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 FOR A MOTION IN WRITING***

DATE: January 31, 2025

VOLUME # #1: STATEMENT OF FACTUM FOR MOTION IN WRITING

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.

6. Moreover, the section 6(2) of the *JRPA* request for leave and potential hearing of merits has been 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

presumption has been set, not that the relief sought will be granted per se, but that the motion will 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

applications) to be able to utilize Rule 37.13 as three potential tools for judicial review applications 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.

For interim purposes, the Tribunal has relied on three cases: (i) *Mansuri* (Div. Ct.); (ii) *Awada* (Div. 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

being compelled to expend resources to file an additional statutory application for auto insurance 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-

represented litigant being successful in her appeal to the ONCA regarding her motion to add causes 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

has failed to comply with its statutory duties under the very statute, from a content and document 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

the removed case manager in Mr. Josh Grant continued to refer to the style of cause as "McLean v. 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 <u>shall file</u> with the application record a <u>certificate of perfection</u>,
>
> (a) stating that all the material required to be filed <u>by the applicant</u> 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 <u>filed</u>, the registrar <u>shall</u> place the application on a <u>list for hearing</u> 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,

administratively speaking, through the JSO portal, the same was applicable to the Applicant's filing 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).

42. Those orders are based upon the law of conflict of interest, bias and independence. More specifically, 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.

48. It imposes an obligation on bodies empowered to determine questions of law to do so in a manner 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"]

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.

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,

together with section 11(d), to find that legislation replacing supernumerary provincial court judges 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?

b. **Issue #2**: is this a proper case to convert the motion, where such relief is sought into a motion 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).

65. “Hearing” means the hearing of an application, motion, reference, appeal or assessment of costs, or 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.

73. "Expeditious" means: done with speed and efficiency.

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)

83. Part VI of the *Legislation Act* applies to every Act and regulation (see: section 46) unless a contrary 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

clerks, assessment officers and any other administrative officers and employees that are considered 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*.

110. In the Superior Court of Justice, an interlocutory injunction or mandatory order may be granted or 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.

116. The LAT is bound by the *SPPA*. In relation to the above, section 15 and 16 of the *SPPA* are 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;

k. “order” includes a judgment
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."

132. The only case that appears to have applied Rule 68.04(4) is that of *Hiamey v. Toronto Community 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**

a legal right (*Julius v. Lord Bishop of Oxford* ((1880) 5 A.C. 214 at 243): 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.

139. All of which is respectfully submitted to the ONSC (Div. Ct.) (motion judge) for hearing of the 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

Appendix #1: The email by the Applicant citing GWL Properties as an additional authority for the 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

conflict of interest, bias and lack of independence between a representative (see: section 1(7) of the LSA). 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

there was a transcript. The pre-trial management judge then spoke or consulted with Chief Justice Esson 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 **<u>on</u>** 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 ***<u>may</u>*** 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)