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

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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)