using a form approved by the CEO of the FSRA: ss. 4(1) of the *Reg 283*. Said form is denoted below at Appendices and it is a A143.[78] TDHA did not even engage in the pretense of doing so.

VOLUME # #4(III)(A)(iv): Section 5 of *Reg 283*

49. The Applicant never received notice under section 4 of *Reg 283* so he did not have any obligation under section 5(1) of *Reg 283*. Ergo, the Applicant could not, in fact, advise the insurer paying benefits in writing within 14 days that he objected to the transfer of the claim to the insurers referred to in a non-existent notice. According to VCM, the transfer of his TD Claim #3, clandestinely occurred at some unparticularized time by some void ab initio agreement between the First Insurer when TDGIC, in conjunction with SNIC, accepted priority over the Applicant's [sic] Insurance Policy [sic]. VCM was clearly not referring to a "decision" but a *subsequent agreement* by her deliberate word choice of "acceptance". For "acceptance" to have occurred by two other insurers, where neither could be the First Insurer (TDHA), an offer had to be made. For an agreement to have been consummated, there had to be return consideration in the form of a fulfilled promise from the offerees to the offeror (TDHA). In order for that proposed contract, which could be at best an "agreement to agree", it required notice to the JRPA Applicant and his consent or his silence AFTER receipt of the prescribed notices.[79]

VOLUME # #4(III)(A)(v): Subsection 5(3) of *Reg 283*

50. Ss. 5(3) of *Reg 283* has a "despite" or "subject to" clause in said subsection but it relates to the Fund initiating arbitration so it is not germane to the issues herein.

VOLUME # #4(III)(A)(vi): *Void Ab Initio* Agreement and deprivation of three different rights: (i) right to object to transfer of his claim to other insurers; (ii) right to object to proposed agreement between insurers; and (iii) right to file notice of arbitration

51. While the Applicant did not receive any section 4 notice pursuant to *Reg 283* and was deprived of his rights which the LGIC provided similarly situated accident victims, to object to the transfer of his TD Claim #3 to SNIC and TDGIC on an apparently joint basis, he was also deprived of his arbitration participatory rights in any subsequent proceeding to *settle* the dispute. Most importantly, whatever clandestine, underhanded and surreptitious agreement was negotiated and consummated between TDHA with SNIC and TDGIC, had no legal effect and was not merely void but void *ab initio*. It amounts to an irremediable nullity.[80]

VOLUME # #4(III)(A)(vii): Consent vs. Non-Opposition – risks of allowing the Tribunal to decide the Hearing Proper with the "musical defence chairs" between SNIC, TDGIC and TDHA

52. Leaving aside that Mr. Nieuwland's purported Notice of Appearance was and remains defective, Mr. Nieuwland is apparently engaged in similar past conduct that was not only rejected by the Tribunal but the FSRA (two administrative tribunals created under different statutes with boundaries that regularly intersect) with respect to his misguided "*one and the same representation*" regarding SNIC and TDGIC being the same corporate entity. Such a misrepresentation was counter to the FSRA certificates of status involving each, their distinct license classes approved by the FSRA, the corporate history of TDGIC and SNIC, and the rule in *Foss v. Harbottle*. Mr. Nieuwland now wishes this ONSC to accept a filing, which was not forthwith, but wherein his cover email misrepresented that he was acting for SNIC and two distinct companies *also referred to as [sic]* as "TD Home and Auto [sic]" and "TD General Insurance company [sic]". It was a tantamount to a "triple down" on his previous "double down" at least "numerically". For the purposes of clause 4.3 of *Schedule* 1, the consent of an individual is only valid if it is reasonable to expect that an individual to whom the organization's activities are directed would understand the nature, purpose and consequences of the collection, use or disclosure of the

personal information to which they are consenting: s. 6.1 of *PIPEDA*. It is trite that the OCF-1 and PIPEDA operate harmoniously and in tandem.

VOLUME #4(III)(B): "Mr. Nieuwland and co" – up to old tricks

53. Not opposing the relief in a motion, as TDGIC did by way of written email by Mr. Nieuwland on behalf of TDGIC on June 6, 2024, is not the legal equivalent of "consent". Such a statement of law is a trite one but the history of how SNIC and TDGIC have abused the process of the LAT Proceeding is precisely why this ***JRPA Proceeding*** must be decided *prior* to the Hearing Proper. After Mr. Karat, a non-licensee, signed and filed a Response on behalf of SNIC on January 25, 2025, (the "SNIC Response") contrary to LSO By-Laws, TDGIC purported to be the sole respondent without even the pretense of filing a pleading. NOM #8 was not granted until June 20, 2024, which then required another section 21.1 of the *SPPA* motion as the clarity and precision of some of the findings of fact, contrary to the record of proceeding, by yet again VCM, were incorrect. The Applicant sought the consent of TDGIC to remove itself as the sole respondent and the consent of SNIC, the only insurance company that filed a Response, to substitute itself for TDGIC. Mr. Nieuwland, for TDGIC, was unequivocal that TDGIC would NOT oppose any such relief from the Applicant after opposing said relief for nearly six months. Mr. McLean is not so self-aggrandizing to think that his NOM #8 was of such superb calibre that it was the sole catalyst for the change in legal position. Rather, it was, admittedly, bold move to serve the FSRA with NOM #8 and invite its submissions by way of *amicus curae.* 128 days passed from the time of the Nieuwland DOR on behalf of TDGIC to the time of his email where TDGIC would not oppose the relief that the Applicant had been seeking, with formal motions and at the case conference. SNIC did not respond to NOM #8 even though its sole representative, at the time, in Mr. Karat had responded to emails in May 2024. Consent for removal of TDGIC and substitution of SNIC for it would have required a "three party agreement" between the JRPA Application, TDGIC and SNIC.

VOLUME # #4(III)(C): *Res judicata* and Issue Estoppel

54. The Applicant could then be caught by the doctrines of *res judicata* and issue estoppel.

VOLUME # #4(III)(C)(i): *Res judicata*

55. In *Said v. Northbridge General Insurance Company, 2024 ONSC 5248* (Div. Court), the Honourable Justice DL Corbette with oral reasons considered *res judicata* in an administrative context where it was found that a LAT decision is final and authoritative subject to a party's rights of reconsideration or appeal from that decision.[81]TDHA and SNIC are not "one and the same" as it has already been found by the FSRA, through its issuance of the certificates of status in June 2024, that "TDGIC and SNIC were not one and the same".

VOLUME # #4(III)(C)(ii): Issue Estoppel

56. Issue estoppel has been articulated as follows in *Kazen v. Whitten & Lublin Professional Corporation,* 2020 ONCA 325[82]: (i) the same question has been decided; (ii) the judicial decision which is said to create the estoppel was final; and (iii) the parties to the judicial decision or their privies were the same persons as the parties to the proceedings in which the estoppel is raised [or] their privies. The ONCA in *Victoria University (Board of Regents) v. GE Canada Real,* 2016 ONCA 646 found the following: "[97] It holds that a party may not relitigate an issue that was finally decided in prior judicial proceedings between the same parties or those who stand in their place. However, even if these elements are present, the court retains discretion to not apply issue estoppel when its application would work an injustice."

57. It is the "mutuality principle" that would be at issue as to whether THDA and SNIC are "privies". However, even the slight chance, however remote, is enough to ensure that a decision is issued as to whom the First Insurer was – as there is no finding that TDHA was not the First Insurer and SNIC was the "Frist Insurer". Since there are no findings in this regard to overturn, no deference is required and the ONSC can decide the issue "de novo" or at least in a manner that resembles a "de novo hearing". It is yet another reason why the respondent insurance companies must not be entitled to participate herein. The Applicant would not be bound by *res judicata* and/or issue estoppel because SNIC and TDHA are privies but because of Mr. Nieuwland's recent representation in his "received" filing (purported NOA) that SNIC are "also referred to as" as TDHA and TDGIC.

VOLUME # #4(III)(D): *Reza vs. State Farm* and s. 19 of *SPPA*

58. The case of *Fatemea Rezaiezadeh v. State Farm Mutual Automobile Insurance Company*, 2016 ONFSCDRS 59 ("*Reza*")[83] stands for the proposition below wherein an arbitrator found the following: "The Appellant concedes there is no explicit procedure in…the *Statutory Powers Procedure Act*, R.S.O. 1990, c. S.22, as amended, to permit a party to continue a proceeding against a non-party." While *Reza* was a decision before the FSCO, the Legislature has not amended the *SPPA* in any manner that would change that precedential statement of law. The Applicant will also be deprived of his rights under section 19 of the SPPA in relation to enforcement of a monetary order.[84]The Applicant cannot continue the LAT Proceeding as currently constituted against TDHA as per the **VCM Decision**. Moreover, the Applicant would be proceeding against as a "Non-First Insurer" that does not have any obligation to respond and to pay benefits.[85]

VOLUME # #4(III)(D)(i): Does the argument that SNIC would merely cut a cheque assuage any concerns and/or should the Applicant have to even take such a risk?

59. In *Reza*[86], the following excerpt has extreme relevance to why this ***JRPA Proceeding*** must proceed expediently before a single justice and, if it fails, then before the ONSC (Div. Court): "The Appellant's apparent concern is that if she is successful on appeal and obtains a monetary award, if the Respondent does not pay, whose property does the sheriff seize? The Respondent submits that Certas would respond to any "valid" judgment by cutting a cheque because of its contractual obligation with State Farm. This did not seem to reassure the Appellant."[87]

VOLUME # #4(III)(D)(ii): Not merely the entitled insured person and the obligated insurance company (First Insurer) but *issues*

60. The danger of not deciding this ***JRPA Proceeding*** on an expedited basis before a single justice, is outlined, to some degree, in 2015 ONCA 851[88]. The ONCA briefly set out the elements required for issue estoppel to apply to bar the re-arguing of *an issue*, and some useful comments on when parties meet the "mutuality principle". The applicable principle is that "litigation is conclusive upon *issues actually brought before the court* and upon any

issues which the parties, exercising reasonable diligence, should have brought forward on that occasion".[89] The ONCA at paragraph nine raised some of the **indicia** that would make corporate parties privies of each other and the address aspect is one that cuts both ways:

> "[9] ….. All corporate appellants, except Committee of Certified Acupuncturists of Ontario, share the same registered address and they all share *many* of the same directors and officers, including the two individual appellants. In the context of these proceedings, this constitutes a sufficient degree of identification among the parties "to make it just to hold that the decision to which one was a party should be binding in the proceedings to which the other is a party".[90] In any event, even if the same parties' requirement for issue estoppel is not strictly met, permitting the appellants to re-litigate the issue that was determined by the Divisional Court would amount to an abuse of process.

VOLUME # #4(III)(D)(v)): "Would respond" is antithetical and counter to the purposes of *Reg 283* and *SABS* [they are imperatives]

61. As found by the Honourable Mr. Justice Akazaki, a former president of the OBA no less, in *Zurich 2024*[91] the purpose of *SABS* is and remains that those injured persons receive vital treatments and income replacement benefits. SNIC is even on worse footing than Certas, vis-à-vis the defunct State Farm, as noted in *Reza*[92], as it relates to automobile insurance benefits in Ontario, because there is no evidence of SNIC having a contractual relationship to TDHA to respond and pay on its behalf for its obligations under *Reg 283* and *SABS*. However, this inharmoniously bolsters a variety of points: (i) SNIC may take the position that it was *standing in the shoes* of TDHA; (ii) SNIC and TDHA are privies because of the "*standing in the shoes argument*"; (iii) without a decision herein, SNIC may take the position, even post hearing, that the Applicant was advancing his arguments not only against SNIC, but TDGIC and TDHA, and be without any recourse against TDHA as the First Insurer; (iv) SNIC does not have a duty to respond and pay benefits because it was not the First Insurer but the Applicant's LAT Appeal is dispositive of all issues against not only SNIC but TDHA; (v) to the extent that the Applicant advanced a separate LAT Appeal against TDHA, he would be abusing the process of the Tribunal because the underlying evidence would be similar or the same as he had faxed the seminal documents and correspondence to 416.774.3120 on a primary level; and (v) others.

VOLUME # #4(III)(E)(i): No ***effective remedy*** left for the Applicant

62. The prematurity doctrine has no applicability. The Applicant may or may not obtain a remedy against a non-liable insurance company as a matter of the governing statute in *Insurance Act*, ss. 268(3) and the binding regulations in *Reg 283*, *SABS* and *Reg 664*. Judicial review is a discretionary remedy. However, in *Awada*[93], Corbett J. by setting out the legal principle or precedent that courts should not interfere with ongoing administrative proceedings until after they are completed *or* until effective remedies are exhausted. It is not that a claimant has exhausted remedies but effective remedies. "Effective" is synonymous with "actual, real, or operative". Any remedies against SNIC are ineffective, futile or useless. The ineffectiveness of any remedies, absent costs against SNIC in the LAT Proceeding, is further bolstered by the mature and stable jurisprudence that an order adding or dismissing a motion to add a party is a final order.

VOLUME # #4(III)(E)(ii): The Ultimate Appeal argument

63. The ONSC outlined the legal test in *Mansuri*[94] wherein it stated, "To the extent that there are "alleged deficiencies" arising from the Initial Decision, the applicants have not established that they "cannot be cured on an ultimate appeal. Put another way, the applicants have not established that the alleged prejudice to the applicants outweighs the benefits of a single court proceeding once the underlying Tribunal proceedings are complete" (see: *Mansuri v. Dominion of Canada General Insurance Company*, 2023 ONSC 5764[95] at paragraph 43).[96] Even in an "ultimate appeal", no curing could occur as TDHA is not the solely liable respondent party in the LAT Appeal.

VOLUME # #4(III)(E)(iii): The corollaries in *Ontario Nurses Association*

64. The ONSC in *Sudbury and District Health Unit v Ontario Nurses' Association*, 2023 ONSC 2419 ["*Ontario Nurses*"][97], found as follows at paragraph 29: "…. Resolution of this application does not resolve the outstanding issues before the Arbitrator. In addition, the court has been clear that this is not an exceptional circumstance that would lead it to hear a judicial review application on an interlocutory decision." The deductive reasoning is rather rudimentary: (i) if resolution of a *JRPA* Application resolves outstanding issues

before the Tribunal, then a *JRPA* Application is not premature; and (ii) if not an interlocutory decision, then this militates in favour of hearing this *JRPA* Application.[98]

VOLUME # #4(III)(E)(iv): Court May ALWAYS intervene - Inherent Jurisdiction of its Superior Court Status

65. The court noted that "if there is a prospect of *real unfairness* through denial of natural justice or otherwise, a superior court may always exercise its inherent supervisory jurisdiction to put an end to the injustice before all the alternative remedies are exhausted…the unfairness in this case is so obvious that it would be inappropriate to put the officer through a trial before a tribunal that lost jurisdiction through a denial of natural justice.[99] This madness needs to be put to an end. The Tribunal is not even correctly distinguishing between the law of consent and "non-opposition". *What next by way of extrapolation of legal principles?* Sexual assault victims need not consent to sexual acts but their lack or absence of opposition to sexual acts is functionally and legally equivalent to consent. This Tribunal should be ashamed of itself by tossing around, in some irresponsible manner, that "consent" and "non-opposition" are "*one and the same*".[100]

VOLUME # #4(III)(E)(v): Concerns about this decision maker in VCM

66. Further, the total absence of a foundation for a finding of fact is an error of law. Moreover, it is the findings of VCM that are so particularly concerning that raise incredible integrity issues and conduct. It is not the first time that this former adjudicator, since promoted to Vice Chair, has been involved in serious breaches of conduct with knowledge. Her apparent knowledge, not in the record of proceeding, of what transpired, was not only affront to the *LAT Rules* of all parties being copied on correspondence, but this ONSC can take judicial notice of some issues involving this Tribunal of yesteryear.

67. Vice Chair Morrissette had to obtain this "knowledge" that TDGIC and SNIC accepted priority over the Applicant's [sic] insurance policy [sic] from some place, repository *et al*. The activities of VCM, prior to assuming her role as an adjudicator and now VC, are of great concern on a general but a specific level herein (see: https://lobbycanada.gc.ca/en/investigations/reports-on-investigation/the-lobbying-activities-of-trina-morissette/).[101] [102]

VOLUME # #4(III)(E)(vi): The conduct of this Tribunal is bringing the rule of law into disrepute: exceptional circumstances.

68. In *Harold the Mortgage Closer Inc. v. Ontario* (Financial Services Regulatory Authority, Chief Executive Officer), 2024 ONSC 446 [103] , this ONSC found: "[49] Exceptional circumstances are ones that bring the rule of law into disrepute which goes beyond breaching procedural fairness or even acting without jurisdiction: *Dugré*, at para. 35."

VOLUME # #4(III)(E)(vii): Risk of repeating proceedings and potential prejudice

69. Referring to the exceptions to the prematurity doctrine, which are analyzed when interlocutory relief is challenged by way of judicial review which has no applicability herein, "…It will only be permitted in rare cases where the *potential* prejudice of the risk of repeating proceedings after review" (see: *Lourenco*[104]). This JRPA Application will be repeated if the prematurity doctrine and arguments of the Tribunal are accepted.

VOLUME # #4(III)(E)(viii): Broader implications, Test Cases and Concurrent Jurisdiction

70. In *London District Catholic School Board v. Weilgosh*, 2024 ONSC 3857[105], the concepts of broader implications and test cases caused the ONSC to hear the judicial review even on an interim order, which the **VCM Decision**s are not, before the conclusion of that proceeding. Even more forcefully, the issues herein are even more important because they will determine a *Reg 283* and *SABS* issue in a "test case" where they have not been decided before against the backdrop of some alarming issues involving this Tribunal which appear to be related to previous concerns about this Tribunal. This outcome and decision herein have broad implications for insured persons with various insurance companies in any "insurance group" and whether there is a systemic issue involving providing false contact information, which may or may not involve intentional breaches, and may be merely a technological error like the "four insurance companies" had in the FSRA Enforcement Decisions for SNIC[106], TDGIC[107], Primmum[108], and TDHA[109] . Nonetheless, it must be addressed forthwith before further prejudice occurs to the public.

VOLUME #5: Conclusion and Orders Sought

VOLUME #5(A): Why the prematurity doctrine has no applicability

71. History cannot repeat itself and the JRPA Applicant is acting not only in relation to "final orders" but in accordance with the "rule of law" and being pre-emptive by filing this factum and asking, with great respect and appreciation, for an urgent hearing. The obvious 'devil's advocate' position to the JRPA Applicant's submissions regarding being technically correct in following *Reg 283,* which dovetails with SABS and Reg 664, is that SNIC will claim that it will be bound by any decision of the Tribunal and not advance any positions contrary to the same or at the "11th hour". However, there is nothing, with the findings in the impugned orders and decisions of VCM on September 12, 2024, (contrary to the September 6, 2024 inscription), to take the position that it [SNIC] is not obligated to respond and pay benefits pursuant to *SABS* because it was NOT the "First Insurer". There is also nothing that would preclude SNIC from doing so after the Hearing Proper and prior to the issuance and release of a decision of the Tribunal in relation to the Hearing Proper as the Tribunal would not be *functus officio* until that time. SNIC could seek leave post Hearing Proper and advance that argument all while relying on the finding, god willing such a finding would not be issued by this ONSC Divisional Court, that the JRPA Application was premature. It would then leave the Applicant with no recourse regarding the final orders to NOT add TDHA as the First Insurer and not only no effective remedy against insurance companies within the TDI Group but no insurance company with a duty to respond and pay any benefits. In effect, it would be a return to the unlawful *status quo* where the Applicant communicates with the purported adjusters for SNIC and they do not respond to him despite the digital communication protocol that was consummated by consent between SNIC and the Applicant on January 23, 2024.

VOLUME #5(B): Preliminary Orders

72. With great respect and appreciation for the ONSC's time on this matter, the Applicant seeks, by way of this factum, the following orders on a preliminary basis: (a) Striking Nieuwland Purported NOA on behalf of three insurance companies; (b) An order that the Applicant is entitled to be heard on the issue of leave before a single justice of the ONSC

at the earliest opportunity of this ONSC and prior to January 15, 2025; and (c) An Order dispensing with the need for any case management conference.

VOLUME #5(C): Public Interest Remedies: Declarations Of Law

73. The Applicant seeks the following public interest remedies, orders, declarations or findings for the benefit of the public along with this ONSC solidifying the required stability and uniformity involving *Reg 283*, which the Applicant respectfully seeks an endorsement or finding of the same, are the following syllogisms for accidents post September 1, 2010:

a. A **Declaration of Law** that there cannot be any binding agreement, at law, between a First Insurer and another insurer or insurer(s), where an insured person has not received notice from the First Insurer (see: section 3(1));
b. A **Declaration of Law** that there cannot be any binding agreement, at law, between a First Insurer and another insurer or insurer(s), where an insured person has not *selected* the First Insurer (see: section 7(2) of *Reg 283*);
c. A **Declaration of Law** that there cannot be any binding agreement, at law, between a First Insurer and another insurer or insurer(s), at first instance or subsequent, under *Reg 283* if the insured person, in her capacity as an Applicant having sent a Completed Application that was received by an insurer, making said insurer the "First Insurer", did not receive a notice of dispute or transfer pursuant to *Reg 283*;:
d. A **Declaration of Law** that there cannot be any binding agreement between a First Insurer and another insurer or insurer(s), at first instance or subsequent, under *Reg 283* if the insured person, in her capacity as an Applicant having sent a Completed Application that was received by an insurer making said insurer the "First Insurer", objected to any transfer of her claim pursuant to section 5(1) of *Reg 283* and said "agreement" was made without the consent of the insured person applicant who has seen and read the agreement;
e. A **Declaration of Law** that there cannot be any binding agreement, at law, between a First Insurer and another insurer or insurer(s), at first instance or subsequent, under *Reg 283* if the insured person, in her capacity as an Applicant having sent a Completed Application that was received by an insurer making said insurer the "First Insurer", where:
    i. an insured person has received notice of the potential transfer of the claim by the First Insurer to another insurer or insurers, the insured person has objected to the transfer within 14 days of receiving notice, received a copy of the proposed agreement, objected to said proposed agreement and has initiated arbitration within 14 days of being notified of an agreement under the *Arbitration Act, 1991* (see: section 7(2) of *Reg 283*);
f. A **Declaration of Law** that there cannot be any binding agreement, at law, between a First Insurer and another insurer or insurer(s), where an insurer does NOT commence or initiate arbitration within one year after the day the insurer paying

benefits gives a section 3 notice to the other insurers and, by corollary, a section 4 notice to the insured person applicant (see: section 7(4)); and

g. A **Declaration of Law** that there cannot be any binding agreement, at law, between a First Insurer and another insurer or insurer(s), whereby the insurer paying benefits was not the First Insurer if the First Insurer does not give notice in accordance with section 3(1) of *Reg 283* because the First Insurer is bound by its failure to give a section 3 notice to every other insurer because even if the First Insurer does so, section 4 requires a more formal notice under section 4 in the requisite form (A143).

VOLUME #5(D): Judicial Review Final Orders vis-à-vis Mr. McLean and TDHA

74. The Applicant seeks the following final orders:

1. An order quashing, in the nature of certiorari, and setting aside the **VCM Decision**;
2. An order quashing, in the nature of certiorari, and setting aside the **VCL Reconsideration Decision**;
3. An order granting the Applicant's orders sought, stylized as #1 and #3 in his NOM #14 (see: page 12 of the **Application Record**);
4. Costs in favour of the Applicant in NOM #14 and #15 against the then sole respondent in SNIC and fixed at $2,000;
5. Costs in favour of the Applicant in this ***JRPA Proceeding*** against any of the respondents herein that oppose the relief herein;
6. Such other further relief that this Honourable Court may grant pursuant to its inherent jurisdiction; and
7. Leave to the Applicant to file and serve any further documents, including amended submissions, that arise from the above or become known to him and/or based upon any agreement or order regarding the filing of the record of proceeding.

VOLUME #5(E): A full answer to the prematurity doctrine by way of legal bases

75. Lastly, there is a full answer to why the issue of who the First Insurer was and is, and who the correct liable and obligated respondent party must be and that is section 56 of SABS:

> **"Time limit for proceedings**
> **56.** An application under subsection 280 (2) of the Act in respect of a benefit shall be commenced within two years after the insurer's refusal to pay the amount claimed. O. Reg. 44/16, s. 6."

76. The LAT Appeal (a section 280(2) of the Insurance Act 'Application') was filed and served on the TDHA Fax Number, albeit unbeknownst to the Applicant as being the TDHA Fax Number, on December 24, 2023. SNIC filed its Response on January 25, 2024. VCM could not have reviewed the pleadings because she would have known by both pleadings that it was NOT the Applicant's Insurance Policy.

77. In *R.M. v CAA Insurance*, 2020 CanLII 94775[110], Vice Chair Shapiro found in relation to section 56 of the Schedule:

> "[5] Section 56 of the *Schedule* provides that an application to dispute a denial of a benefit must be commenced within two years of the insurer's refusal to pay. Section 64 allows the denial notice to be sent by regular mail or faxed to an insured's lawyer. Once a proper denial has been properly sent, if an insured does not appeal within that period, the Tribunal can not hear it as it is "time-barred".

78. This, in turn, makes the precise point that SNIC, at least prima facie, has sent "denial letters" to the Applicant but TDHA has not. Parenthetically, TDGIC never sent a denial letter to the Applicant which was the Applicant's primary reason for continuing to seek the relief to substitute SNIC for TDGIC – not the unsupported findings of VCM. Therefore, the "record of proceeding" will be unequivocally different between SNIC and TDHA. It is not merely a "cosmetic difference" but a substantive one.

79. All of which is respectfully submitted to the ONSC (Div. Ct.) at first instance on Tuesday, December 10, 2024:

Mr. Kevin A. McLean (B.A. J.D., CIM)
Self-represented, the Applicant herein

APPENDICES OF THE JRPA APPLICANT'S FACTUM

APPENDIX #1: Errors in **VCM Decision** as referenced by NOM #18 in the NOM #18 Motion Forom and Schedule therein

The Appellant seeks the following orders as follows pursuant to section 21.1 of the *SPPA* (but not LAT Rule 17) by way of strikethrough for deleting the word therein and underlining for proposed additions in substantially the same form:

a. An Order correcting the "date of the order" from September 6, 2024 to September 13, 20242;

b. An Order correcting **paragraph 2** from "was issued to the parties" to the following in substance "was issued to the Appellant and TDGIC, which was and is a non-party pursuant to the retroactive nature of my order issued on June 20, 2024, and released on June 21, 2024. As a parenthetical note, the Appellant sought clarification of my order in relation to this NOM #8 to confirm that the retroactive nature of the ordered changes from TDGIC to SNIC only related to documents and orders issued by the Tribunal and not those of TDGIC from January 30, 2024, to June 21, 2024. I confirmed the same in my reasons for decision in relation to the Appellant's order seeking clarification, which was his NOM #10;

c. An Order correcting **paragraph #2**, **sentence #2**: [this is corrected by the change above in Order #2];

d. An Order correcting **paragraph #3** to: from "on consent of the parties" to "by TDGIC not opposing the relief sought in NOM #8 (except costs) and the Appellant proceeding with his motion unopposed";

e. An Order correcting **paragraph #5** as follows in substance: [to be consistent between sentence #1 and sentence #2 as sentence #1 references twelfth, thirteenth, and fourteenth and sentence #2 references "NOM #13, NOM #14, and NOM #15"];

f. An order correcting the *"similar error" [technical deficiency error]*, in the form of incorrect language, at **paragraph 12**, as submissions are not affidavit evidence. Further, an order specifically correcting paragraph 12, sentence #2, from "He submits that he made demands..." to "He swore affidavit evidence that he made demands upon TDHA and exhibited the emails he sent to TDGIC along with filing a certificate of service that delivered the hearing brief, which was indexed, tabulated and consecutively numbered pursuant to *LAT Rule 9.4.5.*, on July 11, 2024. As the Tribunal did not provide TDGIC with an opportunity for submissions, contrary to LAT Rule 9.2.2., the Tribunal did not have the benefit of any written submissions, affidavit evidence or authorities."

g. An order correcting paragraph #18 as follows with the inclusion of the technically correct language and facts: was TDGIC. While TDGIC was the

respondent party at the time, the effect of my order on June 6, 2024, operated retroactively.

h. An order correcting paragraph #19 as follows: removing sentence #1 and replacing with the language in the underlying hearing brief and record at the time "The reasons that SNIC was required to be the sole respondent party, as cited in NOM #8, were not only because of the Appellant's reasons but compliance with the *SPPA, SABS, Reg 283,* FSRA requirements, LATA, consistency with the *LAT Rules* and others.

i. An Order that **paragraph 22**, sentence #1 is corrected as follows: "TD Insurance letterhead" to "TD Insurance Meloche Monnex letterhead" with the return address of 200-101 McNabb Street, Markham, Ontario"

j. An Order that **paragraph 22, sentence #3** is removed in its entirety in favour of the facts within the record of proceeding as follows in substance with the below:

i. Within the filed Appeal, the Appellant utilized the definition of TD SNIC. While the Appellant could not input the entirety of TD Insurance Meloche Monnex (Security National Insurance Company), he used TD Insurance with the definition of "TD SNIC" within the pleading for further specification. Attached to his pleading with the required
listed key documents were four pre-pleading affidavits that all referenced TD SNIC, which contained the "Denial Letters" therein.

i. On December 24, 2023, the Appellant served the Appeal to the fax number provided to him by SNIC in September 2022, which was 416.774.3120. The said fax number is grounded and wired to the building located at 3650 Victoria Park Avenue, North York, Toronto, Ontario. The Appellant was unaware that said fax number was not that of SNIC Markham. Whichever insurance company was so located on the 4th floor of the Victoria Park Building at the time of October 13, 2022, was served with the Appeal.

ii. On January 3, 2024, the Appellant filed his NOM #1 with the Tribunal.

iii. On January 8, 2024, the Appellant filed his NOM #2 with the Tribunal. On the same day, the Appellant received communications from one Mr. Josh Grant, case manager, of the LAT/AABS requesting that the Appellant provide copies of the denial letters that he had received in relation to his TD Claim #3 and LAT Proceeding. The Appellant did so on January 8, 2024, which contained denials letters exclusively from SNIC at its alleged offices of SNIC Markham and the Burlington Office Building (absent a floor number). The denial letters that the Appellant provided were already contained within the pre-pleading affidavits that particularized the key documents for the Appeal.

iv. On January 14, 2024, the Appellant filed NOM #3.

v. In each of the three motions denoted above, the Appellant denoted the respondent as "TD Insurance Meloche Monnex" (Security National Insurance Company).

vi. On January 16, 2024, Vice-Chair Lake issued written reasons for decision in all three motions, without the party receiving any notice of the written hearings, section 6, declining to decide the same. In Vice Chair Lake's order, she even references TD SNIC but continued with the finalization of her reasons for decision with TDGIC as the Respondent.

vii. For context as to how TD General Insurance Company became the sole respondent on January 8, 2024, in the LAT/AABS system, when Mr. Josh Grant, case manager for the SNIC Proceeding, was assigned to the same, Mr. Grant emailed the Appellant, Mr. Nieuwland, who was then counsel to TDGIC, and Mr. Karat, ADR Specialist to SNIC, on May 6, 2023, in response to the Appellant's May 6, 2024, email requesting, *inter alia*, copies of the documents and information as it relates to who provided the Tribunal with information regarding TDGIC on or around the deadline for filing a Response to the Appellant's Appeal. The Appellant's query arose after May 2, 2024, at the combined case conference and set hearings for his NOM #4 and NOM #6, when he objected, prior to and during the case conference, to TDGIC being the sole respondent or a respondent at all as it was never disclosed to him as an insurance company; it was not the underwriter in the Appellant Spouse's insurance policy, that had any duties in relation to his TD Claim #3. Moreover, the Appellant needed to know the information because *SABS* requires the insurance company that refused to pay any amounts claimed for benefits or any refusal seeking increased benefits to be named (see: section 56 of *SABS*3). Mr. Grant kindly noted that the Appellant did list TD Insurance as the Respondent but **mistakenly** stated that the denial letters the Appellant filed also referenced only TD Insurance when the denial letters bore the two trademarks of "TD Insurance Meloche Monnex" and the return address of Security National Insurance Company (see: affidavit #38, Exhibit "A" pages 31 to 45). Mr. Grant's explanation was that, after receiving the denial letters, which did not reference "TD Insurance" (or TD General Insurance Company), that the information, in his view, provided in the Appeal, plus pre-pleading listed and attached documents, provided him with only two options for entry of the respondent party insurer, when SNIC was in the upper-right hand corner of each document along with the author being "TD Insurance Meloche Monnex", in: (i) TD General Insurance Company; or (ii) TD Home And Auto Insurance Company.

viii. Mr. Grant noted that "If there was a concern that the Security National Insurnace Company, not TDGIC, being named as the Respondent party, please advise if the parties agree that a
change should be made. The Appellant sought TDGIC's consent, but it did not respond. It was not until after the Appellant found the FSRA enforcement decisions and Mr. Nieuwland's representation of SNIC in the Syed Decisions, could he disprove Mr. Nieuwland's representations that SNIC and TDGIC were one and the same and "this is how they always do it" [in relation to SNIC being the sole underwriter, responding insurance company *et al* and then TDGIC becoming the sole respondent]. The Appellant again sought the consent of TDGIC when he obtained the FSRA's confirmation that he could obtain status certificates at a cost for expedited receipt. TDGIC did not respond. It was not until after some six months of TDGIC refusing to be removed as the sole Respondent, and SNIC not responding to the overtures to be the sole respondent and opposing relief from the Appellant in motions and unlawfully appearing as the sole respondent at the case conference, that TDGIC, through Mr. Nieuwland confirmed in writing on June 6, 2024, that it would not oppose the Appellant's relief sought in NOM #8. The Appellant obtained those status certificates on June 19, 2024, and filed them

with the Tribunal. On June 21, 2024, with a litany of reasons as to why SNIC was required to be the respondent instead of TDGIC, as TDHA was unknown to the Appellant, NOM #8 was granted in the Appellant's favour.

k. An Order that **paragraph 23**,

> ix. sentence #1 is corrected from "Respondent's counsel" to "current respondent's counsel and former counsel to TDGIC", from "noting that he was representing the insurer "TDGIC" to "declaring that he was representing the insurer "TDGIC" but only after Mr. Karat, the ADR Specialist, who represented to the Appellant, on January 23, 2024, via email, with Mr. Nieuwland copied as "counsel", that he was assigned to be the ADR and representing the Security National Insurance Company, and then on January 25, 2024, Mr. Karat signed and filed the Response for SNIC ("SNIC Response") whilst serving the Appellant;
> x. sentence #2 is corrected by the removal of the entire sentence with the facts as above in substance subject to the writing style of Vice Chair or an adjudicator;

l. An Order that **paragraph 24** is corrected to the following:

i. Sentence #2: removing the entire sentence and adding the following, "Consistent with the documents, the Appellant refuted Mr. Nieuwland's misrepresentations4 that SNIC and TDGIC were "one and the same" and that TD Insurance Staff Legal always substituted or changed the identity of TDGIC for SNIC in LAT proceedings, which was counter to the very representations Mr. Nieuwland made representing SNIC in those *Syed Decisions* in LAT file number:
ii. Sentence #4: changing the following from "dated June 20, 2024, and released the following day on Friday, June 21, 2024,"5 and from "on consent of the respondent" to "by email dated June 6, 2024, TDGIC, through Mr. Nieuwland, confirmed it [TDGIC] would not oppose the relief sought";
m. An Order the following sentences in paragraph #27 are amended as follows:
i. Sentence #2: changing from "The initial respondent, TDGIC, and the current respondent, SNIC accepted priority over the applicant's spouse's insurance policy"
n. An Order that the following paragraph 35, sentence two is amended as follows:
i. From "curtail" to "circumvent";6; and

APPENDIX #2: REG 283

ONTARIO REGULATION 283/95

DISPUTES BETWEEN INSURERS

Last amendment: 126/19.

This Regulation is made in English only.

0.1 In this Regulation,

"application" means an application for accident benefits (OCF-1) approved by the Superintendent for the purposes of the *Schedule*;

"benefits" means statutory accident benefits as defined in subsection 224 (1) of the Act;

"completed application" means a completed and signed application;

"Fund" means the Motor Vehicle Accident Claims Fund continued under subsection 2 (1) of the *Motor Vehicle Accident Claims Act*;

"Schedule" means, in respect of an accident, the *Statutory Accident Benefits Schedule* as defined in subsection 224 (1) of the Act that applies in respect of the accident. O. Reg. 38/10, s. 1.

1. All disputes as to which insurer is required to pay benefits under section 268 of the Act shall be settled in accordance with this Regulation. O. Reg. 283/95, s. 1.

2. (1) The first insurer that receives a completed application for benefits is responsible for paying benefits to an insured person pending the resolution of any dispute as to which insurer is required to pay benefits under section 268 of the Act. O. Reg. 283/95, s. 2.

(2) Subsection (1) applies in respect of benefits that may be payable as a result of an accident that occurs before September 1, 2010. O. Reg. 38/10, s. 2.

2.1 (1) This section applies in respect of benefits that may be payable as a result of an accident that occurs on or after September 1, 2010. O. Reg. 38/10, s. 3.

(2) An insurer shall promptly provide an application and any other appropriate forms in accordance with the *Schedule* to an applicant who notifies the insurer that he or she wishes to apply for benefits. O. Reg. 38/10, s. 3.

(3) The application provided by the insurer must include the insurer's name, mailing address and telephone and facsimile numbers. O. Reg. 38/10, s. 3.

(4) The applicant shall use the application provided by the insurer and shall send the completed application to only one insurer. O. Reg. 38/10, s. 3.

(5) An insurer that provides an application under subsection (2) to an applicant shall not take any action intended to prevent or stop the applicant from submitting a completed application to the insurer and shall not refuse to accept the completed application or redirect the applicant to another insurer. O. Reg. 38/10, s. 3.

(6) The first insurer that receives a completed application for benefits from the applicant shall commence paying the benefits in accordance with the provisions of the *Schedule* pending the resolution of any dispute as to which insurer is required to pay the benefits. O. Reg. 38/10, s. 3.

(7) An insurer that fails to comply with this section shall reimburse the Fund or another insurer for any legal fees, adjuster's fees, administrative costs and disbursements that are reasonably incurred by the Fund or other insurer as a result of the non-compliance. O. Reg. 38/10, s. 3.

(8) In subsection (7),

"insurer" does not include the Fund. O. Reg. 38/10, s. 3.

3. (1) No insurer may dispute its obligation to pay benefits under section 268 of the Act unless it gives written notice within 90 days of receipt of a completed application for benefits to every insurer who it claims is required to pay under that section. O. Reg. 283/95, s. 3 (1).

(1.1) If the dispute relates to an accident that occurred on or after September 1, 2010, a notice required under subsection (1) must also be given to the Fund if the insurer claims the Fund is required to pay benefits. O. Reg. 38/10, s. 4.

(2) An insurer may give notice after the 90-day period if,

(a) 90 days was not a sufficient period of time to make a determination that another insurer or insurers is liable under section 268 of the Act; and

(b) the insurer made the reasonable investigations necessary to determine if another insurer was liable within the 90-day period. O. Reg. 283/95, s. 3 (2).

(2.1) If the dispute relates to an accident that occurred on or after September 1, 2010, the Fund may give a notice under subsection (1) after the 90-day period and is not required to comply with subsection (2). O. Reg. 38/10, s. 4.

(3) The issue of whether an insurer who has not given notice within 90 days has complied with subsection (2) shall be resolved in an arbitration under section 7. O. Reg. 283/95, s. 3 (3).

3.1 (1) This section applies to disputes relating to accidents occurring on or after September 1, 2010. O. Reg. 38/10, s. 5.

(2) Before giving a notice to the Fund under section 3, an insurer must,

(a) complete a reasonable investigation to determine if any other insurer or insurers are liable to pay benefits in priority to the Fund; and

(b) provide particulars to the Fund of the investigation and the results of the investigation. O. Reg. 38/10, s. 5.

4. (1) An insurer that gives notice under section 3 shall also give notice to the insured person using a form approved by the Chief Executive Officer. O. Reg. 283/95, s. 4; O. Reg. 305/98, s. 1; O. Reg. 126/19, s. 2.

(2) Despite subsection (1), if the insurer that gives notice under section 3 is the Fund, no notice shall be given to the insured person under subsection (1). O. Reg. 38/10, s. 6.

5. (1) An insured person who receives a notice under section 4 shall advise the insurer paying benefits in writing within 14 days whether he or she objects to the transfer of the claim to the insurers referred to in the notice. O. Reg. 283/95, s. 5 (1).

(2) If the insured person does not advise the insurer within 14 days that he or she objects to the transfer of the claim, the insured person is not entitled to object to any subsequent agreement or decision to transfer the claim to the insurers referred to in the notice. O. Reg. 283/95, s. 5 (2).

(3) Subject to subsection 7 (5), an insured person who has given notice of an objection is entitled to participate as a party in any subsequent proceeding to settle the dispute and no agreement between insurers as to which insurer should pay the claim is binding unless the insured person consents to the agreement or 14 days have passed since the insured person was notified in writing of an agreement and the insured person has not initiated an arbitration under the *Arbitration Act, 1991*. O. Reg. 283/95, s. 5 (3); O. Reg. 38/10, s. 7.

6. (1) The insured person shall provide the insurers with all relevant information needed to determine who is required to pay benefits under section 268 of the Act. O. Reg. 283/95, s. 6.

(2) Upon request by the first insurer that receives a completed application for benefits, the insured person shall submit to one examination under oath for the purpose of determining who is required to pay benefits under section 268 of the Act. O. Reg. 16/13, s. 1.

(3) No other insurer is entitled to require the insured person to submit to an examination under oath for the purpose of determining who is required to pay benefits under section 268 of the Act. O. Reg. 16/13, s. 1.

(4) The scope of the examination under oath is limited to matters that are relevant to determining who is required to pay benefits under section 268 of the Act. O. Reg. 16/13, s. 1.

(5) The insured person is entitled to be represented at his or her own expense at the examination under oath by such counsel or other representative of his or her choice as the law permits. O. Reg. 16/13, s. 1.

(6) The insurer shall make reasonable efforts to *Schedule* the examination under oath for a time and location that are convenient for the insured person and shall give him or her reasonable advance notice of the following:

1. The date and location of the examination.

2. The insured person’s entitlement to be represented in the manner described in subsection (5).

3. The reason for the examination.

4. The fact that the scope of the examination is limited to matters that are relevant to determining who is required to pay statutory accident benefits under section 268 of the Act. O. Reg. 16/13, s. 1.

7. (1) If the insurers cannot agree as to who is required to pay benefits, the dispute shall be resolved through an arbitration under the *Arbitration Act, 1991* initiated by the insurer paying benefits under section 2 or 2.1 or any other insurer against whom the obligation to pay benefits is claimed. O. Reg. 38/10, s. 8.

(2) If an insured person was entitled to receive a notice under section 4, has given a notice of objection under section 5 and disagrees with an agreement among insurers that an insurer other than the insurer selected by the insured person should pay the benefits, the dispute shall be resolved through an arbitration under the *Arbitration Act, 1991* initiated by the insured person. O. Reg. 38/10, s. 8.

(3) The arbitration may be initiated by an insurer or by the insured person no later than one year after the day the insurer paying benefits first gives notice under section 3. O. Reg. 38/10, s. 8.

(4) Despite subsection (3), the arbitration may be initiated by the Fund at any time before or after the expiry of the time limit set out in subsection (3) if the Fund is paying benefits in respect of an accident that occurred on or after September 1, 2010. O. Reg. 38/10, s. 8.

(5) No insured person is entitled to initiate or participate as a party to an arbitration under this section if the insurer paying benefits is the Fund. O. Reg. 38/10, s. 8.

(6) If the dispute relates to an accident that occurred on or after September 1, 2010, the failure of an insurer other than the Fund to comply with section 2.1 or 3.1 may be the subject of a special award made by the arbitrator. O. Reg. 38/10, s. 8.

8. (1) Except as provided in this Regulation, the *Arbitration Act, 1991* applies to an arbitration under this Regulation. O. Reg. 283/95, s. 8 (1).

(2) The following rules apply with respect to an arbitration of a dispute relating to an accident that occurs on or after September 1, 2010:

1. If an insurer to whom a notice to initiate arbitration is delivered does not respond to the notice within 30 days, the insurer is deemed to have accepted the jurisdiction of the arbitrator proposed in the notice.

2. A pre-arbitration hearing must be *Schedule*d and take place no later than 120 days after the appointment of the arbitrator.

3. Subject to paragraph 4, once a date for the arbitration is *Schedule*d, the arbitration must be conducted on that day.

4. The arbitrator may grant an adjournment on such terms as the arbitrator considers appropriate, but only if there is cogent and compelling evidence of the reasons why the hearing cannot proceed on the *Schedule*d day.

5. Unless consented to by all parties, the hearing of the arbitration must be completed within two years after the commencement of the arbitration. O. Reg. 38/10, s. 9.

(3) The decision of an arbitrator made under this Regulation must be made public. O. Reg. 38/10, s. 9.

(4) If the decision relates to an accident that occurred on or after September 1, 2010, the decision must be made public,

(a) by the insurer that the arbitrator finds to be liable to pay the benefits; and

(b) in a manner and form specified by the Chief Executive Officer. O. Reg. 38/10, s. 9; O. Reg. 126/19, s. 2.

9. (1) Unless otherwise ordered by the arbitrator or agreed to by all the parties before the commencement of the arbitration, the costs of the arbitration for all parties, including the cost of the arbitrator, shall be paid by the unsuccessful parties to the arbitration. O. Reg. 283/95, s. 9 (1).

(2) The costs referred to in subsection (1) shall be assessed in accordance with section 56 of the *Arbitration Act, 1991*. O. Reg. 283/95, s. 9 (2).

10. (1) If an insurer who receives notice under section 3 disputes its obligation to pay benefits on the basis that other insurers, excluding the insurer giving notice, have equal or higher priority under section 268 of the Act, it shall give notice to the other insurers. O. Reg. 283/95, s. 10 (1).

(2) This Regulation applies to the other insurers given notice in the same way that it applies to the original insurer given notice under section 3. O. Reg. 283/95, s. 10 (2).

(3) The dispute among the insurers shall be resolved in one arbitration. O. Reg. 283/95, s. 10 (3).

11. References in this Regulation to a form approved by the Chief Executive Officer are deemed to include the last form approved by the Superintendent for the purposes of the relevant provision prior to the day section 22 of *Schedule* 13 to the *Plan for Care and Opportunity Act (Budget Measures), 2018* came into force until the Chief Executive Officer approves a subsequent form for the purposes of the relevant provision. O. Reg. 126/19, s. 1.

APPENDIX #3: THE SCHEDULE (NOTA BENE: FOCUSED ON THE WORD "RECEIVE" OR "RECEIVES")

Statutory Accident Benefits Schedule, O Reg 34/10, <https://canlii.ca/t/56cm2> retrieved on 2024-12-10

PART VIII
PROCEDURES FOR CLAIMING BENEFITS

General

Notice to insurer and application for benefits

[nota bene: duties of a person – insured person – or potentially insured person]

32. (1) A person who intends to apply for one or more benefits described in this Regulation shall notify the insurer of his or her intention no later than the seventh day after the circumstances arose that give rise to the entitlement to the benefit, *or* as soon as practicable after that day. O. Reg. 34/10, s. 32 (1).

[Nota bene: Duties of the First Notified Insurer]

(2) The insurer shall promptly provide the person with,

(a) the appropriate application forms;

(b) a written explanation of the benefits available;

(c) information to assist the person in applying for benefits; and

(d) information on the election relating to income replacement, non-earner and caregiver benefits, if applicable. O. Reg. 34/10, s. 32 (2).

(3) If an insurer that is subject to a Guideline referred to in subsection 64 (7) determines, acting reasonably, that there is a likelihood that the person may, in connection with the accident, deliver one or more documents referred to in that subsection, the insurer shall provide the following information to the central processing agency referred to in that subsection:

1. The name, address, gender and date of birth of the person.

2. The date of the accident.

3. Particulars of the automobile insurance policy under which the person asserts he or she is entitled to a benefit or benefits, including,

i. the name of the insurer,

ii. the policy number, and

iii. the name of the person to whom the policy was issued.

4. The claim number assigned by the insurer.

5. Any other information reasonably required by the central processing agency to enable it to carry out its obligations to the insurer under this Regulation. O. Reg. 34/10, s. 32 (3).

(4) An insurer's obligation to provide the information referred to in subsection (3) may be discharged by,

(a) providing the information to the central processing agency; or

(b) confirming, correcting or supplementing the information previously provided to the central processing agency. O. Reg. 34/10, s. 32 (4).

[Nota bene: duties of the applicant submitting a completed application within 30 days after receipt of application forms]

(5) The applicant shall submit a completed and signed application for benefits to the insurer within 30 days after receiving the application forms. O. Reg. 34/10, s. 32 (5).

[Nota bene: Duties of the First Insurer]

(6) If an insurer receives an incomplete or unsigned application, the insurer shall notify the applicant within 10 business days after receiving the application and shall advise the applicant of the missing information that is required or that the applicant's signature is missing, as appropriate. O. Reg. 34/10, s. 32 (6).

(7) The insurer shall not give a notice under subsection (6) unless,

(a) the insurer, after a reasonable review of the incomplete application, is unable to determine, without the missing information, whether a benefit is payable; or

(b) the application has not been signed by the applicant. O. Reg. 34/10, s. 32 (7).

(8) If subsection (6) applies in respect of an incomplete application, no benefit is payable before the applicant provides the missing information or signs the application, as the case may be. O. Reg. 34/10, s. 32 (8).

(9) If an applicant is required by an insurer to submit an additional application in respect of a benefit that the applicant is receiving or may be eligible to receive, the applicant shall submit the additional application to the insurer within 30 days after receiving the additional application forms from the insurer. O. Reg. 34/10, s. 32 (9).

(10) Despite any shorter time, limit in this Regulation, if an applicant fails without a reasonable explanation to notify an insurer under subsection (1) within the time required under that subsection,

the insurer may delay determining if the applicant is entitled to a benefit and may delay paying the benefit until the later of,

(a) 45 days after the day the insurer receives the completed and signed application; or

(b) 10 business days after the day the applicant complies with any request made by the insurer under subsection 33 (1) or (2). O. Reg. 34/10, s. 32 (10).

Claim for Income Replacement Benefit, Non-Earner Benefit, Caregiver Benefit or Payment for Housekeeping or Home Maintenance Services

Application

36. (1) In this section and section 37

(4) Within 10 business days after the insurer receives the application and completed disability certificate, the insurer shall,

(a) pay the specified benefit;

(b) give the applicant a notice explaining the medical and any other reasons why the insurer does not believe the applicant is entitled to the specified benefit and, if the insurer requires an examination under section 44 relating to the specified benefit, advising the applicant of the requirement for an examination; or

(c) send a request to the applicant under subsection 33 (1) or (2). O. Reg. 34/10, s. 36 (4).

(5) If the insurer sends a request to the applicant under subsection 33 (1) or (2), the insurer shall, within 10 business days after the applicant complies with the request,

(a) pay the specified benefit; or

(b) give the applicant a notice described in clause (4) (b). O. Reg. 34/10, s. 36 (5).

(6) If the insurer fails to comply with subsection (4) or (5) within the applicable time limit, the insurer shall pay the specified benefit for the period starting on the day the insurer received the application and completed disability certificate and ending, if the insurer subsequently gives a notice described in subsection (4) (b), on the day the insurer gives the notice. O. Reg. 34/10, s. 36 (6).

(7) If the insurer requires the applicant to undergo an examination under section 44, the insurer shall, within 10 days after receiving the report of the examination,

(a) give a copy of the report to the applicant and to the person who completed the disability certificate submitted with the application; and

(b) provide the applicant with a notice indicating the amount, if any, that the insurer agrees to pay in respect of the specified benefit, the amount, if any, the insurer refuses to pay in respect of the

specified benefit and the medical and any other reasons for the insurer's decision. O. Reg. 34/10, s. 36 (7).

(8) Within 10 business days after delivering the notice under clause (7) (b), the insurer shall pay the amount, if any, that the insurer agrees to pay in respect of the specified benefit. O. Reg. 34/10, s. 36 (8).

(9) Every income replacement benefit, non-earner benefit or caregiver benefit shall be paid at least once every second week, subject to any prepayment of the benefit by the insurer. O. Reg. 34/10, s. 36 (9).

[Nota bene: Hence, why the Applicant has sworn evidence or submitted that he has never received any IRB as it was required to be paid by TDHA].

[Section 64 of *SABS* not relevant as it relates to that regulation and not *Reg 283*]

APPENDIX #4: INSURANCE ACT, SECTIONS 224 AND 268

[SQUARE BRACKETS ARE THE APPLICANT'S]

PART VI
AUTOMOBILE INSURANCE

Interpretation, Part VI

224 (1) In this Part,

"statutory accident benefits" means the benefits set out in the regulations made under paragraphs 9 and 10 of subsection 121 (1); ("indemnités d'accident légales")

Fees and Regulations

Regulations

121 (1) The Lieutenant Governor in Council may make regulations,

9. establishing benefits for the purposes of Part VI that must be provided under contracts evidenced by motor vehicle liability policies and establishing terms, conditions, provisions, exclusions and limits related to such benefits;

10. requiring insurers to offer optional benefits in excess of the benefits that must be provided under paragraph 9 prescribing the circumstances in which the optional benefits are to be offered and establishing terms, conditions, provisions, exclusions and limits related to such benefits;

10.1 prescribing coverages and endorsements in respect of contracts of automobile insurance that insurers or a class of insurers are required to offer, deeming the benefits provided by the coverages and endorsements not to be statutory accident benefits for the purpose of Part VI, and prescribing the circumstances in which the coverages and endorsements shall be offered;

10.2 prescribing rules for interpreting the regulations made under paragraphs 9 and 10 or any provision of those regulations;

10.3 prescribing functions to be performed by a committee appointed under section 7;

10.4 governing the procedure for determining who is liable to pay statutory accident benefits under section 268, including requiring insurers to resolve disputes about liability through an arbitration process established by the regulations and requiring the interim payment of benefits pending the determination of liability;

[nota bene: subsection 10.4 is yet another example of how the Legislature provided an extremely broad grant of authority to the LGIC for governing the procedure of determining how insurers are liable to pay *SABS* under section 268 which then dovetails to Reg 263]

Statutory accident benefits

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

Liability to pay

(2) The following rules apply for determining who is liable to pay statutory accident benefits:

1. In respect of an occupant of an automobile,

i. the occupant has recourse against the insurer of an automobile in respect of which the occupant is an insured,

ii. if recovery is unavailable under subparagraph i, the occupant has recourse against the insurer of the automobile in which he or she was an occupant,

iii. if recovery is unavailable under subparagraph i or ii, the occupant has recourse against the insurer of any other automobile involved in the incident from which the entitlement to statutory accident benefits arose,

iv. if recovery is unavailable under subparagraph i, ii or iii, the occupant has recourse against the Motor Vehicle Accident Claims Fund.

Liability

(3) An insurer against whom a person has recourse for the payment of statutory accident benefits is liable to pay the benefits. R.S.O. 1990, c. I.8, s. 268 (3); 1993, c. 10, s. 1.[111]

Choice of insurer

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

[nota bene: upon Mr. McLean's discovery of whom the First Insurer (TDHA) was, he, at law, only has recourse against one insurer and that is TDHA per se. To the extent that Mr. McLean has recourse against more than one insurer, it is only the obligation to pay benefits (see: *Beasley* and

Jia) which triggers the fiduciary duties owed by an insurance company to him. It would be against his own self-interest, as a matter of law, to choose an insurer which does not have a duty to respond and pay. It is not a matter of contract but a matter of statute and regulations. Moreover, the duties of the insurer that first received the Completed Application are also delineated and detailed in the OCF-1 itself which also dovetail to *PIPEDA*. Mr. McLean has not and is not revoking his consent to TDHA having received the same but that has provided notice to it that it must comply with its oblgiations therein as a matter of law or "by law" which are under the following: (i) *Insurance Act*; (ii) Legislation Act; (iii) *SPPA*; (iv) *PIPEDA*; and regulations: (i) *Reg 283*; (iii) *SABS*s *et al*.

Same

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

Same

(5.1) Subject to subsection (5.2), if there is more than one insurer against which a person may claim benefits under subsection (5), the person, in his or her discretion, may decide the insurer from which he or she will claim the benefits. 1993, c. 10, s. 26 (2).

Same

(5.2) If there is more than one insurer against which a person may claim benefits under subsection (5) and the person was, *at the time* of the incident, an occupant of an automobile in respect of which the person is the named insured or the spouse or a dependant of the named insured, the person shall claim statutory accident benefits against the insurer of the automobile in which the person was an occupant. 1993, c. 10, s. 26 (2); 1999, c. 6, s. 31 (10); 2005, c. 5, s. 35 (14).

[nota bene: There is no dispute that Mr. McLean attempted to claim benefits from SNIC but he nearly did not receive his accident benefits package by an incorrect postal code therein whilst his spouse did receive the same. Moreover, he did *attempt to claim benefits* from SNIC but it was intentional redirection, by way of fax number and potentially address (mailing), to a "different insurance company(ies)"

Payments pending dispute resolution

(8) Where the *Statutory Accident Benefits Schedule* provides that the insurer will pay a particular statutory accident benefit pending resolution of any dispute between the insurer and an insured, the insurer shall pay the benefit until the dispute is resolved. R.S.O. 1990, c. I.8, s. 268 (8); 1993, c. 10, s. 1.

[nota bene: said subsection 268(8) was passed in 1990 and amended in 1993 which predated *Reg 283* in its initial form and certainly well before its "amended form" in 2010. Nonetheless, a breach

of *SABS* and *Reg 283* is legally equivalent in the year of 2024 so said section overrides the above subsections 268(5) as that is a contractual (policy) issue. By the **VCM Decision**, paragraph 27, her finding that TDGIC, as the "initial respondent" [sic] and SNIC accepted priority over the applicant's [sic] insurance policy invokes the analysis of priority and not an insurance policy because priority cannot be decided in relation to an insurance policy per se when there is only one insurer. It certainly cannot add a "party" (i.e. language of "First Party Insurer" under *Reg 664* which is distinct from *Reg 283* with "First Insurer") to a contract WITHOUT the consent of a party to the Insurance Policy. Moreover, while the Applicant was statutorily deemed to have given consideration therefor under the Insurance Policy, the adding of an additional insurance company to a contract would have required the consent of all parties to that contract with "new consideration" or "additional consideration". Therefore, while subsection 2.1 of *Reg 283*, passed in 2010, is more analytically relevant to this *JRPA* Application, TDHA is still obligated to pay the benefits to the Applicant pursuant to section 2(1) of *Reg 283*).

APPENDIX #5: Changes to Ontario Regulation 283/95: Disputes Between Insurers
Bulletin No. A-07/10 – Auto Property & Casualtyhttps://www.fsrao.ca/media/7866/download

With this Bulletin, the Financial Services Commission of Ontario (FSCO) is highlighting the recent changes to Ontario Regulation 283/95: Disputes Between Insurers, to ensure compliance by all insurers. The changes are effective September 1, 2010. Background Ontario Regulation 283/95 sets out a mandatory process for private arbitration of all disputes between insurers over which insurer is liable to pay accident benefits to a claimant. This regulation is intended to ensure that claimants receive accident benefits (e.g., medical and income replacement benefits) in a timely fashion while these disputes are being resolved. Ontario Regulation 283/95 was established in 1995 following several years of experience with the no-fault accident benefits system. During the past several years, a number of procedural issues and disputes over the interpretation of Ontario Regulation 283/95 have led to delays in paying claimants' benefits. In addition, the Motor Vehicle Accident Claims Fund (MVACF) has frequently had to get involved to ensure that benefit payments to injured persons were not delayed – even if a private insurer was obliged to make the payments. As part of the automobile insurance reforms which resulted from FSCO's Five Year Review of Automobile Insurance, effective September 1, 2010 Ontario Regulation 283/95 is amended by Ontario Regulation 38/10. These amendments were made to ensure that claims are not deflected and that claimants receive payments without delay in cases where there may be a dispute regarding which insurer is liable to pay statutory accident benefits. Insurers that do not comply with this regulation will be subject to appropriate

Key Regulation Changes 1. Deflection of Applications for Accident Benefits a) Upon request, an insurer must provide a claimant timely access to OCF-1: Application for Accident Benefits (OCF-1 application). (Section 2.1(2)) Individuals who are injured in automobile accidents often contact the insurance company that they believe is liable to pay accident benefits before they complete and send their OCF-1 application to the insurer. In many cases, claimants are not aware of the priority rules that determine which insurer is liable to pay them benefits. The Statutory Accident Benefits *Schedule* (*SABS*) requires an insurer to provide an OCF-1 application to an injured person who expresses an intention to make a claim for benefits. This requirement is now reinforced by section 2.1(2) of Ontario Regulation 283/95. b) An insurer must not impede claimants from submitting OCF-1 applications or redirect them to other insurers or the MVACF. (Section 2.1(5)) When a claimant first contacts an insurer following an accident, it is not always clear, based on information reported by the claimant, if that insurer is responsible for paying the accident benefits in accordance with the priority rules. It is inappropriate for the insurer to discourage the injured person from filing an OCF-1 application, for example on the grounds that there is no insurance coverage (e.g., due to a cancelled insurance policy), or that there is another insurer to whom the person should make his or her claim. Insurers must provide claimants who express an intention to make an accident benefits claim with an OCF-1 application and not direct them to file it with MVACF or another insurer. Section 2.1(5) of Ontario Regulation 283/95 prohibits the deflection of OCF-1 applications. This includes deflection on the grounds that it is not clear which insurer is

required to pay accident benefits. c) The first insurer that receives an OCF-1 application must pay accident benefits in accordance with the *SABS*. (Section 2.1(6)) In order to prevent delays in payments, Ontario Regulation 283/95 requires the first insurer that receives a completed OCF-1 application to pay the accident benefits, as long as the claimant meets the requirements of the *SABS*. Although an insurer may believe that it is not responsible for paying accident benefits under the priority rules, the process to transfer, dispute and recover paid benefits is set out in Ontario Regulation 283/95. d) An insurer that fails to comply with this section will reimburse the MVACF or another insurer all related legal fees, administrative costs and disbursements. (Section 2.1(7) Section 2.1 (7) has been added to Ontario Regulation 283/95 to confirm the ability to recover costs incurred by the MVACF or an insurer in the administration of a claim (including adjusting costs) from the non-compliant insurer. 2. Definitions of "First Insurer" and "Completed Application" Several amendments are intended to provide clarity on issues that have arisen since the release of Ontario Regulation 283/95 in 1995; such as what is a "first insurer" and "completed application". a) A "completed application" is defined as a completed and signed OCF-1 application. (Section 0.1) b)The insurer that first receives a completed OCF-1 application is the "first insurer" for the purposes of Ontario Regulation 283/95. (Section 2.1(6)) A "first insurer" may not refuse to respond to the application on the basis that the application is not from an "insured person", or that there was no relevant policy in place on the date of the accident (e.g., the insurance policy was cancelled, expired or never existed). c) The applicant shall complete the OCF-1 application that is provided by the insurer and send it to only one insurance company. (Section 2.1(4)) Claimants are required to submit a completed OCF-1 application to only one insurer. This is intended to avoid potential disputes over which insurer first received a completed application, rather than creating confusion by submitting OCF-1 applications to more than one insurer. 3. Time Limitations for Notifying Other Insurers of Liability a) Before initiating a dispute against the MVACF, an insurer is required to complete a reasonable investigation to determine if any other insurer(s) is/are liable to pay benefits in priority to the MVACF and provide the MVACF with the particulars and results of the investigation. (Section 3.1(2)(a) and (b)) Section 3 of Ontario Regulation 283/95 provides the first insurer 90 days from the receipt of the completed application to conduct a reasonable investigation. This time frame allows the insurer to conduct an investigation to determine whether another insurer is liable to pay benefits, and to deliver written notice to other insurers if it believes they are liable to pay for accident benefits under the priority rules. Ontario Regulation 283/95 provides an extension beyond 90 days only if the first insurer has made reasonable investigation of the claim but cannot reach a decision within the 90-day period. Section 3.1 requires an insurer that wishes to put the MVACF on notice of a dispute to first complete a reasonable investigation and provide the results of the investigation to the MVACF.

Due to the unique nature of the claims that are submitted directly to the MVACF, in many cases another policy is discovered only after an extended period of investigation. As a result, this time limit does not apply to OCF-1 applications that are submitted first to the MVACF. (Section 3(2.1)) To facilitate the early resolution of disputes between insurers, a dispute about which insurer is responsible

for payments must go to arbitration within one year of providing notice to the other insurer. See section 7 for the specific rules that need to be followed. Enforcement Note that in addition to

sections 2.1(7) and 7 (6), actions contrary to Ontario Regulation 283/95 will be subject to appropriate enforcement or regulatory action in accordance with section 441 of the *Insurance Act* and Ontario Regulation 7/00: Unfair or Deceptive Acts or Practices. Publication of Arbitration Decisions involving Disputes Between Insurers Amendments to Ontario Regulation 283/95 have been made to ensure that arbitration decisions involving disputes between insurers are both timely and publicly available. The amendments require the insurer that is found by the arbitrator to be liable to pay benefits to make the arbitrator's decision public in a manner and form specified by the Superintendent. (Section 8(4)) The specified form and the process by which insurers will need to comply with this requirement will be the subject of a future Property & Casualty – Auto Bulletin. Effective Date The effective date of the Ontario Regulation 283/95 amendments is September 1, 2010. All insurers need to ensure that their claims and underwriting staff, plus any other staff who may be affected by these amendments, are informed of these changes. In addition, insurers are to ensure that they make any operational changes needed to implement the reforms by the effective date. Copies of Regulations The *Insurance Act* and Ontario Regulations 283/95 and 38/10 can be downloaded from the e-laws website at www.e-laws.gov.on.ca. Phil Howell Chief Executive Officer and Superintendent of Financial Services May 13, 2010

APPENDIX #6:AF-143, "Notice to Applicant of Dispute between Insurers"

Fillable/saveable:

AF-143E

Form details

Form number:	AF-143
Form title:	Notice to Applicant of Dispute Between Insurers
Sector:	Auto
Category:	Other - Auto
Last update:	1995-04-01

Notice to Applicant of Dispute Between Insurers

Name of Applicant

Last Name | First Name

Mr. ☐ Mrs. ☐ Ms. ☐

Street Address

City | Province | Postal code

Date of Accident: Day / Month / Year

This notice is to inform you that the insurer to whom you have applied for accident benefits claims that another insurer is responsible for paying these benefits. You may be required to assist the insurers in resolving their dispute by providing them with any information that may be needed to determine which insurer should be paying your accident benefits claim.

You will continue to receive accident benefits that you are entitled to from the insurer that you applied to while the insurers attempt to resolve their dispute.

You also have the right to object to your claim being transferred to another insurer. If you wish to object please complete Part 5 of this form and send it within 14 days to the insurer that is currently paying you accident benefits. If you object, you are entitled to participate in any proceeding that may take place to determine which insurer is responsible for paying accident benefits to you. If you do not object, you will not be permitted to dispute the transfer of your claim to another insurer.

If you have any questions about this notice, or about the process that insurers use to determine who is responsible for paying your claim, please contact the representative of the insurance company that is paying your accident benefits claim. The name and telephone number of the representative is listed in Part 1.

Part 1: Insurer that You Applied to for Accident Benefits

Company Name

Mailing Address

City | Province | Postal code

Contact Person/Representative | Phone No.: ( )

Part 2: Insurer(s) Notified to Pay Benefits (by Insurer listed in Part 1)

First Company Name

Mailing Address

City | Province | Postal code

Contact Person/Representative | Phone No.: ( )

Attach additional sheets if necessary. ☐ Additional sheets attached.

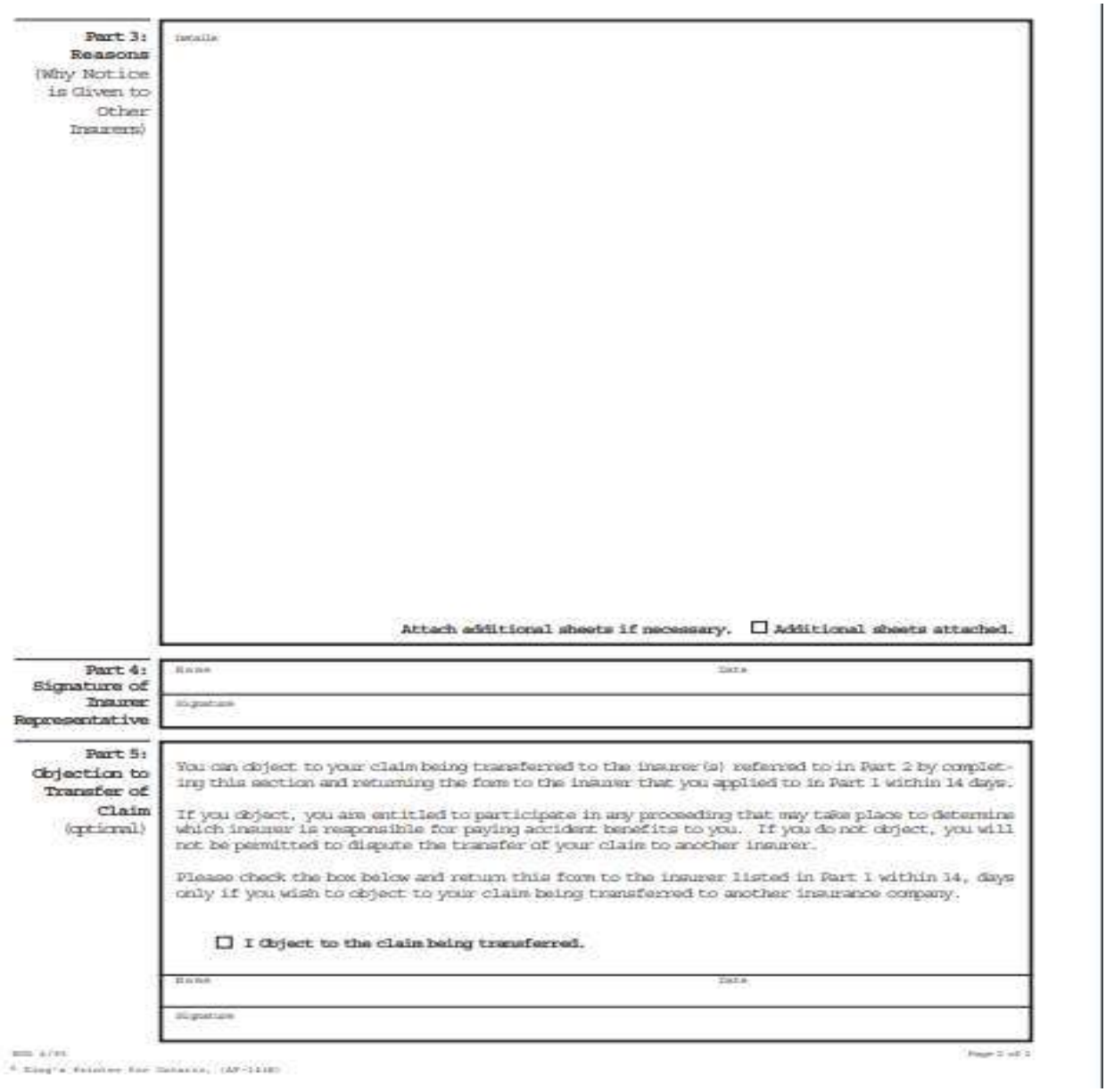
Second Company Name

Mailing Address

City | Province | Postal code

Contact Person/Representative | Phone No.: ( )

Attach additional sheets if necessary. ☐ Additional sheets attached.



Part 3: Reasons (Why Notice is Given to Other Insurers)

Details

Attach additional sheets if necessary. ☐ Additional sheets attached.

Part 4: Signature of Insurer Representative

Name Date

Signature

Part 5: Objection to Transfer of Claim (optional)

You can object to your claim being transferred to the insurer(s) referred to in Part 2 by completing this section and returning the form to the insurer that you applied to in Part 1 within 14 days.

If you object, you are entitled to participate in any proceeding that may take place to determine which insurer is responsible for paying accident benefits to you. If you do not object, you will not be permitted to dispute the transfer of your claim to another insurer.

Please check the box below and return this form to the insurer listed in Part 1 within 14, days only if you wish to object to your claim being transferred to another insurance company.

☐ I Object to the claim being transferred.

Name Date

Signature

[Copied and pasted] [square bracketing is the Applicant's for ease of reference]

For ease of searchability by the ONSC and the participating parties at the ONSC (Divisional Court level or by way of single justice on an expedited basis), the following are copied and pasted from the A143 Form at the following pages with endnoting for ease of application of the facts to the law:

[page 1]

"This notice is to inform you that the insurer[112] to whom you have applied for accident benefits claims[113] that another insurer[114] is responsible for paying[115] these benefits. You[116] may be required to assist the insurers[117] in resolving their dispute by providing them with any information that may be needed to determine which insurer[118] should be paying your accident benefits claim. You will continue to receive accident benefits that you are entitled to from the insurer[119] that you applied to while the insurers attempt to resolve their dispute.

[Applicant's transfer of claim objection rights]

You also have the right to object to your claim being transferred[120] to another insurer[121]. If you wish to object please complete Part 5 of this form and send it within 14 days to the insurer that is currently paying you accident benefits[122].

[Applicant's arbitration participatory rights]

If you object, you are entitled to participate in *any* ***proceeding***[123] that may take place to determine which insurer is responsible for paying accident benefits to you. If you do not object, you will not be permitted to dispute the transfer of your claim to another insurer.

If you have any questions about this notice, or about the process that insurers use to determine who is responsible for paying your claim, please contact the representative of the insurance company that is paying your accident benefits claim. The name and telephone number of the representative is listed in Part 1.[124]

APPENDIX #7: REMITTANCE FORM PURSUANT TO FSRA REQUIREMENT

NOTE: Remember to attach all relevant documents when submitting this form

Insurer Details

Date of Remittance

Reporting Insurance Company

Name of Authorized Insurer Representative

Telephone Number | Email Address

Decision Details

Date of Decision

Arbitrator

Names of Insurers in Dispute (Company Name vs Company Name)

Disputed Issue/Nature of Dispute (Please Check all that Apply):

- ☐ First Insurer/Nexus
- ☐ Completed Application
- ☐ 90 Day Notice
- ☐ One Year/Commencement
- ☐ Reasonable Investigation
- ☐ Restitution
- ☐ Arbitration (Practice, Interest and Special Awards, Costs)
- ☐ Priority Rules: Insured Person (Named/Listed/Spouse/Dependent/ Regular Use)
- ☐ Priority Rules: Occupant
- ☐ Priority Rules: Non – Occupant Struck By Vehicle
- ☐ Coverage Issues: Cancellation
- ☐ Coverage Issues: Leased Vehicle
- ☐ Coverage Issues: Other Automobiles
- ☐ Appeal Pending (Forward appeal decision once it is received.)
- ☐ Priority Rules: Involved Vehicle

Print Form | Clear Form | Save Form | Submit by Email

AF-082E (2023) © King's Printer for Ontario Page 1 of 1

Endnotes

[1]AABS division
[2] Along with the interplay between the enabling statute (*Insurance Act*) and binding pieces of legislation (regulations) in *Reg 283*, *SABS* and *Reg 664*:
[3]Effective date
[4](see: *Legislation Act*, wherein a statute and regulations are both "legislation"),
[5]*Dunsmuir v. New Brunswick*, 2008 SCC 9 (CanLII), [2008] 1 SCR 190, <https://canlii.ca/t/1vxsm>, retrieved on 2024-12-10
[6]Mr. Nieuwland filed a DOR on behalf of SNIC on June 28, 2024.
[7](iii) concerns about the Tribunal's undue influence or lack of independence, even subconsciously, from the insurance companies due to it being the only non-state funded Tribunal of the 13 tribunals in "Tribunals Ontario"; and (iv) an investigation report involving Ms. Trina Morrissette from the federal government regarding her conduct as a lobbyist for the Canadian Red Cross ("CRC").[7] The Applicant says her conduct amounts to "similar fact evidence" and contextual evidence that arises as a result of the **VCM Decision**.
[8]Balance of probabilities standard: is it more likely than not that there will be a failure of justice by the delay.
[9]Mr. Nieuwland's recent email to this ONSC (Divisional Court) has reignited the subsequent issues: (i) whether insurance companies in a group of insurers are 'one and the same', 'also known as' or 'also referred as'; (ii) the rule in *Foss v. Harbottle*; (ii) the FSRA guidance on affiliated entities only have an exemption on the non-adjuster broker side, and (iv) the motives for why such insurance companies in the TDI Group would engage in such misconduct.
[10]In this regard, the **VCM Decision** has again put two administrative bodies, at least, in the FSRA and the Tribunal against each other when they operate under the same enabling statute (*Insurance Act*) and the participants (insured persons, service providers and insurance companies) must comply with the *UDAP Rule* (2022 *et seq*).
[11]The Applicant is seeking by his factum to be heard before a single justice of the ONSC, with leave, due to the urgency of the issues herein.
[12]all people are equal under the law and have the right to equal protection and benefits with SABS benefits for all similarly situated persons to this Applicant
[13]all people, institutions, and entities are accountable to the law; (iii) *transparency*: the law-making process is transparent
[14]people have access to justice through independent and impartial courts
[15] (and patently unreasonable)
[16](with no distinction between a breach of *SABS* and *Reg 283* (see: *Chubb Insurance Co. of Canada v. Zurich Insurance Company*, 2024 ONSC 2929 (CanLII), <https://canlii.ca/t/k4tln>, retrieved on 2024-12-10 ["*Zurich* 2024"],
[17]on account of technicalities in the language of the LAT Rules which was different from the time this ONSC (Div. Court) upheld the reconsideration decision of VC Trojek in *Jia*
[18]*The Personal Insurance Company v. Jia*, 2020 ONSC 6361 (CanLII), <https://canlii.ca/t/jb7qm>, retrieved on 2024-12-10
[19]*Harold The Mortgage Closer Inc. v. Chief Executive Officer of the Financial Services Regulatory Authority of Ontario*, 2024 ONSC 2236 (CanLII), <https://canlii.ca/t/k43bl>, retrieved on 2024-12-10
[20]*Volochay v. College of Massage Therapists of Ontario*, 2012 ONCA 541 (CanLII)
[21]*Volochay v. College of Massage Therapists of Ontario*, 2012 ONCA 541 (CanLII), at para 68, <https://canlii.ca/t/fsdgd#par68>, retrieved on 2024-12-10 https://canlii.ca/t/fsdgd#par68
[22](see: [U]nless exceptional circumstances exist, a court should not interfere in an administrative proceeding until it has run its course. The principle has particular force where adequate alternative remedies are available under the administrative scheme. Ordinarily an affected individual must pursue these remedies before seeking relief from the court. The Federal Court of Appeal has endorsed this approach as well in Dugré v Canada (Attorney General), 2021 FCA 8, at para 37, framing the rule against prematurity, or interlocutory relief, as "next to absolute".).
[23]Herein, a multiplicity of proceedings will be avoided and the law will be clarified and settled, while avoiding a return by this Applicant to make the same arguments that he would even if all of his benefits and quantum were found in his favour because the wrong party would be liable for the same and required to respond *post-facto* the conclusion of the Hearing Proper. In this regard, the Applicant herein confirms, by his authorized signature, that he would bring the same *JRPA* Application and he respectfully submits that the principle of mootness, cited by the SCC in *Borowski*,

would not be applicable because the important legal issues would not only not be decided but the decision of the LAT would be in conflict with the governing statutes, governing regulations and its own *LAT Rules*.

[24] *Sanscon Construction Ltd. v. City of Toronto*, 2021 ONSC 6409 (CanLII), <https://canlii.ca/t/jjn4p>, retrieved on 2024-12-10

> [16] Sanscon's Application was not brought before the Divisional Court, contrary to the Consolidated Practice Direction.
>
> [17] Sanscon's factum does not seek leave under s. 6(2) of the JRPA to have this matter heard, nor is it in the Notice of Application. It does not reference this court's jurisdiction or address why the Application was not brought before a single judge of the Divisional Court, sitting as a judge of the Superior Court of Justice.

[25]SNIC and Primmum operate under the trade name, which is a combination of two registered trademarks in "TD Insurance Meloche Monnex", with the 'TD Insurance" owned by TD Bank and the Meloche Monnex owned by Meloche Monnex Inc. SNIC issues automobile (and home) insurance policies to alumni of various universities and those part of professional associations (the "**Alumni Professional Program**"). Primmum issues insurance policies to "employer groups".

[26]TDGIC issues insurance policies, by part of its namesake, to the "general public". Toronto has 416 area code landline telephone and fax numbers but not 905 telephone and fax numbers, and Burlington (and Markham) have 905 landline telephone and fax numbers but not 416 numbers. Mr. James V. Russell was appointed as the CEO of "TD Insurance Group" in the 2010's, and one of his stated goals was to increase the market share for "TD General" (TDGIC). This evidence provides the motive for why SNIC would allow TDGIC to be substituted for it *during* the LAT Proceeding without the name of TDGIC ever being present in a single communication since the MVA date of loss (the "Date Of Loss" or "DOL").

[27]If an Insured Person, who is also an injured person and often a lay litigant encountering the complexities of a *SABS* claim, may not keep completely accurate records of each and every fax that she has sent to an insurance company, the purported liable insurer can claim that it does not have the documents to which an injured person claims to have sent. In fact, herein this occurred with the initial adjuster for SNIC in Ms. Nurse claiming to not have certain documents that the Applicant delivered via fax. The Applicant obviously not your quintessential lay litigant had everything reduced to paper copy and saved in binders along with cloud storage whilst using an e-fax number. Affidavit #3 is an example of that attention to detail and record-keeping.

[28]https://lso.ca/about-lso/legislation-rules/by-laws/by-law-7-1

[29]LSA, ss. 62(2): (2) The by-laws made under this section shall be interpreted as if they formed part of this Act. R.S.O. 1990, c. L.8, s. 62 (2); 1998, c. 21, s. 29 (13).

[30](d) the determination of rights that depend on the interpretation of a deed, will, contract or other instrument, or on the interpretation of a statute, order in council, regulation or municipal by-law or resolution

[31]in part because of SNIC not participating in the LAT Appeal after filing a Response and allowing TD General Insurance Company ("**TDGIC**") to be substituted for it,

[32]Factually on many levels, this is not an *JRPA* Application, like the flurry of arbitral, judicial review and appellate decisions involving *Zurich v. Chubb* from 2009 to 2024 (the "*Zurich Decisions*") in that TDHA did not merely receive one completed OCF-1, like Chubb Insurance Company through some innocent mistake by an injured individual (Ms. Singh) involving her rental of vehicle and seeing the name of "Chubb" inside the car rental office. TDHA received the *SABS* Applicant's completed OCF-1, OCF-2, OCF-3, OCF-6 and OCF-19. It is also uncontroverted that TDHA, by being the only former commercial tenant at the **East Mall Address (Etobicoke)** received all the Applicant's OCF-18's that were submitted through HCAI.[32]

[33] *Chubb Insurance Co. of Canada v. Zurich Insurance Company*, 2024 ONSC 2929 (CanLII), <https://canlii.ca/t/k4tln>, retrieved on 2024-12-10 (see: *Zurich 2024*, paragraph 6 (see: https://canlii.ca/t/k4tln#par6)).

[34] *Chubb Insurance Co. of Canada v. Zurich Insurance Company*, 2024 ONSC 2929 (CanLII), <https://canlii.ca/t/k4tln>, retrieved on 2024-12-10 (see: *Zurich 2024*, paragraph 16 (see: https://canlii.ca/t/k4tln#par16)).

[35]The Applicant erred in omitting said word in his JRPA Application and he apologizes to this ONSC Div. Court and the respondents for the same.

[36] *Chubb Insurance Co. of Canada v. Zurich Insurance Company*, 2024 ONSC 2929 (CanLII), <https://canlii.ca/t/k4tln>, retrieved on 2024-12-10 (see: *Zurich 2024*, paragraph 54 (see: https://canlii.ca/t/k4tln#par54)

[37](see: paragraph 15 of the ***JRPA* Application**).

[38] *Chubb Insurance Co. of Canada v. Zurich Insurance Company*, 2024 ONSC 2929 (CanLII), <https://canlii.ca/t/k4tln>, retrieved on 2024-12-10 (see: *Zurich 2024*, paragraph 8).
[39] *Chubb Insurance Co. of Canada v. Zurich Insurance Company*, 2024 ONSC 2929 (CanLII), <https://canlii.ca/t/k4tln>, retrieved on 2024-12-10 (see: *Zurich 2024*, paragraph 29).
[40]Herein, there was no evidence that TDHA paid any benefits but there was also no evidence that TDHA disputed its liability and obligations.
[41] *Chubb Insurance Co. of Canada v. Zurich Insurance Company*, 2024 ONSC 2929 (CanLII), <https://canlii.ca/t/k4tln>, retrieved on 2024-12-10 (see: *Zurich 2024*, paragraph 10).
[42]on a provisional basis but with an ability to step out of those shoes if the First Insurer avails itself to the *Reg 283* protections and obtain reimbursement from the liable insurer after provisionally responding to the Claimant (i.e. legal fees, disbursements, administration fees et al)
[43]*Zurich Insurance Co. v. Chubb Insurance Co. of Canada*, 2015 SCC 19 (CanLII), [2015] 2 SCR 134, <https://canlii.ca/t/gh85t>, retrieved on 2024-12-10
[44] *Chubb Insurance Co. of Canada v. Zurich Insurance Company*, 2024 ONSC 2929 (CanLII), <https://canlii.ca/t/k4tln>, retrieved on 2024-12-10 (see: *Zurich 2024*, paragraph 12).
[45] *Chubb Insurance Co. of Canada v. Zurich Insurance Company*, 2024 ONSC 2929 (CanLII), <https://canlii.ca/t/k4tln>, retrieved on 2024-12-10 (see: *Zurich 2024*, paragraph 14).
[46]Zurich Insurance v. Chubb Insurance, 2012 ONSC 6363 (CanLII), <https://canlii.ca/t/ftr4c>, retrieved on 2024-12-10
[47]As this ONSC will know, that is such a unique event by our SCC where they do not even wish to put any such amendments or clarity to a dissenting decision of the ONCA. While the justices in our province are not in the "business of counting their press clippings", it is a testament to how analytically sound The Honourable Justice Jurianz was in those dissenting reasons.
[48]Zurich Insurance Company v. Chubb Insurance Company of Canada, 2014 ONCA 400 (CanLII), <https://canlii.ca/t/g6vrk>, retrieved on 2024-12-10
[49]https://www.torontomu.ca/criminaljusticefirsts/courts/Russell-Juriansz/
[50]Zurich Insurance Company v. Chubb Insurance Company of Canada, 2014 ONCA 400 (CanLII), <https://canlii.ca/t/g6vrk>, retrieved on 2024-12-10
[51]Zurich Insurance Co. v. Chubb Insurance Co. of Canada, 2015 SCC 19 (CanLII), [2015] 2 SCR 134, <https://canlii.ca/t/gh85t>, retrieved on 2024-12-10
[52](see: *Zurich 2024*, paragraph 15).
[53]*Chubb Insurance Co. of Canada v. Zurich Insurance Company*, 2024 ONSC 2929 (CanLII), <https://canlii.ca/t/k4tln>, retrieved on 2024-12-10
[54] *Chubb Insurance Co. of Canada v. Zurich Insurance Company*, 2024 ONSC 2929 (CanLII), <https://canlii.ca/t/k4tln>, retrieved on 2024-12-10 (see: *Zurich* 2024, paragraph 64).
[55]Beasley et al. v. Barrand, 2010 ONSC 2095 (CanLII), <https://canlii.ca/t/2984g>, retrieved on 2024-12-10
[56]wherein he overturned the decision of the adjudicator in the initial decision
[57]In this *JRPA* Application, the issue of whether a lawyer like Mr. Nieuwland could act for TDGIC for six months then act for SNIC when NOM #8 was granted in the Applicant's favour, despite six months of opposition and then non-opposition [not consent], thereafter, is not at issue *per se*. However, the backdrop regarding the same is an important one.
[58]What about, as a "test case", the duties of insurance companies (and their counsel) in relation to their holding, controlling and/or possession (solely, jointly or constructively) that are: (i) neither an underwriter nor a First Insurer, and masquerade as the liable insurance company in the LAT Proceeding; (ii) the obligations of a First Insurer who remains anonymous until effectively caught as having the mailing address and/or fax number that provides unequivocal proof that it was a First Insurer; and (iii) the obligations of an underwriter, who was not the First Insurer, who carries on as the solely liable insurance company but then does not participate after filing the sole Response, pursuant to section 280(2) of the *Insurance Act*, in a LAT proceeding?
[59]Pursuant to section 280(1) of the *Insurance Act*, "this section applies with respect to the resolution of disputes in respect of an insured person's entitlement to statutory accident benefits *or* in respect of the amount of statutory accident benefits to which an insured person is entitled." Pursuant to ss. 280(2) of the *Insurance Act*, "The insured person *or* the insurer *may* apply to the Licence Appeal Tribunal to resolve a dispute described in subsection (1)". No person may bring a proceeding in any court with respect to a dispute described in subsection (1), other than an appeal from a decision of the Licence Appeal Tribunal or an application for judicial review: ss. 280(3) of the *Insurance Act*. The dispute shall be resolved in accordance with the *Statutory Accident Benefits Schedule*
[60]. 2014, c. 9, Sched. 3, s. 14: ss. 280(4) of the *Insurance Act*.

[61](see: "statutory accident benefits" mean the benefits set out in the regulations made under paragraphs 9 and 10 of subsection 121 (1) of the *Insurance Act*; see: section 121(a): "121 (1) The Lieutenant Governor in Council may make regulations").
[62]The Applicant notified SNIC, pursuant to the *Schedule*, s. 32, in early September 2022, that he wished to apply for benefits making SNIC not only the Sole Underwriter but the First Notified Insurer.
[63]The Applicant, in his capacity as a *SABS* applicant, sent the Completed Application [OCF-1] to the **North York Fax Number** on October 12, 2022. Ergo, at law, the *SABS* Applicant sent, or "served" only one **Completed Application** to only one insurer in TDHA. TDHA was the sole insurer that first received (the "First Insurer") the ***SABS* Applicant's Completed Application**.
[64]In fact, and at law, SNIC did not stop the Applicant from submitting his Completed Application to TDHA in that it provided him with the **TDHA Fax Number**. It is the word "accept" that is so pivotal in this ***JRPA* Application** by VCM's choice of language at paragraph 27 therein.
[65]"first party insurer" means the insurer responsible under subsection 268 (2) of the Act for the payment of statutory accident benefits; ("assureur de première part"): Automobile Insurance, RRO 1990, Reg 664, s 9, <https://canlii.ca/t/tlw#sec9>,
[66]The word "accept" is of great importance considering the finding by VCM, without any evidence in the record of proceeding to support the same, that TDGIC and SNIC jointly ***accepted*** priority of the Applicant's [sic] insurance policy [sic] (see: paragraph 27 of the **VCM Decision**).
[67]As SNIC was the Sole Underwriter in the Insurance Policy, the Applicant has alleged that SNIC (as First Notified Insurer) breached section 2.1(5) of *Reg 283* by taking action, with intent (as it knew that its fax number was not the **North York Office Fax Number**), to prevent or stop the Applicant from submitting his Completed OCF-1 to it [SNIC] as it is an out-of-province insurer.
[68]In relation to the lack of promptness, SNIC somehow sent the Applicant's accident benefits package to the wrong postal code address yet his Spouse received her accident benefits package to the correct postal code when they lived in the same residence
[69]Further, the Applicant provided uncontroverted evidence that SNIC failed to provide its correct facsimile address in the Completed Application but instead provided the fax number of TDHA and thereby breached subsection 2.1(3) of *Reg 283*.
[70]Reimbursement by the non-compliant insurer during the period of non-compliance (see: ss. 2.1(7) of *Reg 283*): (i) legal fees; (ii) adjuster's fees; (iii) administrative costs; and (iv) disbursements
[71]Subsection 2.1 of *Reg 283* applies to this judicial review as the Accident occurred on August 31, 2022, which was after September 1, 2010.
[72]Whether SNIC was to remain for costs purposes in the McLean LAT Proceeding was a matter of discretion, but the sole respondent insurance company as a matter of obligations under *Reg 283*, *SABS* and *Reg 664* was not. However, the Applicant's argument was encapsulated by a rhetorical question: *why should he not have any ability to seek costs against SNIC for its conduct in the LAT Proceeding that he alleged and alleges was unreasonable, frivolous, and in bad faith?* Costs are not a matter that relate to the *Insurance Act*, and the binding regulations herein (*SABS* and *Reg 283*), as the Tribunal passed them under a different statute: section 17.1 of the SPPA. Put another way, is the Applicant's time not worth anything when it required hundreds of hours to obtain the order in NOM #8?
[73]Even when the OCF-19 was fax delivered, in November 2023, to the VP Bldg. 4th Floor Fax Number, and when SNIC's fax number (**Burlington 905 Fax Number**) was blocking the same, SNIC responded by misidentifying one of the legal tests for a duly completed OCF-19 and merely enclosed a copy of a blank OCF-19. Moreover, when considering the **Forged Signature** in the OCF-18, last page only, it could not have been SNIC, although it appeared that way in HCAI by insurer name but NOT physical address, with the "As per A. Nurse", it was TDHA's address (East Mall Etobicoke Address) that received the duly completed OCF-18 at first instance. Perhaps, this is why Ms. Nurse, an adjuster, was not amenable to executing the same.
[74]The same would have been applicable to TD Staff Legal and Mr. Nieuwland with its fax and his listed fax number with the LSO. Said unappealed findings are determinative that *neither* SNIC nor TDGIC were the First Insurers by way of the fax served Completed Application upon the 4th Floor VP Building Fax Number which was TDHA.
[75]"If the Licence Appeal Tribunal finds that an insurer has unreasonably withheld or delayed payments, the Licence Appeal Tribunal, in addition to awarding the benefits and interest to which an insured person is entitled under the Statutory Accident Benefits *Schedule*, may award a lump sum of up to 50 per cent of the amount to which the person was entitled at the time of the award together with interest on all amounts then owing to the insured (including unpaid interest) at the rate of 2 per cent per month, compounded monthly, from the time the benefits first became payable under the *Schedule*. O. Reg. 43/16, s. 4.".

[76](like the vacillation of findings and orders of the arbitrator, ONSC (Goldstein J. in the ONSC), reversed by the ONCA, and the ONCA reversed by the SCC adopting the dissent of Justice Jurianz)
[77]It is trite that while the Tribunal is required to determine whether Mr. McLean was entitled to certain benefits and in what amounts, it also must determine which insurance company was and is liable for certain benefits and at what times. It can only do that if that the First Insurer is found to be TDHA and that decision must come from the ONSC.
[78] There was no evidence and none in the Application Record that TDHA, or any insurer, ever did so. Even on the convoluted, tortuous, unsupported and absurd logic of VCM that SNIC and TDGIC accepted priority over the Insurance Policy, there was some form of "transfer of the claim" to TDGIC which would have required notice to, at least, TDGIC and the *SABS* Applicant. No evidence was ever provided of such written notice to either.
[79]Mr. McLean was also entitled to object to SNIC (and TDGIC as he had done previously) having any control or possession of his TD Claim #3 relating to "confidential information" and documents not subsequently received by it in accordance with standardized language in the OCF-1 and *PIPEDA*. There is no dispute that TD Claim #3 was transferred from TDHA to TDGIC and SNIC. SNIC claimed to have received documents but not directly from the Applicant. SNIC purported to respond or did respond to the Applicant in relation to some communications but not all communications. TDGIC then surfaced at the LAT Proceeding but only after inclusion by the Tribunal without the consent of the Applicant or without any legal authority. SNIC filed its Response ("SNIC Response") on January 25, 2024, and then Mr. Nieuwland filed a DOR on behalf of TDGIC – not SNIC. The charade continued for six months until Mr. McLean, relying on Mr. Nieuwland's misrepresentations in non-transcribed case conference, which was yet another irremediable nullity and without statutory power as TDGIC was a non-party, that SNIC and TDGIC were "one and the same" and "this is how we always do it" (in relation to TDGIC being some sort of insurance company that came "off the bench" to provide a "spark" to the "defence" for SNIC as if it were some kind of sporting event). While there is no dispute of some form of transfer from TDHA to SNIC and, of course, with some unknown terms and conditions involving TDGIC on some basis perhaps on a joint level but more likely some form of "staggered interventions" based on unknown terms and conditions in this "subsequent clandestine agreement", there are no particulars in the decision of VCM. Moreover, any such transfer was without notice to Mr. McLean, and without compliance with *Reg 283*. The scheme of *Reg 283* requires substantive and procedural compliance and TDHA along with SNIC and TDGIC intentionally breached *Reg 283* without any form of attempt to cure the same. The required FSRA form did not matter to TDHA. The closest evidence that this ONSC has is a fax from an unknown fax number to Mr. McLean that TDHA had no record of his claim as of March 2023 (and then another letter in August 2024 albeit after NOM #14 and NOM #15). It was a fax without any semblance of compliance with *Reg 283*, and *SABS* to some degree, and the FSRA Form 143. It directed Mr. McLean to other fax numbers in Calgary, Montreal, New Brunswick and Burlington without reference to any insurance company. Mr. McLean was entitled, after lengthy investigation and fortuitous discoveries, was entitled to object and required to bring the issue forward as to TDHA not complying with its duties to respond and to pay benefits as the First Insurer.
[80]Due to the public importance of the issues herein, the Applicant respectfully, yet forcefully, notes that the LGIC did not create any ability for an insured person (applicant) to consent or sanitize the breaches that have occurred herein. Put another way, the LGIC did not pass any provisions that would authorize an insured person to sanitize or remedy such clandestine breaches to provide post-facto consideration that cure such non-compliance with *Reg 283*. Therefore, this undisclosed agreement by the respondent insurance companies, known to the Tribunal but not the Applicant, has no legal force or effect. The purposes of the inflexible prescribed regulations are to promote compliance with the statutory scheme and not to assist insurance companies and insured persons in isolated incidents so that an "insured person" can assist delinquent and felonious activities. To not set aside the VCM Decision and replace it with a correct decision, while the ONSC commences *ab initio*, would represent a precedent that contains a "slippery slope". Perhaps, "insurance companies" like this collection of respondent insurance companies may send a late notice with a semi-contemporaneous phone call to an insured person that may be in the form of a bribe so that the "checks and balances" of various regulatory bodies (FSRA, LSO, OPCC et al) do not catch "wind of the unlawful scheme".
[81][3] .... The test for *res judicata* was applied by the Adjudicator as follows (Decision, para. 12). In my view, the four preconditions for *res judicata* are satisfied. The parties are the same in both proceedings. The prior claim was within the jurisdiction of the Tribunal. The decision in the first application was based on the merits. The Tribunal reviewed the submissions and evidence and found that the applicant was not entitled to the IRB or found that the applicant was not entitled to IRBs for the period of January 14, 2020 to date and ongoing. Moreover, he was not entitled to payment for the November 9, 2019 accounting report. The first decision was a final decision because he did <u>not</u> file a reconsideration request and nor did he appeal the decision.
[5] A LAT decision is final and authoritative, subject to a party's rights of reconsideration or appeal from that decision. A party that disagrees with a LAT decision may not ignore that decision and recommence the same claims all over again. That is what the Appellant has done in this case. Even if the LAT erred in the first decision

and decided the case on the basis of an issue that was not before it, that error would not have deprived the LAT of jurisdiction. The LAT's second decision is correct in law; this appeal fails on the merits.

[82]*Kazen v. Whitten & Lublin Professional Corporation*, 2020 ONCA 325 (CanLII), <https://canlii.ca/t/j7z9n>, retrieved on 2024-12-10 ["*Kazen*"]

[83]*Fatemea Rezaiezadeh v. State Farm Mutual Automobile Insurance Company*, 2016 ONFSCDRS 59 (CanLII), <https://canlii.ca/t/jq9fm>, retrieved on 2024-12-10 ["*Reza*"]

[84]It is trite that the Sheriffs in Ontario operate in different jurisdictions. TDHA's known address, when utilizing the fax number (landline phone number) of 416.774.3120, was that of 4th floor of the VP Building (North York) which is in the City of Toronto. The Tribunal found that SNIC's address for service in the LAT Proceeding was that of the Burlington Office Building (5th floor) which was tied to the 905 Fax Number. This was consistent, albeit absent the floor number, to SNIC's "switch" or "change" from the Markham Office Address to the Burlington Office Address which was only *after* the Applicant received the March 2023 fax that an unknown insurance company, presumably TDHA, did NOT have any record of his TD Claim #3 after responding to one of his earlier faxes to 416.774.3120. Further, the Tribunal found repeatedly that TDGIC's address was 9th floor-3650 Victoria Park Avenue, North York, Toronto, Ontario, with a fax number of 416.774.3629. Therefore, the Applicant could be wedged in an unsolvable, unfathomable and impenetrable conundrum and a perjury trap. In relation to the latter, if the Applicant was required to swear evidence for the Sheriff regarding enforcement of an order against SNIC, it would force Mr. McLean into a "perjury trap".

[85]This ONSC can take judicial notice that SNIC and TDGIC could not even correctly represent the amount of benefits paid to the Applicant in May 2024 which leaves only one other insurance company, by reference to the fax number of 416.774.3120, that would correctly know the same.

[86]*Fatemea Rezaiezadeh v. State Farm Mutual Automobile Insurance Company*, 2016 ONFSCDRS 59 (CanLII), <https://canlii.ca/t/jq9fm>, retrieved on 2024-12-10 ["*Reza*"]

[87]A change in the title of proceeding in this case potentially affects every Commission case involving the present insurer. At present there is no suggestion that this appeal is a nullity or that it should be stayed pending an order to continue as would happen under Rule 11.01 of the *Rules of Civil Procedure*. In the absence of any case law regarding a presently hypothetical concern, I defer to any further or other appellate officer the question of amending the title of proceeding in this appeal proceeding in the event there is any difficulty in the enforcement of this appeal order. I leave to arbitration any amendment of the title of proceeding at that level."

[88]*College of Traditional Chinese Medicine Practitioners and Acupuncturists of Ontario v. Federation of Ontario Traditional Chinese Medicine Association (Committee of Traditional Chinese Medicine Practitioners & Acupuncturists of Ontario), 2015 ONCA 851 (CanLII), <https://canlii.ca/t/gmf92>, retrieved on 2024-12-10*

[89]Las Vegas Strip Ltd. v. Toronto (City), 1996 CanLII 8037 (ON SC), <https://canlii.ca/t/1vttp>, retrieved on 2024-12-10

[90]EnerNorth Industries Inc. (Re), 2009 ONCA 536 (CanLII), <https://canlii.ca/t/249wt>, retrieved on 2024-12-10.

[91]*Chubb Insurance Co. of Canada v. Zurich Insurance Company*, 2024 ONSC 2929 (CanLII), <https://canlii.ca/t/k4tln>, retrieved on 2024-12-10

[92]*Fatemea Rezaiezadeh v. State Farm Mutual Automobile Insurance Company*, 2016 ONFSCDRS 59 (CanLII), <https://canlii.ca/t/jq9fm>, retrieved on 2024-12-10 ["*Reza*"]

[93]Awada v. Allstate, 2021 ONSC 8108 (CanLII), <https://canlii.ca/t/jl6vv>, retrieved on 2024-12-10

[94]Mansuri v. Dominion of Canada General Insurance Company, 2023 ONSC 5764 (CanLII), <https://canlii.ca/t/k0nrz

[95]Mansuri v. Dominion of Canada General Insurance Company, 2023 ONSC 5764 (CanLII), <https://canlii.ca/t/k0nrz

[96]Of note, the Applicant is not challenging the decision of the Tribunal that did not find a reasonably perceived conflict of interest as a preliminary issue therein but rather he is challenging the decisions and orders of VCM that did not add TDHA as a party – at the very least so the Applicant could advance the argument of which insurance company was liable to respond and pay benefits. Since SNIC was and is not the First Insurer, as, in fact, found by the Tribunal or not found to not be, and TDGIC was already removed by non-opposition by TDGIC, then it leaves Primmum and SNIC. Primmum and SNIC have a bond with respect to the "TD Insurance Meloche Monnex" programs. The only insurance company in the TDI Group that was located at the **Material Time** at the **VP Building** with the fax of 416.774.3120 was TDHA. Former case manager Mr. Grant even admitted, on May 6, 2024, as a matter of optics, how the Tribunal viewed "TD Insurance" as being one of two companies: (i) TDGIC; and (ii) TDHA.

[97]*Sudbury and District Health Unit v Ontario Nurses' Association*, 2023 ONSC 2419 (CanLII), <https://canlii.ca/t/jxgwc>, retrieved on 2024-12-10

[98]The Applicant is not making any argument in costs savings but avoidance of having two JRPA proceedings before this ONSC with the identical challenges to NOM #14 and #15.
[99]*Gage v. Ontario (Attorney General)*, 1992 CanLII 8517 (ON SCDC), <https://canlii.ca/t/gbkgx.
[100]This is particularly the case when the Applicant has drawn it to the attention of not only the Tribunal but VCM when she made the same mistake previously.
[101]In November 2017, one Ms. Karen E. Shepard wrote to then The Honourable Speaker Furey (Senate of our Parliament), "Pursuant to section 10.5 of the *Lobbying Act*, I have the honour of presenting to you a Report on Investigation on the lobbying activities of Trina Morissette for tabling in the Senate. The investigation was conducted in accordance with the provisions of section 10.4 of the Act." A key duty of government officials is to interact with citizens. The *Lobbying Act* ensures that Canadians and public office holders know who is communicating with the government and on what subject.
[102]While similar fact evidence is presumptively inadmissible and must be pleaded in civil court proceedings, being one of the exceptions to pleading evidence, this was not a court proceeding and the probative value of the similar fact evidence of an adjudicator and Vice Chair who is fashioning decisions with pejorative language, slights at the Applicant, and sanctimoniously accusing him of abusing the process. The **VCM Decision** almost rings in a covert threat to stay away from "pandora's box". For the Court's edification, Mr. McLean doubled down on his FIPPA request including Mr. Sean Weir, Executive Chair of Tribunals Ontario, but without a response. He then tripled down by including the Attorney General Of Ontario in Mr. Downey as the LAT is a body of MAG and based on the recent, publicly available, MOU, Mr. Weir was delegated the authority of an "institutional head" by the AGO. How shameful can it get when the LAT requests payment of fees to obtain records and has 30 days to provide a response, then does not provide one, then the adolescent excuses flowed with "technical difficulties" and then stonewalling. It may perhaps be a fresh evidence matter. The conduct involving Ms. Morrissette was of such a serious nature that one Ms. Shephard had to immediately suspend her investigation and refer the matter to the Royal Canadian Mounted Police: "An administrative review concerning this matter was opened in February of 2015. It involved interviews, a review of correspondence and other materials and an examination of Ms. Trina Morissette's work on behalf of the Canadian Red Cross (CRC). In November of 2015, I opened an investigation based upon information provided to me in an administrative review report prepared by the Investigations Directorate of my Office. In accordance with subsection 10.4(8)[102] of the Act, I immediately suspended my investigation and referred this matter to the Royal Canadian Mounted Police (RCMP), as I had reasonable grounds to believe that a breach of the *Lobbying Act* had occurred. In December of 2016, I was informed by the RCMP following their investigation that no charges would be laid in the matter. The RCMP had determined that it was not in the public interest to prosecute Ms. Morissette." The RCMP did not find that she had not breached the Criminal Code, which is an astonishing matter considering it involved Ms. Morrissette's activities as a lobbyist for a well-known charity in the Red Cross, but it was not in the public interest to prosecute. That is an entirely different finding than there were not reasonable and probable grounds to charge. Ms. Morrissette was subject to the five-year prohibition and restrictions on lobbying after being a designated public office holder which implies that she had a role in government prior to her switch to the charitable activities of the CRC. "Prior to starting work as the CRC's manager of Government Relations in 2014, Ms. Morissette had worked as a member of a federal minister's staff from 2009 to 2013. Her final day as a member of a minister's staff was on June 14, 2013Investigator Shephard found: "I have concluded that Ms. Morissette was in breach of Rule 2 (Accurate Information) of the *Lobbyists' Code of Conduct* (1997), as well as the Principles of Professionalism and Integrity and Honesty in the Code." There are some obvious inaccuracies in the **VCM Decision** and she was given a chance to correct the same by the Applicant's section 21.1 of the *SPPA* motion and she has apparently decided not to correct the same despite carrying on with other rulings in this LAT Proceeding. It would quite one thing if VCM cross-referenced her findings to evidence in the record of proceeding or even an email that she found between Mr. Grant and another individual or representative of @tdinsurance.com but there is not even a scintilla of the same. Under the "Lessons Learned", Investigator Shepard found: "the purpose of the five-year prohibition is to ensure that designated public office holders do not use information and personal connections derived from those positions to the advantage of interests that they lobby on behalf of. This is in the public interest because it ensures that Canadians can have confidence in the integrity of government decision-making." LAT is a body of government and the MAG no less. It is where this court has to exercise its supervisory jurisdiction to ensure the conduct of VCM and to some extent VCL, who was on notice of a potential conflict of interest relayed to one Mr. Grant but then snapped out a decision in relation to NOM #7 and then was presumed gone until October 2024, is realigned with the integrity and professionalism requirements of a decision maker with the Tribunal. However, lobbying public office holders should be done in a transparent manner and in conformity with high standards of conduct (see: Investigator Shepard). The same applies to the decision-making process of the LAT. She worked for the CRC for approximately 16 months as she returned to the Minister of Health in late 2014. It is unclear if she was fired. Pursuant to subsection 10.11(1) of

the *Lobbying Act*, when Ms. Morissette ceased being a designated public office holder from 2013 until her return to work as a ministerial exempt staff in October of 2014, she was subject to the prohibition on lobbying. As of November 2017, she no longer worked in the public sector, "Ms. Morissette no longer works in the public sector". However, she returned to the provincial public sector at some point thereafter by of being an adjudicator at LAT. "Although officials of the Canadian Red Cross and Ms. Morissette indicated that her position with the CRC was initially to be "behind the scenes," they recalled having discussed the topic of lobbying during her interview. Once she was employed by the CRC, Ms. Morissette was asked to lobby on behalf of the organization. In fact, the CRC submitted monthly communication reports in the Registry of Lobbyists for meetings in which Ms. Morissette was the only representative of the organization. Ms. Morissette's employment description, the CRC letter of disclosure to the OCL and other information obtained during the investigation indicate that, on the occasions when Ms. Morissette communicated with designated public office holders, she did so on behalf of her employer, the CRC." "Although officials of the Canadian Red Cross and Ms. Morissette indicated that her position with the CRC was initially to be "behind the scenes," they recalled having discussed the topic of lobbying during her interview. Once she was employed by the CRC, Ms. Morissette was asked to lobby on behalf of the organization. In fact, the CRC submitted monthly communication reports in the Registry of Lobbyists for meetings in which Ms. Morissette was the only representative of the organization. Ms. Morissette's employment description, the CRC letter of disclosure to the OCL and other information obtained during the investigation indicate that, on the occasions when Ms. Morissette communicated with designated public office holders, she did so on behalf of her employer, the CRC. "In her letter of response to me, she acknowledged her obligations as a former designated public office holder and recognized that there could be consequences arising from her mistake. She confirmed that once she discovered that she had made an error [sic] regarding the application of the five-year prohibition to her, she took steps to remedy her error. She offered to disclose the fact of her error to my Office, and she offered to resign as an employee of the CRC." It is unclear whether that offer came to fruition. "When Ms. Morissette provided information about the *Lobbying Act* to the Canadian Red Cross, relying, in part, on her own interpretation of the *Lobbying Act*, Ms. Morissette provided information that was inaccurate to her employer. Ms. Morissette did not use proper care to avoid providing that inaccurate information regarding the application of the five-year prohibition on lobbying. As a result, Ms. Morissette was in breach of Rule 2 (Accurate information) of the *Lobbyists' Code of Conduct*." Vice Chair Morrissette has been given a chance to clarity and correct errors in the **VCM Decision**s but she has not done so. The fact that her decision was apparently dated on September 6, 2024, being the same date as the Applicant paying fees to the LAT privacy division is rather ironic and suspicious considering the decision is signed on September 12, 2024. Following Ms. Morissette's inquiries to the OCL concerning the application of the five-year prohibition to her lobbying activities, Ms. Morissette continued to engage in lobbying."" By engaging in registrable lobbying activity while prohibited from lobbying under the *Lobbying Act*, Ms. Morissette did not observe the highest professional and ethical standards. The breach of Rule 2 (Accurate information) and of the prohibition on lobbying do not meet the high standards for lobbyists that are necessary to ensure Canadians that lobbying is conducted transparently and ethically in accordance with the *Lobbying Act*. As a result, Ms. Morissette was in breach of the Principle of Professionalism in the Code.

[103]*Harold the Mortgage Closer Inc. v. Ontario (Financial Services Regulatory Authority, Chief Executive Officer*), 2024 ONSC 4464 (CanLII), <https://canlii.ca/t/k68mf>, retrieved on 2024-12-10
[104]*Lourenco v. Hegedus*, 2017 ONSC 3872 at para. 6
[105]London District Catholic School Board v. Weilgosh, 2024 ONSC 3857 (CanLII), <https://canlii.ca/t/k3gpr>, retrieved on 2024-12-10
[106]https://teao.fsrao.ca/?searchRequired=true&searchText=Security+National&enfActions=false&warnings=false&hasRelatedFiles=false&selectedStatus=0&startDate=&endDate=
[107]https://teao.fsrao.ca/?searchRequired=true&searchText=TD+General&enfActions=false&warnings=false&hasRelatedFiles=false&selectedStatus=0&startDate=&endDate=
[108]https://teao.fsrao.ca/?searchRequired=true&searchText=Primmum&enfActions=false&warnings=false&hasRelatedFiles=false&selectedStatus=0&startDate=&endDate=
[109]https://teao.fsrao.ca/?searchRequired=true&searchText=TD+Home+And+Auto&enfActions=false&warnings=false&hasRelatedFiles=false&selectedStatus=0&startDate=&endDate=
[110] *R.M. v CAA Insurance, 2020 CanLII 94775* (ON LAT), <https://canlii.ca/t/jbwwr>, retrieved on 2024-12-10
[111][nota bene: TDHA is an insurer. Mr. McLean has recourse for the payment of *SABS* against TDHA as TDHA is bound by *Reg 283*. A breach of *Reg 283* is legally equivalent to a breach of *SABS*. Moreover, various sections of *SABS* reference the "first insurer" (i.e. receipt of the Completed Application) which imposed, and continues to impose obligations upon TDHA, to: (i) respond; and (ii) pay.

[112]TDHA: October 13, 2022, by way of fax from Mr. McLean to TDHA albeit unbeknownst to him until August 2024
[113]In this hypothetical, it would have been TDHA
[114]Singular
[115]Duty to pay, albeit the updated A07 Bulleting from 2010 (May) which was the bases for the amendments to *Reg 283* in 2010 includes the duty to respond.
[116]In this hypothetical, it would have been McLean
[117]Based upon the VCM Decision, paragraph 27, it would have been a dispute between TDHA, as First Insurer, and SNIC, the Sole Underwriter and First Notified Insurer, and TDGIC, neither an underwriter nor a First Insurer and not even a First Notified Insurer but a "Fictitious Respondent" in the LAT Proceeding.
[118]One of three
[119]THE INSURER: TDHA
[120]Not "having already been transferred after October 13, 2022"
[121]Transfer of a claim objection rights
[122]Had TDHA sent the notice, then it would have been SNIC that was paying at the time, so it would have been a challenge to SNIC paying while TDHA was the First Insurer
[123]The LAT Proceeding is "any proceeding". The JRPA Application is "any proceeding". Although Mr. McLean did not have any "claim transfer objection rights" as TDHA failed to extend the same to him. Moreover, Mr. McLean did not have any "proceeding participation rights" as it relates to any potential arbitration before an arbitration pursuant to the Ontario legislation or statute known as the "Arbitration Act, 1991". Moreover, TDHA could not advance an arbitration without having paid any benefits to Mr. McLean. If TDHA was the payor of some or all of the $1499.98, then it could technically advance an arbitration claim but only after it provided a notice of potential transfer of claim pursuant to A143. However, it would be, if it did so in the month of December 2024, some 700 days late. Pursuant to *Reg 283*, section 2 and Zurich 2024, TDHA was provisionally liable to pay benefits from October 13, 2022, to January 10, 2023, (the "Provisional Payment Period"), and then permanently liable after January 10, 2023, subject to giving it notice of a transfer claim (A143) and then providing clear, cogent and convincing evidence as to why the 90 day period was insufficient to make a determination that *another insurer* or insurers (nota bene: conceivable could be two under section 268 per se) is liable under section 268; AND the insurer [TDHA] made the reasonable [nota bene: objective person standard] investigations necessary to determine if another insurer was liable within the 90 day period (see: section 3(2) of the *Reg 283*, passed in 1995, which was the year that *Reg 283* was passed by its namesake, "*Reg 283*/95". Where there is a dispute as to whether a First Insurer, like TDHA, had not given notice to other insurers and an Applicant pursuant to its receipt of a Completed Application by fax or mail, shall be resolved in an ARBITRATION pursuant to section 7 of *Reg 283* (see: ss. 3(3) of *Reg 283*). Pursuant to ss. 7(1) of *Reg 283*, it is ONLY an insurer that *has been* paying benefits under section 2 (nota bene: reference to section 268 of the Insurance Act (1990) and *Reg 283* passed in 1995) OR section 2.1 (nota bene: relating to an Accident (see: SABS, definition section), that occurred after September 1, 2010 and requires the dispute to be resolved in accordance with the Regulation 283 (not Insurance Act)) OR any other insurer against who the obligation to pay benefits is *claimed*. Subsection 3(3) dovetails to subsection 7(3) with a one year prescribed limitation period but that is tied to the insurer, 'first giving notice' under section 3 which is the insurers that it believes are liable to pay the benefits and the insured person, in his or her capacity as an "Applicant" after sending a Completed Application and it being *received* first by an insurance company making said insurance company the "First Insurer". However, if the First Insurer does not give a notice, pursuant to section 3(1) of *Reg 283* within 90 days (often means counting the "first day" and "last day"), it loses all of its dispute rights to pay benefits subject to overcoming the strenuous legal test under section 3(2) of *Reg 283*. It is here where TDHA, would hypothetically speaking, never be able to overcome said test by a decision of any reasonably-minded arbitrator rending a decision regarding the application of the facts to the legal test under ss. 3(2) of *Reg 283*. TDHA is an Ontario based insurer (not an out of province insurance company) and was the co-tenant with TDGIC at the "Spark Building", "North York Office Building" or the "VP Building" located at 3650 Victoria Park Avenue, District of North York, City of Toronto, where TDHA was located on the 4th floor (4th to 6th floors) with a fax of 416.774.3120 and its co-tenant in TDGIC had a fax number of 416.774.3629 and it was the commercial tenant on floors 7 to 9. By review of the information scribed on the Application (OCF-1), it had a sufficient period of time to make a determination that another insurer or insurers were liable under section 268 of the Act.
[124]Hence, by SNIC intentionally, as sworn by McLean, redirecting the Applicant to TDHA at first instance, and then purportedly paying benefits (unclear if that name is correct), TDHA became the First Insurer by McLean faxing of the same to it on October 13, 2022. However, if TDHA was the "actual payor" of the direct deposits at said time then it could have provided this notice to McLean. It was then caught in another dilemma by the fact that the representative known to McLean was that of Ms. Nurse of SNIC. Therefore, TDHA would have had to provide a phone number and representative for TDHA which would have caused issues and concerns for McLean.

TAB 6:

Court File No. DC-24-00000718-00JR
Applicant's Motion #2 (Motion in Writing; Request to Convert Motion into Motion for Judgment)

Court File No. DC-24-00000718-00JR

Form 4E
Courts of Justice Act

Requisition

ONTARIO COURT OF JUSTICE (DIVISIONAL COURT)

BETWEEN:

KEVIN ALEXANDER MCLEAN

APPLICANT

- and -

TD HOME AND AUTO INSURANCE COMPANY, SECURITY NATIONAL INSURANCE COMPANY, TD GENERAL INSURANCE COMPANY, EXECUTIVE DIRECTOR, LICENCE APPEAL TRIBUNAL,
HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO, REPRESENTED BY EXECUTIVE CHAIR OF TRIBUNALS ONTARIO IN MR. SEAN WEIR, THE ATTORNEY GENERAL OF ONTARIO

RESPONDENTS

REQUISITION

TO THE LOCAL REGISTRAR at The Ontario Superior Court of Justice (Divisional Court) Toronto, Osgoode Hall, 130 Queen Street W., Rm 174 (or any other room situate within said building and lands at the ONSC Divisional Court (Toronto) where the Registrar is so located), Toronto, ON, M5H 2N5 (the "**Toronto Divisional Court**") Phone: (416) 327 5100

I REQUIRE, with due respect and out of an abundance of caution, pursuant to *Rules Of Civil Procedure*, Rule 4.08[i], that the Registrar provide myself and the named respondents in the **Filed Certificate Of Perfection** (see: *infra*), with a Notice of Listing For Hearing in Form 68(B) pursuant to *Rules of Civil Procedure*, Rule 68, "**PROCEEDINGS FOR JUDICIAL REVIEW"**, Rule 68.05, "*Certificate of Perfection*", sub rule (2)[ii], pursuant to my filing and payment of the required fee for the **Certificate of Perfection** on December 15, 2024, (the "**Filed Certificate Of Perfection**").

December 24, 2024

Mr. Kevin A. McLean
775 King Street West,
Suite 410
Toronto, Ontario
M5V 2K3
(e): mcleansettlement@gmail.com

Mr. Kevin A. McLean (B.A. J.D., CIM)
Self-represented or appearing *Pro Se*, the Applicant herein

RCP-E 4E (July 1, 2007)

---

[i] **4.08** Where a party is entitled to require the registrar to carry out a duty under these rules, the party may do so by filing a requisition (Form 4E) and paying the prescribed fee, if any. R.R.O. 1990, Reg. 194, r. 4.08.

[ii] (2) When the certificate of perfection has been filed, the registrar shall place the application on a list for hearing and give notice of listing for hearing (Form 68B) by mail to the parties and the other persons named in the certificate of perfection. R.R.O. 1990, Reg. 194, r. 68.05 (2).

TAB 7:

Court File No. DC-24-00000718-00JR
Applicant's Motion #2 (Motion in Writing; Request to Convert Motion into Motion for Judgment)

Court File No. DC-24-00000718-00JR

FORM 4D

Courts of Justice Act

AFFIDAVIT

ONTARIO SUPERIOR COURT OF JUSTICE (DIVISIONAL COURT)

BETWEEN:

KEVIN ALEXANDER MCLEAN

APPLICANT

- and -

TD HOME AND AUTO INSURANCE COMPANY, SECURITY NATIONAL INSURANCE COMPANY, TD GENERAL INSURANCE COMPANY, EXECUTIVE DIRECTOR, LICENCE APPEAL TRIBUNAL,
HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO, REPRESENTED BY EXECUTIVE CHAIR OF TRIBUNALS ONTARIO IN MR. SEAN WEIR, THE ATTORNEY GENERAL OF ONTARIO

RESPONDENTS

Affidavit #7[i] of Kevin A. McLean in this *JRPA* Proceeding

I, **Kevin Alexander McLean**, Disabled (B.A., J.D., CIM) of **Toronto**, **Ontario, SWEAR** THAT:

Volume #1: Sworn Under Oath; under the Penalty of Perjury; and Introduction

1. I am the individual *JRPA* Applicant herein and I swear, under the pains and penalties of perjury, the following facts to be true. Where I have stated or sworn information on my belief(s), I have cited the source of my belief(s) by references, citations, end-noting or otherwise. When I have used the expressions (including any permutations) of "in my view", "in my opinion", or "belief", I am not drawing or making any conclusion of law or swearing a conclusion of law but rather citing my position and opinions as a matter of fact.

2. I commenced drafting this affidavit on January 24, 2025

3. Attached hereto to this my affidavit is a copy of my email and submissions that were attached to the email regarding my request that Madam Justice Shore recuse herself

along with other ancillary relief ("**COI Recusal Request**"). As of today's date, I have not received any decision regarding my COI Recusal Request so I will file notice of motion with supporting materials to seek the same relief that I am seeking in the COI Recusal Request.

4. I am also concerned that I received an email from a Ms. Badwal that referenced a case conference before Madam Justice Shore on February 18, 2025. I confirm that I am not available on said date. However, I will bring my motion promptly and I intend to seek additional relief in the proposed motion.

5. In relation to the Ms. Badwal email, I am concerned that a different thread was commenced and it did not contain all of the emails that were in the previous thread with myself and the ONSC Divisional Court. It is unclear to me why that occurred but I am not castigating Ms. Badwal in any way. I will file an additional affidavit that contains all of those emails at the relevant time and in support of the intended motion.

6. I expressly adopt the facts in the attached email and submissions as my sworn evidence herein. I intend to pay for my notice and file the same, and then serve it on the respondents and in the "interested person" in Mr. Papadimitropoulos.

7. I will also provide a copy of my motion to Epstein Cole LLP so it can participate and provide its position should it wish to do so.

8. I will continue to object to Madam Justice Shore having any involvement in this matter as I remain of the view that Mr. Papadimitropoulos was the individual who signed the OCF-18 #1 (defined as the "Dhaliwal OCF-18") with the handprinted language of "As per A. Nurse" and that he was, he is, and remains in breach of his separation agreement with Ms. Nicole Artopoulos regarding a "provision" in said separation agreement of no indirect or direct contact. I repeat and rely upon my evidence in affidavit #4 in this regard.

9. I remain of the view that Mr. Boyce of the LAT is also in a conflict of interest by virtue of my previously stated positions in the emails to him with the respondents and the ONSC Divisional Court copied. I do not believe that the Tribunal can participate in an impartial manner with Mr. Boyce as its counsel. I intend to seek relief in this regard as well.

10. I note that the AGO, through Ms. Im, did not file a Notice of Appearance in this JRPA Proceeding.

11. As of tonight, I note that Ms. Im has done the same vis-à-vis her address and business name (employer) on the LSO directory website. I note my affidavit evidence in affidavit #2 which stated in part which was a copy and paste from the LSO website at the time of said affidavit:

JUXTAPOSED TO MS. IM WHOSE EMPLOYER IS MAG AND SHE IS AT 720 BAY STREET

Judie Yung-Mi Im
Back to resultsNew SearchPrint
Assumed Name
Judie Im
Law Society Number
44577V
Class of Licence Definitions
Lawyer (L1)
Real Estate Insured †
No
Status Definitions
Practising Law - Employed
Business Name
Ministry of Attorney General
Business Address
8-720 Bay StToronto, OntarioM7A 2S9
Phone
1 416 427 4611 Ext.
Email Address
judie.im@ontario.ca
Trusteeships
None
Current Practice Restrictions
None
Current Regulatory Proceedings
None
Regulatory History
None

12. Ms. Im's contact information on the LSO directory website is now:

Judie Yung-Mi Im

Back to resultsNew SearchPrint
Assumed Name
Law Society Number
44577V
Class of Licence Definitions
Lawyer (L1)
Real Estate Insured †

No
Status Definitions
Practising Law - Employed
Trusteeships
None
Current Practice Restrictions
None
Current Regulatory Proceedings
None
Regulatory History

13. I swear this **Affidavit #7** for no improper purpose and for the above purposes.

Sworn before me via videoconference in accordance with O. Reg. 431/20 at **Toronto, Ontario** on this 24th day of January 2025

Mr. Kevin A. McLean (B.A., J.D., CIM)

Unlimited. No Expiration.
NO ILA PROVIDED.
Identification Confirmed.

[i]Three affidavits have been my affidavits of service

THIS IS EXHIBIT A ..... REFERRED TO IN THE
AFFIDAVIT OF Mr. Kevin A. McLean .....
AFFIRMED BEFORE ME, THIS 24th ..... DAY
OF January ..... 20 25 .....

....
NER, ETC.

Vinh The Tran, Esq., LSUC #57761C
Lawyer, Notary, Oaths Commissioner
188-639 Dupont Street, Toronto, ON
M6G 1Z4, T. 647-209-7389
vinhtranlaw@hotmail.com

Gmail

Mr. Kevin McLean <mcleansettlement@gmail.com>

Re: LAT's Notice of Appearance : McLean v. TD Home and Auto Insurance et al. : 718/24

Mr. Kevin McLean <mcleansettlement@gmail.com> Thu, Jan 16, 2025 at 10:58 AM
To: "SCJ-CSJ Div Court Mail (JUD)" <scj-csj.divcourtmail@ontario.ca>
Cc: "SCJ-CSJ Div Court Mail (JUD)" <scj-csj.divcourtmail@ontario.ca>, "Maciel, Milene (MAG)" <Milene.Maciel@ontario.ca>, "Collie, Connor (MAG)" <Connor.Collie@ontario.ca>, "Im, Judie (She/Her) (MAG)" <Judie.Im@ontario.ca>, "Pasquini, Heather" <Heather.Pasquini@tdinsurance.com>, "Imafidon, Isibhakhomen (MAG)" <Isibhakhomen.Imafidon@ontario.ca>, Div Court Schedule <DivCourtSchedule@ontario.ca>, "Nieuwland, Matthew" <Matthew.Nieuwland@tdinsurance.com>, "christiana.ortiz@tdinsurance.com" <christiana.ortiz@tdinsurance.com>, scjcsj.divcourtmail@ontario.ca

January 16, 2025

VIA EMAIL

URGENT – NOTICE

URGENT – ATTACHMENTS

Court file number: Court File No. DC-24-00000718-00JR
Type of document: email
Short title of proceeding: McLean v. TDHA et al
Party: Mr. Kevin A. McLean, self-represented, Applicant, e: mcleansettlement@gmail.com;

To:

The ONSC Divisional Court
130 Queen Street West, Toronto, Ontario
Toronto, Ontario

Kind attention: ONSC Divisional Court Registrar (Madam Clerk Clegg)

AND TO: (pursuant to the Courts of Justice Act, (s. 75(1)(3)),) and section 76

The Honourable Geoffrey B. Morawetz
Chief Justice of the Superior Court of Justice

AND TO:

The Honourable Faye E. McWatt
Associate Chief Justice of the Superior Court of Justice

With a copy to:

The Honourable Stephen E. Firestone
Regional Senior Judge for the Toronto Region

With a copy to:

COPIED TO THE RESPONDENTS AND THEIR COUNSEL

AND COPIED TO (FOR NOTICE PURPOSES REGARDING THE APPLICANT'S REQUEST(S))):

Andrew Papadimitropoulos
Law Society Number
58696I
Class of Licence Definitions
Lawyer (L1)
Real Estate Insured †
No
Status Definitions
Practising Law - Employed
Business Name
TD Insurance
Business Address
101 Mcnabb St
Markham, Ontario
L3R 4H8
Phone
416 983 5467 Ext.
Email Address
andrew.papadimitropoulos@tdinsurance.com

Re: enclosed written submissions for the Respectful Requests (defined therein)

Dear Madam Registrar Clegg (copied to the above or to be forward by the ONSC Divisional Court Registrar):

1. I write regarding the above. As promised, please find my PDF and signed submissions for the Respectful Requests. For ease of reference, they at paragraph 19 and 126:

a. The Honourable Madam Justice Shore is disqualified from any further involvement in this *JRPA* Proceeding (the "**Disqualification Request**" or the "**Recusal Request**");
b. The Case Management Appearance Requirement is declared as void and void *ab initio* (not merely voidable) (the "**Nullification Request**");
c. A general and indefinite adjournment of the case conference pursuant to 77.04(1)(b) of the *Civil Rules* by the Associate Justice (the "**Adjournment Request**");
d. A direction by the Honourable Chief Justice, pursuant to section 76 of the *CJA*, that the Registrar shall accept all outstanding requisition filings and provide confirmation of the same to the *JRPA* Applicant and respondents; and
e. A direction by the Honourable Chief Justice, pursuant to section 76 of the *CJA*, that the Registrar comply with her duties (by law), pursuant to 68.05(2) of the *Civil Rules*[i], and provide the parties with a "Notice of Listing For Hearing".

("d" and "e" together, the "**Staff Direction Requests**").

(collectively, the "**Respectful Requests**" or "**Requests**").

2. I rely on affidavit #2 and #3 in support of the same as my leading of evidence in this regard.

3. Should the Court require any further submissions or sworn evidence from me regarding the same, I remain available and please contact me at your earliest moment. Otherwise, I shall presume this is sufficient and the procedure is consistent with the case law in this niche and unique subset of a few areas of law.

4. Please extend my thanks to the Chief Justice and Associate Chief Justice (where applicable) for their consideration.

5. Thank you.

---

[i] 68.05(2) When the certificate of perfection has been filed, the registrar shall place the application on a list for hearing and give notice of listing for hearing (Form 68B) by mail to the parties and the other persons named in the certificate of perfection. R.R.O. 1990, Reg. 194, r. 68.05 (2).

Warm regards,

Mr. Kevin A. McLean (B.A. (MCL), J.D., CIM)

On Thu, Jan 16, 2025 at 6:42 AM Mr. Kevin McLean <mcleansettlement@gmail.com> wrote:

> January 16, 2025
>
> **VIA EMAIL**
>
> **URGENT – NOTICE**
>
> Court file number: Court File No. DC-24-00000718-00JR
> Type of document: email
> Short title of proceeding: *McLean v. TDHA et al*
> Party: Mr. Kevin A. McLean, self-represented, Applicant, e: mcleansettlement@gmail.com;
>
> Re: confirmation of the correct or preferred procedure to address my nullification request of Justice Shore initiated case management appearance requirement (the "**Case Management Appearance Requirement**") (the "**Nullification Request**") (see: affidavit #3 herein)
>
> Re #2: recusal request of Madam Justice Shore (the "**Recusal Request**")
>
> Re #3: to the extent applicable – dependent on other factor – the assignment request or reassignment
>
> Re #4: Written Submissions to follow today
>
> Dear Madam Registrar Clegg:
>
> 1. I write regarding the above. I remain of the view and position, with great respect, that Justice Shore must recuse herself and withdraw her self-initiated Case Management Appearance Requirement.

ONTARIO COURT OF JUSTICE (DIVISIONAL COURT)

BETWEEN:

KEVIN ALEXANDER MCLEAN

APPLICANT

- and -

TD HOME AND AUTO INSURANCE COMPANY, SECURITY NATIONAL INSURANCE COMPANY, TD GENERAL INSURANCE COMPANY, EXECUTIVE DIRECTOR, LICENCE APPEAL TRIBUNAL,
HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO, REPRESENTED BY EXECUTIVE CHAIR OF TRIBUNALS ONTARIO IN MR. SEAN WEIR, THE ATTORNEY GENERAL OF ONTARIO

RESPONDENTS

Applicant's Submissions for his RESPECTFUL REQUESTS

To:

The ONSC Divisional Court
130 Queen Street West, Toronto, Ontario
Toronto, Ontario

Kind attention: ONSC Divisional Court Registrar (Madam Clerk Clegg)

AND TO: (pursuant to the Courts of Justice Act, (s. 75(1)(3)),) and section 76

The Honourable Geoffrey B. Morawetz
Chief Justice of the Superior Court of Justice

AND TO:

The Honourable Faye E. McWatt
Associate Chief Justice of the Superior Court of Justice

With a copy to:

The Honourable Stephen E. Firestone
Regional Senior Judge for the Toronto Region

With a copy to:

The Honourable Madam Justice Shore

COPIED TO THE RESPONDENTS AND THEIR COUNSEL

AND COPIED TO (FOR NOTICE PURPOSES):

Andrew Papadimitropoulos
Law Society Number
58696I
Class of Licence Definitions
Lawyer (L1)
Real Estate Insured †
No
Status Definitions
Practising Law - Employed
Business Name
TD Insurance
Business Address
101 Mcnabb St
Markham, Ontario
L3R 4H8
Phone
416 983 5467 Ext.
Email Address
andrew.papadimitropoulos@tdinsurance.com

VOLUME # #1: STATEMENT OF RECUSAL REQUEST, NULLIFICATION REQUEST, ADJOURNMENT REQUEST (SOLELY IN RELATION TO SHORE J. APPEARANCE REQUIREMENT) AND STAFF DIRECTION ORDERS (SEE: SECTION 76 OF THE CJA)

1. Which Canadian jurist represented the following to the federal committee responsible for judicial appointments in her sworn and signed questionnaire to it, "Vital to the Canadian system is the impartiality of a judge. This is different than the system in the United States. In Canada, judicial independence is viewed as vital to fostering public confidence in the fairness and objectivity of the justice system. The Supreme Court of Canada has described judicial independence as "the cornerstone, a necessary prerequisite for judicial impartiality."

2. None other than The Honourable Madam Justice Sharon Store.

3. The Honourable Sharon Shore of our ONSC (not the Federal Court) also made a statement to that same federal committee that this Applicant certainly agrees with as follows

> Last, but not least, is integrity. I have always tried to conduct my personal and professional life with integrity. One of the lessons I learned from my mentors is that it takes a lifetime to build your reputation, and only minutes to destroy it.

4. Public confidence in our legal system is rooted in the belief that those who deliver legal judgments do so without bias or prejudice to one side or the other. In this regard, the appearance of justice is just as important as the reality.[1]

5. Judges often disqualify themselves where the matter before them involves former clients or law partners. Herein, we have a situation of a former client of Epstein Cole LLP where Madam Justice Shore was a partner.

6. Lord Hewart C.J.'s aphorism that "it is not merely of some importance but is of fundamental importance that justice should not only be done, but should manifestly and undoubtedly be seen to be done" (The King v. Sussex Justices, Ex parte McCarthy, [1924] 1 K.B. 256, at p. 259). To put it differently, in cases where disqualification is argued, the relevant inquiry is not whether there was in fact either conscious or unconscious bias on the part of the judge, but whether a reasonable person properly informed would apprehend that there was. In that sense, the reasonable apprehension of bias is not just a surrogate for unavailable evidence, or an evidentiary device to establish the likelihood of unconscious bias, but the manifestation of a broader preoccupation about the image of justice. As was said by Lord Goff in Gough, supra, at p. 659, "there is an overriding public interest that there should be confidence in the integrity of the administration of justice" (see: paragraph 66 of *Weykaum*). The last is the most demanding for the judicial system, because it countenances the possibility that justice might not be seen to be done, even where it is undoubtedly done – that is, it envisions the possibility that a decision-maker may be totally impartial in circumstances which nevertheless create a reasonable apprehension of bias, requiring his or her disqualification (see: paragraph 67 of *Weykaum*).

7. The law of judicial bias is founded on two basic legal maxims: audi alteram partem ("listen to the other side") and nemo judex in sua causa ("no-one should be a judge in his own cause"). The former requires that parties affected by a decision have the right to be heard and that the decision-maker must not have pre-judged the issue. The latter prohibits the adjudicator of the case from having an interest in the decision,

thus safeguarding the right of the parties to be treated impartially and without prejudice. In other words, bias represents a predisposition or a state of mind which sways judgment.

8. Unlike tribunals, judicial impartiality is guaranteed by our *Constitution* under section 96 to 101 (see: *Ocean Port Hotel* (SCC)).

> **Volume #1(A):** The Anticipatory Counter to Justice Shore taking a similar position to Binnie J. in *Weykaum*

9. While the SCC has found that there is a distinction with a difference between government lawyers and private practice, the following statement of law is apropos. 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).

> ***VOLUME #1(B): BY ANALOGY***

10. The Applicant (also defined as the "**Requestor**") repeats and relies upon his letter in Appendix #1.

11. If a judge is aware of any relationship or personal interest that raises a reasonable apprehension of bias, it is generally desirable that disclosure is made in advance of a hearing, so that the case may be reassigned.

12. Under the Ontario *Courts of Justice Act* (s. 75(1)(3)), it is the Chief Justice of a court or one of the Associate Chief Justices who is responsible for the assignment or reassignment of cases.

13. Pursuant to the *Civil Rules*, the following is applicable to the Case Management Appearance Requirement:

> 77.04 (1) A judge or associate judge may,
>
> (b) adjourn a case conference;
>
> (2) A judge or associate judge may, on his or her own initiative, require the parties to appear before him or her or to participate in a conference call to deal with any matter arising in connection with the case management of the proceeding, including a failure to comply with an order or the rules. O. Reg. 438/08, s. 64; O. Reg. 383/21, s. 15.
>
> (3) For greater certainty, the powers set out in subrules (1) and (2) are in addition to any other powers set out in this Rule. O. Reg. 438/08, s. 64.

14. For sake of completeness, Rule 77(1) and (2) state the following:

> RULE 77 CIVIL CASE MANAGEMENT
>
> Purpose and General Principles

Purpose

77.01 (1) The purpose of this Rule is to establish a case management system that provides case management only of those proceedings for which a need for the court's intervention is demonstrated and only to the degree that is appropriate, as determined in reliance on the criteria set out in this Rule. O. Reg. 438/08, s. 64.

General Principles

(2) This Rule shall be construed in accordance with the following principles:

1. Despite the application of case management under this Rule to a proceeding, the greater share of the responsibility for managing the proceeding and moving it expeditiously to a trial, hearing or other resolution remains with the parties.

2. The nature and extent of the case management provided by a judge or associate judge under this Rule in respect of a proceeding shall be informed by any relevant practices, traditions, customs or judicial resource issues that apply locally in the region in which the proceeding is commenced or to which it is transferred. O. Reg. 438/08, s. 64; O. Reg. 383/21, s. 15.

15. The Canadian Judicial Council considers recusal inappropriate where no other adjudicator can be constituted to hear the case or where, as a result of an emergency, withdrawal would lead to a miscarriage of justice. Still, the exercise of judicial discretion is at the heart of judicial independence, and judges are presumed to have acted in good faith.

16. The urgency is in favour of the Applicant having his requisitions filed and receiving a Form 68(B) which is most outstanding despite requisitions for the same.

17. It is rather coincidental that there are 93 justices in the Toronto region and somehow the one justice who was a partner who acted, and remains as the sole law firm to have represented one Mr. Andrew Papadimtripoulos

18. It is current counsel to the three respondent insurance companies in Mr. Nieuwland who unequivocally admitted, as a matter of law, that there was a conflict of interest when TDGIC represented in a purported but unlawful response to the Applicant's *PIPEDA* request of SNIC in January 2024 that Mr. Andrew Papadimtripoulos had not been involved in any way with this claim or access request. However, the claim number provided therein was 035325709-04 [sic] (see: **page 66** of the **Oral Compendium**).

VOLUME #2: RELIEF SOUGHT IN THE RECUSAL REQUEST, NULLIFICATION REQUEST AND REASSIGNMENT REQUEST

19. The Requestor seeks the following relief as follows:

a. The Honourable Madam Justice Shore is disqualified from any further involvement in this *JRPA* Proceeding (the "**Disqualification Request**" or the "**Recusal Request**");
b. The Case Management Appearance Requirement is declared as void and void *ab initio* (not merely voidable) (the "**Nullification Request**");

c. A general and indefinite adjournment of the case conference pursuant to 77.04(1)(b) of the *Civil Rules* by the Associate Justice (the "**Adjournment Request**");
d. A direction by the Honourable Chief Justice, pursuant to section 76 of the *CJA*, that the Registrar shall accept all outstanding requisition filings and provide confirmation of the same to the *JRPA* Applicant and respondents; and
e. A direction by the Honourable Chief Justice, pursuant to section 76 of the *CJA*, that the Registrar comply with her duties (by law), pursuant to 68.05(2) of the *Civil Rules*[2], and provide the parties with a "Notice of Listing For Hearing".

("d" and "e" together, the "**Staff Direction Requests**").

(collectively, the "**Respectful Requests**" or "**Requests**").

VOLUME #2(A): A note on section 76 of the *CJA*, "Direction of Court Staff"

20. For ease of reference, Section 76 of the *CJA* states:

> 76 (1) In matters that are assigned **by law**[3] to the judiciary, registrars, court clerks, court reporters, interpreters and other court staff shall act at the direction of the chief justice of the court. 2006, c. 21, Sched. A, s. 14.

21. The following outlines the facts material to the ***JRPA* Application** and the LAT Appeal as it relates to the various requests herein. Painstaking detail is required because of the Tribunal's failure to comply with section 10 of the *JRPA* and to fill the lacunas creates by that intentional and egregious statutory non-compliance by the Tribunal. These submissions are provided in support of the **Requests** as a means of ensuring compliance and on the continued basis of urgency. The further details of the below are bookmarked and hyperlinked in the Applicant's oral compendium and oral outline that shall follow.

VOLUME #3: FACTS

22. The underlying facts in this ***JRPA* Application** are contained within the record of proceeding with reference to the filed documents such as the ***JRPA* Application**, Factum, Application Record, and Affidavit #2.

23. The Ontario Superior Court of Justice Guide to Judicial Review in Divisional Court, effective by its metadata which states, "Scarciolla, Claudia (JUD)" (author) and 11/24/22 (date) (the "*JRPA* Guide") which states [emphasis it the Applicant's]:

> "After you have brought an application for judicial review, you will receive an email to register for CaseLines and upload your materials. There is no fee to use CaseLines."

24. The ***JRPA* Applicant** tendered his ***JRPA* Application** and paid the requisite fees on November 15, 2024.
    a. After receipt of the issued ***JRPA* Application**, from the Registrar, with thanks, the ***JRPA* Applicant** did not receive an invitation to Case Center.

25. The ***JRPA* Applicant** delivered[4] (served) and filed his **Factum**[5] on December 10, 2024.

26. The ***JRPA* Applicant** delivered (served) and filed his **Application Record** on December 12, 2024;

27. The ***JRPA* Applicant** filed and paid for the Certificate of Perfection on December 13, 2024;

28. The ***JRPA* Applicant** also filed the requisite affidavit of service thereafter;

29. The ***JRPA* Applicant** received confirmation of his filing thereafter;

30. The ***JRPA* Applicant**, based on his review of what has been received, has not received any mail or email of the Form 68(B) which was required to be delivered to the parties after the ***JRPA* Applicant** had filed and paid for the Certificate Of Perfection with an approximate date of the hearing. Based upon a reasonable interpretation of the relevant Civil Rule, which is 68.05(2) (see: (2) When the certificate of perfection has been filed, the registrar shall place the application on a list for hearing and give notice of listing for hearing (Form 68B) by mail to the parties and the other persons named in the certificate of perfection. R.R.O. 1990, Reg. 194, r. 68.05 (2).”), the Registrar was required to place the Applicant’s ***JRPA* Application** on a list for hearing and give notice of listing for hearing on or around Tuesday, December 17, 2024.

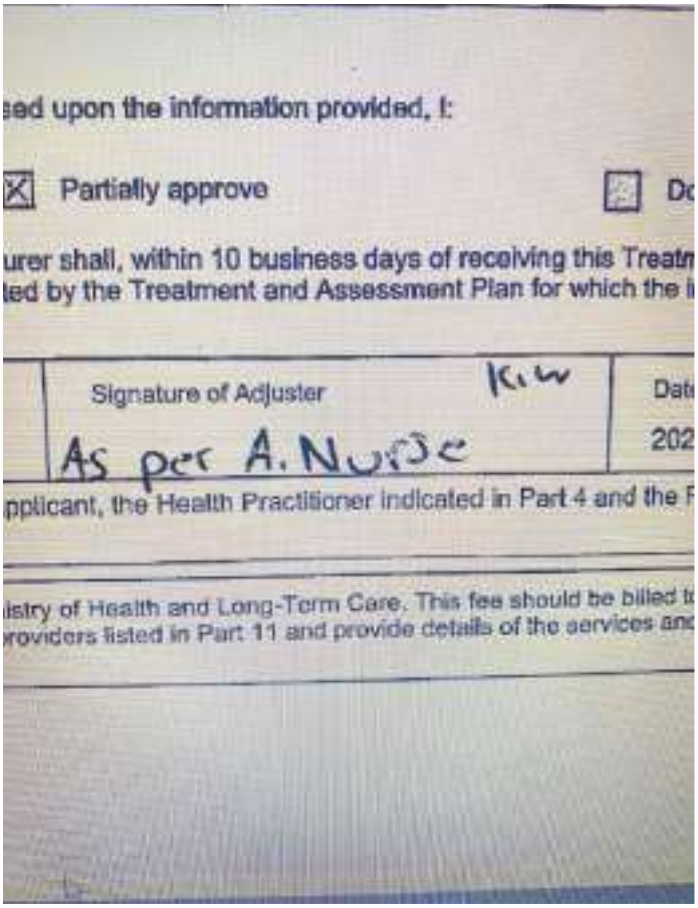
31. Despite filing his requisition #1 on December 24, 2024 (see: **Confirmation number 2787308**) requesting and requiring the Registrar to comply with her duties, there is currently no evidence that any such steps have been taken in this regard. Moreover, the ***JRPA* Applicant**, by usage of said service, was entitled to have any filing processed within five business days, which may be accepted or rejected. Five business days from December 24, 2024, was January 2, 2025.

32. Relevant to this Recusal Request and Nullification Request, on June 28, 2024, in relation to the Applicant’s NOM #6 and NOM #9, the Tribunal dismissed the Applicant’s COI motion and Mr. Andrew Papadimtripoulos (the “**Epstein Cole Client**”) remained as a representative of SNIC. The timing could not be more important because on June 20, 2024, the Tribunal granted the Applicant’s NOM #8 which removed the Fictitious Respondent (TDGIC) as the sole respondent party.

33. 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).

VOLUME #3(A): THE FORTUITOUS DISCOVERY

34. The fortuitous discovery which merely solidified the Applicant’s uncontroverted evidence was the finding of an anniversary card penned to his ex wife presumably in 2015 and 2016 under the bed where the Applicant slept and where Mr. Papadimitropoulos used to reside. The evidence remains uncontroverted in the record of proceeding;



sed upon the information provided, I:

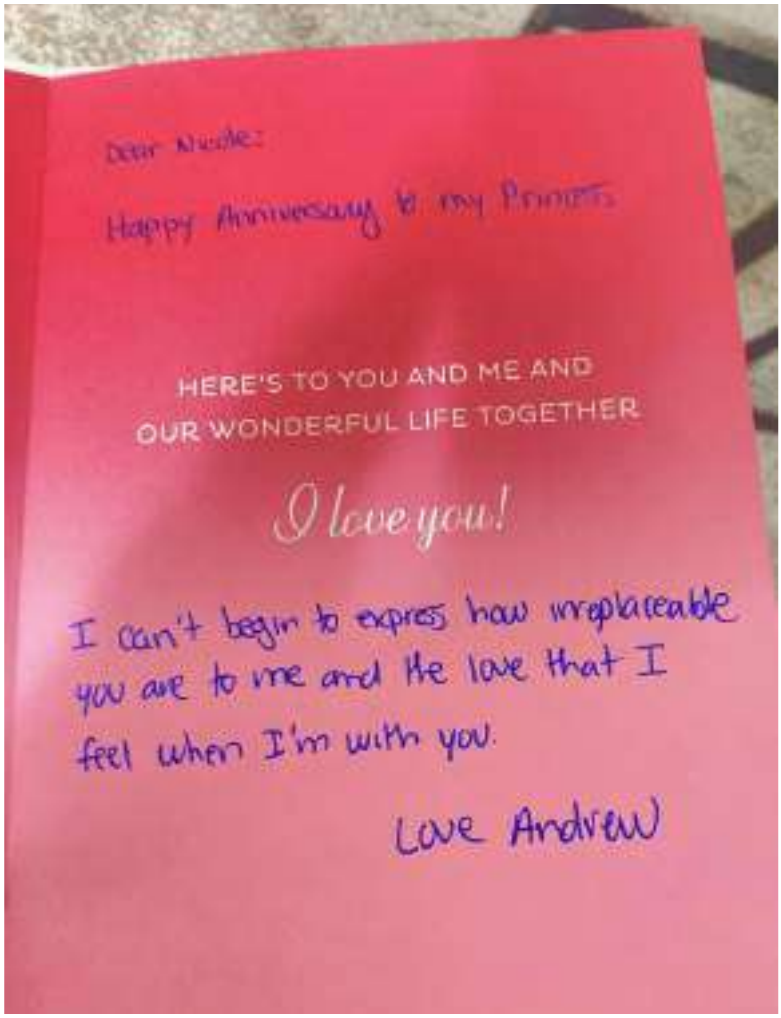
☒ Partially approve ☐ Do

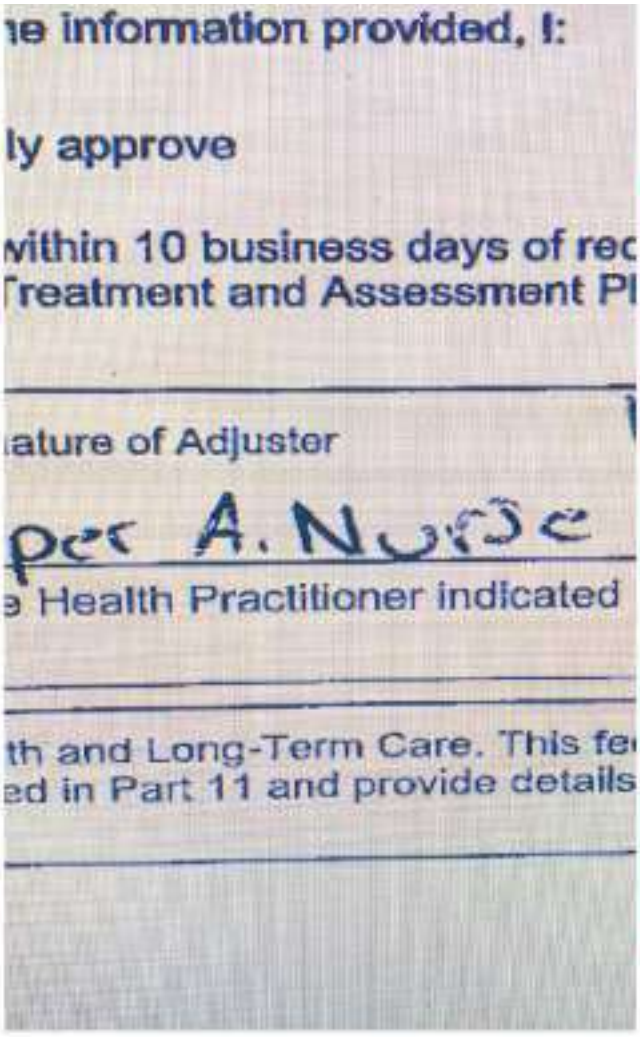
urer shall, within 10 business days of receiving this Treatm
ted by the Treatment and Assessment Plan for which the i

Signature of Adjuster	Date
As per A. Nurse KW	202

pplicant, the Health Practitioner indicated in Part 4 and the F

istry of Health and Long-Term Care. This fee should be billed t
roviders listed in Part 11 and provide details of the services and


Dear Nicole:
Happy Anniversary to my Parents
HERE'S TO YOU AND ME AND
OUR WONDERFUL LIFE TOGETHER
I love you!
I can't begin to express how irreplaceable
you are to me and the love that I
feel when I'm with you.
Love Andrew



(see: Affidavit #3, Exhibit "A", pages 274 to 279, which was affidavit of the Applicant on September 19, 2024,

35. No handwriting expert was required with that glaring obvious similarities.

36. The backdrop to this Forged Signature of an adjuster with SNIC is that the cover letter therein (not a public interest issue per se) confirmed and represented that SNIC had approved the sum of approximately $2080 in medical and rehab benefits ($1995 +$85.87). However, it never issued a cheque for the same to the Applicant's relevant health practitioners. The only reasonable inference is that SNIC did not want to take further steps in affirmation of the fraud, forgery, false document and uttering of a false document. Does that it make it lawful? The question answer itself.

VOLUME #3(B): NO ONE HAS MORE TO LOSE THAN MR. ANDREW PAPADIMITROPOULOS

37. It is the very exhaustion of each and every avenue that has karmically come to save this Applicant at the most fortuitous of times. The dismissal of his NOM #6 and NOM #9 (which was repurposed and filed after the nullity case conference and the change of the style of cause) is what kept Mr. Andrew

Papadimitropoulos as a representative of SNIC from his post in Markham for "TD Insurance" but now has caused a further light to be shined on his misconduct whilst being a client of Epstein Cole and at the very least a continued address for notices within a separation agreement.

VOLUME #5: ISSUES

38. The Applicant frames the general legal issues as follows:

    b. Is there a ROAB involving the Madam Justice Shore in light of her being a partner at Epstein Cole LLP at the time when Mr. Andrew Papadimtriopoulos retained Epstein Cole LLP along with the admission of law by counsel of record in this *JRPA* Proceeding to the three distinct insurance companies that Mr. Andrew Papadimitropoulos could not be involved in the Applicant's SABS Claim and LAT Appeal by his contractually agreed requirement that he not have any indirect or direct contact Ms. Nicole Artopoulos (spouse of the Applicant at material times) (see: Oral Compendium, page 66)?
    c. Pursuant to the common law in Canada that a RAOB cannot be remedied, what order must be granted in relation to the Shore J. Case Management Appearance Requirement?
    d. Pursuant to the *Civil Rules* and the common law requirement that justice must not just be done but seen to be done, what steps should and must the Associate Justice take after the Nullification Request is granted?
    e. In light of the delays experienced by the *JRPA* Applicant and the public interest along with the continued urgency of the Applicant's ***JRPA* Application**, what directions must the Chief Justice take as per section 76 of the *CJA*?

VOLUME #6: LEGAL BASES: RELATING TO THE LICENSEES AND CAST OF CHARACTERS BELOW

Volume #6(A): Law Society Act

39. To fully elucidate and outline the underlying conflict of interest and, bluntly, fraudulent conduct of one Mr. Andrew Papadimtriopoulos in executing documents for adjusters but in their name of "as per" (see: As per A. Nurse") (by way of the fortuitous discovery (see: Affidavit #3 herein), the underlying legal bases involving the non-licensee, Mr. Karat, acting contrary to the *LSA* and the LSO *By-Law*s is required.

40. Moreover, there is ostensibly some persistent discord between the decisions of Vice Chair McGee and Vice Chair Maedel in Dankha and Mosa respectively and the decisions of Vice Chair Morrissette and Vice Chair Lake (see: NOM #5 and reconsideration decision of Vice Chair Logan). As this Court would have seen had the Tribunal complied with its statutory obligation under the *JRPA*, the Applicant had to get most "creative" and "lucky" (see: the "one and the same" misrepresentation by Mr. Nieuwland at the May 2, 2024, nullity case conference) to have the Tribunal to comply with the law (which is completely antithetical to the consumer protection nature of the statutory scheme of the Insurance Act, SABS, Reg 283) to obtain the orders that he did in his NOM #8 (nota bene: which changed the style of cause while removing a party and adding a party i.e. the granting of the same which is interlocutory in nature whereas the refusal of the same is a final order and final decision):

41. For clarity as to the Applicant's positions regarding some of the other decision makers at the quasi-judicial tribunal known as "LAT" like Vice Chair McGee, Vice Chair Maedel and some others, they are clearly very articulate and have high legal acumen. The decisions of Vice Chair McGee in Dankha was yet another beautifully written and analytical precise decision wherein she ensured that the Tribunal did not

condone the breaches of the *LSA* and LSO *By-Laws* by a paralegal engaging in the practice of law (not provision of legal services)

42. 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.

43. Ms. Watson, a lawyer licensee in good standing with the LSO, made the following arguments which were all rejected by Vice Chair McGee:
    a. Mr. Grabar submitted documents under the advisement of Mr. Faletta (a now suspended lawyer);
    b. Mr. Faletta oversaw Grabar's handling of the file; and
    c. A new lawyer (Watson) had recently took carriage of the file.

44. Mr. Karat was and is on far worse grounds that Mr. Grabar as Mr. Grabar was a licensed paralegal.

VOLUME #6(A)(I): LSA, SECTIONS 1(5) AND (6)

45. 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*)

46. 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*).

VOLUME #6(A)(II): SECTION 1(7) OF THE LSA: REPRESENTATION IN A PROCEEDING

47. 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")

48. 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.

49. "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*").

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

VOLUME #6(B): THE "ADR REPRESENTATIVE" [NOT AN "OFFICER"]: KARAT – CONDUCT SOLELY IN RELATION TO SNIC

51. Karat is a NON-licensee and unlicensed representative of SNIC in this **LAT Proceeding** before an adjudicative body (LAT/AABS) when measured against the *LSA* and its *By-Law*s. 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

52. 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 Mr. Papadimitropoulos) affiliates with a non-licensee, he remained exclusively liable for his professional practice when so affiliating. The Conflicted Lawyer (Mr. Papadimtriopoulos) has also acted for "TD Insurance Meloche Monnex" in *Mensah* (see: 2022 CanLII 452) and 18-00161 v. SNIC, 2019 CanLII 9628.

53. Notably, the Conflicted Lawyer (Mr. Papadimtriopoulos) 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.

54. 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 **LAT Proceeding**.

55. 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.

56. 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)).

57. 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). **Mr. Karat** regularly confirmed by that auto-reply that is not authorized for **SNIC** (but for Primmum, TD Home & Auto, and ***NON-SABS INSURER***).

Volume #6(C): 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[6], 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. 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 The **Appellant** also urged Mr. **Nieuwland** provide an affidavit if Ms. Moraes was his legal assistant. **Nieuwland** did not respond to the request

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

62. While, again, it matters not of the underlying facts and minutia of the relationships per se and the **EPSTEIN COLE** Client's involvement in representing SNIC, by reference to the As per A. Nurse signature and beyond as the Tribunal found that Mr. Andrew Papadimitropoulos was fully entitled to remain as a representative in the LAT Appeal, the Applicant provides the same primer no the LSO *By-Law*s in relation to the cast of characters. Put another way, the *JRPA* Applicant provides the same as per each case being determined on its own facts and out of abundance of caution.

63. 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 **LAT 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.

64. 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 (nota bene: **SNIC**'s head office is in Montreal, Quebec); and
    b. Licensee: includes a permitted group of licensees

65. "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.

66. The *JRPA* Applicant now copies and pastes from his speaking notes, filed with the Tribunal and later appended to an affidavit to meet the definition of record to be included in a record of proceeding under section 20 of the *SPPA*, as follows:

125. 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 Mr. Papadimitropoulos 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.
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. The Mr. Papadimitropoulos meets the definition of an "officer" under the Insurance Act by his title of "Consequence Management".

133. As of January 2024, the Mr. Papadimitropoulos 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 (Mr. Papadimtriopoulos) and Karat were joining would have met the definition of "regular basis".

134. While the Conflicted Lawyer (Mr. Papadimtriopoulos) 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 (Mr. Papadimtropoulos)) 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 (Mr. Papadimtropoulos) could not have his name (publicly associated) with this TD Claim #3 and this **LAT Proceeding**. He could not covertly have be involved in the "handling" of TD Claim #3 and this **LAT 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 **LAT 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 (Mr.Papadimtropoulos).

67. While Mr. Karat and Mr. Nieuwland had different clients for nearly six months and at the time of the case conference (with a bit of irony herein), SNIC in filing the SNIC Response had to act through an authorized representative or be directed by a "direct mind" – however clandestine and secret it may have been.

68. **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"). However, the *LSA* prohibited Mr. Karat from "signing" the SNIC Response as the sole representative at the time.

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

70. 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*). While the **Mr. Papadimitropoulos** is not a "trustee" or "director" of **SNIC**, he does hold himself out as a "manager" and involved in "consequence management". **Mr. Papadimitropoulos** would meet the requirements of a licensee, officer and manager of **SNIC** at **SNIC Markham**. 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 Mr. Papadimitropoulos for the particulars in affidavit evidence previously which are uncontroverted. 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.

71. Even more compelling was that Mr. Karat signed the Purported SNIC Response without any reference to Nieuwland, and then served the Appellant (as defined in the LAT Appeal) 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. The author of the cover letter was "TD Insurance Meloche Monnex" with Security National Insurance Company as the return address albeit allegedly in Markham, Ontario.

VOLUME #6(D): KAISER

72. While the Divorced Husband Conflicted Lawyer (Mr. Papadimtriopoulos) is NOT the declared tribunal advocate for SNIC and not declared herein at the *JRPA* Proceeding, 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). It does not matter if the individual, admittedly in irreconcilable conflict of interest, is the "tribunal or court" advocate as found by the ONSC in Talisman. There is codification of the same under section 1(7) of the *LSA*.

VOLUME #6(E): PUHL, TALISMAN, AND YELLOW CEDAR

73. 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*).

74. 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

VOLUME #6(F): SEMINAL POINT – COI COMING TO PASS FOR JUSTICE SHORE AS A RESULT OF THE MISCONDUCT, MISCHIEF AND FRAUD OF MR. PAPADIMITROPOULOS

75. To belabour the point, the decision of the Tribunal dismissing the Applicant's COI Motion allowed Mr. Papadimitropoulos to remain as a representative whether or not he was in the forefront or back-office, declared or not. However, the difference now is that none of the tribunal decision makers were his counsel in a matrimonial litigation spanning some three years and ending in a divorce decree, and then issuing decisions involving him. However, that COI has come to pass on or around January 8, 2024.

Volume #6(G): Martin – the administration of justice

76. 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 individual – in this matter being a justice - is necessary for the proper administration of justice (see: *MacDonald Estate v. Martin*, 1990 CanLII 32 at paragraph 47).

77. The expression "substantial risk" in the definition of "conflict of interest" describes the *likelihood* of impairment as opposed to nature and severity. substantial risk is one that is significant and plausible EVEN IF it is NOT certain or even probably that it will occur. There must be more than a "mere possibility" that impairment will occur. Ergo, not a "mere possibility" but a "possibility".

VOLUME #6(F): DUTIES TO THIRD PERSONS MATTER UNDER THE LSO BY-LAWS AND RULES OF PROFESSIONAL CONDUCT

78. Moreover, the *ROPC*, section 3.4 does not solely relate to whether the **Conflicted Lawyer (Mr. Papadimtropoulos)** 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".

79. 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*

80. 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 #6(G): FAMILY LAW AND FAMILY LAW FIRMS INVOKE DIFFERENT PRINCIPLES

84. 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."

82. It is most fitting to note there are ongoing obligations arising from a "family dispute" between the Divorced Husband Conflicted Lawyer (Mr. Papadimtriopoulos) and the Individual Policyholder that are in perpetuity.

VOLUME #7: THE LEGAL BASES RELATING TO A REASONABLE APPREHENSION OF A BIAS ("RAOB") INVOLVING A JUSTICE

VOLUME #7(A): THE TEST FOR RAOB

83. The test for a reasonable apprehension of bias is fairly straight forward. It was first articulated by Supreme Court of Canada in Committee for Justice and Liberty v. National Energy Board, as follows:

> ". . . what would an informed person, viewing the matter realistically and practically — and having thought the matter through — conclude. Would he think that it is more likely than not that [the decision-maker], whether consciously or unconsciously, would not decide fairly."

84. This test — what would a reasonable, informed person think — has consistently been endorsed and repeated by the Supreme Court of Canada, most recently in *Yukon Francophone School Board, Education Area #23 v. Yukon* (*Attorney General).*

85. As such, the possibility of bias is not assessed from the perspective of the reviewing judge or the litigants themselves. Rather, the assessment of bias must be holistic and contextual, requiring "a careful and thorough examination of the proceeding", 6 to determine what a reasonable, neutral observer would see. The court reviews the ***FULL RECORD*** in its entirety "to determine the cumulative effect of any transgressions or improprieties".

86. By the Applicant being deprived of his right to upload his filed documents into Case Center, contrary to the explicit language in the JR Divisional Court Guide, it is unclear if Justice Shore had access to the Applicant's Filed Documents which an Originating Process, Factum, Application Record, Affidavit #1 and #2, and others.

VOLUME #7(B): POTENTIAL GROUNDS FOR BIAS

87. There are six potential grounds for bias by which the impartiality of judges and administrative decision-makers can be brought into question under Canadian law.

88. This typology has been adapted from the categories formulated by Bryden, Philip, and Jula Hughes. "Legal Principles Governing the Disqualification of Judges." Available at SSRN 2473557 (2014) ["*Bryden & Phillips, Legal Principles of Disqualification*"].

a. Pecuniary or Personal Interest;

b. Personal Relationships;
c. **Past Associations** with Litigants or their Representatives; and
d. Prior judicial involvement with litigants.

89. There is no dispute that pursuant to the *LSA*, as a result of the substantial amendments in 2006 pursuant to the *Access To Justice Act, 2006*, that a representative need not be counsel of record. However, as per the record of proceeding in the LAT Appeal, pursuant to the contents required by the *SPPA*, section 20, the decision that allowed Mr. Papadimitropoulos remain as a binding one herein. If not a COI then, then certainly a COI came to pass now.

VOLUME #7(C): RECUSAL PROCEDURE

90. For example, in *Benedict v. Ontario* the provincial Crown moved to disqualify the motion judge on a reasonable apprehension of bias, as the motions judge was a plaintiff in an ongoing wrongful dismissal action against the Crown in a case similar to the employment-related claim before her. The Crown appealed after the judge refused to recuse herself. The Ontario Court of Appeal disqualified the judge, holding that any decision she reached which was unfavourable to the Crown could be perceived as advancing or vindicating her own claim.

VOLUME #7(D): PERSONAL RELATIONSHIPS

91. This class of bias relates to situations where the adjudicator has a sufficiently close relationship with a person involved in the proceeding (e.g. witnesses, parties, counsel, etc.) that renders him or her incapable or potentially incapable of judging impartially. In these instances, the impartiality can be in the form of favouritism[7] or personal animus[8] depending on the history of the relationship.[9]

92. Three considerations are important here: (1) whether it is a current or a previous relationship (existing relationship give rise to greater apprehension of bias); (2) The nature of the relationship (i.e. friendship, family, professional, or business); and (3) The depth of the relationship (i.e. cordial, formal, social, intimate). [10]

VOLUME #7(E): PERSONAL RELATIONSHIPS WITH LITIGANTS AND THEIR REPRESENTATIVES

93. Judges often disqualify themselves where the matter before them involves former clients or law partners.

94. The SCC found in its seminal case of *Weykaum* Indian Bank at paragraph 65:

> "Second, when parties say that there was no actual bias on the part of the judge, they may be conceding that the judge was acting in good faith, and was not consciously relying on inappropriate preconceptions, but was nevertheless unconsciously biased. In R. v. Gough, [1993] A.C. 646 (H.L.), at p. 665, quoting Devlin L.J. in The Queen v. Barnsley Licensing Justices, [1960] 2 Q.B. 167 (C.A.), Lord Goff reminded us that:
>
> Bias is or may be an unconscious thing and a man may honestly say that he was not actually biased and did not allow his interest to affect his mind, although, nevertheless, he may have allowed it unconsciously to do so. The matter must be determined upon the probabilities to be inferred from the circumstances in which the justices sit."

95. Put another way, is it more likely than not that it can inferred, from an objective person's perspective, that Madam Justice Shore was not actually biased and did not allow her interest as being a partner of the law firm of Epstein Cole LLP during the time of a firm's representation of Mr. Papadimitropoulos but nonetheless the appearance of mischief and misconduct is one that this ONSC (Divisional Court) must distance itself from an appearance standpoint.

96. What would an informed person, viewing the matter realistically and practically – and having thought the matter through – conclude? Would this person think that it is more likely than not that Binnie J., whether consciously or unconsciously, did not decide fairly?

97. There are no textbook instances.

98. Whether the facts, as established, point to financial or personal interest of the decision-maker; present or past link with a party, counsel or judge; earlier participation or knowledge of the litigation; or expression of views and activities, they must be addressed carefully in light of the entire context. There are no shortcuts.[11]

99. The fact that a judge would have recused himself or herself ex ante cannot be taken to be determinative of a reasonable apprehension of bias ex post.[12]

100. The following statement of Laskin C.J., in *Committee for Justice and Liberty v. National Energy Board*, *supra*, at p. 388:

> "Lawyers who have been appointed to the Bench have been known to refrain from sitting on cases involving former clients, even where they have not had any part in the case, until a reasonable period of time has passed. *A fortiori*, they would not sit in any case in which they played any part at any stage of the case. This would apply, for example, even if they had drawn up or had a hand in the statement of claim or statement of defence and nothing else (see: paragraph 80 of *Weykaum*).

101. While commending Madam Justice Shore for being ready, willing and able, she (and this Court) must live by the very representations that she made to the Judicial Advisory Committee for it to rely upon in determining her high level qualification to become a justice and ensure not only the impartiality of her actions but the *appearance of the same*.

102. It is not the grounds for automatic disqualification but it serves as a strong evidentiary foundation. It suggests that a reasonable and right-minded person would likely view unfavourably the fact that the judge acted as counsel in a case over which he or she is presiding, and could take this fact as the foundation of a reasonable apprehension of bias (see: paragraph 81 of *Weykaum*).

VOLUME #7(F): GOVERNMENT PRACTICE IS DIFFERENT THAN PRIVATE PRACTICE

103. Furthermore, in assessing the potential for bias arising from a judge's earlier activities as counsel, the reasonable person would have to take into account the characteristics of legal practice within the Department of Justice, as compared to private practice in a law firm. See the *Canadian Judicial Council's Ethical Principles for Judges*, supra, at p. 47.

VOLUME #7(G): JUDGES' VOLUNTARY RECUSAL

104. In Canada, the vast majority of recusal decisions are made by judges on their own motion. Judges are under an ethical and legal obligation to recuse themselves, if they believe they will be unable to judge impartially. In carrying out this responsibility, a judge is not required to consul with any other person, including with his or her Chief Justice.

105. If a judge is aware of any relationship or personal interest that raises a reasonable apprehension of bias, it is generally desirable that disclosure is made in advance of a hearing, so that the case may be reassigned.

VOLUME #7(H): COURTS OF JUSTICE ACT: REASSIGNMENT

106. Under the Ontario *Courts of Justice Act* (s. 75(1)(3)), it is the Chief Justice of a court or one of the Associate Chief Justices who is responsible for the assignment or reassignment of cases. However, pursuant to section 77.04(1), the case management conference was required to be in front of the **same judge** who self-initiated (however coincidentally or unlikely, probabilistically speaking, that may seem) the same. As such, said Case Management Attendance Requirement must be nullified as per the Nullification Request. It is void and void *ab initio* not merely voidable.

107. In the alternative, it must be adjourned generally and indefinitely while all other duties and obligations of not only the Applicant but the respondents, and, where applicable, the staff of the ONSC (Divisional Court) must be complied with forthwith. There is no requirement of a case conference to be held in any proceeding let alone a judicial review proceeding which are to be summary in nature.

VOLUME #7(I): NO UNIFORM PRACTICE BUT BEST GUIDANCE: "SEEK SUBMISSIONS"

108. More obviously, the CJC notes that judges should not recuse themselves where the potential conflict of interest is "trifling" or unlikely to raise plausible basis for disqualification. However, where the potential for disqualification is arguable, or when an unexpected issue arises shortly before or during the proceeding, the judge is advised to make disclosure and to seek submissions from counsel.

VOLUME #7(J): NO UNIFORM PRACTICE BUT BEST GUIDANCE: "OBJECT PROMPTLY"

109. The Supreme Court of Canada affirmed in *Canada (Human Rights Commission) v. Taylor*, that where a party reasonably apprehensive of bias fails to allege a violation of natural justice at "the earliest practicable opportunity", there is an implied waiver of any future right to complain about bias. Cartwright J. put the rule as follows, by way of dicta, in delivering the Supreme Court judgment in *Ghirardosi v. Minister of Highways for British Columbia*:

> "There is no doubt that, generally speaking, an award will not be set aside if the circumstances alleged to disqualify an arbitrator were known to both parties before the arbitration commenced and they proceeded without objection.

140. Where both criteria are established, the reviewing court will often look to the failure to object or raise with suspicion, indicative of tactic to hold an objection in reserve in the event of an unfavourable ruling. This is especially the case where allegations of bias are raised on appeal at first instance. For instance, in *Eckervogt v. British Columbia (Minister of Employment and Investment)*, the Court of Appeal noted that it is "most unsatisfactory" for the court to hear an allegation of bias in the first instance:

> "I do not think it is proper for a party to hold in reserve a ground of disqualification for use only if the outcome turns out badly. Bias allegations have serious implications for the reputation of the tribunal and in fairness they should be made directly and promptly, not held back as a tactic in the litigation. Such a tactic should, I think, carry the risk of a finding of waiver. Furthermore, the genuineness of the apprehension becomes suspect when it is not acted on right away.[emphasis added]."

111. Hence the critical importance to formally note objections in the record. The *JRPA* Applicant has been anything but "silent" but ensuring that he had objected, reserved his rights and promptly notified the ONSC Registrar.

VOLUME #7(J): NO UNIFORM PRACTICE BUT BEST GUIDANCE: MOTION OR REQUEST

112. ***Mullan and Boyle*** suggest that objections to an adjudicators presence should be made in writing, preferably by way of a formal motion to recuse, "or at the very least by an unambiguous request, and not just by way of general expressions of potential concern".

113. In the context of a "non-endorsement" or "non-order" by Justice Shore, the Applicant respectfully submits that a request, as opposed to a motion, is most appropriate considering the same. The Applicant, the "Requestor" herein, will provide a "record" so it can be stamped accordingly on the same or by way of separate document at the election of the Court.

114. In this manner, Rule 59.06 of the Civil Rules need not be addressed and it is unlikely it could be addressed on strict reading of the same but would have, hypothetically speaking but for the RAOB herein, by analogy under the Civil Rules.

VOLUME #8: CONCLUDING REMARKS WITH THANKS TO THIS COURT FOR DECIDING THE RESPECTFUL REQUESTS

VOLUME #8(A): MISUSE OF CONFIDENTIAL INFORMATION: NORMALLY NOT SUSCEPTIBLE TO PROOF (OR DISPROOF)

115. This principle, legal in nature, is cited for the purposes that the ***JRPA*** **Applicant** cannot prove or disprove what was shared in a privileged setting between **Epstein Cole LLP** and Mr. Andrew Papadimitropoulos. All that he can prove is that current counsel of record in this ***JRPA*** **Proceeding** admitted (but misrepresented) that Mr. Papadimtripoulos could not be involved in the LAT Appeal. If he could not be involved in any way in the LAT Appeal, then there is agreement between the Applicant and the respondent insurance companies that his legal relationships, caused by a separation and a final divorce decree in 2019, along with his continuing duties pursuant to contract to cease and desist in any form of direct (Ms. Nicole Artopoulos (the "Named Individual Insured" in the **Insurance Policy** (the very "insurance policy" cited

by VC Morrissette at paragraph 27 of the VCM Reasons (see: Oral Compendium, Tab 1, page 9) of indirect contact (which would be the Applicant)).

116. Litigation is not a "tea party". That being said, this Court's time need not be wasted in the minutia of the unlawful and, frankly, rather frightening conduct (from a mental health standpoint) that he engaged in by reference to affidavit #3 of the *JRPA* Applicant, made on January 8, 2025, by appending the very affidavits in the record of proceeding that he relied upon in support of his COI Motion.

117. It is now established on a balance of probabilities that **Karat** derived his assignment to this LAT Dispute for **SNIC** from the **Conflicted Lawyer (Mr. Papadimtriopoulos)**. 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.

118. With the benefit of hindsight, the Applicant's submissions in Spring 2024 were now somewhat prophetic:

> "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)."

119. It was prophetic because of the reference to 'future related proceedings" and it has come to roost yet again.

120. It is not in the Applicant's DNA or makeup to feel sorry for himself so nobody else needs to.

121. His primary concern is preventing this type of conduct from happening again (if systemic) to others who do not have the ability, determination, and/or skill to take on a collection of bullies.

122. To the extent that it is idiosyncratic to the *JRPA* Applicant, then it bolster the Applicant's respectful submission that the Recusal Request, Nullification Request, Adjournment Request, and Staff Direction Requests must be granted.

123. 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. Unfortunately, this Tribunal, unlike the sound reasons for decision by Vice Chair McGee in *Mansuri* (which is well known to this Court by way of subsequent judicial review), did not decide in accordance with the law at that time. However, it turned out to be to the detriment to the respondent insurance companies considering their failure to comply with filing (not 'exchanging of materials' whatever that means in fact or at law) deadline of the *Civil Rules*.

124. In fairness to the Tribunal, the Applicant did not have said evidence of the mischief with respect to the forger of the "As per A. Nurse" 'signature' (used only for reference and not in the legal sense or any admission of its validity). The Applicant framed the legal issues as follows:

> *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 **LAT Proceeding** and any Future Related LAT Proceedings of the Mr. Papadimitropoulos, 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?*

125. Simply put, since the record of proceeding is replete with only uncontroverted evidence of the Applicant regarding this rather fortuitous discovery (see: images above) for his self-interest and counter to that of the initial adjuster for SNIC and Mr. Andrew Papadimtriopoulos, Mr. Nieuwland's representations in defiance and response to the COI orders sought in NOM #6 and NOM #9 now bear heavily on Justice Shore recusing herself through no per se fault of her own but solely based on her former partnership status at **Epstein Cole LLP**. However, said law firm agreed to represent this "individual" and with that comes potential consequences that follow lawyers into retirement and into the bench. Simply put, the law firm cannot have it both ways where they accept funds for services and not have to bear the consequences (which is merely herein that Justice Shore cannot adjudicate this JRPA Proceeding in any fashion even at the triage or case management phase)

VOLUME #9: RECAP OF RELIEF SOUGHT

126. As opposed to making a public spectacle of the above with a reported decision, the Applicant sincerely trusts that this Honourable Court appreciates resolving the above issues with findings, orders or granting of the Requested Relief in the Respectful Requests on an expedited basis:

1. The Honourable Madam Justice Shore is disqualified from any further involvement in this *JRPA* Proceeding (the "**Disqualification Request**" or the "**Recusal Request**");
2. The Case Management Appearance Requirement is declared as void and void *ab initio* (not merely voidable) (the "**Nullification Request**");
3. A general and indefinite adjournment of the case conference pursuant to 77.04(1)(b) of the *Civil Rules* by the Associate Justice (the "**Adjournment Request**");
4. A direction by the Honourable Chief Justice, pursuant to section 76 of the *CJA*, that the Registrar shall accept all outstanding requisition filings and provide confirmation of the same to the *JRPA* Applicant and respondents; and
5. A direction by the Honourable Chief Justice, pursuant to section 76 of the *CJA*, that the Registrar comply with her duties (by law), pursuant to 68.05(2) of the *Civil Rules*[13], and provide the parties with a "Notice of Listing For Hearing".

("d" and "e" together, the "**Staff Direction Requests**").

(collectively, the "**Respectful Requests**" or "**Requests**").

127. In support of the Respectful Requests, the JRPA Applicant relies on the filed materials in the record of proceeding herein and those documents that the JRPA Applicant has tendered for filing which remain in "processing status" and/or are required to be issued or deemed filed by the ONSC Divisional Court Registrar with reference to Rule 4.08 and/or section 76 of the *CJA*.

128. All of which is respectfully submitted (with the filed affidavit #3 of the *JRPA* Applicant on January 8, 2025, as "materials" in support of the same) to the ONSC (Div. Ct.) (Chief Justice and Associate Chief Justice (where applicable above)) on Thursday, January 16, 2025:

Mr. Kevin A. McLean (B.A. J.D., CIM)

Appendices of the *JRPA* Applicant's Factum

APPENDIX #1

January 16, 2025

VIA EMAIL

URGENT – NOTICE

Court file number: Court File No. DC-24-00000718-00JR
Type of document: email (three outstanding requisitions)
Short title of proceeding: McLean v. TDHA et al
Party: Mr. Kevin A. McLean, self-represented, Applicant, e: mcleansettlement@gmail.com;

Re: confirmation of the correct or preferred procedure to address my nullification request of Justice Shore initiated case management appearance requirement (the "**Case Management Appearance Requirement**") (the "**Nullification Request**") (see: affidavit #3 herein)

Re #2: recusal request of Madam Justice Shore (the "**Recusal Request**")

Re #3: to the extent applicable – dependent on other factor – the assignment request or reassignment

Re #4: Materials to follow today

Dear Madam Registrar Clegg:

1. I write regarding the above. I remain of the view and position, with great respect, that Justice Shore must recuse herself and withdraw her self-initiated Case Management Appearance Requirement.

2. You will kindly recall that I kindly informed you that I would review the law with respect to the preferred procedure. In that vein, There is no uniform practice in Canada with regard to raising the allegation of bias or a reasonable apprehension of bias at trial. Thus, the exact procedure to be followed in Ontario is unsettled (see: Paul Perell, "The Disqualification of Judges and Judgments on the Grounds of Bias or Reasonable Apprehension of Bias" (2004), 29 The Advocates' Quarterly 102, at 114 [Perell, "The Disqualification of Judges"].

3. Pursuant to our Courts of Justice Act, section 75(1) is relevant:

> Powers re sittings and assignment of judicial duties
>
> 75 (1) The powers and duties of a judge who has authority to direct and supervise the sittings and the assignment of the judicial duties of his or her court include the following:
>
> 1. Determining the sittings of the court.
>
> 2. Assigning judges to the sittings.
>
> 3. Assigning cases and other judicial duties to individual judges

4. As such, my request will be directed to the Honourable Chief Justice of the ONSC The Honourable Geoffrey B. Morawetz Chief Justice of the Superior Court of Justic and The Honourable Faye E. McWatt.

5. As noted, I have already filed my affidavit #3 on January 8, 2025, in support (i.e. materials exchanged already in support but also filed) of my Nullification Request and Request.

6. As noted by our SCC in *Newfoundland Telephone Co. v. Newfoundland (Board of Commissioners of Public Utilities)*, 1992 CanLII 84 (SCC), the damage caused by the reasonable apprehension of bias ("RAOB") cannot be remedied by Justice Shore. The only solution is the withdrawal of her Case Management Appearance Requirement.

7. The materials shall follow in short order which will be in the nature of a request with reliance on affidavit #3.

8. In relation to The Honourable Madam Justice Shore, and which will be relied upon in my requests of this Honourable Court, and as a brief "sneak preview" to the main argument, I note the following and certainly agree with Justice Shore's representations to the federal courts judicial appointment committee [hyperlinked to the specific paragraph for ease of reference]:

> "Vital to the Canadian system is the impartiality of a judge. This is different than the system in the United States. In Canada, judicial independence is viewed as vital to fostering public confidence in the fairness and objectivity of the justice system. The Supreme Court of Canada has described judicial independence as "the cornerstone, a necessary prerequisite for judicial impartiality."
>
> The Honourable Sharon Shore of our ONSC also made a statement to the Judicial Advisory Committee[14] that this Applicant certainly agrees with as follows:
>
> Last, but not least, is integrity. I have always tried to conduct my personal and professional life with integrity. One of the lessons I learned from my mentors is that it takes a lifetime to build your reputation, and only minutes to destroy it.

9. I repeat and rely upon the previous supra in this email thread and explicitly repeat and rely upon section 76 of the *CJA*. I note the importance of the record of this proceeding being complete, accurate and up-to-date for a variety of purposes not limited to the requirement it be so for my requests.

10. Thank you in advance for drawing this email and my affidavit #3 to the attention of the Chief Justice of the ONSC and the Associate Justice of the ONSC with the proviso that my written argument for my above noted requests will follow today.

Endnotes

[1] https://www.canlii.org/en/commentary/doc/2015CanLIIDocs5022#!fragment//BQCwhgziBcwMYgK4DsDWszIQewE4BUBTADwBdoByCgSgBpltTCIBFRQ3AT0otokLC4EbDtyp8BQkAGU8pAELcASgFEAMioBqAQQByAYRW1SYAEbRS2ONWpA:~:text=Public,reality.

[2] 68.05(2) When the certificate of perfection has been filed, the registrar shall place the application on a list for hearing and give notice of listing for hearing (Form 68B) by mail to the parties and the other persons named in the certificate of perfection. R.R.O. 1990, Reg. 194, r. 68.05 (2).

[3] Ironically, the same language under section 5 of the SPPA that is at issue in the JRPA Proceeding

[4] "deliver" means serve and file with proof of service, and "delivery" has a corresponding meaning (see: Rule 1.03)
[5] "factum" includes a book of authorities, if one is required by rule 4.06.1 (see: Rule 1.03(1));
[6]These references are to the "hearing book" or "hearing record" at the time and are part of the "record of proceeding" which remains the obligation of the Tribunal to file the same forthwith.
[7]See G.W.L. Properties Ltd. v. W.R. Grace & Co. of Canada Ltd., 1992 CanLII 934 (BC CA). (There was no RAOB where brother of a pre-trial management judge was associated with the plaintiff's law firm in a major product liability case. The interlocutory nature of the judge's role, short period remaining until trial, and inconvenience of recusal were relevant factors).
[8]See Blanchette v. C.I.S. Ltd., [1973] SCR 833, 1973 CanLII 3 (SCC). (The trial judge sitting an insurance defence matter was disqualified for a RAOB as he had actively pursued claims against the defendant-insurer on behalf of members of his family
[9]Kligman, "Bias", supra note 17 at 1-6.
[10]Bryden & Phillips, Legal Principles of Disqualification", supra note 15 at 58-63.
[11]https://canlii.ca/t/51pj#par77
[12]https://canlii.ca/t/51pj#par78
[13]68.05(2) When the certificate of perfection has been filed, the registrar shall place the application on a list for hearing and give notice of listing for hearing (Form 68B) by mail to the parties and the other persons named in the certificate of perfection. R.R.O. 1990, Reg. 194, r. 68.05 (2).
[14]Under the new judicial application process introduced by the Minister of Justice on October 20, 2016, any interested and qualified Canadian lawyer or judge may apply for federal judicial appointment by completing a questionnaire. The questionnaires are then used by the Judicial Advisory Committees across Canada to review candidates and submit a list of "highly recommended" and "recommended" candidates for consideration by the Minister of Justice (see: https://www.canada.ca/en/department-justice/news/2018/12/the-honourable-sharon-shores-questionnaire.html)

TAB 8:

Court File No. DC-24-00000718-00JR
Applicant's Motion #2 (Motion in Writing; Request to Convert Motion into Motion for Judgment)

Court File No. DC-24-00000718-00JR

FORM 4D

Courts of Justice Act

AFFIDAVIT

ONTARIO SUPERIOR COURT OF JUSTICE (DIVISIONAL COURT)

BETWEEN:

KEVIN ALEXANDER MCLEAN

APPLICANT

- and -

TD HOME AND AUTO INSURANCE COMPANY, SECURITY NATIONAL INSURANCE COMPANY, TD GENERAL INSURANCE COMPANY, EXECUTIVE DIRECTOR, LICENCE APPEAL TRIBUNAL,
HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO, REPRESENTED BY EXECUTIVE CHAIR OF TRIBUNALS ONTARIO IN MR. SEAN WEIR, THE ATTORNEY GENERAL OF ONTARIO

RESPONDENTS

Affidavit #8[i] of Kevin A. McLean in this *JRPA* Proceeding

I, **Kevin Alexander McLean**, Disabled (B.A., J.D., CIM) of **Toronto**, **Ontario, SWEAR** THAT:

Volume #1: Sworn Under Oath; under the Penalty of Perjury; and Introduction

1. I am the individual *JRPA* Applicant herein and I swear, under the pains and penalties of perjury, the following facts to be true. Where I have stated or sworn information on my belief(s), I have cited the source of my belief(s) by references, citations, end-noting or otherwise. When I have used the expressions (including any permutations) of "in my view", "in my opinion", or "belief", I am not drawing or making any conclusion of law or swearing a conclusion of law but rather citing my position and opinions as a matter of fact.

2. I adopt the definitions from my served documents in this *JRPA* Proceeding and they have the same meaning therein as they do herein unless expressly noted otherwise.

3. I define, at times, Mr. Andrew Papadimitropoulos as the "**Interested Individual**" or "**Interested Person**".

4. I swear this affidavit in support of my second motion ("**Motion #2**" or "NOM #2") in this *JRPA* Proceeding. My Motion #2 will be seeking the relief in the COI Recusal Submissions (see: Affidavit #7, Exhibit "A", pages 6 to 33) and other relief contained in the Notice of Motion form (Form 37(A)) to be filed and paid for after my serving and filing of this Affidavit #8 on the respondents and **Interested Person**s.

5. My first motion ("**Motion #1**" or "**NOM #1**") in this *JRPA* Proceeding is my motion exclusively directed at relief to be obtained against the Tribunal discharging its statutory obligations in accordance with section 10 of the *JRPA* and section 20 of the *SPPA*.

6. I note that in relation to my Motion #1 that I am only seeking that the Tribunal file (not necessarily serve as per the language in section 10 of the *JRPA*) the record of proceeding from December 24, 2023, to September 12, 2024.

7. For ease of reference for the Tribunal, these are from "speaking notes" for Motion #1:

> "When notice of an application for judicial review of a decision made in the exercise or purported exercise of a statutory power of decision has been served on the person making the decision, such person shall *forthwith file* in the court for use *on the application* the record of the proceedings in which the decision was made: section 10 of the *JRPA*. When notice of an application for judicial review of a decision made in the purported exercise of a statutory power of decision which includes a decision of the committee is served on the person making the decision, that person is required by s.10 of the *Judicial Review Procedure Act*, to "forthwith" file the record of proceedings in which the decision was made: *Rew v Association of Professional Engineers of Ontario (Discipline Committee)*, 2016 ONSC 4043 (CanLII) ["*REW*"], https://canlii.ca/t/gs5t9 as per Dambrot, J. (orally) at paragraph 8;
>
> Any interlocutory orders made by the Tribunal would include the orders to the time the VCM Decision was made which was September 12, 2024: *Payne v. Ontario Human Rights Commission*, 2000 CanLII 5731 (ON CA), [2000] O.J. No. 2987, 136 O.A.C. 357 (C.A.) ["*Payne*"], at paragraphs 79 [the record of proceeding when the decision was made], paragraph 160, and paragraph 161. *Payne* was cited with approval by this ONSC Div. Ct. in the same year when the *JRPA* Application was made in Lachance: *Lachance v. Solicitor General of Ontario*, 2024 ONSC 975 (CanLII) as per Stewart, Myers, and Leiper JJ of the Divisional Court at paragraph 37 [copied by link to highlight as no hyperlink available on CanLII].

> In *Rol-Land Farms Limited*, Justice Swinton, Greer and Leitch of the ONSC Div. Ct. found that content that post-dated the decisions under review was not admissible (see: *UFCW Canada v. Rol-Land Farms Limited*, 2008 CanLII 6652 (ON SCDC), (see: https://canlii.ca/t/1vtm5) ("*Rol-Land Farms*") at paragraph 38[ii])
>
> Pursuant to s. 10 of the *JRPA*, since the VCM Decision was an exercise of a statutory power of decision [or the refusal of], she must, upon receipt of a judicial review application, file a record of proceedings: Endicott ONCA, paragraph 18. It is for use *on the application* which is the proceeding and not for select uses at select times: Endicott ONSC (as per Molloy, Lederer and Edwards JJ.), paragraph 20."

8. While I am aware of the law involving judicial reviews intended to be summary proceedings, I felt compelled to serve, pay for and file my Motion #1 in its current state so that I, *inter alia*, was not accused or prejudiced in the future by any allegation or finding that I did not object to the Tribunal's statutory non-compliance. In this regard, I again copy and paste from my 'draft speaking notes' for Motion #1 returnable on January 30, 2025, by teleconference:

> *"*In *Reflection Productions*, it was available to the applicant to bring a motion seeking production of documents it alleges were relied on by the decision-maker but are not contained in the record: see, for example *K.D. v. Peel Children's Aid Society*, 2017 ONSC 7392 (Div. Ct.) at paras. 16-17).

9. I remain of the belief that the Tribunal does not have a full and accurate record of the proceeding and it is unable, not unwilling per se to file the record of proceeding as it was from December 23, 2023, to September 13, 2024. I source my belief based upon Mr. Boyce provided his theories of the law, without citation to the statutory sections under the *JRPA* and SPPA, and providing a timeline of three to four weeks in his initial letter to myself and the ONSC Divisional Court and not being able to comply with the same.

Volume #2: Exhibits

Volume #2(A): Exhibit "A"

10. Attached hereto to this my affidavit and marked as **Exhibit "A"** are copies of documents which I found last evening of January 26, 2025, and this morning of January 27, 2025, which are denoted as follows with the corresponding pagination:

a. "***Consultation on Proposed Fraud Reporting Service Rule and Guidance***" issued by the FSRA on July 15, 2024, with a comment due date of October 15, 2024, under the ID 2024-008;
    i. Page count: 14 pages
        1. (see: pages 1 to 14);
b. "***TDI - Final - Feedback on FRS Guidance dated Oct 15 2024***" authored by Mr. Andrew Papadimitropoulos (see: **[2024-008] Andrew Papadimitropoulos - TD Insurance;** Attached is TD Insurance feedback on FRS Guidance TDI - Final - Feedback on FRS Guidance dated Oct 15 2024.pdf
    i. Page count: 3 pages
        1. (see: **Exhibit "A"**, pages 15 to 17);
c. Fraud Reporting Service by the Financial Services Regulatory Authority of Ontario, "Proposed Rule 2024 – 003" in the following FSRA class of insurance licence of Automobile Insurance – Fraud Reporting Service (the "**Proposed Rule**")
    i. Page count: 4 pages
        1. (see: **Exhibit "A"**, pages 18 to 21);
d. Automobile Insurance Fraud Reporting Guidance document, issued by the FSRA under identifier, "AU0140INT" (the "**Guidance Document**")
    i. Page count: 20 pages;
        1. (see: **Exhibit "A"**, pages 22 to 41);
e. Notice of Proposed rule under the *Financial Services Regulatory Authority of Ontario Act, 2016* issued by the FSRA ("**Proposed Rule Notice**"); and
    i. Page count: 12 pages
        1. (see: **Exhibit "A"**, pages 42 to 53).

11. I have alleged and sworn on belief, which is contained in the record of proceeding and some of my documents in my filed and served Application Record of December 12, 2024, that there are issues of *real unfairness* before the Tribunal and that, *inter alia*, that Mr. Papadimitropoulos was the individual who engaged in some of the impugned conduct like the 'As per A. Nurse' purported signature in the first OCF-18 (see: Affidavit #3 herein, Exhibit "A", page 199) that was tendered through HCAI on or around April 6, 2023. I have not received any evidence to the contrary. I challenge any of the three respondent insurance companies and any individual that were so involved to provide evidence to the contrary. I directly challenge Mr. Papadimitropoulos to swear evidence to the contrary.

12. Out of an abundance of caution and in light of Ms. Im and Mr. Boyce removing their business addresses and business name or employer names after my affidavit #2 was served on them and filed with the ONSC Divisional Court, I copy and paste as of today's date Mr. Papadimitropoulos' directory information[iii]:

> **"Assumed Name**
> Andrew Papadimitropoulos
> **Law Society Number**
> 58696I
> **Class of Licence Definitions**

Lawyer (L1)
Real Estate Insured †
No
Status Definitions
Practising Law - Employed
Business Name
TD Insurance
Business Address
101 Mcnabb StMarkham, OntarioL3R 4H8
Phone
416 983 5467 Ext.
Email Address
andrew.papadimitropoulos@tdinsurance.com
Trusteeships
None
Current Practice Restrictions
None
Current Regulatory Proceedings
None
Regulatory History
N"

13. While I appreciate that the FSRA Proposed Rule (defined supra) is not in effect as of today's date, I allege that there has been a situation of employee fraud at the various insurance companies including but not limited to: (i) TDHA; (ii) TDGIC; and (iii) SNIC. I have alleged with sworn evidence, on belief, contained in the record of proceeding, that Mr. Papadimitropoulos was involved in some of the internal employee fraud.

14. I believe that in relation to SNIC's Response, exclusively, on its face, completed, signed and filed by one Mr. David Karat, a non-licensee, Mr. Papadimitropoulos had a role in conduct that fell under the following at section 1(7)(1.) and (3.) of the Law Society Act:

> "Representation in a proceeding
>
> (7) Without limiting the generality of paragraph 3 of subsection (6), doing any of the following shall be considered to be representing a person in a proceeding:
>
> 1. Determining what documents to serve or file in relation to the proceeding, determining on or with whom to serve or file a document, or determining when, where or how to serve or file a document.

3. Engaging in any other conduct necessary to the conduct of the proceeding. 2006, c. 21, Sched. C, s. 2 (10)."

15. I have referenced some of the above noted issues in my Factum which was filed and served on December 10, 2024.

16. I believe that Mr. Papadimitropoulos remains in breach of the terms and provisions of the separation agreement (contract) that he and Ms. Nicole Artopoulos reached prior to their finalized and approved divorce decree. I have a copy of the divorce decree in storage. In relation to the first sentence in this paragraph, I believe that Mr. Papadimitropoulos was and is in breach of the "no direct and indirect contact provision" therein. I believe that I would fall under the "no indirect contact provision" which is why I believe and allege, and challenge Mr. Papadimitropoulos to swear evidence to the contrary, that he utilized the likes of the names of Ms. Alisha Anne-Nurse, Ms. Persaud and Mr. Karat without revealing or disclosing his involvement.

17. For consistency and accuracy purposes for the ONSC Divisional Court to assess the merits of my NOM #2, Ms. Nicole Artopoulos' legal counsel was Mr. Theodore Laan, barrister and solicitor of the LSO with the firm name at the time of "Laan Litigation"[iv].

18. I now copy and paste from the LSO directory the information relating to Mr. Ted Laan:

Assumed Name
Law Society Number
18492Q
Class of Licence **Definitions**
Lawyer (L1)
Real Estate Insured †
No
Status **Definitions**
In Private Practice
Business Name
Ted Roland Laan
Business Address
207-145 Wellington St WToronto, OntarioM5J 1H8
Phone
1 416 861 1071
Email Address
ted@lannlitigation.com
Trusteeships
None
Current Practice Restrictions
None
Current Regulatory Proceedings
None

Regulatory History
Yes
See Regulatory History Details

19. I note that the size of the firm of Epstein Cole LLP is, based upon my computation, some 30 lawyers. Based upon my review of the website, it appears to me that Epstein Cole LLP specializes in matrimonial and family law dispute resolution and litigation.

20. I provide the above noted fact when juxtaposing the facts involving a client of Epstein Cole LLP in Mr. Papadimitropoulos and the facts in *GWL Properties* wherein a case management judge had a brother at the then firm of Ladner Downs LLP in Vancouver, BC.

21. I have provided my intention to seek relief, informally and formally, that Madam Justice Shore recuse herself and/or the Associate Justice of the ONSC and/or the Chief Justice of the ONSC disqualify her from being involved in this *JRPA* Proceeding, since becoming aware of Madam Justice Shore's prior distinguished, in my view, legal career at Epstein Cole LLP.

22. I believe and will continue to request the consent of the respondents until my Motion #2 is heard or resolved in my favour based upon the case law that I cited in my COI Recusal Submissions but also my correspondence with the ONSC Divisional Court and respondents but also pursuant to section 71 of the CJA:

> "The administration of the courts shall be carried on so as to: (a) maintain the independence of the judiciary as a separate branch of government; (b) recognize the respective roles and responsibilities of the Attorney General and the judiciary in the administration of justice; (c) encourage public access to the courts and public confidence in the administration of justice; (d) further the provision of high-quality services to the public; and (e) promote the efficient use of public resources."

23. I wish to continue to make clear that I have not alleged, as I cannot prove a negative (i.e. a matter that is susceptible to proof or not susceptible to proof), that Madam Justice Shore is actually biased towards the respondent insurance companies and prejudiced towards me but that the appearance of impartiality is at the forefront of my Motion #2.

24. Based on the writing style in the above noted document attributed by the FSRA to the **Interested Individual**, I believe that he was responsible for what I have defined in my Factum and Application Record as the Spam Fax (Spring 2023) and the letter that one of my health practitioners received in August or September 2024 which were, in my view and based on memory in relation to the former, similar to each other. The

latter letter to which I refer was the one where I had delivered OCF-18's and invoices on my behalf or in relation to the services provided to me to TDHA and SNIC, along with any other insurance company that may have had carriage of my accident benefits file regarding the duty to respond and pay benefits. The response that I received was that no entity within TD Insurance had any record of my claim number with TD despite it being provided in each OCF-18 and invoice along with the cover letter therein.

25. I believe that the **Interested Individual** has much animus and malice towards me.

VOLUME #2(B): EXHIBIT "B":

26. I re-swear that I do not believe TD Insurance Staff Lawyers' representation to me and the Tribunal that Mr. Andrew Papadimitropoulos was never involved in my accident benefits claim. I note that said representation was tendered by Mr. Nieuwland in the Winter and Spring of 2024. I believe that he remains involved in any all aspects of the same and I continue to object to the same however clandestine or surreptitiously he has been, he is or intends to provides any form of representation to any of the three distinct insurance companies named as respondents in this *JRPA* Proceeding or otherwise.

27. I have not finished at this time the chart that outlines all of the justices of the ONSC (Toronto Region) and their previous affiliations, partnerships or associations prior to being appointed as justices of the ONSC. However, having completed some 88 of the 93 listed justices in the ONSC (Toronto Region), I cannot find any other justice that worked at the law firm of Epstein Cole LLP at the times denoted of 2017 and beyond.

28. Attached hereto to this my affidavit and marked as Exhibit "B" are copies of two sets or classes of documents which are particularized as follows:

a. Copies of images that I obtained from CAMH through a privacy request and now privacy complaint to the OIPC (ON) involving the theft of my property on Friday, October 25, 2024;
    i. Page count: 6 pages
        1. (see: Exhibit "B", pages 54 to 59); and
b. Copy of a printout or chart that I received from the TPL based on my second access request[v] made of it pursuant to my factual grounds that an individual had engaged in unauthorized collection, use, access and disclosure of my name, TPL library card[vi] (from the time after October 25, 2024 into January 2025);
    i. Page count: 3 pages
        1. (see: Exhibit "B", pages 60 to 62).

29. While I do not intend at this time to delve into all of the minutia of what transpired from October 25, 2024, to January 2025 involving the theft of my property and

subsequent and continued theft, impersonation, fraud, false pretenses et al, I will provide the evidence which I believe is currently relevant and/or material to this *JRPA* Proceeding and my Motion #2.

30. I swear that none of the activities but for one activity in the chart provided by the TPL to me were activities undertaken by myself. The sole activity undertaken by myself was the obtaining of a replacement library card despite not having any picture identification at the time in hard copy form as all of my identification, including my passport, were contained within the "backpack" or "laptop bag" that was stolen on October 25, 2024.

31. I received the above noted chart late last week and I was most appalled with further unauthorized activities of which I was unaware in substance and form. For example, while my primary laptop computer was stolen, as it was contained within the backpack, the unauthorized individual engaged in 'renting' or 'borrowing' a laptop on October 28, 2024 which was a Monday. He did so, as it has been confirmed to me for some time that I am looking for a male that is engaged in the impersonation of me, on the very day in which I was in the same branch at the TPL which was the Fort York branch. In conjunction with said unauthorized activity involving the 'borrowing of laptops in my name' with my library card, said individual also borrowed a library book later entitled "That Night in the Library" or words to that effect. Since that time of October 25, 2024, it was, is and remains a terribly traumatizing and debilitating experience at the hands of this individual.

32. With respect to the images (Exhibit "B", page 55 (albeit slightly dark therein due to the image at the top), one of the reasons, of which I now have many and further corroborating evidence (some of it hearsay per se) that "TD Insurance", including Mr. Papadimtriopoulos was involved in some of the above unauthorized activities, was that there is a black suitcase that was NOT taken on October 25, 2024. I had utilized said suitcase for a period of time before the theft on October 25, 2024, and it had a "TD Bank" logo or name tag on the same. On the day in question, I was in the washroom of the visitor area part of the hospital, known as CAMH, at 1025 Queen Street West, which has a park that is adjacent to the East of it known as the "TD Commons", for no more than five minutes. During that time of setting my backpack and black luggage suitcase or "carry on" (with the TD logo on the same), only my backpack, and all contents (including all electronic devices) were taken therein. I immediately reported the same to the security and then made an access request of CAMH.

33. The images appended to this my affidavit at Exhibit "B" are some of the images that I obtained in relation to my access request of CAMH.

34. In relation to the unauthorized borrowing of books from the Queen and Salter branch of the TPL in November 2024, I confirmed with the TPL that I had never attended said branch or knew of its existence. I believe that at the material time of November 2024 that Mr. Papadimitropoulos had resided at an apartment or condo unit that was

approximately three hundred metres from that branch. I believe the same based on information that Ms. Nicole Artopoulos had provided me at various time regarding his whereabouts and asking that I avoid that area when driving.

35. When referring to the residences in which I believe that Mr. Papadimitropoulos resided at, while not knowing if he had moved from that apartment building which is on the South side of Queen Street West, I am referring to the buildings situated where there is a Starbucks on the corner of Queen Street West and Carlaw Street.

36. In my view, the most disturbing of all of the unauthorized conduct was that after I had paid for, served and filed the Certificate of Perfection on December 13, 2024, there was further unauthorized conduct at seven p.m. on that Friday evening. The ONSC Divisional Court will be able to review the emails in the record of proceeding herein or at least by reference to the covering emails wherein Madam Registrar Ms. Clegg, with thanks, referred me to the online "Civil Claims Submissions Portal" to file and pay for my Certificate of Perfection.

37. I thank Registrar Ms. Clegg for her guidance in that regard and the correct manner to file at first instance such that the fees were paid prior to attempting to file at first instance through email.

38. In relation to the December 13, 2024, date, I note that it was one day after I had filed and served my Application Record which then only afforded the respondent insurance companies and the Tribunal 30 days to file any responsive factums and application records.

39. I have received or obtained further information involving December 13, 2024, and that it involved a male impersonating me at the Toronto Reference Library. I had been to the Toronto Reference Library (789 Yonge Street) but only for the purpose of delivering my fees for purposes of receiving access to the requested personal information and information (records as defined under *MFIPPA*).

40. I note that based upon my height and weight and that of Mr. Papadimitropoulos, we are similar in my view in height and weight. I have seen him before, based on information and belief, and Ms. Nicole Artopoulos confirming that we had seen him while driving in public from certain time periods of 2019 to 2024.

41. I was going to provide an image of Mr. Papadimitropoulos and an image of myself for comparison purposes but his LinkedIn profile does not appear to me to be active at this time. However, I can confirm for the ONSC Divisional Court that in order for an individual to have obtained a third library card, albeit under false pretenses, that said individual was required to provide identification. My identification was contained in my wallet which was in the aforementioned backpack which was stolen on October 25, 2024.

42. In relation to my evidence about what I believe to the most disturbing conduct on December 13, 2024, the unauthorized individual also changed my phone number associated with my library card and account to that of a CBC reported known as Ms. Valeria Ouellet who specializes in investigative reporting involving fraud, fraud investigations, RCMP corruption, money laundering *et al*.

Volume #2(C): Madam Justice Shore

43. It is unclear to me as to how Madam Justice Shore was delegated, if at all, to provide the email that she did to presumably the Registrar that was then relayed to myself and the respondents on or around January 7, 2025. I, in my view, promptly objected to her compulsory requirement of an attendance at a case conference. Based upon my review of the *Rules of Civil Procedure*, the case conference was required to be before her. In that regard, I swore an affidavit, served and filed the same on an urgent basis by way of email in the email thread that was commenced by the Tribunal with its Notice of Appearance albeit to the incorrect email to me as a matter of my email address for service.

44. As such, I believe and will submit that the issue is now far more serious and the circumstances are more compelling that Madam Justice Shore cannot have any involvement in this *JRPA* Proceeding. I will be relying on the case of *GWL Properties* that I cited in my correspondence to the ONSC Divisional Court, the respondents and **Interested Person**.

VOLUME #3: JURAT

45. I swear this affidavit in support of my Motion #2 and the relief that will be sought therein. To the extent that any respondent and **Interested Person** opposes my relief in Motion #2, I will seek costs in accordance with the *CJA* and the Rules of Civil Procedure.

46. In light of the above, my position remains that this *JRPA* Proceeding is more urgent than previously and any delays to have the matter heard before the Divisional Court inclusive of any case conferences, whether before Madam Justice Shore or not, will likely lead to a failure of justice.

47. I will be seeking in my Motion #2 an order that Mr. Papadimitropoulos and Epstein Cole produce and provide to the Court *'in camera*' for its review a copy of the separation agreement between Ms. Nicole Artopoulos and Mr. Papadimitropoulos to assess the validity of the underlying evidence and facts, and relief sought in my Motion #2. I will be seeking leave or ancillary relief in relation to the same if the Court does not find that there is a reasonably perceived apprehension of bias, conflict of interest or lack of independence between Madam Justice Shore and the respondent

insurance companies by virtue of, *inter alia*, Mr. Papadimitropoulos being a client of Epstein Cole LLP.

48. I swear that I will provide any necessary or requested evidence regarding the above as it becomes known to me.

49. I challenge any of the respondent insurance companies including Mr. Papadimitropoulos to provide any evidence to the contrary involving any of my sworn evidence that relates to the above. To the extent that they do not, I will ask that this Court to draw an adverse inference against them (some or all) and disqualify Madam Justice Shore, not through her wrongdoing, but "theirs" and refusing to consent to the relief that a different justice provide a similar type email and manage a case conference (if applicable).

50. In repeating and relying upon my previous evidence from the LAT Appeal, I kindly refer the Divisional Court (Toronto Region) to the sworn evidence that I filed and served in the LAT Appeal, which is appended to my affidavit #3, wherein Mr. Papadimitropoulos was attending the courtyard of the condo corporation denoted in my address for service which required further intervention of legal counsel and contacting of the police at the time. I again swear that I am not a party to the separation agreement but to the extent that there are consequences for non-compliance by a party to that contract, I am providing a copy of my affidavit material to one Epstein Cole LLP and Laan Litigation for their receipt and advising of their respective clients.

51. I again ask that the Tribunal consent to the relief that I am seeking in my proposed Motion #2.

52. I seek the consent of the respondent insurance companies as well on the bases above in relation to my proposed Motion #2.

53. To the extent that I do not hear from either or both, I will proceed accordingly and seek the relief on what I submit is an urgent bases. I will move as expediently as possible in order to have my Motion #2 heard and decided. I confirm that I am not available on February 18, 2025, as I will be away from February 16, 2025, to early March 2025. I have asked the ONSC Divisional Court to provide alternate dates for a potential case conference before Madam Justice Shore should I not be successful with Motion #2 in its entirety. I reserve my rights in relation to the same and I do not agree that a case conference is necessary in accordance with the *CJA*, *Civil Rules* et al when measured against the current status and non-compliance by the respondents with the *Rules of Civil Procedure* (defined herein at times as the "*Civil Rules*").

54. I swear this **Affidavit #8** for no improper purpose and for the above purposes.

Sworn before me via videoconference in accordance with O. Reg. 431/20 at **Toronto, Ontario** on this 27th day of January 2025

Mr. Kevin A. McLean (B.A., J.D., CIM)

[i] Three affidavits have been my affidavits of service

[ii] [38] Thus, the content of volume 3 is not properly part of the record required to be filed pursuant to s. 10 of the *JPRA*, as it post-dates the decisions under review. Moreover, it is not relevant to the issue of reasonable apprehension of bias before this Court, as it responds to an issue of actual bias.

[iii] https://lso.ca/public-resources/finding-a-lawyer-or-paralegal/directory-search/member?MemberNumber=58696I

[iv] https://lso.ca/public-resources/finding-a-lawyer-or-paralegal/directory-search/member?MemberNumber=18492Q

[v] My first access request made of the TPL was when I learned in November 2024 that an individual had, while using my library card and library card number

[vi] While I later learned in receipt of this chart as of last week that the unauthorized individual had impersonated me on December 13, 2024 (the day after my filing and serving of the Application Record, which in turn put the respondents on the 30 day prescribed timeline to file responsive factums and application records pursuant to Rule 68 (nota bene: Rule 38.09 does not apply

THIS IS EXHIBIT "A" REFERRED TO IN THE
AFFIDAVIT OF Mr. Kevin A. McLean
AFFIRMED BEFORE ME, THIS 27th DAY
OF January 20 25

.....
...ER, ETC.

Vinh The Tran, Esq., LSUC #57761C
Lawyer, Notary, Oaths Commissioner
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vinhtranlaw@hotmail.com

FSRA Financial Services Regulatory Authority of Ontario

Consultation on Proposed Fraud Reporting Service Rule and Guidance

ID: 2024-008

Type: Rules
Sector: Auto Insurance
Status: Public comment closed
Date: July 15, 2024
Comment Due Date: October 15, 2024

Thank you for providing your feedback on FSRA's proposed Fraud Reporting Service Rule and Guidance .

The request for submissions is now closed.

We appreciate the comments and questions received to date and look forward to sharing with you the final Rule. Stay up to date on FSRA's Rules on our newsroom. Follow us on LinkedIn and subscribe to our mailing list for quick updates.

To reduce consumer harm and the additional costs associated with auto insurance fraud, Ontario's Financial Services Regulator (FSRA) is proposing a new Rule on auto insurance fraud reporting. This will help to better determine the amount of auto insurance fraud in the province, identify and address fraud trends and establish a baseline to be able to track and reduce the amount of fraud in the future. Once the Proposed Rule is in effect, insurance companies will be required to provide specific information to FSRA.

FSRA is seeking feedback on a Proposed Rule and Guidance that includes:

- a proposed definition of what constitutes a 'fraud event'
- when insurers are required to report information about a fraud event
- how often insurers will need to report information about fraud events to FSRA
- FSRA's approach in administering the Proposed Rule

Once the Proposed Rule comes into force, insurers will be required to provide prescribed information about auto insurance fraud to the FSRA. With the benefit of this information, FSRA will determine what can be done to reduce fraud and the consumer harm and costs arising from fraud.

The consultation period for the Proposed Rule is now open and will close on October 15, 2024. FSRA invites stakeholders to review the Proposed Rule and Guidance and submit their feedback.

Learn more:

- Fraud Reporting Service Proposed Rule
- Fraud Reporting Service Proposed Guidance
- Notice of Proposed Rule

everyone. Learn more at www.fsrao.ca.

Before we begin, please make sure you do not include any personal or private financial information. If your inquiry does require this information be shared with us, please call us at 1-800-668-0128 or email us at contactcentre@fsrao.ca for instructions.

By submitting your content, you agree to have your materials posted on our engagement portal, used in reports and other materials prepared by Financial Services Regulatory Authority of Ontario (FSRA) that may be shared with the public. Content is moderated so that all posts are respectful and professional. The Freedom of Information and Protection of Privacy Act, R.S.O. 1990, c.F.31, applies to all online content.

Comments | **Questions and Responses**

Sector	Comment	Date posted
Auto Insurance	**[2024-008] Giuseppina Marra - Desjardins Group** Bonjour, Le Mouvement Desjardins soumet à l'attention de l'Autorité ontarienne de réglementation des services financiers ses commentaires relatifs à la consultation publique sur le projet de règle et ligne directrice proposées sur le service de signalement des fraudes. Nous vous réitérons nos sincères remerciements pour l'occasion offerte de soumettre nos commentaires. Bien cordialement. 2024-10-15_ ARSF - Projet règle et ligne directrice sur le service de signalement des fraudes_commentaires du Mouvement Desjardins.pdf	**November 19, 2024**
	[2024-008] Laurence L. Wymant - Unica Insurance Please find enclosed Unica Insurance's feedback on the proposed Fraud Reporting Service Rule and Guidance Unica - FSRA FRS Submission (002).pdf	**November 1, 2024**

Sector	Comment	Date posted
	[2024-008] Derrick Ajmo - Heartland Mutual Insurance Hi there, The below are the concerns that Heartland would like to submit regarding the proposed Fraud Reporting Service Rule. 1. Fraud is usually never alleged unless proven in court. Typically, insurers will never deny a claim under fraud unless we have proof which we then turn over to the authorities. Typically, the authorities deem this low value and nothing is done. Therefore, without a conviction, how can we allege fraud towards an insured or vendor under the proposed guidelines. 2. The verbal presentation indicated that the insured or vendor identifying information would not be required to be reported however the documents released indicate that insured name and contact details must be listed on the FSRA reporting system. If we do indeed need to declare the insured or vendor name on the site and this information gets released to the public, the insurer could be exposed to a bad faith claim. Will FSRA regulations or rules exempt this reporting from being disclosed to the relevant parties and/or will FSRA compensate the insurer if found to be acting in bad faith due to reporting the insured or vendor of fraud based upon what later on could be deemed unproven allegations by a court? 3. What safeguards will FSRA undertake to ensure that this information is not inadvertently released to the public? With FSRA compensate insurers for the unauthorized release of the data should the system be compromised? Is there a concern by FSRA of the reputational harm to individual insureds and vendors should these unproven allegations of fraud be released into the public domain. 4. Will this information submitted by the insurer be subject to release to the public under Freedom of Information or be open to being subpoenaed in a court case involving said insurer. 5. As the goal of this is to gather the extent of the fraud being perpetrated in auto insurance, how will the information gathered be released to the public or insurers in a manner that will protect insurers from any potential bad faith allegations due to the data that has been reported to FSRA by them? If there is another format that the above feedback needs to be	**November 1, 2024**

Sector	Comment	Date posted
	submitted to FSRA, please let me know and I will provide. Regards Derrick Ajmo	
Auto Insurance	**[2024-008] Elliott Silverstein - CAA Insurance** On behalf of CAA Insurance, please find our comments related to this consultation. Thank you. 2024-10-15- CAA Insurance submission to Fraud Reporting Consultation (final).pdf	**October 15, 2024**
Auto Insurance	**[2024-008] Sarah Fong - Travelers Canada** Please find attached Travelers Canada's submission to FSRA's Consultation on Proposed Fraud Reporting Service Rule and Guidance. Travelers Canada Submission on FSRA Fraud Reporting Service 10 15 2024.pdf	**October 15, 2024**

Sector	Comment	Date posted
Auto Insurance	**[2024-008] Rhona DesRoches - FAIR Association of victims for Accident Insurance Reform** FAIR Association of victims for Accident Insurance Reform response to: FSRA Consultation on Proposed Fraud Reporting Service Rule and Guidance ID 2024-008 We are pleased to see the Regulator take steps to identify fraud in the auto insurance industry to better protect the public. No one supports fraud and this is a positive step. 1. Definition of what constitutes a 'fraud event' Regarding the definition of a 'fraud event' at: 1. (e) "fraud event" means a deceptive act or omission, or series of deceptive acts or omissions intentionally committed by a person(s) to obtain advantage, financial gain, or benefits beyond that to which one is entitled to with regard to any policy, claim, provision of goods or services or other occurrence related to automobile insurance, and for greater clarity includes instances of:... RECOMMENDATION: The wording be expanded to include: "committed by a person(s), business(es) or institution(s) to.." The current language appears to specifically exclude businesses or institutions that are insurers and their associates or intermediaries. 3. Prescribed information under subsection 101.3(1) of the Act In respect to: 3(2) An insurer shall within thirty days after the close of each quarter of the calendar year provide the information prescribed in subsection 3(1) of this Rule with respect to fraud events which in the preceding quarter the insurer has taken action or made a decision based on reasonable grounds for the insurer to believe that a fraud event has occurred or is likely to occur. RECOMMENDATION: Insurers should have to provide information in subsection 3(1) within 30-60 days of the event rather than after the close of each quarter. If all insurers report at the same time the effectiveness of the Regulator may be compromised by being overwhelmed. Perhaps it is presumptuous to assume that the Regulator might take action to protect vulnerable claimants but stale-dated fraud reporting is	**October 15, 2024**

Sector	Comment	Date posted

less helpful.

GENERAL COMMENT:
If the “purpose of collecting this information is to support the more effective assessment and detection of automobile insurance fraud in Ontario” and to support “FSRA’s goal of reducing consumer harm caused through fraud” then there should be some statement about what FSRA does with this information other than “information that has been collected will be available for insurers to access to enable the assessing and detecting of fraud” in a second phase. What about consumer access to industry fraud?

Not only is the hunt for fraud left entirely to insurers (who are themselves often fraudulent in their claims practices) but it also ignores the claimant experience where insurers’ (and their intermediaries) fraud is a very real issue tens of thousands of Ontario’s claimants face every day.

Where, in this document, is the protection of vulnerable injured car crash claimants who are exposed to the fraud? This shouldn’t just be about protecting insurer profits but rather about protecting people who are scammed along the claims corridor.

This document goes back and forth about prescribed information required but fails to inspire confidence as it becomes clear this is about gathering information to identify fraud and carefully doesn’t mention any action to be taken by Fraud Reporting Service (“FRS”).

FSRA has taken some recent action to address fraud in the medical examination process with the Dr. Romeo Vitelli case but the failure to put the interests of consumers as a high priority is obvious. We cannot tell if any action was taken against the assessment center, Novo Medical Services Inc., for whom this psychologist prepared the medical reports that were at the center of FSRA’s investigation.

In 2019, Dr. Vitelli entered into an Acknowledgement and Undertaking with the College of Psychologists following allegations of professional misconduct as a result of a complaint from a claimant and FSCO and FSRA were informed of the College’s actions.

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	According to the FSRA website https://teao.fsrao.ca:7179/api/enforcement/downloadDocument?Id=2653&lang=en : In 2019, FSRA received an investigative report in support of Aviva's allegations. Documents in the report establish that Novo Medical submitted seven Psychological Evaluation Reports and one Catastrophic Impairment Determination Psychological Evaluation Report (dated between April 21, 2017 and May 4, 2018) for claimants (AK, CD, GC, JH, MM, MR, and NK). Sections of the reports are identical. The reports also include identical quotations presented as the claimants' verbatim descriptions of their injuries and symptoms. (for claimants (AK, CD, GC, JH, MM, MR, and NK)). and; On June 23, 2020, FSRA received a Business Activity Complaint Form from Desjardins General Insurance Group ("Desjardins") alleging that Novo Medical and Dr. Vitelli engaged in practices that contravene the Act. (five psychological assessment reports for claimants (NH, AL, KH, JS, and RR)). and; FSRA received an investigative report from Intact Insurance ("Intact"). (claimant (SR)). Despite insurers reporting they had been defrauded there was no action taken by FSRA until February 8, 2021, when FSRA investigators interviewed Dr. Vitelli. It was during this process that "Dr. Vitelli also stated that Novo Medical's staff used his Treatment Plan for another claimant as a template, by switching out the names and pronouns where necessary. Dr. Vitelli did not confirm the content and accuracy of the Treatment Plans he completed." Finally in 2021 action was taken by FSRA with the suggestion "an administrative penalty in the amount of $50,000 should be imposed on Dr. Vitelli for knowingly making false or misleading representations to insurers in order to obtain payment for goods or services provided, contrary to section 447(2)(a.3) of the Act." The public was eventually informed in a press release on "Nov. 22, 2023 /CNW/ - The Financial Services Regulatory Authority of Ontario (FSRA) has imposed a compliance order and administrative penalty of $15,000 against Romeo Vitelli	

Sector	Comment	Date posted

(Vitelli)."

For 4 years innocent injured claimants interests were ignored, first by the College of Psychologists (CPO) whom the Regulator relies on to enforce quality control and then by FSRA during the process of deciding what to do about the fraud.

We could find no evidence that Novo Medical Services Inc. was ever held accountable for their participation in harming the most seriously injured car crash survivors. Nova Medical is still actively in business providing assessments of Ontario's auto insurance claimants for insurers.

FAIR's files indicate there are likely more victims of the fraudulent reports as well as through 'expert' evidence at hearings where Dr. Vitelli's testimony was often criticized. There is also evidence that more than one assessment center used the services of Dr.Vitelli "through four healthcare clinics" mentioned on the CPO website document at https://cpbao.ca/wp-content/uploads/Notice-of-Hearing-Vitelle-Dr.-Romeo-2.pdf.

As of May 2024 the CPO https://members.cpbao.ca/public_register/show/1461 has listed the current referrals of Dr. Vitelli to the Discipline Committee.

We see no evidence that the 13 plus victims of this fraud were informed by FSRA or the CPO that they'd been scammed and that their cases had been tainted by the fraudulent and uncaring actions of Dr. Vitelli and Nova Medical.

To this day AK, CD, GC, JH, MM, MR, NK, NH, AL, KH, JS, RR, and SK may all still be in the dark about how their cases and access to rehabilitation were recklessly ignored by the insurer's choice of assessment centers.

We bring up this particular case for several reasons but the most important is that there is no point to gathering information if there is no intent to protect the public's interest. It should never be just about insurer profit and gain over informing the public in a timely fashion and this should be reflected in the proposed Rule and Guidance.

Timely reporting from insurers coupled with judicious action

Sector	Comment	Date posted

from the Regulator would better protect claimants. The promise to follow through on the insurer reporting fraud is missing in this Guidance along with a willingness to share fraud trends with the public and not just insurers.

Taking steps to enforce compliance with Dr. Vitelli was an important mile-stone for the Regulator and we recognize this. The problem lies in the two and half years from the Notice of Proposal to Impose Administrative Penalties on March 31, 2021 to informing the public on November 22, 2023 in a press release. It appears that for two and a half years vulnerable claimants lacked protection because FSRA withheld this information. This should never happen.

The investigation and the conclusion record poses other serious questions related to the outcomes for the victims of this fraud.

It's still an open question whether Dr. Vitelli will be able to continue to provide services for auto insurers through medical examinations and testimony going forward. None of that is clear in the information on the College of Psychologists (CPO) website or in FSRA's documentation and neither contribute to public confidence in the automobile insurance sector.

In this instance insurers did the right thing but we can tell you we routinely hear about bogus insurer medical exams and this Guidance presents deaf ears to claimants who are harmed in the current system that relies on the Regulator to take action to protect them. What about Nova? Should they have been subject to an Administrative Penalty and/or closed out of performing these medical assessments?

Our suggestion to include businesses and institutions in the wording is based on this case above as is our comment about the importance of timeliness in reporting fraud.

Something needs to be done about the regulatory hole that exists for assessment centers who currently have no oversight and who, in this case, appear to have participated in, or should have known about, the fraud taking place.

Consumers believe the Regulator has a distinct obligation to follow-through on the fraud they find by way of informing

Sector	Comment	Date posted
	victims of that fraud and, by extension, to protect the potential or future victims from the perpetrators by barring the fraudulent players from activity in the auto insurance medical landscape. This can be done by closing the door to Health Claims for Auto Insurance (HCAI) access. There should be an active dialogue to disclose this type of medical fraud activity between relevant Colleges and FSRA. Further, the Colleges should also be required to participate in cleaning up this fertile ground for fraud that harms Ontario's patients. Thank you for the opportunity to voice our concerns. FAIR Association of victims for Accident Insurance Reform	
Auto Insurance	**[2024-008] Amanda Dean - Insurance Bureau of Canada** Please see the attached submission for your consideration. Thank you 2024 - 10 Oct 15 - IBC Submission-Consultation on Proposed Fraud Reporting Service Rule and Guidance - FINAL.pdf	**October 15, 2024**
Auto Insurance	**[2024-008] Andrew Papadimitropoulos - TD Insurance** Attached is TD Insurance feedback on FRS Guidance TDI - Final - Feedback on FRS Guidance dated Oct 15 2024.pdf	**October 15, 2024**
Auto Insurance	**[2024-008] Ryan Stein - Definity Insurance** Good afternoon, Thank you for the opportunity to participate in the consultation for the fraud reporting service. Attached is a response from Definity Insurance. Sincerely, Ryan 24-10-15-Ontario Fraud Reporting Service Consultation.pdf	**October 15, 2024**

Sector	Comment	Date posted
Auto Insurance	**[2024-008] Karin Ots - Aviva Canada** Attached is Aviva's submission to FSRA Fraud Reporting Service consultation.. Aviva Submission to FSRA Fraud Reporting Service Consultation - Oct 15 2024.pdf	**October 15, 2024**
Auto Insurance	**[2024-008] Craig Bran - Co-operators** Co-operators Submission on Proposed Fraud Reporting Service Rule and Guidance Consultation_FINAL_10Oct2024.pdf	**October 15, 2024**
Cross Sector	**[2024-008] Danielle Wilkinson - Equite Association** Please accept the attached consultation submission on behalf of Equite Association. 2024.10.09 - Équité Association - FSRA FRS Consultation Submission FV.docx_0.pdf	**October 15, 2024**

Sector	Comment	Date posted
Health Service Providers	**[2024-008] Laurie Davis - Ontario Rehab Alliance** To whom it may concern, Please see attached for the Ontario Rehab Alliance's comments on the Consultation on Proposed Fraud Reporting Service Rule and Guidance ID 2024-008 We welcome the opportunity to discuss our comments or respond to any questions you may have. Please feel free to reach out to the ORA at admin@ontariorehaballiance.com or to myself directly, Laurie Davis, Executive Director of the Ontario Rehab Alliance - lauriedavis@ontariorehaballiance.com Sincerely, Laurie Davis Executive Director The Ontario Rehab Alliance 2024 10 11 - ORA - Fraud Reporting Service - Comments.pdf	**October 11, 2024**
Health Service Providers	**[2024-008] Ralph Palumbo - The Hillcrest Consulting Group Inc.** Attached are the submissions from the Ontario Psychological Association (OPA) on FSRA's Proposed Fraud Reporting Service Rule and Guidance. The OPA would be pleased to discuss its submissions with FSRA at any time. Respectfully submitted, Ralph Palumbo OPA Submission on Fraud Event October 7 2024.docx	**October 7, 2024**

Sector	Comment	Date posted
Property and Casualty and General Insurance	**[2024-008] John Taylor - Ontario Mutual Insurance Association** Please find attached OMIA's submission. 2024 09 30 FSRA - Fraud Reporting - OMIA Response.pdf	**September 30, 2024**

No questions have been asked about this consultation yet.

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October 15, 2024

Financial Services Regulatory Authority of Ontario
Auto Insurance Sector
25 Sheppard Avenue West, Suite 100
Toronto, ON M2N 6S6

Dear Sir / Madame:

Subject: Consultation on Proposed Fraud Reporting Service Rule and Guidance

TD Insurance ("TDI") appreciates the opportunity to respond to the current Consultation on Proposed Fraud Reporting Service Rule and Guidance initiated by Ontario's Financial Services Regulator ("FSRA") with stakeholders on future statutory fraud reporting requirements.

TDI overall supports FSRA's outcomes to reduce the costs to consumers & industry borne as a result of fraud.

Data and Privacy Concerns

TDI is always committed to ensuring compliance and transparency and we fully understand the importance of data in fighting fraud. Since much of our industry already provides fulsome data to Equite we suggest that FSRA consider leveraging this already established route to avoid duplication of effort.

Consumers trust insurers with sensitive information, and any regulation mandating the sharing of such data must ensure robust protections are in place. It would be appreciated that FSRA share with the Insurance Industry the security measures it will implement to safeguard; and furthermore to protect, any insurer from the release of personal information and to prevent identity theft and other privacy concerns. We also suggest that FSRA provide limited liability protections to insurers for any cybersecurity data breaches.

Key Concerns & Recommendations

TDI is committed to working with all stakeholders to effectively tackle fraud within the auto insurance sector. The phase one strategy of data collection is a significant step in building a Fraud Prevention Strategy, however it needs to be combined with other tools and resources to be effective. An over-reliance on quantitative metrics, that do not accurately capture the nuances of fraudulent activity, may therefore miss context and intent.

We recommend that FSRA first provide guidance to mandate that all auto insurers in the province design and implement a robust fraud framework to include policies and procedures, monitoring,

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audits and governance for their respective book of business. Furthermore, FSRA should then inquire with all auto insurers about what their respective experiences were with law enforcement regarding the actioning of white-collar insurance fraud matters including whether fraud charges ever laid, convictions and whether the sentencing judge order restitution.

Clarity and Ambiguity

One of our primary concerns is the use of the term "fraud event" and how its proposed definition may lead to inconsistent interpretations within the industry. Specifically, the words *reasonable grounds for the insurer to believe that a fraud event has occurred or is likely to occur.*

We recommend that the words *likely to occur* be removed from the definition of fraud event. We suggest that only fraud events where there is confirmed evidence of fraud be reported to FSRA as this will provide a clearer picture of the actual fraud trends impacting the industry and expose the bad actors who bolster auto fraud.

Recommendations

We advocate for a collaborative approach that emphasizes information sharing among industry stakeholders (i.e. insurers/law enforcement) and regulatory bodies. Engaging in partnerships to share best practices, insights and trends could lead to more effective fraud prevention strategies without compromising operational integrity.

In addition, insurers need to have the tools to allow them to act on the information developed during the course of an investigation. We recommend that FSRA confirm that insurers have the right to cancel or refuse to renew a policy under appropriate circumstances including:

- providing false information on the approved application form
- making any misrepresentation in the information provided for the purposes of obtaining, updating, or renewing an automobile insurance policy, including on the application form;
- a history of fraudulent activity in relation to an automobile insurance policy and the most recent instance of such an activity occurred less than 7 years before the day of the request to obtain, update or renew an automobile insurance policy.

There is also a noticeable lack of resources allocated to investigating and prosecuting insurance fraud cases. This underfunding hampers the ability of law enforcement and regulatory bodies to effectively combat fraud, allowing dishonest practices to proliferate.

Fraudsters are becoming increasingly sophisticated in their tactics, yet our legal framework remains stagnant. Laws must evolve to address new methods of fraud and provide clear guidelines for insurers on how to identify and report suspicious activities.

Conclusion

We appreciate your dedication to addressing fraud in the auto insurance industry and acknowledge the challenges that come with it. We are committed to work with FSRA and other relevant stakeholders to promote collaboration and efficiency to properly prevent and detect insurance fraud, while maintaining consumer protection.

Thank you for your attention to our concerns.

Yours truly,

TD Insurance

FRAUD REPORTING SERVICE

FINANCIAL SERVICES REGULATORY AUTHORITY OF ONTARIO
PROPOSED RULE 2024 – 003

AUTOMOBILE INSURANCE – FRAUD REPORTING SERVICE

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1 Definitions

1(1) In this Rule,

(a) "Act" means the *Insurance Act*, RSO 1990, c I.8, as amended;

(b) "FSRA Act" means the *Financial Services Regulatory Authority of Ontario Act, 2016*, SO 2016, c 37, Sched 8, as amended;

(c) "prescribed information" means the information an insurer is required to provide under subsection 101.3(1) of the Act in accordance with subsection 3(1) of this Rule.

(d) "Rule" means this Authority Rule 2024 – 003

(e) "fraud event" means a deceptive act or omission, or series of deceptive acts or omissions intentionally committed by a person(s) to obtain advantage, financial gain, or benefits beyond that to which one is entitled to with regard to any policy, claim, provision of goods or services or other occurrence related to automobile insurance, and for greater clarity includes instances of:

i. Obtaining an automobile insurance policy through fraudulent means, including underwriting fraud;

ii. Obtaining a benefit under a contract of insurance through fraudulent claims;

iii. Providing goods or services to a beneficiary under a contract of insurance through fraudulent means or in a fraudulent manner;

iv. Fraudulent activity in the selling or distribution of insurance products; and

v. Fraudulent activity committed by internal employees of an insurer.

2 Interpretation

2(1) If a term or phrase used in this Rule is defined in the Act, the definition used in the Act shall apply for the purposes of this Rule.

2(2) Words and phrases not defined in this Rule have the same meaning as ascribed thereto under section 1 of the FSRA Act unless a contrary intention appears.

2(3) References in this Rule to the Chief Executive Officer include reference to an authorized delegate or designated agency of the Chief Executive Officer as outlined in subsection 101.3(1) of the Act.

2(4) For the purposes of this Rule, references to “insurance” are limited only to “automobile insurance”.

3 Prescribed information under subsection 101.3(1) of the Act

3(1) Prescribed information includes all information, including personal information, in the insurer’s possession, control or power related to any policy, claim, provision of goods or services or any other occurrence or event where the information provides reasonable grounds for the insurer to believe that a fraud event has occurred or is likely to occur.

3(2) An insurer shall within thirty days after the close of each quarter of the calendar year provide the information prescribed in subsection 3(1) of this Rule with respect to fraud events which in the preceding quarter the insurer has taken action or made a decision based on reasonable grounds for the insurer to believe that a fraud event has occurred or is likely to occur.

3(3) An insurer shall not disclose personal information that is not necessary for the purposes set out in subsection 101.3(2) of the Act when providing the prescribed information to the Chief Executive Officer.

3(4) An insurer shall de-identify all names and identifying numbers, symbols or other particulars assigned to individuals before an insurer provides the prescribed information to the Chief Executive Officer unless disclosure of the names or other identifying information is necessary for the purposes set out in subsection 101.3(2) of the Act.

4 Reporting requirements – Prescribed information

4(1) An insurer shall ensure that all prescribed information is complete, up to date, and factually correct before an insurer provides the prescribed information to the Chief Executive Officer.

4(2) Every insurer who provides prescribed information that subsequently becomes aware that the information the insurer provided is or has become incomplete, out-of-date, or factually incorrect shall in the quarter following their becoming aware:

(a) inform the Chief Executive Officer of the deficiencies in the prescribed information provided; and

(a) take reasonable steps to remedy the deficiencies in the prescribed information provided to bring the information into compliance with subsection 5(1) of this Rule.

4(3) If an insurer provides information to the Chief Executive Officer and subsequently discovers that the information either:

(a) includes deficiencies that cannot be remedied as required by subsection 5(2)(b) of this Rule; or

(b) fails to meet the threshold of the reporting requirement outlined in subsection 3(1) of this Rule,

then the insurer must immediately give notice and recommend the Chief Executive Officer to withdraw the information provided.

4(4) Every insurer shall submit the prescribed information through the Authority's electronic or computer-based system for the filing, delivery or reporting of the prescribed information.

5 Transitional

5(1) An insurer is not required to report the information required in section 3 of this Rule until after [date].

6 Coming into force

6(1) This Rule will come into force on the later of the date that section 101.3 and clause 8.2 of subsection 121.0.1(1) of the Act comes into force and 15 days after the Rule is approved by the Minister.

FSRA
Financial Services Regulatory Authority of Ontario

Guidance

☑Interpretation | ☑Approach | ☐ Information | ☐ Decision

Effective date: [TBD]
Identifier: No. AU0140INT

Automobile Insurance Fraud Reporting

Purpose

This Guidance outlines the Financial Services Regulatory Authority of Ontario's ("**FSRA**") interpretation of requirements under Authority Rule 2024-003 – Fraud Reporting Service ("**FRS Rule**") and section 101.3 of the *Insurance Act* (the "***Act***"), and outlines FSRA's approach to supervising against the reporting requirements outlined in the *Act* and the FRS Rule.

Specifically, this Guidance provides FSRA's interpretation of several requirements under the FRS Rule regarding:

- the scope of prescribed information an insurer is required to provide when reporting information about fraud events to the Chief Executive Officer ("**CEO**") or an agency designated by the CEO
- the threshold of what constitutes "reasonable grounds for the insurer to believe" that a fraud event has occurred or is likely to occur, and
- the "action" an insurer may take that triggers an insurer's requirement to report prescribed information to the Fraud Reporting Service ("**FRS**")

The purpose of the collection of information in the FRS is to support FSRA's effective assessment and detection of automobile insurance fraud in Ontario. Key outcomes associated with this purpose include:

- quantifying the prevalence of automobile insurance fraud in Ontario
- creating a baseline for fraud detection, and
- identifying fraud trends throughout the automobile insurance industry

Scope

This Guidance affects all insurers that are licensed to carry on automobile insurance business in Ontario.

Rationale and background

FSRA's rule-making authority to enact a FRS is derived from paragraph 8.2 of subsection 121.0.1(1) of the *Act* in conjunction with subsection 101.3(1) of the *Act*.

The overall objective of the FRS is to improve the use of data in the auto insurance industry's fraud management activities by statutorily authorizing and enabling insurers to report automobile insurance fraud information to the FRS.

The requirement to report information about automobile insurance fraud to the FRS builds on FSRA's existing powers to supervise against unfair or deceptive acts and practices ("**UDAP**") in the insurance sector. These powers are grounded in section 5 of FSRA's UDAP Rule to address unfair claims practices, and section 6 of the UDAP Rule to address fraudulent or abusive conduct related to goods and services provided to a consumer. Conduct by policyholders, claimants, claims vendors, and other non-licensees is captured by many parts of the UDAP Rule, including sections 5 and 6.

FSRA's collection and consolidation of the information about automobile insurance fraud that insurers are required to report under the *Act* will help create a baseline of data that can serve the purpose of assessing the amount of fraud in the automobile insurance system in Ontario.

In supervising and regulating the automobile insurance sector, FSRA is guided by its statutory objects under section 3 of the *Financial Services Regulatory Authority of Ontario Act, 2016* ("***FSRA Act***").

Specifically, this Guidance supports outcomes consistent with the following objects:

- to deter deceptive or fraudulent conduct, practices and activities by the regulated sectors
- to promote transparency and disclosure of information by the regulated sectors
- to contribute to public confidence in the automobile insurance sector
- to monitor and evaluate developments and trends in the automobile insurance sector
- to promote high standards of business conduct, and
- to protect the rights and interests of consumers

The FRS aims to reduce consumer harm, including unnecessary costs borne by consumers, as a result of auto mobile insurance fraud.

The FRS Rule and this accompanying Guidance represent the first phase of the development of the FRS. In the second phase of the FRS, FSRA anticipates that information collected in phase one will be available for insurers to access to enable the assessment and detection of fraud by insurers. Phase two is subject to approval from the Ministry of Finance and will depend on the implementation of and outcomes achieved in phase one. Amendments to the Proposed Rule and Guidance are expected to be required before the FRS can proceed to this second phase.

With regards to the first phase of the FRS, FSRA's view is that "assessing and detecting automobile insurance fraud" includes:

- quantifying the prevalence of automobile insurance fraud in Ontario
- creating a baseline for fraud detection, and
- identifying trends throughout the industry

Interpretation

1. What is a “fraud event”?

All insurers must report information about “automobile insurance fraud” to the FRS in accordance with subsection 101.3(1) of the *Act* and the FRS Rule.

A common understanding of what events, circumstances, or actions are considered to amount to a “fraud event” is important for insurers to understand how to comply with the requirement to provide information to the CEO about “automobile insurance fraud”.

Subsection 3(2) of the FRS Rule requires insurers to provide information in accordance with subsection 101.3(1) of the *Act* when an insurer has taken action or made a decision based on reasonable grounds for the insurer to believe that a “fraud event” has occurred or is likely to occur. Subsection 1(1) of the FRS Rule defines a “fraud event” as follows:

> “fraud event” means a deceptive act or omission, or series of deceptive acts or omissions intentionally committed by a person(s) to obtain advantage, financial gain, or benefits from an insurer beyond that to which one is entitled to in with regard to any policy, claim, provision of goods or services or other occurrence related to automobile insurance […]

FSRA interprets this phrase broadly to cover a wide range of “deceptive acts or omissions intentionally committed by a person(s) to obtain advantage, financial gain, or benefits from an insurer beyond that to which one is entitled to”. This broad interpretation empowers insurers to identify activities that meet this definition.

Recognizing that the scope of what may constitute a fraud event under the FRS Rule is constantly evolving and that a prescriptive list could not capture all potential occurrences within scope of the definition, subsection 1(1)(e) of the FRS Rule provides a non-exhaustive list of categories of “fraud events”. Examples of specific instances of “fraud events” under these broad categories is included as **Appendix A** in this Guidance.

2. What is the extent of information about automobile insurance fraud that an insurer must provide?

Section 3(1) of the FRS Rule outlines the scope of "prescribed information" that an insurer must provide:

> "Prescribed information includes **all information**, including personal information, in the insurer's possession, control or power […] where the information provides reasonable grounds for the insurer to believe that a fraud event has occurred or is likely to occur".

FSRA interprets "all information" to mean all relevant information, without restriction or limitation, where the information provides reasonable grounds for the insurer to believe that a "fraud event" has occurred or is likely to occur.

The scope of information in section 3(1) is unqualified. As a result, if an insurer knowingly or unknowingly withholds prescribed information in their possession, control or power, including any and all relevant data points outlined in **Appendix B** of this Guidance, then the insurer would be in contravention of the *Act* and the FRS Rule, which may result in FSRA initiating measures to enforce compliance.

3. What type of information provides "reasonable grounds for an insurer to believe that a fraud event has occurred or is likely to occur"?

Insurers are required under the FRS Rule to report all information about automobile insurance fraud where the information provides reasonable grounds for the insurer to suspect that a fraud event has occurred or is likely to occur.

Understanding the difference between the prescribed "reasonable grounds to believe" ("**RGB**") threshold for reportable information and other thresholds is important for an insurer to understand the standard and scope of information that must be reported to the FRS.

This RGB threshold is intentionally prescribed in the FRS Rule to prevent premature, unnecessary, or inaccurate information from being reported to the FRS, but also to encourage

reporting before an adjudicated finding of automobile insurance fraud is secured. The RGB is intended to reflect a middle-ground between suspicion, and confirmation of fraud, resulting in information most beneficial to the automobile insurance sector in assessing and detecting these fraud events.

To illustrate the RGB threshold, this guidance distinguishes between three thresholds of information: suspicion of fraud, reasonable grounds to believe fraud has occurred, a conclusion that fraud has occurred. A suspicion of fraud is the lowest threshold, and a conclusion that fraud has occurred is the highest threshold.

The highest threshold will include all information captured by the lower thresholds, with the only difference being an increased level of evidence or facts that confirm the existence of automobile insurance fraud.

Lowest threshold: Suspicion that a fraud event has occurred

Insurers are not required to report information if they only have suspicion that a fraud event has occurred or is likely to occur.

Suspicion means an insurer may have an indication that something is unusual or suspicious, but does not yet have verified facts that can confirm the suspicion of a fraud event or elevate the suspicion into a reasonable belief that a fraud event has occurred. Indications of a fraud event may be based on not-yet-verified evidence received from an external source, such as a law enforcement agency or another insurer.

The suspicion could come from a discrepancy from: a written document that was filed on a claim, a claim filed shortly after a new policy is bound, a conversation with the insured, claimant or other involved party, a tip from a broker, police officer or other party, external intelligence (such as information from a conference or meeting), and an indicator from a fraud software solution.

Reasonable grounds to suspect that a fraud event has occurred may exist where the insurer investigates into their suspicion of a fraud event having occurred, and discovers further indicators or facts that warrant verification and further investigation. The suspicion at this stage is based on limited unverified evidence and does not raise to a belief that a fraud event has occurred.

Suspicion of a fraud event is relevant to the extent that it may prompt an insurer to assess the factual circumstances of the situation to identify any additional information or evidence that would support or confirm this simple suspicion.

Example: A consumer purchases an automobile insurance policy on their truck. 3 days after purchasing the policy, the individual reports the vehicle as stolen. At this point, the insurer has no evidence that the consumer has fraudulently reported the vehicle as stolen, but the insurer nevertheless suspects that the consumer may be engaging in automobile insurance fraud based on previous investigations with similar facts. The insurer does not report any information to the FRS as the information only rises to the threshold of suspicion.

Prescribed threshold: Reasonable grounds to believe (“RGB”) a fraud event has occurred or is likely to occur

Insurers are required to report prescribed information once it meets this threshold.

Section 3(1) of the FRS Rule clarifies that information is prescribed information is only where “the information provides **reasonable grounds for the insurer to believe** that a fraud event has occurred or is likely to occur”.

FSRA interprets “reasonable grounds […] to believe” to include evidence, verified facts, context, or indicators that support a high degree of certainty that a fraud event has occurred or is likely to occur, warranting further action by the insurer but not allowing the insurer to conclude that a fraud event has occurred.

Information that meets the RGB threshold will allow an insurer to demonstrate and articulate their belief that a fraud event has occurred or is likely to occur in such a way that another insurer reviewing the same material with similar knowledge, experience, or training would likely reach the same conclusion.

Many factors will support an insurer’s assessment and conclusion that there are reasonable grounds to believe a fraud event has occurred or is likely to occur, all of which are required to be reported to the FRS.

Example: A consumer purchases an automobile insurance policy on their truck. 3 days after purchasing the policy, the consumer reports the vehicle as stolen. One week following the consumer reporting the theft, the insurer receives a tip from a credible source that the consumer has been implicated in a vehicle theft ring. After verifying the information provided by the tip, the insurer has reasonable grounds to believe that the consumer is engaging in automobile insurance fraud with respect to their own car that they have reported as stolen. Even though the insurer does not have any direct evidence to conclude that the consumer has engaged in fraud, the insurer has opened an investigation and has started gathering evidence relating to the consumer's claim. The insurer reports all information that supports their reasonable grounds to believe a fraud event has occurred to the FRS.

Highest threshold: Conclusion of fraud

Insurers should update the reported information once they have concluded that a fraud event has in fact occurred. If an insurer comes into possession of information that allows them to bypass the lower thresholds and immediately conclude that a fraud event has concurred, then the insurer will still need to report the information to the FRS.

At this threshold, an insurer has investigated, verified, and concluded that a fraud event has in fact occurred.

The threshold of information may cause the insurer to:

- pay or process a claim despite having information that allows the insurer to conclude that fraud has occurred
- deny a claim on the basis of it being fraudulent
- refer the claim or policy to a law enforcement or state agency to further the investigation and pursue criminal or other action
- seek an adjudicated finding of civil or criminal fraud, or
- secure an "in-fact determination" that fraud has occurred

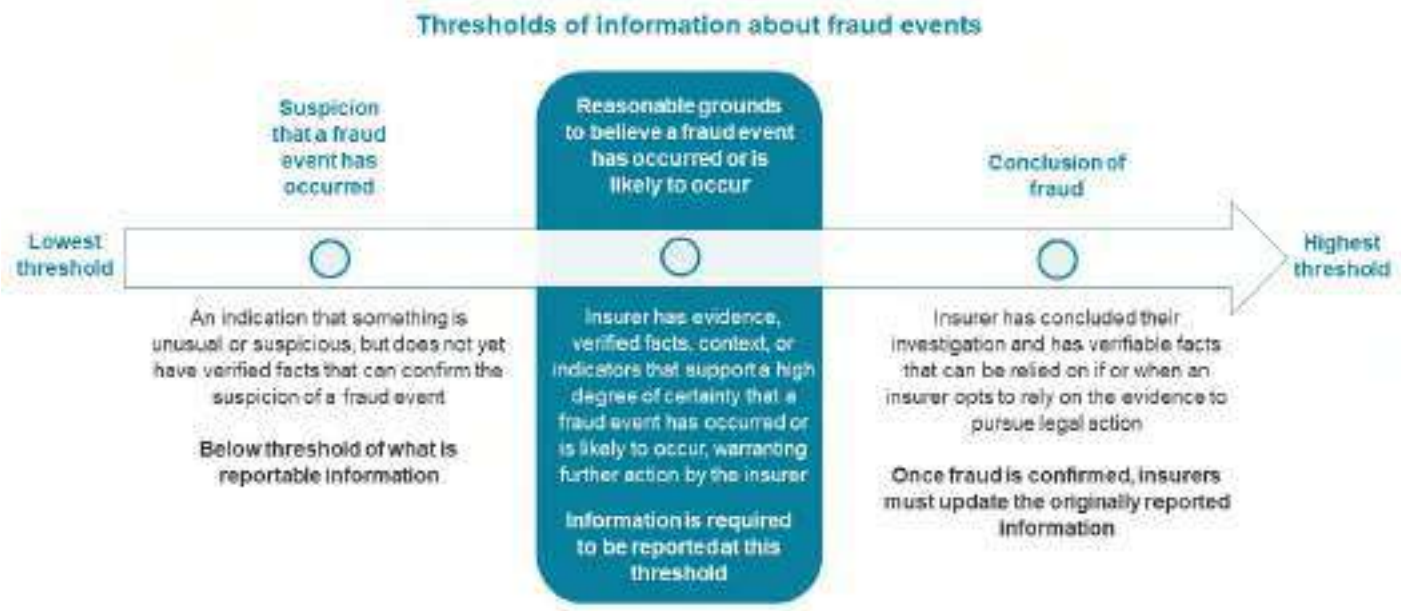
Example: A consumer purchases an automobile insurance policy on their truck. 3 days after purchasing the policy, the consumer reports the vehicle as stolen. One week following the consumer reporting the theft, the insurer receives a tip from a credible source that the consumer has been implicated in a vehicle theft ring. The insurer launches an investigation during which the insurer obtains video evidence that places the consumer in the vehicle at the location where the truck was later recovered. Based on this evidence, the insurer denies the claim on the basis of it being fraudulent and refers the claim to law enforcement to pursue criminal charges. The insurer updates the information they previously reported to the FRS, including a description of the video evidence that led to their conclusion that a fraud event had occurred.

Insurers are required to update information in the FRS when the information meets the threshold of conclusion that a fraud event has occurred

Section 4 of the FRS Rule requires insurers to ensure all prescribed information provided to the CEO shall be complete, up to date, and factually correct.

If an insurer subsequently becomes aware that the information the insurer previously provided is or has become incomplete, out-of-date, or factually incorrect (e.g., the insurer has discovered information that has allowed them to conclude that fraud has occurred), then compliance with section 4 of the FRS Rule necessitates that the insurer take steps to update the information to ensure that the information provided to the FRS remains complete, up to date, and factually correct.

If an insurer reports information based on the RGB threshold, and subsequently collects further information that leads to a conclusion that a fraud event has occurred, the insurer shall update the originally-reported information based on the new information that resulted in a higher threshold.



4. What “action” triggers an insurer’s requirement to report prescribed information about automobile insurance fraud to the FRS?

Subsection 3(2) of the FRS Rule requires that:

> An insurer shall within thirty days after the close of each quarterly period of the calendar year provide the information prescribed in subsection 3(1) with respect to instances of automobile insurance fraud which in the preceding quarter **the insurer has taken action or made a decision** based on reasonable grounds for the insurer to believe that a fraud event has occurred or is likely to occur.

“Action” is interpreted to mean any definitive decision to act based on reasonable grounds to believe a fraud event has occurred or likely to occur. To trigger an insurer’s requirement to report the prescribed information, an insurer must both have information that meets the RGB threshold and the insurer must take action based on information that meets the RGB threshold.

The following is a non-exhaustive list of “actions” an insurer could take that would trigger an insurer’s requirement to provide the prescribed information to the CEO:

- escalating a file for further investigation to SIU
- denying a claim
- voiding or otherwise terminating an insurance policy

The following is a non-exhaustive list of “decisions” an insurer could take that would trigger an insurer’s requirement to provide the prescribed information to the CEO:

- paying or processing a claim despite having information that provides reasonable grounds to believe that fraud has occurred or is likely to occur
- closing a claim made under a policy that has been abandoned by the claimant

5. How much personal information is necessary for the purposes of subsection 101.3 of the *Act*?

Subsections 3(3) and 3(4) of the FRS Rule limit insurers from providing more personal information than is necessary for the purposes set out in subsection 101.3(2) of the *Act* (“assessing and detecting automobile insurance fraud”), and requires insurers to de-identify all names and identifying numbers, symbols or other particulars assigned to individuals unless disclosure of this information is necessary for the purposes set out in the *Act*:

> 3(3) An insurer shall not disclose personal information that is not necessary for the purposes set out in subsection 101.3(2) of the Act when providing the prescribed information to the Chief Executive Officer.
>
> 3(4) An insurer shall de-identify all names and identifying numbers, symbols or other particulars assigned to individuals before an insurer provides the prescribed information to the Chief Executive Officer unless disclosure of the names or other identifying information is necessary for the purposes set out in subsection 101.3(2) of the Act.

Insurers are not required to report personal information that is not necessary for the purposes set out in subsection 101.3(2) of the *Act*.

FSRA interprets the statutory purpose, “assessing and detecting automobile insurance fraud” to enable FSRA to:

- quantifying the prevalence of automobile insurance fraud in Ontario
- creating a baseline for fraud detection, and
- identifying trends throughout the industry

This interpretation reflects the first phase of FSRA’s approach to building the FRS, which focuses solely on the FRS collection of information about automobile insurance fraud.

FSRA anticipates a second phase where information collected in phase one will enable insurers to use the information. The personal information listed in the Appendix may be necessary to include in phase two reporting.

FSRA will work with insurers to create unique identifiers for each instance of reporting. These unique identifiers will allow insurers to update information provided in phase one with personal information where necessary for phase two. This Guidance will need to be updated before proceeding to this second phase.

Approach

Supervision and enforcement

The main outcome that FSRA aims to achieve through administering the FRS requirements under the *Act* and the FRS Rule is to empower insurers to better manage and reduce automobile insurance fraud by mandating the reporting of prescribed information about automobile insurance fraud to the FRS. To that end, insurers should design and organize internal policies, processes, controls, and governance procedures in a manner that facilitates compliance with the requirements under the *Act* and the FRS Rule, as interpreted in this Guidance.

FSRA intends to supervise against the requirements outlined under the *Act* and the FRS Rule by using its investigation and examination powers under the *Act*. Following an investigation and examination of an insurer's acts and practices, pursuant to the provisions of the *Act*, FSRA has the authority to:

- issue a compliance order to insurers, or[1]
- lay provincial offence charges against insurers[2]

FSRA will exercise its discretion when conducting its supervisory activities by considering the extent to which an insurer's fraud reporting system has been implemented effectively by management through policies, processes, systems and associated controls.

FSRA will evaluate insurers' processes, controls, and governance during supervisory reviews. This includes verifying the presence of adequate controls and ensuring that reporting meets the requirements as outlined. While FSRA retains the authority to sanction non-compliance with the FRS requirements, the supervisory approach will take in account the efforts made by insurers to comply and their efforts to achieve the desired outcomes.

Implementation of controls and governance

To comply with the FRS requirements, FSRA encourages insurers to design and implement a robust framework that encompasses the following elements:

- **Policies and procedures**: Clear and detailed policies and procedures that facilitate compliance with the FRS Rule and *Act*. This should include steps to identify and report information related to instances of automobile insurance fraud. These should be regularly updated to reflect any changes in the regulatory environment and/or emerging fraud trends.

[1] FSRA seek a court issued compliance order pursuant to s. 448(1) of the Act.
[2] FSRA may pursue the laying of provincial offences as set out in s. 447(2) of the Act.

- **Monitoring and reporting systems**: Systems for monitoring and detecting fraud events as outlined in the FRS Rule and *Act*. These systems should be capable of capturing and reporting the prescribed information in a timely and accurate manner.

- **Internal audits and reviews**: Regular internal audits and reviews to assess the effectiveness of the fraud management framework. This helps in identifying any gaps or areas for improvement.

- **Governance and oversight**: Strong governance structures with clear accountability and oversight mechanisms.

While the elements identified above are not mandatory, they can, depending on the circumstances, be reflective of whether an insurer has met their obligations with respect to the FRS requirements.

Effective date and future review

This Guidance will become effective on **[TBD]** and will be reviewed no later than **[TBD]**.

About this Guidance

This document is consistent with FSRA's Guidance Framework. As Approach guidance, it describes FSRA's internal principles, processes and practices for supervisory action and application of CEO discretion. It does not create compliance obligations for regulated parties but can be considered indicative of FSRA's position, and it does not alter requirement to comply with existing legal and regulatory framework. As Interpretation guidance, it describes FSRA's view of requirements under its legislative mandate (i.e. legislation, regulations and rules) so that non-compliance can lead to enforcement or supervisory action.

Appendices and reference

Appendix A: Examples of fraud events that insurers are required to report information about to the Fraud Reporting Service

The following is a non-exhaustive list of the types of fraud events that insurers must report to the Fraud Reporting Service. The following is categorized according to the automobile insurance life cycle.

Fraud category	Description	Example
Fraud perpetrated through underwriting fraud	Fraud committed by persons which occurs when someone intentionally conceals or misrepresents information when obtaining insurance coverage	• Policy misrepresentation such as falsifying information on the insurance application to gain a lower premium. This could include non-disclosure of drivers, residency, and mileage driven on vehicles • Quote manipulation (to generate the lowest premium)
Fraud perpetrated through fraudulent claims	Fraud committed by policy holder when a claim has been made on a policy	• Falsely claiming damage to a covered automobile as a result of an auto accident when another caused the damage • Claim embellishment-exaggerated/fabricated vehicle contents, false car seat claims, false invoices for items (often to cover deductible)
Fraud perpetrated by a service provider	Fraud committed by persons who provide services to a policy holder after a claim has been made on a policy.	• Billing by practitioners for care that they never rendered

		• Auto body/repair shop that inflates cost of repairs/repairs areas that do not need repairs • Tow truck company that inflates cost of repair/bills for tows not needed • Re-VINing (stolen vehicles; reVINned with a registered VIN from another vehicle and sold or insured again)
Fraud perpetrated by selling or distribution of insurance products	Fraud perpetrated by individuals directly involved in the distribution or sale of an insurance policy	• **Independent Agents/Brokers** o Backdating policy or misrepresenting true risk to assist the insured in gaining coverage and/or producing a gamified rate o Deliberately failing to disclose policy information to obtain a lower premium for the insured o Ghost brokering (selling fake pink slips, insured thinks they have insurance but they do not)
Fraud perpetrated by internal employees of an insurer	Fraud perpetrated by individuals employed within the insurance industry	• Creating fictitious claims and orchestrating claim payments to the employee • Employees receive a kickback from a third-party vendor in exchange for engaging vendor services

		• Backdating transactions, not rating properly, insuring knowing impending claim

Appendix B: Data points to be submitted when reporting information about fraud events to the Fraud Reporting Service

The following is a non-exhaustive list of the data elements that may be necessary for the purposes of assessing and detecting fraud. To the extent that the following list includes personal information that is not necessary for the purposes of assessing and detecting fraud, an insurer should not report the personal information during phase one of the FRS.

Category	Data type
Insured/policyholder/claimant	• Contact information o (name, address, phone number, email address) • Date of birth • Driver's licence number • Occupation • Vehicle ownership type: owned/financed/leased/rental
Insurance carrier	• Corporate contact information o (corporate name, address, phone number) • Policy number

	• Claim number • Agent/broker name and address • Policy duration • Status of the claim (ongoing, denied, withdrawn after investigation)
Accident information	• Date of loss • Time of loss • Location of loss (street address, city, province, country) • Cause of loss
Involved parties:	• Insured vehicle passengers o Contact information (name, address, phone number, email address) • Claimant vehicle passengers o Contact information (name, address, phone number, email address) • Insured vehicle information o VIN, make, model, year, owner, damage • Claimant vehicle information o VIN, make, model, year, owner, damage

	• Legal Counsel (contact information). • Auto body/repair shop o Contact information and repair details • Tow truck o Contact information, and towing details. • Medical Provider o Contact information • Medical Clinic o Contact information • Adjuster o Contact information • Car Rental Company, Lienholder/Leaseholder, other Third Parties o (direct third parties to the claim or individuals acting on behalf of the policyholder for policy/claim purposes, as an intermediary, translator, or general agent)
Cost	• Estimated cost of the claim fraud • Estimated cost of the policyholder/underwriting fraud
Category/Fraud Details	• Fraud perpetrated through underwriting fraud

	• Fraud perpetrated through fraudulent claims • Fraud by a service provider • Fraud through selling or distribution of insurance products • Fraud perpetrated by internal employees of an insurer • Fraud details/description

FINANCIAL SERVICES REGULATORY AUTHORITY OF ONTARIO

NOTICE OF PROPOSED RULE UNDER THE *FINANCIAL SERVICES REGULATORY AUTHORITY OF ONTARIO ACT, 2016*

PROPOSED RULE 2024 – 003

AUTOMOBILE INSURANCE – FRAUD REPORTING SERVICE

[07/15/2024]

1. Introduction

Pursuant to subsection 22(1) of the *Financial Services Regulatory Authority of Ontario Act, 2016* (the "***FSRA Act***") the Financial Services Regulatory Authority of Ontario ("**FSRA**" or the "**Authority**") is publishing for public consultation the following Notice of Proposed Rule ("**Notice**"). In accordance with subsection 22(4) of the *FSRA Act*, interested persons are invited to make written representations to FSRA with respect to the Proposed Fraud Reporting Service Rule ("**Proposed Rule**"), within 90 days of publishing this Notice. The consultation period will close on [10/14/2024].

If approved by the Minister of Finance ("**Minister**"), the Proposed Rule will prescribe both the information insurers must report under section 101.3 of the *Insurance Act* (the "***Act***"), and the requirements associated with reporting the prescribed information. More specifically, the Proposed Rule will prescribe the threshold and scope of information insurers are required to report about automobile insurance fraud; and the timing and process requirements regarding how an insurer shall report the prescribed information to the Fraud Reporting Service ("**FRS**").

For the text of the Proposed Rule please see **Appendix A** to this Notice.

2. Statutory Authority under which the Rule is proposed

Section 101.3 of the *Act*, when proclaimed into force, will require insurers to provide the Chief Executive Officer or an agency designated by the Chief Executive Officer (referred to collectively as the "**CEO**" in this Notice) with information prescribed by the Proposed Rule about automobile insurance fraud at such times and in accordance with such requirements as may be prescribed by the Proposed Rule.

To this end, section 101.3 further provides FSRA the express statutory authority to directly or indirectly collect, use and disclose personal information about identifiable individuals

provided that the collection, use, or disclosure is for the purpose of assessing and detecting automobile insurance fraud.

Section 101.3 in conjunction with paragraph 8.2 of subsection 121.0.1(1) of the *Act* gives FSRA the authority to prescribe the information outlined in section 101.3 in accordance with the Proposed Rule included in this Notice.

3. Statement of the substance and purpose of the Proposed Rule

The **purpose** of the Proposed Rule is to prescribe information that automobile insurers must provide to FSRA, and the corresponding requirements regarding the reporting of the prescribed information. Once in force, the Proposed Rule will give operational effect to FSRA's Fraud Reporting Service ("**FRS**").

The main outcome FSRA aims to achieve through the implementation of the FRS is to collect information to create a baseline of data that will quantify the amount of automobile insurance fraud and better enable the automobile insurance sector to assess and detect such fraud in Ontario.

The purpose of collecting this information is to support the more effective assessment and detection of automobile insurance fraud in Ontario. Key outcomes associated with this purpose include:

- quantifying the prevalence of automobile insurance fraud in Ontario;
- creating a baseline for fraud detection; and
- identifying trends throughout the industry.

Achieving these outcomes supports FSRA's goal of reducing consumer harm caused through fraud, and reducing unnecessary externality costs to be borne by consumers.

The Proposed Rule and accompanying Interpretation Guidance (the "**Guidance**") represents the first phase of the development of a functional FRS. FSRA anticipates a second phase of the FRS where information that has been collected will be available for insurers to access to enable the assessing and detecting of fraud. Amendments to the Proposed Rule and Guidance are expected to be required before the FRS can proceed to this second phase.

The **substance** of the Proposed Rule centers around prescribed information about automobile insurance fraud, and requirements associated with the insurer's statutory duty to report the prescribed information.

With regards to the information prescribed about automobile insurance fraud, the Proposed Rule defines a "fraud event" as a deceptive act or omission intentionally committed by a person(s) to obtain advantage, financial gain, or benefits beyond that to which one is entitled to with regard to any policy, claim, provision of goods or services or other occurrence related to automobile insurance. Included in this definition is a non-exhaustive list of categories that each instance of a fraud event may fall under.

With regards to the prescribed information about automobile insurance fraud, the Proposed Rule prescribes that insurers must report all information that provides reasonable grounds for the insurer to believe that a fraud event has occurred or is likely to occur.

The Proposed Rule further clarifies that this prescribed information must be reported if and only if the insurer has taken action based on the information that provided reasonable grounds for the insurer to believe that a fraud event has occurred or is likely to occur.

Once an insurer holds information that provides reasonable grounds for the insurer to believe that a fraud event has occurred or is likely to occur and have taken action based on said information, an insurer is required to report the information to the FRS within thirty (30) days after the close of each quarterly period of the calendar year.

With regards to requirements associated with the insurer's statutory duty to report the prescribed information, the Proposed Rule requires that all prescribed information be complete, accurate and up-to-date, and imposes an ongoing obligation on the insurer to take reasonable steps to ensure the information remains complete, accurate and up-to-date or otherwise recommend that the information be removed from the FRS.

FSRA will be publishing for public consultation **Guidance** that will set out FSRA's interpretation of several requirements under the Proposed Rule regarding:

- The scope of information an insurer is required to provide when reporting information about a "fraud event" to the CEO;

- The threshold of what constitutes "reasonable grounds for the insurer to believe" that a fraud event has occurred or is likely to occur; and

- The "action" an insurer may take that triggers an insurer's requirement to report prescribed information to the FRS.

The Guidance will also set out FSRA's approach in administering the Proposed Rule, including:

- How FSRA will supervise insurers in reviewing their policies, processes, systems and associated controls to ensure compliance with the Proposed Rule;

- How FSRA will exercise its discretion when enforcing against the requirements in the Proposed Rule; and

- How FSRA will utilize its enforcement powers to address non-compliance with requirements in the Proposed Rule.

4. Summary of the Proposed Rule

This section describes the requirements outlined in the Proposed Rule, that, if approved by the Minister, will operationalize the reporting of information about automobile insurance fraud by insurers to the FRS.

Section 1 – Definitions

This section outlines key definitions used throughout the Proposed Rule, including the definition of a "fraud event". The broad scope of what may constitute a fraud event is further informed by the definition's non-exhaustive list of several categories of fraud that are pertinent to the automobile insurance sector.

Section 2 – Interpretation

This section outlines how the Proposed Rule is to be interpreted.

Section 3 – Prescribed information under subsection 101.3(1) of the *Act*

This section sets out the prescribed information under subsection 101.3(1) of the *Act*.

This section:

- prescribes the scope and threshold [or standard] of information that every insurer licensed under the *Act* is required to report under subsection 101.3(1) of the *Act*. Specifically, an insurer is required to *report all information* in the insurer's possession, control or power related to any policy, claim, provision of goods or services or any other occurrence or event *where the information provides reasonable grounds for the insurer to believe that a fraud event has occurred or is likely to occur*;

- prescribes the activity-based trigger for an insurer to report the prescribed information, such that an insurer is required to report prescribed information within thirty days after the close of each [quarter] only if they have taken action or made a decision based on the prescribed information;

- requires that insurers include personal information in the prescribed information *only if* the personal information is necessary the purpose of assessing and detecting automobile insurance fraud; and

- requires insurers to de-identify all personal information in the prescribed information unless disclosure of the personal information is necessary for the purpose of assessing and detecting automobile insurance fraud.

Section 4 – Reporting requirements – Prescribed information

This section sets out additional requirements regarding the reporting of the prescribed information outlined in section 3 of the Proposed Rule.

This section:

- requires that an insurer ensures that all prescribed information is complete, up to date, and factually correct prior to reporting the information as required; and

- requires an insurer to inform the CEO and take reasonable steps to correct information if the insurer becomes aware that information reported is not complete, up to date, or factually correct.

Section 5 – Transitional

This section clarifies that insurers are not required to report the prescribed information in accordance with the rule until after [date TBD].

Section 6 – Coming into Force

This section clarifies that the Proposed Rule will come into force on the later of the date that subsection 101.3(1) and clause 8.2 of subsection 121.0.1(1) of the *Act* comes into force and 15 days after the Rule is approved by the Minister.

5. Unpublished Material

In making the Proposed Rule, FSRA has retained the consultant services of the *International Fraud Training Group*, who have provided FSRA with unpublished written materials that have been relied in part to inform drafting of the Proposed Rule.

6. Alternatives Considered

i. Prescribing specific data points that insurers would be required to report under subsection 101.3(1) of the *Act*

The Proposed Rule requires insurers to report all information in the insurer's possession, control or power related to any policy, claim, provision of goods or services or any other occurrence or event where the information provides reasonable grounds for the insurer to believe that a fraud event has occurred or is likely to occur.

As an alternative, FSRA considered prescribing an all-encompassing list of data points that insurers would be required to submit to the FRS. This approach was not followed for three reasons.

First, a prescriptive list of data points about a "fraud event" could only be amended via an amendment to the Proposed Rule. The time it takes to amend an Authority Rule would not be adaptable to an ever-evolving list of data points that may be material to assessing and detecting fraud events.

Second, prescribing an all-encompassing list of data points is inconsistent with FSRA's principles-based and outcomes-focused approach to regulation. A prescriptive approach would overshadow the intended outcome of insurers reporting information according to a particular standard of proof or threshold of materiality and would turn the Proposed Rule into a listing and indexing exercise of prescribed information.

Third, FSRA recognizes that the ever-evolving nature of automobile insurance fraud requires flexibility and adaptability in the types of information that insurers must report to the FRS. FSRA intentionally has chosen not to prescribe all relevant data points *before* information begins to be reported by insurers. In other words, the most relevant information that will ultimately achieve the FRS's purpose will become more apparent only *after* insurers begin reporting to the FRS. FSRA intentionally chose not to limit the scope of information to a prescribed list that may or may not be reflective of market realities.

ii. Alternate thresholds of information an insurer would be required to report under subsection 101.3(1) of the *Act*

The Proposed Rule requires insurers to only report information to the FRS where the information provides *reasonable grounds for the insurer to believe* that a fraud event has occurred or is likely to occur. FSRA's interpretation of information that would constitute "reasonable grounds to believe" is outlined in the Guidance.

FSRA considered alternative thresholds that would impact the scope of information that insurers would ultimately need to report to the FRS including:

- **No threshold (i.e., "all information about a fraud event")**: This would require insurers to report all information, without any modification or clarification of scope, about a fraud event, as defined in the Proposed Rule. FSRA did not choose this option as it provided uncertainty to the scope of information to be provided.

- **"Reasonable grounds to suspect"**: This threshold is lower than the prescribed "reasonable grounds to believe" threshold in the sense insurers would be required to report information where the information provides mere "suspicion" that a fraud event has occurred or is likely to occur. FSRA did not choose this option as this threshold may invite information that may be premature, inaccurate, or unverifiable. Reasonable grounds to believe, on the other hand, require more than mere suspicion, as well as verifiable evidence relating to the belief. Further, "suspicion" may be inconsistently interpreted throughout the sector, resulting in ambiguity regarding the scope of information that is required to be provided.

- **"Belief based on a balance of probabilities"**: This threshold is higher than "reasonable grounds to believe" in the sense that this threshold is similar to the civil standard of proof required in civil trial cases. FSRA did not choose this option as this threshold may invite too little information to be reported. Once information has reached this threshold, it already provides a basis for seeking civil legal action. Rather, FSRA is requiring information that serves the purpose of enabling the assessing and detecting of automobile insurance fraud, information that reaches this civil standard includes instances of fraud has already been assessed and detected and is ready for adjudication.

- **"Adjudicated finding of a fraud event"**: Similar to the above, this is the highest threshold of information, that would require reporting to the FRS only if the information is used to adjudicate a finding a fraud event. This option was not chosen because it would result in the lowest amount of information being reported, albeit resulting in highly reliable information.

iii. Alternate timing requirements for when an insurer is required to report information to the FRS

The Proposed Rule requires insurers to report the prescribed information to the FRS on a quarterly basis only if the insurer has taken action or made a decision based on information that meets the prescribed threshold. FSRA's interpretation of information that would constitute "action" or a "decision" is outlined in the Guidance.

FSRA decided on this requirement to provide sufficient time for the insurer to prepare information that must be reported, and to ensure that information that may be premature or not actionable is not reported to the FRS.

As an alternative, FSRA also considered alternate timing requirements for insurers to report the prescribed information to the FRS:

- **Reporting information within a prescribed number of days following the conclusion of an insurer's investigation about a fraud event:** FSRA considered an arbitrary number of days (e.g., 30 days) that an insurer would have following the conclusion of an investigation to report the information. This option was not chosen because of the arbitrariness of the time period and also because the conclusion of an investigation was determined by FSRA to be too high of a standard to require information to be reported.

- **Reporting information within a "reasonable" amount of time following the conclusion of an insurer's investigation about a fraud event:** Similar to the above, this option was not chosen because FSRA decided there needs to be some certainty about the timing requirement (i.e., a "reasonable" amount of time may differ significantly throughout the sector), and that the conclusion of an investigation is too high of a standard to require information to be reported.

- **Real-time Reporting once information reaches prescribed threshold:** This option was not chosen due to perceived inconsistencies and ambiguities regarding what point-in-time an insurer is required to report, as well as the administrative burden real-time reporting would place on insurers and FSRA. For example, it is possible that one insurer may subjectively determine that their information gathered does not reach the threshold of "reasonable grounds to believe" that a fraud event has occurred, whereas a different insurer with the same information may subjectively determine their information does reach the prescribed threshold and thus be required to report.

7. Anticipated Costs and Benefits

Qualitative benefits associated with operationalization of the Proposed Rule may include:

- Enabling FSRA to monitor and evaluate developments and trends of fraud in the automobile insurance industry;

- Holding insurers accountable for reporting fraud; and

- Developing a common understanding of automobile insurance fraud amongst all participants of the automobile insurance system.

Qualitative costs associated with operationalization of the Proposed Rule may include:

- Familiarization with a net-new reporting requirement;

- ‘Growing pains’ associated with net-new reporting requirement, including erroneous or premature reporting; and

- Understanding how to comply with a principles-based and outcomes-focused reporting requirement.

Quantitative benefits associated with operationalization of the Proposed Rule may include:

- Enabling FSRA’s ability to quantify the prevalence of automobile insurance fraud in Ontario;

- Gathering of information about automobile insurance fraud may inform how resources can be most efficiently allocated to reduce costs to insurers and ultimately consumers.

New quantitative costs associated with operationalization of the Proposed Rule for both FSRA and insurers may include:

- Anticipated system and data collection resources needed to adapt to new reporting requirements.

- Data integrity and quality during the initial stages of reporting may cause initial challenges.

- Investment in data security and encryption technology will need to be considered to protect data.

8. Regulations to be Amended

FSRA does not intend to make any recommendations with respect to the amendment or revocation of a regulation or provision in a regulation that relates to the implementation of the Proposed Rule. FSRA expects that in due course certain regulations or provisions in regulations will be amended or revoked in a manner consistent with the operationalization of the Proposed Rule.

Appendix A – PROPOSED RULE 2024 – 003

1 Definitions

1(1) In this Rule,

(a) "Act" means the *Insurance Act*, RSO 1990, c I.8, as amended;

(b) "FSRA Act" means the *Financial Services Regulatory Authority of Ontario Act, 2016*, SO 2016, c 37, Sched 8, as amended;

(c) "prescribed information" means the information an insurer is required to provide under subsection 101.3(1) of the Act in accordance with subsection 3(1) of this Rule.

(d) "Rule" means this Authority Rule 2024 – 003

(e) "fraud event" means a deceptive act or omission, or series of deceptive acts or omissions intentionally committed by a person(s) to obtain advantage, financial gain, or benefits beyond that to which one is entitled to with regard to any policy, claim, provision of goods or services or other occurrence related to automobile insurance, and for greater clarity includes instances of:

i. Obtaining an automobile insurance policy through fraudulent means, including underwriting fraud;

ii. Obtaining a benefit under a contract of insurance through fraudulent claims;

iii. Providing goods or services to a beneficiary under a contract of insurance through fraudulent means or in a fraudulent manner;

iv. Fraudulent activity in the selling or distribution of insurance products; and

v. Fraudulent activity committed by internal employees of an insurer.

2 Interpretation

2(1) If a term or phrase used in this Rule is defined in the Act, the definition used in the Act shall apply for the purposes of this Rule.

2(2) Words and phrases not defined in this Rule have the same meaning as ascribed thereto under section 1 of the FSRA Act unless a contrary intention appears.

2(3) References in this Rule to the Chief Executive Officer include reference to an authorized delegate or designated agency of the Chief Executive Officer as outlined in subsection 101.3(1) of the Act.

2(4) For the purposes of this Rule, references to “insurance” are limited only to “automobile insurance”.

3 Prescribed information under subsection 101.3(1) of the Act

3(1) Prescribed information includes all information, including personal information, in the insurer’s possession, control or power related to any policy, claim, provision of goods or services or any other occurrence or event where the information provides reasonable grounds for the insurer to believe that a fraud event has occurred or is likely to occur.

3(2) An insurer shall within thirty days after the close of each quarter of the calendar year provide the information prescribed in subsection 3(1) of this Rule with respect to fraud events which in the preceding quarter the insurer has taken action or made a decision based on reasonable grounds for the insurer to believe that a fraud event has occurred or is likely to occur.

3(3) An insurer shall not disclose personal information that is not necessary for the purposes set out in subsection 101.3(2) of the Act when providing the prescribed information to the Chief Executive Officer.

3(4) An insurer shall de-identify all names and identifying numbers, symbols or other particulars assigned to individuals before an insurer provides the prescribed information to the Chief Executive Officer unless disclosure of the names or other identifying information is necessary for the purposes set out in subsection 101.3(2) of the Act.

4 Reporting requirements – Prescribed information

4(1) An insurer shall ensure that all prescribed information is complete, up to date, and factually correct before an insurer provides the prescribed information to the Chief Executive Officer.

4(2) Every insurer who provides prescribed information that subsequently becomes aware that the information the insurer provided is or has become

incomplete, out-of-date, or factually incorrect shall in the quarter following their becoming aware:

(a) inform the Chief Executive Officer of the deficiencies in the prescribed information provided; and

(a) take reasonable steps to remedy the deficiencies in the prescribed information provided to bring the information into compliance with subsection 5(1) of this Rule.

4(3) If an insurer provides information to the Chief Executive Officer and subsequently discovers that the information either:

(a) includes deficiencies that cannot be remedied as required by subsection 5(2)(b) of this Rule; or

(b) fails to meet the threshold of the reporting requirement outlined in subsection 3(1) of this Rule,

then the insurer must immediately give notice and recommend the Chief Executive Officer to withdraw the information provided.

4(4) Every insurer shall submit the prescribed information through the Authority's electronic or computer-based system for the filing, delivery or reporting of the prescribed information.

5 Transitional

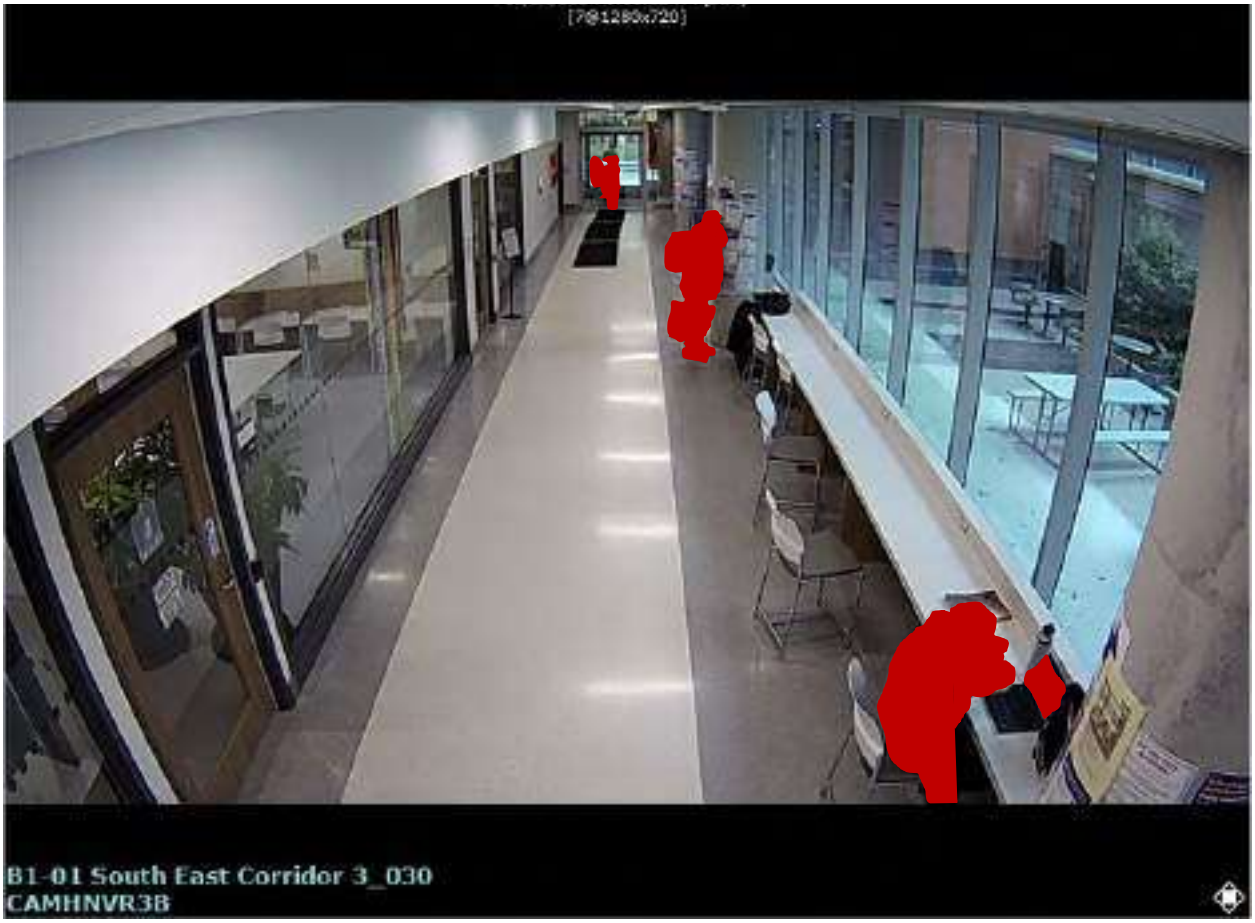
5(1) An insurer is not required to report the information required in section 3 of this Rule until after [date].

6 Coming into force

6(1) This Rule will come into force on the later of the date that section 101.3 and clause 8.2 of subsection 121.0.1(1) of the Act comes into force and 15 days after the Rule is approved by the Minister.

THIS IS EXHIBIT "B" REFERRED TO IN THE
AFFIDAVIT OF Mr. Kevin A. McLean
AFFIRMED BEFORE ME, THIS 27th DAY
OF January 20 25
, ETC.

Vinh The Tran, Esq., LSUC #57761C
Lawyer, Notary, Oaths Commissioner
188-639 Dupont Street, Toronto, ON
M6G 1Z4, T. 647-209-7389
vinhtranlaw@hotmail.com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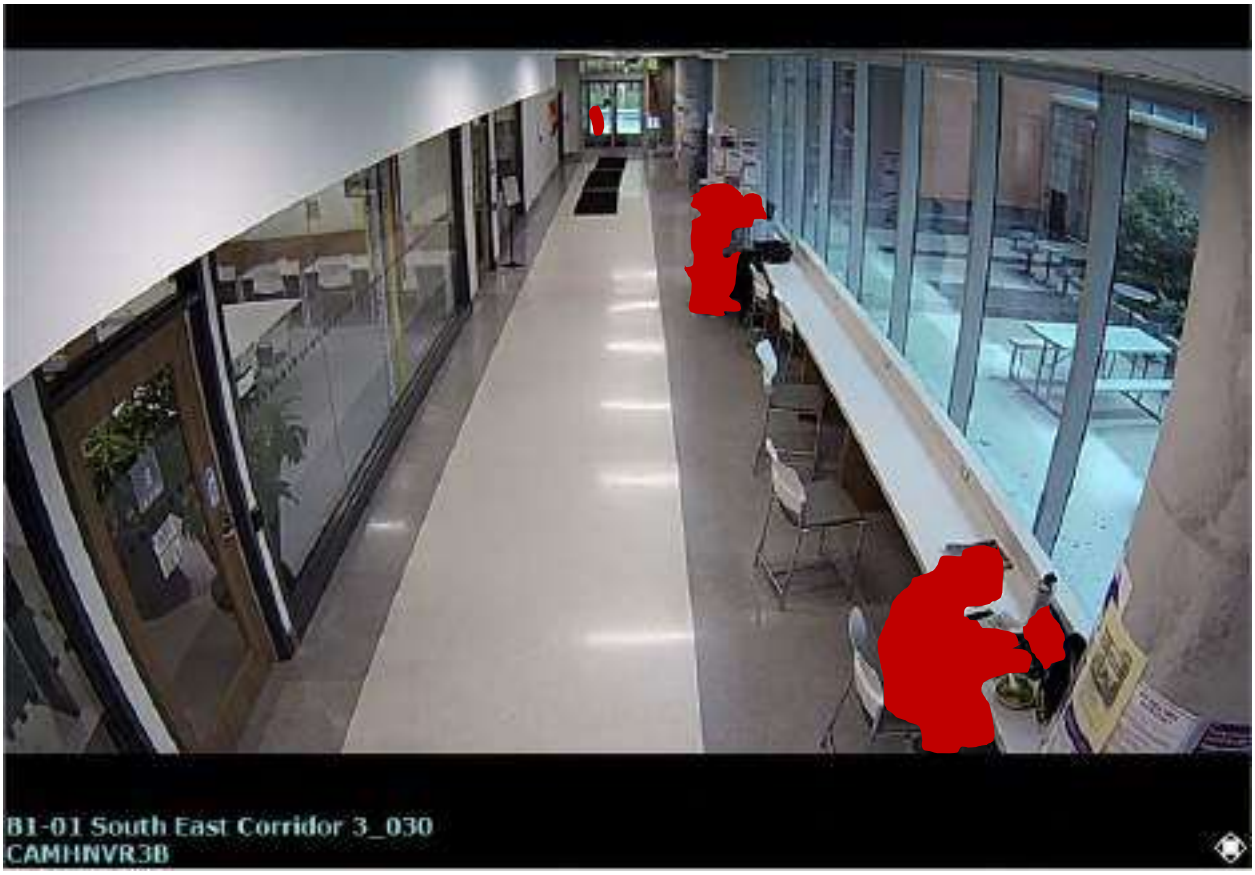
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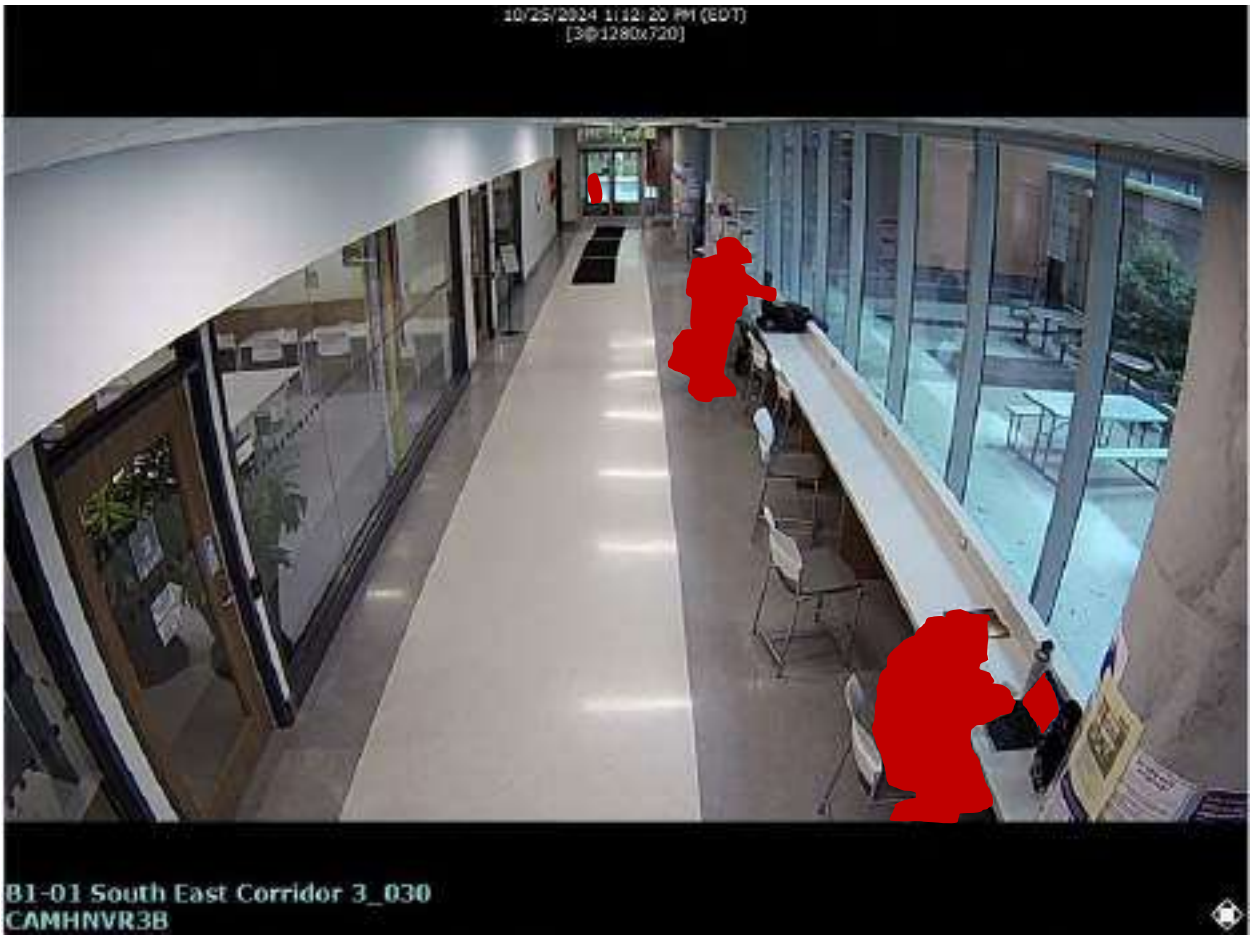
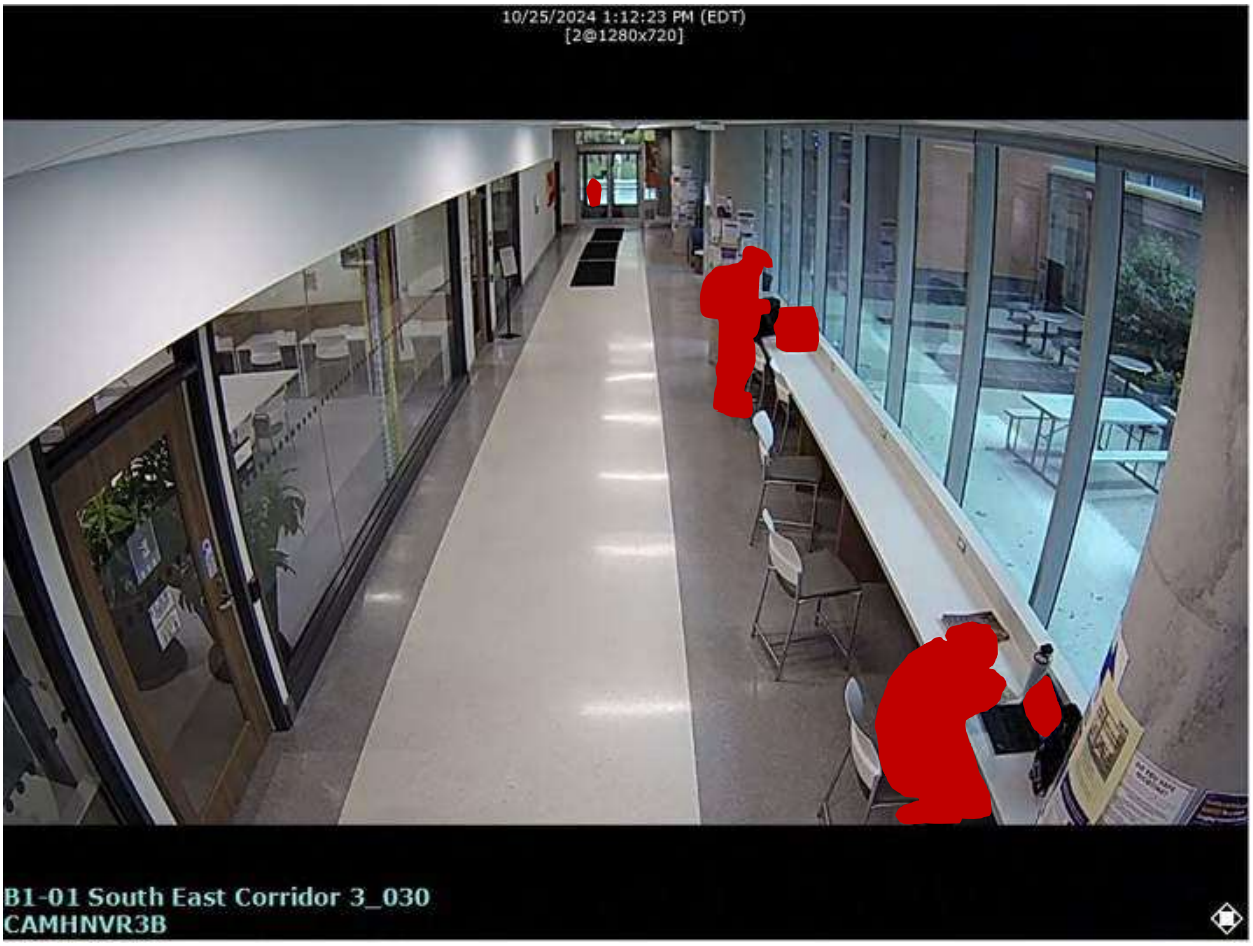
Toronto Superior Court of Justice / Cour supérieure de justice





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MCLEAN, KEVIN ALEXANDER - Account Summary

Note: CircIT transactions cannot be separately identified as self-checkout vs staff-assisted checkout as they both use the same software.

Date/Time	Branch / Location	Card #	Activity	Method of Transaction
28/10/2024,16:35	Fort York	27131056572458	Laptop check out. Item returned	Symphony accessed by staff
28/10/2024,16:36	Fort York	27131056572458	Note added: Laptop form completed at Fort York Branch Oct 28/2024	Symphony accessed by staff
28/10/2024,19:41	Fort York	27131056572458	Check out 1 Book	CircIT accessed either through self-checkout or staff-assisted station
28/10/2024,19:43	Fort York	27131056572458	Laptop check out. Item returned	Symphony accessed by staff
28/10/2024,20:16	Fort York	27131056572458	Check out 1 book	CircIT accessed either through self-checkout or staff-assisted station
8/11/2024, 11:57 – 12:29 11:57-11:58 12:04 12:13 12:29	Queen/Saulter	27131056572458	Checked out 24 items 10 have been returned 3 Generic paperback 3 Books (1 book returned) 9 Periodicals (all 9 were returned) 5 Books 1 Book 3 Generic paperback	CircIT accessed either through self-checkout or staff-assisted station
8/11/2024, 12:52	Queen/Saulter	27131056572458	Check In 1 book 9 periodicals	CircIT accessed at staff-assisted station

Date/Time	Branch / Location	Card #	Activity	Method of Transaction
16/11/2024,10:20	Fort York	27131066792070	New card issued at Fort York Branch Previous card 27131056572458 marked as LOSTCARD	Symphony accessed by staff
13/12/2024,19:00	Toronto Reference Library	27131066991128	New card issued at Toronto Reference Library Previous card 27131066792070 marked as LOSTCARD	Symphony accessed by staff
13/12/2024,19:09	Toronto Reference Library	27131066991128	Renewed 16 items (2 borrowed at Fort York; 14 borrowed at Queen/Saulter Branch)	Symphony accessed by staff
13/12/2024,19:12	Toronto Reference Library	27131066991128	Phone number updated to 416-919-7820 Account renewed	Symphony accessed by staff
13/12/2024,20:03	Toronto Reference Library	27131066991128	Checkout 1 Book	CircIT accessed either through self-checkout or staff-assisted station
21/12/2024,15:15	Fort York	27131067089492	New card issued at Fort York Branch Previous card 27131066991128 marked as LOSTCARD	Symphony accessed by staff
21/12/2024,15:48	Fort York	27131067089492	Laptop check out. Item returned	Symphony accessed by staff
21/12/2024,16:11	Fort York	27131067089492	Check out 1 Book 4 Periodicals	CircIT accessed either through self-checkout or staff-assisted station
21/12/2024,16:13	Fort York	27131067089492	Laptop check out. Item returned	Symphony accessed by staff
28/12/2024, 15:30	Fort York	27131067089492	Laptop check out. Item returned	Symphony accessed by staff

Date/Time	Branch / Location	Card #	Activity	Method of Transaction
28/12/2024,15:59	Fort York	27131067089492	Check out 7 Periodicals	CircIT accessed either through self-checkout or staff-assisted station
17/1/2025,16:03	Answerline	27131067089492	Renewed – 29 items 1 item not renewed due to outstanding hold	Symphony accessed by staff

TAB 9:

Court File No. DC-24-00000718-00JR
Applicant's Motion #2 (Motion in Writing; Request to Convert Motion into Motion for Judgment)

This is the 4th affidavit of Mr. Kevin A. McLean in this JRPA Proceeding and it was made on January 18th, 2025

Court File No. DC-24-00000718-00JR

FORM 4D

Courts of Justice Act

AFFIDAVIT

ONTARIO SUPERIOR COURT OF JUSTICE (DIVISIONAL COURT)

BETWEEN:

KEVIN ALEXANDER MCLEAN

APPLICANT

- and -

TD HOME AND AUTO INSURANCE COMPANY, SECURITY NATIONAL INSURANCE COMPANY, TD GENERAL INSURANCE COMPANY, EXECUTIVE DIRECTOR, LICENCE APPEAL TRIBUNAL,
HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO, REPRESENTED BY EXECUTIVE CHAIR OF TRIBUNALS ONTARIO IN MR. SEAN WEIR, THE ATTORNEY GENERAL OF ONTARIO

RESPONDENTS

In a matter under the *Judicial Review Procedure Act*, RSO 1990, c J.1 et seq

Affidavit #4 of Kevin A. McLean in this *JRPA* Proceeding

(Affidavit in support of Applicant's Notice of Motion #1, compelling the Tribunal to comply with its statutory duties – forthwith filing of the Record of Proceeding pursuant to section 10 of *JRPA* and section 30 of the SPPA – other relief (see: Schedule "A")

I, Kevin Alexander McLean, Disabled (B.A., LL.B., CIM) of **Toronto, Ontario, SWEAR THAT:**

Volume #1: Sworn Under Oath; under the Penalty of Perjury; and Introduction

1 I am the JRPA Applicant and I swear under penalty of perjury that the following facts are true. When stating my beliefs, I verily believe these beliefs to be true and, as such, I have

cited their sources. When using phrases like "in my view," "in my opinion," or "belief," I express my factual position and opinions and I am not making any legal conclusions.

2. I put the respondents to strict proof of any and all of their positions and allegations as of today's date. I ask that the ONSC draw an adverse inference against any respondent, party (where applicable) or person where I have sworn evidence that has been provided to them and they have not countered;

3. Where double underlining has been utilized, the double underlining is mine and added for emphasis

VOLUME #2: MR. BOYCE'S PREVIOUS CONTACT INFORMATION ON THE LSO DIRECTORY WEBSITE

4. I now copy and paste from my Affidavit #2 which was the contact information that I copied and pasted on or around December 30, 2024, from the LSO directory. For sake of completeness, I have copied and pasted the identical language from paragraph 51 of my Affidavit #2.

> "I am also concerned that Mr. Boyce is located at the same office as VCI, and presumably the same office as VCM (albeit she appears to not have updated her contact information with the LSO). I distinguish the same with the office location of Ms. Im, counsel to Ministry of Attorney General. I now copy and paste from the Appendices of my Oral Outline (Draft):
>
> **Order in Council 1421/2023**
> On the recommendation of the undersigned, the Lieutenant Governor of Ontario, by and with the advice and concurrence of the Executive Council of Ontario, orders that:
> Whereas Jesse Boyce was reappointed as full-time member and vice-chair of the Licence Appeal **Tribunal** for a fixed term of three years, effective November 12, 2022, by Order in Council O.C. 1319/2022;
> And whereas Jesse Boyce was reappointed as part-time member of the Ontario Civilian Police Commission for a fixed term of five years, effective February 21, 2023, by Order in Council O.C. 67/2023;
> And whereas Jesse Boyce tendered his resignation effective August 21, 2023,
> Therefore, pursuant to subsection 2(3) of the *Licence Appeal* ***Tribunal*** *Act, 1999*, subsection 24(2) of the *Police Services Act* and subsection 16(4) of the *Adjudicative* ***Tribunals*** *Accountability, Governance and Appointments Act, 2009*, Orders in Council O.C. 1319/2022 and 67/2023 be revoked effective August 21, 2023.
> **Ministry of the Attorney General**
> **Approved and Ordered:** September 28, 2023
>
> LSO Directory

Jesse Aaron Boyce
Back to results Next Service Print
Assumed Name
Jesse A. Boyce
Law Society Number
72486F
Class of Licence Definitions
Lawyer (L1)
Real Estate Insured
No
Status Definitions
Practising Law - Employed
Business Name
SLASTO
Business Address
25 Grosvenor 4th FloorToronto, Ontario M7A 2S8
Phone
1 437 997 1235 Ext.
Trusteeships
None
Current Practice Restrictions
None
Current Regulatory Proceedings
None
Regulatory History
None

[end of quotation]

5. I served the Tribunal with a copy of my filed and paid for JRPA Application of November 15, 2024, on November 15, 2024, by way of emails to the case manager of the LAT Proceeding in Ms. Hannah Lee. I also filed a copy of the same on or around November 15, 2024, in the LAT (AABS) e-filing portal.

6. I did not know Mr. Boyce until I became aware that the Licence Appeal Tribunal had purported to serve me, albeit at the incorrect address for service (i.e. mcleansmclat@gmail.com) as opposed to the email on file with the ONSC Divisional Court of appeals@lamenta.email.com) with a copy of the Notice of Appearance on behalf of the Tribunal.

7. For ease of reference, the email from Ms. Maciel, law clerk at Tribunals Ontario (but perhaps not in a specialized role with the LAT or LAT/AABS) stated as follows:

[beginning of quotation]

From: Maciel, Milene (MAG) <Milene.Maciel@ontario.ca>
Sent: Wednesday, November 27, 2024 2:52 PM
To: mcleansmclat@gmail.com; Matthew.Nieuwland@tdinsurance.com
Cc: Boyce, Jesse (MAG) <Jesse.Boyce@ontario.ca>; Collie, Connor (MAG) <Connor.Collie@ontario.ca>; Cloc-Reception (MAG)

«Cloc.Reception@ontario.ca»; SCJ-CSJ Div Court Mail (JUD) «scj-csj.divcourtmail@ontario.ca»
Subject: LAT's Notice of Appearance : McLean v. TD Home and Auto Insurance et al. : 718'24

Good Afternoon,

Please find attached the Licence Appeal Tribunal's Notice of Appearance and covering letter which are being served in accordance with the Rules of Civil Procedure

Best Regards,

Milene Maciel (Pronouns: she/her) (learn more)

Law Clerk

Tribunals Ontario: Legal Services

P: 416-272-8057

E: milene.maciel@ontario.ca

W: tribunalsontario.ca

Tribunals Ontario
Tribunaux décisionnels Ontario

[end of quotation]

8 I believe that the Tribunal forwarded him a copy of my JRPA Application.

The confirmation of receipt and filing by Madam Clerk or Madam Registrar (Ms. Clegg)

9. I now copy and paste the same from the response of Madam Registrar at the time below:

"On Wed, Nov 27, 2024 at 3:11 PM SCJ-CSJ Div Court Mail (JUD) <scj-csj.divcourtmail@ontario.ca> wrote:
Hello Ms. Maciel,

Received and file [sic]

Thanks.

JESSA-MARIE CLEGG
Clerk
Divisional Court, Toronto Region
(416) 327-5169
(416) 327-5569 (Fax)
130 Queen Street West, Toronto ON
M5H 2N5
Osgoode Hall - Room 124

10. I note that this set a precedent, in my view, that the respondents and I could file and serve ("deliver" under the Civil Rules) via email as, inter alia, my IRPA Application was denoted as urgent along with pleading section 6(2) of the IRPA

11. Mr. Boyce's signature block so states

[beginning of quotation]

Jesse A. Boyce (he/him)

Counsel

Tribunals Ontario – Legal Services Branch

(437) 997-1235

jesse.boyce@ontario.ca

tribunalsontario.ca

[end of signature]

12. I note that the phone number in Mr. Boyce's signature block and his information on the LSO directory website as of December 30, 2024, are identical

13. I have only found jurisprudence where Mr. Boyce has acted, in his role as counsel (a lawyer licensee representative (see: section 1 and 10 of the SJPA) for the Licence Appeal Tribunal.

14 I copy and paste the following from the Tribunals Ontario website[4].

> "INTRODUCTION
> The Licence Appeal Tribunal (LAT or "the Tribunal") is an adjudicative tribunal included within the Safety, Licensing Appeals and Standards Tribunals Ontario (SLASTO). SLASTO is a cluster of adjudicative tribunals created on April 1, 2013. SLASTO is designated as a cluster pursuant to s. 15 of the *Adjudicative Tribunals Accountability, Governance and Appointments Act, 2009* and s. 4 of Ontario Regulation 126/10.
>
> The constituent tribunals of SLASTO are:
>
> Animal Care Review Board (ACRB)
>
> Fire Safety Commission (FSC)
>
> Licence Appeal Tribunal (LAT)
>
> Ontario Civilian Police Commission (OCPC)
>
> Ontario Parole Board (OPB)
>
> LAT adjudicates matters in a variety of diverse areas such as alcohol and gaming regulation, motor vehicle impoundments and driver's licences, new home warranties, consumer protection, regulation of various occupations and businesses, and starting on April 1, 2016, in relation to automobile insurance Statutory Accident Benefits Schedule (SABS) disputes. LAT conducts proceedings pursuant to the following statutes:
>
> Insurance Act
>
> You may contact LAT by mail at:
>
> Licence Appeal Tribunal
>
> 15 Grosvenor Street, Ground Floor
>
> Toronto, Ontario
>
> M7A 2G6

> Please note that AABS maintains a separate mailing address from the main LAT address. Please check the website referenced above for current AABS mailing address."

15. I note that Vice Chair Lake has represented on the LSO Directory that she is employed by LAT/AABS and located at 25 Grosvenor Street, Toronto, Ontario.

16. I note that Mr. Boyce represented on the LSO Directory that he was employed by SLASTO, which I believe is a cluster or sub-cluster within the cluster of the 13 tribunals that make up Tribunals Ontario.

17. I confirm that when I attempted to deliver my application fee for my access request of the LAT in September 2024 (ironically, in my view, the same date that VCM represented that the VCM Decision was dated albeit discrepantly with the signed copy of the same) that I could not enter 15 Grosvenor Street as it denoted that said building was closed to the public since the pandemic. I then attended the building and premises at 25 Grosvenor Street and was able to deliver the same to the privacy division of LAT.

VOLUME #3: SOCIETY OF ONTARIO ADJUDICATORS AND REGULATORS: PUBLIC INFORMATION: JOB POSTING[3]

18. I repeat and rely upon my references to *Shuttleworth* in my affidavit #2, paragraph 52.

19. I rely upon he above hyperlinked job posting regarding said job posting regarding a manger of legal services at SLASTO:

> "Manager, Legal Services - Safety, Licensing Appeals and Standards Tribunals Ontario (SLASTO)
> Posted on February 9, 2018 - 12:47pm
> The Safety, Licensing Appeals and Standards Tribunals Ontario (SLASTO) has a challenging opportunity for a strategic thinker with highly developed leadership skills to manage the provision of legal and strategic policy advice to the Executive Chair, SLASTO and its constituent tribunals.
>
> What can I expect to do in this role?
>
> Reporting to the Executive Lead and accountable to the Executive Chair, your duties will include:
>
> • Serving as counsel to the Executive Chair, SLASTO within a solicitor–client relationship
>
> • Leading a team of highly skilled legal professionals (in both unionized and excluded positions)

• Providing expert legal advice to provide quality assurance and maintain and enhance the consistency and coherence of Tribunal decisions, adjudicative processes and dispute resolution processes

• Overseeing investigations and prosecutions under the Police Services Act at the direction of the Executive Chair, SLASTO

• Representing, or overseeing the representation of SLASTO and its tribunals before the Courts, for appeals, judicial review applications and various court-related matters

• Reviewing and/or drafting contracts, agreements and internal policies and ensuring that they are in compliance with all statutory or legal requirements

• Monitoring trends in decisions and evolving jurisprudence for use in adjudicator training, and for targeting emerging legal and policy issues

• Providing leadership and direction in the preparation and delivery of orientation sessions and continuing education for Tribunal Members, Vice-Chairs and staff, including topics such as: legislation, rules and practice directions, case law, conduct of hearings, and decision writing

• Representing SLASTO at public symposia, conferences, and provincial and national meetings of organizations/practitioners, and other fora involving issues related to SLASTO, establishing contacts/networks, and delivering presentations

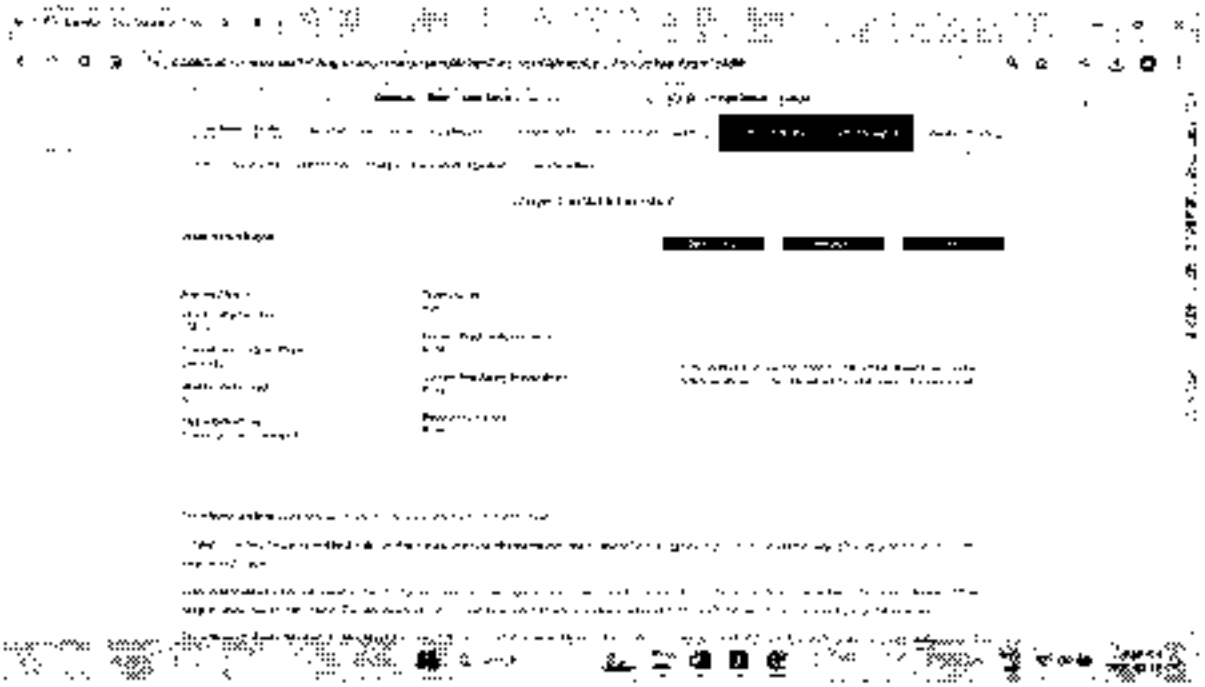
• Developing, managing, and growing complex relationships with multiple constituencies on behalf of SLASTO

• Cultivating a work environment that values respect, diversity and inclusion

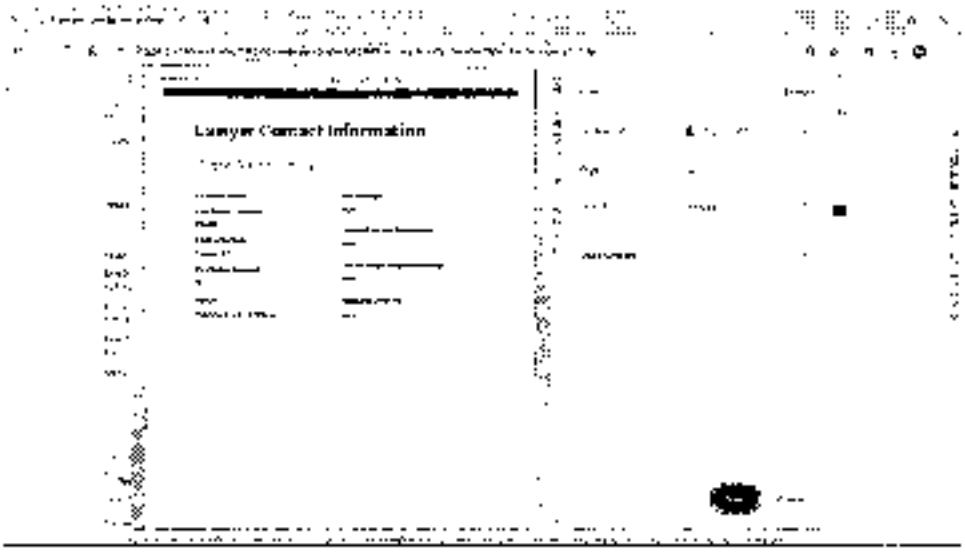
• Contributing as a key member of the SLASTO executive management team"

VOLUME #4: MR. BOYCE'S CURRENT CONTACT INFORMATION

20 I now attach or copy and paste a screenshot from the LSO Directory website from Saturday, January 18, 2025, at approximately 9:38 a.m.:



2 I also copy and paste a screenshot of Mr. Boyce's revised contact information, on a date unknown to me but I believe at some time after December 30, 2024



22. For ease of reference, the missing components therein are:
   a. Employer; and
   b. Address.

VOLUME #5: COPY OF SELECT RELEVANT PARAGRAPHS FROM MY DRAFT ORAL OUTLINE AND ORAL COMPENDIUM

23. I now copy and paste from my oral outline (draft), contained at Tab 1 therein, which I have attempted to adhere to the principles on *Robertson*,

[start of quotation]

ISSUE #4: Footnote #4[CC](b): Two competing interests: fully informed adjudication of issues vs. tribunal impartiality

The two most important considerations, drawn from those cases, were the (i) "importance of having a fully **informed** adjudication of the issues before the court" (para. 37); and (ii) "the importance of maintaining tribunal **impartiality**" (para. 38). The principle of impartiality is implicated by tribunal argument on appeal, because decisions may in some cases be remitted to the tribunal for further consideration. Stratas J.A. found that "[s]ubmissions by the tribunal in a judicial review proceeding that descend too far, too intensely, or too aggressively into the merits of the matter before the tribunal may disable the tribunal from conducting an impartial redetermination of the merits later": *Quadrion*, at para. 16 [see paragraph 30 of Ontario Energy Board].

Finality, the principle whereby a tribunal may not speak on a matter again once it has decided upon it and provided reasons for its decision, is discussed in greater detail below, as it is more directly related to concerns surrounding "overstepping," rather than agency standing itself. The court should limit tribunal participation if it will undermine future confidence in its objectivity. The court identified a list of factors, discussed further below, that may assist in determining whether and to what extent the tribunal should be permitted to make submissions: paras. 36-38 of *Goodis*[1]. If the judicial review application involves only questions of law or primarily questions of law (or the limitation of the appeal to questions of law or to extricable questions of law from a finding of mixed fact and law and/or findings of fact unsupported by evidence which are questions of law) in relation to certain decisions and orders, then the participation (not necessarily intervention) of the Tribunal in this ***JRPA Proceeding*** is not particularly necessary or relevant."

[END OF QUOTATION]

VOLUME #5(A) MY NOW POSITION, IN LIGHT OF MR. BOYCE'S CHANGE OF POSITION INVOLVING HIS EMPLOYER (SLASTO) AND ADDRESS AND OBFUSCATION OF THE SAME

24. The Applicant's now stated and formal position, by the provision of notice to SLASTO, LAT and Mr. Boyce including any other potential counsel (lawyer licensee representative) is encapsulated in the current draft in the Oral Outline (draft form):

[start of quotation]

ISSUE #4: VOLUME #5(A)[CC](b): Mr. Boyce's admission, by conduct, in January 2025, has disabled the Tribunal from adjudicating the matter any further and Mr. Boyce must be prohibited from acting in this JRPA Proceeding

The prime principle of impartiality is implicated by tribunal argument in this JRPA Application at bar, because decisions may in some cases be remitted to the tribunal for further consideration. The LSO public exercise management resources and By-Laws, which have legislative force, are of great import. From the ONSC – *Nothnagel v. Ludwig* as per Gordon J. of the Central West Region, articulated the legal principles in relation to the ONSC (which the ONSC Divisional Court is the intermediate appellate court or "court of review").

This Court's jurisdiction to remove Bennett Jones LLP as counsel for Talisman on the basis of a conflict of interest is an inherent one. It is not derived from any particular legislation or rule. It is grounded in the Court's objective to safeguard the proper administration of justice. Pahl v. Katz Group Canada Ltd., [2006] O.J. No 4596 (S.C.J.) at paragraph 23

> [14] The question is whether these Defendants have established on a balance of probabilities that a fair minded and reasonably informed member of the public would conclude that the removal of Bennett Jones LLP as counsel for Talisman is necessary for the proper administration of justice. MacDonald Estate v. Martin, 1990 CanLII 32 (SCC), [1990] 3 S.C.R. 1235 at paragraph 47.
>
> [14] The question is whether these Defendants have established on a balance of probabilities that a fair-minded and reasonably informed member of the public would conclude that the removal of Bennett Jones LLP as counsel for Talisman is necessary for the proper administration of justice. MacDonald Estate v. Martin, 1990 CanLII 32 (SCC), [1990] 3 S.C.R. 1235 at paragraph 47.
>
> [15] In analyzing the question, the Court may consider any applicable rules of professional conduct. Where there is a rule or guideline or ethical principle directly on point, the Court ought to consider it but is not bound by it. MacDonald Estate, supra, at paragraph 21

As it relates to a lawyer, which Mr. Boyce is albeit he must have taken active steps to hide his address and employer name of SLASTO after the conflict of interest was drawn to his attention on December 30, 2024. Mr. Boyce also made up a new version of the law that there was some kind of extension for the Tribunal to file the record of proceeding within 60 days of an applicant, in a JRPA matter bringing her JRPA application. Apparently, Mr. Boyce's views and practices are more important and take precedence and/or are parametral to that of a well-functioning democratic society under the rule of law by a democratically elected members of the Legislature. In any event, he has not even followed his created non-law requirement

Mr. Boyce, the SLASTO cluster, Tribunal (LAT) and the divisional AABS will now have to face the evidence that there is a systemic issue if the LAT wishes to obtain leave to file its factum and application record past the deadline imposed by our Lieutenant Governor under the Rules of Civil Procedure. Moreover, there cannot be a case conference at ANY TIME with Mr. Boyce as counsel to the LAT because he would be in breach of his professional obligations and duties as an officer of the court.

Moreover, without a record of proceeding, to the extent that "prematurity" needed to be "discussed" (whatever that means in fact or in law – leaving aside another conflict of interest, albeit without any where near the allegations made and directly aimed at the Tribunal and Mr. Boyce) such discussions cannot occur in the abstract. Mr. Boyce in his undated imaging are of emails with this DNSC (Divisional Court) copied not only the Applicant and other respondents and their counsel, which, with the benefit of hindsight bias and retrospection had self evident purposes, relied on Awanda and Hoogstra. Awanda's legal principles are in the Applicant's factum. Hoogstra has about as much relevance here on Mr. Boyce's representation of the Tribunal herein considering his representation of the Tribunal, and provision of legal advice to it involving the LAT Proceeding.

Mr. Boyce has an overriding duty as an officer of the court. Lawyers are officers of the court in Canada. This means that lawyers are part of the legal system and have a role in the administration of justice. The Applicant forcefully notes the overlap between the jurisdiction of this court to remove counsel to the Tribunal for disrupted its arguments pursuant to *In Taylor*, ONSC Divisional Court (Toronto) as per The Honourable Justices Ryan Bell, Nishikawa, and Shore JJ and the role of a lawyer, as an officer of the court in the administration of justice.

Lawyers are officers of the court when they appear in court on behalf of a client. They are expected to uphold the authority and dignity of the court, and to serve the cause of justice.

In 2010, Chief Justice Winkler, in the "Remarks of Chief Justice Warren K. Winkler on the Occasion of the Law Society of Upper Canada's Call to the Bar Ceremony Toronto, Ontario June 15, 2010"[3] stated the following:

> "The privilege of call to counsel a lawyer comes with many perquisites. You will be treated with respect and deference not only by your clients, but also by the public generally. You will be recognized as an officer of the court whose job is not

> in a courtroom. You will have the distinction of being gowned, as you are today, whenever you appear in court on behalf of a party. The gown is itself a special distinction, a powerful sign or manifestation of dignity and worth. You will have the pleasure and satisfaction of being referred to as "counsel" by judges and opposing lawyers.

It is now notable that the one thing that Mr. Boyce has had an interest in doing is that of "appearing in the courtroom" and filing a factum and application record on behalf of the Tribunal within 30 days of December 12, 2024. Moreover, from the outset, the Tribunal, through Mr. Boyce, has not complied with its statutory duty to file forthwith the record of proceeding.

With that in reliance of this Oral Outline and other filed documents with this ONSC Divisional Court, will be the consideration of the formal adjournment request (as per Ms. Hannah Lee representing to the Applicant it could be made two days before January 24, 2025), with supporting materials, relying upon, inter alia, that the Tribunal must address a motion as to whether it has lost jurisdiction based upon, inter alia, Mr. Boyce's contemplated dual roles of providing legal advice to the Tribunal regarding decisions to be issued and providing advice to the Tribunal in this very JRPA Proceeding. Parenthetically, it does not mean that such conflict of interest does not arise in a LAT Act Appeal but it is more obvious and glaring when there is no stay of the underlying LAT proceeding. For the Court's benefit, there are other grounds and not squarely on Mr. Boyce and his displayed employer SLASTO (LAT), at the very same office building of adjudicators and vice-chairs for the LAT in that in relation to a document production motion, partly granted in favour of the SADS Applicant, one Mr. Kanji purporting to comply with the same provided documents, non-responsive to the order of the Tribunal, on behalf of "TDGLC" with an email title of "Melanie v. TDGLC". It is rather ironic twist considering the decision of VCM in NOM 413 involving a non-party in TDGLC – of which said decisions and orders therein (not in NOM 414) is not under judicial review.
As per the ONSC in Talisman, rules of professional conduct are most instructive:

> Duties owed to third persons can created conflicts of interest. It is trite that the more important, by a considerable distance, persons with respect to duties is that of this ONSC Divisional Court which includes its staff, and those ordre de la crème former lawyers named judges, when compared to that of the JRPA Applicant. Nonetheless, there are multiple third persons to which Mr. Boyce owes duties.

> A conflict of interest exists when there is a substantial risk that a lawyer or paralegal's loyalty to or representation of a client would be materially and adversely affected by competing duties to another party or competing interests between the client(s) and the licensee. Because even well-intentioned licensees may not realize that the performance of their duties has been impaired, the rules address the risk of impairment rather than actual impairment. Substantial risk means a significant and plausible risk. It need not be certain or even likely, but it must be more than a mere possibility. Conflicts of interest may fall into one of the below categories.[1]

A client cannot waive a COI where the lawyer may be a witness (see *Wheeler v. Taylor*, 2024 ONSC 818 as per Justice Dietrich. At paragraph 31, Justice Dietrich, citing *Dagenais v. Allen Estate*, found as follows whilst citing the SCC and another one of the historically great legal minds to come to the Ontario bench in The Honourable Mr. Justice Perrell, formerly of Osler's who had written, as a lawyer, a vast amount of analytically precise secondary source articles:

> [31] As stated by Gillese J. (as she then was) in *Dagenais v. Allen Estate*, [999] O.J. No. 4816 (Ont. S.C.), at para. 27:
>
> > When counsel appears as a witness on a contentious matter, it causes two problems. First, it may result in a conflict of interest between counsel and his client. That conflict may be waived by the client .... The second problem relates to the administration of justice. The dual roles serve to create a conflict between counsel's obligations of objectivity and detachment, which are owed to the court, and his obligations as his client to present evidence in as favourable a light as possible. This is a conflict that cannot be waived by the client as the conflict is between counsel and the court/justice system.
>
> [32] The Law Society of Ontario *Rules of Professional Conduct* similarly state that a lawyer who appears as advocate shall not testify or submit their own affidavit evidence before the tribunal unless

permitted to do so on a purely formal or uncontroversial matter. (s. § 2-1.

[53] While the courts are not bound by the codes of conduct applicable to lawyers, the Supreme Court of Canada stated at *MacDonald Estate*, at p. 124n, that "an expression of a professional standard in a code of ethics relating to a matter before the court should be considered an important statement of public policy."

[54] In *Re: Brayko Parenting Trenchs*, 2018 ONSC 4161, at para. 56, Perell J. confirmed that a lawyer who is a material witness should not be permitted to continue acting as counsel even if they do not intend to testify in the case.

Mr. Boyce is (and has been the same time since his adoption as formal counsel of record herein) now in a conflict between himself and the ONSC (Divisional Court) or the ONSC (the matter proceeds by urgent application before a single judge of the ONSC) there is nothing

To even allow Mr. Boyce to discuss another matter, formally or informally (note here it is self-evident why he was bringing out of emails with the ONSC Divisional Court) would be contrary to his duties to the court.

What other reason would Mr. Boyce have for requesting the amendment of his information with the LSO?

It is herein that Tribunal counsel is rightly charged with providing an overview of the filed record of proceeding and the context of *the proceeding before the Tribunal*. Is Mr. Boyce, in light of his involvement and obfuscation of his employer (SLASTO) and his address (in contact with the public LSO Directory, able to discharge these duties in accordance with his duties to this Court as an officer of the Court? The question answers itself.

The more compelling public interest question is whether any lawyer in-house (see reference in the affidavit provided by in-house counsel in *Mandanewich*) who is employed by SLASTO able to do so? The Applicant says that optically, by reasonable perception, is that it is impossible for any lawyer to do so whether or not they are or were, in fact, providing advice to the Tribunal in any specific decisions involving any JRPA applicant. The Applicant's registrant submission on this point is grounded in ONSC common law precedent.

There is a *strong* concern that licensees who work together share confidences especially where they work under a "group" wall of internal confidentiality screens are in place (see *Mahrangeli*, [2004] OJ 3082 (Ont Sup. Ct.). Where confidential information exchanged on a prior related matter or file (or related to a current retainer the "licensees" MUST rebut inference confidential information was exchanged (see *Mahrangeli*, [2004] OJ 3082 (Ont Sup. Ct.).

The first obvious counter-query is are the adjudicators licensees? They are indeed in the VC Lake and VC Morrissette are licensees but "not practising law". The second counter is that Mahrangeli related to confidential information between potential shared between a prior related matter to a current retainer.

However, that is of no assistance to the LAT, Mr. Boyce and any potential future counsel (if applicable hereto) when considering the participation scope that the Tribunal would be entitled to by virtue of having some form of general party status pursuant to section 9(2) of the JRPA. Moreover, the ONSC has a supervisory and residual discretion to not accept arguments from the Tribunal whether there is any pre-hearing motion or case conference about its defined scope of participation. Each Tribunal must be analyzed distinctly but this Tribunal, the LAT under the SLASTO, is admittedly, or at least by representation to the public, a quasi-judicial tribunal. The context is most important in various cases. However, a case conference, even by telephone, is an "appearance before the Court" which is fatal to Mr. Boyce and this Tribunal.

Therefore, Mr. Boyce has to rebut the inference and provide contextual explanations to this Court as to why he did what he did in changing his address after receipt of the Applicant's affidavit #2 and perhaps affidavit #3 (and perhaps after the deadline under Rule 68.01(4) of the Civil Rules). Timing is everything.

Moreover, the SLASTO, Tribunal and Mr. Boyce, and any potential legal counsel, who works for the SLASTO, would have to provide evidence of the confidentiality screens. Are there confidentiality screens between the adjudicators of LAT and legal counsel of LAT? It is where the *Mandanewich* decision comes back to haunt this Tribunal in that the very Court documents are sent to the SLASTO

Legal Unit – Mr. Boyce's employer that he has only in the last two or so weeks had from the "public record"

As Mr. Boyce is the only individual, on behalf of another client, that raised the preliminary objection of "prematurity" without him being able to participate on behalf of the Tribunal, and the Tribunal not filing any factum or application record, the Applicant is entitled to proceed and not wait around for the SLASTO to "clean up his house" and manipulate addresses on the back-end of the LSO portal for public removal.

Mr. Boyce only raised prematurity because he wanted to delay the inevitable result in this JRPA Proceeding, at least as it relates to the Fee Issues issue, so that he could give more advice to the Tribunal in relation to other decisions. It is not likely he was giving advice at it all along the way after November 19, 2024, in relation to the outstanding matters and how to navigate the same.

This does not mean that every other tribunal in this province or other provinces in Canada cannot have representation at the Tribunal but it leads to the inevitable conclusion that when the likes of Tribunal members counsel are at the same physical location as adjudicators and vice chairs, and where they share the same domain name with the same hosting under the same web-site, and they admit an *Ehrenforst* that the LAT's practice explicitly involves the SLASTO legal unit (the very employer name that Mr. Boyce removed from the LSO Directory as that would change the actualities of what occurs "behind the scenes"):

> Second, there is legal review: The SLASTO Legal Services Unit reviews the decision to ensure [paraphrase] that the correct legal test has been applied and to identify any related case law that was not mentioned that might be helpful."

The Tribunal will now get the opportunity to determine whether it should grant an adjournment, at least on cost ground, as to whether it has lost jurisdiction to hear any further matters because of Mr. Boyce's dual role of providing advice to it in the McLean LAT Proceeding And then to the Tribunal in the McLean JRPA Proceeding. This is different than the legal ground so referenced above involving the Tribunal's decision too far into legal argument.

To allow Mr. Boyce to even discuss, however informal, the preliminary objection of prematurity, irrespective of its lack of merit, would be counter to the inherent jurisdiction of this Honourable Court, and it is an obvious and disabling conflict of interest between Mr. Boyce (and any future counsel of the LAT who seeks to act as a proxy or a "proxy upon proxy" (i.e. a proxy for another) and this Court (whether on division (by three justices) or "general division" (by a single justice) sees a motion, leave request or merits.

The legal scholars in this area have suggested a potentially preferred route for counsel to tribunals and courts to have judicially appointed amicus curiae appear on behalf of tribunals, particularly government ones that are self-espoused as quasi-judicial. In the following article[1], Mr. Lewis Sandler (see JD (Victoria), LL M (McGill), PhD (Cambridge); Member of the Law Society of Upper Canada[2], Assistant Professor Thompson Rivers University Faculty of Law) espoused the following whilst cross-referencing with authorities at 226 A.C.W.S. (3d) 54, 11 ADMIN. L.R. (6th) 1, page 8 thereon:

> "Courts may also appoint amici curiae as part of their inherent jurisdiction where it is necessary to assist the court in discharging its work.[3] The public advocate or amicus curiae could gather specialist information and present it in a more detached and informed manner to the court. Such a system would assist prevent public worldviews in administrative impartiality as it would interpose a layer, akin to an "institutional stove,"[4] between the tribunal and the reviewing court."

The only competing principle to tribunal impartiality is "having fully informed adjudication of the issues before the reviewing court". Mr. Boyce cannot do the same and no other counsel employed by the SLASTO (LAT) can do the same – not only not on these facts.

The Tribunal is not discharged of its statutory duties to a full record of proceeding under the JRPA. However, I agree with the essence in this case JRPA and hence the Applicant's motion of Friday, January 17, 2025. While this JRPA Application had numerous public issues before Mr. Boyce "lawyered switch" to "unreasonable holding of his address of employment and employer", it has more now.

The JRPA Applicant still has the burden of proving, on a balance of probabilities, that the VCM Decisions and VCM Orders for failure to even address certain issues and orders sought was incorrect and must be substituted, and this ONSC Court, like the Tribunal has found many times, cannot force the Tribunal or the respondent insurance companies, who had no interest in complying with the Practice Direction regarding "Information Submitted to the Court", cannot force respondents to file notices of appearances, factums and application records. However, actions or inactions come with consequences and that is the complete deprivation of participation rights. However, the Tribunal must still be compelled to file the record of proceedings. The only "silver lining" is that it makes scheduling easier."

[end of quotation]

VOLUME #6: JURAT

25. I swear, under the penalty of perjury, that I have raised the issues above as soon as they become known to me and then commenced the drafting of this affidavit for filing with the ONSC and for service upon the Tribunal and the respondent insurance companies.

26 I most sincerely hope that this affidavit is of assistance to SLASTO, Tribunal, Mr. Boyce and any other potential counsel that the former two may seek to retain herein and in any future unrelated JRPA or LAT Act appeal proceedings. I have no personal animus to any of the counsel for the respondents but I felt compelled to draw this to their attention so I was not seen to have waived or acquiesced to the same. I object on the above grounds to Mr. Boyce or any counsel at the LAT (SLASTO) engaging in any form of representation of the LAT herein. As the respondent insurance companies did not participate in NOM #14 and #15, and have not filed a factum and application record, I remain ready, willing and able to proceed on any date commencing next week

27. I swear this **Affidavit #4** for no improper purpose and for the above purposes.

Sworn before me at **Toronto, Ontario**
On this 18th day of January of 2025

Mr. Rowan A. McLean (B.A., J.D., C.M.)

Yinh Tae Tran, Esq.

Until Ind. Jr Expiration.
NO DA PROVIDED.
Identification Confirmed.

Schedule "A": the served (or exchanged) motion of the Applicant on Friday, January 17, 2025

Court File No. DC-24-00000718-40JR

FORM 37A

Courts of Justice Act

NOTICE OF MOTION

BETWEEN:

KEVIN ALEXANDER MCLEAN

APPLICANT

- and -

TD HOME AND AUTO INSURANCE COMPANY, SECURITY NATIONAL INSURANCE COMPANY, TD GENERAL INSURANCE COMPANY, EXECUTIVE C LICENCE APPEAL TRIBUNAL,
HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO, REPRESENTED BY EXECUTIVE CHAIR OF TRIBUNALS ONTARIO IN MR. SEAN WEIR, THE ATTORNEY GENERAL OF ONTARIO

RESPONDENTS

NOTICE OF MOTION

The Applicant will make a motion to the court on Wednesday, January 22, 2025, at 9:30 a.m. or as soon after that time as the motion can be heard.

PROPOSED METHOD OF HEARING: The motion is to be heard.

☐ In writing under subrule 37.12.1 (1) because it is *(insert one of* on consent, unopposed *or* made without notice*)*[2];

☐ In writing as an opposed motion under subrule 37.12.1 (4);

☐ In person;

X By telephone conference;

☐By video conference.

at the following location

Address of Local Registrar court office Divisional Court

Superior Court of Justice
Osgoode Hall
130 Queen Street West
Toronto, ON M5H 2N5

THE MOTION IS FOR the following relief:

1. An Order abridging the time, prescribed under Rule 37 and 39 of the *Rules Of Civil Procedure*[1], for this motion to be heard on the date above;

2. An Order abridging the time for any requirement for the Applicant to provide a confirmation of his motion in the prescribed form from three days under (Rule 37.10.1(1)) to the day before the motion hearing or the day of the hearing including any orders of a "nunc pro tunc" applicable generally and specifically;

3. An Order that the date of the receipt of this unfiled yet served motion shall be deemed to be the date of **delivery**[14] of this motion and/or by operation of the "*nunc pro tunc*" principle.

4. An Order dispensing with the need for the delivery of any motion record;

5. An Order that the delegated or presiding motion judge (not an "associate judge" pursuant to 37.02(2)(t) of the *Rules Of Civil Procedure* and section 4 of the *JRPA*) shall not be the Honourable Madam Justice Shaw and/or any other justice that was employed by Epstein Cole and/or was a partner in the limited liability partnership of Epstein Cole LLP during the time from Fall of 2017 to present;

6. An order compelling the Licence Appeal Tribunal (the "**Tribunal**") to file the Record of Proceeding forthwith and in accordance with, inter alia, section 10 of the *JRPA* and in accordance, from a content standpoint with section 20 of the *SPPA*;

7. An Order that the Tribunal is prohibited from any form of participation in this JRPA Proceeding until it does so in full and strict compliance with aforementioned legislative sections;

8. An Order dispensing with the need for the signature on behalf, "as per", "per procurationem", by proxy or agent of the Licence Appeal Tribunal and a forthwith

endorsement of the pronounced order by the Honourable presiding judge on this notice of motion, any amended[15] notice of motion or the delivered[15] notice of motion (if applicable);

9. Costs in favour of the Applicant against the Tribunal on a substantial indemnity basis to be determined by this Honourable Court after providing leave to the Applicant to provide a costs outline or written argument within three days of the pronouncement of the orders herein and limited to three pages double spaced; and

10. Such other orders that are consistent with the above.

THE GROUNDS FOR THE MOTION ARE:

1. The above noted statutes but more specifically, but not limited to, the following statutory subsections;

   a. Section 9(2) of the *JRPA*;

   b. Section 10 of the *JRPA*;

   c. Section 20 of the *SPPA*;

2. The *Courts of Justice Act* (the "CJA"),

3. *Rules Of Civil Procedures* including but not limited to the following rules.

   a. Rule 1.02(1)(3);

   b. Rule 1.03 with respect to the following definitions.

      i. "applicant" means a person who makes an application.

      ii. "application" means a proceeding commenced by notice of application;

      iii. "court" means the court in which a proceeding is pending and, in the case of a proceeding in the Superior Court of Justice, includes an associate judge;

      iv. "deliver" means serve and file with proof of service, and "delivery" has a corresponding meaning;

      v. "document" includes data and information in electronic form;

      vi. "hearing" means the hearing of an application, motion, reference, appeal or assessment of costs, or a trial;

vii. "motion" means a motion in a proceeding or an intended proceeding;

viii. "moving party" means a person who makes a motion;

ix. "person" includes a party to a proceeding;

x. "proceeding" means an action or application;

xi. "respondent" means a person against whom an application is made or an appeal is brought, as the circumstances require;

xii. "responding party" means a person against whom a motion is made;

xiii. "statute" includes a statute passed by the Parliament of Canada; and

xiv. "substantial indemnity costs" mean costs awarded in an amount that is 1.5 times what would otherwise be awarded in accordance with Part I of Tariff A, and "on a substantial indemnity basis" has a corresponding meaning.

c. Rule 1.04;

d. Rule 1.05;

e. Rule 1.06;

f. Rule 1.08[1];

g. Rule 2.03;

h. Rule 3.02;

i. Rule 4.01;

j. Rule 37 with particular reference to the following:

i. Rule 37.01;

ii Rule 37.02;

iii Rule 37.03;

iv. Rule 37.04 (by way of judge and not "associate judge" or "registrar")

k. Rule 39,

l. Rule 57 and 58;

m. Rule 59;

n. Rule 68;

4. The doctrine of paramountcy (wherein statutory language prevails over language in regulations, and any "practice directions"); and

5. *Payne v. Ontario Human Rights Commission*, 2000 CanLII 5731 (ON CA), [2000] O.J. No. 2987, 136 O.A.C. 357 (C.A.), at para. 12, *Jacko v. McLellan*, 2008 CanLII 22921 (ON SCDC) at paragraph 18).[18]..

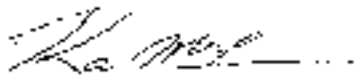
THE FOLLOWING DOCUMENTARY EVIDENCE will be used at the hearing of the motion are all filed documents with the ONSC Divisional Court and any documents that have been tendered for filing including but not limited to:

1. Affidavit #2 of the Applicant made on December 30, 2024;
2. Affidavit #3 of the Applicant made on January 8, 2025;
3. The JRPA Application of the Applicant of November 15, 2024;
4. The Applicant's Factum of December 10, 2024;
5. The Applicant's Application Record of December 12, 2024;
6. The Applicant's filed and issued Certificate of Perfection;
7. The Applicant's tendered requisitions herein;
8. The Applicant's written submissions of January 16, 2025, with respect to the 'requests' sought therein;
9. The Applicant's Oral Compendium, including Oral Outline, to be filed (subject to any discharge of obligations by any persons between now and the time of the hearing or any consent or non-opposition by the Tribunal);
10. Any "Oral Outline" or "Speaking Notes" of the Applicant that may be filed and served (or merely exchanged between the Applicant and the Tribunal); and
11. Such other material as the Applicant may advise and this Honourable Court, by way of a judge, may accept.

The Applicant estimates five minutes in opening oral argument and two minutes in reply (if applicable).

January 17, 2025:

DULY EXECUTED IN ELECTRONIC FORM BY THE JRPA APPLICANT ON THE DATE ABOVE:



Mr. Kevin A. McLean (B.A. J.D., CIM)
775 King Street West
Suite 410
Toronto, Ontario
M5V 2K3
(e): mcleansettlement@gmail.com

TO:

Licence Appeal Tribunal/AABS

By way of attention to its declared representative (see: section 1 and 10 of the *SPPA*) at the following address as denoted in Affidavit #3 of the Applicant (copied and pasted herein).

Jesse Aaron Boyce
Assumed Name
Jesse A. Boyce
Law Society Number
72486F
Class of Licence Definitions
Lawyer (L1)
Real Estate Insured ?
No
Status Definitions
Practising Law - Employed
Business Name
SLASTO
Business Address
25 Grosvenor[10] 4th FloorToronto, OntarioM7A 2S8
Phone
1 437 997 1255 Ext.
Trusteeships
None
Current Practice Restrictions
None
Current Regulatory Proceedings
None
Regulatory History
None

Schedule "B"- particulars involving the Applicant's claim under Reg 283 and SABS from August 31, 2022

Insurance Policy #: *#00101351806*
Insurance Program: *"TD INSURANCE MELOCHE MONNEX" (Alliance And Professional Program)*
Broker: *Meloche Monnex Financial Services Inc.*
Underwriter/Insurer: *Security National Insurance Company; FSRA registration number of 397 (location determined be that of SNIC was the SNIC Burlington Address with a fax number provided by SNIC of 905.305.1074)*
First Insurer *(insurance company to first receive the Completed Application): TD Home And Auto Insurance Company; FSRA registration number 1063 (note here: TDHA acquired Liberty Mutual Insurance Company of Canada in 2005)*
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 #: *0355325790-3 ("TD Claim #3")*
Fictitious TD Insurance Claim # provided when Mr. Karat (an non-licensee who had been listed as an AOR Specialist in conjunction with Mr. Andrew Papadimitropoulos on public reported decisions involving Security National Insurance Company) *purported to respond to the Applicant's PIPEDA request on January 16, 2024 of SNIC and so referenced by Mr. Mansukhani, on behalf of TDGIC, in response to the Applicant's COI motion (NOM #7 and NOM #9) wherein he represented that Mr. Papadimitropoulos had never been involved in the Applicant's claim or access request:* **0354325790-3**
AABS File Number: **"23-015662/AABS"**

[1] Where Mr. McLean's PIPEDA request was delivered
[2] https://mclaughlinlaw.ca/documents/2021/03/Rodriguez%20v.%20Agnew%20and%20Peterborough%20(ex.%20Mr.%20McLaughlin%20Affidavit%20-%20Exhibits).pdf
[3] https://canlii.ca/t/gl6b7
[4] Ontario (Energy Board), v. Ontario Power Generation Inc., 2015 SCC 44 (CanLII), [2015] 3 SCR 147, at para 50, <https://canlii.ca/t/gljb7#par50>, retrieved on 2024-12-25

[3] Ontario Lawyers Board, v. Ontario Power Generation Inc., 2015 SCC 44 (CanLII), [2015] 3 SCR 147, at para 48, <https://canlii.ca/t/gk607#par48>, retrieved on 2024-12-25

[4] https://www.ontariocourts.ca/coa/about-the-court/archives/becomingprofessional/#:~:text=The%20privilege%20of%20dealing%20yourself,interesting%20and%20stimulating%20and%20challenging.

[5] https://abovethelaw.com/media-appeals-ruling-that-protects-the-lawyer-client-relationship/?print=print; https://albertalawyer.ca/wp-content/uploads/2020/04/45.pdf

[6] Now, the LSO

[7] Footnote 48 therein: For a discussion of the role of amici curiae see Ontario v. Criminal Lawyers' Association of Ontario, 2013 SCC 43, [2013] 3 SCR 3 at para 47 [emphasis in original], where the Supreme Court of Canada observes that, in the criminal law context, "amici should be used sparingly and with caution, in response to specific and exceptional circumstances" at para 47. The corollary is that this is not the criminal context

[8] Footnote 49 therein: This language was used by the Supreme Court of Canada when it imposed a commission process to separate the judiciary from the government in relation to salary negotiations to better protect judicial impartiality: *Reference re Remuneration of Judges of the Provincial Court of Prince Edward Island; Reference re Independence and Impartiality of Judges of the Provincial Court of Prince Edward Island*, [1997] 3 SCR 3 at para 170.

[9] To the extent that the Tribunal consents to the same or does not oppose, and/or comply with its obligations forthwith, the Applicant seeks relief to convert the mode of hearing from telephone conference to a brief written argument with a draft order to be provided, vetted by the Registrar, for immediate entry.

[10] With particular reference to the following rules: (1) Rule 37.07: (b) Where a motion is made on notice, the notice of motion shall be served at least seven days before the date on which the motion is to be heard; and (ii) (2) Where a motion or application is made on notice, the affidavits on which the motion or application is founded shall be served with the notice of motion or notice of application and shall be filed with proof of service in the court office where the motion or application is to be heard at least seven days before the hearing.

[11] Please see: Rule 1.3

[12] While there does not appear to be a provision under the Rules of Civil Procedure, an implicit order therein granting leave to the Applicant to amend this notice of motion in accordance with the Rules of Civil Procedure or by analogy

[13] Not merely "exchanged" and not merely a "material" or "materials"

[14] Denoted *supra*

[15] The purpose of requiring a tribunal or adjudicator to file a "record or proceedings" is to ensure that when the court reviews the tribunal's decision, it has the information and evidence as it appeared before the tribunal in the first instance. A court reviewing an adjudicative decision may look at decisions to admit evidence, submissions of witnesses, and other evidence and may substitute its judgment for that of the court [or tribunal] of first instance

[16] Where Mr. McLean's FTPPA request was delivered

TAB 10:

Court File No. DC-24-00000718-00JR
Applicant's Motion #2 (Motion in Writing; Request to Convert Motion into Motion for Judgment)

Court File No. DC-24-00000718-00JR

FORM 4D

Courts of Justice Act

AFFIDAVIT

ONTARIO SUPERIOR COURT OF JUSTICE (DIVISIONAL COURT)

BETWEEN:

KEVIN ALEXANDER MCLEAN

APPLICANT

- and -

TD HOME AND AUTO INSURANCE COMPANY, SECURITY NATIONAL INSURANCE COMPANY, TD GENERAL INSURANCE COMPANY, EXECUTIVE DIRECTOR, LICENCE APPEAL TRIBUNAL,
HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO, REPRESENTED BY EXECUTIVE CHAIR OF TRIBUNALS ONTARIO IN MR. SEAN WEIR, THE ATTORNEY GENERAL OF ONTARIO

RESPONDENTS

Affidavit #7[i] of Kevin A. McLean in this *JRPA* Proceeding

I, **Kevin Alexander McLean**, Disabled (B.A., J.D., CIM) of **Toronto**, **Ontario, SWEAR** THAT:

Volume #1: Sworn Under Oath; under the Penalty of Perjury; and Introduction

1. I am the individual *JRPA* Applicant herein and I swear, under the pains and penalties of perjury, the following facts to be true. Where I have stated or sworn information on my belief(s), I have cited the source of my belief(s) by references, citations, end-noting or otherwise. When I have used the expressions (including any permutations) of "in my view", "in my opinion", or "belief", I am not drawing or making any conclusion of law or swearing a conclusion of law but rather citing my position and opinions as a matter of fact.

2. I commenced drafting this affidavit on January 24, 2025

3. Attached hereto to this my affidavit is a copy of my email and submissions that were attached to the email regarding my request that Madam Justice Shore recuse herself

along with other ancillary relief ("**COI Recusal Request**"). As of today's date, I have not received any decision regarding my COI Recusal Request so I will file notice of motion with supporting materials to seek the same relief that I am seeking in the COI Recusal Request.

4. I am also concerned that I received an email from a Ms. Badwal that referenced a case conference before Madam Justice Shore on February 18, 2025. I confirm that I am not available on said date. However, I will bring my motion promptly and I intend to seek additional relief in the proposed motion.

5. In relation to the Ms. Badwal email, I am concerned that a different thread was commenced and it did not contain all of the emails that were in the previous thread with myself and the ONSC Divisional Court. It is unclear to me why that occurred but I am not castigating Ms. Badwal in any way. I will file an additional affidavit that contains all of those emails at the relevant time and in support of the intended motion.

6. I expressly adopt the facts in the attached email and submissions as my sworn evidence herein. I intend to pay for my notice and file the same, and then serve it on the respondents and in the "interested person" in Mr. Papadimitropoulos.

7. I will also provide a copy of my motion to Epstein Cole LLP so it can participate and provide its position should it wish to do so.

8. I will continue to object to Madam Justice Shore having any involvement in this matter as I remain of the view that Mr. Papadimitropoulos was the individual who signed the OCF-18 #1 (defined as the "Dhaliwal OCF-18") with the handprinted language of "As per A. Nurse" and that he was, he is, and remains in breach of his separation agreement with Ms. Nicole Artopoulos regarding a "provision" in said separation agreement of no indirect or direct contact. I repeat and rely upon my evidence in affidavit #4 in this regard.

9. I remain of the view that Mr. Boyce of the LAT is also in a conflict of interest by virtue of my previously stated positions in the emails to him with the respondents and the ONSC Divisional Court copied. I do not believe that the Tribunal can participate in an impartial manner with Mr. Boyce as its counsel. I intend to seek relief in this regard as well.

10. I note that the AGO, through Ms. Im, did not file a Notice of Appearance in this JRPA Proceeding.

11. As of tonight, I note that Ms. Im has done the same vis-à-vis her address and business name (employer) on the LSO directory website. I note my affidavit evidence in affidavit #2 which stated in part which was a copy and paste from the LSO website at the time of said affidavit:

JUXTAPOSED TO MS. IM WHOSE EMPLOYER IS MAG AND SHE IS AT 720 BAY STREET

Judie Yung-Mi Im
Back to resultsNew SearchPrint
Assumed Name
Judie Im
Law Society Number
44577V
Class of Licence Definitions
Lawyer (L1)
Real Estate Insured †
No
Status Definitions
Practising Law - Employed
Business Name
Ministry of Attorney General
Business Address
8-720 Bay StToronto, OntarioM7A 2S9
Phone
1 416 427 4611 Ext.
Email Address
judie.im@ontario.ca
Trusteeships
None
Current Practice Restrictions
None
Current Regulatory Proceedings
None
Regulatory History
None

12. Ms. Im's contact information on the LSO directory website is now:

Judie Yung-Mi Im

Back to resultsNew SearchPrint
Assumed Name
Law Society Number
44577V
Class of Licence Definitions
Lawyer (L1)
Real Estate Insured †

No
Status Definitions
Practising Law - Employed
Trusteeships
None
Current Practice Restrictions
None
Current Regulatory Proceedings
None
Regulatory History

13. I swear this **Affidavit #7** for no improper purpose and for the above purposes.

Sworn before me via videoconference in accordance with O. Reg. 431/20 at **Toronto, Ontario** on this 24th day of January 2025

Mr. Kevin A. McLean (B.A., J.D., CIM)

Vinh The Tran, Esq.
Unlimited. No Expiration.
NO ILA PROVIDED.
Identification Confirmed.

[i] Three affidavits have been my affidavits of service

THIS IS EXHIBIT A REFERRED TO IN THE
AFFIDAVIT OF Mr. Kevin A. McLean
AFFIRMED BEFORE ME, THIS 24th DAY
OF January 20 25

NER, ETC.

Vinh The Tran, Esq., LSUC #57761C
Lawyer, Notary, Oaths Commissioner
188-639 Dupont Street, Toronto, ON
M6G 1Z4, T. 647-209-7389
vinhtranlaw@hotmail.com

Gmail

Mr. Kevin McLean <mcleansettlement@gmail.com>

Re: LAT's Notice of Appearance : McLean v. TD Home and Auto Insurance et al. : 718/24

Mr. Kevin McLean <mcleansettlement@gmail.com> Thu, Jan 16, 2025 at 10:58 AM
To: "SCJ-CSJ Div Court Mail (JUD)" <scj-csj.divcourtmail@ontario.ca>
Cc: "SCJ-CSJ Div Court Mail (JUD)" <scj-csj.divcourtmail@ontario.ca>, "Maciel, Milene (MAG)" <Milene.Maciel@ontario.ca>, "Collie, Connor (MAG)" <Connor.Collie@ontario.ca>, "Im, Judie (She/Her) (MAG)" <Judie.Im@ontario.ca>, "Pasquini, Heather" <Heather.Pasquini@tdinsurance.com>, "Imafidon, Isibhakhomen (MAG)" <Isibhakhomen.Imafidon@ontario.ca>, Div Court Schedule <DivCourtSchedule@ontario.ca>, "Nieuwland, Matthew" <Matthew.Nieuwland@tdinsurance.com>, "christiana.ortiz@tdinsurance.com" <christiana.ortiz@tdinsurance.com>, scjcsj.divcourtmail@ontario.ca

January 16, 2025

VIA EMAIL

URGENT – NOTICE

URGENT – ATTACHMENTS

Court file number: Court File No. DC-24-00000718-00JR
Type of document: email
Short title of proceeding: McLean v. TDHA et al
Party: Mr. Kevin A. McLean, self-represented, Applicant, e: mcleansettlement@gmail.com;

To:

The ONSC Divisional Court
130 Queen Street West, Toronto, Ontario
Toronto, Ontario

Kind attention: ONSC Divisional Court Registrar (Madam Clerk Clegg)

AND TO: (pursuant to the Courts of Justice Act, (s. 75(1)(3)),) and section 76

The Honourable Geoffrey B. Morawetz
Chief Justice of the Superior Court of Justice

AND TO:

The Honourable Faye E. McWatt
Associate Chief Justice of the Superior Court of Justice

With a copy to:

The Honourable Stephen E. Firestone
Regional Senior Judge for the Toronto Region

With a copy to:

The Honourable Madam Justice Shore

COPIED TO THE RESPONDENTS AND THEIR COUNSEL

AND COPIED TO (FOR NOTICE PURPOSES REGARDING THE APPLICANT'S REQUEST(S))):

Andrew Papadimitropoulos
Law Society Number
58696I
Class of Licence Definitions
Lawyer (L1)
Real Estate Insured †
No
Status Definitions
Practising Law - Employed
Business Name
TD Insurance
Business Address
101 Mcnabb St
Markham, Ontario
L3R 4H8
Phone
416 983 5467 Ext.
Email Address
andrew.papadimitropoulos@tdinsurance.com

Re: enclosed written submissions for the Respectful Requests (defined therein)

Dear Madam Registrar Clegg (copied to the above or to be forward by the ONSC Divisional Court Registrar):

1. I write regarding the above. As promised, please find my PDF and signed submissions for the Respectful Requests. For ease of reference, they at paragraph 19 and 126:

a. The Honourable Madam Justice Shore is disqualified from any further involvement in this *JRPA* Proceeding (the "**Disqualification Request**" or the "**Recusal Request**");
b. The Case Management Appearance Requirement is declared as void and void *ab initio* (not merely voidable) (the "**Nullification Request**");
c. A general and indefinite adjournment of the case conference pursuant to 77.04(1)(b) of the *Civil Rules* by the Associate Justice (the "**Adjournment Request**");
d. A direction by the Honourable Chief Justice, pursuant to section 76 of the *CJA*, that the Registrar shall accept all outstanding requisition filings and provide confirmation of the same to the *JRPA* Applicant and respondents; and
e. A direction by the Honourable Chief Justice, pursuant to section 76 of the *CJA*, that the Registrar comply with her duties (by law), pursuant to 68.05(2) of the *Civil Rules*[i], and provide the parties with a "Notice of Listing For Hearing".

("d" and "e" together, the "**Staff Direction Requests**").

(collectively, the "**Respectful Requests**" or "**Requests**").

2. I rely on affidavit #2 and #3 in support of the same as my leading of evidence in this regard.

3. Should the Court require any further submissions or sworn evidence from me regarding the same, I remain available and please contact me at your earliest moment. Otherwise, I shall presume this is sufficient and the procedure is consistent with the case law in this niche and unique subset of a few areas of law.

4. Please extend my thanks to the Chief Justice and Associate Chief Justice (where applicable) for their consideration.

5. Thank you.

---

[i] 68.05(2) When the certificate of perfection has been filed, the registrar shall place the application on a list for hearing and give notice of listing for hearing (Form 68B) by mail to the parties and the other persons named in the certificate of perfection. R.R.O. 1990, Reg. 194, r. 68.05 (2).

Warm regards,

Mr. Kevin A. McLean (B.A. (MCL), J.D., CIM)

On Thu, Jan 16, 2025 at 6:42 AM Mr. Kevin McLean <mcleansettlement@gmail.com> wrote:

> January 16, 2025
>
> **VIA EMAIL**
>
> **URGENT – NOTICE**
>
> Court file number: Court File No. DC-24-00000718-00JR
> Type of document: email
> Short title of proceeding: *McLean v. TDHA et al*
> Party: Mr. Kevin A. McLean, self-represented, Applicant, e: mcleansettlement@gmail.com;
>
> Re: confirmation of the correct or preferred procedure to address my nullification request of Justice Shore initiated case management appearance requirement (the "**Case Management Appearance Requirement**") (the "**Nullification Request**") (see: affidavit #3 herein)
>
> Re #2: recusal request of Madam Justice Shore (the "**Recusal Request**")
>
> Re #3: to the extent applicable – dependent on other factor – the assignment request or reassignment
>
> Re #4: Written Submissions to follow today
>
> Dear Madam Registrar Clegg:
>
> 1. I write regarding the above. I remain of the view and position, with great respect, that Justice Shore must recuse herself and withdraw her self-initiated Case Management Appearance Requirement.

ONTARIO COURT OF JUSTICE (DIVISIONAL COURT)

BETWEEN:

KEVIN ALEXANDER MCLEAN

APPLICANT

- and -

TD HOME AND AUTO INSURANCE COMPANY, SECURITY NATIONAL INSURANCE COMPANY, TD GENERAL INSURANCE COMPANY, EXECUTIVE DIRECTOR, LICENCE APPEAL TRIBUNAL,
HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO, REPRESENTED BY EXECUTIVE CHAIR OF TRIBUNALS ONTARIO IN MR. SEAN WEIR, THE ATTORNEY GENERAL OF ONTARIO

RESPONDENTS

Applicant's Submissions for his RESPECTFUL REQUESTS

To:

The ONSC Divisional Court
130 Queen Street West, Toronto, Ontario
Toronto, Ontario

Kind attention: ONSC Divisional Court Registrar (Madam Clerk Clegg)

AND TO: (pursuant to the Courts of Justice Act, (s. 75(1)(3)),) and section 76

The Honourable Geoffrey B. Morawetz
Chief Justice of the Superior Court of Justice

AND TO:

The Honourable Faye E. McWatt
Associate Chief Justice of the Superior Court of Justice

With a copy to:

The Honourable Stephen E. Firestone
Regional Senior Judge for the Toronto Region

With a copy to:

The Honourable Madam Justice Shore

COPIED TO THE RESPONDENTS AND THEIR COUNSEL

AND COPIED TO (FOR NOTICE PURPOSES):

Andrew Papadimitropoulos
Law Society Number
58696I
Class of Licence Definitions
Lawyer (L1)
Real Estate Insured †
No
Status Definitions
Practising Law - Employed
Business Name
TD Insurance
Business Address
101 Mcnabb St
Markham, Ontario
L3R 4H8
Phone
416 983 5467 Ext.
Email Address
andrew.papadimitropoulos@tdinsurance.com

VOLUME # #1: STATEMENT OF RECUSAL REQUEST, NULLIFICATION REQUEST, ADJOURNMENT REQUEST (SOLELY IN RELATION TO SHORE J. APPEARANCE REQUIREMENT) AND STAFF DIRECTION ORDERS (SEE: SECTION 76 OF THE CJA)

1. Which Canadian jurist represented the following to the federal committee responsible for judicial appointments in her sworn and signed questionnaire to it, "Vital to the Canadian system is the impartiality of a judge. This is different than the system in the United States. In Canada, judicial independence is viewed as vital to fostering public confidence in the fairness and objectivity of the justice system. The Supreme Court of Canada has described judicial independence as "the cornerstone, a necessary prerequisite for judicial impartiality."

2. None other than The Honourable Madam Justice Sharon Store.

3. The Honourable Sharon Shore of our ONSC (not the Federal Court) also made a statement to that same federal committee that this Applicant certainly agrees with as follows

> Last, but not least, is integrity. I have always tried to conduct my personal and professional life with integrity. One of the lessons I learned from my mentors is that it takes a lifetime to build your reputation, and only minutes to destroy it.

4. Public confidence in our legal system is rooted in the belief that those who deliver legal judgments do so without bias or prejudice to one side or the other. In this regard, the appearance of justice is just as important as the reality.[1]

5. Judges often disqualify themselves where the matter before them involves former clients or law partners. Herein, we have a situation of a former client of Epstein Cole LLP where Madam Justice Shore was a partner.

6. Lord Hewart C.J.'s aphorism that "it is not merely of some importance but is of fundamental importance that justice should not only be done, but should manifestly and undoubtedly be seen to be done" (The King v. Sussex Justices, Ex parte McCarthy, [1924] 1 K.B. 256, at p. 259). To put it differently, in cases where disqualification is argued, the relevant inquiry is not whether there was in fact either conscious or unconscious bias on the part of the judge, but whether a reasonable person properly informed would apprehend that there was. In that sense, the reasonable apprehension of bias is not just a surrogate for unavailable evidence, or an evidentiary device to establish the likelihood of unconscious bias, but the manifestation of a broader preoccupation about the image of justice. As was said by Lord Goff in Gough, supra, at p. 659, "there is an overriding public interest that there should be confidence in the integrity of the administration of justice" (see: paragraph 66 of *Weykaum*). The last is the most demanding for the judicial system, because it countenances the possibility that justice might not be seen to be done, even where it is undoubtedly done – that is, it envisions the possibility that a decision-maker may be totally impartial in circumstances which nevertheless create a reasonable apprehension of bias, requiring his or her disqualification (see: paragraph 67 of *Weykaum*).

7. The law of judicial bias is founded on two basic legal maxims: audi alteram partem ("listen to the other side") and nemo judex in sua causa ("no-one should be a judge in his own cause"). The former requires that parties affected by a decision have the right to be heard and that the decision-maker must not have pre-judged the issue. The latter prohibits the adjudicator of the case from having an interest in the decision,

thus safeguarding the right of the parties to be treated impartially and without prejudice. In other words, bias represents a predisposition or a state of mind which sways judgment.

8. Unlike tribunals, judicial impartiality is guaranteed by our *Constitution* under section 96 to 101 (see: *Ocean Port Hotel* (SCC)).

> **Volume #1(A):** The Anticipatory Counter to Justice Shore taking a similar position to Binnie J. in *Weykaum*

9. While the SCC has found that there is a distinction with a difference between government lawyers and private practice, the following statement of law is apropos. 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).

> ***VOLUME #1(B): BY ANALOGY***

10. The Applicant (also defined as the "**Requestor**") repeats and relies upon his letter in Appendix #1.

11. If a judge is aware of any relationship or personal interest that raises a reasonable apprehension of bias, it is generally desirable that disclosure is made in advance of a hearing, so that the case may be reassigned.

12. Under the Ontario *Courts of Justice Act* (s. 75(1)(3)), it is the Chief Justice of a court or one of the Associate Chief Justices who is responsible for the assignment or reassignment of cases.

13. Pursuant to the *Civil Rules*, the following is applicable to the Case Management Appearance Requirement:

> 77.04 (1) A judge or associate judge may,
>
> (b) adjourn a case conference;
>
> (2) A judge or associate judge may, on his or her own initiative, require the parties to appear before him or her or to participate in a conference call to deal with any matter arising in connection with the case management of the proceeding, including a failure to comply with an order or the rules. O. Reg. 438/08, s. 64; O. Reg. 383/21, s. 15.
>
> (3) For greater certainty, the powers set out in subrules (1) and (2) are in addition to any other powers set out in this Rule. O. Reg. 438/08, s. 64.

14. For sake of completeness, Rule 77(1) and (2) state the following:

> RULE 77 CIVIL CASE MANAGEMENT
>
> Purpose and General Principles

Purpose

77.01 (1) The purpose of this Rule is to establish a case management system that provides case management only of those proceedings for which a need for the court's intervention is demonstrated and only to the degree that is appropriate, as determined in reliance on the criteria set out in this Rule. O. Reg. 438/08, s. 64.

General Principles

(2) This Rule shall be construed in accordance with the following principles:

1. Despite the application of case management under this Rule to a proceeding, the greater share of the responsibility for managing the proceeding and moving it expeditiously to a trial, hearing or other resolution remains with the parties.

2. The nature and extent of the case management provided by a judge or associate judge under this Rule in respect of a proceeding shall be informed by any relevant practices, traditions, customs or judicial resource issues that apply locally in the region in which the proceeding is commenced or to which it is transferred. O. Reg. 438/08, s. 64; O. Reg. 383/21, s. 15.

15. The Canadian Judicial Council considers recusal inappropriate where no other adjudicator can be constituted to hear the case or where, as a result of an emergency, withdrawal would lead to a miscarriage of justice. Still, the exercise of judicial discretion is at the heart of judicial independence, and judges are presumed to have acted in good faith.

16. The urgency is in favour of the Applicant having his requisitions filed and receiving a Form 68(B) which is most outstanding despite requisitions for the same.

17. It is rather coincidental that there are 93 justices in the Toronto region and somehow the one justice who was a partner who acted, and remains as the sole law firm to have represented one Mr. Andrew Papadimtripoulos

18. It is current counsel to the three respondent insurance companies in Mr. Nieuwland who unequivocally admitted, as a matter of law, that there was a conflict of interest when TDGIC represented in a purported but unlawful response to the Applicant's *PIPEDA* request of SNIC in January 2024 that Mr. Andrew Papadimtripoulos had not been involved in any way with this claim or access request. However, the claim number provided therein was 035325709-04 [sic] (see: **page 66** of the **Oral Compendium**).

VOLUME #2: RELIEF SOUGHT IN THE RECUSAL REQUEST, NULLIFICATION REQUEST AND REASSIGNMENT REQUEST

19. The Requestor seeks the following relief as follows:

a. The Honourable Madam Justice Shore is disqualified from any further involvement in this *JRPA* Proceeding (the "**Disqualification Request**" or the "**Recusal Request**");
b. The Case Management Appearance Requirement is declared as void and void *ab initio* (not merely voidable) (the "**Nullification Request**");

c. A general and indefinite adjournment of the case conference pursuant to 77.04(1)(b) of the *Civil Rules* by the Associate Justice (the "**Adjournment Request**");
d. A direction by the Honourable Chief Justice, pursuant to section 76 of the *CJA*, that the Registrar shall accept all outstanding requisition filings and provide confirmation of the same to the *JRPA* Applicant and respondents; and
e. A direction by the Honourable Chief Justice, pursuant to section 76 of the *CJA*, that the Registrar comply with her duties (by law), pursuant to 68.05(2) of the *Civil Rules*[2], and provide the parties with a "Notice of Listing For Hearing".

("d" and "e" together, the "**Staff Direction Requests**").

(collectively, the "**Respectful Requests**" or "**Requests**").

VOLUME #2(A): A note on section 76 of the *CJA*, "Direction of Court Staff"

20. For ease of reference, Section 76 of the *CJA* states:

> 76 (1) In matters that are assigned **by law**[3] to the judiciary, registrars, court clerks, court reporters, interpreters and other court staff shall act at the direction of the chief justice of the court. 2006, c. 21, Sched. A, s. 14.

21. The following outlines the facts material to the ***JRPA* Application** and the LAT Appeal as it relates to the various requests herein. Painstaking detail is required because of the Tribunal's failure to comply with section 10 of the *JRPA* and to fill the lacunas creates by that intentional and egregious statutory non-compliance by the Tribunal. These submissions are provided in support of the **Requests** as a means of ensuring compliance and on the continued basis of urgency. The further details of the below are bookmarked and hyperlinked in the Applicant's oral compendium and oral outline that shall follow.

VOLUME #3: FACTS

22. The underlying facts in this ***JRPA* Application** are contained within the record of proceeding with reference to the filed documents such as the ***JRPA* Application**, Factum, Application Record, and Affidavit #2.

23. The Ontario Superior Court of Justice Guide to Judicial Review in Divisional Court, effective by its metadata which states, "Scarciolla, Claudia (JUD)" (author) and 11/24/22 (date) (the "*JRPA* Guide") which states [emphasis it the Applicant's]:

> "After you have brought an application for judicial review, you will receive an email to register for CaseLines and upload your materials. There is no fee to use CaseLines."

24. The ***JRPA* Applicant** tendered his ***JRPA* Application** and paid the requisite fees on November 15, 2024.
    a. After receipt of the issued ***JRPA* Application**, from the Registrar, with thanks, the ***JRPA* Applicant** did not receive an invitation to Case Center.

25. The ***JRPA* Applicant** delivered[4] (served) and filed his **Factum**[5] on December 10, 2024.

~~26.~~ The ***JRPA* Applicant** delivered (served) and filed his **Application Record** on December 12, 2024;

27. The ***JRPA* Applicant** filed and paid for the Certificate of Perfection on December 13, 2024;

28. The ***JRPA* Applicant** also filed the requisite affidavit of service thereafter;

29. The ***JRPA* Applicant** received confirmation of his filing thereafter;

30. The ***JRPA* Applicant**, based on his review of what has been received, has not received any mail or email of the Form 68(B) which was required to be delivered to the parties after the ***JRPA* Applicant** had filed and paid for the Certificate Of Perfection with an approximate date of the hearing. Based upon a reasonable interpretation of the relevant Civil Rule, which is 68.05(2) (see: (2) When the certificate of perfection has been filed, the registrar shall place the application on a list for hearing and give notice of listing for hearing (Form 68B) by mail to the parties and the other persons named in the certificate of perfection. R.R.O. 1990, Reg. 194, r. 68.05 (2).”), the Registrar was required to place the Applicant’s ***JRPA* Application** on a list for hearing and give notice of listing for hearing on or around Tuesday, December 17, 2024.

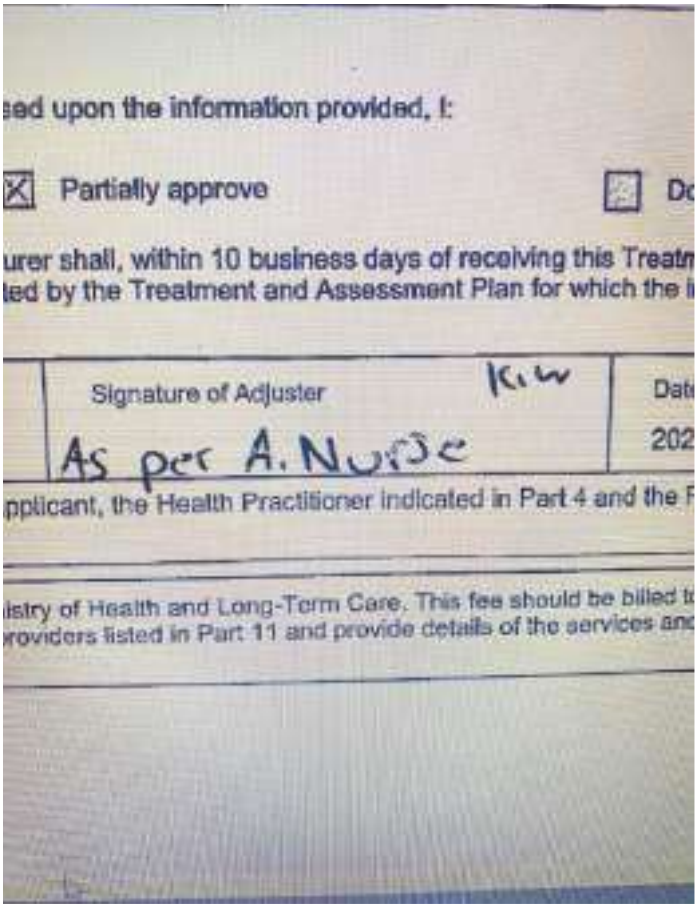
31. Despite filing his requisition #1 on December 24, 2024 (see: **Confirmation number 2787308**) requesting and requiring the Registrar to comply with her duties, there is currently no evidence that any such steps have been taken in this regard. Moreover, the ***JRPA* Applicant**, by usage of said service, was entitled to have any filing processed within five business days, which may be accepted or rejected. Five business days from December 24, 2024, was January 2, 2025.

32. Relevant to this Recusal Request and Nullification Request, on June 28, 2024, in relation to the Applicant’s NOM #6 and NOM #9, the Tribunal dismissed the Applicant’s COI motion and Mr. Andrew Papadimtripoulos (the “**Epstein Cole Client**”) remained as a representative of SNIC. The timing could not be more important because on June 20, 2024, the Tribunal granted the Applicant’s NOM #8 which removed the Fictitious Respondent (TDGIC) as the sole respondent party.

33. 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).

VOLUME #3(A): THE FORTUITOUS DISCOVERY

34. The fortuitous discovery which merely solidified the Applicant’s uncontroverted evidence was the finding of an anniversary card penned to his ex wife presumably in 2015 and 2016 under the bed where the Applicant slept and where Mr. Papadimitropoulos used to reside. The evidence remains uncontroverted in the record of proceeding;



sed upon the information provided, I:

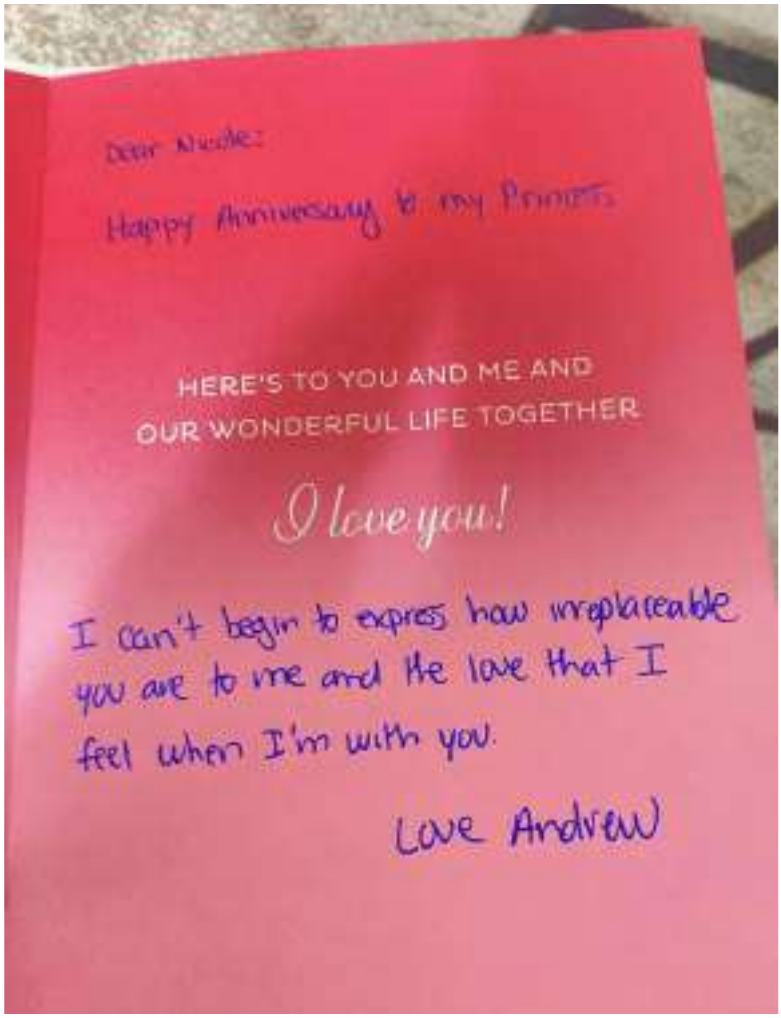
☒ Partially approve ☐ Do

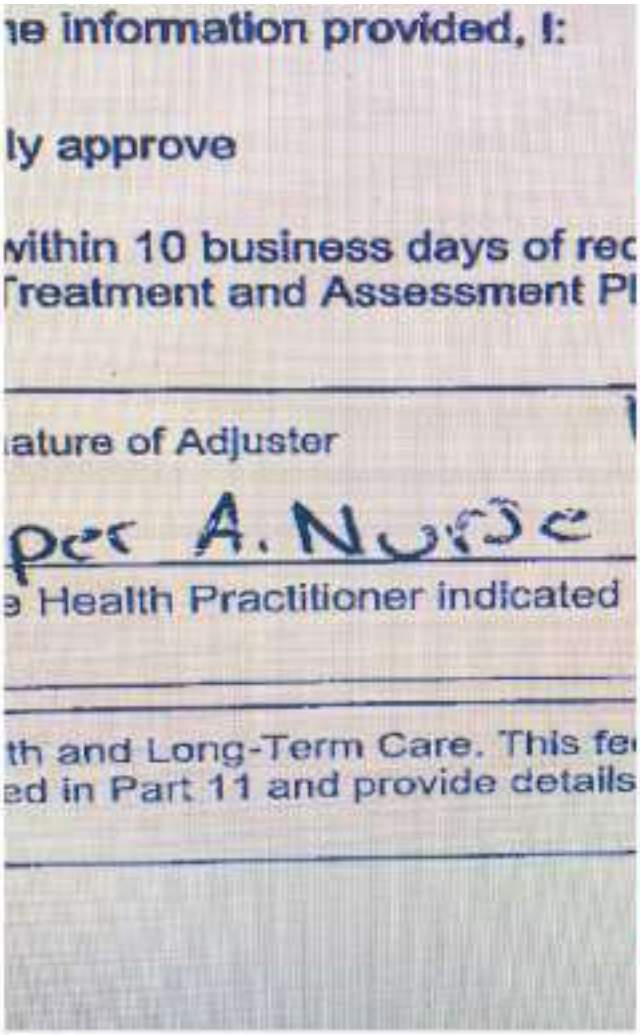
urer shall, within 10 business days of receiving this Treatm
ted by the Treatment and Assessment Plan for which the i

Signature of Adjuster	Date
As per A. Nurse KW	202

pplicant, the Health Practitioner indicated in Part 4 and the F

istry of Health and Long-Term Care. This fee should be billed t
roviders listed in Part 11 and provide details of the services and


Dear Nicole:
Happy Anniversary to my Parents
HERE'S TO YOU AND ME AND
OUR WONDERFUL LIFE TOGETHER
I love you!
I can't begin to express how irreplaceable
you are to me and the love that I
feel when I'm with you.
Love Andrew



(see: Affidavit #3, Exhibit "A", pages 274 to 279, which was affidavit of the Applicant on September 19, 2024,

35. No handwriting expert was required with that glaring obvious similarities.

36. The backdrop to this Forged Signature of an adjuster with SNIC is that the cover letter therein (not a public interest issue per se) confirmed and represented that SNIC had approved the sum of approximately $2080 in medical and rehab benefits ($1995 +$85.87). However, it never issued a cheque for the same to the Applicant's relevant health practitioners. The only reasonable inference is that SNIC did not want to take further steps in affirmation of the fraud, forgery, false document and uttering of a false document. Does that it make it lawful? The question answer itself.

VOLUME #3(B): NO ONE HAS MORE TO LOSE THAN MR. ANDREW PAPADIMITROPOULOS

37. It is the very exhaustion of each and every avenue that has karmically come to save this Applicant at the most fortuitous of times. The dismissal of his NOM #6 and NOM #9 (which was repurposed and filed after the nullity case conference and the change of the style of cause) is what kept Mr. Andrew

Papadimitropoulos as a representative of SNIC from his post in Markham for "TD Insurance" but now has caused a further light to be shined on his misconduct whilst being a client of Epstein Cole and at the very least a continued address for notices within a separation agreement.

VOLUME #5: ISSUES

38. The Applicant frames the general legal issues as follows:

    b. Is there a ROAB involving the Madam Justice Shore in light of her being a partner at Epstein Cole LLP at the time when Mr. Andrew Papadimtriopoulos retained Epstein Cole LLP along with the admission of law by counsel of record in this *JRPA* Proceeding to the three distinct insurance companies that Mr. Andrew Papadimitropoulos could not be involved in the Applicant's SABS Claim and LAT Appeal by his contractually agreed requirement that he not have any indirect or direct contact Ms. Nicole Artopoulos (spouse of the Applicant at material times) (see: Oral Compendium, page 66)?
    c. Pursuant to the common law in Canada that a RAOB cannot be remedied, what order must be granted in relation to the Shore J. Case Management Appearance Requirement?
    d. Pursuant to the *Civil Rules* and the common law requirement that justice must not just be done but seen to be done, what steps should and must the Associate Justice take after the Nullification Request is granted?
    e. In light of the delays experienced by the *JRPA* Applicant and the public interest along with the continued urgency of the Applicant's ***JRPA* Application**, what directions must the Chief Justice take as per section 76 of the *CJA*?

VOLUME #6: LEGAL BASES: RELATING TO THE LICENSEES AND CAST OF CHARACTERS BELOW

Volume #6(A): Law Society Act

39. To fully elucidate and outline the underlying conflict of interest and, bluntly, fraudulent conduct of one Mr. Andrew Papadimtriopoulos in executing documents for adjusters but in their name of "as per" (see: As per A. Nurse") (by way of the fortuitous discovery (see: Affidavit #3 herein), the underlying legal bases involving the non-licensee, Mr. Karat, acting contrary to the *LSA* and the LSO *By-Law*s is required.

40. Moreover, there is ostensibly some persistent discord between the decisions of Vice Chair McGee and Vice Chair Maedel in Dankha and Mosa respectively and the decisions of Vice Chair Morrissette and Vice Chair Lake (see: NOM #5 and reconsideration decision of Vice Chair Logan). As this Court would have seen had the Tribunal complied with its statutory obligation under the *JRPA*, the Applicant had to get most "creative" and "lucky" (see: the "one and the same" misrepresentation by Mr. Nieuwland at the May 2, 2024, nullity case conference) to have the Tribunal to comply with the law (which is completely antithetical to the consumer protection nature of the statutory scheme of the Insurance Act, SABS, Reg 283) to obtain the orders that he did in his NOM #8 (nota bene: which changed the style of cause while removing a party and adding a party i.e. the granting of the same which is interlocutory in nature whereas the refusal of the same is a final order and final decision):

41. For clarity as to the Applicant's positions regarding some of the other decision makers at the quasi-judicial tribunal known as "LAT" like Vice Chair McGee, Vice Chair Maedel and some others, they are clearly very articulate and have high legal acumen. The decisions of Vice Chair McGee in Dankha was yet another beautifully written and analytical precise decision wherein she ensured that the Tribunal did not

condone the breaches of the *LSA* and LSO *By-Laws* by a paralegal engaging in the practice of law (not provision of legal services)

42. 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.

43. Ms. Watson, a lawyer licensee in good standing with the LSO, made the following arguments which were all rejected by Vice Chair McGee:
    a. Mr. Grabar submitted documents under the advisement of Mr. Faletta (a now suspended lawyer);
    b. Mr. Faletta oversaw Grabar's handling of the file; and
    c. A new lawyer (Watson) had recently took carriage of the file.

44. Mr. Karat was and is on far worse grounds that Mr. Grabar as Mr. Grabar was a licensed paralegal.

VOLUME #6(A)(I): LSA, SECTIONS 1(5) AND (6)

45. 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*)

46. 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*).

VOLUME #6(A)(II): SECTION 1(7) OF THE LSA: REPRESENTATION IN A PROCEEDING

47. 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")

48. 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.

49. "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*").

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

VOLUME #6(B): THE "ADR REPRESENTATIVE" [NOT AN "OFFICER"]: KARAT – CONDUCT SOLELY IN RELATION TO SNIC

51. Karat is a NON-licensee and unlicensed representative of SNIC in this **LAT Proceeding** before an adjudicative body (LAT/AABS) when measured against the *LSA* and its *By-Law*s. 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

52. 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 Mr. Papadimitropoulos) affiliates with a non-licensee, he remained exclusively liable for his professional practice when so affiliating. The Conflicted Lawyer (Mr. Papadimtriopoulos) has also acted for "TD Insurance Meloche Monnex" in *Mensah* (see: 2022 CanLII 452) and 18-00161 v. SNIC, 2019 CanLII 9628.

53. Notably, the Conflicted Lawyer (Mr. Papadimtriopoulos) 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.

54. 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 **LAT Proceeding**.

55. 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.

56. 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)).

57. 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). **Mr. Karat** regularly confirmed by that auto-reply that is not authorized for **SNIC** (but for Primmum, TD Home & Auto, and ***NON-SABS INSURER***).

Volume #6(C): 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[6], 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. 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 The **Appellant** also urged Mr. **Nieuwland** provide an affidavit if Ms. Moraes was his legal assistant. **Nieuwland** did not respond to the request

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

62. While, again, it matters not of the underlying facts and minutia of the relationships per se and the **EPSTEIN COLE** Client's involvement in representing SNIC, by reference to the As per A. Nurse signature and beyond as the Tribunal found that Mr. Andrew Papadimitropoulos was fully entitled to remain as a representative in the LAT Appeal, the Applicant provides the same primer no the LSO *By-Law*s in relation to the cast of characters. Put another way, the *JRPA* Applicant provides the same as per each case being determined on its own facts and out of abundance of caution.

63. 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 **LAT 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.

64. 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 (nota bene: **SNIC**'s head office is in Montreal, Quebec); and
    b. Licensee: includes a permitted group of licensees

65. "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.

66. The *JRPA* Applicant now copies and pastes from his speaking notes, filed with the Tribunal and later appended to an affidavit to meet the definition of record to be included in a record of proceeding under section 20 of the *SPPA*, as follows:

125. 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 Mr. Papadimitropoulos 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.
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. The Mr. Papadimitropoulos meets the definition of an "officer" under the Insurance Act by his title of "Consequence Management".

133. As of January 2024, the Mr. Papadimitropoulos 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 (Mr. Papadimtriopoulos) and Karat were joining would have met the definition of "regular basis".

134. While the Conflicted Lawyer (Mr. Papadimtriopoulos) 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 (Mr. Papadimtropoulos)) 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 (Mr. Papadimtropoulos) could not have his name (publicly associated) with this TD Claim #3 and this **LAT Proceeding**. He could not covertly have be involved in the "handling" of TD Claim #3 and this **LAT 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 **LAT 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 (Mr.Papadimtropoulos).

67. While Mr. Karat and Mr. Nieuwland had different clients for nearly six months and at the time of the case conference (with a bit of irony herein), SNIC in filing the SNIC Response had to act through an authorized representative or be directed by a "direct mind" – however clandestine and secret it may have been.

68. **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"). However, the *LSA* prohibited Mr. Karat from "signing" the SNIC Response as the sole representative at the time.

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

70. 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*). While the **Mr. Papadimitropoulos** is not a "trustee" or "director" of **SNIC**, he does hold himself out as a "manager" and involved in "consequence management". **Mr. Papadimitropoulos** would meet the requirements of a licensee, officer and manager of **SNIC** at **SNIC Markham**. 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 Mr. Papadimitropoulos for the particulars in affidavit evidence previously which are uncontroverted. 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.

71. Even more compelling was that Mr. Karat signed the Purported SNIC Response without any reference to Nieuwland, and then served the Appellant (as defined in the LAT Appeal) 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. The author of the cover letter was "TD Insurance Meloche Monnex" with Security National Insurance Company as the return address albeit allegedly in Markham, Ontario.

VOLUME #6(D): KAISER

72. While the Divorced Husband Conflicted Lawyer (Mr. Papadimtriopoulos) is NOT the declared tribunal advocate for SNIC and not declared herein at the *JRPA* Proceeding, 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). It does not matter if the individual, admittedly in irreconcilable conflict of interest, is the "tribunal or court" advocate as found by the ONSC in Talisman. There is codification of the same under section 1(7) of the *LSA*.

VOLUME #6(E): PUHL, TALISMAN, AND YELLOW CEDAR

73. 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*).

74. 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

VOLUME #6(F): SEMINAL POINT – COI COMING TO PASS FOR JUSTICE SHORE AS A RESULT OF THE MISCONDUCT, MISCHIEF AND FRAUD OF MR. PAPADIMITROPOULOS

75. To belabour the point, the decision of the Tribunal dismissing the Applicant's COI Motion allowed Mr. Papadimitropoulos to remain as a representative whether or not he was in the forefront or back-office, declared or not. However, the difference now is that none of the tribunal decision makers were his counsel in a matrimonial litigation spanning some three years and ending in a divorce decree, and then issuing decisions involving him. However, that COI has come to pass on or around January 8, 2024.

Volume #6(G): Martin – the administration of justice

76. 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 individual – in this matter being a justice - is necessary for the proper administration of justice (see: *MacDonald Estate v. Martin*, 1990 CanLII 32 at paragraph 47).

77. The expression "substantial risk" in the definition of "conflict of interest" describes the *likelihood* of impairment as opposed to nature and severity. substantial risk is one that is significant and plausible EVEN IF it is NOT certain or even probably that it will occur. There must be more than a "mere possibility" that impairment will occur. Ergo, not a "mere possibility" but a "possibility".

VOLUME #6(F): DUTIES TO THIRD PERSONS MATTER UNDER THE LSO BY-LAWS AND RULES OF PROFESSIONAL CONDUCT

78. Moreover, the *ROPC*, section 3.4 does not solely relate to whether the **Conflicted Lawyer (Mr. Papadimtropoulos)** 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".

79. 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*

80. 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 #6(G): FAMILY LAW AND FAMILY LAW FIRMS INVOKE DIFFERENT PRINCIPLES

81. 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."

82. It is most fitting to note there are ongoing obligations arising from a "family dispute" between the Divorced Husband Conflicted Lawyer (Mr. Papadimtriopoulos) and the Individual Policyholder that are in perpetuity.

VOLUME #7: THE LEGAL BASES RELATING TO A REASONABLE APPREHENSION OF A BIAS ("RAOB") INVOLVING A JUSTICE

VOLUME #7(A): THE TEST FOR RAOB

83. The test for a reasonable apprehension of bias is fairly straight forward. It was first articulated by Supreme Court of Canada in Committee for Justice and Liberty v. National Energy Board, as follows:

> ". . . what would an informed person, viewing the matter realistically and practically — and having thought the matter through — conclude. Would he think that it is more likely than not that [the decision-maker], whether consciously or unconsciously, would not decide fairly."

84. This test — what would a reasonable, informed person think — has consistently been endorsed and repeated by the Supreme Court of Canada, most recently in *Yukon Francophone School Board, Education Area #23 v. Yukon* (*Attorney General).*

85. As such, the possibility of bias is not assessed from the perspective of the reviewing judge or the litigants themselves. Rather, the assessment of bias must be holistic and contextual, requiring "a careful and thorough examination of the proceeding", 6 to determine what a reasonable, neutral observer would see. The court reviews the ***FULL RECORD*** in its entirety "to determine the cumulative effect of any transgressions or improprieties".

86. By the Applicant being deprived of his right to upload his filed documents into Case Center, contrary to the explicit language in the JR Divisional Court Guide, it is unclear if Justice Shore had access to the Applicant's Filed Documents which an Originating Process, Factum, Application Record, Affidavit #1 and #2, and others.

VOLUME #7(B): POTENTIAL GROUNDS FOR BIAS

87. There are six potential grounds for bias by which the impartiality of judges and administrative decision-makers can be brought into question under Canadian law.

88. This typology has been adapted from the categories formulated by Bryden, Philip, and Jula Hughes. "Legal Principles Governing the Disqualification of Judges." Available at SSRN 2473557 (2014) ["*Bryden & Phillips, Legal Principles of Disqualification*"].

a. Pecuniary or Personal Interest;

b. Personal Relationships;
c. **Past Associations** with Litigants or their Representatives; and
d. Prior judicial involvement with litigants.

89. There is no dispute that pursuant to the *LSA*, as a result of the substantial amendments in 2006 pursuant to the *Access To Justice Act, 2006*, that a representative need not be counsel of record. However, as per the record of proceeding in the LAT Appeal, pursuant to the contents required by the *SPPA*, section 20, the decision that allowed Mr. Papadimitropoulos remain as a binding one herein. If not a COI then, then certainly a COI came to pass now.

VOLUME #7(C): RECUSAL PROCEDURE

90. For example, in *Benedict v. Ontario* the provincial Crown moved to disqualify the motion judge on a reasonable apprehension of bias, as the motions judge was a plaintiff in an ongoing wrongful dismissal action against the Crown in a case similar to the employment-related claim before her. The Crown appealed after the judge refused to recuse herself. The Ontario Court of Appeal disqualified the judge, holding that any decision she reached which was unfavourable to the Crown could be perceived as advancing or vindicating her own claim.

VOLUME #7(D): PERSONAL RELATIONSHIPS

91. This class of bias relates to situations where the adjudicator has a sufficiently close relationship with a person involved in the proceeding (e.g. witnesses, parties, counsel, etc.) that renders him or her incapable or potentially incapable of judging impartially. In these instances, the impartiality can be in the form of favouritism[7] or personal animus[8] depending on the history of the relationship.[9]

92. Three considerations are important here: (1) whether it is a current or a previous relationship (existing relationship give rise to greater apprehension of bias); (2) The nature of the relationship (i.e. friendship, family, professional, or business); and (3) The depth of the relationship (i.e. cordial, formal, social, intimate). [10]

VOLUME #7(E): PERSONAL RELATIONSHIPS WITH LITIGANTS AND THEIR REPRESENTATIVES

93. Judges often disqualify themselves where the matter before them involves former clients or law partners.

94. The SCC found in its seminal case of *Weykaum* Indian Bank at paragraph 65:

> "Second, when parties say that there was no actual bias on the part of the judge, they may be conceding that the judge was acting in good faith, and was not consciously relying on inappropriate preconceptions, but was nevertheless unconsciously biased. In R. v. Gough, [1993] A.C. 646 (H.L.), at p. 665, quoting Devlin L.J. in The Queen v. Barnsley Licensing Justices, [1960] 2 Q.B. 167 (C.A.), Lord Goff reminded us that:
>
> Bias is or may be an unconscious thing and a man may honestly say that he was not actually biased and did not allow his interest to affect his mind, although, nevertheless, he may have allowed it unconsciously to do so. The matter must be determined upon the probabilities to be inferred from the circumstances in which the justices sit."

95. Put another way, is it more likely than not that it can inferred, from an objective person's perspective, that Madam Justice Shore was not actually biased and did not allow her interest as being a partner of the law firm of Epstein Cole LLP during the time of a firm's representation of Mr. Papadimitropoulos but nonetheless the appearance of mischief and misconduct is one that this ONSC (Divisional Court) must distance itself from an appearance standpoint.

96. What would an informed person, viewing the matter realistically and practically – and having thought the matter through – conclude? Would this person think that it is more likely than not that Binnie J., whether consciously or unconsciously, did not decide fairly?

97. There are no textbook instances.

98. Whether the facts, as established, point to financial or personal interest of the decision-maker; present or past link with a party, counsel or judge; earlier participation or knowledge of the litigation; or expression of views and activities, they must be addressed carefully in light of the entire context. There are no shortcuts.[11]

99. The fact that a judge would have recused himself or herself ex ante cannot be taken to be determinative of a reasonable apprehension of bias ex post.[12]

100. The following statement of Laskin C.J., in *Committee for Justice and Liberty v. National Energy Board*, *supra*, at p. 388:

> "Lawyers who have been appointed to the Bench have been known to refrain from sitting on cases involving former clients, even where they have not had any part in the case, until a reasonable period of time has passed. *A fortiori*, they would not sit in any case in which they played any part at any stage of the case. This would apply, for example, even if they had drawn up or had a hand in the statement of claim or statement of defence and nothing else (see: paragraph 80 of *Weykaum*).

101. While commending Madam Justice Shore for being ready, willing and able, she (and this Court) must live by the very representations that she made to the Judicial Advisory Committee for it to rely upon in determining her high level qualification to become a justice and ensure not only the impartiality of her actions but the *appearance of the same*.

102. It is not the grounds for automatic disqualification but it serves as a strong evidentiary foundation. It suggests that a reasonable and right-minded person would likely view unfavourably the fact that the judge acted as counsel in a case over which he or she is presiding, and could take this fact as the foundation of a reasonable apprehension of bias (see: paragraph 81 of *Weykaum*).

VOLUME #7(F): GOVERNMENT PRACTICE IS DIFFERENT THAN PRIVATE PRACTICE

103. Furthermore, in assessing the potential for bias arising from a judge's earlier activities as counsel, the reasonable person would have to take into account the characteristics of legal practice within the Department of Justice, as compared to private practice in a law firm. See the *Canadian Judicial Council's Ethical Principles for Judges*, supra, at p. 47.

VOLUME #7(G): JUDGES' VOLUNTARY RECUSAL

104. In Canada, the vast majority of recusal decisions are made by judges on their own motion. Judges are under an ethical and legal obligation to recuse themselves, if they believe they will be unable to judge impartially. In carrying out this responsibility, a judge is not required to consul with any other person, including with his or her Chief Justice.

105. If a judge is aware of any relationship or personal interest that raises a reasonable apprehension of bias, it is generally desirable that disclosure is made in advance of a hearing, so that the case may be reassigned.

VOLUME #7(H): COURTS OF JUSTICE ACT: REASSIGNMENT

106. Under the Ontario *Courts of Justice Act* (s. 75(1)(3)), it is the Chief Justice of a court or one of the Associate Chief Justices who is responsible for the assignment or reassignment of cases. However, pursuant to section 77.04(1), the case management conference was required to be in front of the **same judge** who self-initiated (however coincidentally or unlikely, probabilistically speaking, that may seem) the same. As such, said Case Management Attendance Requirement must be nullified as per the Nullification Request. It is void and void *ab initio* not merely voidable.

107. In the alternative, it must be adjourned generally and indefinitely while all other duties and obligations of not only the Applicant but the respondents, and, where applicable, the staff of the ONSC (Divisional Court) must be complied with forthwith. There is no requirement of a case conference to be held in any proceeding let alone a judicial review proceeding which are to be summary in nature.

VOLUME #7(I): NO UNIFORM PRACTICE BUT BEST GUIDANCE: "SEEK SUBMISSIONS"

108. More obviously, the CJC notes that judges should not recuse themselves where the potential conflict of interest is "trifling" or unlikely to raise plausible basis for disqualification. However, where the potential for disqualification is arguable, or when an unexpected issue arises shortly before or during the proceeding, the judge is advised to make disclosure and to seek submissions from counsel.

VOLUME #7(J): NO UNIFORM PRACTICE BUT BEST GUIDANCE: "OBJECT PROMPTLY"

109. The Supreme Court of Canada affirmed in *Canada (Human Rights Commission) v. Taylor*, that where a party reasonably apprehensive of bias fails to allege a violation of natural justice at "the earliest practicable opportunity", there is an implied waiver of any future right to complain about bias. Cartwright J. put the rule as follows, by way of dicta, in delivering the Supreme Court judgment in *Ghirardosi v. Minister of Highways for British Columbia*:

> "There is no doubt that, generally speaking, an award will not be set aside if the circumstances alleged to disqualify an arbitrator were known to both parties before the arbitration commenced and they proceeded without objection.

110. Where both criteria are established, the reviewing court will often look to the failure to object or raise with suspicion, indicative of tactic to hold an objection in reserve in the event of an unfavourable ruling. This is especially the case where allegations of bias are raised on appeal at first instance. For instance, in *Eckervogt v. British Columbia (Minister of Employment and Investment)*, the Court of Appeal noted that it is "most unsatisfactory" for the court to hear an allegation of bias in the first instance:

> "I do not think it is proper for a party to hold in reserve a ground of disqualification for use only if the outcome turns out badly. Bias allegations have serious implications for the reputation of the tribunal and in fairness they should be made directly and promptly, not held back as a tactic in the litigation. Such a tactic should, I think, carry the risk of a finding of waiver. Furthermore, the genuineness of the apprehension becomes suspect when it is not acted on right away.[emphasis added]."

111. Hence the critical importance to formally note objections in the record. The *JRPA* Applicant has been anything but "silent" but ensuring that he had objected, reserved his rights and promptly notified the ONSC Registrar.

VOLUME #7(J): NO UNIFORM PRACTICE BUT BEST GUIDANCE: MOTION OR REQUEST

112. ***Mullan and Boyle*** suggest that objections to an adjudicators presence should be made in writing, preferably by way of a formal motion to recuse, "or at the very least by an unambiguous request, and not just by way of general expressions of potential concern".

113. In the context of a "non-endorsement" or "non-order" by Justice Shore, the Applicant respectfully submits that a request, as opposed to a motion, is most appropriate considering the same. The Applicant, the "Requestor" herein, will provide a "record" so it can be stamped accordingly on the same or by way of separate document at the election of the Court.

114. In this manner, Rule 59.06 of the Civil Rules need not be addressed and it is unlikely it could be addressed on strict reading of the same but would have, hypothetically speaking but for the RAOB herein, by analogy under the Civil Rules.

VOLUME #8: CONCLUDING REMARKS WITH THANKS TO THIS COURT FOR DECIDING THE RESPECTFUL REQUESTS

VOLUME #8(A): MISUSE OF CONFIDENTIAL INFORMATION: NORMALLY NOT SUSCEPTIBLE TO PROOF (OR DISPROOF)

115. This principle, legal in nature, is cited for the purposes that the ***JRPA*** **Applicant** cannot prove or disprove what was shared in a privileged setting between **Epstein Cole LLP** and Mr. Andrew Papadimitropoulos. All that he can prove is that current counsel of record in this ***JRPA*** **Proceeding** admitted (but misrepresented) that Mr. Papadimtripoulos could not be involved in the LAT Appeal. If he could not be involved in any way in the LAT Appeal, then there is agreement between the Applicant and the respondent insurance companies that his legal relationships, caused by a separation and a final divorce decree in 2019, along with his continuing duties pursuant to contract to cease and desist in any form of direct (Ms. Nicole Artopoulos (the "Named Individual Insured" in the **Insurance Policy** (the very "insurance policy" cited

by VC Morrissette at paragraph 27 of the VCM Reasons (see: Oral Compendium, Tab 1, page 9) of indirect contact (which would be the Applicant)).

116. Litigation is not a "tea party". That being said, this Court's time need not be wasted in the minutia of the unlawful and, frankly, rather frightening conduct (from a mental health standpoint) that he engaged in by reference to affidavit #3 of the *JRPA* Applicant, made on January 8, 2025, by appending the very affidavits in the record of proceeding that he relied upon in support of his COI Motion.

117. It is now established on a balance of probabilities that **Karat** derived his assignment to this LAT Dispute for **SNIC** from the **Conflicted Lawyer (Mr. Papadimtriopoulos)**. 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.

118. With the benefit of hindsight, the Applicant's submissions in Spring 2024 were now somewhat prophetic:

> "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)."

119. It was prophetic because of the reference to 'future related proceedings" and it has come to roost yet again.

120. It is not in the Applicant's DNA or makeup to feel sorry for himself so nobody else needs to.

121. His primary concern is preventing this type of conduct from happening again (if systemic) to others who do not have the ability, determination, and/or skill to take on a collection of bullies.

122. To the extent that it is idiosyncratic to the *JRPA* Applicant, then it bolster the Applicant's respectful submission that the Recusal Request, Nullification Request, Adjournment Request, and Staff Direction Requests must be granted.

123. 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. Unfortunately, this Tribunal, unlike the sound reasons for decision by Vice Chair McGee in *Mansuri* (which is well known to this Court by way of subsequent judicial review), did not decide in accordance with the law at that time. However, it turned out to be to the detriment to the respondent insurance companies considering their failure to comply with filing (not 'exchanging of materials' whatever that means in fact or at law) deadline of the *Civil Rules*.

124. In fairness to the Tribunal, the Applicant did not have said evidence of the mischief with respect to the forger of the "As per A. Nurse" 'signature' (used only for reference and not in the legal sense or any admission of its validity). The Applicant framed the legal issues as follows:

> *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 **LAT Proceeding** and any Future Related LAT Proceedings of the Mr. Papadimitropoulos, 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?*

125. Simply put, since the record of proceeding is replete with only uncontroverted evidence of the Applicant regarding this rather fortuitous discovery (see: images above) for his self-interest and counter to that of the initial adjuster for SNIC and Mr. Andrew Papadimtriopoulos, Mr. Nieuwland's representations in defiance and response to the COI orders sought in NOM #6 and NOM #9 now bear heavily on Justice Shore recusing herself through no per se fault of her own but solely based on her former partnership status at **Epstein Cole LLP**. However, said law firm agreed to represent this "individual" and with that comes potential consequences that follow lawyers into retirement and into the bench. Simply put, the law firm cannot have it both ways where they accept funds for services and not have to bear the consequences (which is merely herein that Justice Shore cannot adjudicate this JRPA Proceeding in any fashion even at the triage or case management phase)

VOLUME #9: RECAP OF RELIEF SOUGHT

126. As opposed to making a public spectacle of the above with a reported decision, the Applicant sincerely trusts that this Honourable Court appreciates resolving the above issues with findings, orders or granting of the Requested Relief in the Respectful Requests on an expedited basis:

1. The Honourable Madam Justice Shore is disqualified from any further involvement in this *JRPA* Proceeding (the "**Disqualification Request**" or the "**Recusal Request**");
2. The Case Management Appearance Requirement is declared as void and void *ab initio* (not merely voidable) (the "**Nullification Request**");
3. A general and indefinite adjournment of the case conference pursuant to 77.04(1)(b) of the *Civil Rules* by the Associate Justice (the "**Adjournment Request**");
4. A direction by the Honourable Chief Justice, pursuant to section 76 of the *CJA*, that the Registrar shall accept all outstanding requisition filings and provide confirmation of the same to the *JRPA* Applicant and respondents; and
5. A direction by the Honourable Chief Justice, pursuant to section 76 of the *CJA*, that the Registrar comply with her duties (by law), pursuant to 68.05(2) of the *Civil Rules*[13], and provide the parties with a "Notice of Listing For Hearing".

("d" and "e" together, the "**Staff Direction Requests**").

(collectively, the "**Respectful Requests**" or "**Requests**").

127. In support of the Respectful Requests, the JRPA Applicant relies on the filed materials in the record of proceeding herein and those documents that the JRPA Applicant has tendered for filing which remain in "processing status" and/or are required to be issued or deemed filed by the ONSC Divisional Court Registrar with reference to Rule 4.08 and/or section 76 of the *CJA*.

128. All of which is respectfully submitted (with the filed affidavit #3 of the *JRPA* Applicant on January 8, 2025, as "materials" in support of the same) to the ONSC (Div. Ct.) (Chief Justice and Associate Chief Justice (where applicable above)) on Thursday, January 16, 2025:

Mr. Kevin A. McLean (B.A. J.D., CIM)

Appendices of the *JRPA* Applicant's Factum

APPENDIX #1

January 16, 2025

VIA EMAIL

URGENT – NOTICE

Court file number: Court File No. DC-24-00000718-00JR
Type of document: email (three outstanding requisitions)
Short title of proceeding: McLean v. TDHA et al
Party: Mr. Kevin A. McLean, self-represented, Applicant, e: mcleansettlement@gmail.com;

Re: confirmation of the correct or preferred procedure to address my nullification request of Justice Shore initiated case management appearance requirement (the "**Case Management Appearance Requirement**") (the "**Nullification Request**") (see: affidavit #3 herein)

Re #2: recusal request of Madam Justice Shore (the "**Recusal Request**")

Re #3: to the extent applicable – dependent on other factor – the assignment request or reassignment

Re #4: Materials to follow today

Dear Madam Registrar Clegg:

1. I write regarding the above. I remain of the view and position, with great respect, that Justice Shore must recuse herself and withdraw her self-initiated Case Management Appearance Requirement.

2. You will kindly recall that I kindly informed you that I would review the law with respect to the preferred procedure. In that vein, There is no uniform practice in Canada with regard to raising the allegation of bias or a reasonable apprehension of bias at trial. Thus, the exact procedure to be followed in Ontario is unsettled (see: Paul Perell, "The Disqualification of Judges and Judgments on the Grounds of Bias or Reasonable Apprehension of Bias" (2004), 29 The Advocates' Quarterly 102, at 114 [Perell, "The Disqualification of Judges"].

3. Pursuant to our Courts of Justice Act, section 75(1) is relevant:

> Powers re sittings and assignment of judicial duties
>
> 75 (1) The powers and duties of a judge who has authority to direct and supervise the sittings and the assignment of the judicial duties of his or her court include the following:
>
> 1. Determining the sittings of the court.
>
> 2. Assigning judges to the sittings.
>
> 3. Assigning cases and other judicial duties to individual judges

4. As such, my request will be directed to the Honourable Chief Justice of the ONSC The Honourable Geoffrey B. Morawetz Chief Justice of the Superior Court of Justic and The Honourable Faye E. McWatt.

5. As noted, I have already filed my affidavit #3 on January 8, 2025, in support (i.e. materials exchanged already in support but also filed) of my Nullification Request and Request.

6. As noted by our SCC in *Newfoundland Telephone Co. v. Newfoundland (Board of Commissioners of Public Utilities)*, 1992 CanLII 84 (SCC), the damage caused by the reasonable apprehension of bias ("RAOB") cannot be remedied by Justice Shore. The only solution is the withdrawal of her Case Management Appearance Requirement.

7. The materials shall follow in short order which will be in the nature of a request with reliance on affidavit #3.

8. In relation to The Honourable Madam Justice Shore, and which will be relied upon in my requests of this Honourable Court, and as a brief "sneak preview" to the main argument, I note the following and certainly agree with Justice Shore's representations to the federal courts judicial appointment committee [hyperlinked to the specific paragraph for ease of reference]:

> "Vital to the Canadian system is the impartiality of a judge. This is different than the system in the United States. In Canada, judicial independence is viewed as vital to fostering public confidence in the fairness and objectivity of the justice system. The Supreme Court of Canada has described judicial independence as "the cornerstone, a necessary prerequisite for judicial impartiality."
>
> The Honourable Sharon Shore of our ONSC also made a statement to the Judicial Advisory Committee[14] that this Applicant certainly agrees with as follows:
>
> Last, but not least, is integrity. I have always tried to conduct my personal and professional life with integrity. One of the lessons I learned from my mentors is that it takes a lifetime to build your reputation, and only minutes to destroy it.

9. I repeat and rely upon the previous supra in this email thread and explicitly repeat and rely upon section 76 of the *CJA*. I note the importance of the record of this proceeding being complete, accurate and up-to-date for a variety of purposes not limited to the requirement it be so for my requests.

10. Thank you in advance for drawing this email and my affidavit #3 to the attention of the Chief Justice of the ONSC and the Associate Justice of the ONSC with the proviso that my written argument for my above noted requests will follow today.

Endnotes

[1] https://www.canlii.org/en/commentary/doc/2015CanLIIDocs5022#!fragment//BQCwhgziBcwMYgK4DsDWszIQewE4BUBTADwBdoByCgSgBpltTCIBFRQ3AT0otokLC4EbDtyp8BQkAGU8pAELcASgFEAMioBqAQQByAYRW1SYAEbRS2ONWpA:~:text=Public,reality.

[2] 68.05(2) When the certificate of perfection has been filed, the registrar shall place the application on a list for hearing and give notice of listing for hearing (Form 68B) by mail to the parties and the other persons named in the certificate of perfection. R.R.O. 1990, Reg. 194, r. 68.05 (2).

[3] Ironically, the same language under section 5 of the SPPA that is at issue in the JRPA Proceeding

[4] "deliver" means serve and file with proof of service, and "delivery" has a corresponding meaning (see: Rule 1.03)
[5] "factum" includes a book of authorities, if one is required by rule 4.06.1 (see: Rule 1.03(1));
[6]These references are to the "hearing book" or "hearing record" at the time and are part of the "record of proceeding" which remains the obligation of the Tribunal to file the same forthwith.
[7]See G.W.L. Properties Ltd. v. W.R. Grace & Co. of Canada Ltd., 1992 CanLII 934 (BC CA). (There was no RAOB where brother of a pre-trial management judge was associated with the plaintiff's law firm in a major product liability case. The interlocutory nature of the judge's role, short period remaining until trial, and inconvenience of recusal were relevant factors).
[8]See Blanchette v. C.I.S. Ltd., [1973] SCR 833, 1973 CanLII 3 (SCC). (The trial judge sitting an insurance defence matter was disqualified for a RAOB as he had actively pursued claims against the defendant-insurer on behalf of members of his family
[9]Kligman, "Bias", supra note 17 at 1-6.
[10]Bryden & Phillips, Legal Principles of Disqualification", supra note 15 at 58-63.
[11]https://canlii.ca/t/51pj#par77
[12]https://canlii.ca/t/51pj#par78
[13]68.05(2) When the certificate of perfection has been filed, the registrar shall place the application on a list for hearing and give notice of listing for hearing (Form 68B) by mail to the parties and the other persons named in the certificate of perfection. R.R.O. 1990, Reg. 194, r. 68.05 (2).
[14]Under the new judicial application process introduced by the Minister of Justice on October 20, 2016, any interested and qualified Canadian lawyer or judge may apply for federal judicial appointment by completing a questionnaire. The questionnaires are then used by the Judicial Advisory Committees across Canada to review candidates and submit a list of "highly recommended" and "recommended" candidates for consideration by the Minister of Justice (see: https://www.canada.ca/en/department-justice/news/2018/12/the-honourable-sharon-shores-questionnaire.html)

TAB 11:

Court File No. DC-24-00000718-00JR
Applicant's Motion #2 (Motion in Writing; Request to Convert Motion into Motion for Judgment)

Court File No. DC-24-00000718-00JR

FORM 4D

Courts of Justice Act

AFFIDAVIT

ONTARIO SUPERIOR COURT OF JUSTICE (DIVISIONAL COURT)

BETWEEN:

KEVIN ALEXANDER MCLEAN

APPLICANT

- and -

TD HOME AND AUTO INSURANCE COMPANY, SECURITY NATIONAL INSURANCE COMPANY, TD GENERAL INSURANCE COMPANY, EXECUTIVE DIRECTOR, LICENCE APPEAL TRIBUNAL,
HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO, REPRESENTED BY EXECUTIVE CHAIR OF TRIBUNALS ONTARIO IN MR. SEAN WEIR, THE ATTORNEY GENERAL OF ONTARIO

RESPONDENTS

Affidavit #8[i] of Kevin A. McLean in this *JRPA* Proceeding

I, **Kevin Alexander McLean**, Disabled (B.A., J.D., CIM) of **Toronto**, **Ontario, SWEAR** THAT:

Volume #1: Sworn Under Oath; under the Penalty of Perjury; and Introduction

1. I am the individual *JRPA* Applicant herein and I swear, under the pains and penalties of perjury, the following facts to be true. Where I have stated or sworn information on my belief(s), I have cited the source of my belief(s) by references, citations, end-noting or otherwise. When I have used the expressions (including any permutations) of "in my view", "in my opinion", or "belief", I am not drawing or making any conclusion of law or swearing a conclusion of law but rather citing my position and opinions as a matter of fact.

2. I adopt the definitions from my served documents in this *JRPA* Proceeding and they have the same meaning therein as they do herein unless expressly noted otherwise.

3. I define, at times, Mr. Andrew Papadimitropoulos as the "**Interested Individual**" or "**Interested Person**".

4. I swear this affidavit in support of my second motion ("**Motion #2**" or "NOM #2") in this *JRPA* Proceeding. My Motion #2 will be seeking the relief in the COI Recusal Submissions (see: Affidavit #7, Exhibit "A", pages 6 to 33) and other relief contained in the Notice of Motion form (Form 37(A)) to be filed and paid for after my serving and filing of this Affidavit #8 on the respondents and **Interested Person**s.

5. My first motion ("**Motion #1**" or "**NOM #1**") in this *JRPA* Proceeding is my motion exclusively directed at relief to be obtained against the Tribunal discharging its statutory obligations in accordance with section 10 of the *JRPA* and section 20 of the *SPPA*.

6. I note that in relation to my Motion #1 that I am only seeking that the Tribunal file (not necessarily serve as per the language in section 10 of the *JRPA*) the record of proceeding from December 24, 2023, to September 12, 2024.

7. For ease of reference for the Tribunal, these are from "speaking notes" for Motion #1:

> "When notice of an application for judicial review of a decision made in the exercise or purported exercise of a statutory power of decision has been served on the person making the decision, such person shall *forthwith file* in the court for use *on the application* the record of the proceedings in which the decision was made: section 10 of the *JRPA*. When notice of an application for judicial review of a decision made in the purported exercise of a statutory power of decision which includes a decision of the committee is served on the person making the decision, that person is required by s.10 of the *Judicial Review Procedure Act*, to "forthwith" file the record of proceedings in which the decision was made: *Rew v Association of Professional Engineers of Ontario (Discipline Committee)*, 2016 ONSC 4043 (CanLII) ["*REW*"], https://canlii.ca/t/gs5t9 as per Dambrot, J. (orally) at paragraph 8;
>
> Any interlocutory orders made by the Tribunal would include the orders to the time the VCM Decision was made which was September 12, 2024: *Payne v. Ontario Human Rights Commission*, 2000 CanLII 5731 (ON CA), [2000] O.J. No. 2987, 136 O.A.C. 357 (C.A.) ["*Payne*"], at paragraphs 79 [the record of proceeding when the decision was made], paragraph 160, and paragraph 161. *Payne* was cited with approval by this ONSC Div. Ct. in the same year when the *JRPA* Application was made in Lachance: *Lachance v. Solicitor General of Ontario*, 2024 ONSC 975 (CanLII) as per Stewart, Myers, and Leiper JJ of the Divisional Court at paragraph 37 [copied by link to highlight as no hyperlink available on CanLII].

> In *Rol-Land Farms Limited*, Justice Swinton, Greer and Leitch of the ONSC Div. Ct. found that content that post-dated the decisions under review was not admissible (see: *UFCW Canada v. Rol-Land Farms Limited*, 2008 CanLII 6652 (ON SCDC), (see: https://canlii.ca/t/1vtm5) ("*Rol-Land Farms*") at paragraph 38[ii])
>
> Pursuant to s. 10 of the *JRPA*, since the VCM Decision was an exercise of a statutory power of decision [or the refusal of], she must, upon receipt of a judicial review application, file a record of proceedings: Endicott ONCA, paragraph 18. It is for use *on the application* which is the proceeding and not for select uses at select times: Endicott ONSC (as per Molloy, Lederer and Edwards JJ.), paragraph 20."

8. While I am aware of the law involving judicial reviews intended to be summary proceedings, I felt compelled to serve, pay for and file my Motion #1 in its current state so that I, *inter alia*, was not accused or prejudiced in the future by any allegation or finding that I did not object to the Tribunal's statutory non-compliance. In this regard, I again copy and paste from my 'draft speaking notes' for Motion #1 returnable on January 30, 2025, by teleconference:

> *"*In *Reflection Productions*, it was available to the applicant to bring a motion seeking production of documents it alleges were relied on by the decision-maker but are not contained in the record: see, for example *K.D. v. Peel Children's Aid Society*, 2017 ONSC 7392 (Div. Ct.) at paras. 16-17).

9. I remain of the belief that the Tribunal does not have a full and accurate record of the proceeding and it is unable, not unwilling per se to file the record of proceeding as it was from December 23, 2023, to September 13, 2024. I source my belief based upon Mr. Boyce provided his theories of the law, without citation to the statutory sections under the *JRPA* and SPPA, and providing a timeline of three to four weeks in his initial letter to myself and the ONSC Divisional Court and not being able to comply with the same.

Volume #2: Exhibits

Volume #2(A): Exhibit "A"

10. Attached hereto to this my affidavit and marked as **Exhibit "A"** are copies of documents which I found last evening of January 26, 2025, and this morning of January 27, 2025, which are denoted as follows with the corresponding pagination:

a. "***Consultation on Proposed Fraud Reporting Service Rule and Guidance***" issued by the FSRA on July 15, 2024, with a comment due date of October 15, 2024, under the ID 2024-008;
    i. Page count: 14 pages
        1. (see: pages 1 to 14);
b. "***TDI - Final - Feedback on FRS Guidance dated Oct 15 2024***" authored by Mr. Andrew Papadimitropoulos (see: **[2024-008] Andrew Papadimitropoulos - TD Insurance;** Attached is TD Insurance feedback on FRS Guidance TDI - Final - Feedback on FRS Guidance dated Oct 15 2024.pdf
    i. Page count: 3 pages
        1. (see: **Exhibit "A"**, pages 15 to 17);
c. Fraud Reporting Service by the Financial Services Regulatory Authority of Ontario, "Proposed Rule 2024 – 003" in the following FSRA class of insurance licence of Automobile Insurance – Fraud Reporting Service (the "**Proposed Rule**")
    i. Page count: 4 pages
        1. (see: **Exhibit "A"**, pages 18 to 21);
d. Automobile Insurance Fraud Reporting Guidance document, issued by the FSRA under identifier, "AU0140INT" (the "**Guidance Document**")
    i. Page count: 20 pages;
        1. (see: **Exhibit "A"**, pages 22 to 41);
e. Notice of Proposed rule under the *Financial Services Regulatory Authority of Ontario Act, 2016* issued by the FSRA ("**Proposed Rule Notice**"); and
    i. Page count: 12 pages
        1. (see: **Exhibit "A"**, pages 42 to 53).

11. I have alleged and sworn on belief, which is contained in the record of proceeding and some of my documents in my filed and served Application Record of December 12, 2024, that there are issues of *real unfairness* before the Tribunal and that, *inter alia*, that Mr. Papadimitropoulos was the individual who engaged in some of the impugned conduct like the 'As per A. Nurse' purported signature in the first OCF-18 (see: Affidavit #3 herein, Exhibit "A", page 199) that was tendered through HCAI on or around April 6, 2023. I have not received any evidence to the contrary. I challenge any of the three respondent insurance companies and any individual that were so involved to provide evidence to the contrary. I directly challenge Mr. Papadimitropoulos to swear evidence to the contrary.

12. Out of an abundance of caution and in light of Ms. Im and Mr. Boyce removing their business addresses and business name or employer names after my affidavit #2 was served on them and filed with the ONSC Divisional Court, I copy and paste as of today's date Mr. Papadimitropoulos' directory information[iii]:

> **"Assumed Name**
> Andrew Papadimitropoulos
> **Law Society Number**
> 58696I
> **Class of Licence Definitions**

Lawyer (L1)
Real Estate Insured †
No
Status Definitions
Practising Law - Employed
Business Name
TD Insurance
Business Address
101 Mcnabb StMarkham, OntarioL3R 4H8
Phone
416 983 5467 Ext.
Email Address
andrew.papadimitropoulos@tdinsurance.com
Trusteeships
None
Current Practice Restrictions
None
Current Regulatory Proceedings
None
Regulatory History
N"

13. While I appreciate that the FSRA Proposed Rule (defined supra) is not in effect as of today's date, I allege that there has been a situation of employee fraud at the various insurance companies including but not limited to: (i) TDHA; (ii) TDGIC; and (iii) SNIC. I have alleged with sworn evidence, on belief, contained in the record of proceeding, that Mr. Papadimitropoulos was involved in some of the internal employee fraud.

14. I believe that in relation to SNIC's Response, exclusively, on its face, completed, signed and filed by one Mr. David Karat, a non-licensee, Mr. Papadimitropoulos had a role in conduct that fell under the following at section 1(7)(1.) and (3.) of the Law Society Act:

> "Representation in a proceeding
>
> (7) Without limiting the generality of paragraph 3 of subsection (6), doing any of the following shall be considered to be representing a person in a proceeding:
>
> 1. Determining what documents to serve or file in relation to the proceeding, determining on or with whom to serve or file a document, or determining when, where or how to serve or file a document.

3. Engaging in any other conduct necessary to the conduct of the proceeding. 2006, c. 21, Sched. C, s. 2 (10)."

15. I have referenced some of the above noted issues in my Factum which was filed and served on December 10, 2024.

16. I believe that Mr. Papadimitropoulos remains in breach of the terms and provisions of the separation agreement (contract) that he and Ms. Nicole Artopoulos reached prior to their finalized and approved divorce decree. I have a copy of the divorce decree in storage. In relation to the first sentence in this paragraph, I believe that Mr. Papadimitropoulos was and is in breach of the "no direct and indirect contact provision" therein. I believe that I would fall under the "no indirect contact provision" which is why I believe and allege, and challenge Mr. Papadimitropoulos to swear evidence to the contrary, that he utilized the likes of the names of Ms. Alisha Anne-Nurse, Ms. Persaud and Mr. Karat without revealing or disclosing his involvement.

17. For consistency and accuracy purposes for the ONSC Divisional Court to assess the merits of my NOM #2, Ms. Nicole Artopoulos' legal counsel was Mr. Theodore Laan, barrister and solicitor of the LSO with the firm name at the time of "Laan Litigation"[iv].

18. I now copy and paste from the LSO directory the information relating to Mr. Ted Laan:

Assumed Name
Law Society Number
18492Q
Class of Licence **Definitions**
Lawyer (L1)
Real Estate Insured †
No
Status **Definitions**
In Private Practice
Business Name
Ted Roland Laan
Business Address
207-145 Wellington St WToronto, OntarioM5J 1H8
Phone
1 416 861 1071
Email Address
ted@lannlitigation.com
Trusteeships
None
Current Practice Restrictions
None
Current Regulatory Proceedings
None

Regulatory History
Yes
See Regulatory History Details

19. I note that the size of the firm of Epstein Cole LLP is, based upon my computation, some 30 lawyers. Based upon my review of the website, it appears to me that Epstein Cole LLP specializes in matrimonial and family law dispute resolution and litigation.

20. I provide the above noted fact when juxtaposing the facts involving a client of Epstein Cole LLP in Mr. Papadimitropoulos and the facts in *GWL Properties* wherein a case management judge had a brother at the then firm of Ladner Downs LLP in Vancouver, BC.

21. I have provided my intention to seek relief, informally and formally, that Madam Justice Shore recuse herself and/or the Associate Justice of the ONSC and/or the Chief Justice of the ONSC disqualify her from being involved in this *JRPA* Proceeding, since becoming aware of Madam Justice Shore's prior distinguished, in my view, legal career at Epstein Cole LLP.

22. I believe and will continue to request the consent of the respondents until my Motion #2 is heard or resolved in my favour based upon the case law that I cited in my COI Recusal Submissions but also my correspondence with the ONSC Divisional Court and respondents but also pursuant to section 71 of the CJA:

> "The administration of the courts shall be carried on so as to: (a) maintain the independence of the judiciary as a separate branch of government; (b) recognize the respective roles and responsibilities of the Attorney General and the judiciary in the administration of justice; (c) encourage public access to the courts and public confidence in the administration of justice; (d) further the provision of high-quality services to the public; and (e) promote the efficient use of public resources."

23. I wish to continue to make clear that I have not alleged, as I cannot prove a negative (i.e. a matter that is susceptible to proof or not susceptible to proof), that Madam Justice Shore is actually biased towards the respondent insurance companies and prejudiced towards me but that the appearance of impartiality is at the forefront of my Motion #2.

24. Based on the writing style in the above noted document attributed by the FSRA to the **Interested Individual**, I believe that he was responsible for what I have defined in my Factum and Application Record as the Spam Fax (Spring 2023) and the letter that one of my health practitioners received in August or September 2024 which were, in my view and based on memory in relation to the former, similar to each other. The

latter letter to which I refer was the one where I had delivered OCF-18's and invoices on my behalf or in relation to the services provided to me to TDHA and SNIC, along with any other insurance company that may have had carriage of my accident benefits file regarding the duty to respond and pay benefits. The response that I received was that no entity within TD Insurance had any record of my claim number with TD despite it being provided in each OCF-18 and invoice along with the cover letter therein.

25. I believe that the **Interested Individual** has much animus and malice towards me.

VOLUME #2(B): EXHIBIT "B":

26. I re-swear that I do not believe TD Insurance Staff Lawyers' representation to me and the Tribunal that Mr. Andrew Papadimitropoulos was never involved in my accident benefits claim. I note that said representation was tendered by Mr. Nieuwland in the Winter and Spring of 2024. I believe that he remains involved in any all aspects of the same and I continue to object to the same however clandestine or surreptitiously he has been, he is or intends to provides any form of representation to any of the three distinct insurance companies named as respondents in this *JRPA* Proceeding or otherwise.

27. I have not finished at this time the chart that outlines all of the justices of the ONSC (Toronto Region) and their previous affiliations, partnerships or associations prior to being appointed as justices of the ONSC. However, having completed some 88 of the 93 listed justices in the ONSC (Toronto Region), I cannot find any other justice that worked at the law firm of Epstein Cole LLP at the times denoted of 2017 and beyond.

28. Attached hereto to this my affidavit and marked as Exhibit "B" are copies of two sets or classes of documents which are particularized as follows:

a. Copies of images that I obtained from CAMH through a privacy request and now privacy complaint to the OIPC (ON) involving the theft of my property on Friday, October 25, 2024;
    i. Page count: 6 pages
        1. (see: Exhibit "B", pages 54 to 59); and
b. Copy of a printout or chart that I received from the TPL based on my second access request[v] made of it pursuant to my factual grounds that an individual had engaged in unauthorized collection, use, access and disclosure of my name, TPL library card[vi] (from the time after October 25, 2024 into January 2025);
    i. Page count: 3 pages
        1. (see: Exhibit "B", pages 60 to 62).

29. While I do not intend at this time to delve into all of the minutia of what transpired from October 25, 2024, to January 2025 involving the theft of my property and

subsequent and continued theft, impersonation, fraud, false pretenses et al, I will provide the evidence which I believe is currently relevant and/or material to this *JRPA* Proceeding and my Motion #2.

30. I swear that none of the activities but for one activity in the chart provided by the TPL to me were activities undertaken by myself. The sole activity undertaken by myself was the obtaining of a replacement library card despite not having any picture identification at the time in hard copy form as all of my identification, including my passport, were contained within the "backpack" or "laptop bag" that was stolen on October 25, 2024.

31. I received the above noted chart late last week and I was most appalled with further unauthorized activities of which I was unaware in substance and form. For example, while my primary laptop computer was stolen, as it was contained within the backpack, the unauthorized individual engaged in 'renting' or 'borrowing' a laptop on October 28, 2024 which was a Monday. He did so, as it has been confirmed to me for some time that I am looking for a male that is engaged in the impersonation of me, on the very day in which I was in the same branch at the TPL which was the Fort York branch. In conjunction with said unauthorized activity involving the 'borrowing of laptops in my name' with my library card, said individual also borrowed a library book later entitled "That Night in the Library" or words to that effect. Since that time of October 25, 2024, it was, is and remains a terribly traumatizing and debilitating experience at the hands of this individual.

32. With respect to the images (Exhibit "B", page 55 (albeit slightly dark therein due to the image at the top), one of the reasons, of which I now have many and further corroborating evidence (some of it hearsay per se) that "TD Insurance", including Mr. Papadimtriopoulos was involved in some of the above unauthorized activities, was that there is a black suitcase that was NOT taken on October 25, 2024. I had utilized said suitcase for a period of time before the theft on October 25, 2024, and it had a "TD Bank" logo or name tag on the same. On the day in question, I was in the washroom of the visitor area part of the hospital, known as CAMH, at 1025 Queen Street West, which has a park that is adjacent to the East of it known as the "TD Commons", for no more than five minutes. During that time of setting my backpack and black luggage suitcase or "carry on" (with the TD logo on the same), only my backpack, and all contents (including all electronic devices) were taken therein. I immediately reported the same to the security and then made an access request of CAMH.

33. The images appended to this my affidavit at Exhibit "B" are some of the images that I obtained in relation to my access request of CAMH.

34. In relation to the unauthorized borrowing of books from the Queen and Salter branch of the TPL in November 2024, I confirmed with the TPL that I had never attended said branch or knew of its existence. I believe that at the material time of November 2024 that Mr. Papadimitropoulos had resided at an apartment or condo unit that was

approximately three hundred metres from that branch. I believe the same based on information that Ms. Nicole Artopoulos had provided me at various time regarding his whereabouts and asking that I avoid that area when driving.

35. When referring to the residences in which I believe that Mr. Papadimitropoulos resided at, while not knowing if he had moved from that apartment building which is on the South side of Queen Street West, I am referring to the buildings situated where there is a Starbucks on the corner of Queen Street West and Carlaw Street.

36. In my view, the most disturbing of all of the unauthorized conduct was that after I had paid for, served and filed the Certificate of Perfection on December 13, 2024, there was further unauthorized conduct at seven p.m. on that Friday evening. The ONSC Divisional Court will be able to review the emails in the record of proceeding herein or at least by reference to the covering emails wherein Madam Registrar Ms. Clegg, with thanks, referred me to the online "Civil Claims Submissions Portal" to file and pay for my Certificate of Perfection.

37. I thank Registrar Ms. Clegg for her guidance in that regard and the correct manner to file at first instance such that the fees were paid prior to attempting to file at first instance through email.

38. In relation to the December 13, 2024, date, I note that it was one day after I had filed and served my Application Record which then only afforded the respondent insurance companies and the Tribunal 30 days to file any responsive factums and application records.

39. I have received or obtained further information involving December 13, 2024, and that it involved a male impersonating me at the Toronto Reference Library. I had been to the Toronto Reference Library (789 Yonge Street) but only for the purpose of delivering my fees for purposes of receiving access to the requested personal information and information (records as defined under *MFIPPA*).

40. I note that based upon my height and weight and that of Mr. Papadimitropoulos, we are similar in my view in height and weight. I have seen him before, based on information and belief, and Ms. Nicole Artopoulos confirming that we had seen him while driving in public from certain time periods of 2019 to 2024.

41. I was going to provide an image of Mr. Papadimitropoulos and an image of myself for comparison purposes but his LinkedIn profile does not appear to me to be active at this time. However, I can confirm for the ONSC Divisional Court that in order for an individual to have obtained a third library card, albeit under false pretenses, that said individual was required to provide identification. My identification was contained in my wallet which was in the aforementioned backpack which was stolen on October 25, 2024.

42. In relation to my evidence about what I believe to the most disturbing conduct on December 13, 2024, the unauthorized individual also changed my phone number associated with my library card and account to that of a CBC reported known as Ms. Valeria Ouellet who specializes in investigative reporting involving fraud, fraud investigations, RCMP corruption, money laundering *et al*.

Volume #2(C): Madam Justice Shore

43. It is unclear to me as to how Madam Justice Shore was delegated, if at all, to provide the email that she did to presumably the Registrar that was then relayed to myself and the respondents on or around January 7, 2025. I, in my view, promptly objected to her compulsory requirement of an attendance at a case conference. Based upon my review of the *Rules of Civil Procedure*, the case conference was required to be before her. In that regard, I swore an affidavit, served and filed the same on an urgent basis by way of email in the email thread that was commenced by the Tribunal with its Notice of Appearance albeit to the incorrect email to me as a matter of my email address for service.

44. As such, I believe and will submit that the issue is now far more serious and the circumstances are more compelling that Madam Justice Shore cannot have any involvement in this *JRPA* Proceeding. I will be relying on the case of *GWL Properties* that I cited in my correspondence to the ONSC Divisional Court, the respondents and **Interested Person**.

VOLUME #3: JURAT

45. I swear this affidavit in support of my Motion #2 and the relief that will be sought therein. To the extent that any respondent and **Interested Person** opposes my relief in Motion #2, I will seek costs in accordance with the *CJA* and the Rules of Civil Procedure.

46. In light of the above, my position remains that this *JRPA* Proceeding is more urgent than previously and any delays to have the matter heard before the Divisional Court inclusive of any case conferences, whether before Madam Justice Shore or not, will likely lead to a failure of justice.

47. I will be seeking in my Motion #2 an order that Mr. Papadimitropoulos and Epstein Cole produce and provide to the Court *'in camera*' for its review a copy of the separation agreement between Ms. Nicole Artopoulos and Mr. Papadimitropoulos to assess the validity of the underlying evidence and facts, and relief sought in my Motion #2. I will be seeking leave or ancillary relief in relation to the same if the Court does not find that there is a reasonably perceived apprehension of bias, conflict of interest or lack of independence between Madam Justice Shore and the respondent

insurance companies by virtue of, *inter alia*, Mr. Papadimitropoulos being a client of Epstein Cole LLP.

48. I swear that I will provide any necessary or requested evidence regarding the above as it becomes known to me.

49. I challenge any of the respondent insurance companies including Mr. Papadimitropoulos to provide any evidence to the contrary involving any of my sworn evidence that relates to the above. To the extent that they do not, I will ask that this Court to draw an adverse inference against them (some or all) and disqualify Madam Justice Shore, not through her wrongdoing, but "theirs" and refusing to consent to the relief that a different justice provide a similar type email and manage a case conference (if applicable).

50. In repeating and relying upon my previous evidence from the LAT Appeal, I kindly refer the Divisional Court (Toronto Region) to the sworn evidence that I filed and served in the LAT Appeal, which is appended to my affidavit #3, wherein Mr. Papadimitropoulos was attending the courtyard of the condo corporation denoted in my address for service which required further intervention of legal counsel and contacting of the police at the time. I again swear that I am not a party to the separation agreement but to the extent that there are consequences for non-compliance by a party to that contract, I am providing a copy of my affidavit material to one Epstein Cole LLP and Laan Litigation for their receipt and advising of their respective clients.

51. I again ask that the Tribunal consent to the relief that I am seeking in my proposed Motion #2.

52. I seek the consent of the respondent insurance companies as well on the bases above in relation to my proposed Motion #2.

53. To the extent that I do not hear from either or both, I will proceed accordingly and seek the relief on what I submit is an urgent bases. I will move as expediently as possible in order to have my Motion #2 heard and decided. I confirm that I am not available on February 18, 2025, as I will be away from February 16, 2025, to early March 2025. I have asked the ONSC Divisional Court to provide alternate dates for a potential case conference before Madam Justice Shore should I not be successful with Motion #2 in its entirety. I reserve my rights in relation to the same and I do not agree that a case conference is necessary in accordance with the *CJA*, *Civil Rules* et al when measured against the current status and non-compliance by the respondents with the *Rules of Civil Procedure* (defined herein at times as the "*Civil Rules*").

54. I swear this **Affidavit #8** for no improper purpose and for the above purposes.

Sworn before me via videoconference in accordance with O. Reg. 431/20 at **Toronto, Ontario** on this 27th day of January 2025

Mr. Kevin A. McLean (B.A., J.D., CIM)

Vinh The Tran, Esq.

VINH THE TRAN NOTARY PUBLIC ONTARIO

Unlimited. No Expiration.
NO ILA PROVIDED.
Identification Confirmed.

[i] Three affidavits have been my affidavits of service

[ii] [38] Thus, the content of volume 3 is not properly part of the record required to be filed pursuant to s. 10 of the *JPRA*, as it post-dates the decisions under review. Moreover, it is not relevant to the issue of reasonable apprehension of bias before this Court, as it responds to an issue of actual bias.

[iii] https://lso.ca/public-resources/finding-a-lawyer-or-paralegal/directory-search/member?MemberNumber=58696I

[iv] https://lso.ca/public-resources/finding-a-lawyer-or-paralegal/directory-search/member?MemberNumber=18492Q

[v] My first access request made of the TPL was when I learned in November 2024 that an individual had, while using my library card and library card number

[vi] While I later learned in receipt of this chart as of last week that the unauthorized individual had impersonated me on December 13, 2024 (the day after my filing and serving of the Application Record, which in turn put the respondents on the 30 day prescribed timeline to file responsive factums and application records pursuant to Rule 68 (nota bene: Rule 38.09 does not apply

THIS IS EXHIBIT "A" REFERRED TO IN THE
AFFIDAVIT OF Mr. Kevin A. McLean
AFFIRMED BEFORE ME, THIS 27th DAY
OF January 20 25

.....
...ER, ETC.

Vinh The Tran, Esq., LSUC #57761C
Lawyer, Notary, Oaths Commissioner
188-639 Dupont Street, Toronto, ON
M6G 1Z4, T. 647-209-7389
vinhtranlaw@hotmail.com

FSRA
Financial Services Regulatory Authority of Ontario

Consultation on Proposed Fraud Reporting Service Rule and Guidance

ID: 2024-008

Type: Rules
Sector: Auto Insurance
Status: Public comment closed
Date: July 15, 2024
Comment Due Date: October 15, 2024

Thank you for providing your feedback on FSRA's proposed Fraud Reporting Service Rule and Guidance .

The request for submissions is now closed.

We appreciate the comments and questions received to date and look forward to sharing with you the final Rule. Stay up to date on FSRA's Rules on our newsroom. Follow us on LinkedIn and subscribe to our mailing list for quick updates.

To reduce consumer harm and the additional costs associated with auto insurance fraud, Ontario's Financial Services Regulator (FSRA) is proposing a new Rule on auto insurance fraud reporting. This will help to better determine the amount of auto insurance fraud in the province, identify and address fraud trends and establish a baseline to be able to track and reduce the amount of fraud in the future. Once the Proposed Rule is in effect, insurance companies will be required to provide specific information to FSRA.

FSRA is seeking feedback on a Proposed Rule and Guidance that includes:

- a proposed definition of what constitutes a 'fraud event'
- when insurers are required to report information about a fraud event
- how often insurers will need to report information about fraud events to FSRA
- FSRA's approach in administering the Proposed Rule

Once the Proposed Rule comes into force, insurers will be required to provide prescribed information about auto insurance fraud to the FSRA. With the benefit of this information, FSRA will determine what can be done to reduce fraud and the consumer harm and costs arising from fraud.

The consultation period for the Proposed Rule is now open and will close on October 15, 2024. FSRA invites stakeholders to review the Proposed Rule and Guidance and submit their feedback.

Learn more:

- Fraud Reporting Service Proposed Rule
- Fraud Reporting Service Proposed Guidance
- Notice of Proposed Rule

everyone. Learn more at www.fsrao.ca.

Before we begin, please make sure you do not include any personal or private financial information. If your inquiry does require this information be shared with us, please call us at 1-800-668-0128 or email us at contactcentre@fsrao.ca for instructions.

By submitting your content, you agree to have your materials posted on our engagement portal, used in reports and other materials prepared by Financial Services Regulatory Authority of Ontario (FSRA) that may be shared with the public. Content is moderated so that all posts are respectful and professional. The Freedom of Information and Protection of Privacy Act, R.S.O. 1990, c.F.31, applies to all online content.

Comments | **Questions and Responses**

Sector	Comment	Date posted
Auto Insurance	**[2024-008] Giuseppina Marra - Desjardins Group** Bonjour, Le Mouvement Desjardins soumet à l'attention de l'Autorité ontarienne de réglementation des services financiers ses commentaires relatifs à la consultation publique sur le projet de règle et ligne directrice proposées sur le service de signalement des fraudes. Nous vous réitérons nos sincères remerciements pour l'occasion offerte de soumettre nos commentaires. Bien cordialement. 2024-10-15_ ARSF - Projet règle et ligne directrice sur le service de signalement des fraudes_commentaires du Mouvement Desjardins.pdf	**November 19, 2024**
	[2024-008] Laurence L. Wymant - Unica Insurance Please find enclosed Unica Insurance's feedback on the proposed Fraud Reporting Service Rule and Guidance Unica - FSRA FRS Submission (002).pdf	**November 1, 2024**

Sector	Comment	Date posted
	[2024-008] Derrick Ajmo - Heartland Mutual Insurance Hi there, The below are the concerns that Heartland would like to submit regarding the proposed Fraud Reporting Service Rule. 1. Fraud is usually never alleged unless proven in court. Typically, insurers will never deny a claim under fraud unless we have proof which we then turn over to the authorities. Typically, the authorities deem this low value and nothing is done. Therefore, without a conviction, how can we allege fraud towards an insured or vendor under the proposed guidelines. 2. The verbal presentation indicated that the insured or vendor identifying information would not be required to be reported however the documents released indicate that insured name and contact details must be listed on the FSRA reporting system. If we do indeed need to declare the insured or vendor name on the site and this information gets released to the public, the insurer could be exposed to a bad faith claim. Will FSRA regulations or rules exempt this reporting from being disclosed to the relevant parties and/or will FSRA compensate the insurer if found to be acting in bad faith due to reporting the insured or vendor of fraud based upon what later on could be deemed unproven allegations by a court? 3. What safeguards will FSRA undertake to ensure that this information is not inadvertently released to the public? With FSRA compensate insurers for the unauthorized release of the data should the system be compromised? Is there a concern by FSRA of the reputational harm to individual insureds and vendors should these unproven allegations of fraud be released into the public domain. 4. Will this information submitted by the insurer be subject to release to the public under Freedom of Information or be open to being subpoenaed in a court case involving said insurer. 5. As the goal of this is to gather the extent of the fraud being perpetrated in auto insurance, how will the information gathered be released to the public or insurers in a manner that will protect insurers from any potential bad faith allegations due to the data that has been reported to FSRA by them? If there is another format that the above feedback needs to be	**November 1, 2024**

Sector	Comment	Date posted
	submitted to FSRA, please let me know and I will provide. Regards Derrick Ajmo	
Auto Insurance	**[2024-008] Elliott Silverstein - CAA Insurance** On behalf of CAA Insurance, please find our comments related to this consultation. Thank you. 2024-10-15- CAA Insurance submission to Fraud Reporting Consultation (final).pdf	**October 15, 2024**
Auto Insurance	**[2024-008] Sarah Fong - Travelers Canada** Please find attached Travelers Canada's submission to FSRA's Consultation on Proposed Fraud Reporting Service Rule and Guidance. Travelers Canada Submission on FSRA Fraud Reporting Service 10 15 2024.pdf	**October 15, 2024**

Sector	Comment	Date posted
Auto Insurance	**[2024-008] Rhona DesRoches - FAIR Association of victims for Accident Insurance Reform** FAIR Association of victims for Accident Insurance Reform response to: FSRA Consultation on Proposed Fraud Reporting Service Rule and Guidance ID 2024-008 We are pleased to see the Regulator take steps to identify fraud in the auto insurance industry to better protect the public. No one supports fraud and this is a positive step. 1. Definition of what constitutes a 'fraud event' Regarding the definition of a 'fraud event' at: 1. (e) "fraud event" means a deceptive act or omission, or series of deceptive acts or omissions intentionally committed by a person(s) to obtain advantage, financial gain, or benefits beyond that to which one is entitled to with regard to any policy, claim, provision of goods or services or other occurrence related to automobile insurance, and for greater clarity includes instances of:... RECOMMENDATION: The wording be expanded to include: "committed by a person(s), business(es) or institution(s) to.." The current language appears to specifically exclude businesses or institutions that are insurers and their associates or intermediaries. 3. Prescribed information under subsection 101.3(1) of the Act In respect to: 3(2) An insurer shall within thirty days after the close of each quarter of the calendar year provide the information prescribed in subsection 3(1) of this Rule with respect to fraud events which in the preceding quarter the insurer has taken action or made a decision based on reasonable grounds for the insurer to believe that a fraud event has occurred or is likely to occur. RECOMMENDATION: Insurers should have to provide information in subsection 3(1) within 30-60 days of the event rather than after the close of each quarter. If all insurers report at the same time the effectiveness of the Regulator may be compromised by being overwhelmed. Perhaps it is presumptuous to assume that the Regulator might take action to protect vulnerable claimants but stale-dated fraud reporting is	**October 15, 2024**

Sector	Comment	Date posted

less helpful.

GENERAL COMMENT:
If the "purpose of collecting this information is to support the more effective assessment and detection of automobile insurance fraud in Ontario" and to support "FSRA's goal of reducing consumer harm caused through fraud" then there should be some statement about what FSRA does with this information other than "information that has been collected will be available for insurers to access to enable the assessing and detecting of fraud" in a second phase. What about consumer access to industry fraud?

Not only is the hunt for fraud left entirely to insurers (who are themselves often fraudulent in their claims practices) but it also ignores the claimant experience where insurers' (and their intermediaries) fraud is a very real issue tens of thousands of Ontario's claimants face every day.

Where, in this document, is the protection of vulnerable injured car crash claimants who are exposed to the fraud? This shouldn't just be about protecting insurer profits but rather about protecting people who are scammed along the claims corridor.

This document goes back and forth about prescribed information required but fails to inspire confidence as it becomes clear this is about gathering information to identify fraud and carefully doesn't mention any action to be taken by Fraud Reporting Service ("FRS").

FSRA has taken some recent action to address fraud in the medical examination process with the Dr. Romeo Vitelli case but the failure to put the interests of consumers as a high priority is obvious. We cannot tell if any action was taken against the assessment center, Novo Medical Services Inc., for whom this psychologist prepared the medical reports that were at the center of FSRA's investigation.

In 2019, Dr. Vitelli entered into an Acknowledgement and Undertaking with the College of Psychologists following allegations of professional misconduct as a result of a complaint from a claimant and FSCO and FSRA were informed of the College's actions.

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	According to the FSRA website https://teao.fsrao.ca:7179/api/enforcement/downloadDocument?Id=2653&lang=en : In 2019, FSRA received an investigative report in support of Aviva's allegations. Documents in the report establish that Novo Medical submitted seven Psychological Evaluation Reports and one Catastrophic Impairment Determination Psychological Evaluation Report (dated between April 21, 2017 and May 4, 2018) for claimants (AK, CD, GC, JH, MM, MR, and NK). Sections of the reports are identical. The reports also include identical quotations presented as the claimants' verbatim descriptions of their injuries and symptoms. (for claimants (AK, CD, GC, JH, MM, MR, and NK)). and; On June 23, 2020, FSRA received a Business Activity Complaint Form from Desjardins General Insurance Group ("Desjardins") alleging that Novo Medical and Dr. Vitelli engaged in practices that contravene the Act. (five psychological assessment reports for claimants (NH, AL, KH, JS, and RR)). and; FSRA received an investigative report from Intact Insurance ("Intact"). (claimant (SR)). Despite insurers reporting they had been defrauded there was no action taken by FSRA until February 8, 2021, when FSRA investigators interviewed Dr. Vitelli. It was during this process that "Dr. Vitelli also stated that Novo Medical's staff used his Treatment Plan for another claimant as a template, by switching out the names and pronouns where necessary. Dr. Vitelli did not confirm the content and accuracy of the Treatment Plans he completed." Finally in 2021 action was taken by FSRA with the suggestion "an administrative penalty in the amount of $50,000 should be imposed on Dr. Vitelli for knowingly making false or misleading representations to insurers in order to obtain payment for goods or services provided, contrary to section 447(2)(a.3) of the Act." The public was eventually informed in a press release on "Nov. 22, 2023 /CNW/ - The Financial Services Regulatory Authority of Ontario (FSRA) has imposed a compliance order and administrative penalty of $15,000 against Romeo Vitelli	

Sector	Comment	Date posted

(Vitelli)."

For 4 years innocent injured claimants interests were ignored, first by the College of Psychologists (CPO) whom the Regulator relies on to enforce quality control and then by FSRA during the process of deciding what to do about the fraud.

We could find no evidence that Novo Medical Services Inc. was ever held accountable for their participation in harming the most seriously injured car crash survivors. Nova Medical is still actively in business providing assessments of Ontario's auto insurance claimants for insurers.

FAIR's files indicate there are likely more victims of the fraudulent reports as well as through 'expert' evidence at hearings where Dr. Vitelli's testimony was often criticized. There is also evidence that more than one assessment center used the services of Dr.Vitelli "through four healthcare clinics" mentioned on the CPO website document at https://cpbao.ca/wp-content/uploads/Notice-of-Hearing-Vitelle-Dr.-Romeo-2.pdf.

As of May 2024 the CPO https://members.cpbao.ca/public_register/show/1461 has listed the current referrals of Dr. Vitelli to the Discipline Committee.

We see no evidence that the 13 plus victims of this fraud were informed by FSRA or the CPO that they'd been scammed and that their cases had been tainted by the fraudulent and uncaring actions of Dr. Vitelli and Nova Medical.

To this day AK, CD, GC, JH, MM, MR, NK, NH, AL, KH, JS, RR, and SK may all still be in the dark about how their cases and access to rehabilitation were recklessly ignored by the insurer's choice of assessment centers.

We bring up this particular case for several reasons but the most important is that there is no point to gathering information if there is no intent to protect the public's interest. It should never be just about insurer profit and gain over informing the public in a timely fashion and this should be reflected in the proposed Rule and Guidance.

Timely reporting from insurers coupled with judicious action

Sector	Comment	Date posted

from the Regulator would better protect claimants. The promise to follow through on the insurer reporting fraud is missing in this Guidance along with a willingness to share fraud trends with the public and not just insurers.

Taking steps to enforce compliance with Dr. Vitelli was an important mile-stone for the Regulator and we recognize this. The problem lies in the two and half years from the Notice of Proposal to Impose Administrative Penalties on March 31, 2021 to informing the public on November 22, 2023 in a press release. It appears that for two and a half years vulnerable claimants lacked protection because FSRA withheld this information. This should never happen.

The investigation and the conclusion record poses other serious questions related to the outcomes for the victims of this fraud.

It's still an open question whether Dr. Vitelli will be able to continue to provide services for auto insurers through medical examinations and testimony going forward. None of that is clear in the information on the College of Psychologists (CPO) website or in FSRA's documentation and neither contribute to public confidence in the automobile insurance sector.

In this instance insurers did the right thing but we can tell you we routinely hear about bogus insurer medical exams and this Guidance presents deaf ears to claimants who are harmed in the current system that relies on the Regulator to take action to protect them. What about Nova? Should they have been subject to an Administrative Penalty and/or closed out of performing these medical assessments?

Our suggestion to include businesses and institutions in the wording is based on this case above as is our comment about the importance of timeliness in reporting fraud.

Something needs to be done about the regulatory hole that exists for assessment centers who currently have no oversight and who, in this case, appear to have participated in, or should have known about, the fraud taking place.

Consumers believe the Regulator has a distinct obligation to follow-through on the fraud they find by way of informing

Sector	Comment	Date posted
	victims of that fraud and, by extension, to protect the potential or future victims from the perpetrators by barring the fraudulent players from activity in the auto insurance medical landscape. This can be done by closing the door to Health Claims for Auto Insurance (HCAI) access. There should be an active dialogue to disclose this type of medical fraud activity between relevant Colleges and FSRA. Further, the Colleges should also be required to participate in cleaning up this fertile ground for fraud that harms Ontario's patients. Thank you for the opportunity to voice our concerns. FAIR Association of victims for Accident Insurance Reform	
Auto Insurance	**[2024-008] Amanda Dean - Insurance Bureau of Canada** Please see the attached submission for your consideration. Thank you 2024 - 10 Oct 15 - IBC Submission-Consultation on Proposed Fraud Reporting Service Rule and Guidance - FINAL.pdf	**October 15, 2024**
Auto Insurance	**[2024-008] Andrew Papadimitropoulos - TD Insurance** Attached is TD Insurance feedback on FRS Guidance TDI - Final - Feedback on FRS Guidance dated Oct 15 2024.pdf	**October 15, 2024**
Auto Insurance	**[2024-008] Ryan Stein - Definity Insurance** Good afternoon, Thank you for the opportunity to participate in the consultation for the fraud reporting service. Attached is a response from Definity Insurance. Sincerely, Ryan 24-10-15-Ontario Fraud Reporting Service Consultation.pdf	**October 15, 2024**

Sector	Comment	Date posted
Auto Insurance	**[2024-008] Karin Ots - Aviva Canada** Attached is Aviva's submission to FSRA Fraud Reporting Service consultation.. Aviva Submission to FSRA Fraud Reporting Service Consultation - Oct 15 2024.pdf	**October 15, 2024**
Auto Insurance	**[2024-008] Craig Bran - Co-operators** Co-operators Submission on Proposed Fraud Reporting Service Rule and Guidance Consultation_FINAL_10Oct2024.pdf	**October 15, 2024**
Cross Sector	**[2024-008] Danielle Wilkinson - Equite Association** Please accept the attached consultation submission on behalf of Equite Association. 2024.10.09 - Équité Association - FSRA FRS Consultation Submission FV.docx_0.pdf	**October 15, 2024**

Sector	Comment	Date posted
Health Service Providers	**[2024-008] Laurie Davis - Ontario Rehab Alliance** To whom it may concern, Please see attached for the Ontario Rehab Alliance's comments on the Consultation on Proposed Fraud Reporting Service Rule and Guidance ID 2024-008 We welcome the opportunity to discuss our comments or respond to any questions you may have. Please feel free to reach out to the ORA at admin@ontariorehaballiance.com or to myself directly, Laurie Davis, Executive Director of the Ontario Rehab Alliance - lauriedavis@ontariorehaballiance.com Sincerely, Laurie Davis Executive Director The Ontario Rehab Alliance 2024 10 11 - ORA - Fraud Reporting Service - Comments.pdf	**October 11, 2024**
Health Service Providers	**[2024-008] Ralph Palumbo - The Hillcrest Consulting Group Inc.** Attached are the submissions from the Ontario Psychological Association (OPA) on FSRA's Proposed Fraud Reporting Service Rule and Guidance. The OPA would be pleased to discuss its submissions with FSRA at any time. Respectfully submitted, Ralph Palumbo OPA Submission on Fraud Event October 7 2024.docx	**October 7, 2024**

Sector	Comment	Date posted
Property and Casualty and General Insurance	**[2024-008] John Taylor - Ontario Mutual Insurance Association** Please find attached OMIA's submission. 2024 09 30 FSRA - Fraud Reporting - OMIA Response.pdf	**September 30, 2024**

No questions have been asked about this consultation yet.

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October 15, 2024

Financial Services Regulatory Authority of Ontario
Auto Insurance Sector
25 Sheppard Avenue West, Suite 100
Toronto, ON M2N 6S6

Dear Sir / Madame:

Subject: Consultation on Proposed Fraud Reporting Service Rule and Guidance

TD Insurance ("TDI") appreciates the opportunity to respond to the current Consultation on Proposed Fraud Reporting Service Rule and Guidance initiated by Ontario's Financial Services Regulator ("FSRA") with stakeholders on future statutory fraud reporting requirements.

TDI overall supports FSRA's outcomes to reduce the costs to consumers & industry borne as a result of fraud.

Data and Privacy Concerns

TDI is always committed to ensuring compliance and transparency and we fully understand the importance of data in fighting fraud. Since much of our industry already provides fulsome data to Equite we suggest that FSRA consider leveraging this already established route to avoid duplication of effort.

Consumers trust insurers with sensitive information, and any regulation mandating the sharing of such data must ensure robust protections are in place. It would be appreciated that FSRA share with the Insurance Industry the security measures it will implement to safeguard; and furthermore to protect, any insurer from the release of personal information and to prevent identity theft and other privacy concerns. We also suggest that FSRA provide limited liability protections to insurers for any cybersecurity data breaches.

Key Concerns & Recommendations

TDI is committed to working with all stakeholders to effectively tackle fraud within the auto insurance sector. The phase one strategy of data collection is a significant step in building a Fraud Prevention Strategy, however it needs to be combined with other tools and resources to be effective. An over-reliance on quantitative metrics, that do not accurately capture the nuances of fraudulent activity, may therefore miss context and intent.

We recommend that FSRA first provide guidance to mandate that all auto insurers in the province design and implement a robust fraud framework to include policies and procedures, monitoring,

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audits and governance for their respective book of business. Furthermore, FSRA should then inquire with all auto insurers about what their respective experiences were with law enforcement regarding the actioning of white-collar insurance fraud matters including whether fraud charges ever laid, convictions and whether the sentencing judge order restitution.

Clarity and Ambiguity

One of our primary concerns is the use of the term "fraud event" and how its proposed definition may lead to inconsistent interpretations within the industry. Specifically, the words *reasonable grounds for the insurer to believe that a fraud event has occurred or is likely to occur.*

We recommend that the words *likely to occur* be removed from the definition of fraud event. We suggest that only fraud events where there is confirmed evidence of fraud be reported to FSRA as this will provide a clearer picture of the actual fraud trends impacting the industry and expose the bad actors who bolster auto fraud.

Recommendations

We advocate for a collaborative approach that emphasizes information sharing among industry stakeholders (i.e. insurers/law enforcement) and regulatory bodies. Engaging in partnerships to share best practices, insights and trends could lead to more effective fraud prevention strategies without compromising operational integrity.

In addition, insurers need to have the tools to allow them to act on the information developed during the course of an investigation. We recommend that FSRA confirm that insurers have the right to cancel or refuse to renew a policy under appropriate circumstances including:

- providing false information on the approved application form
- making any misrepresentation in the information provided for the purposes of obtaining, updating, or renewing an automobile insurance policy, including on the application form;
- a history of fraudulent activity in relation to an automobile insurance policy and the most recent instance of such an activity occurred less than 7 years before the day of the request to obtain, update or renew an automobile insurance policy.

There is also a noticeable lack of resources allocated to investigating and prosecuting insurance fraud cases. This underfunding hampers the ability of law enforcement and regulatory bodies to effectively combat fraud, allowing dishonest practices to proliferate.

Fraudsters are becoming increasingly sophisticated in their tactics, yet our legal framework remains stagnant. Laws must evolve to address new methods of fraud and provide clear guidelines for insurers on how to identify and report suspicious activities.

Conclusion

We appreciate your dedication to addressing fraud in the auto insurance industry and acknowledge the challenges that come with it. We are committed to work with FSRA and other relevant stakeholders to promote collaboration and efficiency to properly prevent and detect insurance fraud, while maintaining consumer protection.

Thank you for your attention to our concerns.

Yours truly,

TD Insurance

FRAUD REPORTING SERVICE

FINANCIAL SERVICES REGULATORY AUTHORITY OF ONTARIO
PROPOSED RULE 2024 – 003

AUTOMOBILE INSURANCE – FRAUD REPORTING SERVICE

1 Definitions 2
2 Interpretation 2
3 Prescribed information under subsection 101.3(1) of the Act 3
4 Reporting requirements – Prescribed information 3
5 Transitional 4
6 Coming into force 4

1 Definitions

1(1) In this Rule,

(a) "Act" means the *Insurance Act*, RSO 1990, c I.8, as amended;

(b) "FSRA Act" means the *Financial Services Regulatory Authority of Ontario Act, 2016*, SO 2016, c 37, Sched 8, as amended;

(c) "prescribed information" means the information an insurer is required to provide under subsection 101.3(1) of the Act in accordance with subsection 3(1) of this Rule.

(d) "Rule" means this Authority Rule 2024 – 003

(e) "fraud event" means a deceptive act or omission, or series of deceptive acts or omissions intentionally committed by a person(s) to obtain advantage, financial gain, or benefits beyond that to which one is entitled to with regard to any policy, claim, provision of goods or services or other occurrence related to automobile insurance, and for greater clarity includes instances of:

i. Obtaining an automobile insurance policy through fraudulent means, including underwriting fraud;

ii. Obtaining a benefit under a contract of insurance through fraudulent claims;

iii. Providing goods or services to a beneficiary under a contract of insurance through fraudulent means or in a fraudulent manner;

iv. Fraudulent activity in the selling or distribution of insurance products; and

v. Fraudulent activity committed by internal employees of an insurer.

2 Interpretation

2(1) If a term or phrase used in this Rule is defined in the Act, the definition used in the Act shall apply for the purposes of this Rule.

2(2) Words and phrases not defined in this Rule have the same meaning as ascribed thereto under section 1 of the FSRA Act unless a contrary intention appears.

2(3) References in this Rule to the Chief Executive Officer include reference to an authorized delegate or designated agency of the Chief Executive Officer as outlined in subsection 101.3(1) of the Act.

2(4) For the purposes of this Rule, references to “insurance” are limited only to “automobile insurance”.

3 Prescribed information under subsection 101.3(1) of the Act

3(1) Prescribed information includes all information, including personal information, in the insurer’s possession, control or power related to any policy, claim, provision of goods or services or any other occurrence or event where the information provides reasonable grounds for the insurer to believe that a fraud event has occurred or is likely to occur.

3(2) An insurer shall within thirty days after the close of each quarter of the calendar year provide the information prescribed in subsection 3(1) of this Rule with respect to fraud events which in the preceding quarter the insurer has taken action or made a decision based on reasonable grounds for the insurer to believe that a fraud event has occurred or is likely to occur.

3(3) An insurer shall not disclose personal information that is not necessary for the purposes set out in subsection 101.3(2) of the Act when providing the prescribed information to the Chief Executive Officer.

3(4) An insurer shall de-identify all names and identifying numbers, symbols or other particulars assigned to individuals before an insurer provides the prescribed information to the Chief Executive Officer unless disclosure of the names or other identifying information is necessary for the purposes set out in subsection 101.3(2) of the Act.

4 Reporting requirements – Prescribed information

4(1) An insurer shall ensure that all prescribed information is complete, up to date, and factually correct before an insurer provides the prescribed information to the Chief Executive Officer.

4(2) Every insurer who provides prescribed information that subsequently becomes aware that the information the insurer provided is or has become incomplete, out-of-date, or factually incorrect shall in the quarter following their becoming aware:

(a) inform the Chief Executive Officer of the deficiencies in the prescribed information provided; and

(a) take reasonable steps to remedy the deficiencies in the prescribed information provided to bring the information into compliance with subsection 5(1) of this Rule.

4(3) If an insurer provides information to the Chief Executive Officer and subsequently discovers that the information either:

(a) includes deficiencies that cannot be remedied as required by subsection 5(2)(b) of this Rule; or

(b) fails to meet the threshold of the reporting requirement outlined in subsection 3(1) of this Rule,

then the insurer must immediately give notice and recommend the Chief Executive Officer to withdraw the information provided.

4(4) Every insurer shall submit the prescribed information through the Authority's electronic or computer-based system for the filing, delivery or reporting of the prescribed information.

5 Transitional

5(1) An insurer is not required to report the information required in section 3 of this Rule until after [date].

6 Coming into force

6(1) This Rule will come into force on the later of the date that section 101.3 and clause 8.2 of subsection 121.0.1(1) of the Act comes into force and 15 days after the Rule is approved by the Minister.

FSRA
Financial Services Regulatory Authority of Ontario

Guidance

☑Interpretation | ☑Approach | ☐ Information | ☐ Decision

Effective date: [TBD]
Identifier: No. AU0140INT

Automobile Insurance Fraud Reporting

Purpose

This Guidance outlines the Financial Services Regulatory Authority of Ontario's ("**FSRA**") interpretation of requirements under Authority Rule 2024-003 – Fraud Reporting Service ("**FRS Rule**") and section 101.3 of the *Insurance Act* (the "***Act***"), and outlines FSRA's approach to supervising against the reporting requirements outlined in the *Act* and the FRS Rule.

Specifically, this Guidance provides FSRA's interpretation of several requirements under the FRS Rule regarding:

- the scope of prescribed information an insurer is required to provide when reporting information about fraud events to the Chief Executive Officer ("**CEO**") or an agency designated by the CEO
- the threshold of what constitutes "reasonable grounds for the insurer to believe" that a fraud event has occurred or is likely to occur, and
- the "action" an insurer may take that triggers an insurer's requirement to report prescribed information to the Fraud Reporting Service ("**FRS**")

Ontario

The purpose of the collection of information in the FRS is to support FSRA's effective assessment and detection of automobile insurance fraud in Ontario. Key outcomes associated with this purpose include:

- quantifying the prevalence of automobile insurance fraud in Ontario
- creating a baseline for fraud detection, and
- identifying fraud trends throughout the automobile insurance industry

Scope

This Guidance affects all insurers that are licensed to carry on automobile insurance business in Ontario.

Rationale and background

FSRA's rule-making authority to enact a FRS is derived from paragraph 8.2 of subsection 121.0.1(1) of the *Act* in conjunction with subsection 101.3(1) of the *Act*.

The overall objective of the FRS is to improve the use of data in the auto insurance industry's fraud management activities by statutorily authorizing and enabling insurers to report automobile insurance fraud information to the FRS.

The requirement to report information about automobile insurance fraud to the FRS builds on FSRA's existing powers to supervise against unfair or deceptive acts and practices ("**UDAP**") in the insurance sector. These powers are grounded in section 5 of FSRA's UDAP Rule to address unfair claims practices, and section 6 of the UDAP Rule to address fraudulent or abusive conduct related to goods and services provided to a consumer. Conduct by policyholders, claimants, claims vendors, and other non-licensees is captured by many parts of the UDAP Rule, including sections 5 and 6.

FSRA's collection and consolidation of the information about automobile insurance fraud that insurers are required to report under the *Act* will help create a baseline of data that can serve the purpose of assessing the amount of fraud in the automobile insurance system in Ontario.

In supervising and regulating the automobile insurance sector, FSRA is guided by its statutory objects under section 3 of the *Financial Services Regulatory Authority of Ontario Act, 2016* ("***FSRA Act***").

Specifically, this Guidance supports outcomes consistent with the following objects:

- to deter deceptive or fraudulent conduct, practices and activities by the regulated sectors
- to promote transparency and disclosure of information by the regulated sectors
- to contribute to public confidence in the automobile insurance sector
- to monitor and evaluate developments and trends in the automobile insurance sector
- to promote high standards of business conduct, and
- to protect the rights and interests of consumers

The FRS aims to reduce consumer harm, including unnecessary costs borne by consumers, as a result of auto mobile insurance fraud.

The FRS Rule and this accompanying Guidance represent the first phase of the development of the FRS. In the second phase of the FRS, FSRA anticipates that information collected in phase one will be available for insurers to access to enable the assessment and detection of fraud by insurers. Phase two is subject to approval from the Ministry of Finance and will depend on the implementation of and outcomes achieved in phase one. Amendments to the Proposed Rule and Guidance are expected to be required before the FRS can proceed to this second phase.

With regards to the first phase of the FRS, FSRA's view is that "assessing and detecting automobile insurance fraud" includes:

- quantifying the prevalence of automobile insurance fraud in Ontario
- creating a baseline for fraud detection, and
- identifying trends throughout the industry

Interpretation

1. What is a “fraud event”?

All insurers must report information about “automobile insurance fraud” to the FRS in accordance with subsection 101.3(1) of the *Act* and the FRS Rule.

A common understanding of what events, circumstances, or actions are considered to amount to a “fraud event” is important for insurers to understand how to comply with the requirement to provide information to the CEO about “automobile insurance fraud”.

Subsection 3(2) of the FRS Rule requires insurers to provide information in accordance with subsection 101.3(1) of the *Act* when an insurer has taken action or made a decision based on reasonable grounds for the insurer to believe that a “fraud event” has occurred or is likely to occur. Subsection 1(1) of the FRS Rule defines a “fraud event” as follows:

> “fraud event” means a deceptive act or omission, or series of deceptive acts or omissions intentionally committed by a person(s) to obtain advantage, financial gain, or benefits from an insurer beyond that to which one is entitled to in with regard to any policy, claim, provision of goods or services or other occurrence related to automobile insurance […]

FSRA interprets this phrase broadly to cover a wide range of “deceptive acts or omissions intentionally committed by a person(s) to obtain advantage, financial gain, or benefits from an insurer beyond that to which one is entitled to”. This broad interpretation empowers insurers to identify activities that meet this definition.

Recognizing that the scope of what may constitute a fraud event under the FRS Rule is constantly evolving and that a prescriptive list could not capture all potential occurrences within scope of the definition, subsection 1(1)(e) of the FRS Rule provides a non-exhaustive list of categories of “fraud events”. Examples of specific instances of “fraud events” under these broad categories is included as **Appendix A** in this Guidance.

2. What is the extent of information about automobile insurance fraud that an insurer must provide?

Section 3(1) of the FRS Rule outlines the scope of "prescribed information" that an insurer must provide:

> "Prescribed information includes **all information**, including personal information, in the insurer's possession, control or power […] where the information provides reasonable grounds for the insurer to believe that a fraud event has occurred or is likely to occur".

FSRA interprets "all information" to mean all relevant information, without restriction or limitation, where the information provides reasonable grounds for the insurer to believe that a "fraud event" has occurred or is likely to occur.

The scope of information in section 3(1) is unqualified. As a result, if an insurer knowingly or unknowingly withholds prescribed information in their possession, control or power, including any and all relevant data points outlined in **Appendix B** of this Guidance, then the insurer would be in contravention of the *Act* and the FRS Rule, which may result in FSRA initiating measures to enforce compliance.

3. What type of information provides "reasonable grounds for an insurer to believe that a fraud event has occurred or is likely to occur"?

Insurers are required under the FRS Rule to report all information about automobile insurance fraud where the information provides reasonable grounds for the insurer to suspect that a fraud event has occurred or is likely to occur.

Understanding the difference between the prescribed "reasonable grounds to believe" ("**RGB**") threshold for reportable information and other thresholds is important for an insurer to understand the standard and scope of information that must be reported to the FRS.

This RGB threshold is intentionally prescribed in the FRS Rule to prevent premature, unnecessary, or inaccurate information from being reported to the FRS, but also to encourage

reporting before an adjudicated finding of automobile insurance fraud is secured. The RGB is intended to reflect a middle-ground between suspicion, and confirmation of fraud, resulting in information most beneficial to the automobile insurance sector in assessing and detecting these fraud events.

To illustrate the RGB threshold, this guidance distinguishes between three thresholds of information: suspicion of fraud, reasonable grounds to believe fraud has occurred, a conclusion that fraud has occurred. A suspicion of fraud is the lowest threshold, and a conclusion that fraud has occurred is the highest threshold.

The highest threshold will include all information captured by the lower thresholds, with the only difference being an increased level of evidence or facts that confirm the existence of automobile insurance fraud.

Lowest threshold: Suspicion that a fraud event has occurred

Insurers are not required to report information if they only have suspicion that a fraud event has occurred or is likely to occur.

Suspicion means an insurer may have an indication that something is unusual or suspicious, but does not yet have verified facts that can confirm the suspicion of a fraud event or elevate the suspicion into a reasonable belief that a fraud event has occurred. Indications of a fraud event may be based on not-yet-verified evidence received from an external source, such as a law enforcement agency or another insurer.

The suspicion could come from a discrepancy from: a written document that was filed on a claim, a claim filed shortly after a new policy is bound, a conversation with the insured, claimant or other involved party, a tip from a broker, police officer or other party, external intelligence (such as information from a conference or meeting), and an indicator from a fraud software solution.

Reasonable grounds to suspect that a fraud event has occurred may exist where the insurer investigates into their suspicion of a fraud event having occurred, and discovers further indicators or facts that warrant verification and further investigation. The suspicion at this stage is based on limited unverified evidence and does not raise to a belief that a fraud event has occurred.

Suspicion of a fraud event is relevant to the extent that it may prompt an insurer to assess the factual circumstances of the situation to identify any additional information or evidence that would support or confirm this simple suspicion.

Example: A consumer purchases an automobile insurance policy on their truck. 3 days after purchasing the policy, the individual reports the vehicle as stolen. At this point, the insurer has no evidence that the consumer has fraudulently reported the vehicle as stolen, but the insurer nevertheless suspects that the consumer may be engaging in automobile insurance fraud based on previous investigations with similar facts. The insurer does not report any information to the FRS as the information only rises to the threshold of suspicion.

Prescribed threshold: Reasonable grounds to believe (“RGB”) a fraud event has occurred or is likely to occur

Insurers are required to report prescribed information once it meets this threshold.

Section 3(1) of the FRS Rule clarifies that information is prescribed information is only where “the information provides **reasonable grounds for the insurer to believe** that a fraud event has occurred or is likely to occur”.

FSRA interprets “reasonable grounds […] to believe” to include evidence, verified facts, context, or indicators that support a high degree of certainty that a fraud event has occurred or is likely to occur, warranting further action by the insurer but not allowing the insurer to conclude that a fraud event has occurred.

Information that meets the RGB threshold will allow an insurer to demonstrate and articulate their belief that a fraud event has occurred or is likely to occur in such a way that another insurer reviewing the same material with similar knowledge, experience, or training would likely reach the same conclusion.

Many factors will support an insurer’s assessment and conclusion that there are reasonable grounds to believe a fraud event has occurred or is likely to occur, all of which are required to be reported to the FRS.

Example: A consumer purchases an automobile insurance policy on their truck. 3 days after purchasing the policy, the consumer reports the vehicle as stolen. One week following the consumer reporting the theft, the insurer receives a tip from a credible source that the consumer has been implicated in a vehicle theft ring. After verifying the information provided by the tip, the insurer has reasonable grounds to believe that the consumer is engaging in automobile insurance fraud with respect to their own car that they have reported as stolen. Even though the insurer does not have any direct evidence to conclude that the consumer has engaged in fraud, the insurer has opened an investigation and has started gathering evidence relating to the consumer's claim. The insurer reports all information that supports their reasonable grounds to believe a fraud event has occurred to the FRS.

Highest threshold: Conclusion of fraud

Insurers should update the reported information once they have concluded that a fraud event has in fact occurred. If an insurer comes into possession of information that allows them to bypass the lower thresholds and immediately conclude that a fraud event has concurred, then the insurer will still need to report the information to the FRS.

At this threshold, an insurer has investigated, verified, and concluded that a fraud event has in fact occurred.

The threshold of information may cause the insurer to:

- pay or process a claim despite having information that allows the insurer to conclude that fraud has occurred
- deny a claim on the basis of it being fraudulent
- refer the claim or policy to a law enforcement or state agency to further the investigation and pursue criminal or other action
- seek an adjudicated finding of civil or criminal fraud, or
- secure an "in-fact determination" that fraud has occurred

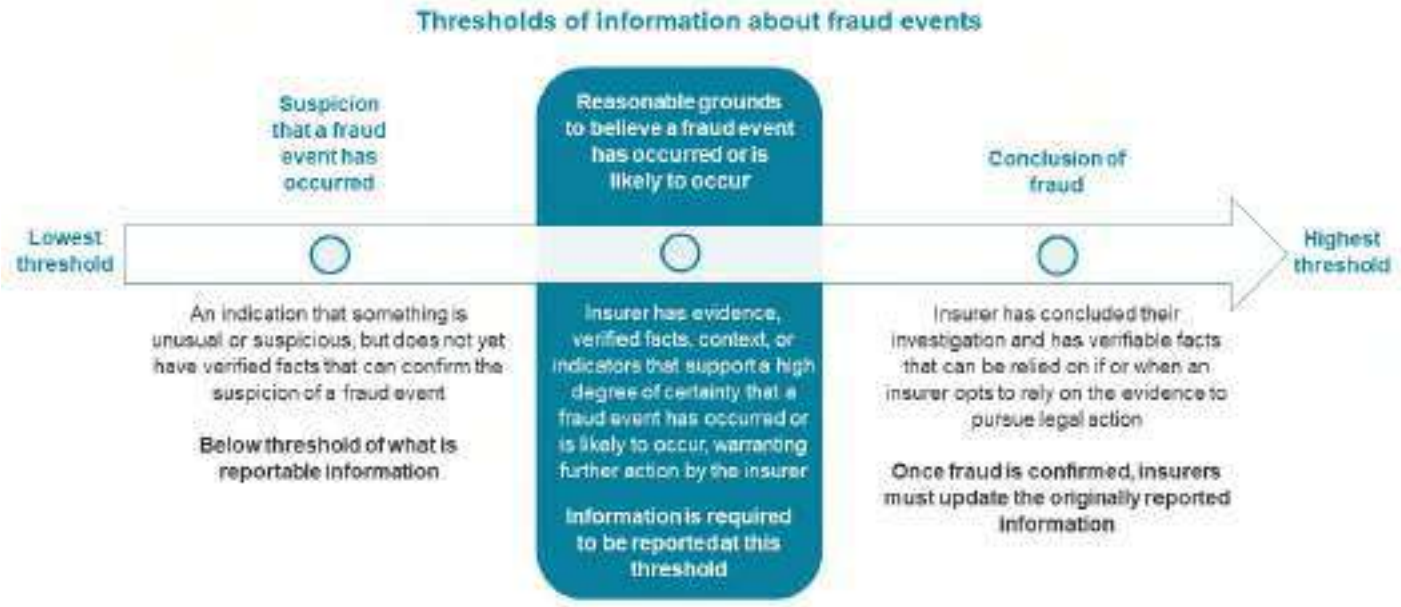
Example: A consumer purchases an automobile insurance policy on their truck. 3 days after purchasing the policy, the consumer reports the vehicle as stolen. One week following the consumer reporting the theft, the insurer receives a tip from a credible source that the consumer has been implicated in a vehicle theft ring. The insurer launches an investigation during which the insurer obtains video evidence that places the consumer in the vehicle at the location where the truck was later recovered. Based on this evidence, the insurer denies the claim on the basis of it being fraudulent and refers the claim to law enforcement to pursue criminal charges. The insurer updates the information they previously reported to the FRS, including a description of the video evidence that led to their conclusion that a fraud event had occurred.

Insurers are required to update information in the FRS when the information meets the threshold of conclusion that a fraud event has occurred

Section 4 of the FRS Rule requires insurers to ensure all prescribed information provided to the CEO shall be complete, up to date, and factually correct.

If an insurer subsequently becomes aware that the information the insurer previously provided is or has become incomplete, out-of-date, or factually incorrect (e.g., the insurer has discovered information that has allowed them to conclude that fraud has occurred), then compliance with section 4 of the FRS Rule necessitates that the insurer take steps to update the information to ensure that the information provided to the FRS remains complete, up to date, and factually correct.

If an insurer reports information based on the RGB threshold, and subsequently collects further information that leads to a conclusion that a fraud event has occurred, the insurer shall update the originally-reported information based on the new information that resulted in a higher threshold.



4. What "action" triggers an insurer's requirement to report prescribed information about automobile insurance fraud to the FRS?

Subsection 3(2) of the FRS Rule requires that:

> An insurer shall within thirty days after the close of each quarterly period of the calendar year provide the information prescribed in subsection 3(1) with respect to instances of automobile insurance fraud which in the preceding quarter **the insurer has taken action or made a decision** based on reasonable grounds for the insurer to believe that a fraud event has occurred or is likely to occur.

"Action" is interpreted to mean any definitive decision to act based on reasonable grounds to believe a fraud event has occurred or likely to occur. To trigger an insurer's requirement to report the prescribed information, an insurer must both have information that meets the RGB threshold and the insurer must take action based on information that meets the RGB threshold.

The following is a non-exhaustive list of "actions" an insurer could take that would trigger an insurer's requirement to provide the prescribed information to the CEO:

- escalating a file for further investigation to SIU
- denying a claim
- voiding or otherwise terminating an insurance policy

The following is a non-exhaustive list of “decisions” an insurer could take that would trigger an insurer’s requirement to provide the prescribed information to the CEO:

- paying or processing a claim despite having information that provides reasonable grounds to believe that fraud has occurred or is likely to occur
- closing a claim made under a policy that has been abandoned by the claimant

5. How much personal information is necessary for the purposes of subsection 101.3 of the *Act*?

Subsections 3(3) and 3(4) of the FRS Rule limit insurers from providing more personal information than is necessary for the purposes set out in subsection 101.3(2) of the *Act* (“assessing and detecting automobile insurance fraud”), and requires insurers to de-identify all names and identifying numbers, symbols or other particulars assigned to individuals unless disclosure of this information is necessary for the purposes set out in the *Act*:

> 3(3) An insurer shall not disclose personal information that is not necessary for the purposes set out in subsection 101.3(2) of the Act when providing the prescribed information to the Chief Executive Officer.
>
> 3(4) An insurer shall de-identify all names and identifying numbers, symbols or other particulars assigned to individuals before an insurer provides the prescribed information to the Chief Executive Officer unless disclosure of the names or other identifying information is necessary for the purposes set out in subsection 101.3(2) of the Act.

Insurers are not required to report personal information that is not necessary for the purposes set out in subsection 101.3(2) of the *Act*.

FSRA interprets the statutory purpose, “assessing and detecting automobile insurance fraud” to enable FSRA to:

- quantifying the prevalence of automobile insurance fraud in Ontario
- creating a baseline for fraud detection, and
- identifying trends throughout the industry

This interpretation reflects the first phase of FSRA’s approach to building the FRS, which focuses solely on the FRS collection of information about automobile insurance fraud.

FSRA anticipates a second phase where information collected in phase one will enable insurers to use the information. The personal information listed in the Appendix may be necessary to include in phase two reporting.

FSRA will work with insurers to create unique identifiers for each instance of reporting. These unique identifiers will allow insurers to update information provided in phase one with personal information where necessary for phase two. This Guidance will need to be updated before proceeding to this second phase.

Approach

Supervision and enforcement

The main outcome that FSRA aims to achieve through administering the FRS requirements under the *Act* and the FRS Rule is to empower insurers to better manage and reduce automobile insurance fraud by mandating the reporting of prescribed information about automobile insurance fraud to the FRS. To that end, insurers should design and organize internal policies, processes, controls, and governance procedures in a manner that facilitates compliance with the requirements under the *Act* and the FRS Rule, as interpreted in this Guidance.

FSRA intends to supervise against the requirements outlined under the *Act* and the FRS Rule by using its investigation and examination powers under the *Act*. Following an investigation and examination of an insurer's acts and practices, pursuant to the provisions of the *Act*, FSRA has the authority to:

- issue a compliance order to insurers, or[1]
- lay provincial offence charges against insurers[2]

FSRA will exercise its discretion when conducting its supervisory activities by considering the extent to which an insurer's fraud reporting system has been implemented effectively by management through policies, processes, systems and associated controls.

FSRA will evaluate insurers' processes, controls, and governance during supervisory reviews. This includes verifying the presence of adequate controls and ensuring that reporting meets the requirements as outlined. While FSRA retains the authority to sanction non-compliance with the FRS requirements, the supervisory approach will take in account the efforts made by insurers to comply and their efforts to achieve the desired outcomes.

Implementation of controls and governance

To comply with the FRS requirements, FSRA encourages insurers to design and implement a robust framework that encompasses the following elements:

- **Policies and procedures**: Clear and detailed policies and procedures that facilitate compliance with the FRS Rule and *Act*. This should include steps to identify and report information related to instances of automobile insurance fraud. These should be regularly updated to reflect any changes in the regulatory environment and/or emerging fraud trends.

[1] FSRA seek a court issued compliance order pursuant to s. 448(1) of the Act.
[2] FSRA may pursue the laying of provincial offences as set out in s. 447(2) of the Act.

- **Monitoring and reporting systems**: Systems for monitoring and detecting fraud events as outlined in the FRS Rule and *Act*. These systems should be capable of capturing and reporting the prescribed information in a timely and accurate manner.

- **Internal audits and reviews**: Regular internal audits and reviews to assess the effectiveness of the fraud management framework. This helps in identifying any gaps or areas for improvement.

- **Governance and oversight**: Strong governance structures with clear accountability and oversight mechanisms.

While the elements identified above are not mandatory, they can, depending on the circumstances, be reflective of whether an insurer has met their obligations with respect to the FRS requirements.

Effective date and future review

This Guidance will become effective on **[TBD]** and will be reviewed no later than **[TBD]**.

About this Guidance

This document is consistent with FSRA's Guidance Framework. As Approach guidance, it describes FSRA's internal principles, processes and practices for supervisory action and application of CEO discretion. It does not create compliance obligations for regulated parties but can be considered indicative of FSRA's position, and it does not alter requirement to comply with existing legal and regulatory framework. As Interpretation guidance, it describes FSRA's view of requirements under its legislative mandate (i.e. legislation, regulations and rules) so that non-compliance can lead to enforcement or supervisory action.

Appendices and reference

Appendix A: Examples of fraud events that insurers are required to report information about to the Fraud Reporting Service

The following is a non-exhaustive list of the types of fraud events that insurers must report to the Fraud Reporting Service. The following is categorized according to the automobile insurance life cycle.

Fraud category	Description	Example
Fraud perpetrated through underwriting fraud	Fraud committed by persons which occurs when someone intentionally conceals or misrepresents information when obtaining insurance coverage	• Policy misrepresentation such as falsifying information on the insurance application to gain a lower premium. This could include non-disclosure of drivers, residency, and mileage driven on vehicles • Quote manipulation (to generate the lowest premium)
Fraud perpetrated through fraudulent claims	Fraud committed by policy holder when a claim has been made on a policy	• Falsely claiming damage to a covered automobile as a result of an auto accident when another caused the damage • Claim embellishment- exaggerated/fabricated vehicle contents, false car seat claims, false invoices for items (often to cover deductible)
Fraud perpetrated by a service provider	Fraud committed by persons who provide services to a policy holder after a claim has been made on a policy.	• Billing by practitioners for care that they never rendered

		• Auto body/repair shop that inflates cost of repairs/repairs areas that do not need repairs • Tow truck company that inflates cost of repair/bills for tows not needed • Re-VINing (stolen vehicles; reVINned with a registered VIN from another vehicle and sold or insured again)
Fraud perpetrated by selling or distribution of insurance products	Fraud perpetrated by individuals directly involved in the distribution or sale of an insurance policy	• **Independent Agents/Brokers** o Backdating policy or misrepresenting true risk to assist the insured in gaining coverage and/or producing a gamified rate o Deliberately failing to disclose policy information to obtain a lower premium for the insured o Ghost brokering (selling fake pink slips, insured thinks they have insurance but they do not)
Fraud perpetrated by internal employees of an insurer	Fraud perpetrated by individuals employed within the insurance industry	• Creating fictitious claims and orchestrating claim payments to the employee • Employees receive a kickback from a third-party vendor in exchange for engaging vendor services

		• Backdating transactions, not rating properly, insuring knowing impending claim

Appendix B: Data points to be submitted when reporting information about fraud events to the Fraud Reporting Service

The following is a non-exhaustive list of the data elements that may be necessary for the purposes of assessing and detecting fraud. To the extent that the following list includes personal information that is not necessary for the purposes of assessing and detecting fraud, an insurer should not report the personal information during phase one of the FRS.

Category	Data type
Insured/policyholder/claimant	• Contact information o (name, address, phone number, email address) • Date of birth • Driver's licence number • Occupation • Vehicle ownership type: owned/financed/leased/rental
Insurance carrier	• Corporate contact information o (corporate name, address, phone number) • Policy number

	• Claim number • Agent/broker name and address • Policy duration • Status of the claim (ongoing, denied, withdrawn after investigation)
Accident information	• Date of loss • Time of loss • Location of loss (street address, city, province, country) • Cause of loss
Involved parties:	• Insured vehicle passengers o Contact information (name, address, phone number, email address) • Claimant vehicle passengers o Contact information (name, address, phone number, email address) • Insured vehicle information o VIN, make, model, year, owner, damage • Claimant vehicle information o VIN, make, model, year, owner, damage

	• Legal Counsel (contact information). • Auto body/repair shop o Contact information and repair details • Tow truck o Contact information, and towing details. • Medical Provider o Contact information • Medical Clinic o Contact information • Adjuster o Contact information • Car Rental Company, Lienholder/Leaseholder, other Third Parties o (direct third parties to the claim or individuals acting on behalf of the policyholder for policy/claim purposes, as an intermediary, translator, or general agent)
Cost	• Estimated cost of the claim fraud • Estimated cost of the policyholder/underwriting fraud
Category/Fraud Details	• Fraud perpetrated through underwriting fraud

	• Fraud perpetrated through fraudulent claims • Fraud by a service provider • Fraud through selling or distribution of insurance products • Fraud perpetrated by internal employees of an insurer • Fraud details/description

FINANCIAL SERVICES REGULATORY AUTHORITY OF ONTARIO

NOTICE OF PROPOSED RULE UNDER THE *FINANCIAL SERVICES REGULATORY AUTHORITY OF ONTARIO ACT, 2016*

PROPOSED RULE 2024 – 003

AUTOMOBILE INSURANCE – FRAUD REPORTING SERVICE

[07/15/2024]

1. Introduction

Pursuant to subsection 22(1) of the *Financial Services Regulatory Authority of Ontario Act, 2016* (the "***FSRA Act***") the Financial Services Regulatory Authority of Ontario ("**FSRA**" or the "**Authority**") is publishing for public consultation the following Notice of Proposed Rule ("**Notice**"). In accordance with subsection 22(4) of the *FSRA Act*, interested persons are invited to make written representations to FSRA with respect to the Proposed Fraud Reporting Service Rule ("**Proposed Rule**"), within 90 days of publishing this Notice. The consultation period will close on [10/14/2024].

If approved by the Minister of Finance ("**Minister**"), the Proposed Rule will prescribe both the information insurers must report under section 101.3 of the *Insurance Act* (the "***Act***"), and the requirements associated with reporting the prescribed information. More specifically, the Proposed Rule will prescribe the threshold and scope of information insurers are required to report about automobile insurance fraud; and the timing and process requirements regarding how an insurer shall report the prescribed information to the Fraud Reporting Service ("**FRS**").

For the text of the Proposed Rule please see **Appendix A** to this Notice.

2. Statutory Authority under which the Rule is proposed

Section 101.3 of the *Act*, when proclaimed into force, will require insurers to provide the Chief Executive Officer or an agency designated by the Chief Executive Officer (referred to collectively as the "**CEO**" in this Notice) with information prescribed by the Proposed Rule about automobile insurance fraud at such times and in accordance with such requirements as may be prescribed by the Proposed Rule.

To this end, section 101.3 further provides FSRA the express statutory authority to directly or indirectly collect, use and disclose personal information about identifiable individuals

provided that the collection, use, or disclosure is for the purpose of assessing and detecting automobile insurance fraud.

Section 101.3 in conjunction with paragraph 8.2 of subsection 121.0.1(1) of the *Act* gives FSRA the authority to prescribe the information outlined in section 101.3 in accordance with the Proposed Rule included in this Notice.

3. Statement of the substance and purpose of the Proposed Rule

The **purpose** of the Proposed Rule is to prescribe information that automobile insurers must provide to FSRA, and the corresponding requirements regarding the reporting of the prescribed information. Once in force, the Proposed Rule will give operational effect to FSRA's Fraud Reporting Service ("**FRS**").

The main outcome FSRA aims to achieve through the implementation of the FRS is to collect information to create a baseline of data that will quantify the amount of automobile insurance fraud and better enable the automobile insurance sector to assess and detect such fraud in Ontario.

The purpose of collecting this information is to support the more effective assessment and detection of automobile insurance fraud in Ontario. Key outcomes associated with this purpose include:

- quantifying the prevalence of automobile insurance fraud in Ontario;
- creating a baseline for fraud detection; and
- identifying trends throughout the industry.

Achieving these outcomes supports FSRA's goal of reducing consumer harm caused through fraud, and reducing unnecessary externality costs to be borne by consumers.

The Proposed Rule and accompanying Interpretation Guidance (the "**Guidance**") represents the first phase of the development of a functional FRS. FSRA anticipates a second phase of the FRS where information that has been collected will be available for insurers to access to enable the assessing and detecting of fraud. Amendments to the Proposed Rule and Guidance are expected to be required before the FRS can proceed to this second phase.

The **substance** of the Proposed Rule centers around prescribed information about automobile insurance fraud, and requirements associated with the insurer's statutory duty to report the prescribed information.

With regards to the information prescribed about automobile insurance fraud, the Proposed Rule defines a "fraud event" as a deceptive act or omission intentionally committed by a person(s) to obtain advantage, financial gain, or benefits beyond that to which one is entitled to with regard to any policy, claim, provision of goods or services or other occurrence related to automobile insurance. Included in this definition is a non-exhaustive list of categories that each instance of a fraud event may fall under.

With regards to the prescribed information about automobile insurance fraud, the Proposed Rule prescribes that insurers must report all information that provides reasonable grounds for the insurer to believe that a fraud event has occurred or is likely to occur.

The Proposed Rule further clarifies that this prescribed information must be reported if and only if the insurer has taken action based on the information that provided reasonable grounds for the insurer to believe that a fraud event has occurred or is likely to occur.

Once an insurer holds information that provides reasonable grounds for the insurer to believe that a fraud event has occurred or is likely to occur and have taken action based on said information, an insurer is required to report the information to the FRS within thirty (30) days after the close of each quarterly period of the calendar year.

With regards to requirements associated with the insurer's statutory duty to report the prescribed information, the Proposed Rule requires that all prescribed information be complete, accurate and up-to-date, and imposes an ongoing obligation on the insurer to take reasonable steps to ensure the information remains complete, accurate and up-to-date or otherwise recommend that the information be removed from the FRS.

FSRA will be publishing for public consultation **Guidance** that will set out FSRA's interpretation of several requirements under the Proposed Rule regarding:

- The scope of information an insurer is required to provide when reporting information about a "fraud event" to the CEO;

- The threshold of what constitutes "reasonable grounds for the insurer to believe" that a fraud event has occurred or is likely to occur; and

- The "action" an insurer may take that triggers an insurer's requirement to report prescribed information to the FRS.

The Guidance will also set out FSRA's approach in administering the Proposed Rule, including:

- How FSRA will supervise insurers in reviewing their policies, processes, systems and associated controls to ensure compliance with the Proposed Rule;

- How FSRA will exercise its discretion when enforcing against the requirements in the Proposed Rule; and

- How FSRA will utilize its enforcement powers to address non-compliance with requirements in the Proposed Rule.

4. Summary of the Proposed Rule

This section describes the requirements outlined in the Proposed Rule, that, if approved by the Minister, will operationalize the reporting of information about automobile insurance fraud by insurers to the FRS.

Section 1 – Definitions

This section outlines key definitions used throughout the Proposed Rule, including the definition of a "fraud event". The broad scope of what may constitute a fraud event is further informed by the definition's non-exhaustive list of several categories of fraud that are pertinent to the automobile insurance sector.

Section 2 – Interpretation

This section outlines how the Proposed Rule is to be interpreted.

Section 3 – Prescribed information under subsection 101.3(1) of the *Act*

This section sets out the prescribed information under subsection 101.3(1) of the *Act*.

This section:

- prescribes the scope and threshold [or standard] of information that every insurer licensed under the *Act* is required to report under subsection 101.3(1) of the *Act*. Specifically, an insurer is required to *report all information* in the insurer's possession, control or power related to any policy, claim, provision of goods or services or any other occurrence or event *where the information provides reasonable grounds for the insurer to believe that a fraud event has occurred or is likely to occur*;

- prescribes the activity-based trigger for an insurer to report the prescribed information, such that an insurer is required to report prescribed information within thirty days after the close of each [quarter] only if they have taken action or made a decision based on the prescribed information;

- requires that insurers include personal information in the prescribed information *only if* the personal information is necessary the purpose of assessing and detecting automobile insurance fraud; and

- requires insurers to de-identify all personal information in the prescribed information unless disclosure of the personal information is necessary for the purpose of assessing and detecting automobile insurance fraud.

Section 4 – Reporting requirements – Prescribed information

This section sets out additional requirements regarding the reporting of the prescribed information outlined in section 3 of the Proposed Rule.

This section:

- requires that an insurer ensures that all prescribed information is complete, up to date, and factually correct prior to reporting the information as required; and

- requires an insurer to inform the CEO and take reasonable steps to correct information if the insurer becomes aware that information reported is not complete, up to date, or factually correct.

Section 5 – Transitional

This section clarifies that insurers are not required to report the prescribed information in accordance with the rule until after [date TBD].

Section 6 – Coming into Force

This section clarifies that the Proposed Rule will come into force on the later of the date that subsection 101.3(1) and clause 8.2 of subsection 121.0.1(1) of the *Act* comes into force and 15 days after the Rule is approved by the Minister.

5. Unpublished Material

In making the Proposed Rule, FSRA has retained the consultant services of the *International Fraud Training Group*, who have provided FSRA with unpublished written materials that have been relied in part to inform drafting of the Proposed Rule.

6. Alternatives Considered

i. Prescribing specific data points that insurers would be required to report under subsection 101.3(1) of the *Act*

The Proposed Rule requires insurers to report all information in the insurer's possession, control or power related to any policy, claim, provision of goods or services or any other occurrence or event where the information provides reasonable grounds for the insurer to believe that a fraud event has occurred or is likely to occur.

As an alternative, FSRA considered prescribing an all-encompassing list of data points that insurers would be required to submit to the FRS. This approach was not followed for three reasons.

First, a prescriptive list of data points about a "fraud event" could only be amended via an amendment to the Proposed Rule. The time it takes to amend an Authority Rule would not be adaptable to an ever-evolving list of data points that may be material to assessing and detecting fraud events.

Second, prescribing an all-encompassing list of data points is inconsistent with FSRA's principles-based and outcomes-focused approach to regulation. A prescriptive approach would overshadow the intended outcome of insurers reporting information according to a particular standard of proof or threshold of materiality and would turn the Proposed Rule into a listing and indexing exercise of prescribed information.

Third, FSRA recognizes that the ever-evolving nature of automobile insurance fraud requires flexibility and adaptability in the types of information that insurers must report to the FRS. FSRA intentionally has chosen not to prescribe all relevant data points *before* information begins to be reported by insurers. In other words, the most relevant information that will ultimately achieve the FRS's purpose will become more apparent only *after* insurers begin reporting to the FRS. FSRA intentionally chose not to limit the scope of information to a prescribed list that may or may not be reflective of market realities.

ii. Alternate thresholds of information an insurer would be required to report under subsection 101.3(1) of the *Act*

The Proposed Rule requires insurers to only report information to the FRS where the information provides *reasonable grounds for the insurer to believe* that a fraud event has occurred or is likely to occur. FSRA's interpretation of information that would constitute "reasonable grounds to believe" is outlined in the Guidance.

FSRA considered alternative thresholds that would impact the scope of information that insurers would ultimately need to report to the FRS including:

- **No threshold (i.e., "all information about a fraud event")**: This would require insurers to report all information, without any modification or clarification of scope, about a fraud event, as defined in the Proposed Rule. FSRA did not choose this option as it provided uncertainty to the scope of information to be provided.

- **"Reasonable grounds to suspect"**: This threshold is lower than the prescribed "reasonable grounds to believe" threshold in the sense insurers would be required to report information where the information provides mere "suspicion" that a fraud event has occurred or is likely to occur. FSRA did not choose this option as this threshold may invite information that may be premature, inaccurate, or unverifiable. Reasonable grounds to believe, on the other hand, require more than mere suspicion, as well as verifiable evidence relating to the belief. Further, "suspicion" may be inconsistently interpreted throughout the sector, resulting in ambiguity regarding the scope of information that is required to be provided.

- **"Belief based on a balance of probabilities"**: This threshold is higher than "reasonable grounds to believe" in the sense that this threshold is similar to the civil standard of proof required in civil trial cases. FSRA did not choose this option as this threshold may invite too little information to be reported. Once information has reached this threshold, it already provides a basis for seeking civil legal action. Rather, FSRA is requiring information that serves the purpose of enabling the assessing and detecting of automobile insurance fraud, information that reaches this civil standard includes instances of fraud has already been assessed and detected and is ready for adjudication.

- **"Adjudicated finding of a fraud event"**: Similar to the above, this is the highest threshold of information, that would require reporting to the FRS only if the information is used to adjudicate a finding a fraud event. This option was not chosen because it would result in the lowest amount of information being reported, albeit resulting in highly reliable information.

iii. Alternate timing requirements for when an insurer is required to report information to the FRS

The Proposed Rule requires insurers to report the prescribed information to the FRS on a quarterly basis only if the insurer has taken action or made a decision based on information that meets the prescribed threshold. FSRA's interpretation of information that would constitute "action" or a "decision" is outlined in the Guidance.

FSRA decided on this requirement to provide sufficient time for the insurer to prepare information that must be reported, and to ensure that information that may be premature or not actionable is not reported to the FRS.

As an alternative, FSRA also considered alternate timing requirements for insurers to report the prescribed information to the FRS:

- **Reporting information within a prescribed number of days following the conclusion of an insurer's investigation about a fraud event:** FSRA considered an arbitrary number of days (e.g., 30 days) that an insurer would have following the conclusion of an investigation to report the information. This option was not chosen because of the arbitrariness of the time period and also because the conclusion of an investigation was determined by FSRA to be too high of a standard to require information to be reported.

- **Reporting information within a "reasonable" amount of time following the conclusion of an insurer's investigation about a fraud event:** Similar to the above, this option was not chosen because FSRA decided there needs to be some certainty about the timing requirement (i.e., a "reasonable" amount of time may differ significantly throughout the sector), and that the conclusion of an investigation is too high of a standard to require information to be reported.

- **Real-time Reporting once information reaches prescribed threshold:** This option was not chosen due to perceived inconsistencies and ambiguities regarding what point-in-time an insurer is required to report, as well as the administrative burden real-time reporting would place on insurers and FSRA. For example, it is possible that one insurer may subjectively determine that their information gathered does not reach the threshold of "reasonable grounds to believe" that a fraud event has occurred, whereas a different insurer with the same information may subjectively determine their information does reach the prescribed threshold and thus be required to report.

7. Anticipated Costs and Benefits

Qualitative benefits associated with operationalization of the Proposed Rule may include:

- Enabling FSRA to monitor and evaluate developments and trends of fraud in the automobile insurance industry;

- Holding insurers accountable for reporting fraud; and

- Developing a common understanding of automobile insurance fraud amongst all participants of the automobile insurance system.

Qualitative costs associated with operationalization of the Proposed Rule may include:

- Familiarization with a net-new reporting requirement;

- ‘Growing pains’ associated with net-new reporting requirement, including erroneous or premature reporting; and

- Understanding how to comply with a principles-based and outcomes-focused reporting requirement.

Quantitative benefits associated with operationalization of the Proposed Rule may include:

- Enabling FSRA’s ability to quantify the prevalence of automobile insurance fraud in Ontario;

- Gathering of information about automobile insurance fraud may inform how resources can be most efficiently allocated to reduce costs to insurers and ultimately consumers.

New quantitative costs associated with operationalization of the Proposed Rule for both FSRA and insurers may include:

- Anticipated system and data collection resources needed to adapt to new reporting requirements.

- Data integrity and quality during the initial stages of reporting may cause initial challenges.

- Investment in data security and encryption technology will need to be considered to protect data.

8. Regulations to be Amended

FSRA does not intend to make any recommendations with respect to the amendment or revocation of a regulation or provision in a regulation that relates to the implementation of the Proposed Rule. FSRA expects that in due course certain regulations or provisions in regulations will be amended or revoked in a manner consistent with the operationalization of the Proposed Rule.

Appendix A – PROPOSED RULE 2024 – 003

1 Definitions

1(1) In this Rule,

(a) "Act" means the *Insurance Act*, RSO 1990, c I.8, as amended;

(b) "FSRA Act" means the *Financial Services Regulatory Authority of Ontario Act, 2016*, SO 2016, c 37, Sched 8, as amended;

(c) "prescribed information" means the information an insurer is required to provide under subsection 101.3(1) of the Act in accordance with subsection 3(1) of this Rule.

(d) "Rule" means this Authority Rule 2024 – 003

(e) "fraud event" means a deceptive act or omission, or series of deceptive acts or omissions intentionally committed by a person(s) to obtain advantage, financial gain, or benefits beyond that to which one is entitled to with regard to any policy, claim, provision of goods or services or other occurrence related to automobile insurance, and for greater clarity includes instances of:

i. Obtaining an automobile insurance policy through fraudulent means, including underwriting fraud;

ii. Obtaining a benefit under a contract of insurance through fraudulent claims;

iii. Providing goods or services to a beneficiary under a contract of insurance through fraudulent means or in a fraudulent manner;

iv. Fraudulent activity in the selling or distribution of insurance products; and

v. Fraudulent activity committed by internal employees of an insurer.

2 Interpretation

2(1) If a term or phrase used in this Rule is defined in the Act, the definition used in the Act shall apply for the purposes of this Rule.

2(2) Words and phrases not defined in this Rule have the same meaning as ascribed thereto under section 1 of the FSRA Act unless a contrary intention appears.

2(3) References in this Rule to the Chief Executive Officer include reference to an authorized delegate or designated agency of the Chief Executive Officer as outlined in subsection 101.3(1) of the Act.

2(4) For the purposes of this Rule, references to “insurance” are limited only to “automobile insurance”.

3 Prescribed information under subsection 101.3(1) of the Act

3(1) Prescribed information includes all information, including personal information, in the insurer’s possession, control or power related to any policy, claim, provision of goods or services or any other occurrence or event where the information provides reasonable grounds for the insurer to believe that a fraud event has occurred or is likely to occur.

3(2) An insurer shall within thirty days after the close of each quarter of the calendar year provide the information prescribed in subsection 3(1) of this Rule with respect to fraud events which in the preceding quarter the insurer has taken action or made a decision based on reasonable grounds for the insurer to believe that a fraud event has occurred or is likely to occur.

3(3) An insurer shall not disclose personal information that is not necessary for the purposes set out in subsection 101.3(2) of the Act when providing the prescribed information to the Chief Executive Officer.

3(4) An insurer shall de-identify all names and identifying numbers, symbols or other particulars assigned to individuals before an insurer provides the prescribed information to the Chief Executive Officer unless disclosure of the names or other identifying information is necessary for the purposes set out in subsection 101.3(2) of the Act.

4 Reporting requirements – Prescribed information

4(1) An insurer shall ensure that all prescribed information is complete, up to date, and factually correct before an insurer provides the prescribed information to the Chief Executive Officer.

4(2) Every insurer who provides prescribed information that subsequently becomes aware that the information the insurer provided is or has become

incomplete, out-of-date, or factually incorrect shall in the quarter following their becoming aware:

(a) inform the Chief Executive Officer of the deficiencies in the prescribed information provided; and

(a) take reasonable steps to remedy the deficiencies in the prescribed information provided to bring the information into compliance with subsection 5(1) of this Rule.

4(3) If an insurer provides information to the Chief Executive Officer and subsequently discovers that the information either:

(a) includes deficiencies that cannot be remedied as required by subsection 5(2)(b) of this Rule; or

(b) fails to meet the threshold of the reporting requirement outlined in subsection 3(1) of this Rule,

then the insurer must immediately give notice and recommend the Chief Executive Officer to withdraw the information provided.

4(4) Every insurer shall submit the prescribed information through the Authority's electronic or computer-based system for the filing, delivery or reporting of the prescribed information.

5 Transitional

5(1) An insurer is not required to report the information required in section 3 of this Rule until after [date].

6 Coming into force

6(1) This Rule will come into force on the later of the date that section 101.3 and clause 8.2 of subsection 121.0.1(1) of the Act comes into force and 15 days after the Rule is approved by the Minister.

THIS IS EXHIBIT "B" REFERRED TO IN THE
AFFIDAVIT OF Mr. Kevin A. McLean
AFFIRMED BEFORE ME, THIS 27th DAY
OF January 20 25
, ETC.

Vinh The Tran, Esq., LSUC #57761C
Lawyer, Notary, Oaths Commissioner
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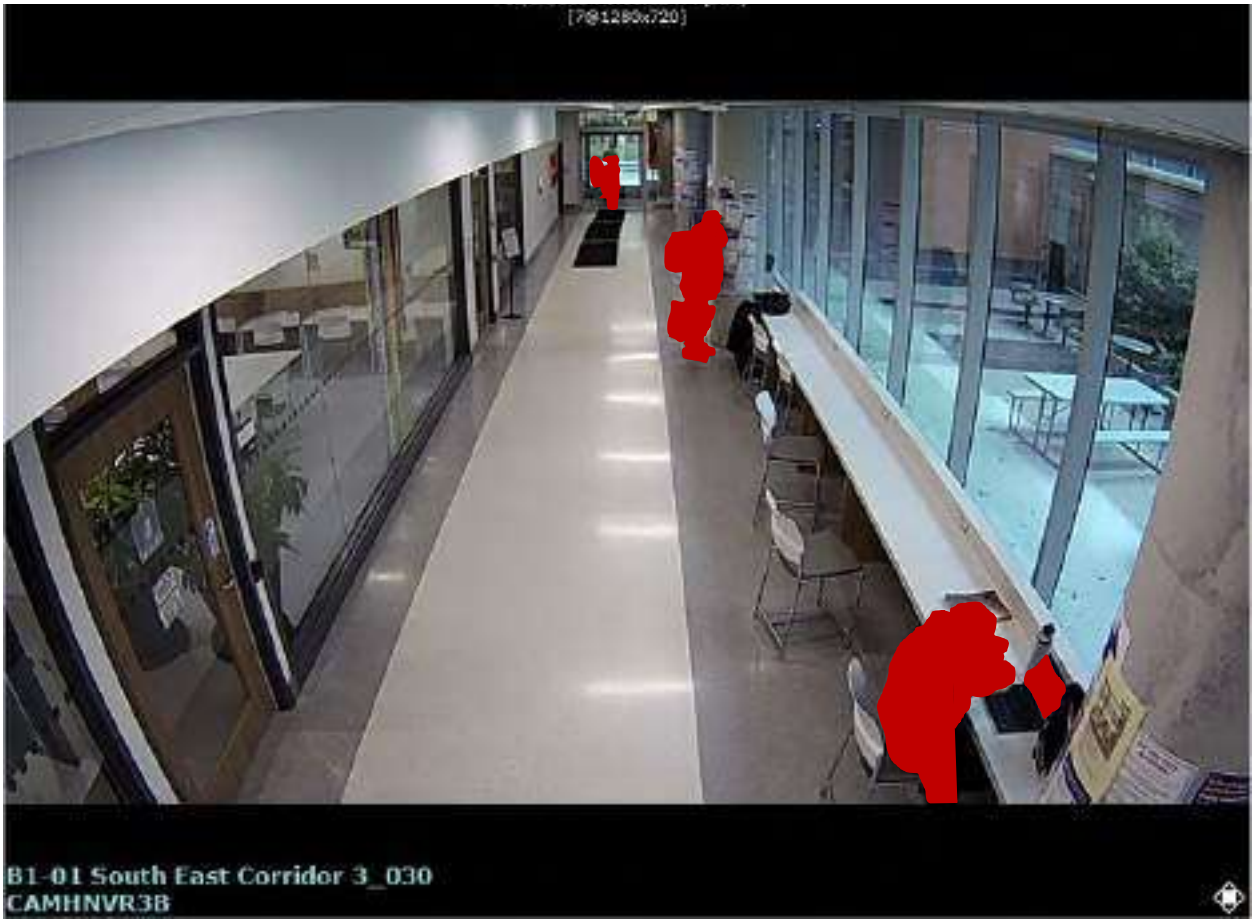
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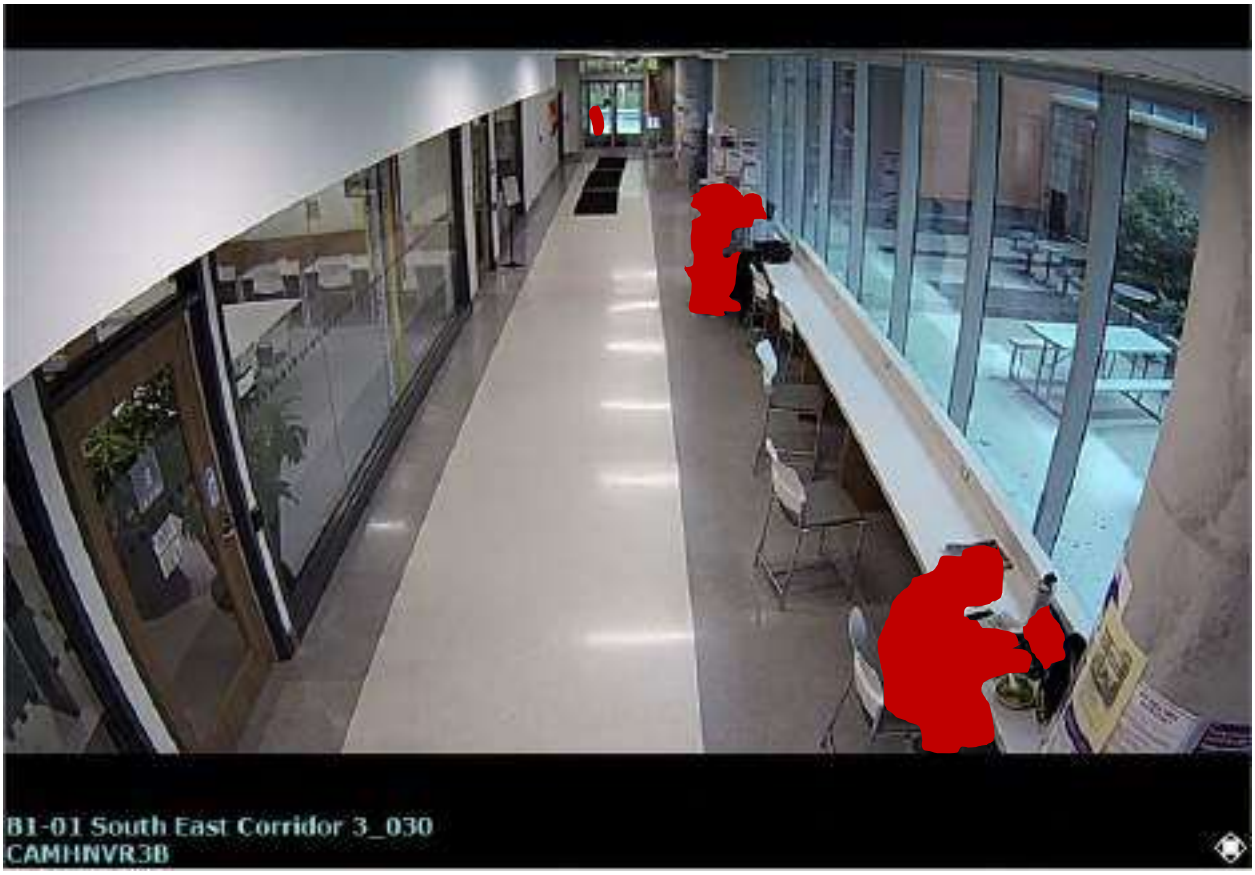
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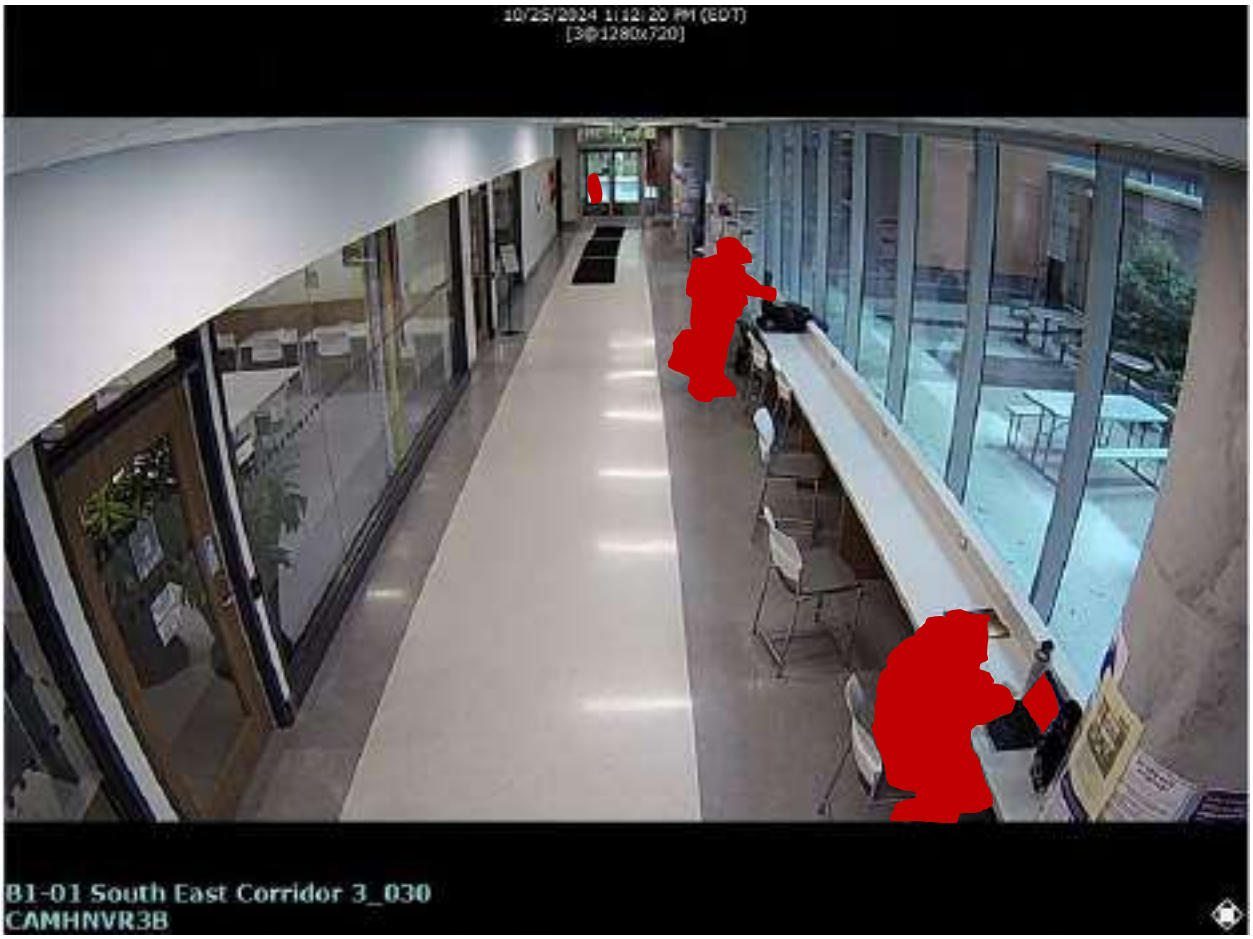
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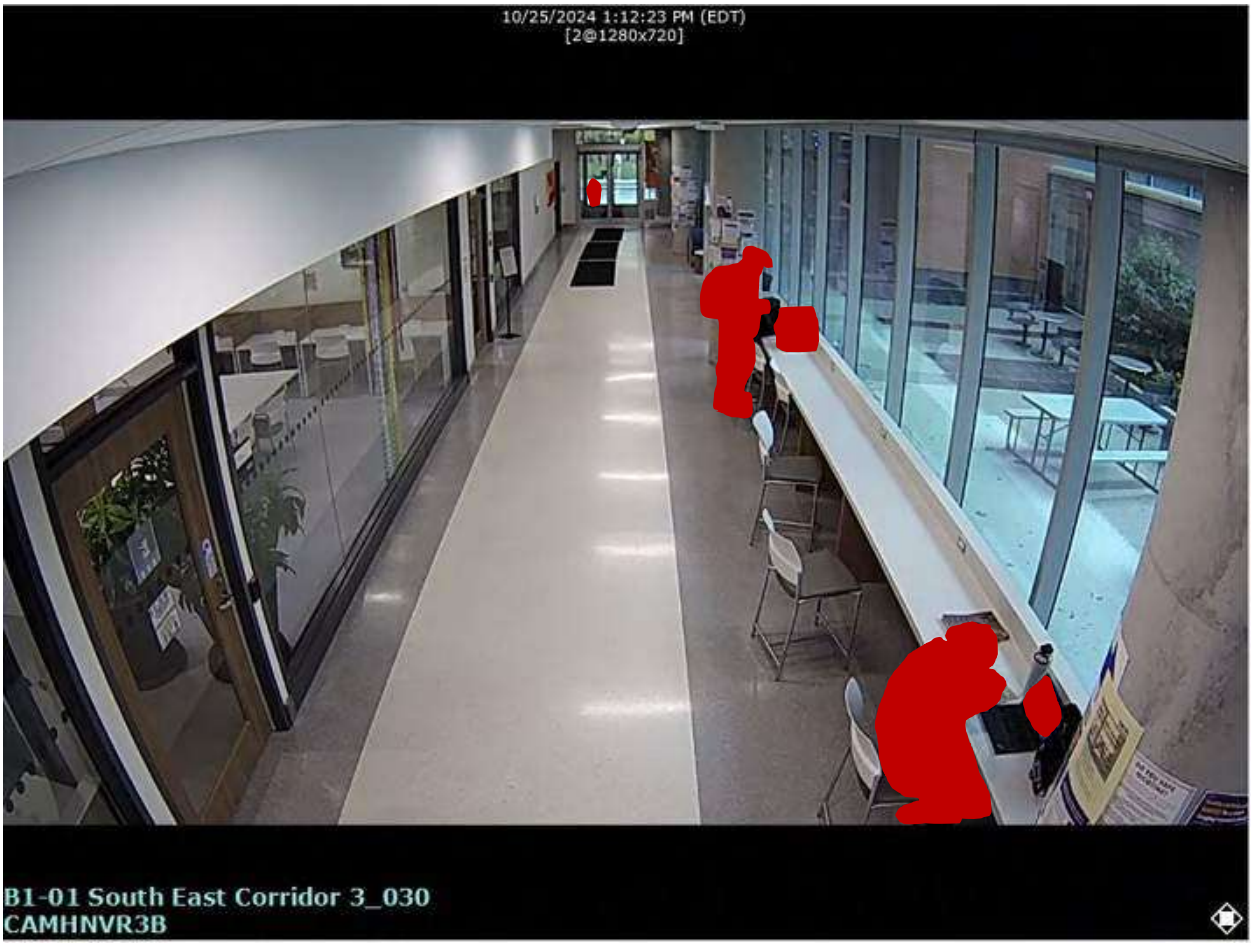
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MCLEAN, KEVIN ALEXANDER - Account Summary

Note: CircIT transactions cannot be separately identified as self-checkout vs staff-assisted checkout as they both use the same software.

Date/Time	Branch / Location	Card #	Activity	Method of Transaction
28/10/2024,16:35	Fort York	27131056572458	Laptop check out. Item returned	Symphony accessed by staff
28/10/2024,16:36	Fort York	27131056572458	Note added: Laptop form completed at Fort York Branch Oct 28/2024	Symphony accessed by staff
28/10/2024,19:41	Fort York	27131056572458	Check out 1 Book	CircIT accessed either through self-checkout or staff-assisted station
28/10/2024,19:43	Fort York	27131056572458	Laptop check out. Item returned	Symphony accessed by staff
28/10/2024,20:16	Fort York	27131056572458	Check out 1 book	CircIT accessed either through self-checkout or staff-assisted station
8/11/2024, 11:57 – 12:29 11:57-11:58 12:04 12:13 12:29	Queen/Saulter	27131056572458	Checked out 24 items 10 have been returned 3 Generic paperback 3 Books (1 book returned) 9 Periodicals (all 9 were returned) 5 Books 1 Book 3 Generic paperback	CircIT accessed either through self-checkout or staff-assisted station
8/11/2024, 12:52	Queen/Saulter	27131056572458	Check In 1 book 9 periodicals	CircIT accessed at staff-assisted station

Date/Time	Branch / Location	Card #	Activity	Method of Transaction
16/11/2024,10:20	Fort York	27131066792070	New card issued at Fort York Branch Previous card 27131056572458 marked as LOSTCARD	Symphony accessed by staff
13/12/2024,19:00	Toronto Reference Library	27131066991128	New card issued at Toronto Reference Library Previous card 27131066792070 marked as LOSTCARD	Symphony accessed by staff
13/12/2024,19:09	Toronto Reference Library	27131066991128	Renewed 16 items (2 borrowed at Fort York; 14 borrowed at Queen/Saulter Branch)	Symphony accessed by staff
13/12/2024,19:12	Toronto Reference Library	27131066991128	Phone number updated to 416-919-7820 Account renewed	Symphony accessed by staff
13/12/2024,20:03	Toronto Reference Library	27131066991128	Checkout 1 Book	CircIT accessed either through self-checkout or staff-assisted station
21/12/2024,15:15	Fort York	27131067089492	New card issued at Fort York Branch Previous card 27131066991128 marked as LOSTCARD	Symphony accessed by staff
21/12/2024,15:48	Fort York	27131067089492	Laptop check out. Item returned	Symphony accessed by staff
21/12/2024,16:11	Fort York	27131067089492	Check out 1 Book 4 Periodicals	CircIT accessed either through self-checkout or staff-assisted station
21/12/2024,16:13	Fort York	27131067089492	Laptop check out. Item returned	Symphony accessed by staff
28/12/2024, 15:30	Fort York	27131067089492	Laptop check out. Item returned	Symphony accessed by staff

Date/Time	Branch / Location	Card #	Activity	Method of Transaction
28/12/2024,15:59	Fort York	27131067089492	Check out 7 Periodicals	CircIT accessed either through self-checkout or staff-assisted station
17/1/2025,16:03	Answerline	27131067089492	Renewed – 29 items 1 item not renewed due to outstanding hold	Symphony accessed by staff

TAB 14

ONTARIO COURT OF JUSTICE (DIVISIONAL COURT)

BETWEEN:

KEVIN ALEXANDER MCLEAN

APPLICANT

- and -

TD HOME AND AUTO INSURANCE COMPANY, SECURITY NATIONAL INSURANCE COMPANY, TD GENERAL INSURANCE COMPANY, EXECUTIVE DIRECTOR, LICENCE APPEAL TRIBUNAL,

HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO, REPRESENTED BY EXECUTIVE CHAIR OF TRIBUNALS ONTARIO IN MR. SEAN WEIR, THE ATTORNEY GENERAL OF ONTARIO

RESPONDENTS

APPLICANT'S ***FACTUM FOR A MOTION IN WRITING***

DATE: January 31, 2025

1. The Applicant adopts the definitions from his documents tendered for filing for the court file and they have the same meaning herein as they do therein. Where the Applicant has utilized "double underlining" in statutes, regulations, or authorities, he has done so for emphasis.

2. The Applicant confirms, as a participation matter, that the AGO has decided to not participate in this *JRPA* Proceeding and waived his right, through counsel in Ms. Im, to be heard at the hearing on the merits. Ergo, the AGO's waiver bolstered the Applicant's position that the *JRPA* Application could be heard in front of a single justice of the ONSC on request (see: section 6(2) of the *JRPA*) or motion before a single motions justice of the ONSC (Divisional Court). Under the Divisional Court's Practice Direction, a section 6(2) of the *JRPA* request is heard before a single justice of the ONSC Divisional Court (in said rotation) sitting as a justice of the ONSC. It is difficult to reconcile that language in the Practice Direction with the Legislature's language in section 6(2). In any event, the issue is somewhat moot despite the Applicant filing a requisition requesting an urgent hearing before a single justice of the ONSC pursuant to section 6(2) of the JPRA on January 2, 2025, it has yet to be stamped. The test for leave to be heard before a single justice of the ONSC under section 6(2) of the *JRPA* is whether: (i) urgency; and (ii) it appears that there will likely be a failure of justice based on the time to hear and decide an application for judicial review before a three justice panel.

3. All justices of the ONSC are also justices of the ONSC Divisional Court: s. 18 of the *CJA*.

4. While on first glance, one many believe that a motion in writing seeking to convert said motion, in a proper case, before a single justice of the ONSC Divisional Court to a motion for Judgment is the same procedurally and substantively because the same result, in the same case, would be reached. They are not procedurally and substantively the same even the result reached may be the same.

5. Section 6(2) of the *JRPA* requires leave predicted upon a request by requisition. A rule 37.13(2)(a) is predicated upon the provision on the making (not filing and serving per se) of a notice of motion at least 14 days prior to the hearing of the written hearing. There is a small cost difference of $353 in that the latter requires the prescribed paying of fees.

customarily done in person with oral submissions whereas a motion in writing, at first request subject to objection by a respondent(s), is heard in writing.

7. The responding parties, if any, must within ten days of having received the Applicant's moving material, which was served on January 31, 2025, provide their position as follows: (a) consent to the motion; (b) not oppose the motion by way of notice; (c) agreement to have the motion heard in writing, a responding factum with the prescribed entitled language therein and its argument regarding the relief sought and its argument; OR (d) a notice that the responding party intends to make oral argument, along with any material intended to be relied upon by the party: Rule 37.12.1(5).

8. Pursuant to the common law in *Savone*, the unassailable corollary is when final orders are at issue or to be determined a failure of justice is *likely* if the single justice of the ONSC does not assume jurisdiction. The merits of an application are important factors in determining whether there will be a failure of justice: *Savone*. The question then is only one of urgency. As the incorrect party in SNIC remains as the sole respondent, even by admission of it by not opposing TDGIC unlawfully assume the role of the sole respondent party in the LAT Appeal for at least six months, urgency remains on a personal level for the Applicant. However, it is the urgency with respect to the rule of law issues including issues of persistent discord involving this Tribunal that must be answered forthwith.

9. While some of the analogistic principles from jurisprudence interpreting ss. 6(2) of the *JRPA* are applicable to the urgency of this NOM #2, the legal tests for: (i) motion in writing; and (ii) converting a motion into a motion for judgment must be identified and applied against the facts herein.

10. The legal test for motions opposed in writing is prescribed under Rule 37.12(4) to (6). In brief, the moving party must "make the motion" 14 days prior to the hearing date. After so doing, the moving party must serve the notice of motion and file immediately, with proof of service (affidavit of service) the notice of motion (Form 37(B)). Where a motion is filed electronically, the motion record is considered the same document and commands the same fee as the "notice of motion". As such, they are filed separately, albeit forthwith or immediately thereafter, with affidavits of service for the draft order, motion record and then factum. The Applicant has done so on an immediate basis. The

be heard in writing on the date of Friday, February 14, 2025.

11. Pursuant to subsection five (5) of 37.12.1 of the *Civil Rules*, the responding parties ("persons a against whom a motion is made") must within ten days of receipt of the undefined word "material" in relation to the motion, must choose from one of the four prescribed options thereunder and then serve and file either a notice (not oppose or intend to make oral argument), consent to the relief OR a motion record that the responding party agrees to the proposed method of hearing and makes it arguments on writing for the hearing and determination of the issues in the motion. There is no requirement for the moving party to attend after receiving a notice under subsection 5(d) pursuant to ss. 6 of 37.12.1 of the said sub-rule. However, the moving party is required to secure the date for oral hearing: *Kolten v. Walker*, 2019 ONSC 3210 at para 5. Rule 37.12.1(4) is applicable to all civil matters excepting the ONCA[1] and Small Claims i.e. all those proceedings before the ONSC.

12. Having motions heard in writing are most preferrable when the time it will take to have such motion scheduled and heard are at issue, the importance of ensuring that interests are fairly represented, as well as the importance of moving this matter forward expeditiously: *Agbapu v Munshi*, 2023 ONSC 2053 at para 4.

13. Nothing further needs to be analyzed at this time under Rule 37.12.1(4) to (6) because if the responding parties provide a notice that they wish to be heard orally on this motion, they are so entitled.

Volume #1(A): Rule 37.13: Disposition on Motion

14. The more compelling and intellectually stimulating legal test to identify and then analyze is the legal test under Rule 37.13(2)(a). The language therein is clear on it its face: in a 'proper case', the motions judge may convert the motion into a motion for Judgment.

15. Rule 37.13 has four subsections in (1) to (4). Only the sub-rules involving an "Application" are analyzed. Only subrule 37.13(1)(b) and 37.13(a) are applicable because subrule 37.13(1)(a), 37.13(2)(b) and 37.13(3) involve trials and actions, and 37.13(4) involves estate matters. Therefore, the drafters and the LGIC intended for moving parties (applicants and respondents in judicial review

to be decided in their intended summary manner as follows:

a. **Obtain interim relief**: like the Applicant has sought, as a moving party, in his NOM #1 and many before him had done in seeking orders relating to the "record of proceeding".
    i. Although the Applicant is the unprecedented situation wherein this Tribunal has not even submitted a single document from the Record Of Proceeding. In that regard, the Applicant respectfully submits this is now a 'proper case' for this motion, where applicable, to be converted into a motion for Judgment. It is entirely open to the Tribunal to seek to dismiss the *JRPA* Application on motion and to be heard at the same time. However, it will have to rely on the Record of Proceeding. The same is applicable to SNIC and TDHA.
b. **Obtain a precise hearing date**: while the Applicant perfected his *JRPA* Application on December 13, 2024, there appears to be, as represented to him by the Registrar, some unwritten convention involving the Divisional Court where it no longer issues a Form 68(B) despite the mandatory language in the relevant rule (see: Rule 68.06); and
c. **Motion for Judgment:** the relevant subrule does not mean or connote that a moving party will be successful in obtaining a "Reasons For Judgment" in his, her or its favour but that the motions judge converts the motion into one that is a "motion for judgment" where a final disposition on the merits of the *JRPA* Application occurs.

16. As a matter of this 'record of proceeding' before the Divisional Court, there has not been any notice pursuant to Rule 2.1.01(2) as has occurred in many statutory appeals of decisions of the LAT. This is not a statutory appeal but a judicial review and the distinction is an important one considering the statements of law in *Yatar*.

17. Moreover, there has not been a single motion from any of the respondents, including prior to the AGO's departure, for any relief including but not limited to seeking to dismiss the Applicant's judicial review on grounds of prematurity. The Tribunal raised the objection in the required "information submitted to the court" (see: Practice Direction of Divisional Court) but the respondent insurance companies did not. The Applicant squarely faced the same in his Factum and it will be further faced in his Compendium and 'Outline' contained therein with a hyperlinking (internal and external) and bookmarking to each and every relevant document, statute, regulation, and authority.

Ct.); and (iii) Heegsma (ONCA). The Applicant faced the same in correspondence and his Factum.

18. *Mansuri* was a conflict of interest case involving three brothers with the same insurer (Dominion Insurance Company of Canada) wherein all three brothers with the same counsel alleged that Dominion Insurance's counsel was in a conflict of interest by having the same counsel and adjusters cross-reference their information by way of pooling and comparison as authorized under the OCF-1 and PIPEDA. As the decision by Vice Chair McGee refused the motion relief, which was in the nature of disqualifying the counsel and adjusters handling the Mansuri brothers' SABS claims, it was interlocutory in nature. Refusal to grant relief involving disqualification are interlocutory as they relate to the counsel retained as agent for said principals. Ironically, the Applicant brought a conflict of interest motion in the underlying LAT Proceeding and it was dismissed. He disagreed but marshalled on as there was no final order or final decision to be challenged. Ergo, Mr. Boyce's citation of Mansuri was misguided on these facts and the underlying Application Record and the record of proceeding.

19. The Tribunal's citation of Awada served no utility to its misguided position of prematurity which was cited in the Applicant's Factum (see: paragraph 62[2] therein) prior to him reading the correspondence issued by Mr. Boyce to he and the other respondents. The Honourable Justice Corbett crystallized and refined the precedential statement of law that that courts should not interfere with ongoing administrative proceedings until after they are completed *or* until effective remedies are exhausted. The test is disjunctive one. In effect, Corbett J. confirmed the abolition of the doctrine cited in *CB Powell* of the rule against fragmentation or bifurcation of administrative proceedings. The precedent is a sound one because a final decision or final order may occur at any stage of an administrative proceeding. It would not only be wrong, unjust and ineffective to have a litigant continue when a final order or final decision must be overturned like a refusal to amend a pleading, add a party, or add a cause of action but it would be the principle of the rule against a multiplicity of proceedings. If litigants became "gun shy" about bringing motions to add parties, causes of action or amend pleadings, it could open the floodgates to litigants commencing different proceedings against the same party with new causes of actions with, in effect, amended pleadings, and then having a surfeit of unnecessary motions to consolidate claims and proceedings by moving parties. Said principle has equal force when measured against section 2 of the *SPPA* or Rule 1.04 of the Civil Rules. Even worse, if litigants are overly cautious about the risk of bring a motion to add a party, cause of action, or amendment of pleadings in the LAT context, it will lead to injured persons

dispute resolution against the insurance company that he or she believes may be the First Insurer. This Honourable ONSC (Divisional Court) can take judicial notice that injured persons are often in the most precarious situations financially, emotionally, physically and mentally. While the affluent in our society may scoff at the notion of having to pay $106 for a filing fee to the Tribunal, that is for many who have been denied vital treatments, benefits et al, that they do not have. To the extent that there are class or subclass of individuals that are not so financially burdened that the payment of a filing fee is of concern, this Divisional Court will undoubtedly have learned from this underlying LAT proceeding, the decisions involving the likes of one of Ms. Therese Reilly[3], and the Ontario Trial Lawyers Association recently issued information that injured persons' success rate at the Tribunal has dwindled from around 30 percent five years ago to less then ten percent. Simply put, Mr. Boyce's analysis on behalf of the Tribunal was as misguided as it was in various decisions when he was an adjudicator or vice chair for the very Tribunal under further attack from the public, the OTLA[4] and, without question, this Applicant.

20. Mr. Boyce's conduct herein has been concerning to say the least with the removal of his business name (employer) and address after receipt of the Applicant's affidavit #2. [5]

21. As it relates to the 'proper case', the Applicant respectfully submits that even if the standard of review were, hypothetically speaking 'patent unreasonableness, which existed in Dunsmuir prior to the revamping of the judicial review landscape in Vavilov, the Applicant would be able to obtain an order that the final decisions and orders of VCM were patently unreasonable. The standard of review herein is, without question, correctness (see: Factum and Outline to Compendium (to follow in accordance with the Civil Rules). Ergo, it is unclear what the Tribunal was relying upon Awada for but it did the Tribunal more harm than good considering that Awara was a statutory appeal under *LATA* which are only on questions of law, and it involved the appeal of a production by the insurance company (Allstate). Again, the Applicant has not appealed the production order in NOM #13 that involved a non-party in TDGIC. Ergo, the principles of law in Awada are not only in the Applicant's favour but do not bolster the misguided preliminary objection of the Tribunal.

22. This leaves *Heegsma*, which is an ONCA decision that invokes vertical stare decisis but only when the facts are the similar or same, and lower courts are required to adhere to the decisions, factually similar or the same, pursuant to the principle of vertical *stare decisis*. However, when comparing the likes of the ONCA authority cited by the Applicant in *ME v. Ontario*, which involved a self-

of action and add parties albeit unequivocally misguided in her otherwise ludicrous causes of action (albeit the refusal to add a cause of action against the same parties in the style of cause or by way of refusing to add a party are final decisions and final orders), Heegsma involved the appeal by a proposed intervenor (OHRC) to be granted leave to intervene in the underlying proceeding before the ONSC. The legal test to be applied for a proposed intervenor under the Civil Rules (Ruel 13.02) is entirely distinct (not 'one and the same') from the legal tests to be applied under section 5 of the *SPPA*, the Insurance Act (sections on the requirement that the Tribunal conduct and decide all matters in accordance with SABS, with the precedential statement of law of The Honourable Mr. Justice Akazaki, a brother of all of those other 93 ONSC court justices in the Toronto region, who found in *Zurich v. Chubb 2024* that a breach of Reg 283 is equivalent to a breach of SABS and vice-versa), Reg 283, SABS, and Reg 664 (certain sections like the distinction between a First Party Insurer and a "First Insurer". *Heegsma* was a case that involved a litany of applicants against the City of Hamilton regarding the removal of their encampments, and whether the municipal by-laws (not to be confused with the language in section 5 of the *SPPA* of 'by law') were unconstitutional by alleging infringing their section 7 and 15 Charter rights. The OHRC's appeal was predicated upon two grounds, in that the motions judge, who was also the application judge, erred as follows: (i) misapprehended the law on intervention; and (ii) did not provide sufficient reasons. The ONCA dismissed the appeal summarily on account of want of jurisdiction at paragraph 6: "I would quash this appeal for want of jurisdiction. For the reasons that follow, I conclude that this court does not have jurisdiction to hear an appeal from the dismissal of a motion for leave to intervene as a friend of the court." Ergo, the Tribunal's reliance on Heegsma was misguided.

23. This does not mean that the Tribunal cannot bring a motion with further authorities at any time to seek to dismiss this *JRPA* Application on grounds of prematurity. However, it would have to take the steps this *JRPA* Applicant has and pay the requisite fees, and have the appropriate evidence before this Divisional Court along with, at the very least, complying with its forthwith statutory duties: section 10 of the *JRPA* and section 20 of the *SPPA*. The Tribunal, through its counsel who is employed by the SLASTO legal unit, cannot contemporaneously object to the *JRPA* Proceeding on grounds of prematurity, then seek to shield the Tribunal from judicial review by not having it comply with its statutory duties. A statutory body subject to judicial review cannot immunize itself or its process by arriving at decisions on considerations that are not revealed by the record it files with the court: paragraph 161 of *Payne* (ONCA). The Tribunal has done so on multiple levels: (i) it

standpoint, in the *SPPA* that govern its duties in governing LAT proceedings; (ii) failed to comply with the very statute that this *JRPA* Application was brought pursuant to; and (iii) failed to comply with the Civil Rules passed and amended in their current form by our Honourable Lieutenant Governor.

24. Mr. Boyce is his introductory letter to the Applicant, which enclosed the Tribunal's Notice of Appearance of November 27, 2024, imposed a discretionary non-legislative deadline of three to four weeks. On its most charitable reading, the Tribunal missed its deadline on the day (December 24, 2024) that the Applicant filed his requisition that requested and required the ONSC Divisional Court to issue the Form 68(B) pursuant to the mandatory language in the Civil Rules which was triggered by the Applicant's perfecting of his *JRPA* Application by payment for a filing that was nearly three times the amount of the *JRPA* Application itself.

25. To add insult to injury, the Tribunal did not formally oppose, but did not consent, to the relief in the Applicant's NOM #1 which was to be heard on January 30, 2025, or as soon as possible thereafter. The Tribunal had the opportunity to dispute whether the motion record for NOM #1 was incomplete and it did not.

26. The most logical explanation and inference, which is subject to the Applicant's evidence under oath albeit on belief as he cannot prove a negative, is that the Tribunal, which had represented to the Applicant in Spring 2024 that the reason he could not file documents for a two day period as his LAT file number was not recognized by that e-filing system was on account of "power outage", does not have the full and accurate record of proceeding. The Applicant has invited Mr. Boyce, for the Tribunal, to admit the same so the Applicant and remaining respondents can work together for the Court's benefit. No response has been provided but for more stonewalling, answers to questions that no one has asked, and a bevy of out of office responses from the Tribunal and respondent insurance companies.

27. The other logical possibility, which could be in combination with the primary logical inference, is that the Tribunal has not been able to amend its technological systems to change party name as per the order of Adjudicator Morissette, as she then was in June 2024, and it does not want to show the Applicant and the Court that "TDGIC", a non-party, remained at the respondent on its books, records and account for the "record of proceeding". There is evidence to support the same in that

TDGIC" in subsequent email correspondence post June 20, 2024.

28. It is trite that if the Tribunal does not have a full and accurate record of proceeding, it cannot argue prematurity. Moreover, it cannot argue the customary allowable positions for a statutory body on a judicial review or statutory appeal involving the history of the underlying proceeding when measured against the statutory and regulatory framework that the Tribunal operated under. Put another way, it is fatal to the Tribunal's involvement in this *JRPA* Proceeding.

29. While the Tribunal must be concerned about the rule of law and arriving at correct decisions when the rule of law is at issue and reasonable ones when it is not, it is unfortunately human nature (consciously or subconsciously) for those employed by the same employer as the very decision makers, whom they are also advise (see: *Shuttleworth*[6]), to wish to "stand up for them" and "fight for their personal well-being and repute in the public review or appellate processes". This issue will be addressed, as it relates to the merits of the *JRPA* Application, further in the Outline to the Compendium to be filed in the JSO filing portal, which has not had anywhere the same issues as that of the LAT e-filing portal, and then served on the remaining respondents.

Volume #1(B): Return to Rule 37.13

30. As "Judgment" means a decision that finally disposes of an Application on its merits, the interpretation of decision, finally, disposes, proper,

31. The word 'decision' is not defined but order includes "Order" includes a "Judgment". Orders are interpreted under Rule 59 of the Civil Rules. It is trite that the email relayed from the ONSC Div. Ct. staff to the Applicant and respondents was neither an order nor an endorsement.

32. "Dispose" means: to settle a matter finally: M-W dictionary.

33. "Proper" means: marked by suitability, rightness, or appropriateness: M-W Dictionary.

34. The word "suitable" is often thought of in the context of summary judgment or summary trial. Since there has not been any motion to convert this 'application' to an action, there is no issue as to the suitability for summary trial disposition in that judicial review proceedings are intended to be summary proceedings at first instance.

35. As this Divisional Court has correctly stated in its Judicial Review Guide, which is a 'practice direction', that judicial reviews are reviews on the record (of proceeding) and not a chance for inadmissible submissions, even implicitly, or adding evidence that was not before the initial decision maker. Moreover, our courts have found that the record of proceeding includes the documents filed, and properly served, before the administrative decision maker at the time of the decision and not thereafter (see: "Keeprite Standard" cited in

36. The leading case of our ONCA, which has been cited with approval thereafter, is that of CIBC Trust Corp where the ONCA found at paragraph eight: "Where both parties had had the opportunity to argue their positions fully, and all necessary evidence was before the motions judge, the court had authority to convert a motion for directions for a trial to a motion for judgment pursuant to Rule 37.13(2)(a)." The Applicant is on even strong footing as there could not be a motion for direction for trial as this *JRPA* Application is not a chance for document discovery of the Applicant, the First Insurer (TDHA), the Sole Underwriter (SNIC), or the non-party (TDGIC), or management of a complex piece of litigation. The Civil Rules are clear under Rule 68.05 as follows:

> Certificate of Perfection
>
> 68.05 (1) The applicant shall file with the application record a certificate of perfection,
>
> (a) stating that all the material required to be filed by the applicant for the hearing of the application has been filed; and
>
> (b) setting out, with respect to every party to the application and any other person entitled by statute or by an order under rule 13.03 (intervention) to be heard on the application,
>
> (i) the name, address and telephone number of the party's or other person's lawyer, or
>
> (ii) the name, address for service and telephone number of the party or other person, if acting in person. O. Reg. 260/05, s. 15; O. Reg. 248/21, s. 13.
>
> (2) When the certificate of perfection has been filed, the registrar shall place the application on a list for hearing and give notice of listing for hearing (Form 68B) by mail to the parties and the other persons named in the certificate of perfection. R.R.O. 1990, Reg. 194, r. 68.05 (2)."

37. Like the filings for this NOM #2, where a fee is required to be paid as opposed to documents that may be filed urgently by email like the Applicant and respondents have done (albeit on a few occasions), the initial filing and service is made through email and then consummated,

of the certificate of perfection which was not done 'with the Application Record' but rather done the day after his filing of the Application Record (which was filed via email) albeit through the JSO Portal with the prescribed fee.

38. The drafters of the Civil Rules were unequivocal in their choice of diction that the Applicant cannot be precluded from filing his certificate of perfection because a Tribunal has failed to file the record of proceeding. Put another way, what is required by the Applicant to be filed by him, she or it, is not what is required to be filed by the Tribunal pursuant to two statutory sections.

39. As the Toronto region of the Divisional Court sits every week in January and February, it is unclear why Rule 68.05(2) was not strictly followed.

40. If it had been, then the Applicant would have been able to requisition one of the hearing dates based on the approximate time in the Form 68(B) and this motion would likely have been rendered superfluous but for the relief sought in relation to Madam Justice Shore and her non-endorsement and non-order of January 7, 2025.

Volume #2: Orders Sought

Orders #1 and #3: Disqualification of Shore J. or her recusal

41. With that segue, the Applicant seeks the relief in his NOM #2 made within 14 days of February 14, 2025. NOM #2 seeks two orders relating to the involvement of Madam Justice Shore in this *JRPA* Proceeding which are: (i) restraining her from any involvement in this NOM #2; and (ii) permanently disqualifying her from any involvement in this *JRPA* Proceeding and any future proceedings involving the Applicant and any of the respondent insurance companies. The Applicant relies on his affidavit #3 (Jan. 8, 2025), his COI Recusal Submissions (Jan 16, 2025), affidavit #7 (Jan 24, 2025) and affidavit #8 (Jan 27, 2025).

the orders are legally based upon the requirement of independence embedded in our constitution pursuant to the Constitution Act that judges must be entirely independent.

43. Vital to the Canadian system is the impartiality of a judge. This is different than the system in the United States. In Canada, judicial independence is viewed as vital to fostering public confidence in the fairness and objectivity of the justice system. The Supreme Court of Canada has described judicial independence as "the cornerstone, a necessary prerequisite for judicial impartiality." (as per Madam Justice Shore, when she was a lawyer at the very law firm which represented Mr. Andrew P. during his matrimonial litigation with the sole individual named insured person in the Insured Policy, cited by VCM at paragraph 27 of the VCM Reasons, who was the Spouse of the Applicant at all material times).

44. The Applicant raised his concerns about the fairness and objectivity if Madam Justice Shore was handling any aspect of the Applicant's *JRPA* Application. He did so within a day of receipt of the same: Applicant's Affidavit #3.

The Constitution of Canada

45. Section 52(2) of 'The Constitution of Canada' includes: the *Canada Act 1982*, including this Act; the Acts and orders referred to in the schedule; and any amendment to any Act or order referred to in paragraph (a) or (b).

46. Section 52(1) states that "The Constitution of Canada is the supreme law of Canada, and any law that is inconsistent with the provisions of the Constitution is, to the extent of the inconsistency, of no force or effect" (the "**Supremacy Clause**"). As cited countless scholars like Mr. Peter Hogg, where a party relies on a law (statute or regulation) that is inconsistent with the Charter and it is struck down, said party loses the legal bases for their case.

47. At this stage, the Supremacy Clause has importance as follows. Section 52(1) recognizes the primacy of the Constitution.

consistent with the Constitution and to invalidate or treat as invalid a law to the extent of its inconsistency with the Constitution (*Mossop v. Canada*, [1993] 1 S.C.R. 554 at page 582; *Nova Scotia (Workers Compensation Board) v. Martin*, [2003] 2 S.C.R. 504 ["*Martin*"] at paragraph 28). Courts may not apply invalid laws, and the same obligation applies to every level and branch of government, including the administrative organs of the state (see: paragraph 28 of Martin).

49. The Licence Appeal Tribunal is an administrative body, exclusively adjudicative in nature and self-touted as quasi-judicial, and has the power and duties to decide all questions of fact and law before it: *LATA* section 3. VCM failed to do so in relation Orders #1, #2, #4 and #5.

50. There is no challenge in the *JRPA* Proceeding to the constitutionality of any statute, regulation or rule. Rather, the judicial review challenges the incorrectness of the final orders and decisions of Vice Chair Morrisette in relation to the five final orders and the decisions in relation to the Applicant's NOM #14 and #15. Those five final orders, either decided or not decided at all, that the Applicant sought in NOM #14 and #15 are contained in the Draft Order (January 31, 2025) which were and are:

a. ***Order #1***:
    i. An Order, Declaration, determination and/or finding that TD Home And Auto Insurance Company, FSRA registration number 1063 ("**TDHA**" or "**TDHAIC**") was the **First Insurer** to receive, pursuant to *Reg 283*, the Appellant's fax delivered **Completed Application** (see: *Reg 283*, s 0. 1) to the fax number, provided to him by SNIC as a return address [sic] for SNIC, of 416-774-3120 (the "**416 Fax Number**") on October 13, 2022 [the "First Insurer Order"];

b. ***Order #2***:
    i. An Order, Declaration, determination or finding the physical address, which is apparently denoted as a branch office of **SNIC** in **HCAI**, municipally known as 304 The East Mall, Floor 6, Etobicoke, Toronto, Ontario, M9B 6B7 (the "**Etobicoke East Mall Address**") was or is an address or branch office of **TDHA** and not **SNIC** [the "HCAI Office Order"]

i. An Order adding **TDHA** as a respondent party to this LAT proceeding therein [the "**TDHA Party Addition Order**" and "**TDHA Cause Of Action Order**"]; and

d. ***Order #4***:

i. An Order requiring **TDHA**, should it wish to oppose the relief sought in the **Appellant's Appeal**, file and serve a **Response** to the **Appellant's Appeal** within 14 days of the date of the orders herein;

Order #3 that the Applicant sought in **NOM #15**:

a. "Order #5": A preliminary finding, determination, or order, that the fax number 416-774-3120 was a landline phone number utilized as a fax number on the 4th floor of the building situated at the premises municipally known as 3650 Victoria Park Avenue, North York, Toronto, Ontario, M2H 3P7.

51. Despite filing and serving a reconsideration motion in the LAT Proceeding on the three respondent insurance companies and then filing the same with the Tribunal, Vice Chair Lake in mid October 2024 found that the *LAT rule* (the reconsideration rule that was amended in August 2023) did not authorize her to overturn the VCM Decision

52. Section 52(2) is related to the Supremacy Clause.

53. Unwritten constitutional principles identified by the Supreme Court include federalism, democracy, constitutionalism and the rule of law, respect for minorities the separation of powers and the independence of the judiciary and the sovereignty of Parliament (*Babcock v. Canada (Attorney General)*, [2002] 3 S.C.R. 3), among others.

54. A notable example of the capacity of unwritten principles to supplement Charter protections arises in respect of judicial independence. Sections 96 to 100 of the *Constitution Act, 1867* protect the independence of judges of the superior courts like the ONSC Divisional Court.

55. The SCC has found that the unwritten principle of the independence of the judiciary extends to all courts in Canada. The SCC relied directly on the unwritten principle of judicial independence,

with a panel of retired judges was unconstitutional (*Mackin v. New Brunswick (Minister of Finance)*, [2002] 1 S.C.R. 405). While continuing to recognize the applicability of the principle of judicial independence, the Supreme Court found that it was not limited by legislation that strengthened the required qualifications and independence of justices of the peace (*Ell v. Alberta*, [2003] 1 S.C.R. 857).

VOLUME #3: Why the ONSC Divisional Court has the first say at first instance and why the Shore J. compulsory requirement must be nullified

56. The Supreme Court has rejected the argument that the independence of administrative tribunals is protected by the constitutional principle of judicial independence (*Ocean Port Hotel Ltd. v. British Columbia (General Manager, Liquor Control and Licensing Branch*), [2001] 2 S.C.R. 781.

57. However, the Applicant's reliance in his affidavit #3 on the SCC case therein bolsters his relief sought that invalidates or nullifies the Shore J. compulsory requirement to attend a case conference before her.

58. The only authority not cited by the Applicant in his COI Recusal Submissions, which are appended to the NOM #2, was that of *GWL Properties*. He provided notice of the same to the respondents by way of email correspondence which was copied to the Divisional Court (see: Appendix #1).

VOLUME # #4: Issues, Law and Argument

VOLUME # #4(A): Issues

59. The Applicant frames the general legal issues as follows:

a. **Issue #1**: by virtue of Mr. Andrew P. being a client of Epstein Cole LLP while Madam Justice Shore was a partner at said law firm, would a reasonable person, viewing the matter objectively, perceive that there could be the appearance of a lack of independence between Madam Justice Shore and the respondent insurance companies and/or a reasonable apprehension of bias or conflict of interest?
    i. If so, what remedies must be granted?

for Judgment?

VOLUME #4(B): Law

VOLUME ##4(B)(I): Motions

60. In Ontario, legal proceedings may be commenced by way of an Action or an Application ('Notice of Application') pursuant to Rule 14.05. A "Notice of Application for Judicial Review" is one that is commenced pursuant to the statute of the *JRPA* (see: Rule 14.05(2)). A *JRPA* applicant must commence the *JRPA* application to the Divisional Court at first instance: ss. 6(1) of the *JRPA*. This *JRPA* Applicant did so on November 15, 2024.

VOLUME #4(B)(I): Converting A Motion into a Motion for Judgment

61. Rule 37.13(2)(a) has been cited directly or by being a prescribed companion to the inherent jurisdiction of the court: *Stickel v. Unum Provident Corporation*, 2009 CanLII 63588 (ON SC) at paragraph 4.

62. "**Judgment**", again, is: means a decision that **finally disposes** of an application….on its merits and includes a judgment entered in consequence of the default of a party.

63. "Default judgments" only apply to trials. There cannot be a trial in a proceeding before the Tribunal and there cannot be a trial herein unless there was a motion to convert this *JRPA* Application to an Action. No such motion has been brought or even the intention by the Applicant or Respondent to do so. Judicial review proceedings are intended to be summary proceedings wherein preliminary motions are discouraged. Case conferences are permissive and not mandatory before the Divisional Court.

64. The filing of a "Notice of Appearance" allows a respondent to be heard at the hearing before the presiding judge: Rule 38.07(2)(d).

a trial. Herein, a motion is to be heard in writing on February 14, 2025. Ergo, the AGO would need leave to be heard even though it [he in The Honourable Mr. Downey] had the legal right to be heard pursuant to section 9(4) of the *JRPA*. However, that right is curtailed when the AGO, by right, does not file a Notice of Appearance. Ms. Im, quite rightly, has confirmed the AGO would not even participate or need to be heard in the hearing of the *JRPA* Application.

66. Therefore, there are two counsel that remains for the Tribunal and the respondent insurance companies (TDHA and SNIC) who have filed Notices of Appearances on behalf their clients. The Tribunal has filed the required information to the court pursuant the Divisional Court Practice Direction but Mr. Nieuwland's clients have not or even responded to the query of whether they will.

67. This is consistent with their non-participation in NOM #14 and #15 (along with NOM #13 but that was directed at Mr. Nieuwland's initial fictious respondent client in TDGIC). The hearing of the *JRPA* Application is not an opportunity for new arguments to be made, or arguments at first instance for SNIC and TDHA, by the respondents.

68. The Tribunal is prohibited from arguing the merits on the *JRPA* Application.

69. The Tribunal and the respondent insurance companies have but one goal: drag, stall and delay. They have no interest in facing the merits. The Tribunal has no interest in complying with section 10 of the *JRPA*. Mr. Boyce has created fictional assumptions and timelines for when the Tribunal is required to file the record of proceeding. Even on his own fictional, self-created and non-legal timelines, the Tribunal has not complied with them.

70. The conduct of the respondents has been most inconsistent with the Civil Rules and their purpose, spirit, pith and substance, and "General Principle" (see: Rule 1.04(1): 1.04 (1) These rules shall be liberally construed to secure the just, most expeditious and least expensive determination of every civil proceeding on its merits. R.R.O. 1990, Reg. 194, r. 1.04 (1).

71. "Secure" means guarantee.

72. "Just" means fair or equitable.

74. Enactment interpretation is most similar to statutory interpretation. The law is always speaking.

75. In 2006, the Legislature amended a variety of statutes and passed the *Legislation Act, 2006*, pursuant to the omnibus bill known as the *Access To Justice Act, 2006*.

76. A statute is an "Act" like the Insurance Act, *SPPA, JRPA, CJA* et al. A "regulation", which uses the word 'prescribed' to self-denote itself or requirement under a regulation, is "regulation" means a regulation, rule, order or by-law of a legislative nature made or approved under an Act of the Legislature by the Lieutenant Governor in Council, a minister of the Crown, an official of the government or a board or commission all the members of which are appointed by the Lieutenant Governor in Council, but does not include a "by-law" or an order of the Ontario Land Tribunal. Examples of a "regulation" like Reg 283, SABS, Reg 664, and the Rules of Civil Procedure.

77. Every regulation shall be filed with the Registrar, except as provided in sections 19 to 21. 2006, c. 21: section 18 of the *Legislation Act*.

78. Statutes and regulations are both considered "legislation": *Legislation Act*, ss. 1(1).

79. "Legislation" are both consider "source law": *Legislation Act*, ss. 1(1).

80. Where a regulation is made that is inconsistent with its governing enactment it is said to be ultra vires or void *ab initio* as it was without authority to be made at first instance.

81. Judicial notice shall be taken of the enactment and contents of an Act: section 13(1).

82. Judicial notice shall be taken of the making, approval where required, filing, contents and publication of a regulation that is published on the e-Laws website or in *The Ontario Gazette*: section 29 of the *Legislation Act*.

VOLUME #4(C): Legislation Act, Part VI (sections 46 to 97)

intention appears or its application would give to a term or provision a meaning that is inconsistent with the context (see: section 47).

84. Ergo, the words "intention" and "context" have great import to this Motion #2.

VOLUME #4(C)(I): General Rules of Construction: section 63 to 68 of Leg. Act.

85. The law is always speaking, and the present tense shall be applied to circumstances as they arise: s. 63.

86. An Act shall be interpreted as being remedial and shall be given such fair, large and liberal interpretation as best ensures the attainment of its objects: section 64(1). The same liberal, fair, large and remedial interpretation is required with regulations: section 64(2).

87. As "ensure" means guarantee, the relevant analysis is what are the objects of an Act or regulation.

88. "Remedial" means "intended as a remedy". "Remedy" means:

89. Words in the singular include the plural and words in the plural include the singular: section 67 of the Leg. Act.

VOLUME #4(C)(II): Appointments, Powers and Delegation (section 76 to 81)

90. If power to do or to enforce the doing of a thing is conferred on a person, all necessary incidental powers are included: section 78 of the *Legislation Act*.

VOLUME #4(C)(III): When a "may" becomes a must

91. Powers that are conferred on a person may be exercised, and duties that are imposed on a person shall be performed, whenever the occasion requires: section 79 of the *Legislation Act*.

VOLUME #4(C)(IV): Definitions under the *Legislation Act*

92. If a term is defined, other forms of the same term have corresponding meanings: section 85 of the *Legislation Act*. Terms used in regulations have the same meaning as in the Act under whose authority they are made: section 86 of the *Legislation Act*. The following definitions are applicable:
    a. "Act" means an Act of the Legislature, and "statute" has the same meaning: section 87 of the Leg. Act.
    b. "regulation" means a regulation that is filed under Part III (Regulations)
    c. "Divisional Court" means the Divisional Court of the Superior Court of Justice:
    d. "individual" means a natural person:
    e. "person" includes a corporation;
    f. "Rules of court" means rules made under Part IV of the Courts of Justice Act, or otherwise by an authority having power to make rules regulating court practices and procedures.

VOLUME #4(C)(V): Computation of time

93. Time limits that would otherwise expire on a holiday are extended to include the next day that is not a holiday: section 89 of the *Legislation Act*.

VOLUME #4(C)(VI): Corporations

94. A provision of an Act that creates a corporation: gives it power to have perpetual succession, to sue and be sued and to contract by its corporate name, to have a seal and to change it, and to acquire, hold and dispose of personal property for the purposes for which the corporation is incorporated, gives a majority of the members of the corporation power to bind the others by their acts, exempts the members of the corporation from personal liability for its debts, acts and obligations, if they do not contravene the Act that incorporates them.

95. A requirement that a person take an oath or be sworn is satisfied by an affirmation or a declaration: section 95 of the *Legislation Act*.

VOLUME #4(D): Courts of Justice Act

96. "Application" means a civil proceeding that is commenced by notice of application or by application. "motion" means a motion in a proceeding or an intended proceeding. "order" includes a judgment or decree: section 1 of the *CJA*.

97. Since 1996, the ONSC (Gen. Div.) was continued under the name of the ONSC: section 11(1) of the *CJA*. The ONSC all the jurisdiction, power and authority historically exercised by courts of common law and equity in England and Ontario: section 11(2) of the *CJA*.

98. Since 1990, the branch of the Superior Court of Justice known as the Divisional Court is continued under the name Divisional Court in English and Cour divisionnaire in French: section 18(1) of *CJA*.

99. Every judge of the Superior Court of Justice is also a judge of the Divisional Court: section 18(3) of the *CJA*.

100. While the *JRPA* Application is not an "appeal" of a justice or under *LATA* the principle under section 19(4) of the *CJA* is: No appeal lies from an interlocutory order of a judge of the Superior Court of Justice made on an appeal from an interlocutory order of the Ontario Court of Justice.

VOLUME #4(D)(I): Section 71 of *CJA*

101. The administration of the courts shall be carried on so as to: (a) maintain the independence of the judiciary as a separate branch of government; (b) recognize the respective roles and responsibilities of the Attorney General and the judiciary in the administration of justice; (c) encourage public access to the courts and public confidence in the administration of justice; (d) further the provision of high-quality services to the public; and (e) promote the efficient use of public resources.

102. The Attorney General, Ms. Im's client, who is not participating in this *JRPA* Proceeding despite section 9(4) of the *JRPA*, has a superintendent: Matters that are assigned by law to the judiciary, including authority to direct and supervise the sittings and the assignment of the judicial duties of the court (see: section 72 of the *CJA*).

103. Court officers and staff, including the Registrar, are appointed by the Deputy AGO (see: ss. 73(2) of the *CJA*) for administration purposes (see: Section 73(1) of the *CJA*: Registrars, sheriffs, court

necessary for the administration of the courts in Ontario may be appointed under Part III of the *Public Service of Ontario Act, 2006*. 2006, c. 21, Sched. A, s. 14; 2006, c. 35, Sched. C, s. 20 (3); 2015, c. 27, Sched. 1, s. 1 (10)

VOLUME #4(D)(I): Direction of Court Staff

104. In matters that are assigned by law to the judiciary, registrars, court clerks, court reporters, interpreters and other court staff shall act at the direction of the chief justice of the court: section 76 of the *CJA*.

VOLUME #4(D)(II): Part VI: Judges and Officers

105. The following persons have the same immunity from liability as judges of the Superior Court of Justice: 1. Judges of all courts in Ontario, including judges presiding in the Small Claims Court and deputy judges of that court. 2. Masters. 3. Associate judges: section 82 of the *CJA*.

VOLUME #4(D)(III): Part VII: Court Proceedings

106. This Part applies to civil proceedings in courts of Ontario: section 95 of the *CJA*.

107. Where a rule of equity conflicts with a rule of the common law, the rule of equity prevails: section 96(2) of the *CJA*.

108. Only the Court of Appeal and the Superior Court of Justice, exclusive of the Small Claims Court, may grant equitable relief, unless otherwise provided: section 96(3) of the *CJA*.

109. The Court of Appeal and the Superior Court of Justice, exclusive of the Small Claims Court, may make binding declarations of right, whether or not any consequential relief is or could be claimed: section 97 of the *CJA*.

a receiver or receiver and manager may be appointed by an interlocutory order, where it appears to a judge of the court to be just or convenient to do so: section 101 of the *CJA*.

111. Subject to the provisions of an Act or rules of court, the costs of and incidental to a proceeding or a step in a proceeding are in the discretion of the court, and the court may determine by whom and to what extent the costs shall be paid: section 131 of the *CJA*.

VOLUME #4(E): Judicial Review Procedure Act

112. "Application for judicial review" means an application under subsection 2 (1)."Court" means the Superior Court of Justice: section 1 of the *JRPA*. The court may, despite any right of appeal, by order grant any relief that the applicant would be entitled to in any one or more of the following: Proceedings by way of application for an order in the nature of mandamus, prohibition or certiorari: section 2(1) of the *JRPA*.

VOLUME #4(E)(I): Error of law

113. The power of the court to set aside a decision for error of law on the *face* of the record on an application for an order in the nature of certiorari is extended so as to apply on an application for judicial review in relation to any decision made in the exercise of any statutory power of decision to the extent it is not limited or precluded by the Act conferring such power of decision: section 2(2) of the *JRPA*.

VOLUME #4(E)(II): Lack of Evidence

114. Where the findings of fact of a tribunal made in the exercise of a statutory power of decision are required by any statute or law to be based exclusively on *evidence admissible* before it and on facts of which it may take notice and there is no such evidence and there are no such facts to support findings of fact made by the tribunal in making a decision in the exercise of such power, the court may set aside the decision on an application for judicial review: section 2(3) of the *JRPA*.

115. This subsection of the *JRPA* distinguishes it from the *LATA* ss. 11.

applicable.

VOLUME #4(E)(III): JRPA Power to Set Aside

117. Where the applicant on an application for judicial review is entitled to a judgment declaring that a decision made in the exercise of a statutory power of decision is unauthorized or otherwise invalid, the court may, in the place of such declaration, set aside the decision: section 2(4) of the *JRPA*.

VOLUME #4(E)(IV): JRPA: Summary Disposition of

118. Relief seeking mandamus, certiorari or prohibition shall be disposed of in a summary manner: section 7 and section 8 of the *JRPA*.

VOLUME #4(F): Rules of Civil Procedure

119. These rules apply to all civil proceedings in the Court of Appeal and in the Superior Court of Justice: Rule 1.02:

a. "application" means a proceeding commenced by notice of application.
b. "deliver" means serve and file with proof of service, and "delivery" has a corresponding meaning. The word "exchange" has no legal meaning under the Civil Rules.
c. "document" includes data and information in electronic form.
d. "Materials" appear under the Civil Rules but without a definition per se. As such, the "exchange of materials" referenced by Shore J. have no legal meaning and would require clarification in the event motions #1 and #2 are not granted in full.
e. "factum" includes a book of authorities, if one is required by rule 4.06.1
f. "hearing" means the hearing of an application, motion, reference, appeal or assessment of costs, or a trial.
g. "judge" means a judge of the court but does not include an associate judge;
h. "judgment" means a decision that finally disposes of an application or action on its merits and includes a judgment entered in consequence of the default of a party. Hence, the motion to convert the motion in writing into a motion for judgment – at least in part.
i. "motion" means a motion in a proceeding or an intended proceeding.
j. "moving party" means a person who makes a motion;

l. The notice of application for judicial review is an originating process (see: Rule 1.02).
m. "person" includes a party to a proceeding
n. "proceeding" means an action or application;
o. "proceeding" means an action or application
p. "order" includes a judgment.

120. Rule 59 and the interpretative jurisprudence denotes the likes of non-endorsement and non-orders relayed in email by Shore J. are not orders or endorsements per se.

121. "Respondents" and "parties", with "party" curiously not being defined per se, are not 'one and the same'. Different respondents are, tritely speaking, not 'one and the same'. However, a respondent at which a motion is made becomes a "responding party" for purposes of that motion. With respect to NOM #1, the "responding party" is the Tribunal. With respect to NOM #2, the "respondent parties" are SNIC and TDHA, and the Tribunal.

122. These rules shall be liberally construed to secure the just, most expeditious and least expensive determination of every civil proceeding on its merits: Rule 1.04.

123. "Orders" and "directions" are not 'one and the same'. In applying these rules, the court shall make orders and give directions that are proportionate to the importance and complexity of the issues, and to the amount involved, in the proceeding: R. 1.04(1.1).

124. Where there is a lacuna in the Civil Rules, they shall be applied by analogy: R. 1.04(2). The Court has the power to impose any terms and conditions that are just: R. 1.05.

125. The forms prescribed by these rules shall be used where applicable and with such variations as the circumstances require: R. 1.06. The Applicant has used all of the correct forms, the respondents, who files NOAs, utilizes the correct "Notices of Appearances". The Applicant still awaits a copy of the Form 68(B) from the Divisional Court as he satisfied the condition precedent for all parties to receive the same via mail, which was his filing, serving and paying for the Certificate of Perfection.

VOLUME #4(F)(I): Rules of Civil Procedure Practice Directions are subject to the Civil Rules

126. "Practice direction" means a direction, notice, guide or similar publication for the purpose of governing, subject to these rules, the practice for proceedings. The Divisional Court has two relevant practice direction: (i) one which is stylized as a "Practice Direction", effective June 15, 2023; and (ii) the other which is stylized as the "Divisional Court Judicial Review Guide".

127. The Applicant completed the "intake form" promptly after filing, serving and paying for his *JRPA* Application: section 2.

VOLUME #4(F)(II): Litigation efficiency

128. The general principle is: convert the motion before him to a motion for judgment "as the best way to achieve the most just, most expeditious, and least expensive result", in accordance with r. 37.13(2)(a) of the *Rules of Civil Procedure*: paragraph 39 of *Donovan v. Waterloo (Police Services Board),* 2022 ONCA 199.

VOLUME #4(F)(IV): Judicial Reviews are Summary Proceedings

129. Even more forcefully, Applications for judicial review are intended to be summary proceedings, and preliminary motions add greatly to the cost and time required to deal with such matters and are therefore to be **discouraged**.[7] However, where a Tribunal is in egregious breach of its statutory obligations under the very statute in which the proceeding arises, this *JRPA* Applicant had to take active steps.

130. This is particularly apposite when the respondents, particularly those that had filed NOAs, do not have an order dispensing with the need for a factum and application record. More pointedly, nor could they because Rule 38.09 does not apply to "applications" before the Divisional Court: Rule 38.01.

131. Ergo, the respondents were governed by Rule 68.04(4) which states, " The respondent shall deliver an application record and a factum within thirty days after service of the applicant's application record and factum."

Housing Corporation wherein a Mr. Hiamey failed to comply with the requirement of filing and paying for a certificate of perfection. The only indication in said case was that Mr. Hiamey had filed a "judicial review application" in December 2015 and did not perfect his materials with factum and application record until April 2016. The justice, with due respect, appears, at first blush, to have erred in his interpretation of time unless the judicial review application was combined with a factum and application record. It appears, on second blush, that the justice did not err because the issue with Mr. Hiamey was that he had not complied with the binding requirements for an application record and factum and had "stapled them" (see: paragraph 16 of Hiamey).

133. The distinctions between this *JRPA* Proceeding and Hiamey are enormous by recitation of the facts above. The respondents knew exactly what they had to respond to from the *JRPA* Application and most certainly upon receipt of the factum. The Applicant uses the word "factum" as the "application record" was known to the respondent insurance companies and certainly known to the Tribunal. By analogy, like a party may not rest on allegations in its pleadings on a motion for summary judgment, the same applies to motions before tribunals on points of law that are dispositive of whom is the "First Insurer" out of two or more insurance companies. The party must "put its best foot forward" or "lead trumps or risk losing".[8] The principle is applicable herein to the NOM #14 and #15 being summary type hearings and this ***JRPA Proceeding***.

VOLUME #5: Conclusion and Orders Sought

134. Like the English common law found in 1880 in *Julius v. Lord Bishop of Oxford* ((1880) 5 A.C. 214 at 243): Lord Blackburn) cited by our SCC in *Information* ***Commissioner*** *v. Minister of Employment and Immigration* (respondent), 1986 CanLII 6836, where there is a right of a decision maker coupled with a duty, the "may becomes a must". For direction quotation, the Applicant tenders the following from the aforementioned authority:

> "While this language is permissive in form, it imposed, in my opinion, a duty upon the Board to exercise this power **when called upon** to do so by a party interested and having the right ***to make the application*** (Drysdale v. Dominion Coal Company ((1904) 34 Can. S.C.R. 328 at 336): Killam J.). Enabling words are **always compulsory** where they are words to **effectuate**

Lord Blackburn).

135. The Applicant has provided further detail and analysis of how our SCC has approved *Julius v. Lord Bishop Of Oxford* when interpreting its powers under statute and regulations[9].

136. Without any castigation of Madam Justice Shore, as clients of one's current or former law firm can cause issues such as these, she must disqualified as there is a reasonable apprehension of bias for her to engage in any further involvement in this JRPA Proceeding or any future proceeding involving the Applicant and any of the respondent insurance companies. Mr. Papadimitropoulos changing of his employer or business name from "TD Insurance" to "The Toronto-Dominion Bank" whilst changing his address from Markham to Toronto, but only after the Applicant's affidavit material filed herein regarding the same, only further bolsters the relief sought by the Applicant. Her compulsory requirement for the parties to attend for a case conference must be invalidated and nullified solely on grounds of a reasonably perceived conflict of interest.

137. Mr. Nieuwland and Mr. Boyce officers of the court, at common law and by section 29 of the LSA: 29 (1) Every person who is licensed to practise law in Ontario as a barrister and solicitor is an officer of every court of record in Ontario. 2006, c. 21, Sched. C, s. 26. There are six cases cited under this section that was passed in 2006 which was by way of the Access To Justice Act, 2006. Paralegals are not officers of the court[10] whereas lawyer licensees are: *Gobin v. Sheriff of the Regional Municipality of Durham*, 2018 ONSC 1255 as per Justice Salmers. Black's Law Dictionary, 8th ed., defines "officer of the court" as "a person who is charged with upholding the law and administering the judicial system." (see: *Nixon v. The King*, 2023 TCC 124 at paragraph 6, cited at note 3). Every barrister and solicitor licensed to practise law in Ontario is an officer of the court: s. 29 of the Act. Further, by operation of s. 33, every advocate practising law in Ontario is prohibited from engaging in professional misconduct or conduct unbecoming a licensee (see: at paragraph 9 of *Groia* (2016 at the ONCA).

138. Only time will tell if they discharge their obligations to this court (distinct from that of obligations to a tribunal as there is no analogous term of "officers of the tribunal) and their professional obligations.

Applicant's relief involving Madam Justice Shore (if not rendered moot by a decision on said date) and for entitled "factum for a motion in writing" seeking relief to convert the JRPA Application into a motion for Judgment:

Mr. Kevin A. McLean (B.A. J.D., CIM)
Self-represented, the Applicant herein

APPENDICES OF THE JRPA APPLICANT'S FACTUM

disqualification of Madam Justice Shore

Mr. Kevin McLean <**mcleansettlement@gmail.com**> Jan 24, 2025, 1:40 PM (8 days ago)

to SCJ-CSJ, Milene, Connor, Judie, Heather, Isibhakhomen, Div, Matthew, christiana.ortiz@tdinsurance.com, Jesse, andr

January 9, 2025

URGENT FILING for Record of Proceeding: COI Recusal Request – Notice that COI Recusal Submissions and Recusal Request Record will be amended to include the case of

VIA EMAIL (see: scj-csj.divcourtmail@ontario.ca)

Regarding the below (pursuant to the Consolidated Practice Direction on sending emails and enclosing documents by the document naming protocol contained therein)

Court file number: Court File No. DC-24-00000718-00JR
Type of document: email with attachment of Affidavit #3
Short title of proceeding: McLean v. TDHA et al
Party: Mr. Kevin A. McLean, self-represented, Applicant, e: mcleansettlement@gmail.com;

Re #1:
TO:
ONSC Divisional Court (regional centre)
Kind attention: Chief Justice of the ONSC
Kind attention: Associate Chief Justice of the ONSC
Kind attention: Registrar

ONSC (Divisional Court) (copied to the respondents and Divisional Court Scheduling):

1. I write regarding the above.

2. In light of the comments made by Mr. Boyce yesterday and my initial response to them, I provide the case that I was referring to which is denoted: G.W.L. Properties Ltd. v. W.R. Grace & Co. of Canada Ltd., 1992 CanLII 934 (BCCA), <https://canlii.ca/t/1d9nh> ["GWL Properties" or "Bentall Properties"].

3. While GWL Properties is a case that predated the likes of Weykaum and others cited in my COI Recusal Request (formerly defined as the "Respectful Requests" and now defined as the "COI Recusal Request" which includes the relief sought in the COI Recusal Submissions (attached above)), there are some apropos legal principles and precedents contained in Chief Justice McEachern (as he then was) reasons from the bench in December 1992. Moreover, the unassailable corollaries, which will be fleshed out in amended COI Recusal Submissions, further support that the compulsory appearance for a case conference by Madam Justice Shore must be set aside on grounds, inter alia, of a reasonably perceived

As will be seen in the record of proceeding once filed by the Tribunal pursuant to its statutory obligations (see: section 10 of the *JRPA* and section 20 of the *SPPA*), Mr. Papadimtropoulos was not disqualified from any form of representation in the LAT Appeal.

4. To the extent that it is not, there will be clarification questions from myself regarding what is meant by the language therein. However, that would be premature.

5. GWL Properties was an asbestos case that was set for a six-month trial and naturally a very complex piece of litigation.

6. The matter came before the BCCA based on an application for leave to appeal interlocutory orders (see: paragraph 2) by the defendants/applicants which the Chief Justice referred to as "Grace" but I shall refer to as "Grace Ltd." The defendants requested that there was an appointment of a pre-trial management judge which was most understandable considering that there was a six-month trial to be conducted.

7. As the Chief Justice McEachern found in relation to a pre-trial management judge, "A pre-trial management judge is an indulgence offered by the court to the parties to assist them to manage complex litigation and to hear as many of the interlocutory applications as may be possible without counsel having to wait their turn in chambers. This obviously is a great advantage to all parties."

8. Unlike Madam Justice Shore, the pre-trial management judge in Bentall Properties had already heard a number of applications as found by CJBCSC McEachern, "In this case the Chief Justice of the Supreme Court appointed a pre-trial management judge and he has heard and decided a number of applications and he has made other decisions including, as I understand it, an order for a short adjournment to accommodate counsel for Grace, but he has made another order refusing a longer adjournment. As I have said, the trial is now set for May of 1993 and counsel for Grace assures me that this application is not intended in any way to assist Grace to obtain a further adjournment. I must, therefore, assume that the trial will proceed in May as scheduled."

9. It is a trite fact that Madam Justice Shore has not made any decisions let alone heard a single application. I raised my objection promptly after receiving the copied and pasted email from the ONSC Div. Ct. Registrar, and immediately made an affidavit that was email filed and served on the respondents (see: Affidavit #3).

10. Unlike my prompt and forthwith objection, the defendants or applicants for Grace Ltd. raised the objection for the first time on December 3, 1992, "On December 3, 1992, counsel for Grace informed me that he or his colleagues learned for the first time what I thought was common knowledge within the profession, that the pre-trial management judge has a brother who is associated with the plaintiff's solicitors Messrs. Lander Downs, which is a law firm having in the range of 100 or so lawyers." (see: paragraph 6). Ergo, the impugned conflict of interest was the pre-trial management judge had a brother that worked at the same law firm of what was then Ladner Downs, which later became Borden Ladner Gervais LLP ("BLG LLP").

11. The conflict of interest alleged herein is not "one and the same" herein and not a matter of public knowledge or common knowledge per se. It remains unclear to me how Madam Justice Shore was appointed, if at all, but I presume we can somehow chalk it up to "coincidence" for the time being.

12. The procedure, like herein, in the Bentall Properties case was initially dealt with in a confidential manner in chambers. The pre-trial management judge then requested submissions in open court of which

as he had been invited to do so by counsel for Grace Ltd. Chief Justice McEachern articulated the following for ease of reference at paragraph six:

"Counsel for Grace accordingly asked to see the pre-trial management judge in his chambers and invited him to withdraw from the pre-trial management of this case. The pre-trial management judge quite properly asked counsel to speak to the matter in open court which was done. I have read a transcript of those proceedings. The pre-trial management judge considered the matter and spoke to Chief Justice Esson as he had been invited to do by counsel for Grace.

(see: paragraph 6).

13. Chief Justice Esson then delivered a memorandum as follows (see: paragraph 7):

"After the matter was raised on Friday morning last, the pre-trial management judge discussed the matter with me. It was for other reasons a hectic day. Without giving the matter adequate thought, I expressed the view that we should apply an approach (it is not a rule or a principle) which we often apply where questions of possible grounds for disqualification arise, as they often do, in circumstances of urgency. That approach is to avoid the "hassle" of having a judge face suggestions of bias, however spurious, by simply shifting the case to another judge. That problematic approach is entirely reasonable if it can be applied without injustice to the parties or the public interest."

14. Herein, Mr. Boyce without tendering any responsive materials on behalf of the Tribunal has necessitated my covering all bases and ensuring that I have evinced a continuing intention to proceed with my COI Recusal Request of Madam Justice Shore from any activities including appearing before her as a case management judge.

15. In GWL Properties, the pre-trial management judge to decide to withdraw (see: "As a result the pre-trial management judge informed counsel that he would withdraw from the management of the case" (see: paragraph 8).

16. However, the "other parties", the plaintiffs, were not pleased with such a result which necessitated their bringing to the attention of Chief Justice Esson the prejudice that would be caused by the loss of the pre-trial management judge (see: supra, 'his decisions in a variety of applications at that stage'). Chief Justice Esson reversed course [emphasis added by me]:
"This is what Chief Justice Esson said about that in the memo he sent to counsel:

What I overlooked in my haste was that this is not such a case. If the pre-trial management judge does not continue as management judge, the value of his unique knowledge of the case resulting from the investment of time and effort which he has put into it will be entirely lost. That will prejudice the parties. Furthermore, it will damage the system and thus prejudice the public interest. Much judicial time, a scarce commodity at present, will be squandered. It must never be forgotten that the cost of providing judges, courthouses, and all the ancillary services falls upon the public. Those are some of the reflections, obvious enough to me now, which I overlooked on Friday last.

(see: paragraph 8).

17. The exact opposite is the case herein in that the only time lost will be that of a few sentence email. The time spent by myself and the court to hear this COI Recusal Request will be excessive but necessary if so required by the respondents opposing the same.

18. Unlike a trial, judicial review proceedings are intended to be summary proceedings. They do not require documentary discovery and are not a chance for the same. Herein, the Tribunal was required to file the record of proceedings forthwith. It has failed to do so and it is now subject to a motion returnable on January 30, 2025, before a motions judge of the ONSC Divisional Court with the preliminary order that any such delegation of a motions judge not be Madam Justice Shore or any other justice that was employed at Epstein Cole LLP or was a partner at said firm during the material times of which Mr. Papadimitropoulos first became a client of Epstein Cole LLP.

19. While it is emphasized in the COI Recusal Submissions (attached above) that there is no uniform or agreed procedure in Ontario for making the request that a justice recuse himself or herself, there is no order or endorsement herein so a motion is unlikely to be the preferred route. Put another way, Rule 59 of the Civil Rules relates to “orders”.

20. I again note that there is no requirement for a case conference to be conducted in the ONSC Div. Ct. as the permissive word “may” is used. However, I will not speculate as I have a pending motion and whatever transpires at that motion hearing may shape the discretion depending on the results of my COI Recusal Request.

21. For the potential record of request hearing [not motion hearing per se as there is no “order” or “endorsement”), I will amend my submissions to include much of the above and any noted up cases in Ontario. I have found eight but I am still reviewing the same.

22. I trust this assistance, by way of courtesy and full disclosure, and to not ambush the respondents in the event the COI Recusal Request. If the court can advise on when this needs to be heard (if at all) or when submissions from the respondents must occur, I would be most grateful.

23. Thank you.

Endnotes

[1]See: for example: Hoang v. Mann Engineering Ltd., 2015 ONCA 838 (CanLII), <https://canlii.ca/t/gmbkg>, at paragraph 1.
[2][62]The prematurity doctrine has no applicability. The Applicant may or may not obtain a remedy against a non-liable insurance company as a matter of the governing statute in *Insurance Act*, ss. 268(3) and the binding regulations in *Reg 283*, *SABS* and *Reg 664*. Judicial review is a discretionary remedy. However, in *Awada*[2], Corbett J. by setting out the legal principle or precedent that courts should not interfere with ongoing administrative proceedings until after they are completed *or* until effective remedies are exhausted. It is not that a claimant has exhausted remedies but effective remedies. "Effective" is synonymous with "actual, real, or operative". Any remedies against SNIC are ineffective, futile or useless. The ineffectiveness of any remedies, absent costs against SNIC in the LAT Proceeding, is further bolstered by the mature and stable jurisprudence that an order adding or dismissing a motion to add a party is a final order.

[3]Ms. Reilly's reply to the bias allegation a frightening one: "Reilly has told media her decisions in the insurance cases were fact-based and untainted by bias. She claims LAT disclosure procedures should be tightened up to prevent any appearance of bias." In effect, an experienced Vice Chair of the Tribunal's position is that the public should not known of a "conditional offer" of employment with an insurance company where she inevitably worked for a period thereafter (i.e. avoid these "disclosures" and have less transparency). The prejudice experienced by these injured person is denoted in a case like *Nagesu v Traders General Insurance Company*, 2024 CanLII 23453 (ON LAT) where Associate Chair had to cancel the decisions of former adjudicator Ms. Reilly. The position of Aviva is perhaps even more concerning: "Aviva Canada said it was unaware Reilly was involved in insurance cases for LAT after ***'the insurer'*** hired her." It is rather disingenuous or intentionally misleading considering it was a "conditional offer of employment" and, of course, Vice Chair Reilly could not be involved in insurance cases for LAT *after* the hiring.
Upon investigation by the LAT, it was, in fact, only four decisions wherein Vice Chair Reilly had issued decisions after her acceptance of an offer of conditional employment. Mr. Boyce, counsel to the Tribunal herein and a former Vice Chair of the Tribunal with the same employer or payor of his wages (see: Appendix #2), "batted a better record" for the **TDHA** and SNIC as his time as a Vice Chair. Involving SNIC and **TDHA**, they were 14-0-1 when Vice Chair Boyce, as he then was, was the decision maker (see: **Appendix #3**). *Is this Mr. Boyce's 'cooling off period' before joining the likes of Mr. Nieuwland as counsel at TD Insurance Staff Legal? Is this why Mr. Nieuwland and his clients have remained silent? Is Mr. Boyce seeking to, in good faith, raise prematurity or is this a circuitous route for him to defend the advice he provided to the Tribunal before the* ***VCM*** *Decision was issued?* The optics are not pleasant to the eyes or ears. The rule of law requires the ONSC, by a single justice, to intervene judicially to immediately put an end to the real unfairness to not only this *JRPA* Applicant but others similarly situated. It must be forcefully noted that of the 13 tribunals in Tribunals Ontario, the Licence Appeal Tribunal is the one tribunal funded by the insurance industry. This Tribunal must earn back the respect of the public and not be seen on any level to be siding with the insurance company giants whether at first instance or by counsel who are former adjudicators with unfettered mobility.
[4]"***OLTA Pushes for Urgent LAT Review***"

(see: The Applicant quotes: "The association cited "disturbing trends" drawn from an inHEALTH analysis". OTLA noted that the success rate for insured applicants bringing their disputes to LAT has *fallen over the years*, with just 10% getting a win in 2023 compared to 2017's 33%. "Our members have voiced concerns that the LAT's process is overly rigid, is fraught with procedural unfairness, and fails to accommodate requests, even when both parties agree. This also raises important questions about the qualifications and training of LAT adjudicators," Purewal said. "The LAT is an arm of our justice system. Injured Ontario citizens should feel confident that they are getting a fair hearing, and that justice is being done. Unfortunately, with the recent declining trends in success rates for applicants and the overwhelming success of insurers is raising significant questions for our membership
[5]By-Law #8, section 4, states the following in relation to a "notice of change"

Notice of change
4. (1) A licensee shall file with the Society a notice of change for every change in any of the following information, previously provided by the licensee to the Society either before or after the coming into force of this section:

1. The licensee's legal and assumed names.
2. The licensee's personal contact information.
3. The licensee's business contact information.
4. Information with respect to whether the licensee is practising law or providing legal services.

Mr. Boyce removed his "assumed name". Mr. Boyce did not have any "personal contact information" so that subsection of By-Law #8 is irrelevant.
His employer or business contact information was removed but not changed per se. There does not appear to be any grounds whatsoever to remove the "business name" or "employer name" from the LSO directory through the LSO Portal.
Inexplicably and without reference to the very "business" or "employer", Mr. Boyce' status remained the same as he is still "practising law – employed". Thankfully, affidavit #2 in the Divisional Court record provided the exact particulars of Mr. Boyce's business or employer name, address, and phone number therein. As such, the issue of whether Mr. Boyce, as the agent (lawyer licensee representative) of the Tribunal can advance arguments in an impartial manner for the quasi-judicial LAT is at issue.

[6]Mary Shuttleworth v. Licence Appeal Tribunal, 2018 ONSC 3790 as per **THORBURN, MCKELVEY and MYERS JJ**
[7]*David Bull Laboratories (Canada) Inc. v. Pharmacia Inc*., 1994 CanLII 3529 (FCA) (F.C.A.); *Rosianu v. Western Logistics Inc*., 2021 FCA 241 at paras. 23, 27-30.
[8] (*Caplan v. Atas*, 2021 ONSC 670, the Honourable Justice DL Corbett paragraph 106).
[9]"On July 13, 1984 the respondent informed the complainant that the information which he sought could not be obtained under the *Access to Information Act* because it was **Personal Information** about another person. A complaint was lodged with the Information **Commissioner** who, following an investigation, *recommended* that the information **be released**. The respondent subsequently provided the complainant with access to documents consisting of **5** ***pages***, but refused to disclose in excess of 200 *pages* of documents. The applicant seeks a review of that **refusal** under paragraph 42(1)(a) of the *Access to Information Act*: 42. (1) The Information **Commissioner** may (a) apply to the Court, within the time limits prescribed by section 41, for a review of any refusal to disclose a record requested under this Act or a part thereof in respect of which an investigation has been carried out by the Information **Commissioner**, if the **Commissioner** has the consent of the person who requested access to the record; (b) appear before the Court on behalf of any person who has applied for a review under section 41; or

> (c) with leave of the Court, appear as a party to any review applied for under section 41 or 44.
>
> places upon the respondent the burden of es*tab*lishing that she is authorized to refuse to disclose the record requested:
>
> 48. In any proceedings before the Court arising from an application under section 41 or 42, the burden of es*tab*lishing that the head of a government institution is authorized to refuse to disclose a record requested under this Act or a part thereof **shall** be **on** the government institution concerned.
>
> Counsel for the respondent argues that such authority exists under section 19 of the Act:
>
> 19. (1) Subject to subsection (2), the head of a government institution shall refuse to disclose any record requested under this Act that contains **Personal Information** as defined in section 3 of the *Privacy Act*.
>
> (2) The head of a government institution ***may*** disclose *any record* requested under this Act that contains **Personal Information** *if*
>
> (a) the individual to whom it relates consents to the disclosure;
>
> (b) the information is publicly available; *or*
>
> (c) the disclosure is in accordance with section 8 of the *Privacy Act*.

The SCC disagreed with the respondent's interpretation of section 19(2) of *Access To Information Act* for two reasons [emphasis is mine with square brackets being mine]:

> *[Two Reasons: (i) statutory interpretation; and (ii) legislative purposes]*
>
> "I reject the argument for two reasons: **first**, as a question of law, it is contrary to principles of **statutory interpretation**; **second**, it represents an approach that runs directly *against* the very

purpose for which this legislation was enacted, as stated in the **express provisions** of the statute and confirmed in jurisprudence.

[Shall versus May]

In terms of statutory interpretation, when legislators intend to create an obligation to do something, they use the word "**shall**". When they intend instead to es*tab*lish a discretion or a right to do it, they use the word "**may**".

Had the legislators intended here to repose *residual discretion* in the head of the government institution **not** to disclose information[9], even though the conditions of section 19(2) had been met, that appropriate and precise language *would have* been used.

Of course, the Act does not es*tab*lish the discretion not to disclose in such circumstances (in which case the respondent's argument might have had merit). The language chosen expresses the intent to es*tab*lish a discretion to release **Personal Information** under certain circumstances. Those conditions having been fulfilled, it becomes **tantamount** to an **obligation** upon the head of the government institution to do so, especially where the purpose for which the statute was enacted is, as here, to create a *right of access* in the public.

It is my view, of course, that the present matter is precisely such a case and I therefore turn to the following passages of the two decisions referred to above. In *Julius v. Oxford (Bishop of)* (1880), App. Cas. 214 (H.L.), Lord Blackburn states at *pages* 242-243:

> But there are cases in which the authority or power given is not to do a judicial act, and yet there is a duty on the donee to exercise the power if it appears to be given to the donee for the purpose of **making good** a right, and he is called upon by those who have that right to exercise the power for their benefit.

And in *Labour Relations Board v. The Queen* ex rel. F.W. Woolworth Company Limited and Agnes Slabick and Saskatchewan Joint Board, Retail, Wholesale and Department Store Union, [1956] S.C.R. 82, Locke J. states at *page* 86:

The language of s. 5, in so far as it affects this aspect of the matter, reads:-

5. The board shall have power to make orders:—

> (i) rescinding or amending any order or decision of the board.
>
> While this language is permissive in form, it imposed, in my opinion, a duty upon the Board to exercise this power **when called upon[9]** to do so by a party interested[9] and having the right ***to make the application*** (Drysdale v. Dominion Coal Company ((1904) 34 Can. S.C.R. 328 at 336): Killam J.). Enabling words are **always compulsory** where they are words to **effectuate** a legal right (*Julius* v. Lord Bishop of Oxford ((1880) 5 A.C. 214 at 243): Lord Blackburn)

Turning then to the purpose of the legislation, it is perhaps appropriate to return once again to the language I used in *Maislin Industries Limited v. Minister for Industry, Trade and Commerce*, [1984] 1 F.C. 939 [at *pages* 942 and 943]:

> It should be emphasized however, that since the basic principle of these statutes is to codify the **right of public access** to Government information two things follow: first, that such public access ought **not** be frustrated by the courts except upon the **clearest grounds** so that doubt ought to be resolved in *favour of disclosure*[9]; second, the burden of persuasion must rest upon the party *resisting disclosure*[9] whether, as in this case, it is the private corporation or citizen, or in other circumstances, the Government. It is appropriate to quote subsection 2(1):

> 2. (1) The purpose of this Act is to extend the present l**aws** of Canada to provide a right of access to information in records under the **control** of a government institution in accordance with the principles that government information should be available to the public, that necessary exceptions to the right of access should be **limited** and **specific** and that decisions on the disclosure of government information should be reviewed independently of government.[9]

The SCC found: 4. (1) Subject to this Act, but notwithstanding any other Act of Parliament, every person who is (a) a Canadian citizen, or (b) a permanent resident within the meaning of the Immigration Act, 1976, has a right to and shall, on request, be given access to any record under the control of a government institution.

To repeat, the purpose of the *Access to Information Act* is to codify the right of access to information held by the government. It is not to codify the government's right of refusal. Access should be the **normal course**. Exemptions should be exceptional and must be confined to *those specifically* set out in the statute. In the present case, the applicant was quite properly informed that the information sought could not be obtained except by a Canadian citizen or a resident and could not involve disclosure of **Personal Information** about another person *without* their consent. Once those conditions were met, and they were here, the information should have been disclosed. The application must therefore succeed. An order will go pursuant to section 49 of the Act ordering the respondent to disclose the records in issue to the complainant, **Gerald G. Goldstein**. The applicant should have her costs of this application.

[10]With post 2016, the distinction between barristers and solicitor no longer being applicable: Whatever historical differences may have existed between the roles of barrister and solicitor no longer apply under Ontario law. Section 29 of the Law Society Act, R.S.O. 1990, c. L.8 provides that every "member" is an officer of every court of record in Ontario and s. 28 provides that a person who is qualified and is called to the bar and enrolled and admitted as a solicitor "are members and entitled to practice law in Ontario as barristers and solicitors" (see: Iroquois Falls Power Corp. v. Jacobs Canada Inc., 2006 CanLII 35612 (ON SC), https://canlii.ca/t/1ptvd, note 15)

TAB 15

Court File No. DC-24-00000718-00JR

Form 37B

Courts of Justice Act

CONFIRMATION OF MOTION

ONTARIO SUPERIOR COURT OF JUSTICE (DIVISIONAL COURT)

BETWEEN:

KEVIN ALEXANDER MCLEAN

APPLICANT

- and -

TD HOME AND AUTO INSURANCE COMPANY, SECURITY NATIONAL INSURANCE COMPANY, TD GENERAL INSURANCE COMPANY, EXECUTIVE DIRECTOR, LICENCE APPEAL TRIBUNAL, HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO, REPRESENTED BY EXECUTIVE CHAIR OF TRIBUNALS ONTARIO IN MR. SEAN WEIR, THE ATTORNEY GENERAL OF ONTARIO

RESPONDENTS

CONFIRMATION OF MOTION

Note: If the information on this form changes, you have a duty to give the court and the other parties a corrected version of the form (rule 37.10.1(3)). If you wish to abandon the motion after it has been confirmed, a notice of abandonment may be delivered (rule 37.09(1)).

Part A:

I, Mr. Kevin A. McLean, the moving party, confirm that I have conferred or attempted to confer with the other party, the Licence Appeal Tribunal (the "**Tribunal**") (attention: Mr. Boyce with a copy to his legal assistant(s)) and confirm that the motion to be heard on January 30, 2025, will proceed on the following basis:

[X] for a hearing of the following issues only *(specify)*:

1. An order granting the following relief exclusively related or directed to the Licence Appeal Tribunal:

a. An Order that the delegated or presiding motion judge (not an "associate judge" pursuant to 37.02(2)(f) of the *Rules Of Civil Procedure* and section 4 of the *JRPA*) shall **not** be the Honourable Madam Justice Shore and/or any other justice that was employed by Epstein Cole LLP and/or was a partner in the limited liability partnership of Epstein Cole during the time from Fall of 2017[1] to present;

b. An Order compelling the Licence Appeal Tribunal (the "**Tribunal**") to file the Record of Proceeding forthwith and in accordance with, *inter alia*, section 10 of the *JRPA* and in accordance, from a content standpoint with section 20 of the *SPPA*;

c. An Order that the Tribunal is prohibited from any form of participation in this JRPA Proceeding until it does so in full and strict compliance with aforementioned legislative sections in Order #2;

d. Costs in favour of the Applicant against the Tribunal on a substantial indemnity basis to be determined by this Honourable Court after providing leave to the Applicant to provide a costs outline or written argument within three days of the pronouncement of the orders herein and limited to three pages double spaced; and

e. Such other orders that are consistent with the above.

f. An order granting the Applicant leave to speak to costs in the form sought in the Notice of Motion.

The presiding motion judge will be referred to the following materials:

1. The documents filed and served on the respondents in this *JRPA* Proceeding herein including but not limited to:

   a. Affidavit #2 of the Applicant made on December 30, 2024 ("**Affidavit #2**");
   b. Affidavit #4 of the Applicant made on January 18, 2025 ("**Affidavit #4**");
   c. The *JRPA* Application of the Applicant of November 15, 2024 (the "***JRPA* Application**");
   d. The Applicant's Factum of December 10, 2024 (the "**Factum**");
   e. The Applicant's Application Record of December 12, 2024 (the "**Application Record**");
   f. The Applicant's filed and issued Certificate of Perfection (the "**Certificate Of Perfection**") and affidavit of service filed with the ONSC Divisional Court (the "**Affidavit #1**" or "**AOS**");
   g. The Applicant's relevant, to this motion hearing, tendered requisitions herein;
   h. Brief and succinct oral outline or speaking notes of the Applicant to be provided at the relevant time and if applicable (the "**Speaking Notes**");
   i. The statutes, regulations and authorities cited in the Notice of Motion of January 22, 2025 including but not limited to the following authorities:

Authorities (hyperlinked to the case itself and paragraphs to be relied upon)
The Seminal Decision in Payne

i. *Payne v. Ontario Human Rights Commission*, 2000 CanLII 5731 (ON CA), [2000] O.J. No. 2987, 136 O.A.C. 357 (C.A.) ["*Payne*"], at paragraphs 79 [the record of proceeding when the decision was made], paragraph 160, and paragraph 161[2];

Payne cited with approval by ONSC Divisional Court in 2024

ii. *Lachance v. Solicitor General of Ontario*, 2024 ONSC 975 ["*Lachance*"] as per Stewart, Myers, and Leiper JJ of the Divisional Court at paragraph 37 [copied by link to highlight as no hyperlink available on CanLII]

General Principles

iii. *Jacko v. McLellan*, 2008 CanLII 22921 (ONSCDC) ["*Jacko*"] at paragraph 18)[3];.
iv. *Rew v Association of Professional Engineers of Ontario (Discipline Committee)*, 2016 ONSC 4043 ["*REW*"], https://canlii.ca/t/gs5t9 as per Dambrot, J. (orally) at paragraph 8;
v. *Pritchard v. Ontario (Human Rights Commission)*, 2004 SCC 31 ["*Pritchard*"] https://canlii.ca/t/1h2c4

Endicott Decisions

vi. *Endicott v. Ontario (Independent Police Review Office)*, 2014 ONCA 363 ["*Endicott ONCA*"] at paragraph 1, paragraph 18 ['upon receipt of a judicial review application]; paragraph 44 (citing *Payne*[4]),
vii. *Endicott v. Independent Police Review Director*, 2013 ONSC 2046 ["*Endicott ONSC*"] at paragraph 20,

Cases involving privacy or medical (contextual)

viii. *Batacharya v. The College of Midwives of Ontario*, 2012 ONSC 1072 ["*Batacharya*"] at paragraph 13 to 15;
ix. *LifeLabs LP v. Information and Privacy Commr. (Ontario)*, 2022 ONSC 5751 ["*Lifelabs LP*"] at paragraph 13 [citing *Payne* and *Endicott*]

Legal principle and precedent: All materials in the record of proceeding that predate the VCM Decision

j. *UFCW Canada v. Rol-Land Farms Limited*, 2008 CanLII 6652 (ON SCDC), (see: https://canlii.ca/t/1vtm5) ("*Rol-Land Farms*") at paragraph 38[5];

Right to bring a motion where record of proceeding filed but underinclusive; and importance of bringing a motion to be able to raise the issue

k. *Reflection Productions v. Ontario Media Dev. Corp.*, 2022 ONSC 64 ["*Reflection Productions*"] at paragraph 74 and 75[6];

Note: Parties are responsible for ensuring that all materials in the above list are (a) filed with the court and (b) uploaded to Case Center by the applicable deadline in rule 4.05.3 of the *Rules of Civil Procedure*.

I estimate that the time required for the motion will be 20 minutes or less.

Dated: January 23, 2025

DULY EXECUTED IN ELECTRONIC FORM BY
THE *JRPA* APPLICANT ON THE DATE ABOVE:

Mr. Kevin A. McLean (B.A. J.D., CIM)
775 King Street West
Suite 410
Toronto, Ontario
M5V 2K3
(e): mcleansettlement@gmail.com

TO:

Licence Appeal Tribunal

By way of attention to its declared representative at the following address as denoted in Affidavit #3 of the Applicant (copied and pasted herein) and confirmed to be the same, despite Mr. Boyce's unilateral and without notice removal of the same on a date known to him in 2025, by the LSO (Directory Services Department) on January 22, 2025:

Jesse Aaron Boyce
Assumed Name
Jesse A. Boyce
Law Society Number
72486F
Class of Licence Definitions
Lawyer (L1)
Real Estate Insured †
No
Status Definitions
Practising Law - Employed
Business Name
SLASTO
Business Address

25 Grosvenor[7] 4th FloorToronto, OntarioM7A 2S8
Phone
1 437 997 1235 Ext.
Trusteeships
None
Current Practice Restrictions
None
Current Regulatory Proceedings
None
Regulatory History
None

[1]Please see (if applicable): the court file with respect to the Applicant's Respectful Requests (defined therein) regarding the reasonable apprehension of a conflict of interest, bias and/or lack of independence involving Madam Justice Shore and one Mr. Andrew Papadimitropoulos (a client of Epstein Cole LLP) who was not removed as a representative (see: *LSA*, section 1(7)) by the Applicant's motions before the Tribunal (see: NOM #6 and NOM #9 in the Record of Proceeding)

[2][161] An applicant for judicial review has the right to have a full and accurate record of what went on before the tribunal put before the court. This is an aspect of the superior court's inherent powers of judicial review. A superior court may insist upon the production of an adequate record of the proceedings before the tribunal being reviewed. As stated by Denning L.J. in R. v. Medical Appeal Tribunal ex p. Gilmore, [1957] 1 Q.B. 574 at 583 (C.A.): "The court has always had power to order an inferior tribunal to complete the record ... [A] tribunal could defeat a writ of certiorari unless the courts could order them to complete or correct an imperfect record. So the courts have the power to give such an order". See also *R. v. Northumberland Compensation Appeal Tribunal*, ex p. Shaw, [1952] K.B. 338 at 352–54 (C.A.); *Canadian Workers Union v. Frankel Structural Steel Ltd.* (1976), 1976 CanLII 829 (ON SC), 12 O.R. (2d) 560 at 577 (Div. Ct.) per Reid J.; F.G. *Spencer Ltd. v. Prince Edward Island (Labour Relations Board)* (1970), 1970 CanLII 960 (PE SCAD), 16 D.L.R. (3d) 670 (P.E.I.S.C.); *Battaglia v. British Columbia (Workmen's Compensation Board)* (1960), 1960 CanLII 334 (BC SC), 22 D.L.R. (2d) 446 (B.C.S.C.). A statutory body subject to judicial review cannot immunize itself or its process by arriving at decisions on considerations that are not revealed by the record it files with the court.

[3]The purpose of requiring a tribunal or adjudicator to file a "record of proceedings" is to ensure that when the court reviews the tribunal's decision, it has the information and evidence as it appeared before the tribunal in the first instance. A court reviewing an adjudicative decision may look at decisions to admit evidence, submissions of witnesses, and other evidence and may substitute its judgment for that of the court [or tribunal] of first instance

[4]An applicant for judicial review has the right to have a full and accurate record of what went on before the tribunal put before the court. This is an aspect of the superior court's inherent powers of judicial review. A superior court may insist upon the production of an adequate record of the proceedings before the tribunal being reviewed. As stated by Denning L.J. in *R. v. Medical Appeal Tribunal, Ex parte Gilmore*, [1957] 1 Q.B. 574 (Eng. C.A.) at 583:

The court has always had power to order an inferior tribunal to complete the record … [A] tribunal could defeat a writ of certiorari unless the courts could order them to complete or correct an imperfect record. So the courts have the power to give such an order.

[5][38] Thus, the content of volume 3 is not properly part of the record required to be filed pursuant to s. 10 of the *JPRA*, as it post-dates the decisions under review. Moreover, it is not relevant to the issue of reasonable apprehension of bias before this Court, as it responds to an issue of actual bias.

[6]Ergo, pursuant to s. 10 of the Judicial Review Procedure Act, it was available to the applicant to bring a motion seeking production of documents it alleges were relied on by the decision-maker but are not contained in the record: see, for example *K.D. v. Peel Children's Aid Society*, 2017 ONSC 7392 (Div. Ct.) at paras. 16-17). The applicant failed to do so. As a result, it is precluded from raising this issue for the first time on judicial review.

[7]Where Mr. McLean's *FIPPA* request was delivered

Civil Submissions Online

Confirmation

Thank you for submitting document(s) through the Portal for filing and/or issuance with the Superior Court of Justice in your civil (or Divisional Court) proceeding.

You will be notified by the Court Registrar about whether your document(s) have been accepted for filing and/or issuance. This notice will be sent to you by email **within 5 business days.** Your credit/debit card will only be charged once the filing has been accepted.

If your documents are rejected, you will receive an email from the court office to tell you they have not been filed, the reason(s) for the rejection, and confirming that your credit/debit card has not been charged.

If you need to file or issue documents for a court hearing that is 5 business days or less away or you need to meet a timeline for a step in the proceeding established by legislation, court rules, court practice direction or a court order and the timeline is 5 business days or less away, your request may not be processed in time. Contact the court office for more information.

Please ensure that your computer system can accept emails from the court (for example, by adjusting your spam filter to ensure that you receive all emails from court staff with "@ontario.ca" addresses). If you are expecting an email and have not received one, please check your junk mail folder before contacting the court office.

Court file number
DC-24-00000718-00JR
Submitted to the Divisional Court, Superior Court of Justice in
Toronto
Confirmation number
2849063
Date and time
23-Jan-2025 02:16 PM
Document(s) submitted
File Name
Form 37B: Confirmation of Motion

Case specific questions and questions about your submission should be directed to the court office where your documents were submitted.

You can find a list of courthouse addresses and phone numbers on the Ministry of the Attorney General's website.

To help us improve our services, please provide us with feedback on your online experience. The information collected is for research purposes only. Your responses are completely confidential.

Rate Our Service

1. Case information

Email address	mcleansettlement@gmail.com
Type of proceeding	Existing proceeding
Selected court	Toronto
Has this submission previously been rejected by the Court?	No
Identify the court file number	DC-24-00000718-00JR

2. Filing Party information

The document(s) are being filed on behalf of:	MCLEAN , KEVIN , Appellant

3. Uploaded Document(s)

Form 37B: Confirmation of Motion	Confirmation of Motion - NOM - Applicant - McLean - 23-Jan-25_Filed.pdf
Are any of the documents in this submission required to be filed and/or issued for a hearing or deadline 6 or 7 business days away?	Yes

TAB 16

Court File No. DC-24-00000718-00JR

Form 4E
Courts of Justice Act

Requisition

ONTARIO COURT OF JUSTICE (DIVISIONAL COURT)

BETWEEN:

KEVIN ALEXANDER MCLEAN

APPLICANT

- and -

TD HOME AND AUTO INSURANCE COMPANY, SECURITY NATIONAL INSURANCE COMPANY, TD GENERAL INSURANCE COMPANY, EXECUTIVE DIRECTOR, LICENCE APPEAL TRIBUNAL,
HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO, REPRESENTED BY EXECUTIVE CHAIR OF TRIBUNALS ONTARIO IN MR. SEAN WEIR, THE ATTORNEY GENERAL OF ONTARIO

RESPONDENTS

REQUISITION #3

URGENT FILING VIA EMAIL TO THE ONSC DIVISIONAL COURT

RE: OUTSTANDING REQUIREMENT ISSUES BY REFERENCE TO PREVIOUS REQUISITIONS FILED ON DECEMBER 24, 2024, (the "Requisition #1"), January 2, 2025, (the "Requisition #2") and the outstanding issues, without reference to a requisition, involving

TO THE LOCAL REGISTRAR[i] (see: Appendix #2) at The Ontario Superior Court of Justice (Divisional Court) Toronto, Osgoode Hall, 130 Queen Street W., Rm 174 (or any other room situate within said building and lands at the ONSC Divisional Court (Toronto) where the Registrar is so located), Toronto, ON, M5H 2N5 (the "**Toronto Divisional Court**") Phone: (416) 327 5100

I REQUIRE[ii], with due respect and out of an abundance of caution, pursuant to *Rules Of Civil Procedure*, Rule 4.08[iii], that the Registrar provide me, despite my repeated requests for the same and citation of the

following from JRPA Guide Divisional Court, with the invitation to Case Center (formerly CaseLines) on a forthwith basis and by no later than end of business day on Monday, January 13, 2025.

I further REQUIRE[iv], with due respect to the ONSC Divisional Court Registrar and out of an abundance of caution, pursuant to *Rules Of Civil Procedure*, Rule 4.08[v], that it comply with any and all outstanding obligations regarding stamping and dating my filings with it via the Civil Claims Submissions portal (with sole reference to: **Confirmation number 2787308**) and my e-mail filings to the extent that they were not stamped as filed on the days in which they were received. I particularly reference my filing of the Requisition #2, dated December 24, 2024, which was urgently filed with the ONSC Divisional Court via email on January 2, 2024, in accordance with the **Practice Direction**, requesting an urgent hearing pursuant to section 6(2) of the *JRPA*.

The **JRPA Applicant** relies on the following material facts, material particulars and legal bases[vi] whilst expressly adopting the definitions from the documents that he has filed with the ONSC Divisional Court that have not been rejected and/or where he was not directed to file at first instance or solely through the "Civil Claims Submissions" (see: Certificate of Perfection with guidance from the Head Registrar Ms. Clegg).

1. The Ontario Superior Court of Justice Guide to Judicial Review in Divisional Court, effective by its metadata which states, "Scarciolla, Claudia (JUD)" (author) and 11/24/22 (date) (the "JRPA Guide") which states [emphasis it the Applicant's]:

   > "After you have brought an application for judicial review, you will receive an email to register for CaseLines and upload your materials. There is no fee to use CaseLines."

2. The **JRPA Applicant** tendered his **JRPA Application** and paid the requisite fees on November 15, 2024.
   a. After receipt of the issued **JRPA Application**, from the Registrar, with thanks, the **JRPA Applicant** did not receive an invitation to Case Center.

3. The Licence Appeal Tribunal filed and delivered its Notice of Appearance, executed by one Mr. Jesse A. Boyce, lawyer licensee with the LSO, and in-house counsel at SLASTO at 25 Grosvenor Street, Toronto, Ontario, on November 27, 2024.

4. Despite not filing a "Notice of Appearance" forthwith, despite each of the distinct insurance companies in TDHA (FSRA registration number 1063), SNIC (FSRA registration number 397), and TDGIC (FSRA registration number 353) being served with the same, each of the distinct insurance companies did not file a Notice of Appearance forthwith.

5. The **JRPA Applicant** delivered[vii] (served) and filed his **Factum**[viii] on December 10, 2024.

6. The **JRPA Applicant** delivered (served) and filed his **Application Record** on December 12, 2024.

7. The **JRPA Applicant** filed and paid for the **Certificate of Perfection** on December 13, 2024.

8. The **JRPA Applicant** also filed the requisite affidavit of service thereafter.

9. The **JRPA Applicant** received confirmation of his filing thereafter.

10. The **JRPA Applicant**, based on his review of what has been received, has not received any mail or email of the Form 68(B) which was required to be delivered to the parties after the **JRPA Applicant** had filed and paid for the Certificate Of Perfection with an approximate date of the hearing. Based upon a reasonable interpretation of the relevant Civil Rule, which is 68.05(2) (see: (2) When the certificate of perfection has been filed, the registrar shall place the application on a list for hearing and give notice of listing for hearing (Form 68B) by mail to the parties and the other persons named in the certificate of perfection. R.R.O. 1990, Reg. 194, r. 68.05 (2).”), the Registrar was required to place the Applicant’s JRPA Application on a list for hearing and give notice of listing for hearing on or around Tuesday, December 17, 2024.” To the extent that the Registrar of the ONSC Divisional Court did discharge said duty and the JRPA Applicant did not receive the same via mail due to inadvertence, error or the Canada Post Strike, the JRPA Applicant respectfully requests the same.

11. Despite filing his requisition #1 on December 24, 2024 (see: **Confirmation number 2787308**) requesting and requiring the Registrar to comply with her duties, there is currently no evidence that any such steps have been taken in this regard. Moreover, the **JRPA Applicant**, by usage of said service, was entitled to have any filing processed within five business days, which may be accepted or rejected. Five business days from December 24, 2024, was January 2, 2025. While the Applicant should not be compelled to file requisitions to require the Registrar to comply with her duties, he has been put to the expense and resources to do so in any event. Moreover, the **JRPA Applicant** has been placed in the most uncompromising and unprecedented situation of not having any acceptance or a denial of an online filing (see: Requisition #1).
    a. The only recourse, from a legal bases standpoint, that the Applicant can find is to continue to make requests regarding previous requisitions which are outstanding, and to the extent there is a denial, it appears that the procedure required for such an aggrieved party is that of a stated case to this very Divisional Court under the *Public Inquiries Act*.[ix] The matter remains urgent and the JRPA Applicant is not in any way suggesting such a route has been, is being or will be contemplated but rather pointing out the dearth of adequate, alternative and available remedies for of his filings that were not formally accounted for and time stamped in accordance with the law.

12. The Registrar is a creature of statute and does not have any jurisdiction to exercise where the language is mandatory (i.e. ‘shall’, ‘must’, or ‘will’). The record of proceeding herein must be reflected to ensure that the chronology of filings, to the extent they were not up to date and current, is complete and accurate for any and all events henceforth.

13. The **JRPA Applicant** shall continue to attempt to mitigate any loss or damage occasioned by the same and file any and all necessary further documents, including additional requisition documents (amended with the above noted filing dates on the presumption that they were “filed” on said date and to the extent they were not, the Applicant relies on the facts and particulars herein to confirm, on the record, that he cannot be held liable or prejudiced by not having taken steps where he was not able), including exhausting of any and all adequate and alternative remedies herein (where applicable). However, in order to do so, the **JRPA Applicant**.

14. All of which is respectfully submitted to this ONSC Divisional Court Registrar for her immediate attention, remediation and rectification where applicable:

January 11, 2025

Mr. Kevin A. McLean
775 King Street West,
Suite 410
Toronto, Ontario
M5V 2K3
(e): mcleansettlement@gmail.com

Mr. Kevin A. McLean (B.A. J.D., CIM)
Self-represented or appearing *Pro Se*, the Applicant herein

Appendices

Appendix #1:

Mr. Kevin McLean <mcleansettlement@gmail.com>
Attachments
Thu, Jan 2, 3:05 PM (9 days ago)
to SCJ-CSJ, Matthew, Jesse, Milene, Connor, Judie, Heather

January 2, 2025

VIA EMAIL

Regarding the below (pursuant to the Consolidated Practice Direction on sending emails and enclosing documents by the document naming protocol contained therein)

Court file number: Court File No. DC-24-00000718-00JR
Type of document: Request – requisition for urgent hearing – online filing in error – as requests for urgent hearing cannot be submitted online[i]
Short title of proceeding: McLean v. TDHA et al
Party: Mr. Kevin A. McLean, self-represented, Applicant, e: mcleansettlement@gmail.com;

Re: Requisition – request for urgent hearing submitted herein for filing and service upon the respondents

Dear ONSC Divisional Court (Madam Clerk):

I write to confirm the above. I am now tendering the requisition #2 for filing and service herein as per my error in filing the same online. I apologize to the court and the respondents in this regard for my lack of precision in this regard and obtuseness.

I thank you for accepting the same for filing in this manner. The document remains identical to the one tendered previously.

I will take any necessary steps to remove that filing from the online portal if I am able to. Otherwise, kindly accept this as my authorization to remove this Requisition #2 for any further processing.

Thank you kindly and a Happy New Year to all!

[i]https://www.ontario.ca/page/file-civil-or-divisional-court-documents-online (nota bene: at least that is the way I read said secondary source information: You cannot submit documents online:

· to request an urgent court hearing

Endnotes

[i]"registrar" means the Registrar of the Divisional Court or Court of Appeal, or a local registrar of the Superior Court of Justice, as the circumstances require

[ii] *(Set out a concise statement of what is sought and include all particulars necessary for the registrar to act. Where what is sought is authorized by an order, refer to the order in the requisition and attach a copy of the entered order. Where an affidavit or other document must be filed with the requisition, refer to it in the requisition and attach it.)*

[iii]**4.08** Where a party is entitled to require the registrar to carry out a duty under these rules, the party may do so by filing a requisition (Form 4E) and paying the prescribed fee, if any. R.R.O. 1990, Reg. 194, r. 4.08.

[iv] *(Set out a concise statement of what is sought and include all particulars necessary for the registrar to act. Where what is sought is authorized by an order, refer to the order in the requisition and attach a copy of the entered order. Where an affidavit or other document must be filed with the requisition, refer to it in the requisition and attach it.)*

[v]**4.08** Where a party is entitled to require the registrar to carry out a duty under these rules, the party may do so by filing a requisition (Form 4E) and paying the prescribed fee, if any. R.R.O. 1990, Reg. 194, r. 4.08.

[vi]While also evincing an intention and providing notice that the JRPA Applicant will be providing further requisitions, either fresh or amended with reference to the dates of the above filings, and confirming that he objects to any drafting of the Honourable Justice Shore Order of January 7, 2025, and will be seeking to have it nullified, rescinded, and/or declared void ab initio (see: affidavit #3 of the Applicant, made on January 8, 2025) and/or amended pursuant to, inter alia, Rule 59.06. To the extent that issues become moot, then the Applicant respectfully reserves his rights.

[vii] "deliver" means serve and file with proof of service, and "delivery" has a corresponding meaning (see: Rule 1.03)

[viii] "factum" includes a book of authorities, if one is required by rule 4.06.1 (see: Rule 1.03(1));

[ix]College of Physicians & Surgeons (Ontario) v Peel Regional Police Service, 2009 CarswellOnt 3180 (ONSC) -- Application denied -- Four physicians brought an application under R. 14 challenging the validity of s. 76(1) of the Health Professions Procedural Code, S.O. 1991, c. 18, Sched. 2 as being unconstitutional. "The Legislature has determined that the way to bring this question before the Court is by way of stated case to the Divisional Court pursuant to s. 8 of the Public Inquiries Act, R.S.O. 1990, c. P.41 and not an application to the Superior Court of Justice under R. 14. Therefore, it is appropriate to follow the stated case process to adjudicate whether the refusal was with or without "lawful excuse" and have the Divisional Court decide this legal issue." (paras 14-15).m (see: 2021 CanLIIDocs 2000, page 10)

Court File No. DC-24-00000718-00JR

Form 4E

Courts of Justice Act

REQUISITION

ONTARIO SUPERIOR COURT OF JUSTICE (DIVISIONAL COURT)

BETWEEN:

KEVIN ALEXANDER MCLEAN

APPLICANT

- and -

TD HOME AND AUTO INSURANCE COMPANY, SECURITY NATIONAL INSURANCE COMPANY, TD GENERAL INSURANCE COMPANY, EXECUTIVE DIRECTOR, LICENCE APPEAL TRIBUNAL,
HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO, REPRESENTED BY EXECUTIVE CHAIR OF TRIBUNALS ONTARIO IN MR. SEAN WEIR, THE ATTORNEY GENERAL OF ONTARIO

RESPONDENTS

REQUISITION

REQUISITION #4 PURSUANT TO RULE 37.10 OF THE RULES OF CIVIL PROCEDURE)

URGENT FILING VIA EMAIL TO THE ONSC DIVISIONAL COURT

RE: REQUISITION PURSUANT TO *RULE 37.10*[i] TO PLACE THE COURT FILE BEFORE THE PRESIDING MOTION JUSTICE ON JANUARY 22, 2025

TO THE LOCAL REGISTRAR[ii] at The Ontario Superior Court of Justice (Divisional Court) Toronto, Osgoode Hall, 130 Queen Street W., Rm 174 (or any other room situate within said building and lands at the ONSC Divisional Court (Toronto) where the Registrar is so located), Toronto, ON, M5H 2N5 (the "**Toronto Divisional Court**") Phone: (416) 327 5100

Pursuant to Rule 37.10 of the *Rules of Civil Procedure*, I REQUIRE that the court file is placed before the presiding motion justice in relation to my motion of January 17, 2025 (the "Motion #1") returnable on Wednesday, January 22, 2025, via telephone conference.

All of which is respectfully required and requisitioned to this ONSC Divisional Court Registrar for her immediate attention and action.

January 20, 2025

Mr. Kevin A. McLean
775 King Street West,
Suite 410
Toronto, Ontario
M5V 2K3
(e): mcleansettlement@gmail.com

Mr. Kevin A. McLean (B.A. J.D., CIM)
Self-represented or appearing *Pro Se*, the Applicant herein

Endnotes

[i]37.10 (1) Where a motion is made on notice, the moving party shall, unless the court orders otherwise before or at the hearing of the motion, serve a motion record on every other party to the motion and file it, with proof of service, in the court office where the motion is to be heard, at least seven days before the hearing, and the court file shall not be placed before the judge or associate judge hearing the motion unless he or she requests it or **a party requisitions it**. R.R.O. 1990, Reg. 194, r. 37.10 (1); O. Reg. 171/98, s. 14 (1); O. Reg. 438/08, s. 35 (1); O. Reg. 711/20, s. 7; O. Reg. 383/21, s. 15.

[ii]"registrar" means the Registrar of the Divisional Court or Court of Appeal, or a local registrar of the Superior Court of Justice, as the circumstances require

Court File No. DC-24-00000718-00JR

Form 4E

Courts of Justice Act

REQUISITION

ONTARIO SUPERIOR COURT OF JUSTICE (DIVISIONAL COURT)

BETWEEN:

KEVIN ALEXANDER MCLEAN

APPLICANT

- and -

TD HOME AND AUTO INSURANCE COMPANY, SECURITY NATIONAL INSURANCE COMPANY, TD GENERAL INSURANCE COMPANY, EXECUTIVE DIRECTOR, LICENCE APPEAL TRIBUNAL,
HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO, REPRESENTED BY EXECUTIVE CHAIR OF TRIBUNALS ONTARIO IN MR. SEAN WEIR, THE ATTORNEY GENERAL OF ONTARIO

RESPONDENTS

REQUISITION

URGENT FILING VIA EMAIL TO THE ONSC DIVISIONAL COURT

RE: REQUISITION PURSUANT TO *RULE 37.10*[i] TO PLACE THE COURT FILE BEFORE THE PRESIDING MOTION JUSTICE (IN WRITING AND WITHOUT ATTENDANCE OF THE PARTIES) ON FEBRUARY 14, 2025

TO THE LOCAL REGISTRAR[ii] at The Ontario Superior Court of Justice (Divisional Court) Toronto, Osgoode Hall, 130 Queen Street W., Rm 174 (or any other room situate within said building and lands at the ONSC Divisional Court (Toronto) where the Registrar is so located), Toronto, ON, M5H 2N5 (the "**Toronto Divisional Court**") Phone: (416) 327 5100

1. I have requested an invitation link to Case Center but I have not received an invitation link as of today's date;

2. Subject to receiving a link to Case Center with reasonable time to upload my filed documents into Case Center pursuant to Rule 4.05(3) and (4)(1.), pursuant to Rule 37.10 of the *Rules of Civil Procedure*, I REQUIRE that the entire court file is placed before the presiding motion justice (in writing subject to one of the responding parties providing a notice to be heard orally) in relation to my motion made on Friday, January (the "NOM #2") returnable on February 14, 2025; and
3. If an invitation link to Case Center is provided, at least, four days prior to February 14, 2025, then I request that all documents that I do not upload into Case Center, which are in the court file, are placed before the presiding motion justice on February 14, 2025.

All of which is respectfully required and requisitioned to this ONSC Divisional Court Registrar for her immediate attention and subsequent action pursuant to Rule 4.08.

February 5, 2025

Mr. Kevin A. McLean
775 King Street West,
Suite 410
Toronto, Ontario
M5V 2K3
(e): mcleansettlement@gmail.com

Mr. Kevin A. McLean (B.A. J.D., CIM)
Self-represented or appearing *Pro Se*, the Applicant herein

RCP-E 4E (July 1, 2007)

Endnotes

[i]37.10 (1) Where a motion is made on notice, the moving party shall, unless the court orders otherwise before or at the hearing of the motion, serve a motion record on every other party to the motion and file it, with proof of service, in the court office where the motion is to be heard, at least seven days before the hearing, and the court file shall not be placed before the judge or associate judge hearing the motion unless he or she requests it or **a party requisitions it**. R.R.O. 1990, Reg. 194, r. 37.10 (1); O. Reg. 171/98, s. 14 (1); O. Reg. 438/08, s. 35 (1); O. Reg. 711/20, s. 7; O. Reg. 383/21, s. 15.

[ii]"registrar" means the Registrar of the Divisional Court or Court of Appeal, or a local registrar of the Superior Court of Justice, as the circumstances require

1. Case information

Email address	mcleansettlement@gmail.com
Type of proceeding	Existing proceeding
Selected court	Toronto
Has this submission previously been rejected by the Court?	No
Identify the court file number	DC-24-00000718-00JR

2. Filing Party information

The document(s) are being filed on behalf of:	MCLEAN , KEVIN , Appellant

3. Uploaded Document(s)

Form 4E: Requisition	Requisition 6 - Rule 37.10 -NOM 2 - JUSTICE - APPLICANT - MR MCLEAN - 5-FEB-2025.pdf
Are any of the documents in this submission required to be filed and/or issued for a hearing or deadline 6 or 7 business days away?	Yes

TAB 17

Court File No. DC-24-00000718-00JR

Form 4E

Courts of Justice Act

REQUISITION

ONTARIO SUPERIOR COURT OF JUSTICE (DIVISIONAL COURT)

BETWEEN:

KEVIN ALEXANDER MCLEAN

APPLICANT

- and -

TD HOME AND AUTO INSURANCE COMPANY, SECURITY NATIONAL INSURANCE COMPANY, TD GENERAL INSURANCE COMPANY, EXECUTIVE DIRECTOR, LICENCE APPEAL TRIBUNAL,
HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO, REPRESENTED BY EXECUTIVE CHAIR OF TRIBUNALS ONTARIO IN MR. SEAN WEIR, THE ATTORNEY GENERAL OF ONTARIO

RESPONDENTS

REQUISITION #7

URGENT FILING VIA EMAIL TO THE ONSC DIVISIONAL COURT

RE: REQUISITION PURSUANT TO ONTARIO SUPERIOR COURT OF JUSTICE GUIDE TO JUDICIAL REVIEW DIVISIONAL COURT (PAGE 8 OF 9)[i]

TO THE LOCAL REGISTRAR[ii] at The Ontario Superior Court of Justice (Divisional Court) Toronto, Osgoode Hall, 130 Queen Street W., Rm 174 (or any other room situated within said building and lands at the ONSC Divisional Court (Toronto) where the Registrar is so located), Toronto, ON, M5H 2N5 (the "**Toronto Divisional Court**") Phone: (416) 327 5100

1. I REQUIRE forthwith access to **Case Center** as per the *Rules of Civil Procedure* and my obligations therein; and
2. I REQUIRE an invitation link forthwith to Case Center and have had a right of access to the same since the time my judicial review application was filed, commenced, or brought (see: Ontario Superior Court of Justice Guide go Judicial Review Divisional Court" [the "Divisional Court JRPA

Guide" or "Divisional Court Judicial Review Guide"] which states [emphasis is mine], "After you have brought an application for judicial review, you will receive an email to register for CaseLines and upload your materials. There is no fee to use CaseLines" (see: page 8 of 9).

All of which is respectfully required and requisitioned to this ONSC Divisional Court Registrar for her immediate attention and subsequent action pursuant to Rule 4.08.

February 5, 2025

Mr. Kevin A. McLean
775 King Street West,
Suite 410
Toronto, Ontario
M5V 2K3
(e): mcleansettlement@gmail.com

Mr. Kevin A. McLean (B.A. J.D., CIM)
Self-represented or appearing *Pro Se*, the Applicant herein

RCP-E 4E (July 1, 2007)

Endnotes

[i]Nota bene: the Divisional Court JRPA Guide remains the only one that the Applicant can find publicly. However, the two linked documents, namely: (i) Consolidated Practice Direction for Divisional Court [spent or no longer in effect]; and (ii) Notice to Profession – Divisional Court (April 19, 2022)

[ii]"registrar" means the Registrar of the Divisional Court or Court of Appeal, or a local registrar of the Superior Court of Justice, as the circumstances require

1. Case information

Email address	mcleansettlement@gmail.com
Type of proceeding	Existing proceeding
Selected court	Toronto
Has this submission previously been rejected by the Court?	No
Identify the court file number	DC-24-00000718-00JR

2. Filing Party information

The document(s) are being filed on behalf of:	MCLEAN , KEVIN , Appellant

3. Uploaded Document(s)

Form 4E: Requisition	Requisition 7 - Invitation - Case Center - JRPA Guide - APPLICANT - M R MCLEAN - 5-FEB-2025.pdf
Are any of the documents in this submission required to be filed and/or issued for a hearing or deadline 6 or 7 business days away?	Yes

Civil Submissions Online

Confirmation

Thank you for submitting document(s) through the Portal for filing and/or issuance with the Superior Court of Justice in your civil (or Divisional Court) proceeding.

You will be notified by the Court Registrar about whether your document(s) have been accepted for filing and/or issuance. This notice will be sent to you by email **within 5 business days.** Your credit/debit card will only be charged once the filing has been accepted.

If your documents are rejected, you will receive an email from the court office to tell you they have not been filed, the reason(s) for the rejection, and confirming that your credit/debit card has not been charged.

If you need to file or issue documents for a court hearing that is 5 business days or less away or you need to meet a timeline for a step in the proceeding established by legislation, court rules, court practice direction or a court order and the timeline is 5 business days or less away, your request may not be processed in time. Contact the court office for more information.

Please ensure that your computer system can accept emails from the court (for example, by adjusting your spam filter to ensure that you receive all emails from court staff with "@ontario.ca" addresses). If you are expecting an email and have not received one, please check your junk mail folder before contacting the court office.

Court file number
DC-24-00000718-00JR
Submitted to the Divisional Court, Superior Court of Justice in
Toronto
Confirmation number
2882352
Date and time
05-Feb-2025 02:38 PM
Document(s) submitted
File Name
Form 4E: Requisition

Case specific questions and questions about your submission should be directed to the court office where your documents were submitted.

You can find a list of courthouse addresses and phone numbers on the Ministry of the Attorney General's website.

To help us improve our services, please provide us with feedback on your online experience. The information collected is for research purposes only. Your responses are completely confidential.

Rate Our Service

TAB 18

Court File No. DC-24-00000718-00JR

FORM 59A

Courts of Justice Act

ORDER

ONTARIO SUPERIOR COURT OF JUSTICE (DIVISIONAL COURT)

_____ _____ _____

ONTARIO SUPERIOR COURT OF JUSTICE (DIVISIONAL COURT)

BETWEEN:

KEVIN ALEXANDER MCLEAN

APPLICANT

- and -

TD HOME AND AUTO INSURANCE COMPANY, SECURITY NATIONAL INSURANCE COMPANY, TD GENERAL INSURANCE COMPANY, EXECUTIVE DIRECTOR, LICENCE APPEAL TRIBUNAL, HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO, REPRESENTED BY EXECUTIVE CHAIR OF TRIBUNALS ONTARIO IN MR. SEAN WEIR, THE ATTORNEY GENERAL OF ONTARIO

RESPONDENTS

ORDER

THIS MOTION, made by the Applicant, Mr. Kevin A. McLean, for the relief sought at the paragraphs denoted in his Notice of Motion of January 31, 2025 (see: **Schedule "A"**) was heard in writing on February 14, 2025, AND ON READING the following: (i) materials in support of the Applicant's Notice of Motion (the "**Materials In Support**") (see: **Schedule "B"** to this Order (Form 59(A)); and (ii) on hearing the following in written form way of evidence, forms, submissions and other documents signed by the

Applicant, written and filed documents or submissions (non-sworn evidence) of the Applicant, which are particularized and described as (see**: Schedule "C"**); AND

the respondents being served with the Applicant's *JRPA* Application immediately after he made the *JRPA* Application to the Court via the online filing and paying for the same on November 15, 2024, filing Notices of Appearance on November 27, 2024, (Tribunal) and December 3, 2024 (respondent insurance companies); the Tribunal neglecting or failing to comply with its statutory duties under the *JRPA* and SPPA to forthwith file a record of proceedings that contained all of the content requirements at section 20 of the SPPA, and not opposing or consenting to the Applicant's NOM #1 that sought compliance with the same; the respondent insurance companies not complying with the Practice Direction entitled "Information Submitted to the Court" within two weeks of the *JRPA* Application being issued or at all; the respondent insurance companies and the Tribunal being served with the Applicant's Factum and Application Record (December 12, 2024) yet not complying with Rule 68.04(4), or seeking leave to deliver responsive factums and application records after January 13, 2025; and neither the respondent insurance companies nor the Tribunal (collectively, the "Responding Parties" or "Remaining Respondents") complying with Rule 37.12.1(5) within ten days of the date of January 31, 2025, or February 1, 2025, and not filing any objections to NOM #2 being heard in writing or seeking to be heard orally (see: Rule 37.12.1(5)(d));

1. **THIS COURT DECLARES** *AS A FACT* that the Attorney General of Ontario (the "AGO") confirmed in writing on January 30, 2025, with the Applicant, other respondents and the Court that it would not participate in the *JRPA* Proceeding and to be removed from any future correspondence. THIS COURT FURTHER ORDERS that the orders herein are granted with reasons for decision and/or reasons for judgment to follow;

2. **THIS COURT DECLARES** *AS A FACT* that the Applicant provided the status of his motion #1, attempts to have it heard, the status of the Tribunal's filing of the record of proceeding and documents that were not accounted for in the court file by the Tribunal's failure to forthwith file a record of proceeding in accordance with the *JRPA* and *SPPA*. **THIS COURT FURTHER DECLARES** that the Tribunal had failed to file, as of the date of this order, a record of the proceeding forthwith or at all, the respondent insurance companies and the Tribunal failed to file responsive factums and application records in accordance with *Rule* 68.04(4), and THIS COURT

ORDERS that the Tribunal and the respondent insurance companies are precluded from any further participation in this *JRPA* Proceeding but for costs subject to the below order;

3. **THIS COURT ORDERS THAT** The Honourable Madam Justice Shore was and is precluded from hearing any motions, hearings or conferences, and from any involvement in this *JRPA* Proceeding at first instance and/or in the future involving the Applicant and respondent insurance companies on account of a reasonably perceived conflict of interest, apprehension of bias and/or lack of independence, through no fault of this Divisional Court or herself, and solely by virtue of her being a former partner at the law firm of Epstein Cole LLP wherein one Mr. Andrew Papadimitropoulos, a lawyer licensee with "TD Insurance" at the material times of August 31, 2022 to January 2025, was a client of said law firm in matrimonial litigation with his ex-wife who was the individual named insured in the relevant insurance policy[i], underwritten by SNIC;

4. **THIS COURT FURTHER ORDERS** the following consequential relief is granted, as a result of the respondents, excluding the AGO, not consenting to the initial request of the Applicant on January 16, 2025, that a justice other than The Honourable Madam Justice Shore of the ONSC was engaged in any triage, case management or conduct involving the *JRPA* Proceeding:

    i. The **Case Management Appearance Requirement** (January 7, 2025) is declared as void and void *ab initio* (not merely voidable) (the "**Nullification Request**");
    ii. A general and indefinite adjournment of the case conference;

5. **THIS COURT DECLARES THAT** that Rule 4.05.3 of the *Rules of Civil Procedure* applied to Madam Justice Shore's written requirement, on January 7, 2025, to the parties, as they then were, attend before her by way of case conference, pursuant to Rule 77.04(2) of the *Rules of Civil Procedure*;

6. **THIS COURT DECLARES THAT** that since the Applicant and Remaining Respondents did not receive an invitation to Case Center despite the Applicant's requests and requisitions for the same that the case conference of February 18, 2025, for the purposes of *discussing prematurity* and, if necessary, exchanging materials and setting a hearing, was incapable of being conducted in accordance with the *Rules of Civil Procedure* as none of the parties could upload their filed documents into Case Center pursuant to Rule 4.05.3(2), (3)(1.) and (2.), and (4)(2.);

7. **THIS COURT ORDERS THAT** the Registrar shall forthwith send the Applicant an invitation to Case Center to his email address for service with this Court;

8. **THIS COURT ORDERS** THAT the NOM #2 is heard in "written format" on February 14, 2025, and that said NOM #2 was converted into a Motion for **Judgment** (see: Rule 1.03(2)[ii]) pursuant to *Rule* 37.13(2)(a);

9. **THIS COURT ORDERS THAT** that the Applicant shall have **Judgment** in this ***JRPA* Proceeding** as, in part, particularized in his ***JRPA* Application**, **Factum** and **Factum** to his NOM #2 as follows:

    a. **THIS COURT DECLARES THAT** the impugned decisions and orders (relevant to the Applicant's NOM #14 (August 3, 2024) (see: particularized therein as Orders #1 to #4 of Vice Chair Morisette (see: **Schedule "D"**) and **NOM #15** (August 17, 2024) (particularized therein as Order #3), dated and signed on September 12, 2024 (the "**VCM Decision**"), and Vice Chair Lake on reconsideration (October 15, 2024) involve **final decisions** and **final orders**;

    b. **THIS COURT FURTHER DECLARES** that the standard of review to those final decisions and final orders, particularized and cross-referenced herein, is correctness;

    c. **THIS COURT ORDERS AND QUASHES**, in the nature of *certiorari*, the decisions and orders of **VCM** (excluding the order(s) in NOM #13 contained in the same issued reasons for decision VCM (defined above as the "**VCM Decision**") upheld on reconsideration by VC Lake, and substituting the same for the orders sought in NOM #14 as follows including the following consequential or ancillary orders:

        i. An Order setting aside the final order of **VCM** that refused the Applicant's relief sought to add TDHA as a party and substituting it with an order that **TDHA** is added as a party to the LAT Appeal (see: Compendium, Tab 6);
        ii. An Order that **TDHA** has 14 days from the date of this order to file a responsive pleading to the causes of action of the Applicant's LAT Appeal (see: Compendium, Tab 6) that it received on December 24, 2023, via fax;
        iii. An Order that **TDHA** is declared as the **First Insurer** pursuant to *Reg 283*;
        iv. An Order that TDHA is required to comply with all of its obligations under the *Insurance Act*, *Reg 283*, and *SABS* forthwith on a past, current and future bases;
        v. An Order **SNIC** and TDHA shall take all necessary steps to provide the correct name of 'the insurer' that first received the Applicant's Completed Application with current mailing address and fax number to the Applicant at his email for his accident benefits claim at mcleansniclatgmail.com, and correct the same with the central processing agency also known as HCAI within 7 days of this order; and

10. THIS COURT ORDERS THAT the Applicant is entitled to costs of this JRPA Proceeding against the Tribunal, SNIC and TDHA; and

11. THIS COURT ORDERS THAT the Applicant is entitled to seek directions regarding any of the above.

Date of issuance …… _____

RCP-E 59A (January 2, 2024)

Schedule "A"
Verbatim language from the made notice of motion on January 31, 2025
Served on the respondents, with proof of service, immediately thereafter.

THE MOTION IS FOR the following relief:

Order #1: Preliminary order (if applicable)

1. A preliminary delegation by the ONSC Div. Ct. (Chief Justice) that the delegated or presiding motion judge (not an "associate judge" pursuant to 37.02(2)(f) of the *Rules Of Civil Procedure* and section 4 of the *JRPA*) for this written motion shall not be the Honourable Madam Justice Shore and/or any other justice that was employed by Epstein Cole and/or was a partner in the limited liability partnership of Epstein Cole LLP during the time from Fall of 2017 to present;

Order #2: Motion #1 (if applicable)

2. An Order that to the extent that some or all of the relief in his motion #1 (see: Schedule "A"), originally returnable on Thursday, January 30, 2025, or as soon thereafter has not determined by teleconference that it is heard and decided in this motion #2 by the presiding motion judge (in writing). A further order that the Applicant (moving party) shall advise the Court (Registrar) to the attention of the presiding justice with the following information one day before February 14, 2025;
    a. The status of motion #1;
    b. The attempts to have motion #1 heard;
    c. The status of the Tribunal's filing of the record of proceeding with the Divisional Court;
    d. What documents contained in the record of proceeding are not accounted for in the Applicant's Application Record, filed affidavit material herein, and the application records of the respondents to the motion in writing; and
    e. Any other information of assistance to this Court.

Order #3: The Disqualification of Madam Justice Shore or Recusal of Madam Justice Shore

3. An Order that Mr. Papadimitropoulos and Epstein Cole LLP provide copies of the separation agreement between Mr. Papadimitropoulos and Ms. Nicole Artopoulos (the named individual insured individual) and the divorce decree between them for review by the Court "in camera" to assess the issue of a reasonable apprehension of conflict of interest and bias involving Madam Justice Shore on account of Mr. Papadimitropoulos being a client of her former law firm in 2018 in Epstein Cole LLP. Further, Orders consistent with the following relief (see: SCHEDULE "B") in the Applicant's COI Recusal Submissions as follows:
    a. The Honourable Madam Justice Shore is disqualified from any further involvement in this *JRPA* Proceeding (the "**Disqualification Request**" or the "**Recusal Request**");
    b. The Case Management Appearance Requirement is declared as void and void *ab initio* (not merely voidable) (the "**Nullification Request**");

c. A general and indefinite adjournment of the case conference pursuant to 77.04(1)(b) of the *Civil Rules* by the Associate Justice (the "**Adjournment Request**");
d. A direction by the Honourable Chief Justice, pursuant to section 76 of the *CJA*, that the Registrar shall accept all outstanding requisition filings and provide confirmation of the same to the *JRPA* Applicant and respondents; and
e. A direction by the Honourable Chief Justice, pursuant to section 76 of the *CJA*, that the Registrar comply with her duties (by law), pursuant to 68.05(2) of the *Civil Rules*[iii], and provide the parties with a "Notice of Listing For Hearing".

("d" and "e" together, the "**Staff Direction Requests**").

(collectively, the "**Respectful Requests**" or "**Requests**").

Order #4: Converting the "motion in writing" to a "motion for Judgment"

4. An Order converting this motion into a motion for **Judgment** and the Applicant is entitled to judgment in accordance with the relief sought in his *JRPA* Application, Factum, and further particularized and referenced in the Oral Compendium with "Outline";
    a. In the alternative, an Order that that the Court in accordance with Rule 37.13(2)(b) that the *JRPA* Application is heard and decided on a date in February 2025 that is within the approximate range provided by the Registrar as per a Form 68(B)

Administrative and Costs Orders

5. An Order abridging or shortening any prescribed time requirement to have this motion heard in writing on February 14, 2025, including any orders that allow for filing of any amendments to the Notice of Motion #2, Motion Record #2, Draft Order for Motion #2, and "Factum For Motion in Writing and Converting Motion to Motion for Judgment" by way of amendment, newly discovered evidence or fresh evidence, any filing of the record of proceeding by the Tribunal and/or inclusion of documents to be included in the record of proceeding by the Applicant or any other person in control or possession of the same for benefit of the court, by way of "reply submissions" or "reply evidence" and/or the status of motion #1 at any time thereafter. A further Order that any orders so granted at the time of the hearing of NOM #2 (in writing) are granted nunc pro tunc;

6. An Order that the respondent insurance companies, each and all, have not raised a preliminary objection in this *JRPA* Proceeding herein by not complying with the Practice Direction, specifically the section regarding "Information Submitted to the Court";

7. An Order that the respondents, excluding the AGO, have contravened Rule 68.04(4) of the Rules of Civil Procedure. A further order that if the respondents have not provided a proposed factum by way of affidavit at the hearing of this motion #2 herein, they are precluded from seeking leave of this Court to file their factums and application records one month after the prescribed time requirement;

8. An Order granting leave to the Applicant to file any responsive submissions or reply evidence and such order shall be granted nunc pro tunc;

9. An Order dispensing with the requirement for the Applicant to upload any filed documents to Case Center if he does not receive an invitation to Case Center prior to the prescribed time to discharge his obligation pursuant to the Civil Rules. Further, an Order that the court file shall be provided to the presiding motions judge (in writing) prior to February 14, 2025;

10. Costs against any of the respondents that do not consent and oppose motion #2.

SCHEDULE "B"

The presiding motion judge was referred to the following materials in support of NOM #2:

1. Affidavits of service of the Applicant including affidavit of service on February 11, 2025,
2. Affidavit #2 of the Applicant, made on December 30, 2024
3. Affidavit #4 of the Applicant, made on January 18, 2025
4. Affidavit #7 of the Applicant, made on January 24, 2025;
5. Affidavit #8 of the Applicant, made on January 27, 2025;
6. Affidavits filed by the Applicant not enumerated above, sworn on February 14, 2025, and provided before the issuance of any endorsement or orders, or "reasons for decision" so issued and signed by the sitting motions justice; and
7. Compendium filed by the Applicant in accordance with the Rules of Civil Procedure relating to a motion on notice (where those materials were of an evidentiary (sworn) nature).

SCHEDULE "C"
Re: Written Submissions or Documents (filed) in Support

(a) Applicant's *JRPA* Application, dated and made on November 15, 2024, and served on the respondent insurance companies, Tribunal and AGO immediately thereafter;

(b) the Tribunal's Notice of Appearance of November 27, 2024;

(c) the Notice of Appearance of TD Home And Auto Insurance Company, Security National Insurance Company, and TD General Insurance Company of December 3, 2024;

(d) Applicant's Factum: dated, filed and served on December 10, 2024;

(e)The Applicant's Application Record: dated, filed and served on December 12, 2024;

(f) The Applicant's Certificate of Perfection: dated and served on December 13, 2024, and paid for and filed on December 13, 2024, and issued on December 16, 2024;

(h) The Applicant's requisition of December 24, 2024, seeking a Form 68(B) from the Registrar;

(i) Applicant's COI Recusal Submissions (see: Schedule "B" to the **NOM #2**) initially made to the Court by way of a "request" as opposed to motion as no order or endorsement was issued by Madam Justice Shore on January 7, 2025;

(j) The Applicant's Notice of Motion #2;

(k) The Applicant's Confirmation of Motion filed and served herein;

(l) Applicant's Compendium of February 11, 2025; (m) Applicant's affidavit of service of February 11, 2025, for his Compendium; and

(m) Applicant's comprehensive written outline of February 14, 2025, cross-referenced to the Compendium; and the non-participation generally by the respondent insurance companies and the Tribunal, and specifically in relation to this Motion #2:

SCHEDULE "D"

NOM #14 ORDERS SOUGHT BY THE APPLICANT BEFORE THE LAT

a. ***Order #1***:
   i. An Order, Declaration, determination and/or finding that TD Home And Auto Insurance Company, FSRA registration number 1063 ("**TDHA**" or "**TDHAIC**") was the **First Insurer** to receive, pursuant to *Reg 283*, the Appellant's fax delivered **Completed Application** (see: *Reg 283*, s 0. 1) to the fax number, provided to him by SNIC as a return address [sic] for SNIC, of 416-774-3120 (the "**416 Fax Number**") on October 13, 2022 [the "First Insurer Order"];

b. ***Order #2***:
   i. An Order, Declaration, determination or finding the physical address, which is apparently denoted as a branch office of **SNIC** in **HCAI**, municipally known as 304 The East Mall, Floor 6, Etobicoke, Toronto, Ontario, M9B 6B7 (the "**Etobicoke East Mall Address**") was or is an address or branch office of **TDHA** and not **SNIC** [the "HCAI Office Order"]

c. ***Order #3***:
   i. An Order adding **TDHA** as a respondent party to this LAT proceeding therein [the "**TDHA Party Addition Order**" and "**TDHA Cause Of Action Order**"]; and

d. ***Order #4***:
   i. An Order requiring **TDHA**, should it wish to oppose the relief sought in the **Appellant's Appeal**, file and serve a **Response** to the **Appellant's Appeal** within 14 days of the date of the orders herein;

Order #3 that the Applicant sought in **NOM #15**:

a. "Order #5": A preliminary finding, determination, or order, that the fax number 416-774-3120 was a landline phone number utilized as a fax number on the 4th floor of the building situated at the premises municipally known as 3650 Victoria Park Avenue, North York, Toronto, Ontario, M2H 3P7.

[i]Referenced in the VCM Decision at paragraph 27
[ii]"Judgment" means a decision that finally disposes of an application …on its merits
[iii]68.05(2) When the certificate of perfection has been filed, the registrar shall place the application on a list for hearing and give notice of listing for hearing (Form 68B) by mail to the parties and the other persons named in the certificate of perfection. R.R.O. 1990, Reg. 194, r. 68.05 (2).

TAB 19

Civil Submissions Online

Confirmation

Thank you for submitting document(s) through the Portal for filing and/or issuance with the Superior Court of Justice in your civil (or Divisional Court) proceeding.

You will be notified by the Court Registrar about whether your document(s) have been accepted for filing and/or issuance. This notice will be sent to you by email **within 5 business days.** Your credit/debit card will only be charged once the filing has been accepted.

If your documents are rejected, you will receive an email from the court office to tell you they have not been filed, the reason(s) for the rejection, and confirming that your credit/debit card has not been charged.

If you need to file or issue documents for a court hearing that is 5 business days or less away or you need to meet a timeline for a step in the proceeding established by legislation, court rules, court practice direction or a court order and the timeline is 5 business days or less away, your request may not be processed in time. Contact the court office for more information.

Please ensure that your computer system can accept emails from the court (for example, by adjusting your spam filter to ensure that you receive all emails from court staff with "@ontario.ca" addresses). If you are expecting an email and have not received one, please check your junk mail folder before contacting the court office.

Court file number
DC-24-00000718-00JR
Submitted to the Divisional Court, Superior Court of Justice in
Toronto
Confirmation number
2952360
Date and time
05-Mar-2025 08:18 AM
Document(s) submitted
File Name
Form 4F: Notice of Constitutional Question

Case specific questions and questions about your submission should be directed to the court office where your documents were submitted.

You can find a list of courthouse addresses and phone numbers on the Ministry of the Attorney General's website.

To help us improve our services, please provide us with feedback on your online experience. The information collected is for research purposes only. Your responses are completely confidential.

Rate Our Service

Court File No. DC-24-00000718-00JR

FORM 4F

Courts of Justice Act

NOTICE OF CONSTITUTIONAL QUESTION

ONTARIO SUPERIOR COURT OF JUSTICE (DIVISIONAL COURT)

BETWEEN:

KEVIN ALEXANDER MCLEAN

APPLICANT

- and -

TD HOME AND AUTO INSURANCE COMPANY, SECURITY NATIONAL INSURANCE COMPANY, TD GENERAL INSURANCE COMPANY, EXECUTIVE DIRECTOR, LICENCE APPEAL TRIBUNAL,
HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO, REPRESENTED BY EXECUTIVE CHAIR OF TRIBUNALS ONTARIO IN MR. SEAN WEIR, THE ATTORNEY GENERAL OF ONTARIO

RESPONDENTS

NOTICE OF CONSTITUTIONAL QUESTION

The Applicant intends to question the constitutional validity and/or applicability of various rules of the Licence Appeal Tribunal, effective on August 21, 2023 (the "*LAT Rules*"), and to seek relief pursuant to section 52(1) of the *Charter*.

The Applicant further intends to claim remedies under subsection 24 (1) of the *Canadian Charter of Rights and Freedoms* in relation to various acts or omissions of the Government of Ontario or agents[1] of the Government of Ontario from the time period of December 24, 2023, to present.

The question is to be argued:

X In person

☐ By telephone conference

☐ By video conference

at the following location:

The Ontario Superior Court of Justice (Divisional Court)
130 Queen Street West
Toronto, Ontario,

(Courthouse address for in person hearing or telephone conference or video conference details, such as a dial-in number, access code, video link, etc., if applicable)

on ..... (*day*), ... (*date*), at ..... (*time*).

Material Facts

The following are the material facts giving rise to the constitutional question:

1. The Applicant concisely sets out the material facts that relate to the constitutional questions above by reference to the following with a written argument to follow and a **2nd Amended Compendium** and revised written argument. Due to the urgency to the issues and the recently discovered evidence in the previous week (February 24, 2025 to February 28, 2025) and application of the same, the Applicant has tendered this **NOCQ** as promptly as possible. Subject to any amendments for current evidence to be obtained, hyperlinking and bookmarking, the Applicant provides this **NOCQ** on an urgent basis.

2. The Applicant attaches the index to his 1st Amended Compendium along with the documents contained therein inclusive of his 1st written argument therein and relies upon the following documents therein

3. The Applicant also relies upon the following not contained in his 1st Amended Compendium as the material facts that arose involving the same, and further investigations and application of that newly discovered evidence to the previously known facts and the law, which are:

    a. Affidavit #17 of the Applicant, made on Wednesday, February 26, 2025;
    b. Affidavit #18 of the Applicant, made on March 3, 2025.

4. There is no dispute that the Applicant was subject to a search and/or seizure by the theft of his property by way of backpack on October 25, 2024. There is also no dispute that one Mr. Andrew Papadimitropoulos impersonated him by way of his purported signature and named in a TPL equipment borrowing agreement (see: **Affidavit #17, Exhibit "A**"). Moreover, there is also no dispute that Mr. Papadimitropoulos during this **JRPA Proceeding**, specifically December 13, 2024, engaged in utilizing the identification from his wallet contained in his backpack which was stolen on October 25, 2024, from the visitor area of CAMH. December 13, 2024, was the day that the Applicant filed and paid for the **Certificate of Perfection**. On December 10, 2024, the Applicant filed and served the Applicant's Factum. On December 12, 2024, the Applicant filed and served the Application Record which triggered the 30 day prescribed requirement, pursuant to section 68.04 of the *Rules of Civil Procedure*, to file their responsive factums and application records.

5. There is also no dispute that Mr. Papadimitropoulos or those under his authorization, by way of alleged LAT authorization, engaged in the further unlawful borrowing of books, magazines and periodicals from the TPL under the guise and pretense that he was Mr. McLean. He was not and never was.

6. One of the issues to be addressed in this regard in relation to section 8 of the *Charter* is whether he was acting as an agent on behalf of the LAT. The Applicant pleads, submits and avers that he was acting as an agent of government in those capacities despite being listed with the LSO directory as an employee of "TD Insurance". Since the overwhelming and undisputed evidence of his involvement in wide scale unauthorized seizures and searches of Mr. McLean's property, personal information and personal health information came to light, he ceased being an employee of "TD Insurance". Moreover, since Mr. McLean brought the same to the attention of the ONSC Divisional Court including esteemed counsel for the AGO in Ms. Im, the AGO withdrew thereafter. However, at the time, the Applicant did not have the relevant and material facts to responsibly submit that

some or all of the insurance companies in the TDI Group along with their agents, employees and/or contractors were acting as government agents for the Licence Appeal Tribunal.

7. The other issue to be addressed under section 8 of the *Charter* is whether the recently discovered undisclosed decisions of the Tribunal on or around the following dates: (i) June 6, 2024; (ii) July 27, 2024; and (iii) August 16, 2024 (see: Affidavit #18, Exhibit "A"), are contrary to section 8 of the *Charter* by being unreviewable (see: *Goodwin*, infra).

8. In relation to section 2 of the *Charter*, the issue to be addressed in relation to those primary dates in the foregoing paragraph lead to the

9. Moreover, the Applicant relies on the facts in *Shuttleworth* for the then policy of the Tribunal in issuing its decisions (see: Applicant's Written Outline to 1st Amended Compendium, Voume 5(L), paragraph 359; Volume #6(I)(E)).

10. The Applicant seeks relief herein that each and every decision, including those favourable to him, are quashed in the nature of certiorari on similar grounds to that of those found in *Shuttleworth* (i.e. a reasonable apprehension of a lack of independence).

11. The Applicant has sworn and continues to aver that counsel in Mr. Boyce to the Tribunal in this JRPA Proceeding was, in part, counsel to the impugned decision makers in the LAT Appeal, and he continues to seek similar type relief prohibiting Mr. Boyce from acting on behalf of the Tribunal. However, in the context of this **NOCQ**, the Applicant submits that the Tribunal has a systemic issue of actual bias and decision makers under the power of dictation from lawyers (particularly in-house counsel) of insurance companies through in-house counsel of the SLASTO Legal Unit like Mr. Boyce.

12. The Applicant submits that it is not merely the likes of Mr. Boyce, a former adjudicator and vice chair at the LAT who then resigned from those duties to become an in-house legal counsel of the SLASTO, that engage in this conduct but it is a systemic issue affecting the *Charter* rights of similarly situated individuals. In this regard, the Applicant

13. The Applicant attaches all of the above by way of piecemeal attachments to the same due to their size.

Legal Bases

The following is the legal basis for the constitutional question:

1. The Applicant relies on the following legal bases for the above noted constitutional questions.

Section 1 of the Chater

2. The Canadian *Charter of Rights and Freedoms* (the "*Charter*') guarantees the rights and freedoms set out in it subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society.

Section 2 of the *Charter*

3. The Applicant alleges that the LAT has breached the open court principle and he is entitled to relief under section 24(1) of the *Charter*.

4. In *Toronto Star v. AG Ontario*, 2018 ONSC 2586, the Honourable Justice Morgan confirmed that the "open court principle" applies with equal force to tribunals particularly those of an adjudicative capacity like the Licence Appeal Tribunal (see: paragraph 16 of the Applicant's Written Outline to his 1st Amended Compendium).[2]

5. The open court principle is one of the hallmarks of a democratic society . . . [and] is inextricably tied to the rights guaranteed by s. 2(b) of the *Charter* (see: paragraph 54 of *Toronto Star*).

6. This open access, and concomitant protection of freedom of the press, is in keeping with those tribunals' obligation "in exercising their statutory functions . . . [to] act consistently with the *Charter* and its values". This is not optional or discretionary on the part of administrative tribunals. As the Supreme Court has stated, "the protection of *Charter* guarantees is a fundamental and pervasive obligation, no matter which adjudicative forum is applying it". (see: paragraph 55 of *Toronto Star*).

7. It is important to keep in mind that freedom of expression "protects listeners as well as speakers" (see: paragraph 56 of *Toronto Star*).

8. But the open court principle in s. 2(*b*) of the *Charter* only applies to Adjudicative Records (see: paragraph 62 of *Toronto Star*). The Applicant has been seeking the adjudicative records from the LAT by way of its required forthwith filing pursuant to section 10 of the JRPA, his FIPPA request of the LAT privacy and access division, and the LAT registrar. The furthest the LAT went was providing a purported print out on February 26, 2025, which necessitated the Applicant to exhaustively created a precise index of that purported "print out" which yielded the results contained in affidavit #18 filed and stamped in this **JRPA Proceeding**.

9. The Applicant continues to be stonewalled from his rights as a party to the LAT Appeal with respect to receipt of adjudicative records therein. He is on stronger footing than that of the Toronto Star albeit it was challenging the legislation therein. In this instance, the Applicant is challenging the conduct of the LAT in relation to failing to comply with the "open court principle" by failing to comply with its compiling duties under section 20 of the SPPA at first instance. There are a litany of missing records from the "print out" and to the extent that they cannot be accessed, then the LAT will remain in breach of the "open court principle" in perpetuity.

10. The Applicant repeats and relies upon paragraphs 11 to 13[3] of the Written Outline to the 1st amended Compendium.

11. The Applicant repeats and relies upon the endnoted paragraphs in his Written Outline to 1st Amended Compendium.[4]

12. The open court principle, which is inextricably tied to the rights guaranteed by s. 2(b) of the *Charter*, applies to administrative tribunals as well as to courts. This Tribunal followed up the incorrect decision of VCM with attempting to immunize itself from the constitutional guarantees and rights under section 96 to 101 of the *Constitution Act of Canad*a of the public to judicial review of administrative bodies by admitting through the LAT Registrar that it had not even compiled the **Record Of Proceeding** at first instance and throughout the LAT Proceeding (***SEE:*** Affidavit #16; COMPENDIUM, Tab 60; Applicant's Written Outline to his 1st Amended Compendium, paragraph 17 of the Comprehensive Written Argument).

13. There is a distinction with a difference herein in that the Applicant is a party to the LAT Appeal and the only party that has in fact kept his identity and name the same unlike that of the three respondent insurance companies. The irony is now a little overwhelming considering the theft, impersonation, fraud and unreasonable searches and seizures inflicted upon him by which the Applicant believes were at the authorization of Ontario government, specifically, the Licence Appeal Tribunal.

14. The Applicant had provided evidence to the ONSC Divisional Court of the involvement of the agents and representatives of various insurance companies of TDI Group and evidence of the colluding nature of the LAT with counsel to the respondent insurance companies but the timing of the October 25, 2024, thefts and subsequent unauthorized conduct on October 28, 2024, November 2024, and December 13, 2024, December 21, 2024, and December 28, 2024, led the unassailable conclusion that the LAT was instructing or authorizing various agents of the TDI Group to engage in unauthorized searches or seizures.

15. The law in this regard requires citing herein with further application of the same.

16. If an entity is a part of "government" then the *Charter* generally applies to all its activities, including those that might in other circumstances be thought of as private, commercial, contractual or non-public in nature.

17. Section 32 governs which persons are subjects to the *Charter*: Section 32.(1) This *Charter* applies: a. to the Parliament and government of Canada in respect of all matters within the authority of Parliament including all matters relating to the Yukon Territory and Northwest Territories; and b. to the legislature and government of each province in respect of all matters within the authority of the legislature of each province.

18. Section 32(1) defines the scope of the *Charter*'s application. The text of section 32(1) provides "a strong message that the *Charter* … is essentially an instrument for checking the powers of government over the individual": *McKinney v. University of Guelph*, [1990] 3 S.C.R. 229 at page 261, quoted in *Dickson v. Vuntut Gwitchin First Nation*, 2024 SCC 10 at paragraph 45.

19. Section 32(1) is drafted in a broad manner "to prevent Parliament, the legislatures, and the federal, provincial, and territorial governments from avoiding their *Charter* obligations by conferring

certain of their legislative responsibilities or powers on other entities that are not ordinarily subject to the *Charter*": *Dickson*, supra at paragraph 44. This provision "must be interpreted in a manner that is flexible, purposive, and generous, rather than technical, narrow, or legalistic": *Dickson,* supra at paragraph 45.

20. In Eldridge v. British Columbia (Attorney General), [1997] 3 S.C.R. 624, the Supreme Court set out the basic approach to determining whether the *Charter* applies. The *Charter* can apply in two ways. The first depends on the nature of the actor. If an entity is a part of "government", either by its very nature or due to extensive government control, then the *Charter* generally applies to all of its actions. The second way the *Charter* applies depends on the nature of the action. Even if an entity is not part of "government", the *Charter* nonetheless might apply to certain actions of that entity. Persons or entities that are not "government" but that implement a specific government policy or program, must generally comply with the *Charter* in performing the relevant governmental activity but not in respect of their non-governmental or private activities. See also *Greater Vancouver Transportation Authority v. Canadian Federation of Students — British Columbia Component,* [2009] 2 S.C.R. 295 ("GVTA") at paragraphs 15-16; *Dickson*, supra at paragraphs 42, 61, 70

21. This is a point that Mr. McLean has attempted, respectfully, to drive home by referencing that the LAT is the one tribunal in the 14 tribunals comprising Tribunals Ontario that is funded by the "insurance industry". Prima facie, the insurance industry, with the insurance companies controlling the funds by way of premiums and its growth through its direct or unrelated investment activities, and the LAT are acting in concert to some degree.

22. To the extent that they are not by the funding for the adjudicators and vice chairs et al of the LAT, the conduct specifically herein calls for a remedy under section 24(1) of the *Charter* because of the uncontroverted evidence of such particulars like the LAT assisting the respondent insurance companies counsel with its Notice of Appearance (see: Appendix #1 herein which is an attachment of the Applicant's email that he filed and served upon the respondents and interested persons).

23. Does the *Charter* apply to litigation between private actors? Dolphin Delivery was the first Supreme Court of Canada decision to discuss the application of the *Charter* in the context of purely private litigation. See also Tremblay v. Daigle, [1989] 2 S.C.R. 530. Dolphin Delivery does not "preclude the possibility of a successful reliance on the *Charter* by a party to a dispute between private individuals, provided it could be shown that the party against whom the *Charter* was invoked relied upon some form of governmental action" (*Stoffman*, supra at page 507)

24. Although the *Charter* generally does not apply to actions of non-governmental entities, specific actions of a non-governmental actor can attract *Charter* scrutiny where there is a high degree of control exercised by the government in the accomplishment of the act or because the government retains responsibility for the act in question.

Section 7 of the *Charter*

25. Everyone has the right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice (see: Section 7 of the *Charter*). The Applicant alleges that the LAT has breaches his section 7 rights and he is entitled to relief under section 7 of the *Charter*.

Section 8 of the *Charter*

26. Everyone has the right to be secure against unreasonable search or seizure. The Applicant alleges that the LAT has breached his section 8 rights in various independent manners by way of its decisions and nefarious conduct outside of the same (i.e. the authorizing of unauthorized searches or seizures of his property). The Applicant submits that he is entitled to relief regarding the same pursuant to section 24(1) of the *Charter*.

27. A right to inspect documents as part of an administrative scheme set up by statute to regulate commercial and industrial activity constitutes a search (see: *Comité paritaire de l'industrie de la chemise v. Potash*, [1994] 2 S.C.R. 406 at pages 440-441). The photocopying of a document is a search (see: *R. v. Law*, 2002 SCC 10). A search can include the right to look for things that are tangible or intangible, such as spoken words and electronic data (see: R. v. Morelli, [2010] 1 S.C.R. 253). There was no right to inspect his property at first instance or thereafter.

28. The demand upon a person to produce a record is a seizure and as conceded by the LSBC (see: *Mulgrew*, para 23). The SCC has distinguished between the ability to demand for documents made by a government body versus said person being able to collect records (see: *Arkinstall*, para 71). No demand was made upon Mr. McLean but merely the unauthorized seizure of his property and then deep and broad impersonation of him, whilst putting his life, liberty and security at jeopardy at the time and now, that dovetailed to various seminal dates in this JRPA Proceeding.

29. The SCC further echoed those sentiments and found in *Thomson Newspapers Ltd. v. Canada (Director of Investigation and Research, Restrictive Trade Practices Commission*), 1990 1 S.C.R. 425 that whether the empowered body "takes the documents" or does not, the impact on a Canadian's privacy remains the same. The constitutional validity of a statute which authorizes seizure must focus on the impact which the legislation has on the subject; not whether the regulatory body was, in fact, able to search the area and records and seize them. There was no statute that authorized such conduct into Mr. McLean's property.

30. To the extent one speaks of a "reasonable belief" in the context of "reasonable suspicion", it is a reasonable belief that an individual might be connected to a particular offence, as opposed to a reasonable belief that an individual is connected to the offence (see: *R. v. MacKenzie*, 2013 SCC 50). Reasonable suspicion is a lower standard, as it engages the reasonable possibility, rather than probability, of "any misconduct.

31. . "Reasonable grounds to believe'" and "probable cause", as found in the Fourth Amendment to the American Constitution, are identical standards (see: *R. v. Debot*, [1989] 2 S.C.R. 1140 at page 1166). "Reasonable suspicion" is a less demanding standard than "probable cause in the following ways: content of information: not only in the sense that reasonable suspicion can be established with information that is different in quantity or content than that required to establish probable cause; but reliability of information: also in the sense that reasonable suspicion can arise from information that is less reliable than that required to show probable cause.

32. Less reliable information could justify reasonable suspicion, though not 'reasonable grounds to believe'. A 'reasonable suspicion' standard may be sufficient where the investigative technique is relatively non-intrusive and the expectation of privacy is not high (see: *R. v. Kang-Brown*, 2008 SCC 18, para 168).

33. There was no reasonable grounds to believe or reasonable belief at the time or to be considered as no such law authorized the conduct that the LAT authorized by its proxies and the insurance company persons that engaged in the conduct on behalf of the LAT. The motive, while not required to be proven, was a simple one: the LAT had condoned breaches of various statutes including the *Law Society Act*, the *Insurance Act*, *PIPEDA* and others along with the various FSRA rules, which have prescribed force, and the Applicant's bringing of these issues into the public domain by decision of an independent judiciary would be fatal to it.

34. In the absence of any evidence to show that the objectives of statutes and regulations would be frustrated by adherence to having that there be entirely independent and neutral arbiter(s) capable of acting judicially and there not be any reasonable apprehension of bias regarding adjudicators and vice chairs for hearings before the LAT, it is impossible to conclude that an injured persons' right to a fair hearing would be minimally impaired.

35. Rather, it would simply require that a vice chair or adjudicator, who is not engaged in any form of communications with the various insurance companies on their own or through their SLASTO in-house legal counsel, be selected from hearing pool panel of prima facie independent decision makers.

36. In the absence of any evidence to show that the objectives of the statutory scheme would be frustrated by adherence to criterion or conduct that there be entirely independent and neutral arbiter capable of acting judicially for this self-promoted quasi-judicial tribunal, it is impossible to conclude that the s. 8 *Charter* rights would be minimally impaired. This applies to whether the challenge is to any of the statutes, regulations or rules that authorize or allegedly authorize the conduct which has occurred herein since December 23, 2024, to present.

37. The Applicant repeats and relies upon his sworn evidence in the 1st Amended Compendium relating to Mr. Boyce removing his address in the LSO Directory, Mr. Nieuwland removing his contact information altogether and switching into "to be confirmed" status, and Mr. Papadimitropoulos being relieved of his duties from "TD Insurance". There is also another compelling piece of evidence in that Mr. Karat listed his property in Oshawa for sale on the very day that Mr. McLean filed the JRPA Application which was November 15, 2024. Perhaps, they are all matters of pure coincidences but that is unlikely. All of these individuals will be afforded the right to swear competing evidence to that of Mr. McLean because a full evidentiary record is required to decide *Charter* violation.

Section 24 of the *Charter* relief

38. Pursuant to section 109 of the Courts of Justice Act, *Rules of Civil Procedure*, section 24 of the *Charter*, the **Applicant** intends to question the constitutionality of the acts, conduct, or omissions of the Licence Appeal Tribunal, known to him at this time (denoted particularly in his affidavit #18 in this JRPA Proceeding) and to be known, from on or around January 2024 to present, and the ongoing violations of the **Applicant**'s *Charter* rights as a consequence of the same, and any determined or declared non-governmental individuals or persons who are determined to have been agents of the Tribunal, violated or infringed the following rights of the Applicant:

a. Section 2 of the *Charter*;
b. Section 7 of the *Charter*; and

c. Section 8 of the *Charter*.

(collectively, the "*Charter* Violations")

and each of those *Charter* Violations cannot be saved by section 1 of the *Charter*.

39. The **Applicant** seeks remedies under section 24(1) of the *Charter* to seek redress regarding some or all of the *Charter* Violations and to prevent the infringement of his *Charter* rights on an interim, interlocutory and permanent basis as detailed below.

40. Appropriate remedies may be fashioned under section 24(1) of the *Charter* to nullify and invalidate the ***Charter* Violations** of the **Applicant** and to prevent the infringement of the **Applicant**'s *Charter* rights, including injured persons or insured persons who filed statutory applications pursuant to section 280(2) of the *Insurance Act* to the Tribunal, that are occurring or could occur.

Section 52 of the *Charter* relief

41. In relation to the LAT Rules, S. 52 provides an explicit basis for judicial review of legislation in Canada, for, whenever a court finds that a law is consistent with the Constitution of Canada, the court must hold that law invalid i.e. of no force and effect.

42. When an order of invalidity is made against a statute, regulation or rule (issued by government) that *ends the matter* as it relates to those questions involving that provision. Moreover, in a civil proceeding, the entity relying on the law will **lose** the legal bases for their case or defence.

43. Since the *Charter* is part of the Constitution of Canada, any law that is inconsistent with the *Charter* is "of no force and effect". Since it falls to this Court of Appeal to determine whether or not a law is inconsistent with the *Charter*, s. 52(1) provides an explicit basis for judicial review of legislation (see: Legislation Act 2006) in Canada. As the LAT Rules were made by the Tribunal, which is an arm or division of the Ministry of Attorney General, they can be challenged pursuant to section 52(1) of the *Charter* (see: Peter W. Hogg, Constitutional Law of Canada, (Toronto: Thomson Carswell, 2005) ["**Hogg Constitutional Law**"] at page 866).

44. S. 52(1) appears to confer no discretion on the court, requiring the court to make a holding of invalidity if it concludes that a law or act is inconsistent with Constitution. The learned chambers judge noted the presumption of constitutionality but where a law is found to be inconsistent with the *Charter* of Rights, the court is obliged to strike the law down. If the litigation is a criminal prosecution, the person charged under the invalid law will be entitled to be acquitted. If the litigation is a civil action, the parties relying on the invalid laws lose the legal bases for their case (see: Hogg Constitutional Law, page 868).

45. Mr. Justice Rothstein, as he then was of the FCA, in Canada (Information Commissioner) v. Canada (Prime Minister) 1992 CanLII 2414 (F.C.). ["*Information Commissioner*"] provided the framework for challenging legislation or conduct at first instance.

46. In *Information Commissioner* which applied *Slaight* provided the following analytical framework that is deconstructed into the following syllogism:

a. **Guaranteed/Protected Right at Issue**: if a guaranteed right is at issue, then the impugned legislative sections must be analyzed with respect to the below.

i. 1. No Discretion: if the impugned legislative section has not conferred any discretion or power to the benchers to limit said right(s), then the challenge is directed at the section(s) of the parent legislation/enabling statute; or
ii. 2. Precise Discretion: if the impugned legislative section has conferred a precise discretion or power to the benchers to limit said right(s),then the challenge is directed at the section(s) of parent legislation/enabling statute; or
iii. 3. Imprecise Discretion a. Imprecise Discretion yet Expressly Conferred: if the impugned legislative section has conferred an imprecise discretion or power to the benchers to limit said right(s) but that power is expressly conferred, then the challenge is directed at the section of parent legislation/enabling statute; or
iv. b. Imprecise Discretion Not Expressly Conferred yet Necessarily Implied: if the impugned legislative section has conferred an imprecise discretion or power to the benchers to limit said right(s) but that power is not expressly conferred yet necessarily implied, then the challenge is directed at the section of parent legislation/enabling statute.

47. There is no challenge to the empowering statute or regulations (where applicable) but rather to the *LAT Rules* that authorize, to the extent that they do, the Tribunal to engage in some or all of the following (wherein he seeks relief regarding the same):

a. Engaging in making of decisions without following the requirements under the *SPPA*, *LATA* and other statutes, regulations or requirements of law;
b. Making decisions without issuing the same;
c. Making decisions under the power of dictation by insurance companies in the automotive sectors and who are at issue in a LAT proceeding;
d. Engaging in any conduct that would be counter to the natural justice rights of injured person or insured persons before the LAT;
e. The issuance of decisions where the decision makers are not independent from the very insurance companies that fund the Licence Appeal Tribunal; and
f. Other particulars in the **1st Amended Compendium**, Affidavit #18 herein and affidavit material to be sworn, filed and served.

48. In relation to section 7 of the Charter, the LAT, by authorizing the conduct it did during the LAT Appeal and outside of the same, was attempting to cause immediate or premature death to the Applicant. To the extent it was not involved in the same, an affidavit, by its executive director or designate or a knowledgeable (of the facts and issues herein) individual(s) of the LAT will focus the Charter issues to be heard and decided. With respect to the authorizing conduct that was aimed at destroying the life, liberty and security of the Applicant, and his premature or immediate death, they came close but the Applicant is now ready to be heard on these issues. To the extent that the LAT declines to swear any evidence, the Applicant asks that an adverse inference is drawn against the LAT and variously named authorized individuals on behalf of them.

49. All of which is respectfully submitted to this ONSC Divisional Court and with service on the AGO and AGC for their consideration and participation in the hearing and deciding of these public interest issues and, where applicable, specific issues involving the Applicant.

March 4, 2025 Mr. Kevin A. McLean (B.A., J.D., CIM)

TO

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AND TO:

TD Home and Auto Insurance Company
FSRA Registration 1063

AND TO:

Security National Insurance Company
FSRA Registration 397

AND TO:

TD General Insurance Company
FSRA Registration 353

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[Other Potential Associations or Bodies to be added by way of notice]

(This notice must be served as soon as the circumstances requiring it become known and, in any event, at least 15 days before the question is to be argued, unless the court orders otherwise.)

RCP-E 4F (February 1, 2021)

Appendices

Appendix #1: email from February 9, 2025

Mr. Kevin McLean <mcleansettlement@gmail.com> Sun, Feb 9, 2025 at 4:49 PM
To: "SCJ-CSJ Div Court Mail (JUD)" <scj-csj.divcourtmail@ontario.ca>
Cc: "Maciel, Milene (MAG)" <Milene.Maciel@ontario.ca>, "Collie, Connor (MAG)" <Connor.Collie@ontario.ca>, "Pasquini, Heather" <Heather.Pasquini@tdinsurance.com>, Div Court Schedule <DivCourtSchedule@ontario.ca>, "Nieuwland, Matthew" <Matthew.Nieuwland@tdinsurance.com>, "Boyce, Jesse (MAG)" <Jesse.Boyce@ontario.ca>, andrew.papadimitropoulos@tdinsurance.com, andrew.papadimitropoulos@td.com

February 9, 2025

URGENT COURTESY NOTICE TO TRIBUNAL AND RESPONDENT INSURANCE COMPANIES

VIA EMAIL (see: scj-csj.divcourtmail@ontario.ca)

Court file number: Court File No. DC-24-00000718-00JR
Type of document: email
Short title of proceeding: *McLean v. TDHA et al*
Party: Applicant (Mr. Kevin A. McLean (BA, JD, CIM))

Re #1: courtesy notice - a matter involving the potential yet highly probable unlawful sharing of documents and communications between the Tribunal and the Respondent Insurance Companies – specifically the Respondent Insurance Companies utilizing a word document from the Tribunal to file its NOA on December 3, 2024 – leads to conclusion that neither the current counsel for the Remaining Respondents can act further

Re #2: residual – involving the record of proceeding – current status with further status updates for the benefit of the court of the very record of proceeding that was to be filed for its use – involving its constitutional imperatives

Dear **Tribunal** and Respondent Insurance Companies (copied to the ONSC Divisional Court):

VOLUME #1: URGENTLY SENT REGARDING RE #1

1. I write regarding the above. As I write on an urgent basis so the Remaining Respondents and their counsel do not feel they have been ambushed by the above issue that I have learned of yesterday by way of careful review with each document (NOAs) side-by-side.

2. I am still investigating the above matter with further analysis to follow and potentially an affidavit for the court file. Since it is alarming on its face, I have been comprehensive herein

so that none of the Remaining Respondents can argue that they did not have notice regarding the same.

3. Further, I reserve the right to further edit this correspondence for grammar, spelling, punctuation and any erroneous double negatives but the substance will remain the same.

4. As you will know from the above email thread, the facts regarding the timing of what occurred and by whom is not in dispute. I will, as a courtesy, outline the material facts and look forward to hearing from the above in the **Tribunal** and Respondent Insurance Companies in an open, honest and transparent manner.

5. On November 27, 2024, the **Tribunal**, as per Mr. Boyce, filed and served its Notice of Appearance.

6. At said time, the Respondent Insurance Companies had not filed or served a singular email let alone with a Notice of Appearance.

7. As per the template form a Notice Of Appearance, it has little in the way of wording and guidance (see: rcp-38a-e.pdf).

8. In early December 2024, I took the position consistent with the Divisional Court JRPA Guide that as TDHA and SNIC had not participated in the hearings for NOM #14 and #15 that they were not entitled to participate in the JRPA Proceeding. Mr. Boyce for the **Tribunal** took a different position regarding the same. I took the step of removing Mr. Nieuwland from emails without the Divisional Court so copied to the same. Mr. Boyce for the **Tribunal** re-included Mr. Nieuwland in the email communications.

9. I also alerted the **Tribunal** that as the requirement was for any respondent who wished to participate and intended to respond to the JRPA Application to forthwith file a Notice of Appearance and none had been filed and served by the Respondent Insurance Companies that I was not aware of any legal bases to continue to include Mr. Nieuwland, counsel at the inferior **Tribunal** level, to remain. Mr. Boyce's position, while prima facie sensible, was that all counsel for the named respondents, not necessarily "parties", should be copied. However, it was not the law and declared counsel at the inferior **Tribunal** level for a party (or even a non-party) are not necessarily counsel at the appellate level.

10. In any event, on December 3, 2024, at shortly before five p.m., Mr. Nieuwland served and filed a Notice of Appearance. I obviously took issue with the lack of forthwith filing and the language in the covering email so attaching the same. In any event, Mr. Nieuwland represented in a formal prescribed document with the ONSC Divisional Court that he was counsel to each of the Respondent Insurance Companies. As all will recall, Mr. Nieuwland was counsel to TDGIC, by way of Declaration of Representative for TDGIC on or around January 29, 2024, and then SNIC on or around June 28, 2024. No lawyer licensee had declared himself or herself as counsel to TDHA in the LAT Proceeding.

11. What is most alarming, at least by appearance, is an aspect of the "Notices Of Appearances" themselves that I had not picked up at said time because of the incorrect email utilized by the **Tribunal** and then so copied by the Respondent Insurance Companies

thereafter. I noticed the same when finalizing the documents for my Compendium in that they have the same following aspects:

a. Font (see: 11.5 and Arial);
b. Spacing;
c. Layout;
d. Same "Divisional Court file number in 'shorthand' or abbreviated style: "Divisional Court File No.: 718/24"); and
e. Other particulars.

12. Moreover, there are errors in the Respondent Insurance Companies [emphasis on 'plural'] as a result of what I believe was a result of the **Tribunal** sending the Respondent Insurance Companies a "Word" document of its NOA for usage by the Respondent Insurance Companies. I have a multitude of reasons as to why I believe, on reasonable grounds, that the **Tribunal** did so. One reason why I believe a "Word" copy was sent is that I attempted, as a step in investigating the same, to download the **Tribunal**'s filed and served NOA. When I did so, many of the lines, spacing, borders were different and then difficult, if not impossible, to reimplement.

13. The **Tribunal** utilized, as it was not a signed document per se, "Adobe PDF Maker" but the Respondent Insurance Companies utilized "Microsoft Word for Microsoft 365". You may check for yourself by way of checking the "properties" in the "metadata"[i]. The distinction is one with a crucial difference as per the above.

14. Moreover, when reviewing the timing on December 3, 2024, and Mr. Boyce's insistence of including Mr. Nieuwland in the email thread, it becomes extremely concerning and likely disabling for Mr. Boyce to act for the **Tribunal**. While there has not been much in the way of participation by the **Tribunal**, I am compelled to put this on the record to ensure that my initial position, to be solidified, by further analysis, has been provided by way of notice to the above.

15. The obvious devil's advocate type position is likely, "*So what Mr. McLean, it is two lawyers (members of the LSO and lawyer licensees) in one for the **Tribunal** and another for the respondent insurance companies sharing a document to be filed in the Divisional Court proceeding?*"

16. If it were two lawyers who were both representing non-public or non-government entities, I would be inclined to not be so technical about it. Moreover, within the span of three months or 90 days on Friday, February 14, 2025, this **JRPA Proceeding** has covered more idiosyncratic, alarming, troubling and deeply concerning facts in how the Rules of Civil Procedure and process of this ONSC Divisional Court has been misused or abused by them:

a. Mr. Nieuwland not filing and serving the requisite information under the Divisional Court Practice Direction under the heading of "Information To Be Submitted to the Court";
b. Mr. Boyce removing the business name of his employer in the SLASTO Legal Unit and address but only after receipt of my affidavit #2 on December 30, 2024;
    i. The requirement for me to confirm his current address with the LSO (Directory Services);

c. The respondent insurance companies not filing a responsive factum and application record in accordance with Rule 68;
d. The **Tribunal** not filing a responsive factum and application record in accordance with Rule 68 and the jurisprudence not above (i.e. not arguing the merits, the standard of review, and remaining impartial by appearance and actuality);
e. Neither the **Tribunal** nor respondent insurance companies providing their position of a potential RAOB involving Madam Justice Shore;
f. Mr. Papadimitropoulos' employer and address with the LSO suspiciously changing from "TD Insurance" to "TD Bank", and from Markham to Toronto (downtown);
g. Mr. Nieuwland's status with the LSO changing, in non-compliant form with the LSA and LSO By-Laws, some time in late January or early February 2025 from not only having an employer and business address to that of a "to be confirmed" status as a lawyer; and
h. Mr. Papadimitropoulos' auto reply on Friday, February 7, 2025, that he was not returning to his apparent new position with TD Bank (FIN 004) without providing his position regarding the RAOB;
i. The **Tribunal** not even filing a singular document from the Record of Proceeding along with Mr. Boyce not complying with his self-imposed timelines;
j. The **Tribunal** not opposing my paid for, filed and served NOM #1 and not raising any objection to the motion record for NOM #1;
k. The necessity of me making a FIPPA request for the Record of Proceeding and awaiting a response from the EC of **Tribunal**s Ontario as there is no "Associate Chair" for the LAT like other **Tribunal**s in the **Tribunal**s Ontario;
    i. Said FIPPA request was not necessary because I am a party to the LAT Proceeding and the documents forming the Record Of Proceeding during the ROP Temporal Period are "adjudicative records";
l. Other particulars in the made, filed and served documents in the record of this JRPA Proceeding.

17. But more importantly, it is not my opinion that matters but the opinions of the SCC, ONCA, and this revered ONSC Divisional Court that matter and count.

18. The legal test since 2016 regarding the scope of the **Tribunal**'s participation in a judicial review or appeal, with some level of analytical precision required thereafter to each province involving whether a judicial review was brought from an impugned decision or order or whether an appeal was taken from the same, was articulated at paragraph 59 of *Ontario (Energy Board)*:

"

a. If an appeal or review were to be otherwise **unopposed**, a reviewing court may benefit by exercising its discretion to grant **Tribunal** standing;

b. If there are other parties available to oppose a[n]… review, and those parties have the necessary knowledge and expertise to fully make and respond to arguments on … review, **Tribunal** standing may be less important in ensuring just outcomes; and

> c. Whether the **Tribunal** ***adjudicates individual conflicts*** between two adversarial parties, or whether it instead serves a policy-making, regulatory or investigative role, or acts on behalf of the public interest, bears on the degree to which impartiality concerns are raised. Such concerns may weigh more heavily where the **Tribunal** served an adjudicatory function in the proceeding that is the subject of the appeal, while a proceeding in which the **Tribunal** adopts a more regulatory role may not raise such concerns."

19. As a judicial review was brought herein, it is section 9(2) of the *JRPA* that is unclear on the scope of participation by any statutory decision maker.

20. There is no dispute that the Respondent Insurance Companies filed the NOA and this JRPA Application was not unopposed per se.

21. There is no dispute that the Respondent Insurance Companies are available to oppose, and they have the necessary knowledge and expertise.

22. Further, the **Tribunal** represents itself to not only be "adjudicative" but "quasi-judicial". As such, the three factors militate in favour of minimal participation by the **Tribunal**. As the **Tribunal** has not been able to file a record of proceeding forthwith or at all, this factor further militates in favour of no participation by the **Tribunal**.

VOLUME #1(A): The issue of unfairness and 'being ganged upon on'

23. The issue of unfairness and an applicant for judicial review being "ganged up on" was squarely addressed in 2016 by the SCC in *Ontario (Energy Board)* at paragraph 67:

> "[67] There is merit in both positions on the issue of bootstrapping. On the one hand, a permissive stance toward new arguments by **Tribunal**s on appeal serves the interests of justice insofar as it ensures that a reviewing court is presented with the strongest arguments in favour of both sides: Semple, at p. 315. This remains true even if those arguments were not included in the **Tribunal**'s original reasons. On the other hand, to permit bootstrapping may undermine the importance of reasoned, well-written original decisions. There is also the possibility that a **Tribunal**, surprising the parties with new arguments in an appeal or judicial review after its initial decision, may lead the parties to see the process as unfair. This may be particularly true where a **Tribunal** is tasked with adjudicating matters between two private litigants, as *the introduction of new arguments* by the **Tribunal** on appeal may give the appearance that it is "ganging up" on one party. As discussed, however, it may be less appropriate in general for a **Tribunal** sitting in this type of role to participate as a party on appeal."

24. However, the concept of an applicant being "ganged up on" by the statutory **Tribunal** and the respondents in a judicial review was articulated against the backdrop of "bootstrapping" (see: paragraphs 63 to 72 of *Ontario (Energy Board)*). It is far worse in this situation if the **Tribunal** is assisting counsel to the three respondent insurance companies in rectifying a

failure to comply with the *Rules of Civil Procedure*. When measured against the backdrop that this is the Licence Appeal **Tribunal**, a quasi-judicial agency which is tasked with engaging in resolving disputes between two private litigants (nota bene: more in this scenario as I have had to take on three of the four automotive insurance companies) and individuals that have been injured, through no fault of their own, in an automobile accident, it is a further aggravating factor.

25. Put another way, the introduction of a "new argument" on judicial review is far less egregious than the **Tribunal** assisting the respondent in a judicial review irrespective of a party status (i.e. insured person or insurance company). It can never happen. However, it is more egregious if the **Tribunal** assists an insurance company(ies) in a judicial review when the insurance company is a respondent and did not participate in the hearings involving the impugned final orders and final decisions.

26. This Honourable Court has the power to exercise its inherent discretion to control abuses of its process. If there is any further participation or purported participation by the **Tribunal** and the Respondent Insurance Companies through these in-house counsel to each, I will ask that this Honourable Court disregard any of their filings or oral submissions.

27. There is but one exception which involves the **Tribunal**'s statutory requirement under section 10 of the *JRPA*.

VOLUME #2: RE #2: THE RESIDUAL: RECORD OF PROCEEDING (CURRENT STATUS AS OF FEBRUARY 9, 2025)

28. With that segue, Mr. Boyce did refer, albeit in separate emails without the court's involvement, the concept of waiving the requirement to file the record of proceeding to expedite the proceeding. I never waived the requirement but in fairness, Mr. Boyce did refer to a lengthier time of 60 days to file the record of proceeding. We are well past that self-imposed non-consensual timeline. In any event, for any waiver to have occurred, it would have required all involved at the relevant time which would have included the AGO. No such consent was ever sought or jointly approved by all of the relevant respondents and me.

29. Moreover, I do not believe that the parties can waive a statutory requirement of the **Tribunal** to forthwith file a Record Of Proceeding as it is for the court's use. I am unaware of any authorities that would support Mr. Boyce's position regarding a waiver of filing the record of proceeding for the court's use to purportedly expedite a JRPA proceeding. I welcome his comments in that regard.

30. I can confirm that I did not hear back from the LAT, inclusive of the AGO Mr. Downey and Mr. Weir (Executive Chair of **Tribunal**s Ontario) (as there is no 'Associate Chair' for the LAT).

31. As I have sworn under oath, on belief, I remain of the sworn belief, whilst citing the sources at the time, that the **Tribunal** does not have a full and accurate record of proceeding.

VOLUME #3: The importance of real and PERCEIVED fairness in this ONSC Divisional Court Proceeding

32. For **Tribunal**s tasked with this latter responsibility, "the importance of fairness, real and perceived, weighs more heavily" against **Tribunal** standing: *Henthorne v. British Columbia Ferry Services Inc.*, 2011 BCCA 476, 344 D.L.R. (4th) 292, at para. 42 (see: Ontario (Energy Board) at paragraph 56.

33. The importance of fairness, real and perceived, weighs more heavily against **Tribunal** standing where the **Tribunal** served an adjudicatory function in the proceeding. **Tribunal** standing is a matter to be determined by the court conducting the first-instance review in accordance with the principled exercise of that court's discretion. In exercising its discretion, the court is required to balance the need for fully informed adjudication against the importance of maintaining **Tribunal** impartiality: summary by the SCC in Ontario (Energy Board).

34. The obvious reasonable person's perception of the above noted conduct but particularly the *prima facie* similarities between the **Tribunal**'s filed and served NOA (November 27, 2024) and the Respondent Insurance Companies' filed and served NOA (December 3, 2024).

35. As such, the necessary and available evidence is before the ONSC Divisional Court. For notice purposes, I will provide, wherein I have to remain some flexible, adaptable and on-call, with the continued urgency of this JRPA Proceeding and timelines under the Rules of Civil Procedure, my position will be, subject to receiving sworn affidavits from Mr. Boyce and Mr. Nieuwland regarding the above that no such sharing of documents denoted above or communications without me being copied had occurred between them or their agents, that neither of them can act for their clients. While it is my position, they are now on notice of the same.

36. The concern expressed publicly by the Ontario Trial Lawyers Association ("OTLA") regarding the diminishing numbers of successful injured persons before the **Tribunal** is no small consequence.

37. I have hyperlinked and quoted the below:

> ***"OTLA Pushes for Urgent LAT Review (see: https://www.lawtimesnews.com/practice-areas/personal-injury/otla-pushes-for-urgent-licence-appeal-Tribunal-review/389679)***
>
> > "The association cited "disturbing trends" drawn from an inHEALTH analysis". OTLA noted that the success rate for insured applicants bringing their disputes to LAT has *fallen over the years*, with just 10% getting a win in 2023 compared to 2017's 33%. "Our members have voiced concerns that the LAT's process is overly rigid, is fraught with procedural unfairness, and fails to accommodate requests, even when both parties agree. This also raises important questions about the qualifications and training of LAT adjudicators," Purewal said.

> "The LAT is an arm of our justice system. Injured Ontario citizens should feel confident that they are getting a fair hearing, and that justice is being done. Unfortunately, with the recent declining trends in success rates for applicants and the overwhelming success of insurers is raising significant questions for our membership."

38. As appended to one of my previous affidavits, Mr. Boyce, when he was an adjudicator or Vice Chair at the LAT, rule 14 times in favour of the three insurance companies against injured persons without a singular decision fully in favour of an injured person. Some may say pure coincidence.

39. However, from a public interest perspective, it is again the case so well-known to the ONSC Divisional Court in Shuttleworth that was upheld by the ONCA on appeal by the **Tribunal** that provided that *unwritten policy* of concern. I copy and paste the same from the ONSC Divisional Court regarding the same or by way of recitation by the ONCA [square brackets and double underlining are mine]:

> ***"The Decision Review Process***
> [24] In-house counsel for the LAT swore an affidavit explaining that the executive chair implemented a decision review process at the LAT. The stated reason was to maximize the quality of the **Tribunal**'s decisions. The peer review process has not been adopted formally. No written policy was provided but counsel swore that, "generally, the LAT decision review process for final decisions is, and at all material times in this case was" as follows:
>
> > [Step 1]
> >
> > First, there is peer review: After drafting a decision, an adjudicator ***is expected to send the decision for peer review by the Duty Vice-Chair***. The Duty Chair offers suggestions to improve clarity, reasoning and readability and might also evaluate, for example, whether the correct legal test has been applied and whether any related case law that was not mentioned might be helpful.
> >
> > [Step 2: Mr. Boyce's Legal Services Unit in SLASTO]
> >
> > Second, there is legal review: The SLASTO Legal Services Unit reviews the decision to ensure [guarantee] that the **correct legal test** has been applied and to identify any related case law that was not mentioned that might be helpful[ii].
> >
> > Third, there is a second peer review by the executive chair: "In some rare instances – such as when a decision involves a novel, contentious, precedent-setting, or high-profile issue – ***the Legal Services Unit will send the decision to the Executive chair for her review***. In these instances, the Executive chair serves, in essence, as a second peer reviewer and accordingly will order the same kinds of comments that the author would typically receive during the initial peer review."

> Fourth, there is a review by the file's case management officer: The case management officer acts as an intake officer and primary point of contact for the parties. This review involves examining the decision's format, correcting grammatical and spelling errors, and ensuring that the template and parties' names are correct." [Emphasis added.]

40. The numbers are providing corroboration for the fact that injured persons are losing their cases, with no substantial variable differentiation between injuries, from some five years ago to 2024. In approximate numbers, injured persons have dropped from a 30 percent success rate to a less than ten percent success rate.

41. Referring to the above, the Executive Chair is that of Mr. Sean Weir. The very Mr. Weir who I have requested that he cause the **Tribunal** to provide me with the records that form the Record of Proceeding. I look forward to hearing from him tomorrow as to the same as I made the request some nearly ten days ago at first instance.

42. The LAT does not appear to have a "Duty Vice Chair" at least by public directory. As such, the second and third steps involve the SLASTO Legal Services Unit of which Mr. Boyce has been a part of since his resignation from his adjudicative capacity in or around 2023 and the Executive Chair in Mr. Weir. As such, it must be of serious concern if Mr. Boyce was providing legal advice to the adjudicative decision makers in VC Morrisette and VC Lake (on reconsideration) and then representing the **Tribunal** on judicial review particularly in light of the above. I remain of the view that the human nature element is one where those all working from 25 Grosvenor Street, Toronto, renders it one where those in-house lawyers with the SLASTO legal unit cannot disabuse their minds (at least subconsciously) from engaging an adversarial position on the merits at the hearing of a judicial review. Put another way, my concerns have been more so that Mr. Boyce would be arguing more in favour of his self-interest of the legal advice he provided or one of his close colleagues provided the statutory decision makers as opposed to being an officer of the court. In that regard, I say that it amounts to a conflict of interest for Mr. Boyce subject to swearing an affidavit for that sole purpose.

43. More concerning from a public interest standpoint, we have the answer to what is of great concern to the esteemed association known as the Ontario Trial Lawyers Association in how injured persons are losing their SABS claims in the **Tribunal** at nearly over 90 percent. Certainly the legal counsel representing them have only become more astute and dedicated to their crafts. The health care professionals are more attuned to their requirements and working with their patients to ensure that they are compliant with the requirements under *Reg 283* and *SABS*.

44. However, with the mobility of vice-chairs and adjudicators (part time and full time) as called members of the LSO in varying capacities, this Court can take judicial notice that lawyers are fully entitled to have outside relationships with each other on a personal level.

45. Moreover, if what I believe to be correct is correct above and not disputed that counsel for the **Tribunal** and counsel for the Respondent Insurance Companies are sharing even template documents via whatever method, it is only reasonable to infer that they may talk about other files involving other injured persons where the SLASTO Legal Unit may give advice to an adjudicator or vice-chair. Moreover, it is only reasonable to infer that those communications,

without an injured person copied to the same, would occur not only at the appellate court level but also involving current cases before the **Tribunal**. Even if there is nothing explicit from a lawyer for an insurance company to a legal practitioner in the SLASTO Legal Services Unit, the ripple effect and the perception of bias that filters through to the adjudicators and vice-chairs is likely a large component of why injured persons are not receiving a fair shake at the **Tribunal** along with unjust outcomes.

46. To the extent that they request any right to be heard orally, I remind them their duties are most elevated as "officers of the court".

47. While I cannot stop the Remaining Respondents from filing documents through these counsel, if they do, I will reserve the right to rely on this correspondence and any further correspondence addressing the same.

48. While the Remaining Respondents cannot be forced to defend or respond to the JRPA Application, Applicant's Factum and Application Record, or motions, this Divisional Court can make orders, declarations and findings arising from the same for the benefit of the public interest.

49. As articulated in Ontario (Energy Board), "[50] The principle of impartiality is implicated by **Tribunal** argument on appeal, because decisions may in some cases be remitted to the **Tribunal** for further consideration. Stratas J.A. found that "[s]ubmissions by the **Tribunal** in a judicial review proceeding that descend too far, too intensely, or too aggressively into the merits of the matter before the **Tribunal** may disable the **Tribunal** from conducting an impartial redetermination of the merits later": *Quadrini*, at para. 16. However, he ultimately found that these principles did not mandate "hard and fast rules", and endorsed the discretionary approach set out by the Ontario Court of Appeal in *Goodis*: *Quadrini*, at paras. 19-20", there are no hard and fast rules. Abuse of process is somewhat amorphous and flexible.

50. If the JRPA Proceeding was not an urgent one, as pleaded with the relief sought in the JRPA Application, I would have been inclined to seek relief to strike the NOA's filed by the **Tribunal** and the Respondent Insurance Companies under some of the same grounds but different legal grounds.

51. However, I will consider my options but unequivocally ask the Divisional Court to disregard any *potential* filings or oral submissions by the **Tribunal** through Mr. Boyce (at the very least) pursuant to the legal principles in *Taylor v. Pivotal Integrated HR Solutions*, 2021 ONSC 7720, at paragraphs 18 to 20. For ease of reference, paragraph 20 from the decision of the Divisional Court so found as a pure question of law:

> [20] *Once* a **Tribunal** is a party, the court still has discretion as to the scope of participation to be accorded to the **Tribunal** *during the hearing*. This involves balancing the need for fully informed adjudication against the importance of maintaining **Tribunal** impartiality: *Hydro Ottawa v. Ontario (Workplace Safety and Insurance Appeals **Tribunal**)*, 2019 ONSC 4898 (Div. Ct.), at para. 6. This court is under no obligation to accept the submissions of a **Tribunal** that appears before it."

52. As the Respondent Insurance Companies' NOA post-dated the **Tribunal**'s NOA, I will ask that the Court disregard any potential filings or oral submissions on behalf of the Respondent Insurance Companies through Mr. Nieuwland or TD Insurance Staff Legal [not "lawyers" [sic] underneath said business name which appears to be an error as a result of the template created by the LAT that I say was sent from the **Tribunal** to TD Insurance Staff Lawyers).

53. If those potentials do not occur, I will proceed accordingly whilst reserving my rights generally and specifically. In any event, whatever could be filed or submitted (orally or in writing), the **Tribunal** is precluded from duplicating the argument of the Respondent Insurance Companies.

54. To the extent that the Respondent Insurance Companies and the **Tribunal** do not deny the same, I will rely on the adverse inference legal principle.

55. To the extent that I do not receive the entire and full adjudicative records for the Record of Proceeding from the LAT, by email to the LAT Registrar along with Mr. Weir and the AGO, I will submit (in writing and potentially orally) that the doctrine of *spoliation* is applicable.

Volume #4: Why the current counsels of record for the Tribunal and Respondent Insurance Companies more than likely communicated and assisted each other in a clandestine and unfair manner – disabling both from further participation

56. I have attached copies of the above Notices of Appearance for ease of reference so any recipient can cross-reference my facts above including the metadata.

57. What I will conclude with for one of the many grounds of my belief, which may be reduced to an affidavit and which I currently say is reasonably grounded, is page 2 of 3 of the Respondent Insurance Companies' NOA under the second and fourth "AND TO:" [whilst not being able to keep the exact same spacing and formatting as I do not have a "Word" version of the same].

58. Under the "Fourth" "AND TO", the following is below:

> AND TO: **ATTORNEY GENERAL OF CANADA**
> Crown Law Office – Civil
> 720 Bay Street, 8th Floor
> Toronto, Ontario
> M5G 2K1
> Email: Cloc.Reception@ontario.ca

59. It is the "Attorney General of Ontario" and not the "Attorney General of Canada" [sic] that is entitled to notice by way of my service upon it [or him in The Honourable Mr. Downey]. The address for service on the Attorney General of Canada is that of "120 Adelaide Street, Suite 400, Toronto, Ontario, M5H 1T1". Most certainly, the "Attorney General of Canada" does not utilize a domain for emails of "@ontario.ca" as it is not "provincial".

60. Under the fourth "AND TO:" of the Tribunal, it is as follows:

AND TO: **Attorney General of Ontario**
Crown Law Office – Civil
720 Bay Street, 8th Floor
Toronto, ON M5G 2K1
Email: Cloc.Reception@ontario.ca

61. Under the 'second AND TO:', the following is from the Respondent Insurance Companies' NOA:

AND TO: **KEVIN MCLEAN**
775 King Street West, Suite 410
Toronto ON M5V 2K3
Email: mcleansniclat@gmail.com

62. Under the 'second AND TO:', the following is from Tribunal's NOA:

AND TO: **Kevin McLean**
775 King Street West, Suite 410
Toronto ON M5V 2K3
Email: mcleansniclat@gmail.com

63. The irony is that Mr. Nieuwland did not send the Respondent Insurance Companies' NOA to mcleansniclat@gmail.com (an email solely for the LAT Proceeding) but he delivered the same to the correct email for the Divisional Court JRPA Proceeding herein.

64. While the counter-position will inevitably be that there are other differences between the Tribunal's NOA and the Respondent Insurance Companies' NOA, a closer look demonstrates that those differences are only where the Respondent Insurance Companies were required to input different information for themselves and counsel at first instance and by way of notice (i.e. not notice to themselves).

65. For example, a page 3, I note the following is provided which demonstrates that the font is "11" and not "11.5"

MATTHEW NIEUWLAND
LSO NO. 71405A
Tel: (905) 201-4092
Fax: (416) 599-7439
Matthew.Nieuwland@tdinsurance.com

66. When considering that there is an erroneous inclusion under "TD Insurance Staff Legal" of "Lawyers" (which not all are lawyers at TD Insurance Staff Legal[iii]), this lends credence to my belief that a template type document of LAT was provided to the Respondent Insurance Companies. The following is below at page 3 (under the "Notice of Appearance" and above the wording above that commences with "Matthew Nieuwland" in size 11 font and not 11.5):

TD INSURANCE STAFF LEGAL
Lawyers
66 Wellington Street West
38th Floor
Toronto, Ontario
M5K 1A2

67. As any individual who has worked in the practice of law or provision of legal services, in private practice or for government, templates of that particular firm or institution are a large part of efficient provision of services and practising of law. Templates at each law firm or institution (government or otherwise) have idiosyncratic elements that differ from each.

68. In the Tribunal's NOA, you will note that the Tribunal utilizes a "bolding" and 11.5 font for the Licence Appeal Tribunal and has "Tribunals Ontario, Legal Services" and then the address for the same below it. I provide the same for ease of reference:

Licence Appeal Tribunal
Tribunals Ontario, Legal Services
15 Grosvenor St, Ground Floor
Toronto, ON M7A 2G6

69. What I believe happened is whoever received the Tribunal's word template document for the same had to obviously edit the same but the formatting required an inclusion under the name of the party or the lawyer. As Mr. Boyce is part of the SLASTO Legal Unit, he has the name of the Tribunal and then the department of legal services for it. As Mr. Nieuwland is part of the "TD Insurance Staff Legal" (not lawyers), he has the business name of the firm that he worked for, its address and then himself below.

70. What I am referring to on "page 3 of 3" for each of the Tribunal and the Respondent Insurance Companies is a "back sheet" (Form 4(C)).

71. I ground my belief regarding the impermissible and/or unfair and "ganging up style conduct" in the following which is at Appendix #1 by screenshot and attachment. The numbers at the top are for the Compendium. However, you will note that the document to which I am referring is from one of my affidavits in the JRPA Proceeding wherein Mr. Nieuwland on behalf of TD Insurance Staff Legal [not "lawyers" [sic] under "TDISL"] unlawfully sought some $10,000 in costs on behalf of the Fictitious Respondent in TD General Insurance Company in April 2024. However, that is neither here nor there but rather I am focused on the name of the law firm or organization for which he worked that he input with his signature. It is obvious that there is no reference to the style and errors in the "Backing Sheet" to the "Notice of Appearance" and the "Notice of Appearance" itself (page 1).

72. The other potential theory is that the Tribunal drafted it for Mr. Nieuwland and the Respondent Insurance Companies because of my removal regarding the same. However, I will await to hear from both without any communication before they respond.

73. While it is most unfortunate and inefficient to spend this amount of time and resources dissecting the same, I was compelled to draw this to the attention of the ONSC Divisional Court and ensure that my position was clear and unequivocal. Thankfully, neither have continued, since that time, with filings and submissions before the ONSC Divisional Court which would have required further analysis.

74. I reserve the right to rely upon this correspondence for any lawful purposes including costs. I will hold off on my finalization of a "costs outline" until the relevant time and after seeing if there are any responses from the above by way of email and sworn evidence.

75. Moreover, I reserve the right to append the same to an affidavit for current purposes at the relevant time and to draw the same to the attention of this ONSC Divisional Court for any purposes.

76. If any of the addressees require clarification regarding the above as it has been compiled and analyzed on an urgent basis, kindly respond herein (under this email thread for ease of reference by the ONSC Divisional Court if so necessary).

77. Thank you.

[1]To the extent that the misconduct committed upon the Applicant in the form of theft of his property, committed in part by one Mr. Papadimitropoulos, from the time of October 25, 2024, and onwards, was done at the direction or authorization of the Licence Appeal Tribunal, the LAT has breached the Applicant's section 8 rights under the Charter, and those breaches cannot be saved under section 1 of the Charter. The Applicant is entitled to remedies under section 24(1) of the Charter.

[2]Former Chief Justice Lamer has pointed out that characterizing administrative bodies depends on their function in the circumstances: "the principles for judicial independence . . . are applicable in the case of an administrative tribunal, where the tribunal is functioning as an adjudicative body settling disputes and determining the rights of parties" (see: paragraph 42 of *Toronto Star*).

[3]With the above set in stone as for the facts and law, the House of Lords put it some eight decades ago, openness to the public is the "authentic hallmark of judicial as distinct from administrative procedure". (see: paragraph 40 of *Toronto Star*). The LAT is a public institution, albeit funded by the insurance industry, that is conducting adjudicative matters. Just as justice delayed can be justice denied, so reportage delayed can be reportage denied (see: paragraph 67 of *Toronto Star*). The leading case regarding the "open court principle" and "adjudicative records" is that of the ONSC in *Toronto Star* v. AG Ontario, 2018 ONSC 2586. In that case, the *Toronto Star* was entitled to "Adjudicative Records" as a member of the media or journalism sector.

[4]Statutory tribunals exercising judicial or quasi-judicial functions involving adversarial-type processes which result in decisions affecting rights truly constitute part of the "administration of justice": *Southam Inc v Canada (Minister of Employment and Immigration),* [1987] FCJ no 658 (QL). The legitimacy of such tribunals' authority requires that confidence in their integrity and understanding of their operations be maintained, and this can be effected only if their proceedings are open to the public: *Germain v*

Saskatchewan (Automobile Injury Appeal Commission), 2009 SKQB 106. Tribunals like the LAT conduct administrative hearings governed by the *Statutory Powers Procedure Act* ("*SPPA*") are required to be open to the public. In principle, therefore, it is uncontroversial that "[t]he 'open court' principle" -- at least in some version -- "is a cornerstone of accountability for decision-making tribunals and courts" (see: paragraph 6 of *Toronto Star*). The Supreme Court of Canada has stated that "[a]ll law and law-makers that touch the people must conform to [the Charter]. Tribunals and commissions charged with deciding legal issues are no exception." (see: *Toronto Star*, paragraph 14).

TAB 20

Court File No. DC-24-00000718-00JR

FORM 68A

Courts of Justice Act

AMENDED NOTICE OF APPLICATION TO DIVISIONAL COURT FOR JUDICIAL REVIEW

ONTARIO SUPERIOR COURT OF
JUSTICE (DIVISIONAL COURT)

BETWEEN:

KEVIN ALEXANDER MCLEAN

APPLICANT

- and -

TD HOME AND AUTO INSURANCE COMPANY, SECURITY NATIONAL INSURANCE COMPANY, TD GENERAL INSURANCE COMPANY, EXECUTIVE DIRECTOR, LICENCE APPEAL TRIBUNAL, HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO, REPRESENTED BY EXECUTIVE CHAIR OF TRIBUNALS ONTARIO IN MR. SEAN WEIR, THE ATTORNEY GENERAL OF ONTARIO

RESPONDENTS

AMENDED NOTICE OF APPLICATION TO DIVISIONAL COURT FOR JUDICIAL REVIEW

ORIGINAL NOTICE OF APPLICATION PAID FOR AND FILED ON NOVEMBER 15, 2024 AFTER FIVE P.M. LEADING TO A FILING DATE OF NOVEMBER 18, 2024

Amended pursuant to the *Rules of Civil Procedure* and by analogy to Rule 26.03 with each addition by way of underlining and each deletion by way of strikethrough

APPLICATION under sections 2, 6(1) and 6(2) of the *Judicial Review Procedure Act*, R.S.O. 1990, c. J.1, as amended, and sections 2, 7, 8 and 24 of the *Charter of Rights and Freedoms*

TO THE RESPONDENTS:

A LEGAL PROCEEDING HAS BEEN COMMENCED by the Applicants. The claim made by the Applicants appears on the following pages.

THIS APPLICATION for Judicial Review will come on for a hearing before the Divisional Court on a date to be fixed by the Registrar at the place of hearing requested by the Applicants. The Applicants request that this application be heard at Osgoode Hall, 130 Queen Street West, Toronto, Ontario, MSH 2N5.

IF YOU WISH TO OPPOSE THIS APPLICATION, to receive notice of any step in the application or to be served with any documents in the application, you or an Ontario lawyer acting for you must forthwith prepare a notice of appearance in Form 38A prescribed by the Rules of Civil Procedure, serve it on the Applicants' lawyer or, where the Applicants do not have a lawyer, serve it on the Applicants, and file it, with proof of service, in the office of the Divisional Court, and you or your lawyer must appear at the hearing.

IF YOU WISH TO PRESENT AFFIDAVIT OR OTHER DOCUMENTARY EVIDENCE TO THE COURT OR TO EXAMINE OR CROSS-EXAMINE WITNESSES ON THE APPLICATION, you or your lawyer must, in addition to serving your notice of appearance, serve a copy of the evidence on the Applicants' lawyer or, where the Applicants do not have a lawyer, serve it on the Applicants, and file it, with proof of service, in the office of the Divisional Court within thirty days after service on you of the Applicants' application record, or not later than 2 p.m. on the day before the hearing, whichever is earlier.

IF YOU FAIL TO APPEAR AT THE HEARING, JUDGMENT MAY BE GIVEN IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO DEFEND THIS PROCEEDING BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

Date:

Issued by

Address of Local
Registrar court office
Divisional Court

Superior Court of Justice
Osgoode Hall
130 Queen Street West
Toronto, ON MSH 2N5

TO: ATTORNEY GENERAL OF ONTARIO
Crown Law Office — Civil
8th Floor, 720 Bay Street
Toronto, ON

Attention: Ms. Judie Im
Email: Judie.im@ontario.ca

AND TO:

The Attorney General of Canada
120 Adelaide Street
Suite 400
Toronto, Ontario

Licence Appeal Tribunal

Tribunals Ontario, Legal Services
15 Grosvenor St, Ground Floor
Toronto, ON M7A 2G6
Jesse Boyce, LSO No. 72486F
Tel: (437) 997-1235
Email: jesse.boyce@ontario.ca

AND TO:

TD Home and Auto Insurance Company
FSRA Registration 1063

AND TO:

Security National Insurance Company
FSRA Registration 397

AND TO:

TD General Insurance Company
FSRA Registration 353

COUNSEL TO THE ABOVE RESPONDENT INSURANCE COMPANIES

TD INSURANCE STAFF LEGAL
Lawyers
66 Wellington Street West 38th Floor
Toronto, Ontario M5K 1A2
MATTHEW NIEUWLAND
LSO No. 71405A
Tel: (905) 201-4092
Fax: (416) 599-7439
Matthew.Nieuwland@tdinsurance.com

Lawyer for the Respondents Insurance Companies

~~AND TO:~~

~~Respondent Insurance Companies~~

AND TO:

Ontario Trial Lawyers Association
1190 Blair Road
Burlington, Ontario, L7M 1K9

APPLICATION

Volume #1: Relief Sought

1. The Applicant adopts his definitions from the record of proceeding, including the hearing record in NOM #13 to #15 and NOM #16 and they have the same meaning herein as they do therein.

2. The Applicant makes the application for the following relief in the form of any orders, declarations, findings, determinations or directions with great respect to the License Appeal Tribunal and gratitude to the ONSC (Divisional Court) for its consideration of the same:

    a. An Order that this *JRPA* proceeding be declared as public interest litigation;

    b. An order that no costs are awarded against the Applicant in any event of the cause;

    c. An Order compelling Vice Chair Morrissette or the Tribunal to decide the Applicant's motion (defined as "NOM #16" which was served on SNIC, TDHA, and TDGIC and filed in September 2024) or confirm with the Applicant, copied to this ONSC (Divisional Court), that it is declining to exercise its jurisdiction or discretion under section 21.1 of the SPPA;

i. An Order, thereafter the Tribunal complying with the above order, that Vice Chair Lake either amend her reconsideration decision (the "RD") or confirm, with a copy to this court, that she is declining to exercise her jurisdiction or discretion;

1. An Order that the 30 day time limit under the *JRPA* does not commence until the above orders are complete;

d. A preliminary or procedural order that this judicial review is heard before a single sitting judge pursuant to section 6(2) of the *JRPA*;

e. A procedural and preliminary order that the limitation period for judicial review involving the final orders involving NOM #14 and NOM #15 does not commence until the Licence Appeal Tribunal/AABS issues its order regarding the Applicant's section 21.1 of the SPPA motion ("NOM #16") (filed in September 2024 but "in "progress" as of November 15, 2024, to the LAT/AABS) and the Tribunal issues any amended decision regarding the Applicant's likely amended reconsideration motion;

f. An Order that the Applicant may add and include fresh evidence when it becomes available to him through any lawful means including the LAT and/or any privacy requests that are outstanding at the time of this *JRPA* Application;

g. A procedural and preliminary order that no responsive materials are required from the Respondent Insurers and they are not entitled to participate without leave as they chose not to participate in the underlying motions subject to the Respondent Insurers participating in any of aforementioned amended motions arising out of the Applicant's NOM #16;

h. An order in the nature of mandamus requiring the Tribunal to comply with its requirements regarding the provision of hearing notices to any and all parties prior to issuing decisions;

i. An Order in the nature of mandamus requiring the Tribunal to comply with its specific rules, effective August 21, 2023, with particular reference to granting non-parties the right to make submissions prior to the issuance of a decision;

j. A declaration that certain specific rules in the LAT Rules are ultra vires the Tribunal which will be specified in the Applicant's factum;

k. An Order that the relief sought in the Applicant's motions (see: NOM #14 (August 3, 2024) and NOM #15 (August 21, 2024)) (see: Appendices #1 and #2) including his reconsideration motion, dated September 27, 2024, is granted in substantially the same form:

i. An Order quashing or in certiorari and/or varying the orders of Vice Chair Morrissette ("**VCM**") decision on September 12, 2024, to the substantive orders sought therein; and

ii. An Order quashing or in the nature of certiorari and/or varying the orders in the Vice Chair decision on involving the Applicant's reconsideration motion;

l. More specifically, the Orders sought by the Applicant shall be granted in full or substantially the same form as he sought them at the time:

i. An Order cancelling the decisions and orders of the Adjudicator in NOM #14 and NOM #15;

ii. An Order varying the decision of the Appellate Tribunal as follows:

1. Granting the relief sought in NOM #14 (see: Hearing Record, Tab 1, page 3; see also: Appendix #1 herein); and

2. Grant the relief in NOM #15, paragraph #3 (see: Appendix #2 herein);

m. A Declaration and Order that TDHA, FSRA registration number 1063, is declared the "**First Insurer**" pursuant to *Reg 283*, and such an order shall remain as it relates to the Applicant (also defined as the "Insured Person" or "Disabled Individual" arising out of no-fault car accident on August 31, 2022);

n. An Order compelling the LAT to provide and disclose any and all records involving who was the first respondent denoted in its LAT/AABS e-filing system;

o. An Order quashing VC Lake's Reconsideration Decision on grounds of conflict of interest and/or reasonable apprehension of bias;

p. Such injunctive or interlocutory relief as may be sought by the Applicant, until such time this application can be determined on its merits;

q. Costs in favour of the Applicant; ~~and~~

r. Such other relief that the Applicant may advise and this Court may allow~~.~~ ;

Orders Sought in NOM #1 and NOM #2

s. An order granting all of the relief in NOM #1 and NOM #2 by way of endorsing the draft orders before this Honourable Court with reasons to follow

Disqualification of Mr. Boyce or any other in-house SLASTO legal unit counsel; and other orders

t. An Order disqualifying Mr. Boyce and any other SLASTO legal unit counsel from acting from the Tribunal in this *JRPA* Proceeding;

u. An order prohibiting counsel for the Respondent Insurance Companies from acting until they comply with the Practice Direction, Part 1, heading F, "Information To Be Submitted to the Court";

v. An order requiring the Tribunal and Respondent Insurance Companies to seek leave to file their factums and application records in relation to the non-*Charter* issues before taking any further steps;

Shuttleworth-Esque type order

w. A Declaration, finding or order that the circumstances herein **rise to reasonable apprehension of lack of adjudicative independence;**

The SPPA, the *JRPA* and LATA

x. A Declaration that the Tribunal breached section 20 of the SPPA;

y. A Declaration that the Tribunal has breached section 10 of the *JRPA*;

z. A Declaration that the Tribunal breached section 10 of LATA by not providing the undisclosed motion orders on July 24, 2024, and August 16, 2024 (the "**Undisclosed Motion Orders**");

Charter Breaches herein

Section 2(B) of the *Charter*

aa. a Declaration that the Licence Appeal Tribunal (the "Tribunal") has breached, continues to breach and will remain in a perpetual state of breach of section 2(b) of *The Constitution Act*, 1982, Schedule B to the *Canada Act 1982 (UK)*, 1982, c 11, cited as the *Canadian Charter of Rights and Freedoms* (defined herein as the "*Charter*") by its failure or neglect to comply with section 20 of the SPPA at first instance;

bb. a Declaration that the Licence Appeal Tribunal (the "Tribunal") has breached, continues to breach and will remain in a perpetual state of breach of section 2(b) of the *Charter* by its failure to file the record of proceeding;

cc. a Declaration that the LAT has breached the Applicant's section 7 rights under the *Charter*;

dd. A Declaration that the LAT has breached the Applicant's section 8 rights under the *Charter* pursuant to the unreviewable decisions defined as the Undisclosed Motion Orders;

ee. A Declaration that the LAT has breached the Applicant's section 8 rights by the particularized conduct infra by way of unreasonable searches or seizures it authorized, had a high degree of control of the same and/or responsibility for some or all of the acts;

ff. Interim, interlocutory and injunctive relief in favour of the Applicant pursuant to section 24(1) of the *Charter*;

gg. Damages in favour of the Applicant pursuant to section 24(1) of the *Charter*; and

Section 52(1) of the *Charter*

hh. A Declaration that to the extent that the LAT Rules authorize any of the conduct outlined and particularized in the "print out" attached at Exhibit "A" of the Applicant's Affidavit #18 including the Undisclosed Motion Orders, failing to extend natural justice rights to parties or interested persons including non-parties, and failing to comply with procedural fairness requirements, they are of no force and effect and must be struck down, read down or severed;.

Volume #2: The Grounds for the Application

3. This judicial review can be disposed of on one legal ground and error, while there are broader errors in the VCM decision in the **First Insurer Motions** which include the following statement: "[27] .....The initial respondent [sic], TDGIC, and the current respondent, SNIC accepted priority over the applicant's [sic] insurance policy".

4. Therefore, if SNIC and TDGIC accepted priority of the Insurance Policy, as found by the Adjudicator, and the Appellant did not make any such offer to either for them to 'accept priority of the Insurance Policy' and/or neither SNIC nor TDGIC first received the **Appellant's Completed Application**, then TDGIC had to receive that offer of "priority" (as the Adjudicator puts it) from the "**First Insurer**".

5. As a matter of law, could TDHA offer "priority" to SNIC and TDGIC? The question answers itself.

6. As the Applicant, along with SNIC, TDHA and TDGIC, are awaiting the decision from Vice Chair Morrissette in NOM #16, the Applicant took the time to advance this judicial

review application so that it is filed and then can be amended after receiving the NOM #16 decision. Moreover, it may be affecting the reconsideration decision of Vice Chair Lake. Unlike an appeal under *LATA*, the underlying matter is not stayed.

7. The Appellant is a disabled individual residing in Toronto, Ontario. At the time of the Accident, he was 39 years old with a G2 license. At the time of these submissions, he is 41 years old with a G license. The Appellant is the spouse of the individual insured (Nicole Artopoulos) and the Insured Automobile was leased from the lessor BMW Financial Services Inc. Since April 2018, the Appellant and Ms. Artopoulos have resided at 775 King Street West, Toronto, Ontario, M5V 2K3. Ms. Artopoulos, in Spring 2018, obtained an exclusive automotive insurance policy through SNIC as her being a University Of Toronto alumnus for a previous BMW leased vehicle. In October 2019, the same insurance policy was transferred to the Insured Automobile.

8. Security National Insurance Company ("SNIC") was incorporated under the CBCA in 1934, then continued under the federal *Insurance Act* with its head office in Montreal, Quebec. At the time of the Accident, SNIC was licensed with the FSRA to provide six (6) classes of insurance in Ontario and its FSRA registration number if 397. From 2018 to the time of the Accident and thereafter, SNIC's Ontario office has been the McNabb Building in Markham, Ontario. The primary area code for phone and fax lines in Markham is "905". At the time of the Accident, SNIC provided the return mailing address of the Markham

McNabb Building but, in error, provided a "416 area code" fax number. The head tenants at the Markham McNabb Building are: (I) TD Bank; and (ii) General Motors. SNIC and Primmum Insurance Company ("Primmum") (FSRA reg. #1396), by virtue of them not having "TD" in their corporate names, operate under the colloquial business name of "TD Insurance Meloche Monnex" under two licensed trademarks from TD Bank and Meloche Monnex Inc. in: (i) "TD Insurance"; and (ii) "Meloche Monnex". SNIC, through TDIMM, issues policies under the "Professionals and Alumni Program" and Primmum, through TDIMM, issues policies under the "Employer Group Program". In October 2023, upon the Appellant's return to Canada after obtaining requisite MRIs, examinations, assessments and reports, the Appellant learned that SNIC had purported to change its physical address

and fax number to: (i) the Burlington Address; and (ii) 905 Fax Number. The Burlington Address is 91 km from SNIC Markham (McNabb

Building), where Meloche Monnex Inc. has its registered records office. The "Ontario Business Directory" lists the Burlington Address and 905 Fax Number as being the business of "TD Insurance". The "Ontario Business Directory" also lists the head office associated with the Burlington Address as the Victoria Park Building (see: Affidavit #29, Exhibit "A", page 1 and 2).

9. In the SNIC Response, SNIC did not list the 416 Fax Number as a fax number for service. With the benefit of hindsight and labyrinthian investigations, the only factual contact information that SNIC provided to the Appellant was its mailing address at the Markham McNabb Building. Neither the 416 Fax Number (which is the material mistake as it relates to whom is the **First Insurer**) nor the 905 Fax Number were fax numbers for SNIC as a recipient. Further, the Burlington Address was not an address for receipt of documents from the Appellant for SNIC.

10. TD Home And Auto Insurance Company ("TDHA") is an insurance company that is licensed, by the FSRA, to provide three classes of insurance including automotive insurance. TDHA's FSRA registration number is 1063. At the time of the Accident, the lead tenant(s) at the Victoria Park Building were denoted as "TD Insurance" by the property manager at the VP Building in Collies International. From 2018 to present, the "Ontario Business Directory" has listed the fax number of 416-774-3120 (the "416 Fax Number") as the fax number for TDHA. The 416 Fax Number is a landline, owned by Bell Canada Inc., which is grounded at the Victoria Park Building. In the HCAI Portal, the Appellant's TD Claim #3, contrary to the information he provided his physiotherapists as the return mailing address in documents, prima facie, sent to him by SNIC, auto-populated the name of the adjuster and a branch address for SNIC

of 304 The East Mall, 6th floor, Etobicoke, Toronto, Ontario, M9B 6B7 (the "**Etobicoke East Mall**

Address") (see: Affidavit #21, Exhibit "A", page 20 to 22 for "branch names" as being "independent" of the licensed insurer. Yelp, another online business directory, lists the

Etobicoke East Mall Address as the address for TDHAIC (see: Tab 18, page 340 to 343). While SNIC never, in letter to the Appellant, represented that its address was the Etobicoke East Mall Address, it is now clear that said address, created by SNIC for this TD Clam #3, was independent of SNIC, and an address for TDHA.

11. On or around September 1, 2022, the Appellant notified SNIC of his intention to apply for accident benefits. Due to an error in his postal code, the Appellant did not received an application benefits package from SNIC until late September 2022. On October 13, 2022, the Appellant fax delivered his OCF-1 (also defined as "Completed Application") to the 416 Fax Number. The Appellant also delivered the OCF-2, on his behalf by his employer, to the 416 Fax Number. On November 3, 2022, his attending medical doctor for his post-Accident impairments, completed and signed his portions of the OCF-3, and faxed the completed OCF-3 to the 416 Fax Number. 90 days from October 13, 2022 was January 10, 2022. The Appellant did not receive any dispute notice from SNIC or any other insurance company by January 10, 2023, pursuant to *Reg 283*. From January 11, 2023, to October 2023, the Appellant continued to fax the 416 Fax Number with all confidential information and other OCF forms regarding TD Claim #3. In October 2023, the Appellant attempted to fax some of his documents to the 905 Fax Number, with a copy to the 416 Fax Number, but the 905 Fax Number would more regularly, than the 416 Fax Number, block his faxes and/or drop them during the sending process. In November 2023, the Appellant fax delivered the completed OCF-19. On December 24, 2023, the Appellant filed this Appeal and served the duly signed Appeal to the 416 Fax Number. For some context along the way, in March 2023, the Appellant received a request from SNIC via mail wishing to communicate via email. The Appellant faxed the 416 Fax Number with his decline regarding the same and the reasons therein (i.e. PIPEDA issues and absence of compliance by whom he presumed was SNIC).

12. In April 2023, the Appellant received the "Spam Faxes" wherein an unknown person or company represented to him that it (after receipt of faxes at the 416 Fax Number but not from the 416 Fax Number) had no record of his TD Claim #3. The Appellant promptly faxed the 416 Fax Number (attention: Ms.

Nurse) to alert SNIC to the issue of the "Spam Faxes" and his dismay that said recipient had no record of his TD Claim #3. In early May 2023, the Appellant received the purported attempt by SNIC to partially approve and partially reject the Dhaliwal OCF-18 (April 6, 2023) with the Forged Nurse Signature. After being successful in his NOM #8, by order on June 21, 2024, of the Tribunal, the Appellant filed his NOM #13 for non-party production and disclosure by the Fictitious Respondent (TDGIC) on July 9, 2024. The Appellant hand delivered the NOM #13 hearing brief to the listed address for the Fictitious Respondent, which was the Victoria Park Building which only became known to the Appellant for TDGIC in February 2024 (as it was not in the SNIC Response as an address for SNIC or previously), and learned that TDGIC had misrepresented its address to the Tribunal as it had not been a tenant for over a year (i.e. July 2023). The building manager for the VP Building represented that TDGIC had moved to the Markham McNabb Building. The building manager for the VP Building did NOT represent that TDGIC had moved to any of the following addresses: (i) the Burlington Address; or the (ii) the Etobicoke East Mall Address. From July 26 to July 31, 2024, the Appellant provided notice to TDHA, with a copy to SNIC, that the evidence was uncontroverted that the 416 Fax Number, the 905 Fax Number, the Burlington Address, and the East Mall Address were contact information exclusively for TDHA. Neither TDHA nor SNIC denied the same. From August 1 to 2, 2024, the Appellant sought the consent of SNIC and TDHA to add TDHA as a party, and neither TDHA nor SNIC responded. As of August 3, 2024, TDHA has never responded to the Appellant despite the Appellant sending faxes to the 416 Fax Number, 905 Fax Number, and through authorized submissions to HCAI, the East Mall Address. SNIC has not started any section 7(1) of *Reg 283* arbitration. SNIC and the Appellant consented since January 2024 to the Email Communication Protocol

13. The question of fact to be answered in NOM #14 are on a balance of probabilities:

a. a) *Who was the owner of the **416 Fax Number**, which is a landline located at the Victoria Park Building in Toronto, in October 2022? (b) Was the address of 304 The East Mall, 6th Floor,*

Etobicoke, Toronto, Ontario (the "East Mall Address"), which is denoted by auto-population in HCAI after TD Claim #3 is inputted therein, an address for an

address for SNIC, the address of TDHA, SNIC or another insurance company? And (c) Which insurance company holds the file for the ***Fictitious TD Claim Number****?*

14. The issue of law to be answered in this NOM #14 on a balance of probabilities is

whether TDHA was the **First Insurer** (i.e. the insurance company to receive the Appellant's Completed Application on October 13, 2022)?

15. The substantial amendments to *Reg 283* became effective in September 2010. *Reg 283* is designed to keep priority disputes out of the courts (see: *Zurich 2024*, paragraph 6). *Reg 283* is also purposed to prevent SABS claims, including vital treatments and income benefits, from being delayed while insurers fight over priority dispute under section 268(2) of the *Insurance Act* (see: *Zurich 2024*, paragraph 16). SABS and *Reg 283*, having undergone major amendments in 2010 after being submitted to industry consultations and amendments before proclamations, they reflect important policy choices to ensure order and stability in regulated industries (see: *Bristol-Myers Squibb v. Canada (AG)*, 2005 1 SCR 533 at paragraph 99-100). As a matter of principle, there is difference between an insurer's failure to pay under section 2 of

Reg 283 and a failure to pay under any provision of SABS (see: *Zurich 2024*, paragraph 54). While a **First Insurer** may have never received insurance premiums from the insured person (claimant) may seem intuitively wrong but the Legislature and LGIC's intent are to be respected. There is no, per se, harshness to be alleviated by a sophisticated insurance company, with endless resources, who receives a faxed OFC1, who fails to investigate within three months and provides a notice to an insured person and other insurers under section 3 of *Reg 283*. The provisional first-insurer rule under the regulation and the priority regime under the

statute operate ***differently*** (see: Zurich, paragraph 8). As long as a claimant for accident benefits completes all required fields (see: SABS, ss. 66 and 67) and signs the OCF-1, the **First Insurer** that receives an OCF-1 application MUST pay benefits in accordance with SABS (see: *Reg 283*, ss. 2.1(6)). If the **First Insurer** does not take any issue, within ten business days (approximately 15 calendar days) of receipt of the Completed Application, the **First Insurer** has 75 days from then to provide a notice of dispute that it is required to pay the benefits of the claimant in which it received a Completed Application. Irrespective of whether the claimant is an "insured person" or not in the subjective mind of the **First Insurer**, the **First Insurer** must respond to the Completed Application and the claimant (see: *Reg 283*, ss. 2.1(6)). Acceptance during the 90-day period is merely provisional (see: *Zurich 2024*, paragraph 29). If the **First Insurer** does not dispute, within 90 days, its liability to pay all benefits, in accordance with SABS, of the claimant, there is no other process for the **First Insurer** to transfer, dispute

and recover any paid or to be paid benefits to the claimant. **First Insurer**'s calculus to not accept a claim for whatever subjective reason can turn out to a costly and permanent mistake (see: Zurich, paragraph 10). As of 2015, in *Zurich 2015*, the SCC held that Chubb ought to have responded to the SABS claim immediately on a 'pay first and dispute later' basis (see: *Zurich 2024*, paragraph 12). long as the Completed Application by the claimant was not arbitrary, there is a nexus between the claimant and the

First Insurer (i.e. the one to receive the Completed Application) (see: *Zurich 2024*, paragraph 14). In *Zurich 2015*, the SCC (see: 2015 SCC 19) restored Goldstein J (ONSC (Divisional Court)) in adopting the dissent of Juriansz J.A.: 2014 ONCA 400. A vague recollection about seeing an insurer's name at a rental car office was sufficiently non-arbitrary to require the **First Insurer** (Chubb in *Zurich 2015*)) to step into the shoes as a "**First Insurer**" for the purposes of section 2(1) of *Reg 283* (see: *Zurich 2024*, paragraph 15). long as the **First Insurer** providers automobile insurance in Ontario at the time of receipt of the Completed Application there is a sufficient nexus between a claimant and the **First Insurer** (see: *Zurich 2024*, paragraph 16). The policy behind the inflexible rule that an insurer (like TDHA) fails to pay benefits and fails to put other insurers on notice after receipt of a Completed Application, when there is *SOME* nexus, being permanently responsible for the claimant's benefits is to promote compliance with the statutory scheme. It is not an issue herein of this Appellant and TDHA but rather the greater public interest and ongoing and future compliance by all other similarly situated '**First Insurer**s' (see: *Zurich 2024*, paragraph 31, where the second arbitrator cited paragraph 62 from the decision of Strathy J. (as he then was) *in Lombard Canada Ltd*., 2008, 94 O.R. (3d) 62 (Ont. S.C.J.)The ONSC in *Zurich 2024* has settled the law in the above regards as follows:

(i) breach of section 2 of *Reg 283*, according to the case law, does not result in the an insurer being required to pay benefits to the claimant permanently; BUT, (ii) the failure TO AVAIL itself of section 3 does. TDHA's permanent liability for paying benefits was a self-inflicted consequence of its failure to adhere to the requirements of both section 2 and s. 3 of *Reg 283*.

The combination of provisions in *Reg 283* transformed TDHA's provisional liability into a permanent one (see: *Zurich 2024*, paragraph 64). For TDHA to not be declared as the **First Insurer** would mean that there were no consequences for the conduct (or inaction) of TDHA by receipt of the Completed

Application and by continuing to have its former branch office address (East Mall Address) auto-populate in HCAI, and it would defeat the legislation's public policy: "*pay now and dispute later*".[i]

16. "**Arbitrary**" means: determined by impulse rather than reason. The Appellant faxed the Completed Application solely based on the reason that SNIC represented that its fax number was the 416 Fax Number when it could not have been based on SNIC's physical location at SNIC Markham. Therefore, the Appellant did not make an "arbitrary decision" to fax his Completed Application to the 416 Fax Number. "Receipt" means: "to get possession of". TDHA got possession of the Completed Application as the **First Insurer** on October 13, 2022. There is now no dispute that the Spam Faxes, which SNIC could not produce in the face of a demand from the Appellant for the same, were on behalf of TDHA and its attempt to steer the Appellant away from the 416 Fax Number and its representation it [TDHA] had no record of its claim. TDHA would NOT have had a "record" of the Appellant's TD Claim #3 as it the TD Claim #3 was likely created

by SNIC but when the Appellant faxed the Completed Application, as opposed to mailing to SNIC Markham, to the 416 Fax Number, TDHA became the **First Insurer**.

17. The 416 Fax Number was the fax number for TDHA in September and October 2022. TDHA has been an adjusting insurance company, by reference to the East Mall Address which has been exclusively represented to the public as TDHA's address, of the Appellant's TD Claim #3, including by way of the Fictitious TD Claim Number, since it was so denoted in the HCAI portal as such. The 905 Fax Number and the Burlington Addresses were, at the material times post receipt of the Appellant's OCF-1, OCF-2, OCF-3, OCF-6's and OCF-18 (Dhaliwal), address for receipt of documents and confidential information of the Appellant (albeit unbeknownst to him) by TDHA.

18. TDHA was the **First Insurer**, pursuant to *Reg 283*, and it is solely and permanently liable for the Appellant's claims for benefits pursuant to SABS. The Tribunal must grant ancillary orders compelling TDHA to provide the Appellant with the current address and fax number for TDHAIC along with an adjuster that is authorized for TDHA along with amendments to the HCAI portal for accuracy purposes for any and all ongoing or day-to-day matters. SNIC must remain as a party as it may be liable for some of the costs in this **SNIC Proceeding** to be dealt with at the hearing proper.

19. It is the word "accept" that is conspicuous, marked and eye-catching. Whatever acceptance of priority of the applicant's [sic] insurance policy was and is of no consequence in law as per *Reg 283*, section 4(1), 5(1) and (2). The Appellant never received any notice of "assignment, sharing or transfer of priority". It is trite that TDGIC's fax was in the LAT orders as early of February 2024 and SNIC resiled from the 416.774.3120 fax number by no later than Summer of 2023. TDHA was the **First Insurer** and received the Completed Application at first instance, and all other OCF

documents. It is understandable why certain adjusters at SNIC, and then Mr. Nieuwland for TDGIC, were so unfamiliar with the documents and claimed to be missing certain documents like MRI reports, Brain MRI UHN Notification and others. It may be the most clichéd phrase in the history of law: "offer, acceptance, consideration." Prior to the 'acceptance' by SNIC and TDGIC over the insurance policy, as found by the Adjudicator, there had to be an offer from another person. There are four automotive insurance companies in "TD Insurance", as per its public website and URL for "legal", which are: (i) SNIC; (ii) TDGIC; (iii) TDHAIC (TDHA); and (iv) Primmum. SNIC and Primmum, without any reference TD in their names, operate under the banner of two distinct yet combined trademarks which are: (i) TD Insurance," which is owned by "The TD Bank"; and (ii) "Meloche Monnex," which is owned by Meloche Monnex Inc. (not to be confused with Meloche Monnex Financial Services Inc. or other brokers or agents with permutations of the name). Ironically, TDGIC and TDHA do not have "TD Insurance" in their name as the "insurance" word comes after "General" and "Auto" sequentially for the aforementioned.

20. There is no dispute that SNIC was the Sole Underwriter of the Insurance Policy. SNIC delivered an accident benefits package to the Appellant in late September 2022. SNIC represented its address as the SNIC Markham Office with a fax number of 416.774.3120. On May 2, 2024,3 in relation to NOM #4 and NOM #6, Nieuwland (with Karat appearing as the ADR Specialist for SNIC) orally represented, contrary the April 11 submissions (supra) solely on behalf of TDGIC, 8 that SNIC and TDGIC were and are "one and the same". The Appellant objected and reserved his rights.

21. "**One And the Same**" is defined, by Collins Dictionary as "When two or more people or things are thought to be separate and you say that they are one and the same, you mean that they are in fact one single person or thing."

22. While there is no dispute what Nieuwland thought and meant on May 2, 2024, his thoughts and meanings, while unambiguous, are contrary to the statute (*Ins. Act*) in which this **SNIC Proceeding** arose and FSRA Enforcement Decisions have found that the SABS Insurer (SNIC) and TDGIC are separate persons. The Tribunal not only viewed and found SNIC and TDGIC to be separate persons but it found, without disclosure to the Applicant, on or around April 22, 2024, that TDGIC was a "related party" (see: Affidavit #18, Exhibit "A")./ The filing on April 22, 2024, by TDGIC was in relation to the case conference that was to be held on May 2, 2024, and then was held on May 2, 2024. The Applicant pleads a point of law that the Tribunal had no statutory authority to hold a case conference with a person that was not a party by law pursuant to section 5 of the *SPPA*. Ergo, the case conference conducted by the Tribunal as per Vice Chair Painchaund was a nullity, void and void ab initio at law (the "**Nullity Case Conference**"). The Tribunal acted in bad faith by its dishonesty and intentional misrepresentation to the Applicant by denoting its own books, records or accounts in the purported record of proceeding that TDGIC was a "related party" (see: Affidavit #18 of the Applicant, Exhibit "A", and Exhibit "B", page 304, Tab 303) yet it had prior and thereafter conducted the LAT Proceeding as if and in actuality that TDGIC was the only respondent entitled by law to be a party. The deceit by the Tribunal did not cease at that stage. Adjudicator Morrissette, as she then was, referred and found that the Applicant's NOM #8 went by consent in relation to the substantive order to change the style of cause. This finding was contrary to the evidence before her. It necessitated the Applicant bringing NOM #12, pursuant to

section 21.1 of the SPPA, to correct the same. Adjudicator Morrissette did not, per se, grant NOM #12 but clarified what she was intending to mean therein and flippantly and perfunctorily referred to not opposing and consenting as not having any distinction in law. Vice Chair Morrisette was wrong in law. Moreover, the "print out" of the record of proceeding provided by the LAT Registrar, in the face of the Applicant's demands and inclusion of the AGO himself and Executive Chair of Tribunals Ontario in Mr. Sean Weir to the email chain, confirmed that it appeared that the Tribunal had granted NOM #8 well in advance of the set hearing date of June 20, 2024; particularly on June 6, 2024. Returning to the misconduct and bad faith of this Tribunal generally and towards the Applicant, it was Vice Chair Lake who engaged in her issuing of a decision in relation to the Applicant's NOM #5 where she cited the incorrect LAT rule as some sort of unjustifiable legal ground for why Mr. David Karat could sign, file and serve the SNIC Response and why TDGIC must remain as the sole respondent party. Vice Chair Lake did so in the face of the settled precedents of the Tribunal such as *Dankha* and *Mosa*, and the unequivocal amendments to the LAT Rules clarifying and interpreting the definition of a "Respondent", "Response" and other definitions. At the time of the decision by Vice Chair Lake, SNIC was the only insurance company in the TDI Group that had filed a Response (see: LAT Rule).

23. The now finding by the Tribunal that SNIC and TDGIC accepted priority over the insurance policy means that they agreed (which is possible in fact but not in law) to accept an offer from another regarding priority. This is not only the logical explanation for what transpired and why TDHA, an automotive insurer in Ontario which is the only required element for a non-underwriter of an insurance policy to be the provisional **First Insurer** and then potentially the permanent **First Insurer**, has not been responded and paid the benefits due and owing to the Appellant despite receipt of the same from the Appellant via fax. This also explains the Spam Fax in Spring 2023 which was nearly or identical to the August 2024 letter (see: Affidavits #34 and Affidavit #35 in the LAT Appeal).

24. It is unfortunate, from an access to justice standpoint and for the benefit of the public, for the Adjudicator to rush this decision, as it was not available when the Appellant inquired on September 11, 2024, as to the date of the hearing for the NOM #13. With the greatest of respect, the Adjudicator was unfamiliar with the facts, which one can empathize with if she was new to this LAT proceeding but she granted the most consequential motion in this proceeding so far, and basic one at that such as the first order in this proceeding of her fellow Vice Chair (VC Lake). Adjudicator Morrissette was of the mistaken view that the Tribunal changed, at some unknown time, the IDENTITY of SNIC to TDGIC after January 30, 2024, but some time before February 19, 2024. One can understand not being able to pinpoint an exact date when identities are changed or swapped in a cyber-attack or ransomware plot, but the Adjudicator found that it was THE TRIBUNAL that changed the identity from SNIC to TDGIC. It appears that the Adjudicator was implying that an administrative individual employed by the License Appeal Tribunal in the AABS division somehow on off-time engaged in some administrative identity swapping without notice to the litigants in the proceeding. The Appellant is not attempting to be hyperbolic or histrionic in any way, but the License Appeal Tribunal is one of 13 tribunals part of Tribunals Ontario and it is a division or sub-body within the office of the most important ministry as it pertains to the law: THE MINISTRY OF ATTORNEY GENERAL. And the Appellant is merely finding out about this in September 2024? This is beyond concerning and beyond the Appellant's immediate interest. Perhaps, Adjudicator Morrissette meant December 30, 2023, to January 19, 2024? This would make more sense in that an administrator or case manager would have reviewed the Appeal and attached documents and countless references to TD SNIC and Security National Insurance Company and input SNIC as the respondent. Then, likely someone informed Mr. Grant to change

the name from SNIC to TDGIC. This, of course, would have required such a change as the Appellant had already filed two motions by January 8, 2024. The Appellant only objected for six months, and this appears to have been the strategy by SNIC and then TDGIC of which neither were **First Insurer**s.

25. A "Respondent" is a party in a LAT Proceeding. Legislative definitions are sometimes counter-intuitive and defy common sense. In Ontario, "legislation" includes "legislation and regulations", but a statute is distinct from a regulation. Section 5 of the SPPA: "The parties to a proceeding SHALL be: (i) the persons specified as parties by/under the statute17 under which the proceeding arises; OR (ii) if, not so specified, persons entitled BY LAW18 to be parties to the proceeding19. One would have thought with the benefit of Adjudicator Morrissette who expressly dealt with a party issue in NOM #8, such a misstatement of law or query from her would have been obsolete. By law is an ambiguous phrase which is not to be confused with a municipal by-law. "Source law" is a definition under the Legislation Act 2006, and it includes regulations. Tribunals in Ontario and Canada have held that persons who are not expressly required by statute to be parties may be added as parties pursuant to section 5 (*SPPA*) if s/he or it have a substantial and direct interest in the proceeding's outcome.

26. A final order disposes of the litigation, or finally disposes of part of the litigation: *Ball v. Donais* (1993), 1993 CanLII 8613 (ON CA), 13 O.R. (3d) 322 (C.A.). An interlocutory order disposes of the issue raised, most often a procedural issue, but the litigation proceeds: *Hendrickson v. Kallio*, 1932 CanLII 123 (ON CA), [1932] O.R. 675 (C.A.), at p. 678.The interlocutory order from which there is no appeal is an order which does not determine the real matter in dispute between the

parties – the very subject matter of the litigation, but only some matter collateral (see: *Hendrickson v. Kallio*, 1932 CanLII 123 (ON CA), [1932] O.R. 675 (C.A.)

27. In *Smerchanski v. Lewis* (1980), 1980 CanLII 1699 (ON CA), 30 O.R. (2d) 370 (C.A.), at para. 18: This Court has held that an order made in a contest between a party to an action and someone who is not a party is a final order, appealable without leave, if the order finally disposes of the rights of the parties in the issue raised between them. In *M.E. v. Ontario*, 2021 ONCA 718, the ONCA found at paragraphs therein : "We conclude that M.E. was seeking to add new causes of action. An order refusing leave to amend pleadings to plead a new cause of action is final: *Atlas Construction Inc. v. Brownstones Ltd.* (1996), 46 C.P.C. (3d) 67 (Ont. Gen. Div.). So is an order dismissing a motion to add a party, which M.E. also appears to have been trying to do *Bryson v. Kerr* (1976), 1976 CanLII 867 (ON SC), 13 O.R. (2d) 672 (Ont. Div. Ct.). Accordingly, leave to appeal is not required and an appeal lies as of right to the Court of Appeal: *Courts of Justice Act*, R.S.O. 1990, c. C.43, s. 6(1)(b)."

28. In *Vavilov*, the SCC attempted to clear up complexities and uncertainty brought on by Dunsmuir. ~~22~~ The SCC cited three (3) non-exhaustive examples in Vavilov where the correctness standard must be applied by a review tribunal or court: (i) constitutional questions (ii) general questions of law of central importance to the legal system as a whole; and (iii) questions regarding jurisdictional boundaries between two or more administrative bodies.

29. The Supreme Court in *Housen* found an error of law including the: (i) application of an incorrect legal standard; (ii) a failure to consider a required element of a legal test; or (iii) the mischaracterization of the standard.

30. A tribunal errors in law when it improperly approaches the evidence such as by misapprehending evidence, ignoring relevant evidence or relying on irrelevant evidence or irrelevant factors in reaching its decision 30 (see: *Nguyen*). In *Drewlo Holdings v. MPAC*, 33 the ONSCJ (DC) cited its decision in *Yatar*~~34~~ where, at ¶28, the Court confirmed a finding of fact can constitute an error of law: "is when a finding of fact on a material point is based on no evidence.

31. The failure to identify or consider the legal criteria that govern (the "Identification Failure Governing Legal Criteria") the exercise of discretion may constitute an error of law.

32. In *Gega*, the Divisional Court applied a novel yet functional determination of when an issue was one of law as opposed to one of 'mixed fact and law': "[19] This issue is a matter of law...argue this issue is a matter of mixed fact and law, but there are no factual findings that need to be made by me to consider this question."

33. In *Kawa Arab*, the Divisional Court found an administrative decision of statutory interpretation as a matter of law. At paragraph 19, Tzimas J found, "[19 If an Adj. ignores evidence that the law requires to be considered to arrive at a DECISION, that will amount to an error of law."

34. In *Bassline*, VC Lamoreux found in 201846 at ¶ 20, "Therefore, I am satisfied that the Tribunal erred by determining that it had no jurisdiction to consider the issues raised in the Notice."

35. In *Lapcevich*, the ONSCJ~~49~~ found: "We agree with the appellant, Registrar, that the Licence Appeal Tribunal erred in its approach to the statutory framework and exceeded its jurisdiction; and it did not make the necessary threshold determinations, as required by the statute. In *Sparks*, the Divisional Court found that inconsistent findings of facts as "errors of law."

36. In *Glencore*, the FCA considered a second appeal wherein it stated the applicable SOR for extricable legal issues in that no deference is owed to the overall conclusion (see: ¶ 22).

37. In *THMR*, ONCA found that when hearing below is in writing that the correctness standard applies.

38. The case of *Fatemea Rezaiezadeh v. State Farm Mutual Automobile Insurance Company*, 2016 ONFSCDRS 59 ("*Reza*") stands for the proposition below. The Appellant notes the case of Reza (for short) wherein, albeit under the FSCO, the arbitrator found the following: "The Appellant concedes there is no explicit procedure in the Code or the *Statutory Powers Procedure Act*, R.S.O. 1990, c. S.22, as amended, to permit a party to continue a proceeding against a non-party." The "Dispute Resolution Code" is no longer applicable as it only applied with the FSCO. Even where State Farm Automobile Insurance Company was bought out by Certas and Desjardins regarding its Canadian operations, State Farm remained as the party as it was the underwriter at the time of the accident therein. Therefore, this is yet another reason that the decision of the Adjudicator and now the decision of the Appellate Tribunal (LAT) is one that finally disposes of the Appeal even when it is not in favour of the Appellant. If the Appellant does not have the **First Insurer** as the primary and liable party for the main issues between the Appellant and it (with SNIC only therein for costs as a result of it filing the sole Response (SNIC Response) to date but only as a result of the LAT Rules which is a distinction between present times and a case like Volfson), then all of the protections under SABS are illusory.

39. The provisional "**First Insurer** rule" (the "**First Insurer** Rule") under the regulation and priority regime under the statute operate differently (see: *Zurich 2024*, paragraph 8). If a claimant for accident benefits completes all required 'fields' (see: *SABS*, ss. 66 and 67), duly signs the OCF-1 and then sends via mail or fax, the **First Insurer** that receives an OCF-1 application MUST benefits in accordance with SABS (see: *Reg 283*, ss. 2.1(6)). If the **First Insurer** does not take any issue, within ten business days of receipt of the Completed Application, the **First Insurer** has approximately 75 days from then to provide a notice of dispute that it is required to pay the benefits of the claimant in which it received a Completed Application. Irrespective of whether the claimant is an "insured person" or not in the subjective mind of the **First Insurer**, the **First Insurer** must respond to the **Completed Application** and the claimant (see: *Reg 283*, ss. 2.1(6)).

40. Acceptance during the 90-day period is merely provisional (see: *Zurich 2024*, paragraph 29). If the **First Insurer** does not dispute, within 90 days, its liability to pay any and all benefits, in accordance with SABS, of the claimant, there is no other process for the **First Insurer** to transfer, dispute and recover any paid or to be paid benefits to the claimant. A **First Insurer**'s calculus to not accept a claim for whatever subjective reason can turn out to be a costly and permanent mistake.60 This is full answer to the Adjudicator's query about whether the Tribunal had authority to add the **First Insurer** to this LAT Proceeding, which is oddly required as a matter of law.

41. As of 2015, in *Zurich 2015*, the SCC held that Chubb ought to have responded to the SABS claim immediately on a 'pay first and dispute later' basis (see: *Zurich 2024*, paragraph 12). As long as the Completed Application by the claimant was not arbitrary, there is a "nexus"

between the claimant and the **First Insurer** (i.e. the one to receive the Completed Application) (see: *Zurich 2024*, paragraph 14). In *Zurich 2015*, the SCC (see: 2015 SCC 19) restored Goldstein J's decision (ONSC (Divisional Court)) in adopting the dissent of Juriansz J.A.: 2014 ONCA 400. A vague recollection about seeing an insurer's name at a rental car office was sufficiently non-arbitrary to require a '**First Insurer**' (Chubb in *Zurich 2015*)) to step into the shoes as a "**First Insurer**" for the purposes of section 2(1) of *Reg 283* (see: *Zurich 2024*, paragraph 15). If the **First Insurer** provides automobile insurance in Ontario at the time of receipt of the Completed Application there is a sufficient nexus between a claimant and the **First Insurer** (see: *Zurich 2024*, paragraph 16). The policy behind the inflexible rule is that an insurer who fails to pay benefits and fails to put other insurers on notice after receipt of a Completed Application, when there is SOME nexus between the claimant and the **First Insurer**, being permanently responsible for the claimant's benefits is to promote compliance with the statutory and regulatory scheme.

42. No power to pursue a non-party under statute is answered above. As a matter of principle, there is NO difference between an insurer's failure to pay under section 2 of *Reg 283* and a failure to pay under any provision of SABS (see: *Zurich 2024*, paragraph 54). As the Tribunal is required to decide this LAT Proceeding in accordance with SABS as a matter of statute (see: section 280(4) of the *Insurance Act*), then it was not a matter of discretion for Adjudicator Morrissette but a requirement upon her to ensure that the Appellant had the correct and liable party (see also: *Insurance Act*, ss. 268(3)) before the Tribunal and in the future for not only himself but his service providers. While there is an ability of a party to "request an expedited hearing" in the dropdown menu of Tribunals Ontario e-filing portal,

there is a dearth of jurisprudence regarding the same with LAT/AABS matters. As of 2010, the amendments to *Reg 283* led to an absence of listed fax numbers for insurance companies and for good reason: some unsavory insured persons may deliberately manipulate the system by faxing their OCF-1's to an incorrect insurance company with no record of them as insured persons leading to those insurance companies in receipt of confidential information with an inability to dispute that they were not liable along with which insurance company may be liable. This could lead to an insurance company, who had not received premiums with no previous interaction with such an unsavory insured person, being liable to respond and pay benefits to said unsavory insured person.

43. It is important to note that the actual relief sought in the hearing record was slightly different in language but a distinction with a difference at Order #5: [5] Any further relief that is consistent with the above and in accordance with *Reg 283*, SABS, and Reg 664. The issue of adding the party TDHA as the **First Insurer** is one that the Adjudicator was required to answer (see: *Rio Tinto*, SCC 2010 SCC 43). However, even if the Adjudicator had granted Order #1 that would have been sufficient as a decision (order, declaration, determination and/or finding) that would have finally disposed of the Appeal, as it was currently constituted on September 13, 2024.

44. Again, the Reconsideration Decision references that the appellant did not cite to any binding case law or legislative authority regarding adding a second respondent. The Tribunal has yet again misunderstood the Appellant's argument in that TDHA would be the First Insurer and SNIC would remain solely as it relates for costs in the proceeding prior to TDHA being the First Insurer. In relation to binding case law, Zurich 2024 as per Justice Akazaki unequivocally found that a breach of *Reg 283* or SABs were a distinction without a difference. The decision of VCM in mid-

September 2024 is not only an incorrect decision but a dangerous decision. It must be corrected forthwith for the benefit of the general public, the insurance industry and the relevant participants.

45. Moreover, had the Adjudicator determined the factual issue at Order #3 in NOM #15, this would have been a decision that finally disposes of the Appeal. In this regard, the Tribunal issued a Notice of Motion Scheduling Order on Thursday, September 12, 2024, that fond that SNIC was located at the Burlington Office: "[3] preliminary finding, determination, or order, that the fax number 416-774-3120 was a landline phone number utilized as a fax number on the 4th floor of the building situated at the premises municipally known as 3650 Victoria Park Avenue, North York, Toronto, Ontario, M2H 3P7. The decision of Vice Chair Lake on reconsideration suffers from the same issues but remains premature considering not having NOM #16 decided in advance of the same. Once NOM #16 is decided, it will allow for the Applicant (Appellant) to be able to advance this judicial review in accordance with having final decisions on all the same.

The Fresh Evidence, New Factual and Legal Grounds

Summary of the new evidence and factual grounds

46. It became indisputable in September 2024 that Mr. Papadimitropoulos was the forger of a purported signature on April 20, 2023, document (OCF-18) of the initial claims advisor in the TD insurance claim number 03257390-03 (the "TD Claim #3") in response to an OCF-18 tendered through HCAI on April 6, 2023, by comparison to an anniversary card that he tendered to the named individual insured (the "**Papadimitropoulos Anniversary Card**" or "**Anniversary Card**") prior to their separation and ultimate divorce by divorce decree of an Ontario court on or

around 2019. The Applicant found the **Anniversary Card** under the bed at the address denoted for himself below. It was under a pile of junk which apparently had not been discarded by the named individual insured and his former common law spouse. The Applicant immediately tendered the same by way of affidavit through the e-filing portal for the LAT/AABS (see: Affidavit #3 herein, which included the relevant affidavits before the LAT that included the same).

47. It also became indisputable in the Summer of 2024 to the Applicant, albeit by way of fraudulent concealment by the Respondent Insurance Companies and their various agents and/or representatives, that the fax number of 416.774.3120 was that of TDHA and not a fax number for SNIC or TDGIC during the time of September and October 2022.

48. After the LAT granted the order in the Applicant's NOM #8, by issuance on June 20, 2024, the Applicant took steps to ensure that SNIC would list and produce documents along with that of TDGIC. The Applicant made demands upon the non-party of TDGIC from late June 2024 to early July 2024.

49. On July 10, 2024, the Applicant filed his NOM #13 which was a motion seeking document production from a non-party in TDGIC (see: Affidavit #18, Exhibit "B", page 322, cross-referencing page 220 of the "print out" provided by the LAT on February 26, 2025).

50. Approximately two weeks later on Wednesday, July 24, 2024, the LAT apparently heard and decided NOM #13 with a final order, albeit in "docx form", but did not disclose the same to the Applicant. The Tribunal acted contrary to its own *LAT Rule*, Rule 9.2.2. which required, inter alia, an opportunity for the non-party to make submissions in response to the motion.

51. The referenced document was and is intitutled,

"2M_-_Motion_Order-2019071 0_-Final.2024-07-24_15-04-56.docx".

52. No such motion order was ever released to the Applicant.

August 2024

August 3, 2024

53. On August 3, 2024, the Applicant filed NOM #14, which is the primary motion herein (with one final order in NOM #15 which is the subject of a quashing order), after serving the same on SNIC and TDHA (see: Affidavit #18, Exhibit "B", page 326, Tab 565).

August 6, 2024

54. On Tuesday August 6, 2024, the Tribunal input in the purported record of proceeding a document titled "notice of motion" which the Applicant did not file or serve but with the inscription of "motion denied" (see: Affidavit #18, Exhibit "B", page 326, Tab 588).

August 16, 2024

55. On August 16, 2024, the Tribunal input in its purported record of proceeding the following inscription:

"2M_-_Motion_Order-2019071 0_-Final.2024-08-16_13-26-16.docx"

56. No such motion order was ever released to the Applicant.

Similarities between the July 24 Undisclosed Motion Order and the August 16 Undisclosed Motion Order

57. The similarities between the motion orders of July 24, 2024, and August 16, 2024 (collectively, the "Summary 2024 Undisclosed Motion Orders") are as follows:

a First letters: "2M";

b Type of order: "Motion Order";

c Numbers thereafter: "2019071 0";

d Type of order or decision: "Final"; and

e Type of document: Word document with "docx".

August 22, 2024: Undisclosed Notice of Motion Schedule Motion Hearing

58. On August 22, 2024, the Tribunal input a "Notice of Motion Schedule Motion Hearing" for the Applicant's NOM #16 which was a motion for SNIC to list and produce documents as it had not listed or produced a document during the LAT Proceeding (see: Affidavit #18, Exhibit "B", page 329, Tab 606). All of the documents contained therein as denoted attachments are "PDF documents". The Applicant never received a copy of the document titled "Notice of Motion Schedule Motion Hearing". He did receive a "Notice of Motion Schedule Motion Hearing" on September 12, 2024, in relation to NOM #16 which denoted that SNIC's address with the Tribunal was the Burlington Office Address with the fifth floor so denoted.

59. The Tribunal breached and remains in breach of section 10 of *LATA* which states, **10** The Tribunal shall send a copy of its final decision or order, including any reasons, to each party to a hearing, or to the person who represented the party. 2011, c. 1, Sched. 5, s. 5 (3)."

60. The Applicant avers that the Tribunal was able to file what it possessed of the record of proceeding but it chose to deliberately breach section 10 of the *JRPA* and section 2(B) of the *Charter* because the index and records would demonstrate that it had made errors that authorized the ONSC Divisional Court or a single justice of the ONSC to set aside the final VCM orders and decisions in NOM #14 and, in part, NOM #15. The Applicant further avers that the Tribunal breached its duties under section 20 of the SPPA to compile a record of the proceeding involving the same and the, at least, implicit requirement, by reference to section 10 of the *JRPA*, that it have available and ready for filing with the ONSC upon the bringing of a judicial review application by an applicant.

61. The Applicant filed his reconsideration request motion of the VCM's final orders and final decisions in NOM #14 and #15 on September 29, 2024, due to the apparent and purported backdating of the date of the decision to September 6, 2024, by VCM, which is inconsistent with the "print out" from the LAT on February 26, 2024 (see: Compendium, Tab 25).

October 15, 2024: the Reconsideration Decision

62. On October 15, 2024, Vice Chair Lake, who was on notice of a conflict of interest involving herself from Spring 2024, issued the reconsideration decision reasons.

63. The Applicant, within days, informed the Tribunal that he intended to appeal the same.

64. The Applicant avers that the Tribunal was of the view that the Applicant would appeal and he would need leave to proceed with an appeal which triggered a 15 day requirement to do so.

65. For whatever its misguided understanding of the law (then and now), the Applicant avers that the Tribunal instructed and authorized the Respondent Insurance Companies (some or all) and retained ultimate control upon the Respondent Insurance Companies to then engage in the theft of the Applicant's property; namely, his computer, phone, wallet, identification et al.

October 25, 2024: The Theft consummated at the direction of the Tribunal, the Tribunal having a high degree of control regarding the same, and/or retaining responsibility for the act of theft and thereafter

66. On October 25, 2024, the Applicant was in the visitor area of CAMH, not for any personal reason but for another, and he attended the publicly usable restrooms therein for a period of approximately four minutes. He left his backpack, which contained his computer, wallet, electronic devices, medication, identification and passport (the "McLean Backpack"), and a carry-on luggage type bag that had, in fact, had a logo of TD Bank. The Applicant was utilizing the latter for his hard copy materials and other personal effects. Upon his return, the McLean Backpack was stolen but not the luggage backpack.

67. The Applicant immediately asked other persons in the visitor area, who were working on their laptops or otherwise eating and resting, if they say any person and they confirmed that they did not. The Applicant immediately contacted the security in CAMH and they responded promptly with an incident report.

68. The individual who committed the theft was not Mr. Papadimitropoulos. In effect, he could not conduct the same.

October 28, 2024: Applicant makes access request of CAMH for the records involving the persons involved in the theft

69. On October 28, 2024, the Applicant made an access request upon CAMH after the security personnel reviewed the video footage therein.

October 28, 2024: Mr. Papadimitropoulos utilizes the identification that was the subject of the crime (theft) of the McLean Backpack:

Impersonation of Mr. McLean and forging of his signature albeit with his own signature but with Mr. McLean's name as the "borrower"

70. On October 28, 2024, at 4:35 and 4:36. unbeknownst to the Applicant, Mr. Papadimitropoulos engaged in fraud and forgery of the Applicant's name, whilst using the TPL library card contained in the McLean Backpack, to obtain and borrow laptops from the TPL Fort York branch. Mr. Papadimitropoulos did so again at approximately 17:43. On the same day at the same branch, he checked out two books from the TPL Fort York Branch in the name of the Applicant, without his authorization, at the times of 7:41 and 8:16 (see: Appendix #4 herein).

November 2024: the 1st to the 15th

71. As the Tribunal learned from the Applicant in early to mid November 2024 that he would be bringing a judicial review, Mr. Papadimitropoulos engaged in two distinct acts under a high degree of control from the Tribunal as follows:

a Friday, November 8, 2024: the booking of a reservation to attend the Aga Khan museum on November 9, 2024 (see: Appendix #5 herein); and

b Monday, November 11, 2024: taking out some 14 books on Monday, November 11, 2024, from the branch of Queen and Saulter of the TPL. Said library branch is some 300 metres from his rental residence on Queen Street East, Toronto, Ontario.

November 15, 2024

72. The Applicant filed and served his judicial review on the Tribunal and Respondent Insurance Companies on November 15, 2024.

73. Despite not having access to any banking, computers, electronic devices, et al, the Applicant still found a way to prepare the *JRPA* Application and file the same along with service.

74. The Applicant alleges that the Tribunal was stunned and it did not know how to respond. Despite a motion for documents outstanding, along with two other motions, the Tribunal was unable to conceptualize the same. It is scheme was without its desired goal.

November 16, 2024

75. On November 16, 2024, the Applicant obtained a new library card based on having his birth certificate and access to the emails that alerted him to the unauthorized taking out of books. At the time, the Applicant was unaware of the unauthorized and fraudulent borrowing of laptops by way of a false document with a forged signature and forged initials in the Laptop Borrowing Request Consent Form.

November 27, 2024

76. After the Tribunal had taken some 13 days, after service of the *JRPA* Application, it filed the two page NOA. The Tribunal did not file forthwith and attempted to put forward misguided theories about the law regarding the rudimentary distinction between interlocutory decisions and orders, and the prematurity doctrine. It was on that date that Mr. Boyce represented that the Tribunal would need three to four weeks to file the record of proceeding. The Applicant disagreed.

77. By latter letter on November 27, 2024, the Tribunal as per Mr. Boyce, was of the view, albeit incorrect on the law, that the Applicant was judicially reviewing interlocutory decisions or orders. It is trite that the decisions and orders of VCM where judicial review has been sought are final decisions and orders (see: *ME v. Ontario*, supra). However, that position of the Tribunal, not advanced by the Respondent Insurance Companies, is an admission that its view triggered a 15 day period that would have required leave to appeal which would have been October 30, 2024.

78. However, it is the LAT's position regarding the same that, in part, grounds his relief pursuant to section 8 of the *Charter*.

79. The Tribunal filed its Notice of Appearance on November 27, 2024. Despite the Respondent Insurance Companies being served with the filed *JRPA* Application on November 15, 2024, they did not file a Notice of Appearance until December 3, 2024, and only at the urging of the Tribunal. Upon further analysis of the metadata, layout, font, language and similar errors in the Respondent Insurance Companies' NOA, the Applicant put the Tribunal and Respondent Insurance Companies on notice that there had been improper information and document sharing between them. They did not deny the same. Thereafter, Mr. Nieuwland, counsel to the Respondent Insurance Companies, amended his practicing status with the LSO in "to be confirmed" mode.

80. The Respondent Insurance Companies failed to comply with the Chief Justice issued practice direction for the Divisional Court as of June 2023 (the "Valid Practice Direction") with respect to "Information To Be Submitted to the Court" (see: Part 1, Heading "F"). As of the date

of this Amended *JRPA* Application, the Respondent Insurance Companies have failed to comply with the same.

December 2024

December 3, 2024

81. The Tribunal complied with the Valid Practice Direction, "Information To Be Submitted To the Court". The Tribunal estimated a half day for the hearing of the *JRPA* Application and raised a preliminary objection of the prematurity doctrine.

82. The Applicant complied with the same, and confirmed with respect to the filing and serving of any documents that he was in the process of filing and serving his factum and application record.

December 10, 2024

83. The Applicant filed and served the Applicant's Factum on December 10, 2024 (see: Compendium, Tab 38). The Applicant addressed the prematurity doctrine and it contained no merit then or now.

84. Mr. Boyce, before the Applicant filed his Factum but without having read the same, relied on *Awada* and *Heegsma* for the apparent position of what constituted a "final order" versus an "interlocutory order". The Applicant responded in kind and kindly pointed out to Mr. Boyce of the Tribunal that *Heegsma* involved the appeal of an order of the ONSC regarding the OHRC attempting to intervene as a friend of the court. It had no applicability to the *JRPA* Application and his reliance on his attempted legal position and that of the prematurity doctrine.

December 12, 2024

85. The Applicant filed and served his Application Record on December 12, 2024.

86. It was only the Tribunal that was engaged in emails before and after the filing of Notices of Appearances. It was Mr. Boyce that was clamouring for a phone call with Mr. McLean. There was nothing to discus per se but Mr. McLean remained open to a cognitive and productive discussion.

87. The Applicant paid form filed and served his Certificate of Perfection on December 13, 2024. The Divisional Court stamped and issued the Certificate of Perfection on December 16, 2024 (see: Compendium, Tab 39).

88. The Applicant provided a copy of his duly completed and executed certificate of perfection on Friday, December 13, 2024, via email. The Registrar noted with the Applicant that he was required to pay for the same and file it in the JSO Portal. The Applicant did so later that afternoon.

89. On the same day at 7 p.m., Mr. Papadimitropoulos attended the TPL Reference Library, with the Applicant's wallet and identification, and obtained a new library card in fraudulent and unauthorized fashion. The Applicant avers and pleads that at all material times Mr. Papadimitropoulos was relying on some form of governmental action, namely that of the Licence Appeal Tribunal.

90. Mr. Papadimitropoulos was not copied on any of the emails with the ONSC Divisional Court and the Respondents at the time. On December 13, 2024, the Respondent Insurance

Companies had not an evinced an intention to even submit information to the court pursuant to the **Valid Practice Direction**.

91. On the same day in the evening, Mr. Papadimitropoulos, under a high degree of control exercised by the LAT through its in-house counsel of the SLASTO legal unit and the vice chairs and adjudicators whose decisions were so impugned and with the LAT retaining responsibility for the act in question, renewed some 16 books at 7:09 (19:09 p.m.) he had taken out with the Applicant's first library card which was validly issued in 2022. Mr. Papadimitropoulos had to obtain a new library card as the Applicant had obtained the Second Library Card and he could engage in further misconduct, all contrary to section 7 and 8 of the *Charter*, under the control of the LAT with the LAT retaining responsibility for the acts in question.

92. Consistent with the carefully selected borrowing of books by their names and synopses, which had deep personal connections or similarities to the Applicant's life experience, Mr. Papadimitropoulos then changed the phone number of the Applicant from his phone number on file to that of a CBC investigative journalist in Ms. Valerie Oullette (see: Appendix #4, 416-919-7820).

93. The Applicant further pleads that an adverse inference must be drawn against the Tribunal by way of Mr. Boyce removing his address and employer name after December 30, 2024, when the Applicant directly copied and pasted his decisions involving the three Respondent Insurance Companies when he was an adjudicator wherein those insurance companies were successful 14 times to zero defeats.

December 16, 2024: Certificate of Perfection Issued

94. On December 16, 2024, the Certificate of Perfection was issued.

95. After a reasonable period and contrary to Rule 68.05 and the language in this Form 68(A) in the *JRPA* Application (see: Compendium, Tab 37), the Registrar did not send a Form 68(B) via mail (or email (pursuant to Rules of Civil Procedure, rule ____) at first instance or thereafter.

December 17, 2024 to December 21, 2024

96. From Thursday, December 19, 2024, the Applicant sought the position of the Tribunal regarding the decisions of the Ontario (Energy Board), Drewlo v. MPAC (the "**Tranquilli Decision**") and Hutchinson v. Aviva General Insurance and whether the Tribunal could even participate in the *JRPA* Application.

97. Mr. Boyce did respond, but not substantively to the questions posed, and confirmed that he was available on January 2, 2025, for a case conference as he knew the time for providing its responsive factum and application record along with not duplicating any factums from the Respondent Insurance Companies.

98. On December 20, 2024, the Applicant confirmed that he had obtained a Case Center account and was awaiting the invitation to the same and was awaiting a Form 68(B).

Return to the unauthorized conduct at the control and direction of the Tribunal

99. On Saturday, December 21, 2024, Mr. Papadimitropoulos then obtained a fourth library card in the Applicant's name albeit this time with a return to the Fort York Branch of the TPL (see: Appendix #4 herein). Mr. Papadimitropoulos then engaged in the taking out of laptops in the Applicant's name pursuant to the unauthorized laptop and equipment borrowing form wherein he impersonated the Applicant whilst using a forged signature and uttering a false document, on December 21, 2024. Mr. Papadimitropoulos, under a high degree or control and authorization of the LAT, then took out books and periodicals in the afternoon therein.

100. The Applicant was wholly unaware of the conduct on said date and was not present in the library on said date.

December 23, 2024

101. On Monday, December 23, 2024, the Applicant continued to assert the urgency of having the *JRPA* Application heard along with limited to no rights of the Tribunal to participate.

December 24, 2024

102. In the face of the same, the Applicant, on December 24, 2024, filed, and served his requisition pursuant to Rule 4.08, requiring the Registrar to comply with her obligation pursuant to Rule 68.05(2). Despite filing the same in the JSO Portal on December 24, 2024, it was not technically stamped until late January 2025 (see: Compendium, Tab 41).

December 28, 2024

103. After the Tribunal had received those emails that confirmed the law in relation to the Keeprite Standard and the limited ability of the Tribunal to participate, Mr. Papadimitropoulos

again attended the Fort York Branch and engaged in further unauthorised conduct by the taking out of laptops and periodicals.

Affidavit #30 of December 30, 2024

104. As there was no existing requirement for a case conference under the Valid Practice Direction, while there was a requirement that all Divisional Court cases were subject to judicial case management, the Applicant, on December 30, 2024, swore affidavit #2 herein (see: Compendium, Tab 36), with affidavit #1 being his compulsory affidavit of service (see: Tab 40 of the Compendium) for the Certificate Of Perfection, to ensure that he led evidence of why there was urgency to the *JRPA* Application and why there would likely be a failure of justice if the *JRPA* Application was heard by a three justice panel of the ONSC Divisional Court.

105. Shortly after Mr. Boyce's receipt of affidavit #2, Mr. Boyce took the step with the LSO by way of the LSO Portal of removing his physical address and name of his employer (denoted as "business name" in the LSO online directory (the "LSO Directory"). The Applicant was unaware of the same until later into the month of January 2025, and he inquired with the LSO. The LSO confirmed that its records demonstrated that Mr. Boyce remained employed by the SLASTO Legal Unit at the same address of 25 Grosvenor Street, Toronto, Ontario.

January 2, 2025

106. On January 2, 2025, the Applicant filed a requisition by urgent email filing to the ONSC Divisional Court in the singular email thread for communications between the Applicant,

respondents and interested persons, seeking an urgent hearing before a single justice of the ONSC (see: Compendium, Tab 42).

107. The Applicant did not receive any response from the ONSC Divisional Court in relation to the compulsory Form 68(B) sending to the parties or the request for urgent hearing pursuant to section 6(2) of the *JRPA*.

January 7, 2025: Madam Justice Shore somehow requires the parties to attend before her when she is the only justice of 93 in the Toronto Region who worked at the law firm (Epstein Cole LLP) that acted for Mr. Papadimitropoulos involving an individual insured in a car accident with its Insurance Policy with SNIC

108. On January 7, 2025, the Registrar did email the Applicant and the Respondents with an apparent copy and paste of an email or transcribed note from The Honourable Madam Justice Shore that read that she was exercising her powers of compulsory attendance before her for a case conference.

January 8, 2025: The Applicant's Objection to Madam Justice Shore's involvement herein and in the future

109. On January 7 and 8, 2025, the Applicant reviewed the public biographical information regarding Madam Justice Shore, and he learned that she was as a partner at the law firm of Epstein Cole LLP until the summer of 2018 before her appointment to the ONSC by way of the Constitution, section 96 to 101. The Applicant immediately objected to her involvement in this *JRPA* Proceeding as said law firm was counsel to Mr. Papadimitropoulos in his matrimonial litigation with Ms. Nicole Artopoulos, the named insured individual in the Insurance Policy issued

by SNIC in 2018 and renewed each year thereafter until 2023 (see: named listed in the LAT Appeal (see: Compendium, Tab 6) and SNIC Response (see: Compendium, Tab 7).

110. The Applicant took it a step further and swore affidavit #3 which outlined the factual grounds as to why he was objecting. The Applicant filed and served affidavit #3 herein on January 8, 2025 (see: Compendium, Tab 43).

January 13, 2025: Tribunal fails to file any factum or application record; same with the Respondent Insurance Companies (although RIC's – no objections on a preliminary basis)

111. On January 13, 2025, neither the Tribunal nor the Respondent Insurance Companies filed a responsive factum with supporting materials in the form of a respondent's application record. The Applicant pleads a point of law that those respondents, not the AGO who was and is statutorily entitled to be heard at the hearing of the *JRPA* Application pursuant to section 9(4) of the *JRPA*, contravened rule 68.04. The Applicant also pleads a point of law that Rule 38 is not applicable to judicial review applications before the Divisional Court which eliminated the potential of those aforementioned respondents filing factum at a time prior to the hearing date. Rather, the Tribunal and Respondent Insurance Companies were required to file and serve their responsive factums and application record 30 days from December 12, 2024. To date, the Tribunal and Respondent Insurance Companies have not sought leave to file their responsive factums and application records.

112. The Applicant, at all material times, before and after January 13, 2025, confirmed, in writing, that he viewed the failure to do so as one that would lead to nullity filings if those respondents attempted to do so without leave.

January 16, 2025: Applicant files written submissions to the attention of the Chief Justice et al: appears never provided to Chief Justice

113. After awaiting to hear from the ONSC Divisional Court, the Applicant prepared written submissions regarding the Shore J. recusal request and the invalidation of the compulsory case conference attendance requirement before her (see: Rules of Civil Procedure, Rule 77). The Applicant filed and served those written submissions on January 16, 2025, to the attention of, inter alia, the Honourable Chief Justice Mr. Morawetz, the Associate Chief Justice, and the Regional Senior Justice of the Toronto region.

114. The Applicant presumed that his affidavit #3 and the written submissions would be brought to the attention of the Chief Justice. He tendered the same predicated on there not being any uniform practice in Ontario for how to raise the recusal of a justice and pursuant to a secondary source article, issued by Gowlings LLP, citing one of the most astute and erudite justices to ever grace the ONSC in The Honourable Mr. Justice Perrell, formerly of the "seven sister law firm" in Oslers LLP (see: Gowlings LLP).

115. While the impugned conflict of interest involving Madam Justice Shore was being addressed, the Tribunal remained in breach of its forthwith filing requirement pursuant to section 10 of the *JRPA*. While Mr. Boyce, counsel to the Tribunal, had provided some inconsistent self-imposed, non-statutory, and non- prescribed timelines of three to four weeks from late November 2024 or 60 days in a subsequent letter to the Applicant and other respondents, by any measure of the same, the Tribunal had not complied with those self-imposed deadlines by January 23, 2025.

January 17, 2025

116. In the face of the Applicant's COI recusal submissions and nullification of the case conference compulsory requirement, albeit the Respondents failed to comply with the timelines in the Rules of Civil Procedure to file their responsive factums and application records thereafter, some 29 items were renewed by an unknown individual utilizing the Fourth Library Card obtained on false pretenses by Mr. Papadimitropoulos.

Affidavit #4: January 18, 2025

117. On January 18, 2025, the Applicant filed and served affidavit #4 (see: Compendium, Tab 45).

January 22, 2025
Re: NOM #1 filed and served upon the Tribunal

118. On January 22, 2025, the Applicant filed and served upon the Tribunal his notice of motion #1 ("NOM #1") seeking various relief, inter alia, that the Tribunal comply with section 10 of the *JRPA* to file the record of proceeding for the court's use for the *JRPA* Application (see: Compendium, Tab 48). NOM #1 was returnable on January 30, 2025.

119. On January 24, 2025, the Applicant filed and served his Affidavit #7 (with affidavits #5 to #6 being affidavits of service) on the Respondents (see: Compendium, Tab

January 27, 2025

120. On January 27, 2025, the Applicant filed and served his Affidavit #8 on the respondents

121. The Tribunal did not object to the relief sought regarding the same within the prescribed time requirement of four days (January 27, 2025) or at all.

January 30, 2025

122. On the morning of January 30, 2025, the Applicant filed a written argument (see: Compendium, Tab 50) to supplement his Notice of Motion and Confirmation of Motion (se: Compendium, Tab 49). Prior to January 30, 2025, the Applicant requested a case conference call number of the ONSC Divisional Court but did not receive the same.

123. The relief sought in NOM #1 remains unopposed and uncontested with a vetted draft order with respect to form and content as per the amendments to the Rules of Civil Procedure, Rule 59.

January 30, 2025: AGO withdraws from the *JRPA* Proceeding in the face of the Applicant putting the uncontroverted evidence of the October 25, 2024, theft and subsequent unlawful conduct in the record of proceeding

124. Without any resistance of the relief sought in the *JRPA* Application or the merits of the same and the Applicant's continued and unwaived intention for strict compliance with the Rules of Civil Procedure, the AGO confirmed in writing, on January 30, 2025, that he was withdrawing through his esteemed counsel in Ms. Judie Im.

January 31, 2024: NOM #2 made, served and then immediately filed for written hearing

125. On January 31, 2024, the Applicant moved promptly to make (see: language in Rule 37.12(4)) his motion for a written hearing within 14 days of said date. The Applicant served and

immediately thereafter filed his NOM #2, Motion Record, Draft Order, and Factum on the Remaining Respondents.

126. The Remaining Respondents had ten days from February 1, 2025, being Tuesday, February 11, 2025, to choose one of the four prescribed options pursuant to Rule 37.12(5). The Applicant was also required to file and serve a Compendium at least three days, by two p.m., before the hearing of the written hearing. The Applicant filed and served his Compendium on February 14, 2025, at 1:59 pm. The Remaining Respondents, as potential responding parties (see: Rule 1.03(1)), did not choose any of the four options under Rule 37.12(5).

127. As the Applicant had not received an invitation to Case Center, contrary to the ONSC Guide to Judicial Review In Divisional Court" (see: language therein, "…invitation to CaseLines (former name) upon bringing the *JRPA* Application), by February 5, 2025, the Applicant filed and served Requisition #6 (see: Compendium, Tab 56), that required the Registrar to bring the entire court file to the attention of the sitting motions justice. The Applicant filed an additional requisition ("Requisition #7") seeking, yet again, an invitation to Case Center (see: Compendium, Tab 57).

128. The Applicant pleads a point of law that there is no similar provision for triages or conferences under the Rules of Civil Procedure.

129. In early February 2025, Mr. Nieuwland had changed his status to "to be confirmed" with no address for service, no employer, no email or phone number. The Applicant promptly inquired with the LSO regarding the same and Mr. Nieuwland then changed his contact information particulars back to the previous information.

February 1, 2025: Mr. Papadimitropoulos no longer employed by TD Insurance

130. On or around February 1, 2025, Mr. Papadimitropoulos was no longer employed by TD Insurance.

131. After February 11, 2025, the Applicant provided a revised and current Draft Order for NOM #2 on Friday, February 14, 2025, before the commencement of court.

132. On February 14, 2025, the Applicant also swore his Affidavit #16 (with affidavits #9 to #15 being affidavits of service for not only the Remaining Respondent but Mr. Papadimitropoulos and the law firm of Epstein Cole LLP). Neither Epstein Cole LLP nor Mr. Papadimitropoulos filed any responsive materials.

February 15, 2025 to end of February: Applicant scheduled to be away but an access request bore fruit: Mr. Papadimitropoulos forging signatures yet again with the Laptop Borrowing Request Consent Form

133. The Applicant was scheduled to be away from the weekend of February 15, 2025, until the end of February 2025 for necessary medical procedures for impairments as a consequence of the Accident on August 31, 2022. The Applicant was able to attend to the same in the week of February 18, 2025 to February 22, 2025, but then received a response to his access request of the Toronto Public Library involving some of the information contained in the chart that it provided to the Applicant on January 23, 2025; specifically, a copy of the document denoted as a "Laptop or Equipment Borrowing Form with the TPL" from October 28, 2024. The Applicant was, without his wallet and stored hard copy identification inclusive of his TPL issued library card as of October 25, 2024, as a result of the theft of the same in the CAMH visitor area. The Applicant did not ever request such a form or initial and execute such a form regarding the same. Ironically, the Applicant

was in the TPL (Fort York branch) at the time of the fraudulent obtaining, fraudulent completion and forging of the same at approximately 4:30 on Monday, October 28, 2024.

134. The Applicant reviewed a copy of the document, personally compared the same and had a handwriting and signature experts compare the same to the printing in the authored anniversary card from Mr. Papadimitropoulos to Ms. Nicole Artopoulos at a time prior to 2017. The Applicant's belief and opinion of an expert in the aforementioned area was that they were similar to the aforementioned anniversary card. The Applicant's handwriting expert had previously confirmed that the forged signature of the "As per A. Nurse" on the OCF-18 (April 20, 2023), contained nearly identical letters such as: (i) "e's"; (ii) "n's"; and (ii) others (see: Compendium, Tab 43, Affidavit #3).

135. The Applicant had to put his health to the sidelines and attend to the making of an affidavit which was affidavit #17. The Applicant filed and served affidavit #17 on an urgent basis on February 26, 2025.

136. While it appears that anxiety got the better of Mr. Papadimitropoulos or being a "creature of habit" on October 28, 2024, , it was the very signature, under "Borrower Name (please print)" that was an "A", "N" and "P" that was most compelling. Under the "signature field", Mr. Papadimitropoulos input "Kevin Mclean". The Applicant spells his last name with a capital "L" which is his mother's maiden name and his maternal grandfather's surname.

Legal Grounds in relation to the *Charter* relief

137. The Applicant repeats and rely on the law cited in his served and filed NOCQ of March 4, 2025.

Section 2(B) of the *Charter* and the record of proceeding

138. The Applicant pleads that the Tribunal has breached, is breaching and continues to breach section 2(b) of the *Charter* with respect to the "open court principle".

139. The Applicant repeats and relies upon the law cited in his NOM #1 with respect to the importance of filing the record of proceeding from a judicial review standpoint and our constitution.

140. An applicant for judicial review has the right to have a full and accurate record of what went on before the tribunal put before the court: *Payne* at paragraph 161. The reason for the Applicant being entitled to the same is not grounded in the statutory sections but the ONSC Divisional Court's inherent jurisdiction: *Payne* at paragraph 161 (sentence 2).

141. A statutory body subject to judicial review cannot immunize itself or its process by arriving at decisions on considerations that are not revealed by the record it files with the court: *ibid*.

Section 7 of the *Charter*

142. The purpose of section 7 of the *Charter* is as follows.

143. Section 7 of the *Charter* requires that laws or state actions that interfere with life, liberty and security of the person conform to the principles of fundamental justice — the basic principles that underlie our notions of justice and fair process (*Charkaoui v. Canada (Citizenship and Immigration)*, [2007] 1 S.C.R. 350 at paragraph 19).

144. Section 7 involves a two-step analysis:

a. Is there a deprivation of one of the three (3) protected interests, that is to say life, liberty or security of the person?
b. Is the deprivation in accordance with the principles of fundamental justice?

145. This second step may be broken down into two steps, where it is necessary a) to identify the relevant principle or principles of fundamental justice and then b) to determine whether the deprivation has occurred in accordance with such principles. (*R. v. Malmo-Levine*, [2003] 3 S.C.R. 571 at paragraph 83; *R. v. White*, [1999] 2 S.C.R. 417 at paragraph 38; *R. v. S.(R.J.)*, [1995] 1 S.C.R. 451 at page 479).

146. There is no independent right to fundamental justice. Accordingly there will be no violation of section 7 if there is no deprivation of life, liberty or security of the person (*R. v. Pontes*, [1995] 3 S.C.R. 44, at paragraph 47).

147. The principles of fundamental justice incorporate *at least* the requirements of the common law duty of procedural fairness (*Singh, supra* at pages 212-13; *Lyons, supra*, at page 361; *Suresh, supra* at paragraph 113; *Ruby, supra* at paragraph 39). They also incorporate many of the principles set out in sections 8-14 of the *Charter* (*Re B.C. Motor Vehicle Act*, *supra* at paragraphs 29-30) and are "inextricably intertwined" with the requirements of s. 11(d) (*R. v. Rose*, [1998] 3 S.C.R. 262 at paragraph 95; *J.J.*, *supra* at paragraph 114). Context is particularly important with respect to procedural fundamental justice — the more serious the infringement of life, liberty and security of the person, the more rigorous the procedural requirements (*Suresh* paragraph 118; *Charkaoui* (2007), *supra* at paragraph 25; *Charkaoui v. Canada (Citizenship and Immigration*, [2008] 2 S.C.R. 326, at paragraphs 53-58). The protections are *generally* more stringent in the criminal law context than in other areas of law (*Chiarelli, supra* at pages 743; *Ruby, supra* at paragraph 39). However, the guiding question is always the severity of the impact on protected interests rather than a formal distinction between the different areas of law (*Charkaoui* (2008), *supra* at paragraph 53).

148. Deciding what procedural protections must be provided involves consideration of the following factors: (1) the nature of the decision made and the procedures followed in making it, that is, "the closeness of the administrative process to the judicial process"; (2) the role of the

particular decision within the statutory scheme; (3) the importance of the decision to the individual affected; (4) the legitimate expectations of the person challenging the decision where undertakings were made concerning the procedure to be followed; and (5) the choice of procedure made by the agency itself. This list of factors is non-exhaustive in determining the procedures demanded by the principles of fundamental justice (*Baker v. Canada (Minister of Citizenship and Immigration)*, [1999] 2 S.C.R. 817 at paragraphs 23-27; *Suresh, supra* at paragraph 115; *Charkaoui (2008)*, *supra* at paragraph 57).

149. The following are procedural principles of fundamental justice that have been found to apply outside the criminal context: the right to a hearing before an independent and impartial tribunal (*Ruffo v. Conseil de la magistrature*, [1995] 4 S.C.R. 267 at paragraph 38; *Pearlman v. Manitoba Law Society Judicial Committee*, [1991] 2 S.C.R. 869, at page 883; *Charkaoui* (2007), *supra* at paragraphs 29, 32); the right to a fair hearing, including the right to State-funded counsel where circumstances require it to ensure an effective opportunity to present one's case (*G.(J.)*, *supra* at paragraphs 72-75 and 119; *Ruby, supra* at paragraph 40); the opportunity to know the case one has to meet (*Chiarelli, supra*, at pages 745-46; *Suresh, supra* at paragraph 122; *May v. Ferndale Institution*, *supra* at paragraph 92; *Charkaoui* (2007), *supra* at paragraph 53), including, where the proceeding may have severe consequences, the disclosure of evidence (*Charkaoui* (2008), *supra* at paragraphs 56, 58; *Harkat, supra* at paragraphs 43, 57, 60); the opportunity to present evidence to challenge the validity of the state's evidence (*Suresh, supra* at paragraph 123; *Harkat, supra* at paragraph 67); the right to a decision on the facts and the law (*Charkaoui* (2007), *supra*, paragraphs 29, 48); the right to written reasons that articulate and rationally sustain an administrative decision (*Suresh, supra* at paragraph 126); and the right to protection against abuse of process (*Cobb, supra* at paragraphs 52-53). The application of these principles is highly contextual, but it may be assumed that if they apply outside the criminal context, they apply with greater force in the criminal context.

150. By the very internal denoting of TD General Insurance Company on April 22, 2024, as a "related party" when it was, at the time, the sole respondent in the LAT Appeal, was and is an

admission that it was interfering with the life, liberty and security of the Applicant in an unjust and unfair manner when he needed and still needs vital benefits and treatments.

Section 8 of the *Charter*

151. It would be analytical overkill to go into all of the purposes of section 8 of the *Charter* because the theft, impersonation, and fraud are all without authority.

152. The more intellectual argument, worthy of some attention, is that the unreviawability of decisions involving the Undisclosed Motion Orders.

Charter Damages

153. Anyone who has had their guaranteed *Charter* rights breached or violated may apply to a court of competent jurisdiction for such remedies that the court considers appropriate and just in the circumstances (see: section 24(1) of the *Charter*).

154. This section permits a person whose rights have been infringed to apply to a "court of competent jurisdiction" for "such remedy as the court considers appropriate and just in the circumstances". Within certain jurisdictional limits, the court's exercise of its remedial power is discretionary.

Not just past or current breaches but apprehended breaches

155. Anyone whose rights or freedoms have been directly infringed or denied may apply for a remedy. Despite the plain wording of the section ("Anyone whose rights *have* been violated…") indicating the contrary, section 24(1) applies not only in the case of actual interference with *Charter* guarantees, but also where an apprehension of a future interference can be established on

a balance of probabilities (*New Brunswick (Minister of Health & Community Services) v. G.(J.)*, [1999] 3 S.C.R. 46 at paragraph 51; *United States of America v. Kwok*, [2001] 1 S.C.R. 532 at paragraph 66).

Legal Test and burden of proof

156. To obtain a *Charter* remedy, the applicant must: (1) establish an adequate factual foundation; (2) bring their claim at the correct stage of litigation; and (3) persuade the court that, on a balance of probabilities, their *Charter* rights have been violated (Collins, supra, at page 277).

157. The Applicant has presented an adequate factual foundation and brought the relevant evidence as soon as he was aware of the same.

158. There is no dispute that the Applicant has had his section 2(b) of the *Charter* rights infringed. The question is one of remedies.

159. In relation to section 8 of the *Charter*, there is no dispute that the Undisclosed Orders are unreviewable orders and decisions which violate section 8 of the *Charter* and cannot be saved under section 1 of the Chart.er

160. In relation to the other alleged section 8 breaches, the respondent LAT and Respondent Insurance Companies have ten days to provide a notice of appearance and any competing evidence to dispute the same.

Types of Remedies

161. When there is a right, there is a remedy (see: (*Doucet-Boudreau*, *supra*, at paragraph 25).

162. It is "difficult to imagine language which could give the court a wider and less fettered discretion" in crafting remedies than section 24(1) (*Mills, supra*, at page 181).

163. The Divisional Court is to approach *Charter* remedies purposively and give vitality to the maxim, "where there is a right, there must be a remedy")

Purposive Approach

164. The purposive approach consists of two specific requirements:

a the remedy must be "responsive" and promote "the purpose of the right being protected";

b the remedy must be effective (*Doucet-Boudreau, supra*, at paragraph 25; *PHS Community Services Society, supra*, at paragraph 142).

The Section 2(B) rights

165. The section 2(B) rights are inextricably bound to the inherent jurisdiction of this Divisional Court of the ONSC as per the Divisional Court reinforcing the legal precedents and rights of this Applicant and all similarly situated applicants in judicial review.

166. Section 2(b) protects the "open court principle", a strong presumption in favour of open courts that allows the public and the press to attend hearings, to consult court files, and to inquire into and comment on the workings of the courts (*Sherman Estate v. Donovan*, 2021 SCC 25). The open court principle is embedded in the common law tradition and is protected by section 2(b) because it promotes the full and fair discussion of public institutions, which is vital to any democracy: (*Sherman Estate*, *supra* at paragraph 30; *Ruby v. Canada (Solicitor General)*, [2002] 4 S.C.R. 3 at paragraph 53; *Canadian Broadcasting Corp. v. New Brunswick (Attorney General)*, [1996] 3 S.C.R. 480 at paragraph 23; *Edmonton Journal v. Alberta (Attorney*

General), [1989] 2 S.C.R. 1326 at pages 1339-40; *B.C.G.E.U. v. British Columbia (Attorney General)*, [1988] 2 S.C.R. 214; *R. v. MacIntyre*, [1982] 1 S.C.R. 175).

167. Open courts discourage mischief and ensure confidence in the administration of justice through transparency (*Sherman Estate*, *supra* at paragraphs 39, 44).

Interplay between section 2(b) and 7 of the *Charter*

168. The open court principle is also protected as appropriate under the right to a fair and public trial pursuant to section 7 and section 11(d).

169. Section 11(d) is not at issue for the Applicant per se but it may be for some others in other proceedings.

170. The open court principle applies to all judicial proceedings, whatever their nature (*Sherman Estate*, *supra* at paragraph 44). This entails a presumption of access to both criminal and civil hearings, and also, for example, to pretrial proceedings (*Re Vancouver Sun*, *supra* at paragraph 27), probate proceedings (*Sherman Estate*, *supra* at paragraphs. 44-45), and court exhibits (*Canadian Broadcasting Corp. v. The Queen*, [2011] 1 S.C.R. 65 at paragraph 12; *Canadian Broadcasting Corp. v. New Brunswick (Attorney General)*, *supra*; *Hill v. Church of Scientology of Toronto*, [1995] 2 S.C.R. 1130). Court openness would be limited by, for example, sealing orders, publication bans, orders excluding the public from a hearing, or redaction orders (*Sherman Estate*, *supra* at paragraph 38).

171. There is no issue regarding any redacted documents, orders or otherwise before the Tribunal.

172. A person asking a court to exercise discretion in a way that limits court openness must establish that: (1) court openness poses a serious risk to an important public interest; (2) the order sought is necessary to prevent this risk because reasonably alternative measures will not prevent the risk; and (3) as a matter of proportionality, the benefits of the order outweigh its negative effects. This test applies to all discretionary limits on court openness. (*Sherman Estate*, *supra* at paragraph 38; *Sierra Club of Canada v. Canada (Minister of Finance)*, [2002] 2 S.C.R. 522; *R. v. Mentuck,* [2001] 3 S.C.R. 442; *Dagenais v. Canadian Broadcasting Corp*., [1994] 3 S.C.R. 835.)

173. As the open court principle applies equally to administrative tribunals particularly those that are adjudicative in nature like the LAT, the LAT has not attempted to rely on any of the above and nor could it.

174. The Tribunal has understandably yet unlawfully attempted to shield itself from judicial scrutiny.

175. "Adjudicative records", in the context of this application, meant records that are part of the actual record of the tribunal hearing, not documents that were part of the pre-hearing discovery but that did not get introduced at the hearing itself (see: summary of *Toronto Star v. AGO* (2018).

176. The open court principle, which is inextricably tied to the rights guaranteed by s. 2(*b*) of the *Charter*, applies to administrative tribunals as well as to courts (see: summary of Toronto Star).

177. The Tribunal has violated section 2(B) of the *Charter* at first instance, from December 24, 2023, until September 13, 2024, by its failure to compile records in an organized and responsible

manner. In this regard, the Tribunal cannot have it both ways by tossing around the language of "quasi-judicial" but then engage in deplorable organizational record and file management.

178. The Tribunal has purported to created a reverse onus upon the Applicant and it must pay for his expenses and costs in compiling the index and seeking to obtain, and potentially obtaining the adjudicative records before the Tribunal during the ROP Temporal Period.

179. There must be consequences for the actions of the Tribunal and that can only be obtained by way of remedy that is not nominal and trivial.

180. The Supreme Court has stated emphatically that when it comes to access of the press to Adjudicative Records, "covertness is the exception and openness the rule" (see: *Nova Scotia (Attorney General) v. MacIntyre*, 1982 CanLII 14 (SCC)).

181. The point is even more forceful when it applies to a party to a proceeding before a Tribunal.

182. Once a judicial review application is commenced, openness is not only the rule but it is constitutional entrenched and a democratic principle.

183. While the Applicant, consistent with his approach before the Tribunal in exhausting all available, alternative and adequate remedies, is exhausting all routes outside of the Court process out of respect for the scare, finite and valuable judicial resources. Moreover, he is leaving nothing to chance when it comes to this insurance industry funded Tribunal.

184. The relief sought in NOM #1 is an effective remedy as it curtails and prohibits the Tribunal from participating in this *JRPA* Proceeding until it complies with its forthwith filing duties.

185. However, that was more than 45 days ago and the Tribunal has still failed in its duty to file with the court. It would be one thing if the Tribunal took the position that it had filed the record of proceeding during the ROP

186. Temporal Period but did not serve the Applicant. In reality, the Tribunal has put the Applicant to further expense, harm, and cost to obtain the same through alternate methods but he still has not seen a single document that was filed from the apparent repository of the Tribunal.

187. This is not a situation like that occurred in Toronto Star where it was seeking access to tribunal schedules but rather the Tribunal has not filed a single document form the record of proceeding.

188. The remedy in favour of the Applicant, and to an extent the public, must be significant, meaningful and effective to ensure that the Tribunal does not engage.

189. The Applicant has proposed by way of remedy that the LAT pay the sum of $280,000 to pro bono legal services earmarked for SABS claims of injured persons before the LAT. In this manner, some balancing of the scales of justice and monetary power of the insurance funded tribunal is effected. The Applicant arrived at said number based on the summation of the salaries of Mr. Boyce and Vice Chair Morrissette. The Applicant is not submitting that it said funds comes from their salaries but from the LAT itself.

What is an appropriate and just remedy?

190. A remedy that is "appropriate and just" fulfils the following requirements:

a. the remedy is meaningful, in that it is "relevant to the experience of the claimant and must address the circumstances in which the right was infringed or denied" (*Doucet-Boudreau*, *supra*, at paragraph 55).

b. the remedy must respect basic constitutional principles, such as the principle of separation of powers, although it is permissible for a *Charter* remedy to "touch on functions that are principally assigned to the executive" (at paragraph 56).
c. the remedy does not exceed the judiciary's power and competence by involving it in "the kinds of decisions and functions for which its design and expertise are manifestly unsuited" (at paragraph 57); and
d. The remedy must be fair to the party against which it is imposed in that it "should not impose substantial hardships that are unrelated to securing the right" (at paragraph 58).

191. The circumstances of the Applicant, and particularly in the spirit of similarly situated applicants, is underscored by the recent report of the Ontario Trial Lawyers Association in its push for urgent review of the LAT. Injured persons are losing their cases, while represented by highly skilled and competent counsel, more than 90 percent of the time. This is a stark change from five years ago and pre-pandemic numbers where claimants were at least successful in obtaining vital benefits and treatments 30 percent of the time.

192. It is why the entire record of *this JRPA Proceeding* is being provided to the Ontario Trial Lawyers Association because the Applicant through all the pain and suffering has likely discovered one of the primary causes to that precipitous drop off in the last five years.

193. Where a rule of equity conflicts with a rule of the common law, the rule of equity prevails: section 96(2) of the *CJA*.

194. Only the Court of Appeal and the Superior Court of Justice, exclusive of the Small Claims Court, may grant equitable relief, unless otherwise provided: section 96(3) of the *CJA*.

195. The Court of Appeal and the Superior Court of Justice, exclusive of the Small Claims Court, may make binding declarations of right, whether or not any consequential relief is or could be claimed: section 97 of the *CJA*.

196. Relief seeking mandamus, certiorari or prohibition shall be disposed of in a summary manner: section 7 and section 8 of the *JRPA*.

197. The Civil Rules shall be liberally construed to secure the just, most expeditious and least expensive determination of every civil proceeding on its merits: Rule 1.04. It is the merits that must be decided. The Applicant has underscored the drastic change in the law pursuant to Yatar as it relates to judicial review.

198. Herein, there are final orders and final decisions, which were apparently issued at some time in August 16, 2024, but not disclosed to the Applicant. Even the namesake of the document in Word form was "final".

199. The benefit of having the input of the AGO and the AGC, somewhat more the AGC in certain regards due to the egregious conduct of Mr. Papadimitropoulos directly injecting himself into the pith and substance of the powers of the federal branch of government, is for the hearing of the constitutional questions. The Applicant has provided now sufficient and necessary evidence for this Honourable Court to decide the NOM #2. While those general questions of law that are of the utmost importance to the legal system as a whole which are evasive of this *JRPA* Application and of importance to practice and procedure before the LAT, the *Charter* questions exceed their importance.

200. The Applicant has proposed that by way of orders sought that the relief in NOM #2 is decided, and then a date is set for the hearing of the constitutional questions. It likely requires a day for all to be heard but it must be in open court, with the public access and the lights shining bright.

201. To the extent that they cannot be heard in such fashion, then an urgent date needs to be set. *How many more injured persons need to suffer?*

202. Because courts should expect evolution in the understanding of what is required to appropriately remedy *Charter* violations, the approach to *Charter* remedies must "remain flexible and responsive to the needs of a given case," and they should remain open to employing remedies with "novel and creative features when compared to traditional and historical remedial practice" (at Doucet-Boudreau, paragraph 59).

203. The question that is not easily answerable as only the LAT will know is whether its misconduct herein is consistent with its previous conduct or misconduct. Put another way, is the LAT regularly engaging in making and deciding motions but not disclosing the same and then disclosing a different order at a later date while leaving injured persons in the wings waiting?

204. "[C]osts and practicalities" may be relevant in a court's selection of an appropriate and just remedy (*Association des parents de l'école Rose-des-vents v. British Columbia (Education)*, [2015] 2 S.C.R. 139 at paragraph 49).

205. The LAT has its vice chairs and adjudicators receiving salaries in the 99.9 percentile of Canadians. Yet, the OTLA is challenging whether these adjudicators and vice chairs are even competent at first instant or qualified to do their jobs.

206. The Applicant is not hiding behind their statements and he has taken it a step further in challenging whether Vice Chair Morrisette should have been hired in the first place? It is not to suggest that she is not a highly intelligent person in another field like the health sector on a federal level or delving into the injustices in West Africa but her integrity was non-existent when investigated by the federal government; specifically the investigative and enforcement arm under the *Lobbyist Act*.

207. The types of adjudicators and vice chairs that must be selected at first instance are those that have a strong background in this area. SABS has changed many times over since 2010. Reg 283 underwent significant changes in 2010. Certain regulations have been repealed in favour of the FSRA passing rules in lieu of the same.

208. The *Insurance Act (Ontario)* is a lengthy statute that requires much reading many times over with constant attention to detail and language.

209. The SPPA is another statute that was amended substantially in 2006 pursuant to the *Access To Justice Act* 2006 which dovetailed with significant amendments to the *LSA*. To add the intellectual rigour required to be an astute, competent and up-to-date adjudicator or Vice Chair like a Vice Chair McGee or Vice Chair Maedel in *Dankha* and *Mosa*, you must have read not only the LSA but the LSO By-Laws.

210. During the **Nullity Case Conference**, Vice Chair Painchaund was asking the Applicant for which sections of the LSO By-Laws prohibited a non-licensee from signing a responsive pleading in a statutory appeal involving accident benefits. This can never happen again.

Civil Remedies

211. **Damages** are available in appropriate cases where they would serve a "functional" purpose in remedying a *Charter* violation.

212. This requires a claimant to demonstrate that damages would further one or more of the general objects of the *Charter*, including those of section 24(1), namely:

a compensation (remedying any personal loss the claimant has suffered);
b vindication (importance of upholding *Charter* rights); and
c and/or deterrence (of further breaches by state actors) (*Ward, supra*, at paragraphs 25-31).

213. The Applicant has suffered enormous personal loss by the failure to comply with section 2(b) at first instance which was evidence by all of the mistakes of a chronological, evidentiary

and factual matrix nature in each and every one the Adjudicator or Vice Chair Morrisette decisions.

214. The **Formal LAT Admission** (see: Compendium, Written Argument) in mid February 2025 that it was attempting to figure out how to best compile the record of proceeding requires remedies to vindicate the *Charter* rights and deter future breaches by state actors.

215. The same is applicable to the section 8 breaches relating to the unreviewability of the Undisclosed Motion Orders.

216. In response to a *Charter* damages claim, the government may establish that other considerations render a pecuniary award inappropriate or unjust in the circumstances, *e.g.*, double compensation or duplicative remedies; or concerns that an award of damages would interfere with "good governance" and the rule of law (*Ward*, *supra*, at paragraphs 32-45). The quantum will be determined based on evidence of pecuniary or non-pecuniary loss, as well as in light of the other functional purposes of section 24(1), *i.e.*, vindication and deterrence (*Ward*, *supra*, at paragraphs 46-57).

217. The LAT has engaged in horrific governance and its conduct has been counter to the rule of law (see: Compendium, Applicant's Factum, Tab 38).

218. Where a claimant seeks *Charter* damages in a civil suit alleging that a Crown prosecutor breached the *Charter* in respect of disclosure obligations, damages are available if harm was suffered by the accused and the Crown **intentionally withheld information** when it knew, or would reasonably be expected to have known, that the information was material and that the failure to disclose would likely affect the accused's ability to make full answer and defence (*Henry v. British Columbia (Attorney General)*, [2015] 2 S.C.R. 214 at paragraph 82).

219. While not a criminal matter for the Applicant per se, the Tribunal clearly intentionally withheld the record of proceeding for self-evident reasons. To borrow the word from the VCM Decision and that word alone, it was fatal to her and her final decisions and orders being upheld as correct.

220. Had the Tribunal filed the record of proceeding forthwith with an index like the Applicant had done in his affidavit #18, court resources could have been more focused on having the merits decided.

221. While Vice Chair Morrisette found that the Applicant had put a strain on the Tribunal, she was not strained at all with her Undisclosed Motion Orders in late July and August 2024. It was posturing and deceit by the Tribunal aimed at attempting to deter the Applicant from advancing his rights. Thankfully, the Applicant saw it for what it was: weakness, insecurity, and covertness.

222. While the LAT (or the Respondent Insurance Companies) have not filed a single affidavit in this *JRPA* Proceeding, the Applicant welcomes their sworn evidence in the face of his evidence in relation to whether the LAT maintained a high degree of control over Mr. Papadimitropoulos in executing that four month crime spree involving the Applicant's identity, credit cards, banking cards, library card (and newly obtained one). Mr. Papadimitropoulos and those authorizing him with government have an odd obsession with the Applicant to spending their time hand-picking book titles that bore resemblance to his life experiences with everything in those books from his life in and out of the practice of law, corruption, NCAA Division 1 athletics, not meeting one's biological father, the country of Greece and holidays, et al.

223. Perhaps, they should have spent their time learning this area of law and focusing on the merits.

Costs

224. In relation to the damages and costs elements along with that of the avoidance of double collection, the case of *Soleil Hospitality Inc. v. Louie*, 2010 BCSC 1183, aff'd at the BCCA:

> [384] As a general rule, the type of misconduct that justifies an award of special costs will relate to the course of the litigation and not to pre-litigation misconduct. This is so because reprehensible pre-litigation misconduct giving rise to a cause of action is typically addressed by an award of punitive damages. In some cases, however, reprehensible misconduct may have originated prior to litigation but continued throughout the litigation process. **In these circumstances, special costs may be ordered in addition to punitive damages without double punishment being imposed**: *Golden Capital Sec. Ltd.* at ¶ 161-176.
> [385] Perjury is reprehensible misconduct, as is fraud and conspiracy. Such misconduct cannot be condoned by the court. On the contrary, it should be denounced and deterred, both specifically and generally. For these reasons, acts of perjury, fraud and conspiracy often attract an award of special costs. Such awards may be made on the basis of full indemnity: *Fullerton v. Matsqui (District)*, [1992] B.C.J. No. 2969 (C.A.) at ¶ 17; *Insurance Corporation of British Columbia v. Phung*, 2003 BCSC 1619 (CanLII) at ¶ 8 & 11.

225. To the extent that the LAT provides sworn evidence that it was not directing or authorizing Mr. Papadimitropoulos and others within the TD insurance group, irrespective of their now defunct or non-existent status with the same, but acting in concert with him, by action or inaction, then this can be addressed in costs and damages.

226. Whether technically inside the ropes or outside of the same, the pleaded uncontroverted facts *supra* are deserving of rebuke.

227. Certainly, Madam Justice Shore is not the individual to make that judgment call. To borrow from our US counterparts, Chief Justice Roberts of the US Supreme Court once stated words to the effect, "My job is that of an umpire and to call balls and strikes in a dispassionate and objective manner."

228. The public importance issues require a justice as far away from Mr. Papadimitropoulos as humanly possible whether based on past or current association, affiliation or knowledge.

No Deference with the VCM Decisions and No Deference when reviewing the impugned LAT Rules

229. The Applicant pleads a point of law: There is no deference when reviewing legislation *ab initio*. Courts engaged in judicial review of impugned legislation, the court **must hold a law** invalid if it is inconsistent with the *Charter*. Where a provision is declared unconstitutional pursuant to s. 52 of the *Constitution Act, 1982*, that will be end of all matters that involve that question of law

230. Pursuant to Vavilov, there is no deference owed to VCM's decisions and orders, which were final orders and decisions, as there was a statutory appeal mechanism available to the Applicant, the general questions posed herein are of important to the legal system as a whole, they are evasive of the *JRPA* Application and of great importance to practice before the LAT, they engage the rule of law and varies subspecies or categories of the rule of law, they engage questions that test the boundaries of two or more administrative bodies not only on a provincial level but a federal level.

Avoidance of Multiplicity of Proceedings

231. The *Courts of Justice Act* require that the Court determine all issues and fact before it in a singular proceeding as opposed to a multiplicity of proceedings.

Now increasingly obvious and palpable errors of law on the face of the record

Errors of Law

232. The power of the court to set aside a decision for error of law on the *face* of the record on an application for an order in the nature of *certiorari* is extended so as to apply on an application for judicial review in relation to any decision made in the exercise of any statutory power of decision to the extent it is not limited or precluded by the Act conferring such power of decision: section 2(2) of the *JRPA*.

Admissible Evidence only and Lack of Evidence

233. Where the findings of fact of a tribunal made in the exercise of a statutory power of decision are required by any statute or law to be based exclusively on *evidence admissible* before it and on facts of which it may take notice and there is no such evidence and there are no such facts to support findings of fact made by the tribunal in making a decision in the exercise of such power, the court may set aside the decision on an application for judicial review: section 2(3) of the *JRPA.*

Power to Set Aside

234. Where the applicant on an application for judicial review is entitled to a judgment declaring that a decision made in the exercise of a statutory power of decision is unauthorized or otherwise invalid, the court may, in the place of such declaration, set aside the decision: section 2(4) of the *JRPA*.

Conclusion

235. An urgent hearing must be held regarding the above noted issues that are evasive of this judicial review in light of the discretionary powers that the LAT wields and the manner in which it is conducting hearings not even in accordance with its own LAT Rules and in breach of the natural justice rights and *Charter* rights of injured persons.

Volume #3: Documentary Evidence

46. The following documentary evidence will be used at the hearing of the application:

(a) The Motion Hearing Record for NOM #14 which includes the affidavits of the Applicant therein (see: Appendix #3)

(b) The Motion Hearing Record for NOM #15 of the Applicant which includes the affidavits of the Applicant therein (see: Appendix #4);

(c) The Motion Hearing Record for NOM #13 of the Applicant which includes the affidavits of the Applicant therein;

(d) The decision of Vice Chair Morrissette in relation to NOM #13 to #15 of the Applicant;

(e) The decision of Vice Chair Lake in relation to the Applicant's reconsideration motion;

(f) The record of proceeding in ***AABS File Number*****: "23-015662/AABS"**

(g) Such other affidavit material and evidence as counsel may advise and this

Honourable Court may deem proper; and

(h) The sworn evidence listed in the Applicant's Compendium (February 14, 2025) and the Applicant's 1st Amended Compendium (February 18, 2025) denoted by tabs therein.

~~November 15, 2024~~
March 5, 2025

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

(e): mcleansettlement@gmail.com

Appendix #1

The actual relief sought The Appellant seeks the following orders, without consent of SNIC and TDHA, as follows:

Order #1: **First Insurer** Declaration 1. An Order, Declaration, determination and/or finding that TD Home And Auto Insurance Company, FSRA registration number 1063 ("TDHA" or "TDHAIC") was the **First Insurer** to receive, pursuant to *Reg 283*, the Appellant's fax delivered Completed Application (see: *Reg 283*, s. 1) to the fax number, provided to him by SNIC as a return address [sic] for SNIC, of 416-774-3120 (the "416 Fax Number") on October 13, 2022; Order #2: East Mall Address (Branch Office): Determination of which licensed insurer carried on business at said branch office

2. An Order, Declaration, determination or finding the physical address, which is apparently denoted as a branch office of SNIC in HCAI, municipally known as 304 The East Mall, Floor 6, Etobicoke, Toronto, Ontario, M9B 6B7 (the "Etobicoke East Mall Address") was or is an address or branch office of TDHA and not SNIC;

Orders #3 and #4: Adding TDHA as a Party 3. An Order adding TDHA as a respondent party to this LAT proceeding herein; 4. An Order requiring TDHA, should it wish to oppose the relief sought in the Appellant's Appeal, file and serve a Response to the Appellant's Appeal within 14 days of the date of the orders herein;

Order #5: Ancillary Relief 5. Any further relief that is consistent with the above and in accordance with *Reg 283*, SABS, and Reg 664; and Order #6: Costs against SNIC pursuant to section 17.1 of the SPPA and Rule 19 of the LAT Rules.

Appendix #2

Schedule “A” for NOM #15 The Appellant seeks the following remedies, without the consent of SNIC, as follows: 1. An Order that NOM #14 is heard in an expedited fashion and by no later than August 28, 2024 or, in the alternative, at the earliest date available for a Vice-Chair or adjudicator to determine the same; 2. An Order that if the Respondent Party (SNIC), TDHA or any other non-party or interested person wishes to oppose NOM #14, it must provide notice, via filed letter, to the Tribunal by no later than Wednesday, August 21, 2024; and 3. A preliminary finding, determination, or order, that the fax number 416-7743120 was a landline phone number utilized as a fax number on the 4th floor of the building situated at the premises municipally known as 3650 Victoria Park Avenue, North York, Toronto, Ontario, M2H 3P7; a. In the alternative, an order that said issue of fact is added to the hearing of NOM #14; 4. An Order that NOM #13 is set for hearing three (3) weeks after the final decision of the Tribunal in NOM #14; and 5. An Order that the Appellant shall tender his hearing brief for his potential motion regarding document production and disclosure from SNIC (the “SNIC Document Production Motion”) within one week after the decision of NOM #14 with a notice of scheduled hearing date to be issued by the Tribunal regarding exchange of responsive and reply briefs; 6. An Order that NOM #13 (Non-Party production by TDGIC) and the SNIC Document Production Motion (if applicable) shall be heard together three weeks after the decision in NOM #14; and Costs against SNIC for this motion herein if it opposes the same

Appendix #3: Index for NOM #14

Chapter #1: Notice of Motion Form
1. Notice of Motion Form (with Schedule "A"), signed by the Appellant on August 2, 2024 ["Motion
Form" or "NOM #14"]
a. (see pages 1 to 3);

Chapter #2: *Reg 283* and Cited authorities (prior to *Zurich 2024*] 2.
Disputes Between Insurers, O *Reg 283*/95 ["*Reg 283*"]
a. (see pages 4 to 9)
3. Cankaya v. Unifund Insurance Company, and Cankaya v. Intact Insurance Company, 2015
ONFSCDRS 214 (as per Delegate Blackman of the former Financial Services Commission of
Ontario ["FSCO"]) ["Cankaya 2015"] a.
(see: pages 10 to 31)
4. Cankaya v. Unifund Insurance Company, and Cankaya v. Intact Insurance Company, 2016
ONFSCDRS 255 (as per Arbitrator Marshall Schnapp, "Decision on a Preliminary Issue")
["Cankaya 2016"]
a. (see: pages 32 to 45)
5. Economical v. Intact, 2021 ONSC 3249 (as per Mr. Justice Chalmers) ["Economical Group"]
a. Applicant (Respondent in Appeal): The Economical Insurance Group
b. Respondent (Appellant in Appeal): Intact Insurance
c. (see: pages 46 to 56)
6. Macko v. Aviva Insurance Company, 2023 CanLII 72650 (decision before Adjudicator Kaur) ["Macko"]
a. (see: pages 57 to 61)
7. Macko v. Aviva Insurance Company, 2023 CanLII 116487 (Reconsideration Decision before Vice
Chair Kaur) ["Macko Reconsideration"] a.
(see: pages 62 to 66)

Chapter #3: Reg 664 and SABS
8. R.R.O. 1990, Regulation 664 ["Reg 664"], ss. 9.1, 9(1) and 10
a. (see: pages 67 to 69)
9. Statutory Accident Benefits Schedule, O Reg 34/10, effective September 1, 2010 et seq ["SABS"
or the "Schedule"]
a. (see: pages 70 to 132)

Chapter #4: Pleadings; *Insurance Act*; and UDAP Rule
10. Application of an Injured Person for auto insurance dispute resolution pursuant to the Insurance
Act, filed by the Appellant on December 24, 2023 (the "Appeal")
a. Served on the recipient of the fax number of 416-774-3120 (the "416 Fax Number"); b. (see: pages 133 to 142)
11. Response filed by SNIC (the "SNIC Response")
a. solely signed, filed and served by Mr. David Karat, ADR Specialist for SNIC, on January 25, 2024
b. (see: pages 143 to 145)
12. *Insurance Act*, RSO 1990 c. I 8, section 268 [the "Act" or the "*Insurance Act*"]

a. (see: pages 146 to 148) 13. Unfair or Deceptive Acts or Practices Rule, effective 2022 (the "UDAP Rule") a. (see: pages 149 to 161) Chapter #5: Further Authorities
The Chubb v. Zurich cases (2015 and 2024);
TD General Insurance Company v. Markel
Intact v. Bateman: "Re: two files with two different file numbers for one claimant (insured person)
(although unlawful – not unprecedented)
14. Chubb Insurance Co. of Canada v. Zurich Insurance Company, 2024 ONSC 2929 (as per The
Honourable Justice Akazaki) ["*Zurich 2024*"] a.
(see: pages 162 to 179)
15. TD General Insurance Company v. Markel Insurance Company, 2014 ONSC 6461 (as per Justice
Lederman) ["Markel"]
a. (see: pages 180 to 194)
16. Zurich Insurance Co. v. Chubb Insurance Co. of Canada, 2015 SCC 19 ["*Zurich 2015*"]
a. (see: pages 195 to 198)
17. Intact Insurance Company v. Bateman, 2014 ONFSCDRS 14 (as per Delegate Blackman)
a. (see: pages 199 to 214)

Chapter #6: Affidavits
18. Affidavit #30 of the Appellant, made on July 31, 2024 (filed: August 1, 2024; served on SNIC and
TDHA: August 1, 2024) ["Affidavit #30"] a.
(see: pages 215 to 358)
19. Affidavit #3 of the Appellant, made on October 31, 2024 (select pages only) (filed: listed and attached document in Appeal on December 24, 2023) ["Affidavit #3"] a. (see: pages 359 to 488);
20. Affidavit #29 of the Appellant, made on July 25, 2024 (select pages only)
a. (see: page pages 489 to 500)

Chapter #7: Motion Submissions (pursuant to LAT Rule 15: six pages, double spaced, size 12 font (except
for evidence, appendices and authorities)
21. Motion Submissions of the Appellant dated August 3, 2024 (served on SNIC and TDHA: August
3, 2024)
a. (see: pages 500 to 511)

Chapter #8: Additional evidence in pictorial form of the East Mall Address (August 4, 2024) and emails
to TDHA and SNIC confirming the same pursuant to, inter alia, section 15 of the SPPA
1 st Amended Inclusion (August 5, 2024)
22. Additional evidence: the East Mall Address
a. (see: pages 512 to 551)

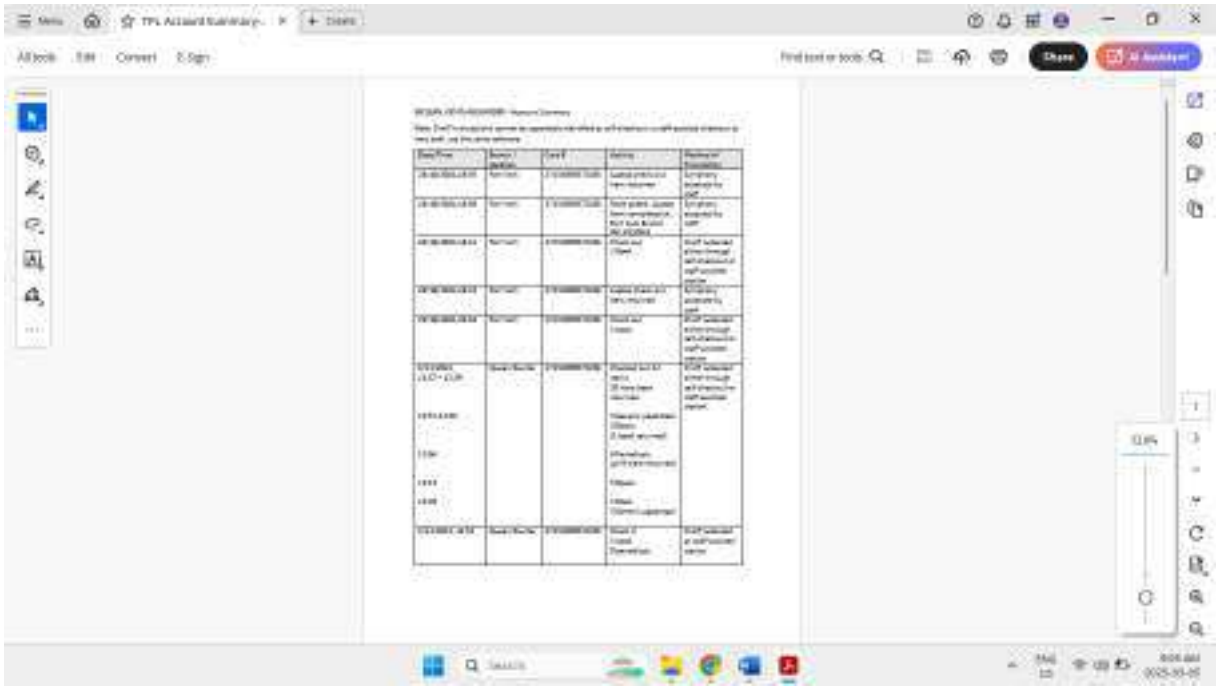
Chapter #9: Costs against SNIC
Appellant's served and filed Costs Submissions on Thursday, September 5, 2024 (includes
LAT Rule 19.1: affidavit evidence in support of the Appellant have reasonable and probable grounds to believei
that SNIC has conducted itself in relation to NOM #14 in an unreasonable, vexatious, frivolous and/or in bad faith
LAT Rule 19.2: written costs submissions by the Appellant before the decision or order is released
in relation to NOM #14;
LAT Rule 19.3: written costs submissions seeking $1,000 against SNIC in favour of the Appellant,
payable forthwith in any event of the result of NOM #14;
LAT Rule 19.4: Appellant has provided the reasons (authorities, statutes, regulations, LAT Rules)
and the particulars of SNIC's impugned conduct that have been, are and will continue to be unreasonable, frivolous, vexatious, and in bad faith;
LAT Rule 19.5: Appellant has provided all relevant factors including but not limited to: (i) seriousness of SNIC's misconduct; (ii) SNIC's conduct in breach of orders (implicitly) and LAT
Directions issued by the Tribunal; (iii) how SNIC's conduct has interfered with the Tribunal's
ability to carry out a fair, efficient, and effective process; and (iv) the resultant prejudice to the Appellant.
LAT Rule 19.6: the Appellant has sought $1,000 for the NOM #14 hearing
23. Costs submissions of the Appellant, filed and served on Thursday, September 5, 2024 with e-receipt
a. (see: pages 552 to 640)

i. Appendix #1: Glossary (see: pages 565 to 570) ii. Appendix #2: Evidentiary And Authorities Chronology: from the time of SNIC's incorporation in 1934 to August 21, 2024 (see: pages 571 to 647); and iii. Endnotes (see: pages 648 to 650).

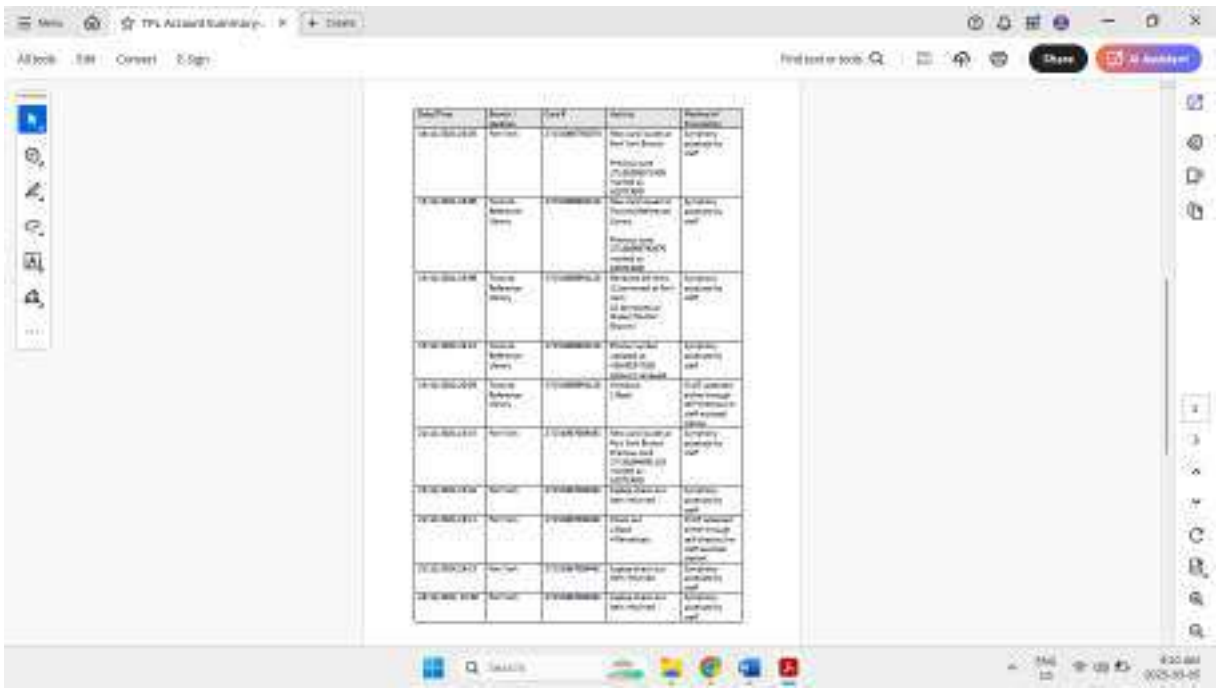
Chapter #9: Materials For Reconsideration of the decisions involving NOM #14 and NOM #15
Fresh Evidence: not available to the Adjudicator in the Hearing Record (albeit in record of proceeding in relation
24. Affidavit #34 of the Appellant of August 29, 2024 (see: pages 651 to 676)
25. Affidavit #35 of the Appellant of September 12, 2024 (see: pages 677 to 769)
26. Affidavit #36 of the Appellant of September 18, 2024 (see: pages 770 to 789)
27. Affidavit #37 of the Appellant of September 19, 2024 (filed under seal) (see: pages 790 to 832)
28. Reconsideration Form with Motion Submissions of September 30, 2024 (see: pages 833 to 856)

Appendix #4: the chart provided by the TPL

Page 1

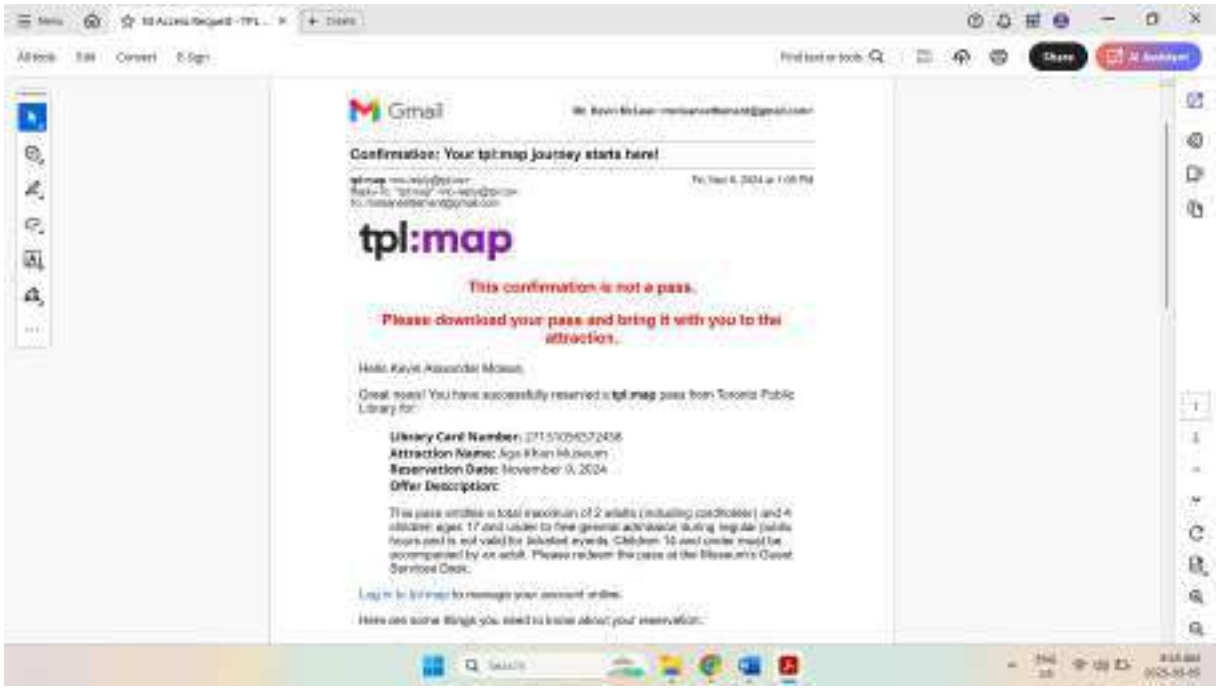


Page 2



Page 3

Appendix #5: Unauthorized and Fraudulent Reservation for the AGA Khan Museum with the McLean TPL library card (the "First Library Card"): November 8, 2024 booked for November 9, 2024



TAB 21

Court File No. DC-24-00000718-00JR

FORM 59A

Courts of Justice Act

ORDER

ONTARIO SUPERIOR COURT OF JUSTICE (DIVISIONAL COURT)

_____ _____ _____

ONTARIO SUPERIOR COURT OF JUSTICE
(DIVISIONAL COURT)

BETWEEN:

KEVIN ALEXANDER MCLEAN

APPLICANT

- and -

TD HOME AND AUTO INSURANCE COMPANY, SECURITY NATIONAL INSURANCE COMPANY, TD GENERAL INSURANCE COMPANY, EXECUTIVE DIRECTOR, LICENCE APPEAL TRIBUNAL, HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO, REPRESENTED BY EXECUTIVE CHAIR OF TRIBUNALS ONTARIO IN MR. SEAN WEIR, THE ATTORNEY GENERAL OF ONTARIO

RESPONDENTS

ORDER

THIS MOTION, made by the Applicant, Mr. Kevin A. McLean, for the relief sought at the paragraphs denoted in his Notice of Motion of November 17, 2025 was heard in writing on December 3, 2025

AND ON READING the following: (i) materials in support of the Applicant's Notice of Motion (the "**Materials In Support**") (see: motion record of the Applicant and amended or updated motion records tendered by the Applicant prior to issuing and making of the "Reasons for Decision" or "Reasons for Judgment"); and (ii) on hearing, while excluding any purportedly filed documents by the **Respondent Insurance Companies** and the LAT due to its failures to "file" and "deliver" Notices of Appearances", the following in written form way of evidence, forms, submissions and other documents signed by the Applicant, written and filed documents or submissions (non-sworn evidence) of the Applicant, which are particularized and described as (see**:**); AND

the respondents being served with the Applicant's *JRPA* Application immediately after he made the *JRPA* Application to the Court via the online filing and paying for the same on November 15, 2024, non-service of the LAT's NOA of November 27, 2024, along with the absence of "filing" or "delivery" of the same, and December 3, 2024, NOA of the **Respondent Insurance Companies** duly served on the Applicant but neither "filed" nor "served" on the Applicant;
the Tribunal neglecting or failing to comply with its statutory duties under the *JRPA* and *SPPA* to forthwith file a record of proceedings that contained all of the content requirements at section 20 of the *SPPA*, and not opposing or consenting to the Applicant's NOM #1 that sought compliance with the same;
the **Respondent Insurance Companies** not complying with the Practice Direction entitled "Information Submitted to the Court" within two weeks of the *JRPA* Application being issued or at all;
the **Respondent Insurance Companies** and the Tribunal being served with the Applicant's Factum and Application Record (December 12, 2024) yet not complying with Rule 68.04(4), or seeking leave to **deliver** responsive factums and application records after January 13, 2025; and neither the **Respondent Insurance Companies** nor the Tribunal (collectively, the "Responding Parties" or "Remaining Respondents") complying with Rule 37.12.1(5) within ten days of the date of the made NOM #3 of the Applicant and not filing any objections to NOM #2, despite not being permitted to do so without seeking and obtaining an order of the court to "deliver" their Notices of Appearances some 366 days late, being heard in writing or seeking to be heard orally (see: Rule 37.12.1(5)(d));

This Court Orders the following:
UPON THE MOTION for the comprehensive relief sought by the Applicant, Kevin Alexander McLean, as formally particularized within his *Notice of Motion* dated November 17, 2025 (hereinafter "NOM #3");

AND UPON the Motion having proceeded as a written hearing on the 3rd day of December, 2025, pursuant to the *Rules of Civil Procedure*;

AND UPON READING: (i) the materials tendered in support of the Applicant's NOM #3 (the "Materials In Support"), including the Applicant's Motion Record and all subsequent amended or updated motion records filed prior to the issuance of any Reasons for Decision or Reasons for Judgment; and

(ii) upon considering all evidence, forms, submissions, and other documents, signed or otherwise, submitted in written form by the Applicant;

AND NOTWITHSTANDING the exclusion of any purportedly filed documents by the Respondent Insurance Companies and the Licence Appeal Tribunal (LAT) due to their manifest failures to "file" and "deliver" their respective Notices of Appearances, it is observed that: the Respondents were served with the Applicant's Judicial Review Procedure Application (*JRPA* Application) immediately subsequent to its online filing on November 15, 2024; non-service of the LAT's Notice of Appearance (NOA) of November 27, 2024, is evident, concomitant with the absence of its requisite "filing" or "delivery"; and the NOA of the Respondent Insurance Companies, dated December 3, 2024, was duly served upon the Applicant but neither "filed" nor "delivered" upon the Applicant;

AND FURTHER NOTING that the Tribunal neglected or failed to discharge its statutory obligations pursuant to the *Judicial Review Procedure Act* and the *Statutory Powers Procedure Act* (*SPPA*) to forthwith file a complete record of proceedings, inclusive of all content requirements stipulated at section 20 of the *SPPA*, and did not proffer opposition or consent to the Applicant's antecedent NOM #1 seeking compliance therewith; that the Respondent Insurance Companies failed to adhere to the *Practice Direction* entitled "Information Submitted to the Court" within the prescribed two-week period following the issuance of the *JRPA* Application, or at any subsequent juncture; that the Responding Parties failed to comply with *Rule 68.04(4)* of the *Rules of Civil Procedure* subsequent to being served with the Applicant's Factum and Application Record (December 12, 2024), nor did they seek leave to *deliver* responsive factums and application records post-January 13, 2025; and that neither the Respondent Insurance Companies nor the Tribunal (collectively, the "Remaining Respondents") complied with *Rule 37.12.1(5)* within ten days of the promulgation of the Applicant's NOM #3, nor did they file any objections to NOM #2, despite being jurisdictionally precluded from doing so without first seeking and obtaining a mandatory order of this Honourable Court to effect the "delivery" of their Notices of Appearances, which are now approximately 366 days late, or seeking an oral hearing (vide: *Rule 37.12.1(5)(d)*);

THIS COURT DOTH ORDER, DECLARE, DIRECT, AND DECREE THE FOLLOWING:

1. ASSIGNMENT AND JUDICIAL REQUISITION ORDERS

1.1 JUDICIAL ASSIGNMENT ORDERS AND RECUSAL REQUISITES (CONFLICT OF INTEREST)

1.1.1 **PEREMPTORY JUDICIAL REQUISITION** AN ORDER directing the President of the Divisional Court (pursuant to subsection 18(2) of the *Courts of Justice Act*) to forthwith issue a Judicial Assignment which shall, in the most peremptory and unequivocal manner, expressly mandate that the judicial officer designated to preside over the determination of this written motion shall not, under any conceivable or colourable circumstance, include, be comprised of, or be derived from the following

specified jurists, lest a justifiable apprehension of bias, ***prima facie***, arise: i. The Honourable Madam Justice Shore (hereinafter "Justice Shore"); ii. The Honourable Madam Justice Melanie Kraft (hereinafter "Justice Kraft"); iii. Any judicial officer who was actively employed by, or served as a partner within, the limited liability partnership of Epstein Cole (hereinafter "Epstein Cole LLP") during the critical temporal ambit spanning from the commencement of the Fall of 2017 to the present moment.

1.1.2 **FRESH JUSTICE MANDATE**: An Order *in the nature of a Fresh Justice Order*, confirming with incontrovertible finality that, in the event that any previous requirements, determinations, findings, judgments, or orders unilaterally issued by Madam Justice Shore (collectively, the "Justice Shore Steps") are sought to be vacated or set aside, such remedial relief shall be heard and determined exclusively by a duly constituted Judge of the Divisional Court, thereby precluding any consideration by a single judge of the Superior Court exercising jurisdiction *in banco*.

2. INTERIM AND INJUNCTIVE RELIEF

2.1 PRESERVATION, DELIVERANCE, AND INTERDICTORY ORDERS (PROPERTY CUSTODY)

2.1.1 **IMMEDIATE PRESERVATION INJUNCTION** AN IMMEDIATE ORDER mandating that all automotive insurance entities within the TDIA Group, Mr. Karat, and his supervising agent, Mr. Papadimitropoulos, shall undertake all reasonable, efficacious, and affirmative steps to preserve and secure all confidential and proprietary information pertaining to the Applicant, whether such information exists in tangible hard-copy form or as electronic data, pending the final and conclusive disposition of the within proceeding (constituting an Interim, Interlocutory, and Permanent Injunction).

2.1.2 **MANDATORY DELIVERY UP**: AN ORDER compelling the immediate and unreserved delivery up of the Applicant's property that was subjected to the unauthorized appropriation (the "TDI Karat Theft") on October 25, 2024, and subsequently utilized and/or disclosed, with such property to be restored to the Applicant within three (3) days of the formal pronouncement of this Order.

2.2 *NUNC PRO TUNC* AND CONVERSION DECREES

2.2.1 **RETROACTIVE EFFECT**: AN ORDER decreeing that all Orders herein contained shall be granted ***nunc pro tunc*** where such retroactive application is applicable.

2.2.2 **CONVERSION *AD JUDICIUM:*** AN ORDER converting the within motion, due to the demonstrated and inexplicable lack of responsive material forthcoming from the Respondents, together with the allegation of fraud manifest ***on its face***, ***ad judicium***, into a Motion for Final Judgment and to be heard on writing. A further Order, pre-emptive in nature, that any filings by the Respondent Insurance Companies and/or the LAT are declared void ab initio and not accepted for filing until the Respondent Insurance Companies and LAT have obtained separate orders to file their NOA's and further file material on the application in accordance with, inter alia, Rule 38.07(2)(c). A further Order, pre-emptive and on a *nunc pro tunc* basis, that the Divisional Court (court staff) are mandated, directed and ordered to not provide any notice of steps to the Respondent Insurance Companies and LAT, and only provide notice to the AGO in relation to the hearing of the constitutional and Charter issues.

2.2.3 **FURTHER ORDER REGARDING APPLICANT'S REQUIREMENT:** A Declaration and Order that but for the notice that the Applicant provided herein in relation to NOM #3, the Applicant is

permitted to not further file or serve the Respondent Insurance Companies and LAT with any further filings or otherwise;

2.3 LEAVE FOR SUPPLEMENTARY SUBMISSIONS

2.3.1 **LEAVE TO FILE:** AN ORDER granting leave to the Applicant to file further submissions and supplementary evidence, the quantum of which shall be restricted to a predetermined number of pages, PRIOR to the judicial adjudication of the outstanding and herein Orders, contingent upon the Applicant's receipt of the documents, records, evidence, and things sought through the production mandates herein established and/or through his multitude of PIPEDA requests and OPCC complaints along with FIPPA requests and OIPC Appeals;

2.3.2 **RULE 38.11 EXPEDITED HEARING**: AN ORDER pursuant to *Rule 38.11* of the *Rules of Civil Procedure*, establishing the Rule 38.11 Order, which confirms the Applicant's entitlement to have the relief seeking to set aside the Justice Shore Steps heard upon the tendering of three (3) days' notice, subsequent to any purported judgment or Order coming to the Applicant's immediate and actual attention.

3. DECLARATIONS REGARDING PRACTICE AND PROCEDURE

3.1 DECLARATIONS CONCERNING JURISDICTION AND FILING IMPERATIVES

3.1.1 **NON-SERVICE OF NOA (LAT)**: A DECLARATION that the Licence Appeal Tribunal (**LAT**) failed to effect requisite "service" of its *Notice of Appearance* (**NOA**) dated November 27, 2024.

3.1.2 **FAILURE TO DELIVER NOA**: A DECLARATION that the **LAT** and the Respondent Insurance Companies failed to forthwith "deliver" their respective Notices of Appearances immediately subsequent to being served with the Applicant's *JRPA* Application.

3.1.3 **ABSENCE OF NOA DELIVERY** A DECLARATION that the **LAT** and the Respondent Insurance Companies are in an absolute state of non-compliance with the imperative to "deliver" their Notices of Appearances and have not taken any steps to rectify the same by seeking an order of this Honourable Divisional Court to "file" a First Defence and "deliver" their Notices of Appearances;

3.1.4 **ABSENCE OF "FILING" OF A FIRST DEFENCE:** A DECLARATION that none of the Respondents, as of December 3, 2024, or at any subsequent date, had filed a "First Defence" as defined and mandated by *Rule 77* of the *Rules of Civil Procedure*.

3.1.5 *BREACH OF RULE 38.07(1)*: A DECLARATION that a palpable breach of *Rule 38.07(1)* of the *Rules of Civil Procedure* was occasioned by the **LAT** and Respondent Insurance Companies.

3.1.6 *BREACH OF RULE 38.07(2):* A DECLARATION that a breach of *Rule 38.07(2)* of the *Rules of Civil Procedure* occurred in consequence of the Divisional Court providing notification of steps or documents to the **LAT**, Respondent Insurance Companies, and the Attorney General of Ontario (**AGO**) due to the Respondents' abject failure to deliver Notices of Appearances.

3.1.7 **VOID *AB INITIO* SUBMISSIONS:** A DECLARATION that any purported filings, whether ***de facto*** or ***de jure***, submitted by the **LAT** or the Respondent Insurance Companies post-November 27 or

December 3, 2024, are rendered ***void ab initio*** and are subject to the vitiating effect of insufficient notice rules stipulated under the *Rules of Civil Procedure*, and are heard, even notionally, on three days notice.

3.2 DECLARATIONS PERTAINING TO CASE MANAGEMENT AND PRIOR JUDICIAL STEPS

3.2.1 **INVALID CASE CONFERENCE REQUEST:** A DECLARATION AND ORDER that, as a direct and immediate consequence of the Respondents' demonstrable failure to file a "First Defence" by December 3, 2024, the **LAT**'s request for a case conference was directly contrary to *Rule 77.05* of the *Rules of Civil Procedure*, and the *JRPA* Proceeding could not have been legitimately and lawfully "Assigned for Case Management."

3.2.2 ***ULTRA VIRES* ASSIGNMENT:** A DECLARATION AND ORDER that Madam Justice Shore was jurisdictionally estopped from assigning the *JRPA* Proceeding for case management pursuant to Rule 77.05 of the Rules of Civil Procedure, and, a fortiori, from assigning the *JRPA* Proceeding to herself, pursuant to, inter alia, Rule 77.06 of the Rules of Civil Procedure, for case management.

3.2.3 **NULLIFICATION OF STEPS TAKEN:** AN ORDER that, as a direct ramification of the preceding declaration, all steps taken by Madam Justice Shore were rendered a **nullity** and are ***void ab initio***.

3.2.4 **LAT REQUEST VOID:** A DECLARATION that the request by the **LAT** on December 3, 2024, for the *JRPA* Proceeding to be assigned for case management was ***void ab initio***.

3.2.5 **JUDICIAL CONSIDERATION VOID** A DECLARATION that the judicial consideration by the case management judge of the Divisional Court of a request, by the LAT for assignment for case management pursuant to Rule 77.05 of the Rules of Civil Procedure, and the subsequent assignment of the case to herself and/or himself, is ***void ab initio***.

3.3 DECLARATIONS REGARDING ELECTRONIC FILING ACCESS (CASE CENTER)

3.3.1 **ENTITLEMENT TO ACCESS:** A DECLARATION that the Applicant was entitled to an invitation to the Divisional Court Case Center electronic platform immediately upon the formal commencement of this Judicial Review (*JRPA*) Proceeding on or around November 15, 2024, pursuant to the binding administrative directives and guidelines established in the Divisional Court *JRPA Guide*.

3.3.2 **CONSISTENCY WITH RULES:** A DECLARATION that the portion of the Divisional Court *JRPA Guide* relating to the provision of an invitation to Case Center upon the commencement of a *JRPA* application is not inconsistent with the *Rules of Civil Procedure*.

3.3.3 **MISLEADING OF APPLICANT:** A DECLARATION that court staff, being employees of the Ministry of the Attorney General (**MAG**), actively misled the Applicant concerning his entitlement relating to the timing and/or prerequisites for a self-represented litigant to receive access to Case Center, thereby occasioning a breach of their administrative duty (vide: correspondence between the Applicant and Ms. Lawrence of the Divisional Court in December 2024).

3.3.4 **UNAUTHORIZED WITHHOLDING OF ACCESS:** A DECLARATION that court staff are not entitled to withhold access to Case Center and then unilaterally assert that copies of filed materials will be provided to a judge or judges without the express consent of the Applicant.

3.3.5 **UNLAWFUL *EX PARTE* CONFERENCE:** A DECLARATION that any conference conducted without the Applicant possessing full electronic access and formal notification is hereby deemed an unlawful ***ex parte*** event, constituting an irremediable violation of the fundamental principles of natural justice and procedural fairness.

3.3.6 **PREJUDICIAL CHARACTERIZATION:** A DECLARATION that the Applicant was precluded from his invitation to Case Center, either in part or in whole, because he was unjustly and unfairly brandished as a criminal litigant before the Superior Court of Justice (SCJ) when this matter was and remains strictly a civil proceeding, thus contravening the most basic principles of procedural fairness and the ***status quo ante***.

3.4 DECLARATIONS REGARDING MOTIONS HEARING PREREQUISITES

3.4.1 **ENTITLEMENT TO HEARING *IN LIMINE:*** A DECLARATION that the Applicant was entitled to have his *Notice of Motion #1* and *Notice of Motion #2* heard and judicially determined, without the imposition of the pre-condition of an invitation to Case Center, pursuant to his filed requisitions submitted in strict accordance with *Rule 38*.

3.4.2 **SUBVERSION OF RULES:** A DECLARATION that the imposition of an unauthorized prerequisite (electronic Case Center access) necessary to hear a pending motion constitutes a subversion of the *Rules* and the equitable mandate of the Court, thereby frustrating the Applicant's recourse to judicial remedies and necessitating a finding of ***ultra vires*** as to the administrative action.

3.5 DECLARATIONS REGARDING RECORD AND NOTICE (FORM 68(B))

3.5.1 **STATUTORY DUTY TO FILE RECORD FORTHWITH:** A DECLARATION that administrative tribunals, subsequent to the formal commencement and service of the *JRPA* Proceeding, are statutorily required to file the complete record of the proceeding forthwith and without undue or dilatory delay with the Ontario Superior Court of Justice (Divisional Court), pursuant to Section 10 of the *Judicial Review Procedure Act*.

3.5.2 **ENTITLEMENT TO *FORM 68(B)***: A DECLARATION that the Applicant, and all applicants in proceedings under the *JRPA*, were and are entitled to the issuance of a *Form 68(B)* notice immediately subsequent to the filing and requisite payment for the Certificate of Perfection, or, alternatively, at some point thereafter during the month that they have filed and paid for the "Certificate Of Perfection" and herein during the month December 2024.

3.6 DECLARATIONS REGARDING TRIBUNAL STATUS

3.6.1 **NON-EQUIVALENCE OF TRIBUNALS:** A DECLARATION that **Tribunals Ontario** is not legally equivalent to the **LAT** (Licence Appeal Tribunal).

4. DECLARATIONS OF LAW AND MISCONDUCT

4.1 DECLARATIONS OF MISCONDUCT (FRAUD, BRIBERY, AND OBSTRUCTION)

4.1.1 **FRAUD UPON THE COURT** A **FRAUD DECLARATION**: declaring that the Licence Appeal Tribunal (**LAT**) and the Respondent Insurance Companies committed a demonstrable fraud upon the Court with specific and precise reference to the facts fully particularized in the Applicant's Affidavits, Factum, and evidence to be gleaned from the case conference transcripts, thereby tainting the entire ***acta*** of the proceeding.

4.1.2 **ACT OF BRIBERY:** A DECLARATION that the conduct involving Mr. Karat, an employee or contractor to the Respondent Insurance Companies, in the unauthorized appropriation of the Applicant's property on October 25, 2024, and subsequent related actions (including the purchase of new property and the utilization of a fictitious name by Ms. Julia Dunk) ascended to the level of a bribe or an act of bribery.

4.1.3 **SPECIAL NULLITY *IPSO FACTO***: A FURTHER DECLARATION AND ORDER that the aforementioned declared act of bribery has irreparably tainted the proceeding and rises to the level of a **special nullity** such that any and all steps, requirements, orders, decisions, or judgments prejudicial to the Applicant must be, ***ipso facto***, set aside.

4.1.4 **UNDISCLOSED JUDICIAL INVOLVEMENT**: AN ORDER AND DECLARATION that Madam Justice Shore was involved in an undisclosed fashion in a prior judicial capacity with the Applicant with specific reference to the Undisclosed Criminal Proceeding.

4.1.5 EXTORTION AND **OBSTRUCTION OF JUSTICE** AN **OBSTRUCTION OF JUSTICE DECLARATION**, declaring the Respondent Insurance Companies committed the criminal offence of extortion and obstruction of justice, on a balance of probabilities, and the associated intentional torts, both prior to the origination of this *JRPA* Proceeding and throughout its subsequent bringing, commencement and advancement.

4.2 DECLARATION OF FRAUD SCOPE

4.2.1 **SCOPE OF FRAUD UNDER *RULE 59.06:*** A DECLARATION that there is no prerequisite or requirement under *Rule 59.06(2)(a)* of the *Rules of Civil Procedure* that the fraud must be committed exclusively against an opposing party or solely by a party, and that it may be committed by any person so long as it had a material, demonstrable, and causative effect within the legal proceeding.

5. FINAL RELIEF, PRODUCTION, AND CONSEQUENTIAL ORDERS

5.1 ORDERS VACATING PRIOR JUDICIAL STEPS

5.1.1 **NULLIFICATION *IN TOTO:*** AN ORDER setting aside, ***in toto*** and ***ab initio***, all of the Justice Shore Steps pursuant to: i. The Declarations of Law supra (relating to the established bias and procedural breach); ii. *Rule 38.11* of the *Rules of Civil Procedure* on account of insufficient or non-existent notice; and iii. *Rule 59* of the *Rules of Civil Procedure* on the grounds of fraud and miscarriage of justice, as the underlying judicial steps were irrevocably and fundamentally tainted by misconduct and conflict.

5.1.2 **IMPERMISSIBLE DELEGATION:** AN ORDER that Justice Shore's consideration of the **LAT**'s ***void ab initio*** request for assignment for case management and the subsequent assignment of the *JRPA*

Proceeding to herself was an **impermissible delegation of authority**, and/or was directly contrary to *Rule 77* of the *Rules of Civil Procedure*.

5.2 ORDERS FOR INSTITUTIONAL AND THIRD-PARTY PRODUCTION OF RECORDS

5.2.1 **JUDICIAL COMPULSION AND DISCLOSURE (JUSTICE SHORE):** AN ORDER compelling Madam Justice Shore to provide an affidavit confirming or denying her prior judicial involvement with the Applicant within three (3) days of this Order, said affidavit to be provided to the Applicant and the Respondents (Non-Appearing Respondents) and the Attorney General of Ontario (**AGO**).

5.2.2 **LAT PRODUCTION MANDATES**: AN ORDER that the **LAT** produce copies of the Undisclosed Motion Orders of July 24, 2024, and August 16, 2024, which are made without reference to any motion of the Applicant or the Respondents.

5.2.3 **SUPERIOR COURT PRODUCTION MANDATES:** AN ORDER that the Superior Court of Justice (**SCJ**) or the Court of Appeal for Ontario (**ONCA**) shall produce copies of any and all informations and indictments received involving the Applicant, including any associated or supporting documents or records (nota bene: a *Form 4 Criminal Code* must be filed electronically via email as per the *Criminal Proceeding Rules of the SCJ (Ontario)*).

5.2.4 **POLICE PRODUCTION MANDATES:** AN ORDER that the Toronto Police Service (**TPS**) produce any documents and records involving **TPS Occurrence Numbers** of Sunday September 15, 2024, and Sunday, September 22, 2024, and **Police Case ID: 457197**, including but not limited to any complaints made by any of the Respondents or their agents (actual or purported).

5.2.5 **MAG/SOLGEN PRODUCTION MANDATES:** AN ORDER that any relevant ministry of the Ontario Government, with particular reference to the Ministry of the Attorney General (**MAG**) and the Ministry of the Solicitor General (**SOLGEN**), shall produce to the Parties (aside from itself with respect to the **MAG**) copies of any draft or signed *Criminal Code Form 4* Indictments and/or any other documents relating to the Applicant.

5.2.6 **DIVISIONAL COURT INTERNAL RECORDS:** AN ORDER commanding the immediate production to the parties of the name of the Local Administrative Judge of the Divisional Court during the critical operational period spanning from December 2024 to January 2025 (the "LAJ Name Order") (if one was designated).

5.2.7 **REQUISITIONED DOCUMENTATION:** AN ORDER that the Registrar of the Divisional Court shall provide certified copies of all documentation and materials specifically requested by the Applicant in **Requisition #8** and subsequent related requisitions, without equivocation, demurral, or administrative impedance.

5.2.8 **RESIDUAL PRODUCTION MANDATE:** AN ORDER that all Respondents and persons formally notified of this **NOM #3** shall produce all documents, things, papers, records, or communications that are demonstrably **relevant** to this **NOM #3**, irrespective of the physical or electronic situs of their storage or custody.

5.3 CONSEQUENTIAL AND FINAL JUDGMENT DECREES

5.3.1 **SPECIAL NULLITY *DE NOVO:*** A DECLARATION AND ORDER that as a direct and immediate consequence of the Fraud Declaration and the irreparable taint of Bribery, the within *Judicial Review Procedure Act* Proceeding is deemed to be a **special nullity** (***ab initio***) ***vis-à-vis*** the prior steps taken, and shall proceed ***de novo*** from the point of initial application filing, requiring no further procedural steps to perfect the matter for the final hearing of the Judicial Review on its merits.

5.3.2 **FINAL JUDGMENT ENTITLEMENT:** AN ORDER decreeing with conclusive finality that the Applicant is entitled to Judgment in accordance with the comprehensive relief sought in his *JRPA* Application, Factum, and as further particularized and referenced in the Oral Compendium with "Outline."

5.3.3 **NOM #2 GRANTED:** AN ORDER granting, in its entirety, the comprehensive and unreserved relief sought in the Applicant's *Notice of Motion #2* ("NOM #2").

5.3.4 **STRIKING OF NOA:** AN ORDER striking the Notices of Appearances purportedly filed by the Respondents.

5.3.5 **PREFERENTIAL SCHEDULING:** AN ORDER that the Registrar shall forthwith set the Judicial Review Application down for hearing on the **earliest available preferential date**, thereby abridging any standard notice or scheduling periods otherwise required by the *Rules of Civil Procedure* or Practice Directions, on account of the demonstrated systemic misconduct and judicial conflict.

5.4 MANDATORY REFERRAL, PROTECTIVE, AND REMEDIAL ORDERS (FLOWING FROM FRAUD/BRIBERY)

5.4.1 **MANDATE TO TRANSMIT EVIDENCE:** AN ORDER mandating that the Registrar of the Divisional Court shall immediately transmit the entirety of the Applicant's evidence, including all Affidavits, Factums, and the within Orders, to the Law Society of Ontario (**LSO**), the *Attorney General of Canada* (for potential criminal investigation), and the Law Enforcement Agency of the Applicant's choice, for investigation into the declared acts of Fraud, Bribery, Obstruction of Justice, and professional misconduct.

5.4.2 **PROTECTIVE EXPUNGEMENT:** AN ORDER that all records of the *JRPA* Proceeding, including but not limited to those documents purportedly served but never legally "filed" or "delivered" according to the Rules, being irrevocably tainted by fraud and bribery, shall be sealed and/or administratively expunged from all publicly accessible databases (including CanLII, court databases, and Case Center) to prevent the dissemination of records arising from a **special nullity** (the "Protective Expungement Order" and "Open Court Principle Regularization Order").

5.4.3 **IMMEDIATE REIMBURSEMENT:** AN ORDER mandating the immediate reimbursement of any and all filing fees, disbursement costs, and other expenses directly and necessarily incurred by the Applicant in responding to or attempting to set aside the steps tainted by the declared Fraud and Bribery.

5.5 CHARTER AND COSTS ORDERS

5.5.1 **CHARTER DETERMINATION:** AN ORDER that the determination of the said *Charter* relief shall proceed via written argument or oral hearing, to be finally adjudicated and decided by the presiding Divisional Court Judge within **thirty (30) days** of the date of this Order.

5.5.2 **FULL INDEMNITY COSTS**: AN ORDER awarding Costs against any and all Respondents that oppose or do not consent to the relief herein sought, such costs to be assessed on a **full indemnity basis** due to the egregious and indefensible nature of the underlying misconduct and the manifest necessity of this extraordinary procedural intervention.

5.5.3 **NOM #1 COSTS:** AN ORDER granting costs on a **substantial-indemnity basis** for the Applicant's *Notice of Motion #1* ("NOM #1"), along with the indemnification of his motion filing fee for NOM #1.

AND an Order that the Applicant may submit any draft order to the Divisional Court for immediate signature and entry, and it is effective from the date of pronouncement including all relief in relation to NOM #2;

AND SUCH FURTHER AND OTHER RELIEF as may be deemed just and equitable by this Honourable Court.

THIS COURT DOTH ORDER THAT the Applicant is entitled to seek subsequent directions regarding the implementation or interpretation of any of the provisions contained herein.

Date of issuance …… _____

RCP-E 59A (January 2, 2024)

TAB 22

Court File No. DC-24-00000718-00JR

FORM 16B

Courts of Justice Act

AFFIDAVIT OF SERVICE

ONTARIO SUPERIOR COURT OF JUSTICE
(DIVISIONAL COURT)

BETWEEN:

KEVIN ALEXANDER MCLEAN

APPLICANT

- and -

TD HOME AND AUTO INSURANCE COMPANY, SECURITY NATIONAL INSURANCE COMPANY, TD GENERAL INSURANCE COMPANY, EXECUTIVE DIRECTOR, LICENCE APPEAL TRIBUNAL, HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO, REPRESENTED BY EXECUTIVE CHAIR OF TRIBUNALS ONTARIO IN MR. SEAN WEIR, THE ATTORNEY GENERAL OF ONTARIO

RESPONDENTS

AFFIDAVIT OF SERVICE

I, KEVIN ALEXANDER MCLEAN, of the City of Toronto, in the Province of Ontario, GENTLEMAN Applicant, Party and LITIGANT, MAKE OATH AND SAY:

1. I am, *de facto* and de jure , the Applicant in the within judicial review proceeding, and, consequently, I possess an intimate and comprehensive knowledge of the facts and circumstances hereinafter deposed; I am thus endowed with the requisite authority to proffer this solemn testimonial instrument. The statements herein articulated are predicated entirely upon my direct, immediate, and continuous engagement in the processes of documentation, preparation, and formal service.
2. I adopt the definitions from the documents contained in the index to my NOM #3 motion record (the "Motion Record").

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VOLUME #1: SERVICE ON THE RESPONDENTS (BUT NOT "PARTIES" AND WITHOUT LAWYERS OF RECORD)

3. I effectuated service of the requisite judicial documentation upon the aforementioned Respondents and the named persons in Exhibit "A", Tabs 2 to 5 (collectively defined as the "**Non-Respondents**").

4. Specifically, on the *20th day of November, 2025*, I caused the following comprehensive evidentiary corpus (see: Tab 3 and 4 of the Motion Record for my NOM #3) to be transmitted forthwith to the designated legal representatives and institutional entities for the Respondents. By referencing "designated legal representatives", I do not accept or admit that those lawyer licensees are "lawyers of record" as defined under the *Rules of Civil Procedure*.

VOLUME #2: DATES OF SERVICE AND UPON WHOM IN RELATION TO RESPONDENTS AND NON-RESPONDENTS

5. I executed the aforementioned service via electronic mail transmission, which is a method canonically sanctioned and acknowledged for the expeditious conveyance of critical process, directing the instruments to the prescribed email addresses of all represented by email, counsel to the Respondents, in the following:

    a. Mr. Boyce at jesse.boyce@ontario.ca for the LAT;

    b. Mr. Nieuwland at matthew.nieuwland@tdinsurance.com for the Respondent Insurance Companies:

        i. TDHA;

        ii. SNIC; and

        iii. TDGIC;

    c. Ms. Im for the AGO at Judie.im@ontario.ca; and

    d. The AGC at the email address of NCQ-AQC.Toronto@justice.gc.ca;

6. I served Ms. Dunk, Mr. Karat and the **Epstein Cole LLP Client** at:

    a. Ms. Julia Dunk at jdunk@himprolaw.com;

    b. Mr. David Karat at david.karat@tdinsurance.com;

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c. Mr. Papadimitropoulos at andrew.papadimitropoulos@td.com and andrew.papadimitropoulos@tdinsurance.com;

7. I served the TPS by way of its chief legal officer and its legal department at the following:
    a. Falguni.Debnath@tps.ca; and
    b. Legal.Services@torontopolice.on.ca
8. I served the Ministry of Solicitor General and the SOLGEN et al at the following emails:
    a. SOLGEN.Correspondence@ontario.ca;
    b. michael.kerzner@pc.ola.org
    c. Minister.SOLGEN@ontario.ca;
    d. nicolas.dimarco@ontario.ca;
    e. christopher.johns@ontario.ca;
    f. joe.dipietro@ontario.ca; and
    g. jenna.fullerton@ontario.ca.
9. I served Mr. Sinnadurai counsel to Madam Justice Shore, on November 20, 2025, at the email that he has utilized in representing Madam Justice Shore in the Superior Court of Justice and the email that he provided to me in the Summer of 2025 when I was seeking access to copies of information, information assets, documents, papers, files, and records in the custody and/or control of the various courts involved in the False Information Package including but not limited to the criminal proceeding documents, electronically filed, as required, with the relevant and pertinent court level and the originating courthouse as it relates to the issuing, giving and/or making of the "signed arrest warrant".
10. In this present jurisdictional instance, I do hereby unequivocally and expressly **adopt and reaffirm** the entire substantive and procedural content of my prior "Statutory Declarations" (see: Tabs #3 and #4). This comprehensive adoption includes, but is not limited to, every specific factual assertion, every derived legal extrapolation, and the totality of the documentary exhibits appended thereto. These antecedent instruments, namely the Statutory Declarations dated **October 13, 2025, and November 14, 2025**, are not merely referenced within this document,

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but are, by this present solemn swearing, seamlessly incorporated by reference, acquiring the identical force and judicial effect as if they were fully reproduced *ad seriatim* herein.

11. It is my considered submission that this integrated evidentiary matrix, comprising the declarations *in toto* and their accompanying exhibits, establishes my ***prima facie*** entitlement to the judicial remedies sought. This body of evidence renders my ultimate conclusions self-evident and thereby necessitates an immediate and comprehensive judicial contemplation of the substantive issues presented.

VOLUME #3: EXHIBIT "A": TABS 1 TO 5 (PAGES 1 TO 35)

12. I **swear** that the following exhibits are attached to this Affidavit and are comprised of the following documentation:

    a. **Exhibitum A, Tab 1: Jurisdictional and Foundational Service Documents:**

        i. Now shown to me and marked as Exhibit "A," commencing at page 1 and concluding at page 7, is a true and accurate copy of the electronic mail transmissions, inclusive of all attachments thereto, involving the formal service of process upon the Respondents, alongside the simultaneous provision of a courtesy copy to the Registrar of the Divisional Court.

            1. This Exhibit "A", Tab 1 serves as irrefutable documentation of my diligent discharge of procedural duty concerning notice despite the absence of any filed documents by the Respondents including but not limited to:

                a. LAT;

                b. Respondent Insurance Companies; and

                c. AGO.

    b. **Exhibitum "A", Tab 2: Service of Declarations and Motion Record upon Designated Counsel**

        i. Now shown to me and marked as Exhibit "B," Tab 2, commencing at page 8 and concluding at page 20, is a comprehensive copy of electronic mail exchanges and their attendant attachments regarding the formal service of my Statutory Declarations and the complete Motion Record (NOM #3) upon Ms. Julia Dunk, Mr. David Karat, and the representative for the Epstein Cole LLP Client.

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1. This section constitutes the *acta* confirming service upon these specified individuals involved in, inter alia, the TDI Karat Theft at 1025 Queen Street West, Toronto, Ontario, at approximately 1:11 p.m. on October 25, 2024, with Mr. Karat wearing a hat with a Keffiyeh scarf, and the subsequent impersonation of myself by the Epstein Cole LLP Client on the following dates:
    a. Monday, October 28, 2024 (Fort York TPL library branch including the TPS Fraudulent Equipment Borrowing Agreement);
    b. Friday, November 8, 2024 (the day after I served the AGO and AGC with the NOCQ in the HRTO Proceeding);
    c. November 11, 2024;
    d. December 13, 2024;
    e. December 21, 2024; and
    f. December 28, 2024.

c. **Exhibitum "A", Tab 3**: Service of Motion Record upon Toronto Police Services Board (TPS)

i. Now shown to me and marked as Exhibit "A", Tab 3 commencing at page 21 and concluding at page 26, is conclusive documentation of the service of the NOM #3 Motion Record, executed on Thursday, November 20, 2025, upon the Toronto Police Services Board ("TPS"), specifically directed to the Chief Legal Officer, Ms. Falguni Debnath, and the Legal Services Department.

1. This **Exhibit "A", Tab 3** embodies the formal notice provided to this institutional entity relating to the relief sought against it;

d. **Exhibitum "A", Tab 4:** Service of Motion Record upon Ministry of the Solicitor General (MSG):

i. Now shown to me and marked as Exhibit "A", Tab 4 commencing at page 27 and concluding at page 31, is irrefutable evidence of the service of the NOM #3 Motion Record, executed on Thursday, November 20, 2025, upon the Ministry of the Solicitor General ("MSG"), including specific direction to the Honourable Solicitor General, Mr. Michael Kerzner (the "SOLGEN"), and other associated officials within the Ministry.

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1. This documentation confirms the comprehensive delivery of process to this Ministry and its Minister regarding the relief sought against it and him (where applicable);

e. **Exhibitum "A", Tab 5**: Service of Motion Record upon Counsel to Madam Justice Shore

i. Now shown to me and marked as Exhibit "A", Tab 5, commencing at page 32 and concluding at page 35, is irrefutable evidence of the service of the NOM #3 Motion Record, executed on Thursday, November 20, 2025, upon Mr. Sinnadurai, who acts as counsel to Madam Justice Shore;

1. This documentation confirms the comprehensive delivery of process to this counsel of record to Madam Justice Shore as per public records and my communications with Mr. Sinnadurai and his, inter alia, insistence that I only communicate with him in the Summer and Autumn of 2025 regarding my seeking access to various information,

13. I proffer this Affidavit for Service for multi-purposes purposes including but not limited to:

a. exclusive and specific purpose of establishing formal compliance with the procedural mandates regarding the transmission of documents, and to effectuate the conclusive integration of the antecedent evidentiary record into the prevailing juridical milieu of the matter *sub judice*.

14. The following assertions are presented for the express purpose of delineating my legal position with respect to the procedural status of the Respondents, absent being "parties" and having "lawyers of record", but with the proviso that the AGO is entitled to be "heard" at the hearing of the JRPA Application (see: section 9(4) of the JRPA) and the efficacy of service effected.

15. The, in my view, sophisticated legal arguments in my NOM #3, are foundational to my Motion *In Limine* (Motion Number 3) and are to be considered in conjunction with the facts sworn in the foregoing Affidavit, with express incorporation of the statutory declarations to the extent further formality is so required.

VOLUME #4: DISTINCTION BETWEEN "RESPONDENT" AND "RESPONDING PARTY"

16. I verily believe that a critical jurisdictional nuance must be observed concerning the definitive status of the various entities named in the style of cause. I rely upon the precise lexicon enshrined within the JRPA and *Rules of Civil Procedure* to maintain the position that none of the named Respondents have achieved the definitive procedural

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designation of **"party"** by virtue of their collective and continued omission to forthwith **"deliver"** a Notice of Appearance, or to **"deliver"** such an instrument at all.

17. I repeat and rely, with express adoption of my aforementioned statutory declarations, the uncontested and non-denied belief that none of the Respondents "filed" a "First Defence".

18. This distinction is further predicated upon the canonical definitions within the *Rules*:

    a. **"respondent"** means a person against whom an application is made or an appeal is brought, as the circumstances require; and

    b. **"responding party"** means a person against whom a motion is made.

19. I note that Respondent Insurance Companies are different "persons" at law and not "one and the same".

20. I note that the LAT is a distinct entity from "Tribunals Ontario" to the extent the latter could be construed as a "person".

21. I maintain that while the named entities are unequivocally *Respondents* (as they are the subjects against whom the Application for Judicial Review is made and some against the NOM #3 is made), their failure to "file" the requisite initiating document in the Divisional Court precludes their automatic acquisition of the procedural rights and obligations exclusively reserved for an active, participating **Responding Party** pursuant to, *inter alia*, Rule 38.07(2)(a) to (c), at this stage, of the *Rules of Civil Procedure*.

22. As of today's date, I have not received any motions from any of the Respondents seeking an order to receive any further document in the JRPA Application (see: Rule 38.07(2)(b).

23. I maintain in perpetuity my pre-emptive objection that any of the Respondents "file" any material (not merely "exchange" as Madam Justice Shore would have it or had it in the January 7, 2025, ***purported direction*** that was, in my view, more in the nature of a void *ab initio* compulsory attendance requirement before her at some time in the future predicated on conditions) on the JRPA Application (see: Rule 38.07(2)(c)).

24. I distinguish between the "Respondents" under Rule 38.07 of the Rules of Civil Procedure and the Non-Respondents in relation to responding to my NOM #3. Bluntly speaking, I welcome their served and filed documents evidencing their positions in relation to, inter alia, my stolen property, the undisclosed criminal proceeding document(s), the undisclosed "signed arrest warrant" (see: emails with Mr. Sinnadurai by way of his

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letters on June 25, 2025, and July 4, 2025) and any other records, documents et al relating to the preservation, production, and/or disclosure of the same.

25. I verily believe that a paramount consideration, one which engenders profound apprehension, pertains directly to the felonious expropriation of personal property—comprising the tangible assets and the digital infrastructure resident thereon—and the attendant, demonstrable implications of enduring fraudulent *acta* and calculated digital personation. This *mala fides* conduct is of such a pervasive and sustained character that the very sanctity of the digital identity has been jeopardized, thereby necessitating the immediate and decisive intervention of this Honourable Tribunal to preclude the perpetuation of this multifaceted *delict*.

26. It is formally deposed that the proprietary status in respect of the digital domain designated *www.searchandseizure.ca* has been maintained. The associated electronic mail repository was utilized with palpable vigour and in an actively managed fashion throughout the temporal period spanning 2021 through 2022, serving as a critical conduit for sensitive and privileged professional communications; however, the subsequent usage thereof was intentionally terminated *in toto* due to overriding considerations of confidentiality, predicated upon a specific antecedent agreement and a multiplicity of binding undertakings designed to shield proprietary interests and personal information from unauthorized disclosure. Notwithstanding this cessation of utilization, a notification was received during the current week, indicating that action had been successfully initiated by an unknown, unauthorized third party to sustain the operational viability of the contiguous Google account associated with the aforementioned domain, thereby countermanding its scheduled administrative termination—a course of action which is affirmatively confirmed was **not** undertaken or authorized by the affiant, constituting, *prima facie*, an act of wilful trespass into the digital infrastructure and a profound breach of the expectation of digital security.

27. For the comprehensive edification for this Honourable Divisional Court and the to be presiding judge of NOM #3, the electronic communiqué from Google Workspace is herein reproduced, *verbatim et litteratim* with the heading of the email being:

> "Your Google account has been successfully reactivated

Doc ID: 8b960b234a8f0e2f0a969b3a1cb577119ccaf25d

The Google Workspace Team <workspace-noreply@google.com> Nov 18, 2025, 4:11 PM

to me

Hello,
You have successfully taken action to keep your Google account for the organization, searchandseizure.ca. Your account is no longer scheduled to be closed.
Important: If you don't sign in to your Google account for 180 days, the automatic account closure process will restart. You can manually delete your account at any time.
Visit the Google Workspace Admin Help Center to learn more about why Google closes inactive accounts.
Sincerely,
The Google Workspace Team

Google Workspace

© 2025 Google LLC 1600 Amphitheatre Parkway, Mountain View, CA 94043

You're receiving this mandatory email service announcement to update you about important changes to your Google Workspace product or account"

Volume #4(A): Particulars of non-coincidental fraudulent conduct post material events involving myself

28. **I verily believe** and maintain the profound conviction that the juridical persons, or their designated managers, representatives, and/or agents, intrinsically linked to the felonious *TDI Karat Theft*, are the responsible parties for this unauthorized account reactivation. The singular viable logical inference, supported by the evidentiary *acta*, is that access to the requisite credentialling mechanisms, essential for such reactivation, was illicitly obtained from the stolen computing apparatus. *Ipso facto*, this Affidavit is proffered for a multiplicity of objectives, encompassing, *inter alia*, the substantiation of the interim, interlocutory, and permanent injunctive relief currently being sought, serving as a critical piece of newly discovered evidence supporting the narrative of ongoing, coordinated, in my view unlawful, digital espionage and harassment.
29. **I verily believe** that this egregious digital episode constitutes a calculated *acta* of systemic harassment and sophisticated fraud, perpetrated by the individuals who expropriated the property and who, by undeniable logical extrapolation, secured illicit access to the electronic mail repository and its associated credentialling mechanisms, the particulars of which were resident upon the stolen computing apparatus; moreover, the precise temporal

convergence with the litigation timeline is demonstrable, manifestly intended to disrupt the focus and inject an element of profound digital insecurity into the affiant's affairs.

30. **I verily believe** that, *prima facie*, this demonstrative evidence provides substantial fortification for the extant allegations of pervasive fraud perpetrated by, at the minimum, the Respondent Insurance Companies, their delegates, representatives, *et al*. This continuous stream of misconduct suggests a systemic failure of supervision, or conversely, a calculated directive, that permits or encourages the utilization of illicitly obtained personal information to perpetuate *ultra vires* acts of digital personation. The inescapable conclusion is that the initial theft was merely the antecedent to an ongoing campaign of identity manipulation.
31. It is sworn that the perusal of the entirety of the said email did not occur until the day immediately succeeding its transmission. Consequent to this discovery, further comprehensive investigations into the disconcerting particulars of this digital intrusion were immediately initiated, or caused to be initiated. These investigations are currently dedicated to mapping the digital footprint of the unauthorized reactivation, thereby aiming to procure forensic corroboration that may definitively link this intrusion to the known actors or their associates, which would definitively establish the requisite *mens rea* for contempt proceedings.

Volume #4(B): Temporal Nexus and Pattern of Misconduct (a pattern of one business day or approximately post a filing or seeking of documents involving

32. Upon meticulous observation, **I verily believe** that a recurrent similarity is revealed with respect to the temporal periodicity of precisely one diurnal cycle immediately following the service of legal documentation upon the opposing parties. This synchronicity does not constitute a statistical anomaly but represents a discernible *modus operandi* wherein the substantive advancement of the legal claims acts as the immediate catalyst for a retaliatory, fraudulent *acta*. Such a pattern compels the juridical inference of a calculated design, executed with a clear intent to intimidate, distract, or otherwise impede the due course of justice.
33. This pattern, demonstrative of a retaliatory *modus operandi*, is illuminated by the comprehensive chronology of events hereinbelow, each instance reinforcing the syllogistic inference of targeted action:

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a. **September 19, 2024:** Subsequent to the service of Affidavit #37, which furnished compelling evidentiary proof of the fraudulent signatures and the systematic falsification of documents by the *Epstein Cole LLP Client* on various instances, this substantial juridical submission was swiftly followed by an egregious administrative measure, *ipso facto* resulting in the effective denial of possessory rights and peaceful enjoyment, evidenced by the denial of physical ingress to the residential unit on the succeeding day;

b. **October 25, 2024:** The *TDI Karat Theft*—the profound and consequential theft of property, which contained the very digital keys currently being utilized—was perpetrated on the next business day subsequent to the service of the *HRTO Application* upon the Toronto Police Service (TPS) at 40 College Street, Toronto, Ontario, suggesting a clear attempt to disrupt the presentation of the case *in limine*;

c. **October 25, 2024 (Following Business Day):** Immediately subsequent to the aforementioned *TDI Karat Theft* and the formal, written request to the Centre for Addiction and Mental Health (CAMH) for immediate institutional assistance and compliance with its duties under various legislative instruments, including the *Occupiers Liability Act* and *Freedom of Information and Protection of Privacy Act* (*FIPPA*), *et al*, the *Epstein Cole LLP Client* was engaged in a multiplicity of preparatory steps, including, but not limited to, the procurement of the *TPS Fraud Equipment Loan Agreement (Laptop Service)*, thereby demonstrating a swift, coordinated, and resource-intensive response to the commission of the underlying theft;

d. **November 7, 2024:** On the day succeeding the service of the Notice of Constitutional Question (*NOCQ*) in the *HRTO Proceeding* upon the Attorney General of Ontario (AGO, via electronic medium) and the Attorney General of Canada (AGC, via physical hard copy), Mr. Karat or the *Epstein Cole LLP Client* engaged in the fraudulent reservation of an entry for the affiant at the Aga Khan Museum in North York, Toronto, Ontario, scheduled for November 9, 2024, an *acta* of clear *in-personam* harassment and digital personation;

e. **November 9, 2024 (Following Business Day):** Subsequent to the Saturday, November 9, 2024 date, and after the Toronto Public Library (TPL) was alerted to fraudulent activity involving the affiant's name and identification *et al* with the TPL library account (the prior fraud being unknown at that time), the *Epstein Cole LLP Client* engaged in the fraudulent borrowing of approximately twenty-four (24) distinct books,

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magazines, or periodicals from the *TPL Queen Saulter Branch*, constituting a significant, coordinated effort to misuse and compromise public institutional access;

f. **December 13, 2024:** On the precise date of the service and filing of the *Certificate Of Perfection*, a document of significant procedural import, the *Epstein Cole LLP Client* was observed to attend at the TPL Reference Library during the evening to initiate the unauthorized alteration of the telephone number associated with the TPL library account, accompanied by the ostensible changing of the name, by clear implication, to that of Ms. Valerie Oulette, thereby establishing a pattern of leveraging administrative processes to obfuscate digital misconduct;

g. **December 21, 2024 (Saturday):** Subsequent to various electronic mail transmissions tendered concerning the impermissibility, as a matter of common law jurisprudence, of the participation of the Licence Appeal Tribunal (LAT) in the *JRPA Proceeding*, further fraudulent activity was engaged involving the TPL library account at the TPL Fort York Branch, showcasing a persistence that transcends mere happenstance and enters the realm of calculated retaliation;

h. **December 24, 2024 (Following Business Day/Saturday, December 28, 2024):** One full business day after the filing of Requisition #1 and Requisition #2 on December 24, 2024, yet further fraudulent activity was detected involving the TPL library account, occurring at the TPL Fort York branch, thereby demonstrating the direct correlation between the filing of substantive motions and the immediate subsequent acts of digital personation;

i. **June 19, 2025 (4:44 p.m.):** The police caution from Police Officer Aaron Bourdages of the TPL 55th Division (the same jurisdictional location as the *Epstein Cole LLP Client*) was tendered by Mr. Papadimitropoulos on this precise date and time. Although no communication was exchanged with the *Epstein Cole LLP Client* on or immediately proximate to this time, the subsequent review of electronic mail archives observed the dispatch of the following communiqués within three days of the aforesaid caution: (a) An electronic mail dispatch to the SCJ Criminal and Family Court on June 17, 2025, directed to the attention of specified personnel and 393 University Avenue (SCJ), requesting access to the *Criminal Code* Form 4 or Form 2 and the signed arrest warrant; (b) A facsimile transmission to the SCJ Criminal Intake

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Division delivered on June 18, 2025; and (c) The receipt of the inaugural email from the Toronto Region CSD (MAG), which directed the affiant to Mr. Sinnadurai as the sole counsel. Correspondence was thereafter directed to the Toronto Region CSD (MAG) and Mr. Sinnadurai on June 18, 2024, at 4:38 p.m. **I verily believe** that this synchronicity of timing exhibits an exceptionally incongruous connection between the Respondent Insurance Companies, through their current or former managers or representatives, and the Executive Branch of Government, thereby establishing a troubling confluence of state and private actors seemingly aligned in their opposition to the legal advancement of the affiant.

34. My profound concern remains that not only is further digital *ultra vires* fraud ongoing as of the current week—in direct relation to the feloniously expropriated property, inclusive of identification and sensitive personal, personal health, and confidential information—but that such, in my view, egregious conduct shall persist unabated until the plenary relief being pursued is formally granted. The compromised personal health information and professional data constitute a vulnerability of the utmost severity, demanding immediate and rigorous judicial protection against ongoing misuse by the Respondent entities and their proxies.

35. I verily believe that such relief must entail that the Respondent Insurance Companies and the individuals so involved, in conjunction with the Licence Appeal Tribunal (LAT) and potentially others associated with the MAG and the various courts including the SCJ and Divisional Court, which I squarely direct to Madam Justice Shore by her propensity to email all judges about Mr. McIntosh in McIntosh v. Shore et al along with the direct quotes attributed to her in the JRPA Proceeding and my requests for records, information and information assets in the UCP — whose administrative conduct has been called into serious question—are formally and perpetually restrained from any future misconduct under the penalty of contempt. I verily believe that this stringent measure, which must be ordered *in limine*, is an essential prerequisite to restoring the *status quo ante* with respect to digital and personal security and ensuring that the continued integrity of the judicial process remains unimpaired by these sophisticated acts of digital interference.

36. I verily believe that the observation of the, in my view, highly suspicious temporal nexus is reiterated: approximately twenty-four hours subsequent to the service of the NOM #3 and the Statutory Declaration of November 14, 2025, upon the Respondents, further fraud transpired involving an email workspace account that had

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neither been sought for reactivation nor desired for utilization. **I verily believe** that this latest *acta* of impersonation represents the conclusive element in a lengthy chain of circumstantial evidence, transforming the suspicion of coordinated fraud into an undeniable judicial certainty.

37. **I verily believe** that the proposition that the timing of these calculated, retaliatory *acta* is merely a matter of coincidence is not acceded to. The extrapolation of the aforementioned pattern, which invariably links successful legal submissions to an immediate, unauthorized countermeasure involving the stolen identity or property, renders the conclusion of intentionality self-evident and compels the immediate issuance of the requested injunctive orders by this Honourable Court.

VOLUME #5: STATUS (OR LACK THEREOF) OF THE LICENCE APPEAL TRIBUNAL (LAT)

38. In relation to the Tribunal Respondent, the Licence Appeal Tribunal (**LAT**), I reiterate and rely upon the prescriptive language of *section 9(2) of the Judicial Review Procedure Act* (*JRPA*). This legislative provision delineates the specific, circumscribed role and participatory scope of a tribunal in a judicial review, which fundamentally differs from the robust, full participation accorded to a substantive litigant.

VOLUME #6: ABSENCE OF "LAWYER OF RECORD"

39. I assert that, consequent to the absence of filed Notices of Appearance from the Respondent Insurance Companies, their purported legal counsel do not currently hold the formal designation of a **"lawyer of record"** within this specific Judicial Review proceeding.

40. I observe the definition:

    a. **"lawyer's office"** means the office of the **lawyer of record** as set out in the last document **filed** by him or her.

41. As no proof has been tendered to me indicating that any representative of the Respondents (including counsel such as Mr. Boyce, Mr. Nieuwland, and/or Ms. Im) has definitively **filed** a document—which would include a "First Defence" or, indeed, any "last document"—in this *JRPA* proceeding, the **status quo ante** remains that there are, *pro hac vice*, no lawyers of record.

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VOLUME #7: ABSENCE OF ANY ABILITY TO EXCHANGE DOCUMENTS THROUGH AN EDX

42. I note that the *Rules of Civil Procedure* explicitly authorize service upon *parties* in compliance with the Ontario's regime for electronic document exchange (**EDX**), which, under certain circumstances, permits service **without an Affidavit of Service** due to the automatic generation of email notifications and the instant documentation of receipt, time, and date. While I have, ex abundante cautela, generated the foregoing Affidavit, the method of service via confirmed electronic transmission aligns with the procedural efficiencies inherent in the EDX framework. This reliance on verifiable electronic conveyance underscores the efficacy and incontrovertible nature of the service executed, confirming, beyond peradventure, the temporal and technical transmission of the complete Motion Record upon all mandated Respondents, irrespective of their formal designation as a full "Responding Party."

VOLUME #8: CONCLUSION

43. In light of the new evidence learned of this week and now deposed, I will continue to seek the relief I am seeking and any relief of abridgements of time and granting of orders nunc pro tunc.

Sworn before me by videoconference:

by Mr. Kevin A. McLean at the City of Toronto, in the Province of Ontario, before me on November 12, 2025 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.

Commissioner for Taking Affidavits, Lawyer and Notary

Signature of Commissioner/Lawyer/Notary

Signature of Deponent

Sworn remotely, before me in the City of Toronto, in the Province of Ontario, accordance with O.Reg 431/20, administering oath/declaration remotely.

DG NOTARY
My-Ngoc Dianna Giang | P12197
contact@dg-notary.com
647-693-9973 | www.dg-notary.com

RCP-E 16B (February 1, 2021)

Doc ID: 8b960b234a8f0e2f0a969b3a1cb577119ccaf25d

This is Exhibit "A" referred to in the Affidavit of Mr. Kevin A McLean sworn (or affirmed) before me at Toronto, ON this 21st day of November 20 25.

A Commissioner/Notary Public for the Province of Ontario

Sworn remotely, before me in the City of Toronto, in the Province of Ontario, accordance with O.Reg 431/20, administering oath/declaration remotely.

MY-NGOC DIANNA GIANG NOTARY PUBLIC ONTARIO

DG NOTARY
My-Ngoc Dianna Giang | P12197
contact@dg-notary.com
647-693-9973 | www.dg-notary.com

1(A)

Tab 1

Gmail

Mr. Kevin McLean <mcleansettlement@gmail.com>

Re: LAT's Notice of Appearance : McLean v. TD Home and Auto Insurance et al. : 718/24

Mr. Kevin McLean <mcleansettlement@gmail.com>
To: "SCJ-CSJ Div Court Mail (JUD)" <scj-csj.divcourtmail@ontario.ca>
Cc: "Maciel, Milene (MAG)" <Milene.Maciel@ontario.ca>, "Collie, Connor (MAG)" <Connor.Collie@ontario.ca>, "Pasquini, Heather" <Heather.Pasquini@tdinsurance.com>, Div Court Schedule <DivCourtSchedule@
<Isibhakhomen.Imafidon@ontario.ca>, christiana.ortiz@tdinsurance.com, NCQ-AQC.Toronto@justice.gc.ca, AGC_PGC_OTTAWA@justice.gc.ca

Court file number: DC-24-00000718-00JR
Type of document: Applicant's NOM #3 Motion Record in multiple parts (Part 2 is attached)
Short title of proceeding: McLean v. TDHA et al
Party: Mr. Kevin A. McLean (B.A., J.D., CIM) (mcleansettlement@gmail.com)

TO: RESPONDENTS BUT WAY OF DECLARED BY EMAIL COUNSEL (Including the Respondent Insurance Companies, the Executive Director of the Licence Appe

AND TO: THE REGISTRAR, ONTARIO SUPERIOR COURT OF JUSTICE (DIVISIONAL COURT)

SUBJECT: FORMAL SERVICE OF THE APPLICANT'S NOTICE OF MOTION NO. 3 (NOM #3) MOTION RECORD (Part 2 of 2)

Dear Sirs/Mesdames/Other Gender-Neutral Pronouns:

As promised, please find part 2 of 2 attached. As confirmed, I did receive notification that Case Center will be available by November 24, 2025, through the MyOntario accou

Yours faithfully,

/KAM

Mr. Kevin A. McLean (BA, JD, CIM)

Sender's name: Mr. Kevin Alexander McLean (BA, JD, CIM)

Sender's address: 410-775 King Street West, Toronto, Ontario, M5V 2K3

Sender's Telephone Number: (647) 370-9354

Sender's email address: mcleansettlement@gmail.com

On Wed, Nov 19, 2025 at 4:48 PM Mr. Kevin McLean <mcleansettlement@gmail.com> wrote:

Court file number: DC-24-00000718-00JR
Type of document: Applicant's NOM #3 Motion Record in multiple parts (Part 1 is attached)
Short title of proceeding: *McLean v. TDHA et al*
Party: Mr. Kevin A. McLean (B.A., J.D, CIM) (mcleansettlement@gmail.com)

TO: RESPONDENTS BUT WAY OF DECLARED BY EMAIL COUNSEL *(Including the Respondent Insurance Companies, the Executive Director of the Licence Appeal T*

TO: THE REGISTRAR, ONTARIO SUPERIOR COURT OF JUSTICE (DIVISIONAL COURT)

SUBJECT: FORMAL SERVICE OF THE APPLICANT'S NOTICE OF MOTION NO. 3 (*NOM #3*) MOTION RECORD (Part 1 of 2)

I. INTRODUCTORY PROLEGOMENA AND TRANSMISSION OF ACTA

This formal, definitive, and profoundly weighty correspondence is hereby **dispatched** in rigorous and unwavering fulfillment of the antecedent **undertaking** to submit the which fundamentally and directly pertain to the above-referenced judicial review proceeding. The intrinsic **gravity** and the consequential implications of the *lis pendens*- **procedural rectitude**, and an absolute fidelity to the principles of justice that underpin the *Courts of Justice Act*.

Enclosed herewith is the initial, but by no means exhaustive, instalment, which has been designated **Part 1**, comprising a consequential segment of the complete and co **Order**, a pivotal jurisdictional document which is logically situated and clearly referenced at **Tab 21** of the overall record. This complete filing, spanning several thousands Superior Court to address the systemic failures that have precipitated this extraordinary recourse. The Applicant, in the exercise of his constitutional rights, presents this *a*

II. PROCEDURAL ELABORATION AND CURIAL AMENITY

It is a substantive matter of formal confirmation that the entirety of the electronically submitted record has been rendered in a state of reasonably precise and naviga preparatory measure, the immense compilation shall imminently undergo further, comprehensive technical refinement. This subsequent, highly specialized refinement **Factum**, the evidentiary **Statutory Declaration (which can be reduced to an appended affidavit if necessary but provided for temporal purposes in such form** authorities.
This technically advanced undertaking is extended not merely as a superficial convenience, but as a deliberate and essential **curial amenity**, fundamentally designed critical mechanism to mitigate the logistical complexities arising from the record's **prodigious** magnitude, ensuring the Tribunal's constitutional overreach and the Resp Applicant's articulated position, the complete *NOM #3* Motion Record is necessarily and pragmatically segregated into discrete electronic parts. This essential segmentat processing the entirety of the voluminous *acta*.

III. SUBSTANTIVE PRÉCIS OF RELIEF SOUGHT

It is considered procedurally and substantively **imperative** that the Honourable Court, alongside all respondents (not technically "parties"), take explicit notice, **in limi** necessity for the **Divisional Court** to exercise its superior, inherent jurisdiction to grant efficacious and essential remedies, the scope of which fundamentally and decisive is that the Tribunal, having acted arguably **ultra vires** its mandate in its disposition or, more precisely, its *failure* to properly address constitutional questions, has created a

The constellation of relief sought, as meticulously detailed within the **Factum of the Applicant**, is substantially and logically predicated upon two principal and non-severa

1. **Constitutional Determination and Procedural Due Process:** An unequivocal Order establishing that the determination of the requisite **Charter** relief shall proc temporal parameter, such as thirty (30) days from the date of the issuance of the Order. This immediate adjudication is not merely preferential but is rendered **indis** *7* and *section 15* of the *Canadian Charter of Rights and Freedoms*. The delay, *prima facie*, amounts to irreparable prejudice, thus demanding an immediate restora this situation to subsist, justifies this robust judicial intervention.
2. **Exemplary Costs and Judicial Rebuke:** An Order awarding **Full Indemnity Costs** against any and all Respondents who elect to oppose, or who demonstrate a recognized basis of the demonstrated and **egregious** nature of the underlying systemic and procedural misconduct. Such malfeasance has rendered this judicial int indefensible conduct—conduct which suggests an intentional disregard for the Applicant's constitutional rights and the process of justice—is **ipso facto** sufficient to appropriate **in terrorem** effect against those corporate entities and governmental offices that would otherwise countenance the continuance of the deleterious *acta* u

IV. CONFIRMATION OF SERVICE

Confirmation is likewise unequivocally afforded that due and diligently attested service upon **all interested persons and counsel of record**, including the statutorily ma by the *Rules of Civil Procedure*. Subsequent to the rigorous completion of the entirety of the multi-jurisdictional service process, a formal **Affidavit of Service**, meticulou service upon all necessary persons, thereby perfecting the procedural record for the Court's consideration.

I will continue all due diligence efforts to ensure that the open court principle and the truth seeking function of civil litigation is honoured. To the extent that I obtain further r

Part 2 of 2 shall follow.

Kevin A. McLean (B.A., J.D., CIM)
Applicant, Self-Represented

Yours faithfully,

/KAM

Mr. Kevin A. McLean (BA, JD, CIM)

Sender's name: Mr. Kevin Alexander McLean (BA, JD, CIM)

Sender's address: 410-775 King Street West, Toronto, Ontario, M5V 2K3

Sender's Telephone Number: (647) 370-9354

Sender's email address: mcleansettlement@gmail.com

On Wed, Nov 19, 2025 at 4:11 PM Mr. Kevin McLean <mcleansettlement@gmail.com> wrote:

> Court file number: DC-24-00000718-00JR
> Type of document: Factum for NOM #3
> Short title of proceeding: McLean v. TDHA et al
> Party: Mr. Kevin A. McLean (B.A., J.D, CIM) (mcleansettlement@gmail.com)
>
> Dear Sirs/Mesdames/Other Gender-Neutral Pronouns:
>
> As promised, please find Tab #1 (Factum For Motion in Writing) for NOM #3 for service upon the relevant persons. The remainder will be provided with the motion record which is
>
> As noted and discovered, all of the proven allegations and highly pointed special categories of nullities where the Divisional Court is implicated are unequivocally and absolutely dir
>
> Thank you.
>
> Yours faithfully,
>
> */KAM*
>
> Mr. Kevin A. McLean (BA, JD, CIM)
>
> Sender's name: Mr. Kevin Alexander McLean (BA, JD, CIM)
>
> Sender's address: 410-775 King Street West, Toronto, Ontario, M5V 2K3
>
> Sender's Telephone Number: (647) 370-9354
>
> Sender's email address: mcleansettlement@gmail.com

On Mon, Nov 17, 2025 at 4:23 PM Mr. Kevin McLean <mcleansettlement@gmail.com> wrote:

> **Procedural Nexus and Identification**
> **Court File Number:** DC-24-00000718-00JR
> **Nature of Instrument:** Formal Electronic Communication Incorporating Substantial Documentary Enclosures and Assertions of Procedural Default
> **Short Title of Proceeding:** *McLean v. TDHA et al*
> **Principal Litigant:** The Applicant, Mr. Kevin A. McLean (B.A., J.D, CIM) (mcleansettlement@gmail.com)
>
> Dear Sirs/Mesdames/Other Gender-Neutral Pronouns:
>
> As promised, my statutory declaration of November 14, 2025, served on Mr. Karat, Ms. Dunk and the Epstein Cole LLP Client. As noted, the statutory declaration, with the same.
>
> Due to its size, it has been served in double compressed form.
>
> Thank you.
>
> Yours faithfully,
>
> */KAM*
>
> Mr. Kevin A. McLean (BA, JD, CIM)
>
> Sender's name: Mr. Kevin Alexander McLean (BA, JD, CIM)
>
> Sender's address: 410-775 King Street West, Toronto, Ontario, M5V 2K3
>
> Sender's Telephone Number: (647) 370-9354
>
> Sender's email address: mcleansettlement@gmail.com

On Mon, Nov 17, 2025 at 4:18 PM Mr. Kevin McLean <mcleansettlement@gmail.com> wrote:

> ***Per* Electronic Facsimile Transmission**
> **SUBSEQUENT TO THE ESTABLISHMENT OF IRREVOCABLE LEGAL PREJUDICE AND MANDATORY NON-DEROGATION**
>
> **Date of Execution:** The Seventeenth Day of November, Two Thousand and Twenty-Five (MMXV)
>
> **Procedural Nexus and Identification**
>
> **Court File Number:** DC-24-00000718-00JR
> **Nature of Instrument:** Formal Electronic Communication Incorporating Substantial Documentary Enclosures and Assertions of Procedural Default
> **Short Title of Proceeding:** *McLean v. TDHA et al*
> **Principal Litigant:** The Applicant, Mr. Kevin A. McLean (B.A., J.D, CIM) (mcleansettlement@gmail.com)

Designated Recipient Entities

The Licence Appeal Tribunal (LAT)
Attention: The Office of the Registrar, Mr. Boyce, or Designated Senior Legal Counsel, as the originating administrative body whose record and conduct are the subject of the instan
The Respondent Insurance Corporations:
Corporate entities possessing established jural personality and attendant legal obligations under the Insurance Act (Ontario) and the common law, specifically named herein as the en

- TD Insurance Home and Auto (TDHA)
- *Security National Insurance Company* (SNIC)
- TD General Insurance Company (TDGIC)

Courtesy Recipients: Entities of Oversight and Jurisdiction

The Divisional Court
Attention: The Office of the Clerk of the Court (Madam Clerk Clegg et al.), as the administrative and record-keeping authority for the reviewing judicial body. The Divisional Court'
The Attorney General of Ontario (AGO)
Attention: Crown Counsel, Ms. Im, whose office maintains an enduring supervisory role over the proper conduct of administrative tribunals, the integrity of the provincial justice sys
The Attorney General of Canada (AGC)
Attention: Legal Counsel, whose interest is necessarily engaged when questions of fundamental justice, the Charter implications of procedural failures, and the possible systemic fail
The considered inclusion of these esteemed entities of sovereign oversight constitutes a necessary, non-supererogatory procedural measure, serving to ensure that the profound proce
comprehensive integrity and efficacious operation of the Canadian judicial and administrative apparatuses. The highly sensitive nature of the emergent fraud claims mandates the atte
specifically, requires full and unreserved awareness of the Respondents' procedural deficiencies in the underlying Tribunal process, as this bears directly upon the quantum and type
Subject Matter of Transmittal

CONCERNING: The formal and definitive enclosure of the Applicant's now perfected and finalized **Notice of Motion Number Three** (NOM #3) and the supplementary, critical **S**

These transmitted documents collectively delineate the *sine qua non* (the essential condition) upon which the Applicant's immediate and urgent request for judicial intervention is pro
seek a definitive ruling. This intervention specifically addresses and seeks definitive redress for the systemic procedural failures, the egregious delays, and the substantiated substanti
NOM #3 constitutes the conclusive demand for remedy based upon an uncontroverted record and the inherent authority vested in the reviewing court to correct patent procedural irre
Correspondence: Substantive Submissions

To the Esteemed Recipients and Affected Parties, formal salutations and unequivocal notice are hereby extended:
This instrument is addressed to the aforementioned Divisional Court proceeding, DC-24-00000718-00JR, thereby effectuating the official and legally significant service of the Appli
procedurally predetermined by the Respondents' documented and persistent defaults in filing, thereby compelling the Court's subsequent ruling *ex parte* if necessary.
Section I: The Transmittal of Definitive Filings and Evidentiary Submission

Pursuant to the mandatory procedural requisites stipulated by the Tribunal and the fundamental, inherent requirements of *natural justice* and the *duty of candour* owed to the court, a
This portfolio is comprised of the following two foundational submissions, both of which are central to the prompt, conclusive, and legally sound adjudication of the instant motion:

1. The Applicant's **Statutory Declaration,** which was solemnly executed on the fourteenth day of November, MMXV. This declaration, a pivotal evidentiary instrument, has bee
   Notwithstanding the documented service upon opposing counsel, the absence of any formal rejoinder or evidentiary rebuttal results in the conclusive, uncontroverte
   procedural derelictions and substantive *mala fides* in the underlying dispute. Its contents are predicated upon personal knowledge and documentation which constitute *res gest*
   Procedure, a mechanism the Respondents have conspicuously failed to employ. The uncontroverted status of this sworn evidence renders any future attempts to introduce cont
2. The Applicant's finalized and perfected **Notice of Motion Number Three (NOM #3)**, bearing the date of today's execution. This document meticulously articulates the compl
   serves as the definitive statement of the Applicant's current procedural posture and the consequential remedies sought under the *Courts of Justice Act*, particularly concerning t

The simultaneous service of these definitive filings operates to remove any conceivable or potential procedural impediment to the motion's ultimate disposition by the Divisional Co
expired, requiring a prompt resolution of the resulting procedural *impasse* through the immediate enforcement of the procedural *Rules*.

Section II: Extrapolation of Non-Appearance and Consequent Legal Implication

The **conspicuous and profoundly concerning absence** of any substantive, defensible, and formal rejoinder to the antecedent correspondence, transmitted on the twenty-sixth day of
and *unassailable syllogistic* extrapolation regarding the Respondents' procedural posture and, indeed, their *bona fides* in this protracted litigation. Such protracted and unexplained p
progression of the matter, conduct which could be conclusively construed as an *abuse of process* and a contemptuous disregard for the judicial process.
This protracted and demonstrated failure confirms, unequivocally, that the Licence Appeal Tribunal and the Respondent Insurance Corporations have **manifestly and deliberately es**
specifically referencing Rule 37 pertaining to Notices of Appearance and defence filing deadlines. This is not a mere technical oversight or venial error of minimal consequence; it c
failure to file a defence is tantamount to an admission of the Applicant's claims for the purposes of this motion.
Sub-Section A: The Undisclosed Professional Retainer and Appearance of Impropriety

As is meticulously documented herein, the Applicant recently ascertained that **Mr. Sinnadurai** served as counsel to **Madam Justice Shore**, an association which, although potential
circumstance is particularly notable given that Mr. Sinnadurai was the sole, insistent point of contact designated for *all* requests for records involving the Undisclosed Criminal Proc
tie to a senior member of the judiciary raises profound concerns regarding the **duty of institutional neutrality**. The selection of Mr. Sinnadurai for this sensitive and exclusionary ro
confidence of the Applicant in the impartiality of the document production process. The legal ramifications of such a confluence of professional associations and designated roles, pa
conflict of interest, bias, or preferential treatment in the handling of sensitive judicial and governmental records cannot be ignored by this Court. *Res ipsa loquitur* (The thing speaks

Sub-Section B: Procedural Forfeiture, Non-Discretionary Curative Orders, and Legal *Estoppel*

This operational omission (failure to file a Defence) constitutes a **procedural forfeiture** of the highest order, resulting in a **tacit and undeniable abandonment** of the entitlement to
the Applicant's narrative or the facts attested to in the Statutory Declaration. By failing to avail themselves of the prescribed procedural mechanisms for reply within the designated ti
that is entirely self-imposed and wholly attributable to their procedural choices.
A direct and binding admonition is hereby issued that the Licence Appeal Tribunal and the Respondent Insurance Corporations are under a strict, non-delegable obligation to actively
non-delivery of the requisite Notices of Appearance, prior to any possible consideration of their standing being deemed *in bonis* (in good order) before this Honourable Court. This o
subsequent attempt by the Respondents to participate in the proceedings must be dismissed *in limine* (at the threshold) due to fundamental lack of standing.

Consequently, by direct operation of this material, persistent, and unrectified procedural default, the entirety of the Applicant's proposed conclusions, legal assertions, and factual pre
procedural failure, is singularly and overwhelmingly in favour of the Applicant, thereby necessitating the **mandatory and non-discretionary allowance** of the consequential relief s
related ethical anomalies, is thus duty-bound to grant the Orders requested in the enclosed **NOM #3** to restore the procedural *equilibrium*, deter similar future misconduct, and secure
Attachments, which shall include the statutory declaration noted above, are to follow separately, attended by filing in the new Ontario Court Case and Document Portal (OCPP) in ac

The Applicant's factum, motion record, confirmation of motion, draft orders *et al* shall follow promptly for the purpose of complete procedural compliance and final submission to th
I reserve the right to rely on this correspondence for any lawful purpose inclusive of costs.

Respectfully submitted,
/s/ Mr. Kevin A. McLean (BA, JD, CIM)
Mr. Kevin A. McLean (BA, JD, CIM)

Yours faithfully,

/KAM

Mr. Kevin A. McLean (BA, JD, CIM)

Sender's name: Mr. Kevin Alexander McLean (BA, JD, CIM)

Sender's address: 410-775 King Street West, Toronto, Ontario, M5V 2K3

Sender's Telephone Number: (647) 370-9354

Sender's email address: mcleansettlement@gmail.com

On Sun, Oct 26, 2025 at 7:25 PM Mr. Kevin McLean <mcleansettlement@gmail.com> wrote:

PRIVATE AND CONFIDENTIAL
Via Electronic Transmission
WITH PREJUDICE
Date: October 26, 2025

Creation Method: Document dictated utilizing Voice Recognition Software commencing on October 24, 2025, necessitated by the emergence of further facts and/or the potential di

Court file number: DC-24-00000718-00JR
Type of document: Electronic Mail
Short title of proceeding: *McLean v. TDHA et al*
Party: Mr. Kevin A. McLean (B.A., J.D, CIM) (mcleansettlement@gmail.com)

The Licence Appeal Tribunal (LAT)
Kind Attention: Mr. Boyce, Registrar or Designated Counsel

Respondent Insurance Companies
TD Insurance Home and Auto (TDHA)
Scotia-affiliated National Insurance Company (SNIC)
TD General Insurance Company (TDGIC)

COPIED TO:

The Divisional Court
Attention: Clerk of the Court (Madam Clerk Clegg et al.)

COPIED TO:

Attorney General of Ontario (AGO)
Kind Attention: Ms. Im, Crown Counsel

COPIED TO:

Attorney General of Canada (AGC)
Kind Attention: Legal Counsel

Subject I: Respectful Query and **Urgent Request of the Respondents (LAT and Respondent Insurance Companies)** – Formal demand for copies of evidentiary proof concern the **Notice of Appearance** by the Licence Appeal Tribunal (LAT), with particular emphasis on the manifest failure to transmit the document to the Applicant via the **exclusive a** Maciel Milene directed to the address reserved solely for the **LAT Proceeding**: mcleansniclat@gmail.com).

Subject II: Respectful Query and **Formal Demand** – Requisition for copies of evidentiary proof concerning the complete and procedurally sound **"Delivery"** (Service and Filed I (Collectively, the "Subjects")

Dear Sirs/Mesdames/Other Gender-Neutral Pronouns:

This comprehensive missive is hereby formally tendered concerning the aforementioned Subjects of correspondence, necessitating an immediate and definitive clarification regard reference or inclusion). The finite yet invaluable institutional and human resources of the recipients are profoundly valued, which consideration is precisely why an immense and *mutandis* (*with the necessary changes having been made*), all definitions and designations from previously, indirectly or directly, cited correspondence are adopted. **I refer to t** superfluous formality or a suggestion of best practice; rather, it constitutes an **indispensable, constitutional foundation** for the proper, lawful exercise of **judicial authority** and derogation therefrom possesses the potential to fundamentally impair the substantive rights of a litigant, thereby undermining the principles of **due process** and compelling the cou

PREAMBLE OF INTENT AND RESERVED RIGHTS: DEMAND FOR STRICT PROOF AND PROCEDURAL NULLITIES

The Respondents herein are hereby put to **strict proof**, requiring the production of unmanipulated documentation as mandated by law. These respectful and courtesy requisitions a demonstrating filing with proof of service (a requirement of two documents) or such documents shall be absent. The absence of such documentation would not constitute a mere i failures are not voidable by an applicant, such as the filing of a record of proceeding forthwith albeit under a statute and not a regulation. Consequently, all subsequent steps taken Furthermore, pursuant to the judicial distinction articulated in the British Columbia Court of Appeal's ruling in ***Long v. Red Branch Investments***, which differentiated between th instant Judicial Review Application before the Divisional Court. To the extent that documents were purportedly filed by any Respondents subsequent to the alleged non-filings (i.e unauthorized uploading of documents to the electronic **Case Center**, should an invitation have been proffered to the Respondents without the co-equal and simultaneous issuance grounds of insufficient or complete lack of formal notice, precisely because the fundamental initial procedural steps remain **void ab initio**.
This mandates that the subsequent steps taken by the Divisional Court, which may have involved court staff in the court office, including but not limited to Madam Registrar Cleg not in relation to steps that were aligned with the statute in the JRPA (i.e., heard in a summary fashion on the record). The preservation of the court's institutional legitimacy hinges
The Applicant further asserts that the purported assignment of **The Honourable Madam Justice Shore** to take carriage of the JRPA Proceeding is also **void *ab initio*** because no d of the NOA defect and forms a separate, fatal jurisdictional challenge to the management of this case.

I. Detailed Recitation of Material Facts and Precedent Events (Procedural Courtesy)

A comprehensive and precise recitation of the operative facts pertinent to the *tempus* preceding this query is herein commenced. On November 15, 2024, the **JRPA Application** application under Court File Number DC-24-00000718-00JR. This initiation of process, which constitutes the **genesis** of the Divisional Court's jurisdiction, vested in the Court th Court of Justice, instituted a new and separate legal proceeding. This judicial review, by its very nature, necessitated the formal designation of a specific electronic address, mcle any associated email channel, which became *functus officio* (*having performed its office*) upon the issuance of the final LAT decision (which is distinct from a "last decision"). N Leaving that aside, Mr. Boyce conflated the prematurity doctrine with the sometimes utilized rule when there are no interlocutory orders of "rule against bifurcation of administrati

This correspondence is afforded as an extended professional courtesy, and action is proceeded upon out of an **abundance of caution** (*ex cautela abundanti*) to ensure that docume by the gravity of maintaining a pristine and unimpeachable documentary record, a requirement that is geometrically amplified in matters of public law and judicial review where (served, filed, and with proof of service), and proceedings, thereby necessitating the expenditure of further public and private resources to rectify what ought to have been a st jurisdictional procedural irregularity, thereby ensuring the integrity of the judicial review process remains **sacrosanct** and immune to collateral attack based on a flawed record. **Th**

II. *Corpus Delicti* – The Deficiency in Formal Delivery and the Imperative of Strict Compliance

It remains **entirely unknown** to the Applicant, who is the principal adversely affected party, whether the requisite and complete **"delivery"** of the **Notices of Appearances** was c deficiency relates directly to the **substantive jurisdictional steps** necessary to confirm the Respondents' formal participation and their unequivocal, lawful submission to the cou standard of substantial compliance, which is often reserved for non-jurisdictional matters). This rigour is applied precisely because the procedural requirement, such as proper s **complete and authentic**. This deficiency or **lacuna** in the official court record necessitates the immediate and forthwith resolution articulated in the subsequent section of this corr

A. The *Ratio Decidendi* Regarding the Licence Appeal Tribunal and Procedural Prejudice

The **Licence Appeal Tribunal** (LAT), the administrative body under review, forwarded an electronic copy of its **Notice of Appearance** dated November 27, 2024, by way of definition of **"delivery,"** which, by the clear and unambiguous wording of **Rule 1.03** and the related service provisions under **Rule 16**, inexorably demands the **conjoined requir** electronic mail exclusively dedicated to the antecedent and *sub judice* **LAT Proceeding** (mcleansniclat@gmail.com). This address is **materially distinct** and **pro** (**mcleansettlement@gmail.com**). The failure to use the designated email address is not a clerical error; it actively undermines the integrity of the Applicant's digital record-ke This lack of diligence by the LAT in ensuring proper service fundamentally violates the principle of **natural justice**, which dictates that a party must have adequate notice of the ac

B. The *Quid Pro Quo* Regarding the Respondent Insurance Companies and the Onus Probandi

Similarly, the **Respondent Insurance Companies**—TDHA, SNIC, and TDGIC—electronically transmitted their **Notice of Appearance** on December 3, 2024. A comparable, if r *probandi* (*burden of proof*) rests squarely and solely upon the Respondents—highly sophisticated corporate entities represented by experienced legal counsel—to furnish independ **Proof of Service** affidavit or certification **simultaneously filed** and accepted within the **JSO Portal**, represents an incomplete and potentially invalid procedural step. The *quic* Appearance. Absent this strict demonstration, the Respondents cannot be considered **"parties"** properly before the court and any subsequent steps they take, or that are taken on th

III. Demand for Production and Temporal Stipulation (Exigence and Efficiency)

In recognition of the self-evident fact that the production of independent and indisputable evidence—specifically, a filed copy *via* the **JSO Portal** bearing an official date-stamp a immediate production of the following is formally and expeditiously requested:

1. Filed **Notices of Appearance** that bear the requisite **JSO Portal** acceptance stamp, clearly indicating the date of official filing, thereby confirming the existence of the docur
2. Filed **Notices of Appearance with proof of service** that are demonstrably appended to the filed document, certifying service upon the Applicant at the correct **JRPA App (where applicable)**.

The Respondents are therefore put to **strict proof** to **forthwith** produce the filed NOA, with stamping on the same, and the associated proof of service. The failure to meet th **indefeasible**. **This strict temporal requirement is necessitated by the principle that judicial efficiency cannot take precedence over the fundamental integrity of the judici**

IV. *Nisi Prius* – Legal Consequences, Conflicts, and Judicial Nullity

Should satisfactory evidence of the complete and proper **"delivery"** of the aforesaid documents not be received forthwith, the Applicant shall proceed, without further notificati finalization of the **Factum** and **Motion Record** shall be executed *sans* the inclusion of any **Notices of Appearances** in the court record, thus entirely precluding any necessity t subsequent action thereunder procedurally null and void. The Applicant reserves the right to seek costs against any Respondent or third party that acted without procedural foundat

A. The Unlawful Assignment or non-assignment or non-direct: A Newly Discovered Fact or presumed fact subject to dispute - Challenge under Rule 77.07

The Applicant challenges the fundamental authority under which the proceeding has been managed, drawing attention to **Rule 77.07** of the *Rules of Civil Procedure*:

To Whom Made
77.07 (1) A motion may be made only to a judge or associate judge.
Same, Particular Judge
(2) If a direction is made under subrule 77.06 (1) for all steps in a proceeding to be heard by a particular judge, then any motions in the proceeding shall be made to that judge.

The Applicant asserts that **no direction was made** by the Chief Justice (CJ) of the Superior Court of Justice (SCJ), the Associate Chief Justice (ACJ) of the SCJ, or a Local Admir administrative function of assignment must be performed by the judiciary, not court staff, to maintain the integrity of judicial independence and the constitutional separation of pow The unassailable corollary, based on the absence of filed or disclosed proof of direction, is that, in the absence of a proper direction or assignment by the requisite Judicial Authorit **to herself in an unlawful fashion**. The result is that any step taken by the named judge to take carriage of the JRPA Proceeding, including any attempt to curtail the Applicant's pr ***ab initio*** assignment or direction, as the foundational prerequisite for the exercise of authority was never lawfully established. The reference in any endorsement to a case manag **practice that bypasses the mandatory *Rule 77.06(1)* direction would be *ultra vires* (beyond the court's powers) and fundamentally ineffective.**

B. Void *Ab Initio* Steps, Conflict of Interest, and Judicial Misconduct

The Applicant notes that, irrespective of whether the failure to file the NOAs is an irregularity (attackable under **Rule 2.02**) or a nullity (attackable in any event), the subsequent st **the legitimacy of this JRPA, go to the foundation of judicial independence, and may collectively constitute a novel issue of fraud on the court by a judge herself, an un Shore's** prior judicial involvement in a separate, undisclosed **"Ex Parte In Camera Unrecorded Hearings Unretained Indictment Process"** and her prior partnership at Epstei constitutional test for disqualifying a judge, as articulated by the Supreme Court of Canada in cases such as ***R. v. S. (R.D.)***. A reasonable person, informed of the facts, would concl The Applicant further asserts that **The Honourable Madam Justice Shore's** engagement in the JRPA Proceeding without compliance with the law (i.e., **self-assignment** contrary **Judges Act** concerning judicial independence, impartiality, and integrity. This failure to recuse herself upon prompt objection, and her alleged **misstatements of law** on Octobe management or access to transcripts—suggest a pattern of conduct that undermines the perceived fairness of the process.
Furthermore, the lack of proper assignment means that:

1. The Respondents were not **"parties"** under **Rule 77.05(4)** as they failed to **"Deliver"** a first defence (NOA) with proof of service. This failure to become *de jure* parties pre
2. **The Honourable Madam Justice Shore** could not compel any conference call or appearance under **Rule 77.04(2)**:
   77.04 (2) A judge or associate judge may, on his or her own initiative, require the parties to appear before him or her or to participate in a conference call to deal with any m
   Since the Respondents were not legally "parties," and the assignment was void ab initio, no authority existed for the named judge to compel attendance or conduct a case co
3. **The Honourable Madam Justice Shore** could not technically assign a case for case management to herself, as the power to assign is vested in the CJ, ACJ, or LAJ (as per **inherent jurisdiction cannot be used to contravene clear statutory or regulatory mandates.**

The Applicant reiterates that this failure to comply with the rules, coupled with the alleged undisclosed prior judicial involvement and conflicts of interest, underscores that the ne newly discovered facts and evidence of fraud as it becomes known.

V. Appendix: Cited Legal Authorities and Maxims

This Appendix provides an exhaustive catalogue of the primary and secondary legal authorities and Latin maxims referenced in this correspondence, ensuring transparency and fac

A. Rules of Civil Procedure

Authority	Description
Rules of Civil Procedure (R.R.O. 1990, Reg. 194)	The primary procedural framework governing all civil proceedings in the Superior Court of Justice, including the Division
Rule 1.03 **(Definition of "Deliver")**	A specific provision within the *Rules* that provides a definitive interpretation of key procedural terms.
Rule 2.02	Pertains to the ability of the court to set aside steps where there has been a **procedural irregularity** (curable defect).
Rule 59.06	Pertains to setting aside or varying judgments or orders based on **newly discovered facts and/or fraud**.
Rule 77.04(2)	Permits a judge to compel the **parties** to a conference or appearance for case management issues.
Rule 77.05(4)	Outlines the criteria for assigning a proceeding for case management, with the power reserved to the Regional Senior Judg
Rule 77.06(1)	The rule authorizing the requisite judicial authority (CJ, ACJ, or LAJ) to make a **direction** for a particular judge to hear al
Rule 77.07(2)	The rule mandating that motions be heard by a particular judge *only if* a direction was made under *Rule 77.06(1)*.
Form 16B or *16B.1*	The prescribed forms for **Proof of Service** used in Ontario proceedings.

B. Legislation and Jurisprudence

Authority	Description
Judicial Review Procedure Act (JRPA)	The statute governing the Applicant's proceeding.
Courts of Justice Act (CJA) **Section 75(1)**	Outlines the powers and duties of a judge with authority to direct and supervise sittings and assignment of judicial duties.
Judges Act (Federal)	The federal statute governing the conduct and removal of federally appointed judges.
R. v. S. (R.D.) **(SCC)**	Supreme Court of Canada decision setting out the test for **reasonable apprehension of bias**.
Long v. Red Branch Investments **(BCCA)**	Jurisprudence from the British Columbia Court of Appeal providing a distinguishing analysis of the procedural requirements in d

C. Latin Maxims and Phrases

Latin Maxim	Translation	Contextual Application in Missive
Ultra Vires	Beyond the powers.	Used to describe the unauthorized nature of the purported judicial assignment.
Void Ab Initio	Void from the beginning.	The critical legal conclusion regarding non-delivered documents and the subsequent lack of authority.
Onus Probandi	The burden of proof.	Establishes that the Respondents bear the sole legal responsibility to prove they complied with **"delivery."**
Ex Cautela Abundanti	Out of an abundance of caution.	Justifies the pre-emptive, rigorous nature of this formal inquiry.
Functus Officio	Having performed its office.	Used to describe the email address dedicated to the LAT Proceeding, which became irrelevant upon filing the JRP
Lex Fori	The law of the forum.	Emphasizes that the *Rules of Civil Procedure* are the mandatory law of the Divisional Court.
Nisi Prius	Unless before.	Used formally to structure a conditional legal consequence (i.e., *unless* evidence is provided, then X will occur).

The right is expressly reserved to rely upon this correspondence for any and all lawful purposes, including the submission of this missive as an exhibit in the Applicant's upcoming

I reserve the right to rely on this correspondence for any lawful purpose.

I cordially denote for the LAT and the Respondent Insurance Companies to govern themselves accordingly especially in relation to the officers of the court as the demand above is

I thank the innocent persons for their patience while I discovered new facts and fraud in the most diligent and painstaking fashion as, inter alia, evidenced by this comprehensive le

Yours most appreciatively and gratefully,

/s/Mr. Kevin A. McLean (BA, JD, CIM)

Mr. Kevin A. McLean (BA, JD, CIM) (he/him)

Yours faithfully,

/KAM

Mr. Kevin A. McLean (BA, JD, CIM)

Sender's name: Mr. Kevin Alexander McLean (BA, JD, CIM)

Sender's address: 410-775 King Street West, Toronto, Ontario, M5V 2K3

Sender's Telephone Number: (647) 370-9354

Sender's email address: mcleansettlement@gmail.com

On Tue, Oct 14, 2025 at 9:54 AM Mr. Kevin McLean <mcleansettlement@gmail.com> wrote:

> October 14, 2025
>
> **VIA EMAIL**
>
> Urgent filing via email pursuant to the *Consolidated Practice Direction for Divisional Court Proceedings* effective June 15, 2023, issued by The Honourable Chief Justice of th
> "Valid Practice Direction"), mores particularized pursuant to and under section 16 *et al* to the ONSC Divisional Court (Toronto Region))
>
> -
> **Court file number**: DC-24-00000718-00JR
> **Type of document**: email with attachment (Affidavit #28)
> **Short title of proceeding**: *McLean v. TDHA et al*
> **Party:** Mr. Kevin A. McLean (B.A., J.D, CIM) (mcleansettlement@gmail.com)
> -
> Re: My statutory declaration of October 13, 2025 – timing regarding the same – material development on late Friday afternoon after making, filing and serving my NOM #3
>
> Re #2: factum, motion record et al to follow upon my return from delivery of prescribed fees et al involving access to digital recordings from the case conferences et al
>
> Dear Sirs/Mesdames/Other Gender-Neutral Pronouns
>
> **I. Preliminary Overture and Foundational Context**
>
> **To: The Esteemed Recipients of the Court and Counsel to the various respondents**
>
> I pen this communication concerning the aforementioned proceeding. Subsequent to the timely filing and service of my *Notice of Motion* No. 3 (hereinafter "NOM No. 3") h
> concerning my requisite *Transcript Order Form* for the digital audio recordings of the case management conferences.
>
> The tenor and substance of this communication mandated a meticulous re-evaluation of the extant factual matrix and the applicable jurisprudence governing the release of court r
>
> It is self-evident, *ex facie* the contents of the perfected NOM No. 3 transmitted (made, urgently filed and served) on Friday, October 10, 2025, that The Honourable Madam Just
> involvement been unequivocally acknowledged by the Court at this juncture. Notwithstanding this protracted obfuscation, a sufficient quantum of investigative due diligence, sp
> For the purposes of immediate reference and to substantiate the imperative for the annexed statutory declaration, I reproduce the following sworn statement:
>
> "I verily believe that The Honourable Madam Justice Shore had prior judicial involvement with myself in the referenced *ex parte in camera* criminal proceedings or hearings, wh
>
> In light of this recent disclosure and its resultant exigency—discovered during the *post-meridiem* hours of Friday, October 10, 2025, immediately preceding a statutory holiday
> Superior Court of Justice Recording Management Office (hereinafter the "SCJ RMO") and shall proceed, with all due expedition, to tender the prescribed requisite fee to procure
>
> The remittance of the bank draft shall be effectuated without delay; however, I furnish the statutory declaration of October 13, 2025, *ad interim*. As shall be elucidated *infra*
> consistent with other judicial documents pertaining to this matter, even those wherein her name was previously suppressed.
> **II. Judicial Pronouncement and Formal Legal Dissent**
>
> **A. The Impugned Judicial Directive**
>
> The official electronic communication transmitted by the SCJ RMO on October 10, 2025, relayed the explicit directive and judicial decision emanating from The Honourable Ma
>
> > "Justice Shore has advised as follows:
> >
> > 'The attendances were case management conferences and we do not release transcripts for conferences. No transcript/audio can be provided.'"
>
> Following a comprehensive legal review conducted throughout the long weekend—a necessity to ensure that my subsequent representation to the SCJ RMO was both factually a
>
> > "October 13, 2025

Tab 2

Gmail Mr. Kevin McLean <mcleansettlement@gmail.com>

IMPERATIVE DEMAND FOR IMMEDIATE RESTITUTION OF PROPERTY PROCURED THROUGH MANIFEST FRAUDULENT CONDUCT, AND PEREMPTORY NOTICE CONCERNING THE FILING OF NOTICE OF MOTION #3 IN MCLEAN V. TDHA ET AL (ONTARIO SUPERIOR COURT OF JUSTICE, DIVISIONAL COURT, COURT FILE NO. DC-24-00000718-00JR)

Mr. Kevin McLean <mcleansettlement@gmail.com> Thu, Nov 20, 2025 at 2:39 PM
To: jdunk@himprolaw.com, david.karat@tdinsurance.com, andrew.papadimitropoulos@td.com, andrew.papadimitropoulos@tdinsurance.com

Dear Sirs/Mesdames/Other Gender-Neutral Pronouns: as promised, please find Part 2 attached. Thankyou.

Yours faithfully,

/KAM

Mr. Kevin A. McLean (BA, JD, CIM)

Sender's name: Mr. Kevin Alexander McLean (BA, JD, CIM)

Sender's address: 410-775 King Street West, Toronto, Ontario, M5V 2K3

Sender's Telephone Number: (647) 370-9354

Sender's email address: mcleansettlement@gmail.com

On Thu, Nov 20, 2025 at 2:38 PM Mr. Kevin McLean <mcleansettlement@gmail.com > wrote:

> Date: November 20, 2025
>
> Classification: Private and Confidential
>
> Sending Method: Via Electronic Transmission
>
> Creation Method: Dictated with Voice Recognition Software (All rights are formally reserved to effect any subsequent correction of grammar, syntax, salient qualifiers, or improper double negatives.)
>
> To:
>
> Mr. Papadimitropoulos
>
> Mr. David Karat
>
> Mr. Julia Dunk

Subject I: Court File No. DC-24-00000718-00JR, Superior Court of Justice (Divisional Court)

Subject II: Formal Service of Applicant's Motion Record (NOM #3) in the Matter of McLean v. TD Home and Auto Insurance Company, et al.

I. Introduction to Correspondence and Adopted Definitions

I cordially write regarding the above **Subjects** of this correspondence. I thank you in advance for your judicious time and earnest consideration of this correspondence and its attachments (either by reference or inclusion). I profoundly appreciate your finite yet valuable resources, which is why immense time has been expended to thoroughly research the pertinent legal issues herein and effectuate their precise application to the factual matrix.

I adopt all definitions from previously, indirectly or directly, cited correspondence in this matter.

II. Formal Service of Motion Record and Procedural Necessity

Pursuant to the relevant *Rules of Civil Procedure*, including, *inter alia*, *Rule 37.10(2)*, formal notice is hereby conveyed regarding the instant service of the Applicant's **Motion Record** in this jurisdictional proceeding. Due to the voluminous nature of the documentation comprising the complete record—the **Motion Record** (*"The Record"*) has been necessarily bifurcated into two distinct, yet cohesive, parts.

The Record includes, by way of example and not exclusion, the **Factum of the Applicant** (dated November 18, 2025) and the **Statutory Declaration of the Applicant** (dated October 13, 2025), among other essential *acta*. The complete **Motion Record** is attached hereto and cited as follows:

1. **Attachment A:** "Motion Record - NOM #3 - Part I"
2. **Attachment B:** "Motion Record - NOM #3 - Part II"

III. Prior Omissions to Respond to my Demands and Consequent Service

It is herewith reiterated and confirmed that **The Record** has been served only subsequent to the demonstrable and conspicuous lack of response to the antecedent procedural steps. Specifically, you were previously served with the **Motion Form** and accompanying **Declarations** on the respective dates of October 13, 2025, and November 14, 2025.

The omission of any substantive reply to the aforesaid correspondence and documentation evinces an absence of engagement that has consequently precipitated the mandatory service of the current **Motion Record**. The present procedural step is thus not gratuitous but is instead necessitated by the *status quo ante* established by the Respondents' previous inaction.

IV. Continuance of Demands and Legal Imputability

It is imperative that the enduring and complete validity of all prior demands, claims, and allegations contained within the antecedent correspondence and the appended **Motion Record** be explicitly confirmed. All such demands remain **extant** (*"currently in existence"*) and fully operative.

Furthermore, attention is specifically drawn to the immutable legal maxim: ***ignorantia juris non excusat*** (*"ignorance of the law does not excuse"*). Consequently, the absence of engagement or response cannot be subsequently defended or excused by any alleged lack of knowledge concerning the

procedural or substantive obligations imposed by the *Rules of Civil Procedure*, the *Courts of Justice Act*, or the established jurisprudence of this Province. The Respondents are deemed to possess a constructive, if not actual, cognizance of the entire legal framework governing this proceeding.

V. Relief Sought and Mandate for Responsive Documentation

It remains the Applicant's resolute intention to seek the relief outlined in the appended **Motion Record** accordingly. Consequently, should you deem it appropriate or necessary to file any responsive documentation pertaining to this motion, it is a formal requirement that you serve the Applicant with the same file, simultaneously providing proof of service evidencing compliance with this mandate.

A failure to serve the Applicant with any documentation in relation to this motion shall not only constitute a procedural default but will also compel the Applicant to duly notify both the Divisional Court and the named Respondents of such an absolute omission. This notification shall be effectuated so that the presiding justice may proceed with the adjudication of the motion on a *prima facie* basis, considering only the *acta* tendered by the Applicant.

Part 1 is enclosed and Part 2 will follow.

Yours most appreciatively and gratefully,

/s/Mr. Kevin A. McLean (BA, JD, CIM)

Mr. Kevin A. McLean (BA, JD, CIM) (he/him)

Latin Terms Used:

- *inter alia*: ("among other things")
- *acta*: ("documents/proceedings")
- *status quo ante*: ("the state of affairs that existed before")
- *prima facie*: ("on the face of it")
- ***ignorantia juris non excusat***: ("ignorance of the law does not excuse")

Yours faithfully,

/KAM

Mr. Kevin A. McLean (BA, JD, CIM)

Sender's name: Mr. Kevin Alexander McLean (BA, JD, CIM)

Sender's address: 410-775 King Street West, Toronto, Ontario, M5V 2K3

Sender's Telephone Number: (647) 370-9354

Sender's email address: mcleansettlement@gmail.com

On Mon, Nov 17, 2025 at 6:13 PM Mr. Kevin McLean <mcleansettlement@gmail.com > wrote:

CLASSIFICATION: Private and Confidential

DATE: November 17, 2025

TRANSMISSION MODALITY: Electronic Communication

DOCUMENT ORIGINATION: Dictation utilizing Voice Recognition Software. (A categorical reservation of all rights is maintained concerning the correction of any potential errors in grammar, syntax, crucial qualifying terms, or inappropriate double negatives that may have arisen during the process of transcription.)

TO:

Mr. David Karat

AND TO:

Ms. Julia Dunk

AND TO:

The Epstein Cole LLP Client

FROM: The Applicant, Mr. Kevin A. McLean (B.A., J.D, CIM)
(mcleansettlement@gmail.co)

Procedural Nexus and Identification

COURT FILE NUMBER: DC-24-00000718-00JR

NATURE OF INSTRUMENT: Formal Electronic Communication Incorporating Substantial Documentary Enclosures and Assertions of Procedural Default

SHORT TITLE OF PROCEEDING: McLean v. TDHA et al

PRINCIPAL LITIGANT: The Applicant, Mr. Kevin A. McLean (B.A., J.D, CIM)
(mcleansettlement@gmail.co)

Subject I and Subject II

SUBJECT I: FORMAL CONFIRMATION OF SERVICE: Notice of Motion #3 (NOM #3) and Assertion of Material Procedural Default and Unlawful Retention of Stolen Property (Fraud upon Fraud)

SUBJECT II: DC-24-00000718-00JR: *McLean v. TDHA et al* — Precipitating Dereliction and Remediation Mandate in *Locus Poenitentiae* Pertaining to Feloniously Expropriated Assets, Fraudulent Misrepresentation, Extortionate Duress, and Subornation of Bribery
(The "Correspondence Subjects")

Statement of Purpose and Adopted Lexicon

Reference is hereby formally effectuated with respect to the aforementioned **Correspondence Subjects** of this instrument. Gratitude is herewith extended for the forthcoming consideration of this communication and its ancillary documentation (by reference or inclusion) (**"Documentary Enclosures"**). Appreciation is evinced for the necessity of respecting finite yet valuable resources; consequently, a substantial temporal commitment has been dedicated to the comprehensive legal research and the subsequent application of salient legal principles to the operative facts herein. All previously, indirectly or directly, cited correspondence shall serve as the source for the adoption of established definitions (**"Prior Definitions"**).

Execution of Service and Determination of Substantive Dereliction

This instrument constitutes the unequivocal and requisite formal confirmation that the service of **Notice of Motion #3** (**"NOM #3"**), a substantial procedural implement demanding judicial intervention, has been successfully executed upon the recipients. This extraordinary recourse was regrettably rendered necessary by the manifest and continuing dereliction of duty, specifically evidenced by the failure to effectuate the **Restitution of Proprietary Assets** by **Mr. Karat** on the stipulated date of **October 25, 2024** (**"Procedural Default"**).

The aforementioned **Procedural Default** is inextricably linked with a concomitant series of flagrant *malfeasance*, encompassing, *inter alia*, fraudulent misrepresentation, egregious extortionate duress, and a calculated subornation of bribery. These actions are considered a profound contravention of both the established precepts of the common law of torts and the relevant provisions of the *Criminal Code* (the "*Code*"). As a point of objective legal exposition, the established jurisprudence dictates a stringent precedent concerning the timely and unimpeachable obligation for the **Restitution of Proprietary Assets** following an advancement of a claim of misappropriation, a fundamental principle which appears to have been cavalierly disregarded.

It is asserted, through the deployment of advanced syllogisms and rigorous extrapolations of extant legal principles, that the composite effect of the **Procedural Default** amalgamated with the antecedent **malfeasance** renders the current posture of the Respondent untenable, thereby leading to a conclusion of self-evident liability upon dispassionate consideration.

Jurisdictional Preconditions for Abatement of Proceedings and *Locus Poenitentiae*

The Applicant's position is maintained in a formal and composed manner, remaining resolutely focused upon the resolution of this matter, guided exclusively by the imperative to ensure mandated compliance with the established canons of law.

In the event that an intention to comply forthwith with the peremptory exigencies of the governing statutes is held by the counter-party, specifically the immediate and complete **Restitution of Proprietary Assets**, the doctrine of *locus poenitentiae* (opportunity for repentance) remains, for a delimited temporal period, theoretically accessible. The provision of such immediate and unimpeachable compliance would permit the filing of a **Notice of Compliance** with the Divisional Court by the Applicant, thereby obviating the necessity for the full spectrum of relief sought in **NOM #3** to proceed to adjudication.

In the absence of this immediate and tangible remediation, the Divisional Court will necessarily be fully apprised of the **Procedural Default** and its nexus to the embedded acts of fraud, extortion, and subornation of bribery, which is rendered cogent and robust by the very essence of the **Documentary Enclosures** appended to the original service of **NOM #3**.

Govern yourselves accordingly.

Respectfully and with appreciation for the due process of law,

/Mr. Kevin A. McLean (BA, JD, CIM)

Mr. Kevin A. McLean (BA, JD, CIM) (he/him)

Yours faithfully,

/KAM

Mr. Kevin A. McLean (BA, JD, CIM)

Sender's name: Mr. Kevin Alexander McLean (BA, JD, CIM)

Sender's address: 410-775 King Street West, Toronto, Ontario, M5V 2K3

Sender's Telephone Number: (647) 370-9354

Sender's email address: mcleansettlement@gmail.com

On Fri, Nov 14, 2025 at 5:39 PM Mr. Kevin McLean <mcleansettlement@gmail.com > wrote:

> Please find the second attachment of the declaration after splitting the same.
>
> Yours faithfully,
>
> */KAM*
>
> Mr. Kevin A. McLean (BA, JD, CIM)
>
> Sender's name: Mr. Kevin Alexander McLean (BA, JD, CIM)

Sender's address: 410-775 King Street West, Toronto, Ontario, M5V 2K3

Sender's Telephone Number: (647) 370-9354

Sender's email address: mcleansettlement@gmail.com

On Fri, Nov 14, 2025 at 5:38 PM Mr. Kevin McLean <mcleansettlement@gmail.com > wrote:

> Dear Sirs/Mesdames/Other Gender-Neutral Pronouns:
>
> It appears that the second attachment may have been too large for one of the email addressees. As such, I have double compressed and split them into two which will be attached separately.
>
> To the extent I do not hear from you by the end of the day, I will proceed accordingly. As these are documents delivered for purposes of a court proceeding and setting aside and unravelling fraud, they are all of course on account of lawful authority.
>
> Thank you.
>
> Yours faithfully,
>
> */KAM*
>
> Mr. Kevin A. McLean (BA, JD, CIM)
>
> Sender's name: Mr. Kevin Alexander McLean (BA, JD, CIM)
>
> Sender's address: 410-775 King Street West, Toronto, Ontario, M5V 2K3
>
> Sender's Telephone Number: (647) 370-9354
>
> Sender's email address: mcleansettlement@gmail.com
>
> On Fri, Nov 14, 2025 at 4:20 PM Mr. Kevin McLean <mcleansettlement@gmail.com > wrote:
>
> > Dear Sirs/Mesdames/Other Gender-Neutral Pronouns:
> >
> > Please find the second declaration attached which is now attached due to the combined size of the previous.

I reserve the right to rely on this correspondence in relation to interim, interlocutory and injunctive relief, and final relief along with costs.

Yours faithfully,

/KAM

Mr. Kevin A. McLean (BA, JD, CIM)

Sender's name: Mr. Kevin Alexander McLean (BA, JD, CIM)

Sender's address: 410-775 King Street West, Toronto, Ontario, M5V 2K3

Sender's Telephone Number: (647) 370-9354

Sender's email address: mcleansettlement@gmail.com

On Fri, Nov 14, 2025 at 4:18 PM Mr. Kevin McLean <mcleansettlement@gmail.com > wrote:

SUBJECT: IMPERATIVE DEMAND FOR IMMEDIATE RESTITUTION OF PROPERTY PROCURED THROUGH MANIFEST FRAUDULENT CONDUCT, AND PEREMPTORY NOTICE CONCERNING THE FILING OF NOTICE OF MOTION #3 IN *MCLEAN V. TDHA ET AL* (ONTARIO SUPERIOR COURT OF JUSTICE, DIVISIONAL COURT, COURT FILE NO. DC-24-00000718-00JR)

DATE: November 14, 2025

TO:

Mr. David Karat

Mr. Papadimitropoulos

Ms. Julia Dunk

CC or to be forwarded to

Respondents who failed to file and deliver

I. PEREMPTORY STIPULATION AND REQUISITE AFFIRMATIVE CONFIRMATION

Dear Sirs, Mesdames, or Other Addressees Represented by Gender-Neutral Pronouns:

This formal communication is tendered with a singular, exigent, and unambiguous objective: to provide a final *locus poenitentiae* (opportunity for repentance or change of mind) for the rectification of egregious malfeasance directly antecedent to the procurement and subsequent retention of property—chattels or otherwise—which stands demonstrably predicated upon manifest **fraudulent conduct**. Pursuant to this imperative, you are hereby afforded a final, non-negotiable terminus, namely the **end of business day today, November 14, 2025**, to issue an unequivocal, affirmative stipulation confirming your definitive intent to effect the *reversion* and *restitution* of the aforementioned property.

This concession, in the form of a final private pre-litigation opportunity, emanates solely from the Applicant's preference for an efficient and expedited resolution that obviates the necessity for further protracted judicial intervention, a preference which should under no circumstances be misconstrued as an attenuation or diminution of the gravamen of the underlying claims. The fraudulent paradigm upon which the proprietary deprivation was meticulously conceived and executed demands nothing less than the immediate *status quo ante* restoration, thereby necessitating an immediate and voluntary cessation of the ongoing tortious and potentially criminal maintenance of control over assets belonging rightfully and exclusively to the Applicant.

Dereliction in providing this requisite affirmative stipulation prior to the peremptory terminus shall be construed, *per se*, as an irrevocable declination, serving as a conclusive waiver of any future consideration for amicable settlement. Such refusal will thereby compel and necessitate the immediate and comprehensive exercise of all extant legal rights and remedies available to the Applicant, both in *civil* jurisprudence—including but not limited to equitable remedies such as *constructive trust*, *restitutionary relief*, and the process of **tracing** of proprietary assets—and potentially engaging the full purview of the *Criminal Code* jurisdiction. Should an affirmative stipulation be punctually received, thereby evidencing a belated but commendable recognition of your remedial or fiduciary obligation, the Applicant shall, forthwith, transmit a separate missive specifying end of day deadline and the precise designated location for the coordinated collection and pickup of the property, ensuring the expeditious and unencumbered conclusion of this protracted proprietary dispute.

II. ENCLOSED EVIDENTIARY DOCUMENTATION FOR NOM #3

This section confirms the formal enclosure of evidentiary materials intended for the impending Notice of Motion #3 (NOM #3) within the matter identified by **Divisional Court File No. DC-24-00000718-00JR**. Enclosed herewith, and integrated by reference into the corpus of this communication for the purpose of affording you full and timely notice pursuant to the dictates of the *Rules of Civil Procedure*, are the two (2) comprehensive Statutory Declarations executed by the Applicant, Mr. Kevin Alexander McLean, dated **October 13, 2025** and **November 14, 2025**. These instruments are specifically designated for immediate inclusion and formal consideration within NOM #3, which shall be filed with the Honourable Divisional Court *instanter* upon the expiration of the present deadline without satisfactory compliance, consistent with the procedural requirements of *Rule 37*. The Declarations themselves carry significant evidentiary weight, constituting formal attestations of fact which, if necessary, are readily

convertible into a formal affidavit sworn pursuant to the *Evidence Act* (Ontario), and will serve as the evidentiary foundation for the relief sought.

As will be manifestly apparent from the aforementioned Declarations—the contents of which may be subsequently formalized into a sworn affidavit, *si necessitate est* (if it is necessary)—the conduct of Mr. Papadimitropoulos is therein meticulously delineated, encompassing serious allegations of **public mischief** and further **fraudulent activity** pertaining to interactions with the Toronto Police Service's 55 Division (specifically referencing Police Officer Bourdages). This alarming confluence of civil and potentially criminal allegations illuminates the profound gravity of the malfeasance and establishes a clear, premeditated pattern of calculated deception intended to manipulate legal and law enforcement processes. While the Applicant's principal focus remains fixed upon the expedited resolution of the civil action, strictly adhering to the fundamental legal maxim *ubi jus ibi remedium* (where there is a right, there is a remedy), the right to pursue all parallel or auxiliary legal avenues, including the submission of a formal police complaint, remains unequivocally reserved and unmitigated.

The considered inclusion of Ms. Julia Dunk as a necessary and essential party to this definitive ultimatum is directly attributable to the compelling evidentiary nexus uncovered during the Applicant's intensive due diligence. This nexus specifically concerns her known **spousal connection** to Mr. Karat, notwithstanding any ostensible legal separation of names observed in the conveyance documentation for the property situated at **591 Fleet Avenue, Oshawa, Ontario**. Her involvement is deemed integral to the comprehensive constellation of facts underpinning the fraudulent procurement, invoking equitable principles of **constructive notice** and the **tracing of property**. **It is explicitly noted that the evidential connections between the addressees and all relevant associated parties have been solidified, at the very least, beyond a reasonable doubt**, establishing a clear factual matrix for the Court's adjudication. Equity's inherent jurisdiction is engaged in this paradigm to follow assets acquired through funds tainted by fraudulent derivation, regardless of the subsequent legal title holder, thereby preventing the unjust enrichment of any individual connected to the original wrong.

III. CONSEQUENCE OF NON-COMPLIANCE AND IMPENDING PROCEEDINGS

This document constitutes the definitive, final opportunity to unilaterally and conscientiously redress the demonstrated **dereliction of probity** and the resulting wrongful appropriation of the Applicant's property, thereby strategically forestalling the inevitable judicial inquiry into this intricate and injurious matter.

A. Professional and Ethical Obligations of Licensees

Furthermore, any addressee who is a member or licensee of a professional regulatory body is hereby formally reminded of the **elevated professional and ethical obligations** incumbent upon their status. Failure to confirm immediate restitution and subsequent judicial findings of fraudulent conduct or participation in the wrongful retention of property may compel the Applicant to file a **formal complaint with the relevant regulatory body** (e.g., Law Society of Ontario, Chartered Professional

Accountants of Canada, etc.). Such proceedings impose profound consequences, including public reprimands, fines, suspension, or the revocation of professional licensure, entirely separate and distinct from the punitive measures administered by the Divisional Court. The preservation of professional integrity necessitates immediate and corrective action in the face of such serious allegations.

B. Judicial Remedies for Sustained Dereliction

Be apprised that in the event of your sustained dereliction to comply with the peremptory deadline articulated herein, the Applicant shall proceed forthwith with the formal filing of NOM #3. Notwithstanding the necessity of this exigent demand, you shall, *ceteris paribus* (all else being equal), be afforded the fundamental entitlement to appropriate notification and the opportunity to respond to the substance of NOM #3, consistent with the dictates of the *Rules of Civil Procedure* and the principles of natural justice. However, your present non-compliance will operate as compelling evidence of an intractable and premeditated refusal to effect an equitable, out-of-court resolution regarding the property's immediate restitution, thereby creating a powerful **syllogism of intent** that will profoundly influence the Court's assessment of your credibility, the merit of your overall defence, and the quantum of judicial remedies imposed.

The consequences flowing from a failure to effect restitution are demonstrably severe, encompassing the potential for adverse findings concerning **contempt of court**—given the inherent jurisdiction of the Superior Court to compel obedience and adherence to the administration of justice—the imposition of substantial **aggravated damages** designed to account for the extraordinary humiliation, distress, and economic injury caused by the calculated manner of the defendants' fraudulent and deceitful conduct, and, most notably, the imposition of exemplary **punitive remedies** designed specifically to censure and denounce such flagrant disregard for the law and the sanctity of proprietary rights. The sustained and deliberate withholding of property predicated on fraud represents an enduring affront to the Court's authority and the integrity of the rule of law, necessitating the most rigorous judicial response to ensure that justice is not merely dispensed, but seen to be dispensed with unequivocal firmness and finality.

I remain available solely for the purpose of receiving the definitive, affirmative confirmation of your intent to initiate restitution prior to the aforementioned deadline.

Yours most respectfully and resolutely,

Mr. Kevin Alexander McLean (B.A., J.D., CIM)

Applicant

Enclosed:

Declaration of October 13, 2024

Yours faithfully,

/KAM

Mr. Kevin A. McLean (BA, JD, CIM)

Sender's name: Mr. Kevin Alexander McLean (BA, JD, CIM)

Sender's address: 410-775 King Street West, Toronto, Ontario, M5V 2K3

Sender's Telephone Number: (647) 370-9354

Sender's email address: mcleansettlement@gmail.com

Motion Record - NOM #3 - Tabs 1 to 21 - Index - Tabulated - APPLICANT - MR MCLEAN - 19-Nov-2025_compressed-1801-3106.pdf
19061K View as HTML Scan and download

Tab 3

Gmail Mr. Kevin McLean <mcleansettlement@gmail.com>

SERVICE OF THE APPLICANT'S MOTION RECORD IN COURT FILE NO. DC-24-00000718-00JR

2 messages

Mr. Kevin McLean <mcleansettlement@gmail.com> Thu, Nov 20, 2025 at 3:01 PM
To: Falguni.Debnath@tps.ca, Legal.Services@torontopolice.on.ca

Date: November 20, 2025
Classification: Private and Confidential

Sending method: Via Electronic Transmission

Creation method: Dictated with Voice Recognition Software (Reservation of rights to correct any grammar, syntax, important qualifiers or improper double negatives)

To: Ms. Falguni Debnath (Falguni.Debnath@tps.ca), Chief Legal Officer of the Toronto Police Service ("TPS"); c/o Legal Services (Legal.Services@torontopolice.on.ca)

Subject I: SERVICE OF THE APPLICANT'S MOTION RECORD IN COURT FILE NO. DC-24-00000718-00JR (The "Motion Record")

Subject II: FOCUS ON EXTRAORDINARY RELIEF PERTAINING TO NON-RESPONDENTS, AS PARTICULARIZED IN THE DRAFT ORDER AT TAB 21 (The "Relief Sought")

I. Formal Introduction and Adoption of Definitions

I cordially write regarding the above **Subjects** of this correspondence. I thank you in advance for your time and consideration of this correspondence and its attachments (by reference or inclusion). I appreciate your finite yet valuable resources which is why I have taken immense time to research the legal issues herein and apply them to the facts herein. The present communication is executed in strict conformity with the highest professional standards, designed to provide comprehensive notification of judicial proceedings that bear consequential and, potentially, mandatory relevance to the administrative operations and public interest mandate of the **Toronto Police Service** ("TPS"). The Applicant is acutely cognizant of the institutional pressures faced by the **TPS**, yet the imperative of judicial rectitude necessitates this formal service.

Furthermore, it is confirmed that I adopt all definitions from previously, indirectly or directly, cited correspondence, thereby ensuring rigorous terminological consistency and precluding any unnecessary ambiguity throughout this formal exchange. The continued use of established vernacular is crucial for the precise articulation of legal concepts. Consequently, all **Relief Sought** is to be interpreted in the broadest possible construction of the *status quo ante* which the Applicant seeks to restore, which, by necessity, implicates remedial measures that transcend the immediate adversarial parties and extend to any non-party whose actions or inactions contributed to the existing legal imbalance or whose assistance is required to effectuate a comprehensive judicial remedy. The underlying policy objective is the achievement of unreserved systemic correction.

II. Purpose of Correspondence and Service of Motion Record

This formal missive serves to effectuate the compulsory service of the Applicant's voluminous and comprehensive **Motion Record**, which has been duly filed in the Ontario Superior Court of Justice (Divisional Court) under Court File No. DC-24-00000718-00JR. The **Motion Record** encompasses the totality of the evidentiary submissions, documentary exhibits, and legal authorities upon which the Applicant will rely in the vigorous prosecution of this application for judicial review and associated extraordinary relief. This body of material presents a cogent and detailed narrative supporting the Applicant's claim for remedial intervention. The service upon the **TPS** is fundamentally predicated upon the procedural necessity of granting full non-party disclosure regarding the specific judicial orders being sought, thereby according procedural fairness given the prospective imposition of institutional obligations.

The comprehensive documentation provided is intended to ensure that the **TPS** possesses full and unfettered opportunity to conduct a thorough and meticulous review of the entire body of material. This is not merely a superfluous formality; rather, it constitutes a critical and indispensable prerequisite for the **TPS** to competently assess the intricate factual matrix and the compelling juridical basis that underpins the imposition of obligations that may flow from the ensuing court order. The sheer magnitude and gravity of the documented **acta**, which address fundamental questions of institutional accountability and procedural oversight, warrant an elevated degree of institutional due diligence and profound scrutiny by your office. This scrutiny must extend not only to the immediate practical consequences of the **Draft Order** but also to the broader legal implications for the **TPS**'s compliance framework under *The Police Services Act* and other relevant *legislation*.

III. Particularization of Extraordinary Relief Pertaining to Non-Respondents

The cardinal focus of this service is the specific, extraordinary relief sought which is directed toward, or necessitates the administrative or operational action of, a non-Respondent party, namely the **TPS**. This particularized **Relief Sought** is comprehensively delineated within the **Draft Order** appended to the **Motion Record** at **Tab 21** ("Draft Order"), which articulates precise, mandatory judicial directives intended to rectify a manifest miscarriage of justice resulting from the underlying administrative process. The relief sought against the **TPS** is fundamentally remedial in nature, seeking not to punish but to compel corrective conduct.

This **Draft Order** specifies judicial directives that, if granted, possess the *ipso facto* effect of imposing certain administrative, operational, or disclosure obligations, thereby requiring a specific, unreserved, and timely course of action by the **TPS**. The Applicant maintains with reasoned confidence that such judicial intervention is not *ultra vires* the jurisdictional mandate of the Divisional Court; conversely, it is asserted that the power to issue such an order is, *prima facie*, unequivocally within the inherent, supervisory, and remedial jurisdiction of the Honourable Court to ensure the efficacy and integrity of the entire judicial process. The inherent jurisdiction of the superior courts of justice, as masters of their own process, extends logically and necessarily to issuing ancillary orders against non-parties whose cooperation is essential to give efficacy to the primary judicial determination and to remedy the underlying grievances enumerated within the **Motion Record**. Failure to seek such relief would constitute a procedural waiver of the Applicant's full right to remedy. The **Draft Order** should be thoroughly reviewed, *in limine*, to appreciate the full, intricate scope of the Applicant's application, which is designed to prevent further erosion of the

Applicant's entrenched rights and to restore the integrity of the institutional processes involved in this matter.

IV. Procedural Requirements for Opposition

The **TPS** is hereby formally and expressly apprised that, should the institution determine that the **Relief Sought**—insofar as it pertains directly or indirectly to the **TPS**'s administrative or institutional functions—warrants intercession by way of opposition, the following procedural steps must be meticulously observed and executed to the requisite judicial standard of diligence and precision:

1. **Service of Documentation:** The **TPS** is strictly mandated to serve upon the undersigned legal counsel comprehensive documentation detailing with forensic precision the legal and factual grounds upon which any opposition is predicated. This documentation must explicitly cite the governing *rules* of civil procedure, relevant *legislation*, and supporting *jurisprudence* defining any potential limitations on the Court's remedial authority over the **TPS**. Mere unsubstantiated assertions, generalized policy objections, or procedural non-compliance will be deemed insufficient and procedurally non-compliant, potentially attracting adverse cost consequences.
2. **Filing with the Court:** Concurrently and without delay, this documentation must be formally filed with the Divisional Court, ensuring the judicial record remains complete and accurate for the Honourable Judge's comprehensive adjudication. Punctuality and adherence to filing rules are mandatory.
3. **Proof of Service:** The requisite documentation must include demonstrable and unimpeachable proof of service upon the Applicant, verifying compliance with the mandatory procedural notice requirements.

The Applicant maintains an objective and neutral tone throughout this correspondence, but respectfully posits that any opposition must necessarily address the advanced syllogisms and detailed extrapolations of legal principles, including those pertaining to public interest duties, the scope of judicial review, and the doctrine of proportionality, which are compellingly presented in the **Motion Record**. The heavy burden rests upon the **TPS** to demonstrate, with legal specificity and evidentiary support, why the extraordinary, yet essential, relief sought would contravene established legal doctrine, or result in a substantial, demonstrable, and irreparable prejudice that fundamentally outweighs the manifest necessity of the proposed judicial intervention to cure the underlying defects in the administrative process.

V. Concluding Sentiment

In concluding this formal service correspondence, the Applicant reiterates his profound conviction that the **Relief Sought** is indispensable for the maintenance of procedural fairness and the elevation of justice in this complex proceeding. The entire application is predicated upon the fundamental belief that institutional accountability is paramount to the proper and ethical functioning of the legal system and that the courts possess the necessary authority to compel remedial actions where administrative bodies fall short of their mandated obligations. The conclusions regarding the necessity of this intervention are, *sub silentio*, rendered entirely self-evident by the documented facts contained within the **Motion Record** and the failure of alternative, less restrictive remedies to achieve the requisite systemic correction. The Applicant anticipates your office's professional and timely acknowledgment of the same.

Yours most appreciatively and gratefully,

/s/Mr. Kevin A. McLean (BA, JD, CIM)

Mr. Kevin A. McLean (BA, JD, CIM) (he/him)

Applicant

Court File No. DC-24-00000718-00JR
Enclosure:
1. Part 1 of 2 of the Applicant's Motion Record for his NOM #3

Yours faithfully,

/KAM

Mr. Kevin A. McLean (BA, JD, CIM)

Sender's name: Mr. Kevin Alexander McLean (BA, JD, CIM)

Sender's address: 410-775 King Street West, Toronto, Ontario, M5V 2K3

Sender's Telephone Number: (647) 370-9354

Sender's email address: mcleansettlement@gmail.com

Motion Record - NOM #3 - Tabs 1 to 21 - Index - Tabulated - APPLICANT - MR MCLEAN - 19-Nov-2025 - PART 1 - PAGES 1 TO 1800 - F AND S.pdf
12159K

Mr. Kevin McLean <mcleansettlement@gmail.com> Fri, Nov 21, 2025 at 11:11 AM
To: Falguni.Debnath@tps.ca, Legal.Services@torontopolice.on.ca

Dear Sirs/Mesdames/Other Gender-Neutral Pronouns:

I was remiss in not including part 2 of 2 of the Motion Record for NOM #3. Please find attached for service on the TPS. Thank you.

On a side note, I reiterate, pursuant to section 29 of the Criminal Code, my request for a copy of the arrest warrant that the TPS relied upon in arresting me. Kindly provide the same forthwith.

Yours faithfully,

/KAM

Mr. Kevin A. McLean (BA, JD, CIM)

Sender's name: Mr. Kevin Alexander McLean (BA, JD, CIM)

Sender's address: 410-775 King Street West, Toronto, Ontario, M5V 2K3

Sender's Telephone Number: (647) 370-9354

Sender's email address: mcleansettlement@gmail.com

[Quoted text hidden]

Motion Record - NOM #3 - Tabs 1 to 21 - Index - Tabulated - APPLICANT - MR MCLEAN - 19-Nov-2025_compressed-1801-3106.pdf
19061K

Tab 4

SERVICE OF THE APPLICANT'S MOTION RECORD IN COURT FILE NO. DC-24-00000718-00JR (The "Motion Record")

2 messages

Mr. Kevin McLean <mcleansettlement@gmail.com> Thu, Nov 20, 2025 at 3:18 PM
To: SOLGEN.Correspondence@ontario.ca, michael.kerzner@pc.ola.org, Minister.SOLGEN@ontario.ca, nicolas.dimarco@ontario.ca, christopher.johns@ontario.ca, joe.dipietro@ontario.ca, jenna.fullerton@ontario.ca

Private and Confidential
Via Electronic Transmission

Date: November 20, 2025

Creation Method: Dictated with Voice Recognition Software (Reservation of rights to correct any grammar, syntax, important qualifiers, or improper double negatives.)

TO:

The Honourable Michael Kerzner

Solicitor General of Ontario

George Drew Bldg, 18th Flr, 25 Grosvenor St

Toronto, Ontario M7A 1Y6

Email Addresses:

SOLGEN.Correspondence@ontario.ca

Senior Staff:

Nicolas Di Marco, Chief of Staff (nicolas.dimarco@ontario.ca)

Christopher Johns, Assistant Deputy Minister (christopher.johns@ontario.ca)

Joe Di Pietro, Executive Assistant (joe.dipietro@ontario.ca)

Jenna Fullerton, Strategic Advisor (jenna.fullerton@ontario.ca)

SUBJECT I: IMPLICATIONS ARISING FROM UNDISCLOSED *CRIMINAL CODE* (THE "*CODE*") *FORM 4 INDICTMENT* (THE "INDICTMENT") AND ASSOCIATED SIGNED ARREST WARRANT (THE "WARRANT"). SUBJECT II: NECESSITY OF PUBLIC ACCOUNTABILITY REGARDING PURPORTED NEXUS BETWEEN THE MINISTRY OF THE SOLICITOR GENERAL (THE "MINISTRY") AND JUDICIAL OFFICERS

Introduction

I cordially write regarding the above **Subjects** of this correspondence. I thank you in advance for your time and consideration of this correspondence and its attachments (by reference or inclusion). I appreciate your finite yet valuable resources which is why I have taken immense time to research the legal issues herein and apply them to the facts herein. I adopt all definitions from previously, indirectly or directly, cited correspondence.

Exposition of the Factual Matrix and Legal Implications

This correspondence is necessitated by a meticulous review of public representations disseminated on the social media platforms associated with the **Ministry of the Solicitor General** (the "**Ministry**"). This extensive scrutiny has given rise to profound concerns regarding the potential **implications** of the *Honourable Michael Kerzner* (the "**Solicitor General**")'s involvement in an ostensibly undisclosed *Criminal Code* (the "***Code***") ***Form 4 Indictment*** (the "**Indictment**") and an associated **"signed arrest warrant"** (the "**Warrant**").

It is submitted that the **Ministry**'s mandate is intrinsically linked to the preservation of public order and the maintenance of the highest standards of integrity within the correctional and policing ecosystems. This is reflected in the official statement that the *Ministry of the Solicitor General* (the "**Ministry**") is responsible for **"the safety and security of communities across Ontario through effective policing, correctional services and emergency services programs,"** which includes promoting policing excellence and maintaining effective correctional programs.

The gravity of the current *status quo* (the "**Current State**") is magnified by the potential nexus purportedly extrapolated from the aforementioned public social media representations. A careful analysis of this publicly available *acta* ("the **Records**") suggests a possible connection between the *Solicitor General* (the "**Solicitor General**"), *Madam Justice Shore* ("Justice Shore"), and *Justice of the Peace Jiri* ("JP Jiri"). Such a connection, if substantiated, raises serious questions concerning the appropriate boundaries and **propriety** of engagement between the Executive arm of government and the independent Judiciary, potentially bordering on *ultra vires* ("beyond the powers") conduct if it impinges upon judicial or ministerial impartiality.

Requisite Standards of Ministerial and Judicial Conduct

The **indicia** available *prima facie* ("on its first appearance") necessitate an immediate and **comprehensive** investigation into the veracity of the claims surrounding the **Indictment** and the **Warrant**. It is axiomatic that the principles of **Ministerial responsibility** and **judicial independence** must be upheld without derogation. Any suggestion of a failure of *mens rea* ("guilty mind") on the part of involved officials—or, conversely, the appearance of **impropriety** *ipso facto* ("by the fact itself")—must be addressed with the utmost **alacrity** and **transparency**.

The *Re: Status of Executive Responsibility* (the "***Status*** Jurisprudence")—which governs the indispensable need for the Executive to operate within the ambit of its **statutory** and **constitutional** authority—is particularly pertinent. It is submitted that the presence of an undisclosed criminal process involving the *Solicitor General* (the "**Solicitor General**") represents a matter of **overwhelming** public interest, demanding a forthright disclosure *in limine* ("at the threshold").

Furthermore, given the **Ministry**'s supervisory and advisory role with respect to the *Ontario Provincial Police* (the "**OPP**"), which provides **"front-line policing services,"** a request is hereby made upon the **OPP** as well, to the extent that it was involved in any capacity concerning the origination or execution of the **Indictment** or the **Warrant**.

Formal Demand for Dispute and Procedural Requirements

Should the *Solicitor General* (the "**Solicitor General**") or the **Ministry** wish to contest, refute, or otherwise provide a substantive rejoinder to the contentions advanced herein, it is formally requested and demanded that such **disputation** be effectuated **exclusively** by way of **formal service** and **filing** with proof of service.

This procedural stricture is mandated to ensure adherence to the formal requirements stipulated in the *Rules of Civil Procedure* (the "***Rules***"), thereby precluding any subsequent claim of **procedural irregularity**.
This correspondence and its attendant concerns are submitted in the earnest hope that the necessity of a formal judicial review process, grounded in the principles of *natural justice* ("Procedural Fairness") and the *Canadian Charter of Rights and Freedoms* (the "***Charter***"), can be obviated through the exercise of **prudent** and **transparent** executive governance.

Conclusion

The underlying factual assertions, while derived from a review of publicly available material, are **grave** and **material** to the public's confidence in the **Ministry** and the administration of justice. The maintenance of the *status quo ante* ("the way things were before") is no longer tenable without a formal and public response.
Yours most appreciatively and gratefully,

/s/Mr. Kevin A. McLean (BA, JD, CIM)

Mr. Kevin A. McLean (BA, JD, CIM)

(he/him)

Enclosure:

1. Part 1 of 2 of the NOM #3 Motion Record

Yours faithfully,

/KAM

Mr. Kevin A. McLean (BA, JD, CIM)

Sender's name: Mr. Kevin Alexander McLean (BA, JD, CIM)

Sender's address: 410-775 King Street West, Toronto, Ontario, M5V 2K3

Sender's Telephone Number: (647) 370-9354

Sender's email address: mcleansettlement@gmail.com

Motion Record - NOM #3 - Tabs 1 to 21 - Index - Tabulated - APPLICANT - MR MCLEAN - 19-Nov-2025 - PART 1 - PAGES 1 TO 1800 - F AND S.pdf
12159K

Mr. Kevin McLean <mcleansettlement@gmail.com> Thu, Nov 20, 2025 at 3:19 PM
To: SOLGEN.Correspondence@ontario.ca, michael.kerzner@pc.ola.org, Minister.SOLGEN@ontario.ca, nicolas.dimarco@ontario.ca, christopher.johns@ontario.ca, joe.dipietro@ontario.ca, jenna.fullerton@ontario.ca

Dear Sirs/Mesdames/Other Gender-Neutral Pronouns:

As promised, please find attached Part 2 of 2.

Yours faithfully,

/KAM

Mr. Kevin A. McLean (BA, JD, CIM)

Sender's name: Mr. Kevin Alexander McLean (BA, JD, CIM)

Sender's address: 410-775 King Street West, Toronto, Ontario, M5V 2K3

Sender's Telephone Number: (647) 370-9354

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Motion Record - NOM #3 - Tabs 1 to 21 - Index - Tabulated - APPLICANT - MR MCLEAN - 19-Nov-2025_compressed-1801-3106.pdf
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Tab 5

Gmail Mr. Kevin McLean <mcleansettlement@gmail.com>

Formal Service of the Applicant's Notice of Motion #3 (“NOM #3”) in Kevin Alexander McLean v. TD Home and Auto Insurance Company, et al., Ontario Superior Court of Justice (Divisional Court), Court File No. DC-24-00000718-00JR.

2 messages

Mr. Kevin McLean <mcleansettlement@gmail.com> Thu, Nov 20, 2025 at 2:51 PM
To: ananthan.sinnadurai@ontario.ca

November 20, 2025

Classification: Private and Confidential
Sending method: Via Electronic Transmission
Creation method: Dictated with Voice Recognition Software (reservation of rights to correct any grammar, syntax, important qualifiers or improper double negatives)
To: Mr. Sinnadurai, Lawyer Licensee ("60614G") MAG - Civil Law Division - Crown Law Office Civil 720 Bay St Toronto, Ontario M7A 2S9 (Legal Counsel to Madam Justice Shore and responsive counsel to the Applicant)

Subject I: **Re: Engagement as Responsive Lawyer Licensee regarding Requests for Documents, Information, and Information Assets in the custody and control, or not in the custody or control of certain court levels and courthouses.**
Subject II: **Formal Service of the Applicant's Notice of Motion #3 (“NOM #3”) in *Kevin Alexander McLean v. TD Home and Auto Insurance Company, et al.*, Ontario Superior Court of Justice (Divisional Court), Court File No. DC-24-00000718-00JR**

I. INTRODUCTION AND DEFINITIONAL ADOPTION

I cordially write regarding the above Subjects of this correspondence. This correspondent proffers profound appreciation *in futuro* for the finite yet invaluable allotment of temporal and intellectual resources necessarily devoted to the perusal and careful consideration of this correspondence and its referenced or appended enclosures. The meticulous effort undertaken to research the extant legal issues and apply them *ad factum* is predicated upon a recognition of your finite yet valuable resources.
I adopt all definitions from previously, indirectly or directly, cited correspondence.

II. PREDICATE FOR FORMAL SERVICE

The present communication serves to effect the requisite formal service of the Applicant's Notice of Motion #3 ("NOM #3") and the initial portion of its supporting Motion Record upon you, pursuant to the *Rules of Civil Procedure* (the "Rules"). This imperative arises directly from your established engagement as the lawyer licensee responsive to the Applicant's preceding and extensive requests for documents, information, and information assets pertaining to various court levels and registries, as previously delineated in correspondence emanating from *mrkevinalexandermcleanbajdcim@gmail.com* (as known to you).
The comprehensive rationale compelling this service, as well as the specific, extraordinary relief sought by the Applicant, is meticulously articulated within the body of the Motion Record. This formal service is a necessary procedural concomitance, ensuring that cognizance of this application, which pertains *inter alia* to the administration and oversight of the judicial process, is duly vested in all interested and relevant parties.

III. ATTACHMENTS AND PENDING SERVICE

Enclosed herewith, and cited by reference as a foundational component of this service, is Part 1 of the Motion Record supporting the aforementioned NOM #3. Part 1, the document entitled **"Motion Record - NOM #3 - Tabs 1 to 21 - Index - Tabulated - APPLICANT - MR MCLEAN - 19-Nov-2025"** (attached hereto), encompasses the principal evidentiary and procedural foundation for the relief sought before the Divisional Court. **Part 1 is attached. Part 2 will follow.**
It is further confirmed that Part 2 of the Motion Record, which shall contain supplementary and ancillary materials, shall be transmitted to you contemporaneously upon its compilation, thereby completing the formal service of the entire motion record, as it currently stands, of documentation supporting NOM #3.

IV. LEGAL AND PROCEDURAL EXTRAPOLATION

The Motion Record meticulously details why the *status quo ante* cannot be permitted to endure, necessitating this procedural intervention. Should the factual and legal premises advanced within the NOM #3 be established *prima facie*, it becomes self-evident that judicial intervention is warranted to remediate the extant deficiencies. This *acta* is not predicated upon a foundation of emotion; rather, it represents the culmination of a cognitive, rigorous, and dispassionate application of legal principles to the ascertained facts.
The relief sought therein, including the adjudication of Charter entitlements, is designed to restore a normative legal equilibrium. The Applicant's submissions posit a cogent syllogism: where actions or inactions by an entity are found to be *ultra vires* or otherwise deficient under law, the necessary and appropriate remedy must be granted to prevent an ongoing miscarriage of justice. This proceeding, therefore, is fundamentally resolution-oriented, seeking judicial pronouncements that define the legal boundaries and compel compliance with the supreme law of the land, obviating the necessity for protracted and superfluous litigation.

Yours most appreciatively and gratefully,

/s/Mr. Kevin A. McLean (BA, JD, CIM)

Mr. Kevin A. McLean (BA, JD, CIM) (he/him)

Yours faithfully,

/KAM

Mr. Kevin A. McLean (BA, JD, CIM)

Sender’s name: Mr. Kevin Alexander McLean (BA, JD, CIM)

Sender’s address: 410-775 King Street West, Toronto, Ontario, M5V 2K3

Sender’s Telephone Number: (647) 370-9354

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12159K

Mr. Kevin McLean <mcleansettlement@gmail.com>
To: ananthan.sinnadurai@ontario.ca

Thu, Nov 20, 2025 at 2:51 PM

Dear Sirs/Mesdames/Other Gender-Neutral Pronouns:

Please find Part 2 of 2 attached.

Yours faithfully,

/KAM

Mr. Kevin A. McLean (BA, JD, CIM)

Sender's name: Mr. Kevin Alexander McLean (BA, JD, CIM)

Sender's address: 410-775 King Street West, Toronto, Ontario, M5V 2K3

Sender's Telephone Number: (647) 370-9354

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TAB 23

ONTARIO SUPERIOR COURT OF JUSTICE
GUIDE TO JUDICIAL REVIEW IN DIVISIONAL COURT

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What is Judicial Review?

Judicial review is a process by which courts make sure that the decisions of administrative bodies are fair, reasonable, and lawful. The Divisional Court hears applications for judicial review of decisions of administrative bodies in Ontario by virtue of s. 6(1) of the *Judicial Review Procedure Act*, R.S.O 1990, c J.1.

In an application for judicial review, a party asks a three-judge panel of the Divisional Court to change or set aside a decision of an administrative body where the party can show an error was made that warrants action by the Court. Judicial review is not an

opportunity to re-argue the case, but rather to show that the decision-maker failed to properly exercise its decision-making powers.

What Kind of Decisions Can Be Reviewed?

Decision-makers whose authority and powers exist by virtue of statute are subject to judicial review. Administrative bodies whose decisions may be reviewed by the Divisional Court include administrative tribunals or government decision-makers whose responsibility it is to decide any person or party's legal rights or their eligibility to receive a benefit or licence. Section 1 of the *Judicial Review Procedure Act* defines the scope of decisions that can be subject to judicial review. The decisions of private actors are not subject to judicial review.

For example, decisions of an administrative tribunal such as the Human Rights Tribunal of Ontario or an official decision-maker such as the Independent Police Review Director are subject to judicial review. There need not be legislation that specifically grants the right to judicial review.

When to Apply for Judicial Review

An application for judicial review of an administrative decision must be brought within thirty days of the decision being made, as set out in s. 5(1) of the *Judicial Review Procedure Act*. However, the Court may exercise its discretion to extend the time for making an application for judicial review if there are apparent grounds for relief and no substantial prejudice will occur to any person, under s. 5(2) of the *Judicial Review Procedure Act*.

Where there is a right to request reconsideration of the decision by the original decision-maker or to appeal, the Court may decline to hear the application for judicial review until that process has been completed. Generally speaking, decisions should be final and determinative of a case before they are judicially reviewed.

Urgent Applications

Various approaches to addressing urgent matters may be discussed as part of case management, discussed below. For example, a party may request an expedited schedule and hearing date. Parties with urgent matters should request a case conference.

In addition, under s. 6(2) of the *Judicial Review Procedure Act*, if a matter is urgent, an application for judicial review may be made to a single judge of the Superior Court. In Toronto, such applications are heard by a Divisional Court judge sitting as a judge of the Superior Court of Justice. Elsewhere in the province, a Superior Court judge deals with the urgent application.

Remedies

In order to know whether to bring an application for judicial review, it is important to understand what relief the Court can order. Subsection 2(1) of the *Judicial Review Procedure Act* specifies that, on an application for judicial review, the Court may grant remedy in the nature of *mandamus*, prohibition, *certiorari*, a declaration or an injunction. All of these remedies can but do not have to be granted as the Court sees fit.

Mandamus – is an order requiring a party to do something. If the Court determines that the decision-maker has a duty to do something, but did not, then the Court may require the decision-maker to fulfil that duty.

Prohibition – prevents a decision-maker from continuing an unlawful process or action. If the Court determines that the decision-maker has no authority to do something or it would be wrong for them to do something, the Court may prevent the decision-maker from doing or continuing to do that thing.

Certiorari – is an order that the decision under review is of no force and effect (i.e., quashed). If the Court decides that the decision cannot be upheld (for example, because the decision-maker lacks jurisdiction or there has been a breach of procedural fairness), the Court may grant an order quashing the decision. The Court may then send the matter back to the decision-maker or, in exceptional circumstances, make the decision it considers appropriate.

Declaration – is a statement made by the Court about the parties' legal positions or the law applicable to them. A declaration may be made to rule on a party's rights or whether the decision-maker acted within its legislative authority.

Injunction – is an order stopping a party or prohibiting a party from doing something. The Court may order an injunction to prevent harm or protect a legal right.

Standard of Review

The standard of review is an important feature of all judicial review applications and should be addressed in the written argument you file with the Court (your factum).

The standard of review refers to the degree of scrutiny that the court will apply in examining the substance of the decision being reviewed. There are generally two standards of review: reasonableness and correctness. Where an application involves issues of procedural fairness, no standard of review analysis is necessary.

For all judicial review applications, there is a presumption that the standard of review is reasonableness. This presumption is only rebutted in exceptional, narrowly defined circumstances. Looking at recent cases where the Court considered similar decisions by

the same decision-maker will assist you in determining what standard of review the Court will apply.

Reasonableness

Reasonableness is a deferential standard of review. A reasonable decision is “based on internally coherent reasoning” and is justified in light of the facts and law that constrain the decision-maker. Where a decision-maker has provided reasons, those will guide the Court’s review. The reasonableness standard recognizes that there may be more than one reasonable interpretation or more than one reasonable possible result. On this standard, courts will not interfere with decision they consider reasonable, even if the judges themselves might have come to a different decision

When a court applies the reasonableness standard, the person applying for judicial review has to persuade the court that the decision was unreasonable. A court will find that a decision is unreasonable if there are any fatal flaws in its overall logic or if it does not respect the factual and legal constraints on the decision. Those constraints include the evidence, the relevant law, the issues before the court as framed by the parties, the parties’ arguments, past practices, and the effect of the decision.

Correctness

While reasonableness is the default standard, in certain limited circumstances, the correctness standard will apply instead.

In applying a correctness standard of review, the Court does not defer to the decision of the administrative decision-maker. Instead, it makes its own determination of the correct outcome. A correctness standard will only apply to the following questions:

- Constitutional questions;
- General questions of law of central importance to the legal system as a whole (that is, questions that must always be answered the same way because the answer has implications across the justice system);
- Questions concerning the jurisdictional lines between two decision makers; and
- Questions where Courts and administrative bodies have concurrent first instance jurisdiction over a legal issue.

Procedural Fairness

Where an application for judicial review challenges the procedural fairness of a decision-maker’s process or hearing, the Court will consider what level of procedural fairness is necessary in the circumstances, and whether that level has been met. In determining the

content of the duty of procedural fairness, the Court will look at the relevant factors, including:

- The nature of the decision being made and process followed in making it;
- The nature of the statutory scheme and the terms of the statute pursuant to which the body operates;
- The importance of the decision to the individual or individuals affected;
- The legitimate expectations of the person challenging the decision; and
- The choices of procedure made by the original decision-maker itself.

Many statutes also set out particular procedural requirements. The *Statutory Powers Procedure Act*, R.S.O. 1990, c. 22 ("*SPPA*"), establishes minimum procedural requirements that must be met by administrative tribunals in conducting hearings and decision-making. Not all administrative bodies are subject to the *SPPA*, nor are all tribunals required to hold a hearing. The decision-maker's enabling legislation, regulations, by-laws, and rules may set out specific procedural requirements.

What to Include in an Application for Judicial Review

Judicial review is initiated by filing a "Notice of Application for Judicial Review" (Form 68A) with the Divisional Court. The Notice of Application must be served on the Attorney General of Ontario. The Notice of Application should also be served on the decision-maker that exercised the statutory power and anyone else who participated in the original hearing. The decision-maker may also be a party to the proceedings. You can serve the Notice of Application on the Attorney General of Ontario and the relevant administrative body by mail, facsimile, or by delivering it in person to their offices. You should look online for the correct contact information.

Notice of Application

The Notice of Application briefly sets out:

1. The remedy being sought (as described above) – the order the applicant is asking the Court to make if the applicant is successful;
2. The grounds for review – the errors alleged to have been made by the decision-maker, why the Court should make a different decision, and reference to any statutory provision or rule relied on; and
3. A list of the evidence to be relied on – this will usually be limited to the evidence that was before the decision-maker in making its decision. The circumstances under which an applicant can file additional evidence are very limited.

An applicant bringing a constitutional challenge as part of an application for judicial review must also file a "Notice of Constitutional Question" (Form 4F). The Notice of Constitutional Question must be served on the Attorney General of Ontario and the Attorney General of

Canada. Notice is required when the applicant raises the constitutional validity or applicability of federal or provincial legislation, a regulation or by-law, or a common law rule is in issue or a remedy is claimed against the governments under s. 24(1) of the *Canadian Charter of Rights and Freedoms.*

Stay Motions

Filing an application for judicial review does not mean that the original decision under review ceases to apply or be effective. If you want the Court to order that the decision made by the administrative body be suspended until the Court considers the application for judicial review, you must apply to the Court for what is called a "stay" of the decision. To do so in the Divisional Court, an applicant must bring a motion seeking an order staying the original decision so that it does not take effect until the final determination of the application.

Records

If the tribunal is subject to the *Statutory Powers Procedures Act* and a hearing was held, the decision-maker that made the original decision will file a "Record of Proceedings" with the Court. The Record of Proceedings will include:

- Any application, complaint, reference or other document, if any, by which the proceeding was commenced;
- The notice of hearing;
- Any interlocutory (intermediary) orders made by the tribunal;
- All documentary evidence filed with the tribunal, subject to any limitation expressly imposed by any other Act on the extent to or the purposes for which any such documents may be used in evidence in any proceeding;
- The transcript, if any, of the oral evidence given at the hearing; and
- The decision of the tribunal and the reasons, where reasons were given.

The applicant must prepare and file an Application Record. An Application Record will normally contain the following documents:

- A table of contents,
- A copy of the Notice of Application,
- A copy of the reasons of the Court or tribunal whose decision is to be reviewed, with a further typed or printed copy if the reasons are handwritten,
- A copy of all affidavits and other materials served by any party that were before the original decision-maker. (As indicated above, the circumstances under which new/additional evidence will be allowed are limited.),
- A list of all relevant transcripts of evidence, and
- A copy of any other material in the Court file that is necessary for the hearing of the application

Factum

The applicant must also file a factum, which should be no more than 30 pages in length. A factum is a concise summary of a party's case, and should be organized as follows:

- *Part 1*: A statement identifying the applicant, as well as the court or tribunal whose decision is to be reviewed and stating the result in that court or tribunal;
- *Part 2:* A concise summary of the facts relevant to the issues on the application, with specific reference to the evidence;
- *Part 3:* A statement of each issue raised, immediately followed by a concise statement of the law and authorities relating to that issue;
- *Part 4*: A statement of the order that the Court will be asked to make, including any order for costs;
- Schedule A: List of authorities referred to; and
- Schedule B: Text of all relevant provisions of statutes, regulations and by-laws.

Book of Authorities

If a party's factum relies on previous tribunal or court decisions, or other legal texts, then the entire decision or the relevant text (for example, the complete legal article or, if it is a book, the relevant chapter or pages) should be compiled in a Book of Authorities. It is also a good idea to highlight the portions of the case or text that are referred to in the factum. The Book of Authorities is often filed when the application is perfected but it does not technically need to be filed at that time.

Cases that are frequently relied on in judicial review applications are supplied to Divisional Court judges in a Judges' Book of Authorities and do not need to be included in a party's Book of Authorities. The list of cases included in the Judges' Book of Authorities is updated from time to time and can be found on the Divisional Court's website.

Certificate of Perfection

Once the above materials have been served and filed, the applicant must complete a "certificate of perfection". The certificate of perfection confirms that all the material required to be filed by the applicant for the hearing of the application has been filed.

Once the certificate of perfection has been filed at the Court, the registrar will place the application on a list for hearing and send the "Notice of Listing for Hearing" (Form 68B) to the parties. The Notice of Listing for Hearing will advise you of the next steps required in order to get a date for the application to be heard by the Divisional Court.

Filing & Timing

The Notice of Application, Application Record, factum, Book of Authorities, and Certificate of Perfection should be served on the Attorney General, the decision-maker, and any other respondent. Once the material is served, an electronic version of the materials should also be filed with the Court.

The Notice of Application should be accompanied by an Affidavit of Service (Form 16B) confirming that it was served on each party.

Once the Application Record has been served on a respondent, the respondent will have **30 days** to file a responding Application Record and a factum.

If the applicant has not yet delivered an application record and factum and filed a certificate of perfection within **one year** of filing a notice of application, the respondent may make a motion to dismiss for delay. The Registrar can also give notice of a dismissal for delay. Once notice of dismissal is given, the applicant will have **10 days** to file the missing materials.

Case Management

Most motions and applications for judicial review in the Divisional Court are subject to judicial case management. As part of that process, the time for the delivery of court materials may be changed as set out in directions from the court. Case management is more flexible than a traditional hearing and allows certain issues to be dealt with efficiently to reduce time and expenses during the judicial review hearing.

CaseLines

CaseLines is an online document sharing platform which allows the Court to electronically view your materials. The Divisional Court uses CaseLines for remote and in-person hearings. After you have brought an application for judicial review, you will receive an email to register for CaseLines and upload your materials. There is no fee to use CaseLines.

Filing materials with the Court is not the same as uploading to CaseLines. In order for the Court to view your materials, you must complete both steps according to the timeline in the "Notice to the Profession – Divisional Court" or as directed by a judge. Generally, your materials must be uploaded four weeks before your scheduled hearing date. During the hearing, you may make use of CaseLines features including directing participants to a specific page and displaying exhibits.

The Hearing

At the hearing of the application, the parties will have the opportunity to argue the case before a three-judge panel of the Divisional Court. The parties can expect the panel to have read the materials filed and be familiar with the issues in the case. The oral hearing is an opportunity to present each party's position on the key issues in the case. It is not an opportunity to recite what is in the factums. The judges may ask questions about the arguments. The hearing begins with the applicant's submissions, after which the respondent(s) will make their oral submissions. The applicant may then make reply submissions, however this is not an opportunity to repeat your submissions, as replies should only address new matters raised by the respondent.

Appendix: Relevant Legislation and Practices

Judicial Review Procedure Act, R.S.O. 1990, c. J.1

Statutory Powers Procedure Act, R.S.O. 1990, c. S.22 – Section 20

Rules of Civil Procedure, R.R.O. 1990, Reg. 194 – Rules 38 and 68, except Rules 38.02 and 38.09

Consolidated Practice Direction for Divisional Court Proceedings

Notice to Profession – Divisional Court (April 19, 2022) – This Notice is updated approximately annually.

TAB 24

ONTARIO SUPERIOR COURT OF JUSTICE

GUIDE TO JUDICIAL REVIEW IN DIVISIONAL COURT

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What is Judicial Review?

Judicial review is a process by which courts make sure that the decisions of administrative bodies are fair, reasonable and lawful. The Divisional Court hears applications for judicial review of decisions as set out in the *Judicial Review Procedure Act*, R.S.O 1990, c. J.1.

In an application for judicial review, a party asks a three-judge panel of the Divisional Court to change or set aside a decision of an administrative body where the party can show an error was made that warrants action by the Court. Judicial review is not an opportunity to re-argue the case, but rather to show that the decision-maker failed to properly exercise its decision-making powers.

What Kind of Decisions Can Be Reviewed?

Decision-makers whose authority and powers exist by virtue of statute are subject to judicial review. Administrative bodies whose decisions may be reviewed by the Divisional Court include administrative tribunals or government decision-makers whose responsibility it is to decide any person or party's legal rights or their eligibility to receive a benefit or licence. The decisions of private actors are not subject to judicial review.

For example, decisions of an administrative tribunal such as the Human Rights Tribunal of Ontario or an official decision-maker such as the Complaints Director under the *Community Safety and Policing Act* are subject to judicial review.

When to Apply for Judicial Review

An application for judicial review of an administrative decision must be brought within **30 days** of the decision being made. However, the Court may exercise its discretion to extend the time for making an application for judicial review if there are apparent grounds for relief and no substantial prejudice will occur to any person.

Where there is a right to request reconsideration of the decision by the original decision-maker or to appeal, the Court may decline to hear the application for judicial review until that process has been completed. Generally, decisions should be final and determinative of a case before they are judicially reviewed.

The Divisional Court may, in its discretion, consider an appeal alongside a judicial review application.

Urgent Applications

Various approaches to addressing urgent matters may be discussed as part of case management, outlined below. For example, a party may request an expedited schedule and hearing date. In addition, if a matter is urgent, an application for judicial review may be made to a single judge of the Superior Court with leave of that Court. Parties with urgent matters should request an urgent case conference in the Divisional Court.

Filing an application for judicial review does not mean that the original decision under review ceases to apply or be effective. If you want the Court to order that the decision made by the administrative body be suspended until the Court considers the application for judicial review, you must bring a motion for what is called a "stay" of the decision.

Leave to Commence an Application for Judicial Review

In some instances, a statute may require you to seek leave from the Divisional Court in order to bring an application for judicial review.

To seek leave, the applicant must serve and file a notice of motion for leave to commence a judicial review. The notice of motion should state that the motion will be heard on a date to be fixed by the Registrar and should set out the specific issues that will be raised in the hearing if leave is granted. All leave motions must be filed in the Toronto Region. The steps for filing the leave motion are set out in the Consolidated Practice Direction for Divisional Court Proceedings.

The motion for leave will be heard by a panel of three judges in writing (i.e., you will not attend a hearing to argue in-person why the Court should grant you leave to bring your application).

Case Management

Once you commence your application for judicial review or your motion for leave, there are steps that you must take regarding the schedule for the exchange of court documents and any preliminary issues. These steps are set out in the Consolidated Practice Direction for Divisional Court Proceedings.

All proceedings in the Divisional Court are subject to judicial case management. The purpose of case management is to facilitate access to justice through the timely adjudication of proceedings in the Divisional Court in a cost-effective and proportional manner.

This means that you may receive written directions from a judge and a judge may direct that there will be a case conference prior to the hearing of your motion or application.

As part of this process, the time for the delivery of court materials may be determined or changed as set out in directions from the Court. Other issues may be addressed, as set out in the judge's directions. Directions are normally sent to the parties by email.

Case Center

Case Center is an online document sharing platform which allows the Divisional Court to electronically view your court materials. The Divisional Court uses Case Center for both remote and in-person hearings. After you have brought an application or motion for leave, you will receive an email to register for Case Center and upload your materials. There is no fee to use Case Center.

Filing materials with the Court is not the same as uploading to Case Center. In order for the Court to view your materials, you must complete both steps according to the timeline in the Consolidated Practice Direction for Divisional Court Proceedings or as directed by

a judge. Generally, your materials must be uploaded four weeks before your scheduled hearing date.

Information about how to use Case Center is available on the Court's website: https://www.ontariocourts.ca/scj/casecenter/.

When uploading documents to Case Center, you should ensure that you follow the naming rules set out in Schedule B of the Consolidated Practice Direction for Divisional Court Proceedings.

What to Include in an Application for Judicial Review

Judicial review is initiated by filing a "Notice of Application for Judicial Review" (Form 68A) with the Divisional Court. The Notice of Application must be served on the Attorney General of Ontario. The Notice of Application should also be served on the decision-maker that exercised the statutory power and all parties who participated in the original hearing. The decision-maker may also be a party to the proceedings. You can serve the Notice of Application on the Attorney General of Ontario and the relevant administrative body by mail, fax or delivering it in person to their offices. You should look online for the correct contact information.

Notice of Application

The Notice of Application briefly sets out:

1. **the remedy being sought (as described above)** – the order the applicant is asking the Court to make if the applicant is successful;
2. **the grounds for review** – the errors alleged to have been made by the decision-maker, why the Court should make a different decision, and reference to any statutory provision or rule relied on; and
3. **a list of the evidence to be relied on** – this will usually be limited to the evidence that was before the decision-maker in making its decision. The circumstances under which an applicant can file additional evidence are very limited.

An applicant bringing a constitutional challenge as part of an application for judicial review must also serve and file a "Notice of Constitutional Question" (Form 4F). The Notice of Constitutional Question must be served on the Attorney General of Ontario and the Attorney General of Canada. This Notice is required when the applicant raises the constitutional validity or applicability of federal or provincial legislation, a regulation or by-law, or a common law rule is in issue or a remedy is claimed against the government under s. 24(1) of the *Canadian Charter of Rights and Freedoms.*

Records

If the tribunal is subject to the *Statutory Powers Procedure Act* and a hearing was held, the decision-maker that made the original decision will serve and file a "Record of Proceedings". The Record of Proceedings will include:

- any application, complaint, reference or other document, by which the administrative proceeding was commenced;
- the notice of the administrative hearing;
- any interlocutory (intermediary) orders made by the tribunal;
- all documentary evidence filed with the tribunal, subject to any limitation expressly imposed by any other Act on the extent to or the purposes for which any such documents may be used in evidence in any proceeding;
- the transcript, if any, of the oral evidence given at the hearing; and
- the decision of the tribunal and the reasons, where reasons were given.

The applicant must prepare, serve and file an Application Record. The applicant's Application Record will normally contain the following documents:

- a table of contents;
- a copy of the Notice of Application;
- a copy of the reasons for decision of the court or tribunal whose decision is to be reviewed, and any related orders, with a further typed or printed copy if the reasons are handwritten;
- a copy of all affidavits and other materials if they are not in the Record of Proceedings (note that the circumstances under which new/additional evidence will be allowed are limited);
- a list of all relevant transcripts of evidence; and
- a copy of any other material in the court file that is necessary for the hearing of the application.

The respondent must also prepare, serve and file an Application Record, which will contain:

- a table of contents; and
- a copy of any material to be used by the respondent on the application and not included in the applicant's Application Record (note that the circumstances under which new/additional evidence will be allowed are limited).

Factum

The applicant must also file a Factum, which should be no more than 9,200 words and 40 pages in length, double spaced, with each paragraph consecutively numbered. A Factum is a concise summary of a party's case.

The applicant's Factum should be organized as follows:

- **Part I:** A statement identifying the applicant, as well as the court or tribunal whose decision is to be reviewed and stating the result in that court or tribunal;

- **Part II:** A concise summary of the facts relevant to the issues on the application, with specific reference to the evidence;
- **Part III:** A statement of each issue raised, immediately followed by a concise statement of the law and authorities relating to that issue;
- **Part IV:** A statement of the order that the court will be asked to make, including any order for costs;
- **Certificate:** A statement of how much time (expressed in hours or fractions of an hour) will be required for oral argument, not including reply;
- **Schedule A:** List of authorities referred to; and
- **Schedule B:** Text of all relevant provisions of statutes, regulations and by-laws.

The respondent's Factum should be organized as follows:

- **Part I:** A statement of the facts in the applicant's summary of relevant facts that the respondent accepts as correct and those facts with which the respondent disagrees and a concise summary of any additional facts relied on, with specific reference to the evidence;
- **Part II:** A statement of the position of the respondent with respect to each issue raised by the applicant, immediately followed by a concise statement of the law and the authorities relating to that issue;
- **Part III:** a statement of any additional issues raised by the respondent, the statement of each issue to be immediately followed by a concise statement of the law and the authorities relating to that issue;
- **Part IV:** A statement of the order that the court will be asked to make, including any order for costs;
- **Certificate:** A statement of how much time (expressed in hours or fractions of an hour) will be required for oral argument, not including reply;
- **Schedule A:** List of authorities referred to; and
- **Schedule B:** Text of all relevant provisions of statutes, regulations.

Book of Authorities

If your Factum relies on previous tribunal or court decisions, or other legal texts, then the entire decision or the relevant text (for example, the complete legal article or, if it is a book, the relevant chapter or pages) should be provided to the Court in one of two ways.

If the decision is available on a free public website like CanLII.org, you must provide a hyperlink to that decision in your Factum. Alternatively, you may file an electronic book of authorities. In your Book of Authorities, you should provide the full text of all relevant court decisions. You must also include the relevant excerpts from any other sources you rely on. However, if the text is available on a free public website, then you may simply provide a hyperlink to that text in the table of contents of the Book of Authorities without providing the full text.

The Book of Authorities is often filed when the application is perfected.

Filing & Timing

The Notice of Application, Application Record, Factum and Book of Authorities should be served on the Attorney General, the decision-maker and any other respondent. Once the material is served, an electronic version of the materials should also be filed with the Court. Instructions for filing materials with the Court can be found online here. There may be fees associated with filing certain documents.

When filing documents electronically, you should ensure that you follow the document naming rules set out in Schedule B of the Consolidated Practice Direction for Divisional Court Proceedings.

The Notice of Application should be accompanied by an "Affidavit of Service" (Form 16B) confirming that it was served on each party.

Unless otherwise specified, the application for judicial review should be made within **30 days** after the date the decision to be reviewed was made.

Once the Application Record has been served on a respondent, the respondent will have **30 days** to file a responding Application Record and their Factum.

If the applicant has not yet delivered an Application Record and Factum within **1 year** of filing a notice of application, the respondent may make a motion to dismiss for delay. The Registrar can also give notice of a dismissal for delay. Once notice of dismissal is given, the applicant will have **10 days** to file the missing materials.

All your court documents must be uploaded to Case Center. Filing materials with the Court is not the same as uploading to Case Center. In order for the Court to view your materials, you must complete both steps according to the timeline in the Consolidated Practice Direction for Divisional Court Proceedings or as directed by a judge. Generally, your materials must be uploaded at least **four weeks before your scheduled hearing date**. During the hearing, you may make use of Case Center features including directing participants to a specific page and displaying exhibits.

Information about how to use Case Center is available on the Court's website: https://www.ontariocourts.ca/scj/casecenter/.

When uploading documents to Case Center, you should ensure that you follow the document naming rules set out in Schedule B of the Consolidated Practice Direction for Divisional Court Proceedings.

Standard of Review

The standard of review refers to the degree of scrutiny that the Court will apply in examining the substance of the decision being reviewed. The standard of review is an important feature of all judicial review applications and should be addressed in the written argument you file with the Court (your Factum).

For all judicial review applications, there is a presumption that the standard of review is reasonableness. This presumption is only rebutted in exceptional, narrowly defined circumstances in which the standard of review is correctness. Looking at recent cases where the Court considered similar decisions by the same decision-maker will assist you in determining what standard of review the Court will apply.

Where an application involves issues of procedural fairness, the Court considers what procedure is required and whether it was provided.

Reasonableness

Reasonableness is a deferential standard of review. A reasonable decision is “based on internally coherent reasoning” and is justified in light of the facts and law that constrain the decision-maker. Where a decision-maker has provided reasons, those will guide the Court’s review. The reasonableness standard recognizes that there may be more than one reasonable interpretation or more than one reasonable possible result. On this standard, courts will not interfere with a decision they consider reasonable, even if the judges themselves might have made a different decision.

When a court applies the reasonableness standard, the person applying for judicial review has to persuade the court that the decision was unreasonable. A court will find that a decision is unreasonable if there are any fatal flaws in its overall logic or if it is not justified in light of the factual and legal constraints on the decision. Those constraints include the evidence, the relevant law, the issues before the Court as framed by the parties, the parties’ arguments, past practices and the effect of the decision.

Correctness

While reasonableness is the default standard of review, in certain limited circumstances, the correctness standard will apply instead.

In applying a correctness standard of review, the Court does not defer to the decision of the administrative decision-maker. Instead, it makes its own determination of the correct outcome. A correctness standard will only apply to the following questions:

- constitutional questions;
- general questions of law of central importance to the legal system as a whole (that is, questions that must always be answered the same way because the answer has implications across the justice system);
- questions concerning the jurisdictional boundaries between two decision makers; and
- questions where courts and administrative bodies have concurrent first instance jurisdiction over a legal issue.

Procedural Fairness

Where an application for judicial review challenges the procedural fairness of a decision-maker's process or hearing, the Court will consider what level of procedural fairness is necessary in the circumstances, and whether that level has been met. In determining the content of the duty of procedural fairness, the Court will look at the relevant factors, including the following:

- the nature of the decision being made and the process followed in making it;
- the nature of the statutory scheme and the terms of the statute pursuant to which the body operates;
- the importance of the decision to the individual or individuals affected;
- the legitimate expectations of the person challenging the decision; and
- the choices of procedure made by the original decision-maker.

Many statutes also set out particular procedural requirements. Further, when applicable, the *Statutory Powers Procedure Act* (the "*SPPA*") establishes minimum procedural requirements that must be met by administrative tribunals in conducting hearings and decision-making. Not all administrative bodies are subject to the *SPPA*, nor are all tribunals required to hold a hearing. The decision-maker's enabling legislation, regulations, by-laws, and rules may set out specific procedural requirements.

The Divisional Court Hearing

The Court office will provide the parties with the hearing date. At the hearing of the application for judicial review, the parties will have the opportunity to argue the case before a three-judge panel of the Divisional Court. The parties can expect the panel to have read the materials filed and be familiar with the issues in the case. The oral hearing is an opportunity to present each party's position on the key issues in the case. It is not an opportunity to recite what is in the Factums. The judges may ask questions about the arguments.

The hearing begins with the applicant's submissions, after which the respondent(s) will make their oral submissions. The applicant may then make brief reply submissions, however this is not an opportunity to repeat your submissions, as replies should only address new matters raised by the respondent. The panel of judges presiding at the hearing may adjust these steps.

Remedies

Once the Divisional Court has heard an application for judicial review, it may grant remedy in the nature of *mandamus*, prohibition, *certiorari*, a declaration or an injunction: s. 2(1) of the *Judicial Review Procedure Act*. All these remedies can, but do not have to, be granted as the Court sees fit.

Mandamus

Mandamus is a remedy requiring a party to do something. If the Court determines that the decision-maker has a duty to do something, but did not, then the Court may require the decision-maker to fulfil that duty.

Prohibition

Prohibition prevents a decision-maker from continuing an unlawful process or action. If the Court determines that the decision-maker has no authority to do something or it would be wrong for them to do something, the Court may prevent the decision-maker from doing or continuing to do that thing.

Certiorari

Certiorari is a remedy that renders the decision under review of no force and effect (called quashing the decision). If the Court decides that the decision cannot be upheld (for example, because the decision-maker lacks jurisdiction or there has been a breach of procedural fairness), the Court may grant an order quashing the decision. The Court may then send the matter back to the decision-maker or, in exceptional circumstances, make the decision it considers appropriate.

Declaration

A Declaration is a statement, made by the Court, of its decision about the parties' legal rights or obligations or determining a question of law applicable to them. For example. a declaration may be made to rule on a party's rights or whether the decision-maker acted within its legislative authority.

Injunction

An injunction is an order stopping a party from doing something. The Court may order an injunction to prevent harm or protect a legal right.

The Decision

The parties may receive an oral decision from the panel on the day of the hearing. Otherwise, the decision will be reserved and released at a later date in writing.

Appendix: Relevant Legislation and Practices

Statutes and Regulations

Canadian Charter of Rights and Freedoms, Part I of the *Constitution Act, 1982*, being Sched. B to the *Canada Act 1982* (UK), 1982, c. 11

Judicial Review Procedure Act, R.S.O. 1990, c. J.1

Rules of Civil Procedure, R.R.O. 1990, Reg. 194

Statutory Powers Procedure Act, R.S.O. 1990, c. S.22

Consolidated Practice Direction for Divisional Court Proceedings

Forms

Affidavit of Service (Form 16B)

Notice of Application for Judicial Review (Form 68A)

Notice of Constitutional Question (Form 4F)

TAB 25

FORM 37B

Courts of Justice Act

CONFIRMATION OF MOTION

File No. DC-24-00000718-00JR

ONTARIO SUPERIOR COURT OF JUSTICE
(DIVISIONAL COURT)

BETWEEN:

KEVIN ALEXANDER MCLEAN

APPLICANT

- and -

TD HOME AND AUTO INSURANCE COMPANY, SECURITY NATIONAL INSURANCE COMPANY, TD GENERAL INSURANCE COMPANY, EXECUTIVE DIRECTOR, LICENCE APPEAL TRIBUNAL, HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO, REPRESENTED BY EXECUTIVE CHAIR OF TRIBUNALS ONTARIO IN MR. SEAN WEIR, THE ATTORNEY GENERAL OF ONTARIO

CONFIRMATION OF MOTION

Note: If the information on this form changes, you have a duty to give the court and the other parties a corrected version of the form (rule 37.10.1(3)). If you wish to abandon the motion after it has been confirmed, a notice of abandonment may be delivered (rule 37.09(1)).

PART A:

I, Mr. Kevin A. McLean (BA, JD, CIM), pro se or self-represented for the moving party, confirm that I have conferred or attempted to confer with the other party*(ies)* [*nota bene*: none as of today's date as of failure or neglect by the Respondents to have "delivered" their purported, in relation to the LAT, Notice of Appearance and the Respondent Insurance Companies' Notice of Appearance although the same was served on the Applicant at approximately 4:50 p.m. on December 3, 2025' and confirm that the motion to be heard on Wednesday, December 3, 2025, will proceed on the following basis:

[X] for a hearing of all the issues

The presiding judge will be referred to the following materials:

1. The Applicant's Notice of Motion number three ("NOM #3") made and served on the Respondents and non-Respondents on November 17, 2025 (see: Tab #2 of NOM #3 Motion Record);

2. The Applicant's Factum for NOM #3 served on the Respondents on November 19, 2025 (see: Tab #1 of the NOM #3 Motion Record);

3. The Applicant's Motion for NOM #3 served on the Respondents and non-Respondents on November 21, 2025;

4. The Applicant's Affidavit of Service, inclusive of sworn evidence adopting the statutory declarations served on an urgent basis on October 13, 2025, and November 14, 2025, on the Respondents and Non-Respondents inclusive of Mr. Karat, Mr. Papadimitropoulos and Ms. Dunk (see: Tab #22 of the NOM #3 Motion Record);

5. The documents sequentially separated by tabulations and consecutively numbered in the NOM #3 Motion Record (see: Tabs #4 to #Tab #21 (which is the Draft Order);

6. The authorities and evidence contained in the hyperlinked and bookmarked NOM #3 Motion Record served on the Respondents and Non-Respondents as of November 24, 2025;

7. The Divisional Court Judicial Review Guide as it was from on or around 2022 to June 2025 (the "Materially Timed Divisional Court JRPA Guide"), and by reference and comparison the current Divisional Court Judicial Review Guide (the "June 2025 Amended or Current JRPA Guide");

8. This Confirmation of Motion and Schedule "A" herein;

9. Select documents contained in the Applicant's served and filed Compendium of February 14, 2025 and amended Compendium of February 15, 2025 inclusive of the following but not limited to:

    a. **APPLICANT**'S OUTLINE TO **COMPENDIUM**

        i. Compendium filed and served on February 11, 2025

        ii. 1st Amended Compendium of February 15, 2025;

            1. **Court file number**

            2. DC-24-00000718-00JR

            3. **Submitted to the Divisional Court, Superior Court of Justice in**

            4. Toronto

                a. **Confirmation number**2910470

10. The following tabs from the Applicant's filed and served Compendium of February 17, 2025;

    a. Tab #2 (VCM Decisions involving NOM #13 to #15 of the Applicant (Nota bene: only NOM #14 and #15 under judicial review and select orders further denoted in NOM #2 by reference to those final decisions, determination or exercises of statutory powers of decisions or purported exercises of statutory powers of decisions or refusal to exercise a statutory power of decision (i.e. dismissal of the relief sought involving amending pleadings; dismissal of relief to add a party et al);

    b. Tab #3 (VCL Decision of October 15, 2024, but received on October 16, 2024);

c. Tab #4: VCL Decision of January 16, 2024;

d. Tab #5: LAT Order of February 13, 2024;

e. Tab #6: Applicant's LAT Appeal pursuant to section 280(2) of the Insurance Act

f. Tab #7: Response to LAT Appeal by SNIC and not TDGIC prima facie signed by Mr. David Karat, a non-licensee and unauthorized to have completed and signed the same on account of the Law Society Act and the LSO By-Laws;

g. Tab #8: Affidavit #3 of the Applicant in the LAT of October 31, 2023;

h. Tab #9: Select Evidence from NOM #3: Appendices

    i. October 2023: e-claims workflow;

    ii. February 2024: Mr. Nieuwland's fraudulent misrepresentation that Mr. Papadimitropoulos ("Epstein Cole LLP Client") had not been involved in any way with Applicant's claim or access request but based on a fictitious claim number with a "04"

i. Tab #10: Affidavit #30 in the LAT Proceeding of the Applicant on July 31, 2024;

j. Tab #11: Affidavit #38 in the LAT Proceeding of the Applicant of September 28, 2024;

k. Tab #12: Affidavit #17 in the LAT Proceeding of the Applicant on April 14, 2024;

l. Tab #13: Affidavit #18 in the LAT Proceeding of the Applicant made on April 15, 2024

m. Tab #14: Affidavit #21 in the LAT Proceeding of the Applicant made on May 3, 2024

n. Tab #15: Affidavit #22 in the LAT Proceeding of the Applicant made on May 10, 2024

o. Tab #16: Affidavit #23 in the LAT Proceeding of the Applicant made on May 11, 2024;

p. Tab #17: Affidavit #24 in the LAT Proceeding of the Applicant, made on May 15, 2024;

q. Tab #18: Affidavit #27 in the LAT Proceeding of the Applicant, made on June 10, 2024;

r. Tab #19: Affidavit #28 in the LAT Proceeding of the Applicant, made on July 5, 2024;

s. Tab #20: Affidavit #19 in the LAT Proceeding of the Applicant, made on April 24, 2024;

t. Tab #21: Affidavit #31 in the LAT Proceeding of the Applicant, made on August 16, 2024

u. Tab #22: NOM #14 Motion Submission of the Applicant before the LAT in the LAT Proceeding filed and served on August 3, 2024

    i. *Nota bene*: motion was unopposed by the Respondent Insurance Companies;

v. Tab #23: Tab #22 in NOM #13: images of the East Mall Address from August 4, 2024 demonstrating that the location of the Applicant's apparent HCAI situated insurer, which being TDHA but through concealment, was a construction site or "hole in the ground";

w. Tab #24: NOM #18 Motion Submissions of the Applicant, dated September 29,2024 (the "Ss. 21.1 of the SPPA Motion")

x. Tab #25: Reconsideration Motion of the Applicant to the LAT in the LAT Proceeding on September 29, 2024 (*nota bene*: 15 days after the VCM Decision was issued to the Applicant and SNIC, the only "party" per se as it filed a Response under the LAT Rules (AABS), and the fictitious respondent in TDGIC and the sought to be added, although unopposed, in the First Insurer (TDHA) (*nota bene* #2: this was 16 days after the LAT issued a Notice of Hearing for the Applicant's NOM #16);

y. Regulations and rules referenced in Tabs #26 to #29:

i. Reg 283;

ii. Reg 664;

iii. UDAP Rule;

iv. *SABS* or the Schedule;

z. Authorities listed in Tabs #30 to #32 (by their definitions therein);

i. Zurich 2024;

ii. Bateman;

iii. Beasley;

aa. FSRA Issued Documents at Tab #33 including but not limited to and titled, "Affiliated insurer carrying on business as a common undertaking pursuant to s. 392.2(8) of the *Insurance Act"*

bb. Tab #34: *SPPA et seq* ["*SPPA*"]

cc. Tab #35: Applicant's Submissions for NOM #15;

dd. Tab #36: Affidavit #2 in the JRPA Proceeding ["**Urgent Hearing Single Justice Affidavi**t"]

ee. Tab #40: Affidavit of Service of the Applicant, December 13, 2024;

11. Such other documents that the Applicant may advise, which may have arisen or been discovered or may arise or be discovered post the giving and serving of this Confirmation of Motion on today's date.

Note: Parties are responsible for **ensuring** that all materials in the above list are (a) filed with the court and (b) **uploaded** to Case Center by the applicable deadline in rule 4.05.3 of the *Rules of Civil Procedure*.

I estimate that the time required for the motion, including costs submissions, will be **"not applicable" minutes** for the moving party*(ies)* is "**not applicable**" minutes for the responding party*(ies)* (*nota bene*:

not applicable because the responding parties, distinct from Respondents, have not served, filed, with proof of service, Notices of Appearance. The determination of the Applicant's *Notice of Motion Number Three* is predicated upon a hearing in writing. It is of paramount significance to observe, *in limine*, that the Respondents have not tendered a First Defence and have failed to deliver their respective *Notices of Appearance* (*NOA*s). This critical antecedent procedural default engages a precise mechanism within the *Rules of Civil Procedure*. Pursuant to the mandatory stipulations enumerated in *Rule 38.07(2)(a) to (c)* of the *Rules of Civil Procedure*, the Respondents are *ipso facto* precluded from the filing of any material whatsoever pertaining to the *Judicial Review Procedure Act* (*JRPA*) Application. This prohibition extends, as a necessary corollary, to the instant *Notice of Motion Number Three*. Moreover, in the absence of a remedial *order* of the Court, which has not been duly sought or secured at the juncture of this Confirmation of Motion, the Respondents are further barred from receiving subsequent procedural steps or documentation within this *JRPA* proceeding. Consideration must also be given to *Rule 37.12.1(5)*, which, by invoking the preclusionary mandate of *Rule 38.07(2)(c)*, prohibits the Responding Parties from filing requisite documentation for motions in writing. Consequently, the non-delivery of *NOA*s renders untenable the subsequent filing of: (1) A consent to the motion; (2) A notice affirming non-opposition; (3) A motion record, inclusive of a factum entitled "factum for a motion in writing," or any corresponding agreement to have the matter adjudicated in writing; or (4) A notice of intent to make oral argument, along with any supporting material intended to be relied upon. The failure to "deliver" the *Notices of Appearance* is demonstrably the foundational element that vitiates any entitlement to "filing" material. The *JRPA* proceeding has been fundamentally impacted by a series of alleged *ultra vires* actions. Were the Respondent Insurance Companies to deliver their *NOA*s at this belated juncture, such a remedial action would constitute a tacit affirmation that all antecedent procedural steps taken by them were voidable irregularities, or, more likely, absolute nullities foundational to the entire *JRPA* Proceeding. This affirmation would inherently extend to the following: (1) The request for a case conference by the License Appeal Tribunal (*LAT*) is rendered null and void; (2) The compulsory case conference mandated by Madam Justice Shore is rendered null and void; (3) The resultant failures of the Respondents to serve and file application records and facta by the designated deadline of January 13, 2025, were substantively defective; (4) The Applicant's *Notice of Motion Number One* (*NOM #1*) and *Notice of Motion Number Two* (*NOM #2*) stand unopposed; and (5) All previous case conference appearances by the Respondents, particularly those conducted without the Applicant's attendance (under notice and objection, yet involving subsequent discoveries of fraud and material facts), are demonstrably null and void. Furthermore, the *LAT*'s inability to "deliver" its *NOA* is substantiated by Ms. Maciel's acknowledged failure to provide a sufficient proof of service thereof. To the extent that the Respondent Insurance Companies *subsequently* delivered their *NOA*s, the resultant legal effect would maintain the unopposed status of *NOM #1* and *NOM #2*. This action would compel a return to the *status quo ante*, effectively serving as an admission that all steps, documents, and/or orders executed subsequently were, at the very least, irregularities warranting being set aside, or, more probatively, were nullities that vitiated the underlying foundation of the *JRPA* Proceeding. *Rule 38.07(2)(d)* presents a distinguishing factor pertaining solely to the hearing of the *JRPA* Application itself; nevertheless, it necessitates the procurement of leave from the presiding justice. Moreover, while *section 9(4)* of the *JRPA* establishes a clause paramount to the *Rules of Civil Procedure*, its overriding effect is restricted exclusively to procedural requirements for the appearance of the Attorney General of Ontario (*AGO*). Consequently, the Respondent Insurance Companies are obliged to seek judicial leave for the filing of a factum and an application record in the primary Application. This exigency exists against the backdrop of the *LAT*'s dereliction in its duty to file the Record of Proceeding forthwith, or at all. Furthermore, the *LAT* and the Respondent Insurance Companies are concurrently required to seek leave to serve and file their responsive documentation to *NOM #1* and *NOM #2*. Such a motion for leave must be buttressed by sworn or declared evidence demonstrating the requisite *mens rea* (or lack thereof) which led to the initial non-opposition of the aforementioned motions. Finally, the *AGO*, in a welcome communication dated January 30, 2025, has formally confirmed that participation in this matter will not be undertaken.]

for a total of **"not applicable" minutes,.**

Dated: November 24, 2025

DULY EXECUTED IN ELECTRONIC FORM BY
THE *JRPA* APPLICANT ON THE DATE ABOVE:

Mr. Kevin A. McLean (B.A. J.D., CIM) (he/him)
(e): mcleansettlement@gmail.com

TO (SEPARATED BY VOLUMES OF PERSONS, ENTITIES ET AL)

VOLUME #1: THE RESPONDENTS IN THE STYLE OF CAUSE

VOLUME #1(A): SPECIFICALLY TO: RESPONDENT INSURANCE COMPANIES

Volume #1(A)(I): TDHA (First Insurer)

TD Home and Auto Insurance Company,

Last known address and addresses (mail and fax) at the time of its [TDHA] receipt of the Applicant's completed OCF-1 pursuant to *Reg 283* (the "**MCLEAN COMPLETED OCF-1 APPLICATION**"):

4th Floor
3650 Victoria Park Avenue,
North York, Toronto, Ontario
M2H 3B2

FAX NUMBER

FAX: 416.774.3120

FSRA REGISTRATION NUMBER 1063, Fax: 416.774.3120 ("**TDHA**")

Attention (its declared counsel herein):

Mr. Matthew Nieuwland
Business name: TD Insurance Staff Legal

Lawyer Licensee with the LSO
LSO #71405A

66 Wellington Street West,
38th Floor,
Toronto, Ontario,
M5K 1A2
T: 905-201-4092 | F: 416-599-7439
Email: Matthew.Nieuwland@tdinsurance.com

Volume #1(A)(II): SNIC (Sole Underwriter)

Security National Insurance Company ("SNIC")

FSRA REGISTRATION 397, FAX: 905-315-1074 ("**SNIC**")

MAILING ADDRESS:

5th floor-5045 South Service Rd ,
Burlington, ON
L7L 5Y7

FAX NUMBER

Fax: 905-315-1074

Attention (its declared counsel herein):

Mr. Matthew Nieuwland
Business name: TD Insurance Staff Legal
Lawyer Licensee with the LSO
LSO #71405A

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Toronto, Ontario,
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T: 905-201-4092 | F: 416-599-7439
Email: Matthew.Nieuwland@tdinsurance.com

i.

Volume #1(A)(III): TDGIC (Fictitiously Inserted Respondent in the LAT Proceeding

TD General Insurance Company,

FSRA REGISTRATION NUMBER 353, Fax: 416.774.3629 ("**TDGIC**")

TD General Insurance Company
FSRA registration number 353

Address found by Tribunal in issued orders for TDGIC despite no provision of the same to the Applicant during TD Claim #3 process, in any filed documents by TDGIC or otherwise:

3650 Victoria Park Ave
Floor 9,
North York, ON
M2H 3P7

FAX NUMBER

FAX: 416.714.3629

Attention (its declared counsel herein):

Mr. Matthew Nieuwland
Business name: TD Insurance Staff Legal
Lawyer Licensee with the LSO
LSO #71405A

66 Wellington Street West,
38th Floor,
Toronto, Ontario,
M5K 1A2
T: 905-201-4092 | F: 416-599-7439

VOLUME #1(B): THE IMPUGNED DECISION MAKING ADJUDICATIVE TRIBUNAL

SPECIFICALLY TO

Licence Appeal Tribunal (the "**Tribunal**");

25 Grosvenor Street,

(unknown floor)

Toronto, Ontario,

(attention: Mr. Boyce, LSO, 72486F

Jesse A. Boyce
Law Society Number
72486F

Class of Licence Definitions
Lawyer (L1)
Real Estate Insured †
No
Status Definitions
Practising Law - Employed
Business Name
SLASTO
Business Address
25 Grosvenor 4th Floor Toronto, OntarioM7A 2S8
Phone
1 437 997 1235 Ext.

Jesse.boyce@ontario.ca

VOLUME #1(C): THE AGO

SPECIFICALLY TO:

Ms. Judie Im
Called to the bar: 2001 (ON)
Min. of Attorney General (ON)
Senior Counsel
Crown Law Office-Civil Law, 8th Flr.
720 Bay St.
Toronto, Ontario M7A 2S9
Phone: 416-427-4611
Fax: 416-326-4181
Email: judie.im@ontario.ca

Attorney General of Ontario Constitutional Law Branch McMurtry-Scott Building 4th Floor 720 Bay Street Toronto, Ontario, M7A 2S9 email: clbsupport@ontario.ca

VOLUME #2: THE HONOURABLE AGC

AND TO:

Attorney General of Canada

Department of Justice Canada 120 Adelaide Street West Suite #400 Toronto, Ontario M5H 1T1 Telephone: 416-973-0942; (Alternate: 647-256-1663) TDD: 416-973-2496 Fax: 416-954-8982 Email for Notices of Constitutional Questions: NCQ-AQC.Toronto@justice.gc.ca

VOLUME #3: LEGAL COUNSEL, LAWYER LICENSEE IN MR. SINNADURAI, TO MADAM JUSTICE SHORE

AND TO:

Counsel (retained to Madam Justice Shore) in Mr. Sinnadurai

Ananthan Sinnadurai
Called to the bar: 2011 (ON)
Min. of Attorney General (ON)
Counsel
Crown Law Office-Civil Law, 8th Flr.
720 Bay St.
Toronto, Ontario M7A 2S9
Phone: 416-326-4008
Fax: 416-326-4181
Email: ananthan.sinnadurai@ontario.ca

VOLUME #4: THE SPOUSE OF THE INDIVIDUAL WHO ENGAGED IN THE TDI KARAT THEFT ON OCTOBER 25, 2024

AND TO:

Ms. Julia Dunk

Law Society Number
P10606
Class of Licence Definitions
Paralegal (P1)
Status Definitions
In Private Practice
Business Name
Himelfarb Proszanski
Business Address
1401-480 University Ave Toronto, OntarioM5G 1V2
Phone
416-599-8080
Email Address
jdunk@himprolaw.com

VOLUME #5: THE ADR SPECIALIST WHO ENGAGED IN UNAUTHORIZED SIGNING OF THE SNIC RESPONSE AND THE THEFT OF THE APPLICANT'S PROPERTY, OF WHICH THE DOCUMENTATION THEREIN IS A SUBJECT MATTER IN DISPUTE HEREIN, BY THE TDI KARAT THEFT

AND TO:

Mr. David Karat

Non-licensee with the LSO

By professional email: David.karat@tdinsurance.com

As per his signature block that he was authorized to represent: Primmum Insurance Company, TD Home And Auto Insurance Company, TD General Insurance Company, and Security National Insurance Company

VOLUME #6: THE SABS MANAGER FOR THE TDIA GROUP FROM APRIL 2023 TO JANUARY 2025 AND EPSTEIN COLE LLP CLIENT WHILE MADAM JUSTICE SHORE WAS A SENIOR PARTNER AT SAID LAW FIRM

AND TO:

Epstein Cole LLP Client, Mr. Papadimitropoulos

Andrew Papadimitropoulos

Law Society Number
58696I
Class of Licence Definitions
Lawyer (L1)
Real Estate Insured †
No
Status Definitions
Practising Law - Employed
Business Name
The Toronto-Dominion Bank-Legal Department
Business Address
66 Wellington Toronto, OntarioM5K 1A0
Phone
416-983-5467

By previous email until end of January 2025 in: andrew.papadimitropoulos@tdinsurance.com

And current LSO directory email: andrew.papadimitropoulos@td.com

VOLUME #7: THE TORONTO POLICE SERVICES BOARD (THE "TPS"): THE MUNICIPAL POLICE FORCE INVOLVED THE EXECUTION OF THE SIGNED ARREST WARRANT BUT FAILED TO PROVIDE A COPY OF THE SAME DESPITE REQUESTS OF THE SAME

TPS Headquarters (nota bene: same address location for service of Court Officer (Toronto Region) Mrs. Frugoni-Rojas and the last location of employment for JP Jiri prior to being appointed as a JP of the OCJ and then assigned to the Central West Region OCJ Brampton)

40 College Street,

Toronto, ON,

M5G 2J3

Attention:

Ms. Falguni Debnath and legal department

Falguni.Debnath@tps.ca and legal.services@torontopolice.on.ca

VOLUME #8: THE MINISTRY OF SOLGEN AND THE HONOURABLE SOLGEN MR. MICHAEL KERZNER

Ministry of Solicitor General

Address:

18th floor of 25 Grosvenor Street

Toronto, Ontario

(nota bene: one floor below the office floor of "Tribunals Ontario" and that of executive director of Tribunals Ontario in Mr. Sean Weir)

Attention: emails in Affidavit of Service at Tab #22 of the NOM #3 Motion Record

PART B [NOT APPLICABLE BY VIRTUE OF THE APPLICANT'S GIVING OF THE CONFIRMATION FO MOTION ON NOVEMBER 24, 2025, FOR THE DECEMBER 3, 2025 HEARING

I, ... *(name)*, [lawyer for] the responding party, confirm that the moving party*(ies)* served a notice of motion but failed to send a copy of the Confirmation of Motion (Form 37B) in accordance with rule 37.10.1(1)(b). I will appear on the motion date to seek costs. I estimate the time required for costs submissions will be ..... minutes. I confirm that I have sent a copy of this form to the other party*(ies)* by e-mail in accordance with rule 37.10.1(2)(b).

RCP-E 37B (May 15, 2024)

Nothing past this line but schedules

SCHEDULE "A": COPIED AND PASTED EMAILS SINCE MAKING AND SERVING THE NOTICE OF MOTION ET AL
***NOTA BENE*: TITLE OF EMAIL WAS PURSUANT TO MS. MACIEL'S ERRONEOUS AND MISDIRECTED SERVICE OF THE LAT'S NOA TO THE INCORRECT EMAIL OF THE APPLICANT FOR THE JRPA PROCEEDING WHICH EXPLICITLY REFERENCED SERVICE PURSUANT TO THE RULES OF CIVIL PROCEDURE (BUT NOT "FILING" OR "DELIVERY")**

Re: LAT's Notice of Appearance : McLean v. TD Home and Auto Insurance et al. : 718/24

Mr. Kevin McLean <mcleansettlement@gmail.com> Mon, Nov 24, 2025 at 6:18 PM

To: "SCJ-CSJ Div Court Mail (JUD)" <scj-csj.divcourtmail@ontario.ca>
Cc: "Maciel, Milene (MAG)" <Milene.Maciel@ontario.ca>, "Collie, Connor (MAG)" <Connor.Collie@ontario.ca>, "Pasquini, Heather" <Heather.Pasquini@tdinsurance.com>, Div Court Schedule <DivCourtSchedule@ontario.ca>, "Nieuwland, Matthew" <Matthew.Nieuwland@tdinsurance.com>, "Boyce, Jesse (MAG)" <Jesse.Boyce@ontario.ca>, "Im, Judie (She/Her) (MAG)" <Judie.Im@ontario.ca>, "Imafidon, Isibhakhomen (MAG)" <Isibhakhomen.Imafidon@ontario.ca>, christiana.ortiz@tdinsurance.com, NCQ-AQC.Toronto@justice.gc.ca, AGC_PGC_OTTAWA@justice.gc.ca

Any reference to party or parties does not refer to the Respondents in the style of cause.
PRIVATE AND CONFIDENTIAL
Via Electronic Transmission
DATE: November 24, 2025

VIA EMAIL

URGENT

Court file number: DC-24-00000718-00JR
Type of document: NOM #3 Motion Record with meticulous hyperlinking and bookmarking
Short title of proceeding: *McLean v. TDHA et al*
Party: Mr. Kevin A. McLean (B.A., J.D, CIM) (mcleansettlement@gmail.com)

TO:

Respondent Insurance Companies
Licence Appeal Tribunal (LAT)
Attorney General of Ontario (AGO)

COPIED TO:

Divisional Court (Registrar)

Attorney General of Canada ("AGC")

SUBJECT I: PART 2 OF 2 OF THE HYPERLINKED AND BOOKMARKED MOTION RECORD FOR APPLICANT'S NOM #2

SUBJECT II: ENCLOSURE OF THE IN FORCE DIVISIONAL COURT JRPA GUIDE AT THE MATERIAL TIME
SUBJECT III: ASSURANCE AND PROMISE THAT MY CONFIRMATION OF MOTION FOR NOM #3 WILL BE GIVEN TO THE REGISTRAR WITH A COPY TO THE RESPONDENTS ALTHOUGH THEY ARE DISENTITLED TO RECEIVE NOTICE OF ANY STEPS IN THE JRPA PROCEEDING, RECEIVE DOCUMENTS IN THE JRPA PROCEEDING, AND FILE MATERIALS ON THE JRPA APPLICATION AS PER RULE 38.07(2)(A) TO (C)

INTRODUCTION AND ADOPTED DEFINITIONS
I cordially write regarding the above Subjects of this correspondence, the cumulative import of which necessitates an expeditious and judicious resolution by this Honourable Court. I tender my sincerest appreciation *in limine* for your valuable time and considered deliberation concerning this material correspondence and its **contemporaneous enclosures**, including the designated Part 2 of the Motion Record and the *in force* Divisional Court JRPA Guide. Acknowledging the finite, yet unequivocally valuable, resources at the Court's disposal, it is incumbent upon me to confirm that I have devoted an immense quantum of time to the exhaustive research and methodical analysis of the complex legal issues herein delineated, and their appropriate application to the intricate factual matrix of this file, thereby ensuring maximal efficiency in the judicial process. This effort is not merely about procedural compliance, but about safeguarding the integrity of the judicial review process itself, which is a cornerstone of public confidence in administrative law. The function of judicial review, as the primary mechanism for the supervisory jurisdiction of the superior courts, is to ensure that administrative bodies, such as the LAT, operate within the boundaries of their statutory mandate and adhere to the fundamental tenets of natural justice. This proceeding, therefore, is fundamentally resolution-oriented, seeking judicial pronouncements that define the legal boundaries of procedural regularity and compel adherence to the governing *Rules*. This is necessary to obviate the need for protracted and superfluous litigation stemming from the initial, profound procedural irregularities, and to restore the Applicant's right to an unblemished review of the administrative decision-making process.

The resolution sought in this correspondence is fundamentally resolution-oriented, aiming to secure judicial pronouncements that define the legal boundaries of procedural regularity and compel adherence to the governing *Rules*. This is necessary to obviate the need for protracted and superfluous litigation stemming from the initial, profound procedural irregularities. Furthermore, and in the interest of terminological precision and economy of expression, I formally adopt all definitions, whether explicitly, indirectly, or directly, contained within previously exchanged correspondence and documents forming the record, including but not limited to the *Rules of Civil Procedure* (the "Rules") and the *Judicial Review Procedure Act* (the "JRPA").

The present correspondence operates with a tone that is very formal, yet simultaneously gracious and fundamentally resolution-oriented, maintaining a strictly cognitive and non-emotional posture

throughout its articulation, thereby ensuring the discourse remains immutably anchored in the objective reality of legal and procedural fact. This approach is paramount to facilitating the prompt administration of justice.

Status Update and Definitive Conclusions Regarding Extra-Judicial Proceedings

The Locus Standi of the Case Conference and Procedural Mens Rea

As previously communicated, please find Part 2 of 2 attached (the "Attachment"), which contains supplementary evidence integral to the Applicant's position. Subsequent to my prior communication, I have secured confirmation via the *specific* auto-reply received from the representative of **Tribunals Ontario** (the "Tribunals"), Ms. Maciel, who was the individual charged with the attempted service of the Notice of Application (the "NOA") for the Licence Appeal Tribunal (the "LAT"). The confirmation of Ms. Maciel's confirmed and indefinite absence, devoid of any stipulated return date for her resumption of duties, precipitates a foundational procedural and legal impossibility regarding the requisite filing of the affidavit of service for the NOA. The successful and demonstrable service of the originating process, evidenced by a properly sworn affidavit, is not merely a formality, but a jurisdictional prerequisite (*sine qua non*) for the validity of all subsequent procedural steps; the absence of a competent affiant renders this fundamental step incapable of perfection, thus vitiating the procedural chain *in toto*.

The inescapable syllogism, therefore, is that in the complete absence of an affiant competent to execute the affidavit of service, the request by the LAT for a case conference on December 3, 2024, at approximately 3:30 p.m., was **void *ab initio***, possessing no legal force or effect from its purported inception. This defect is **patent** on the face of the record, as the Court could not have been presented with the necessary proof of jurisdiction over the Respondents. *Ipso facto*, it is axiomatic that no case conferences could have been lawfully or properly conducted in the complete absence of a perfected service record, as the Tribunal lacked the demonstrable jurisdiction over the parties mandated by the *Rules* at that material time. The consequence of this profound procedural nullity dictates that the legal ***status quo ante*** must be rigorously restored, which necessitates completely disregarding the purported extra-judicial proceedings and any directions that may have stemmed therefrom. The inherent flaw is that the Tribunal's action, however well-intentioned, fails the test of procedural *vires* when measured against the mandatory requirements of the *Rules*. A proceeding cannot be validly commenced without proof of service on the opposing party, as the court's jurisdiction over that party is derived from the fact of notice. The very concept of procedural *fidelity* demands this conclusion, as the *mens rea* (intent/knowledge) of the moving party (the Tribunal) cannot supersede the explicit dictates of the *Rules* concerning service. Furthermore, allowing directions derived from a *void ab initio* conference to stand would undermine the principle of judicial economy by injecting uncertainty into the procedural framework, inviting further litigation on collateral issues of validity.

Unavailability of Digital Recordings, Judicial Scrutiny, and *Ultra Vires* Actions

The substantive relief sought pertaining to the mandatory obtainment of the transcripts from those purported case conferences remains entirely **extant**, retaining its full legal force, especially as Madam Justice Shore has heretofore declined to judicially acknowledge the existence or content of the same. This judicial non-acknowledgement, while perhaps intended to minimize judicial entanglement in extra-procedural matters, paradoxically creates a record gap that obstructs the Applicant's ability to demonstrate the full procedural history of the dispute. The integrity of the appellate record, which must be complete and accurate, is a fundamental right guaranteed by the principles of natural justice

and procedural fairness. The Applicant's right to review the totality of the administrative record, including all interactions that influence the progression of the judicial review, is not discretionary.
My due diligence efforts are continuous and exacting, seeking to compel the production of this essential documentation, which is required for a complete record of review. Furthermore, I have been demonstrably unable to obtain the Compact Disc (CD) copies of the digital recordings, notwithstanding the fact that I remitted the requisite payment to secure this material. The continuous denial of delivery, coupled with the retention of the remitted funds, constitutes a **prima facie breach of contract and an affront to the principles of natural justice**. It remains ***sub judice*** and highly problematic why Madam Justice Shore has ostensibly taken the position that I should be deprived of funds paid and unreturned while simultaneously being denied receipt of the digital recordings to which I am definitively entitled by the executed Request Form Undertaking of October 2025. This situation constitutes an ongoing denial of the right to access the **full administrative record** under section 10 of the *Judicial Review Procedure Act* and is a direct impediment to the Applicant's ability to conduct effective review. The denial of this paid-for evidence, which forms part of the administrative record (however flawed), constitutes an action that may be considered **ultra vires** (beyond the powers) the authority conferred by the *JRPA* and the inherent principles of natural justice, specifically the right to a fair hearing and the ability to review the complete record without impediment. A core tenet of procedural fairness is the expectation that the fruits of a legally binding agreement (the undertaking and payment) will be delivered promptly. The denial of the full administrative record for review violates the principle of **completeness**, which is essential for effective **appellate or supervisory review** and the constitutional right to access the courts. If a thirty (30) day period was stipulated for the provision of the recordings, that period has demonstrably elapsed without adherence to the procedural covenant, constituting a breach of the undertaking. Furthermore, the argument that these were *in camera* proceedings does not diminish the need for transcription, as the Applicant retains the right to review the transcript for errors of natural justice, such as procedural unfairness, bias, or the failure to give proper deference. Consequently, further due diligence efforts are continuing with the Office of the Public Complaints Commissioner (the "OPCC") in relation to the compulsory securement of the recordings via Zoom or other verifiable means, ensuring the principle of **audi *alteram partem*** (the right to be heard) is not vitiated by the withholding of the record. The Court's intervention is required to prevent a miscarriage of justice predicated upon the incomplete administrative record, and to compel the immediate release of the paid-for recordings or the return of the funds remitted.

Procedural Compliance and the Evolving Divisional Court JRPA Guide

NOM #3, the Compendium Requirement, and Procedural Symmetry

In relation to *Rule 4.05.3* of the *Rules of Civil Procedure* (the "Rules"), the ultimate deadline for filing is noted to be 2:00 p.m. three days prior to the mandated hearing date of December 3, 2025. This Rule provides a clear procedural timeline which must be rigorously respected. It is further noted that if the Notice of Motion #3 (the "NOM #3") is unopposed ***de jure*** (as a matter of law), a compendium is not a mandatory prerequisite *per se*. Nevertheless, the Motion Record for NOM #3 has been deliberately and sufficiently hyperlinked and meticulously bookmarked in a comprehensive **"compendium style,"** thereby proactively mitigating any administrative burden upon the Court and fulfilling the spirit, if not the strict letter, of the requirement. This proactive submission underscores the Applicant's commitment to judicial efficiency and the principle of good faith litigation. To the extent that a formal "Compendium" is not ***de jure*** required due to the presumable absence of opposition—which would necessarily be the case unless the Respondent Insurance Companies and the LAT were able to secure an ancillary order ***in limine***—I shall nonetheless include all filed documentation relevant to the

hearing for NOM #3. This approach ensures procedural symmetry, eliminates the potential for a subsequent technical objection based on form, and facilitates the Court's ready access to the relevant evidentiary landscape. The purpose is to make the conclusions of the motion **self-evident** through the organization of the materials, thereby promoting both judicial and litigant efficiency.

The Retroactivity of Practice Guides and Lex Prospicit Non Respicit

The *Divisional Court Judicial Review Procedure Act Guide* (the "JRPA Guide") has undergone recent, substantive amendment, specifically in relation to hyperlinking, which necessitates that the *in force* version at the material time—the version which governed the Applicant's commencement of the JRPA Proceeding—be furnished to the presiding judicial officer. The legal principle of prospective application must govern this dispute, as any contrary finding would violate the right to procedural fairness. I shall presume that NOM #3 will be unopposed relative to the Confirmation of Motion required, and shall incorporate the same into the Motion Record for NOM #3 along with a physical exemplar of the *JRPA Guide* as it existed prior to the amendments most recently effected in 2025, or as it is demonstrably reflected in the metadata of late June 2025.
The alterations are most noticeable in that the iteration of the *Guide to Judicial Review in Divisional Court* not *in force* at the relevant time, represented as of late June or early July 2025, includes new and comprehensive sections regarding judicial case management that appear to impose new scheduling requirements:

"Case Management
Once you commence your application for judicial review or your motion for leave, there are steps that you must take regarding the schedule for the exchange of court documents and any preliminary issues. These steps are set out in the Consolidated Practice Direction for Divisional Court Proceedings.
All proceedings in the Divisional Court are subject to judicial case management. The purpose of case management is to facilitate access to justice through the timely adjudication of proceedings in the Divisional Court in a cost-effective and proportional manner.
This means that you may receive written directions from a judge and a judge may direct that there will be a case conference prior to the hearing of your motion or application.
As part of this process, the time for the delivery of court materials may be determined or changed as set out in directions from the Court. Other issues may be addressed, as set out in the judge's directions. Directions are normally sent to the parties by email."

It is a self-evident legal conclusion that a non-statutory **"guide"** is **not** imbued with **retroactive** effect, a principle encapsulated by the ancient legal maxim **lex prospicit non respicit** (the law looks forward, not backward). This maxim is fundamental to the rule of law, ensuring legal certainty and fairness. Procedural rules are generally presumed to be prospective in their operation unless the language compelling retrospective application is explicit and unambiguous, a condition not met by a non-statutory practice guide. While I maintain a vigorous academic disagreement with certain elements of the language concerning case management *per se* contained therein, the merits of that discursive point are presently **moot** as the *Guide* cannot retroactively cure procedural defects in the case at bar, nor impose obligations that did not exist when the proceeding was initiated. I remain firmly of the view that the LAT retains the mandatory, statutory obligation to file the record of proceeding **forthwith** as dictated by the *JRPA* prior to the guide's amendments, and this statutory duty cannot be superseded by a practice direction.

Case Management Assignment: The Jurisdictional Flaw Under Rule 38.07(2)

The purported exercise of judicial authority in assigning this proceeding for case management or issuing written directions must be rigorously scrutinized against the jurisdictional pre-conditions set out in *Rule 38.07(2)* of the *Rules of Civil Procedure*. This Rule governs the point at which a judge may assign a proceeding for case management and states:

"No Consent

(2) At any time on or after the filing of the first defence in a proceeding to which this Rule may apply, a regional senior judge or, subject to the direction of a regional senior judge, any judge or associate judge may assign the proceeding for case management under this Rule,

(a) on his or her own initiative; or

(b) on the request of a party or on motion if the court requires it." (Emphasis added)

The language of *Rule 38.07(2)* is clear and dispositive: the power to assign a proceeding for case management, whether on the Court's own initiative or upon the request of a party, is contingent upon the jurisdictional trigger event: the **filing of the first defence**. As established in the conclusion regarding NOM #2, the LAT and the Respondent Insurance Companies have demonstrably **failed to file** their Notices of Appearance (NOAs) or their First Defence. This failure is a matter of irrefutable record, legally corroborated by the adverse inference doctrine arising from their sustained silence and inability to cure the defect *nunc pro tunc*.

In the context of a Judicial Review Application, the "First Defence" is not merely an equivalent to a Statement of Defence, but is typically marked by the filing of the Respondent's Record and/or Factum, or at a minimum, the **Notice of Appearance** required under the *Rules* to acknowledge the proceeding and indicate an intention to defend the administrative body's decision. In this case, the complete absence of **any** responsive document that constitutes a "First Defence" means the fundamental procedural trigger required by the *Rules* for the commencement of case management has not been pulled. **Consequently, the assignment of this proceeding for case management, and any judicial directions issued pursuant thereto, were procedurally and jurisdictionally flawed, as the prerequisite for assigning the proceeding for case management under *Rule 38.07(2)* had not been met.** While a judge possesses the inherent authority to manage proceedings, this power cannot be permissibly exercised in contravention of a clear and mandatory procedural precondition established by the *Rules* themselves, which are statutory instruments authorized by the *Courts of Justice Act*. The action of assigning the proceeding for case management, and subsequently issuing directions based on that assignment, was **void *ab initio***, as it lacked the fundamental jurisdictional basis of a filed "First Defence." The *Rules* are designed to provide a predictable framework, and their contravention by an administrative assignment renders that assignment inherently defective, necessitating a return to the *status quo ante* where the Respondents are required to comply with their basic obligations before judicial management can commence.

The Limits of a Judge's Authority and the Hierarchy of Judicial Assignment

Furthermore, even assuming, for the purpose of argument alone, that a proceeding could be assigned for case management without the requisite filing, the subsequent direction by Madam Justice Shore to assign steps *to herself* as a particular case management judge represents an impermissible assignment of authority. *Rule 38.07(2)* indicates that a judge may assign the proceeding for case management, which is purely an **"assignment for case management" *per se***. The assignment of **all subsequent steps** to a *particular* judge is typically reserved for the Chief Justice of the Superior Court of Justice (SCJ) or the Associate Chief Justice of the SCJ—the quintessential President and Vice-President of the Divisional Court, an intermediate appellate court. This distinction is critical: the power to administratively designate a judge to take charge of a file for all purposes rests with the designated leadership of the Court, not with the individual judge. The Divisional Court, unlike the general SCJ, is a court of intermediate appeal and its internal administration must adhere strictly to the established

protocols for judicial assignment. While a judge may be designated as the case management judge *after* the initial assignment is properly made, they cannot unilaterally self-assign the entirety of the proceedings to themselves and simultaneously issue binding directions absent the jurisdictional foundation (the filed defence). Madam Justice Shore's purported written directions or order directing a case conference prior to the hearing of the JRPA Application are therefore without lawful procedural foundation, reinforcing the Applicant's argument that these extra-judicial proceedings are a complete legal nullity. The principle of *delegatus non potest delegare* (a delegate cannot delegate) may not strictly apply here, but the principle that judicial authority must be exercised in accordance with established rules of assignment is paramount to maintaining institutional integrity.

Non-Compliance with Case Center: Denial of Procedural *Parity* and Impediment to *Acta*

Notwithstanding the foregoing, the Case Center language within the prior *JRPA Guide* unequivocally stipulated that I was entitled to an invitation to Case Center upon the initiation of the JRPA Application, an entitlement that was denied in this proceeding:
"Case Center is an online document sharing platform which allows the Divisional Court to electronically view your court materials. The Divisional Court uses Case Center for both remote and in-person hearings. After you have brought an application or motion for leave, you will receive an email to register for Case Center and upload your materials. There is no fee to use Case Center".

The **non-compliance** inherent in the failure to extend such an invitation constitutes a systemic deficiency in the administration of the file, representing a matter of profound disappointment and, more critically, a denial of procedural **parity** with litigants whose proceedings were administered correctly. This denial of electronic access has forced the Applicant to engage in more cumbersome, paper-based processes, impeding the efficient **acta** (acts/transactions) of the litigation. This systemic deficiency is formally directed towards Madam Justice Shore's oversight of the matter. The quoted language under the "Case Management" section of the *Divisional Court Guide to Judicial Review*, which was not *in force* at the relevant time, serves as unequivocal proof that the *JRPA Guide* did not exist in that specific iteration *at the time of the dispute*, highlighting the fluid procedural environment. Consequently, the procedural irregularities witnessed here are symptomatic of a transition period, and it appears this NOM #3 and the attendant JRPA Application may represent the last vestiges of a **"dying breed"** of proceedings predating the current, formalized procedural regime of judicial case management. This non-compliance is highly prejudicial, forcing the Applicant to shoulder unnecessary burdens of manual document management and service, a condition not suffered by those whose files were administered correctly via the Case Center platform.

The Hierarchy of Law and the Limits of Inherent Jurisdiction

Upon a balance of probabilities, the quoted language attributed to Madam Justice Shore may well have reflected her desired procedural ***status quo*** at the time of the dispute; however, judicial preference does not possess the force of the governing law. I shall therefore make express reference to the legal principles concerning **retroactivity** versus **retrospectivity** versus the **proactive** force of legislative and regulatory instruments, and the impact upon procedural due process.
Legal Hierarchy of Authority:

1. **Statute** (*Judicial Review Procedure Act*): Supreme expression of legislative will, binding on the Court and all parties.
2. **Regulation** (*Rules of Civil Procedure*): Statutory instrument authorized by the *Courts of Justice Act*, governing the conduct of all civil proceedings.

3. **Practice Direction/Guide** (*Divisional Court JRPA Guide*): Administrative tool to aid in the application of the Rules, possessing no statutory authority to override the Statute or the Rules, and therefore having only persuasive, not prescriptive, force.

It remains my substantiated view that particular provisions of the current *Divisional Court JRPA Guide* are not perfectly aligned with the *Rules*, nor with the enabling *Judicial Review Procedure Act* (the "JRPA" or the "statute"), nor with the foundational **common law**. The *JRPA Guide* is not a regulation, is not subsidiary legislation, and does not constitute **"source law"**; its function is descriptive, not prescriptive, and must yield to the higher sources of law. As such, it is *subject to* the **Rules of Civil Procedure**, which are in turn *subject to* the statute, the ultimate interpretation of which is *subject to* the common law. In the event of an irreconcilable conflict between the common law and the principles of equity, **equity prevails** (*lex ferenda*). Notwithstanding this hierarchy, inherent jurisdiction, while vast and essential for the functioning of the Court, cannot be permissibly utilized to override clear Legislative will as expressed in a statute or its attendant regulations; to do so would be an act of legislative **ultra vires** and an overreach of judicial authority, potentially resulting in an appealable error and a denial of due process. The reliance on an administrative *Guide* to retroactively impose case management, particularly one that undermines a mandatory prerequisite of the Rules, is an application of *lex obliqua* (oblique law) rather than *lex recta* (straight law). The maxim **lex prospicit non respicit** confirms that the Applicant's procedural rights must be assessed based on the law and rules *in force* at the time the cause of action accrued and the proceeding was commenced, not by subsequently amended administrative directions.

Confirmation of Procedural Diligence

I provide the preceding exposition to confirm the rationale for the deliberate omission of hyperlinks in the *JRPA Guide* references within the Motion Record served upon the relevant Respondents and Non-Respondents, as the inclusion would have improperly directed the reader to the incorrect, amended *JRPA Guide*. **For the Court's convenience, I confirm that the correct, *in force* version of the Divisional Court JRPA Guide (as applicable at the material time) is enclosed with this correspondence, along with Part 2 of 2 of the Motion Record.** This meticulous approach ensures procedural integrity and avoids any possible confusion regarding the governing procedural framework at the material time, whilst maintaining meticulous attention to ensuring perfected service and notice, notwithstanding the potential relief offered by the provisions of *Rule 38.07*. All such steps are taken out of an **abundance of caution** and are undertaken without any concurrent or implied waiver of my substantive or procedural rights, which are preserved *in toto*.

Conclusion on NOM #2 and NOM #3 and Confirmation of Motion Compliance

I note, regarding the Draft Order for **NOM #2**, that I was operating under the misapprehension, a misconception consistent with my *post*-March 2025 discovery evidence, that the LAT and the Respondent Insurance Companies had successfully filed their Notices of Appearances (the "NOAs"). This assumption was demonstrably not the factual ***status quo***, as corroborated by the adverse inference doctrine. Approximately one month has now elapsed since I sought definitive proof or disproof of the filing and service of their NOAs. The complete absence of proffered evidence, combined with the subsequent inability of the parties to file *nunc pro tunc* (now for then), leads to the **unequivocal conclusion** that the NOAs were never filed, a finding which must be drawn by the Court in the interest of procedural clarity. Furthermore, the LAT's request for a case conference was procedurally predicated upon the **"filing"** of a First Defence at the time of the request, a requirement that was not met, as detailed extensively in the analysis of *Rule 38.07(2)*. The Respondent Insurance Companies

conspicuously refrained from participating in the process concerning potential preliminary issues. Consequently, in the absence of the filing of a First Defence or any NOA, the Respondents could not have lawfully received notice of any procedural steps or documentation within this JRPA Proceeding, thereby rendering their formal participation severely curtailed.

Moreover, in light of the requirements under Rule 37.10.1 regarding the Confirmation of Motion, I note the following procedural reality:

> "Confirmation of Motion
> 37.10.1 (1) A party who makes a motion on notice to another party shall confer or attempt to confer with the other party and shall, not later than 2 p.m. five days before the hearing date,
> (a) give the registrar a confirmation of motion (Form 37B) by,
> (i) sending it by email to the court office, or
> (ii) leaving it at the court office; and
> (b) send a copy of the confirmation of motion to the other party by email."

I submit that, pursuant to the unique and compelling factual *acta* herein, the procedural landscape was definitively established not merely by the filing and payment for the *Certificate of Perfection*, but *ipso facto* by the subsequent, protracted cessation of any formal or active participation by the Respondents. This confluence of events—the complete perfection of the record antecedent to the Listing for Hearing—has consequentially precluded the formal, regulatory definition of opposing "parties" as contemplated by the *Rules of Civil Procedure*. The extended and considerable delay in the judicial process has rendered the appearance of any putative Respondent moot for the purposes of immediate procedural determination.

The absence of the requisite procedural condition, specifically the lack of a *Listing for Hearing*, combined with the *de facto* non-appearance of Respondents subsequent to the completion of the *Certificate of Perfection*, dictates a finding that the strict application of subsection *37.10.1(b)* is presently vitiated and rendered nugatory. It is a fundamental legal principle that the strictures of the *Rules* cannot be imposed where the factual and procedural basis for their operation does not, in effect, exist. My conclusion, therefore, becomes self-evident: the extant *Rule 37.10.1(b)* is, under these singular circumstances, utterly superfluous.

The *status quo ante* prevailing at the material time is demonstrably reflected in the then-operative Divisional Court Judicial Review Practice Guide, a relevant regulatory instrument.
This *Guide* articulated a precise circumscription on the scope of mandatory judicial case management, unequivocally stating that: "Most motions and applications for judicial review in the Divisional Court are subject to judicial case management." The employment of the quantifying adjective "Most" is, *prima facie*, determinative; it prohibits an interpretation that would compel the absolute and universal application of case management to all matters.

The judicial pronouncement articulated in the Intake Court Endorsement [sic] dated February 3, 2025, whereby a mandatory and universal proposition was purportedly adduced, exhibits a profound discrepancy with the official and contemporaneous regulatory framework. It remains beyond my comprehension from whence this *verbatim* quotation was derived, yet the resulting necessity for comprehensive, painstaking research—a dedication spanning from May 2025 to the present date—has been compelling.

I further submit that the highly specialized and erudite registry staff, including Ms. Gentles with whom I became acquainted during the summer and autumn of 2025, would have possessed an intimate and unequivocal knowledge of the content of the *Rules of Civil Procedure* and the Divisional Court Practice Directions. Their expertise would preclude any assumption that such universal and mandatory language was contained within the official regulatory instruments. Consequently, the application of such a directive, if it purports to impose an obligation outside the express terms of the *Rules* or the *Guide*, is *ultra vires* the foundational procedural authority.

I must respectfully note that, in other less constrained procedural contexts—specifically, those not characterized by such immense delays and the consequent crystallization of the procedural record without opposing participation—I would deem it necessary to challenge the language presently contained within the current Divisional Court JRPA Guide, particularly the provisions effective June 2025. Nevertheless, this reservation of jurisprudential contention is a question for a future determination and is not requisite for the resolution of the matter *in limine*.

The requirement to "confer or attempt to confer with the other party" presupposes the existence of a legally recognized opposing party who has formally attested to their participation by filing a defence. Since the Respondents are technically in default and have not filed the requisite documentation to become formal "parties" in the sense contemplated by this Rule, the obligation to confer is diminished, though not entirely extinguished. The Applicant's conferral obligations cannot force an unrepresented or defaulted party to engage, nor can a non-response be deemed an agreement to a motion's content.

However, in the utmost spirit of professional courtesy and respecting the Court’s time and the interests of others, I have attempted to confer with the Respondents and Non-Respondents *per se* through the various notifications provided. I will now proceed to give the registrar the Confirmation of Motion in the required Form 37B by sending it via email to the court office, thereby satisfying the core obligation under Rule 37.10.1(1)(a). This proactive step ensures the Court is fully informed of the Applicant's intention to proceed on the scheduled date, thus promoting judicial efficiency despite the Respondents' procedural omissions. Furthermore, recognizing the interest of the Attorney General of Ontario (AGO) to be heard at the hearing of the JRPA Application, and to maintain transparency, I will provide copies of the Confirmation of Motion to the Non-Respondents, ensuring that all interested entities are duly apprised of the Applicant's intention to proceed on the scheduled date.
Irrespective of the ultimate disposition of NOM #3, transcripts from the case conferences are imperatively required. This requirement stems from the need for judicial oversight and the ability of the Applicant to exercise his right of appellate review; the alleged ***in camera*** nature of those proceedings does not defeat the right to a complete record for judicial scrutiny. The principle of accountability dictates that the record must be capable of being reviewed. My Confirmation of Motion shall subsequently follow to ensure a singular, cohesive motion record. My position regarding the lack of opposition to the same will be predicted upon a **de *jure*** conclusion (a legal certainty dictated by the lack of filing and the subsequent lack of jurisdiction for case management), as opposed to a **de *facto*** one (a mere factual observation). The legal conclusions arising from the procedural defaults are clear, and I have now drawn the necessary distinction with the required specificity. Those procedural defaults remain uncorrected without repentance or explanation.

I reserve the unqualified right to rely upon the entire exposition contained in this comprehensive correspondence for any lawful purpose whatsoever, inclusive of the future determination of costs, particularly in the context of the pervasive procedural irregularities and the lack of response from opposing parties documented herein. The systemic failures and procedural defects that have necessitated this extensive motion practice—including the failure of service, the *void ab initio* case

conferences, the denial of the paid-for record, and the unauthorized invocation of *Rule 38.07(2)*—constitute exceptional circumstances justifying an award of substantial indemnity costs against the defaulting parties to deter future similar breaches of procedural *fidelity*.

Yours most appreciatively and gratefully,

/s/Mr. Kevin A. McLean (BA, JD, CIM)

Mr. Kevin A. McLean (BA, JD, CIM) (he/him)

Yours faithfully,

/KAM

Mr. Kevin A. McLean (BA, JD, CIM)

Sender's name: Mr. Kevin Alexander McLean (BA, JD, CIM)

Sender's address: 410-775 King Street West, Toronto, Ontario, M5V 2K3

Sender's Telephone Number: (647) 370-9354

Sender's email address: mcleansettlement@gmail.com

On Mon, Nov 24, 2025 at 4:33 PM Mr. Kevin McLean <mcleansettlement@gmail.com> wrote:
DATE: November 24, 2025
MODE OF TRANSMISSION: VIA EMAIL
PRIORITY CLASSIFICATION: URGENT
JUDICIAL PARTICULARS

Court File Number:	**DC-24-00000718-00JR**
Document Type:	NOM #3 - part 1 of 2
Short Title of Proceeding:	McLean v. TDHA et al

Filing Party:	Mr. Kevin A. McLean (B.A., J.D., CIM) (mcleansettlement@gmail.com)

SUBJECT: Enclosure of the NOM #3 Motion Record with Extensive and Meticulous Hyperlinking and Bookmarking within the Table of Contents, Tabs 1 to 22, with Emphasis Involving the Factum
Dear Sirs/Mesdames/Other Gender-Neutral Pronouns:

I. TRANSMITTAL OF INAUGURAL COMPONENT SUBMISSION AND EVIDENTIARY AUTHENTICATION

As has been previously and unequivocally undertaken by the undersigned, the instant communication constitutes the formal transmittal of the inaugural component (Part I of II) of the overarching legal submission that will ultimately define the parameters of this proceeding. It is herein confirmed that the appended Factum, which serves as the principal argumentative instrument, has been rendered with a degree of **meticulousness** that warrants specific judicial consideration and mention, thereby facilitating the subsequent adjudication. The instrument incorporates a comprehensive system of internal hyper-citations that correspond precisely and seamlessly to the requisite Tabs and page enumerations of the voluminous and **compendious evidentiary record**. This sophisticated referencing structure is deliberately employed to ensure the preservation of analytical continuity and to expedite the comprehension of the judicial officer.
Furthermore, external linkages have been duly embedded within the textual fabric of the Factum, constituting the authoritative and **jurisprudential bases** for every material legal assertion contained within the instrument. This integration ensures that the submitted materials are not merely assertions *in vacuo*, but are robustly grounded in the prevailing *corpus juris* and **relevant statutory enactments**. The submission, by virtue of this intricate compilation and cross-referencing, renders the critical issues immediately and incontrovertibly justiciable, compelling the necessary judicial attention to the merits of the proposition advanced.

II. FORMAL ATTESTATION OF SERVICE, DEEMED ACCEPTANCE, AND PROCEDURAL ACQUIESCENCE

It is hereby formally and with requisite solemnity attested, as of the current date of execution of this document, that the process of service has been duly and properly effected upon all designated **persons or entities**, strictly pursuant to the procedural mandates stipulated in the *Rules of Civil Procedure* and/or any ancillary *Rules of Practice* governing these proceedings. In furtherance of the **paramount principle** of full and candid disclosure to the Court, it is confirmed that a multiplicity of various recipients have provided an **acknowledgment of receipt**, primarily, though not exclusively, in the form of automated electronic replies, which nevertheless fulfill the threshold requirement for proof of delivery.
Crucially, a material assertion, with profound procedural implications, is advanced: None of the designated Non-Respondents, within the established style of cause, have registered any formal **controversy**, objection, or substantive dispute regarding the facts, assertions, or evidentiary material proffered for the Court's contemplation. This deliberate, calculated absence of opposition or formal rebuttal, **ipso facto**, gives immediate rise to the necessary **prima facie** presumption of an implicit and legally binding acceptance of both the efficacy of the service process and the underlying substantive accuracy of the materials transmitted. This non-action is not construed as mere passivity, but rather as an affirmative procedural acquiescence, which compels the **deduction** that all served instruments are deemed procedurally sound and materially accurate, thereby constituting a fundamental and irrevocable procedural waiver of the right to contest the initial introduction of these materials **in limine**.

III. SYLLOGISTIC EXTRAPOLATION ON JUDICIAL SERVICE AND DOCTRINE OF AGENCY

Of **paramount significance** is the formal attestation regarding the demonstrable efficacy of service upon the Honourable Madam Justice Shore, the judicial officer seized of this matter. It is herein confirmed that Mr. Sinnadurai, Esquire, a barrister and solicitor, and his professional assistant, Ms. Kwok—with whom a professional acquaintance has been established since the summer of MMXXV and subsequently—have not, at any juncture, registered any dispute concerning the propriety or the legal sufficiency of service effected upon Her Ladyship through their office. This service, it is **syllogistically** and logically posited, is validated by the undeniable professional retention of Mr. Sinnadurai as retained counsel to Her Ladyship in the context of this specific file and/or the related proceedings.

The established doctrine of agency dictates that service upon retained counsel constitutes effective service upon the client, and in this judicial context, this principle stands unassailable. Therefore, the antecedent delivery of duplicative documents to the respective Managers of Court Operations for the Divisional Court and the Superior Court of Justice (SCJ) at 361 University Avenue—which constitutes the non-Divisional Court location of the Honourable Madam Justice Shore's chambers—is, by this confirmation of counsel's authority, deemed an **ultra vires** and superfluous administrative act. The independent undertaking of such delivery would be entirely lacking the necessary legal **actus** or practical utility, as the matter of notification and receipt has been definitively concluded through counsel. The **status quo ante**—the state of procedural sufficiency—is thereby maintained solely by this singular, effective, and procedurally compliant service upon Her Ladyship's authorized representative.

IV. CONCLUSION AND COMPULSORY PRESUMPTION OF NON-OPPOSITION

In the eventuality that no substantive motions—including, but not limited to, applications for directions, motions to strike, or any request for interim or interlocutory relief that might impede the scheduled progression of this matter—are duly filed by either the Respondent Insurance Companies and/or the Licence Appeal Tribunal (LAT) within the **requisite temporal framework** established under the *Rules* for the proper service and subsequent commencement of such applications, then the undersigned shall, in application of established and compelling legal principles, invoke the formidable presumption of non-opposition with respect to Notice of Motion No. 3 (**NOM #3**). This presumption is not merely ceremonial; it constitutes a definitive legal entitlement, thereby rendering **NOM #3** uncontested and ripe for immediate disposition by the Court based exclusively upon the submitted materials.

A certified true copy of the within Transmittal and formal Attestation shall be **forthwith** remitted to all designated **persons or entities** as Non-Respondents. This serves as supplemental evidence of service and provides the **requisite** and explicit notification of the procedural consequence—the inevitable invocation of the foregoing presumptions—ensuring that no subsequent objection pertaining to lack of notification may be entertained **in limine** by the Court.

Respectfully Submitted,
Mr. Kevin A. McLean (B.A., J.D., CIM)

Yours faithfully,

/KAM

Mr. Kevin A. McLean (BA, JD, CIM)

Sender's name: Mr. Kevin Alexander McLean (BA, JD, CIM)

Sender's address: 410-775 King Street West, Toronto, Ontario, M5V 2K3

Sender's Telephone Number: (647) 370-9354

Sender's email address: mcleansettlement@gmail.com

On Mon, Nov 24, 2025 at 4:05 PM Mr. Kevin McLean <mcleansettlement@gmail.com> wrote:
24th day of November 2025

VIA ELECTRONIC MAIL

URGENT COMMUNICATION AND SERVICE OF ENCLOSURES

Court File Number: DC-24-00000718-00JR

Style of Proceeding: *McLean v. TDHA et al.*

Document Description: Notice of Motion No. 3 Motion Record with Hyperlinking and Bookmarking

Party: Mr. Kevin A. McLean (B.A., J.D., CIM) (mcleansettlement@gmail.com)

TO: The Respondent Insurance Entities (TD Home and Auto Insurance Company, Security National Insurance Company, TD General Insurance Company) The Licence Appeal Tribunal (LAT) The Attorney General of Ontario (AGO)

COPIED TO: The Divisional Court The Attorney General of Canada (AGC)

SUBJECT: ENCLOSURE OF THE COMPREHENSIVE NOTICE OF MOTION NO. 3 MOTION RECORD, INCORPORATING METICULOUS HYPERLINKING AND BOOKMARKING ACROSS THE ENTIRETY OF THE TABLE OF CONTENTS AND TABS 1 THROUGH 22, WITH PARTICULAR EMPHASIS UPON THE FACTUM, THEREBY FACILITATING JUDICIAL REVIEW AND EXPEDITING THE DETERMINATION OF SUBSTANTIVE MATTERS.

I. INTRODUCTION AND CONVEYANCE OF MATERIAL

The present correspondence functions as the formal instrument effecting the transmission of the **Notice of Motion No. 3 Motion Record** of the Applicant, Mr. Kevin A. McLean. This extensive evidentiary and argumentative repository has been prepared with scrupulous, even obsessive, attention to detail, manifesting as an exceptionally robust system of hyperlinking and bookmarking meticulously integrated within the electronic document's architecture. This intricate framework specifically traverses the entirety of the **Table of Contents** and the sequential contents housed within **Tabs 1 to 22**. Particular diligence has been exercised in ensuring that the **Factum** contained therein—the central legal submission of the Applicant—is comprehensively and recurrently cross-referenced with maximum precision to the evidentiary material, thereby establishing a foundation of undeniable factual nexus between the legal submissions and the primary evidentiary foundation.

The preparation of this record embodies a paramount commitment to the principles of **judicial economy** and **procedural transparency**, which are recognized as foundational pillars of the Canadian justice system. The exhaustive hyperlinking and bookmarking are not merely superficial aesthetic enhancements, but rather a sophisticated, functional mechanism devised to afford this Honourable Court immediate, seamless, and unerringly precise navigability through the voluminous documentation. The meticulous cross-referencing establishes an unimpeachable factual nexus, thereby minimizing the judicial expenditure of time requisite for the laborious, meticulous verification of every single citation and evidentiary reference. This proactive adherence to the highest echelon of best practices in digital litigation manifests the Applicant's profound respect for the scarce resources of the court system and the imperative for an expeditious, reasoned, and procedurally unimpeachable determination. The conveyance of these electronic copies, executed as a profound gesture of *bona fides* and professional obligation, underscores the gravity attributed to the unimpeded and accurate apprehension of the material facts and the complex legal propositions proffered. The comprehensive, self-contained nature of this document is ultimately intended to facilitate the Court’s judicious review and to ensure the most efficient possible disposition of this judicial review proceeding, precluding any plausible argument of procedural deficiency or informational opacity.

II. OBSERVATIONS ON THE OCCP PORTAL AND FILING REQUIREMENTS

It is noted that the Case Centre functionality within the MyOntario portal has been duly activated *in relation to* the Ontario Civil Claims Portal (OCCP), signifying a pivotal and necessary evolution in the digitalization of the Ontario superior courts. This transition requires a corresponding elevation in the technical proficiency of all litigants. Consequent upon this institutional transition, necessary steps shall be undertaken forthwith to achieve complete and proficient familiarization with the intricate procedural and operational dictates of the said portal, ensuring a complete and *in limine* comprehension of all associated technical specifications, security protocols, and upload idiosyncrasies. This is to ensure strict and unimpeachable compliance with all relevant *Rules of Civil Procedure*, attendant practice directions, and specialized electronic filing requirements recently promulgated by the Chief Justice.

Furthermore, profound recognition is accorded to the stringent temporal mandate governing the uploading of all exhibits, evidence, and authorities intended for reliance during the scheduled forthcoming written hearing. The temporal exigency—an acute and pressing demand—requires that this complete, compiled upload must be consummated approximately three (3) clear, full days prior to the established date of the hearing, specifically by the two o’clock post-meridiem (2:00 p.m.) deadline. This procedural deadline is understood not as a flexible suggestion or an administrative guideline, but as an unforgiving, absolute threshold. Failure to comply with this electronic filing

requirement shall *ipso facto* jeopardize the admissibility and, consequently, the judicial consideration of the requisite documentation, thereby incurring the non-negligible risk of procedural forfeiture and severely compromising the Applicant's substantive rights to due process. Strict, absolute, and demonstrable adherence to this technological and chronological imperative is therefore guaranteed by the Applicant, ensuring no procedural deficiency shall be imputed to this moving party.

III. JURISPRUDENTIAL CONTEXT AND PROCEDURAL IMPERATIVE

A fundamental jurisprudential principle dictates that a party alleging *mala fides* or fraud must prosecute its claim within the procedural ambit of the specific proceeding where the alleged fraudulent conduct originated or where the resultant administrative decision was rendered. The jurisprudential foundation for the selection of this forum—the Divisional Court via a **JRPA Application**—rests upon the established doctrine of **procedural propriety**, which rigorously constrains attempts at a collateral attack upon prior judgments or administrative determinations. This principle ensures the orderly administration of justice by preventing multiple proceedings challenging the same root issues.

Notwithstanding the potential for a more financially *lucrative* quantum of damages potentially obtainable through a direct petition sounding in the egregious elements of fraud—a course analogous to the specialized fraud litigation procedural mechanisms extant in the Province of British Columbia—the immutable dictate of Ontario procedural law prevails. This jurisdiction mandates that any challenge predicated upon allegations of *mala fides*, systemic irregularity, or *ultra vires* conduct (action taken without legal authority), particularly those possessing the highly prejudicial hallmarks of a fundamental vitiation of process (akin to the requisite standard for *mens rea* in a criminal context, applied here analogously to corporate or administrative intent), must be formally and singularly adjudicated within the original proceeding or via the prescribed mechanisms of judicial oversight, such as judicial review. Therefore, the prevailing Ontario procedure dictates that the instant **JRPA Application** is confirmed, *a fortiori*, as the procedurally correct, statutorily sanctioned, and unavoidable legal container within which the documentation requisite to expose and remedy the alleged *ultra vires* conduct and subsequent fraud must be definitively filed, addressed, and resolved by the superior courts of jurisdiction. The utilization of this JRPA, therefore, constitutes a meticulous adherence to the established *lex fori* (law of the forum).

IV. IMPLICATIONS OF NON-FILING OF NOTICES OF APPEARANCE

It is again formally underscored, for the benefit of the Respondent parties and the judicial record, that the Respondent Insurance Companies and the Licence Appeal Tribunal (LAT) have not yet duly filed and delivered their respective Notices of Appearance in this proceeding. The current procedural posture of these entities is consequently drawn into sharp and unambiguous relief by their sustained omission to comply with the mandated initial filing requirements, as set out in the relevant *Rules*. This sustained absence constitutes a definitive procedural bar, which may preclude their subsequent participation in the substantive hearing of this matter, unless cured by extraordinary judicial dispensation.

Should these parties subsequently determine that a participatory role is desired, or should they seek to make submissions concerning the Applicant's motion, it shall become incumbent upon them to seek formal leave to appear by way of a substantive, documented motion to the Divisional Court. The grant of such extraordinary relief is profoundly discretionary and is strictly predicated upon a

demonstration of compelling merit, the absence of any demonstrable prejudice to the Applicant, and the provision of a satisfactory, exhaustive, and credible explanation for the antecedent failure to adhere to the established filing deadlines. This strict procedural *sine qua non* is essential for the preservation of the integrity and predictability of the litigation schedule and ensures that the *status quo ante*—the legal position of non-participation and the attendant consequence of limited rights—is not unilaterally disturbed without judicial oversight. The Court's supervisory function is robustly invoked to ensure that such procedural omissions are addressed rigorously and formally, thereby maintaining the fairness and predictability essential to the just administration of justice.

V. RESERVATION OF RIGHTS AND CONCLUSION

The Applicant hereby expressly reserves all rights to rely upon this specific correspondence, as an unequivocal statement of procedural position and intent, for any and all lawful purposes throughout the remaining tenure of this litigation and any derivative proceedings, including its potential tender as evidence of procedural notification.

As previously articulated, and out of an abundance of caution, **Part 1** and **Part 2** of the meticulously hyperlinked and bookmarked Motion Record shall follow this transmittal as a separate electronic delivery. This division of files is a technical necessity owing to the maximum size constraints imposed by email servers for single attachments.

Sincere appreciation is hereby extended for the professional consideration and immediate attention afforded to this critical material, the prompt review of which is essential to the timely advancement of this judicial review and unravelling the errors that have spawned from Shore J.

I reserve the right to rely on this correspondence for any lawful purpose including the making of the NOM #3 one week ago along with meticulous courtesy notice and service of all documents.

Sincerely,

/s/ Mr. Kevin A. McLean (B.A., J.D., CIM)

Mr. Kevin A. McLean (B.A., J.D., CIM) (mcleansettlement@gmail.com)

Yours faithfully,

/KAM

Mr. Kevin A. McLean (BA, JD, CIM)

Sender's name: Mr. Kevin Alexander McLean (BA, JD, CIM)

Sender's address: 410-775 King Street West, Toronto, Ontario, M5V 2K3

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On Fri, Nov 21, 2025 at 5:07 PM Mr. Kevin McLean <mcleansettlement@gmail.com> wrote:
Dear Sirs/Mesdames/Other Gender-Neutral Pronouns:

Please find Part 2 of 2 attached. Thank you.

Yours faithfully,

/KAM

Mr. Kevin A. McLean (BA, JD, CIM)

Sender's name: Mr. Kevin Alexander McLean (BA, JD, CIM)

Sender's address: 410-775 King Street West, Toronto, Ontario, M5V 2K3

Sender's Telephone Number: (647) 370-9354

Sender's email address: mcleansettlement@gmail.com

On Fri, Nov 21, 2025 at 5:04 PM Mr. Kevin McLean <mcleansettlement@gmail.com> wrote:
Dear Sirs/Mesdames/Other Gender-Neutral Pronouns:

For good measure and in the spirit of courtesy, please find attached the updated and current motion record with Tabs 1 to 22 (Part 1 of 2) with consecutively numbered pages. Part 2 of 2 will follow. Copies are being served on the Non-Respondents. Thank you.

Yours faithfully,

/KAM

Mr. Kevin A. McLean (BA, JD, CIM)

Sender's name: Mr. Kevin Alexander McLean (BA, JD, CIM)

Sender's address: 410-775 King Street West, Toronto, Ontario, M5V 2K3

Sender's Telephone Number: (647) 370-9354

Sender's email address: mcleansettlement@gmail.com

On Fri, Nov 21, 2025 at 4:04 PM Mr. Kevin McLean <mcleansettlement@gmail.com> wrote:
Dear Sirs/Mesdames/Other Gender-Neutral Pronouns:

As promised, please find attached the notarized Affidavit of Service which has also been tabulated into Tab 22 with page numbers 3099 to 3150.

I will attend to the filing of the entire motion record, as is, in such form with the index at the outset and in the same exact form as previously. Due to the previous size, you can add Tab 22 to the previous Motion Record.

Thank you.

Yours faithfully,

/KAM

Mr. Kevin A. McLean (BA, JD, CIM)

Sender's name: Mr. Kevin Alexander McLean (BA, JD, CIM)

Sender's address: 410-775 King Street West, Toronto, Ontario, M5V 2K3

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On Fri, Nov 21, 2025 at 3:11 PM Mr. Kevin McLean <mcleansettlement@gmail.com> wrote:
Classification: Private and Confidential
Sending method: Via Electronic Transmission
Creation method: Dictated with Voice Recognition Software (reservation of rights to correct any grammar, syntax, important qualifiers or improper double negatives)

Date: November 21, 2025

Court File No: DC-24-00000718-00JR

Short Title of Proceeding: McLean v. TDHA et al (the "Within Proceeding")

Party: Mr. Kevin A. McLean (B.A., J.D, CIM) (the "Applicant")

Applicant's Email: mcleansettlement@gmail.com

SUBJECT I: PROVISION OF THE UN-NOTARIZED OR UN-COMMISSIONED AFFIDAVIT OF SERVICE, MULTI-PURPOSED (AFFIDAVIT #28) IN THE WITHIN PROCEEDING

SUBJECT II: AMPLIFICATION OF THE EXIGENT CIRCUMSTANCES NECESSITATING IMMEDIATE CONSIDERATION OF THE APPLICANT'S NOTICE OF MOTION (NOM #3) DUE TO FURTHER ACTS OF FRAUD AND MALFEASANCE CONCERNING PERSONAL PROPERTY AND INFORMATION

Dear Sirs/Mesdames/Other Gender-Neutral Pronouns:

I. Introduction, Preliminary Adoptions, and Procedural *Ratio*

I cordially write regarding the above **Subjects** of this correspondence. I thank the Recipients in advance for the time and consideration they dedicate to this correspondence and its attachments, which are incorporated herein by reference and/or inclusion. It is fully appreciated that the **Recipients** operate with finite, yet profoundly valuable, professional and institutional resources, which is precisely why the Applicant has undertaken immense and fastidious effort to research the salient legal issues herein and apply them comprehensively to the extant factual matrix. This detailed approach is not merely an exercise in rhetorical flourish but an attempt to mitigate any potential confusion, ambiguity, or procedural *locus standi* challenge that might otherwise burden the judicial process and the **Recipients'** professional obligations. The central procedural *ratio* of this document is the demonstration of both diligent compliance, through the provision of the **Affidavit**, and the immediate, escalating need for judicial protection against the egregious **acta** being perpetrated. This dual emphasis serves to underscore the Applicant's good faith while simultaneously placing the onus of responsibility for the ongoing crisis upon the opposing parties and the relevant judicial administration.

The Applicant adopts all definitions and conventions from previously, indirectly or directly, cited correspondence and all documentation contained within the index to the Applicant's NOM #3 motion record (the "Motion Record"). Specifically, the Applicant provides the following definitions for the purposes of precise legal articulation and consistent terminology throughout the **Within Proceeding**:

i. Affidavit of Service (the "Affidavit");
ii. Notice of Motion (the "NOM");
iii. Toronto-Dominion Insurance Group of Automotive Insurance Companies (the "TDI");
iv. Further acts of fraud involving my stolen property (the "TDI Karat Theft of this week");
v. Rules of Civil Procedure (the "Rules");
vi. Courts of Justice Act (the "Act");
vii. McLean v. TDHA et al (the "Within Proceeding");
viii. Privacy legislation, including but not limited to the Personal Information Protection and Electronic Documents Act (the "PIPEDA"), and all analogous provincial statutes (the "Privacy Regime");
ix. The agent of the Respondent Insurance Companies, as he once was by LSO Directory, engaged in fraudulent impersonation (the "Epstein Cole LLP Client").

II. Substantive Provision of Documentation and Evidentiary Efficacy: The *Nunc Pro Tunc* Principle

This correspondence serves as the formal transmittal mechanism for the un-notarized or un-commissioned **Affidavit** (Affidavit #28) pertaining to the service of documentation in the **Within Proceeding**. The **Affidavit** is appended hereto and its contents are incorporated *in extenso* as if fully restated herein, thereby establishing a formal nexus between the act of service and the judicial record. The provision of this documentation, although presently un-commissioned, does not diminish its inherent factual veracity, which is sworn to by the Applicant. It is a demonstrable commitment to transparency and timely disclosure, reserving the right to file the formally commissioned document *nunc pro tunc*—literally, "now for then"—a judicial doctrine utilized to remedy procedural omissions where the delay is minimal and does not prejudice the opposing parties (of which there are none). The service of this un-commissioned instrument immediately achieves the substantial compliance required for procedural advancement.

The submission of this **Affidavit**, notwithstanding its temporary un-commissioned status, is effectuated for multi-purposed utility, primarily to establish *prima facie* evidence of service as required by the **Rules**, specifically *Rule 16*, and to delineate the immutable chronological progression of the **Within Proceeding**. This preemptive submission is critical; it ensures that the evidentiary foundation for the subsequent procedural steps, including the hearing of the **NOM #3**, is robustly established and available for the **Recipients'** immediate perusal and instruction.

Furthermore, it pre-emptively addresses and vitiates any potential procedural challenges regarding timely notification of all interested parties, thereby eliminating opportunities for delay based on technical non-compliance which could, in turn, frustrate the ends of justice and exacerbate the Applicant's ongoing prejudice. The Applicant operates on the principle of *uberrima fides* (utmost good faith), providing evidence even if a formal technicality is pending, to accelerate the judicial process. This transparent disclosure of the completed service *acta* mandates that the **Recipients** cannot plead lack of notice or surprise regarding the impending filing of the **Motion Record** or the substantive arguments contained within the **NOM #3**.

III. Exigent Circumstances and the *Necessitas* for NOM #3: The Constitutional Dimension of Harm and Suspicion

The provision of the aforementioned **Affidavit** is rendered all the more exigent and pressing in consequence of the egregious and subsequent **TDI Karat Theft of this week**. This new and reprehensible sequence of events involves further unauthorized access, manipulation, and deprivation concerning the Applicant's personal information (the "Personal Information"), confidential information, personal health information, and sensitive personal information. The continuity of such calculated deprivation and unauthorized access necessitates an immediate judicial response, confirming that the issues at the heart of the litigation are dynamically deteriorating and that the **Respondents** (or their affiliates) continue to exert an unauthorized dominion over the Applicant's private sphere. This phenomenon signifies a distinct escalation in the perceived risk to the Applicant's safety and proprietary interests, moving beyond mere financial damages to encompassing fundamental liberty and privacy concerns enshrined within Canadian jurisprudence and quasi-constitutional documents. The judiciary's authority must be exercised *in the affirmative* to arrest this negative trajectory and re-establish the lawful *status quo ante*.

Such unauthorized **acta** directly and severely contravene the fundamental tenets of privacy legislation, including the **PIPEDA** and the broader **Privacy Regime**, and the Applicant's *status quo ante* rights concerning the inviolability of private dominion. The persistence of these unlawful activities, purportedly perpetrated *ipso facto* against the Applicant, incontrovertibly furnishes additional, compelling evidence that the underlying issues giving rise to the **Within Proceeding** are not merely historical infractions, susceptible to remedial measures over an extended timeline, but represent an ongoing and deleterious campaign of **malfeasance**.

Crucially, while the Applicant maintains a rigorous *decorum* and refrains from unsupported conjecture concerning the precise orchestrators of the current *acta*, the timing of this new deprivation is deemed most suspicious. The only established and known facts are: (1) the identity of the initial *de facto* thief, (2) his unequivocal agency tie to the Respondent Insurance Companies (the **TDI** entities), and (3) the subsequent, clear instance of impersonation executed by the **Epstein Cole LLP Client**. These facts construct a compelling circumstantial narrative that necessitates urgent investigation and judicial constraint. This ongoing pattern of conduct exponentially amplifies the irreparable harm that the Applicant continues to suffer, moving the matter from one of ordinary dispute resolution to one demanding extraordinary interim and injunctive relief to prevent the complete erosion of proprietary control over personal data. The very integrity of the judicial process is arguably implicated when parties demonstrate such a patent disregard for proprietary and informational boundaries during the pendency of active litigation, manifesting a brazen attempt to circumvent or undermine the authority of the Court. The Applicant posits that this conduct exhibits a sophisticated **extrapolation** of prior, lesser infractions into a concerted, high-gravity **acta** demanding judicial scrutiny *sine mora* (without delay).

IV. Obligation of Mitigation and Procedural Finality: The Equitable Duty

To the extent that any **Respondents** or their duly authorized agents possess knowledge of this unconscionable conduct and are vested with the ability, power, or operational control to interdict or cease the same, it is requested with the utmost seriousness that **active and immediate steps** be taken to mitigate the ongoing harm. This **active duty of mitigation** is a foundational principle of equity and civil responsibility, extending beyond passive cessation to requiring affirmative measures to claw back or neutralize the unlawful informational control. Any willful omission to act in the face of known, ongoing breaches, particularly where such breaches involve sensitive information protected by the **Privacy Regime**, shall be considered a compounding factor, evidencing a corporate or

institutional **mens rea** in the Applicant's pursuit of aggravated and punitive remedies. The **Recipients** are hereby put on formal notice of this escalating exposure to adverse findings predicated upon the doctrine of *respondeat superior* (let the master answer).

Furthermore, the Applicant affirms the procedural finality regarding the evidentiary status of the service: This **Affidavit** of Service, to be commissioned shortly and without delay, will be formally and irrevocably included under the remaining tab of the **Motion Record**, subsequent to which the entirety of the **Motion Record** will be filed with the Court as such. The function of this filing is to ensure comprehensive documentary submission well in advance of the judicial hearing date. A complete and comprehensive copy of the same, including the duly commissioned **Affidavit**, will be served concurrently upon the Non-Respondents who have already been served with prior documentation in the **Within Proceeding**, thereby satisfying the procedural imperative of complete documentary dissemination to all interested parties. This meticulous approach ensures that all parties, whether designated as Respondents or Non-Respondents, possess the full evidentiary context required to prepare for the substantive hearing of the **NOM #3**.

V. Legal Syllogism and Conclusion: The Mandate of Judicial *Alacrity*

It is a core **syllogism** that judicial intervention becomes an absolute *necessitas* when non-judicial entities engage in a continuous course of action that is *ultra vires* their lawful mandate and which manifests an inherent **mens rea**—a guilty or deliberate mind—to disregard the Applicant's entrenched justiciable rights. The deliberate and repeated nature of the alleged infractions, extending into the current week, provides a strong **extrapolation** that the Respondents' activities are calculated, volitional, and systematic, rather than merely negligent or accidental administrative failures. This *animus* necessitates a judicial remedy of a protective and pre-emptive nature, rather than a mere compensatory one, to prevent further proliferation of the alleged harm. The Court is therefore urged to consider the protective dimensions of the relief sought in **NOM #3** as being paramount to the curative, emphasizing the doctrine of irreversible judicial protection.

The factual extrapolations flowing from the **TDI Karat Theft of this week** demonstrate that the core relief sought by the **NOM #3**—which fundamentally concerns the preservation of rights, the cessation of unlawful processes, and the maintenance of evidentiary purity—is not merely desirable, but is now a matter of acute and immediate judicial necessity. The current situation demands an adjudication *ex parte* if the initial circumstances warrant such protective measures, followed by *inter partes* proceedings at the earliest judicial opportunity, lest the **Respondents** benefit from the temporal delay inherent in standard scheduling and thereby consummate their alleged unlawful objectives, rendering the Court's future orders irrelevant.

As this NOM #3 was made this week on Monday, the timing of the fraudulent conduct on Tuesday, November 18, 2025, is a pattern as the service of the Motion Record was thereafter.

The further investigations currently underway concerning the **TDI Karat Theft of this week** shall, without a scintilla of doubt, serve only to buttress the Applicant's assertions of systemic and ongoing breach, providing granular evidentiary detail to the Court. Consequently, the **NOM #3** must be prioritized on the judicial docket to address these accumulating and compounding harms *in limine* (at the threshold). The failure to expeditiously address the substantive legal issues and the underlying causative mechanisms that permit such ongoing breaches risks the judicial validation of an unlawful *status quo* and potentially renders the ultimate judgment nugatory—a hollow victory devoid of practical effect that severely undermines the purpose of the *Act*. This would constitute a profound

miscarriage of justice that the Applicant seeks strenuously to avoid through this detailed and urgent correspondence.
The conclusions drawn herein are thus rendered self-evident: the necessity of the **NOM #3** has been logarithmically elevated by the **Respondents'** latest purported **acta**, placing a definitive and urgent onus upon the **Recipients** to acknowledge the amplified gravity and inherent procedural complexity of the **Within Proceeding**. The immediate scheduling and contemplation of the relief sought are prerequisites for restoring the equitable balance between the litigating parties and ensuring that justice is not merely promised, but substantively delivered with *alacrity* and finality.

Yours most appreciatively and gratefully,

/s/Mr. Kevin A. McLean (BA, JD, CIM)

Mr. Kevin A. McLean (B.A., J.D, CIM) (he/him)

Yours faithfully,

/KAM

Mr. Kevin A. McLean (BA, JD, CIM)

Sender's name: Mr. Kevin Alexander McLean (BA, JD, CIM)

Sender's address: 410-775 King Street West, Toronto, Ontario, M5V 2K3

Sender's Telephone Number: (647) 370-9354

Sender's email address: mcleansettlement@gmail.com

On Wed, Nov 19, 2025 at 4:55 PM Mr. Kevin McLean <mcleansettlement@gmail.com> wrote:
Court file number: DC-24-00000718-00JR
Type of document: Applicant's NOM #3 Motion Record in multiple parts (Part 2 is attached)
Short title of proceeding: McLean v. TDHA et al
Party: Mr. Kevin A. McLean (B.A., J.D., CIM) (mcleansettlement@gmail.com)

TO: RESPONDENTS BUT WAY OF DECLARED BY EMAIL COUNSEL (Including the Respondent Insurance Companies, the Executive Director of the Licence Appeal Tribunal (LAT), the Attorney General of Ontario (AGO), and the Associate General Counsel (AGC) or corresponding

office)

AND TO: THE REGISTRAR, ONTARIO SUPERIOR COURT OF JUSTICE (DIVISIONAL COURT)

SUBJECT: FORMAL SERVICE OF THE APPLICANT'S NOTICE OF MOTION NO. 3 (NOM #3) MOTION RECORD (Part 2 of 2)

Dear Sirs/Mesdames/Other Gender-Neutral Pronouns:

As promised, please find part 2 of 2 attached. As confirmed, I did receive notification that Case Center will be available by November 24, 2025, through the MyOntario account. Better late than never subject to it being accessible and not requiring the required invitation. Thank you.

Yours faithfully,

/KAM

Mr. Kevin A. McLean (BA, JD, CIM)

Sender's name: Mr. Kevin Alexander McLean (BA, JD, CIM)

Sender's address: 410-775 King Street West, Toronto, Ontario, M5V 2K3

Sender's Telephone Number: (647) 370-9354

Sender's email address: mcleansettlement@gmail.com

On Wed, Nov 19, 2025 at 4:48 PM Mr. Kevin McLean <mcleansettlement@gmail.com> wrote:

Court file number: DC-24-00000718-00JR
Type of document: Applicant's NOM #3 Motion Record in multiple parts (Part 1 is attached)
Short title of proceeding: *McLean v. TDHA et al*
Party: Mr. Kevin A. McLean (B.A., J.D, CIM) (mcleansettlement@gmail.com)

TO: RESPONDENTS BUT WAY OF DECLARED BY EMAIL COUNSEL *(Including the Respondent Insurance Companies, the Executive Director of the Licence Appeal Tribunal (LAT), the Attorney General of Ontario (AGO), and the Associate General Counsel (AGC) or corresponding office)*

TO: THE REGISTRAR, ONTARIO SUPERIOR COURT OF JUSTICE (DIVISIONAL COURT)

SUBJECT: FORMAL SERVICE OF THE APPLICANT'S NOTICE OF MOTION NO. 3 (*NOM #3*) MOTION RECORD (Part 1 of 2)

I. INTRODUCTORY PROLEGOMENA AND TRANSMISSION OF ACTA

This formal, definitive, and profoundly weighty correspondence is hereby **dispatched** in rigorous and unwavering fulfillment of the antecedent **undertaking** to submit the Applicant's voluminous, complex, and dispositive **Notice of Motion No. 3 (*NOM #3*) Motion Record**. This compendium is inclusive of all supplementary documentary and exhaustive evidentiary materials which fundamentally and directly pertain to the above-referenced judicial review proceeding. The intrinsic **gravity** and the consequential implications of the *lis pendens*—a matter concerning the rightful adjudication of constitutional liberties within an administrative framework—necessitate this immediate filing to ensure that the matter proceeds with the requisite **celerity**, **procedural rectitude**, and an absolute fidelity to the principles of justice that underpin the *Courts of Justice Act*.

Enclosed herewith is the initial, but by no means exhaustive, instalment, which has been designated **Part 1**, comprising a consequential segment of the complete and comprehensive documentary **compendium**. This inaugural submission contains the systematically tabulated and consecutively enumerated materials, the entirety of which culminates with the requisite **Draft Order**, a pivotal jurisdictional document which is logically situated and clearly referenced at **Tab 21** of the overall record. This complete filing, spanning several thousands of pages of documentary evidence, constitutes an articulate, forceful, and irrefutable exposition of the compelling legal position necessitating the immediate and substantive intervention of this Honourable Superior Court to address the systemic failures that have precipitated this extraordinary recourse. The Applicant, in the exercise of his constitutional rights, presents this *acta* to delineate the failures of the administrative process below.

II. PROCEDURAL ELABORATION AND CURIAL AMENITY

It is a substantive matter of formal confirmation that the entirety of the electronically submitted record has been rendered in a state of reasonably precise and navigable **electronic bookmarking**, thereby efficaciously optimizing the preliminary organization for immediate comprehension. Nevertheless, and notwithstanding the execution of this initial, indispensable preparatory measure, the immense compilation shall imminently undergo further, comprehensive technical refinement. This subsequent, highly specialized refinement involves the rigorous implementation of internal **hyperlinking** and meticulous **cross-referencing** across the entirety of the record. The purpose is to ensure the utmost ease of navigation between the **Factum**, the evidentiary **Statutory Declaration (which can be reduced to an appended affidavit if necessary but provided for temporal purposes in such format due to the urgency and necessary, inter alia, return of property or confirmation of destruction by those who de facto and de jure stole from me tainting this proceeding)**, and the cited authorities. This technically advanced undertaking is extended not merely as a superficial convenience, but as a deliberate and essential **curial amenity**, fundamentally designed to construct the most **expeditious** and intellectually **unencumbered intellectual pathway** for the Presiding Honourable Justice when engaging with the complex evidentiary matrix. This refinement is a critical mechanism to mitigate the logistical complexities arising from the record's **prodigious** magnitude, ensuring the Tribunal's constitutional overreach and the Respondents' deleterious conduct are immediately accessible for judicial scrutiny. Furthermore, by reason of the sheer volume of the documentary evidence and legal authorities amassed in support of the Applicant's articulated position, the complete *NOM #3* Motion Record is necessarily and pragmatically segregated into discrete

electronic parts. This essential segmentation ensures seamless, secure, and efficient transmission to the Court and all interested respondents thereby deliberately obviating any potential for technological impediment or administrative confusion in processing the entirety of the voluminous *acta*.

III. SUBSTANTIVE PRÉCIS OF RELIEF SOUGHT

It is considered procedurally and substantively **imperative** that the Honourable Court, alongside all respondents (not technically "parties"), take explicit notice, **in limine**, of the profound substantive exigencies and **fundamental jurisdictional imperatives** motivating the *NOM #3*. The application predicates, with undeniable force, upon the manifest and inescapable necessity for the **Divisional Court** to exercise its superior, inherent jurisdiction to grant efficacious and essential remedies, the scope of which fundamentally and decisively **transcend** the statutory limitations and the restrictive, inherent authority of the **Licence Appeal Tribunal**. The underlying premise, which is capable of an **irrefutable extrapolation of legal principles**, is that the Tribunal, having acted arguably **ultra vires** its mandate in its disposition or, more precisely, its *failure* to properly address constitutional questions, has created a jurisdictional void and a constitutional lacuna that only the supervisory jurisdiction of this Court may fully and finally rectify.

The constellation of relief sought, as meticulously detailed within the **Factum of the Applicant**, is substantially and logically predicated upon two principal and non-severable components:

1. **Constitutional Determination and Procedural Due Process:** An unequivocal Order establishing that the determination of the requisite **Charter** relief shall proceed forthwith, either *via* detailed written argument or an expedited oral hearing, to be finally adjudicated and definitively rendered by the presiding Divisional Court Judge within a strictly defined, narrow temporal parameter, such as thirty (30) days from the date of the issuance of the Order. This immediate adjudication is not merely preferential but is rendered **indispensable** to rectifying the current **status quo ante**, which is undeniably and fundamentally compromised by reason of the protracted denial of the Applicant's constitutional entitlements pursuant to *section 7* and *section 15* of the *Canadian Charter of Rights and Freedoms*. The delay, *prima facie*, amounts to irreparable prejudice, thus demanding an immediate restoration of **procedural fairness** and the cessation of the constitutional stagnation currently afflicting the proceeding. The *mens rea*, or lack of due diligence, demonstrated by the systemic actors in permitting this situation to subsist, justifies this robust judicial intervention.
2. **Exemplary Costs and Judicial Rebuke:** An Order awarding **Full Indemnity Costs** against any and all Respondents who elect to oppose, or who demonstrate a failure to unequivocally consent to, the straightforward and self-evident remedial measures herein sought. This extraordinary entitlement is claimed, not capriciously, but on the compelling and judicially recognized basis of the demonstrated and **egregious** nature of the underlying systemic and procedural misconduct. Such malfeasance has rendered this judicial intervention an inescapable matter of absolute procedural and legal necessity, designed to prevent the perpetuation of injustice. The legal **syllogism** articulated within the Applicant's **Factum** posits that such indefensible conduct—conduct which suggests an intentional disregard for the Applicant's constitutional rights and the process of justice—is **ipso facto** sufficient to justify a punitive and corrective measure on the highest, **full indemnity** basis. This serves the dual purpose of compensating the Applicant for the unnecessary expenditure of resources and providing an appropriate **in terrorem** effect against those corporate entities and governmental offices that would otherwise countenance the continuance of the deleterious *acta* under judicial review.

IV. CONFIRMATION OF SERVICE

Confirmation is likewise unequivocally afforded that due and diligently attested service upon **all interested persons and counsel of record**, including the statutorily mandated service upon the respective Attorneys General owing to the constitutional nature of the claims advanced, shall be effectuated **forthwith**. This service will strictly adhere to the modalities prescribed by the *Rules of Civil Procedure*. Subsequent to the rigorous completion of the entirety of the multi-jurisdictional service process, a formal **Affidavit of Service**, meticulously documenting precise compliance with *Rule 16* and its associated strictures, shall be generated, commissioned, and filed with the Registry. This document will serve as the final and conclusive proof of service upon all necessary persons, thereby perfecting the procedural record for the Court's consideration.

I will continue all due diligence efforts to ensure that the open court principle and the truth seeking function of civil litigation is honoured. To the extent that I obtain further relevant evidence to the same, I will provide it as a courtesy.

Part 2 of 2 shall follow.

Kevin A. McLean (B.A., J.D., CIM)
Applicant, Self-Represented

Yours faithfully,

/KAM

Mr. Kevin A. McLean (BA, JD, CIM)

Sender's name: Mr. Kevin Alexander McLean (BA, JD, CIM)

Sender's address: 410-775 King Street West, Toronto, Ontario, M5V 2K3

Sender's Telephone Number: (647) 370-9354

Sender's email address: mcleansettlement@gmail.com

On Wed, Nov 19, 2025 at 4:11 PM Mr. Kevin McLean <mcleansettlement@gmail.com> wrote:
Court file number: DC-24-00000718-00JR
Type of document: Factum for NOM #3
Short title of proceeding: McLean v. TDHA et al

Party: Mr. Kevin A. McLean (B.A., J.D, CIM) (mcleansettlement@gmail.com)

Dear Sirs/Mesdames/Other Gender-Neutral Pronouns:

As promised, please find Tab #1 (Factum For Motion in Writing) for NOM #3 for service upon the relevant persons. The remainder will be provided with the motion record which is Tabs #1 to #21 and enumerated consecutively. I provide this as a courtesy in light of the failure to file a First Defence by the Respondent Insurance Companies and LAT and to "deliver" Notices of Appearances.

As noted and discovered, all of the proven allegations and highly pointed special categories of nullities where the Divisional Court is implicated are unequivocally and absolutely directed at Madam Justice Shore herein.

Thank you.

Yours faithfully,

/KAM

Mr. Kevin A. McLean (BA, JD, CIM)

Sender's name: Mr. Kevin Alexander McLean (BA, JD, CIM)

Sender's address: 410-775 King Street West, Toronto, Ontario, M5V 2K3

Sender's Telephone Number: (647) 370-9354

Sender's email address: mcleansettlement@gmail.com

On Mon, Nov 17, 2025 at 4:23 PM Mr. Kevin McLean <mcleansettlement@gmail.com> wrote:
Procedural Nexus and Identification
Court File Number: DC-24-00000718-00JR
Nature of Instrument: Formal Electronic Communication Incorporating Substantial Documentary Enclosures and Assertions of Procedural Default
Short Title of Proceeding: *McLean v. TDHA et al*
Principal Litigant: The Applicant, Mr. Kevin A. McLean (B.A., J.D, CIM) (mcleansettlement@gmail.com)

Dear Sirs/Mesdames/Other Gender-Neutral Pronouns:

As promised, my statutory declaration of November 14, 2025, served on Mr. Karat, Ms. Dunk and the Epstein Cole LLP Client. As noted, the statutory declaration, with the time stamping of the same for temporal precision, may be appended to an affidavit or affidavits for formality purposes but the substance and exact language and exhibits therein will obviously remain the same.

Due to its size, it has been served in double compressed form.

Thank you.

Yours faithfully,

/KAM

Mr. Kevin A. McLean (BA, JD, CIM)

Sender's name: Mr. Kevin Alexander McLean (BA, JD, CIM)

Sender's address: 410-775 King Street West, Toronto, Ontario, M5V 2K3

Sender's Telephone Number: (647) 370-9354

Sender's email address: mcleansettlement@gmail.com

On Mon, Nov 17, 2025 at 4:18 PM Mr. Kevin McLean <mcleansettlement@gmail.com> wrote:
***Per* Electronic Facsimile Transmission**
SUBSEQUENT TO THE ESTABLISHMENT OF IRREVOCABLE LEGAL PREJUDICE AND MANDATORY NON-DEROGATION

Date of Execution: The Seventeenth Day of November, Two Thousand and Twenty-Five (MMXV)

Procedural Nexus and Identification

Court File Number: DC-24-00000718-00JR
Nature of Instrument: Formal Electronic Communication Incorporating Substantial Documentary Enclosures and Assertions of Procedural Default
Short Title of Proceeding: *McLean v. TDHA et al*

Principal Litigant: The Applicant, Mr. Kevin A. McLean (B.A., J.D, CIM) (mcleansettlement@gmail.com)

Designated Recipient Entities

The Licence Appeal Tribunal (LAT)
Attention: The Office of the Registrar, Mr. Boyce, or Designated Senior Legal Counsel, as the originating administrative body whose record and conduct are the subject of the instant judicial review.
The Respondent Insurance Corporations:
Corporate entities possessing established jural personality and attendant legal obligations under the Insurance Act (Ontario) and the common law, specifically named herein as the entities in default of filing a substantive defence:

- TD Insurance Home and Auto (TDHA)
- *Security National Insurance Company* (SNIC)
- TD General Insurance Company (TDGIC)

Courtesy Recipients: Entities of Oversight and Jurisdiction

The Divisional Court
Attention: The Office of the Clerk of the Court (Madam Clerk Clegg et al.), as the administrative and record-keeping authority for the reviewing judicial body. The Divisional Court's mandate, as the superior court, includes the supervisory function over the inferior tribunals of this province, thereby necessitating its prompt awareness of the institutional non-compliance herein documented.
The Attorney General of Ontario (AGO)
Attention: Crown Counsel, Ms. Im, whose office maintains an enduring supervisory role over the proper conduct of administrative tribunals, the integrity of the provincial justice system, and the enforcement of all apposite provincial statutes. This role imports a compelling public interest obligation to address allegations of systemic fraud and administrative malfeasance.
The Attorney General of Canada (AGC)
Attention: Legal Counsel, whose interest is necessarily engaged when questions of fundamental justice, the Charter implications of procedural failures, and the possible systemic failure of federally-regulated entities are implicated by the provincial proceedings.
The considered inclusion of these esteemed entities of sovereign oversight constitutes a necessary, non-supererogatory procedural measure, serving to ensure that the profound procedural *lacuna* and the patent administrative failings created by the categorical non-compliance of the Respondents are brought directly to the immediate cognizance of those vested with the responsibility of upholding the comprehensive integrity and efficacious operation of the Canadian judicial and administrative apparatuses. The highly sensitive nature of the emergent fraud claims mandates the attention of both governmental levels, inasmuch as these claims speak directly to potential systemic deficiencies

impacting the fundamental public trust in regulated insurance and administrative bodies. The Divisional Court, specifically, requires full and unreserved awareness of the Respondents' procedural deficiencies in the underlying Tribunal process, as this bears directly upon the quantum and type of remedy available upon judicial review.

Subject Matter of Transmittal

CONCERNING: The formal and definitive enclosure of the Applicant's now perfected and finalized **Notice of Motion Number Three** (NOM #3) and the supplementary, critical **Statutory Declaration of November 14, 2025**.

These transmitted documents collectively delineate the *sine qua non* (the essential condition) upon which the Applicant's immediate and urgent request for judicial intervention is predicated, serving as the procedural mechanism for obtaining conclusive relief. The perfection of the NOM #3 signifies that all requisite documentary components have been assembled, finalizing the Applicant's *locus standi* to seek a definitive ruling. This intervention specifically addresses and seeks definitive redress for the systemic procedural failures, the egregious delays, and the substantiated substantive deficiencies evinced by the Respondents throughout the entirety of the subject proceeding, failures which fundamentally subvert the principles of justice and fairness mandated by the *Charter of Rights and Freedoms*. The NOM #3 constitutes the conclusive demand for remedy based upon an uncontroverted record and the inherent authority vested in the reviewing court to correct patent procedural irregularities that prejudice a litigant's position. The relief sought is not of an interlocutory nature but aims for the final resolution of the extant procedural and substantive defaults.

Correspondence: Substantive Submissions

To the Esteemed Recipients and Affected Parties, formal salutations and unequivocal notice are hereby extended:

This instrument is addressed to the aforementioned Divisional Court proceeding, DC-24-00000718-00JR, thereby effectuating the official and legally significant service of the Applicant's current and material submissions. This action is undertaken to ensure that all parties possess the requisite **constructive notice** concerning the consequential relief sought, the allowance of which is now demonstrably procedurally predetermined by the Respondents' documented and persistent defaults in filing, thereby compelling the Court's subsequent ruling *ex parte* if necessary.

Section I: The Transmittal of Definitive Filings and Evidentiary Submission

Pursuant to the mandatory procedural requisites stipulated by the Tribunal and the fundamental, inherent requirements of *natural justice* and the *duty of candour* owed to the court, and by way of formal, contemporaneous service upon all designated Respondents, the requisite documentary portfolio is herewith transmitted for immediate and non-derogable consideration and procedural

acknowledgment. This portfolio is comprised of the following two foundational submissions, both of which are central to the prompt, conclusive, and legally sound adjudication of the instant motion:

1. The Applicant's **Statutory Declaration,** which was solemnly executed on the fourteenth day of November, MMXV. This declaration, a pivotal evidentiary instrument, has been previously and punctiliously served upon Messrs. Karat, Dunk, and Papadimitropoulos of the Epstein Cole LLP entity, thereby establishing their specific, non-deniable knowledge of the factual assertions contained therein. **Notwithstanding the documented service upon opposing counsel, the absence of any formal rejoinder or evidentiary rebuttal results in the conclusive, uncontroverted status of this sworn evidence.** The declaration is adduced as conclusive sworn evidence, attesting to facts that are materially *exculpatory* of the Applicant's conduct and simultaneously *incriminating* of the Respondents' procedural derelictions and substantive *mala fides* in the underlying dispute. Its contents are predicated upon personal knowledge and documentation which constitute *res gestae* of the underlying dispute and stand as sworn evidence before this Honourable Court, carrying with it the attendant, irrebuttable weight of proof until formally rebutted via a mechanism provided for within the *Rules of Civil Procedure*, a mechanism the Respondents have conspicuously failed to employ. The uncontroverted status of this sworn evidence renders any future attempts to introduce contradictory facts an abuse of process.
2. The Applicant's finalized and perfected **Notice of Motion Number Three (NOM #3)**, bearing the date of today's execution. This document meticulously articulates the complex legal and factual premises underpinning the specific and far-reaching judicial orders requested, encompassing relief that extends to procedural regularization, costs on a solicitor-client basis, and substantive remedies. It serves as the definitive statement of the Applicant's current procedural posture and the consequential remedies sought under the *Courts of Justice Act*, particularly concerning the enforcement of procedural compliance by recalcitrant parties who have demonstrated a palpable disregard for the Court's scheduling and procedural directives.

The simultaneous service of these definitive filings operates to remove any conceivable or potential procedural impediment to the motion's ultimate disposition by the Divisional Court, thereby placing the entire and undivided **onus of timely and legally sufficient response** entirely and exclusively upon the respective Respondents. The time allocation for delay, evasion, or equivocation has demonstrably expired, requiring a prompt resolution of the resulting procedural *impasse* through the immediate enforcement of the procedural *Rules*.

Section II: Extrapolation of Non-Appearance and Consequent Legal Implication

The **conspicuous and profoundly concerning absence** of any substantive, defensible, and formal rejoinder to the antecedent correspondence, transmitted on the twenty-sixth day of October, MMXV, **and the failure of Messrs. Karat, Dunk, and their instructing client to file a rebuttal to the Statutory Declaration of November 14, 2025, notwithstanding documented service**, compels a necessary and *unassailable syllogistic* extrapolation regarding the Respondents' procedural posture and, indeed, their *bona fides* in this protracted litigation. Such protracted and unexplained procedural inertia suggests not merely passive negligence, which would be sufficient grounds for sanction, but a deliberate strategy of calculated procedural disengagement designed to frustrate the orderly, timely, and just progression of the matter, conduct which could be conclusively construed as an *abuse of process* and a contemptuous disregard for the judicial process.

This protracted and demonstrated failure confirms, unequivocally, that the Licence Appeal Tribunal and the Respondent Insurance Corporations have **manifestly and deliberately eschewed** their fundamental procedural obligation to lodge, with requisite proof of service appended, a **First Defence** as formally stipulated under the apposite *Rules of Civil Procedure* of the Superior Court of Justice, specifically referencing Rule 37 pertaining to Notices of Appearance and defence filing deadlines. This is not a mere technical oversight or venial error of minimal consequence; it constitutes a fundamental procedural *dereliction* that irrevocably jeopardizes the very foundation of adversarial fairness and necessitates the exercise of the Court's inherent jurisdiction to mandate judicial intervention. The failure to file a defence is tantamount to an admission of the Applicant's claims for the purposes of this motion.

Sub-Section A: The Undisclosed Professional Retainer and Appearance of Impropriety

As is meticulously documented herein, the Applicant recently ascertained that **Mr. Sinnadurai** served as counsel to **Madam Justice Shore**, an association which, although potentially facilitated by design by the Ministry of the Attorney General (MAG), nonetheless establishes an undeniable, established relationship of professional retainer between Madam Justice Shore and Mr. Sinnadurai. This circumstance is particularly notable given that Mr. Sinnadurai was the sole, insistent point of contact designated for *all* requests for records involving the Undisclosed Criminal Proceeding, a role performed over and above the established jurisdictional authority of the MAG Civil Strategy Division (CSD) Records Division. This exclusive delegation of authority to an individual with a known professional tie to a senior member of the judiciary raises profound concerns regarding the **duty of institutional neutrality**. The selection of Mr. Sinnadurai for this sensitive and exclusionary role, considering the extensive roster of available legal professionals at the MAG, and the pre-existing professional history with Madam Justice Shore, presents a question of patent and non-trivial impropriety, impacting the confidence of the Applicant in the impartiality of the document production process. The legal ramifications of such a confluence of professional associations and designated roles, particularly when records pertaining to an Undisclosed Criminal Proceeding are centralized in the hands of one individual with conflicts of interest, are, upon

objective consideration, manifest. The potential for the appearance of conflict of interest, bias, or preferential treatment in the handling of sensitive judicial and governmental records cannot be ignored by this Court. *Res ipsa loquitur* (The thing speaks for itself).

Sub-Section B: Procedural Forfeiture, Non-Discretionary Curative Orders, and Legal *Estoppel*

This operational omission (failure to file a Defence) constitutes a **procedural forfeiture** of the highest order, resulting in a **tacit and undeniable abandonment** of the entitlement to substantively controvert the factual or legal merits of the instant judicial review application. The practical, undeniable, and immediate effect of this default is the creation of a procedural *estoppel* against future contestation of the Applicant's narrative or the facts attested to in the Statutory Declaration. By failing to avail themselves of the prescribed procedural mechanisms for reply within the designated time parameters, the Respondents have voluntarily and conclusively relinquished their right to invoke the protective doctrine of *audi alteram partem* (the right to be heard) in opposition to the merits of NOM #3, a consequence that is entirely self-imposed and wholly attributable to their procedural choices.

A direct and binding admonition is hereby issued that the Licence Appeal Tribunal and the Respondent Insurance Corporations are under a strict, non-delegable obligation to actively petition for and obtain formal curative orders from the Court. These orders are required for the regularization of manifest procedural irregularities, including, but not limited to, the dereliction involving the non-filing and non-delivery of the requisite Notices of Appearance, prior to any possible consideration of their standing being deemed *in bonis* (in good order) before this Honourable Court. This onerous procedural obligation rests squarely and unilaterally upon the defaulting parties, and their failure to secure such regularization serves as further conclusive evidence of their non-compliance. Absent such an order, any subsequent attempt by the Respondents to participate in the proceedings must be dismissed *in limine* (at the threshold) due to fundamental lack of standing.

Consequently, by direct operation of this material, persistent, and unrectified procedural default, the entirety of the Applicant’s proposed conclusions, legal assertions, and factual predicates presented in the attached Statutory Declaration and NOM #3 are rendered, *prima facie*, **self-evident, incontestable, and utterly uncontroverted**. The evidentiary record, as it stands following this unilateral procedural failure, is singularly and overwhelmingly in favour of the Applicant, thereby necessitating the **mandatory and non-discretionary allowance** of the consequential relief sought, specifically encompassing orders for the **immediate return of the Applicant’s property *et al*** and all ancillary judicial directives involving the same. The Divisional Court, in the face of this persistent default and the related ethical anomalies, is thus duty-bound to grant the Orders requested in the enclosed **NOM #3** to restore the procedural *equilibrium*, deter similar future misconduct, and secure the Applicant’s constitutional access to justice without further undue, prejudicial delay.

Attachments, which shall include the statutory declaration noted above, are to follow separately, attended by filing in the new Ontario Court Case and Document Portal (OCPP) in accordance with the prescribed digital (filing) protocols.

The Applicant's factum, motion record, confirmation of motion, draft orders *et al* shall follow promptly for the purpose of complete procedural compliance and final submission to the Court's judicial officer not a client of Mr. Sinnadurai who have come to know all too well in 2025.
I reserve the right to rely on this correspondence for any lawful purpose inclusive of costs.

Respectfully submitted,
/s/ Mr. Kevin A. McLean (BA, JD, CIM)
Mr. Kevin A. McLean (BA, JD, CIM)

Yours faithfully,

/KAM

Mr. Kevin A. McLean (BA, JD, CIM)

Sender's name: Mr. Kevin Alexander McLean (BA, JD, CIM)

Sender's address: 410-775 King Street West, Toronto, Ontario, M5V 2K3

Sender's Telephone Number: (647) 370-9354

Sender's email address: mcleansettlement@gmail.com

On Sun, Oct 26, 2025 at 7:25 PM Mr. Kevin McLean <mcleansettlement@gmail.com> wrote:
PRIVATE AND CONFIDENTIAL
Via Electronic Transmission
WITH PREJUDICE
Date: October 26, 2025

Creation Method: Document dictated utilizing Voice Recognition Software commencing on October 24, 2025, necessitated by the emergence of further facts and/or the potential discovery of additional material fraud (The reservation of rights to effect corrections upon any grammar, syntax, salient qualifiers, or improper double negatives is expressly maintained)

Court file number: DC-24-00000718-00JR
Type of document: Electronic Mail
Short title of proceeding: *McLean v. TDHA et al*
Party: Mr. Kevin A. McLean (B.A., J.D, CIM) (mcleansettlement@gmail.com)

TO:

The Licence Appeal Tribunal (LAT)
Kind Attention: Mr. Boyce, Registrar or Designated Counsel

TO:

Respondent Insurance Companies
TD Insurance Home and Auto (TDHA)
Scotia-affiliated National Insurance Company (SNIC)
TD General Insurance Company (TDGIC)

Copied to:

The Divisional Court
Attention: Clerk of the Court (Madam Clerk Clegg et al.)

Copied to:

Attorney General of Ontario (AGO)
Kind Attention: Ms. Im, Crown Counsel

Copied to:

Attorney General of Canada (AGC)
Kind Attention: Legal Counsel

Subject I: Respectful Query and **Urgent Request of the Respondents (LAT and Respondent Insurance Companies)** – Formal demand for copies of evidentiary proof concerning the complete and accurate **"delivery"** (pursuant to *Rule 1.03* definition of **"Deliver"** signifying both a successful service upon the Applicant and the subsequent **FILE** of the document accompanied by proof of service) of the **Notice of Appearance** by the Licence Appeal Tribunal (LAT), with particular emphasis on the manifest failure to transmit the document to the Applicant via the **exclusive and formally designated** email address within the **Judicial Review Application** (the "**JRPA Application**") and the demonstrable use of an alternate, antecedent channel (an electronic mail transmission from Law Clerk Ms. Maciel Milene directed to the address reserved solely for the **LAT Proceeding**: mcleansniclat@gmail.com).

Subject II: Respectful Query and **Formal Demand** – Requisition for copies of evidentiary proof concerning the complete and procedurally sound **"Delivery"** (Service and Filed Proof) of the **Notice of Appearance** by the **Respondent Insurance Companies** dated December 3, 2024.
(Collectively, the "Subjects")

Dear Sirs/Mesdames/Other Gender-Neutral Pronouns:

This comprehensive missive is hereby formally tendered concerning the aforementioned Subjects of correspondence, necessitating an immediate and definitive clarification regarding the integrity and fidelity of the court record. Appreciation is *a priori* (*from the former*) extended for the time and considered deliberation that will be accorded this correspondence and its appended attachments (whether by reference or inclusion). The finite yet invaluable institutional and human resources of the recipients are profoundly valued, which consideration is precisely why an immense and **painstaking commitment of time** has been undertaken to thoroughly research the extant legal principles herein and ensure their diligent application to the germane, operative facts. Confirmation is hereby given that, *mutatis mutandis* (*with the necessary changes having been made*), all definitions and designations from previously, indirectly or directly, cited correspondence are adopted. **I refer to the Applicant in the third person herein for ease of reference.** The meticulous adherence to **procedural stipulations**, particularly those governing the initiation of a court record and the formal joinder of parties, is not a superfluous formality or a suggestion of best practice; rather, it constitutes an **indispensable, constitutional foundation** for the proper, lawful exercise of **judicial authority** and the enduring preservation of **natural justice** (*audi alteram partem*—hear the other side). This adherence is critical, given that the procedural framework of the court constitutes the *lex fori* (*law of the forum*), and any material derogation therefrom possesses the potential to fundamentally impair the substantive rights of a litigant, thereby undermining the principles of **due process** and compelling the court's inherent jurisdiction to restore the procedural equilibrium *ex officio* (*by virtue of office*).

Preamble of Intent and Reserved Rights: Demand for Strict Proof and Procedural Nullities

The Respondents herein are hereby put to **strict proof**, requiring the production of unmanipulated documentation as mandated by law. These respectful and courtesy requisitions are observed to possess an element of public interest. Furthermore, the issues pertain to knowledge that is not subject to proof or disproof by the Applicant, as the Respondents shall either be in custody or control of documents demonstrating filing with proof of service (a requirement of two documents) or such documents shall be absent. The absence of such documentation would not constitute a mere irregularity (a defect curable by the court under the discretion conferred by **Rule 2.02**) but a **nullity** (a fundamental defect that renders the act invalid from the outset, incapable of being made valid retrospectively), since such failures are not voidable by an applicant, such as the filing of a record of proceeding forthwith albeit under a statute and not a regulation. Consequently, all subsequent steps taken shall be **void ab initio**. A distinction is necessarily drawn between a filing that is void *ab initio* and a document that was never filed with proof of service at the first instance.

Furthermore, pursuant to the judicial distinction articulated in the British Columbia Court of Appeal's ruling in ***Long v. Red Branch Investments***, which differentiated between the procedural requisites for the discovery of new facts or evidence of fraud post-judicial step in the jurisdictions of British Columbia and Ontario, the Applicant is necessarily constrained to proceed with the prosecution of the instant Judicial Review Application before the Divisional Court. To the extent that documents were purportedly filed by any Respondents subsequent to the alleged non-filings (i.e., filed in the Divisional Court with proof of service), such filings would similarly be deemed **void ab initio** due to the jurisdictional defect of the antecedent actions. This fatal procedural consequence would also extend to any unauthorized uploading of documents to the electronic **Case Center**, should an invitation have been proffered to the Respondents without the co-equal and simultaneous issuance of the requisite invitation to the Applicant. It is further posited that any such subsequent filings, irrespective of their due execution with proof of service and/or proper delivery, would inevitably be subject to challenge

on the grounds of insufficient or complete lack of formal notice, precisely because the fundamental initial procedural steps remain **void ab initio**.

This mandates that the subsequent steps taken by the Divisional Court, which may have involved court staff in the court office, including but not limited to Madam Registrar Clegg, Ms. Lawrence, Ms. Tibula, and Ms. Badwal (albeit a single judge motions coordinator), are **void ab initio** (as if they never occurred) regarding those steps by the Divisional Court that were adverse to the Applicant, though not in relation to steps that were aligned with the statute in the JRPA (i.e., heard in a summary fashion on the record). The preservation of the court's institutional legitimacy hinges upon strict adherence to the **"delivery"** rule, which acts as a bulwark against the subversion of the judicial process.

The Applicant further asserts that the purported assignment of **The Honourable Madam Justice Shore** to take carriage of the JRPA Proceeding is also **void *ab initio*** because no **direction** was made under **Rule 77.06(1)** for all steps in a proceeding to be heard by a particular judge, thereby invalidating any purported authority exercised pursuant to **Rule 77.07(2)**. This procedural infirmity is independent of the NOA defect and forms a separate, fatal jurisdictional challenge to the management of this case.

I. Detailed Recitation of Material Facts and Precedent Events (Procedural Courtesy)

A comprehensive and precise recitation of the operative facts pertinent to the *tempus* preceding this query is herein commenced. On November 15, 2024, the **JRPA Application** was duly submitted by the Applicant through the Justice Services Online **(JSO) Portal**, whereupon the electronic filing mechanism applied its official date-stamp, thereby establishing the **unimpeachable chronology** of this application under Court File Number DC-24-00000718-00JR. This initiation of process, which constitutes the **genesis** of the Divisional Court's jurisdiction, vested in the Court the mandate to supervise the administrative proceedings, subject to **strict and unambiguous compliance** by all participants. Crucially, the **JRPA Application**, being a distinct and superior form of legal recourse to the Superior Court of Justice, instituted a new and separate legal proceeding. This judicial review, by its very nature, necessitated the formal designation of a specific electronic address, **mcleansettlement@gmail.com**, for all subsequent official correspondence and service related exclusively to the Divisional Court, an address that is materially and practically separate from the antecedent **LAT Proceeding** and any associated email channel, which became *functus officio* (*having performed its office*) upon the issuance of the final LAT decision (which is distinct from a "last decision"). Notably, The Honourable Madam Justice Shore could not take heed of any of the positions advanced by Mr. Boyce of the LAT as there was no service as exclusively posited and written by Ms. Maciel on November 27, 2024. Leaving that aside, Mr. Boyce conflated the prematurity doctrine with the sometimes utilized rule when there are no interlocutory orders of "rule against bifurcation of administrative proceedings".

This correspondence is afforded as an extended professional courtesy, and action is proceeded upon out of an **abundance of caution** (*ex cautela abundanti*) to ensure that documents forming the foundation of the judicial record are accurately, authentically, and honestly depicted and referenced for both current and subsequent lawful purposes. The necessity for this precautionary measure is underscored by the gravity of maintaining a pristine and unimpeachable documentary record, a requirement that is geometrically amplified in matters of public law and judicial review where the fairness and lawfulness of an administrative decision are scrutinized. Any ambiguity, inconsistency, or fundamental defect in the filing process possesses the potential to irrevocably **vitiate** subsequent steps, documents (served, filed, and with proof of service), and proceedings, thereby necessitating the expenditure of further public and private resources to rectify what ought to have been a straightforward, ministerial procedural execution. This diligence is undertaken not merely to challenge

a technical point, but to prevent any future challenge, at any level of appellate scrutiny, premised upon a fundamental, jurisdictional procedural irregularity, thereby ensuring the integrity of the judicial review process remains **sacrosanct** and immune to collateral attack based on a flawed record. **The Applicant emphasizes that the integrity of the record is not a mere preference, but a requirement fundamental to the rule of law itself.**

II. *Corpus Delicti* – The Deficiency in Formal Delivery and the Imperative of Strict Compliance

It remains **entirely unknown** to the Applicant, who is the principal adversely affected party, whether the requisite and complete **"delivery"** of the **Notices of Appearances** was effectuated by any of the four designated Respondents in the precise manner stipulated by the pertinent procedural provisions. This profound **lacuna** in the record does not constitute a mere ministerial technicality; rather, the deficiency relates directly to the **substantive jurisdictional steps** necessary to confirm the Respondents' formal participation and their unequivocal, lawful submission to the court's adjudicative authority. The **prevailing standard** required in such formal, jurisdictional processes in Canadian courts is, in the absence of explicit judicial dispensation, that of **strict compliance** (*versus* the less exacting standard of substantial compliance, which is often reserved for non-jurisdictional matters). This rigour is applied precisely because the procedural requirement, such as proper service and filing, is designed to ensure the other party is formally, unequivocally, and correctly apprised of the respondent's intention to defend the proceeding and, equally important, to ensure the **official court record is complete and authentic**. This deficiency or **lacuna** in the official court record necessitates the immediate and forthwith resolution articulated in the subsequent section of this correspondence, as the court cannot *de jure* (*by law*) exercise its jurisdiction over a party that has failed to formally enter an appearance and complete the process of **"delivery."**

A. The *Ratio Decidendi* Regarding the Licence Appeal Tribunal and Procedural Prejudice

The **Licence Appeal Tribunal** (LAT), the administrative body under review, forwarded an electronic copy of its **Notice of Appearance** dated November 27, 2024, by way of an electronic mail transmission originating from Law Clerk Ms. Maciel Milene. This transmission constitutes, at best, an *informal, unsolicited method of service*—a mere conveyance of information—but **not** the complete definition of **"delivery,"** which, by the clear and unambiguous wording of **Rule 1.03** and the related service provisions under **Rule 16**, inexorably demands the **conjoined requirement** of service **and** the subsequent filing of the document accompanied by proof of service with the court. The cardinal, overriding difficulty, however, lies in the fact that the destination address for this transmittal was the electronic mail exclusively dedicated to the antecedent and *sub judice* **LAT Proceeding** (mcleansniclat@gmail.com). This address is **materially distinct** and **procedurally disparate** from the electronic mail address explicitly provided, designated, and utilized for the current, separate **JRPA Application** and all subsequent correspondence with the **Divisional Court** (**mcleansettlement@gmail.com**). The failure to use the designated email address is not a clerical error; it actively undermines the integrity of the Applicant's digital record-keeping and could lead to **procedural prejudice**, including the risk of the Applicant missing important deadlines or filings due to the misdirection of official court documents into a dormant or inappropriately monitored inbox. This lack of diligence by the LAT in ensuring proper service fundamentally violates the principle of **natural justice**, which dictates that a party must have adequate notice of the actions taken against them.

B. The *Quid Pro Quo* Regarding the Respondent Insurance Companies and the Onus Probandi

Similarly, the **Respondent Insurance Companies**—TDHA, SNIC, and TDGIC—electronically transmitted their **Notice of Appearance** on December 3, 2024. A comparable, if not greater, degree of uncertainty subsists regarding the *bona fide* compliance with the complete **"delivered"** stipulation regarding this particular filing. It must be unequivocally stated and structurally reinforced that the *onus probandi* (*burden of proof*) rests squarely and solely upon the Respondents—highly sophisticated corporate entities represented by experienced legal counsel—to furnish independent documentary evidence confirming their precise compliance with the prescribed filing and service methodologies. The mere issuance of an electronic document, without the corresponding submission of a formally executed **Proof of Service** affidavit or certification **simultaneously filed** and accepted within the **JSO Portal**, represents an incomplete and potentially invalid procedural step. The *quid pro quo* here is that the Respondents receive the right to participate fully in the judicial review only *in exchange* for demonstrably fulfilling their primary procedural obligation—the proper **"Delivery"** of their Notice of Appearance. Absent this strict demonstration, the Respondents cannot be considered **"parties"** properly before the court and any subsequent steps they take, or that are taken on their behalf, would lack the necessary procedural foundation. **The court's reliance on documents that were not properly delivered would create a fatally flawed record, compromising the entire proceeding.**

III. Demand for Production and Temporal Stipulation (Exigence and Efficiency)

In recognition of the self-evident fact that the production of independent and indisputable evidence—specifically, a filed copy *via* the **JSO Portal** bearing an official date-stamp and a valid, correctly executed **Proof of Service**—of the aforementioned **Notices of Appearances** from the LAT or **Respondent Insurance Companies** should not necessitate a protracted or extensive investigatory period, the immediate production of the following is formally and expeditiously requested:

1. Filed **Notices of Appearance** that bear the requisite **JSO Portal** acceptance stamp, clearly indicating the date of official filing, thereby confirming the existence of the document on the Court's electronic record (if extant); and
2. Filed **Notices of Appearance with proof of service** that are demonstrably appended to the filed document, certifying service upon the Applicant at the correct **JRPA Application** designated electronic mail address. This proof must detail the method, time, and date of service, and be formally executed as required by the relevant *Rules* (if extant), specifically using **Form 16B or Form 16B.1 (where applicable)**.

The Respondents are therefore put to **strict proof** to **forthwith** produce the filed NOA, with stamping on the same, and the associated proof of service. The failure to meet this deadline shall compel the Applicant to proceed on the documented assumption that the documents are absent from the record, an assumption that the Respondents, by their lack of timely response, shall have rendered **indefeasible**. **This strict temporal requirement is necessitated by the principle that judicial efficiency cannot take precedence over the fundamental integrity of the judicial record; however, the resolution of this foundational defect must not be unnecessarily delayed.**

IV. *Nisi Prius* – Legal Consequences, Conflicts, and Judicial Nullity

Should satisfactory evidence of the complete and proper **"delivery"** of the aforesaid documents not be received forthwith, the Applicant shall proceed, without further notification or correspondence, to file a fresh **Notice of Motion** (NOM), relying entirely upon the appended **Statutory Declaration** which attests to the documented, factual lacuna in the Applicant's official record. The subsequent finalization of the **Factum** and **Motion Record** shall be executed *sans* the inclusion of any **Notices of Appearances** in the court record, thus entirely precluding any necessity to seek the additional relief of formally striking the purported **Notices of Appearances** on the legal axiom that the document was never duly filed **with proof of service** in the first instance, thereby rendering any purported subsequent action thereunder procedurally null and void. The Applicant reserves the right to seek costs against any Respondent or third party that acted without procedural foundation.

A. The Unlawful Assignment or non-assignment or non-direct: A Newly Discovered Fact or presumed fact subject to dispute - Challenge under Rule 77.07(2) and the *Ultra Vires* Doctrine

The Applicant challenges the fundamental authority under which the proceeding has been managed, drawing attention to **Rule 77.07** of the *Rules of Civil Procedure*:

To Whom Made
77.07 (1) A motion may be made only to a judge or associate judge.
Same, Particular Judge
(2) If a direction is made under subrule 77.06 (1) for all steps in a proceeding to be heard by a particular judge, then any motions in the proceeding shall be made to that judge.

The Applicant asserts that **no direction was made** by the Chief Justice (CJ) of the Superior Court of Justice (SCJ), the Associate Chief Justice (ACJ) of the SCJ, or a Local Administrative Judge (LAJ) of the Divisional Court to assign the entirety of the proceeding to a particular judge under **Rule 77.06(1)**. The language in Rule 77.07(2) is specific: "all steps in **a** proceeding," not "all proceedings." The administrative function of assignment must be performed by the judiciary, not court staff, to maintain the integrity of judicial independence and the constitutional separation of powers. This power of direction is vested in senior judicial officers as a safeguard against improper influence or the appearance of non-impartial case management.
The unassailable corollary, based on the absence of filed or disclosed proof of direction, is that, in the absence of a proper direction or assignment by the requisite Judicial Authority (CJ, ACJ, or LAJ) as defined by the **Courts of Justice Act (CJA)** and **Rule 77**, the only rational and unassailable inference that remains is that the Honourable Madam Justice Shore **assigned the case for case management to herself in an unlawful fashion**. The result is that any step taken by the named judge to take carriage of the JRPA Proceeding, including any attempt to curtail the Applicant's previous motions (NOM #1 and NOM #2), is **void *ab initio***. Furthermore, a judge cannot attain the status of *functus officio* (having discharged their duty) in a proceeding where their initial jurisdiction was founded upon a **void *ab initio*** assignment or direction, as the foundational prerequisite for the exercise of authority was never lawfully established. The reference in any endorsement to a case management judge, or the reference to an assignment to Shore J., must therefore be put to **strict proof** to demonstrate the formal, written direction from the proper judicial authority. **Any reliance on an internal administrative practice that bypasses the mandatory *Rule 77.06(1)* direction would be *ultra vires* (beyond the court's powers) and fundamentally ineffective.**

B. Void *Ab Initio* Steps, Conflict of Interest, and Judicial Misconduct

The Applicant notes that, irrespective of whether the failure to file the NOAs is an irregularity (attackable under **Rule 2.02**) or a nullity (attackable in any event), the subsequent steps taken by the case management judge are subject to challenge. **Importantly, all of the foregoing procedural defects, coupled with the newly discovered facts and/or evidence of fraud, are materially fundamental to the legitimacy of this JRPA, go to the foundation of judicial independence, and may collectively constitute a novel issue of fraud on the court by a judge herself, an unprecedented matter that requires urgent judicial attention.** The Applicant asserts, with extreme emphasis, that due to **known and recently discovered conflicts of interest** (including **The Honourable Madam Justice Shore's** prior judicial involvement in a separate, undisclosed **"Ex Parte In Camera Unrecorded Hearings Unretained Indictment Process"** and her prior partnership at Epstein Cole LLP), she **cannot hear any motions** of the Applicant or motions attempting to cure the **void *ab initio*** steps of the Respondents. These undisclosed involvements create a **reasonable apprehension of bias**, which is the constitutional test for disqualifying a judge, as articulated by the Supreme Court of Canada in cases such as ***R. v. S. (R.D.)***. A reasonable person, informed of the facts, would conclude that the judge might not be impartial.

The Applicant further asserts that **The Honourable Madam Justice Shore's** engagement in the JRPA Proceeding without compliance with the law (i.e., **self-assignment** contrary to the law) is sufficient grounds for her to be removed from office and is the subject of a **formal complaint** lodged with the **Canadian Judicial Council (CJC)**. This complaint necessarily invokes the standards set out in the **Judges Act** concerning judicial independence, impartiality, and integrity. This failure to recuse herself upon prompt objection, and her alleged **misstatements of law** on October 10, 2025, are posited as sufficient grounds for the Applicant to be in an **unequivocally adversarial type position** with the named judge. The alleged misstatements—such as those concerning the mandatory nature of case management or access to transcripts—suggest a pattern of conduct that undermines the perceived fairness of the process.

Furthermore, the lack of proper assignment means that:

1. The Respondents were not **"parties"** under **Rule 77.05(4)** as they failed to **"Deliver"** a first defence (NOA) with proof of service. This failure to become *de jure* parties prevents the subsequent application of case management rules to them.
2. **The Honourable Madam Justice Shore** could not compel any conference call or appearance under **Rule 77.04(2)**:
   77.04 (2) A judge or associate judge may, on his or her own initiative, require the parties to appear before him or her or to participate in a conference call to deal with any matter arising in connection with the case management of the proceeding, including a failure to comply with an order or the rules.
   Since the Respondents were not legally "parties," and the assignment was void ab initio, no authority existed for the named judge to compel attendance or conduct a case conference. Any such conference and its subsequent endorsements are, by extension, void ab initio.
3. **The Honourable Madam Justice Shore** could not technically assign a case for case management to herself, as the power to assign is vested in the CJ, ACJ, or LAJ (as per **Rule 77.05(4)** and sections of the *Courts of Justice Act* (CJA)), which was not executed. **The Applicant asserts that this is a fatal flaw of jurisdiction that cannot be cured by the invocation of inherent jurisdiction, as inherent jurisdiction cannot be used to contravene clear statutory or regulatory mandates.**

The Applicant reiterates that this failure to comply with the rules, coupled with the alleged undisclosed prior judicial involvement and conflicts of interest, underscores that the necessary constitutional **filter or safeguard** (proper judicial assignment) was not in place, causing permanent and lasting damage to

the integrity of the Divisional Court. The Applicant reserves all rights to bring forward more newly discovered facts and evidence of fraud as it becomes known.

V. Appendix: Cited Legal Authorities and Maxims

This Appendix provides an exhaustive catalogue of the primary and secondary legal authorities and Latin maxims referenced in this correspondence, ensuring transparency and facilitating verification of the Applicant's legal arguments.

A. Rules of Civil Procedure

Authority	Description	Contextual Relevance
Rules of Civil Procedure (R.R.O. 1990, Reg. 194)	The primary procedural framework governing all civil proceedings in the Superior Court of Justice, including the Divisional Court, in Ontario, Canada.	Establishes the governing regime for all actions, motions, and filings.
Rule 1.03 **(Definition of "Deliver")**	A specific provision within the *Rules* that provides a definitive interpretation of key procedural terms.	The term **"Deliver"** mandates the **conjoined requirement** of both serving a document and filing it with an acceptable **proof of service**.
Rule 2.02	Pertains to the ability of the court to set aside steps where there has been a **procedural irregularity** (curable defect).	Distinguished from a **nullity**, which the Applicant asserts the current defects are, making the steps attackable in any event.
Rule 59.06	Pertains to setting aside or varying judgments or orders based on **newly discovered facts and/or fraud**.	Cited as an independent ground for setting aside previous directions or orders, irrespective of the procedural nullity argument.
Rule 77.04(2)	Permits a judge to compel the **parties** to a conference or appearance for case management issues.	Argued that this rule was unavailable to the named judge because the Respondents were not **"parties"** and the judge lacked proper assignment.
Rule 77.05(4)	Outlines the criteria for assigning a proceeding for case management, with the power reserved to the Regional Senior Judge, other judge, or associate judge.	Used to challenge the named judge's authority to assign, particularly to herself, when no parties were properly before the court.

Rule 77.06(1)	The rule authorizing the requisite judicial authority (CJ, ACJ, or LAJ) to make a **direction** for a particular judge to hear all steps in a proceeding.	Cited as the source of authority that was allegedly not invoked, rendering subsequent assignment *ultra vires*.
Rule 77.07(2)	The rule mandating that motions be heard by a particular judge *only if* a direction was made under *Rule 77.06(1)*.	Central to the argument that motions were correctly made **not** to the named judge due to the lack of proper direction/assignment.
Form 16B or *16B.1*	The prescribed forms for **Proof of Service** used in Ontario proceedings.	Specifically demanded to prove the lawful **"delivery"** of the Notices of Appearance.

B. Legislation and Jurisprudence

Authority	**Description**	**Contextual Relevance**
Judicial Review Procedure Act (JRPA)	The statute governing the Applicant's proceeding.	The **JRPA**'s statutory requirements (not the ROCP) govern the filing of the Record of Proceeding (ROP).
Courts of Justice Act (CJA) **Section 75(1)**	Outlines the powers and duties of a judge with authority to direct and supervise sittings and assignment of judicial duties.	Supports the argument that assignment is an administrative task that must be performed by the judiciary (CJ/ACJ/LAJ), not by self-assignment.
Judges Act (Federal)	The federal statute governing the conduct and removal of federally appointed judges.	Cited in relation to the **CJC** complaint and the standards of impartiality, independence, and integrity.
R. v. S. (R.D.) **(SCC)**	Supreme Court of Canada decision setting out the test for **reasonable apprehension of bias**.	Used to frame the recusal and misconduct argument against the named judge based on alleged conflicts of interest.
Long v. Red Branch Investments **(BCCA)**	Jurisprudence from the British Columbia Court of Appeal providing a distinguishing analysis of the procedural requirements in different	Supports the Applicant's right and requirement to proceed with the JRPA Application and to challenge antecedent procedural steps.

	jurisdictions post-discovery of new facts or fraud.	

C. Latin Maxims and Phrases

Latin Maxim	Translation	Contextual Application in Missive
Ultra Vires	Beyond the powers.	Used to describe the unauthorized nature of the purported judicial assignment.
Void Ab Initio	Void from the beginning.	The critical legal conclusion regarding non-delivered documents and the subsequent lack of authority.
Onus Probandi	The burden of proof.	Establishes that the Respondents bear the sole legal responsibility to prove they complied with **"delivery."**
Ex Cautela Abundanti	Out of an abundance of caution.	Justifies the pre-emptive, rigorous nature of this formal inquiry.
Functus Officio	Having performed its office.	Used to describe the email address dedicated to the LAT Proceeding, which became irrelevant upon filing the JRPA.
Lex Fori	The law of the forum.	Emphasizes that the *Rules of Civil Procedure* are the mandatory law of the Divisional Court.
Nisi Prius	Unless before.	Used formally to structure a conditional legal consequence (i.e., *unless* evidence is provided, then X will occur).

The right is expressly reserved to rely upon this correspondence for any and all lawful purposes, including the submission of this missive as an exhibit in the Applicant's upcoming **Motion Record**, with the assertion that the Applicant and **The Honourable Madam Justice Shore** are now in an unequivocally adversarial type position.

I reserve the right to rely on this correspondence for any lawful purpose.

I cordially denote for the LAT and the Respondent Insurance Companies to govern themselves accordingly especially in relation to the officers of the court as the demand above is made upon them and no one else.

I thank the innocent persons for their patience while I discovered new facts and fraud in the most diligent and painstaking fashion as, inter alia, evidenced by this comprehensive letter herein and by reference to the above noted complaint – not directed at any of the addressees per se.

Yours most appreciatively and gratefully,

/s/Mr. Kevin A. McLean (BA, JD, CIM)

Mr. Kevin A. McLean (BA, JD, CIM) (he/him)

Yours faithfully,

/KAM

Mr. Kevin A. McLean (BA, JD, CIM)

Sender's name: Mr. Kevin Alexander McLean (BA, JD, CIM)

Sender's address: 410-775 King Street West, Toronto, Ontario, M5V 2K3

Sender's Telephone Number: (647) 370-9354

Sender's email address: mcleansettlement@gmail.com

On Tue, Oct 14, 2025 at 9:54 AM Mr. Kevin McLean <mcleansettlement@gmail.com> wrote:
October 14, 2025

VIA EMAIL

Urgent filing via email pursuant to the *Consolidated Practice Direction for Divisional Court Proceedings* effective June 15, 2023, issued by The Honourable Chief Justice of the ONSC Mr. Morawetz ("**C.J.O.N.S.C. Mr. G.B. Morawetz**" or "**Morawetz CJ**") pursuant to the statutory and prescribed authority pursuant to, *inter alia*, Rule 1.07(3)[i] (collectively, the "Effective Practice Direction" or "Valid Practice Direction"), mores particularized pursuant to and under section 16 *et al* to the ONSC Divisional Court (Toronto Region))

Court file number: DC-24-00000718-00JR
Type of document: email with attachment (Affidavit #28)
Short title of proceeding: *McLean v. TDHA et al*
Party: Mr. Kevin A. McLean (B.A., J.D, CIM) (mcleansettlement@gmail.com)

Re: My statutory declaration of October 13, 2025 – timing regarding the same – material development on late Friday afternoon after making, filing and serving my NOM #3

Re #2: factum, motion record et al to follow upon my return from delivery of prescribed fees et al involving access to digital recordings from the case conferences et al

Dear Sirs/Mesdames/Other Gender-Neutral Pronouns

I. Preliminary Overture and Foundational Context

To: The Esteemed Recipients of the Court and Counsel to the various respondents

I pen this communication concerning the aforementioned proceeding. Subsequent to the timely filing and service of my *Notice of Motion* No. 3 (hereinafter "NOM No. 3") herein, I was placed in receipt of an electronic correspondence, transmitted via my authorized transcriptionist of the Province of Ontario, which conveyed a substantive response from The Honourable Madam Justice Shore concerning my requisite *Transcript Order Form* for the digital audio recordings of the case management conferences.

The tenor and substance of this communication mandated a meticulous re-evaluation of the extant factual matrix and the applicable jurisprudence governing the release of court records, necessitating a contextual comparison to previous judicial pronouncements, whether directly attributable to Her Ladyship or discernible by means of logical deduction (*per deductio*).

It is self-evident, *ex facie* the contents of the perfected NOM No. 3 transmitted (made, urgently filed and served) on Friday, October 10, 2025, that The Honourable Madam Justice Shore had prior judicial involvement with myself antecedently to the formal institution of this Judicial Review Application (*JRPA*) Proceeding; however, Her Ladyship's name had not been formally disclosed, nor has this involvement been unequivocally acknowledged by the Court at this juncture. Notwithstanding this protracted obfuscation, a sufficient quantum of investigative due diligence, spanning several months, permits the responsible advancement of this assertion.
For the purposes of immediate reference and to substantiate the imperative for the annexed statutory declaration, I reproduce the following sworn statement:

"I verily believe that The Honourable Madam Justice Shore had prior judicial involvement with myself in the referenced *ex parte in camera* criminal proceedings or hearings, which involvement was undisclosed to me prior to my commencement of the *JRPA* Application and subsequent thereto."

In light of this recent disclosure and its resultant exigency—discovered during the *post-meridiem* hours of Friday, October 10, 2025, immediately preceding a statutory holiday weekend—I have deemed it necessary, pursuant to the provisions of the *Evidence Act (Ontario)*, to forthwith file the aforementioned statutory declaration. I have simultaneously submitted a *Request Form Undertaking* to the Superior Court of Justice Recording Management Office (hereinafter the "SCJ RMO") and shall proceed, with all due expedition, to tender the prescribed requisite fee to procure the digital audio materials of the subject case management conferences.

The remittance of the bank draft shall be effectuated without delay; however, I furnish the statutory declaration of October 13, 2025, *ad interim*. As shall be elucidated *infra*, the analysis proffered by The Honourable Madam Justice Shore is, with the greatest deference, flawed; yet, Her Ladyship's response proves fortuitous in that it demonstrates a linguistic and structural style demonstrably consistent with

other judicial documents pertaining to this matter, even those wherein her name was previously suppressed.

II. Judicial Pronouncement and Formal Legal Dissent

A. The Impugned Judicial Directive

The official electronic communication transmitted by the SCJ RMO on October 10, 2025, relayed the explicit directive and judicial decision emanating from The Honourable Madam Justice Shore regarding my request. The germane excerpt, conveying Her Ladyship's instruction and position, is herein reproduced:

> "Justice Shore has advised as follows:
>
> 'The attendances were case management conferences and we do not release transcripts for conferences. No transcript/audio can be provided.'"

Following a comprehensive legal review conducted throughout the long weekend—a necessity to ensure that my subsequent representation to the SCJ RMO was both factually accurate and jurisprudentially sound—I transmitted the appended formal submission on October 13, 2025, the full text of which is reproduced forthwith for ease of reference and contextualization herein:

> "October 13, 2025
>
> TRANSMITTED VIA ELECTRONIC MAIL UPON THE FIRST INSTANCE
> PRIVATE AND CONFIDENTIAL
>
> TO:
>
> Superior Court of Justice Recording Management Office
> (With carriage, control and administration of Court Recordings for SCJ 393, 361, and 330 University Avenue, and Divisional Court at Osgoode Hall, 130 Queen Street West, Toronto)
>
> Located at:
> 361 University Avenue
> Toronto, Ontario
> ATTENTION: SCJ Recording Management Coordinators, Ms. Amirthalingam (copied to: Ms. Hsieh and Ms. Azim for continuity and contextual purposes)
>
> SUBJECT: Formal Submission of the Digitally Executed Request Form/Undertaking for Access to Digital Court Recordings Pertaining to Two Specific Dates in *McLean v. TDHA et al*, Court File: DC-24-00000718-00JR
>
> Dear Sirs/Mesdames/Other Gender-Neutral Pronouns:
> I provide the below out of an abundance of caution in a comprehensive and contextual manner to ensure that in the event of an untimely demise or further injury to myself that I have papered my affairs accordingly for those who will benefit from my estate and ancillary reasons. I also do so for the reasons infra and previously on a contextual level.

I. PRELIMINARY OBSERVATION AND IMPERATIVE FOR FORTHWITH COMMUNICATION

This formal submission is necessitated by the exigency of the matter aforementioned. I must solicit your kind indulgence for the transmission of this document upon a statutory holiday, an action to which I have been compelled to undertake on a forthwith basis, subsequent to being placed in receipt, during the *post-meridiem* hours of Friday, October 10, 2025, of electronic correspondence from Ms. Amirthalingam. That communication, *inter alia*, incorporated a quotation attributable to The Honourable Madam Justice Shore, referenced within the context of a distinct Transcript Order Form Request submitted during the preceding week.

II. DISSECTION OF LEXICAL AMBIGUITY: THE PERMISSIVE VERSUS THE CAPABILITY CONUNDRUM

I take formal cognizance of Ms. Amirthalingam's previous lexical usage, conveyed to my retained Authorized Transcriptionist in Ontario (hereinafter, an "ACT" or "ATO"), which I concede to be substantively accurate in its descriptive premise:
"Good afternoon,
According to our records, both of the requested dates were Civil Case Conferences where the Ordering Party was not present. Judicial Acknowledgement is required to determine whether the audio may be released for the purposes of preparing a transcript."

To avoid the pitfalls of eliding two discrete communications—an analytical error which I am assiduous in seeking to circumvent—I shall reproduce the germane excerpts from Ms. Amirthalingam's subsequent electronic mail of Friday, October 10, 2025, which was relayed to me later on that day:
"Justice Shore has advised as follows:
"The attendances were case management conferences and we do not release transcripts for conferences. No transcript/audio can be provided."

The distinction between the administrative inquiry and the judicial pronouncement is not merely semantic; it represents a fundamental divergence in legal effect. Ms. Amirthalingam's employment of the verb "may" correctly encapsulates the permissive nature of a judicial assessment, articulating the prospect of whether a specific allowance will be granted. Conversely, The Honourable Madam Justice Shore's utilization of the auxiliary verb "can" improperly denotes an issue of ability or capability; it suggests an absolute physical or systemic incapacity to provide the material. The conclusion, therefore, is self-evident: the administrative position acknowledges the possibility of release subject to judicial acknowledgement, while the subsequent judicial pronouncement erroneously asserts an irremediable impediment to the provision of the audio material.

III. EXTRAPOLATION OF LEGAL PRINCIPLE: THE DISTINCTIVE REGIMES OF CIVIL AND FAMILY PROCEEDINGS

I am necessarily constrained to articulate my formal disagreement with the linguistic construction and legal import ascribed by The Honourable Madam Justice Shore, given

that superior courts do not furnish "transcripts" *per se*, but rather release the requisite digital audio materials from which a transcript may be professionally prepared.
It is posited that The Honourable Madam Justice Shore has perhaps inadvertently conjoined the distinct procedural strictures applicable to Family Law matters—specifically those involving "family law case conferences"—with the procedural mandates governing Civil and Divisional Court proceedings, particularly those concerning the judicial review of administrative or adjudicative decisions.

The *Family Law* Conferences Exception [inapplicable herein]

The material divergence is comprehensively articulated within the *Court Transcripts Practices Standards Manual*, page 16, which states:

"b) Family Law Conferences Relevant Websites & Resources • *Family Law Rules*: https://www.ontario.ca/laws/regulation/990114

Rule 17 of the *Family Law Rules* provides for three types of conferences: case conferences, settlement conferences and trial management conferences.
These conferences may be recorded at the request of the presiding judicial official. These recordings are for the judge's use only. Transcripts of these recordings cannot be provided to any party without a court order or the consent of the presiding judicial official."

It is axiomatic that the Family Law jurisdiction constitutes a unique, insular sphere—an *sui generis* domain—due to the highly sensitive, often privileged (e.g., spousal privilege), and inherently confidential nature of its subject matter, which frequently involves the paramount consideration of the best interests of children. For compelling public policy rationales, the restrictive access protocol is thus warranted within this specific context.

The *Civil/Divisional Court* Open Court Principle

No such *sui generis* restriction applies to a Civil Proceeding, including the Divisional Court's judicial review of an administrative or adjudicative body's impugned decision. The guiding imperative remains the open court principle, which is a foundational tenet of our constitutional and common law tradition, binding upon the Divisional Court as a superior court of inherent jurisdiction. The proceedings must be recorded, irrespective of the platform utilized—either by a court staff member or court reporter using an Approved Recording Device (a "DRD"), or via an Alternative Recording Platform (an "ARP"), such as the utilisation of Zoom or teleconferencing technologies, as was referenced for these specific attendances at which I was unable to be physically present.

IV. COMPLIANCE AND TECHNICAL AVAILABILITY OF THE DIGITAL RECORDING

The matter herein falls under the ARP system of recording, which bypasses the conventional DRD process. As such, the recording exists as a digital file upon a server, and its provision is governed by *Regulation 293/92* to the *Evidence Act (Ontario)*.

Under sub-section 1(1) 11. of the Schedule, the prescribed fee applies: “For a copy on compact disc (CD) of a digital recording of a court hearing in respect of a case, if such a recording exists and a copy is available.” The cost structure articulated therein—$23.00 plus $11.00 for a total of $34.00, as the request involves multiple recordings from the same case—is the legally applicable fee.

The technical availability is readily demonstrable: ”Available,” in its established meaning, signifies ”the state of being obtainable or accessible.” The digital recording exists as a file on a server, thereby satisfying this definition. Furthermore, I have satisfied two independent stipulations under the Request Undertaking Form, which is hereby enclosed. Since the Divisional Court is a branch of the Superior Court of Justice (SCJ) and is not a constituent part of the Ontario Court of Justice (OCJ), no prior court order is mandatorily required for the Applicant’s access to a copy of this digital recording.

To fortify the foregoing analytical construction regarding technical feasibility, I append the widely understood technical process for the procurement of such files from the conferencing service:
Zoom Recording Protocol: The court, being in control of the same, possesses the M4A audio-only file from the Zoom recording, which is demonstrably convertible to a compatible format (e.g., WAV or MP3) for the purpose of creating a Standard Audio CD, thereby rendering the digital recording *available* for provision.

a. ”Step 1: you need to get the files from Zoom. The process differs slightly depending on whether you used cloud or local recording.
1. Cloud Recording: If you have a paid Zoom account and are recorded to the cloud, Zoom will automatically generate separate files, including the audio/video (MP4 or M4A) and the transcript (VTT file).
2. You’ll receive an email notification when the recording and transcript are ready. Log in to the Zoom web portal, go to the “Recordings” section, and download both the audio-only file (M4A) and the transcript (VTT).
3. Local Recording: If you recorded to your computer, Zoom saves the files to a local folder (usually in your Documents folder under a “Zoom” directory). The transcript function is not automatically available for local recordings, so you’ll have to find a separate transcription service or software to create one from the audio file.
b. Step 2: Prepare the Files for CD
i. Create a Standard Audio CD (Audio Only)
ii. This is the most common and straightforward method if you only want to listen to the audio on a standard CD player (like in a car or home stereo).
iii. Get the Audio File: Locate the M4A audio-only file from your Zoom recording which the court would have control of the same.
iv. Convert to a Compatible Format: M4A is not always compatible with older CD players. You will need to convert the M4A file to a format like WAV or MP3.
v. Burn the Audio CD: Use a CD burning program (like Windows Media Player, iTunes, or a third-party application) to create an

Audio CD. This process converts the WAV/MP3 files into the specific format that a CD player can read."

V. COMPREHENSIVE UNDERLYING FACTUAL AND LEGAL BASES

I provide the preceding comprehensive analysis not merely to articulate a grievance concerning what constitutes an unwarranted obstruction—whether judicial or administrative—to my ACT's ability to perform their professional mandate, but to confirm the legal and technical basis upon which this request is grounded. The response attributed to The Honourable Madam Justice Shore is, upon close examination, inconsistent with the applicable legal framework governing Civil and Divisional Court proceedings.

Due to the persistent urgency of this matter, I now formally attach a copy of the digitally executed Request Undertaking Form. The prescribed fee of $34.00 will be remitted for delivery on the subsequent day, and I shall furnish confirmation upon receipt of the delivery confirmation.

Requisition for Electronic Audio Recordings and Logistics

Pursuant to the requisite payments previously remitted to the Superior Court of Justice (earmarked for the Minister of Finance as required) and, in parallel, to the Authorized Court Transcriber(s) (hereinafter, "ACT(s)"), the administrative division is hereby requested to effectuate the immediate preparation of the electronic audio recordings of the proceedings.

Kindly ensure that the aforesaid recordings are prepared for transcription and subsequent transfer onto a compact disc (CD). Upon the demonstrable receipt of the prescribed fee, the undersigned respectfully requests that the appropriate Court Services personnel advise, with expediency, of a precise date and time for the physical retrieval of the said material from Room 405 of the Superior Court of Justice located at 361 University Avenue Courthouse.

The Unassailable Judicial Misapprehension and Resultant Legal Infringement

The undersigned is compelled to register a formal objection predicated upon the assertion that The Honourable Madam Justice Shore has demonstrably engaged in an erroneous legal interpretation and/or a palpable misdirection regarding prevailing jurisprudence. This conduct constitutes additional indicia of a potential conflict of interest, the full legal and factual dimensions of which remain the subject of continuing due diligence, the underlying grounds having been, *inter alia*, discovered subsequent to March 2025 and hitherto unknown to the undersigned.

It must be underscored that the conduct in question is patently and inexorably consistent with a demonstrable infringement upon the fundamental protections enshrined within the *Canadian Charter of Rights and Freedoms* and other pertinent legal rights. Furthermore, such actions concomitantly constitute a breach of the foundational *Open Court Principle*, the ambit of which extends the prophylactic shield of procedural fairness to all interested observers and litigants alike.

Erroneous Interpretation of Transcription Protocols: A Syllogistic Analysis

In the context of the procedural requirements governing the "Transcript Order Form" and its associated obligations concerning the ACT(s), the undersigned shall direct this

substantive issue to superior administrative and judicial regulatory authorities who possess the requisite jurisdiction to evaluate and correct such a manifest misstatement of law. It is axiomatic that an exercise of a judicial function cannot, *sub specie aeternitatis*, encompass the prerogative to misapprehend the established rules pertaining to court records, especially when expressed through the ambiguous utilization of the unspecified pronoun, "we."

Should one be compelled to assent to the Honourable Madam Justice Shore's purported interpretation of the governing legal framework, the inescapable conclusion of law would be that no requestor, throughout the entire historical practice of the civil division (excluding Family Law matters) of the Superior Court of Justice or the Divisional Court, could ever have secured the required *tapes and materials required for transcription* for delivery to their Authorized Court Transcriber.

Such an *argumentum ad absurdum* renders the interpretation devoid of merit. If such were truly the case, the esteemed Superior Court of Justice Records Management Office (RMO) and its Records Management Co-ordinators (RMCs) would possess a comprehensive awareness of this unprecedented operational constraint. Consequently, their administrative response to transcription requests would be materially distinct from the judiciously accurate response rendered by Ms. Amirthalingam, which correctly mandated a specific level of acknowledgment, rather than an outright judicial *fiat* of prohibition, as a prerequisite to the release of the electronic audio records.

Out of an abundance of caution, I note that while similar fact evidence involving a party is presumptively inadmissible unless the probative value outweighs the prejudicial value, the same is not applicable to the scope of Shore J's prior judicial involvement with myself. I note the following language utilized by way of passing the same onto me which she did not author which was yet another misstatement of law (when measured on its face against The Honourable Chief Justice of the SCJ's Divisional Court Consolidated Practice Direction, effective June 15, 2023) wherein she (the esteemed Clerk of the Divisional Court Ms. Clegg) stated in late January 2025 (after The Honourable Madam Justice Shore had inserted herself into the JRPA Proceeding):

"Are you requesting a hearing date or a case conference?

Please advise that all [sic] cases are being case managed, coordinators are not providing dates.

As all matters [sic] are currently being case managed in Divisional Court, hearings are scheduled as per the directions of the case management Judge. The Coordinators are not providing hearing dates unless directed."

I inquired with Madam Clerk Ms. Clegg as to where she obtained the quote and to provide a link to the same and none was provided. It became clear then and crystal clear now that The Honourable Madam Justice Shore provided the same which was inconsistent with the aforementioned Divisional Court Consolidated Practice Direction for 18 months at the time.

The same can be said of the denial of my access to Case Center after bringing my JRPA Application in mid November 2024 along with, inter alia, failure to stamp requisitions, provide me with a Form 68(B) which was required after my payment of the Certificate of Perfection on December 13, 2024, and the failure to allow me to proceed before a single judge of the SCJ as opposed to a three person panel of the Divisional Court (see: statutory language under the JRPA, section 6; wherein the Legislature distinguished between the SCJ and Divisional Court). This is also consistent with Mr. Sinnadurai, a

lawyer licensee with the MAG (Civil division) representing to me and some with supporting documentation that there was no evidence of Court Officer (Toronto Region) Mrs. Frugoni-Rojas Form 2 under *Criminal Code* "Information" in the OCJ and none in the "Superior Court of Justice" in Toronto.

For refresher purposes, one "Ashleigh" of the SCJ RMO represented to one of my ACT's in September 2025 as follows:

"Hi ____

There are currently no DRD recordings before the Toronto Superior Court for Mr. McLean. It is my understanding that Mr. McLean had matters heard at the Ontario Court of Justice (10 Armoury).

Given the above, there is nothing further staff <u>can</u> assist with"

In addressing the latter first, I note again the distinction, as it relates to my obtaining that which I am entitled in relation to the prior judicial involvement of The Honourable Madam Justice Shore and myself, that DRD recordings only exist when there is a court reporter or court staff member who uses an approved recording device and then certifies a Form 1. This customarily do not exist in relation to the latter and the former referenced individual do not appear in *ex parte* in camera intake or pre-enquete hearings. As such, it is the ARP Platform(s) that govern the same so there would not be any DRD recordings but an ARP Platform recording (i.e. Zoom).

I also note the distinction between the Superior Court and the Divisional Court by reference to statutes. I thank Ms. Amirthalingam for confirming that the SCJ RMO handles recordings for 130 Queen Street West, Toronto, Ontario in addition to the SCJ courthouses on University Avenue, Toronto.

Notably, it was not "Ashleigh's understanding" that matters were heard in Central West Region OCJ Brampton Courthouse or any other region or any other courthouse outside of the Toronto Region. There was no dispute that the OCJ 10 Armoury Courthouse was a transferee courthouse but the issue of the "originating courthouse" was and remains at issue (kindly address that separately as I paid $23.00 via bank draft in mid August 2025 and not only is the SCJ RMO able to assist but required to do so).

The usage of the word "can" is another word choice that is consistent with The Honourable Madam Justice Shore but not the SCJ RMO and its esteemed staff.

As OCJ 10 Armoury Street Courthouse was not involved until October 3, 2024, one day after my arrest, which naturally meant that the tapes, as an additional ground (i.e. in addition to a process having been issued which includes a Summons (Form 6) or Arrest Warrant (Form 7 under the *Criminal Code*) but not an Undertaking or Appearance Notice (Form 10 and 9 under the *Criminal Code* respectively in that they can be signed by a peace officer), were to be released to anyone who requested the same which includes the public.

In relation to the latter, I do not dispute, for contextual purposes, that a judge of the SCJ is also a judge of the Divisional Court as per the *Courts of Justice Act* and that a judge of the Superior Court Of Criminal Jurisdiction, in the province of Ontario, means a judge of the SCJ and ONCA. The import of that to my circumstances involving The Honourable Madam Justice Shore is that irrespective of whether she was in her designated by the CJ of the SCJ rotation in the Divisional Court in 2024 and beyond, The Honourable Madam Justice Shore had the parliamentary statutory authority to hear and consider an application, *ex parte* and in camera (closed to the public) [but not without a recording via ARP Platform at first instance because upon an arrest OR a process being issued, the tapes and materials required for transcription become

available to the public as per the MAG CSD Court Information Access Guide and the Court Transcripts Practices Standards Manual which are and were both issued by the Ontario government (MAG) in 2019 and 2024 respectively) and by the *Criminal Code*, she was required to hear and consider the same. As we now know, it was an un-proceeded upon *Criminal Code* Form 4 Indictment, which had to be signed by the Attorney General, which also includes the SOLGEN by Parliamentary statutory definition, post-facto, by the later manipulation of the Intake Court Endorsement [Sic] including that of the *Criminal Code* Form 2 Information of Court Officer (Toronto Region) Mrs. Frugoni-Rojas, but the legal test is whether The Honourable Madam Justice Shore had "prior judicial involvement with myself" PRIOR to the Divisional Court JRPA Proceeding. The key words therein were and are: (i) judicial; and (ii) involvement.

As I had predicted, the Intake Court Endorsement [Sic] was not from the OCJ, as admitted by the MAG CSD Records Division, as that would have required a digital signature therein which could not be removed. Moreover, I had predicted prior to knowing that the Intake Court Endorsement [Sic] purported to be transcribed by the "law enforcement applicant" document. That is permissible under various sections of the *Criminal Code* which is primarily under section 487.1 of the *Criminal Code* but the issuing of a summons versus an arrest warrant (or as Shore J called it a "warrant in the first" which is consistent with a nationwide arrest warrant in which only an SCJ can issue – not the likes of a JP or PCJ as per the *Criminal Code*) does not permit the same. Ergo, any filing of the e-indictment (see: Criminal Proceeding Rules, "definitions" and rule 4.10) had to "produce a writing" which the email filing of the same would do. Moreover, this now, in light of The Honourable Madam Justice Shore's strident and incorrect comments of Friday, October 10, 2025, which is now a pattern of conduct with her involving me, fully answers the misguided initial position taken by the Divisional Court Manage of Court Operations that the Divisional Court could not hear criminal matters or proceedings. That may be correct as a matter of provincial law but not the federal law, which pursuant to the paramountcy doctrine trumps provincial law in the event of a conflict, and it is not only permissible but practical that those Toronto Region Judges (see: Criminal Proceeding Rules and *Criminal Code* definition of "judge" versus "justice" or "provincial court judge) in their Divisional Court rotations or designations, by statutory authority (de jure) and in fact (de facto) hear and consider *ex parte* in camera "law enforcement applications" as they clearly have less of an intensive in-court schedule when compared to the family law judges at SCJ 361 University Courthouse and those at SCJ 393 University Avenue and 330 University Avenue courthouses. This does not detract from the demanding nature of their schedules but simply that their availability is more present when there are allegedly urgent "law enforcement applications" or applications for various warrants including that of arrest warrants wherein they are preceded by a *Criminal Code* Form 4 Indictment – which while the SCJ can hear any criminal matters it primarily only hears indictable offences.

It is nonetheless compelling and now most telling that The Honourable Madam Justice Shore utilized the language of "accepted on its face" as if it did not require some credibility finding by her but naturally it would have considering that the requirement is to "hear and decide". It necessarily requires the weighing of evidence and submissions and considering the perspective of the person who is not entitled to notice under the *Criminal Code*.

In a rather fortuitous set of circumstances, with the benefit of hindsight, I came to learn that the SCJ Toronto Region practice direction for criminal matters prohibits a self-represented litigant from having access to Case Center but the same cannot be said of civil proceedings including the Divisional Court proceedings where it is a requirement that I received an invitation to Case Center and utilized the same. The reason proffered by Ms. Lawrence of the Divisional Court to me was inconsistent with the Divisional Court Judicial Review Guide and the now known authentic reason was as per The Honourable Madam Justice Shore's prior judicial involvement with me I was unfairly brandished as a criminal and treated as a "criminal litigant" in a Divisional Court proceeding.

Parenthetically, on the Transcript Order Form issue (distinct from herein), under The Honourable Madam Justice Shore's interpretation, and one were to then exercise rights of appeal (either applicant or respondents), there would not be a transcript for the Court of Appeal's benefit. As such, The Honourable Madam Justice Shore is yet again wrong on that ground.

It is quite a shame as a matter of law, access to justice, and the rule of law (which requires procedural and substantive equality) that this occurred. However, what is done is done and I require access to the digital recordings from the case conferences on the denoted dates as per my entitlement to the same without a court order and as a litigant/party on two independent grounds in light of The Honourable Madam Justice Shore email of Friday, October 10, 2025.

Thankfully, the procedure in Ontario is distinct from BC (see: *Long v. Red Branch Investments Ltd,* 2018 BCCA decision) in that I must bring my motion, which I did on Friday but prior to reviewing the email forwarded to me by my ACT by Ms. Amirthalingam with the quoted language of The Honourable Madam Justice Shore (see: supra), and it is one of the factual and legal grounds for why I require the digital recordings as an interim measure albeit being unable to provide a copy to the Divisional Court and the sitting motions judge on October 27, 2025.

VI. DENOUEMENT

The undersigned explicitly reserves the unequivocal right to rely upon this detailed correspondence for any and all lawful purposes, including, but not limited to, the advancement of legal proceedings and administrative review.

Pursuant to the requisite payments previously remitted to the Superior Court of Justice (earmarked for the Minister of Finance as required) and, in parallel, to the Authorized Court Transcriber(s) (hereinafter, "ACT(s)"), the administrative division is hereby requested to effectuate the immediate preparation of the electronic audio recordings of the proceedings.

Kindly ensure that the aforesaid recordings are prepared for transcription and subsequent transfer onto a compact disc (CD). Upon the demonstrable receipt of the prescribed fee, the undersigned respectfully requests that the appropriate Court Services personnel advise, with expediency, of a precise date and time for the physical retrieval of the said material from Room 405 of the Superior Court of Justice located at 361 University Avenue Courthouse.

Thank you in advance for your anticipated compliance with the law which dos not require a court order as per supra albeit I am constrained by usage of the to be received copy on CD of the digital recording by an ARP Platform.

I trust this comprehensive submission with the attached was of assistance from a contextual and underlying bases standpoint so there is not unnecessary back and forth which I now know the genesis or etiology of the same.

Wishing you well on your well-deserved statutory holiday.
Mr. Kevin A. McLean (BA, JD, CIM)
/s/ Mr. Kevin A. McLean (BA, JD, CIM)"

In my view and having carefully examined previous responses of The Honourable Madam Justice Shore or attributed to her, it is unequivocal that she had prior judicial involvement involving myself but nonetheless undisclosed. As such, it amounts to a post-facto (March 2025) discovery of new facts and/or fraud which vitiates all previous steps taken that were subject to the failure to disclose the same to me.

At the very least, the JRPA Proceeding has been tainted with fraud and no court in this land will allow a person to keep an advantage which he has obtained by fraud. No judgment of a court, no order of a Minister, can be allowed to stand if it has been obtained by fraud. Fraud unravels everything.

Should Shore J.'s position change, I will promptly notify you of the same but it will likely require an interim order regarding the same which was already addressed in the NOM #3 but on slightly different factual grounds.

I will continue to exercise all of my rights and act with due diligence in obtaining the same but you will note that I have done so but been stonewalled and delayed at every turn.

I sincerely trust you appreciate the detailed email to assist your obtaining instructions from your various clients.

I repeat and rely upon the above subjects of the email.

Respectfully Submitted,

/s/Mr. Kevin A. McLean (BA, JD, CIM)

Mr. Kevin A. McLean (B.A., J.D, CIM)

[i]It is applicable to all Divisional Court proceedings in Ontario by reference to section 1: "Parties are **required** to follow the practice set out below for all matters in the Divisional Court **anywhere in Ontario." Practice Directions are subject to the Rules of Civil Procedure (see: Rule 1.07:** "practice direction" means a direction, notice, guide or similar publication for the purpose of governing, *subject to* these rules, the practice for proceedings). Ergo, the Valid Practice Direction for Divisional Court proceedings in Ontario

Yours faithfully,

/KAM

Mr. Kevin A. McLean (BA, JD, CIM)

Sender's name: Mr. Kevin Alexander McLean (BA, JD, CIM)

Sender's address: 410-775 King Street West, Toronto, Ontario, M5V 2K3

Sender's Telephone Number: (647) 370-9354

Sender's email address: mcleansettlement@gmail.com

On Fri, Oct 10, 2025 at 4:00 PM Mr. Kevin McLean <mcleansettlement@gmail.com> wrote:
October 10, 2025 at 3:59 p.m.

VIA EMAIL

Urgent filing via email pursuant to the *Consolidated Practice Direction for Divisional Court Proceedings* effective June 15, 2023, issued by The Honourable Chief Justice of the ONSC Mr. Morawetz ("**C.J.O.N.S.C. Mr. G.B. Morawetz**" or "**Morawetz CJ**") pursuant to the statutory and prescribed authority pursuant to, *inter alia*, Rule 1.07(3)[i] (collectively, the "Effective Practice Direction" or "Valid Practice Direction"), mores particularized pursuant to and under section 16 *et al* to the ONSC Divisional Court (Toronto Region))

Court file number: DC-24-00000718-00JR
Type of document: email with attachment (Affidavit #28)
Short title of proceeding: *McLean v. TDHA et al*
Party: Mr. Kevin A. McLean (B.A., J.D, CIM) (mcleansettlement@gmail.com)

Re: my multi-purposed motion herein to set aside any steps, compulsory case conferences, orders et al based on new facts arising or discovered and fraud since March 2025

To the Honourable Court and Counsel, *In Re* the Within Proceeding:

I. Introduction and Procedural Compliance

This communication is tendered *in pertinentia* to the above-referenced matter. Pursuant to the **mandatory precepts** enshrined within the relevant Ontario *statutes and regulations*, which necessitate the commencement of an application or motion to **vitiate** any prior order or judgment resultant from the emergence or subsequent **discovery of material facts** or the **unearthing of palpable fraud** within the ambit of the original proceeding, please find **appended hereto** the Third Motion Record of the Applicant.

II. Newly Ascertained Indicia of Facts and Subsequent Procedural Impediments

A **plethora of newly ascertained indicia of material facts and potential malfeasance** have demonstrably materialized subsequent to the prior filing, with the anticipation of further revelations yet to unfold. *In limine*, it is imperative to register the observation that **The Honourable Madam Justice Shore** has, as of the present moment, elected not to furnish a substantive reply to the Court Services personnel of the Superior Court of Justice (SCJ) Records Management Office (RMO)—the designated repository for all judicial recordings and transcripts originating from SCJ venues, including **361 University Avenue Courthouse**, and the *Divisional Court* at **130 Queen Street West**. This non-response, which **significantly impedes the procurement of authorized transcripts** essential to the Applicant's prosecution of this matter, was further **exacerbated by the Registrar's failure** to honour the Applicant's formal requisition for the production of all filings submitted by the Respondents or Interested Persons, save and except for the Notices of Appearance tendered by the *Licence Appeal Tribunal* (LAT) and the Respondent Insurance Companies—a deficiency underscored by the *sub judice* issues concerning the **alleged pervasive managerial dominion** exerted by the LAT in the drafting of the Respondents' materials.

III. Judicial Process and the *Open Court Principle*

Notwithstanding the aforementioned procedural hurdles, the Applicant has maintained an **unreservedly transparent posture** in the preparation of this Third Motion, advancing the current exigencies at the earliest possible juncture consonant with the **discovery of germane evidence**. This evidence, *inter alia*, pertains to the inability of the Superior Court of Justice and its various functionaries to **unequivocally repudiate** the contention that **The Honourable Madam Justice Shore** exercised a judicial function—distinct from the successful repudiation concerning *Madam Justice Kraft*—in a *sub rosa* (ex parte, *in camera*) judicial determination involving the **issuance of criminal process** or an **arrest warrant**, alongside other potential authorizations.

While the conventional practice dictates the preservation of the confidentiality and privilege associated with such sensitive information, the **fundamental *Open Court Principle* mandates public accessibility** to instruments such as Informations and Indictments, thereby **rendering disclosure paramount**. This principle accentuates the subsequent issue: the demonstrable **manipulation of court documents** pertaining to the Applicant during September and October 2024 by unknown actors. This manipulation persisted even **subsequent to the formal admission** by counsel for the Ministry of the Attorney General (Civil Branch) that the purported *Criminal Code Form 2* 'Information' **did not exist in the alleged form**. The Applicant's conduct remains **unimpeachable in this particular context**, having committed none of the acts documented in the counterfeit materials—materials featuring the **forged signature of a Justice of the Peace** from the Central West Region (*OCJ Brampton Court*) and purporting to evidence an 'Intake Court Endorsement [sic]' and a 'warrant in the first' dated in September 2024. The Respondents are **fully cognizant** of the Applicant's contemporaneous and conspicuous participation in the LAT proceeding at the material time, thereby **negating any suggestion of evasion**.

IV. Contemplated Relief: Draft Orders

Consistent with the **exigency of these circumstances**, the Motion Record includes two distinct *Draft Orders* for the Court's consideration:

1. **Interim Draft Order:** Pertaining to the **mandated production and complete disclosure** of the audio recordings from specific case conferences, specifically those wherein the Applicant's non-availability was notified in advance to **Ms. Badwal** (a Motions Coordinator of the *Divisional Court*) and the subsequent conference necessitated by the Applicant's hospitalization due to injuries sustained from an e-scooter accident—communicated via electronic mail at 04:00 hours. Furthermore, this Order includes **ancillary interim relief**, particularly the **exigent return of all property** *de facto* **unlawfully appropriated** by **Mr. Karat** of the Respondent Insurance Companies (specifically the insurer Primmum, but excluding TD Life).

2. **Final Order:** A comprehensive determination of the substantive relief sought.

V. Legal Extrapolation and Scope of Remedy

The **fundamental *ratio* of this Motion** concerns the *vexata quaestio* of whether the LAT exercised a **pervasive managerial dominion** over the TDIA Group and/or the Respondent Insurance Companies. This assessment is acutely relevant subsequent to the March 2025 **unlawful appropriation** of the Applicant's property by **Mr. David Karat**—an individual whose conduct has been previously **particularized as felonious** by the *Centre for Addiction and Mental Health* (CAMH). The property unlawfully appropriated included highly sensitive personal information and electronic devices, the very nature of which **magnifies the Applicant's Reasonable Expectation of Privacy** (REOP).

Consequently, the **principal remedy sought** is a judicial finding establishing this high degree of control, with attendant **leave to address the quantum of pecuniary damages** at the appropriate future juncture. Furthermore, the **exigent return of the appropriated property** from Mr. Karat—as mandated by the proposed Interim Order—is **a requisite antecedent** to the full determination of damages, as it will **facilitate a comprehensive forensic analysis** of the electronic devices and ancillary materials to ascertain the full extent of data retention or exfiltration.

VI. Alternative Submission and Final Confirmations

Should the aforementioned approach not be favourably received by the Court, the Applicant **shall submit an itemized sum** within the accompanying *Factum* and pertinent *Draft Order* for the Court's immediate reference. This submission is **proffered contingent upon the Applicant's request** that this Motion be adjudicated in writing, subject always to any **meritorious objections** lodged by the opposing parties.

Given the Applicant's understanding that the *Justice Services Online* (JSO) portal is currently undergoing a process of **decommissioning and systemic replacement**, the requisite **prescribed filing fees** shall be remitted forthwith upon the activation and operationalization of the successor electronic filing infrastructure.

Notwithstanding the foregoing, the Applicant **hereby confirms** that this Motion Record has been **duly filed and served** upon all principal parties as of the date hereof, prior to the hour of 16:00. Service upon all other **potentially affected third-party persons** shall be effectuated by the Applicant **under separate cover**.

The subsequent materials shall follow.

May this holiday season afford all parties a respite conducive to reflection and equanimity.

[i]It is applicable to all Divisional Court proceedings in Ontario by reference to section 1: "Parties are **required** to follow the practice set out below for all matters in the Divisional Court **anywhere in Ontario." Practice Directions are subject to the Rules of Civil Procedure (see: Rule 1.07:** "practice direction" means a direction, notice, guide or similar publication for the purpose of governing, *subject to* these rules, the practice for proceedings). Ergo, the Valid Practice Direction for Divisional Court proceedings in Ontario

Yours faithfully,

/KAM

Mr. Kevin A. McLean (BA, JD, CIM)

Sender's name: Mr. Kevin Alexander McLean (BA, JD, CIM)

Sender's address: 410-775 King Street West, Toronto, Ontario, M5V 2K3

Sender's Telephone Number: (647) 370-9354

Sender's email address: mcleansettlement@gmail.com

--- END OF SCHEDULE "a"

TAB 26

Court File No. DC-24-00000718-00JR

Form 4E

Courts of Justice Act

REQUISITION

ONTARIO SUPERIOR COURT OF JUSTICE (DIVISIONAL COURT)

BETWEEN:

KEVIN ALEXANDER MCLEAN

APPLICANT

AND:

TD HOME AND AUTO INSURANCE COMPANY, SECURITY NATIONAL INSURANCE COMPANY, TD GENERAL INSURANCE COMPANY, EXECUTIVE DIRECTOR, LICENCE APPEAL TRIBUNAL, HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO, REPRESENTED BY EXECUTIVE CHAIR OF TRIBUNALS ONTARIO IN MR. SEAN WEIR, THE ATTORNEY GENERAL OF ONTARIO

RESPONDENTS

REQUISITION

TO THE LOCAL REGISTRAR[ii] at The Ontario Superior Court of Justice (Divisional Court) Toronto, Osgoode Hall, 130 Queen Street W., Rm 174 (or any other room situated within said building and lands at the ONSC Divisional Court (Toronto) where the Registrar is so located), Toronto, ON, M5H 2N5 (the "**Toronto Divisional Court**") Phone: (416) 327 5100 Email: scj-csj.divcourtmail@ontario.ca)

1. I REQUIRE copies in electronic format of any filed documents by the Respondents exclusive of their non-filed and non-delivered Notices of Appearances (on November 27, 2024, by the Licence Appeal Tribunal (the "**LAT**" or "**Tribunal**") and December 3, 2024, by TDHA, SNIC, and TDGIC (collectively, the

"**Respondent Insurance Companies**") respectively) (collectively, the "**NOA's**" or "**Appearance Notices**")[iii];

2. I repeat and rely upon my Affidavit of Service (multi-purposes with express incorporation of statutory declarations at Tabs 3 and 3 of the Motion Record

.

All of which is REQUIRED, pursuant to the express statutory and prescribed authority and requirements under the governing statutes and regulations, the by the ONSC Divisional Court Registrar for her immediate attention and subsequent action pursuant to, *inter alia*, the *Courts of Justice Act*, R.S.O. 1990, Chapter C.43 (the "*CJA*") section 146, section 137 (if applicable) *et al* and *Rules of Civil Procedure*[iv], Rule 4.08[v], *Rule 4.03*[vi] *et al*.

November 26, 2025

Mr. Kevin A. McLean (B.A., J.D., CIM)
775 King Street West,
Suite 410
Toronto, Ontario
M5V 2K3
(e): mcleansettlement@gmail.com

Mr. Kevin A. McLean (B.A. J.D., CIM)
The JRPA Applicant

RCP-E 4E (July 1, 2007)

APPENDICES

Endnotes

[i]

[iv]Approved by the Lieutenant Governor in Council ("**LGIC**"). The Applicant, pursuant to the particulars and legal bases required for such a requisition, relies on the legal precedent and common law rule that inherent jurisdiction of a court of superior jurisdiction **cannot** be used to conflict with the unambiguous expression of the Rules. More specifically, courts have

held that inherent jurisdiction does **not** operate where Parliament or the legislature has enacted and received Royal Assent, which is also applicable to regulations that are not ultra vires the LGIC or regulatory making authority, and cannot be used so as to contradict a statute or rule: see *Baxter Student Housing Ltd. v. College Housing Co-operative Ltd*., 1975 CanLII 164 (SCC), [1976] 2 S.C.R. 475 at p. 480 and *Stephen Francis Podgurski (Re)*, 2020 ONSC 2552, at para. 68 to 70 as per The Honourable Chief Justice G.B. Morawetz.

[v]**"4.08** Where a party is entitled to require the registrar to carry out a duty under these rules, the party may do so by filing a requisition (Form 4E) and paying the prescribed fee, if any. R.R.O. 1990, Reg. 194, r. 4.08."

[vi](to the extent that it is applicable to the Applicant (a party in the **JRPA Proceeding**) but without limitation)

Court File No. DC-24-00000718-00JR

FORM 4D

Courts of Justice Act

AFFIDAVIT

ONTARIO SUPERIOR COURT OF JUSTICE (DIVISIONAL COURT)

BETWEEN:

KEVIN ALEXANDER MCLEAN

APPLICANT

- and -

TD HOME AND AUTO INSURANCE COMPANY, SECURITY NATIONAL INSURANCE COMPANY, TD GENERAL INSURANCE COMPANY, EXECUTIVE DIRECTOR, LICENCE APPEAL TRIBUNAL,
HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO, REPRESENTED BY EXECUTIVE CHAIR OF TRIBUNALS ONTARIO IN MR. SEAN WEIR, THE ATTORNEY GENERAL OF ONTARIO

RESPONDENTS

Affidavit #23 of the Applicant

I, **Kevin Alexander McLean**, Disabled (B.A., J.D., CIM) of **Toronto**, **Ontario, SWEAR** THAT:

1. I am the applicant in this **JRPA Proceeding**, and I swear under pains and penalties of perjury that the following facts are true. Where information is based on my beliefs, I have provided the sources of my beliefs. Definitions from documents filed, provided, or served on respondents or interested parties in this **JRPA Proceeding** retain their meanings here unless noted otherwise. Additionally, definitions from my **2nd Amended Compendium** dated March 28, 2025, are adopted here unless stated otherwise. The date is *April 24, 2025*.

2. My last affidavit was filed under seal and it was filed and served on the date therein. Since that time, I have not received any responses to my outstanding requests. I repeat and rely upon my previous evidence. I have not waived any of the rights in fact or at law. I intend to proceed as previously particularized.

3. Now shown to me and marked as **Exhibit "A"** to this my affidavit are copies of the following documents which are consecutively enumerated:

   a. a copy of my fax request of the Divisional Court for copies of the requested filed documents (if any) by the Respondents during the relevant temporal period denoted therein (see: **page 1**);
   b. a copy of the confirmed delivery of the above noted fax to the Divisional Court (see: **page 2**); and
   c. a copy of my emails following up with the Divisional Court regarding **Exhibit "A"**, page 1 (see: **pages 3** and **4**).

4. As of today's date, I have not received any response to those requests in **Exhibit "A"** or any of my previous requests via email.

5. I now have further 'fresh evidence' or new[1] facts that I will be providing by additional affidavit material and subsequent submissions.

6. I swear this affidavit for no improper purpose and for the above purposes.

Sworn before me by videoconference:

by Mr. Kevin A. McLean at the City of Toronto, in the Province of Ontario, before me on **April 24, 2025** in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.

Signature of Notary

Signature of Deponent

[1]Previously unknown in March 2025

THIS IS EXHIBIT "A" REFERRED TO IN THE
AFFIDAVIT OF Mr. Kevin A. McLean
AFFIRMED BEFORE ME, THIS 24th DAY
OF April 20 25

.....
NER, ETC.

Vinh The Tran, Esq., LSUC #57761C
Lawyer, Notary, Oaths Commissioner
188-639 Dupont Street, Toronto, ON
M6G 1Z4, T. 647-209-7389
vinhtranlaw@hotmail.com

Reply to the attention of: Mr. Kevin A. McLean (B.A., J.D., CIM)
Reply via email: mcleansettlement@gmail.com

April 16, 2025

RESPECTFULLY URGENT

VIA FAX (416-327-5549) AT FIRST INSTANCE (KINDLY REPLY VIA EMAIL)

EXCLUSIVELY DIRECTED TO:

ONSC DIVISIONAL COURT
130 Queen Street West
Toronto, Ontario

Kind attention: Madam Registrar

Court file number: Court File No. DC-24-00000718-00JR
Type of document: email
Short title of proceeding: *McLean v. TDHA et al*
Party: Mr. Kevin A. McLean (B.A., J.D, CIM) (mcleansettlement@gmail.com)

Re: Request for any alleged or purported filed materials by any Respondents (defined infra) in the above noted proceeding excluding of filed Notices of Appearances by TD Home and Auto Insurance Company ("**TDHA**"), Security National Insurance Company ("**SNIC**"), TD General Insurance Company ("**TDGIC**") and Licence Appeal Tribunal ("**LAT**") (collectively defined for this email as the "**Respondents**")

Dear Sirs/Mesdames *et al*:

1. I politely write regarding the above. I am the individual applicant above and I have requested access to any allegedly filed material including the following: motions; motion records; confirmations of motion; submissions; affidavits; and/or affidavits of service, by the Respondents. I am presuming that they must have attempted to file some of the above noted documents in late February and/or until on or around March 20, 2025. At this time as there appears to be a suggestion to mail or fax, I have sent this urgent request via fax but kindly respond to me via email above and known to you for ease of reference. If there has not been anything filed, kindly confirm the same via email. I may follow up to confirm the same via email.

2. I thank you in advance for your time.

Yours truly,

Mr. Kevin A. McLean (B.A., J.D., CIM)
Applicant in this *JRPA* Application

Gmail Mr. Kevin McLean <mcleansettlement@gmail.com>

Your fax to ONSC Divisional Court has succeeded

FaxZero.com <support@faxzero.com> Wed, Apr 16, 2025 at 12:36 PM
To: KEVIN ALEXANDER MCLEAN <MCLEANSETTLEMENT@gmail.com>

Dear KEVIN ALEXANDER MCLEAN,

Your fax to ONSC Divisional Court at 4163275549 has been sent successfully!
Successful delivery of your fax was confirmed at 12:36 PM Eastern Daylight Time on April 16th, 2025
Your fax included 1 page of coversheet with your text and 1 page of attached documents.

Be sure to follow up with the recipient to make sure that the fax is legible and is delivered to the right person in the office.
To view or print the status of your fax, click here. You can also send FaxZero a "tip" to support this handy service.
Thank you,
FaxZero.com

P.S. Check out https://www.FreePrintable.net: printable business cards,
certificates, timesheets, calendars, coloring pages, and more.

If you want to RECEIVE faxes or send lots of pages
each month, try our friends at FaxPlus. As low as $6.99 per month.
http://faxzero.com/go/FaxPlus

(id#36174265)

Gmail Mr. Kevin McLean <mcleansettlement@gmail.com>

Confirmation delivered fax of April 16, 2025 - requested documents (if any)

2 messages

Mr. Kevin McLean <mcleansettlement@gmail.com> Thu, Apr 17, 2025 at 9:25 AM
To: "SCJCSJDiv Court Mail (WD)" <scj-csj.divcourtmail@ontario.ca>

Reply to the attention of: Mr. Kevin A. McLean (B.A., J.D., CIM)
Reply via email: mcleansettlement@gmail.com

April 17, 2025

VIA EMAIL

EXCLUSIVELY DIRECTED TO:

ONSC DIVISIONAL COURT
130 Queen Street West
Toronto, Ontario

Kind attention: Madam Registrar

Court file number: Court File No. DC-24-00000718-00JR
Type of document: email
Short title of proceeding: *McLean v. TDHA et al*
Party: Mr. Kevin A. McLean (B.A., J.D, CIM) (mcleansettlement@gmail.com)

Re: confirmation of my fax delivered yesterday regarding receiving copies to any filed materials (exclusive of NOAs) by Respondents in February and March 2025

Dear Sirs/Mesdames *et al*:

1. I respectfully write regarding the above. I confirm that I delivered the attached fax of yesterday's date to the ONSC Divisional Court. Would you kindly provide access to the requested documents (if any) to this email?

2. If there were not any filed documents by the Respondents (defined therein), would you kindly provide written confirmation of the same?

3. I thank you in advance.

Yours truly,

Mr. Kevin A. McLean (B.A. (MCL), J.D., CIM) (he/him)

(e): mcleansettlement@gmail.com

Disclaimer:

1. *The contents of this email are strictly confidential, unless otherwise noted, and are only intended for the recipients of said email.*

2. *If you receive this email in error, please reply to me by separate email and confirm the same by double deleting my errant email. I will do the same for you.*

Meegwetch | Merci | Thank you |

Mr. Kevin McLean <mcleansettlement@gmail.com> Tue, Apr 22, 2025 at 8:08 AM
To: "SCJCSJDiv Court Mail (WD)" <scj-csj.divcourtmail@ontario.ca>

Dear ONSC Divisional Court: I am writing regarding the above. I am in a hearing today so I will not be able to respond. Would you kindly provide me with access to any of the above (if any exists)? If none exists, would you kindly confirm the same? Thank you.

Yours truly,

Mr. Kevin A. McLean (B.A. (MCL), J.D., CIM) (he/him)

(e): mcleansettlement@gmail.com

Disclaimer:

1. *The contents of this email are strictly confidential, unless otherwise noted, and are only intended for the recipients of said email.*

2. *If you receive this email in error, please reply to me by separate email and confirm the same by double deleting my errant email. I will do the same for you.*

Meegwetch | Merci | Thank you |

[Quoted text hidden]

Court File No. DC-24-00000718-00JR

FORM 4D

Courts of Justice Act

AFFIDAVIT

ONTARIO SUPERIOR COURT OF JUSTICE (DIVISIONAL COURT)

BETWEEN:

KEVIN ALEXANDER MCLEAN

APPLICANT

AND:

TD HOME AND AUTO INSURANCE COMPANY, SECURITY NATIONAL INSURANCE COMPANY, TD GENERAL INSURANCE COMPANY, EXECUTIVE DIRECTOR, LICENCE APPEAL TRIBUNAL, HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO, REPRESENTED BY EXECUTIVE CHAIR OF TRIBUNALS ONTARIO IN MR. SEAN WEIR, THE ATTORNEY GENERAL OF ONTARIO

RESPONDENTS

AFFIDAVIT #24 OF THE APPLICANT

I, **Kevin Alexander McLean**, Disabled (B.A., J.D., CIM) of **Toronto**, **Ontario, SWEAR** THAT:

1. I am the applicant in this **JRPA Proceeding**, and I swear under pains and penalties of perjury that the following facts are true. Where information is based on my beliefs, I have provided the sources of my beliefs. Definitions from documents filed, provided, or served on respondents or interested parties in this **JRPA Proceeding** retain their meanings here unless noted otherwise. Additionally, definitions from my **2nd Amended Compendium** dated March 28, 2025, are adopted here unless stated otherwise. The date is *April 24, 2025*. It is my second affidavit sworn on said date.

VOLUME #1: Exhibit "A"

2. Now shown to me and marked as **Exhibit "A"** to this my affidavit are copies of the following documents which are consecutively enumerated:

   a. a copy of my perfected and finalized written access request made of the Licence Appeal Tribunal (the "**LAT**" or "**Tribunal**") *FIPPA* division (the "**LAT *FIPPA* Division**") of on or around March 19, 2025 (the "**Access Request**") (see: pages 1 to 29);
   b. a copy of my emails to the **LAT *FIPPA* Division** following up on the finalized and perfected **Access Request** of it (see: pages 30 to 88); and
   c. a copy of a document confirming that I filed and paid for my OIPC appeal on April 23, 2025, regarding the **LAT *FIPPA* Division**'s failure to provide a compliant decision or any decision within 30 calendar days of receiving my **Access Request** and statutory and prescribed application fee (see: page 89).

3. The **Access Request** was further to my initial January 2025 access request of the **LAT *FIPPA* Division**. As per my previously sworn evidence and submissions (filed and served on the Respondents as they were at the various times) in January to March 2025, the **LAT *FIPPA* Division** directed me to the LAT Registrar regarding 'adjudicative records'. However, the LAT Registrar, through Ms. Lee, confirmed what she did at the various time and I repeat and rely upon the same (see: the formal admissions made by the LAT Registrar that it was still attempting or determining the best way to compile the **ROP** from the **ROP Temporal Period**.

4. I am still seeking the 13 classes of records (as defined under *FIPPA*) denoted in Exhibit "A", pages 7 and 8 which are in addition to all of the adjudicative records involving the **ROP** from the **ROP Temporal Period** for the, *inter alia*, reasons espoused as per my legal bases, sworn evidence and submissions in my NOM #1, NOM #2, and Compendia (twice amended since February 14, 2025), from the **LAT *FIPPA* Division**.

Volume #2: Exhibit "B"

5. Now shown to me and marked as **Exhibit "B"** is a copy of my submissions in relation to my NOM #8 before the LAT in relation to costs. **Exhibit "B"** is enumerated from *pages 90 to 119*.

6. I provide, in part, this **Exhibit "B"** to demonstrate some of the types of documents that would be contained in the ROP during the ROP Temporal Period. I also provide the same to this Divisional Court to demonstrate the diligence I have previously exhibited to search for and obtain evidence of the likes of the LSBC and its legal counsel committing fraud upon various tribunals, the BC Supreme Court (the "BCSC"), BCCA and the SCC.

7. As denoted therein, I was the subject to criminal conduct by the LSBC in the form of a concealed RAM Dump of my computer in June 2014 which the LSBC failed, by omission, to inform the various tribunals at issue and courts (superior and appellate) of the same. I believe that if the soon-to-be former LSBC, pursuant to the *Legal Professions Act (BC) (2024)*, could commit that type of fraud upon the various tribunals and courts, then it is probable that the LAT and the Respondent Insurance Companies did as well by commission or omission. While I learned of this fraud committed by the soon-to-be defunct LSBC (see:

8. I invite the Respondents and the Divisional Court to review the same to confirm the veracity of my positions before various tribunals and courts in BC when measured against the documents at appendices therein.

9. I have alleged that the LAT failed to follow its own *LAT Rules* in various respects and this was another example where it did so by failing to understand that it had jurisdiction to award costs at the time and it was required to make a decision regarding costs (see: *LAT Rules* in this regard). I note that said decision in relation to NOM #8 was by adjudicator Morrissette as she then was.

VOLUME #3: Application Fee paid to the **LAT *FIPPA* Division** and LAT's failures to comply with *FIPPA* and the open court principle

10. The statutory and prescribed pursuant to *FIPPA* and its associated regulation(s) application fee was tendered to the **LAT *FIPPA* Division** on or around March 20, 2025, and it accepted the same on or around said date. As of today's date, the **LAT *FIPPA* Division** has failed to produce a single document

from the ROP during the ROP Temporal Period including those particularized documents or records that are required in Exhibit "A", pages 7 to 9. The only 'document' that I have received is the LAT Print Out from the LAT Registrar. As of today's date, the **LAT *FIPPA* Division** has failed to respond to my **Access Request** and the follow up emails.

11. The **LAT *FIPPA* Division** did not seek clarification of my **Access Request**. The **LAT *FIPPA* Division** did not seek an extension of time relating to my **Access Request**. The **LAT *FIPPA* Division** did seek any further payment of fees of myself to it for me to access to the requested records in my **Access Request**.

12. Moreover, the LAT, through Mr. Boyce, itself did not provide a single document to me from the **ROP** during the **ROP Temporal Period** as per my request of it during February 2025. I allege based on the current chronological table that I have compiled of the, in my view, relevant events (jurisprudential, factual and evidentiary) that Mr. Boyce misled and committed fraud (as it is interpreted in some of the below jurisprudence) upon this Honourable Court at various times and stages during this JRPA Proceeding. I refer to Mr. Boyce and the LAT in this regard because based upon my review of the chronology, as currently composed with reference to the documents in my affidavit #21 and beyond, the LAT was the Respondent sending the majority of emails under our dedicated email thread regarding the same.

13. For courtesy and notice purposes, as I have not had any responses from the Respondents and the Divisional Court, in relation to my requests relating to the Purported Dismissal, I will be relying on the following cases including but not limited to the ground of 'fraud': *LAC Minerals Ltd*., (1988) 66 O.R. (23d) 7610 (H.C.) and *JV Mechanical Limited v. Steelcase Construction Inc et al* , 2010 ONSC 1443, and those decisions affirming the legal test for fraud and setting aside any order (to the extent there was a valid and lawfully issued order and duly endorsed at the time) that was predicated upon the same.

14. I repeat and rely upon my previous citation of various precedents that remaining silent or omitting material information at relevant times may amount to fraud.

15. While the evidence of the fraud is not known to me[1] and I continue to request the same but without any responses from the Respondents or the Divisional Court, I believe that it will be material. I continue to apply as much diligence as I can to obtain the same and act without delay. However, without the filed documents (if any) in addition to the requested underlying documents from the Divisional Court, it is not possible for me to make full legal argument. I will also file requisitions relating to the same out of an abundance of caution. I do not require certified copies but merely copies of what was allegedly filed and at what time it was filed (if applicable), and/or the relevant issued order. I reserve my rights to review a copy of the draft order involving the Purported Dismissal and I rely on the legal ground

VOLUME #4: CONCLUDING PARAGRAPHS AND JURAT

16. This is some of the 'fresh evidence or new facts' that I will introduce to set aside the **Purported Dismissal** and obtain the relief that I have been seeking in my **JRPA Application** (amended on March 5, 2025), motions (filed and to be filed), NOCQ (March 4, 2025) *et al*. I intend to and will exhaust every conceivable legal avenue in order to attempt to and obtain the relief that I have been seeking. I remain of the view and belief that a fraud has been committed on this Divisional Court and upon myself, and I will seek that relief in relation to the style of cause titled above involving the facts and relief sought that have been adjudicated upon at all, as known to me, and by decision makers that are not only independent but seen to be independent.

17. I allege that there is a systemic problem with the Licence Appeal Tribunal ("**LAT**") including that of Tribunals Ontario with respect to its conduct in relation to compliance with including the following but not limited to:

a. section 20 of the *SPPA*;
b. section 10 of *LATA*;
c. section 10 of the *JRPA*; and
d. the '*open court principle;* under our *Charter*.

18. I note that there have been allegations in some cases against Epstein Cole LLP communicating with the court staff and the Court in an improper manner. I do not know whether those allegations were true or not. Without castigating Epstein Cole LLP, I again note that it did not respond to my requests of it relating to my NOM #2. I do not believe that Madam Justice Shore was assigned and/or took some form of carriage of the JRPA Proceeding in January 2025 randomly to this JRPA Proceeding. While I note that the Chief Justice of the ONSC, The Honourable Mr. Justice Morawetz is responsible for the assignment of justices to certain matters, it is unclear to me whether he assigned Madam Justice Shore at first instance relating to the Compulsory Case Conference Requirement on or around January 7, 2025, or whether Justice Shore sought the same. I have found recent decisions (see: 2024[2] and 2025) involving the only other justice of the ONSC (Toronto Region) that I believe was employed and/or a partner at Epstein Cole LLP in The Honourable Madam Justice Melanie Kraft during the period of 2017 to present, and they were not in the Divisional Court. I will be seeking various orders pursuant to various legal bases, including section 146 of the *Courts of Justice Act*, and the Inherent Jurisdiction of this Honourable Court in relation to the above.

19. I will also be seeking an order of this Honourable Court to produce the transcripts from any and all case conferences (actual, purported or otherwise) so I can inspect the same and be granted permission to file additional submissions in relation to the motion itself. For notice purposes, I will provide a draft consent order for consideration by the Respondents. For further notice purposes and to demonstrate my continued diligence along with acting with, in my view, without delay, while also being as patient, in my view, as I can to receive responses from the Respondents and the Divisional Court, whilst respecting their resources, I will await their responses to the same by end of the business day on Friday, April 25, 2025. I have further evidence that will be filed under seal that will be tendered in support the above.

20. I swear this affidavit for no improper purpose and for the above purposes.

Sworn before me by videoconference:

by Mr. Kevin A. McLean at the City of Toronto, in the Province of Ontario, before me on **April 24, 2025** in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.

Signature of Notary

Signature of Deponent

Unlimited. No Expiration.
NO ILA PROVIDED.
Identification Confirmed.

[1]While I see a litany of inconsistencies in the chronology to be provided when I have the majority or all of the relevant documents regarding the same, I will need to measure them against the documents that I do not have.
[2]*Phillips v. Phillips*, 2024 ONSC 6339

THIS IS EXHIBIT "A" REFERRED TO IN THE
AFFIDAVIT OF Mr. Kevin A. McLean
AFFIRMED BEFORE ME, THIS 24th DAY
OF April 20 25

NER, ETC.

Vinh The Tran, Esq., LSUC #57761C
Lawyer, Notary, Oaths Commissioner
188-639 Dupont Street, Toronto, ON
M6G 1Z4, T. 647-209-7389
vinhtranlaw@hotmail.com

Reply to the attention of: Mr. Kevin A. McLean (B.A., J.D., CIM) (he/him)
Email: mrkevinalexandermcleanbajdcim@gmail.com

March 2025

Further to the January 2025 Access Request from the above noted email

DICTATED IN PART WITH VOICE RECOGNITION SOFTWARE – KINDLY EXCUSE ANY ERRORS

Private and Confidential (EXCLUSIVELY FOR PURPOSES RELATED TO *FIPPA* AND JANUARY 2025 ACCESS REQUEST – NOT TO BE DISCLOSED BUT FOR LAWFUL PURPOSES RELATED TO *FIPPA* AND THIS JANUARY 2025 ACCESS REQUEST)

VIA HAND DELIVERY (MAY BE FOLLOWED VIA EMAIL)

Hard Copy version does not have hyperlinks

To:
Licence Appeal Tribunal
15 Grosvenor Street
Toronto, Ontario

Attention: head of the Licence Appeal Tribunal

Attention: Privacy Division and Privacy Manager

Attention: Ms. Jennifer (last name unknown) (defined as "Ms. Jennifer" or "Jennifer")

Your file number: TDB
Type of document: access request (January 2025 at first instance) with five-dollar fee
Short title of the parties to the access partnership: Mr. McLean and the Licence Appeal Tribunal (*FIPPA* Access Privacy Division)
Party (sender): Requestor

Re: my comprehensive access request pursuant to, inter alia, section 24 and 47 (if applicable) of *FIPPA* – further to my emails – highly particularized and narrowed in parts but broadened in other parts – regarding documents or records relating to the record of proceeding in the LAT file 23-015662/AABS (the "LAT Proceeding") during the ROP Temporal Period

Re #2: confirmation – only requesting few documents from the ROP during the ROP Temporal Period: documents number therein

Re #3: broadening of access request to the following documents generally

Dear Sirs/Mesdames/Other Gender Neutral Pronouns:

VOLUME #1: INTRODUCTION

1. I write regarding the above. I adopt the definitions from the emails between myself and the LAT *FIPPA* Division, and they have the same meaning herein unless otherwise noted.

2. "**Requested Time Period**" means the time period from December 24, 2023, to January 31, 2025.

3. I reserve the right to formalize and amend any errors herein. I attempt to return from a relatively serious accident on March 5, 2024, albeit not involving any motor vehicles. I am having some serious dental issues as my face hit the pavement. I apologize in advance for any administrative, grammar or spelling errors. If I do amend, including an e-copy of this letter, with hyperlinking and bookmarking, I will highlight the amendments of the same.

4. Since we last communicated, and I apologize for the delay as I was unfortunately hit by an e-scooter in the evening of March 5, 2025, and had to attend the emergency room at a local hospital. As such, I had been recovering since that time. I am somewhat better so I have had some assistance with the drafting of the same but the contents and thoughts remain mine. In any event, this access request and records sought, personal information in nature, remain urgent and of extreme importance to me involving that which involves my rights to benefits from the First Insurer along with ensuring that my health and safety are adequately protected. In this regard, I am also ensuring that I have done all that I can do to exhaust all potential avenues to obtain records, inspect the same and determine if I need to protect myself.

5. I thank you for your responses previously via email and requested redirection to the **LAT Registrar**. While it bore some fruit per se, the delays and lack of transparency were not readily apparent. As noted in email, I obtained an alleged "print out" from the LAT on February 26, 2025, (the "**LAT ROP Print-Out**") the of the alleged records that compiled the record of proceeding (the "ROP") from the **ROP Temporal Period**. However, it raised more questions than answers. As such, oversight of the LAT *FIPPA* Division, bound by the requirements under *FIPPA* and its interpretative, persuasive and binding jurisprudence that specifically cites sections of *FIPPA* or otherwise, is required in any event.

6. Detachment and objectivity are required.

7. It is indisputable on the evidence that my suspicions turned to reasonable belief to reasonable grounds to believe to near certainties that this LAT had a vendetta and malice towards me. In this regard, one of my great nemeses involving my 11-year war involving my former regulatory body in the LSBC was that of the law firm of the BLG LLP. Current executive director of the Tribunals Ontario is that of Mr. Sean Weir who was the national managing partner of BLG LLP from 2001 to 2018. I reference some of my seminal decisions and you will see that BLG was not only involved in various stages therein in a role of purported independent supervising solicitor and independent adjudicator. However, I came to learn later that BLG LLP took the position that its client was listed at the LSBC and it would not even allow me to view its invoices for its work performed (by way of partner at BLG LLP (Vancouver office) in Mr. Robert Deane, KC).

8. I then learned that there was an unlawful RAM dump of my CPU (see: NOM #8 of the Applicant on "Costs"), alien to that of what was authorized by the LSBC (albeit challenged on many levels and successful on many levels and then ultimately successful by way of the LPA being repealed to the New LPA in nearly the exact form I had requested formally in the BCSC) on June 3 and/or 4, 2014, at my private, confidential and privileged law office in Vancouver, BC. I then later learned in

9. While I do not intend to impugn the character or integrity of Mr. Weir, it is not a remote potential that Mr. Weir remains in contact with many of the lawyers, paralegals and staff at BLG LLP. I do not fault him for doing so but it is important that I know of the same to further protect myself. However, I had one specific lawyer who was the 'chief risk officer" of BLG LLP at the time engage in threatening conduct towards me in July 2022. I was able to overcome the same with the benefit of the BLG LLP PIPEDA department and its esteemed privacy officers in Montreal, Quebec. I was thankful for the same. However, there was certainly some 'bad blood' created by said chief risk officer.

10. In this regard and again exclusively to assist your LAT *FIPPA* Division with its anticipated conclusion that I am correct that I am entitled to a wide and broad scope of requested records even where there may be an initial position taken by LAT or the individual who acted in the scope of his or her authorities with the LAT that the records are subject to privilege, would constitute an unreasonable invasion of privacy of their privacy and/or it would create some unreasonable safety risk to said individuals.

11. I wish to make clear herein that I can confirm like I did with CAMH and TPL that I would not and did not make any complaints to law enforcement. While many with those public bodies, without naming any names, were most astonished as to why, I had my confidential reasons for not doing so. However, the main one that was not confidential is that I do my adversarial work in the civil sense. I do not need to ever waste taxpayer dollars on criminal investigations for that type of unauthorized and fraudulent conduct. I also remain of the view that it is best to fix one's problems and to not delay any civil proceedings or potential civil proceedings with a criminal charge or otherwise.

12. I confirm the same herein albeit I doubt that any conduct would rise to that level. I raise this point in light of the aforementioned but to immediately dispel any potential that the

LAT and various individuals could or would posit that providing with the personal information records, or part of those records (subject to any lawful redactions), to myself would put their health and safety at risk (i.e. the potential of a quasi-criminal charge or criminal charge). I would say that said position would not be reasonable in any event.

13. Moreover, there is nothing about potential civil liability or requirements to comply with the law that could be seen as a 'threat" to the health and safety of an individual. Moreover with a reasonable or objective person test, nothing could be construed as a reasonable threat regarding the same.

14. I will be comprehensive herein out of an abundance of caution and by way of some learning experiences from my access requests and appeals (now concluded) involving CAMH (see: infra for relevant particulars herein) and The Toronto Public Library (see: infra for particulars). In relation to the beneficial learning experiences, I found some by 'trial and error' that by recasting or, at first instance, making an access request that was specific and particularized, with its legal bases, along with a forward-looking element allowed for a streamlined appeal and, in one instance, a nearly immediate resolution between myself and the public body. I cannot delve into the details per se of the same and I do not cite the same for the truth of their contents but the timing of delivering the same could not be more apropos.

15. I am also sending the enclosed five dollars via hand delivery or mail along with this letter as I appreciate technological errors that can occur and to ensure that I do not need to unnecessarily follow-up, whilst welcoming any follow-ups from your privacy department of the LAT via email, you will have a singular document, cross-referenced to the relevant components of the email access request, to rely upon. To the extent your division disagrees with my legal bases and the anticipated records to be received on or before 30 calendar days of receipt of this letter with the five-dollar application fee,

16. As I had noted with those public institutions and to some extent in my emails, which triggered the retention of the information in record form request or to be created depending on what is learned in your search,

17. I repeat and rely upon the relevant contents of the access request minus the need for each and every document from the record of proceeding in the LAT Proceeding as I have reviewed the printout from the **LAT Registrar** and I am aware of the majority of the documents therein but for the following:

    a. The documents ending in file type of: ".msg";
    b. The denotation of the related party of "TD General Insurance Company" on April 22, 2024;
    c. The undisclosed motion order on or around July 27, 2024; and
    d. The undisclosed motion order on or around August 16, 2024.

18. There were a variety of documents contained therein that are unknown to me. Ergo, I am requesting those documents or records from you so I can obtain copies of the same.'

19. Moreover, the printout raises more questions than answers, and, as such, my access request of the LAT is not one and the same with the request for the ROP from the ROP Temporal Period.

VOLUME #2: INCLUSION OF DOCUMENTS

20. I shall be referring to the following documents by inclusion herein (in part or in whole) and/or by inclusion via email:

    a. Tab #1: select pages from my index that I created;
    b. Tab #2: select pages from the LAT Registrar Print Out;
    c. Tab #3: CAMH images in redacted form;
    d. Tab #4: TPL chart of unauthorized activities; and
    e. Tab #5: Unauthorized completing of a form denoted as "TPL laptop and equipment borrowing form"; and
    f. Tab #6: Notices of Appearance by the LAT and three insurance companies in the TDI Group on the dates therein (see: November 27, 2024, and December 3, 2024, respectively).

21. Some, if not all, of the above noted documents are already known to the LAT *FIPPA* Division.

22. I apologize in this regard for a little bit of a foggy memory as I was concussed by my accident, via e-scooter from behind, on March 5, 2025, and I am to avoid light from screens as much as possible.

VOLUME #3: My specified and particularized request for access to copies of records via email to the above noted email

23. Ergo, I am requesting the following records from the LAT/AABS division from the following period of December 24, 2023, to January 31, 2025, which I delineate into the following groups or classes of documents:

    A. CLASS #1: FILE LOGS, SCREENSHOTS (INCLUDING ANY PREVIOUS VERSIONS (SEE: CLASS #3 REGARDING 'POWER OUTAGE')

        i. the file logs and screenshots from whatever "back end" of the LAT/AABS division including but not limited to:
        ii. record indicating the style of cause and when it changed (if at all);
        iii. when any insurance companies were input as the respondents into said portal or back-end;
            1. Conclusion: not a large number of records. Perhaps, a few records.

B. CLASS #2: POWER OUTAGE RECORDS

i. the date and records when there was an apparent power outage on or around March 30, 2024, and the steps taken, inclusive of records, to recreate the file and any lost records from that period;
    1. Conclusion: not a large number of records. Perhaps one or two records.

C. CLASS #3: SPECIFIC DOCUMENTS FROM THE LAT REGISTRAR FEB 26 PRINT OUT

i. specific documents from the **LAT Registrar** the records involving the following from the LAT print out from on or around February 26, 2025
ii. the denotation of the TDGIC as a related party on April 22, 2024 (on or around);
iii. the undisclosed motion order from July 27, 2024;
iv. the undisclosed motion order from August 16, 2024;
v. the document that include .msg as follows in said index.
    1. Conclusion: not a large number of records and must be in the possession and control of the LAT.

D. **CLASS #4 – THE SHUTTLEWORTH (SEE:** Mary Shuttleworth v. Licence Appeal Tribunal, 2018 ONSC 3790 (CanLII), <https://canlii.ca/t/hsm3q>) **TYPE DOCUMENTS:**

i. records, specific to the LAT Proceeding, which are in the nature of the types of documents that were present in the Shuttleworth decision. In this regard, I reference the components of the decisions in *Shuttleworth vs. Licence Appeal Tribunal* (see: paragraph 24);
    1. Conclusion: not a large number of records as it is simply in relation to each decision or order, whether that four-step process was followed.

E. CLASS #5: LIST OF PROFESSIONAL ADVISERS INCLUDING LEGAL COUNSEL (IN-HOUSE I.E. LAT IN-HOUSE OR SLASTO IN-HOUSE LEGAL COUNSEL LIKE MR. BOYCE):

i. The name of any legal counsel, inclusive of a lawyer licensee or paralegal licensee along with their legal assistants (de facto, de jure, actual or implied) (defined hereinafter as "Legal Counsel" or "Legal Counsel Team"), to the Tribunal and any decision makers in the LAT Proceeding (denoted as 23-015662/AABS) and a list (not necessarily the documents of themselves) of any and all communications between the following:
    1. Legal counsel and any decision maker;
    2. Legal counsel and the Tribunal;

3. The Tribunal and any legal counsel;
    a. In this regard, I would be most grateful, which I believe would be helpful to both of us, in a form similar to that of an LOD or affidavit of documents in the ONSC;
        i. Conclusion: not a large umber of records and must already be in the easily accessible possession and control like those in the ROP index created by Mr. McLean. To the extent they are not, they would need to be easily cross-referenced.

f. **Class #6**: **LAT AND TDI GROUP RECORDS INVOLVING MYSELF:**

i. Any and all communications between the LAT and the tdiadr@tdinsurance.com including Mr. Andrew Papadimitropoulos or any agents of TD by said vocational emails or personal emails where I am NOT copied from December 24, 2023, to January 31, 2025;
    1. Conclusion: not a large number of records and easily searchable.

G. CLASS #7: LAT CRO'S AND TDI GROUP:

i. Any and all communications involving the email of josh.grant@ontario.ca and any individual associated with TD Insurance group (the "TDI Group");
    1. Conclusion: not a large number of records and easily searchable.

h. Class #8: LAT CRO and TDI Group (where I was not copied):

i. Any and all communications between the LAT and Mr. Andrew Papadimitropoulos about or relating to myself between December 24, 2023, and January 31, 2025;
    1. Conclusion: not a large number of records (hopefully).

I. CLASS #9: LAT (MR. BOYCE AND HIS ASSISTANTS) AND TDI (MR. NIEUWLAND AND HIS ASSISTANTS INCLUDING ANY COLLEAGUES):

i. Any communications between Mr. Boyce and Mr. Nieuwland (see: emails) between December 24, 2023, and January 31, 2025;
    1. Conclusion: unlikely to be a large number of records but certainly the LAT provided Mr. Nieuwland or for his attention a copy of an NOA for him to fill out, and sign on or around December 3, 2024;

J. CLASS #10: NOTES TO PHONE CALLS:

i. any notes to phone calls between the LAT and any individuals of, agents to, or employees of TDI Group during the requested time period;

1. Conclusion: not a large number of records. It is unclear if staff members at the LAT other than lawyers and paralegals engage the same. The LSO does require some level of note taking for phone calls involving their licensees:

K. CLASS #11: NON-EMAIL COMMUNICATIONS VIA MOBILE, SMART PHONES OR SMART DEVICES VIA TEXT, WHATSAPP, VIBER OR ANY OTHER MESSAGING SOFTWARE:

i. any communications, including e-communications via mobile, smart device devices, tablets et al in any other medium but for email between the LAT and TDI Group, including TD Bank (see: Mr. Papadimitropoulos new employer and address for delivery of documents on the LSO Directory);
   1. Conclusion: only the experienced employee will know whether LAT employees (and potentially consultants) have government issued mobile and smart devices. If they do, the definition of 'control' is the right of the public institution *TO REQUEST TO MAKE A COPY of the record*;

L. CLASS #12: MR. WEIR AND OTHERS INVOLVING MYSELF:

i. any and all communications by or to Mr. Sean Weir or any other individual with the management of LAT with any other persons besides myself that involve me from the Requested Time Period (see: Mr. _____):
ii. Conclusion: unlikely to be a large number of records but some including any decisions to not release records or to specifically denote certain records as sensitive and/or with differing levels of authorization to access the same;

m. Class #13: Residual

i. Any other records not exactly specified regarding the above but in the spirit of the same that come to your attention when conducting your search and processing of the same.

VOLUME #4: The *Shuttleworth* Process (2018 and 2019 decisions)

24. I note the following from the ONSC Divisional Court in Shuttleworth at the following paragraphs:

> ***"The Decision Review Process***
> [24] In-house counsel for the LAT swore an affidavit explaining that the executive chair implemented a decision review process at the LAT. The stated reason was to maximize the quality of the tribunal's decisions. The peer review process has not been adopted formally. No written policy was provided but counsel swore that, "generally, the LAT decision review process for final decisions is, and at all material times in this case was" as follows:

> First, there is peer review: After drafting a decision, an adjudicator ***is expected to send the decision for peer review by the Duty Vice-Chair***. The Duty Chair offers suggestions to improve clarity, reasoning and readability and might also evaluate, for example, whether the correct legal test has been applied and whether any related case law that was not mentioned might be helpful.
>
> Second, there is legal review: The SLASTO Legal Services Unit reviews the decision to ensure that the correct legal test has been applied and to identify any related case law that was not mentioned that might be helpful.
>
> Third, there is a second peer review by the executive chair: "In some rare instances – such as when a decision involves a novel, contentious, precedent-setting, or high profile issue – ***the Legal Services Unit will send the decision to the Executive chair for her review***. In these instances, the Executive chair serves, in essence, as a second peer reviewer and accordingly will order the same kinds of comments that the author would typically receive during the initial peer review."
>
> Fourth, there is a review by the file's case management officer: The case management officer[i] acts as an intake officer and primary point of contact for the parties. This review involves examining the decision's format, correcting grammatical and spelling errors, and ensuring that the template and parties' names are correct. [Emphasis added.]

[25] The absence of a written policy is significant. The ATAGAA contains a very formal process to ensure the accountability of tribunal members and officers both internally and to the public. Sections 7 and 8 of ATAGAA read as follows:

> Member accountability framework
> **7** (1) Every adjudicative tribunal shall develop a member accountability framework.
>
> Contents
> (2) The member accountability framework must contain,
> (a) a description of the functions of the members, the chair and the vice-chairs, if any, of the tribunal;
> (b) a description of the skills, knowledge, experience, other attributes and specific qualifications required of a person to be appointed as a member of the tribunal;
> (c) a code of conduct for the members of the tribunal; and

(d) any other matter specified in the regulations or in a directive of the Management Board of Cabinet. 2009, c. 33, Sched. 5, s. 7 (2).

Approval
(3) The member accountability framework must be approved by the tribunal's responsible minister.
Publication, Amendment and Review of Public Accountability Documents
Publication of public accountability documents

8 Every adjudicative tribunal shall make its public accountability documents, approved as required by section 3, 4, 5, 6 or 7, as the case may be, available to the public.

[26] No documents were provided to outline LAT's review process nor were we advised that the process had been adopted and published in accordance with the statutory process designed to protect and enhance accountability as provided by the statute.

[27] According to counsel for the LAT,

> … those who review a draft decision accept, and do not question, the facts and evidence as presented in the draft. To the extent that a reviewer's comments might relate to the facts or evidence, they are simply intended to clarify the author's findings. The reviewer functions simply as an editor. Likewise, those who review a draft decision do not comment on the decision's policy choice(s) or ultimate result. In this sense, the LAT's decision review process recognizes that an adjudicator assigned to hear and determine a matter is completely independent to render whatever determination he or she sees fit. Again, the reviewer functions simply as an editor. The adjudicator has complete discretion to accept or reject any suggested revisions offered as part of the decision review process, as well as complete discretion over the extent to which he or she shows a reviewer any further drafts or revisions before releasing the decision to the parties; and while SLASTO has a formal process for peer and legal review as described above, there is no means to compel adjudicators to participate in it. If an adjudicator declined to participate in process, there is no means to prevent him or her from releasing the decisions without further comment or discussion.

25. As the LAT is a quasi-judicial body, its conduct must mirror that of the courts in Ontario when it comes to transparency, openness and honesty.

VOLUME #4: The Privilege List and the underlying documents: one of the presumed disputes regarding access

26. By way of courtesy, I appreciate that the LAT is likely going to contend that any document in a list of privileged documents are semi-eponymously privileged. I would disagree at first

instance for a variety of reasons. However, I need not speculate. As such, I will simply request a list of the documents as follows:

a. Author (sender);
b. Recipient;
c. Date;
d. Type of document; and
e. Short description of document.

VOLUME #4(A): Mr. Boyce

27. I have reasonable grounds to believe that one of the legal counsel was that of Mr. Jesse Aaron Boyce.

28. For some background in this regard, Mr. Boyce, as you know, became declared counsel to the LAT in the JRPA Proceeding at a time unknown to me. However, he became known to me on or around November 27, 2024.

29. Mr. Nieuwland on behalf of the three insurance companies (TDHA, SNIC and TDGIC) filed an NOA on December 3, 2024.

VOLUME #4(B): Legal Bases regarding whether privilege (litigation privilege, solicitor-client or settlement privilege) exists

30. Trusting the LAT is well-known with the legal tests for the same, they do not bear much in the way of repeating per se but for the basic principles.

31. In *Goldman Sachs & Co. v. Sessions*, 2000 BCSC 67 (CanLII), <https://canlii.ca/t/52qg>, the BCSC stated the obvious:

> [12] I cannot agree with Mr. Nathanson. The burden of establishing privilege rests on the party who asserts privilege. Communications between client and lawyer are not privileged simply on the basis of the status of the parties. Only communications made to Ms. Litt for **the purpose of seeking legal advice** or made by her to provide advice in her professional capacity as a lawyer are privileged.

32. It is trite that in-house counsel, whether to the LAT during the LAT Proceeding or to the LAT during the JRPA Proceeding, are tempered depending on whether an in-house lawyer was truly acting in his legal capacity or acting more in an investigative role. In my Amended JRPA Proceeding, which was preceded by the NOCQ (March 4, 2025), I have alleged therein (and will beyond) that the likes of those involved in the theft and subsequent unauthorized conduct were under a high degree of control from the LAT.

VOLUME #4(C): The exceptions to privilege

33. The exceptions to privilege are as follows:

a. Waiver;
   i. Implicit;
   ii. Explicit;
b. Conduct;
c. Future crimes[ii];
d. Non-criminal breaches of the law; and
e. it is necessary to protect public safety.[iii]

34. In relation to subparagraph 34(d), I note the following case at the following paragraphs: *McDermott v McDermott*, 2013 BCSC 534 (CanLII), 46 BCLR (5th) 121 at paras 72 to 73. This exception applies not just to communications that are "necessarily criminal in nature", it may also apply to communications in relation to any "unlawful conduct" that "causes injury to the legal rights of other citizens", which includes "breaches of regulatory statutes, breaches of contract, and torts and other breaches of duty.

35. Administrative bodies have a duty of fairness to the public. This is particularly apposite when they are an extension of the MAG and/or have a memorandum with the MAG that requires it to be uphold certain duties.

36. It is trite that the conduct of the LAT, perhaps at the misguidance of one of the TDIG insurance companies through the likes of Mr. Papadimitropoulos, Mr. Karat and/or Mr. Nieuwland et al, caused it to be askew from the outset.

37. However, the documents in the index, created by myself after receipt of the February 26, 2025, print out, demonstrate a pattern of breaching its duty of good faith to me along with various statutes including section 20 of the SPPA and section 10 of the LATA.

38. In the same style of cause as the above but in the year of 1999, the BCSC addressed the exceptions to solicitor-client privilege in the civil context:

> [20] The defendants' burden is described in ***Pax Management Ltd. v. C.I.B.C.*** (1987), 1987 CanLII 153 (BC CA), 14 B.C.L.R. (2d) 257 (C.A.) at pp. 265-66, where Wallace J.A., speaking for the Court, adopted the reasoning of Viscount Finlay in ***O'Rourke v. Darbishire***, *supra*, at p. 604, that there must be more than a mere allegation — there must be "something to give colour to the charge", that is, "**some prima facie evidence** that it has some foundation in fact." He identified the proper approach in this passage:

> I have concluded that the plaintiffs have specifically pleaded fraudulent misrepresentation and that the surrounding circumstances, as revealed by the affidavits filed in support of the application, satisfy me that the claim is honestly advanced and has sufficient credence to justify exercising the Court's discretion to disallow the privilege so that all relevant material is before the Court when resolving this very serious allegation.
>
> [21] Accordingly, it is not necessary for the court to weigh conflicting evidence and to make findings of fact on an application such as this. Rather, the court must examine the applicant's case in the light shed by all of the evidence and the surrounding circumstances to determine if it "gives colour to the charge."
>
> [22] Before it can be determined whether the defendants have given colour to the charge here, it is necessary to consider the submission made by Mr. Nathanson, for the plaintiffs, that the defendants have not pled a cause of action for abuse of process in their counterclaim.

39. The BCSC went further at paragraph 30 to explain what is meant by colour to the charge:

> [30] The showing of colour to the charge is not sufficient, in itself, to justify setting aside the privilege, however. If that threshold is crossed, the Court must then inspect the communications in camera to determine the legitimacy of the claim of privilege: Middelkamp v. Fraser Valley Real Estate Board, 1992 CanLII 2241 (BC CA), [1993] 1 W.W.R. 436 (B.C.C.A.) at para. 6.
>
> [31] There will, therefore, be an order that the plaintiffs produce the documents described in the notice of motion to the court for inspection.
>
> [32] This conclusion does not engage the risks that concerned Goff J. that the whole basis of privilege will be endangered and that persons will be prevented from seeking legitimate legal advice: Crescent Farms, *supra*, at p. 565. That concern is met by the requirement that the privilege will apply unless the recipient of the professional legal communication obtained it for a wrongful purpose: see R. v. Campbell, *supra*, at paras. 58-59, and by the requirement that the communication be inspected by the chambers judge before production will be ordered."

40. If the position of the LAT Privacy Division is that those requested records must be reviewed by the OIPC in camera, then kindly advise as soon as you know of the same.

41. As noted, I will provide the further documents via email due to their size including those already known to the LAT and those not known to the LAT.

42. I have already provided affidavits in the JRPA Proceeding regarding the same. I may have an additional affidavit to you for these purposes herein or specified herein. The honesty of my claims therein and future claims are indisputable. Whether I am correct or not is a matter of access to the Requested Personal Information Records.

43. Moreover, in light of the wildly undisciplined and unauthorized conduct by the likes of an agent of the LAT, at least at various times, in forging my signature, engaging in fraudulent misrepresentation et al, without any disavowing of the same by the LAT through Mr. Boyce, public safety remains at risk.

44. While TD Insurance Group appears to have dismissed Mr. Papadimitropoulos, his email remains active @tdinsurance.com as does his new email of @td.com. Therefore, it appears some steps have been taken by TD Insurance but it is certainly not enough. The LAT as part of or a division of MAG cannot sit idle. It needs to be fully transparent in all respects even to confirm if documents or records have been deleted or destroyed.

VOLUME #5: Legal Bases: *FIPPA*

VOLUME #5(A): Settled Legal Principles from the authorities

45. I commence with the obvious and that is the definition and interpretation of personal information.

46. The general legal principles are:

a. **Procedure**: access applicants ("**Access Applicants**") versus complainants against **Public Body** ("**Public Body Complainants**"): **Access Applicants** make requests pursuant to a right of general records or personal information records, and then review requests or appeals (depending on provincial nomenclature) under *FIPPA* leading to potential inquiries (not investigations) and/or orders under relevant statutory sections;
b. The **COMMISSIONER** has the additional powers to "reviews" or "appeal" under *FIPPA* ensure ***FIPPA Purposes*** are guaranteed achieved by making orders described under various sections;
c. **Public Body Complainants** make complaints which lead to investigations and the **COMMISSIONER** may make orders under relevant statutory sections
d. **Access to Information Rights – Purpose – *Facilitate Democracy***: the overarching purpose of access to information rights ("Information Rights") is to *facilitate democracy* by ensuring that citizens have *the information* required to participate meaningfully in the democratic process;
e. **Privacy Rights – Purpose**: privacy rights are designed to protect the privacy of individuals with respect to **Personal Information** held by government institutions

and to provide individuals with a right of access to that information; (d): **Privacy Act (federal and provincial)**: *quasi-constitutional*[iv];

f. (e):**Exceptions from an individual applicant's access rights – interpreted narrowly**: In *Lavigne v. Canada (Office of the **COMMISSIONER** of Official Languages),* 2002 SCC 53 (CanLII), [2002] 2 S.C.R. 773, Gonthier J. observed that exceptions from the rights set out in the act should be interpreted *narrowly*, with any doubt resolved in favour of preserving the right;
g. (f): **Burden of proof**: the burden of persuasion on the person *asserting the exception* (at paras. 30-31). (*Lavigne*); (g): **Privacy Rights only compromised when there is a compelling state interest for doing so**: in *Dagg v. Canada (Minister of Finance),* 1997 CanLII 358 (SCC), [1997] 2 S.C.R. 403, the court articulated the governing principles of privacy law including that protection of privacy is a **fundamental value**[v] in modern democracies and is enshrined in ss. 7 and 8 of the *Charter,* and privacy rights are to be compromised only where there is a compelling state interest for doing so (at paras. 65, 66, 71);
h. (i) **Competing values**: the operation of *FIPPA* to balance the competing values of privacy and access is a matter which the **COMMISSIONER** is tasked with overseeing;
i. (j) **"Compliance" and "duty":** these are not permissive or directive but rather mandatory word choices by the Legislature that require a public body or public institution to comply with the same. It cannot chose when it wishes to comply with its legal duties or not;
j. (l) **Discretionary exceptions - even if access is technically protected under a limited exception – public interest is paramount:**
k. **(**m) In Order 02-38[vi], at para. 149, I affirmed once again that the head of a **Public Body** *should* always consider the public interest in disclosure of information that is *technically protected* from disclosure and cited some of the relevant factors in considering the public interest in disclosure.
l. **COMMISSIONER**, as an independent officer of the legislature, has a variety of means at his or her disposal.
m. **Even where orders not made**: findings still have "teeth" and must be complied with.

47. The OPCC, FCC and FCA has interpreted personal information to be the following at this endnote.[vii]

48. Records are defined as the following:

> "record" means any record of information however recorded, whether in printed form, on film, by electronic means or otherwise, and includes,
>
> (a) correspondence, a memorandum, a book, a plan, a map, a drawing, a diagram, a pictorial or graphic work, a photograph, a film, a microfilm, a sound recording, a videotape, a machine readable record, any other documentary material, regardless of physical form or characteristics, and any copy thereof, and

> (b) subject to the regulations, any record that is capable of being produced from a machine readable record under the control of an institution by means of computer hardware and software or any other information storage equipment and technical expertise normally used by the institution; ("document")

49. Subsection (b) in the definition of "record" is similar to a provision under BC *FIPPA* which requires the public body to create a record and even create applications to make the same where such records are not immediately accessible.

50. Being forced to learn *FIPPA* and M*FIPPA* as a result of the October 25 CAMI Theft and the unauthorized TPL conduct from October 28, 2024, to present has provided a silver lining or benefit on an individual and collective level. It allowed me, being used to the BC *FIPPA*, to provide my positions in advance and on a preemptive basis which I and the public bodies so involved found helpful and truncated the time regarding the same.

51. My briefing of *FIPPA* was and is as follows.

52. The *Freedom of Information and Protection of Privacy Act* (R.S.O. 1990, CHAPTER F.31) aims to balance the public's right to access information held by institutions with the need to protect individual privacy. It establishes a framework for accessing records under the control of institutions, ensuring that information is available to the public while limiting exemptions to specific and necessary cases. The Act also mandates independent review of government disclosure decisions to maintain transparency and accountability (section 1).

53. The Act applies to various institutions, including ministries, hospitals, and educational institutions, and outlines the roles and responsibilities of the Information and Privacy Commissioner. The Commissioner is tasked with overseeing compliance, handling appeals, and ensuring that institutions adhere to the Act's provisions regarding the collection, use, and disclosure of personal information (sections 2, 4, and 5).

54. The legislation details procedures for requesting access to records, including timelines for responses and conditions under which access may be denied. It also specifies exemptions for certain types of records, such as those related to law enforcement, solicitor-client privilege, and Cabinet deliberations. Additionally, the Act provides guidelines for the protection of personal information, including its collection, retention, and disposal (sections 10, 12, 19, and 40).

55. The Act includes provisions for appeals and reviews, allowing individuals to challenge decisions made by institutions regarding access to information. It also outlines the powers of the Commissioner to conduct inquiries and issue orders to ensure compliance. The legislation is designed to promote transparency, accountability, and the protection of personal privacy within Ontario's public sector (sections 50, 52, and 54).

56. The Act was last amended in 2024 and is consolidated from January 29, 2025, to the e-Laws currency date.

Outline of the seminal legislative sections to this January 2025 Access Request

Purposes (section 1)

57. Establishes the Act's objectives to provide public access to information and protect individual privacy regarding personal information held by institutions.

58. The Legislature's stated purpose is supplemented, bolstered and solidified by the common law principles found by the ONCA and SCC.

59. The obvious potential dispute will be what records are privileged, including the type of privilege, and whether there are any exemptions to the claim of privilege. However, the names of the lawyers, paralegals and/or staff are not privileged in of themselves.

Limited Application Re Assembly (section 1.1)

60. Specifies the Act's limited application to the Assembly, focusing on reviewable expenses and personal information of Opposition leaders and their staff.

61. This subsection is inapplicable to my January 2025 Access Request.

Definitions (section 2)

62. Provides definitions for key terms used throughout the Act, such as "institution," "personal information," and "record." Those are noted and defined above.

Part I — Administration (sections 3–9)

63. Outlines the roles of the responsible minister and the Information and Privacy Commissioner, including appointment, powers, duties, and office administration.

Part II — Freedom of Information (sections 10–36.1)

64. Details the right of access to records, exemptions, access procedures, and information to be published or made available by institutions.

65. As I am only seeking personal information of myself and personal health information (where applicable), the presumption is that I am entitled to said personal information.

66. The burden is on the LAT to prove why a narrow exemption would apply to any of the classes of documents or documents within those classes. The burden is a heavy one and not easily displaced.

67. Of course, solicitor-client privilege has been somewhat constitutionalized. However, where the communications are not for the purposes of the client seeking advice from in-house tribunal counsel, then such privilege does not exist.

68. Whether the dominant purpose of the communication was the contemplation or the actuality of litigation will have to be inspected by reference to a list in this regard. There is no dispute that Mr. Boyce and Mr. Nieuwland or a proxy or agent (de facto, de jure or purported one) have communicated without my involvement.

69. Section 10 of *FIPPA* is worth repeating herein:

> **10** (1) Subject to subsections (1.1) and 69 (2), every person has a right of access to a record or a part of a record in the custody or under the control of an institution unless,
>
> (a) the record or the part of the record falls within one of the exemptions under sections 12 to 22; or
>
> (b) the head is of the opinion on reasonable grounds that the request for access is frivolous or vexatious. 1996, c. 1, Sched. K, s. 1; 2010, c. 25, s. 24 (6); 2019, c. 7, Sched. 31, s. 1 (1

70. There is nothing frivolous about this request or in any way vexatious as has been self-evident from the royal runaround that has occurred with the LAT registrar and it apparently sincere apologies. Unfortunately with the trust broken and my life, health, liberty and security being affected by the conduct of certain individuals in the TDI Group (now some at TD Bank Group by what appears to have been a dismissal of some individuals like Mr. Papadimitropoulos), the exceptions are not available to the LAT but for potentially bona fide and lawful solicitor-client communications. As I cannot prove or disprove (i.e. not prove a negative), I will need to inspect the list of documents and he inputs therein under the above noted categories sot determine if I need to continue with my initial assertion that no privilege would attach to any of the listed but not disclosed as it relates to the contents of those listed documents therein (if that is the case).

71. If certain parts of documents are determined by lawful discretion to be subject to an exception (lawful) but the other part of the document does not, kindly disclose the same and the reasons for why part of said document may have been served (see: section 10(2) of *FIPPA*).

72. I note the general requirement of preservation by the Legislature (see: 10.1 of *FIPPA*).

73. I note that section 13 of *FIPPA* may be relied upon the LAT with respect to potential advice provided by an in-house counsel or retained consultant by LAT. It is naturally permissive so balancing would be required therein.

74. I note the exceptions under section 13(2) which will apply to all factual material and anything in relation to reasons for decision or orders including the Undisclosed Motion

Orders or any other undisclosed motion orders or reasons for decision which are not encapsulated by the LAT Registrar Print Out (February 26,2025).

75. Sections 14 to 16 of *FIPPA* are irrelevant so I need not address them.

76. In relation to section 17 of *FIPPA*, I am not seeking, when referencing the class of documents that relates to logs or back-end of the electronic database of the LAT in relation to the LAT Proceeding, any trade secrets or confidential information. As provided by the LAT Registrar with resect to the "Print Out", there is even disclosure therein of the alleged URL that was utilized to access the same. I am, of course, solely concerned in the authenticity of the back end of the portal for the LAT for access by case managers and point-in-time references, supported by authentic documents,

77. Section 18 of *FIPPA* cannot have any relevance as there is nothing that could be injurious to the Government of Ontario by said disclosure.

78. Section 18.1 of *FIPPA* would not apply to the LAT as it is not an educational institution, hospital or governing body (i.e. the LSO, the College of Physicians and Surgeons or the College of Chartered Accountants).

79. In relation to where some but not all of the Requested Personal Information Records may be subject to withholding or non-disclosure of some or all of the same, it is section 19(a) of *FIPPA* that would be at issue. I note when referencing some, it would not be a large amount per se due to the classes of documents that are some 13 headings and sub-headings.

80. Of course, where the Tribunal is not the client per se but communications in the form of records or records to be made involve the Tribunal and other persons not namely a legal advisor (in-house or consultant) (i.e. a communication between Mr. Boyce and Mr. Nieuwland or Mr. Boyce and Mr. Papadimitropoulos).

81. On first blush, it would appear that the only time that section 21 of *FIPPA* could be at issue is when the client, as privilege is the right of the client, objects to the same involving lawful and permissible communications between a solicitor and a client and a client seeking advice from its solicitor(s). However, the word "individual" is used and not that of a "person" so it is not applicable.

82. In citing the above about the current causes of action against the LAT and relief sought against it in the JRPA Proceeding and potentially by extension in other future claims or offshoots of the same, I am also relying upon the exception to the exception where there is the potential but I say not possible at first instance unjustified invasion of another individuals' privacy. This exception to the exception or factor where a section 21(1) issues arise is denoted as:

> 22(2)(d): the personal information is relevant to a fair determination of rights affecting the person who made the request

83. There is an unfortunate history of the Tribunal not complying with its statutory duties at first instance like section 20 of the SPPA and section 10 of the LATA, and then at the JRPA Proceeding under section 10 of the JRPA. Insult to injury has occurred with the delinquent, unprofessional and unreliable communications from the LAT after the redirection by Ms. Jennifer of the LAT *FIPPA* Division.

84. In relation to the other factors under section 21(2) of *FIPPA*, I have copied and pasted the same:

> (a) the disclosure is desirable for the purpose of subjecting the activities of the Government of Ontario and its agencies to public scrutiny;
>
> (b) access to the personal information may promote public health and safety;
>
> (c) access to the personal information will promote informed choice in the purchase of goods and services;
>
> (e) the individual to whom the information relates will be exposed unfairly to pecuniary or other harm;
>
> (f) the personal information is highly sensitive;
>
> (g) the personal information is unlikely to be accurate or reliable;
>
> (h) the personal information has been supplied by the individual to whom the information relates in confidence; and
>
> (i) the disclosure may unfairly damage the reputation of any person referred to in the record. R.S.O. 1990, c. F.31, s. 21 (2).

85. Again, only when there will be an unjustified invasion of another individual's privacy will the LAT be REQUIRED to not disclose some of the Requested Personal Information Records to me. Ergo, where there is discretion, then such discretion must be exercised lawfully and in accordance with the presumption that I am entitled to access to my personal information.

86. All of the factors above are in my favour and resoundingly so.

Part III — Protection of Individual Privacy (sections 37–49)

87. Covers the collection, retention, use, and disclosure of personal information, including personal information banks and rights of access and correction.

88. It is trite that the LAT is not a bank but it is within the MAG but not technically the MAG. In this regard, I refer to the memorandum between LAT and the AGO.

Part III.1 — Data Integration (sections 49.1–49.15)

89. Addresses data integration units, the collection and use of personal information, and the role of the Commissioner in reviewing practices.

Part IV — Appeal (sections 50–56)

90. Provides the right to appeal decisions regarding access to records, outlines the appeal process, and details the Commissioner's powers during inquiries.

91. As noted, I have exercised appellate rights previously by submitting and paying the appeal fee to the OIPC BC.

Part V — General (sections 57–70)

92. Includes provisions on fees, whistleblowing, the Commissioner's annual report, powers and duties, and regulations, as well as the Act's application and exceptions.

VOLUME #8: Legal Bases: open court principle and the importance of the record of proceeding in relation to judicial review

93. As all privacy and access statues, whether provincial or federal, are quasi-constitutional statutes, and I as noted *supra*, filed and served a notice of constitutional question on March 4, 2025, and an amended JRPA Application on March 5, 2025, the below law is most relevant, at least, for context purposes in your search, processing and disclosure to me of the Requested Personal Information Records.

94. The relief sought therein was exclusively against or in relation to the LAT.

95. The legal bases regarding the same are as follows.

1. Content of the record: The content of the record for an application for judicial review is defined by the Judicial Review Procedure Act, R.S.O. 1990, c. J-1, *SPPA*, and by the Rules of Civil Procedure.
2. Process to trigger Tribunal's obligations: The process begins with the notice of application: r. 68.01(1). Upon being served with the notice of application for judicial review, the decision-maker is required by s. 10 of the Judicial Review Procedure Act, to forthwith file with the Divisional Court "the record of the proceedings in which the decision was made". The "record" is not defined by the Act: *Payne*, at paragraph 160 (see: paragraph 34);
3. Full and accurate record: An applicant for judicial review has the right to have a full and accurate record of what went on before the tribunal put before the court: *Payne* at paragraph 161 (see: paragraph 35);

4. Court is entitled to the **Record Of Proceeding** pursuant to statute (see: section 10 of the *JRPA*);
5. An applicant is entitled to the **Record Of Proceeding** pursuant to inherent jurisdiction: The reason for the Applicant being entitled to the same is not grounded in the statutory sections but the ONSC Divisional Court's inherent jurisdiction: *Payne* at paragraph 161 (sentence 2
6. As early as 1952, Lord Denning *in R. v. Medical Appeal Tribunal ex p. Gilmore*, [1957] 1 Q.B. 574 at 583 (C.A.) found the following as a basis the common law and/or equitable powers of the English courts upon which our common law and courts of equity are founded "The court has always had power to order an inferior tribunal to complete the record ... [A] tribunal could defeat a writ of certiorari unless the courts could order them to complete or correct an imperfect record. So the courts have the power to give such an order
7. The ONCA adopted the same in 2000 in its decision in *Payne* at paragraph 161 where it also cited other jurisprudence.
8. A statutory body subject to judicial review cannot immunize itself or its process by arriving at decisions on considerations that are not revealed by the record it files with the court." (see: (see: paragraph 161 of *Payne* (ONCA)).
9. The erudite justices in Rol-Land Farms Limited for the Divisional Court in 2008 reaffirmed the legal precedent that the temporal period for which documents, evidence, and decisions must be included in the forthwith filing by an administrative decision maker with the ONSC Div. Ct. at paragraphs 37 and 38: As indicated in an oral ruling during the hearing, volume 3 of the **Record Of Proceeding**s is not admissible. Section 10 of the *JRPA* requires a tribunal to file its **Record Of Proceeding**s when served with an application for judicial review of a decision. It is the **Record Of Proceeding**s relating to the particular decision that is to be filed, as is clear from the words of s. 10; and thus, the content of volume 3 is not properly part of the record required to be filed pursuant to s. 10 of the *JRPA*, as it post-dates the decisions under review."
10. While entitled – the dangers of not bringing a motion: Ergo, pursuant to s. 10 of the *Judicial Review Procedure Act,* it was available to the applicant to bring a motion seeking production of documents it alleges were relied on by the decision-maker but are not contained in the record: see, for example *K.D. v. Peel Children's Aid Society*, 2017 ONSC 7392 (Div. Ct.) at paras. 16-17). The applicant failed to do so. As a result, it is precluded from raising this issue for the first time on judicial review: Reflection Productions v. Ontario Media Dev. Corp., 2022 ONSC 64, the ONSC Div. Ct (as per MORAWETZ C.J., VARPIO, KRISTJANSON JJ.

96. openness to the public is the "authentic hallmark of judicial as distinct from administrative procedure". (see: paragraph 40 of *Toronto Star*). The LAT is a public institution, albeit funded by the insurance industry, that is conducting adjudicative matters.

97. Just as justice delayed can be justice denied, so reportage delayed can be reportage denied (see: paragraph 67 of *Toronto Star*).

98. The leading case regarding the “open court principle” and “adjudicative records” is that of the ONSC in *Toronto Star* v. AG Ontario, 2018 ONSC 2586. In that case, the *Toronto Star* was entitled to “Adjudicative Records” as a member of the media or journalism sector.

99. Ms. Jennifer was correct to note that I was entitled to the requested adjudicative records from the LAT Registrar but it took longer than 30 days to even provide the simulacrum of records that it did. As such, my confidence and trust are completely eradicated on a permanent level. I frankly do not trust whatever it provides me as being full, accurate and complete. While I do and did appreciate the reference and redirection, the LAT, by way of its staff in non-*FIPPA* capacities cannot be trusted to the degree that I need for that to have been an alternative route. In light of the distrust that it created by its waffling timelines by reference to the LAT Registrar which was consistent with the misconduct of Mr. Boyce on its behalf in the JRPA Proceeding, I, at the very least, need some levels of checks and balances or a frame of reference regarding the same.

100. The open court principle is one of the hallmarks of a democratic society . . . [and] is inextricably tied to the rights guaranteed by s. 2(b) of the Charter (see: paragraph 54 of *Toronto Star*).

101. This open access, and concomitant protection of freedom of the press, is in keeping with those tribunals' obligation "in exercising their statutory functions . . . [to] act consistently with the Charter and its values". This is not optional or discretionary on the part of administrative tribunals. As the Supreme Court has stated, "the protection of Charter guarantees is a fundamental and pervasive obligation, no matter which adjudicative forum is applying it". (see: paragraph 55 of *Toronto Star*).

102. It is important to keep in mind that freedom of expression "protects listeners as well as speakers" (see: paragraph 56 of *Toronto Star*).

103. Naturally, my standing and privacy rights are much wider because I am only seeking records that relate to or about myself and that relate to or about (however tangentially to the LAT Proceeding.

104. As such, I am on stronger footing than the Toronto Star in *Toronto Star*.

105. Statutory tribunals exercising judicial or quasi-judicial functions involving adversarial-type processes which result in decisions affecting rights truly constitute part of the "administration of justice": *Southam Inc v Canada (Minister of Employment and Immigration),* [1987] FCJ no 658 (QL). The legitimacy of such tribunals' authority requires

that confidence in their integrity and understanding of their operations be maintained, and this can be effected only if their proceedings are open to the public: *Germain v Saskatchewan (Automobile Injury Appeal Commission),* 2009 SKQB 106.

106. Tribunals like the LAT conduct administrative hearings governed by the *Statutory Powers Procedure Act* ("*SPPA*") are required to be open to the public. In principle, therefore, it is uncontroversial that "[t]he 'open court' principle" -- at least in some version -- "is a cornerstone of accountability for decision-making tribunals and courts" (see: paragraph 6 of *Toronto Star*).

107. The Supreme Court of Canada has stated that "[a]ll law and law-makers that touch the people must conform to [the Charter]. Tribunals and commissions charged with deciding legal issues are no exception." (see: *Toronto Star*, paragraph 14).

108. The open court principle, which is inextricably tied to the rights guaranteed by s. 2(b) of the Charter, applies to administrative tribunals as well as to courts

VOLUME #7: Conclusion

109. Kindly respond via email henceforth.

110. As noted under section 23 of *FIPPA*, none of any of the potential exemptions could have any merit because of the following:

> **23** An exemption from disclosure of a record under sections 13, 15, 15.1, 17, 18, 20, 21 and 21.1 does not apply where a compelling public interest in the disclosure of the record clearly outweighs the purpose of the exemption. R.S.O. 1990, c. F.31, s. 23; 1997, c. 41, s. 118 (2); 2017, c. 8, Sched. 13, s. 3.

111. The facts and evidence, which I have sworn, are unprecedented and the public safety issue and public interest issues in the disclosure of the record to myself clearly outweigh the purpose of any of the potential exemptions (if applicable).

112. What I found in my recent appeals with the OIPC was that by having such a document provided at first instance, it allowed for the OIPC to review the nature of my appeal in expedient fashion while causing the other public body(ies) to consent to a settlement (confidential of course). In this manner, I was most pleased as I was able to inform the OIPC immediately that we did not require its resources.

113. Ironically, the positions of one of the public body's immediately changed once it knew that I had filed and paid for an OIPC appeal through the portal. Perhaps, said public institution was relying on the being "overly cautious" aspects and did not think I would appeal. As this matter is even more urgent than my other access requests, I can confirm as a courtesy that if there is not full, transparent, accurate and complete disclosure of the Requested

Personal Information Records (see: *supra*), albeit not many per se overall, then I will appeal immediately. I will even appeal if there is an attempt to seek an extension of time.

114. I shall presume that you do not have any need for clarification of the nature of the requests made and they are sufficiently particularized herein and previously where applicable.

115. I appreciate your time is valuable and finite so I will await unless I hear from you otherwise to hear from you on or before the expiry of the 30 calendar days.

116. As I consider this as an extremely serious matter involving my safety and public safety and it remains most concerning that the LAT has somehow teamed up with the likes of an insurance company at least at the JRPA Proceeding level, I would be most grateful if this access request was prioritized.

117. I intend to keep the truth of the contents of this communications and any receipt of such communications, subject to the permissibility of utilizing records for lawful purposes, as confidential. If you feel otherwise, kindly advise.

118. As a parting note, I wish to emphasize that Mr. Papadimitropoulos is the ex-husband of my former spouse Ms. Nicole Artopoulos and he is highly dangerous, volatile, unhinged and clearly out of control. His conduct in impersonating me with my identification that was stolen on October 25, 2024, and forging my signature albeit with the initials of "A", "N" and "P" demonstrates his recklessness. I still stay that the LAT had a high degree of control or authority, at least by instructions, over him. In that regard, I say he is easily influenced, malleable and insecure such that he would engage in this conduct albeit under unlawful instructions and authorization from the likes of an in-house counsel of LAT.

119. The concerns about Mr. Boyce are plenty considering he removed his physical address and employer after I raised a conflict-of-interest issue involving himself and the insurance companies in the JRPA Application (i.e. when he was a vice chair or adjudicator, he decided in favour of those insurance companies at a clip of 14-0-1). Moreover, Mr. Boyce has engaged in misleading myself and others regarding the record of proceeding and when the Tribunal would produce the same. No such statutory option was open to the Tribunal (see: section 10 of the JPRA). I have sworn that he has not denied any of my beliefs, allegations and impugnment of him with respect to conduct that demonstrates conduct contrary to the common law, statutes and regulations.

120. By way of courtesy notice, when I know I am right at law, I persist until the end while exhausting all avenues. I made the most unlikely candidate to take on the LSBC's unconstitutional statutory and regulatory regime but I could not sit idle when it engaged in what I thought was only forensic copying of my hard drive in June 2014 but later discovered to be the most egregious breach of a professional's privacy rights along with his clients by usage of a tool in DumpIt that does not copy the "RAM", which cannot be copied. How I was successful to the extent I was without that seminal piece of information, undisclosed in fraudulent fashion by the LSBC and its purportedly esteemed counsel (now

one of which is a judge of the BCSC) but I owed it to other lawyers (past, present and future) to challenge the same.

121. I yet again became the most unlikely candidate to challenge the LAT's conduct herein but in the oddest of ways, I was the perfect candidate to be rear-ended at high velocity. It is now known to me that elements of the car accident were planned and deliberate.

122. There are some serious issues with certain employees of the LAT including but not limited to former employees like Ms. Therese Reilly and current employees like that of Mr. Boyce, Ms. Lake and Ms. Morrissette. Vice Chair Morrissette's history of criminal and unlawful conduct (albeit not charged by the RCMP when she intentionally and repeatedly breached The Lobbyist Act (Canada) when she was an employee of the Canadian Red Cross after being an employee of the Ministry of Health (federal)) is most concerning to me and should be to the public.

123. I solely advanced my rights and she clearly issued decisions or orders without providing me with copies of the same. I look forward to receiving copies of not only those Undisclosed Motion Orders.

124. I can see why Mr. Boyce did not want to put the ROP from the ROP Temporal Period to me but that makes it intentional misconduct on his behalf and binding the LAT.

125. You, of course, at liberty to review my NOCQ and Amended JRPA Proceeding from the likes of Mr. Boyce as the Tribunal was served with those documents on March 4 and 5, 2025 respectively.

126. If we end up in the appeal process, I will ask for an expedited hearing of the issues (not known now) due to the public interest issues at play and my health and safety remaining at risk. While this must be an access partnership, if we have to engage in an adversarial process such as that (if it is such), then it will be because a lack of compliance by the LAT.

127. I always like to leave the door open for resolutions between myself and others. As such, should the likes of Mr. Weir or an assigned counsel by him for the Tribunal in this regard and globally wish to resolve the issues identified herein and any potential issues so arising, including that which is pleaded (and before the ONSC Divisional Court), you have my email. If you wish to have a sit-down in person, kindly name the time and place. In the spirit of full disclosure, many say that I am quite self-assured and confident in my ability to "win" in litigation. I do not see it that way. Rather, I see it as life has treated me too well and I got way more than I deserve in life. I owe it to every marginalized, disadvantaged, struggling injured person that has been before the LAT and may have been subject to similar type conduct that I endured to advance all matters to conclusion or by way of settlement.

128. With respect to any resolution or settlement of these issues, there will need to confirmation to me, albeit confidentially, in a binding proposed document that the LAT has addressed these issues of breaches of privacy and/or breaches of the above noted principles. The mere

shock of myself when I went through that "print out" from the LAT Registrar on February 26, 2024, remains palpable. Honestly, "orders" that are not disclosed and then being lied by the LAT. If I am the only individual who has experienced the same, then I will chalk it up as being "public enemy number one" of the lawyers in BC and here. Again, I was the victim of the worst privacy breach in Canadian history involving a professional and a regulatory body but I appreciate that the likes of the lawyers that were involved in the same at the time of the RAM Dump and thereafter believe that I somehow caused damage to their reputation and firm names by advancing PIPEDA requests inclusive of Mr. Weir's former firm where he reached the obscenely high level of managing partner. They would be wrong or playing the "victim". It was me, as a single individual, had to make some 250 plus privacy requests of various organizations implicated by a record I received from LSBC counsel in October 2021 which was anything but only the records and information from a RAM Dump.

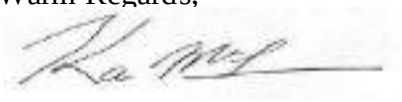
129. By direct reference and communications with the other two public bodies involving some of the events herein, not by active involvement, find me to be quite reasonable on all fronts. I believe you will feel the same if we have candid and confidential discussion. My goal is not to embarrass or put the LAT under some high degree of embarrassment but the more time that passes, it simply means that I will have to prepare to advance the same. As I am at about 40 percent of where I used to be, it requires much planning in advance. Kindly note the same in the event you know (as I do not know have the custody and control of records at issue) a way to resolve the same without wasting resources of the LAT Privacy Division and potentially the OIPC (ON) and others.

130. Of course, if I receive an affidavit, sworn under the penalty of perjury by a knowledgeable representative of LAT that it has searched for the above records and all of the conduct engaged in by the likes of agents of TD Insurance Group (various insurance companies therein) were solely at their own direction or direction of insurance companies without any knowledge of the LAT, then you will have my immediate written apology for such belief and allegations and withdrawal of various aspects of this access request. However, I do not hear from you in a reasonable time, I will have to presume that I am correct in substance

131. I thank you for efforts and discharging the duties of the division in accordance with the rule of law. I thank you in advance for your anticipated compliance with *FIPPA* and other laws and the common law which remain binding upon it.

132. Yours truly

Warm Regards,



Mr. Kevin A. McLean (B.A., J.D., CIM)[viii]

Requestor

Enclosures by hard copy

1. Five dollars for the five-dollar application fee

Further enclosures by email: referenced above

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[i]Ergo, the requests of the LAT involving the CRO's at various times. As there was an issue involving the correct respondent party at various times, the initial input into the LAT database is most germane and required to be produced.

[ii]If that arises in your search, I await the results of the same. I, of course, am only seeking personal information so such future crimes would have to continue to relate to me. I still do not have access or control of my property stolen on October 25, 2024, and any relief from the unauthorized conduct thereafter, including the return of the property utilized thereafter including the return of proprietary items like my passport, TPL library card, credit cards, banking cards, health card et al. I have alleged and continue to allege that the LAT, through the likes of one Mr. Boyce and others at the LAT or SLASTO, instructed, unauthorized approved or acquiesced to the unlawful conduct at various times.

[iii]*Smith v Jones*, 1999 CanLII 674 (SCC), [1999] 1 SCR 455, *per* Cory J, at para 26 and later ("...society recognizes that the safety of the public is of such importance that in appropriate circumstances it will warrant setting aside solicitor-client privilege.")

[iv]Justice Tysoe in 1998 referenced the decision of *Dyment* in *Mazhero*. "The protection section 8 provides for privacy — personal, territorial and informational — is essential not only to human dignity, but also to the functioning of our democratic society. As such, section 8 protects a sphere of *individual autonomy* within which people have the right "to be let alone" and on which the state cannot *intrude* without permission[iv] (R. v. Ahmad, 2020 SCC 11 at paragraph 38)."" Section 8 protects people, not places, against unjustified intrusions on their privacy interests (*Hunter v. Southam Inc.*, [1984] 2 S.C.R. 145 at 159; *R. v. Gomboc*, [2010] 3 S.C.R. 211 at paragraphs 17, 75)."" The values underlying the privacy interest protected by section 8 are dignity, integrity and autonomy (*R. v. Plant*, [1993] 3 S.C.R. 281 at page 292. "The courts have defined "**search**" for section 8 purposes as any state activity that *interferes* with a reasonable expectation of privacy. This can include looking for things that are tangible or intangible, such as **spoken words[iv]** and ***electronic*** **data** (*R. v. Morelli*, [2010] 1 S.C.R. 253), or scents (*Evans* at paragraphs 12-21; *R. v. Kokesch*, [1990] 3 S.C.R. 3).A "**seizure**" for section 8 purposes is the "taking of a thing from a person by a public authority without that person's consent" (*R. v. Dyment*, [1988] 2 S.C.R. 417 at 431; *R. v. Colarusso*, [1994] 1 S.C.R. 20 at 58; *R. v. Law,* [2002] 1 S.C.R. 227 at paragraph 15). This includes situations in which a person is required to produce a thing (including information) pursuant to a state compulsion (*R. v. McKinlay Transport Ltd.*, [1990] 1 S.C.R. 627 at 642; *Mills* (1999) at paragraph 77; *British Columbia Securities Commission v. Branch*, [1995] 2 S.C.R. 3 at page 34; see also *R. v. White*, [1999] 2 S.C.R 417; *R. v. Fitzpatrick*, [1995] 4 S.C.R. 154; *Thomson Newspapers Ltd. v. Canada (Director of Investigation and Research, Restrictive Trade Practices Commission)*, [1990] 1 S.C.R. 425). The power to **make copies** of documents is analogous to a requirement for production of documents and constitutes a seizure within section 8 (*Comité paritaire* at page 439).In order to constitute a "seizure", a "taking" by the state *need not* be directly from the person whose rights are affected. For example, where a medical professional obtains a bodily sample for medical purposes, disclosure of the sample to police will amount to a "seizure" (*Dyment*; *R. v. Dersch*, [1993] 3 S.C.R. 768; *Colarusso* at page 56). This is so whether the sample is provided pursuant to a police demand, request, or whether it is provided voluntarily. The fact that a person who has acquired lawful *possession* of information for their **own purposes** voluntarily discloses **THE INFORMATION** to the state does not vest in the state a delegated or derivative power to appropriate that information for the purposes of a criminal investigation (*R. v. Cole*, [2012] 3 S.C.R. 34 at paragraph 67)."The section 8 protection against seizure does not apply to government

action merely because those actions interfere with ***property*** rights. Rather, "there must be a superadded impact upon privacy rights occurring in the context of administrative or criminal investigation" (*Quebec (Attorney General) v. Laroche*, [2002] 3 S.C.R. 708 at paragraph 53). "Where the state has seized records, the Supreme Court has indicated that **disclosure** of those records to individuals outside of those to whom, or for purposes other than for which, they were *originally divulged* may interfere with a reasonable expectation of privacy (*Mills* (1999) at paragraph 108; *R. v. Quesnelle*, 2014 SCC 46, [2014] 2 S.C.R. 390 at paragraphs 28-30, 39-43; see also *Wakeling* at paragraphs 91-96 *per* McLachlin C.J. and paragraphs 122-125 *per* Karakatsanis J., dissenting; but see *Wakeling* at paragraphs 32-40 where Moldaver J. appears to endorse a plain meaning interpretation of s. 8 that would not generally capture the disclosure of information by the state)."

"In fostering the underlying values of dignity, integrity and autonomy, it is fitting that section 8 of the *Charter* should seek to protect a biographical core of **Personal Information** which individuals in a free and democratic society would wish to maintain and control from dissemination to the state. This would include information which tends to reveal intimate details of the lifestyle and personal choices of the individual (*Plant* at 293). Informational privacy has been defined as "the claim of individuals, groups, or institutions to determine for themselves when, how, and to what extent information about them is communicated to others" (*Tessling* at paragraph 23; see also *Patrick*, *Gomboc, Cole, A.M.*) Informational privacy includes at least *three* conceptually distinct, though overlapping, understandings of what privacy is: privacy as secrecy; privacy as control and privacy as anonymity. Privacy as secrecy encompasses the expectation that information disclosed in confidence will be held *in trust* and confidence by those to whom it is disclosed. Privacy also encompasses a wider notion of control over, access to, and use of information. This aspect of privacy "derives from the assumption that all information about a person is in a fundamental way his own, for him to communicate or retain for himself as he sees fit" (*Spencer* at paragraph 40). Privacy as anonymity permits individuals to act in public places but to preserve freedom from identification and surveillance. This conception of privacy is particularly important in the context of Internet usage (*Spencer* at paragraphs 41-43). Because the Internet has exponentially increased both the quality and quantity of information that is stored about Internet users, and because users cannot fully control or even be fully aware of who may observe a pattern of online activity, it is by remaining anonymous that the user can in large measure be assured that the activity remains private (*Spencer* at paragraph 46). Privacy concerns in relation to information are at their strongest where aspects of an **individual's identity are at stake**, such as in the context of information "about one's lifestyle, intimate relations or political or religious opinions" (*Mills* (1999) at paragraph 81; *Thomson Newspapers* at 517; *Branch* at paragraph 62)."Privacy is a normative rather than descriptive standard (*Tessling*, paragraph 42; *R. v. Jarvis*, 2019 SCC 10 at paragraph 68).""Privacy as secrecy encompasses the expectation that information disclosed in confidence will be held *in trust* and confidence by those to whom it is disclosed". Privacy is not an all or nothing right. It encompasses the reasonable expectation that private information will remain **Confidential** to the persons to whom and restricted to the purposes for which it was divulged (*Mills* (1999) at paragraph 108; *Dyment* at page 429; *Colarusso* at page 71). Accordingly, a person may have a *residual* and continuing privacy interest protecting against the subsequent use or disclosure — and potentially retention — of information that has been divulged for a specific or limited purpose (*Law* at paragraph 23; *Dyment* at pages 432-435; *Mills* (1999) at paragraph 94; *R. v. Dore* (2002), 166 C.C.C. (3d) 225 (Ont. C.A.); *Wakeling* at paragraph 39).A person normally does not retain a reasonable expectation of privacy with respect to ***property*** or things, including informational content that have been voluntarily abandoned. The determination of whether a thing has been abandoned — *i.e.*, whether a person has relinquished a privacy interest in it — will have to be determined on the particular facts of the case.

[v]Protection of privacy is a fundamental value

[vi]See: Office of the Premier and Executive council operations and Ministry of Skills Development and Labour, Re, 2002 CanLII 42472 (BC IPC):

[vii]https://www.priv.gc.ca/en/privacy-topics/privacy-laws-in-canada/the-personal-information-protection-and-electronic-documents-act-pipeda/pipeda-compliance-help/pipeda-interpretation-bulletins/interpretations_02/

[viii]I trust this Honourable Divisional Court that I am not your "average" lay litigant and I am the same Kevin McLean who challenged and sued the LSBC and some LSBC defendants in 2014 and has undergone a ten-year saga. While I will not comment on that which is confidential or without prejudice, this Divisional Court will inevitably see in the "record of proceeding" a reference to some unfortunate and unlawful conduct (defined as "Concealed RAM Dump") and I included the same as "things are not always what they seem" from the outside and Mr. Nieuwland albeit on behalf of TDGIC put my character at issue.

Gmail

Kevin McLean <mrkevinalexandermcleanbajdcim@gmail.com>

Access Request - McLean - LAT/AABS - record of proceeding - index, list, and copies of the same including logs of style of cause, party status, amendments et al - 23-015662/AABS

7 messages

Kevin McLean <mrkevinalexandermcleanbajdcim@gmail.com>
To: "Access.TO-TDO (MAG)" <Access.TO-TDO@ontario.ca>

Dear LAT access and privacy division:

I write to confirm that I am proceeding with my access request. I have started a separate thread for ease of reference but copied the previous emails. I was about to have th Tribunal provided what it called an index but was a print out of some back-end. Nonetheless, this should make the access request more simple. Moreover, I will be able to majority of these documents and pick out certain documents. However, my access request will still include the previous request for logs, change of parties, et al. I do see a refers to TD General Insurance Company on or around page 130. Therefore, it appears that will be a seminal time. I will confirm when the five dollars is delivered. Thank

APPENDIX

Access Request - McLean - LAT/AABS - record of proceeding - index, list or print out - 23-015662/AABS

K

Kevin McLean <**mrkevinalexandermcleanbajdcim@gmail.com**> Sat, Jan 25, 12:21 PM

to Access.TO-TDO

January 25, 2025

Good Afternoon to you LAT/AABS privacy division (*FIPPA*):

I am making an access request for a copy of a list, index or print out of the filed documents in the record of proceeding involving the LAT file 23-015662/AABS from the 12, 2024. I am the Appellant therein.

I look forward to working with you on how best to obtain a list, index or print out of what was filed on the back-end of your system for documents that were e-filed by m various times which were: (i) TD General Insurance Company ("TDGIC"); and (ii) Security National Insurance Company ("SNIC").

I am seeking a list or index, unless it is easier and more efficient for you to send me a PDF of all of the documents filed by myself, and the aforementioned insurance c representative by one Mr. Nieuwland on or around January 30, 2024, and on or around June 28, 2024.

Please also provide any records that denote the "style of cause" at the various times as it appears on your back-end portal.

I may provide some further background information regarding the same but I trust this satisfies what I am seeking in the primary or in the alternative (depending on wh have delivered the $5 application fee to the location at 25 Grosvenor Street, Toronto, Ontario as the 15 Grosvenor Street, Toronto, Ontario, location was not accessible for

I will presume on the above that a print out will be the easiest from your back-end and kindly provide the same herein via email. If a print out of the back-end with that above, kindly provide the same.

Thank you.

--

My best regards to you,

Kevin A. McLean (B.A., J.D., CIM)
Chartered Investment Manager
E (personal and confidential): mrkevinalexandermcleanbajdcim@gmail.com

DISCLAIMER

1. *The content of this email is confidential and intended for the recipient specified in message only. It is strictly forbidden to share any part of this m consent of the sender. If you received this message by mistake, please reply to this message and follow with its deletion, so that we can ensure suc*
2. *Due to being an accident, this email may be dictated in part or full with voice recognition software. Kindly excuse any errors for grammar, syntax*

A

Access.TO-TDO (MAG) Fri, Jan 31, 3:14 PM

to me

Good afternoon Kevin,

Thank you for your email. Because you're seeking copies of the adjudicative records for your own LAT-AABS application file, you can resubmit your below directly to the LAT via email at LATregistrar@ontario.ca.

Have a nice weekend,

Jennifer

Senior Policy Advisor, FOI
Access to Records and Information Office
Access.TO-TDO@ontario.ca

Confidential message which may be privileged. If received in error, please delete the message and advise me by return email.
Message confidentiel dont le contenu peut être privilégié. Si reçu par erreur, veuillez supprimer ce message et aviser l'expéditeur par retour de courriel.

From: Kevin McLean <mrkevinalexandermcleanbajdcim@gmail.com>
Sent: Saturday, January 25, 2025 12:21 PM
To: Access.TO-TDO (MAG) <Access.TO-TDO@ontario.ca>
Subject: Access Request - McLean - LAT/AABS - record of proceeding - index, list or print out - 23-015662/AABS

CAUTION -- EXTERNAL E-MAIL - Do not click links or open attachments unless you recognize the sende

January 25, 2025

Good Afternoon to you LAT/AABS privacy division (*FIPPA*):

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I will presume on the above that a print out will be the easiest from your back-end and kindly provide the same herein via email. If a print out of the back-end with that
above, kindly provide the same.

Thank you.

--

My best regards to you,

Kevin A. McLean (B.A., J.D., CIM)
Chartered Investment Manager
E (personal and confidential): mrkevinalexandermcleanbajdcim@gmail.com

DISCLAIMER

1. *The content of this email is confidential and intended for the recipient specified in message only. It is strictly forbidden to share any part of this m
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2. *Due to being an accident, this email may be dictated in part or full with voice recognition software. Kindly excuse any errors for grammar, synta*

K

Kevin McLean <**mrkevinalexandermcleanbajdcim@gmail.com**> Wed, Feb 5, 2:45 PM

to Access.TO-TDO

Thanks Jennifer. I confirm receipt of the email. Greatly appreciated. I will try that route. To confirm on the previous one, as I APPRECIATED it got a little bit
helpful and professional, I did not file an appeal with OIPC (ON). Trusting that said route will solve my request, I wish you well.

K

Kevin McLean <**mrkevinalexandermcleanbajdcim@gmail.com**> Wed, Feb 5, 3:40 PM

to LATregistrar

February 5, 2025

VIA EMAIL: LATregistrar@ontario.ca.

Dear LAT Registrar:

1. I write regarding the above.

2. Kindly see the below email which was initially cast as a FIPPA request but thanks to Jennifer's response, I am redirecting the same to the esteemed LAT registr

3. I trust the above is sufficiently clear and precise with enough details but I may supplement to assist further.

4. Kindly only respond to this email for this access request for adjudicative records. As I have never seen what an adjudicative record looks like after submitted
assistance to a sample of the same i.e. whether it is time stamped with any additional information with style of cause. For clarity purposes, I am only seeking the ac

or individual in the AABS matter denoted below from December 24, 2023, to September 13, 2024. You may send the records to me on a piecemeal basis. I am al as how to the LAT proceeding was denoted as there were some change of parties and counsel at various times. A screenshot from those material times should suffic

5. Thank you.

K

Kevin McLean <mrkevinalexandermcleanbajdcim@gmail.com> Wed, Feb 5, 3:57 PM

to LATregistrar

February 5, 2025

Re: my access request for the adjudicative records from December 23, 2023, to September 13, 2024, involving McLean v. SNIC formerly McLean v. TDGIC in LAT/A

Dear LAT Registrar:

1. I wish to confirm that this access request for adjudicative records arises because counsel to the Tribunal in Mr. Boyce in the Divisional Court proceeding repres weeks from the time I brought the judicial review application which was November 15, 2024. While the statutory requirement is forthwith filing (see: section 10 not meet his self-imposed deadline. As such, I will assist the court, as it is for its use.

2. Mr. Boyce is Mr. Jesse Aaron Boyce in the event you needed to cross-reference. It is unclear why he is so delinquent in the same but nonetheless if there is a of proceeding, I can advise the court of the same and plug the gap.

3. I will provide some further details to assist with important dates and deadlines with copies of my documents so we can work together.

4. Thank you.

K

Kevin McLean <mrkevinalexandermcleanbajdcim@gmail.com> Fri, Feb 7, 7:49 AM

to Doug.Downey, sean.weir, attorneygeneral, LATregistrar

February 7, 2025

URGENT

VIA EMAIL

Re: urgent request for the adjudicative records herein

Re #2: inclusion of The Honourable Mr. Downey and the esteemed Mr. Weir, Executive Chair of Tribunals Ontario for oversight and the provision of the record of "**Tribunal**") file number 23-0155662/AABS from December 23, 2023, to September 13, 2024 (the "**ROP Temporal Period**")

Dear LAT Registrar (copied to the AGO and EC of Tribunals Ontario):

1. I again thank Jennifer of the access and privacy division for the LAT for confirming with me that the record of proceeding from December 23, 2023, to Septem am entitled to without the necessity of a formal *FIPPA* request along with the statutory and prescribed fees. As such, I confirm that the *FIPPA* time periods do not a

2. In light of the above issues with delays along with failure to comply with one of the more basic aspects of a statutory requirements under section 10 of the system[ii], I have copied Mr. Sean Weir, Executive Chair ("EC") of Tribunals Ontario and The Honourable Mr. Attorney General of Ontario in Mr. Downey for ove the above purposes but also in light of his learned counsel in Ms. Judie Im in the **JRPA Proceeding** denoted by file number above Court File No. DC-24-000 participate in the same as of late last week.

3. As the relevant decision-makers of the LAT at the relevant time purported to rely on the record of proceeding, it must be provided to a party in myself w documents were filed electronically so the LAT, with its resources and technological capabilities, with presumably AWS as the storage provider, return access to a be the most rudimentary of tasks.

4. The lack of a confirmatory response is most concerning and appears to be part of a pattern. My belief is that the LAT does not have a full and accurate **ROP** outages" at various times. As we know, "technology happens" from time to time. As such, please provide the **ROP** from the **ROP** Temporal Period by no later **Temporal Period**. By my computation, we are looking at a period of 264 days.

5. I may provide a subsequent email of what I will be expecting that you will be providing today. To the extent that you wish to provide some piecemeal today i.e I am amenable with said approach. That being said, I cannot imagine that it is not possible to complete that which is in the possession and control of the LAT by copies.

6. To the extent that none of the records from the ROP during the ROP Temporal Period are provided today, I will presume that the Tribunal has lost or had stolen Temporal Period.

7. As The Honourable Mr. Downey will undoubtedly know, as the chief law officer in this province, the language chosen by our Legislature was for the Tribunal decision) to file forthwith the record of proceeding for the court's use. However, one Mr. Boyce imposed an arbitrary timeline of three to four weeks in mid Nove the Tribunal. In a subsequent email to myself, with others copied, he had contrived a non-statutory timeline of 60 days from November 15, 2024 (i.e. the date c behalf of the Tribunal, had not met either then or now.

8. I also ground my belief that the Tribunal either does not have a full and accurate record of proceeding on the bases of the above but also that some of the issu makers in June, July and September 2024 were not conversant with the documents and facts. In this regard, they were askew by not only time periods but the acto me to believe that they did not have the entire ROP at those times. Moreover, there were continued references to *McLean v. TD General Insurance Company* [sic] favour which was a motion served and filed by me in mid May 2024 culminating in a decision of the Tribunal (Adjudicator Morrissette as she then was) on or

change of the respondent from TDGIC to Security National Insurance Company. As such, those "adjudicative records" will also include the below at section 20 of that a responsive pleading like a statutory response under section 280(2) of the *Insurance Act* is not explicitly captured. However, I would respectfully submit that and it is "evidence" albeit not sworn but signed by an individual representative on behalf of an insurance company (i.e. true, accurate and complete).

9. When providing the same, kindly denote the same in the following format: "Record of Proceeding [24-Dec-2023 – Sept 13-2024] – Respondent - Licence A you are unable or unwilling to do so, I will solely change the title of the document to the same with various volumes depending on size (i.e. for the current and While it is for the Tribunal to have filed the same, Mr. Boyce has only been interested in filing a Notice of Appearance and no interest in facing the merits of the s most basic of duties.

10. I trust, in copying two of the great legal minds in our province in the Honourable AGO and former managing partner of Canada's last largest law firm in B reference the *purpose* of the filing of the record of proceeding by the Tribunal. Perhaps, the LAT, in its somewhat infancy being in its nearly tenth year by my cou purpose of requiring a tribunal or adjudicator to file a "record of proceedings" is to ensure that when the court reviews the tribunal's decision, it has the infc tribunal in the first instance. A court reviewing an adjudicative decision may look at decisions to admit evidence, submissions of witnesses, and other evidence anc [or tribunal] of first instance: *Payne v. Ontario Human Rights Commission*, 2000 CanLII 5731 (ONCA) ["*Payne*"] at para. 23. *Payne* was adopted by the ONS decisis, but in referencing that long standing legal precedent nearly a half quarter century later in *Lachance* (as per the Honourable Justices Myers, Stewart and Court found:

> "[37] I agree with the finding of Ryan Bell J. that by bringing this application for judicial review the applicants became entitled to receive all adopted the words of Sharpe JA in *Payne v. Ontario Human Rights Commission*, 2000 CanLII 5731 (ON CA) at paragraph 161
>
> > An applicant for judicial review has the right to have a full and accurate record of what went on before the tribunal put before the court. powers of judicial review. A superior court may insist upon the production of an adequate record of the proceedings before the tribunal being
>
> [38] When met by a reluctant decision-maker, the applicants always had the ability to obtain the documents that they needed to advance their clai

11. As such, an interesting interplay arises between the forthwith filing requirement of the Tribunal with the court for its use, the inherent jurisdiction of the H applicant's rights on judicial review.

12. Arguably the most important precedential statement of law to come from *Payne* was its adoption, verbatim in parts, of the precedent from The Honourable Lor *Gilmore,* [1957] 1 Q.B. 574 at 583 (C.A.) which was:

> "A statutory body subject to judicial review cannot immunize itself or its process by arriving at decisions on considerations that are not revea
>
> (see: paragraph 161 of Payne (ONCA)).

13. As such, it matters not the *source* (equitable, common law, statutory, prescribed or otherwise) of the legal obligation or whether it is to file forthwith with t obligation that requires immediate rectification.
14. Without conflating a previous access request of the LAT, I was impressed with the rapidity that the access and privacy division provided access to some of the on the email thread. I invoked the same herein due to a more urgent and pressing request for the very adjudicative records I am so entitled, the court is entitled entitled to discharge its supervisory powers so section 96 to 101 of the *Constitution Act of Canada* is adhered to.

15. Trusting the Tribunal will provide the compiled record of proceeding, at the various times and then added to over time, by today at three p.m. (as there was 2024) to me as a party (the 'applicant' or 'appellant' depending on the preferred nomenclature), I can remove the Honourable AGO and EC of Tribunals Ontario important work that they do whilst confirming the satisfactory closure of my request.

16. Thank you for your compliance with the above, and I most look forward to confirming the closure of this request. A copy of this email may follow via fax due caution.

Appendix

Record of proceeding

20 A tribunal shall compile a record of any proceeding in which a hearing has been held which shall include,

(a) any application, complaint, reference or other document, if any, by which the proceeding was commenced;

(b) the notice of any hearing;

(c) any interlocutory orders made by the tribunal;

(d) all documentary evidence filed with the tribunal, subject to any limitation expressly imposed by any other Act on the extent to or the purposes for which any s proceeding;

(e) the transcript, if any, of the oral evidence given at the hearing; and

(f) the decision of the tribunal and the reasons therefor, where reasons have been given. R.S.O. 1990, c. S.22, s. 20.

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[i] Despite the LAT being separate from the MAG per se, and certainly the likes of Ms. Im in her former representative capacity for the AGO in the JRPA Proceeding and Mr. Boyce acting for the LAT.

[ii] https://www.lawtimesnews.com/practice-areas/personal-injury/otla-pushes-for-urgent-licence-appeal-tribunal-review/389679#:~:text=The%20Ontario%20Trial%20Lawyers%20Associat 20analysis.

[iii] https://www.ontariocourts.ca/scj/practice/div-court-pd/#_Toc133391236

K

Kevin McLean <mrkevinalexandermcleanbajdcim@gmail.com> Fri, Feb 7, 10:17 PM

3301

to LATregistrar, Doug.Downey, sean.weir, attorneygeneral

Dear LAT Registrar (copied to the above honourable and esteemed persons):

I confirm that I did not hear from you today. Do you wish for me to come pick up the same? Is it easier to have it on a USB for my pickup this Monday? I can be there at n

If not, I will presume that you can provide the same this Monday by the same time.

Thank you.

K

Kevin McLean <mrkevinalexandermcleanbajdcim@gmail.com> Mon, Feb 10, 4:37 PM

to Access.TO-TDO, LATregistrar, Doug.Downey, sean.weir, attorneygeneral

Dear LAT Registrar (copied to the above honourable and esteemed persons):

1. I am compelled to continue to copy Mr. Weir and the Honourable AGO until I have the requested records from the record of proceeding from the duration

2. I will presume that an in-person pick up is not the acceptable or amenable route so kindly disregard the same.

3. I have also copied the above email to the kind attention of Jennifer who directed me to the LAT registrar for these adjudicative records. (Good Afternoon me with an individual name of a person who is responsible for these adjudicative records at the LAT?)

4. (Mr. Weir, I extend the same question to you as well)

5. (Dear all, if there are certain documents missing or lost, would you kindly provide me with which documents you believe those to be. Would you also pro determine if they are time stamped when filed or have any notations on the same?)

6. The matter remains urgent. Thank you.

K

Kevin McLean <mrkevinalexandermcleanbajdcim@gmail.com> Mon, Feb 10, 5:13 PM

to LATregistrar, sean.weir, attorneygeneral, Access.TO-TDO

Dear Sirs/Mesdames/Other Gender-Neutral Pronouns:

1. I write further to the above. In the circumstances, I confirm that I am entitled to the adjudicative records without an access request under FIPPA. However, as I records from the record of proceeding are missing from the time period denoted above, I confirm that my FIPPA request was made from the time herein. Fu delivered tomorrow. I am doing so out of an abundance of caution as I have not received any response from the LAT registrar which is terribly concerning.

2. (Dear Jennifer, in this regard, I will confirm when the five dollar application fee is delivered on my behalf. However, I will still presume that I will receive t LAT registrar as per the Tribunal's obligation to do so. That being said, I confirm that all requested records must be retained from the time of my request with th administrative step to finalize the processing of the same. To the extent that the LAT registrar does not feel that the logs are part of the record of proceeding or ar are, then there will be a slight discrepancy.).

3. (Dear LAT Registrar, would kindly provide a sample document of one of my filings, a filing on behalf of TDGIC, a filing on behalf of SNIC and the d Nieuwland on behalf of TDGIC and SNIC. I trust I can receive that by no later than noon tomorrow. While I should not have to compromise my legal rights, I d the same.)

4. (Dear Mr. Weir, if you have delegated the responsibility to another individual in this regard, would you kindly provide me with the contact information for said

5. (In the circumstances, I will remove The Honourable Mr. Downey's direct email as he has notice of the same but keep the AGO email so it is aware of wh without even the courtesy of a response from the LAT registrar. I thank The Honourable Mr. Downy for the indulgence of including his email herein for ensu prioritized. I can confirm that not a single record has been provided to me herein or from any other sources.)

6. As a parting point here so we can work together as the record of proceeding is a matter that involves countless constitutional principles and the rule of law, ple to whether the Tribunal has the full and accurate record of proceeding from the time period above. If I do not hear from you by that time, which should not requi presume that my fears and beliefs that some of those records from the record of proceeding are missing, lost, stolen, or otherwise unrecoverable. This can happen by the then case manager in Mr. Grant. However, transparency must accompany the same.

7. Thank you.

K

Kevin McLean <mrkevinalexandermcleanbajdcim@gmail.com> Wed, Feb 12, 1:29 PM

to LATregistrar, sean.weir, attorneygeneral, Access.TO-TDO

February 12, 2025

Re: the continued non-compliance with my access request of January 2025 which was redirected to the LAT Registrar as per its requirement to provide adj proceeding

Dear LAT Registrar, Executive Chair of Tribunals Ontario, Office of the Attorney General and Ms. Jennifer [last name unknown] (an officer in the privacy de access requests made pursuant to FIPPA):

3302

write further to the above involving my access request made to the LAT in January 2025. I thank Ms. Jennifer for her prompt response and redirection the necessity for the formality of the FIPPA request along with the payment of statutory and prescribed fees. Since the time of the redirection, I have not rec despite my inclusion of the above noted Executive Chair and AGO.

2. My requests pursuant to FIPPA and the LAT Registrar shall remain in perpetuity and until they are complied with in a strict and lawful manner.

3. As such, I confirm the scope of my access request for the record of proceeding in the LAT/AABS file number of 23-015662/AABS and confirm that all rec those requests. As this will now require me on the FIPPA side of the ledger to tender an application fee, I will confirm when that has been delivered to 25 G respect the resources of all above, I will not need to have duplicate copies of the record of proceeding provided to me but now I am most curious to know w stonewalled in light of counsel for the Tribunal failing to file a single document from the record of proceeding in contravention of the JRPA and SPPA. The a in any event of any determinations in the Tribunal proceeding or before the ONSC Divisional Court or otherwise.

4. Kindly extend some professionalism and courtesy herein where applicable.

5. Thank you.

L

LATregistrar (MAG) Thu, Feb 13, 3:54 PM

to me

Good afternoon Mr. McLean,

We acknowledge and thank you for your emails sent between February 5 and February 12, 2025.

We thank you for your patience, while we review how best to compile and forward the records identified in your request. We will reach out to you with addi

As your request relates to your application before the LAT, please continue to direct all your correspondence through LATRegistrar@ontario.ca only. We'll necessary.

Best Regards,

Hannah Lee (Pronouns: she/her) (learn more)
Case Management Officer
Licence Appeal Tribunal
Phone: 647-463-8220
Local 416-326-1356 / Toll free 1-888-444-0240
LATregistrar@ontario.ca
tribunalsontario.ca

K

Kevin McLean <mrkevinalexandermcleanbajdcim@gmail.com> Fri, Feb 14, 1:59 PM

to sean.weir, attorneygeneral, Access.TO-TDO, LATregistrar

February 14, 2025

Dear LAT Registrar (Ms. Lee), FIPPA privacy officer (Ms. Jennifer), EC of Tribunals Ontario and the AGO email:

I thank you for your response. I have copied Mr. Weir, the FIPPA privacy and AGO email as noted above. I have also copied the relevant parts of your email to the below as some of it is i privacy requests. I apologize for the brief delay on my part as I see your email came in late yesterday and I did not check this email until now.

However, that is entirely unacceptable on all fronts in relation to "how best to compile" the record of proceeding from December 23, 2023, to September 13, 2024.

Section 20 of the *SPPA*:

"Record of proceeding

20 A tribunal shall compile a record of any proceeding in which a hearing has been held which shall include,

(a) any application, complaint, reference or other document, if any, by which the proceeding was commenced;

(b) the notice of any hearing;

(c) any interlocutory orders made by the tribunal;

(d) all documentary evidence filed with the tribunal, subject to any limitation expressly imposed by any other Act on the extent to or the purposes for which any such documents may be u

(e) the transcript, if any, of the oral evidence given at the hearing; and

(f) the decision of the tribunal and the reasons therefor, where reasons have been given. R.S.O. 1990, c. S.22, s. 20."

Therefore, this explains exactly why these decisions issued by Vice Chair Morrissette and others were so askew with the facts because the Tribunal had not even compiled the record of pr The duty to compile operates irrespective of whether any appeal or judicial review is advanced.

The requirement was to file the record of proceeding forthwith with the ONSC Divisional Court. The JRPA Application was brought in mid-November 2024. Mr. Boyce for the Tribunal f the Tribunal was to file an NOA forthwith which for the most part it did.

However, the Tribunal is only working on compiling the record now. There is nothing to discuss in terms of reaching out to me for information. I have already provided the information ar so as a courtesy.

...ch, the Tribunal is in breach of two sets of statutory duties. As stated, please provide what you have during those time periods on a forthwith basis to me. The time is now 1:55 p.m. commence today.

Respectfully, this should not take more than 30 minutes to do as I am a party and it is a period of some 8.5 months. Kindly re-attach the same by reply email. Based on size Alternatively, you can send via multiple piecemeal emails.

If you commence providing today, you can remove Mr. Weir and the AGO email address. Please remove Jennifer and her email in any event.

(Jennifer, I apologize for having you caught up in this email but I copied you to ensure that you are aware that I will be attending the relevant office (like last time) to deliver the fees for t separate thread with you so we do not conflate the two. However, for interim measure, it is the same as above with any logs from the back-end.)

Appendix

LATregistrar (MAG) Feb 13,

to me

Good afternoon Mr. McLean,

We acknowledge and thank you for your emails sent between February 5 and February 12, 2025.

We thank you for your patience, while we review how best to compile and forward the records identified in your request. We will reach out to you with additional information by Februar

Best Regards,

...

[Message clipped] View entire message

K

Kevin McLean <mrkevinalexandermcleanbajdcim@gmail.com> Fri, Feb 14, 2:47 PM

to Access.TO-TDO

Good Afternoon Jennifer:

I have directed this email solely to you as per the above. I was going to start a new thread but instead of doing the same for urgency purposes, I have forwarded the same f application fee dropped off at the 25 Grosvenor Street location and confirm the same when that is complete. I will start a separate thread hereafter. As confirm, I am seekin possession and control as it relates to 23-0115662/AABS involving McLean v. Security National Insurance Company (formerly McLean v. TD General Insurance Compan during that period i.e. ones that were filed to this email.

I am also seeking the logs as particularized above. Thank you

...

[Message clipped] View entire message

K

Kevin McLean <mrkevinalexandermcleanbajdcim@gmail.com> Sun, Feb 23, 12:23 PM (5 days ago)

to Access.TO-TDO

Dear Jennifer:

I hope you are well. I am currently still recovering from a medical procedure from last week and I have another two this week. As such, you will likely receive my auto-re (attention: LAT Registrar) has entirely failed in providing me with a copy of the record of proceeding from December 24, 2023, to September 13, 2024. Despite Ms. Lee's to me on February 21, 2024, said date came and went. As such, I confirm that my access request is extant and the only thing remaining is that of the five dollar fee to be pa deliver the amount to your attention.

As noted, my access request is slightly broader than the above which will include any logs (electronic or hard copy) during that time as to the parties et al. However, to ex provided sufficient particulars, I propose the following. If there is an index of all filings, with screenshots of the back-end (i.e. change of parties), during the relevant perio As such, if that exists, would you kindly provide me with an electronic copy of the same as soon as you are able? I will then be in a position to confirm that I do not need t

Thank you.

...

[Message clipped] View entire message

K

Kevin McLean <mrkevinalexandermcleanbajdcim@gmail.com> Wed, Feb 26, 1:48 PM (2 days ago)

to LATregistrar

Dear LAT Registrar (and to Ms. Lee):

I write regarding the above. I confirm you have failed to provide the record of proceeding from the ROP Temporal Period. You did not follow up on February 21, 2025, ev the records that make up the record of proceeding.

Please provide the same by the end of the business day to this email herein. I make this demand and request for all of the above reasons.

I appreciate the Tribunal does not have the full and accurate record of the proceeding from the ROP Temporal Period due to that technological issue (framed as a "power o said, that will make the provision of what the Tribunal has in its possession and control all the easier and simplified.

Thank you.

L

LATregistrar (MAG) Thu, Feb 27, 11:02 AM (1 day ago)

to me

Good morning,

Thank you for your email. Please see the attached index of all documents on this file.

Thank you for your patience.

--

My best regards to you,

Kevin A. McLean (B.A., J.D., CIM)
Chartered Investment Manager
E (personal and confidential): mrkevinalexandermcleanbajdcim@gmail.com

DISCLAIMER

1. *The content of this email is confidential and intended for the recipient specified in message only. It is strictly forbidden to share any part of this messa*
   consent of the sender. If you received this message by mistake, please reply to this message and follow with its deletion, so that we can ensure such
2. *Due to being an accident, this email may be dictated in part or full with voice recognition software. Kindly excuse any errors for grammar, syntax or s*

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Kevin McLean <mrkevinalexandermcleanbajdcim@gmail.com>
To: "Access.TO-TDO (MAG)" <Access.TO-TDO@ontario.ca>

March 23, 2025

EXCLUSIVELY FOR PURPOSES HEREIN

File number: [please provide]
Type of document: email with hard copy of finalized and particularized access request
Short title of request: *McLean and LAT (FIPPA Division)*
From: Mr. Kevin A. McLean (B.A., J.D, CIM), defendant and moving party (the “Applicant” or "Requestor")

Re: confirmed delivery of the application fee and further particularized access request (attached herein)

Dear LAT (privacy division):

1. I write to confirm that the five dollar application fee was delivered last week with your offices at 25 Grosvenor Street, Toronto. By my computation, this would in turn mean 2025.

2. I enclosed a letter regarding the same which is now re-attached. As noted therein, I apologize for the delay as I was recovering from an accident where I was hit while walkin

3. In any event, I thank the kind and helpful individuals for their assistance in bringing to the attention of the privacy officers involved in searching for the requested records tl unhelpful, I am not wasting collective resources on that route any further.

4. As the finalized and delivered access request is highly particularized, I will presume no clarity is required.

5. The only thing I can imagine by way of supplementation is that of confirming the legal grounds for why I am entitled to access.

6. I kindly note that to the extent that I do not receive access within the 30 calendar days, I will file an appeal with the OIPC (ON) without further notice. I hope that will not be

7. If you would kindly provide me with your file number assigned to this request, I would be most grateful.

8. Thank You kindly and I look forward to receipt of the requested records (even on a piecemeal basis) at your earliest opportunity.

On Fri, Feb 28, 2025 at 2:24 PM Kevin McLean <mrkevinalexandermcleanbajdcim@gmail.com> wrote:

Dear LAT access and privacy division:

I write to confirm that I am proceeding with my access request. I have started a separate thread for ease of reference but copied the previous emails. I was about to have Tribunal provided what it called an index but was a print out of some back-end. Nonetheless, this should make the access request more simple. Moreover, I will be able t majority of these documents and pick out certain documents. However, my access request will still include the previous request for logs, change of parties, et al. I do see refers to TD General Insurance Company on or around page 130. Therefore, it appears that will be a seminal time. I will confirm when the five dollars is delivered. Thar

APPENDIX

Access Request - McLean - LAT/AABS - record of proceeding - index, list or print out - 23-015662/AABS

K

Kevin McLean <mrkevinalexandermcleanbajdcim@gmail.com> Sat, Jan 25, 12:21 PM

to Access.TO-TDO

January 25, 2025

Good Afternoon to you LAT/AABS privacy division (*FIPPA*):

I am making an access request for a copy of a list, index or print out of the filed documents in the record of proceeding involving the LAT file 23-015662/AABS from tl 12, 2024. I am the Appellant therein.

I look forward to working with you on how best to obtain a list, index or print out of what was filed on the back-end of your system for documents that were e-filed by various times which were: (i) TD General Insurance Company ("TDGIC"); and (ii) Security National Insurance Company ("SNIC").

I am seeking a list or index, unless it is easier and more efficient for you to send me a PDF of all of the documents filed by myself, and the aforementioned insurance representative by one Mr. Nieuwland on or around January 30, 2024, and on or around June 28, 2024.

Please also provide any records that denote the "style of cause" at the various times as it appears on your back-end portal.

I may provide some further background information regarding the same but I trust this satisfies what I am seeking in the primary or in the alternative (depending on v have delivered the $5 application fee to the location at 25 Grosvenor Street, Toronto, Ontario as the 15 Grosvenor Street, Toronto, Ontario, location was not accessible fo

I will presume on the above that a print out will be the easiest from your back-end and kindly provide the same herein via email. If a print out of the back-end with th above, kindly provide the same.

Thank you.

--

My best regards to you,

Kevin A. McLean (B.A., J.D., CIM)
Chartered Investment Manager
E (personal and confidential): mrkevinalexandermcleanbajdcim@gmail.com

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2. *Due to being an accident, this email may be dictated in part or full with voice recognition software. Kindly excuse any errors for grammar, synta*

A

Access.TO-TDO (MAG) Fri, Jan 31, 3:14 PM

to me

Good afternoon Kevin,

Thank you for your email. Because you're seeking copies of the adjudicative records for your own LAT-AABS application file, you can resubmit your belov directly to the LAT via email at LATregistrar@ontario.ca.

Have a nice weekend,
Jennifer

Senior Policy Advisor, FOI
Access to Records and Information Office
Access.TO-TDO@ontario.ca

Confidential message which may be privileged. If received in error, please delete the message and advise me by return email.
Message confidentiel dont le contenu peut être privilégié. Si reçu par erreur, veuillez supprimer ce message et aviser l'expéditeur par retour de courriel.

From: Kevin McLean <mrkevinalexandermcleanbajdcim@gmail.com>
Sent: Saturday, January 25, 2025 12:21 PM

3307

To: Access.TO-TDO (MAG) <Access.TO-TDO@ontario.ca>
Subject: Access Request - McLean - LAT/AABS - record of proceeding - index, list or print out - 23-015662/AABS

CAUTION -- EXTERNAL E-MAIL - Do not click links or open attachments unless you recognize the send

January 25, 2025

Good Afternoon to you LAT/AABS privacy division (*FIPPA*):

I am making an access request for a copy of a list, index or print out of the filed documents in the record of proceeding involving the LAT file 23-015662/AABS from tl 12, 2024. I am the Appellant therein.

I look forward to working with you on how best to obtain a list, index or print out of what was filed on the back-end of your system for documents that were e-filed by various times which were: (i) TD General Insurance Company ("TDGIC"); and (ii) Security National Insurance Company ("SNIC").

I am seeking a list or index, unless it is easier and more efficient for you to send me a PDF of all of the documents filed by myself, and the aforementioned insurance representative by one Mr. Nieuwland on or around January 30, 2024, and on or around June 28, 2024.

Please also provide any records that denote the "style of cause" at the various times as it appears on your back-end portal.

I may provide some further background information regarding the same but I trust this satisfies what I am seeking in the primary or in the alternative (depending on v have delivered the $5 application fee to the location at 25 Grosvenor Street, Toronto, Ontario as the 15 Grosvenor Street, Toronto, Ontario, location was not accessible fo

I will presume on the above that a print out will be the easiest from your back-end and kindly provide the same herein via email. If a print out of the back-end with th above, kindly provide the same.

Thank you.

--

My best regards to you,

Kevin A. McLean (B.A., J.D., CIM)
Chartered Investment Manager
E (personal and confidential): mrkevinalexandermcleanbajdcim@gmail.com

DISCLAIMER

1. *The content of this email is confidential and intended for the recipient specified in message only. It is strictly forbidden to share any part of thi consent of the sender. If you received this message by mistake, please reply to this message and follow with its deletion, so that we can ensure s*
2. *Due to being an accident, this email may be dictated in part or full with voice recognition software. Kindly excuse any errors for grammar, syn*

K

Kevin McLean <mrkevinalexandermcleanbajdcim@gmail.com> Wed, Feb 5, 2:45 PM

to Access.TO-TDO

Thanks Jennifer. I confirm receipt of the email. Greatly appreciated. I will try that route. To confirm on the previous one, as I APPRECIATED it got a little b helpful and professional, I did not file an appeal with OIPC (ON). Trusting that said route will solve my request, I wish you well.

K

Kevin McLean <mrkevinalexandermcleanbajdcim@gmail.com> Wed, Feb 5, 3:40 PM

to LATregistrar

February 5, 2025

VIA EMAIL: LATregistrar@ontario.ca.

Dear LAT Registrar:

1. I write regarding the above.

2. Kindly see the below email which was initially cast as a FIPPA request but thanks to Jennifer's response, I am redirecting the same to the esteemed LAT regi

3. I trust the above is sufficiently clear and precise with enough details but I may supplement to assist further.

4. Kindly only respond to this email for this access request for adjudicative records. As I have never seen what an adjudicative record looks like after submitt assistance to a sample of the same i.e. whether it is time stamped with any additional information with style of cause. For clarity purposes, I am only seeking the or individual in the AABS matter denoted below from December 24, 2023, to September 13, 2024. You may send the records to me on a piecemeal basis. I am as how to the LAT proceeding was denoted as there were some change of parties and counsel at various times. A screenshot from those material times should suf

5. Thank you.

K

Kevin McLean <mrkevinalexandermcleanbajdcim@gmail.com> Wed, Feb 5, 3:57 PM

to LATregistrar

February 5, 2025

Re: my access request for the adjudicative records from December 23, 2023, to September 13, 2024, involving McLean v. SNIC formerly McLean v. TDGIC in LAT/

Dear LAT Registrar:

1. I wish to confirm that this access request for adjudicative records arises because counsel to the Tribunal in Mr. Boyce in the Divisional Court proceeding repr weeks from the time I brought the judicial review application which was November 15, 2024. While the statutory requirement is forthwith filing (see: section not meet his self-imposed deadline. As such, I will assist the court, as it is for its use.

2. Mr. Boyce is Mr. Jesse Aaron Boyce in the event you needed to cross-reference. It is unclear why he is so delinquent in the same but nonetheless if there is of proceeding, I can advise the court of the same and plug the gap.

3. I will provide some further details to assist with important dates and deadlines with copies of my documents so we can work together.

4. Thank you.

K

Kevin McLean <mrkevinalexandermcleanbajdcim@gmail.com> Fri, Feb 7, 7:49 AM

to Doug.Downey, sean.weir, attorneygeneral, LATregistrar

February 7, 2025

URGENT

VIA EMAIL

Re: urgent request for the adjudicative records herein

Re #2: inclusion of The Honourable Mr. Downey and the esteemed Mr. Weir, Executive Chair of Tribunals Ontario for oversight and the provision of the record ("**Tribunal**") file number 23-0155662/AABS from December 23, 2023, to September 13, 2024 (the "**ROP Temporal Period**")

Dear LAT Registrar (copied to the AGO and EC of Tribunals Ontario):

1. I again thank Jennifer of the access and privacy division for the LAT for confirming with me that the record of proceeding from December 23, 2023, to Septe am entitled to without the necessity of a formal *FIPPA* request along with the statutory and prescribed fees. As such, I confirm that the *FIPPA* time periods do no

2. In light of the above issues with delays along with failure to comply with one of the more basic aspects of a statutory requirements under section 10 of th system[ii], I have copied Mr. Sean Weir, Executive Chair ("EC") of Tribunals Ontario and The Honourable Mr. Attorney General of Ontario in Mr. Downey for o the above purposes but also in light of his learned counsel in Ms. Judie Im in the **JRPA Proceeding** denoted by file number above Court File No. DC-24-0(participate in the same as of late last week.

3. As the relevant decision-makers of the LAT at the relevant time purported to rely on the record of proceeding, it must be provided to a party in myself documents were filed electronically so the LAT, with its resources and technological capabilities, with presumably AWS as the storage provider, return access to be the most rudimentary of tasks.

4. The lack of a confirmatory response is most concerning and appears to be part of a pattern. My belief is that the LAT does not have a full and accurate **RO** outages" at various times. As we know, "technology happens" from time to time. As such, please provide the **ROP** from the **ROP** Temporal Period by no lat **Temporal Period**. By my computation, we are looking at a period of 264 days.

5. I may provide a subsequent email of what I will be expecting that you will be providing today. To the extent that you wish to provide some piecemeal today I am amenable with said approach. That being said, I cannot imagine that it is not possible to complete that which is in the possession and control of the LAT b copies.

6. To the extent that none of the records from the ROP during the ROP Temporal Period are provided today, I will presume that the Tribunal has lost or had stol Temporal Period.

7. As The Honourable Mr. Downey will undoubtedly know, as the chief law officer in this province, the language chosen by our Legislature was for the Tribun decision) to file forthwith the record of proceeding for the court's use. However, one Mr. Boyce imposed an arbitrary timeline of three to four weeks in mid Nov the Tribunal. In a subsequent email to myself, with others copied, he had contrived a non-statutory timeline of 60 days from November 15, 2024 (i.e. the date behalf of the Tribunal, had not met either then or now.

8. I also ground my belief that the Tribunal either does not have a full and accurate record of proceeding on the bases of the above but also that some of the is makers in June, July and September 2024 were not conversant with the documents and facts. In this regard, they were askew by not only time periods but the a me to believe that they did not have the entire ROP at those times. Moreover, there were continued references to *McLean v. TD General Insurance Company* [sic favour which was a motion served and filed by me in mid May 2024 culminating in a decision of the Tribunal (Adjudicator Morrissette as she then was) on c change of the respondent from TDGIC to Security National Insurance Company. As such, those "adjudicative records" will also include the below at section 20 that a responsive pleading like a statutory response under section 280(2) of the *Insurance Act* is not explicitly captured. However, I would respectfully submit th and it is "evidence" albeit not sworn but signed by an individual representative on behalf of an insurance company (i.e. true, accurate and complete).

9. When providing the same, kindly denote the same in the following format: "Record of Proceeding [24-Dec-2023 – Sept 13-2024] – Respondent - Licence you are unable or unwilling to do so, I will solely change the title of the document to the same with various volumes depending on size (i.e. for the current a While it is for the Tribunal to have filed the same, Mr. Boyce has only been interested in filing a Notice of Appearance and no interest in facing the merits of the most basic of duties.

10. I trust, in copying two of the great legal minds in our province in the Honourable AGO and former managing partner of Canada's last largest law firm in reference the *purpose* of the filing of the record of proceeding by the Tribunal. Perhaps, the LAT, in its somewhat infancy being in its nearly tenth year by my c purpose of requiring a tribunal or adjudicator to file a "record of proceedings" is to ensure that when the court reviews the tribunal's decision, it has the in

3309

tribunal in the first instance. A court reviewing an adjudicative decision may look at decisions to admit evidence, submissions of witnesses, and other evidence a [or tribunal] of first instance: *Payne v. Ontario Human Rights Commission*, 2000 CanLII 5731 (ONCA) ["*Payne*"] at para. 23. *Payne* was adopted by the O decisis, but in referencing that long standing legal precedent nearly a half quarter century later in *Lachance* (as per the Honourable Justices Myers, Stewart an Court found:

> "[37] I agree with the finding of Ryan Bell J. that by bringing this application for judicial review the applicants became entitled to receive a adopted the words of Sharpe JA in *Payne v. Ontario Human Rights Commission*, 2000 CanLII 5731 (ON CA) at paragraph 161
>
> > An applicant for judicial review has the right to have a full and accurate record of what went on before the tribunal put before the court powers of judicial review. A superior court may insist upon the production of an adequate record of the proceedings before the tribunal bei
>
> [38] When met by a reluctant decision-maker, the applicants always had the ability to obtain the documents that they needed to advance their c

11. As such, an interesting interplay arises between the forthwith filing requirement of the Tribunal with the court for its use, the inherent jurisdiction of the applicant's rights on judicial review.

12. Arguably the most important precedential statement of law to come from *Payne* was its adoption, verbatim in parts, of the precedent from The Honourable L *Gilmore,* [1957] 1 Q.B. 574 at 583 (C.A.) which was:

> "A statutory body subject to judicial review cannot immunize itself or its process by arriving at decisions on considerations that are not rev
>
> (see: paragraph 161 of Payne (ONCA)).

13. As such, it matters not the *source* (equitable, common law, statutory, prescribed or otherwise) of the legal obligation or whether it is to file forthwith witl obligation that requires immediate rectification.
14. Without conflating a previous access request of the LAT, I was impressed with the rapidity that the access and privacy division provided access to some of t on the email thread. I invoked the same herein due to a more urgent and pressing request for the very adjudicative records I am so entitled, the court is entitle entitled to discharge its supervisory powers so section 96 to 101 of the *Constitution Act of Canada* is adhered to.

15. Trusting the Tribunal will provide the compiled record of proceeding, at the various times and then added to over time, by today at three p.m. (as there wa 2024) to me as a party (the 'applicant' or 'appellant' depending on the preferred nomenclature), I can remove the Honourable AGO and EC of Tribunals Onta important work that they do whilst confirming the satisfactory closure of my request.

16. Thank you for your compliance with the above, and I most look forward to confirming the closure of this request. A copy of this email may follow via fax du caution.

Appendix

Record of proceeding

20 A tribunal shall compile a record of any proceeding in which a hearing has been held which shall include,

(a) any application, complaint, reference or other document, if any, by which the proceeding was commenced;

(b) the notice of any hearing;

(c) any interlocutory orders made by the tribunal;

(d) all documentary evidence filed with the tribunal, subject to any limitation expressly imposed by any other Act on the extent to or the purposes for which any proceeding;

(e) the transcript, if any, of the oral evidence given at the hearing; and

(f) the decision of the tribunal and the reasons therefor, where reasons have been given. R.S.O. 1990, c. S.22, s. 20.

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[i] Despite the LAT being separate from the MAG per se, and certainly the likes of Ms. Im in her former representative capacity for the AGO in the JRPA Proceeding and Mr. Boyce acting for the LAT.
[ii] https://www.lawtimesnews.com/practice-areas/personal-injury/otla-pushes-for-urgent-licence-appeal-tribunal-review/389679#:~:text=The%20Ontario%20Trial%20Lawyers%20Assoc 20analysis.
[iii] https://www.ontariocourts.ca/scj/practice/div-court-pd/#_Toc133391236

K

Kevin McLean <mrkevinalexandermcleanbajdcim@gmail.com> Fri, Feb 7, 10:17 PM

to LATregistrar, Doug.Downey, sean.weir, attorneygeneral

Dear LAT Registrar (copied to the above honourable and esteemed persons):

I confirm that I did not hear from you today. Do you wish for me to come pick up the same? Is it easier to have it on a USB for my pickup this Monday? I can be there at

If not, I will presume that you can provide the same this Monday by the same time.

Thank you.

K

Kevin McLean <mrkevinalexandermcleanbajdcim@gmail.com> Mon, Feb 10, 4:37 PM

to Access.TO-TDO, LATregistrar, Doug.Downey, sean.weir, attorneygeneral

Dear LAT Registrar (copied to the above honourable and esteemed persons):

1. I am compelled to continue to copy Mr. Weir and the Honourable AGO until I have the requested records from the record of proceeding from the duratio

2. I will presume that an in-person pick up is not the acceptable or amenable route so kindly disregard the same.

3. I have also copied the above email to the kind attention of Jennifer who directed me to the LAT registrar for these adjudicative records. (Good Afternoo me with an individual name of a person who is responsible for these adjudicative records at the LAT?)

4. (Mr. Weir, I extend the same question to you as well)

5. (Dear all, if there are certain documents missing or lost, would you kindly provide me with which documents you believe those to be. Would you also p determine if they are time stamped when filed or have any notations on the same?)

6. The matter remains urgent. Thank you.

K

Kevin McLean <mrkevinalexandermcleanbajdcim@gmail.com> Mon, Feb 10, 5:13 PM

to LATregistrar, sean.weir, attorneygeneral, Access.TO-TDO

Dear Sirs/Mesdames/Other Gender-Neutral Pronouns:

1. I write further to the above. In the circumstances, I confirm that I am entitled to the adjudicative records without an access request under FIPPA. However, as records from the record of proceeding are missing from the time period denoted above, I confirm that my FIPPA request was made from the time herein. I delivered tomorrow. I am doing so out of an abundance of caution as I have not received any response from the LAT registrar which is terribly concerning.

2. (Dear Jennifer, in this regard, I will confirm when the five dollar application fee is delivered on my behalf. However, I will still presume that I will receive LAT registrar as per the Tribunal's obligation to do so. That being said, I confirm that all requested records must be retained from the time of my request with administrative step to finalize the processing of the same. To the extent that the LAT registrar does not feel that the logs are part of the record of proceeding or are, then there will be a slight discrepancy.).

3. (Dear LAT Registrar, would kindly provide a sample document of one of my filings, a filing on behalf of TDGIC, a filing on behalf of SNIC and the Nieuwland on behalf of TDGIC and SNIC. I trust I can receive that by no later than noon tomorrow. While I should not have to compromise my legal rights, I the same.)

4. (Dear Mr. Weir, if you have delegated the responsibility to another individual in this regard, would you kindly provide me with the contact information for sa

5. (In the circumstances, I will remove The Honourable Mr. Downey's direct email as he has notice of the same but keep the AGO email so it is aware of w without even the courtesy of a response from the LAT registrar. I thank The Honourable Mr. Downy for the indulgence of including his email herein for en prioritized. I can confirm that not a single record has been provided to me herein or from any other sources.)

6. As a parting point here so we can work together as the record of proceeding is a matter that involves countless constitutional principles and the rule of law, p to whether the Tribunal has the full and accurate record of proceeding from the time period above. If I do not hear from you by that time, which should not req presume that my fears and beliefs that some of those records from the record of proceeding are missing, lost, stolen, or otherwise unrecoverable. This can happe by the then case manager in Mr. Grant. However, transparency must accompany the same.

7. Thank you.

K

Kevin McLean <mrkevinalexandermcleanbajdcim@gmail.com> Wed, Feb 12, 1:29 PM

to LATregistrar, sean.weir, attorneygeneral, Access.TO-TDO

February 12, 2025

Re: the continued non-compliance with my access request of January 2025 which was redirected to the LAT Registrar as per its requirement to provide a proceeding

Dear LAT Registrar, Executive Chair of Tribunals Ontario, Office of the Attorney General and Ms. Jennifer [last name unknown] (an officer in the privacy d access requests made pursuant to FIPPA):

1. I write further to the above involving my access request made to the LAT in January 2025. I thank Ms. Jennifer for her prompt response and redirection the necessity for the formality of the FIPPA request along with the payment of statutory and prescribed fees. Since the time of the redirection, I have not r despite my inclusion of the above noted Executive Chair and AGO.

2. My requests pursuant to FIPPA and the LAT Registrar shall remain in perpetuity and until they are complied with in a strict and lawful manner.

3. As such, I confirm the scope of my access request for the record of proceeding in the LAT/AABS file number of 23-015662/AABS and confirm that all r those requests. As this will now require me on the FIPPA side of the ledger to tender an application fee, I will confirm when that has been delivered to 25 respect the resources of all above, I will not need to have duplicate copies of the record of proceeding provided to me but now I am most curious to know stonewalled in light of counsel for the Tribunal failing to file a single document from the record of proceeding in contravention of the JRPA and SPPA. The in any event of any determinations in the Tribunal proceeding or before the ONSC Divisional Court or otherwise.

4. Kindly extend some professionalism and courtesy herein where applicable.

5. Thank you.

L

LATregistrar (MAG) Thu, Feb 13, 3:54 PM

to me

Good afternoon Mr. McLean,

We acknowledge and thank you for your emails sent between February 5 and February 12, 2025.

We thank you for your patience, while we review how best to compile and forward the records identified in your request. We will reach out to you with ad

As your request relates to your application before the LAT, please continue to direct all your correspondence through LATRegistrar@ontario.ca only. We' necessary.

Best Regards,

Hannah Lee (Pronouns: she/her) (learn more)
Case Management Officer
Licence Appeal Tribunal
Phone: 647-463-8220
Local 416-326-1356 / Toll free 1-888-444-0240
LATregistrar@ontario.ca
tribunalsontario.ca

K

Kevin McLean <mrkevinalexandermcleanbajdcim@gmail.com> Fri, Feb 14, 1:59 PM

to sean.weir, attorneygeneral, Access.TO-TDO, LATregistrar

February 14, 2025

Dear LAT Registrar (Ms. Lee), FIPPA privacy officer (Ms. Jennifer), EC of Tribunals Ontario and the AGO email:

I thank you for your response. I have copied Mr. Weir, the FIPPA privacy and AGO email as noted above. I have also copied the relevant parts of your email to the below as some of it i privacy requests. I apologize for the brief delay on my part as I see your email came in late yesterday and I did not check this email until now.

However, that is entirely unacceptable on all fronts in relation to "how best to compile" the record of proceeding from December 23, 2023, to September 13, 2024.

Section 20 of the *SPPA*:

"Record of proceeding

20 A tribunal shall compile a record of any proceeding in which a hearing has been held which shall include,

(a) any application, complaint, reference or other document, if any, by which the proceeding was commenced;

(b) the notice of any hearing;

(c) any interlocutory orders made by the tribunal;

(d) all documentary evidence filed with the tribunal, subject to any limitation expressly imposed by any other Act on the extent to or the purposes for which any such documents may b

(e) the transcript, if any, of the oral evidence given at the hearing; and

(f) the decision of the tribunal and the reasons therefor, where reasons have been given. R.S.O. 1990, c. S.22, s. 20."

Therefore, this explains exactly why these decisions issued by Vice Chair Morrissette and others were so askew with the facts because the Tribunal had not even compiled the record of The duty to compile operates irrespective of whether any appeal or judicial review is advanced.

The requirement was to file the record of proceeding forthwith with the ONSC Divisional Court. The JRPA Application was brought in mid-November 2024. Mr. Boyce for the Tribuna the Tribunal was to file an NOA forthwith which for the most part it did.

However, the Tribunal is only working on compiling the record now. There is nothing to discuss in terms of reaching out to me for information. I have already provided the information so as a courtesy.

As such, the Tribunal is in breach of two sets of statutory duties. As stated, please provide what you have during those time periods on a forthwith basis to me. The time is now 1:55 p.n commence today.

Respectfully, this should not take more than 30 minutes to do as I am a party and it is a period of some 8.5 months. Kindly re-attach the same by reply email. Based on s Alternatively, you can send via multiple piecemeal emails.

If you commence providing today, you can remove Mr. Weir and the AGO email address. Please remove Jennifer and her email in any event.

(Jennifer, I apologize for having you caught up in this email but I copied you to ensure that you are aware that I will be attending the relevant office (like last time) to deliver the fees fo separate thread with you so we do not conflate the two. However, for interim measure, it is the same as above with any logs from the back-end.)

LATregistrar (MAG) Feb 1

to me

Good afternoon Mr. McLean,

We acknowledge and thank you for your emails sent between February 5 and February 12, 2025.

We thank you for your patience, while we review how best to compile and forward the records identified in your request. We will reach out to you with additional information by Febru

Best Regards,

...

[Message clipped] View entire message

K

Kevin McLean <mrkevinalexandermcleanbajdcim@gmail.com> Fri, Feb 14, 2:47 PM

to Access.TO-TDO

Good Afternoon Jennifer:

I have directed this email solely to you as per the above. I was going to start a new thread but instead of doing the same for urgency purposes, I have forwarded the same application fee dropped off at the 25 Grosvenor Street location and confirm the same when that is complete. I will start a separate thread hereafter. As confirm, I am seek possession and control as it relates to 23-0115662/AABS involving McLean v. Security National Insurance Company (formerly McLean v. TD General Insurance Comp during that period i.e. ones that were filed to this email.

I am also seeking the logs as particularized above. Thank you

...

[Message clipped] View entire message

K

Kevin McLean <mrkevinalexandermcleanbajdcim@gmail.com> Sun, Feb 23, 12:23 PM (5 days ago)

to Access.TO-TDO

Dear Jennifer:

I hope you are well. I am currently still recovering from a medical procedure from last week and I have another two this week. As such, you will likely receive my auto-r (attention: LAT Registrar) has entirely failed in providing me with a copy of the record of proceeding from December 24, 2023, to September 13, 2024. Despite Ms. Lee to me on February 21, 2024, said date came and went. As such, I confirm that my access request is extant and the only thing remaining is that of the five dollar fee to be deliver the amount to your attention.

As noted, my access request is slightly broader than the above which will include any logs (electronic or hard copy) during that time as to the parties et al. However, to e provided sufficient particulars, I propose the following. If there is an index of all filings, with screenshots of the back-end (i.e. change of parties), during the relevant per As such, if that exists, would you kindly provide me with an electronic copy of the same as soon as you are able? I will then be in a position to confirm that I do not neec

Thank you.

...

[Message clipped] View entire message

K

Kevin McLean <mrkevinalexandermcleanbajdcim@gmail.com> Wed, Feb 26, 1:48 PM (2 days ago)

to LATregistrar

Dear LAT Registrar (and to Ms. Lee):

I write regarding the above. I confirm you have failed to provide the record of proceeding from the ROP Temporal Period. You did not follow up on February 21, 2025, e the records that make up the record of proceeding.

Please provide the same by the end of the business day to this email herein. I make this demand and request for all of the above reasons.

I appreciate the Tribunal does not have the full and accurate record of the proceeding from the ROP Temporal Period due to that technological issue (framed as a "power said, that will make the provision of what the Tribunal has in its possession and control all the easier and simplified.

Thank you.

L

LATregistrar (MAG) Thu, Feb 27, 11:02 AM (1 day ago)

to me

Good morning,

Thank you for your email. Please see the attached index of all documents on this file.

Thank you for your patience.

--

My best regards to you,

Kevin A. McLean (B.A., J.D., CIM)
Chartered Investment Manager
E (personal and confidential): mrkevinalexandermcleanbajdcim@gmail.com

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   consent of the sender. If you received this message by mistake, please reply to this message and follow with its deletion, so that we can ensure su
2. *Due to being an accident, this email may be dictated in part or full with voice recognition software. Kindly excuse any errors for grammar, syntax or*

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My best regards to you,

Kevin A. McLean (B.A., J.D., CIM)
Chartered Investment Manager
E (personal and confidential): mrkevinalexandermcleanbajdcim@gmail.com

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MARCH 17 2025 - Access Request ^LLLN2 - LAT - ROP - Internal Communications - REQUESTOR - Mr McLean - delivered copy-EMAIL COPY.pdf
392K

Kevin McLean <mrkevinalexandermcleanbajdcim@gmail.com>
To: "Access.TO-TDO (MAG)" <Access.TO-TDO@ontario.ca>

April 9, 2025

Good Morning to you LAT Privacy Division:

1. I hope you are well. I write to confirm that the responsive decision and access to the requested records (personal information) are due in approximately 9 days. As such, I con has been sought and I have particularized the request with sufficient detail. I confirm that the application fee was received in mid March 2025 by the LAT privacy division.

2. I further confirm that the request (non-FIPPA) of the LAT Registrar was wasteful but for the apparent print-out of some of the documents in the record of proceeding so provi exhibiting of the same.

On Sun, Mar 23, 2025 at 10:08 AM Kevin McLean <mrkevinalexandermcleanbajdcim@gmail.com> wrote:

> March 23, 2025

EXCLUSIVELY FOR PURPOSES HEREIN

File number: [please provide]
Type of document: email with hard copy of finalized and particularized access request
Short title of request: *McLean and LAT (FIPPA Division)*
From: Mr. Kevin A. McLean (B.A., J.D, CIM), defendant and moving party (the "Applicant" or "Requestor")

Re: confirmed delivery of the application fee and further particularized access request (attached herein)

Dear LAT (privacy division):

1. I write to confirm that the five dollar application fee was delivered last week with your offices at 25 Grosvenor Street, Toronto. By my computation, this would in turn me 2025.

2. I enclosed a letter regarding the same which is now re-attached. As noted therein, I apologize for the delay as I was recovering from an accident where I was hit while walk

3. In any event, I thank the kind and helpful individuals for their assistance in bringing to the attention of the privacy officers involved in searching for the requested records unhelpful, I am not wasting collective resources on that route any further.

4. As the finalized and delivered access request is highly particularized, I will presume no clarity is required.

5. The only thing I can imagine by way of supplementation is that of confirming the legal grounds for why I am entitled to access.

6. I kindly note that to the extent that I do not receive access within the 30 calendar days, I will file an appeal with the OIPC (ON) without further notice. I hope that will not

7. If you would kindly provide me with your file number assigned to this request, I would be most grateful.

8. Thank You kindly and I look forward to receipt of the requested records (even on a piecemeal basis) at your earliest opportunity.

On Fri, Feb 28, 2025 at 2:24 PM Kevin McLean <mrkevinalexandermcleanbajdcim@gmail.com> wrote:

> Dear LAT access and privacy division:
>
> I write to confirm that I am proceeding with my access request. I have started a separate thread for ease of reference but copied the previous emails. I was about to hav Tribunal provided what it called an index but was a print out of some back-end. Nonetheless, this should make the access request more simple. Moreover, I will be abl majority of these documents and pick out certain documents. However, my access request will still include the previous request for logs, change of parties, et al. I do s refers to TD General Insurance Company on or around page 130. Therefore, it appears that will be a seminal time. I will confirm when the five dollars is delivered. Th

APPENDIX

Access Request - McLean - LAT/AABS - record of proceeding - index, list or print out - 23-015662/AABS

K

Kevin McLean <**mrkevinalexandermcleanbajdcim@gmail.com**> Sat, Jan 25, 12:21 PM

to Access.TO-TDO

January 25, 2025

Good Afternoon to you LAT/AABS privacy division (*FIPPA*):

I am making an access request for a copy of a list, index or print out of the filed documents in the record of proceeding involving the LAT file 23-015662/AABS from 12, 2024. I am the Appellant therein.

I look forward to working with you on how best to obtain a list, index or print out of what was filed on the back-end of your system for documents that were e-filed b various times which were: (i) TD General Insurance Company ("TDGIC"); and (ii) Security National Insurance Company ("SNIC").

I am seeking a list or index, unless it is easier and more efficient for you to send me a PDF of all of the documents filed by myself, and the aforementioned insuran representative by one Mr. Nieuwland on or around January 30, 2024, and on or around June 28, 2024.

Please also provide any records that denote the "style of cause" at the various times as it appears on your back-end portal.

I may provide some further background information regarding the same but I trust this satisfies what I am seeking in the primary or in the alternative (depending or have delivered the $5 application fee to the location at 25 Grosvenor Street, Toronto, Ontario as the 15 Grosvenor Street, Toronto, Ontario, location was not accessible

I will presume on the above that a print out will be the easiest from your back-end and kindly provide the same herein via email. If a print out of the back-end with above, kindly provide the same.

Thank you.

--

My best regards to you,

Kevin A. McLean (B.A., J.D., CIM)
Chartered Investment Manager
E (personal and confidential): mrkevinalexandermcleanbajdcim@gmail.com

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2. *Due to being an accident, this email may be dictated in part or full with voice recognition software. Kindly excuse any errors for grammar, syn*

A

Access.TO-TDO (MAG) Fri, Jan 31, 3:14 PM

to me

Good afternoon Kevin,

Thank you for your email. Because you're seeking copies of the adjudicative records for your own LAT-AABS application file, you can resubmit your bel directly to the LAT via email at LATregistrar@ontario.ca.

Have a nice weekend,
Jennifer

Senior Policy Advisor, FOI
Access to Records and Information Office
Access.TO-TDO@ontario.ca

Confidential message which may be privileged. If received in error, please delete the message and advise me by return email.
Message confidentiel dont le contenu peut être privilégié. Si reçu par erreur, veuillez supprimer ce message et aviser l'expéditeur par retour de courriel

From: Kevin McLean <mrkevinalexandermcleanbajdcim@gmail.com>
Sent: Saturday, January 25, 2025 12:21 PM
To: Access.TO-TDO (MAG) <Access.TO-TDO@ontario.ca>
Subject: Access Request - McLean - LAT/AABS - record of proceeding - index, list or print out - 23-015662/AABS

CAUTION -- EXTERNAL E-MAIL - Do not click links or open attachments unless you recognize the se

January 25, 2025

Good Afternoon to you LAT/AABS privacy division (*FIPPA*):

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Please also provide any records that denote the "style of cause" at the various times as it appears on your back-end portal.

I may provide some further background information regarding the same but I trust this satisfies what I am seeking in the primary or in the alternative (depending or have delivered the $5 application fee to the location at 25 Grosvenor Street, Toronto, Ontario as the 15 Grosvenor Street, Toronto, Ontario, location was not accessible

I will presume on the above that a print out will be the easiest from your back-end and kindly provide the same herein via email. If a print out of the back-end with above, kindly provide the same.

Thank you.

--

My best regards to you,

Kevin A. McLean (B.A., J.D., CIM)
Chartered Investment Manager
E (personal and confidential): mrkevinalexandermcleanbajdcim@gmail.com

DISCLAIMER

1. *The content of this email is confidential and intended for the recipient specified in message only. It is strictly forbidden to share any part of t consent of the sender. If you received this message by mistake, please reply to this message and follow with its deletion, so that we can ensure*
2. *Due to being an accident, this email may be dictated in part or full with voice recognition software. Kindly excuse any errors for grammar, sy*

K

Kevin McLean <mrkevinalexandermcleanbajdcim@gmail.com> Wed, Feb 5, 2:45 PM

to Access.TO-TDO

Thanks Jennifer. I confirm receipt of the email. Greatly appreciated. I will try that route. To confirm on the previous one, as I APPRECIATED it got a little helpful and professional, I did not file an appeal with OIPC (ON). Trusting that said route will solve my request, I wish you well.

K

Kevin McLean <mrkevinalexandermcleanbajdcim@gmail.com> Wed, Feb 5, 3:40 PM

to LATregistrar

February 5, 2025

VIA EMAIL: LATregistrar@ontario.ca.

Dear LAT Registrar:

1. I write regarding the above.

2. Kindly see the below email which was initially cast as a FIPPA request but thanks to Jennifer's response, I am redirecting the same to the esteemed LAT re

3. I trust the above is sufficiently clear and precise with enough details but I may supplement to assist further.

4. Kindly only respond to this email for this access request for adjudicative records. As I have never seen what an adjudicative record looks like after subm assistance to a sample of the same i.e. whether it is time stamped with any additional information with style of cause. For clarity purposes, I am only seeking th or individual in the AABS matter denoted below from December 24, 2023, to September 13, 2024. You may send the records to me on a piecemeal basis. I ar as how to the LAT proceeding was denoted as there were some change of parties and counsel at various times. A screenshot from those material times should su

5. Thank you.

K

Kevin McLean <mrkevinalexandermcleanbajdcim@gmail.com> Wed, Feb 5, 3:57 PM

to LATregistrar

February 5, 2025

Re: my access request for the adjudicative records from December 23, 2023, to September 13, 2024, involving McLean v. SNIC formerly McLean v. TDGIC in LA

Dear LAT Registrar:

1. I wish to confirm that this access request for adjudicative records arises because counsel to the Tribunal in Mr. Boyce in the Divisional Court proceeding re weeks from the time I brought the judicial review application which was November 15, 2024. While the statutory requirement is forthwith filing (see: sectio not meet his self-imposed deadline. As such, I will assist the court, as it is for its use.

2. Mr. Boyce is Mr. Jesse Aaron Boyce in the event you needed to cross-reference. It is unclear why he is so delinquent in the same but nonetheless if there of proceeding, I can advise the court of the same and plug the gap.

3. I will provide some further details to assist with important dates and deadlines with copies of my documents so we can work together.

4. Thank you.

K

Kevin McLean <mrkevinalexandermcleanbajdcim@gmail.com> Fri, Feb 7, 7:49 AM

to Doug.Downey, sean.weir, attorneygeneral, LATregistrar

February 7, 2025

URGENT

VIA EMAIL

Re: urgent request for the adjudicative records herein

Re #2: inclusion of The Honourable Mr. Downey and the esteemed Mr. Weir, Executive Chair of Tribunals Ontario for oversight and the provision of the record "**Tribunal**") file number 23-0155662/AABS from December 23, 2023, to September 13, 2024 (the "**ROP Temporal Period**")

Dear LAT Registrar (copied to the AGO and EC of Tribunals Ontario):

1. I again thank Jennifer of the access and privacy division for the LAT for confirming with me that the record of proceeding from December 23, 2023, to Sep am entitled to without the necessity of a formal *FIPPA* request along with the statutory and prescribed fees. As such, I confirm that the *FIPPA* time periods do n

2. In light of the above issues with delays along with failure to comply with one of the more basic aspects of a statutory requirements under section 10 of system[ii], I have copied Mr. Sean Weir, Executive Chair ("EC") of Tribunals Ontario and The Honourable Mr. Attorney General of Ontario in Mr. Downey for the above purposes but also in light of his learned counsel in Ms. Judie Im in the **JRPA Proceeding** denoted by file number above Court File No. DC-24- participate in the same as of late last week.

3. As the relevant decision-makers of the LAT at the relevant time purported to rely on the record of proceeding, it must be provided to a party in mysel documents were filed electronically so the LAT, with its resources and technological capabilities, with presumably AWS as the storage provider, return access t be the most rudimentary of tasks.

4. The lack of a confirmatory response is most concerning and appears to be part of a pattern. My belief is that the LAT does not have a full and accurate **R** outages" at various times. As we know, "technology happens" from time to time. As such, please provide the **ROP** from the **ROP** Temporal Period by no l **Temporal Period**. By my computation, we are looking at a period of 264 days.

5. I may provide a subsequent email of what I will be expecting that you will be providing today. To the extent that you wish to provide some piecemeal toda I am amenable with said approach. That being said, I cannot imagine that it is not possible to complete that which is in the possession and control of the LAT copies.

6. To the extent that none of the records from the ROP during the ROP Temporal Period are provided today, I will presume that the Tribunal has lost or had st Temporal Period.

7. As The Honourable Mr. Downey will undoubtedly know, as the chief law officer in this province, the language chosen by our Legislature was for the Tribu decision) to file forthwith the record of proceeding for the court's use. However, one Mr. Boyce imposed an arbitrary timeline of three to four weeks in mid N the Tribunal. In a subsequent email to myself, with others copied, he had contrived a non-statutory timeline of 60 days from November 15, 2024 (i.e. the da behalf of the Tribunal, had not met either then or now.

8. I also ground my belief that the Tribunal either does not have a full and accurate record of proceeding on the bases of the above but also that some of the makers in June, July and September 2024 were not conversant with the documents and facts. In this regard, they were askew by not only time periods but the me to believe that they did not have the entire ROP at those times. Moreover, there were continued references to *McLean v. TD General Insurance Company* [favour which was a motion served and filed by me in mid May 2024 culminating in a decision of the Tribunal (Adjudicator Morrissette as she then was) or change of the respondent from TDGIC to Security National Insurance Company. As such, those "adjudicative records" will also include the below at section 2 that a responsive pleading like a statutory response under section 280(2) of the *Insurance Act* is not explicitly captured. However, I would respectfully submit and it is "evidence" albeit not sworn but signed by an individual representative on behalf of an insurance company (i.e. true, accurate and complete).

9. When providing the same, kindly denote the same in the following format: "Record of Proceeding [24-Dec-2023 – Sept 13-2024] – Respondent - Licen you are unable or unwilling to do so, I will solely change the title of the document to the same with various volumes depending on size (i.e. for the current While it is for the Tribunal to have filed the same, Mr. Boyce has only been interested in filing a Notice of Appearance and no interest in facing the merits of t most basic of duties.

10. I trust, in copying two of the great legal minds in our province in the Honourable AGO and former managing partner of Canada's last largest law firm i reference the *purpose* of the filing of the record of proceeding by the Tribunal. Perhaps, the LAT, in its somewhat infancy being in its nearly tenth year by my purpose of requiring a tribunal or adjudicator to file a "record of proceedings" is to ensure that when the court reviews the tribunal's decision, it has the tribunal in the first instance. A court reviewing an adjudicative decision may look at decisions to admit evidence, submissions of witnesses, and other evidence [or tribunal] of first instance: *Payne v. Ontario Human Rights Commission*, 2000 CanLII 5731 (ONCA) ["*Payne*"] at para. 23. *Payne* was adopted by the C decisis, but in referencing that long standing legal precedent nearly a half quarter century later in *Lachance* (as per the Honourable Justices Myers, Stewart Court found:

> "[37] I agree with the finding of Ryan Bell J. that by bringing this application for judicial review the applicants became entitled to receive adopted the words of Sharpe JA in *Payne v. Ontario Human Rights Commission*, 2000 CanLII 5731 (ON CA) at paragraph 161
>
> > An applicant for judicial review has the right to have a full and accurate record of what went on before the tribunal put before the cou powers of judicial review. A superior court may insist upon the production of an adequate record of the proceedings before the tribunal b
>
> [38] When met by a reluctant decision-maker, the applicants always had the ability to obtain the documents that they needed to advance their

11. As such, an interesting interplay arises between the forthwith filing requirement of the Tribunal with the court for its use, the inherent jurisdiction of th applicant's rights on judicial review.

12. Arguably the most important precedential statement of law to come from *Payne* was its adoption, verbatim in parts, of the precedent from The Honourable *Gilmore,* [1957] 1 Q.B. 574 at 583 (C.A.) which was:

> "A statutory body subject to judicial review cannot immunize itself or its process by arriving at decisions on considerations that are not r
>
> (see: paragraph 161 of Payne (ONCA)).

13. As such, it matters not the *source* (equitable, common law, statutory, prescribed or otherwise) of the legal obligation or whether it is to file forthwith w obligation that requires immediate rectification.
14. Without conflating a previous access request of the LAT, I was impressed with the rapidity that the access and privacy division provided access to some o on the email thread. I invoked the same herein due to a more urgent and pressing request for the very adjudicative records I am so entitled, the court is enti entitled to discharge its supervisory powers so section 96 to 101 of the *Constitution Act of Canada* is adhered to.

15. Trusting the Tribunal will provide the compiled record of proceeding, at the various times and then added to over time, by today at three p.m. (as there 2024) to me as a party (the 'applicant' or 'appellant' depending on the preferred nomenclature), I can remove the Honourable AGO and EC of Tribunals On important work that they do whilst confirming the satisfactory closure of my request.

16. Thank you for your compliance with the above, and I most look forward to confirming the closure of this request. A copy of this email may follow via fax caution.

Appendix

Record of proceeding

20 A tribunal shall compile a record of any proceeding in which a hearing has been held which shall include,

(a) any application, complaint, reference or other document, if any, by which the proceeding was commenced;

(b) the notice of any hearing;

(c) any interlocutory orders made by the tribunal;

3319

(d) all documentary evidence filed with the tribunal, subject to any limitation expressly imposed by any other Act on the extent to or the purposes for which ar proceeding;

(e) the transcript, if any, of the oral evidence given at the hearing; and

(f) the decision of the tribunal and the reasons therefor, where reasons have been given. R.S.O. 1990, c. S.22, s. 20.

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[i] Despite the LAT being separate from the MAG per se, and certainly the likes of Ms. Im in her former representative capacity for the AGO in the JRPA Proceeding and Mr. Boyce acting for the LAT.

[ii] https://www.lawtimesnews.com/practice-areas/personal-injury/otla-pushes-for-urgent-licence-appeal-tribunal-review/389679#:~:text=The%20Ontario%20Trial%20Lawyers%20Ass 20analysis.

[iii] https://www.ontariocourts.ca/scj/practice/div-court-pd/#_Toc133391236

K

Kevin McLean <mrkevinalexandermcleanbajdcim@gmail.com> Fri, Feb 7, 10:17 PM

to LATregistrar, Doug.Downey, sean.weir, attorneygeneral

Dear LAT Registrar (copied to the above honourable and esteemed persons):

I confirm that I did not hear from you today. Do you wish for me to come pick up the same? Is it easier to have it on a USB for my pickup this Monday? I can be there

If not, I will presume that you can provide the same this Monday by the same time.

Thank you.

K

Kevin McLean <mrkevinalexandermcleanbajdcim@gmail.com> Mon, Feb 10, 4:37 PM

to Access.TO-TDO, LATregistrar, Doug.Downey, sean.weir, attorneygeneral

Dear LAT Registrar (copied to the above honourable and esteemed persons):

1. I am compelled to continue to copy Mr. Weir and the Honourable AGO until I have the requested records from the record of proceeding from the dura

2. I will presume that an in-person pick up is not the acceptable or amenable route so kindly disregard the same.

3. I have also copied the above email to the kind attention of Jennifer who directed me to the LAT registrar for these adjudicative records. (Good Afterno me with an individual name of a person who is responsible for these adjudicative records at the LAT?)

4. (Mr. Weir, I extend the same question to you as well)

5. (Dear all, if there are certain documents missing or lost, would you kindly provide me with which documents you believe those to be. Would you also determine if they are time stamped when filed or have any notations on the same?)

6. The matter remains urgent. Thank you.

K

Kevin McLean <mrkevinalexandermcleanbajdcim@gmail.com> Mon, Feb 10, 5:13 PM

to LATregistrar, sean.weir, attorneygeneral, Access.TO-TDO

Dear Sirs/Mesdames/Other Gender-Neutral Pronouns:

1. I write further to the above. In the circumstances, I confirm that I am entitled to the adjudicative records without an access request under FIPPA. However, records from the record of proceeding are missing from the time period denoted above, I confirm that my FIPPA request was made from the time herein delivered tomorrow. I am doing so out of an abundance of caution as I have not received any response from the LAT registrar which is terribly concerning.

2. (Dear Jennifer, in this regard, I will confirm when the five dollar application fee is delivered on my behalf. However, I will still presume that I will recei LAT registrar as per the Tribunal's obligation to do so. That being said, I confirm that all requested records must be retained from the time of my request wit administrative step to finalize the processing of the same. To the extent that the LAT registrar does not feel that the logs are part of the record of proceeding a are, then there will be a slight discrepancy.).

3. (Dear LAT Registrar, would kindly provide a sample document of one of my filings, a filing on behalf of TDGIC, a filing on behalf of SNIC and t Nieuwland on behalf of TDGIC and SNIC. I trust I can receive that by no later than noon tomorrow. While I should not have to compromise my legal rights, the same.)

4. (Dear Mr. Weir, if you have delegated the responsibility to another individual in this regard, would you kindly provide me with the contact information for

5. (In the circumstances, I will remove The Honourable Mr. Downey's direct email as he has notice of the same but keep the AGO email so it is aware of without even the courtesy of a response from the LAT registrar. I thank The Honourable Mr. Downy for the indulgence of including his email herein for prioritized. I can confirm that not a single record has been provided to me herein or from any other sources.)

3320

6. As a parting point here so we can work together as the record of proceeding is a matter that involves countless constitutional principles and the rule of law. to whether the Tribunal has the full and accurate record of proceeding from the time period above. If I do not hear from you by that time, which should not re presume that my fears and beliefs that some of those records from the record of proceeding are missing, lost, stolen, or otherwise unrecoverable. This can happ by the then case manager in Mr. Grant. However, transparency must accompany the same.

7. Thank you.

K

Kevin McLean <mrkevinalexandermcleanbajdcim@gmail.com> Wed, Feb 12, 1:29 PM

to LATregistrar, sean.weir, attorneygeneral, Access.TO-TDO

February 12, 2025

Re: the continued non-compliance with my access request of January 2025 which was redirected to the LAT Registrar as per its requirement to provide proceeding

Dear LAT Registrar, Executive Chair of Tribunals Ontario, Office of the Attorney General and Ms. Jennifer [last name unknown] (an officer in the privacy access requests made pursuant to FIPPA):

1. I write further to the above involving my access request made to the LAT in January 2025. I thank Ms. Jennifer for her prompt response and redirecti the necessity for the formality of the FIPPA request along with the payment of statutory and prescribed fees. Since the time of the redirection, I have no despite my inclusion of the above noted Executive Chair and AGO.

2. My requests pursuant to FIPPA and the LAT Registrar shall remain in perpetuity and until they are complied with in a strict and lawful manner.

3. As such, I confirm the scope of my access request for the record of proceeding in the LAT/AABS file number of 23-015662/AABS and confirm that all those requests. As this will now require me on the FIPPA side of the ledger to tender an application fee, I will confirm when that has been delivered to 2 respect the resources of all above, I will not need to have duplicate copies of the record of proceeding provided to me but now I am most curious to kno stonewalled in light of counsel for the Tribunal failing to file a single document from the record of proceeding in contravention of the JRPA and SPPA. Th in any event of any determinations in the Tribunal proceeding or before the ONSC Divisional Court or otherwise.

4. Kindly extend some professionalism and courtesy herein where applicable.

5. Thank you.

L

LATregistrar (MAG) Thu, Feb 13, 3:54 PM

to me

Good afternoon Mr. McLean,

We acknowledge and thank you for your emails sent between February 5 and February 12, 2025.

We thank you for your patience, while we review how best to compile and forward the records identified in your request. We will reach out to you with a

As your request relates to your application before the LAT, please continue to direct all your correspondence through LATRegistrar@ontario.ca only. W necessary.

Best Regards,

Hannah Lee (Pronouns: she/her) (learn more)
Case Management Officer
Licence Appeal Tribunal
Phone: 647-463-8220
Local 416-326-1356 / Toll free 1-888-444-0240
LATregistrar@ontario.ca
tribunalsontario.ca

K

Kevin McLean <mrkevinalexandermcleanbajdcim@gmail.com> Fri, Feb 14, 1:59 PM

to sean.weir, attorneygeneral, Access.TO-TDO, LATregistrar

February 14, 2025

Dear LAT Registrar (Ms. Lee), FIPPA privacy officer (Ms. Jennifer), EC of Tribunals Ontario and the AGO email:

I thank you for your response. I have copied Mr. Weir, the FIPPA privacy and AGO email as noted above. I have also copied the relevant parts of your email to the below as some of i privacy requests. I apologize for the brief delay on my part as I see your email came in late yesterday and I did not check this email until now.

However, that is entirely unacceptable on all fronts in relation to "how best to compile" the record of proceeding from December 23, 2023, to September 13, 2024.

Section 20 of the *SPPA*:

"Record of proceeding

20 A tribunal shall compile a record of any proceeding in which a hearing has been held which shall include,

(a) any application, complaint, reference or other document, if any, by which the proceeding was commenced;

(b) the notice of any hearing;

(c) any interlocutory orders made by the tribunal;

(d) all documentary evidence filed with the tribunal, subject to any limitation expressly imposed by any other Act on the extent to or the purposes for which any such documents may

(e) the transcript, if any, of the oral evidence given at the hearing; and

(f) the decision of the tribunal and the reasons therefor, where reasons have been given. R.S.O. 1990, c. S.22, s. 20."

Therefore, this explains exactly why these decisions issued by Vice Chair Morrissette and others were so askew with the facts because the Tribunal had not even compiled the record The duty to compile operates irrespective of whether any appeal or judicial review is advanced.

The requirement was to file the record of proceeding forthwith with the ONSC Divisional Court. The JRPA Application was brought in mid-November 2024. Mr. Boyce for the Tribu the Tribunal was to file an NOA forthwith which for the most part it did.

However, the Tribunal is only working on compiling the record now. There is nothing to discuss in terms of reaching out to me for information. I have already provided the informati so as a courtesy.

As such, the Tribunal is in breach of two sets of statutory duties. As stated, please provide what you have during those time periods on a forthwith basis to me. The time is now 1:55 p commence today.

Respectfully, this should not take more than 30 minutes to do as I am a party and it is a period of some 8.5 months. Kindly re-attach the same by reply email. Based on Alternatively, you can send via multiple piecemeal emails.

If you commence providing today, you can remove Mr. Weir and the AGO email address. Please remove Jennifer and her email in any event.

(Jennifer, I apologize for having you caught up in this email but I copied you to ensure that you are aware that I will be attending the relevant office (like last time) to deliver the fees separate thread with you so we do not conflate the two. However, for interim measure, it is the same as above with any logs from the back-end.)

Appendix

LATregistrar (MAG) Fel

to me

Good afternoon Mr. McLean,

We acknowledge and thank you for your emails sent between February 5 and February 12, 2025.

We thank you for your patience, while we review how best to compile and forward the records identified in your request. We will reach out to you with additional information by Fel

Best Regards,

...

[Message clipped] View entire message

K

Kevin McLean <mrkevinalexandermcleanbajdcim@gmail.com> Fri, Feb 14, 2:47 PM

to Access.TO-TDO

Good Afternoon Jennifer:

I have directed this email solely to you as per the above. I was going to start a new thread but instead of doing the same for urgency purposes, I have forwarded the sar application fee dropped off at the 25 Grosvenor Street location and confirm the same when that is complete. I will start a separate thread hereafter. As confirm, I am se possession and control as it relates to 23-0115662/AABS involving McLean v. Security National Insurance Company (formerly McLean v. TD General Insurance Con during that period i.e. ones that were filed to this email.

I am also seeking the logs as particularized above. Thank you

...

[Message clipped] View entire message

K

Kevin McLean <mrkevinalexandermcleanbajdcim@gmail.com> Sun, Feb 23, 12:23 PM (5 days ago)

to Access.TO-TDO

Dear Jennifer:

I hope you are well. I am currently still recovering from a medical procedure from last week and I have another two this week. As such, you will likely receive my aut (attention: LAT Registrar) has entirely failed in providing me with a copy of the record of proceeding from December 24, 2023, to September 13, 2024. Despite Ms. L to me on February 21, 2024, said date came and went. As such, I confirm that my access request is extant and the only thing remaining is that of the five dollar fee to b deliver the amount to your attention.

As noted, my access request is slightly broader than the above which will include any logs (electronic or hard copy) during that time as to the parties et al. However, tc provided sufficient particulars, I propose the following. If there is an index of all filings, with screenshots of the back-end (i.e. change of parties), during the relevant p As such, if that exists, would you kindly provide me with an electronic copy of the same as soon as you are able? I will then be in a position to confirm that I do not ne

3322 Thank you.

...

[Message clipped] View entire message

K

Kevin McLean <mrkevinalexandermcleanbajdcim@gmail.com> Wed, Feb 26, 1:48 PM (2 days ago)

to LATregistrar

Dear LAT Registrar (and to Ms. Lee):

I write regarding the above. I confirm you have failed to provide the record of proceeding from the ROP Temporal Period. You did not follow up on February 21, 2025 the records that make up the record of proceeding.

Please provide the same by the end of the business day to this email herein. I make this demand and request for all of the above reasons.

I appreciate the Tribunal does not have the full and accurate record of the proceeding from the ROP Temporal Period due to that technological issue (framed as a "pow said, that will make the provision of what the Tribunal has in its possession and control all the easier and simplified.

Thank you.

L

LATregistrar (MAG) Thu, Feb 27, 11:02 AM (1 day ago)

to me

Good morning,

Thank you for your email. Please see the attached index of all documents on this file.

Thank you for your patience.

--

My best regards to you,

Kevin A. McLean (B.A., J.D., CIM)
Chartered Investment Manager
E (personal and confidential): mrkevinalexandermcleanbajdcim@gmail.com

DISCLAIMER

1. *The content of this email is confidential and intended for the recipient specified in message only. It is strictly forbidden to share any part of this m consent of the sender. If you received this message by mistake, please reply to this message and follow with its deletion, so that we can ensure*
2. *Due to being an accident, this email may be dictated in part or full with voice recognition software. Kindly excuse any errors for grammar, syntax*

--

My best regards to you,

Kevin A. McLean (B.A., J.D., CIM)
Chartered Investment Manager
E (personal and confidential): mrkevinalexandermcleanbajdcim@gmail.com

DISCLAIMER

1. *The content of this email is confidential and intended for the recipient specified in message only. It is strictly forbidden to share any part of this mes consent of the sender. If you received this message by mistake, please reply to this message and follow with its deletion, so that we can ensure su*
2. *Due to being an accident, this email may be dictated in part or full with voice recognition software. Kindly excuse any errors for grammar, syntax or*

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My best regards to you,

Kevin A. McLean (B.A., J.D., CIM)
Chartered Investment Manager
E (personal and confidential): mrkevinalexandermcleanbajdcim@gmail.com

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Kevin McLean <mrkevinalexandermcleanbajdcim@gmail.com>
To: "Access.TO-TDO (MAG)" <Access.TO-TDO@ontario.ca>

Dear LAT (Privacy Section):

I confirm that I will be expecting a compliant FIPPA response by end of the business day. To the extent that you are working tomorrow, which I presume not, I will also accept on said dat day.

Thank you.

On Wed, Apr 9, 2025 at 9:48 AM Kevin McLean <mrkevinalexandermcleanbajdcim@gmail.com> wrote:

April 9, 2025

Good Morning to you LAT Privacy Division:

1. I hope you are well. I write to confirm that the responsive decision and access to the requested records (personal information) are due in approximately 9 days. As such, I c has been sought and I have particularized the request with sufficient detail. I confirm that the application fee was received in mid March 2025 by the LAT privacy division.

2. I further confirm that the request (non-FIPPA) of the LAT Registrar was wasteful but for the apparent print-out of some of the documents in the record of proceeding so pr exhibiting of the same.

On Sun, Mar 23, 2025 at 10:08 AM Kevin McLean <mrkevinalexandermcleanbajdcim@gmail.com> wrote:

March 23, 2025

EXCLUSIVELY FOR PURPOSES HEREIN

File number: [please provide]
Type of document: email with hard copy of finalized and particularized access request
Short title of request: *McLean and LAT (FIPPA Division)*
From: Mr. Kevin A. McLean (B.A., J.D, CIM), defendant and moving party (the “Applicant” or "Requestor")

Re: confirmed delivery of the application fee and further particularized access request (attached herein)

Dear LAT (privacy division):

1. I write to confirm that the five dollar application fee was delivered last week with your offices at 25 Grosvenor Street, Toronto. By my computation, this would in turn n 2025.

2. I enclosed a letter regarding the same which is now re-attached. As noted therein, I apologize for the delay as I was recovering from an accident where I was hit while wa

3. In any event, I thank the kind and helpful individuals for their assistance in bringing to the attention of the privacy officers involved in searching for the requested reco unhelpful, I am not wasting collective resources on that route any further.

4. As the finalized and delivered access request is highly particularized, I will presume no clarity is required.

5. The only thing I can imagine by way of supplementation is that of confirming the legal grounds for why I am entitled to access.

6. I kindly note that to the extent that I do not receive access within the 30 calendar days, I will file an appeal with the OIPC (ON) without further notice. I hope that will n

7. If you would kindly provide me with your file number assigned to this request, I would be most grateful.

8. Thank You kindly and I look forward to receipt of the requested records (even on a piecemeal basis) at your earliest opportunity.

On Fri, Feb 28, 2025 at 2:24 PM Kevin McLean <mrkevinalexandermcleanbajdcim@gmail.com> wrote:

Dear LAT access and privacy division:

I write to confirm that I am proceeding with my access request. I have started a separate thread for ease of reference but copied the previous emails. I was about to h Tribunal provided what it called an index but was a print out of some back-end. Nonetheless, this should make the access request more simple. Moreover, I will be a majority of these documents and pick out certain documents. However, my access request will still include the previous request for logs, change of parties, et al. I dc refers to TD General Insurance Company on or around page 130. Therefore, it appears that will be a seminal time. I will confirm when the five dollars is delivered. T

APPENDIX

Access Request - McLean - LAT/AABS - record of proceeding - index, list or print out - 23-015662/AABS

K

Kevin McLean <**mrkevinalexandermcleanbajdcim@gmail.com**> Sat, Jan 25, 12:21 PM

to Access.TO-TDO

January 25, 2025

Good Afternoon to you LAT/AABS privacy division (*FIPPA*):

I am making an access request for a copy of a list, index or print out of the filed documents in the record of proceeding involving the LAT file 23-015662/AABS frc 12, 2024. I am the Appellant therein.

I look forward to working with you on how best to obtain a list, index or print out of what was filed on the back-end of your system for documents that were e-filec various times which were: (i) TD General Insurance Company ("TDGIC"); and (ii) Security National Insurance Company ("SNIC").

I am seeking a list or index, unless it is easier and more efficient for you to send me a PDF of all of the documents filed by myself, and the aforementioned insura representative by one Mr. Nieuwland on or around January 30, 2024, and on or around June 28, 2024.

Please also provide any records that denote the "style of cause" at the various times as it appears on your back-end portal.

I may provide some further background information regarding the same but I trust this satisfies what I am seeking in the primary or in the alternative (depending have delivered the $5 application fee to the location at 25 Grosvenor Street, Toronto, Ontario as the 15 Grosvenor Street, Toronto, Ontario, location was not accessib

I will presume on the above that a print out will be the easiest from your back-end and kindly provide the same herein via email. If a print out of the back-end wi above, kindly provide the same.

Thank you.

--

My best regards to you,

Kevin A. McLean (B.A., J.D., CIM)
Chartered Investment Manager
E (personal and confidential): mrkevinalexandermcleanbajdcim@gmail.com

DISCLAIMER

1. *The content of this email is confidential and intended for the recipient specified in message only. It is strictly forbidden to share any part of consent of the sender. If you received this message by mistake, please reply to this message and follow with its deletion, so that we can ensu*
2. *Due to being an accident, this email may be dictated in part or full with voice recognition software. Kindly excuse any errors for grammar, s*

A

Access.TO-TDO (MAG) Fri, Jan 31, 3:14 PM

to me

Good afternoon Kevin,

Thank you for your email. Because you're seeking copies of the adjudicative records for your own LAT-AABS application file, you can resubmit your b directly to the LAT via email at LATregistrar@ontario.ca.

Have a nice weekend,
Jennifer

Senior Policy Advisor, FOI

3326 Access to Records and Information Office
Access.TO-TDO@ontario.ca

Confidential message which may be privileged. If received in error, please delete the message and advise me by return email.
Message confidentiel dont le contenu peut être privilégié. Si reçu par erreur, veuillez supprimer ce message et aviser l'expéditeur par retour de courri

From: Kevin McLean <mrkevinalexandermcleanbajdcim@gmail.com>
Sent: Saturday, January 25, 2025 12:21 PM
To: Access.TO-TDO (MAG) <Access.TO-TDO@ontario.ca>
Subject: Access Request - McLean - LAT/AABS - record of proceeding - index, list or print out - 23-015662/AABS

CAUTION -- EXTERNAL E-MAIL - Do not click links or open attachments unless you recognize the s

January 25, 2025

Good Afternoon to you LAT/AABS privacy division (*FIPPA*):

I am making an access request for a copy of a list, index or print out of the filed documents in the record of proceeding involving the LAT file 23-015662/AABS fro 12, 2024. I am the Appellant therein.

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I am seeking a list or index, unless it is easier and more efficient for you to send me a PDF of all of the documents filed by myself, and the aforementioned insura representative by one Mr. Nieuwland on or around January 30, 2024, and on or around June 28, 2024.

Please also provide any records that denote the "style of cause" at the various times as it appears on your back-end portal.

I may provide some further background information regarding the same but I trust this satisfies what I am seeking in the primary or in the alternative (depending have delivered the $5 application fee to the location at 25 Grosvenor Street, Toronto, Ontario as the 15 Grosvenor Street, Toronto, Ontario, location was not accessib

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Thank you.

--

My best regards to you,

Kevin A. McLean (B.A., J.D., CIM)
Chartered Investment Manager
E (personal and confidential): mrkevinalexandermcleanbajdcim@gmail.com

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1. *The content of this email is confidential and intended for the recipient specified in message only. It is strictly forbidden to share any part o consent of the sender. If you received this message by mistake, please reply to this message and follow with its deletion, so that we can ensu*
2. *Due to being an accident, this email may be dictated in part or full with voice recognition software. Kindly excuse any errors for grammar,*

K

Kevin McLean <mrkevinalexandermcleanbajdcim@gmail.com> Wed, Feb 5, 2:45 PM

to Access.TO-TDO

Thanks Jennifer. I confirm receipt of the email. Greatly appreciated. I will try that route. To confirm on the previous one, as I APPRECIATED it got a lit helpful and professional, I did not file an appeal with OIPC (ON). Trusting that said route will solve my request, I wish you well.

K

Kevin McLean <mrkevinalexandermcleanbajdcim@gmail.com> Wed, Feb 5, 3:40 PM

to LATregistrar

February 5, 2025

VIA EMAIL: LATregistrar@ontario.ca.

Dear LAT Registrar:

1. I write regarding the above.

2. Kindly see the below email which was initially cast as a FIPPA request but thanks to Jennifer's response, I am redirecting the same to the esteemed LAT

3. I trust the above is sufficiently clear and precise with enough details but I may supplement to assist further.

4. Kindly only respond to this email for this access request for adjudicative records. As I have never seen what an adjudicative record looks like after sub assistance to a sample of the same i.e. whether it is time stamped with any additional information with style of cause. For clarity purposes, I am only seeking or individual in the AABS matter denoted below from December 24, 2023, to September 13, 2024. You may send the records to me on a piecemeal basis. I as how to the LAT proceeding was denoted as there were some change of parties and counsel at various times. A screenshot from those material times should

5. Thank you.

K

Kevin McLean <mrkevinalexandermcleanbajdcim@gmail.com> Wed, Feb 5, 3:57 PM

to LATregistrar

February 5, 2025

Re: my access request for the adjudicative records from December 23, 2023, to September 13, 2024, involving McLean v. SNIC formerly McLean v. TDGIC in L

Dear LAT Registrar:

1. I wish to confirm that this access request for adjudicative records arises because counsel to the Tribunal in Mr. Boyce in the Divisional Court proceeding weeks from the time I brought the judicial review application which was November 15, 2024. While the statutory requirement is forthwith filing (see: sect not meet his self-imposed deadline. As such, I will assist the court, as it is for its use.

2. Mr. Boyce is Mr. Jesse Aaron Boyce in the event you needed to cross-reference. It is unclear why he is so delinquent in the same but nonetheless if the of proceeding, I can advise the court of the same and plug the gap.

3. I will provide some further details to assist with important dates and deadlines with copies of my documents so we can work together.

4. Thank you.

K

Kevin McLean <mrkevinalexandermcleanbajdcim@gmail.com> Fri, Feb 7, 7:49 AM

to Doug.Downey, sean.weir, attorneygeneral, LATregistrar

February 7, 2025

URGENT

VIA EMAIL

Re: urgent request for the adjudicative records herein

Re #2: inclusion of The Honourable Mr. Downey and the esteemed Mr. Weir, Executive Chair of Tribunals Ontario for oversight and the provision of the reco "**Tribunal**") file number 23-0155662/AABS from December 23, 2023, to September 13, 2024 (the "**ROP Temporal Period**")

Dear LAT Registrar (copied to the AGO and EC of Tribunals Ontario):

1. I again thank Jennifer of the access and privacy division for the LAT for confirming with me that the record of proceeding from December 23, 2023, to S am entitled to without the necessity of a formal *FIPPA* request along with the statutory and prescribed fees. As such, I confirm that the *FIPPA* time periods do

2. In light of the above issues with delays along with failure to comply with one of the more basic aspects of a statutory requirements under section 10 system[ii], I have copied Mr. Sean Weir, Executive Chair ("EC") of Tribunals Ontario and The Honourable Mr. Attorney General of Ontario in Mr. Downey f the above purposes but also in light of his learned counsel in Ms. Judie Im in the **JRPA Proceeding** denoted by file number above Court File No. DC-2 participate in the same as of late last week.

3. As the relevant decision-makers of the LAT at the relevant time purported to rely on the record of proceeding, it must be provided to a party in mys documents were filed electronically so the LAT, with its resources and technological capabilities, with presumably AWS as the storage provider, return acces be the most rudimentary of tasks.

4. The lack of a confirmatory response is most concerning and appears to be part of a pattern. My belief is that the LAT does not have a full and accurate outages" at various times. As we know, "technology happens" from time to time. As such, please provide the **ROP** from the **ROP** Temporal Period by n **Temporal Period**. By my computation, we are looking at a period of 264 days.

5. I may provide a subsequent email of what I will be expecting that you will be providing today. To the extent that you wish to provide some piecemeal to I am amenable with said approach. That being said, I cannot imagine that it is not possible to complete that which is in the possession and control of the L copies.

6. To the extent that none of the records from the ROP during the ROP Temporal Period are provided today, I will presume that the Tribunal has lost or had Temporal Period.

7. As The Honourable Mr. Downey will undoubtedly know, as the chief law officer in this province, the language chosen by our Legislature was for the Tr decision) to file forthwith the record of proceeding for the court's use. However, one Mr. Boyce imposed an arbitrary timeline of three to four weeks in mid the Tribunal. In a subsequent email to myself, with others copied, he had contrived a non-statutory timeline of 60 days from November 15, 2024 (i.e. the behalf of the Tribunal, had not met either then or now.

8. I also ground my belief that the Tribunal either does not have a full and accurate record of proceeding on the bases of the above but also that some of th makers in June, July and September 2024 were not conversant with the documents and facts. In this regard, they were askew by not only time periods but th me to believe that they did not have the entire ROP at those times. Moreover, there were continued references to *McLean v. TD General Insurance Company* favour which was a motion served and filed by me in mid May 2024 culminating in a decision of the Tribunal (Adjudicator Morrissette as she then was) change of the respondent from TDGIC to Security National Insurance Company. As such, those "adjudicative records" will also include the below at section that a responsive pleading like a statutory response under section 280(2) of the *Insurance Act* is not explicitly captured. However, I would respectfully subm and it is "evidence" albeit not sworn but signed by an individual representative on behalf of an insurance company (i.e. true, accurate and complete).

9. When providing the same, kindly denote the same in the following format: “Record of Proceeding [24-Dec-2023 – Sept 13-2024] – Respondent - Lic
you are unable or unwilling to do so, I will solely change the title of the document to the same with various volumes depending on size (i.e. for the curre
While it is for the Tribunal to have filed the same, Mr. Boyce has only been interested in filing a Notice of Appearance and no interest in facing the merits o
most basic of duties.

10. I trust, in copying two of the great legal minds in our province in the Honourable AGO and former managing partner of Canada’s last largest law firn
reference the *purpose* of the filing of the record of proceeding by the Tribunal. Perhaps, the LAT, in its somewhat infancy being in its nearly tenth year by n
purpose of requiring a tribunal or adjudicator to file a "record of proceedings" is to ensure that when the court reviews the tribunal's decision, it has t
tribunal in the first instance. A court reviewing an adjudicative decision may look at decisions to admit evidence, submissions of witnesses, and other eviden
[or tribunal] of first instance: *Payne v. Ontario Human Rights Commission*, 2000 CanLII 5731 (ONCA) [“*Payne*”] at para. 23. *Payne* was adopted by th
decisis, but in referencing that long standing legal precedent nearly a half quarter century later in *Lachance* (as per the Honourable Justices Myers, Stewar
Court found:

> “[37] I agree with the finding of Ryan Bell J. that by bringing this application for judicial review the applicants became entitled to recei
> adopted the words of Sharpe JA in *Payne v. Ontario Human Rights Commission*, 2000 CanLII 5731 (ON CA) at paragraph 161
>
> > An applicant for judicial review has the right to have a full and accurate record of what went on before the tribunal put before the c
> > powers of judicial review. A superior court may insist upon the production of an adequate record of the proceedings before the tribunal
>
> [38] When met by a reluctant decision-maker, the applicants always had the ability to obtain the documents that they needed to advance the

11. As such, an interesting interplay arises between the forthwith filing requirement of the Tribunal with the court for its use, the inherent jurisdiction of
applicant’s rights on judicial review.

12. Arguably the most important precedential statement of law to come from *Payne* was its adoption, verbatim in parts, of the precedent from The Honourab
Gilmore, [1957] 1 Q.B. 574 at 583 (C.A.) which was:

> “A statutory body subject to judicial review cannot immunize itself or its process by arriving at decisions on considerations that are no
>
> (see: paragraph 161 of Payne (ONCA)).

13. As such, it matters not the *source* (equitable, common law, statutory, prescribed or otherwise) of the legal obligation or whether it is to file forthwith
obligation that requires immediate rectification.
14. Without conflating a previous access request of the LAT, I was impressed with the rapidity that the access and privacy division provided access to some
on the email thread. I invoked the same herein due to a more urgent and pressing request for the very adjudicative records I am so entitled, the court is er
entitled to discharge its supervisory powers so section 96 to 101 of the *Constitution Act of Canada* is adhered to.

15. Trusting the Tribunal will provide the compiled record of proceeding, at the various times and then added to over time, by today at three p.m. (as ther
2024) to me as a party (the ‘applicant’ or ‘appellant’ depending on the preferred nomenclature), I can remove the Honourable AGO and EC of Tribunals C
important work that they do whilst confirming the satisfactory closure of my request.

16. Thank you for your compliance with the above, and I most look forward to confirming the closure of this request. A copy of this email may follow via fa
caution.

Appendix

Record of proceeding

20 A tribunal shall compile a record of any proceeding in which a hearing has been held which shall include,

(a) any application, complaint, reference or other document, if any, by which the proceeding was commenced;

(b) the notice of any hearing;

(c) any interlocutory orders made by the tribunal;

(d) all documentary evidence filed with the tribunal, subject to any limitation expressly imposed by any other Act on the extent to or the purposes for which
proceeding;

(e) the transcript, if any, of the oral evidence given at the hearing; and

(f) the decision of the tribunal and the reasons therefor, where reasons have been given. R.S.O. 1990, c. S.22, s. 20.

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[i] Despite the LAT being separate from the MAG per se, and certainly the likes of Ms. Im in her former representative capacity for the AGO in the JRPA Proceeding and Mr. Boyce acting for the LA
[ii] https://www.lawtimesnews.com/practice-areas/personal-injury/otla-pushes-for-urgent-licence-appeal-tribunal-review/389679#:~:text=The%20Ontario%20Trial%20Lawyers%20A
20analysis.
[iii] https://www.ontariocourts.ca/scj/practice/div-court-pd/#_Toc133391236

K

Kevin McLean <mrkevinalexandermcleanbajdcim@gmail.com> Fri, Feb 7, 10:17 PM

to LATregistrar, Doug.Downey, sean.weir, attorneygeneral

Dear LAT Registrar (copied to the above honourable and esteemed persons):

I confirm that I did not hear from you today. Do you wish for me to come pick up the same? Is it easier to have it on a USB for my pickup this Monday? I can be the

If not, I will presume that you can provide the same this Monday by the same time.

Thank you.

K

Kevin McLean <mrkevinalexandermcleanbajdcim@gmail.com> Mon, Feb 10, 4:37 PM

to Access.TO-TDO, LATregistrar, Doug.Downey, sean.weir, attorneygeneral

Dear LAT Registrar (copied to the above honourable and esteemed persons):

1. I am compelled to continue to copy Mr. Weir and the Honourable AGO until I have the requested records from the record of proceeding from the du

2. I will presume that an in-person pick up is not the acceptable or amenable route so kindly disregard the same.

3. I have also copied the above email to the kind attention of Jennifer who directed me to the LAT registrar for these adjudicative records. (Good After me with an individual name of a person who is responsible for these adjudicative records at the LAT?)

4. (Mr. Weir, I extend the same question to you as well)

5. (Dear all, if there are certain documents missing or lost, would you kindly provide me with which documents you believe those to be. Would you als determine if they are time stamped when filed or have any notations on the same?)

6. The matter remains urgent. Thank you.

K

Kevin McLean <mrkevinalexandermcleanbajdcim@gmail.com> Mon, Feb 10, 5:13 PM

to LATregistrar, sean.weir, attorneygeneral, Access.TO-TDO

Dear Sirs/Mesdames/Other Gender-Neutral Pronouns:

1. I write further to the above. In the circumstances, I confirm that I am entitled to the adjudicative records without an access request under FIPPA. Howev records from the record of proceeding are missing from the time period denoted above, I confirm that my FIPPA request was made from the time here delivered tomorrow. I am doing so out of an abundance of caution as I have not received any response from the LAT registrar which is terribly concerning.

2. (Dear Jennifer, in this regard, I will confirm when the five dollar application fee is delivered on my behalf. However, I will still presume that I will rec LAT registrar as per the Tribunal's obligation to do so. That being said, I confirm that all requested records must be retained from the time of my request v administrative step to finalize the processing of the same. To the extent that the LAT registrar does not feel that the logs are part of the record of proceedin are, then there will be a slight discrepancy.).

3. (Dear LAT Registrar, would kindly provide a sample document of one of my filings, a filing on behalf of TDGIC, a filing on behalf of SNIC and Nieuwland on behalf of TDGIC and SNIC. I trust I can receive that by no later than noon tomorrow. While I should not have to compromise my legal righ the same.)

4. (Dear Mr. Weir, if you have delegated the responsibility to another individual in this regard, would you kindly provide me with the contact information fo

5. (In the circumstances, I will remove The Honourable Mr. Downey's direct email as he has notice of the same but keep the AGO email so it is aware without even the courtesy of a response from the LAT registrar. I thank The Honourable Mr. Downy for the indulgence of including his email herein fo prioritized. I can confirm that not a single record has been provided to me herein or from any other sources.)

6. As a parting point here so we can work together as the record of proceeding is a matter that involves countless constitutional principles and the rule of la to whether the Tribunal has the full and accurate record of proceeding from the time period above. If I do not hear from you by that time, which should not presume that my fears and beliefs that some of those records from the record of proceeding are missing, lost, stolen, or otherwise unrecoverable. This can ha by the then case manager in Mr. Grant. However, transparency must accompany the same.

7. Thank you.

K

Kevin McLean <mrkevinalexandermcleanbajdcim@gmail.com> Wed, Feb 12, 1:29 PM

to LATregistrar, sean.weir, attorneygeneral, Access.TO-TDO

February 12, 2025

Re: the continued non-compliance with my access request of January 2025 which was redirected to the LAT Registrar as per its requirement to provi proceeding

Dear LAT Registrar, Executive Chair of Tribunals Ontario, Office of the Attorney General and Ms. Jennifer [last name unknown] (an officer in the priva access requests made pursuant to FIPPA):

1. I write further to the above involving my access request made to the LAT in January 2025. I thank Ms. Jennifer for her prompt response and redirec the necessity for the formality of the FIPPA request along with the payment of statutory and prescribed fees. Since the time of the redirection, I have r despite my inclusion of the above noted Executive Chair and AGO.

2. My requests pursuant to FIPPA and the LAT Registrar shall remain in perpetuity and until they are complied with in a strict and lawful manner.

3. As such, I confirm the scope of my access request for the record of proceeding in the LAT/AABS file number of 23-015662/AABS and confirm that those requests. As this will now require me on the FIPPA side of the ledger to tender an application fee, I will confirm when that has been delivered to respect the resources of all above, I will not need to have duplicate copies of the record of proceeding provided to me but now I am most curious to k stonewalled in light of counsel for the Tribunal failing to file a single document from the record of proceeding in contravention of the JRPA and SPPA. in any event of any determinations in the Tribunal proceeding or before the ONSC Divisional Court or otherwise.

4. Kindly extend some professionalism and courtesy herein where applicable.

5. Thank you.

L

LATregistrar (MAG) Thu, Feb 13, 3:54 PM

to me

Good afternoon Mr. McLean,

We acknowledge and thank you for your emails sent between February 5 and February 12, 2025.

We thank you for your patience, while we review how best to compile and forward the records identified in your request. We will reach out to you with

As your request relates to your application before the LAT, please continue to direct all your correspondence through LATRegistrar@ontario.ca only. necessary.

Best Regards,

Hannah Lee (Pronouns: she/her) (learn more)
Case Management Officer
Licence Appeal Tribunal
Phone: 647-463-8220
Local 416-326-1356 / Toll free 1-888-444-0240
LATregistrar@ontario.ca
tribunalsontario.ca

K

Kevin McLean <mrkevinalexandermcleanbajdcim@gmail.com> Fri, Feb 14, 1:59 PM

to sean.weir, attorneygeneral, Access.TO-TDO, LATregistrar

February 14, 2025

Dear LAT Registrar (Ms. Lee), FIPPA privacy officer (Ms. Jennifer), EC of Tribunals Ontario and the AGO email:

I thank you for your response. I have copied Mr. Weir, the FIPPA privacy and AGO email as noted above. I have also copied the relevant parts of your email to the below as some o privacy requests. I apologize for the brief delay on my part as I see your email came in late yesterday and I did not check this email until now.

However, that is entirely unacceptable on all fronts in relation to "how best to compile" the record of proceeding from December 23, 2023, to September 13, 2024.

Section 20 of the *SPPA*:

> **"Record of proceeding**
>
> **20** A tribunal shall compile a record of any proceeding in which a hearing has been held which shall include,
>
> (a) any application, complaint, reference or other document, if any, by which the proceeding was commenced;
>
> (b) the notice of any hearing;
>
> (c) any interlocutory orders made by the tribunal;
>
> (d) all documentary evidence filed with the tribunal, subject to any limitation expressly imposed by any other Act on the extent to or the purposes for which any such documents m
>
> (e) the transcript, if any, of the oral evidence given at the hearing; and
>
> (f) the decision of the tribunal and the reasons therefor, where reasons have been given. R.S.O. 1990, c. S.22, s. 20."

Therefore, this explains exactly why these decisions issued by Vice Chair Morrissette and others were so askew with the facts because the Tribunal had not even compiled the reco The duty to compile operates irrespective of whether any appeal or judicial review is advanced.

The requirement was to file the record of proceeding forthwith with the ONSC Divisional Court. The JRPA Application was brought in mid-November 2024. Mr. Boyce for the Tril the Tribunal was to file an NOA forthwith which for the most part it did.

However, the Tribunal is only working on compiling the record now. There is nothing to discuss in terms of reaching out to me for information. I have already provided the informa so as a courtesy.

As such, the Tribunal is in breach of two sets of statutory duties. As stated, please provide what you have during those time periods on a forthwith basis to me. The time is now 1:5 commence today.

Respectfully, this should not take more than 30 minutes to do as I am a party and it is a period of some 8.5 months. Kindly re-attach the same by reply email. Based Alternatively, you can send via multiple piecemeal emails.

If you commence providing today, you can remove Mr. Weir and the AGO email address. Please remove Jennifer and her email in any event.

(Jennifer, I apologize for having you caught up in this email but I copied you to ensure that you are aware that I will be attending the relevant office (like last time) to deliver the fe separate thread with you so we do not conflate the two. However, for interim measure, it is the same as above with any logs from the back-end.)

Appendix

LATregistrar (MAG) I

to me
Good afternoon Mr. McLean,

We acknowledge and thank you for your emails sent between February 5 and February 12, 2025.

We thank you for your patience, while we review how best to compile and forward the records identified in your request. We will reach out to you with additional information by F

Best Regards,
...

[Message clipped] View entire message

K

Kevin McLean <mrkevinalexandermcleanbajdcim@gmail.com> Fri, Feb 14, 2:47 PM

to Access.TO-TDO

Good Afternoon Jennifer:

I have directed this email solely to you as per the above. I was going to start a new thread but instead of doing the same for urgency purposes, I have forwarded the s application fee dropped off at the 25 Grosvenor Street location and confirm the same when that is complete. I will start a separate thread hereafter. As confirm, I am possession and control as it relates to 23-0115662/AABS involving McLean v. Security National Insurance Company (formerly McLean v. TD General Insurance C during that period i.e. ones that were filed to this email.

I am also seeking the logs as particularized above. Thank you

...

[Message clipped] View entire message

K

Kevin McLean <mrkevinalexandermcleanbajdcim@gmail.com> Sun, Feb 23, 12:23 PM (5 days ago)

to Access.TO-TDO

Dear Jennifer:

I hope you are well. I am currently still recovering from a medical procedure from last week and I have another two this week. As such, you will likely receive my a (attention: LAT Registrar) has entirely failed in providing me with a copy of the record of proceeding from December 24, 2023, to September 13, 2024. Despite Ms. to me on February 21, 2024, said date came and went. As such, I confirm that my access request is extant and the only thing remaining is that of the five dollar fee t deliver the amount to your attention.

As noted, my access request is slightly broader than the above which will include any logs (electronic or hard copy) during that time as to the parties et al. However, provided sufficient particulars, I propose the following. If there is an index of all filings, with screenshots of the back-end (i.e. change of parties), during the relevant As such, if that exists, would you kindly provide me with an electronic copy of the same as soon as you are able? I will then be in a position to confirm that I do not

Thank you.

...

[Message clipped] View entire message

K

Kevin McLean <mrkevinalexandermcleanbajdcim@gmail.com> Wed, Feb 26, 1:48 PM (2 days ago)

to LATregistrar

Dear LAT Registrar (and to Ms. Lee):

I write regarding the above. I confirm you have failed to provide the record of proceeding from the ROP Temporal Period. You did not follow up on February 21, 20 the records that make up the record of proceeding.

Please provide the same by the end of the business day to this email herein. I make this demand and request for all of the above reasons.

I appreciate the Tribunal does not have the full and accurate record of the proceeding from the ROP Temporal Period due to that technological issue (framed as a "pc said, that will make the provision of what the Tribunal has in its possession and control all the easier and simplified.

Thank you.

L

3332 **LATregistrar (MAG)** Thu, Feb 27, 11:02 AM (1 day ago)

to me

Good morning,

Thank you for your email. Please see the attached index of all documents on this file.

Thank you for your patience.

--

My best regards to you,

Kevin A. McLean (B.A., J.D., CIM)
Chartered Investment Manager
E (personal and confidential): mrkevinalexandermcleanbajdcim@gmail.com

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   consent of the sender. If you received this message by mistake, please reply to this message and follow with its deletion, so that we can ensur
2. *Due to being an accident, this email may be dictated in part or full with voice recognition software. Kindly excuse any errors for grammar, synta*

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My best regards to you,

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52 attachments

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Kevin McLean <mrkevinalexandermcleanbajdcim@gmail.com>
To: "Access.TO-TDO (MAG)" <Access.TO-TDO@ontario.ca>

April 18, 2025

Re: 30 days have expired since the LAT received my application fee for my access request

Dear Licence Appeal Tribunal (FIPPA Division): I write to confirm that 30 days have expired since I made my LAT request and tendered the application fee of five dollars that was receiv
been any requests for clarification or fees since that time. Thank you.

On Thu, Apr 17, 2025 at 4:30 PM Kevin McLean <mrkevinalexandermcleanbajdcim@gmail.com> wrote:

> Dear LAT (Privacy Section):
>
> I confirm that I will be expecting a compliant FIPPA response by end of the business day. To the extent that you are working tomorrow, which I presume not, I will also accept on said d
> day.
>
> Thank you.
>
> On Wed, Apr 9, 2025 at 9:48 AM Kevin McLean <mrkevinalexandermcleanbajdcim@gmail.com> wrote:
>
> > April 9, 2025
> >
> > Good Morning to you LAT Privacy Division:
> >
> > 1. I hope you are well. I write to confirm that the responsive decision and access to the requested records (personal information) are due in approximately 9 days. As such, I
> > has been sought and I have particularized the request with sufficient detail. I confirm that the application fee was received in mid March 2025 by the LAT privacy division.
> >
> > 2. I further confirm that the request (non-FIPPA) of the LAT Registrar was wasteful but for the apparent print-out of some of the documents in the record of proceeding so p
> > exhibiting of the same.
> >
> > On Sun, Mar 23, 2025 at 10:08 AM Kevin McLean <mrkevinalexandermcleanbajdcim@gmail.com> wrote:
> >
> > > March 23, 2025
> > >
> > > **EXCLUSIVELY FOR PURPOSES HEREIN**
> > >
> > > File number: [please provide]
> > > Type of document: email with hard copy of finalized and particularized access request
> > > Short title of request: *McLean and LAT (FIPPA Division)*
> > > From: Mr. Kevin A. McLean (B.A., J.D, CIM), defendant and moving party (the "Applicant" or "Requestor")
> > >
> > > **Re: confirmed delivery of the application fee and further particularized access request (attached herein)**
> > >
> > > Dear LAT (privacy division):
> > >
> > > 1. I write to confirm that the five dollar application fee was delivered last week with your offices at 25 Grosvenor Street, Toronto. By my computation, this would in turn
> > > 2025.
> > >
> > > 2. I enclosed a letter regarding the same which is now re-attached. As noted therein, I apologize for the delay as I was recovering from an accident where I was hit while
> > >
> > > 3. In any event, I thank the kind and helpful individuals for their assistance in bringing to the attention of the privacy officers involved in searching for the requested rec
> > > unhelpful, I am not wasting collective resources on that route any further.
> > >
> > > 4. As the finalized and delivered access request is highly particularized, I will presume no clarity is required.

5. The only thing I can imagine by way of supplementation is that of confirming the legal grounds for why I am entitled to access.

6. I kindly note that to the extent that I do not receive access within the 30 calendar days, I will file an appeal with the OIPC (ON) without further notice. I hope that will

7. If you would kindly provide me with your file number assigned to this request, I would be most grateful.

8. Thank You kindly and I look forward to receipt of the requested records (even on a piecemeal basis) at your earliest opportunity.

On Fri, Feb 28, 2025 at 2:24 PM Kevin McLean <mrkevinalexandermcleanbajdcim@gmail.com> wrote:

Dear LAT access and privacy division:

I write to confirm that I am proceeding with my access request. I have started a separate thread for ease of reference but copied the previous emails. I was about to
Tribunal provided what it called an index but was a print out of some back-end. Nonetheless, this should make the access request more simple. Moreover, I will be
majority of these documents and pick out certain documents. However, my access request will still include the previous request for logs, change of parties, et al. I
refers to TD General Insurance Company on or around page 130. Therefore, it appears that will be a seminal time. I will confirm when the five dollars is delivered

APPENDIX

Access Request - McLean - LAT/AABS - record of proceeding - index, list or print out - 23-015662/AABS

K

Kevin McLean <**mrkevinalexandermcleanbajdcim@gmail.com**> Sat, Jan 25, 12:21 PM

to Access.TO-TDO

January 25, 2025

Good Afternoon to you LAT/AABS privacy division (*FIPPA*):

I am making an access request for a copy of a list, index or print out of the filed documents in the record of proceeding involving the LAT file 23-015662/AABS f
12, 2024. I am the Appellant therein.

I look forward to working with you on how best to obtain a list, index or print out of what was filed on the back-end of your system for documents that were e-fi
various times which were: (i) TD General Insurance Company ("TDGIC"); and (ii) Security National Insurance Company ("SNIC").

I am seeking a list or index, unless it is easier and more efficient for you to send me a PDF of all of the documents filed by myself, and the aforementioned insu
representative by one Mr. Nieuwland on or around January 30, 2024, and on or around June 28, 2024.

Please also provide any records that denote the "style of cause" at the various times as it appears on your back-end portal.

I may provide some further background information regarding the same but I trust this satisfies what I am seeking in the primary or in the alternative (dependin
have delivered the $5 application fee to the location at 25 Grosvenor Street, Toronto, Ontario as the 15 Grosvenor Street, Toronto, Ontario, location was not access

I will presume on the above that a print out will be the easiest from your back-end and kindly provide the same herein via email. If a print out of the back-end v
above, kindly provide the same.

Thank you.

--

My best regards to you,

Kevin A. McLean (B.A., J.D., CIM)
Chartered Investment Manager
E (personal and confidential): mrkevinalexandermcleanbajdcim@gmail.com

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A

Access.TO-TDO (MAG) Fri, Jan 31, 3:14 PM

to me

Good afternoon Kevin,

Thank you for your email. Because you're seeking copies of the adjudicative records for your own LAT-AABS application file, you can resubmit your
directly to the LAT via email at LATregistrar@ontario.ca.

Have a nice weekend,

3336

Jennifer

Senior Policy Advisor, FOI
Access to Records and Information Office
Access.TO-TDO@ontario.ca

Confidential message which may be privileged. If received in error, please delete the message and advise me by return email.
Message confidentiel dont le contenu peut être privilégié. Si reçu par erreur, veuillez supprimer ce message et aviser l'expéditeur par retour de cou

From: Kevin McLean <mrkevinalexandermcleanbajdcim@gmail.com>
Sent: Saturday, January 25, 2025 12:21 PM
To: Access.TO-TDO (MAG) <Access.TO-TDO@ontario.ca>
Subject: Access Request - McLean - LAT/AABS - record of proceeding - index, list or print out - 23-015662/AABS

CAUTION -- EXTERNAL E-MAIL - Do not click links or open attachments unless you recognize the

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above, kindly provide the same.

Thank you.

--

My best regards to you,

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2. *Due to being an accident, this email may be dictated in part or full with voice recognition software. Kindly excuse any errors for gramma*

K

Kevin McLean <**mrkevinalexandermcleanbajdcim@gmail.com**> Wed, Feb 5, 2:45 PM

to Access.TO-TDO

Thanks Jennifer. I confirm receipt of the email. Greatly appreciated. I will try that route. To confirm on the previous one, as I APPRECIATED it got a helpful and professional, I did not file an appeal with OIPC (ON). Trusting that said route will solve my request, I wish you well.

K

Kevin McLean <**mrkevinalexandermcleanbajdcim@gmail.com**> Wed, Feb 5, 3:40 PM

to LATregistrar

February 5, 2025

VIA EMAIL: LATregistrar@ontario.ca.

Dear LAT Registrar:

1. I write regarding the above.

2. Kindly see the below email which was initially cast as a FIPPA request but thanks to Jennifer's response, I am redirecting the same to the esteemed LA

3. I trust the above is sufficiently clear and precise with enough details but I may supplement to assist further.

4. Kindly only respond to this email for this access request for adjudicative records. As I have never seen what an adjudicative record looks like after su
assistance to a sample of the same i.e. whether it is time stamped with any additional information with style of cause. For clarity purposes, I am only seeki

or individual in the AABS matter denoted below from December 24, 2023, to September 13, 2024. You may send the records to me on a piecemeal basis. as how to the LAT proceeding was denoted as there were some change of parties and counsel at various times. A screenshot from those material times shou

5. Thank you.

K

Kevin McLean <mrkevinalexandermcleanbajdcim@gmail.com> Wed, Feb 5, 3:57 PM

to LATregistrar

February 5, 2025

Re: my access request for the adjudicative records from December 23, 2023, to September 13, 2024, involving McLean v. SNIC formerly McLean v. TDGIC in

Dear LAT Registrar:

1. I wish to confirm that this access request for adjudicative records arises because counsel to the Tribunal in Mr. Boyce in the Divisional Court proceedir weeks from the time I brought the judicial review application which was November 15, 2024. While the statutory requirement is forthwith filing (see: se not meet his self-imposed deadline. As such, I will assist the court, as it is for its use.

2. Mr. Boyce is Mr. Jesse Aaron Boyce in the event you needed to cross-reference. It is unclear why he is so delinquent in the same but nonetheless if tl of proceeding, I can advise the court of the same and plug the gap.

3. I will provide some further details to assist with important dates and deadlines with copies of my documents so we can work together.

4. Thank you.

K

Kevin McLean <mrkevinalexandermcleanbajdcim@gmail.com> Fri, Feb 7, 7:49 AM

to Doug.Downey, sean.weir, attorneygeneral, LATregistrar

February 7, 2025

URGENT

VIA EMAIL

Re: urgent request for the adjudicative records herein

Re #2: inclusion of The Honourable Mr. Downey and the esteemed Mr. Weir, Executive Chair of Tribunals Ontario for oversight and the provision of the re "**Tribunal**") file number 23-0155662/AABS from December 23, 2023, to September 13, 2024 (the "**ROP Temporal Period**")

Dear LAT Registrar (copied to the AGO and EC of Tribunals Ontario):

1. I again thank Jennifer of the access and privacy division for the LAT for confirming with me that the record of proceeding from December 23, 2023, tc am entitled to without the necessity of a formal *FIPPA* request along with the statutory and prescribed fees. As such, I confirm that the *FIPPA* time periods

2. In light of the above issues with delays along with failure to comply with one of the more basic aspects of a statutory requirements under section 1 system[ii], I have copied Mr. Sean Weir, Executive Chair ("EC") of Tribunals Ontario and The Honourable Mr. Attorney General of Ontario in Mr. Downey the above purposes but also in light of his learned counsel in Ms. Judie Im in the **JRPA Proceeding** denoted by file number above Court File No. DC participate in the same as of late last week.

3. As the relevant decision-makers of the LAT at the relevant time purported to rely on the record of proceeding, it must be provided to a party in m documents were filed electronically so the LAT, with its resources and technological capabilities, with presumably AWS as the storage provider, return acc be the most rudimentary of tasks.

4. The lack of a confirmatory response is most concerning and appears to be part of a pattern. My belief is that the LAT does not have a full and accura outages" at various times. As we know, "technology happens" from time to time. As such, please provide the **ROP** from the **ROP** Temporal Period by **Temporal Period**. By my computation, we are looking at a period of 264 days.

5. I may provide a subsequent email of what I will be expecting that you will be providing today. To the extent that you wish to provide some piecemeal I am amenable with said approach. That being said, I cannot imagine that it is not possible to complete that which is in the possession and control of the copies.

6. To the extent that none of the records from the ROP during the ROP Temporal Period are provided today, I will presume that the Tribunal has lost or h Temporal Period.

7. As The Honourable Mr. Downey will undoubtedly know, as the chief law officer in this province, the language chosen by our Legislature was for the decision) to file forthwith the record of proceeding for the court's use. However, one Mr. Boyce imposed an arbitrary timeline of three to four weeks in m the Tribunal. In a subsequent email to myself, with others copied, he had contrived a non-statutory timeline of 60 days from November 15, 2024 (i.e. tl behalf of the Tribunal, had not met either then or now.

8. I also ground my belief that the Tribunal either does not have a full and accurate record of proceeding on the bases of the above but also that some of makers in June, July and September 2024 were not conversant with the documents and facts. In this regard, they were askew by not only time periods but me to believe that they did not have the entire ROP at those times. Moreover, there were continued references to *McLean v. TD General Insurance Compa* favour which was a motion served and filed by me in mid May 2024 culminating in a decision of the Tribunal (Adjudicator Morrissette as she then was

change of the respondent from TDGIC to Security National Insurance Company. As such, those "adjudicative records" will also include the below at secti that a responsive pleading like a statutory response under section 280(2) of the *Insurance Act* is not explicitly captured. However, I would respectfully sub and it is "evidence" albeit not sworn but signed by an individual representative on behalf of an insurance company (i.e. true, accurate and complete).

9. When providing the same, kindly denote the same in the following format: "Record of Proceeding [24-Dec-2023 – Sept 13-2024] – Respondent - L you are unable or unwilling to do so, I will solely change the title of the document to the same with various volumes depending on size (i.e. for the cur While it is for the Tribunal to have filed the same, Mr. Boyce has only been interested in filing a Notice of Appearance and no interest in facing the merits most basic of duties.

10. I trust, in copying two of the great legal minds in our province in the Honourable AGO and former managing partner of Canada's last largest law fi reference the *purpose* of the filing of the record of proceeding by the Tribunal. Perhaps, the LAT, in its somewhat infancy being in its nearly tenth year by purpose of requiring a tribunal or adjudicator to file a "record of proceedings" is to ensure that when the court reviews the tribunal's decision, it has tribunal in the first instance. A court reviewing an adjudicative decision may look at decisions to admit evidence, submissions of witnesses, and other evid [or tribunal] of first instance: *Payne v. Ontario Human Rights Commission*, 2000 CanLII 5731 (ONCA) ["*Payne*"] at para. 23. *Payne* was adopted by decisis, but in referencing that long standing legal precedent nearly a half quarter century later in *Lachance* (as per the Honourable Justices Myers, Stew Court found:

> "[37] I agree with the finding of Ryan Bell J. that by bringing this application for judicial review the applicants became entitled to rec adopted the words of Sharpe JA in *Payne v. Ontario Human Rights Commission*, 2000 CanLII 5731 (ON CA) at paragraph 161
>
> > An applicant for judicial review has the right to have a full and accurate record of what went on before the tribunal put before the powers of judicial review. A superior court may insist upon the production of an adequate record of the proceedings before the tribur
>
> [38] When met by a reluctant decision-maker, the applicants always had the ability to obtain the documents that they needed to advance t

11. As such, an interesting interplay arises between the forthwith filing requirement of the Tribunal with the court for its use, the inherent jurisdiction c applicant's rights on judicial review.

12. Arguably the most important precedential statement of law to come from *Payne* was its adoption, verbatim in parts, of the precedent from The Honour *Gilmore,* [1957] 1 Q.B. 574 at 583 (C.A.) which was:

> "A statutory body subject to judicial review cannot immunize itself or its process by arriving at decisions on considerations that are r
>
> (see: paragraph 161 of Payne (ONCA)).

13. As such, it matters not the *source* (equitable, common law, statutory, prescribed or otherwise) of the legal obligation or whether it is to file forthwi obligation that requires immediate rectification.
14. Without conflating a previous access request of the LAT, I was impressed with the rapidity that the access and privacy division provided access to sor on the email thread. I invoked the same herein due to a more urgent and pressing request for the very adjudicative records I am so entitled, the court is entitled to discharge its supervisory powers so section 96 to 101 of the *Constitution Act of Canada* is adhered to.

15. Trusting the Tribunal will provide the compiled record of proceeding, at the various times and then added to over time, by today at three p.m. (as th 2024) to me as a party (the 'applicant' or 'appellant' depending on the preferred nomenclature), I can remove the Honourable AGO and EC of Tribunals important work that they do whilst confirming the satisfactory closure of my request.

16. Thank you for your compliance with the above, and I most look forward to confirming the closure of this request. A copy of this email may follow via caution.

Appendix

Record of proceeding

20 A tribunal shall compile a record of any proceeding in which a hearing has been held which shall include,

(a) any application, complaint, reference or other document, if any, by which the proceeding was commenced;

(b) the notice of any hearing;

(c) any interlocutory orders made by the tribunal;

(d) all documentary evidence filed with the tribunal, subject to any limitation expressly imposed by any other Act on the extent to or the purposes for whic proceeding;

(e) the transcript, if any, of the oral evidence given at the hearing; and

(f) the decision of the tribunal and the reasons therefor, where reasons have been given. R.S.O. 1990, c. S.22, s. 20.

---

[i] Despite the LAT being separate from the MAG per se, and certainly the likes of Ms. Im in her former representative capacity for the AGO in the JRPA Proceeding and Mr. Boyce acting for the I

[ii] https://www.lawtimesnews.com/practice-areas/personal-injury/otla-pushes-for-urgent-licence-appeal-tribunal-review/389679#:~:text=The%20Ontario%20Trial%20Lawyers%20 20analysis.

[iii] https://www.ontariocourts.ca/scj/practice/div-court-pd/#_Toc133391236

K

Kevin McLean <mrkevinalexandermcleanbajdcim@gmail.com> Fri, Feb 7, 10:17 PM

3339

to LATregistrar, Doug.Downey, sean.weir, attorneygeneral

Dear LAT Registrar (copied to the above honourable and esteemed persons):

I confirm that I did not hear from you today. Do you wish for me to come pick up the same? Is it easier to have it on a USB for my pickup this Monday? I can be t

If not, I will presume that you can provide the same this Monday by the same time.

Thank you.

K

Kevin McLean <mrkevinalexandermcleanbajdcim@gmail.com> Mon, Feb 10, 4:37 PM

to Access.TO-TDO, LATregistrar, Doug.Downey, sean.weir, attorneygeneral

Dear LAT Registrar (copied to the above honourable and esteemed persons):

1. I am compelled to continue to copy Mr. Weir and the Honourable AGO until I have the requested records from the record of proceeding from the

2. I will presume that an in-person pick up is not the acceptable or amenable route so kindly disregard the same.

3. I have also copied the above email to the kind attention of Jennifer who directed me to the LAT registrar for these adjudicative records. (Good Aft me with an individual name of a person who is responsible for these adjudicative records at the LAT?)

4. (Mr. Weir, I extend the same question to you as well)

5. (Dear all, if there are certain documents missing or lost, would you kindly provide me with which documents you believe those to be. Would you a determine if they are time stamped when filed or have any notations on the same?)

6. The matter remains urgent. Thank you.

K

Kevin McLean <mrkevinalexandermcleanbajdcim@gmail.com> Mon, Feb 10, 5:13 PM

to LATregistrar, sean.weir, attorneygeneral, Access.TO-TDO

Dear Sirs/Mesdames/Other Gender-Neutral Pronouns:

1. I write further to the above. In the circumstances, I confirm that I am entitled to the adjudicative records without an access request under FIPPA. Howe records from the record of proceeding are missing from the time period denoted above, I confirm that my FIPPA request was made from the time he delivered tomorrow. I am doing so out of an abundance of caution as I have not received any response from the LAT registrar which is terribly concerning.

2. (Dear Jennifer, in this regard, I will confirm when the five dollar application fee is delivered on my behalf. However, I will still presume that I will LAT registrar as per the Tribunal's obligation to do so. That being said, I confirm that all requested records must be retained from the time of my request administrative step to finalize the processing of the same. To the extent that the LAT registrar does not feel that the logs are part of the record of proceedi are, then there will be a slight discrepancy.).

3. (Dear LAT Registrar, would kindly provide a sample document of one of my filings, a filing on behalf of TDGIC, a filing on behalf of SNIC a Nieuwland on behalf of TDGIC and SNIC. I trust I can receive that by no later than noon tomorrow. While I should not have to compromise my legal rig the same.)

4. (Dear Mr. Weir, if you have delegated the responsibility to another individual in this regard, would you kindly provide me with the contact information

5. (In the circumstances, I will remove The Honourable Mr. Downey's direct email as he has notice of the same but keep the AGO email so it is awa without even the courtesy of a response from the LAT registrar. I thank The Honourable Mr. Downy for the indulgence of including his email herein prioritized. I can confirm that not a single record has been provided to me herein or from any other sources.)

6. As a parting point here so we can work together as the record of proceeding is a matter that involves countless constitutional principles and the rule of to whether the Tribunal has the full and accurate record of proceeding from the time period above. If I do not hear from you by that time, which should n presume that my fears and beliefs that some of those records from the record of proceeding are missing, lost, stolen, or otherwise unrecoverable. This can by the then case manager in Mr. Grant. However, transparency must accompany the same.

7. Thank you.

K

Kevin McLean <mrkevinalexandermcleanbajdcim@gmail.com> Wed, Feb 12, 1:29 PM

to LATregistrar, sean.weir, attorneygeneral, Access.TO-TDO

February 12, 2025

Re: the continued non-compliance with my access request of January 2025 which was redirected to the LAT Registrar as per its requirement to pro proceeding

Dear LAT Registrar, Executive Chair of Tribunals Ontario, Office of the Attorney General and Ms. Jennifer [last name unknown] (an officer in the pri access requests made pursuant to FIPPA):

3340

1. I write further to the above involving my access request made to the LAT in January 2025. I thank Ms. Jennifer for her prompt response and redir the necessity for the formality of the FIPPA request along with the payment of statutory and prescribed fees. Since the time of the redirection, I have despite my inclusion of the above noted Executive Chair and AGO.

2. My requests pursuant to FIPPA and the LAT Registrar shall remain in perpetuity and until they are complied with in a strict and lawful manner.

3. As such, I confirm the scope of my access request for the record of proceeding in the LAT/AABS file number of 23-015662/AABS and confirm tha those requests. As this will now require me on the FIPPA side of the ledger to tender an application fee, I will confirm when that has been delivered respect the resources of all above, I will not need to have duplicate copies of the record of proceeding provided to me but now I am most curious to stonewalled in light of counsel for the Tribunal failing to file a single document from the record of proceeding in contravention of the JRPA and SPPA in any event of any determinations in the Tribunal proceeding or before the ONSC Divisional Court or otherwise.

4. Kindly extend some professionalism and courtesy herein where applicable.

5. Thank you.

L

LATregistrar (MAG) Thu, Feb 13, 3:54 PM

to me

Good afternoon Mr. McLean,

We acknowledge and thank you for your emails sent between February 5 and February 12, 2025.

We thank you for your patience, while we review how best to compile and forward the records identified in your request. We will reach out to you w

As your request relates to your application before the LAT, please continue to direct all your correspondence through LATRegistrar@ontario.ca only necessary.

Best Regards,

Hannah Lee (Pronouns: she/her) (learn more)
Case Management Officer
Licence Appeal Tribunal
Phone: 647-463-8220
Local 416-326-1356 / Toll free 1-888-444-0240
LATregistrar@ontario.ca
tribunalsontario.ca

K

Kevin McLean <mrkevinalexandermcleanbajdcim@gmail.com> Fri, Feb 14, 1:59 PM

to sean.weir, attorneygeneral, Access.TO-TDO, LATregistrar

February 14, 2025

Dear LAT Registrar (Ms. Lee), FIPPA privacy officer (Ms. Jennifer), EC of Tribunals Ontario and the AGO email:

I thank you for your response. I have copied Mr. Weir, the FIPPA privacy and AGO email as noted above. I have also copied the relevant parts of your email to the below as some privacy requests. I apologize for the brief delay on my part as I see your email came in late yesterday and I did not check this email until now.

However, that is entirely unacceptable on all fronts in relation to "how best to compile" the record of proceeding from December 23, 2023, to September 13, 2024.

Section 20 of the *SPPA*:

"Record of proceeding

20 A tribunal shall compile a record of any proceeding in which a hearing has been held which shall include,

(a) any application, complaint, reference or other document, if any, by which the proceeding was commenced;

(b) the notice of any hearing;

(c) any interlocutory orders made by the tribunal;

(d) all documentary evidence filed with the tribunal, subject to any limitation expressly imposed by any other Act on the extent to or the purposes for which any such documents

(e) the transcript, if any, of the oral evidence given at the hearing; and

(f) the decision of the tribunal and the reasons therefor, where reasons have been given. R.S.O. 1990, c. S.22, s. 20."

Therefore, this explains exactly why these decisions issued by Vice Chair Morrissette and others were so askew with the facts because the Tribunal had not even compiled the rec The duty to compile operates irrespective of whether any appeal or judicial review is advanced.

The requirement was to file the record of proceeding forthwith with the ONSC Divisional Court. The JRPA Application was brought in mid-November 2024. Mr. Boyce for the T the Tribunal was to file an NOA forthwith which for the most part it did.

However, the Tribunal is only working on compiling the record now. There is nothing to discuss in terms of reaching out to me for information. I have already provided the infor so as a courtesy.

3341

As such, the Tribunal is in breach of two sets of statutory duties. As stated, please provide what you have during those time periods on a forthwith basis to me. The time is now 1 commence today.

Respectfully, this should not take more than 30 minutes to do as I am a party and it is a period of some 8.5 months. Kindly re-attach the same by reply email. Base Alternatively, you can send via multiple piecemeal emails.

If you commence providing today, you can remove Mr. Weir and the AGO email address. Please remove Jennifer and her email in any event.

(Jennifer, I apologize for having you caught up in this email but I copied you to ensure that you are aware that I will be attending the relevant office (like last time) to deliver the separate thread with you so we do not conflate the two. However, for interim measure, it is the same as above with any logs from the back-end.)

Appendix

LATregistrar (MAG)

to me
Good afternoon Mr. McLean,

We acknowledge and thank you for your emails sent between February 5 and February 12, 2025.

We thank you for your patience, while we review how best to compile and forward the records identified in your request. We will reach out to you with additional information by

Best Regards,
...

[Message clipped] View entire message

K

Kevin McLean <**mrkevinalexandermcleanbajdcim@gmail.com**> Fri, Feb 14, 2:47 PM

to Access.TO-TDO

Good Afternoon Jennifer:

I have directed this email solely to you as per the above. I was going to start a new thread but instead of doing the same for urgency purposes, I have forwarded the application fee dropped off at the 25 Grosvenor Street location and confirm the same when that is complete. I will start a separate thread hereafter. As confirm, I ar possession and control as it relates to 23-0115662/AABS involving McLean v. Security National Insurance Company (formerly McLean v. TD General Insurance during that period i.e. ones that were filed to this email.

I am also seeking the logs as particularized above. Thank you

...

[Message clipped] View entire message

K

Kevin McLean <**mrkevinalexandermcleanbajdcim@gmail.com**> Sun, Feb 23, 12:23 PM (5 days ago)

to Access.TO-TDO

Dear Jennifer:

I hope you are well. I am currently still recovering from a medical procedure from last week and I have another two this week. As such, you will likely receive my (attention: LAT Registrar) has entirely failed in providing me with a copy of the record of proceeding from December 24, 2023, to September 13, 2024. Despite M to me on February 21, 2024, said date came and went. As such, I confirm that my access request is extant and the only thing remaining is that of the five dollar fee deliver the amount to your attention.

As noted, my access request is slightly broader than the above which will include any logs (electronic or hard copy) during that time as to the parties et al. Howeve provided sufficient particulars, I propose the following. If there is an index of all filings, with screenshots of the back-end (i.e. change of parties), during the releva As such, if that exists, would you kindly provide me with an electronic copy of the same as soon as you are able? I will then be in a position to confirm that I do nc

Thank you.

...

[Message clipped] View entire message

K

Kevin McLean <**mrkevinalexandermcleanbajdcim@gmail.com**> Wed, Feb 26, 1:48 PM (2 days ago)

to LATregistrar

Dear LAT Registrar (and to Ms. Lee):

I write regarding the above. I confirm you have failed to provide the record of proceeding from the ROP Temporal Period. You did not follow up on February 21, 2 the records that make up the record of proceeding.

Please provide the same by the end of the business day to this email herein. I make this demand and request for all of the above reasons.

I appreciate the Tribunal does not have the full and accurate record of the proceeding from the ROP Temporal Period due to that technological issue (framed as a " said, that will make the provision of what the Tribunal has in its possession and control all the easier and simplified.

Thank you.

L

LATregistrar (MAG) Thu, Feb 27, 11:02 AM (1 day ago)

to me

Good morning,

Thank you for your email. Please see the attached index of all documents on this file.

Thank you for your patience.

--

My best regards to you,

Kevin A. McLean (B.A., J.D., CIM)
Chartered Investment Manager
E (personal and confidential): mrkevinalexandermcleanbajdcim@gmail.com

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2. *Due to being an accident, this email may be dictated in part or full with voice recognition software. Kindly excuse any errors for grammar, syn*

--

My best regards to you,

Kevin A. McLean (B.A., J.D., CIM)
Chartered Investment Manager
E (personal and confidential): mrkevinalexandermcleanbajdcim@gmail.com

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My best regards to you,

Kevin A. McLean (B.A., J.D., CIM)
Chartered Investment Manager
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My best regards to you,

Kevin A. McLean (B.A., J.D., CIM)
Chartered Investment Manager
E (personal and confidential): mrkevinalexandermcleanbajdcim@gmail.com

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My best regards to you,

Kevin A. McLean (B.A., J.D., CIM)
Chartered Investment Manager
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Kevin McLean <mrkevinalexandermcleanbajdcim@gmail.com>
To: "Access.TO-TDO (MAG)" <Access.TO-TDO@ontario.ca>

Dear LAT (FIPPA Division): I confirm that, by any computation, you have failed to respond within 30 calendar days. I took into consideration Good Friday and potentially Easter Monday
Your administrative body continues to fail me in every sense of the word. In my view, you continue to fail in discharging the public interest. It is unfathomable that the LAT takes appl
same and does not even respond within 30 calendar days. The inferences as to why are most obvious. I confirm your requirement to preserve any and all information subject to the access

On Fri, Apr 18, 2025 at 1:08 PM Kevin McLean <mrkevinalexandermcleanbajdcim@gmail.com> wrote:

> April 18, 2025
>
> **Re: 30 days have expired since the LAT received my application fee for my access request**
>
> Dear Licence Appeal Tribunal (FIPPA Division): I write to confirm that 30 days have expired since I made my LAT request and tendered the application fee of five dollars that was rece
> been any requests for clarification or fees since that time. Thank you.
>
> On Thu, Apr 17, 2025 at 4:30 PM Kevin McLean <mrkevinalexandermcleanbajdcim@gmail.com> wrote:
>
> > Dear LAT (Privacy Section):
> >
> > I confirm that I will be expecting a compliant FIPPA response by end of the business day. To the extent that you are working tomorrow, which I presume not, I will also accept on saic
> > day.
> >
> > Thank you.
> >
> > On Wed, Apr 9, 2025 at 9:48 AM Kevin McLean <mrkevinalexandermcleanbajdcim@gmail.com> wrote:
> >
> > > April 9, 2025
> > >
> > > Good Morning to you LAT Privacy Division:
> > >
> > > 1. I hope you are well. I write to confirm that the responsive decision and access to the requested records (personal information) are due in approximately 9 days. As such
> > > has been sought and I have particularized the request with sufficient detail. I confirm that the application fee was received in mid March 2025 by the LAT privacy division.

2. I further confirm that the request (non-FIPPA) of the LAT Registrar was wasteful but for the apparent print-out of some of the documents in the record of proceeding s exhibiting of the same.

On Sun, Mar 23, 2025 at 10:08 AM Kevin McLean <mrkevinalexandermcleanbajdcim@gmail.com> wrote:

March 23, 2025

EXCLUSIVELY FOR PURPOSES HEREIN

File number: [please provide]
Type of document: email with hard copy of finalized and particularized access request
Short title of request: *McLean and LAT (FIPPA Division)*
From: Mr. Kevin A. McLean (B.A., J.D, CIM), defendant and moving party (the "Applicant" or "Requestor")

Re: confirmed delivery of the application fee and further particularized access request (attached herein)

Dear LAT (privacy division):

1. I write to confirm that the five dollar application fee was delivered last week with your offices at 25 Grosvenor Street, Toronto. By my computation, this would in tu 2025.

2. I enclosed a letter regarding the same which is now re-attached. As noted therein, I apologize for the delay as I was recovering from an accident where I was hit whi

3. In any event, I thank the kind and helpful individuals for their assistance in bringing to the attention of the privacy officers involved in searching for the requested unhelpful, I am not wasting collective resources on that route any further.

4. As the finalized and delivered access request is highly particularized, I will presume no clarity is required.

5. The only thing I can imagine by way of supplementation is that of confirming the legal grounds for why I am entitled to access.

6. I kindly note that to the extent that I do not receive access within the 30 calendar days, I will file an appeal with the OIPC (ON) without further notice. I hope that w

7. If you would kindly provide me with your file number assigned to this request, I would be most grateful.

8. Thank You kindly and I look forward to receipt of the requested records (even on a piecemeal basis) at your earliest opportunity.

On Fri, Feb 28, 2025 at 2:24 PM Kevin McLean <mrkevinalexandermcleanbajdcim@gmail.com> wrote:

Dear LAT access and privacy division:

I write to confirm that I am proceeding with my access request. I have started a separate thread for ease of reference but copied the previous emails. I was about Tribunal provided what it called an index but was a print out of some back-end. Nonetheless, this should make the access request more simple. Moreover, I will majority of these documents and pick out certain documents. However, my access request will still include the previous request for logs, change of parties, et al. refers to TD General Insurance Company on or around page 130. Therefore, it appears that will be a seminal time. I will confirm when the five dollars is deliver

APPENDIX

Access Request - McLean - LAT/AABS - record of proceeding - index, list or print out - 23-015662/AABS

K

Kevin McLean <mrkevinalexandermcleanbajdcim@gmail.com> Sat, Jan 25, 12:21 PM

to Access.TO-TDO

January 25, 2025

Good Afternoon to you LAT/AABS privacy division (*FIPPA*):

I am making an access request for a copy of a list, index or print out of the filed documents in the record of proceeding involving the LAT file 23-015662/AABS 12, 2024. I am the Appellant therein.

I look forward to working with you on how best to obtain a list, index or print out of what was filed on the back-end of your system for documents that were e- various times which were: (i) TD General Insurance Company ("TDGIC"); and (ii) Security National Insurance Company ("SNIC").

I am seeking a list or index, unless it is easier and more efficient for you to send me a PDF of all of the documents filed by myself, and the aforementioned ir representative by one Mr. Nieuwland on or around January 30, 2024, and on or around June 28, 2024.

Please also provide any records that denote the "style of cause" at the various times as it appears on your back-end portal.

I may provide some further background information regarding the same but I trust this satisfies what I am seeking in the primary or in the alternative (depend have delivered the $5 application fee to the location at 25 Grosvenor Street, Toronto, Ontario as the 15 Grosvenor Street, Toronto, Ontario, location was not acce

I will presume on the above that a print out will be the easiest from your back-end and kindly provide the same herein via email. If a print out of the back-enc above, kindly provide the same.

Thank you.

--

My best regards to you,

Kevin A. McLean (B.A., J.D., CIM)
Chartered Investment Manager
E (personal and confidential): mrkevinalexandermcleanbajdcim@gmail.com

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2. *Due to being an accident, this email may be dictated in part or full with voice recognition software. Kindly excuse any errors for gramm*

A

Access.TO-TDO (MAG) Fri, Jan 31, 3:14 PM

to me

Good afternoon Kevin,

Thank you for your email. Because you're seeking copies of the adjudicative records for your own LAT-AABS application file, you can resubmit yo directly to the LAT via email at LATregistrar@ontario.ca.

Have a nice weekend,
Jennifer

Senior Policy Advisor, FOI
Access to Records and Information Office
Access.TO-TDO@ontario.ca

Confidential message which may be privileged. If received in error, please delete the message and advise me by return email.
Message confidentiel dont le contenu peut être privilégié. Si reçu par erreur, veuillez supprimer ce message et aviser l'expéditeur par retour de cc

From: Kevin McLean <mrkevinalexandermcleanbajdcim@gmail.com>
Sent: Saturday, January 25, 2025 12:21 PM
To: Access.TO-TDO (MAG) <Access.TO-TDO@ontario.ca>
Subject: Access Request - McLean - LAT/AABS - record of proceeding - index, list or print out - 23-015662/AABS

CAUTION -- EXTERNAL E-MAIL - Do not click links or open attachments unless you recognize t

January 25, 2025

Good Afternoon to you LAT/AABS privacy division (*FIPPA*):

I am making an access request for a copy of a list, index or print out of the filed documents in the record of proceeding involving the LAT file 23-015662/AABS 12, 2024. I am the Appellant therein.

I look forward to working with you on how best to obtain a list, index or print out of what was filed on the back-end of your system for documents that were e- various times which were: (i) TD General Insurance Company ("TDGIC"); and (ii) Security National Insurance Company ("SNIC").

I am seeking a list or index, unless it is easier and more efficient for you to send me a PDF of all of the documents filed by myself, and the aforementioned ir representative by one Mr. Nieuwland on or around January 30, 2024, and on or around June 28, 2024.

Please also provide any records that denote the "style of cause" at the various times as it appears on your back-end portal.

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I will presume on the above that a print out will be the easiest from your back-end and kindly provide the same herein via email. If a print out of the back-enc above, kindly provide the same.

Thank you.

--

My best regards to you,

Kevin A. McLean (B.A., J.D., CIM)
Chartered Investment Manager
E (personal and confidential): mrkevinalexandermcleanbajdcim@gmail.com

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2. *Due to being an accident, this email may be dictated in part or full with voice recognition software. Kindly excuse any errors for gramm*

K

Kevin McLean <mrkevinalexandermcleanbajdcim@gmail.com> Wed, Feb 5, 2:45 PM

to Access.TO-TDO

Thanks Jennifer. I confirm receipt of the email. Greatly appreciated. I will try that route. To confirm on the previous one, as I APPRECIATED it got helpful and professional, I did not file an appeal with OIPC (ON). Trusting that said route will solve my request, I wish you well.

K

Kevin McLean <mrkevinalexandermcleanbajdcim@gmail.com> Wed, Feb 5, 3:40 PM

to LATregistrar

February 5, 2025

VIA EMAIL: LATregistrar@ontario.ca.

Dear LAT Registrar:

1. I write regarding the above.

2. Kindly see the below email which was initially cast as a FIPPA request but thanks to Jennifer's response, I am redirecting the same to the esteemed L

3. I trust the above is sufficiently clear and precise with enough details but I may supplement to assist further.

4. Kindly only respond to this email for this access request for adjudicative records. As I have never seen what an adjudicative record looks like after assistance to a sample of the same i.e. whether it is time stamped with any additional information with style of cause. For clarity purposes, I am only seel or individual in the AABS matter denoted below from December 24, 2023, to September 13, 2024. You may send the records to me on a piecemeal bas as how to the LAT proceeding was denoted as there were some change of parties and counsel at various times. A screenshot from those material times sh

5. Thank you.

K

Kevin McLean <mrkevinalexandermcleanbajdcim@gmail.com> Wed, Feb 5, 3:57 PM

to LATregistrar

February 5, 2025

Re: my access request for the adjudicative records from December 23, 2023, to September 13, 2024, involving McLean v. SNIC formerly McLean v. TDGIC

Dear LAT Registrar:

1. I wish to confirm that this access request for adjudicative records arises because counsel to the Tribunal in Mr. Boyce in the Divisional Court proceed weeks from the time I brought the judicial review application which was November 15, 2024. While the statutory requirement is forthwith filing (see: not meet his self-imposed deadline. As such, I will assist the court, as it is for its use.

2. Mr. Boyce is Mr. Jesse Aaron Boyce in the event you needed to cross-reference. It is unclear why he is so delinquent in the same but nonetheless if of proceeding, I can advise the court of the same and plug the gap.

3. I will provide some further details to assist with important dates and deadlines with copies of my documents so we can work together.

4. Thank you.

K

Kevin McLean <mrkevinalexandermcleanbajdcim@gmail.com> Fri, Feb 7, 7:49 AM

to Doug.Downey, sean.weir, attorneygeneral, LATregistrar

February 7, 2025

URGENT

VIA EMAIL

Re: urgent request for the adjudicative records herein

Re #2: inclusion of The Honourable Mr. Downey and the esteemed Mr. Weir, Executive Chair of Tribunals Ontario for oversight and the provision of the "**Tribunal**") file number 23-0155662/AABS from December 23, 2023, to September 13, 2024 (the "**ROP Temporal Period**")

Dear LAT Registrar (copied to the AGO and EC of Tribunals Ontario):

1. I again thank Jennifer of the access and privacy division for the LAT for confirming with me that the record of proceeding from December 23, 2023, am entitled to without the necessity of a formal *FIPPA* request along with the statutory and prescribed fees. As such, I confirm that the *FIPPA* time perio

2. In light of the above issues with delays along with failure to comply with one of the more basic aspects of a statutory requirements under section system[ii], I have copied Mr. Sean Weir, Executive Chair ("EC") of Tribunals Ontario and The Honourable Mr. Attorney General of Ontario in Mr. Down the above purposes but also in light of his learned counsel in Ms. Judie Im in the **JRPA Proceeding** denoted by file number above Court File No. L participate in the same as of late last week.

3. As the relevant decision-makers of the LAT at the relevant time purported to rely on the record of proceeding, it must be provided to a party in documents were filed electronically so the LAT, with its resources and technological capabilities, with presumably AWS as the storage provider, return a be the most rudimentary of tasks.

4. The lack of a confirmatory response is most concerning and appears to be part of a pattern. My belief is that the LAT does not have a full and accu outages" at various times. As we know, "technology happens" from time to time. As such, please provide the **ROP** from the **ROP** Temporal Period t **Temporal Period**. By my computation, we are looking at a period of 264 days.

5. I may provide a subsequent email of what I will be expecting that you will be providing today. To the extent that you wish to provide some piecemea I am amenable with said approach. That being said, I cannot imagine that it is not possible to complete that which is in the possession and control of th copies.

6. To the extent that none of the records from the ROP during the ROP Temporal Period are provided today, I will presume that the Tribunal has lost or Temporal Period.

7. As The Honourable Mr. Downey will undoubtedly know, as the chief law officer in this province, the language chosen by our Legislature was for th decision) to file forthwith the record of proceeding for the court's use. However, one Mr. Boyce imposed an arbitrary timeline of three to four weeks in the Tribunal. In a subsequent email to myself, with others copied, he had contrived a non-statutory timeline of 60 days from November 15, 2024 (i.e. behalf of the Tribunal, had not met either then or now.

8. I also ground my belief that the Tribunal either does not have a full and accurate record of proceeding on the bases of the above but also that some makers in June, July and September 2024 were not conversant with the documents and facts. In this regard, they were askew by not only time periods t me to believe that they did not have the entire ROP at those times. Moreover, there were continued references to *McLean v. TD General Insurance Com* favour which was a motion served and filed by me in mid May 2024 culminating in a decision of the Tribunal (Adjudicator Morrissette as she then w change of the respondent from TDGIC to Security National Insurance Company. As such, those "adjudicative records" will also include the below at sec that a responsive pleading like a statutory response under section 280(2) of the *Insurance Act* is not explicitly captured. However, I would respectfully su and it is "evidence" albeit not sworn but signed by an individual representative on behalf of an insurance company (i.e. true, accurate and complete).

9. When providing the same, kindly denote the same in the following format: "Record of Proceeding [24-Dec-2023 – Sept 13-2024] – Respondent - you are unable or unwilling to do so, I will solely change the title of the document to the same with various volumes depending on size (i.e. for the c While it is for the Tribunal to have filed the same, Mr. Boyce has only been interested in filing a Notice of Appearance and no interest in facing the mer most basic of duties.

10. I trust, in copying two of the great legal minds in our province in the Honourable AGO and former managing partner of Canada's last largest law reference the *purpose* of the filing of the record of proceeding by the Tribunal. Perhaps, the LAT, in its somewhat infancy being in its nearly tenth year purpose of requiring a tribunal or adjudicator to file a "record of proceedings" is to ensure that when the court reviews the tribunal's decision, it h tribunal in the first instance. A court reviewing an adjudicative decision may look at decisions to admit evidence, submissions of witnesses, and other ev [or tribunal] of first instance: *Payne v. Ontario Human Rights Commission*, 2000 CanLII 5731 (ONCA) ["*Payne*"] at para. 23. *Payne* was adopted b decisis, but in referencing that long standing legal precedent nearly a half quarter century later in *Lachance* (as per the Honourable Justices Myers, St Court found:

> "[37] I agree with the finding of Ryan Bell J. that by bringing this application for judicial review the applicants became entitled to r adopted the words of Sharpe JA in *Payne v. Ontario Human Rights Commission*, 2000 CanLII 5731 (ON CA) at paragraph 161
>
> > An applicant for judicial review has the right to have a full and accurate record of what went on before the tribunal put before t powers of judicial review. A superior court may insist upon the production of an adequate record of the proceedings before the trib
>
> [38] When met by a reluctant decision-maker, the applicants always had the ability to obtain the documents that they needed to advanc

11. As such, an interesting interplay arises between the forthwith filing requirement of the Tribunal with the court for its use, the inherent jurisdictior applicant's rights on judicial review.

12. Arguably the most important precedential statement of law to come from *Payne* was its adoption, verbatim in parts, of the precedent from The Honou *Gilmore,* [1957] 1 Q.B. 574 at 583 (C.A.) which was:

> "A statutory body subject to judicial review cannot immunize itself or its process by arriving at decisions on considerations that ar
>
> (see: paragraph 161 of Payne (ONCA)).

13. As such, it matters not the *source* (equitable, common law, statutory, prescribed or otherwise) of the legal obligation or whether it is to file forthv obligation that requires immediate rectification.
14. Without conflating a previous access request of the LAT, I was impressed with the rapidity that the access and privacy division provided access to s on the email thread. I invoked the same herein due to a more urgent and pressing request for the very adjudicative records I am so entitled, the court entitled to discharge its supervisory powers so section 96 to 101 of the *Constitution Act of Canada* is adhered to.

15. Trusting the Tribunal will provide the compiled record of proceeding, at the various times and then added to over time, by today at three p.m. (as 2024) to me as a party (the 'applicant' or 'appellant' depending on the preferred nomenclature), I can remove the Honourable AGO and EC of Tribuna important work that they do whilst confirming the satisfactory closure of my request.

16. Thank you for your compliance with the above, and I most look forward to confirming the closure of this request. A copy of this email may follow v caution.

Appendix

Record of proceeding

20 A tribunal shall compile a record of any proceeding in which a hearing has been held which shall include,

(a) any application, complaint, reference or other document, if any, by which the proceeding was commenced;

(b) the notice of any hearing;

(c) any interlocutory orders made by the tribunal;

(d) all documentary evidence filed with the tribunal, subject to any limitation expressly imposed by any other Act on the extent to or the purposes for wh proceeding;

(e) the transcript, if any, of the oral evidence given at the hearing; and

(f) the decision of the tribunal and the reasons therefor, where reasons have been given. R.S.O. 1990, c. S.22, s. 20.

---

[i]Despite the LAT being separate from the MAG per se, and certainly the likes of Ms. Im in her former representative capacity for the AGO in the JRPA Proceeding and Mr. Boyce acting for th

[ii]https://www.lawtimesnews.com/practice-areas/personal-injury/otla-pushes-for-urgent-licence-appeal-tribunal-review/389679#:~:text=The%20Ontario%20Trial%20Lawyers%20analysis.

[iii]https://www.ontariocourts.ca/scj/practice/div-court-pd/#_Toc133391236

K

Kevin McLean <mrkevinalexandermcleanbajdcim@gmail.com> Fri, Feb 7, 10:17 PM

to LATregistrar, Doug.Downey, sean.weir, attorneygeneral

Dear LAT Registrar (copied to the above honourable and esteemed persons):

I confirm that I did not hear from you today. Do you wish for me to come pick up the same? Is it easier to have it on a USB for my pickup this Monday? I can be

If not, I will presume that you can provide the same this Monday by the same time.

Thank you.

K

Kevin McLean <mrkevinalexandermcleanbajdcim@gmail.com> Mon, Feb 10, 4:37 PM

to Access.TO-TDO, LATregistrar, Doug.Downey, sean.weir, attorneygeneral

Dear LAT Registrar (copied to the above honourable and esteemed persons):

1. I am compelled to continue to copy Mr. Weir and the Honourable AGO until I have the requested records from the record of proceeding from the

2. I will presume that an in-person pick up is not the acceptable or amenable route so kindly disregard the same.

3. I have also copied the above email to the kind attention of Jennifer who directed me to the LAT registrar for these adjudicative records. (Good A me with an individual name of a person who is responsible for these adjudicative records at the LAT?)

4. (Mr. Weir, I extend the same question to you as well)

5. (Dear all, if there are certain documents missing or lost, would you kindly provide me with which documents you believe those to be. Would you determine if they are time stamped when filed or have any notations on the same?)

6. The matter remains urgent. Thank you.

K

Kevin McLean <mrkevinalexandermcleanbajdcim@gmail.com> Mon, Feb 10, 5:13 PM

to LATregistrar, sean.weir, attorneygeneral, Access.TO-TDO

Dear Sirs/Mesdames/Other Gender-Neutral Pronouns:

1. I write further to the above. In the circumstances, I confirm that I am entitled to the adjudicative records without an access request under FIPPA. Ho records from the record of proceeding are missing from the time period denoted above, I confirm that my FIPPA request was made from the time delivered tomorrow. I am doing so out of an abundance of caution as I have not received any response from the LAT registrar which is terribly concernin

2. (Dear Jennifer, in this regard, I will confirm when the five dollar application fee is delivered on my behalf. However, I will still presume that I wil LAT registrar as per the Tribunal's obligation to do so. That being said, I confirm that all requested records must be retained from the time of my requ administrative step to finalize the processing of the same. To the extent that the LAT registrar does not feel that the logs are part of the record of proce are, then there will be a slight discrepancy.).

3. (Dear LAT Registrar, would kindly provide a sample document of one of my filings, a filing on behalf of TDGIC, a filing on behalf of SNIC Nieuwland on behalf of TDGIC and SNIC. I trust I can receive that by no later than noon tomorrow. While I should not have to compromise my legal the same.)

4. (Dear Mr. Weir, if you have delegated the responsibility to another individual in this regard, would you kindly provide me with the contact informati

5. (In the circumstances, I will remove The Honourable Mr. Downey's direct email as he has notice of the same but keep the AGO email so it is aw without even the courtesy of a response from the LAT registrar. I thank The Honourable Mr. Downy for the indulgence of including his email herei prioritized. I can confirm that not a single record has been provided to me herein or from any other sources.)

6. As a parting point here so we can work together as the record of proceeding is a matter that involves countless constitutional principles and the rule to whether the Tribunal has the full and accurate record of proceeding from the time period above. If I do not hear from you by that time, which should presume that my fears and beliefs that some of those records from the record of proceeding are missing, lost, stolen, or otherwise unrecoverable. This ca by the then case manager in Mr. Grant. However, transparency must accompany the same.

7. Thank you.

K

Kevin McLean <mrkevinalexandermcleanbajdcim@gmail.com> Wed, Feb 12, 1:29 PM

to LATregistrar, sean.weir, attorneygeneral, Access.TO-TDO

February 12, 2025

Re: the continued non-compliance with my access request of January 2025 which was redirected to the LAT Registrar as per its requirement to pr proceeding

Dear LAT Registrar, Executive Chair of Tribunals Ontario, Office of the Attorney General and Ms. Jennifer [last name unknown] (an officer in the p access requests made pursuant to FIPPA):

1. I write further to the above involving my access request made to the LAT in January 2025. I thank Ms. Jennifer for her prompt response and rec the necessity for the formality of the FIPPA request along with the payment of statutory and prescribed fees. Since the time of the redirection, I ha despite my inclusion of the above noted Executive Chair and AGO.

2. My requests pursuant to FIPPA and the LAT Registrar shall remain in perpetuity and until they are complied with in a strict and lawful manner.

3. As such, I confirm the scope of my access request for the record of proceeding in the LAT/AABS file number of 23-015662/AABS and confirm t those requests. As this will now require me on the FIPPA side of the ledger to tender an application fee, I will confirm when that has been delivere respect the resources of all above, I will not need to have duplicate copies of the record of proceeding provided to me but now I am most curious stonewalled in light of counsel for the Tribunal failing to file a single document from the record of proceeding in contravention of the JRPA and SPI in any event of any determinations in the Tribunal proceeding or before the ONSC Divisional Court or otherwise.

4. Kindly extend some professionalism and courtesy herein where applicable.

5. Thank you.

L

LATregistrar (MAG) Thu, Feb 13, 3:54 PM

to me

Good afternoon Mr. McLean,

We acknowledge and thank you for your emails sent between February 5 and February 12, 2025.

We thank you for your patience, while we review how best to compile and forward the records identified in your request. We will reach out to you

As your request relates to your application before the LAT, please continue to direct all your correspondence through LATRegistrar@ontario.ca or necessary.

Best Regards,

Hannah Lee (Pronouns: she/her) (learn more)
Case Management Officer
Licence Appeal Tribunal
Phone: 647-463-8220
Local 416-326-1356 / Toll free 1-888-444-0240
LATregistrar@ontario.ca
tribunalsontario.ca

K

Kevin McLean <mrkevinalexandermcleanbajdcim@gmail.com> Fri, Feb 14, 1:59 PM

to sean.weir, attorneygeneral, Access.TO-TDO, LATregistrar

February 14, 2025

Dear LAT Registrar (Ms. Lee), FIPPA privacy officer (Ms. Jennifer), EC of Tribunals Ontario and the AGO email:

I thank you for your response. I have copied Mr. Weir, the FIPPA privacy and AGO email as noted above. I have also copied the relevant parts of your email to the below as so privacy requests. I apologize for the brief delay on my part as I see your email came in late yesterday and I did not check this email until now.

However, that is entirely unacceptable on all fronts in relation to "how best to compile" the record of proceeding from December 23, 2023, to September 13, 2024.

Section 20 of the *SPPA*:

"Record of proceeding

20 A tribunal shall compile a record of any proceeding in which a hearing has been held which shall include,

(a) any application, complaint, reference or other document, if any, by which the proceeding was commenced;

(b) the notice of any hearing;

(c) any interlocutory orders made by the tribunal;

(d) all documentary evidence filed with the tribunal, subject to any limitation expressly imposed by any other Act on the extent to or the purposes for which any such documer

(e) the transcript, if any, of the oral evidence given at the hearing; and

(f) the decision of the tribunal and the reasons therefor, where reasons have been given. R.S.O. 1990, c. S.22, s. 20."

Therefore, this explains exactly why these decisions issued by Vice Chair Morrissette and others were so askew with the facts because the Tribunal had not even compiled the r The duty to compile operates irrespective of whether any appeal or judicial review is advanced.

The requirement was to file the record of proceeding forthwith with the ONSC Divisional Court. The JRPA Application was brought in mid-November 2024. Mr. Boyce for the the Tribunal was to file an NOA forthwith which for the most part it did.

However, the Tribunal is only working on compiling the record now. There is nothing to discuss in terms of reaching out to me for information. I have already provided the inf so as a courtesy.

As such, the Tribunal is in breach of two sets of statutory duties. As stated, please provide what you have during those time periods on a forthwith basis to me. The time is now commence today.

Respectfully, this should not take more than 30 minutes to do as I am a party and it is a period of some 8.5 months. Kindly re-attach the same by reply email. Ba Alternatively, you can send via multiple piecemeal emails.

If you commence providing today, you can remove Mr. Weir and the AGO email address. Please remove Jennifer and her email in any event.

(Jennifer, I apologize for having you caught up in this email but I copied you to ensure that you are aware that I will be attending the relevant office (like last time) to deliver th separate thread with you so we do not conflate the two. However, for interim measure, it is the same as above with any logs from the back-end.)

Appendix

LATregistrar (MAG)

to me
Good afternoon Mr. McLean,

We acknowledge and thank you for your emails sent between February 5 and February 12, 2025.

We thank you for your patience, while we review how best to compile and forward the records identified in your request. We will reach out to you with additional information

Best Regards,
...

[Message clipped] View entire message

K

Kevin McLean <mrkevinalexandermcleanbajdcim@gmail.com> Fri, Feb 14, 2:47 PM

to Access.TO-TDO

Good Afternoon Jennifer:

I have directed this email solely to you as per the above. I was going to start a new thread but instead of doing the same for urgency purposes, I have forwarded t application fee dropped off at the 25 Grosvenor Street location and confirm the same when that is complete. I will start a separate thread hereafter. As confirm, I possession and control as it relates to 23-0115662/AABS involving McLean v. Security National Insurance Company (formerly McLean v. TD General Insuranc during that period i.e. ones that were filed to this email.

I am also seeking the logs as particularized above. Thank you

...

[Message clipped] View entire message

K

Kevin McLean <mrkevinalexandermcleanbajdcim@gmail.com> Sun, Feb 23, 12:23 PM (5 days ago)

to Access.TO-TDO

Dear Jennifer:

I hope you are well. I am currently still recovering from a medical procedure from last week and I have another two this week. As such, you will likely receive n (attention: LAT Registrar) has entirely failed in providing me with a copy of the record of proceeding from December 24, 2023, to September 13, 2024. Despite to me on February 21, 2024, said date came and went. As such, I confirm that my access request is extant and the only thing remaining is that of the five dollar f deliver the amount to your attention.

As noted, my access request is slightly broader than the above which will include any logs (electronic or hard copy) during that time as to the parties et al. Howe provided sufficient particulars, I propose the following. If there is an index of all filings, with screenshots of the back-end (i.e. change of parties), during the rele As such, if that exists, would you kindly provide me with an electronic copy of the same as soon as you are able? I will then be in a position to confirm that I do

Thank you.

...

[Message clipped] View entire message

K

Kevin McLean <mrkevinalexandermcleanbajdcim@gmail.com> Wed, Feb 26, 1:48 PM (2 days ago)

to LATregistrar

Dear LAT Registrar (and to Ms. Lee):

I write regarding the above. I confirm you have failed to provide the record of proceeding from the ROP Temporal Period. You did not follow up on February 21 the records that make up the record of proceeding.

Please provide the same by the end of the business day to this email herein. I make this demand and request for all of the above reasons.

I appreciate the Tribunal does not have the full and accurate record of the proceeding from the ROP Temporal Period due to that technological issue (framed as a said, that will make the provision of what the Tribunal has in its possession and control all the easier and simplified.

Thank you.

L

LATregistrar (MAG) Thu, Feb 27, 11:02 AM (1 day ago)

to me

Good morning,

Thank you for your email. Please see the attached index of all documents on this file.

Thank you for your patience.

--

My best regards to you,

Kevin A. McLean (B.A., J.D., CIM)
Chartered Investment Manager
E (personal and confidential): mrkevinalexandermcleanbajdcim@gmail.com

DISCLAIMER

1. *The content of this email is confidential and intended for the recipient specified in message only. It is strictly forbidden to share any part of t consent of the sender. If you received this message by mistake, please reply to this message and follow with its deletion, so that we can er*
2. *Due to being an accident, this email may be dictated in part or full with voice recognition software. Kindly excuse any errors for grammar, s*

--

My best regards to you,

Kevin A. McLean (B.A., J.D., CIM)
Chartered Investment Manager
E (personal and confidential): mrkevinalexandermcleanbajdcim@gmail.com

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My best regards to you,

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My best regards to you,

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Kevin McLean <mrkevinalexandermcleanbajdcim@gmail.com> Wed, Apr 23, 2025 at 11:10 AM
To: "Access.TO-TDO (MAG)" <Access.TO-TDO@ontario.ca>, sean.weir@ontario.ca

April 23, 2025

URGENT NOTICE

Good Morning LAT FIPPA Division: I have copied Mr. Weir on this email to confirm that there has been another failure with respect to my receipt of the requested personal information. I am in the process of filing an OIPC Appeal. It will take me a few hours to do so. Therefore, if you are able to provide me the requested personal information (records) in the interim, then it can be avoided. If nothing is provided by that time, I will also copy the AGO's office to confirm that there appears to be a systemic issue or at least an issue in relation to myself that requires immediate correction and attention.

Submission summary

Thank you. Your application has been submitted.

Form name:	Appeal Form under FIPPA and MFIPPAFreedom of Information and Protection of Privacy Act (FIPPA)Municipal Freedom of Information and Protection of Privacy Act (MFIPPA)
Form number:	ON00345_2E
Card type:	VISA
Transaction type:	Purchase
Payment total:	$10.00 CAD
Payment status:	Successful
Payment confirmation:	32534289
Date/time:	April 23, 2025 4:37 PM
Submission confirmation number:	48755262
Submitted to:	Information and Privacy Commissioner of Ontario (Telephone: 416-326-3333 Toll-free: 1-800-387-0073 Email: info@ipc.on.ca)

More information

Should you have any questions or comments regarding your application, please call or email the contact listed above.

Every effort is made to ensure that the online form is successfully delivered; however, making sure that the document was received remains the responsibility of the user.

Privacy Accessibility Contact us

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THIS IS EXHIBIT "B" REFERRED TO IN THE
AFFIDAVIT OF Kevin A. McLean
AFFIRMED BEFORE ME, THIS 24 DAY
OF April 20 25

NER, ETC.

Vinh The Tran, Esq., LSUC #57761C
Lawyer, Notary, Oaths Commissioner
188-639 Dupont Street, Toronto, ON
M6G 1Z4, T. 647-209-7389
vinhtranlaw@hotmail.com

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

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

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

"Insured Person", "Unnamed Insured Person", "Occupant" ,"Appellant", Applicant", or "Claimant"[5]*)*

Date of Loss*: August 31, 2022 ("**DOL**" or "**Date Of Loss**")*

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

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

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

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

***AABS File Number*: "23-015662/AABS"[7]**

BETWEEN:

Kevin Alexander McLean

APPLICANT/APPELLANT

AND:

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

RESPONDENT

Re: In a matter of an **Appeal** (also defined as "**Application**", "**Application Of Injured Person**" or "**Application**") by the **Appellant** (also defined as "**Applicant**", "Claimant" or "Beneficiary"[8])[9] under the *Insurance Act*, RSO 1990, c I.8 et seq[10] (the "*Insurance Act*") in the above-noted **AABS Claim Number** (also defined as "**SNIC Proceeding**")

Re #2: in a motion regarding section 21.1 of the *SPPA* and costs submissions i

Re: NOM #8
Costs Submissions
Dated: June 17, 2024

APPLICANT/APPELLANT (PARTY)	**RESPONDENT PARTY[11]**
Mr. Kevin A. McLean (B.A., J.D. CIM) 410-775 King Street West, Toronto, Ontario, M5V 2K3 **Telephone**: 647.513.1270 **Email**: **MCLEANSNICLAT@GMAIL.COM**	**Security National Insurance Company** (Securite Nationale Compagnie D'Assurance) **Insurance License Number : #397** ("**SNIC**", "***SABS* Insurer**", and "**SNIC #397**") **Canadian Head Office [12] [13]** 12th floor-50 Place Cremazie, Montreal, QC H2P 1B6 Address for Service in the **Purported SNIC Response**

	101 McNabb Street, **Markham**, Ontario, L3R 4H8 ("**SNIC** Markham")
	AND TO (2):**AND TO:**
	Unlicensed Non-Exempt Representative to **SNIC** ("**Non-Exempt Non-Licensee**"): Mr. David **Karat** employed by TD Insurance[14] at the premises situated at 101 Mcnabb St, **Markham**, Ontario, L3R 4H8 ("**SNIC Markham**")[15]; ("**Karat**", "**ADR Representative**", "**ADRR**", "**ADR Specialist**" or "**Sole Signatory**" (of the "**Purported SNIC Response**"); 101 McNabb Street **Markham**, Ontario, L3B 4H8 877 855-3767 E-mail : david.karat@tdinsurance.com

Volume #1: Overview

1. This costs submission for NOM #8 (the "**Costs Submission**" or "Costs Argument") is encapsulated by the famous quote from Sir Walter Scott's play "*Marmion*": "*Oh, what a tangled web we weave, when first we practice to deceive*".[16] This is the Appellant's costs submissions, pursuant to Rule 19 of the *LAT Rules*[17] tendered before a decision or orders is made by the Tribunal with respect to the NOM Hearing Order on June 5, 2024 setting the "hearing" for **NOM #8** on June 20, 2024. For ease of reference and ease of reading in the body of this Costs Submission, the Appellant provides a summary[18] as to the legal bases involving NOM #8 and why the Tribunal was not only authorized to correct the "similar error" in all of its decisions or orders since January 2024 including the NOM Hearing Order ("NOMHO").

"A Note on Length and Spacing"

2. As "costs submissions", which must be in writing at first instance, are not a "motion per se", there is no requirement that the submissions be "six pages, double spaced exclusive of evidence and authorities" (see: Rule 15.1(b)). As such, there is much for the Appellant to traverse herein so details and particulars, along with reasons are important as there are many complex areas of law that are referenced by directness but also analogy and context. This will be added in the "hearing brief record" for internal purposes at the last tab. To the extent that SNIC responds to the costs submissions within a reasonable time and with time to include the same in a "joint hearing record", the Appellant is amenable to include any responsive costs submissions therein. If SNIC does not respond by midday tomorrow, then the Appellant will presume that SNIC is not contesting a costs order against it.

3. The Appellant's review of Rule 17.1 of the SPPA and Rule 19 of the LAT Rules is that "costs submissions" (in writing) do not fall under the requirement that written argument submissions are confined to a page length and double spacing:
   a. all supporting submissions, which must not exceed 6 double-spaced pages in length, exclusive of evidence and authorities (see: Rule 15.1(b)):
   b. The completed form must be served on the other parties prior to being filed with the Tribunal and must include all submissions and evidence in support of the request. Submissions must not exceed 5 double-spaced pages in length and must include (Rule 16); and
   c. The reconsideration request includes the following: All submissions in support of the request, which must specify the applicable criteria under Rule 18.2. The submissions must not exceed 10 double-spaced pages in length, exclusive of evidence and authorities (Rule 18).

4. As such, the Appellant has confined these submissions to 11 pages, single spaced as he also cannot find any "practice direction" on the same that would limit him to the same.

SNIC's failure to respond to the underlying NOM #8

5. As **SNIC** has failed to respond to NOM #8 even by written email confirming its "position", the Appellant is proceeding with this Costs Submissions. Insured persons should not have to go through the financial, emotional and temporal costs by engaging with the **Tribunal** in order to have an insurer that is liable for *SABS* benefits comply (**see:** *Peel Mutual* and *Vila*).

6. The Appellant is seeking $1,000 in costs against **SNIC** (the "respondent party" pursuant to the statute under which this Appeal arose) for its unreasonable, bad faith, vexatious and/or frivolous conduct.

7. **SNIC** is defined as "**SNIC** 397", "*SABS* Insurer", "First Insurer" or "Offending Party".

8. The License Appeal **Tribunal** is a creature of statute and can only add a Non-*SABS* Insurance Company or individual by order in which the Appellant was entitled to notice. It is a matter of procedural and administrative fairness.

9. The Appellant has exceeded the threshold for being entitled to tender a costs' submission as only "belief" is required.

10. The Appellant has sworn[19] four affidavits that are contained in the hearing record that condescend upon particulars as to the unreasonable, bad faith, vexatious or frivolous conduct of **SNIC** in relation to NOM #8. It is trite that evidence under oath is the equivalent of "reasonable grounds to believe" (also known as "reasonable and probable grounds" (see: R. v. Kang, SCC) which is a higher standard of "belief". The standard of proof remains a "balance of probabilities" and the Appellant carries the burden. As the NOM #8 hearing is not being held orally, Rule 19.3[20] does not apply.

Volume #1(A)(I)(a): The Particulars
Affidavit #21 (see: NOM #8, Hearing Record, Tab 2, pages 3 to 59)

11. The Appellant is required to set out the "reasons" and "particulars"[21]. Affidavit #21 was made on the day after the May 2, 2024, (see: May 3, 2024) case conference and "to be heard" NOM #4 and NOM #6, pursuant to LAT orders, which provided the relevant particulars to further demonstrate to the **Tribunal** that the OCF-18 from April 2023 was exclusively sent to **SNIC**. Moreover, the Appellant continued to distinguish between the **SABS Insurer** and **Non-SABS Insurance Company**.

12. The affidavit #21 was 57 pages in total with body occupying eight (8) pages and **Exhibit "A"** with separate tabs occupying the remaining pages. The Appellant was unequivocal in his affirmed evidence that he continued to object to Fictitious Respondent having any status as a "party", without having brought a motion to be added (not substituted for the SABS Insurer) he was reserving all of his rights in facts and at law, and that he continued to object in perpetuity (see: **paragraphs 6** and **7** therein).

13. **SNIC** did not take any active steps to remedy the situation by way of what is sought in Order #1 in NOM #8.

14. Karat has the opportunity to dispute the same by responsive evidence herein. Only time will tell if he does so and before the **Tribunal** renders a decision on June 20, 2024. While the time has passed for **SNIC** to provide any responsive submissions and evidence to the underlying motion, the Appellant challenges **SNIC** to do so in relation to this Costs Submission. The Appellant affirmed, on belief, that **SNIC** and the **Fictitious Respondent** were in breach of the various sections of *PIPEDA* along with the OPCC decisions involving the standardized form of the OCF-1 (see: paragraphs 20 to 29). The Appellant affirmed, and

noted, that the string of 'TD Insurance' was and is consistent with 'TD Insurance Meloche Monnex' but "TD General Insurance Company" was not (see: paragraph 32).

15. At no time did the Appellant provide any reference in the Appeal (along with the listed and attached documents to the Appeal) or his first three motions wherein the Appellant has affirmed, on belief, that the **Tribunal** was misled by Nieuwland or someone authorized by him.[22] The Appellant filed and served Affidavit #21 on **SNIC** on May 3, 2024.

> **Volume #1**(A)(II)(b): The Particulars **Affidavit #22 of the Appellant (see: NOM #8 Hearing Record, Tab 3, pages 60 to 104)**

16. The Appellant made, affirmed, filed and served Affidavit #22 on May 10, 2024. By May 10, 2024, the Appellant had determined that the Nieuwland "**One and the Same Representation**" was unequivocally false as a result of the **FSRA Enforcement Decisions**. The Appellant's language was at paragraphs 3[23] and 4[24] of the **Affidavit #22**. As the Appellant presumed that the issue was effectively "cut and dried" without any room for an ambiguous interpretation, he filed a request of the **Tribunal** by letter (see: paragraph 5)[25].

17. **SNIC** did not budge and the **Tribunal** presumably wished to have formality by way of motion pursuant to the "New LAT Rules" as opposed to doing so on its *own initiative*. The Appellant particularized how he had believed the misapprehension was created on or around early to mid January 2024, the **Tribunal** including its staff (such as Mr. Josh Grant and others) and Vice Chair Lake (see: paragraph 7).[26]

18. On May 6, 2024, Mr. Karat remained active in 23-015662/AABS while pursuant to section 1(7) of the LSA had engaged in conduct that was legislatively deemed to be **representation** of a person (SNIC) in a proceeding (23-015662) before an adjudicative body (License Appeal Tribunal), with courtesy, responding to the Appellant's request as to the particulars of when the TDIADR email was sent to the **Tribunal** and misled the **Tribunal**. Mr. Karat represented to the Tribunal and the Appellant that the TDIADR email did NOT send "outgoing email" and was only for "incoming email". Mr. Karat was mistaken.

19. The Appellant received an email response on January 17, 2024, from said TDIADR email account but Mr. Karat's response was nonetheless appreciated (see: page 3 of **Exhibit "A" of Affidavit #22**). By said time, Mr. Karat had done the following, prima facie, exclusively on his own: (i) signed the SNIC Response; (ii) filed the SNIC Response; (iii) served the SNIC Response; and (iv) filed and signed a COS for said SNIC Response.

20. With class and humility along with good faith and honesty, the Appellant admitted, on May 8, 2024, he had made an error in relying on the insurance registration numbers for **SNIC** and TDGIC from another province (albeit distinct) but then tendered the **FSRA Enforcement Decisions** for **SNIC** and TDGIC which confirmed that **SNIC** and **TDGIC** had different FSRA registration numbers.[27] Despite Mr. Karat responding on May 6, 2024, **SNIC** did not respond to this epiphany.

21. The seminal paragraph in Affidavit #22, by way of particulars, was paragraph 22[28] it cannot now take the position with the **Tribunal** that another registered insurance company in **TDGIC** (#353) can be

substituted as the "***SABS* INSURER**" when it is not. I respectfully submit that the same applies to **TDGIC** (see: **Exhibit "A", page 20**).The Appellant notes the following particulars in paragraphs 24 to 29.[29]

> **Volume #1**(A)(II)(b)(i) Appellant explicitly referenced the prejudice it was causing him (paragraph 30 of Affidavit #22)

22. For sake of convenience, the Appellant quotes the following from paragraphs 30[30] and 31[31]: The Appellant affirmed on belief, in the remaining paragraphs of Affidavit #22 the prejudice that he was suffering and would suffer as a result of SNIC and the Fictitious Respondent opposing notifying the Tribunal of the mistake and error in the name of the respondent. The standard before the Tribunal of jointly notifying the Tribunal of an error in the naming of the respondent was denoted in *F.C. v. Wawanesa*.

> **Volume #1**(A)(II)(c): Affidavit #23 (made on May 11, 2024) (see: BOA, Tab 4, pages 105 to 257)

23. Affidavit #23 was primarily exhibit based which was separated by ten tabs and provided a chronology of events from December 24, 2023, to May 11, 2024.

> **Volume #1**(A)(II)(d):
> Affidavit #24 (made on May 15, 2024)

24. Affidavit #24 provided further details and evidence that even in May 2024 the TD Insurance Meloche Monnex programs referred to two different insurance programs in the "Alumni And Professional Program" (underwritten by **SNIC**) and the "Employer Group Program" (underwritten by TDGIC). Only the former was applicable and neither included "TD General Insurance Company".

> **Volume #1**(A)(II)(d)(i):The Case of Reza (see: *Fatemea Rezaiezadeh v. State Farm Mutual Automobile Insurance Company*, 2016 ONFSCDRS 59 ("*Reza*")

25. In the case of *Fatemea Rezaiezadeh v. State Farm Mutual Automobile Insurance Company*, 2016 ONFSCDRS 59 ("Reza") which is provided which is provided for the purpose that at no time has TD Insurance (Meloche Monnex) (Security National Insurance Company) represented publicly that any other insurer underwrites the Insurance Policy herein or the Alumni And Professionals Program. The TD Insurance website clearly delineates between **SNIC (397)**, being the underwriter for the Alumni Program, and Primmum (1396) being the underwriter for the "Employer Group Program".

26. The Appellant notes the case of *Reza* (for short) wherein, albeit under the FSCO, the arbitrator found the following: "The Appellant concedes there is no explicit procedure in the *Code* or the *Statutory Powers Procedure Act*, R.S.O. 1990, c. S.22, as amended, to permit a party to continue a proceeding against a non-party." The "Dispute Resolution Code" is no longer applicable as it only applied with the FSCO. Even where State Farm Automobile Insurance Company was bought out by Certas and Desjardins regarding its Canadian operations, State Farm remained as the party as it was the underwriter *at the time* of the accident therein. The time of the accident herein was August 31, 2022, SNIC sent the Appellant (Insured Person) the OCF-1 with its pre-printed and determined returned sender address of SNIC Markham (attention: Ms. Alisha Anne-Nurse). For a summary regarding the steps that were required of

SNIC to provide notice to the Appellant if there was a dispute as to which "insurer" was liable (in part or in whole) for SABS benefits, the Appellant has done so by "endnote"[32] regarding the applicability of the uncontroverted evidence to *Reg 283*. Reg 283 cannot be circumvented by a substitution between insurers, during a LAT proceeding after the "respondent party" (SNIC #397) by law (see: section 5 of the SPPA), as any condoning of such conduct would render the protections for an Insured Person under *Reg 283* largely illusory.

27. After the Appellant apprised the **Tribunal** and **SNIC** that Nieuwland's representations were false with respect to the "One & Same Misrepresentation" by providing the FSRA Enforcement Decisions, **SNIC** remained silent. It has remained silent even after the June 5, 2024 LAT Order setting the written hearing for June 20, 2024. Silence was not a legal option or legal right at all and particularly after **SNIC** was served with NOM #8. In the context of a "banking case" of *Sugar Peat* where remaining silent when a "third party" was aware of the misrepresentations made by another (which is somewhat ironic considering that "The Toronto-Dominion Bank" licenses the trademarked name of "TD Insurance" and Meloche Monnex Inc. licenses the trademarked name of "Meloche Monnex" for "TD Insurance Meloche Monnex" for SNIC ("Alumni And Professional Insurance Program") and Primmum ("Employer Group Program")

28. is persuasive and binding for its legal principles, which have been adopted in legal principles as per Adjudicator Henein Thorn in *Bennett*. In *Sugar Peat*, Southey J., writing for the Ontario High Court of Justice found, "the bank was guilty of fraud in remaining silent and permitting S. to rely on the statements of the receiver-manager acting as the bank's ***agent***, when employees of the bank knew the statements to be false." In this SNIC Proceeding, while the usage of the word "agent" is somewhat "taboo" pursuant to the amendments in the Omnibus Bill, stylizes as the *Access to Justice Act, 2006,* which amended the *Law Society Act,* the *SPPA* et al with the Legislation Act receiving "Royal Assent" from our Legislature in October 2006. The effect of the same was that those non-lawyers or non-paralegals, wherein paralegals received well-deserved recognition status as paralegals under a "single regulator" in the LSO, who were appearing as 'agent' for clients could no longer to do so unless they were licensed lawyers (L1, L2 or L3) or paralegals (P1).[33]

29. Sugar Peat Ltd.'s negligence in failing to verify the statements was no defence; nor was her delay, since she did not learn of the bank's knowledge until October, 1984. Sugar Peat Ltd. was entitled to recover the full amount of its investment before that date.

30. Without sounding self-serving or braggadocios, the Appellant has been the opposite of negligent when it was not a requirement per se because "bad faith, civil fraud, dishonesty and extortion" are special category of nullity.

31. The impugning remarks by a non-viable 'representative' in Nieuwland for a **Fictitious Respondent** have been in the nature that the Appellant has been too detailed and voluminous.

32. The Appellant, objectively speaking, takes such an "accusation" as evidence that he was fastidious in preserving his legal rights.

33. Simply put, it should not have taken 130 days for the **Fictitious Respondent** to relent to the same. While the liability for *SABS* and costs herein is that of an "insurer" and "*SABS* Insurer", it was not open to Mr.

Karat as the "agent" for **SNIC** to allow Nieuwland to make the representations he did in the submissions on April 11, 2024 about who "assigned" or "appointed".

34. Mr. Karat's email on January 23, 2024 was unequivocal with Nieuwland and Persaud copied. While Karat is a "Non-Licensee", he was required to raise the issue with a manager or supervising lawyer within **SNIC Markham**. Therein lay Karat's issue in that there is evidence that he has worked in the *same premises* as the Divorced Husband Conflicted Lawyer on a case stylized as *Quinn v. Security National Insurance Company*.

35. However, that is not the issue herein as the issue is whether the inactivity from mid May 2024 to present is deserving of a costs award; specifically whether the conduct of the "**Offending Party**" in **SNIC** was unreasonable, frivolous, vexatious or in bad faith.

Volume #1(C): Definitions are required for "bad faith

Volume #1(C)(I): Bad Faith

36. What constitutes bad faith is not always obvious. The Courts have, however, provided some guidance. In *Fidler v. Sunlife Assurance Company of Canada*[34], the Supreme Court of Canada clarified that bad faith: requires a conscious wrongdoing or "an act of dishonesty operating within an improper or illegal design." Therefore, mere negligent adjusting of a file is not always going to be bad faith. In the context of personal injury claims, the Ontario courts, for context, have found the following conduct has constituted bad faith (see: *Demetriou v. AIG Insurance Company* of Canada per Justice Gray).[35] While punitive damages cannot be awarded by the Tribunal are not the same as a costs award in the **Tribunal**, the concept of "bad faith" and a lesson learned as to why *AIG*, in the Demetriou case, had punitive damages awarded against it: *You can't hide in the weeds*; and *While there are consequences for failed defences, however unmeritorious, you also cannot hedge*.

Volume #1(C)(II): SNIC hiding in the weeds with the ultimate hedge or was it?

37. By Karat, solely signing and filing the SNIC Response on behalf of SNIC on January 25, 2024, and Nieuwland filing the DOR for the **Fictitious Respondent**, this was the "*ultimate hedge*". Or was it? However, the issue again is the conduct of **SNIC** from from mid May 2024 to present in relation this NOM #8. *Stenega* is a case that was cited by the Appellant in his earlier motions wherein at paragraph 55 of the decision Justice Zarnett provides a useful summary of the features of a bad faith claim or punitive damages claim that outside the scope of the Tribunal's jurisdiction.[36] Despite this agreement, the Court of Appeal upheld the decision of the motions judge. The Court held that by virtue of section 280 of the *Insurance Act*, the LAT has exclusive jurisdiction over *SABS* claims.

Volume #1(C)(II): Frivolous

38. "Frivolous" is defined as: "*not having any serious purpose or value"*. There was zero value in the Nieuwland DOR and the nullity filings by the Fictitious Respondent. However, the Fictitious Respondent was and is not a "party" pursuant to section 5 of the SPPA. Ergo, the issue is whether SNIC's inaction and

refusal to respond to this NOM #8, when Karat was active in January, February and May 2024 in this file with the Appellant and Tribunal, then he could have provided a response on behalf of SNIC even in email. In that regard, Karat cannot sign correspondence unless it is of a routine administrative nature (see: By-Law 7.1, section 6(d)) but an email response on behalf of SNIC is likely appropriate. However, the issue for Karat was that he and Nieuwland have different "clients" (the former being the "party" and the other being the Fictitious Respondent) so it was debatable whether he could do so on his own unless he was being supervised by a different lawyer(s) in the background.

Volume #1(C)(III): Vexatious

39. Vexatious is defined as: "causing or tending to cause annoyance, frustration, or worry". To put this Appellant to the worry about all of the issues in this SNIC Proceeding while having to "battle" against two different insurance companies with two different representatives along with a Fictitious Legal Assistant (Moraes) is the quintessential vexatious conduct. However, the issue for this NOM #8 is whether the conduct from the lead up to NOM #8 to the filing of NOM #8 to present was vexatious when measured against the Fictitious Respondent making the Non-Party Admission on June 6, 2024. At that point, if Nieuwland felt he could act for SNIC, SNIC had a duty to instruct him and have him file a DOR on its behalf. SNIC has not done so.

40. Vexatious conduct has been found where an unauthorized representative, albeit duly called to the LSO, was acting without authority from the correct and legal party (see: *Chandrarajah*[37], and citing *Toma*). The Appellant learned, it used to be that under the FCSO regime in the mid 2000's that costs could be awarded against non-parties like *Volfson* and others in the SunLife Assurance case. However, under the current regime as of August 21, 2023, the *LAT Rules* only authorize costs against the *other party*. While costs were not awarded in *Chandrarajah*, Adjudicator Jarda's reasons, in her seminal decision, were unambiguous in that it was the insurer seeking costs, it was a sympathetic situation as the wife had lost her husband to injuries unrelated to the accident impairments, and the issues were directed at "applicant's counsel" in Ms. Erin Neal (see: https://naimarklaw.com/team/#ErinNeal). Of counsel, a lawyer or paralegal (licensee) must have instructions from the client, and this is standard protocol in the client intake process. Adjudicator Jarda, with is a precedent decision of the License Appeal Tribunal which was beautifully articulated and reasoned as she, while not being bound by FCSO decisions, provided how the License Appeal Tribunal will decide cases where the prima facie "representative", albeit a licensee, did not have authority to act on behalf of a non-party. In providing the legal precedent therein, Adj. Jarda found, explicitly and by implication, that while all of the previous filings by the prima facie representative were in the "record of proceeding", they were nullities. Adj. Jarda, by implication, found that where much time has passed (i.e. three to five months) and there is no evidence that the authorized representative has taken steps to file a DOR on behalf of the "legal party", there is no viable way for the unauthorized party to continue. It leads to, pursuant to section 23(1) and 25.0.1, to an extraordinary remedy

41. There was was no authority to award costs against the representative and certainly not Mr. Karat who is an unlicensed representative.

42. The ironic relevance herein is that Karat has appeared before the Tribunal, not on his own but with in-house counsel in the Divorced Husband Conflicted Lawyer (*Quinn)* and external counsel or law firm (McCague Borlack LLP) in *Kopylets*.

Volume #1(C)(IV): Unreasonable

43. Unreasonable connotes an objective person standard. Unreasonable means: beyond the limits of acceptability or fairness. Collins Dictionary refers to the synonyms as: biased, arbitrary, irrational,

VOLUME #2: ISSUE OF LAW

44. *As the Appellant is only required to meet one of the requirements under Rule 19.1, has the Appellant established on a balance of probabilities that **SNIC** has conducted itself in relation to NOM #8 in a vexatious, bad faith, frivolous OR bad faith manner?*
    a. *If the answer is yes, what is the **Tribunal** allowed to award against **SNIC** in favour of the Appellant?*
        i. *Further, what would be the enforcement jurisdiction should **SNIC** fail to pay?*

VOLUME 3: ARGUMENT

Volume #3(A): The Changes from 2016

45. Rule 19.1 of the Rules mirrors the language of s. 17.1(2) of the SPPA, and provides that a party may make a request to the **Tribunal** for its costs where a party believes that *another party* in a proceeding has acted unreasonably, frivolously, vexatiously or in bad faith. Prior to April 1, 2016, under s. 282 (11) of the *Insurance Act* ("*Act*"), an arbitrator's jurisdiction and discretion to award expenses was broad. Unlike Rule 19.1, arbitrators at the Financial Services Commission Ontario ("FSCO") could consider criteria other than vexatious, unreasonable, frivolous and bad faith behaviour of a party, such as a party's degree of success in the outcome of the proceeding, the conduct of a party, or a party's representative, the failure of a party to comply with undertakings or orders, any written offers to settle, and/or any aspect that was improper, vexatious or unnecessary. Section 281 (11) of the *Act* was repealed on April 1, 2016. The **Tribunal**'s opinion is that the repeal of s. 281 (11) is a clear statement of legislature's intent to limit the circumstances where the **Tribunal** can award costs in a proceeding. However, the repeal of s 281 (11) does not prevent parties from negotiating costs and disbursements between themselves as they settle files. An award of costs under Rule 19 differs significantly from an award of expenses at FSCO. In FSCO arbitrations, the successful party typically receives its expenses. In contrast, an award of costs under Rule 19 is a discretionary remedy. Such an award does not routinely follow success at a hearing as costs are not meant to compensate parties for bringing or defending a claim. Rather, in appropriate circumstances an award of costs penalizes a party whose actions have impeded the **Tribunal** in carrying out its mandate to provide fair and efficient resolution of automobile accident benefit disputes. The possibility of an award under Rule 19 also acts to deter inappropriate behaviour by a party (see: *16-002272 v Aviva Insurance Canada*, 2017 CanLII 39578).

***Volume #3**(B): **Tribunal**'s Authority to Award Costs*

46. The **Tribunal** has authority to award costs against a party to the maximum of $1,000 per full day of attendance for a motion hearing, in this NOM #8, a "written hearing". **Tribunal** may, in the circumstances set out in rules made under section 17.1(4) of the *SPPA*, order a party to pay all or part of another party's [see: *TDGIC* not a "party" under the *Insurance Act* so not a party under the *SPPA*; conflict between LAT Rule 2 and legislation] costs in a proceeding. **Tribunal** shall NOT make an order to pay costs under section 17 UNLESS the conduct or course of conduct of a Party has been: (i) unreasonable; (ii) frivolous; (iii) vexatious or a Party has acted in "bad faith", AND the **Tribunal** (see: Rule 19) has made rule section 17.1(4)Section 17.1(1) of the *SPPA* states that a **Tribunal** "may, in the circumstances set out in rules made under subsection (4), order a party to pay all or part of another party's costs in a proceeding." However, there are limitations. Section 17.1(2) of the *SPPA* states that the **Tribunal** shall not make an order to pay costs unless the following apply: "a) the conduct or course of conduct of a party has been unreasonable, frivolous or vexatious or a party has acted in bad faith; and b) the **Tribunal** has made rules under subsection (4)."

Volume #3(B): Insurance Companies are the sophisticated party

47. Insurance companies have been found to be the sophisticated parties: *Mosa*.

Volume #3(C): No Conflation of Reg 664 vs. Section 17.1 of SPPA and Rule 19 of the *LAT Rules*

48. Some applicants have conflated "costs" under section 25.1 of the SPPA and the rules of the LAT with a "Reg 664 award". They are not "one and the same".

Volume #3(D): SNIC owes the Appellant a fiduciary duty

49. The starting point with respect to **SNIC**'s obligations is that it owed and continues to owe the Appellant a duty of good faith and fiduciary duties (see: Beasley, 2010, paragraph 34).

Volume #3(F): the Five Part Test (only four parts relevant)

Volume #3(F)(I):**Seriousness of the SNIC's conduct relating to NOM #8**

50. The seriousness of the misconduct by **SNIC** is on the highest of the ends as it is in breach of its fiduciary duties to the Appellant. Further, **SNIC** has been on notice of being required to have a lawyer licensee file a DOR on its behalf since early February 2024.

Volume #3(F)(II):**Misconduct in breach of an order**

51. While it appears from the evidence that **SNIC** and its unlicensed representative who remained active in this **SNIC** Proceeding into May 2024 by attending the case conference and responding to queries by the Appellant regarding the TDIADR Email. Even worse than breaching an order or the LAT Rules is

breaching the very enabling legislation under the *Insurance Act* when the SABS Insurer has been in business since 1934.

Volume #3(F)(III): **Whether the party's behaviour interfered with the Tribunal to carry out a fair, efficient and effective process**

52. *What could amount to more interference than requiring the Appellant to bring a motion for an order under section 21.1 of the SPPA after finding that counsel for a* ***Fictitious Respondent*** *had made a litany of misrepresentations on its behalf?*

Volume #3(F)(IV):**Prejudice to other parties**

53. It is trite that TDGIC as the **Fictitious Respondent** was not a party, never has been and never will by the Non-Party Admission. The only other party is the Appellant and the prejudice has been astronomical by reference to Affidavit #21 to #24 and onwards.

Volume #3(G): Other cases regarding costs

Volume #3(G)(I): *Aviva case (see: Eghomwanre v Aviva General Insurance*, 2024 CanLII 35846)

54. Herein, **SNIC** has not provided any rationale for its non-responses. It is important to note that Mr. David Karat has been responsive to the Appellant, at times, and was the individual that represented (albeit apparently by mistake) on May 6, 2024 that the "TDIADR email" did not send outgoing emails. Mr. Karat also appeared at the case conference on May 2, 2024.

Volume #3(G)(II): The cases cited by Aviva: *16-001032 v Allstate Insurance Company of Canada*, 2017 CanLII 148122; and PM v. TD Insurance Meloche Monnex

55. At paragraph 9 of the 2017 Aviva decision, **Rebecca Hines, Adjudicator** found as follows: "The applicant did not request the consent of the **Tribunal** with respect to filing late submissions and evidence. Nor did the applicant provide a reasonable explanation with respect to why their submissions were late or why the documents were not disclosed in accordance with Rule 9 or the Case Conference Adjudicator's Order. In addition, she failed to address the respondent's requests for costs in their reply submissions. I agree with the respondent that this behaviour was unreasonable."

56. Pursuant to the *LAT Rules* (effective August 31, 2023), a party is now required to seek permission with motion materials to overcome its offending or contravening conduct. The Applicant continued to invite even Nieuwland to file a DOR for SNIC and he declined. Even Mr. Grant (case manager), who has been pure class and professionalism personified, invited Mr. Nieuwland to do so.

Volume #3(G)(III): *PM v. TD Insurance (Meloche Monnex)*

57. In *PM v. TD Insurance Meloche Monnex*, Adjudiactor Derek Grant found: " [35] Parties in a proceeding have a duty to ensure the **Tribunal**'s Orders are adhered to. Should there be a delay, or a foreseeable reason for a delay, the parties have a duty to ensure the timeliness and efficiency of the proceeding is maintained, by notifying the other party of a foreseeable delay. Further, bad faith, vexatious and/or frivolous actions on behalf of a party, contrast with the **Tribunal**'s purpose of ensuring a fair proceeding takes place.

Volume #3(G)(IV): Black Swan:

58. As found by another one of the Tribunals that forms Tribunals Ontario, the HRTO found in Black Swan as follows: "The error in the respondent's name, the applicant submits, is a barrier to effective enforcement of the orders in the Decision. It would be an abuse of the Tribunal's process for the respondent to benefit from its failure to correctly self-identify in the Response or during the course of the proceeding in which it appeared and actively responded to the Application."

59. SNIC correctly self-identified in the "Response" which Adj. Lake found, albeit adjudicating a dispute under different legislation and regulations in *Van Hodge*, is a "responsive pleading". However, it then "passed the baton" to another insurer which was not only prohibited by the OCF-1 documents but PIPEDA, the Insurance Policy and the common law. It is what Mr. Nieuwland did not say on May 2, 2024 that is of import, with Mr. Karat there as the "ADR Specialist", in that Mr. Nieuwland NEVER said, "Well, Vice Chair, the Insurance Policy is now underwritten by TDGIC". He said the opposite when he misrepresented the following:

60. Mr. Karat remained silent which was not open to him pursuant to section 1(7) of the LSA in that his acts on January 25, 2024 are 'deemed representation of a person in this proceeding before an adjudicative body'. As such, his silence bound SNIC. Moreover, it was open to Karat to respond via email like he had on May 6, 2024 after the Non-Party Admission on June 6, 2024 by the Fictitious Respondent. He remained silent. He bound SNIC yet again.

Volume #3(G)(V): Withdrawal of an Application: costs

61. As Executive Chair, Linda Lamoureux, has noted, "a withdrawal of an application alone will rarely, if ever, be a sufficient basis on which the **Tribunal** will make a cost order." Given that access to justice is central to the mandate of the Licence Appeal **Tribunal**, "a cost award shall not be granted merely because a withdrawal has caused another party inconvenience. In the case of a withdrawal, there must be sufficient evidence that the Applicant has engaged in a course of conduct that is unreasonable, frivolous, vexatious, or is in bad faith." (see: *16-002272 v Aviva Insurance Canada*, 2017 CanLII 39578 (ON LAT), at para 15).

62. The distinction herein is that the Fictitious Respondent was not a lawful party and all of the steps it took were nullities predicated on dishonesty. At the very least, SNIC was required to take decisive and active steps to respond to this NOM #8 and communicate with the Appellant and Tribunal. It failed miserably. It was clearly not "good faith" and certainly a breach of its fiduciary duties. Ergo, it was and is "bad faith".

Volume #4: Conclusion

63. Enforcement is not within the jurisdiction of the **Tribunal** (**see:** *McGrath v. Ontario (Superintendent Financial Services, 2010 ONFST* 9; section 19 of the SPPA.)[38] Any monetary orders herein, relating to *SABS*, can only be enforced against **SNIC** (**see:** Shinozaki). A certified copy of the **Tribunal**'s decision or order in this **SNIC Proceeding** may be filed in the Ontario Superior Court of Justice by the **Tribunal** OR a party and on filing shall be deemed to be an order of that court and is enforceable as such (see: section 19(1)).

64. The two adages are apropos herein: "There is never a wrong time to do the right thing"; and "Better late than never".

65. While this costs submissions is solely focused on **SNIC**'s conduct since the filing of the NOM #8 in mid May 2024, the LAT Order on June 5, 2024, the Non-Party Admission by TDGIC on June 6, 2024, and missing the deadline pursuant to the LAT Order of June 11, 2024, whilst remaining in "radio silence" mode", **SNIC**'s conduct must be measured against its overarching fiduciary duties to the Appellant. **SNIC** has not extended the courtesy to the **Tribunal** and the Appellant to provide the name of a representative that may be in a position to file a DOR on its behalf and by when. **SNIC** continues to leave everyone in the dark. With particularity to this **SNIC** Proceeding, there is nothing that precluded a representative from filing a DOR and, by letter, advising the **Tribunal** that **SNIC** would be, through a lawyer licensee representative, taking steps to remedy the unfortunate state of affairs regarding the steps taken by the **Fictitious Respondent**, and its position relating to NOM #8. **SNIC** had a duty, consistent with its fiduciary duties, to consent to this order and not put the **Tribunal** to unnecessary and unreasonable expenses, as justice is not free, along with not wasting the Appellant's time in a frivolous, bad faith, unreasonable and vexatious manner. The above cases makes it clear that failure to comply with an Order from LAT, especially with no adequate explanation, may amount to unreasonable conduct and therefore could attract cost consequences. Ultimately, it goes without saying that all Counsel need to ensure that they are in compliance with the Orders issued by LAT.

66. As Nieuwland, albeit an unauthorized representative for a Fictitious Respondent put the Appellant's character at issue, the Appellant will respond once and once only. The reason for the same is that the Tribunal is not unfairly influenced by that kind of irrelevant one-sided type of attack. Unfortunately, the Appellant cannot seek costs against a Fictitious Respondent and Nieuwland. Moreover, neither the Fictitious Respondent nor Nieuwland are being served as they are both not "parties". The Appellant notes section 8 of the SPPA: "**8.** Where the good character, propriety of conduct or competence of a party is an issue in a proceeding, the party is entitled to be furnished prior to the hearing with reasonable information of any allegations with respect thereto. R.S.O. 1990, c. S.22, s. 8". The Appellant direct SNIC, so it does not engage in the same type of issues that distract from the real issues and contrast with section 2 of the SPPA and section 64 of the Legislation Act. The Appellant cordially directs the Tribunal to Appendix #1 and Appendix #2, and the Tribunal may read the full extent of those decisions at their leisure.

67. However, like SNIC failing to notify the Tribunal in an honest and forthright fashion, beyond remarkably, neither was the LSBC. For ease of reference, the Appellant directs the Tribunal and SNIC to Appendix #3 which is a copy and paste of the motion (which was consistent with the LSBC's pleadings in the *McLean*

v. LSBC action and *JRPA* later challenge) that the LSBC filed in April 2017 which failed. After some happenstance and luck, the Appellant learned that the LSBC, while misleading the Court for years, may have committed a RAM Dump which is the most intrusive and unlawful types of searches and seizures and requires a warrant. The Appellant made a FOIPPA (BC) privacy request in June 2021 and in October 2021, the LSBC's counsel was required to produce the same which was an 8.49 GB evidentiary trail of criminal conduct by the LSBC and others. Unsurprisingly, the LSBC is approximately a month away from its disbandment. It appears that the SNIC and the LSBC have some common traits in that they both do not notify tribunals and courts when they are required to do so. What is even now more ironic is that the nullity filings by TDGIC on April 11, 2024, there was a unknown reference, to the Appellant, to a request made by PWC LLP (without any evidence of how it was sent, when it was sent, and/or how it was delivered) regarding "accounting requests". The Tribunal can take judicial notice of the fact that the LSBC's auditor is PWC LLP. It raises the interesting question as to why the "bait and switch" from SNIC to TDGIC and the stubborn, without justification of law, position of SNIC to not reclaim its position as the lawful respondent party. The Appellant could go on but he felt compelled to face that issue once – and once only so he is not prejudiced by the "record of proceeding", albeit a nullity, containing those filings.

68. It raises the obvious question: what does that have to doe with SNIC's fiduciary obligations in a dispute resolution proceeding under section 280(2) of the *Insurance Act*, and having this SNIC Proceeding governed in accordance with SABS? The question answers itself.

69. That being said, the Appellant is the first to admit that while running a litigation practice that contained a plethora of successful decisions on behalf of his clients, and then later himself (albeit not in the practice of law), he lacked maturity, discipline, and an understanding of what it meant to be a well-rounded lawyer and how to run a successful practice of law. He owns it. He knows it and he has to live with that regret. While he had walked away into the business field (which allowed him to move from Vancouver to Toronto to reunite with his now Spouse and Individual Policyholder) before the disbar by the LSBC (where he was not served but beyond the pale here) and continued that path up and until the Accident, there was no place for the willful misrepresentations by the LSBC in tribunals and courts over a ten year period, and there is no place for it by SNIC by omission. In a court action, it is grounds for "solicitor-indemnity costs" and herein, unfortunately as $1,000 will not do much monetarily to SNIC, it is grounds for the "max". The Appellant's hope with this highly particularized and detailed legal analysis of awarding costs against SNIC is that it is motivates to be compliant specifically and generally.

70. As the **Fictitious Respondent** did not oppose the relief sought in NOM #8, it is also deemed to have admitted that the evidence was true and correct, and not at issue. Speculating on motives and intent or the underlying reasons as why this error occurred only bog down from the merits of this **SNIC** Proceeding which is why the **Appellant** has signed this submission and affirmed further evidence to provide comfort to the **Tribunal** that he is solely focused on having the merits of this **SNIC** Proceeding determined in the most expeditious, just and cost-effective manner (**see:** *Dadi v. Aviva*). However, **SNIC** needs to be discouraged from this type of conduct post the order in NOM #8 so that, if it wishes to have a representative and is able to defeat some of the other remedial relief being sought by the Appellant consequential to the **Fictitious Respondent** so the remainder of this SNIC Proceeding is governed in accordance with the Governing Statutes, Governing Regulations and LAT Rules.

71. All of which is respectfully submitted on Monday, June 17, 2024

Appendices

Appendix #1: Decision of The Honourable Mr. Justice Grauer as he then was (all in the same court file cited by Nieuwland in his nullity motion filing on behalf of TDGIC on April 11, 2024)

McLean v. Law Society of British Columbia, 2015 BCSC 1431

[93] Accordingly, I am of the view it is appropriate to grant the orders sought in paragraphs 7 and 8 of the May 13, 2015 application. I am making the following orders:

1. The plaintiff is not required to produce his personal phone to the Law Society pursuant to the Rule 4-43 order, and
2. Restraining the Law Society from entering or attempting to enter the plaintiff's residence pursuant to that order.

Appendix #2 : Decision of The Honourable Mr. Justice Grauer as he then was (all in the same court file cited by Nieuwland in his nullity motion filing on behalf of TDGIC on April 11, 2024)

McLean v Law Society of British Columbia, 2017 BCSC 987

4.1.2 Mr. McLean’s application for summary judgment

[65] As I see it, and as the Court of Appeal intimated, it is important to distinguish between the different questions that arise from Mr. McLean’s claim.

[66] The first question is whether the Law Society exceeded its statutory jurisdiction when it granted the investigation order; in other words, was the order ultra vires the Law Society? If so, it must be set aside.

[67] The second question is whether, assuming that it had jurisdiction to grant the order, the Law Society nevertheless acted improperly in the manner in which it granted the order, giving rise to procedural unfairness, so that the order must be set aside and, presumably, remitted to the Chair of the Discipline Committee. On this aspect, Mr. McLean relies upon: the failure of Mr. Riddell to give reasons for his decision to grant the order; the absence of information under oath to support the decision; the fact that the order was granted without notice to Mr. McLean; the absence of procedural safeguards (such as would, for instance, be available in an application for an Anton Pillar order, to which Mr. McLean likens the investigation order); and the conflict of interest that arises from what Mr. McLean terms a solicitor-client relationship that existed between Mr. Bussanich and Mr. Riddell.

[68] If either of those two questions were resolved in favour of Mr. McLean, then it would follow that the steps taken by the Law Society in carrying out the order were unlawful. The question of consent becomes immaterial.

[69] The third question is whether, assuming that the Law Society had jurisdiction to grant the order and did not act improperly in doing so, the Law Society nevertheless carried out the order in a manner that constitutes an unreasonable search and seizure. This turns primarily on the question of consent.

[70] The third question is one that could indeed be the subject of a civil action for damages, but I am satisfied that it is not one that can be decided on this application. This is because I would be obliged to weigh the evidence concerning whether and to what extent Mr. McLean consented to the investigation of his records and the copying of his computer contents.

Appendix #3: Filed NOA by the LSBC in April 2017

(Tribunal at liberty to obtain a copy of the same)

The filing by the LSBC in S-1410056 on April 2017

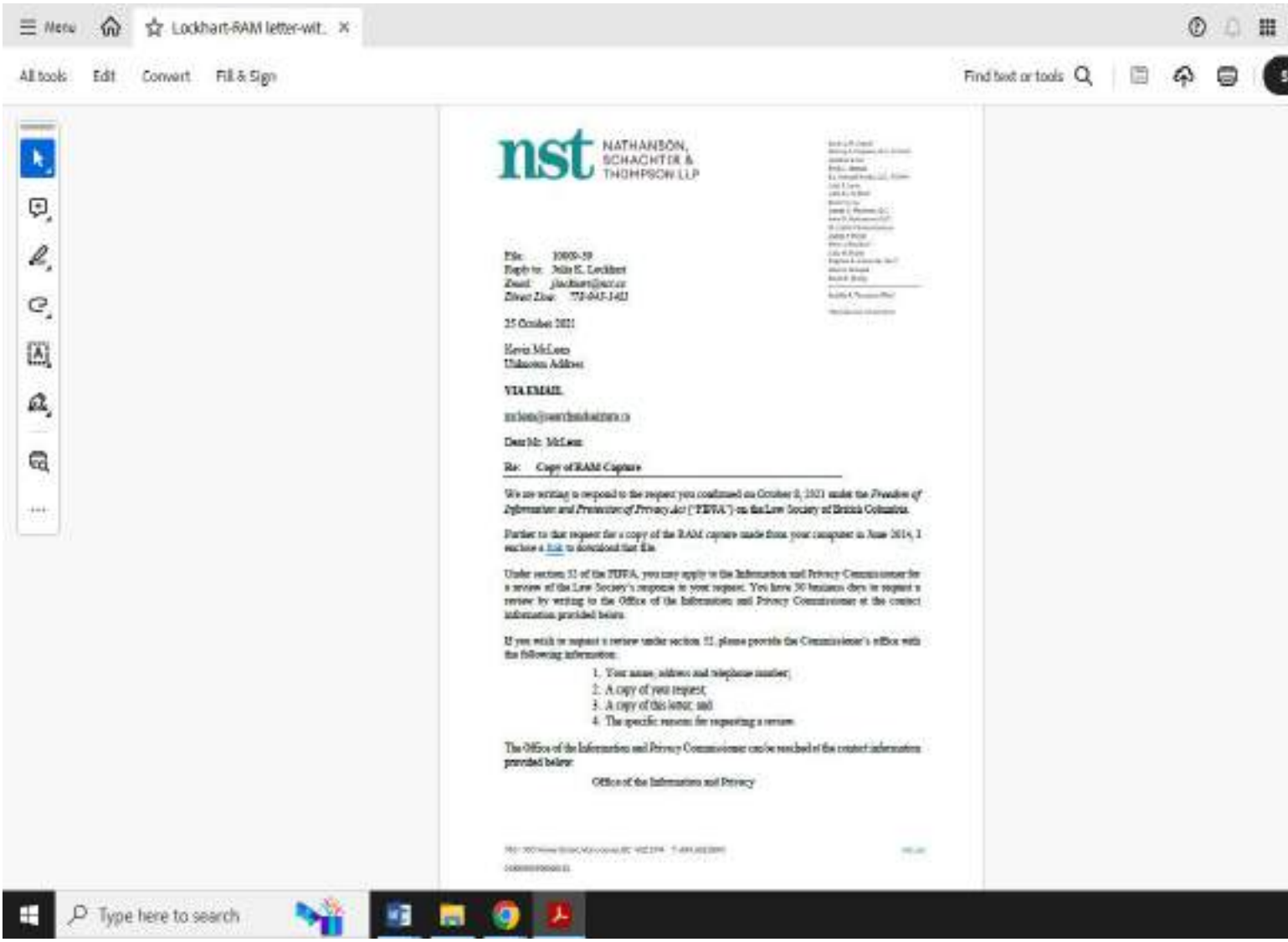
[23] On the morning of June 4, 2014, the plaintiff emailed Mr. Bussanich again and stated that his office was wide open for the Law Society to investigate. The plaintiff provided Mr. Bussanich with the password to his computer and stated that the investigators were at liberty to copy any documents they wanted

[24] On June 4, 2014, the investigators attended again at the plaintiffs office. The investigators took two forensic copies of the HARD DRIVE on the plaintiff’s office computer. They also took copies of paper files provided by the plaintiff.

[25] Nobody from the LSBC reviewed the **HARD DRIVE** until the conclusion of a process set out in the Rule 4-43 order for the adjudication of the plaintiffs request that certain documents be excluded from review. As it turned out, the plaintiff initiated but did not pursue the exclusion request and an independent adjudicator eventually dismissed the request.

[26] The plaintiff did not provide to the investigators all the records they requested. He was cited for failing to comply with the Rule 4-43 order.

Appendix #4: LSBC compelled to provide access to the Appellant of the “Concealed RAM Dump”



Appendix #5
Re: Distinction between "forensic copying" of a hard drive and a "RAM Dump" of a "computer"

Distinction between forensic copying and RAM dumps in the event the Tribunal is unaware as it took the Appellant months with forensic experts to understand the distinction between the "hard drive" and "RAM" and what a "RAM Dump" entailed when measured against forensic copying. (nota bene: the issues of the LSBC attempting to enter the Appellant's home are now moot by the passage and proclamation of "Royal Assent" of Bill 21 (also known as the "*Legal Professions Act*, SBC 2024 c. ___) (nota bene: should the Tribunal wish to have further details, the Appellant can provide on a confidential basis.)

RAM Dumps:

(i) Memory is not storage;

(ii) Not magnetic;

(iii) Volatile;

(iv) RAM cannot be copied;

(v) Native Images from RAM dumps are not Forensically Verifiable

a RAM DUMP and RAM CANNOT be COPIED due to the:

a. Usage of CPU before Dump;

b. Volatile Memory in constant flux

c. Creating a RAM DUMP changes the evidence – no write BLOCK

d. Imaged CANNOT be validated.

ENDNOTES

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

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

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

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

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

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

[7]"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.

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

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

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

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

[12]See: Affidavit #13, Exhibit "A", page 1; Affidavit #23, Exhibit "A", Tab 7, page 127

[13]**(Address included on Motor Vehicle Liability Card**

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

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

[16]This quote is frequently used to describe the destructive consequences of lies and the impact on persons' lives.

[17](see: Rule 19.2: A request for costs may be made to the **Tribunal** in writing or orally at a case conference or hearing, at any time before the decision or order is released)

[18]After providing notice to the **Tribunal**, after May 2, 2024, that Nieuwland's representations, exclusively on behalf of his client in TDGIC, were false in fact and at law, the Appellant filed his NOM #8 in mid May 2024. Amending the style of cause to be correct has been granted on numerous occasions with non-regulated entities (**see:** *Black Swan*, *Shinozaki*, *Grzesiak*)**.** Ontario **Tribunal**s routinely grant requests to amend the names of corporate respondents to reflect their correct legal names.[18] [18] Between an injured person and an insurance company, it is the insurance companies that have been found to be the sophisticated corporations (**see:** *Mosa*). In the *SABS* context, the insurer whom an insured person has recourse is liable for under the Schedule (**see:** *Insurance Act*). Motions to correct the naming of a corporate respondent to its factual and legal name are granted when reviewing the allegations in the pleadings as it pertains to the relationship between a claimant and respondent (**see:** Tab 10, page 267, *Ziemendorf v. Toronto Police Services Board*, paragraph 8 therein). The point is even more forceful when considering the good faith and fiduciary duties owed by this *SABS* Insurer to an Insured Person who was not at any fault in the Accident and has suffered immensely (**see:** *Beasley*, *Transamerica*, *Dervisholli* et al). [18] Moreover, it is only **SNIC** and Primmum that operate under the business or trade name of "TD Insurance Meloche Monnex".The overriding issue in this LAT Proceeding is whether **SNIC** has discharged its good faith duties pursuant to the law of contract (**see:** Bhasin), and its fiduciary duties to the **Appellant** (an Insured Person) (**see:** Beasley, Dervisholli, Transamerica, De Rosa, and Jia) and complied with *SABS*. It is quite obvious for context purposes that **SNIC** has not even when analyzing the Forged Nurse Signature in the OCF-18 from April 20, 2023. However, for the purposes of this costs submissions, this type of "stonewalling", "delaying" and "royal runaround" has to be sanctioned. Section 21.1 of the SPPA is an exception to the principle of functus officio (**see:** Tan, 2023 ONPSDT 9) and a codification of he common law setting out the circumstances under which admin **Tribunal**s may revisit their decision or orders for the purpose of amendment or alteration (**see:** *State Farm v. Ramalingam*, 2008 ONFSCDRS 22). Under the *LAT Rules*, as this **Appellant** has learned by way of decision of Vice Chair Logan, there is no right of reconsideration for not having the style of cause amended if the decision of the initial decision maker is NOT a "final decision". Therefore, it is only section 21.1 of the SPPA that can be advanced with the necessary evidentiary record to demonstrate the error. Rule 17 goes further than section 21.1 of the SPPA, and provides more discretion, "The **Tribunal** may at any time: Correct a typographical error, an error of calculation or similar error in its order or decision; OR clarify an order or decision that contains a misstatement or ambiguity, which is not substantive and does not change the order or decision." Herein, the orders of any decision makers do not change anything substantive in those decisions per se but rather ensure consistency with the Governing Legislation and Governing Regulations. None of those decisions or orders finally dispose of this **Appeal** so the only route is section 21.1 of the SPPA. Now with the evidence correctly before the **Tribunal** with respect to the distinctions between **SNIC** and TDGIC in Ontario, it is merely the amendment of a slip of "two words" by strikethrough and deletion.

[19]When using the word "sworn" it is interchangeable with "affirmed"

[20](see: The **Tribunal** may order that a party making a request orally under Rule 19.2 shall provide written submissions to the **Tribunal** and all other parties within 7 days of that oral request. A submission on costs shall set out the amount being requested.).

[21](see: A submission on costs shall set out the reasons for the request and the particulars of the other party's conduct that are alleged to be unreasonable, frivolous, vexatious, or in bad faith.)

[22]The remainder of the evidence therein in the body of the affidavit #21 is more relevant to a Reg 664 award as opposed to a Rule 19 costs award.

[23](see: I will continue to distinguish between **SECURITY NATIONAL INSURANCE COMPANY** as the "***SABS INSURER***" or "**SNIC #397**" or words and definitions to the similar effect)

[24](see: I will continue to reference to TD General Insurance Company as "**NON-*SABS* INSURANCE COMPANY**" (or "**TDGIC** #353")

[25]I filed and served my request pursuant to subsection 21.1 of the *SPPA* (the "**Error Correction Request**" or "*SPPA* **Section 21.1 Request**") which has sought the following: correction to the name of the respondent in previously issued decisions and orders of the Tribunal pursuant to the statutory authority under section 21 of the *SPPA* along with all other sections of the *SPPA* that are relevant to the definition and interpretation of "parties", representatives *et al* including references to the *Legislation Act*, *Insurance Act* and *SABS*; and in favour of the above and to avoid continuing advancing my request for the outstanding information for how, inter alia, a misapprehension was created upon the Tribunal, regarding which email (or communications orally) and/or individuals inadvertently misrepresented (in writing or orally) to or created the misapprehension upon the **Tribunal** that the "respondent" [sic] was **TDGIC** [SIC], I am content to have the name of the respondent corrected by the amendment of two words:

~~TD General~~ Insurance Company to **SECURITY NATIONAL INSURANCE COMPANY**.

[26]Now shown to me on page 5 to 11 is a copy of my email from May 2, 2024 which I sent at 8:12 a.m. wherein I asked **SNIC** to provide me a copy of one of one of the "Spam Faxes" which I denoted in my affidavit #3, which was served on **SNIC** prior to the filing of this my "Application Of An Injured" and solely served on **SNIC** as I did not know the name of "TDGIC" at said time in relation to TD Claim #3. Despite my request I did not receive a copy of the same from any of the persons that I requested the same upon. I believe, based upon the *lack of response* to my request, that an individual on behalf of **TDGIC** created an misapprehension upon the **Tribunal** on or around January 13, 2024 and said error must, which is not a legal conclusion but my belief (based on the now loss and damage

that I am suffering as a result) be corrected in accordance with the strict requirements (see: "technical deficiency" defined on page 28 of my **Exhibit "A"**; "technical": according to strict interpretation of the law" and "deficiency": the state of not having something that is needed (i.e. the words of "**Security National**" in favour of "*TD General*") of the *Insurance Act, SPPA, Legislation Act, Law Society Act,* and any associated regulations with said empowering and enabling legislation.

[27](see: NOM #8 Hearing Record, Tab 5 and 7 along with Exhibit "A", page 3 therein which was a "copy and paste" of the "tables" with hyperlinks to those decisions).

[28](see: respectfully submit to the **Tribunal** that since **SNIC** agreed and consent to the payment of fines (see: **Exhibit "A"**, page 19, brought by the initial allegations of contravention by the **FSRA** (formerly the FCSO) against it [**SNIC #397**],

[29]I affirm that my **Error Correction Request** is NOT a "reconsideration request" like my "reconsideration request" in relation to NOM #5 as the **Tribunal**'s orders and decisions in relation to notices of motions or that of Mr. Nieuwland on behalf of the **NON-*SABS* INSURANCE COMPANY** (**TDGIC** #353) as there were not any "final decisions" made by the **Tribunal**. I note that in *Black Swan*, albeit in relation to an HRTO matter, that at paragraph 9 (see: **Exhibit "A"**, page 23), the decision maker of the HRTO, noted that the **Tribunal** routinely grants requests to amend the names of corporate respondents to reflect their correct legal names. I note that the correct legal name of the ***SABS* INSURER** herein is "**SECURITY NATIONAL INSURANCE COMPANY**" (see: including but not limited to: **Insurance Policy**, correspondence in my listed and attached documents to my filed **Appeal** on December 24, 2023; denial letters filed on or around January 9, 2024 pursuant to the requirement of the **Tribunal** in order to process my **Appeal**; my notices of motions (#1 to #3 filed in January 2024; Mr. Karat's email to me on January 23, 2024 wherein he represented to me that he was assigned as the "ADR" to handle this **LAT Dispute** while representing that he was 'representing the **SECURITY NATIONAL INSURANCE COMPANY**; and the Karat COS, evidencing his service of the cover letter (see: return address of **SNIC Markham** with the logo in the upper left hand corner of "*TD Insurance Meloche Monnex*") and **SNIC Response** which he signed and filed whilst referencing the insurance company of "**SECURITY NATIONAL INSURANCE COMPANY**)I note that **TDGIC** and **SNIC** are both "corporations" but only one can be the "insurer" (see: *Insurance Act*, s.1(1)) as it relates to *SABS*. As I have claims for monetary orders in this **SNIC Proceeding**, I note the language in *Black Swan* which the HRTO stated, "The error in the respondent's name...is a barrier to effective enforcement of the orders..." While I am not raising the issue herein as it relates to an abuse of process under section 23(1) of the *SPPA*, I note that Mr. Nieuwland, which was astonishing to me at the time of his representation to me on May 2, 2024, that "**SNIC** and **TDGIC** are one and the same". Since that is his position, and his a lawyer licensee with the LSO (which requires him to be honest in any representations or submissions made to the **Tribunal**), I respectfully submit to the **Tribunal** that there is no prejudice to **TDGIC** to correct (amend) the errors in previously issued orders or decisions of the **Tribunal**. In this regard, I also note that the issues faced by the applicant and then judgment creditor after the issuance of a decision and order relation, in *Shinozaki v. 2252419 Ontario Inc.*, 2013 HRTO 2023 (see: **Exhibit "A"**, page 26). The applicant therein attempted to have her order enforced by the sheriff but was advised by the sheriff that the **Tribunal's** order could NOT be enforced (see: paragraph 5, sentence 3 therein; **Exhibit "A"**, page 26) unless it was amended to reflect the respondent's corporation name as opposed to a registered business name. As **SNIC** is the only corporation (***SABS* INSURER**: **SNIC #397**) that has paid me benefits by ETF, pursuant to my exclusive consent to **SNIC #397**, to do so and I have NOT consented to any other insurance company paying me in said form or otherwise, I re-affirm my previously affirmed evidence that I would not be able to have a monetary order enforced, as it relates to *SABS*, against "**TDGIC** #353"; rather, I could only, in good faith and honesty, seek to enforce any monetary order pursuant to *SABS* against **SNIC #397**. I am only seeking remedies against **SNIC** in reference to the *Insurance Act* and *SABS* (see: **Exhibit "A"**, page 27 citing paragraph 12 of *Shinozaki*).

[30][30] I again affirm that by not correcting the errors in the "respondent's name", it is creating prejudice and difficulty for me in updating my various health practitioners, professionals *et al*, as to the status of this **SNIC Proceeding** as there is a differently named corporation (**TDGIC**) than the underlying documents in **TD Claim #3**.

[31][31] As of today's date, which was somewhat of the impetus for this affidavit herein, I was queried by two separate "professionals" who have provided services to me and continue to provide services to me (whilst I continue to attempt to resolve this LAT dispute), with words to the effect of whether any favourable decisions against **TDGIC** would have any effect in our ongoing professional relationship (i.e. whether a decision to remove me from the **MIG** against **TDGIC** as opposed to **SNIC** would authorize of any treatment plans or payment for their services through HCAI in the future). Moreover, I have had recent confirmation from one prospective health practitioner that their clinic could not submit any treatment plans without referencing the name in the **Insurance Policy** and any discrepancy between the same would not be sufficient for it. As such, before I embark on the same or provide necessary updates to my current health practitioners (which are aware of the issues involving **SNIC**), I kindly request that the "technical deficiencies" are corrected forthwith.

[32]SNIC, pursuant to *Reg 283*, section 2.1(1) and (2) provided the Applicant with an "application" (OCF-1) for benefits (see: *Reg 283*, section 1, "benefits") "in late September 2022. On October 13, 2022, the Appellant, pursuant to section 2(4) of *Reg 283*, used the **Application** provided by SNIC delivered a "Completed Application"[32] to SNIC. On October 13, 2022, by receipt of **Completed Application** via fax to it, SNIC complied with section 2.1(5) of *Reg 283*. SNIC was the first insurer (and only insurer) to receive the **Appellant's Completed Application** and, as the "First Insurer", was responsible for paying benefits pending the resolution of any

dispute to *which insurer* was required to pay benefits.[32] 90 days from SNIC's receipt of the Completed Application was January 12, 2023. As of January 13, 2023, SNIC was permanently prohibited from disputing its obligation to pay benefits under section 268 of the *Act*. SNIC has never purported or actually relied on section 3(2) of *Reg 283*. From October 13, 2022, SNIC has never "redirected" the Appellant to "another insurer". At all material times after the Accident, SNIC, pursuant to section *Reg 283*, ss. 2(3) provided the Application and other appropriate forms that included the insurer's name (SNIC), mailing address (SNIC Markham and SNIC Burlington), telephone and fax number (416 Fax Number and 905 Fax Number).From October 13, 2022 to April 5, 2023, SNIC paid the Appellant, to the Appellant's Beneficiary Bank Account which the Appellant tendered in signed fashion exclusively to SNIC in early October 2022, the sum of $1419.98 for "Medical and Rehab Benefits" pursuant to completed OCF-6 forms. SNIC never gave notice to the Appellant (Insured Person) under section Reg 283, ss. 4(1) and, by law, SNIC never gave notice under section 3 of *Reg 283* to other insurers, and was prohibited from disputing its obligation to pay benefits under section 268 of the Act. The Appellant filed his Appeal on December 24, 2023 and served SNIC on December 24, 2023. The remainder of the material facts leading up to May 2, 2024 have been painstakingly put before the Tribunal in NOM #8, #10 and #11. Despite Nieuwland, on behalf of the Fictitious Respondent, signing and filing three motion submissions (April 11, 2024), a case conference brief, and attending a pre-hearing conference on behalf (May 2, 2024) and re-filing (May 22, 2024) of the Fictitious Respondent's submissions to the Appellant's NOM #6, all predicated on his misrepresentations (by omission or commission) to the Tribunal since January 2024, Nieuwland, exclusively on behalf of the Fictitious Respondent, made the Non-Party Admission in relation to NOM #8.[32]On May 2, 2024, Nieuwland orally represented to the Tribunal (VCP) that "SNIC and TDGIC" were "one and the same (the "One & Same Misrepresentation"). The "**One & Same Misrepresentation**" was contradicted by the public decisions, under "Enforcement Actions and Warnings" wherein the FCSO confirmed for the public that SNIC had a separate insurance license number of 397 and the Fictitious Respondent had an FSRA registration number of 353.[32]"The Appellant was only able to unequivocally disprove the **One & Same Misrepresentation** by fortuitousness. [32] [32] Nieuwland also represented, whilst solely acting for TDGIC, to the Tribunal (VCP), that "This is how we always do it" in relation to the party issue of TDGIC being substituted for SNIC during a LAT proceeding (the "**Unilateral Party Sub Misrepresentation**").

In relation to the "**Unilateral Party Substitution Misrepresentation**", the Appellant, found the "**Syed Decisions**" where Nieuwland acted for Security National Insurance Company (Respondent) in an initial hearing[32] and reconsideration hearing[32] before Adjudicator Evans. The reconsideration decision *as per* Adjudicator Evans was released in *July 2023*, and the LAT proceeding therein was commenced in 2020[32]. There is no record of Nieuwland ever representing the **Fictitious Respondent** before the Tribunal. [32] the tribunal has made rules under section 25.1 of the *SPPA* dealing with pre-hearing conferences, the tribunal may direct the parties , but not "non-parties", to participate in a pre-hearing conference to consider a variety of issues (see: 5.3(1) (a) to (f) of the *SPPA)*. The corollary is that any direction or order by the Tribunal regarding non-parties to attend a pre-hearing conference and in relation to obligations of a non-party that masqueraded as a "party" are null and void as it relates to a "non-party" or "non-parties". A member who presides at a pre-hearing conference may make such orders as he or she considers necessary or advisable with respect to the conduct of the proceeding, *including adding parties*.[32]. TDGIC never sought to be added as a party therein or be added as a party with an order that its previous filing were admitted by ay of "nunc pro tunc" order.

Non-parties are NOT entitled to reasonable notice of the hearing, which includes "written hearings", of the Tribunal: section 6(1) of the *SPPA*.

[33]The distinction had an important difference when considering that one Mr. Ronald Spiegel in the early 2000's where he was able to carve out a niche as a "public adjuster" and avoid any sanctions but when he was grandfathered in as a paralegal, he suffered fines and sanctions as a paralegal in the hundreds of thousands. In effect, those outside the regulatory reach of the LSO could not discipline these "agents", "ADR types" or "Swiss Army Knife types" (without any pejorative implication as many non-lawyers and non-paralegals are highly intelligent, experienced and contribute well, either as a public adjuster or claims adjuster, or even in the context of being an ADR individual (see: the distinction in Mosa wherein Mr. Morrow as the "ADR Specialist" and the adjuster for BelairDirect was a different female individual). Most, on first glance, will argue that non-licensees, who are engaged in the unauthorized practice of law or unauthorized provision of legal services can suffer the pain, stigma and loss (temporal, financial, emotional et al) of section 26.1 of the LSA. However, that requires the LSO to expend resources to file a petition with the ONSC, seek injunctive relief, and proceed with a hearing of the matter. Impecuniosity of these individuals or inability to pay the fines, and then the court costs to the LSO, may be an issue. Like the Tribunal, LSO's resources are finite and valuable, and while it has a book and asset value in the nine figures, it cannot be spending its resources going after each and every unauthorized legal practitioner. However, herein, Nieuwland has represented, which, with due respect, it is difficult to attribute much credibility to his representations herein (perhaps idiosyncractic to this SNIC Proceeding) considering his resiling, on behalf of the Fictitious Respondent, of his not only unlawful position as per his DOR (January 30, 2024) but one that is a nullity. Timing is everything with nullities. Had Nieuwland taken heed of the Appellant's reference to the law in NOM #4, #5, #6 and #7, NOM #8 would not have arisen. Moreover, NOM #9 (the COI preliminary motion albeit difficult to determine at this stage as the validity of those orders from VCP (with no castigation of her) as TDGIC cannot comply with orders when it is no longer "on the books" as the "respondent party".

34In *Fidler v. SunLife Assurance Company of Canada*, 2006 S.C.C. 30, the Supreme Court of Canada adopted the following paragraph from 702535 Ontario Inc. v. Lloyd's London Non-Marine Underwriters 2000, 184 D.L.R. (4 th) 687 (Ont. CA) at para 29: The duty of good faith also requires an insurer to deal with its insured's claim fairly. The duty to act fairly applies both to the manner in which the insurer investigates and assesses the claim and to the decision whether or not to pay the claim. In making a decision whether to refuse payment of a claim from its insured, an insurer must assess the merits of the claim in a balanced and reasonable manner. It must not deny coverage or delay payment in order to take advantage of the insured's economic vulnerability or to gain bargaining leverage in negotiating a settlement. A decision by an insurer to refuse payment should be based on a reasonable interpretation of its obligations under the policy. This duty of fairness, however, does not require that an insurer necessarily be correct in making a decision to dispute its obligation to pay a claim. Mere denial of a claim that ultimately succeeds is not, in itself, an act of bad faith.
35The Appellant cannot seek "punitive damages" in a **Tribunal** matter. His only recourse for unreasonable, bad faith, and frivolous conduct is under Rule 19 and it is only against a "party". The issue in the Costs Submission is not whether the adjusters (Nurse, Persaud or Michie) were acting in bad faith in their adjusting of the files. Context is always important when considering how the law evolves in relation to the likes of Rule 19. In *Demetriou v. AIG Insurance Company* of Canada , Justice Gray considered a summary judgment motion by the plaintiff. The plaintiff had received a family heirloom ring, which had been appraised at $550,000.00. He insured the ring insured through AIG Insurance. The policy was purchased July 15, 2015. The plaintiff's ring was stolen at knife-point two weeks later while he was walking on the beach in the Dominican Republic, wearing the ring on a chain around his neck and smoking a cigar. The court awarded the plaintiff $581,950.00 for the ring, $4,000.00 for the gold chain that was around his neck and $50,000.00 for punitive damages. Punitive damages against AIG were warranted for the following reasons: 1. AIG had decided that litigation would be required two weeks after the claim was made, but did not tell the plaintiffs for many months, until after the claim was issued. Even though it had decided not to pay the plaintiff, it continued to demand information documents and to conduct examinations under oath of the plaintiff, his father, and his wife." Other contextual examples are: Terminating disability benefits when surveillance and other evidence show total disability. • Handling claims with "incompetence, lack of care, indifference, neglect, outrageous arrogance or a calculated course of conduct designed to discourage and dishearten a claimant." • Engaging in a corporate practice that avoids making timely payment until a claimant is so desperate that they will take a reduced amount. Where a lawyer sees such conduct arising in a case, it may be appropriate to plead (or amend to plead) bad faith and punitive damages. It is important to remember that if one wants punitive damages, they must also be specifically pleaded."
[36]An insurer is under a duty of good faith and fair dealing. A breach of the duty of good faith is independent of and in addition to the breach of a contractual duty to pay the insured's loss. It is an actionable wrong, which can support a claim for punitive damages: Whiten, at paras. 79. A breach of the duty to act fairly and in good faith gives rise to a separate cause of action that is distinct from the cause of action founded on the express terms of the policy and that is not restricted by the limits in the policy. Hence it may result in an award of consequential damages distinct from the proceeds payable under the policy: Ferme Gérald Laplante & Fils Ltée v. Grenville Patron Mutual Fire Insurance Co. (2002), 2002 CanLII 45070 (ON CA), 61 O.R. (3d) 481 (C.A.), at para. 78. Statutory conditions in an insurance contract imposing limitation periods for "a claim under [this] contract" or an action "under this contract…in respect of the loss or damage to person or property" do not apply to a bad faith claim. A bad faith claim is not a claim for indemnity under the contract: Dundas v. Zurich Canada, 2012 ONCA 181 (CanLII), 109 O.R. (3d) 521, at paras. 46-49.
[37]word "vexatious" was used four (4) time as follows: [11] In its written hearing submissions, the respondent raised a procedural issue. The respondent submits that since the applicant is deceased and that no estate trustee has been appointed, the application is not legally viable as there is no authority on which it can proceed. Further, the respondent argues that, in the circumstances, the application was not properly commenced. As such, the respondent requests that the application be dismissed on the basis that it is vexatious.[17] The arbitrator found that the insured's claims had become vexatious as there was no legally viable way of pursuing them, and he indicated as follows on page 2 of the decision: Mr. Toma has been deceased for more than two years. A deceased person cannot pursue accident benefits. A legally appointed representative, either an executor or an estate trustee can "stand in the shoes" of the deceased and pursue a claim for accident benefits. No such person exists in this claim, nor, apparently, are there any plans to appoint a trustee. There is some question in my mind as to whether the dispute resolution process was properly commenced, given the lack of an executor or estate trustee. **Costs**[30] Pursuant to Rule 19.1 of the *Licence Appeal* ***Tribunal*** *Rules, 2023*, costs may be ordered where a party has acted unreasonably, frivolously, vexatiously, or in bad faith.[31] In its written hearing submissions, the respondent sought costs against the deceased applicant in the amount of $1,000.00. The respondent submits that the application is vexatious and should never had been commenced given that no estate trustee was appointed. The respondent argues that at the very least, the application should have been withdrawn. The respondent indicates that it has incurred legal costs to defend the application against a party that does not have any legal standing or existence.[32] The applicant's counsel did not respond to the respondent's request for costs in the reply submissions, despite having the opportunity to do so. As such, the applicant's counsel's position is unknown.
[33] It is well established that the test to award costs represents a high bar. I find that the respondent has not demonstrated that the applicant's conduct attracts costs and I note that neither the deceased applicant nor an estate trustee acting on his behalf pursued this

application. While I acknowledge that the respondent has been inconvenienced as a result of the applicant’s counsel’s actions, I have not been directed to any authority to support that the **Tribunal** has the power to make an order for costs against a legal representative.[34] Accordingly, I decline to make an order for costs against the deceased applicant.

[38]Section 19 of the SPPA requires an entered order, with notice by the enforcing party against a party that, in fact and at law, owes the monies (or risking an entire nullity of the entire proceeding) with a correct order at the time directed against the insurer that the insured person has recourse or vice versa. The alternative is that a party that is owed monies cannot have said order corrected by the Ontario Superior Court (Sheriff) but has to return to the **Tribunal** to correct that which was required to be correct at first instance (see: Shinozaki).

FORM 4C

Courts of Justice Act

BACKSHEET

McLean v. TDHA et al

Court file no. DC-24-00000718-00JR

ONTARIO SUPERIOR COURT OF JUSTICE (DIVISIONAL COURT)

PROCEEDING COMMENCED AT **TORONTO**

REQUISITION

Mr. Kevin A. McLean (B.A., J.D., CIM)
Applicant in this Notice of Application For Judicial Review ("**JRPA Application**") and perfected on December 16, 2024
775 King Street West
Suite 410
Toronto, Ontario
M5V 2K3
Email: mcleansettlement@gmail.com

SERVED UPON THE RESPONDENTS AND PERSONS ENTITLED TO NOTICE (IF KNOWN):

RESPONDENTS

Licence Appeal Tribunal: jesse.boyce@ontario.ca
TD Home and Autor Insurance Company: Matthew.Nieuwland@tdinsurance.com
Security National Insurance Company: Matthew.Nieuwland@tdinsurance.com
TD General Insurance Company: Matthew.Nieuwland@tdinsurance.com
Attorney General Of Ontario: judie.im@ontario.ca

PERSON ENTITLED TO NOTICE:

Attorney General of Canada: AGC_PGC_OTTAWA@justice.gc.ca and other email in the singular email thread for communications involving all parties and interested persons in *McLean v. TDHA et al*

TAB 27

Court File No. DC-24-00000718-00JR

Form 4E

Courts of Justice Act

REQUISITION

ONTARIO SUPERIOR COURT OF JUSTICE

(DIVISIONAL COURT)

BETWEEN:

KEVIN ALEXANDER MCLEAN

APPLICANT

- and -

TD HOME AND AUTO INSURANCE COMPANY, SECURITY NATIONAL INSURANCE COMPANY, TD GENERAL INSURANCE COMPANY, EXECUTIVE DIRECTOR, LICENCE APPEAL TRIBUNAL, HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO, REPRESENTED BY EXECUTIVE CHAIR OF TRIBUNALS ONTARIO IN MR. SEAN WEIR, THE ATTORNEY GENERAL OF ONTARIO

RESPONDENTS

REQUISITION

URGENT FILING TO THE DIVISIONAL COURT

REQUISITION FOR URGENT REGISTRAR OBLIGATORY COMPLIANCE AND FACILITATION OF ELECTRONIC UPLOAD ACCESS BY WAY OF INVITATION TO THE APPLICANT IN HIS CASE CENTER ACCOUNT, NOW ACCESSIBLE THROUGH MYONTARIO ACCOUNT

SUBJECT: Requisition for Mandated Electronic Document Upload Repository Access for the Litigant Pertaining to Motion Number 3 (*NOM* #3), filed November 17, 2025, inclusive of the Factum (November 18, 2025), Motion Record (November 19, 2025), and Proof of Service (November 21, 2025), all having been duly served, filed, and fees remitted, and which is returnable on December 3, 2025.

TO THE LOCAL REGISTRAR at the Divisional Court, Osgoode Hall, 130 Queen Street West, Room 174, Toronto, Ontario, M5H 2N5 (the "Divisional Court"). Telephone: (416) 327-5100.

I. DEMAND FOR ACCESS TO THE ELECTRONIC UPLOAD REPOSITORY

1. I REQUIRE Access to the **Case Center** electronic upload repository is necessitated forthwith for the effectual prosecution of this Judicial Review and *Peremptory Application* (JRPA) Proceeding, in strict conformity with the inherent procedural obligations imposed by the *Rules of Civil Procedure*. The denial of timely access constitutes a significant impediment to the preparation of submissions *in limine*, thereby risking a contravention of the foundational tenets of *procedural fairness*. The efficacious administration of justice is predicated upon the full and transparent disclosure of all relevant *acta* intended for the perusal of the presiding judicial officer, a prerequisite which is manifestly compromised in the absence of the requisite login credentials and upload functionality.
2. I REQUIRE AA facilitative invitation link to the **Case Center** system is commanded immediately in consequence of the Confirmation of Motion (November 24, 2025), the aforementioned document having been duly delivered and filed, and containing the explicit stipulation that:
    1. "Parties are responsible for ensuring that all materials in the above list are (a) filed with the court and (b) uploaded to **Case Center** by the applicable deadline in *Rule 4.05.3* of the *Rules of Civil Procedure*."
        1. The lack of this requisite invitation *ipso facto* renders the Applicant *non-compos mentis* regarding the full electronic court record, which is fundamentally inimical to the requirement of procedural equality, particularly when the forthcoming motion hearing necessitates precise reference to the uploaded documentary evidence for the consideration of the Bench.

II. LEGAL AND PROCEDURAL IMPERATIVES

A. COMPLIANCE WITH FILING REGULATIONS AND THE JUDICIAL RECORD

a. It is confidently asserted, subject to verification through the requested access, that all requisite documentary “materials,” as meticulously delineated in the aforementioned Confirmation of Motion, have been deposited with the Chancery of the Divisional Court, the temporal ambit of such deposit spanning either the antecedent period of November 2024 to February 2025 or the current calendar month of November 2025. This deposition satisfies the fundamental jurisdictional requirement for placing the *acta* of the proceeding before the tribunal.

b. Notwithstanding the recent amendment to the *Rules of Civil Procedure* under *Rule 4.05.3* relating to the Toronto Region—whereby the Registrar is primarily responsible for the uploading of all filed documents with the singular exception of the Compendium—an ineluctable entitlement to be fully apprised of the entire contents uploaded to **Case Center** is maintained for the benefit of the presiding justice concerning Motion Number 3. This right is critical to ensure that the presiding justice is endowed with the complete *acta* of the matter, thus mitigating the potential for judicial misapprehension or the denial of *natural justice* occasioned by an incomplete record. This procedural prerogative is buttressed by the principles enunciated in *Long v. Redbranch Investments Ltd.* (2018, BCCA), which meticulously references the procedural divergence extant between Ontario and its Western counterparts (specifically British Columbia and Alberta), and, by extrapolation, the foundational necessity of considering new facts or the *discovery* of fraud arising subsequent to the issuance of an impugned order, consistent with the foundational legal principle embodied in *Rule 59.06(2)* of the *Rules of Civil Procedure*. The inability to examine the uploaded documents precludes the Applicant from effectively preparing an argument *in limine* on December 3, 2025, concerning the totality of the record which is expected to be placed before the Court.

B. NULLITIES, IRREGULARITIES, AND THE INTEGRITY OF PROCEEDINGS

c. Ineluctably, non-compliance with the *Rules of Civil Procedure* is generally presumed to constitute an irregularity and not an absolute nullity. Nevertheless, pursuant to the foundational principle codified in

Rule 2.01, those litigants whose conduct evinces non-compliance with the *Rules of Civil Procedure* are obligated to make an application and obtain an order for relief to regularize the proceedings, thereby discharging the onus placed upon them to cure the procedural defect. No such application for exculpatory relief has been advanced by the defaulting or non-compliant Respondents, which failure further compounds the irregularity. While the Divisional Court is possessed of the inherent judicial discretion to dispense with strict adherence to the *Rules of Civil Procedure*, the same imperative exists that the Respondents must take proactive and discernible steps to obtain such exculpatory relief; their passive posture is legally untenable. This is consonant with the application of *Rule 59.01*, which demarcates the various pronouncements of the court, distinguishing a formal order, which generates legally enforceable obligations, from a mere compulsory attendance requirement, a judicial direction, or other preparatory judicial pronouncements that do not possess the same enduring legal effect. Furthermore, for a judicial order to achieve legal *status*, notwithstanding its validity *ab initio* from the time of pronouncement (subject to specified exceptions), a formal order must be drafted by "parties." At the current *status quo ante*, the only litigant actively participating remains the Applicant, pending the formal and requisite "delivery" of a Notice of Appearance by the Respondent Insurance Companies or the Attorney General of Ontario (AGO).

d. Albeit contestation as to the undertaking of subsequent procedural steps is absent, it is emphatically asserted that these subsequent *acta* were executed devoid of any cognizance concerning the operative irregularities, as evidenced by the draft order for Motion Number 2 (February 14, 2025) and Requisition Number 8, wherein operation was predicated upon the *prima facie* presumption that the Licence Appeal Tribunal (LAT) and the Respondent Insurance Companies had duly filed their respective Notices of Appearance. Consequently, a question of mixed fact and law arises in Motion Number 4 regarding whether constructive knowledge of these irregularities ought to have been possessed at the juncture of undertaking subsequent procedural steps, requiring a determination of the litigant's necessary *mens rea* in taking those

steps. This is an issue demanding resolution on a balance of probabilities by the presiding motion judge during the scheduled written hearing on December 3, 2025; such a determination will have a direct and significant bearing upon the legal validity of all subsequent procedural events.

e. *Rule 2.01* addresses not only the singular remediation of orders but also the rectification of "steps" and "documents" constituting the *acta* of the proceeding.

i. In this JRPA Proceeding and Motion Number 3, *Rule 2.01* of the *Rules of Civil Procedure* seamlessly dovetails with other cognate rules, particularly *Rule 38.07(2)*, which explicitly references the receipt of "steps" and "documents" and the negation thereof via the prohibition imposed upon the Divisional Court when Respondents have not formally "delivered" their Notices of Appearance, thereby vitiating the notice of those subsequent *acta*.

ii. Given the *post hoc* ascertainment (late October 2025) that the Respondents had neither filed nor delivered any Notices of Appearance, and contingent upon the resolution of the issues scheduled for December 3, 2025, a judicial determination is necessitated that all "steps" or "documents" received by way of notice by the Respondent Insurance Companies, the LAT, and the AGO are susceptible to being set aside, nullified, invalidated, or rendered of no force and effect *ipso facto* and *ab initio*. Such procedural invalidation would be effective subsequent to November 27, 2024, thereby restoring the *status quo ante* prior to the unauthorized participation of the non-compliant Respondents.

iii. Furthermore, as the request for a Case Management Conference by the LAT on December 3, 2024, was demonstrably advanced by a non-"party"—the LAT never having served its Notice of Appearance (the purported service by Ms. Maciel on November 27, 2024, being deficient as it was not transmitted to the Applicant's email address for service)—the request for case management conference was not made by a "party" as stipulated by the rules. Consequently, The Honourable Madam Justice Shore was legally precluded from assigning the JRPA Proceeding for case management pursuant to *Rule 77.05* of the *Rules of Civil Procedure*. A corollary of this intricate procedural predicament is that The Honourable Madam

Justice Shore was precluded from the *ultra vires* assignment of the entire proceeding and its attendant steps to her own judicial oversight, as contemplated by *Rule 77.06* of the *Rules of Civil Procedure*. While the assignment of a particular judge is conceivable, this requires the *bona fide* delegation of authority by the Chief Justice of the Superior Court of Justice (SCJ), the Associate Chief Justice of the SCJ, or potentially an unidentified Local Administrative Judge (LAJ), but not a Regional Senior Judge. The extant facts are insufficient to substantiate that Her Ladyship was so assigned *in limine* to January 7, 2025; such an inference is further undermined by the communication emanating from Ms. Lawrence of the Divisional Court which stipulated that approvals for case management are subject to the discretion of "the case management judge," a judicial role distinct from that of the Chief Justice of the SCJ, the Associate Chief Justice of the SCJ, or a LAJ of the SCJ courthouse. Ergo, the approval of a request for case management, which must only be initiated by a "party" subsequent to the filing of a "First Defence," is not co-extensive with, or equivalent to, an assignment to a "particular judge." As a Local Administrative Judge and a Case Management Judge (CMJ) are distinct judicial functionaries, and a LAJ is prevented from assigning a particular JRPA proceeding to himself or herself as this would constitute an impermissible delegation of power, all steps taken subsequent to this procedural lapse are deemed null and void on account of being irregularities subject to attack by Motion Number 3, with facts and fraud arising or discovered after the steps, documents, or orders were so taken, made, or issued, thereby rendering all subsequent directions *coram non judice*.

iv. Conclusively, access to the **Case Center** system is required, as an indefeasible right inheres, for the purpose of discerning with precision which documents have been duly filed and entered into the court file (c.f. *Rule 4.05.3* (Subparagraph (1) versus Subparagraph (2))). This is a matter of paramount importance to ensure that the Applicant is fully cognizant of the exact digital record that will form the basis of the impending judicial deliberation.

v. Furthermore, access is necessary to facilitate proactive preparation in the event that some or all Respondents "deliver" a Notice of Appearance (albeit not forthwith), thereby potentially entitling them to file materials concerning the JRPA Application and acquire *locus standi*. Should this circumstance materialize, the Applicant may be thereby compelled to interpose opposition to the relief sought in Motion Number 3 and/or to the notion that Motion Number 3 be adjudicated by written submission alone, which would necessitate an oral hearing on Wednesday, December 3, 2025. This latter scenario would compel the Applicant, and any potential participating non-Respondents or non-parties (if a Notice of Appearance is filed with proof of service), to access **Case Center**. The system is mandated for all participating persons or parties, and the reference to uploaded documents is requisite for the presentation of effective oral submissions, a requirement that cannot be met when access is denied.

vi. Moreover, the upload of the Compendium corresponding to Motion Number 3 is both an entitlement and a requirement, with said document being near completion at the moment of this Requisition's issuance. This Compendium is required to be uploaded by 2:00 p.m., three days preceding the hearing date of December 3, 2025. Given that the *Rules of Civil Procedure* do not stipulate "business days," a plain reading dictates that the Applicant's mandated uploading deadline is 2:00 p.m. on Friday, November 28, 2025. The delay in providing access directly infringes upon the ability to meet this crucial temporal imperative, causing demonstrable prejudice to the Applicant's procedural rights.

vii. The Confirmation of Motion is unequivocal in its reliance upon documentation that has been duly filed outside the immediate scope of the Motion Number 3 Motion Record, reinforcing the necessity of full access to the *acta* of the JRPA Proceeding.

viii. Access to **Case Center** through the issuance of a formal invitation is primarily predicated upon the statutory mandate governing Judicial Review and *Peremptory Application* proceedings, irrespective of any potential revision to the *Divisional Court JRPA Guide* subsequent to July 2025—a revision ostensibly suggested by the *inspection of metadata therein*. Given the inherently summary nature of JRPA

proceedings, which are required to be conducted strictly upon the extant record, and considering the antecedent perfection of the JRPA Application on December 13, 2024, or, *ad extremum*, on December 16, 2024, the Registrar's office was thereto obligated to effectuate a "listing for hearing," thereby affording any participating litigant the prerogative to solicit the approximate date of the hearing for the JRPA Application, an obligation that was not discharged.

ix. This procedural obligation concerning the required listing remains *res integra*, and the manifest non-compliance with, or the existence of an ostensible, unpublished practice by the Divisional Court to circumvent, *Rule 68.05* of the *Rules of Civil Procedure* is ultimately *de minimis* in consequence; every scheduled hearing or conference necessitates that a party assumes the responsibility for uploading all filed documents *prior* to the proceeding, subject only to the limited exception currently prevailing in the Toronto Region. Notwithstanding the delegated responsibility of the Registrar in the Toronto Region to effectuate the upload of core materials, the **Compendium** remains a distinct and mandatory submission that must be initiated by the litigant, even in circumstances wherein the motion is unopposed. Therefore, given the temporal exigency herein, the upload of the Compendium for Motion Number 3 remains a paramount obligation, the documents contained within being those upon which the Applicant has unequivocally signified reliance by way of the Confirmation of Motion. The failure to receive the invitation effectively nullifies this procedural entitlement and duty.

x. Furthermore, any modifications embodied within the *Divisional Court JRPA Guide*, which does not possess the status of "source law" and remains subservient to the *Rules of Civil Procedure*, the latter being themselves hierarchically subordinate to applicable statutes pursuant to the doctrines of paramountcy or legislative hierarchy, cannot operate either retrospectively or retroactively to divest vested procedural rights (*lex prospicit non respicit*), especially in relation to applications advanced under *Rule 2.01* (curing irregularities), *Rule 38.11* (setting aside originating process), *Rule 59.06* (orders made without *mens rea* or with *fraus*), and other operative sections of the *Courts of Justice Act* (*CJA*) *et al.* These fundamental

procedural safeguards remain immutable, notwithstanding subsequent administrative changes to the Divisional Court's procedural guidance.

3. An invitation link to **Case Center** is required forthwith, as an indefeasible right of access has existed since the judicial review application was officially filed, commenced, or brought. This position is supported by the *Ontario Superior Court of Justice Guide to Judicial Review (Divisional Court)* [the "Divisional Court JRPA Guide"], which explicitly states:

"After an application for judicial review has been brought, **an email** will be received for registration for **Case Center** and the uploading of materials. There is no fee to utilize **Case Center**" (See: Page 8 of 9). This written confirmation establishes a procedural expectation and right that must be respected.

4. Access to the **Case Center** electronic upload repository is immediately required, as a strict procedural obligation exists for the Applicant to upload the Compendium corresponding to Motion Number 3, and failure to facilitate this access constitutes a breach of the Court's implied duty to ensure the procedural efficacy of its own electronic systems.

Note: For the purposes of this Requisition, "registrar" denotes the Registrar of the Divisional Court or Court of Appeal, or a local registrar of the Superior Court of Justice, as the circumstances necessitate.

All of which is respectfully required and requisitioned to the Divisional Court Registrar for her immediate attention and subsequent action pursuant to Rule 4.08 and other cited "source laws" that are binding upon the Registrar, who is a creature of statute.

November 26, 2025

Mr. Kevin A. McLean
775 King Street West,
Suite 410
Toronto, Ontario
M5V 2K3
(e): mcleansettlement@gmail.com

Mr. Kevin A. McLean (B.A. J.D., CIM)
Self-represented or appearing *Pro Se*, the Applicant herein

RCP-E 4E (July 1, 2007)

Appendix #1: Confirmation of Motion of the Applicant of November 24, 2025

FORM 37B

Courts of Justice Act

CONFIRMATION OF MOTION

File No. DC-24-00000718-00JR

ONTARIO SUPERIOR COURT OF JUSTICE
(DIVISIONAL COURT)

BETWEEN:

KEVIN ALEXANDER MCLEAN

APPLICANT

- and -

TD HOME AND AUTO INSURANCE COMPANY, SECURITY NATIONAL INSURANCE COMPANY, TD GENERAL INSURANCE COMPANY, EXECUTIVE DIRECTOR, LICENCE APPEAL TRIBUNAL, HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO, REPRESENTED BY EXECUTIVE CHAIR OF TRIBUNALS ONTARIO IN MR. SEAN WEIR, THE ATTORNEY GENERAL OF ONTARIO

CONFIRMATION OF MOTION

Note: If the information on this form changes, you have a duty to give the court and the other parties a corrected version of the form (rule 37.10.1(3)). If you wish to abandon the motion after it has been confirmed, a notice of abandonment may be delivered (rule 37.09(1)).

PART A:

I, Mr. Kevin A. McLean (BA, JD, CIM), pro se or self-represented for the moving party, confirm that I have conferred or attempted to confer with the other party*(ies)* [*nota bene*: none as of today's date as of failure or neglect by the Respondents to have "delivered" their purported, in relation to the LAT, Notice of Appearance and the Respondent Insurance Companies' Notice of Appearance although the same was served on the Applicant at approximately 4:50 p.m. on December 3, 2025' and confirm that the motion to be heard on Wednesday, December 3, 2025, will proceed on the following basis:

[X] for a hearing of all the issues

The presiding judge will be referred to the following materials:

1. The Applicant's Notice of Motion number three ("NOM #3") made and served on the Respondents and non-Respondents on November 17, 2025 (see: Tab #2 of NOM #3 Motion Record);

2. The Applicant's Factum for NOM #3 served on the Respondents on November 19, 2025 (see: Tab #1 of the NOM #3 Motion Record);

3. The Applicant's Motion for NOM #3 served on the Respondents and non-Respondents on November 21, 2025;

4. The Applicant's Affidavit of Service, inclusive of sworn evidence adopting the statutory declarations served on an urgent basis on October 13, 2025, and November 14, 2025, on the Respondents and Non-Respondents inclusive of Mr. Karat, Mr. Papadimitropoulos and Ms. Dunk (see: Tab #22 of the NOM #3 Motion Record);

5. The documents sequentially separated by tabulations and consecutively numbered in the NOM #3 Motion Record (see: Tabs #4 to #Tab #21 (which is the Draft Order);

6. The authorities and evidence contained in the hyperlinked and bookmarked NOM #3 Motion Record served on the Respondents and Non-Respondents as of November 24, 2025;

7. The Divisional Court Judicial Review Guide as it was from on or around 2022 to June 2025 (the "Materially Timed Divisional Court JRPA Guide"), and by reference and comparison the current Divisional Court Judicial Review Guide (the "June 2025 Amended or Current JRPA Guide");

8. This Confirmation of Motion and Schedule "A" herein;

9. Select documents contained in the Applicant's served and filed Compendium of February 14, 2025 and amended Compendium of February 15, 2025 inclusive of the following but not limited to:

    a. **APPLICANT**'S OUTLINE TO **COMPENDIUM**

        i. Compendium filed and served on February 11, 2025

        ii. 1st Amended Compendium of February 15, 2025;

            1. **Court file number**

            2. DC-24-00000718-00JR

            3. **Submitted to the Divisional Court, Superior Court of Justice in**

            4. Toronto

                a. **Confirmation number**2910470

10. The following tabs from the Applicant's filed and served Compendium of February 17, 2025;

    a. Tab #2 (VCM Decisions involving NOM #13 to #15 of the Applicant (Nota bene: only NOM #14 and #15 under judicial review and select orders further denoted in NOM #2 by reference to those final decisions, determination or exercises of statutory powers of decisions or purported exercises of statutory powers of decisions or refusal to exercise a statutory power of decision (i.e. dismissal of the relief sought involving amending pleadings; dismissal of relief to add a party et al);

    b. Tab #3 (VCL Decision of October 15, 2024, but received on October 16, 2024);

c. Tab #4: VCL Decision of January 16, 2024;

d. Tab #5: LAT Order of February 13, 2024;

e. Tab #6: Applicant's LAT Appeal pursuant to section 280(2) of the Insurance Act

f. Tab #7: Response to LAT Appeal by SNIC and not TDGIC prima facie signed by Mr. David Karat, a non-licensee and unauthorized to have completed and signed the same on account of the Law Society Act and the LSO By-Laws;

g. Tab #8: Affidavit #3 of the Applicant in the LAT of October 31, 2023;

h. Tab #9: Select Evidence from NOM #3: Appendices

    i. October 2023: e-claims workflow;

    ii. February 2024: Mr. Nieuwland's fraudulent misrepresentation that Mr. Papadimitropoulos ("Epstein Cole LLP Client") had not been involved in any way with Applicant's claim or access request but based on a fictitious claim number with a "04"

i. Tab #10: Affidavit #30 in the LAT Proceeding of the Applicant on July 31, 2024;

j. Tab #11: Affidavit #38 in the LAT Proceeding of the Applicant of September 28, 2024;

k. Tab #12: Affidavit #17 in the LAT Proceeding of the Applicant on April 14, 2024;

l. Tab #13: Affidavit #18 in the LAT Proceeding of the Applicant made on April 15, 2024

m. Tab #14: Affidavit #21 in the LAT Proceeding of the Applicant made on May 3, 2024

n. Tab #15: Affidavit #22 in the LAT Proceeding of the Applicant made on May 10, 2024

o. Tab #16: Affidavit #23 in the LAT Proceeding of the Applicant made on May 11, 2024;

p. Tab #17: Affidavit #24 in the LAT Proceeding of the Applicant, made on May 15, 2024;

q. Tab #18: Affidavit #27 in the LAT Proceeding of the Applicant, made on June 10, 2024;

r. Tab #19: Affidavit #28 in the LAT Proceeding of the Applicant, made on July 5, 2024;

s. Tab #20: Affidavit #19 in the LAT Proceeding of the Applicant, made on April 24, 2024;

t. Tab #21: Affidavit #31 in the LAT Proceeding of the Applicant, made on August 16, 2024

u. Tab #22: NOM #14 Motion Submission of the Applicant before the LAT in the LAT Proceeding filed and served on August 3, 2024

    i. *Nota bene*: motion was unopposed by the Respondent Insurance Companies;

v. Tab #23: Tab #22 in NOM #13: images of the East Mall Address from August 4, 2024 demonstrating that the location of the Applicant's apparent HCAI situated insurer, which being TDHA but through concealment, was a construction site or "hole in the ground";

w. Tab #24: NOM #18 Motion Submissions of the Applicant, dated September 29,2024 (the "Ss. 21.1 of the SPPA Motion")

x. Tab #25: Reconsideration Motion of the Applicant to the LAT in the LAT Proceeding on September 29, 2024 (*nota bene*: 15 days after the VCM Decision was issued to the Applicant and SNIC, the only "party" per se as it filed a Response under the LAT Rules (AABS), and the fictitious respondent in TDGIC and the sought to be added, although unopposed, in the First Insurer (TDHA) (*nota bene* #2: this was 16 days after the LAT issued a Notice of Hearing for the Applicant's NOM #16);

y. Regulations and rules referenced in Tabs #26 to #29:

i. Reg 283;

ii. Reg 664;

iii. UDAP Rule;

iv. *SABS* or the Schedule;

z. Authorities listed in Tabs #30 to #32 (by their definitions therein);

i. Zurich 2024;

ii. Bateman;

iii. Beasley;

aa. FSRA Issued Documents at Tab #33 including but not limited to and titled, "Affiliated insurer carrying on business as a common undertaking pursuant to s. 392.2(8) of the *Insurance Act"*

bb. Tab #34: *SPPA et seq* ["*SPPA*"]

cc. Tab #35: Applicant's Submissions for NOM #15;

dd. Tab #36: Affidavit #2 in the JRPA Proceeding ["**Urgent Hearing Single Justice Affidavi**t"]

ee. Tab #40: Affidavit of Service of the Applicant, December 13, 2024;

11. Such other documents that the Applicant may advise, which may have arisen or been discovered or may arise or be discovered post the giving and serving of this Confirmation of Motion on today's date.

Note: Parties are responsible for **ensuring** that all materials in the above list are (a) filed with the court and (b) **uploaded** to Case Center by the applicable deadline in rule 4.05.3 of the *Rules of Civil Procedure*.

I estimate that the time required for the motion, including costs submissions, will be **"not applicable" minutes** for the moving party*(ies)* is "**not applicable**" minutes for the responding party*(ies)* (*nota bene*:

not applicable because the responding parties, distinct from Respondents, have not served, filed, with proof of service, Notices of Appearance. The determination of the Applicant's *Notice of Motion Number Three* is predicated upon a hearing in writing. It is of paramount significance to observe, *in limine*, that the Respondents have not tendered a First Defence and have failed to deliver their respective *Notices of Appearance* (*NOA*s). This critical antecedent procedural default engages a precise mechanism within the *Rules of Civil Procedure*. Pursuant to the mandatory stipulations enumerated in *Rule 38.07(2)(a) to (c)* of the *Rules of Civil Procedure*, the Respondents are *ipso facto* precluded from the filing of any material whatsoever pertaining to the *Judicial Review Procedure Act* (*JRPA*) Application. This prohibition extends, as a necessary corollary, to the instant *Notice of Motion Number Three*. Moreover, in the absence of a remedial *order* of the Court, which has not been duly sought or secured at the juncture of this Confirmation of Motion, the Respondents are further barred from receiving subsequent procedural steps or documentation within this *JRPA* proceeding. Consideration must also be given to *Rule 37.12.1(5)*, which, by invoking the preclusionary mandate of *Rule 38.07(2)(c)*, prohibits the Responding Parties from filing requisite documentation for motions in writing. Consequently, the non-delivery of *NOA*s renders untenable the subsequent filing of: (1) A consent to the motion; (2) A notice affirming non-opposition; (3) A motion record, inclusive of a factum entitled "factum for a motion in writing," or any corresponding agreement to have the matter adjudicated in writing; or (4) A notice of intent to make oral argument, along with any supporting material intended to be relied upon. The failure to "deliver" the *Notices of Appearance* is demonstrably the foundational element that vitiates any entitlement to "filing" material. The *JRPA* proceeding has been fundamentally impacted by a series of alleged *ultra vires* actions. Were the Respondent Insurance Companies to deliver their *NOA*s at this belated juncture, such a remedial action would constitute a tacit affirmation that all antecedent procedural steps taken by them were voidable irregularities, or, more likely, absolute nullities foundational to the entire *JRPA* Proceeding. This affirmation would inherently extend to the following: (1) The request for a case conference by the License Appeal Tribunal (*LAT*) is rendered null and void; (2) The compulsory case conference mandated by Madam Justice Shore is rendered null and void; (3) The resultant failures of the Respondents to serve and file application records and facta by the designated deadline of January 13, 2025, were substantively defective; (4) The Applicant's *Notice of Motion Number One* (*NOM #1*) and *Notice of Motion Number Two* (*NOM #2*) stand unopposed; and (5) All previous case conference appearances by the Respondents, particularly those conducted without the Applicant's attendance (under notice and objection, yet involving subsequent discoveries of fraud and material facts), are demonstrably null and void. Furthermore, the *LAT*'s inability to "deliver" its *NOA* is substantiated by Ms. Maciel's acknowledged failure to provide a sufficient proof of service thereof. To the extent that the Respondent Insurance Companies *subsequently* delivered their *NOA*s, the resultant legal effect would maintain the unopposed status of *NOM #1* and *NOM #2*. This action would compel a return to the *status quo ante*, effectively serving as an admission that all steps, documents, and/or orders executed subsequently were, at the very least, irregularities warranting being set aside, or, more probatively, were nullities that vitiated the underlying foundation of the *JRPA* Proceeding. *Rule 38.07(2)(d)* presents a distinguishing factor pertaining solely to the hearing of the *JRPA* Application itself; nevertheless, it necessitates the procurement of leave from the presiding justice. Moreover, while *section 9(4)* of the *JRPA* establishes a clause paramount to the *Rules of Civil Procedure*, its overriding effect is restricted exclusively to procedural requirements for the appearance of the Attorney General of Ontario (*AGO*). Consequently, the Respondent Insurance Companies are obliged to seek judicial leave for the filing of a factum and an application record in the primary Application. This exigency exists against the backdrop of the *LAT*'s dereliction in its duty to file the Record of Proceeding forthwith, or at all. Furthermore, the *LAT* and the Respondent Insurance Companies are concurrently required to seek leave to serve and file their responsive documentation to *NOM #1* and *NOM #2*. Such a motion for leave must be buttressed by sworn or declared evidence demonstrating the requisite *mens rea* (or lack thereof) which led to the initial non-opposition of the aforementioned motions. Finally, the *AGO*, in a welcome communication dated January 30, 2025, has formally confirmed that participation in this matter will not be undertaken.]

for a total of **"not applicable" minutes,.**

Dated: November 24, 2025

DULY EXECUTED IN ELECTRONIC FORM BY
THE *JRPA* APPLICANT ON THE DATE ABOVE:

Mr. Kevin A. McLean (B.A. J.D., CIM) (he/him)
(e): mcleansettlement@gmail.com

TO (SEPARATED BY VOLUMES OF PERSONS, ENTITIES ET AL)

VOLUME #1: THE RESPONDENTS IN THE STYLE OF CAUSE

VOLUME #1(A): SPECIFICALLY TO: RESPONDENT INSURANCE COMPANIES

Volume #1(A)(I): TDHA (First Insurer)

TD Home and Auto Insurance Company,

Last known address and addresses (mail and fax) at the time of its [TDHA] receipt of the Applicant's completed OCF-1 pursuant to *Reg 283* (the "**MCLEAN COMPLETED OCF-1 APPLICATION**"):

4th Floor
3650 Victoria Park Avenue,
North York, Toronto, Ontario
M2H 3B2

FAX NUMBER

FAX: 416.774.3120

FSRA REGISTRATION NUMBER 1063, Fax: 416.774.3120 ("**TDHA**")

Attention (its declared counsel herein):

Mr. Matthew Nieuwland
Business name: TD Insurance Staff Legal

Lawyer Licensee with the LSO
LSO #71405A

66 Wellington Street West,
38th Floor,
Toronto, Ontario,
M5K 1A2
T: 905-201-4092 | F: 416-599-7439
Email: Matthew.Nieuwland@tdinsurance.com

Volume #1(A)(II): SNIC (Sole Underwriter)

Security National Insurance Company ("SNIC")

FSRA REGISTRATION 397, FAX: 905-315-1074 ("**SNIC**")

MAILING ADDRESS:

5th floor-5045 South Service Rd ,
Burlington, ON
L7L 5Y7

FAX NUMBER

Fax: 905-315-1074

Attention (its declared counsel herein):

Mr. Matthew Nieuwland
Business name: TD Insurance Staff Legal
Lawyer Licensee with the LSO
LSO #71405A

66 Wellington Street West,
38th Floor,
Toronto, Ontario,
M5K 1A2
T: 905-201-4092 | F: 416-599-7439
Email: Matthew.Nieuwland@tdinsurance.com

i.

Volume #1(A)(III): TDGIC (Fictitiously Inserted Respondent in the LAT Proceeding

TD General Insurance Company,

FSRA REGISTRATION NUMBER 353, Fax: 416.774.3629 ("**TDGIC**")

TD General Insurance Company
FSRA registration number 353

Address found by Tribunal in issued orders for TDGIC despite no provision of the same to the Applicant during TD Claim #3 process, in any filed documents by TDGIC or otherwise:

3650 Victoria Park Ave
Floor 9,
North York, ON
M2H 3P7

FAX NUMBER

FAX: 416.714.3629

Attention (its declared counsel herein):

Mr. Matthew Nieuwland
Business name: TD Insurance Staff Legal
Lawyer Licensee with the LSO
LSO #71405A

66 Wellington Street West,
38th Floor,
Toronto, Ontario,
M5K 1A2
T: 905-201-4092 | F: 416-599-7439

VOLUME #1(B): THE IMPUGNED DECISION MAKING ADJUDICATIVE TRIBUNAL

SPECIFICALLY TO

Licence Appeal Tribunal (the "**Tribunal**");

25 Grosvenor Street,

(unknown floor)

Toronto, Ontario,

(attention: Mr. Boyce, LSO, 72486F

Jesse A. Boyce
Law Society Number
72486F

Class of Licence Definitions
Lawyer (L1)
Real Estate Insured †
No
Status Definitions
Practising Law - Employed
Business Name
SLASTO
Business Address
25 Grosvenor 4th Floor Toronto, OntarioM7A 2S8
Phone
1 437 997 1235 Ext.

Jesse.boyce@ontario.ca

VOLUME #1(C): THE AGO

SPECIFICALLY TO:

Ms. Judie Im
Called to the bar: 2001 (ON)
Min. of Attorney General (ON)
Senior Counsel
Crown Law Office-Civil Law, 8th Flr.
720 Bay St.
Toronto, Ontario M7A 2S9
Phone: 416-427-4611
Fax: 416-326-4181
Email: judie.im@ontario.ca

Attorney General of Ontario Constitutional Law Branch McMurtry-Scott Building 4th Floor 720 Bay Street Toronto, Ontario, M7A 2S9 email: clbsupport@ontario.ca

VOLUME #2: THE HONOURABLE AGC

AND TO:

Attorney General of Canada

Department of Justice Canada 120 Adelaide Street West Suite #400 Toronto, Ontario M5H 1T1 Telephone: 416-973-0942; (Alternate: 647-256-1663) TDD: 416-973-2496 Fax: 416-954-8982 Email for Notices of Constitutional Questions: NCQ-AQC.Toronto@justice.gc.ca

VOLUME #3: LEGAL COUNSEL, LAWYER LICENSEE IN MR. SINNADURAI, TO MADAM JUSTICE SHORE

AND TO:

Counsel (retained to Madam Justice Shore) in Mr. Sinnadurai

Ananthan Sinnadurai
Called to the bar: 2011 (ON)
Min. of Attorney General (ON)
Counsel
Crown Law Office-Civil Law, 8th Flr.
720 Bay St.
Toronto, Ontario M7A 2S9
Phone: 416-326-4008
Fax: 416-326-4181
Email: ananthan.sinnadurai@ontario.ca

VOLUME #4: THE SPOUSE OF THE INDIVIDUAL WHO ENGAGED IN THE TDI KARAT THEFT ON OCTOBER 25, 2024

AND TO:

Ms. Julia Dunk

Law Society Number
P10606
Class of Licence Definitions
Paralegal (P1)
Status Definitions
In Private Practice
Business Name
Himelfarb Proszanski
Business Address
1401-480 University Ave Toronto, OntarioM5G 1V2
Phone
416-599-8080
Email Address
jdunk@himprolaw.com

VOLUME #5: THE ADR SPECIALIST WHO ENGAGED IN UNAUTHORIZED SIGNING OF THE SNIC RESPONSE AND THE THEFT OF THE APPLICANT'S PROPERTY, OF WHICH THE DOCUMENTATION THEREIN IS A SUBJECT MATTER IN DISPUTE HEREIN, BY THE TDI KARAT THEFT

AND TO:

Mr. David Karat

Non-licensee with the LSO

By professional email: David.karat@tdinsurance.com

As per his signature block that he was authorized to represent: Primmum Insurance Company, TD Home And Auto Insurance Company, TD General Insurance Company, and Security National Insurance Company

VOLUME #6: THE SABS MANAGER FOR THE TDIA GROUP FROM APRIL 2023 TO JANUARY 2025 AND EPSTEIN COLE LLP CLIENT WHILE MADAM JUSTICE SHORE WAS A SENIOR PARTNER AT SAID LAW FIRM

AND TO:

Epstein Cole LLP Client, Mr. Papadimitropoulos

Andrew Papadimitropoulos

Law Society Number
58696I
Class of Licence Definitions
Lawyer (L1)
Real Estate Insured †
No
Status Definitions
Practising Law - Employed
Business Name
The Toronto-Dominion Bank-Legal Department
Business Address
66 Wellington Toronto, OntarioM5K 1A0
Phone
416-983-5467

By previous email until end of January 2025 in: andrew.papadimitropoulos@tdinsurance.com

And current LSO directory email: andrew.papadimitropoulos@td.com

VOLUME #7: THE TORONTO POLICE SERVICES BOARD (THE "TPS"): THE MUNICIPAL POLICE FORCE INVOLVED THE EXECUTION OF THE SIGNED ARREST WARRANT BUT FAILED TO PROVIDE A COPY OF THE SAME DESPITE REQUESTS OF THE SAME

TPS Headquarters (nota bene: same address location for service of Court Officer (Toronto Region) Mrs. Frugoni-Rojas and the last location of employment for JP Jiri prior to being appointed as a JP of the OCJ and then assigned to the Central West Region OCJ Brampton)

40 College Street,

Toronto, ON,

M5G 2J3

Attention:

Ms. Falguni Debnath and legal department

Falguni.Debnath@tps.ca and legal.services@torontopolice.on.ca

VOLUME #8: THE MINISTRY OF SOLGEN AND THE HONOURABLE SOLGEN MR. MICHAEL KERZNER

Ministry of Solicitor General

Address:

18th floor of 25 Grosvenor Street

Toronto, Ontario

(nota bene: one floor below the office floor of "Tribunals Ontario" and that of executive director of Tribunals Ontario in Mr. Sean Weir)

Attention: emails in Affidavit of Service at Tab #22 of the NOM #3 Motion Record

PART B [NOT APPLICABLE BY VIRTUE OF THE APPLICANT'S GIVING OF THE CONFIRMATION FO MOTION ON NOVEMBER 24, 2025, FOR THE DECEMBER 3, 2025 HEARING

I, ... *(name)*, [lawyer for] the responding party, confirm that the moving party*(ies)* served a notice of motion but failed to send a copy of the Confirmation of Motion (Form 37B) in accordance with rule 37.10.1(1)(b). I will appear on the motion date to seek costs. I estimate the time required for costs submissions will be ..... minutes. I confirm that I have sent a copy of this form to the other party*(ies)* by e-mail in accordance with rule 37.10.1(2)(b).

RCP-E 37B (May 15, 2024)

Nothing past this line but schedules

SCHEDULES

SCHEDULE "A": COPIED AND PASTED EMAILS SINCE MAKING AND SERVING THE NOTICE OF MOTION ET AL
***NOTA BENE*: TITLE OF EMAIL WAS PURSUANT TO MS. MACIEL'S ERRONEOUS AND MISDIRECTED SERVICE OF THE LAT'S NOA TO THE INCORRECT EMAIL OF THE APPLICANT FOR THE JRPA PROCEEDING WHICH EXPLICITLY REFERENCED SERVICE PURSUANT TO THE RULES OF CIVIL PROCEDURE (BUT NOT "FILING" OR "DELIVERY")**

Re: LAT's Notice of Appearance : McLean v. TD Home and Auto Insurance et al. : 718/24

Mr. Kevin McLean <mcleansettlement@gmail.com> Mon, Nov 24, 2025 at 6:18 PM

To: "SCJ-CSJ Div Court Mail (JUD)" <scj-csj.divcourtmail@ontario.ca>
Cc: "Maciel, Milene (MAG)" <Milene.Maciel@ontario.ca>, "Collie, Connor (MAG)" <Connor.Collie@ontario.ca>, "Pasquini, Heather" <Heather.Pasquini@tdinsurance.com>, Div Court Schedule <DivCourtSchedule@ontario.ca>, "Nieuwland, Matthew" <Matthew.Nieuwland@tdinsurance.com>, "Boyce, Jesse (MAG)" <Jesse.Boyce@ontario.ca>, "Im, Judie (She/Her) (MAG)" <Judie.Im@ontario.ca>, "Imafidon, Isibhakhomen (MAG)" <Isibhakhomen.Imafidon@ontario.ca>, christiana.ortiz@tdinsurance.com, NCQ-AQC.Toronto@justice.gc.ca, AGC_PGC_OTTAWA@justice.gc.ca

Any reference to party or parties does not refer to the Respondents in the style of cause.
PRIVATE AND CONFIDENTIAL
Via Electronic Transmission
DATE: November 24, 2025

VIA EMAIL

URGENT

Court file number: DC-24-00000718-00JR
Type of document: NOM #3 Motion Record with meticulous hyperlinking and bookmarking
Short title of proceeding: *McLean v. TDHA et al*
Party: Mr. Kevin A. McLean (B.A., J.D, CIM) (mcleansettlement@gmail.com)

TO:

Respondent Insurance Companies
Licence Appeal Tribunal (LAT)
Attorney General of Ontario (AGO)

COPIED TO:

Divisional Court (Registrar)

Attorney General of Canada ("AGC")

SUBJECT I: PART 2 OF 2 OF THE HYPERLINKED AND BOOKMARKED MOTION RECORD FOR APPLICANT'S NOM #2

SUBJECT II: ENCLOSURE OF THE IN FORCE DIVISIONAL COURT JRPA GUIDE AT THE MATERIAL TIME
SUBJECT III: ASSURANCE AND PROMISE THAT MY CONFIRMATION OF MOTION FOR NOM #3 WILL BE GIVEN TO THE REGISTRAR WITH A COPY TO THE RESPONDENTS ALTHOUGH THEY ARE DISENTITLED TO RECEIVE NOTICE OF ANY STEPS IN THE JRPA PROCEEDING, RECEIVE DOCUMENTS IN THE JRPA PROCEEDING, AND FILE MATERIALS ON THE JRPA APPLICATION AS PER RULE 38.07(2)(A) TO (C)

INTRODUCTION AND ADOPTED DEFINITIONS
I cordially write regarding the above Subjects of this correspondence, the cumulative import of which necessitates an expeditious and judicious resolution by this Honourable Court. I tender my sincerest appreciation *in limine* for your valuable time and considered deliberation concerning this material correspondence and its **contemporaneous enclosures**, including the designated Part 2 of the Motion Record and the *in force* Divisional Court JRPA Guide. Acknowledging the finite, yet unequivocally valuable, resources at the Court's disposal, it is incumbent upon me to confirm that I have devoted an immense quantum of time to the exhaustive research and methodical analysis of the complex legal issues herein delineated, and their appropriate application to the intricate factual matrix of this file, thereby ensuring maximal efficiency in the judicial process. This effort is not merely about procedural compliance, but about safeguarding the integrity of the judicial review process itself, which is a cornerstone of public confidence in administrative law. The function of judicial review, as the primary mechanism for the supervisory jurisdiction of the superior courts, is to ensure that administrative bodies, such as the LAT, operate within the boundaries of their statutory mandate and adhere to the fundamental tenets of natural justice. This proceeding, therefore, is fundamentally resolution-oriented, seeking judicial pronouncements that define the legal boundaries of procedural regularity and compel adherence to the governing *Rules*. This is necessary to obviate the need for protracted and superfluous litigation stemming from the initial, profound procedural irregularities, and to restore the Applicant's right to an unblemished review of the administrative decision-making process.

The resolution sought in this correspondence is fundamentally resolution-oriented, aiming to secure judicial pronouncements that define the legal boundaries of procedural regularity and compel adherence to the governing *Rules*. This is necessary to obviate the need for protracted and superfluous litigation stemming from the initial, profound procedural irregularities. Furthermore, and in the interest of terminological precision and economy of expression, I formally adopt all definitions, whether explicitly, indirectly, or directly, contained within previously exchanged correspondence and documents forming the record, including but not limited to the *Rules of Civil Procedure* (the "Rules") and the *Judicial Review Procedure Act* (the "JRPA").

The present correspondence operates with a tone that is very formal, yet simultaneously gracious and fundamentally resolution-oriented, maintaining a strictly cognitive and non-emotional posture

throughout its articulation, thereby ensuring the discourse remains immutably anchored in the objective reality of legal and procedural fact. This approach is paramount to facilitating the prompt administration of justice.

Status Update and Definitive Conclusions Regarding Extra-Judicial Proceedings

The Locus Standi of the Case Conference and Procedural Mens Rea

As previously communicated, please find Part 2 of 2 attached (the "Attachment"), which contains supplementary evidence integral to the Applicant's position. Subsequent to my prior communication, I have secured confirmation via the *specific* auto-reply received from the representative of **Tribunals Ontario** (the "Tribunals"), Ms. Maciel, who was the individual charged with the attempted service of the Notice of Application (the "NOA") for the Licence Appeal Tribunal (the "LAT"). The confirmation of Ms. Maciel's confirmed and indefinite absence, devoid of any stipulated return date for her resumption of duties, precipitates a foundational procedural and legal impossibility regarding the requisite filing of the affidavit of service for the NOA. The successful and demonstrable service of the originating process, evidenced by a properly sworn affidavit, is not merely a formality, but a jurisdictional prerequisite (*sine qua non*) for the validity of all subsequent procedural steps; the absence of a competent affiant renders this fundamental step incapable of perfection, thus vitiating the procedural chain *in toto*.

The inescapable syllogism, therefore, is that in the complete absence of an affiant competent to execute the affidavit of service, the request by the LAT for a case conference on December 3, 2024, at approximately 3:30 p.m., was **void *ab initio***, possessing no legal force or effect from its purported inception. This defect is **patent** on the face of the record, as the Court could not have been presented with the necessary proof of jurisdiction over the Respondents. *Ipso facto*, it is axiomatic that no case conferences could have been lawfully or properly conducted in the complete absence of a perfected service record, as the Tribunal lacked the demonstrable jurisdiction over the parties mandated by the *Rules* at that material time. The consequence of this profound procedural nullity dictates that the legal ***status quo ante*** must be rigorously restored, which necessitates completely disregarding the purported extra-judicial proceedings and any directions that may have stemmed therefrom. The inherent flaw is that the Tribunal's action, however well-intentioned, fails the test of procedural *vires* when measured against the mandatory requirements of the *Rules*. A proceeding cannot be validly commenced without proof of service on the opposing party, as the court's jurisdiction over that party is derived from the fact of notice. The very concept of procedural *fidelity* demands this conclusion, as the *mens rea* (intent/knowledge) of the moving party (the Tribunal) cannot supersede the explicit dictates of the *Rules* concerning service. Furthermore, allowing directions derived from a *void ab initio* conference to stand would undermine the principle of judicial economy by injecting uncertainty into the procedural framework, inviting further litigation on collateral issues of validity.

Unavailability of Digital Recordings, Judicial Scrutiny, and *Ultra Vires* Actions

The substantive relief sought pertaining to the mandatory obtainment of the transcripts from those purported case conferences remains entirely **extant**, retaining its full legal force, especially as Madam Justice Shore has heretofore declined to judicially acknowledge the existence or content of the same. This judicial non-acknowledgement, while perhaps intended to minimize judicial entanglement in extra-procedural matters, paradoxically creates a record gap that obstructs the Applicant's ability to demonstrate the full procedural history of the dispute. The integrity of the appellate record, which must be complete and accurate, is a fundamental right guaranteed by the principles of natural justice

and procedural fairness. The Applicant's right to review the totality of the administrative record, including all interactions that influence the progression of the judicial review, is not discretionary.
My due diligence efforts are continuous and exacting, seeking to compel the production of this essential documentation, which is required for a complete record of review. Furthermore, I have been demonstrably unable to obtain the Compact Disc (CD) copies of the digital recordings, notwithstanding the fact that I remitted the requisite payment to secure this material. The continuous denial of delivery, coupled with the retention of the remitted funds, constitutes a **prima facie breach of contract and an affront to the principles of natural justice**. It remains ***sub judice*** and highly problematic why Madam Justice Shore has ostensibly taken the position that I should be deprived of funds paid and unreturned while simultaneously being denied receipt of the digital recordings to which I am definitively entitled by the executed Request Form Undertaking of October 2025. This situation constitutes an ongoing denial of the right to access the **full administrative record** under section 10 of the *Judicial Review Procedure Act* and is a direct impediment to the Applicant's ability to conduct effective review. The denial of this paid-for evidence, which forms part of the administrative record (however flawed), constitutes an action that may be considered **ultra vires** (beyond the powers) the authority conferred by the *JRPA* and the inherent principles of natural justice, specifically the right to a fair hearing and the ability to review the complete record without impediment. A core tenet of procedural fairness is the expectation that the fruits of a legally binding agreement (the undertaking and payment) will be delivered promptly. The denial of the full administrative record for review violates the principle of **completeness**, which is essential for effective **appellate or supervisory review** and the constitutional right to access the courts. If a thirty (30) day period was stipulated for the provision of the recordings, that period has demonstrably elapsed without adherence to the procedural covenant, constituting a breach of the undertaking. Furthermore, the argument that these were *in camera* proceedings does not diminish the need for transcription, as the Applicant retains the right to review the transcript for errors of natural justice, such as procedural unfairness, bias, or the failure to give proper deference. Consequently, further due diligence efforts are continuing with the Office of the Public Complaints Commissioner (the "OPCC") in relation to the compulsory securement of the recordings via Zoom or other verifiable means, ensuring the principle of **audi *alteram partem*** (the right to be heard) is not vitiated by the withholding of the record. The Court's intervention is required to prevent a miscarriage of justice predicated upon the incomplete administrative record, and to compel the immediate release of the paid-for recordings or the return of the funds remitted.

Procedural Compliance and the Evolving Divisional Court JRPA Guide

NOM #3, the Compendium Requirement, and Procedural Symmetry

In relation to *Rule 4.05.3* of the *Rules of Civil Procedure* (the "Rules"), the ultimate deadline for filing is noted to be 2:00 p.m. three days prior to the mandated hearing date of December 3, 2025. This Rule provides a clear procedural timeline which must be rigorously respected. It is further noted that if the Notice of Motion #3 (the "NOM #3") is unopposed ***de jure*** (as a matter of law), a compendium is not a mandatory prerequisite *per se*. Nevertheless, the Motion Record for NOM #3 has been deliberately and sufficiently hyperlinked and meticulously bookmarked in a comprehensive **"compendium style,"** thereby proactively mitigating any administrative burden upon the Court and fulfilling the spirit, if not the strict letter, of the requirement. This proactive submission underscores the Applicant's commitment to judicial efficiency and the principle of good faith litigation. To the extent that a formal "Compendium" is not ***de jure*** required due to the presumable absence of opposition—which would necessarily be the case unless the Respondent Insurance Companies and the LAT were able to secure an ancillary order ***in limine***—I shall nonetheless include all filed documentation relevant to the

hearing for NOM #3. This approach ensures procedural symmetry, eliminates the potential for a subsequent technical objection based on form, and facilitates the Court's ready access to the relevant evidentiary landscape. The purpose is to make the conclusions of the motion **self-evident** through the organization of the materials, thereby promoting both judicial and litigant efficiency.

The Retroactivity of Practice Guides and Lex Prospicit Non Respicit

The *Divisional Court Judicial Review Procedure Act Guide* (the "JRPA Guide") has undergone recent, substantive amendment, specifically in relation to hyperlinking, which necessitates that the *in force* version at the material time—the version which governed the Applicant's commencement of the JRPA Proceeding—be furnished to the presiding judicial officer. The legal principle of prospective application must govern this dispute, as any contrary finding would violate the right to procedural fairness. I shall presume that NOM #3 will be unopposed relative to the Confirmation of Motion required, and shall incorporate the same into the Motion Record for NOM #3 along with a physical exemplar of the *JRPA Guide* as it existed prior to the amendments most recently effected in 2025, or as it is demonstrably reflected in the metadata of late June 2025.
The alterations are most noticeable in that the iteration of the *Guide to Judicial Review in Divisional Court* not *in force* at the relevant time, represented as of late June or early July 2025, includes new and comprehensive sections regarding judicial case management that appear to impose new scheduling requirements:

"Case Management
Once you commence your application for judicial review or your motion for leave, there are steps that you must take regarding the schedule for the exchange of court documents and any preliminary issues. These steps are set out in the Consolidated Practice Direction for Divisional Court Proceedings.
All proceedings in the Divisional Court are subject to judicial case management. The purpose of case management is to facilitate access to justice through the timely adjudication of proceedings in the Divisional Court in a cost-effective and proportional manner.
This means that you may receive written directions from a judge and a judge may direct that there will be a case conference prior to the hearing of your motion or application.
As part of this process, the time for the delivery of court materials may be determined or changed as set out in directions from the Court. Other issues may be addressed, as set out in the judge's directions. Directions are normally sent to the parties by email."

It is a self-evident legal conclusion that a non-statutory **"guide"** is **not** imbued with **retroactive** effect, a principle encapsulated by the ancient legal maxim **lex prospicit non respicit** (the law looks forward, not backward). This maxim is fundamental to the rule of law, ensuring legal certainty and fairness. Procedural rules are generally presumed to be prospective in their operation unless the language compelling retrospective application is explicit and unambiguous, a condition not met by a non-statutory practice guide. While I maintain a vigorous academic disagreement with certain elements of the language concerning case management *per se* contained therein, the merits of that discursive point are presently **moot** as the *Guide* cannot retroactively cure procedural defects in the case at bar, nor impose obligations that did not exist when the proceeding was initiated. I remain firmly of the view that the LAT retains the mandatory, statutory obligation to file the record of proceeding **forthwith** as dictated by the *JRPA* prior to the guide's amendments, and this statutory duty cannot be superseded by a practice direction.

Case Management Assignment: The Jurisdictional Flaw Under Rule 38.07(2)

The purported exercise of judicial authority in assigning this proceeding for case management or issuing written directions must be rigorously scrutinized against the jurisdictional pre-conditions set out in *Rule 38.07(2)* of the *Rules of Civil Procedure*. This Rule governs the point at which a judge may assign a proceeding for case management and states:

"No Consent

(2) At any time on or after the filing of the first defence in a proceeding to which this Rule may apply, a regional senior judge or, subject to the direction of a regional senior judge, any judge or associate judge may assign the proceeding for case management under this Rule,

(a) on his or her own initiative; or

(b) on the request of a party or on motion if the court requires it." (Emphasis added)

The language of *Rule 38.07(2)* is clear and dispositive: the power to assign a proceeding for case management, whether on the Court's own initiative or upon the request of a party, is contingent upon the jurisdictional trigger event: the **filing of the first defence**. As established in the conclusion regarding NOM #2, the LAT and the Respondent Insurance Companies have demonstrably **failed to file** their Notices of Appearance (NOAs) or their First Defence. This failure is a matter of irrefutable record, legally corroborated by the adverse inference doctrine arising from their sustained silence and inability to cure the defect *nunc pro tunc*.

In the context of a Judicial Review Application, the "First Defence" is not merely an equivalent to a Statement of Defence, but is typically marked by the filing of the Respondent's Record and/or Factum, or at a minimum, the **Notice of Appearance** required under the *Rules* to acknowledge the proceeding and indicate an intention to defend the administrative body's decision. In this case, the complete absence of **any** responsive document that constitutes a "First Defence" means the fundamental procedural trigger required by the *Rules* for the commencement of case management has not been pulled. **Consequently, the assignment of this proceeding for case management, and any judicial directions issued pursuant thereto, were procedurally and jurisdictionally flawed, as the prerequisite for assigning the proceeding for case management under *Rule 38.07(2)* had not been met.** While a judge possesses the inherent authority to manage proceedings, this power cannot be permissibly exercised in contravention of a clear and mandatory procedural precondition established by the *Rules* themselves, which are statutory instruments authorized by the *Courts of Justice Act*. The action of assigning the proceeding for case management, and subsequently issuing directions based on that assignment, was **void *ab initio***, as it lacked the fundamental jurisdictional basis of a filed "First Defence." The *Rules* are designed to provide a predictable framework, and their contravention by an administrative assignment renders that assignment inherently defective, necessitating a return to the *status quo ante* where the Respondents are required to comply with their basic obligations before judicial management can commence.

The Limits of a Judge's Authority and the Hierarchy of Judicial Assignment

Furthermore, even assuming, for the purpose of argument alone, that a proceeding could be assigned for case management without the requisite filing, the subsequent direction by Madam Justice Shore to assign steps *to herself* as a particular case management judge represents an impermissible assignment of authority. *Rule 38.07(2)* indicates that a judge may assign the proceeding for case management, which is purely an **"assignment for case management" *per se***. The assignment of **all subsequent steps** to a *particular* judge is typically reserved for the Chief Justice of the Superior Court of Justice (SCJ) or the Associate Chief Justice of the SCJ—the quintessential President and Vice-President of the Divisional Court, an intermediate appellate court. This distinction is critical: the power to administratively designate a judge to take charge of a file for all purposes rests with the designated leadership of the Court, not with the individual judge. The Divisional Court, unlike the general SCJ, is a court of intermediate appeal and its internal administration must adhere strictly to the established

protocols for judicial assignment. While a judge may be designated as the case management judge *after* the initial assignment is properly made, they cannot unilaterally self-assign the entirety of the proceedings to themselves and simultaneously issue binding directions absent the jurisdictional foundation (the filed defence). Madam Justice Shore's purported written directions or order directing a case conference prior to the hearing of the JRPA Application are therefore without lawful procedural foundation, reinforcing the Applicant's argument that these extra-judicial proceedings are a complete legal nullity. The principle of *delegatus non potest delegare* (a delegate cannot delegate) may not strictly apply here, but the principle that judicial authority must be exercised in accordance with established rules of assignment is paramount to maintaining institutional integrity.

Non-Compliance with Case Center: Denial of Procedural *Parity* and Impediment to *Acta*

Notwithstanding the foregoing, the Case Center language within the prior *JRPA Guide* unequivocally stipulated that I was entitled to an invitation to Case Center upon the initiation of the JRPA Application, an entitlement that was denied in this proceeding:
"Case Center is an online document sharing platform which allows the Divisional Court to electronically view your court materials. The Divisional Court uses Case Center for both remote and in-person hearings. After you have brought an application or motion for leave, you will receive an email to register for Case Center and upload your materials. There is no fee to use Case Center".

The **non-compliance** inherent in the failure to extend such an invitation constitutes a systemic deficiency in the administration of the file, representing a matter of profound disappointment and, more critically, a denial of procedural **parity** with litigants whose proceedings were administered correctly. This denial of electronic access has forced the Applicant to engage in more cumbersome, paper-based processes, impeding the efficient **acta** (acts/transactions) of the litigation. This systemic deficiency is formally directed towards Madam Justice Shore's oversight of the matter. The quoted language under the "Case Management" section of the *Divisional Court Guide to Judicial Review*, which was not *in force* at the relevant time, serves as unequivocal proof that the *JRPA Guide* did not exist in that specific iteration *at the time of the dispute*, highlighting the fluid procedural environment. Consequently, the procedural irregularities witnessed here are symptomatic of a transition period, and it appears this NOM #3 and the attendant JRPA Application may represent the last vestiges of a **"dying breed"** of proceedings predating the current, formalized procedural regime of judicial case management. This non-compliance is highly prejudicial, forcing the Applicant to shoulder unnecessary burdens of manual document management and service, a condition not suffered by those whose files were administered correctly via the Case Center platform.

The Hierarchy of Law and the Limits of Inherent Jurisdiction

Upon a balance of probabilities, the quoted language attributed to Madam Justice Shore may well have reflected her desired procedural ***status quo*** at the time of the dispute; however, judicial preference does not possess the force of the governing law. I shall therefore make express reference to the legal principles concerning **retroactivity** versus **retrospectivity** versus the **proactive** force of legislative and regulatory instruments, and the impact upon procedural due process.
Legal Hierarchy of Authority:

1. **Statute** (*Judicial Review Procedure Act*): Supreme expression of legislative will, binding on the Court and all parties.
2. **Regulation** (*Rules of Civil Procedure*): Statutory instrument authorized by the *Courts of Justice Act*, governing the conduct of all civil proceedings.

3. **Practice Direction/Guide** (*Divisional Court JRPA Guide*): Administrative tool to aid in the application of the Rules, possessing no statutory authority to override the Statute or the Rules, and therefore having only persuasive, not prescriptive, force.

It remains my substantiated view that particular provisions of the current *Divisional Court JRPA Guide* are not perfectly aligned with the *Rules*, nor with the enabling *Judicial Review Procedure Act* (the "JRPA" or the "statute"), nor with the foundational **common law**. The *JRPA Guide* is not a regulation, is not subsidiary legislation, and does not constitute **"source law"**; its function is descriptive, not prescriptive, and must yield to the higher sources of law. As such, it is *subject to* the **Rules of Civil Procedure**, which are in turn *subject to* the statute, the ultimate interpretation of which is *subject to* the common law. In the event of an irreconcilable conflict between the common law and the principles of equity, **equity prevails** (*lex ferenda*). Notwithstanding this hierarchy, inherent jurisdiction, while vast and essential for the functioning of the Court, cannot be permissibly utilized to override clear Legislative will as expressed in a statute or its attendant regulations; to do so would be an act of legislative **ultra vires** and an overreach of judicial authority, potentially resulting in an appealable error and a denial of due process. The reliance on an administrative *Guide* to retroactively impose case management, particularly one that undermines a mandatory prerequisite of the Rules, is an application of *lex obliqua* (oblique law) rather than *lex recta* (straight law). The maxim **lex prospicit non respicit** confirms that the Applicant's procedural rights must be assessed based on the law and rules *in force* at the time the cause of action accrued and the proceeding was commenced, not by subsequently amended administrative directions.

Confirmation of Procedural Diligence

I provide the preceding exposition to confirm the rationale for the deliberate omission of hyperlinks in the *JRPA Guide* references within the Motion Record served upon the relevant Respondents and Non-Respondents, as the inclusion would have improperly directed the reader to the incorrect, amended *JRPA Guide*. **For the Court's convenience, I confirm that the correct, *in force* version of the Divisional Court JRPA Guide (as applicable at the material time) is enclosed with this correspondence, along with Part 2 of 2 of the Motion Record.** This meticulous approach ensures procedural integrity and avoids any possible confusion regarding the governing procedural framework at the material time, whilst maintaining meticulous attention to ensuring perfected service and notice, notwithstanding the potential relief offered by the provisions of *Rule 38.07*. All such steps are taken out of an **abundance of caution** and are undertaken without any concurrent or implied waiver of my substantive or procedural rights, which are preserved *in toto*.

Conclusion on NOM #2 and NOM #3 and Confirmation of Motion Compliance

I note, regarding the Draft Order for **NOM #2**, that I was operating under the misapprehension, a misconception consistent with my *post*-March 2025 discovery evidence, that the LAT and the Respondent Insurance Companies had successfully filed their Notices of Appearances (the "NOAs"). This assumption was demonstrably not the factual ***status quo***, as corroborated by the adverse inference doctrine. Approximately one month has now elapsed since I sought definitive proof or disproof of the filing and service of their NOAs. The complete absence of proffered evidence, combined with the subsequent inability of the parties to file *nunc pro tunc* (now for then), leads to the **unequivocal conclusion** that the NOAs were never filed, a finding which must be drawn by the Court in the interest of procedural clarity. Furthermore, the LAT's request for a case conference was procedurally predicated upon the **"filing"** of a First Defence at the time of the request, a requirement that was not met, as detailed extensively in the analysis of *Rule 38.07(2)*. The Respondent Insurance Companies

conspicuously refrained from participating in the process concerning potential preliminary issues. Consequently, in the absence of the filing of a First Defence or any NOA, the Respondents could not have lawfully received notice of any procedural steps or documentation within this JRPA Proceeding, thereby rendering their formal participation severely curtailed.

Moreover, in light of the requirements under Rule 37.10.1 regarding the Confirmation of Motion, I note the following procedural reality:

> "Confirmation of Motion
> 37.10.1 (1) A party who makes a motion on notice to another party shall confer or attempt to confer with the other party and shall, not later than 2 p.m. five days before the hearing date,
> (a) give the registrar a confirmation of motion (Form 37B) by,
> (i) sending it by email to the court office, or
> (ii) leaving it at the court office; and
> (b) send a copy of the confirmation of motion to the other party by email."

I submit that, pursuant to the unique and compelling factual *acta* herein, the procedural landscape was definitively established not merely by the filing and payment for the *Certificate of Perfection*, but *ipso facto* by the subsequent, protracted cessation of any formal or active participation by the Respondents. This confluence of events—the complete perfection of the record antecedent to the Listing for Hearing—has consequentially precluded the formal, regulatory definition of opposing "parties" as contemplated by the *Rules of Civil Procedure*. The extended and considerable delay in the judicial process has rendered the appearance of any putative Respondent moot for the purposes of immediate procedural determination.

The absence of the requisite procedural condition, specifically the lack of a *Listing for Hearing*, combined with the *de facto* non-appearance of Respondents subsequent to the completion of the *Certificate of Perfection*, dictates a finding that the strict application of subsection *37.10.1(b)* is presently vitiated and rendered nugatory. It is a fundamental legal principle that the strictures of the *Rules* cannot be imposed where the factual and procedural basis for their operation does not, in effect, exist. My conclusion, therefore, becomes self-evident: the extant *Rule 37.10.1(b)* is, under these singular circumstances, utterly superfluous.

The *status quo ante* prevailing at the material time is demonstrably reflected in the then-operative Divisional Court Judicial Review Practice Guide, a relevant regulatory instrument.
This *Guide* articulated a precise circumscription on the scope of mandatory judicial case management, unequivocally stating that: "Most motions and applications for judicial review in the Divisional Court are subject to judicial case management." The employment of the quantifying adjective "Most" is, *prima facie*, determinative; it prohibits an interpretation that would compel the absolute and universal application of case management to all matters.

The judicial pronouncement articulated in the Intake Court Endorsement [sic] dated February 3, 2025, whereby a mandatory and universal proposition was purportedly adduced, exhibits a profound discrepancy with the official and contemporaneous regulatory framework. It remains beyond my comprehension from whence this *verbatim* quotation was derived, yet the resulting necessity for comprehensive, painstaking research—a dedication spanning from May 2025 to the present date—has been compelling.

I further submit that the highly specialized and erudite registry staff, including Ms. Gentles with whom I became acquainted during the summer and autumn of 2025, would have possessed an intimate and unequivocal knowledge of the content of the *Rules of Civil Procedure* and the Divisional Court Practice Directions. Their expertise would preclude any assumption that such universal and mandatory language was contained within the official regulatory instruments. Consequently, the application of such a directive, if it purports to impose an obligation outside the express terms of the *Rules* or the *Guide*, is *ultra vires* the foundational procedural authority.

I must respectfully note that, in other less constrained procedural contexts—specifically, those not characterized by such immense delays and the consequent crystallization of the procedural record without opposing participation—I would deem it necessary to challenge the language presently contained within the current Divisional Court JRPA Guide, particularly the provisions effective June 2025. Nevertheless, this reservation of jurisprudential contention is a question for a future determination and is not requisite for the resolution of the matter *in limine*.

The requirement to "confer or attempt to confer with the other party" presupposes the existence of a legally recognized opposing party who has formally attested to their participation by filing a defence. Since the Respondents are technically in default and have not filed the requisite documentation to become formal "parties" in the sense contemplated by this Rule, the obligation to confer is diminished, though not entirely extinguished. The Applicant's conferral obligations cannot force an unrepresented or defaulted party to engage, nor can a non-response be deemed an agreement to a motion's content.

However, in the utmost spirit of professional courtesy and respecting the Court’s time and the interests of others, I have attempted to confer with the Respondents and Non-Respondents *per se* through the various notifications provided. I will now proceed to give the registrar the Confirmation of Motion in the required Form 37B by sending it via email to the court office, thereby satisfying the core obligation under Rule 37.10.1(1)(a). This proactive step ensures the Court is fully informed of the Applicant's intention to proceed on the scheduled date, thus promoting judicial efficiency despite the Respondents' procedural omissions. Furthermore, recognizing the interest of the Attorney General of Ontario (AGO) to be heard at the hearing of the JRPA Application, and to maintain transparency, I will provide copies of the Confirmation of Motion to the Non-Respondents, ensuring that all interested entities are duly apprised of the Applicant's intention to proceed on the scheduled date.
Irrespective of the ultimate disposition of NOM #3, transcripts from the case conferences are imperatively required. This requirement stems from the need for judicial oversight and the ability of the Applicant to exercise his right of appellate review; the alleged ***in camera*** nature of those proceedings does not defeat the right to a complete record for judicial scrutiny. The principle of accountability dictates that the record must be capable of being reviewed. My Confirmation of Motion shall subsequently follow to ensure a singular, cohesive motion record. My position regarding the lack of opposition to the same will be predicted upon a **de *jure*** conclusion (a legal certainty dictated by the lack of filing and the subsequent lack of jurisdiction for case management), as opposed to a **de *facto*** one (a mere factual observation). The legal conclusions arising from the procedural defaults are clear, and I have now drawn the necessary distinction with the required specificity. Those procedural defaults remain uncorrected without repentance or explanation.

I reserve the unqualified right to rely upon the entire exposition contained in this comprehensive correspondence for any lawful purpose whatsoever, inclusive of the future determination of costs, particularly in the context of the pervasive procedural irregularities and the lack of response from opposing parties documented herein. The systemic failures and procedural defects that have necessitated this extensive motion practice—including the failure of service, the *void ab initio* case

conferences, the denial of the paid-for record, and the unauthorized invocation of *Rule 38.07(2)*—constitute exceptional circumstances justifying an award of substantial indemnity costs against the defaulting parties to deter future similar breaches of procedural *fidelity*.

Yours most appreciatively and gratefully,

/s/Mr. Kevin A. McLean (BA, JD, CIM)

Mr. Kevin A. McLean (BA, JD, CIM) (he/him)

Yours faithfully,

/KAM

Mr. Kevin A. McLean (BA, JD, CIM)

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On Mon, Nov 24, 2025 at 4:33 PM Mr. Kevin McLean <mcleansettlement@gmail.com> wrote:
DATE: November 24, 2025
MODE OF TRANSMISSION: VIA EMAIL
PRIORITY CLASSIFICATION: URGENT
JUDICIAL PARTICULARS

Court File Number:	**DC-24-00000718-00JR**
Document Type:	NOM #3 - part 1 of 2
Short Title of Proceeding:	McLean v. TDHA et al

Filing Party:	Mr. Kevin A. McLean (B.A., J.D., CIM) (mcleansettlement@gmail.com)

SUBJECT: Enclosure of the NOM #3 Motion Record with Extensive and Meticulous Hyperlinking and Bookmarking within the Table of Contents, Tabs 1 to 22, with Emphasis Involving the Factum
Dear Sirs/Mesdames/Other Gender-Neutral Pronouns:

I. TRANSMITTAL OF INAUGURAL COMPONENT SUBMISSION AND EVIDENTIARY AUTHENTICATION

As has been previously and unequivocally undertaken by the undersigned, the instant communication constitutes the formal transmittal of the inaugural component (Part I of II) of the overarching legal submission that will ultimately define the parameters of this proceeding. It is herein confirmed that the appended Factum, which serves as the principal argumentative instrument, has been rendered with a degree of **meticulousness** that warrants specific judicial consideration and mention, thereby facilitating the subsequent adjudication. The instrument incorporates a comprehensive system of internal hyper-citations that correspond precisely and seamlessly to the requisite Tabs and page enumerations of the voluminous and **compendious evidentiary record**. This sophisticated referencing structure is deliberately employed to ensure the preservation of analytical continuity and to expedite the comprehension of the judicial officer.
Furthermore, external linkages have been duly embedded within the textual fabric of the Factum, constituting the authoritative and **jurisprudential bases** for every material legal assertion contained within the instrument. This integration ensures that the submitted materials are not merely assertions *in vacuo*, but are robustly grounded in the prevailing *corpus juris* and **relevant statutory enactments**. The submission, by virtue of this intricate compilation and cross-referencing, renders the critical issues immediately and incontrovertibly justiciable, compelling the necessary judicial attention to the merits of the proposition advanced.

II. FORMAL ATTESTATION OF SERVICE, DEEMED ACCEPTANCE, AND PROCEDURAL ACQUIESCENCE

It is hereby formally and with requisite solemnity attested, as of the current date of execution of this document, that the process of service has been duly and properly effected upon all designated **persons or entities**, strictly pursuant to the procedural mandates stipulated in the *Rules of Civil Procedure* and/or any ancillary *Rules of Practice* governing these proceedings. In furtherance of the **paramount principle** of full and candid disclosure to the Court, it is confirmed that a multiplicity of various recipients have provided an **acknowledgment of receipt**, primarily, though not exclusively, in the form of automated electronic replies, which nevertheless fulfill the threshold requirement for proof of delivery.
Crucially, a material assertion, with profound procedural implications, is advanced: None of the designated Non-Respondents, within the established style of cause, have registered any formal **controversy**, objection, or substantive dispute regarding the facts, assertions, or evidentiary material proffered for the Court's contemplation. This deliberate, calculated absence of opposition or formal rebuttal, **ipso facto**, gives immediate rise to the necessary **prima facie** presumption of an implicit and legally binding acceptance of both the efficacy of the service process and the underlying substantive accuracy of the materials transmitted. This non-action is not construed as mere passivity, but rather as an affirmative procedural acquiescence, which compels the **deduction** that all served instruments are deemed procedurally sound and materially accurate, thereby constituting a fundamental and irrevocable procedural waiver of the right to contest the initial introduction of these materials **in limine**.

III. SYLLOGISTIC EXTRAPOLATION ON JUDICIAL SERVICE AND DOCTRINE OF AGENCY

Of **paramount significance** is the formal attestation regarding the demonstrable efficacy of service upon the Honourable Madam Justice Shore, the judicial officer seized of this matter. It is herein confirmed that Mr. Sinnadurai, Esquire, a barrister and solicitor, and his professional assistant, Ms. Kwok—with whom a professional acquaintance has been established since the summer of MMXXV and subsequently—have not, at any juncture, registered any dispute concerning the propriety or the legal sufficiency of service effected upon Her Ladyship through their office. This service, it is **syllogistically** and logically posited, is validated by the undeniable professional retention of Mr. Sinnadurai as retained counsel to Her Ladyship in the context of this specific file and/or the related proceedings.

The established doctrine of agency dictates that service upon retained counsel constitutes effective service upon the client, and in this judicial context, this principle stands unassailable. Therefore, the antecedent delivery of duplicative documents to the respective Managers of Court Operations for the Divisional Court and the Superior Court of Justice (SCJ) at 361 University Avenue—which constitutes the non-Divisional Court location of the Honourable Madam Justice Shore's chambers—is, by this confirmation of counsel's authority, deemed an **ultra vires** and superfluous administrative act. The independent undertaking of such delivery would be entirely lacking the necessary legal **actus** or practical utility, as the matter of notification and receipt has been definitively concluded through counsel. The **status quo ante**—the state of procedural sufficiency—is thereby maintained solely by this singular, effective, and procedurally compliant service upon Her Ladyship's authorized representative.

IV. CONCLUSION AND COMPULSORY PRESUMPTION OF NON-OPPOSITION

In the eventuality that no substantive motions—including, but not limited to, applications for directions, motions to strike, or any request for interim or interlocutory relief that might impede the scheduled progression of this matter—are duly filed by either the Respondent Insurance Companies and/or the Licence Appeal Tribunal (LAT) within the **requisite temporal framework** established under the *Rules* for the proper service and subsequent commencement of such applications, then the undersigned shall, in application of established and compelling legal principles, invoke the formidable presumption of non-opposition with respect to Notice of Motion No. 3 (**NOM #3**). This presumption is not merely ceremonial; it constitutes a definitive legal entitlement, thereby rendering **NOM #3** uncontested and ripe for immediate disposition by the Court based exclusively upon the submitted materials.

A certified true copy of the within Transmittal and formal Attestation shall be **forthwith** remitted to all designated **persons or entities** as Non-Respondents. This serves as supplemental evidence of service and provides the **requisite** and explicit notification of the procedural consequence—the inevitable invocation of the foregoing presumptions—ensuring that no subsequent objection pertaining to lack of notification may be entertained **in limine** by the Court.

Respectfully Submitted,
Mr. Kevin A. McLean (B.A., J.D., CIM)

Yours faithfully,

/KAM

Mr. Kevin A. McLean (BA, JD, CIM)

Sender's name: Mr. Kevin Alexander McLean (BA, JD, CIM)

Sender's address: 410-775 King Street West, Toronto, Ontario, M5V 2K3

Sender's Telephone Number: (647) 370-9354

Sender's email address: mcleansettlement@gmail.com

On Mon, Nov 24, 2025 at 4:05 PM Mr. Kevin McLean <mcleansettlement@gmail.com> wrote:
24th day of November 2025

VIA ELECTRONIC MAIL

URGENT COMMUNICATION AND SERVICE OF ENCLOSURES

Court File Number: DC-24-00000718-00JR

Style of Proceeding: *McLean v. TDHA et al.*

Document Description: Notice of Motion No. 3 Motion Record with Hyperlinking and Bookmarking

Party: Mr. Kevin A. McLean (B.A., J.D., CIM) (mcleansettlement@gmail.com)

TO: The Respondent Insurance Entities (TD Home and Auto Insurance Company, Security National Insurance Company, TD General Insurance Company) The Licence Appeal Tribunal (LAT) The Attorney General of Ontario (AGO)

COPIED TO: The Divisional Court The Attorney General of Canada (AGC)

SUBJECT: ENCLOSURE OF THE COMPREHENSIVE NOTICE OF MOTION NO. 3 MOTION RECORD, INCORPORATING METICULOUS HYPERLINKING AND BOOKMARKING ACROSS THE ENTIRETY OF THE TABLE OF CONTENTS AND TABS 1 THROUGH 22, WITH PARTICULAR EMPHASIS UPON THE FACTUM, THEREBY FACILITATING JUDICIAL REVIEW AND EXPEDITING THE DETERMINATION OF SUBSTANTIVE MATTERS.

I. INTRODUCTION AND CONVEYANCE OF MATERIAL

The present correspondence functions as the formal instrument effecting the transmission of the **Notice of Motion No. 3 Motion Record** of the Applicant, Mr. Kevin A. McLean. This extensive evidentiary and argumentative repository has been prepared with scrupulous, even obsessive, attention to detail, manifesting as an exceptionally robust system of hyperlinking and bookmarking meticulously integrated within the electronic document's architecture. This intricate framework specifically traverses the entirety of the **Table of Contents** and the sequential contents housed within **Tabs 1 to 22**. Particular diligence has been exercised in ensuring that the **Factum** contained therein—the central legal submission of the Applicant—is comprehensively and recurrently cross-referenced with maximum precision to the evidentiary material, thereby establishing a foundation of undeniable factual nexus between the legal submissions and the primary evidentiary foundation.

The preparation of this record embodies a paramount commitment to the principles of **judicial economy** and **procedural transparency**, which are recognized as foundational pillars of the Canadian justice system. The exhaustive hyperlinking and bookmarking are not merely superficial aesthetic enhancements, but rather a sophisticated, functional mechanism devised to afford this Honourable Court immediate, seamless, and unerringly precise navigability through the voluminous documentation. The meticulous cross-referencing establishes an unimpeachable factual nexus, thereby minimizing the judicial expenditure of time requisite for the laborious, meticulous verification of every single citation and evidentiary reference. This proactive adherence to the highest echelon of best practices in digital litigation manifests the Applicant's profound respect for the scarce resources of the court system and the imperative for an expeditious, reasoned, and procedurally unimpeachable determination. The conveyance of these electronic copies, executed as a profound gesture of *bona fides* and professional obligation, underscores the gravity attributed to the unimpeded and accurate apprehension of the material facts and the complex legal propositions proffered. The comprehensive, self-contained nature of this document is ultimately intended to facilitate the Court’s judicious review and to ensure the most efficient possible disposition of this judicial review proceeding, precluding any plausible argument of procedural deficiency or informational opacity.

II. OBSERVATIONS ON THE OCCP PORTAL AND FILING REQUIREMENTS

It is noted that the Case Centre functionality within the MyOntario portal has been duly activated *in relation to* the Ontario Civil Claims Portal (OCCP), signifying a pivotal and necessary evolution in the digitalization of the Ontario superior courts. This transition requires a corresponding elevation in the technical proficiency of all litigants. Consequent upon this institutional transition, necessary steps shall be undertaken forthwith to achieve complete and proficient familiarization with the intricate procedural and operational dictates of the said portal, ensuring a complete and *in limine* comprehension of all associated technical specifications, security protocols, and upload idiosyncrasies. This is to ensure strict and unimpeachable compliance with all relevant *Rules of Civil Procedure*, attendant practice directions, and specialized electronic filing requirements recently promulgated by the Chief Justice.

Furthermore, profound recognition is accorded to the stringent temporal mandate governing the uploading of all exhibits, evidence, and authorities intended for reliance during the scheduled forthcoming written hearing. The temporal exigency—an acute and pressing demand—requires that this complete, compiled upload must be consummated approximately three (3) clear, full days prior to the established date of the hearing, specifically by the two o’clock post-meridiem (2:00 p.m.) deadline. This procedural deadline is understood not as a flexible suggestion or an administrative guideline, but as an unforgiving, absolute threshold. Failure to comply with this electronic filing

requirement shall *ipso facto* jeopardize the admissibility and, consequently, the judicial consideration of the requisite documentation, thereby incurring the non-negligible risk of procedural forfeiture and severely compromising the Applicant's substantive rights to due process. Strict, absolute, and demonstrable adherence to this technological and chronological imperative is therefore guaranteed by the Applicant, ensuring no procedural deficiency shall be imputed to this moving party.

III. JURISPRUDENTIAL CONTEXT AND PROCEDURAL IMPERATIVE

A fundamental jurisprudential principle dictates that a party alleging *mala fides* or fraud must prosecute its claim within the procedural ambit of the specific proceeding where the alleged fraudulent conduct originated or where the resultant administrative decision was rendered. The jurisprudential foundation for the selection of this forum—the Divisional Court via a **JRPA Application**—rests upon the established doctrine of **procedural propriety**, which rigorously constrains attempts at a collateral attack upon prior judgments or administrative determinations. This principle ensures the orderly administration of justice by preventing multiple proceedings challenging the same root issues.

Notwithstanding the potential for a more financially *lucrative* quantum of damages potentially obtainable through a direct petition sounding in the egregious elements of fraud—a course analogous to the specialized fraud litigation procedural mechanisms extant in the Province of British Columbia—the immutable dictate of Ontario procedural law prevails. This jurisdiction mandates that any challenge predicated upon allegations of *mala fides*, systemic irregularity, or *ultra vires* conduct (action taken without legal authority), particularly those possessing the highly prejudicial hallmarks of a fundamental vitiation of process (akin to the requisite standard for *mens rea* in a criminal context, applied here analogously to corporate or administrative intent), must be formally and singularly adjudicated within the original proceeding or via the prescribed mechanisms of judicial oversight, such as judicial review. Therefore, the prevailing Ontario procedure dictates that the instant **JRPA Application** is confirmed, *a fortiori*, as the procedurally correct, statutorily sanctioned, and unavoidable legal container within which the documentation requisite to expose and remedy the alleged *ultra vires* conduct and subsequent fraud must be definitively filed, addressed, and resolved by the superior courts of jurisdiction. The utilization of this JRPA, therefore, constitutes a meticulous adherence to the established *lex fori* (law of the forum).

IV. IMPLICATIONS OF NON-FILING OF NOTICES OF APPEARANCE

It is again formally underscored, for the benefit of the Respondent parties and the judicial record, that the Respondent Insurance Companies and the Licence Appeal Tribunal (LAT) have not yet duly filed and delivered their respective Notices of Appearance in this proceeding. The current procedural posture of these entities is consequently drawn into sharp and unambiguous relief by their sustained omission to comply with the mandated initial filing requirements, as set out in the relevant *Rules*. This sustained absence constitutes a definitive procedural bar, which may preclude their subsequent participation in the substantive hearing of this matter, unless cured by extraordinary judicial dispensation.

Should these parties subsequently determine that a participatory role is desired, or should they seek to make submissions concerning the Applicant's motion, it shall become incumbent upon them to seek formal leave to appear by way of a substantive, documented motion to the Divisional Court. The grant of such extraordinary relief is profoundly discretionary and is strictly predicated upon a

demonstration of compelling merit, the absence of any demonstrable prejudice to the Applicant, and the provision of a satisfactory, exhaustive, and credible explanation for the antecedent failure to adhere to the established filing deadlines. This strict procedural *sine qua non* is essential for the preservation of the integrity and predictability of the litigation schedule and ensures that the *status quo ante*—the legal position of non-participation and the attendant consequence of limited rights—is not unilaterally disturbed without judicial oversight. The Court's supervisory function is robustly invoked to ensure that such procedural omissions are addressed rigorously and formally, thereby maintaining the fairness and predictability essential to the just administration of justice.

V. RESERVATION OF RIGHTS AND CONCLUSION

The Applicant hereby expressly reserves all rights to rely upon this specific correspondence, as an unequivocal statement of procedural position and intent, for any and all lawful purposes throughout the remaining tenure of this litigation and any derivative proceedings, including its potential tender as evidence of procedural notification.

As previously articulated, and out of an abundance of caution, **Part 1** and **Part 2** of the meticulously hyperlinked and bookmarked Motion Record shall follow this transmittal as a separate electronic delivery. This division of files is a technical necessity owing to the maximum size constraints imposed by email servers for single attachments.

Sincere appreciation is hereby extended for the professional consideration and immediate attention afforded to this critical material, the prompt review of which is essential to the timely advancement of this judicial review and unravelling the errors that have spawned from Shore J.

I reserve the right to rely on this correspondence for any lawful purpose including the making of the NOM #3 one week ago along with meticulous courtesy notice and service of all documents.

Sincerely,

/s/ Mr. Kevin A. McLean (B.A., J.D., CIM)

Mr. Kevin A. McLean (B.A., J.D., CIM) (mcleansettlement@gmail.com)

Yours faithfully,

/KAM

Mr. Kevin A. McLean (BA, JD, CIM)

Sender's name: Mr. Kevin Alexander McLean (BA, JD, CIM)

Sender's address: 410-775 King Street West, Toronto, Ontario, M5V 2K3

Sender's Telephone Number: (647) 370-9354

Sender's email address: mcleansettlement@gmail.com

On Fri, Nov 21, 2025 at 5:07 PM Mr. Kevin McLean <mcleansettlement@gmail.com> wrote:
Dear Sirs/Mesdames/Other Gender-Neutral Pronouns:

Please find Part 2 of 2 attached. Thank you.

Yours faithfully,

/KAM

Mr. Kevin A. McLean (BA, JD, CIM)

Sender's name: Mr. Kevin Alexander McLean (BA, JD, CIM)

Sender's address: 410-775 King Street West, Toronto, Ontario, M5V 2K3

Sender's Telephone Number: (647) 370-9354

Sender's email address: mcleansettlement@gmail.com

On Fri, Nov 21, 2025 at 5:04 PM Mr. Kevin McLean <mcleansettlement@gmail.com> wrote:
Dear Sirs/Mesdames/Other Gender-Neutral Pronouns:

For good measure and in the spirit of courtesy, please find attached the updated and current motion record with Tabs 1 to 22 (Part 1 of 2) with consecutively numbered pages. Part 2 of 2 will follow. Copies are being served on the Non-Respondents. Thank you.

Yours faithfully,

/KAM

Mr. Kevin A. McLean (BA, JD, CIM)

Sender's name: Mr. Kevin Alexander McLean (BA, JD, CIM)

Sender's address: 410-775 King Street West, Toronto, Ontario, M5V 2K3

Sender's Telephone Number: (647) 370-9354

Sender's email address: mcleansettlement@gmail.com

On Fri, Nov 21, 2025 at 4:04 PM Mr. Kevin McLean <mcleansettlement@gmail.com> wrote:
Dear Sirs/Mesdames/Other Gender-Neutral Pronouns:

As promised, please find attached the notarized Affidavit of Service which has also been tabulated into Tab 22 with page numbers 3099 to 3150.

I will attend to the filing of the entire motion record, as is, in such form with the index at the outset and in the same exact form as previously. Due to the previous size, you can add Tab 22 to the previous Motion Record.

Thank you.

Yours faithfully,

/KAM

Mr. Kevin A. McLean (BA, JD, CIM)

Sender's name: Mr. Kevin Alexander McLean (BA, JD, CIM)

Sender's address: 410-775 King Street West, Toronto, Ontario, M5V 2K3

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On Fri, Nov 21, 2025 at 3:11 PM Mr. Kevin McLean <mcleansettlement@gmail.com> wrote:
Classification: Private and Confidential
Sending method: Via Electronic Transmission
Creation method: Dictated with Voice Recognition Software (reservation of rights to correct any grammar, syntax, important qualifiers or improper double negatives)

Date: November 21, 2025

Court File No: DC-24-00000718-00JR

Short Title of Proceeding: McLean v. TDHA et al (the "Within Proceeding")

Party: Mr. Kevin A. McLean (B.A., J.D, CIM) (the "Applicant")

Applicant's Email: mcleansettlement@gmail.com

SUBJECT I: PROVISION OF THE UN-NOTARIZED OR UN-COMMISSIONED AFFIDAVIT OF SERVICE, MULTI-PURPOSED (AFFIDAVIT #28) IN THE WITHIN PROCEEDING

SUBJECT II: AMPLIFICATION OF THE EXIGENT CIRCUMSTANCES NECESSITATING IMMEDIATE CONSIDERATION OF THE APPLICANT'S NOTICE OF MOTION (NOM #3) DUE TO FURTHER ACTS OF FRAUD AND MALFEASANCE CONCERNING PERSONAL PROPERTY AND INFORMATION

Dear Sirs/Mesdames/Other Gender-Neutral Pronouns:

I. Introduction, Preliminary Adoptions, and Procedural *Ratio*

I cordially write regarding the above **Subjects** of this correspondence. I thank the Recipients in advance for the time and consideration they dedicate to this correspondence and its attachments, which are incorporated herein by reference and/or inclusion. It is fully appreciated that the **Recipients** operate with finite, yet profoundly valuable, professional and institutional resources, which is precisely why the Applicant has undertaken immense and fastidious effort to research the salient legal issues herein and apply them comprehensively to the extant factual matrix. This detailed approach is not merely an exercise in rhetorical flourish but an attempt to mitigate any potential confusion, ambiguity, or procedural *locus standi* challenge that might otherwise burden the judicial process and the **Recipients'** professional obligations. The central procedural *ratio* of this document is the demonstration of both diligent compliance, through the provision of the **Affidavit**, and the immediate, escalating need for judicial protection against the egregious **acta** being perpetrated. This dual emphasis serves to underscore the Applicant's good faith while simultaneously placing the onus of responsibility for the ongoing crisis upon the opposing parties and the relevant judicial administration.

The Applicant adopts all definitions and conventions from previously, indirectly or directly, cited correspondence and all documentation contained within the index to the Applicant's NOM #3 motion record (the "Motion Record"). Specifically, the Applicant provides the following definitions for the purposes of precise legal articulation and consistent terminology throughout the **Within Proceeding**:

i. Affidavit of Service (the "Affidavit");
ii. Notice of Motion (the "NOM");
iii. Toronto-Dominion Insurance Group of Automotive Insurance Companies (the "TDI");
iv. Further acts of fraud involving my stolen property (the "TDI Karat Theft of this week");
v. Rules of Civil Procedure (the "Rules");
vi. Courts of Justice Act (the "Act");
vii. McLean v. TDHA et al (the "Within Proceeding");
viii. Privacy legislation, including but not limited to the Personal Information Protection and Electronic Documents Act (the "PIPEDA"), and all analogous provincial statutes (the "Privacy Regime");
ix. The agent of the Respondent Insurance Companies, as he once was by LSO Directory, engaged in fraudulent impersonation (the "Epstein Cole LLP Client").

II. Substantive Provision of Documentation and Evidentiary Efficacy: The *Nunc Pro Tunc* Principle

This correspondence serves as the formal transmittal mechanism for the un-notarized or un-commissioned **Affidavit** (Affidavit #28) pertaining to the service of documentation in the **Within Proceeding**. The **Affidavit** is appended hereto and its contents are incorporated *in extenso* as if fully restated herein, thereby establishing a formal nexus between the act of service and the judicial record. The provision of this documentation, although presently un-commissioned, does not diminish its inherent factual veracity, which is sworn to by the Applicant. It is a demonstrable commitment to transparency and timely disclosure, reserving the right to file the formally commissioned document *nunc pro tunc*—literally, "now for then"—a judicial doctrine utilized to remedy procedural omissions where the delay is minimal and does not prejudice the opposing parties (of which there are none). The service of this un-commissioned instrument immediately achieves the substantial compliance required for procedural advancement.

The submission of this **Affidavit**, notwithstanding its temporary un-commissioned status, is effectuated for multi-purposed utility, primarily to establish *prima facie* evidence of service as required by the **Rules**, specifically *Rule 16*, and to delineate the immutable chronological progression of the **Within Proceeding**. This preemptive submission is critical; it ensures that the evidentiary foundation for the subsequent procedural steps, including the hearing of the **NOM #3**, is robustly established and available for the **Recipients'** immediate perusal and instruction.

Furthermore, it pre-emptively addresses and vitiates any potential procedural challenges regarding timely notification of all interested parties, thereby eliminating opportunities for delay based on technical non-compliance which could, in turn, frustrate the ends of justice and exacerbate the Applicant's ongoing prejudice. The Applicant operates on the principle of *uberrima fides* (utmost good faith), providing evidence even if a formal technicality is pending, to accelerate the judicial process. This transparent disclosure of the completed service *acta* mandates that the **Recipients** cannot plead lack of notice or surprise regarding the impending filing of the **Motion Record** or the substantive arguments contained within the **NOM #3**.

III. Exigent Circumstances and the *Necessitas* for NOM #3: The Constitutional Dimension of Harm and Suspicion

The provision of the aforementioned **Affidavit** is rendered all the more exigent and pressing in consequence of the egregious and subsequent **TDI Karat Theft of this week**. This new and reprehensible sequence of events involves further unauthorized access, manipulation, and deprivation concerning the Applicant's personal information (the "Personal Information"), confidential information, personal health information, and sensitive personal information. The continuity of such calculated deprivation and unauthorized access necessitates an immediate judicial response, confirming that the issues at the heart of the litigation are dynamically deteriorating and that the **Respondents** (or their affiliates) continue to exert an unauthorized dominion over the Applicant's private sphere. This phenomenon signifies a distinct escalation in the perceived risk to the Applicant's safety and proprietary interests, moving beyond mere financial damages to encompassing fundamental liberty and privacy concerns enshrined within Canadian jurisprudence and quasi-constitutional documents. The judiciary's authority must be exercised *in the affirmative* to arrest this negative trajectory and re-establish the lawful *status quo ante*.

Such unauthorized **acta** directly and severely contravene the fundamental tenets of privacy legislation, including the **PIPEDA** and the broader **Privacy Regime**, and the Applicant's *status quo ante* rights concerning the inviolability of private dominion. The persistence of these unlawful activities, purportedly perpetrated *ipso facto* against the Applicant, incontrovertibly furnishes additional, compelling evidence that the underlying issues giving rise to the **Within Proceeding** are not merely historical infractions, susceptible to remedial measures over an extended timeline, but represent an ongoing and deleterious campaign of **malfeasance**.

Crucially, while the Applicant maintains a rigorous *decorum* and refrains from unsupported conjecture concerning the precise orchestrators of the current *acta*, the timing of this new deprivation is deemed most suspicious. The only established and known facts are: (1) the identity of the initial *de facto* thief, (2) his unequivocal agency tie to the Respondent Insurance Companies (the **TDI** entities), and (3) the subsequent, clear instance of impersonation executed by the **Epstein Cole LLP Client**. These facts construct a compelling circumstantial narrative that necessitates urgent investigation and judicial constraint. This ongoing pattern of conduct exponentially amplifies the irreparable harm that the Applicant continues to suffer, moving the matter from one of ordinary dispute resolution to one demanding extraordinary interim and injunctive relief to prevent the complete erosion of proprietary control over personal data. The very integrity of the judicial process is arguably implicated when parties demonstrate such a patent disregard for proprietary and informational boundaries during the pendency of active litigation, manifesting a brazen attempt to circumvent or undermine the authority of the Court. The Applicant posits that this conduct exhibits a sophisticated **extrapolation** of prior, lesser infractions into a concerted, high-gravity **acta** demanding judicial scrutiny *sine mora* (without delay).

IV. Obligation of Mitigation and Procedural Finality: The Equitable Duty

To the extent that any **Respondents** or their duly authorized agents possess knowledge of this unconscionable conduct and are vested with the ability, power, or operational control to interdict or cease the same, it is requested with the utmost seriousness that **active and immediate steps** be taken to mitigate the ongoing harm. This **active duty of mitigation** is a foundational principle of equity and civil responsibility, extending beyond passive cessation to requiring affirmative measures to claw back or neutralize the unlawful informational control. Any willful omission to act in the face of known, ongoing breaches, particularly where such breaches involve sensitive information protected by the **Privacy Regime**, shall be considered a compounding factor, evidencing a corporate or

institutional **mens rea** in the Applicant's pursuit of aggravated and punitive remedies. The **Recipients** are hereby put on formal notice of this escalating exposure to adverse findings predicated upon the doctrine of *respondeat superior* (let the master answer).
Furthermore, the Applicant affirms the procedural finality regarding the evidentiary status of the service: This **Affidavit** of Service, to be commissioned shortly and without delay, will be formally and irrevocably included under the remaining tab of the **Motion Record**, subsequent to which the entirety of the **Motion Record** will be filed with the Court as such. The function of this filing is to ensure comprehensive documentary submission well in advance of the judicial hearing date. A complete and comprehensive copy of the same, including the duly commissioned **Affidavit**, will be served concurrently upon the Non-Respondents who have already been served with prior documentation in the **Within Proceeding**, thereby satisfying the procedural imperative of complete documentary dissemination to all interested parties. This meticulous approach ensures that all parties, whether designated as Respondents or Non-Respondents, possess the full evidentiary context required to prepare for the substantive hearing of the **NOM #3**.

V. Legal Syllogism and Conclusion: The Mandate of Judicial *Alacrity*

It is a core **syllogism** that judicial intervention becomes an absolute *necessitas* when non-judicial entities engage in a continuous course of action that is *ultra vires* their lawful mandate and which manifests an inherent **mens rea**—a guilty or deliberate mind—to disregard the Applicant's entrenched justiciable rights. The deliberate and repeated nature of the alleged infractions, extending into the current week, provides a strong **extrapolation** that the Respondents' activities are calculated, volitional, and systematic, rather than merely negligent or accidental administrative failures. This *animus* necessitates a judicial remedy of a protective and pre-emptive nature, rather than a mere compensatory one, to prevent further proliferation of the alleged harm. The Court is therefore urged to consider the protective dimensions of the relief sought in **NOM #3** as being paramount to the curative, emphasizing the doctrine of irreversible judicial protection.

The factual extrapolations flowing from the **TDI Karat Theft of this week** demonstrate that the core relief sought by the **NOM #3**—which fundamentally concerns the preservation of rights, the cessation of unlawful processes, and the maintenance of evidentiary purity—is not merely desirable, but is now a matter of acute and immediate judicial necessity. The current situation demands an adjudication *ex parte* if the initial circumstances warrant such protective measures, followed by *inter partes* proceedings at the earliest judicial opportunity, lest the **Respondents** benefit from the temporal delay inherent in standard scheduling and thereby consummate their alleged unlawful objectives, rendering the Court's future orders irrelevant.

As this NOM #3 was made this week on Monday, the timing of the fraudulent conduct on Tuesday, November 18, 2025, is a pattern as the service of the Motion Record was thereafter.

The further investigations currently underway concerning the **TDI Karat Theft of this week** shall, without a scintilla of doubt, serve only to buttress the Applicant's assertions of systemic and ongoing breach, providing granular evidentiary detail to the Court. Consequently, the **NOM #3** must be prioritized on the judicial docket to address these accumulating and compounding harms *in limine* (at the threshold). The failure to expeditiously address the substantive legal issues and the underlying causative mechanisms that permit such ongoing breaches risks the judicial validation of an unlawful *status quo* and potentially renders the ultimate judgment nugatory—a hollow victory devoid of practical effect that severely undermines the purpose of the *Act*. This would constitute a profound

miscarriage of justice that the Applicant seeks strenuously to avoid through this detailed and urgent correspondence.
The conclusions drawn herein are thus rendered self-evident: the necessity of the **NOM #3** has been logarithmically elevated by the **Respondents'** latest purported **acta**, placing a definitive and urgent onus upon the **Recipients** to acknowledge the amplified gravity and inherent procedural complexity of the **Within Proceeding**. The immediate scheduling and contemplation of the relief sought are prerequisites for restoring the equitable balance between the litigating parties and ensuring that justice is not merely promised, but substantively delivered with *alacrity* and finality.

Yours most appreciatively and gratefully,

/s/Mr. Kevin A. McLean (BA, JD, CIM)

Mr. Kevin A. McLean (B.A., J.D, CIM) (he/him)

Yours faithfully,

/KAM

Mr. Kevin A. McLean (BA, JD, CIM)

Sender's name: Mr. Kevin Alexander McLean (BA, JD, CIM)

Sender's address: 410-775 King Street West, Toronto, Ontario, M5V 2K3

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On Wed, Nov 19, 2025 at 4:55 PM Mr. Kevin McLean <mcleansettlement@gmail.com> wrote:
Court file number: DC-24-00000718-00JR
Type of document: Applicant's NOM #3 Motion Record in multiple parts (Part 2 is attached)
Short title of proceeding: McLean v. TDHA et al
Party: Mr. Kevin A. McLean (B.A., J.D., CIM) (mcleansettlement@gmail.com)

TO: RESPONDENTS BUT WAY OF DECLARED BY EMAIL COUNSEL (Including the Respondent Insurance Companies, the Executive Director of the Licence Appeal Tribunal (LAT), the Attorney General of Ontario (AGO), and the Associate General Counsel (AGC) or corresponding

office)

AND TO: THE REGISTRAR, ONTARIO SUPERIOR COURT OF JUSTICE (DIVISIONAL COURT)

SUBJECT: FORMAL SERVICE OF THE APPLICANT'S NOTICE OF MOTION NO. 3 (NOM #3) MOTION RECORD (Part 2 of 2)

Dear Sirs/Mesdames/Other Gender-Neutral Pronouns:

As promised, please find part 2 of 2 attached. As confirmed, I did receive notification that Case Center will be available by November 24, 2025, through the MyOntario account. Better late than never subject to it being accessible and not requiring the required invitation. Thank you.

Yours faithfully,

/KAM

Mr. Kevin A. McLean (BA, JD, CIM)

Sender's name: Mr. Kevin Alexander McLean (BA, JD, CIM)

Sender's address: 410-775 King Street West, Toronto, Ontario, M5V 2K3

Sender's Telephone Number: (647) 370-9354

Sender's email address: mcleansettlement@gmail.com

On Wed, Nov 19, 2025 at 4:48 PM Mr. Kevin McLean <mcleansettlement@gmail.com> wrote:

Court file number: DC-24-00000718-00JR
Type of document: Applicant's NOM #3 Motion Record in multiple parts (Part 1 is attached)
Short title of proceeding: *McLean v. TDHA et al*
Party: Mr. Kevin A. McLean (B.A., J.D, CIM) (mcleansettlement@gmail.com)

TO: RESPONDENTS BUT WAY OF DECLARED BY EMAIL COUNSEL *(Including the Respondent Insurance Companies, the Executive Director of the Licence Appeal Tribunal (LAT), the Attorney General of Ontario (AGO), and the Associate General Counsel (AGC) or corresponding office)*

TO: THE REGISTRAR, ONTARIO SUPERIOR COURT OF JUSTICE (DIVISIONAL COURT)

SUBJECT: FORMAL SERVICE OF THE APPLICANT'S NOTICE OF MOTION NO. 3 (*NOM #3*) MOTION RECORD (Part 1 of 2)

I. INTRODUCTORY PROLEGOMENA AND TRANSMISSION OF ACTA

This formal, definitive, and profoundly weighty correspondence is hereby **dispatched** in rigorous and unwavering fulfillment of the antecedent **undertaking** to submit the Applicant's voluminous, complex, and dispositive **Notice of Motion No. 3 (*NOM #3*) Motion Record**. This compendium is inclusive of all supplementary documentary and exhaustive evidentiary materials which fundamentally and directly pertain to the above-referenced judicial review proceeding. The intrinsic **gravity** and the consequential implications of the *lis pendens*—a matter concerning the rightful adjudication of constitutional liberties within an administrative framework—necessitate this immediate filing to ensure that the matter proceeds with the requisite **celerity**, **procedural rectitude**, and an absolute fidelity to the principles of justice that underpin the *Courts of Justice Act*.

Enclosed herewith is the initial, but by no means exhaustive, instalment, which has been designated **Part 1**, comprising a consequential segment of the complete and comprehensive documentary **compendium**. This inaugural submission contains the systematically tabulated and consecutively enumerated materials, the entirety of which culminates with the requisite **Draft Order**, a pivotal jurisdictional document which is logically situated and clearly referenced at **Tab 21** of the overall record. This complete filing, spanning several thousands of pages of documentary evidence, constitutes an articulate, forceful, and irrefutable exposition of the compelling legal position necessitating the immediate and substantive intervention of this Honourable Superior Court to address the systemic failures that have precipitated this extraordinary recourse. The Applicant, in the exercise of his constitutional rights, presents this *acta* to delineate the failures of the administrative process below.

II. PROCEDURAL ELABORATION AND CURIAL AMENITY

It is a substantive matter of formal confirmation that the entirety of the electronically submitted record has been rendered in a state of reasonably precise and navigable **electronic bookmarking**, thereby efficaciously optimizing the preliminary organization for immediate comprehension. Nevertheless, and notwithstanding the execution of this initial, indispensable preparatory measure, the immense compilation shall imminently undergo further, comprehensive technical refinement. This subsequent, highly specialized refinement involves the rigorous implementation of internal **hyperlinking** and meticulous **cross-referencing** across the entirety of the record. The purpose is to ensure the utmost ease of navigation between the **Factum**, the evidentiary **Statutory Declaration (which can be reduced to an appended affidavit if necessary but provided for temporal purposes in such format due to the urgency and necessary, inter alia, return of property or confirmation of destruction by those who de facto and de jure stole from me tainting this proceeding)**, and the cited authorities. This technically advanced undertaking is extended not merely as a superficial convenience, but as a deliberate and essential **curial amenity**, fundamentally designed to construct the most **expeditious** and intellectually **unencumbered intellectual pathway** for the Presiding Honourable Justice when engaging with the complex evidentiary matrix. This refinement is a critical mechanism to mitigate the logistical complexities arising from the record's **prodigious** magnitude, ensuring the Tribunal's constitutional overreach and the Respondents' deleterious conduct are immediately accessible for judicial scrutiny. Furthermore, by reason of the sheer volume of the documentary evidence and legal authorities amassed in support of the Applicant's articulated position, the complete *NOM #3* Motion Record is necessarily and pragmatically segregated into discrete

electronic parts. This essential segmentation ensures seamless, secure, and efficient transmission to the Court and all interested respondents thereby deliberately obviating any potential for technological impediment or administrative confusion in processing the entirety of the voluminous *acta*.

III. SUBSTANTIVE PRÉCIS OF RELIEF SOUGHT

It is considered procedurally and substantively **imperative** that the Honourable Court, alongside all respondents (not technically "parties"), take explicit notice, **in limine**, of the profound substantive exigencies and **fundamental jurisdictional imperatives** motivating the *NOM #3*. The application predicates, with undeniable force, upon the manifest and inescapable necessity for the **Divisional Court** to exercise its superior, inherent jurisdiction to grant efficacious and essential remedies, the scope of which fundamentally and decisively **transcend** the statutory limitations and the restrictive, inherent authority of the **Licence Appeal Tribunal**. The underlying premise, which is capable of an **irrefutable extrapolation of legal principles**, is that the Tribunal, having acted arguably **ultra vires** its mandate in its disposition or, more precisely, its *failure* to properly address constitutional questions, has created a jurisdictional void and a constitutional lacuna that only the supervisory jurisdiction of this Court may fully and finally rectify.

The constellation of relief sought, as meticulously detailed within the **Factum of the Applicant**, is substantially and logically predicated upon two principal and non-severable components:

1. **Constitutional Determination and Procedural Due Process:** An unequivocal Order establishing that the determination of the requisite **Charter** relief shall proceed forthwith, either *via* detailed written argument or an expedited oral hearing, to be finally adjudicated and definitively rendered by the presiding Divisional Court Judge within a strictly defined, narrow temporal parameter, such as thirty (30) days from the date of the issuance of the Order. This immediate adjudication is not merely preferential but is rendered **indispensable** to rectifying the current **status quo ante**, which is undeniably and fundamentally compromised by reason of the protracted denial of the Applicant's constitutional entitlements pursuant to *section 7* and *section 15* of the *Canadian Charter of Rights and Freedoms*. The delay, *prima facie*, amounts to irreparable prejudice, thus demanding an immediate restoration of **procedural fairness** and the cessation of the constitutional stagnation currently afflicting the proceeding. The *mens rea*, or lack of due diligence, demonstrated by the systemic actors in permitting this situation to subsist, justifies this robust judicial intervention.
2. **Exemplary Costs and Judicial Rebuke:** An Order awarding **Full Indemnity Costs** against any and all Respondents who elect to oppose, or who demonstrate a failure to unequivocally consent to, the straightforward and self-evident remedial measures herein sought. This extraordinary entitlement is claimed, not capriciously, but on the compelling and judicially recognized basis of the demonstrated and **egregious** nature of the underlying systemic and procedural misconduct. Such malfeasance has rendered this judicial intervention an inescapable matter of absolute procedural and legal necessity, designed to prevent the perpetuation of injustice. The legal **syllogism** articulated within the Applicant's **Factum** posits that such indefensible conduct—conduct which suggests an intentional disregard for the Applicant's constitutional rights and the process of justice—is **ipso facto** sufficient to justify a punitive and corrective measure on the highest, **full indemnity** basis. This serves the dual purpose of compensating the Applicant for the unnecessary expenditure of resources and providing an appropriate **in terrorem** effect against those corporate entities and governmental offices that would otherwise countenance the continuance of the deleterious *acta* under judicial review.

IV. CONFIRMATION OF SERVICE

Confirmation is likewise unequivocally afforded that due and diligently attested service upon **all interested persons and counsel of record**, including the statutorily mandated service upon the respective Attorneys General owing to the constitutional nature of the claims advanced, shall be effectuated **forthwith**. This service will strictly adhere to the modalities prescribed by the *Rules of Civil Procedure*. Subsequent to the rigorous completion of the entirety of the multi-jurisdictional service process, a formal **Affidavit of Service**, meticulously documenting precise compliance with *Rule 16* and its associated strictures, shall be generated, commissioned, and filed with the Registry. This document will serve as the final and conclusive proof of service upon all necessary persons, thereby perfecting the procedural record for the Court's consideration.

I will continue all due diligence efforts to ensure that the open court principle and the truth seeking function of civil litigation is honoured. To the extent that I obtain further relevant evidence to the same, I will provide it as a courtesy.

Part 2 of 2 shall follow.

Kevin A. McLean (B.A., J.D., CIM)
Applicant, Self-Represented

Yours faithfully,

/KAM

Mr. Kevin A. McLean (BA, JD, CIM)

Sender's name: Mr. Kevin Alexander McLean (BA, JD, CIM)

Sender's address: 410-775 King Street West, Toronto, Ontario, M5V 2K3

Sender's Telephone Number: (647) 370-9354

Sender's email address: mcleansettlement@gmail.com

On Wed, Nov 19, 2025 at 4:11 PM Mr. Kevin McLean <mcleansettlement@gmail.com> wrote:
Court file number: DC-24-00000718-00JR
Type of document: Factum for NOM #3
Short title of proceeding: McLean v. TDHA et al

Party: Mr. Kevin A. McLean (B.A., J.D, CIM) (mcleansettlement@gmail.com)

Dear Sirs/Mesdames/Other Gender-Neutral Pronouns:

As promised, please find Tab #1 (Factum For Motion in Writing) for NOM #3 for service upon the relevant persons. The remainder will be provided with the motion record which is Tabs #1 to #21 and enumerated consecutively. I provide this as a courtesy in light of the failure to file a First Defence by the Respondent Insurance Companies and LAT and to "deliver" Notices of Appearances.

As noted and discovered, all of the proven allegations and highly pointed special categories of nullities where the Divisional Court is implicated are unequivocally and absolutely directed at Madam Justice Shore herein.

Thank you.

Yours faithfully,

/KAM

Mr. Kevin A. McLean (BA, JD, CIM)

Sender's name: Mr. Kevin Alexander McLean (BA, JD, CIM)

Sender's address: 410-775 King Street West, Toronto, Ontario, M5V 2K3

Sender's Telephone Number: (647) 370-9354

Sender's email address: mcleansettlement@gmail.com

On Mon, Nov 17, 2025 at 4:23 PM Mr. Kevin McLean <mcleansettlement@gmail.com> wrote:
Procedural Nexus and Identification
Court File Number: DC-24-00000718-00JR
Nature of Instrument: Formal Electronic Communication Incorporating Substantial Documentary Enclosures and Assertions of Procedural Default
Short Title of Proceeding: *McLean v. TDHA et al*
Principal Litigant: The Applicant, Mr. Kevin A. McLean (B.A., J.D, CIM) (mcleansettlement@gmail.com)

Dear Sirs/Mesdames/Other Gender-Neutral Pronouns:

As promised, my statutory declaration of November 14, 2025, served on Mr. Karat, Ms. Dunk and the Epstein Cole LLP Client. As noted, the statutory declaration, with the time stamping of the same for temporal precision, may be appended to an affidavit or affidavits for formality purposes but the substance and exact language and exhibits therein will obviously remain the same.

Due to its size, it has been served in double compressed form.

Thank you.

Yours faithfully,

/KAM

Mr. Kevin A. McLean (BA, JD, CIM)

Sender's name: Mr. Kevin Alexander McLean (BA, JD, CIM)

Sender's address: 410-775 King Street West, Toronto, Ontario, M5V 2K3

Sender's Telephone Number: (647) 370-9354

Sender's email address: mcleansettlement@gmail.com

On Mon, Nov 17, 2025 at 4:18 PM Mr. Kevin McLean <mcleansettlement@gmail.com> wrote:
***Per* Electronic Facsimile Transmission**
SUBSEQUENT TO THE ESTABLISHMENT OF IRREVOCABLE LEGAL PREJUDICE AND MANDATORY NON-DEROGATION

Date of Execution: The Seventeenth Day of November, Two Thousand and Twenty-Five (MMXV)

Procedural Nexus and Identification

Court File Number: DC-24-00000718-00JR
Nature of Instrument: Formal Electronic Communication Incorporating Substantial Documentary Enclosures and Assertions of Procedural Default
Short Title of Proceeding: *McLean v. TDHA et al*

Principal Litigant: The Applicant, Mr. Kevin A. McLean (B.A., J.D, CIM) (mcleansettlement@gmail.com)

Designated Recipient Entities

The Licence Appeal Tribunal (LAT)
Attention: The Office of the Registrar, Mr. Boyce, or Designated Senior Legal Counsel, as the originating administrative body whose record and conduct are the subject of the instant judicial review.
The Respondent Insurance Corporations:
Corporate entities possessing established jural personality and attendant legal obligations under the Insurance Act (Ontario) and the common law, specifically named herein as the entities in default of filing a substantive defence:

- TD Insurance Home and Auto (TDHA)
- *Security National Insurance Company* (SNIC)
- TD General Insurance Company (TDGIC)

Courtesy Recipients: Entities of Oversight and Jurisdiction

The Divisional Court
Attention: The Office of the Clerk of the Court (Madam Clerk Clegg et al.), as the administrative and record-keeping authority for the reviewing judicial body. The Divisional Court's mandate, as the superior court, includes the supervisory function over the inferior tribunals of this province, thereby necessitating its prompt awareness of the institutional non-compliance herein documented.
The Attorney General of Ontario (AGO)
Attention: Crown Counsel, Ms. Im, whose office maintains an enduring supervisory role over the proper conduct of administrative tribunals, the integrity of the provincial justice system, and the enforcement of all apposite provincial statutes. This role imports a compelling public interest obligation to address allegations of systemic fraud and administrative malfeasance.
The Attorney General of Canada (AGC)
Attention: Legal Counsel, whose interest is necessarily engaged when questions of fundamental justice, the Charter implications of procedural failures, and the possible systemic failure of federally-regulated entities are implicated by the provincial proceedings.
The considered inclusion of these esteemed entities of sovereign oversight constitutes a necessary, non-supererogatory procedural measure, serving to ensure that the profound procedural *lacuna* and the patent administrative failings created by the categorical non-compliance of the Respondents are brought directly to the immediate cognizance of those vested with the responsibility of upholding the comprehensive integrity and efficacious operation of the Canadian judicial and administrative apparatuses. The highly sensitive nature of the emergent fraud claims mandates the attention of both governmental levels, inasmuch as these claims speak directly to potential systemic deficiencies

impacting the fundamental public trust in regulated insurance and administrative bodies. The Divisional Court, specifically, requires full and unreserved awareness of the Respondents' procedural deficiencies in the underlying Tribunal process, as this bears directly upon the quantum and type of remedy available upon judicial review.

Subject Matter of Transmittal

CONCERNING: The formal and definitive enclosure of the Applicant's now perfected and finalized **Notice of Motion Number Three** (NOM #3) and the supplementary, critical **Statutory Declaration of November 14, 2025**.

These transmitted documents collectively delineate the *sine qua non* (the essential condition) upon which the Applicant's immediate and urgent request for judicial intervention is predicated, serving as the procedural mechanism for obtaining conclusive relief. The perfection of the NOM #3 signifies that all requisite documentary components have been assembled, finalizing the Applicant's *locus standi* to seek a definitive ruling. This intervention specifically addresses and seeks definitive redress for the systemic procedural failures, the egregious delays, and the substantiated substantive deficiencies evinced by the Respondents throughout the entirety of the subject proceeding, failures which fundamentally subvert the principles of justice and fairness mandated by the *Charter of Rights and Freedoms*. The NOM #3 constitutes the conclusive demand for remedy based upon an uncontroverted record and the inherent authority vested in the reviewing court to correct patent procedural irregularities that prejudice a litigant's position. The relief sought is not of an interlocutory nature but aims for the final resolution of the extant procedural and substantive defaults.

Correspondence: Substantive Submissions

To the Esteemed Recipients and Affected Parties, formal salutations and unequivocal notice are hereby extended:

This instrument is addressed to the aforementioned Divisional Court proceeding, DC-24-00000718-00JR, thereby effectuating the official and legally significant service of the Applicant's current and material submissions. This action is undertaken to ensure that all parties possess the requisite **constructive notice** concerning the consequential relief sought, the allowance of which is now demonstrably procedurally predetermined by the Respondents' documented and persistent defaults in filing, thereby compelling the Court's subsequent ruling *ex parte* if necessary.

Section I: The Transmittal of Definitive Filings and Evidentiary Submission

Pursuant to the mandatory procedural requisites stipulated by the Tribunal and the fundamental, inherent requirements of *natural justice* and the *duty of candour* owed to the court, and by way of formal, contemporaneous service upon all designated Respondents, the requisite documentary portfolio is herewith transmitted for immediate and non-derogable consideration and procedural

acknowledgment. This portfolio is comprised of the following two foundational submissions, both of which are central to the prompt, conclusive, and legally sound adjudication of the instant motion:

1. The Applicant's **Statutory Declaration,** which was solemnly executed on the fourteenth day of November, MMXV. This declaration, a pivotal evidentiary instrument, has been previously and punctiliously served upon Messrs. Karat, Dunk, and Papadimitropoulos of the Epstein Cole LLP entity, thereby establishing their specific, non-deniable knowledge of the factual assertions contained therein. **Notwithstanding the documented service upon opposing counsel, the absence of any formal rejoinder or evidentiary rebuttal results in the conclusive, uncontroverted status of this sworn evidence.** The declaration is adduced as conclusive sworn evidence, attesting to facts that are materially *exculpatory* of the Applicant's conduct and simultaneously *incriminating* of the Respondents' procedural derelictions and substantive *mala fides* in the underlying dispute. Its contents are predicated upon personal knowledge and documentation which constitute *res gestae* of the underlying dispute and stand as sworn evidence before this Honourable Court, carrying with it the attendant, irrebuttable weight of proof until formally rebutted via a mechanism provided for within the *Rules of Civil Procedure*, a mechanism the Respondents have conspicuously failed to employ. The uncontroverted status of this sworn evidence renders any future attempts to introduce contradictory facts an abuse of process.
2. The Applicant's finalized and perfected **Notice of Motion Number Three (NOM #3)**, bearing the date of today's execution. This document meticulously articulates the complex legal and factual premises underpinning the specific and far-reaching judicial orders requested, encompassing relief that extends to procedural regularization, costs on a solicitor-client basis, and substantive remedies. It serves as the definitive statement of the Applicant's current procedural posture and the consequential remedies sought under the *Courts of Justice Act*, particularly concerning the enforcement of procedural compliance by recalcitrant parties who have demonstrated a palpable disregard for the Court's scheduling and procedural directives.

The simultaneous service of these definitive filings operates to remove any conceivable or potential procedural impediment to the motion's ultimate disposition by the Divisional Court, thereby placing the entire and undivided **onus of timely and legally sufficient response** entirely and exclusively upon the respective Respondents. The time allocation for delay, evasion, or equivocation has demonstrably expired, requiring a prompt resolution of the resulting procedural *impasse* through the immediate enforcement of the procedural *Rules*.

Section II: Extrapolation of Non-Appearance and Consequent Legal Implication

The **conspicuous and profoundly concerning absence** of any substantive, defensible, and formal rejoinder to the antecedent correspondence, transmitted on the twenty-sixth day of October, MMXV, **and the failure of Messrs. Karat, Dunk, and their instructing client to file a rebuttal to the Statutory Declaration of November 14, 2025, notwithstanding documented service**, compels a necessary and *unassailable syllogistic* extrapolation regarding the Respondents' procedural posture and, indeed, their *bona fides* in this protracted litigation. Such protracted and unexplained procedural inertia suggests not merely passive negligence, which would be sufficient grounds for sanction, but a deliberate strategy of calculated procedural disengagement designed to frustrate the orderly, timely, and just progression of the matter, conduct which could be conclusively construed as an *abuse of process* and a contemptuous disregard for the judicial process.

This protracted and demonstrated failure confirms, unequivocally, that the Licence Appeal Tribunal and the Respondent Insurance Corporations have **manifestly and deliberately eschewed** their fundamental procedural obligation to lodge, with requisite proof of service appended, a **First Defence** as formally stipulated under the apposite *Rules of Civil Procedure* of the Superior Court of Justice, specifically referencing Rule 37 pertaining to Notices of Appearance and defence filing deadlines. This is not a mere technical oversight or venial error of minimal consequence; it constitutes a fundamental procedural *dereliction* that irrevocably jeopardizes the very foundation of adversarial fairness and necessitates the exercise of the Court's inherent jurisdiction to mandate judicial intervention. The failure to file a defence is tantamount to an admission of the Applicant's claims for the purposes of this motion.

Sub-Section A: The Undisclosed Professional Retainer and Appearance of Impropriety

As is meticulously documented herein, the Applicant recently ascertained that **Mr. Sinnadurai** served as counsel to **Madam Justice Shore**, an association which, although potentially facilitated by design by the Ministry of the Attorney General (MAG), nonetheless establishes an undeniable, established relationship of professional retainer between Madam Justice Shore and Mr. Sinnadurai. This circumstance is particularly notable given that Mr. Sinnadurai was the sole, insistent point of contact designated for *all* requests for records involving the Undisclosed Criminal Proceeding, a role performed over and above the established jurisdictional authority of the MAG Civil Strategy Division (CSD) Records Division. This exclusive delegation of authority to an individual with a known professional tie to a senior member of the judiciary raises profound concerns regarding the **duty of institutional neutrality**. The selection of Mr. Sinnadurai for this sensitive and exclusionary role, considering the extensive roster of available legal professionals at the MAG, and the pre-existing professional history with Madam Justice Shore, presents a question of patent and non-trivial impropriety, impacting the confidence of the Applicant in the impartiality of the document production process. The legal ramifications of such a confluence of professional associations and designated roles, particularly when records pertaining to an Undisclosed Criminal Proceeding are centralized in the hands of one individual with conflicts of interest, are, upon

objective consideration, manifest. The potential for the appearance of conflict of interest, bias, or preferential treatment in the handling of sensitive judicial and governmental records cannot be ignored by this Court. *Res ipsa loquitur* (The thing speaks for itself).

Sub-Section B: Procedural Forfeiture, Non-Discretionary Curative Orders, and Legal *Estoppel*

This operational omission (failure to file a Defence) constitutes a **procedural forfeiture** of the highest order, resulting in a **tacit and undeniable abandonment** of the entitlement to substantively controvert the factual or legal merits of the instant judicial review application. The practical, undeniable, and immediate effect of this default is the creation of a procedural *estoppel* against future contestation of the Applicant's narrative or the facts attested to in the Statutory Declaration. By failing to avail themselves of the prescribed procedural mechanisms for reply within the designated time parameters, the Respondents have voluntarily and conclusively relinquished their right to invoke the protective doctrine of *audi alteram partem* (the right to be heard) in opposition to the merits of NOM #3, a consequence that is entirely self-imposed and wholly attributable to their procedural choices.

A direct and binding admonition is hereby issued that the Licence Appeal Tribunal and the Respondent Insurance Corporations are under a strict, non-delegable obligation to actively petition for and obtain formal curative orders from the Court. These orders are required for the regularization of manifest procedural irregularities, including, but not limited to, the dereliction involving the non-filing and non-delivery of the requisite Notices of Appearance, prior to any possible consideration of their standing being deemed *in bonis* (in good order) before this Honourable Court. This onerous procedural obligation rests squarely and unilaterally upon the defaulting parties, and their failure to secure such regularization serves as further conclusive evidence of their non-compliance. Absent such an order, any subsequent attempt by the Respondents to participate in the proceedings must be dismissed *in limine* (at the threshold) due to fundamental lack of standing.

Consequently, by direct operation of this material, persistent, and unrectified procedural default, the entirety of the Applicant’s proposed conclusions, legal assertions, and factual predicates presented in the attached Statutory Declaration and NOM #3 are rendered, *prima facie*, **self-evident, incontestable, and utterly uncontroverted**. The evidentiary record, as it stands following this unilateral procedural failure, is singularly and overwhelmingly in favour of the Applicant, thereby necessitating the **mandatory and non-discretionary allowance** of the consequential relief sought, specifically encompassing orders for the **immediate return of the Applicant’s property *et al*** and all ancillary judicial directives involving the same. The Divisional Court, in the face of this persistent default and the related ethical anomalies, is thus duty-bound to grant the Orders requested in the enclosed **NOM #3** to restore the procedural *equilibrium*, deter similar future misconduct, and secure the Applicant’s constitutional access to justice without further undue, prejudicial delay.

Attachments, which shall include the statutory declaration noted above, are to follow separately, attended by filing in the new Ontario Court Case and Document Portal (OCPP) in accordance with the prescribed digital (filing) protocols.

The Applicant's factum, motion record, confirmation of motion, draft orders *et al* shall follow promptly for the purpose of complete procedural compliance and final submission to the Court's judicial officer not a client of Mr. Sinnadurai who have come to know all too well in 2025.
I reserve the right to rely on this correspondence for any lawful purpose inclusive of costs.

Respectfully submitted,
/s/ Mr. Kevin A. McLean (BA, JD, CIM)
Mr. Kevin A. McLean (BA, JD, CIM)

Yours faithfully,

/KAM

Mr. Kevin A. McLean (BA, JD, CIM)

Sender's name: Mr. Kevin Alexander McLean (BA, JD, CIM)

Sender's address: 410-775 King Street West, Toronto, Ontario, M5V 2K3

Sender's Telephone Number: (647) 370-9354

Sender's email address: mcleansettlement@gmail.com

On Sun, Oct 26, 2025 at 7:25 PM Mr. Kevin McLean <mcleansettlement@gmail.com> wrote:
PRIVATE AND CONFIDENTIAL
Via Electronic Transmission
WITH PREJUDICE
Date: October 26, 2025

Creation Method: Document dictated utilizing Voice Recognition Software commencing on October 24, 2025, necessitated by the emergence of further facts and/or the potential discovery of additional material fraud (The reservation of rights to effect corrections upon any grammar, syntax, salient qualifiers, or improper double negatives is expressly maintained)

Court file number: DC-24-00000718-00JR
Type of document: Electronic Mail
Short title of proceeding: *McLean v. TDHA et al*
Party: Mr. Kevin A. McLean (B.A., J.D, CIM) (mcleansettlement@gmail.com)

TO:

The Licence Appeal Tribunal (LAT)
Kind Attention: Mr. Boyce, Registrar or Designated Counsel

TO:

Respondent Insurance Companies
TD Insurance Home and Auto (TDHA)
Scotia-affiliated National Insurance Company (SNIC)
TD General Insurance Company (TDGIC)

Copied to:

The Divisional Court
Attention: Clerk of the Court (Madam Clerk Clegg et al.)

Copied to:

Attorney General of Ontario (AGO)
Kind Attention: Ms. Im, Crown Counsel

Copied to:

Attorney General of Canada (AGC)
Kind Attention: Legal Counsel

Subject I: Respectful Query and **Urgent Request of the Respondents (LAT and Respondent Insurance Companies)** – Formal demand for copies of evidentiary proof concerning the complete and accurate **"delivery"** (pursuant to *Rule 1.03* definition of **"Deliver"** signifying both a successful service upon the Applicant and the subsequent **FILE** of the document accompanied by proof of service) of the **Notice of Appearance** by the Licence Appeal Tribunal (LAT), with particular emphasis on the manifest failure to transmit the document to the Applicant via the **exclusive and formally designated** email address within the **Judicial Review Application** (the "**JRPA Application**") and the demonstrable use of an alternate, antecedent channel (an electronic mail transmission from Law Clerk Ms. Maciel Milene directed to the address reserved solely for the **LAT Proceeding**: mcleansniclat@gmail.com).

Subject II: Respectful Query and **Formal Demand** – Requisition for copies of evidentiary proof concerning the complete and procedurally sound **"Delivery"** (Service and Filed Proof) of the **Notice of Appearance** by the **Respondent Insurance Companies** dated December 3, 2024.
(Collectively, the "Subjects")

Dear Sirs/Mesdames/Other Gender-Neutral Pronouns:

This comprehensive missive is hereby formally tendered concerning the aforementioned Subjects of correspondence, necessitating an immediate and definitive clarification regarding the integrity and fidelity of the court record. Appreciation is *a priori* (*from the former*) extended for the time and considered deliberation that will be accorded this correspondence and its appended attachments (whether by reference or inclusion). The finite yet invaluable institutional and human resources of the recipients are profoundly valued, which consideration is precisely why an immense and **painstaking commitment of time** has been undertaken to thoroughly research the extant legal principles herein and ensure their diligent application to the germane, operative facts. Confirmation is hereby given that, *mutatis mutandis* (*with the necessary changes having been made*), all definitions and designations from previously, indirectly or directly, cited correspondence are adopted. **I refer to the Applicant in the third person herein for ease of reference.** The meticulous adherence to **procedural stipulations**, particularly those governing the initiation of a court record and the formal joinder of parties, is not a superfluous formality or a suggestion of best practice; rather, it constitutes an **indispensable, constitutional foundation** for the proper, lawful exercise of **judicial authority** and the enduring preservation of **natural justice** (*audi alteram partem*—hear the other side). This adherence is critical, given that the procedural framework of the court constitutes the *lex fori* (*law of the forum*), and any material derogation therefrom possesses the potential to fundamentally impair the substantive rights of a litigant, thereby undermining the principles of **due process** and compelling the court's inherent jurisdiction to restore the procedural equilibrium *ex officio* (*by virtue of office*).

Preamble of Intent and Reserved Rights: Demand for Strict Proof and Procedural Nullities

The Respondents herein are hereby put to **strict proof**, requiring the production of unmanipulated documentation as mandated by law. These respectful and courtesy requisitions are observed to possess an element of public interest. Furthermore, the issues pertain to knowledge that is not subject to proof or disproof by the Applicant, as the Respondents shall either be in custody or control of documents demonstrating filing with proof of service (a requirement of two documents) or such documents shall be absent. The absence of such documentation would not constitute a mere irregularity (a defect curable by the court under the discretion conferred by **Rule 2.02**) but a **nullity** (a fundamental defect that renders the act invalid from the outset, incapable of being made valid retrospectively), since such failures are not voidable by an applicant, such as the filing of a record of proceeding forthwith albeit under a statute and not a regulation. Consequently, all subsequent steps taken shall be **void ab initio**. A distinction is necessarily drawn between a filing that is void *ab initio* and a document that was never filed with proof of service at the first instance.

Furthermore, pursuant to the judicial distinction articulated in the British Columbia Court of Appeal's ruling in ***Long v. Red Branch Investments***, which differentiated between the procedural requisites for the discovery of new facts or evidence of fraud post-judicial step in the jurisdictions of British Columbia and Ontario, the Applicant is necessarily constrained to proceed with the prosecution of the instant Judicial Review Application before the Divisional Court. To the extent that documents were purportedly filed by any Respondents subsequent to the alleged non-filings (i.e., filed in the Divisional Court with proof of service), such filings would similarly be deemed **void ab initio** due to the jurisdictional defect of the antecedent actions. This fatal procedural consequence would also extend to any unauthorized uploading of documents to the electronic **Case Center**, should an invitation have been proffered to the Respondents without the co-equal and simultaneous issuance of the requisite invitation to the Applicant. It is further posited that any such subsequent filings, irrespective of their due execution with proof of service and/or proper delivery, would inevitably be subject to challenge

on the grounds of insufficient or complete lack of formal notice, precisely because the fundamental initial procedural steps remain **void ab initio**.

This mandates that the subsequent steps taken by the Divisional Court, which may have involved court staff in the court office, including but not limited to Madam Registrar Clegg, Ms. Lawrence, Ms. Tibula, and Ms. Badwal (albeit a single judge motions coordinator), are **void ab initio** (as if they never occurred) regarding those steps by the Divisional Court that were adverse to the Applicant, though not in relation to steps that were aligned with the statute in the JRPA (i.e., heard in a summary fashion on the record). The preservation of the court's institutional legitimacy hinges upon strict adherence to the **"delivery"** rule, which acts as a bulwark against the subversion of the judicial process.

The Applicant further asserts that the purported assignment of **The Honourable Madam Justice Shore** to take carriage of the JRPA Proceeding is also **void *ab initio*** because no **direction** was made under **Rule 77.06(1)** for all steps in a proceeding to be heard by a particular judge, thereby invalidating any purported authority exercised pursuant to **Rule 77.07(2)**. This procedural infirmity is independent of the NOA defect and forms a separate, fatal jurisdictional challenge to the management of this case.

I. Detailed Recitation of Material Facts and Precedent Events (Procedural Courtesy)

A comprehensive and precise recitation of the operative facts pertinent to the *tempus* preceding this query is herein commenced. On November 15, 2024, the **JRPA Application** was duly submitted by the Applicant through the Justice Services Online **(JSO) Portal**, whereupon the electronic filing mechanism applied its official date-stamp, thereby establishing the **unimpeachable chronology** of this application under Court File Number DC-24-00000718-00JR. This initiation of process, which constitutes the **genesis** of the Divisional Court's jurisdiction, vested in the Court the mandate to supervise the administrative proceedings, subject to **strict and unambiguous compliance** by all participants. Crucially, the **JRPA Application**, being a distinct and superior form of legal recourse to the Superior Court of Justice, instituted a new and separate legal proceeding. This judicial review, by its very nature, necessitated the formal designation of a specific electronic address, **mcleansettlement@gmail.com**, for all subsequent official correspondence and service related exclusively to the Divisional Court, an address that is materially and practically separate from the antecedent **LAT Proceeding** and any associated email channel, which became *functus officio* (*having performed its office*) upon the issuance of the final LAT decision (which is distinct from a "last decision"). Notably, The Honourable Madam Justice Shore could not take heed of any of the positions advanced by Mr. Boyce of the LAT as there was no service as exclusively posited and written by Ms. Maciel on November 27, 2024. Leaving that aside, Mr. Boyce conflated the prematurity doctrine with the sometimes utilized rule when there are no interlocutory orders of "rule against bifurcation of administrative proceedings".

This correspondence is afforded as an extended professional courtesy, and action is proceeded upon out of an **abundance of caution** (*ex cautela abundanti*) to ensure that documents forming the foundation of the judicial record are accurately, authentically, and honestly depicted and referenced for both current and subsequent lawful purposes. The necessity for this precautionary measure is underscored by the gravity of maintaining a pristine and unimpeachable documentary record, a requirement that is geometrically amplified in matters of public law and judicial review where the fairness and lawfulness of an administrative decision are scrutinized. Any ambiguity, inconsistency, or fundamental defect in the filing process possesses the potential to irrevocably **vitiate** subsequent steps, documents (served, filed, and with proof of service), and proceedings, thereby necessitating the expenditure of further public and private resources to rectify what ought to have been a straightforward, ministerial procedural execution. This diligence is undertaken not merely to challenge

a technical point, but to prevent any future challenge, at any level of appellate scrutiny, premised upon a fundamental, jurisdictional procedural irregularity, thereby ensuring the integrity of the judicial review process remains **sacrosanct** and immune to collateral attack based on a flawed record. **The Applicant emphasizes that the integrity of the record is not a mere preference, but a requirement fundamental to the rule of law itself.**

II. *Corpus Delicti* – The Deficiency in Formal Delivery and the Imperative of Strict Compliance

It remains **entirely unknown** to the Applicant, who is the principal adversely affected party, whether the requisite and complete **"delivery"** of the **Notices of Appearances** was effectuated by any of the four designated Respondents in the precise manner stipulated by the pertinent procedural provisions. This profound **lacuna** in the record does not constitute a mere ministerial technicality; rather, the deficiency relates directly to the **substantive jurisdictional steps** necessary to confirm the Respondents' formal participation and their unequivocal, lawful submission to the court's adjudicative authority. The **prevailing standard** required in such formal, jurisdictional processes in Canadian courts is, in the absence of explicit judicial dispensation, that of **strict compliance** (*versus* the less exacting standard of substantial compliance, which is often reserved for non-jurisdictional matters). This rigour is applied precisely because the procedural requirement, such as proper service and filing, is designed to ensure the other party is formally, unequivocally, and correctly apprised of the respondent's intention to defend the proceeding and, equally important, to ensure the **official court record is complete and authentic**. This deficiency or **lacuna** in the official court record necessitates the immediate and forthwith resolution articulated in the subsequent section of this correspondence, as the court cannot *de jure* (*by law*) exercise its jurisdiction over a party that has failed to formally enter an appearance and complete the process of **"delivery."**

A. The *Ratio Decidendi* Regarding the Licence Appeal Tribunal and Procedural Prejudice

The **Licence Appeal Tribunal** (LAT), the administrative body under review, forwarded an electronic copy of its **Notice of Appearance** dated November 27, 2024, by way of an electronic mail transmission originating from Law Clerk Ms. Maciel Milene. This transmission constitutes, at best, an *informal, unsolicited method of service*—a mere conveyance of information—but **not** the complete definition of **"delivery,"** which, by the clear and unambiguous wording of **Rule 1.03** and the related service provisions under **Rule 16**, inexorably demands the **conjoined requirement** of service **and** the subsequent filing of the document accompanied by proof of service with the court. The cardinal, overriding difficulty, however, lies in the fact that the destination address for this transmittal was the electronic mail exclusively dedicated to the antecedent and *sub judice* **LAT Proceeding** (mcleansniclat@gmail.com). This address is **materially distinct** and **procedurally disparate** from the electronic mail address explicitly provided, designated, and utilized for the current, separate **JRPA Application** and all subsequent correspondence with the **Divisional Court** (**mcleansettlement@gmail.com**). The failure to use the designated email address is not a clerical error; it actively undermines the integrity of the Applicant's digital record-keeping and could lead to **procedural prejudice**, including the risk of the Applicant missing important deadlines or filings due to the misdirection of official court documents into a dormant or inappropriately monitored inbox. This lack of diligence by the LAT in ensuring proper service fundamentally violates the principle of **natural justice**, which dictates that a party must have adequate notice of the actions taken against them.

B. The *Quid Pro Quo* Regarding the Respondent Insurance Companies and the Onus Probandi

Similarly, the **Respondent Insurance Companies**—TDHA, SNIC, and TDGIC—electronically transmitted their **Notice of Appearance** on December 3, 2024. A comparable, if not greater, degree of uncertainty subsists regarding the *bona fide* compliance with the complete **"delivered"** stipulation regarding this particular filing. It must be unequivocally stated and structurally reinforced that the *onus probandi* (*burden of proof*) rests squarely and solely upon the Respondents—highly sophisticated corporate entities represented by experienced legal counsel—to furnish independent documentary evidence confirming their precise compliance with the prescribed filing and service methodologies. The mere issuance of an electronic document, without the corresponding submission of a formally executed **Proof of Service** affidavit or certification **simultaneously filed** and accepted within the **JSO Portal**, represents an incomplete and potentially invalid procedural step. The *quid pro quo* here is that the Respondents receive the right to participate fully in the judicial review only *in exchange* for demonstrably fulfilling their primary procedural obligation—the proper **"Delivery"** of their Notice of Appearance. Absent this strict demonstration, the Respondents cannot be considered **"parties"** properly before the court and any subsequent steps they take, or that are taken on their behalf, would lack the necessary procedural foundation. **The court's reliance on documents that were not properly delivered would create a fatally flawed record, compromising the entire proceeding.**

III. Demand for Production and Temporal Stipulation (Exigence and Efficiency)

In recognition of the self-evident fact that the production of independent and indisputable evidence—specifically, a filed copy *via* the **JSO Portal** bearing an official date-stamp and a valid, correctly executed **Proof of Service**—of the aforementioned **Notices of Appearances** from the LAT or **Respondent Insurance Companies** should not necessitate a protracted or extensive investigatory period, the immediate production of the following is formally and expeditiously requested:

1. Filed **Notices of Appearance** that bear the requisite **JSO Portal** acceptance stamp, clearly indicating the date of official filing, thereby confirming the existence of the document on the Court's electronic record (if extant); and
2. Filed **Notices of Appearance with proof of service** that are demonstrably appended to the filed document, certifying service upon the Applicant at the correct **JRPA Application** designated electronic mail address. This proof must detail the method, time, and date of service, and be formally executed as required by the relevant *Rules* (if extant), specifically using **Form 16B or Form 16B.1 (where applicable)**.

The Respondents are therefore put to **strict proof** to **forthwith** produce the filed NOA, with stamping on the same, and the associated proof of service. The failure to meet this deadline shall compel the Applicant to proceed on the documented assumption that the documents are absent from the record, an assumption that the Respondents, by their lack of timely response, shall have rendered **indefeasible**. **This strict temporal requirement is necessitated by the principle that judicial efficiency cannot take precedence over the fundamental integrity of the judicial record; however, the resolution of this foundational defect must not be unnecessarily delayed.**

IV. *Nisi Prius* – Legal Consequences, Conflicts, and Judicial Nullity

Should satisfactory evidence of the complete and proper **"delivery"** of the aforesaid documents not be received forthwith, the Applicant shall proceed, without further notification or correspondence, to file a fresh **Notice of Motion** (NOM), relying entirely upon the appended **Statutory Declaration** which attests to the documented, factual lacuna in the Applicant's official record. The subsequent finalization of the **Factum** and **Motion Record** shall be executed *sans* the inclusion of any **Notices of Appearances** in the court record, thus entirely precluding any necessity to seek the additional relief of formally striking the purported **Notices of Appearances** on the legal axiom that the document was never duly filed **with proof of service** in the first instance, thereby rendering any purported subsequent action thereunder procedurally null and void. The Applicant reserves the right to seek costs against any Respondent or third party that acted without procedural foundation.

A. The Unlawful Assignment or non-assignment or non-direct: A Newly Discovered Fact or presumed fact subject to dispute - Challenge under Rule 77.07(2) and the *Ultra Vires* Doctrine

The Applicant challenges the fundamental authority under which the proceeding has been managed, drawing attention to **Rule 77.07** of the *Rules of Civil Procedure*:

To Whom Made
77.07 (1) A motion may be made only to a judge or associate judge.
Same, Particular Judge
(2) If a direction is made under subrule 77.06 (1) for all steps in a proceeding to be heard by a particular judge, then any motions in the proceeding shall be made to that judge.

The Applicant asserts that **no direction was made** by the Chief Justice (CJ) of the Superior Court of Justice (SCJ), the Associate Chief Justice (ACJ) of the SCJ, or a Local Administrative Judge (LAJ) of the Divisional Court to assign the entirety of the proceeding to a particular judge under **Rule 77.06(1)**. The language in Rule 77.07(2) is specific: "all steps in **a** proceeding," not "all proceedings." The administrative function of assignment must be performed by the judiciary, not court staff, to maintain the integrity of judicial independence and the constitutional separation of powers. This power of direction is vested in senior judicial officers as a safeguard against improper influence or the appearance of non-impartial case management.
The unassailable corollary, based on the absence of filed or disclosed proof of direction, is that, in the absence of a proper direction or assignment by the requisite Judicial Authority (CJ, ACJ, or LAJ) as defined by the **Courts of Justice Act (CJA)** and **Rule 77**, the only rational and unassailable inference that remains is that the Honourable Madam Justice Shore **assigned the case for case management to herself in an unlawful fashion**. The result is that any step taken by the named judge to take carriage of the JRPA Proceeding, including any attempt to curtail the Applicant's previous motions (NOM #1 and NOM #2), is **void *ab initio***. Furthermore, a judge cannot attain the status of *functus officio* (having discharged their duty) in a proceeding where their initial jurisdiction was founded upon a **void *ab initio*** assignment or direction, as the foundational prerequisite for the exercise of authority was never lawfully established. The reference in any endorsement to a case management judge, or the reference to an assignment to Shore J., must therefore be put to **strict proof** to demonstrate the formal, written direction from the proper judicial authority. **Any reliance on an internal administrative practice that bypasses the mandatory *Rule 77.06(1)* direction would be *ultra vires* (beyond the court's powers) and fundamentally ineffective.**

B. Void *Ab Initio* Steps, Conflict of Interest, and Judicial Misconduct

The Applicant notes that, irrespective of whether the failure to file the NOAs is an irregularity (attackable under **Rule 2.02**) or a nullity (attackable in any event), the subsequent steps taken by the case management judge are subject to challenge. **Importantly, all of the foregoing procedural defects, coupled with the newly discovered facts and/or evidence of fraud, are materially fundamental to the legitimacy of this JRPA, go to the foundation of judicial independence, and may collectively constitute a novel issue of fraud on the court by a judge herself, an unprecedented matter that requires urgent judicial attention.** The Applicant asserts, with extreme emphasis, that due to **known and recently discovered conflicts of interest** (including **The Honourable Madam Justice Shore's** prior judicial involvement in a separate, undisclosed **"Ex Parte In Camera Unrecorded Hearings Unretained Indictment Process"** and her prior partnership at Epstein Cole LLP), she **cannot hear any motions** of the Applicant or motions attempting to cure the **void *ab initio*** steps of the Respondents. These undisclosed involvements create a **reasonable apprehension of bias**, which is the constitutional test for disqualifying a judge, as articulated by the Supreme Court of Canada in cases such as ***R. v. S. (R.D.)***. A reasonable person, informed of the facts, would conclude that the judge might not be impartial.

The Applicant further asserts that **The Honourable Madam Justice Shore's** engagement in the JRPA Proceeding without compliance with the law (i.e., **self-assignment** contrary to the law) is sufficient grounds for her to be removed from office and is the subject of a **formal complaint** lodged with the **Canadian Judicial Council (CJC)**. This complaint necessarily invokes the standards set out in the **Judges Act** concerning judicial independence, impartiality, and integrity. This failure to recuse herself upon prompt objection, and her alleged **misstatements of law** on October 10, 2025, are posited as sufficient grounds for the Applicant to be in an **unequivocally adversarial type position** with the named judge. The alleged misstatements—such as those concerning the mandatory nature of case management or access to transcripts—suggest a pattern of conduct that undermines the perceived fairness of the process.

Furthermore, the lack of proper assignment means that:

1. The Respondents were not **"parties"** under **Rule 77.05(4)** as they failed to **"Deliver"** a first defence (NOA) with proof of service. This failure to become *de jure* parties prevents the subsequent application of case management rules to them.
2. **The Honourable Madam Justice Shore** could not compel any conference call or appearance under **Rule 77.04(2)**:
   77.04 (2) A judge or associate judge may, on his or her own initiative, require the parties to appear before him or her or to participate in a conference call to deal with any matter arising in connection with the case management of the proceeding, including a failure to comply with an order or the rules.
   Since the Respondents were not legally "parties," and the assignment was void ab initio, no authority existed for the named judge to compel attendance or conduct a case conference. Any such conference and its subsequent endorsements are, by extension, void ab initio.
3. **The Honourable Madam Justice Shore** could not technically assign a case for case management to herself, as the power to assign is vested in the CJ, ACJ, or LAJ (as per **Rule 77.05(4)** and sections of the *Courts of Justice Act* (CJA)), which was not executed. **The Applicant asserts that this is a fatal flaw of jurisdiction that cannot be cured by the invocation of inherent jurisdiction, as inherent jurisdiction cannot be used to contravene clear statutory or regulatory mandates.**

The Applicant reiterates that this failure to comply with the rules, coupled with the alleged undisclosed prior judicial involvement and conflicts of interest, underscores that the necessary constitutional **filter or safeguard** (proper judicial assignment) was not in place, causing permanent and lasting damage to

the integrity of the Divisional Court. The Applicant reserves all rights to bring forward more newly discovered facts and evidence of fraud as it becomes known.

V. Appendix: Cited Legal Authorities and Maxims

This Appendix provides an exhaustive catalogue of the primary and secondary legal authorities and Latin maxims referenced in this correspondence, ensuring transparency and facilitating verification of the Applicant's legal arguments.

A. Rules of Civil Procedure

Authority	Description	Contextual Relevance
Rules of Civil Procedure (R.R.O. 1990, Reg. 194)	The primary procedural framework governing all civil proceedings in the Superior Court of Justice, including the Divisional Court, in Ontario, Canada.	Establishes the governing regime for all actions, motions, and filings.
Rule 1.03 **(Definition of "Deliver")**	A specific provision within the *Rules* that provides a definitive interpretation of key procedural terms.	The term **"Deliver"** mandates the **conjoined requirement** of both serving a document and filing it with an acceptable **proof of service**.
Rule 2.02	Pertains to the ability of the court to set aside steps where there has been a **procedural irregularity** (curable defect).	Distinguished from a **nullity**, which the Applicant asserts the current defects are, making the steps attackable in any event.
Rule 59.06	Pertains to setting aside or varying judgments or orders based on **newly discovered facts and/or fraud**.	Cited as an independent ground for setting aside previous directions or orders, irrespective of the procedural nullity argument.
Rule 77.04(2)	Permits a judge to compel the **parties** to a conference or appearance for case management issues.	Argued that this rule was unavailable to the named judge because the Respondents were not **"parties"** and the judge lacked proper assignment.
Rule 77.05(4)	Outlines the criteria for assigning a proceeding for case management, with the power reserved to the Regional Senior Judge, other judge, or associate judge.	Used to challenge the named judge's authority to assign, particularly to herself, when no parties were properly before the court.

Rule 77.06(1)	The rule authorizing the requisite judicial authority (CJ, ACJ, or LAJ) to make a **direction** for a particular judge to hear all steps in a proceeding.	Cited as the source of authority that was allegedly not invoked, rendering subsequent assignment *ultra vires*.
Rule 77.07(2)	The rule mandating that motions be heard by a particular judge *only if* a direction was made under *Rule 77.06(1)*.	Central to the argument that motions were correctly made **not** to the named judge due to the lack of proper direction/assignment.
Form 16B or *16B.1*	The prescribed forms for **Proof of Service** used in Ontario proceedings.	Specifically demanded to prove the lawful **"delivery"** of the Notices of Appearance.

B. Legislation and Jurisprudence

Authority	**Description**	**Contextual Relevance**
Judicial Review Procedure Act (JRPA)	The statute governing the Applicant's proceeding.	The **JRPA**'s statutory requirements (not the ROCP) govern the filing of the Record of Proceeding (ROP).
Courts of Justice Act (CJA) **Section 75(1)**	Outlines the powers and duties of a judge with authority to direct and supervise sittings and assignment of judicial duties.	Supports the argument that assignment is an administrative task that must be performed by the judiciary (CJ/ACJ/LAJ), not by self-assignment.
Judges Act (Federal)	The federal statute governing the conduct and removal of federally appointed judges.	Cited in relation to the **CJC** complaint and the standards of impartiality, independence, and integrity.
R. v. S. (R.D.) **(SCC)**	Supreme Court of Canada decision setting out the test for **reasonable apprehension of bias**.	Used to frame the recusal and misconduct argument against the named judge based on alleged conflicts of interest.
Long v. Red Branch Investments **(BCCA)**	Jurisprudence from the British Columbia Court of Appeal providing a distinguishing analysis of the procedural requirements in different	Supports the Applicant's right and requirement to proceed with the JRPA Application and to challenge antecedent procedural steps.

	jurisdictions post-discovery of new facts or fraud.	

C. Latin Maxims and Phrases

Latin Maxim	Translation	Contextual Application in Missive
Ultra Vires	Beyond the powers.	Used to describe the unauthorized nature of the purported judicial assignment.
Void Ab Initio	Void from the beginning.	The critical legal conclusion regarding non-delivered documents and the subsequent lack of authority.
Onus Probandi	The burden of proof.	Establishes that the Respondents bear the sole legal responsibility to prove they complied with **"delivery."**
Ex Cautela Abundanti	Out of an abundance of caution.	Justifies the pre-emptive, rigorous nature of this formal inquiry.
Functus Officio	Having performed its office.	Used to describe the email address dedicated to the LAT Proceeding, which became irrelevant upon filing the JRPA.
Lex Fori	The law of the forum.	Emphasizes that the *Rules of Civil Procedure* are the mandatory law of the Divisional Court.
Nisi Prius	Unless before.	Used formally to structure a conditional legal consequence (i.e., *unless* evidence is provided, then X will occur).

The right is expressly reserved to rely upon this correspondence for any and all lawful purposes, including the submission of this missive as an exhibit in the Applicant's upcoming **Motion Record**, with the assertion that the Applicant and **The Honourable Madam Justice Shore** are now in an unequivocally adversarial type position.

I reserve the right to rely on this correspondence for any lawful purpose.

I cordially denote for the LAT and the Respondent Insurance Companies to govern themselves accordingly especially in relation to the officers of the court as the demand above is made upon them and no one else.

I thank the innocent persons for their patience while I discovered new facts and fraud in the most diligent and painstaking fashion as, inter alia, evidenced by this comprehensive letter herein and by reference to the above noted complaint – not directed at any of the addressees per se.

Yours most appreciatively and gratefully,

/s/Mr. Kevin A. McLean (BA, JD, CIM)

Mr. Kevin A. McLean (BA, JD, CIM) (he/him)

Yours faithfully,

/KAM

Mr. Kevin A. McLean (BA, JD, CIM)

Sender's name: Mr. Kevin Alexander McLean (BA, JD, CIM)

Sender's address: 410-775 King Street West, Toronto, Ontario, M5V 2K3

Sender's Telephone Number: (647) 370-9354

Sender's email address: mcleansettlement@gmail.com

On Tue, Oct 14, 2025 at 9:54 AM Mr. Kevin McLean <mcleansettlement@gmail.com> wrote:
October 14, 2025

VIA EMAIL

Urgent filing via email pursuant to the *Consolidated Practice Direction for Divisional Court Proceedings* effective June 15, 2023, issued by The Honourable Chief Justice of the ONSC Mr. Morawetz ("**C.J.O.N.S.C. Mr. G.B. Morawetz**" or "**Morawetz CJ**") pursuant to the statutory and prescribed authority pursuant to, *inter alia*, Rule 1.07(3)[i] (collectively, the "Effective Practice Direction" or "Valid Practice Direction"), mores particularized pursuant to and under section 16 *et al* to the ONSC Divisional Court (Toronto Region))

Court file number: DC-24-00000718-00JR
Type of document: email with attachment (Affidavit #28)
Short title of proceeding: *McLean v. TDHA et al*
Party: Mr. Kevin A. McLean (B.A., J.D, CIM) (mcleansettlement@gmail.com)

Re: My statutory declaration of October 13, 2025 – timing regarding the same – material development on late Friday afternoon after making, filing and serving my NOM #3

Re #2: factum, motion record et al to follow upon my return from delivery of prescribed fees et al involving access to digital recordings from the case conferences et al

Dear Sirs/Mesdames/Other Gender-Neutral Pronouns

I. Preliminary Overture and Foundational Context

To: The Esteemed Recipients of the Court and Counsel to the various respondents

I pen this communication concerning the aforementioned proceeding. Subsequent to the timely filing and service of my *Notice of Motion* No. 3 (hereinafter "NOM No. 3") herein, I was placed in receipt of an electronic correspondence, transmitted via my authorized transcriptionist of the Province of Ontario, which conveyed a substantive response from The Honourable Madam Justice Shore concerning my requisite *Transcript Order Form* for the digital audio recordings of the case management conferences.

The tenor and substance of this communication mandated a meticulous re-evaluation of the extant factual matrix and the applicable jurisprudence governing the release of court records, necessitating a contextual comparison to previous judicial pronouncements, whether directly attributable to Her Ladyship or discernible by means of logical deduction (*per deductio*).

It is self-evident, *ex facie* the contents of the perfected NOM No. 3 transmitted (made, urgently filed and served) on Friday, October 10, 2025, that The Honourable Madam Justice Shore had prior judicial involvement with myself antecedently to the formal institution of this Judicial Review Application (*JRPA*) Proceeding; however, Her Ladyship's name had not been formally disclosed, nor has this involvement been unequivocally acknowledged by the Court at this juncture. Notwithstanding this protracted obfuscation, a sufficient quantum of investigative due diligence, spanning several months, permits the responsible advancement of this assertion.
For the purposes of immediate reference and to substantiate the imperative for the annexed statutory declaration, I reproduce the following sworn statement:

"I verily believe that The Honourable Madam Justice Shore had prior judicial involvement with myself in the referenced *ex parte in camera* criminal proceedings or hearings, which involvement was undisclosed to me prior to my commencement of the *JRPA* Application and subsequent thereto."

In light of this recent disclosure and its resultant exigency—discovered during the *post-meridiem* hours of Friday, October 10, 2025, immediately preceding a statutory holiday weekend—I have deemed it necessary, pursuant to the provisions of the *Evidence Act (Ontario)*, to forthwith file the aforementioned statutory declaration. I have simultaneously submitted a *Request Form Undertaking* to the Superior Court of Justice Recording Management Office (hereinafter the "SCJ RMO") and shall proceed, with all due expedition, to tender the prescribed requisite fee to procure the digital audio materials of the subject case management conferences.

The remittance of the bank draft shall be effectuated without delay; however, I furnish the statutory declaration of October 13, 2025, *ad interim*. As shall be elucidated *infra*, the analysis proffered by The Honourable Madam Justice Shore is, with the greatest deference, flawed; yet, Her Ladyship's response proves fortuitous in that it demonstrates a linguistic and structural style demonstrably consistent with

other judicial documents pertaining to this matter, even those wherein her name was previously suppressed.

II. Judicial Pronouncement and Formal Legal Dissent

A. The Impugned Judicial Directive

The official electronic communication transmitted by the SCJ RMO on October 10, 2025, relayed the explicit directive and judicial decision emanating from The Honourable Madam Justice Shore regarding my request. The germane excerpt, conveying Her Ladyship's instruction and position, is herein reproduced:

> "Justice Shore has advised as follows:
>
> 'The attendances were case management conferences and we do not release transcripts for conferences. No transcript/audio can be provided.'"

Following a comprehensive legal review conducted throughout the long weekend—a necessity to ensure that my subsequent representation to the SCJ RMO was both factually accurate and jurisprudentially sound—I transmitted the appended formal submission on October 13, 2025, the full text of which is reproduced forthwith for ease of reference and contextualization herein:

> "October 13, 2025
>
> TRANSMITTED VIA ELECTRONIC MAIL UPON THE FIRST INSTANCE
> PRIVATE AND CONFIDENTIAL
>
> TO:
>
> Superior Court of Justice Recording Management Office
> (With carriage, control and administration of Court Recordings for SCJ 393, 361, and 330 University Avenue, and Divisional Court at Osgoode Hall, 130 Queen Street West, Toronto)
>
> Located at:
> 361 University Avenue
> Toronto, Ontario
> ATTENTION: SCJ Recording Management Coordinators, Ms. Amirthalingam (copied to: Ms. Hsieh and Ms. Azim for continuity and contextual purposes)
>
> SUBJECT: Formal Submission of the Digitally Executed Request Form/Undertaking for Access to Digital Court Recordings Pertaining to Two Specific Dates in *McLean v. TDHA et al*, Court File: DC-24-00000718-00JR
>
> Dear Sirs/Mesdames/Other Gender-Neutral Pronouns:
> I provide the below out of an abundance of caution in a comprehensive and contextual manner to ensure that in the event of an untimely demise or further injury to myself that I have papered my affairs accordingly for those who will benefit from my estate and ancillary reasons. I also do so for the reasons infra and previously on a contextual level.

I. PRELIMINARY OBSERVATION AND IMPERATIVE FOR FORTHWITH COMMUNICATION

This formal submission is necessitated by the exigency of the matter aforementioned. I must solicit your kind indulgence for the transmission of this document upon a statutory holiday, an action to which I have been compelled to undertake on a forthwith basis, subsequent to being placed in receipt, during the *post-meridiem* hours of Friday, October 10, 2025, of electronic correspondence from Ms. Amirthalingam. That communication, *inter alia*, incorporated a quotation attributable to The Honourable Madam Justice Shore, referenced within the context of a distinct Transcript Order Form Request submitted during the preceding week.

II. DISSECTION OF LEXICAL AMBIGUITY: THE PERMISSIVE VERSUS THE CAPABILITY CONUNDRUM

I take formal cognizance of Ms. Amirthalingam's previous lexical usage, conveyed to my retained Authorized Transcriptionist in Ontario (hereinafter, an "ACT" or "ATO"), which I concede to be substantively accurate in its descriptive premise:
"Good afternoon,
According to our records, both of the requested dates were Civil Case Conferences where the Ordering Party was not present. Judicial Acknowledgement is required to determine whether the audio may be released for the purposes of preparing a transcript."

To avoid the pitfalls of eliding two discrete communications—an analytical error which I am assiduous in seeking to circumvent—I shall reproduce the germane excerpts from Ms. Amirthalingam's subsequent electronic mail of Friday, October 10, 2025, which was relayed to me later on that day:
"Justice Shore has advised as follows:
"The attendances were case management conferences and we do not release transcripts for conferences. No transcript/audio can be provided."

The distinction between the administrative inquiry and the judicial pronouncement is not merely semantic; it represents a fundamental divergence in legal effect. Ms. Amirthalingam's employment of the verb "may" correctly encapsulates the permissive nature of a judicial assessment, articulating the prospect of whether a specific allowance will be granted. Conversely, The Honourable Madam Justice Shore's utilization of the auxiliary verb "can" improperly denotes an issue of ability or capability; it suggests an absolute physical or systemic incapacity to provide the material. The conclusion, therefore, is self-evident: the administrative position acknowledges the possibility of release subject to judicial acknowledgement, while the subsequent judicial pronouncement erroneously asserts an irremediable impediment to the provision of the audio material.

III. EXTRAPOLATION OF LEGAL PRINCIPLE: THE DISTINCTIVE REGIMES OF CIVIL AND FAMILY PROCEEDINGS

I am necessarily constrained to articulate my formal disagreement with the linguistic construction and legal import ascribed by The Honourable Madam Justice Shore, given

that superior courts do not furnish "transcripts" *per se*, but rather release the requisite digital audio materials from which a transcript may be professionally prepared.
It is posited that The Honourable Madam Justice Shore has perhaps inadvertently conjoined the distinct procedural strictures applicable to Family Law matters—specifically those involving "family law case conferences"—with the procedural mandates governing Civil and Divisional Court proceedings, particularly those concerning the judicial review of administrative or adjudicative decisions.

The *Family Law* Conferences Exception [inapplicable herein]

The material divergence is comprehensively articulated within the *Court Transcripts Practices Standards Manual*, page 16, which states:

"b) Family Law Conferences Relevant Websites & Resources • *Family Law Rules*: https://www.ontario.ca/laws/regulation/990114

Rule 17 of the *Family Law Rules* provides for three types of conferences: case conferences, settlement conferences and trial management conferences.
These conferences may be recorded at the request of the presiding judicial official. These recordings are for the judge's use only. Transcripts of these recordings cannot be provided to any party without a court order or the consent of the presiding judicial official."

It is axiomatic that the Family Law jurisdiction constitutes a unique, insular sphere—an *sui generis* domain—due to the highly sensitive, often privileged (e.g., spousal privilege), and inherently confidential nature of its subject matter, which frequently involves the paramount consideration of the best interests of children. For compelling public policy rationales, the restrictive access protocol is thus warranted within this specific context.

The *Civil/Divisional Court* Open Court Principle

No such *sui generis* restriction applies to a Civil Proceeding, including the Divisional Court's judicial review of an administrative or adjudicative body's impugned decision. The guiding imperative remains the open court principle, which is a foundational tenet of our constitutional and common law tradition, binding upon the Divisional Court as a superior court of inherent jurisdiction. The proceedings must be recorded, irrespective of the platform utilized—either by a court staff member or court reporter using an Approved Recording Device (a "DRD"), or via an Alternative Recording Platform (an "ARP"), such as the utilisation of Zoom or teleconferencing technologies, as was referenced for these specific attendances at which I was unable to be physically present.

IV. COMPLIANCE AND TECHNICAL AVAILABILITY OF THE DIGITAL RECORDING

The matter herein falls under the ARP system of recording, which bypasses the conventional DRD process. As such, the recording exists as a digital file upon a server, and its provision is governed by *Regulation 293/92* to the *Evidence Act (Ontario)*.

Under sub-section 1(1) 11. of the Schedule, the prescribed fee applies: “For a copy on compact disc (CD) of a digital recording of a court hearing in respect of a case, if such a recording exists and a copy is available.” The cost structure articulated therein—$23.00 plus $11.00 for a total of $34.00, as the request involves multiple recordings from the same case—is the legally applicable fee.

The technical availability is readily demonstrable: ”Available,” in its established meaning, signifies ”the state of being obtainable or accessible.” The digital recording exists as a file on a server, thereby satisfying this definition. Furthermore, I have satisfied two independent stipulations under the Request Undertaking Form, which is hereby enclosed. Since the Divisional Court is a branch of the Superior Court of Justice (SCJ) and is not a constituent part of the Ontario Court of Justice (OCJ), no prior court order is mandatorily required for the Applicant’s access to a copy of this digital recording.

To fortify the foregoing analytical construction regarding technical feasibility, I append the widely understood technical process for the procurement of such files from the conferencing service:
Zoom Recording Protocol: The court, being in control of the same, possesses the M4A audio-only file from the Zoom recording, which is demonstrably convertible to a compatible format (e.g., WAV or MP3) for the purpose of creating a Standard Audio CD, thereby rendering the digital recording *available* for provision.

a. ”Step 1: you need to get the files from Zoom. The process differs slightly depending on whether you used cloud or local recording.
1. Cloud Recording: If you have a paid Zoom account and are recorded to the cloud, Zoom will automatically generate separate files, including the audio/video (MP4 or M4A) and the transcript (VTT file).
2. You’ll receive an email notification when the recording and transcript are ready. Log in to the Zoom web portal, go to the “Recordings” section, and download both the audio-only file (M4A) and the transcript (VTT).
3. Local Recording: If you recorded to your computer, Zoom saves the files to a local folder (usually in your Documents folder under a “Zoom” directory). The transcript function is not automatically available for local recordings, so you’ll have to find a separate transcription service or software to create one from the audio file.
b. Step 2: Prepare the Files for CD
i. Create a Standard Audio CD (Audio Only)
ii. This is the most common and straightforward method if you only want to listen to the audio on a standard CD player (like in a car or home stereo).
iii. Get the Audio File: Locate the M4A audio-only file from your Zoom recording which the court would have control of the same.
iv. Convert to a Compatible Format: M4A is not always compatible with older CD players. You will need to convert the M4A file to a format like WAV or MP3.
v. Burn the Audio CD: Use a CD burning program (like Windows Media Player, iTunes, or a third-party application) to create an

Audio CD. This process converts the WAV/MP3 files into the specific format that a CD player can read."

V. COMPREHENSIVE UNDERLYING FACTUAL AND LEGAL BASES

I provide the preceding comprehensive analysis not merely to articulate a grievance concerning what constitutes an unwarranted obstruction—whether judicial or administrative—to my ACT's ability to perform their professional mandate, but to confirm the legal and technical basis upon which this request is grounded. The response attributed to The Honourable Madam Justice Shore is, upon close examination, inconsistent with the applicable legal framework governing Civil and Divisional Court proceedings.

Due to the persistent urgency of this matter, I now formally attach a copy of the digitally executed Request Undertaking Form. The prescribed fee of $34.00 will be remitted for delivery on the subsequent day, and I shall furnish confirmation upon receipt of the delivery confirmation.

Requisition for Electronic Audio Recordings and Logistics

Pursuant to the requisite payments previously remitted to the Superior Court of Justice (earmarked for the Minister of Finance as required) and, in parallel, to the Authorized Court Transcriber(s) (hereinafter, "ACT(s)"), the administrative division is hereby requested to effectuate the immediate preparation of the electronic audio recordings of the proceedings.

Kindly ensure that the aforesaid recordings are prepared for transcription and subsequent transfer onto a compact disc (CD). Upon the demonstrable receipt of the prescribed fee, the undersigned respectfully requests that the appropriate Court Services personnel advise, with expediency, of a precise date and time for the physical retrieval of the said material from Room 405 of the Superior Court of Justice located at 361 University Avenue Courthouse.

The Unassailable Judicial Misapprehension and Resultant Legal Infringement

The undersigned is compelled to register a formal objection predicated upon the assertion that The Honourable Madam Justice Shore has demonstrably engaged in an erroneous legal interpretation and/or a palpable misdirection regarding prevailing jurisprudence. This conduct constitutes additional indicia of a potential conflict of interest, the full legal and factual dimensions of which remain the subject of continuing due diligence, the underlying grounds having been, *inter alia*, discovered subsequent to March 2025 and hitherto unknown to the undersigned.

It must be underscored that the conduct in question is patently and inexorably consistent with a demonstrable infringement upon the fundamental protections enshrined within the *Canadian Charter of Rights and Freedoms* and other pertinent legal rights. Furthermore, such actions concomitantly constitute a breach of the foundational *Open Court Principle*, the ambit of which extends the prophylactic shield of procedural fairness to all interested observers and litigants alike.

Erroneous Interpretation of Transcription Protocols: A Syllogistic Analysis

In the context of the procedural requirements governing the "Transcript Order Form" and its associated obligations concerning the ACT(s), the undersigned shall direct this

substantive issue to superior administrative and judicial regulatory authorities who possess the requisite jurisdiction to evaluate and correct such a manifest misstatement of law. It is axiomatic that an exercise of a judicial function cannot, *sub specie aeternitatis*, encompass the prerogative to misapprehend the established rules pertaining to court records, especially when expressed through the ambiguous utilization of the unspecified pronoun, "we."

Should one be compelled to assent to the Honourable Madam Justice Shore's purported interpretation of the governing legal framework, the inescapable conclusion of law would be that no requestor, throughout the entire historical practice of the civil division (excluding Family Law matters) of the Superior Court of Justice or the Divisional Court, could ever have secured the required *tapes and materials required for transcription* for delivery to their Authorized Court Transcriber.

Such an *argumentum ad absurdum* renders the interpretation devoid of merit. If such were truly the case, the esteemed Superior Court of Justice Records Management Office (RMO) and its Records Management Co-ordinators (RMCs) would possess a comprehensive awareness of this unprecedented operational constraint. Consequently, their administrative response to transcription requests would be materially distinct from the judiciously accurate response rendered by Ms. Amirthalingam, which correctly mandated a specific level of acknowledgment, rather than an outright judicial *fiat* of prohibition, as a prerequisite to the release of the electronic audio records.

Out of an abundance of caution, I note that while similar fact evidence involving a party is presumptively inadmissible unless the probative value outweighs the prejudicial value, the same is not applicable to the scope of Shore J's prior judicial involvement with myself. I note the following language utilized by way of passing the same onto me which she did not author which was yet another misstatement of law (when measured on its face against The Honourable Chief Justice of the SCJ's Divisional Court Consolidated Practice Direction, effective June 15, 2023) wherein she (the esteemed Clerk of the Divisional Court Ms. Clegg) stated in late January 2025 (after The Honourable Madam Justice Shore had inserted herself into the JRPA Proceeding):

"Are you requesting a hearing date or a case conference?

Please advise that all [sic] cases are being case managed, coordinators are not providing dates.

As all matters [sic] are currently being case managed in Divisional Court, hearings are scheduled as per the directions of the case management Judge. The Coordinators are not providing hearing dates unless directed."

I inquired with Madam Clerk Ms. Clegg as to where she obtained the quote and to provide a link to the same and none was provided. It became clear then and crystal clear now that The Honourable Madam Justice Shore provided the same which was inconsistent with the aforementioned Divisional Court Consolidated Practice Direction for 18 months at the time.

The same can be said of the denial of my access to Case Center after bringing my JRPA Application in mid November 2024 along with, inter alia, failure to stamp requisitions, provide me with a Form 68(B) which was required after my payment of the Certificate of Perfection on December 13, 2024, and the failure to allow me to proceed before a single judge of the SCJ as opposed to a three person panel of the Divisional Court (see: statutory language under the JRPA, section 6; wherein the Legislature distinguished between the SCJ and Divisional Court). This is also consistent with Mr. Sinnadurai, a

lawyer licensee with the MAG (Civil division) representing to me and some with supporting documentation that there was no evidence of Court Officer (Toronto Region) Mrs. Frugoni-Rojas Form 2 under *Criminal Code* "Information" in the OCJ and none in the "Superior Court of Justice" in Toronto.

For refresher purposes, one "Ashleigh" of the SCJ RMO represented to one of my ACT's in September 2025 as follows:

"Hi ____

There are currently no DRD recordings before the Toronto Superior Court for Mr. McLean. It is my understanding that Mr. McLean had matters heard at the Ontario Court of Justice (10 Armoury).

Given the above, there is nothing further staff <u>can</u> assist with"

In addressing the latter first, I note again the distinction, as it relates to my obtaining that which I am entitled in relation to the prior judicial involvement of The Honourable Madam Justice Shore and myself, that DRD recordings only exist when there is a court reporter or court staff member who uses an approved recording device and then certifies a Form 1. This customarily do not exist in relation to the latter and the former referenced individual do not appear in *ex parte* in camera intake or pre-enquete hearings. As such, it is the ARP Platform(s) that govern the same so there would not be any DRD recordings but an ARP Platform recording (i.e. Zoom).

I also note the distinction between the Superior Court and the Divisional Court by reference to statutes. I thank Ms. Amirthalingam for confirming that the SCJ RMO handles recordings for 130 Queen Street West, Toronto, Ontario in addition to the SCJ courthouses on University Avenue, Toronto.

Notably, it was not "Ashleigh's understanding" that matters were heard in Central West Region OCJ Brampton Courthouse or any other region or any other courthouse outside of the Toronto Region. There was no dispute that the OCJ 10 Armoury Courthouse was a transferee courthouse but the issue of the "originating courthouse" was and remains at issue (kindly address that separately as I paid $23.00 via bank draft in mid August 2025 and not only is the SCJ RMO able to assist but required to do so).

The usage of the word "can" is another word choice that is consistent with The Honourable Madam Justice Shore but not the SCJ RMO and its esteemed staff.

As OCJ 10 Armoury Street Courthouse was not involved until October 3, 2024, one day after my arrest, which naturally meant that the tapes, as an additional ground (i.e. in addition to a process having been issued which includes a Summons (Form 6) or Arrest Warrant (Form 7 under the *Criminal Code*) but not an Undertaking or Appearance Notice (Form 10 and 9 under the *Criminal Code* respectively in that they can be signed by a peace officer), were to be released to anyone who requested the same which includes the public.

In relation to the latter, I do not dispute, for contextual purposes, that a judge of the SCJ is also a judge of the Divisional Court as per the *Courts of Justice Act* and that a judge of the Superior Court Of Criminal Jurisdiction, in the province of Ontario, means a judge of the SCJ and ONCA. The import of that to my circumstances involving The Honourable Madam Justice Shore is that irrespective of whether she was in her designated by the CJ of the SCJ rotation in the Divisional Court in 2024 and beyond, The Honourable Madam Justice Shore had the parliamentary statutory authority to hear and consider an application, *ex parte* and in camera (closed to the public) [but not without a recording via ARP Platform at first instance because upon an arrest OR a process being issued, the tapes and materials required for transcription become

available to the public as per the MAG CSD Court Information Access Guide and the Court Transcripts Practices Standards Manual which are and were both issued by the Ontario government (MAG) in 2019 and 2024 respectively) and by the *Criminal Code*, she was required to hear and consider the same. As we now know, it was an un-proceeded upon *Criminal Code* Form 4 Indictment, which had to be signed by the Attorney General, which also includes the SOLGEN by Parliamentary statutory definition, post-facto, by the later manipulation of the Intake Court Endorsement [Sic] including that of the *Criminal Code* Form 2 Information of Court Officer (Toronto Region) Mrs. Frugoni-Rojas, but the legal test is whether The Honourable Madam Justice Shore had "prior judicial involvement with myself" PRIOR to the Divisional Court JRPA Proceeding. The key words therein were and are: (i) judicial; and (ii) involvement.

As I had predicted, the Intake Court Endorsement [Sic] was not from the OCJ, as admitted by the MAG CSD Records Division, as that would have required a digital signature therein which could not be removed. Moreover, I had predicted prior to knowing that the Intake Court Endorsement [Sic] purported to be transcribed by the "law enforcement applicant" document. That is permissible under various sections of the *Criminal Code* which is primarily under section 487.1 of the *Criminal Code* but the issuing of a summons versus an arrest warrant (or as Shore J called it a "warrant in the first" which is consistent with a nationwide arrest warrant in which only an SCJ can issue – not the likes of a JP or PCJ as per the *Criminal Code*) does not permit the same. Ergo, any filing of the e-indictment (see: Criminal Proceeding Rules, "definitions" and rule 4.10) had to "produce a writing" which the email filing of the same would do. Moreover, this now, in light of The Honourable Madam Justice Shore's strident and incorrect comments of Friday, October 10, 2025, which is now a pattern of conduct with her involving me, fully answers the misguided initial position taken by the Divisional Court Manage of Court Operations that the Divisional Court could not hear criminal matters or proceedings. That may be correct as a matter of provincial law but not the federal law, which pursuant to the paramountcy doctrine trumps provincial law in the event of a conflict, and it is not only permissible but practical that those Toronto Region Judges (see: Criminal Proceeding Rules and *Criminal Code* definition of "judge" versus "justice" or "provincial court judge) in their Divisional Court rotations or designations, by statutory authority (de jure) and in fact (de facto) hear and consider *ex parte* in camera "law enforcement applications" as they clearly have less of an intensive in-court schedule when compared to the family law judges at SCJ 361 University Courthouse and those at SCJ 393 University Avenue and 330 University Avenue courthouses. This does not detract from the demanding nature of their schedules but simply that their availability is more present when there are allegedly urgent "law enforcement applications" or applications for various warrants including that of arrest warrants wherein they are preceded by a *Criminal Code* Form 4 Indictment – which while the SCJ can hear any criminal matters it primarily only hears indictable offences.

It is nonetheless compelling and now most telling that The Honourable Madam Justice Shore utilized the language of "accepted on its face" as if it did not require some credibility finding by her but naturally it would have considering that the requirement is to "hear and decide". It necessarily requires the weighing of evidence and submissions and considering the perspective of the person who is not entitled to notice under the *Criminal Code*.

In a rather fortuitous set of circumstances, with the benefit of hindsight, I came to learn that the SCJ Toronto Region practice direction for criminal matters prohibits a self-represented litigant from having access to Case Center but the same cannot be said of civil proceedings including the Divisional Court proceedings where it is a requirement that I received an invitation to Case Center and utilized the same. The reason proffered by Ms. Lawrence of the Divisional Court to me was inconsistent with the Divisional Court Judicial Review Guide and the now known authentic reason was as per The Honourable Madam Justice Shore's prior judicial involvement with me I was unfairly brandished as a criminal and treated as a "criminal litigant" in a Divisional Court proceeding.

Parenthetically, on the Transcript Order Form issue (distinct from herein), under The Honourable Madam Justice Shore's interpretation, and one were to then exercise rights of appeal (either applicant or respondents), there would not be a transcript for the Court of Appeal's benefit. As such, The Honourable Madam Justice Shore is yet again wrong on that ground.

It is quite a shame as a matter of law, access to justice, and the rule of law (which requires procedural and substantive equality) that this occurred. However, what is done is done and I require access to the digital recordings from the case conferences on the denoted dates as per my entitlement to the same without a court order and as a litigant/party on two independent grounds in light of The Honourable Madam Justice Shore email of Friday, October 10, 2025.

Thankfully, the procedure in Ontario is distinct from BC (see: *Long v. Red Branch Investments Ltd,* 2018 BCCA decision) in that I must bring my motion, which I did on Friday but prior to reviewing the email forwarded to me by my ACT by Ms. Amirthalingam with the quoted language of The Honourable Madam Justice Shore (see: supra), and it is one of the factual and legal grounds for why I require the digital recordings as an interim measure albeit being unable to provide a copy to the Divisional Court and the sitting motions judge on October 27, 2025.

VI. DENOUEMENT

The undersigned explicitly reserves the unequivocal right to rely upon this detailed correspondence for any and all lawful purposes, including, but not limited to, the advancement of legal proceedings and administrative review.

Pursuant to the requisite payments previously remitted to the Superior Court of Justice (earmarked for the Minister of Finance as required) and, in parallel, to the Authorized Court Transcriber(s) (hereinafter, "ACT(s)"), the administrative division is hereby requested to effectuate the immediate preparation of the electronic audio recordings of the proceedings.

Kindly ensure that the aforesaid recordings are prepared for transcription and subsequent transfer onto a compact disc (CD). Upon the demonstrable receipt of the prescribed fee, the undersigned respectfully requests that the appropriate Court Services personnel advise, with expediency, of a precise date and time for the physical retrieval of the said material from Room 405 of the Superior Court of Justice located at 361 University Avenue Courthouse.

Thank you in advance for your anticipated compliance with the law which dos not require a court order as per supra albeit I am constrained by usage of the to be received copy on CD of the digital recording by an ARP Platform.

I trust this comprehensive submission with the attached was of assistance from a contextual and underlying bases standpoint so there is not unnecessary back and forth which I now know the genesis or etiology of the same.

Wishing you well on your well-deserved statutory holiday.
Mr. Kevin A. McLean (BA, JD, CIM)
/s/ Mr. Kevin A. McLean (BA, JD, CIM)"

In my view and having carefully examined previous responses of The Honourable Madam Justice Shore or attributed to her, it is unequivocal that she had prior judicial involvement involving myself but nonetheless undisclosed. As such, it amounts to a post-facto (March 2025) discovery of new facts and/or fraud which vitiates all previous steps taken that were subject to the failure to disclose the same to me.

At the very least, the JRPA Proceeding has been tainted with fraud and no court in this land will allow a person to keep an advantage which he has obtained by fraud. No judgment of a court, no order of a Minister, can be allowed to stand if it has been obtained by fraud. Fraud unravels everything.

Should Shore J.'s position change, I will promptly notify you of the same but it will likely require an interim order regarding the same which was already addressed in the NOM #3 but on slightly different factual grounds.

I will continue to exercise all of my rights and act with due diligence in obtaining the same but you will note that I have done so but been stonewalled and delayed at every turn.

I sincerely trust you appreciate the detailed email to assist your obtaining instructions from your various clients.

I repeat and rely upon the above subjects of the email.

Respectfully Submitted,

/s/Mr. Kevin A. McLean (BA, JD, CIM)

Mr. Kevin A. McLean (B.A., J.D, CIM)

[i]It is applicable to all Divisional Court proceedings in Ontario by reference to section 1: "Parties are **required** to follow the practice set out below for all matters in the Divisional Court **anywhere in Ontario." Practice Directions are subject to the Rules of Civil Procedure (see: Rule 1.07:** "practice direction" means a direction, notice, guide or similar publication for the purpose of governing, *subject to* these rules, the practice for proceedings). Ergo, the Valid Practice Direction for Divisional Court proceedings in Ontario

Yours faithfully,

/KAM

Mr. Kevin A. McLean (BA, JD, CIM)

Sender's name: Mr. Kevin Alexander McLean (BA, JD, CIM)

Sender's address: 410-775 King Street West, Toronto, Ontario, M5V 2K3

Sender's Telephone Number: (647) 370-9354

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On Fri, Oct 10, 2025 at 4:00 PM Mr. Kevin McLean <mcleansettlement@gmail.com> wrote:
October 10, 2025 at 3:59 p.m.

VIA EMAIL

Urgent filing via email pursuant to the *Consolidated Practice Direction for Divisional Court Proceedings* effective June 15, 2023, issued by The Honourable Chief Justice of the ONSC Mr. Morawetz ("**C.J.O.N.S.C. Mr. G.B. Morawetz**" or "**Morawetz CJ**") pursuant to the statutory and prescribed authority pursuant to, *inter alia*, Rule 1.07(3)[i] (collectively, the "Effective Practice Direction" or "Valid Practice Direction"), mores particularized pursuant to and under section 16 *et al* to the ONSC Divisional Court (Toronto Region))

Court file number: DC-24-00000718-00JR
Type of document: email with attachment (Affidavit #28)
Short title of proceeding: *McLean v. TDHA et al*
Party: Mr. Kevin A. McLean (B.A., J.D, CIM) (mcleansettlement@gmail.com)

Re: my multi-purposed motion herein to set aside any steps, compulsory case conferences, orders et al based on new facts arising or discovered and fraud since March 2025

To the Honourable Court and Counsel, *In Re* the Within Proceeding:

I. Introduction and Procedural Compliance

This communication is tendered *in pertinentia* to the above-referenced matter. Pursuant to the **mandatory precepts** enshrined within the relevant Ontario *statutes and regulations*, which necessitate the commencement of an application or motion to **vitiate** any prior order or judgment resultant from the emergence or subsequent **discovery of material facts** or the **unearthing of palpable fraud** within the ambit of the original proceeding, please find **appended hereto** the Third Motion Record of the Applicant.

II. Newly Ascertained Indicia of Facts and Subsequent Procedural Impediments

A **plethora of newly ascertained indicia of material facts and potential malfeasance** have demonstrably materialized subsequent to the prior filing, with the anticipation of further revelations yet to unfold. *In limine*, it is imperative to register the observation that **The Honourable Madam Justice Shore** has, as of the present moment, elected not to furnish a substantive reply to the Court Services personnel of the Superior Court of Justice (SCJ) Records Management Office (RMO)—the designated repository for all judicial recordings and transcripts originating from SCJ venues, including **361 University Avenue Courthouse**, and the *Divisional Court* at **130 Queen Street West**. This non-response, which **significantly impedes the procurement of authorized transcripts** essential to the Applicant's prosecution of this matter, was further **exacerbated by the Registrar's failure** to honour the Applicant's formal requisition for the production of all filings submitted by the Respondents or Interested Persons, save and except for the Notices of Appearance tendered by the *Licence Appeal Tribunal* (LAT) and the Respondent Insurance Companies—a deficiency underscored by the *sub judice* issues concerning the **alleged pervasive managerial dominion** exerted by the LAT in the drafting of the Respondents' materials.

III. Judicial Process and the *Open Court Principle*

Notwithstanding the aforementioned procedural hurdles, the Applicant has maintained an **unreservedly transparent posture** in the preparation of this Third Motion, advancing the current exigencies at the earliest possible juncture consonant with the **discovery of germane evidence**. This evidence, *inter alia*, pertains to the inability of the Superior Court of Justice and its various functionaries to **unequivocally repudiate** the contention that **The Honourable Madam Justice Shore** exercised a judicial function—distinct from the successful repudiation concerning *Madam Justice Kraft*—in a *sub rosa* (ex parte, *in camera*) judicial determination involving the **issuance of criminal process** or an **arrest warrant**, alongside other potential authorizations.

While the conventional practice dictates the preservation of the confidentiality and privilege associated with such sensitive information, the **fundamental *Open Court Principle* mandates public accessibility** to instruments such as Informations and Indictments, thereby **rendering disclosure paramount**. This principle accentuates the subsequent issue: the demonstrable **manipulation of court documents** pertaining to the Applicant during September and October 2024 by unknown actors. This manipulation persisted even **subsequent to the formal admission** by counsel for the Ministry of the Attorney General (Civil Branch) that the purported *Criminal Code Form 2* 'Information' **did not exist in the alleged form**. The Applicant's conduct remains **unimpeachable in this particular context**, having committed none of the acts documented in the counterfeit materials—materials featuring the **forged signature of a Justice of the Peace** from the Central West Region (*OCJ Brampton Court*) and purporting to evidence an 'Intake Court Endorsement [sic]' and a 'warrant in the first' dated in September 2024. The Respondents are **fully cognizant** of the Applicant's contemporaneous and conspicuous participation in the LAT proceeding at the material time, thereby **negating any suggestion of evasion**.

IV. Contemplated Relief: Draft Orders

Consistent with the **exigency of these circumstances**, the Motion Record includes two distinct *Draft Orders* for the Court's consideration:

1. **Interim Draft Order:** Pertaining to the **mandated production and complete disclosure** of the audio recordings from specific case conferences, specifically those wherein the Applicant's non-availability was notified in advance to **Ms. Badwal** (a Motions Coordinator of the *Divisional Court*) and the subsequent conference necessitated by the Applicant's hospitalization due to injuries sustained from an e-scooter accident—communicated via electronic mail at 04:00 hours. Furthermore, this Order includes **ancillary interim relief**, particularly the **exigent return of all property** *de facto* **unlawfully appropriated** by **Mr. Karat** of the Respondent Insurance Companies (specifically the insurer Primmum, but excluding TD Life).

2. **Final Order:** A comprehensive determination of the substantive relief sought.

V. Legal Extrapolation and Scope of Remedy

The **fundamental *ratio* of this Motion** concerns the *vexata quaestio* of whether the LAT exercised a **pervasive managerial dominion** over the TDIA Group and/or the Respondent Insurance Companies. This assessment is acutely relevant subsequent to the March 2025 **unlawful appropriation** of the Applicant's property by **Mr. David Karat**—an individual whose conduct has been previously **particularized as felonious** by the *Centre for Addiction and Mental Health* (CAMH). The property unlawfully appropriated included highly sensitive personal information and electronic devices, the very nature of which **magnifies the Applicant's Reasonable Expectation of Privacy** (REOP).

Consequently, the **principal remedy sought** is a judicial finding establishing this high degree of control, with attendant **leave to address the quantum of pecuniary damages** at the appropriate future juncture. Furthermore, the **exigent return of the appropriated property** from Mr. Karat—as mandated by the proposed Interim Order—is **a requisite antecedent** to the full determination of damages, as it will **facilitate a comprehensive forensic analysis** of the electronic devices and ancillary materials to ascertain the full extent of data retention or exfiltration.

VI. Alternative Submission and Final Confirmations

Should the aforementioned approach not be favourably received by the Court, the Applicant **shall submit an itemized sum** within the accompanying *Factum* and pertinent *Draft Order* for the Court's immediate reference. This submission is **proffered contingent upon the Applicant's request** that this Motion be adjudicated in writing, subject always to any **meritorious objections** lodged by the opposing parties.

Given the Applicant's understanding that the *Justice Services Online* (JSO) portal is currently undergoing a process of **decommissioning and systemic replacement**, the requisite **prescribed filing fees** shall be remitted forthwith upon the activation and operationalization of the successor electronic filing infrastructure.

Notwithstanding the foregoing, the Applicant **hereby confirms** that this Motion Record has been **duly filed and served** upon all principal parties as of the date hereof, prior to the hour of 16:00. Service upon all other **potentially affected third-party persons** shall be effectuated by the Applicant **under separate cover**.

The subsequent materials shall follow.

May this holiday season afford all parties a respite conducive to reflection and equanimity.

[i]It is applicable to all Divisional Court proceedings in Ontario by reference to section 1: "Parties are **required** to follow the practice set out below for all matters in the Divisional Court **anywhere in Ontario." Practice Directions are subject to the Rules of Civil Procedure (see: Rule 1.07:** "practice direction" means a direction, notice, guide or similar publication for the purpose of governing, *subject to* these rules, the practice for proceedings). Ergo, the Valid Practice Direction for Divisional Court proceedings in Ontario

Yours faithfully,

/KAM

Mr. Kevin A. McLean (BA, JD, CIM)

Sender's name: Mr. Kevin Alexander McLean (BA, JD, CIM)

Sender's address: 410-775 King Street West, Toronto, Ontario, M5V 2K3

Sender's Telephone Number: (647) 370-9354

Sender's email address: mcleansettlement@gmail.com

--- END OF SCHEDULE "a"

TAB 28

Court File No. DC-24-00000718-00JR

Courts of Justice Act

ONTARIO SUPERIOR COURT OF JUSTICE (DIVISIONAL COURT)

BETWEEN:

KEVIN ALEXANDER MCLEAN

APPLICANT

- AND -

TD HOME AND AUTO INSURANCE COMPANY, SECURITY NATIONAL INSURANCE COMPANY, TD GENERAL INSURANCE COMPANY, EXECUTIVE DIRECTOR, LICENCE APPEAL TRIBUNAL, HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO, REPRESENTED BY EXECUTIVE CHAIR OF TRIBUNALS ONTARIO IN MR. SEAN WEIR, THE ATTORNEY GENERAL OF ONTARIO

RESPONDENTS

APPLICANT'S COSTS SUBMISSIONS FOR THE ENTIRETY OF PROCEEDING BUT FOR CONSTITUTIONAL ISSUES AND QUESTIONS

Date of hearing: December 3, 2025

APPLICANT'S SUBMISSION ON COSTS: APPLICATION FOR AN AWARD OF SUBSTANTIAL INDEMNITY

I. PROEMIUM AND EXORDIUM

1. This is the Applicant's submissions on costs pursuant to section 131 of the CJA and, inter alia, Rule 57 of the Rules of Civil Procedure. The Applicant may supplement the same with a Form 57(A) for each unnecessary step or for a combination of unnecessary steps in a singular or separate documents.
2. The Applicant adopts the facts from his uncontested evidence and facts contained in documents filed such as motion submissions, factums et al.
3. This comprehensive and meticulously articulated motion for costs is formally tendered by the Moving Party, appearing *pro se*, to this Honourable Tribunal. The "Moving Party" or "Applicant" has served and filed (with payment of $339.00) with proof of delivery (a "Delivery" under the Rules of Civil Procedure, Rule 1.03, "Definitions), his NOM #3 along with by separate and commingled inclusions the following:
    a. NOM #3 as a separate document;
    b. Factum for NOM #3 as a separate document;
    c. Affidavit of Service as a separate document and commingled in the Motion Record; and
    d. Confirmation of Motion as a separate document.
4. The instant requisition for an extraordinary award of costs is necessitated, *ipso facto*, by the patently deleterious and exceptional *modus operandi* exhibited by the Respondent institutional parties throughout the entire temporal duration of this protracted and labyrinthine litigation. A formal award of costs on the elevated scale of Substantial Indemnity is herewith supplicated; the jurisprudential justification for which is predicated upon the fundamental tenets enshrined within the *Courts of Justice Act* (hereinafter referred to as the *Act*) and the *Rules of Civil Procedure* of this Province—specifically *Rule 57*—and its attendant jurisprudential directives concerning the rigorous assessment of litigant conduct.
5. The Moving Party asserts, with unwavering certitude, that the cumulative repercussions of the Respondents' procedural recalcitrance and substantive intransigence have irrevocably propelled this action beyond the

conventional parameters of ordinary costs. Having been compelled to assume the onerous mantle of *pro se* representation due to the inherent complexity engendered by the Respondents' systemic refusal to adhere to their fundamental statutory and regulatory obligations, the Moving Party has expended an extraordinary quantum of professional time and intellectual capital. It is respectfully submitted that an award of Partial Indemnity would, *in toto*, fail to adequately remunerate the successful party for the demonstrable prejudice sustained, thereby permitting the Respondents to externalize the pecuniary consequences of their own malfeasance. Such an outcome would fundamentally vitiate the principle of *audi alteram partem*, allowing a party with superior informational and financial capacity to utilize the mechanisms of justice as instruments of systemic oppression and financial attrition. The integrity of the judicial process is demonstrably imperiled when a successful litigant is compelled to absorb the substantial costs solely precipitated by the opposing party's calculated procedural vexation.

6. The institutional behaviour of the Respondents—characterized by the consistent deployment of dilatory tactics and the defence of an initial decision devoid of any arguable jurisdictional foundation—has created a fundamental disequilibrium in the administration of justice. To deny full recovery to a successful *pro se* litigant under these specific and highly compromised circumstances would inevitably precipitate a chilling effect, signalling to powerful institutional actors that they may utilize procedural attrition without fear of significant pecuniary sanction. This application for Substantial Indemnity is therefore not merely a request for monetary compensation, but a solemn appeal for the maintenance of the judicial equilibrium and the unequivocal condemnation of *mala fides* litigation management. The Court is implored to recognize that the financial integrity of the Applicant has been directly attacked by a deliberate strategy of procedural exhaustion, a tactic that seeks to leverage the economic disparities inherent in a dispute between a sole individual and a multi-billion dollar financial institution. The award sought is restorative, preventative, and fundamentally necessary to uphold the equitable enforcement of the *Insurance Act*.
7. The unique burden imposed upon a *pro se* litigant when confronting the consolidated power and limitless financial resources of sophisticated corporate and governmental Respondents cannot be overstated. The

jurisprudence acknowledges the inherent vulnerability of the self-represented party who must, by necessity, master the intricacies of procedural law, administrative law, and the substantive legal issues, all while simultaneously managing the debilitating effects of the injuries sustained in the motor vehicle accident. The Respondents' misconduct—which includes the active suppression of critical evidence and the fabrication of claim documents—is demonstrably more egregious when perpetrated against an individual who lacks the immediate access to specialized counsel and the procedural machinery available to the institutional litigant. The Court must recognize that Substantial Indemnity in this context serves a crucial restorative function: it levels the playing field, ensuring that the successful Applicant is not penalized merely for having prevailed against a determined and ethically compromised institutional opposition. Any lesser award would represent a tacit endorsement of the Respondents' exploitative strategy of procedural exhaustion, thereby enabling corporate litigants to budget for bad faith as a cost of doing business. The cumulative impact of this institutional aggression has imposed a demonstrable and quantifiable **cognitive load** on the Moving Party, an uncompensated injury that must be factored into the final cost determination.

8. The total quantum of relief presently solicited by the Moving Party is **Two Hundred and Sixty-Five Thousand Dollars ($265,000.00)**. This comprehensive figure comprises two distinct, yet intrinsically interdependent, components: a compensatory award for professional time and intellectual capital expended in the prosecution of this application, calculated at $250,000.00, and a necessary reimbursement for disbursements and mandatory filing fees, approximating $15,000.00. This quantum is not merely a request for pecuniary compensation but constitutes an indispensable element of the judicial function, designed to preserve the inherent integrity of the process and maintain the accessibility of justice against formidable, well-resourced institutional actors, whose *acta* throughout this proceeding have been demonstrably *ultra vires* and procedurally unsound. The Tribunal must, *ergo*, invoke its inherent jurisdiction to condemn and mitigate the profound prejudice wrought by the Respondents' sustained course of misconduct, which culminated in an unprecedented abuse of both the civil and criminal justice systems.

II. CHRONOLOGICAL COMPENDIUM OF FACTS AND PROCEDURAL HISTORY

THE ANTECEDENT GENESIS OF CONFLICT AND THE NEXUS OF JUDICIAL BIAS (2017 – 2018)

1. The Foundational Conflict of Interest and the Epstein Cole Nexus

9. The primordial genesis of the instant dispute was undeniably sown in the calendar year 2017, a period contemporaneous with the acrimonious and highly contentious dissolution of the marital union involving the Epstein Cole Client (Mr. Papadimitropoulos) and the Individual Insured (Ms. Nicole Artopoulos). During this protracted epoch of matrimonial discord, legal representation and strategic counsel were afforded to Mr. Papadimitropoulos by the prestigious and influential limited liability partnership of Epstein Cole LLP. It is formally averred, with the requisite gravity and specificity, that the Honourable Madam Justice Shore, prior to her subsequent elevation to the bench of the Superior Court of Justice in October 2018, served in the distinguished capacity of a senior equity partner within said firm. Her professional purview during this critical timeframe was not merely that of a passive observer; rather, she exercised significant administrative and operational authority, specifically including the oversight of the student, articling, and young associates committee. This specific role necessitated an intimate and granular knowledge of the firm's high-profile clientele and the strategic nuances of active litigations, including the management of contentious files such as that involving the Epstein Cole Client, to effectively guide junior counsel. **The subsequent non-disclosure of this material professional nexus, prior to the commencement of the current proceedings, constitutes a fundamental and irreparable failure of the judicial duty to ensure the appearance of impartiality *ab initio*.**

10. The jurisprudence is clear that the test for reasonable apprehension of bias is an objective one: whether an informed, reasonable person, viewing the matter realistically and practically, would conclude that the judicial officer might not bring an impartial mind to the resolution of the matter. This test, articulated by the Supreme Court of Canada in *R. v. S. (R.D.)* (1997), does not require proof of actual bias, but rather an *apprehension* thereof. The legal fiction that a senior partner would remain oblivious to the substantial files managed by her

firm—particularly one that included allegations of criminal misconduct used as leverage—is untenable in this context. **The failure to disclose the nature of the relationship with a prominent party's counsel, or the relationship with the firm representing a key antagonist in the underlying factual matrix, created an indelible appearance of structural conflict.** This antecedent professional association establishes an indelible and structural nexus between the presiding judicial officer and the Epstein Cole Client, which, when coupled with the subsequent revelation regarding her former counsel's involvement with the Ministry of the Attorney General (MAG), creates an apprehension of bias so palpable that it permeates the entirety of the subsequent proceedings, rendering the impartial administration of justice an impossibility in the eyes of a reasonable and informed observer. **The resulting prejudice is procedural and systemic, undermining the Applicant's faith in the fairness of the entire judicial gatekeeping process, thereby necessitating increased cost recovery to redress the foundational inequity.**

2. The Unlawful Ingress, Assault, and the Weaponization of Law Enforcement

11. In or about March 2018, the conflict escalated from civil litigation to alleged criminal malfeasance. Disturbing and substantiated allegations arose indicating that Mr. Papadimitropoulos effected an unauthorized and unlawful ingress into the residential premises situated at the Minto Buildings. This breach of the sanctity of the dwelling house was not benign; it was executed for the specific and malevolent purpose of perpetrating an assault *vi et armis* (with force and arms) and battery upon the person of Ms. Artopoulos. Subsequent to this egregious occurrence, and in a Machiavellian manoeuvre characterized by retaliatory *animus*, Mr. Papadimitropoulos inverted the narrative of victimization. He proceeded to lodge a formal, yet demonstrably frivolous, complaint with the Toronto Police Service (TPS) 14th Division, paradoxically alleging that he was the victim of an assault perpetrated by Ms. Artopoulos. This calculated legal manoeuvre—a strategic deployment of law enforcement as an instrument of private vengeance—resulted in severe and immediate consequences for the Individual Insured. Consequent to this complaint, Ms. Artopoulos was charged, detained, and subjected to the indignity of incarceration. She was subsequently released only under restrictive bail conditions which mandated a prohibition on direct or indirect contact with Mr. Papadimitropoulos.

3483 Ultimately, the criminal charge against Ms. Artopoulos was withdrawn by the Crown, a tacit acknowledgment of the lack of a reasonable prospect of conviction and the infirmity of the complaint, thereby confirming the *mala fides* nature of the original charge. However, this withdrawal did not occur before the instantiation of "discernible detriment" to her reputation and liberty, perpetually damaging her *status quo ante*. **The established pattern of leveraging state and judicial processes for personal advantage is a crucial contextual element when assessing the Respondents' subsequent litigation conduct, demonstrating a premeditated willingness to exploit the system for advantage, regardless of the ethical or legal boundaries crossed.**

B. The Insurance Claim and Initial Misrepresentations (September 2022 – December 2022)

1. The Corporate Veil Obfuscation and Policy Identification

12. On the thirty-first day of August, 2022, the Moving Party sustained profound, debilitating, and permanent impairment injuries following a high-velocity rear-end collision. In September 2022, an accident benefits package was transmitted to the Statutory Accident Benefits Schedule (SABS) Applicant by Security National Insurance Company (SNIC). *Nota Bene:* The insignia adorning the header of the documentation erroneously and deceptively identified "TD Insurance Meloche Monnex," a distinct corporate entity, representing a material misrepresentation of the actual underwriting entity. This obfuscation of the insurer's identity served to obfuscate the Moving Party's pursuit of legitimate entitlements *ab initio*. The inclusion of a demonstrably incorrect postal code constituted an indicium of gross administrative negligence or, conversely, calculated obstruction. **This practice of systematically using incorrect corporate branding and addresses directly violates the transparency requirements established under the *Insurance Act* and is evidence of a calculated attempt by the multi-entity corporate Respondent to create a "shell game" intended to frustrate proper claim service and identification.**

2. The Electronic Funds Transfer Authorization and the Severing of the Legal Nexus

13. Between September and October 2022, an Electronic Funds Transfer (EFT) Authorization was executed regarding Claim 035325790-03. The Moving Party irrevocably authorized the "Insurer" to deposit all claim benefits payable under Insurance Policy Number 00101351806 directly into his financial institution. It is posited that if SNIC subsequently elected to permit TD General Insurance Company (TDGIC) to assume the role of sole respondent in subsequent Tribunal proceedings, the legal nexus to the valid insurance policy would be severed *ipso facto*. Such a severance would render the non-payment of benefits to health practitioners, physiotherapists, and doctors—despite the tender of valid invoices—legally inexplicable and contractually indefensible, constituting an actionable breach of the duty of utmost good faith inherent in every insurance contract. This intentional blurring of corporate lines between SNIC, TDGIC, and the true First Insurer, TDHA, amounts to a deliberate strategy of corporate veil obfuscation, specifically designed to delay and confuse the Moving Party's proper legal targeting. **The practical consequence of this multi-entity confusion was the imposition of significant investigative costs upon the *pro se* Moving Party, expenditures that a diligent insurer is statutorily bound to prevent.**

C. THE ADMINISTRATIVE LABYRINTH, BENEFITS CESSATION, AND FINANCIAL FRAUD (JANUARY 2023 – APRIL 2023)

1. The Information Lacuna and Breach of Fiduciary Duty

14. A conspicuous and legally indefensible hiatus in communication occurred between January 11, 2023, and March 21, 2023, during which the insurer effectively "went dark," violating the transparency standards required by the *Statutory Accident Benefits Schedule—General, O. Reg. 34/10*. On February 13, 2023, a formal requisition was issued by the Moving Party seeking unequivocal identification of the actual payor and the originating financial institution for the purported benefits. By February 15, 2023, it became evident through a retrospective "hindsight analysis" that no lawful grounds existed for the withholding of Income Replacement Benefits (IRB). This absence of justification supports the irresistible conclusion that SNIC was

merely a façade, and not the First Insurer obligated to remit payments. **The deliberate and prolonged silence constitutes a foundational breach of the insurer's fiduciary-like duty to deal promptly and fairly with its claimant, an act of institutional contempt for the regulatory framework that severely prejudiced the Moving Party's access to necessary rehabilitation and funding.**

2. The Forgery of the OCF-18 and Systemic Financial Manipulation

15. On April 20, 2023, a seminal act of malfeasance and fraud transpired. It is averred with conviction that the signature affixed to OCF-18 #1 (the "Dhaliwal OCF-18"), originally dated March 30, 2023, was a forgery. The document bore the inscription "As per A. Nurse," purportedly signed by the adjuster Ms. Nurse, executed on a date when Ms. Nurse was ostensibly no longer managing the file, thereby demonstrating a deliberate intent to mislead. Subsequent forensic analysis conducted in September 2024 revealed a striking calligraphic concordance between this forgery and the known penmanship of Mr. Papadimitropoulos, discovered on a 2016 Anniversary Card. This handwriting match provides compelling circumstantial evidence of his direct and continuing interference in the claims process, thereby linking the insurance dispute to the antecedent matrimonial and criminal *acta*.

16. Furthermore, the Respondent Insurer's financial contrivance is manifest: SNIC represented that it had approved the sum of $1,995 for physiotherapy sessions, yet only $1,499.98 was actually remitted on April 6, 2023. **This specific sum was mathematically contrived in a patently transparent attempt to maintain the Moving Party within the $3,500 Minor Injury Guideline (MIG) cap, as dictated by *O. Reg. 34/10, s. 18(1)*.** The calculation was executed with such ineptitude that it exceeded the permissible limit by a mere fifty-five cents, exposing the arbitrary, capricious, and fundamentally dishonest nature of the insurer's adjudication, directly contravening the duty of good faith required by *r. 20* of the *Rules of Civil Procedure*. **This deliberate under-remittance was a calculated financial maneuver designed to improperly constrain the Moving Party's access to benefits, forcing him to litigate his claim under the severely restrictive parameters of the MIG.** The reliance on a forged document to support an improperly curtailed

 payment constitutes the deployment of a known falsehood to advance a financial advantage, an act of institutional fraud that is unequivocally "scandalous and outrageous" and requires Substantial Indemnity.

D. Procedural Obfuscation and Discovery of the True Insurer (Summer 2023 – Summer 2024)

The Departure of Ms. Nurse and the "Ghost" Adjuster

17. In September 2023, correspondence was received from an individual designated as Ms. Persaud, purporting to act as the replacement adjuster for Ms. Nurse on behalf of SNIC. However, auto-replies received from Ms. Persaud's email account in December 2023 indicated that she had been absent from her post since September 2023. This glaring inconsistency suggests that the file was being managed by a "ghost" adjuster or through administrative artifice, with no actual human oversight, thereby prejudicing the Moving Party's ability to instruct counsel or negotiate the claim. The utilization of a non-existent or absent adjuster is a classic example of institutional obfuscation, designed to frustrate the Moving Party's right to prompt communication and resolution. **This deliberate failure of claims management—the purposeful denial of a responsive human agent—constituted a severe impediment to the procedural efficiency, forcing the Moving Party to pursue formal legal channels merely to initiate routine communication.**

THE DISCOVERY OF TDHA AS FIRST INSURER AND HCAI DATA MANIPULATION

18. Between July 27 and July 31, 2024, definitive and incontrovertible evidence was unearthed confirming that TDHA was, in fact, the First Insurer. The Ontario Business Directory explicitly listed TDHA at the Victoria Park Building with the **416.774.3120** fax number, directly linking the recipient of the Moving Party's critical medical documents to TDHA. Moreover, it was discovered via a diligent *PIPEDA* request that SNIC had manipulated the Health Claims for Auto Insurance (HCAI) data to auto-populate the "East Mall Address." **This manipulation of a core industry claims database (HCAI) demonstrates a systemic, institution-wide effort to conceal the true obligor (TDHA) and steer liability toward the non-responsible entities (SNIC/TDGIC).** This calculated scheme to shield the true obligor constitutes an egregious breach of the duty of good faith under the *Insurance Act* and warrants the most severe cost sanction. Formal demands were

served upon TDHA on July 29 and 30, 2024, to discharge its liability as the First Insurer. These demands were systematically ignored, constituting a further and sustained breach of the duty of good faith.

3. Specific Procedural Non-Compliance in the Judicial Review Process

19. During the formal Judicial Review proceedings, the Respondents exhibited a sustained pattern of non-compliance that significantly and unnecessarily complicated the litigation. For instance, the Respondent's Record, filed belatedly and incompletely, contained material omissions and irrelevant documents, necessitating the Moving Party to spend extensive time compiling and cross-referencing the correct and crucial exhibits, a task properly incumbent upon the Respondent. **This calculated "document dump" strategy, combined with the late service of voluminous documents containing key facts (like the corporate address link) on the eve of deadlines, demonstrates a clear intent to overwhelm the *pro se* litigant.** This deliberate procedural attrition, designed not to inform the Court but to exhaust the opposition, is precisely the species of conduct that the jurisprudence deems reprehensible and is a direct violation of the spirit of *r. 57.01(1)(b)* regarding unnecessary complication of issues.

E. The Convergence of Civil and Criminal Malfeasance (September 2024): The Collateral Attack

1. The Undisclosed LAT Orders and Forgery Confirmation

20. In July and August 2024, the *Licence Appeal Tribunal* issued final orders regarding unreferenced motions without providing any notice or copies to the Moving Party. By September 19, 2024, the Moving Party filed Affidavit #37, establishing the forensic match between Mr. Papadimitropoulos's handwriting and the forged "As per A. Nurse" signature, thereby cementing the allegation of fraud within the administrative proceeding. The Tribunal's issuance of orders *in absentia* regarding motions never formally served upon the Moving Party constitutes a profound denial of natural justice and procedural fairness, further compounding the institutional failures that led to the Judicial Review.

2. The Unlawful Lockout (Mr. Karat's partner in crime in Mrs. Aphrodite Artopoulos as revealed in CAMH Unredacted Images) and the Abuse of Process as a Collateral Attack

21. Coincident with the exposure of the forgery, a coordinated and malicious campaign of harassment was initiated against the Moving Party. An *ex parte in camera* hearing was allegedly convened, resulting in an unsigned Intake Court Endorsement and a "warrant in the first," purportedly leading to the Moving Party's unlawful exclusion from his residence. The Moving Party was physically excluded from his lawful tenancy at Unit 410-775 King Street West, with the locks being physically altered and the security FOB deactivated, purportedly under the authority of the questionable arrest warrant. **This act was not a mere criminal event, but a direct *collateral attack* on the Moving Party's ability to prosecute the insurance litigation.** By attempting to seize or control the physical location of the Moving Party's residence, the antagonists sought to compromise his access to documents, records, and the stability required to manage the highly complex Judicial Review, demonstrating an extraordinary and malicious deployment of state power for private, adversarial gain.

3. The Falsified Information and the "Non-Existent" Court Officer

22. On September 23, 2024, a *Criminal Code* Form 2 Information was purportedly declared by Court Officer Ms. Frugoni-Rojas. The Ministry of the Attorney General subsequently admitted in July 2025 that no such Form 2 was ever filed or laid in the Ontario Court of Justice, rendering the entire criminal process a nullity. The Intake Court Endorsement lacked a digital or physical signature, rendering the document a "false instrument" and the entire proceeding *void ab initio* pursuant to the maxim *fraus omnia corrumpit* (fraud unravels everything). **The utilization of the state apparatus (police and court forms) based on falsified and non-existent documents for the purpose of a private vendetta demonstrates the most extreme form of abuse of public and private processes, squarely falling within the "scandalous and outrageous" category justifying Substantial Indemnity.**

Remaining Facts

23. The Applicant adopts the facts from Tabs #1 to #4 and Tab #22 (Affidavit) in the NOM #3 Motion Record.

III. ISSUES FOR DETERMINATION

24. The pertinent issues necessitating determination by this Honourable Tribunal are elucidated with the requisite specificity and legal precision as follows:

    a. Whether Substantial Indemnity Costs ought to be awarded, and if so, against whom the financial burden of these punitive and compensatory costs should be justly apportioned (specifically between the Licence Appeal Tribunal (LAT) and the Respondent Insurance Companies), and in what precise quantum?
    b. Whether Substantial Indemnity costs ought to be awarded for institutional conduct antecedent to the formal commencement of the Judicial Review Application (JRPA) Proceeding, including the period of fraudulent claims administration? If affirmed, the Tribunal must delineate from what specific temporal juncture the costs are recoverable and in relation to what specific reprehensible conduct.
    c. Whether the conduct, encompassing forgery, systemic corporate and HCAI data obfuscation, the non-disclosure of judicial conflict, and the weaponization of judicial and law enforcement processes for adversarial purposes, satisfies the requisite jurisprudential threshold of "reprehensible, scandalous or outrageous" behaviour to justify an award of Substantial Indemnity, thereby serving the paramount goal of institutional deterrence against future misconduct.

IV. THE JURISPRUDENTIAL PREDICATE FOR ENHANCED INDEMNITY

THE GOVERNING LEGAL FRAMEWORK AND THE "REPREHENSIBLE" THRESHOLD

25. The Court's discretionary authority to award costs is governed by *s. 131* of the *Courts of Justice Act, R.S.O. 1990, c. C.43*, and by *r. 57.01* of the *Rules of Civil Procedure, R.R.O. 1990, Reg. 194*. It is a well-established tenet that costs should be awarded on a partial indemnity basis unless the efficacious administration of justice can only be achieved by complete or substantial indemnification: see *Foulis v. Robinson (1978)*. As a general rule, justice will only require substantial indemnification where there has been "reprehensible, scandalous or outrageous conduct on the part of one of the parties" (*Young v. Young, 1993 CanLII 34 (SCC)*, at p. 134).

26. The Moving Party herewith maintains that the Respondents' institutional conduct, distinguishable from a mere isolated failure to comply with disclosure obligations, rises definitively to the "reprehensible, scandalous or outrageous" threshold articulated in *Young*. This distinction is critical: the threshold is not merely traversed by inept litigation management, but by systemic *bad faith* and the deployment of the judicial process for ulterior motives, namely the exhaustion of a successful Applicant. The award of Substantial Indemnity is therefore a necessity, not an option, to fully indemnify the Moving Party against the full financial consequence of the Respondents' calculated misconduct. The litigation history is indelibly marked not by a

single misstep, but by a pervasive strategy of unwarranted obfuscation and unjustifiable persistence in maintaining a position that was, *ab initio*, legally untenable and factually devoid of an arguable foundation. The Ontario Court of Appeal in *McDougald Estate v. Gooderham* (2005) solidified this principle, confirming that costs on this elevated scale are a function of the Court's inherent power to control its process and condemn true misconduct. **The use of a forged document (OCF-18), the manipulation of an industry-wide database (HCAI), and the systemic corporate concealment are actions that go directly to the integrity of the evidence and the administration of justice, which is reprehensible conduct *per se*.**

B. THE DOCTRINE OF ABUSE OF PROCESS, COLLATERAL ATTACK, AND VEXATIOUS CONDUCT

27. The cumulative conduct of the Respondents constitutes a clear and sustained abuse of process, a species of *mala fides* litigation management that warrants the most severe cost sanction. An abuse of process occurs when the Court's process is intentionally used for an ulterior or improper purpose, or when it is utilized in a way that is unfair to the point of being manifestly injurious to the public interest. The pursuit of a defence founded upon a forged document and corporate concealment, coupled with the systemic procedural non-compliance detailed in Section II, transitions the Respondents' *acta* from mere advocacy to unacceptable vexatious conduct. In *Del Giudice v. Thompson* (2021), significant substantial indemnity costs were awarded to clearly signal the Court's condemnation of the pursuit of unmeritorious claims and the unduly complication of proceedings. Similarly, the Respondents' persistence in defending a position that was jurisdictionally void *ab initio* and factually corrupted by fraud falls squarely within this condemned category, making enhanced costs a mandatory punitive and deterrent measure.

28. **Crucially, the attempt to leverage a falsified criminal process (the "non-existent" court officer and Form 2 Information, Section II.E.3) simultaneously with the civil proceeding constitutes an unlawful *collateral attack*.** The purpose of the *ex parte* criminal action was not justice, but the acquisition of an unfair advantage in the civil insurance dispute by attempting to incapacitate the *pro se* Moving Party through harassment, unlawful eviction, and the threat of incarceration. This specific fusion of malicious civil and

quasi-criminal actions to achieve a singular adversarial goal represents an unprecedented affront to the integrity of the legal system, demonstrating that the Respondents' primary objective was not the honest resolution of the claim but the complete elimination of the Applicant as a litigant. This extreme level of systemic hostility places the conduct far beyond the reach of standard Partial Indemnity.

C. Deterrence and Institutional Conduct: The Necessity of a Condemnatory Award

29. The principles articulated in *Davies v. American Home Assurance Co. (2002)* concerning institutional conduct bear direct application herein. The Court recognized that where an insurer—or, by extension, a public tribunal—conducts litigation in a manner that is unduly aggressive, vexatious, or founded on procedural sharp practice, the remedial purpose of a cost award shifts from mere compensation to a forceful deterrent signal. The Respondent Insurers, in particular, utilized their superior resources and legal capacity to prolong a dispute that was fundamentally resolved by the LAT's original *ultra vires* error, compounding the Moving Party's burden and warranting the highest degree of indemnity. This litigation *acta* amounts to a calculated disregard for the tenets of fair play, prioritizing institutional interest over the statutory rights of the individual. As held in *Sagl v. Chubb Insurance Co. of Canada (2018)*, where an insurer's conduct in litigation is designed to impede the just resolution of the claim or to obfuscate the truth—as demonstrated by the forgery and corporate concealment (Section II.D.2)—such behaviour is inherently reprehensible and demands a cost award that reflects the Court’s condemnation of the institutional strategy. The Court must intervene to ensure that the Respondent Insurers do not perceive the pecuniary consequences of a Partial Indemnity award as merely an acceptable operational expense for systemic misconduct. An award of Substantial Indemnity in this context serves a public interest function by reinforcing the judiciary's intolerance for institutional bad faith.

D. Entitlement to Costs for Pre-Commencement Conduct: The Boucher Principle

30. The genesis of this protracted legal engagement lies in the original decision rendered by the LAT, which constituted an *ultra vires* exercise of authority, operating entirely outside the permissible ambit of its statutory

or regulatory charter. This decision is the *causa sine qua non* of the Moving Party's injury. As definitively elucidated in *Boucher v. Public Accountants Council for the Province of Ontario (2004)*, misconduct is not confined solely to the improper conduct post-commencement of the litigation but extends substantively to the improper behaviour and oppressive *acta* employed in the administrative phase that *necessitates* the judicial intervention. The *ratio decidendi* of *Boucher* permits the Court to look beyond the formal commencement date of the Judicial Review to the administrative and pre-litigation conduct that gave rise to the action.

31. **The Moving Party asserts that the recoverable costs must commence from the date the insurer relied upon the forged OCF-18 (April 2023), as this fraudulent document was the direct instrument used to deny lawful benefits and force the claim into the administrative process.** This act of pre-litigation fraud, subsequently defended by the Insurers in the LAT and Judicial Review, is inextricably linked to the present costs. The Moving Party is therefore entitled to Substantial Indemnity costs relating to the conduct from April 2023 onward, encompassing all administrative appeals and preparatory legal work, which was wholly necessitated by the Insurers' fraudulent claims management and the LAT's subsequent, unlawful decision. This award is mandated to ensure that the indemnification is comprehensive and truly compensatory for the entire legal and administrative burden imposed upon the Moving Party.

V. THE INDEPENDENT BASIS FOR PUNITIVE SANCTIONS: INSURER BAD FAITH CLAIMS HANDLING

32. Distinct from the *Rules of Civil Procedure* concerning litigation conduct, the common law imposes a severe penalty for breaches of the duty of utmost good faith in claims handling, which informs the reprehensibility of the Insurers' conduct prior to and during the litigation.

THE *FLETCHER* AND BEASLEY FIDUCIARY DUTIES AND PUNITIVE DAMAGES (ONLY COSTS AVAILABLE IN JUDICIAL REVIEW CASES (SEE: TELEZONE CASES (I.E. TO JUDICIALLY REVIEW OR SUE) AND STEGENGA

33. The seminal Supreme Court of Canada decision in *Fletcher v. Manitoba Public Insurance Co.* (1990) established the insurer’s fiduciary-like duty of utmost good faith, requiring them to act promptly and fairly

in the investigation and payment of claims. More recently in Ontario, the Superior Courts of Justice in Beasley and cases that follow in Dervisholli, Transamerica, Jia et al found that in the no fault regime in auto insurance, "first insurers" (provisional or permanent) are subject to a fiduciary duty to insured persons (see: Applicant's Factum of December 12, 2024; and Outline in Compendium of February 15, 2025) The misconduct detailed in Section II—specifically the "ghost" adjuster, the five-month information lacuna, and the corporate obfuscation—constitutes a clear breach of this *Fletcher* duty.

Aggravating Factors in Claims Handling:

34. Canadian courts recognize that institutional actions that purposefully cause financial and emotional distress to claimants, particularly those resulting from injury, merit exceptional sanctions. The Insurers' calculated attempt to pin the Moving Party under the restrictive MIG cap via an improperly calculated payment and a forged document (Section II.C.2) is precisely the kind of exploitative claims handling that courts condemn. This manoeuvre placed the Moving Party under severe financial duress, forcing him to choose between essential medical treatment and protracted litigation. **This institutional bullying, prior to and throughout the litigation, is an independent justification for the punitive element inherent in the Substantial Indemnity rate.** The award of enhanced costs serves as a proxy for the punitive damages that would otherwise be sought in a separate bad faith action, efficiently punishing the corporate misconduct within the costs framework.

VI. APPORTIONMENT OF LIABILITY FOR COSTS

35. The Tribunal is respectfully directed to undertake a rigorous analysis for the apportionment of this exceptional cost award between the Respondents, specifically the Licence Appeal Tribunal (LAT) and the Respondent Insurance Companies. The liability should be judiciously apportioned based on the demonstrable degree to which each Respondent materially contributed to the necessity, the complexity, and the inordinate length of the proceedings.

Liability of the LAT: The Foundational Jurisdictional Error (Estimated 20-25 percent Liability)

36. The LAT, as a statutory tribunal, initiated the harm by rendering the original *ultra vires* Decision. The Tribunal, in its administrative capacity, committed the fundamental legal error that necessitated the entire Judicial Review. This error, being a jurisdictional flaw, is legally distinct from the procedural faults of the Insurers, yet is the foundational *causa* of the Moving Party's entire expense. The LAT's liability should be limited to a component of the costs that corresponds to the fundamental illegality of the initial decision, or the costs incurred up to the point of the Companies assuming carriage of the substantive defence, which includes the *pre-commencement costs* claimed under Issue 2. **The 20-25% liability reflects the necessary cost of correcting the Tribunal's judicial mistake, but excludes the cost associated with fighting the Insurers' subsequent fraud.**

2. Liability of the Respondent Insurance Companies: The Aggravated and Prolonged Misconduct (Estimated 75-80% Liability)

37. The Insurance Companies are responsible for the subsequent and more egregious procedural misconduct. They actively pursued an indefensible defence, engaged in procedural *mala fides*, and compelled unnecessary interlocutory motions. This conduct is the direct cause of the *protraction* and the *elevated* nature of the costs. Their role moved beyond merely defending the LAT's decision to actively adopting and maintaining an obstructive strategy that inflated the complexity and duration of the litigation, thus justifying the majority of the Substantial Indemnity rate. This strategy of attrition, combined with the evidence of fraudulent documentation, systemic obfuscation of the true obligor (TDHA), and the **collateral criminal attack**, represents a profound institutional failure that demands the imposition of the most severe available sanction. The Insurers bear the substantial majority of the cost liability, given that their litigation conduct prolonged the proceedings, necessitated the uncovering of complex fraud, and warranted the Substantial Indemnity rate.

VII. QUANTIFICATION, INDEMNIFICATION, AND RESTORATION OF THE STATUS QUO ANTE

A. THE BASIS FOR COMPENSATORY PROFESSIONAL TIME (QUANTUM MERUIT AND OPPORTUNITY COST)

38. The Moving Party's request for $250,000.00 for professional time must be viewed not through the limited lens of a standard bill of costs, but as a holistic *quantum meruit* award reflective of the **irretrievable opportunity cost** imposed by the Respondents' misconduct. The Moving Party, possessing advanced professional credentials (BA, JD, CIM), was forced to divert a substantial portion of his intellectual and professional life—equivalent to approximately 2000 hours of senior litigation work—to the relentless task of defending himself against systemic fraud and institutional aggression.

    a. **The Opportunity Cost:** This concept dictates that the cost of pursuing this litigation is not just the value of the time spent, but the value of the *next best alternative* professional engagement that the Moving Party was forced to forego. Given the Moving Party's background, this foregone value significantly exceeds the hourly rate, making the lump sum request a reasonable measure of actual, measurable financial injury.

    b. **The Cognitive Burden on seriously disabled physically (see: MRI in Tab #4 of the Motion Record:** Furthermore, the quantification must account for the unique cognitive and emotional duress involved in simultaneously identifying, proving, and litigating against the Respondents' fraud (OCF-18 forgery, HCAI manipulation, collateral criminal attack). Performing this investigative and legal work *pro se*, while simultaneously recovering from a serious motor vehicle accident, exponentially increased the difficulty and associated stress, justifying the higher end of the professional fee spectrum.

Schedule of Professional Time:

Category of Work	**Estimated Hours Consumed**	**Nature of Work Performed (Detailed Examples)**
I. Jurisdictional/Administrative Analysis	100 Hours	Analysis of the LAT's *ultra vires* decision; SABS regulation review; drafting internal appeals; comprehensive analysis of the administrative record and statutory timelines.

II. Forensic Investigation & Fraud	1000 Hours	**HCAI Data Investigation** (identifying manipulation); *PIPEDA* requests; **Forensic Handwriting Analysis** (OCF-18 vs. Known Hand); documenting the MIG-cap financial contrivance; preparing affidavits on factual fraud.
III. Judicial Review Drafting & Strategy	100 Hours	Drafting the Notice of Application, Comprehensive Factum (including Sections on Fraud, Bias, and *Ultra Vires* action), Affidavits, and detailed reply submissions; legal research on administrative and insurance law.
IV. Procedural & Motion Management	900 Hours	Addressing the Respondent's Record deficiencies (identifying omissions and irrelevance); preparing for and attending interlocutory motions; **Managing the Collateral Attack (Police/Court Forms)**; electronic service management.
V. Costs Submissions & Quantification	50 Hours	Drafting this Substantial Indemnity submission; legal research on the *Young*, *Fletcher*, and *McDougald Estate* cost principles; detailed time-tracking, *quantum meruit* justification, and opportunity cost documentation.
Total Professional Time	**Approx 20000 Hours**	**Valued at $416.67 per hour (Senior Counsel Rate) = $800,000**

39. This total of 2000 **hours** at a rate of **$416.67/hour** provides a transparent and justified basis for the requested indemnification of the work undertaken by the Applicant and Moving Party of **$800,000.00**, representing a necessary indemnification for the complexity and misconduct encountered.

40. The Applicant seeks his disbursements in addition to the same. The award sought is an essential component of the Court's remedial jurisdiction, aimed at restoring the Moving Party to the *status quo ante*—the precise position that would have obtained had the Respondent not embarked upon its unlawful initial decision and subsequent meritless legal trajectory. The imposition of this specific quantum is a necessary mechanism to safeguard the Rule of Law and ensure that the powerful institutional Respondents are strictly held to account for the manifest prejudice inflicted upon the Moving Party.

VIII. CONCLUSION AND RELIEF SOUGHT

41. Within the jurisdictional ambit of the Province of Ontario, the award of costs upon a substantial indemnity basis constitutes a discernible and profoundly exceptional **derogation** from the prevailing **presumptive standard** of partial indemnity. This standard regime, meticulously prescribed by the *Rules of Civil Procedure*, comprises the comprehensive procedural **framework** that governs civil litigation within this **forum**, having been fundamentally **constructed** to foster access to justice through the **mitigation** of financial **disincentives** associated with the adjudicative process. The underlying public policy rationale for the maintenance of the partial indemnity standard is the fundamental societal value placed upon the constitutional right of citizens to the unimpeded presentation of justiciable claims before the courts, thereby preventing the potential for the disproportionate cost consequences of litigation from chilling access to the judicial **edifice**. In this context, the assessment of costs is not merely a quantitative accounting exercise but an act that intrinsically involves the exercise of judicial discretion, which must be executed consistently with the foundational principles of procedural fairness and due process. Such a materially **elevated pecuniary award** is, therefore, reserved for the **manifestation** of truly exceptional **contingencies**, being typically **predicated** upon one of two primary, though non-mutually exclusive, **grounds**. The first ground is the **egregious** and **reprehensible conduct** of a litigant, which must demonstrably **amount** to an abuse of the court's inherent process and is **sanctionable** under the judiciary's **inherent power** to govern its own proceedings and to maintain their dignity. The second ground is the **attainment** of a pecuniary **outcome** at the adjudicative phase that is demonstrably **more favourable** than the applicant's prior formal offer of settlement, a mechanism explicitly **codified** under *Rule 49.10*, the **principal objective** of which is the promotion of litigation efficiency and the **discouragement** of the unreasonable refusal of compromise, irrespective of the underlying conduct of the parties. Notwithstanding the absence of a prescribed, **exhaustive compendium** of justifying criteria, the **jurisprudence** hereinafter delineated, emanating from the superior courts of this province, elucidates the restrictive parameters that govern the exercise of judicial discretion within this critical domain of litigation finance.

42. The pivotal **concept** that **justifies** the imposition of enhanced costs is the presence of *acta* so deficient in **rectitude** that their occurrence necessitates formal judicial **chastisement**. This **reprehensibility** must be **substantive**, providing demonstrable proof of a **calculated disregard** for the opposing party's rights or the procedural integrity of the court. The requisite *mens rea* for such sanctions is typically established by evidence of malice, recklessness, or a calculated **bad faith** which transcends mere negligence, error in judgment, or aggressive, albeit legitimate, advocacy. Conduct that falls short of this **exacting threshold**—such as the unsuccessful pursuit of a novel or difficult legal argument, or the *bona fide* presentation of a legal position ultimately deemed unmeritorious—is **generally insufficient** to **trigger** the award of substantial indemnity, for the right to pursue a claim, even a tenuous one, must be **preserved**. A meticulous distinction must be maintained by the **court** between legitimate, albeit aggressive, advocacy and **sanctionable** misconduct, which is characterized by its wilful, oppressive, or deceitful nature. The determination of reprehensibility must, furthermore, be contextual and demonstrably connected to the increased duration or complexity of the litigation.

43. The following cases are in support of the costs submissions based on the principle of vertical and horizontal stare decisis:

    a. ***McDougald Estate v. Gooderham* (2005):** This **foundational pronouncement** by the Ontario Court of Appeal **solidified** the doctrinal **precept** that costs on a substantial indemnity scale (historically **denominated** as "solicitor-and-client" costs) are fundamentally **reserved** for conduct demonstrably **characterized** as "reprehensible, scandalous or outrageous." This judgment establishes an exceptionally **high threshold** for the imposition of chastisement via an enhanced cost award, emphasizing that the function of costs in such a **context** is distinctly punitive and prophylactic, being intended to deter similar abuses of the court's **precious resources** and inherent dignity. The *ratio decidendi* explicitly **rejected** the notion that the complexity of the case or the quantum of damages alone could justify an enhancement. The Court's reliance upon the historical standard underscores the enduring stricture against the routine imposition of elevated costs.

b. ***Iannarella v. Corbett* (2015):** The Court of Appeal, in this instance, **reaffirmed** that the judicial **warrant** for elevated costs, inclusive of substantial indemnity, is exclusively **warranted** by either patently egregious litigation conduct or substantial success following a formal settlement proposal. It was conclusively **determined** that the mere **espousal** of an "unmeritorious position" by the unsuccessful party does not, *ipso facto*, suffice to justify the increased scale. This distinction is of **paramount importance**, serving to safeguard the right of litigants to pursue claims, even tenuous ones, without undue fear of **disproportionate** financial penalty absent demonstrable *mala fides*. The court emphasized that the failure to succeed is not the equivalent of misconduct; rather, the conduct must be independently assessed for its abusive characteristics.

c. ***Del Giudice v. Thompson* (2021):** The Ontario Superior Court of Justice delivered a **significant award** of substantial indemnity costs (exceeding $1.2 million) against the unsuccessful class plaintiffs and their counsel within a high-profile privacy class action. This decision **transmitted** an unequivocal judicial admonition regarding the prosecution of claims devoid of *prima facie* merit and the undue, deliberate complication of the proceedings. The volume and complexity of the unnecessary **evidentiary** and procedural steps undertaken by the plaintiffs were deemed so **disproportionate** to the merits that they **constituted** an abuse, particularly when such conduct leads to an oppressive burden on the opposing party. The court's analysis underscored the necessity of proportionality in litigation steps relative to the ultimate merits of the claim.

d. ***Barry v. Anantharajah* (2025):** The Court of Appeal validated a substantial cost imposition where the **respondent** had elected to pursue a "zero-offer" negotiating posture. This emphasized the **judicial perspective** that such an uncompromising strategy, even where the eventual damages awarded to the plaintiff were modest and failed to satisfy a formal threshold, may nonetheless **constitute** unreasonable and sanctionable conduct warranting enhanced costs. This **underscores** the judicial **expectation** that litigants must engage in meaningful, good-faith settlement discussions as an **integral component** of the litigation process, lest they face the punitive consequences of an elevated costs

award. An *in limine* refusal to negotiate, without rational **foundation**, can constitute **reprehensible** *acta*, particularly when coupled with a failure to demonstrate genuine commitment to compromise throughout the proceedings.

e. ***Issa v. Aiello*** **(2025):** Enhanced costs on a substantial indemnity basis were **mandated** by the Ontario Superior Court of Justice in this matter due to the applicant's "reprehensible" litigation *acta*. This egregious conduct specifically **encompassed** the prosecution of baseless claims within a will challenge, unsupported by any requisite medical or testamentary capacity evidence. The failure to **adduce** even minimal **substantiation** for allegations impugning the testator's capacity **demonstrated** a reckless disregard for the evidential burden and the attendant expense to the opposing party, thereby needlessly protracting the resolution of a sensitive estate matter. The judicial rebuke in this case reinforces the principle that mere assertion without evidence, especially in matters of high-stakes personal status, constitutes sanctionable conduct.

f. ***Benoit Construction v. Hard at Work*** **(2022):** This judgment, **emanating** from the Ontario courts, illuminated the prospective application of substantial indemnity costs within proceedings initiated under the *Construction Act*, particularly when a party has demonstrably breached contractual obligations, refused payment without legitimate basis, and advanced **unsubstantiated** counterclaims. The persistent advancement of unsupportable defences and counterclaims subsequent to clear contractual breaches was deemed to prolong the dispute unjustly, consuming judicial time and resources through the maintenance of positions known to be untenable. The court recognized the necessity of deterring the use of litigation as a tool for economic coercion

g. ***781526 Ontario Inc. v. Elliott Gerstein*** **(2023):** While ultimately **resulting** in an award of full indemnity costs, this precedent **reinforced** that a **confluence** of actions, such as the deliberate failure to effect full and fair disclosure, the **misrepresentation** of material facts, and the assertion of unsupported allegations of fraud, collectively **constitute** sufficient foundation for the imposition of enhanced cost awards. Such conduct is a direct affront to the administration of justice, striking at the

root of the court's truth-seeking function. The court's willingness to aggregate multiple instances of procedural failure underscores the holistic assessment of a litigant's overall conduct.

h. ***Sawdon Estate v. Watch Tower Bible and Tract Society of Canada*** **(2014):** This case **exemplifies** the judicial exercise of broad **discretion** to award elevated costs, stemming from the specific dynamics and the substandard quality of conduct exhibited throughout the litigation, including a patent lack of legal or factual merit in the opposing party's asserted positions. The court found that the litigation was needlessly protracted due to the intransigence and unfounded claims of the losing party, which elevated the cost and duration of the proceedings substantially. The focus here was on the sustained, systemic recalcitrance demonstrated over the life of the file.

i. ***Pye v. Di Trapani*** **(2024):** The Ontario Court of Appeal affirmed a significant cost and interest award in favour of a plaintiff who achieved a superior outcome following the defendant's unreasonable rejection of settlement overtures. This powerfully **demonstrated** the financial **consequences** attendant upon the failure to engage in reasonable, good-faith settlement negotiations, reinforcing the operation of *Rule 49.10*. The rule operates as an independent, conduct-neutral basis for increased costs, rewarding prudence and penalizing intransigence in the settlement negotiation process. This case highlights the efficacy of the formal offer regime as a powerful instrument of litigation management.

j. ***Laczko v. Alexander*** **(2016):** Reaffirming the **central tenet** that partial indemnity remains the general rule, the Court of Appeal provided a **perspicuous summation** regarding the exceptional nature of substantial indemnity costs, citing grounds such as the failure to comply with mandatory disclosure obligations. *Bayford v. Boese,* 2021 ONCA 533. The persistent, unexcused violation of procedural requirements constitutes an obstruction of the judicial process which warrants censure, particularly where such non-compliance compromises the preparation of the opposing counsel. Further instances of reprehensible conduct, as consistently identified in the jurisprudence, include the improper conduct of cross-examinations, the violation of express court orders, and the unjustified abandonment of

claims or defences late in the proceeding, all of which constitute *acta* that increase the burden upon the opposing party and the judiciary

44. The award of costs on a substantial indemnity scale **serves a dual imperative**: it is simultaneously punitive, serving as a formal judicial rebuke or "chastisement" of the offending party, and prophylactic, acting as a potent **deterrent** against future litigation misconduct. The narrow application of this standard is vital; were it to be deployed broadly, it would invariably **chill legitimate** access to the courts, a **fundamental constitutional** entitlement guaranteed under the *Canadian Charter of Rights and Freedoms*. The tension between sanction and access is resolved by reserving the highest sanctions for the most profound abuses, ensuring that mere adversarial zeal is not confounded with deliberate misconduct. Therefore, the court's authority to award substantial indemnity costs under *Rule 57* is wielded with **circumspection**, being reserved for those instances where the conduct amounts to an **indisputable abuse**, demonstrating a subjective *mens mea* of malice, recklessness, or calculated bad faith. This contrasts sharply with mere tactical error or flawed legal judgment. The analysis necessarily **encompasses** not only the *acta* committed during the interlocutory or trial phases but also the antecedent circumstances that occasioned the very necessity of the litigation (*Mars Canada Inc. v. Bemco Cash & Carry Inc.*, 2018 ONCA 239, at para. 43). The court's jurisdiction to award such costs is an expression of its **supervisory duty** to ensure the fairness and efficiency of its processes, guaranteeing that the rules of engagement are respected by all participants.

45. The operation of *Rule 49.10* constitutes the second and distinct mechanism for the elevation of cost awards, one that is explicitly conduct-neutral. The imposition of increased costs under this provision is automatic upon the fulfillment of specific mathematical criteria: the successful litigant must have made a formal offer to settle, the offer must not have been withdrawn or expired, and the outcome achieved must be equal to or more favourable than the terms of the offer. The judicial intent underpinning this *Rule* is purely functional and economic, designed to exert compelling financial pressure upon litigants to realistically appraise the merits of their respective positions and to refrain from the unreasonable rejection of prudent settlement

proposals. The automatic nature of the penalty is critical, removing the subjective element of assessing *mala fides* and allowing for an objective determination. The court retains a residual discretion under *Rule 49.13* to refuse to apply the cost provisions of *Rule 49.10* where the interest of justice so dictates; however, this discretion is exercised sparingly, only in those narrow circumstances where the strict application of the rule would lead to a manifest injustice, such as where an element essential to the litigation was unknown to the party refusing the offer at the time of refusal. This formal offers regime acts as a parallel structure to the conduct-based sanctioning power, collectively optimizing the efficiency of the court docket.

46. The imposition of cost sanctions **represents** an intrinsic tension between two competing public policy objectives: the **necessity** of maintaining free and **unimpeded** access to the courts, and the imperative of ensuring the courts are not utilized as instruments of oppression or vexatious prosecution. The standard of partial indemnity is the legislative **mechanism** employed to **strike** this balance, rendering litigation economically **viable** for parties acting *bona fide*. When a litigant commits *acta* that **transgress** the bounds of fair play, such as dishonesty, delay, or the fraudulent presentation of evidence, the balance is deliberately **shifted**. The punitive cost award then acts as a necessary **counterweight**, **reaffirming** that the privilege of access to the judicial *forum* is conditional upon adherence to the fundamental principles of honesty and **candour**. Failure to impose severe sanctions in cases of demonstrable abuse would effectively license the **perpetuation** of misconduct, thereby jeopardizing the foundational legitimacy of the judicial system itself. The prophylactic function of the award is thus equally important as the compensatory, serving notice to the legal community that such infractions shall be met with an unyielding judicial response.

47. A precise and jurisprudentially significant demarcation **exists** between the two tiers of elevated cost awards, each corresponding to a differing quantum and severity of judicial **disapprobation**. This distinction is critical for maintaining the coherence of the cost-sanctioning **framework** and ensuring proportionality between the misconduct and the financial penalty.

    a. **Substantial Indemnity Costs:** These are formally **calculated** as 1.5 times the quantum of partial indemnity costs and **represent** the primary elevated scale of costs habitually utilized when the court

seeks to formally express its censure regarding the conduct of a party involved in the litigation. The **imposition** of this scale seeks to shift a significantly greater proportion of the innocent party's legal expenditure back to the transgressing litigant, without necessarily **achieving** complete indemnification. The use of the term "solicitor-and-client costs" has, for many years, been confined to the jurisprudence as the historical nomenclature, replaced by the more precise "substantial indemnity" scale, signifying the fixed mathematical relationship to the partial indemnity scale.

b. Full Indemnity Costs: This term, devoid of a precise formal statutory definition in the *Rules,* is universally **understood** to signify the "complete reimbursement of all amounts a client has had to pay his or her lawyer in relation to the litigation." (*Davies v. Clarington (Municipality)*, 2009 ONCA 722, 100 O.R. (3d) 66, at para. 13). This highest tier aims to restore the successful litigant to a pecuniary *status quo ante* with respect to legal fees, effectively making the innocent party whole. The inherent power of the superior courts to award full indemnity costs **derives** from the need to prevent the court's own procedures from being rendered futile by the conduct of a litigant and to ensure that no party is financially prejudiced by the extreme abuse of another party.

48. The distinction in application is crucial: substantial indemnity is the "elevated scale of costs normally **resorted** to," whereas conduct warranting the ultimate sanction would necessarily have to be "especially egregious to justify the highest scale of full indemnity costs." (*Net Connect Installation Inc. v. Mobile Zone Inc.*, 2017 ONCA 766, at para. 8). An imposition of costs on a full indemnity basis is, therefore, reserved for those truly rare and **exceptional circumstances** wherein the court deems it necessary to chastise a litigant for conduct of which the court unequivocally **disapproves** (*Davies*, at para. 30). The difference between the two scales is often **characterized** as a **spectrum** of *mala fides*, where full indemnity necessitates not merely reprehensible conduct, but behaviour that fundamentally **undermines** the rectitude of the entire judicial process through intentional dishonesty or gross obstruction

49. The egregious forms of *mala fides* conduct which may **necessitate** an award of costs on a full indemnity basis are those actions that directly **assail** the integrity of the judicial *forum* itself, effectively rendering the litigant's

3505 *acta ultra vires* the legitimate bounds of the adversarial system. These include, but are not limited to, the following high-impact *acta*:

a. The fabrication of exculpatory or inculpatory evidence, thereby **obstructing** the court's ability to discern the truth (*Net Connect*, at para. 9); this represents an attack on the **foundational evidentiary** process.

b. The deliberate failure to be **forthright** regarding documentary disclosure, the fraudulent creation of documents, the assertion of false testimony under oath, and the calculated attempt to perpetrate a fraud upon the opposing party and the court itself (*Pirbhai v. Singh*, 2011 ONSC 1366, at para. 119). Such acts **constitute** a profound breach of the duty of candour owed to the court.

50. It is a recognized judicial **prerogative** to consider not only the conduct demonstrated during the litigation *per se*, but also the foundational circumstances that instigated the commencement of the legal action (*Mars Canada Inc. v. Bemco Cash & Carry Inc.*, 2018 ONCA 239, at para. 43; *Davies*, at para. 30). Where the *actus reus* of the misconduct lies in the creation of the underlying cause of action itself—for instance, the fraudulent execution of a document—the misconduct is both antecedent to and pervasive throughout the litigation. The court is thus entitled to conduct an expansive inquiry into the entire factual matrix of the dispute

51. The appellant's requisition for costs **calculated** on a Substantial Indemnity basis is predicated upon the demonstrable fact that the narrative advanced by the respondent at the trial level, and subsequently **countenanced** by the presiding judge, asserted the authenticity of a Will purportedly witnessed by two individuals. As subsequently and definitively ascertained by the appellate jurisdiction, this was not the veracious *status quo ante*. Indeed, the attesting parties affixed their signatures subsequent to the demise of the testator. In essence, it is **posited** that the respondent endeavoured to perpetrate a fraud upon the judicial process, a clear and deliberate attempt to mislead the court by presenting fabricated testamentary documents as genuine. This is not a matter of mere unmeritorious defence, but rather an active and **sustained campaign** of deception, fundamentally compromising the integrity of the proceedings and the reliability of the evidence presented.

52. The syllogistic conclusion is thus self-evident and utterly **inescapable**: the egregious and *mala fides* conduct of the Respondents throughout the entirety of the application **constitutes** a recognized, exceptional circumstance under Canadian jurisprudence. The substantiated evidence pertaining to the fraudulent documentation, systemic administrative obfuscation, corporate non-disclosure, judicial conflict, and the unwarranted **weaponization** of the criminal process **compels** the deployment of the Court's most fitting elevated cost sanction. The cumulative effect of the Respondents' actions **demonstrates** a systemic failure to uphold the most basic and fundamental tenets of good faith, fairness, and procedural integrity. The conduct is not merely censurable; it is, *ipso facto*, deserving of the Court's unequivocal and decisive condemnation. As was **held** by the Supreme Court of Canada in *Young v. Young*: Solicitor-client costs are generally awarded only where there has been reprehensible, scandalous or outrageous conduct on the part of one of the parties.

53. The magnitude of the Moving Party's comprehensive success, coupled with the necessity of judicial deterrence to prevent the recurrence of such institutional *acta*, mandates a final determination that is both fully compensatory and punitive in its effect, operating as a clear judicial repudiation of the Respondents' litigation methodology. The sustained nature of the misconduct, spanning multiple procedural steps and implicating the foundational evidence of the dispute, elevates the severity of the transgression beyond the mere technical to the realm of a structural attack on the administration of justice.

54. The **imposition** of Substantial Indemnity is not merely a compensatory function, but a definitive judicial declaration that such a profound abuse of process is strictly **prohibited** and will be decisively **penalized**. The award serves to unequivocally reinforce the sanctity of testamentary documents and the necessity of complete candour when such documents are presented before the court. It is, therefore, respectfully **petitioned**, with the utmost **deference** and rhetorical conviction, that a final judgment be rendered in favour of the Moving Party for the entirety of the amount sought, being **$800,000.00** upon a **Substantial Indemnity basis** plus disbursements, with the primary **apportionment** of liability directed against the Respondent Insurance Companies, augmented by the requested prejudgment and post-judgment interest at the prescribed statutory rates. This definitive award is **requisite** to properly reflect the gravity of the circumstances, the magnitude of

the Moving Party's vindication, the profound personal cost borne by the Moving Party *pro se*, and the imperative need for judicial deterrence, thereby ensuring that justice, in both substance and form, has been demonstrably served and that the institutional Respondents are strictly held to account for their patent transgressions of proper legal conduct.

55. It must be remembered that this Accident on the Accident Date was yet another example of the Epstein Cole LLP Client engaged in his puppeteering of others and it was and is an "Attempted Murder". Because of vehicle was used makes it more egregious. How could it not be when TDIA Group promptly yet unlawfully cancelled the TD My Advantage App after the Accident? Moreover, when faced with SNIC providing the personal information to the Applicant after the PIPEDA request of it, it breached PIPEDA and then engaged in the fraudulent shifting from SNIC and TDGIC that was all sanitized by the LAT.
56. As opposed to those engaged in the conspiratorial scheme of the Attempted Murder facing criminal sanctions and lengthy federal penitentiary sentences, a just result is the Respondent Insurance Companies footing (heavily) (pardon the pun considering the type of high velocity rear ender committed on the Applicant on a slight grade North of St. Clair Avenue on Spadina Road (not avenue)) the costs bill in conjunction with the LAT sharing the same.
57. Our fellow Canadian Citizens and Ontario residents do not need the criminal justice system utilized any more than it already has by the fraud in the False Information Package.
58. Subject to any amendments to the same for current purposes of which the Applicant reserves his rights, the Applicant thanks the Honourable Divisional Court by way of a presiding judge over this NOM #3, naturally dovetailed to the relief sought in NOM #2, all unopposed, and NOM #1, unopposed by the LAT – as neither the LAT nor the Respondent Insurance Companies "filed" or "delivered" their Notices of Appearances.

ALL OF WHICH IS RESPECTFULLY SUBMITTED ON THIS 26th OF NOVEMBER 2025

Kevin Alexander McLean
Applicant in Propria Persona

Moving Party – pro se

APPENDIX #A: RECENT EMAILS POST THE CONFIRMATION OF MOTION

Gmail

Mr. Kevin McLean <mcleansettlement@gmail.com>

Re: LAT's Notice of Appearance : McLean v. TD Home and Auto Insurance et al. : 718/24

Mr. Kevin McLean <mcleansettlement@gmail.com>
To: "SCJ-CSJ Div Court Mail (JUD)" <scj-csj.divcourtmail@ontario.ca>
Cc: "Maciel, Milene (MAG)" <Milene.Maciel@ontario.ca>, "Collie, Connor (MAG)" <Connor.Collie@ontario.ca>, "Pasquini, Heather" <Heather.Pasquini@tdinsurance.com>, Div Court Schedule
"Nieuwland, Matthew" <Matthew.Nieuwland@tdinsurance.com>, "Boyce, Jesse (MAG)" <Jesse.Boyce@ontario.ca>, "Im, Judie (She/Her) (MAG)" <Judie.Im@ontario.ca>, "Imafidon, Isibhakhor
<Isibhakhomen.Imafidon@ontario.ca>, christiana.ortiz@tdinsurance.com, NCQ-AQC.Toronto@justice.gc.ca, AGC_PGC_OTTAWA@justice.gc.ca, farnoush.pournejati@ontario.ca

PRIVATE AND CONFIDENTIAL
Date: November 26, 2025

To: The Honourable Judges of the Divisional Court and the Within-Named Respondents

From: Mr. Kevin A. McLean (BA, JD, CIM)

Sending Method: Via Electronic Transmission

Creation Method: Dictated with Voice Recognition Software (Reservation of rights to correct any grammar, syntax, important qualifiers, or improper double negatives is expressly asserted).

SUBJECT I: Confirmation of Payment and Filing Status of the Motion Record (the "Motion Record") in the Ontario Courts Public Portal (the "OCPP")

SUBJECT II: Request for Immediate Access to the Case Centre (the "Case Centre") in Advance of the Hearing Date Pursuant to *Rule 4.05.3(4)*

I cordially write regarding the above Subjects of this correspondence. I thank you in advance for your time and consideration of this correspondence and its attachments (by reference or inclu valuable resources which is why I have taken immense time to research the legal issues herein and apply them to the facts herein. The present document serves as an official record, meticul judicial effort necessary for comprehension of the procedural posture, thereby facilitating an efficient and efficacious resolution. The complexity of this matter demands meticulous procedural f have assiduously adhered throughout this **JRPA** proceeding.

I adopt all definitions from previously, indirectly or directly, cited correspondence.

I. Preliminary Confirmations and Current Technical Impediments to Finalization

This correspondence serves to confirm the successful remittance of the requisite fees, where applicable, for the **Motion Record** (comprising, *inter alia*, Notice of Motion #3, the Factum, and a of service, and the Confirmation of Motion (the "**Confirmation**") within the **OCPP**. This successful financial transaction, the particulars of which are appended hereto as **Appendix II**, represen protracted efforts to navigate the initial iterations of the **OCPP**, which previously exhibited an **in limine** reluctance to recognize certain file formats or resolve encrypted document properties.

It is acknowledged that the **OCPP** constitutes an estimable interface, capable of accommodating substantial documentation, and that the integrated payment module functions with commenda facility stands in contradistinction to the preceding difficulties encountered, thereby underscoring the continual improvement in the Court's technological infrastructure.

Receipt is also hereby confirmed of the electronic mail communication disseminated by the Government of Ontario, which specified the linkage of the **Case Centre** platform with the MyOntari account had been previously established under the auspices of Thomson Reuters, the account has persisted and been migrated to the MyOntario framework, thereby maintaining the **status** digital identity and associated procedural history.

The Persistence of the Current Technical Impediment

Notwithstanding the foregoing successes in payment and portal navigation, a singular, refractory technical challenge has materialized this afternoon. An attempt was made to upload a consoli expedient measure intended to streamline judicial review—which included the **Confirmation** appended with the two Divisional Court *Judicial Review Procedure Act* (the "*JRPA*") Guides, mate **Confirmation's** substance. This unitary upload was regrettably met with a pervasive **403 error code** within the **OCPP**. This systemic failure to process a correctly structured submission is de that **ipso facto** precluded the finalization of the comprehensive filing. The resolution of this technical anomaly is, therefore, a necessary precondition to the full and timely electronic submissio without which the filing cannot be considered procedurally complete. Until this technical defect is cured, the integrity of the electronic record remains compromised, an outcome that is, natural context of judicial review.

II. Imperative Necessity for Case Centre Access and Chronological Compliance

Pursuant to the **Confirmation** and the prevailing *Rules of Civil Procedure* (the "**Rules**"), it is mandated that all filed documentation be uploaded to the **Case Centre** within a strict temporal fra transcends mere procedural formality; it is an **acta** essential for the proper administration of justice, ensuring the Bench and all parties have commensurate access to the complete record. **Ru** part, a mandatory deadline:

> "**(4) Subject to subrules (4.1) and (5), the documents listed in subrule (3) must be uploaded to Case Center by the following deadline:
>
> 1. In the case of the hearing of a motion or application where the party is required to give the registrar a confirmation of motion (Form 37B) or confirmation of application (Form 38B three days before the hearing date, unless the court orders otherwise."**

This provision establishes a **prima facie** obligation for the User to effect the uploading of the relevant documents no later than 2:00 *post meridiem* on **Friday**, given the chronology of the impe this procedural matter is non-negotiable, and any failure to meet this *tempus* could potentially prejudice the User's position.

The esteemed Ms. Gentles, Registrar (the "**Registrar**") of the Divisional Court, is appropriately exempt from the provisions of *Rule 4.05.3(4.1)*, which explicitly stipulates that the **Registrar** ca uploading of documents on behalf of a party. This distinction correctly places the administrative burden of electronic transmission upon the party, ensuring clear lines of responsibility. Furtherm inapplicable, as the matter at hand is a Motion, not a Trial, and the **Confirmation** was timely transmitted via electronic mail to the Divisional Court, in strict accordance with the requirements o obviating any requirement for transcripts at this juncture.

Analysis of the Apparent Regulatory Inconsistency and the Role of the Registrar

There appears to be a minor inconsistency **per se** concerning *Ontario Regulation 226/25* (the "*Regulation*"), which became effective in early October 2025, specifically regarding proceedings —a geographical designation applicable to the *JRPA* Proceeding herein (as detailed in **Appendix I**). The *Regulation* pertains to documents filed or residing within the Court file, creating a cru between the **Registrar's** mandated duties and those of a designated "party" concerning the chronological uploading of documentation. The scope of the **Registrar's** authority is not *ultra vires* procedural application of the *Regulation* requires judicial clarification to ensure consistency with the spirit of the **Rules**.

Upload Intent and Entitlement to Unfettered Access Status

In light of the preceding technical delays and the User's commitment to facilitating a comprehensive review by the Court, the intention to upload the previously filed Compendium is hereby rea conventional dispensation accorded to unopposed or consent motions. This is a voluntary act of procedural diligence.

The User possesses a prior, inchoate entitlement to access the **Case Centre** stemming from the initiation of the *JRPA* Proceeding over one year prior. This access is not a gratuity but a neces punctual compliance with the prescribed deadline, the immediate and unfettered grant of access to the **Case Centre** is absolutely essential. The Divisional Court is respectfully solicited to furr preferably by the conclusion of the present business day, to allow for the indispensable acclimation to the **Case Centre** protocols and to verify the consistency of the **Registrar's** prior uploads verification is crucial to ensure that the documentary record upon which the Court will ultimately rely is accurate and complete.

It is posited that only the User's filings shall presently reside in the **Case Centre**, as the Respondents have not yet filed materials. Should any Non-Respondents or Non-Parties seek leave to Appearance or similar instrument, the onus for their respective uploading responsibilities shall attach solely to them. The User is entitled to be apprized of the status of all "filed documents," as existing *per se* within the overall Court file, so that no ambiguity exists concerning the record *in limine*.

For the purpose of effecting the immediate invitation, the designated electronic mail address is the one used for this correspondence, and the designated Username is **kmack1983**.

I will have my Costs Submissions to the Respondents today along with a copy to the Non-Respondents.

Yours most appreciatively and gratefully,

/s/Mr. Kevin A. McLean (BA, JD, CIM)

Mr. Kevin A. McLean (BA, JD, CIM) (he/him)

Appendix I: Citation of Amending Regulation

ONTARIO REGULATION 226/25

Made under the

Courts of Justice Act

Made: September 29, 2025

Filed: October 1, 2025

Published on e-Laws: October 1, 2025

Published in The Ontario Gazette: October 18, 2025

Amending *Reg. 194 of R.R.O. 1990 (RULES OF CIVIL PROCEDURE)*

Appendix II: Confirmation of Payment Particulars

The particulars of the successful remittance of the requisite filing fees within the **OCPP** are hereby documented:

- **Receipt Number: 25D3-0F4F-4A06-8CF8**
- **Receipt Type: Filing Fees**
- **Payment Processor Number: 34836269**
- **Purchased By: Kevin Alexander McLean**
- **Status: Authorized**
- **Amount: $339.00**

Yours faithfully,

/KAM

Mr. Kevin A. McLean (BA, JD, CIM)

Sender's name: Mr. Kevin Alexander McLean (BA, JD, CIM)

Sender's address: 410-775 King Street West, Toronto, Ontario, M5V 2K3

Sender's Telephone Number: (647) 370-9354

Sender's email address: mcleansettlement@gmail.com

On Tue, Nov 25, 2025 at 10:25 PM Mr. Kevin McLean <mcleansettlement@gmail.com> wrote:

> **Dear Sirs/Mesdames:**
>
> **RE: ACKNOWLEDGEMENT OF CORRESPONDENCE AND IMPUTATION OF NON-DISCLOSURE**
>
> ## I. PROLEGOMENON TO CORRESPONDENCE
>
> The receipt of the automatic reply issued by Ms. Im, a barrister and solicitor designated to the Ministry of the Attorney General (MAG), Crown Law Office—Civil Division (CLO-C), whose pro confirmed as 720 Bay Street, 8th Floor, Toronto, Ontario, is hereby formally acknowledged. This confirmation of Ms. Im's professional designation and location is noted as being coterminou thereby establishing a necessary point of jurisdictional and professional reference.
>
> ## II. CIRCUMSTANTIAL EVIDENCE AND IMPUTATION OF MOTIVATION
>
> **A. Discovery of Extrinsic Evidence Pertinent to Costs Submissions**
>
> In the *actus* of verifying the precise street address of Ms. Im, an unforeseen journalistic article—heretofore unknown to the author—was serendipitously discovered via a common-law digita which details the substantial investment of taxpayer-funded Crown counsel hours expended in litigation concerning the nondisclosure of Ministerial Mandate Letters, is appended for conside *canada/toronto/crown-lawyer-hours-ford-mandate-letters-1.6891876*.
>
> It is expressly stipulated that while a complete and exhaustive perusal of the entirety of the aforementioned article has not yet been conducted, reliance shall be placed upon the factual ass subsequent submission of costs and the extrapolation of similar *fact* evidence. The discernible pattern of preserving informational secrecy appears to constitute a thematic element central t posture in specific instances.
>
> **B. Affidavit Evidence Pertaining to Effort Expended**
>
> While the intent is not to *castigate* or engage in *ad hominem* attacks upon the professional integrity of the involved parties, an affirmation has been personally sworn and duly submitted deta time and attendant resources necessarily devoted by this party. This expenditure was occasioned by the protracted and seemingly deliberately circuitous engagement with personnel from th administrative staff of the court operations (inclusive of managerial cadres). The objective of such engagement was the procurement of documentation to which *prima facie* entitlement is co pursuant to the provisions delineated in **Section 7 of the *MAG CSD Court Information Access Guide***.
>
> ## III. LACK OF FORMAL APPEARANCE AND PROSPECTIVE RELIANCE
>
> It is an indisputable factual premise that the Ministry of the Attorney General has not, in any manner or form, submitted or served a Notice of Appearance in this matter.

ex post facto, the resultant inferences and circumstantial evidentiary deductions, which are inextricably linked to the demonstrable lack of comprehensive and timely disclosure, shall be meticu presented within a formalized submission dedicated to the quantification and imposition of costs at the jurisprudentially opportune moment. The absence of a formal appearance thus serves certain actions or, conversely, inactions regarding disclosure were undertaken with a specific, though perhaps unstated, litigation strategy or objective in mind.

I provide the above as a courtesy and to ensure that there has not been justification or excuses laid that notice was not given even on the slightest of issues inclusive of costs (i.e. someone available).

On my brief perusal that case which the SCC overturned the lower court's turned on Cabinet confidentiality which is not at issue herein but nonetheless indicative of non-disclosure from a s especially in light of Derenzis and my due diligence efforts which remain ongoing.

IV. ENCLOSURE

Appendix A: Automated Electronic Communication

The following textual excerpt from the automated electronic communication dispatched by Ms. Judie Im (She/Her), Barrister and Solicitor, is reproduced for complete evidentiary record:

> **Im, Judie (She/Her) (MAG)** 8:20 PM (1 hour ago) to me
>
> I am out of the office, with limited access to email. If this is an emergency, please contact Farnoush, my legal assistant, at farnoush.pournejati@ontario.ca, during office hours. Thank

Yours faithfully,

/KAM

Mr. Kevin A. McLean (BA, JD, CIM)

Sender's name: Mr. Kevin Alexander McLean (BA, JD, CIM)

Sender's address: 410-775 King Street West, Toronto, Ontario, M5V 2K3

Sender's Telephone Number: (647) 370-9354

Sender's email address: mcleansettlement@gmail.com

On Tue, Nov 25, 2025 at 8:19 PM Mr. Kevin McLean <mcleansettlement@gmail.com> wrote:

Court file number: Court File No. DC-24-00000718-00JR
Type of document: email with attached emails from a representative of the DAG and my response
Short title of proceeding: *McLean v. TDHA et al*
Party: Mr. Kevin A. McLean (B.A., J.D, CIM) (mcleansettlement@gmail.com

Dear DC (Registrar and Local Registrar) and the Respondents by their counsel by email representations (but not filed documents):

The present letter is formally tendered for the record, addressing the Honourable Court and all **persons** and your clients herein (where applicable). Confirmation is hereby effectuated that due service of the Confirmation of Motion has been accomplished upon all Non-Respondents possessing a dem the subject proceeding. Furthermore, a definitive response has been formulated subsequent to the thorough and measured consideration of an electror received on the preceding Friday, the complete contents of which were reviewed *in extenso* on the current date; this response was critically assessed a prior formal requisition addressed to the Honourable Deputy Attorney General of Ontario (hereinafter designated as the "DAG"). A facsimile of the afore appended hereto for immediate reference. Should the exigent nature of the motion necessitate such disclosure, this material may be submitted for the j presiding Justice, specifically concerning the necessary determination of whether documentary or other material evidence was subjected to disposal pr purported directives and concurrent approbation of the Chief Justice of the Superior Court of Justice (The Honourable Mr. Justice Morawetz), the found representation has been accepted *prima facie*.

A critical corollary of the Deputy Attorney General's explicit repudiation of signature upon the *Criminal Code* Form 4 Indictment is the effective transfere regarding the instrument's authentic provenance. **The negation of ministerial involvement necessitates that the Originating Judicial Precinct or t must demonstrate, with requisite particularity, the agent or officer who formally executed and preferred the charging instrument, thereby ens integrity of the commencement of the criminal process.** This evidentiary vacuum, created by the absence of a verifiable ministerial fiat, compels juc administrative chain of custody and the delegated authority under which the Indictment was filed, an examination that must proceed concurrently with tl

ANALYSIS OF MATERIAL FACTS, NON-DISCLOSURE, AND PROSPECTIVE EVIDENTIARY DISCLOSURE

The proceedings must acknowledge the materially significant facts that have been either discovered or have arisen *ex post facto*—specifically the disce non-disclosure pertaining not only to the executed arrest warrant but also to the *Criminal Code* Form 4 Indictment. **The gravamen of this non-disclos withholding of facts fundamental to the Applicant's comprehension of the *ratio* underpinning the original judicial process, which non-disclos compounded by the substitution of the originating charge with a subsequent False Information Package.** This systemic substitution prevented t engaging in a substantive defense predicated upon the true nature of the originating accusation, thereby establishing the necessary elements for the es fraud: a false representation (or omission), knowledge of its falsity, intent to deceive, and reliance that resulted in detriment to the Applicant. A solemn u proffered that all **persons** shall be promptly apprised should any further substantive evidence or informational data be subsequently obtained. Notwiths commitment to the rigorous exercise of due diligence, and in adherence to the requisite spirit of *bona fides*, the appended evidentiary materials shall co basis of reliance for the scheduled judicial hearing of December 3, 2024, premised upon the comprehensive rationale articulated hereinafter.

For the purpose of maximal procedural clarity and concision, the detailed enumeration of the underlying rationales for reliance is found within the apper all Counsel of Record and Litigants (*vide*: Appendix #1, Sections II and III).

Juridical Syllogism Regarding Unidentified Principal-Agent Relationships and Material Non-Disclosure

It is logically and legally incumbent upon the proceedings that the following assertion be acknowledged: should the Respondent Insurance Companies, Tribunal (LAT), or Mr. Weir, or the Ministry of the Attorney General (MAG), have possessed any degree of involvement in the origination of the criminal Applicant—notwithstanding the fact that said complaint was subsequently rendered non-procedural through the substitution of the False Information Pa involvement remain undisclosed and *ignotum* at the present juncture, such circumstance would constitute a fact *arising* and/or a fraud *arising* subseque

development would necessarily be deemed to have reasonably and materially vitiated the judicial outcome. **The doctrine of *ultra vires* agency, while limits of delegated authority, cannot be permitted to shield the corporate or governmental principal from the imputation of knowledge or liab misfeasance or non-disclosure is demonstrably linked to the origination of the impugned judicial process.** Conversely, the individual liability of in public office, predicated upon bad faith or malice, operates independently of the principal's immunity, offering an alternative avenue for remedial judic the existence of such an undisclosed nexus is, *in limine*, frequently unknown to the presiding judicial officer under conventional procedural paradigms, t demonstrably engenders a unique and unprecedented legal issue within this particular sphere of jurisprudence, thereby warranting exceptional judicial A principled, non-derogable obligation is submitted to rest upon all officers of the court to formally adduce any evidence pertaining to their substantive k demonstrable absence thereof concerning these material facts. **The disclosure required transcends merely the known facts and encompasses th inquire into the institutional knowledge held by the respective governmental or corporate clients that may bear relevance to the integrity of t** failure to make a requisite disclosure of such pertinent information, followed by the subsequent discovery of the same through the Applicant's rigorous a due diligence, would *ipso facto* and demonstrably engender another potential opportunity to formally institute a motion pursuant to *Rule 59.06(2)(a)* of t *Procedure*, concerning the setting aside or variation of an order on the basis of a matter arising subsequent to the making of the order, as is definitively procedural framework of this Province, in contradistinction to the less rigorous processes extant in other jurisdictions.

Judicial Precedent Pertaining to Suability and the Scope of Remedial Efficacy

It is acknowledged that no definitive inference may be drawn from the courteous and meticulously articulated electronic mail correspondence tendered 2024 (***vide***: Appendix #2). However, it is now judicially observed, with the benefit of the pronouncement by the Ontario Court of Appeal (ONCA) in *Grati Technologies Inc. v. Ontario*, 2010 ONCA 501, that the procurement of declaratory or injunctive relief cannot be permissibly sought *per se* against a nor such as the aforenoted commission, owing to its inherent legal incapacity to be subjected to suit. The *ratio decidendi* of the ONCA explicitly determined 1992, did not expressly or implicitly confer such legal capacity, and, critically, that the inclusion of a claim for declaratory and injunctive relief does not, *i* augment the entity's susceptibility to suit. The pertinent excerpts from this decision are hereby reproduced:

The Commission was not a suable entity. It was a non-corporate entity and was not expressly liable to suit by the terms of the Act. The Act d indication of a legislative intent that legal capacity to be sued should be inferred of the Commission. Indeed, the provisions of the Act relatin significantly undercut that suggestion. As the Commission was not a suable entity, it was irrelevant that the claim was for declaratory and in damages. The liability to suit of non-corporate statutory entities is not augmented where declaratory or injunctive relief is claimed.

The claim against the subcommittee members was for misfeasance in public office. The core of their pleading against the subcommittee members cons

allegations of bad faith, actual malice and bias. To avoid the protective ambit of the immunity from suit provision in s. 31(1) of the Act, sufficient facts ha assertions of bad faith or malice. Moreover, in cases involving allegations of malice, rule 25.06(8) of the Rules of Civil Procedure requires that full partic plea of malice is insufficient to defeat a rule 21.01(1)(b) motion. The only substantial facts pleaded by the plaintiffs were assumptions and speculations underlying the conduct of the subcommittee members and that the asserted facts were nothing more than legal conclusions or bald assertions of bad fa and obvious that the statement of claim did not disclose a reasonable cause of action against the subcommittee members. As the individual defendants was similarly not liable.

This pivotal distinction between the non-suable statutory entity and the suable individual acting in an official capacity is paramount to the es current *locus standi*. Specifically, the availability of injunctive and declaratory remedies against individuals, notwithstanding the non-suabilit principal, ensures that the judicial review process retains efficacy in compelling compliance with judicial mandates. The nomination of Mr. We the capacity of Executive Chair of Tribunals Ontario, therefore serves to provisionally satisfy the jurisdictional threshold, enabling the judicial interventio non-disclosure. The selection of this procedural anchor permits the Court to issue binding orders directed towards the non-corporate **persons** who mai over the requisite documentation or whose actions gave rise to the dispute, thereby avoiding the structural impediments imposed by the *Gratton-Masuy* entity itself.

The advent of the *Tribunals Adjudicative Records Act, 2019* (TARA) and the creation of "Tribunals Ontario" as a non-incorporated umbrella o further layer of complexity to the suability analysis. While *TARA* imposes specific duties regarding the creation, retention, and public access of adju tribunals themselves, the organizational structure of "Tribunals Ontario" as a mere collective reference or administrative body, rather than a distinct, sua raises a material question: how can such an entity, which is not an adjudicative tribunal in itself (*vide: Derenzis*), be the ultimate repository or records ho incapable of being sued? The principle articulated in *Gratton-Masuy* suggests that an umbrella organization lacking its own express statutory capacity t liability augmented simply by being named as the custodian of records. Notwithstanding this, the overarching Crown liability for the conduct of an adjud various statutes, including the *Administration of Tribunals and Government Agencies Act, 2019* (ATGAGA), remains a factor to be reconciled within the current application. **The confirmed refusal by the LAT to provide copies of the two undisclosed Motion Orders, whether pursuant to *TARA* or, i *Freedom of Information and Protection of Privacy Act* (FIPPA), substantiates the necessity of compelling production via a judicial order direc individuals or the appropriate Ministerial entities.**

Accordingly, the prior nomination of individuals, specifically Mr. Weir, in various capacities may be considered fortuitous, thereby establishing a provisio the *ad hoc* purpose of seeking the relevant remedies pursuant to Notice of Motion Number Three (NOM #3). Notwithstanding the potential limitations im jurisprudence, formal notification of this assertion is hereby provided to all interested **persons**.

Consideration of Procedural Propriety and Remedial Scope

It is incumbent upon this submission to formally address the subsequent assertions proffered via electronic communication from Senior Counsel Ms. Im inclusion of Her Majesty the Queen, utilizing an archaic template reference to the Queen as opposed to the King, was procedurally questionable is ackn *de minimis* error does not vitiate the overall validity of the judicial review application, given that the Crown remains a *de facto* **person** via the Attorney G requirement pursuant to *section 9(4) of the Judicial Review and Procedures Act (JRPA)*.

Furthermore, the contention that the Licence Appeal Tribunal (LAT) must be formally named as a respondent, pursuant to *section 9(3) of the JRPA*, is a duly noted. Nonetheless, the operative consideration remains that the declaratory and injunctive relief sought by NOM #3 is principally directed toward documentation held by the nominated individuals and non-Respondent entities. As the *JRPA* permits the issuance of injunctive and declaratory relief ge compelling need to compel the production of records controlled by individuals like Mr. Weir or entities within the Ministry's purview, the application for ju viable even without the formal designation of the LAT as a suable person. The Tribunal's failure to effectuate proper delivery and filing of its own Notice Review, as asserted, further complicates the jurisdictional landscape but does not mitigate the need for the immediate judicial intervention sought by the

While I believe that most of what Ms. Im was articulating was correct on many technical levels, I believe that the Attorney General is entitled to participa JRPA Application – not necessarily a hearing as a matter of right but perhaps a moot issue.

This comprehensive submission is trusted to be deemed of material assistance in the Court's deliberations. **The totality of the aforementioned proce especially the denial of signature by the DAG and the continued refusal to disclose the Motion Orders by the LAT, is advanced at this junctur submissions regarding costs, thereby ensuring that the Court is apprised of the current factual and procedural *status quo* ante.**

In Fidem,
/KAM

Mr. Kevin A. McLean (BA, JD, CIM)
Sender's name: Mr. Kevin Alexander McLean (BA, JD, CIM)
Sender's address: 410-775 King Street West, Toronto, Ontario, M5V 2K3
Sender's Telephone Number: (647) 370-9354
Sender's electronic mail address: mcleansettlement@gmail.com

APPENDIX #1: TRANSMITTAL AND INQUIRY PERTAINING TO JUDICIAL PROCESS

Dear Counsel of Record (The Honourable Shore J.):

I. Transmittal of Judicial Filing and Confirmation of Service
Pursuant to the doctrine of good faith and the necessary requirements of professional comity, transmitted herewith is a facsimile of the Confirmation of Number Three (NOM #3). This instrument was duly furnished to the Registrar of the Divisional Court on the preceding date. Notification shall also be fo Divisional Court confirming service of this requisite instrument upon all **persons** of record, thereby ensuring strict adherence to *Rule 4* of the *Rules of C*
II. Inquiry Pertaining to Criminal Code Indictment
A. Confirmation of Lack of Ministerial Signature
It is further confirmed, pursuant to the aforementioned good faith exchange, that a representative, acting on behalf of the Honourable Deputy Attorney G courteously provided a substantive response concerning the ascertainment of whether the aforementioned official effectuated the signature *de facto* an *Code* Form Indictment. The affixing of the signature was unequivocally repudiated by the representative, notwithstanding the fact that the Deputy Attorr have satisfied the statutory prerequisites for an agent or signing officer of the Attorney General under *section 2 of the Criminal Code*.
B. Extrapolation Regarding Custodial Mandate
This aforementioned repudiation is fundamentally consonant with the established custodial mandate requiring the Originating Judicial Precinct to retain arrest warrant, alongside a duplicate of the *Criminal Code* Form 4 Indictment. The representative of the Honourable Deputy Attorney General did not pr inference that the Judiciary of the Provincial Court (Ontario), being the Ministry of the Attorney General (MAG), may have authorized the execution of th the totality of the circumstances and the compelling inferences arising therefrom appear to gravitate toward the Ministry of the Solicitor General (SOLG proximity and demonstrable nexus with Tribunals Ontario (being situated on the same floor). This connection is underscored by the proven linkage betw Tribunal (LAT), operating as agents of the Crown, and the Respondent Insurance Companies, which are similarly situated as agents. Due diligence con exercised through all appropriate investigative avenues to conclusively resolve this outstanding matter, which involves complex considerations of *ultra v*
C. Legal Conclusion on Retention
Irrespective of the erroneous contention, occasionally posited, that judicial precincts do not retain copies of executed arrest warrants, it follows *ipso fac* Judicial Precinct is legally compelled to maintain a copy of the document that commenced the criminal proceeding, whether said document was electro in physical form.
III. Custody of Judicial Process and Compulsion for Production
A. Potential Custodial Venues
By potentiality, the only Originating Judicial Precincts that have not affirmatively disclaimed custody or control of the aforementioned initiating document follows:

1. The Superior Court of Justice (SCJ) at 361 University Avenue; and
2. The Divisional Court at 130 Queen Street West, Toronto.

B. Syllogistic Analysis of Document Location
It is presumable that the hypothesis obtains that each jurisdictional location may possess a copy of only one of the instruments. The *Criminal Code* For conceivably be lodged via electronic mail with the SCJ 361 University Precinct pursuant to *Rule 4.10* of the *Criminal Proceeding Rules*. Conversely, giv Divisional Court is inherently a Judge of the SCJ, the issuance and execution of an arrest warrant by such a judicial officer, exercising jurisdiction *ad ho* Region, 361 University Avenue), confers the custodial jurisdiction (*de facto* and/or *de jure*) upon the location of the presiding Judge.
Such proceedings are conducted *in camera* by definitive constraint, which, being *ex parte* relative to the Accused, appropriately delineates the element *camera* process. Notwithstanding this framework, it must be submitted that the archival recordings of these proceedings are subject to production, both contexts, subsequent to the arrest of the accused or the issuance of a judicial process. **The principles of open justice and judicial accountability m pertaining to the issuance of compelling process, such as arrest warrants, must be retained and subject to inspection or production pursuar particularly given the subsequent challenges to the procedural validity of the initiating instrument.** This principle, concerning the *acta* of the cou prohibitive ruling regarding civil case conferences, as was posited by the Honourable Madam Justice Shore, whose focus was placed upon an alleged than a demonstrable unwillingness to comply with extant directives.
C. Compulsion for Production
Notwithstanding the preceding complexities, the conceded position of the Deputy Attorney General remains that the judicial documents resident within t alienated or otherwise disposed of by official direction emanating from the Honourable Deputy Attorney General and subsequently ratified by the Chief thus a self-evident conclusion that these documents are subject to production pursuant to judicial directive from any entity possessing custody, control, failure of a person to definitively locate or account for the disposition of a mandatory court record, such as the initial charging document, necessitates a is either still in existence and subject to production or was improperly disposed of, in which latter case the consequences for the vitiated process must b As the Originating Judicial Precinct is statutorily compelled to possess custody and/or control of the process, particularly given the electronic preference operative inquiry devolves upon whether the same has been officially expunged by the precinct or the transmitting person. The ultimate factual determi ante remains a matter requiring further forensic discovery.
Respectfully Submitted,

Appendix #2: Electronic Mail Correspondence (November 2024)

Mr. Kevin McLean mcleansettlement@gmail.com
Fri, Nov 22, 2024, 12:03 PM
to cloc.reception

Dear Attorney General of Ontario:

As per my discussions with Ms. Benson of your office, she requested that I serve the above counsel and then discuss directly with assigned counsel.

I look forward to those discussions and I await to hear regarding the same.

I will update on my proposal for timing, schedule and the hearing of this judicial review. I will update on other procedural and preliminary matters.

As it currently stands, I am finalizing the application record for the ONSC (Divisional Court) or a single justice depending on whether the urgency reque then the factum and the authorities.

Thank you.

Warm regards,

Mr. Kevin Alexander McLean (B.A. (MCL), J.D., CIM) (he/him)

One attachment • Scanned by Gmail

Im, Judie (She/Her) (MAG) Judie.Im@ontario.ca
Fri, Nov 22, 2024, 5:46 PM
to me

Mr. McLean,

Thank you for service of your Notice of Application for Judicial Review.

I accept service as counsel for the Attorney General, who is required to be served with all Notice of Applications for judicial review as per section 9(4) o
Procedures Act, RSO 1990, cJ1. Please be advised that you are NOT required to name the AG as respondent in your application, although he is requi
entitled to participate in any JR should he choose to do so.

Also, you have named the "EXECUTIVE DIRECTOR, LICENCE APPEAL TRIBUNAL, HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO, REPRES
CHAIR OF TRIBUNALS ONTARIO IN MR. SEAN WEIR."

I believe the decision(s) you are seeking to have reviewed are decisions of the License Appeals Tribunal? If that is the case, you are required to compl
of the JRPA. Section 9(3) states that "…any two or more persons who, acting together, may exercise a statutory power, whether styled a board or comr
collective title, shall be deemed to be a person under such collective title…"

In short, you are required to name and serve the License Appeal Tribunal as a respondent to your NOA.

I do not and cannot accepts service of the NOA for the LAT.

Thank you.

Judie Im | Senior Counsel (she/her)
Crown Law Office Civil | Ministry of the Attorney General
720 Bay Street, 8th Floor, Toronto, Ontario M7A 2S9
Fax: 416-326-4181 | Tel: 416-427-4611 | judie.im@ontario.ca

Taking pride in strengthening Ontario, its places and its people.

This communication contains confidential information that may be protected by solicitor-client privilege. Any unauthorized disclosure, reproduction or ot
information is strictly prohibited. If you have received this e-mail in error, please notify me immediately and delete this message without reading, copyin
anyone.

TAB 29

FORM 57A
Courts of Justice Act
BILL OF COSTS

COURT FILE NO.: DC-24-00000718-00JR

ONTARIO SUPERIOR COURT OF JUSTICE

(DIVISIONAL COURT)

BETWEEN:

KEVIN ALEXANDER MCLEAN

Applicant

-AND -

TD HOME AND AUTO INSURANCE COMPANY, SECURITY NATIONAL INSURANCE COMPANY, TD GENERAL INSURANCE COMPANY, EXECUTIVE DIRECTOR, LICENCE APPEAL TRIBUNAL, HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO, REPRESENTED BY EXECUTIVE CHAIR OF TRIBUNALS ONTARIO IN MR. SEAN WEIR, THE ATTORNEY GENERAL OF ONTARIO

Respondents

BILL OF COSTS
AMOUNTS CLAIMED FOR FEES AND DISBURSEMENTS

(Following the items set out in Tariff A, itemize the claim for fees and disbursements. Indicate the names of the lawyers, students-at-law and law clerks who provided services in connection with each item.)

Representation of the Applicant, Kevin Alexander McLean, has been effectuated in a *pro se* capacity. The claim for professional fees is rigorously predicated upon the substantial indemnity quantum, having been precisely quantified at a commensurate rate of **$400.00 per hour**. This rate is considered an objective metric, reflective of the requisite senior professional expertise. The remuneration also accounts for the significant economic sacrifice, identified as opportunity cost, which has been rigorously

sustained through the necessary, comprehensive divestment of billable professional engagements. These foregone opportunities primarily encompassed high-value, fixed-term commercial and financial regulatory consulting contracts, the execution of which was rendered infeasible by the overwhelming, non-delegable temporal demands imposed by this Judicial Review proceeding, thereby quantifying a substantial loss of professional income directly attributable to the litigation. Furthermore, the rate is justified by the manifest, documented complexity inherent in the legal, constitutional, and forensic subject matter of the within Judicial Review. This complexity is not merely procedural but extends to the interdisciplinary requirement for expertise across administrative law, constitutional jurisprudence, and advanced financial forensic analysis, thereby imposing an evidentiary and strategic burden far exceeding the parameters of routine litigation. The application of the principle of *quantum meruit* is directly engaged, as the Applicant’s Juris Doctor (JD) credential authorizes the provision of specialized legal services, while the Chartered Investment Manager (CIM) certification facilitates sophisticated, non-delegable financial and forensic analyses. Such a unique combination of skillsets renders the retention of separate, costly expert consultants unnecessary. Consequently, the claimed rate represents the combined and efficient value of senior legal advocacy and specialized forensic consulting services, resulting in a documented mitigation of costs for the judicial system. It is submitted that the Respondents' institutional behaviour throughout the duration of the litigation, specifically encompassing widespread procedural deficiencies, overt institutional resistance concerning discovery and disclosure obligations, and the manifest failure to address substantive allegations of pervasive systemic fraud, constitutes conduct of a manifestly improper and oppressive nature. This conduct necessitates the award of costs on a substantial indemnity scale pursuant to Rule 57.01, ensuring full restitution for the high-level expertise, quantifiable opportunity cost (representing a loss of potential income from antecedent professional engagements), and the exceptional, adversarial effort mandated by the Respondents' defensive posture and the technical and constitutional novelty introduced by the claim. The hourly

remuneration of $400.00 is submitted as comparable to that commanded by a senior practitioner possessing 10 to 15 years of concentrated experience within the administrative, constitutional, and regulatory law spheres in the primary metropolitan jurisdiction, thereby justifying the application of the *quantum meruit* approach to the valuation of the Applicant's specialized temporal contribution.

Item (Based on Tariff A)	Description of Service / Step	Services Provided By	Time Claimed (Hours)	Rate/Fee Claimed
FEES				
1. Institution of Proceeding (Rule 57.01(1) 1)	**Initial Case Assessment, Drafting, and Filing of Notice of Application (NOA).** This fixed-fee component addresses the critical, non-hourly valuation of the antecedent strategic assessment of the Licence Appeal Tribunal (LAT) decision, which exhibited manifest irregularities. Said assessment mandated a granular, detailed analysis of the alleged jurisdictional transgression, patent procedural unfairness, and fundamental deficiencies within the administrative decision-making framework, thus ensuring the application's proper commencement within the Divisional Court's specialized jurisdictional and	K.A. McLean (Applicant)	N/A	**$1,500.00**

procedural parameters. The process necessitated the meticulous compilation of the initial application record materials, followed by the final execution and electronic submission of the Notice of Application for Judicial Review. The NOA required not only technical compliance with the *Rules of Civil Procedure*, specifically including the issuance of a Constitutional Issues Notice pursuant to the *Courts of Justice Act*, but also the careful, evidence-based articulation of multi-faceted legal theories. These theories included detailed allegations concerning institutional fraud, administrative bias, and *ultra vires* action, all of which were essential prerequisites to the formal commencement of this complex Judicial Review proceeding. This fixed fee is demonstrative of the inherent intellectual and strategic value in establishing the sound legal foundation, determining the appropriate judicial forum, and formulating the complex, multi-layered legal narrative which subsequently informed the entirety of

	the application. **This fee is submitted as being commensurate with the fixed tariff amount designated for the commencement of a complex, multi-issue court proceeding.** **Extensive Legal Research, Substantive Drafting, and Complex Record Management (Total 2100 Hours @ $400/hr = $840,000.00).** This item subsumes the overwhelming majority of the substantive, high-level, non-delegable, and often proprietary preparatory work mandated for a Judicial Review that directly			
2. Preparation for Hearing (Rule 57.01(1) 5)	challenges a regulatory body upon constitutional, public interest, and complex financial fraud grounds. The intensity and specialized nature of this work unequivocally justifies the quantum: **I. Jurisdictional/Administrative Analysis (100 Hrs):** This involved intensive legal research into the parameters of administrative authority, with a specific focus upon the LAT's alleged *ultra vires* decision and conduct. Work included	K.A. McLean (Applicant)	**2,100.0**	**$840,000.00**

rigorous interpretative analysis of the *Statutory Accident Benefits Schedule* (SABS) regulation and related legislative instruments, the preparation of both formal and internal appeals, and comprehensive scrutiny of the voluminous administrative record to identify breaches of natural justice and procedural fairness, alongside meticulous adherence to strict statutory temporal constraints. Research focused critically upon the applicable standard of review for mixed questions of law and fact involving jurisdictional overreach and the specific "correctness" standard necessitated by the involvement of *Charter* issues, specifically examining the doctrine of patent unreasonableness as applied to the LAT's findings regarding the Applicant's medical status and entitlement to benefits, a central challenge within the Judicial Review. **II. Forensic Investigation & Specialized Fraud Analysis (1000 Hrs):** The allocation of this extraordinary temporal resource was non-delegable in nature, necessitating

exclusive reliance upon the Applicant's specialized JD and CIM expertise in conjunction with advanced forensic acumen. This involved proprietary technical work such as deep **HCAI Data Investigation** (identifying systemic data manipulation, irregularities related to billing, and data inconsistencies that implied fraudulent intent across institutional systems by cross-referencing treatment billing codes against initial diagnostic codes to flag pattern anomalies) and detailed, iterative **PIPEDA requests** followed by rigorous analysis of the returned information to expose discrepancies. Specialized **Forensic Handwriting Analysis** was conducted (comparing official OCF-18 forms against known samples) to address core issues of forgery and misrepresentation in the underlying insurance documentation. Critically, this encompassed the technical and financial work of documenting the **MIG-cap financial contrivance**, detailing the mechanism by which the Minor Injury

Guideline designation was allegedly employed to prematurely cap and deny complex claims, and the preparation of extensive expert-level affidavits concerning the factual substratum of the alleged fraud. This necessitated the tracing of complex financial flows, the interpretation of specialized insurance protocols, and the mathematical modeling of the incurred financial harm, thereby demonstrating the direct and undeniable link between the regulatory failure and the resulting economic prejudice. The claimed time reflects the specialized nature of the analysis that, in the ordinary course of litigation, would be delegated to prohibitively expensive forensic accountants and financial experts. **III. Judicial Review Drafting & Appellate Strategy (100 Hrs):** This involved high-stakes legal drafting where conceptual precision and clarity of exposition were paramount. Drafting included the Notice of Application, the 80-plus page Comprehensive Factum (which

incorporated specialized, evidence-based Sections on institutional Fraud, Administrative Bias, and *Ultra Vires* action), detailed supporting Affidavits, and voluminous Reply Submissions. This drafting necessitated simultaneous, exhaustive legal research on foundational administrative law principles (e.g., *Dunsmuir* review standards, the principles of institutional neutrality, the doctrine of separation of powers), complex insurance regulatory regimes, the law of factual and procedural fraud (including the tort of misrepresentation), and ensuring all constitutional arguments were properly framed within the *Rules of Civil Procedure* and established appellate jurisprudence. **IV. Procedural & Interlocutory Motion Management (900 Hrs):** This involved a substantial expenditure of time dedicated to defensively addressing and mitigating the Respondents' protracted, repetitive, and allegedly unnecessary procedural tactics. This included extensive temporal resources

devoted to correcting the Respondents' deficiencies in their filed Record (identifying omissions, missing exhibits, improper indexing, and ensuring completeness and accuracy for the Court), which required the Applicant to engage in considerable consultation with court administrative personnel and opposing counsel to ascertain and rectify the true state of the record. This also covers the preparation for and attendance at multiple interlocutory motions (including those pertaining to the conduct of the parties, late service, or the state of the record, necessitating rapid legal research and response on procedural fairness and estoppel), **Managing the Collateral Attack** (addressing associated legal proceedings and corresponding to external authorities concerning Police/Court Forms filings), and the rigorous electronic service and correspondence management over the extended life of the file. The quantum reflects the extreme volume and complexity

	of the procedural contention allegedly initiated by the opposing side, which demanded constant vigilance and sophisticated legal maneuvering to preserve the integrity of the Judicial Review process and ensure the Applicant's right to be heard was not prejudiced by procedural delay or unwarranted complexity.			
3. Attendance at Motion/Hearing (Rule 57.01(1) 6)	**Full Day Attendance and Oral Presentation at the Divisional Court Hearing.** This entry comprises all temporal resources expended on the designated date of the hearing, including necessary preparation immediately preceding the hearing, transportation logistics, waiting time, and the entire duration dedicated to the oral presentation of argument before the three-judge panel on December 3, 2025. The presentation synthesized years of forensic and legal work, concerning the merits and remedies sought in the Judicial Review, with specific emphasis upon the constitutional and fraud elements. This time reflects the dedicated temporal capacity	K.A. McLean (Applicant)	6.0	**$900.00**

	required for a full-day block hearing, including contingency for extensive judicial questioning, supplemental reply submissions, and necessary final argument structure adjustments on highly complex and novel points of law. **This fee is submitted as being commensurate with the fixed tariff amount designated for a full day hearing attendance.**			
4. Written Submissions on Costs (Rule 57.01(1) 9)	**Preparation and Finalization of Costs Documentation (50 Hours @ $400/hr = $20,000.00).** This includes the meticulous drafting, subsequent editing, and peer review of this Substantial Indemnity submission; specialized legal research focused upon complex cost jurisprudence, including the principles articulated in leading appellate decisions such as *Young*, *Fletcher*, and *McDougald Estate* (which govern cost awards in demonstrably complex or unusual circumstances, against public bodies, and where the conduct of one party is found to have unjustifiably augmented the duration and complexity of	K.A. McLean (Applicant)	**50.0**	**$20,000.00**

	the proceedings); detailed methodological justification of time-tracking; comprehensive development of the *quantum meruit* justification for the Applicant's senior counsel rate; and formal documentation of opportunity costs sustained throughout the litigation. This also encompasses the final formatting, submission, and service preparation of this intricate Bill of Costs, ensuring scrupulous compliance with Rule 57.01(1)(9) and related procedural rules. **The extensive time claimed is deemed necessary given the considerable size of the fee claim and the requisite need to thoroughly justify the Substantial Indemnity rate for a *pro se* litigant possessing specialized professional credentials.**			
TOTAL FEES CLAIMED	**(Total of Items 1, 2, 3, and 4)**		**2,156.0**	**$862,400.00**
DISBURSEMENTS				
Court Filing Fee (NOA)	Filing Fee requisite for the initial Notice of Application (NOA).	K.A. McLean	N/A	**$243.00**

		(Applicant)		
Court Filing Fees (Motions)	Filing Fees requisite for three Notice of Motions (January 23, 2025; January 31, 2025; November 2025).	K.A. McLean (Applicant)	N/A	**$339.00**
Court Filing Fee (Perfection)	Filing Fee requisite for the Certificate of Perfection (December 13, 2025).	K.A. McLean (Applicant)	N/A	**$645.00**
Bank Draft for Case Conference Copies	Expenditure via bank draft for digital copies of case conference recordings (the provision of which was subsequently withheld, as represented by Shore J. on October 10, 2025, due to the non-existence of audio/transcript). This expenditure is submitted as an expense rendered nugatory due to court administrative issues and the failure of the court office to render the paid-for service. The Applicant is not obligated to sustain the cost of an administrative failure to provide a service for which payment was remitted.	K.A. McLean (Applicant)	N/A	**$34.00**
Photocopying & Printing	Costs directly associated with the reproduction and binding of the Application Record (Record), Factum, Book of	K.A. McLean (Applicant)	N/A	**$25,000.00**

	Authorities (BOA), and the Constitutional Issues Notice (quantified at 25,000 pages at $1.00 per page). This substantial claim accurately reflects the necessary hard copy production for the three-judge panel and multiple Respondents, including expenditures for paper stock, toner, binding apparatus or binder materials, and courier costs for formal submission. This is indicative of the immense volume and multi-party service requirements necessitated by the administrative record and filed materials. **The specified cost per page comprehensively includes materials, labour, and associated binding/courier charges.**	
TOTAL DISBURSEMENTS CLAIMED	**($243.00 + $339.00 + $645.00 + $34.00 + $25,000.00)**	**$26,261.00**
TOTAL AMOUNT CLAIMED (Fees + Disbursements)		**$888,661.00**

Disbursements pertaining to court filing fees are officially recorded by the Divisional Court. Other disbursements are predicated upon the inclusive costs associated with the aforementioned photocopying and printing, with the provision of supporting invoices being subject to judicial request. It is asserted that all claimed disbursements are necessary, reasonable, and possess a direct nexus to the prosecution of this complex Judicial Review, noting that expenses related to evidence production (forensics/PIPEDA) are encompassed within the claimed hourly fee for professional work.

STATEMENT OF EXPERIENCE

A claim for fees is being made with respect to the following individuals:

Name of individual	Years of Experience	Capacity / Title
KEVIN ALEXANDER MCLEAN	N/A	Self-Represented Litigant (*Pro Se*) **Education/Professional Qualifications:** BA (Psychology) (Magna Cum Laude) (USA); JD (Canada); Chartered Investment Manager (Canadian Securities Institute). The Applicant's unique and highly specialized educational foundation—comprising a Juris Doctor conferred by a recognized Canadian law school, an advanced financial certification (CIM) which grants profound insight into institutional compliance, regulatory failure, and securities analysis, and a BA in Psychology (Magna Cum Laude) deemed essential for the analysis of institutional bias, pattern recognition, and systemic fraud schemes—

provides a highly relevant interdisciplinary skill set. This unique confluence of expertise is fundamental to addressing the forensic, regulatory, and complex financial fraud issues forming the very core of this protracted litigation. This unique blending of skills constitutes specialist expertise that would, in the absence of self-representation, necessitate the retention of multiple external experts (including forensic accountants and compliance counsel) and senior litigation counsel, thereby validating the claimed rate under the principle of efficient self-representation of specialized expertise.

Relevant Litigation History: The claim is premised upon the temporal resources expended, rigorously quantified at a Senior Counsel Rate, due to the demonstrable, exceptional complexity, the advanced forensic nature of the work performed, the clear public interest ramifications, and the documented, successful expertise in significant litigation spanning multiple provincial jurisdictions, levels of court, and appellate bodies. This history definitively demonstrates the consistent ability to successfully navigate novel and technically difficult legal terrain at a level commensurate with senior practitioners in highly specialized fields.

Public Interest and Regulatory Litigation: Administrative Tribunal Expertise (British Columbia and Ontario): Documented, repeated success in a variety of tribunal hearings, including the attainment of the first-ever order from the LAT mandating a change of insurance companies involving a fictitious respondent (a feat highlighting novel

legal strategy and success against institutional opponents), and the highly effective utilization of procedural mechanisms leading to successful document production orders (demonstrating procedural mastery and the strategic application of administrative law to compel necessary disclosure). *6180 Fraser Holdings Inc. v Ali, 2012 BCSC 247* (Successfully demonstrated proficiency in urgent court procedures, specifically Interim and Injunctive Relief, essential for protecting rights pending final determination in complex real estate matters); *McLean v. Law Society of British Columbia* (Multiple BCSC and BCCA citations, 2015-2019), culminating in the successful defeat of the Attorney General of British Columbia at the Court of Appeal in a reported decision (*McLean v. Attorney General of British Columbia*, 2019 BCCA 133). This landmark history involved the Applicant's forensic discovery of a fraudulently withheld criminal RAM dump of a computer by LSBC investigators and legal counsel, which had been deliberately concealed across multiple levels of proceedings (OIPC, LSBC, BCSC, BCCA, and the Supreme Court of Canada). This forensic and legal success directly contributed to a major legislative amendment in 2024, thereby establishing the Applicant's seminal role as the first individual to successfully defeat a professional and regulatory association/body in a final judgment concerning the breach of Charter rights of both members and their clientele in public interest issues. This judicial victory resulted in the LSBC losing its interim motion against the BC government and its subsequent institutional

winding down. The substantive changes enacted within the new statute were directly aligned with the relief originally sought by the Applicant, validating the Applicant's initial legal position, a phenomenon consistent with the principles articulated by the late Professor Peter Hogg regarding the defence of repealed legislation. The depth and complexity of this regulatory and constitutional experience provide direct and compelling context for the current Judicial Review of the LAT, where analogous issues of institutional misconduct and denial of access to justice are fundamentally central to the application.

Commercial Arbitration and International Trade Litigation: Consistent success and specialized expertise have been demonstrated across a variety of complex commercial (domestic and international) arbitrations within British Columbia. This substantial experience is critical for comprehending the intricate contractual, commercial, and financial complexities inherent in the insurance industry, international reinsurance, and regulatory compliance, which underpins the LAT's functional remit and the alleged financial fraud elements of the current case. The successful navigation of private, binding dispute resolution mechanisms further underscores the Applicant's senior strategic capabilities in complex dispute resolution environments. This commercial background allows for an informed and detailed critique of the Respondents' conduct from the perspective of institutional governance and financial responsibility, a factor crucial for the substantiation of the fraud allegations.

Complex Fraud, Securities, and Trial Litigation: *Mann v. Stevenson, 2013 BCSC 2341* (Successful management of Complex Securities Litigation, requiring specialized knowledge of financial regulations, securities trading, and disclosure requirements); *Jacobs v. Yehia, 2014 BCSC 845* (Extensive Trial Experience: 16-day trial counsel work where the defendant prevailed on 12 of the 13 advanced issues in a claim of an approximate magnitude of $50 million—showcasing advanced trial strategy, complex cross-examination, and superior issue management under intense judicial scrutiny, thereby demonstrating an ability to isolate and prevail upon core legal and factual issues); and *Hampton Park Holdings Inc. v. Kim, Yoo et al, 2014 BC Supreme Court* (Unreported Decision: This decision represents the first success in BC history to secure a $20 million dollar real estate share purchase deal on summary judgment before The Honourable Mr. Justice Groves and included the successful defeat of an attempted appeal, causing a subsequent withdrawal at the British Columbia Court of Appeal—demonstrating profound mastery of civil procedure, high-value litigation risk assessment, forensic financial due diligence, and the capacity to resolve complex financial transactions efficiently and decisively). This collective and impressive litigation history directly underpins the Applicant's assertion that the highly specialized nature of the forensic, financial, and legal skills utilized in Item 2 unequivocally warrants the senior counsel rate claimed.

DATED at Toronto, Ontario, this 27th day of November, 2025.

KEVIN ALEXANDER MCLEAN Applicant (*Pro Se*)

TO (SEPARATED BY VOLUMES OF PERSONS, ENTITIES ET AL)

VOLUME #1: THE RESPONDENTS IN THE STYLE OF CAUSE

VOLUME #1(A): SPECIFICALLY TO: RESPONDENT INSURANCE COMPANIES

Volume #1(A)(I): TDHA (First Insurer)

TD Home and Auto Insurance Company,

Last known address and addresses (mail and fax) at the time of its [TDHA] receipt of the Applicant's completed OCF-1 pursuant to *Reg 283* (the "**MCLEAN COMPLETED OCF-1 APPLICATION**"):

4th Floor
3650 Victoria Park Avenue,
North York, Toronto, Ontario
M2H 3B2

FAX NUMBER

FAX: 416.774.3120

FSRA REGISTRATION NUMBER 1063, Fax: 416.774.3120 ("**TDHA**")

Attention (its declared counsel herein):

Mr. Matthew Nieuwland
Business name: TD Insurance Staff Legal
Lawyer Licensee with the LSO

LSO #71405A

66 Wellington Street West,
38th Floor,
Toronto, Ontario,
M5K 1A2
T: 905-201-4092 | F: 416-599-7439
Email: Matthew.Nieuwland@tdinsurance.com

Volume #1(A)(II): SNIC (Sole Underwriter)

Security National Insurance Company ("SNIC")

FSRA REGISTRATION 397, FAX: 905-315-1074 ("**SNIC**")

MAILING ADDRESS:

5th floor-5045 South Service Rd ,
Burlington, ON
L7L 5Y7

FAX NUMBER

Fax: 905-315-1074

Attention (its declared counsel herein):

Mr. Matthew Nieuwland
Business name: TD Insurance Staff Legal
Lawyer Licensee with the LSO
LSO #71405A

66 Wellington Street West,
38th Floor,
Toronto, Ontario,
M5K 1A2
T: 905-201-4092 | F: 416-599-7439
Email: Matthew.Nieuwland@tdinsurance.com

i.

Volume #1(A)(III): TDGIC (Fictitiously Inserted Respondent in the LAT Proceeding

TD General Insurance Company,

FSRA REGISTRATION NUMBER 353, Fax: 416.774.3629 ("**TDGIC**")

TD General Insurance Company
FSRA registration number 353

Address found by Tribunal in issued orders for TDGIC despite no provision of the same to the Applicant during TD Claim #3 process, in any filed documents by TDGIC or otherwise:

3650 Victoria Park Ave
Floor 9,
North York, ON
M2H 3P7

FAX NUMBER

FAX: 416.714.3629

Attention (its declared counsel herein):

Mr. Matthew Nieuwland
Business name: TD Insurance Staff Legal
Lawyer Licensee with the LSO
LSO #71405A

66 Wellington Street West,
38th Floor,
Toronto, Ontario,
M5K 1A2
T: 905-201-4092 | F: 416-599-7439

VOLUME #1(B): THE IMPUGNED DECISION MAKING ADJUDICATIVE TRIBUNAL

SPECIFICALLY TO

Licence Appeal Tribunal (the "**Tribunal**");

25 Grosvenor Street,

(unknown floor)

Toronto, Ontario,

(attention: Mr. Boyce, LSO, 72486F

Jesse A. Boyce
Law Society Number
72486F
Class of Licence Definitions
Lawyer (L1)
Real Estate Insured †
No
Status Definitions
Practising Law - Employed
Business Name
SLASTO
Business Address
25 Grosvenor 4th Floor Toronto, OntarioM7A 2S8
Phone
1 437 997 1235 Ext.

Jesse.boyce@ontario.ca

VOLUME #1(C): THE AGO

SPECIFICALLY TO:

Ms. Judie Im
Called to the bar: 2001 (ON)
Min. of Attorney General (ON)
Senior Counsel
Crown Law Office-Civil Law, 8th Flr.
720 Bay St.
Toronto, Ontario M7A 2S9
Phone: 416-427-4611
Fax: 416-326-4181
Email: judie.im@ontario.ca

Attorney General of Ontario Constitutional Law Branch McMurtry-Scott Building 4th Floor 720 Bay Street Toronto, Ontario, M7A 2S9 email: clbsupport@ontario.ca

VOLUME #2: THE HONOURABLE AGC

AND TO:

Attorney General of Canada

Department of Justice Canada 120 Adelaide Street West Suite #400 Toronto, Ontario M5H 1T1 Telephone: 416-973-0942; (Alternate: 647-256-1663) TDD: 416-973-2496 Fax: 416-954-8982 Email for Notices of Constitutional Questions: NCQ-AQC.Toronto@justice.gc.ca

VOLUME #3: LEGAL COUNSEL, LAWYER LICENSEE IN MR. SINNADURAI, TO MADAM JUSTICE SHORE

AND TO:

Counsel (retained to Madam Justice Shore) in Mr. Sinnadurai

Ananthan Sinnadurai
Called to the bar: 2011 (ON)
Min. of Attorney General (ON)
Counsel
Crown Law Office-Civil Law, 8th Flr.
720 Bay St.
Toronto, Ontario M7A 2S9
Phone: 416-326-4008
Fax: 416-326-4181
Email: ananthan.sinnadurai@ontario.ca

VOLUME #4: THE SPOUSE OF THE INDIVIDUAL WHO ENGAGED IN THE TDI KARAT THEFT ON OCTOBER 25, 2024

AND TO:

Ms. Julia Dunk

Law Society Number
P10606
Class of Licence Definitions

Paralegal (P1)
Status Definitions
In Private Practice
Business Name
Himelfarb Proszanski
Business Address
1401-480 University Ave Toronto, OntarioM5G 1V2
Phone
416-599-8080
Email Address
jdunk@himprolaw.com

VOLUME #5: THE ADR SPECIALIST WHO ENGAGED IN UNAUTHORIZED SIGNING OF THE SNIC RESPONSE AND THE THEFT OF THE APPLICANT'S PROPERTY, OF WHICH THE DOCUMENTATION THEREIN IS A SUBJECT MATTER IN DISPUTE HEREIN, BY THE TDI KARAT THEFT

AND TO:

Mr. David Karat

Non-licensee with the LSO

By professional email: David.karat@tdinsurance.com

As per his signature block that he was authorized to represent: Primmum Insurance Company, TD Home And Auto Insurance Company, TD General Insurance Company, and Security National Insurance Company

VOLUME #6: THE SABS MANAGER FOR THE TDIA GROUP FROM APRIL 2023 TO JANUARY 2025 AND EPSTEIN COLE LLP CLIENT WHILE MADAM JUSTICE SHORE WAS A SENIOR PARTNER AT SAID LAW FIRM

AND TO:

Epstein Cole LLP Client, Mr. Papadimitropoulos

Andrew Papadimitropoulos

Law Society Number
58696I
Class of Licence Definitions
Lawyer (L1)
Real Estate Insured †
No
Status Definitions
Practising Law - Employed
Business Name
The Toronto-Dominion Bank-Legal Department
Business Address
66 Wellington Toronto, OntarioM5K 1A0
Phone
416-983-5467

By previous email until end of January 2025 in: andrew.papadimitropoulos@tdinsurance.com

And current LSO directory email: andrew.papadimitropoulos@td.com

VOLUME #7: THE TORONTO POLICE SERVICES BOARD (THE "TPS"): THE MUNICIPAL POLICE FORCE INVOLVED THE EXECUTION OF THE SIGNED ARREST WARRANT BUT FAILED TO PROVIDE A COPY OF THE SAME DESPITE REQUESTS OF THE SAME

TPS Headquarters (nota bene: same address location for service of Court Officer (Toronto Region) Mrs. Frugoni-Rojas and the last location of employment for JP Jiri prior to being appointed as a JP of the OCJ and then assigned to the Central West Region OCJ Brampton)

40 College Street,

Toronto, ON,

M5G 2J3

Attention:

Ms. Falguni Debnath and legal department

Falguni.Debnath@tps.ca and legal.services@torontopolice.on.ca

VOLUME #8: THE MINISTRY OF SOLGEN AND THE HONOURABLE SOLGEN MR. MICHAEL KERZNER

Ministry of Solicitor General

Address:

18th floor of 25 Grosvenor Street

Toronto, Ontario

(nota bene: one floor below the office floor of "Tribunals Ontario" and that of executive director of Tribunals Ontario in Mr. Sean Weir)

Attention: emails in Affidavit of Service at Tab #22 of the NOM #3 Motion Record

TAB 30

Court File No. DC-24-00000718-00JR

ONTARIO SUPERIOR COURT OF JUSTICE (DIVISIONAL COURT)

BETWEEN:

KEVIN ALEXANDER MCLEAN

APPLICANT

- and -

TD HOME AND AUTO INSURANCE COMPANY, SECURITY NATIONAL INSURANCE COMPANY, TD GENERAL INSURANCE COMPANY, EXECUTIVE DIRECTOR, LICENCE APPEAL TRIBUNAL, HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO, REPRESENTED BY EXECUTIVE CHAIR OF TRIBUNALS ONTARIO IN MR. SEAN WEIR, THE ATTORNEY GENERAL OF ONTARIO

RESPONDENTS

APPLICANT'S OUTLINE TO **COMPENDIUM**
Compendium filed and served on February 11, 2025
1st Amended Compendium of February 15, 2025
Includes: Affidavit #16, current Draft Order
Dated: FEBRUARY 17, 2025

WRITTEN OUTLINE
(SIMPLIFIED VERSION IN LIGHT OF FORMAL LAT ADMISSION ON FEBRUARY 14, 2025)

1. If the Responding Parties, which are, in substance, **TDHA**, SNIC and the Licence Appeal Tribunal (the "**Remaining Respondents**" after the AGO withdrew on January 30, 2025) had objected pursuant to Rule 37.12.1.(5)(d) to have NOM #2 decided in writing, and an oral hearing ensued on Friday, February 14, 2025, the Applicant's Oral Submissions would have followed herein in 15 minutes. Due to their neglect or failure to do so, and file responsive factums and applications in accordance with Rule 68.04(4), the Applicant provides this written outline that would have been his oral argument for the benefit of the Court. The comprehensive detailed written outline to the Compendium (1st amended) is below after the table of contents and for the benefit of the court and for assurance purposes that this Court can issue an order in substantially the same form as the Draft Order (see: Compendium, Tab 61) with "reasons to follow". The written outline has many arguments purposed in the hypothetical, alternative, *et al* due to the AGO withdrawing on January 30, 2025, and the failures of the **Remaining Respondents** to participate in this ***JRPA*** Proceeding.

2. At their highest, SNIC and **TDHA** evinced an intention to respond to the ***JRPA*** **Application** but never did so.

3. At its highest, in-house legal counsel of the SLASTO Legal unit at 25 Grosvenor Street, Toronto, [the same address as the other decision makers at issue herein] Tribunal evinced an intention to respond to the ***JRPA*** **Application** on November 27, 2024, with its Notice of Appearance, and then provided the cases of Awada, Mansuri and Heegsma on an informal basis for its misguided objection pursuant to the prematurity doctrine. The Applicant has provided those cases cited by the Tribunal, albeit informally and without compliance with the Rules of Civil Procedure, as per the public interest issue, general legal questions of central importance to the legal system as a whole, questions of boundaries between a multitude of administrative bodies (federally and provincially), and questions that are evasive of this judicial review and potentially of great importance to practice before the Licence Appeal Tribunal.

4. But for Rule 38.01 which unequivocally states that Rules 38.02 and 38.09 are not applicable to proceedings before the Divisional Court, the **Remaining Respondents** could have waited to file their factums and application records. However, that hypothetical is not the reality. Rule 68.04(4) required the **Remaining Respondents** to file their responsive factums and application records on January 13, 2025.

5. After Mr. McLean made an access request for the **Record Of Proceeding** as Mr. Boyce did not dispute the evidence of Mr. McLean, on belief, that the Tribunal had lost some of the records in the **Record Of Proceeding** or destroyed the same, he was referred from the LAT privacy division to the LAT registrar.

6. As seen from the below email in his Affidavit #16 (see: Compendium, tab 60), the LAT did not respond for nearly nine days but then admitted it was still compiling the **Record Of Proceeding** and revert back to him in another week if it need more information from him. A copy and paste of the relevant parts of the email is:

> "We thank you for your patience, while we review how best to compile and forward the records identified in your request. We will reach out to you with additional information by February 21, 2025.
>
> **Best Regards,**
>
> **Hannah Lee (Pronouns: she/her)** (learn more)
> Case Management Officer
> Licence Appeal Tribunal
> Phone: 647-463-8220

(see: Compendium, Tab 60, Affidavit #16 of the Applicant filed and served before five pm. on Friday, February 14, 2025).

(defined as the "**LAT Failure To Compile ROP Admission**" or "**Formal LAT Admission**").

7. This Formal LAT Admission bolsters the Applicant's relief sought in this being a proper case to convert NOM #2 into a Motion For Judgment.

8. Moreover, as a result of the same, the issues that were originally in the Applicant's written outline regarding the following: (i) the limited or non-existent participation rights of the Tribunal pursuant to the legal test and analysis in Ontario Energy Board and those that affirmed the general principles therein and added further legal principles involving judicial review or appeals before the Divisional Court; (ii) the non-participation or limited participation rights of SNIC and **TDHA**; and (iii) other headings, were removed herein.

9. However, in order to ensure that they are before the Court before a single motions justice becomes functus officio, the Applicant has included a comprehensive and lengthy written outline that covers those issues and other issues in the event they are issues that a sitting motions justice may wished written argument regarding the same.

The Law of Admissions and Agency: in light of the **Formal LAT Admission**

10. Leaving aside the prescribed time requirements, the Tribunal was required to compile the **Record Of Proceeding** from December 23, 2024, Mr. Boyce's ability to file the **Record Of Proceeding** forthwith pursuant to section 10 of the *JRPA* was frustrated and stymied. As the Applicant's sworn beliefs turned out to be true, he was fortunate to receive an honest answer from the LAT in the form of a formal written admission (see: supra) that bound the Tribunal and provided explanations for why Mr. Boyce could not comply with his self-imposed and non-statutory timelines.

11. In light of the same, the law of admissions and agency become germane.

12. There is no dispute that Ms. Lee bound the LAT pursuant to the law of agency. "Where a principal gives an agent general authority to conduct any business on his behalf, he is bound as regards third persons by every act done by the agent which is incidental to the ordinary course of such business, or which falls within the apparent scope of the agent's authority: *Pastoor v. Pastoor*, 2007 CanLII 28331 (ON SC).

13. This admission was a formal admission by the LAT for the following reasons. The admission was made by an officer of the LAT and it bound the LAT. The formal admission was during the course of the proceeding and related to "**Adjudicative Records**" (see: *Toronto Star v. AGO*, infra) sought for the **Record Of Proceeding** in light of the failures of Mr. Boyce, as declared counsel of record for the Tribunal in the *JRPA* Proceeding, to file the **Record Of Proceeding** during the time period from December 24, 2023, to September 13, 2024 (the "**ROP Temporal Period**").

14. An admission has been defined as an unambiguous deliberate concession to the opposing party: *Canada Permanent Mortgage Corporation v. The City of Toronto*, 1951 CanLII 121 (ON CA), [1951] O.R. 726, paragraph 7[1].

15. A formal admission is not evidence; it is an express and intentional waiver done by a party, or their counsel, during the course of litigation (see Wigmore, vol 9 at p 821). A formal admission is, as Jeremy Bentham

integrity of litigation as they improve the efficiency of the **administration of justice**, advance fairness interests, and promote reliable fact finding and legal reasoning (see *Patterson v Scherloski* (1971), 1971 CanLII 703 (ON SC), 21 DLR (3d) 641 at 645 (Ont H Ct); and S Casey Hill, Louis P Strezos & David M Tanovich, *McWilliams Canadian Criminal Evidence*, 5th ed (Toronto: Thomson Reuters, 2013) (loose-leaf updated 2021, release 4), pt IV, ch 25 at section 25:1 (online: WL Can (date accessed 25 November 2021)).

16. There is no dispute that the LAT is a party to this *JRPA* Proceeding. It was done while this litigation remained ongoing in relation to the **Record Of Proceeding**. As the Tribunal was required to compile the **Record Of Proceeding** from the time the Applicant commenced the LAT Appeal on December 24, 2023, the Tribunal admitted, by an officer of it no less, that it had not been compiling the **Record Of Proceeding** from the outset and on an ongoing basis.

17. Ergo, this disposes of the underlying genesis why VCM made so many errors that masqueraded as facts but were unknown to the **Record Of Proceeding** and the Applicant.

18. There is no dispute that the **Remaining Respondents** have had the opportunity to fully argue their positions in this *JRPA* Proceeding. It is now three months since the ***JRPA* Application** was brought. It is approximately three months since the Tribunal was required to file the **Record Of Proceeding** from the time period of the commencement of the LAT Appeal to the time of the VCM Decision It is also now more than two months since the **Remaining Respondents** were required to file and serve their factums and application records (see: Rule 68.04).

19. Therefore, the sole question before this Divisional Court is whether there the necessary evidence is before it to grant Judgment (i.e. finally dispose of the merits of this ***JRPA* Application**).

20. A trial judge has the freedom to interpret what an admission means: *Allto Construction Services Ltd. v. Toronto and Region Conservation Authority*, 2017 ONCA 488, at para. 11. But that interpretive exercise cannot morph into an analysis of the veracity of the admission. A formal admission is not like other pieces of evidence led at trial that a judge can weigh at their discretion. A formal admission is conclusive of the matter admitted. The court is bound to act on formal admissions before it, *even if* other evidence contradicts the admission: *Serra v. Serra*, 2009 ONCA 105, 93 O.R. (3d) 161, at para. 106."

21. As such, the issues of the likes of the prematurity doctrine objection, whether the Tribunal will participate and on what terms are now moot or no longer, ironically, justiciable.

22. <u>There is now nothing to be gained by taking further steps in this JRPA Proceeding.</u>

ISSUE #1: MOTION HEARD IN WRITING AND A PROPER CASE TO CONVERT TO A MOTION FOR JUDGMENT

Issue #1: Statement of Issue

23. Have the jurisprudential legal tests met under Rule 37.12.1(4) and (5) and Rule 37.13(2)(a) been met?

Answer to Issue #1: Motion in Writing and Conversion to Motion for Judgment

24. As a matter of constitutional law, judicial review is intimately connected with the preservation of the rule of law. It is essentially that constitutional foundation which explains the purpose of judicial review and guides

the foundational democratic principle, which finds an expression in the initiatives of Parliament and legislatures to create various administrative bodies and endow them with broad powers.[2]

25. A person has a right to seek judicial review, and "[t]o give courts a discretion not to hear judicial review applications because of their perception of the quality and quantity of internal reconsiderations would allow judicial discretion to trump [a] constitutional principle" (P. Daly, *A Culture of Justification: Vavilov and the Future of Administrative Law* (2023), at p. 226, note 94). While there is discretion to hear the application on the merits and deny relief, this discretion does not extend to decline to consider the application for judicial review (see: paragraph 49 of Yatar).

Judicial Review is NOT limited to rare or exceptional cases

26. In *Yatar v. TD Insurance Meloche Monnex*, the SCC found that the ONCA and ONSC (Divisional Court) were in error hold that, where there is a limited right of appeal, judicial review should only be exercised in exceptional or rare cases. Ergo, as of March 15, 2024, the unassailable corollary of that legal precedent of law involving an injured person and an insurance company in a LAT dispute, which involves the very same statutory scheme as herein, is that judicial review is NOT limited to rare or exceptional cases.

The Previous Legal Standard of the Divisional Court: still in the Applicant's favour

27. Even if one were to use to the previous standard by the ONSC Divisional Court in *Ontario Nurses Association* by The Honourable Justice Backhouse at paragraph 7: "I have concluded that there are no extraordinary or exceptional circumstances to justify departing from the Divisional Court's usual approach restricting judicial review to final decisions. The application should be dismissed for prematurity", the prematurity doctrine has no applicability herein because the impugned decisions on September 13, 2024, of the Licence Appeal Tribunal as per Vice Chair Morrissette ("VCM") were final decisions and final orders

Rule 37.12.1(4)

28. The Applicant made his NOM #2 14 days in advance of February 14, 2025 (see: Compendium, Tab 51; Rule 37.12.1(4)(a)), and then immediately served the motion record, draft order and factum with affidavits of service on the responding parties (see: Rule 37.12.1(4)(b) and (c)) and Mr. Papadimitropoulos (the client of Madam Justice Shore's former law firm Epstein Cole LLP). The Applicant filed his confirmation of motion on Sunday, February 2, 2025, via email to the Registrar.

29. As the Applicant's "Factum For Motion In Writing" (see: Compendium, Tab 53), was technically filed and served on February 1, 2025, the Responding Parties had ten days, after receipt of the NOM #2, Motion Record, Draft Order and Factum For Motion in Writing, to do one of four things: (i) consent via notice; (ii) not oppose via notice; (iii) agree to have the motion heard in writing with a responsive factum, motion record *et al*; and (iv) object by notice to the motion being heard in writing and request to be heard orally (see: Rule 37.12.1(5)(a) to (d)).

Rule 37.12.1(5)

30. The **Remaining Respondents** (Responding Parties) had the opportunity to sufficiently argue their positions but chose not to. The Tribunal had not compiled the **Record Of Proceeding** throughout and it would have been entirely foolish for Mr. Boyce to object regarding the same to have the matter heard orally with a transcript. SNIC and **TDHA** remained silent like they did before the Tribunal which is consistent with those that did not participate in the hearing before the Tribunal not being afforded the right to participate in judicial review.

31. As such, the **Remaining Respondents** remained silent and did not even extend the courtesy to the Applicant or this Divisional Court as to whether they would not oppose, consent, file a competing motion record or factum, or seek to be heard orally.

32. In *Agbapu v Dr. Munshi*, 2023 ONSC 3458, Regional Senior Justice Firestone at paragraphs 3, 4 and 6 found: "…the Respondent's motion record, factum and book of authorities was served on the Appellant in accordance with the procedure set forth in Rule 37.12.1(4). No responding materials have been delivered and no request for an oral hearing has been made within the timeframe provided in Rule 37.12.1(5). [4] the Respondent's motion record, factum and book of authorities was served on the Appellant in accordance with the procedure set forth in Rule 37.12.1(4). No responding materials have been delivered and no request for an oral hearing has been made within the timeframe provided in Rule 37.12.1(5). [6] To date, the Appellant, ….. has not taken any steps to perfect the appeal or move this matter forward.

33. Therefore, strict compliance by the Applicant was discharged in relation to having NOM #2 heard in writing and the **Remaining Respondents** (Responding Parties), Mr. Papadimitropoulos and Epstein Cole LLP remained silent.

34. The ***JRPA*** **Applicant** met the legal test for NOM #2 to be heard in writing. This does not guarantee success per se but he met the legal test for NOM #2 to be heard in writing.

Rule 37.13(2)(a): Proper Case

35. The **Remaining Respondents** had sufficient opportunity to argue their positions fully but chose not to or were hamstrung or unable to do so by the Tribunal failing to compile the **Record Of Proceeding** or the more likely that large parts of the **Record Of Proceeding** were destroyed from April 2024 to December 2023.

36. The necessary evidence is before the ONSC to convert NOM #2 into a **Motion For Judgment**.

How could Vice Chair Morrissette have the basic facts (some from cursory review of the pleadings) so wrong?

37. The more compelling question for the public interest so that this ONSC Divisional Court ensures and guarantees that such incompetent and misguided findings of purported facts, albeit fictitious in reality, in other LAT proceedings where vital treatments and benefits are needed for fellow Ontarians to survive and continue to exist after the traumatizing and debilitating experience of a car accident, *is how could VC Morrisette make at least four errors of law in one sentence?* (see: paragraph 27 of the VCM Reasons for Decision involving NOM #14).

38. The answer is the formal admission made, with thanks for her honesty in Case Manager Ms. Lee of the LAT (by way of LAT registrar email), as follows on late February 13, 2025:

> "We thank you for your patience, while we review *how best to compile* and forward the records identified in your request. We will reach out to you with additional information by February 21, 2025.

39. The records identified in the Applicant's request were the records that make up the **Record Of Proceeding** from December 24, 2023, to September 12, 2024.

December 24, 2023, to September 12, 2024. The Tribunal was required to then forthwith file the **Record Of Proceeding** pursuant to the *JRPA*

Why has the Tribunal not been able to file a factum and application record?

41. It now obvious based on the LAT Formal Admission, as to why Mr. Boyce could not file and serve a factum and application record on behalf of the Tribunal on January 13, 2025, and now beyond.

Why did the Tribunal not oppose or consent to NOM #1?

42. Mr. Boyce could not consent to the relief sought because as of February 13, 2025, the Tribunal was, in breach of its statutory duty under the *SPPA* (section 20), was still trying to figure out how to best compile the **Record Of Proceeding**.

FINAL CONCLUSION ON ISSUE #1

43. NOM #2 is to be heard in writing. The Applicant has met the test for NOM #2 to be converted into a Motion For Judgment.

ISSUE #2: FINAL DECISIONS AND DETERMINATIONS

Issue #2: Statement of Issue

44. Were the decisions and determinations, primarily in NOM #14, final or interlocutory?

ANSWER TO ISSUE #2: Determinations and Decisions of VCM were final determinations and decisions

45. The refusal by VCM to grant the relief in NOM #14 and Order #3 in NOM #15 were final determinations because they **refused** relief to add a party, add a cause of action, and amend pleadings. As the refusal to grant the First Insurer relief sought was a question of law on a summary motion, it was a final order coupled by a "final decision". As "issue estoppel" is a live issue and needs an answer herein, this is yet another reasons why all of the refused orders and decisions refusing the relief sought particularly in NOM #14 were final decisions and final orders.

46. With that segue, final decisions and final orders are those decisions and orders that refuse relief to: (i) add parties; (ii) amend pleadings; and/or (ii) causes of action (see: *ME v. Ontario*).

47. Further, where a motion, that is summary disposition in nature is dismissed, it will be ***FINAL*** if it involves a *substantive issue* like issue estoppel (***SEE:*** *Almrei v. Canada (Attorney General),* 2011 ONCA 779 ["*Almrei*"]).

48. While **TDHA**, the "First Insurer", and SNIC, the "Sole Underwriter", are distinct entities, the test for issue estoppel is yet another reason why this Divisional Court must provide a uniform and final answer to the questions posed herein.

Seminal Point: Issue Estoppel

49. The decisive point herein is that issue estoppel is a doctrine that will not be raised now but would be raised potentially at a future date. Hence, the word "estoppel" which is used as a "shield" and not a "sword". As such, on this ground alone, this ONSC Divisional Court will need to provide a uniform, consistent and final answer to whether insurance companies within a group of insurance companies are "privies" generally or whether analytical precision is required with each "insurance group" in Ontario.

Legal Test for Issue Estoppel

50. In *Danyluk v. Ainsworth Technologies Inc*., 2001 SCC 44 (CanLII) at para. 25, the Supreme Court outlined the three requirements for issue estoppel: (i) The same question has been decided; (ii) the decision said to give rise to the estoppel is final; and (iii) the parties to the decision and privies were the same persons as the parties to the proceeding in which the estoppel is raised or ***their privies***.

51. Issue estoppel prevents re-litigation of the material facts that the cause of action in the prior action embraces: *Danyluk*, at para. 54.

52. "**Cause of action**" means: a fact or facts that enable a person to bring an action against another.

53. The sheer oddity, based on the ***JRPA*** **Applicant** being misled over such a period of time, is that the Applicant's facts, subject to removal of the "denial letters by SNIC", which even SNIC sought to avoid by having TDGIC replace it during the LAT Appeal, are largely the same as he faxed each and every document to 416.774.3120. The Applicant did for a period of time fax documents to the 905 Fax Number but it was largely blocked or rejected for periods of time.

54. There is no dispute that the decisions of VCM to refuse the relief to add **TDHA** as a party and amend the pleadings and causes of action directed towards **TDHA**, were final orders and decisions. Therefore, the Applicant has an automatic right of judicial review even if this were a ***JRPA*** **Application** advanced in 2023 as per the statement of law by Justice Back house in *Ontario Nurse Association*. The misguided antiquated preliminary objection exclusively by the Tribunal regarding "prematurity" had no merit in 2024 or any year before that.

55. Leaving that aside, the ***JRPA*** **Application** was brought post Yatar (and post Zurich 2024) so judicial review was available to the Applicant in any event and judicial reviews are no longer heard only in a "rare" and "exceptional cases". The Tribunal and "TD Insurance Meloche Monnex" were wrong then and now the Tribunal and now **TDHA**, SNIC and TDGIC, and the Tribunal are wrong yet again.

56. While the focus is the 11 paragraphs of reasons for decision involving NOM #14, and not as much as the "orders" as only one of the four substantive orders in NOM #14 was directly faced, all of the orders are inextricably bound to some degree. The decision to refuse to add **TDHA** is tied to, some degree, to adding **TDHA** as a party. While it is conceivable that a party could be added that was not the First Insurer (permanent) but was the First Insurer (Provisional), or added because it was, not pursuant to Reg 283 but the priority scheme under the Insurance Ac (statute), added based on having a potential insurance policy that was applicable. However, that is not at issue herein as the focus is not section 268 of the Insurance Act but rather the prescribed scheme relating to priority and not the statutory. As Justice Akazaki found in Zurich 2024, the statutory priority scheme and the regulatory priority scheme operate differently.

57. There is no dispute that 416.774.3120 was the phone number (fax) on the fourth floor of the Victoria Park Building (North York) and 416.774.3629 as the phone number (fax) on the ninth floor of the Victoria Park Building. This was the order sought in NOM #15, Order #3.

replacing SNIC as the liable insurance company to respond to the Applicant and pay benefits. As such, it will have an opportunity to provide its pleaded position before the Tribunal. This is Order #4.

Order #2: HCAI Order – Importance for Ability of Applicant to be able to discharge his obligations and obligations discharged on his behalf with HCAI

59. The importance of Order #2, by which the refusal was a final decision, cannot be understated. The following is stated under the Schedule, section 32(3) and (4) state the following:

> "(3) If an insurer that is subject to a Guideline referred to in subsection 64 (7) determines, acting reasonably[3], that there is a likelihood that the person may, in connection with the accident, deliver one or more documents referred to in that subsection, the insurer shall provide the following information to the central processing agency referred to in that subsection:
>
> 1. The name, address, gender and date of birth of the person.
> 2. The date of the accident.
> 3. Particulars of the automobile insurance policy under which the person asserts he or she is entitled to a benefit or benefits, including,
>
> i. the name of the insurer,
> ii. the policy number, and
> iii. the name of the person to whom the policy was issued.
>
> 4. The claim number assigned by the insurer.
> 5. Any other information reasonably required by the central processing agency to enable it to carry out its obligations to the insurer under this Regulation. O. Reg. 34/10, s. 32 (3).
>
> (4) An insurer's obligation to provide the information referred to in subsection (3) may be discharged by,
>
> (a) providing the information to the central processing agency; or
> (b) confirming, correcting or supplementing the information previously provided to the central processing agency. O. Reg. 34/10, s. 32 (4)."

60. As SNIC and **TDHA** are separate entities at law (see: rule in Foss v. Harbottle and section 92 of the Legislation Act), the "an insurer" would be SNIC, and by finding that the address denoted in HCAI of 304 The East Mall, Etobicoke, Toronto, Ontario, was that of **TDHA** as the last known insurance company to be a tenant therein, SNIC would have to discharge its obligation under subsection 32(4) of the Schedule by correcting the information previously provided to HCAI.

FINAL CONCLUSION ON ISSUE #2:

61. It is only final determinations and decisions, and orders (where refused explicitly or implicitly) that are at issue. While there is no dispute that VCM failed to determine Orders #1 (the "First Insurer Order"), Order #2 (the "**HCAI Order**"), Order #4 (the "Amendment Of Pleadings Order"), and Order #5 (the "F**ax Number Location Order**"), she did dismiss Order #3 which was to add **TDHA** as a party. On that dismissal or refusal of relief alone, it was a final determination that provides an automatic right of judicial review even under the previous legal test prior to *Yatar v. TD Insurance Meloche Monnex* (SCC).

ISSUE #3: THE PREMATURITY DOCTRINE OBJECTION

Statement of Issue #3:

62. *As the determinations and decisions made by VCM were final, not interlocutory, is the prematurity doctrine objection exclusively by the Tribunal sustainable at law?*

Answer to Issue #3:

63. Mr. Boyce has confused the differences in various doctrines. Nonetheless, the Tribunal cannot argue the prematurity doctrine without a filed **Record Of Proceeding**. By its Formal Admission, it will be seeking Mr. McLean's input before it even *forwards* the same to him. Moreover, the final orders and decisions have an automatic right of judicial review even as per the practice of the Divisional Court cited in Ontario Nurses Association at paragraph 7 which was before the decision of Yatar in Spring 2024.

Conclusion to Issue #3:

64. There is no merit to the preliminary prematurity objection and it has only caused wasted resources and expenses of the Applicant which can be addressed in costs.

ISSUE #4: STANDARD OF REVIEW

STATEMENT OF ISSUE #4:

65. What is the standard of review of the final decisions and determinations of VCM on September 13, 2024, in light of the following: (i) a statutory appeal mechanism under LATA; (ii) VCM committing a plethora of independent errors of law; (iii) general legal questions of central legal importance to the legal system; (iv) questions are evasive of the judicial review along with those issues potentially a matter of general practice important in proceedings before LAT; (v) questions involving the jurisdictional boundaries between multiple administrative bodies; and (vi) persistent discord intra the LAT on various decisions of importance.

ANSWER TO ISSUE #4

66. The standard of review is correctness. There is a statutory mechanism of appeal in place by section 11(6) of the LATA. Moreover, the legal questions are of general importance to the legal system as a whole. Moreover, such legal questions involve the boundaries between two administrative bodies. Moreover, the standard of review to the errors of law requires correctness.

67. However, the best statement of law is from this hallowed Divisional Court in *Jia*, which, without sounding obsequious, Mr. McLean feels absolutely honoured and privileged to have the opportunity to tender these submissions, when so tailored herein. To blatantly steal the line from the ONSC Divisional Court in *Jia* the questions herein are "evasive of appeal and it is potentially a matter of general practice important in proceedings before LAT."

68. While the decision of *Jia* was one where Vice Chair Trojek granted the reconsideration request of the applicants (the widow husband and a daughter without a mother), it was under the previous LAT Rules which were not as constrained in allowing reconsideration requests to be granted. The LAT Rules were amended in August 2023, and the Applicant was saddled with said current form and language of the LAT Rule 18. In any event, he exhausted the reconsideration route in good faith.

in favour of the applicants in the LAT Appeal (respondents in the appeal to the Divisional Court pursuant to section 11(6) of the LATA) and against the appellant in The Personal Insurance Company and respondent in the LAT Appeal.

70. An interesting note from *Jia* was that the original decision of Justices Corbett, Ducharme and Gomery JJ, was reached on November 20, 2019, the day of the hearing. However, the citation of the decision (see: 2020 ONSC 6361) and date of it (20201022) was nearly a year later. This was because of the release of the decision of *Vavilov* in 2019. The ONSC Divisional Court had this to say in this regard and its conclusion on the three issues (one being premature):

> "[16] In conclusion, I would find:
>
> a. The Vice-Chair's finding that the appellant's lawyer was in conflict of interest acting in both the priority dispute and the liability dispute was **reasonable**;
>
> b. The Vice-Chair's finding that the EUOs obtained by the insurer in the priority dispute should not be permitted to be used in the liability dispute because they were not obtained in compliance with s.33 of the *SABS Regulation* was **reasonable**.
>
> c. This appeal was in any event premature as it relates to the use of the impugned transcripts.
>
> [17] This appeal was heard and decided prior to release of the Supreme Court of Canada's decision in *Canada (Minister of Citizenship and Immigration)* v. *Vavilov*. Our reasons are framed on the basis on which this decision was reached on November 20, 2019, when it was rendered. We considered and decided against conducting a re-hearing on the basis of *Vavilov* because our decision would be the same in any event. Even if we had concluded that SLASTO erred **as a matter of law** on whether there is an inherent conflict in the same lawyer acting for an insurer in a priority dispute and a benefits dispute arising from the same events, on the facts there was a conflict in this case. This misuse of evidence obtained in the priority dispute in the benefits dispute, contrary to the checks and balances prescribed in the statutory scheme, placed the appellant's lawyer in a position where he could not continue to represent the insurer in the benefits dispute.
>
> [18] I would also find that it is not necessary to re-hear this appeal or to receive supplementary submissions on the effect of *Vavilov* because of the improper filing of the EUO transcripts. The improper use of the transcripts arose because of the dual role played by counsel for the insurer in the two proceedings. These facts raise a conflict of interest in this case, as a matter of fact. No purpose would be served by reconsidering the parties' arguments in this case through the correctness lens brought to bear on questions of law as a result of the *Vavilov* decision."

71. It is notable that the uncontroverted and unchallenged submissions, supported by uncontroverted evidence in the **Applicant's Application Record** (December 12, 2024), and the Compendium (1st Amended), are that VCM erred in law or committed errors of law as per the scope of this ***JRPA*** Application.

72. Ergo, the legal test articulated in *Jia* to hearing an appeal or judicial review of interlocutory decisions is merely whether the issues are of "***potential*** general practice" and "important in proceedings before the LAT".

73. In *Jia*, the decisions were interlocutory involving the conflict of interest issues like *Mansuri*. Herein, the decisions and determination of VCM were final decision as they refused relief to add parties, add causes of action, and supplement pleadings.

74. Based on the very position of Mr. Nieuwland in his covering email that he was acting for SNIC also referred to as "TD Home and Auto [sic] and TD General Insurance company [sic]", he put issue estoppel squarely in

decision as to whether insurance companies in a group of affiliated or related insurance companies are privies.

75. While the seminal statement of the Divisional Court in *Jia* was made in relation to the Appellant being heard on appeal of interlocutory decisions, the language of it can be transferred to that of a Rule Of Law SOR Exception as follows, "The questions posed herein are evasive of this judicial review and potentially matters of general practice important in proceedings before LAT."

76. In this regard, where the question, like whether the LAT has jurisdiction to add a party that has been found to be the First Insurer (i.e. the first to receive a Completed Application of a SABS applicant) in the middle of a proceeding is evasive of this judicial review and a potentially a matter of general practice important in proceedings before LAT.

77. As far as possible, multiplicity of legal proceedings shall be avoided (see: section 138 of the *CJA*). This is a full answer to why the ***JRPA*** **Applicant** did not commence an appeal and a judicial review.

78. As there is a statutory appeal mechanism under *LATA*, the presumptive standard of review is that of correctness. To add to the same, the questions posed herein are of a general nature and of great importance to the legal system as a whole. They also involve questions involving the boundaries of two administrative bodies.

79. The other exception in *Vavilov* is where the law requires the correctness standard which refers to the *Housen* standard.

80. As per the formal written admission made by the LAT on February 13, 2025, it disposes of any potential to defer to any of the reasons of VCM on September 13, 2024, in relation to NOM #14 and the one order in NOM #15. Simply put, even if the findings made by VCM were argued (hypothetically speaking) to be findings of fact and/or mixed fact and law (albeit with extricable legal issues), they were only "dressed up as findings of fact" or "mixed fact and law" as per the law cited in the ***JRPA*** **Application** (see: Compendium, Tab 38) but, at law, were "errors of law":

    a. **Misapprehension of evidence, ignoring relevant evidence, or irrelevant evidence**: A tribunal errors in law when it improperly approaches the evidence such as by misapprehending evidence, ignoring relevant evidence or relying on irrelevant evidence or irrelevant factors in reaching its decision (see: *Nguyen*);
    b. **No evidence in a material point**: In *Drewlo Holdings v. MPAC*, the ONSCJ (DC) cited its decision in Yatar, where, at ¶28, the Court confirmed a finding of fact can constitute an error of law: "is when a finding of fact on a material point is based on no evidence";
    c. **Ignorance of evidence**: if an Adj. ignores evidence that the law requires to be considered to arrive at a DECISION, that will amount to an error in law (see: *Kawa Arab*);
    d. **If no factual findings required by Divisional Court to answer the question posed on judicial review**: "[19] This issue is a matter of law. The Landlords argue that this issue is a matter of mixed fact and law, but there are no factual findings that need to be made by me to consider this question." (see: . *Gega*); and
    e. **Inconsistent findings of fact:** Divisional Court found that inconsistent findings of facts as "errors of law."

81. This ***JRPA*** **Application** can somewhat be reduced to the oversimplified heuristic for various tribunals, "If you do not compile, then you cannot file. If you cannot file, then the impugned errors will be presumed to be based on guile".

82. The most inconsistent finding of fact by VCM was beyond irreconcilable when considering the following:

b. Page 9 of VCM Decision: The initial respondent [sic], TDGIC, **and** the current respondent, **SNIC** accepted priority over the **Applicant**'s [sic] insurance policy.

83. *If TDGIC was not a party to the proceeding, as it was neither a First Insurer nor the Sole Underwriter, then how did Vice Chair Lake unilaterally include TDGIC as the sole respondent [fic] in her decision of January 16, 2024 (see: Compendium, Tab 4)?* By that inconsistent finding within the same reasons for decision, VCM has found that non-parties can be liable for entitlement and quantum of benefits by TDGIC being the sole respondent for six months despite the objection of the Applicant for that six month period.

84. The following, while not fictitious facts found by VCM and other decision makers who make purported findings of facts where there is no evidence to support the same, are further "errors of law". In *Bassline*, VC Lamoreux found. "Therefore, I am satisfied that the Tribunal erred by determining that it had no jurisdiction to consider the issues raised in the Notice".

85. With the Correctness SOR standard set, where the Applicant erring on the side of caution especially if the court found or finds that one or two of the questions involve a question of mixed fact and law and/or finding of fact, this Divisional Court, analyzing final decisions and final orders, is to "step into the shoes' of VCM without any deference. No deference is owed by VCM.

86. The SCC in *Vavilov* clarified and drastically changed the judicial review landscape from what it was in Dunsmuir. Since 2019, the presumptive standard of review is reasonableness. However, that presumptive standard is ousted to that of correctness in a litany of situations which are effectively all present herein.

87. There are, at least, five primary exceptions to the presumptive standard of reasonableness: (1) where the correctness standard is required ***by law***; (2) where statutory appeal mechanisms are in place; (3) constitutional questions; (4) general legal questions of central importance to the entire legal system; and (5) questions regarding the jurisdictional boundaries between administrative bodies (***SEE:*** *Vavilov*, paras 34, 36, 55, 58, and 63). The exceptions, at (3) to (5), are defined herein as the "***Rule* Of Law SOR Exceptions**": Tab 38, Factum, pages in COMPENDIUM.

88. The case of *SOCAN* has provided for an additional ground to rebut the presumption of reasonableness which is concurrent jurisdiction of the court and a tribunal.

89. As is readily obvious from the above, section 11(6) of the *LATA* was passed in 2014 pursuant to the *Fighting Fraud and Reducing Automobile Insurance Rates Act*, 2014, SO 2014, c 9, "Other Acts". However, prior to April 1, 2016, automobile accident benefit disputes were adjudicated at FSCO, where there was no statutory right of appeal, only judicial review (see: Penney, at paragraph 18). Ergo, ss. 11(6) did not become practically effective until the LAT officially replaced the FSCO.

90. As of 2024, statutory appeal mechanisms were in place for approximately eight years. Ergo, the reasonableness SOR was and is rebutted herein. There are a litany of questions posed herein that invoke the "Rule Of Law SOR Exceptions" which are outlined in the **Applicant's Factum**.

91. To the extent that the *Housen* standard is applicable herein, the ***JRPA* Applicant** provided unrefuted evidence and legal argument on why the errors by Vice Chair Morrisette were errors of law: Compendium, Tab 37, pages 619 to 621.

92. VCM committed a plethora of errors of law with respect to the following: (i) application of an incorrect legal standard; (ii) a failure to consider a required element(s) of a legal test; or (iii) the mischaracterization of the standard.

(a) no evidence, (b) irrelevant evidence, or (c) an irrational inference (*Johannson v. Saskatchewan Government Insurance,* 2019 SKCA 52 at paras. 24-25) (see: *Yatar,* ONSC Divisional Court).

94. Under any of the exceptions to the presumptive reasonableness standard the standard of review is correctness. In the alternative, to the extent that the ONSC Divisional Court were to find that Orders #2 (the "HCAI Last Known Insurer So Located Order") and Order #5 (renumbered after being Order #3 in NOM #15) required findings of fact, the Applicant's position, which he has to somewhat argue in the hypothetical and pre-emptively on account of no arguments advanced by the **Remaining Respondents**, the Applicant submits that no findings of fact were made so VCM's failure to make any findings renders those refused orders and where no necessary findings of fact are required by the Divisional Court (see: *Gega*) such that the correctness standard applies to each.

CONCLUSION ON ISSUE #4: STANDARD OF REVIEW

95. For any of the above disjunctive grounds, the SOR is correctness.

ISSUE #5: CORRECTNESS STANDARD

Statement of Issue for Issue #5

96. The issue herein is what does the correctness standard entail in terms of what the ONSC Divisional Court is entitled to do while it shows no deference to initial decision maker.

97. ONSC Divisional Court has two options: (i) to uphold the decision of VCM in relation to the refused relief sought in Orders #1 to #4 in NOM #14 and Order #3 in NOM #15 which were final decisions and orders (where applicable); OR (ii) to quash said final decisions and substitute them with its own determinations, findings and orders.

98. No deference is owed to the VC Morrissette reasons and refusal of relief. While perhaps Mr. McLean was overly pointed at VC Morrissette's past, he does not retract it because for her to suggest that he had put "strain on the Tribunal" when it could not even compile the **Record Of Proceeding** at first instance and throughout required her, in her promoted position as Vice Chair, to inform the parties and representatives that the Tribunal had lost some of the records and work with them to re-obtain the same with the filing confirmations.

99. In *Vavilov*, 2019 SCC 65 (S.C.C.) at paragraph 54: "When applying the correctness standard, the reviewing court may choose either to uphold the administrative decision maker's determination or to substitute its own view: Dunsmuir, at para. 50.

CONCLUSION ON ISSUE #5

100. The language of "determination" is most important. When "no determination" was made by VCM and there is no evidence in the record from SNIC but for a pleading by way of the SNIC Response, then the Applicant has necessarily met the balance of probabilities test for Orders #1, #2, and #4 and #5.

ISSUE #6: REQUIRED DECISION UNDER THE CORRECTNESS SOR

101. Is it legally possible for the ONSC Divisional Court to uphold the refusals of relief sought (see: (i) to add a party; (ii) to amend pleadings; (iii) to add causes of action; (iv) a point of law regarding whether **TDHA** was the First Insurer (which is a discrete issue of party status which was finally determined); and (v) that involves, at the very least, issue estoppel) predicated on these "reasons" by the initial decision maker of the LAT:

> [27] .....The initial respondent [sic], TDGIC, **and** the current respondent, **SNIC** accepted priority over the **Applicant**'s [sic] insurance policy".

102. The issue posed herein answers itself. Such a misstatement of law is so egregious that it requires an immediate, final and uniform answer such that no member of the public or any person in the insurance industry so relies on the same.

ISSUE #6: RETURN TO THE *JRPA* APPLICATION

103. To return to the ***JRPA* Application**, paragraphs 4 and 5, the following is copied and pasted:

> [4] Therefore, if **SNIC** and TDGIC accepted priority of the Insurance Policy, as found by the Adjudicator, and the Appellant did not make any such offer to either for them to 'accept priority of the Insurance Policy' and/or neither **SNIC** nor TDGIC first received the Appellant's **Completed Application**, then TDGIC had to receive that offer of "priority" (as the Adjudicator puts it) from the "**First Insurer**".
>
> [5] As a matter of law, could **TDHA** offer "priority" to **SNIC** and TDGIC? The question answers itself.

ISSUE #6(A): EVEN IF THE SOR WAS REASONABLENESS – VCM FINAL DETERMINATIONS FAIL THAT TEST

104. Even if reasonableness was the standard, the VCM determinations and decisions fail that test.

105. In the further alternative, to the extent that ONSC Div. Ct. were to find that the refusals to grant Order #2 and #4 were "findings of fact" or "questions of fact" (albeit without reasons) or "questions of mixed of fact and law", the Applicant submits that VCM erred in jurisdiction by failing to decide all issues of fact and law before her pursuant to *LATA*, and as such erred in jurisdiction.

106. As a further alternative ground, solely in relation to Orders #2 and Order #4, to the extent that the ONSC Div. Ct. cogitated about whether Orders #2 and Order #4 were considered not to be "questions of law", the Applicant submits that the ONSC decision in Elkins would those refusals to be "errors of law". In *Elkins v. Van Wissen*, 2023 ONCA 789 [4], the ONCA found that the Board (LTB) reasons made no mention of the second issue nor the evidence relating to it. Clearly, appellate review was prevented on that issue and, for that reason alone, the Board erred in law. ONCA went further in *Elkins*[5] finding the following: "[69] In addition, however, the Board reasons on the first issue are so deficient as to constitute legal error".

107. Irrespective of the same, if **TDHA** is added as a party, the Applicant's causes of action and amendment of pleadings are directed towards it such that the refusals to grant Orders #1, #3 and #4 are final decisions which involve the discrete issue of party status which are pure questions of law. To the extent that there is a

is extricable from the same as there was no competing evidence before VCM and none now.

Conclusion on Issue #6:

108. This ONSC Divisional Court is required to quash the determinations, decisions, and orders refused by VCM, and where no determination was made, make determinations and findings based upon the Applicant's Application Record and Compendium (1st Amended).

ORDERS SOUGHT

109. The Applicant respectfully seeks the substantive orders sought in his Draft Orders of February 14, 2025, which has been approved for content and form by the Registrar (see: Compendium, Tab 61).

Remainder of this Document (abundance of caution and detail due to non-compliance of Remaining Respondents despite public interest issues)

110. The remainder is solely for benefit of ensuring that this record (court file) contains the necessary facts, evidence, legal bases *et al.*

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VOLUME #10(B(XV):		Form AF-082		
VOLUME #10(B(XV)(a):		April and May 2024: the jurisdictional boundaries issue raised		
VOLUME #10(B) (XVI):	*December 24, 2023: Applicant files LAT Appeal and serves 416.774.3120; and onward*			
VOLUME #10(B)(XVI(a)):				
VOLUME #10(B(XVII):		The shocking misrepresentations by Mr. Nieuwland on behalf of TDGIC at the Nullity Case Conference (May 3, 2024)		
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VOLUME #10(B(XXI):	Potentially two respondent parties in this LAT Proceeding			
VOLUME #10(B(XXII):	Uncontroverted evidence (on belief)			
VOLUME #10(B)(XXIII):	September 28, 2024			
VOLUME #10(B(XXIV):	Reconsideration Decision, ***JRPA Application***, Factum, Application Record, "Certificate Of Perfection" (***SEE:*** COMPENDIUM, Tab 39), Requisition for Form 68(B)[7], Requisition for urgent (***SEE:*** COMPENDIUM, Tab 36)			
VOLUME #11	***ORDERS SOUGHT***			

SUMMARY

This current and comprehensive legal outline to the COMPENDIUM (1st Amended) is for a judicial review application, by way of conversion of NOM #2 (in writing) into a **Motion For Judgment** by Mr. Kevin Alexander McLean in the ONSC Divisional Court against the impugned final decisions and determinations and impugned final orders of Vice Chair Morrissette on September 13, 2024, at the Licence Appeal Tribunal.

First. **Parties Involved**:
- The case involves Kevin Alexander McLean as the **Applicant** and several insurance companies, including TD Home and Auto Insurance Company, Security National Insurance Company, and TD General Insurance Company, as respondents.

Second. **Applicant's Claims**:
- McLean seeks judicial review of the Licence Appeal Tribunal's decisions, arguing that the Tribunal made final decisions that should be reviewed for correctness.

Third. **Legal Standards and Precedents**:
- The document references various legal standards and precedents, including the Judicial Review Procedure Act, the *Insurance Act*, and case law such as *Vavilov* and Savone, to support the **Applicant**'s arguments.

Fourth. **Final Decisions and Orders**:
- McLean argues that the Tribunal's refusal to add parties and amend pleadings were final decisions, which should be reviewed for correctness rather than reasonableness.

Fifth. **Prematurity Doctrine**:
- The document contends that the Tribunal's objection based on the prematurity doctrine is unsustainable since the decisions in question are final and not interlocutory.

Sixth. **Tribunal has conflated the Prematurity Doctrine with the Anti-**Fragmentation Proceedings Doctrine:
- **Anti**-Fragmentation Proceeding Doctrine: imprecise and inapplicable herein

Seventh. **Burden for merits not to be argued is on the Tribunal**: due to its inaction, intentional breaches of its statutory obligations to file the **Record Of Proceeding** forthwith or at all, the Tribunal's counsel engaging in intentional clandestine obfuscation of his address and business employer during the *JRPA* Proceeding, it has failed miserably to meet the burden that the
- **NOM #1**:

Eighth. **Merger of four anti-**justiciability doctrines: The **Applicant** submits that four of the anti-justiciability doctrines, which are inapplicable herein, as a matter of law, must be merged. They are:
- *Rule* Against Judicial Review of Interlocutory Decisions:
- Prematurity Doctrine:
- Exhaustion Doctrine:
- Available, Alternative, and Adequate Remedies Doctrine

Ninth. **Standard of Review**: The **Applicant** argues that the standard of review for the Tribunal's decisions should be correctness, citing the following:
- Statutory mechanisms in place with *LATA*, section 11 (passed in 2016);
- *Rule* Of Law destroyed and obliterated by **VCM**
- presence of general questions of law and issues of central importance to the legal system
- Persistent discord between the decisions of decision makers of the same Tribunal
- Tribunal was unable to decide any hearings from the time it lost or had stolen or destroyed the filed documents from December 23, 2023, to the time of the alleged power outage where Mr. McLean could not file

Tenth. **Overall Burden of Proof**:

Tribunal's, more likely than not, final decisions were incorrect and should be declared as incorrect, set aside, and quashed in the nature of certiorari.

- One paragraph (***SEE:*** paragraph 27 of **VCM** Decision at COMPENDIUM**, Tab 2)**,
- The most glaring misstatement of fact, unsupported by evidence was that **VCM** found, without any evidence and contrary to the pleadings (***SEE:*** first page of the LAT Appeal (***SEE:*** COMPENDIUM, Tab 6) (***SEE:*** COMPENDIUM, Tab 6) and first page of the **SNIC** Response (***SEE:*** COMPENDIUM, Tab 7, pages 32 to 35)), that the Insurance Policy was that of the **Applicant** [sic]. While masquerading as a "finding of fact", it was not a fact. Ergo, it was an error of law.
- The most glaring misstatement of law or error of law was

Eleventh. **Tribunal's Participation**:

- The document discusses the constrained scope of the Tribunal's participation in the judicial review proceeding, arguing that the Tribunal should not defend the correctness of its decisions, not argue the standard of review, and be confined to that which is in the **Record Of Proceeding**.
-

Twelfth. **SNIC and TDHA's limited or non**-existent participation rights at first instance

- As neither **SNIC** nor **TDHA** participated in NOM #14 and #15 at first instance or on reconsideration, they were presumptively not entitled to participate in this *JRPA* Proceeding. In fact, it is what they have done herein. They were effectively forced to participate by the Tribunal with the Tribunal providing them with a template Notice of Appearance which they incorrectly copied and confused with the Attorney General of Ontario with the Attorney General of Canada whilst using the address in the Tribunal's NOA for the AGO

Thirteenth. **Data Fiduciaries**: The document introduces the concept of insurance companies, who are first insurers on a provisional basis and/or on a permanent basis ("**First Insurers**") as data fiduciaries, arguing that they have fiduciary duties regarding the personal data of insured persons.

Fourteenth. **Orders Sought**: McLean seeks several substantive orders, including the addition of TD Home and Auto Insurance Company as a party and the declaration that it is the First Insurer to ensure that it has an insurance company that is obligated to respond to him and his service providers (where applicable) and pay any benefits on a historical, current and future bases (where applicable). Moreover, such a substantive order, by way of declaration, will also assist in an outstanding issue of ensuring that the **Applicant** has the correct address for **TDHA** in HCAI (SEE: **COMPENDIUM**, TAB 14, PAGE 271) along with a fax number for the provision of attachments that cannot be uploaded, as a matter of technological infrastructure, in HCAI (SEE: **COMPENDIUM**, TAB 14, PAGE 271). At this stage, the SABS Claim under TD Claim #3 is an outright mess as neither the non-licensee representative for **SNIC** nor the lawyer licensee representative, who had a brief foray in the "to be confirmed" status in late January and February 2025, who is also the representative for TDGIC in the LAT Appeal could account for what was paid to or on behalf of Mr. McLean (***SEE:*** The misrepresentation regarding the amount paid to McLean or on his behalf (***SEE:*** *COMPENDIUM**, Tab 21,*** page 349, paragraph 6)

Fifteenth. ENDORSEMENT SIGNED, ISSUED AND ENTERED AND WITH REASONS TO FOLLOW

Electronically filed / Déposé par voie électronique : 18-Feb-2025
Toronto Superior Court of Justice / Cour supérieure de justice

Court File No./N° du dossier du greffe : DC-24-00000718-00JR

COMPREHENSIVE DETAILED WRITTEN OUTLINE TO COMPENDIUM

PREFACE *#I: Introduction*

The Licence Appeal Tribunal's Decisions on September 13, 2024, were final decisions and orders
The Public Deserves Final and Uniform Answers to Questions of Central Importance to the legal system; and
*P*arty issue is a discrete issue – finally determined by **VCM** on September 13, 2024

1. These are the ***JRPA*** **Applicant**'s comprehensive submissions, cross-referenced, hyperlinked and bookmarked to the Compendium, which is also hyperlinked and bookmarked therein, that cover all of the issues while brining all of the relevant material to the attention of the sitting motions justice as of February 14, 2025, before he or she is functus officio. They are also designed to be of a benefit to the ONSC Divisional Court due to the unprecedented nature of the conduct before the Tribunal by the respondent insurance companies. The misconduct of SNIC at first instance, then TDGIC and **TDHA**, by its silence, was unprecedented. Never

2. They are of considerable length and detail for the following reasons:

    a. They include cross-reference the informal recusal submissions, supported by affidavit #3 at first instance, of January 16, 2025;
    b. They include and cross-reference the Applicant's NOM #1 which was filed and served on January 23, 20

3. It is trite that the decisions and orders that the ***JRPA Applicant*** has sought to have reviewed are final decisions and orders. **TDHA** has a substantial or direct interest in the outcome of the LAT Appeal (***SEE:*** COMPENDIUM, Tab 6) and it is entitled, by law, to be a party to the LAT Appeal (***SEE:*** COMPENDIUM, Tab 6) (***SEE:*** COMPENDIUM, Tab 6). None of the **Non-Justiciability Doctrines** are applicable herein as the final orders and decisions clearly oust the rule against judicial reviews of interlocutory orders. The **Applicant** cannot seek relief against a non-party and/or the Tribunal cannot award relief against a non-party pursuant to the *SPPA* with *Reza* interpreting the same. While not a precondition to judicial review, the **Applicant** exhausted his right of review internally with the reconsideration motion (***SEE:*** COMPENDIUM, Tab 25) and submissions (***SEE:*** COMPENDIUM, Tab 25).

4. The Divisional Court (ONSC) found, while drawing similarities to *Great Atlantic v. Minister of Citizenship (Ontario)*, in *Rol-Land Farms Limited* as follows at paragraph 44:

> [44] In this case, as in *Great Atlantic &Pacific Co. of Canada Ltd. v. Ontario (Minister of Citizenship)*, [1993] O.J. No. 4179 (Div. Ct.), the question whether Ms. Harold was properly added as a party should be addressed as an interlocutory matter. The issue of party status is a ***discrete issue*** that has been ***FINALLY DETERMINED*** by the **Tribunal**. The full record upon which the **Tribunal** made its decision is before this Court.

5. The full record, as it relates to the final orders and final decisions in the NOM #14 and NOM #15, has been before this Honourable Court since December 12, 2024.

6. Under the sub-heading, the converse is also true: putting the ***JRPA Applicant***, in his capacity as a ***SABS Applicant***, to the expense and time of proceeding against a non-**First Insurer** runs the risk of repeating this

any decisions or potential decisions in the future.

7. Moreover, since the three distinct respondent insurance companies did not make a preliminary objection on any grounds, it is only the Tribunal that did so. However, the Tribunal's **Prematurity Doctrine** objection is on even worse footing or legal grounds that that of Ms. Harold's judicial review because she was ***added*** as a party to that administrative proceeding before the Agricultural Affairs Tribunal. It is trite law that the *addition* of a party by a tribunal is an interlocutory decision whereas the **refusal** or **dismissal** to add a party is a final decision.

8. As such, the Tribunal has the burden of advancing an argument as to why on final orders and final decisions the prematurity doctrine has any merit. As the Tribunal has not filed any documents in the court file but for a Notice Of Appearance, and has not even been compiling the **Record Of Proceeding** as statutorily required by the *SPPA*. Ergo, it cannot get out of the proverbial gate to comply with section 10 of *JRPA*.

9. Bluntly put, the "show must go on" as the public deserves it, no matter how delinquent and noncompliant this Tribunal has been with its obligations under the very statute that governs its conduct in proceedings and the statute that governs its obligation to file the **Record Of Proceeding**.

10. As submitted in NOM #1 by way of NOM (see: Compendium, Tab 48), Confirmation of Motion (see: Compendium, Tab 49), and Written Argument (see: Compendium, Tab 50), the following legal principles and precedents are well-settled by this ONSC Divisional Court and facts are not in dispute:

    a. Facts:
        i. The Tribunal was required to compile a **Record Of Proceeding** from the date of December 23, 2024 and onwards;
        ii. The Tribunal was required to file (not necessarily serve) the **Record Of Proceeding** immediately after receipt of the ***JRPA* Application**. For mathematical and dating purposes, the Tribunal was required to file the **Record Of Proceeding** in the week of November 18 to 22, 2024 (see: Compendium, Tab 50, page 1223, paragraph 27);
        iii. The duty of the Tribunal to file the **Record Of Proceeding** is an independent one from its right of an undefined scope of participation as a party in an application for judicial review or judicial review proceeding (ibid, paragraph 28);
        iv. In this modern day of technology, along with the specific filings herein that it involve a LAT/AABS e-filing portal, all of the filed materials would be compiled and organized in a manner that it could not take the LAT more than a day to prepare an index with tabulations for the delineated different classes of filed documents and then enumerate the same before filing the **Record Of Proceeding** with the ONSC Divisional Court ((see: Compendium, Tab 50, page 1224, paragraph 30);
        v. Therefore, any administrative tribunal in this province that is subject to being served with a 'notice of application for judicial review' is only required to file the **Record Of Proceeding**s forthwith, after having compiled the same if there was a hearing before it. Put another way, there is no requirement upon any administrative body to participate in any judicial review after it has filed the **Record Of Proceeding** forthwith. It is not even required, by statute, to serve the applicant with a copy of the same or any other respondents or interested persons (see: *ibid*, page 1225, paragraph 33);

    b. Legal bases:
        i. Content of the record: The content of the record for an application for judicial review is defined by the Judicial Review Procedure Act, R.S.O. 1990, c. J-1, *SPPA*, and by the Rules of Civil Procedure.
        ii. Process to trigger Tribunal's obligations: The process begins with the notice of application: r. 68.01(1). Upon being served with the notice of application for judicial review, the decision-

Divisional Court "the record of the proceedings in which the decision was made". The "record" is not defined by the Act: *Payne*, at paragraph 160 (see: paragraph 34);

iii. Full and accurate record: An applicant for judicial review has the right to have a full and accurate record of what went on before the tribunal put before the court: *Payne* at paragraph 161 (see: paragraph 35);

iv. Court is entitled to the **Record Of Proceeding** pursuant to statute (see: section 10 of the *JRPA*);

v. An applicant is entitled to the **Record Of Proceeding** pursuant to inherent jurisdiction: The reason for the Applicant being entitled to the same is not grounded in the statutory sections but the ONSC Divisional Court's inherent jurisdiction: *Payne* at paragraph 161 (sentence 2

vi. As early as 1952, Lord Denning *in R. v. Medical Appeal Tribunal ex p. Gilmore*, [1957] 1 Q.B. 574 at 583 (C.A.) found the following as a basis the common law and/or equitable powers of the English courts upon which our common law and courts of equity are founded "The court has always had power to order an inferior tribunal to complete the record ... [A] tribunal could defeat a writ of certiorari unless the courts could order them to complete or correct an imperfect record. So the courts have the power to give such an order

vii. The ONCA adopted the same in 2000 in its decision in *Payne* at paragraph 161 where it also cited other jurisprudence.

viii. A statutory body subject to judicial review cannot immunize itself or its process by arriving at decisions on considerations that are not revealed by the record it files with the court." (see: (see: paragraph 161 of *Payne* (ONCA)).

ix. The erudite justices in Rol-Land Farms Limited for the Divisional Court in 2008 reaffirmed the legal precedent that the temporal period for which documents, evidence, and decisions must be included in the forthwith filing by an administrative decision maker with the ONSC Div. Ct. at paragraphs 37 and 38: As indicated in an oral ruling during the hearing, volume 3 of the **Record Of Proceeding**s is not admissible. Section 10 of the *JRPA* requires a tribunal to file its **Record Of Proceeding**s when served with an application for judicial review of a decision. It is the **Record Of Proceeding**s relating to the particular decision that is to be filed, as is clear from the words of s. 10; and thus, the content of volume 3 is not properly part of the record required to be filed pursuant to s. 10 of the *JRPA*, as it post-dates the decisions under review."

x. While entitled – the dangers of not bringing a motion: Ergo, pursuant to s. 10 of the *Judicial Review Procedure Act,* it was available to the applicant to bring a motion seeking production of documents it alleges were relied on by the decision-maker but are not contained in the record: see, for example *K.D. v. Peel Children's Aid Society*, 2017 ONSC 7392 (Div. Ct.) at paras. 16-17). The applicant failed to do so. As a result, it is precluded from raising this issue for the first time on judicial review: Reflection Productions v. Ontario Media Dev. Corp., 2022 ONSC 64, the ONSC Div. Ct (as per MORAWETZ C.J., VARPIO, KRISTJANSON JJ.

11. With the above set in stone as for the facts and law, the House of Lords put it some eight decades ago, openness to the public is the "authentic hallmark of judicial as distinct from administrative procedure". (see: paragraph 40 of *Toronto Star*). The LAT is a public institution, albeit funded by the insurance industry, that is conducting adjudicative matters.

12. Just as justice delayed can be justice denied, so reportage delayed can be reportage denied (see: paragraph 67 of *Toronto Star*).

13. The leading case regarding the "open court principle" and "adjudicative records" is that of the ONSC in *Toronto Star* v. AG Ontario, 2018 ONSC 2586. In that case, the *Toronto Star* was entitled to "Adjudicative Records" as a member of the media or journalism sector.

the *SPPA* which forecloses the possibility it could comply with section 10 of the *JRPA*, "Adjudicative Records" as a PARTY TO THE LAT PROCEEDING. The Tribunal's response, inconsistent with that of Mr. Boyce, was that it is still attempting to compile the same and would request more information from the ***JRPA* Applicant** by February 21, 2025. To submit that is unacceptable would be the understatement in the history of judicial review proceedings under the *JRPA* in this province.

15. In order for the public to benefit from such an order endorsed (see: Compendium, Tab 61), it must be endorsed with reasons to follow.

16. Former Chief Justice Lamer has pointed out that characterizing administrative bodies depends on their function in the circumstances: "the principles for judicial independence . . . are applicable in the case of an administrative tribunal, where the tribunal is functioning as an adjudicative body settling disputes and determining the rights of parties" (see: paragraph 42 of *Toronto Star*).

17. The open court principle is one of the hallmarks of a democratic society . . . [and] is inextricably tied to the rights guaranteed by s. 2(b) of the Charter (see: paragraph 54 of *Toronto Star*).

18. This open access, and concomitant protection of freedom of the press, is in keeping with those tribunals' obligation "in exercising their statutory functions . . . [to] act consistently with the Charter and its values". This is not optional or discretionary on the part of administrative tribunals. As the Supreme Court has stated, "the protection of Charter guarantees is a fundamental and pervasive obligation, no matter which adjudicative forum is applying it". (see: paragraph 55 of *Toronto Star*).

19. It is important to keep in mind that freedom of expression "protects listeners as well as speakers" (see: paragraph 56 of *Toronto Star*).

20. But the open court principle in s. 2(*b*) of the *Charter* only applies to Adjudicative Records (see: paragraph 62 of *Toronto Star*).

21. Statutory tribunals exercising judicial or quasi-judicial functions involving adversarial-type processes which result in decisions affecting rights truly constitute part of the "administration of justice": *Southam Inc v Canada (Minister of Employment and Immigration)*, [1987] FCJ no 658 (QL). The legitimacy of such tribunals' authority requires that confidence in their integrity and understanding of their operations be maintained, and this can be effected only if their proceedings are open to the public: *Germain v Saskatchewan (Automobile Injury Appeal Commission)*, 2009 SKQB 106.

22. Tribunals like the LAT conduct administrative hearings governed by the Statutory Powers Procedure Act ("*SPPA*") are required to be open to the public. In principle, therefore, it is uncontroversial that "[t]he 'open court' principle" -- at least in some version -- "is a cornerstone of accountability for decision-making tribunals and courts" (see: paragraph 6 of *Toronto Star*).

23. The Supreme Court of Canada has stated that "[a]ll law and law-makers that touch the people must conform to [the Charter]. Tribunals and commissions charged with deciding legal issues are no exception." (see: *Toronto Star*, paragraph 14).

24. The open court principle, which is inextricably tied to the rights guaranteed by s. 2(b) of the Charter, applies to administrative tribunals as well as to courts. This Tribunal followed up the incorrect decision of VCM with attempting to immunize itself from the constitutional guarantees and rights under section 96 to 101 of the Constitution Act of Canada of the public to judicial review of administrative bodies by admitting through the LAT Registrar that it had not even compiled the **Record Of Proceeding** at first instance and throughout the LAT Proceeding (***SEE:*** Affidavit #16; COMPENDIUM, Tab 60).

25. The leading case in Ontario regarding the right of the media is *Toronto Star v. AGO*, 2018. It provided the interpretation of what constituted "Adjudicative Records" in the context of section 20 of the *SPPA*.[8]

26. While the ***JRPA* Applicant** was not required to make any request for the ROP during the **ROP Temporal Period**, he was compelled to do so as a result of the misrepresentations made by Mr. Boyce, counsel to the Tribunal, as to when he anticipated filing the same.

27. Like section 2(b) of the Charter and section 10 of the *JRPA* that requires filing (not necessarily serving per se at first instance) of the **Record Of Proceeding**, as it was before a statutory decision maker at the time of

28. The failures and likely loss or destruction by the Tribunal of the **Record Of Proceeding** from, at least in part, December 24, 2023, to September 12, 2024, provide further justification as to why NOM #2 must be converted into a **Motion For Judgment** and the Draft Order must be signed by the sitting motions justice, signed by the Registrar and entered into the electronic filing system with the ONSC Divisional Court

29. This Honourable Divisional Court is fully entitled as per the Civil Rules and common law (***SEE:*** *Tesky*; *Harisson v. LSO*) to issue its order or endorsement to the NOM #2 Motion Record (or ***JRPA* Application**, COMPENDIUM, or 'record) with "reasons to follow".

30. As per the Applicant's affidavit #16, which was brough to the immediate attention of the ONSC Divisional Court once he learned on February 14, 2025, that the Tribunal had not even been compiling the **Record Of Proceeding**, the Tribunal has been unable to comply with section 10 of the *JRPA* for some time.

31. Had the Applicant known that the Tribunal was not even compiling the **Record Of Proceeding** throughout, which was consistent with the Applicant's NOM #18, seeking a litany of corrections at each and every page of the "reasons for decisions" (for NOM #13 to #15), he would have sought Charter relief against the Tribunal for violating his Charter rights and consequential damages.

32. It is trite that the distinction between section 24(1) and (2) vs. section 52 of the *Charter* is that the former is where an individual has been aggrieved by some governmental action and the latter is where the law itself is impugned and alleged to be unconstitutional.

33. While the necessary evidence is available for the Court to decide the Applicant's NOM #2, which was motion in writing and seeking to convert said motion into a "Motion For Judgment", the intentional and egregious breaches of section 20 of the *SPPA* by the Tribunal have led to the conclusion that it is impossible for the Tribunal to comply with section 10 of the *JRPA*. Since it is impossible for the Tribunal to comply with section 10 of the *JRPA*, then the Court must operate from the best evidence available.

34. While the issue in *Reza* as to whether the style of cause was required to be amended to Certas Insurance Company was not decided and left for another day, albeit without a reported decision at a later date in that proceeding or another, there was no dispute that the scheme of the *SPPA* does not authorize an injured person to obtain SABS benefits or quantum from a non-party. Since it is only the First Insurer, under Reg 283, that is duty bound, by law, to respond and to pay benefits (if any) to an applicant for benefits, at first instance and after 90 days of receipt of a Completed Application (OCF-1), then said First Insurer (provisionally or permanently) must be a party to a LAT proceeding. It matters not when the discovery occurs during a LAT proceeding but what matters is that it is added so that the issue of whom an injured person has recourse against, and at what times, is determined finally and unequivocally.

35. Despite utilizing the document referred to as the "Spam Fax" or the August 2024 letter, which informed Mr. McLean that no insurance company within the **TDI Group** had a record of his claim number, there should

a Motion for Judgment.

36. However, the word used by the Federal Court in *CB Powell* cited by *Buffalocalf* of "available" dovetail with the insurance context (AABS) like found, as a principle of law, in *Reza* in that the **Applicant** therein could not proceed against a non-party as the *SPPA* (part of the administrative process) did not permit (afford) an 'available' remedy. [9]

37. The distinction, with a fundamental difference, was that State Farm wished to exit the Ontario automotive insurance market and looked for a prospective purchaser of its Canadian operations when the delegate provided the background to section "change of title of proceedings" of the matter, "The Appellant therein brought a motion for an order that both the appeal and arbitration title of proceeding be amended to substitute "Certas Home and Auto Insurance Company" for the Respondent. The Appellant submitted that the Desjardins Group acquired State Farm January 1, 2015, and that the Respondent's correspondence and website suggest that Certas Home and Auto Insurance Company are now liable for any amounts payable to the Appellant."

38. There was an obvious cause and effect regarding why State Far++m was ready, willing and able to sell its Canadian insurance business, and how that is different from the "one and the same" misguided arguments made. Desjardins Group acquired State Farm Canada's property and casualty business, including its operations in Ontario, in January 2015. The State Farm brand was rebranded as Desjardins Insurance.[10] The impact of the sale by State Farm to Desjardins, which operates its automotive insurance under Certas, was that Desjardins became the second largest provider of property and casualty insurance in Canada.[11] As part of the deal, Desjardins kept employees of State Farm but they were then employees of Desjardins and relevant to the *Reza* claim, they were employees of Certas. As part of the contract between Desjardins, a cooperative with large European financial backing, and State Farm, State Farm had to provide an influx of capital of some 450 million into the newly acquired in non-voting preferred shares into Desjardins Group's post-closing property and casualty insurance businesses, which includes the newly acquired State Farm Canada property and casualty operations.

39. The non-voting requirement was clearly a requirement of our statutory insurance scheme so foreign insurance companies could not continue to have voting control of a Canadian insurance company albeit without being the "underwriter" of record or on paper. With that segue, the reasons for State Farm willing to sell and selling its Canadian business, particularly the Ontario division, were its issues with the Canadian government.[12] In brief, there was an apparent deglobalization of the insurance industry with less foreign owned insurance companies operating in Canada and the article, mostly referenced to speaks at the "P & C Crystal Ball" and a mandated reduction of premiums in the private passenger market[13]. Such a sale would have required regulatory approval such that Desjardins (Certas) would have taken on all of the outstanding assets and liabilities of State Farm's Canadian operations. Of course, *Reza* could not proceed against the entity that departed the Canadian operations that was also being rebranded as Certas with no reference to State Farm. In the case of *Reza*, there was no priority dispute between State Farm and another insurance company, so the **Applicant** therein was bound to proceed against his underwriter and each "contract of insurance" was required or deemed to provide all of the benefits under *SABS*.

40. Desjardins' purchase of State Farm was an asset transaction. The likely terms required Desjardins to assume liabilities, which may explain the $450 million injection into non-voting preferred shares by State Farm to cover any potential liabilities. There is no evidence of a sale from **TDHA** to **SNIC** or other theories presented by the respondent's counsel in this *JRPA* Proceeding. Documents from FSRA confirmed that **SNIC** and TDGIC are distinct companies, as are **TDHA** and **SNIC**. Without **TDHA** being added as a party and filing a response per LAT *Rule*s, the **Applicant** cannot seek remedies against non-parties through the LAT process under *SPPA* and *LATA* guidelines. Attempts to obtain non-party documents through NOM #13 were detailed in **VCM**'s decision. If an order against **TDHA** for non-party document production was refused, it would result in an interlocutory order, prohibiting judicial review.

41. This final orders and final decisions of VCM remain errors of laws and no member of the public should rely on a single solitary word from those decisions as it relates to her conflating contracts with SABS claims, discretion with obligation, which were based on errors of law (albeit masquerading as facts) for the now obvious reason that the Tribunal was not complying with its basic statutory duty to compile the record into a **Record Of Proceeding** irrespective of whether a party before the Tribunal commences an appeal or judicial review.

42. Without **TDHA** being named as a party, and the party responsible to respond and pay benefits, then the LAT Proceeding (stylized as *McLean v. SNIC*) contains no purpose at law. Every step thereafter remains a nullity but for motions involving points of law that are evasive of the issues of whether the SABS Applicant was entitled to benefits and in what quantum: (i) whether Mr. Karat violated the LSA and LSO By-Laws by signing a statutory responsive pleading and what relief must be granted; and (ii) whether the case conference was a nullity at law by contravening the explicit wording the *SPPA*

43. In order for the **McLean LAT Proceeding** to be determined in accordance with SABS, party status, which is a discrete issue must be determined by this ONSC Divisional Court such that there is a uniform and final answer.

PREFACE #I(A): A "Proper Case"

Leading sufficient evidence for Motion #2 (*Rule* 37.12 and *Rule* 37.13(2)(a); and section 6(2) is liberally construed analogy to the "proper case" –

BY ANALOGY AND IMPORTANT CONTEXT – HOW WE ARRIVED HERE[14]

44. While it appears to be common ground that an affidavit is preferred, Justice AD Grace found in *Her Majesty the Queen*, 6418 at paragraph "[11][15] . In *Cureatz v. Progressive Party of Canada*, [1997] O.J. No. 2309 (Gen. Div.), LaForme J., as he then was, accepted jurisdiction to determine the matter, sitting as a single judge of the Divisional Court pursuant to s. 6(2) of the *JRPA*, while adopting various authorities, found: "In view of the fact that the Divisional Court is not able, in general, to deal with a question of urgency ... I take the view that s. 6(2) should be *liberally construed*. Thus, to my mind, the time that *might be taken up* before the Divisional Court can hear the matter is an important factor: *Universal Settlements International v. Duscio*, 2010 ONSC 6547 (CanLII), at para. 6).[16]

45. The above language in *Rol-Land Farms Limited* and section 6(2) of the *JRPA* are ironically similar in that the ONSCDC used the following: "where the preliminary decision will *likely* result in a fundamental failure of justice" and section 6(2) of the *JRPA* utilizes the language of "where it is made to appear to the judge that the case is one of urgency and that the delay required for an application to the Divisional Court is *likely* to involve a failure of justice. R.S.O. 1990, c. J.1, s. 6 (2); 2006, c. 19, Sched. C, s. 1 (1)." The common or similar words between the jurisprudential statement of law and the legislative language in the *JRPA* are: *likely*; result vs. involve; and failure of justice.

46. The statement of law in *Rol-Land Farms Limited* and *JRPA*, ss. 6(2) both relate to a timing issue as follows:

a. The ONSC determining whether to decide a ***JRPA Application*** at a certain time where the underlying administrative proceeding is ongoing (i.e. whether or not it is premature to do so); and
b. The ONSC determining whether to decide a ***JRPA Application*** before a single justice as opposed to having a three-judge panel of the ONSC Divisional Court decide the same later (i.e. whether or not the delay in waiting for the ONSC Divisional Court to decide it later will *likely*, albeit only a appearance, result in a failure of justice).

determined a failure of justice is *likely* if the single justice of the ONSC does not assume jurisdiction. The merits of an application are important factors in determining whether there will be a failure of justice.

48. It is now unsurprising why **SNIC** purported to approve the sum of approximately $2,000 in the first submitted ***OCF-1***8 in April 2023, and then Mr. Nieuwland for TDGIC and Mr. Karat represented to the **Tribunal** that TDGIC or "they" [as incompetent and inaccurate as that was] had paid $2850 in benefits but both were incorrect. There is no dispute that the hearing of this ***JRPA Application*** is "urgent (***SEE:*** COMPENDIUM, Tab 36 (Affidavit #2) and 42 (Requisition))". It is more *likely* than that that there will be a failure of justice if there is a delay in not having this ***JRPA Application*** heard urgent (***SEE:*** COMPENDIUM, Tab 36 (Affidavit #2) and 42 (Requisition) subject to the ONSC Divisional Court being available in mid-January 2025, as **SNIC** has not even filed a valid pleading therein, **SNIC** did not file a case conference brief, and it is not the **First Insurer**.

49. While the **Tribunal** found in *Mosa* and *Dankha* that it cannot excuse or condone non-compliance with the *LSA* and LSO *By-Laws*, this is exactly what the likes of Vice Chair Lake and Vice Chair Morrissette have done since the outset and continued to flout another piece of legislation, and its by-laws which have legislative force, in the *LAW SOCIETY ACT*. There is a persistent and internal discord between the decisions of Vice Chair McGee and Vice Chair Maedel in *Dankha* and *Mosa* respectively, and those of Vice Chair Lake and Vice Chair Morrissette. This is yet another ground, and a test case, to determine if this internal discord meets one of the disjunctive and independent grounds an exception to presumption of reasonableness.

50. The ***JRPA Applicant*** has led more than sufficient evidence with an affidavit #2 being solely confined to the test for leave. The **Applicant** respectfully submits that it is "plain and obvious" that this ***JRPA Application*** will succeed at least on the substantial and pressing questions of law. However, this is merely contextual now as the **Applicant**'s Requisition #2 was somehow and inexplicably not advance can be addressed on a substantive level by NOM #2.

51. Herein, the sole ground that **VCM** set forth in not granting Order #3 in NOM #14, without addressing the other orders #1, #2, #4 and #5, was that she did not believe she had any jurisdiction to exercise a discretion to add **TDHA** albeit there was no dispute or finding to the contrary that **TDHA** was the **First Insurer** as a matter of law. **VCM** was statutorily required to decide the LAT Appeal (***SEE:*** COMPENDIUM, Tab 6) in accordance with *SABS*. A breach of *Reg 283* is legally equivalent to a breach of *SABS*.

PREFACE #1(A)(I): Remaining Respondents only evinced an intend to respond to ***JRPA* Application** but never did;
Tribunal did not comply with section 20 of the *SPPA*; cannot comply with section 10 of *JRPA*; and
did not participate in NOM #2

52. It is trite that judgments, also called reasons for judgment or reasons, are the explanation that the court gives at the conclusion of a hearing, explaining why an order is being made. By contrast, an order is the formal expression of the ruling of the court. Nothing is to be gained from another step in this *JRPA* Proceeding but for costs or further submissions on any points of law below.

53. The Applicant is concomitantly requesting that a sitting motions justice endorse the Draft Order or issue the same with "reasons to follow". This is consistent with *Rule 59* that an order is effective from the date of pronouncement. It is then incumbent upon the parties to draft an order for review by the justice who issued judgment for it be deposited and/or it may already be deposited and signed upon the Motion #2 Motion Record, COMPENDIUM, *JRPA* Factum or ***JRPA* Application**. The Motion Record #2 is preferrable and ideal.

Applicant has been without a First Insurer, with concomitant duties to respond and pay benefits and without a correct insurer and address in HCAI to be able to submit treatment plans.

PREFACE #1(A)(II): WRITTEN REASONS TO FOLLOW (AN Order or Endorsement)

55. There are many instances in which a trial judge may feel compelled to provide an immediate oral decision though she or he intends to subsequently file more detailed reasons in writing. In *R. v. Teskey*, [2007] 2 S.C.R. 267, the Supreme Court of Canada provided the following examples (at paragraph 17): ...it is often necessary in the interests of achieving trial efficiency for a trial judge to announce promptly the disposition on an evidentiary ruling or on a motion, with reasons to follow at a later date. In *Teskey*, the Supreme Court held that a trial judge "is not precluded from announcing a verdict with 'reasons to follow'" (at paragraph 16).

56. The recent decision of the Supreme Court of Canada in *The Queen v. Teskey*, 2007 SCC 25, is authority for the proposition that a trial judge is not precluded from issuing a judgment "with reasons to follow", provided the reasons objectively reflect the real basis and reasoning underlying the decision. In this case, I felt it imperative to move the case forward as expeditiously as possible in light of the already inordinate length of the proceeding, the time that had expired since the proceeding had commenced and because it was important to secure the earliest possible date for the disposition hearing: *Children's Aid Society of Toronto v. K.(A.),* 2007 ONCJ 735 (CanLII) at paragraph 27.

PREFACE #1(A)(II)(a): Tribunal cases

PREFACE #1(A)(II)(a)(i): Bottom Line Rulings

57. In *Harrison v. LSO*, the panel found Bottom line rulings at paragraph 5: "At the conclusion of the appeal hearing on November 20, 2023, we reserved our decision. On November 28, 2023, we issued a bottom-line ruling. We indicated that the appeal would be allowed, principally on procedural grounds, and that written reasons would follow. We also addressed the relief that would flow from our ruling. At paragraph 68, the LSO appeal tribunal found: "The court was nevertheless at pains to stress the salutary nature of an immediate decision, with reasons to follow, in many circumstances.[18] In Ms. Harrison's case, the passage of one month between the delivery of an oral ruling and the release of the written reasons is neither unusual nor questionable in the context of our Tribunal: *Law Society of Ontario v. Harrison*, 2024 ONLSTA 1 (CanLII), at para 68).

PREFACE #1(A)(II)(b): LAT cases

58. In *Little Start Child Care Inc. v. Director, Child Care and Early Years Act, 2014*, 2021 CanLII 21001 (ON LAT), Member Friedland cited *Tesky* with approval at paragraph 31: "I agree with the appellant's submissions that an adjudicator may announce a decision with reasons to follow. As affirmed by the Supreme Court of Canada in the context of a civil case: the needs of justice in a given case may be better served by an announcement of the disposition of the matter as soon as the deliberation process is completed but before full written reasons can be made available to the parties."

PREFACE #1(A)(II)(c): How much delay is too much delay?

59. In *R. v. Cunningham*, [2011] O.J. No. 3546, the Ontario Court of Appeal held that "reasons, even if released **long after** the decision, are presumed to reflect the reasoning that led him [the trial judge] to his decision" (at paragraph 13). The Court of Appeal also held that there "is no time limit on the delivery of reasons," but

concern that the requisite link between the two does not exist" (at paragraph 37).

PREFACE #1(A)(IV): Distinctions under the Rules of Civil Procedure to the standard involving criminal law under the Criminal Code

PREFACE #1(A)(IV)(a): *Rule 59*

60. *Rule 59* is analyzed with respect to the absolute right of this ONSC Divisional Court to approve the Draft Order (February 14, 2025) filed by the Applicant and stamped by the Registrar, with sincere thanks. The amendments in 2021 to this Ruel 59 contained distinctions with a difference that are important to note in the context of the unprecedented misconduct of the Tribunal and Respondent Insurance Companies.

PREFACE #1(A)(IV)(b): Effective Date

61. An order is effective from the date on which it is made unless contrary language appears: *Rule 59*.01.

PREFACE #1(A)(IV)(c): Endorsements

62. An endorsement of an order shall be made on the following: the appeal book, compendium, record, notice of motion, notice of application; OR (ii) a separate document by the judge, associate judge or officer making the order: *Rule 5*9.02 (new provision since 2021 as per O. Reg. 383/21, s. 15).

PREFACE #1(A)(IV)(d): If a separate document

63. If a separate document it utilized, then it MAY [not "shall"] may include the reasons for the decision. However, the separate document SHALL include the following: (i) nature of the hearing or conference; (ii) date of the hearing [nota bene: if written hearing, then the notional date it was returnable on]; (iii) disposition made at the hearing; (iv) list of parties and lawyers who participated in the hearing or conference and who did not participate in the hearing or conference [nota bene: in the content of a Rule 37.12.1(4) motion, then non-participation is gauged by whether the responding parties filed any notices or requests to be heard orally or agreed to have the matter heard in writing and then filed responding parties' motion records, factums *et al*] (***SEE:*** *Rule 59*.02).

64. This gives the court the flexibility to combine the endorsement and the reasons for decision into one single document. Alternatively, the Court can do it in a separate stages by endorsing the motion record, notice of motion, notice of application (***JRPA* Application**) or "record".

PREFACE #1(A)(IV)(e): Draft Order

65. Notably, a draft order must now be sent for approval to all parties "who participated" in the hearing (rather than just those parties who were "represented" at a hearing). As the ***JRPA* Applicant** has already filed and had stamped the Draft Order for NOM #2, *Rule 59*.03 is inapplicable.

PREFACE #1(A)(IV)(f): Registrar's signature of an order

66. The Registrar may sign the order if it reflects the endorsement made by the sitting motions justice who made it (***SEE:*** *Rule 59*.04(3)).

PREFACE #1(A)(IV)(g): Draft Order must be approved for FORM and CONTENT

67. A draft order is now to be approved in both form *and* content (unlike the earlier version of the rule, which required only approval as to its form). The Applicant's draft order of February 14, 2025, has been approved in content and form (see: Compendium, Tab 61)

> **PREFACE #1(A)(IV)(h):** Application of Rule 59 to the uncontroverted evidence herein

68. The issued order shall be provided to the Applicant has he filed the Draft Order for NOM #2, in Word and PDF, on February 14, 2025, after learning that the responding parties were not complying with their obligations under the Civil Rules (***SEE:*** *Rule 59*.04(4)). As the Applicant does not have access to Case Center, email is the preferred route for provision of the same.

69. If the registrar is not satisfied that the requirements under *Rule 59*.04(3) have been met (i.e., the draft order is not in the proper form and/or does not comply with the endorsement or decision), the registrar must give notice to the person who filed the draft order (*Rule 59*.04(5)). However, that is not an issue herein.

> ***PREFACE*** I(B): Party Status: section 5 of the *SPPA*

70. The Tribunal is subject to the *SPPA*.[17] Under the *SPPA*, parties are those that are specified by statute or entitled by law to participate in the proceeding. The *Insurance Act* does not specify the parties to a LAT proceeding so it is those that are entitled ***by law*** to participate in the LAT Proceeding that is applicable. It is an entitlement to participate, but not a duty, that triggers "party status".

71. The irony herein is overwhelming in that section 5 of the *SPPA* was cited in NOM #8, and it is part of the **Record Of Proceeding**, demonstrating that said motion did not proceed by consent but rather it required the **Applicant** to obtain the status certificates from the FSRA and tender them the day before the June 20, 2024, written hearing. The *SPPA* was included in the motion record, which is in the Application Record, by way of an authority and tendered in perfectly compliant fashion with the relevant *LAT Rule*.

72. The **Applicant** not only relied upon the binding legislation, upon the Tribunal, but he relied upon the authorities that bound the Tribunal in the Zurich quintopoly[18] of cases from 2012 to 2024. Mr. Justice Akazaki, a justice of the ONSC, which makes him a justice of the 'division', known as the "Divisional Court" (an intermediate appellate court), issued a beautifully articulated decision in May 2024, which further clarified and bolstered the decision of the Honourable Justice Juriansz of the ONCA in 2014 (adopted by the SCC in *verbatim* fashion).

73. According to **VCM**, decisions of the SCC, ONCA, and ONSC (Divisional Court) were not binding upon her. While the expertise or lack thereof of a Tribunal (and/or its decision makers) is no longer a factor in setting the standard of review, it is the four-step process articulated in *Shuttleworth* by an in-house counsel of the LAT that is so terribly concerning. While the **Applicant** cited the same, it is the complete absence of any jurisprudence in the **VCM Decision** in NOM #14 (***SEE:*** pages 8 and 9 of COMPENDIUM) that requires this reviewing court to start afresh.

74. **VCM** had to address each order sought and not merely dismiss a 'motion' in a general sense. She had to grapple with the evidence, issues, and submissions. As it relates to the evidence, her apparent biggest gripe is that there was some kind of 'strain' put on the Tribunal as if the Tribunal was subject to some motor vehicle accident and its hypothetically personified impairments needed some level of classification. Moreover, in NOM #15, **VCM** took aim at the **Applicant** somehow 'curtailing' [sic] presuming **VCM** meant circumventing] his affidavit evidence to include too much '***material*** in support of his motion and submissions'.

75. In a pre-LAT decision denoted in the ***JRPA Application*** and Factum in *Reza*, the decision maker therein was concerned that a decision changing the style of cause from State Farm to Certas would affect all other ongoing proceedings before the FSCO. It is unclear why following the law would take a 'back seat' to some administrative changes to the style of cause.

76. The distinction between the sale of a business by State Farm to Certas could not be more different as State Farm naturally no longer had an FSRA number but that was presumably assumed by Certas and/or removed from the rolls of the register for the FSRA.

PREFACE I(C): The direct OR substantial interest in outcome test

77. At paragraph 59 of *UFCW Canada v. Rol-Land Farms Limited*, 2008 CanLII 6652 (ONSC DC), Swinton J., found as follows for a unanimous Divisional Court:

> "[59] Principles of administrative law have long held that a person *can* be made *a* party to a proceeding only if he or she has a direct or substantial *interest* in the outcome of the case (*Re Hoogendoorn and Greening Metal Products & Screening Equipment* (1967), 1967 CanLII 20 (SCC), 65 D.L.R. (2d) 641 (S.C.C.))."

78. There is no dispute any of the evidence on a general level but also specifically under this sub-heading that **TDHA**, on a balance of probabilities had and has a direct OR substantial interest in the outcome of the LAT Appeal (***SEE:*** COMPENDIUM, Tab 6). However, the adding of the party of **TDHA** as the **First Insurer**, along with the concomitant sought orders pursuant to the declaratory relief along the addition of those "causes of action" against "another" were all final orders and decisions that squarely invoke the Constitution of Canada. "**Causes of Action**" is defined as: "a fact or facts that enable a person to bring an action against another". As **SNIC** and TDGIC were not "one and the same", neither are **SNIC** and **TDHA.**

79. The ***JRPA Applicant*** seeks the following substantive orders between himself vs. **SNIC** and **TDHA** as particularized in his Draft Order for Motion #2 in paragraph fives to seven:

> **[8] THIS COURT ORDERS** THAT the NOM #2 is heard in "written format" on February 14, 2025, and that said NOM #2 was converted into a Motion for **Judgment** (***SEE:*** Rule 1.03(2)ii) pursuant to *Rule* 37.13(2)(a);
>
> **[9] THIS COURT ORDERS THAT** that the Applicant shall have **Judgment** in this ***JRPA*** **Proceeding** as, in part, particularized in his ***JRPA Application***, **Factum** and **Factum** to his NOM #2 as follows:
>
> a. **THIS COURT DECLARES THAT** the impugned decisions and orders (relevant to the Applicant's NOM #14 (August 3, 2024) (***SEE:*** particularized therein as Orders #1 to #4 of Vice Chair Morisette (***SEE:*** **Schedule "D"**) and **NOM #15** (August 17, 2024) (particularized therein as Order #3), dated and signed on September 12, 2024 (the "**VCM Decision**"), and Vice Chair Lake on reconsideration (October 15, 2024) involve **final decisions** and **final orders**;
>
> b. **THIS COURT FURTHER DECLARES** that the standard of review to those final decisions and final orders, particularized and cross-referenced herein, is correctness;
>
> c. **THIS COURT ORDERS AND QUASHES**, in the nature of *certiorari*, the decisions and orders of **VCM** (excluding the order(s) in NOM #13 contained in the same issued reasons for decision VCM (defined above as the "**VCM Decision**") upheld on reconsideration by VC Lake, and substituting the same for the orders sought in NOM #14 as follows including the following consequential or ancillary orders:
>
> i. An Order setting aside the final order of **VCM** that refused the Applicant's relief sought to add **TDHA** as a party and substituting it with an order that **TDHA** is added as a party to the LAT Appeal (***SEE:*** COMPENDIUM, Tab 6);
> ii. An Order that **TDHA** has 14 days from the date of this order to file a responsive pleading to the causes of action of the Applicant's LAT Appeal (***SEE:*** COMPENDIUM, Tab 6) that it received on December 24, 2023, via fax;
> iii. An Order that **TDHA** is declared as the **First Insurer** pursuant to *Reg 283*;
> iv. An Order that **TDHA** is required to comply with all of its obligations under the *Insurance Act*, *Reg 283*, and *SABS* forthwith on a past, current and future bases;
> v. An Order **SNIC** and **TDHA** shall take all necessary steps to provide the correct name of 'the insurer' that first received the Applicant's Completed Application with current mailing address and fax number to the Applicant at his email for his accident benefits claim at mcleansniclatgmail.com, and correct the same with the central processing agency also known as HCAI within 7 days of this order;

PREFACE III: THE STATEMENT OF ISSUES

80. The issues to be answered at the February 14, 2025, written hearing are as follows.

ISSUE #1: A PROPER Case to Convert NOM #2 into a Judgment Motion

81. As per the following legal principles and facts herein[19], is this a *proper case* to convert the motion #2 into a motion for judgment (a "**Motion For Judgment**" or "**Judgment Motion**")? Has the **Applicant** brought the necessary evidence to the attention of the single motion justice for a *Rule* 37.13(2)(a) *to convert* NOM #2 into a motion for judgment? In light of the Applicant's strict and unbridled compliance with the *JRPA*, Rules of Civil Procedure, Practice Directions *et al*, and the **Remaining Respondents** failures,

ISSUE #2: **FINAL DECISIONS** AND FINAL ORDERS

82. When an administrative tribunal, particularly a quasi-judicial one, refuses relief (i) add parties; (ii) amend pleadings and/or (iii) causes of actions versus **granting** any of those heads of relief; and makes determinations refusing relief for (iv) summary motions for questions of law; and that invoke (v) involving res judicata and issue estoppel, are those decisions or determinations final decisions and/or final orders?

i. More specifically, did Vice Chair Morrisette ("**VCM**") issue, on September 13, 2024, final decisions and orders when she *refused* the relief and orders sought as follows in the **SABS Applicant's** NOM #14 and #15 in the LAT Appeal (***SEE:*** COMPENDIUM, Tab 6):

i. ***Order #1***:
   1. An Order, Declaration, determination and/or finding that TD Home And Auto Insurance Company, FSRA registration number 1063 ("**TDHA**" or "**TDHAIC**") was the **First Insurer** (i.e.. to receive, pursuant to *Reg 283*, the Appellant's fax delivered **Completed Application** (***SEE:*** *Reg 283*, s 0. 1) to the fax number, provided to him by **SNIC** as a return address [sic] for **SNIC**, of 416-774-3120 (SEE: Affidavit #30 of the **Applicant** in the LAT Appeal of July 31, 2024; **COMPENDIUM**, Tab 10, page 78, paragraph 34; for Exhibit "D" itself, **COMPENDIUM**, Tab 10, page 147 and 148) on October 13, 2022;

ii. ***Order #2***:
   1. An Order, Declaration, determination or finding the physical address, which is apparently denoted as a branch office of **SNIC** in **HCAI (SEE: COMPENDIUM, TAB 14, PAGE 271)**, municipally known as 304 The East Mall, Floor 6, Etobicoke, Toronto, Ontario, M9B 6B7 (the "**Etobicoke East Mall Address**") was or is an address or branch office of **TDHA** and not **SNIC;**

iii. ***Order #3***:
   1. An Order adding **TDHA** as a respondent party to this LAT proceeding therein;

iv. ***Order #4***:
   1. An Order requiring **TDHA**, should it wish to oppose the relief sought in the **Appellant's Appeal**, file and serve a **Response** to the **Appellant's Appeal** within 14 days of the date of the orders herein; and

v. "Order #5" [Order #3 in NOM #14]
   1. A preliminary finding, determination, or order, that the fax number 416-774-3120 (SEE: Affidavit #30 of the **Applicant** in the LAT Appeal of July 31, 2024;

Tab 10, page 147 and 148) was a landline phone number utilized as a fax number on the 4th floor of the building situated at the premises municipally known as 3650 Victoria Park Avenue, North York, Toronto, Ontario, M2H 3P7.

(the "**Refused Relief Sought**")

ISSUE #3: PREMATURITY DOCTRINE: INAPPLICABILITY

83. As the **Refused Relief Sought** became final decisions when the Tribunal (as per Vice Chair Morissette) became functus officio on September 13, 2024, was the Tribunal's (as per SLASTO legal unit counsel in Mr. Boyce), November 2024 prematurity doctrine objection, which did not provide any basis for what adequate, alternate and available relief was available against the First Insurer (**TDHA**) which was not a party of record, objection sustainable at law?

    i. Assuming *arguendo* that the **Prematurity Doctrine** was applicable to this *JRPA* Proceeding, would any the exceptions to the **Prematurity Doctrine**, including any of the other anti-justiciability doctrines, render this judicial review justiciable in any event?

ISSUE #4: STANDARD OF REVIEW

84. Do the questions posed in the ***JRPA Application***, **Applicant's Factum**[20] *et al* in this *JRPA* Proceeding involve: (i) a statutory right[21] of appeal or statutory appeal mechanisms being in place; (ii) the relationship between the Legislature and other branches of government; (iii) the jurisdictional boundaries between two or more administrative bodies within Ontario and federally; (iv) general questions of central importance to the legal system as a whole; (v) constitutional questions; and/or (vi) persistent discord within the Licence Appeal Tribunal?

ISSUE #5: APPLICANT'S BURDEN OF PROOF: BALANCE OF PROBABILITIES

85. What is the **Applicant**'s burden of proof and what is this Court entitled to do when the standard of review by the Divisional Court of the Licence Appeal Tribunal is correctness (the "Correctness SOR")?

ISSUE #6: The Tribunal's Qualified Standing and Non-Existent Participation Rights

86. On account of the following: (i) section 9(2) of the *JRPA* is not unequivocal as to the statutory decision maker's scope of participation; (ii) the Tribunal is a quasi-judicial body; (iii) the Respondent Insurance Companies opposed, at least implicitly, the relief in the ***JRPA Application***; (iv) have been available to oppose the relief sought ***JRPA Application*** as of December 3, 2024, along with having the necessary expertise and knowledge to do so; and (v) the Tribunal's admission, as of February 13, 2025, that it had been compiling the **Record Of Proceeding** and was attempting to do so, what would have been, the scope of the Tribunal's participation in this *JRPA* Proceeding?

ISSUE #7: Specific Issues of Central Importance to the Legal System as a Whole - Evasive of the Specific Issues in the Judicial Review

RE: DATA FIDUCIARIES

RE #2: CAUSES OF ACTION OUTSIDE OF THE SABS DISPUTE RESOLUTION PROCESS INVOLVING A NON-FIRST INSURER AND NON-UNDERWRITER – THAT IMPROPERLY INSERTED ITSELF INTO A TRIBUNAL PROCEEDING

87. Following the masterfully articulated decision of the Honourable Mr. Justice Akazaki, a current justice of this ONSC and a justice of the ONSC Divisional Court, in *Zurich 2024* [***SEE:*** COMPENDIUM, Tab 30] which followed and affirmed the arguably most well-reasoned dissenting decision of the ONCA by The Honourable Mr. Justice Juriansz (as he then was) in *Zurich 2014*, what further principles of law can be expanded upon with respect to the duties of a First Insurer, on a provisional basis, and a First Insurer, on a permanent basis?[22]

ISSUE #8: Participation Rights of Insurance Companies in **SNIC** and **TDHA** in this *JRPA* Proceeding pursuant to the **Keeprite Standard** and *Sticky Nuggz*

88. As the Respondent Insurance Companies did not participate in the initial hearing before **VCM** or VC Lake on reconsideration, how would the **Keeprite Standard** have affected the Respondent Insurance Companies' participation rights (i.e. filing of any evidence, submissions or otherwise) in this *JRPA* Proceeding and NOM #2?

ISSUE #9: Reasonable Apprehension of Bias or COI; Case Conference – impossible to conduct – none of the participants have received invitation to **Case Center**; Case Conference Compulsory Requirement Now Moot or Spent; and "Exchange of Materials" devoid of meaning as per the Civil *Rule*s

89. The issues are as follows:

a. *Is there a ROAB involving the Madam Justice Shore in light of her being a partner at Epstein Cole LLP at the time when Mr. Andrew Papadimtriopoulos retained Epstein Cole LLP along with the admission of law by counsel of record in this JRPA Proceeding to the three distinct insurance companies that Mr. Andrew Papadimitropoulos could not be involved in the **Applicant**'s SABS Claim and LAT Appeal by his contractually agreed requirement that he not have any indirect or direct contact Ms. Nicole Artopoulos (spouse of the **Applicant** at material times) (**SEE:** COMPENDIUM, page 66)?*
b. *Pursuant to the common law in Canada that a RAOB cannot be remedied, what order must be granted in relation to the Shore J. Case Management Appearance Requirement?*
c. *As the **Compulsory Case Conference Attendance Requirement** was predicated on a prematurity doctrine objection by the Tribunal yet the Tribunal had not even compiled the **Record Of Proceeding** on an initial and ongoing basis, could prematurity even been hypothetically discussed the same?*
d. *As the Applicant does not have an invitation to Case Center and he could not comply with the requirement that the parties upload all materials that they intend to rely upon five days before, was or is a case conference able to be conducted in accordance with the requirements of the Civil Rules?*

ISSUE #10: Orders or Endorsement with Reasons to Follow

90. As the Tribunal is unable to file a **Record Of Proceeding** due to its failure to comply with its compilation duties pursuant to section 20 of the *SPPA*, none of the **Remaining Respondents** opposed NOM #1, the **Remaining Respondents** failed to comply with Rule 37.12.1(5)(a) to (d), the form and content of the current Draft Order has been served, filed and stamped by the Divisional Court,

VOLUME #1: ISSUE #1: A PROPER CASE TO CONVERT MOTION TO MOTION FOR JUDGMENT

VOLUME #1(I)(A): Prescribed Definitions

91. "**Judgment**" means *a* decision that finally disposes of *an* application …… on **its merits:** *Rule* 1.03. "**Order**" includes a **Judgment:** *Rule* 1.03. "**Application**" means a proceeding commenced by *notice of application*. "Proceeding" means an action *or* application.

VOLUME #1(I)(B): Undefined by LGIC: Dictionary definitions

92. "**Dispose**" means: to settle *a matter* finally: M-W dictionary. "**Proper**" means: marked by suitability, rightness, or appropriateness: M-W Dictionary.

VOLUME #1(I)(C): Judicial Review: Summary Proceedings – Legislature's Intent Must be Respected

93. Applications for judicial review are intended to be summary proceedings, and preliminary motions add greatly to the cost and time required to deal with such matters and are therefore to be **discouraged**.[23] By analogy, like a party may not rest on allegations in its pleadings on a motion for summary judgment, the same applies to motions before tribunals on points of law that are dispositive of whom is the "**First Insurer**" out of two or more insurance companies. The party must "put its best foot forward" or "lead trumps or risk losing".[24] The principle is applicable herein to the NOM #14 and #15 being summary type hearings and this ***JRPA Proceeding***.

94. Applications for judicial review are intended to be summary proceedings as per the explicit language of the *JRPA* in section 7 and 8. Moreover, the language in the Ontario Civil *Rule*s of Procedure explicitly and implicitly reaffirms the summary nature of judicial review proceedings. Further, even the Valid Consolidated Practice Direction of this Divisional Court provides further evidence by its amendments in July 2023 as to why it too is of the view that judicial review proceedings are summary in nature.

VOLUME #1(I)(C)(i): *JRPA*

95. The power of the court to set aside a decision for error of law on the face of the record on an application for an order in the nature of certiorari is extended so as to apply on an application for judicial review in relation to any decision made in the exercise of any statutory power of decision to the extent it is not limited or precluded by the Act conferring such power of decision: section 2(2) of the *JRPA*.

96. Where the findings of fact of a tribunal made in the exercise of a statutory power of decision are required by any statute or law to be based exclusively on evidence admissible before it and on facts of which it may take notice and there is no such evidence and there are no such facts to support findings of fact made by the tribunal in making a decision in the exercise of such power, the court may set aside the decision on an application for judicial review: section 2(3) of the *JRPA*.

97. On an application for judicial review in relation to a statutory power of decision, where the sole ground for relief established is a defect in form or a technical irregularity, if the court finds that no substantial wrong or miscarriage of justice has occurred, the court may refuse relief and, where the decision has already been

such terms as the court considers proper: s. 3.

98. On an application for judicial review, the court may make such interim order as it considers proper pending the final determination of the application: section 4 of the *JRPA*.

99. An application for an order in the nature of mandamus, prohibition or certiorari shall be deemed to be an application for judicial review and shall be made, treated and disposed of as if it were an application for judicial review: section 7 of the *JRPA*.

100. It is sufficient in an application for judicial review if the **Applicant** sets out in the notice of application the grounds on which the **Applicant** is seeking relief and the nature of the relief: section 9 of the *JRPA*.

101. When notice of an application for judicial review of a decision made in the exercise or purported exercise of a statutory power of decision has been served on the person making the decision, such person shall forthwith file in the court for use on the application the record of the proceedings in which the decision was made: section 10 of the *JRPA*.

VOLUME #1(I)(D): *CJA* and Ontario *Rules of Civil Procedure*: why *JRPA* Proceedings are summary in nature

VOLUME #1(I)(D)(I): *CJA*

102. All justices of the ONSC are also justices of the ONSC Divisional Court: s. 18 of the *CJA*. Every judge of the Superior Court of Justice is also a judge of the Divisional Court: section 18(3) of the *CJA*.

103. Application" means a civil proceeding that is commenced by notice of application or by application. "motion" means a motion in a proceeding or an intended proceeding. "order" includes a judgment or decree: section 1 of the *CJA*.

104. In matters that are assigned by law to the judiciary, registrars, court clerks, court reporters, interpreters and other court staff shall act at the direction of the chief justice of the court: section 76 of the *CJA*.

105. Where a rule of equity conflicts with a rule of the common law, the rule of equity prevails: section 96(2) of the *CJA*.

106. Only the Court of Appeal and the Superior Court of Justice, exclusive of the Small Claims Court, may grant equitable relief, unless otherwise provided: section 96(3) of the *CJA*. The Court of Appeal and the Superior Court of Justice, exclusive of the Small Claims Court, may make binding declarations of right, whether or not any consequential relief is or could be claimed: section 97 of the *CJA*

VOLUME #1(I)(D)(i): *Rules of Civil Procedure* ("Civil *Rule*s")

VOLUME #1(I)(D)(i)(a): *Rule* 1.02 and 1.04

107. The Civil *Rule*s are not applicable to the procedures under statutes like the *SPPA* and *JRPA*: *Rule* 1.02(3.)

108. These rules shall be liberally construed to secure the just, most expeditious and least expensive determination of every civil proceeding on its merits: *Rule* 1.04(1).

PROCEDURE

VOLUME #1(I)(D)(ii)(a): *Rule* 38: Application of the *Rule* and Place of In-Person Hearings: *Rule* 38.03

109. *Rule*s 38.02 and 38.09 do not apply to applications to the Divisional Court: *Rule* 38.01 (2). *Rule* 38.09 is "Material for Use on Application" and its subrules including different requirements for timing of filing and serving the factum and application record from that of *Rule* 68.04.

110. *If* the application is to be heard in person, it shall be heard in the county where the proceeding was commenced or to which it has been transferred under rule 13.1.02, unless the court orders otherwise: *Rule 38.03(1.1).*

111. At any place where no practice direction concerning the scheduling of applications is in effect, an application may be set down for hearing on any day on which a judge is scheduled to hear applications: *Rule* 38.03(2)

112. An urgent (***SEE:*** COMPENDIUM, Tab 36 (Affidavit #2) and Tab 42 (Requisition)) application may be set down for hearing on any day on which a judge is scheduled to hear applications, even if a lawyer estimates that the hearing is likely to be more than two hours long: *Rule* 38.03(3.1).

113. If a notice of application has been served and the respondent wishes to make an application against the **Applicant**, or against the **Applicant** and another person, the respondent shall make the application at the same place and time to the same judge, unless the court orders otherwise (***SEE:*** *Rule* 38.03(4).

VOLUME #1(I)(D)(ii)(a)(i): Service of Notice: Generally: *Rule* 38.06: served at least ten days before the date of the hearing (indicative of the Civil *Rule*s Committee focus on summary disposition of a judicial review notice of application)

114. The notice of application shall be served *at least ten days* before the date of the hearing of the application, except where the notice is served outside Ontario, in which case it shall be served at least twenty days before the hearing date: *Rule*. 38.06.

VOLUME #1(I)(D)(ii)(b): *Rule* 38.07: Notice of Appearance

115. A respondent who has been served with a notice of application shall **forthwith** deliver a notice of appearance (Form 38A). *Rule* 38.07 (1). By filing a "Notice of appearance", a respondent is entitled to file documents in the judicial review proceeding and cross-examine an affiant on his or her affidavit, be heard at the hearing of the Application: *Rule* 38.07(2).

VOLUME #1(I)(D)(ii)(c): *Rule* 38.10: Disposition of Application

116. On the hearing of an application the presiding judge may: (a) grant the relief sought or dismiss or adjourn the application, in whole or in part and with or without terms; and (b) (a) grant the relief sought or dismiss or adjourn the application, in whole or in part and with or without terms.

VOLUME #1(I)(D)(ii)(d): *Rule* 38.12: Striking out a Document

117. *Rule* 25.11 applies, with necessary modifications, with respect to any document filed on an application (***SEE:*** *Rule* 38.12.)

VOLUME #1(I)(D)(iii)(a): Applicable Procedure

118. *Rule* 38, except as provided in subrule 38.01 (2), [which excludes *Rule* 38.02 and *Rule* 38.09 from divisional court judicial review proceedings] and rules 68.03 to 68.07 apply to applications to the Divisional Court for judicial review: (***SEE:*** *Rule* 68.02(1))

119. *Rule* 38 applies to applications to the Superior Court of Justice for judicial review under subsection 6 (2) of the *Judicial Review Procedure Act*: *Rule* 68.02(2).

VOLUME #1(I)(D)(ii)(b): Hearing Date in Divisional Court

120. A notice of application shall state that the application is to be heard on a date to be fixed by the registrar at the place of hearing: *Rule* 68.03.

121. Ergo, it is not a date that is set by the Court but rather by the Registrar.

VOLUME #1(I)(D)(ii)(c): Application Records and Factums

122. The **Applicant** shall deliver an application record and a factum: (b) where the nature of the application does not require such a record, within thirty days after the application is commenced: *Rule* 68.04(1).

123. The respondent shall deliver an application record and a factum *within* thirty [30] days after **service** of the **Applicant**'s application record and factum (***SEE:*** *Rule* 68.04(4).)

VOLUME #1(I)(D)(ii)(d): "Certificate Of Perfection" (***SEE:*** COMPENDIUM, Tab 39)

124. The **Applicant** shall file with the application record a "Certificate Of Perfection" (***SEE:*** COMPENDIUM, Tab 39): (a) stating that all the material required to be filed by the **Applicant** for the hearing of the application has been filed; and (b) setting out, with respect to every party to the application and any other person entitled by statute or by an order under rule 13.03 (intervention) to be heard on the application: *Rule* 68.05(1).

125. When the "Certificate Of Perfection" (***SEE:*** COMPENDIUM, Tab 39) has been filed, the registrar shall place the application on a list for hearing and give notice of listing for hearing (Form 68B) by mail to the parties and the other persons named in the "Certificate Of Perfection" (***SEE:*** COMPENDIUM, Tab 39) (***SEE:*** r. 68.05 (2)).

VOLUME #1(I)(D)(ii)(e): *Rule* 37: Motions

126. A judge has jurisdiction to hear any motion in a proceeding (***SEE:*** *Rule* 37.02).

127. A motion shall be made to the court if it is within the jurisdiction of an associate judge or registrar and otherwise shall be made to a judge (***SEE:*** *Rule* 37.04).

128. At any place[25] where no practice direction concerning the scheduling of motions is in effect, a motion may be set down for hearing on any day on which a judge or associate judge is scheduled to hear motions: *Rule* 37.05.

and shall, not later than 2 p.m. five days before the hearing date: give the registrar a confirmation of motion (Form 37B) by; and (b) send a copy of the confirmation of motion to the other party by e-mail.

VOLUME #1(I)(D)(ii)(g): Opposed Motions in Writing

130. The moving party may propose in the notice of motion that the motion be heard in writing without the attendance of the parties, in which case: *Rule* 37.12.1(4).

131. Within ten days after being served with the moving party's material, the responding party shall serve and file, with proof of service, in the court office where the motion is to be heard: (a) a consent to the motion(b) a notice that the responding party does not oppose the motion;(c) a motion record, a notice that the responding party agrees to have the motion heard and determined in writing under this rule and a factum entitled factum for a motion in writing, setting out the party's argument; or(d) a notice that the responding party intends to make oral argument, along with any material intended to be relied upon by the party: *Rule* 37.12.1(5).

VOLUME #1(I)(D)(ii)(g)(i): Disposition of a Motion

132. On the hearing of a motion, the presiding judge or officer may grant the relief sought or dismiss or adjourn the motion, in whole or in part and with or without terms, and may: (b) where the proceeding is an application, order that it be heard at such time and place as are just. r. 37.13 (1). Pursuant to *Rule* 37.13(2), "A judge who hears a motion may, (a) in proper case, order that the motion be converted into a motion for judgment".

VOLUME #1(I)(E): Practice Direction of the Divisional Court

133. The Divisional Court Practice Direction of June 15, 2023, authorized by Chief Justice Morawetz, made several significant changes in repealing all previous "Notices to Profession" and the "Repealed Practice Direction". The Valid Practice Direction states:

> "Consolidated Practice Direction for Divisional Court Proceedings
> Effective June 15, 2023
>
> This practice direction applies to Divisional Court proceedings. It replaces all previously issued practice directions and notices to the profession for the Divisional Court and the Provincial Notice to the Profession, Parties, Public, and Media."

134. Some of the substantive and relevant amendments were, as applicable herein, that the Divisional Court would no longer manage all judicial reviews, steps in all matters by way of case conferences or case management:

i. **Repealed provision under "Notice of Profession" (D7):** All matters in Divisional Court, and all **steps** in all matters in Divisional Court, are subject to judicial case management (***SEE:*** D7, 1.); versus

ii. **CURRENT PROVISION (SECTION 31)**: All applications, appeals, and motions in Divisional Court, and all steps in those proceedings, ***may*** be subject to judicial case management: Part I: Divisional Court Proceedings, G: Triage and Case Management, section 31.

135. There is no specific provision within the New Practice Direction regarding scheduling of motions. The Divisional Court sits all days in January to June 2025. As such, a justice of the ONSC, who is also a judge of the Divisional Court, can hear a motion at any time.

136. The distinction between the Current DC Practice Direction and the Invalid DC Practice Direction and the Notice to Profession are numerous and significant. The two invalid or spent documents in the 'Repealed DC Practice Direction' and 'Repealed Notice to Profession" are contained within the DC *JRPA* Guide. The DC *JRPA* Guide remains a valid Practice Direction but the hyperlinks contained therein are not. Under the Old Practice Direction, case conferences and case management were always required but under the Current DC Practice Direction, they are not. There is a live issue by way of NOM #2 as to whether there is a reasonable apprehension of bias ("RAOB"), conflict of interest or lack of independence by Madam Justice Shore being involved in this *JRPA* Proceeding by her being a partner at the law firm (Epstein Cole LLP) that advised Mr. Papadimitropoulos.

VOLUME #1(I)(F): Guide to Judicial Review in the Divisional Court

137. The Div Ct *JRPA* Guide is a practice direction. It fills the lacuna above as it relates to the timing of receipt of the **Case Center** invitation. The **Applicant** was entitled to an invitation to **Case Center** upon his bringing of the ***JRPA Application*** which was November 15, 2024. As such, he had to seek an order in NOM #2 regarding the same that reflected the status at the time of seeking said order.

VOLUME #1(I)(G): *Rule* 37.13: A Proper Case: Vertical *Stare decisis* and Horizontal *Stare decisis*

VOLUME #1(I)(G)(i): The Jurisdiction of the Ontario Courts

138. Under *Rule* 37.13(2)(a), a judge who hears a motion may, in a **proper** case, order that the motion *be converted* into a motion for judgment: *Wilson v. Ingersoll* (1916), 38 O.L.R. 260 (H.C.J.); *Janisse v. Livesey*, [1944] O.J. No. 185 (H.C.J.); *CMLQ Investors Co. v. CIBC Trust Corp*., [1996] O.J. No. 3171 (C.A.).

VOLUME #1(I)(G)(ii): The Two Part Legal Test

139. The law in this province has been since 1996 that a proper case to convert a motion into a motion for judgment involves a two part legal test: (i) where the parties have had the **opportunity** to fully argue **their positions;** and (ii) **all necessary evidence** was before the motions judge.

VOLUME #1(I)(G)(iii): But first: the underlying facts

140. The converting of a motion, in writing (as the Responding Parties did not file any notices or opposition by way of factum and motion records to NOM #3), into a **Motion For Judgment** is **not** one that means that the moving party will be successful in his motion to obtain **Judgment** or to dismiss a proceeding. Rather, the conversion is merely that: one where the opportunity has been afforded to the parties to fully argue their positions, and all necessary evidence, not necessarily all evidence, to finally dispose of the issues in the proceeding is in the court file at the time of conversion.

VOLUME #1(I)(G)(iv): Opportunity *to* Fully Argue their Positions

141. The issue of opportunity is rather rudimentary in a judicial review proceeding because the opportunity to argue one's position fully is determined by the *JRPA* and the Civil *Rule*s. The first part of the legal test is rather easy hurdle to determine based on whether the respondents have complied with the timelines in a judicial review proceeding (***SEE:*** *Rule* 68).

("Judgment")

142. The second part of the test is more nuanced. "Evidence" is not defined under the Civil *Rule*s or any other provincial statute. "**Necessary**" is defined as: absolutely needed. What is "necessary" with respect to evidence is shaped by that which is necessary to finally dispose of the merits of the ***JRPA Application***.

143. While a ***JRPA Application*** is not technically a 'pleading' per se, the scope of the pleadings determines the scope of the facts, relief and evidence before the Court. Further, an **Applicant's Factum** and application record will determine what relief has been distilled and particularized that is being sought. From that Factum, which triggers the time for the respondent to file a responsive factum and application record, the evidence that is absolutely necessary to determine whether the merits can be determined is to be decided by the sitting motions justice.

144. If the parties have had the opportunity to fully argue their positions, and the necessary evidence is before the motions judge to either grant Judgment in favour (full or in part of the **Applicant** or respondents), then the motions judge must convert because there is nothing to be gained by either party by **adding further proceedings** (or steps) to those already taken. : *CMLQ Investors Co. v. CIBC Trust Corp*., 1996 CanLII 905 (ON CA), <https://canlii.ca/t/6hzv>, cited with approval in *Royal Bank of Canada v. Rastogi*, 2011 ONCA 47.

VOLUME #1(I)(G)(vi): Inherent Jurisdiction of this Honourable Divisional Court (not a statutory court)

145. *Rule* 37.13(2)(a) has been cited directly or by being a prescribed companion to the inherent jurisdiction of the court: *Stickel v. Unum Provident Corporation*, 2009 CanLII 63588 (ON SC) at paragraph 4.

VOLUME #1(I)(H): Application of the Law to the Facts

146. The Respondents have had ample opportunity to fully argue their positions but they have chosen not to do so. The Tribunal has failed to file the **Record Of Proceeding** during the **ROP Temporal Period** on a forthwith basis. The Tribunal has failed, as of the date of February 14, 2025, which is more than 90 days since the time of being served with the filed copy of the ***JRPA Application***. Despite the **Applicant** bringing NOM #1 to compel production of the ROP, the Tribunal has still failed to file the same. The **Applicant** has also made an access request through FIPPA and may turn into a FIPPA complaint. The Tribunal filed its Notice of Appearance on November 27, 2024 (***SEE:*** COMPENDIUM, Tab 57). The Respondent Insurance Companies filed their Notices Of Appearance on December 3, 2024 (***SEE:*** COMPENDIUM, Tab 57). Since the outset of this *JRPA* Proceeding, adhering to timelines has been an issue for the Tribunal and Respondent Insurance Companies.

VOLUME #2(A): Final Orders and Final Decisions: refuse relief to add a party, amend pleadings and causes of action

147. The dismissal of NOM #14 (Orders #1 to #4) and NOM #15 (Orders #3) by **VCM**, absent any analysis of the statutory scheme were decisions and orders that were final in nature: *ME v. Ontario*[26] citing *Atlas*[27], *Kerr et al*. Further authorities of our Ontario courts unequivocally support the unequivocal common law principles and precedents that ***to refuse*** relief to add a party, cause of action, and/or amendment of pleadings are final orders.

148. Even motions that were dismissed that sought leave to issue third- and fourth-party claims were **FINAL** (***SEE:*** *Khalil et al. v. United Investment Services Ltd. et al.,* 1975 CanLII 490 (ONSC) ["*Khalil*"]. Khalil has been cited positively in cases like *Denison Mines Ltd. v. Ontario Hydro*, 2001 CanLII 5681 (ON CA) at paragraph 21.

149. In *Hollinger*, an order maintaining a sealing order ***FINALLY*** determined that a newspaper could not exercise its right to have access to the court file and was thus **FINAL** for the purposes of appeal (see *Hollinger Inc. v. Ravelston Corp.,* 2008 ONCA 207 ["*Hollinger*"].

150. Even further, where a question of law is at issue, even when the ongoing inferior tribunal proceeding is ongoing, is a final order or decision. An order dismissing a motion for summary judgment on a **question of law**, where the only genuine issue is the question of law should probably be regarded as giving rise to *res judicata* and, hence, a ***FINAL* order (*SEE:*** *David Polowin Real Estate Ltd. v. Dominion of Canada General Insurance Co.,* 2004 CanLII 19916 (ON CA) ["*Polowin*"]). In Polowin, Polowin Real Estate Ltd. was the plaintiff, respondent and moving party and Dominion Insurance Company [abbreviated] was the defendant, **Applicant**, and responding party [on motion] wherein the moving party sought to quash the appeal involving order of Justice Roland J. Haines of the Superior Court of Justice dated July 14, 2003. Its quashing motion was predicated on the distinction between interlocutory vs. final orders with naturally the moving party seeking an order, declaration or finding that the orders were interlocutory. The ONCA disagreed, while later finding that McNaughton was wrongly decided,

> "[5] The orders are also not just a declaration that the principle of *stare decisis* applies because there is an order dismissing the motions. As stated in S (R) v. H. (R) (2000), 2000 CanLII 17038 (ON CA), 52 O.R. (3d) 152 (C.A.) 159- 160:
>
> > …an order dismissing a motion for summary judgment on a question of law, where the only genuine issue is the question of law (as provided for in rule 20.04(4)) should probably be regarded as giving rise to a *res judicata* and, hence, a final order.
>
> [6] The effect of the order of the motions judge was to preclude the defendants from contesting that they were not entitled to deduct the deductible portion of an insurance policy and claim salvage in the cases before him. Thus, the orders are final."

151. Similarly, herein, the only genuine issues before **VCM**, as there were no disputes on the evidence as none had been submitted on behalf of any respondent party or non-parties, were questions of law. Therefore, this is yet another disjunctive ground why the **Applicant**'s has an automatic right of judicial review. It is fatal to the Tribunal's preliminary objection of prematurity.

conclusion, is a final order. Where a motion, that is summary disposition in nature is dismissed, it will be ***FINAL*** if it involves a *substantive issue* like issue estoppel (***SEE:*** *Almrei v. Canada (Attorney General),* 2011 ONCA 779 ["*Almrei*"]).

VOLUME #2(B): Orders granting leave to add a party, cause of action or amendments to pleadings – interlocutory

153. The natural corollary is that orders that **grant** the adding of a party, causes of action and/or amendments to pleadings are ***interlocutory***. **Permitting** amendments to pleadings are generally ***interlocutory*** **(*SEE:*** *Dynasty Furniture Manufacturing Ltd. v. Toronto-Dominion Bank*, 2015 ONCA 137 ["*Dynasty Furniture*"]). Order g**ranting** leave to amend a statement of claim was ***interlocutory*** **(*SEE:*** *Merling v. Southam Inc.*, *et al*, 2000 CanLII 5621 (ONCA) ["*Merling*"]). An order ADDING a defendant is ***interlocutory*** (*nota bene*: *supra*, order refusing or denying the addition of a proposed party is ***FINAL*** which is trite in the sense that if a party has a cause of action and can seek relief against said proposed party, the refusal ***FINALLY*** disposes of that substantive right) (***SEE:*** *Prescott & Russell (United Counties) v. David S. Laflamme Construction Inc.,* 2018 ONCA 495 ["*Prescott*"]). Order granting leave to amend paragraphs in a statement of claim was **interlocutory (*SEE:*** *Natario v. Rodriguez,* 2015 ONCA 227 ["*Natario*"]).

VOLUME #2(C): ISSUE #2: APPLICATION OF THE LAW TO THE FACTS

154. The **Refused Final Orders** were final in nature as they refused relief to add parties, add causes of action and amend pleadings. Moreover, the very legal test for issue estoppel uses the word "final". The only genuine issues were questions of law or issues of law. Ergo, any of the foregoing four grounds are sufficient for declaration that the decisions issued by **VCM** in NOM #14 and #15 were of a final nature.

VOLUME #3; ISSUE #3: PREMATURITY DOCTRINE: UNSUSTAINABLE WHEN FINAL ORDERS OR FINAL DECISIONS AT ISSUE – TRIBUNAL HAS BURDEN – FAILED TO DISCHARGE

VOLUME #3(A): Judicial Review – final decisions – automatic right of judicial review

155. In *Ontario Nurses Association*, Justice Backhouse for the Divisional Court[28] clarified, in 2023, the law in relation to judicial review being restricted to final decisions:

> "[7][29] For the reasons set out below, I have concluded that there are no extraordinary or exceptional circumstances to justify departing from the Divisional Court's usual approach restricting judicial review to **final decisions**."

156. Justice Backhouse did not find that the law, in Ontario for divisional court proceedings commenced correctly under section 6(1) of the *JRPA*, was that the entire proceeding had to be completed prior to any commencement of a judicial review which is commonly referred to as ***one*** of the doctrines under the anti-justiciability doctrines or rules (the "**Anti-Justiciability Doctrines**" or "**Anti-Justiciability *Rules***"). That aforementioned singular doctrine is commonly referred to as the *doctrine against fragmentation or bifurcation of administrative proceedings* (the "**Anti-Fragmentation Doctrine**").

157. The two cases cited by the ONSC Divisional Court on its subcategory or sub URL on the Ontario Courts URL (SEE: https://www.ontariocourts.ca/scj/divisional-court/casebook/) are: (i) Volochay (2012 ONCA); an (ii) *Ontario College of Art* (1993 ONSC DC).

VOLUME #3(B): *Volochay*

158. The facts in *Volochay* have no relevance herein as *Volochay* involved a massage therapist engaged in a litany of bizarre, unlawful, unethical and disturbing conduct involving one of his patients. As such, while the general legal principle is well-taken, vertical *stare decisis* does not apply. Volochay, at the ONCA, discussed the issue whether the application judge was right to grant judicial review and quash two decisions made by the College of Massage Therapists of Ontario regarding a complaint against Mr. Oleg Volochay, who was accused of professional misconduct. The College's Complaints Committee investigated the complaint without notifying Mr. Volochay or giving him a chance to respond, which violated the procedural fairness required by the Code. Justice Ratushny granted Mr. Volochay's judicial review application, quashing the decisions of the Complaints Committee and the subsequent appointment of an investigator, citing violations of natural justice and procedural fairness. The regulatory framework under the Regulated Health Professions Act and the Health Professions Procedural Code mandates procedural fairness, including the right to notice and the opportunity to respond to complaints. The Court of Appeal concluded that the application judge was wrong in principle to grant judicial review and that Mr. Volochay should have pursued the alternative remedy before seeking judicial intervention. The College was awarded costs for both the judicial review in the Divisional Court and the appeal, totaling $22,500.

VOLUME #3(C): *Art College*

159. In *Art College*, The Ontario Court (General Division) Divisional Court dismissed an application for judicial review concerning a decision by the Ontario Human Rights Commission to seek the appointment of a board of inquiry. The application was deemed premature, emphasizing the importance of allowing administrative proceedings to reach their conclusion before judicial intervention. The College and the chairman sought to

General who argued that the application was premature.

160. This was an understandable result because the College of Art, Van Kempen and the other individual took issue with the investigation undertaken by an officer of the Ontario Human Rights Commission – not to be confused with the HRTO. However, this was again at the investigative stage involving the OHRC requesting that the Minister of Citizenship conduct an inquiry through a board.

161. There was no final decision or final order therein as it was merely a decision to appoint a board to inquire into the impugned conduct. Ergo, the legal precedent or *ratio decidendi* ("the reason for deciding" or "principle that said case establishes on the facts of that case") of *Art College* does not invoke any vertical *stare decisis* herein. It is important to note that in 1993, there was no Ontario Human Rights Tribunal as that was not created until 2008. At the time of *Art College*, there was only an Ontario Human Rights Commission that engaged in not only deciding matters through a Board of Inquiry but an investigative stage.

162. Ironically, there was perhaps a similar type procedure of compelled mediation and then arbitration before the FSCO prior to 2016 but that was abolished by the passage of various pieces of legislation and subsequent action in 2016. As such, there is no similar type procedure to be compared involving the LAT (AABS) that could apply the legal principles or precedent from *Art College* to the facts herein.

VOLUME #3(D): **THE KNOWN CASES RELIED UPON BY THE TRIBUNAL ALBEIT INFORMALLY IN CORRESPONDENCE**

163. The **Applicant** addressed the cases cited by the Tribunal in his Factum For Motion In Writing for NOM #2. Those cases were: (i) *Mansuri*; (ii) *Awada*; and (iii) *Heegsma*.

VOLUME #3(D)(I): *Mansuri*: more harm than good to the Tribunal's half-hearted objection[30]

164. It is paragraphs four to six in *Mansuri,* before the ONSC Divisional Court in 2023, with The Honourable Justice Lococo writing for the unanimous Divisional Court that are of great import in the analysis herein [emphasis is the **Applicant**'s]:

> "[4] The Applicants [Mansuri brothers] argue that the court should exercise its jurisdiction upon judicial review and determine on the merits that the Tribunal erred in law in finding that there was no breach of privacy or confidentiality and no conflict of interest.
>
> [5] DOMINION DISPUTES the merits of the application but, together with the Tribunal, raises the issue of prematurity. The respondents argue that unless there are exceptional circumstances, the Divisional Court should decline to consider an application for judicial review of the Tribunal's **interlocutory decision** until the underlying Tribunal applications are completed. The respondents submit that there are no exceptional circumstances nor is it a "rare case" that would warrant the court's intervention.
>
> [6] Following oral submissions on the issue of prematurity, the parties were advised at the application hearing that the application was being dismissed, *with* written reasons to follow. These Reasons for Judgment explain the court's decision to dismiss the judicial review application as premature, without deciding the merits of the **Applicant**s' challenge to the Initial Decision."

Volume #3(D)(I)(a)(i): Interlocutory Decisions or Orders: can be errors of law

dispute that a decision, by Vice Chair McGee, to NOT find a conflict of interest with consequential relief (i.e. that counsel were disqualified along with various adjusters involved in the various Mansuri file numbers with Dominion Insurance Company of Canada post each accident of each individual) could have been an error of law.

166. As found by the SCC in *Yatar*, the grounds for declining to undertake judicial review of the merits of an application for judicial review are now different than they once were in 2023 and prior. However, the "rare and exceptional cases" truly only applied when a decision was truly interlocutory. No such arises herein.

Volume #3(D)(I)(a)(ii): Respondent Insurance Company allowed to argue merits but NOT LAT in *Mansuri*

167. Dominion Insurance Company was allowed to argue the merits of the ***JRPA* Application** but the LAT was not allowed to do so.

Volume #3(D)(I)(a)(iii): **TDHA** and SNIC entitled to argue the merits but confined by the motion records

168. In McLean v. **TDHA** *et al*, **TDHA** and SNIC can argue the merits but it must be on the basis of the motion records, which is substance the Applicant's Application Record of December 12, 2024, (***SEE:*** Rule 68) before the Tribunal as they were on September 12, 2024.

Volume #3(D)(I)(a)(iv): Dominion and LAT joined together to argue prematurity [**TDHA** & SNIC, and Tribunal did NOT]

169. As Vice Chair McGee's decision was interlocutory in nature, as it did not determine any issue around party status, adding of parties, adding of causes of action, amendments to pleadings or involved issue estoppel (or res judicata), or a summary disposition of the underlying claims regarding entitlement or quantum of benefits, Dominion Insurance Company and the LAT were entitled to jointly argue prematurity.

Volume #3(D)(I)(a)(v): the Three Respondent Insurance Companies herein did NOT object on grounds of prematurity but LAT did: distinction with a difference

170. Herein, it is only the LAT (as per Mr. Boyce as the agent for the Tribunal) that objected on the grounds of prematurity by way of preliminary objection. Therefore, any reliance by the Tribunal on Mansuri was misguided.

Volume #3(D)(I)(a)(vi): Applicant's COI Motion before the LAT: His NOM #6 and the renumbered as NOM #9

171. Herein, the **Applicant** did bring a conflict of interest motion, albeit on different facts and evidence involving a variety of actors for a variety of insurance companies (some known and unknown) within the **TDI Group**, some not in a SABS department and perhaps some in the SABS department, by way of his NOM #6 which then was renumbered as NOM #9. The **Applicant** has no judicial review challenge to the decision of the Tribunal in this regard.

172. It is trite that the orders made or declined to be decided by VC Morrissette were final orders and final decisions as she refused to add a party, refused to add cause of actions, and refused to allow for the amendments of pleadings. No such relief was sought or dismissed in *Mansuri v Dominion of Canada General*

add another insurance company to their tribunal proceeding on the basis that Dominion Insurance Company was not the First Insurer. The Mansuri brothers primary complaint was that which the **Applicant** disagrees with them and their counsel, there was allegedly improper information sharing between *their claims* and not between Dominion Insurance Company of Canada and *other insurance companies*.

173. Moreover, the facts involving the raising of the issue of prematurity are different in that Dominion and the Tribunal raised the issue of prematurity. Herein, the **Respondent Insurance Companies** have not raised the issue of prematurity. The **Respondent Insurance Companies** did not even engage in the pretense of complying with the Practice Direction of this Divisional Court regarding 'information submitted to the court'. As such, the Tribunal did not have a 'dance partner' for its preliminary objection of prematurity in November 2024.

174. The refusal to find a conflict of interest and/or improper information (Personal Information, Personal Health information, sensitive personal information, and/or confidential information) is not a final decision but rather interlocutory. *Mansuri* does more harm than good to the Tribunal's position of prematurity because while the Mansuri brothers had their judicial review application dismissed without the merits being heard, it was done AT THE APPLICATION HEARING (not on motion or case conference). Put another way, this is unequivocal evidence of the practice of the Divisional Court that the Tribunal was required to file its factum and application record, along with filing the **Record Of Proceeding** forthwith, and argue the same the hearing of the ***JRPA Application***. As the Tribunal has chosen not to comply with its basic statutory requirements to file forthwith the **Record Of Proceeding**, it cannot argue the issue of prematurity as having the **Record Of Proceeding** before this Divisional Court isa precondition to being able to argue the same at first instance and particularly when there are final orders and/or final decisions at issue. Herein, analysis is required with respect to each "reasons for decision" and "each order sought and refused" as to whether they are interlocutory or final. Of course, each are of a final nature considering the refusals to grant the relief.

Volume #3(D)(I)(a)(vii): Vertical *Stare decisis – ME v. Ontario* is binding upon this ONSC Divisional Court as it relates to Orders #1, #3, and #4

175. The ONCA in *ME v. Ontario* could have not been any clearer that the **refusal** to add parties, amend pleadings, and causes of action are final orders. Assuming arguendo, had the **Applicant** been imprecise in his ***JRPA Application*** and challenged all of the "reasons for decision" in the unilaterally consolidated "reasons for decisions" for NOM #13 and #15, and sought to judicially review the refused orders in NOM #13, which were all interlocutory as they were sought orders of a non-party to produce documents, then a different 'discussion' could have been had. However, that hypothetical is not the reality of this ***JRPA Application***, the **Applicant's Factum**, the **Applicant**'s Application Record and now COMPENDIUM.

176. The **Prematurity Doctrine** cannot be discussed in the abstract as the Tribunal would have it and its obligations to file the **Record Of Proceeding** and from what time period are contained in NOM #1.

Volume #3(D)(I)(a)(viii): AGO withdrawal

177. It should not be unsurprising, with all of the misconduct prior to the ***JRPA Application*** by TDGIC and its representative along with **SNIC** and its non-licensee representative and some of the misconduct during this *JRPA* Proceeding by the Tribunal and Respondent Insurance Companies, that the AGO had seen enough and withdraw, through his handpicked and highly accomplished counsel in Ms. Judie Im, on January 30, 2025.

Volume #3(D)(I)(a)(ix): Non-Justiciability Doctrines

178. With those orders and decisions being final, the doctrine against interlocutory judicial review or interlocutory appeals (also defined as "**Non-Justiciability ["NJ"] Interlocutory Doctrine**") is obsolete. As there has been

adequate, alternative and available[31] remedy doctrine (the "**AAAR Doctrine**"), there cannot be any sustainable non-frivolous preliminary objection by a respondent insurance company or the **Tribunal** (***SEE:*** section 9(2) of the *JRPA*) or the AGO (***SEE:*** section 9(4) of the *JRPA*). It is noted yet again that the **Divisional Court Practice Direction** is being flouted with impunity by the respondent insurance companies as they, some or all, have refused to even submit the relevant information to the court within two weeks of the *JRPA* having been brought.

179. The same is applicable to the exhaustion doctrine as that is predicated upon an **Applicant** seeking judicial review exhausting all **AAAR** ("**Exhaustion Doctrine**"). If the potential party that is an **Applicant** avers, with supporting evidence, is subject to a cause of action is not added by decision of an administrative decision maker who becomes *functus officio*[32], and reconsideration fails, then he or she has exhausted any available, alternate and adequate remedies [AAAR] *before the* ***Tribunal***.

Volume #3(D)(I)(a)(x): Binding statement of law required

180. Therefore, this ONSC should make the binding statement of law that, at the very least, the **Exhaustion Doctrine**, **AAAR Doctrine**, and **Prematurity Doctrine** are effectively the same doctrine. The **Anti-Justiciability Interlocutory Doctrine** often has the same elements of the former three anti-justiciability doctrines but it is somewhat of an academic issue as all of the orders and decisions that the **Applicant** has sought to have reviewed by this Court are final orders and decisions.

181. While reconsideration is not an absolute prerequisite to judicial review (*Ellis-Don Ltd. v. Ontario (Labour Relations Board)*, 2001 SCC 4 (CanLII)), the **Applicant** did so and received the three-*page* decision where VCL, a decision-maker that he had drawn a potential and *prima facie* conflict of interest between him and her to the attention of the former case manager in Mr. Grant, wherein she took issue with the *ME v. Ontario* precedential statements of law.

Volume #3(D)(I)(a)(xi): Applicant was obligated to bring First Insurer Motion

182. As found in *Grewal v. Peel Mutual Insurance Company*, 2024 ONSC 2085 ["*Grewal*"], the ONCA found, "…… argument advanced by the Appellant in this case focuses on a transfer of "jurisdiction" from the Superior Court to the LAT. As explained in *Keulen*, exclusive jurisdiction over *SABS* claims has been removed from the Superior Court of Justice and the Financial Services Commission of Ontario and has been placed in the LAT. This is the effect of the language in s. 280 of the *Insurance Act*. The authority granted to the LAT is circumscribed by the *Insurance Act*, the *SABS* and the applicable regulations. The LAT has no inherent jurisdiction."

Volume #3(D)(I)(a)(xii): *Ultra Vires*: VCM's failure to decide NOM #14 in accordance with SABS was an abdication of jurisdiction – decision was *ultra vires*

183. Any decision outside its authority is *ultra vires* (without authority or jurisdiction) and to not decide the matter in accordance with *SABS* (Schedule) was without authority or jurisdiction. If a breach of *Reg 283* is the legal equivalent of a breach of *SABS*, then not making a decision or issuing an order in accordance with *Reg 283*, is the legal equivalent of not deciding said LAT Appeal (***SEE:*** COMPENDIUM, Tab 6) in accordance with *SABS*. Simply put, **VCM** breached the very statute she was required to follow: section 280 of the *Insurance Act* (must decide in accordance with *SABS*).

VOLUME #3(D)(I)(b): Burden is everything; and whether it can be cured on judicial review

issue, the **Applicant** has the burden to demonstrate why there are exceptional circumstances. However, when a final decision is at issue, the respondent raising prematurity has the burden. Hence, it is the Tribunal's sole burden to overcome.

185. While the Mansuri brother applicants were unable to demonstrate that they could not cure the same on the ultimate appeal or judicial review, this was because there was no issue about who the First Insurer was and it was the same as the sole underwriter for each of the brothers therein. Herein, there is a party issue and it is a discrete issue.

VOLUME #3(D)(I)(c): In the context of the NOM #2

186. Further, with a *Rule* 37.13(2)(a) motion, the **Applicant** is seeking to have the merits decided so if the Tribunal does not face the same, then the merits can be decided because it had the opportunity to raise the same.

187. However, the refusal herein to not add parties, add causes of action, amend pleadings *et al* are final decisions.

VOLUME #3(D)(II): *Awada v. Allstate (2021 ONSC DC)*

188. Not much needs to be noted in the way of submissions regarding *Allstate v. Awada* because it was normal interlocutory production order in which Allstate sought to appeal by a statutory appeal. This would be the equivalent of this ***JRPA Applicant*** bringing an appeal of the decision in NOM #13. He has not done so. Moreover, the corollary of the legal precedent and the ratio decidendi is contained within the **Applicant's Factum**.

VOLUME #3(D)(III): *Heegsma*

189. *Heegsma*, again referenced in the NOM #2 Factum, involved the OHRC appealing the decision of the ONSC to the ONCA that refused it being added as an intervenor in the underlying claim against the City of Hamilton by a variety of plaintiffs who were residing in encampments and removed therefrom pursuant to by-laws passed by the municipality. The OHRC was seeking to be added on its own, without ever having the proverbial litigation finger pointed at it like a **TDHA** in the context of a highly regulated industry of automotive insurance, as a party or friend of the court to provide insight into human rights issues of those living in encampments. It was a noble cause and use of resources by the OHRC but that involved *Rule* 13.02 of the Civil *Rule*s at the court level at first instance. There is no precedent to be taken from *Heegsma* to be applied to this *JRPA* Proceeding.

VOLUME #3(E)(IV): *ME v. Ontario*

190. As cited in the **Applicant**'s reconsideration submissions (***SEE:*** COMPENDIUM, Tab 25) before the Tribunal, his ***JRPA Application***, **Applicant's Factum** *et al*, the case of *ME v. Ontario* is binding upon this Divisional Court for its legal precedents.

191. If there is no prematurity, then the merits are to be decided as per NOM #2.

VOLUME #3(F): Application of the Law to the Facts

192. The issue in this ***JRPA Application*** is one of party status, which is a discrete issue, and whether Mr. McLean was required to continue the futile path, however successful for him personally, against **SNIC**. However, the larger issue for the public, and himself, is ensuring that the correct and lawful "First Insurer" is determined. It was not determined before the Tribunal at first instance and thereafter on reconsideration. This ***JRPA***

the Sole Underwriter and sole insurance company that was notified and then purported to respond to the **Applicant**, albeit miserably yet understandably after learning it was not the First Insurer, for 18 months, then filed a Response before the Tribunal and then sought to pass the "litigation baton" to another insurance company which was never named in the statutory LAT application and did not have any contact information (mail, fax or otherwise) that was contained in the records involving the SABS **Applicant**.

193. The statutory or legislative scheme was beautifully articulated by the Honourable Justice Akazaki in that a breach of *Reg 283* and SABS are legally equivalent. Moreover, a determination as to whom the First Insurer was, provisionally and permanently, for the facts to be applied against section 51 of SABS and section 10 of Reg 664. What was or was not unreasonable in terms of withholding or delaying benefits varies based upon whom had the duty to respond.

194. Moreover, the issue of the quality or lack thereof of denial letters is one to be measured against whom was the First Insurer (***SEE:*** section 56 of SABS).

195. It is well-known in our modern technological times that whether a pre-authorized debit or deposit ("PAD"), a federal body formerly known was "Canada Payments Association" and known as Payments Canada requires that the payor is correctly identified as the sole payor along with the payee. Therefore, there is yet another issue of boundaries of, at least, four administrative bodies between the LAT, FSRA, OSFI and Payments Canada.

196. This ONSC Divisional Court cannot allow insurance companies to be unilaterally determining who the First Insurer without strict compliance with *Reg 283* as it could open the floodgates of them engaging in fraud with having certain insurance companies within a group of insurance companies utilizing liabilities (contingent or otherwise) and/or payments as deductibles in some form of sophisticated tax scheme to ensure that minimal tax is paid by each depending on the "accounting, financial and taxation needs of each insurance company within the group".

197. In 2020, this Divisional Court precisely and appropriately found that the law of prematurity was effectively synonymous with that of the AAAR Doctrine in *Metro Ontario Real Estate Limited v. Corporation of the City of Orillia*, 2020 ONSC 7002 at paragraph 30: Judicial review is a discretionary remedy. There is a principle of administrative law that an application for judicial review is premature and relief should be denied *if* the **Applicant** has an adequate alternative remedy to address the issues (*Volochay v. College of Massage Therapists of Ontario,* 2012 ONCA 541 at paras. 68, 70 and 73; *C.B. Powell Ltd. v. Canada (Agence des services frontaliers*), 2010 FCA 61 at paras. 30-33). It was not merely paragraph 30, which was unequivocal enough to confirm that the erudite Honourable Justices Swinton, Patillo and Bloom had found that the **Prematurity Doctrine** was only applicable if a ***JRPA Applicant*** (whether insured person or insurance company in the context herein but no therein) had not exhausted adequate, alternative and available remedies.

198. At paragraph 31, those Honourable Justices found for the Divisional Court:

> "[31] Metro had an adequate alternative remedy to this application for judicial review. It could have proceeded to the HON and requested an adjournment on the basis that it had had inadequate time to prepare and to participate in the hearing because of the timing of the Notice of Grounds and the timing of the disclosure. No doubt the City would have argued that there was adequate notice, and there was no element of surprise given that the Downtown Tomorrow Plan had been adopted in 2012 and the parties had been in extensive negotiations over the years with respect to the Coldwater Street extension and the redevelopment plan for the downtown. It would then have been up to the Inquiry Officer to determine whether an adjournment was warranted in the interests of a fair hearing."

199. The **Applicant** did not have any adequate, available and alternative remedy after the reconsideration was dismissed because there is no statutory power for him to proceed against a party that is NOT by law entitled

involving the same. Further, if a party is not named in the style of cause, the **Applicant** cannot seek costs against the same or any substantive relief.

200. Hence, why the **Prematurity Doctrine**, in its precisely defined form, and the AAAR Doctrine, along with the Exhaustion Doctrine, should be merged and/or fall under the same umbrella. The **Prematurity Doctrine** is not "one and the same" with the Anti-Fragmentation Doctrine. It appears, without the benefit of any formalized and filed submissions in any factum from the Tribunal regarding its exclusive objection, that what Mr. Boyce was attempting to argue was the Anti-Fragmentation Doctrine.

201. As this *JRPA* Proceeding involves a litany of public interest orders, which are evasive of the lis between the **Applicant** and the to be added party in **TDHA** and **SNIC** and of central importance to the law as a whole, the **Applicant** throughout refers to the positions, however informal, of the Tribunal in correspondence. One of those positions, albeit post noncompliance with *Rule* 68.04, was that the Tribunal proceeding was ongoing, albeit between the **Applicant** and **SNIC** (Sole Underwriter, who chose not to participate for six months until compelled on June 20, 2024, by order of Adjudicator Morrissette pursuant to the **Applicant**'s NOM #8). As any relief, positively or negatively, hypothetically or actually, has no legal effect and is counter to *Reg 283* and SABS, it need not be addressed.

202. Moreover, the **Anti-Fragmentation Doctrine** is inconsistent to the unassailable corollaries when the other four Anti-Justiciability Doctrines are inapplicable. The other four Anti-Justiciability Doctrines are: (i) the **Prematurity Doctrine** (the "**Prematurity Doctrine**"); (ii) the available, adequate and alternative relief ("AAAR") doctrine (the "**AAAR Doctrine**"); (iii) exhaustion doctrine (the "**Exhaustion Doctrine**"); and (iv) the rule against interlocutory judicial reviews (the "**Interlocutory JR Review Prohibition**" or "**Anti-Justiciability Interlocutory Doctrine**").

203. If a final decision is being challenged, then this ONSC must 'hear and decide' the same.[33] The ***JRPA Applicant*** is only challenging the final decisions and final orders in the **VCM Decision**[34] (the "**VCM Final Decisions**" or "**VCM Final Orders**"). Ergo, the ***JRPA Applicant*** has an automatic right to judicial review of those **VCM** Final Decisions. *Ergo*, if final decisions and final orders are being challenged by way of judicial review, then the issue of prematurity is not a sustainable one.[35] [36] [37] While final orders or final decisions differ by size and shape, the Impugned Five Orders of **VCM** are final orders involving the refusal to add the First Insurer as a party, refusal to add causes of action against **TDHA** (First Insurer), and the refusal to amend pleadings consequentially or accordingly. While the **Prematurity Doctrine** is the only preliminary objection so advanced and solely by the Tribunal, the only doctrine that could have been advanced was that of the Anit-Fragmentation Doctrine. This doctrine is somewhat antiquated and imprecise per se.

VOLUME #3(G): Rolling Back to the 'Farmed Principles': *Rol-Land Farms Limited*

204. However, it cannot be applicable when party status is at issue as found in *Rol-Land Farms Limited* at paragraph 44: "The issue of party status is a ***discrete issue*** that has been ***FINALLY DETERMINED*** by the **Tribunal**. The **full record** upon which the **Tribunal** made *its decision* is before this Court."

205. What was not said in *Rol-Land Farms Limited* is of great importance and dispositive of the issue of the preliminary objection exclusively by the Tribunal. The Divisional Court in 2008 did not say that the entire administrative proceeding between a union and Ms. Diane Harold (the *judicial review* ***Applicants*** therein) and a tribunal (the Agricultural, Food and Rural Affairs Tribunal) must be completed prior to judicial review being commenced and being subject to the authority of the ONSC Div. Ct. justiciability authority. Ergo, the Anti-**Fragmentation Doctrine** has no applicability herein and in the ONSC Div. Ct. if a final decision is at issue.

(The exceptions to the non-justiciability doctrines)

206. Even where decisions or orders are interlocutory, which they are not herein, and a ***SABS Applicant*** has adequate, alternative, and available remedies before the **Tribunal**, which this ***JRPA Applicant*** does not, this ONSC Divisional Court and other similarly situated courts have intervened in the following circumstances.

VOLUME #3(H)(I): *Repetition of judicial review proceedings*

207. In rare cases this court will intervene on an application for judicial review in the midst of an administrative process where there are strong reasons to believe that the ongoing process is so deeply flawed that there is a strong likelihood that it will have to be run over again, usually on the basis of bias, reasonable apprehension of bias or *want of jurisdiction*…where the potential prejudice of the risk of repeating proceedings ***after*** review outweighs the prejudice to the general orderly processing of administrative proceedings without interruption until their conclusion: *Lourenco v. Hegedus*, 2017 ONSC 3872 at paragraph 6 ["*Lourenco*"].

208. It is more than a risk that the LAT Proceeding will have to run over again as each and every decision prior to was of no force and effect (i.e. prior to NOM #8) as it involved the incorrect party – on even worse footing than SNIC as it was not even the underwriter of the Insurance Policy.

VOLUME #3(H)(II): *Real unfairness (prospect of)*

209. If there is a prospect of *real unfairness* through **denial** of natural justice or otherwise, a superior court may always exercise its inherent supervisory jurisdiction to put an end to the injustice before all the alternative remedies are exhausted'… (paragraph 65 of the **Applicant's Factum** citing *Gage*).

210. This exception is most compelling for an override of not only the **NJ Interlocutory Doctrine** and **Exhaustion Doctrin**e but the AAR Doctrine because where there is the *prospect* (forward looking), then then an **Applicant** or appellant need not even exhaust alternative remedies.

VOLUME #3(H)(III): *Natural justice breach – 'clear and obvious' application succeeds*

211. "Where the court is being asked to determine whether a particular breach of natural justice rises to an "exceptional" circumstance, the court may consider whether it is "*clear and obvious*" that the application will be successful: *Unimac-United Management Corp. v St. Clare's-Monaco Place*, 2015 ONSC 4760 ["*Unimac*"] at paras. 16 and 17.)

212. If it was not "clear and obvious" at the ***JRPA Application*** commencement stage, then it was increasingly clear at the **Applicant**'s delivery of the Factum and Application Record stage. If it was not clear then, it become an increasing certainty the failure of the Tribunal to file the **Record Of Proceeding** stage by its own inconsistent timelines stage.

213. If it was not clear then, then it become obvious that the ***JRPA Application*** would succeed on the substantive relief after the Tribunal, **SNIC** and **TDHA** failed to file factums and application records.

214. The **Applicant** respectfully submits that he can do better than prove that it is more likely than not that the **VCM** Final Decisions were not. At this stage on February 13, 2025, he can prove them at least beyond the criminal standard of proof (i.e. beyond a reasonable doubt) and to a certainty.

215. *Broad Implications*: "The Decision has broad implications for human rights disputes arising between unionized employers and employees throughout the province. Delaying this application until the conclusion of the hearing on the merits, which does not depend on any evidence or law relevant to the jurisdictional issue, will result in uncertainty for employers, employees and unions. This is an appropriate case for this court to exercise its discretion to hear this judicial review": *London District Catholic School Board v. Weilgosh, 2024 ONSC 3857* ["*Weilgosh*"].

216. Herein, it is **VCM**'s usage of the language of jurisdiction that squarely put the jurisdictional issue in play in this *JRPA* Proceeding. However, this ***JRPA Applicant*** is on much stronger footing because the decisions and orders of **VCM** are final ones whereas in Weilgosh, the HRTO issued a true interim order based on it having concurrent jurisdiction with that of labour arbitrators appointed under the *Labour Relations Act*, 1995, S.O. 1995, c. 1, Sched. A (the "*LRA*"). The School Board was entitled to have its judicial review application heard but its judicial review application was contemporaneously dismissed. This is another ground why the issue of prematurity is one that should be, as judicial reviews are summary in nature, decided at the hearing of this judicial review. The ***JRPA Applicant*** has an automatic right to be heard on final decisions and orders. The issue of whether he will be successful will be decided at the hearing on the merits before the ONSC Divisional Court or a single justice of the ONSC, pursuant to section 6(2) of the *JRPA*. The **Applicant** respectfully submits that having it heard before a single justice of the ONSC is preferrable because of the intersection of language between section 6(2) of the *JRPA* and language in decisions involving prematurity. Therein, one of the respondents (not all as the Tribunal cannot duplicate arguments of respondents (parties or non-parties)) will be entitled to argue prematurity. In order to argue prematurity, the **Record Of Proceeding** will need to have been filed as the **Record Of Proceeding** provides the background of all of the steps take in the LAT Appeal (***SEE:*** COMPENDIUM, Tab 6) and the content of the **Record Of Proceeding** i.e. whether it is complete or not.

VOLUME #3(H)(V): *Fatally Flawed Process*

217. "This Court has stated that it will review an interlocutory decision of a tribunal where a process is fatally flawed (*Roosma v. Ford Motor Co. of Canada* 1988 CanLII 5633 (ON SCDC) ["*Roosma*"] at paragraphs 25 and 26 (***SEE:*** "Delay is at odds with the rationale of appointment of the Tribunal").

VOLUME #3(H)(V): Was the process fatally flawed?

218. *Was the process fatally flawed from the outset by having a non-licensee represent **SNIC** by intentionally breaching the LSA and LSO By-Laws, section 6(1)(b) and (d) and having Mr. Nieuwland act for TDGIC by filing a declaration of representative on January 30, 2024?* The question answers itself.

219. The criticism of the ***JRPA Applicant*** was that he was too exhaustive of bringing motions. It was by design to ensure that he had done all he could to remove this unknown entity, without any justifiable reason posited by Mr. Nieuwland for months. Mr. Nieuwland in, ironically, a "case conference" then made those two notorious representations of "one and the same" (in relation to **SNIC** and TDGIC) and "this is how we always do it" (in relation to TDGIC being the 'sole respondent' at the LAT even if **SNIC** was the sole underwriter). Both were provably false but for different reasons. After ardent, but misguided, opposition by TDGIC, and **SNIC** by its silence, which in the area of torts and by reference to *Bennett v. TDGIC* were intentional misrepresentations, the charade came to an end on June 20, 2024, after TDGIC did not oppose the relief in NOM #8. However, it was merely the "tip of the iceberg" of a sophisticated unlawful scheme involving a variety of persons and individuals by way of agreement with the intent to harm the **Applicant**, which continues to cause harm and loss, and by unlawful means. The summer of 2024, by way of length investigations and serendipitous discoveries, led to the discovery of the "First Insurer" in **TDHA** which met

passenger market' in Ontario.

VOLUME #3(H)(VI): *Lack of jurisdiction, privacy rights at issue or resultant or prospective hearing would be unfair*

220. Judicial intervention may be warranted in situations where the tribunal clearly lacks jurisdiction *to proceed*, privacy rights are at issue or where *proceeding* with the hearing [proper] would result in an unfair hearing or a breach of natural justice: *Rowe v. College of Nurses of Ontario and al*., 2023 ONSC 6414 ["*Rowe*"].

221. Unlike *Mansuri*, where they were misguided about the scope and parameters of the consent that they gave to Dominion Insurance Company of Canada, and its ability to share their personal information and personal health information for the purposes in the clear language of the OCF-1, issued by the FSRA, formerly the FSCO.

222. It is not "one and the same" in this case at bar where the consent provided by the duly authorized signature of the **Applicant** in the OCF-2 and his own signature in OCF-1 (not 'as per' the same individual as some would have it) was only, as he believed, to one insurance company and one only in **SNIC**. However, the fax number of 416.774-3120 was not that of **SNIC**.

223. By way of a simple example, a claimant or plaintiff could not claim that he, she, or it, had served an opposing party via fax if he, she or it faxed a different number than the one provided in an address for service however successfully faxed it was.

224. It is trite law that misrepresentation, particularly intentional ones, vitiate consent. For clarity, the **Applicant** has not withdrawn his consent per se in the OCF-1, a statutory and prescribed precondition to receiving benefits, but solely noted the actualities and facts, and the requirements for the First Insurer (first recipient of the McLean **Completed Application**) to comply with its duties by law.

VOLUME #3(H)(VII): *Judicial Intervention even at the preliminary*[38] *stages of an administrative proceeding*

225. "Judicial review is a discretionary remedy, and the Divisional Court has taken the position that it should not fragment proceedings before administrative tribunals. Absent exceptional circumstances demonstrating that the application should be heard, the Court will not intervene at a PRELIMINARY STAGE in proceedings. However, where the preliminary decision will *likely* result in a fundamental failure of justice, the Court may exercise its discretion to hear the application: *FCW Canada v. Rol-Land Farms Limited*, 2008 CanLII 6652 (ON SCDC) ["*Rol-Land Farms Limited*"][39].

226. While the decision of **VCM** to refuse to add **TDHA** as a party, wherein the **Applicant** would have had a cause of action against **TDHA**, with consequential relief for **TDHA** to file a pleading, were final decisions and not preliminary in nature, they also result in a fundamental failure of justice.

VOLUME #3(H)(VIII): *Natural Justice Breaches*

227. In *Lifford*, the denial of a summons was a breach of natural justice as per the headnote. If the Tribunal complies with its statutory duties under the *JRPA*, the Tribunal will inevitably see that the **Applicant** sought summons of various individuals which were denied.[40]

228. While the judicial review landscape has changed twice since *Lifford* by *Dunsmuir* and *Vavilov*, the next principle is of immense importance when considering the **VCM Decision**:

> "[45] Moreover, as I have said, although the rejection by an administrative tribunal of relevant evidence does not automatically constitute a breach of natural justice, where the rejection of such evidence taints hearing fairness, a breach of natural justice arises. The demonstration of such a breach displaces curial deference and permits judicial intervention: *Larocque* at paras. 42, 43 and 46."

229. **VCM** engaged in far worse errors than merely rejecting evidence but she created an "alternate universe of facts and evidence" without any cross-referencing to the same;

VOLUME #3(H)(IX): *Gonsalves*

230. The case of *Gonsalves* (also referred as "*Certas"*) is yet another case where even an interlocutory decision was allowed to be reviewed by the ONSC Div. Ct. The ***JRPA Applicant*** challenges brought by this ***JRPA Applicant*** do NOT relate to any interlocutory decisions or orders in the **VCM Decision**. As such, he has an automatic right of judicial review.

231. *Higashi* and *Gonsalves* establish that this Court will hear an appeal if a full hearing before the Tribunal could be avoided with a successful appeal. Although this is a ***JRPA Application***, this principle applies because if **TDHA** is identified as the **First Insurer** and added as a party, further hearings will not be required, saving costs. It is incorrect to say these doctrines only apply "when the administrative process has finished." The anti-fragmentation doctrine is outdated and an inaccurate representation of previous practices by the ONSC Divisional Court or common law.

VOLUME #3(I): Application of the Binding Precedents involving the Prematurity Doctrine to the Uncontroverted Facts

232. The decisions and orders challenged by the **Applicant** are final decisions and final orders. As such, the **Prematurity Doctrine** has no applicability herein. To the extent that it has any applicability, the

233. Practically, Mr. Boyce for the Tribunal is not conversant with the rudimentary principles of Anti-Justiciability Doctrines. Like his colleague at the LAT, neither of them have made a ripple in the lake of analytical precision in different contexts.

234. Mr. Boyce wants to have a discussion in the abstract without the **Record Of Proceeding**. As such, he has now bound the Tribunal to a further issue, solely arising intra this *JRPA* Proceeding, and that is a constitutional one as per the findings by the SCC in *Yatar*.

VOLUME #4: STANDARD OF REVIEW OF THE FINAL DECISIONS AND FINAL ORDERS (X 5) OF THE LICENCE APPEAL TRIBUNAL ON SEPTEMBER 13, 2024

VOLUME #4(A): INTRODUCTION

235. In 2019, the SCC in *Vavilov* clarified that the common law presumptive standard for judicial reviews by a reviewing court of an inferior tribunal is reasonableness. However, reasonableness is **easily rebutted** when the statutory scheme allows for a statutory appeal on questions of law.

236. The questions of law herein are multiple which are evasive of appeal and of great importance to not only substantive law but the practice before the Tribunal. Ergo, the standard of review is correctness.

237. This does not mean that a sitting justice or panel of justices do not find that the decision of an impugned statutory decision maker is not correct or was correct at first instance as a whole or in relation to certain orders issued and/or the decision.

VOLUME #4(B)(I): JUDICIAL REVIEW – SUMMARY PROCEEDINGS

238. Applications for judicial review are intended to be summary proceedings, and preliminary motions add greatly to the cost and time required to deal with such matters and are therefore to be discouraged.[41] The matter remains one where the delay will *likely*[42] involve a failure of justice being an affront to the *Rule* of Law and subspecies of the *Rule Of Law* that involve: (i) general questions of law of central importance to the legal system as a whole; (ii) questions related to the jurisdictional boundaries between two or more administrative bodies; and (iii) the relationship between the legislature and the other branches of the state, which require a final and determinate answer from the courts (the "**Final Answer Requirement**").

VOLUME #4(B): Standard of Review, Urgency and Failure of Justice: all invoke the "*Rule* Of Law" which are exceptions to the non-existent non-justiciability doctrines but also require the standard of correctness

239. There are, at least, five primary exceptions to the presumptive standard of reasonableness and they all, but one ('constitutional questions') apply herein: (1) where the correctness standard is required ***by law***; (2) where statutory appeal mechanisms are in place; (3) constitutional questions; (4) general legal questions of central importance to the entire legal system; and (5) questions regarding the jurisdictional boundaries between administrative bodies (***SEE:*** *Vavilov*, paras 34, 36, 55, 58, and 63). The exceptions, at (3) to (5), are defined herein as the "***Rule* Of Law SOR Exceptions**": Tab 38, Factum, pages in COMPENDIUM).

240. There are, at least, four primary disjunctive grounds to support that Correctness SOR (i.e. no deference to the orders, reasons for decision, and errors made by **VCM** in NOM #14 and NOM #15 as it related to those five dismissed orders by express dismissal or implied dismissal of the same).

241. The **Applicant** also argues that an additional ground of persistent discord on certain issues is another ground to support the Correctness SOR.

general questions of law that are of central importance to the legal system as a whole because they require uniform and consistent answers (the "**Uniform Answers Requirement**" or "**Vertical *Stare decisis***").[43]

243. The "*Rule* of Law" requires courts to intervene where one administrative body has interpreted the scope of its authority in a manner that is **incompatible** with the jurisdiction of another administrative body since the *Rule* of law cannot tolerate conflicting orders and proceedings where they result in a *true operational conflict* between two administrative bodies ("**Intolerance Conflicting Orders Requirement**").[44]

244. Whether affiliate or related insurance companies can accept priority, without any independent notices (***SEE:*** (i) notice of transfer; (ii) notice of a potential agreement between insurers; and/or (iii) notice of arbitration) to an insured person or absolute noncompliance with *Reg 283*, over an **Applicant**'s [sic] insurance policy [sic] (not a *SABS* claim) is a question that must be answered by this ONSC on an urgent (***SEE:*** COMPENDIUM, Tab 36 (Affidavit #2) and 42 (Requisition)) basis[45] (***SEE:*** Affidavit #2, COMPENDIUM, Tab 36).

245. Some of the pertinent principles regarding the *Rule* of law herein are: (i) *equality before the law*[46]; (ii) *accountability*[47]; and (iii) *access to justice*[48].

246. While administrative tribunal independence and absence of bias is not a constitutional principle, like that which is present pursuant to section 96 to 101 of the *Constitution Act* involving courts, conflicts of interest, bias and independence are presumed to be absent or at least reasonably perceived to be.

247. The **VCM Decision** (***SEE:*** COMPENDIUM, Tab 2) was not only incorrect and unreasonable[49] but it was counter to the ROL requirement of "*equality before the law*" to which the **Applicant** and, by extension, his service providers were so entitled.

248. The **VCM Decision** (***SEE:*** COMPENDIUM, Tab 2, pages 8 and 9) lacked *"accountability to the law"* as it was opaque in not only substance but process as: (i) it failed to reference any uncontroverted filed and served evidence; (ii) it failed to reference the binding "source law" wherein the **Tribunal** was required to decide all questions of law and fact before it in accordance with *Reg 283*, *SABS* and *Reg 664*[50]*;* and (iii) it failed to reference any jurisprudence that was binding upon it.

VOLUME #4(C): Right of Statutory Appeal – new phenomenon – post 2016

Volume #4(C)(i): *Penney* and *LATA*

249. The case of *Penney v. The Co-operators General Insurance Company*, 2022 ONSC 3874 ["*Penney*"] noted the timing of when the statutory right of appeal became effective after the passage of section 11(6) of LATA in 2015. At paragraphs 17 and 18, the ONSC (Div. Ct.) found as follows whist citing, with some irony, cases involving **SNIC**:

> "[17] I now turn to the recent cases involving LAT Appeal (***SEE:*** COMPENDIUM, Tab 6)s. In *Security National Insurance Company v. Kumar*, 2018 ONSC 3556, this Court heard an appeal of an interlocutory order where both parties agreed that the appeal was not premature, because the preliminary issue was essentially the only issue in dispute between the parties. In finding that the "court does, at least on occasion, hear appeals from tribunals on specific preliminary issues that do not constitute final determination on the merits", the Court relied on the following cases (at para. 8): *Certas Direct Insurance Company v. Gonsalves*, 2011 ONSC 3986; *Security National*

America v. Dong Do, 2015 ONSC 1891.

> [18] It is important to note that these three cases were applications for judicial review from decisions of the Financial Services Commission of Ontario ("FSCO"), not appeals to the Divisional Court. Prior to April 1, 2016, automobile accident benefit disputes were adjudicated at FSCO, where there was no statutory right of appeal, only judicial review. These judicial reviews of FSCO decisions do not address or assist in determining whether an interlocutory decision may be appealed under s. 11(1) of the *LAT Act*. Only Certas discusses the doctrine of prematurity, doing so in the context of judicial review of an interlocutory decision."

VOLUME #3(C)(ii): *"May Have Appealed" – not "did appeal" – statutory mechanisms – Legislative Intent -*

250. Language is important in that the SCC used the words of "may appeal" and not "have appealed" or made use of the statutory appellate route as opposed to judicial reviews. Under *LATA*, parties *may appeal* only questions of law. Therefore, even where a party has chosen the route of judicial review, the *appellate* standard applies to each question to be answered. Therefore, the determination of whether the error was one of fact, mixed fact and law, and/or error of law is a key determination.

251. Where a legislature has provided for an appeal (the "**Statutory Appeal SOR Exception**"), correctness review applies in all circumstances: "Where a legislature has provided that parties *may appeal* from an administrative decision to a court, either as of right or with leave, it has *subjected* the administrative regime to appellate oversight and indicated that it expects the court to scrutinize such administrative decisions on an appellate basis" (at para. 36 of *Vavilov*).

252. This was a monumental change. As Abella and Karakatsanis JJ noted in their concurring yet separate reasons for judgment (the "***Vavilov* Concurring Reasons**") , "the majority's reasons *strip away deference* from hundreds of administrative actors *subject to* statutory rights of appeal" (at para. 199).

253. It is the language of "administrative decisions" that is key. The SCC did not use the word of "orders". Therefore, if a decision of an administrative body is one where it is subject to appeal mechanisms by way of statute, then the presumption is NOT reasonableness but correctness.

254. The Legislature was not so broad in its legislative language to pass a statutory provision that insured persons and insurance companies could appeal on any questions but rather questions of law or "errors of law".

255. When combining the legislative language under the *JRPA* with the common law decisions of this ONSC Divisional Court, whether it is a question of fact, question of mixed fact and law and/or question of law is not relevant to the automatic right of judicial review. The determination of whether final orders or final decisions are at issue, wherein some may be final and some may not, is the threshold issue as to whether an applicant who has brought a "notice of application for judicial review" is entitled to be heard.

256. Under the categorical non-nuanced approach, this category alone requires this reviewing court (Divisional Court), whether by a single justice of the ONSC by way of ss. 6(2) of the *JRPA* or by way of conversion of the "motion in writing" into a motion for judgment, or a panel of the Divisional Court, to afford no deference

consolidated three motions.

257. In *Yatar v. TD Insurance Meloche Monnex*, the SCC found the following in relation to what is applicable herein, wherein the SCC also emphasized that judicial review plays an important role in upholding the rule of law and ensuring that public authorities – including LAT adjudicators – are subject to the supervisory power of the superior courts. In addition, the SCC reiterated the constitutional nature of the right to seek judicial review. Citing Mr. Paul Daly, the SCC held that it cannot be the case that a court has discretion to not hear a judicial review application, as this would allow the court's "perception of the quality and quantity of internal reconsiderations … to trump [a] constitutional principle."

258. The *Licence Appeal Tribunal Act, 1999* does not contain any privative clause that seeks to bar or otherwise restrict judicial review. The SCC held that both the Divisional Court and Court of Appeal erred in their application of *Strickland* to this case. Properly applied, the *Strickland* framework indicated that the court should exercise its discretion to grant relief. The Court of Appeal was mistaken when it held that the statutory appeal right reflected legislative intent to restrict judicial review. The fact that the legislature provided for a statutory right of appeal on questions of law can only demonstrate legislative intention to subject questions of law arising from an LAT adjudicator's decision to correctness review.

259. The legislature specifically did not provide for a right of appeal on questions of fact or questions of mixed fact and law, though it could have done so. Allowing judicial review of such questions, it thus fully complies with the legislature's intentions.

260. It is perfectly reasonable for an insured person to seek judicial review alone as opposed to bringing multiple proceedings because of the rule against bringing a "multiplicity of proceedings." In considering the statutory right to appeal, the SCC cited back to its statement in *Vavilov* that "because judicial review is protected by s. 96 of the *Constitution Act*, 1867, legislatures cannot shield administrative decision making from curial scrutiny entirely."

261. The SCC, however, acknowledged the argument that the court's jurisdiction to conduct judicial review has been ousted where there is an appropriate alternative forum or remedy. Nevertheless, in *Yatar*, there was **no** adequate alternative remedy. Since the statutory right of appeal only allowed for an appeal on a question of law, the statutory right of appeal was not an adequate alternative remedy. The fact that the scheme provided for reconsideration by the LAT adjudicator also did not assist, as it was this very reconsideration decision that was under review. Additionally, while the appropriateness of judicial review in the circumstances is a "balancing exercise", concerns over judicial economy were outweighed in this case by the need to ensure that individuals have meaningful and adequate means to challenge (i) unreasonable decisions; or (ii) procedurally unfair administrative decisions.

VOLUME #4(D): Exception to the presumption of reasonableness: *Rule* of law" exceptions
51

262. Note that the three JR SOR '*Rule* of law' exceptions are for 'constitutional, 'central importance to the legal system' and 'jurisdictional boundaries' questions - other exceptions are grounded on other principles. The **Applicant** raises, for completeness, the persistent discord within the tribunal as a further ground for an **ROL** exception.

VOLUME #4(E): Most relevant authority and example of a general question of law: admin proceeding barred by *res judicata* and/or issue estoppel

issue estoppel and/or abuse of process in Toronto (City) vs. CUPE at para. 15 is an example where the question to be answered is of "general question of law". The *locus classicus* for the modern doctrine of abuse of process[52] and its relationship to *res judicata* is *Hunter* which affirmed *McIlkenny v. Chief Constable of the West Midlands*, [1980] Q.B. 283 (C.A.).

264. It is where the law of issue estoppel plays such an important role, as detailed in the **Applicant's Factum** (***SEE:*** COMPENDIUM, , because where issue estoppel is of concern in a decision, the decision of an adjudicator is final one but also sets the standard of review of correctness. Moreover, where a decision is a final one, then the **Non-Justiciability Doctrines** have no applicability because to let a proceeding run its course when the liable insurance company, as it relates to responding and paying benefits, is not a party would mean that the *SABS* **Applicant** would be saddled with the issues of non-communication and non-payment of benefits on an ongoing basis.

265. As noted in the OCF-18 #1 (April 20,2023) that **SNIC**, by the forged signature (***SEE:*** COMPENDIUM, Tab 14, page 270) document above on the OCF-18 from APRIL 2023, represented it would pay.

266. The only solution, which is the only lawful decision, is to ensure that the **First Insurer** in **TDHA** is declared as the **First Insurer** forthwith and on an urgent (***SEE:*** COMPENDIUM, Tab 36 (Affidavit #2) and 42 (Requisition)) basis.

VOLUME #4(F): SOR EXCEPTION: General Questions of Law of Central Importance

267. The other categories where this reviewing court must not defer whatsoever to the **VCM Decision**s is where the rule of law is at issue which are outlined in detail in the **Applicant's Factum**.

Volume #4(F)(i): "True Questions of Jurisdiction" no longer a "Rule Of Law" ground to invoke correctness SOR

268. These are the categories set out in *Dunsmuir,* ***minus*** true questions of jurisdiction: "respect for the rule of law requires courts to apply the standard of correctness for certain types of legal questions: constitutional questions, general questions of law of central importance to the legal system as a whole and questions regarding the jurisdictional boundaries between two or more administrative bodies" (at para. 53).

269. The majority's conception of the rule of law, which has been somewhat amorphous and difficult to analytically target but in more general terms it is engaged in situations where "consistency" and thus "a final, determinate answer" to a general legal question of a non-trivial nature is necessary (at para. 53; ***SEE:*** **Applicant's Factum**).

Volume #4(F)(ii): This is how we do it' at "TD Insurance" as per Mr. Nieuwland)

270. Nobody admitted better than Mr. Nieuwland, then as counsel for TDGIC, at the unauthorized, by statute, case conference, when he represented to Vice Chair Painchaund in response to Mr. McLean's continuous objections to TDGIC being the sole respondent party or a party at all, "This is how we always do it."

271. If that is how they [we] always do it, this Divisional Court can take judicial notice that the four insurance companies in the **TDI Group** take up a significant market share in the automotive insurance marketplace, and there are vast amounts of individual insured persons that may have been affected, are affected and will be affected in light of the representation by a lawyer licensee who is acting for three of the four automotive insurance companies in the **TDI Group**.

VOLUME #4(G): A unique decision in *Vavilov*: more ways than one

272. *Vavilov* was decided, without a dissenting opinion, by a nine-justice panel[53] of the SCC but seven justices were part of a "joint reasons" (the "***Vavilov* Joint Reasons**" or the "**Joint Reasons**") but Abella and Karakatsanis JJ delivered "joint concurring reasons" (the "***Vavilov* Joint Concurring Reasons**" or "Concurring Reasons"). The **Concurring Reasons** are somewhat of a misnomer in that they at times read more like a dissenting opinion. Nonetheless, for purposes of the judicial scorecard and the judicial review landscape, *Vavilov* was and is the law of the land at the time this *JRPA* Application was brought.

VOLUME #4(H): Expertise no longer a factor in SOR; questions of general and central importance (broad catch all)

273. The majority in *Vavilov*, in the **Joint Reasons**, insisted that "*questions of central importance* are now transformed into a broad catch-all category for correctness review" simply "because expertise no longer plays a role in the selection of the standard of review" (at para. 61).

274. In the context of the **VCM Decision**, this is fatal to her 'reasons' if they can be so euphemistically described, because she whilst taking irrelevant and unconstrained jabs at the **Applicant** purports to rely heavily on how her and the Tribunal's expertise somehow operates and its processes.

275. While she engaged in claiming that a non-natural person how endured some level of "strain", the very same tribunal has failed to even file a single document from the **Record Of Proceeding**, despite two concomitant statutory duties, and could not meet deadlines under the *Rules of Civil Procedure*.

276. Now, as per the **1st Amended COMPENDIUM** of the Applicant on February 14, 2025, as per arguably the most shocking admission by an agent of the LAT (LAT registrar office) that it was attempting *to compile*

277. As per the SCC in *Vavilov*, the reasonableness review can never exist based upon expertise because it "does not give [administrative decision-makers] licence to enlarge their powers [or not exercise the same] beyond what the legislature ***intended***" and that the "governing statutory scheme will always operate as a constraint on administrative decision makers and as a limit on their authority" (at para. 68) for non-deferential reasonableness review (also known as "**Correctness SOR**" or the "**Correctness Standard**").

VOLUME #4(I): Errors of Law

278. This court had an opportunity to further expand on what constitutes a question of law on a statutory appeal in *Yatar v. TD Insurance Meloche Monnex,* 2021 ONSC (Div. Ct.), aff'd 2022 ONCA 446, reversed on other grounds, 2024 SCC 8, 489 D.L.R. (4th) 191. In that case, Kristjanson J. of this court explained as follows, at para. 28:

> "[28] On a statutory appeal limited to questions of law alone, the court considers whether the decision-maker correctly identified and interpreted the governing law or legal standard relevant to the facts found by the decision-maker. There are limited circumstances in which findings of fact, or the administrative decision-maker's assessment of the evidence, may give rise to an error of law alone for the purposes of the appeal. If the adjudicator ignored items of evidence that the law required him or her to consider in making the decision, then the adjudicator erred in law: *Canada (Director of Investigation and Research) v. Southam Inc.,* 1997 CanLII 385 (SCC), [1997] 1 S.C.R. 748 at para. 41. Challenges to the sufficiency or weight of evidence supporting a finding of fact to not give

unless the failure is based on a wrong legal principle: *R. v. J.M.H.,* 2011 SCC 45, [2011] 3 S.C.R. 197, at paras. 25 and 29. It is an error of law to make a finding of fact on a material point where the factual finding is based solely on (a) no evidence, (b) irrelevant evidence, or (c) an irrational inference (*Johannson v. Saskatchewan Government Insurance,* 2019 SKCA 52 at paras. 24-25)"

Volume #4(I)(a): *JRPA*, section 2(1)

279. The *JRPA* was passed in 1990 by the Legislature. Subsection 2(1) of the *JRPA* mortises with the *Civil Rules* regarding the styling of the originating notice of a "Notice of Application For Judicial Review", the court, which is the Superior Court of Justice, which includes the Divisional Court and the "Non-Divisional Court", may:

> "the court may, despite any right of appeal, by order grant any relief that the **Applicant** would be entitled to in any one or more of the following: 1. Proceedings by way of application for an order in the nature of *mandamus*, prohibition or *certiorari* 2. Proceedings by way of an action for a declaration or for an injunction, or both, in relation to the exercise, refusal to exercise or proposed or purported exercise of a statutory power. R.S.O. 1990, c. J.1, s. 2 (1).

VOLUME #4(J): APPLICATION OF THE LAW – POST 2019 VAVILOV AND POST 2016 LATA AMENDMENTS AND POST YATAR – TO THE FACTS

280. Simply put, the vexing contextual factors and expertise of the decision maker were **abolished**. In the context of this ***JRPA* Proceeding**, such abolition in being a post-*Dunsmuir* decision are most important when considering, arguably the most glaring misstatement of law in the history of a decision makers post the passage of *Reg 283* by our Lieutenant Governor in 2010, because this reviewing court cannot ruminate about her expertise (or lack thereof) in which she could not, and did not, distinguish between the difference between a "contract" and a "*SABS* claim".

281. As the initial 'vice-chair' did not distinguish between a 'contract' and a 'prescribed application for benefits', she failed or neglected to provide any findings and answers in relation to the following:

a. which insurance company was the First Insurer; and
b. Which insurance company was located at the address in the central processing agency, known as "HCAI" (SEE: **COMPENDIUM**, TAB 14, PAGE 271).

282. The standard of review of the dismissed final orders sought by the final decision of **VCM** are analyzed herein. The standard of review is unequivocally correctness.

283. There is no dispute that general questions of law arose before it by reference to ***PREFACE*** #I but **VCM** took some ten or so paragraphs to only address one of the four orders in NOM #14, and did not address the questions of facts and law before.

284. The question of fact which **VCM** failed or neglected to answer was Order #5. It was a pure question of fact to be answered as it involved whether the 'phone number' used as a fax number was a landline phone number located on the 4th floor of the building, situated on the land, at 3650 Victoria Park Avenue, North York, Toronto. It is as if VC Morissette was deliberately avoiding answering that issue. The **Applicant** submits that she did so because if she had answered that issue, she, on behalf of the Tribunal, would have had to answer that question in the affirmative which would have then led to unassailable legal conclusions. It did not call for a legal determination per se but rather that said fax number (416.774.3120) ((SEE: Affidavit #30 of the

"D" itself, **COMPENDIUM**, Tab 10, page 147 and 148) first provided to the **Applicant** and the fax number that first received, was situated on a certain floor inside the **Spark Building**.

285. The unassailable legal conclusions would have then been as follows:

a. **SNIC** was not the First Insurer as its represented address in September and October 2022 was in Markham, Ontario and not North York, Toronto, Ontario; and
b. TDGIC could not have been the First Insurer because the Tribunal found that TDGIC's fax number was 416.774.**3629**.

286. With those unassailable legal conclusions, then it could have only been **TDHA** that was the First Insurer. Therefore, **VCM** would have been compelled, by law, to grant Order #1. This would have left Orders #2 to #4 sought in NOM #14.

287. By law, **VCM** was required to add **TDHA** as a party as it was the First Insurer. It would not have precluded **TDHA** from its right to seek give a late notice to the SABS **Applicant**, an unnamed insured individual in the Insurance Policy but an insured person by the statute (*Insurance Act*), and the other insurance companies that it alleged were liable to respond and pay accident benefits (if any). Whether an arbitrator would have believed the evidence and submissions of **TDHA**, hypothetically speaking, that 90 days from October 13, 2022, was not a sufficient time, from an objective person's standard, to conduct an investigation and determine who was the responsible insurer to pay benefits and respond to the **Applicant** is a matter of conjecture and speculation. Moreover, **TDHA**, once found to have been the First Insurer, would not have been precluded from seeking a stay of the LAT Proceeding while it potentially exercised its potential legal rights. However, **TDHA** (and potentially **SNIC** and its apparent joint and several co-indemnitor or perhaps contributor to liability of an insurance policy where they accepted priority [sic]) would have, most ironically in light of the misguided prematurity objection solely by the Tribunal, subject to the rule against reviews or appeals or interlocutory decisions and orders.

288. It is trite law that an order that ***grants*** the addition of a party (or cause of action), by way of order sought in a motion (whether at the tribunal or court level) is an *interlocutory decision*. Conversely, an order that *refuses*, *dismisses*, or does not grant an order to add a party (and a cause of action) is a *final decision* or *final order*.

289. Objectively speaking, the ***JRPA Applicant*** was beyond courteous to seek an order that granted **TDHA** the right to file a responsive pleading within 14 days of an order adding it as a party, which has been denoted as Order #3 in NOM #14, by way of Order #4 in NOM #14. The **Applicant** could have not sought such an order predicated on **TDHA** having been served at the fax number of 416.774.3120 (SEE: Affidavit #30 of the **Applicant** in the LAT Appeal of July 31, 2024; **COMPENDIUM**, Tab 10, page 78, paragraph 34; for Exhibit "D" itself, **COMPENDIUM**, Tab 10, page 147 and 148) with the LAT Appeal (***SEE:*** COMPENDIUM, Tab 6) on December 24, 2023. However, the **Applicant** nonetheless sought Order #4 which can only be characterized as an "amendment of pleading order", which was not decided specifically but rather refused by dismissal of the motion itself (NOM #14).

290. This would have left Order #2 in NOM #14. Said order sought is somewhat of a contextual or supplemental order to the First Insurer Order Sought (Order #1) and the Fax Number Location Order Sought (Order #5). If either were granted, then the finding that **TDHA** was the only known or last known, by reference to the uncontroverted public evidence so appended to the **Applicant**'s affidavit material, that the East Mall Address was one that **TDHA** utilized before the City of Toronto amended the various zoning plans involving the commercial building known as the Valhalla Executive Suites to allow for the development of mixed-use commercial-residential towers. While no insurance company, l*et al*one any company could have been located at 304 The East Mall in October 2022, which was the time that the address was input into the CPA or HCAI (SEE: **COMPENDIUM**, TAB 14, PAGE 271) back-end technological database, or at the time of the **VCM**

supplemental evidence as to why **TDHA** was the First Insurer in October 2022.

291. Simply put, the fax number of 416.774.3120 (SEE: Affidavit #30 of the **Applicant** in the LAT Appeal of July 31, 2024; **COMPENDIUM**, Tab 10, page 78, paragraph 34; for Exhibit "D" itself, **COMPENDIUM**, Tab 10, page 147 and 148) was that of **TDHA** in September and October 2022, and that is all that matters as it relates to *Reg 283* as to whom was the First Insurer. An insurance company may move 20 days, 20 months or 20 years later from the physical office where such a landline fax number was based but the sole question to be answered, pursuant to *Reg 283* which dovetails with the Schedule, is which owner, tenant, sub-tenant, assignee, or addressee was so located on the 4th floor of the **Spark Building** at said time.

292. While some of the orders above would have amounted to findings of fact, **VCM** failed or neglected to decide the same. It is unclear if that amounted to declining or not. In any event, **VCM** failed to decide the issue of law and the finding that **TDHA** was the First Insurer which would have required the adding of **TDHA**, including the cause of action against it, with amendment of the pleadings accordingly. As such, whether the nomenclature is 'failing to decide', 'refusing to decide', or 'refusing to add a party, a cause of action, or amendment of pleadings', the dismissal of NOM #14 amounted to a final decision. It is about as trite law as it gets in the field of civil appellate (judicial review) litigation of a statutory tribunal.

293. The standard of review on all issue is that of correctness because **VCM** did not engage in any analysis of the statutory scheme. Moreover, there are hints or reasonable perceptions of bias and lack of independence along with breaches of the **Applicant**'s natural justice rights. As seen in the **Applicant's Factum**, there is the potential that not only the decision of the **Tribunal** would invoke the same but a decision here, without clear addressing of this issue, could lead to the same. It is herein where **VCM**'s attacks on the ***SABS Applicant*** as somehow putting a strain on the **Tribunal** by notifying and advancing his *SABS* claim under TD Claim #3 was an "abuse of process". Section 138 of the *CJA* codifies the principle that a multiplicity of proceedings must be avoided.[54] This leaves the sole issue being one of timing.

(X5) ARE ALL INCORRECT

VOLUME #5(A): Introduction

294. The correctness standard entails this Court stepping into the shoes of **VCM** and deciding this ***JRPA Application*** afresh.

Volume #5(A)(i): Correctness: (i) to uphold; or (ii) substitute – that is the choice

295. In *Vavilov*, 2019 SCC 65 (S.C.C.) at paragraph 54: "When applying the correctness standard, the reviewing court may choose either to uphold the administrative decision maker's determination or to substitute its own view: *Dunsmuir,* at para. 50.

296. While it should take the administrative decision maker's reasoning into account—and indeed, it may find that reasoning persuasive and adopt it—the reviewing court is ultimately empowered to come to its own conclusions on the questions before it.

297. In any civil case the plaintiff must prove their case on a balance of probabilities if they are to succeed. This means that the plaintiff must prove that his facts tip the scale in his favor even if it is only a 51% probability that he is correct. The only civil standard of proof is proof on a balance of probabilities: *F.H. v. McDougall*, 2008 SCC 53, at para. 40.

298. In all cases, the evidence adduced to meet this standard must be "sufficiently clear, convincing and cogent" to persuade the trier of fact of the merits of the claim on a balance of probabilities: *McDougall,* at para. 46.

VOLUME #5(B): Why **VCM**'s Refusal Final Orders were incorrect at law

299. The **VCM Reasons** incorrectly found that the **Applicant**'s was the individual insured individual when he was not.

300. The **VCM Reasons** found that two insurance companies, both of which DID NOT have the fax number of 416.774.3120 (SEE: Affidavit #30 of the **Applicant** in the LAT Appeal of July 31, 2024; **COMPENDIUM**, Tab 10, page 78, paragraph 34; for Exhibit "D" itself, **COMPENDIUM**, Tab 10, page 147 and 148) as per the uncontroverted evidence, accepted priority over an insurance policy at some unparticularized time by some of unparticularized method.

301. It does not get more 'general' in terms of a legal question than whether an underwriter of an automotive insurance policy can provide a different fax number than its own at first instance and then purport to accept priority with another insurance company when neither first received an injured person's **Completed Application** pursuant to *Reg 283*.

VOLUME #5(C): Even if reasonableness were the standard of review

302. To the extent that any questions could be decided under the "reasonableness SOR", which they could not, the **VCM Decisions**[56] would fail yet again under the following hallmarks of an unreasonable decision. While the **Applicant** strongly submits that reasonableness cannot be the SOR on *any* of the questions or issues herein, the **Applicant** respectfully submits that he would have hypothetically met that burden[57] as the **VCM Reasons** for decisions, particularly in relation to NOM #14 are:

a. not transparent, intelligible and justified (the "**Incoherent[58] Failure**");
b. internally incoherent and irrational chain of analysis and that is not justified in relation to the facts and law that constrained her ("**Rationality Process Failure**")
c. where the result reached by the administrative decision-maker is untenable in light of the relevant factual and legal constraints that bear upon the decision ("**Untenable Result**"); and
d. Failure to even request submissions from the respondent insurance companies[59].

303. As there is no "counter judicial review application" by any of the three respondent insurance companies, and no preliminary objection, the judicial review is to be heard and decided on the basis of whether the impugned **VCM Decision**s ((***SEE:*** COMPENDIUM, Tab 2) were correct or not as a matter of law. Unsurprisingly and consistently with the respondents (**SNIC** and **TDHA**) not wishing to participate in NOM #14 and NOM #15, and the reconsideration motion (***SEE:*** COMPENDIUM, Tab 25), there is no evidence to weigh on their behalf and no submissions to consider. An adverse inference must be drawn against each **SNIC** and **TDHA** in both of those 'written hearings' and in this *JRPA* Proceeding. It was almost as if the Tribunal had to force the three respondent insurance companies to file a Notice of Appearance.

VOLUME #5(D): Since reasonableness is NOT the SOR

304. Since reasonableness is not the standard of review, correctness must be the SOR. It is a zero sum game.

305. Unlike the reasonableness SOR, this reviewing court must ask itself the following (***SEE:*** the corollaries of the paragraphs in *Vavilov* at paras. 75, 83 and 116):

a. how it would have resolved [the] issues;
b. undertake a *de novo* analysis;
c. ask itself what the correct decision would have been; and
d. decide the issues itself.

VOLUME #5(D)(i): De Novo Analysis and Decide the issues itself

306. In relation to the 'decide the issues itself', **VCM** did not decide the issues under Order #1, #2, #4 and #5 in NOM #14 and #15. Ergo, this Divisional Court must do so based on the motion hearing records as they were at the time of the **VCM Decision** on September 12, 2024, irrespective of the b*lata*nt purported backdating on page 1 of the VCM Reasons For Decision which were inconsistent with the

Volume #5(D)(ii): What order did VCM explicitly refuse

307. There is no dispute from the **Applicant** that **VCM** dismissed Order #3 sought, which was the **TDHA Party Addition Order** but her reasons for dismissing that order sought were predicated upon the misguided legal understanding, somewhat reflexively queried therein, as to whether the Tribunal had a discretionary jurisdiction to add **TDHA** as a party.

Volume #5(D)(iii): What orders did VCM refuse but not explicitly state

308. By dismissing NOM #14, albeit without specifically grappling with the law and evidence, VCM's refused Orders #1, #2, and #4. The same is applicable to NOM #15 with respect to Order #3.

Conflating "discretion" vs. "obligation"

automotive insurance contract and an automotive accident benefits claim, the distinction between the following:

a. an obligation pursuant to statute; and
b. discretion pursuant to statute.

310. Analytical precision is required when issuing decisions but also making submissions to this ONSC Divisional Court.

311. Parties are those persons that are entitled to be parties "by law". The Legislature provided a discretion, in the broad sense to a variety of tribunals that are subject to the *SPPA*, to have persons who are entitled by law to be parties, to be parties to a proceeding before them.

312. However, in the Reg 283/SABS/LAT/AABS context, it is a matter of which insurance company, for liability to respond to the insured person and to pay benefits (if any i.e. the entitlement), and not a multitude of insurance companies.

SABS entitlement and benefits are different than costs

313. Theoretically, there could be two insurance companies that are subject to a LAT appeal or section 280(2) statutory application for resolution involving automotive benefits with the following:
a. First Insurer (Provisional): and
b. First Insurer (Permanent).

314. Those insurance companies may be liable in different amounts for costs in a LAT proceeding.

315. With no competing evidence, sworn or otherwise to the substantive rights and final orders sought, most undecided and not faced, in NOM #14 (orders #1 to #4) and NOM #15 (order #3), in the **Applicant**'s Application Record, and none in the **Record Of Proceeding**, any purported finding of *fact* was one without supporting evidence. Even those findings 'dressed up as findings of fact' but, as per the actual record (at least the documents filed by the SABS **Applicant**, **SNIC** with one filed document (**SNIC Response** (***SEE:*** COMPENDIUM, Tab 7, pages 32 to 35)) and TDGIC with a variety of void ab initio filings), are subject to the Correctness SOR because they were unsupported by any reference to a document, evidence or otherwise.

Tribunal lawlessness has continued into this *JRPA* Proceeding

316. Although the Tribunal has decided to act without statutory authority by unilaterally deciding that its convenience in filing the **Record Of Proceeding** is unlawfully paramount to the clear legislative language ('*forthwith file'*), it apparently took some misguided heed of its statutory authority in refusing to add **TDHA** as the First Insurer and leave **SNIC** as a party for purposes of costs. Moreover, the Tribunal has admitted, by way of the Applicant's access request of it in January 2025 regarding the **Record Of Proceeding**, on February 13, 2025, that it is determining how to compile the same.

317. What is for the court's use and an obligation to do forthwith is of no concern to this Tribunal. It does as it wants when it wants and how it wants. It picks and chooses when obligations are of any concern to it. When the Legislature passes provisions like section 20 of the *SPPA*

318. But therein is the answer or one of the answers for the OTLA as to why injured persons are losing at exponentially lower rates than they did some five years ago.

VC McGee in Mansuri before the ONSC Divisional Court

319. As Vice Chair McGee, a decision maker that had issued a litany of correct and coherent decisions which the **Applicant** relied upon in the Tribunal proceeding, noted in *Mansuri*, as follows at paragraph 14:

> "[14] The **Applicant**s submit the relief they seek relates to a dispute under the *Insurance Act* and, therefore, falls within the Tribunal's jurisdiction. The **Applicant**s also refer me to the Tribunal's authority under the *Statutory Powers Procedure Act*, RSO 1990, c S.22 ("*SPPA*") to make orders with respect to the procedures and practices that apply in a proceeding, and to the Tribunal's authority under the *Licence Appeal Tribunal Act*, 1999, SO 1999, c 12, Sched G ("*LAT Act*") to determine all questions of fact or law that arise in matters before it.

320. There is no dispute that general questions of law arose before it by reference to ***PREFACE*** #1 but **VCM** took some ten or so paragraphs to only address one of the four orders in NOM #14, and did not address the questions of facts and law before.

321. The question of fact which **VCM** failed or neglected to answer was Order #5. It was a pure question of fact to be answered as it involved whether the 'phone number' used as a fax number was a landline phone number located on the 4th floor of the building, situated on the land, at 3650 Victoria Park Avenue, North York, Toronto. It is as if VC Morissette was deliberately avoiding answering that issue. The **Applicant** submits that she did so because if she had answered that issue, she, on behalf of the Tribunal, would have had to answer that question in the affirmative which would have then led to unassailable legal conclusions. It did not call for a legal determination per se but rather that said fax number (416.774.3120) (SEE: Affidavit #30 of the **Applicant** in the LAT Appeal of July 31, 2024; **COMPENDIUM**, Tab 10, page 78, paragraph 34; for Exhibit "D" itself, **COMPENDIUM**, Tab 10, page 147 and 148) first provided to the **Applicant** and the fax number that first received, was situated on a certain floor inside the **Spark Building**.

Unassailable Conclusions – *De Novo* or at First Instance

322. The unassailable legal conclusions would have then been as follows:

a. **SNIC** was not the First Insurer as its represented address in September and October 2022 was in Markham, Ontario and not North York, Toronto, Ontario; and
b. TDGIC could not have been the First Insurer because the Tribunal found that TDGIC's fax number was 416.774.**3629**.

Order #1 in NOM #14

323. With those unassailable legal conclusions, then it could have only been **TDHA** that was the First Insurer. Therefore, **VCM** would have been compelled, by law, to grant Order #1. This would have left Orders #2 to #4 sought in NOM #14.

Not Permissive as VCM would have it

324. By law, **VCM** was required to add **TDHA** as a party as it was the First Insurer. It would not have precluded **TDHA** from its right to seek give a late notice to the SABS **Applicant**, an unnamed insured individual in the Insurance Policy but an insured person by the statute (*Insurance Act*), and the other insurance companies that it alleged were liable to respond and pay accident benefits (if any). Whether an arbitrator would have believed the evidence and submissions of **TDHA**, hypothetically speaking, that 90 days from October 13, 2022, was

the responsible insurer to pay benefits and respond to the **Applicant** is a matter of conjecture and speculation. Moreover, **TDHA**, once found to have been the First Insurer, would not have been precluded from seeking a stay of the LAT Proceeding while it potentially exercised its potential legal rights. However, **TDHA** (and potentially **SNIC** and its apparent joint and several co-indemnitor or perhaps contributor to liability of an insurance policy where they accepted priority [sic]) would have, most ironically in light of the misguided prematurity objection solely by the Tribunal, subject to the rule against reviews or appeals or interlocutory decisions and orders.

325. It is trite law that an order that ***grants*** the addition of a party (or cause of action), by way of order sought in a motion (whether at the tribunal or court level) is an *interlocutory decision*. Conversely, an order that *refuses*, *dismisses*, or does not grant an order to add a party (and a cause of action) is a *final decision* or *final order*.

Applicant was courteous and not cutthroat

326. Objectively speaking, the ***JRPA Applicant*** was beyond courteous to seek an order that granted **TDHA** the right to file a responsive pleading within 14 days of an order adding it as a party, which has been denoted as Order #3 in NOM #14, by way of Order #4 in NOM #14. The **Applicant** could have not sought such an order predicated on **TDHA** having been served at the fax number of 416.774.3120 (SEE: Affidavit #30 of the **Applicant** in the LAT Appeal of July 31, 2024; **COMPENDIUM**, Tab 10, page 78, paragraph 34; for Exhibit "D" itself, **COMPENDIUM**, Tab 10, page 147 and 148) with the LAT Appeal (***SEE:*** COMPENDIUM, Tab 6) on December 24, 2023. However, the **Applicant** nonetheless sought Order #4 which can only be characterized as an "amendment of pleading order", which was not decided specifically but rather refused by dismissal of the motion itself (NOM #14).

327. This would have left Order #2 in NOM #14. Said order sought is somewhat of a contextual or supplemental order to the First Insurer Order Sought (Order #1) and the Fax Number Location Order Sought (Order #5). If either were granted, then the finding that **TDHA** was the only known or last known, by reference to the uncontroverted public evidence so appended to the **Applicant**'s affidavit material, that the East Mall Address was one that **TDHA** utilized before the City of Toronto amended the various zoning plans involving the commercial building known as the Valhalla Executive Suites to allow for the development of mixed-use commercial-residential towers. While no insurance company, l*et al*one any company could have been located at 304 The East Mall in October 2022, which was the time that the address was input into the CPA or HCAI (SEE: **COMPENDIUM**, TAB 14, PAGE 271) back-end technological database, or at the time of the **VCM Decision**, such an order was sought as it provided further independent and supplemental evidence as to why **TDHA** was the First Insurer in October 2022.

328. Simply put, the fax number of 416.774.3120 (SEE: Affidavit #30 of the **Applicant** in the LAT Appeal of July 31, 2024; **COMPENDIUM**, Tab 10, page 78, paragraph 34; for Exhibit "D" itself, **COMPENDIUM**, Tab 10, page 147 and 148) was that of **TDHA** in September and October 2022, and that is all that matters as it relates to *Reg 283* as to whom was the First Insurer. An insurance company may move 20 days, 20 months or 20 years later from the physical office where such a landline fax number was based but the sole question to be answered, pursuant to *Reg 283* which dovetails with the Schedule, is which owner, tenant, sub-tenant, assignee, or addressee was so located on the 4th floor of the **Spark Building** at said time.

VOLUME #5(E): further reasons why **VCM** erred in law

329. With the SOR being correctness, the **VCM Decision** also suffers from a variety of errors of law where this reviewing court also extends no deference to the inferior tribunal's decisions and orders.

VOLUME #5(F): failure to grapple with issues and evidence

330. An administrative decision maker's reasons must "meaningfully account for the central issues and concerns raised by the parties" and be responsive to the parties' submissions: *Vavilov*, at para. 127; *Elkins* at paragraph 69[60]. **VCM** failed to issue a notice of hearing, contrary to the *SPPA*, and request submissions from **SNIC** or **TDHA**. **VCM** failed to meaningfully account for concerns raised by the **Applicant**. Consequently, the **VCM Reasons** have prevented meaningful appellate review and constitute errors of law.[61] As the Legislature has evinced a clear intention to allow for, if an aggrieved party so wishes, appellate review on questions of law by *LATA*, although that leads to a stay of the underlying proceeding, this signals a correctness SOR.

331. If the Tribunal was subject to some "power outage" or "privacy breach" (internal or external) and did not have a full and accurate **Record Of Proceeding** in September 2024, it should have informed the parties therein so they could assist. Certainly, such a mess of a decision by **VCM** that had some 45 errors in 11 pages resembled could not have indicative of her competence. The only other potential was that **VCM** issued those "decisions" (NOM #13 not under judicial review) from a faulty memory. In this regard, the **Applicant** is willing to give her the benefit of the doubt. However, that makes the point that compounding and aggravating the issue as the Tribunal has done through its counsel in Mr. Boyce can never be the answer. It is antithetical to unwritten constitutional principles, constitutional values and the supervisory role of our constitutionally guaranteed independent judiciary.

VOLUME #5(G): failed to identify the orders sought in NOM #14

332. In *Elkins v. Van Wissen*, 2023 ONCA 789 [62], the ONCA found that the Board (LTB) reasons made no mention of the second issue nor the evidence relating to it. Clearly, appellate review was prevented on that issue and, for that reason alone, the Board erred in law.

333. The **VCM**'s reasons did not address orders #1 and #2 and the issues so inextricably intertwined with the same. Ergo, judicial review was prevented on this issue and, for that reason alone, **VCM** erred in law.

VOLUME #5(H): Deficient reasons (not absence of reasons): error of law

334. The ONCA went further in *Elkins*[63] finding the following: "[69] In addition, however, the Board reasons on the first issue are so deficient as to constitute legal error". The **VCM Reasons**, in relation to NOM #14, also suffer from that fatal level of deficiency albeit in relation to numerous issues.

VOLUME #5(I): Typographical errors, error of calculations or similar errors made in the **VCM** Decision

335. The **Applicant** continues to draw to the attention of the Tribunal and the ONSC that the **VCM** Decision contains the errors in its decision as follows. The **VCM** Decision does not only contain rejection of relevant evidence but an apparent recitation of facts unknown to the **Record Of Proceeding**. The errors in 11 pages were astounding as per the ***JRPA Applicant***'s section 21.1 of the *SPPA* motion, which he incorrectly (being objective) noted was NOM #16 when it was NOM #18, as follows (which are somewhat required because of the Tribunal's failure to comply with section 10 of the *JRPA*) (SEE: Appendices).

VOLUME #5(J): The fatal misstatement of law by **VCM**

336. While using the word "fatal" should not be utilized as a standard naming protocol in civil litigation, the ***JRPA Applicant*** has done so for emphasis as per the word choice by **VCM** in her brief reasons for decision in NOM #14.

quashed, and substituted for correct decisions and orders, one of the benefits of the orders and decisions in NOM #14 and #15 (collectively, the "**First Insurer Motions**") being set aside, is that this misstatement of law is expunged, eradicated and eviscerated as any form of precedent so that no other person (private, public or otherwise) ever relies on the same:

> "This judicial review can be disposed of on one legal ground and error, while there are broader errors in the **VCM Decision** in the **First Insurer Motions** which include the following statement: "[27] .....The initial respondent [sic], TDGIC, **and** the current respondent, **SNIC** accepted priority over the **Applicant**'s [sic] insurance policy". [the "Joint Insurance Company Insurance Policy Priority"][64].
>
> 4. Therefore, if **SNIC** and TDGIC accepted priority of the Insurance Policy, as found by the Adjudicator, and the Appellant did not make any such offer to either for them to 'accept priority of the Insurance Policy' and/or neither **SNIC** nor TDGIC first received the Appellant's **Completed Application**, then TDGIC had to receive that offer of "priority" (as the Adjudicator puts it) from the "**First Insurer**".
>
> 5. As a matter of law, could **TDHA** offer "priority" to **SNIC** and TDGIC? The question answers itself.
>
> (***SEE:*** paragraphs three to five of the ***JRPA Application***; ***COMPENDIUM***, Tab 37, pages 604 to 631).

338. With great respect, **VCM**'s analysis therein is, bluntly, incompetent. It is not competent because in the reasons for decision, **VCM** refers to TDGIC as a non-party. Since TDGIC was a non-party, by virtue of her own orders and decisions in NOM #8, then how could an insurance company that apparently, albeit without any evidence in the Application Record or the **Record Of Proceeding**, accept priority over the **Applicant**'s [sic] insurance policy [sic] and not be a party to the ***JRPA* Proceeding**? Based on **VCM**'s reasoning, then both **SNIC** and TDGIC were required to be parties as, hypothetically speaking, why should the **Applicant** be deprived from enforcement of any monetary aspects and/or the duty to respond and pay benefits if two insurance companies inexplicably, without evidence in the Application Record, accepted priority over an insurance policy – whatever that means at law.

VOLUME #5(K): Applicant is in "exceptional company"

339. While it would be one thing for this **Applicant** to be on an "island" making such bold and pointed submissions at this LAT, he is not. The ***JRPA Applicant*** is in extremely good company and, ironically, his factum, which took *dead aim* at the questionable qualifications of **VCM** at it relates to being an adjudicator (then promoted to Vice Chair) was filed before his reading of the below. As it relates to competence, the Ontario Trial Lawyers Association has squarely taken aim at this Tribunal as of November 2024. When commencing the ***JRPA Application***, the very thoughts, by mere happenstance and coincidence, of the OTLA were a source of rumination for the ***JRPA Applicant***.

340. It is not an overstatement or hyperbole to submit that the Ontario Trial Lawyers Association is the preeminent trial lawyers association in any common law jurisdiction. When you look to the history of the calibre of civil and criminal trial lawyers produced by Ontario from Mr. John Josiah Robinette to Mr. David Tanovich to Mr. Edward Greenspan to Mr. Peter Hogg to those justices of our ONSC and ONCA who were members of the OTLA, it is a statement that is nearly beyond debate. While our American counterparts will argue that the likes of Mr. Johnie Cochran to Mr. Shapiro and others are superior, the US courts are notoriously more based on persuasion and acting the part than pure legal acumen. Out of an abundance of caution, the ***JRPA Applicant*** wishes to make clear that being in that exceptional company for that fleeting moment was a coincidence and he is not within the same stratosphere of legal acumen of those aforementioned individuals.

341. With that segue, the very OTLA is pushing for an urgent review of the LAT:

> ***"OTLA Pushes for Urgent Review of the LAT (SEE: COMPENDIUM, Tab 36 (Affidavit #2) and 42 (Requisition)) LAT Review***"
>
> (***SEE:*** The **Applicant** quotes: "The association cited "disturbing trends" drawn from an inHEALTH analysis". OTLA noted that the success rate for insured **Applicant**s bringing their disputes to LAT has *fallen over the years*, with just 10% getting a win in 2023 compared to 2017's 33%. "Our members have voiced concerns that the LAT's process is overly rigid, is fraught with procedural unfairness, and fails to accommodate requests, even when both parties agree. This also raises important questions about the qualifications and training of LAT adjudicators," Purewal said. "The LAT is an arm of our justice system. Injured Ontario citizens should feel confident that they are getting a fair hearing, and that justice is being done. Unfortunately, with the recent declining trends in success rates for **Applicant**s and the overwhelming success of insurers is raising significant questions for our membership."

342. Similarly, this ***JRPA Applicant*** is seeking an 'urgent (***SEE:*** COMPENDIUM, Tab 36 (Affidavit #2) and 42 (Requisition))' judicial 'review' of two (2) decisions makers of the LAT and the LAT itself. Whether by section 6(2) of the *JRPA* and *Rule* 37.13(2)(a), it matters not because urgency is a temporal issue – not a procedural one.

VOLUME #5(L): *Déjà Vu* All Over Again or worse than *Shuttleworth*?

343. As it relates to integrity, this ONSC Divisional Court is well attuned to the decision in *Shuttleworth*, and it, at least, *prima facie*, appears to have resurfaced herein to some degree. Where a **Tribunal** such as this one is back to its old "bad habits" like it was in *Shuttleworth*[65] and the recent discovery that a former adjudicator in Therese Reilly (LSO number 28621D; "not practising law" with "contact information withheld"[66]) had received a conditional job offer from Aviva in 2022 and then proceeded to apparently issue 13 decisions in favour of Aviva before embarking on her in-house legal position.[67] [68]

344. The "similar fact evidence" or "contextual evidence", all of it public, is a "cocktail" of *some* administrative actors that palpably lack any level of objectivity.

VOLUME #5(M): AN UNPRECEDENTED STEP BY TRIBUNAL COUNSEL (SLASTO LEGAL UNIT) BY MR. BOYCE IN THE FACE OF RECEIPT OF AFFIDAVIT #2;

THE SLASTO LEGAL UNIT CONNECTION TO THE IMPUGNED DECISIONS OF THE IMPUGNED DECISION MAKERS

345. As denoted in the **Applicant**'s affidavit #4 (January 18, 2024), Mr. Boyce, in-house counsel at the SLASTO legal unit, took the extraordinary step of removing certain information in his public contact information such as: (i) address; and (ii) employer name, although maintain his status as "practising law – employed". The **Applicant**'s affidavit #2 (December 30, 2024), clearly put Mr. Boyce on notice of a potential reasonably perceived conflict of interest issue and the inability for the Tribunal to further participate in this *JRPA* Proceeding on grounds of an absence of impartiality pursuant to his office address being the same as **VCM** and VCL, and potentially being the SLASTO lawyer that advised those decision makers and co-drafted those impugned decisions. As opposed to Mr. Boyce facing the same, and providing this ONSC Div. Ct. with an explanation and/or evidence, he took the extraordinary step of removing the very information from the public record in the LSO directory.

issued licences." Mr. Boyce removed his "assumed name". Mr. Boyce did not have any "personal contact information" so that subsection of By-Law #8 is irrelevant. His employer or business contact information was removed but not changed *per se*. There does not appear to be any grounds whatsoever to remove the "business name" or "employer name" from the LSO directory through the LSO Portal.

347. Inexplicably and without reference to the very "business" or "employer", Mr. Boyce' status remained the same as he is still "practising law – employed". Thankfully, affidavit #2 in the Divisional Court record provided the exact particulars of Mr. Boyce's business or employer name, address, and phone number therein. As such, the issue of whether Mr. Boyce, as the agent (lawyer licensee representative) of the Tribunal can advance arguments in an impartial manner for the quasi-judicial LAT is at issue.

348. Leaving that aside, Mr. Boyce is an officer of the court, at common law and by section 29 of the LSA: 29 (1) Every person who is licensed to practise law in Ontario as a barrister and solicitor is an officer of every court of record in Ontario. 2006, c. 21, Sched. C, s. 26. There are six cases cited under this section that was passed in 2006 which was by way of the Access To Justice Act, 2006. Paralegals are not officers of the court[69] whereas lawyer licensees are: *Gobin v. Sheriff of the Regional Municipality of Durham*, 2018 ONSC 1255 as per Justice Salmers. Black's Law Dictionary, 8th ed., defines "officer of the court" as "a person who is charged with upholding the law and administering the judicial system." (***SEE:*** *Nixon v. The King*, 2023 TCC 124 at paragraph 6, cited at note 3). Every barrister and solicitor licensed to practise law in Ontario is an officer of the court: s. 29 of the Act. Further, by operation of s. 33, every advocate practising law in Ontario is prohibited from engaging in professional misconduct or conduct unbecoming a licensee (***SEE:*** at paragraph 9 of *Groia* (2016 at the ONCA).

349. When considering the litany of errors in **VCM Decision**, by reference to the **Applicant**'s section 21.1 of the *SPPA* motion alone, wherein **VCM** failed to cross-reference any filed evidence or evidence altogether, it leads to a very scary inference. That scary inference is all the more frightening when former case manager Mr. Josh Grant[70] was, without notice, relieved of his duties in favour of case manager, Ms. Hannah Lee in Fall of 2024. The insight from *Shuttleworth*[71] as to the procedure before a decision is issued during this "behind the doors and non-public consultation process" leads to the obvious inference that the **VCM Decision**, coupled with **VC Lake** coming out of the "woodwork" after there was a clear objection by the **Applicant** to the Tribunal that VC Lake not engage in any further role in the LAT Appeal (***SEE:*** COMPENDIUM, Tab 6), was not relying on evidence in the "**Record Of Proceeding**" but rather on non-public evidence. *Were there conversations behind closed doors or at least not including the* ***Applicant*** *as to what transpired?* It seems to be the only natural inference. *Were Mr. Nieuwland and Mr. Boyce communicating during the LAT Proceeding?* Their evidence was welcomed but "radio silence" followed.

350. In this regard, the **Applicant** welcomed the Tribunal speaking to the **Record Of Proceeding** but on one condition: if it has it in full and precise form. As of January 15, 2025, the Tribunal has filed to file a single document of the **Record Of Proceeding**. As of January 14, 2025, the Tribunal failed to file its application record and factum contrary to *Rule* 68.04(4) of the *Civil Rules*.

VOLUME #6: CONSTRAINED SCOPE OF THE LICENSE APPEAL TRIBUNAL'S PARTICIPATION[72]

351. Judicial review is not an opportunity to re-argue the case or hearing, but rather to show that the decision-maker failed to properly exercise its decision-making powers or for the respondent insurance companies to do the opposite. Judicial review is not documentary discovery. However, compliance with section 10 of the *JRPA* is a requirement or obligation upon the **Tribunal**. The *Civil Rules* have no applicability pursuant to *Rule* 1.02(1)(3.). As a 'Practice Direction' is subject to the *Civil Rules*, neither any Practice Direction nor any Civil *Rule* can override the statute; particularly the forthwith requirement that the Tribunal filed the **Record Of Proceeding**.

ISSUE #6; Volume #6(I)(A): Standing of the **Tribunal**

352. Ss. 9(2) of the *Judicial Review Procedure Act* entitles the administrative tribunal to be a party to the proceedings but leaves to the court's discretion the scope of its standing (***SEE:*** *Goodis* at paragraph 33). It is not the "can" in relation to participation but the "content" of the participation.

ISSUE #6: VOLUME #6(I)(B): Why the Tribunal must be prohibited from arguing the correctness of the **VCM Decision** and VCL Decision

353. As such, the lens through which the court is analyzing the Application Record, and where applicable the **Record Of Proceeding**, is whether the ***JRPA Applicant***, in his capacity as a ***SABS Applicant***, provided clear, convincing and cogent proof that, it was more *likely* than not, that **TDHA** was the **First Insurer**. If the Tribunal were entitled to argue the correctness of the **VCM Decision** and VCL Decision (***SEE:*** COMPENDIUM, Tab 3), it would be tantamount to the Tribunal arguing the hearing of NOM #14 and NOM #15 for the respondent insurance companies as they volitionally did not participate. It would be the equivalent of Mr. Boyce for the Tribunal standing in the shoes of **TDHA** and **SNIC** in this ***JRPA Application*** along with the potential of the Tribunal taking a second bite of the cherry for **SNIC** and **TDHA**. When considering that Mr. Boyce and the Vice Chairs work from the same location and for SLASTO, which is funded by insurance industry, it would be tantamount to the Tribunal engaging in the legal argument that **SNIC** and **TDHA** chose to not engage in and, at least, the *appearance of a lack of independence between the Tribunal and the insurance companies* – which are sources of funding capital for SLASTO.

ISSUE #6: VOLUME #6(I)(C): *Northwestern Utilities*; *Paccar* and Profession Mullan

354. In *Northwestern Utilities*, supra, Estey J. articulated the other [competing interest being a fully informed adjudication on the issues] significant consideration, namely the importance of maintaining tribunal **impartiality**. This obviously matters to the parties to the decision, particularly if the application results in the matter being *referred back* to the tribunal. More broadly however, in future cases before the tribunal where similar interests arise, or where the tribunal serves a defined and specialized community, there may be a risk that full- fledged participation by a tribunal as an **adversary** in a judicial review proceeding will undermine *future confidence* in its objectivity (cited in *Goodis* in paragraph 38).

ISSUE #6, ***VOLUME #6***(I)(D): The decision presented adequately by the party that had relief refused?

355. As our ONCA stated in *Goodis*, citing *Paccar* at paragraph 37 and quoting Professor David Mullan, one of the preeminent legal scholars in administrative law[73] with the following:

"Professor Mullan put it this way at *Mullan*, supra, at p. 459:

> Under a discretionary approach, the principal question should probably be whether the participation of the tribunal is needed to enable a proper defence or justification of the decision under attack. If that decision will almost certainly be presented adequately by the losing party at first instance or by some other party or intervenor such as the attorney general, there may be no need for tribunal representation irrespective of the ground of judicial review or appeal."

356. The word justification connotes that the reasonableness standard of review is at issue. The standard of review on the decisions and orders, by way of impugnment, is correctness. Justification, intelligibility and rationality are not the standards or benchmarks herein but rather whether the decisions and orders of **VCM** were correct or incorrect. In this instant circumstance, one of the hallowed and honourable justices will decide the leave request and, if granted, will "step into the shoes" of **VCM** and make a decision, either confirming her decisions or substituting them, on the record that was before her, and, where applicable, the Reconsideration Decision based on the principles cited in *Kawa Arab*. Simply put, if the **VCM Decision**s and **VCM** Orders in NOM #14 and #15 (***SEE:*** VCM Decision, Tab 2, pages 8 to 11) are incorrect, they must be set aside.

357. The issue is whether this Tribunal is needed? It is not. The **Applicant**, as the unsuccessful party in NOM #14 and #15, albeit without any adverse findings of fact on the issue of the relevant owner of a landline fax in North York and the HCAI (SEE: **COMPENDIUM**, TAB 14, PAGE 271) former branch office (East Mall Address), has already presented the decisions, along with the Application Record, at issue in adequate fashion.

> ***ISSUE #6***, ***VOLUME #6***(I)(E): Not merely no need for Tribunal representation but Mr. Boyce should be prohibited on grounds of conflict of interest and bias (***SEE:*** Affidavit #2); Moot Issue as he is not effectively participating on behalf of the Tribunal; and Has this Tribunal learned anything since *Shuttleworth*? Or is it getting worse?

358. As a starting point, if Mr. Boyce (and Mr. Nieuwland) spent as much time changing their addresses and practice statuses with the LSO as they did herein, perhaps, they would have been able to assist the Court with some cogent and comprehensive arguments.

359. While *Shuttleworth* is well-known to the ONSC (Divisional Court), which was upheld by the ONCA, the paragraphs from its decision are most compelling [double underlining is the **Applicant**'s and single underlining is that of the court]:

> ***"The Decision Review Process***
> [24] In-house counsel for the LAT swore an affidavit explaining that the executive chair implemented a decision review process at the LAT. The stated reason was to maximize the quality of the tribunal's decisions. The peer review process has not been adopted formally. No written policy was provided but counsel swore that, "generally, the LAT decision review process for final decisions is, and at all material times in this case was" as follows:
>
> > First, there is peer review: After drafting a decision, an adjudicator ***is expected to send the decision for peer review by the Duty Vice-Chair***. The Duty Chair offers suggestions to improve clarity, reasoning and readability and might also evaluate, for example, whether the correct legal test has been applied and whether any related case law that was not mentioned might be helpful.

> to ensure [guarantee] that the **correct legal test** has been applied and to identify any related case law that was not mentioned that might be helpful[74].
>
> Third, there is a second peer review by the executive chair: "In some rare instances – such as when a decision involves a novel, contentious, precedent-setting, or high-profile issue – ***the Legal Services Unit will send the decision to the Executive chair for her review***. In these instances, the Executive chair serves, in essence, as a second peer reviewer and accordingly will order the same kinds of comments that the author would typically receive during the initial peer review."
>
> Fourth, there is a review by the file's case management officer: The case management officer acts as an intake officer and primary point of contact for the parties. This review involves examining the decision's format, correcting grammatical and spelling errors, and ensuring that the template and parties' names are correct." [Emphasis added.]

ISSUE #6, ***VOLUME #6***(I)(E)(i): Application of the LAT structure to these facts

360. In-house counsel for the Tribunal would be the likes of a Mr. Boyce. With great respect to the former case manager in Mr. Grant, his explanations regarding why he apparently input TDGIC as the sole respondent party do not pass muster. He requested, on January 8, 2024 (which was ironically 14 days (which is the rule deadline for a respondent to file a Response) after the filing and serving of the LAT Appeal (***SEE:*** COMPENDIUM, Tab 6) on the fax number of **416.774.3120**) (SEE: Affidavit #30 of the **Applicant** in the LAT Appeal of July 31, 2024; **COMPENDIUM**, Tab 10, page 78, paragraph 34; for Exhibit "D" itself, **COMPENDIUM**, Tab 10, page 147 and 148) that the **Applicant** provide the denial letters, which were already contained in the LAT Appeal (***SEE:*** COMPENDIUM, Tab 6) by way of pre-LAT Appeal (***SEE:*** COMPENDIUM, Tab 6) affidavits, and they contained "TD Insurance Meloche Monnex logos" with the address of **SNIC** with its two locations of Markham and Burlington. Neither location housed the landline fax number of 416.774.3120. It is submitted that Mr. Grant, as a case manager, knew that 416.774.3120 was the fax number of **TDHA** and was most confused by the **Applicant**'s written references to TD **SNIC** in the Appeal and then TD Insurance Meloche Monnex (Security National Insurance Company) in his initial motions in early January 2024.

361. The mere fact that Mr. Grant would be responsible for the "parties' names are correct" is a scary cogitation. This is the same Mr. Grant that represented to the ***SABS Applicant*** that when he could not file, when his file number was not recognized in the e-filing portal, solely on account of a "power outage". *If there was a power outage for the server that received electronically filed documents in the AABS e-filing portal, would the whole portal not have been down?* The question answers itself.

362. It was about as believable as his previous representations about why he input TDGIC as the sole respondent over the very name in the "denial letters" when he represented that the only two "TD Insurance" companies that were in the database of LAT/AABS (which naturally makes the very point that **TDHA** was an automotive insurer in Ontario at the time of August 31, 2022):

    a. TDGIC; and
    b. **TDHA**.

363. As noted in NOM #18, the **Applicant** has filed three motions with the respondent's name in the style of cause as "TD Insurance Meloche Monnex" (Security National Insurance Company) and the denial letters were filed and served on January 8th, 2024, which was "sandwiched" in between NOM #1 and NOM #3. How could Mr. Grant conceivably and reasonably, with no filed documents from any of the three respondent insurance companies, concluded, absent any further requests of the **Applicant**, that TDGIC was the 'sole respondent'

referencing the incorrect party, and the unequivocal language in the requested denial letters? While his emails are in evidence and the **Record Of Proceeding**, the more salient question arises: *why is the Tribunal remaining in a state of non-compliance with its statutory duties to forthwith file the* ***Record Of Proceeding****?* The **Applicant** respectfully submits that the question answers itself.

ISSUE #6, ***VOLUME #6***(I)(F): The many hats of "tribunal counsel"[75]

364. This leaves the obvious question as to whether Mr. Boyce or any of the undisclosed lawyers who are working on this *file* (***SEE:*** file number above) have acted in the dual capacity of counsel to the Tribunal involving any decisions that are at issue (***SEE:*** 23-015662/AABS).

365. *Ergo, while it may seem reasonable or helpful for Mr. Boyce to argue prematurity, would he, on behalf of the Tribunal (not one and the same) really be arguing prematurity or acting in a mode of self-preservation?* [76]

366. It is self-evident and common knowledge that any loss of any document (hard copy or electronic) that is required by law or otherwise is an embarrassing situation.

ISSUE #6, ***VOLUME #6***(I)(G): Mr. Boyce's decisions subject to appeal or review

367. In *Lockyear v. Wawanesa Mutual Insurance Company*, 2022 ONSC 94, the Divisional Court overturned the decision and reconsideration decision of then Vice Chair Boyce. [12] Jeffrey Lockyear requested a reconsideration and submitted that the Tribunal erred when it failed to admit the video footage. The Tribunal did not agree. It found that the video would not have been probative of the "ultimate issue." (***SEE:*** Amended Reconsideration Decision of the Licence Appeal Tribunal, May 16, 2019 (Jesse Boyce, Adjudicator) *Appeal Book and COMPENDIUM [therein],* at Tab 2 at para. 10.[77] The Divisional Court was highly critical in blunt language about Vice Chair Boyce's analysis.[78]

368. It is important to note that Mr. Boyce was a Vice Chair and member of the LAT while **VCM** and VCL were as well. But for Vice Chair Morrissette's error in her address and/or not updating the same, Mr. Boyce, whose employer is SLASTO along with VCL yet Vice Chair Morrissette inputs the LAT (only Vice Chair to it, whereas Vice Chair Lake has issued decisions involving under tribunals under the sub-cluster of SLASTO).

369. In relation to Tribunal's preliminary objection on grounds of prematurity (i.e. to the ONSC Divisional Court within the required two weeks while noting that the respondent insurance companies failed to do so), and then citing *Awada* and *Heegsma* (both of which are not on point with these facts), the **Applicant** notes *AIG Insurance Company of Canada v. Riddell*, 2024 ONSC 6033. Mr. Boyce argued that said JR by AIG (not Riddell) was premature as it related to the decision of an adjournment request. The ***JRPA Applicant*** agrees with Mr. Boyce and the Tribunal on those known facts.

370. The **Applicant** notes *Fernandez v. Commonwell Mutual Insurance*, 2024 ONSC 5180 and the LAT, represented by Mr. Boyce, that there was a denial of procedural fairness therein. The **Applicant** also notes in *Shahin v. Intact Insurance Company*, 2024 ONSC 2059 where Ms. Shahin was successful with another breach of procedural fairness by LAT. Mr. Boyce was counsel. Despite that stellar record below with **SNIC** and **TDHA**, the ONSC Divisional Court found Adjudicator Boyce erred in law again: *Varriano v. Allstate*, 2021 ONSC 8242.

ISSUE #6, ***VOLUME #6***(I)(H):*Ontario Energy Board*

reviews and appeals, the three-part test is as follows as it relates to when the statute does not clearly resolve the issue as to tribunal standing, as to the scope or fullness (or lack thereof) of tribunal standing:

> "In accordance with the foregoing discussion of tribunal standing, where the statute does not clearly resolve the issue, the reviewing court must rely on its discretion to define the tribunal's role on appeal. While not exhaustive, I would find the following factors, identified by the courts and academic commentators cited above, are relevant in informing the court's exercise of this discretion:
>
> (1) If an appeal or review were to be otherwise unopposed, a reviewing court may benefit by exercising its discretion to grant tribunal standing.
>
> (2) If there are other parties available to oppose an appeal or review, and those parties have the necessary knowledge and expertise to fully make and respond to arguments on appeal or review, tribunal standing may be less important in ensuring just outcomes.
>
> (3) Whether the tribunal adjudicates individual conflicts between two adversarial parties, or whether it instead serves a policymaking, regulatory or investigative role, or acts on behalf of the public interest, bears on the degree to which impartiality concerns are raised. Such concerns may weigh more heavily where the tribunal served an adjudicatory function in the proceeding that is the subject of the appeal, while a proceeding in which the tribunal adopts a more regulatory role may not raise such concerns.

372. The review is not unopposed as Mr. Nieuwland, in his cover email, made a legal argument that **SNIC** was also referred to as **TDHA** and TDGIC. Mr. Nieuwland, on behalf of the respondent insurance companies, filed a Notice of Appearance. At the very least, the respondent insurance companies are available to argue and oppose the ***JRPA Application***, and there is no dispute that those parties have the necessary knowledge and expertise to fully make and respond to argument on review.

373. The LAT is a quasi-judicial body so the third part of the test weighs heavily in limited participation by the Tribunal.

ISSUE #6, ***VOLUME #6***(I)(I)(a): Vigorous arguments are prohibited and tone matters

RE; NOT WHAT YOU SAY BUT HOW YOU SAY IT

374. As found by the SCC in *Ontario Energy Board*, "If an administrative tribunal seeks to make submissions on a judicial review of its decision, it [should] pay careful attention to the ***tone*** with which it does so. Although this is not a discrete basis upon which its standing might be limited, there is no doubt that the tone of the proposed submissions provides the background for the determination of that issue. A tribunal that seeks to resist a judicial review application will be of assistance to the court to the degree its submissions are characterized by the helpful elucidation of the issues, informed by its specialized position, rather than by the aggressive partisanship of an adversary." [para. 61]

375. While *Ontario (Energy Board)* was a 2016 decision, of enormous help to the Canadian administrative law community as a whole in answering general questions of importance, the distinction between each and ever judicial review statute and administrative tribunal appellate statutes could not be analyzed by the SCC.

376. Hence, OEB was merely a starting point to set the general legal test which is modified within each province depending on passed statutes at the relevant time. In Ontario, the relevant provisions of LAT (***SEE:*** section 11) were passed in 2016, as the FSCO ceased its role altogether in being replaced by the FSRA, and the FSRA

services that were licensed provincially and not licensed provincially.

ISSUE #6: VOLUME #6(I)(I)(b): Two competing interests: fully informed adjudication of issues vs. tribunal impartiality

377. The two most important considerations, drawn from those cases, were the (i) "importance of having a **fully informed** adjudication of the *issues* before the court" (para. 37), and (ii) "the importance of maintaining tribunal **impartiality**": para. 38. The principle of impartiality is implicated by tribunal argument on appeal, because decisions may in some cases be remitted to the tribunal for further consideration. Stratas J.A. found that "[s]ubmissions by the tribunal in a judicial review proceeding that descend too far, too intensely, or too aggressively into the merits of the matter before the tribunal may disable the tribunal from conducting an impartial redetermination of the merits later": *Quadrini*, at para. 16. [79] (***SEE:*** paragraph 50 of Ontario (Energy Board))

ISSUE #6: VOLUME #6(I)(I)(b): Finality

378. Finality, the principle whereby a tribunal may not speak on a matter again once it has decided upon it and provided reasons for its decision, is discussed in greater detail below, as it is more directly related to concerns surrounding "bootstrapping" rather than agency standing itself. The court should limit tribunal participation if it will undermine future confidence in its objectivity. The court identified a list of factors, discussed further below, that may aid in determining whether and to what extent the tribunal should be permitted to make submissions: paras. 36-38 of *Goodis*[80].

379. If the judicial review application involves only questions of law or primarily questions of law (or the limitation of the appeal to questions of law or an extricable question of law from a finding of mixed fact and law and/or findings of fact unsupported by evidence which are questions of law) in relation to certain decisions and orders, then the participation (not necessarily intervention) of the Tribunal in this ***JRPA Proceeding*** is not particularly necessary or relevant.

380. Based upon the misconduct, even by omission and failure to be forthcoming and honest, two Latin principles or maxims become relevant herein:

a. *Ex turpi causa non oritur action:* is a legal principle that prevents a person from seeking legal action if it arises from their own illegal act; and
b. *Omnia praesumuntur contra spoliatorem*: which means "all things are presumed against the wrongdoer".

ISSUE #6: VOLUME #6(I)(I)(c): Purpose of **Record Of Proceeding** (***SEE:*** NOM #1, COMPENDIUM)

381. This subheading is addressed further in the written argument to NOM #1. The purpose of requiring a tribunal or adjudicator to file a "**Record Of Proceeding**s" is to ensure that when the court reviews the tribunal's decision, it has the information and evidence as it appeared before the tribunal in the first instance. A court reviewing an adjudicative decision may look at decisions to admit evidence, submissions of witnesses, and other evidence and may substitute its judgment for that of the court [or tribunal] of first instance: *Payne v. Ontario Human Rights Commission*, 2000 CanLII 5731 (ON CA), [2000] O.J. No. 2987, 136 O.A.C. 357 (C.A.), at para. 23; *Jacko v. McLellan*, 2008 CanLII 22921 (ON SCDC) at paragraph 18).

"Nishikawa Motion Decision"]

382. In *Hutchinson v. Aviva General Insurance Company*, 2022 ONSC 7136, Justice Nishikawa sitting as a **motion judge**, found the following at paragraph 14[81]:

> (h) The LAT will accept the record as prepared by the parties and not add to it, adduce further evidence or raise any new issues;
> (i) The LAT will limit its submissions to the proposed issues (a) and (c) above;
> (j) The LAT will make all reasonable efforts to avoid duplicating the Respondent's submissions;
> (k) The LAT will serve a factum not exceeding 15 double-spaced *page*s;
> (l) The LAT will be permitted to make submissions not exceeding 15 minutes at the hearing of the appeal; and
> (m) Unless the panel permits otherwise, the LAT will not seek costs.

383. *Hutchinson*[82] was an "appeal" so the section 10 of the *JRPA* obligation was not upon the Tribunal.

384. However, Justice Nishikawa effectively confirmed the **Keeprite Standard** by his order at paragraph 14(h). The proposed issues (a) and (c) (albeit listed differently at paragraph 9[83]) were: (a) The statutory and procedural context of the proceeding at the LAT; and (c) Procedural fairness and the tribunal's ability to control its own process. What Justice Nishikawa excluded from the proposed submissions of Aviva were the following: (b)[84] The applicable standard of review; and (d) Reasonable apprehension of bias, by subparagraph 14(i) order. Ergo, the standard involving the **Tribunal**'s standing rights and the extent of the same is that the **Tribunal** will not make submissions on the SOR. The policy behind the same seems obvious because the SOR can drastically affect the outcome of a ***JRPA Proceeding*** and by arguing the same, it veers into the territory of defending the merits. As see in Ontario (Energy Board), this would offend the principles of: (i) finality; and (ii) impartiality. In fact, the **Tribunal**, which is the best authority for how the **Tribunal** conducted itself in LAT/AABS matters, proposed: "the LAT does not propose to take a position on the merits of its decision or the outcome of the appeal" (***SEE:*** paragraph 9 of *Hutchinson*).

385. It is commonplace in other orders that administrative tribunals not comment on whether there was a "reasonable apprehension of bias" because such an impugning of the same because any such defence of the same would require the engaging in vigorous advocacy in defending the actual or apprehension of bias of the **Tribunal**. It would require an analysis of the law to the facts. "Independence" and "bias" are not one and the same. Independence refers to the relationship between the "tribunal" and another party or person or lack thereof. It is more institutional in nature than a reasonable apprehension of bias or actual bias or prejudice towards a person.[85]

386. Returning to the order referenced at paragraph 14(h) in *Hutchinson*, the **Tribunal** is not able to advance the statutory and procedural context of the 'proceeding' (not the hearing of NOM #14 and #15) if it fails to file a **Record Of Proceeding** and remains in a perpetual state of breach with section 10 of the *JRPA*.

387. While there were certainly breaches of procedural fairness by the **Tribunal** in relation to NOM #14 and #15, it would require a "counter application" by the respondent insurance companies to apply to set aside the decision of **VCM** in relation to NOM #14 and #15 without reference to the merits. As such, there is nothing for the **Tribunal** to add of any assistance to the court in order to have a "fully informed adjudication". This leaves the counterbalancing principles of "impartiality" and "finality" and the prohibition against "bootstrapping".

"**Tranquilli Decision**")

388. In the **Tranquilli Decision**[86], Justice Tranquilli found at paragraph 11 that the tribunal therein could participate on the terms proposed which were at paragraph 7 therein: (i) the limitation of the appeal to questions of law or an extricable question of law from a finding of mixed fact and law; (ii) the applicable standard of review of correctness within the context of the Board's specialized function; and (iii) procedural fairness as it relates to the tribunal's ability to make procedural choices and the extent to which the Board may consider law or argument not raised by the parties.

ISSUE #6: VOLUME #6(I)(I)(e)(i): *Taylor v. Pivotal HR*

389. In *Taylor v. Pivotal Integrated HR Solutions*, 2021 ONSC 7720, the **Applicant**, Paul Taylor, moved pursuant to s. 21(5) of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, to set aside the orders of Sachs J. made October 8, 2020. The motion judge made orders adding the Workplace Safety and Insurance Appeals Tribunal as a party to Mr. Taylor's judicial review application and dismissing the application for extreme delay.

390. In *Taylor*, ONSC Divisional Court (Toronto) as per The Honourable Justices Ryan Bell, Nishikawa, and Shore JJ., made the seminal statements of law relating to the overarching discretion of the ONSC (whether Divisional or otherwise) with respect to the Tribunal's participation:

> "[18] Section 9(2) of the *JRPA* does not affect this court's supervisory jurisdiction. It does not shield administrative tribunals such as the Tribunal from curial scrutiny entirely; rather, s. 9(2) permits tribunals to bring relevant matters to the attention of the court.
>
> [19] Allowing an administrative tribunal such as the Tribunal to participate on an application for judicial review does not give rise to "unjust opposition" as Mr. Taylor contends. To the contrary, the presence of the administrative tribunal as a party *may* help to ensure that the court hears both sides of a dispute where there is no other well-informed party standing in opposition to the party challenging the tribunal decision: *Ontario (Energy Board) v. Ontario Power Generation Inc.*, 2015 SCC 44, at para. 54.
>
> [20] *Once* a tribunal is a party, the court still has discretion as to the scope of participation to be accorded to the tribunal *during the hearing*. This involves balancing the need for fully informed adjudication against the importance of maintaining tribunal impartiality: *Hydro Ottawa v. Ontario (Workplace Safety and Insurance Appeals Tribunal)*, 2019 ONSC 4898 (Div. Ct.), at para. 6. This court is under no obligation to accept the submissions of a tribunal that appears before it."

ISSUE #6: VOLUME #6(I)(I)(f): Mr. Boyce's admission, by conduct, in January 2025, has disabled the Tribunal from adjudicating the matter at the Tribunal level any further or in the future and Mr. Boyce must be prohibited from acting in this *JRPA* Proceeding

ISSUE #6: VOLUME #6(I)(I)(f)(i): Remitting to the Tribunal: undesirable and impossible for it to decide future matters if it does not have the **Record Of Proceeding** (see: **Formal LAT Admission**, *supra*)

uncontroverted evidence, are more in the nature of a "shield" as opposed to a "sword". Moreover, they are most pre-emptive in the event in any late filed submissions are purportedly tendered.

392. The principle of impartiality is implicated by tribunal arguments, however informal or otherwise, in this ***JRPA Application***, because decisions may in some cases be remitted to the tribunal for further consideration.

393. The Tribunal is now disabled from deciding any matters that involve previous records in the **Record Of Proceeding** considering it has admitted that it has not even compiled the **Record Of Proceeding** as of February 13, 2025.

394. While an order adding **TDHA** as a party, a declaration that it was and is the First Insurer, with the causes of actions contained in the LAT Appeal and all thereafter will resolve the majority of all of the outstanding benefit issues involving the Applicant, it casts serious doubt on the Tribunal's ability to issue any further decisions.

ISSUE #6: VOLUME #6(I)(I)(f)(ii): *Talisman Resort v. Keyser, Usling et al*, 2013 ONSC 1901 (CanLII)(per Conlan J.) ["*Talisman Resort*"]

395. The LSO public practice management resources and By-Laws, which have legislative force, are of great import. From this ONSC in *Talisman Resort* as per Conlan J. of the Central West Region, articulated the legal principles in relation to the ONSC (which the ONSC Divisional Court is the intermediate appellate court or 'court of review')

> "This Court's jurisdiction to remove Bennett Jones LLP as counsel for Talisman on the basis of a conflict of interest is an inherent one. It is not derived from any particular legislation or rule. It is grounded in the Court's objective to safeguard the **proper administration of justice**. *Puhl v. Katz Group Canada Ltd.,* [2006] O.J. No. 4596 (S.C.J.) at paragraph 23.
>
> [14] The question is whether these Defendants have established on a balance of probabilities that a fair-minded and reasonably informed member of the public would conclude that the removal of Bennett Jones LLP as counsel for Talisman is necessary for the proper administration of justice. *MacDonald Estate v. Martin*, 1990 CanLII 32 (SCC), [1990] 3 S.C.R. 1235 at paragraph 47.
>
> [17] In analyzing the question, the Court may consider any applicable rules of professional conduct. Where there is a rule or guideline or ethical principle directly on point, the Court ought to consider it but is not bound by it. *MacDonald Estate*, supra, at paragraph 21."

ISSUE #6: VOLUME #6(I)(I)(f)(iii): Mr. Boyce hiding his address: admission, adverse inference, or other

396. As it relate to a lawyer, which Mr. Boyce is albeit he must have taken active steps to hide his address and employer name of SLASTO after the conflict of interest was drawn to his attention on December 30, 2024. Mr. Boyce also made up a new version of the law that there was some kind of convention for the Tribunal to file the **Record Of Proceeding** within 60 days of an **Applicant**, in a *JRPA* matter, bringing her ***JRPA Application***. Apparently, Mr. Boyce's views and practices are more important and take precedence and/or are paramount to that of a well-functioning democratic society under the rule of law by a democratically elected members of the Legislature. In any event, he has not even followed his created non-law requirement.

that there is a systemic issue if the LAT wishes to obtain leave to file its factum and application record post the deadline imposed by our Lieutenant Governor under the *Rules of Civil Procedure*. Moreover, there cannot be a case conference at ANY TIME with Mr. Boyce as counsel to the LAT because he would be in breach of his professional obligations and duties as an officer of the court.

ISSUE #6: VOLUME #6(I)(I)(f)(iv): This is the Divisional Court of ONSC: discussions in the abstract are most beneath its standards

398. Moreover, without a **Record Of Proceeding**, to the extent that 'prematurity' needed to be 'discussed' (whatever that means in fact or at law – leaving aside another conflict of interest, albeit without anywhere near the allegations made and directly aimed at the Tribunal and Mr. Boyce) such discussions cannot be in the abstract. Mr. Boyce in his unilateral triaging out of emails with this ONSC (Divisional Court) copied but only the **Applicant** and other respondents and their counsel, which with the benefit of hindsight bias and retrospection had self-evident purposes, relied on *Awada* and *Heegsma*. *Awada's* legal principles are in the **Applicant's Factum**. *Heegsma* has about as much relevance herein as Mr. Boyce's representation of the Tribunal herein considering his representation of the Tribunal, and provision of legal advice to it involving the LAT Proceeding.

ISSUE #6: VOLUME #6(I)(I)(f)(v): Officers of the Court [not officers of the Tribunal]

399. Mr. Boyce has an overriding duty as an officer of the court. Lawyers are officers of the court in Canada. This means that lawyers are part of the legal system and have a role in the **administration of justice**. The **Applicant** forcefully notes the overlap between the jurisdiction of this court to remove counsel to the Tribunal (or disregard its arguments pursuant to *Taylor v. HR Solutions* at paragraph 20) and the role of a lawyer, as an officer of the court in the administration of justice.

400. Lawyers are officers of the court when they appear in court on behalf of a client. They are expected to uphold the authority and dignity of the court, and to serve the cause of justice. Adjudicators make mistakes. They are human. To err is human. But to not correct the same is inhumane. The law will not correctly evolve is counsel to the Tribunal are treating their role as one as "adversarial" when they advance an argument dressed up as the "prematurity doctrine" but when seen in its bare and true form is entirely distinct.

ISSUE #6: VOLUME #6(I)(I)(f)(vi): Conflicts of Interest do NOT arise in every *LAT Act* Appeal but they will presumptively when in-house counsel are utilized in JRPA proceedings

401. Parenthetically, it does not mean that such conflict of interest does not arise in a *LAT Act* Appeal but it is more obvious and glaring when there is no stay of the inferior LAT proceeding and the record of proceeding is required. As noted in the Nishikawa Decision, which involved a *LAT Act* Appeal, or the Tranquilli Decision, involving an appeal under different legislation, the absence of the requirement for an administrative tribunal to forthwith file a record of proceeding along with section 9(2) of the JRPA is a distinction with a difference.

402. It is rather ironic twist considering the decision of **VCM** in NOM #13 involving a non-party in TDGIC – of which said decisions and orders therein (not in NOM #14) is not under judicial review.

ISSUE #6: VOLUME #6(I)(I)(f)(vii): Duties Owed to Third Persons

403. As per this ONSC in *Talisman*, rules of professional conduct are most instructive.

considerable distance, persons with respect to duties is that of this ONSC Divisional Court which includes its staff, and those crème de la crème former lawyers turned judges, when compared to that of the ***JRPA Applicant***. Nonetheless, there are multiple third persons to which Mr. Boyce owes duties and it is a zero sum game.

ISSUE #6: VOLUME #6(I)(I)(f)(viii): Substantial Risk to Lawyer or Paralegals loyalty to representation to client

405. A conflict of interest exists when there is a substantial risk that a lawyer or paralegal's loyalty to or representation of a client would be materially and adversely affected by competing duties to another party or competing interests between the client(s) and the licensee.

ISSUE #6: VOLUME #6(I)(I)(f)(ix): Good intent matters not

406. Because even well-intentioned licensees may not realize that the performance of their duties has been impaired, the rules address the risk of impairment rather than actual impairment. Substantial risk means a significant and plausible risk. It need not be certain or even likely, but it must be more than a mere possibility. Conflicts of interest may fall into one of the below categories.[87]

ISSUE #6: VOLUME #6(I)(I)(f)(x): Mr. Boyce would have had to provided affidavit evidence to counter the same

407. A client cannot waive a COI where the lawyer *may* be a witness (***SEE:*** *Wheeler v. Taylor* 2024 ONSC 818 as per Justice Dietrich).

408. At paragraph 31, Justice Dietrich, citing *Urquhart v Allen Estate*, found as follows whilst citing the SCC and another one of the historically great legal minds to come to the Ontario bench in The Honourable Mr. Justice Perrell, formerly of Oslers who had written, as a lawyer, a vast amount of analytically precise secondary source articles:

> [31] As stated by Gillese J. (as she then was) in *Urquhart v. Allen Estate,* [1999] O.J. No. 4816 (Ont. S.C.), at para. 27:
> When counsel appears as a witness on a contentious matter, it causes two problems. First, it may result in a conflict of interest between counsel and his client. That conflict may be waived by the client …. The second problem relates to the administration of justice. The dual roles serve to create a conflict between counsel's obligations of objectivity and detachment, which are owed to the court, and his obligations to his client to present evidence in as favourable a light as possible. This is a conflict that cannot be waived by the client as the conflict is between counsel and the court/justice system.
>
> [32] The Law Society of Ontario *Rules of Professional Conduct* similarly state that a lawyer who appears as advocate shall not testify or submit their own affidavit evidence before the tribunal unless permitted to do so or on a purely formal or uncontroverted matter: s. 5.2-1.
>
> [33] While the courts are not bound by the codes of conduct applicable to lawyers, the Supreme Court of Canada stated in *MacDonald Estate*, at p. 1246, that "an expression of a professional standard in a code of ethics relating to a matter before the court should be considered an important statement of public policy."

[34] In *Bose v. Bangiya Parishad Toronto*, 2018 ONSC 7639, at para. 98, Perell J. confirmed that a lawyer who is a material witness should not be permitted to continue acting as counsel, even if they do not intend to testify in the case.

ISSUE #6: VOLUME #6(I)(I)(f)(xi): Counter to the high standards we expect of the legal profession and administration of justice

409. Mr. Boyce is (and has been for some time since his inclusion as formal counsel of record herein) now in a conflict between himself and the ONSC (Divisional Court). To even allow Mr. Boyce to discuss another matter, formally or informally, would be an affront to the high standards that we expect of lawyer licensees and the administration of justice. The word "just" means "fairness".

410. It is herein that Tribunal counsel is regularly charged with providing an overview of the filed **Record Of Proceeding** and the context of the proceeding before the Tribunal. The following questions are self-answering:

a. W*as it fair that Mr. Boyce changed his address by removing his employer name, employer address et al? What other reason would Mr. Boyce have for requesting the amendment of his information with the LSO through the LSO Portal but only after receipt of the* ***Applicant****'s affidavit #2 (****SEE:*** *COMPENDIUM); and*

b. Is Mr. Boyce, in light of his amendment and obfuscation of his employer (SLASTO) and his address for contact with the public LSO Directory, able to discharge those duties in accordance with his duties to this Court as an officer of the Court? The question answers itself.

ISSUE #6: VOLUME #6(I)(I)(f)(xii): Food for thought: future *JRPA* Proceedings generally and specifically involving the LAT (insurance industry (insurance company) funded)

411. *The more compelling public interest question is whether any lawyer (in-house (****SEE:*** *reference in the affidavit provided by in-house counsel in Shuttleworth)) who is employed by SLASTO able to do so?* The **Applicant** says that optically, by reasonable perception, is that it is impossible for any lawyer to do so whether or not they are or were, in fact, providing advice to the Tribunal in any specific decisions involving any ***JRPA Applicant***.

412. 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.). The issue of a confidential information is replaced herein with "privileged information" and "privileged legal advice".

ISSUE #6: VOLUME #6(I)(I)(f)(xiii): Adjudicators as licensees

413. *The first obvious counter or query is: are the adjudicators licensees?* They are indeed VC Lake and VC Morrissette are licensees but "not practising law". However, it matters not because, as per Shuttleworth, the in-house or "practicing law – employed" lawyers like Mr. Boyce are giving legal advice to the adjudicators and vice chairs.

414. The second counter is that *Mariangeli* related to confidential information between potentially shared between a prior related matter to a current retainer.

when considering the participation scope that the Tribunal could be entitled to by virtue of having some form of general party status pursuant to section 9(2) of the *JRPA*. The SLASTO legal unit, which Mr. Boyce rapidly removed from the LSO Directory *after* receipt (got possession of) Affidavit #2 of the Applicant.

416. Moreover, this ONSC has a supervisory and residual discretion to not accept arguments from the Tribunal whether there is any pre-hearing motion, case conference, affidavit or any other filed document in the "court file".

417. Each Tribunal must be analyzed distinctly but this Tribunal, the LAT under the SLASTO, is admittedly, or at least by representation to the public, a quasi-judicial tribunal. However, a case conference, even by telephone, is an "appearance before the Court" which is fatal to Mr. Boyce and this Tribunal.

418. Therefore, Mr. Boyce has to rebut the inference and provide contextual explanations, preferably and presumably under oath, to this Court as to why he engaged in the removal of his employer's name and address after receipt of the **Applicant**'s affidavit #2 and perhaps affidavit #3 (and perhaps after the deadline under *Rule* 68.04(4) of the *Civil Rules*).

ISSUE #6: VOLUME #6(I)(I)(f)(xix): Confidentiality Screens

419. Moreover, the SLASTO, Tribunal and Mr. Boyce, and any potential legal counsel, who works for the SLASTO, would have to provide evidence of the confidentiality screens. Are there confidentiality screens between the adjudicators of LAT and legal counsel of LAT? It is where the *Shuttleworth* decision comes back to haunt this Tribunal in that the very draft decisions are sent to the SLASTO Legal Unit – Mr. Boyce's employer - that he in January 2025 hid from the "public record".

ISSUE #6: VOLUME #6(I)(I)(f)(xv): The suspiciously similar Notices of Appearances by the LAT and Respondent Insurance Companies

420. The Applicant put the LAT and Respondent Insurance Companies on notice that it appeared from a further inspection of the Notices of Appearances that there were covert, clandestine and undisclosed communications between the LAT and Mr. Nieuwland after Mr. McLean removed Mr. Nieuwland from email communications. Mr. McLean did so because SNIC and **TDHA** had not participated in the written hearing before VCM and the reconsideration motion hearing before VCL.

421. Upon doing so, Mr. Boyce re-added Mr. Nieuwland to the email chain and approximately an hour later, pursuant to the metadata, the NOA for the Respondent Insurance Companies was complete. An hour thereafter (approximately 4:50 p.m. on December 3, 2024), Mr. Nieuwland filed and served the NOA for the Respondent Insurance Companies.

422. When the ***JRPA* Applicant** challenged Mr. Boyce and Mr. Nieuwland to explain away the seemingly obvious, they remained silent. An adverse inference must be drawn against them, and a finding, even in *obiter dictum*, that they were exchanging legal documents for filing in this

ISSUE #6: VOLUME #6(I)(I)(f)(xvi): the LAT Formal Admission

423. As Mr. Boyce is the only individual, on behalf of another client, that raised the preliminary objection of "prematurity", without him being able to participate on behalf of the Tribunal, and the Tribunal not filing any factum or application record, the **Applicant** is entitled to proceed and not wait around for the SLASTO to "clean up his house" and manipulate addresses on the back-end of the LSO portal for public removal.

"higher ups" at the Tribunal raised prematurity: bad faith

424. Mr. Boyce only raised prematurity because he wanted to delay the inevitable result in this *JRPA* Proceeding, at least as it relates to the **First Insurer** issue, so that he could give more advice to the Tribunal in relation to other decisions. It is now likely he was giving advice to it all along the way after November 15, 2024, in relation to the outstanding motions and how to navigate the same.

ISSUE #6: VOLUME #6(I)(I)(f)(xviii): Office Location Dependent: Tribunals Ontario has all working under one building: 25 Grosvenor Street, Toronto, Ontario

425. This does not mean that every other tribunal in this province or other provinces in Canada cannot have representation at the administrative tribunal level from in-house licencees (lawyers or paralegals) but it leads to the inevitable conclusion that when the likes of tribunal in-house counsel are at the same physical location as adjudicators and vice chairs, and where they share the same domain name with the same hosting under the same website, and they admit in *Shuttleworth* that the LAT's practice explicitly involves the SLASTO legal unit (the very employer name that Mr. Boyce removed from the LSO Directory as that would change the actualities of what occurs "behind the scenes"):

> "Second, there is legal review: The SLASTO Legal Services Unit reviews the decision to ensure [guarantee] that the **correct legal test** has been applied and to identify any related case law that was not mentioned that might be helpful."

ISSUE #6: VOLUME #6(I)(I)(f)(xix): solution to this issue involving the LAT: Amicus Curae or "Public Advocates"

426. The legal scholars in this area have suggested a potentially preferred route for counsel to tribunals and that is to have judicially appointed amicus curia appear on behalf of tribunals, particularly government ones that are self-espouses as quasi-judicial. In the following article[88], Mr. Lorne Neudorf (***SEE:*** JD (Victoria), LLM (McGill), PhD (Cambridge); Member of the Law Society of Upper Canada[89]; Assistant Professor, Thompson Rivers University, Faculty of Law) espoused the following whilst cross-referencing with authorities at 226 ALBERTA LAW REVIEW (2016) 54:1, page 8 therein:

> "Courts may also appoint *amici curiae* as part of their inherent jurisdiction where it is necessary to assist the court in discharging its work.[90] The public advocate or amicus curiae could gather specialist information and present it in a more detached and impartial manner to the court. Such a system would better protect public confidence in administrative impartiality as it would interpose a layer, akin to an "institutional sieve,"[91] between the tribunal and the reviewing court."

427. The Applicant does not submit that this would apply to ever tribunal in the Tribunals Ontario as some are different in their scope of resolving matters and some are more policy based, as opposed to quasi-judicial like the LAT, than others.

428. Moreover, the LAT is the only tribunal that is funded by the insurance industry and represents itself as quasi-judicial.

429. The Tribunal is not discharged of its statutory duties to a file a **Record Of Proceeding** under the *JRPA*. However, the only evidence, necessary as it is, is that the Tribunal does not have a full and accurate **Record Of Proceeding**.

with section 20 of the *SPPA* (***SEE:*** COMPENDIUM, Tab 60, Affidavit #16 of the Applicant)

430. As of February 13, 2025, the LAT, through the case manager in Ms. Lee on behalf of the LAT Registrar (***SEE:*** latregistrar@ontario.ca) admitted, in writing, that it was still *attempting to compile* the **Record Of Proceeding** for an eight month period (the "**ROP Temporal Period**").

431. It is trite that since the Tribunal has not even complied with its initial and ongoing duties to compile the **Record Of Proceeding**, then it answers the question as to why it did not file

ISSUE #6: VOLUME #6(I)(I)(g): 3RD PART OF THE TEST OF *OEB*

INVESTIGATIVE POLICY BASED TRIBUNALS VS. ADJUDICATIVE/QUASI-JUDICIAL TRIBUNALS

432. The LAT represents that is not only adjudicative but "quasi-judicial" so that militates against it participating at all. Impartiality of said Tribunal (like LAT that is quasi-judicial) weights against them in the heaviest of weights in terms of any standing – impartiality is not just actual but perceived. This factor is measured against administrative tribunal impartiality (or lack thereof). For tribunals tasked with this latter responsibility, "the importance of fairness, real and perceived, weighs more heavily" against tribunal standing: *Henthorne v. British Columbia Ferry Services Inc.*, 2011 BCCA 476, 344 D.L.R. (4th) 292, at para. 42.

ISSUE #6: VOLUME #6(I)(I)(h): Full party standing vs. qualified or limited standing

433. As found in *Ontario Energy Board*, "Among its many roles: it licenses market participants, approves the development of new transmission and distribution facilities, and authorizes rates to be charged to consumers. In this case, the Board was exercising a regulatory role by setting just and reasonable payment amounts to a utility. This is unlike situations in which a tribunal may adjudicate disputes between two parties, in which case the interests of impartiality may weigh more heavily against full party standing (***SEE:*** paragraph 61)." The former is more analogous to the FSRA and the latter is more analogous to the LAT.

ISSUE #6: VOLUME #6(I)(I)(i): Participation vs. submissions (content)

434. It remains to consider whether the content of the Board's arguments was appropriate. (***SEE:*** paragraph 62 of *Ontario Energy Board*).

ISSUE #6: VOLUME #6(I)(I)(j): Bootstrapping

STANDING: WHAT TYPES OF ARGUMENT TRIBUNAL MAY MAKE BOOTSTRAPPING: CONTENT OF ARGUMENTS

435. The issue of tribunal "bootstrapping" is closely related to the question of when it is proper for a tribunal to act as a party on appeal or judicial review of its decision.

436. The standing issue concerns what types of argument a tribunal may make, i.e. jurisdictional or merits arguments, while the bootstrapping issue concerns the ***content*** of those arguments (***SEE:*** paragraph 63 of Ontario (Energy Board)).

437. As the term has been understood by the courts who have considered it in the context of tribunal standing, a tribunal engages in bootstrapping where it seeks to **supplement** what would otherwise be a deficient decision with new arguments on appeal (***SEE:*** *United Brotherhood of Carpenters and Joiners of America, Local 1386*

"defen[d] its decision on a ground that it did not rely on in the decision under review": *Goodis*, at para. 42.

438. There is no question that the VCM Decision, particularly at pages 8 and 9 therein vis-à-vis- NOM #14, could have used some supplementation, clarification, deletion, amendments, revising, and rewriting. However, once she signed those reasons for decisions, she was functus officio. There is no similar type requirement with tribunals to have said orders and reasons for decisions issued and signed by the LAT Registrar and then entered (***SEE:*** *Rule 59*, supra, and cited jurisprudence supra).

ISSUE #6: VOLUME #6(II)): CONCLUSION ON LICENCE APPEAL TRIBUNAL STANDING GENERALLY AND SPECIFICALLY HEREIN

A NEW PRECEDENT MUST BE SET INVOLVING THE SOLE STATUTORY BODY FUNDED BY THE INSURANCE INDUSTRY (AKA THE INSURANCE COMPANIES)

439. A new precedent must be set herein that where an administrative tribunal that does not comply with its forthwith duties under the *JRPA* and the *SPPA* to file the **Record Of Proceeding**, this Court must exercise its discretion to not permit said statutory body to file any documents or participate in a judicial review proceeding until it does so. This is especially apposite an administrative tribunal has its own theories, through the likes of tribunal counsel like Mr. Boyce herein, of when it is allowed to file the **Record Of Proceeding**.

440. To the extent that an administrative tribunal is permitted to participate, it participatory rights and standing status must be further limited to the likes of a seven page factum and seven minutes in oral argument. Herein, the LAT must be prohibited from any form of participation, including defending the **Applicant**'s costs submissions until it does so. In any event, as the Tribunal is an adjudicative quasi-judicial statutory body, this factor militated in favour of its already limited status. This is a constant variable that never changes. As a result of SNIC and **TDHA** being represented by counsel and being available to oppose the relief sought herein along with having the necessary expertise and knowledge to do so, along with presumably opposing the relief sought, the Tribunal should have been limited to a 15 page factum and 15 minute oral submission.

441. However, as a result of the relief sought in NOM #1, which must be ordered so that this Divisional Court sends a clear message to any other administrative tribunal that engages in similar type conduct, the Tribunal must be precluded from any participation herein until it not only files the contents of the **Record Of Proceeding** that it has in its possession and control but explains, informally or formally, precisely what contents it may not have.

442. There is no place for this kind of misconduct by a statutory tribunal; particularly when the Tribunal's counsel has engaged in the kind of reprehensible conduct that it has in not following its own self-imposed non-statutory deadlines. The irony is most surreal considering the VCM Decision, particularly with respect to NOM #14, and the trite fact that the LAT is a statutory body.

VOLUME #7: *GOOD FAITH (IMPLIED IN CONTRACT) VERSUS FIDUCIARY DUTIES (DUTY TO RESPOND AND PAY BENEFITS VS. DATA FIDUCIARIES):*

AUTOMOTIVE INSURANCE CONTEXT: SOURCES OF DUTIES, SCOPE OF DUTIES, AND DUTIES OF UNDERWRITERS VS. FIRST INSURERS (PROVISIONAL AND PERMANENT) – CONTRACTS VS. REG 283/SABS CLAIMS

ISSUE #7: ***VOLUME #***7(I)(A): Duty of Good Faith – implied in every contract – *Bhasin*

443. The **Applicant** provides a courtesy note under this Volume #7. In being comprehensive and anticipatory of any potential arguments, as a result of the dearth of compliance by the Tribunal and respondent insurance companies, the **Applicant** has engaged in extensive analysis regarding some of the topics hereunder. As the pressing issues are in Orders #1 to #5, the **Applicant** has included those more extensive legal arguments at various appendices.

444. The duty of an underwriter in a "contract of insurance" or "insurance policy" is that of good faith and the insured person has a reciprocal duty of good faith: *Bhasin*. The duty of good faith does not exist pre-contract or in the negotiation phase, so it does not apply to brokers or agents in the same way that it does to an underwriter of an insurance policy: *Bhasin*. A breach of duty of good faith pursuant to contract is actionable in law for various types of relief and it may be independent of an automobile accident and those include the likes of acceptance of repudiation of a contract, recission *et al*. A breach of the duty of good faith includes half-truths, white lies, silence *et al*: *Zollinger*.

ISSUE #7: ***VOLUME #***7(I)(B): Multiple Insurance Policies

445. It is trite that after an automobile accident occurs, an insured person may have multiple insurance policies that may be applicable to the insured automobile. There are often disputes involving the *Insurance Act* as to which of those policies has priority in relation to the insured person who has been injured: *Markel v. TD General Insurance*. Such disputes are the quintessential statutory priority dispute: section 268 of the *Insurance Act*.

ISSUE #7: ***VOLUME #***7(I)(C): *Reg 283 et seq (2010 amendments) operate different than Insurance Act, section 268*

446. However, the priority dispute regulation operates differently in that where an injured person in an automobile accident suffers impairments delivers a **Completed Application** to a non-underwriter, said non-underwriter is provisionally liable to respond to the ***SABS Applicant*** on a provisional basis and pay any potential benefits on a provisional basis: *Reg 283*; and *Zurich 2024* [***SEE:*** COMPENDIUM, Tab 30].

447. Where the injured person has not engaged in any arbitrary conduct in selecting the non-underwriter insurer by delivering the **Completed Application** to said non-underwriter by fax or mail (***SEE:*** *Reg 283)*, there is a nexus between the injured person (**Applicant** under *Reg 283*) and the non-underwriter insurance company: *Zurich 2024*. Where the insured person did not "select" (but was provided the mailing or fax address for the non-underwriter insurer), the matter cannot be resolved through arbitration if an insured person was entitled to receive a notice under section 4, has given a notice of objection under section 5 and disagrees with an agreement among insurers that an insurer *other than* ***'the insurer'*** selected by the insured person should pay the benefits, the dispute shall be resolved through an arbitration under the *Arbitration Act, 1991* initiated by the insured person. O. Reg. 38/10, s. 8. Alternatively, the insured person can bring the matter to arbitration but the First Notified Insurer that provided the misleading ***OCF-1*** application will stand no chance of success and the injured person will inevitably be successful in her objection and disagreement that "an insurer" other than ***"the insurer"*** selected by the insured person as to who is required to respond to the injured person

in holding the **First Insurer** liable for benefits and responding duties permanently.

448. The **First Insurer** in effect obtains an operational windfall because it obtains an accident benefits file that it would not otherwise have as not only is it entitled to indemnification for the payment of benefits but also the 'responding duties" by way of indemnification for: any legal fees, adjuster's fees, administrative costs and disbursements: section 2.1(7),

449. If one year passes since the time that the **First Insurer** gave the A143 notice, then neither ***'the insurer'*** nor the insured person can initiate arbitration proceedings: section 7(3) of *Reg 283*. The corollary is that the **First Insurer** that was paying benefits and responding is permanently bound to do so until the *SABS* claims are either settled pursuant to a binding agreement in accordance with section 9.1 of Reg 664 or the dispute, as to entitlement OR quantum, is resolved before the **Tribunal**. If not resolved before the **Tribunal**, either ***"the insurer"*** or the insured person may apply within two years of each validly sent notice to deny entitlement and/or quantum pursuant to section 56 of the Schedule: *RM v. CAA*).

450. *SABS* and *Reg 283* work in harmony in this regard in that it is simple computation: (i) the potentially insured person has 7 days from the time of the accident to deliver an oral notification of her intent to apply for accident benefits to an insurance company (the "**First Notified Insurer**"); (ii) the First Notified Insurer must promptly provided accident benefit forms along with an explanation of benefits; (iii) the explanation of benefits is not a fiduciary duty but a duty pursuant to the notification of one's underwriter in their pink slips or one of the two in pink slips (perhaps an employer insurance policy and alumni policy); (iv) the insured person must then deliver a **Completed Application** within 30 days along with an ***OCF-2*** to 'one insurer"; (v) the **First Insurer** has 90 days to deliver an A143 notice; (vi) even if the **First Insurer** delivers said A143 notice on the last day and was denying benefits, entitlement or quantum during that period, the ***SABS Applicant*** will still have two years from that date to file with the **Tribunal**; and (vi) if neither the insured person nor the **First Insurer** (or another insurer) has initiated arbitration proceedings from the date of the A143 notice, then the issue of whom the **First Insurer** is, is one that is completely resolved by *Reg 283*.

451. Where arbitration proceedings are commenced by the insured person or an insurer, then said arbitration proceedings have certain temporal requirements like a pre-hearing within 120 days and completion within two years.

452. On approximate math, even if the **First Notified Insurer** delivers the accident benefit forms on the last conceivable day, the insured person delivers the **Completed Application** on the last imaginable day, the **First Insurer** delivers the A143 on the 90th day after receipt of the **Completed Application**, an insurer or insured person initiates arbitration on the 365th day after receipt of notice of the 143 by the insured person, the arbitration will be completed within approximately three years. There is no dispute that an insured person will be required to commence some form of application, pursuant to section 280(2) of the *Insurance Act*, within two years of a validly sent letter to her, and it may be that arbitration proceedings are running concurrently to a potential LAT proceeding. In that scenario, the insured person would be most reasonable to name the **First Insurer** and any other potential insurer.[92] It is a principle of law that a claimant or plaintiff is entitled to name those that they know at the time could be liable.]. Moreover, the obligation to add a party to a claim once that insured person has discovered the potential for liability and said causes of action and amendment of pleadings (either directly or indirectly) is trite. It allows an insured person to avoid the potential that they are not estopped from filing a similar or the same claim against another insurance company by principles of res judicata, issue estoppel or abuse of process. Res judicata is noted herein that while **TDHA** and **SNIC** are not "one and the same", there could be an argument that they are or one that has been made by counsel to the respondent insurance companies.

453. The form that the **First Insurer** is required to send to the ***SABS Applicant*** is A143. The ***SABS Applicant*** is, if she wishes to object to the potential transfer from the **First Insurer** to another insurance company, required, within 14 days to object in said form and return it to **First Insurer**: https://www.fsrao.ca/notice-**Applicant-**

insurance company, the ***SABS Applicant***, who has objected to the transfer of the claim in Form 143, may thereafter consent to the potential agreement or not consent to the same: section 5(3) of *Reg 283*.

454. The word "selected" means "to carefully choose as being the best or most suitable". In some ways, it is the opposite of "arbitrary" which means "based on random choice or personal whim, rather than any reason or system". So long as there is reason to why the injured person faxed or mailed the **Completed Application** to said insurance company, then there is a nexus between the injured person and insurance company even if that insurance company is not the underwriter of any contract of insurance which may be applicable to the insured automobile (or insured person). Therefore, if said insured person took the necessary steps to object and disagree with any 'agreement" among ***'the insurer'***s other than ***'the insurer'*** that was selected by the insured, then she is entitled to payment of benefits and responses from the **First Insurer** until it is resolved in accordance with *Reg 283* and Schedule.

455. The obligation to respond to an **Applicant** for *SABS* benefits and pay any benefits is trigged by the receipt of a duly **Completed Application** (***OCF-1***) for accident benefits: *Reg 283*, section 2.1 and 2.6; *Beasley*; *Jia*; and *Zurich 2014*; Zurich 2015; and *Zurich 2024*.

ISSUE #7: ***VOLUME #***7(I)(D): A Test Case Unlike Any Other

456. The duty of an insurer that is obligated to pay benefits is a fiduciary obligation: *Beasley*, paragraph at paragraph 34. It may be that an insurer that first received the ***SABS Applicant***'s **Completed Application** only turns out to be a **First Insurer** on a provisional basis and second insurance company has the ***SABS Applicant***'s **Completed Application** *et al* (the "***SABS* Claim**") transferred to it without objection by the insured person, by agreement or by arbitration. In this scenario, then there are two insurance companies with fiduciary obligations as "*ad hoc* fiduciaries"; more specifically as "data fiduciaries.

ISSUE #7: ***VOLUME #***7(I)(E): Fiduciary Obligations: (i) obligation to pay and respond; and (ii) data fiduciaries

ISSUE #7: ***VOLUME #***7(I)(E)(I): *Stegenga*

NO CONCURRENT JURISDICTION (ANOTHER GENERAL EXCEPTION TO THE PRESUMPTIVE SOR OF REASONABLENESS)

457. In *Stegenga*, the Court of Appeal concluded that the legislature in enacting a cost-effective and efficient dispute resolution scheme, could not have intended that both the LAT and the court should be required to determine the same questions on a path to granting different relief. It is not the legal characterization of the claim (unreasonableness v. bath faith) but rather, the facts giving rise to the dispute that are determinative.

458. *Stegenga* stands for the legal principle that Court of Appeal closed the door on independent bad faith claims arising from an insurer's conduct in handling a claim for accident benefits in the automotive industry.

459. *But what about the conduct of 'an insurer' who was never entitled, at first instance, to handle an accident benefits claims but apparently did so in any event like TD General Insurance Company?*

ISSUE #7: ***VOLUME #***7(I)(E)(I)(a)(i): Unassailable Corollaries arising out of Stegenga

460. The ***JRPA Applicant*** poses the following rhetorical questions:

*company] was **neither** the underwriter in the insurance policy (contract of insurance) **nor** a **First Insurer**, provisionally or permanently, (or even a potential insurer for which any accident benefits claim was subject to a transfer), but interfered in the Tribunal processes as an unauthorized de facto sole respondent for a period of six months?*

b. *Further, since costs can only be awarded against a party, and TDGIC was not a party, at law, pursuant to section 5 of the SPPA, should the **Applicant** be without recourse for a potential damages claim against TDGIC for its conduct?*
c. *Would the authority and legal principles in Stegenga preclude him or others similarly situated from doing so? Put another way, should the door be left open?*

The seminal question:

461. *So why was TDGIC chosen for its specialized, yet unlawful, role of being the "hired gun insurance company fictitious sole respondent" when it was neither the underwriter of the **Insurance Policy** (**SEE: Insurance Policy** nor a **First Insurer**?*

462. The answer is now obvious because as a non-underwriter, it did not have to comply with the duty of good faith espoused in our common law by *Bhasin*, and as a 'non-**First Insurer**', it did not have any duties under *Reg 283* i.e. to respond and pay benefits.

463. Moreover, by not being the "first collector" or "first recipient", by virtue of its [TDGIC] fax number in 416.774.**3629** [[not that of **TDHA** being 416.774.3120] (**SEE:** Affidavit #30 of the **Applicant** in the LAT Appeal of July 31, 2024; **COMPENDIUM**, Tab 10, page 78, paragraph 34; for Exhibit "D" itself, **COMPENDIUM**, Tab 10, page 147 and 148) TDGIC avoided any discovery that it was the 'first insurer' thereby ending the entire LAT Proceeding.

464. Put another way, it would have been too risky from a 'bottom line perspective' to have **TDHA** be the 'fictitious respondent' because the **Applicant** would have been able to compare the fax numbers in his faxes to 'an insurance company' (whom he thought was **SNIC** but it was not) to an order of the Tribunal that listed contact information particulars.

ISSUE #7: **VOLUME #**7(I)(G): Data Fiduciaries in Canadian Privacy Law:
generally and specifically to the automotive insurance context

465. Despite the unsettling and alarming effects of abuses and breaches of confidentiality undertaken by various organizations in Canada, Canadian privacy law does not currently impose an explicit fiduciary obligation on insurance companies who misuse their insured persons 'data, but particularly herein a '***SABS Applicant***' under *Reg 283*,' data. This subheading argues the data fiduciary concept fits squarely into this area of Canadian law. It falls under the notion a decision could be issued here or the door left open to address it in the future with notice to the insurance industry by way of a cautionary note.

466. Firstly, the **Applicant** argues that insurance companies, who are either provincial First Insurers or permanent First Insurers can be recognized as data fiduciaries because they satisfy the common law requirements for *ad hoc* fiduciary relationships.

467. Secondly, the scope of the fiduciary duties for **First Insurers** is discussed below.

468. Thirdly, the **Applicant** illustrates the content of data fiduciaries' obligations to their insured persons, but particularly herein a '***SABS Applicant***' under *Reg 283*, including the duties of: (i) confidentiality; (ii) care; (iii) loyalty; and (iv) disclosure.

469. In most cases, the concept of remedy would be discussed but since this is a *SABS* matter, it need not be addressed herein. The **Applicant**, if able to do so and the Court finds that the necessary information is of a public nature, argues that a finding that First Insurers, who receive a **Completed Application** are bound by fiduciary duties in relation to the data therein. "Data" encompassed personal information ("PI" or "PII") and personal health information ("PHI") as defined under the controlling statute of *PIPEDA* as it relates to motor vehicle insurers in Ontario.

470. The *sui generis* nature of a breach of confidence claim is based upon the policy of the law that confidences must be respected. It is not that *PIPEDA* and the FCC cannot provide for the remedies sought but it is the prerequisite of making a *PIPEDA* request and then a *PIPEDA* complaint and the year period permissible, by federal statute, to the OPCC to issue its investigation report (which is not a matter for judicial review *per se* but rather an investigation report) is not conducive to effective remedies.

ISSUE #7: VOLUME #7(I)(G)(i): *Ad hoc* Data Fiduciaries

471. Insurance companies should be recognized as *ad hoc* fiduciaries, not *de facto* fiduciaries, because of the different factual circumstances surrounding each relationship. I am not arguing that the law should recognize all insurance companies as data fiduciaries, thereby creating a new category of *de facto* fiduciaries; rather, I am arguing that the data fiduciary concept should be recognized in Canadian law, but whether an insurance company is a data fiduciary depends on the specific factual matrix of the relationship. The primary rationale for this distinction is that not all insurance companies have the same capacity to collect insured persons, but particularly herein a '***SABS Applicant***' under *Reg 283*,' data or engage in the same practices with respect to the data. Thus, the existence of a data fiduciary will turn on the specific facts and circumstances of the relationship.

472. The Supreme Court of Canada has identified four requirements for a court to recognize an *ad hoc* fiduciary relationship: (i) the alleged fiduciary has scope for the exercise of some discretion or power; (ii) a person or class of persons vulnerable to the alleged fiduciary's control; (iii) the alleged fiduciary can exercise their power or discretion to affect the beneficiary's legal or practical interests; and (iv) a mutual understanding or the alleged fiduciary's undertaking to act in the best interests of the alleged beneficiary.

473. Drawing on uncovered practices by insurance companies with at least the three insurance companies denoted herein, the **Applicant** argues that these elements are present in the relationship between these insurance companies and any SABS or *Reg 283* **Applicant** when an insurance company has received [got possession of] a **Completed Application**.

474. While the establishment of an *ad hoc* fiduciary relationship is factually dependent, the presence of these elements in existing relationships between claimants and first recipients of **Completed Application**s (inclusive of any other organizations denoted in the OCF-). It opens the door for the recognition of the data fiduciary concept in Canadian privacy law with respect to First Insurers – provisionally or permanently.

ISSUE #7: ***VOLUME #***7(I)(G)(i)(a): Exercise of Discretion or Power over Insured Persons who were injured in an MVA

475. Insurance companies have significant discretion over their insured persons, including a '**SABS Applicant**' under *Reg 283*. These companies can influence insured persons' behaviour, gather information, and collect data because they design and control the technological infrastructure used for collecting, transmitting, submitting, and receiving information. Herein, the Court will note that one or some of the insurance companies, when **First Insurer** has the word "first", were requesting some or all of the following:

a. email protocol during the *SABS* phase;
b. sending confidential information through some company named "E-Claims (***SEE:*** COMPENDIUM, Tab 9)"; and
c. others.

476. They can even amass their insured persons, but particularly herein a '***SABS Applicant***' under *Reg 283*,' data when their insured persons, but particularly herein a '***SABS Applicant***' under *Reg 283*, are operating under the strict parameters of the OCF-1 standardized language but the insurance companies are not by the 'bait and switch game' and using other insurance companies for overt breaches of the OCF-1 parameters whilst trying to convince an injured person that two insurance companies within a group are 'one and the same' while making inconsistent representations to the OSFI and FSRA.

ISSUE #7: ***VOLUME #***7(I)(G)(i)(b): **Vulnerability of Injured Persons (Data Context)**

477. Identifying vulnerability involves pinpointing those under an alleged fiduciary's control, depending on specific facts. Vulnerability is a key factor in determining an *ad hoc* fiduciary relationship though not always necessary or sufficient. It comes from a beneficiary's inability to "prevent injurious exercise of power" and lack of legal remedies.

478. In the data fiduciary context, insured persons, particularly '***SABS Applicants***' under *Reg 283*, cannot prevent insurance companies from using their power due to asymmetry in information and power. Companies collect and share personal data rapidly, often undiscovered until years later by journalists. Insured individuals don't have sufficient remedies under privacy laws like *PIPEDA*.

479. *PIPEDA* permits individuals to complain to the Privacy Commissioner but it does not allow lawsuits against violators directly without going through a lengthy protracted process where delegated investigators of the Federal Privacy Commissioner engage in awaiting 45 days after the complaint to then isolated back and forth communications with the complainant and the organization that often leads to some "broken telephone".

480. Tort law also falls short. Breach of confidence, intrusion upon seclusion, and public disclosure of embarrassing private facts often do not apply to insurance data misuse cases.

481. For breach of confidence, it must be shown that (1) information was confidential, (2) shared in a confidential context, and (3) unauthorized use caused harm. Public disclosure of private facts requires proof that private info was shared widely and was offensive to a reasonable person. Intrusion upon seclusion focuses on invasion into private affairs, not misuse of data. Existing torts rarely provide adequate redress for privacy breaches by insurance companies.

ISSUE #7: ***VOLUME #***7(I)(G)(i)(c): **Affecting Users' (Insured Injured Persons) Legal and Practical Interests**

482. Insurance companies can leverage their power or discretion to affect their insured persons, but particularly herein a '***SABS Applicant***' under *Reg 283*,' legal or practical interests. These companies have the technological capacity to extrapolate their insured persons, but particularly herein a '***SABS Applicant***' under *Reg 283*,' information, such as political affiliation, personal habits, credit histories and previous work experiences which is seen from the 'pooling' in the ***OCF-1***.

ISSUE #7: ***VOLUME #***7(I)(G)(i)(d): **Mutual Understanding or Undertaking by the Fiduciary to Act in the Best Interests of the Injured Insured Persons**

483. An essential element for recognizing an *ad hoc* fiduciary relationship is a mutual understanding or an undertaking by the fiduciary to act in the beneficiary's best interests. A mutual understanding occurs when one party agrees to act solely on behalf of the other. In *Norberg v Wyn rib*, Justice McLachlin stated that fiduciary relationships often stem from voluntary agreements where the fiduciary undertakes to act in the beneficiary's interests. Similarly, Justice Cromwell in *Perez v Galambos* highlighted the importance of loyalty in fiduciary relationships, noting that while vulnerability is relevant, it doesn't constitute a separate category of *ad hoc* fiduciary relationships. A mutual understanding can take many forms: (1) the exercise of statutory powers; (2) express or implied terms of an agreement; or (3) an undertaking to act accordingly. The exercise of statutory powers will be discussed in Section IV, which covers implementing the data fiduciary concept into Canadian law. An explicit agreement or undertaking to act responsibly requires insurance companies to form separate agreements with each insured person. However, including such clauses would likely be avoided by insurers due to the stringent obligations and profit constraints. Courts are more inclined to infer an undertaking from the implied terms of an agreement, considering if the alleged fiduciary induced reliance on its loyalty. Insurance companies often induce this reliance through privacy policies and terms and conditions, especially for a '*SABS **Applicant***' under *Reg 283*, by promising not to misuse personal data.

ISSUE #7: ***VOLUME #***7(I)(H): Scope of the Duty

484. As previously mentioned, fiduciary obligations concerning data would apply to insurance companies who collect personal information from insured persons, but particularly herein a '***SABS Applicant***' under *Reg 283*, on their online platform. The data fiduciary's obligations would pertain to the information collected on their platforms. The duty would extend to third parties who obtain insured persons, but particularly herein a '***SABS Applicant***' under *Reg 283*,' information from data fiduciaries because many insurance companies who collect data on their own websites also provide the data to others. Third parties include persons to whom the user consents to sharing their data, as well as persons who did not obtain insured persons, but particularly herein a '***SABS Applicant***' under *Reg 283*,' consent. The Applicant further argues that the fiduciary duty must "run with the data", which means that the law should impose similar obligations on third parties who have obtained insured persons, but particularly herein a '***SABS Applicant***' under *Reg 283*,' personal data. The rationale behind extending the duty to third parties is that insured persons, but particularly herein a '***SABS Applicant***' under *Reg 283*, do not have a "separate contractual agreement" with each organization that obtains the data, which maintains certainty and consistency.

485. One problem with "running with the data" is that *ad hoc* fiduciary relationships require a mutual understanding or an undertaking, which implies that the beneficiary is aware that the third party is collecting their personal information. However, many insured persons, but particularly herein a '***SABS Applicant***' under *Reg 283*, like this **Applicant** may be aware of who the "**First Insurer**" was (at first instance), and then and when the unauthorized collection, access and disclosure occurred thereafter and when a third party is collecting their data and from *whom*.

ISSUE #7: ***VOLUME #***7(I)(I): Content of the Duty

486. While the nature of the fiduciary relationship between an information fiduciary and its insured persons, but particularly herein a '***SABS Applicant***' under *Reg 283*, may not attract the same degree of care, loyalty and protection required by traditional fiduciary relationships. The content of a fiduciary duty depends on certain factors, including the "trust, confidence, complexity of subject matter, and community or industry standards." The main components of a data fiduciary's obligations regarding PII, PHI and confidential information it collects from ***SABS Applicant***s by receipt of a **Completed Application** and thereafter. The non-exhaustive duties are a combination of duties owed by traditional fiduciaries and non-conventional fiduciaries.

somewhat ironic and/or fitting, considering that a breach of confidence affords remedies that are *sui generis*.

ISSUE #7: ***VOLUME #***7(I)(J): Components of the fiduciary's obligations: (I): Duty of Confidentiality; (ii) Duty of Care; (iii) Duty of Loyalty; (iv) Duty of Disclosure; and (iv) other duties

ISSUE #7: ***VOLUME #***7(I)(J)(i): Duty of Confidentiality

488. The duty of confidentiality and the duty of care require data fiduciaries to keep their beneficiaries' information confidential and secure. This is consistent with the judicial statements of law in Dervisholli, Transamerica, and Jia. Inherent in these duties are that data fiduciaries must create safeguards to ensure re the security of their insured persons, but particularly herein a '***SABS Applicant***' under *Reg 283*,' data. The duty of confidentiality and the duty of care would require **First Insurer**s, whether provisionally and/or permanently, to ensure that their insured persons' personal data is confidential and secure.

ISSUE #7: ***VOLUME #***7(I)(J)(ii): Duty of Care

489. The duty of care would also require the data fiduciary to ensure that personal information is only used for the purpose for which it was collected. Many insured persons, but particularly herein a '***SABS Applicant***' under *Reg 283*, originally consent to disclosing their personal data because they trust insurance companies will use it for a certain purpose. However, many companies use it for other purposes in an attempt to monetize data as a commodity. The duty of care would limit the use of personal data to specified purposes and would require data fiduciaries to obtain consent if the data are to be used for another purpose. This is consistent with the language in the ***OCF-1*** and explicit language in *PIPEDA*. The doctrine of paramountcy, whereby any inconsistency between federal law and provincial law, federal law trumps provisional law) applies therein.

ISSUE #7: ***VOLUME #***7(I)(J)(iii): **Duty of Loyalty**

490. The duty of loyalty requires the data fiduciary to use their insured persons, but particularly herein a '***SABS Applicant***' under *Reg 283*,' personal data for the best interests of the user. Traditional fiduciaries are barred from "[entering] into engagements or [assuming] functions in which he has or can have a personal interest conflicting or which possibly may conflict with the interests of those he is bound to protect". In the case of data fiduciaries, the duty of loyalty would prohibit them from manipulating insured persons, but particularly herein a '***SABS Applicant***' under *Reg 283*,' emotions or behaviours for their own personal gain. While data fiduciaries may still use personal data for certain purposes, such as advertising and marketing, they must not do so in a way that would conflict with the interests of its insured persons, but particularly herein a '***SABS Applicant***' under *Reg 283*,

ISSUE #7: ***VOLUME #***7(I)(J)(iv): **Duty of Disclosure**

491. Data fiduciaries have a duty of disclosure in two primary situations:

a. they have a duty to promptly notify affected insured persons, but particularly herein a '***SABS Applicant***' under *Reg 283*, in the event of a security or privacy breach. This allows insured persons, but particularly herein a '***SABS Applicant***' under *Reg 283*, to immediately take any necessary steps, such as changing passwords or deleting information, to prevent any further breaches; and
b. data fiduciaries have a duty to disclose to their insured persons, but particularly herein a '***SABS Applicant***' under *Reg 283*, any potential conflicts of interest. For example, if a data fiduciary is entering into a contract with a third party that involves insured persons, but particularly herein a '***SABS Applicant***' under *Reg 283*,' personal information, the fiduciary must disclose this conflict of interest and obtain consent when necessary.

ISSUE #7: ***VOLUME #***7(I)(J)(v): **Conflicting Duties**

492. Directors of data fiduciaries owe a fiduciary duty to act in the best interests of the company, which may conflict with their duties to their insured persons, but particularly herein a '***SABS Applicant***' under *Reg 283*,

493. In particular, acting in the best interests of the company typically involves maximizing profits which is often a benefit to the owners of said company known as the shareholders.

494. Directors' fiduciary duties to the company may cause friction with their duties to their insured persons, or even non-insured persons who are claimants regarding personal data. However, directors can perform both duties concurrently without contention by maximizing profits for the company within the confines of respect for injured persons' privacy rights.

495. For example, directors have other duties to consumers, the environment and competitors that may conflict with their fiduciary duty to the company. Under *PIPEDA*, post 2018 pursuant to the *Digital Privacy Act* amending *PIPEDA* in 2015 with the effective date of the amendments being in November 2018, directors can be held liable for privacy breaches under *PIPEDA*.

496. Nevertheless, management is bound by other areas of law to carry out these duties concurrently. Similarly, directors of insurance companies can still maximize profits without engaging in business practices that harm insured persons, but particularly herein a '***SABS Applicant***' under *Reg 283*,' privacy interests.

ISSUE #7: ***VOLUME #***7(I)(K): Breach of Fiduciary Duty and Remedies outside of the SABS processes

497. The law would hold data fiduciaries to a strict standard of conduct, and any slight abrogation from the standard would constitute a breach of the duty. Manipulating insured persons and/or claimants, behaviour, emotions and/or pooling data to third parties (or even inviting the same as it did with "E-Claims (***SEE:*** COMPENDIUM, Tab 9) services" without claimant's knowledge and consent will obviously violate the fiduciary obligation. However, other conduct may not be as clear.

498. A potential plaintiff must demonstrate that the data fiduciary acted inconsistently with its duty to act in ***utmost good faith***. In the event of a privacy violation, the data fiduciary can rebut the *de facto* breach by showing that it acted consistently with its duties.

499. The remedies for a breach of fiduciary obligation are non-exhaustive. The appropriate remedy will depend on the factual circumstances of the case, and courts have discretion to grant the plaintiff an appropriate equitable remedy. Courts may order an injunction to prohibit a privacy-violating practice, a mandatory order to compel the information fiduciary to commit a rightful act or redress the loss or improper gain through rescission, restitution or damages.

500. Depending on what steps an individual has taken by of *PIPEDA* access request and potential complaint, it may be that the affected individual will pursue the matter through the federal courts as the FCC can order any remedies. However, if it is more time sensitive, the individual may wish to proceed through the ONSC to obtain interim relief in relation to prohibiting any further disclosure of PPI, PHI and confidential information, and/or any property so associated with the impugned conduct.

ISSUE #7: ***VOLUME #***7(II): Application of the Law to the Facts

benefits and respond to the ***SABS* Applicant** but it also has "fiduciary duties" as an "*ad hoc* data fiduciary" by having been the First Insurer (Provisional) and First Insurer (Permanent).

502. This Court must recognize that each and every "First Insurer", whether provisional or permanent, has fiduciary duties to those SABS **Applicant**s (claimants), who may or may not be insured persons under insurance policies that have been issued by said insurance company, and where those fiduciary duties are not accounted for under *PIPEDA* in relation to 'data', said fiduciary duties will fall any lacuna.

503. Like a lawyer who holds property in trust in a commercial transaction, there are often conditions attached to the same which are restrictive and permissive. Like the OCF-1 standard form document, it is not that the recipient First Insurer cannot disclose personal information and personal health information, and must exclusively act in the best interests of the individual but it is tailored to the circumstances of each situation.

VOLUME #8(A): WHAT IS THE 'STANDARD' THAT PROHIBITS FILING OF EVIDENCE THAT WAS NOT BEFORE THE DECISION MAKER?

504. In Ontario, this is known as the "**Keeprite Standard**" (by reference to *Keeprite Workers' Independent Union et al. and Keeprite Products Ltd.*, 1980 CanLII 1877 (ON CA), <https://canlii.ca/t/g14jm>) wherein in 2013 Madam Justice Swinton (who received supernumerary status in 2013) summarized the **Keeprite Standard** on judicial review regarding the impermissible inclusion of materials that were not before the decision maker:

> "[18] The ***Keeprite Standard*** for the admission of affidavit evidence on judicial review has been applied in numerous decisions involving labour boards and labour arbitrators. These cases have held that affidavit evidence can be admitted either to show an ***absence of evidence*** on an essential point *or* to disclose a ***breach of natural justice*** that cannot be proven by a mere reference to the record."

505. This was affirmed in the decision of *Sticky Nuggz* by the ONSC Divisional Court in 2020. Affidavit evidence containing material that was **not** before the decision-maker is not admissible on judicial review unless it: a) provides non-argumentative background information; b) demonstrates that the decision-maker decided an essential point without any evidence; or c) demonstrates the decision-maker breached the *Rule*s of natural justice (***SEE:*** *Sticky Nuggz Inc. v. Alcohol and Gaming Commission of Ontario*, 2020 ONSC 5916 as per The Honourable Justices Swinton, Lederer, Penny JJ ["*Sticky Nuggz*"]).

ISSUE #8, ***VOLUME #***8(II): Application of the Law to the Facts

506. Certainly, Mr. Boyce's decisions, when he was an adjudicator and Vice Chair, delineated between the various insurance companies that are apparently in the **TDI Group**. This does not mean that **TDHA** and **SNIC** are not entitled to have counsel represent their interests, but they cannot provide any additional evidence (which would be evidence at first instance) and *cannot attempt to re-argue (or argue for the first time)* to the Tribunal l*et al*one any of benefit. To do so would be tantamount to intentionally including inadmissible affidavit evidence and subject to a costs award. Further, while **SNIC** or **TDHA** is entitled to oppose the relief sought, submissions are not evidence, and they cannot overcome the balance of probabilities test. Without a **Record Of Proceeding** filed, the respondent insurance companies cannot reference any material outside of the **Applicant**'s Application Record.

VOLUME #9: JUDICIAL DISQUALIFICATION OR RECUSAL; COMPULSORY CASE CONFERENCE ATTENDANCE NULLITY; AND RESIDUAL

VOLUME #9(A): Reasonably Perceived Conflict of Interest (***SEE:*** COMPENDIUM, Tab 44) and Affidavit Evidence (***SEE:*** COMPENDIUM, Tab 43)

507. The conflict of interest submissions (the "**COI Recusal Submissions**") were filed and served on January 16, 2025 which were supported by Affidavit #3. The only addition thereafter was that of the case of *GWL Properties* in that it was applicable to some of the facts involving case conferences and a justice having an association with one of the representatives of one of the parties. As of February 13, 2025, the interested individual and interested law firm in Epstein Cole LLP did not respond or provide any contrary evidence. As such, to the extent that the sitting motions justice, not Justice Shore, cannot find that there was and is a reasonably perceived conflict of interest, then the **Applicant** has sought, without objection, an order that Mr. Papadimitropoulos and Epstein Cole LLP produce a copy of the separation agreement and divorce decree for the sitting motions justice inspection *in camera*.

508. The Applicant also relies on the SCC law as follows in *Economical Mutual Insurance Company v. British Columbia (Information and Privacy Commissioner),* 2013 BCSC 903 citing *Gurtins v. Goyert,* 2008 BCCA 196, the court stressed the importance of clarity in court orders. It said at para. 15:

> The rule of law requires that court orders be obeyed. Accordingly, it is of paramount importance that persons who are subject to court orders be able to readily determine their obligations and responsibilities. They do this by having regard to what is *on the face* of the formal order setting out what they are required to do, or refrain from doing. As stated in *Arlidge, Eady & Smith on Contempt* (London: Sweet & Maxwell, 2005) (at para. 12-55), "[a]n order should be clear in its terms and should not require the person to whom it is addressed to cross-refer to other material in order to ascertain his precise obligation".

509. While the Shore J. compulsory case conference attendance requirement was not an order, clarity matters as well. While "exchange of material" was devoid of legal meaning per se, there was nothing in that emailed language that directed that the requirements to upload documents in the court file was dispensed with.

510. As such, once it was a reasonable time before five days prior to February 18, 2025, the proposed case conference could not be conducted in accordance with the Rules of Civil Procedure. As such, any such case conference would be a nullity and not merely an irregularity. This is a pure point of law.

511. Some rhetorical and self-answering questions regarding the conflict of interest involving Madam Justice Shore (Epstein Cole LLP) and a representatives, pursuant to the LSA, section 1(7)(a) and (c), in Mr. Karat and Mr. Papadimitropoulos and Mr. Grant, the relieved of his duties case manager for the LAT

512. Was there a "power outage", as represented by former case manager Mr. Grant, that led to Mr. McLean's LAT file number being unrecognizable and deleted in the LAT e-filing portal along with the records from December 2023 to April 2024 or is it more likely than not that because the Tribunal had acceded to some "backroom clandestine chatter between Mr. Grant and some representative of "TD Insurance" (likely Mr. Papadimtropoulos) about including TDGIC as the respondent on its books", in the face of the denial letters

the respondent as "TD Insurance Meloche Monnex (Security National Insurance Company)"

513. Is it more likely than the individual in Mr. Papadimitropoulos (client of Epstein Cole LLP), who was the forger of the first OCF-18 on April 20, 2023, of Ms. Nurse's signature, albeit clumsily and incompetently, with the "As per A. Nurse" purported signature, who was controlling the tdiadr@tdinsurance.com email so listed in the order of the Tribunal in February 2024, was communicating with Mr. Grant? Is it more likely than not that this was occurring with the case manager in Mr. Grant, who was relieved of his duties in summer of 2024, which is a position that, pursuant to the affidavit evidence of in-house counsel in Shuttleworth, is responsible for: "Fourth, there is a review by the file's case management officer: The case management officer acts as an intake officer and primary point of contact for the parties. This review involves examining the decision's format, correcting grammatical and spelling errors, and ensuring that the template and parties' names are correct" and he was perhaps instructed to delete and destroy the records from the **Record Of Proceeding** in April 2024 which is why Ms. Lee is now trying how best to compile them in February 2025?

514. Is it more likely than not that VCM Decision, impugned aspects in NOM #14 and part in NOM #15, suffered from inconsistent findings of fact, and ignorance of evidence, because VCM did not have an accurate and complete **Record Of Proceeding** on September 12, 2024?

515. Is it more likely than not that individuals, like Mr. Papadimitropoulos and the ADR specialist in Mr. Karat (who had been an assistant to him in a case involving SNIC), orchestrated the theft of Mr. McLean's property a few days after he had represented to the Tribunal and SNIC that he intended to judicially review or appeal the decision of Vice Chair and Vice Chair Morrissette?

516. The question that may need to be answered, subject to Judgment being granted in favour of the Applicant, is how out of 93 justices in the ONSC did the "one justice" who worked at the law firm that represented Mr. Papadimitropoulos in his matrimonial litigation with the one individual named insured in the Insurance Policy, have an email sent on her behalf regarding a compulsory requirement attendance before her on the issues that the Tribunal wished to have argued?

517. As per the relief sought in NOM #2 that Mr. Papadimitropoulos and Epstein Cole LLP produce a copy of the separation agreement between him and the individual named insured in the Insurance Policy in camera to the sitting motions justice, which would have language of a non-contact (direct or indirect) order between them, who would have been motivated to have the "Insurance Policy" not be that of his former spouse?

518. Is it more likely than not that after Mr. McLean brought forward his affidavit evidence and NOM #2, along with his *PIPEDA* request of all insurance companies in the TDI Group, on reasonable belief that Mr. Papadimtriopoulos and Mr. Karat engaged in the theft of his property (personal information and personal health information) along with months of fraudulent impersonation of him with credit cards, banking cards, and the TPL library card (along with impersonating him at the TPL to obtain a third library card and change his phone number therein) that TD Insurance relegated Mr. Papadimitropoulos to "TD Bank" and a different address before his inevitable dismissal?

519. Is Mr. Nieuwland's representation to the Tribunal in his responsive submissions to NOM #6 (the "COI Motion") albeit for the "Fictitious Respondent TDGIC") that Mr. Papadimitropoulos had never been involved in his SABS benefits claim or access request credible?

520. If Mr. Papadimitropoulos was working out of 101 McNabb Street, Markham, Ontario , TDGIC had its fax number of 416.774.3629 on the 9th floor of 3650 Victoria Park Avenue, North York, Toronto, and it would have had a litany of faxes being received from injured persons in the "private passenger" market as it was responsible for issuing policies in the general market (not SNIC or Primmum) but **TDHA** would have its fax on the 4th floor of Spark Building (416.774.3120) so required therein for motor vehicle accidents from previous accidents before it departed the private passenger market and other motor vehicle accidents that

Papadimitropoulos chose the fax number of 416.774.3120 so he could pick up the faxes himself .

VOLUME #9(B): Case Conference: Incapable of Performance due to failure to send invite to Case Conference contrary to Civil *Rule*s and Practice Direction (Divisional Court *JRPA* Guide): Rendered a Nullity (not an Irregularity)

521. *Rule* 4.05.3(3) states: "Every party participating in the hearing or conference shall provide the following documents *to the court* by uploading them to **Case Center** in accordance with this rule:

> 1. A copy of every document filed with the court by the party in respect of the hearing or conference;
> 2. Subject to subrule (5) [transcripts], a copy of any other document in the court file on which the party intends to rely at the hearing or conference that has not already been uploaded to **Case Center** by another party; and
> 3. Unless the court directs otherwise and subject to subrule
>
> (3.1), a COMPENDIUM that meets the requirements of subrule (7). O. Reg. 300/24, s. 2 (1).
>
> Reg 300/24 was proposed by the Ministry of the AGO, from the very address of Ms. Im, which was passed in 2024 which was summarized as follows:
>
> a. This regulation, O. Reg. 300/24, introduces a new rule governing factums, streamlines other rules pertaining to factums, sets out new requirements for COMPENDIUMs and certain other documents uploaded to **Case Center** (formerly CaseLines), clarifies the circumstances when a book of authorities is required to accompany a factum in the Superior Court of Justice, and improves terminology.

522. Unless the court directs otherwise, this rule applies to all or part of any hearing, pre-trial conference or case conference held in the Superior Court of Justice **or** the Divisional Court: *Rule* 4.05.3(2). Ergo, unless the Divisional Court has directed otherwise unequivocally that *Rule* 4.05.3 does not apply to any hearing or case conference, then **Case Center** rules apply.

523. Moreover, without the court staff providing the **Applicant** and **Remaining Respondents** with a case center invitation link with sufficient time to upload desired materials into **Case Center**, it made the case conference process entirely futile and incapable of being conducted. Despite multiple requisitions by the **Applicant** for compliance with the same, the court staff chose not to provide the same. The **Remaining Respondents** did not object. As such, if the **Applicant** is not successful in obtaining the substantive orders, this issue will be addressed at another date.

VOLUME #9(C): "Exchange of Material": Devoid of Legal Meaning

524. The starting point is the doctrine of paramountcy between statutes and regulations. It is trite law that in the event of an inconsistency between a statute and a regulation, the statute prevails. It is further trite law that in the event of an inconsistency between a regulation and a practice direction, the regulation prevails. This is codified in the *Civil Rules*. There is no dispute that the **Practice Direction** purports that where a timetable or a deadline is set through case management, it supersedes any civil rule. As a matter of time, that is now impossible because a case conference could not be held on Monday, January 13, 2025. *Ergo*, the deadlines in two source laws continue to apply:

a. *JRPA*, section 6(2) for the Tribunal (***SEE:*** *Rule* 1.02(1)(3.)); and
b. *Rule* 68.04(4) for the respondents who filed Notices of Appearances (nota bene: albeit the three respondent insurance companies did not file forthwith).

525. "Factum" is defined as: "factum" includes a book of authorities, if one is required by rule 4.06.1. "Application Record" is not defined under the *Civil Rules* but it is interpreted under 38.09 but said rule is not applicable to judicial review applications. However, it is interpreted *Rule* 68.04(2)[93]. The **Applicant** filed and served his Application Record on December 12, 2024.

526. However, that is the "application record" for the **Applicant** which was filed and served on the respondents on December 12, 2024. The respondents, should they wished to oppose, had 30 days from that date to file: (a) factum; and (b) application record (***SEE:*** 68:04(4)). It is rule 68.04(5) that is relevant:

> (5) The respondent's application record shall contain, in consecutively numbered pages arranged in the following order,
>
> (a) a table of contents describing each document, including each exhibit, by its nature and date and, in the case of an exhibit, by exhibit number or letter; and
>
> (b) a copy of any material to be used by the respondent on the application and not included in the application record. R.R.O. 1990, Reg. 194, r. 68.04 (5).

527. Therefore, the words of "exchange" and "materials" becomes germane. Simply put, there is nothing that the respondents can include that was NOT included in the ***JRPA Applicant***'s **Applicant** Record. Therefore, the issue is the 'table of contents' describing each document, including each exhibit by its nature and date, and in the case of an exhibit, the exhibit letter. They may truncate the same but the records will remain the same.

528. The word "document" includes data and information in electronic form. Practically, the respondents are, as it relates to their application records, are extracting the documents from the **Applicant**'s Application Record that they wish to highlight in their responsive factums should they wish to oppose.

529. As it relates to 'exchange of material', assuming *arguendo* the issue of bias (reasonable apprehension of) did not arise, it appears that the word 'material' would refer to those documents that support the responsive factum. There is always the potential that the respondents could contend that they wish to rely upon

530. Ergo, the "Factum" and "Application Record" are distinct. The Factum does not include "materials" but incudes the book of authorities by reference or separate authorities' book. The Application Record may include materials in support of the same but that depends on the content of the same. Further, it may be that a respondent solely relies on the Application Record of the ***JRPA Applicant***.

531. The word "materials" has no legal effect at all. This leaves aside that the one justice out of some 75 was in a conflict of interest by her pre-case conference vague direction. As such, any such direction was void *ab initio* – not merely voidable. No subsequent orders cure the same but merely aggravate and are all null and void from the date of issuance. The ONSC Div. Ct. registrar CANNOT give effect to the same by scheduling a case conference when the Registrar remains duty bound to provide all of the aforementioned documents, some in court forms, prior to even considering the same.

532. Moreover, even assuming arguendo that such a pre-hearing direction would have any legal effect, which it cannot as the SCC has firmly settled and clarified the common law that any such direction (order or not), does NOT supersede the timetable or deadlines in the *Civil Rules* because no timetable or deadline can be or has been set through case management *prior to the* respondents (some or all) filing responsive factums. To the extent that that the respondents viewed the "application record" as 'materials', nothing needs to be exchanged because the documents in the **Applicant**'s Application Record.

clarification order.

534. "**Application**" means a proceeding commenced by notice of application. *Rule* 68.01(1) and (2) were passed in 1990 with subsection of 68.01 being amended in 1999 by reference to Reg 292/99, s.1(2):

> **"How Commenced**
> **68.01** (1) An application to the Divisional Court or to the Superior Court of Justice for judicial review under the *Judicial Review Procedure Act* shall be commenced by notice of application, and where the application is to the Divisional Court the notice of application shall be in Form 68A. R.R.O. 1990, Reg. 194, r. 68.01 (1); O. Reg. 292/99, s. 1 (2).
> (2) If the application is made to the Divisional Court and is not commenced at a regional centre, the local registrar in the place where it is commenced shall forthwith transfer a copy of the notice of application and of any material filed in support of the application to the court office in the regional centre of the region where the application is to be heard, and all further documents in the application shall be filed there. R.R.O. 1990, Reg. 194, r. 68.01 (2).

535. The **Applicant** commenced his Notice of Application for Judicial Review in Form 68(A) on November 15, 2024. This is further evidence under the enactment (regulation) of the *Rule*s Of Civil Procedure that "material" means that which supports an originating process. The same can be extrapolated to the likes of an "application record" for respondents which relates to documents and exhibits and not the "facta" of the respondents. Pursuant to the *Keeprite Standard* and *Sticky Nuggz*, it is not improper, at least *prima facie*, for an **Applicant** to tender non-controversial affidavit evidence in support but that is a hypothetical that need not be entertained. While other provinces, like BC, have judicial reviews commenced by "petition", there is also a corresponding requirement of a respondent to file a "response to petition." No such procedure arises under our *Civil Rules*.

536. "**Court**" means the court in which a proceeding is pending and, in the case of a proceeding in the Superior Court of Justice, includes an associate judge. The court in which this proceeding is pending is the ONSC. The division of it is the "divisional court."

537. To the extent that the requisition was not filed *per se* or stamped as such, it pre-dated the Justice Shore pre case conference direction. Out of an abundance of caution, the **Applicant** filed a requisition to compel or require the Registrar to comply with her duties which are as follows:

a. Form 68(b): filed on December 24, 2024;
b. Confirmed the filing of the *Rule* 38.03(3.1) request for urgent (***SEE:*** COMPENDIUM, Tab 36 (Affidavit #2) and 42 (Requisition)) hearing (January 2, 2025); and
c. Providing an invitation to the ***JRPA Application*** to the **Case Center** (formerly Case Lines)

538. While the word "materials" is not defined, it auto-populates five (5) times, with two (2) under headings, under the *Civil Rules*. They are as follows (with removal for the reference to "leave to the court of appeal" under section 61.03):

539.

a. *Rule* 76.01 relates to the "Simplified Procedure":
    i. ***Materials***: Depending on the practical requirements of the situation, the motion may be made with or without supporting material or a motion record. O. Reg. 689/20, s. 48;

b. *Rule* 77 is "Civil Case Management":

the motion may be made with or without supporting material or a motion record. O. Reg. 689/20, s. 49.

540. This is consistent with the ***JRPA Application*** relating to "what material to be relied upon," which is often in the form of affidavits. In the context of this ***JRPA Application***, there are no "materials to exchange" *per se* as the Tribunal remains required to file the **Record Of Proceedings** forthwith and cannot rely on any *Civil Rules* or practice directions as the *Civil Rules* do not apply to the timing required by statute (***SEE:*** *Rule* 1.02(1)(3.))With that segue, civil case management is under *Rule 77.* The relayed statement of **Shore J.** from the Registrar to the **Applicant**, LAT and respondent insurance companies was in the nature of *Rule* 77.04(2) and nothing more, at best, which is "(2) A judge or associate judge may, on his or her own initiative, **require** the parties to **appear** before him or her or to participate in a conference call to *deal with any matter* arising in connection with the case management of the proceeding, including a failure to comply with an order or the rules". It is a requirement of an appearance, at a future date to be set by the Registrar (subject to the Registrar complying with her other duties that remain extant), to *discuss* prematurity. However, it is the requirement to appear before him or her (a 'her' in this case which is Justice Sharon Store – former partner at Epstein Cole LLP at the very time when the forgery specialist in Mr. Andrew Papadimtripoulos was represented by said firm regarding matrimonial litigation involving the named female insured individual and the residence where the ***JRPA Applicant*** resided then and until now) and the bias issue that stops that dead in its tracks. The *Civil Rules* do NOT say that a judge may on her own initiative require the parties to appear before ANOTHER JUDGE. It did not say the obligations of the respondents in any way. Nor could Shore J do so without motion materials. Shore J did not purport to do so. Under *Rule 59*.06, "set aside orders", that is not particularly the issue because the order is somewhat open ended *per se*. Moreover, a "requirement of an appearance" to discuss matters cannot be seen to be an order that has any effect on the requirements under the *Civil Rules*. It is also subject to the Registrar setting such a date.

541. Orders are not presumptively retroactive either. They can be retroactive if they are "nunc pro tunc" but that did not occur here. However, there is no stay of obligations and rights.

542. Moreover, there is a lack of clarity with respect to the Shore J. pre-hearing requirement direction. The general rule under *Rule 59*.01 is that the binding effect of a judgment or order commences on the date upon which it is pronounced. However, this rule is not unqualified. For example, the judgment or order itself may provide otherwise. In other situations, the judgment or order may be uncertain and clarification may be required, something of substance has been missed. In these situations, judgment or order is effective from the date of entry, rather than pronouncement (paras 58-59 of *Fontaine v. Canada (Attorney General)*, 2012 ONCA 206).

VOLUME #9(D): Shore J Compulsory Case Conference Attendance Requirement: NOT an endorsement or order

543. The question arises as to whether the "relayed email" from Justice Shore is an "order". The court held that an e-mail sent by a judge to the parties was not an "endorsement" because it was not "made" on the motion record. This decision highlights the formalistic constraints of the former *Rule 59*.02(2). Presumably, under the new rule, a judge may issue an endorsement in the form of an e-mail provided that the requirements for a "separate Document" are met: *Alfano et al v. Piersanti et al*, 2014 ONSC 60.

544. *Rule*s 59.01 and 59.02 state: "Effective Date 59.01 An order is effective from the date on which it is made, *unless* it provides otherwise. R.R.O. 1990, Reg. 194, r. 59.01. Endorsement of Orders 59.02 (1) An endorsement of an order shall be made on the appeal book, COMPENDIUM, record, notice of motion, notice of application or on a separate document by the judge, associate judge or officer making the order. O. Reg. 689/20, s. 38; O. Reg. 383/21, s. 15.

2025. With respect to setting a hearing date, Form 68(b) gives a range of dates or approximation and the parties are entitled to the same. As it relates to the word "discussion", it would be impossible to have any such discussion until the facta and application records are received along with a filed **Record Of Proceeding**.

VOLUME #9(E):
The word "Exchange": may be service but may not; exchange is not filing

546. The word "deliver" means to serve and file with proof of service. Therefore, 'filing' alone is not equivalent to 'delivering' or 'service'. *Rule* 16 governs service within Ontario and frequently uses the word 'exchange', which appears 12 times under the *Civil Rules*. Exchange differs from 'filing', which the Tribunal does not fulfill promptly as required by statute. Ironically, the Tribunal objects to judicial review under the *JRPA* while not complying with its requirements. "**Case Center**" (formerly Caselines) is not the same as a "document exchange" or "electronic document exchange" as per *Rules of Civil Procedure*, Service, *Rule* 16 - Service of Documents. According to the 2nd ed, 2022 CanLIIDocs 997: "To serve a lawyer representing the opposite party, service can be done by depositing a copy of the document through the document exchange if it is set up." Electronic document exchanges are web-based platforms for sending documents between parties. Uploading documents to "**Case Center**" is not equivalent to filing or delivering, and thus, cannot constitute service. The **Applicant** is entitled to proceed with the matter as the dominus litis principle applies, along with the intention for judicial reviews to be summary.

547. The TD Insurance ("**TDI**") group of companies consists of five companies with four distinct auto insurance providers. Each company within the "**TDI Group**" maintains its own unique history, FSRA registration number, balance sheets, financial statements, goodwill, areas of expertise, insurance products, programs, and office locations.

Volume #10(I): Security National Insurance Company

The "Sole Underwriter" in the Insurance Policy [not the "***JRPA* Applicant**"" as VCM would have it]

548. Security National Insurance Company ("**SNIC**"), the underwriter mentioned in paragraph 27 of the **VCM Reasons**, is an out-of-province insurer based at 50 Boulevard Crémazie, Floor 12, Montreal, QC, H2P 1B6. **SNIC**'s FSRA registration number is 397. Established in 1933 under the CBCA and continued under Canada's *Insurance Companies Act*, **SNIC** offers insurance products for professionals and alumni under the TD Insurance Meloche Monnex ("**TDIMM**") brand. **TDIMM** is the combination of two distinct trademarks of "TD Insurance", owned by The Toronto-Dominion Bank, and "Meloche Monnex", owned by Meloche Monnex Inc.

Volume #10(I)(a): TDI Meloche Monnex: two insurance companies

549. For context, under **TDIMM** combined trademarks, Primmum provides auto insurance products but only to **employer groups**. Employer group products have no relevance to the underlying *SABS* Claim, LAT Appeal (***SEE:*** COMPENDIUM, Tab 6) and *JRPA* Proceeding.

Volume #10(I)(b): the Non-Underwriter First Insurer: **TDHA**

Volume #10(II): TD Home and Auto Insurance Company ("TDHA")

the **First Insurer**

550. TD Home And Auto Insurance Company ("**TDHA**") is a Canadian incorporated insurance company with an FSRA registration number of **1063**.

551. **TDHA** is the former Liberty Insurance Company of Canada which was the former Liberty Mutual Insurance Company. Liberty Insurance Company of Canada sold its Canadian business and operations to Meloche Monnex Inc. and then renamed it TD Insurance Home and Auto Company on or around 2005. As seen in the 2007 case before the SCC (***SEE:*** https://decisions.scc-csc.ca/scc-csc/scc-l-csc-a/en/item/11288/index.do), the name was utilized in substantially the same form. It was only **TDHA** that had its contact information by way of address (4th floor of the Spark Building (North York)) and fax number (4th floor of the VP Building (Spark Building)). The only known fax number in evidence and the **Record Of Proceeding**, and represented by SNIC in 2023 in written correspondence to the **Applicant**, was 905.305.1074, and its address was the Burlington Office Address absent the provision of a floor number.

552. As seen by the FSRA registration number of 1063, TD Home and Auto Insurance Company naturally came TD General Insurance Company and **SNIC** which had FSRA (formerly FSCO) registration numbers of 353 and 397 respectively. Thereafter, Primmum obtained an FSRA registration number of 1396.

Affidavit #30 of the **Applicant** in the LAT Appeal of July 31, 2024; **COMPENDIUM**, Tab 10, page 78, paragraph 34; for Exhibit "D" itself, **COMPENDIUM**, Tab 10, page 147 and 148) which was the grounded landline, issued by Bell Canada (not Bell Mobility) on the 4th floor of 3650 Victoria Park Avenue, District of North York, City of Toronto, Province of Ontario.

554. At the Material Time, **TDHA** was the last known insurance company to have an office at the East Mall Address in Etobicoke.

Volume #10(III): TD General Insurance Company: the Fictitious Respondent Party at the Tribunal

the Automotive Insurance Company that Masqueraded as the Sole Respondent before the Tribunal

555. TD General Insurance Company, previously known as **CT Direct Insurance Company**, is a Canadian incorporated insurance company. At the **Material Time**, TDGIC's fax number was 416.774.**3629**, which was associated with a grounded landline issued by Bell Canada (not Bell Mobility) on the **9TH FLOOR** of 3650 Victoria Park Avenue, North York, Toronto, Ontario.

Volume #10(A): Material Facts – NOT IN DISPUTE

556. The material facts are oddly addressed in the proposed corrections to VCM Reasons, inclusive of in NOM #18 [misnamed as NOM #16 by the Applicant, with notice to the Divisional Court and Respondents [as they were before the AGO withdrew on January 30, 2025],

557. The material facts from August to October 13, 2022, are not in dispute. As the Applicant notified orally SNIC, via telephone, of his intention to seek benefits on or around September 1, 2022, he discharged his burden to promptly notify an insurance company that he believed was responsible to pay him vital benefits for his survival pursuant to section 32 of the Schedule. SNIC was the "First Notified Insurer" which is definition the Applicant has created for distinction between SNIC and **TDHA** (the "First Insurer").

558. While SNIC, at least prima facie, provided the Applicant with some documents and explanations for accident benefits, it did so in tardy fashion because it input the incorrect postal code for his residential address. His residential address was the identical location of his then spouse who was the individual named insured in the Insurance Policy. At the time, Mr. Papadimitropoulos' information on the LSO Directory (online) was that of "TD Insurance" at the Markham McNabb Address.

559. The return address for the initial accident benefits package was that of the Markham McNabb Address. However, the name of the individual "claims advisor" [not adjuster] was that of Ms. Alisha-Anne Nurse.

560. However, the fax number provided in the OCF-1 was NOT that of SNIC but rather **TDHA** located on the 4th floor of the building (the "Spark Building") located on the lands and premises municipally described as 3650 Victoria Park Avenue, District of North York, City of Toronto, Province of Ontario. This was unknown to the SABS Applicant and he utilized the fax number provided to deliver the completed OCF-1 on October 13, 2022 (the "McLean Completed Application" or the "McLean Completed OCF-1") and the completed OCF-2 on October 13, 2022.

VOLUME #10(A)(I): August and September 2022

561. The following facts are provided herein.

Volume #10(A)(i): the "Accident" ("MVA") on August 31, 2022 involving the Insured Automobile by Security National Insurance Company

562. On August 31, 2022, the **Applicant** suffered impairments (the "**Impairments**")[95] as a result of a motor vehicle accident (the "**Accident**" or "**MVA**") on August 31, 2022 (the "**Accident Date**") at the location of Spadina Road (not to be confused with Spadina Avenue) north of St. Clair Avenue and south of Heath Road, in the Forest Hill neighbourhood.

563. The SNIC Insured Automobile had two named insured persons: (i) Ms. Nicole Artopoulos; and (ii) BMW Financial Services Inc.

564. The Insured Automobile was a leased vehicle from 2019 to the date of the Accident. The Insured Automobile suffered more than five thousand dollars worth of damage and the impact of the collision by the sole female driver (Ms. Alisha Carey) of an Acura MDX SUV, insured by Pembridge Insurance Company, an insurance company within the Allstate Group of Insurance Companies, was such that the trunk would not close and the electronic systems were largely inoperable or malfunctioning. The Insured Automobile was taken for inspection in North York at the police reporting collision centre and had well in excess of $2,000 worth of damage to it. The police reporting number is denoted in the motion record before VCM of the Licence Appeal (***SEE:*** COMPENDIUM).

565. The Insured Automobile was propelled some 30 feet forward from a stationary stopped position when the Acura MDX rear-ended it without stopping which caused the Applicant's head to hit the steering wheel and snap back, and come towards oncoming traffic as the cars in front of him move forward on a green light. The Applicant was able, with his reflex instincts to jerk the car into part of a driveway of residential homes on the East Side of Spadina Road, and bring the car to a stop. The distance between Insured Automobile and Acura MDX was some 25 feet or so.

Volume #10(A)(ii): the ***JRPA*** **Applicant**: not at fault – driver of Insured Automobile

566. The Applicant was the driver of the Insured Automobile, but not a named insured individual on the Insurance Policy. VC Morrissette made an incorrect finding, unsupported by the **Record Of Proceeding** from the time of the commencement of the LAT Appeal (***SEE:*** COMPENDIUM, Tab 6) to the time of the signing of her decision (September 12, 2024) to its issuance one day later.

Volume #10(A)(iii): the Applicant was an Insured Person

567. The **Applicant** was an "**Insured Person**" by virtue of being a **Spouse** of the named individual insured.[96]

568. On September 1, 2022, the **Applicant** orally notified **SNIC** of his **Impairments** thereby making **SNIC** the "**First Notified Insurer**" pursuant to a combination of *Reg 283* and *SABS*, section 32(1)[97].

569. After the **Applicant** received his initial MRI results from St. Joseph's hospital regarding his October 3, 2022, MRI (the "**October 2022 MRI**"), the **Applicant**, on October 6, 2022, fax delivered the electronic funds transfer authorization (the "**EFT Authorization**") to the fax number provided by **SNIC** to the **Applicant** which was 416.774.3120 (the known fax number as of August 2024 by the **Applicant**, of **TDHA**, defined herein as the "**TDHA Fax Number**", "**416 Fax Number**", "**Non-905 Fax Number**" or the "**Victoria Park Building 4th Floor Fax Number**") (***SEE:*** ***COMPENDIUM***, Tab 8, page 46, Affidavit #3 of the **Applicant** in the LAT Appeal (***SEE:*** COMPENDIUM, Tab 6), Exhibit **"A"**, page 27).

Completed Application"), pursuant to *Reg 283*, to the **TDHA Fax Number** albeit unknown to him at the time to be that of **TDHA**. The ***OCF-1*** (defined as "**Application**" under *Reg 283*, section 1) contained a "*Return this form to*" field which contained pre-printed language with **SNIC**, an address of a Markham office, and the **TDHA** Fax Number (***SEE: COMPENDIUM***, Tab 8, page 48). Part 12 of the ***OCF-1*** Application, provided to the ***SABS Applicant***, contained Part 12, "Signature" (***SEE: COMPENDIUM***, Tab 8, page 53), which provided the duties of "***the insurer***" regarding the receipt of the PII and PHI from the ***SABS Applicant*** and the constrained rights of collection, usage and disclosure (***SEE: COMPENDIUM***, Tab 8, page 53, paragraphs 1 to 9). There is no dispute on the evidence in the **Application Record** that **TDHA** was the first to receive the **Completed Application** on October 13, 2022.

VOLUME #10(B): THE STANDARD FORM DOCUMENT, ISSUED BY FSRA: OCF-1)

571. Contained within the OCF-1, Part 12, are 15 unnumbered paragraphs. The Applicant analyzes each paragraph herein as it relates to the material issues to be decided herein this *JRPA* Proceeding.

VOLUME #10(B)(I): Paragraph 1 of Part 12: the "Direct Collecting Requirement (***SEE: OC***, Tab 8, page 53)

572. At paragraph 1, the ***OCF-1***, Part 12 denoted that the ***SABS Applicant*** understands that "***the insurer***" and persons acting for "***the insurer***" (*nota bene*: **TDHA** is "***the insurer***" aka the "**First Insurer**" which is distinct from the "**First Party Insurer**", which is defined under *Reg 664*, which relates to the Insurance Policy) will [shall] collect PI and PHI about the *SABS* **Applicant** that is related to [my] claims for accident benefits arising out of the Accident and that such information shall be collected DIRECTLY from me OR from any other person WITH MY CONSENT.

573. **SNIC** did not collect the **Applicant**'s **PII** and **PHI** directly from him. **TDHA** was and is the **First Insurer**. **TDHA** collected directly from him albeit based on the provision of **TDHA**'s **Fax Number** by SNIC (an out of province insurance company) without his knowledge or consent.

574. The misrepresentations vitiated the Applicant's consent per se.

VOLUME #10(B)(II): OCF-1, Paragraph 2: The Insurer will collect certain pieces of information

575. At paragraph 2, Part 12 of the OCF-1, it represented that the ***SABS Applicant***, by executing and delivering the **Completed Application** to "***the insurer***" via mail or fax", understood that "***the insurer***" would collect information about:

(i) [my or your] driving record;
(ii) [my or your] auto insurance policy history; and
(iii) [my or your] automobile insurance claims history if they exist.

Application of the Paragraph 2 to the Facts

576. The **Applicant**'s driving record was unblemished, he did not have any auto insurance policy history in Ontario and no claims history in Ontario.

VOLUME #10(B)(III): OCF-1, Paragraph 4: Collection and Use

represented that the information collected above, which was limited in scope and exclusively from the ***SABS Applicant***, would only be used reasonably [objective] necessary for purposes of (all of which the ***SABS Applicant*** 'understood'):

a. investigating the ***SABS Applicant***'s claim ("**Claims Investigation**") and processing claims ("**Claims Processing**") as required "by law";
b. obtaining or verifying information relating to the ***SABS Applicant***'s claim in order to determine entitlement and quantum ("**Claims Information Verification**");
c. recovering payment from insurers and others liable in law for amount that that "***'the insurer'***" pays in connection with the ***SABS Applicant***'s claims ("**Other Insurer Payment Recovery**" or "***Reg 283* Indemnification**");
d. identifying and analyzing the nature and COGS that are provided to victims of auto accidents by health care providers ("**COGS Classification Analysis**");
e. preventing, detecting and supressing ("PDS") fraud ("**Fraud Prevention**");
f. compiling anonymized statistics for government agencies ("**Anonymous Stats Compilation**"); and
g. assessing underwriting risks and claims experience ("**Underwriting Risk Assessment**").

(***SEE:*** ***COMPENDIUM***, Tab 13, page 267; Affidavit #18, para. 29).

578. At paragraph 5 of the OCF-1, the ***SABS Applicant*** confirmed, by being the sole signatory, that he understood that "***'the insurer'***" may disclose "*this information*"[98] to the following persons or organizations. At paragraph 6, the ***SABS Applicant*** confirmed and understood that ***'the insurer'*** may pool this information with information from other sources and may analyze this information for the PDS fraud (limited purpose). At paragraph 7, the ***SABS Applicant*** understood by consenting, that you ["***'the insurer'***"] to collecting, using and disclosing ["**CUD**"] this information in the manner described above, but NO MORE of such information than is reasonably [objective] necessary to meet the legitimate purpose of such CUD. At paragraph 8, the ***SABS Applicant*** understood that if he had any questions about 'this consent' that he was free to consult his insurance company representative OR legal advisor before signing the ***OCF-1*** ('**Application**' under *Reg 283*). At paragraph 9, the ***SABS* Applicant** was 'also aware' that ***'the insurer'*** may be required or permitted by law to disclose 'this information' to others without his knowledge and consent. This section of the OCF-1 Application implicitly invoked section 7(3) of *PIPEDA*.

VOLUME #10(B)(IV): **TDHA** was [and is] the "**First Insurer**"
TDHA *also the* "First Collector"

579. As **TDHA** was the **First Insurer** by its receipt of the **Completed Application**, it was also the "**First Collector**" (***SEE:*** CBA Article, "Transfers of Information For Processing[99]", in the **Record Of Proceeding**).

580. While the ***SABS Applicant*** thought, by detrimentally relying upon the representations made by SNIC in written mailed correspondence, that he was delivering his **Completed Application** (the "**McLean Completed Application**") to **SNIC**, he, in fact, delivered the **McLean Completed Application**, through no arbitrariness or fault of his own, to **TDHA**.

581. The doctrine of contra proferentem is applicable herein in that all ambiguities are construed against the drafter and not the SABS Applicant (Mr. McLean).

582. 90 days from October 13, 2022, was January 10, 2023. **TDHA** had until January 10, 2023, to object to it being the **First Insurer** on a provisional basis (the "**First Provisional Insurer**"). If **TDHA** did not, it became the **First Insurer** on a permanent basis (the "First Permanent Insurer" or "First Insurer (Permanent")).

583. On January 11, 2023, **TDHA** became the First Insurer (Permanent) pursuant to Reg 283.

VOLUME #10(B)(V): OCF-2

(***SEE: COMPENDIUM***, Tab 8, page 54)

584. The **OCF-2** contained in the '*Accident Benefits Package'* also contained the fax number for **TDHA** in the " 'Return this Form To" header field' albeit unknown to the ***SABS Applicant*** at the time, and the Markham office address which was not the office address for **SNIC** as found the Tribunal in September 2024 and by reference to **SNIC**'s change of address in Spring/Summer of 2023.

VOLUME #10(B)(VI): October 2022: *SABS*, subsections 32(2) and (3)

[Central Processing Agency (**HCAI (SEE: COMPENDIUM, TAB 14, PAGE 271)**)]

585. At a time known in or around September or October 2022, **SNIC** included the particulars (pursuant to section 32(3) of the Schedule) involving the ***SABS Applicant*** to **HCAI (SEE: COMPENDIUM, TAB 14, PAGE 271)** but in reference to itself, it did NOT include its represented address of the Markham office.

586. Rather, it included the address of sixth floor, 304 The East Mall, District of Etobicoke, City of Toronto, Ontario (the "**East Mall Address**" or a "**TDHA Etobicoke Address**").

587. The aforementioned and latter definition was utilized by the **Applicant** as per his discovery that the **East Mall Address** was exclusively associated with **TDHA** by reference to public listings of YELP.

VOLUME #10(B)(VII): October 2022: SNIC Mailing Address in mailed documents to Applicant NOT the same as mailing address in HCAI

SNIC had not provided its mailing address in **HCAI (SEE: COMPENDIUM, TAB 14, PAGE 271)** but an address only ever associated with **TDHA**; and Fax number of **TDHA**

588. By mid October 2022, **SNIC** had not provided its mailing address in **HCAI (SEE: COMPENDIUM, TAB 14, PAGE 271)** but provided that of an address for **TDHA** as known to the public AND provided the fax number of **TDHA** for the ***OCF-1*** and **OCF-2**. *Neither* the mailing address in **HCAI (SEE: COMPENDIUM, TAB 14, PAGE 271)** was an address of **SNIC**, as represented in mailed documents to the **Applicant** and the OCF-1 (Application), in Markham, or even in its subsequently represented address in Burlington, *nor* the fax number of 416.774.3120 was an area code that resident jurisdictionally in Markham (or even in Burlington). [100]

VOLUME #10(B)(VIII): October 25, 2022, to Jan 11, 2023: No steps taken by First Insurer

(***SEE: COMPENDIUM***, Tab 8, page 55)

589. From October 25, 2022, to January 11, 2023, (and thereafter), the **Applicant** exclusively faxed his communications to the **TDHA** Fax Number presuming it was **SNIC**. Simply put, he continued to "submit" and "deliver" all communications to the **TDHA** Fax Number and **TDHA** continued to receive all documents.

590. The **Applicant** received, via mail, communications that purported to be from TD Insurance Meloche Monex (**SNIC**) (***SEE: COMPENDIUM***, tab 8, page 56; top right hand corner with the address of **SNIC**, 101 McNabb Street, 2nd Floor, Markham, Ontario, L3R 4H8, Telephone: 1.877.855.3767 [bolded] with the website of www.melochemonnex.com). While the correspondence purportedly from **SNIC** had a "return address" of **SNIC** with a telephone number, it did **not** list the 416.774.3120 fax number as a return fax number. Rather, with the benefit of now hindsight, the correspondence reference the same phone number above but with an extension for Ms. Nurse (claims adjuster at the time) and the fax of 416.774.3120 in contacting 'her' (***SEE:***

Monnex" with a "cc Kevin McLean" (whatever means in fact or at law)). At said time, said fax number (416.774.3120) was grounded by way of landline at the 4th floor of the building and premises situated at 3650 Victoria Park Avenue, District of North York, City of Toronto, Province of Ontario (the "**Spark Building**" or "**VP Building**") (defined herein as, the "**4th Floor VP Building Fax Number**"). By hindsight analysis, it appears that **SNIC**, after **TDHA**'s fax number received the **Completed Application** (***OCF-1***), was attempting to redirect the **Applicant** to the address in Markham by physical mail.

591. In the additional October 18, 2022, letter (***SEE: COMPENDIUM***, Tab 8, page 58), the return address is emphasizing mail without any reference to faxing the ***OCF-3*** to the fax number and the enclosed ***OCF-3*** did not have a pre-printed address in the "return this form to" (***SEE: COMPENDIUM***, Tab 8, page 59). It appears that this was an attempt to again have the **Applicant** send via mail to the Markham office and not fax to the **VP Building 4th Floor Fax Number**.

VOLUME #10(B)(IX): November 2022:

Delivery of the Disability Certificate (OCF-3)

592. On November 3, 2022, the ***OCF-3*** was faxed submitted and delivered to the **4th Floor VP Building Fax Number** by the **Applicant**'s medical office (***SEE: COMPENDIUM***, Tab 8, page 64).

VOLUME #10(B)(X): January 11, 2023

Expiry of the 90 day period under *Reg 283*

Seminal Date to Determine if **TDHA** was the First Insurer pursuant to Reg 283

593. The **Applicant** did not receive any notice in the A-143 from any insurance company l*et al*one **TDHA** or **SNIC** by January 10, 2023.

594. **TDHA** was the First Insurer (Permanent) on January 11, 2023.

VOLUME #10(B)(XI): January 12, 2023, to March 2023: Ongoing expenses submitted, SPAM Fax, SNIC (purportedly) request for consent for email communications, and refusal by SABS Applicant

VOLUME #10(B)(XI)(a): *Applicant continues to submit ongoing expenses*

595. From January 12, 2023, to March 2023, the **Applicant** continued to submit his **OCF-6** expenses and deliver documents to the **4th Floor VP Building Fax Number**.

VOLUME #10(B)(XI)(b): The Spam Fax in March 2023

(nota bene: similar to the August 2024 letter – responsive purportedly to the OCF-18 delivered via mail to **TDHA** and SNIC (and TDGIC for good measure)

596. In March 2023, the **Applicant** received, what he has defined as the "**Spam Fax**" wherein an unknown sender from an unknown fax number (not 416.774.3120) represented that it had received his recent correspondence and documents but had no record of his claim. It then input a box or chart in the document regarding which numbers to fax the same to for his claim with required particulars. Parenthetically, while the **Applicant** asked for a copy of the same from **SNIC** before the case conference, he received a document, albeit initially received by a health practitioner of his in August 2024, that was nearly identical to the same.

VOLUME #10(B)(XI)(c): SNIC requests to communicate via email

597. In March 2023, the **Applicant** also received mail from **SNIC** requesting to communicate via email and sought his consent.

VOLUME #10(B)(XI)(d): Applicant refuses consent via fax

598. The **Applicant** declined the same until compliance was affected involving, *inter alia*, his *PIPEDA* request.

VOLUME #10(B(XII): April 2023: Fraud *PIPEDA* Response

Re: *PIPEDA* response by undisclosed organization from New Brunswick to Applicant's 2023 *PIPEDA* access request of SNIC (only known insurance company to him in the TDI Group)

599. There was further corroborative evidence, undisputed no less before Vice Chair Morrisette, that **TDHA** was (and is) the **First Insurer** with respect to the *PIPEDA* request made by the **Applicant** of **SNIC**.

600. In the purported response to the *PIPEDA* request, the **Applicant** received mailed documents, via UPS (which was distinct from the previous mailed sent from **TDIMM**, which was by regular mail, with its TD Insurance insignia on the outside of the envelope), from a Ms. Smith from New Brunswick. With the benefit of hindsight analysis, **TDHA**, while an automotive insurer in Ontario, was not an auto-insurer in the private passenger market in Ontario, but it was in New Brunswick. Conversely, TDGIC, the "Fictitious Respondent", a non-underwriter in relation to the **Insurance Policy** and "non-**First Insurer**", was, in October 2022, was an insurer in the private passenger market in Ontario but not in New Brunswick.

VOLUME #10(B(XIII): Forged signature on OCF-18 (as Per A. Nurse) (***SEE:*** COMPENDIUM, Tab 14, page 270) ;

False Document and Uttering a False Document

601. In mid-May 2024, the **Applicant** received one page of the ***OCF-1***8 (Dhaliwal ***OCF-1***8) that had a forged signature (***SEE:*** COMPENDIUM, Tab 14, page 270) of the claim's advisor in Ms. Alisha-Anne Nurse ("as per A. Nurse"). Upon later discovery by the **Applicant**, in his residence, the ex-husband of his then common law spouse, had tendered an anniversary card to her (***SEE:*** ***COMPENDIUM***, Tab 11, page 196).

602. While Mr. Nieuwland represented, as a member in good standing on behalf of TDGIC (Fictitious Respondent), that an ex-husband of the individual policyholder was never involved in the *SABS* Claim or LAT Appeal (***SEE:*** COMPENDIUM, Tab 6), said document was signed, albeit a forgery and "false document", on April 20, 2023. The context matters herein. Said OCF-18 was the first tendered by the *SABS* **Applicant**, and unbeknownst to him, the address on the back end of HCAI (SEE: **COMPENDIUM**, TAB 14, PAGE 271), which he did not have access to the same as he is not a health practitioner, was that of **TDHA**'s former address at The East Mall Address (Etobicoke). Moreover, the representation made therein was that **SNIC** had approved approximately $2,000 in payment of benefits to his then physiotherapist but no payment was ever issued. This is corroborating evidence that **SNIC** was not the First Insurer. As TDGIC's fax number, as a finding by the Tribunal, to be 416.774.**3629** (***SEE:*** Tab 5, order of the Tribunal on February 13, 2024), then this leaves Primmum and **TDHA**.

VOLUME #10(B(XIV): Spring/Summer 2023: SNIC address changes
Re: Change of SNIC's address from Markham to Burlington

603. By sometime known in the Summer 2023, there was a change in address by **SNIC** from the Markham Office to the Burlington Office and from the 416.774.3120 fax number to the **905 Fax Number** (Burlington).

604. This appears to have been predicated upon the **Applicant**'s refusal to consent to email, discovery of the Spam Fax, *PIPEDA* requests and apparent response from a New Brunswick address *et al*.

605. The claims advisor changed from Ms. Nurse to Ms. Persaud.

VOLUME #10(B(XV): October 2023: E-Claims Workflow (***SEE:*** COMPENDIUM, Tab 9):
request of "TD Insurance – Ontario Accident Benefits Carol Persaud" (***SEE:*** Tab 9, page 65)

606. On or around October 11, 2023, the **Applicant** received an email, despite not consenting to email communication and not sending any alleged email, which referenced the following:

a. **Sender**: TD Insurance – Ontario Accident Benefits Carol Persaud
b. **Reference** [incorrect]: 035325790-02 [sic]
c. **Sent:** 2023-10-12, 9:21 a.m.
d. **eMsg Tracking** #: [contained therein]
e. **Comments**: further to your email [sic [none sent]], Please [sic] upload all documents through this secure site. Pleas see e-msg link which will easily allow you to transmit secure documents via the following formats PDF/TIFF/JPEG once we have them, we will be happy to confirm receipt. Please remember to add….

VOLUME #10(B(XV)(a): Who is "E-Claims Workflow")

607. E-Claims (***SEE:*** COMPENDIUM, Tab 9) Workflow is a Canadian company but not an insurance company. It is not even a broker or agent as those terms are defined under the *Insurance Act*. Mr. Ian Edger is the CEO of E-Claims (***SEE:*** COMPENDIUM, Tab 9) workflow.

608. Had the **Applicant** acceded to this purported requirement, **SNIC**, whom he thought was the sole insurance company responsible for responding and paying benefits (TD Claim #3 (not TD Claim #2 [***SEE:***)), direct collection would not have occurred from **SNIC** or the **First Insurer** in **TDHA**. In any event, any insurance company who engaged in this conduct would be in breach of the standardized language of the OCF-1.

609. This is further evidence that **SNIC** was NOT the First Insurer. Moreover, pursuant to cases like De Rosa, accident benefit files cannot be shared even between a husband and wife. The *SABS* **Applicant** did not know whose accident benefit claims that was it could have been his former spouse or BMW Financial Services Inc. In any event, the **Applicant** did not send any email and it is now unequivocal that the faxes to 416.774.3120 were causing an issue of which the **Applicant** was unaware as to why. The **Applicant** never sent any documents through this allegedly secure website which was E-Claims (***SEE:*** COMPENDIUM, Tab 9) Workflow. In light of the sender (TD Insurance – Ontario Accident Benefits – Carol Persaud) not having the correct exposure number, it is a shocking self-aggrandizing statement by E-Claims (***SEE:*** COMPENDIUM, Tab 9) Workflow, "Founded in 2004, we are a Toronto based team that is dedicated to the Insurance claims and Medical industries. Created before the *PIPEDA* legislation, we have been and continue to be leaders in vendor management and compliance. Our solutions automate and secure information flows between companies for both people and for automated systems."

610. However, it is this statement on its website that is most concerning when measured against the precedential statements of law in the Zurich Quintopoly involving *Reg 283* and there being only First Insurer (either by

arbitration decision) which is as follows:

> "Multi Vendor Workflow
>
> Converged communications and process management for a compliance based world. We help organize, assess, and secure **inter-company claims** and medical processes.

611. "Inter" means 'between'. This representation is also quite concerning in the context of Ontario laws including but not limited to the likes of: (i) Jia; (ii) Beasley; (iii) Dervisholli; (iv) Transamerica; and (v) *Reg 283*.

> "Converged Claims Management
>
> "A multi-vendor claims management platform with
> complete visibility from the office or mobile."

612. "**Converged**"[101] means to come together in one place. It was not until 14 months into the *SABS* Claim that any reference was made of **E-Claims (*SEE:* COMPENDIUM, Tab 9) Workflow**. Where the First Insurer is not disclosed to the **Applicant**, this would amount to a multitude of breaches of *SABS* and *Reg 283*. It is a complete and unequivocal breach of OCF-1 as **SNIC** represented by the standard form language that it was required to collect information directly from the *SABS* **Applicant**.

VOLUME #10(B(XV)(b)): Form AF-082 (***SEE:*** AF-082E (2023))

613. Moreover, if there are claims between companies, whether affiliated or not, those competing 'inter' (not 'intra') company claims must be resolved in accordance with *Reg 283* and *SABS*. Moreover, any insurance company that is entitled to indemnification based on a breach of *Reg 283* must submit a specific form by email which is intitutled as "Insurer Remittance Form for Disputes Between Insurers Arbitration Decisions". As such, naturally the likes of **SNIC**, TDGIC and **TDHA** would wish to avoid this oversight and regulatory requirement.

614. If the above evidence was not sufficient to prove on a balance of probabilities that **TDHA** was the First Insurer, and certainly not **SNIC**, the email above demonstrated unequivocally that **TDHA** did not want the *SABS* **Applicant** faxing to 416.774.3120. While the **Applicant** had a separate fax number for **SNIC** at its determined and found address of **SNIC** Burlington, it was regularly blocked or could not receive faxes. The obvious answer as to why the 416.774.3120 fax number would receive faxes but **SNIC** would not or block the same is a smaller workforce for **TDHA** in Ontario as it has been out of the private passenger market by way of issuing new policies since on or around 2020. This does not mean that **TDHA** does not have to still service its existing clients and customers but certainly it would not need as much of a workforce when **TDHA** was not issuing new private passenger automotive insurance policies.

VOLUME #10(B)(XVI): *December 24, 2023: Applicant files LAT Appeal and serves 416.774.3120; and onward*

April and May 2024: the jurisdictional boundaries issue raised

615. On December 24, 2023, the Applicant filed the LAT Appeal and then served the fax number of 416.774.3120.

616. On April 14, 2024, the **Applicant** swore Affidavit #17 (***SEE:*** ***COMPENDIUM***, Tab 12, pages 197 to 254) which provided, inter alia, a detailed pieces of evidence as to why the **Applicant** had never consented to the breaches of *PIPEDA* as were known to him involving **SNIC** and TDGIC. At the time, the **Applicant** was unaware that TDGIC's fax number was listed in the orders of the Tribunal commencing in February 2024 (***SEE:*** ***COMPENDIUM***, Tab 5, pages 20 to 21).

617. On April 15, 2024, the **Applicant** served and filed Affidavit #18 that provided his evidence regarding the substantial unfairness that he alleged was being conducted in relation to the LAT Proceeding (***SEE: COMPENDIUM***, Tab 13, pages 255 to 261).

618. On April 24, 2024, the **Applicant** filed Affidavit #19, which provided some of the breaches of procedural fairness that he had alleged and particularized (***SEE: COMPENDIUM***, Tab 20, page 320). The **Applicant** also provided his belief, based on research, as to whether Mr. Karat, a non-licensee (who claimed an affiliation with the LSUC [sic])) as to whether a claims adjuster could sign a responsive pleading pursuant to the LSO By-Law 7.1, section 6. The analysis led to the uncontroverted position that a claims adjuster may or may not be a paralegal or lawyer, and whether the issue of CAT Impairment was in the pleadings. Paralegals are prohibited from acting in any capacity, on their own, when CAT Impairment is at issue (***SEE: COMPENDIUM***, Tab 20, page 326).

VOLUME #10(B)(XVII): The shocking misrepresentations by Mr. Nieuwland on behalf of TDGIC at the Nullity Case Conference (May 3, 2024)

619. On May 3, 2024, the day after a case conference, and hearings that were never properly heard, with **SNIC not** filing a case conference brief, the **Applicant** served and filed Affidavit #21, which provided evidence and cited decisions of the OPCC involving the "interplay between OPCC and *SABS*" (i.e. jurisdictional boundaries between two administrative bodies (***SEE: COMPENDIUM***, Tab 14, pages 264, 265, 266 and 267).

620. The Applicant also provided information from various websites including the OSFI and Canadian Gazettes as denoted therein.

621. On May 10, 2024, the ***SABS Applicant*** provided the evidence in relation to his NOM #8 which was affidavit #22 (***SEE: COMPENDIUM***, Tab 15, pages 273 to 282), On May 11, 2024, the ***SABS Applicant*** served and filed Affidavit #23, providing evidence in relation to, *inter alia*, the Motor Vehicle Liability Card ('pink document') (***SEE: COMPENDIUM***, Tab 16, page 284).

622. On May 15, 2024, the ***SABS Applicant*** filed and served Affidavit #24 (***SEE: COMPENDIUM***, Tab 17, pages 286 to 303), which provided evidence from various government websites involving the trademarks and corporate registries that make up "TD Insurance Meloche Monnex". "TD Insurance" is one trademark that is owed by The TD Bank (***SEE: COMPENDIUM***, Tab 17, page 293) and "Meloche Monnex" (***SEE: COMPENDIUM***, Tab 17, page 297) is one trademark owned by Meloche Monnex Inc., which is not to be confused with Meloche Monnex Financial Services Inc. Affidavit #24 provided further uncontroverted evidence that the "TD Insurance Meloche Monnex" program (the "**TDIMM Program**") included specifically designed programs for: (i) professionals and alumni (the **SNIC** product under the **TDIMM Program**); and (ii) employer groups (Primmum) (***SEE: COMPENDIUM***, Tab 17, page 301; 302).

VOLUME #10(B(XVII)(a) : TDGIC does not oppose NOM #8

623. On June 6, 2024, Mr. Nieuwland on behalf of TDGIC exclusively confirmed in writing that TDGIC would NOT oppose the relief sought in NOM #8.

624. Contrary to VCM's findings thereafter, unsupported by the evidence in the **Record Of Proceeding** from the **ROP Temporal Period**, TDGIC did NOT consent but did NOT oppose.

was served with the ***JRPA*** **Application** is contained in Affidavit #16 (February 14, 2025) (***SEE:*** COMPENDIUM, Tab 60).

VOLUME #10(B)(XVIII): June 11, 2024 : Status Certificates

626. On June 11, 2024, the **Applicant** served and filed Affidavit #27 wherein he swore that he had applied and paid the requisite fees to the FSRA to obtain status certificates for **SNIC** and the Fictitious Respondent (***SEE: COMPENDIUM***, Tab 18, page 307, paragraph five (5)).

627. At the said time, no lawyer licensee had filed a DOR on behalf of **SNIC** (***SEE: COMPENDIUM***, Tab 18, page 307, paragraphs 9 and 10). The **Applicant** swore that he never consented to TDGIC having access to his AB file, which he thought at the time was with **SNIC** but in fact was with **TDHA** at least by delivery and sending it to **TDHA** and **TDHA** *first* receiving the same, and he never consented to TDGIC substituting itself as the sole respondent party, and then resiling and recoiling from its position of non-opposition to **SNIC** being the sole respondent party (***SEE: COMPENDIUM***, Tab 18, page 308). It was not a matter of consent between the ***SABS Applicant*** and TDGIC, and certainly not consent between the **Applicant**, TDGIC and **SNIC** but TDGIC admitting, at least tacitly, that it was not the sole respondent party or a party at all. On July 5, 2024, the **Applicant** filed his Affidavit #19 and then filed his NOM #13. The decisions and orders in NOM #13 are not being challenged herein.

VOLUME #10(B(XIX): July 31, 2024: **TDHA** DISCOVERY: FIRST INSURER (***SEE: COMPENDIUM***, Tab 10, pages 70 to 177

(*nota bene*: the **VCM Decision** was released on September 13, 2024, and neither **SNIC** nor **TDHA** sought to provide any contradictory evidence to the same within the 44 days)

628. After finding independent evidence that the fax number of 416.774.3120 belonged to **TDHA**, the **Applicant** swore affidavit #30 on July 31, 2024 (***SEE: COMPENDIUM***, Tab 10, page 73, affidavit 30, paragraph #11, paragraph #13. The **Applicant** also moved promptly with serving and filing his NOM #14 on **SNIC** and **TDHA**. Contrary to the Reconsideration Decision, NOM #14 did not merely seek the remedy of adding **TDHA** as a party but it also sought: (i) declarations of law; (ii) adding causes of action; (iii) amendments of pleadings; and (iv) others (***SEE: COMPENDIUM***, Tab 25, Reconsideration Submissions). NOM #14 was in part titled, "in a potential motion, subject to the **First Insurer** as known to the licensed insurer with the 416 Fax Number and the East Mall Address. The **Applicant** swore that he believed that whoever provided the 416 Fax Number in the mailed document purporting to be the fax number of **SNIC** at the **SNIC** Markham Office, made a mistake or misrepresented (perhaps innocently) it as belonging to **SNIC** could not have had a 416 area code fax number (***SEE: COMPENDIUM***, Tab 10, page 73, paragraphs 13 and 14 of said affidavit #30). The **Applicant** swore evidence that the only public indication as to who controlled, owned and operated the 416 Fax Number was **TDHA** (***SEE: COMPENDIUM***, Tab 10, page 73, paragraph 16). Further, the **Applicant** swore evidence that the only indication of a tenant at the 6th floor of 304 The East Mall, as that was the address input in **HCAI (SEE: COMPENDIUM, TAB 14, PAGE 271)** (the "CPA"), was **TDHA** (***SEE: COMPENDIUM***, Tab 10, page 73-75, paragraph 16- 20 (with images)). At paragraph 20 therein, the **Applicant** swore that he believed that if **TDHA** disputed that the 416 Fax Number was its fax number, it would have denied the same. The **Applicant** had not had any denials at the time and none were made before the **VCM Decision**. The **Applicant** turned his mind and openly swore evidence as to whether it was better to add **TDHA** as a party to the LAT Proceeding or commence a separate LAT Proceeding against **TDHA** for similar relief (***SEE: COMPENDIUM***, Tab 10, page 76, paragraph 22). The **Applicant** swore evidence that he believed that Mr. Nieuwland knew [NTD: include the line from Jia] that the 416 Fax Number was that of **TDHA** (***SEE: COMPENDIUM***, Tab 10, page 76, paragraph 24). The **Applicant** further provided sworn evidence on belief as

also why they utilized TDGIC as opposed to **TDHA** (***SEE:*** ***COMPENDIUM***, Tab 10, paragraph 25). The **Applicant** swore further evidence that he believed that not only did **TDHA** first receive the **Completed Application** making it the **First Insurer** but it also, on account of the East Mall Address, received all of the ***OCF-1***8's via **HCAI (SEE: COMPENDIUM, TAB 14, PAGE 271)** (***SEE:*** ***COMPENDIUM***, Tab 10, page 76, paragraph 26 of Affidavit #30). The **Applicant** also provided his consent to **TDHA** to communicate with him via email (***SEE:*** ***COMPENDIUM***, Tab 10, *page* 77). The **Applicant** revisited, by evidence, the Spam Faxes and his belief that the Spam Faxes (March 2023) (***SEE:*** COMPENDIUM, Tab 15, page 274) were at the instruction or advice of **TDHA** to **SNIC** to ensure that the **Applicant** did not send any further faxes to the 416 fax Number (***SEE:*** ***COMPENDIUM***, Tab 10, *page* 77). The **Applicant** provided further evidence that he remained stunned that an insurance company would claim, at the time, that it would have no record of his claim number, which was TD Claim #3 (***SEE:*** ***COMPENDIUM***, Tab 10 *page* 77, paragraph 27). The **Applicant** swore further that he believed that **TDHA** refused to respond to the **Applicant**, despite being the **First Insurer**, in the hopes that the **Applicant** would never discover that the 416 Fax Number [416.774.3120] was its fax number at the Material Time along with the East Mall Address being its former branch office [not that of **SNIC**] (***SEE:*** ***COMPENDIUM***, Tab 10, *page* 77, paragraph 28).

VOLUME #10(B(XX): Exhibits for Affidavit #30

629. The seminal exhibits in affidavit #30 are denoted in the **Applicant**'s OC Index (***SEE:*** supra).

VOLUME #10(B(XXI): Potentially two respondent parties in this LAT Proceeding:

(i) one solely for costs from January 23, 2024 to date of order of this Honourable Court; and

(ii) one as First Insurer and costs from the date of order until conclusion of the LAT Appeal (***SEE:*** COMPENDIUM, Tab 6)

630. In relation to the two potential respondent parties in the **LAT Proceeding**, the ***SABS Applicant*** provided his evidence in relation to the mechanics of the same with **TDHA** and **SNIC** being respondent parties but with **TDHA** as the **First Insurer** in relation to liability and **SNIC** being the respondent solely for costs (***SEE:*** ***COMPENDIUM***, Tab 10, *page* 79 and 80, paragraph 41 to 46).

VOLUME #10(B)(XXII): Uncontroverted evidence (on belief)

631. The **Applicant** again swore under oath that with the absence of any response from **TDHA** and **SNIC** that he then believed that it was only **TDHA** that received (got possession) at first instance of his **Completed Application** including his OCF-2, OCF-3, OCF-6, and OCF-18's (***SEE:*** ***COMPENDIUM***, Tab 10, *page* 90, paragraph 47).

VOLUME #10(B)(XXIII): September 28, 2024

632. On September 28, 2024, the **Applicant** swore affidavit #38 which provided further evidence, *inter alia*, for his section 21.1 of the *SPPA* motion along and some of what he alleged to be the "real unfairness" in the LAT Proceeding (***SEE:*** ***COMPENDIUM***, Tab 11, *page*s 178 to 196).

633. The **Applicant** also provided evidence in relation to case manager Mr. Grant's representations as to how he apparently arrived at TDGIC being named as a party on the file (***SEE:*** ***COMPENDIUM***, Tab 11, *page* 192, paragraph 40; and ***COMPENDIUM***, Tab 11, *page* 195). The **Applicant**'s NOM #8 motion followed and was successful, and it was not by consent as **VCM** found it was albeit incorrectly. Despite the findings made by **VCM** absent any supporting evidence so referenced, the **Applicant** thanked the Tribunal for providing

paragraph 46).

VOLUME #10(B(XXIV): Reconsideration Decision, ***JRPA Application***, Factum, Application Record, "Certificate Of Perfection" (***SEE:*** COMPENDIUM, Tab 39), and Requisitions
Requisition for Form 68(B)[102], Requisition for urgent (***SEE:*** COMPENDIUM, Tab 36 (Affidavit #2) and 42 (Requisition)) hearing *et al*

634. The timing of the above is well known to this Court as it is the **Record Of Proceeding** with the ONSC Divisional Court. The **Reconsideration Decision** was issued on October 16, 2024, and the **Applicant** filed his ***JRPA Application*** on November 15, 2024. The **Applicant** filed his Factum on December 10, 2024, and then following with his Application Record on December 12, 2024. The **Applicant** filed and served the "**Certificate Of Perfection**" (***SEE:*** COMPENDIUM, Tab 39) and Affidavit of Service ("Affidavit #1") (***SEE:*** COMPENDIUM, Tab 40)) on December 13, 2024. The **Applicant** then filed Requisition #1 on December 24, 2024, which sought a copy of the presumed issued Form 68(B). The **Applicant** filed his Affidavit #2 in support of his section 6(2) of the *JRPA* request which was filed by requisition on January 2, 2024.

The *JRPA* Divisional Court Practice Direction: Certificate of Perfection

635. From the *JRPA* Guide Divisional Court [which is a '**Practice Direction'**] it states:

> "*Once* the "Certificate Of Perfection" (***SEE:*** COMPENDIUM, Tab 39) has been filed [not necessarily served or delivered] at the Court, the registrar will place the application on a list for hearing and send the "Notice of Listing for Hearing" (Form 68B) to the parties."

636. Form and "*forms matter*". "Once" means: as soon as; when.

Prescribed Form: Form 68(B)

637. **Form 68(B)** states the following:

> "FORM 68B
> *Courts of Justice Act*
> NOTICE OF LISTING FOR HEARING (JUDICIAL REVIEW)
> (General heading)
>
> NOTICE OF LISTING FOR HEARING
>
> THIS APPLICATION FOR JUDICIAL REVIEW HAS BEEN PERFECTED and has been listed for hearing at (place). You may ascertain from **my office** the *approximate date* of hearing."

638. The **Applicant** has remained deprived of this ability since December 13, 2024, to even an "approximate date" for the hearing proper of the ***JRPA*** **Application**. As such, he brought forward another requisition (***SEE:*** Requisition #2) on January 2, 2025 for an urgent hearing. Moreover, the aggregated facts above led to him bringing forward NOM #1 which was not opposed by the Tribunal, and then NOM #2 with a "Motion For Judgment".

VOLUME #11: ORDERS SOUGHT

639. For ease of reference, they are the Five Orders from NOM #14 and #15 which are and remain:

i. ***Order #1***: An Order, Declaration, determination and/or finding that TD Home And Auto Insurance Company, FSRA registration number 1063 ("**TDHA**" or "**TDHAIC**") was the **First Insurer** to receive, pursuant to *Reg 283*, the Appellant's fax delivered **Completed Application** (***SEE:*** *Reg 283*, s 0. 1) to the fax number, provided to him by **SNIC** as a return address [sic] for **SNIC**, of 416-774-3120 (the "**416 Fax Number**") on October 13, 2022 [the "**First Insurer Order**"];

ii. ***Order #2***: An Order, Declaration, determination or finding the physical address, which is apparently denoted as a branch office of **SNIC** in **HCAI (SEE: COMPENDIUM, TAB 14, PAGE 271)**, municipally known as 304 The East Mall, Floor 6, Etobicoke, Toronto, Ontario, M9B 6B7 (the "**Etobicoke East Mall Address**") was or is an address or branch office of **TDHA** and not **SNIC** [the "**HCAI (SEE: COMPENDIUM, TAB 14, PAGE 271) Office Order**"]

iii. ***Order #3***: An Order adding **TDHA** as a respondent party to this LAT proceeding therein [the "**TDHA Party Addition Order**" and "**TDHA Cause Of Action Order**"]; and

iv. ***Order #4***: An Order requiring **TDHA**, should it wish to oppose the relief sought in the **Appellant's Appeal**, file and serve a **Response** to the **Appellant's Appeal** within 14 days of the date of the orders herein; and

v. "Order #5": A preliminary finding, determination, or order, that the fax number 416-774-3120 was a landline phone number utilized as a fax number on the 4th floor of the building situated at the premises municipally known as 3650 Victoria Park Avenue, North York, Toronto, Ontario, M2H 3P7.

Compendium, Tab 61: DRAFT ORDER (FEBRUARY 14, 2025)

AFTER FORMAL LAT ADMISSION (REGARDING STILL ATTEMPTING TO DETERMINE HOW BEST TO COMPILE RECORD OF PROCEEDING) AND WITHOUT ANY RESISTANCE BY RESPONDING PARTIES TO NOM #2 (NO DENIAL OF A COI INVOLVING SHORE J.)

640. The **Applicant** also seeks the following orders herein as per his NOM #2, to the extent that any of the issues involving the merits are not finally disposed of by way of reference to the Draft Order for NOM #2, filed and stamped on February 17, 2025.

All of which is respectfully submitted on February 17, 2025, to this ONSC Divisional Court:

Mr. Kevin A. McLean (B.A., J.D., CIM)

ENDNOTES

[1]https://canlii.ca/t/ggfkq#par165
[2]*Yatar v. TD Insurance Meloche Monnex*, 2024 SCC 8 (CanLII), at para 46, <https://canlii.ca/t/k3gs5#par46>
[3]Objective person test
[4]Elkins v. Van Wissen, 2023 ONCA 789 (CanLII), <https://canlii.ca/t/k1dgk ["Elkins"]
[5] Elkins v. Van Wissen, 2023 ONCA 789 (CanLII), <https://canlii.ca/t/k1dgk ["Elkins"]
[6]definition of "preliminary": denoting an action or event preceding or done in preparation for something fuller or more important.
[7]https://www.ontariocourts.ca/scj/divisional-court/sittings/

[8]The application is restricted even further to those documents that qualify as records of tribunal proceedings. The *SPPA* contains a list of "records" for the purposes of hearings by tribunals covered by that Act. This list provides a ready definition of the documents to which the present application applies ("Adjudicative Records"). These include:

(a) any application, complaint, reference or other document, if any, by which the proceeding was commenced;
(b) the notice of any hearing;
(c) any interlocutory orders made by the tribunal;
(d) all documentary evidence filed with the tribunal, subject to any limitation expressly imposed by any other Act on the extent to or the purposes for which any such documents may be used in evidence in any proceeding;
(e) the transcript, if any, of the oral evidence given at the hearing; and
(f) the decision of the tribunal and the reasons therefor, where reasons have been given.

[9]See: **Applicant**'s Factum, paragraph 58 and 59, "The case of *Fatemea Rezaiezadeh v. State Farm Mutual Automobile Insurance Company*, 2016 ONFSCDRS 59 ("*Reza*")[9] stands for the proposition below wherein an arbitrator found the following: "The Appellant concedes there is no explicit procedure in…the *Statutory Powers Procedure Act*, R.S.O. 1990, c. S.22, as amended, to permit a party to continue a proceeding against a non-party." While *Reza* was a decision before the FSCO, the Legislature has not amended the *SPPA* in any manner that would change that precedential statement of law. The **Applicant** will also be deprived of his rights under section 19 of the *SPPA* in relation to enforcement of a monetary order." [59] In *Reza*, the following excerpt has extreme relevance to why this ***JRPA Proceeding*** must proceed expediently before a single justice and, if it fails, then before the ONSC (Div. Court): "The Appellant's apparent concern is that if she is successful on appeal and obtains a monetary award, if the Respondent does not pay, whose property does the sheriff seize? The Respondent submits that Certas would respond to any "valid" judgment by cutting a cheque because of its contractual obligation with State Farm. This did not seem to reassure the Appellant."
[10]https://www.newswire.ca/news-releases/state-farm-brand-in-canada-to-become-desjardins-insurance-659112793.html#:~:text=State%20Farm%20brand%20in%20Canada%20to%20become%20Desjardins%20Insurance&text=Search%20When%20typing%20in%20this,automatically%20updated%20as%20you%20type.
[11]https://www.newswire.ca/news-releases/desjardins-group-completes-the-acquisition-of-state-farms-canadian-operations-businesses-516296241.html
[12]https://www.canadianunderwriter.ca/insurance/ontario-auto-one-factor-in-state-farms-sale-to-desjardins-industry-ceo-suggests-1002876378/#:~:text=The%20Ontario%20government's%20stance%20on,Crystal%20Ball%20conference%20in%20Toronto.
[13]Campbell has said in Jan 2013, at the CIP Society luncheon, that the minority ruling Liberals and the New Democratic Party are "contemplating arbitrary mandated price cuts in an industry that's in a free market and is already losing money." That was before the Liberals, at the behest of the NDP, announced they would mandate a 15% reduction, over two years, in private passenger auto premiums.
[14]***DIFFERENCES BETWEEN A SINGLE MOTION JUSTICE OF THE ONSC (IN DIVISIONAL COURT ROTATION) VS. SINGLE MOTION JUSTICE ON A RULE 37.12 AND RULE 37.13(2)(A) ARE NOT MERELY COSMETIC BUT UNDERLYING CONTEXT AND CHRONOLOGY ARE IMPORTANT FOR HOW WE ARRIVED AT SAID STAGE***
[15]While Mr. Borton did not file an affidavit saying that he had lost his home, it seems obvious to me that Mr. Borton is suffering economically and that the uncertainty of a hearing date in the Divisional Court creates a real risk of there being a failure of justice. The prejudice to Mr. Borton grows with each passing day; prejudice he can only mitigate by capitulating or by finding an available day for argument.". [12] In the circumstances of this case, I am satisfied that Mr. Borton has met the test articulated in s. 6(2) of the *JRPA*. The required leave is given: *Apotex Inc. v. Ontario Minister of Health and Long Term Care,* [2006] O.J. No. 5141 (S.C.J.) at paras. 4 and 5; *Griffin v. Ontario (Minister of Transportation)*, [2004] O.J. No. 54 (S.C.J.). [13] I turn to the merits of the application."
[16]While a 1997 decision, this principle has been codified since 2006 in the *Legislation Act*, section 64.
[17]. Other tribunals, like the HRTO, are not *carte blanche* subject to the *SPPA* but the *SPPA* applies subject to it not being inconsistent with the HR Code, which is paramount to all other provincial legislation and curiously contains a standard of review of "patent unreasonableness", and the HRTO Common *Rule*s and Specific *Rule*s.
[18]Including the arbitration decisions which were required to become publicly issued after 2010

[19](i) judicial review proceedings are intended to be summary proceedings; (ii) the **Applicant** pleaded the material facts and sought the relevant prayers for relief pursuant to section 6(2) of the *JRPA*; (iii) he perfected the ***JRPA* Application** on December 13, 2024; (iv) requisitioned the Registrar for a Form 68(B) on December 24, 2024; (v) requisitioned the Registrar for an urgent (***SEE:*** COMPENDIUM, Tab 36 (Affidavit #2) and 42 (Requisition)) hearing before a single justice of the ONSC on January 2, 2025; (vi) the **Remaining Respondents** failed to file responsive facta and application records on January 13, 2025; (viii) none of the **Remaining Respondents** have opposed NOM #1 and NOM #2; (ix) the **Applicant**'s evidence remains uncontroverted at the Tribunal level in the initial hearing and reconsideration hearing, and herein with respect to leading evidence with respect to the continued urgency of this JRPA Application
[20](see: Compendium, Tab 38, pages 632 to 697)
[21]Not one that is necessarily taken but merely the right, privilege or power
[22]Specifically, how can this Divisional Court further clarify and shape the law with respect to the obligations of Provisional First Insurer and Permanent First Insurers, and the sources of their duties?

1. More specifically, as the SCC found in 2014 that parties to a commercial contract are bound by the implied duty of good faith, how do the duties of First Insurers differ, who are not bound by a 'contract of insurance', differ from those that are bound by a contract of insurance (i.e. underwriters of the same) (if at all)?
2. As Ontario does not have any statute that exempts Ontario non-public bodies from *PIPEDA*, how does *PIPEDA*, the binding jurisprudence in Beasley, Dervisholli, Transamerica, and Jia, shape the duties of First Insurers with respect to any and all personal information ("PII") and personal health information ("PHI") that they receive either at first instance or by way of disclosure from a First Insurer? More specifically, should insurance companies who receive PII and PHI at first instance under an OCF-1 (**Completed Application** under *Reg 283*) be found at law to be data fiduciaries ("Data Fiduciaries") irrespective of whatever the volume, amount and types of PII and PHI that they have received, hold or have held, accessed and/or disclosed?

[23]*David Bull Laboratories (Canada) Inc. v. Pharmacia Inc*., 1994 CanLII 3529 (FCA) (F.C.A.); *Rosianu v. Western Logistics Inc*., 2021 FCA 241 at paras. 23, 27-30.
[24] (*Caplan v. Atas*, 2021 ONSC 670, the Honourable Justice DL Corbett paragraph 106).
[25]The ONSC Divisional Court does NOT have any practice direction on scheduling motions.
[26]*M.E. v. Ontario*, 2021 ONCA 718: As per the endnote in this subheading, the plaintiff (appellant at the ONSC Divisional Court and appellant at the ONCA) had a rather baseless claim marked by ludicrous, absurd and baseless attacks against any and everyone. She was seeking criminal convictions against various government bodies and employees *in absentia*. However, the relief sought to add parties, which included six lawyers no less, which was dismissed by The Honourable Justice Vella of the ONSC, sitting as a case management judge dismissed the motion on grounds of abuse of process, frivolous, vexatious *et al* pursuant to Rule 2.01 of the Civil Rules. The ONCA, with a three-judge panel as Justice Simmons of the ONCA was concerned that while the Divisional Court's decisions and orders were final, the motions judge's (as the ONCA referred to Justice Vella, although more precisely a case management judge) order may not have been interlocutory. The corollary of the same was that the M.E. would not have required leave to appeal the order of Justice Vella but rather would have been able to bring an appeal without leave. As Simmon J.A. could not determine the same as a single justice of the ONCA, she adjourned the leave motion to the ONCA to ME, to a three-justice panel. In 2021, the ONCA found as follows: [1] This matter has a long procedural history. For present purposes, it is sufficient to focus on the motion brought by M.E. on October 9, 2020, wherein she sought to add additional causes of action and new parties to the action. The motion judge dismissed the motion as frivolous, vexatious, and an abuse of process under r. 2.1.01: Rules of Civil Procedure, R.R.O. 1990, Reg. 194. M.E. then sought leave to appeal the motion judge's order to the Divisional Court. A panel of the Divisional Court dismissed that motion.[2] On May 17, 2021, M.E. applied to this court for leave to appeal the Divisional Court's order. The Registrar has repeatedly informed her that her materials do not comply with the Rules and practice directions. On July 5, 2021, M.E. filed the underlying" Notice of Motion for Non-Compliance." Simmons J.A. heard the motion on July 27, 2021. She adjourned the matter to a full panel, noting that while the Divisional Court's order was final, the motion judge's order concerned a motion to add causes of action, which may not be interlocutory. As a single judge, Simmons J.A. could not determine this issue. [3] We conclude that M.E. was seeking to add new causes of action. An order refusing leave to amend pleadings to plead a new cause of action is final: *Atlas Construction Inc. v. Brownstones Ltd.* (1996), 46 C.P.C. (3d) 67 (Ont. Gen. Div.). So is an order dismissing a motion to add a party, which M.E. also appears to have been trying to do: *Bryson v. Kerr* (1976), 1976 CanLII 867 (ON SC), 13 O.R. (2d) 672 (Ont. Div. Ct.). Accordingly, leave to appeal is not required and an appeal lies as of right to the Court of Appeal: *Courts of Justice Act*, R.S.O. 1990, c. C.43, s. 6(1)(b).[4] We order that the appeal of the motion judge's order of October 9, 2020, may proceed in this court. Costs of this motion are reserved to the panel hearing the appeal."
[27]*Atlas Construction Inc. v. Brownstones Ltd.* (1996), 46 C.P.C. (3d) 67 (Ont. Gen. Div.)
[28]H2P 1B6
[29]Nota bene: the closest link was paragraph four (4) therein
[30]Prematurity Argued at the Hearing Proper of the Judicial Review Application of the Mansuri Brothers; Three Judge Panel; Error of Law on interlocutory decision (VC McGee) – Potentially – but still premature as it was not a final order or final decision; respondent insurance company allowed to argue merits but NOT Tribunal; if premature – merits are not decided; the key point: if final decision (i.e. refusing to add a third party, refusing to add a cause of action, or refusing to add amendments to pleadings, a substantive point of law on a summary motion (i.e. that would dispose of the merits of the case), or a decision that would allow a further defence of issue estoppel or res judicata);

[31](1) "**Adequate**" is defined as: lawfully and reasonably sufficient.[31] This connotes an objective person test by the word "reasonably". "**Sufficient**" is defined as: *enough* to meet the needs of a situation or a proposed end. "**Lawfully**" is defined as: being in harmony with the law; (ii) "**Alternative**" is defined as: "offering or expressing a choice"; and "**Available**" means "present or ready for immediate use".

[32]The general common law rule is that a decision-maker is functus officio when they make a final decision in respect of the matter before it": *Chandler v. Alberta Association of Architects*, 1989 CanLII 41 (SCC), [1989] 2 S.C.R. 848, at p. 861. In Chandler, the Supreme Court held that: "As a general rule, once a tribunal has reached a final decision in respect to the matter that is before it in accordance with its enabling statute, that decision cannot be revisited because the tribunal has changed its mind, made an error within jurisdiction or because there has been a change of circumstances. It can only do so if authorized by statute or if there has been a slip or error within [certain] exceptions…." Ergo, while it is always prudent and responsible, like the **Applicant** did, to bring forth a reconsideration motion, **VCM** was functus officio when she executed the **VCM** Decision (see: Compendium, Tab 2) .

[33]It, of course, does not mean that an **Applicant** for judicial review will necessarily be successful. A final decision or order may be predicated on a pure finding of fact or a question of mixed fact and law without an extricable legal issue which means that the standard of review would be reasonableness. However, that is a hypothetical that need not be canvassed herein.

[34]**Compendium**, Tab 2, pages 1 to 11

[35]As those final decisions and orders relate to issues and general questions of central importance to the public, legal profession, "implicates professional responsibility and the legal profession in Ontario", and involve the jurisdiction of the Tribunal as it relates to other administrative tribunals by way of boundaries, and along with some persistent discord within the tribunal in its decision-making processes and consultation, the standard of review is correctness. Herein, there was no competing evidence from the respondent insurance companies in **SNIC** and TDHA in NOM #14 and NOM #15, there was no evidence to weigh by **VCM** and she did not purport to weight any evidence. The Tribunal cannot 'save the day' even if it so desired. It is most restricted in its ability to make any arguments as it is a quasi-judicial tribunal, unlike the former FSCO which occupied a variety of roles. This court is tasked with determining whether the moving party, who had said relief refusal, demonstrated on a balance of probabilities (more likely than not to the approximate quantum of 51% which requires clear, cogent and convincing evidence) that he was entitled to the relief sought. Where the successful responding parties did not, ironically, provide any evidence and submissions to the tribunal at first instance or on reconsideration, pursuant to the **Keeprite Standard**, they are prohibited from supplementing this ***JRPA Proceeding*** record with any further evidence. In that instance, this court is required to disregard any such filings or contents therein that contravene the Keeprite Standard.

[36]Also, depending on what transpires on Monday, January 13, 2025, a new precedent may arise for those tribunals, which exercise or purport to exercise a statutory power of decision pursuant to section 1 of the *SPPA* with the same definition under s. 1 of the JRPA, that fail to file the ROP on a forthwith basis, which should prohibit their participation or further limits the same.

[37]The *sine qua non* for why this ***JRPA Application*** must be successful is that the orders and decisions that are being reviewed are final orders and those final orders or determinations involve errors of law. Therefore, there is an automatic right of judicial review and on the standard of correctness. As such, this Court is required to look at this matter *ab initio* and may substitute or confirm **VCM**'s decisions, determinations and orders. In relation to orders #1 to #3, **VCM** failed to even address the same. Therefore, they are questions of law. As such, there is nothing to uphold *per se* as nothing was decided in relation to those orders sought. Where the rule of law is at issue in a ***JRPA Proceeding***, not only is the standard of review correctness, but the ROL and its principles operate as full overrides or exceptions to the **Non-Justiciability Doctrines** (see: definition, *supra* and *infra*).

[38]definition of "preliminary": denoting an action or event preceding or done in preparation for something fuller or more important.

[39](*Ontario College of Art v. Ontario (Human Rights Commission)* (1993), 1993 CanLII 3430 (ON SCDC), 11 O.R. (3d) 798 (Div. Ct.) at pp. 2-3; *Howe v. Institute of Chartered Accountants of Ontario* (1994), 1994 CanLII 3360 (ON CA), 19 O.R. (3d) 483 (C.A.) at 490; *Gage v. Ontario (Attorney General)* (1992), 1992 CanLII 8517 (ON SCDC), 90 D.L.R. (4th) 537 (Div. Ct.) at 553).

[40]This was against the backdrop of the Fictitious Respondent being inserted into the LAT Proceeding absent any legal bases or jurisdiction. While the **Applicant** was entitled to vital treatments and income replacement, his first three motions were declined to be decided by Vice Chair Lake with the Fictitious Respondent as the sole respondent party. When then measured against **SNIC** being the only of the three-respondent insurance to file a pleading, albeit invalid, yet Mr. Nieuwland filing a DOR on behalf of TDGIC, whilst using a fictitious legal assistant for months, Vice Chair Lake cited an old LAT Rule in relation to what constituted a respondent in the **Applicant**'s NOM #5. His NOM #4 and NOM #6 were to be heard at the case conference while he continued to object to TDGIC being the sole respondent party. This did not occur at the case conference whilst **SNIC** failed to file a case conference brief. As such, the case conference was not only futile but contrary to the *SPPA* as only parties can be directed to a case conference.

[41]*David Bull Laboratories (Canada) Inc. v. Pharmacia Inc*., 1994 CanLII 3529 (FCA) (F.C.A.); *Rosianu v. Western Logistics Inc*., 2021 FCA 241 at paras. 23, 27-30.

[42]Balance of probabilities standard: is it more likely than not that there will be a failure of justice by the delay.

[43]Mr. Nieuwland's recent email to this ONSC (Divisional Court) has reignited the subsequent issues: (i) whether insurance companies in a group of insurers are 'one and the same', 'also known as' or 'also referred as'; (ii) the rule in *Foss v. Harbottle*; (ii) the FSRA guidance on affiliated entities only have an exemption on the non-adjuster broker side, and (iv) the motives for why such insurance companies in the TDI Group would engage in such misconduct.

[44]In this regard, the **VCM Decision** (see: Compendium, Tab 2) has again put two administrative bodies, at least, in the FSRA and the **Tribunal** against each other when they operate under the same enabling statute (*Insurance Act*) and the participants (insured persons, service providers and insurance companies) must comply with the *UDAP Rule* (2022 *et seq*).

[45]The **Applicant** is seeking by his factum to be heard before a single justice of the ONSC, with leave, due to the urgency of the issues herein.

[46]all people are equal under the law and have the right to equal protection and benefits with SABS benefits for all similarly situated persons to this **Applicant**

[47]all people, institutions, and entities are accountable to the law; (iii) *transparency*: the law-making process is transparent
[48]people have access to justice through independent and impartial courts
[49] (and patently unreasonable)
[50](with no distinction between a breach of *SABS* and *Reg 283* (see: *Chubb Insurance Co. of Canada v. Zurich Insurance Company*, 2024 ONSC 2929 (CanLII), <https://canlii.ca/t/k4tln>, ["*Zurich* 2024"],
[51]The burden is on the party challenging the decision to show that it is unreasonable. Any alleged flaws or shortcomings must be more than merely superficial or peripheral to the merits of the decision": *Vavilov*, at para. 100
[52]In the context of the tribunal abusing the process, Abrametz was a case that raised issues of abuse of process, a component of procedural fairness. The Supreme Court discussed the relationship between abuse of process, fair play, and the relationship between administrative decisionmakers, those affected by the decisions and society. Questions of abuse of process are questions of law, and thus, we apply a standard of correctness to the question of procedural fairness in the context of this statutory appeal: See Abrametz at paras. 30-36. ***Whether*** there has been an abuse of process is a question of law. Thus, the applicable standard of review is correctness (Abrametz, paragraph 30).
[53]Wagner C.J. and Abella, Moldaver, Karakatsanis, Gascon, Côté, Brown, Rowe and Martin JJ.
[54]Herein, a multiplicity of proceedings will be avoided and the law will be clarified and settled, while avoiding a return by this **Applicant** to make the same arguments that he would even if all of his benefits and quantum were found in his favour because the wrong party would be liable for the same and required to respond *post-facto* the conclusion of the Hearing Proper. In this regard, the **Applicant** herein confirms, by his authorized signature, that he would bring the same *JRPA* Application and he respectfully submits that the principle of mootness, cited by the SCC in *Borowski*, would not be applicable because the important legal issues would not only not be decided but the decision of the LAT would be in conflict with the governing statutes, governing regulations and its own *LAT Rules*.
[55]IRRESPECTIVE OF THE WITHDRAWL BY THE AGO, NON-PARTICIPATION BY THE RESPONDENT INSURANCE COMPANIES BUT FOR AN NOA, AND THE FAILURES BY THE TRIBUNAL TO EVEN FILE THE RECORD OF PROCEEDING
[56]**Compendium**, Tab 2, pages 1 to 11
[57](see: Reasonableness review requires the court to show restraint. It should not ask itself what it would have done; its focus should instead be on "whether the **Applicant** has demonstrated that the decision is unreasonable" (para. 75 of)):
[58]logically or aesthetically ordered or integrated : consistent (see: https://www.merriam-webster.com/dictionary/coherent)
[59][127] The principles of justification and transparency require that an administrative decision maker's reasons meaningfully account for the central issues and concerns raised by the parties. ….The concept of responsive reasons is inherently bound up with this principle, because reasons are the primary mechanism by which decision makers demonstrate that they have actually listened to the parties (*Vavilov*).
[60]The ONCA further found in *Elkins*[60]: "[69]….The Board made no attempt to grapple with the body of evidence adduced, or the Tenants' submissions on whether the Vendor Landlords gave the s. 49 Termination Notice in bad faith." **VCM**, without any cross-referencing to the evidence or the submissions, abdicated her duties as a decision-maker of said quasi-judicial tribunal which is fatal to her orders and decisions being upheld.
[61]: R. v. Sheppard, 2002 SCC 26, [2002] 1 S.C.R. 869, at para. 28; Hanna & Hamilton Construction Co. Ltd. v. Robertson, 2021 ONCA 660, at para. 6.
[62]Elkins v. Van Wissen, 2023 ONCA 789 (CanLII), <https://canlii.ca/t/k1dgk ["Elkins"]
[63] Elkins v. Van Wissen, 2023 ONCA 789 (CanLII), <https://canlii.ca/t/k1dgk ["Elkins"]
[64]This definition is included to demonstrate the incoherent and absurdity of that incorrect decision or finding.
[65]Mary Shuttleworth v. Licence Appeal Tribunal, 2018 ONSC 3790 (CanLII), https://canlii.ca/t/hsm3q ["Shuttleworth"]
[66]https://lso.ca/public-resources/finding-a-lawyer-or-paralegal/directory-search/member?MemberNumber=28621D
[67]Ms. Reilly's reply to the bias allegation a frightening one: "Reilly has told media her decisions in the insurance cases were fact-based and untainted by bias. She claims LAT disclosure procedures should be tightened up to prevent any appearance of bias." In effect, an experienced Vice Chair of the Tribunal's position is that the public should not known of a "conditional offer" of employment with an insurance company where she inevitably worked for a period thereafter (i.e. avoid these "disclosures" and have less transparency). The prejudice experienced by these injured person is denoted in a case like *Nagesu v Traders General Insurance Company*, 2024 CanLII 23453 (ON LAT) where Associate Chair had to cancel the decisions of former adjudicator Ms. Reilly. The position of Aviva is perhaps even more concerning: "Aviva Canada said it was unaware Reilly was involved in insurance cases for LAT after ***'the insurer'*** hired her." It is rather disingenuous or intentionally misleading considering it was a "conditional offer of employment" and, of course, Vice Chair Reilly could not be involved in insurance cases for LAT *after* the hiring.
Upon investigation by the LAT, it was, in fact, only four decisions wherein Vice Chair Reilly had issued decisions after her acceptance of an offer of conditional employment. Mr. Boyce, counsel to the Tribunal herein and a former Vice Chair of the Tribunal with the same employer or payor of his wages (see: Appendix #2), "batted a better record" for the **TDHA** and **SNIC** as his time as a Vice Chair. Involving **SNIC** and **TDHA**, they were 14-0-1 when Vice Chair Boyce, as he then was, was the decision maker (see: **Appendix #3**). *Is this Mr. Boyce's 'cooling off period' before joining the likes of Mr. Nieuwland as counsel at TD Insurance Staff Legal? Is this why Mr. Nieuwland and his clients have remained silent? Is Mr. Boyce seeking to, in good faith, raise prematurity or is this a circuitous route for him to defend the advice he provided to the Tribunal before the **VCM** Decision* (see: Compendium, Tab 2) *was issued?* The optics are not pleasant to the eyes or ears. The rule of law requires the ONSC, by a single justice, to intervene judicially to immediately put an end to the real unfairness to not only this *JRPA* **Applicant** but others similarly situated. It must be forcefully noted that of the 13 tribunals in Tribunals Ontario, the Licence Appeal Tribunal is the one tribunal funded by the insurance industry. This Tribunal must earn back the respect of the public and not be seen on any level to be siding with the insurance company giants whether at first instance or by counsel who are former adjudicators with unfettered mobility.[67]

[69]With post 2016, the distinction between barristers and solicitor no longer being applicable: Whatever historical differences may have existed between the roles of barrister and solicitor no longer apply under Ontario law. Section 29 of the Law Society Act, R.S.O. 1990, c. L.8 provides that every "member" is an officer of every court of record in Ontario and s. 28 provides that a person who is qualified and is called to the bar and enrolled and admitted as a solicitor "are members and entitled to practice law in Ontario as barristers and solicitors" (see: Iroquois Falls Power Corp. v. Jacobs Canada Inc., 2006 CanLII 35612 (ON SC), https://canlii.ca/t/1ptvd, note 15)

[70](not to be confused with Vice Char Derek Grant who is an adjudicator or Vice Chair with LAT)

[71]Mary Shuttleworth v. Licence Appeal Tribunal, 2018 ONSC 3790 as per **THORBURN, MCKELVEY and MYERS JJ**

[72]*HEREIN, GENERALLY AND SPECIFICALLY WHEN A QUASI-JUDICIAL OR ADJUDICATIVE TRIBUNAL FAILS TO FILE A RECORD OF PROCEEDING – NEW PRECEDENT*

[73](with the other being now Justice Stratas of the Federal Court and Mr. Paul Daly, professor at McGill, to name a few)

[74]Yet, **VCM** and VCL somehow found that the **Applicant**'s recitation of binding jurisprudence, invoking the principle of *stare decisis*, along with LAT being a creature of statute with reference to sections of the *SPPA*, was somehow 'fatal' to his NOM #14.

[75]https://soar.on.ca/system/files/documents/The%20Role%20of%20Tribunal%20Counsel%20SUMMARY.pdf

[76]The ***JRPA Applicant*** welcomes honest and open dialogue in this regard with Madam Clerk copied so the **Applicant** and participating (whether in full or partially) can advise the court accordingly. In the face of his request of Mr. Boyce, he responded but under an email thread without the court copied. It raises further suspicion.

[77](Caselines A947)) – THEREIN).

[78][37] The Amended Reconsideration Decision says the following:

> After reviewing the decision, it is clear the Tribunal's reasons were based on conflicting medical reports and the credibility of Mr. Drew's testimony. There is *no disagreement that the test was administered* by Mr. Drew shortly following the accident.[39]
> [Emphasis added]
> [38] As the italicized words in quotation above demonstrated, this is wrong. The Tribunal found the test was never initiated. The paragraph in the Amended Reconsideration Decision goes on:
> The disagreement lies in whether J. L. has a score of 15/15-*the score Mr. Drew registered three times immediately following the accident*-or a score of 8/15, which is the score that Mr. Drew registered in his report from November 2015, three months following the accident and on request of J. L.'s counsel. I find the admission of the video footage-which is not continuous, has no sound and does not alter the fact that the reports have conflicting scores, would not have been probative of the ultimate issue.
>
> [40] I point out that the Amended Reconsideration Decision refers to the submission of counsel for Jeffrey Lockyear, as stating:
> "…under 18.2(b) that the Tribunal should have admitted video footage of the paramedic attending at the scene and *allegedly* administering the Glasgow Coma Scale test he recorded in a later report"[40]
> [Emphasis added].
> [41] I wonder at the use of the word "allegedly". Given the understanding that the "test was administered" (see the quotation at fn. 38), the word "allegedly" can only refer to the suggestion that the video shows the test actually being applied. That would be highly probative. It would be consistent with and confirmed by the observation made by Dr. Keith Meloff following his review of the video and inconsistent with the conclusion of the Licence Appeal Tribunal, in its original decision, that the test was never initiated.
> [42] The Amended Reconsideration Decision goes on:
> Further, even if the footage were was admitted, I fail to see how it would have changed the result since silent video cannot corroborate which Glasgow Coma Scale score was registered at the scene of the accident, which would not help J.L. meet his onus of proving catastrophic impairment.[41]
> [43] This proposes that the only means by which the video could corroborate the values set by each of the three components of a Glasgow Coma Scale test is if somebody announces them such that they can be heard. This again denies the possibilities raised by the observations of Dr. Keith Meloff. At the risk of relying on an overused cliché, if a picture is worth a thousand words, how many words is an appropriately described video worth?
> [44] The paragraph which begins with the quotation, immediately above, continues and ends as follows:
> In submissions, J.L. does not offer a compelling explanation why he felt the footage was so needed, other than to aide in [*sic*] Mr. Drew's memory. In my view, it is unclear what value video footage would provide in the context either, since Mr. Drew testified that he recalls many details of the accident and prepared a contemporaneous report that could have aided his memory just as well. On these facts, I see no reason to interfere with the Tribunal's decision to exclude the video evidence.[42]
> [45] The assertion that it was unclear what value the video would have, given its relevance, would stand in favour of, not against, its admission as evidence so that its probative value (its weight) could be tested. The proposition that Adam Drew's ability to otherwise recall what happened misses the point. Adam Drew's

evidence was not accepted. His credibility was questioned. Could the video have served not just to help him remember but more importantly confirm what he otherwise said?

[46] Refusing to admit the video was a denial of the right of Jeffrey Lockyear to be heard and a breach of procedural fairness.

[79]Ontario (Energy Board) v. Ontario Power Generation Inc., 2015 SCC 44 (CanLII), [2015] 3 SCR 147, at para 50, <https://canlii.ca/t/glb07#par50>, retrieved on 2024-12-25

[80]Ontario (Energy Board) v. Ontario Power Generation Inc., 2015 SCC 44 (CanLII), [2015] 3 SCR 147, at para 48, <https://canlii.ca/t/glb07#par48>, retrieved on 2024-12-25

[81]*Hutchinson v. Aviva General Insurance Company*, 2022 ONSC 7136 (CanLII), at para 14, <https://canlii.ca/t/jtk8c#par14>, retrieved on 2024-12-27

[82]Injured person appealed under *LATA*; sought to adjourn and format of hearing; LAT dismissed both and right to benefits; Appellant raises issues of procedural fairness and reasonable apprehension of bias, among other issues; failure to oppose by **Applicant**/appellant [injured person']; LAT could provide useful insight on how hearings are conducted [nb: not at issue herein]; no duplication of submissions of the respondent [which speaks to the issue of whether respondent insurance companies [**SNIC** and TDHA will oppose relief as intending to respond to the JRPA Application does not by the Purported Appearance provide any insight into whether they will oppose some or all of the relief, take no position and/or consent]; 15 page factum; no costs seeking; and 15 minute oral argument [hence rife for a single justice, on leave, by teleconference]; notice of proposed factum on motion is required

[83]*Hutchinson v. Aviva General Insurance Company*, 2022 ONSC 7136 (CanLII), at para 9, <https://canlii.ca/t/jtk8c#par9>,

[84]Albeit alphabetized differently at paragraph 9;

[85]The SCC found in *Ocean Port Hotel*[85] as follows in the summary: "It is settled case law that, in the absence of constitutional constraints, the degree of independence required of a decision-maker or administrative tribunal is determined by its enabling statute. The statute must be interpreted as a whole to determine the degree of independence intended by the legislature. When faced with silent or ambiguous statutes, courts will generally infer that Parliament, or the legislature intended that the procedures of the administrative tribunal should conform to the principles of natural justice. However, as with all principles of natural justice, the degree of independence required of members of the administrative tribunal may be disregarded by the express terms of the statute or by necessary implication. There is a fundamental distinction between administrative tribunals and courts of law. Superior courts, by virtue of their inherent jurisdiction, are constitutionally required to provide objective guarantees of institutional and individual independence. The same constitutional imperative applies to provincial courts. Administrative tribunals, on the other hand, are not constitutionally separate from the executive. They are in fact created specifically for the purpose of implementing government policy. In fulfilling this function, they may be called upon to render quasi-judicial decisions." The SCC in *Ocean Port Hotel* distinguished between that administrative tribunal (commission) and others by referencing the issuing of permits which is not the same as the quasi-judicial functions of LAT and particularly those of **VCM**. [85] The enabling statute that formed the LAT is LATA. Some of the structures in place for the LAT are discussed in *Shuttleworth* (infra). The inference appears to be that by backdating the **VCM** Decision (see: Compendium, Tab 2) to September 6, 2024, when it was signed on September 12, 2024, and released on September 13, 2024, whilst VCL found on reconsideration that it was made or issued on September 13, 2024, that there were some breaches of the consultation rule in *Ellis Don*[85]. The Executive Chair was the same individual who was responsible for delaying the **Applicant**'s FIPPA request which remains ongoing by way of appeal to the IPC (Ontario). The other inference is that VCL, who reappeared in face of the **Applicant**'s objection to her having any role on grounds of a conflict of interest, was superior to **VCM**, at least by seniority as a "vice chair", was responsible for, and perhaps down the hierarchical ladder, for imposing consultation on **VCM**. Without any draft decisions of **VCM**, it is impossible to prove a negative but there are suspicious circumstances (see: second part of the Ellis Don test: There is reason to believe the executive chair changed the adjudicator's decision). The three part test in *Ellis Don* regarding the "institutional consultation principle" is institutional consultation ensures consistency in the decisions of an administrative body and does not create an apprehension of bias or lack of independence if the following rules are respected: (1) the consultation proceeding cannot be imposed by a superior level authority within the administrative hierarchy; (2) the consultation must be limited to questions of policy and law; and (3) even on questions of law and policy, the decision-makers must remain free to make their own decision. There was clearly some form of unrest with the **Tribunal** when case manager Ms. Lee replaced case manager Mr. Grant. Under the regime, which is unclear if it still exists, of a case manager having some level of say in a final proofing of a decision (see: Shuttleworth), this if of great concern and bolsters the "real unfairness" considering the representations made by Mr. Grant (former case manager) in relation to the inclusion of TDGIC as the "initial respondent" on or around January 8, 2024. His response on May 6, 2024, was internally and externally inconsistent.

[86]Defined in the correspondence in the email thread with the ONSC Divisional Court and respondents.

[87]https://lso.ca/lawyers/practice-supports-and-resources/topics/the-lawyer-client-relationship/conflicts-of-interest

[88]https://albertalawreview.com/index.php/ALR/article/view/465/457

[89]Now the LSO

[90]Footnote 48 therein: For a discussion of the role of amici curiae see Ontario v Criminal Lawyers' Association of Ontario, 2013 SCC 43, [2013] 3 SCR 3 at para 47 [emphasis in original], where the Supreme Court of Canada observes that, in the criminal law context, "amici should be used sparingly and with caution, in response to specific and exceptional circumstances" at para 47. The corollary is that this is not the criminal context.

[91]Footnote 49 therein: This language was used by the Supreme Court of Canada when it imposed a commission process to separate the judiciary from the government in relation to salary negotiations to better protect judicial impartiality: Reference re Remuneration of Judges of the Provincial Court of Prince Edward Island;

Reference re Independence and Impartiality of Judges of the Provincial Court of Prince Edward Island, [1997] 3 SCR 3 at para 170.

[92]This is a full answer to **VCM**'s reflexive query and finding that she was unable to find any authority for the same.

[93](2) The **Applicant**'s application record shall contain, in consecutively numbered pages arranged in the following order,
(a) a table of contents describing each document, including each exhibit, by its nature and date and, in the case of an exhibit, by exhibit number or letter;
(b) a copy of the notice of application;
(b.1) a copy of the reasons of the court or tribunal whose decision is to be reviewed, with a further typed or printed copy if the reasons are handwritten;
(c) a copy of all affidavits and other material served by any party for use on the application;
(d) a list of all relevant transcripts of evidence in chronological order, but not necessarily the transcripts themselves; and
(e) a copy of any other material in the court file that is necessary for the hearing of the application. R.R.O. 1990, Reg. 194, r. 68.04 (2); O. Reg. 219/91, s. 8; O. Reg. 248/21, s. 14.

[94]The **Applicant**, by way of outline purposes, engages in some painstaking detail herein because of the inability to even determine where **VCM** obtained her chronology, facts and evidence. They were unsupported by even the reference to any material in the record of proceeding. As noted in the *JRPA* Application in *Kawa Arab* if an adjudicator ignores evidence that the law requires to be considered to arrive at a decision, that would amount to an error in law (see: paragraph 19). There is no challenge by this *JRPA* **Applicant** to the sufficiency of or the weight given to the evidence supporting a finding of fact but rather that what she called facts or implied were facts were contrived, and it appears now that she did not have proper access to the record of proceeding. In a reconsideration decision, this Court's (whether Divisional Court or single justice of the ONSC pursuant to section 6(2) of the *JRPA*), is narrower than the review of an adjudicator's decision by a Vice Chair (in this ***JRPA* Proceeding** – both were technically "vice chairs") who undertakes the review (see: *Kawa Arab*, paragraph 20). The question for the Court is to determine whether in her reconsideration of the underlying decision (the "**VCM** Decision" herein), the Vice Chair erred in law she conducted the review OR in her decision. In the Reconsideration Decision by VC Lake, who was already on notice of a potential conflict of interest from Spring 2024 and most surprisingly was somehow 'delegated' authority absent particulars, VC Lake failed to even address orders #1 and #2 in NOM #14 and Order #3 in NOM #15.

[95]See: SABS, section 3(1), "Definitions"

[96]The **Applicant** was not a named insured individual. The **Applicant** was an Insured Person as he was a spouse of Ms. Nicole Artopoulos (the "Individual Named Insured" or "Nicole"). The **Applicant** obtained the "pink slip" and insurance policy between Security National Insurance Company (the "Sole Underwriter" or "**SNIC**") and Nicole and BMW Financial Services Inc which insured a BMW 330 vehicle (the "Insured Automobile").

[97]Notice to insurer and application for benefits
32. (1) A person who intends to apply for one or more benefits described in this Regulation shall notify the insurer of his or her intention no later than the seventh day after the circumstances arose that give rise to the entitlement to the benefit, or as soon as practicable after that day. O. Reg. 34/10, s. 32 (1)

[98]"This information" was the information provided by the ***SABS Applicant*** to the **TDHA** Fax Number and then, in 2023 at times, the 905 Fax Number as **SNIC**, in Summer 2023 (although not received by the ***SABS Applicant***) provided a different address in Burlington. All of "this information" provided by the ***SABS Applicant*** was via fax and solely related to the claim for accident benefits arising out of the Accident.

[99]*CANADIAN BAR ASSOCIATION PRIVACY AND ACCESS LAW AND CHARITIES AND NOT-FOR-PROFIT LAW SECTION*, cited in NOM #7 in the record of proceeding which the "LAT IS STILL TRYING TO DETERMINE HOW BEST TO COMPILE"

[100]Parenthetically, by the time that the LAT Appeal was delivered to the 416.774.3120 fax number, and then in email to the adjusters known to the **Applicant** at the time, there was no evidence provided to the **Applicant** that **TDHA** was the recipient of his faxes despite those faxes being submitted and delivered and received by the lawful tenant at the 4th Floor VP Building. Moreover, by January 25, 2024, a non-licensee (see: ***COMPENDIUM***, Tab 7).

[101]"Converge." Merriam-Webster.com Dictionary, Merriam-Webster, https://www.merriam-webster.com/dictionary/converge.

[102]https://www.ontariocourts.ca/scj/divisional-court/sittings/

TAB 31

Court File No. DC-24-00000718-00JR

ONTARIO SUPERIOR COURT OF JUSTICE (DIVISIONAL COURT)

BETWEEN:

KEVIN ALEXANDER MCLEAN

APPLICANT

- and -

TD HOME AND AUTO INSURANCE COMPANY, SECURITY NATIONAL INSURANCE COMPANY, TD GENERAL INSURANCE COMPANY, EXECUTIVE OF LICENCE APPEAL TRIBUNAL, HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO, REPRESENTED BY EXECUTIVE CHAIR OF TRIBUNALS ONTARIO IN MR. SEAN WEIR, THE ATTORNEY GENERAL OF ONTARIO

RESPONDENTS

APPLICANT'S COMPENDIUM
FILED AND SERVED PURSUANT TO RULE 4.03.3 ON FEBRUARY 11, 2025 BEFORE TWO P.M.
FOR WRITTEN HEARING FOR NOM #2:
RETURNABLE ON FRIDAY FEBRUARY 14, 2025

INDEX: ***COMPENDIUM***

Tab	**DOCUMENT**	Pages In AR	Pages
	VOLUME #1: WRITTEN OUTLINE		
1.	**OUTLINE FOR WRITTEN ARGUMENT IF RESPONDING PARTIES TO NOM #2 DO NOT INVOKE RULE 37.12.1(5)(D)** Nota bene: Responding Parties failed to respond at all with any prescribed notices, objections to written hearing or otherwise. Outline now dated: Feb 12, 2025	N/A	Roman Numerals
	VOLUME #2: VCM DECISION AND VCL RECONSIDERATION DECISION		
2.	Decision of VC Morrissette ("**VCM**"), signed on September 12, 2024, and provided to the Applicant and TDHA, SNIC and TDGIC on September 13, 2024 ["**VCM Decision", "Initial Decision" or "Morrissette Decision"**] ▪ References to non-party TDGIC and non-party TDHA (***SEE:*** page 1) ▪ NOM #14 reasons for decision, pages 8 and 9 (***SEE:*** paragraphs 21 to 28)	Tab 22, 578 to 589	1 to 11
3.	Decision of Vice Chair Lake ("VCL"), signed on October 15, 2024, and received on October 16, 2024 ["**VC Lake Decision**", "**Reconsideration Decision**" or "**VCL Decision**"]	Tab 22, 590 to 592	12 to 15
	VOLUME #2(B): OTHER LAT ORDERS FOR CONTEXT		
	VOLUME #2(B)(I): The Initial Reasons For Decision (*Declination to Decide*) in mid January 2024 in relation to NOM #1 to NOM #3[1]		
4.	Vice Chair Lake Reasons For Decision, January 16, 2024, ▪ Incorrect style of cause: ***SEE:*** page 16	Tab 27, pages 669 to 672	16 to 19
	VOLUME #2(B)(II): THE LAT ORDER THAT FOUND THAT TDGIC'S FAX NUMBER WAS NOT THAT OF 416.774.3120 (THE "TDHA FAX NUMBER") BUT 416.774.3629 (THE "TDGIC FAX NUMBER") LAT Order providing TD General Insurance Company, formerly CT Direct Insurance Company, fax number 416.774.3269 - Distinct from TD Home And Auto Insurance Company, formerly Liberty Mutual Insurance Company of Canada		
5.	LAT Order of February 13, 2024 ▪ TDGIC fax number ("3629"): (see: page 21)	Tab 31, 695 to 697	20 to 21
	VOLUME #3: ALL RELEVANT MATERIAL FACTS (pursuant to Part IV, E., s. 14, sentence two (2), first part of sentence, "Parties must bring to the attention of the court all relevant material[2]…" [***SEE:*** bookmarking and hyperlinking [internal and external]		
	VOLUME #3(A): PLEADINGS		
	VOLUME #3(A)(I): STATUTORY APPLICATION BEFORE LICENSE APPEAL TRIBUNAL (SECTION 280(2) OF THE INSURANCE ACT)		

6.	APPELLANT'S LAT APPEAL: ▪ Application pursuant to section 280(2) of the *Insurance Act*[3] (the "**LAT Appeal**"), December 24, 2023: o Fax confirmation of the LAT Appeal to 416.774.3120 (***SEE:*** page 31)	Tab 10, ***Pages*****:** 149 to 159	22 to 31
	VOLUME #3(A)(II): STATUTORY RESPONSE (BY AN INSURANCE COMPANY) BEFORE LICENSE APPEAL TRIBUNAL (SECTION 280(2) OF THE INSURANCE ACT)		
7.	***RESPONSE TO LAT APPEAL*** ▪ exclusively, at the time and to date, by SNIC on January 25, 2024, solely signed by a non-licensee in Mr. David Karat, contrary to LSO By-Law 7.1, section 6(1)(d) and the prohibition against any non-lawyer licensee practising law and providing legal services where CAT impairment is at issue (the "**SNIC Response**")[4] ▪ Mr. David Karat, a non-licensee, listed under claim adjuster/representative name: page 32 o Mr. Karat repeatedly represented he was NOT the "adjuster" but rather he was the ADR [sic] or ADR specialist (email on January 23, 2024, and case conference on May 2, 2024)	Tab 11, ***Pages*****:** 160 to 164	32 to 35
	VOLUME #3(B): AFFIDAVIT EVIDENCE OF THE APPLICANT (UNCONTROVERTED)		
	VOLUME #3(B)(I): PRE-LAT-APPEAL AFFIDAVIT		
8.	Affidavit #3 of the Applicant, a pre-LAT Appeal affidavit, made on October 31, 2023 ["**Affidavit #3**"][select pages] ▪ **September 2022**: the accident benefits package sent by SNIC to *SABS* Applicant with incorrect postal code: page 45 o Nota bene: the logo at the top of the document stated, "TD Insurance Meloche Monnex" [not TD Insurance as Mr. Grant represented it did] ▪ **September/October 2022**: TD Insurance Meloche Monnex – EFT Authorization (direct Deposit) Claim 035325790-03: page 46 o "I, Kevin A. McLean, as the claimant pursuant to claim #035325790-3 that is issued by Security National Insurance Company (the "Insurer") herby irrevocably direct and authorize the Insurer to deposit all claim benefits payable to me under the Insurance policy number 00101351806 ▪ Nota bene: if SNIC chose to allow TDGIC to be the sole respondent in the LAT Appeal, then the LAT Appeal could no longer about related to the Insurance Policy. o Nota bene: this is also speaks to why no further benefits were paid to the *SABS* Applicant (if in fact SNIC was the actual payor in EFT's) and none were paid to any physiotherapists, health practitioners, doctors et al despite invoices tendered and where SNIC represented that it had agreed to pay ▪ **October 2022**: OCF-1: pages 48 to 58 o Page 48: pre-printed address and fax provided by SNIC ▪ Address: 101 McNabb Street, Suite 200, Markham, Ontario, [NTD ▪ Fax: 416.774.3120 (fax number for TDHA) ▪ **October 2022**: OCF-2 o Page 54: pre-printed address and fax provided by SNIC ▪ Address: 101 McNabb Street, Suite 200, Markham, Ontario ▪ Fax: 416.774.3120 (fax number for TDHA)	Tab 19, 385 to 474 475 to 509)	36 to 64

address does not include fax but refers to Ms. Nurse and the fax number (***SEE:*** Page 56 and 57)
    - Enclosed OCF-3 but without any "return this form to" language;

- **November 3, 2022**: OCF-3 faxed to 416.774.3120: (***SEE:*** page 64)

- **February 13, 2023**: Request for the actual payor and originating financial institution (supporting documents request) ((***SEE:*** page 36, paragraph 180)
- **February 15, 2023**: no legal grounds to not have made payments for IRB – further evidence – benefit of hindsight analysis – SNIC not the First Insurer (***SEE:*** page 36, paragraph 181 with subheading 8(D))
- OCF-6 expenses: all faxed to 416.774.3120 – detrimental reliance – misrepresentation by SNIC to the Applicant: page 37, paragraphs 182 to 186
- Gap in anything received from January 11, 2023 to March 21, 2023: (***SEE:*** page 39, paragraph 192
- March 21, 2023: accounting of the IRB at said time of $11,200 without a single payment despite the representation by SNIC, with the fax number of TDHA [416.774.3120] and the address for delivery of Markham Office [not its office as SNIC's office – as represented in Spring 2023 was the Burlington Office Building [absent a floor number]]: (***SEE:*** page 39 paragraph 193
- March 28, 2023: TD driving app [TD MyAdvantage [likely a misnomer] information requested – concerns as to whether there was pre-accident surveillance involving Mr. Andrew Papadimtriopoulos – disgruntled ex-husband: page 39
- March 30, 2023: outstanding expenses and IRB – remain unpaid: page 39 and 40 (***SEE:*** paragraph 196)
- April 3, 2023: Mr. McLean's refusal (no consent) to engage in email communications despite SNIC seeking the same by way of consent – which is to be commended – hindsight analysis – around this time – the SPAM Fax (denial of any claim number for the Applicant) was sent – independent evidence – SNIC's fax was NOT – 416.774.3120 – leaves two potential insurance companies: (i) TDGIC; or (ii) TDHA: PAGE 40 (***SEE:*** Volume #10(A) therein, paragraph 197)
- April 03, 2023: receipt of package from New Brunswick – later learned in relation to *PIPEDA* request – had Applicant's number with the area code of New Brunswick therein – did not come in envelope from TD Insurance – not opened – returned to sender – New Brunswick – UPS: PAGE 40 (***SEE:*** paragraph 198);
    - *Nota bene*: April 6, 2023: OCF-18 #1 ("Dhaliwal OCF-18") was signed by *SABS* Applicant with address therein of Markham Office and fax number of 416.774.3120
        - Nota bene #2: *SABS* Applicant later learns that his previous physiotherapist, registered health professional and health practitioner, could only deliver through HCAI of which he was authorized but not the *SABS* Applicant – had already automatically – October 2022 – set the branch office of TD Insurance – Etobicoke – East Mall Address
- April 19, 2023: confirmation of switch of physiotherapists – courtesy notice AND *PIPEDA* matters handled separately: Page 40 (***SEE:*** Volume #10(B), paragraph 199)
    - April 20, 2023: the date of the forged signature on the OCF-18 #1 (Dhaliwal OCF-18, originally printed on March 30, 2023 and then signed by the Applicant on April 6, 2023 (nota bene: TDGIC was most concerned about demanding a copy of the same at the nullity case conference on May 2, 2024 – which the Applicant later obtained despite some efforts – through *PIPEDA* request of HCAI)
        - SNIC represented therein that it had approved the sum of $1995 in physio sessions but only $85.87 in the initial full body assessment (prohibited under the MIG if Applicant was under the MIG)

received to Beneficiary Bank Account, on April 6, 2023, the sum of $1499.98. The above math was contrived to attempt to keep the Applicant within the $3,500 but it was over by 55 cents.

- The Applicant learned, through lengthy investigations, in Summer 2024 – SNIC never sent a cheque for payment to any physiotherapist to the *SABS* Applicant.
- Despite an invoice (OCF_23) not being required – one was tendered to TDHA, SNIC and TDGIC (out of an abundance of caution). Response came in late August 2024 – no record of the Applicant's claim number at "TD Insurance"

- **April 25, 2023**: receipt of the New Brunswick mailed documents but in TD Insurance denoted envelope – *SABS* Applicant confirms – *PIPEDA* addressed separately and via email (***SEE:*** PAGE 40) (see; Volume #10(C), paragraph 200)
  - April 2023: Andrew Papadimtriopoulos – no longer denoted as lawyer with TD Insurance – but a "consequence management" – potential demotion
- **October 12, 2023**: *SABS* Applicant had been delivering faxes to the 416 Fax Number (416.774.3120)
- (nota bene: Applicant did not know of the TDGIC fax (or TDGIC itself) (***SEE:*** 416.774.3629) until the LAT Order of February 13, 2024 (***SEE:*** supra, Tab 5)
  - Response to letter o Ms. Persaud, replacement adjuster for Ms. Nurse – of her September 18, 2023 letter – purporting to be on behalf of SNIC but SNIC at Burlington Office Building [no floor number] [nota bene: floor number later provided by Tribunal in September 2024 LAT Order] [***SEE:*** page 41 (***SEE:*** Volume #17(D), paragraph 268)
    - Nota bene: upon providing an email copy of the LAT Appeal to Ms. Persaud in December 2023 – Ms. Persaud's auto-reply confirmed that she had been away since September 2023
- **October 12, 2023**: further fax from Applicant to 416 Fax Number – Ms. Persaud represented that based on the medical evidence documented (nota bene: hindsight analysis – Ms. Persaud – SNIC – did not have the file of the *SABS* Applicant – alleged – Mr. Andrew Papadimtriopoulos destroyed the file upon departing and the switch from Ms. Nurse to Ms. Persaud (***SEE:*** page 42);
- **October 19, 2023**: *SABS* Applicant delivers to 416.774.3120 fax number – OCF-19 with reports to follow (nota bene: TDHA received the OCF-19 and did not respond within 10 business days)

- **October 27, 2023**: Ms. Persaud of SNIC – unfamiliar with the file – when *SABS* Applicant had referral for brain MRI – UHN Notification– March and April 2023
  - *Nota bene*: around the time that Mr. Andrew Papadimtriopoulos was allegedly demoted from being a lawyer with TD Insurance to "consequence management"
  - SPAM Fax received by *SABS* Applicant (i.e. no record of his claim number, insurance policy number, file, et al) – despite it being responsive to a fax delivered by the *SABS* Applicant to 416.774.3120
  - Matter of proximity: Andrew Papadimtriopoulos was not supposed – by LSO By-Laws – be involved in any *SABS* Claims involving his ex-wife – including the *SABS* Applicant – but his work location was at the Markham Office – TDHA fax was 3650 Victoria Park Avenue – 4th floor – North York, Toronto – distance between two addresses – 7 minutes by car between the two (***SEE:*** Google Maps Directions)
    - Distance between SNIC's office (the "Burlington Office") and the Markham Office is 91 km.
  - Motive for using the TDHA fax number:
    - TDGIC – as of recently - underwrites all policies for auto insurance in Ontario – when a named insured person – NOT with SNIC

	(employer group program) [nota bene: however, only SNIC was the underwriter of the Insurance Policy wherein Ms. Nicole Artopoulos [not the Applicant as VCM incorrectly found (nota bene: evidence that the Tribunal did not have a full and accurate Record of Proceeding as of September 13, 2024, - further corroborated by the Applicant's NOM #18 [misquoted by *JRPA* Applicant in *JRPA* Application – but notice provided to ONSC Div. Ct. and respondents of the same] – finally undisputedly corroborated by Mr. Boyce for the Tribunal being unable to file the Record Of Proceeding on a forthwith basis or at all] ▪ With a landline fax grounded on the 4th floor of TDHA's office floor at 3650 Victoria Park Avenue (the "Spark Building") in October 2022 – TDHA was the First Insurer – but it had also departed a subcategory of being an automobile licensed insurer with the FSRA – which was "private passenger market" – like TD Direct Insurance (***SEE:*** FSRA website) – the prohibition on TD Direct Insurance Inc. was "no new policies after 1995" – TDHA does not have that prohibition – falls under category of not a "non-automobile insurer" – but – without private passenger segment (likely the largest segment or sub-space) – less operational manpower (or womanpower or non-binary power) required – easier – to obtain faxes when this "lawyer" – came to and from work (nota bene: landline faxes – different than e-fax – no remote access) ▪ It was likely discovered in March/April 2023 by another employee or Mr. Papadimtripoulos was required to *attempt* to steer the *SABS* Applicant away from the 416.774.3120 by referencing "North York" in relation to said fax number but providing fax numbers for other provinces but one in Ontario which was Burlington. The Applicant was concerned about a privacy breach and presumed at the time that the North York fax reference was incorrect (i.e. not knowing the distinction between Markham and North York with the former only having 905 fax numbers and the latter having a 416 area code)		
	VOLUME #3(B)(II): EVIDENCE AND AFFIDAVITS DURING LAT APPEAL		
9.	Select evidence from NOM #13: Appendices ▪ **October 2023**: E-claims Workflow ▪ **February 2024**: TDGIC represented in a purported but unlawful response to the Applicant's *PIPEDA* request of SNIC in January 2024 that Mr. Andrew Papadimtripoulos had not been involved in any way with this claim or access request. However, the claim number provided therein was 035325709-04 [sic] (***SEE:*** page 66)	Pages 1175 to 1177	65 to 69
	VOLUME #3(B)(II)(A): JULY 2024 AFFIDAVIT IN SUPPORT OF NOM #14		
10.	Affidavit #30 in the LAT Appeal (with four affidavits being pre-appeal affidavits), made on July 31, 2024 ["**Affidavit #30**"] ▪ Notice of potential motion to add TDHA as a party and certain declaratory relief (***SEE:*** page 72, paragraph 7); ▪ Notice that SNIC shall remain for costs: page 72, paragraph 8);	Tab 18, Pages: 240 to 384	70 to 177 [107 pages]

while he had addressed *Reg 283* in certain costs submission – done so in the context between SNIC and TDGIC and the misconduct of TDGIC;
- Disclosure of newly discovered evidence of 416 Fax Number (***SEE:*** page 73, paragraph 11(a):
- Disclosure of newly discovered evidence of The East Mall Address (***SEE:*** page 73, paragraph 11(b));
- Whether best to add TDHA or start a new proceeding against TDHA – risk of abuse of process; page 76
- Reference to A07 Auto Bulletin:
- Applicant believes that Spam Faxes (March 2023) from or on behalf of TDHA: (***SEE:*** page 77, paragraph 27)

Exhibits therein:

- Exhibit **"A"**: copies of emails to the chief agent of **TDHA** and SNIC from July 27 to July 31, 2024, regarding the **416 Fax Number** and **TDHA** being the **First Insurer** (***SEE:*** ***COMPENDIUM***, Tab 10, *page* 77, paragraph 30; for Exhibit "A" itself: ***COMPENDIUM***, Tab 10, *page* 90 to 134);
  - July 27, 2024, notification – discovered TDHA – First Insurer: page 90, 91, 92, 93, 94 to 95;
  - July 27, 2024, follow up: corroborating evidence as to why TDHA was the First Insurer: 24 points:
    - Pages 96, 97, 98, 99
  - July 29, 2024:
    - Confirmation that the fax number in LAT Orders involving TDGIC was distinct from that of TDHA (***SEE:*** page 101);
    - TDHA fax number of 416.774.3120 – Ontario Business Directory: page 102, paragraph 14
    - Confirmation TDHA received all of the OCF documents after first receiving OCF-1
    - Addressing the forged signature: page 107, paragraph 8
    - Addressing the issues surrounding the failure by SNIC to pay what it represented it would on April 20, 2023: page 107, paragraph 7;
    - TDHA liable to respond and pay benefits (***SEE:*** page 107, paragraph 11);
    - Attaching invoice for TDHA (***SEE:*** page 108, paragraph 16);
    - Demand upon TDHA to pay out any and all outstanding benefits (***SEE:*** page 109, paragraph 20).
  - July 30, 2024: further demand made upon TDHA (***SEE:*** page 110, paragraph 3 therein);
  - July 31, 2024: SNIC had manipulated the HCAI auto-population to only that of East Mall (***SEE:*** page 112, paragraph 3); TDHA's address was the East Mall Address (not Markham) – further evidence that TDHA was the First Insurer;
    - HCAI submitted copy – Applicant obtained with *PIPEDA* request (***SEE:*** page 166);

- Exhibit **"B"**:
  - the public listing of **TDHA** that lists its address as the **Vicotria Park Building** with a fax number of 416-774-3120 (***SEE:*** ***COMPENDIUM***, Tab 10, *page* 78, paragraph 32; for Exhibit **"B"** itself, ***COMPENDIUM***, Tab 10, ***page* 136**,);
  - Could not be SNIC's fax number
  - Page 137: October 13, 2022 letter that demonstrates that the fax number for TDHA is 41.6774.3120

	SNIC at Markham return address – yet utilizing the 416.774.3120 fax (***SEE:*** pages 140 to 143 ▪ **Exhibit "C":** o the Spark Building dossier from Colliers International (***SEE:*** page 145); ▪ Exhibit "D": o the Tribunal order that listed TDGIC's fax number as 416.774.3629 (***SEE: COMPENDIUM***, Tab 10, *page* 78, paragraph 34; for Exhibit "D" itself, ***COMPENDIUM***, Tab 10, *page* 147 and 148; ▪ **Exhibit "E":** ▪ copy of the documents from the Ontario Business Directory website from on or around July 18, 0224, involving the "Burlington Address," which was represented as SNIC's address by SNIC from on or around Spring/Summer 2023 with the fax number of 905.315.1074 (the "**905 Fax Number**") (***SEE:*** ***COMPENDIUM***, Tab 10, ***page* 150 (learned of the same in 2023**); ▪ **Exhibit "F":** the Forged Signature on the ***OCF-1***8 on the **False Document (*SEE:* *COMPENDIUM***, Tab 10, *page* 78, paragraph 37; o ***COMPENDIUM***, Tab 10, pages 153 to 15 (***page* 155** for Exhibit "E" itself in relation to the **Forged Signature**); ▪ **Exhibit "G"**: o ***OCF-1***8 (hard copy: April 6, 2023): demonstrating consistency in the ***JRPA Applicant*** utilizing the Markham Office address and the fax number of ***416.774.3120*** while the **HCAI** produced ***OCF-1***8, by *PIPEDA* request of the Applicant, demonstrated that the East Mall Address auto-populated regarding the same (***SEE:*** FOR HARD COPY: ***COMPENDIUM***, Tab 10, *page* 78, paragraph 41; Tab 10, pages 156 to 165); ▪ **Exhibit "H":** o copies of the *page*s from the Yelp listing that denoted **TDHA** as the sole insurance company at the East Mall Address (***SEE:*** ***COMPENDIUM***, Tab 10, *page* 84, paragraph 49 to 53; ***COMPENDIUM***, Tab 10, *page* 174 to 178; with *page* 177 providing the connection between **TDHA** and New Brunswick by "Stephanie S" in August 2, 2018; the connection was that the Applicant, in his capacity as a *PIPEDA* requestor in February 2023, made a request pursuant to *PIPEDA* for access to all collection, access, use and disclosure of his personal information by the Organization (SNIC) but he received a response in the UPS package);		
	VOLUME #3(B)(II)(B): SEPTEMBER 28, 2024, AFFIDAVIT		
11.	Affidavit #38 of the Applicant, made on September 28, 2024 ["**Affidavit #38**"] ▪ Issues with the decision of VCM espoused by the Applicant by way of letter and notice that he intends to seek reconsideration and then judicial review (***SEE:*** page 190) ▪ May 6, 2024: o Josh Grant Case Management Officer: explanation for why he apparently input TDGIC as the sole respondent at some (***SEE:*** page 192 and 195) ▪ Forged Signature, False Document and Uttering a False Document: April 20,2023 (***SEE:*** page 196)	Tab 26, Pages 613 to 668	178 to 196 [18 pages]

	VOLUME #3(B)(II)(C): APRIL 2024 AFFIDAVIT		
12.	Affidavit #17 of the Applicant, made on April 14, 2024 ["**Affidavit 17**"] Re: *PIPEDA* and OCF-1 affidavit – why the breaches occurred and not saved under any exemption under *PIPEDA* ▪ OCF-1, Part 1 (***SEE:*** page 204) ▪ Applicant's annotations ▪ The exceptions to not collecting directly from the Applicant were not present ▪ Access request of SNIC on January 16, 2024 (***SEE:*** Page 222)	Tab 32, Pages: 698 to 756	197 to 254
13.	Affidavit #18 of the Applicant, made on April 15, 2024 ["**Affidavit #18**"] ▪ Challenge Mr. Nieuwland to provide the name of the supervising lawyer of Mr. Karat (***SEE:*** Page 260, paragraph 42 and 43) ▪ Unable to take any meaningful steps (***SEE:*** page 260)	Tab 33, Pages: 757 to 766	255 to 261
	VOLUME #3(B)(II)(D): MAY 2024 AFFIDAVITS		
	VOLUME #3(B)(II)(D)(I): Day After the Case Conference (Nullity)		
14.	Affidavit #21 of the Applicant, made on May 3, 2024 ["**Affidavit #21**"] ▪ TD General Insurance Company – formerly **CT Direct Insurance Company** (***SEE:*** page 263, paragraph 4) ▪ Primarily a *PIPEDA* affidavit ▪ Forged signature (***SEE:*** page 270) ▪ HCAI documents (***SEE:*** page 271 to 272	Tab 34, Pages 767 to 794	262 to 272
15.	Affidavit #22 of the Applicant, made on May 10, 2024 ["**Affidavit #22**"] ▪ NOM #8 order sought on May 9, 2024 (***SEE:*** page 274, paragraph 5) ▪ Reference to Spam Faxes (***SEE:*** page 274, paragraph 7) ▪ Reference to the Applicant's belief at that time regarding coordinates (***SEE:*** page 275, paragraphs 8 to 10)	Tab 35, Pages: 795 to 805	273 to 282
16.	Affidavit #23 of the Applicant, made on May 11, 2024 (without exhibits) ["**Affidavit #23**"] ▪ Exhibit "A" with ten tabs	Tab 36, Pages: 806 to 811	283 to 285
17.	Affidavit #24 of the Applicant, made on May 15, 2024 ["**Affidavit #24**"] ▪ The Trademark, Corporate Offices, **TDIMM**, financial statement et al affidavit	Tab 37, pages 812 to 832	286 to 303
	VOLUME #3(B)(II)(E): June 2024 Affidavit		
18.	Affidavit #27 of the Applicant, made on June 10, 2024 ["**Affidavit #27**"] ▪ NO DOR filed on behalf of SNIC (***SEE:*** page 307, paragraph 9 ▪ Notice of conflict of interest issues citing *Dervisholli*, *Transamerica*	Tab 38, pages 833 to 841	304 to 311 [7 pages]
	VOLUME #3(B)(II)(F): July 2024 Affidavit		

	Affidavit"] ▪ Rule 9.2.2.: request for non-party production	Pages 842 to 886	
	VOLUME #3(B)(II)(G): April 2024 Affidavit		
20.	Affidavit #19 of the Applicant, made on April 24, 2024 (select pages) ["**Affidavit #19**"] ▪ Heavy on citing sections of the *Insurance Act*, *SABS* for review; distinguishing between: o "an insurer" and "the insurer"	Tab 48, 997 to 1029	322 to 345 [23 pages]
	VOLUME #3(B)(II)(): August 2024		
21.	Affidavit #31 of the Appellant, made on August 16, 2024 ["**Affidavit #31**"][5] ▪ The misrepresentation regarding the amount paid to McLean or on his behalf (***SEE:*** page 349, paragraph 6) ▪ Further corroborating evidence regarding SNIC and TDGIC not being the First Insurer and TDHA was and is (***SEE:*** page 349, paragraph 7) ▪ Invoice heavy affidavit (***SEE:*** page 349, paragraph 8) ▪ Further evidence regarding the fourth floor ▪ Exhibit "A": repeat of the above	Tab 61, Pages: 1129 to 1298	346 to 390
	VOLUME #3(B)(III): SUBMISSIONS BEFORE THE TRIBUNAL		
22.	NOM #14 Motion Submissions of the Applicant, ▪ dated August 3, 2024 ["**NOM #14 Submissions**"]	TAB 21 ***Pages*****:** 523 to 534	391 to 405
23.	Tab 22 in **NOM #14**: images of the **East Mall Address** from August 4, 2024		
24.	NOM #18 Motion Submissions of the Applicant, dated September 29, 2024 (the "**Section 21.1 of the *SPPA* Motion**")	Tab 28, pages 673 to 684	406 to 412
	VOLUME #3(B)(IV): RECONSIDERATION SUBMISSIONS		
25.	Reconsideration Motion filed on September 29, 2024, and Reconsideration submissions of the Applicant ▪ in relation to the **VCM Decision [**"**Reconsideration Submissions**"]	Tab 70, **Pages:** 1445 to 1467	Pages: 413 to 435
	VOLUME #4: THE AUTHORITIES[6]		
26.	*Disputes Between Insurers*, O *Reg 283*/95 et seq ["*Reg 283*"]	Tab 4, Pages 13 to 19	436 to 441
27.	R.R.O 1990, *Regulation 664 et seq* ["*Reg 664*"], sections 9.1	Tab 8 Pages: 82 to 85	442 to 444
28.	*Unfair Deceptive Acts Rule,* issued by the FSRA, effective 2022, ["*UDAP Rule*"]	Tab 13, pages 169 to 182	445 to 455
29.	*Statutory Accident Benefits Schedule*, O. Reg 34/10 ["*SABS*" or the "*Schedule*"]	Tab 9	456 to 516

		to 148	
30.	*Chub Insurance Co. of Canada v. Zurich Insurance Company*, 2024 ONSC 2929 ["*Zurich 2024*"] ▪ issued on May 23, 2024, as per The Honourable Mr. Justice Akazaki of the ONSC	Tab 14, ***Pages*:** 183 to 201	517 to 533
31.	*Intact Insurance Company v. Margie Bateman*, 2014 ONFSCDRS 14 ["*Bateman*"]	Tab 17, Pages 223 to 239	534 to 537
32.	*Beasley et al v. Barrand*, 2010 ONSC 2095 (Ontario Superior Court of Justice, as per the Honourable Justice Moor, April 9, 2010) ["*Beasley*"]	Tab 53, Pages 1106 to 1109	538 to 539
33.	FSRA Issued Documents ▪ FSRA Guidance document ▪ FSRA document titled, "Affiliated insurers carrying on business as a common undertaking pursuant to s. 392.2(8) of the *Insurance Act*" [7]	TAB 54, Pages 1110 to 1123	540 to 549
34.	*Statutory Powers Procedure Act*, R.S.O. 1990, C. S.22 *et seq*[8] (the "*SPPA*")	Tab 68, 1406 to 1428	550 to 569
	VOLUME #5: NOM #15		
35.	Applicant's Submissions for NOM #15 ["NOM #15 Submissions"]	Tab 69, 1429 to 1444	570 to 572
	VOLUME #6: REQUEST FOR LEAVE AFFIDAVIT		
36.	Affidavit #2 in the *JRPA* Proceeding of the Applicant on December 30, 2024 ["Affidavit #2" or the "**Urgent Hearing Single Justice Affidavit**"]	N/A	573 to 603
	VOLUME #7: *JRPA APPLICATION* AND FACTUM		
37.	Applicant's ***JRPA Application*** (November 15, 2024) (the "***JRPA* Application")**	N/A	604 to 631
38.	Applicant's Factum (December 10, 2024) (the "**Factum**" or "AR Factum")**	N/A	632 to 697
	VOLUME #8: CERTIFICATE OF PERFECTION AND AFFIDAVIT OF SERVICE Pursuant to Rule 68.05, **Divisional Court. *JRPA* Guide**, and ___		
39.	Certificate of Perfection of the Applicant, filed and paid for on December 13, 2024 (the "COP", "Certificate Of Perfection" or "Perfection Certificate") ▪ Issued on December 16, 2024	N/A	698 to 702
40.	Affidavit of Service of the Applicant, December 13, 2024 ["**Affidavit #1**"]	N/A	703 to 708

	68.05(2) AND ISSUANCE OF FORM 68(B)		
41.	Requisition of the Applicant filed on December 24, 2024, seeking the provision by the Registrar of the Form 68(B) ("**Requisition #1**") ▪ Electronically issued one month after JSO Portal Filing but with the correct date of filing which was December 24, 2024	N/A	709 to 711
	VOLUME #10: REQUEST FOR AN URGENT HEARING PURSUANT TO SECTION 6(2) OF THE *JRPA*	N/A	
42.	Requisition #2 of the Applicant, made on December 24, 2024 (the "Requisition #2" or "Urgent Hearing Requisition")	N/A	712 to 718
	VOLUME #11: AFFIDAVITS (NON-AFFIDAVITS OF SERVICE)	N/A	
	VOLUME #11(A): AFFIDAVITS AND COI RECUSAL SUBMISSIONS[9]		
43.	Affidavit #3 of the Applicant, made on January 8, 2025 (the "**Affidavit #3**" or "COI Affidavit") ▪ Prompt raising of the conflict of interest issue once learning that Madam Justice Shore was an esteemed partner at the same law firm (Epstein Cole LLP) that represented Mr. Papadimitropoulos during his matrimonial dispute with his ex-wife, who was the individual named insured on the Insurance Policy. ▪ The fact that the *JRPA* Applicant was driving his then Spouse was the legal justification for why he was found to be an Insured Person and had given consideration therefor for the Insurance Policy (the "**Statutory Deemed Consideration Given Provision**")	N/A	719 to 724; 724 to 786 (Ex A); 787 to 1024
44.	Recusal Request (Informal): ▪ COI Recusal Submissions: filed on January 16, 2025	N/A	1025 to 1055
	VOLUME #11(B): AFFIDAVITS #4, #7 AND #8		
45.	Affidavit #4 of the Applicant, made on January 18, 2025 ("Affidavit #4")	N/A	1056 to 1081
46.	Affidavit #7 of the Applicant, made on January 24, 2025 ("Affidavit #5")	N/A	1082 to 1088; Ex A: 1089 to 1121
47.	Affidavit #8 of the Applicant, made on January 27, 2025 ("Affidavit #8")	N/A	1122 to 1136 Ex A: 1137 to 1190; Ex B: 1191 to 1199

	VOLUME #12: NOTICE OF MOTON #1 **RE:**	N/A	
48.	NOM #1 of the Applicant, January 23, 2025 o Returnable: January 30, 2025		1200 to 1207
49.	Confirmation of Motion, January 23, 2025		1208 to 1214
	Nota bene: January 27, 2024, Tribunal did not object to the contents of the motion record		
50.	Written Argument of the Applicant on January 30, 2025	N/A	1215 to 1229
	VOLUME #13: NOTICE OF MOTION #2		
51.	NOM #2 of the Applicant, Friday, January 31, 2025	N/A	1230 to 1238 Sch. A: 1239 to 1245; Sch. B: 1246 to 1277
52.	Draft Order of the Applicant, January 31, 2025	N/A	1279 to 1283 Sch. A: 1284 to 1286 Sch. B: 1287 Sch. C: 1288 Sch. D: 1289
53.	Factum For Motion In Writing, January 31, 2025	N/A	1290 to 1320 App.: 1321 to 1325 Endnotes: 1326 to 1329

54.	Affidavits of Service for Remaining Respondents and Mr. Papadimitropoulos ▪ For the NOM #2, Draft Order, Motion Record[10], and Factum For Motion In Writing (Convert to "**Motion For Judgment**")	N/A	1330 to 1340
55.	Affidavit of Service for Epstein Cole LLP ▪ Attention: current managing partner in Ms. Tsao	N/A	1341 to 1344
	VOLUME #14: REQUISITIONS IN FEBRUARY 2025 Re: Bring Entire Court File to attention of presiding motions justice on Friday, February 14, 2025 and invitation to Case Centre		
56.	Requisition of the Applicant, Feb 5, 2025 ("**Requisition #6**") ▪ Bring entire court file to the attention of the presiding motions justice ▪ Stamped on said	N/A	1345 to 1348
57.	Requisition of the Applicant, Feb 5, 2025("**Requisition #7**") ▪ Invitation to Case Centre	N/A	1349 to 1352
	VOLUME #15: NOTICES OF APPEARANCES		
58.	Notice of Appearance of the Tribunal ▪ The Licence Appeal Tribunal as per Mr. Jesse Aaron Boyce ▪ Date: November 27, 2024	N/A	1353 to 1356
59.	Notice of Appearance for: (i) TDHA; (ii) SNIC; and (iii) TDGIC ▪ As per Mr. Matthew Nieuwland for each of the ▪ Date: December 3, 2024	N/A	1357 to 1360
	Any potential additional materials from Applicant, Remaining Respondents or Interested Persons by way of Supplemental Compendium or Amended Compendium for ease of reference for sitting motions justice [in writing]		
60.	Affidavit #16 of the Applicant, made on Friday February 14, 2025		1361 to 1372
61.	Draft Order of the Applicant, made on February 14, 2025 (stamped by Registrar)		1373-1384

TAB 32

TAB #2: ORAL COMPENDIUM: COURT FILE NO. DC-24-00000718-00JR

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TAB 1 PAGE 1
AOL

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Tribunals Ontario
Licence Appeal Tribunal

Tribunaux décisionnels Ontario
Tribunal d'appel en matière de permis

Ontario

Licence Appeal Tribunal File Number: 23-015662/AABS

In the matter of an Application pursuant to subsection 280(2) of the *Insurance Act*, RSO 1990, c I.8, in relation to statutory accident benefits.

Between:

Kevin McLean

Applicant

and

Security National Insurance Company

Respondent

MOTION ORDER

ADJUDICATOR:	**Trina Morissette, Vice-Chair**
APPEARANCES:	
The Applicant:	Kevin McLean, self-represented
For the Respondent:	No submissions were requested
For the Non-Party (TDGIC):	No submissions were requested
For the Non-Party (TD Home and Auto Insurance Company):	No submissions were requested

Date of Order: **September 6, 2024**

NOM #13 PAGE 2

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BACKGROUND

[1] The applicant was injured in an automobile accident on August 31, 2022, and sought benefits pursuant to the *Statutory Accident Benefits Schedule – Effective September 1, 2010 (including amendments effective June 1, 2016)*. The applicant was denied certain benefits and submitted an application to the Licence Appeal Tribunal (Tribunal) on December 27, 2023.

[2] A case conference in this matter was held on May 2, 2024 and a Case Conference Report and Order (CCRO) was issued to the parties on May 7, 2024. Relevant to the motions herein, paragraph [20] of the CCRO states that the applicant did not identify any specific document requests at the case conference and paragraph [22] states that the applicant made no production requests.

[3] In an Order dated June 20, 2024, on consent of the parties, I granted the applicant's request to change the respondent from TD General Insurance Company (TDGIC) to Security National Insurance Company (SNIC).

[4] A written hearing is scheduled in this matter for January 24, 2025.

[5] This file is currently 254-days old and this is the twelfth, thirteenth and fourteenth motions filed by the applicant. The applicant refers to these motions respectively as "NoM #13", "NoM #14" and "NoM #15".

MOTIONS

Notice of Motion filed July 9, 2024

[6] On July 9, 2024, the applicant filed a Notice of Motion (which the applicant refers to as "NoM #13") for:

1. An Order that the non-party, TDGIC, produce or disclose the following to the applicant on a forthwith basis:
   i. Notes;
   ii. Emails;
   iii. Summaries on files;
   iv. Memoranda of fact;
   v. Memoranda of law;
   vi. Meeting notes;
   vii. Notes of telephone calls;
   viii. Folders;

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ix. Directories;

x. Files or sub files;

xi. Copies of any unique reference or matter numbers (disclosed or undisclosed to the applicant);

xii. Any matter reference numbers;

xiii. Documents (paper and electronic form);

xiv. Off-site storage documents;

xv. Any documents of third-party service providers to TDGIC;

xvi. Any documents that evidence disclosures made by TDGIC to entities not named SNIC;

xvii. Any aliases that TDGIC utilizes for the naming of "TD General Insurance Company" FSRA Registration #353;

xviii. File opening date for TDGIC as it relates to the applicant or TD claim numbers;

xix. File closing date for TDGIC as it relates to the applicant or TD claim numbers;

xx. Any accounting and billing documents attributable to TDGIC;

xxi. Any documents evidencing "reserves" relating to the applicant on the books, records and accounts of TDGIC (internally or by reference to documents provided by TDGIC to the FSRA and OSFI involving automotive insurance);

xxii. Any retainer agreement between TDGIC and any known or unknown representatives, lawyer licensees, licensee firms, or paralegal licensees et al.;

xxiii. Any and all documents that were housed or stored at 3650 Victoria Park Avenue, North York, Ontario that were related to or about the applicant;

xxiv. Copies of all documents that were faxed or attempted to be faxed to the applicant, in the spring of 2023, that were not sent by the SNIC Markham's 416 fax number to the applicant and referenced;

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xxv. Copy of any and all documents, including the drafters or authors of said email, that reference TD claim #2 in the "e-claims services email" of October 11, 2023 that the applicant received to a non-consented email account for the purposes of TD claim #3;

xxvi. Any documents regarding legal research including but not limited to the legal positions taken by SNIC with respect to CAT impairment, IRB calculations, MIG, OCF-6 expenses, et al;

xxvii. Statements of account and billing information;

xxviii. Statements of work performed by TDGIC in relation to the applicant's PIPEDA request in 2023 and two PIPEDA requests in 2024;

xxix. Copies of any and all documents related to any representative (declared or deemed) of TDGIC, and their interactions with other individuals involving in the representative to TDGIC's capacity therein;

xxx. Copies of any and all documents related to the transferring of TDGIC's file in the SNIC proceeding to SNIC after the granting of NOM #8;

xxxi. Copy of the billed client and statements of account for any and all motions that TDGIC filed responsive materials to, any motions filed on behalf of TDGIC, the case conference et al; and

xxxii. Any other documents known to TDGIC that are not included or captured by or in the above.

2. An Order that TDGIC provide all of the names and contact information, in a list with dates for all persons who reviewed, summarized, corresponded, or communicated with the respondent and/or in any capacity that involved the applicant;

3. An Order that TDGIC provide any and all documents or things associated with the TD claim number referenced in the February 14, 2024, *PIPEDA* response that was not the applicant's TD claim number and more particularly TD claim number 034325790-03 ("fictitious TD claim number" or "TDGIC file number");

4. An Order that TDGIC provide and produce any and all documents or things that evidence when it received access to any and all documents that the applicant faxed to SNIC Markham or SNIC Burlington including but not limited to OCF documents and confidential correspondence;

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5. An Order that the applicant is limited to the usage and disclosure of these requested documents exclusively for the purposes relating to TD Claim #3, this SNIC proceeding or any future proceeding before this Tribunal involving the parties exclusively known and defined as this "applicant" and "SNIC"; and

6. Costs.

Notice of Motion filed August 3, 2024

[7] On August 3, 2024, the applicant filed an additional Notice of Motion (which the applicant refers to as "NoM #14") for:

1. An Order, Declaration, determination and/or finding that TD Home and Auto Insurance Company, FRSA (Financial Services Regulatory Authority of Ontario) registration number 1063 (TDHA) was the first insurer to receive, pursuant to Reg. 283, the applicant's fax delivered completed application to the fax number provided to him by the respondent as a return address for the respondent on October 13, 2022;

2. An Order, Declaration, determination or finding that the physical address, which is apparently denoted as a branch office of the respondent in HCAI, was or is an address or branch office of TDHA and not the respondent;

3. An Order adding TDHA as a respondent to the application;

4. An Order requiring TDHA, should it wish to oppose the relief sought in the application, file and serve a response within 14 days of the Order;

5. Any further relief that is consistent with the above; and

6. Costs.

Notice of Motion filed August 19, 2024

[8] On August 19, 2024, the applicant filed an additional Notice of Motion (which the applicant refers to as "NoM #15) for:

1. An Order that NoM #14 be heard in an expedited fashion and by no later than August 28, 2024, or, in the alternative, at the earliest date available;

2. An Order that if the respondent, TDHA, or any other non-party or interested person wishes to oppose NoM #14, it must provide notice, via filed letter, to the Tribunal by no later than August 21, 2024;

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3. A preliminary finding, determination, or order, that the fax number 416-774-3120 was a landline phone number utilized as a fax number on the 4th floor building situated at the premises municipally known as 3650 Victoria Park Avenue, North York, Toronto, Ontario, M2H 3P7; or

4. In the alternative, an Order that said issue of fact is added to the hearing of NoM #14;

5. An Order that NoM #13 is set for a hearing three weeks after the final decision of NoM #14;

6. An Order that the applicant shall tender his hearing brief for his potential motion regarding document production and disclosure from SNIC within one week after the decision of NoM #14 with a notice of scheduled hearing date to be issued by the Tribunal regarding exchange of responsive and reply briefs;

7. An Order that NoM #13 and the SNIC document production motion, if applicable, shall be heard together three weeks after the decision in NoM #14; and

8. Costs.

[9] No submissions were requested of the respondent or of the non-parties.

RESULT

[10] The applicant's motions are denied.

[11] I decline to make an order as to costs at this time. The applicant's request for costs has already been added to the issues in dispute in this matter and shall be determined at the hearing on the substantive issues.

ANALYSIS AND REASONS

The applicant's request for non-party productions is denied

[12] The applicant relies on Rule 9.2.2 of the *Licence Appeal Tribunal Rules, 2023* (*Rules*) in support of the list of 32 items for which he seeks production and additional relief. He submits that he made demands of the non-party to obtain the requested documents on June 25, 2024 and June 27, 2024, but has received no reply.

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[13] Rule 9.2.2 provides that the Tribunal may exercise its discretion to order a non-party to disclose or produce any relevant document or thing. The onus, however, is on the parties to obtain the documents and things that they wish to rely on and that they are required to produce to the other party or parties. When a party has the power to obtain documents or things from a non-party, the Tribunal will generally not make an order under Rule 9.2.2 where the party's efforts fall short.

[14] The applicant submits that for him to know the "authentic reasons" for the respondent's position regarding the issues in dispute, he must have access to these documents. The applicant argues that persons other than the respondent may have or been part of the decision-making process and that, in order to determine the applicant's entitlement to an award (one of the issues in dispute), the applicant requires the names of the "drafters and/or authors" of various documents which he submits were agents of TDGIC.

[15] First, part of the documentation sought by the applicant, for example the documents or things related to his *PIPEDA* requests in 2024, have no relevance to the matters to be adjudicated by this Tribunal and are denied on this basis.

[16] Second, although the applicant submits that the documents are not protected by solicitor-client privilege, I find that some of the requests made, for example the request found at xxvi. above (documents regarding legal research including but not limited to: the legal positions taken by SNIC with respect to CAT impairment, IRB calculations, MIG, OCF-6 expenses, et al.) could be protected by privilege. Pursuant to s. 15(2)(a) of the *Statutory Powers Procedure Act*, R.S.O. 1990, c. S.22, privileged information is inadmissible.

[17] Furthermore, while one of the issues in dispute is an award under s. 10 of Regulation 664, I find that the remainder of the documents and things requested by the applicant are excessive, unreasonable, and no more than a fishing expedition.

[18] Moreover, at the time of the case conference on May 2, 2024, the respondent in this matter was TDGIC. The applicant made no document exchange requests or production requests at the time and has provided no explanation for waiting until after the production deadlines (as set out in the CCRO) have passed to make these requests. As a matter of procedural fairness, the respondent (now SNIC) is entitled to notice of the case to meet and to prepare for the hearing based on the documents exchanged in a timely manner in advance of the hearing and according to the Tribunal's orders including those in the CCRO.

[19] The sole reason TDGIC is a non-party is because the applicant requested - and obtained consent - to change the respondent to SNIC. The applicant has not satisfied me that the documents and things sought are relevant to the issues in dispute. Ultimately, the applicant submits that he is seeking the names of the "drafters and/or authors" of these various documents which is a fishing expedition rather than a basis to prove relevance.

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[20] The applicant's motion for the production of documents and things as per NoM #13 are denied.

The applicant's request to add TDHA as a respondent and additional relief sought in NoM #14 is denied

[21] In order to properly address the applicant's NoM #14, and more specifically the applicant's prolonged and inconsistent argument regarding the correct identification of the respondent, a brief history following the filing of the application is required.

[22] The applicant filed his application in December 2023 naming "TD Insurance" as the respondent insurer. On January 25, 2024, the respondent filed its response to the application under the insurer name SNIC, accompanied by its correspondence written on "TD Insurance" letterhead. In correspondence following the filing of the response, the applicant referred to the respondent as "TD SNIC" (as an example, in the applicant's first notice of motion and the applicant's affidavit dated January 28, 2024 – Affidavit #7 – he refers to the respondent as "TD SNIC").

[23] On January 30, 2024, respondent's counsel filed a Declaration of Representative (DoR) noting that he was representing the insurer "TDGIC". At some point between the filing of the respondent's counsel's DoR on January 30, 2024 and February 19, 2024, the respondent's identity was administratively changed by the Tribunal from SNIC to TDGIC.

[24] From February 19, 2024 when the applicant filed his fifth notice of motion, the applicant objected to the respondent being TDGIC and sought an order for it to be changed to SNIC. The applicant refuted the respondent's information that SNIC and TDGIC were "one and the same". The applicant filed five more notices of motion – all of which included submissions that the applicant opposed the respondent being TDGIC and requesting that it be changed to SNIC. In an Order dated June 20, 2024, on consent of the respondent, the applicant's request was granted and the name of the respondent was changed to SNIC.

[25] The applicant has now filed a motion in which he requests, amongst other relief, that TDHA be added as a respondent to the application.

[26] In his motion submissions, the applicant failed to point to any binding case law or legislative authority that permits the Tribunal to add a second respondent to an application before the Tribunal. As the Tribunal is a creature of statute and has no inherent jurisdiction, the relief sought by the applicant raises questions about whether the Tribunal has jurisdiction to add TDHA as a second respondent in these circumstances. The applicant failed to address the fundamental question of the Tribunal's jurisdiction to grant this relief in his submissions which is fatal to the application request.

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[27] Even if the Tribunal has the authority to grant this relief, I am not satisfied that it would be appropriate to exercise that authority in the circumstances. The initial respondent, TDGIC, and the current respondent, SNIC, accepted priority over the applicant's insurance policy.

[28] The applicant's requests, under NoM #14, are denied.

The applicant's request to set timelines for the Tribunal's process is denied

[29] It is well-settled that the Tribunal is entitled to control its own procedure (s. 25.01.1(a), *Statutory Powers Procedure Act*, R.S.O. 1990, c. S.22) and is entitled to deference on matters requiring the exercise of discretion, such as scheduling and adjournment requests (*Riddell v. Huynh*, 2019 ONSC 2620 (Ont. Div. Ct.), at para. 33). Also, the Tribunal, and parties accessing the Tribunal, are assisted by its *Rules*.

[30] As such, the relief sought in the applicant's NoM #15 – to determine the process and set timelines for the determination of the various motions filed – is denied.

The applicant's continuous disregard of the Tribunal's process and resources

[31] Between the filing of the within application (on December 27, 2023) up to the filing of the applicant's NoM #15 on August 19, 2024 - the equivalent of 236 days - the applicant filed 13 motions, one request for accommodation, and a reconsideration request. This is the median equivalent of the applicant filing one motion with the Tribunal every 17 calendar days. It is challenging to provide an accurate list of all the requests made by the applicant during this period as several were made through correspondence in addition to the notices of motion filed.

[32] In my Order dated June 20, 2024, I put the applicant on notice that should he continue to disregard the Tribunal's processes, the Tribunal may simply refuse to hear the applicant's motion or dismiss it as an abuse of process. I provided examples of the numerous contradictions made by the applicant in his submissions which have made it challenging for the Tribunal to properly assess his position and how the continuous (and sometimes repetitive) notices of motion filed by the applicant have hindered the Tribunal's ability to ensure efficient and timely resolution of the requests made by the applicant and how this has rendered the case management of this file very challenging.

[33] I acknowledged the Tribunal's duty to accommodate self-representatives and noted the significant steps the Tribunal has taken to accommodate the applicant's unfamiliarity with its process. Despite the Tribunal's attempts to assist and educate the applicant, the applicant has continued to disregard the Tribunal's notice.

587 ROC (TAB #1, PAGE 10

[34] Of particular concern, the applicant continues to frustrate the Tribunal's process by filing significant submissions – over the 6 double-spaced page limit – which has continuously been brought to the applicant's attention. I note that after filing his motion #13 within, case management at the Tribunal contacted the applicant to remind him that submissions are to be limited to a maximum of six pages. The applicant responded by stating that his submissions were within that range.

[35] I note that although the document which the applicant refers to as his "submissions" are kept within six double-spaced pages, within these submissions, he references additional submissions filed through the means of affidavits. These affidavits, to date now totaling 30, are all sworn by the applicant and as such, are an attempt by the applicant to curtail the 6-page limit.

[36] In motion #13, the applicant filed an additional affidavit (Affidavit #26) which consists of 13 single-spaced pages (plus appendices with additional submissions) and references Affidavit #17 (55 pages), Affidavit #18 (9 pages), Affidavit #19 (33 pages), Affidavit #21 (27 pages), Affidavit #22 (10 pages), Affidavit #23 (5 pages), Affidavit #24 (19 pages), and Affidavit #27 (6 pages) for a total of at least 169 additional single-spaced pages of submissions.

[37] In motion #14, the applicant filed additional affidavits - Affidavit #29 (9 pages) and Affidavit #30 (20 pages) – and also references Affidavit #21 (2 pages) for a total of at least 31 additional single-spaced pages.

[38] As cited in my June 20, 2024 Order:

> The doctrine of abuse of process engages the inherent power of the court to prevent the misuse of its procedure, in a way that would be manifestly unfair to a party to the litigation before it or would in some other way bring the administration of justice into disrepute. (Justice Arbour in *Toronto (City) v. C.U.P.E., Local 79*, 2003 SCC 63 at para. 37).

[39] The applicant's actions have put a significant strain on Tribunal resources. If the applicant does not curtail his motion requests, the Tribunal will entertain any motion put forward by the respondent requesting costs against the applicant for frivolous motions and abuse of process.

Costs are denied

[40] The applicant seeks costs in each of its motions (NoM #13, 14 and 15).

[41] Rule 19.1 of the Rules provides that a party may make a request to the Tribunal for its costs where a party believes that another party in a proceeding has acted unreasonably, frivolously, vexatiously, or in bad faith. Rule 19.2 allows a request for costs to be made any time before a decision is released.

[42] The issue of costs has already been added to the issues in dispute in this matter. Doing so again would be repetitive and redundant.

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ORDER

[43] The applicant's motions are denied.

[44] I decline to determine the issue of costs at this time and leave it to the hearing adjudicator to determine.

[45] Except for the provisions contained in this Order, all previous orders made by the Tribunal remain in full force and effect.

[46] If the parties reach an agreement on the issues in dispute, the applicant shall immediately advise the Tribunal in writing.

[47] I am not seized of this matter.

Released: September 13, 2024

Trina Morissette
Vice-Chair

TAB 33

Electronically filed / Déposé par voie électronique : 18-Feb-2025
Toronto Superior Court of Justice / Cour supérieure de justice

TAB #3: ORAL COMPENDIUM: COURT FILE NO. DC-24-00000718-00JR

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Tribunals Ontario
Licence Appeal Tribunal

Tribunaux décisionnels Ontario
Tribunal d'appel en matière de permis

Ontario

RECONSIDERATION ORDER

Before:	Lindsay Lake Vice-Chair, Delegate
Date of Order:	October 15, 2024
Licence Appeal Tribunal File Number:	23-015662/AABS
Case Name:	Kevin McLean v. Security National Insurance Company
For the Applicant:	Kevin McLean, Self-represented

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ORDER

[1] On September 30, 2024, the applicant submitted a request for reconsideration with respect to the Tribunal's motion order dated September 13, 2024. In the motion order, the Tribunal dismissed the applicant's Notices of Motions filed on July 9, 2024, August 3, 2024, and August 19, 2024. In the applicant's August 3, 2024 Notice of Motion (also referred to by the applicant as "NoM #14"), the applicant sought an order adding TD Home and Auto Insurance Company (TDHA) as a respondent to this application.

[2] Pursuant to s. 17(2) of the *Adjudicative Tribunals Accountability, Governance and Appointments Act, 2009*, S.O. 2009, c. 33, Sched. 5, the Executive Chair has delegated to me authority to deal with such matters.

[3] I find that the applicant's request for reconsideration fails to comply with Rule 18.1 of the *Licence Appeal Tribunal Rules, 2023* ("Rules") for the following reasons.

[4] The Tribunal's power to reconsider as set out in Rule 18.1 is a discretionary one. It provides that the Tribunal may reconsider any decision that finally disposes of an appeal if the request for reconsideration is made within 21 days of the date of the decision. In this case, although the applicant's request was filed within the 21-day deadline for filing a request for reconsideration, the September 13, 2024 motion order is not a decision that finally disposed of an appeal as required by Rule 18.1.

[5] The applicant's request for reconsideration focused solely on the Tribunal's decision in the September 13, 2024 motion order to not add TDHA as a second respondent to this application. The applicant relied upon several decisions including the Ontario Court of Appeal decision in *M.E. v. Ontario*, 2021 ONCA 719 (CanLII) (*M.E.*) which referred to the High Court of Justice, Divisional Court Decision in *Bryson et al. v. Kerr*, 1976 CanLII 887 (ON SC) (*Bryson*). The applicant submitted that these decisions stand for the proposition that an order dismissing a motion to add a party is a final order and, therefore, can be the subject of a reconsideration. I find that these decisions can be distinguished on the facts from this matter.

[6] *M.E.* is a decision under the *Child, Youth and Family Services Act, 2017*, S.O. 2017, c. 14, Sch. 1 in which the appellant filed a motion to add additional causes of action and new parties to the action. The motion was dismissed at first instance as frivolous, vexatious, and an abuse of process, and leave to appeal the motion to the Divisional Court was also dismissed. The appellant then sought leave to appeal the Divisional Court decision to the Ontario Court of Appeal.

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which was granted as the Court of Appeal, relying on the decision in *Bryson*, found that an order dismissing a motion to add a party is "final."

[7] In *Bryson*, the plaintiff who was involved in a motor vehicle accident was seeking to add a co-defendant in what appears to be a tort proceeding involving the application of a limitation period under the then *Highway Traffic Act*, R.S.O. 1970, c. 202. The court in this matter found that an order dismissing an application made by the plaintiffs to add a defendant to the action was a final order.

[8] In this matter, Rule 16.1 is clear that the Tribunal may only reconsider any decision that finally disposes of an appeal and does not use the same wording as in *M.E.* and *Bryson* of a "final order." A final order is one that would finally dispose of the rights of the parties whereas an interlocutory matter is one that does not determine the real matter in dispute between the parties or the very subject matter of the litigation, but rather only a collateral matter: *[LM] v. The Co-operators General Insurance Company, 2021 CanLII 28676* (ON LAT Reconsideration) at para. 9. Here, the motion order did not determine any of the substantive issues in dispute as set out in the May 2, 2024 Case Conference Report and Order, and the proceeding in this matter is ongoing with the written hearing scheduled for January 24, 2025.

[9] In his reconsideration submissions, the applicant also failed to point to any binding case law or legislative authority that would permit the Tribunal to add a second respondent to an application as noted in paragraph 26 of the September 13, 2024 motion order. As the Tribunal is a creature of statute and has no inherent jurisdiction, the Tribunal found that the relief sought by the applicant raised questions about whether the Tribunal has jurisdiction to add TDHA as a second respondent in this matter. This also distinguishes the circumstances in this matter from the decisions in *Bryson* and *M.E.* as in those cases, multiple respondents or defendants were permitted.

[10] Finally, and as noted above, the Tribunal's power to reconsider a decision is not an appeal of right but is rather a discretionary power which the Tribunal may exercise. If I am incorrect and the Tribunal's Motion Order dated September 13, 2024 is a "decision that finally disposes of an appeal" and the Tribunal may add multiple respondents to an application, I find this would not be an appropriate matter in which to exercise this discretion because the applicant has already made a request for, and was granted, an order regarding the naming of the respondent. The applicant filed 6 previous motions with the Tribunal seeking, amongst various other relief, an order changing the respondent's name from TD General Insurance Company to Security National Insurance Company (SNIC). In an Order dated June 20, 2024, on consent of the respondent, the applicant's request was granted, and the name of the respondent was changed to SNIC.

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[11] For these reasons, the applicant's request for reconsideration is dismissed.

Lindsay Lake
Vice-Chair, Delegate
Tribunals Ontario – Licence Appeal Tribunal

Released: October 16, 2024

TAB 34

TAB #4: ORAL COMPENDIUM: COURT FILE NO. DC-24-00000718-00JR

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Tribunals Ontario
Licence Appeal Tribunal

Tribunaux décisionnels Ontario
Tribunal d'appel en matière de permis

Ontario

Licence Appeal Tribunal File Number: 23-015662/AABS

In the matter of an Application pursuant to subsection 280(2) of the *Insurance Act*, RSO 1990, c I.8, in relation to statutory accident benefits.

Between:

Kevin McLean

Applicant

and

TD General Insurance Company

Respondent

MOTION ORDER

ADJUDICATOR:	**Lindsay Lake, Vice-Chair**
APPEARANCES:	
For the Applicant:	**Kevin McLean, self-represented**
For the Respondent:	**No submissions were requested**
Motions heard in writing:	**January 15, 2024**

BACKGROUND

[1] The applicant was injured in an automobile accident on August 31, 2022 and sought benefits pursuant to the *Statutory Accident Benefits Schedule Effective September 1, 2010 (including amendments effective June 1, 2016)* (*Schedule*).

[2] The applicant was denied certain benefits and submitted an application to the Licence Appeal Tribunal - Automobile Accident Benefits Service (Tribunal) on December 27, 2023. The file has been open with the Tribunal for 19 days.

[3] A case conference has not yet been scheduled in this matter.

MOTIONS

[4] The applicant has filed three motions with the Tribunal.

[5] The applicant filed a Notice of Motion dated January 2, 2024 requesting the following relief:[1]

a. That the Tribunal issue the following Interim Orders:

i. A declaration that a catastrophic (CAT) impairment designation or determination is not a benefit under the *Schedule*;

ii. A declaration and Order that any assessment and/or examination fee, including fees associated with medical reports, the GOS test, and the completion of an Application for Determination of Catastrophic Impairment form (OCF-19) are not considered an expense pursuant to s. 18 of the *Schedule*;

iii. A declaration and Order that the provisions in s. 18 of the *Schedule* do not apply to fees and expenses incurred by the applicant for a CAT impairment determination by way of the submitted OCF-19 in a complete manner on November 10 and 11, 2023 to TD SNIC;

iv. A declaration that the submitted August 2023 MRI invoice and the October 2023 Neurosurgeon invoice are "subject and pursuant to section 25 of the SABS, being 'adjusting fees' and/or 'adjusting

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[1] The applicant also requested various other forms of relief in his motion submissions on page 7. Rule 15.1 of the *Licence Appeal Tribunal Rules, 2023* (*Rules*), however, provides that submissions in support of a motion must not exceed 6 double-spaced pages in length. As a result, the additional requests for relief were not considered as they were contained on pages that exceeded the permitted page length.

expenses" and are subject to the monetary limits under s. 25(5)(a) of the *Schedule*; and

v. An Order that TD SNIC pay the August 2023 MRI invoice on a forthwith basis.

[6] The applicant filed a Notice of Motion dated January 7, 2024 requesting the following relief:

a. An Order that the respondent pay to the applicant the rounded amount of the BMW Parkview Invoice ($1,531.00);

b. An Order that the respondent pay to the applicant $25,000 pursuant to s. 16(1), (2), (3)(j) and (4)(e) of the *Schedule*;

c. An Order that the respondent pay $598.50 to the applicant (April 2023 Rehab Invoice);

d. An Order that the respondent provide to the applicant, with a copy to the Tribunal, a full accounting of the amounts it has paid to the applicant since January 7, 2024;

e. Interest; and

f. An Award under *Regulation 664*.

[7] The applicant filed a Notice of Motion dated January 9, 2024 requesting the following relief:

a. A declaration that the respondent has failed within 10 business days of receipt of the applicant's Application for Accident Benefits (OCF-1), Employer's Confirmation (OCF-2), and Disability Certificate (OCF-3) dated November 3, 2022 to comply with s. 36(4) of the *Schedule* and is required to pay the specified benefit under s. 36(4)(a);

b. A declaration that the respondent remains bound by s. 36(6) of the *Schedule* until or if it complies with all of the requirements under section 36(4)(b) of the *Schedule*;

c. Interest;

d. "Penalty and compound interest" under *Regulation 664*; and

e. Costs of this motion if it is opposed.

AOC TAB 4
PAGE 19

RESULT

[8] I decline to consider the applicant's motions at this time.

ANALYSIS AND REASONS

[9] The applicant has filed various motions seeking, in part, interim orders and declaratory relief that requires findings on the substantive issues in dispute. A motion is not the proper procedure to make such requests, as the issues in dispute between the parties must proceed through the Tribunal's established processes. The Tribunal will only consider the substantive issues at the hearing of this matter.

[10] Further, if the applicant wishes to add any issues to the issues in dispute that he may have not included in his application, the process to do so is outlined in Rule 20.4 of the *Licence Appeal Tribunal Rules, 2023* and these matters can also be addressed at the case conference.

[11] The applicant has also sought orders for production of certain information from the respondent. These requests can be considered and addressed at the case conference once scheduled.

ORDER

[12] I decline to consider the applicant's motions at this time.

[13] Except for the provisions contained in this Order all previous Orders made by the Tribunal remain in full force and effect.

[14] If the parties reach an agreement on the issues in dispute, the applicant shall immediately advise the Tribunal in writing.

[15] I am not seized of this matter.

Released: January 16, 2024

Lindsay Lake
Vice-Chair

TAB 35

TAB #5: ORAL COMPENDIUM: COURT FILE NO. DC-24-00000718-00JR

NOM #13
TAB 2

6

Tribunals Ontario
Licence Appeal Tribunal
15 Grosvenor Street, Ground Floor
Toronto, ON M7A 2G6
Telephone: 416-326-1356
Toll Free: 1-888-444-0240
TTY: 1-800-855-0511
Email: LATregistrar@ontario.ca

Tribunal File Number: 23-015662/AABS

ISSUED in TORONTO on **February 13, 2024**

In the matter of an Application pursuant to subsection 280(2) of the Insurance Act, RSO 1990, c I.8, in relation to statutory accident benefits

Between:

Kevin McLean

Applicant

and

TD General Insurance Company

Respondent

NOTICE OF MOTION TO BE HEARD AT SCHEDULED EVENT

The Licence Appeal Tribunal will hear the motion filed by the applicant dated February 9, 2024 at the case conference scheduled to proceed on **Thursday, May 2, 2024**.

The order sought by the applicant is as follows:

1. An Order that the respondent pay the applicant $27,200 or any greater amount for the time period of one week after the accident to the deemed receipt date by the applicant of the respondent's "admitted IRB Denial on the IRB Denial Date (Saturday, December 23, 2023)."

The applicant also sought an Order for an award under s. 10 of *Regulation 664* and costs. The applicant has already included his claim for an award in his application. The issue of costs can be requested to be added to the issues in dispute at the case conference. As a result, these requests will not be addressed as part of this motion.

The party responding to the motion is invited to file responding submissions by April 11, 2024. Submissions shall be limited to 6 double-spaced pages, exclusive of evidence and authorities, and they shall be served on all other parties and filed with the Tribunal. Responding submissions filed after this deadline or that exceed the page limits may not be considered by the adjudicator hearing the motion.

697 NOM #13 TAB #2 (1)

The party bringing the motion is invited to file reply submissions by April 25, 2024. Submissions shall be limited to 3 double-spaced pages, exclusive of evidence and authorities, and they shall be served on all other parties and filed with the Tribunal. Reply submissions filed after this deadline or that exceed the page limits may not be considered by the adjudicator hearing the motion.

If you do not participate in the case conference, the Tribunal may make a decision on the motion in your absence and without further notice to you.

The documents submitted by the parties for the motion may be made available to the public, unless the Tribunal orders otherwise.

If the parties reach an agreement on the motion prior to the scheduled motion hearing date, the party bringing the motion shall immediately advise the Tribunal in writing.

If you require an accommodation to participate in a Tribunal proceeding, or, information about the Tribunal's processes, including the *Licence Appeal Tribunal Rules*, please contact the Tribunal by phone at 416-326-1356 or toll-free at 1-888-444-0240. If you are using a TTY device you can call us at toll-free at 1-800-855-0511. For the Tribunal's Accessibility Policy, please see our website at http://tribunalsontario.ca/lat.

Pour obtenir des services en français veuillez communiquer avec le Tribunal au (416) 326-1356.

TO:

Kevin McLean
775 KING ST W
TORONTO, ON M5V2K3
lat@confidentialmclean.ca
(647) 370-6208

TD General Insurance Company
3650 Victoria Park Avenue, 9th Floor
North York, ON M2H 3P7
TDIAOR@tdinsurance.com
(416) 774-3629

Matthew Nieuwland
TD Insurance Staff Lawyers
39-66 Wellington Street
Toronto, ON M5K 1A2
matthew.nieuwland@tdinsurance.com
(416) 599-7439

TAB 36

Electronically filed / Déposé par voie électronique : 18-Feb-2025
Toronto Superior Court of Justice / Cour supérieure de justice

TAB #6: ORAL COMPENDIUM: COURT FILE NO. DC-24-00000718-00JR

Licence Appeal Tribunal

133

Auto Insurance Dispute Resolution under the Insurance Act

Personal Information

In this form, the Injured Person is referred to as the "Claimant".

There is a $186 filing fee, which must be paid before your application is submitted. Payments are accepted by credit or debit card (Visa or MasterCard). After payment, you will be directed to the "Confirmation Page", which is your proof of payment. Please save the "Confirmation Page" for your records.

Within 5 days of filing your application, you must serve a copy of the application and all additional attached documents to the Insurance Company and the Insurance Company's representative and serve the Tribunal with a completed Certificate of Service as proof of service of the documents. (Blank 'Certificate of Service' forms are available on the Tribunal's website at www.slasto-tsapng.gov.on.ca/lat/en/resources/mandatory-accident-benefits-servi-cp/forms/).

Claimant Information

Is the application being filed by the Claimant's Representative?

☐ Yes ☑ No

Claimant Name

Last Name	First Name	Middle Name(s)
McLean	Kevin	

Mailing Address

Unit Number	Street Number	Street Name	PO Box
	775	KING ST W	

City/Town	Province/State	Postal/Zip Code
ORONTO	ON	M5V3K3

County

Toronto

Daytime Phone	Ext.	Alternate Phone	Ext.	Fax Number
647 513-1270				647 370-8268

Email Address

a@conflossalects.on.ca

Date of Birth (yyyy-mm-dd)

06-[illegible]-05

What is your preferred method of communication with the Tribunal?

☑ Email ☐ Fax ☐ Regular Mail

Note: If you check email you are consenting to the delivery of communications and some documents by email.

Preferred Language

☑ English ☐ French ☐ other

Is the Claimant under 18 years old?

☐ Yes ☑ No

Is the Claimant mentally incapable?

☐ Yes ☑ No

Do you or any witness(es) require accommodation under the Ontario Human Rights Code to participate in a Tribunal hearing?

☑ Yes ☐ No

If yes, please specify (or contact the Tribunal to discuss your needs).

'AT Updated, duty and all necessary accommodations'

Do you want the dispute resolution proceedings (e.g. case conference and hearings) to be conducted in French?

☐ Yes ☑ No

Do you or any witness(es) require language interpretation services?

☐ Yes ☑ No

What was the date of the accident? (yyyy-mm-dd)

2022-08-31

Where did the accident take place?

Address

60 Sandine Road

City/Town	Province/State	Postal/Zip Code
ORONTO	Ontario	M6P 2V4

Army
Mazda
451
(134)
Jane Road and St. Clair

Company Name

Joint Adjuster/Representative Name

Last Name	First Name	Middle Initial
[illegible]	Alisha-Anne	

Mailing Address

Unit Number	Street Number	Street Name	PO Box
20	101	MCNABB ST	

City/Town	Province/State	Postal/Zip Code
MARKHAM	ON	L3R0H8

Country
[illegible]

Daytime Phone	Ext.	Alternate Phone	Ext.	Fax Number
15 774-3120				416 774-3120

Email Address

Claim Number	Policy Number
353257983	001013511806

Policy Holder Name (First and Last Name)
Costa Antopoulos

. Did the Claimant notify the Insurance Company of the circumstances giving rise to a claim?

☑ Yes ☐ No

. Did the Claimant submit an application within the times set out by the Statutory Accident Benefits Schedule (SABS)?

☐ Yes ☑ No

Did the Claimant and the Insurance Company attempt to resolve the claim through the Insurance Company's internal dispute resolution process?

☑ Yes ☐ No

. Was the Claimant provided with notice by the Insurance Company that it requires an examination?

☐ Yes ☑ No

Did the Insurance Company deny payment of an invoiced amount because a service provider has not responded to a request for information from the insurance company?

☐ Yes ☑ No

this Application related to another case already filed at the Tribunal?

☐ Yes ☑ No

Does this claim involve optional benefits?

☐ Yes ☑ No

Does the dispute involve whether or not the Claimant's injuries fall within the Minor Injury Guidelines (MIG)?

☑ Yes ☐ No

Has the Insurance Company designated the Claimant to be catastrophically impaired?

☐ Yes ☑ No

Does the dispute involve whether or not the Claimant has sustained a catastrophic impairment as defined in the Statutory Accident Benefits Schedule (SABS)?

☑ Yes ☐ No

Does the claim involve an award for unreasonably held or delayed payments under s. 10 of RRO 1990, Reg 664?

☑ Yes ☐ No

Minutes of Assist

vide a full description of the accident benefits that you are seeking repayment for. If you have multiple claims that fall within the same accident benefit category
152 your claims by pressing the "Add Benefit" button.

135

: Income Replacement Benefits

hat is being disputed?

Initial entitlement to benefits ☐ Length of time benefits paid ☐ Amount of weekly benefits

Entitlement to benefits past 104 weeks ☑ other (Specify) See above

kkly Amount in Dispute $

0.00

ate Submitted to Insurer (yyyy-mm-dd)
2022-10-13

Date Denied (yyyy-mm-dd)
2023-12-23

as the denial of your claim provided in writing?

Yes ☑ No

no, please provide details to explain why you were denied your claim.

D SNEC never technically denied the IRB but represented while I was in Europe, obtaining skills that I could not get with the same expediency in Canada despite
eing raised for the sense (particular reference my brain) that it had "discontinued paying the

ute Period in Dispute

om (yyyy-mm-dd)
022-09-06

Please choose a date or select "Ongoing"
To (yyyy-mm-dd)
☑ Ongoing

easons for Denial

the Claimant received income benefits state weekly amount and duration of payments.

Weekly Amount $ | From (yyyy-mm-dd) | To (yyyy-mm-dd)

the Insurance Company claiming a repayment of benefits?

Yes ☑ No

the Claimant claiming interest?

☑ No

: Orthotics

mount in Dispute $

50.00

ate Submitted to Insurer (yyyy-mm-dd)
023-11-24

Date Denied (yyyy-mm-dd)
2023-11-30

as the denial of your claim provided in writing?

☑ Yes ☐ No

yes, please include a copy of the denial letter with your application

ame of Service Provider

ype of Service

rthotics

me Period in Dispute

om (yyyy-mm-dd)
023-11-24

Please choose a date or select "Ongoing"
To (yyyy-mm-dd)
☑ Ongoing

easons for Denial

represented to me that it had paid $3500 in benefits when it had paid more than that to the approximate amount of $4000 with many amounts outstanding

the Claimant claiming interest?

☑ Yes ☐ No

: Medical services

unt in Dispute $

234.00

ate Submitted to Insurer (yyyy-mm-dd)

Date Denied (yyyy-mm-dd)

as the denial of your claim provided in writing?

Yes

If yes, please include a copy of the denial letter with your application.

(136)

Name of Service Provider

[redacted]

Type of Service

Medical services

Service Period in Dispute:

From (yyyy-mm-dd)

2023-09-22

Please choose a date or select "Ongoing"

To (yyyy-mm-dd)

☑ Ongoing

Reasons for Denial

TD SNIC represented to me it was not in English when initially submitted but without an OCF-9 and then it was translated for TD SNIC and it did not respond in the time.

Is the Claimant claiming interest?

☑ Yes ☐ No

Type of Service: Medical services

Amount in Dispute $

2,000.00

Date Submitted to Insurer (yyyy-mm-dd)

2023-11-08

Date Denied (yyyy-mm-dd)

2023-11-30

Has the denial of your claim provided in writing?

☑ Yes ☐ No

If yes, please include a copy of the denial letter with your application.

Name of Service Provider

Dr. Apostolos Chatzikalfas

Type of Service

Medical services

Service Period in Dispute:

From (yyyy-mm-dd)

2023-11-04

Please choose a date or select "Ongoing"

To (yyyy-mm-dd)

☑ Ongoing

Reasons for Denial

TD SNIC claimed that the invoice of Dr. Apostolos Chatzikalfas (neurosurgeon) was not "reasonable and necessary" despite it being in relation to the OCF-18 for all listed applications, examinations and assessments.

Is the Claimant claiming interest?

☑ Yes ☐ No

Type of Service: Dental services

Amount in Dispute $

000.00

Date Submitted to Insurer (yyyy-mm-dd)

2023-06-09

Date Denied (yyyy-mm-dd)

2023-12-29

Has the denial of your claim provided in writing?

☐ Yes ☑ No

If no, please provide details to explain why you were denied your claim.

TD SNIC failed to respond

Name of Service Provider

Initial Emergency Services

Type of Service

[redacted] Services

Service Period in Dispute

Please choose a date or select "Ongoing"

123-06-08	☑ Ongoing

154

137

ere Claimant claiming interest?

☐ Yes ☐ No

: Other Disputes

mount in Dispute $

000,000.00

ate Submitted to Insurer (yyyy-mm-dd)	Date Denied (yyyy-mm-dd)
023-11-10	2023-12-23

as the denial of your claim provided in writing?

☐ Yes ☑ No

o, please provide details to explain why you were denied your claim.

endered an Application (OCF-18) for CAT Impairment but TD SMIC failed to respond within ten business days and relies on unknown law that only an "Appropriate ntario Health Practitioner" can complete the same. It has not responded to my request for aut

ate Period in Dispute:

om (yyyy-mm-dd)	Please choose a date or select "Ongoing" To (yyyy-mm-dd)
023-11-10	☑ Ongoing

etail of Expense

endered an Application (OCF-18) for CAT Impairment but TD SMIC failed to respond within ten business days and relies on unknown law that only an "Appropriate ntario Health Practitioner" can complete the same. It has not responded to my request for aut

easons for Denial

the Insurance Company claiming a repayment of benefits?

☐ Yes ☑ No

the Claimant claiming interest?

☐ Yes ☑ No

: Other goods and services

mount in Dispute $

800.00

ate Submitted to Insurer (yyyy-mm-dd)	Date Denied (yyyy-mm-dd)
023-04-20	2023-12-23

as the denial of your claim provided in writing?

☐ Yes ☑ No

o, please provide details to explain why you were denied your claim.

D SMIC has failed to respond a variety of my requests for OCF-6 expenses to be covered. A variety of expenses from different dates which will be particularized.

ame of Service Provider

ype of Service

ther goods and services

ate Period in Dispute:

om (yyyy-mm-dd)	Please choose a date or select 'Ongoing' To (yyyy-mm-dd)
023-04-20	☑ Ongoing

easons for Denial

the Claimant claiming interest?

☐ Yes ☐ No

: Other Disputes

mount in Dispute $

1,500.00

023-07-07	2023-12-23

as the denial of your claim provided in writing?

☐ Yes ☑ No

(138)

no, please provide details to explain why you were denied your claim.

D SNIC has failed to respond for my invoice for BMW Paintless for damage to the car arising from the Accident. TD SNIC has failed to comply with section 16(4) of [illegible] even respond to my evidence provided. Despite an adjuster providing a request for doc

od Period in Dispute

rom (yyyy-mm-dd)	Please choose a date or select "Ongoing"
023-07-07	To (yyyy-mm-dd)
	☑ Ongoing

ail of Expense

D SNIC has failed to comply with the BMW Paintless invoice without a response. TD SNIC has failed to comply with section 16(4) of SABS to provide the amount $25,000 (replacement value with appraisal provided).

easons for Denial

the Insurance Company claiming a repayment of benefits?

☐ Yes ☑ No

the Claimant claiming interest?

☑ Yes ☐ No

: Other Disputes

mount in Dispute $

,000.00

ate Submitted to Insurer (yyyy-mm-dd)	Date Denied (yyyy-mm-dd)
023-08-01	2023-12-23

Was the denial of your claim provided in writing?

☐ Yes ☑ No

no, please provide details to explain why you were denied your claim.

ny and all other expenses and amounts to be paid now or in the future not covered by TD SNIC based on timing of hearings or resolution.

od Period in Dispute

rom (yyyy-mm-dd)	Please choose a date or select "Ongoing"
023-08-01	To (yyyy-mm-dd)
	☑ Ongoing

ail of Expense

ny and all other expenses and amounts to be paid now or in the future not covered by TD SNIC based on timing of hearings or resolution.

easons for Denial

the Insurance Company claiming a repayment of benefits?

☐ Yes ☑ No

the Claimant claiming interest?

☐ Yes ☑ No

is expected that the Claimant and the Insurance Company have exchanged key documents prior to the filing of an Application.

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of the documents in your possession to which you will refer in the dispute process. Identify the type of document (letter, medical report, tax return), the name of the author or issuing institution and the date of the document.

Affidavit #1 of Kevin A. McLean, made on October 20, 2023 2. Affidavit #2 of Kevin A. McLean, made on October 20, 2023 3. Affidavit #3 of Kevin A. McLean, ade on October 31, 2023; 4. Affidavit #4 of Kevin A. McLean, made on November 28, 2023; et al

documents not currently in your possession, which you intend to get from other sources (such as employers, doctors, Revenue Canada) for use in the process. You should also include any documents requested from the Insurance Company (such as surveillance evidence, a summary of benefits paid) which has not yet been provided. Wherever possible, identify the type of document (letter, medical report, tax return), the name of the writer or issuing institution and the date of the document.

If personal information obtained through PIPEDA. All requested information of TD through requested for records

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[redacted]

ead carefully and then confirm the statements below.

457

] I certify that all information in the application and attachments are true and complete.

] I certify that within 5 days, I will serve a copy of the application form and all additional attached documents to the Insurance Company and the Insurance company's representative and will serve the Tribunal with a completed Certificate of Service as proof of service of the documents. (Blank Certificate of Service [redacted] available on the Tribunal's website at www.sbtlo-tsapmo.gov.on.ca/sbt-tsapmo/auto/vehicle-accident-benefit-applications/).

] If applicable, I authorize the respondent insurance company to release all medical reports and information relating to the issues in dispute to the Automobile Accident Benefits Service, Licence Appeal Tribunal. I realize that information filed with this application will be given to the other party in this dispute.

Statement

rint Name	Signature	Date (yyyy-mm-dd)
evin McLean	eFiled	2023-12-24

he Licence Appeal Tribunal collects the personal information requested on this form under section 3 of the Licence Appeal Tribunal Act, 1999 and under the surance Act. This information will be used in the dispute resolution process for accident benefits. After an appeal is filed, all information may become available to e public. Any questions about this collection may be directed to the Licence Appeal Tribunal at 416-327-8500 or toll-free at 1-844-242-0606.

or additional information, please visit the Automobile Accident Benefits Service website at: www.sbtlo-tsapmo.gov.on.ca/sbt-tsapmo/ or call the Licence Appeal ribunal at 416-327-8506 or toll-free at 1-844-242-0606. If you are using a TTY device you can call us at 416-314-0152 or TTY toll-free at 1-844-850-2819.

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Safety, Licensing Appeals and Standards Tribunals Ontario
Licence Appeal Tribunal

141

AABS e-File | Application by an Injured Person

Application Submitted

Confirmation Page

Tribunal File Number:	23-015662/AABS
Date Submitted to Tribunal: [1]	24-Dec-2023 04:12 PM EST
Insurance Company Claim Number:	0363257903
Payment Confirmation:	28006622
Amount:	$106.00
Payment Method:	VISA
Payment Status:	SUCCESS

[1] When an application, response or document is submitted by AABS e-File, service to the Tribunal will be deemed to have occurred on the day sent if received before 5:00 PM EST on a weekday. If sent on a weekend or a holiday or after 5:00 PM EST on a business day, service will be deemed to have occurred on the next business day.

Within 5 days of filing your application by AABS e-File, you must serve a copy of the application and all additional attached documents to the Insurance Company and the Insurance Company's representative and serve the Tribunal with a completed Certificate of Service as proof of service of the documents. (Blank 'Certificate of Service' forms are available on the Tribunal's website at https://tribunalsontario.ca/lat/automobile-accident-benefits-service/forms/).

Transaction Details

Payment To:	Automobile Accident Benefits
Total:	$106.00
Time:	24-Dec-2023 04:12 PM EST
Payment Method:	VISA
Card Number:	**********5793
Cardholder Name:	KEVIN MCLEAN
Session ID:	28006622
Authorization Number:	161219

Note:

- For payment inquiries to your card issuer, please refer to the Authorization Number on your payment receipt.

AOC 197

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FAX

To
Name: TD-SNIC-Nurse-Persaud
Fax number: +14167743120

From
Name: Insured Person (KAM)
Fax number: +16475706208

Number of pages: 6

Subject: Claim number: 035325790-3

Date: Dec 24, 2023

■ Urgent ■ For Review ■ Please Reply ■ Confidential

Message:

Please find attached

TAB 37

TAB #7: ORAL COMPENDIUM: COURT FILE NO. DC-24-00000718-00JR

Automobile Accident Benefits Service
Licence Appeal Tribunal

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Response by an Insurance Company to an Injured Person's Application for Auto Insurance Dispute Resolution under the Insurance Act

General Information

- On this form, the Injured Person is referred to as the "Claimant".
- There is no fee required for filing a response.
- Once you have e-Filed your response, you will be directed to a "Confirmation Page". Please save the "Confirmation Page" for your records.
- Within 5 days of filing your response, you must serve a copy of the response and all additional attached documents to the Claimant and the Claimant's representative and serve the Tribunal with a completed Certificate of Service as proof of service of the documents. (Blank 'Certificate of Service' forms are available on the Tribunal's website at www.ltbtt-lstpoo.gov.on.ca/ltbt-pages/en/automobile-accident-benefits-service-forms/).

Response to Tribunal File Number 23-015612/AABS

Insurance Company Information

Is the application being filed by the Insurance Company's Legal Representative?

☐ Yes ☑ No

Insurance Company Name

Security National Insurance Company

Claim Adjuster/Representative Name

Last Name	First Name	Middle Initial
Karal	David	

Mailing Address

Unit Number	Street Number	Street Name	PO Box
	101	MONARCH ST	

City/Town	Province/State	Postal/Zip Code
MARKHAM	ON	L3R4H8

Country

Canada

Daytime Phone	Ext.	Alternate Phone	Ext.	Fax Number
877 856-3767	260283			

Email Address

Claim Number	Policy Number
035326705	06161351806

Policy Holder Name (First and Last Name)

Nicole Anopoulos

Accommodation and Language Interpretation

1. Do you or any witness(es) require accommodation under the Ontario Human Rights Code to participate in a Tribunal hearing?

☐ Yes ☑ No

2. Do you want the dispute resolution proceedings (e.g. case conference and hearings) to be conducted in French?

☐ Yes ☑ No

3. Do you or any witness(es) require language interpretation services?

☐ Yes ☑ No

Related Cases

Is the Application related to another case already filed at the Tribunal?

☐ Yes ☑ No

Preliminary Issues

Do you intend to raise any preliminary issues at the Case Conference?

☑ Yes ☐ No

If yes, please specify.

Pursuant to section 55 (1) 2. of the SABS, is the applicant precluded from pursuing benefits for Med Rehab because he has failed to comply with the respondent's request for assessment in accordance with Section 44 of the schedule

Response

Provide a full response to the matters raised by the Claimant about the accident benefits that are in dispute with reference to the paragraph numbers in the claim. You may also identify new issues you wish to raise. You must choose at least one item below.

1. 162 Disputes

Response

MIG Dispute - Denied as Applicant has failed to comply with s.44 of the SABS and issue should be withdrawn.

[redacted] ber Disputes

Response

CAT Dispute - OCF-19 is invalid and issue should be withdrawn

3. . Income Replacement Benefits

Response

$400.00/week. Length of Time Benefits Paid, Submitted October 10, 2022. Denied December 23, 2023 and ongoing - Suspended due to non-compliance with s.33 s.44 of the SABS and issue should be withdrawn

4. : Orthotics

Response

$450.00, submitted November 24, 2023, denied, November 30, 2023, OCF-6, Orthotics - Denied in MIG

5. . Other goods and services

Response

$1,230.00, submitted September 22, 2023, denied, September 30, 2023, Medical Services, Unknown - Denied as not submitted on an treatment plan or previously approved and issue should be withdrawn.

6. : Cost of Examinations

Response

$12,000.00, submitted November 9, 2023, denied, November 20, 2023, Medical Services, Completion of OCF-19 - Not submitted to NCAI on an OCF-19 and issue should be withdrawn.

7. : Dentures, other dental devices

Response

$1,000.00, submitted June 9, 2023, denied, December 23, 2023, Medical Services, Dental - No OCF-6 can be found for that amount and issue should be withdrawn.

8. : Other Disputes

Response

$[redacted],000.00, submitted December 10, 2023, denied, December 23, 2023, CAT Determination - This is a duplicate of the CAT issue above and should be withdrawn.

9. : Other goods and services

Response

$4,000.00, submitted April 20, 2023, denied, December 23, 2023, Other goods and services - No OCF-6 can be found for that amount and issue should be withdrawn

10. : Other Disputes

Response

$25,500.00, submitted July 7, 2023, denied, December 23, 2023, Other - There is no coverage for this under the SABS and issue should be withdrawn

11. : Other Disputes

Response

$3,000.00, Other - There is no denial of any kind for this request and issue should be withdrawn

Documents List (This section must be completed)

It is agreed that the Claimant and the Insurance Company have exchanged key documents prior to the filing of an Application.

List key documents in the Insurance Company's possession to which you will refer in the dispute process. Identify the type of document (letter, medical report, tax return), the name of the writer or issuing institution and the date of the document.

All correspondence on file. → WHICH FILE? WHICH ONE? FIRST

Any documents not currently in the Insurance Company's possession, which you intend to get from other sources (such as employers, doctors, Revenue Canada) for use in the dispute process. You should also include any documents requested from the Claimant (such as financial or employment records) which have not yet been provided. Wherever possible, identify the type of document (letter, medical report, tax return), the name of the writer or issuing institution and the date of the document.

TBD.

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Acknowledgement

Read carefully and then confirm the statements below.

I am the Insurance Company

☑ I certify that all information in the response and attachments are true and complete.

☑ I certify that within 5 days, I will serve a copy of the response form and all additional attached documents to the Claimant and the Claimant's representative and serve the Tribunal with a completed Certificate of Service as proof of service of the documents. (Blank 'Certificate of Service' forms are available on the Tribunal's website at www.slasto-tsagso.gov.on.ca/lat-tampon/automobile-accident-appeals-service-forms/).

Insurer

Print Name	Signature	Date (yyyy-mm-dd)
David Kacat	eFiled	2024-01-25

The Licence Appeal Tribunal collects the personal information requested on this form under section 3 of the Licence Appeal Tribunal Act, 1999 and under the Insurance Act. This information will be used in the dispute resolution process for accident benefits. After an appeal is filed, all information may become available to the public. Any questions about this collection may be directed to the Licence Appeal Tribunal at 416-327-8508 or toll-free at 1-844-242-0606.

For additional information, please visit the Automobile Accident Benefits Service website at: www.slasto-tsagso.gov.on.ca/lat-tampon/ or call the Licence Appeal Tribunal at 416-327-8500 or toll-free at 1-844-242-0606. If you are using a TTY device you can call us at 416-916-8102 or TTY toll-free at 1-844-650-2819.

104

TAB 38

TAB #8: ORAL COMPENDIUM: COURT FILE NO. DC-24-00000718-00JR

430

409

Page 45

Re: #6: START OF VESTIBULAR EXERCISES - SUFFERED SOME FORM OF CONCUSSION OR BRAIN ISSUES AS RESULT OF ACCIDENT

177. Now shown to me and marked as **EXHIBIT "A"**, *pages* denoted above are copies of the documents, with description therein, so referenced.

VOLUME 8(B): February 05, 2023
EXHIBIT "A", *pages* 403 to 406
Re #1: Sport Clark – posture vest
Re #2: Targeting Grade 8 RL – provide a singular and comprehensive *OCF* form in this regard

178. Now shown to me and marked as **EXHIBIT "A"**, *pages* denoted above are copies of the documents, with description therein, so referenced.

VOLUME 8(C): February 13, 2023
EXHIBIT "A", *pages* 407 to 408
Re #1: Requested an accounting of how the payor, TD SNIC, is and ACCOUNTING for any confirmed eligibility and enablement of the IRB on its records, books and accounts

179. Now shown to me and marked as **EXHIBIT "A"**, *pages* denoted above are copies of the documents, with description therein, so referenced.

180. I believe that **TD SNIC** (or whomever was making the payments) was deducting the **IRB** on its books and records from September 8, 2023 as a "deductible expense" without paying me. I also requested the name of the actual payor and originating financial institution as well.

VOLUME 9(D): February 15, 2023
EXHIBIT "A", *pages* 409 to 410
Re: **IRB** – no legal grounds to have not made payments – ss. 33(1)(1.) – was not rendered within 10 business days of receipt of the *OCF-3* (November 3, 2023)
Re #2: reserving all rights
Re #3: LIKELY I FALL INTO THE CATEGORY OF CAT IMPAIRMENT (no documents provided)

181. Now shown to me and marked as **EXHIBIT "A"**, *pages* denoted above are copies of the documents, with description therein, so referenced.

VOLUME 8(E): February 19, 2023

431

(410)

EXHIBIT "A", *pages* 411 to 417

Re #1: expenses under *OCF-6*: $129.54 (all from February 9, 2023); $132.95 (from December 12, 2023 invoices); and $8.97 (ice packs with *OCF-6* from previous on February 5 2023) f

182. Now shown to me and marked as **EXHIBIT "A"**, *pages* denoted above are copies of the documents, with description thereto, so referenced.

183. As it relates to expenses (December 12, 2022), they were as follows (**EXHIBIT "A"**, *pages* 413 and 415): L-arginine; Focus Formula; Neuro Fuel; Minerals: Iron; and Vitamin K.

184. As it relates to expenses, they were as follows from the date of **February 9, 2023**: Iron; L-tyrosine; **NMN Surge**; Super mushrooms; and Ear Candles (x2) (ear issues and pain).

VOLUME 8(F): February 21, 2023
EXHIBIT "A", *pages* 418 to 421
Re: Expenses *OCF-6* ($135.38)
Re #2: 1 Water Jug
Re #3: 1 PTP posture position vest

185. Now shown to me and marked as **EXHIBIT "A"**, *pages* denoted above are copies of the documents, with description thereto, so referenced.

VOLUME 8(G): February 21, 2023
EXHIBIT "A", *pages* 422 to 428
Re #1: Audiologist test ($315)
Re #2: Back brace (Shoppers Drug Mart) and gloves $65 (doubled up admission right way) (Disregard)

186. Now shown to me and marked as **EXHIBIT "A"**, *pages* denoted above are copies of the documents, with description thereto, so referenced.

VOLUME 9: March 2023

VOLUME 9(A): March 03, 2023
Pages: 3
EXHIBIT "A", *pages* 429 to 431
Re: Blood coming out of the "earlobes" and "brain issues". - attached picture

429

(408)

174. Now shown to me and marked as **EXHIBIT "A"**, pages denoted above are copies of the documents so referenced.

VOLUME 7(D): January 31, 2023
Pages: 2
EXHIBIT "A", *pages* 374 to 376
Re: INB et al
Re #2: statutory obligations under SABS
Re #3: not merely a slipped disc – far more
Re #4: amount at said time for INB was $84.00
Re #5: 50% penalty

175. Now shown to me and marked as **EXHIBIT "A"**, pages denoted above are copies of the documents so referenced.

VOLUME 7(B): January 31, 2023
Pages: 23
EXHIBIT "A", *Pages* 377 to 399
Re: **secondary source material as it related to Grade 1 RL** from 2016

176. Now shown to me and marked as **EXHIBIT "A"**, pages denoted above are copies of the documents so referenced. I note the language on page 379 that can only be confirmed through a study such as X ray or MRI. As such, any such examinations are predicated upon the MRI results from October 2022 and August 2023.

VOLUME 8: February 2023

VOLUME 8: February 2023
"Issues with brain and functioning commenced -

VOLUME 8(A): February 06, 2023
Pages: 3
EXHIBIT "A", pages 400 to 402
Re #1: Expenses $100.94 ($89.32 without HST)
Re #2: Bring Accident Benefits up to Date
Re #3: Forward the same to your accounting department
Re #4: "Listhesis" – manual and care movement in backwards fashion of the bones regarding L5-S1
Re #5: "posture vest" from Sport Chek

433

412

VOLUME 9(F): March 21, 2023
EXHIBIT "A", page 484 to 485
Re: nothing received from TD in quite some time

192. Now shown to me and marked as **EXHIBIT "A"**, *pages* denoted above are copies of the documents with description therein, so referenced.

VOLUME 9(G): March 21, 2023
EXHIBIT "A", page 486 to 487
Re: IRB – entitled after I delivered the OCF-3 – amount at time - $11,200
Re #2: provide to relevant accounting and tax department

193. Now shown to me and marked as **EXHIBIT "A"**, pages denoted above are copies of the documents with description therein, so referenced.

VOLUME 9(H): March 28, 2023
EXHIBIT "A", page 488 to 489
Re: Expenses outstanding
Re #2: last expenses paid – January 16, 2023
Re #3: scheduling MRI – attempting sooner than usual
Re #4: require outstanding payments immediately
Re #5: TD driving app information requested
Re #6: additional request for tax and accounting information requested

194. Now shown to me and marked as **EXHIBIT "A"**, pages denoted above are copies of the documents, with description therein, so referenced.

VOLUME 9(I): March 29, 2023
EXHIBIT "A", Pages 490 to 511
Re: relevant documents - abundance of caution

195. Now shown to me and marked as **EXHIBIT "A"**, *pages* denoted above are copies of the documents, with description therein, so referenced.

VOLUME 9(J): March 30, 2023
EXHIBIT "A", page 512 to 514
Re: outstanding issues – IRB - $11,600
Re #2: outstanding expenses
Re #3: physiotherapy and rehabilitation expenses

434

196. Now shown to me marked as **EXHIBIT "A"**, *pages* denoted above are copies of the documents, with description therein, so referenced.

VOLUME 10: April 2023

VOLUME 10(A): April 03, 2023
EXHIBIT "A", *pages* 515 to 516

Re: denial of communications via email until TD SNIC resolves its compliance obligations

Re #2: Expenses from Staples: $212.57

197. Now shown to me marked as **EXHIBIT "A"**, *pages* denoted above are copies of the documents, with description therein, so referenced.

198. I affirm herein that the package was sent from somewhere in New Brunswick and it had my number as the area code therein. I have never lived in Nova Scotia which was concerning. The concierge in the building notified me of the same and I was concerned it could be a dangerous package. It did not come from TD in regular mailed envelopes. I note the same in relation to the "spam letter."

VOLUME 10(B): April 19, 2023
EXHIBIT "A", *pages* 518 to 519

Re: *PIPEDA* matters handled separately

Re #2: switch of physios

199. Now shown to me marked as **EXHIBIT "A"**, *pages* denoted above are copies of the documents, with description therein, so referenced.

VOLUME 10(C): April 25, 2023
EXHIBIT "A", *pages* 520 to 521

Re: confirmed receipt of delivered mail

RE #2 – *PIPEDA* addressed separately

Re #3: I was the driver and entitled to that information

Re #4: MISC.

200. Now shown to me marked as **EXHIBIT "A"**, *pages* denoted above are copies of the documents, with description therein, so referenced.

VOLUME 11: May 2023

VOLUME 11(A): May 05, 2023
EXHIBIT "A", *pages* 522 to 523 and 528 to

445

(424)

VOLUME 17: October 2023

VOLUME 17(A): October 4, 2023

EXHIBIT "A", *Pages* 809 to 812
Re:

264. I returned to Canada in early October 2023, and I faxed the name of Ms. Persaud that was provide to me upon my return to Canada (i.e. full legal name) and introduced myself. I faxed her at the 416 number.

265. Now shown to me marked as **EXHIBIT "A"**, *pages* denoted above are copies of the documents described and particularized above.

VOLUME 17(B): October 4, 2023

EXHIBIT "A", *pages* 813 to 816
Re:

266. Now shown to me marked as **EXHIBIT "A"**, *pages* denoted above are copies of the documents described and particularized above.

VOLUME 17(C): October 4, 2023

EXHIBIT "A", *pages* 817 to 819
Re:

267. Now shown to me marked as **EXHIBIT "A"**, *pages* denoted above are copies of the documents described and particularized above.

VOLUME 17(D): October 12, 2023
EXHIBIT "A", *pages* 820 to 825

Re #1: response to Ms. Persaud's letter of September 18, 2023

Re #2: Despite TD SNIC saying a "upon fax" that 416 fax number (based on recollection and memory) after deleting the same and blocking the number for loss of privacy breach was not active – Ms. Persaud confirmed receipt
Re #3: Ms. Persaud represented that my invoices were not attached with the submission in question – September 6, 2023 – which was correct but there were further documents sent thereafter (see: supra)

268. Now shown to me marked as **EXHIBIT "A"**, *pages* denoted above are copies of the documents described and particularized above.

VOLUME 17(D): October 12, 2023 (SEMINAL LETTER – AMOUNTS TO ADMISSION OF CERTAIN FACTS BY TD SNIC)

446

(426)

Page: 44

EXHIBIT "A", *pages 826 to 832*

Re: My response to Ms. Persaud's letter of September 29, 2023 (delivered to us via fax number)

Re #1: **TD SNIC** (Persaud) represented - "based on review of medical evidence documented, we are *unable* to *determine* if your EXISTING MEDICAL CONDITION is *sufficient* to *exclude* you from the Minor Injury Guideline"

Re #2: maximum amount payable for Medical and Rehab benefits respect of Insured Person **SHALL** not exceed the sum of $3,500.00 for an **Impairment** that is *predominately* a **Minor Injury**
Re #3: To Date, we have approved $3500.00 for an Impairment that is [illegible] *predominately* a **Minor Injury** as defined in SABS

269. Now shown to me marked as **EXHIBIT "A"**, pages denoted above are copies of the documents described and particularized above. **TD SNIC**, based upon my review of the documents and the October 12, 2023 letter.

VOLUME 17(D)(I): *what type of "a review" was done and by whom? Was the individual(s) who conduct said review able to fully grasp and comprehend the "documented medical evidence"?*

270. It is unclear to me what type of "review" was done by **TD SNIC**. I look forward to seeing and inspecting those documents (if there are any) and whom they were completed by.

271. As noted above and in the documentary evidence to this my affidavit #3 and previous affidavits #1 and #2, I put **TD SNIC** to strict proof herein and thereof any positions it has taken, and challenge it to produce documents in any process or by way of privacy requests, and to retain all of the same until I have exhausted all of my rights (whether provincial or federal).

272. Based on **TD** singular review of the documented medical evidence, which was created by medical professionals (Physicians) utilizing MRIs and X rays, I believe that I have provided **TD** with means and opportunity to determine that the plain language in the MRI Reports (and X-rays which excluded a broken bone in my left hand), and I would presume it has the "skill" to review the language in MIG to determine that there is no language therein that would fall under the definition of "Minor Injury".

VOLUME 17(D)(II): "Unable" (to determine)

273. I note the definition of "unable" is lacking.
a. Skill;
b. Means; or
c. opportunity

to do something.

274. I find and have found it unfortunate that **TD SNIC** does not have the skills to determine that my "existing medical condition(s)" are sufficient to exclude me from the MIG

450

(129)

Re #1: CAT Impairment – *OCF-19* submitted with further documents to follow (attachments) to complete application (*OCF-19*) (presumed that the October 2022 MRI report and images, and the August 28, 2023 MRIs and reports received in September 2023 by myself) are included therein with further reports to follow

293. Now shown to me and marked as **EXHIBIT "A"**, are copies of the documents described and particularized above.

VOLUME 17(L): October 23, 2023
EXHIBIT "A", pages 909 to 918
Re #1: same as above but in black and white scanned

294. Now shown to me and marked as **EXHIBIT "A"**, are copies of the documents described and particularized above.

VOLUME 17(M): October 24, 2023
EXHIBIT "A", pages 919 to 924
Re #1:

295. Now shown to me and marked as **EXHIBIT "A"**, are copies of the documents described and particularized above.

VOLUME 17(N): October 24, 2023
EXHIBIT "A", pages 925 to 928

296. Now shown to me and marked as **EXHIBIT "A"**, are copies of the documents described and particularized above.

VOLUME 17(o): October 25, 2023
EXHIBIT "A", pages 929 to 932

297. Now shown to me and marked as **EXHIBIT "A"**, are copies of the documents described and particularized above.

VOLUME 17(P): October 27, 2023
EXHIBIT "A", pages 933 to 939
Re: Ms. Persaud inquired into when I had a referral for MRI of my brain (sec. signs) resent as a courtesy

298. Now shown to me and marked as **EXHIBIT "A"**, are copies of the documents described and particularized above.

475 AFF #3
AD SMC

(454)

THIS IS EXHIBIT 1 REFERRED TO IN THE
AFFIDAVIT OF KEVIN A MCLEAN
AFFIRMED BEFORE ME, THIS 31 DAY
OF OCTOBER 20 23

A COMMISSIONER, ETC.

Vinh Tho Tran, Esq. LSUC #57761C
Lawyer, Notary, Oaths Commissioner
588-639 Queen Street, Toronto, ON
M6G 1Z4, T 647-209-7389
vinhtranlaw@hotmail.com

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TD Insurance

(26)

(455)

KEVIN MCLEAN
775 KING ST W SUITE 416
TORONTO,ON M5V 0G3

RECEIVED
SEPT — 2022

WRONG POSTAL CODE
M5V 2K3

A-4491532-297 (10/11)

Member of TD Bank Financial Group. TD and the TD logo are trade-mark of Toronto-Dominion Bank, used under licence. TD Insurance is a trade-mark of The Toronto-Dominion Bank, used under licence.

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TD Insurance

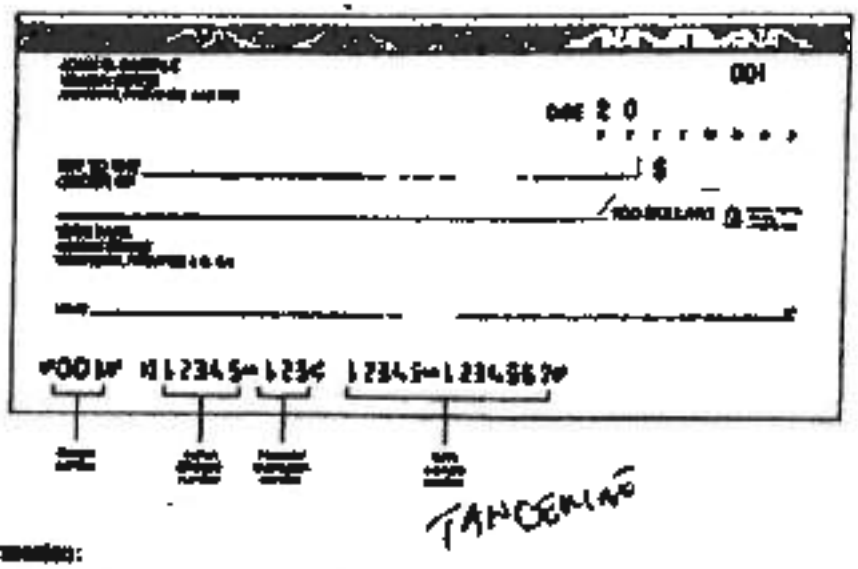
(46) Electronic Funds Transfer Authorization (Direct Deposit) (21)

Claim No.: 0SS325794-3

At your request, we can deposit your claims payment directly into your designated bank account. This will ensure that you receive your payment as quickly and efficiently as possible.

Do you wish to proceed with this option? ☑ Yes ☐ No

If yes, please attach a void cheque that clearly identifies the Bank Account (the "Account") into which you wish the payment to be deposited into or, enter this information in the space provided under Account information and sign and date this form at the bottom. If you do not have a void cheque, you can obtain a direct deposit request form from your financial institution.



TANGERINE

Account information:
For help filling out your Account information, please see sample cheque above.

00156 - 614 - 4007 7124 3389 STEELES AVE
Transit Number — Financial Institution Number — Bank account number — Bank Address

TORONTO, ON M2H 3S6

I KEVIN A. MCLEAN (Please print name) as the claimant pursuant to claim # 0SS325794-3 that is issued by Security National Insurance Company (the "Insurer"), hereby irrevocably direct and authorize the Insurer to deposit all claim benefits payable to me under the insurance policy number 0040135106, through electronic funds transfer (direct deposit) to the account number as noted above and this shall serve as your good and sufficient authority for so doing. I fully release the Insurer from any and all liability in regard to such payment upon its deposit in the above described Account. If such Account is a joint account with any other person or belongs to a third party, it shall not be the Insurer's responsibility should any funds be withdrawn by any person other than me or are used to pay down any indebtedness for which this Account is responsible. Note that the Insurer is unable to verify the accuracy of an account number so you are responsible in the event an incorrect account number is provided. Please ensure the information is accurate.

Signature

Oct 9, 2024
Date

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TD Insurance

(157) DEADLINE: OCT 19, 2024 FOR SAH (28)

Accident Benefits Application Package Form Checklist

OCF-1

APP SEP 19 2024

Form	To Be	By When
(1) Application for Accident Benefits (OCF-1) ✓	Complete all sections in full; date and sign at Part 11.	Within thirty (30) days of your receipt of the form.
(2) Employer's Confirmation of Income (OCF-2) ✓	Complete Parts 1 through 3, sign and give to your employer to complete all other Parts. This form is required if you are making a claim for income replacement benefits.	As soon as possible. An Income Replacement Benefit is not payable until this form is received.
Disability Certificate (OCF-3)	Complete Parts 1 through 4, sign and provide it to your Health Practitioner. The form describes who can complete it on your behalf.	As soon as possible. Payment of certain specified benefits may not be payable until this form is received. ONLY CERTAIN
Permission to Disclose Health Information forms (OCF 5)	Complete all Parts, including the name, address and telephone number of your treating health practitioner and sign; An additional OCF-5 form is provided and should be completed, signed and submitted in the name of your family physician if different than your treating health practitioner.	Within thirty (30) days of your receipt of the form.
(3) Application For Expenses (OCF-6) OCF ✓	Complete all Parts and provide bills and receipts if you are claiming any of the expenses described by this form.	Submit when expenses are incurred ✓ Done
Treatment Confirmation Form (DCF-23)	Complete Parts 1 and 2 and give to your Health Practitioner if you are seeking treatment. The form describes in Part 5 who can complete it on your behalf.	As soon as possible.

(4) TO COME SUNNYBROOK FORM

Insurance of TD Bank Financial Group. Melocha Mangan is a trade-mark of Melocha Mangan Inc., used under license. TD Insurance is a trade-mark of The Toronto-Dominion Bank, used under license.

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Return this form to:
Security National Insurance Company
Attn: Anna Hoyo
100 Milverton Street
2nd Floor
Markham, Ontario
L3R 4M5
Fax: 416-774-3126

MS. MUSE

(458) (29)

Application for Accident Benefits (OCF-1)

Claim Number:	0553515790-3
Policy Number:	9010351806
Date of Accident (YYYY/MM/DD):	2022-05-30

A separate form must be completed for each person who is applying for accident benefits. Completion of ALL sections is mandatory. Your application may be denied if information is incomplete or inaccurate. Please print clearly.

Part 1 Applicant Information

Last Name: Mingo	First Name and Initial: Kevin	Gender: ☑ Male ☐ Female	Marital Status: ☐ Single ☐ Married ☐ Common-law ☐ Separated ☐ Divorced ☐ Widow(er)
Driver's Licence Number: M1062-43808-30525	Year: 1982 Month: 05 Day: 25		
Address: 770 Kingston Rd Unit 44			Is anyone dependent on you for financial support or care? ☐ Yes, how many persons? ☐ No
City: Toronto	Province: ON	Postal Code: M4E 3X3	
Home Telephone: [redacted]	Work Telephone: 647 513 1210	Fax Number: 647-370 6208 (Confirm)	
Preferable time to be reached: ☐ by telephone ☐ by personal visit ☐ other ☐ at home ☐ at work	Language Spoken: ENGLISH	What is the best time to reach you: Day(s) of the week: Time of day: ☐ a.m. ☐ p.m.	
	E-mail: [redacted]		

Part 2 Applicant's Information (if Deceased)

Complete this section only if the applicant injured in the accident is deceased, is a minor, is unable to fill out the form on their own, or has validated one of their representatives.

Last Name			Relationship with Applicant
First Name and Initial			
Address			
City			Postal Code
Home Telephone	Fax Number	E-mail	

Part 3 Accident Details and Health Information

Date of Accident: Year 2022 Month 05 Day 30	Time of Accident: 0330 ☐ a.m. ☐ p.m.	Were you: ☑ Driver ☐ Passenger ☐ Pedestrian ☐ Other	OFFICER
Accident Location (Street No. and Street Name): GRANDVIEW AVENUE	City: TORONTO	Province: ONT	
Did the accident occur while you were at work?	☐ Yes		
Did you file a claim with the Workplace Safety and Insurance Board?	☐ Yes		
Was the accident reported to the police?	☐ Yes (Give details below)		
Officer Name:	Badge:	Date Reported: Year Month Day	
Police Service/Detachment: Reporting Centre:			
Were you charged? ☐ No ☐ Yes (Give details)			

Give a brief description of the accident. If you suffered any injuries as a result of the accident, describe the nature and extent of the injuries.

PLEASE SEE ATTACHED (7) CONSECUTIVE REPORT + COVER LETTER

Were you able to return to your normal activities following the accident? ☐ Yes ☑ No

Did you go to the hospital? FOR MRI ☐ Yes (Give details) ☐ No

Did you go to any other health practitioner (chiropractor, physiotherapist, massage therapist, etc.)? DIL. BACK PAIN ☐ Yes (Give details) ☐ No

PHYSICIAN DR. JOHN KIA MR. CAR

68 ARELL TORONTO ONT

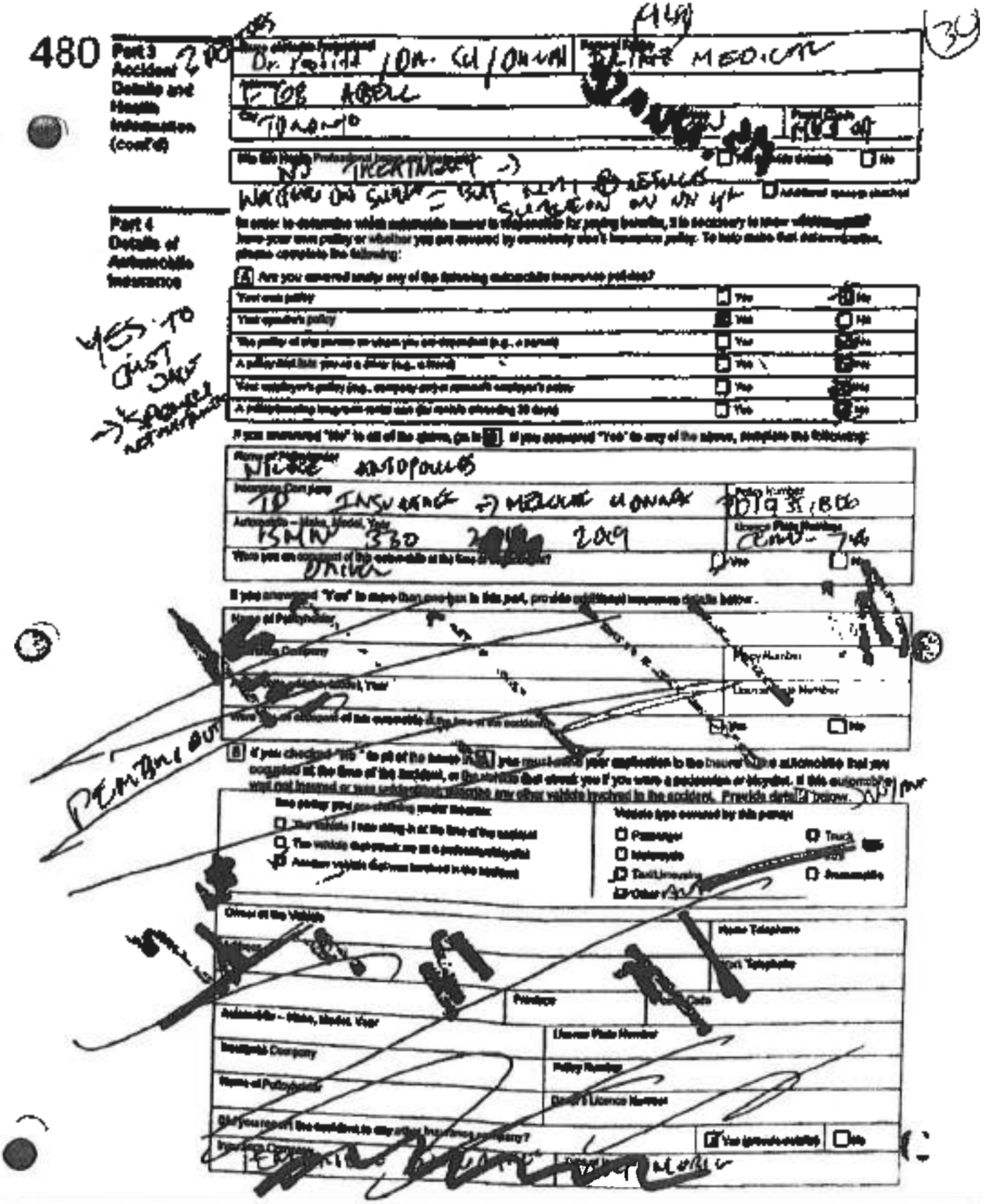
☑ Additional sheets attached

Effective (20##/##/##) FSCO (12/2018)

Page 2 of 8

COURT COPY

OCF-1 (####-##)



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Part 3 Accident Details and Health Information (cont'd)

Part 4 Details of Automobile Insurance

In order to determine which automobile insurer is responsible for paying benefits, it is necessary to know whether you have your own policy or whether you are covered by somebody else's insurance policy. To help make that determination, please complete the following:

A Are you covered under any of the following automobile insurance policies?

	Yes	No
Your own policy	☐	☐
Your spouse's policy	☐	☐
The policy of any person on whom you are dependent (e.g., a parent)	☐	☐
A policy that lists you as a driver (e.g., a friend)	☐	☐
Your employer's policy (e.g., company car or someone else's employer's policy)	☐	☐
A policy insuring any motor vehicle you rented within the last 30 days	☐	☐

If you answered "No" to all of the above, go to B. If you answered "Yes" to any of the above, complete the following:

Name of Policyholder	
Insurance Company	Policy Number
Automobile – Make, Model, Year	Licence Plate Number
Were you an occupant of this automobile at the time of the accident? ☐ Yes ☐ No	

If you answered "Yes" to more than one box in this part, provide additional insurance details below.

Name of Policyholder	
Insurance Company	Policy Number
Automobile – Make, Model, Year	Licence Plate Number
Were you an occupant of this automobile at the time of the accident? ☐ Yes ☐ No	

B If you checked "No" to all of the boxes in A, you must provide your application to the insurer of the automobile that you occupied at the time of the accident, or the vehicle that struck you if you were a pedestrian or bicyclist. If this automobile was not insured or was unidentified, provide any other vehicle involved in the accident. Provide details below.

Was the policy you are claiming under insured: ☐ The vehicle I was riding in at the time of the accident ☐ The vehicle that struck me as a pedestrian/cyclist ☐ Another vehicle that was involved in the accident	Vehicle type covered by this policy: ☐ Passenger ☐ Truck ☐ Motorcycle ☐ Van ☐ Taxi/Limousine ☐ Snowmobile ☐ Other
Owner of the Vehicle	Home Telephone
Address	Work Telephone
Automobile – Make, Model, Year	Province / Date
Insurance Company	Licence Plate Number
Name of Policyholder	Policy Number
Did you report the accident to any other insurance company? ☐ Yes (provide details) ☐ No	Driver's Licence Number
Insurance Company	Date of Loss

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Part 5 Applicant Status

(460) SELF-EMPLOYED (31)

Which of the following describes your status at the time of the accident?

Employed	Not Employed	
☐ Employed and working	☐ Unemployed	☐ Student or retired
☐ Self-Employed	☐ Unemployed and:	
	☐ Have worked 26 weeks in the past 52 weeks	☐ Caregiver
	☐ Receiving Employment Insurance Benefits	
	☐ Other	

Part 6 Student Attending School

Were you attending school on a full-time basis at the time of accident or had you completed your education less than one year before the accident?

☐ Yes (Give details below) ☐ No (Continue to Part 7)

Name of School			Date Last Attended	Year	Month	Day
Address			Program and Level			
City	Province	Postal Code	Projected Date for Completion of Studies	Year	Month	Day

Are you now attending school? ☐ Yes (Enter date) Year Month Day ☐ No

Were you able to return to school after the accident? ☐ Yes (Enter date) Year Month Day ☐ No

Part 7 Caregiver

Were you the main caregiver to people living with you, at the time of the accident?

☐ Yes (Complete information below) ☐ No (Continue to next)

Were you paid to provide care to these people? ☐ Yes (Continue to next) ☐ No

List the people who you were caring for at the time of the accident

Name	Date of Birth Year Month Day	Disabled Yes	Disabled No
		☐	☐
		☐	☐
		☐	☐
		☐	☐
		☐	☐

☐ Additional sheet is attached

Did your injuries prevent you from performing the caregiving activities you did prior to the accident?

☐ Yes (Explain below) Approximate date Year Month Day ☐ No

Explanation:

☐ Additional sheets attached

At any point since the accident, were you able to return to caregiving?

☐ Yes (From what date?) Year Month Day ☐ No

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Part 6 Income Replacement Determination

Give details of your employment for the past 52 weeks. Start with your current or most recent employer. If you held more than one position with the same employer, use a separate line for each position. Gross income is before tax and deductions.

If you were self-employed during the 4 weeks prior to the accident, please consider yourself the employer for the purpose of completing this section.

Date Year/Month/Day	Name and Address of Most Recent Employer	Position/Occupation Duties	No. of Hours Per week	Gross Income for the period
From: 2020 Jan 01 To: Present	BAY BEACH GRAND INC	CHEF / EXECUTIVE CHEF	60	$ 36,000.00
From: To:				$
From: To:				$
From: To:				$

☐ Additional sheets attached

Did your injuries prevent you from working?

☑ Yes (Provide start date) Year 2020 Month Oct Day 31 ☐ No (Continue to Part 7)

At any period since the accident, were you able to return to work since the accident?

☐ Yes (Provide start date) Year N/A Month Day ☑ No

The amount of your benefit is based on your past income. During which of the following periods did you have the highest average weekly income?

☐ Last 4 weeks (not applicable to self-employed persons)

☐ Last 52 weeks

☑ Last fiscal year (self-employed only) NOV 1 2020 NOV 1 2021

Part 7 Other Insurance or Collateral Payments

Do you, your spouse or anyone you are dependent on (e.g., parents) have any other benefit plan that covers you (e.g., group or private, extra, disability, medical or dental, etc.)?

☐ Yes (Give details below) ☑ No

Name of Benefit Payer	Type of Coverage	Policy or Certificate number

During the past 52 weeks, did you receive any income from a disability plan? ☐ Yes (Give details) ☐ No

From: Year Month Day To: Year Month Day Total Amount Received $

Are you receiving Employment Insurance Benefits? ☑ Yes (Give details) ☐ No

From: Year Month Day To: Year Month Day Total Amount Received $

☐ Additional sheets attached

Are you receiving Social Assistance Benefits (welfare)? ☐ Yes ☐ No

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Part 10 Motor Vehicle Accident Claims fund

DO NOT FILL OUT UNLESS ITEMS (f) TO (j) ON PAGE 2 SO NOT APPLY AND YOU ARE APPLYING TO THE MOTOR VEHICLE ACCIDENT CLAIMS FUND

You and your representative acknowledge that you have the responsibility to investigate and apply to all potential sources to which the applicant may have recourse BEFORE submitting an application to the Motor Vehicle Accident Claims Fund (MVACF) at 5160 Yonge Street, P.O. Box 85, Toronto, ON M2N 6L9. If you have any questions about your MVACF application contact MVACF in Toronto at (416) 250-1432 or Toll Free at 1-(888) 250-7164.

You and your representative acknowledge that the application MUST INCLUDE a completed:

- ☑ NOTICE OF COLLECTION OF PERSONAL INFORMATION FORM, signed and attached*
- ☐ Form 3 – Section 9 MVACF Application for Statutory Accident Benefits, signed and attached*
- ☐ Motor Vehicle Accident (Police) Report, attached.

Before the applicant can submit the application for the payment of accident benefits from the MVACF.

(* These forms are available at www.fsrao.gov.on.ca)

I certify that I have read this part and understand that this application for accident benefits is not complete until the required forms are completed, signed and provided to the MVACF.

Name of Applicant or Substitute Decision Maker (please print)	Signature of Applicant or Substitute Decision Maker	Date (YYYY/MM/DD)

N/A w) MS CARE1 – INSURER REMEDIES

Part 11 Direct Payment Assignment by Applicant

(only applicable to applicants obtaining treatment/services from a Regulated service provider)

☐ I direct the Insurer, including the Motor Vehicle Accident Claims Fund, to pay the licensed service provider directly for that portion of the approved goods and services specified on any Treatment Confirmation Form (OCF-23) and/or Treatment and Assessment Plan (OCF-18) that are not covered by extended/supplementary health insurance.

Applicants that have extended/supplementary health insurance responding to a claim may need to provide payment out of pocket before the extended/supplementary health insurer reimburses the claimant.

Applicant's Initials

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Part 12 Signature

TO THE INSURER, INCLUDING IBAO/P, TO WHOM THIS APPLICATION IS BEING SUBMITTED:

I UNDERSTAND that you, and persons acting for you, will collect personal information and personal health information about me that is related to my claims for accident benefits arising out of the accident described in this application, and that all such information will be collected directly from me or from any other person with my consent.

I ALSO UNDERSTAND that you and persons acting for you will collect information about my driving record, automobile insurance policy history and automobile insurance claims history if they exist.

I ALSO UNDERSTAND that if I am the holder of an automobile insurance policy, you, and persons acting for you, will collect the driving record, automobile insurance policy history and automobile insurance claims history of any listed driver on my automobile insurance policy or other drivers whom I have permitted to drive my automobile.

I ALSO UNDERSTAND that the information described above will be collected and used only as reasonably necessary for the purposes of:

- Investigating my claims and processing my claims as required by law, including the Ontario Automobile Policy;
- Obtaining or verifying information relating to my claims in order to determine entitlement and the proper amount of payment;
- Processing payment from insurers and others liable in law for amounts that you pay in connection with my claims;
- Identifying and analyzing the nature and costs of goods and services that are provided to automobile accident victims by health care providers;
- Preventing, detecting and suppressing fraud;
- Compiling aggregated statistics for government agencies; and
- Assessing underwriting risks and claims experience.

I ALSO UNDERSTAND that you, and persons acting for you, may disclose this information to the following persons or organizations, who may collect and use this information only as reasonably necessary to enable you to carry out the purposes described above:

Insurers; insurance adjusters, agents and brokers; employers; health care professionals; hospitals; accountants; financial advisors; solicitors; organizations that consolidate claims and underwriting information for the insurance industry; fraud prevention organizations; other insurance companies; the police; databases or registries used by the insurance industry to analyze and check information provided against existing information; and my agents or representatives as designated by me from time to time.

I ALSO UNDERSTAND that you, and persons acting for you, may pool this information with information from other persons and may analyze this information for the limited purpose of preventing, detecting or suppressing fraud.

I CONSENT and, if I am the holder of an automobile insurance policy, declare that I have obtained consent from the listed drivers on my policy and any other drivers whom I have permitted to drive my automobile, to you collecting, using and disclosing this information in the manner described above, but to only of such information that is reasonably necessary to meet the legitimate purpose of such collection, use or disclosure.

I UNDERSTAND that if I have any questions about this consent I am free to consult with my insurance company representative or legal advisor before signing this document.

I AM ALSO AWARE that you, and persons acting for you, may be required or permitted by law to disclose this information to others without my knowledge or consent.

I CERTIFY THAT THE INFORMATION PROVIDED IS TRUE AND CORRECT.

I UNDERSTAND THAT IT IS AN OFFENCE UNDER THE INSURANCE ACT to knowingly make a false or misleading statement or representation to an insurer under a contract of insurance.

I FURTHER UNDERSTAND THAT IT IS AN OFFENCE UNDER THE FEDERAL CRIMINAL CODE for anyone, by deceit, falsehood, or other fraudulent act, to defraud or attempt to defraud an insurance company. This information will be used for processing payments of claims; identifying and analyzing the nature, effects and costs of goods and services that are provided to automobile accident victims, by health care providers; and PREVENTING, DETECTING AND SUPPRESSING FRAUD.

To obtain further information about how your consent relates to pooling and data analytics to prevent and detect fraud please visit eapd.ibaowww.ibao.ca/consent-pooling-harmonization.asp

Name of Applicant or Substitute Decision Maker (please print)	Signature of Applicant or Substitute Decision Maker	Date (YYYY/MM/DD)
[illegible]	[illegible]	2024/04/11

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Return this form to:
Intact Insurance
Attn: Auto Claims
PO Box 4000
Stn A
Mississauga, ON
L5A 4M8
Fax: 1-800-461-9999

Employer's Confirmation Form (OCF-2)

Use this form for accidents that occur on or after September 1, 1996.

Claim Number	01-[illegible]
Policy Number	[illegible]
Date of Accident (YYYY/MM/DD)	2020-09-30

If your insurance company asks you to complete this form, fill in parts 1 through 3 and give the form to your employer or former employer(s) to complete the rest. Please name each employer you listed on your Application for Accident Benefits form. Fill out a separate form. Extra forms are available from your insurance company. Your employer(s) will return the form(s) directly to the insurance company. Please print clearly.

Part 1 Applicant Information

Last Name: [illegible]	First Name and Initial: [illegible]	Gender: ☐ Male ☐ Female
Address: [illegible]		
City: Toronto	Province: ON	Postal Code: M5V 3G
Birth Date (YYYY/MM/DD): [illegible]	Home Telephone: [illegible]	Work Telephone: [illegible]
Name of Insurance Company: [illegible]		
Address: [illegible]		
City: Markham	Province: Ontario	Postal Code: L3R 4M8
Name of Policyholder: [illegible]		Policy Number: [illegible]

Part 2 Authorization

I authorize my employer to disclose to my insurance company or its authorized representative, any relevant information about my employment, including copies of relevant documents directly relating to my application for income replacement benefits and details of any collateral sources of income or benefits.

Name of witness (please print)	Signature of applicant or substitute decision maker	Date (YYYY/MM/DD)

Part 3 What Salary Information is Needed

Employed

To my employer or former employer:
I was involved in an automobile accident on:

(YYYY/MM/DD)

To process my application, my insurance company needs information about my salary for the following period before the date of the accident. If you check ☑ both, the insurance company will determine which period provides the highest benefit.)

4 weeks ☐
52 weeks ☐

Self-Employed

If you are or were self-employed at any time during the four weeks before the accident, please consider yourself the employer for the purpose of completing this form.
I was self-employed five weeks before the accident and I designate the following time period to be used to calculate my income (check one ☑ and proceed to part 4).

☑ Last Complete Fiscal Year

From 2020 / 11 / 01 (YYYY/MM/DD)
To 2021 / 11 / 01

NOV 1 2020
NOV 1 2021

ABC TAB 8, PAGE 469

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FAX

To
Name: TD Meloche (Ms. Nurse)
Fax number: +14167743120

From
Name: Kevin McLean
Fax number: +16473706208

Number of pages: 9

Subject: Claim No: 035325790-3

Date: Oct 25, 2022

☐ Urgent ☐ For Review ☐ Please Reply ☐ Confidential

Message:

Claim No: 035325790-3
Dear Ms. Nurse, thank you for the recent letter and enclosed OCF-3. I will have to review the materials in detail and revert back to you. In the interim, I note that I am to see the surgeon on November 3 or 4, 2022 (have to check my records). I can provide the update that I am following the information provided and trying to utilize all of the medications, supplements, therapeutic measures but, as stated, in the MRI I am suffering from degenerative disc disease as a result of the Collision. It takes quite some time to book an appointment for these matters but I will see if I can do a "walk in" or book an expedited appointment. Thank you kindly and hope all is well. Take care, Kevin

AOC TAB 8, PAGE 86 470

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TD Insurance

Security National Insurance Company
181 Millidge Street
2nd Floor
Markham, Ontario
L3R 4H8
Tel: 877-935-3767
www.melochemotorclub.ca

October 18, 2022

KEVIN MCLEAN
775 KING ST W SUITE 410
TORONTO, ON M5V 2K5

Insured(s): Nicole Anopoulos and BMW Financial Services Canada A Division of BMW Canada INC
Claim No.: 035325790-3
Date of Loss: 2022-08-31
Claimant: Kevin Mclean

Dear Sir:

Thank you for submitting your Application for Accident Benefits (OCF-1) dated October 7, 2022 and received on October 13, 2022. Based on our review of the above documentation, we have assessed your eligibility to receive the benefits listed below.

Medical and Rehabilitation Benefit:
The maximum amount payable for Medical and Rehabilitation Benefits in respect of an insured person shall not exceed the sum of $3,500.00 for a non-catastrophic impairment under the definition of a Minor Injury. This amount is inclusive of the treatment received within the Minor Injury Guideline. As your impairment has not been deemed to be outside of the Minor Injury Guideline or to meet the criteria for a catastrophic impairment, no further Medical and Rehabilitation benefits will be considered in excess of the above limitation.

Please be advised that we will not pay for any portion of the approved goods and services which are payable under any other insurance plan. You or your healthcare providers are required to first submit an invoice for these expenses to your own extended healthcare plan for coverage prior to submitting to TD Insurance.

Income Replacement Benefit:
The amount of the benefit is calculated based on 70% of your gross weekly income from employment to a maximum of $400 per week and may be subject to deduction for collateral benefits or income from Employment received subsequent to the accident. The benefit is payable during the period that you continue to suffer a substantial inability to perform the essential tasks of your employment.

No benefit is payable for the first week of disability or for a period longer than 104 weeks of disability, unless you continue to suffer a complete inability to engage in any employment for which you are reasonably suited by education, training or experience.

We are unable to determine your entitlement to this benefit without the completed Disability Certificate (OCF-3).

Non-Earner Benefit:

(see reverse)

Member of TD Bank Financial Group. Melochs Insurance is a trade-mark of Melochs Insurance Inc., used under license. TD Insurance is a trade-mark of The Toronto-Dominion Bank, used under license.

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The Non-Earner Benefit is payable for the period you continue to suffer a complete inability to carry on a normal life. The amount of the benefit payable is $185 per week. No benefit is payable for first 4 weeks of disability and for any period before you attain the age 18, if applicable. Be advised that this benefit is payable only for the first 104 week from the date of the above accident.

We are unable to determine your entitlement to this benefit without the completed Disability Certificate (OCF-3).

Housekeeping and Home Maintenance & Caregiver Benefits:
We have determined that you are not eligible for these benefits as you have not purchased Optional Housekeeping and Caregiver Benefits as part of your automobile policy and your injuries do not meet the definition of a catastrophic impairment, you are not eligible to receive these benefits.

Damage to Clothing, Glasses, Hearing Aids, etc.
You will be reimbursed for reasonable expenses incurred by you to repair or replace clothing you were wearing at the time of the accident including prescription eyewear, dentures, hearing aids, prosthesis, and other medical or dental devices that were lost or damaged as a result of the accident.

We are enclosing another Disability Certificate OCF-3 for your convenience. The OCF-3 is to be completed by a health practitioner of your choosing. A health practitioner may include, but is not limited to, your family physician. The OCF-3 form describes who can complete it on your behalf.

The enclosed Applicant's Right to Dispute notice explains your rights and limitations regarding your Accident Benefits claim.

If we can assist you in any way, please contact Alisha-Anne Nurse, Claims Services, at 1-877-855-3767 x264213, or by fax at 416-774-3120. When doing so, please refer to the above-mentioned claim number to help us serve you better.

TD Insurance Michelle Monaco

cc: Kevin Mclean

Enclosure: Applicant's Right to Dispute

page 38

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TD Insurance

Servigo National Insurance Company
[illegible] McCaffrey Street
2nd Floor
Markham, Ontario
[illegible]
T.: 1 877-[illegible]
www.[illegible].com

October 18, 2022

[illegible]
KEVIN MCLEAN
775 KING ST W SUITE 416
TORONTO, ON M5V 2N3

Insured(s): Nicos Anagnostou and Shift Financial Services Canada A Division of BMW Canada INC
Claim No.: 035325790-3
Date of Loss: 2022-08-31
Claimant: Kevin Mclean

Dear Sir:

Thank you for submitting your Employee Confirmation Form (OCF-2) dated October 12, 2022 and received on October 13, 2022. We are unable to determine your eligibility for the following benefit as we have not received a completed Disability Certificate (OCF-3):

Income Replacement

Please be advised that no benefit is payable until we have received the completed Disability Certificate (OCF-3).

We are enclosing another Disability Certificate OCF-3 for your convenience. The OCF-3 is to be completed by a health practitioner of your choosing. A health practitioner may include, but is not limited to, your family physician. The OCF-3 form describes who can complete it on your behalf.

The enclosed Applicant's Right to Dispute notice explains your rights and limitations regarding your Accident Benefits claim.

If we can assist you in any way, please contact Alisha-Anne Nurse, Claims Service, at 1-877-455-3767 x244313, or by fax at 416-774-3420. When doing so, please refer to the above-mentioned claim number to help us serve you better.

TD Insurance Meloche Monnex

Enclosure: Applicant's Right to Dispute

Member of TD Bank Financial Group. Meloche Monnex is a trade-mark of Meloche Monnex Inc., used under license. TD Insurance is a trade-mark of The Toronto-Dominion Bank, used under license.

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Return this form to:

Disability Certificate (OCF-3)

Use this form for accidents that occur on or after November 1, 1996

Claim Number:	
Policy Number:	
Date of Accident: (YYYY/MM/DD)	

Use this form for accidents that occur on or after November 1, 1996. If your insurance company asks you to complete this form, fill out Parts 1 to 3 and give the form to your health practitioner (chiropractor, dentist, nurse practitioner, occupational therapist, optometrist, physician, physiotherapist, psychologist, speech-language pathologist). After your health practitioner has explained your accident-related injury to you, sign Part 4. Your health practitioner will complete the rest of the form, based on his/her most recent assessment, and return it to the insurance company.

Only an authorized health practitioner can complete this form. The health practitioner's opinion will be relied upon by people who review the certificate to make important decisions. Accordingly, it is necessary to be accurate and complete. Please print clearly and provide all information requested. This form may not be manually altered.

Confidentiality: Collection, use and disclosure of this information is subject to all applicable privacy legislation.

Part 1 Applicant Information

To be completed by the applicant

Date Of Birth (YYYY/MM/DD)	Gender ☐ Male ☐ Female	Telephone Number / Extension
Last Name	First Name	
Middle Name	E-mail (optional)	
Address		
City	Province	Postal Code

Are you currently working? ☐ Yes ☐ No If No, when was the last date that you worked? Year / Month / Day

Were you working at the time of the accident? ☐ Yes ☐ No

If Yes, what type of work were you doing?

Did you work at least 26 weeks of the previous 52 weeks preceding the accident or were you receiving Employment Insurance benefits during that time?

☐ Yes ☐ No

Were you receiving Employment Insurance at the time of the accident? ☐ Yes ☐ No

Were you the primary caregiver for anyone you lived with at the time of the accident? (see Part 6 for definition) ☐ Yes ☐ No

Were you enrolled in an education program (elementary, secondary, post-secondary or continuing education) at the time of the accident? ☐ Yes ☐ No

PRINT RESET SAVE

AOC 478 PAGE 60

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FAX

To
Name: Ms Nurse
Fax number: +14167743120

From
Name: Kevin McLean
Fax number: +16473706208

Number of pages: 2

Subject: expenses

Date: Oct 28, 2022

■ Urgent ☐ For Review ■ Please Reply ■ Confidential

Message:

Dear Ms Nurse thank you for your recent communications regarding the oct 3. As noted this will delay matters due to logistical issues. If you kindly have payment made for the expenses on an interim basis as these were submitted early in the month. Thank you

501

FAX

480

(5C)

To
Name: Ms Nurse
Fax number: +14167743120

From
Name: Kevin McLean
Fax number: +16473706206

Number of pages: 2

Subject: expenses

Date: Oct 28, 2022

■ Urgent ☐ For Review ■ Please Reply ■ Confidential

Message:

Dear Ms Nurse thank you for your recent communications regarding the oct 3. As noted this will delay matters due to logistical issues. If you kindly have payment made for the expenses on an interim basis as these were submitted early in the month. Thank you

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FAX

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To
Name: Ms Nurse
Fax number: +14167743120

From
Name: Kevin McLean
Fax number: +16473706206

Number of pages: 6

Subject: payment of current expenses with thanks

Date: Oct 31, 2022

■ Urgent	■ For Review	☐ Please Reply	■ Confidential

Message:

Please find the exact amount for the Naproxen times two based upon previous expenses report.
Apologies for the approximation.

AUC TAB 8 PAGE 3

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FAX

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(64)

To
Name: Ms. Nurse
Fax number: +14167743120

From
Name: Kevin McLean
Fax number: +16473706206

Number of pages: 8

Subject: Further expenses-reimbursement-OCF-3-sent by dr

Date: Nov 03, 2022

■ Urgent ☐ For Review ☐ Please Reply ■ Confidential

Message:

As requested, I have paid for and had the OCF-3 form completed with a duly licensed doctor who has seen me since the Date of Loss. I kindly enclose my receipt for the same and I await reimbursement for this expenses and the outstanding expenses to the bank account provided approximately a month ago. I have a copy of the fax transmission sheet from the doctor's office this morning. It has been quite an ordeal to do so as a result of the timing of the Collision. I have a further letter to follow but I will await the benefits and reimbursement of expenses to be paid to the bank account above. Thank you.

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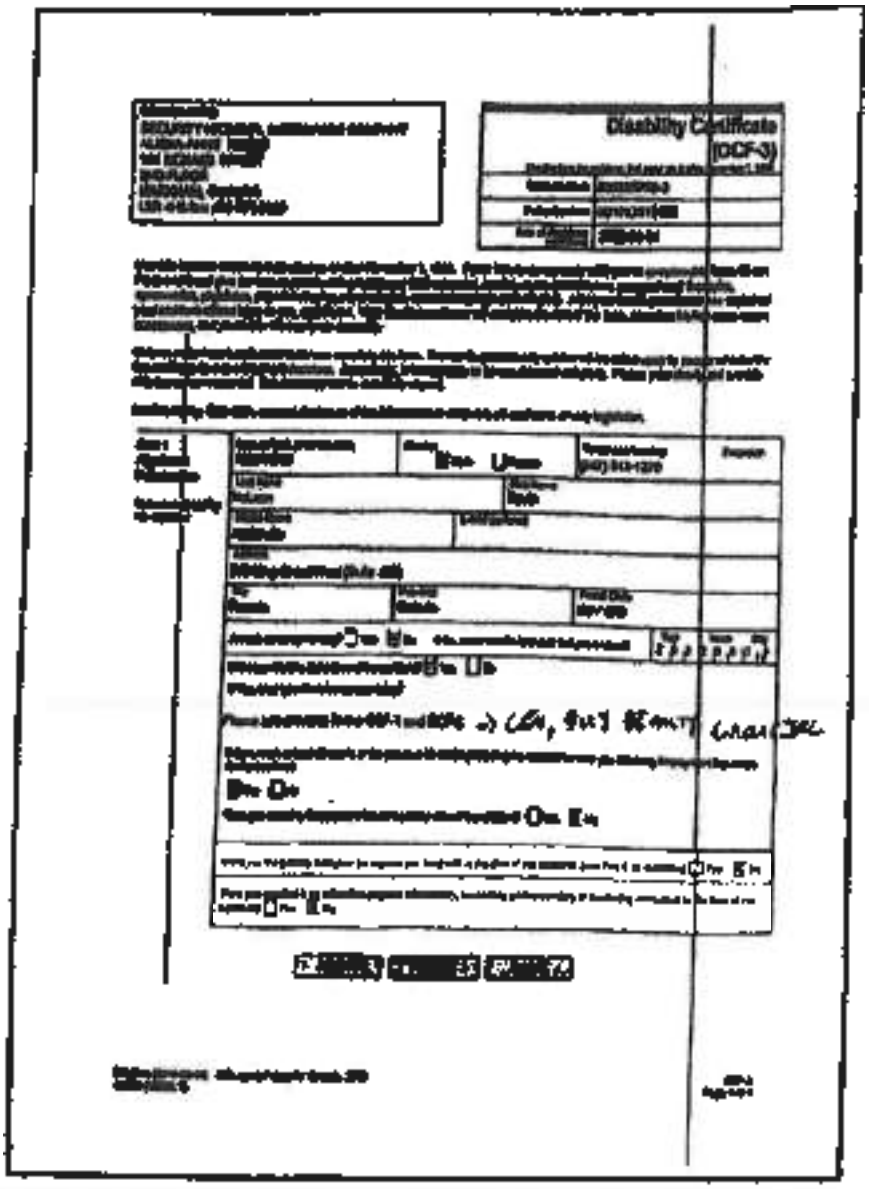
Transmission Log

Prime Medical Centre Thursday, 11-03-2022 10:21 4165120268

Date	Time	Type	Job #	Length	Speed	Fax Name/Number	Pages	Status
11-03-2022	14:18	SCNR	34217	1:54	14400		5	OK -- V.17 AM1



TAB 39

Electronically filed / Déposé par voie électronique : 18-Feb-2025
Toronto Superior Court of Justice / Cour supérieure de justice

TAB #9: ORAL COMPENDIUM: COURT FILE NO. DC-24-00000718-00JR

AOC MD

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Appendix #2: Who is the real drafter of this email as Ms. Persaud was away until January 2024 as per her auto-reply in December 2023 (see: "away from September 2023")

"Sender: TD Insurance- Ontario Accident Benefits
Carol Persaud
Reference: 035325790-02 [sic]
Sent: 2023-10-12 9:21 AM
Expires 2023-11-11

eMsg Tracking #: M686180

Comments: Further to your email [sic], Please [sic] upload all documents through this secure site. Please see the E-msg link which will easily allow you to transmit secure documents, via the following formats PDF/Tiff/JPEG once we have them, we will be happy to confirm receipt. Please remember to add the exposure number eg: -02 beside the claim number for the document to be uploaded. Thank you."

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Appendix #3: NON-PARTY's explanation of its (when it was not the Organization which the Appellant sought access to PII under *PIPEDA*) response on February 14, 2024

The Fictitious Respondent represented the following:

> **The Respondent [not SNIC] sent correspondence to the Applicant on March 26, 2024, addressing his concerns regrading a potential conflict of interest**
>
> **Author of the letter dated February 14, 2024**
>
> **• Letter was drafted by TDI Privacy with approval from TDI Legal and David Karan.**
> **• Please note Andy Gera prepared the standard format template used in the Privacy Access Request letter. Andy Gera is no longer with TD Insurance, nor did he have any involvement with this access request.**

• Please also note Andrew Papadimitropoulos is in no way associated with Andy Gera, nor has Andrew Papadimitropoulos been involved in any way with this claim or access request

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Endnotes

[1]The Appellant has faxed TDGIC throughout with copies of emails, affidavit #28, the hearing brief index, and hearing record
[2](see: Tab 12)
[3](see: Tab 11)
[4]The NOM was served on TDGIC via fax as of July 8, 2024 and this Written Argument will be served on TDGIC prior to filing. The entire hearing record is being served via hand delivery due to its size.
[5]See: definition *infra*
[6]See: definition *infra*
[7]Note bene: objective person standard
[8]See: LAT Rule 2.8 (see: Tab #11, page #92)
[9](see: Rule 24); As of July 8, 2024, Mr. Neuenland has not filed a removal of representative form with the Tribunal and not served all other parties with said form
[10](see: Tab 2, pages 6, confirmed as early as said LAT Order).
[11]*Agraira v. Canada (Public Safety and Emergency Preparedness)*, 2013 SCC 36, [2013] 2 S.C.R. 559, at para. 52, quoting *Newfoundland Nurses*, at para. 15).
[12](see: Tab 13, *N.T.*, paragraph 56)
[13](see: Tab 16, paragraph 14, *LKC v. Unifirst*)
[14](see: *MJ v. Economical*, Tab 17, page 282, paragraph 9).
[15](see: Tab 15, *M.S. v. Desjardins General Insurance Group*, 2019 CanLII 94054 (ON LAT), at para 19)
[16](see: Tab 13, page 248, paragraph 5, bullet point 2, Tab 13, page 250, paragraph 14)
[17]See: *16-002272 v Aviva Insurance Canada*, 2017 CanLII 39578)
[18](a) seriousness of the misconduct of the party (SNIC); (b) misconduct in breach of an order or *LAT Rules* by or on behalf of a party; (c) whether the party's behaviour interfered with the Tribunal to carry out a fair, efficient and effective process; and (d) prejudice to other party(ies).
[19](Kang-Brown, at paras. 21 and 25, per Binnie J., and at para. 104, per Deschamps J.).
[20]of offence (see: paragraph 75 thereto).
[21](It is trite that TDGIC could not have any "reserves" for TD Claim #3 or the SNIC Proceeding but it will speak volumes as to what it says its *reserves* were).
[22]Under PIPEDA, there is no exemption for not providing access to "reserves" of a SABS Insurer let alone a Non-SABS Insurance Company that are improperly booked for the latter. However, that is neither here nor there (see: *Mawani*)

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APPS OF 30
JULY 31, 2024

This is the 30th Affidavit of Mr. Kevin A. McLean under TD Insurance (SNIC) Claim Number 035325798-3 (the "Claim Number" or "TD Claim #3"), TD Insurance Policy Number #0010135111806 (the "Policy Number"), LAT File Number "23-015662/AABS" (the "LAT File Number" or "LAT Proceeding") and was finalized and made on July 31, 2024

Jurisdiction: *Provincial (Ontario)*
Governing Automobile Insurance Legislation: *Insurance Act R.S.O. 1990, c. I.8 et seq ("Insurance Act" or "Ins. Act")*
Governing Automobile Provincial Regulations: *SABS and Reg 664*
Governing FSRA Rule: *Unfair Deceptive or Act Practices Rule 2022 et seq Unfair or* Deceptive Acts or Practices Rule as amended by Deferral Sales Charge Amendment 2 Approved by Minister of Finance: January 30, 2024 (***"UDAP Rule"***)
Insurance' Policy #: *#0010135111806 (the* "Insurance Policy", "Insurance Contract" or "Insurance Policy #806")
Insurance Program and Product: *Abuse And Professional Program*
Underwriter/Insurer: *Security National Insurance Company (FSRA Insurance Registration #397")*

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

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(This is the 30th Affidavit of Mr. Kevin A. McLean under TD Insurance (SNIC: "Aviva Program") Claim Number 0351279[illegible] (ID January 1st Policy Number [illegible] (the "Policy Number"), LAT File Number "23-[illegible]/AB" (the "LAT File Number" / LAT Proceeding "[illegible] Proceeding") under section 280(2) of the *Insurance Act* currently involving the sole respondent party (the "Sole Respondent Party") Security National Insurance Company ("SNIC") with its FSRA Registration Number of 397 ("SNIC #397") and potentially involving the First Insurer to receive an Completed Application October 13, 2022 via my fax to the 416 Fax Number

BETWEEN:

KEVIN ALEXANDER MCLEAN

APPLICANT/APPELLANT

AND:

SECURITY NATIONAL INSURANCE COMPANY

RESPONDENT

Affidavit #30 of Kevin A. McLean

Re: In a matter under the *Insurance Act*, RSO 1990, c I.8, (the "*Insurance Act*")

Re #2: In the matter of an "**Application of an Injured Person**" ("**Application**" or "**AIP**") filed by the **Applicant** with the License Appeal Tribunal ("**LAT**" or "**Tribunal**") Automobile Accident Services ("**AABS**") on December 24, 2023, and served on Security National Insurance Company ("**SNIC**"), FRSRA Insurance Registration Number 397 ("**SNIC #397**") and a **Response**[9] filed by SNIC with LAT on January 25, 2024, all pursuant to subsection 280(2) of the *Insurance Act*, RSO 1990, c I.8., in relation (expressly or implicitly, or by inclusion or exclusion) to the following regulations thereunder:

i. *Statutory Accident Benefits Schedule*, O Reg 34/10 ("*SABS*");
ii. *Automobile Insurance*, RRO 1990, Reg 664 ("*Reg 664*"); and
iii. Disputes Between Insurers, O *Reg 283/95* ("*Reg 283*")[10]

Re #3: in a potential motion, subject to the "**First Insurer**" as known to the licensed insurer with the 416 Fax Number and the East Mail Address

Re #4: potential complaint regarding the particularized conduct herein to the extent that the First Insurer does not comply with its legal obligations by August 1, 2024

I, **Kevin Alexander McLean**, Disabled[11] (B.A., J.D., CIM) of **Toronto, Ontario**, **SWEAR THAT**:

VOLUME #1: Introduction

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This is the 30th Affidavit of Mr. Kevin A. McLean under TD Insurance (SNIC, "Alumni Program") Claim Number [illegible] ID Claim #3), TD Insurance Policy Number [illegible] (the "Policy Number") LAT File Number "23-005662/AABI" (the "LAT File Number", "LAT Proceeding" or "McLean Proceeding") under section 280(2) of the *Insurance Act* unilaterally inserting the sole respondent party (the "Sole Respondent Party") as Security National Insurance Company ("SNIC") with an FSRA Registration Number of 287 ("SNIC ID#") and potentially inserting the "Sole Insurer" to receive my Completed Application on October 13, 2023 via my fax to the 416 Fax Number

1. I am the deponent or affiant (also defined as the "**Appellant**", "**Applicant**", "**Insured Person**", "**Disabled Individual**" and/or "**CAT Impaired Individual**") herein and I swear, under the pains and penalties of perjury, the following facts to be true.

2. Where I have stated or sworn information on my belief(s), I have cited the source of my belief(s) by references, citations, end-noting or otherwise.

3. When I have used the expressions (including any permutations) of "in my view", "in my opinion", or "belief", I am not drawing or making any conclusion of law or swearing a conclusion of law but rather citing my position and opinions as a matter of fact.

4. I adopt the definitions from my previously filed documents in this **LAT Proceeding** (also defined as the "**SNIC Proceeding**" and now the "**McLean Proceeding**" (see: infra for explanation as to why) and they have the same meaning herein as they do therein unless expressly denoted otherwise.

5. Where I have included annotations on the exhibit pages, I have done so for ease of reference and I adopt the same as my evidence.

6. Where I have used "double underlining", the double underlining is mine and added to distinguish and delineate between my emphases of certain language.

7. As per my NOM #13 not being set for hearing as of today's date and my informing the Tribunal that I would determine how best to make use of time, in accordance with, inter alia, section 2 of the *SPPA*, I make this affidavit #30 for that purpose and my potential motion to:

   a. add **TDHA** as a party to this **McLean Proceeding** (defined infra);
   b. certain declaratory relief; and
   c. ancillary relief.

8. I believe, even if **TDHA** is the solely liable insurance company for my benefits pursuant to the Schedule in accordance with requirements under Reg 283, SNIC, as the "Sole SABS Insurer" should bear some of the costs of this McLean Proceeding if **TDHA**, as known to it, does not comply with its legal obligations and I am required to bring a motion to add **TDHA** as a party.

9. I repeat and rely, and incorporate the definitions from *Reg 283* herein as follows:

   a. **Application**;
   b. **Benefits**; and
   c. **Completed Application**.

10. While I had addressed *Reg 283* in certain costs submission et al in this **McLean Proceeding**, I had done so in the context between SNIC and TDGIC, and my allegation by the unilateral inclusion of TDGIC as the sole respondent party after SNIC had filed and served its "Response" (which remains the sole Response herein this **McLean Proceeding**) that SNIC had circumvented *Reg 283* by its approval or tacit approval, by conduct, of the defence of the relief sought in my Appeal (including

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This is the 20th Affidavit of Mr. Kevin A. McLean under TD insurance (SNIC – Wildfire Program") Claim Number [illegible] from Mr. TD Insurance Policy Number [illegible] (the "Policy Number"), LAT File Number [illegible] (the "LAT File Number", "LAT Proceeding" or "Arbitration Proceeding") under section 280(2) of the Insurance Act currently involving the sole respondent party (the "Sole Respondent Party") Security National Insurance Company ("SNIC") with an FSRA Registration Number of 397 ("SNIC #397") and potentially involving the "Third Party" to whom an Unredacted Application October 15, 2022 was my fax to the 416 Fax Number

any other unknown or fictitious TD claim numbers associated with me) being "transferred" or "assigned" to TDGIC.

11. I now believe, after my recent investigations and discoveries, that there is no evidence (external or internal) related to TDGIC but exclusively related to TDGIC which is as follows including but not limited to.

a. The fax number of 416-774-3120 (the "**416 FAX NUMBER**") having only public evidence from 2018 to present as being the fax number of TD Home And Auto Insurance Company ("**TDHA**"); and

b. The address of 304 The East Mall, Etobicoke, Toronto, Ontario, M9B 6B7 (the "**East Mall Address**" or the former "Valhalla Executive Offices" (the "**Former Valhalla Executive Offices**") being associated, by way of former 6th floor office space being listed on Yelp as "TD Home And Auto Insurance Company".

12. I swear that the insurance policy under the **Policy Number** (see: header) only listed Security National Insurance Company as the insurer in that "contract of insurance".

13. However, I now believe that whomever provided the **416 FAX NUMBER** in mailed documents to be purporting to be the fax number of **SNIC** at the **SNIC Markham** office ("**SNIC Markham Office**") made a mistake or misrepresented (perhaps innocently) said **416 FAX NUMBER** as the fax number of SNIC at the **SNIC Markham Office**. I now believe, having reviewed and investigated postal codes in Ontario and Markham, that SNIC could not have had a **416 FAX NUMBER** in Markham (see: **Exhibit "A"** herein).

14. I further now believe that whomever conducted the technological setting or changes in HCAI to purport that SNIC had a branch office at the **East Mall Address** in 2022 to 2024 made a mistake or misrepresented (perhaps innocently) the **East Mall Address** as a purported branch office of SNIC in the HCAI by way of "auto-population" (which cannot be amended by the submitter which I have learned from health practitioners and I verily believe to be true).

15. I now further believe that whomever has been conducting the technological changes to the names of adjusters for SNIC, albeit at the **East Mall Address** from, at least, 2023 to 2024, has made a mistake or misrepresented the same therein by way of those adjusters not being located at the **East Mall Address**.

16. While I appreciate that "TD General Insurance Company" and "**TDHA**" may have been tenants at the same time after my **Date Of Loss** at the **Victoria Park Building**, the only evidence that I can find in relation to the **East Mall Address**, which has auto-populated in HCAI since at least part of 2023 and 2024, is tied to "TD Home And Auto Insurance Company". Moreover, I cannot find any evidence that the 416-774-3120 fax number is tied to TDGIC but rather, the public evidence that I have found, is that said **416 FAX NUMBER** is the fax number of **TDHA**.

17. Based upon my research, I believe that the "Former Valhalla Executive Centre" looked like this:

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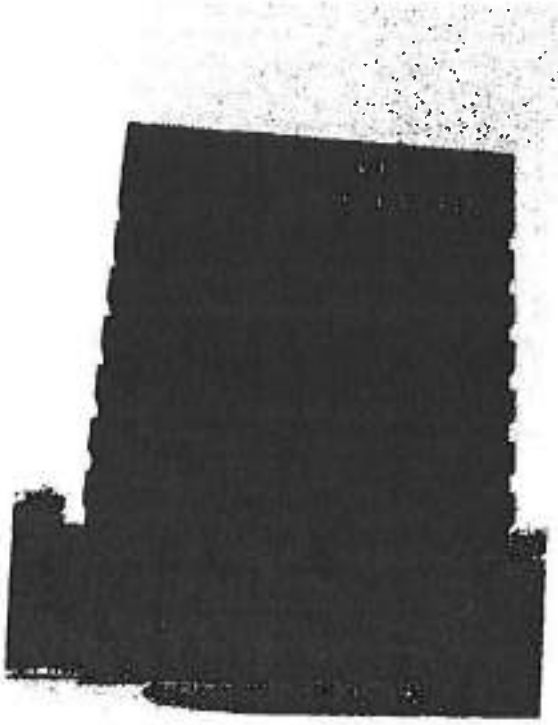
This is the 39th Affidavit of Mr. Kevin A. McLean under TD Insurance (SNC "Absent Program") Claim Number 0353157003 ("TD Claim #"), TD Insurance Policy Number 8001615510 (the "Policy Number"), LAT File Number "21-005663/AABS" (the "LAT File Number"), LAT Proceedings or Ahl case Proceeding") under section 258(3) of the Insurance Act currently involving the sole independent party (the "Sole Respondent Party") as Security National Insurance Company ("SNIC") with an FSRA Registration Number of 399 ("SNIC #399") and potentially involving the "First Insurer" (as set out in Claimant Application) October 11, 2022 via my fax to the 416 Fax Number



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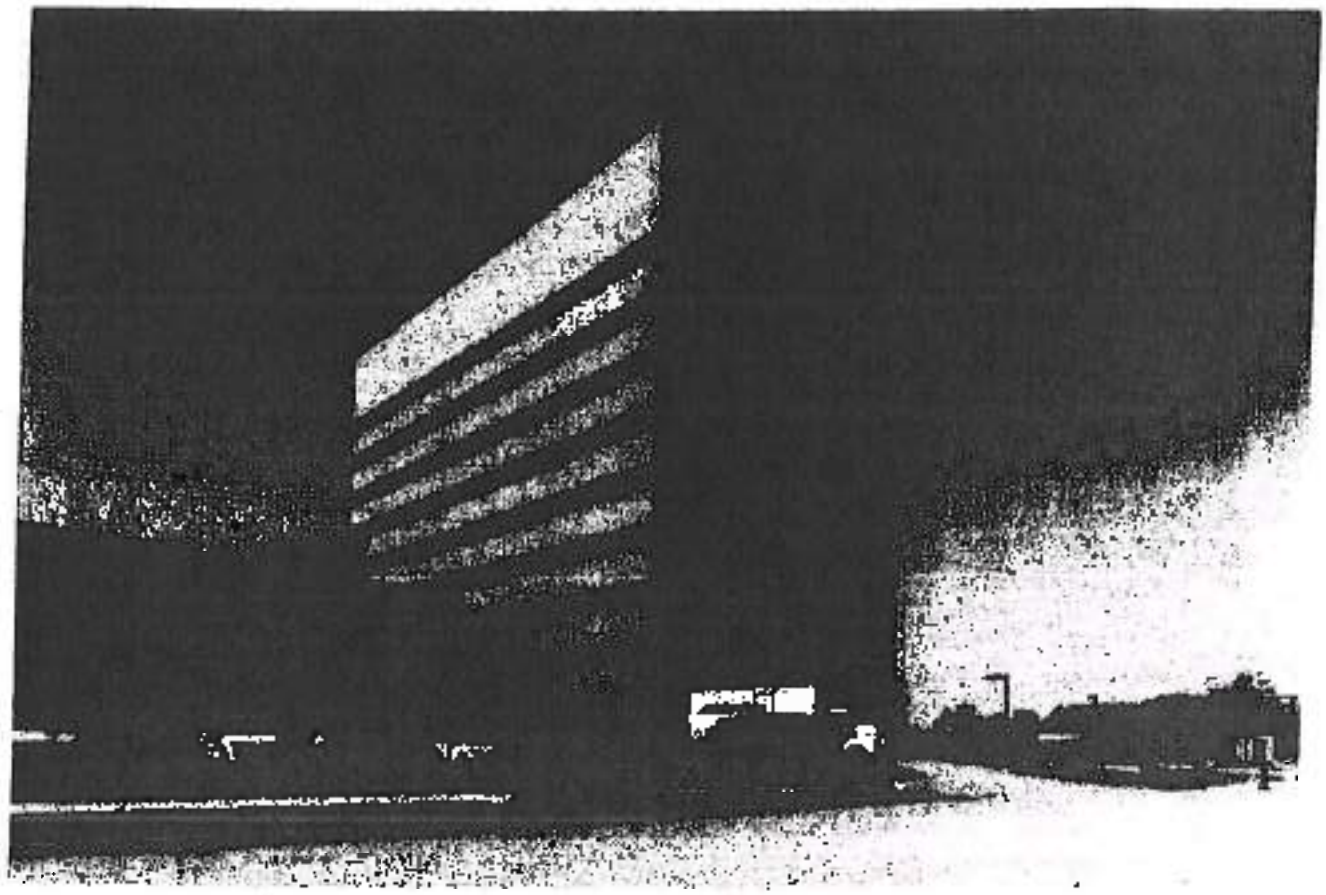
This is the 20th Affidavit of Mr. Kevin A. McLean under TD Insurance (Slight) "Abatujt Program") Claim Number [illegible] Policy Number [illegible] (the "Policy Number"), LAT File Number "[illegible]" (the "LAT File Number"), "LAT Proceeding" or "Motion Proceeding") under section 280(2) of the *Insurance Act* (formally involving the sole responding party (the "Sole Responding Party") the Security Insurance Company ("SNIC") with an FSRA Registration Number of 307 ("SNIC #307") and potentially involving the "Third Insurer" in receipt of Completed Applications of October 13, 2022 via my fax to the 416 Fax Number



18. I note the "304" in blue to the left of the commercial truck with the name of "Mackie".

19. I swear under oath that I am not aware of any potential home policy that was combined with the Insurance Policy with SNIC as the underwriter. I maintain my evidence that SNIC was and is the "*SABS* Insurer".

20. If TDHA, through its chief agent in Mr. Russell (along with the delivery this week of the emails deposed in Exhibit "A", to TDHA to 66 Wellington West, Toronto, Ontario), disputed that the 416 FAX NUMBER was that of TDHA, I believe that TDHA would have denied the same. As of today's date, I have not received any denials of the same.

21. I believe, based on my copying and pasting from online dictionaries that the definitions of "receipt" and "pending" are as follows:

a. "Receive" means: get something; come into possession of.
b. "Pending" means: "begun but not completed.

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(22)

This is the 30th Affidavit of Mr. Kevin A. McLean under TD Insurance (SNIC, "Abatelli Program") Claim Number 0350579[illegible] ("the McLean SNIC") TD Insurance Policy Number #0099L351B06 (the "Policy Number"), LAT File Number [illegible] (the "LAT File Number") ("LAT Proceeding" or "Action Proceeding") under section 280(2) of the *Insurance Act* currently involving the sole respondent party (the "Sole Respondent Party") Security National Insurance Company ("SNIC") with an FSRA Registration Number of 397 ("SNIC #397") and potentially involving the First Insurer to receive my Completed Application (October 13, 2022 via my fax to the 416 Fax Number)

22. I am continuing to ruminate about whether it is best to add **TDHA** as a "party" or to commence a separate **LAT Proceeding against TDHA** for similar relief sought herein albeit due to a "unilateral mistake" or "misrepresentation" by **SNIC** to me.

23. I do not believe that the Tribunal, as a creature of statute, has any inherent or equitable jurisdiction and must conduct any proceedings in accordance with the Insurance Act and associated regulations along with the *SPPA*, *LATA* and *Legislation Act*.

24. I have also ruminated about why Mr. Nieuwland and TDISL continued to take the position that "TDGIC and SNIC" were one and the same, and opposing my requests and relief (until June 2024) for TDGIC to be removed as it was not the *SABS* insurer, when the now evidence I have all points to **TDHA** having the **416 FAX NUMBER** and having a branch office at the **East Mall Address**. I have also ruminated about why Mr. Nieuwland, Ms. Moraes and those employed at TDISL would represent that TDGIC was the sole respondent party when I believe they knew that the **416 FAX NUMBER** and the **East Mall Address** were associated with **TDHA**, and not seek to represent **TDHA** (as opposed to TDGIC).

25. I now believe that TDISL, through Mr. Nieuwland and Ms. Moraes, did so because they sought to delay my access to benefits under the Schedule, and had Mr. Nieuwland filed a DOR for **TDHA** (as opposed to TDGIC on January 30, 2024). I further believe that the aforementioned did so because if I had the name of "TD Home And Auto Insurance Company" as the sole respondent party in lieu of **SNIC**, then I may have typed in the name of "**TDHA**" and it would have returned the **416 FAX NUMBER**. I further believe that they were concerned or anxious that had I done so, I would have then realized (as both the **416 FAX NUMBER** and the **East Mall Address** were all represented to me as being the fax number of **SNIC** and the branch office of **SNIC**) that **TDHA** was the "**First Insurer**" to receive my **Completed Application** (see: *Reg 283*). In this regard, although only **SNIC** filed a "Response" in the **McLean Proceeding**, it may have allowed me or at least they (TDISL, Mr. Nieuwland and Ms. Moraes) feared that I could have, inter alia, proceeded against **TDHA** on a summary basis without the delays of having motions, case conferences, et al against TDGIC, and continuing to seek to have the style of cause amended by order.

26. Based on my review of the "**A07 Auto Bulletin**" (see: infra) from the then FSCO, I believe that the **First Insurer** has not only a duty to pay all benefits, if it does not dispute within 90 days of receipt of the **Completed Application**, but it also has a duty to respond and engage with the "applicant" who delivered the "**Completed Application**" to the "**First Insurer**". Regarding myself, I only submitted the **Completed Application** via fax to the **416 FAX NUMBER**. To the extent, and I have no evidence to the contrary or denials by **TDHA** or **SNIC**, that the **416 FAX NUMBER** and **East Mall Address** are as the public evidence indicates, the fax number and former branch office of **TDHA**, then my belief is that not only was **TDHA** the "**First Insurer**" to receive the **Completed Application** but the only insurer to receive all of the **OCF-18's** from **Rehab Mechanics**. I believe that to the extent that **TDHA** was the **First Insurer** to receive the **Completed Application** and all of the **OCF-18's** to the represented branch office at the **East Mall Address**, then **TDHA** has an obligation to pay any and all benefits that I am entitled under *SABS*, and I still do not have any "decision" from **TDHA** in relation to any of the benefits that I have sought. I further believe that if **TDHA** was the **First Insurer** to receive the **Completed Application**, then its obligations to pay and all outstanding benefits and future benefits operate independently from this **McLean Proceeding**. I ground my belief in this regard pursuant to the Insurance Act, *SABS*, *Reg 283* and the *CDAP Rule*. I

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have provided **TDIIA**, though its chief agent, with my consent to communicate via email to the email (mcleanSNICLat@gmail.com) for any and all purposes relating to the same (see: **Exhibit "A"**).

27. I now believe that the attempts to have me consent to communicate via email in Spring 2023 and the "**Spam Faxes**" were at the instruction or advise of **TDIIA** to SNIC to ensure that I did not send any more faxes to the **416 FAX NUMBER**. I note that the "**Spam Faxes**" did not have any reference to any insurance company and I recall finding it to be terribly informal and was stunned that any "insurance company" would claim it had no record of my "claim number" which was "**TD Claim #3**". Now having read *Reg 283* and the *A07 Auto Bulletin*, along with my recently discovered evidence as of July 26, 2024 to present, I believe that is consistent with some of the language in the Auto Bulletin (see: infra) as follows:

> ***b) The insurer that first receives a completed OCF-1 application is the "first insurer" for the purposes of Ontario Regulation 283/95. (Section 2.1(5))***
>
> A "first insurer" may not refuse to respond to the application on the basis that the application is not from an "insured person", or that there was no relevant policy in place on the date of the accident (e.g., the insurance policy was cancelled, expired or never existed).

28. I now believe that **TDIIA** refused to respond, which I believe was not an entitled it had, in the hopes that I would never figure out or learn of the **416 FAX NUMBER** being its fax number at the material times along with the **East Mall Address** being its former branch office.

29. I make a formal demand for the benefit of my health practitioners, who are enrolled with HCAI, that whomever made the mistake in HCAI that he or she correct the mistake and include only the name of the "**First Insurer**", as 90 days from October 13, 2022 (the date of receipt of my Completed Application by the **416 Fax Number**) was on or around January 10, 2023, and its correct mailing address, head office and/or branch office.

Volume #2: Exhibits

30. Now shown to me and marked as **Exhibit "A"** to this my affidavit is a copy of my emails that I have delivered to **TDIIA** (chief agent for **TDIIA** in Mr. Russell) and **SNIC** (its adjusters and representatives as known to me) from on or around July 27, 2024 to July 30, 2024 regarding my confirmation, without denial from **TDIIA** or **SNIC**, that the fax number of 416-774-3120 was, during the months of September to December 2022 (and beyond), **TDIIA**'s fax number. **Exhibit "A"** is enumerated from pages 1(a) to 46.

31. For ease of reference, I have defined the fax number of 416-774-3120 as the "**416 FAX NUMBER**". I have also utilized this definition because it is the only 416 area code fax number that I received from SNIC in September 2022, which I now do not believe was its [SNIC] fax number at any time after the **Date Of Loss**. I believe, based on the sources of my belief in the exhibits herein, that the **416 FAX NUMBER** was **TDIIA**'s fax number at the **Victoria Park Building**. From Exhibit "1" to Exhibit "X", I included the majority of the exhibits therein as attachments to my emails to **TDIIA** and **SNIC**.

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(24)

This is the 30th Affidavit of Mr. Kevin A. McLean under FB Insurance (SNIC - Ontario Program) (Claim Number 0[illegible] DOI [illegible] FB Insurance Policy Number 000[illegible] (the "Policy Number"); LAT File Number: 24-003642/AABS (the "LAT File Number", "LAT Proceeding" or "Mclean Proceeding") under section 280(2) of the Insurance Act currently involving the sole respondent party also "Sole Respondent Party" is Security National Insurance Company ("SNIC") with an FSRA Registration Number of 309 ("SNIC FSRA #309") and potentially involving the "third interest" in recovery as it employs but, Application on October 11, 2022 via my fax to the 416 Fax Number

32. Now shown to me and marked as **Exhibit "B"** to this my affidavit is a copy of a public listing for **TDHA** that lists its address as **the Victoria Park Building** with a fax number of 416-774-3120 (see: page 47), and copies of letters from SNIC to myself, which represented to me that SNIC's fax number was the **416 FAX NUMBER** (see: pages 48 to 55).

33. Now shown to me and marked as **Exhibit "C"** to this my affidavit are copies of documents involving the **Victoria Park Building** (see: pages 56 to 69).

34. Now shown to me and marked as **Exhibit "D"** to this my affidavit is a copy of the Order involving the "Notice of Motion to be heard at Scheduled Event" from February 13, 2024 (see: pages 70 to 71). I note in Exhibit "D", page 71 that the phone number list for "TDGIC" (not **TDHA**) is not as close to the fax number digits as the **TDHA** listed phone number in the "Ontario Business Directory" (see: **Exhibit "B"**, page 47).

35. Now shown to me and marked as **Exhibit "E"**, pages 72 to 73, to this my affidavit is a copy of documents from the Ontario Business Directory website from on or around July 18, 2024, involving the "**Burlington Address**" which was represented as SNIC by SNIC, with reference to Ms. Persaud as the then claims adjuster or advisor for SNIC, with the fax number of 905-315-1074 (the "**905 Fax Number**").

36. Based upon my review and research, **SNIC Markham** is approximately 91 kilometers from the **Burlington Address**. Based upon phone calls, research and investigations conducted by myself or on my behalf, I do not believe that SNIC has been located at the **Burlington Address** after the **Date Of Loss** to present.

Exhibit "F"

37. Now shown to me and marked as **Exhibit "F"**, pages 74 to 76 is a copy of the document that was sent to me on or around April 20, 2023 but not received until early May 2023. I note that on page 76 therein that Ms. Nurse did not sign the **OCF-18**, Part 13 "Signature of Insurer" under the field "signature of adjuster" as it reads to me as "As per A. Nurse" in printed language with the inscription of "Ki W" above it". It appears to me that the entirety of the document on page 7 was typed and printed and then the printed "As Per A. Nurse" appears to me to be in black ink.

38. I now believe that one of the reasons that Ms. Nurse could not sign this Dhaliwal **OCF-18** was because she was a claims advisor or adjuster for **SNIC**, and **TDHA** was the "**First Insurer**" to receive my "**Completed Application**" (OCF-1) albeit unbeknownst to me until July 26, 2024.

39. I further note that I have never received a signed **OCF-18**, Part 13 from any adjuster on behalf of SNIC or otherwise despite the submission of signed **OCF-18**'s from my physiotherapists in 2023 and 2024 which amount, by my recent computation, to five (5) **OCF-18**'s.

40. Based upon my investigations or investigations on my behalf, I now, pursuant to the exhibits herein, do NOT believe that any of the "claims advisors" or "claims advisors" for SNIC have had any

authority to execute any of the **OCF-18**'s pursuant to, inter alia, **TDHA** being the "**First Insurer**" to receive my **Completed Application** on October 13, 2022 (see: *Reg 283*).

Exhibit "G"

Re: **OCF-18**'s select pages

41. Now shown to me and marked as **Exhibit "G"**, pages 77 to 95 are copies of some of my **OCF-18**'s as follows:

a. ***Dhaliwal* OCF-18** (*April 06, 2023*) (see: pages 77 to 86);
b. The first page of the February 2024 **OCF-18** submitted by **Rehab Mechanics** through HCAI that returned a document number therein with the address of the **East Mall Address** (see: page 87);
c. Other pages from **OCF-18**, submitted in 2023, by **Rehab Mechanics** to the attention of Ms. Persaud (see: pages 88 to 94); and
d. The first page from the **OCF-18** from summer of 2024 submitted by **Rehab Mechanics** that had the address of the **East Mall Address** (see: page 95).

42. I swear that all of my **OCF-18**'s have been submitted by myself to the Tribunal and served upon **SNIC**.

43. While I was entirely unaware that the **East Mall Address** was NOT an address for **SNIC** but only **TDHA**, by reference to the Yelp listing (the "**TDHA Yelp Listing**") in public internet search engines, until the time of making this Affidavit #30, I inquired with various health practitioners, who have HCAI accounts, as to how the address would be denoted as such without my input whatsoever. I learned from those various health practitioners, as of this week, and I verily believe to be true, that the **East Mall Address** would auto-populate along with a potential adjuster. I believe the same to be true based upon my conversations with the aforementioned health practitioners because my current physiotherapy company knew of the change from Ms. Persaud to Ms. Michie before I did when it was preparing and finalizing the HCAI **OCF-18** submissions. In this regard, we have chosen the route to sign off on the draft **OCF-18**'s at first instance and then the finalized HCAI **OCF-18** submitted versions thereafter.

Potentially two respondent parties in this LAT Proceeding

44. In light of the potential that there may be two parties in this LAT Proceeding, I am now redefining the **SNIC Proceeding** to "**McLean Proceeding**" to avoid any confusion if **TDHA** is the sole insurance company that is liable to pay any and all benefits under **TD Claim #3** and the **McLean Proceeding**.

45. I reference "two respondent parties" as it is unclear to me whether Mr. Dhaliwal's HCAI submission had the address of the **East Mall Address** or **SNIC Markham** in the final submission as **Rehab Mechanics** does not have access to TONP's HCAI account.

46. To the extent that **SNIC** received the **Dhaliwal OCF-18** at **SNIC Markham**, which is unclear to me and I now demand, pursuant to section 5.4(1) of the *SPPA* and the *LAT Rules*, whichever "branch

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(226)

This is the 30th Affidavit of Ms. Karen A. McLean under TD Insurance (SNIC: "Multilist Program") Claim Number [illegible] ("OF Claim #") re: TD Insurance Policy Number [illegible] (the "Policy Number"), LAT File Number "[illegible]" (the "LAT File Number"), LAT Proceedings re: McLean Proceeding ("under section 280.2 of the Insurance Act naming the sole respondent party (the "Sole Respondent Party") as Security National Insurance Company ("SNIC") with an FSRA Registration Number of 907 ("SNIC #907") and personally serving the "First Insurer" to receive an Unopposed Application on October 13, 2022 via my fax to the 416 Fax Number

office" that was of a *licensed insurer* at the **East Mall Address** produce or disclose documents or things to me in this regard, then it may be that **SNIC** is liable for the payment of the entirety of this **Dhaliwal OCF-18**. However, my review leads me to a different conclusion pursuant to *Reg 283* and the amendments as of 2010 to *Reg 283*, to the extent that **TDHA** was the "first recipient insurer" or "**First Insurer**" (all defined as "**First Insurer**") to **RECEIVE** my **Completed Application**. While I was only entitled to submit the **Completed Application** to one (1) insurance company, pursuant to, inter alia, *Reg 283*, I believed at the time of submitting my **Completed Application**, by reference to the pre-printed language in the OCF-1 that was provided to me via mail, that I was submitting to **SNIC** at its **SNIC Markham** branch office (now defined herein and retrospectively as the "**SNIC Markham Branch Office**").

47. With the absence of any responses from **TDHA** and **SNIC**, I now believe that it was only **TDHA** that received (got possession of) at first instance my **Completed Application** including my OCF-2, OCF-3, OCF-6's and OCF-19's. I further now believe, based upon the exhibits and hyperlinks herein, that **TDHA** received at **TDHA**'s former office or "former branch office" on the 6th floor of the **East Mall Address**, all of the **OCF-18**'s from **Rehab Mechanics**.

> Auto-Bulletin: No. A-07/10 – Auto Property & Casualty (2010) Hyperlinked Document (see: https://www.fsrao.ca/media/7866/download) (the "A07 Auto Bulletin")

48. To ground and swear my belief, under oath, as to why the "**First Insurer**" may be exclusively liable for any and all benefits pursuant to the Schedule, I note the following from the Auto-Bulletin which I now copy and paste herein [emphasis being mine]:

> "Changes to Ontario Regulation 283/95: Disputes Between Insurers
>
> With this Bulletin, the Financial Services Commission of Ontario (FSCO) is highlighting the recent changes to Ontario Regulation 283/95: Disputes Between Insurers, to ensure[2] compliance by **all** insurers[3]. The changes are effective September 1, 2010.
>
> **Background**
>
> Ontario Regulation 283/95 sets out a **mandatory**[4] process for private arbitration of all disputes between insurers over **which**[5] insurer is liable to pay accident benefits to a claimant[6]. This regulation is intended to ensure that claimants receive accident benefits (e.g., medical and income replacement benefits) in a **timely** fashion while these disputes are being resolved[7]. Ontario Regulation 283/95 was established in **1995** following several years of experience with the no-fault accident benefits system.
>
> During the past several years, a number of procedural issues and disputes over the interpretation of Ontario Regulation 283/95 have led to delays in paying claimants' benefits. In addition, the Motor Vehicle Accident Claims Fund (MVACF) has frequently had to get involved to ensure that benefit payments to injured persons were not delayed - even if a private insurer was obliged to make the payments

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(27)

This is the 30th Affidavit of Mr. Kevin A. Arcuri in his capacity as Chief Executive Officer of Arcuri Insurance Brokers Inc. (the "Agent") dated October 23, 2024.

As part of the automobile insurance reforms which resulted from FSCO's Five Year Review of Automobile Insurance, effective September 1, 2010 Ontario Regulation 283/95 is amended by Ontario Regulation 38/10. These amendments were made to ensure that claims are not deflected and that claimants receive payments without delay in cases where there may be a dispute regarding which insurer is liable to pay statutory accident benefits. Insurers that do not comply with this regulation will be subject to appropriate regulatory action.

Key Regulation Changes

1. Deflection of Applications for Accident Benefits

a) Upon request, an insurer must provide a claimant timely access to OCF-1: Application for Accident Benefits (OCF-1 application). (Section 2.1(2))

Individuals who are injured in automobile accidents often contact the insurance company that they believe is liable to pay accident benefits before they complete and send their OCF-1 application to the insurer. In many cases, claimants are not aware of the priority rules that determine which insurer is liable to pay them benefits. The Statutory Accident Benefits Schedule (*SABS*) requires an insurer to provide an OCF-1 application to an injured person who expresses an intention to make a claim for benefits. This requirement is now reinforced by section 2.1(2) of Ontario Regulation 283/95.

b) An insurer must not impede claimants from submitting OCF-1 applications or redirect them to other insurers or the MVACF. (Section 2.1(5))

When a claimant first contacts an insurer following an accident, it is not always clear, based on information reported by the claimant, if that insurer is responsible for paying the accident benefits in accordance with the priority rules. It is inappropriate for the insurer to discourage the injured person from filing an OCF-1 application, for example on the grounds that there is no insurance coverage (e.g., due to a cancelled insurance policy), or that there is another insurer to whom the person should make his or her claim. Insurers must provide claimants who express an intention to make an accident benefits claim with an OCF-1 application and not direct them to file it with MVACF or another insurer. Section 2.1(5) of Ontario Regulation 283/95 prohibits the deflection of OCF-1 applications. This includes deflection on the grounds that it is not clear which insurer is required to pay accident benefits.

c) The first insurer that receives an OCF-1 application must pay accident benefits in accordance with the *SABS*. (Section 2.1(6))

In order to prevent delays in payments, Ontario Regulation 283/95 requires the first insurer that receives a completed OCF-1 application to pay the accident benefits, as long as the claimant meets the requirements of the *SABS*. Although an insurer may *believe* that it is not responsible for paying accident benefits under the priority

1254 126

This is the 30th Affidavit of Mr. Kevin A. McLean under TD Insurance (SNIC: "Alumni Program") Claim Number 0[illegible] ("Claim Number"), TD Insurance Policy Number 8001[illegible] (the "Policy Number"), LAT File Number "24-0[illegible]" (the "LAT File Number") ("LAT Proceeding") in "Motor Vehicle Proceeding") under section 280(2) of the *Insurance Act* materially involving the sole respondent party (the "Sole Respondent Party") as Security National Insurance Company ("SNIC") with an FSRA Registration Number of 397 ("SNIC #397") and generally servicing the "First Insurer" to receive my Completed Application on October 13, 2022 via my fax to the 416 Fax Number

rules, the process to transfer, dispute and recover paid benefits is set out in Ontario Regulation 283/95.

d) An insurer that fails to comply with this section will reimburse the MVACF or another insurer[1] all related legal fees, administrative costs and disbursements. (Section 2.1(7)

Section 2.1 (7) has been added to Ontario Regulation 283/95 to confirm the ability to recover costs incurred by the MVACF or an insurer in the administration of a claim (including adjusting costs) from the non-compliant insurer.

2. Definitions of "First Insurer" and "Completed Application"

Several amendments are intended to provide clarity on issues that have arisen since the release of Ontario Regulation 283/95 in 1995; such as what is a "first insurer" and **"Completed Application"**.

a) A "Completed Application" is defined as a completed and signed OCF-1 application. (Section 0.1)

b)The insurer that first receives a completed OCF-1 application is the "first insurer" for the purposes of Ontario Regulation 283/95. (Section 2.1(6))

A "first insurer" may not refuse to respond to the application on the basis that the application is not from an "insured person", or that there was no relevant policy in place on the date of the accident (e.g., the insurance policy was cancelled, expired or never existed).

c) The applicant shall complete the OCF-1 application that is provided by the insurer and send it to only one insurance company. (Section 2.1(4))

Claimants are required to submit a completed OCF-1 application to only one insurer. This is intended to avoid potential disputes over which insurer first received a **Completed Application**, rather than creating confusion by submitting OCF-1 applications to more than one insurer.

3. Time Limitations for Notifying Other Insurers of Liability a) Before initiating a dispute against the MVACF, an insurer is required to complete a reasonable investigation to determine if any other insurer(s) is/are liable to pay benefits in priority to the MVACF, and provide the MVACF with the particulars and results of the investigation. (Section 3.1(2)(a) and (b))

Section 3 of Ontario Regulation 283/95 provides the first insurer 90 days from the receipt of the **Completed Application** to conduct a reasonable investigation. This time frame allows the insurer to conduct an investigation to determine whether another insurer is liable

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This is the 38th Affidavit of Mr. Kevin A. McLean made TD Insurance (SMC: "Aviva Program") Claim Number 03525799-3 ("Claim #3") ... Policy Number 4001033[illegible] (the "Policy Number"), LAT File Number "23-005603/AABS" (the "LAT File Number"), "LAT Proceeding" ... Proceeding Number section 280(2) of the Insurance Act currently involving the sole respondent party (the "Sole Respondent Party") ... Company ("SMC") with an FSRA Registration Number of 397 ("SMC #397") and potentially involving the "Applicant" in respect of my Completed Application ... October 13, 2022 via my fax to the 416 Fax Number

to pay benefits, and to deliver written notice to other insurers if it believes they are liable to pay for accident benefits under the priority rules.

Ontario Regulation 283/95 provides an extension beyond 90 days only if the first insurer has made reasonable investigation of the claim, but cannot reach a decision within the 90 day period.

Section 3.1 requires an insurer that wishes to put the MVACF on notice of a dispute to first complete a reasonable investigation and provide the results of the investigation to the MVACF. Due to the unique nature of the claims that are submitted directly to the MVACF, in many cases another policy is discovered only after an extended period of investigation. As a result, this time limit does not apply to OCF-1 applications that are submitted first to the MVACF. (Section 3(2.1)) To facilitate the early resolution of disputes between insurers, a dispute about which insurer is responsible for payments must go to arbitration within one year of providing notice to the other insurer. See section 7 for the specific rules that need to be followed.

Enforcement

Note that in addition to sections 2.1(7) and 7 (6), actions contrary to Ontario Regulation 283/95 will be subject to appropriate enforcement or regulatory action in accordance with section 441 of the Insurance Act and Ontario Regulation 7/00: Unfair or Deceptive Acts or Practices. Publication of Arbitration Decisions involving Disputes Between Insurers Amendments to Ontario Regulation 283/95 have been made to ensure that arbitration decisions involving disputes between insurers are both timely and publicly available. The amendments require the insurer that is found by the arbitrator to be liable to pay benefits to make the arbitrator's decision public in a manner and form specified by the Superintendent. (Section 8(4)) The specified form and the process by which insurers will need to comply with this requirement will be the subject of a future Property & Casualty Auto Bulletin.

Effective Date

The effective date of the Ontario Regulation 283/95 amendments is September 1, 2010.

All insurers need to ensure that their[19] claims and underwriting staff, plus any other staff who may be affected by these amendments, are informed of these changes. In addition, insurers are to ensure that they make any operational changes needed to implement the reforms by the effective date. Copies of Regulations

The Insurance Act and Ontario Regulations 283/95 and 38/10 can be downloaded from the e-laws website at www.e-laws.gov.on.ca.

Phil Howell

Chief Executive Officer and Superintendent of Financial Services

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This is the 30th Affidavit of Mr. Kevin A. McLean under TD Insurance (SNIC) "Abated Progress") Claim Number [illegible] TD Claim #[illegible]), TD Insurance Policy Number [illegible] (the "Policy Number"), LAT File Number "24-[illegible]/AABS" (the "LAT File Number") ("LAT Proceeding") or "Motion Proceeding") under section 20(12) of the Statutory for currently involving the sole registered party (the "Sole Respondent Party") or Security Financial Insurance Company ("SNIC") with an FSRA Registration Number of 309 ("SNIC #309") and potentially involving the First Insurer, pursuant to a completed Application dated October 13, 2022 via my fax to the 416 Fax Number

May 13, 2010

Exhibit "H"

49. Now shown to me and marked as **Exhibit "H"**, pages 96 to 103 are copies of pages from Yelp that exclusively reference the **East Mall Address** (see: page 96, "TD Home And Auto Insurance Company", 304 The E Mall, Toronto, ON , M9B 6B7; see: page 98, 304 The E Mall 6th Fl Toronto, ON M9B 6B7; see: page 99, 304 The E Mall, 6th Fl, Toronto, ON M9B 6B7 Etobicoke)

50. I swear under oath that I have not been able to find any evidence, or been provided any evidence from SNIC that its branch office was at the **East Mall Address** in 2022 to 2024.

51. For completeness purposes, I also cannot find any evidence that the Fictitious Respondent ("FXGIC") had its branch office at the **East Mall Address**.

52. I swear that I have only found information and evidence that the **East Mall Address** WAS a branch office for TD Home And Auto Insurance Company.

53. Based on my evidence supra, I believe that the "auto-population" of the address of the East Mall Address exclusively relates to TDHA (FSRA registration number 1063).

Exhibit "I"

54. Now shown to me and marked as **Exhibit "I"**, pages 104 to 106 are copies of documents that I have found which I believe demonstrate that the **East Mall Address** in the former "Valhalla Executive Centre" has been inoperable since on or around 2020 or 2021 (prior to my **Date Of Loss**) relating to not only the **East Mall Address** but also "300 The East Mall" and "302 The East Mall" as follows:

a. Article from www.toronto.com by Ms. Tamara Shepard on November 11, 2020 titled "High-rise condos replacing Valhalla Executive Centre in Etobicoke" (see: pages 104 to 106).

Exhibit "J"

55. Now shown to me and marked as **Exhibit "J"**, pages 107 to 112 are copies of documents that I have found which I believe demonstrate that not only was the Valhalla Executive Office (buildings and premised approved for demolition in 2020 by Toronto city council (the "Toronto Council" or "City Council") and demolished thereafter but that the "breaking of ground" for construction of the 494 units (which includes 172 "affordable units" in Valhalla Village on "The East Mall") occurred in January 2024:

a. Article from the Daily Commercial News titled "KingSett leads Toronto East Mall affordable housing project" dated January 18, 2024 (see: pages 107 to 109); and
b. Article from the "City of Toronto" titled, "City of Toronto celebrates the ground-breaking of 172 affordable rental homes at 300-304 The East Mall" dated January 16, 2024.

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This is the 38th Affidavit of Ms. Kevin A. McLean under Tab (Insurance (SNIC, "Abattoir Program") Claim Number 0[illegible] Policy Number [illegible] (the "Policy Number"), LAT File Number "[illegible]" (the "LAT File Number", "LAT Proceedings" as the case Proceeding") under section 280(2) of the Statutory Act currently involving the sole respondent party (the "Sole Respondent Party") Intact Insurance Company ("SNIC") with an FSRA Registration Number of 909 ("SNIC FSRA") and potentially involving the "First Insurer" between the Completed Application on October 13, 2022 via my fax to the 416 Fax Number

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56. I note the following from *SABS*, along with *Reg 283*, with specific reference to section 32:

a. Upon an insurer being notified of a person's intent to apply for one or more benefits described in the Schedule (see: *SABS*, ss. 32(1)), said insurer shall promptly provide said person with appropriate application forms, **Specified Benefit** election rights, and information to assist the person in applying for benefits (see: *SABS*, ss. 32(2)).
   i. In order for said person to apply for benefits, she must, in writing, send the **Completed Application** via mail or fax (see: *Reg 283*) within 10 days after she has received the various application forms which includes an OCF-1 (see: *SABS*, ss. 32(5)).

b. If an insurer receives an incomplete or unsigned application, the recipient insurer (via mail or fax) shall notify said applicant within 10 business days AFTER receiving the allegedly incomplete or unsigned application AND shall advise the applicant of the missing that is required or that the applicant's signature is missing, as appropriate (see: *SABS*, ss. 32(6)).
   i. However, the recipient insurer SHALL NOT give a notice under ss. 32(6) unless the insurer, after a reasonable review of the incomplete application is unable to determine, without the missing information whether a benefit is payable OR whether the application has not been signed by the applicant (see: *SABS*, ss. 32(7)); and

c. From the time the recipient insurer (via mail or fax) has received the **Completed Application**, which is deemed complete if the recipient insurer does not give said insured person a ss. 32(6) notice, said recipient insurer has 90 days to provide a notice of dispute to not only other insurer(s) but the insured person.

57. I was never, and not within ten business days of October 13, 2022, notified by the "**First Insurer**" or any licensed insurer in Ontario that my **Completed Application** was incomplete or not duly signed.

58. I further note that the distance between the **East Mall Address** and the **Burlington Address** is approximately 38 kilometers whereas the distance between the **Burlington Address** and **SNIC Markham** is approximately 91 km (see: using "Map Quest").

59. To the extent that any or all of the above is consistent and correct with the exhibits, including my own positions in emails to **TDHA** with a copy to **SNIC**, I believe that I am not required to engage with the "complaint officer" for **TDHA** as the FSRA form requires a reference to the insurance policy of my (as an "insured person") Insurance Policy with **SNIC** (the "*SABS* Insurer") but I could make a complaint directly to the FSRA regarding the conduct (or lack thereof) of **TDHA** in being the "**First Insurer**".

60. I also believe that there is no preclusion under Reg 664, section 9.1(1) for multiple and independent settlements between myself and **SNIC** and myself and **TDHA**. As TDGIC is no longer a party in the **McLean Proceeding** and the evidence, in my view, all being consistent with **TDHA** having the **416 FAX NUMBER** at the time of my delivery, via fax, of the **Completed Application** to the **416 FAX NUMBER** and the **East Mall Address** auto-population in HCAI, then I do not see any need for a "settlement" under Reg 664, section 9.1(1) between myself and TDGIC.

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This is the 30th Affidavit of Ms. Karen A. McLaren under TD Insurance (SNIC "Absurd Program") Claim Number [illegible] TD Claim #3 [illegible] TD Insurance Policy Number [illegible] (the "Policy Number"), LAT File Number "[illegible]" (the "LAT File Number"), LAT Proceeding "[illegible]" in Ontario Proceeding Number under section 280(2) of the *Insurance Act* currently involving the sole respondent party (the "Sole Respondent Party") in Security National Insurance Company ("SNIC") with an FSRA Registration Number of 397 ("SNIC #397") and potentially involving the "First Insurer" in receipt of my Completed Application on October 13, 2023 via my fax to the 416 Fax Number

61. To the extent that **TDHA** does not comply with its obligations, as known to it, by August 1, 2024 at 5:00 p.m., I reserve the right to tender this affidavit #30 to any and all persons who are lawfully entitled to receive the same.

62. I reserve all of my rights in fact and at law if **TDHA** does not comply with its legal obligations as known to it.

63. I remain available to communicate with **TDHA** on a "with prejudice" or "without prejudice" basis at the email provided and I confirm that I am consenting to email communications with **TDHA** as a result of outstanding nature of the benefits to which I am entitled in accordance with *Reg 283* and *SABS*.

64. For all of the above evidentiary reasons and exhibits, I believe this is why there was a reference in the "PIPEDA response" on February 14, 2024 to what I defined as the "**Fictitious TD Claim Number**".

65. I swear under oath and under the pains and penalties of perjury that I did not become aware of the issues with the 416 Fax Number and auto-population of the East Mail Address until the times detailed herein; generally, in the month of July 2024. I do not believe that I had any duty to investigate these issues per se but that the duty was and remains upon the "**First Insurer**" that received my Completed Application. I further swear that I have never received a fax from the 416 Fax Number. I further swear that any and all "Spam Faxes" were not from the 416 Fax Number. I further swear, under oath, that I never received a fax from the **905 Fax Number**, and I again re-swear the issues that I particularized as "delays" in receiving mail from what I presume was "SNIC" but perhaps **TDHA** 'masquerading' as SNIC or using SNIC as a "conduit".

66. Out of an abundance of caution and for record keeping purposes, along with any potential that I become incapacitated or die before resolution of any and all issues involving my Accident, I swear that I will NOT and do not authorize the release of any personal information, PHI or confidential information but in accordance with the law including *PIPEDA*. Moreover, in the same vein, I will not provide any personal information, PHI or confidential information to any insurance company (SNIC or **TDHA**) until I have admissions by each regarding the same and compliance with *Reg 283* and SABS as known to each.

67. I swear that I will notify the Tribunal of any and all resolutions between myself and SNIC and potentially myself and TDHA for context purposes relating to the former.

68. I respectfully put SNIC and TDHA to strict proof herein and I will rely on the law of adverse inference along with the requirement that SNIC continues to owe me fiduciary duties as the "SABS Insurer".

69. I reserve the right to swear further evidence as it becomes known to me for any and all lawful purposes.

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This is the 30th Affidavit of Mr. Kevin A. McLean under TD Insurance (SMC "Absent Program") Claim Number [illegible] (Claim #30) (D declaration Policy Number [illegible] (the "Policy Number"), LAT File Number "13-[illegible]/AABS" (the "LAT File Number"), LAT Proceeding [illegible] Proceeding") under section 258(2) of the Insurance Act currently involving the sole respondent party (the "Sole Respondent Party") Insurance Company ("SMC") with an FSRA Registration Number of 397 ("SMC #397") and potentially involving the "First Insurer" to section 66 Complaint (collectively, the "Applications") on October 13, 2022 via my fax to the dip Fax Number

70. I swear this Affidavit #30 for no improper purpose.

Sworn before me at Toronto, Ontario
On this 31st day of July 2024

Mr. Kevin A. McLean (B.A., M.D., CIM)

Vinh The Tran, Esq.

[illegible]
AND A NOTARY PUBLIC
[illegible]

ENDNOTES

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

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

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

[4] See: *Insurance Act*, ss. 279 (includes does not exclude); see: section 3(8) of SABS which includes the Spouse of the Individual Named Insured (Antopoulos)

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

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

[7] The "file number provided in the *Andy Gass response*" that was approved by TDI Legal which denoted the incorrect File number which I swear is the "TDGIC internally denoted file number" which it had and has possession and control of the same

[8] I shall be relying on jurisprudence in any to be heard motions and this SNIC Proceeding or future proceedings between SNIC and I where other insurers have had "two files" (one authentic and another not as authentic or not part of the assigned claim number for an insured person or injured person)

[9] See: LAT Rules (effective August 21, 2023), "Response" means the response a respondent is required to provide in relation to an appeal or as may otherwise be specified by the Tribunal.

[10] Please see: submissions and affidavits by myself regarding the inapplicability or lack of compliance with it by TDHA or SNIC within 90 days since receipt of my OCF-1 and OCF-2 (on my behalf) (see: October 13, 2022). At no time did TDHA (or SNIC) as it appears to me that TDHA's fax number was 416-774-3129 and the First Mail Address was TDHA's prior to the demolition of the "Valhalla Executive Centre", represent to me that there was any dispute between it and any other insurer(s) pursuant to Reg 283. This affidavit #30 will be (if necessary) in support of my motion to add TDHA as a party and seek declaratory relief regarding TDHA being the "First Insurer" to receive my "Completed Application"

[11] One year after the Accident as determined by a physician (neurosurgeon) when reviewing the four different MRIs that I had since the Accident (please: Affidavits #1 to #4 which were attached to my filed pleading herein on December 24, 2023).

[12] Synonym: guarantee

[13] Based upon my review there are five insurance companies, licensed to do business in Ontario, as follows: (i) SNIC (397); (ii) Primmum (1796), (iii) TDHA (1063); (iv) TDGIC (353); and (v) TD Direct Insurance Company (although not able to issue policies since 1995)

[14] No discretion

[15] I now believe, after investigation and discoveries (with potentially more discoveries), that the dispute between which insurer is liable is between: (i) SNIC (397); and (ii) TDHA (1063)

[16] Myself

[17] If no dispute or no "pending dispute" (as I am not aware of any pending dispute between SNIC and any other insurance company including TDHA), then I rely on ss. 2(1) of Reg 283 for TDHA being liable, as the "First Insurer" that received a Co

[18] TDHA and SNIC are different insurers

[19] Where there is an "insurance group", in my view, it will vary from insurance company to insurance company within the "insurance group" as they are all not one and the same as per the 'status certificates' from the FSRA regarding SNIC and TDGIC (see: June 19, 2024)

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THIS IS EXHIBIT A REFERRED TO IN THE AFFIDAVIT OF KEVIN O MCLEAN

AFFIRMED BEFORE ME, THIS 31 DAY OF MAY, 20 24

A COMMISSIONER, ETC.

Vinh The Tran, Esq. LSUC #52761C
Lawyer, Notary, Oaths Commissioner
189-639 Dupont Street, Toronto, ON
M6G 1Z4, T. 647-209-7389
vinhtranlaw@hotmail.com

262 EX A 1(A) (240)

Urgent notification – the fax number of 416-774-3120 (the "416 Fax Number") – was and is not SNIC's fax number 416 Fax Number is TDHA - NOTICE AND SERVICE OF THIS DEMAND UPON TDHA

Kevin McLean <mcleansniclat@gmail.com> Sat, Jul 27, 7:07 PM

to James.V Russell, alisha.anne, Carol, bev michie, Matthew, David

July 27, 2024

PRIVATE AND CONFIDENTIAL

VIA EMAIL AND PDF EMAIL

TO THE FOLLOWING INSURANCE COMPANIES:

TO (1):

SECURITY NATIONAL INSURANCE COMPANY
FSRA Registration Number 397

Physical Mailing Address in Application Benefits Package enclosing the OCF-1 and OCF-[illegible] September 2022 and the OCF-1 in October 2022, and the SNIC Response

101 McNabb Street, 2nd Floor

Markham, Ontario

L3R 4H8

(the "McNabb Building" or "SNIC Markham")

Kind attention (claims advisors or claims adjusters as represented as being claims advisors to me):

Ms. Alisha-Anne Nurse

263 EX B 1 (B) (237)

[redacted]

Email: Alisha.nurse@tdinsurance.com

Ms. Carol Persaud

Email: carol.persaud@tdinsurance.com

Ms. Michie

Email bev.michie@tdinsurance.com

Kind attention: the ADR Specialist and sole filer, signatory and server of the SNIC Response (January 23, 2024 in the License Appeal Tribunal (the "Tribunal" or "LAT") proceeding denoted as 23-015862/AABS (the "Dispute Resolution Proceeding" and previously defined as the "SNIC Proceeding")

[redacted]

Mr David Karal

Email: david.karal@tdinsurance.com

Kind attention: Declared Representative for SNIC as June 28, 2024

TO (2):

TD Home And Auto Insurance Company
FSRA Registration #1063 (see: https://www.fsrao.ca/en/enforcement/13511

Kind attention: chief agent (exclusively in his capacity as chief agent for TDIA): Mr. James V Russell (James.V.Russell@td.com)

[redacted]

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Ex A

(1)(c)

(229)

Re: urgent notification – the fax number of 416-774-3120 (the "416 Fax Number") is mine and SNIC's fax number - 416 Fax Number is TDHA - NOTICE AND SERVICE OF THE DEMAND UPON TDHA

Re #2: Based upon the uncontroverted evidence (see: Attachment #1), TDHA is obligated under Reg 283 and by receipt of my "Completed Application" to pay any and all benefits pursuant to SABS

Re #3: Confirmation that TDHA, by its receipt of my completed application, is estopped to dispute its liability under SABS, with reference to the required proceedings under Reg 283 (see: Attachment #2) within 90 days of October 11, 2022 (date of receipt of Completed Application to the 416 Fax Number

Re #4: Confirmation that SNIC has never made any payments for IRB and other benefits (to be particularized)

Re #5: residual

Dear Sirs/Mesdames/Other Gender Neutral Pronouns

1. I write regarding the above.

2. I am commencing this thread for the reasons above and exclusively to
   a. SNIC; and
   b. TDHA.

3. I will be supplementing this email with further email(s) below. However, at this interim, I confirm that I require SNIC to provide me with its fax number for SNIC Markham, and for TDHA to confirm that it is obligated as the first insurer to receive this its fax number 416-774-3120 my OCF-1 (see: Reg 283, "completed application") that it still has my Beneficiary Bank Account information. If TDHA has misplaced the same. I ask that TDHA request the same to this email by no later than the end of business this on Monday, July 29, 2024.

4. Pardon my obtuseness or lack of familiarity with area codes in Ontario as I have lived most of my life outside of Ontario but my preliminary review leads to the inevitable conclusion that the city of Markham does NOT have a 416 area code and is associated with 905.

5. Therefore, some individual must have erred from the outset of my claim for accident benefits in providing the incorrect fax number for SNIC.

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6. I have attached the document from the Ontario Business Directory regarding the same fax number and I have double checked against what was provided to me by SNIC and the number of 416-774-3120 number is not a Markham fax number and is not clearly the same number as denoted by SNIC Markham (Ms. Nurse as "claims advisor") on its documents to me in Fall 2022 and 2023.

7. TDHA may communicate with me via email for the above purposes.

8. TDHA will also need to provide me with a "claims advisor" and/or "claims adjuster" for it.

9. I confirm that SNIC has not made any payment to me for IRH (Specified Benefits) and it now makes sense as to why as SNIC was NOT the "First Insurer" to receive my Completed Application. TDHA was the "First Insurer" to receive my Completed Application.

10. I will have to go through my fax records to determine each and every television document, application (OCF or otherwise) received by the 416 Fax Number but in the interim, the evidence is uncontroverted that TDHA's fax number was and is the 416 Fax Number and it is obligated to pay any and all outstanding benefits under SABS. For courtesy purposes, I will provide an accounting in this regard.

11. If there are no further disputes by this Monday, July 29, 2024 to the above then I am entitled to presume that the 416 Fax Number is that of TDHA. Simply put, SNIC Markham could not have its fax at a Toronto area code with another prefix of 774. The requirements under the governing statutes, governing regulations, and binding jurisprudence require firewalls and protective measures for confidential information even between departments in the SAMIC insurance company here, for legal principles and precedents: *Bentley, Dorvenholt, Transamerica, De Rosa, Jacot et al.*

12. SNIC could not have me detrimentally rely on the incorrect fax number for any period of time let alone the length of time it did. Further, as the "SABS Insurer", SNIC had fiduciary duties to me and has ongoing duties to me. However, TDHA as the "First Insurer" under Reg 283 was bound by its receipt of the Completed Application to pay benefits even while it is disputed the same. However, it had to follow the required procedures under Reg 283 which explicitly references, by language, the *Insurance Act* (which is of course the enabling or empowering legislation to Reg 283).

13. It is nearly 16 months since the regulatory deadline for TDHA to have disputed its liability under *Reg 283*. Therefore, any attempt at this stage for TDHA to dispute its liability would stand no chance of success.

14. As the evidence is uncontroverted and a matter of public record that the 416 Fax Number is that of TDHA, I will provide TDHA with the opportunity to work with me on the payment of benefits and take any position of denial by Monday, July 29, 2024 if TDHA

page

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(3) (240)

does not by said date, I will presume that I am correct in this regard on the facts and the law (which will be supplemented).

15. I confirm that even if SNIC pays out the outstanding IBB, with SABS (section 51 of SABS) or (a Reg 664 amount), it will still be TDHA (subject to any defences or evidence denial that the public records showing that the 416 Fax Number is its fax number and SNIC Markham would have a Markham area code fax number) that is required to pay any outstanding, ongoing or future benefits.

16. Of course, I was completely misled not only on the 416 Fax Number but for TDHA's benefit, TD General Insurance Company, FSRA Registration Number 353 ("TDGIC") purported to act as the sole respondent party in the SNIC Proceeding for nearly half a year. It was not until volumes of materials, research, affidavits, submissions, negotiations (including having to obtain status certificates for SNIC and TDGIC from the FSRA) and all were poured into finding a way, as Mr. Nicholson was counsel to TDGIC (and sadly remains so) and stubbornly represented to me as early as February 2024 that TDGIC would oppose all relief I sought, to have it removed that Mr. Nicholson for TDGIC finally relented and confirmed that TDGIC would not oppose such relief. I will provide further particulars for TDHA's benefit as per its likely and inevitable liability under SABS prior to the SNIC Proceeding, likely for issues in the SNIC Proceeding and beyond.

17. For the time being, this will suffice as notice to TDHA.

18. I confirm that I only became aware of this material change as of Friday, July [illegible] 2024 and I brought it to the attention of SNIC and the Tribunal. I confirm that the rules and legislation, regulations and jurisprudence has been reviewed, annotated and now attached (see: Attachment #2). Ironically, there was a small benefit (despite the document being much higher) to me (pardon the pun) to TDGIC masquerading as the sole respondent (sorry for SNIC in that I came to learn the truth as to whom I was dealing with and that was TDHA).

19. I thank TDHA in advance for its anticipated compliance with its statutory, regulatory and legal requirements. I remain available via this email for TDHA to reconcile any outstanding benefits. Should anything be unclear or TDHA disputes the above, and or SNIC disputes the above, please advise by no later than Monday, July [illegible], 2024 at 9 am I will presume (as I am entitled) that all of the above factual and legal positions are correct, and I will, of course, rely on the doctrine of *adverse inference*. I look forward to hearing from Mr. Russell on behalf of TDHA and/or any authorized individual for TDHA. I reserve the right to rely on this correspondence for any lawful purposes including drawing to the attention of the Tribunal, the FSRA, any relevant regulatory body and or the licensing complaint officer for TDHA. Lastly, before SNIC or TDHA (through one of their representatives) consider misleading me again (SNIC) or TDHA (by commission now), I have already lodged a complaint with SNIC's licensing complaint officer, and those the relevant documents by reference to multiple PIPEDA requests including further and distinct ones involving "other Organizations" (unknown to me prior). I will leave it at that by provision of notice without speaking to the truth of the contents of those documents and

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(4) (241)

clients. I will follow up with quantification amounts where payment shall be made by the "FIRST INSURER" to have received my Completed Application.

Yours truly,

KAM

Kevin A. McLean

Enclosures.

Yours truly,

Mr. Kevin A. McLean (B.A., J.D., CIM) (he/him)
per: **MCLEANSNICKLAW@GMAIL.COM**; (p). *647.313.1270*, and cellphone for service *for HR- Issues #3 and SNR Proceedings (see: Appeal)*; 410-375 King Street West, Toronto (Ontario) M5V 2N7.

Disclaimer

DUTY OF CONFIDENTIALITY. The contents of this email, and its attachments are confidential and is for the specified purposes above, and intended for the recipient specified in message only and DISCLOSURE OF EMAIL or Assistance from Third Parties (for matters of confidentiality or privilege); this email may have been created using voice recognition software and therefore may have unintended errors in spelling, grammar and syntax upon further review.

Reservation of rights in fact and at law: out of an abundance of caution, and consistent with previous objections by Mr. McLean ("Claimant" or "Appellant") has not, is not and will not consent to any unauthorized collection, use or access ("CUA") of his PII, PHI or SPI ("Confidential Information") or "CI") that is inconsistent with any OCF documents that he signed and delivered exclusively to the "Insurer" (see, *Insurance Act* (Ontario)), whether by first accident against the SABS at Security National Insurance Company (the "SABS Insurer" or "SNIC") via secure fax to SNIC Markham (416-[illegible]) and SNIC Burlington, and via email involving the LAT Proceeding

Relevant antecedents: Insurance Policy #: 000103511896; Insurance Program: "FI Insurance Motor Vehicle Liability Non Professional Program"; Broker: Belair Direct Financial Services Inc.; Underwriter Insurance Company: National Insurance Company; Named Insureds: BMO Financial Services Inc. (Employer of [illegible] Injury and Needs Assessor (OCF-18)) ("McLean Spouse"); Insured Automobile: BMW X [illegible] 2019; Insured Person/Appellant: Mr. Kevin A. McLean (B.A., J.D., CIM) ("Insured Spouse") Date of Loss: August 31, 2022 ("DOL"); Location of Loss: Spadina Road (between Heath Rd and St. Clair Ave. [illegible] Ontario); Police File Number (Peel Police Reporting Collision Centre (see: affidavit #3)); and ID Insurance Claim #: 035125790-3 ("FB Claim #3"), and OHIS File Number "[illegible]" (the "LAT Proceeding" or "SNR Proceeding").

"Sent via my secure web-based email"

2 Attachements • Scanned by Gmail

K

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(5) (142)

Kevin McLean <mcleansniclat@gmail.com> Sat, Jul 27, 7:23 PM

to James.V.Russell, alisha.anne, Carol, bev.mchie, Matthew, David

July 27, 2024

PRIVATE AND CONFIDENTIAL

VIA EMAIL AND PDF EMAIL

(Ltr #2 under this email thread)

TO THE FOLLOWING INSURANCE COMPANIES:

TO (1):

SECURITY NATIONAL INSURANCE COMPANY
FSRA Registration Number 397

Physical Mailing Address in Application Benefits Package enclosing the OCF-1 and OCF-2 in September 2022 and the OCF-3 in October 2022, and the SNIC Response

101 McNabb Street, 3rd Floor

Markham, Ontario

L3B 4H8

(the "**McNabb Building**" or "SNIC Markham")

Kind attention (claims advisors or claims adjusters as represented as being claims advisors to me):

Ms. Alisha-Anne Nurse

Email: Alisha.nurse@tddinsurance.com

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(6)

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Ms. Carol Persaud

Email: carol.persaud@tdinsurance.com

Ms. Michie

Email hcv.michie@tdinsurance.com

Kind attention: the ADR Specialist and sole filer, signatory and server of the SNIC Response (January 2), 2024 in the License Appeal Tribunal (the "Tribunal" or "LAT") proceeding denoted as 23-015662/AABS (the "Dispute Resolution Proceeding" and previously defined as the "SNIC Proceeding")

Mr. David Karat

Email: david.karat@tdinsurance.com

Kind attention: Declared Representative for SNIC as June 28, 2024

TO (2):

TD Home And Auto Insurance Company
FSRA Registration #1063

Kind attention: chief agent (exclusively in his capacity as chief agent for TDHA) Mr. James V. Russell (James.V.Russell@td.com)

Re: urgent notification – the fax number of 416-774-3120 (the "416 Fax Number") ... ups and is not SNIC's fax number – 416 Fax Number is TDHA

AOC 485 ... Pg

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Re #2: Based upon the unopposed evidence (see: Attachment #1), IDHA is obligated under Reg 283 and by receipt of my "Completed Application" to pay any and all benefits pursuant to SABS

Re #3: Confirmation that IDHA, by its receipt of my completed application, never sought to dispute its liability under SABS, with reference to the required procedures under Reg 283 (see: Attachment #2) within 90 days of October 13, 2022 (date of receipt of Completed Application to the 416 Fax Number

Re #4: Confirmation that SNIC has never made any payments for IRB and assistive device benefits (to be particularized)

Re #5: residual

Dear Sirs/Mesdames/Other Gender Neutral Pronouns

I write further to the above. For context purposes and to support the unopposed evidence at Attachment #1, I note some of the following:

1. Incorrect postal code for my application benefits package but not my Specimen;
2. The April 20, 2023, letter misrepresenting that there was no medical information on file (when I had faxed my MRI results on multiple occasions along with other medical evidence) to support my being outside of IMG;
3. Failures to pay the amounts allegedly approved in OCF-18s (to this date);
4. Adjusters not signing OCF-18's where required (April 20, 2023 and beyond);
5. SNIC not having control of all relevant records and personal information;
6. The SPAM Faxes (my definition) (see: Spring 2023);
7. The request for only email communications (see: March 2023);
8. The delays in SNIC responding to fax communications (see: from the Date of Loss to the time of my filing of the Appeal);
9. The failure of SNIC to respond at all to fax communications;
10. The attempt to switch to the 905 Fax Number (which was still not SNIC's fax number and located in Burlington and which I have just checked and they are some 91 km's apart);
11. The October 2023 email from "E-claims fax service" claiming that I had sent an email when I had not (and not consented at that time to email communications with SNIC until my PIPEDA request (at the time) was resolved to my satisfaction);
12. The attempt to have my OCF-19 submitted through IE AI with reference to an "Appropriate Ontario Health Practitioner" (sic);
13. Continued responses allegedly from SNIC to my faxing to the 416 Fax Number when I was in Europe along with the 905 Fax Number not receiving faxes or blocking the same;
14. Ms. Persaud being out of office for four months from September to December 2024;
15. Ms. Persaud apparently not having access to my AB File including documents like the UHN Notification for my Brain MRI;
16. Refusal to respond to my request for accounting, tax and payor information

ADC "this at the page 11

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17. The SNIC Response that failed to identify, list and attach documents as required by said form;
18. The unauthorized participation by TDGIC in the SNIC Proceeding;
19. The conduct of Mr. Nicowland in the SNIC Proceeding albeit on behalf of TDGIC;
20. The conduct of the Fictitious Legal Assistant in Ms Moraes for TDGIC;
21. The Fictitious TD Claim Number;
22. Mr. Kuras offering the email communication protocol on January 23, 2024;
23. Perhaps, oddly correct, that Mr. Papaliminopoulos was NEVER involved in any claim for accident benefits and the SNIC Proceeding as he is located in SNC Markham and His 416 Fax Number is in Toronto; and
24. Other particulars (known and unknown).

I further note that I made a demand upon SNIC for the "Spam Faxes" (my definition) but SNIC has not been able to produce the same. When referencing the "Spam Faxes", I am referring to faxes sent to me by an unknown fax number attempting to redirect me to another fax number which is also different from the 416 Fax Number.

Why would the likes of an unknown entity attempt to direct me to a different fax number by a letter that had no return address, not from the 416 Fax Number, purport to inform me that "TD" (emphasis is mine) had no record of my "claim number", and to a different fax number than the 416 Fax Number? The question answers itself.

Ironically, and with the benefit of hindsight, I was directed to a 905 Fax Number (first learned of the same in October 2023 but letters were sent in Summer of 2023 to one but not read and actioned until I returned from Europe from my required MRIs et al) that also was not SNIC's fax number.

I look forward to working with TDHA so it can comply with Reg 283 et al and then working in tandem with SNIC to notify the Tribunal (without unnecessary embarrassment to all but in an private, confidential and discreet manner) as that is clearly not my goal or prerogative that all issues in the SNIC Proceeding have been resolved.

I reserve all of my rights in fact and at law.

Your truly,

KAM

Kevin A. McLean

Warm regards,

Mr. Kevin A. McLean (B.A. (MCL), J.D., CPA)

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(2-10)

[redacted]

Kevin McLean <mcleanseniclat@gmail.com> Mon, Jul 29, 1:10 PM

to James.V.Russell, alisha anne, Carol, bev michie, Matthew (Univ)

July 29, 2024

Re: further to the above – two attachments – awaiting TDHA confirmation regarding 416 Fax Number – awaiting SNIC's provision of its actual fax number at the time of any submitted Completed Application

Dear Sirs/Mesdames/Other Gender Neutral Pronouns

1. I write further to the above. For further evidentiary purposes while I await the confirmation from **TDHA** that the **416 Fax Number** was its fax number at the time that I delivered my **Completed Application**, I enclose the following attachments:

a. True North REIT brochure regarding the Victoria Park Building (which will be defined herein as "**Attachment #3**");
b. Colliers International brochure, as it is the commercial listing realtor for the Victoria Park Building (or "**Spark Building**") (defined herein as "**Attachment #4**"); and
c. Notice Of Motion Of Hearing At Scheduled Event Order for my NOM (as which provides an example of the address and phone number for **TDHA** (before its removal on June 21, 2024 in relation to my NOM #8 (defined herein as "**Attachment #5**").

2. I further await to receive SNIC's *actual* fax number at the time that I delivered my **Completed Application** (including all other OCF documents).

Part 2: Uncontroverted Evidence

3. As noted, the lead tenants were colloquially referred to as "**TD Insurance**" by **True North REIT** (see: **Attachment #3**).

4. The two insurance companies without any reference to the name of "TD" in their names per se (whilst noting "**TD General Insurance Company**"[1] and "**TD Home And Auto Insurance Company**") have the word "**insurance**" after their descriptors. These two insurance companies that use two trademarks of "**TD Insurance**" and "**Meloche Monnex**" (for "**TD Insurance Meloche Monnex**" absent any "Inc.", "Incorporated", "Company", "Corp.", "Ltd." or "Limited" as those are in their legal and correct corporate names"[2] which are:

a. Security National Insurance Company (FSRA Registration Number [redacted] ("**SNIC**"); and

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b. Printemps Insurance Company (FSRA Registration 1396) ("Printemps").

5. SNIC has been a tenant on the 2nd floor of SNIC Markham at the McNabb Building since on or around 2018. SNIC's landline fax number must be an area code associated with Markham which is a 905 fax number. I note that Markham has other area codes but those area codes are NOT area code "416" and they are area codes associated with "mobile numbers".

6 The Victoria Park Building (or "Spark Building") is nine floors and the lead tenants of "TD Insurance" had multiple floors therein which is particularly important when the likes of TDHA and TDGIC are tenants therein.

7. Since 2018, TDHA's publicly listed fax number has been the 416 Fax Number (see: 416-774-3120) (see: Ontario Business Directory website)

8. The Tribunal listed the address for "TD General Insurance Company" in the "Notice of Motion To Be Heard Scheduled Event Order" (the "TBHSE Order") for my NOM #4 (the "IRB Quantification Order") as the following (with emphasis on the "prefix" of "774" and the "first three (3) digits" of the "last four (4) digits":

> "TD General Insurance Company
> 3650 Victoria Park Avenue,
> 9th Floor
> North York, ON
> M2H 3P7
> TDHADR@tdinsurance.com
> (416) 774-3629"

9. It is trite that "North York" is part of the City Of Toronto.

10. In said "Notice Of Motion TBHSE Order", it is important to note the phone number listed therein which commences with the following:

a. Area code: 416; and
b. Prefix: 774.

11. It is further important to note that the the "last four digits" of the phone number for TD General Insurance Company do NOT commence with the digits of "31" (see: "36" and then "29"). This distinction is a seminal one because in in turn means that the likely fax number of TDGIC at the Victoria Park Building commences or commenced (depending on the date of its departure[1]) as a tenant or occupier of the Victoria Park Building)

12. It is important to note that the phone number listed for Mr. Nguyen had, as he then was exclusively[2] declared representative for TDGIC, at the offices located at Wellington West in downtown Toronto was:

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- (416) 599-7439

13. While the area code is obviously a Toronto area code (416) (as being downtown Toronto), the first prefix is "599".

14. In reviewing the "Ontario Business Directory website information" (see: **Attachment #1**), it is notable that the phone number and fax number for TDHA not only commence with the same area code and prefix but the "first three digits" of the last four numbers to make up the ten digit phone number (emphasis is mine).

a. Phone number: 416-774-3123; and
b. Fax number: 416-774-3120.

15. As they are landlines, owned by Bell Canada (not Bell Mobility), phone numbers and fax numbers are directed and received at the **Victoria Park Building**. Of course, two insurance companies cannot share the same fax number as that would be a breach of the variety of governing statutes, governing regulations, *FSRA Rule*, Tribunal rules, Civil Rules, governing policies, guidance documents, jurisprudence et al. Moreover, this means that all faxes to the **416 Fax Number**, which I sent, were received at the **Victoria Park Building**.

16. Had the listed phone number for **TDGIC** in this Tribunal Proceeding (see: 015662/AABS) had its last four digits of "312X", then there may have been an argument that the 416-774-3120 fax number belonged to or was controlled by TDGIC in the material and relevant times. However, that mere hypothetical is not a fact. Rather the publicly listed phone number and fax number for **TDHA** both begin with the following:

a. 416-774-312X.

17. As noted in the various letters that are included in Attachment #1, the mailing address was **SNIC Markham** with the author being "TD Insurance Meloche Monnex" (neither **TDGIC** nor **TDHA** operate under TD Insurance Meloche Monnex) and the boilerplate language at the last paragraph before the author (TDIMM) of:

> "If we can assist you in any way, please contact Alisha Anne Prince, Claims Services, at 1-877-3767 x26413, OR by fax at 416-774-3139"

18. I note that the fax number was pre-printed in certain OCF documents that I received via mail.

Part 3: Conclusion (as of July 29, 2024)

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19. As of September 2022, the fax number of 416-774-3120 was for **TDHA**. Therefore, my position, based on the current uncontroverted evidence, is that **TDHA** through no fault of my own, received the following including but not limited to (at 9:27):

a. OCF-1;
b. OCF-2;
c. OCF-3;
d. OCF-6; and
e. All other confidential communications.

20. Unless **TDHA** disputes the above by the end of the business day, I will presume that my position is correct and that **TDHA** will be liable for any and all benefits that are outstanding. I will then provide a demand letter to **TDHA** with all of the outstanding amounts to **TDHA**, with SNIC copied as a courtesy, and then **TDHA** will be required to pay those principal amounts plus SABS interest pursuant to section 51 of SABS. The only issue that will remain is Reg 664 awards against **TDHA** if it does not deny and provide contrary evidence that the 416 Fax Number was its fax number at the time of receipt of the Completed Application (see: Reg 283). To the extent that I am correct in fact in all of the above positions, then any amounts that SNIC has allegedly paid is not on my behalf (nota bene: I am still awaiting whether SNIC was the actual payor of these benefits (which do not include IRB and amounts over and outside of the MIG, after OCF-6 expenses, at all) will simply act as a deduction against the amounts that **TDHA** was, is and will be required to pay as the "First Insurer" to receive my Completed Application without protestation and following the requirements under Reg 283. This will be a matter to be resolved between **TDHA** and SNIC regarding, inter alia, reconciling their books, records and accounts, and not myself. I am not required to wait for **TDHA** and SNIC to resolve those matters between them as it is nearly 18 months since the expiry of the 90 day period since **TDHA** (presuming that there is no contrary evidence to the above and SNIC's fax number could not have been 416-774-3120 in September and October 2022).

21. I will continue to investigate these issues and provide any further evidence that is relevant to the above so that any and all insurance companies and individuals act in accordance with the governing statutes, governing regulations et al. I reserve all of my rights in fact and at law.

22. I reserve the right to rely on this correspondence for any purpose that I deem necessary and that is lawful.

23. Thank you to all for their prompt attention to each distinct matter and note how we as known to each.

Your truly,

IRAM

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Kevin A. McLean

Enclosures.

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[1]FSRA Registration Number 351
[2]See: (i) "General"; and (ii) "Home And Auto"
[3]See: my evidence in the COS regarding TDIHC for NOM #11 and to be further discussed in disclosure re production in NOM #13
[4]Since June 28, 2024, Mr. Nieuwland has been the declared representative re SNR (in addition to being the duly declared representative to TDIHC). Mr. Nieuwland's "One & The Same Representation" regarding "SNR" and "TDIHC" was rejected by the FSRA "status certificates" and the granting of my NOM #8.
Warm regards.

Mr. Kevin A. McLean (B.A. (MCC), J.D., CIM)

...

[Message clipped] View entire message
3 Attachments - Scanned by Gmail

[redacted]

Kevin McLean <mcleansmcle@gmail.com> Mon, Jul 29, 4:43 PM

to James.V.Russell, aisha.anne, Carol, bev.michie, Matthew, David

July 29, 2024

Kind attention: relevant accounts payable department of the liable insurance company that received my Completed Application

Re: Quantification of the IRB that is due and owing in principal amount to this Thursday, August 1, 2024

Dear Sirs/Mesdames/Other Gender Neutral Pronouns:

I write regarding the above. Presuming that TDIHA will not deny that the 416 fax number was its fax number when it received my Completed Application, I confirm that the amount of IRB due and owing this Thursday, August 1, 2024 is the sum of $39,600 (the "Current IRB Principal Debt").

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I further confirm that I have not received any IRB as of today's date despite delivery of the Completed Application (along the OCF-2 and OCF-3) to the **416 Fax Number** (416-771-3100). Therefore, the full amount of the **Current IRB Principal Debt**, plus interest pursuant to section 51 of SABS, will be due and owing on this Thursday, August 1, 2024. I provide this unrefuted and uncontroverted evidence to the attention of the insurance company that received my Completed Application via fax to the **416 Fax Number** so that it can prepare the necessary calculations and payments for this Thursday, August 1, 2024.

As SNIC will know that the 416 Fax Number was not its fax number at the material time. Record only leaves TDHA by all accounts of public evidence and the above.

I confirm that any switching of fax numbers from the 416 Fax Number to the 905 Fax Number (see: Burlington Address references) is inconsequential because the law bases the liability for the insurance company (albeit unknown to me until last Friday, July 26, 2024) under the "no-fault insurance regime" on **RECEIPT** and timing of receipt which was October 13, 2022.

As I provided my Beneficiary Bank Account information to the 416 Fax Number the recipient insurance company (not any other insurance company that may have received a Benefits Plan required pursuant to SABS to make payment of the same by this Thursday, August 1st, 2024 with accumulated SABS interest (see: section 51 of SABS).

Thank you for your attention to this outstanding matter regarding compliance with SABS and payment of the IRB and interest.

Warm regards,

Mr. Kevin A. McLean (B.A. (McGill), J.D., C.(Ab)

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[Message clipped] View entire message

[redacted]

Kevin McLean <mcleaneniclat@gmail.com> Mon, Jul 29, 4:53 PM

to James V Russell, alisha.anne, Carol, bev.michie, Mathew, David

July 29, 2024

Re: the referenced 905 fax number which was - 905-315-3447 (the "905 Fax Number")

Dear Sirs/Mesdames:

In reference to the 905 fax number, I confirm that the above fax number is the 905 Fax Number which is a landline at the address of 5045 S Service Rd, Burlington, ON L7L 5Y7 (the

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"Burlington Address"). I further note while the address at the McNabb Building does reference a "floor number" the Burlington Address does not. This is likely another indication that the Burlington Address was an attempt to move me away from the 416 Fax Number (i.e. the TDHA fax number at the material times) as it was not SNIC's fax address as SNIC was located in Markham.

I attach a copy of a printout from the Ontario Business Directory website relating to the Burlington Address and the 905 Fax Number. As noted therein, the Ontario Business Directory does not reference SNIC but does reference the Victoria Park Building. I have defined the attachment as "Attachment #6" herein.

Thank you for your (relevant insurance company as known to each) to the above matters.

Warm regards,

Mr. Kevin A. McLean (B.A. (Hist.), LL.B., LL.M.)

..

[Message clipped] View entire message
One attachment • Scanned by Gmail

[redacted]

Kevin McLean <mcleansniclat@gmail.com> Mon, Jul 29, 6:56 PM

to James.V.Russell, alisha anne, Carol, bev mchue, Matthew (David

July 29, 2024

Re: confirmation – no denial by TDHA by end of business day today – that 416 [illegible] fax number at all material times

Dear Sirs/Mesdames:

Simply put, I write to confirm the above. I will provide in separate emails, which will be multiple (through no fault of my own but solely to being misled without denial of the same) herein as certain benefits are SABS come under different provisions and there are different consequences for delay involving each.

I confirm that Messrs Nieuwland Karat failed to even provide the correct fax number for SNIC by the end of the business day with the Tribunal and Mr. Josh Grant copied. I say that constitutes the drawing of an adverse inference.

I am copying Mr. Russell in his capacity as chief agent for TDHA. Thank you.

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as the respondent party and *SABS* insurer in some bizarre manner), that "what had been paid" was $2,850 to me in benefits.

5. I can confirm that I have received the sum of $1499.98 but $80 was for the OCF-18. It appears that the $80 would be a section 25 expense but SNIC (then TDIA) to some degree) to have lumped them together.

6. In any event, it appears that the $2,850 number (while not precise per se) is an amount of $1,350 that has been paid on my behalf with $50 being for the sum of a "transfer physio fee" albeit misguided under MIG.

7. As known to SNIC and the Tribunal, the Forged Nurse Signature (see: "As Per A. Nurse" with the inscription of "Ks. W" above the name) was not compliant with the requirements under *SABS* (see: a combination of section 38(8) and 32(11) and sections 66 and 67 of *SABS*). As such, this is dispositive as to whether I was out of the MIG (as by noting all of my injuries were outside of the definition of "minor injury") as SNIC (albeit while not referencing its correct fax number in the letter and noting that the OCF-18 in April 2023 referenced Ms. Nurse and Ms. Nurse only along with the fax number of 416-774-3120 – which was also in her letter but often hard to scan as they were double sided and sent in regular enveloped leading to their "crumpling")) was prohibited from taking the position that I was in the MIG on the 11th business day after receipt. I have identified this "attachment" as "Attachment #7".

8. However, intentional misrepresentation vitiates everything as that is the OCF document and with the fictitious fax number being used on behalf of SNIC, that is sufficient to render the entirety of the April 20, 2023 letter and resulted OCF-18. That 12 application null and void.

9. In any event, as TDIA has not denied that its fax number, in the Toronto area code calling or faxing (see: the letter of April 20, 2023 and its enclosure referencing the number was 416-774-3120, then it was, in fact and at law, TDIA that received the Completed Application.

10. Pursuant to subsection 2(3) of *Reg 283*, the "Application" (not to be confused with the LAT Application (pursuant to section 280(2) of the *Insurance Act*)) pursuant to the definition in *Reg 283*, section 1, the "Application" provided by the insurer MUST include the insurer's name, mailing address and telephone AND [emphasis is mine] and **FACSIMILE NUMBERS** [emphasis is mine].

11. I again note that I only receive one fax number at the material time and that was 416-774-3120. Said **416 Fax Number** is tied to the mailing address and landline of the **Victoria Park Building** (North York, Toronto). North York (Toronto) is in a different area code than Markham.

12. Therefore, it was, in fact and at law, TDIA that was obliged to respond to each and every OCF-18 or pay the benefits (see: for example, subsection 36(1) of *Reg 283*) (a)

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course, by not disputing its liability pursuant to *Reg 283*, with the deadline being on January 10, 2023, TDIA was required to pay all benefits IN ACCORDANCE WITH THE *SCHEDULE* pending the resolution of ANY dispute as to which insurer is (and was) required to pay the benefits (see: again, ss. 266 of *Reg 283*).

13. With no dispute pending or one at all, TDIA, by being the "First Insurer" (and now the only insurer, albeit through me not knowing that 416 Fax Number was NOT SNIC) to have received (at least first which is all that is required under *Reg 283*) to receive any "Completed Application", it was TDIA that required to dispute any and all OCF submitted documents signed by myself (OCF-1 and OCF-6's), or by the relevant company in the OCF-2, or duly signed by myself and a health practitioner which are as follows:

a. OCF-3 (myself and Dr. Paulin) (November 3, 2022);
b. OCF-18's (April 2023 to July 2024) (myself and Mr. Dhaliwal, PT (CCSNP) and myself Mr. Atwala, PT (Rehab Mechanics) (see: attached (now defined as "Attachments 8 to 12"); and
c. OCF-19 (November 2023) (signed by myself and the Neurosurgeon).

14. As I delivered the OCF-19 to the 416 Fax Number (as the 905 Fax Number was oddly rejecting faxes on a regular basis), the "First Insurer" will have a copy of that OCF-19. The OCF-19 and relevant sections of *SABS* (i.e. section 45 et al) do NOT have a deeming provision. However, all of the other OCF documents do. Therefore, any and all amounts of benefits are due and owing in that regard.

15. Of course, there will need to be a decision based upon my OCF-19 (CAT Impairment) but I will address that issue later and provide (again because TDIA has not denied that its fax number was the 416 Fax Number and I am inquiring through other avenues as what is SNIC's actual fax number in Markham).

16. Kindly find the above OCF-18's attached relating to physiotherapy. We will leave the calculations finalized on our side but in summary form, it appears only $1,900 was paid for physiotherapy leaving $1300 due and owing on the OCF-18 from April 2023 and the remainder are all due and owing and to Rehab Mechanics with *SABS* interest from the 1st day after ten business days of receipt. While appreciating the attempts to have the fees of an OCF-19 go through HCAI with an "Appropriate Ontario Health Practitioner" [SIC], submitting through HCAI is not a requirement or often done even with a physiatrist (without geographical restriction) or a practising neuropsychologist in Canada with five years of experience. Most physicians [without geographical restriction] and neuropsychologists (even those with five years Canadian experience that are based in Ontario) are not registered with HCAI. It seems that this was an attempt to NOT have them or me fax to the 416-774-3120 fax number.

17. In any event, SNIC remained the *SABS* Insurer but NOT the "First Insurer".

18. As such, I trust that these attachments for TDIA are of great assistance to it so it knows its liability in terms of the OCF-18's.

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19. I will hereafter attach a copy of the OCF-18 for my orthotics which was [illegible] however, that will follow in the next email.

20. Should anything be unclear for the "First Insurer", kindly advise at your earliest opportunity. Otherwise, I will fully expect, as it is requirement under the *Insurance Act, S.O. 1990, Reg 283* and UDAP Rule for TDHA (again based on the [illegible] fax number being what was provided to me as the ONLY and SOLE fax number to deliver the "Completed Application") to pay out any and all amounts to myself and to Ecliptic Mechanics to its known bank account to "you" by no later than this Thursday, August 1 2024.

21. I reserve the right to formalize these communications and reduce them to affidavit material at any time.

22. I kindly remind all of their obligations pursuant to the UDAP Rules and requirements of being licensed insurers in Ontario.

23. Thank you kindly for your (as known to each of you (where applicable) attorneys) to the above urgent and outstanding matters.

Warm regards,

Mr. Kevin A. McLean (B.A. (Hist.), J.D. (Law)

...

[Message clipped] View entire message
3 Attachments • Scanned by Gmail

[redacted]

Kevin McLean <mcleansniclat@gmail.com> Mon, Jul 29, 8:34 PM

to James V.Russell, alisha.anne, Carol, bev.michie, Matthew, David

July 29, 2024

Re: OCF-18 orthotics

Dear Sirs/Mesdames/Other Gender Neutral Pronouns:

I write regarding the above.

page. 110

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(21) (259)

I enclose a copy of the OCF-18 for orthotics in the amount of $450. This was also tendered on the form of an OCF-6 at first instance. I may provide the same for you for ease of reference as that was faxed to the 416 Fax Number in November 2023. The 416 Fax Number insurer will have received the same and have a copy of the same.

Since I paid for said amount, kindly tender the amount plus SABS interest for the above to my Beneficiary Bank Account submitted to the 416 Fax Number in October 2023

Warm regards,

Mr. Kevin A. McLean (B.A. (McG.), J.D. CNI

[Message clipped] View entire message
2 Attachments • Scanned by Gmail

Kevin McLean <mcleananiciat@gmail.com>

8:58 AM (1 day

to James.V.Russell, alisha.anne, Carol, bev michie, Matthew, David

July 30, 2024

Re: the remaining and outstanding benefit issues that require payment by the insurance company that first received the Completed Application at 416-774-3120

Dear Sirs/Mesdames/Other Gender Neutral Pronouns:

1. I write regarding the above.

2. With respect to CAT Impairment, the OCF-19 is invalid and will require a response by the insurance company that first received the Completed Application. Kindly provide your responses to this email herein. I consent to the same.

3. Kindly tender payment for the Section 25 expenses which are as follows:
   a. The $1,236.00 for the August 2023 MRIS, examinations and assessments.
   b. The sum of $10,000 for the preparation of reports, examinations, assessments et al involving my application for CAT Impairment (see: Section 25 of SABS).
      i. (para. here: the sum of $12,000 has been reduced to $10,000 as per the cap of $2,000 per examination, assessment, report et al under section 25(5) of SABS)

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...

[Message clipped] View entire message

[redacted]

Kevin McLean <mcleananiclat@gmail.com> 10:37 AM (0

to James.V.Russell, alisha.anne, Carol, bev.michie, Matthew, David

July 31, 2024

Re: enclosed documents – including signed EFT Authorization Form – faxed – exclusively delivered to - 416-774-3120 – signed by russell on October 6, 2022

Dear Sirs/Mesdames:

I write regarding the above. Having had no denial from FDIA that the 416-774-3120 belonged to it at the material times, as a courtesy, I attach a copy of the signed and delivered EFT authorized form. I confirm that this again constitutes a demand made upon the "First Insurer" who first received my Completed Application and the signed and delivered EFT authorization form (as attached in multiple faxes and letters therein). I confirm that said bank account remains the sole beneficiary bank account for payment of any and all outstanding benefits. I put payment of all outstanding benefits by the First Insurer by no later than the end of business day tomorrow. I will confirm safe receipt of the same.

Thank you.

Warm regards,

Mr. Kevin A. McLean (B.A. (MCD.), J.D., CPA)

..

[Message clipped] View entire message
One attachment • Scanned by Gmail

[redacted]

Kevin McLean <mcleananiclat@gmail.com> 2:14 PM (2

to James.V.Russell, alisha.anne, Carol, bev.michie, Matthew, David

July 31, 2024

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Pag. 112

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(261)

VIA Email

To:

TDHA
FSRA Registration Number 1063

Attention: chief agent for TDHA is Mr. James V. Russell

Re #1: Confirmation that TDHA has an address of 304 The East Mall, 6th Floor, Etobicoke, Ontario, ON M9B 6B7 (the "East Mall Address" or the "Etobicoke Address") (see Attachment #13 (over attachments))

Re #2: Confirmation that the OCF-18 submitted treatment plans by, inter alia, Rehab Mechanics through the HCAI portal: auto-populate an address for SNIC under any OCF form as of the Etobicoke Address (note bene: has been the case since at least April 2024)

Dear TDHA:

1. I write briefly regarding the above to draw the above demands again to the attention of TDHA. There is now further evidence to support that the 416-771-1120 fax number was TDHA's at all material times by reference to Re #1 and Re #2.

2. I confirm Re #1 and Re #2.

3. I had occasion to discuss Re #2 with various health practitioners who are experienced in submitting documents through HCAI and it has been confirmed, with evidence, that SNIC has manipulated the auto-population of the address for SNIC to the Etobicoke Address.

4. It is trite that SNIC's physical address was listed, as it relates to SABS and Reg 283, as SNIC Markham and not the Etobicoke Address. The Etobicoke Address is that of TDHA (see Attachment #13 herein).

5. Further, I note that the Burlington Address that SNIC directed me to, along with the 905 Fax Number, does not appear to be an address for SNIC either. In any event, it is not relevant to the issue of who was the "First Insurer" but it demonstrates that the Burlington Address was also NOT the East Mall Address.

6. Moreover, as HCAI is not an "fax portal" per se, it is notable that the Dhaliwal OCF-18 (April 2023) had the SNIC address and fax number therein as I provided to Mr. Dhaliwal in advance. It is unclear whether it was submitted through HCAI or whether that was merely the hard copy version that I have. In any event, all of the OCF-18's have been submitted through HCAI but were obviously directed to the Etobicoke Address (or East Mall Address) through SNIC's manipulation of the same as a health practitioner is unable

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page 25

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so change the auto-population of the back-end of HCAI. This issue is being investigated further from a technological standpoint.

7. I have copied the "represented" adjusters of SNIC and the representatives of SNIC in the Tribunal Proceeding (see: 23-013662/AABS).

8. The Forged Nurse Signature (see: "As Per A. Nurse" with the "K.L. W" inscription above it) is now making sense – albeit non-compliance with SABS and sacred texts issued by the CEO of the FSRA.

9. I reserve the right to rely on this correspondence and its attachments for any lawful purpose. I reiterate the above demands which will remain until the "First Insurer" and any subsequent recipient of what was received by the First Insurer complies with the Insurance Act, SABS, Reg 283 et al. Thank you for your prompt attention to the above matter.

Warm regards,

KAM

Kevin A. McLean

Copied to:

SNIC
FSRA Registration Number 397

And copied to:

Claims Advisors or Claims Adjusters (as represented (to me) in claims advices for SNIC in the TD Claim #3)
Ms. Nurse
Ms. Persaud
Mr. Michie

And copied to:

SNIC's representatives in the Tribunal Proceeding
Mr. Kurst
Mr. Nieuwland

Warm regards,

Acc TAB #10 page 114

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Mr. Kevin A. McLean (B.A. (MCL), J.D., CIAL)

...

[Message clipped] View entire message
2 Attachments • Scanned by Gmail

[redacted]

Kevin McLean <mcleanandclat@gmail.com> 4:05 PM (1

to James.V.Russell, alisha, anne, Carol, bev michie, Matthew, David

July 31, 2024

VIA Email

Private and Confidential

Dictated with voice recognition software – kindly excuse any non-sensicalities, errors or please advise of any spelling, grammatical or syntax errors including any apparent qualifiers that may be misplaced

To:

TDHA
FSRA Registration Number 11063

Attention: chief agent for **TDHA** is Mr. James V. Russell

Re #1: Confirmation that SNIC's pleading references HCAI (see: SNIC Response, paragraph 6 therein: "... Not submitted to HCAI on an OCF-18"

Re #2: Confirmation that the 416-774-3120 received the OCF-19 (valid – and has failed to respond in accordance with SABS

Re #3: April 30, 2023 letter referencing Ms. Nurse as the "claims advisor" and "no medical evidence" reference

Re #4: Confirmation that the reason SNIC could not list and attach any documents to the SNIC Response, as required by the "Response Form" (0456E) (see: "Response by an Insurance Company pursuant to section 280(2) of the *Insurance Act*") was because TDHA had control and possession of the entirety of the accident benefits file under TD Claim #3

AoC 115 pg 115

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Re #5: Residual

Dear TDHA:

1. I write regarding the above. I write again to ensure that I have "papered" any and all facts and issues to ensure that **TDHA** complies with its obligations under *S 185* and *Reg 283* which were both passed and amended pursuant to the *Insurance Act*.

2. It now stands to reason why the **SNIC Response** was referencing **HCAI** as the "First Insurer" was **TDHA**. **SNIC** and **TDHA** are not "one and the same". **SNIC** and **TDGIC** are "not one and the same". **SNIC** and **Prisumum** are not "one and the same" even though they both operate under the distinct trademarks of "HD Insurance Meloche Monnex".

3. I further note that **SNIC** deceived me in requesting copies of the submitted OCF-18's as **SNIC** would not have access to the same if the "branch office" was that of **TDHA**. I also note that **SNIC** took an extraordinarily long time to ever provide me with the requested information in my **Dhaliwal OCF-18**.

4. I further confirm that any references to the "Fictitious Respondent" in **TDGIC** were false in fact and at law. **TDIC** has since been removed as the sole respondent party. **SNIC** remains the sole "*SABS* Insurer" but with the further evidence regarding the **Last 3 half Address** by way of auto-population in the HCAI portal, **TDHA** appears (subject to any further review) to have received all of the Rehab Mechanics invoices in the OCF-18's therein.

5. It stands to reason that the underlying deception by **SNIC** in misrepresenting to the Tribunal that **TDGIC** (not **TDHA**) was the "**Respondent Party**" was to ensure that I did not learn and discover that **TDHA** was the "**First Insurer**".

6. The fundamental reason that Ms. Nurse could not sign the Dhaliwal OCF-18 (competent for the adjuster) was because **TDHA** was the "First Insurer" to receive my **Completed Application**.

7. In relation to "Re #3", the reason that **SNIC** did not have any medical evidence to support me being outside of the MIG was because I faxed all of my supporting medical evidence (including the **October 2022 MRI Report** and supporting evidence) to 416-774-3120.

8. It is now unassailable as to why **SNIC** misrepresented the legal test of "*Ippersiel Ontario Health Practitioner*" [sic] for an OCF-19 and failed to respond to the OCF-19 delivered package to the 416-774-3120 as **SNIC** could not. It was only **TDHA** that would respond (and it was obliged to do so) to the OCF-19.

9. Simply put, I was duped by the *SABS* Insurer (**SNIC**) on a variety of occasions over a period of nearly two years and **SNIC** has failed to correct the same.

Ans 185 #17 pg. 116

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10. In order for the "SNIC Proceeding" to be resolved, TDHA will need to pay any and all outstanding benefit amounts, including confirming in writing it was the First Insurer to receive my Completed Application on October 13, 2022, with an acknowledgment of the same to the very Beneficiary Bank Account it received in early October 2023 via my fax to the fax number of 416-774-3120.

11. The deadline is a hard and fast one at the end of business day on August 1, 2024 for TDHA to comply with its duties under the *Insurance Act*, *SABS Reg.* 34 et al. If TDHA fails to do so, I reserve the right to make complaints to external bodies in accordance with the law including but not limited to seeking relief with the Tribunal and other provincial and federal bodies. TDHA has had and has the correct Beneficiary Bank Account in its possession and control and can avoid the above by paying all outstanding benefits (or confirmation that it has sent the same and the funds are en route to not only myself but any health practitioners with outstanding invoices tendered on their file to SNIC but clearly to TDHA via fax or through IBCAH.

12. For SNIC's purposes, I confirm that each and every document that I sent me via email was a "false document" as SNIC intentionally misrepresented its fax number which was required under *SABS* and, particularly, under *Reg 283*.

13. I confirm that the amounts that TDHA is required to pay under *SABS* on a historical basis and in the future are unequivocally required as a matter of law but TDHA will have a full right of indemnity against SNIC for misusing the following:

a. Fax number: 416-774-3120; and
b. **East Mall Address.**

14. While SNIC was the insurance company, known (in part and still being further investigated) to me as of July 26, 2024, that misrepresented its fax number (see: 416-774-3120) and address (see: IBCAH auto-population issue for health practitioners). It appears that ss. 2(7) requires the "first insurer" to reimburse another insurer (SNIC) for any legal fees, adjuster's fees, administrative costs and disbursements that are REASONABLY INCURRED by the other insurer as a result of the non-compliance. However, it appears that the "Spam Faxes" (albeit not on letterhead per se of any insurer and now for obvious reasons) in Spring 2023 in attempting to direct me to another fax number were an attempt by TDHA to not receive any further faxes from me to the 416 Fax Number. However, I immediately confirmed with the 416 Fax Number (albeit detrimentally relying upon the misrepresentations by SNIC) that the "Spam Faxes" had been removed from the main fax inbox and said fax number was "blocked" and "blacklisted".

15. While this is yet another set of facts to add to the most unprecedented fact pattern in the history of the License Appeal Tribunal and its predecessor in the FSCO, I yet again confirm that to the extent that TDHA attempts to serve a notice some 18 months after the requirement under *Reg 283* to dispute its liability, it may do so by email. I will oppose such a notice (if applicable).

292 Ref TAS #10 page 117 27 (216)

16. I cordially remind **TDHA** of its obligations under the Insurance Act, *SABS* and *Reg 283*. I remind **TDHA** of its obligations under the *UDAP Rule*.

17. I remind **SNIC** and the various individuals who have represented to me that they have authority for SNIC of the *UDAP Rule*.

18. I hereby confirm that so long as **TDHA** (as neither SNIC nor TDHA have denied that **TDHA**'s fax number, at the material times, was 416-774-0120 and its Last Mail Address (as listed on Yelp I might add) was and is **TDHA**'s address (not SNIC's) makes payment (or confirms that the payment amounts have been sent through direct deposit to myself and via whatever method health practitioners are paid for performing valuable services on my behalf) of any and all outstanding benefits to me by Thursday, August 1, 2024, at 4:59 p.m., then I will hold any and all lawful steps that I may take, including but not limited to make any complaints to external bodies and/or taking steps before the Tribunal or otherwise, in abeyance pending further resolution between us regarding the *SABS* interest on each benefit amount. In this regard, it will only leave the issue of a *Reg 664* award which I am amenable to negotiate the same on each as we are not wasting valuable resources of ours and that of the Tribunal including potentially the FSRA and others.

19. In this manner, and only after "**First Insurer**" complies with its obligations by the deadline of August 1, 2024 at 4:59 p.m. (i.e. either confirmation of having sent payment through the Canada Payments by direct deposit to me and that a cheque has been issued to **Rehab Mechanics** and potentially **IONP** (Mr. Dhaliwall (where applicable), it would seem that *Reg 664*, section 9.1(1) allows for separate settlements between myself and SNIC, and myself and **TDHA**. As **TDGIC** was not located at the **East Mail Address**, and the **416 Fax Number** was **TDHA**'s at all material times, it appears that no settlement would be required under *SABS* between myself and **TDGIC**.

20. Of course, if the "**First Insurer**" does not comply with *Reg 283* and *SABS* at all by the deadline denoted above, then I will be at liberty to take any and all lawful steps without further notice to **TDHA** (and SNIC), including adding **TDHA** as a party to the "**SNIC Proceeding**". To the extent that there is an argument that **TDHA** is the only liable insurer under **TD Claim #3** (and any **Fictitious TD Claim Numbers** (known or unknown) my argument will be that SNIC is liable for some of the costs of the SNIC Proceeding from January 2024 to present and will be required to remain SNIC, as the "**Sole SABS Insurer**", filed a responsive pleading in the **SNIC Proceeding** as well so it is unlikely that it can be removed per se but that is a few steps down the road and subject to further evidence.

21. As I am required to make demands as promptly as I can once I know of the evidence and material facts leading to the same, I will continue to rely on the law of relevant influence.

22. If TDHA fails to meet the deadline of tomorrow, presuming it will need to have an independent representative or a member of its board of directors and/or a "senior officer"

AOC TAB #10 pg 118

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communicate with me (and I remain amenable to communicate with Mr. Russell in his capacity as chief agent of TDHA (FSRA Registration #11063).

23. My goal remains to resolve this terribly unlawful conduct and what would be facts of embarrassing and detrimental to the repute of any insurance company or individual so involved if I were required to file materials that were open to the public in a measured cognitive and confidential manner. However, it will require immediate compliance by the "First Insurer" as denoted above.

24. To ensure that I have made the point, it is now unavoidable or at least, fair to ask the facts as to why NO adjuster for SNIC has signed (at least lawfully and in his or her personal capacity with a valid signature) one OCF-18. I have made demands on SNIC for copies of the signed OCF-18, Part 12, and it has been "radio silence". Put another way, SNIC has not produced or disclosed an OCF-18, Part 12, with the signature of an adjuster *that I/we could & when TDHA was the "First Insurer" to receive the "Completed Application"*.

25. I sincerely hope that this is not a standard or usual practice of SNIC and TDHA and purely idiosyncratic to myself.

26. I confirm that if I am required to bring a motion to add TDHA as a party to the SNIC Proceeding, I am only entitled at that time to seek costs against a party and I will seek costs against SNIC pursuant to Section 17.1 of the SPPA and LAT Rule 19.

27. I reserve the right to rely on this correspondence (herein or under the Appeal) and any attachments for any lawful purpose.

Warm regards,

KAM

Kevin A. McLean

Copied to:

SNIC
FSRA Registration Number 397

And copied to:

Claims Advisory or Claims Adjusters (as represented (to me) as claims advisors for SNIC on my TD Claim #3)
Ms. Nurse
Mr. Persaud
Ms. Michie

AOC 1148 #10 119

294 page 31

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And copied to:

SNIC's representatives in the Tribunal Proceeding
Mr. Karat
Mr. Nieuwland

Warm regards,

Mr. Kevin A. McLean (B.A. (McGill), J.D., C.S.I.

On Wed, Jul 31, 2024 at 2:14 PM Kevin McLean <mcleansniclaw@outlook.com> wrote:
July 31, 2024

VIA Email

To:

TDHA
FSRA Registration Number 1063

Attention: chief agent for TDHA is Mr. James V. Russell

Re #1: Confirmation that TDHA has an address of 304 The Queensway, Unit 1, Toronto, ON M9B 6B7 (the "Post Mail Address" or the "Etobicoke Address") (see: Attachment #1 [two attachments])

Re #2: Confirmation that the OCF-18 submitted treatment plans (re. injured pts. Rehab Mechanics through the IBAT portal) auto-populate an address for SNIC under no. 10 (Item 5) of the Etobicoke Address (note bene: has been the case since at least April 2023)

Dear TDHA:

1. I write briefly regarding the above to draw the above demands again to the attention of TDHA. There is now further evidence to support that the 416-771-5720 fax number was TDHA's at all material times by reference to Re #1 and Re #2.

2. I confirm Re #1 and Re #2.

AOC #AIS #10 page 120

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3. I had occasion to discuss Re #2 with various health practitioners who are experienced in submitting documents through HCAI and it has been confirmed, with evidence, that SNIC has manipulated the auto-population of the address for SNIC to the Etobicoke Address.

4. It is true that SNIC's physical address was listed, as it relates to SABS and Reg 283, as SNIC Markham and not the Etobicoke Address. The Etobicoke Address is that of TDHA (see: Attachment #13 herein).

5. Further, I note that the Burlington Address that SNIC directed me to, along with the 905 Fax Number, does not appear to be an address for SNIC either. In any event, it is not relevant to the issue of who was the "First Insurer" but it demonstrates that the Burlington Address was also NOT the Last Mail Address.

6. Moreover, as HCAI is not an "fax portal" per se, it is notable that the Dhaliwal OCF 18 (April 2023) had the SNIC address and fax number therein as I provided to Ms. Dhaliwal in advance. It is unclear whether it was submitted through HCAI or whether that was merely the hard copy version that I have. In any event, all of the OCF 18's have been submitted through HCAI but were obviously directed to the Etobicoke Address (or Last Mail Address) through SNIC's manipulation of the same as a health practitioner is unable to change the auto-population of the back-end of HCAI. This issue is being investigated further from a technological standpoint.

7. I have copied the "represented" adjusters of SNIC and the representatives of SNIC in the Tribunal Proceeding (see: 23-015662/AABS).

8. The Forged Nurse Signature (see: "As Per A. Nurse" with the "Ct. W" inscription above it) is now making sense – albeit non-compliance with SABS and sacred forms issued by the CEO of the FSRA.

9. I reserve the right to rely on this correspondence and its attachments for any lawful purpose. I reiterate the above demands which will remain until the "First Insurer" and a subsequent recipient of what was received by the First Insurer complies with the Insurance Act, SABS, Reg 283 et al. Thank you for your prompt attention to the above matter.

Warm regards.

AAM

Kevin A. McLean

Copied to:

SNIC
FSRA Registration Number 397

296

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210

And copied to:

Claims Advisors or Claims Adjusters (as represented (to me) as claims advisors for SNC for my TD Claim #3)
Ms. Nurse
Ms. Persaud
Ms. Mielic

And copied to:

SNIC's representatives in the Tribunal Proceeding
Mr. Karat
Mr. Nieuwland

Warm regards,

Mr. Kevin A. McLean (B.A. (McGL), LL.B., LSSU)

On Wed, Jul 31, 2024 at 10:37 AM Kevin McLean <mcleanregister@gmail.com> wrote:
July 31, 2024

Re: enclosed documents – including signed EFT Authorization form – hand – exclusively delivered to – 416-274-3120 – signed by myself on October 6, 2022

Dear Sirs/Mesdames:

I wrote regarding the above. Having had no denial from TDIA that the 416-771-4120 belonged to it at the material times, as a courtesy, I attach a copy of the signed and delivered EFT authorized form. I confirm that this again constitutes a demand made upon the "First Insurer" who first received my Completed Application and the signed and delivered EFT authorization form (see attached in multiple faxes and letters therein). I confirm that said bank account remains the sole beneficiary bank account for payment of any and all outstanding benefits. Upon payment of all outstanding benefits by the First Insurer by no later than the end of business day tomorrow, I will confirm safe receipt of the same.

Thank you.

Warm regards.

Re: the remaining and outstanding benefit issues that require payment by the insurance company that first received the Completed Application at 416-774-3120

Dear Sirs/Mesdames/Other Gender Neutral Pronouns:

1. I write regarding the above.

2. With respect to CAT Impairment, the OCF-19 is invalid and will require a response by the insurance company that first received the Completed Application. I shall provide any responses to this email herein. I consent to the same.

3. Kindly tender payment for the Section 25 expenses which are as follows:
   a. The $1,236.00 for the August 2023 MRIS, examinations and assessments;
   b. The sum of $10,000 for the preparation of reports, examinations or assessments or all involving my application for CAT Impairment (see section 25 of SABS).
      i. (note bene: the sum of $12,000 has been reduced to $10,000 as per the cap of $2,000 per examination, assessment, report et al under section 25(5) of SABS)

4. Kindly tender payment for all outstanding OCF-6's that were faxed to 416-774-3120. I have received the sum of $1019.98. Therefore, any amounts over and above the same are due and owing.

5. Kindly tender payment for all the sum of $25,500 for the replacement cost of the vehicle pursuant to section 16 of SABS.

6. As it is settled law, section 25 expenses do not attract any SABS interest.

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7. The other amounts particularized and specified attract SAIS interest. I am amenable to principal amounts being paid and then resolving with the "first instance" regarding interest.

8. Kindly ensure that all payments denoted above are made by no later than Thursday August 1, 2024 to my Beneficiary Bank Account or to Rehab Mediumes when applicable.

9. Thank you.

Warm regards.

Mr. Kevin A. McLean (B.A. (McG.), J.D., CISI)

On Mon, Jul 29, 2024 at 8:34 PM Kevin McLean <mcleansniclat@gmail.com> wrote:
July 29, 2024

Re: OCF-18 orthotics

Dear Sirs/Mesdames/Other Gender Neutral Pronouns:

I write regarding the above.

I enclose a copy of the OCF-18 for orthotics in the amount of $450. This was also rendered in the form of an OCF-6 at first instance. I may provide the same for you for ease of reference as that was faxed to the 416 Fax Number in November 2023. The 416 Fax Number insurer will have received the same and have a copy of the same.

Since I paid for said amount, kindly tender the amount plus SAIS interest for the above to my Beneficiary Bank Account submitted to the 416 Fax Number in October 2023.

Warm regards.

Mr. Kevin A. McLean (B.A. (McG.), J.D., CISI)

On Mon, Jul 29, 2024 at 8:31 PM Kevin McLean <mcleansniclat@gmail.com> wrote:
July 29, 2024

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Re: outstanding amounts owing for the OCF-18's pursuant to *Reg 283* and *SABS* – enclosed are the relevant documents including the only OCF-18, Part 12 (April 20, 2023) which remains incomplete and can never be completed for the reasons infra and previously affirmed or sworn under oath and/or submitted to me and all relevant "persons"

Dear Sirs/Mesdames/Other Gender Neutral Pronouns,

1. I write regarding the above.

2. I enclose copies of the OCF-18's signed by myself and the relevant health practitioners are the relevant times regarding physiotherapy. While each and every OCF-18 was addressed to SNIC, while noting the names of the "adjusters" that were provided to myself and each physiotherapist as being adjusters for SNIC in relation to TD Claim #3, it appears that the law is unequivocal in that the 416 Fax Number (416-774-3120) that first insurance company to receive the Completed Application (see: *Reg 283*) is responsible and liable for the benefits unless that insurance company disputed its liability by following the requirements under the binding and governing regulation (see: *Reg 283*).

3. As there is no evidence and I never received any notice from TDIA disputing its liability (and no denial that 416 Fax Number was its fax number at the relevant and material times herein), then TDIA is responsible for paying all outstanding amounts to Rehub Mechanics.

4. While SNIC has not been forthcoming (with a clearer understanding of why) about the amounts paid to Mr. Dhaliwal, PT (of Toronto Orthopedic Physiotherapy) (defined as "TONP") and likely SNIC did not know the amounts, SNIC, through Ms. Kuut in some degree, represented in May 2024 (although there was an issue with TDGIC masquerading as the respondent party and *SABS* lawsuit in some bizarre manner), that "what had been paid" was $2,850 to me in benefits.

5. I can confirm that I have received the sum of $1499.98 but $80 was for the OCF-3. It appears that the $80 would be a section 25 expense but SNIC often (if not to some degree) to have lumped them together.

6. In any event, it appears that the $2,850 number (while not precise per SNIC) is an amount of $1,350 that has been paid on my behalf with $50 being for the sum of a "transfer physio fee" albeit misguided under MIG.

7. As known to SNIC and the Tribunal, the Forged Nurse Signature (see: "As Per A. Nurse" with the inscription of "Kit W" above the name) was not compliant with the requirements under *SABS* (see: a combination of section 38(8) and 38(11) and section 66 and 67 of *SABS*). As such, this is dispositive as to whether I was out of the MIG (while noting all of my injuries were outside of the definition of "minor injury") as SNIC (albeit while not referencing its correct fax number in the letter and noting that the OCF-18 in April 2023 referenced Ms. Nurse and Ms. Nurse only alone

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with the fax number of 416-774-3120 – which was also in her letter but often found to scan as they were double sided and sent in regular envelopes leading to their "crumpling")) was prohibited from taking the position that I was in the DRO on the 11th business day after receipt. I have defined this "attachment" as "Attachment #7".

8. However, intentional misrepresentation vitiates everything as that is an OCF document and with the fictitious fax number being used on behalf of SNIC, that is sufficient to render the entirety of the April 20, 2023 letter and required OCF-18 Part 12 signature null and void.

9. In any event, as TDHA has not denied that its fax number, in the Toronto area code calling or faxing (see: the letter of April 20, 2023 and its enclosure (clearly the same) was 416-774-3120, then it was, in fact and at law, TDHA that received the Completed Application.

10. Pursuant to subsection 2(3) of *Reg 283*, the "Application" (not to be confused with the LAT Application (pursuant to section 280(2) of the *Insurance Act*)) pursuant to the definition in *Reg 283*, section 1, the "Application" provided by the insurer MUST include the insurer's name, mailing address and telephone AND (emphasis is mine) and FACSIMILE NUMBERS (emphasis is mine)

11. I again note that I only receive one fax number at the material time and that was 416-774-3120. Said 416 Fax Number is tied to the mailing address and facilities at the Victoria Park Building (North York, Toronto). North York (Toronto) Hall has a different area code than Markham.

12. Therefore, it was, in fact and at law, TDHA that was obliged to respond to each and every OCF-18 or pay the benefits (see: for example, subsection 2(6) of *Reg 283*). Of course, by not disputing its liability pursuant to *Reg 283*, with the deadline being on January 10, 2023, TDHA was required to pay all benefits IN ACCORDANCE WITH THE *SCHEDULE* pending the resolution of ANY dispute as to which insurer is (and was) required to pay the benefits (see again: s. 2(6) of *Reg 283*).

13. With no dispute pending or one at all, TDHA, by being the "first insurer" (and now the only insurer, albeit through me not knowing that 416 Fax Number was NOT SNIC, to have received (at least first which is all that is required under *Reg 283*)) to receive my "Completed Application", it was TDHA that required to dispose any and all OCF submitted documents signed by myself (OCF-1 and OCF-6's), or by the relevant company in the OCF-2, or duly signed by myself and a health practitioner which are as follows:

a. OCF-3 (myself and Dr. Profitt) (November 3, 2022);
b. OCF-18's (April 2023 to July 2024) (myself and Mr. Dhaliwal, PT (TONP) and myself Mr. Atwala, PT (Rehab Mechanics) (see attached) (now defined as "Attachments 8 to 12"); and

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c. OCF-19 (November 2023) (signed by myself and the Neurosurgeon)

14. As I delivered the OCF-19 to the 416 Fax Number (as the 905 Fax Number was oddly rejecting faxes on a regular basis), the "First Insurer" will have a copy of that OCF-19. The OCF-19 and relevant sections of *SABS* (i.e. section 15 et al) do NOT have a deeming provision. However, all of the other OCF documents do. Therefore, any and all amounts of benefits are due and owing in this regard.

15. Of course, there will need to be a decision based upon my OCF-19 (i.e. Impairment) but I will address that issue later and provide again because HCAI has not denied that its fax number was the 416 Fax Number and I am inquiring through other avenues as what is SNIC's actual fax number in Markham).

16. Kindly find the above OCF-18's attached relating to physiotherapy. We will have the calculations finalized on our side but in summary form, it appears only $1300 was paid for physiotherapy leaving $1300 due and owing on the OCF-18 from April 2023 and the remainder are all due and owing and to Rehab Mechanics with *SABS* interest from the 1st day after ten business days of receipt. While appreciating the attempts to have the likes of an OCF-19 go through HCAI with no "Appropriate Ontario Health Practitioner" (SNIC), submitting through HCAI is not a requirement or often done even with a physician (without geographical restriction) or a practising neuropsychologist in Canada with five years of experience. Most physicians (without geographical restriction) and neuropsychologists (even those with five years Canadian experience that are based in Ontario) are not registered with HCAI. It seems that this was an attempt to NOT have them provide fax to the 416-274-3120 fax number.

17. In any event, SNIC remained the *SABS* Insurer but NOT the "First Insurer"

18. As such, I trust that these attachments for DOIA are of great assistance so it knows its liability in terms of the OCF-18's.

19. I will hereafter attach a copy of the OCF-18 for my orthotics which was $150. However, that will follow in the next email.

20. Should anything be unclear for the "First Insurer", kindly advise at your earliest opportunity. Otherwise, I will fully expect, as it is required under the *Insurance Act*, *SABS*, *Reg 283* and *HDAP Rule* for DOIA (again based on the 416-274-3120 fax number being what was provided to me as the ONLY and SOLE fax number to deliver the "Completed Application") to pay out any and all amounts to myself and to Rehab Mechanics to its known bank account to "you" by no later than this Thursday, August 1, 2024.

21. I reserve the right to formalize these communications and reduce them to affidavit material at any time.

AOC 4th ... page. 127

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22. I kindly remind all of their obligations pursuant to the LSUC Rules and requirements of being licensed insurers in Ontario.

23. Thank you kindly for your (where applicable) attention to the above urgent and outstanding matters.

Warm regards,

Mr. Kevin A. McLean (B.A. (McGill), J.D. (UT))

On Mon, Jul 29, 2024 at 7:09 PM Kevin McLean <mcleanmichael@gmail.com> wrote:

July 29, 2024

Re: reference to all the issues in the SNIC Proceeding

Dear Sirs/Mesdames:

As I had referenced in my above email, which was received at the 416 Fax Number (416-774-3120) on December 24, 2023, I provide a copy of the pleadings herein with the parties (myself, myself and SNIC. As the insurance company that received the "Appeal" (December 24, 2023) (also known as an "Application Of An Injured Person pursuant to section 280(7) of the Insurance Act" will have a copy, I am providing a copy of Security National Insurance Company's pleading (January 25, 2024 – signed and served by one Mr. David Kurtz). The emails to follow will be the quantification of what is owing within the SNIC Proceeding and perhaps subject to review outside of the SNIC Proceeding.

You will see one of the confirmations of the fax delivery to 416-774-3120 which was six pages as part of my Appeal was blocked and I had to send it in multiple faxes. As noted, this became a consistent theme involving 416-774-3120 which required me to send faxes from multiple fax numbers and sometimes discreet ones as per the blocking. Alas, from having multiple landline faxes over the years in multiple jurisdictions, you can block an income landline fax with ease as long as you are close to the actual fax machine. Moreover, there are often issues with them being busy like the antiquated days of calling a landline and someone else is on the phone at that time.

As noted, there is no question that SNIC (not TDGIC) was and is the SABS insurer for the one named in the Insurance Policy donated in the pleadings by both myself and SNIC, but the issue is the receipt of the Completed Application (see: Reg 283).

I will provide the documents where applicable as to what remains outstanding in terms of benefits with supporting documentation.

Thank you.

Warm regards,

AOC 1A8 at 10 page. TCD

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Mr. Kevin A. McLean (B.A. (Hons.), J.D., CIArb)

On Mon, Jul 29, 2024 at 6:56 PM Kevin McLean <mcleansnicjd@gmail.com> wrote:
July 29, 2024

Re: confirmation – no denial by TDHA by end of business day today – that [illegible] fax number at all material times

Dear Sirs/Mesdames:

Simply put, I write to confirm the above. I will provide in separate emails, which will be multiple (through no fault of my own but solely to being misled without denial of the same here) as to why benefits are SARS come under different provisions and there are different consequences for the Ls involving each.

I confirm that Messers Nieuwland Karal failed to even provide the correct fax number for SNIC by the end of the business day with the Tribunal and Mr. Josh Grant copied. I say that compound the drawing of an adverse inference.

I am copying Mr. Russell in his capacity as chief agent for TDHA. Thank you

Warm regards,

Mr. Kevin A. McLean (B.A. (Hons.), J.D., CIArb)

On Mon, Jul 29, 2024 at 4:53 PM Kevin McLean <mcleansnicjd@gmail.com> wrote:
July 29, 2024

Re: the referenced 905 fax number which was - 905-315-3447 (the "905 Fax Number")

Dear Sirs/Mesdames:

In reference to the 905 fax number, I confirm that the above fax number is the 905 Fax Number which is a landline at the address of 5045 S Service Rd, Burlington, ON L7L 5Y7 (the "Burlington Address"). I further note while the address at the McNabb Building does reference a "floor number" the Burlington Address does not. This is likely another indicator that the Burlington Address was an attempt to move me away from the 416 Fax Number (i.e. the TDHA fax number at the material times) as it was not SNIC's fax address as SNIC was located in Markham.

I attach a copy of a printout from the Ontario Business Directory website relating to the Burlington Address and the 905 Fax Number. As noted therein the Ontario Business Directory does not

POC /IAB #1 page 1 of 1

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reference SNIC but does reference the Victoria Park Building. I have defined this attachment as "Attachment #6" herein.

Thank you for your (relevant insurance company as known to each) to the above matters.

Warm regards,

Mr. Kevin A. McLean (B.A. (Hons.), J.D., CIM)

On Mon, Jul 29, 2024 at 4:43 PM Kevin McLean <mcleanmediakit@gmail.com> wrote:
July 29, 2024

Kind attention: relevant accounts payable department of the public insurance company that received my Completed Application

Re: Quantification of the IRB that is due and owing in principal amount by this Thursday, August 1, 2024

Dear Sirs/Mesdames/Other Gender Neutral Pronouns:

I write regarding the above. Presuming that TDHA will not deny that the 416 Fax Number was its fax number when it received my Completed Application, I confirm that the amount of IRB due and owing this Thursday, August 1, 2024 is the sum of $39,600 (the "Current IRB Principal Debt").

I further confirm that I have not received any IRB as of today's date despite delivery of the Completed Application (along the OCT-2 and OCT-3) to the 416 Fax Number (416-221-6470). Therefore, the full amount of the Current IRB Principal Debt, plus interest pursuant to section 51 of SABS, will be due and owing on this Thursday, August 1, 2024. I provide this evidence and unconverted evidence to the attention of the insurance company that received my Completed Application via fax to the 416 Fax Number so that it can prepare the necessary authorizations and payments for this Thursday, August 1, 2024.

As SNIC will know that the 416 Fax Number was not its fax number at the material time, there only leaves TDHA by all accounts of public evidence and the above.

I confirm that any switching of fax numbers from the 416 Fax Number to the 905 Fax Number (see: Burlington Address references) is inconsequential because the law loves the liability for the insurance company (albeit unknown to me until last Friday, July 26, 2024) under the "one fax# insurance regime" on **RECEIPT** and timing of receipt which was October 13, 2023.

As I provided my Beneficiary Bank Account information to the 416 Fax Number, the recipient insurance company (not any other insurance company that may have received it thereafter) is required pursuant to SABS to make payment of the same by this Thursday, August 01, 2024 with accumulated SABS interest (see: section 51 of SABS).

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Thank you for your attention to this outstanding matter regarding compliance with SNIC's and payment of the IRB and interest.

Warm regards,

Mr. Kevin A. McLean (B.A. (Mod.), J.D., CAIB)

On Mon, Jul 29, 2024 at 1:10 PM Kevin McLean <mcleansnicklaw@gmail.com> wrote:
July 29, 2024

Re: further to the above – two attachments – awaiting TDHA confirmation regarding 416 Fax Number – awaiting SNIC's provision of its actual fax number at the time of my submitted Completed Application

Dear Sirs/Mesdames/Other Gender Neutral Pronouns

1. I write further to the above. For further evidentiary purposes which I await the confirmation from TDHA that the 416 Fax Number was its fax number at the time that I delivered my Completed Application. I enclose the following attachments:

a. True North REIT brochure regarding the Victoria Park Building (which will be defined herein as "Attachment #3");
b. Colliers International brochure, as it is the commercial leasing agent for the Victoria Park Building (or "Spark Building") (defined herein as "Attachment #4"); and
c. Notice Of Motion Of Hearing At Scheduled Event Order for my NOM #4, which provides an example of the address and phone numbers for TDGIC (before its removal on June 21, 2024 in relation to my NOM #8 (defined herein as "Attachment #5").

2. I further await to receive SNIC's *actual* fax number at the time that I delivered my Completed Application (including all other OCI documents).

Part 2: Uncontroverted Evidence

3. As noted, the lead tenants were colloquially referred to as "TD Insurance" by True North REIT (see: Attachment #3).

4. The two insurance companies without any reference to the words of "TD" in their names per se (whilst noting "TD General Insurance Company"[iii] and "TD Home And Auto Insurance Company") have the word "Insurance" after their descriptors[iii] are those insurance companies that use two

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trademarks of "TD Insurance" and "Meloche Monnex" (for "TD Insurance Meloche Monnex" absent any "Inc.", "Incorporated", "Company", "Corp.", "Ltd." or "Limited" as these are in their legal and correct corporate names") which are:

a. Security National Insurance Company (FSRA Registration Number 397) ("SNIC"); and
b. Primmum Insurance Company (FSRA Registration Number [illegible]) ("Primmum").

5. **SNIC** has been a tenant on the 2nd floor of SNIC Markham at the **McNabb Building** since on or around 2018. **SNIC**'s landline fax number must be an area code associated with Markham which is a 905 fax number. I note that Markham has other area codes but those area codes are NOT area code "416" and they are area codes associated with "mobile numbers".

6. The **Victoria Park Building** (or "Spark Building") is one Doors and the lead tenants of "TD Insurance" had multiple Doors therein which is particularly important when the likes of **TDHA** and **TDGIC** are tenants therein.

7. Since 2018, **TDHA**'s publicly listed fax number has been the 416 Fax Number (see: 416-774-3120) (see: Ontario Business Directory website)

8. The Tribunal listed the address for "TD General Insurance Company" in the "Notice of Motion To Be Heard Scheduled Event Order" the "TBHSE Order") for my NOM #4 (the "IRB Quantification Order") as the following (with emphasis on the "prefix" of "774" and the "last three (3) digits" of the "last four (4) digits":

> "TD General Insurance Company
> 3630 Victoria Park Avenue,
> 9th Floor
> North York, ON
> M2H 3N7
> TDIADR@tdinsurance.com
> (416) 774-3629"

9. It is trite that "North York" is part of the City Of Toronto

10. In said "Notice Of Motion **TBHSE Order**", it is important to note the phone number listed therein which commences with the following:

a. Area code: 416; and
b. Prefix: 774.

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11. It is further important to note that the the "last four digits" of the phone number for TD General Insurance Company do NOT commence with the digits of "31" (see: "36" and then "29"). This distinction is a seminal one because as in turn means that the likely fax number of TDGIC at the Victoria Park Building commences or commenced (depending on the date of its departure[2]) as a tenant or occupier of the Victoria Park Building)

12. It is important to note that the phone number listed for Mr. Kevin McLean as he then was exclusively[3] declared representative for TDGIC at the office located at Wellington West in downtown Toronto was:

[Message clipped] View entire message

[redacted]

Kevin McLean <mcleansnicl@gmail.com>

to James.V.Russell, alisha.anne, Carol, bev.michie, Matthew Davis

July 31, 2024

VIA Email

Private and Confidential

Dictated with voice recognition software [4]

To:

TDHA
FSRA Registration Number 1063

Attention: chief agent for **TDHA** is Mr. James V. Russell

Re #1: inclusion of the 905 Fax Number that I learned of in October 2021 by letter from SNIC which then changed its address from SNIC Markham to the "Burlington Address" and provided a different fax number from the 416-774-3120

Dear TDHA:

1. I write regarding the above. For good measure, I provide a copy of the documents from the "Ontario Business Directory website" (the "OBD Website") with respect to the 905 Fax Number.

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2. As TDHA has not in any way disputed the external evidence that the 416 Fax Number was its fax number at the material times, and the 905 Fax Number from the OMD Software distinguishes between the 905 Fax Number and "TDHA" (albeit circling back to the head office at 3650 Victoria Park Avenue (which is not SNIC Markham). I will continue to presume that TDHA was the "First Insurer" to receive my Completed Application. I will further presume that TDHA is capable of complying with the above demands by the above deadline. I will presume that I have provided sufficient time for TDHA to comply with the demands and it does not need any further extension of time.

3. I reserve the right to rely on this correspondence (hereon or under the Dewalt and Lee attachments for any lawful purpose.

Warm regards.

/KAM

Kevin A. McLean

Copied to:

SNIC
FSRA Registration Number 397

And copied to:

Claims Advisors or Claims Adjusters (as represented (to me) as claims advisors for SNIC in my TD Claim #3)
Ms. Nurse
Ms. Persaud
Ms. Michie

And copied to:

SNIC's representatives in the Tribunal Proceeding
Mr. Kane
Mr. Nieuwland

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-116

(203)

(Kindly excuse any non-substantive errors or typos, akin of any spelling, grammatical or syntax errors including any innocuous auxiliary that may be misplaced or result in an innocuous plural or possessive)

Warm regards,

Mr. Kevin A. McLean (B.A. (MCLL.) D., CSM

...

[Message clipped] View entire message
One attachment • Scanned by Gmail

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page

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THIS IS EXHIBIT "B" REFERRED TO IN THE
AFFIDAVIT OF Kevin D Mclean
AFFIRMED BEFORE ME, THIS 31st DAY
OF July 20 24

SIONER, ETC.

Vinh The Tran, Esq., LSUC #57756
Lawyer, Notary, Oaths Commissio
186-639 Dupont Street, Toronto, C
M6G 1Z4, T. 647-209-7389
vinhtranlaw@hotmail.com

TD Insurance Home & Auto Co.

» North York » City List » Industry List

Company Information

Company Name
TD Insurance Home & Auto Co.

Phone
416-774-3123

Fax
416-774-3120

Web Site
www.tdinsurance.com

Mailing Address
3550 Victoria Park Ave Floor 9, North York, ON M2H 3P7

Company Details

Number of Workers
1200

Sales
Over $100 Million

Established Year

312

48

(286)

(40)

905 ←
ANGIA
CODE →
MUST BE
A 905
FAX #

October 13, 2022

Dear Sir,

Re: Application for Accident Benefits (OCF-1)
Claim No.: [redacted]
Date of Loss: 2022-08-31
Claimant: Kevin Mclean

Thank you for submitting your Express Claim form (OCF-9) and dated October 4, 2022 and received October 11, 2022. A review of your application indicates that there is required information that has not been provided. As a result of the missing information, we are unable to determine your eligibility to the following benefits:

- Medical and Rehabilitation Benefits

Please note that no benefit is payable until the following information has been provided to the insurer:

- Application for Accident Benefits (OCF-1)

We have enclosed the above indicated form for your convenience. The above information is required to be submitted to the benefits no later than November 30, 2022.

The enclosed Applicant's Right to Dispute notice explains your rights and limitations regarding your Accident Benefits claim.

If you are unable to do so by mail, please contact Alisha-Anne Mann, Claims Services, at [redacted], or by fax at 866-756-8230. When doing so, please refer to the above-mentioned claim number to help us serve you better.

NOT
SNIC
FAX →
FAX NUMBER
TO HOME
AND
AUTO

TD Insurance Meloche Monnex

Enclosure: Applicant's Right to Dispute

[redacted]
[redacted]
[redacted]
Meloche Monnex is a trademark of Meloche Monnex Insurance and Financial Services Inc., used under licence by the subsidiaries of The Toronto-Dominion Bank, and its affiliates.

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TAB 1: IRB (PURPORTED DENIAL LETTER)

(see: Affidavit #3, Exhibit "A", page 92 and 93)

(note bene: previous letters included are not subject to any challenge or appeal by the Applicant as he had submitted the OCF-1 and OCF-2 along with the OCF-3. Provided merely for context)

FAXED BY APPLICANT OCT 13, 2022 TO 416-774-3120

FAXED BY PRIME MEDICAL (NON-PROFIT) NOV 3, 2022

314

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(285)

(67)

October 11, 2023

[redacted]

[redacted] (the "Insurer") and BMW Financial Services Canada A Division of BMW Canada INC
Claim No.: [redacted]
Date of Loss: 2022-08-31
Claimant: Kevin Mishra

Dear Sir:

Thank you for submitting your Express Claim form (OCF-1) and dated October 4, 2023 and received October 11, 2023. A review of your application indicates that there is required information that has not been provided. As a result of the missing information, we are unable to determine your eligibility to the following benefits:

- Medical and Rehabilitation Benefits

Please note that no benefit is payable until the following information has been provided to the Insurer:

- Application for Accident Benefits (OCF-1)

We have enclosed the above-indicated form for your convenience. The above information is required to be submitted to the Insurer on or before November 30, 2023.

The enclosed Applicant's Right to Dispute notice explains your rights and limitations regarding your Accident Benefits claim.

If you can contact me for any reason, please contact Alisha Anne Mann, Claims Services, at [redacted] or by fax at 416-799-3120. When doing so, please refer to the above-mentioned claim number to help us serve you better.

SAME FAX NUMBER AS TD HOME AND AUTO (FKA MEC) (002

[redacted]

Enclosure: Applicant's Right to Dispute

[redacted]

[redacted]

315

October 13, 2022

KEVIN MCLEAN
TORONTO, ON

Re: Accident Benefits Application and BMW Financial Services Canada A Division of BMW Canada INC
Claim No.:
Date of Loss:
Claimant: Kevin McLean

Dear Sir:

Thank you for submitting your Express Claim form (OCF-1) and dated October 4, 2022 and received October 11, 2022. A review of your application indicates that there is required information that has not been provided. As a result of the missing information, we are unable to determine your eligibility to the following benefits:

- Medical and Rehabilitation Benefits

Please note that no benefit is payable until the following information has been provided to the insurer:

- Application for Accident Benefits (OCF 1)

We have outlined the above missing item for your convenience. The above information is required to be submitted to the insurer on or before November 30, 2022.

The enclosed Applicant's Right to Dispute notice explains your rights and limitations regarding your Accident Benefits claim.

If you can assist us in any way, please contact Allstate Auto Claims Customer Service, at [redacted], quoting claim number [redacted]. When doing so, please refer to the above mentioned claim number to help us serve you better.

TD Insurance Meloche Monnex

Enclosure: Applicant's Right to Dispute

SAME FAX NUMBER AS TD HOME AND AUTO (FAX NEW) 1062

316

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(41)

[redacted]

[redacted]

[redacted]

317

53 (291) (43)

The Non-Earner Benefit is payable for the period you continue to suffer a complete inability to carry on a normal life. The amount of the benefit payable is $185 per week. The benefit is payable for first 4 weeks of disability and for any period before you reach the age of 65, if applicable. Be advised that this benefit is payable only after the first 104 week from the date of the above incident.

We are unable to determine your entitlement to the benefit without the completed Disability Certificate (OCF-3).

Housekeeping and Home Maintenance & Caregiver Benefits:
We have determined that you are not eligible for these benefits as you have not purchased Optional Housekeeping and Caregiver Benefits as part of your automobile policy and your injuries do not meet the definition of a catastrophic impairment, you are not eligible to receive these benefits.

Damage to Clothing, Glasses, Hearing Aids, etc.
You will be reimbursed for reasonable expenses incurred by you to repair or replace clothing you were wearing at the time of the accident including prescription eyewear, dentures, hearing aids, prosthesis, and other medical or dental devices that were lost or damaged as a result of the accident.

We are enclosing another Disability Certificate OCF-3 for your convenience. The OCF-3 is to be completed by a health practitioner of your choosing. A health practitioner may include, but is not limited to, your family physician. The OCF-3 form requires who will complete it on your behalf.

The enclosed Applicant's Right to Dispute notice explains your rights and limitations regarding your Accident Benefits claim.

If we can assist you in any way, please contact Allstate Accident Claims Services, at 1-877-633-3787 (option 2, or by fax at 416-774-3120. When doing so, please refer to the above mentioned claim number to help us serve you better.

TDHP FAX #

ED Rousseau Midwife Midwife

cc: Kevin Moises

Enclosure: Applicant's Right to Dispute

page 1 of 3

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(293)

(93)

Assignment body within the meaning of the Public Accounting Act 2004, and the expense is reasonable and necessary for the purpose of determining your entitlement to IRB. We will pay no more than $2,500 for the preparation of this or more of these reports.

The amount of the Income Replacement Benefit is determined based on 70% of the sum of your gross monthly income from employment and monthly income from self-employment less monthly income from self-employment preceding the accident. This amount may be increased by 70% of monthly loss from self-employment if providing loss to the Insurer. This entitlement is further adjusted for a deduction for payments for loss of income replacement received or available from other sources. The amount of the IRB payable is the lesser of the preceding amount determined and $400 (Amounts may differ if optional benefits have been purchased) per week but 70% of gross income and income from self-employment earned or received after the accident. The benefits payable during the period that you continue to suffer a substantial inability to perform the essential tasks of your employment. We begin to pay for the first week of disability or for a period longer than 104 weeks of disability, unless you continue to suffer a complete inability to engage in any employment for which you are reasonably suited by education, training or experience.

The enclosed "Applicant's Right to Dispute" notice explains your rights and limitations in regards to your Accident Benefits claim with us.

If you have any questions, please contact Allstate Asset Wings Claims Services, at 1-877-[illegible] (24 hours), or by fax at 416-774-[illegible]. When doing so, please refer to the above-mentioned claim number to help us serve you better.

TD Insurance Meloche Monnex

Enclosure: Applicant's Right to Dispute

TDHQ
FAX #
PREMIUM (396)
SNIC (397)
ISSUE
INS.
POLICIES
UNDER
THOSE
2 TRADENAMES
ONLY

320

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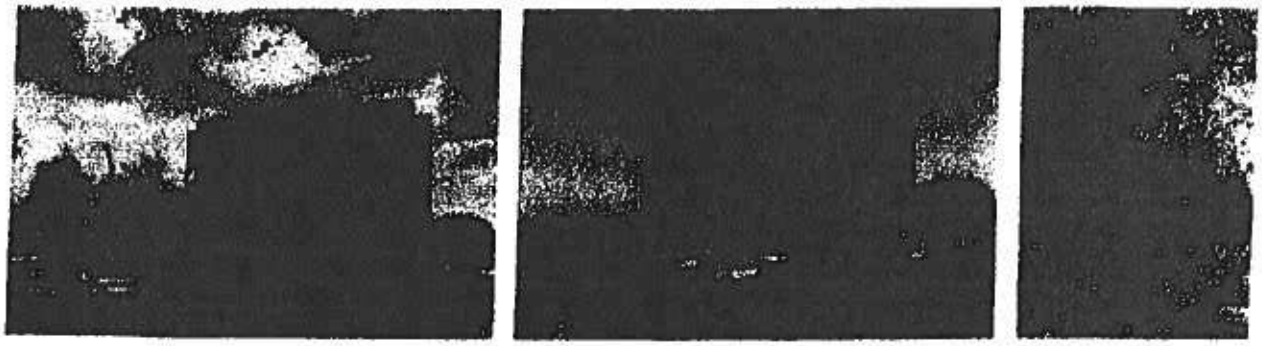
THIS IS EXHIBIT C REFERRED TO IN THE
AFFIDAVIT OF Kevin A McLean
AFFIRMED BEFORE ME, THIS 31st DAY
OF July, 2021

[signature]
COMMISSIONER, ETC.

Vinh The Tran, Esq., LSUC #97761C
Lawyer, Notary, Oaths Commissioner
188-639 Dupont Street, Toronto, ON
M6G 1Z4, T. 647-209-7389
vinhtranlaw@hotmail.com

32 $/sf 50 (295)

3650 Victoria Park Avenue Toronto, Ontario



This building is a nine-storey office building and is located close to Highways 401, 407 and 404, with convenient access to downtown Toronto.

PROPERTY HIGHLIGHTS

153,500
SQFT

551
PARKING STALLS

LEAD TENANT(S)
TD Insurance

PROPERTY MANAGER
Cadillac Management
http://cadillacmanagement.com

Leasing Inquiries: commercialleasing@cadillacwest.com

Location and Surroundings

335

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THIS IS EXHIBIT "B" REFERRED TO IN THE
AFFIDAVIT OF Kevin A McLeod
AFFIRMED BEFORE ME, THIS 31st DAY
OF July 20 24

NER, ETC.

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336 ELD 70 310

Tribunals Ontario
Licence Appeal Tribunal
15 Grosvenor Street, Ground Floor
Toronto, ON M7A 2G6
Telephone: 416-326-1395
Toll Free: 1-668-444-0240
TTY: 1-800-855-0511
Email: LATregistrar@ontario.ca

Tribunal File Number: 23-015662/AA BS

ISSUED in TORONTO on February 13, 2024

In the matter of an Application pursuant to subsection 280(2) of the Insurance Act, RSO 1990, c I.8, in relation to statutory accident benefits

Between:

Kevin McLean

Applicant

and

TD General Insurance Company

Respondent

NOTICE OF MOTION TO BE HEARD AT SCHEDULED EVENT

The Licence Appeal Tribunal will hear the motion filed by the applicant dated February 9, 2024 at the case conference scheduled to proceed on Thursday, May 2, 2024.

The order sought by the applicant is as follows:

1. An Order that the respondent pay the applicant $27,200 or any greater amount for the time period of one week after the accident to the deemed receipt date by the applicant of the respondent's "admitted IRB Denial on the IRB Denial Date (Saturday, December 23, 2023)."

The applicant also sought an Order for an award under s. 10 of *Regulation 664* and costs. The applicant has already included his claim for an award in his application. The issue of costs can be requested to be added to the issues in dispute at the case conference. As a result, these requests will not be addressed as part of this motion.

The party responding to the motion is invited to file responding submissions by April 11, 2024. Submissions shall be limited to 6 double-spaced pages, exclusive of evidence and authorities, and they shall be served on all other parties and filed with the Tribunal. Responding submissions filed after this deadline or that exceed the page limits may not be considered by the adjudicator hearing the motion.

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The party bringing the motion is invited to file reply submissions by April 25, 2024. Submissions shall be limited to 3 double-spaced pages, exclusive of evidence and authorities, and they shall be served on all other parties and filed with the Tribunal. Reply submissions filed after this deadline or that exceed the page limits may not be considered by the adjudicator hearing the motion.

If you do not participate in the case conference, the Tribunal may make a decision on the motion in your absence and without further notice to you.

The documents submitted by the parties for the motion may be made available to the public, unless the Tribunal orders otherwise.

If the parties reach an agreement on the motion prior to the scheduled motion hearing date, the party bringing the motion shall immediately advise the Tribunal in writing.

If you require an accommodation to participate in a Tribunal proceeding, or information about the Tribunal's processes, including the *Licence Appeal Tribunal Rules*, please contact the Tribunal by phone at 416-326-1356 or toll-free at 1-866-444-0240. If you are using a TTY device you can call us at toll-free at 1-800-855-0511. For the Tribunal's Accessibility Policy, please see our website at http://tribunalsontario.ca/lat/

Pour obtenir des services en français veuillez communiquer avec le Tribunal au (416) 326-1356.

TO:

Kevin McLean
775 KING ST W
TORONTO, ON M5V2K3
lat@confidentialmclean.ca
(647) 370-6208

TD General Insurance Company
3660 Victoria Park Avenue, 9th Floor
North York, ON M2H 3P7
TDIADR@tdinsurance.com
(416) 774-3629 → LAST 4 DIGITS → NOT STANDARD WITH 1131(4) LIKE 416-TTY-3120 (NOT SAME FAX → MUST BE TDIAR

Matthew Newland
TD Insurance Staff Lawyers
36-66 Wellington Street
Toronto, ON M5K 1A2
matthew.newland@tdinsurance.com
(416) 599-7439

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THIS IS EXHIBIT "E" REFERRED TO IN THE
AFFIDAVIT OF KEVIN A MILLER
AFFIRMED BEFORE ME, THIS 31st DAY
OF JULY 20 24

.....
...ER, ETC.

Vinh The Tran, Esq., LSUC #57761C
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188-639 Dupont Street, Toronto, ON
M6G 1Z4, T. 647-209-7389
vinhtranlaw@hotmail.com

339 €8€

72

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TD Insurance

» Burlington » City List » Industry List

Company Information

Company Name
TD Insurance

Phone
905-315-3447

Fax
905-315-1074 → I learned of said fax in Oct 2023

Web Site
www.tdinsurance.com

Contact Person
Ms Lynne Maritz (Sr Mgr General Manager)

Mailing Address
100-5045 South Service Rd , Burlington, ON L7L 5Y7

Company Details

Number of Workers
140

Sales

340

73

314

$10-25 Million

Established Year
2005

Industry Sector
- Insurance

Head Office
3650 Victoria Park Ave, Floor 9, North York, ON M2H 3P7, Canada

Products / Services

Products / Services
- Insurance: life
- Insurance: automobile
- Insurance: homeowners
- Insurance: property

AFF TAB 10 PAGE 152

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THIS IS EXHIBIT "F" REFERRED TO IN THE
AFFIDAVIT OF KEVIN A. McLEAN
AFFIRMED BEFORE ME, THIS 31st DAY
OF July 20 24

.....
ONER, ETC.

Vinh The Tran, Esq., LSUC #57776
Lawyer, Notary, Oaths Commissio
188-639 Dupont Street, Toronto,
M6G 1Z4, T. 647-209-7389
vinhtranlaw@hotmail.com

342 EXF

TD Insurance

Security National Insurance Company
101 McNabb Street
2nd Floor
Markham, Ontario
L3R 4H8
T.: 1 877-935-3767
www.melocclaims.com

April 20, 2023

KEVIN MCLEAN
773 KING ST W SUITE 410
TORONTO, ON M5V 2K3

Insured(s): Nicole Arsopoulos and BMW Financial Services Canada A Division of BMW Canada INC
Claim No.: (035325780-3)
Date Of Loss: 2022-08-31
Claimant: Kevin Meleno

Dear Sir:

Thank you for submitting the Treatment and Assessment Plan (OCF-18) prepared by prepared by Ortho Neuro Physiocare and dated April 6, 2023. We have reviewed the recommendations and are approving the following items:

- Physical rehabilitation in the amount of $1995.00
- Assessment (examination), total body in the amount of $85.57

We do not agree to pay for any of the following goods, services and/or assessments for medical reasons and all other reasons known as of the date of this notice as follows:

- Physical rehabilitation in the amount of $598.50
- Assessment (examination), total body in the amount of $129.43

To date we have received no further information, despite our s33 request for clinical notes and records, that the proposed goods and services are reasonable, necessary and/or essential to your recovery from your accident-related impairments. Currently, there is no medical evidence to support that the proposed goods and services are essential to your ongoing treatment / rehabilitation. In effort to obtain a holistic view of your impairments we require in-person examinations.

Your claim remains subject to the Medical and Rehabilitation limit of $3,500. The amount of treatment, goods and services that has been approved to date is $3,590.

In order to determine if you suffer from an impairment that comes within the above Guideline, the Treatment Plan (OCF-18) will be reviewed by an assessor(s) chosen by the insurer. A notice will follow under a separate cover with further information regarding the particulars of the examination including the date, time and location.

If you fail or refuse to participate in the examination, we will make a determination that you are not entitled to any of the goods, services and/or assessments described in the Treatment and Assessment Plan (OCF-18).

(see reverse)

Member of TD Bank Financial Group. Melocclaims is a trade-mark of Intact Insurance Inc., used under license. TD Insurance is a trade-mark of The Toronto-Dominion Bank, used under license.

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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 your insurance company, you have a right to dispute your insurance company's determination.

If you do not agree with the insurance company's decision you may file an application with the Licence Appeal Tribunal (LAT) – Automobile Accident Benefits Service (AABS) within 2 years of the date of reduction or denial.

WARNING: TWO YEAR TIME LIMIT

You have TWO YEARS from the date of your insurance company's refusal to pay, or reduction of a benefit, to file an application with the Licence Appeal Tribunal – Automobile Accident Benefits Service. If you do not apply within two years, you will lose the right to dispute the determination.

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

HOW TO FILE AN APPLICATION TO THE LICENCE APPEAL TRIBUNAL - AUTOMOBILE ACCIDENT BENEFITS 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 company (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 completed application and the Certificate of Service to AABS and pay the AABS application fee.

Forms

The forms can be downloaded and can be filled in on a computer or by hand. For more information on forms and serving documents please visit http://www.giaato.gov.on.ca/en/AABS/Pages/Forms.aspx

If you need a paper copy or if you have questions about the forms or process, please call AABS at 416-314-4260 from the Toronto calling area, or toll-free at 1-800-255-2214.

Fee

The fee to file an application with AABS is $106.00. This payment can be made by cheque or credit card when you submit the forms. The $106.00 fee is non-refundable once AABS has confirmed that it can proceed with your claim.

How to Submit Your Application

BY MAIL:

Automobile Accident Benefits Service
Licence Appeal Tribunal
77 Wellesley St. W.
Box 250
Toronto, ON, M7A1N3
Attention: Registrar

BY FAX: (416) 314-4270 or 1-800-720-5292 (toll free)

IN PERSON:

You may bring your completed application to the AABS office at 20 Dundas Street West, 5th floor, Suite 530, Toronto, ON M5G 2C2. It is located at the northwest corner of Yonge and Dundas Streets above the Dundas subway station.

Hours of Operation: AABS' hours of operation are Monday to Friday, 8:30 a.m. to 5:00 p.m.

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OCF-18

Part 11 Health Care Providers

Provider Reference	Provider Type	Provider Last Name	Provider First Name	Registered College Registration Number	Group Name (if applicable, as listed)	Group Number (if applicable)
A	PT	[illegible]	Mangindar	11[illegible]		

Part 12 Proposed Goods or Services Requiring Insurer Approval

OCF Ref	Description	Code	Provider Ref	Recommended Quantity	Recommended Frequency	Recommended Cost	Projections Total Quantity	Projections Total Cost
1	Physical rehabilitation	[illegible]	A	1.00	HR	[illegible]	20	[illegible]
2	Assessment, other [illegible]	[illegible]	A	1.00	HR	[illegible]	1	[illegible]
						Sub-total:	37	[illegible]
	Estimated duration of this Plan:			[illegible]			Taxes (HST):	[illegible]
	*How many visits have already occurred:			10 visits			[illegible]	[illegible]
							Out of province:	[illegible]
							Auto Insurer Total:	[illegible]

Applicant or Substitute Decision-Maker confirms consent to proposed goods and services: Initials:

Please indicate any additional comments regarding proposed goods and services:

Are there any attachments? ☐ Yes ☒ No

If Yes, how many? ____
Send any attachments directly to the Insurer

Part 13 Signature of Insurer

☐ I explain the purpose of the Applicant's signature

I have reviewed the Treatment and Assessment Plan and have made the attached decision, if:

☐ Approve this Treatment and Assessment Plan ☒ Partially approve ☐ Do not approve

The Statutory Accident Benefits Schedule states that the Insurer shall, within 10 business days of receiving this Assessment and Treatment Plan, give the applicant a notice stating the goods and services contemplated by the Treatment and Assessment Plan for which the Insurer will or will not be responsible.

Name of Adjuster (please print)	Signature of Adjuster	Date
Hydes, Alesha-Anne	As per A. Hydes	[illegible]

To the Insurer: Please provide a copy of this page to the applicant, the Health Practitioner indicated in Part 11 and the Regulated Health Professional indicated in Part 9.

Note: The Insurer is providing the details and attached assessment of the CAT(Catastrophic) Health and Long-Term Care Test for which it is responsible. The Regulated Health Professional indicated in Part 9 will maintain some of the health care goods and services listed in Part 12 and provide details of the services and other charges that have been approved and are payable under this Treatment and Assessment Plan.

NOT A COMPLIANT SIGNATURE OF AN ADJUSTER → FORM → NOT COMPLETE SEE: S. 66 @ 67 of 81 SMSS

page 150

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THIS IS EXHIBIT G REFERRED TO IN THE
AFFIDAVIT OF Kevin A. McCee
AFFIRMED BEFORE ME, THIS 31st DAY
OF July 20 21

ER, ETC.

Vinh The Tran, Esq., LSUC #97761C
Lawyer, Notary, Oaths Commissioner
188-639 Dupont Street, Toronto, ON
M6G 1Z4, T. 647-209-7389
vinhtranlaw@hotmail.com

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Return this form to:
Security National Insurance Company
19-1 Nicholas Street
Markham, ON
L3R 4H8
ATTN: Alisha-Annie Nurse

Treatment and Assessment Plan (OCF-18)

Use this form for accidents that occur on or after November 1, 1996

*Claim Number:	0353267[illegible]-2
*Policy Number:	061013611804
Date of Accident (yyyy/mm/dd):	20220831

NOTE: A Treatment and Assessment Plan (OCF-18) is not required to make the following claims:

- treatment of other goods or services provided on an emergency basis (not more than 5 calendar days after the accident)
- drugs prescribed by a regulated health professional
- dental goods or services (excluding on the Standard Dental Citizen Fee)
- goods referenced in s. 15(1)(d) to (f) and s. 15(2)(b) to (j) with a cost of $250 or less per item
- goods and services referenced in s. 15(1)(g) or 15(2)(k) if the insurer agrees on expenses is obtained for the treatment or amelioration of the insured person with a cost of $250 or less per item or period

If this is an Impairment that comes within the Minor Injury Guideline applicable to the accident plan accident that occurred on or after September 1, 2010 is an OCF – 23 Treatment Confirmation Form is required instead of this form.

To the Applicant:
Please provide a signature for the completion of Parts 1 and 2 only. After your regulated health professional has reviewed your Treatment and Assessment Plan with you, sign Part 10 and have Part 10

Your regulated health professional will complete all other parts of this form.

Collection, use and disclosure of this information are subject to all applicable privacy legislation. Additional disclosure and consent may be required depending on the manner in which the information is used and disclosed.

As mentioned on the form, all attachments are sent directly to the insurer.

All fields should be completed except in the following circumstances:
*required if known
**at least one field in this section
***optional

To the Regulated Health Professional/Facility:
The Treatment and Assessment Plan should include all goods and services contemplated by the regulated health professional referred to in Part 1.

A health practitioner (i.e., chiropractic, dental, nurse practitioner, occupational therapist, optometrist, physician, physiotherapist, psychologist, speech-language pathologist) must sign Part 4.

Complete Part 6 based on your most recent examination of the Applicant named and attach the form to the insurance company listed in Part 2. Please print clearly.

Caution: It is the responsibility of regulated health professionals to ensure that the collection, use and disclosure of information submitted are authorized by a consent form. Consent Claims Form 8 (OCF – 8), Permission to Disclose Health Information, may be used as a suitable form.

Part 1 Applicant Information

To be completed by the applicant

Date of Birth (yyyy/mm/dd): 19[illegible]26	Gender: ☑ Male ☐ Female	*Telephone Number: 6476151270	
*Last Name: McLean			
*First Name: Kevin		**Middle Initial:	
Address: 410-775 King St W			
City: Toronto	Province: ON	Postal Code: M6V 2K8	

Part 2 Insurance Company Information

To be completed by the applicant

Insurance Company Name: Security National Insurance Company		City or Town of Head Office (if Applicable): Markham	
*Adjuster Last Name: Nurse		*Adjuster First Name: Alisha-Annie	
*Adjuster Telephone Number:	Extension:	*Adjuster Fax Number: 4167743130	
*Name of Policy Holder: same as Applicant ☐, OR:	*Policy Holder Last Name: Micole		*Policy Holder First Name: Antopoulos

FAX # PROVIDED BY SNIC (MARKHAM) IN SEPT 2022

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Part 3
Other
Insurance
Information

To be completed by the regulated health professional named in Part 2 with information from the applicant

OTHER INSURANCE: Is there other insurance coverage for any goods and services listed in this Treatment and Assessment Plan?
If there might be insurance coverage, the applicant must first submit a claim to the insurer for the coverage before submitting a claim to the Insurer.

☑ No — There is no other insurance coverage identified for these goods and services

☐ Yes / Unsure — There is other insurance coverage that is potentially available to cover these goods and services

HCAI	Is there Ministry of Health and Long-Term Care (OHIP) coverage for any goods and services listed in this plan? ☐ Yes ☑ No ☐ Not applicable	
Other Insurer 1	Other Insurer Name	Other Insurance Plan Or Policy Number
	Policy Holder Name	Other Insurer's Identifier
Other Insurer 2	Other Insurer Name	Other Insurance Plan Or Policy Number
	Name of Policy Holder	Other Insurer's Identifier

Part 4
Signature of Health Practitioner

Treatment and Assessment Plan Certification

Name of Health Practitioner: Mandy Dhaliwal	College Registration Number: 11884
Facility Name (if applicable): Toronto Ortho Neuro Physiocare	
HCAI Facility Registry Number (if applicable): 823687	HSDO Licence Number (if applicable): 3F17641
Street Address: 48 Abell Street, Unit 1	
City: TORONTO	Province: ON
Postal Code: M6J 0B9	
Telephone Number: 416-588-3700	Extension:
Fax Number: 416-781-8878	Email Address:

You are A:
☐ Chiropractor
☐ Dentist
☐ Nurse Practitioner
☐ Occupational Therapist
☐ Optometrist
☐ Physician
☑ Physiotherapist
☐ Psychologist
☐ Speech-Language Pathologist

For accidents that occur on or after September 1, 2010
Is this treatment predominantly a minor injury as defined in the Minor Injury Guideline applicable to the accident? ☐ Yes ☐ No

If yes, select the applicable circumstance:

☐ Treatment under the Minor Injury Guideline has already been provided and additional treatment goods and/or services are required within the $3,500 limit.

☐ The applicant has a pre-existing medical condition that was documented by his or her/her health practitioner before the accident and that will prevent the applicant from achieving maximal recovery from the minor injury if the applicant is subject to the $3,500 limit as it relates to the goods and services authorized under the Minor Injury Guideline. Please provide an explanation and provide corroborating evidence to support this determination:

Keep any attachments directly related to this section

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TO THE INSURER TO WHOM THIS APPLICATION IS BEING SUBMITTED:

I UNDERSTAND that you, and persons acting for you, will collect business, personal and personal health information that is related to the applicant's claim for accident benefits arising out of the accident mentioned in this Treatment and Assessment Plan and that all such information will be collected directly from me or from any other person with my consent.

I ALSO UNDERSTAND that you and persons acting for you will collect information about this Treatment and Assessment Plan prepared by me.

I ALSO UNDERSTAND that as the health practitioner for the applicant that you and persons acting for you will collect information related to the claim that is provided by me or this or any other auto insurance plan form.

I ALSO UNDERSTAND that the information within this form will be collected and used only as reasonably necessary, with the applicant's consent, for the purposes of:

- Investigating the claims of the applicant and processing the claims of the applicant as required by law, including the Ontario Automobile Policy;
- Obtaining or verifying information relating to the applicant's claims in order to determine entitlement and the proper amount of payment;
- Reviewing payment from insurers and others liable in law for accidents that you pay in connection with the applicant's claims;
- Identifying and analyzing the nature and costs of goods and services that are provided to automobile accident victims by health care providers;
- Preventing, detecting and suppressing fraud;
- Compiling anonymized statistics for government agencies; and
- Assessing underwriting risks and claims experience.

I ALSO UNDERSTAND that you, and persons acting for you, may disclose this information to the following persons or organizations who may collect and use this information only as reasonably necessary to enable you or them to carry out the purposes described above:

Insurers, insurance adjusters, agents and brokers, employers, health care providers, hospitals, accountants, financial advisors, collection organizations that consolidate claims and underwriting information for the insurance industry, fraud prevention organizations, other insurance companies, the police, databases or registries used by the insurance industry to analyze and check information provided (registries relating to driving information), and my agents or representatives as designated by me from time to time.

I ALSO UNDERSTAND that you, and persons acting for you, may pool this information with information from other sources that may analyze this information for the limited purpose of preventing, detecting or suppressing fraud.

I CONSENT to you collecting, using and disclosing information relating to this Treatment and Assessment Plan in the manner described above, which will be limited to information that is reasonably necessary to meet the legitimate purpose of such collection, use or disclosure.

I UNDERSTAND that if I have any questions about the consent I am free to consult with the insurance company representative at a reasonable time before signing this document.

I AM ALSO AWARE that you, and persons acting for you, may be required to permitted by law to disclose this information to others without my knowledge or consent.

I CONFIRM THAT, to the best of my knowledge, the information in this Treatment and Assessment Plan is accurate, the Treatment and Assessment Plan has been reviewed with the applicant by the regulated health professional in Part 3, and the goods and services contemplated are reasonable and necessary for the treatment and rehabilitation of the applicant for the injuries identified in Part 4.

I CERTIFY THAT THE INFORMATION PROVIDED IS TRUE AND CORRECT.

I UNDERSTAND THAT IT IS AN OFFENCE UNDER THE INSURANCE ACT to knowingly make a false or misleading statement or representation to an insurer under a contract of insurance. Regulated workers may be subject to an administrative or inquiry about matters in connection with a licence and or unfair or deceptive act or practice. Non-compliance with applicable regulations may result in disciplinary action ranging from an administrative monetary penalty to prosecution under the Provincial Offences Act.

I FURTHER UNDERSTAND THAT IT IS AN OFFENCE UNDER THE PRIVACY, CRIMINAL CODE for anyone, by deceit, falsehood or other dishonest act, to pretend or attempt to defraud an insurance company. This information will be used for processing payments of claims, identifying and analyzing the nature, utilization and costs of goods and services that are provided to automobile accident victims by health care providers, and PREVENTING, DETECTING AND SUPPRESSING FRAUD.

To obtain further information about privacy related issues please contact the Privacy Officer for the insurance company listed in Part 2.

To obtain further information about how your consent relates to pooling and data analysis to prevent and detect fraud please visit [illegible]

Name of Health Practitioner (please print)	Signature	Date (YYYY/MM/DD)
Manny Shaddad		20230330

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TO THE INSURER TO WHOM THIS APPLICATION IS BEING SUBMITTED:

I UNDERSTAND that you, and persons acting for you, will collect personal information and personal health information that is relevant to the application for statutory benefits arising out of the accident referenced in this Treatment and Assessment Plan and that all such information will be collected directly from me or from any other person with my consent.

I ALSO UNDERSTAND that you and persons acting for you will collect information about this Treatment and Assessment Plan for purposes that include:

I ALSO UNDERSTAND that as the regulated health professional(s) for the applicant and you, and persons acting for you, will collect information on the attached Plan that is provided by me or this or any other Insurance claim form.

I ALSO UNDERSTAND that this information will be collected and used only as reasonably necessary with the applicant's consent, for the purposes of:

- investigating the claims of the applicant and processing the claims of the applicant as required by law, including the Ontario Automobile Policy;
- checking or verifying information relating to the applicant's claims in order to determine entitlement and the proper amounts of payment;
- [illegible] payment from insurers and others liable in law for amounts that you pay in connection with the applicant's claims;
- developing and analyzing the nature and costs of goods and services that are provided to successfully assisted victims by health care providers;
- preventing, detecting and suppressing fraud;
- Complying any payment methods for government agencies; and
- [illegible] underwriting rules and claims experience.

I ALSO UNDERSTAND that you, and persons acting for you, may disclose this information to the following persons or organizations who may collect and use this information only as reasonably necessary to enable you or them to carry out the purposes described above:

Insurers, reinsurers, adjusters, agents and brokers; employers; health care providers; specialists; accountants; financial advisors; solicitors; legal counsel; third party claimants; claims and underwriting information for the insurance industry; fraud prevention organizations; other insurance companies; the policy databases or registers used by the insurance industry to analyze and check insurance claims against suspected fraudulent claims; and any agents or representatives as designated by the Solicitor Act.

I ALSO UNDERSTAND that you, and persons acting for you, may provide information with information from other sources and may analyze this information for the limited purpose of preventing, detecting or suppressing fraud.

I CONSENT to you collecting, using and disclosing this information related to this Treatment and Assessment Plan in the manner described above which will be limited to information that is reasonably necessary to meet the legitimate purpose of such collection, use or disclosure.

I UNDERSTAND that if I have any questions about this consent I am free to consult with the insurance company representative or a lawyer at any time before signing this document.

I AM ALSO AWARE that you, and persons acting for you, may be required or permitted by law to disclose this information or obtain additional information without my knowledge or consent.

I CONFIRM THAT THE INFORMATION PROVIDED IS TRUE AND CORRECT.

I UNDERSTAND THAT IT IS AN OFFENCE UNDER THE INSURANCE ACT to knowingly make a false or misleading statement or representation to an insurer and/or a violation of licensure. Applicable sanctions may be subject to an examination or inquiry about matters in connection with insurance and an order or declaration that an act or practice. Non-compliance under applicable regulations may result in an insurance company or regulatory licensee and/or Ministry penalty in prosecution under the Provincial Offences Act.

I FURTHER UNDERSTAND THAT IT IS AN OFFENCE UNDER THE FEDERAL CRIMINAL CODE for anyone, by deceit, falsehood, or other fraudulent act, to defraud or attempt to defraud an insurance company. This information will be used for processing payments of claims, validation and analysing the nature, effects and costs of goods and services that are provided to automobile accident victims, by health care providers and PREVENTION, DETECTING AND SUPPRESSING FRAUD.

To obtain further information about privacy related issues please contact the Privacy Officer at the insurance company (shown Part 1).

To obtain further information about how your personal health information is protected, please visit http://www.ipc.on.ca/privacy-terminology.asp

Name of Regulated Health Professional (please print)	Signature of Regulated Health Professional	Date (YYYY/MM/DD)

Part 5 Injury and Diagnostic Information

Provide a description and associated ICD-10-CA code for complete, precise and specific that are the direct result of the motor vehicle accident (refer to the User manual at www.hcpdata.ca for ICD-10-CA coding information)

Description	Code
Please refer to the extended Injuries list attached to this document.	

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Part 5 Activity Limitations

a) Does the applicant's impairment(s) keep the injured identified in Part 3 affect his/her ability to carry out

Work or work of employment ☐ Not employed ☐ No ☑ Yes ☐ Yes

Normal activities of normal life ☐ No ☐ Unknown ☑ Yes

b) If Yes to either of the questions above, briefly describe the activities known by the impairment and their impact on the applicant's ability in function.

Difficulty with prolonged sitting, standing positions. Concentration, short term memory, reproduced repetitive (limitations)

c) If the applicant is unable to carry out pre-accident employment activity, is the employer able to provide suitable modified employment for the applicant?

☐ Not employed ☐ Yes ☑ Unknown ☐ No (please explain)

Part 6 Plan Goals, Outcome Evaluation Methods and Barriers to Recovery

a) Goals:

i) Identify the goal(s) in regard to the applicant's impairment(s), symptom(s) or pathology that the Treatment and Assessment Plan(s) is to achieve:

☑ pain reduction ☑ increased range of motion
☐ increase in strength ☐ other(s) not applicable (please specify)

and

ii) Select the functional goal(s) that the Treatment and Assessment Plan seeks to achieve

☑ return to activities of normal living ☑ return to pre-accident work activities
☑ return to recreational work activities ☐ other(s) not applicable (please specify)

b) Evaluation:

i) How will progress on the goal(s) in a) i) and a) ii) be evaluated?

Clinical observation, testing and subjective interviews

ii) If this is a subsequent Treatment and Assessment Plan, what was the applicant's improvement at the end of the previous plan (specify the date and status rating)?

N/A

Send any assessments done by the treater

a) Barriers to Recovery:

i) Have you identified any other barriers to recovery? ☐ No ☑ Yes (please explain)

severity of fatigue as well as neurological impairment

ii) Do you have any recommendations and/or strategies to overcome these barriers? ☐ No ☑ Yes (please explain)

Headaches which could ongoing treatment

b) Concurrent Treatment:

Are you aware of any concurrent treatment not included in this Treatment and Assessment Plan will be provided by any other service facility?

☑ No ☐ Yes (please explain)

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Part 10
Signature of Applicant

Must be completed unless sealed by Insurer

TO THE INSURER TO WHOM THIS APPLICATION IS BEING SUBMITTED:

I UNDERSTAND that you, and persons acting for you, will collect personal information and personal health information about me that is relevant to my claims for accident benefits arising out of the accident referenced in this Treatment and Assessment Plan, and that all such information will be collected directly from me or from any other person with my consent.

I ALSO UNDERSTAND that you and persons acting for you will collect information about the Treatment and Assessment Plan prepared by my health care providers.

I ALSO UNDERSTAND that (if I am the holder of an automobile insurance policy, you, and persons acting for you will collect the information related to this claim that is provided by me and/or by any other auto insurance claimant.

I ALSO UNDERSTAND that the information described above will be collected and used only as reasonably necessary for the purposes of:

- investigating my claims and processing my claims as required by law, including the Ontario Automobile Policy;
- Obtaining or verifying information relating to my claims, in order to determine entitlement and the proper amount of payment;
- Processing payment from industry and private sector for amounts that you pay in connection with my claims;
- Identifying and analyzing the nature and costs of goods and services that are provided to automobile accident victims by health care providers;
- Preventing, detecting and investigating fraud;
- Complying with requests and returns to government agencies; and
- Assessing epidemiological data and claims experience.

I ALSO UNDERSTAND that you, and persons acting for you, may disclose this information to the following persons or organizations solely as necessary to collect and use the information only as reasonably necessary to enable you or them to carry out the purposes described above:

Insurers, insurance adjusters, agents and brokers; employers; health care providers; hospitals; accident benefit insurers; financial advisors; solicitors; organizations that consolidate claims and underwriting information for the insurance industry; motor vehicle registrations, other insurance companies; the police; disclosure as required by the insurance industry to analyze and check information provided against existing information; and my agents or representatives as designated by me from time to time.

I ALSO UNDERSTAND that you and persons acting for you, may pool this information with information from other sources and may analyze this information for the limited purpose of preventing, detecting or suppressing fraud.

I CONSENT to you collecting, using and disclosing information related to this Treatment and Assessment Plan as the insurer described above has no more of such information than is reasonably necessary to meet the legitimate purposes of such collection, use or disclosure.

I UNDERSTAND that if I have any questions about this consent I will have to consult with my insurance company representatives or legal advisor before signing this document.

I AM ALSO AWARE that you, and persons acting for you, may be required or permitted by law to disclose this information to others without my knowledge or consent.

I have reviewed and agree with the Treatment and Assessment Plan. I understand that payment for the Treatment and Assessment Plan is subject to the approval of the insurer.

In the event that my insurer does not agree to pay for all the goods and services contemplated in the Treatment and Assessment Plan, I understand that an assessment may be required to determine my eligibility for the goods and services contained in this Treatment and Assessment Plan.

In the event that an examination is requested, I authorize my treating and my health care providers to give the person identified by the insurer in this application any and all information relating to my health condition, treatment and rehabilitation associated as a result of the collision as is reasonably required for the purposes of determining my eligibility to benefits.

As required by law, a copy of this examination report as well as the insurance company's determination will be sent to me.

Subject to the Statutory Accident Benefits Schedule, in those circumstances where prior approval is required, I understand that if I substantially vary the proposed services prior to approval by the insurer, I may be responsible for payment of any charges for any of the services rendered on my behalf.

I CERTIFY THAT THE INFORMATION PROVIDED IS TRUE AND CORRECT.

I UNDERSTAND that it is an offence under the INSURANCE ACT to knowingly make a false or misleading statement or representation to the Insurer under a contract of insurance.

I FURTHER UNDERSTAND THAT IT IS AN OFFENCE UNDER THE FEDERAL CRIMINAL CODE for anyone, by oral statement or other statement on, to defraud or attempt to defraud an insurance company. The information will be used for processing payments of claims, investigating and analyzing the nature, effects and costs of goods and services that are provided to automobile accident victims, by health care providers and PREVENTING, DETECTING AND SUPPRESSING FRAUD.

To obtain further information about how your consent relates to pooling and use and how to pursue any denied benefit please visit https://www.fsco.gov.on.ca/en/auto/privacy-and-auto/Pages/default.aspx

To obtain further information about privacy related issues please contact the Privacy Officer at the insurance company listed in Part 2.

Name of Applicant or Authorized Representative (please print)	Signature of Applicant or Authorized Representative	Date (YYYY/MM/DD)
Kevin McLean	[redacted]	20230404

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FSCO 12376E

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OCF-18

Provider Name:	Kinetic Rehab	Policy Number:	0810126118 604
Provider Fax:	416-961-9978	Claim Number:	03581790-3
		Date of Accident:	20220831

Part 11 Health Care Providers

Provider Reference	Provider Type	Last Name	First Name	Regulated College Registration Number	Hourly Rate ($)
A	PT	Dhaliwal	Jimmy	11854	89.75
B					
C					
D					
E					
F					

Part 12 Proposed Goods or Services Requiring Insurer Approval

To the extent possible, this Treatment and Assessment Plan should include all goods and services (OHIP) contemplated by the Regulated Health Professionals referred to in Part 5 for the period of the Treatment and Assessment Plan

	Goods or Services Description	Code	Modifier	Provider Ref	Quantity	Measurement	Cost	Proposed Total Count	Proposed Total Cost
1	Rehab Session	[illegible]	GA	A	1	hr	89.75	28	2,513.00
2	Initial MVA Assessment	[illegible]			3.00	hr	215.00	1	215.00
3									
4									
5									
6									
7									
8									
9									
10									
11									
12									
13									

	12	Weeks	Sub-total 27 2728.00
Total study office visits you already provided	48	Visits	Minus 10%
			Minus Other Insurer $ (if applicable)
			HST (if applicable)
			Auto Insurer Total 2728.00

Approval or Non-approval letter sent by insurer to provider on [illegible]

*Please indicate any additional comments regarding proposed goods and services

Are there any attachments? ☐ Yes ☑ No
If Yes, date supplied
Send any attachments directly to the insurer

Part 13 Signature of Insurer

☐ I have waived the requirement for the Applicant's signature

I have reviewed this Treatment and Assessment Plan and based upon the information provided it

☐ approve the Treatment and Assessment Plan ☐ Partially approve ☐ Do not approve

The Statutory Accident Benefits Schedule requires that the insurer shall, within 10 business days of receiving this Treatment and Assessment Plan, give the applicant a notice stating the goods and services contemplated by the Treatment and Assessment Plan for which the insurer will or will not pay.

Name of Adjuster (please print) | Signature of Adjuster | Date (YYYY/MM/DD)

Insurer Section: Please provide a Copy of this page to the applicant, the Health Practitioner indicated in Part 4 and the Regulated Health Professional indicated in Part 5

Note: The fee for completing this form is not a health care benefit the Ontario Ministry of Health and Long-Term Care. This fee should be billed to the insurer directly. The Regulated Health Professional referred to in Part 5 will invoice each of the health care providers listed in Part 11 and provide details of the services and other charges that have been approved and are payable under this Treatment and Assessment Plan.

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McLean, Kevin

To the Health Professional,

Please complete the following information based on your most recent examination of the applicable patient (dated not more than 14 days prior to the assessment / activity listed on Part 1).

Please print clearly.

Injury and Diagnosis Information (Reference)

Provide a description (the most significant first) and associated ICD-10-CA code for injuries and sequelae that are the direct result of the Accident(s) described.

Description	Code
Spondylolisthesis	
Lumbar and other intervertebral disc disorders with radiculopathy	
Postconcussional syndrome	
Disorders of vestibular function	
Sprain and strain of sacroiliac joint	
Other sprain and strain of cervical spine	
Sprain and strain of thoracic spine	
Sprain and strain of disc and dorsalgia	
Sprain and strain of lumbar spine	

Note: Refer to the User manual or www.knowledge.ca for ICD-10-CA coding information.

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Return this form to:

GTDHA

Treatment and Assessment Plan (OCF-18)

Use this form for an [illegible] on or after September 1, 2016.

Claim Number	[illegible]
Policy Number	[illegible]
Date of Accident (YYYY-MM-DD)	2022-06-21

attendance or other goods or services provided on an emergency basis not more than 5 business days after the accident

an assessment by a regulated health professional

dental goods or services (submitted on the Disabled Dental Claim Form)

goods referenced in s. 15(1)(a) to (f) and s. 15(2)(b) to (j) with a cost of $250 or less per item

goods and services referenced in s. 15(1)(a) to (f) or 15(1)(j) if the insurer agrees the expense is reasonable for the treatment or rehabilitation of the insured person with a cost of $250 or less per item or service

If this is an Application that cannot within the Minor Injury Guideline applicable to the accident for services that occurred on or after September 1, 2016 see OCF – 23 Treatment Confirmation Form in respect instead of this Form.

To the Applicant:
Please provide information for the completion of Parts 1 and 2 and 3. After your regulated health professional has reviewed your Treatment and Assessment Plan with you, sign Part 10 and have Part 12

Your regulated health professional completes all other parts of the form.

Collection, use and disclosure of this information are subject to all applicable privacy legislation. Additional disclosure and consent may be required depending on the manner in which the information is used and disclosed.

All information on this form, with all references are made directly to the insurer.

All fields must be completed to be [illegible] subject to the following exceptions:
required if [illegible]
[illegible]
[illegible]

To the Regulated Health Professional(s):
To the extent possible, this Treatment and Assessment Plan should include all goods and services anticipated by the regulated health professional referred to in Part 5

A health practitioner (i.e., chiropractor, dentist, nurse practitioner, occupational therapist, optometrist, physician, physiotherapist, psychologist, speech-language pathologist) must sign Part 9.

Complete Part 6 regardless your most recent examination of the applicant carried out before the form is the insurance company listed in Part 2. Please print clearly.

Comment: It is the responsibility of regulated health professionals to ensure that their collection, use and disclosure of personal information complies with applicable law. Ontario Claims Form 6 (OCF-6): Permission to Disclose Health Information may be used as a consent form

Part 1 Applicant Information

To be provided by the applicant

Date of Birth (YYYY-MM-DD) 1983-03-09	Gender: ☒ Male ☐ Female	Telephone Number	Extension
Last Name Last-name			
First Name Kayla	Middle Name		
Address 4 Hillcrest Ridge Street West			
City Toronto	Province ON	Postal Code M9V 2P8	

Part 2 Insurance Company Information

To be completed by the applicant

Insurance Company Name Economical Insurance Company		Claim Number (if applicable) Unknown	
Adjuster Last Name Mahe		Adjuster First Name Alisha-Jamie	
Adjuster Telephone	Extension	Adjuster Fax	
Province in which Policy was issued: Applicant ☒ ON	Policy Holder Last Name	Policy Holder First Name	

Part 3 Other Insurance Information

To be completed by the regulated health professional referred to in Part 5 with information from the applicant

Is there other insurance coverage for the applicant mentioned in this Treatment and Assessment Plan? (Note: more than one insurer may be responsible for the applicant's losses mentioned in this Treatment and Assessment Plan)

☒ No — Please do not complete Section 3 and proceed to Part 4

☐ Yes — Please do not complete Section 3 and proceed to Part 4

Auto	a) Does Ministry of Health and Long-Term Care (MOHLTC) cover/pay for any goods and services indicated in this plan? ☐ Yes ☐ No ☐ Not Applicable		
Other Insurer 1	Other Insurer Name	Other Insurance Plan ID / Policy Number	
	Name of Plan Member	Other Insurer's Identifier	
Other Insurer 2	Other Insurer Name	Other Insurance Plan ID / Policy Number	
	Name of Plan Member	Other Insurer's Identifier	

Effective date (YYYY-MM-DD)
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(a) BE REQUIRED TO KNOW THIS APPLICATION IS BEING LAUNCHED.

I ALSO UNDERSTAND that you, as the person acting on my behalf, will submit reasonable claims for payment for your services.

I ALSO UNDERSTAND that the eligibility criteria for the VSF is based on [illegible] and that I will be required to provide [illegible] to verify my eligibility.

I ALSO UNDERSTAND that the VSF is a payer of last resort and that I am required to [illegible]

- Investigating the crime, or the application that was made on my behalf
- Obtaining or providing information relating to the application made on my behalf
- Accessing payment from [illegible]
- Identifying and assessing the nature and extent of injury and loss that may be eligible for payment
- [illegible]
- [illegible]
- [illegible]

I ALSO UNDERSTAND that you, and persons acting on my behalf, disclose the information [illegible]

I ALSO UNDERSTAND that [illegible]

I CONSENT to you collecting, using and disclosing information relating to me [illegible]

I UNDERSTAND that I have the right to withdraw my consent at any time by [illegible]

I also agree, that you may [illegible]

I CONFIRM THAT, to the best of my knowledge, the information that I have provided [illegible]

I CERTIFY THAT THE INFORMATION PROVIDED IS TRUE AND CORRECT.

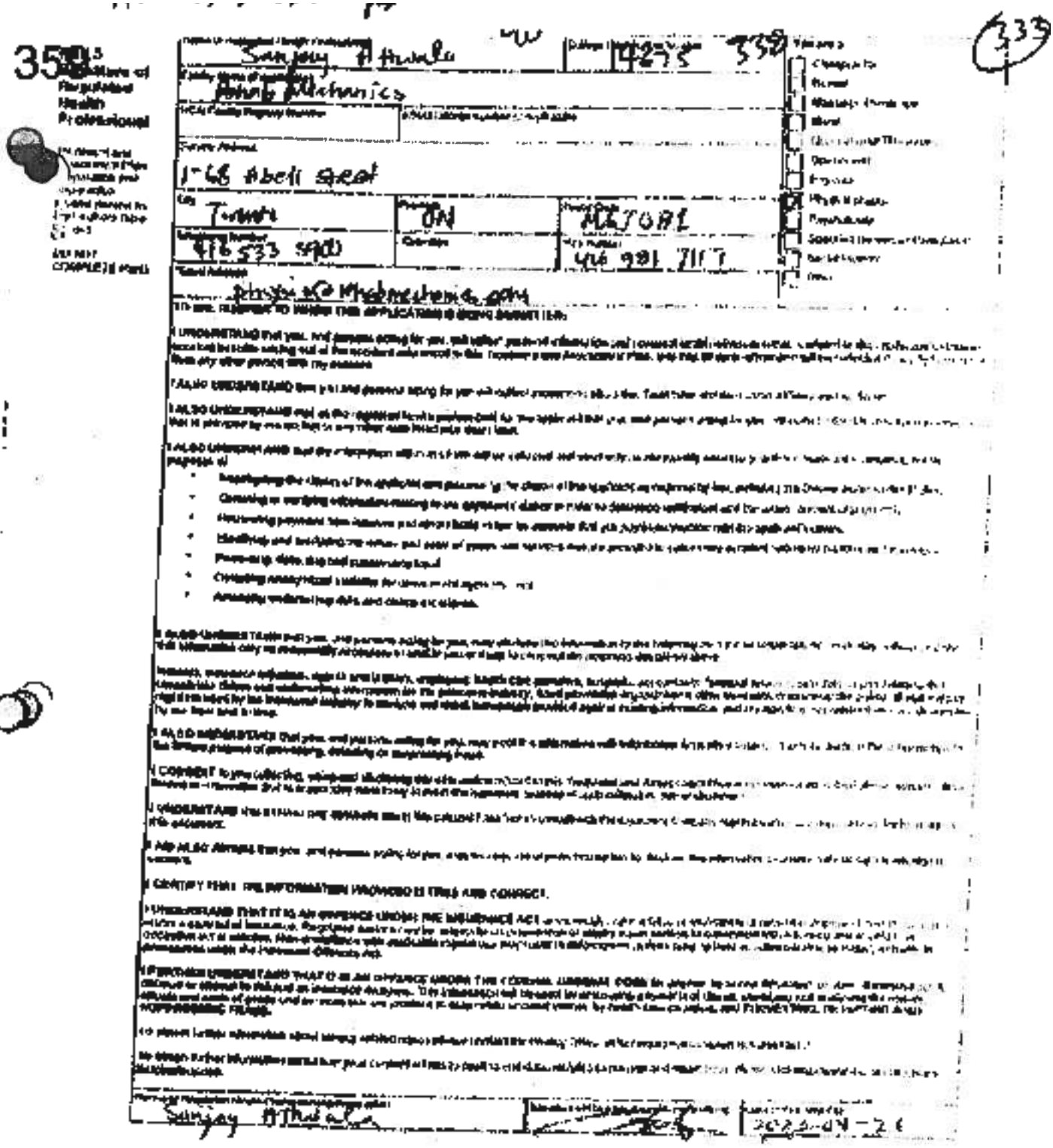
I UNDERSTAND THAT IT IS AN OFFENCE UNDER THE *Criminal Code* [illegible]

I FURTHER UNDERSTAND THAT IT IS AN OFFENCE UNDER THE *Criminal Code* [illegible]

For more information about [illegible]

To obtain further information about [illegible]

Name of Victim (Please print)	Signature of Victim	Date (dd/mm/yyyy)
Witness' Name		



Sunjay Thukral

Sunjay Thukral

2024-04-26

Part 6 Injury and Sequelae Information

Provide a description (list most significant first) and associated ICD-10-CA code for conditions, injuries and sequelae that are the direct result of the automobile accident (refer to the User manual at [illegible] for ICD-10-CA coding information).

Description	Code
[illegible]	M43.1
Lumbar and other intervertebral disc disorders with radiculopathy	M51.1
Postconcussional syndrome	F07.2
Dizziness of vestibular duration	H81
Injury of blood vessels of head, not elsewhere classified	S05.8
Sprain and strain of cervical joint	S13.4

Part 7 Prior and Concurrent Conditions

a) Prior to the accident, did the applicant have any disease, condition or injury that could affect his/her response to treatment for the injuries described in Part 6?

☒ No ☐ Unknown ☐ Yes (please explain)

If Yes to "a" above, did the applicant undergo investigations or assessment for this disease, condition or injury in the past year?

☐ No ☐ Unknown ☐ Yes (please explain and identify jurisdiction, if known)

b) Since the accident, has the applicant developed any other disease, condition or injury not related to the automobile accident that could affect his/her response to treatment for the injuries described in Part 6?

☐ No ☐ Unknown ☒ Yes (please explain)

- patient is always to have periodic bleeding tests but has refused any infusion. Patient will be having an MRI and CT in the event of the bleed

Send any attachments directly to the Insurer

Part 8 Activity Limitations

a) Does the applicant's impairment from the injuries described in Part 6 affect his/her ability to carry out

His/her usual occupation ☐ Not employed ☐ No ☐ Unknown ☒ Yes

Activities of daily life ☐ No ☐ Unknown ☒ Yes

b) If Yes to either of the questions above, briefly describe the activities limited by the impairment and their impacts on the applicant's ability to carry out his/her

- patient struggles with eyesight changes for long periods, permanent vision loss and pain were noted. Patient also has had his memory and concentration levels to be different when conducting long concentration tasks

c) If the applicant is unable to carry out pre-accident employment activity, is the employer able to provide suitable modified employment to the applicant?

☐ Not employed ☐ Yes ☒ Unknown ☐ No (please explain)

3622 Part 10 Signature of Applicant

must be completed unless waived by adjuster

TO THE INSURER TO WHOM THIS APPLICATION IS BEING SUBMITTED:

I UNDERSTAND that you, and persons acting for you, will collect personal information and personal health information about me that is related to my claims for accident benefits arising out of the accident referenced in this Treatment and Assessment Plan, and that all such information will be collected directly from me or from my other persons with my consent.

I ALSO UNDERSTAND that you and persons acting for you will collect and receive reports about this Treatment and Assessment Plan completed by my health care provider(s).

I ALSO UNDERSTAND that if I am the holder of an automobile insurance policy, you, and persons acting for you, will collect the information I provide or the claim file(s) generated by me on this or any other auto insurance claim from:

I ALSO UNDERSTAND that the information described above will be collected and used only as reasonably necessary for the purposes of:

- Investigating my claims and processing my claims as required by law, including the Ontario no-fault Policy;
- Obtaining or verifying information relating to my claims in order to determine entitlement and the proper amounts payable;
- Processing payment both treatments and other costs in lieu the amounts that you pay in connection with my claims;
- Identifying and analyzing the cause and costs of fraud and potential that are proposed as automobile accident victims for health care providers;
- Preventing, detecting and suppressing fraud;
- Complying with legislative requirements for prevention and detection; and
- Assessing claims activity and claims experience.

I ALSO UNDERSTAND that you, and persons acting for you, may disclose this information to the following persons or organizations who may collect and use this information only as reasonably necessary to enable you to carry out the purposes described above:

Insurers, insurance regulators, agents and brokers, employers, health care providers, adjusters, consultants, expert witnesses, solicitors, any professionals that conduct claim and preventing information for the insurance industry, fraud prevention organizations, claim insurance companies, the police, statistical or regulatory body for the insurance industry to analyze and check information provided against existing information, and any agents or representatives designated by me from time to time.

I ALSO UNDERSTAND that you, and persons acting for you, may pool this information with information from other sources and may analyze this information for the stated purpose of preventing, detecting or determining fraud.

I CONSENT to you collecting, using and disclosing information related to the Treatment and Assessment Plan in the manner described above. I do so more of such information than is reasonably necessary to meet the legitimate purpose of such collection, use or disclosure.

I UNDERSTAND that if I have any questions about this consent, I am free to consult with my lawyer/law company. I may not sign or sign before signing this document.

I AM AWARE that you, and persons acting for you, may be required or permitted by law to disclose the information without obtaining my knowledge or consent.

I have reviewed and agree with this Treatment and Assessment Plan. I understand that payment for this Treatment and Assessment Plan is subject to the approval of the insurer.

In the event that my insurer does not agree to pay for all the goods and services contemplated in this Treatment and Assessment Plan, I authorize it/ does not object to disclosure may be required in determining my eligibility for the goods and services in this Treatment and Assessment Plan.

In the event that an examination is requested, I authorize my insurer and my health care providers to release the personal information relating to my health condition, as stated and reasonably required for the purposes of determining my eligibility to receive.

As requested by you, a copy of the examination report as well as the insurer's payment/denial decision will be sent to me.

Subject to the Statutory Accident Benefits Schedule, in those circumstances where prior approval is required, I make aware that if I unreasonably delay or the proposed services plan is approved by the insurer, I may be responsible for payment for any or the services rendered on my behalf.

I CERTIFY THAT THE INFORMATION GIVEN HEREIN IS TRUE AND CORRECT.

I UNDERSTAND THAT IT IS AN OFFENCE UNDER THE INSURANCE ACT to knowingly make a false or misleading statement or representation to an insurer, broker or another person.

I FURTHER UNDERSTAND THAT IT IS AN OFFENCE UNDER THE FEDERAL CRIMINAL CODE for anyone, by deceit, falsehood, or other dishonest act or omission, to defraud or attempt to defraud an insurance company. This information will be used for processing payments of claims; identifying and analyzing the losses, collision and costs of goods and services that are provided to automobile accident victims, by health care providers; and PREVENTING, DETECTING AND SUPPRESSING FRAUD.

To obtain further information about how your personal information is used and disclosed, please visit

To obtain further information about privacy-related issues, please contact the Privacy Officer at the insurer(s) listed in Part 2.

Name of Applicant or Substitute Decision Maker (please print)	Signature of Applicant or Substitute Decision Maker	Date (YYYY-MM-DD)
Brad Lyon, Hyde		2023-04-21

Effective date (YYYY-MM-DD)
2022-10-01

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April 2020

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OCF-18

Provider Name:	Atlantic, Sanjay
Provider Fax:	

Claim Number:	[illegible]
Claim Number:	[illegible]
Date of Accident:	2022-09-21

Part 11 Health Care Providers

Provider Reference	Provider Type	Provider Last Name	Provider First Name	Regulated (College/Registration Number)	Designation (if applicable, or none)	Hourly Rate (if applicable)
A	PT	Atlantic	Sanjay	14575		

Part 12 Proposed Goods or Services Requiring Insurer Approval

To the extent possible, the Treatment and Assessment Plan should include all goods and services (OHS) recommended by the Regulated Health Professionals referred to in Part 6 in the period of the Treatment and Assessment Plan.

OCF Ref	Description	Code	Validation	Provider Ref	Estimated Quantity	Estimated Frequency	Estimated Cost	Proposed Total Count	Proposed Total Cost
1	"Assessment (initial/follow), and treat"	[illegible]		A	1	per [illegible]	[illegible]	1	[illegible]
2	"Therapy, multiple body parts"	[illegible]		A	1	per	[illegible]	[illegible]	[illegible]
	Estimated duration of this Plan:				6 Weeks		Sub-total:	[illegible]	[illegible]
	How many visits have you already provided:				4 visits			Minus HST	0.00
								Minus Other Subtotal in 1 + 2:	0.00
								Tax (if applicable)	0.00
								Auto Insurer Total:	[illegible]
	Applicant or Substitute Decision Maker confirms consent to proposed goods and services.								Initials

Please indicate any additions or comments regarding proposed goods and services:

Are there any attachments? ☐ Yes ☒ No

If Yes, how many? ____
Send any attachments you clip to the insurer

Part 13 Signature of Insurer

☐ I/We waive the requirement of the Applicant's signature.

I have reviewed the Treatment and Assessment Plan and based upon the information provided, I

☐ Approve the Treatment and Assessment Plan ☐ Partially approve ☒ Do not approve

The Statutory Accident Benefits Schedule states that the insurer shall, within 10 business days of receiving this Treatment and Assessment Plan, give the insured a notice stating the goods and services contained in the Treatment and Assessment Plan for which the insurer will or will not pay.

Name of Adjudicator (please print)	Signature of Adjudicator	Date (YYYY-MM-DD)
Persaud, Gael		2023-07-19

To the Insurer: Please provide a copy of this page to the applicant, the Health Practitioner indicated in Page 4 and the Regulated Health Professional indicated in Page 5.

Note: The use by or disclosure to you of this form is not authorized unless you are the Group Insurance Plan Administrator of the Group Insurance Plan, this form should be filled up by your Regulated Health Professional referred to in Part 6 of the current OCF-18 Treatment and Assessment Plan and provided directly to you by the Regulated Health Professional referred to in Part 6 of the current OCF-18 Treatment and Assessment Plan.

SIGNED COPY FROM PERSAUD NEEDS 342

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Return this form to:
Security National Insurance Company
366 The East Mall, Floor 6
Etobicoke
ON
M9C 0E2

→ TDH4 Auto-Populate (See Help Area)

Treatment and Assessment Plan (OCF-18)

NOTE: A Treatment and Assessment Plan (OCF-18) is not required to make the following claims:

- [illegible]
- [illegible]
- [illegible] $3000 or less per [illegible]

[illegible] is not required to claim the services listed on this Treatment and Assessment Plan if the services were provided before [illegible] or if the Treatment Confirmation Form is required instead at this time.

To the Applicant:
Please provide information for the completion of Parts 1 and 2 and 3. After your regulated health professional has completed your Treatment and Assessment Plan with you, sign Part 10 and initial Part 10

Your regulated health professional completes all other parts of this form.

Collection, use and disclosure of this information are subject to all applicable privacy legislation. Additional disclosure and consent may be required depending on the nature of the information used and received.

As indicated on the form, all reimbursement are sent directly to the insurer.

All claims must be accompanied by the following documents:
- Completed [illegible]
- [illegible], see Note to the section
- [illegible]

To the Regulated Health Professional:
To the extent possible, this Treatment and Assessment Plan should be completed and signed by the Applicant before [illegible] and services contemplated by this Treatment and Assessment Plan are provided.

A health practitioner (e.g., chiropractor, [illegible] physiotherapist, [illegible] chiropractic, osteopathic, physiotherapy, [illegible] psychologist) [illegible] pursuant to [illegible] must sign Part 9.

Complete Part 9 based on your assessment of the applicant's [illegible] Attach this form to the [illegible]

Consent is the only exception to privacy legislation permitting the collection, use and disclosure of information without consent. Ontario Consent Form 8 (OCF-8) [illegible] be used as a consent form.

Part 1 Applicant Information

To be provided by the applicant

Date of Birth (YYYY-MM-DD): 1983-09-23
Insured: ☒ Male ☐ Female
Last Name: Makwana
First Name: Manoj
Address: 448-7 Ft. King Council Way
City: Toronto
Province: ON
Postal Code: M9V 3E1

Part 2 Insurance Company Information

To be provided by the applicant

Insurance Company Name: Security National Insurance Company
City or Town of Where to Direct Mail: Etobicoke
Claim Number: [illegible]
Adjuster First Name: Adam-Lewis
Adjuster Telephone Extension:
Adjuster Fax:
Name of Policy Holder (owner of the vehicle): Andrew [illegible] ON
Policy Holder Last Name:
Policy Number:

Part 3 Other Insurance Information

To be provided by the applicant

OTHER INSURANCE: Is there other insurance coverage for the goods and services listed in this Treatment and Assessment Plan?
Note: Do not include coverage for non-passenger benefits or third party liability coverage.
☒ No ☐ Yes
Note: Do not include coverage for non-passenger benefits or third party liability coverage.

HCAI: Is There Ministry of Health and Long-Term Care (MOHLTC) coverage for any goods and services on this plan?
☐ Yes ☐ No ☐ Not applicable

Other Insurer 1:
Other Insurer Name:
Other Insurer Policy Number:
Treatment Plan Number:
Other Insurer's Number:

Other Insurer 2:
Other Insurer Name:
Other Insurer Policy Number:
Name of Plan Member:
Plan Member's Number:

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THIS IS EXHIBIT "H" REFERRED TO IN THE AFFIDAVIT OF KEVIN A. McLEOD
AFFIRMED BEFORE ME, THIS 31st DAY OF July, 20 24

.....
SSIONER, ETC.

Vinh The Tran, Esq., LSUC #57761C
Lawyer, Notary, Oaths Commissioner
183-639 Dupont Street, Toronto, ON
M6G 1Z4, T. 647-209-7389
vinhtranlaw@hotmail.com

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Directions - TD Home and Auto Insurance Company - Etobicoke - Toronto, ON - Yelp

Things to do, nail salons, plumbers

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TD Home and Auto Insurance Company

EATONVILLE

BLOORDALE GARDENS

MARKLAND WOOD

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Press	Events	Claim your Business Page	Canada
Investor Relations	Yelp Blog	Advertise on Yelp	
Trust & Safety	Support	Yelp for Restaurant Owners	
Content Guidelines	Yelp Mobile	Local Management	
Terms of Service	Developers	Business Success Stories	
Privacy Policy	RSS	Business Support	
Ad Choices		Yelp Blog for Business	
Manage Cookies		Yelp Data for B2B	
		Yelp Data for B2C	

(341)

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90 (342)

368 .../4, 1:50 PM TD HOME AND AUTO INSURANCE COMPANY - Updated July 2024 - 304 The E Mall, Toronto, Ontario - Insurance Phone Number

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Restaurants Home Services Auto Services More

TD Home and Auto Insurance Company

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368 (343)

6/24, 1:50 PM TD HOME AND AUTO INSURANCE COMPANY - Updated July 2024 - 304 The E Mall, Toronto, Ontario - Insurance Claims Home Mgmt

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NOT SNIC (SEE: SNIC MANAGEMENT)
NOT FICTITIOUS RESPONDENT (SEE: SADIQ)
IS MUST BE TDIA

Recommended Reviews

Your trust is our top concern, so businesses can't pay to alter or remove this review. Learn more about reviews.

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Select your rating

Start your review of TD Home and Auto Insurance Company

Overall rating

5 stars
4 stars
3 stars
2 stars
1 star

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Stephanie S.
Mississauga, ON
3 reviews 1 photo 2 friends

Aug 3, 2018

For the experience only the customer service that I spoke at this end at least and was told that before I can receive my insurance package

After 2 weeks of not receiving anything, I called again and was told that a package would be ready. I received it yesterday and it's a BLANK automobile insurance application.

I called their customer service line and was on hold for 10-15 mins. Only to be finally told that this review system is down so they can't pull up any account.

A customer rep called me back, but is for a quote in her insurance, so now I have to pay long distance charges to try to register this. My renewal is up soon and I may have to switch to my current provider because of TD's incompetence.

I've received go the customer service at this branch level, but their management should be reprimanded and be organized.

Helpful 3 Thanks 0 Love this 2 Oh no! 0

TAB 40

TAB #11: ORAL COMPENDIUM: COURT FILE NO. DC-24-00000718-00JR

614

20

This is the 38th Affidavit of Mr. Kevin A. McLean under TD Insurance (SNIC) Claim Number 035325790 (the "TD Claim Number") and the following expenses number included in the "Application" by SNIC and all OCF documents by the Appellant, including the Completed Application, in 035325790-3 (the or "TD Claim #3" or the "353 Claim Number") in relation to the TD Insurance Policy (the "Insurance Contract" or "Insurance Policy") denoted by number #00101351806 (the "Policy Number") albeit as of Spring 2023 and August 15, 2024, TD Insurance Group has been unable to match the duly signed and submitted OCF document with "one of their four claims" (see: Affidavit #34, Exhibit "B")

This 38th affidavit is also submitted under the following LAT File Number "23-015662/AABS" (the "LAT File Number", "LAT Proceeding", "SNIC Proceeding", "McLean Proceeding" and or "SNIC TDHA' Proceeding") and was finalized and made on September 28, 2024

ABS File Number: "23-015662/AABS"

BETWEEN:

KEVIN ALEXANDER MCLEAN

APPLICANT/APPELLANT

AND:

SECURITY NATIONAL INSURANCE COMPANY

RESPONDENT

This is the 3rd Affidavit of Mr. Kevin A. McLean under OB Insurance (SNIC "Mutual Program") Claim Number 0358879034-101 Date of 1 All Insurance Policy Number 3000015118 (the "Policy Number"). LAT File Number "24-0106A2/A-MEN" (the "LAT File Number" "LAT Proceeding" or "Section Proceeding") under section 280(2) of the Insurance Act currently governing the sole respondent party (the "Sole Respondent Party") to Security National Insurance Company ("SNIC") with an FSRA Registration Number of 397 ("SNIC #397") and pursuant to serving the "Joint Insurer" to receive an Completed Application on October 13, 2022 via my fax to the fax number of 416-774-3120 (the "4th Floor 3650 Victoria Park Avenue Fax Number" or "VP Building 4th Floor Fax Number")

Regarding the following matters including but not limited to (see: definitions herein previous definitions in Appellant's "Glossary"):

IN THE MATTER of an automobile accident (the "**Accident**") on August 31, 2022, appertaining to the application and compliance by the **Appellant**, **SNIC** and the **First Insurer** with the *Insurance Act*, RSO 1990, c I.8 *et seq* (the "*Insurance Act*") and outstanding, current and future benefits (the "**Benefits**") owed to, owing to or to be owed to the **Appellant** and on behalf of the Appellant pursuant to *Reg 283* and *SABS* (also defined as the "*Schedule*"[3]);

IN THE MATTER of a provided **OCF-1** application (the "**Application**"[4]) by the **Sole Underwriter** of the **Insurance Policy** in Security National Insurance Company, **FSRA** registration number 397 ("**SNIC**"), with the unalterable return mailing address[5] of 200-101 McNabb Street, Markham, Ontario, L3R 4H8 ("**SNIC Markham Office**") and unalterable return (see: "Return this form to") landline facsimile number[6], provided by Bell Canada Inc. ("**Bell**" or "**Bell Canada**"), grounded and wired to the fourth floor of the building (colloquially known as the "**Spark Building**" which is owned the **True North REIT**" and managed by **Colliers International**), situated on the premises municipally known as 3650 Victoria Park Avenue, district of North York, city of Toronto (Metro Toronto), postal code of M2H 3P7 (defined herein as the "**Victoria Park Building**" or "**VP Building**"), of **416-774-3120**[7], (the "**VP Building 4th Fl. Fax Number**") to the **Appellant**, in his capacity as an **Insured Person** pursuant to being an "**Occupant**", "**Driver**" and "**Spouse**" of the individual named insured in the **Insurance Contract**", on or around September 20, 2022, and the **Appellant**'s completion and execution, on October 12, 2022, (the "**Completed Application**"[8]), and delivery of the **Completed Application** to "one insurer" (see: *Reg 283*, ss. 2.1(4)) to the **VP Building 4th Floor Fax Number**, albeit unbeknownst to the **Appellant** at the time that a different insurance company (the "**First Insurer**") than **SNIC** would and did receive (see: *Reg 283*, ss. 2(1) and 2.1(6)) the **Completed Application** on October 13, 2022 (the "**Receipt Date: Completed Application**" or "**Completed Application Receipt Date**");

IN THE SPECIFIC MATTER of the **First Insurer**, pursuant to *Reg 283*, ss. 2(1), 2.1(1) and 2(6), being responsible for the payment of benefits to the **Appellant** from October 13, 2022, to January 10, 2023 and to respond to the Appellant on a forthwith basis (collectively, the "**Duties To Respond & To Pay**");

IN THE SPECIFIC MATTER of "an insurer" (**SNIC**) that provided an **Application** under ss. 2(2) of *Reg 283*, being prohibited from taking any action intended to prevent or stop the Applicant (distinguished from "Appellant" but referring to the same individual) from submitting a completed application to [THE INSURER (nota bene: based on public evidence regarding the owner and tenant associated with the telephone landline fax number of **416-774-3120** at the **Material Time** being THIS] AND shall NOT refuse to accept the completed application or direct an Applicant to another insurer (see: *Reg 283*, ss. 2.1(5));

IN THE SPECIFIC MATTER of the **First Insurer** being required, pursuant to *Reg 283*, ss. 2(7), to reimburse another insurer (**SNIC**) for any legal fees, adjuster's fees, administrative costs and disbursements that are reasonably incurred by the other insurer as a result of non-compliance;

This is the 18th Affidavit of Mr. Kevin A. McCann under TD Insurance (SNIC's Accident Program 1 (Claim Number [illegible]) (the Policy Number) LAT File Number [illegible] (the "LAT File Number") LAT Proceeding (the "LAT Proceeding") under section 280(2) of the Insurance Act pursuant involving the sole respondent party who Sole Respondent Party The Security National Insurance Company ("SNIC") with an FSRA Registrant Number of 297 ("SNIC #297") and generally involving the First Insurer's Incorrect or Unexpected Application on October 13, 2022 sent by fax to the fax number of 416-774-3120 (the "3rd Floor 3620 Victoria Park Avenue Fax Number" or "VP Building 4th Floor Fax Number")

IN THE SPECIFIC MATTER of the **First Insurer** being legally prohibited from disputing its obligation to pay benefit under section 268 of the *Insurance Act* as it did not give written notice within 90 days (January 10, 2023) of October 13, 2022, (its receipt of the **Completed Application**) to any and every insurer that it could have claimed was required to pay under section 268 of the *Insurance Act* (see: *Reg 283*, ss. 3(1) and to the **Appellant** in accordance with *Reg 283*, ss. 4(1);

IN THE SPECIFIC MATTER of the **Appellant** swearing that he had no knowledge that the **VP Building 4th Floor Fax Number** was not the fax phone number of SNIC until August 2024 and disclaiming any intent or knowledge in relation to the section titled "**Warning – Offences**" in the "Accident Benefits Application Package" (effective 2016-06-01) (c) Queen's Printer for Ontario, 2016, FSCO 1224E.5));

IN THE SPECIFIC MATTER of an "**Application of an Injured Person**" ("**Appeal**") filed by the **Appellant** with the **Licence Appeal Tribunal** ("**LAT**" or "**Tribunal**") Automobile Accident Services ("**AABS**") division ("**AABS Division**") on December 24, 2023, and served upon the insurance company with the fax number of **416-774-3120** (same as the "**First Insurer**") and the known[11] claims advisors in Ms. Alisha-Anne Nurse ("**Ms. Nurse**") and Ms. Carol Persaud ("**Ms. Persaud**"), who purported to be of SNIC, and the sole **Response**[12] signed and filed by SNIC with the **Tribunal** on January 25, 2024 (the "**SNIC Response**") and then served on the **Appellant** on January 25, 2024, all pursuant to subsection 280(2) of the *Insurance Act*, RSO 1990, c I.8., in relation (expressly or implicitly, or by inclusion or exclusion) to the following statutes (and made rules thereunder) and regulations:

i. *SPPA;*
ii. *LATA;*
   a. *LAT Rules* made under the *SPPA* and *LATA* that are not inconsistent with the above;
iii. *Legislation Act;*
iv. *Regulations*
   a. *Statutory Accident Benefits Schedule*, O Reg 34/10 *et seq* ("*SABS*").
   b. *Automobile Insurance*, RRO 1990, *Reg 664 et seq* ("*Reg 664*");
   c. *Disputes Between Insurers*, O *Reg 283/95 et seq* ("*Reg 283*");
   d. Other denoted regulations herein or in this LAT Proceeding.

IN THE SPECIFIC MATTER of a multi-purposed affidavit involving my allegations that **SNIC** has breached its fiduciary duties owed to the Appellant (myself) and other insured persons under the Insurance Contract (or if a systemic issue, then other insured persons who were, are and may be "similarly situated, the **First Insurer** has breached its duties owed to me, various insurance companies within the **TDI Group**, TDISL, various persons employed by **TDISL**, various claims advisors within the **TDI Group**, various claims advisors of SNIC, and other persons have agreed to breach the *Insurance Act*, *Reg 283*, *SABS*, *Reg 664*, the *LDAP Rule*, **FSRA** bulletins, **FSRA** guidance documents, and other "laws";

IN THE SPECIFIC MATTER of the "Spam Fax" in Spring 2021 resembling or approximating the same language as the letter (see: Affidavit #34, **Exhibit "B"**, page 4; and Affidavit #35, **Exhibit "C"** herein) delivered to Rehab Mechanics on or around August 28, 2024, which, *inter alia*, being "**[illegible] TO MATCH**

YOUR ENCLOSED DOCUMENT(S) WITH ONE OF OUR CLAIMS" (see: **Exhibit "A" herein**"). Further, **IN THE SPECIFIC MATTER** of the "Spam Fax" in Spring 2023 being responsive to the Appellant's delivered fax to the telephone number (fax number) of 416-774-3120 yet by similar unidentified sender *per se*, unidentified return address, and unspecified phone number et al. yet referring him to the a "list of fax numbers" across Canada albeit one of the fax numbers being the Victoria Park Building 4th Floor Fax Number which he had faxed to:

IN THE SPECIFIC MATTER of SNIC purporting to amend or change its mailing address and fax number to the **Burlington Office Address** (absent a floor number) (attention: Ms. Persaud) in Summer of 2023, and then reverting back to the mailing address of **SNIC Markham** absent a fax number:

IN THE SPECIFIC MATTER of the delivered August 9, 2024, (albeit not "received" until August 15, 2024) letter to all active insurance companies in the TDI Group and no insurance company in the TDI Group being able to match the Appellant by name, **Insurance Policy**, TD Claim Number, telephone number, address or any other particulars therein; **IN THE SPECIFIC MATTER** of TDI Group not being *able* to match any of the enclosed documents in the delivered **Invoice #1(A)** which appended to it attachments including the Dhaliwal OCF-18 and the Appellant's affidavit therein which included but not limited to: (i) the Appellant's TD Claim Number; (ii) the Appellant's phone number; (iii) the Appellant's address; (iv) the Insurance Policy Number; (v) the Date of Loss; (vi) the claims advisor (at the time); (vii) the Appellant's legal name; (viii) the Appellant's gender; and (ix) all particulars contained in the enclosed documents (**Invoice #1(A) with attachments**) (the "**Enclosed Documents**") (see: pages 4 to 70 of **Exhibit "A"** of Affidavit #15)

IN THE SPECIFIC MATTER of the Appellant's to be filed motion seeking, inter alia, "Correction of Errors" pursuant to ss. 21.1 of the SPPA (A tribunal may at ANY TIME correct a: (i) typographical error; (ii) error of calculation, or (iii) similar error made in its: (a) decision; or (b) order) ("**NOM #18**").

I, **Kevin Alexander McLean**, **Disabled**[14] (B.A., J.D., CIM) of Toronto, Ontario, **SWEAR**[15] **THAT**:

Volume #1: Sworn Under Oath; under the Penalty of Perjury; and Definitions

1. I am the deponent or affiant (also defined as the "**Appellant**"[16], "**Applicant**"[17], "**Insured Person**"[18], "**Disabled Individual**"[19] and/or "**CAT Impaired Individual**"[20]) herein and I swear, under the pains and penalties of perjury, the following facts to be true. Where I have stated or sworn information on my belief(s), I have cited the source of my belief(s) by references, citations, end-noting or otherwise. When I have used the expressions (including any permutations) of "in my view", "in my opinion", or "belief", I am not drawing or making any conclusion of law or swearing a conclusion of law but rather citing my position and opinions as a matter of fact.

2. I adopt the definitions from my previously filed documents in this **LAT Proceeding** (also defined as the "**SNIC Proceeding**" and now also defined as the "**McLean Proceeding**" [see: *infra* for explanation as to why) and they have the same meaning herein as they do therein unless expressly denoted otherwise.

This is the 38th Affidavit of Mr. Kevin A. McLean under File Insurance (SNIC "Abuse Program") Claim Number [illegible] FSRA Claim #[illegible] Insurance Policy Number [illegible] (the "Policy Number"). LAT File Number "[illegible] (the "LAT File Number") LAT Proceeding or Motion Proceeding under section 280(2) of the Insurance Act currently involving the sole respondent party (the "Sole Respondent Party") Security National Insurance Company ("SNIC") with an FSRA Registrants Number of [illegible] ("SNIC #397") and potentially involving the "First Insurer" to receive my completed Application on October 13, 2022 namely (as to the fax number of 416-734-3120 (the "4th Floor 2650 Victoria Park Avenue Fax Number") or "VP Holdings" (Fax Number")

1. For ease of chronology, NOM #16 is my SNIC document production motion of which I must file a reply by end of business day on Monday, September 30, 2024.

4. NOM #17 is another SNIC document production motion of which the Tribunal has been kind enough to notify me is still being reviewed.

5. I swear this evidence in support of NOM #18 which is not set to be heard by way of the statutorily required "notice" to the parties regarding the time, date, purpose and format of the hearing along with the consequences of non-attendance or participation in the same.

6. Now shown to me and marked as Exhibit "A" to this my affidavit are copies of emails and attachments therein whereby I am the sender of all but for the first email from the female case manager named therein with the attachment of the "reasons for decision" and "orders" therein of Vice Chair Morrissette ("VCM"). I have separated the following by "parts" with the following pages:

   a. **Part 1**: the email and attachment from the female case manager denoted therein with the attached VCM decision for NOM #13 to #15 which was received by myself on Friday, September 13, 2024. Exhibit "A", Part 1, is enumerated from pages 1 to 12;
   b. **Part 2**: my two emails in that email thread which are enumerated from pages 13 to 24; and
   c. **Part 3**: the attachments to my third email of September 28, 2024, in that email thread therein which are enumerated from pages 25 to 48.

7. I expressly incorporate and adopt the facts and my beliefs, while citing the source, in my two emails in Exhibit "A" herein and they are my evidence herein.

8. On a go forward basis, I would respectfully ask the Tribunal that since Vice Chair Morrissette is not seized that an adjudicator other than her decide any hearings herein.

page -

619

25

This is the 15th Affidavit of Mr. Kevin A. McLean under TD Insurance (SNK, "Named Progressive" Claim Number 0303359961) | TD Insurance Policy Number 00010351126 (the "Policy Number") | DAT File Number "23-015663/AMS" (the "DAT File Number") | DAT Proceeding re Dispute Proceeding") under section 280(2) of the Insurance Act (compels resolving the only respondent party (the "Only Respondent Party") to Security National Insurance Company ("SNIC") with an FSRA Registration Number of 997 | NAIC 0347") and potentially involving the Third Insurer (insurer(s) of Unidentified Applicant) on October 10, 2022 with an fax to the fax number of 416-174-1120 (the "4th Floor 3600 Victoria Park Avenue Fax Number at "VP Building" | Fax Fax Number")

9. I swear this Affidavit #38 for no improper purpose and for the above purposes.

Sworn before me at Toronto, Ontario
On this 28th day of September 2024

Kevin A. McLean (B.A., J.D., CIM)

Viola The Term Est.

NOTARY PUBLIC

620

This is the Affidavit of Mr. Gevus A. Mel sworn under LD Insurance (DIC: "Alumni Program" IC Seat Number 03525798-3) ID Claim #3) 00 (Insurance Policy Number [redacted] (the "Policy Number") LAT File Number 24-005863/AABS (the "LAT File Number") LAT Proceedings or "Mclean Proceeding") under section 280(2) of the Insurance Act especially involving the sole respondent (any reference to "Sole Respondent Party") the Statutory Accident Insurance Company ("SAIC") with an FSRA Registrature Number of [redacted] and particularly involving the "First Insurer" pursuant to Completed Application October 15, 2022 (as may be) the fax number of 416-774-3120 (the "F" Street 3650 Victoria Park Avenue Fax Number or "VP Building") Head Fax Number (

ENDNOTES

[1]As TDGIC, by its not opposing NOM #8, waived its rights of dispute in relation to the issues in this McLean Proceeding

[2]See: Reg 283, 0.1, "benefits" means statutory accident benefits as defined in subsection 224(1) of the Insurance Act;

[3]"Schedule" means, in respect of an accident, the *Statutory Accident Benefits Schedule* as defined in subsection 224 (1) of the Act that applies in respect of the accident. O. Reg. 38/10, s. 1.

[4]See: Ontario Regulation 283/95 ("Reg 283"), section 6.1, definition of "application" means an application for accident benefits (OCF-1) approved by the former Superintendent, and now CEO of the FSRA, for the purposes of the Schedule

[5]See: Reg 283, ss. 2(3): (3) The application provided by the insurer MUST include the insurer's name, mailing address and telephone and facsimile numbers. O. Reg. 38/10, s. 3.

[6]See: Reg 283, ss. 2(3): (3) The application provided by the insurer MUST include the insurer's name, mailing address and telephone and facsimile numbers. O. Reg. 38/10, s. 3.

[7]https://truenorthreit.com/property/3650-victoria-park-avenue-toronto-ontario; True North RHIT is a real investment trust that raised its money for the purchase of the Spark Building or Victoria Park Building through the issuance of "units" (colloquially analogous to "shares" in a "corporation"); for further information on the Spark Building, please see: https://truenorthreit.com/property/3650-victoria-park-avenue-toronto-ontario/download (see: This building is a nine-story office building and is located close to Highways 401, 407 and 404, with convenient access to downtown Toronto; "Lead Tenant"; "ID Insurance"

[8]Which was unbeknownst to the Appellant at the time and until August 2024 as a fax number located on the 4th floor of the building situated on the premises municipally known as 3650 Victoria Park Avenue, the district of North York, the city of Toronto, M2H 3P7

[9]Contemplated by offer, acceptance and consideration on or around April 2018, and then affirmed and reaffirmed by the payment of premiums et al from April 2018 to the Date Of Loss

[10]As defined and interpreted under Reg 283

[11]to the Appellant at said time

[12]See: LAT Rules (effective August 21, 2023). "Response" means the response a respondent is required to provide in relation to an appeal or as may otherwise be specified by the Tribunal.

[13]Please see: submissions and affidavits by myself regarding the inapplicability or lack of compliance with it by TDHA or SNIC within 90 days since receipt of my OCF-1 and OCF-2 (on my behalf) (see: October 17, 2022). At no time did TDHA (or SNIC), as it appears to me that TDHA's fax number was 416-774-3120 and the East Mail Address was TDHA's prior to the demolition of the "Valhalla Executive Centre", represent to me that there was any dispute between it and my other insurer(s) pursuant to Reg 283. This affidavit #10 will be (if necessary) in support of my motion to add TDHA as a party and seek declaratory relief regarding TDHA being the "First Insurer" to receive my "Completed Application"

[14]One year after the Accident as determined by a physician (neurosurgeon) when reviewing the four different MRIs that I had since the Accident (please: Affidavits #1 to #4 which were attached to my filed pleading herein on December 24, 2023)

[15]Primarily by way of dictation at first instance

[16]In relation to the Appeal filed by myself on December 24, 2023, with the LAT AABS

[17]As it relates to the Completed Application

[18]As it relates to SABS, Reg 283 and the Insurance Policy by virtue of my spousal status

[19]As per the language in the October 2022 MRI Report, October 2022 MRI Images, and the OCF-3 (November 1, 2022)

[20]As it relates to the combination of independent medical evidence including but not limited to: (i) October 2022 MRI Report; (ii) Dhaliwal Full Body Assessment; (iii) Dhaliwal

621

THIS IS EXHIBIT "A" REFERRED TO IN THE AFFIDAVIT OF KEVIN A. McLEW
AFFIRMED BEFORE ME, THIS 28th DAY OF August 2024

.....
...ER, ETC

Yash Tha [illegible], LSUC #[illegible]
[illegible] Commissioner
[illegible] Toronto ON
[illegible]
[illegible]

(13)

23-015682.AABS - MOTION ORDER.pdf
179K

Kevin McLean <mcleansnicist@gmail.com> Fri, Sep 27, 2024 at 10:21 AM
To: "LATregistrar (MAG)" <LATregistrar@ontario.ca>
Cc: "TDIADR@tdinsurance.com" <TDIADR@tdinsurance.com>, "matthew.nieuwland@tdinsurance.com" <matthew.nieuwland@tdinsurance.com>, "Karat, David" <David.Karat@tdinsurance.com>, "Ortiz, Christiane C" <Christiane.Ortiz@tdinsurance.com>

Dear Ms. Maureen Balagtas (she/her):

Thank you kindly for this attachment and decision involving SNIC and TDIA with respect to NOM #14 and #15 and TDGIC with respect to NOM #13.

I confirm that this was not received until Friday, September 13, 2024, so the date is off by a week. I am solely confirming the same out of an abundance of caution. The adjudicator may wish to correct that but nonetheless it was not received until Friday, September 13, 2024, so I am using that date for precision purposes as this came after an order of September 12, 2024. Put another way, I will referring to this decision as the Friday September 13 Decision.

Thank you.

Warm regards.

Mr. Kevin McLean, B.A. (Hon.), J.D., LL.M.

(Quoted text hidden)

Kevin McLean <mcleansnicist@gmail.com> Sat, Sep 28, 2024 at 10:00 AM
To: "LATregistrar (MAG)" <LATregistrar@ontario.ca>
Cc: "TDIADR@tdinsurance.com" <TDIADR@tdinsurance.com>, "matthew.nieuwland@tdinsurance.com" <matthew.nieuwland@tdinsurance.com>, "Karat, David" <David.Karat@tdinsurance.com>, "Ortiz, Christiane C" <Christiane.Ortiz@tdinsurance.com>

September 28, 2024

Via Email and PDF Email

DICTATED WITH VOICE RECOGNITION SOFTWARE DUE TO IMPAIRMENTS – KINDLY EXCUSE ANY ERRORS – RESERVE RIGHT TO CORRECT IF DRAWN TO MY ATTENTION AND/OR LATER DISCOVERED

TO BE FILED IN THE TRIBUNALS ONTARIO (LAT/AABS) PORTAL[1]

Re: my notice to SNIC, TDGIC and TDIA that I will be bringing a motion pursuant to subsection 21.1 of the *SPPA*

Re #2: residual – abundance of caution

635 Dear LAT Registrar: (19)

1. I write regarding the above and for notice purposes.

2. I write to confirm that I inspected the metadata of the "reasons for decision" of now Vice-Chair Morrissette. I extend my congratulations to her on her ascent at LAT. I copy and paste the same to this email at "Appendix #1". From what we have gleaned, Ms. Zukowski, is a "Senior Project Manager, Team Lead at the Ministry of the Attorney General". For ease of reference, I have defined Vice Chair Morrissette as "VCM" at various parts herein.

3. It is unclear how the decision is dated September 6, 2024, when it was delivered to myself and counsel to SNIC at 11:12 a.m. on Friday, September 13, 2024. This is consistent with when the document was created (see: 11:09:06 a.m. on Friday, September 13, 2024) and last modified before its delivery (see: 11:09:56 a.m. on Friday, September 13, 2024).

4. I submit with the greatest respect that not having the date of a "reasons for decision" is an error that needs correction considering its impact on timelines in the LAT Rules.

5. I was particularly concerned with the tone in the Reasons For Decision and some of the attacks and implications of language used by Vice-Chair Morrissette therein. I had it reviewed by external and experienced lawyers and they agreed with me. Vice Chair Morrissette appears to have some level of dislike towards me.

6. Additionally, she is referencing the accommodation towards me and my unfamiliarity with the process. I have certainly had some learning but I have been compliant with the forms to use, the LAT Rules, usage of indices, tabulations, consecutive numbering et al. With great respect, it was not I that had the incorrect party in the initial decision of Vice Chair Lake when my motions #2 to #3 all referenced "TD Insurance Meloche Monnex (Security National Insurance Company". How that became "TD General Insurance Company" remains beyond me. I sought the amendment of TDGIC to SNIC in my NOM #4 yet Vice Chair Lake issued an order and reasons for decision that she declined to decide. Even at that time, the law was unequivocally clear that TDGIC was not a separate entity from SNIC. I need not be repetitious. However, if TDGIC did not oppose it from January 2024 until June 2024, time could have been better allocated. I am reviewing the provisions of the *SPPA* on validity of the case conference as that is noted in Vice Chair Morrissette's order. Of course, only parties can be compelled to case conferences and pre-hearing conferences. By Vice Chair Morrissette's granting of my NOM #8, her order was retroactive effect on all orders issued by the Tribunal. That being said, the case conference did not have SNIC on the record per se.

7. In this regard, Vice-Chair Morrissette stated at part in paragraph 18 which I am paraphrasing that I did not make any document demands upon SNIC when SNIC was not the party. I kindly direct Vice Chair Morrissette and the Tribunal to my case conference form submitted and signed which remained consistent. I do not know what production deadlines she is referring to therein. It remains unclear. The case law shows production requests being made after case conferences on a regular occasion. SNIC did not submit a case conference brief so it is unclear how I am being held responsible for the same and deprived of documents or things from a non-party. Vice Chair Morrissette went further in saying that Mr. Nieuwland, on behalf of TDGIC, consented to NOM #8. To be objective and precise, Mr. Nieuwland's language on June 6, 2024, was that TDGIC did not oppose. Not opposing and consenting are different in law. Consent to a motion, with approval from the decision maker, results in a consent order. A consent order is a contract and can only be set aside on the traditional grounds of: (i) duress; (ii) misrepresentation; (iii) mistake; (iv) absence of consent; (v) non est factum; and (iv) others. Not opposing the wishes of another is not the same as consenting to such intended conduct.

8. As Adjudicator Morrissette, as she then was, is aware I sought corrections and amendments in her "reasons for decision" of her granting of my NOM #8 order with language that was imprecise including the above. For example, Adj. Morrissette, as she then was, was not as analytically precise as one would expect when she referenced Mr. Nieuwland filing a Response (capitals were hers). It was TDGIC that filed responses to my motions when it had no legal right to be a party. TDGIC never filed a Response (as defined under the LAT Rules). It was a crucial distinction that was required and the Appellant thanked Adjudicator Morrissette for her clarification of what she was intending.

9. That being said, of particular concern with the September 6, 2024, incorrect date for her "reasons for decision" was that on that date I had tendered a privacy request with MAG and paid the requisite funds for the processing of the funds to the Minister of Finance (MAG). It was not an easy process with my impairments and considering Tribunals Ontario has been closed for some time. I had to liaise with the most accommodating Ontario Provincial Police ("OPP") constables or officers at the building adjacent to the right (West) of Tribunals Ontario to find the correct individual to receive the same. After some time, we were able to find said individual and the funds were provided along with the *FOIPPA* request. While I will not go into details of my *FOIPPA* request, it was, in part, because it was represented to me by LAT in late July 2024 that my NOM #13 would be heard in due course.

10. I was not receiving any responses at all to my queries. I appreciate Mr. Grant was away for a period of time in July 2024 and I noted the female case manager (name escapes me currently and reference to female was the "she/her" reference and to distinguish her from Mr. Grant who was away) who confirmed that my NOM #13 was received in compliant fashion and referenced "due course"

11. Vice Chair Morrissette was correct that Mr. Gant was prompt to notify me that LAT believed that there was an issue with the page length of my submissions when they were six pages double spaced. I confirm that they were on multiple occasions and that was the cessation of that conversation. I note that this happened with Mr. Nieuwland as well. To ensure that is not an issue moving forward, I will ensure that only the body of my submissions are numbered and not the initial pages containing the LAT file number, style of cause, contact information et al.

12. Returning to NOM #13, I was required to make demands upon the Non-Party TDGIC and I did so. I did not receive any response.

13. I followed up regarding NOM #13 on Wednesday, September 11, 2024 as it was exactly two months since I had served TDGIC at its office represented by the Tribunal, without objection from TDGIC, at 9th floor-3650 Victoria Park Avenue, North York, Toronto, Ontario.

14. On Thursday, September 12, 2024, I and SNIC then received a motion scheduling order for NOM #16. Nothing was received regarding NOM #13. I did not seek consolidation of NOM #13 with NOM #14 and NOM #15. It is unclear why that was done considering it was only NOM #13 that had the representation attached to it that it was enacted in due course. However, the statutory requirements denoted below are distinct from the exercise of discretion to consolidate hearings. I still say, pursuant to section notice of each hearing was required in consolidated form or by distinction.

15. It is trite that NOM #13 involved TDGIC alone. NOM #14 and NOM #15 involved SNIC and TDHA.

16. It is further unoriginal that I sought that NOM #13 was to be heard on a written hearing.

No Notice of Three Hearings in One by Vice Chair Morrissette

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17. There appears to be an issue that has been drawn to my attention regarding Vice Chair Lake and Vice Chair Morrissette engaging in issuing orders and reasons for decision without notice of hearing.

LAT Rule 15.3: Responding and Reply Submissions

18. I appreciate that the LAT Rules have a provision that states the following:

> "Before a motion is granted, the Tribunal may provide the responding parties with the **opportunity** to make submissions. The Tribunal may also provide the moving party with the opportunity to make reply submissions."

19. I am not certain that is allowable under the *SPPA*. If the splicing therein is that the responding party has received notice of the hearing by way of date, purpose and manner of format but there is no statutory right to file submissions and the Tribunal has ordered that only affidavit evidence (or documents and not "submissions" per se) is required from the responding party. If that is what is meant by the erudite minds who drafted the LAT Rules, effective August 2023, then I can see the logic.

20. If it is a proper and *intra vires* exercise of delegated statutory rule making authority under another statute, I will have to review the same.

21. However, if it is, it has been pointed out to me that the following sections of the *SPPA* state the following:

" Section 1, "Definitions"

"hearing" means a hearing in any proceeding.

Notice of hearing

6 (1) The parties to a proceeding shall be given reasonable notice of the hearing by the tribunal. R.S.O. 1990, c. S.22, s. 6 (1).

Statutory authority

(2) A notice of a hearing shall include a reference to the statutory authority under which the hearing will be held.

Written hearing

(4) A notice of a written hearing <u>SHALL</u> include,

(a) a statement of the date and purpose of the hearing, and details about the manner in which the hearing will be held,

(b) a statement that the hearing shall not be held as a written hearing if the party satisfies the tribunal that there is good reason for not holding a written hearing (in which case the tribunal is required to hold it as an electronic or oral hearing) and an indication of the procedure to be followed for that purpose;

(c) a statement that if the party notified neither acts under clause (b) nor participates in the hearing in accordance with the notice, the tribunal may proceed without the party's participation and the party will not be entitled to any further notice in the proceeding. 1994, c. 27, s. 56 (13); 1997, c. 23, s. 13 (13); 1999, c. 12, Sched. B, s. 16 (5).

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Effect of non-attendance at hearing after due notice

Same, written hearings

(2) Where notice of a written hearing has been given to a party to a proceeding in accordance with this Act and the party neither acts under clause 6 (4) (b) nor participates (IV) in the hearing in accordance with the notice, the tribunal may proceed without the party's participation and the party is not entitled to any further notice in the proceeding "

Application of the above to the facts

22. The above language is unambiguous in that parties are entitled to notice of a hearing with the time, date, place and purpose of the hearing. Further, the manner in which a hearing is to be held is provided to the parties. It is not fining upon them particularly when a party has followed up and informed that it will be heard in "due course". In order for the hearing to be heard, notice is required. It may be short notice or lengthier notice. Certainly, then a party may object to the same and bring a motion to have a shorter or lengthier notice than the ordered notice period.

23. Moreover, the statutorily required notice, by way of document in most scenarios, provides a responding party the opportunity to provide "good reason" why a written hearing should be held as an oral hearing. Without a notice document issued from the Tribunal, how does a responding party do so? Of course, in that hypothetical measured against my proposal for written hearings, that would have been opposed. However, this is not a matter of my interests per se but the requirements under statute. As a creature of statute, LAT cannot deviate from those obligatory requirements.

24. Whether a responding party is entitled or NOT entitled to make submissions, there is no conceivable way, as a matter of administrative law but particularly section 6 of the *SPPA*, that a respondent party is not entitled to notice of the hearing. As noted in some of my earlier authorities like *IV Raleigh Holdings Ltd. v. OSC* and others, if a party receives notice of a hearing and does not attend a hearing, the remainder of the proceeding (whether a LAT, privacy, ONLRB or others) may be conducted in absentia of that duly notified but non-participating party.

25. I will have to review the law further in this manner to consider the impact of VCM's decision absent a notice of hearing being provided which is all the more confusing considering that NOM #16 had a notice motion hearing scheduling date issued the day before.

26. NOM #8 is a perfect example of the statutorily required compliance with the *SPPA* from a notice standpoint. On June 5, 2024, the Tribunal issued a notice of hearing for it to be heard on June 21, 2024. Between that time, I arranged for the payment and procedural efforts to obtain the independent status certificates for SNIC and TDGIC. I agreed with the FSRA that I would pay for expedited delivery of the same. The FSRA was able to do so, with great appreciation to it, and I obtained the same a few days before the hearing of NOM #8 and included them in the record of proceeding. During that time, Mr. Nieuwland for TDGIC, and credit to him for being responsive, on June 6, 2024, confirmed TDGIC did not oppose.

27. Whether it is this LAT proceeding or any other proceeding, any respondent (insurer or insured) has the right to notice of a hearing and to consider how it wishes to participate or not participate. Obviously, Mr. Nieuwland with his vast experience knew that not saying anything could be viewed as non-participation so he provided that confirmation of non-opposition on behalf of TDGIC. Parenthetically, this is yet another reason (not the "sole reason") why TDGIC had to be removed and SNIC in its role as a party after being the sole insurance company to file a Response

639 pursuant to the LAT Rules. In this example, SNIC was not a party so it was NOT entitled to notice under the *SPPA*. The Legislature was unequivocal in its language that notice entitlement only applies to parties.

28. Even the LAT Rules acknowledge the same, at least tacitly, in Rule 9.2.2 where it was inclusive and intentional with language of the extension of the right to a non-party to make submissions before an order is granted.

29. I note the following language which I know copy and paste:

> "Before an order is granted by the Tribunal, the non-party will have an opportunity to make submissions as set out in the notice of motion hearing."

30. As I was reading the same and then dictating, an epiphany arose. TDGIC was and is a non-party, and the Tribunal did not follow its own rule.

31. The language of "will" is used under Rule 9.2.2 yet "may" is used in Rule 15.3. Even if different hearings are consolidated, which is somewhat troubling considering a Rule 9.2.2. motion being distinct from other types of motions, with non-parties and the Respondent Party, the non-party will have the opportunity to make submissions, which is a guaranteed right of the non-party by the LAT Rule 9.2.2., and the responding party will, as a matter of statutory right be entitled to notice of the hearings (even if one rule does not afford it with the right to make submissions (i.e. Rule 9.2.2. entitles the Respondent Party to receipt of the motion materials as the moving party must serve the Respondent Party and the Non-Party)).

Conclusion

32. I am deeply concerned about some of the revisionist history in the above. Much of the "reasons for decision" of Vice Chair Morrissette are inconsistent with the record of proceeding. At this stage, there is no eraser that can be used for that which has been filed with "permanent ink" and that I have stored in three separate cloud storages and hard copies into binders.

33. It appears that VCM has also conflated the distinction between Motion Submissions and Costs Submissions. I was clear in my Costs Submissions, which are not motions unto themselves, are not constrained by the limits under Rule 15. It is very disquieting that there is ostensible conflation of the two: the hearing record index or indices are unequivocal into the distinction between Motion Submissions and Costs Submissions which are in separate tabs.

34. There is a reference to the "sole reason" required, as a matter of law, change of name from TDGIC to SNIC is because that I requested it and obtained consent (from whom is unclear in this VCM decision). That is patently false. The reason was as a matter of law it was required to be amended. The second reason was SNIC filed and served a Response and TDGIC did not. The third reason was the FSRA informed me they were not one and the same. The fourth reason was that the FSRA confirmed if I paid fees for status certificates that it would provide current evidence that they were not one and the same. The fifth reason was that TDGIC never sought to be added as a party but somehow took over from SNIC when the Consent Email Communication Protocol between myself and SNIC, as Mr. Karat as ADR specialist for SNIC.

35. As it relates to NOM #16, I will file my reply by the end of the business day on Monday, September 30, 2024.

36. However, in light of the above, without getting into any substantive positions on potential reconsideration and/or future judicial review and/or appeal, pursuant to LATA, Vice Chair Morrissette's decision commences with the incorrect date which is then followed with a litany of

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errors that must be corrected and amended to reflect the actualities and facts of the record of proceeding.

37. The reason for the same is that of the likes of Rule 18 "Reconsideration" which uses the words of "date of the decision".

38. Lastly, and these are the most troubling aspects of the VCM Decision which are from paragraphs 22 to 28. It is quite the finding about "inconsistency" directed towards me. In any event, I note some of the following:

a. Paragraph 22: I did not refer to TD SNIC after the filing of the "Response" but it was in my pre-appeal affidavits and in the Appeal itself. Simply put, there was not enough room to put "TD Insurance Meloche Monnex (Security National Insurance Company):

i. In motions #1 to #3, the Respondent is so titled as "TD Insurance Meloche Monnex (Security National Insurance Company) which VCM has somehow skipped;

ii. The change to TDGIC was by Vice-Chair Lake in mid-January 2024.

b. Paragraph 23: for the same reasons above is incorrect and must be corrected;

c. Paragraph 24 to 26: the Motion Submissions and NOM #14 could not have been clearer in that TDHA was the First Insurer, by overwhelming and independent public evidence. SNIC only remains as per costs which is oddly consistent with the VCM decision herein;

d. Paragraph 27: again, the pleadings themselves demonstrate that the insurance policy was not mine per se so that must be corrected.

i. However, it is the language as follows: "The initial respondent, TDGIC, and the current respondent, SNIC, accepted priority over the applicant's [sic] policy".

ii. For precision purposes, VCM found at paragraph 23, "At some point between the filing of the respondent's counsel's DoR on January 30, 2023, and February 19, 2024, the respondent's IDENTITY was administratively changed by the Tribunal from SNIC to TDGIC."

a. This would in turn mean that SNIC was the initial respondent if the administrative change occurred at some unknown time between January 30, 2024 to February 19, 2024;

b. Inconsistent with subpart "a", the above language in paragraph 27 refers to TDGIC as the "initial respondent" but that would make TDGIC the second respondent due to the administrative change.

i. As such, these corrections must be made due to being factually incorrect but it cannot be a fact (not a legal issue) that two insurance companies accepted priority over the "applicant's [sic] policy". I do not know what it means to accept priority over an insurance policy. An insurance company may accept priority, pursuant to Reg 283, over an automotive claim pursuant to a Completed Application being "initially" or "first received" by said insurance company (note bene: receipt can be mail or fax – not email).

ii. This obviously lends support that TDHA was the First Insurer as the name of TDGIC only surfaced at the Tribunal and never by me. Moreover, TDGIC's fax was 416.774.3629 and the fax number provided by SNIC was not its fax and not even where its office was located then or now, to the Appellant (then in his capacity as a "Claimant" (unless that definition is referred to under the LSO By-Laws as "claimant" is not included in an individual who has CAT Impairment – as paralegals cannot act for an

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individual who may have a CAT impairment claim or where such issues are included or added in a LAT AABS proceeding) of 416.774.3128. We know that SNIC was not located at VP Building (North York) 4th Floor so TDHA was the First Insurer by its receipt of my Completed Application on October 13, 2022.

39. With that segue (and although my usage of TD Insurance was with TD SNIC for definitions from October 2023 and onwards and in motions #1 to #3 listed the "Respondent" as "TD Insurance Meloche Monnex (Security National Insurance Company)). I note Mr. Grant's comments, with great thanks, that provide insight into how he, as an experienced case manager, viewed the same as "TD Insurance" between "TDGIC" and "TDHA". While I never indicated "TD General Insurance Company" and technically speaking if the words start with "TD Insurance" then "Meloche Monnex" can follow with "SNIC" or "Primmum" as underwriters for their insurance programs but the same cannot be said of "TDHA" or "TDGIC".

40. For ease of reference and by way of impetus – said decision of VCM, Mr Grant represented the following on May 6, 2024:

LA registrar (MAG) <LATregistrar@ontario.ca> Mon, May 6, 2024 at 11
To: Kevin McLean <mcleansnicat@gmail.com>, "Niewiand, Matthew" <Matthew.Niewiand@tdinsurance.com>
Cc: TDI ADR <TDIADR@tdinsurance.com>, "Karai, David" <David.Karai@tdinsurance.com>, Christiana C" <Christiana.Ortuz@tdinsurance.com>

Hello.

Further to the correspondence below in the above-referenced matter, the documents naming TD Insurance as the Respondent in this dispute are the Application (the "Insurance Company Information listed is "TD Insurance") and the copies of claim denial letters from TD Insurance which were filed Accordingly, as the information did not indicate "TD Home and Auto" which is the other, separate, insurance company in our system, TD General Insurance company was named as a party on the fil

Furthermore, various TD insurance companies (including TD General, TD Home and Auto, and Sec National) as parties on AABS files are all communicated with via "TDI ADR" at TDIADR@tdinsurance.com.

I see that the Insurer's Response form listed "Security National Insurance Company" as the party bu Respondent's Counsel's Declaration of Representative form listed "TD General Insurance Compan the party.

If there is a concern that Security National Insurance Company, not TD General Insurance Company named as the Respondent party on the file, please advise if the parties agree that change should be n

Thank you,

Josh Grant
Case Management Officer
Licence Appeal Tribunal
416-317-5149
LATregistrar@ontario.ca
http://tribunalsontario.ca/lat/

Confidential message which may be privileged. If received in error, please delete the message and a
me by return email.
Message confidentiel dont le contenu peut être privilégié. Si reçu par erreur, veuillez supprimer ce
message et aviser l'expéditeur par retour de courriel.

41. I have just noticed that Mr. Grant refers to the denial letters as "TD Insurance" which had the "TD Insurance Meloche Monnex" (SNIC). Mr. Grant made that request of me on or around January 8, 2024, but I will check the exact date. The denial letters has SNIC at the "Markham address" and the Burlington address (albeit without a floor). Mr. Grant had it right the first time that the administrative denotation was done before Vice Chair Lake's decision on January 16, 2024, (nota bene: I will check the exact date). My style of cause in each motion makes NO reference to TD General Insurance Company. TDGIC is not part of the "TD Insurance Meloche Monnex" programs as would be well-known to the Tribunal. Vice Chair Lake overrode my style of cause with TD General Insurance Company.

42. I have been detailed herein so that the Tribunal and the relevant persons have notice as to which will follow. Moreover, it will make my submissions ultra-brief which will be six pages double spaced as per previous filings. I will append the above and attachments to an affidavit.

43. In conclusion, with great respect as I appreciate that the LAT runs a very sophisticated operation, but I am beyond alarmed that VCM, with the benefit of a well-accomplished senior project manager in Ms. Zukowski, that there is a reference to "at some point" between a 20 or 21 day period that the "Respondent's IDENTITY" was changed. *How would the Tribunal not know the date when it was changed?* This must be a matter of record. I will now attend to the motion, affidavit, and service of a very brief hearing record along with a *FOIPPA* request so we are not guessing.

44. I confirm, out of an abundance of caution, that I will be seeking reconsideration of the decision that if decided in my favour would have finally disposed of the appeal (i.e. a final decision and not an interlocutory decision like NOM #13) but with respect to timing, it would have been 21 days from September 13, 2024 (not the date of September 6, 2024). However, we will need the benefit of a decision on the corrections and amendments of errors, calculation errors (potentially if known) and similar errors before this VCM decision is correct in its entirety. Of course, this does not guarantee that the Tribunal will agree with every proposed amendment but I will outline the same and not speculate. However, if I may be so bold and audacious, there will have to be some corrections and amendments of some of the above, even by additional language in sentences, to provide some context.

45. For ease of reference, I have attached the denial letters that I filed which Mr. Grant confirms in his email above.

46. I also thank the Tribunal for providing SNIC's correct address of SNIC Burlington (the inclusion of the 5th floor by the Tribunal while SNIC failed to do so in its denial letters of which you will some in the attachment(s)). This makes logical sense because I have confirmed independently that Primmum is located in the same building and it is the other distinct insurer under the trade name by way of two combined trademarks of TD Insurance Meloche Monnex (nota bene: (i) TD Insurance licensed by The TD Bank; and (ii) Meloche Monnex licensed by Meloche Monnex Inc. (not to be confused with Meloche Monnex Financial Services Inc.).

47. As I trust the Tribunal is aware of the importance of my rehab from my impairments and my surgery in the USA, I will notify said clinic that I will need a little more time to address these issues

643 and have certainty and clarity with my schedule so I can be slotted in at the appropriate, yet earlier, time. I also note that all of the above is not only integral and crucial for this LAT proceeding but also prior to and outside of the same, and after its conclusion. In my humble view, addresses, insurer names and facsimile numbers are not only important but they must be precise. Certainly, the LGIC thought so in 2010 when it amended Reg 283. Moreover, our Parliament certainly thinks so and has engaged in demonstrating the importance of the same by amendments to *PIPEDA*

48. Thank you all and I trust that this will provide the necessary courtesy notice in advance of receipt of the above. My best to all over the weekend.

Appendices

Appendix #1

[i] In light of a previous situation where I could not access the same and Mr. Grant represented to me that it was due to a "power outage"

[ii] Like my "Reasons For Decision" or Affidavit, Motion Submissions, or Costs Submissions, the first few pages are not the substance of the affidavit, Motion Submissions or Costs Submissions but required boilerplate language or some references to the "In the Matter of"

[iii] It appears that VCM somehow failed to

[iv] Different than attendance per se. As I learned in delivering fees for my recent privacy request, necessitated by long absences of responses since July 11, 2024, after Mr. Grant emailed promptly about a six-page limit issue [sic] with Motion Submissions.

Warm regards

Mr. Kevin A. McLean (B.A. (MCD), J.D., LLM)

Enclosures:

1. Email from Mr. Grant on May 6, 2024, which is reproduced above
2. Image of the metadata involving the VCM Decision
3. Denial letters filed with E-receipt (note bene: name thereon is SNIC as Sole Underwriter with TD Insurance Meloche Monnex at top left)

[Quoted text hidden]

4 attachments

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Gmail

Tribunal file 23-013862/AABS - Kevin McLean vs. TD General Insurance Company

Hello.

Further to the correspondence below re the above-referenced matter, the documents naming TD Insurance as the Respondent in this dispute are the Application (the 'Insurance Company Information' listed is 'TD Insurance') and the copies of claim denial letters from TD Insurance which were filed. Accordingly, as the information did not indicate 'TD Home and Auto' which is the other, separate, 'TD' insurance company in our system, TD General Insurance company was named as a party on the file.

Furthermore, various TD Insurance companies (including TD General, TD Home and Auto, and Security National) as parties on AABS files are all communicated with via 'TDI ADR' at TDIADR@tdinsurance.com.

I see that the Insurer's Response form listed "Security National Insurance Company" as the party but the Respondent's Contact's Declaration of Representative form listed "TD General Insurance Company" as the party.

If there is a concern that Security National Insurance Company, not TD General Insurance Company, be named as the Respondent party on the file, please advise if the parties agree that change should be made.

Thank you.

Josh Grant

Case Management Officer

Licence Appeal Tribunal

416-317-6349

LATregistrar@gov.on.ca

https://tribunals.ontario.ca/lat/

Tribunals Ontario
Tribunaux décisionnels Ontario

Confidential message which may be privileged. If received in error, please delete the message and advise me by return email.

Message confidentiel dont le contenu peut être privilégié. Si reçu par erreur, veuillez supprimer ce message et aviser l'expéditeur par retour de courriel.

From: Kevin McLean
Sent: Monday, May 6, 2024 8:28 AM
To: LAT Registrar (LAT) <LATregistrar@ontario.ca>; TDIADR <TDIADR@tdinsurance.com>; Kent, David <David.Kent@tdinsurance.com>; Orth, Christine C <Christine.Orth@tdinsurance.com>; Beaudoin, Matthew <Matthew.Beaudoin@tdinsurance.com>
Subject: Re: 23-013862/AABS - URGENT INQUIRY DIRECTED TO LAT AND/OR SRC (CAVAT) "TDIADR (CONTROLLING SUBDIVISAL OF EMAIL) "LOGIC (REDUNDANT)

CAUTION - EXTERNAL E-MAIL - Do not click links or open attachments unless you recognize the sender.

May 6, 2024

Re: Follow up regarding my request for the specific information from April 30, 2024

Dear LAT

I am directing this to LAT as the "email account" of "TDIADR" is non-responsive to him.

Would you kindly provide me with a copy of the documents and information requested as it relates to who provided the Tribunal the information representing "TD General Insurance Company"? I presume that we are looking at the time frame of January 12 to 14, 2024 but I [LAT] will know better than I.

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OCF-19

Part 11 Health Care Providers

Part 12 Proposed Goods or Services Requiring (pre-) Approval

Part 13 Signature of Insurer

Note:

TAB 41

Electronically filed / Déposé par voie électronique : 18-Feb-2025
Toronto Superior Court of Justice / Cour supérieure de justice

TAB #12: ORAL COMPENDIUM: COURT FILE NO. DC-24-00000718-00JR

699 NOM #13 TAB #3 (9)

23-015662/AABS

This is the 16th Affidavit of Kevin A. McLean under TD's Claim Number 03532579043 (the "Claim Number" or "TD Claim #3"), TD Insurance Policy Number #001 0135118/06 (the "Policy Number"), LAT File Number "23-015662/AABS" (the "LAT File Number" or "LAT Proceeding") and was finalized and made on April 14, 2024

BETWEEN:

KEVIN ALEXANDER MCLEAN

APPLICANT/APPELLANT

AND:

TD INSURANCE MELOCHE MONNEX (SECURITY NATIONAL INSURANCE COMPANY)

RESPONDENT

Affidavit #17 of Kevin A. McLean

In a matter under the *Insurance Act*, RSO 1990, c I 8, (the "*Insurance Act*")

In the matter of an "Application of an Injured Person" ("Application" or "AIP") by the Applicant pursuant to subsection 280(2) of the *Insurance Act*, RSO 1990, c I.8., in relation to statutory Accident benefits and the following regulations including but not limited to:

i. *Statutory Accident Benefits Schedule*, O Reg 34/10 ("SABS"), and
ii. *Automobile Insurance*, RRO 1990, Reg 664 ("Reg 664")

I, Kevin Alexander McLean, Disabled (B.A., J.D., CIM) of Toronto, Ontario AFFIRM THAT

VOLUME #1: affirmation

1. I am the affiant (also defined as the "Applicant", "Insured Person", "Disabled Individual" and/or "CAT Impaired Individual") herein and I affirm, under the pains and penalties of perjury, the following facts to be true. Where I have stated information on my belief, I have cited the source of my belief by references, citations, sub-noting or otherwise.

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2. Where I have used square brackets (i.e. [.....]), I have done so for ease of reference and to provide my evidentiary beliefs while citing the source of the same.

3. Where there are double underlined words, they are mine for ease of reference

4. I have adopted the definitions from my served and filed evidence herein and the have same meaning herein as they do therein.

5. I adopt the definitions from the above noted legislation and regulations, including rules where not made under the *SPPA*, and they have the same meaning herein as they do therein

6. Where I have included definitions, I am not making a legal argument in this affirm evidence but I have included the same for consistency purposes.

7. I affirm that where I have added emphasis is "copying and pasting" from any legislation, regulation or rule, the emphasis mine.

8. In light of Mr. Nieuwland filing and serving (albeit through his now known yet previously concealed legal assistant in Ms. Ortiz) with, *inter alia*, the purportedly responsive hearing briefs to my motions (see: #4 and #6 by LAT Orders on February 14, 2024 and April 9, 2024), which did not factually comply with the requirements under LAT Rules (see: indices, tabs, and consecutive numbering) yet included a document known as my OCF-1, I made this affidavit #17

9. My factual and legal positions are contained by my annotations therein.

10. My additional position for the purported filings by Mr. Nieuwland, of which I have notified him since early February 2024 that he needed to bring a motion to obtain permission to refile the Nieuwland DOR Non-Respondent, is re-confirmation that I did not consent to TDGIC being or "masquerading" as the Respondent named in the Purported SNIC Response (also defined as the "PSR").

11. In reviewing the OCF-1, I did not consent to TDGIC (or TD Insurance Staff Legal, Mr. Nieuwland, Ms. Moraes, Ms. Klukowska, Ms. Saeed et al) collecting, using, accessing, modifying, copying, or retaining my personal information ("PI") and personal health information ("PHI") therein (or otherwise) from SNIC. I did not consent to SNIC disclosing my PI and PHI to TDGIC for any purpose other than what I consented to and certainly not for TDGIC to attempt to become the "insurer" or "underwriter" not named in any of the documents sent to or receive from Ms. Nurse (SNIC Markham) or Ms. Persaud (SNIC Burlington). I certainly did not consent to TDGIC collecting, using or disclosing ("CUD") PI or PHI for the purposes of purporting or masquerading as the "Respondent" or a "Party" herein, and defending motions or filing motions. Amongst other things, I require any and all unauthorized recipients of my PI and PHI (including TDGIC and Mr. Nieuwland) to return my PI and PHI to SNIC without retaining a copy of the same but for the purpose of complying with the summonses.

12. I do not consent and object to TDGIC's documents being filed in the public record with LAT and I will be able to strike them on a variety of grounds including a breach of my privacy rights.

13. I confirm that I have only provided motions upon Mr. Nieuwland and TDGIC as a courtesy and for the purposes of my motions after January 30, 2024

14. My position remains that Mr. Karat is the sole unlicensed representative for SNIC and I re-affirm my beliefs as to those individuals involving in TD Claim Numbers and this SNIC Proceeding, and that they are in a conflict of interest.

:701 (10) Page 13

15. Now shown to me and marked as Exhibit "A", separated by six tabs and consecutively numbered, are copies of the following documents with my annotations:

a. Tab 1: select copies of pages from my blank OCF-1 with my annotations (see pages 1 and 2),
b. Tab 2: my handwritten notes involving my absent of any consent, and never consenting to the purposes, which were unknown to me at the time of executing the OCF-1, and only became known to me in 2024 (see: pages 3 to 7),
c. Tab 3: copies of pages from *PIPEDA*, sections 5(3) to 7(3) therein with my annotations (see pages 8 to 15);
d. Tab 4: copies of my initial *PIPEDA* request from 2024 with my annotations therein (see. pages 16 to 39),
e. Tab 5: *PIPEDA* bulletin regarding applying paragraphs 7(3)((d.1) and 7(3)(d.2) of *PIPEDA* from March 2017 with my annotations which I believe are relevant to what will be my motion #7 herein to strike the purported filings by Mr. Nieuwland herein (see: pages 40 to 44); and
f. Tab 6: *PIPEDA* bulleting, with my annotations, regarding "*PIPEDA* Fair Information Principle #5 - Limiting Use, Disclosure and Retention (see: pages 45 to 46).

Volume #3: Concluding paragraphs and Jurat

16 I remain stunned that TDGIC had access to my OFC-1 and has somehow utilized it for the purposes of responding to my motions (albeit Mr. Nieuwland has somehow miscounted the motion numbers and the reconsideration request) when I never consented to TDGIC being a "party" or "respondent" and I never consent to TDGIC CUD my PI and PHI to defend my TD Claim Number #3, this SNIC Proceeding or any matter.

17. If Mr. Nieuwland and TDGIC, along with any and all individuals who have received access to my PI and PHI that was solely disclosed to SNIC for the purposes therein and not to TDGIC (as I did not know of TDGIC until late January 2024) do not confirm by 11 a.m. on April 15, 2024 that they have returned all of my PI and PHI to SNIC (attention: Ms. Nurse and Ms. Persaud where applicable) except for the purposes of the summonses upon them, then I will apply to seek further relief in this regard. I will do so on an expedited basis due to the timing and urgency of the same. I may supplement or clarify this affidavit #17 with further affidavits as further evidence and law becomes known to me. If any of my annotations require clarification or explanation, I can provide them upon request.

702

(11) Page 204

Page 4

18. I affirm this Affidavit #17 for no improper purpose and in relation to my NOM #7. general purposes and ancillary purposes (known and unknown).

affirmed before me at Toronto, Ontario
On this 14th day of April 2024

[illegible] McLean (B.A., J.D., CIM)

Vinh The Tran, Esq.

[illegible]

703

(12) Page: 201

Page 5

[1]Defined as "TD SNIC" as "Security National Insurance Company" as provided as the name of the insurance company that Ms. Persaud and Ms. Nurse were acting as "claims adjusters"

[2]Melochs Montreux Inc. ("MMI"), carrying on business under the name of Security National Insurance Company. Hle v. Melochs Montreux, 2022 ONSC 974 (CanLII), at para 2, <https://canlii.ca/t/jnkb0#par2>, retrieved on 2024-01-04

704 (13) AFFIDAVIT # 17 LAT # 22-015662 / AARC

THIS IS EXHIBIT "A" REFERRED TO IN THE AFFIDAVIT OF MR. KEVIN D MCLEAN
AFFIRMED BEFORE ME, THIS 4th DAY OF APRIL 20 24

A Commissioner, etc.

Vinh The Tran, #64, LSUC #57781C
Lawyer, Notary, Oaths Commissioner
108-639 Dupont Street, Toronto, ON
M6G 1Z4, T 647-209-7389
vinhtranlaw@hotmail.com

RE: URGENT → FIRST FILINGS NIEUWENHUYS BESIDES DON - SEN 30, 2024 AFTER APRIL 11, 2024 NON-COMPLYING FILINGS BY NIEUWENHUYS

705

Tab 1

(14) pag. 203

APRIL 17 / 2024

AFFIDAVIT #17

EKA

PAGE #1 to 2

RE: OCF - 1

SELECT PAGES

TO THE INSURER, INCLUDING IMAOF, TO WHOM THIS APPLICATION IS BEING SUBMITTED:

I UNDERSTAND that you, and persons acting for you, will collect personal information and personal health information about me that is related to my claims for accident benefits arising out of the accident described in this application, and that all such information will be collected directly from me or from any other person with my consent.

I ALSO UNDERSTAND that you and persons acting for you will collect information about my driving record, automobile insurance policy history and automobile insurance claims history from time to time.

I ALSO UNDERSTAND that if I am the holder of an automobile insurance policy, you and persons acting for you will collect the driving record, automobile insurance policy history and automobile insurance claims history of any listed drivers on my automobile insurance policy or other drivers whom I have permitted to drive my automobile.

I ALSO UNDERSTAND that the information described above will be collected and used only as reasonably necessary for the purposes of:

- investigating my claims and processing my claims as required by law, including the Ontario Automobile Policy;
- obtaining or verifying information relating to my claims in order to determine entitlement and the proper amount of payment;
- recovering payment from insurers and others liable in law for amounts that you pay in connection with my claims;
- identifying and analyzing the nature and costs of goods and services that are provided to automobile accident victims by health care providers;
- preventing, detecting and suppressing fraud;
- compiling anonymized statistics for government agencies; and
- assessing underwriting risks and claims experience.

I ALSO UNDERSTAND that you, and persons acting for you, may disclose this information to the following persons or organizations, who may collect and use this information (limited to what is reasonably necessary to enable you or them to carry out the purposes described above):

insurers; insurance adjusters, agents and brokers; employers; health care professionals; hospitals; accountants; financial advisors; solicitors; organizations that consolidate claims and underwriting information for the insurance industry; fraud prevention organizations; other insurance companies; the police; databases or registries used by the insurance industry to analyze and check information provided against existing information; and my agents or representatives as designated by me from time to time.

I ALSO UNDERSTAND that you, and persons acting for you, may pool this information with information from other sources and may analyze this information for the limited purpose of preventing, detecting or suppressing fraud.

I CONSENT and, if I am the holder of an automobile insurance policy, declare that I have obtained consent from the listed drivers on my policy and any other drivers whom I have permitted to drive my automobile, to you collecting, using and disclosing this information in the manner described above, but no more of such information than is reasonably necessary to meet the legitimate purpose of such collection, use or disclosure.

I UNDERSTAND that if I have any questions about this consent I am free to consult with my insurance company's representative or legal advisor before signing this document.

I AM ALSO AWARE that you, and persons acting for you, may be required or permitted by law to disclose this information to others without my knowledge or consent.

I CERTIFY THAT THE INFORMATION PROVIDED IS TRUE AND CORRECT.

I UNDERSTAND THAT IT IS AN OFFENCE UNDER THE INSURANCE ACT to knowingly make a false or misleading statement or representation to an insurer under a contract of insurance.

I FURTHER UNDERSTAND THAT IT IS AN OFFENCE UNDER THE FEDERAL CRIMINAL CODE for anyone, by deceit, falsehood, or other dishonest act, to defraud or attempt to defraud an insurance company. This information will be used for processing payments of claims, identifying and analyzing the nature, effects and costs of goods and services that are provided to automobile accident victims, by health care providers, and PREVENTING, DETECTING AND SUPPRESSING FRAUD.

To obtain further information about how your consent relates to pooling and data analytics to prevent and detect fraud please visit http://www.fsrao.ca/industry/insurance-anti-fraud

Name of Applicant or Substitute Decision Maker (please print)	Signature of Applicant or Substitute Decision Maker	Date (YYYY/MM/DD)

16

page. 205

708

Tab 2

17

APRIL 14, 2024

AFFIDAVIT # 17

EX A

TAB 2

PAGES 3 TO 1

RE MCLEAN

NOTES

ON

OLF - 1

NO CONSENT TO DISCLOSE TO [AND AUTHORITY] AS NEEC

TOOK FOR ANY PURPOSES TO BECOME RESPONDENT INSURER PARTY TO COLLECT AND USE FOR LAT PROCEEDING AFTER PURPORTED SOCIAL SIGNED BY MAN

709 Apr 14, 2021

PAGE 2

NOTES ON OCF-1

RE: DISCLOSURE FROM SNIGLEMAN RH TO TD

RE: TOBIC MASQUERADING AS RECIPIENT PARTY

GEN INS. CHIROPRACTIC

HT

ONLY AS REASONABLY NECESSARY TO ENABLE YOU OR THEM TO CARRY OUT THE ABOVE PURPOSES

WHAT ARE THE PURPOSES? ONLY REASONABLY NECESSARY

(1) RELATED TO CLAIMS FOR ACCIDENT BENEFITS
→ MUST BE DIRECTLY FROM ME
(NO CONSENT FOR TOBIC TO COLLECT TO DISCLOSE A DEPENDENT AND PARTY ET AL)

(2) ORIGINAL RECORD = PERFECT
AUTO INS. POLICY (OV) NONE
AUTO INS. CLAIM HISTORY = NONE

(4)
(A) Investigating my claim ≠ → NOT TOBIC acting as NON-INSURER IS LAT
⊕ Processing my claim

(B) Obtaining or verifying information relating to my claim → ENT
⊕ AMOUNT ≠ → NOT TOBIC ACTING → RESPONSIBLE TO LAT

(C) RELEVANT PAYMENT FROM ENT. ⊕ OTHERS LIABLE

710

(4) PAGE 19

(4) continued

(D) Identifying -> COGS -> VICTIMS -> HEARSAY CAVE PROVISIONS -> ≠ TDOIC MISAPPREHENSION AS IRRESPONSIBLE IN LAW

(E) SUPPRESSING FRAUD -> ≠ TDOIC MISAPPREHENSION AS RESPONSIBLE IN LAW

(F) COMPILING ANON STATS FROM CNT NEWS ≠ TDOIC NOT COVT AGENCY ≠ TDOIC MISAPPREHENSION AS RESP -> PARTY IN

(C) ASSESSING UNDERMINING -> SNIC UNDERMINING NOT TDOIC

MAKES ⊕ CCRMS EXPERIENCE ≠ TDOIC MISAPPREHENSION AS RESP IN.

---

(5)

DISCLOSE -> PERSONS OTHER THAN NCLEAR

L) PERSONS OTHER THAN SNIC

L) TDOIC

711 (20) QNE #5 RESPONDENTS EX A PAGE 3 (5)

(5) CONTINUED

NIEUWLAND = PERSON → INDIVIDUAL → EMPLOYEE TO SNS. STAFF DELTA

TDOIC = PERSON = ORGANIZATION

(-) NOT INSURED OR UNDERWRITE)

OR NONE OF THE ABOVE PURPOSES

WERE FOR TDOIC TO

ACT IN LIEU OF SNIC

IN LAT (SEE PARAGRAPHED SNIC

NOT ONLY AS NEAS DECISION RESPONSE)

~~NOT~~ TO COLLECT AND USE

FOR TDOIC TO UNLAWFULLY

AND UNIGATEWAY MASQUERADE

AS RESPONDENT PARTY

INSURED IN

LAT 23-015606

NO CONSENT

AND NOT

DIRECT

CONCLUSION = TDOIC CANNOT TAKE STEPS

AND EACH FILING ON

ATH 11, 2024 WAS

UNAUTHORIZED

7122 APR 14, 2024

21

PAGE 4 EX A AFFAIR

PAGE 4 INTERNAL

(8) LONGULT W NUMBER(SNIC)

↳ BASED ON NIGHLAND DOM

NOT UNTIL JAN 30, 2024

THAT TDGIC BECAME KNOWN ↳ PLAINTIFF IS MUNICIPAL

TO NELSON

↳ IMPOSSIBLE

(9) DISCLOSE TO OTHERS

W/OUT KNOWLEDGE OR CONSENT

≠ TDGIC MASQUERADING

AS RESPONDENT

AFTER CHAT

21

SOLICITOR SIGNED AGREEMENT (ALLEGEDLY)

THE PURPORTED SNIC REPORT

CONCLUSION = NOW THAT TDGIC HAS FILED AND SERVED NON COMPLIANT RESPONDENT HEARING BRIEFS → APR 11, 2024

→ ALL UNLAWFUL AND UNAUTHORIZED W/OUT CONSENT OF APPELLANT → BREACH OF OCE 4

713 PAGE 22 NOW 113 PAGE #1 EX. A AFFIDAVIT. PAGE 5 INTERIM

CONCLUSION CONTINUED

- ONLY AS REASONABLY NECESSARY TO CARRY OUT THE ABOVE PURPOSES DOES NOT EQUAL

TORONTO DOMINION GENERAL INSURANCE COMPANY

UNILATERALLY DECIDING, CONTARY TO OCF-1 AND PURPORTED SNIC RESPONSE, (SOLELY TO SNIC) AND SNIC

SEE ALL DOCS IN NON-COMPLIANT FILINGS

MISCHARACTERIZING AS RESPONDENT INSURANCE UNDERWRITER PARTY TO LAT 23-015662

REMEDY: STRIKING

→ NO AUTHORITY UPON WHICH TOGIC CAN CONTINUE AS IT (NOT SNIC) INCLUDED OCF-1 IN NON COMPLIANT FILINGS

714

Tab 3

PAGE 23

NOM #13

APRIL 14, 2024

AFFIDAVIT #17 EX'A-H

TAB B

PAGES 8 TO 15

RE: RELEVANT SECTIONS OF PIPEDA

CLD WITHOUT CONSENT NONE APPLICABLE

OCF - 1

TOGIC → NEVER SOUGHT MY CONSENT → NOTICE FEB 2024

766

AFFIDAVIT #18 PAGE 74
EX A NOM #13

THIS IS EXHIBIT "A" REFERRED TO IN THE
AFFIDAVIT OF KEVIN A MCLEAN
AFFIRMED BEFORE ME, THIS 15th DAY
OF APRIL, 2021

A COMMISSIONER, ETC.

Vinh The Tran, Esq., LSUC #57761C
Lawyer Notary Oaths Commissioner
188-639 Dupont Street, Toronto, ON
M6G 1Z4, T 647-209-7389
vinhtranlaw@hotmail.com

NOM #13
TAB #4

CanLII

Find in document

Personal Information Protection and Electronic Documents Act, SC 2000, c 5

Current version: in force since Jun 21, 2019

Link to the latest version :	https://canlii.ca/t/7vwj
Stable link to this version :	https://canlii.ca/t/541b8
Citation to this version:	Personal Information Protection and Electronic Documents Act, SC 2000, c 5, <https://canlii.ca/t/541b8> retrieved on 2024-04-14
Currency:	This statute is current to 2024-03-20 according to the Justice Laws Web Site

24 YEARS

Personal Information Protection and Electronic Documents Act

S.C. 2000, c. 5

716 (3) An organization may collect, use or disclose personal information only for purposes that a reasonable person would consider are appropriate in the circumstances.

Effect of designation of individual

6 The designation of an individual under clause 4.1 of Schedule 1 does not relieve the organization of the obligation to comply with the obligations set out in that Schedule.

Valid consent

6.1 For the purposes of clause 4.3 of Schedule 1, the consent of an individual is only valid if it is reasonable to expect that an individual to whom the organization's activities are directed would understand the nature, purpose and consequences of the collection, use or disclosure of the personal information to which they are consenting.

2015, c. 32, s. 5.

Collection without knowledge or consent

7 (1) For the purpose of clause 4.3 of Schedule 1, and despite the note that accompanies that clause, an organization may collect personal information without the knowledge or consent of the individual only if

(a) the collection is clearly in the interests of the individual and consent cannot be obtained in a timely way;

(b) it is reasonable to expect that the collection with the knowledge or consent of the individual would compromise the availability or the accuracy of the information and the

717 collection is reasonable for purposes related to investigating a breach of an agreement or a contravention of the laws of Canada or a province; NO

(b.1) it is contained in a witness statement and the collection is necessary to assess, process or settle an insurance claim; TOUIC → NOT INSURER NO

(b.2) it was produced by the individual in the course of their employment, business or profession and the collection is consistent with the purposes for which the information was produced; NO

(c) the collection is solely for journalistic, artistic or literary purposes; NO

(d) the information is publicly available and is specified by the regulations; or NO

(e) the collection is made for the purpose of making a disclosure

(i) under subparagraph (3)(c.1)(i) or (d)(ii), or

(ii) that is required by law. NO

Use without knowledge or consent

(2) For the purpose of clause 4.3 of Schedule 1, and despite the note that accompanies that clause, an organization may, without the knowledge or consent of the individual, use personal information only if

(a) in the course of its activities, the organization becomes aware of information that it has reasonable grounds to

718 believe could be useful in the investigation of a contravention of the laws of Canada, a province or a foreign jurisdiction that has been, is being or is about to be committed, and the information is used for the purpose of investigating that contravention;

(b) it is used for the purpose of acting in respect of an emergency that threatens the life, health or security of an individual;

(b.1) the information is contained in a witness statement and the use is necessary to assess, process or settle an insurance claim;

(b.2) the information was produced by the individual in the course of their employment, business or profession and the use is consistent with the purposes for which the information was produced;

(c) it is used for statistical, or scholarly study or research, purposes that cannot be achieved without using the information, the information is used in a manner that will ensure its confidentiality, it is impracticable to obtain consent and the organization informs the Commissioner of the use before the information is used;

(c.1) it is publicly available and is specified by the regulations; or

(d) it was collected under paragraph (1)(a), (b) or (e).

Disclosure without knowledge or consent

Electronically filed / Déposé par voie électronique : 18-Feb-2025
Toronto Superior Court of Justice / Cour supérieure de justice

7 (3) For the purpose of clause 4.3 of Schedule 1, and despite the note that accompanies that clause, an organization may disclose personal information without the knowledge or consent of the individual only if the disclosure is

(a) made to, in the Province of Quebec, an advocate or notary or, in any other province, a barrister or solicitor who is representing the organization;

(b) for the purpose of collecting a debt owed by the individual to the organization;

(c) required to comply with a subpoena or warrant issued or an order made by a court, person or body with jurisdiction to compel the production of information, or to comply with rules of court relating to the production of records;

(c.1) made to a government institution or part of a government institution that has made a request for the information, identified its lawful authority to obtain the information and indicated that

(i) it suspects that the information relates to national security, the defence of Canada or the conduct of international affairs,

(ii) the disclosure is requested for the purpose of enforcing any law of Canada, a province or a foreign jurisdiction, carrying out an investigation relating to the enforcement of any such law or gathering intelligence for the purpose of enforcing any such law,

720 **(iii)** the disclosure is requested for the purpose of administering any law of Canada or a province, or

(iv) the disclosure is requested for the purpose of communicating with the next of kin or authorized representative of an injured, ill or deceased individual;

(c.2) made to the government institution mentioned in section 7 of the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act* as required by that section; NO

(d) made on the initiative of the organization to a government institution or a part of a government institution and the organization TOUIC → NOT GOOT INSTITUTE

(i) has reasonable grounds to believe that the information relates to a contravention of the laws of Canada, a province or a foreign jurisdiction that has been, is being or is about to be committed, or

(ii) suspects that the information relates to national security, the defence of Canada or the conduct of international affairs; INVESTIGATING ≠ ACTING AS RESPONDENT

(d.1) made to another organization and is reasonable for the purposes of investigating a breach of an agreement or a contravention of the laws of Canada or a province that has been, is being or is about to be committed and it is reasonable to expect that disclosure with the knowledge or consent of the individual would compromise the investigation; DOES NOT ALLOW TOUIC TO BECOME RESP ⊕ FILE

(d.2) made to another organization and is reasonable for the purposes of detecting or suppressing fraud or of

721 preventing fraud that is likely to be committed and it is reasonable to expect that the disclosure with the knowledge or consent of the individual would compromise the ability to prevent, detect or suppress the fraud;

(d.3) made on the initiative of the organization to a government institution, a part of a government institution or the individual's next of kin or authorized representative and

(i) the organization has reasonable grounds to believe that the individual has been, is or may be the victim of financial abuse,

(ii) the disclosure is made solely for purposes related to preventing or investigating the abuse, and

(iii) it is reasonable to expect that disclosure with the knowledge or consent of the individual would compromise the ability to prevent or investigate the abuse;

(d.4) necessary to identify the individual who is injured, ill or deceased, made to a government institution, a part of a government institution or the individual's next of kin or authorized representative and, if the individual is alive, the organization informs that individual in writing without delay of the disclosure;

(e) made to a person who needs the information because of an emergency that threatens the life, health or security of an individual and, if the individual whom the information is about is alive, the organization informs that individual in writing without delay of the disclosure;

722 **(e.1)** of information that is contained in a witness statement and the disclosure is necessary to assess, process or settle an insurance claim;

(e.2) of information that was produced by the individual in the course of their employment, business or profession and the disclosure is consistent with the purposes for which the information was produced;

(f) for statistical, or scholarly study or research, purposes that cannot be achieved without disclosing the information, it is impracticable to obtain consent and the organization informs the Commissioner of the disclosure before the information is disclosed;

(g) made to an institution whose functions include the conservation of records of historic or archival importance, and the disclosure is made for the purpose of such conservation;

(h) made after the earlier of

(i) one hundred years after the record containing the information was created, and

(ii) twenty years after the death of the individual whom the information is about;

(h.1) of information that is publicly available and is specified by the regulations; or

(h.2) [Repealed, 2015, c. 32, s. 6]

(i) required by law.

723

Tab 4

PAGE 32

APRIL 14, 2024

TAB 4
EX A
AFFIDAVIT
#17

RE: PIDEDA
REQUEST #1
2024
PAGES 16
TO
39

Gmail (16) PAGE 33

Kevin McLean <mrkevinalexandermcleanbajdcim@gmail.com>

PIPEDA Request - delivered - TD (particularly TD Insurance) - with thanks

Kevin McLean <mrkevinalexandermcleanbajdcim@gmail.com> Tue, Jan 16, 2024 at 9:33 PM
To: TD.Privacy@td.com
Cc: carol.persaud@tdinsurance.com

EXCLUSIVELY FOR THE PURPOSES OF *PIPEDA*

FURTHER TO LAT APPEAL ALBEIT BROADER

January 15, 2024

Re: *PIPEDA* request of TD Insurance (August 31, 2022 to January 2024)

Dear TD Insurance (Privacy Officer):

My name is Kevin Alexander McLean and I was born on March 25, 1983.

I am making a *PIPEDA* access request in accordance with the below.

In light of the time being after five p.m., I confirm that this access request was made effective and deemed received on January 16, 2024.

As noted below (in the five (5) appendices), I have compiled the authorities and created the same over the years and they are applicable to my access request.

I confirm that I am the individual that is an insured person with TD Insurance Meloche Monnex ("TD Insurance") and Security National Insurance Company ("SNIC")[1] with the Claim Number 035325790-3 (the "Claim Number") and TD Policy Number #0010135511806 (the "Policy Number"). NO REFERENCE TO TOGIL

Since my previous access request was not addressed in compliance with *PIPEDA (albeit caused TD Insurance to retain all information subject of the same)*, and having reviewed the literature in this regard, it is best that I make a fresh *PIPEDA* request such that your Organization discloses any and all relevant personal information that it has in its control and/or any EUD along with an accounting of disclosures of the same.

In light of the above, I confirm that TD Insurance (the "Organization") is required to provide me with a compliant response by no later than February 15, 2024.

For particulars, I am requesting access to any and all personal information (in existence, used, or disclosed) and with strict compliance with the below accounting obligation with respect to disclosures to other persons.

While appreciating that TD Insurance may take the position that some of the information after December 27, 2023 (subject to an AABS Claim Number) is subject to "*litigation privilege*", I will rely on the Override Provision for needing the information (not necessarily personal information per se albeit likely being personal information) for my health, life and security as it remains threatened. S. 9(4)

But for providing identification to confirm my identity for your file purposes, this will be my last email herein and will await a compliant response with access to the above from August 31, 2022 until the relevant date herein in 2024. I am of course seeking access to the full "Accident Benefits File" involving the above from August 31, 2022 to January 2024. If there is any matter that you say is subject to "solicitor-client privilege", I will take the position that it is subject exceptions and the Override Provision. The same applies to any purported denial of access of "litigation privilege".

If there is a resolution with TD Insurance separately, I will promptly advise you of the same and whether part or all of the *PIPEDA* request has been withdrawn. However, until that time and unless you receive the same in writing from me,

this *PIPEDA* request shall remain extant. (17) PAGE 34

725 Kindly provide a compliant response to this email herein on or before February 15, 2024. Should anything be unclear, kindly advise me at your earliest opportunity or I will presume that all remains clear and precise.

Upon receipt of a fully compliant response with full access during the above temporal period solely involving TD Insurance, I will review the same and then be in a position to confirm that said *PIPEDA* request is closed.

As a courtesy, I have included the most recent insurance adjuster in Mr. Persaud on the email as that may be of assistance to your privacy division.

Thank you.

Appendices

Appendix 1

Upon this request, kindly provide the following (which is prioritized below)

i. **EUD:** existence, use, and disclosure of McLean personal information;
ii. **Access:** provide Mr. McLean with access to that information;
iii. **Holding PI:** an organization shall inform an individual whether or not the organization holds personal information about the individual.
iv. **Source:** Organizations are encouraged to indicate the source of this information
v. **Only used for Purpose:** The information provided shall only be used for this purpose
vi. **Third Party Account:** In providing an account of third parties to which it has disclosed personal information about an individual, an organization should attempt to be as specific as possible
   I. **May Have Disclosed:** When it is not possible to provide a list of the organizations to which it has actually disclosed information about an individual, the organization shall provide a list of organizations to which it *may* have disclosed information about the individual.
vii. **General Understandable:** The requested information shall be provided or made available in a form that is generally understandable
   I. **Unresolved challenges:** When appropriate, the existence of the unresolved challenge shall be transmitted to third parties having access to the information in question

Third Party Account: *Kindly provide* a **Third Party Account** of any other organizations you may have disclosed **McLean Personal Information**

Source of EUD: Kindly provide any timelines of when you received the information from any source and when your services commenced and discontinued
   i. If not possible to ascertain the exact names, then the potential names and timelines since the relevant period above (see: TD MyAdvantage App and other particulars herein).

Appendix 2

WHAT IS PI?
Personal Information is information about an identifiable individual (see: *PIPEDA*, s. 1).
Part B(II): Federal Court Interpretation
Part B(III)(i): Broad and Expansive Interpretation

Drawing from jurisprudence in the federal public sector, the definition of personal information must be given a broad and expansive interpretation (Dagg v. Canada (Minister of Finance), [1997] 2 S.C.R., dissenting, 403 at para 68, Canada (Information Commissioner) v. Canada (Transportation Accident Investigation and Safety Board), 2006 FCA 157; *Canada (Information Commissioner) v. Canada (Commissioner of the Royal Canadian Mounted Police)*, [2003] 1 S.C.R. 66, 2003 SCC 8, at para 23).

Part B(II)(ii): About: Relates or Concerns

Personal information is information "about" an identifiable individual. "About" means that the information is not just the subject of something but also relates to or concerns the subject (Canada (Information Commissioner) v. Canada (Transportation Accident Investigation and Safety Board), 2006 FCA 157).

Part B(II)(iii): Serious Possibility

Information will be about an "identifiable individual" where there is a serious possibility that an individual could be identified through the use of that information, alone or in combination with other information (Gordon v. Canada (Health), 2008 FC 258 (CanLII).

Part B(II)(iv): Need Not Be Recorded

Information need not be recorded for it to constitute personal information.

Part B(II)(v): Oral Conversations and Real Time Surveillance

It is sufficient that the information be about an identifiable individual even if the information is not in a recorded form, such as oral conversations, biological samples and real time video surveillance

Part B(II)(vi): Absence of Recording

While the absence of a recording may go to the issue of collection, it does not change the fact that the information is personal information (Morgan v. Alta Flights Inc. (2006) FCA 121, affirming (2005) FC 421).

Part B(II)(v): Even if Public – Irrelevant

Information will still be personal information even if it is publicly available within the meaning of the regulations and is exempt from applicable consent requirements (Englander v. TELUS Communications Inc., 2004 FCA 387 (CanLII)).

Part B(II)(vi): Subjective Information

Subjective information about an individual may still be personal information even if it is not necessarily accurate (Lawson v. Accusearch Inc. 2007 FC 125).

Part B(II)(vii): Business and Professional Context

An individual's cell phone records from their work cell phone may be the personal information of the individual.

Part B(II)(viii): Company Association

However, an individual's personal information may be so inextricably linked to information about his or her company (e.g. an owner/operator of a small business) that information about that company can constitute personal information about the individual.

Part B(II)(ix): Personal Information in the Business and Professional Context

Other personal information in the Business and Professional context include:

1. NOA and SIN
2. Email addresses and fax numbers
3. Messages
4. Purchase
5. Services
6. Transactions
7. Membership
8. Account Information; and
9. Complaint Information.

Part B(II)(x): De-Identified is Irrelevant

Personal information that has been de-identified does not qualify as anonymous information if there is a serious possibility of linking the de-identified data back to an identifiable individual.

Part B(II)(xi): Financial Context

Examples of financial information which may constitute personal information of an individual include:
1. bank account numbers;
2. summaries or balances
3. transaction histories
4. Debt-related information
5. Mortgage information; Credit reports
6. Credit scores

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Part B(II)(xi): TECHNOLOGICAL
Examples of personal information in the technological context include forms of biometric information, such as fingerprints and voiceprints. A photograph of an individual's home may constitute the personal information of that individual. Video surveillance that captures an individual's physical image or movement may also constitute his or her personal information even if it is not taped since the definition of personal information in *PIPEDA* does not require that the information be recorded.

Part B(II)(xii): IP Addresses

An Internet Protocol (IP) address can be considered personal information if it can be associated with an identifiable individual. For example, in one complaint finding, we determined that some of the IP addresses that an internet service provider (ISP) was collecting were personal information because the ISP had the ability to link the IP addresses to its customers through their subscriber IDs. See also a report prepared by the Technology Analysis Branch of the OPC on "What an IP Address Can Reveal About You".

APPENDIX 3: BASIC PRINCIPLES:
Resolution Based – when it Reached OPCC
One of the Commissioner's primary roles is to investigate and try to resolve privacy complaints

General Principles
While findings on a given issue may differ depending on the facts of each case and the position of the parties, over time, findings on certain key issues can crystallize into general principles that can serve as helpful guidance for both complainants and organizations.
Summary and Guide
In an effort to summarize the general principles that have emerged from court decisions and the Commissioner's findings to date, the OPC issues interpretations of certain key concepts in *PIPEDA*. These interpretations are not binding legal interpretations, but rather, are intended as a guide for compliance with *PIPEDA*. As the Commissioner issues more findings, and the courts render more decisions, these interpretations may evolve and be further refined.
I. Relevant Statutory Provisions
of the *Personal Information Protection and Electronic Documents Act, S.C. 2000, c. 5 (PIPEDA)*
EUD
Principle 4.9: Upon request, an individual ***SHALL*** be informed of the existence, use, and disclosure of his personal information and be given access to that information. [note: holding or control is merely one factor and not determinative]
Challenge Existence
An individual ***SHALL*** be able to challenge the accuracy and completeness of the information and have it amended as appropriate [note: in order to challenge, Mr. McLean must know the EUD along with Accen]
Holding is One Aspect
Principle 4.9.1: Upon request, an organization ***SHALL*** inform an individual whether or not the organization holds personal information about the individual.
Source

Organizations are encouraged to indicate the source of this information. (W) PAGE 37

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Shall Allow Access to Holding or Held

The organization ***SHALL*** allow the individual access to this information.

Accounting of Use: Has Been or Is Being; Third Parties Received Disclosure

In addition, the organization ***SHALL*** provide an account of the use that has been made or is being made of this information and an account of the third parties to which it has been disclosed.

Sufficient Information by Mr. McLean as and Only for this Purpose

Principle 4.9.2: An individual may be required to provide sufficient information to permit an organization to provide an account of the existence, use, and disclosure of personal information. The information provided ***SHALL*** only be used for this purpose.

Account of Third Parties – Specifics and Particulars

Principle 4.9.3: In providing an account of third parties to which it has disclosed personal information about an individual, an organization should attempt to be as specific as possible.

May Have Disclosed

When it is not possible to provide a list of the organizations to which it has actually disclosed information about an individual, the organization ***SHALL*** provide a list of organizations to which it may have disclosed information about the individual.

30 Calendar Days pg

Principle 4.9.4: An organization ***SHALL*** respond to an individual's request within a reasonable time and at minimal or no cost to the individual.

Generally Understandable – Codes with Explanations

The requested information ***SHALL*** be provided or made available in a form that is generally understandable. For example, if the organization uses abbreviations or codes to record information, an explanation ***SHALL*** be provided.

Inaccurate or Incomplete

Principle 4.9.5: When an individual successfully demonstrates the inaccuracy or incompleteness of personal information, the organization ***SHALL*** amend the information as required. Depending upon the nature of the information challenged, amendment involves the correction, deletion, or addition of information.

Transmitted to Third Parties as Well

Where appropriate, the amended information ***SHALL*** be transmitted to third parties having access to the information in question.

TOGIC → TD INS. START

Unresolved Challenges and Transmitted to Third Parties

Principle 4.9.6: When a challenge is not resolved to the satisfaction of the individual, the substance of the unresolved challenge ***SHALL*** be recorded by the organization. When appropriate, the existence of the unresolved challenge ***SHALL*** be transmitted to third parties having access to the information in question.

In Writing

Section 8(1): A request under clause 4.9 of Schedule 1 must be made in writing. (s

Assist Mr. McLean

Section 8(2): An organization ***SHALL*** assist any individual who informs the organization that they need assistance in preparing a request to the organization.

Due Diligence – No Later than 30 Days

Section 8(3): An organization ***SHALL*** respond to a request with due diligence and in any case not later than thirty days after receipt of the request.

No Extensions As Of Yet: Organizations are Large Companies with Immense Resources; No Third Party Consultations (McLean Objects); and Conversion is Simple for Tech Companies with Vast Resources – Simply Decrypt or Inflate

Section 8(4): An organization may extend the time limit (a) for a maximum of thirty days if (i) meeting the time limit would unreasonably interfere with the activities of the organization, or (ii) the time required to undertake any consultations necessary to respond to the request would make the time limit impracticable to meet; or (b) for the period that is necessary in order to be able to convert the personal information into an alternative format.

Right to Make a Complaint for Extension of Time

In either case, the organization ***SHALL***, no later than thirty days after the date of the request, send a notice of extension to the individual, advising them of the new time limit, the reasons for extending the time limit and of their right to make a complaint to the Commissioner in respect of the extension.

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(W) PAGE 38

Reasons for Refusal, Particulars of Reasons and Recourse

Section 8(7): An organization that responds within the time limit and refuses a request *SHALL* inform the individual in writing of the refusal, setting out the reasons and any recourse that they may have under [Part I of *PIPEDA*].

Retention After Privacy Request

Section 8(8): Despite clause 4.5 of Schedule 1, an organization that has personal information that is the subject of a request *SHALL* retain the information for as long as is necessary to allow the individual to exhaust any recourse under [Part I of *PIPEDA*] that they may have.

Mr. McLean Has Not Made any Third Party Privacy Requests

Section 9(1) : Despite clause 4.9 of Schedule 1, an organization *SHALL* not give an individual access to personal information if doing so would likely reveal personal information about a third party. However, if the information about the third party is severable from the record containing the information about the individual, the organization *SHALL* sever the information about the third party before giving the individual access.

No Solicitor-Client Privilege – No Litigation Privilege - No Confidential Commercial Information Sought No Individual Requests – No Formal Dispute Resolution Process – Sever If Necessary (note: Mr McLean is only seeking his PI)

Section 9(3): Despite the note that accompanies clause 4.9 of Schedule 1, an organization is not required to give access to personal information only if (*a*) the information is protected by solicitor-client privilege or the professional secrecy of advocates and notaries or by litigation privilege; (*b*) to do so would reveal confidential commercial information; (*c*) to do so could reasonably be expected to threaten the life or security of another individual; (*c.1*) the information was collected under paragraph 7(1)(*b*); (*d*) the information was generated in the course of a formal dispute resolution process; or (*e*) the information was created for the purpose of making a disclosure under the *Public Servants Disclosure Protection Act* or in the course of an investigation into a disclosure under that Act.

Must Notify Commissioner if Refusing Access

Section 9(5): An organization that decides not to give access to personal information in the circumstances set out in paragraph (3)(*c.1*) *SHALL*, in writing, so notify the Commissioner, and *SHALL* include in the notification any information that the Commissioner may specify.

V. Application by the Courts and the OPC in Different Contexts

Whether an organization can be said to meet its access obligations under *PIPEDA* will vary depending on the facts of each complaint investigation. The following examples illustrate how the access principle has been interpreted and applied by the Courts and the OPC in different contexts.

Policies, Practices, and Procedures

An organization should have procedures in place to ensure that an access to personal information request is properly processed.[5]

- *PIPEDA* Case Summary #2007-377 Law firm's shoddy privacy practices result in missing personal information, request for access denied
- *PIPEDA* Case Summary #2007-367 Need to establish procedures for handling access to personal information requests streamed
- *PIPEDA* Case Summary #2014-016 Sobeys Refuses to Respond to Customer's Requests for Access to Personal Information and Does Not Participate in Subsequent OPC Investigation

STRAIGHTFORWARD: Organizations should have a straightforward procedure that will be adhered to by the personnel handling access to personal information requests.

- *PIPEDA* Report of Findings #2011-002 Airline must ensure policies comply with Canadian privacy law

ADEQUATE TRAINING: Organizations must adequately train their staff on how to properly handle access to personal information requests and on the legal obligations of the organization in this regard.

- *PIPEDA* Case Summary #2009-014 Fraud detection not an acceptable reason to collect driver's licence numbers for store memberships

Right of Access

Includes Documents under PI

PIPEDA does not give individuals a right of access to *any* document. Rather, it entitles individuals to be informed of the existence, use and disclosure of *their* personal information. (*Fahmy v. Bank of Montreal*, 2016 FC 479)

In response to an access to personal information request, organizations need only search for and provide those records related to the conduct of their business. (*Johnson v. Bell Canada*, 2008 FC 1086)

Request of an Insurance Company – Access Required

Handwritten notes of a doctor taken during an independent medical examination performed at the request of an insurance company may be subject to an access request. (*Wyndowe v. Rousseau*, 2008 FCA 39) FCA 39

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Control

Recovery of Overwritten or Deleted Data – Compelling Evidence that It Existed

"It CANNOT be seriously suggested that an organization has a responsibility to recover deleted or overwritten data in the absence of compelling evidence that it existed.

Critical Need: is my view, such a herculean task should only be required to be undertaken, if ever, in circumstances where there is a critical need for the recovered information." (*Johnson v. Bell Canada*, 2008 FC 1086)

Reasonable Search

An organization receiving a broad request for access to personal information has two options: (1) it can inquire of the party making the request if the party *can be more specific* as to the information requested, in which case the requesting party has an obligation to cooperate in defining the request, or (2) it can conduct a reasonable search of information it can reasonably expect to be responsive to the request. Where that latter course is chosen, and absent further evidence, there is no reason to conduct a search for messages falling outside the scope of what the organization reasonably believes it would collect, use and disclose in the course of its business operations. (*Johnson v. Bell Canada*, 2008 FC 1086)

Where an organization has conducted a reasonable search in response to an access request, and the requester claims that there is other information that has not been produced, the burden lies on the requester to establish at least a *prima facie* case that the search was inadequate. (*Johnson v. Bell Canada*, 2008 FC 1086)

In responding to access requests, organizations must search all their files and locations for personal information, not only those that are obvious sources of such data.

- *PIPEDA* Report of Findings #2009-023 Email regarding vehicle repair complaint used for marketing without consent

Responding to Access Requests

RELEASE ALL – EVEN WHERE NOT REQUESTED: A complainant who requests access to all personal information relating to him or her should be provided with all information that the organization can provide to the complainant. If the organization has the information and there is no reason to deny access, it should release all the responsive information even though certain documents were not specifically requested.

- *PIPEDA* Case Summary #2005-291 Collection agency adopts narrow interpretation of access to personal information request

WHERE IT LOOKED: When an organization responds to an access request, it should give an indication of where it looked for the requestor's information and the types of information it holds.

FORTHCOMING: Organizations should be forthcoming in providing details regarding the sources of information and to whom information has been disclosed (NOTE: may not be in possession or control but HAD DISCLOSED)

- *PIPEDA* Case Summary #2007-370 Airline broadens interpretation of personal information and improves handling of personal information access

MEANINGFUL WAY: When in receipt of a request for access to personal information, organizations must respond in a meaningful way, even if only to indicate that they have already provided the individual with all of their information, or if only to indicate that they have no information that is responsive to the request ("EUD").

- *PIPEDA* Report of Findings #2010-005 An organization Improperly Discloses Client's Personal Information
- *PIPEDA* Report of Findings #2013-005 Beneficiary's access to estate information is limited to his own personal information under *PIPEDA*

DESTROYED: An individual should be advised when personal information has been destroyed in accordance with an organization's retention policy, if this is in response to a personal information access request.

- *PIPEDA* Settled Case Summary #2016-001 Complaint about access request settled as audio recordings were deleted in accordance with retention policy

RETAINED: An organization must, within the time limits prescribed in *PIPEDA* , inform an individual in writing of an access request refusal, setting out the reasons for the refusal and any recourse that the individual may have under *PIPEDA* .

- *PIPEDA* Case Summary #2003-216 An airport is accused of not having disclosed all the personal information requested by an employee and of not having retained other personal information
- *PIPEDA* Case Summary #2003-149 Individual denied access to personal information
- *PIPEDA* Report of Findings #2017-008 Jet Airways says possibility of litigation allows it to refuse access to personal information

IMPROPER TO SAY COURT PROCEEDING OR OTHER ORGANIZATION: An organization **CANNOT** refuse to provide access to personal information on that basis that the information can be obtained through some other channel, such as a court proceeding.
- *PIPEDA* Report of Findings #2014-017 Collection agency can't refuse access to personal information on basis that it would be provided as part of a legal proceeding

Form

NO REQUIREMENT TO REFERENCE *PIPEDA*: There is no obligation for requesters to specify in an access to personal information request that they are making their request pursuant to *PIPEDA*.
- *PIPEDA* Case Summary #2003-222 Bank exceeds time limits in responding to an access request

GENERALLY UNDERSTANDABLE: The requested information *SHALL* be provided in a form that is generally understandable. For example, if the organization uses abbreviations or codes to record information, an explanation *SHALL* be provided.
- *PIPEDA* Report of Findings #2009-023 Email regarding vehicle repair complaint used for marketing without consent

ONUS ON ORGANIZATION: Principle 4.9.4 clearly puts the onus on the organization to explain information in understandable terms to the individual and *PIPEDA* makes no provision for an organization to refer the individual to another organization for that purpose.
- *PIPEDA* Case Summary #2002-049 Credit applicant accuses bank of withholding credit reporting information

TIME LIMIT

SHORTENED TIME LIMIT: When receiving an individual's access request, the organization should determine as quickly as possible whether it will be able to complete the request within the initial time limit allowed by *PIPEDA*.

PARTIAL RESPONSES DO NOT MEET THE 30 DAY TIME LIMIT: The Commissioner found that an organization's partial response to an access request within 30 days was not sufficient to satisfy the 30 day time limit provided for in *PIPEDA*.
- *PIPEDA* Case Summary #2003-229 Bank denied individual access to her personal information

NO CONSULTATIONS AND OBJECTIONS: A time extension cited by an organization under s. 8(4)(a)(ii) of *PIPEDA* was found not to be valid as no consultations were undertaken to find the information an individual had requested.
- *PIPEDA* Case Summary #2004-266 Bank improves credit card application process

MEDICAL LEAVE INSUFFICIENT TO EXTEND TIME: The fact that a member of the organization's staff may have been on medical leave does not excuse the organization under *PIPEDA* for not respecting the time limits. The organization is responsible for ensuring that it has, at all times, appropriate arrangements to comply with the Act.
- *PIPEDA* Report of Findings #2017-008 Jet Airways says possibility of litigation allows it to refuse access to personal information

STILL MUST RESPONSE WITH REASONS FOR "EUAD": Even if an organization believes it is entitled to refuse an access request, it must nevertheless respond to the request within the time limits set out in section 8 and provide reasons for the refusal.
- *PIPEDA* Report of Findings #2017-008 Jet Airways says possibility of litigation allows it to refuse access to personal information

Retention

RETAIN UNTIL ALL APPEALS EXHAUSTED: "From a practical and pragmatic standpoint, what subsection 8(8) of *PIPEDA* requires of an organization is that it retain that information that it has discovered in its search that is or may be responsive to the request, until the person making the request has exhausted all avenues of appeal." (*Johnson v Bell Canada*, 2008 FC 1086)

OVERRIDE: For personal information implicated in a specific access request, organizations should consider, and where necessary, override their regular deletion/retention practices until such time as the individual has exhausted any recourse under *PIPEDA* to get access to that information.
- *PIPEDA* Case Summary #2010-003 Poor response to customer's access requests causes unnecessary deletion of his personal information

9(1) Personal information of a third party

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Paragraph 9(1) of *PIPEDA* provides that an individual *SHALL* not be given access to personal information if doing so would likely reveal information about a third party. However, if information about the third party is severable, it *SHALL* be severed. (*Cote v. Day & Ross Inc.*, 2015 FC 1283)

If information about a third party is severable from the record pertaining to an individual's access request, the organization must sever the information about a third party and give the individual access to his or her personal information.

- *PIPEDA* Case Summary #2005-314 Insurance company denies access to personal information in third party claimant's statement
- *PIPEDA* Case Summary #2017-002: Access to personal information held by insurance company facilitated through the early resolution process

EMPLOYEES USE AS WELL – EXCEPT DISCIPLINARY ACTION TAKEN AGAINST EMPLOYEES: Individuals have a right to know the details of unauthorized access of their personal information by an organization's employees. However, organizations must protect third party personal information, such as the disciplinary action taken against the employee involved.

PIPEDA Case Summary #2016-001 Bank shares details on employee's snooping but, rightly, not discipline

9(3)(a) – information protected by solicitor-client privilege / professional secrecy of lawyers and notaries

IMMEDIATE REFERRAL (see: also Exhibit "A"): For purposes of independently verifying claims of solicitor-client privilege invoked by organizations as grounds for refusing access, the Privacy Commissioner may refer the issue to the Federal Court at any point in the course of an investigation, or the Privacy Commissioner may report an impasse over the issue of privilege in a Report of Findings and bring an application to the Federal Court for relief. (*Canada (Privacy Commissioner) v. Blood Tribe Department of Health*, 2008 SCC 44; *Privacy Commissioner of Canada v. Air Canada*, 2010 FC 429)

NO ADMIN TRIBUNAL AND NO GRIEVANCE DISPUTE: Information withheld under paragraph 9(3)(a) can include information prepared by company lawyers with respect to a workers' compensation board dispute and a grievance lodged by a complainant.

- *PIPEDA* Case Summary #2003-147 Railway company withholds employee's personal information

LITIGATION PRIVILEGE – IRRELEVANT – NO DOMINANT PURPOSE (SEE: ALSO EXHIBIT A): Under paragraph 9(3)(a) of *PIPEDA*, an organization can withhold access to personal information if it is subject to litigation privilege. Litigation privilege is a component of solicitor-client privilege; it protects materials brought into existence for the **DOMINANT** purpose of litigation or reasonably anticipated litigation

- *PIPEDA* Case Summary #2011-003 Personal Information Collected in Company's Defence of Damage Claim Falls under *PIPEDA*
- *PIPEDA* Case Summary #2009-018 Psychologist's anonymized peer review notes are the personal information of the patient

BLANKET POLICY – UNLAWFUL: A blanket policy applicable to all documents generated from incidents on board an aircraft did not, in the Commissioner's view, meet the test for solicitor-client privilege or litigation privilege.

- *PIPEDA* Report of Findings #2017-008 Jet Airways says possibility of litigation allows it to refuse access to personal information

9(3)(b) – confidential commercial information

MUST ARTICULATE REASONS: In light of the quasi-constitutional nature of *PIPEDA*, courts CANNOT simply defer to the general qualification given by an organization to the information withheld under paragraph 9(3)(b) of the Act for confidential commercial information. There must be articulate reasons for denying access to any particular document. The standard for justifying the withholding of information under paragraph 9(3)(b) of the Act is very high (*Bertucci v. Royal Bank of Canada*, 2016 FC 332)

RAW DATA: "Raw data" about an individual –does not fall within the exemption under paragraph 9(3)(b) of the Act (*Bertucci v. Royal Bank of Canada*, 2016 FC 332)

VERY HIGH STANDARD: The standard for justifying the withholding of personal information because it would reveal confidential commercial information is very high. Providing access to personal information upon request is the rule and withholding such information is the exception.

- *PIPEDA* Findings #2017-011 Financial institution originally misuses confidential commercial information exemption to withhold personal information

EVEN AT ADMIN TRIBUNAL – STILL DISCLOSED: The Commissioner did not agree that information regarding compensation paid to the complainant and the costs related to his claim with the province's workplace safety board constituted confidential commercial information.

o *PIPEDA* Case Summary #2003-147 Railway company withholds employee's personal information

9(3)(d) – information generated in the course of a formal dispute resolution process

MUST BE FORMAL: In order to qualify as a "formal dispute resolution process" pursuant to paragraph 9(3)(d) of *PIPEDA* , as a basis for withholding access to personal information, the process's purpose must be to resolve a dispute and the process itself must be formal. A formal process mandates the presence of a framework or structure, either legislated or agreed to by the parties to the dispute

o *PIPEDA* Report of Findings #2016-006 An insurance company's internal ombudsman office is not a "formal dispute resolution process" under *PIPEDA*

Notes generated in the process of conducting a medical evaluation to assist an insurer in determining the complainant's eligibility for benefits were not considered to have been "generated in the course of a dispute resolution process".

o *PIPEDA* Case Summary #2005-306 Physician refuses to provide access to individual's personal information

An insurance company's internal ombudsman office is not considered a "formal dispute resolution process" under *PIPEDA* .

o *PIPEDA* Report of Findings #2016-006 An insurance company's internal ombudsman office is not a "formal dispute resolution process" under *PIPEDA*

A grievance and arbitration process can be considered a formal dispute resolution process.

o *PIPEDA* Case Summary #2006-330 Assistant Commissioner considers the nature of certain dispute resolution processes in denial of access complaint

o *PIPEDA* Case

Corrections

Merely informing a third party that information has been amended without sending the amended information to the third party is not sufficient to satisfy the requirement set out in clause 4.9.5 of *PIPEDA* , (*Hamma v. TransUnion of Canada Inc.*, 2010 FC 1284)

An individual must demonstrate the inaccuracy of the information that an organization holds for the organization to be required to amend the information in question.

o *PIPEDA* Case Summary #2005-293 Commissioner considers access, correction, and inappropriate disclosure allegations against insurance company

o *PIPEDA* Case Summary #2006-359 Bank reported accurate information regarding bounced cheque

o *PIPEDA* Case Summary #2002-070 Bank accused of assigning inaccurate credit ratings

Organizations must keep personal information as accurate, complete and up-to-date as is necessary for the purposes for which it is to be used. Organizations must amend an individual's personal information as required when the individual successfully demonstrates either the inaccuracy or the incompleteness of the information.

o *PIPEDA* Report of Findings #2013-008 Individual objects to the real-time accuracy of credit score

o *PIPEDA* Report of Findings #2013-010 In response to a case of a teen who was a victim of online impersonation, Facebook agrees to help non-users, on a case-by-case basis, reinstate their on-line reputation

Where appropriate, the amended information *SHALL* be transmitted to third parties having access to the information in question.

o *PIPEDA* Report of Findings #2013-010 In response to a case of a teen who was a victim of online impersonation, Facebook agrees to help non-users, on a case-by-case basis, reinstate their on-line reputation

o *PIPEDA* Case Summary #2016-010 Credit reporting agency takes remedial action after failing to maintain accurate records

An organization was found to have met its obligations under Principle 4.9.6 when it gave an individual the opportunity to provide a statement regarding a disputed entry, which the organization then recorded and attached to the individual's credit file and transmitted to any third parties having access to the individual's credit information.

o *PIPEDA* Case Summary #2002-102 Individual objects to agency's delayed response to request for credit history

APPENDIX 3

NO APPLICABILITY OF PRIVILEGE (ATTORNEY-CLIENT PRIVILEGE IS NOT SOLICITOR-CLIENT PRIVILEGE)

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COST: not prohibitively costly as simply seeking existence, use or disclosure
i. (note: should be a matter of reviewing logs

OTHER INDIVIDUALS (NOT RELEVANT AS IT ONLY RELATES TO OTHER ORGANIZATIONS): Mr. McLean already has these references;

i. Conclusion: not applicable

NOT THREATEN THE LIFE OR SECURITY OF ANOTHER INDIVIDUAL: Mr. McLean is only seeking existence, use or disclosure of his Personal Information, and disclosure to other Organizations;

i. CONCLUSION: not applicable

USE TO LIC NON
↳ BUT 2nd Access req.
After review 2nd of TOU

NOT COLLECTED UNDER 7(1)(b):

CONCLUSION: not applicable

NOT CONFIDENTIAL COMMERCIAL INFORMATION: Mr. McLean is not seeking confidential commercial information but rather EUD about his PI or disclosed to other Organizations;

i. CONCLUSION: not applicable

NOT FORMAL DISPUTE RESOLUTION PROCESS: it was not generated in the course of a formal dispute resolution process but in response to a privacy request;

i. CONCLUSION: not applicable

NOT *PUBLIC SERVANTS DISCLOSURE PROTECTION ACT*

CONCLUSION: not applicable

SOLICITOR-CLIENT PRIVILEGE

does not exist because the Organizations are not law firms;

report about Incidents does not meet the test (see: ***PIPEDA* Report of Findings #2017-008**)

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"In our view, a blanket policy applicable to all documents generated from onboard incidents would not meet the tests for solicitor-client privilege and litigation privilege. Not every document that is prepared in response to an onboard incident will be for the dominant purpose of litigation or involve a solicitor-client communication. Such a policy would, in all likelihood, lead to privilege claims that are overbroad, and therefore in contravention of the respondent's obligation to provide access to personal information under the Act.

While the respondent no longer maintains its position that all documents generated as a result of an onboard incident are subject to litigation privilege, it has submitted that it was entitled to claim litigation privilege once the "legal notice" was issued. In our view, such a position is also problematic as it means potentially claiming litigation privilege for documents that were created prior to a "legal notice" being received and which were not created for the dominant purpose of litigation that is reasonably contemplated"

PAGE 47

LITIGATION PRIVILEGE: did not exist and does not exist as it does not meet the test

that litigation was **ongoing** or was **reasonably contemplated** at the time the document was ***CREATED; and***

ii. that the **dominant purpose** of creating the document was to prepare for that litigation

1. Litigation privilege protects from disclosure materials created or gathered by a lawyer, including communications between a lawyer and **Third Parties**, where litigation was in reasonable prospect at the time of the communication, and the dominant purpose of the communication was litigation: see ***Hamalainen v. Sippola*** (1991), 1991 CanLII 440 (BC CA), 62 B.C.L.R. (2d) 254 at 260 (C.A.).

iii. Not at the point of preparing for litigation as no complaint is even filed (then or now) – merely an access request under provincial legislation (not federal)

Appendix 4 – Override

Mr. McLean's needs the information (EUD) because his life, health or security are threatened as a result of the Accident on August 31, 2022 and continue to be threatened until he has access to the Personal Information.

Appendix 5: Created Document by Applicant regarding "Shall Clauses"

Organizations have 53 Distinct and Independent Obligations under *PIPEDA*

CREATED BY MCLEAN

SHALL: word count – Schedule 1 – ten clauses – 53 + times

The word "**SHALL**" appears 127 times in *PIPEDA*.

The word "**SHALL**" appears for the 72nd time under Clause 1 of Schedule 1 which leaves 55 times in the remainder of *PIPEDA*.

SOME UNDER ONE SUB CLAUSE

Schedule 2 to 4 do not utilize the word "**SHALL**".

PRINCIPLE #1: Accountability

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PRINCIPLE #1: Accountability

SHALL #1: Accountable Individuals Compliance

An Organization is responsible for Personal Information under its control and **SHALL** designate an Individual or Individuals who are accountable for the Organization's compliance with the following principles.

PRINCIPLE #1: Accountability

SHALL #2

The identity of the Individual(s) designated by the Organization to oversee the Organization's compliance with the principles **SHALL** be made known upon request.

PRINCIPLE #1: Accountability

SHALL #3

The Organization **SHALL** use

a. contractual or
b. other means

i. to provide a comparable level of protection while the information is being *processed* by a third party.

PRINCIPLE #1: Accountability

SHALL #4 (four times)

SHALL #4(A): POP

Organizations **SHALL** implement policies and practices to give effect to the principles: implementing procedures to protect Personal Information.

SHALL #4(B):

Organizations **SHALL** implement policies and practices to give effect to the principles establishing procedures to receive and respond to complaints and inquiries;

SHALL #4(C):

Organizations **SHALL** implement policies and practices to give effect to the principles: training staff and communicating to staff information about the Organization's policies and practices

SHALL #4(D):

Organizations **SHALL** implement policies and practices to give effect to the principles developing information to explain the Organization's policies and procedures

737 Principle #2: Identifying Purposes

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Principle #2: IDENTIFYING PURPOSES
SHALL #5: Collection of Personal Information
Identified by Organization at or BEFORE the time information is collected

The purposes for which **Personal Information** is collected **SHALL** be identified by the **Organization** at or before the time the information is collected. AT THE TIME : SEE CLAUSE 4

Principle #2: IDENTIFYING PURPOSES
SHALL #6: SHALL "document" the purposes for which Personal Information is collected

The **Organization SHALL** document the purpose for which **Personal Information** is collected in order to comply with the Openness principle (Clause 4.8) and the **Individual** Access principle (Clause 4.9).

Principle #2: IDENTIFYING PURPOSES
SHALL #7: If Organization fails to identify the purpose at the time of collection, new purpose requires consent of Individual

When **Personal Information** that has been collected is to be used for a purpose not previously identified, the new purpose **SHALL** be identified prior to use.

Unless the new purpose is required by law, the consent of the **Individual** is required before information can be used for that purpose.

a. For an elaboration on consent, please refer to the Consent principle (Clause 4.3).

Principle #3: Consent

Principle #3: Consent
SHALL #8 and Shall #8(A)
Individual advised of purposes for which information will be use

The principle requires "knowledge and consent". **Organizations SHALL** make a reasonable effort to ensure that the **Individual** is advised of the purposes for which the information will be used. → ADEQUATELY INFORMED

To make the consent meaningful, the purposes must [SHALL] be stated in such a manner that the **Individual** can reasonably understand how the information will be used or disclosed. (Clause 4.3.2.) → TOOLS TO DIFF IN. TO DEFEND REASONS

Principle #3: Consent
3 Obligations upon Organizations under Principle #3
Shall #9, Shall #10 and Shall #11
SHALL #9: Applicable Supply - Product or Service-

An Organization SHALL not, as a condition of the supply of a product or service, require an **Individual** to consent to the collection, use, or disclosure of information beyond that required to fulfil the explicitly specified, and legitimate purposes.

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SHALL #10: Form of Consent

In determining the form of consent to use, Organizations **SHALL** take into account the sensitivity of the information

PRINCIPLE #3: CONSENT

SHALL #11: Consent SHALL NOT be obtained through deception[1]

Consent **SHALL** not be obtained through deception.

Principle 4: Limiting Collection
5 Obligations under Principle 4
Shall #12 to #16

SHALL #12 and #13

Principle 4: Limiting Collection
SHALL #12: Limited to Necessary for Purposes Identified for Organization[2]

The collection of **Personal Information SHALL** be limited to:

that which is necessary for the purposes identified by the Organization.

Principle 4: Limiting Collection
SHALL #13: Fair and Lawful Means

Information **SHALL** be collected by fair and lawful means.

Principle 4: Limiting Collection
SHALL #14 to #16:
SHALL #14:
SHALL #15:
SHALL #16:

Principle 4: Limiting Collection
SHALL #14: Prohibited – collect PI carelessly

Organizations **SHALL NOT** collect **Personal Information** indiscriminately.

Principle 4: Limiting Collection
SHALL #15: Limited to what is necessary to fulfill purposes

Both the:
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amount [of information]; and

c. the type of information

i. collected

1. SHALL be limited to

a. that which is necessary to fulfil the purposes identified.

Principle 4: Limiting Collection
SHALL #16: Specify - type of information collected

Organizations SHALL specify the type of information collected as part of their information-handling policies and practices, in accordance with the Openness principle (Clause 4.8).

Principle #5: Limiting UDR
5 Obligations upon Organizations under Principle #5
Shall #17 to #21

Principle #5: Limiting UDR
SHALL #17 and #18

Principle #5: Limiting UDR
Shall #17: No use or disclosure for purpose other than those that were collected:
Exceptions:
Consent of the individual; or required by law

Personal Information SHALL NOT be:

a. used or
b. disclosed

SEE: OCT -1

i. for purposes other than those for which it was collected, except

1. with the consent of the individual or
2. as required by law.

↳ NONE ↳ NONE

→ TOBIC CANNOT RETAIN → MUST RETURN W/OUT RETAINING

Principle #5: Limiting UDR
Shall #18: Retention of PI – long as necessary – fulfillment of those purposes

↳ AFFIDAVIT FROM ALLEGATOR

Personal Information SHALL be retained only as long as necessary for the fulfillment of those purposes.

RETURN TO SNIC MANAGER SNIC DOMINION CHAMBERS QUEBEC RETURN TO NAME IN THE NON-IDENTIFIED NON-SOLICITATION NON-CONSENTING NUMBERED RESPONSE BANKERS

Principle #5: Limiting UDR
SHALL #19: Document new purposes

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Organizations using Personal Information for a new purpose **SHALL** document this purpose (see Clause 4.2.1)

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Principle #5: Limiting UDR

SHALL #20: If Organization makes a decision about an individual retained long enough to allow individual access to the information after decision has been made

Other Legislative Requirements

Personal Information that has been used to make a decision about an **individual SHALL** be retained long enough to allow the **individual** access to the information after the decision has been made. An **Organization** may be subject to legislative requirements with respect to retention periods.

SHALL #21:
Destruction of Personal Information

Personal Information that is no longer required to fulfill the identified purposes should be destroyed, erased, or made anonymous. **Organizations SHALL** develop guidelines and implement procedures to govern the destruction of **Personal Information**

Time use

Principle #6: Accuracy
(4 Obligations upon Organizations)
Shall #22 to #25

Principle #6: ACCURACY
SHALL #22: Accuracy
Accurate, Complete and Current ("ACC")
Use Purposes

Personal Information SHALL be as:

a. Accurate;
b. Complete; and
c. up-to-date ("ACC")

1. as is necessary for the purposes for which it is to be used.

Principle #6: Accuracy
Principle #6: Accuracy
SHALL #23 and #24

Principle #6: Accuracy

Shall #23:
ACC
Factors: (i) use of the information; and (ii) individual interests

The extent to which **Personal Information SHALL** be:

a. accurate, complete, and up-to-date (current) ("ACC") will depend upon the