

ONTARIO SUPERIOR COURT OF JUSTICE (DIVISIONAL COURT)

BETWEEN:

KEVIN ALEXANDER MCLEAN

APPLICANT

- and -

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

RESPONDENTS

THE MOTION PARTY'S (JRPA APPLICANT) MOTION RECORD INDEX DATE: JANUARY 23, 2025

MOVING PARTY (see: Rule 1.03, "Definitions" under Rules of Civil Procedure):
--

JRPA APPLICANT

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

RESPONDING PARTY (see: Rule 1.03, "Definitions" under Rules of Civil Procedure):

LICENCE APPEAL TRIBUNAL (the "Tribunal")
AABS Division
15 Grosvenor Street,
Ground Floor
Toronto, ON M7A 2G6

Kind attention: it declared counsel in this JRPA Proceeding herein

Jesse Aaron Boyce

Assumed Name

Jesse A. Boyce

Law Society Number

72486F

Class of Licence Definitions

Lawyer (L1)

Real Estate Insured [†]

No

Status Definitions

Practising Law - Employed

Business Name

SLASTO

Business Address

25 Grosvenorⁱ 4th Floor Toronto, Ontario M7A 2S8

Phone

1 437 997 1235 Ext.

Trusteeships

None

Current Practice Restrictions

None

Current Regulatory Proceedings

None

Regulatory History

None

Re: Motion to compel the Tribunal to comply with its statutory duties under section 10 of the *JRPA* and section 20 of the *SPPA*

- Date of Tribunal's **receipt** of the JRPA Application: November 15, 2024
- Date of Attorney General's receipt of the JRPA Application: November 15, 2024
- Date of Tribunal's filing of Notice of Appearance: November 27, 2024
- Date of Attorney General's filing of a Notice of Appearance: none
- Date of Applicant's factum being filed (via urgent email filing) and served: December 10, 2024
- Date of Applicant's Application Record being filed (via urgent email filing) and served: December 12, 2024
- Date of JRPA Application being perfected: December 13, 2024
- Date of failure or neglect of Tribunal to file a factum and application record in accordance with Rule 68: January 11, 2025ⁱⁱ
- Number of days that Tribunal has failed to comply with its statutory requirement under section 10 of the JRPA: 69 days as of today's date

- Number of days that Tribunal will have failed with its statutory requirement under section 10 of the JRPA as of date of motion hearing: 76 days

INDEX

1. Notice of Motion (Form 37(A)) of the Applicant of January 22, 2025ⁱⁱⁱ
2. Confirmation of Motion (Form 37(B)) of the Applicant of January 23, 2025^{iv}
3. JRPA Application of November 15, 2024^v
4. Applicant's Factum of December 10, 2024^{vi}
5. Certificate of Perfection filed and paid for on December 13, 2024^{vii}
6. Affidavit #2 of the Applicant, made on December 30, 2024
7. Affidavit #4 of the Applicant, made on January 18, 2025

ⁱWhere Mr. McLean's *FIPPA* request was delivered

ⁱⁱWhich was a Saturday

ⁱⁱⁱFiled and paid for on said date. Served on said date.

^{iv}Filed and served on said date.

^vPaid for and filed on said date

^{vi}The Applicant's Application Record was filed and served on December 12, 2024

^{vii}Filed and paid for on said date.

Tab 1:

Re: Applicant's Motion Record for Motion #1 (Compel the Tribunal to forthwith file the record of proceeding): Court File No. DC-24-00000718-00JR

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

FORM 37A

Courts of Justice Act

NOTICE OF MOTION

ONTARIO SUPERIOR COURT OF JUSTICE (DIVISIONAL COURT)

BETWEEN:

KEVIN ALEXANDER MCLEAN

APPLICANT

- and -

TD HOME AND AUTO INSURANCE COMPANY, SECURITY NATIONAL INSURANCE COMPANY, TD GENERAL INSURANCE COMPANY, EXECUTIVE f, LICENCE APPEAL TRIBUNAL,

HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO, REPRESENTED BY EXECUTIVE CHAIR OF TRIBUNALS ONTARIO IN MR. SEAN WEIR, THE ATTORNEY GENERAL OF ONTARIO

RESPONDENTS

NOTICE OF MOTION

The Applicant will make a motion to the court on Thursday, January 30, 2025, at 9:30 a.m. or as soon after that time as the motion can be heard.

PROPOSED METHOD OF HEARING: The motion is to be heard:

☐ In writing under subrule 37.12.1 (1) because it is *(insert one of on consent, unopposed or made without notice)ⁱ*;

☐ In writing as an opposed motion under subrule 37.12.1 (4);

☐ In person;

X By telephone conference;

☐ By video conference.

at the following location

Address of Local Registrar court office Divisional Court

Superior Court of Justice
Osgoode Hall

130 Queen Street West
Toronto, ON M5H 2N5

THE MOTION IS FOR the following relief:

1. An Order that the delegated or presiding motion judge (not an “associate judge” pursuant to 37.02(2)(f) of the *Rules Of Civil Procedure* and section 4 of the *JRPA*) shall not be the Honourable Madam Justice Shore and/or any other justice that was employed by Epstein Cole and/or was a partner in the limited liability partnership of Epstein Cole LLP during the time from Fall of 2017 to present;
2. An Order compelling the Licence Appeal Tribunal (the “**Tribunal**”) to file the Record of Proceeding forthwith and in accordance with, *inter alia*, section 10 of the *JRPA* and in accordance, from a content standpoint with section 20 of the *SPPA*;
3. An Order that the Tribunal is prohibited from any form of participation in this JRPA Proceeding until it does so in full and strict compliance with aforementioned legislative sections in Order #2;
4. Costs in favour of the Applicant against the Tribunal on a substantial indemnity basis to be determined by this Honourable Court after providing leave to the Applicant to provide a costs outline or written argument within three days of the pronouncement of the orders herein and limited to three pages double spaced; and
5. Such other orders that are consistent with the above.

THE GROUNDS FOR THE MOTION ARE:

1. The above noted statutes but more specifically, but not limited to, the following statutory subsections;
 - a. Section 9(2) of the *JRPA*;
 - b. Section 10 of the *JRPA*;
 - c. Section 20 of the *SPPA*;
2. The *Courts of Justice Act* (the “CJA”);
3. *Rules Of Civil Procedures* including but not limited to the following rules:
 - a. Rule 1.02(1)(3);
 - b. Rule 1.03 with respect to the following definitions:

- i. “applicant” means a person who makes an application;
 - ii. “application” means a proceeding commenced by notice of application;
 - iii. “court” means the court in which a proceeding is pending and, in the case of a proceeding in the Superior Court of Justice, includes an associate judge;
 - iv. “deliver” means serve and file with proof of service, and “delivery” has a corresponding meaning;
 - v. “document” includes data and information in electronic form;
 - vi. “hearing” means the hearing of an application, motion, reference, appeal or assessment of costs, or a trial;
 - vii. “motion” means a motion in a proceeding or an intended proceeding;
 - viii. “moving party” means a person who makes a motion;
 - ix. “person” includes a party to a proceeding;
 - x. “proceeding” means an action or application;
 - xi. “respondent” means a person against whom an application is made or an appeal is brought, as the circumstances require;
 - xii. “responding party” means a person against whom a motion is made;
 - xiii. “statute” includes a statute passed by the Parliament of Canada; and
 - xiv. “substantial indemnity costs” mean costs awarded in an amount that is 1.5 times what would otherwise be awarded in accordance with Part I of Tariff A, and “on a substantial indemnity basis” has a corresponding meaning.
- c. Rule 1.04;
 - d. Rule 1.05;
 - e. Rule 1.06;
 - f. Rule 1.08ⁱⁱ;
 - g. Rule 2.03;
 - h. Rule 3.02;
 - i. Rule 4.01;

- j. Rule 37 with particular reference to the following:
 - i. Rule 37.01;
 - ii. Rule 37.02;
 - iii. Rule 37.03;
 - iv. Rule 37.04 (by way of judge and not “associate judge” or “registrar”)
- k. Rule 39;
- l. Rule 57 and 58;
- m. Rule 59;
- n. Rule 68;
- 4. The doctrine of paramountcy (wherein statutory language prevails over language in regulations, and any “practice directions”); and
- 5. The statutes, regulations and authorities cited herein but not limited to:

Authorities (hyperlinked to the case itself and paragraphs to be relied upon)

The Seminal Decision in Payne

- i. *Payne v. Ontario Human Rights Commission*, 2000 CanLII 5731 (ON CA), [2000] O.J. No. 2987, 136 O.A.C. 357 (C.A.) [“Payne”], at paragraphs [79](#) [the record of proceeding when the decision was made], [paragraph 160](#), and [paragraph 161](#)ⁱⁱⁱ;

Payne cited with approval by ONSC Divisional Court in 2024

- ii. [Lachance v. Solicitor General of Ontario](#), 2024 ONSC 975 (CanLII) as per Stewart, Myers, and Leiper JJ of the Divisional Court at [paragraph 37](#) [copied by link to highlight as no hyperlink available on CanLII]

General Principles

- iii. [Jacko v. McLellan](#), 2008 CanLII 22921 (ONSCDC) [“Jacko”] at paragraph 18)^{iv};
- iv. *Rew v Association of Professional Engineers of Ontario (Discipline Committee)*, 2016 ONSC 4043 (CanLII) [“REW”], <https://canlii.ca/t/gs5t9> as per Dambrot, J. (orally) at paragraph [8](#);
- v. *Pritchard v. Ontario (Human Rights Commission)*, 2004 SCC 31 [“Pritchard”] <https://canlii.ca/t/1h2c4>

Endicott Decisions

- vi. *Endicott v. Ontario (Independent Police Review Office)*, 2014 ONCA 363 [“*Endicott ONCA*”] at paragraph 1, [paragraph 18](#) [‘upon receipt of a judicial review application’]; [paragraph 44](#) (citing *Payne*”),
- vii. *Endicott v. Independent Police Review Director*, 2013 ONSC 2046 [“*Endicott ONSC*”] at paragraph 20,

Cases involving privacy or medical (contextual)

- viii. *Batacharya v. The College of Midwives of Ontario*, 2012 ONSC 1072 [“*Batacharya*”] at paragraph 13 to 15;
- ix. *LifeLabs LP v. Information and Privacy Commr. (Ontario)*, 2022 ONSC 5751 [“*Lifelabs LP*”] at [paragraph 13](#) [citing *Payne* and *Endicott*]

Legal principle and precedent: All materials in the record of proceeding that predate the VCM Decision
--

- b. *UFCW Canada v. Rol-Land Farms Limited*, 2008 CanLII 6652 (ON SCDC), (see: <https://canlii.ca/t/1vtm5>) (“*Rol-Land Farms*”) at [paragraph 38](#)^{vi};

Right to bring a motion where record of proceeding filed but underinclusive; and importance of bringing a motion to be able to raise the issue
--

- c. *Reflection Productions v. Ontario Media Dev. Corp.*, 2022 ONSC 64 [“*Reflection Productions*”] at [paragraph 74](#) and [75](#)^{vii};

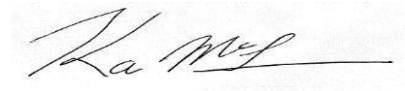
THE FOLLOWING DOCUMENTARY EVIDENCE will be used at the hearing of the motion are all filed documents with the ONSC Divisional Court and any documents that have been tendered for filing including but not limited to:

1. Affidavit #2 of the Applicant made on December 30, 2024 (“Affidavit #2”);
2. Affidavit #4 of the Applicant made on January 18, 2025 (“Affidavit #4”);
3. The JRPA Application of the Applicant of November 15, 2024 (the “JRPA Application”);
4. The Applicant’s Factum of December 10, 2024 (the “Factum”);
5. The Applicant’s Application Record of December 12, 2024 (the “Application Record”);
6. The Applicant’s filed and issued Certificate of Perfection (the “Certificate Of Perfection”) and affidavit of service filed with the ONSC Divisional Court (the “Affidavit #1” or “AOS”);
7. The Applicant’s tendered requisitions herein;
8. Brief and succinct oral outline or speaking notes of the Applicant (the “Speaking Notes”) or written factum in accordance with Rule 37; and
9. Such other material as the Applicant may advise and this Honourable Court, by way of a judge, may accept.

The Applicant estimates ten minutes in opening oral argument and two minutes in reply (if applicable).

January 22, 2025:

DULY EXECUTED IN ELECTRONIC FORM BY
THE JRPA APPLICANT ON THE DATE
ABOVE:



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

TO:

Licence Appeal Tribunal/AABS

By way of attention to its declared representative (see: section 1 and 10 of the *SPPA*) at the following
address as denoted in Affidavit #3 of the Applicant (copied and pasted herein):

Jesse Aaron Boyce

Assumed Name

Jesse A. Boyce

Law Society Number

72486F

Class of Licence Definitions

Lawyer (L1)

Real Estate Insured [†]

No

Status Definitions

Practising Law - Employed

Business Name

SLASTO

Business Address

25 Grosvenor^{viii} 4th Floor Toronto, Ontario M7A 2S8

Phone

1 437 997 1235 Ext.

Trusteeships

None

Current Practice Restrictions

None

Current Regulatory Proceedings

None

Regulatory History

None

RCP-E 37A (September 1, 2020)

ⁱTo the extent that the Tribunal consents to the same or does not oppose, and/or comply with its obligations forthwith, the Applicant seeks relief to convert the mode of hearing from telephone conference to a brief written argument with a draft order to be provided, vetted by the Registrar, for immediate entry.

ⁱⁱDenoted *supra*

ⁱⁱⁱ[161] An applicant for judicial review has the right to have a full and accurate record of what went on before the tribunal put before the court. This is an aspect of the superior court's inherent powers of judicial review. A superior court may insist upon the production of an adequate record of the proceedings before the tribunal being reviewed. As stated by Denning L.J. in *R. v. Medical Appeal Tribunal ex p. Gilmore*, [1957] 1 Q.B. 574 at 583 (C.A.): "The court has always had power to order an inferior tribunal to complete the record ... [A] tribunal could defeat a writ of certiorari unless the courts could order them to complete or correct an imperfect record. So the courts have the power to give such an order". See also *R. v. Northumberland Compensation Appeal Tribunal, ex p. Shaw*, [1952] K.B. 338 at 352–54 (C.A.); *Canadian Workers Union v. Frankel Structural Steel Ltd.* (1976), 1976 CanLII 829 (ON SC), 12 O.R. (2d) 560 at 577 (Div. Ct.) per Reid J.; *F.G. Spencer Ltd. v. Prince Edward Island (Labour Relations Board)* (1970), 1970 CanLII 960 (PE SCAD), 16 D.L.R. (3d) 670 (P.E.I.S.C.); *Battaglia v. British Columbia (Workmen's Compensation Board)* (1960), 1960 CanLII 334 (BC SC), 22 D.L.R. (2d) 446 (B.C.S.C.). A statutory body subject to judicial review cannot immunize itself or its process by arriving at decisions on considerations that are not revealed by the record it files with the court.

^{iv}The purpose of requiring a tribunal or adjudicator to file a "record of proceedings" is to ensure that when the court reviews the tribunal's decision, it has the information and evidence as it appeared before the tribunal in the first instance. A court reviewing an adjudicative decision may look at decisions to admit evidence, submissions of witnesses, and other evidence and may substitute its judgment for that of the court [or tribunal] of first instance

^vAn applicant for judicial review has the right to have a full and accurate record of what went on before the tribunal put before the court. This is an aspect of the superior court's inherent powers of judicial review. A superior court may insist upon the production of an adequate record of the proceedings before the tribunal being reviewed. As stated by Denning L.J. in *R. v. Medical Appeal Tribunal, Ex parte Gilmore*, [1957] 1 Q.B. 574 (Eng. C.A.) at 583:

The court has always had power to order an inferior tribunal to complete the record ... [A] tribunal could defeat a writ of certiorari unless the courts could order them to complete or correct an imperfect record. So the courts have the power to give such an order.

^{vi}[38] Thus, the content of volume 3 is not properly part of the record required to be filed pursuant to s. 10 of the *JPRA*, as it post-dates the decisions under review. Moreover, it is not relevant to the issue of reasonable apprehension of bias before this Court, as it responds to an issue of actual bias.

^{vii}Ergo, pursuant to s. 10 of the Judicial Review Procedure Act, it was available to the applicant to bring a motion seeking production of documents it alleges were relied on by the decision-maker but are not contained in the record: see, for example *K.D. v. Peel Children's Aid Society*, 2017 ONSC 7392 (Div. Ct.) at paras. 16-17). The applicant failed to do so. As a result, it is precluded from raising this issue for the first time on judicial review.

^{viii}Where Mr. McLean's FIPPA request was delivered

Tab 2:

Re: Applicant's Motion Record for Motion #1 (Compel the Tribunal to forthwith file the record of proceeding): Court File No. DC-24-00000718-00JR

Form 37B

Courts of Justice Act

CONFIRMATION OF MOTION

ONTARIO SUPERIOR COURT OF JUSTICE (DIVISIONAL COURT)

BETWEEN:

KEVIN ALEXANDER MCLEAN

APPLICANT

- and -

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

RESPONDENTS

CONFIRMATION OF MOTION

Note: If the information on this form changes, you have a duty to give the court and the other parties a corrected version of the form (rule 37.10.1(3)). If you wish to abandon the motion after it has been confirmed, a notice of abandonment may be delivered (rule 37.09(1)).

Part A:

I, Mr. Kevin A. McLean, the moving party, confirm that I have conferred or attempted to confer with the other party, the Licence Appeal Tribunal (the “**Tribunal**”) (attention: Mr. Boyce with a copy to his legal assistant(s)) and confirm that the motion to be heard on January 30, 2025, will proceed on the following basis:

[X] for a hearing of the following issues only (*specify*):

1. An order granting the following relief exclusively related or directed to the Licence Appeal Tribunal:

- a. An Order that the delegated or presiding motion judge (not an “associate judge” pursuant to 37.02(2)(f) of the *Rules Of Civil Procedure* and section 4 of the *JRPA*) shall **not** be the Honourable Madam Justice Shore and/or any other justice that was employed by Epstein Cole LLP and/or was a partner in the limited liability partnership of Epstein Cole during the time from Fall of 2017¹ to present;
- b. An Order compelling the Licence Appeal Tribunal (the “**Tribunal**”) to file the Record of Proceeding forthwith and in accordance with, *inter alia*, section 10 of the *JRPA* and in accordance, from a content standpoint with section 20 of the *SPPA*;
- c. An Order that the Tribunal is prohibited from any form of participation in this *JRPA* Proceeding until it does so in full and strict compliance with aforementioned legislative sections in Order #2;
- d. Costs in favour of the Applicant against the Tribunal on a substantial indemnity basis to be determined by this Honourable Court after providing leave to the Applicant to provide a costs outline or written argument within three days of the pronouncement of the orders herein and limited to three pages double spaced; and
- e. Such other orders that are consistent with the above.
- f. An order granting the Applicant leave to speak to costs in the form sought in the Notice of Motion.

The presiding motion judge will be referred to the following materials:

1. The documents filed and served on the respondents in this *JRPA* Proceeding herein including but not limited to:
 - a. Affidavit #2 of the Applicant made on December 30, 2024 (“**Affidavit #2**”);
 - b. Affidavit #4 of the Applicant made on January 18, 2025 (“**Affidavit #4**”);
 - c. The *JRPA* Application of the Applicant of November 15, 2024 (the “**JRPA Application**”);
 - d. The Applicant’s Factum of December 10, 2024 (the “**Factum**”);
 - e. The Applicant’s Application Record of December 12, 2024 (the “**Application Record**”);
 - f. The Applicant’s filed and issued Certificate of Perfection (the “**Certificate Of Perfection**”) and affidavit of service filed with the ONSC Divisional Court (the “**Affidavit #1**” or “**AOS**”);
 - g. The Applicant’s relevant, to this motion hearing, tendered requisitions herein;
 - h. Brief and succinct oral outline or speaking notes of the Applicant to be provided at the relevant time and if applicable (the “**Speaking Notes**”);
 - i. The statutes, regulations and authorities cited in the Notice of Motion of January 22, 2025 including but not limited to the following authorities:

Authorities (hyperlinked to the case itself and paragraphs to be relied upon)
--

<i>The Seminal Decision in Payne</i>

- i. *Payne v. Ontario Human Rights Commission*, 2000 CanLII 5731 (ON CA), [2000] O.J. No. 2987, 136 O.A.C. 357 (C.A.) [“Payne”], at paragraphs 79 [the record of proceeding when the decision was made], [paragraph 160](#), and [paragraph 161](#)²;

Payne cited with approval by ONSC Divisional Court in 2024

- ii. *Lachance v. Solicitor General of Ontario*, 2024 ONSC 975 [“Lachance”] as per Stewart, Myers, and Leiper JJ of the Divisional Court at [paragraph 37](#) [copied by link to highlight as no hyperlink available on CanLII]

General Principles

- iii. *Jacko v. McLellan*, 2008 CanLII 22921 (ONSCDC) [“Jacko”] at paragraph 18)³;
- iv. *Rew v Association of Professional Engineers of Ontario (Discipline Committee)*, 2016 ONSC 4043 [“REW”], <https://canlii.ca/t/g55t9> as per Dambrot, J. (orally) at paragraph 8;
- v. *Pritchard v. Ontario (Human Rights Commission)*, 2004 SCC 31 [“Pritchard”] <https://canlii.ca/t/1h2c4>

Endicott Decisions

- vi. *Endicott v. Ontario (Independent Police Review Office)*, 2014 ONCA 363 [“Endicott ONCA”] at paragraph 1, [paragraph 18](#) [‘upon receipt of a judicial review application’]; [paragraph 44](#) (citing *Payne*⁴),
- vii. *Endicott v. Independent Police Review Director*, 2013 ONSC 2046 [“Endicott ONSC”] at paragraph 20,

Cases involving privacy or medical (contextual)

- viii. *Batacharya v. The College of Midwives of Ontario*, 2012 ONSC 1072 [“Batacharya”] at paragraph 13 to 15;
- ix. *LifeLabs LP v. Information and Privacy Commr. (Ontario)*, 2022 ONSC 5751 [“Lifelabs LP”] at [paragraph 13](#) [citing *Payne* and *Endicott*]

Legal principle and precedent: All materials in the record of proceeding that predate the VCM Decision

- j. *UFCW Canada v. Rol-Land Farms Limited*, 2008 CanLII 6652 (ON SCDC), (see: <https://canlii.ca/t/1vtm5>) (“Rol-Land Farms”) at [paragraph 38](#)⁵;

Right to bring a motion where record of proceeding filed but underinclusive; and importance of bringing a motion to be able to raise the issue

- k. *Reflection Productions v. Ontario Media Dev. Corp.*, 2022 ONSC 64 [“Reflection Productions”] at [paragraph 74](#) and 75⁶;

Note: Parties are responsible for ensuring that all materials in the above list are (a) filed with the court and (b) uploaded to Case Center by the applicable deadline in rule 4.05.3 of the *Rules of Civil Procedure*.

I estimate that the time required for the motion will be 20 minutes or less.

Dated: January 23, 2025

DULY EXECUTED IN ELECTRONIC FORM BY
THE JRPA APPLICANT ON THE DATE ABOVE:



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

TO:

Licence Appeal Tribunal

By way of attention to its declared representative at the following address as denoted in Affidavit #3 of the Applicant (copied and pasted herein) and confirmed to be the same, despite Mr. Boyce's unilateral and without notice removal of the same on a date known to him in 2025, by the LSO (Directory Services Department) on January 22, 2025:

Jesse Aaron Boyce
Assumed Name
Jesse A. Boyce
Law Society Number
72486F
Class of Licence Definitions
Lawyer (L1)
Real Estate Insured †
No
Status Definitions
Practising Law - Employed
Business Name
SLASTO
Business Address

25 Grosvenor⁷ 4th Floor Toronto, Ontario M7A 2S8

Phone

1 437 997 1235 Ext.

Trusteeships

None

Current Practice Restrictions

None

Current Regulatory Proceedings

None

Regulatory History

None

RCP-E 37B (May 15, 2024)

¹Please see (if applicable): the court file with respect to the Applicant's Respectful Requests (defined therein) regarding the reasonable apprehension of a conflict of interest, bias and/or lack of independence involving Madam Justice Shore and one Mr. Andrew Papadimitropoulos (a client of Epstein Cole LLP) who was not removed as a representative (see: *LSA*, section 1(7)) by the Applicant's motions before the Tribunal (see: NOM #6 and NOM #9 in the Record of Proceeding)

²[161] An applicant for judicial review has the right to have a full and accurate record of what went on before the tribunal put before the court. This is an aspect of the superior court's inherent powers of judicial review. A superior court may insist upon the production of an adequate record of the proceedings before the tribunal being reviewed. As stated by Denning L.J. in *R. v. Medical Appeal Tribunal ex p. Gilmore*, [1957] 1 Q.B. 574 at 583 (C.A.): "The court has always had power to order an inferior tribunal to complete the record ... [A] tribunal could defeat a writ of certiorari unless the courts could order them to complete or correct an imperfect record. So the courts have the power to give such an order". See also *R. v. Northumberland Compensation Appeal Tribunal*, ex p. Shaw, [1952] K.B. 338 at 352–54 (C.A.); *Canadian Workers Union v. Frankel Structural Steel Ltd.* (1976), 1976 CanLII 829 (ON SC), 12 O.R. (2d) 560 at 577 (Div. Ct.) per Reid J.; *F.G. Spencer Ltd. v. Prince Edward Island (Labour Relations Board)* (1970), 1970 CanLII 960 (PE SCAD), 16 D.L.R. (3d) 670 (P.E.I.S.C.); *Battaglia v. British Columbia (Workmen's Compensation Board)* (1960), 1960 CanLII 334 (BC SC), 22 D.L.R. (2d) 446 (B.C.S.C.). A statutory body subject to judicial review cannot immunize itself or its process by arriving at decisions on considerations that are not revealed by the record it files with the court.

³The purpose of requiring a tribunal or adjudicator to file a "record of proceedings" is to ensure that when the court reviews the tribunal's decision, it has the information and evidence as it appeared before the tribunal in the first instance. A court reviewing an adjudicative decision may look at decisions to admit evidence, submissions of witnesses, and other evidence and may substitute its judgment for that of the court [or tribunal] of first instance

⁴An applicant for judicial review has the right to have a full and accurate record of what went on before the tribunal put before the court. This is an aspect of the superior court's inherent powers of judicial review. A superior court may insist upon the production of an adequate record of the proceedings before the tribunal being reviewed. As stated by Denning L.J. in *R. v. Medical Appeal Tribunal, Ex parte Gilmore*, [1957] 1 Q.B. 574 (Eng. C.A.) at 583:

The court has always had power to order an inferior tribunal to complete the record ... [A] tribunal could defeat a writ of certiorari unless the courts could order them to complete or correct an imperfect record. So the courts have the power to give such an order.

⁵[38] Thus, the content of volume 3 is not properly part of the record required to be filed pursuant to s. 10 of the *JPRA*, as it post-dates the decisions under review. Moreover, it is not relevant to the issue of reasonable apprehension of bias before this Court, as it responds to an issue of actual bias.

⁶Ergo, pursuant to s. 10 of the Judicial Review Procedure Act, it was available to the applicant to bring a motion seeking production of documents it alleges were relied on by the decision-maker but are not contained in the record: see, for example *K.D. v. Peel Children's Aid Society*, 2017 ONSC 7392 (Div. Ct.) at paras. 16-17). The applicant failed to do so. As a result, it is precluded from raising this issue for the first time on judicial review.

⁷Where Mr. McLean's *FIPPA* request was delivered

Tab 3:

Re: Applicant's Motion Record for Motion #1 (Compel the Tribunal to forthwith file the record of proceeding): Court File No. DC-24-00000718-00JR

Court File No.

ONTARIO COURT OF JUSTICE (DIVISIONAL COURT)

BETWEEN:

KEVIN ALEXANDER MCLEAN

APPLICANT

- and -

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

RESPONDENTS

NOTICE OF APPLICATION TO DIVISIONAL COURT FOR JUDICIAL REVIEW

TO THE RESPONDENTS:

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

THIS APPLICATION for Judicial Review will come on for a hearing before the Divisional Court on a date to be fixed by the Registrar at the place of hearing requested by the Applicants. The Applicants request that this application be heard at Osgoode Hall, 130 Queen Street West, Toronto, Ontario, M5H 2N5.

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

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

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

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

Date:

Issued by

Address of Local Registrar court office Divisional

Court

Superior Court of Justice
Osgoode Hall
130 Queen Street West
Toronto, ON M5H 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 Morrisette 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 Morrisette ("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 Morrisette 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 is 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 Colliers 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 Claim #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, 2023. 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 Insurers**' (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 Morrisette 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 Morrisette 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 Insurers**.

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 Morrisette 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 *Yatar*34

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

31. The failure to identify or consider the legal criteria that govern (the “Identification Failure Governing Legal Criteria”) the exercise of discretion may constitute an error of law.
32. In *Gega*, the Divisional Court applied a novel yet functional determination of when an issue was one of law as opposed to one of 'mixed fact and law': “[19] This issue is a matter of law...argue this issue is a matter of mixed fact and law, but there are no factual findings that need to be made by me to consider this question.”
33. In *Kawa Arab*, the Divisional Court found an administrative decision of statutory interpretation as a matter of law. At ¶ 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 Rezaiezhadeh 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 Juriensz 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 Morrisette 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 found 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 Morrisette in relation to NOM #13 to #15 of the Applicant;
- (e) The decision of Vice Chair Lake in relation to the Applicant's reconsideration motion;
- (f) The record of proceeding in **AABS File Number: "23-015662/AABS"**
- (g) Such other affidavit material and evidence as counsel may advise and this

Honourable Court may deem proper.

November 15, 2024



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

Appendix #1

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

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

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

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

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

Appendix #2

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

Appendix #3: Index for NOM #14

Chapter #1: Notice of Motion Form

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

Chapter #2: Reg 283 and Cited authorities (prior to *Zurich 2024*)

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

Chapter #3: Reg 664 and SABS

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

a. (see: pages 70 to 132)

Chapter #4: Pleadings; *Insurance Act*; and UDAP Rule

10. Application of an Injured Person for auto insurance dispute resolution pursuant to the *Insurance*

Act, filed by the Appellant on December 24, 2023 (the “Appeal”)

a. Served on the recipient of the fax number of 416-774-3120 (the “416 Fax Number”);

b. (see: pages 133 to 142)

11. Response filed by SNIC (the “SNIC Response”)

a. solely signed, filed and served by Mr. David Karat, ADR Specialist for SNIC, on January

25, 2024

b. (see: pages 143 to 145)

12. *Insurance Act*, RSO 1990 c. I 8, section 268 [the “Act” or the “*Insurance Act*”]

a. (see: pages 146 to 148)

13. Unfair or Deceptive Acts or Practices Rule, effective 2022 (the “UDAP Rule”)

a. (see: pages 149 to 161)

Chapter #5: Further Authorities

The Chubb v. Zurich cases (2015 and 2024);

TD General Insurance Company v. Markel

Intact v. Bateman: “Re: two files with two different file numbers for one claimant (insured person)

(although unlawful – not unprecedented)

14. Chubb Insurance Co. of Canada v. Zurich Insurance Company, 2024 ONSC 2929 (as per The

Honourable Justice Akazaki) [“*Zurich 2024*”]

a. (see: pages 162 to 179)

15. TD General Insurance Company v. Markel Insurance Company, 2014 ONSC 6461 (as per Justice

Lederman) [“*Markel*”]

a. (see: pages 180 to 194)

16. Zurich Insurance Co. v. Chubb Insurance Co. of Canada, 2015 SCC 19 [“*Zurich 2015*”]

a. (see: pages 195 to 198)

17. Intact Insurance Company v. Bateman, 2014 ONFSCDRS 14 (as per Delegate Blackman)

a. (see: pages 199 to 214)

Chapter #6: Affidavits

18. Affidavit #30 of the Appellant, made on July 31, 2024 (filed: August 1, 2024; served on SNIC and

TDHA: August 1, 2024) [“Affidavit #30”]

a. (see: pages 215 to 358)

19. Affidavit #3 of the Appellant, made on October 31, 2024 (select pages only) (filed: listed and

attached document in Appeal on December 24, 2023) [“Affidavit #3”]

a. (see: pages 359 to 488);

20. Affidavit #29 of the Appellant, made on July 25, 2024 (select pages only)

a. (see: page pages 489 to 500)

Chapter #7: Motion Submissions (pursuant to LAT Rule 15: six pages, double spaced, size 12 font (except

for evidence, appendices and authorities)

21. Motion Submissions of the Appellant dated August 3, 2024 (served on SNIC and TDHA: August

3, 2024)

a. (see: pages 500 to 511)

Chapter #8: Additional evidence in pictorial form of the East Mall Address (August 4, 2024) and emails

to TDHA and SNIC confirming the same pursuant to, inter alia, section 15 of the SPPA 1

st Amended Inclusion (August 5, 2024)

22. Additional evidence: the East Mall Address

a. (see: pages 512 to 551)

Chapter #9: Costs against SNIC

Appellant’s served and filed Costs Submissions on Thursday, September 5, 2024 (includes LAT Rule 19.1: affidavit evidence in support of the Appellant have reasonable and probable grounds

to believei

that SNIC has conducted itself in relation to NOM #14 in an unreasonable, vexatious, frivolous and/or in bad faith

LAT Rule 19.2: written costs submissions by the Appellant before the decision or order is released

in relation to NOM #14;

LAT Rule 19.3: written costs submissions seeking \$1,000 against SNIC in favour of the Appellant,

payable forthwith in any event of the result of NOM #14;

LAT Rule 19.4: Appellant has provided the reasons (authorities, statutes, regulations, LAT Rules)

and the particulars of SNIC’s impugned conduct that have been, are and will continue to be

unreasonable, frivolous, vexatious, and in bad faith;

LAT Rule 19.5: Appellant has provided all relevant factors including but not limited to: (i) seriousness of SNIC’s misconduct; (ii) SNIC’s conduct in breach of orders (implicitly)

and LAT

Directions issued by the Tribunal; (iii) how SNIC's conduct has interfered with the Tribunal's ability to carry out a fair, efficient, and effective process; and (iv) the resultant prejudice to the

Appellant.

LAT Rule 19.6: the Appellant has sought \$1,000 for the NOM #14 hearing

23. Costs submissions of the Appellant, filed and served on Thursday, September 5, 2024 with e-receipt

a. (see: pages 552 to 640)

i. Appendix #1: Glossary (see: pages 565 to 570)

ii. Appendix #2: Evidentiary And Authorities Chronology: from the time of SNIC's incorporation in 1934 to August 21, 2024 (see: pages 571 to 647); and

iii. Endnotes (see: pages 648 to 650).

Chapter #9: Materials For Reconsideration of the decisions involving NOM #14 and NOM #15

Fresh Evidence: not available to the Adjudicator in the Hearing Record (albeit in record of proceeding in relation

24. Affidavit #34 of the Appellant of August 29, 2024 (see: pages 651 to 676)

25. Affidavit #35 of the Appellant of September 12, 2024 (see: pages 677 to 769)

26. Affidavit #36 of the Appellant of September 18, 2024 (see: pages 770 to 789)

27. Affidavit #37 of the Appellant of September 19, 2024 (filed under seal) (see: pages 790 to 832)

28. Reconsideration Form with Motion Submissions of September 30, 2024 (see: pages 833 to 856)

Tab 4:

Re: Applicant's Motion Record for Motion #1 (Compel the Tribunal to forthwith file the record of proceeding): Court File No. DC-24-00000718-00JR

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

ONTARIO COURT OF JUSTICE (DIVISIONAL COURT)

BETWEEN:

KEVIN ALEXANDER MCLEAN

APPLICANT

- and -

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

RESPONDENTS

APPLICANT'S FACTUM

VOLUME # #1: STATEMENT OF JUDICIAL REVIEW APPLICATION

1. This **JRPA Application** involves the challenge to two (2) issued decisions of the Licence Appeal Tribunal (“**LAT**” or “**Tribunal**”)¹ on September 13, 2024, and October 16, 2024, and two potentially unmade decisions involving the same. In the absence of any analysis of the statutory scheme² (i) by Vice Chair (“**VC**”) Morrissette (“**VCM**”); and (ii) VC Lake (“**VCL**”), on reconsideration (the “**RD**”), relying on the newly passed language, as of August 21, 2023³, in the *LAT Rules*, which is non-legislation,⁴ the reviewing or appellate court is required to start afresh. Since 2019, the SCC settled the judicial review landscape in declaring *Dunsmuir*⁵ to no longer be the law of our land and provided factual and/or legal situations where the reasonableness standard of review is rebutted. The focus herein of where the presumptive reasonableness standard is rebutted is where the rule of law (“**ROL**”) requires that the standard of correctness be applied.

2. The rule of law is a theme in this **JRPA Proceeding** as per, some events that occurred or issues that were catalyzed after the filing of the **JRPA Application**, which were, including but not limited to: (i) Tribunal counsel (Ms. Boyce) raising the prematurity doctrine on a preliminary basis; (ii) counsel (Mr. Nieuwland) to TDGIC and SNIC⁶, but not TDHA, in the **LAT Proceeding** not filing an appearance notice *forthwith* but purporting to file said purported notice of appearance (the “**Purported Appearance**”) that was defective whilst in his cover email making a similar misstatement of law to the one he made on behalf at the nullity case conference on May 2, 2024, that “SNIC” was ‘one and the same’ as two other insurance companies (see: ‘also referred to as’ TD Home And Auto [sic] and TD General Insurance company [sic]”; and (iii) others.⁷

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

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

4. The matter remains one where the delay will *likely*⁸ involve a failure of justice being an affront to the rule of law and subspecies of the rule of law that involve: (i) general questions of law of central importance to the legal system as a whole; (ii) questions related to the jurisdictional boundaries between two or more administrative bodies; and (iii) the relationship between the legislature and the other branches of the state, which require a final and determinate answer from the courts (the “**Final Answer Requirement**”). The rule of law requires courts to have the final word (the “**Final Word Requirement**”) with regard to general questions of law that are of central importance to the legal system as a whole because they require uniform and consistent answers (the “**Uniform Answers Requirement**” or “**Vertical Stare Decisis**”).⁹ The rule of law requires courts to intervene where one administrative body has interpreted the scope of its authority in a manner that is **incompatible** with the jurisdiction of another administrative body since the rule of law cannot tolerate conflicting orders and proceedings where they result in a *true operational conflict* between two administrative bodies (“**Intolerance Conflicting Orders Requirement**”).¹⁰
5. Whether affiliate or related insurance companies can accept priority, without any independent notices (see: (i) notice of transfer; (ii) notice of a potential agreement between insurers; and/or (iii) notice of arbitration) to an insured person or absolute noncompliance with *Reg 283*, over an applicant’s [sic] insurance policy [sic] (not a *SABS* claim) is a question that must be answered by this ONSC on an urgent basis¹¹.
6. Some of the pertinent principles regarding the rule of law herein are: (i) *equality before the law*¹²; (ii) *accountability*¹³; and (iii) *access to justice*¹⁴. While administrative tribunal independence and absence of bias is not a constitutional principle, like that which is present pursuant to section 96 to 101 of the *Constitution Act* involving courts, conflicts of interest, bias and independence are presumed to be absent or at least reasonably perceived to be. The **VCM Decision** was not only incorrect and unreasonable¹⁵ but it was counter to the

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

7. The jurisprudence involving *JRPA* (ss. 6(2)), *Reg 283*, the prematurity doctrine, “double jeopardy doctrine” (*res judicata* and issue estoppel), and standard of review all invoke the same principles in the middle of that archetypal “Venn diagram”. While there is no dispute on the law that the orders in NOM #14, and to some extent NOM #15, are **final orders**, irrespective of their lack of correctness, those principles fatefully contain similar language in relation to the legal thresholds for this ONSC to decide the legal issues herein on an expedited and urgent basis: (i) rule of law; (ii) *standing in the shoes of another*; (iii) bringing the administration of justice into disrepute; (iv) urgency; (v) failure of justice; and (vi) avoidance of repetition of proceedings before this ONSC and the Tribunal.
8. If the **Purported Nieuwland Appearance** is struck and there is no validity to the LAT’s preliminary objection in the form of the “prematurity doctrine” to reviewing final orders of the Tribunal,¹⁷ then government counsel cannot defend this JRPA Proceeding. As noted by *Jia*¹⁸ by this ONSC (Div. Court): “We would exercise our discretion to hear an appeal from the conflict decision, because it is evasive of appeal and it is potentially a matter of general practice important in proceedings before LAT.” The ONSC (Divisional Court) referred, in *Harold The Mortgage Closer*¹⁹ (paragraph 37), citing *Volochay*²⁰ (paragraph 68²¹) wherein the ONCA referred to the prematurity doctrine and impugned *interlocutory relief* as synonymous or quasi-synonymous.²²
9. Section 138 of the *CJA* codifies the principle that a multiplicity of proceedings must be avoided.²³ This leaves the sole issue being one of timing. Unlike the applicant, Sanscon Construction Ltd.,²⁴ in *Sanscon v. City of Toronto* [“*Sanscon*”], which failed to comply with some of the elementary requirements of pleadings, notice *et al*, this Applicant paid,

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

10. Like many **unlawful** schemes, it is not the ‘what, when and how’, but the ‘why’. The “why” herein was to circumvent multiple **valid** statutory schemes including: (i) FSRA investigatory and enforcement powers under the *Insurance Act* and the *UDAP Rule*; (ii) *Law Society Act* and its *By-Laws*; (iii) *PIPEDA*; and (iv) others. TDHA, as of 2019, while remaining as a licensed automobile insurer in Ontario, became a non-reporting insurance company to the FSRA for the purposes of the sub-category of insurance in the “**Private Passenger Market**”. Only three insurance companies, within the TDI Group, issued automotive insurance policies in Ontario in the **Private Passenger Market**: (i) Primmum Insurance Company (FSRA registration number 1396)²⁵ (“Primmum”); (ii) SNIC; and (iii) TDGIC.²⁶ The motive for why SNIC would engage in such intentional conduct and why TDHA would be complicit with the same is to “kill or limit the paper trail” of what can be investigated by the FSRA, the LSO, and OPCC.²⁷
11. To determine the unlawful scheme, it required analytical precision, after much review, into the various sections of the *Insurance Act* as to whom, what, when and how an insurance company, including certain individuals in specified situations, could be investigated. Moreover, the FSRA’s investigatory, search, seizure, citation and enforcement powers are not only curtailed but eliminated if an insurer like TDHA is not a reporting insurance company in the “**Private Passenger Market**” of automobile insurance. By SNIC’s intentional action of having TDHA be the recipient insurer of his OCF-1 application, it controls what documents and activities are subject to investigation during the *SABS* claim processes. The corroborating evidence of the unlawful scheme was, *inter alia*, the following: (i) the **Spam Fax** in March 2023 from an unknown insurance company to the Applicant’s fax number; (ii) SNIC providing notice of change of address, in Spring or Summer of 2023 from Markham to Burlington along with changing its fax number from the TDHA Fax Number to the Burlington Fax Number; (iii) a forged and invalid signature

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

12. By having TDGIC being the “sole respondent of record”, albeit SNIC filing the sole “Response” in the LAT Proceeding (the “**SNIC Response**”), with the sole signature of a non-licensee (Mr. Karat) in breach of LSO By-Law 7.1, ss. 6(1)(b) and (d)²⁸, which does not meet a specified document to be included in the “record of proceeding” under the *SPPA*, SNIC controls or eliminates any investigation into its activities during the LAT Appeal temporal period. For example, if the FSRA sought to investigate issues involving SNIC, it could claim that it was not the insurer and that TDGIC was the solely responsible insurer for the Applicant’s *SABS* claim (TD Claim #3), and the FSRA investigative and market conduct team would be misdirected. As the Applicant never faxed a document to the TDGIC fax number (416.774.3629) prior to the filing of the LAT Appeal and thereafter, there would be little to no evidence for the FSRA to investigate.
13. Moreover, by having a non-licensee self-titled “ADR Specialist” (non ‘adjuster’ under the *Insurance Act*), SNIC, along with TD Insurance Staff Legal, further limited the reach of the LSO into activities subject to its legislative powers and its by-laws which have legislative force²⁹. By having Mr. Nieuwland solely act for TDGIC by filing a DOR, whilst having a P1 holder (not providing legal services) in Ms. Michelle Moraes masquerade as his legal assistant for three months before one Ms. Ortiz (his actual legal assistant) surfaced, it further curtailed the investigatory powers of the LSO and the FSRA. There was also evidence, albeit in a PIPEDA response of SNIC in 2024, that there were multiple files of these insurance companies involving a single claimant.
14. This Court must also rule on this ***JRPA Proceeding*** because the findings of VCM invoke the Applicant’s [sic] Insurance Policy [sic] and a clandestine and undisclosed subsequent contract between SNIC and TDGIC (collectively, the “**Offerees**”) by way of being offerees, to the surreptitious and unrevealed offer by TDHA (the “**Offeror**”) as the First Insurer pursuant, to its prescribed jurisdiction, of *Rule 14.05(3)(d)*³⁰ to hear this matter since it

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

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

15. The Applicant was injured as the driver occupant in an automobile accident (“**Accident**”) on August 31, 2022 (the “**DOL**”), through no fault of his own, which rendered the Insured Automobile with a police reporting file and some \$6,000 in damage to the Insured Automobile. The **Insured Automobile** was propelled involuntarily some 30 feet forward from a stopped position north of St. Clair Avenue and south of Heath Road, on the Spadina Avenue. From the DOL to January 11, 2023 (the “**Material Time**”), the Insurance Policy associated with the Insured Automobile that he was operating was a leased vehicle from BMW Financial Services Inc. (“**BMW FSI**”) and his spouse, a University of Toronto alumnus, was the individual named insured. The Applicant suffered a variety of impairments that were readily outside of the MIG, including but not limited to: (i) a grade 1 retrolisthesis; (ii) degenerative disc disease; (iii) S1 nerve issues; and (iv) a concussion.
16. The sole underwriter (the “**Sole Underwriter**”) in the Insurance Policy and “pink cards” was Security National Insurance Company (“**SNIC**”) which was an out-of-province insurer that had six classes of insurance with the FSRA. On September 1, 2022, the Applicant orally notified (the “**Oral Notification**”) SNIC of the **Accident** and his intention to apply for accident benefits pursuant to the *Schedule* making SNIC the “**First Notified Insurer**”.
17. SNIC provided the Applicant, in late September 2022, the OCF-1 application (the “**OCF-1 Application**” or “**Application**” pursuant to *Reg 283*, section 1). In the “return this form to” field, SNIC provided a mailing address of the 2nd floor, 101 McNabb Street, Markham, Ontario (the “**Markham Office**”) and a fax number of 416.774.3120. Unbeknownst to the Applicant, the said fax number was not a telephone number in Markham but rather in North

York, Toronto, and after lengthy investigations³¹ the only evidence before the Tribunal was that the said fax number was a landline number, issued by Bell Canada Inc. (not Bell Mobility) at the 4th floor-3650 Victoria Park Avenue, North York, Toronto. In 2024, the only evidence before the Tribunal was that, in October 2022, it was controlled, assigned and belonged to TD Home And Auto Insurance Company (FSRA registration number 1063) (“**TDHA**”).

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

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

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

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

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

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

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

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

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

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

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

VOLUME #1(B)(v): The New Brunswick response to a <i>PIPEDA</i> request of SNIC and the SPAM Fax: February to April 2023
--

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

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

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

26. *SABS* and *Reg 283*, having undergone major amendments in 2010 after being submitted to industry consultations and amendments before proclamations, they reflect important policy choices to ensure order and stability in regulated industries. Said “order and stability” in the regulations must be matched by this ONSC by reference to the **Final Word Requirement, Final Answer Requirement, Uniform Answers Requirement, Vertical *Stare Decisis*, and Intolerance Conflicting Orders Requirement** pursuant to the ROL.
27. *Reg 283* is designed to keep priority disputes out of the courts.³³ *Reg 283* is also purposed to prevent *SABS* claims, including vital treatments and income benefits, from being delayed while insurers fight over priority dispute under section 268(2) of the *Insurance*

Act.³⁴ As a matter of principle, there is NO³⁵ difference between an insurer's failure to pay under section 2 of *Reg 283* and a failure to pay under any provision of *SABS*.^{36 37}

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

VOLUME #3: Requirement to "step into the shoes" of Sole Underwriter⁴²

29. In *Zurich 2015*⁴³, the SCC held that Chubb ought to have responded to the *SABS* claim immediately on a 'pay first and dispute later' basis.⁴⁴ If the sending of the **Completed Application** by the claimant was not arbitrary, there is a *nexus* between the claimant and the **First Insurer**.⁴⁵ The SCC restored Goldstein J.'s judgment (ONSC) [*"Zurich 2012"*⁴⁶] in its verbatim adopting⁴⁷ the dissent of Juriensz J.A. [*"Zurich 2014"*]⁴⁸, as he then was before retiring after an illustrious legal and judicial career in 2021,⁴⁹: **2014 ONCA 400**⁵⁰.

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

30. The ONSC in *Zurich 2024*⁵³ (May) settled the law in the above regards as follows: (i) breach of section 2 of *Reg 283*, according to the case law, does not result in an insurer being required to pay benefits to the claimant permanently; BUT (ii) the *failure* TO AVAIL itself of section 3 does. Section 3 dovetails to section 4 which requires the First Insurer (TDHA) to provide notice to the insured person. Section 5 of *Reg 283* provides the consequences for an insured person not delivering its objection notice to the First Insurer within 14 days of receipt of the dispute notice form (A143) from the First Insurer. A143 requires the First Insurer, which receives the same, to fill out the form correctly and have a representative sign the same.
31. Herein, there is some incredibly prejudicial and fatal evidence, as it relates to any defence by TDHA that it could not meet the 90-day requirement to provide an A143 notice, and that is the signature block of Mr. Karat wherein he, as an ADR specialist, represented, multiple times, in 2024, that he was authorized to represent, “SNIC, TDGIC, Primmum, and TDHA”.
32. TDHA's permanent liability for responding to the *SABS* Applicant and paying benefits to him was a *self-inflicted consequence* of its failure to adhere to the requirements and protections of section 2 to 4 of *Reg 283*. The combination of provisions in *Reg 283* transformed TDHA's provisional liability into a permanent one.⁵⁴ For TDHA to not be declared as the **First Insurer** would mean that there were no consequences for the conduct

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

VOLUME # #4: Issues, Law and Argument
--

VOLUME # #4(A): Issues

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

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

VOLUME #4(B): Law

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

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

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

35. The ONSC (Divisional Court) in *Jia* found, in upholding the reconsideration decision of VC Trojek⁵⁶, in a priority dispute case between CAA (insurance company) and The Personal Insurance Company, and *SABS* proceeding between a male widow and daughter without his wife and her mother respectively due to the fatal car accident against The Personal Insurance Company, found at paragraph 6: “[6] It is established law that insurers may not use the same counsel in statutory benefits cases and in tort cases brought against them by the same insured. This is because the duties of an insurer (and therefore of its counsel) are different in these contexts, and as an accident benefits insurer, the insurer is entitled to receive, and is required to keep confidential, a great deal of sensitive personal information from claimant.”^{57 58}

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

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

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

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

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

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

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

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

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

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

VOLUME # #4(B)(II)(e): Consequences of Non-Compliance⁷⁰ (ss. 2.1(7) of *Reg 283*) and distinction between section 2(1) (LGIC proclamation in 1995) and ss. 2.1 (LGIC proclamation in 201)

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

VOLUME # #4(III): Argument

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

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

42. TDHA was the First Insurer as the only two lead tenants at the Victoria Park Ave Building were that of TDGIC and TDHA. TDGIC occupied floors 7 to 9 with the 9th floor being its mailing address and TDHA occupying floors four to six with the four floors being its mailing address. Once the Applicant had honed in on the deception, the mathematical computation of how Bell Canada Inc. had assigned the numbers within the building was rather rudimentary. The area code of 416 was only for Toronto-based locations. 774 was assigned as a “prefix” to numbers within the District of North York and then within the VP Building, the 3 was a common feature to many landlines of tenants therein. The “120” was a string of three digits with numerical value of “1” being on the fourth floor and the numerical string of “629” with “six” being on the 9th floor. For sake of completeness: “2” was on the fifth floor; “3” was on the sixth floor; “4” was on the seventh floor; “5” was on the eighth floor; and “6” was on the ninth floor. The Tribunal’s notice of hearing orders are orders at law and subject to judicial review, and neither SNIC nor TDGIC sought to challenge them by a section 21.1 of the *SPPA* motion or judicial review and/or appeal. It is trite that if those fax numbers that the Tribunal had found were to be for service of documents to SNIC and TDGIC were not their fax numbers, they would have objected or confirmed the same with the Tribunal.⁷⁴
43. Therefore, SNIC had no provisional obligation to respond to the Applicant and pay benefits as its obligation to respond was merely the provision of forms and explanation of benefits

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

44. In order for the Tribunal to determine the *JRPA* Applicant's claims under *Reg 664*, s. 10 (Dispute Resolution under section 280 of the *Insurance Act*).⁷⁵ Conceivably, s.10 of *Reg 664* could involve two insurers because a provisional First Insurer could have delayed commencing paying benefits and further delayed during the provisional period, and a different agreed to, with or without the consent of an insured person subject to said claimant receiving notice or notices pursuant to *Reg 283*, or declared insurer, by arbitrator or subsequent court decisions⁷⁶ could have delayed or withheld benefits thereafter.⁷⁷
45. The Applicant complied with section 268(5) of the *Insurance Act* and ss. 32(1) of the *Schedule* by SNIC became the "First Notified Insurer". Pursuant to section 32(2) of *Schedule* and *Reg 283*, ss. 2.1(2) SNIC provided the Applicant with an OCF-1 Application (see: *Reg 283*, s.1) and some other forms that related to the *Schedule*. SNIC breached part of ss. 2.1(3) of *Reg 283* by not providing its accurate mailing address and fax number. The Applicant complied with ss. 2.1(4) of *Reg 283* by using the "OCF-1 Application" provided by SNIC and sent the Completed Application to only one insurer (TDHA).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

56. Issue estoppel has been articulated as follows in *Kazen v. Whitten & Lublin Professional Corporation*, 2020 ONCA 325⁸²: (i) the same question has been decided; (ii) the judicial decision which is said to create the estoppel was final; and (iii) the parties to the judicial decision or their privies were the same persons as the parties to the proceedings in which the estoppel is raised [or] their privies. The ONCA in *Victoria University (Board of Regents) v. GE Canada Real*, 2016 ONCA 646 found the following: "[97] It holds that a party may not relitigate an issue that was finally decided in prior judicial proceedings between the same parties or those who stand in their place. However, even if these elements are present, the court retains discretion to not apply issue estoppel when its application would work an injustice."
57. It is the "mutuality principle" that would be at issue as to whether THDA and SNIC are "privies". However, even the slight chance, however remote, is enough to ensure that a decision is issued as to whom the First Insurer was – as there is no finding that TDHA was not the First Insurer and SNIC was the "Frist Insurer". Since there are no findings in this regard to overturn, no deference is required and the ONSC can decide the issue "de novo" or at least in a manner that resembles a "de novo hearing". It is yet another reason why the respondent insurance companies must not be entitled to participate herein. The Applicant would not be bound by *res judicata* and/or issue estoppel because SNIC and TDHA are privies but because of Mr. Nieuwland's recent representation in his "received" filing (purported NOA) that SNIC are "also referred to as" as TDHA and TDGIC.

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

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

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

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

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

60. The danger of not deciding this **JRPA Proceeding** on an expedited basis before a single justice, is outlined, to some degree, in 2015 ONCA 851⁸⁸. The ONCA briefly set out the elements required for issue estoppel to apply to bar the re-arguing of *an issue*, and some useful comments on when parties meet the “mutuality principle”. The applicable principle is that “litigation is conclusive upon *issues actually brought before the court* and upon any

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

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

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

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

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

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

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

63. The ONSC outlined the legal test in *Mansuri*⁹⁴ wherein it stated, “To the extent that there are “alleged deficiencies” arising from the Initial Decision, the applicants have not established that they “cannot be cured on an ultimate appeal. Put another way, the applicants have not established that the alleged prejudice to the applicants outweighs the benefits of a single court proceeding once the underlying Tribunal proceedings are complete” (see: *Mansuri v. Dominion of Canada General Insurance Company*, 2023 ONSC 5764⁹⁵ at paragraph 43).⁹⁶ Even in an “ultimate appeal”, no curing could occur as TDHA is not the solely liable respondent party in the LAT Appeal.

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

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

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

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

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

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

66. Further, the total absence of a foundation for a finding of fact is an error of law. Moreover, it is the findings of VCM that are so particularly concerning that raise incredible integrity issues and conduct. It is not the first time that this former adjudicator, since promoted to Vice Chair, has been involved in serious breaches of conduct with knowledge. Her apparent knowledge, not in the record of proceeding, of what transpired, was not only affront to the *LAT Rules* of all parties being copied on correspondence, but this ONSC can take judicial notice of some issues involving this Tribunal of yesteryear.
67. Vice Chair Morrissette had to obtain this “knowledge” that TDGIC and SNIC accepted priority over the Applicant’s [sic] insurance policy [sic] from some place, repository *et al.* The activities of VCM, prior to assuming her role as an adjudicator and now VC, are of great concern on a general but a specific level herein (see: <https://lobbycanada.gc.ca/en/investigations/reports-on-investigation/the-lobbying-activities-of-trina-morissette/>).^{101 102}

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

68. In *Harold the Mortgage Closer Inc. v. Ontario* (Financial Services Regulatory Authority, Chief Executive Officer), 2024 ONSC 446¹⁰³, this ONSC found: “[49] Exceptional circumstances are ones that bring the rule of law into disrepute which goes beyond breaching procedural fairness or even acting without jurisdiction: *Dugré*, at para. 35.”

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

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

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

70. In *London District Catholic School Board v. Weilgosh*, 2024 ONSC 3857¹⁰⁵, the concepts of broader implications and test cases caused the ONSC to hear the judicial review even on an interim order, which the **VCM Decisions** are not, before the conclusion of that proceeding. Even more forcefully, the issues herein are even more important because they will determine a *Reg 283* and *SABS* issue in a “test case” where they have not been decided before against the backdrop of some alarming issues involving this Tribunal which appear to be related to previous concerns about this Tribunal. This outcome and decision herein have broad implications for insured persons with various insurance companies in any “insurance group” and whether there is a systemic issue involving providing false contact information, which may or may not involve intentional breaches, and may be merely a technological error like the “four insurance companies” had in the FSRA Enforcement Decisions for SNIC¹⁰⁶, TDGIC¹⁰⁷, Primmum¹⁰⁸, and TDHA¹⁰⁹. Nonetheless, it must be addressed forthwith before further prejudice occurs to the public.

VOLUME #5: Conclusion and Orders Sought
--

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

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

VOLUME #5(B): Preliminary Orders

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

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

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

73. The Applicant seeks the following public interest remedies, orders, declarations or findings for the benefit of the public along with this ONSC solidifying the required stability and uniformity involving *Reg 283*, which the Applicant respectfully seeks an endorsement or finding of the same, are the following syllogisms for accidents post September 1, 2010:
- a. A **Declaration of Law** that there cannot be any binding agreement, at law, between a First Insurer and another insurer or insurer(s), where an insured person has not received notice from the First Insurer (see: section 3(1));
 - b. A **Declaration of Law** that there cannot be any binding agreement, at law, between a First Insurer and another insurer or insurer(s), where an insured person has not *selected* the First Insurer (see: section 7(2) of *Reg 283*);
 - c. A **Declaration of Law** that there cannot be any binding agreement, at law, between a First Insurer and another insurer or insurer(s), at first instance or subsequent, under *Reg 283* if the insured person, in her capacity as an Applicant having sent a Completed Application that was received by an insurer, making said insurer the “First Insurer”, did not receive a notice of dispute or transfer pursuant to *Reg 283*::
 - d. A **Declaration of Law** that there cannot be any binding agreement between a First Insurer and another insurer or insurer(s), at first instance or subsequent, under *Reg 283* if the insured person, in her capacity as an Applicant having sent a Completed Application that was received by an insurer making said insurer the “First Insurer”, objected to any transfer of her claim pursuant to section 5(1) of *Reg 283* and said “agreement” was made without the consent of the insured person applicant who has seen and read the agreement;
 - e. A **Declaration of Law** that there cannot be any binding agreement, at law, between a First Insurer and another insurer or insurer(s), at first instance or subsequent, under *Reg 283* if the insured person, in her capacity as an Applicant having sent a Completed Application that was received by an insurer making said insurer the “First Insurer”, where:
 - i. an insured person has received notice of the potential transfer of the claim by the First Insurer to another insurer or insurers, the insured person has objected to the transfer within 14 days of receiving notice, received a copy of the proposed agreement, objected to said proposed agreement and has initiated arbitration within 14 days of being notified of an agreement under the *Arbitration Act, 1991* (see: section 7(2) of *Reg 283*);
 - f. A **Declaration of Law** that there cannot be any binding agreement, at law, between a First Insurer and another insurer or insurer(s), where an insurer does NOT commence or initiate arbitration within one year after the day the insurer paying

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

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

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

74. The Applicant seeks the following final orders:

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

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

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

“Time limit for proceedings

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

76. The LAT Appeal (a section 280(2) of the Insurance Act ‘Application’) was filed and served on the TDHA Fax Number, albeit unbeknownst to the Applicant as being the TDHA Fax Number, on December 24, 2023. SNIC filed its Response on January 25, 2024. VCM could not have reviewed the pleadings because she would have known by both pleadings that it was NOT the Applicant’s Insurance Policy.
77. In *R.M. v CAA Insurance*, 2020 CanLII 94775¹¹⁰, Vice Chair Shapiro found in relation to section 56 of the Schedule:
- “[5] Section 56 of the *Schedule* provides that an application to dispute a denial of a benefit must be commenced within two years of the insurer’s refusal to pay. Section 64 allows the denial notice to be sent by regular mail or faxed to an insured’s lawyer. Once a proper denial has been properly sent, if an insured does not appeal within that period, the Tribunal can not hear it as it is “time-barred”.
78. This, in turn, makes the precise point that SNIC, at least prima facie, has sent “denial letters” to the Applicant but TDHA has not. Parenthetically, TDGIC never sent a denial letter to the Applicant which was the Applicant’s primary reason for continuing to seek the relief to substitute SNIC for TDGIC – not the unsupported findings of VCM. Therefore, the “record of proceeding” will be unequivocally different between SNIC and TDHA. It is not merely a “cosmetic difference” but a substantive one.
79. All of which is respectfully submitted to the ONSC (Div. Ct.) at first instance on Tuesday, December 10, 2024:



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

APPENDICES OF THE JRPA APPLICANT'S FACTUM

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

The Appellant seeks the following orders as follows pursuant to section 21.1 of the *SPPA* (but not LAT Rule 17) by way of strikethrough for deleting the word therein and underlining for proposed additions in substantially the same form:

- a. An Order correcting the “date of the order” from September 6, 2024 to September 13, 2024;
- b. An Order correcting **paragraph 2** from “was issued to the parties” to the following in substance “was issued to the Appellant and TDGIC, which was and is a non-party pursuant to the retroactive nature of my order issued on June 20, 2024, and released on June 21, 2024. As a parenthetical note, the Appellant sought clarification of my order in relation to this NOM #8 to confirm that the retroactive nature of the ordered changes from TDGIC to SNIC only related to documents and orders issued by the Tribunal and not those of TDGIC from January 30, 2024, to June 21, 2024. I confirmed the same in my reasons for decision in relation to the Appellant’s order seeking clarification, which was his NOM #10;
- c. An Order correcting **paragraph #2, sentence #2**: [this is corrected by the change above in Order #2];
- d. An Order correcting **paragraph #3** to: from “on consent of the parties” to “by TDGIC not opposing the relief sought in NOM #8 (except costs) and the Appellant proceeding with his motion unopposed”;
- e. An Order correcting **paragraph #5** as follows in substance: [to be consistent between sentence #1 and sentence #2 as sentence #1 references twelfth, thirteenth, and fourteenth and sentence #2 references “NOM #13, NOM #14, and NOM #15”];
- f. An order correcting the “*similar error*” [*technical deficiency error*], in the form of incorrect language, at **paragraph 12**, as submissions are not affidavit evidence. Further, an order specifically correcting paragraph 12, sentence #2, from “He submits that he made demands...” to “He swore affidavit evidence that he made demands upon TDHA and exhibited the emails he sent to TDGIC along with filing a certificate of service that delivered the hearing brief, which was indexed, tabulated and consecutively numbered pursuant to *LAT Rule 9.4.5.*, on July 11, 2024. As the Tribunal did not provide TDGIC with an opportunity for submissions, contrary to *LAT Rule 9.2.2.*, the Tribunal did not have the benefit of any written submissions, affidavit evidence or authorities.”
- g. An order correcting paragraph #18 as follows with the inclusion of the technically correct language and facts: was TDGIC. While TDGIC was the

respondent party at the time, the effect of my order on June 6, 2024, operated retroactively.

h. An order correcting paragraph #19 as follows: removing sentence #1 and replacing with the language in the underlying hearing brief and record at the time “The reasons that SNIC was required to be the sole respondent party, as cited in NOM #8, were not only because of the Appellant’s reasons but compliance with the *SPPA*, *SABS*, *Reg 283*, FSRA requirements, *LATA*, consistency with the *LAT Rules* and others.

i. An Order that **paragraph 22**, sentence #1 is corrected as follows: “TD Insurance letterhead” to “TD Insurance Meloche Monnex letterhead” with the return address of 200-101 McNabb Street, Markham, Ontario”

j. An Order that **paragraph 22, sentence #3** is removed in its entirety in favour of the facts within the record of proceeding as follows in substance with the below:

i. Within the filed Appeal, the Appellant utilized the definition of TD SNIC. While the Appellant could not input the entirety of TD Insurance Meloche Monnex (Security National Insurance Company), he used TD Insurance with the definition of “TD SNIC” within the pleading for further specification. Attached to his pleading with the required

listed key documents were four pre-pleading affidavits that all referenced TD SNIC, which contained the “Denial Letters” therein.

i. On December 24, 2023, the Appellant served the Appeal to the fax number provided to him by SNIC in September 2022, which was 416.774.3120. The said fax number is grounded and wired to the building located at 3650 Victoria Park Avenue, North York, Toronto, Ontario. The Appellant was unaware that said fax number was not that of SNIC Markham. Whichever insurance company was so located on the 4th floor of the Victoria Park Building at the time of October 13, 2022, was served with the Appeal.

ii. On January 3, 2024, the Appellant filed his NOM #1 with the Tribunal.

iii. On January 8, 2024, the Appellant filed his NOM #2 with the Tribunal. On the same day, the Appellant received communications from one Mr. Josh Grant, case manager, of the LAT/AABS requesting that the Appellant provide copies of the denial letters that he had received in relation to his TD Claim #3 and LAT Proceeding. The Appellant did so on January 8, 2024, which contained denials letters exclusively from SNIC at its alleged offices of SNIC Markham and the Burlington Office Building (absent a floor number). The denial letters that the Appellant provided were already contained within the pre-pleading affidavits that particularized the key documents for the Appeal.

iv. On January 14, 2024, the Appellant filed NOM #3.

v. In each of the three motions denoted above, the Appellant denoted the respondent as “TD Insurance Meloche Monnex” (Security National Insurance Company).

vi. On January 16, 2024, Vice-Chair Lake issued written reasons for decision in all three motions, without the party receiving any notice of the written hearings, section 6, declining to decide the same. In Vice Chair Lake’s order, she even references TD SNIC but continued with the finalization of her reasons for decision with TDGIC as the Respondent.

vii. For context as to how TD General Insurance Company became the sole respondent on January 8, 2024, in the LAT/AABS system, when Mr. Josh Grant, case manager for the SNIC Proceeding, was assigned to the same, Mr. Grant emailed the Appellant, Mr. Nieuwland, who was then counsel to TDGIC, and Mr. Karat, ADR Specialist to SNIC, on May 6, 2023, in response to the Appellant's May 6, 2024, email requesting, *inter alia*, copies of the documents and information as it relates to who provided the Tribunal with information regarding TDGIC on or around the deadline for filing a Response to the Appellant's Appeal. The Appellant's query arose after May 2, 2024, at the combined case conference and set hearings for his NOM #4 and NOM #6, when he objected, prior to and during the case conference, to TDGIC being the sole respondent or a respondent at all as it was never disclosed to him as an insurance company; it was not the underwriter in the Appellant Spouse's insurance policy, that had any duties in relation to his TD Claim #3. Moreover, the Appellant needed to know the information because SABS requires the insurance company that refused to pay any amounts claimed for benefits or any refusal seeking increased benefits to be named (see: section 56 of SABS3). Mr. Grant kindly noted that the Appellant did list TD Insurance as the Respondent but **mistakenly** stated that the denial letters the Appellant filed also referenced only TD Insurance when the denial letters bore the two trademarks of "TD Insurance Meloche Monnex" and the return address of Security National Insurance Company (see: affidavit #38, Exhibit "A" pages 31 to 45). Mr. Grant's explanation was that, after receiving the denial letters, which did not reference "TD Insurance" (or TD General Insurance Company), that the information, in his view, provided in the Appeal, plus pre-pleading listed and attached documents, provided him with only two options for entry of the respondent party insurer, when SNIC was in the upper-right hand corner of each document along with the author being "TD Insurance Meloche Monnex", in: (i) TD General Insurance Company; or (ii) TD Home And Auto Insurance Company.

viii. Mr. Grant noted that "If there was a concern that the Security National Insurance Company, not TDGIC, being named as the Respondent party, please advise if the parties agree that a change should be made. The Appellant sought TDGIC's consent, but it did not respond. It was not until after the Appellant found the FSRA enforcement decisions and Mr. Nieuwland's representation of SNIC in the Syed Decisions, could he disprove Mr. Nieuwland's representations that SNIC and TDGIC were one and the same and "this is how they always do it" [in relation to SNIC being the sole underwriter, responding insurance company *et al* and then TDGIC becoming the sole respondent]. The Appellant again sought the consent of TDGIC when he obtained the FSRA's confirmation that he could obtain status certificates at a cost for expedited receipt. TDGIC did not respond. It was not until after some six months of TDGIC refusing to be removed as the sole Respondent, and SNIC not responding to the overtures to be the sole respondent and opposing relief from the Appellant in motions and unlawfully appearing as the sole respondent at the case conference, that TDGIC, through Mr. Nieuwland confirmed in writing on June 6, 2024, that it would not oppose the Appellant's relief sought in NOM #8. The Appellant obtained those status certificates on June 19, 2024, and filed them

with the Tribunal. On June 21, 2024, with a litany of reasons as to why SNIC was required to be the respondent instead of TDGIC, as TDHA was unknown to the Appellant, NOM #8 was granted in the Appellant's favour.

k. An Order that **paragraph 23**,

- ix. sentence #1 is corrected from "Respondent's counsel" to "current respondent's counsel and former counsel to TDGIC", from "noting that he was representing the insurer "TDGIC" to "declaring that he was representing the insurer "TDGIC" but only after Mr. Karat, the ADR Specialist, who represented to the Appellant, on January 23, 2024, via email, with Mr. Nieuwland copied as "counsel", that he was assigned to be the ADR and representing the Security National Insurance Company, and then on January 25, 2024, Mr. Karat signed and filed the Response for SNIC ("SNIC Response") whilst serving the Appellant;
- x. sentence #2 is corrected by the removal of the entire sentence with the facts as above in substance subject to the writing style of Vice Chair or an adjudicator;

l. An Order that **paragraph 24** is corrected to the following:

- i. Sentence #2: removing the entire sentence and adding the following, "Consistent with the documents, the Appellant refuted Mr. Nieuwland's misrepresentations⁴ that SNIC and TDGIC were "one and the same" and that TD Insurance Staff Legal always substituted or changed the identity of TDGIC for SNIC in LAT proceedings, which was counter to the very representations Mr. Nieuwland made representing SNIC in those *Syed Decisions* in LAT file number:
- ii. Sentence #4: changing the following from "dated June 20, 2024, and released the following day on Friday, June 21, 2024,"⁵ and from "on consent of the respondent" to "by email dated June 6, 2024, TDGIC, through Mr. Nieuwland, confirmed it [TDGIC] would not oppose the relief sought";
- m. An Order the following sentences in paragraph #27 are amended as follows:
 - i. Sentence #2: changing from "The initial respondent, TDGIC, and the current respondent, SNIC accepted priority over the applicant's spouse's insurance policy"
- n. An Order that the following paragraph 35, sentence two is amended as follows:
 - i. From "curtail" to "circumvent";⁶ and

APPENDIX #2: REG 283

ONTARIO REGULATION 283/95**DISPUTES BETWEEN INSURERS**

Last amendment: 126/19.

This Regulation is made in English only.

0.1 In this Regulation,

“application” means an application for accident benefits (OCF-1) approved by the Superintendent for the purposes of the *Schedule*;

“benefits” means statutory accident benefits as defined in subsection 224 (1) of the Act;

“completed application” means a completed and signed application;

“Fund” means the Motor Vehicle Accident Claims Fund continued under subsection 2 (1) of the *Motor Vehicle Accident Claims Act*;

“*Schedule*” means, in respect of an accident, the *Statutory Accident Benefits Schedule* as defined in subsection 224 (1) of the Act that applies in respect of the accident. O. Reg. 38/10, s. 1.

1. All disputes as to which insurer is required to pay benefits under section 268 of the Act shall be settled in accordance with this Regulation. O. Reg. 283/95, s. 1.

2. (1) The first insurer that receives a completed application for benefits is responsible for paying benefits to an insured person pending the resolution of any dispute as to which insurer is required to pay benefits under section 268 of the Act. O. Reg. 283/95, s. 2.

(2) Subsection (1) applies in respect of benefits that may be payable as a result of an accident that occurs before September 1, 2010. O. Reg. 38/10, s. 2.

2.1 (1) This section applies in respect of benefits that may be payable as a result of an accident that occurs on or after September 1, 2010. O. Reg. 38/10, s. 3.

(2) An insurer shall promptly provide an application and any other appropriate forms in accordance with the *Schedule* to an applicant who notifies the insurer that he or she wishes to apply for benefits. O. Reg. 38/10, s. 3.

(3) The application provided by the insurer must include the insurer’s name, mailing address and telephone and facsimile numbers. O. Reg. 38/10, s. 3.

(4) The applicant shall use the application provided by the insurer and shall send the completed application to only one insurer. O. Reg. 38/10, s. 3.

(5) An insurer that provides an application under subsection (2) to an applicant shall not take any action intended to prevent or stop the applicant from submitting a completed application to the insurer and shall not refuse to accept the completed application or redirect the applicant to another insurer. O. Reg. 38/10, s. 3.

(6) The first insurer that receives a completed application for benefits from the applicant shall commence paying the benefits in accordance with the provisions of the *Schedule* pending the resolution of any dispute as to which insurer is required to pay the benefits. O. Reg. 38/10, s. 3.

(7) An insurer that fails to comply with this section shall reimburse the Fund or another insurer for any legal fees, adjuster's fees, administrative costs and disbursements that are reasonably incurred by the Fund or other insurer as a result of the non-compliance. O. Reg. 38/10, s. 3.

(8) In subsection (7),

“insurer” does not include the Fund. O. Reg. 38/10, s. 3.

3. (1) No insurer may dispute its obligation to pay benefits under section 268 of the Act unless it gives written notice within 90 days of receipt of a completed application for benefits to every insurer who it claims is required to pay under that section. O. Reg. 283/95, s. 3 (1).

(1.1) If the dispute relates to an accident that occurred on or after September 1, 2010, a notice required under subsection (1) must also be given to the Fund if the insurer claims the Fund is required to pay benefits. O. Reg. 38/10, s. 4.

(2) An insurer may give notice after the 90-day period if,

(a) 90 days was not a sufficient period of time to make a determination that another insurer or insurers is liable under section 268 of the Act; and

(b) the insurer made the reasonable investigations necessary to determine if another insurer was liable within the 90-day period. O. Reg. 283/95, s. 3 (2).

(2.1) If the dispute relates to an accident that occurred on or after September 1, 2010, the Fund may give a notice under subsection (1) after the 90-day period and is not required to comply with subsection (2). O. Reg. 38/10, s. 4.

(3) The issue of whether an insurer who has not given notice within 90 days has complied with subsection (2) shall be resolved in an arbitration under section 7. O. Reg. 283/95, s. 3 (3).

3.1 (1) This section applies to disputes relating to accidents occurring on or after September 1, 2010. O. Reg. 38/10, s. 5.

(2) Before giving a notice to the Fund under section 3, an insurer must,

(a) complete a reasonable investigation to determine if any other insurer or insurers are liable to pay benefits in priority to the Fund; and

(b) provide particulars to the Fund of the investigation and the results of the investigation. O. Reg. 38/10, s. 5.

4. (1) An insurer that gives notice under section 3 shall also give notice to the insured person using a form approved by the Chief Executive Officer. O. Reg. 283/95, s. 4; O. Reg. 305/98, s. 1; O. Reg. 126/19, s. 2.

(2) Despite subsection (1), if the insurer that gives notice under section 3 is the Fund, no notice shall be given to the insured person under subsection (1). O. Reg. 38/10, s. 6.

5. (1) An insured person who receives a notice under section 4 shall advise the insurer paying benefits in writing within 14 days whether he or she objects to the transfer of the claim to the insurers referred to in the notice. O. Reg. 283/95, s. 5 (1).

(2) If the insured person does not advise the insurer within 14 days that he or she objects to the transfer of the claim, the insured person is not entitled to object to any subsequent agreement or decision to transfer the claim to the insurers referred to in the notice. O. Reg. 283/95, s. 5 (2).

(3) Subject to subsection 7 (5), an insured person who has given notice of an objection is entitled to participate as a party in any subsequent proceeding to settle the dispute and no agreement between insurers as to which insurer should pay the claim is binding unless the insured person consents to the agreement or 14 days have passed since the insured person was notified in writing of an agreement and the insured person has not initiated an arbitration under the *Arbitration Act, 1991*. O. Reg. 283/95, s. 5 (3); O. Reg. 38/10, s. 7.

6. (1) The insured person shall provide the insurers with all relevant information needed to determine who is required to pay benefits under section 268 of the Act. O. Reg. 283/95, s. 6.

(2) Upon request by the first insurer that receives a completed application for benefits, the insured person shall submit to one examination under oath for the purpose of determining who is required to pay benefits under section 268 of the Act. O. Reg. 16/13, s. 1.

(3) No other insurer is entitled to require the insured person to submit to an examination under oath for the purpose of determining who is required to pay benefits under section 268 of the Act. O. Reg. 16/13, s. 1.

(4) The scope of the examination under oath is limited to matters that are relevant to determining who is required to pay benefits under section 268 of the Act. O. Reg. 16/13, s. 1.

(5) The insured person is entitled to be represented at his or her own expense at the examination under oath by such counsel or other representative of his or her choice as the law permits. O. Reg. 16/13, s. 1.

(6) The insurer shall make reasonable efforts to *Schedule* the examination under oath for a time and location that are convenient for the insured person and shall give him or her reasonable advance notice of the following:

1. The date and location of the examination.
2. The insured person's entitlement to be represented in the manner described in subsection (5).
3. The reason for the examination.

4. The fact that the scope of the examination is limited to matters that are relevant to determining who is required to pay statutory accident benefits under section 268 of the Act. O. Reg. 16/13, s. 1.

7. (1) If the insurers cannot agree as to who is required to pay benefits, the dispute shall be resolved through an arbitration under the *Arbitration Act, 1991* initiated by the insurer paying benefits under section 2 or 2.1 or any other insurer against whom the obligation to pay benefits is claimed. O. Reg. 38/10, s. 8.

(2) If an insured person was entitled to receive a notice under section 4, has given a notice of objection under section 5 and disagrees with an agreement among insurers that an insurer other than the insurer selected by the insured person should pay the benefits, the dispute shall be resolved through an arbitration under the *Arbitration Act, 1991* initiated by the insured person. O. Reg. 38/10, s. 8.

(3) The arbitration may be initiated by an insurer or by the insured person no later than one year after the day the insurer paying benefits first gives notice under section 3. O. Reg. 38/10, s. 8.

(4) Despite subsection (3), the arbitration may be initiated by the Fund at any time before or after the expiry of the time limit set out in subsection (3) if the Fund is paying benefits in respect of an accident that occurred on or after September 1, 2010. O. Reg. 38/10, s. 8.

(5) No insured person is entitled to initiate or participate as a party to an arbitration under this section if the insurer paying benefits is the Fund. O. Reg. 38/10, s. 8.

(6) If the dispute relates to an accident that occurred on or after September 1, 2010, the failure of an insurer other than the Fund to comply with section 2.1 or 3.1 may be the subject of a special award made by the arbitrator. O. Reg. 38/10, s. 8.

8. (1) Except as provided in this Regulation, the *Arbitration Act, 1991* applies to an arbitration under this Regulation. O. Reg. 283/95, s. 8 (1).

(2) The following rules apply with respect to an arbitration of a dispute relating to an accident that occurs on or after September 1, 2010:

1. If an insurer to whom a notice to initiate arbitration is delivered does not respond to the notice within 30 days, the insurer is deemed to have accepted the jurisdiction of the arbitrator proposed in the notice.

2. A pre-arbitration hearing must be *Scheduled* and take place no later than 120 days after the appointment of the arbitrator.

3. Subject to paragraph 4, once a date for the arbitration is *Scheduled*, the arbitration must be conducted on that day.

4. The arbitrator may grant an adjournment on such terms as the arbitrator considers appropriate, but only if there is cogent and compelling evidence of the reasons why the hearing cannot proceed on the *Scheduled* day.

5. Unless consented to by all parties, the hearing of the arbitration must be completed within two years after the commencement of the arbitration. O. Reg. 38/10, s. 9.

(3) The decision of an arbitrator made under this Regulation must be made public. O. Reg. 38/10, s. 9.

(4) If the decision relates to an accident that occurred on or after September 1, 2010, the decision must be made public,

(a) by the insurer that the arbitrator finds to be liable to pay the benefits; and

(b) in a manner and form specified by the Chief Executive Officer. O. Reg. 38/10, s. 9; O. Reg. 126/19, s. 2.

9. (1) Unless otherwise ordered by the arbitrator or agreed to by all the parties before the commencement of the arbitration, the costs of the arbitration for all parties, including the cost of the arbitrator, shall be paid by the unsuccessful parties to the arbitration. O. Reg. 283/95, s. 9 (1).

(2) The costs referred to in subsection (1) shall be assessed in accordance with section 56 of the *Arbitration Act, 1991*. O. Reg. 283/95, s. 9 (2).

10. (1) If an insurer who receives notice under section 3 disputes its obligation to pay benefits on the basis that other insurers, excluding the insurer giving notice, have equal or higher priority under section 268 of the Act, it shall give notice to the other insurers. O. Reg. 283/95, s. 10 (1).

(2) This Regulation applies to the other insurers given notice in the same way that it applies to the original insurer given notice under section 3. O. Reg. 283/95, s. 10 (2).

(3) The dispute among the insurers shall be resolved in one arbitration. O. Reg. 283/95, s. 10 (3).

11. References in this Regulation to a form approved by the Chief Executive Officer are deemed to include the last form approved by the Superintendent for the purposes of the relevant provision prior to the day section 22 of *Schedule 13 to the Plan for Care and Opportunity Act (Budget Measures), 2018* came into force until the Chief Executive Officer approves a subsequent form for the purposes of the relevant provision. O. Reg. 126/19, s. 1.

**APPENDIX #3: THE SCHEDULE (NOTA BENE: FOCUSED ON THE WORD
“RECEIVE” OR “RECEIVES”)**

Statutory Accident Benefits Schedule, O Reg 34/10, <<https://canlii.ca/t/56cm2>> retrieved on 2024-12-10

**PART
PROCEDURES FOR CLAIMING BENEFITS**

VIII

General

Notice to insurer and application for benefits

[nota bene: duties of a person – insured person – or potentially insured person]

32. (1) A person who intends to apply for one or more benefits described in this Regulation shall notify the insurer of his or her intention no later than the seventh day after the circumstances arose that give rise to the entitlement to the benefit, *or* as soon as practicable after that day. O. Reg. 34/10, s. 32 (1).

[Nota bene: Duties of the First Notified Insurer]

(2) The insurer shall promptly provide the person with,

- (a) the appropriate application forms;
- (b) a written explanation of the benefits available;
- (c) information to assist the person in applying for benefits; and
- (d) information on the election relating to income replacement, non-earner and caregiver benefits, if applicable. O. Reg. 34/10, s. 32 (2).

(3) If an insurer that is subject to a Guideline referred to in subsection 64 (7) determines, acting reasonably, that there is a likelihood that the person may, in connection with the accident, deliver one or more documents referred to in that subsection, the insurer shall provide the following information to the central processing agency referred to in that subsection:

- 1. The name, address, gender and date of birth of the person.
- 2. The date of the accident.
- 3. Particulars of the automobile insurance policy under which the person asserts he or she is entitled to a benefit or benefits, including,

- i. the name of the insurer,
- ii. the policy number, and
- iii. the name of the person to whom the policy was issued.

4. The claim number assigned by the insurer.

5. Any other information reasonably required by the central processing agency to enable it to carry out its obligations to the insurer under this Regulation. O. Reg. 34/10, s. 32 (3).

(4) An insurer's obligation to provide the information referred to in subsection (3) may be discharged by,

(a) providing the information to the central processing agency; or

(b) confirming, correcting or supplementing the information previously provided to the central processing agency. O. Reg. 34/10, s. 32 (4).

[Nota bene: duties of the applicant submitting a completed application within 30 days after receipt of application forms]

(5) The applicant shall submit a completed and signed application for benefits to the insurer within 30 days after receiving the application forms. O. Reg. 34/10, s. 32 (5).

[Nota bene: Duties of the First Insurer]

(6) If an insurer receives an incomplete or unsigned application, the insurer shall notify the applicant within 10 business days after receiving the application and shall advise the applicant of the missing information that is required or that the applicant's signature is missing, as appropriate. O. Reg. 34/10, s. 32 (6).

(7) The insurer shall not give a notice under subsection (6) unless,

(a) the insurer, after a reasonable review of the incomplete application, is unable to determine, without the missing information, whether a benefit is payable; or

(b) the application has not been signed by the applicant. O. Reg. 34/10, s. 32 (7).

(8) If subsection (6) applies in respect of an incomplete application, no benefit is payable before the applicant provides the missing information or signs the application, as the case may be. O. Reg. 34/10, s. 32 (8).

(9) If an applicant is required by an insurer to submit an additional application in respect of a benefit that the applicant is receiving or may be eligible to receive, the applicant shall submit the additional application to the insurer within 30 days after receiving the additional application forms from the insurer. O. Reg. 34/10, s. 32 (9).

(10) Despite any shorter time, limit in this Regulation, if an applicant fails without a reasonable explanation to notify an insurer under subsection (1) within the time required under that subsection,

the insurer may delay determining if the applicant is entitled to a benefit and may delay paying the benefit until the later of,

- (a) 45 days after the day the insurer receives the completed and signed application; or
- (b) 10 business days after the day the applicant complies with any request made by the insurer under subsection 33 (1) or (2). O. Reg. 34/10, s. 32 (10).

Claim for Income Replacement Benefit, Non-Earner Benefit, Caregiver Benefit or Payment for Housekeeping or Home Maintenance Services

Application

36. (1) In this section and section 37

(4) Within 10 business days after the insurer receives the application and completed disability certificate, the insurer shall,

- (a) pay the specified benefit;
- (b) give the applicant a notice explaining the medical and any other reasons why the insurer does not believe the applicant is entitled to the specified benefit and, if the insurer requires an examination under section 44 relating to the specified benefit, advising the applicant of the requirement for an examination; or
- (c) send a request to the applicant under subsection 33 (1) or (2). O. Reg. 34/10, s. 36 (4).

(5) If the insurer sends a request to the applicant under subsection 33 (1) or (2), the insurer shall, within 10 business days after the applicant complies with the request,

- (a) pay the specified benefit; or
- (b) give the applicant a notice described in clause (4) (b). O. Reg. 34/10, s. 36 (5).

(6) If the insurer fails to comply with subsection (4) or (5) within the applicable time limit, the insurer shall pay the specified benefit for the period starting on the day the insurer received the application and completed disability certificate and ending, if the insurer subsequently gives a notice described in subsection (4) (b), on the day the insurer gives the notice. O. Reg. 34/10, s. 36 (6).

(7) If the insurer requires the applicant to undergo an examination under section 44, the insurer shall, within 10 days after receiving the report of the examination,

- (a) give a copy of the report to the applicant and to the person who completed the disability certificate submitted with the application; and
- (b) provide the applicant with a notice indicating the amount, if any, that the insurer agrees to pay in respect of the specified benefit, the amount, if any, the insurer refuses to pay in respect of the

specified benefit and the medical and any other reasons for the insurer's decision. O. Reg. 34/10, s. 36 (7).

(8) Within 10 business days after delivering the notice under clause (7) (b), the insurer shall pay the amount, if any, that the insurer agrees to pay in respect of the specified benefit. O. Reg. 34/10, s. 36 (8).

(9) Every income replacement benefit, non-earner benefit or caregiver benefit shall be paid at least once every second week, subject to any prepayment of the benefit by the insurer. O. Reg. 34/10, s. 36 (9).

[Nota bene: Hence, why the Applicant has sworn evidence or submitted that he has never received any IRB as it was required to be paid by TDHA].

[Section 64 of *SABS* not relevant as it relates to that regulation and not *Reg 283*]

APPENDIX #4: INSURANCE ACT, SECTIONS 224 AND 268

[SQUARE BRACKETS ARE THE APPLICANT’S]

**PART VI
AUTOMOBILE INSURANCE**

Interpretation, Part VI

224 (1) In this Part,

“statutory accident benefits” means the benefits set out in the regulations made under paragraphs 9 and 10 of subsection 121 (1); (“indemnités d’accident légales”)

Fees and Regulations

Regulations

121 (1) The Lieutenant Governor in Council may make regulations,

9. establishing benefits for the purposes of Part VI that must be provided under contracts evidenced by motor vehicle liability policies and establishing terms, conditions, provisions, exclusions and limits related to such benefits;

10. requiring insurers to offer optional benefits in excess of the benefits that must be provided under paragraph 9 prescribing the circumstances in which the optional benefits are to be offered and establishing terms, conditions, provisions, exclusions and limits related to such benefits;

10.1 prescribing coverages and endorsements in respect of contracts of automobile insurance that insurers or a class of insurers are required to offer, deeming the benefits provided by the coverages and endorsements not to be statutory accident benefits for the purpose of Part VI, and prescribing the circumstances in which the coverages and endorsements shall be offered;

10.2 prescribing rules for interpreting the regulations made under paragraphs 9 and 10 or any provision of those regulations;

10.3 prescribing functions to be performed by a committee appointed under section 7;

10.4 governing the procedure for determining who is liable to pay statutory accident benefits under section 268, including requiring insurers to resolve disputes about liability through an arbitration process established by the regulations and requiring the interim payment of benefits pending the determination of liability;

[nota bene: subsection 10.4 is yet another example of how the Legislature provided an extremely broad grant of authority to the LGIC for governing the procedure of determining how insurers are liable to pay SABS under section 268 which then dovetails to Reg 263]

Statutory accident benefits

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

Liability to pay

(2) The following rules apply for determining who is liable to pay statutory accident benefits:

1. In respect of an occupant of an automobile,
 - i. the occupant has recourse against the insurer of an automobile in respect of which the occupant is an insured,
 - ii. if recovery is unavailable under subparagraph i, the occupant has recourse against the insurer of the automobile in which he or she was an occupant,
 - iii. if recovery is unavailable under subparagraph i or ii, the occupant has recourse against the insurer of any other automobile involved in the incident from which the entitlement to statutory accident benefits arose,
 - iv. if recovery is unavailable under subparagraph i, ii or iii, the occupant has recourse against the Motor Vehicle Accident Claims Fund.

Liability

(3) An insurer against whom a person has recourse for the payment of statutory accident benefits is liable to pay the benefits. R.S.O. 1990, c. I.8, s. 268 (3); 1993, c. 10, s. 1.¹¹¹

Choice of insurer

(4) If, under subparagraph i or iii of paragraph 1 of subsection (2), a person has recourse against more than one insurer for the payment of statutory accident benefits, the person, in his or her absolute discretion, may decide the insurer from which he or she will claim the benefits

[nota bene: upon Mr. McLean's discovery of whom the First Insurer (TDHA) was, he, at law, only has recourse against one insurer and that is TDHA per se. To the extent that Mr. McLean has recourse against more than one insurer, it is only the obligation to pay benefits (see: *Beasley* and

Jia) which triggers the fiduciary duties owed by an insurance company to him. It would be against his own self-interest, as a matter of law, to choose an insurer which does not have a duty to respond and pay. It is not a matter of contract but a matter of statute and regulations. Moreover, the duties of the insurer that first received the Completed Application are also delineated and detailed in the OCF-1 itself which also dovetail to *PIPEDA*. Mr. McLean has not and is not revoking his consent to TDHA having received the same but that has provided notice to it that it must comply with its obligations therein as a matter of law or “by law” which are under the following: (i) *Insurance Act*; (ii) *Legislation Act*; (iii) *SPPA*; (iv) *PIPEDA*; and regulations: (i) *Reg 283*; (iii) *SABSs et al.*

Same

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

Same

(5.1) Subject to subsection (5.2), if there is more than one insurer against which a person may claim benefits under subsection (5), the person, in his or her discretion, may decide the insurer from which he or she will claim the benefits. 1993, c. 10, s. 26 (2).

Same

(5.2) If there is more than one insurer against which a person may claim benefits under subsection (5) and the person was, *at the time* of the incident, an occupant of an automobile in respect of which the person is the named insured or the spouse or a dependant of the named insured, the person shall claim statutory accident benefits against the insurer of the automobile in which the person was an occupant. 1993, c. 10, s. 26 (2); 1999, c. 6, s. 31 (10); 2005, c. 5, s. 35 (14).

[nota bene: There is no dispute that Mr. McLean attempted to claim benefits from SNIC but he nearly did not receive his accident benefits package by an incorrect postal code therein whilst his spouse did receive the same. Moreover, he did *attempt to claim benefits* from SNIC but it was intentional redirection, by way of fax number and potentially address (mailing), to a “different insurance company(ies)”

Payments pending dispute resolution

(8) Where the *Statutory Accident Benefits Schedule* provides that the insurer will pay a particular statutory accident benefit pending resolution of any dispute between the insurer and an insured, the insurer shall pay the benefit until the dispute is resolved. R.S.O. 1990, c. I.8, s. 268 (8); 1993, c. 10, s. 1.

[nota bene: said subsection 268(8) was passed in 1990 and amended in 1993 which predated *Reg 283* in its initial form and certainly well before its “amended form” in 2010. Nonetheless, a breach

of SABS and *Reg 283* is legally equivalent in the year of 2024 so said section overrides the above subsections 268(5) as that is a contractual (policy) issue. By the **VCM Decision**, paragraph 27, her finding that TDGIC, as the “initial respondent” [sic] and SNIC accepted priority over the applicant’s [sic] insurance policy invokes the analysis of priority and not an insurance policy because priority cannot be decided in relation to an insurance policy per se when there is only one insurer. It certainly cannot add a “party” (i.e. language of “First Party Insurer” under *Reg 664* which is distinct from *Reg 283* with “First Insurer”) to a contract WITHOUT the consent of a party to the Insurance Policy. Moreover, while the Applicant was statutorily deemed to have given consideration therefor under the Insurance Policy, the adding of an additional insurance company to a contract would have required the consent of all parties to that contract with “new consideration” or “additional consideration”. Therefore, while subsection 2.1 of *Reg 283*, passed in 2010, is more analytically relevant to this *JRPA* Application, TDHA is still obligated to pay the benefits to the Applicant pursuant to section 2(1) of *Reg 283*).

APPENDIX #5: Changes to Ontario Regulation 283/95: Disputes Between Insurers
 Bulletin No. A-07/10 – Auto Property & Casualty <https://www.fsrao.ca/media/7866/download>

With this Bulletin, the Financial Services Commission of Ontario (FSCO) is highlighting the recent changes to Ontario Regulation 283/95: Disputes Between Insurers, to ensure compliance by all insurers. The changes are effective September 1, 2010. Background Ontario Regulation 283/95 sets out a mandatory process for private arbitration of all disputes between insurers over which insurer is liable to pay accident benefits to a claimant. This regulation is intended to ensure that claimants receive accident benefits (e.g., medical and income replacement benefits) in a timely fashion while these disputes are being resolved. Ontario Regulation 283/95 was established in 1995 following several years of experience with the no-fault accident benefits system. During the past several years, a number of procedural issues and disputes over the interpretation of Ontario Regulation 283/95 have led to delays in paying claimants' benefits. In addition, the Motor Vehicle Accident Claims Fund (MVACF) has frequently had to get involved to ensure that benefit payments to injured persons were not delayed – even if a private insurer was obliged to make the payments. As part of the automobile insurance reforms which resulted from FSCO's Five Year Review of Automobile Insurance, effective September 1, 2010 Ontario Regulation 283/95 is amended by Ontario Regulation 38/10. These amendments were made to ensure that claims are not deflected and that claimants receive payments without delay in cases where there may be a dispute regarding which insurer is liable to pay statutory accident benefits. Insurers that do not comply with this regulation will be subject to appropriate

Key Regulation Changes

1. Deflection of Applications for Accident Benefits

a) Upon request, an insurer must provide a claimant timely access to OCF-1: Application for Accident Benefits (OCF-1 application). (Section 2.1(2)) Individuals who are injured in automobile accidents often contact the insurance company that they believe is liable to pay accident benefits before they complete and send their OCF-1 application to the insurer. In many cases, claimants are not aware of the priority rules that determine which insurer is liable to pay them benefits. The Statutory Accident Benefits *Schedule (SABS)* requires an insurer to provide an OCF-1 application to an injured person who expresses an intention to make a claim for benefits. This requirement is now reinforced by section 2.1(2) of Ontario Regulation 283/95.

b) An insurer must not impede claimants from submitting OCF-1 applications or redirect them to other insurers or the MVACF. (Section 2.1(5)) When a claimant first contacts an insurer following an accident, it is not always clear, based on information reported by the claimant, if that insurer is responsible for paying the accident benefits in accordance with the priority rules. It is inappropriate for the insurer to discourage the injured person from filing an OCF-1 application, for example on the grounds that there is no insurance coverage (e.g., due to a cancelled insurance policy), or that there is another insurer to whom the person should make his or her claim. Insurers must provide claimants who express an intention to make an accident benefits claim with an OCF-1 application and not direct them to file it with MVACF or another insurer. Section 2.1(5) of Ontario Regulation 283/95 prohibits the deflection of OCF-1 applications. This includes deflection on the grounds that it is not clear which insurer is

required to pay accident benefits. c) The first insurer that receives an OCF-1 application must pay accident benefits in accordance with the *SABS*. (Section 2.1(6)) In order to prevent delays in payments, Ontario Regulation 283/95 requires the first insurer that receives a completed OCF-1 application to pay the accident benefits, as long as the claimant meets the requirements of the *SABS*. Although an insurer may believe that it is not responsible for paying accident benefits under the priority rules, the process to transfer, dispute and recover paid benefits is set out in Ontario Regulation 283/95. d) An insurer that fails to comply with this section will reimburse the MVACF or another insurer all related legal fees, administrative costs and disbursements. (Section 2.1(7)) Section 2.1 (7) has been added to Ontario Regulation 283/95 to confirm the ability to recover costs incurred by the MVACF or an insurer in the administration of a claim (including adjusting costs) from the non-compliant insurer.

2. Definitions of "First Insurer" and "Completed Application"

Several amendments are intended to provide clarity on issues that have arisen since the release of Ontario Regulation 283/95 in 1995; such as what is a "first insurer" and "completed application".

a) A "completed application" is defined as a completed and signed OCF-1 application. (Section 0.1) b) The insurer that first receives a completed OCF-1 application is the "first insurer" for the purposes of Ontario Regulation 283/95. (Section 2.1(6)) A "first insurer" may not refuse to respond to the application on the basis that the application is not from an "insured person", or that there was no relevant policy in place on the date of the accident (e.g., the insurance policy was cancelled, expired or never existed). c) The applicant shall complete the OCF-1 application that is provided by the insurer and send it to only one insurance company. (Section 2.1(4)) Claimants are required to submit a completed OCF-1 application to only one insurer. This is intended to avoid potential disputes over which insurer first received a completed application, rather than creating confusion by submitting OCF-1 applications to more than one insurer.

3. Time Limitations for Notifying Other Insurers of Liability

a) Before initiating a dispute against the MVACF, an insurer is required to complete a reasonable investigation to determine if any other insurer(s) is/are liable to pay benefits in priority to the MVACF and provide the MVACF with the particulars and results of the investigation. (Section 3.1(2)(a) and (b)) Section 3 of Ontario Regulation 283/95 provides the first insurer 90 days from the receipt of the completed application to conduct a reasonable investigation. This time frame allows the insurer to conduct an investigation to determine whether another insurer is liable to pay benefits, and to deliver written notice to other insurers if it believes they are liable to pay for accident benefits under the priority rules. Ontario Regulation 283/95 provides an extension beyond 90 days only if the first insurer has made reasonable investigation of the claim but cannot reach a decision within the 90-day period. Section 3.1 requires an insurer that wishes to put the MVACF on notice of a dispute to first complete a reasonable investigation and provide the results of the investigation to the MVACF.

Due to the unique nature of the claims that are submitted directly to the MVACF, in many cases another policy is discovered only after an extended period of investigation. As a result, this time limit does not apply to OCF-1 applications that are submitted first to the MVACF. (Section 3(2.1)) To facilitate the early resolution of disputes between insurers, a dispute about which insurer is responsible

for payments must go to arbitration within one year of providing notice to the other insurer. See section 7 for the specific rules that need to be followed. Enforcement Note that in addition to

sections 2.1(7) and 7 (6), actions contrary to Ontario Regulation 283/95 will be subject to appropriate enforcement or regulatory action in accordance with section 441 of the *Insurance Act* and Ontario Regulation 7/00: Unfair or Deceptive Acts or Practices. Publication of Arbitration Decisions involving Disputes Between Insurers Amendments to Ontario Regulation 283/95 have been made to ensure that arbitration decisions involving disputes between insurers are both timely and publicly available. The amendments require the insurer that is found by the arbitrator to be liable to pay benefits to make the arbitrator's decision public in a manner and form specified by the Superintendent. (Section 8(4)) The specified form and the process by which insurers will need to comply with this requirement will be the subject of a future Property & Casualty – Auto Bulletin. Effective Date The effective date of the Ontario Regulation 283/95 amendments is September 1, 2010. All insurers need to ensure that their claims and underwriting staff, plus any other staff who may be affected by these amendments, are informed of these changes. In addition, insurers are to ensure that they make any operational changes needed to implement the reforms by the effective date. Copies of Regulations The *Insurance Act* and Ontario Regulations 283/95 and 38/10 can be downloaded from the e-laws website at www.e-laws.gov.on.ca. Phil Howell Chief Executive Officer and Superintendent of Financial Services May 13, 2010

APPENDIX #6: AF-143, “Notice to Applicant of Dispute between Insurers”

Fillable/saveable:

AF-143E

Form details

Form number:	AF-143
Form title:	Notice to Applicant of Dispute Between Insurers
Sector:	Auto
Category:	Other - Auto
Last update:	1995-04-01

Notice to Applicant of Dispute Between Insurers

Name of Applicant	Mr. ☐ Mrs. ☐ Ms. ☐		Last Name		First Name		
	Street Address						
	City		Province		Postal code		
	Date of Accident		Day	/	Month	/	Year
This notice is to inform you that the insurer to whom you have applied for accident benefits claims that another insurer is responsible for paying these benefits. You may be required to assist the insurers in resolving their dispute by providing them with any information that may be needed to determine which insurer should be paying your accident benefits claim. You will continue to receive accident benefits that you are entitled to from the insurer that you applied to while the insurers attempt to resolve their dispute. You also have the right to object to your claim being transferred to another insurer. If you wish to object please complete Part 5 of this form and send it within 14 days to the insurer that is currently paying you accident benefits. If you object, you are entitled to participate in any proceeding that may take place to determine which insurer is responsible for paying accident benefits to you. If you do not object, you will not be permitted to dispute the transfer of your claim to another insurer. If you have any questions about this notice, or about the process that insurers use to determine who is responsible for paying your claim, please contact the representative of the insurance company that is paying your accident benefits claim. The name and telephone number of the representative is listed in Part 1.							
Part 1: Insurer that You Applied to for Accident Benefits	Company Name						
	Mailing Address						
	City		Province		Postal code		
	Contact Person/Representative				Phone No. ()		
Part 2: Insurer(s) Notified to Pay Benefits (by Insurer Listed in Part 1)	First Company Name						
	Mailing Address						
	City		Province		Postal code		
	Contact Person/Representative				Phone No. ()		
	Attach additional sheets if necessary. ☐ Additional sheets attached.						
	Second Company Name						
	Mailing Address						
	City		Province		Postal code		
	Contact Person/Representative				Phone No. ()		
	Attach additional sheets if necessary. ☐ Additional sheets attached.						

MCD 4/98

© King's Printer for Ontario, (MP-1413)

Page 1 of 2

Part 3: Reasons (Why Notice is Given to Other Insurers)	Attach additional sheets if necessary. ☐ Additional sheets attached.				
Part 4: Signature of Insurer Representative	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 60%; font-size: x-small;">Name</td> <td style="width: 40%; font-size: x-small;">Date</td> </tr> <tr> <td colspan="2" style="font-size: x-small;">Signature</td> </tr> </table>	Name	Date	Signature	
Name	Date				
Signature					
Part 5: Objection to Transfer of Claim (optional)	You can object to your claim being transferred to the insurer(s) referred to in Part 2 by completing this section and returning the form to the insurer that you applied to in Part 1 within 14 days. If you object, you are entitled to participate in any proceeding that may take place to determine which insurer is responsible for paying accident benefits to you. If you do not object, you will not be permitted to dispute the transfer of your claim to another insurer. Please check the box below and return this form to the insurer listed in Part 1 within 14, days only if you wish to object to your claim being transferred to another insurance company. ☐ I Object to the claim being transferred. <table border="1" style="width: 100%; border-collapse: collapse; margin-top: 10px;"> <tr> <td style="width: 60%; font-size: x-small;">Name</td> <td style="width: 40%; font-size: x-small;">Date</td> </tr> <tr> <td colspan="2" style="font-size: x-small;">Signature</td> </tr> </table>	Name	Date	Signature	
Name	Date				
Signature					

2020 4/9/20
© King's Printer for Ontario, (20P-1418)
Page 2 of 2

[Copied and pasted] [square bracketing is the Applicant's for ease of reference]

For ease of searchability by the ONSC and the participating parties at the ONSC (Divisional Court level or by way of single justice on an expedited basis), the following are copied and pasted from the A143 Form at the following pages with endnoting for ease of application of the facts to the law:

[page 1]

“This notice is to inform you that the insurer¹¹² to whom you have applied for accident benefits claims¹¹³ that another insurer¹¹⁴ is responsible for paying¹¹⁵ these benefits. You¹¹⁶ may be required to assist the insurers¹¹⁷ in resolving their dispute by providing them with any information that may be needed to determine which insurer¹¹⁸ should be paying your accident benefits claim. You will continue to receive accident benefits that you are entitled to from the insurer¹¹⁹ that you applied to while the insurers attempt to resolve their dispute.

[Applicant’s transfer of claim objection rights]

You also have the right to object to your claim being transferred¹²⁰ to another insurer¹²¹. If you wish to object please complete Part 5 of this form and send it within 14 days to the insurer that is currently paying you accident benefits¹²².

[Applicant’s arbitration participatory rights]

If you object, you are entitled to participate in *any **proceeding***¹²³ that may take place to determine which insurer is responsible for paying accident benefits to you. If you do not object, you will not be permitted to dispute the transfer of your claim to another insurer.

If you have any questions about this notice, or about the process that insurers use to determine who is responsible for paying your claim, please contact the representative of the insurance company that is paying your accident benefits claim. The name and telephone number of the representative is listed in Part 1.¹²⁴

APPENDIX #7: REMITTANCE FORM PURSUANT TO FSRA REQUIREMENT

NOTE: Remember to attach all relevant documents when submitting this form

Insurer Details

Date of Remittance

Reporting Insurance Company

Name of Authorized Insurer Representative

Telephone Number

Email Address

Decision Details

Date of Decision

Arbitrator

Names of Insurers in Dispute (Company Name vs Company Name)

Disputed Issue/Nature of Dispute (Please Check all that Apply):

- | | | |
|---|---|--|
| ☐ First Insurer/Nexus | ☐ Arbitration (Practice, Interest and Special Awards, Costs) | ☐ Coverage Issues: Cancellation |
| ☐ Completed Application | ☐ Priority Rules: Insured Person (Named/Listed/Spouse/Dependent/Regular Use) | ☐ Coverage Issues: Leased Vehicle |
| ☐ 90 Day Notice | ☐ Priority Rules: Occupant | ☐ Coverage Issues: Other Automobiles |
| ☐ One Year/Commencement | ☐ Priority Rules: Non – Occupant Struck By Vehicle | ☐ Appeal Pending (Forward appeal decision once it is received.) |
| ☐ Reasonable Investigation | | ☐ Priority Rules: Involved Vehicle |
| ☐ Restitution | | |

Print Form

Clear Form

Save Form

Submit by Email

Endnotes

¹AABS division

² Along with the interplay between the enabling statute (*Insurance Act*) and binding pieces of legislation (regulations) in *Reg 283*, *SABS* and *Reg 664*:

³Effective date

⁴(see: *Legislation Act*, wherein a statute and regulations are both “legislation”),

⁵*Dunsmuir v. New Brunswick*, 2008 SCC 9 (CanLII), [2008] 1 SCR 190, <<https://canlii.ca/t/1vxsm>>, retrieved on 2024-12-10

⁶Mr. Nieuwland filed a DOR on behalf of SNIC on June 28, 2024.

⁷(iii) concerns about the Tribunal’s undue influence or lack of independence, even subconsciously, from the insurance companies due to it being the only non-state funded Tribunal of the 13 tribunals in “Tribunals Ontario”; and (iv) an investigation report involving Ms. Trina Morrisette from the federal government regarding her conduct as a lobbyist for the Canadian Red Cross (“CRC”).⁷ The Applicant says her conduct amounts to “similar fact evidence” and contextual evidence that arises as a result of the **VCM Decision**.

⁸Balance of probabilities standard: is it more likely than not that there will be a failure of justice by the delay.

⁹Mr. Nieuwland’s recent email to this ONSC (Divisional Court) has reignited the subsequent issues: (i) whether insurance companies in a group of insurers are ‘one and the same’, ‘also known as’ or ‘also referred as’; (ii) the rule in *Foss v. Harbottle*; (iii) the FSRA guidance on affiliated entities only have an exemption on the non-adjuster broker side, and (iv) the motives for why such insurance companies in the TDI Group would engage in such misconduct.

¹⁰In this regard, the **VCM Decision** has again put two administrative bodies, at least, in the FSRA and the Tribunal against each other when they operate under the same enabling statute (*Insurance Act*) and the participants (insured persons, service providers and insurance companies) must comply with the *UDAP Rule* (2022 *et seq*).

¹¹The Applicant is seeking by his factum to be heard before a single justice of the ONSC, with leave, due to the urgency of the issues herein.

¹²all people are equal under the law and have the right to equal protection and benefits with SABS benefits for all similarly situated persons to this Applicant

¹³all people, institutions, and entities are accountable to the law; (iii) *transparency*: the law-making process is transparent

¹⁴people have access to justice through independent and impartial courts

¹⁵(and patently unreasonable)

¹⁶(with no distinction between a breach of *SABS* and *Reg 283* (see: *Chubb Insurance Co. of Canada v. Zurich Insurance Company*, 2024 ONSC 2929 (CanLII), <<https://canlii.ca/t/k4tln>>, retrieved on 2024-12-10 [“Zurich 2024”],

¹⁷on account of technicalities in the language of the LAT Rules which was different from the time this ONSC (Div. Court) upheld the reconsideration decision of VC Trojek in *Jia*

¹⁸*The Personal Insurance Company v. Jia*, 2020 ONSC 6361 (CanLII), <<https://canlii.ca/t/jb7qm>>, retrieved on 2024-12-10

¹⁹*Harold The Mortgage Closer Inc. v. Chief Executive Officer of the Financial Services Regulatory Authority of Ontario*, 2024 ONSC 2236 (CanLII), <<https://canlii.ca/t/k43bl>>, retrieved on 2024-12-10

²⁰*Volochay v. College of Massage Therapists of Ontario*, 2012 ONCA 541 (CanLII)

²¹*Volochay v. College of Massage Therapists of Ontario*, 2012 ONCA 541 (CanLII), at para 68,

<<https://canlii.ca/t/fsdgd#par68>>, retrieved on 2024-12-10 <https://canlii.ca/t/fsdgd#par68>

²²(see: [U]nless exceptional circumstances exist, a court should not interfere in an administrative proceeding until it has run its course. The principle has particular force where adequate alternative remedies are available under the administrative scheme. Ordinarily an affected individual must pursue these remedies before seeking relief from the court. The Federal Court of Appeal has endorsed this approach as well in *Dugré v Canada* (Attorney General), 2021 FCA 8, at para 37, framing the rule against prematurity, or interlocutory relief, as “next to absolute”).

²³Herein, a multiplicity of proceedings will be avoided and the law will be clarified and settled, while avoiding a return by this Applicant to make the same arguments that he would even if all of his benefits and quantum were found in his favour because the wrong party would be liable for the same and required to respond *post-facto* the conclusion of the Hearing Proper. In this regard, the Applicant herein confirms, by his authorized signature, that he would bring the same *JRPA* Application and he respectfully submits that the principle of mootness, cited by the SCC in *Borowski*,

would not be applicable because the important legal issues would not only not be decided but the decision of the LAT would be in conflict with the governing statutes, governing regulations and its own *LAT Rules*.

²⁴ *Sanscon Construction Ltd. v. City of Toronto*, 2021 ONSC 6409 (CanLII), <<https://canlii.ca/t/jjn4p>>, retrieved on 2024-12-10

[16] Sanscon's Application was not brought before the Divisional Court, contrary to the Consolidated Practice Direction.

[17] Sanscon's factum does not seek leave under s. 6(2) of the *JRPA* to have this matter heard, nor is it in the Notice of Application. It does not reference this court's jurisdiction or address why the Application was not brought before a single judge of the Divisional Court, sitting as a judge of the Superior Court of Justice.

²⁵ SNIC and Primmum operate under the trade name, which is a combination of two registered trademarks in "TD Insurance Meloche Monnex", with the "TD Insurance" owned by TD Bank and the Meloche Monnex owned by Meloche Monnex Inc. SNIC issues automobile (and home) insurance policies to alumni of various universities and those part of professional associations (the "**Alumni Professional Program**"). Primmum issues insurance policies to "employer groups".

²⁶ TDGIC issues insurance policies, by part of its namesake, to the "general public". Toronto has 416 area code landline telephone and fax numbers but not 905 telephone and fax numbers, and Burlington (and Markham) have 905 landline telephone and fax numbers but not 416 numbers. Mr. James V. Russell was appointed as the CEO of "TD Insurance Group" in the 2010's, and one of his stated goals was to increase the market share for "TD General" (TDGIC). This evidence provides the motive for why SNIC would allow TDGIC to be substituted for it *during* the LAT Proceeding without the name of TDGIC ever being present in a single communication since the MVA date of loss (the "Date Of Loss" or "DOL").

²⁷ If an Insured Person, who is also an injured person and often a lay litigant encountering the complexities of a SABS claim, may not keep completely accurate records of each and every fax that she has sent to an insurance company, the purported liable insurer can claim that it does not have the documents to which an injured person claims to have sent. In fact, herein this occurred with the initial adjuster for SNIC in Ms. Nurse claiming to not have certain documents that the Applicant delivered via fax. The Applicant obviously not your quintessential lay litigant had everything reduced to paper copy and saved in binders along with cloud storage whilst using an e-fax number. Affidavit #3 is an example of that attention to detail and record-keeping.

²⁸ <https://iso.ca/about-iso/legislation-rules/by-laws/by-law-7-1>

²⁹ LSA, ss. 62(2): (2) The by-laws made under this section shall be interpreted as if they formed part of this Act. R.S.O. 1990, c. L.8, s. 62 (2); 1998, c. 21, s. 29 (13).

³⁰ (d) the determination of rights that depend on the interpretation of a deed, will, contract or other instrument, or on the interpretation of a statute, order in council, regulation or municipal by-law or resolution

³¹ in part because of SNIC not participating in the LAT Appeal after filing a Response and allowing TD General Insurance Company ("**TDGIC**") to be substituted for it,

³² Factually on many levels, this is not an *JRPA* Application, like the flurry of arbitral, judicial review and appellate decisions involving *Zurich v. Chubb* from 2009 to 2024 (the "*Zurich Decisions*") in that TDHA did not merely receive one completed OCF-1, like Chubb Insurance Company through some innocent mistake by an injured individual (Ms. Singh) involving her rental of vehicle and seeing the name of "Chubb" inside the car rental office. TDHA received the SABS Applicant's completed OCF-1, OCF-2, OCF-3, OCF-6 and OCF-19. It is also uncontroverted that TDHA, by being the only former commercial tenant at the **East Mall Address (Etobicoke)** received all the Applicant's OCF-18's that were submitted through HCAI.³²

³³ *Chubb Insurance Co. of Canada v. Zurich Insurance Company*, 2024 ONSC 2929 (CanLII), <<https://canlii.ca/t/k4tln>>, retrieved on 2024-12-10 (see: *Zurich* 2024, paragraph 6 (see: <https://canlii.ca/t/k4tln#par6>)).

³⁴ *Chubb Insurance Co. of Canada v. Zurich Insurance Company*, 2024 ONSC 2929 (CanLII), <<https://canlii.ca/t/k4tln>>, retrieved on 2024-12-10 (see: *Zurich* 2024, paragraph 16 (see: <https://canlii.ca/t/k4tln#par16>)).

³⁵ The Applicant erred in omitting said word in his *JRPA* Application and he apologizes to this ONSC Div. Court and the respondents for the same.

³⁶ *Chubb Insurance Co. of Canada v. Zurich Insurance Company*, 2024 ONSC 2929 (CanLII), <<https://canlii.ca/t/k4tln>>, retrieved on 2024-12-10 (see: *Zurich* 2024, paragraph 54 (see: <https://canlii.ca/t/k4tln#par54>)).

³⁷ (see: paragraph 15 of the *JRPA Application*).

³⁸ *Chubb Insurance Co. of Canada v. Zurich Insurance Company*, 2024 ONSC 2929 (CanLII), <<https://canlii.ca/t/k4tln>>, retrieved on 2024-12-10 (see: *Zurich* 2024, paragraph 8).

³⁹ *Chubb Insurance Co. of Canada v. Zurich Insurance Company*, 2024 ONSC 2929 (CanLII), <<https://canlii.ca/t/k4tln>>, retrieved on 2024-12-10 (see: *Zurich* 2024, paragraph 29).

⁴⁰ Herein, there was no evidence that TDHA paid any benefits but there was also no evidence that TDHA disputed its liability and obligations.

⁴¹ *Chubb Insurance Co. of Canada v. Zurich Insurance Company*, 2024 ONSC 2929 (CanLII), <<https://canlii.ca/t/k4tln>>, retrieved on 2024-12-10 (see: *Zurich* 2024, paragraph 10).

⁴² on a provisional basis but with an ability to step out of those shoes if the First Insurer avails itself to the *Reg 283* protections and obtain reimbursement from the liable insurer after provisionally responding to the Claimant (i.e. legal fees, disbursements, administration fees et al)

⁴³ *Zurich Insurance Co. v. Chubb Insurance Co. of Canada*, 2015 SCC 19 (CanLII), [2015] 2 SCR 134, <<https://canlii.ca/t/gh85t>>, retrieved on 2024-12-10

⁴⁴ *Chubb Insurance Co. of Canada v. Zurich Insurance Company*, 2024 ONSC 2929 (CanLII), <<https://canlii.ca/t/k4tln>>, retrieved on 2024-12-10 (see: *Zurich* 2024, paragraph 12).

⁴⁵ *Chubb Insurance Co. of Canada v. Zurich Insurance Company*, 2024 ONSC 2929 (CanLII), <<https://canlii.ca/t/k4tln>>, retrieved on 2024-12-10 (see: *Zurich* 2024, paragraph 14).

⁴⁶ *Zurich Insurance v. Chubb Insurance*, 2012 ONSC 6363 (CanLII), <<https://canlii.ca/t/ftr4c>>, retrieved on 2024-12-10

⁴⁷ As this ONSC will know, that is such a unique event by our SCC where they do not even wish to put any such amendments or clarity to a dissenting decision of the ONCA. While the justices in our province are not in the “business of counting their press clippings”, it is a testament to how analytically sound The Honourable Justice Juriansz was in those dissenting reasons.

⁴⁸ *Zurich Insurance Company v. Chubb Insurance Company of Canada*, 2014 ONCA 400 (CanLII), <<https://canlii.ca/t/g6vrk>>, retrieved on 2024-12-10

⁴⁹ <https://www.torontomu.ca/criminaljusticefirsts/courts/Russell-Juriansz/>

⁵⁰ *Zurich Insurance Company v. Chubb Insurance Company of Canada*, 2014 ONCA 400 (CanLII), <<https://canlii.ca/t/g6vrk>>, retrieved on 2024-12-10

⁵¹ *Zurich Insurance Co. v. Chubb Insurance Co. of Canada*, 2015 SCC 19 (CanLII), [2015] 2 SCR 134, <<https://canlii.ca/t/gh85t>>, retrieved on 2024-12-10

⁵² (see: *Zurich* 2024, paragraph 15).

⁵³ *Chubb Insurance Co. of Canada v. Zurich Insurance Company*, 2024 ONSC 2929 (CanLII), <<https://canlii.ca/t/k4tln>>, retrieved on 2024-12-10

⁵⁴ *Chubb Insurance Co. of Canada v. Zurich Insurance Company*, 2024 ONSC 2929 (CanLII), <<https://canlii.ca/t/k4tln>>, retrieved on 2024-12-10 (see: *Zurich* 2024, paragraph 64).

⁵⁵ *Beasley et al. v. Barrand*, 2010 ONSC 2095 (CanLII), <<https://canlii.ca/t/2984g>>, retrieved on 2024-12-10

⁵⁶ wherein he overturned the decision of the adjudicator in the initial decision

⁵⁷ In this *JRPA* Application, the issue of whether a lawyer like Mr. Nieuwland could act for TDGIC for six months then act for SNIC when NOM #8 was granted in the Applicant’s favour, despite six months of opposition and then non-opposition [not consent], thereafter, is not at issue *per se*. However, the backdrop regarding the same is an important one.

⁵⁸ What about, as a “test case”, the duties of insurance companies (and their counsel) in relation to their holding, controlling and/or possession (solely, jointly or constructively) that are: (i) neither an underwriter nor a First Insurer, and masquerade as the liable insurance company in the LAT Proceeding; (ii) the obligations of a First Insurer who remains anonymous until effectively caught as having the mailing address and/or fax number that provides unequivocal proof that it was a First Insurer; and (iii) the obligations of an underwriter, who was not the First Insurer, who carries on as the solely liable insurance company but then does not participate after filing the sole Response, pursuant to section 280(2) of the *Insurance Act*, in a LAT proceeding?

⁵⁹ Pursuant to section 280(1) of the *Insurance Act*, “this section applies with respect to the resolution of disputes in respect of an insured person’s entitlement to statutory accident benefits or in respect of the amount of statutory accident benefits to which an insured person is entitled.” Pursuant to ss. 280(2) of the *Insurance Act*, “The insured person or the insurer may apply to the Licence Appeal Tribunal to resolve a dispute described in subsection (1)”. No person may bring a proceeding in any court with respect to a dispute described in subsection (1), other than an appeal from a decision of the Licence Appeal Tribunal or an application for judicial review: ss. 280(3) of the *Insurance Act*. The dispute shall be resolved in accordance with the *Statutory Accident Benefits Schedule*

⁶⁰ 2014, c. 9, Sched. 3, s. 14: ss. 280(4) of the *Insurance Act*.

⁶¹(see: “statutory accident benefits” mean the benefits set out in the regulations made under paragraphs 9 and 10 of subsection 121 (1) of the *Insurance Act*; see: section 121(a): “121 (1) The Lieutenant Governor in Council may make regulations”).

⁶²The Applicant notified SNIC, pursuant to the *Schedule*, s. 32, in early September 2022, that he wished to apply for benefits making SNIC not only the Sole Underwriter but the First Notified Insurer.

⁶³The Applicant, in his capacity as a SABS applicant, sent the Completed Application [OCF-1] to the **North York Fax Number** on October 12, 2022. Ergo, at law, the SABS Applicant sent, or “served” only one **Completed Application** to only one insurer in TDHA. TDHA was the sole insurer that first received (the “First Insurer”) the **SABS Applicant’s Completed Application**.

⁶⁴In fact, and at law, SNIC did not stop the Applicant from submitting his Completed Application to TDHA in that it provided him with the **TDHA Fax Number**. It is the word “accept” that is so pivotal in this **JRPA Application** by VCM’s choice of language at paragraph 27 therein.

⁶⁵“first party insurer” means the insurer responsible under subsection 268 (2) of the Act for the payment of statutory accident benefits; (“assureur de première part”): Automobile Insurance, RRO 1990, Reg 664, s 9, <<https://canlii.ca/t/tlw#sec9>>.

⁶⁶The word “accept” is of great importance considering the finding by VCM, without any evidence in the record of proceeding to support the same, that TDGIC and SNIC jointly accepted priority of the Applicant’s [sic] insurance policy [sic] (see: paragraph 27 of the **VCM Decision**).

⁶⁷As SNIC was the Sole Underwriter in the Insurance Policy, the Applicant has alleged that SNIC (as First Notified Insurer) breached section 2.1(5) of *Reg 283* by taking action, with intent (as it knew that its fax number was not the **North York Office Fax Number**), to prevent or stop the Applicant from submitting his Completed OCF-1 to it [SNIC] as it is an out-of-province insurer.

⁶⁸In relation to the lack of promptness, SNIC somehow sent the Applicant’s accident benefits package to the wrong postal code address yet his Spouse received her accident benefits package to the correct postal code when they lived in the same residence

⁶⁹Further, the Applicant provided uncontroverted evidence that SNIC failed to provide its correct facsimile address in the Completed Application but instead provided the fax number of TDHA and thereby breached subsection 2.1(3) of *Reg 283*.

⁷⁰Reimbursement by the non-compliant insurer during the period of non-compliance (see: ss. 2.1(7) of *Reg 283*): (i) legal fees; (ii) adjuster’s fees; (iii) administrative costs; and (iv) disbursements

⁷¹Subsection 2.1 of *Reg 283* applies to this judicial review as the Accident occurred on August 31, 2022, which was after September 1, 2010.

⁷²Whether SNIC was to remain for costs purposes in the McLean LAT Proceeding was a matter of discretion, but the sole respondent insurance company as a matter of obligations under *Reg 283*, SABS and *Reg 664* was not. However, the Applicant’s argument was encapsulated by a rhetorical question: *why should he not have any ability to seek costs against SNIC for its conduct in the LAT Proceeding that he alleged and alleges was unreasonable, frivolous, and in bad faith?* Costs are not a matter that relate to the *Insurance Act*, and the binding regulations herein (SABS and *Reg 283*), as the Tribunal passed them under a different statute: section 17.1 of the SPPA. Put another way, is the Applicant’s time not worth anything when it required hundreds of hours to obtain the order in NOM #8?

⁷³Even when the OCF-19 was fax delivered, in November 2023, to the VP Bldg. 4th Floor Fax Number, and when SNIC’s fax number (**Burlington 905 Fax Number**) was blocking the same, SNIC responded by misidentifying one of the legal tests for a duly completed OCF-19 and merely enclosed a copy of a blank OCF-19. Moreover, when considering the **Forged Signature** in the OCF-18, last page only, it could not have been SNIC, although it appeared that way in HCAI by insurer name but NOT physical address, with the “As per A. Nurse”, it was TDHA’s address (East Mall Etobicoke Address) that received the duly completed OCF-18 at first instance. Perhaps, this is why Ms. Nurse, an adjuster, was not amenable to executing the same.

⁷⁴The same would have been applicable to TD Staff Legal and Mr. Nieuwland with its fax and his listed fax number with the LSO. Said unappealed findings are determinative that *neither* SNIC nor TDGIC were the First Insurers by way of the fax served Completed Application upon the 4th Floor VP Building Fax Number which was TDHA.

⁷⁵“If the Licence Appeal Tribunal finds that an insurer has unreasonably withheld or delayed payments, the Licence Appeal Tribunal, in addition to awarding the benefits and interest to which an insured person is entitled under the Statutory Accident Benefits *Schedule*, may award a lump sum of up to 50 per cent of the amount to which the person was entitled at the time of the award together with interest on all amounts then owing to the insured (including unpaid interest) at the rate of 2 per cent per month, compounded monthly, from the time the benefits first became payable under the *Schedule*. O. Reg. 43/16, s. 4.”.

⁷⁶(like the vacillation of findings and orders of the arbitrator, ONSC (Goldstein J. in the ONSC), reversed by the ONCA, and the ONCA reversed by the SCC adopting the dissent of Justice Juran)z)

⁷⁷It is trite that while the Tribunal is required to determine whether Mr. McLean was entitled to certain benefits and in what amounts, it also must determine which insurance company was and is liable for certain benefits and at what times. It can only do that if that the First Insurer is found to be TDHA and that decision must come from the ONSC.

⁷⁸There was no evidence and none in the Application Record that TDHA, or any insurer, ever did so. Even on the convoluted, tortuous, unsupported and absurd logic of VCM that SNIC and TDGIC accepted priority over the Insurance Policy, there was some form of “transfer of the claim” to TDGIC which would have required notice to, at least, TDGIC and the SABS Applicant. No evidence was ever provided of such written notice to either.

⁷⁹Mr. McLean was also entitled to object to SNIC (and TDGIC as he had done previously) having any control or possession of his TD Claim #3 relating to “confidential information” and documents not subsequently received by it in accordance with standardized language in the OCF-1 and *PIPEDA*. There is no dispute that TD Claim #3 was transferred from TDHA to TDGIC and SNIC. SNIC claimed to have received documents but not directly from the Applicant. SNIC purported to respond or did respond to the Applicant in relation to some communications but not all communications. TDGIC then surfaced at the LAT Proceeding but only after inclusion by the Tribunal without the consent of the Applicant or without any legal authority. SNIC filed its Response (“SNIC Response”) on January 25, 2024, and then Mr. Nieuwland filed a DOR on behalf of TDGIC – not SNIC. The charade continued for six months until Mr. McLean, relying on Mr. Nieuwland’s misrepresentations in non-transcribed case conference, which was yet another irremediable nullity and without statutory power as TDGIC was a non-party, that SNIC and TDGIC were “one and the same” and “this is how we always do it” (in relation to TDGIC being some sort of insurance company that came “off the bench” to provide a “spark” to the “defence” for SNIC as if it were some kind of sporting event). While there is no dispute of some form of transfer from TDHA to SNIC and, of course, with some unknown terms and conditions involving TDGIC on some basis perhaps on a joint level but more likely some form of “staggered interventions” based on unknown terms and conditions in this “subsequent clandestine agreement”, there are no particulars in the decision of VCM. Moreover, any such transfer was without notice to Mr. McLean, and without compliance with *Reg 283*. The scheme of *Reg 283* requires substantive and procedural compliance and TDHA along with SNIC and TDGIC intentionally breached *Reg 283* without any form of attempt to cure the same. The required FSRA form did not matter to TDHA. The closest evidence that this ONSC has is a fax from an unknown fax number to Mr. McLean that TDHA had no record of his claim as of March 2023 (and then another letter in August 2024 albeit after NOM #14 and NOM #15). It was a fax without any semblance of compliance with *Reg 283*, and SABS to some degree, and the FSRA Form 143. It directed Mr. McLean to other fax numbers in Calgary, Montreal, New Brunswick and Burlington without reference to any insurance company. Mr. McLean was entitled, after lengthy investigation and fortuitous discoveries, was entitled to object and required to bring the issue forward as to TDHA not complying with its duties to respond and to pay benefits as the First Insurer.

⁸⁰Due to the public importance of the issues herein, the Applicant respectfully, yet forcefully, notes that the LGIC did not create any ability for an insured person (applicant) to consent or sanitize the breaches that have occurred herein. Put another way, the LGIC did not pass any provisions that would authorize an insured person to sanitize or remedy such clandestine breaches to provide post-facto consideration that cure such non-compliance with *Reg 283*. Therefore, this undisclosed agreement by the respondent insurance companies, known to the Tribunal but not the Applicant, has no legal force or effect. The purposes of the inflexible prescribed regulations are to promote compliance with the statutory scheme and not to assist insurance companies and insured persons in isolated incidents so that an “insured person” can assist delinquent and felonious activities. To not set aside the VCM Decision and replace it with a correct decision, while the ONSC commences *ab initio*, would represent a precedent that contains a “slippery slope”. Perhaps, “insurance companies” like this collection of respondent insurance companies may send a late notice with a semi-contemporaneous phone call to an insured person that may be in the form of a bribe so that the “checks and balances” of various regulatory bodies (FSRA, LSO, OPCC et al) do not catch “wind of the unlawful scheme”.

⁸¹[3] The test for *res judicata* was applied by the Adjudicator as follows (Decision, para. 12). In my view, the four preconditions for *res judicata* are satisfied. The parties are the same in both proceedings. The prior claim was within the jurisdiction of the Tribunal. The decision in the first application was based on the merits. The Tribunal reviewed the submissions and evidence and found that the applicant was not entitled to the IRB or found that the applicant was not entitled to IRBs for the period of January 14, 2020 to date and ongoing. Moreover, he was not entitled to payment for the November 9, 2019 accounting report. The first decision was a final decision because he did not file a reconsideration request and nor did he appeal the decision.

[5] A LAT decision is final and authoritative, subject to a party’s rights of reconsideration or appeal from that decision. A party that disagrees with a LAT decision may not ignore that decision and recommence the same claims all over again. That is what the Appellant has done in this case. Even if the LAT erred in the first decision

and decided the case on the basis of an issue that was not before it, that error would not have deprived the LAT of jurisdiction. The LAT's second decision is correct in law; this appeal fails on the merits.

⁸²*Kazen v. Whitten & Lublin Professional Corporation*, 2020 ONCA 325 (CanLII), <<https://canlii.ca/t/j7z9n>>, retrieved on 2024-12-10 ["Kazen"]

⁸³*Fatemea Rezaiezhadeh v. State Farm Mutual Automobile Insurance Company*, 2016 ONFSCDRS 59 (CanLII), <<https://canlii.ca/t/jq9fm>>, retrieved on 2024-12-10 ["Reza"]

⁸⁴It is trite that the Sheriffs in Ontario operate in different jurisdictions. TDHA's known address, when utilizing the fax number (landline phone number) of 416.774.3120, was that of 4th floor of the VP Building (North York) which is in the City of Toronto. The Tribunal found that SNIC's address for service in the LAT Proceeding was that of the Burlington Office Building (5th floor) which was tied to the 905 Fax Number. This was consistent, albeit absent the floor number, to SNIC's "switch" or "change" from the Markham Office Address to the Burlington Office Address which was only *after* the Applicant received the March 2023 fax that an unknown insurance company, presumably TDHA, did NOT have any record of his TD Claim #3 after responding to one of his earlier faxes to 416.774.3120. Further, the Tribunal found repeatedly that TDGIC's address was 9th floor-3650 Victoria Park Avenue, North York, Toronto, Ontario, with a fax number of 416.774.3629. Therefore, the Applicant could be wedged in an unsolvable, unfathomable and impenetrable conundrum and a perjury trap. In relation to the latter, if the Applicant was required to swear evidence for the Sheriff regarding enforcement of an order against SNIC, it would force Mr. McLean into a "perjury trap".

⁸⁵This ONSC can take judicial notice that SNIC and TDGIC could not even correctly represent the amount of benefits paid to the Applicant in May 2024 which leaves only one other insurance company, by reference to the fax number of 416.774.3120, that would correctly know the same.

⁸⁶*Fatemea Rezaiezhadeh v. State Farm Mutual Automobile Insurance Company*, 2016 ONFSCDRS 59 (CanLII), <<https://canlii.ca/t/jq9fm>>, retrieved on 2024-12-10 ["Reza"]

⁸⁷A change in the title of proceeding in this case potentially affects every Commission case involving the present insurer. At present there is no suggestion that this appeal is a nullity or that it should be stayed pending an order to continue as would happen under Rule 11.01 of the *Rules of Civil Procedure*. In the absence of any case law regarding a presently hypothetical concern, I defer to any further or other appellate officer the question of amending the title of proceeding in this appeal proceeding in the event there is any difficulty in the enforcement of this appeal order. I leave to arbitration any amendment of the title of proceeding at that level."

⁸⁸*College of Traditional Chinese Medicine Practitioners and Acupuncturists of Ontario v. Federation of Ontario Traditional Chinese Medicine Association (Committee of Traditional Chinese Medicine Practitioners & Acupuncturists of Ontario)*, 2015 ONCA 851 (CanLII), <<https://canlii.ca/t/gmf92>>, retrieved on 2024-12-10

⁸⁹*Las Vegas Strip Ltd. v. Toronto (City)*, 1996 CanLII 8037 (ON SC), <<https://canlii.ca/t/1vttt>>, retrieved on 2024-12-10

⁹⁰*EnerNorth Industries Inc. (Re)*, 2009 ONCA 536 (CanLII), <<https://canlii.ca/t/249wt>>, retrieved on 2024-12-10.

⁹¹*Chubb Insurance Co. of Canada v. Zurich Insurance Company*, 2024 ONSC 2929 (CanLII), <<https://canlii.ca/t/k4tln>>, retrieved on 2024-12-10

⁹²*Fatemea Rezaiezhadeh v. State Farm Mutual Automobile Insurance Company*, 2016 ONFSCDRS 59 (CanLII), <<https://canlii.ca/t/jq9fm>>, retrieved on 2024-12-10 ["Reza"]

⁹³*Awada v. Allstate*, 2021 ONSC 8108 (CanLII), <<https://canlii.ca/t/jl6vv>>, retrieved on 2024-12-10

⁹⁴*Mansuri v. Dominion of Canada General Insurance Company*, 2023 ONSC 5764 (CanLII), <<https://canlii.ca/t/k0nrz>>

⁹⁵*Mansuri v. Dominion of Canada General Insurance Company*, 2023 ONSC 5764 (CanLII), <<https://canlii.ca/t/k0nrz>>

⁹⁶Of note, the Applicant is not challenging the decision of the Tribunal that did not find a reasonably perceived conflict of interest as a preliminary issue therein but rather he is challenging the decisions and orders of VCM that did not add TDHA as a party – at the very least so the Applicant could advance the argument of which insurance company was liable to respond and pay benefits. Since SNIC was and is not the First Insurer, as, in fact, found by the Tribunal or not found to not be, and TDGIC was already removed by non-opposition by TDGIC, then it leaves Primmum and SNIC. Primmum and SNIC have a bond with respect to the "TD Insurance Meloche Monnex" programs. The only insurance company in the TDI Group that was located at the **Material Time** at the **VP Building** with the fax of 416.774.3120 was TDHA. Former case manager Mr. Grant even admitted, on May 6, 2024, as a matter of optics, how the Tribunal viewed "TD Insurance" as being one of two companies: (i) TDGIC; and (ii) TDHA.

⁹⁷*Sudbury and District Health Unit v Ontario Nurses' Association*, 2023 ONSC 2419 (CanLII), <<https://canlii.ca/t/jxgwc>>, retrieved on 2024-12-10

⁹⁸The Applicant is not making any argument in costs savings but avoidance of having two JRPA proceedings before this ONSC with the identical challenges to NOM #14 and #15.

⁹⁹*Gage v. Ontario (Attorney General)*, 1992 CanLII 8517 (ON SCDC), <<https://canlii.ca/t/gbkgx>.

¹⁰⁰This is particularly the case when the Applicant has drawn it to the attention of not only the Tribunal but VCM when she made the same mistake previously.

¹⁰¹In November 2017, one Ms. Karen E. Shepard wrote to then The Honourable Speaker Furey (Senate of our Parliament), “Pursuant to section 10.5 of the *Lobbying Act*, I have the honour of presenting to you a Report on Investigation on the lobbying activities of Trina Morissette for tabling in the Senate. The investigation was conducted in accordance with the provisions of section 10.4 of the Act.” A key duty of government officials is to interact with citizens. The *Lobbying Act* ensures that Canadians and public office holders know who is communicating with the government and on what subject.

¹⁰²While similar fact evidence is presumptively inadmissible and must be pleaded in civil court proceedings, being one of the exceptions to pleading evidence, this was not a court proceeding and the probative value of the similar fact evidence of an adjudicator and Vice Chair who is fashioning decisions with pejorative language, slights at the Applicant, and sanctimoniously accusing him of abusing the process. The **VCM Decision** almost rings in a covert threat to stay away from “pandora’s box”. For the Court’s edification, Mr. McLean doubled down on his FIPPA request including Mr. Sean Weir, Executive Chair of Tribunals Ontario, but without a response. He then tripled down by including the Attorney General Of Ontario in Mr. Downey as the LAT is a body of MAG and based on the recent, publicly available, MOU, Mr. Weir was delegated the authority of an “institutional head” by the AGO. How shameful can it get when the LAT requests payment of fees to obtain records and has 30 days to provide a response, then does not provide one, then the adolescent excuses flowed with “technical difficulties” and then stonewalling. It may perhaps be a fresh evidence matter. The conduct involving Ms. Morissette was of such a serious nature that one Ms. Shephard had to immediately suspend her investigation and refer the matter to the Royal Canadian Mounted Police: “An administrative review concerning this matter was opened in February of 2015. It involved interviews, a review of correspondence and other materials and an examination of Ms. Trina Morissette’s work on behalf of the Canadian Red Cross (CRC). In November of 2015, I opened an investigation based upon information provided to me in an administrative review report prepared by the Investigations Directorate of my Office. In accordance with subsection 10.4(8)¹⁰² of the Act, I immediately suspended my investigation and referred this matter to the Royal Canadian Mounted Police (RCMP), as I had reasonable grounds to believe that a breach of the *Lobbying Act* had occurred. In December of 2016, I was informed by the RCMP following their investigation that no charges would be laid in the matter. The RCMP had determined that it was not in the public interest to prosecute Ms. Morissette.” The RCMP did not find that she had not breached the Criminal Code, which is an astonishing matter considering it involved Ms. Morissette’s activities as a lobbyist for a well-known charity in the Red Cross, but it was not in the public interest to prosecute. That is an entirely different finding than there were not reasonable and probable grounds to charge. Ms. Morissette was subject to the five-year prohibition and restrictions on lobbying after being a designated public office holder which implies that she had a role in government prior to her switch to the charitable activities of the CRC. “Prior to starting work as the CRC’s manager of Government Relations in 2014, Ms. Morissette had worked as a member of a federal minister’s staff from 2009 to 2013. Her final day as a member of a minister’s staff was on June 14, 2013. Investigator Shephard found: “I have concluded that Ms. Morissette was in breach of Rule 2 (Accurate Information) of the *Lobbyists’ Code of Conduct* (1997), as well as the Principles of Professionalism and Integrity and Honesty in the Code.” There are some obvious inaccuracies in the **VCM Decision** and she was given a chance to correct the same by the Applicant’s section 21.1 of the *SPPA* motion and she has apparently decided not to correct the same despite carrying on with other rulings in this LAT Proceeding. It would quite one thing if VCM cross-referenced her findings to evidence in the record of proceeding or even an email that she found between Mr. Grant and another individual or representative of @tdinsurance.com but there is not even a scintilla of the same. Under the “Lessons Learned”, Investigator Shepard found: “the purpose of the five-year prohibition is to ensure that designated public office holders do not use information and personal connections derived from those positions to the advantage of interests that they lobby on behalf of. This is in the public interest because it ensures that Canadians can have confidence in the integrity of government decision-making.” LAT is a body of government and the MAG no less. It is where this court has to exercise its supervisory jurisdiction to ensure the conduct of VCM and to some extent VCL, who was on notice of a potential conflict of interest relayed to one Mr. Grant but then snapped out a decision in relation to NOM #7 and then was presumed gone until October 2024, is realigned with the integrity and professionalism requirements of a decision maker with the Tribunal. However, lobbying public office holders should be done in a transparent manner and in conformity with high standards of conduct (see: Investigator Shepard). The same applies to the decision-making process of the LAT. She worked for the CRC for approximately 16 months as she returned to the Minister of Health in late 2014. It is unclear if she was fired. Pursuant to subsection 10.11(1) of

the *Lobbying Act*, when Ms. Morissette ceased being a designated public office holder from 2013 until her return to work as a ministerial exempt staff in October of 2014, she was subject to the prohibition on lobbying. As of November 2017, she no longer worked in the public sector, “Ms. Morissette no longer works in the public sector”. However, she returned to the provincial public sector at some point thereafter by of being an adjudicator at LAT. “Although officials of the Canadian Red Cross and Ms. Morissette indicated that her position with the CRC was initially to be “behind the scenes,” they recalled having discussed the topic of lobbying during her interview. Once she was employed by the CRC, Ms. Morissette was asked to lobby on behalf of the organization. In fact, the CRC submitted monthly communication reports in the Registry of Lobbyists for meetings in which Ms. Morissette was the only representative of the organization. Ms. Morissette’s employment description, the CRC letter of disclosure to the OCL and other information obtained during the investigation indicate that, on the occasions when Ms. Morissette communicated with designated public office holders, she did so on behalf of her employer, the CRC.” “Although officials of the Canadian Red Cross and Ms. Morissette indicated that her position with the CRC was initially to be “behind the scenes,” they recalled having discussed the topic of lobbying during her interview. Once she was employed by the CRC, Ms. Morissette was asked to lobby on behalf of the organization. In fact, the CRC submitted monthly communication reports in the Registry of Lobbyists for meetings in which Ms. Morissette was the only representative of the organization. Ms. Morissette’s employment description, the CRC letter of disclosure to the OCL and other information obtained during the investigation indicate that, on the occasions when Ms. Morissette communicated with designated public office holders, she did so on behalf of her employer, the CRC. “In her letter of response to me, she acknowledged her obligations as a former designated public office holder and recognized that there could be consequences arising from her mistake. She confirmed that once she discovered that she had made an error [sic] regarding the application of the five-year prohibition to her, she took steps to remedy her error. She offered to disclose the fact of her error to my Office, and she offered to resign as an employee of the CRC.” It is unclear whether that offer came to fruition. “When Ms. Morissette provided information about the *Lobbying Act* to the Canadian Red Cross, relying, in part, on her own interpretation of the *Lobbying Act*, Ms. Morissette provided information that was inaccurate to her employer. Ms. Morissette did not use proper care to avoid providing that inaccurate information regarding the application of the five-year prohibition on lobbying. As a result, Ms. Morissette was in breach of Rule 2 (Accurate information) of the *Lobbyists’ Code of Conduct*.” Vice Chair Morissette has been given a chance to clarify and correct errors in the **VCM Decisions** but she has not done so. The fact that her decision was apparently dated on September 6, 2024, being the same date as the Applicant paying fees to the LAT privacy division is rather ironic and suspicious considering the decision is signed on September 12, 2024. Following Ms. Morissette’s inquiries to the OCL concerning the application of the five-year prohibition to her lobbying activities, Ms. Morissette continued to engage in lobbying.”“ By engaging in registrable lobbying activity while prohibited from lobbying under the *Lobbying Act*, Ms. Morissette did not observe the highest professional and ethical standards. The breach of Rule 2 (Accurate information) and of the prohibition on lobbying do not meet the high standards for lobbyists that are necessary to ensure Canadians that lobbying is conducted transparently and ethically in accordance with the *Lobbying Act*. As a result, Ms. Morissette was in breach of the Principle of Professionalism in the Code.

¹⁰³*Harold the Mortgage Closer Inc. v. Ontario (Financial Services Regulatory Authority, Chief Executive Officer)*, 2024 ONSC 4464 (CanLII), <<https://canlii.ca/t/k68mf>>, retrieved on 2024-12-10

¹⁰⁴*Lourenco v. Hegedus*, 2017 ONSC 3872 at para. 6

¹⁰⁵*London District Catholic School Board v. Weilgosh*, 2024 ONSC 3857 (CanLII), <<https://canlii.ca/t/k3gpr>>, retrieved on 2024-12-10

¹⁰⁶<https://teao.fsrao.ca/?searchRequired=true&searchText=Security+National&enfActions=false&warnings=false&hasRelatedFiles=false&selectedStatus=0&startDate=&endDate=>

¹⁰⁷<https://teao.fsrao.ca/?searchRequired=true&searchText=TD+General&enfActions=false&warnings=false&hasRelatedFiles=false&selectedStatus=0&startDate=&endDate=>

¹⁰⁸<https://teao.fsrao.ca/?searchRequired=true&searchText=Primum&enfActions=false&warnings=false&hasRelatedFiles=false&selectedStatus=0&startDate=&endDate=>

¹⁰⁹<https://teao.fsrao.ca/?searchRequired=true&searchText=TD+Home+And+Auto&enfActions=false&warnings=false&hasRelatedFiles=false&selectedStatus=0&startDate=&endDate=>

¹¹⁰*R.M. v CAA Insurance*, 2020 CanLII 94775 (ON LAT), <<https://canlii.ca/t/jbwwr>>, retrieved on 2024-12-10

¹¹¹[nota bene: TDHA is an insurer. Mr. McLean has recourse for the payment of SABS against TDHA as TDHA is bound by *Reg 283*. A breach of *Reg 283* is legally equivalent to a breach of SABS. Moreover, various sections of SABS reference the “first insurer” (i.e. receipt of the Completed Application) which imposed, and continues to impose obligations upon TDHA, to: (i) respond; and (ii) pay.

¹¹²TDHA: October 13, 2022, by way of fax from Mr. McLean to TDHA albeit unbeknownst to him until August 2024

¹¹³In this hypothetical, it would have been TDHA

¹¹⁴Singular

¹¹⁵Duty to pay, albeit the updated A07 Bulleting from 2010 (May) which was the bases for the amendments to *Reg* 283 in 2010 includes the duty to respond.

¹¹⁶In this hypothetical, it would have been McLean

¹¹⁷Based upon the VCM Decision, paragraph 27, it would have been a dispute between TDHA, as First Insurer, and SNIC, the Sole Underwriter and First Notified Insurer, and TDGIC, neither an underwriter nor a First Insurer and not even a First Notified Insurer but a “Fictitious Respondent” in the LAT Proceeding.

¹¹⁸One of three

¹¹⁹THE INSURER: TDHA

¹²⁰Not “having already been transferred after October 13, 2022”

¹²¹Transfer of a claim objection rights

¹²²Had TDHA sent the notice, then it would have been SNIC that was paying at the time, so it would have been a challenge to SNIC paying while TDHA was the First Insurer

¹²³The LAT Proceeding is “any proceeding”. The JRPA Application is “any proceeding”. Although Mr. McLean did not have any “claim transfer objection rights” as TDHA failed to extend the same to him. Moreover, Mr. McLean did not have any “proceeding participation rights” as it relates to any potential arbitration before an arbitration pursuant to the Ontario legislation or statute known as the “Arbitration Act, 1991”. Moreover, TDHA could not advance an arbitration without having paid any benefits to Mr. McLean. If TDHA was the payor of some or all of the \$1499.98, then it could technically advance an arbitration claim but only after it provided a notice of potential transfer of claim pursuant to A143. However, it would be, if it did so in the month of December 2024, some 700 days late. Pursuant to *Reg* 283, section 2 and Zurich 2024, TDHA was provisionally liable to pay benefits from October 13, 2022, to January 10, 2023, (the “Provisional Payment Period”), and then permanently liable after January 10, 2023, subject to giving it notice of a transfer claim (A143) and then providing clear, cogent and convincing evidence as to why the 90 day period was insufficient to make a determination that *another insurer* or insurers (nota bene: conceivable could be two under section 268 per se) is liable under section 268; AND the insurer [TDHA] made the reasonable [nota bene: objective person standard] investigations necessary to determine if another insurer was liable within the 90 day period (see: section 3(2) of the *Reg* 283, passed in 1995, which was the year that *Reg* 283 was passed by its namesake, “*Reg* 283/95”). Where there is a dispute as to whether a First Insurer, like TDHA, had not given notice to other insurers and an Applicant pursuant to its receipt of a Completed Application by fax or mail, shall be resolved in an ARBITRATION pursuant to section 7 of *Reg* 283 (see: ss. 3(3) of *Reg* 283). Pursuant to ss. 7(1) of *Reg* 283, it is ONLY an insurer that *has been* paying benefits under section 2 (nota bene: reference to section 268 of the Insurance Act (1990) and *Reg* 283 passed in 1995) OR section 2.1 (nota bene: relating to an Accident (see: SABS, definition section), that occurred after September 1, 2010 and requires the dispute to be resolved in accordance with the Regulation 283 (not Insurance Act)) OR any other insurer against who the obligation to pay benefits is *claimed*. Subsection 3(3) dovetails to subsection 7(3) with a one year prescribed limitation period but that is tied to the insurer, ‘first giving notice’ under section 3 which is the insurers that it believes are liable to pay the benefits and the insured person, in his or her capacity as an “Applicant” after sending a Completed Application and it being *received* first by an insurance company making said insurance company the “First Insurer”. However, if the First Insurer does not give a notice, pursuant to section 3(1) of *Reg* 283 within 90 days (often means counting the “first day” and “last day”), it loses all of its dispute rights to pay benefits subject to overcoming the strenuous legal test under section 3(2) of *Reg* 283. It is here where TDHA, would hypothetically speaking, never be able to overcome said test by a decision of any reasonably-minded arbitrator rendering a decision regarding the application of the facts to the legal test under ss. 3(2) of *Reg* 283. TDHA is an Ontario based insurer (not an out of province insurance company) and was the co-tenant with TDGIC at the “Spark Building”, “North York Office Building” or the “VP Building” located at 3650 Victoria Park Avenue, District of North York, City of Toronto, where TDHA was located on the 4th floor (4th to 6th floors) with a fax of 416.774.3120 and its co-tenant in TDGIC had a fax number of 416.774.3629 and it was the commercial tenant on floors 7 to 9. By review of the information scribed on the Application (OCF-1), it had a sufficient period of time to make a determination that another insurer or insurers were liable under section 268 of the Act.

¹²⁴Hence, by SNIC intentionally, as sworn by McLean, redirecting the Applicant to TDHA at first instance, and then purportedly paying benefits (unclear if that name is correct), TDHA became the First Insurer by McLean faxing of the same to it on October 13, 2022. However, if TDHA was the “actual payor” of the direct deposits at said time then it could have provided this notice to McLean. It was then caught in another dilemma by the fact that the representative known to McLean was that of Ms. Nurse of SNIC. Therefore, TDHA would have had to provide a phone number and representative for TDHA which would have caused issues and concerns for McLean.

Tab 5:

Re: Applicant's Motion Record for Motion #1 (Compel the Tribunal to forthwith file the record of proceeding): Court File No. DC-24-00000718-00JR

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

ONTARIO COURT OF JUSTICE (DIVISIONAL COURT)

BETWEEN:

KEVIN ALEXANDER MCLEAN

APPLICANT

- and -

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

RESPONDENTS

CERTIFICATE OF PERFECTION OF THE APPLICANT

I, Mr. Kevin A. McLean, the Applicant, certify by his signature below on the below date:

1. the **JRPA Application, Factum** (which includes the book of authorities by reference and hyperlinking therein), and **Application Record** have been filed herein with the ONSC Divisional Court; and
2. no other personsⁱ than those denoted above are entitled by any statute (as defined and interpreted under the *Legislation Act*, 2006, SO 2006, c 21, Sch F (the “*Legislation Act*”) or by an order *Rules of Civil Procedure*, RRO 1990, Reg 194 (the “*Civil Rules*”, “*Rules*” or “*Rules of Procedure*”) to noticeⁱⁱ and/or to be heard on this **JRPA Application**.

DATE: December 13, 2024



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

FOR SERVICE AND NOTICE PURPOSES

TO [1]:

Licence Appeal Tribunal
15 Grosvenor Street
Toronto, Ontario
M7A 2S8

AND TO (its counsel):

Mr. Jesse Boyce
LSO number: 72486F
25 Grosvenor, 4th Floor
Toronto, Ontario,
M7A 2S8
Email: jesse.boyce@ontario.ca

TO [2]:

The Ministry of the Attorney General of Ontario

Attention: Ms. Judie Im
8-720 Bay St
Toronto, Ontario,
M7A 2S9
Email: judie.im@ontario.ca

FOR PURPOSES OF COURTESY COPY TO RESPONDENT INSURANCE COMPANIES
 (who did not participate in the motions before the Tribunal that are subject to judicial review)

Insurance Companies subject to NOM #14 and #15 (judicial review)

To: the “First Insurer”

Address for service tied to the fax number of 416.774.3120
 provided by the First Notified Insurer, which was the fax number
 of TDHA at the Material Time, in September 2022,

TD Home and Auto Insurance Company [“**TDHA**”]
 FSRA Registration Number 1063
4th Floor-3650 Victoria Park Avenue
 District of North York
 City of Toronto
 Ontario, M2H 3P7

Fax: 416.774.3120

To: The **First Notified Insurer** and **Sole Underwriter** in the Insurance Policy of
 the Applicant’s former Spouse

Address for service provided by the Tribunal in the LAT Proceeding by
 LAT Order on September 12, 2024

Security National Insurance Company (“**SNIC**”)
 FSRA Registration Number 397
 5th Floor-5045 South Service Road
 Burlington, Ontario,
 L7L 5Y7

Fax: 905-315-1074

Courtesy copy to the insurance company (non-party) subject to NOM #13 in part of the VCM
 Decision (*nota bene*: NOM #13 is not subject to JRPA Application as it was a document
 production motion and it was interlocutory unlike the NOM #14, which were final orders as they
 sought to add a party, amend the cause of action against the said a non-party *et al*)

Address for service provided by the LAT in the LAT Proceeding for TDGIC by LAT
 Orders commencing on or around February 13, 2024

TD General Insurance Company (“**TDGIC**”)

FSRA Registration number 353
9th FLOOR-3650 Victoria Park Avenue
District of North York
City of Toronto
Province of Ontario
M2H 3P7

Fax: 416.774.3629

Attention: Mr. Matthew Nieuwland and Ms. Heather Paquiniⁱⁱⁱ

Address for Mr. Matthew Albert Nieuwland

Law Society Number: 71405A
Business Name: TD Insurance Staff Legal
66 Wellington St W.,
Toronto, Ontario
M5K 1A2
Email Address: matthew.nieuwland@tdinsurance.com

Divisional Court File DC-24-00000718-00JR

McLean v. TDHA, the Licence Appeal Tribunal et al

**DIVISIONAL COURT, SUPERIOR
COURT OF JUSTICE**

Proceedings commenced at Toronto, Ontario

Divisional Court Toronto
 Osgoode Hall
 130 Queen Street W., Rm 174
 Toronto, ON M5H 2N5
 Phone: (416) 327 5100

CERTIFICATE OF PERFECTION

Mr. Kevin A. McLean (B.A., J.D, CIM)
 The JRPA Applicant
 Self-represented or appearing *Pro Se*
 410-775 King Street West
 Toronto, Ontario,
 M5V 2K3
 (e): mcleansettlement@gmail.com

ⁱWith my position being, based upon the law that I have read including secondary source material and issued documents from The Honourable ONSC Divisional Court that only those persons that participated in the hearing (specifically, NOM #14 and NOM #15 which are subject to review by way of the relief that I have sought to quash the orders of VCM in NOM #14 and substitute VCM's orders with the orders that I sought in NOM #14 and to some extent NOM #15) that is subject to review or "on review" are entitled to participate as a right subject to the requirement of notice to the AGO and Tribunal and the rights of participation by the AGO and the Tribunal (as represented by their selected counsel)

ⁱⁱThe Applicant's position being, consistent with the Factum, that the Nieuwland Purported NOA or Nieuwland Purported Appearance was not filed forthwith and it remains defective.

ⁱⁱⁱ*Nota bene*: a different legal administrative assistant that Mr. Nieuwland had and has in the Tribunal Proceeding

Tab 6:

Re: Applicant's Motion Record for Motion #1 (Compel the Tribunal to forthwith file the record of proceeding): Court File No. DC-24-00000718-00JR

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

FORM 4D

Courts of Justice Act

AFFIDAVIT

ONTARIO COURT OF JUSTICE (DIVISIONAL COURT)

BETWEEN:

KEVIN ALEXANDER MCLEAN

APPLICANT

- and -

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

RESPONDENTS

Affidavit #2 of Kevin A. McLean in this *JRPA* Proceeding

(Affidavit in support of the request for leave under section 6(2) of the *JRPA*)

I, Kevin Alexander McLean, Disabled (B.A., J.D., CIM) of Toronto, Ontario, SWEAR THAT:

Volume #1: Sworn Under Oath; under the Penalty of Perjury; and Introduction
--

1. I am the individual *JRPA* Applicant herein and I swear, under the pains and penalties of perjury, the following facts to be true. Where I have stated or sworn information on my belief(s), I have cited the source of my belief(s) by references, citations, end-noting or otherwise. When I have used the expressions (including any permutations) of "in my view", "in my opinion", or "belief", I am not drawing or making any conclusion of law or swearing a conclusion of law but rather citing my position and opinions as a matter of fact.
2. I commenced drafting this affidavit on December 30, 2024.

3. Where double underlining has been utilized, the double underlining is mine and added for emphasis.
4. Where I have copied and pasted or quoted from my “Oral Outline” (currently in draft form), which is cross-referenced to the Oral Compendium, which has a hyperlinked and bookmarked index, I have not done so to make any legal argument but to provide context for my positions.
5. I adopt the definitions from this *JRPA* Proceeding herein and they have the same meaning herein as they do therein.
6. This is my second affidavit in this *JRPA* Proceeding herein. My first affidavit was the affidavit of service that was filed and served after the filing of my certificate of perfection (the “**Certificate Of Perfection**”).
7. I repeat and rely upon the facts in my correspondence to the ONSC Divisional Court with copies to counsel for the various respondents herein. I adopt the facts therein as my evidence herein on a factual level but in relation to my positions that I have advanced, am advancing and will advance in a hearing before a single justice of the ONSC.
8. I filed and paid for my *JRPA* Application on November 15, 2024. I served the same on the Tribunal, AGO, and the **Respondent Insurance Companies**.
9. When referring to the “**Respondent Insurance Companies**” in relation to this *JRPA* Proceeding and particularly SNIC and TDHA as it relates to NOM #14 and #15.
10. I have not made any judicial review application regarding NOM #13 which was a document production motion involving TDGIC.
11. The **Respondent Insurance Companies** did not, in my view and my belief, file a notice of appearance on a forthwith basis. I raised an objection in relation to the same.
12. I filed and served my factum (the “**Applicant’s Factum**” or “**Factum**”) on December 10, 2024.
13. I filed and served my application record on December 12, 2024 (the “**Application Record**”).
14. In relation to my **Factum**, I included all of the authorities that I intended to and intend to rely upon in relation to the merits of the hearing of my *JRPA* Application.
15. Since that time, I have, *inter alia*, put the respondents on notice that my reading of the *JRPA* is that the Tribunal was required to file the record of proceeding forthwith (see: section 10 of the *JRPA*) but I have not had a responsive email or letter in relation to the same.

16. On Friday, December 13, 2024, I filed and paid for my certificate of perfection (the "COP" or "**Certificate of Perfection**"). I also filed and served an affidavit of service on or around the same day.
17. As a result of the same, I am including in my oral argument for the urgent hearing before a single justice of the ONSC authorities that relate to the same.
18. I have also included further authorities in relation to the test for leave pursuant to section 6(2) of the *JRPA*.
19. For ease of reference, I copy and paste from the *JRPA* section 6:

Application to Divisional Court

6 (1) Subject to subsection (2), an application for judicial review shall be made to the Divisional Court. R.S.O. 1990, c. J.1, s. 6 (1).

Application to judge of Superior Court of Justice

(2) An application for judicial review may be made to the Superior Court of Justice with leave of a judge thereof, which may be granted at the hearing of the application, where it is made to appear to the judge that the case is one of urgency and that the delay required for an application to the Divisional Court is likely to involve a failure of justice. R.S.O. 1990, c. J.1, s. 6 (2); 2006, c. 19, Sched. C, s. 1 (1).

Transfer to Divisional Court

(3) Where a judge refuses leave for an application under subsection (2), he or she may order that the application be transferred to the Divisional Court. R.S.O. 1990, c. J.1, s. 6 (3).

Appeal to Court of Appeal

(4) An appeal lies to the Court of Appeal, with leave of the Court of Appeal, from a final order of the Superior Court of Justice disposing of an application for judicial review pursuant to leave granted under subsection (2). R.S.O. 1990, c. J.1, s. 6 (4); 2006, c. 19, Sched. C, s. 1 (1).

20. I pleaded the relief sought under section 6(2) of the *JRPA* in my *JRPA* Application. I made my *JRPA* Application to the ONSC Divisional Court at first instance. I am seeking the relief that in the event that the ONSC (single justice) does not grant leave that the *JRPA* Proceeding is transferred to the Divisional Court (ONSC) for hearing.
21. For ease of reference, I quote from **Part I: Divisional Court Proceedings**, Part F of the Practice Direction

26. Within two weeks after an application or appeal is commenced, or a motion is filed, the parties shall send an email to the court setting out,

- a. any preliminary issues;
- b. a draft proposed or agreed schedule for the exchange of court documents; and
- c. the proposed hearing length required (e.g. half a day for panel hearings).

22. I now note, after review of my emails with the ONSC Divisional Court and the respondents that I do not have a copy of the positions of the **Respondent Insurance Companies** in relation to the required information relating to, *inter alia*: (i) any preliminary objections; (ii) exchange of documents; and (iii) length of hearing.

23. For ease of reference, this is the only email that I have from Mr. Nieuwland in this *JRPA* Proceeding:

Nieuwland, Matthew

Tue, Dec
3,
4:52 PM

to Heather, SCJ-CSJ, Jesse, me, Milene, Connor, Judie

Good evening,

Please find attached the Notice of Appearance of the respondent, Security National Insurance Company (otherwise referred to as TD Home and Auto and TD General Insurance company), served in accordance with the *Rules of Civil Procedure*.

Thank you,

Matthew Nieuwland | Lawyer | Claims Litigation Services | **TD Insurance**
66 Wellington Street West, 38th Floor, Toronto, Ontario, M5K 1A2
T: 905-201-4092 | F: 416-599-7439
Email: Matthew.Nieuwland@tdinsurance.com
Legal Assistant: Christiana Ortiz | T: 416-486-2547 |
E: christiana.ortiz@tdinsurance.com

Privileged and/or Confidential”

24. While I appreciate the request by the Tribunal for a case conference, I have opposed the same. I also note, for the benefit of the ONSC Divisional Court, that the references in the Practice Direction to “parties” attending the case conference. My position is that until the Respondent Insurance Companies have complied with the requirement

of providing the ONSC Divisional Court with the above, that having a case conference without knowing the preliminary objections (if any) of the Respondent Insurance Companies, and their time estimate, that it would be futile and wasteful of resources.

25. I now copy and paste from the Practice Direction:

“G. Triage and Case Management

31. All applications, appeals, and motions in Divisional Court, and all steps in those proceedings, may be subject to judicial case management. The purpose of case management is to facilitate access to justice through the timely adjudication of proceedings in Divisional Court in a cost-effective and proportional manner.”

26. While I have asked Mr. Nieuwland via email, with the ONSC Divisional Court copied along with the other respondents, if we could hear from him regarding the same, I have not received any response.

27. My position, after review of the jurisprudence including but not limited to *Hutchinson v. Aviva*ⁱ, *Drewlo Holdings Inc.*ⁱⁱ, *Birani v. Tarion Warranty Corporation, Ontario (Energy Board)*, *Goodis, Northwestern Utilities, Leon's Furniture, et al*, that the Tribunal, particularly the LAT in AABS matters, has been limited to the following participatory rights:

- a. The record and explaining it in relation to said LAT proceeding;
- b. Any procedural fairness that have arisen (but not bias or natural justice per se);
- c. 15 page factum;
- d. 15 minute oral argument;
- e. No seeking of costs by the Tribunal;
- f. Avoidance of any duplication of the respondent insurance company(ies) arguments;
- g. No argument on the merits of this *JRPA* Application;
- h. No arguments on the outcome of this *JRPA* Application;
- i. the limitation of the appeal to questions of law or an extricable question of law from a finding of mixed fact and law;
- j. the applicable standard of review of correctness within the context of the Board's specialized function;
- k. procedural fairness as it relates to the tribunal's ability to make procedural choices and the extent to which the Board may consider law or argument not raised by the parties; and
- l. Others listed in my Oral Outline and Oral Compendium.

28. I further note in order to avoid any duplication of arguments by the Tribunal of the Respondent Insurance Companies, the Respondent Insurance Companies will need to

file and serve a copy of their Factum (if any). If they are not intending to respond to my Factum and Application Record, then I believe, in accordance with the principles of having timely adjudication of this *JRPA* Proceeding in a cost-effective manner, that the Respondent Insurance Companies must notify all interested parties and persons including the ONSC Divisional Court.

29. I note in relation to section 10 of the *JRPA*, and by reference to section 20 of the SPPA, that the Tribunal has not, based on my understanding of the word “forthwith”, filed the record of proceeding (the “Record Of Proceeding”) forthwith.
30. I have reason to believe that the Tribunal does not have possession of the entire Record Of Proceeding or each and every filed document that would constitute the Record Of Proceeding as it is interpreted by jurisprudence that has interpreted section 20 of the SPPA.
31. I ground my belief based upon the following current submission in my Oral Outline (Draft Version):

“[35] With great respect to the former case manager in Mr. Grant, his explanations regarding why he apparently input TDGIC do not pass muster. He requested that the Applicant provide the denial letters, which were already contained in the LAT Appeal by way of pre-LAT Appeal affidavits, and they contained the sole of SNIC with its two locations of Markham and Burlington and neither location housed the landline fax number of 416.774.3120. The mere fact that Mr. Grant would be responsible for the “parties’ names are correct” is a scary cogitation. This is the same Mr. Grant that represented to the SABS Applicant that he could not file, when his file number was not recognized in the e-filing portal that it was due to a “power outage”. It was about as believable as his previous representations about why he input TDGIC as the sole respondent over the very name in the “denial letters”. The Applicant also notes that at various times thereafter that Mr. Grant sent the Applicant, with SNIC copied after the granting of NOM #8 (which was not by consent as VCM found), the style of cause of “McLean v. TDGIC” (or permutations of the same).

[36] Why is the Tribunal remaining in a state of non-compliance with its statutory duties to forthwith file the record of proceeding? The Applicant respectfully submits that the question answers itself. “

32. I also provide this affidavit #2 to ensure that I have provided notice to any parties or interested persons that I will have be advancing the argument on said date, by way of reference to my “Oral Outline”, that not only am I entitled to leave to have the merits determined in such fashion but that the **Respondent Insurance Companies** (SNIC and THDA) are bound by the Keeprite standard (“Keeprite Standard”), as interpreted in the case of Keeprite and the Tribunal’s standing and participation rights are limited.

33. I am also taking the position currently and will take the position that since the Tribunal has not filed a record of proceeding forthwith that it is not entitled to participate until it has done so. I am advancing the alternative position, which has only arisen as a result of the non-compliance with the *JRPA* and other statutes, enactments, policies and/or guides since the filing of the Applicant's Factum, that if the Tribunal is entitled to participate in this *JRPA* Proceeding,
34. To the extent that the Tribunal does not file the Record Of Proceedings or is unable to do so, my position will be that it cannot speak about the "record" to the ONSC (single justice) or the ONSC Divisional Court if I am not able to obtain leave.

VOLUME #2: URGENCY AND FAILURE OF JUSTICE (ON BELIEF): TIMING AND STRUCTURE OF THIS AFFIDAVIT

35. Due to the urgency of this case and that the Hearing Proper before the Tribunal in the LAT Appeal is set for January 25, 2024, I may provide an additional affidavit with exhibits.
36. I believe, without making any legal argument, herein that that this case is urgent based upon the facts pleaded in my *JRPA* Application, the facts in my Factum, correspondence, and that the Hearing Proper is set for January 25, 2025, and it involves, as submitted, the Sole Underwriter (SNIC) that did not first receive my Completed Application (OCF-1) on October 13, 2022.
37. I believe and allege, without making any legal argument, that there will be a failure of justice.
38. In my "Oral Outline" (draft form) that is cross-referenced to Oral Compendium, I have defined the following as [endnotes removed]:
- a. "Urgent" means "requiring immediate action or attention";
 - b. "Likely" involves the balance of probabilities standard;
 - c. "Failure" means the "omission of occurrence or performance"; and
 - d. "Justice" is defined as: the quality of being just, impartial, or fair; the quality of conforming to law; and conformity to truth, fact, or reason : **correctness**.
39. In my "Oral Outline" (draft), I have for purposes of the test under section 6(2) of the *JRPA* and noting that evidence may need to be lead in relation to obtaining leave before a single justice, I have relied (implicitly or explicitly) on the following cases which I now copy and paste:

Her Majesty the Queen, 2013 ONSC 6418, "[11] While Mr. Borton did not file an affidavit saying that he had lost his home, it seems obvious to me that Mr. Borton is suffering economically and that the uncertainty of a hearing date in the Divisional Court creates a real risk of there being

a failure of justice. The prejudice to Mr. Borton grows with each passing day; prejudice he can only mitigate by capitulating or by finding an available day for argument.”

Cureatz v. Progressive Party of Canada, [1997] O.J. No. 2309 (Gen. Div.), LaForme J., as he then was, accepted jurisdiction to determine the matter, sitting as a single judge of the Divisional Court pursuant to s. 6(2) of the *JRPA*, while adopting various authorities, found: “In view of the fact that the Divisional Court is not able, in general, to deal with a question of urgency ... I take the view that s. 6(2) should be *liberally construed*. Thus, to my mind, the time that might be taken up before the Divisional Court can hear the matter is an important factor: *Universal Settlements International v. Duscio*, 2010 ONSC 6547 (CanLII), at para 6.

Universal Settlements International, the ONSC noted the stay of Justice Stinson was a factor in not granting leave and that stay remaining in effect while said *JRPA* application was transferred to the ONSC Divisional Court pursuant to section 6(3).

In *Savone*, the Justice TD Ray found, at paragraph 8, that where a judicial review involves only interlocutory orders and decisions, then it is **unlikely** leave will be granted. The unassailable corollary is when final orders are at issue or to be determined a failure of justice is *likely* if the single justice of the ONSC does not assume jurisdiction.

The merits of an application are important factors in determining whether there will be a failure of justice: *Savone*.

VOLUME #2(A): RECORD OF PROCEEDING

40. I am concerned that with the Tribunal’s failure to file the Record of Proceeding forthwith and that it may be attempting to delay the timely adjudication of this *JRPA* Proceeding and/or it does not have the full and accurate Record Of Proceeding. I provide the source of my beliefs above.

VOLUME #3: MERITS (AS A FACTOR IN CONSIDERATION THE SECTION 6(2) OF THE JRPA

VOLUME #3(A): FINAL ORDERS VS. INTERLOCUTORY

41. While I am not making any legal argument herein, I provide the ONSC Divisional Court by way of this affidavit #2, to be filed and served, in support of my request, wherein I have filed and served Requisition #2 on December 24, 2024, to be heard in front of a single justice of the ONSC pursuant to section 6(2) of the *JRPA*, my current submissions in the Oral Outline regarding the above heading:

However, the adding of the party of TDHA as the First Insurer, along with the concomitant sought orders pursuant to the declaratory relief along the addition of those “causes of action” against “another”. “Causes of action” is defined as: “a fact or facts that enable a person to bring an action against another”.

As SNIC and TDGIC were not “one and the same”, neither are SNIC and TDHA. Therefore, the dismissal of NOM #14 and NOM #15 by VCM, absent any analysis of the statutory scheme were decisions and orders that were final in nature: *ME v. Ontario*ⁱⁱⁱ citing *Atlas, Kerr et al.*

Further authorities of our Ontario courts unequivocally support the unequivocal common law principles and precedents that to refuse relief to add a party, cause of action, and/or amendment of pleadings are final orders. Even motions that were dismissed that sought leave to issue third and fourth party claims were FINAL (see: *Khalil et al. v. United Investment Services Ltd. et al.*, 1975 CanLII 490 (ONSC) [“Khalil”]). In *Hollinger*, an order maintaining a sealing order FINALLY determined that a newspaper could not exercise its right to have access to the court file and was thus FINAL for the purposes of appeal (see: *Hollinger Inc. v. Ravelston Corp.*, 2008 ONCA 207 [“Hollinger”]).

Even further, where a question of law is at issue, even when the ongoing inferior tribunal proceeding is ongoing, is a final order or decision. An order dismissing a motion for summary judgment on a **question of law**, where the only genuine issue is the question of law should probably be regarded as giving rise to *res judicata* and, hence, a FINAL order (see: *David Polowin Real Estate Ltd. v. Dominion of Canada General Insurance Co.*, 2004 CanLII 19916 (ON CA) [“Polowin”]).

Where the doctrines of *res judicata* or issue estoppel are at issue, an order during proceedings, not at its conclusion, is a final order. As there is a live issue of issue estoppel herein, where a motion, that is summary disposition in nature is dismissed, it will be FINAL if it involves a *substantive issue* like issue estoppel (see: *Almrei v. Canada (Attorney General)*, 2011 ONCA 779).

The natural corollary is that orders that **grant** the adding of a party, causes of action and/or amendments to pleadings are *interlocutory*. **Permitting** amendments to pleadings are generally *interlocutory* (see: *Dynasty Furniture Manufacturing Ltd. v.*

Toronto-Dominion Bank, 2015 ONCA 137 [*“Dynasty Furniture”*]). Order **granting** leave to amend a statement of claim was **interlocutory** (see: *Merling v. Southam Inc.*, et al, 2000 CanLII 5621 (ONCA) [*“Merling”*]). An order **ADDING** a defendant is **interlocutory** (*nota bene*: supra, order refusing or denying the addition of a proposed party is **FINAL** which is trite in the sense that if a party has a cause of action and can seek relief against said proposed party, the refusal **FINALLY** disposes of that substantive right) (see: *Prescott & Russell (United Counties) v. David S. Laflamme Construction Inc.*, 2018 ONCA 495 [*“Prescott”*]). Order **granting** leave to amend paragraphs in a statement of claim was **interlocutory** (see: *Natario v. Rodriguez*, 2015 ONCA 227 [*“Natario”*]).

**VOLUME #3(B): THE NON-JUSTICIABILITY DOCTRINES
AND THEIR EXCEPTIONS**

42. While my position remains that the prematurity doctrine raised by Mr. Boyce for the Tribunal is meritless, I have in my Oral Outline (Draft) provided the other non-justiciability doctrines and the exceptions to the same. I now copy and paste from the Oral Argument (Outline):

“It is trite that the two decisions in NOM #14 and #15, and the reconsideration decisions, that are subject to judicial review, and the orders contained therein are final decisions and orders. With those orders and decisions being final, the doctrine against interlocutory judicial review or interlocutory appeals (also defined as “**Non-Justiciability [“NJ”] Interlocutory Doctrine**”) is obsolete. As there has been much discussion by legal scholars and courts about the merger of the **NJ Interlocutory Doctrine** and the adequate, alternative and available^{iv} remedy doctrine (the “**AAAR Doctrine**”), there cannot be any non-frivolous preliminary objection by a respondent insurance company or the **Tribunal** (see: section 9(2) of the *JRPA*) or the AGO (see: section 9(4) of the *JRPA*).

The same is applicable to the exhaustion doctrine as that is predicated upon an applicant seeking judicial review exhausting all **AAAR**. If the potential party that is an applicant avers, with supporting evidence, is subject to a cause of action is not added by decision of an administrative decision maker who becomes *functus officio*^v, and reconsideration fails, then he or she has exhausted any available, alternate and adequate remedies [**AAAR**] *before the Tribunal*. While reconsideration is not an absolute prerequisite to judicial review. (*Ellis-Don Ltd. v. Ontario (Labour Relations Board)*, 2001 SCC 4 (CanLII)), the Applicant did so and received the three page decision where VCL, a decision-maker that he had drawn a potential and *prima facie* conflict of interest between him and her to the attention of the former case

manager in Mr. Grant, wherein she took issue with the *ME v. Ontario* precedential statements of law.

An exceptional circumstance is a final order or decision predicated on an 'exceptional discovery' wherein the respondent insurance companies naturally went into a shell and curled into a ball. Where a respondent insurance company is the only insurer, due to passage of time, that could be the First Insurer, then the LAT decision-maker is required, absent discretion as the **Tribunal** is a creature of statute (see: I would note that the primary argument advanced by the Appellant in this case focuses on a transfer of "jurisdiction" from the Superior Court to the LAT. As explained in *Keulen*, exclusive jurisdiction over *SABS* claims has been removed from the Superior Court of Justice and the Financial Services Commission of Ontario and has been placed in the LAT. This is the effect of the language in s. 280 of the *Insurance Act*. The authority granted to the LAT is circumscribed by the *Insurance Act*, the *SABS* and the applicable regulations. The LAT has no inherent jurisdiction (see: *Lundy v. Peel*) and any decision outside its authority is *ultra vires* (without authority or jurisdiction), to have added such party: section 280 of the *Insurance Act* (must decide in accordance with *SABS*)."

43. With respect to the exceptions to the Non-Justiciability Doctrines, I now copy and paste from the Oral Outline (Draft):

Even here decisions or orders are interlocutory, which they are not herein, and a *SABS* applicant has adequate, alternative, and available remedies before the **Tribunal**, which this *JRPA* Applicant does not, this ONSC Divisional Court and other similarly situated courts have intervened in the following circumstances:

- a. *Repetition of judicial review proceedings*: where the potential prejudice of the risk of repeating proceedings *after* review outweighs the prejudice to the general orderly processing of administrative proceedings without interruption until their conclusion: *Lourenco v. Hegedu*;
- b. *Real unfairness*: if there is a prospect of *real unfairness* through **denial** of natural justice or otherwise, a superior court may always exercise its inherent supervisory jurisdiction to put an end to the injustice before all the alternative remedies are exhausted... (paragraph 65 of the Applicant's Factum citing *Gage*);
- c. *Natural justice breach – clear and obvious application succeeds*: "Where the court is being asked to determine whether a particular breach of natural justice rises to an "exceptional" circumstance, the court may consider whether it is "*clear and obvious*" that the application will be successful: *Unimac-United Management Corp. v St. Clare's-Monaco Place*, 2015 ONSC 4760 (CanLII) at paras. 16 and 17.);
- d. **Override of interlocutory**:

- i. "The Decision has broad implications for human rights disputes arising between unionized employers and employees throughout the province. Delaying this application until the conclusion of the hearing on the merits, which does not depend on any evidence or law relevant to the jurisdictional issue, will result in uncertainty for employers, employees and unions. This is an appropriate case for this court to exercise its discretion to hear this judicial review": *London District Catholic School Board v. Weilgosh*, 2024 ONSC 3857 (CanLII)
- ii. This Court has stated that it will review an interlocutory decision of a tribunal where a process is fatally flawed (*Roosma v. Ford Motor Co. of Canada* (1988), 1988 CanLII 5633 (ON SCDC), 66 O.R. (2d) 18 at 25-26).
- e. *Lack of jurisdiction*: judicial intervention may be warranted in situations where the tribunal clearly lacks jurisdiction to proceed, privacy rights at issue or where proceeding with the hearing [proper] would result in an unfair hearing or a breach of natural justice: *Rowe v. College of Nurses of Ontario and al.*, 2023 ONSC 6414;
- f. *Judicial Intervention even at the preliminary^{vi} stages of an administrative proceeding*:
 - i. "Judicial review is a discretionary remedy, and the Divisional Court has taken the position that it should not fragment proceedings before administrative tribunals. Absent exceptional circumstances demonstrating that the application should be heard, the Court will not intervene at a PRELIMINARY STAGE in proceedings. However, where the preliminary decision will likely result in a fundamental failure of justice, the Court may exercise its discretion to hear the application (*Ontario College of Art v. Ontario (Human Rights Commission)* (1993), 1993 CanLII 3430 (ON SCDC), 11 O.R. (3d) 798 (Div. Ct.) at pp. 2-3; *Howe v. Institute of Chartered Accountants of Ontario* (1994), 1994 CanLII 3360 (ON CA), 19 O.R. (3d) 483 (C.A.) at 490; *Gage v. Ontario (Attorney General)* (1992), 1992 CanLII 8517 (ON SCDC), 90 D.L.R. (4th) 537 (Div. Ct.) at 553).

VOLUME #3(C): KEEPRITE STANDARD

44. I now copy and paste from my Oral Outline (Draft) the relevant paragraphs involving the Keprite Standard:

Judicial review is not an opportunity to re-argue the case, but rather to show that the decision-maker failed to properly exercise its decision-making powers. Judicial review is not documentary discovery. However, compliance with section 10 of the *JRPA* is a requirement or obligation upon the **Tribunal**. As the **Tribunal** is not entitled to duplicate arguments of the respondent insurance companies, the respondent insurance companies will need to file their responsive factum *prior to* January 10, 2025, so the **Tribunal**

has notice of the same and can adjust accordingly to, *inter alia*, avoid any duplication of submissions of the Tribunal.

In Ontario, this is known as the “**Keeprite Standard**” (by reference to *Keeprite Workers' Independent Union et al. and Keeprite Products Ltd.*, 1980 CanLII 1877 (ON CA), <<https://canlii.ca/t/g14jm>>) wherein in 2013 Madam Justice Swinton (who received supernumerary status in 2013) summarized the **Keeprite Standard** on judicial review regarding the impermissible inclusion of materials that were not before the decision maker:

“[18] The *Keeprite Standard* for the admission of affidavit evidence on judicial review has been applied in numerous decisions involving labour boards and labour arbitrators. These cases have held that affidavit evidence can be admitted either to show an *absence of evidence* on an essential point or to disclose a *breach of natural justice* that cannot be proven by a mere reference to the record.”

Affidavit evidence containing material that was **not** before the decision-maker is not admissible on judicial review unless it: a) provides non-argumentative background information; b) demonstrates that the decision-maker decided an essential point without any evidence; or c) demonstrates the decision-maker breached the *Rules* of natural justice (see: *Sticky Nuggz Inc. v. Alcohol and Gaming Commission of Ontario*, 2020 ONSC 5916 as per **Swinton, Lederer, Penny JJ**).

Issue #3, Volume #3(II): Application of the Law to the Facts
--

Mr. Nieuwland, as now counsel to TDHA in this *JRPA* Application and counsel to SNIC in the LAT Appeal and former counsel to TDGIC, is in a blatant conflict of interest by his mere appearance on behalf of all three. They are separate and distinct insurance companies with separate FSRA registration numbers with

Like the Tribunal in *Dankha* and *Mosa*, this ONSC (whether Divisional or not), cannot condone blatant conflicts of interest particularly where TDHA, while still an automotive insurer, is no longer in the sub-category of private passenger market, and SNIC have entirely balance sheets, financial statements, goodwill et al, and are “at odds” (not *ad idem*) as per the FSRA and OSFI

requirements. Mr. Nieuwland, after still not having signed a pleading on behalf of SNIC, wishes for the ONSC (Divisional Court) to somehow believe that SNIC is also referred to as "TD General insurance company [sic]" and "TD Home And Auto [sic]".

Certainly, Mr. Boyce's decisions (as an adjudicator or Vice Chair) delineated between the various insurance companies that are apparently in the TDI Group. This does not mean that TDHA and SNIC are not entitled to have counsel represent their interests but they cannot provide any additional evidence to the Tribunal let alone any of benefit. To do so would be tantamount to intentionally including inadmissible affidavit evidence and subject to a costs award. Further, while SNIC or TDHA is entitled to oppose the relief sought, submissions are not evidence and they cannot overcome the balance of probabilities test

For objectivity purposes, the Applicant does not take issue with SNIC and TDHA separately arguing the standard of review for the questions and issues to be determined herein. However, that would be in essence a five to ten page argument and five to ten minutes in oral argument. This leaves (pardon the pun) with this oral outline where the Applicant is some 30 minutes in "reading time" and subject to questions on the salient points, it will likely be less. Vis-à-vis the Applicant and the respondent insurance companies, it is a total of approximately 35 minutes when considering reply to submissions of the Applicant to the respondent insurance companies.

VOLUME #3(D): MY INCREASING CONCERNS ABOUT INSTITUTIONAL AND SYSTEMIC ISSUES REGARDING THE LAT AND THE IMPUGNED DECISION MAKERS ALONG WITH A CONCERNING TREND INVOLVING MR. BOYE AND THE RESPONDENT INSURANCE COMPANIES: FURTHER GROUNDS FOR SECTION 6(2) OF THE JRPA

45. In light of the occurrence involving former Vice Chair Ms. Therese Reilly wherein she had accepted a conditional offer of employment from Aviva Insurance Company while employed by the SLASTO and LAT, and then issued a variety of decisions in favour of Aviva prior to her departure to work for Aviva, I have raised the below issues as soon as I became aware of them.
46. I have also found an additional authority as what I say the correct procedure is at this time for having this JRPA Application heard on its merits in a manner that is expeditious, cost-effective and just which is copied below (with my introductory submissions therein):

In *Taylor v. Pivotal Integrated HR Solutions*, 2021 ONSC 7720, The applicant, Paul Taylor, moved pursuant to s. 21(5) of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, to set aside the orders of Sachs J. made October 8, 2020. The motion judge made orders adding the Workplace Safety and Insurance Appeals Tribunal as a party to Mr. Taylor's judicial review application and dismissing the application for extreme delay.

In *Taylor*, ONSC Divisional Court (Toronto) as per The Honourable Justices Ryan Bell, Nishikawa, and Shore JJ., made the seminal statements of law relating to the overarching discretion of the ONSC (whether Divisional or otherwise) with respect to the Tribunal's participation:

"[18] Section 9(2) of the *JRPA* does not affect this court's supervisory jurisdiction. It does not shield administrative tribunals such as the Tribunal from curial scrutiny entirely; rather, s. 9(2) permits tribunals to bring relevant matters to the attention of the court.

[19] Allowing an administrative tribunal such as the Tribunal to participate on an application for judicial review does not give rise to "unjust opposition" as Mr. Taylor contends. To the contrary, the presence of the administrative tribunal as a party *may* help to ensure that the court hears both sides of a dispute where there is no other well-informed party standing in opposition to the party challenging the tribunal decision: *Ontario (Energy Board) v. Ontario Power Generation Inc.*, 2015 SCC 44, at para. 54.

[20] Once a tribunal is a party, the court still has discretion as to the scope of participation to be accorded to the tribunal during the hearing. This involves balancing the need for fully informed adjudication against the importance of maintaining tribunal impartiality: *Hydro Ottawa v. Ontario (Workplace Safety and Insurance Appeals Tribunal)*, 2019 ONSC 4898 (Div. Ct.), at para. 6. This court is under no obligation to accept the submissions of a tribunal that appears before it.

The three part legal test from *Ontario Energy Board* is as follows:

In accordance with the foregoing discussion of tribunal standing, where the statute does not clearly resolve the issue, the reviewing court must rely on its discretion to define the tribunal's role on appeal. While not exhaustive, I would find the following factors, identified by the courts and academic commentators cited above, are relevant in informing the court's exercise of this discretion:

(1) If an appeal or review were to be otherwise unopposed, a reviewing court may benefit by exercising its discretion to grant tribunal standing.

(2) If there are other parties available to oppose an appeal or review, and those parties have the necessary knowledge and expertise to fully make and respond to arguments on appeal or review, tribunal standing may be less important in ensuring just outcomes.

(3) Whether the tribunal adjudicates individual conflicts between two adversarial parties, or whether it instead serves a policy-making, regulatory or investigative role, or acts on behalf of the public interest, bears on the degree to which impartiality concerns are raised. Such concerns may weigh more heavily where the tribunal served an adjudicatory function in the proceeding that is the subject of the appeal, while a proceeding in which the tribunal adopts a more regulatory role may not raise such concerns.

47. As Mr. Nieuwland's clients have not complied with the Practice Direction (Information Submitted to the Court) within the two week time period since the bringing of the *JRPA* Application, I feel compelled to argue each of the above in the primary, secondary and tertiary based on the various hypotheticals.

48. I also note the following which I copy and paste from the Oral Outline (Draft):

When the questions or issues to be decided are ones that do not require leave and/or subject to the correctness standard, the justice of the ONSC, pursuant to ss. 6(2) of the *JRPA*, is required to start afresh and/or "in the shoes" of the initial decision maker which was VCM. However, the Applicant requires leave by filing his requisition to set the hearing pursuant to *Rule* 38.03(3.1) which is done by request and not motion.

Applications for judicial review are intended to be summary proceedings, and preliminary motions add greatly to the cost and time required to deal with such matters and are therefore to be **discouraged**.^{vii}

A party may not rest on allegations in its pleadings on a motion for summary judgment. The party must "put its best foot forward" or "lead trumps or risk losing" (*Caplan v. Atas*, 2021 ONSC 670, the Honourable Justice DL Corbett paragraph 106). The principle is applicable herein to the NOM #14 and #15 being summary type hearings and this *JRPA* Proceeding.

49. To the extent that Mr. Nieuwland's clients do not oppose and/or participate in this *JRPA* Proceeding, I believe that will be another factor that will militate in favour of a shortened time for the hearing of my section 6(2) of the *JRPA* leave request and, if leave is granted, the arguing of the merits of the *JRPA* Application.

VOLUME #3(E): MY INCREASING CONCERNS REGARDING MR. BOYCE AND HIS VARIOUS ROLES AND WHETHER THE PREMATURE OBJECTION IS A BONA FIDE OBJECTION – FOR: (I) NOTICE PURPOSES; AND (II) PRE-EMPTIVE PURPOSES

50. However, I am deeply concerned with the record of Mr. Boyce and his role as a former adjudicator and Vice Chair as it relates to how he had decided in favour of the Respondent Insurance Companies and his objection on behalf of the LAT. I now copy and paste from the “Appendices” and I address the same with further sworn evidence:

Appendix #4: LAT decisions where Mr. Boyce, as he then was Vice Chair Boyce (adjudicative capacity between two parties), he issued decisions, orders, finding and determinations that were all in favour of the three respondent insurance companies.

(nota bene: Put another way, not one individual who was an insured person and injured in an automobile accident was successful on a single issue before him.

(nota bene #2: these decisions also provide further direct evidence that TDHA (First Insurer) has been involved in LAT/AABS matters)

SUMMARY: TOTALS INVOLVING THE RESPONDENT INSURANCE COMPANIES THAT ARE AT ISSUE IN THIS JRPA APPLICATION WHERE MR. BOYCE WAS THE DECISION MAKER

- SNIC (includes TDIMM) AND TDHA COMBINED:
 - 14-0-1

Security National Insurance Company (FSRA Registration number 397)

- 4 in favour of SNIC and one split decision
- Total 4-0-1

1. Mr. Boyce issued the following decisions involving SNIC (5)

- a. *A.P. vs. Security National Insurance Company*, 2020 CanLII 14480 (ON LAT)
- i. [3] A.P. has not demonstrated that his impairments warrant treatment beyond the MIG. Accordingly, the treatment plans in dispute are not reasonable and necessary and no interest is payable.

- b. *Security National Insurance Company v. Balgobin*, 2021 CanLII 18916 (ON LAT),
- i.] Security National is entitled to a repayment of IRB in the amount of \$3,257.14, plus interest, due to the respondent's failure to notify it of her return to work.
- c. *Ndukwe v. Security National Insurance Company*, 2021 CanLII 50784 (ON LAT)
- i. [3] The applicant has not met her burden of demonstrating that removal from the MIG is warranted or that the treatment plan in dispute is reasonable and necessary.
- d. *I.G. v Security National Insurance Company*, 2019 CanLII 110085 (ON LAT),
- i. [5] I find I.G. is statute-barred from proceeding with her claim for attendant care but she may proceed with her claims for non-earner benefits and medical benefits before the **Tribunal**.
- e. *M.B. v Security National Insurance Company*, 2019 CanLII 130379 (ON LAT) [nota bene: a closer look at said case demonstrates that SNIC was primarily successful on the amounts sought and amounts]
- i. [5] I find, on a balance of probabilities, that the home modification treatment plan in dispute is partially reasonable and necessary. Specifically, I find the cost of the accessible kitchen package and closet organizers proposed by ADL to be reasonable and necessary.

TDHA (FSRA registration number 1096)

- | |
|---|
| <ul style="list-style-type: none"> ▪ 4 in favour of TDHA ▪ One reversal in favour of Applicant but solely based on decision of ONCA (but for decision, it would have been in favour of TDHA) ▪ One finding in favour of Applicant on CAT but no entitlement to any benefits ▪ 5-0 on substantive issues ▪ 5-1 (objectively speaking for the successful reconsideration on a preliminary issue) |
|---|

2. Mr. Boyce has issued decisions involving the First Insurer herein (TDHA) (6):

- a. *Polat v. TD Home and Auto Insurance Company*, 2021 CanLII 35573 (ON LAT),
- i. Decided in favour of TDHA;
- b. *C.L. v TD Home and Auto Insurance Company*, 2019 CanLII 126182 (ON LAT)
- i. [4] C.L. is statute-barred from proceeding with his application at the **Tribunal** until he attends the IEs scheduled by TD.
- c. Applicant v. TD Home and Auto Insurance Company, 2020 CanLII 30438 (ON LAT) [reconsideration in favour of the Applicant solely based upon the ONCA decision in *Tomec*]:
- i. [3] [The applicant]'s request for reconsideration is granted. I reverse the Tribunal's previous decision on the preliminary issue and find [the

applicant] may proceed to the Tribunal with his claim. [still not a substantive benefit or quantum in favour of the applicant insured person]

d. 18-000169 v *TD Home and Auto Insurance Company*, 2019 CanLII 22189 (ON LAT)

i. [6] I find that K.S. sustained a catastrophic impairment as a result of the accident.

ii. [7] I find that K.S. is not entitled to a post-104 IRB as he does not suffer a complete inability to work in his pre-accident employment. While I find K.S. is entitled to an IRB for the post-accident period, no amount is payable. TD's claim for repayment is denied.

iii. [8] I find that K.S. is not entitled to ACBs or housekeeping for the period in dispute as he has not demonstrated that his service provider suffered an economic loss

iv. [9] I find that an award in this matter is not appropriate as TD did not unreasonably withhold or delay payment of benefits. Accordingly, as no benefits are overdue, no interest is payable.

v. [24] For these reasons and on a balance of probabilities, I find that K.S. suffered a catastrophic impairment as a result of the accident.

e. 17-008493 v *TD Home and Auto Insurance Company*, 2019 CanLII 76874 (ON LAT)

i. [7] SC's appeal is statute-barred pursuant to s.51 of the Schedule.

f. 17-008493 v. *TD Home and Auto Insurance Company*, 2019 CanLII 63361 (ON LAT)

i. [1] The applicant, the insured in this proceeding, has requested reconsideration of an interlocutory motion decision dated January 16, 2019. On that motion, the applicant was unsuccessful in obtaining an adjournment of a hearing on a preliminary issue until a similar issue has been decided by the Court of Appeal.

ii. [3] For the reasons that follow, I **deny** this request for reconsideration.

iii. Adjournment: [19] I agree with the respondent that a hearing should only be delayed because a party is pursuing a civil action on similar issues in exceptional circumstances. The applicant is not pursuing a civil action in this case, he is relying on the outcome of an appeal in *Tomec* as a reason to postpone the hearing of this matter.

TD Insurance Meloche Monnex [no FSRA registration number]

- | |
|---|
| <ul style="list-style-type: none"> ▪ 5 decisions ▪ 4 in favour of TDIMM ▪ 1, prima facie, split decision (but solely on technicality based on cost on completing OCF-18 and 19 forms i.e. section 25 expenses) so marked as in favour of TDIMM |
|---|

○ 5-0 TDIMM over insured persons

3. Mr. Boyce has issued decisions involving a non-insurance company in TD Insurance Meloche Monnex and a "Mennox" (nota bene: it remains unclear from these decisions

whether the underwriter was Primmum (#1396) or SNIC (#397)) (5) [nota bene #2: for all intents and purposes, former Vice Chair Boyce decided all in favour of “TD Ins. Meloche Monnex” for a 5-0 total]

- a. *Bagla v. TD Insurance Meloche Monnex*, 2021 CanLII 35579 (ON LAT)
 - i. [7] The applicant is limitation-barred on both ACB claims.
- b. *Scheltgen and TD Ins. Meloche Monnex*, 2022 CanLII 23403 (ON LAT)
 - i. [3] The applicant's request for reconsideration is dismissed.
- c. *Scheltgen v TD Insurance Meloche Monnex*, 2021 CanLII 124041 (ON LAT)
 - i. [3] The applicant is statute-barred from proceeding with his application under s. 55(1)2 because he failed to attend a properly scheduled s. 44 IE
- d. *O.A. v TD Insurance Meloche-Mennox*, 2020 CanLII 87965 (ON LAT) [nota bene: in effect a decision fully in favour of “TD Insurance Meloche Mennox [sic: as it relates to the same and not a corporate entity]]
 - i. [7] O.A. is entitled to an additional \$400.00, representing the cost of completing the OCF-18 and OCF-19 forms, as they are reasonable and necessary and were not captured by TD's partial approval of January 29, 2019.
 - ii. [8] O.A. is not entitled to payment for any of the remaining unapproved items in the OCF-18, as they are not reasonable and necessary.
- e. *I.R. v. TD Insurance Meloche Mennox* [sic], 2020 CanLII 87968 (ON LAT),
 - i. [4] I find I.R. has not satisfied his burden to prove that his accident-related impairments warrant removal from the MIG. The remainder of the treatment plan in dispute is not payable, no interest applies, and an award is not appropriate.

51. I am also concerned that Mr. Boyce is located at the same office as VCL and presumably the same office as VCM (albeit she appears to not have updated her contact information with the LSO). I distinguish the same with the office location of Ms. Im, counsel to Ministry of Attorney General. I now copy and paste from the Appendices of my Oral Outline (Draft):

Order in Council 1421/2023

On the recommendation of the undersigned, the Lieutenant Governor of Ontario, by and with the advice and concurrence of the Executive Council of Ontario, orders that:

Whereas Jesse Boyce was reappointed as full-time member and vice-chair of the Licence Appeal **Tribunal** for a fixed term of three years, effective November 12, 2022, by Order in Council O.C. 1319/2022;

And whereas Jesse Boyce was reappointed as part-time member of the Ontario Civilian Police Commission for a fixed term of five years, effective February 21, 2023, by Order in Council O.C. 67/2023;

And whereas Jesse Boyce tendered his resignation effective August 21, 2023;

Therefore, pursuant to subsection 2(3) of the *Licence Appeal Tribunal Act, 1999*, subsection 21(2) of the *Police Services Act* and subsection 16(4) of the *Adjudicative Tribunals Accountability, Governance and Appointments Act, 2009*, Orders in Council O.C. 1319/2022 and 67/2023 be revoked effective August 21, 2023.

Ministry of the Attorney General

Approved and Ordered: September 28, 2023

LSO Directory

Jesse Aaron Boyce

[Back to results](#)[New Search](#)[Print](#)

Assumed Name

Jesse A. Boyce

Law Society Number

72486F

Class of Licence Definitions

Lawyer (L1)

Real Estate Insured [†]

No

Status Definitions

Practising Law - Employed

Business Name

SLASTO

Business Address

25 Grosvenor^{viii} 4th Floor Toronto, Ontario M7A 2S8

Phone

1 437 997 1235 Ext.

Trusteeships

None

Current Practice Restrictions

None

Current Regulatory Proceedings

None

Regulatory History

None

Appendix #2: Location of Vice Chair Lake and Vice Chair Morrisette
--

Lindsay Nicole Lake

[Back to results](#)[New Search](#)[Print](#)**Assumed Name**

Lindsay Lake

Law Society Number

53566E

Class of Licence Definitions

Lawyer (L1)

Real Estate Insured †

No

Status Definitions

Not Practising Law - Employed

Business Name

Licence Appeal Tribunal(AABS)

Business Address

25 Grosvenor Street19th FloorToronto, OntarioM7A 1R2

Phone

1 416 627 0430 Ext.

Email Address

lindsay.lake@ontario.ca

Trusteeships

None

Current Practice Restrictions

None

Current Regulatory Proceedings

None

Regulatory History

None

Ms. Morrisette has the incorrect address for the LAT (it is Grosvenor Street)

Trina Karen Morisette

[Back to results](#)[New Search](#)[Print](#)**Assumed Name**

Trina Morisette

Law Society Number

44942T

Class of Licence Definitions

Lawyer (L1)

Real Estate Insured †

No

Status Definitions

Not Practising Law - Employed

Business Name

Licence Appeal Tribunal

Business Address

5-20 Dundas St W Toronto, Ontario M5G 2C2

Phone

1 613 462 9237 Ext.

Trusteeships

None

Current Practice Restrictions

None

Current Regulatory Proceedings

None

Regulatory History

None

JUXTAPOSED TO MS. IM WHOSE EMPLOYER IS MAG AND SHE IS AT 720 BAY STREET

Judie Yung-Mi Im

[Back to results](#) [New Search](#) [Print](#)

Assumed Name

Judie Im

Law Society Number

44577V

Class of Licence Definitions

Lawyer (L1)

Real Estate Insured [†]

No

Status Definitions

Practising Law - Employed

Business Name

Ministry of Attorney General

Business Address

8-720 Bay St Toronto, Ontario M7A 2S9

Phone

1 416 427 4611 Ext.

Email Address

judie.im@ontario.ca

Trusteeships

None

Current Practice Restrictions

None

Current Regulatory Proceedings

None

Regulatory History

None

52. I further note that some of the issues that I had raised relating to the apparent or impugned backdating of the VCM Decision may relate to the following as cited and found by the ONSC (Divisional Court) in Shuttleworth:

Issue #4, Volume #4(I)(E): Has this Tribunal learned anything since Shuttleworth?

While Shuttleworth is well-known to the ONSC (Divisional Court), which was upheld by the ONCA, the paragraphs from its decision are most compelling [double underlining is the Applicant's and single underlining is that of the court]:

The Decision Review Process

[24] In-house counsel for the LAT swore an affidavit explaining that the executive chair implemented a decision review process at the LAT. The stated reason was to maximize the quality of the tribunal's decisions. The peer review process has not been adopted formally. No written policy was provided but counsel swore that, "generally, the LAT decision review process for final decisions is, and at all material times in this case was" as follows:

First, there is peer review: After drafting a decision, an adjudicator ***is expected to send the decision for peer review by the Duty Vice-Chair.*** The Duty Chair offers suggestions to improve clarity, reasoning and readability and might also evaluate, for example, whether the correct legal test has been applied and whether any related case law that was not mentioned might be helpful.

Second, there is legal review: The SLASTO Legal Services Unit reviews the decision to ensure that the ***correct legal test*** has been applied and to identify any related case law that was not mentioned that might be helpful.

Third, there is a second peer review by the executive chair: "In some rare instances – such as when a decision involves a novel, contentious,

precedent-setting, or high profile issue – the Legal Services Unit will send the decision to the Executive chair for her review. In these instances, the Executive chair serves, in essence, as a second peer reviewer and accordingly will order the same kinds of comments that the author would typically receive during the initial peer review.”

Fourth, there is a review by the file’s case management officer: The case management officer acts as an intake officer and primary point of contact for the parties. This review involves examining the decision’s format, correcting grammatical and spelling errors, and ensuring that the template and parties’ names are correct. [Emphasis added.]

The hallmark of the above is that where the “*Rule of Law*” is at issue. Where a **Tribunal** such as this one is back to its old “bad habits” like it was in *Shuttleworth* and the recent discovery that a former adjudicator in Therese Reilly (LSO number 28621D; “not practising law” with “contact information withheld”^{ix}) had received a conditional job offer from Aviva in 2022 and then proceeded to apparently issue 13 decisions in favour of Aviva before embarking on her in-house legal position.^x Ms. Reilly’s reply to the bias allegation a frightening one: “Reilly has told media her decisions in the insurance cases were fact-based and untainted by bias. She claims LAT disclosure procedures should be tightened up to prevent any appearance of bias.” In effect, an experienced Vice Chair of the Tribunal’s position is that the public should not know 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 on the eyes or ears. The rule of law requires the ONSC, by a single justice, to intervene judicially to immediately put an end to the real unfairness to not only this *JRPA* Applicant but others similarly situated.

Issue #4, Volume #4(I)(E)(i): Application of the LAT structure to these facts

In-house counsel for the Tribunal would be the likes of a Mr. Boyce.

With great respect to the former case manager in Mr. Grant, his explanations regarding why he apparently input TDGIC do not pass muster. He requested that the Applicant provide the denial letters, which were already contained in the LAT Appeal by way of pre-LAT Appeal affidavits, and they contained the sole of SNIC with its two locations of Markham and Burlington and neither location housed the landline fax number of 416.774.3120. The mere fact that Mr. Grant would be responsible for the “parties’ names are correct” is a scary cogitation. This is the same Mr. Grant that represented to the SABS Applicant that he could not file, when his file number was not recognized in the e-filing portal that it was due to a “power outage”. It was about as believable as his previous representations about why he input TDGIC as the sole respondent over the very name in the “denial letters”.

Why is the Tribunal remaining in a state of non-compliance with its statutory duties to forthwith file the record of proceeding? The Applicant respectfully submits that the question answers itself.

Issue #4, Volume #4(I)(F):The issues remain ongoing

The issues have not stopped there as per this article, “OLTA Pushes for Urgent LAT Review” (see: <https://www.lawtimesnews.com/practice-areas/personal-injury/otla-pushes-for-urgent-licence-appeal-tribunal-review/389679>)

"The association cited "disturbing trends" drawn from an inHEALTH analysis

OTLA noted that the success rate for insured applicants bringing their disputes to LAT has fallen over the years, with just 10% getting a win in 2023 compared to 2017's 33%.

"Our members have voiced concerns that the LAT's process is overly rigid, is fraught with procedural unfairness, and fails to accommodate requests, even when both parties agree. This also raises important questions about the qualifications and training of LAT adjudicators," Purewal said. "The LAT is an arm of our justice system. Injured Ontario citizens should feel confident that they are getting a fair hearing and that justice is being done. Unfortunately, with the recent declining trends in success rates for applicants and the overwhelming success of insurers is raising significant questions for our membership."

VOLUME #3(F): ADDITIONAL AUTHORITY OF ROL-LAND FARMS LIMITED

53. I will also be relying on an additional authority of *Rol-Land Farms Limited* for the purposes of my Requisition #2:

Rol-Land Farms Limited (paragraph 44): party issue is a discrete issue that has been finally determined

The Divisional Court (ONSC) found, while drawing similarities to *Great Atlantic v. Minister of Citizenship (Ontario)* in *Rol-Land Farms Limited* as follows at paragraph 44 while

[44] In this case, as in *Great Atlantic & Pacific Co. of Canada Ltd. v. Ontario (Minister of Citizenship)*, [1993] O.J. No. 4179 (Div. Ct.), the question whether Ms. Harold was properly added as a party should be addressed as an interlocutory matter. The issue of party status is a discrete issue that has been **FINALLY DETERMINED** by the **Tribunal**. The full record upon which the **Tribunal** made its decision is before this Court.

Under the sub-heading, the converse is also true: putting the *JRPA* Applicant, in his capacity as a SABS Applicant, to the expense and time of proceeding against a non-First Insurer runs the risk of repeating this *JRPA* Proceeding again on the exact same legal issues.

At paragraph 45, **LEITCH r.s.j., GREER and Swinton JJ.B.**, found as follows:

“[45] Failure to address the issue of party status at this time will subject Ms. Harold to considerable prejudice. The proceedings before the **Tribunal** are expected to last between 20 and 25 days. While the respondents have suggested that Ms. Harold need not participate, that argument is without merit, given that she risks having findings made against her. Before she should be put to the trouble and expense of a hearing, the correctness of the **Tribunal**’s decision to add her as a party should be determined. Therefore, this is one of the exceptional cases in which the application for judicial review of the interlocutory decision should be determined.

The above language in *Rol-Land Farms Limited* and section 6(2) of the *JRPA* are ironically similar in that the ONSCDC used the following: “where the preliminary decision will likely result in a fundamental failure of justice” and section 6(2) of the *JRPA* utilizes the language of “where it is made to appear to the judge that the case is one of urgency and that the delay required for an application to the Divisional Court is likely to involve a failure of justice. R.S.O. 1990, c. J.1, s. 6 (2); 2006, c. 19, Sched. C, s. 1 (1).”

The common or similar words between the jurisprudential statement of law and the legislative language in the *JRPA* are:

- a. Likely;
- b. Result vs. involve; and
- c. Failure of justice.

The statement of law in *Rol-Land Farms Limited* and *JRPA*, ss. 6(2) both relate to a timing issue as follows:

- a. The ONSC deciding a *JRPA* Application at a certain time where the underlying administrative proceeding is going (i.e. whether or not it is premature to do so); and
- b. The ONSC deciding the *JRPA* Application before a single justice as opposed to having a three judge panel of the ONSC Divisional Court decide the same later (i.e. whether or not the delay in waiting for the ONSC Divisional Court to decide it later will likely, albeit only appearance, result in a failure of justice).

VOLUME #4: CONCLUSION AND JURAT

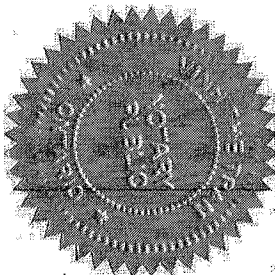
54. I believe, without making any legal conclusion, that I have provided, in addition to my filings, evidence where it has been made to appear that the case is urgent and the time to make any application to the ONSC Divisional Court will likely involve a failure of justice.

55. I do not tender any of the above evidence to castigate any of the above individuals but I have done so to draw to the attention well in advance of January 14 or 16, 2025, that I will be further raising these issues in my leave request under section 6(2) of the *JRPA*. In this manner, I believe I have provided them with sufficient time to make any necessary adjustments. I have done so, in my view, as a courtesy and out of respect for the resources of the ONSC.
56. While I will continue to condense my Oral Outline so it meets the requirement of "succinctness", I have provided the above excerpts in such form for the above purposes. I will now cross-reference my Affidavit #2 to the Oral Outline.
57. I could argue the section 6(2) of the *JRPA* request and merits at this time in person, via phone, or Zoom.
58. I swear this Affidavit #2 so I have "led evidence" in relation to the test for a request for leave of an ONSC single justice pursuant to section 6(2) of *JRPA*.
59. I swear this **Affidavit #2** for no improper purpose and for the above purposes.

Sworn before me at **Toronto, Ontario**
 On this 30th day of December 2024



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



Unlimited. No Expiration.
 NO ILA PROVIDED.
 Identification Confirmed.

ⁱ*Hutchinson v. Aviva General Insurance Company*, 2022 ONSC 7136, Justice Nishikawa

ⁱⁱCited in my letters (emails) to the ONSC Divisional Court (Madam Clerk and Ms. Lawrence) with copying of the respondents' counsel

ⁱⁱⁱAs per the endnote in this subheading, the plaintiff (appellant at the ONSC Divisional Court and appellant at the ONCA) had a rather baseless claim marked by ludicrous, absurd and baseless attacks against any and everyone. She was seeking criminal convictions against various government bodies and employees *in absentia*. However, the relief sought to add parties, which included six lawyers no less, which was dismissed by The Honourable Justice Vella of the ONSC, sitting as a case management judge dismissed the motion on grounds of abuse of process, frivolous, vexatious et al pursuant to Rule 2.01 of the Civil Rules. The ONCA, with a three judge panel as Justice Simmons of the ONCA was concerned that while the Divisional Court's decisions and orders were final, the motions judge's (as the ONCA referred to Justice Vella, although more precisely a case management judge) order may not have been interlocutory. The corollary of the same was that the M.E. would not have required leave to appeal the order of Justice Vella but rather would have been able to bring an appeal without leave. As Simmon J.A. could not determine the same as a single justice of the ONCA, she adjourned the leave motion to the ONCA to ME, to a three justice panel. In 2021, the ONCA found as follows:

[1] This matter has a long procedural history. For present purposes, it is sufficient to focus on the motion brought by M.E. on October 9, 2020, wherein she sought to add additional causes of action and new parties to the action. The motion judge dismissed the motion as frivolous, vexatious, and an abuse of process under r. 2.1.01: Rules of Civil Procedure, R.R.O. 1990, Reg. 194. M.E. then sought leave to appeal the motion judge's order to the Divisional Court. A panel of the Divisional Court dismissed that motion.

[2] On May 17, 2021, M.E. applied to this court for leave to appeal the Divisional Court's order. The Registrar has repeatedly informed her that her materials do not comply with the Rules and practice directions. On July 5, 2021, M.E. filed the underlying "Notice of Motion for Non-Compliance." Simmons J.A. heard the motion on July 27, 2021. She adjourned the matter to a full panel, noting that while the Divisional Court's order was final, the motion judge's order concerned a motion to add causes of action, which may not be interlocutory. As a single judge, Simmons J.A. could not determine this issue.

[3] We conclude that M.E. was seeking to add new causes of action. An order refusing leave to amend pleadings to plead a new cause of action is final: *Atlas Construction Inc. v. Brownstones Ltd.* (1996), 46 C.P.C. (3d) 67 (Ont. Gen. Div.). So is an order dismissing a motion to add a party, which M.E. also appears to have been trying to do: *Bryson v. Kerr* (1976), 1976 CanLII 867 (ON SC), 13 O.R. (2d) 672 (Ont. Div. Ct.). Accordingly, leave to appeal is not required and an appeal lies as of right to the Court of Appeal: Courts of Justice Act, R.S.O. 1990, c. C.43, s. 6(1)(b).

[4] We order that the appeal of the motion judge's order of October 9, 2020 may proceed in this court. Costs of this motion are reserved to the panel hearing the appeal."

^{iv}(i) "Adequate" is defined as: lawfully and reasonably sufficient.^{iv} This connotes an objective person test by the word "reasonably". "Sufficient" is defined as: *enough* to meet the needs of a situation or a proposed end. "Lawfully" is defined as: being in harmony with the law; (ii) "Alternative" is defined as: "offering or expressing a choice"; and "Available" means "present or ready for immediate use".

^vThe general common law rule is that a decision-maker is *functus officio* when they make a final decision in respect of the matter before it": *Chandler v. Alberta Association of Architects*, 1989 CanLII 41 (SCC), [1989] 2 S.C.R. 848, at p. 861. In *Chandler*, the Supreme Court held that: "As a general rule, once a tribunal has reached a final decision in respect to the matter that is before it in accordance with its enabling statute, that decision cannot be revisited because

the tribunal has changed its mind, made an error within jurisdiction or because there has been a change of circumstances. It can only do so if authorized by statute or if there has been a slip or error within [certain] exceptions....” Ergo, while it is always prudent and responsible, like the Applicant did, to bring forth a reconsideration motion, VCM was functus officio when she executed the VCM Decision.

^{vi}definition of “preliminary”: denoting an action or event preceding or done in preparation for something fuller or more important.

^{vii}*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.

^{viii}Where Mr. McLean’s FIPPA request was delivered

^{ix}<https://lso.ca/public-resources/finding-a-lawyer-or-paralegal/directory-search/member?MemberNumber=28621D>

^x<https://www.canadianunderwriter.ca/risk/aviva-and-ontario-adjudicator-under-investigation-for-conflict-of-interest-allegations-1004236762/>

Tab 7:

Re: Applicant's Motion Record for Motion #1 (Compel the Tribunal to forthwith file the record of proceeding): Court File No. DC-24-00000718-00JR

This is the 4th affidavit of Mr.
Kevin A. McLean in this JRPA
Proceeding and it was made on
January 18th, 2025

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

FORM 4D

Courts of Justice Act

AFFIDAVIT

ONTARIO SUPERIOR COURT OF JUSTICE (DIVISIONAL COURT)

BETWEEN:

KEVIN ALEXANDER MCLEAN

APPLICANT

- and -

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

RESPONDENTS

In a matter under the *Judicial Review Procedure Act*, RSO 1990, c J.1 et seq

Affidavit #4 of Kevin A. McLean in this JRPA Proceeding

(Affidavit in support of Applicant's Notice of Motion #1: compelling the Tribunal to comply with its statutory duties – forthwith filing of the Record of Proceeding pursuant to section 10 of *JRPA* and section 20 of the *SPPA* – other relief (see: Schedule "A"))

I, Kevin Alexander McLean, Disabled (B.A., J.D., CIM) of Toronto, Ontario, SWEAR THAT:

Volume #1: Sworn Under Oath; under the Penalty of Perjury; and Introduction

1. I am the JRPA Applicant and I swear under penalty of perjury that the following facts are true. When stating my beliefs, I verily believe those beliefs to be true and, as such, I have

cited their sources. When using phrases like "in my view," "in my opinion," or "belief," I express my factual position and opinions and I am not making any legal conclusions.

2. I put the respondents to strict proof of any and all of their positions and allegations as of today's date. I ask that the ONSC draw an adverse inference against any respondent, party (where applicable) or person where I have sworn evidence that has been provided to them and they have not countered;
3. Where double underlining has been utilized, the double underlining is mine and added for emphasis.

VOLUME #2: MR. BOYCE'S PREVIOUS CONTACT INFORMATION ON THE LSO DIRECTORY WEBSITE

4. I now copy and paste from my Affidavit #2 which was the contact information that I copied and pasted on or around December 30, 2024, from the LSO directory. For sake of completeness, I have copied and pasted the identical language from paragraph 51 of my Affidavit #2:

"I am also concerned that Mr. Boyce is located at the same office as VCL and presumably the same office as VCM (albeit she appears to not have updated her contact information with the LSO). I distinguish the same with the office location of Ms. Im, counsel to Ministry of Attorney General. I now copy and paste from the Appendices of my Oral Outline (Draft):

Order in Council 1421/2023

On the recommendation of the undersigned, the Lieutenant Governor of Ontario, by and with the advice and concurrence of the Executive Council of Ontario, orders that:

Whereas Jesse Boyce was reappointed as full-time member and vice-chair of the Licence Appeal **Tribunal** for a fixed term of three years, effective November 12, 2022, by Order in Council O.C. 1319/2022;

And whereas Jesse Boyce was reappointed as part-time member of the Ontario Civilian Police Commission for a fixed term of five years, effective February 21, 2023, by Order in Council O.C. 67/2023;

And whereas Jesse Boyce tendered his resignation effective August 21, 2023;

Therefore, pursuant to subsection 2(3) of the *Licence Appeal Tribunal Act, 1999*, subsection 21(2) of the *Police Services Act* and subsection 16(4) of the *Adjudicative Tribunals Accountability, Governance and Appointments Act, 2009*, Orders in Council O.C. 1319/2022 and 67/2023 be revoked effective August 21, 2023.

Ministry of the Attorney General

Approved and Ordered: September 28, 2023

LSO Directory

Jesse Aaron Boyce
[Back to results](#)[New Search](#)[Print](#)
Assumed Name
 Jesse A. Boyce
Law Society Number
 72486F
Class of Licence Definitions
 Lawyer (L1)
Real Estate Insured †
 No
Status Definitions
 Practising Law - Employed
Business Name
 SLASTO
Business Address
 25 Grosvenor¹ 4th Floor Toronto, Ontario M7A 2S8
Phone
 1 437 997 1235 Ext.
Trusteeships
 None
Current Practice Restrictions
 None
Current Regulatory Proceedings
 None
Regulatory History
 None”

[end of quotation]

5. I served the Tribunal with a copy of my filed and paid for JRPA Application of November 15, 2024, on November 15, 2024, by way of emails to the case manager of the LAT Proceeding in Ms. Hannah Lee. I also filed a copy of the same on or around November 15, 2024, in the LAT (AABS) e-filing portal.
6. I did not know Mr. Boyce until I became aware that the Licence Appeal Tribunal had purported to serve me, albeit at the incorrect address for service (i.e. mcleansniclat@gmail.com as opposed to the email on file with the ONSC Divisional Court of mcleansettlement@gmail.com) with a copy of the Notice of Appearance on behalf of the Tribunal.
7. For ease of reference, the email from Ms. Maciel, law clerk at Tribunals Ontario (but perhaps not in a specialized role with the LAT or LAT/AABS) stated as follows:

[beginning of quotation]

From: Maciel, Milene (MAG) <Milene.Maciel@ontario.ca>
 Sent: Wednesday, November 27, 2024 2:52 PM
 To: mcleansniclat@gmail.com; Matthew.Nieuwland@tdinsurance.com
 Cc: Boyce, Jesse (MAG) <Jesse.Boyce@ontario.ca>; Collie, Connor (MAG) <Connor.Collie@ontario.ca>; Cloc-Reception (MAG)

<Cloc.Reception@ontario.ca>; SCJ-CSJ Div Court Mail (JUD) <scj-csj.divcourtmail@ontario.ca>
 Subject: LAT's Notice of Appearance : McLean v. TD Home and Auto Insurance
 et al. : 718/24

Good Afternoon,

Please find attached the Licence Appeal Tribunal's Notice of Appearance and covering letter which are being served in accordance with the Rules of Civil Procedure.

Best Regards,

Milene Maciel (Pronouns: she/her) ([learn more](#))

Law Clerk

Tribunals Ontario/ Legal Services

P: 416-272-8057

E: milene.maciel@ontario.ca

W: tribunalsontario.ca



Tribunals Ontario
Tribunaux décisionnels Ontario

[end of quotation]

8. I believe that the Tribunal forwarded him a copy of my JRPA Application.

The confirmation of receipt and filing by Madam Clerk or Madam Registrar (Ms. Clegg)

9. I now copy and paste the same from the response of Madam Registrar at the time below:

"On Wed, Nov 27, 2024 at 3:11 PM SCJ-CSJ Div Court Mail (JUD) <scj-csj.divcourtmail@ontario.ca> wrote:
Hello Ms. Maciel,

Received and file [sic].

Thanks,

JESSA-MARIE CLEGG

Clerk
Divisional Court, Toronto Region

☎ (416) 327-5100

☎ (416) 327-5549 (Fax)

📍 130 Queen Street West, Toronto ON
M5H 2N5

Osgoode Hall - Room 174

10. I note that this set a precedent, in my view, that the respondents and I could file and serve ("deliver" under the Civil Rules) via email as, inter alia, my JRPA Application was denoted as urgent along with pleading section 6(2) of the JRPA.

11. Mr. Boyce's signature block so states:

[beginning of quotation]

Jesse A. Boyce (he/him)

Counsel

Tribunals Ontario – Legal Services Branch

(437) 997-1235

jesse.boyce@ontario.ca

tribunalsontario.ca

[end of signature]

12. I note that the phone number in Mr. Boyce's signature block and his information on the LSO directory website as of December 30, 2024, are identical.

13. I have only found jurisprudence where Mr. Boyce has acted, in his role as counsel (a lawyer licensee representative (see: section 1 and 10 of the SPPA) for the Licence Appeal Tribunal.
14. I copy and paste the following from the Tribunals Ontario website²:

“INTRODUCTION

The Licence Appeal Tribunal (LAT or “the Tribunal”) is an adjudicative tribunal included within the Safety, Licensing Appeals and Standards Tribunals Ontario (SLASTO). SLASTO is a cluster of adjudicative tribunals created on April 1, 2013. SLASTO is designated as a cluster pursuant to s. 15 of the *Adjudicative Tribunals Accountability, Governance and Appointments Act, 2009* and s. 4 of Ontario Regulation 126/10.

The constituent tribunals of SLASTO are:

Animal Care Review Board (ACRB)

Fire Safety Commission (FSC)

Licence Appeal Tribunal (LAT)

Ontario Civilian Police Commission (OCPC)

Ontario Parole Board (OPB)

LAT adjudicates matters in a variety of diverse areas such as alcohol and gaming regulation, motor vehicle impoundments and driver's licences, new home warranties, consumer protection, regulation of various occupations and businesses, and starting on April 1, 2016, in relation to automobile insurance Statutory Accident Benefits Schedule (SABS) disputes. LAT conducts proceedings pursuant to the following statutes:

Insurance Act

You may contact LAT by mail at:

Licence Appeal Tribunal

15 Grosvenor Street, Ground Floor

Toronto, Ontario

M7A 2G6

Please note that AABS maintains a separate mailing address from the main LAT address. Please check the website referenced above for current AABS mailing address.”

15. I note that Vice Chair Lake has represented on the LSO Directory that she is employed by LAT/AABS and located at 25 Grosvenor Street, Toronto, Ontario.
16. I note that Mr. Boyce represented on the LSO Directory that he was employed by SLASTO, which I believe is a cluster or sub-cluster within the cluster of the 13 tribunals that make up Tribunals Ontario.
17. I confirm that when I attempted to deliver my application fee for my access request of the LAT in September 2024 (ironically, in my view, the same date that VCM represented that the VCM Decision was dated albeit discrepantly with the signed copy of the same) that I could not enter 15 Grosvenor Street as it denoted that said building was closed to the public since the pandemic. I then attended the building and premises at 25 Grosvenor Street and was able to deliver the same to the privacy division of LAT.

VOLUME #3: SOCIETY OF ONTARIO ADJUDICATORS AND REGULATORS: PUBLIC INFORMATION: JOB POSTING³
--

18. I repeat and rely upon my references to *Shuttleworth* in my affidavit #2, paragraph 52.
19. I rely upon the above hyperlinked job posting regarding said job posting regarding a manager of legal services at SLASTO:

“Manager, Legal Services - Safety, Licensing Appeals and Standards Tribunals Ontario (SLASTO)

Posted on February 9, 2018 - 12:47pm

The Safety, Licensing Appeals and Standards Tribunals Ontario (SLASTO) has a challenging opportunity for a strategic thinker with highly developed leadership skills to manage the provision of legal and strategic policy advice to the Executive Chair, SLASTO and its constituent tribunals.

What can I expect to do in this role?

Reporting to the Executive Lead and accountable to the Executive Chair, your duties will include:

- Serving as counsel to the Executive Chair, SLASTO within a solicitor–client relationship
- Leading a team of highly skilled legal professionals (in both unionized and excluded positions)

- Providing expert legal advice to provide quality assurance and maintain and enhance the consistency and coherence of Tribunal decisions, adjudicative processes and dispute resolution processes
- Overseeing investigations and prosecutions under the Police Services Act at the direction of the Executive Chair, SLASTO
- Representing, or overseeing the representation of SLASTO and its tribunals before the Courts, for appeals, judicial review applications and various court-related matters
- Reviewing and/or drafting contracts, agreements and internal policies and ensuring that they are in compliance with all statutory or legal requirements
- Monitoring trends in decisions and evolving jurisprudence for use in adjudicator training, and for targeting emerging legal and policy issues
- Providing leadership and direction in the preparation and delivery of orientation sessions and continuing education for Tribunal Members, Vice-Chairs and staff, including topics such as: legislation, rules and practice directions, case law, conduct of hearings, and decision writing
- Representing SLASTO at public symposia, conferences, and provincial and national meetings of organizations/practitioners, and other fora involving issues related to SLASTO, establishing contacts/networks, and delivering presentations
- Developing, managing, and growing complex relationships with multiple constituencies on behalf of SLASTO
- Cultivating a work environment that values respect, diversity and inclusion
- Contributing as a key member of the SLASTO executive management team”

<i>VOLUME #4: MR. BOYCE'S CURRENT CONTACT INFORMATION</i>
--

20. I now attach or copy and paste a screenshot from the LSO Directory website from Saturday, January 18, 2025, at approximately 9:38 a.m.:

Lawyer Contact Information

Jesse Aaron Boyce

Assumed Name: None
 Law Society Number: 72486F
 Class of Licence: Lawyer (LL)
 Real Estate Insured: No
 Status: Practising Law - Employed

Trustships: None
 Current Practice Restrictions: None
 Current Regulatory Proceedings: None
 Regulatory History: None

This information in this directory was prepared Saturday, January 16, 2025 at 7:16 AM.

A "Yes" in the Real Estate Insured field indicates that the lawyer has purchased the required insurance from the [Professional Liability Insurer for Lawyers in Ontario](#) to provide real estate services to the public.

Lawyers who are also licensed in another Canadian jurisdiction may have appropriate insurance from that jurisdiction and be entitled to practice real estate law in Ontario, even if they have not purchased insurance in Ontario. The Law Society of Ontario cannot confirm if our lawyers are insured in another jurisdiction but the lawyer can give you that information.

This directory includes mandatory history information from February 27, 1998 onwards. Disclosure and other regulatory history that resulted in the ordering of a "Reprimand or Committee".

21. I also copy and paste a screenshot of Mr. Boyce's revised contact information, on a date unknown to me but I believe at some time after December 30, 2024:

Lawyer Contact Information

Jesse Aaron Boyce

Assumed Name: None
 Law Society Number: 72486F
 Class of Licence: Lawyer (LL)
 Real Estate Insured: No
 Status: Practising Law - Employed

Trustships: None
 Current Practice Restrictions: None
 Current Regulatory Proceedings: None
 Regulatory History: None

This information in this directory was prepared Saturday, January 16, 2025 at 7:16 AM.

A "Yes" in the Real Estate Insured field indicates that the lawyer has purchased the required insurance from the [Professional Liability Insurer for Lawyers in Ontario](#) to provide real estate services to the public.

Lawyers who are also licensed in another Canadian jurisdiction may have appropriate insurance from that jurisdiction and be entitled to practice real estate law in Ontario, even if they have not purchased insurance in Ontario. The Law Society of Ontario cannot confirm if our lawyers are insured in another jurisdiction but the lawyer can give you that information.

This directory includes mandatory history information from February 27, 1998 onwards. Disclosure and other regulatory history that resulted in the ordering of a "Reprimand or Committee".

22. For ease of reference, the missing components therein are:
- Employer; and
 - Address.

VOLUME #5: COPY OF SELECT RELEVANT PARAGRAPHS FROM MY DRAFT ORAL OUTLINE AND ORAL COMPENDIUM

23. I now copy and paste from my oral outline (draft), contained at Tab 1 therein, which I have attempted to adhere to the principles on *Robertson*,

[start of quotation]

ISSUE #4: VOLUME #4(I)(I)(b): Two competing interests: fully informed adjudication of issues vs. tribunal impartiality

The two most important considerations, drawn from those cases, were the (i) “importance of having a **fully informed** adjudication of the *issues* before the court” (para. 37), and (ii) “the importance of maintaining tribunal **impartiality**”: para. 38. The principle of impartiality is implicated by tribunal argument on appeal, because decisions may in some cases be remitted to the tribunal for further consideration. Stratas J.A. found that “[s]ubmissions by the tribunal in a judicial review proceeding that descend too far, too intensely, or too aggressively into the merits of the matter before the tribunal may disable the tribunal from conducting an impartial redetermination of the merits later”: *Quadrini*, at para. 16.⁴ (see: paragraph 50 of Ontario (Energy Board))

Finality, the principle whereby a tribunal may not speak on a matter again once it has decided upon it and provided reasons for its decision, is discussed in greater detail below, as it is more directly related to concerns surrounding “bootstrapping” rather than agency standing itself. The court should limit tribunal participation if it will undermine future confidence in its objectivity. The court identified a list of factors, discussed further below, that may aid in determining whether and to what extent the tribunal should be permitted to make submissions: paras. 36-38 of *Goodis*⁵. If the judicial review application involves only questions of law or primarily questions of law (or the limitation of the appeal to questions of law or an extricable question of law from a finding of mixed fact and law and/or findings of fact unsupported by evidence which are questions of law) in relation to certain decisions and orders, then the participation (not necessarily intervention) of the Tribunal in this *JRPA Proceeding* is not particularly necessary or relevant.”

[END OF QUOTATION]

VOLUME #5(A) MY NOW POSITION, IN LIGHT OF MR. BOYCE’S CHANGE OF POSITION INVOLVING HIS EMPLOYER (SLASTO) AND ADDRESS AND OBFUSCATION OF THE SAME

24. The Applicant’s now stated and formal position, by the provision of notice to SLASTO, LAT and Mr. Boyce including any other potential counsel (lawyer licensee representative) is encapsulated in the current draft in the Oral Outline (draft form):

[start of quotation]

ISSUE #4: VOLUME #4(I)(I)(f): Mr. Boyce’s admission, by conduct, in January 2025, has disabled the Tribunal from adjudicating the matter any further and Mr. Boyce must be prohibited from acting in this JRPA Proceeding

The principle of impartiality is implicated by tribunal argument in this JRPA Application, because decisions may in some cases be remitted to the tribunal for further consideration. The LSO public practice management resources and By-Laws, which have legislative force, are of great import. From this ONSC in *Talisman v. Usling* as per Conlan J. of the Central West Region, articulated the legal principles in relation to the ONSC (which the ONSC Divisional Court is the intermediate appellate court or ‘court of review’)

This Court's jurisdiction to remove Bennett Jones LLP as counsel for Talisman on the basis of a conflict of interest is an inherent one. It is not derived from any particular legislation or rule. It is grounded in the Court's objective to safeguard the **proper administration of justice**. Puhl v. Katz Group Canada Ltd., [2006] O.J. No. 4596 (S.C.J.) at paragraph 23.

[14] The question is whether these Defendants have established on a balance of probabilities that a fair-minded and reasonably informed member of the public would conclude that the removal of Bennett Jones LLP as counsel for Talisman is necessary for the proper administration of justice. MacDonald Estate v. Martin, 1990 CanLII 32 (SCC), [1990] 3 S.C.R. 1235 at paragraph 47.

[14] The question is whether these Defendants have established on a balance of probabilities that a fair-minded and reasonably informed member of the public would conclude that the removal of Bennett Jones LLP as counsel for Talisman is necessary for the **proper administration of justice**. MacDonald Estate v. Martin, 1990 CanLII 32 (SCC), [1990] 3 S.C.R. 1235 at paragraph 47.

[17] In analyzing the question, the Court may consider any applicable rules of professional conduct. Where there is a rule or guideline or ethical principle directly on point, the Court ought to consider it but is not bound by it. MacDonald Estate, supra, at paragraph 21.

As it relate to a lawyer, which Mr. Boyce is albeit he must have taken active steps to hide his address and employer name of SLASTO after the conflict of interest was drawn to his attention on December 30, 2024. Mr. Boyce also made up a new version of the law that there was some kind of convention for the Tribunal to file the record of proceeding within 60 days of an applicant, in a JRPA matter, bringing her JRPA application. Apparently, Mr. Boyce's views and practices are more important and take precedence and/or are paramount to that of a well-functioning democratic society under the rule of law by a democratically elected members of the Legislature. In any event, he has not even followed his created non-law requirement.

Mr. Boyce, the SLASTO cluster, Tribunal (LAT) and the division of AABS will now have to face the evidence that there is a systemic issue if the LAT wishes to obtain leave to file its factum and application record post the deadline imposed by our Lieutenant Governor under the Rules of Civil Procedure. Moreover, there cannot be a case conference at ANY TIME with Mr. Boyce as counsel to the LAT because he would be in breach of his professional obligations and duties as an officer of the court.

Moreover, without a record of proceeding, to the extent that 'prematurity' needed to be 'discussed' (whatever that means in fact or at law – leaving aside another conflict of interest, albeit without anywhere near the allegations made and directly aimed at the Tribunal and Mr. Boyce) such discussions cannot be in the abstract. Mr. Boyce in his unilateral triaging out of emails with this ONSC (Divisional Court) copied but only the Applicant and other respondents and their counsel, which with the benefit of hindsight bias and retrospection had self-evident purposes, relied on Awada and Heegsma. Awada's legal principles are in the Applicant's Factum. Heegsma has about as much relevance herein as Mr. Boyce's representation of the Tribunal herein considering his representation of the Tribunal, and provision of legal advice to it involving the LAT Proceeding.

Mr. Boyce has an overriding duty as an officer of the court. Lawyers are officers of the court in Canada. This means that lawyers are part of the legal system and have a role in the **administration of justice**. The Applicant forcefully notes the overlap between the jurisdiction of this court to remove counsel to the Tribunal (or disregard its arguments pursuant to In *Taylor*, ONSC Divisional Court (Toronto) as per The Honourable Justices Ryan Bell, Nishikawa, and Shore JJ) and the role of a lawyer, as an officer of the court in the administration of justice.

Lawyers are officers of the court when they appear in court on behalf of a client. They are expected to uphold the authority and dignity of the court, and to serve the cause of justice.

In 2010, Chief Justice Winkler, in the "Remarks of Chief Justice Warren K. Winkler on the Occasion of the Law Society of Upper Canada's Call to the Bar Ceremony Toronto, Ontario June 15, 2010"⁶ stated the following:

"The privilege of calling yourself a lawyer comes with many perquisites. You will be treated with respect and deference not only by your clients, but also by the public generally. You will be recognized as an officer of the court when you appear

in a courtroom. You will have the distinction of being gowned, as you are today, whenever you appear in court on behalf of a party. The gown is itself a special distinction, a powerful sign or manifestation of dignity and worth. You will have the pleasure and satisfaction of being referred to as “counsel” by judges and opposing lawyers.

It is now notable that the one thing that Mr. Boyce has had no interest in doing is that of “appearing in the courtroom” and filing a factum and application record on behalf of the Tribunal within 30 days of December 12, 2024. Moreover, from the outset, the Tribunal, through Mr. Boyce, has not complied with its statutory duty to file forthwith the record of proceeding.

With that, in reliance of this Oral Outline and other filed documents with this ONSC (Divisional Court), will be the consummation of the formal adjournment request (as per Ms. Hannah Lee representing to the Applicant it could be made two days before January 24, 2025), with supporting materials, relying upon, inter alia, that the Tribunal must address a motion as to whether it has lost jurisdiction based upon, inter alia, Mr. Boyce’s contemporaneous dual roles of providing legal advice to the Tribunal regarding decisions to be issued and providing advice to the Tribunal in this very JSPA Proceeding. Parenthetically, it does not mean that such conflict of interest does not arise in a LAT Act Appeal but it is more obvious and glaring when there is no stay of the inferior LAT proceeding. For the Court’s benefit, there are other grounds and not squarely on Mr. Boyce and his displayed employer SLASTO (LAT) at the very same office building of adjudicators and vice chairs for the LAT in that in relation to a document production motion, partly granted in favour of the SABS Applicant, one Mr. Karat purporting to comply with the same provided documents, non-responsive to the order of the Tribunal, on behalf of “TDGIC” with an email title of “McLean v. TDGIC”. It is rather ironic twist considering the decision of VCM in NOM #13 involving a non-party in TDGIC – of which said decisions and orders therein (not in NOM #14) is not under judicial review.

As per this ONSC in *Talisman*, rules of professional conduct are most instructive.

Duties owed to third persons can create conflicts of interest. It is trite that the more important, by a considerable distance, persons with respect to duties is that of this ONSC Divisional Court which includes its staff, and those crème de la crème former lawyers turned judges, when compared to that of the JSPA Applicant. Nonetheless, there are multiple third persons to which Mr. Boyce owes duties.

A conflict of interest exists when there is a substantial risk that a lawyer or paralegal’s loyalty to or representation of a client would be materially and adversely affected by competing duties to another party or competing interests between the client(s) and the licensee. Because even well-intentioned licensees may not realize that the performance of their duties has been impaired, the rules address the risk of impairment rather than actual impairment. Substantial risk means a significant and plausible risk. It need not be certain or even likely, but it must be more than a mere possibility. Conflicts of interest may fall into one of the below categories.⁷

A client cannot waive a COI where the lawyer *may* be a witness (see: *Wheeler v. Taylor* 2024 ONSC 818 as per Justice Dietrich). At paragraph 31, Justice Dietrich, citing *Urquhart v. Allen Estate*, found as follows whilst citing the SCC and another one of the historically great legal minds to come to the Ontario bench in The Honourable Mr. Justice Perrell, formerly of Oslers who had written, as a lawyer, a vast amount of analytically precise secondary source articles:

[31] As stated by Gillese J. (as she then was) in *Urquhart v. Allen Estate*, [1999] O.J. No. 4816 (Ont. S.C.), at para. 27:

When counsel appears as a witness on a contentious matter, it causes two problems. First, it may result in a conflict of interest between counsel and his client. That conflict may be waived by the client The second problem relates to the administration of justice. The dual roles serve to create a conflict between counsel’s obligations of objectivity and detachment, which are owed to the court, and his obligations to his client to present evidence in as favourable a light as possible. This is a conflict that cannot be waived by the client as the conflict is between counsel and the court/justice system.

[32] The Law Society of Ontario *Rules of Professional Conduct* similarly state that a lawyer who appears as advocate shall not testify or submit their own affidavit evidence before the tribunal unless

permitted to do so or on a purely formal or uncontroverted matter: s. 5.2-1.

[33] While the courts are not bound by the codes of conduct applicable to lawyers, the Supreme Court of Canada stated in *MacDonald Estate*, at p. 1246, that “an expression of a professional standard in a code of ethics relating to a matter before the court should be considered an important statement of public policy.”

[34] In *Bose v. Bangiya Parishad Toronto*, 2018 ONSC 7639, at para. 98, Perell J. confirmed that a lawyer who is a material witness should not be permitted to continue acting as counsel, even if they do not intend to testify in the case.

Mr. Boyce is (and has been for some time since his inclusion as formal counsel of record herein) now in a conflict between himself and the ONSC (Divisional Court) or the ONSC if the matter proceeds by urgent application before a single justice of the ONSC there so sitting.

To even allow Mr. Boyce to discuss another matter, formally or informally (nota bene: it is self-evident why he was triaging out of emails with the ONSC Divisional Court) would be contrary to his duties to the court.

What other reason would Mr. Boyce have for requesting the amendment of his information with the LSO?

It is herein that Tribunal counsel is regularly charged with providing an overview of the filed record of proceeding and the context of *the proceeding before the Tribunal*. Is Mr. Boyce, in light of his amendment and obfuscation of his employer (SLASTO) and his address for contact with the public LSO Directory, able to discharge those duties in accordance with his duties to this Court as an officer of the Court? The question answers itself.

The more compelling public interest question is whether any lawyer (in-house (see: reference in the affidavit provided by in-house counsel in *Shuttleworth*)) who is employed by SLASTO able to do so? The Applicant says that optically, by reasonable perception, is that it is impossible for any lawyer to do so whether or not they are or were, in fact, providing advice to the Tribunal in any specific decisions involving any JRPA applicant. The Applicant’s respectful submission on this point is grounded in ONSC common law precedent.

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

The first obvious counter or query is: are the adjudicators licensees? They are indeed in the VC Lake and VC Morrisette are licensees but “not practising law”. The second counter is that *Mariangeli* related to confidential information between potential shared between a prior related matter to a current retainer.

However, that is of no assistance to the LAT, Mr. Boyce and any potential future counsel (if applicable herein) when considering the participation scope that the Tribunal could be entitled to by virtue of having some form of general party status pursuant to section 9(2) of the JRPA. Moreover, this ONSC has a supervisory and residual discretion to not accept arguments from the Tribunal whether there is any pre-hearing motion or case conference about its defined scope of participation. Each Tribunal must be analyzed distinctly but this Tribunal, the LAT under the SLASTO, is admittedly, or at least by representation to the public, a quasi-judicial tribunal. The context is most important in various cases. However, a case conference, even by telephone, is an “appearance before the Court” which is fatal to Mr. Boyce and this Tribunal.

Therefore, Mr. Boyce has to rebut the inference and provide contextual explanations to this Court as to why he did what he did in changing his address after receipt of the Applicant’s affidavit #2 and perhaps affidavit #3 (and perhaps after the deadline under Rule 68.04(4) of the Civil Rules). Timing is everything.

Moreover, the SLASTO, Tribunal and Mr. Boyce, and any potential legal counsel, who works for the SLASTO, would have to provide evidence of the confidentiality screens. Are there confidentiality screens between the adjudicators of LAT and legal counsel of LAT? It is where the *Shuttleworth* decision comes back to haunt this Tribunal in that the very draft decisions are sent to the SLASTO

Legal Unit – Mr. Boyce’s employer that he has only in the last two or so weeks hid from the “public record”.

As Mr. Boyce is the only individual, on behalf of another client, that raised the preliminary objection of “prematurity”, without him being able to participate on behalf of the Tribunal, and the Tribunal not filing any factum or application record, the Applicant is entitled to proceed and not wait around for the SLASTO to “clean up his house” and manipulate addresses on the back-end of the LSO portal for public removal.

Mr. Boyce only raised prematurity because he wanted to delay the inevitable result in this JRPA Proceeding, at least as it relates to the First Insurer issue, so that he could give more advice to the Tribunal in relation to other decisions. It is now likely he was giving advice to it all along the way after November 15, 2024, in relation to the outstanding motions and how to navigate the same.

This does not mean that every other tribunal in this province or other provinces in Canada cannot have representation at the Tribunal but it leads to the inevitable conclusion that when the likes of tribunal in-house counsel are at the same physical location as adjudicators and vice chairs, and where they share the same domain name with the same hosting under the same website, and they admit in *Shuttleworth* that the LAT’s practice explicitly involves the SLASTO legal unit (the very employer name that Mr. Boyce removed from the LSO Directory as that would change the actualities of what occurs “behind the scenes”):

“Second, there is legal review: The SLASTO Legal Services Unit reviews the decision to ensure [guarantee] that the correct legal test has been applied and to identify any related case law that was not mentioned that might be helpful.”

The Tribunal will now get the opportunity to determine whether it should grant an adjournment, at least on one ground, as to whether it has lost jurisdiction to hear any further matters because of Mr. Boyce’s dual role of providing advice to it in the McLean LAT Proceeding and then to the Tribunal in the McLean JRPA Proceeding. This is different than the legal ground so referenced above involving the Tribunal descending too far into legal argument.

To allow Mr. Boyce to even discuss, however informal, the preliminary objection of prematurity, irrespective of its lack of merit, would be counter to the inherent jurisdiction of this Honourable Court, and it is an obvious and disabling conflict of interest between Mr. Boyce (and any future counsel of the LAT who seeks to act as a proxy or a “proxy upon proxy” (i.e. as per for another)) and this Court (whichever division (by three justices) or “general division” (by a single justice) hears a motion, leave request or merits

The legal scholars in this area have suggested a potentially preferred route for counsel to tribunals and that is to have judicially appointed amicus curia appear on behalf of tribunals, particularly government ones that are self-espouses as quasi-judicial. In the following article⁸, Mr. Lorne Neudorf (see: JD (Victoria), LLM (McGill), PhD (Cambridge); Member of the Law Society of Upper Canada⁹; Assistant Professor, Thompson Rivers University, Faculty of Law) espoused the following whilst cross-referencing with authorities at 226 ALBERTA LAW REVIEW (2016) 54:1, page 8 therein:

“Courts may also appoint amici curiae as part of their inherent jurisdiction where it is necessary to assist the court in discharging its work.¹⁰ The public advocate or amicus curiae could gather specialist information and present it in a more detached and impartial manner to the court. Such a system would better protect public confidence in administrative impartiality as it would interpose a layer, akin to an “institutional sieve,”¹¹ between the tribunal and the reviewing court.”

The only competing principle to tribunal impartiality is “having fully informed adjudication of the issues before the reviewing court”. Mr. Boyce cannot do the same and no other counsel employed by the SLASTO (LAT) could do the same – certainly not on these facts.

The Tribunal is not discharged of its statutory duties to file a record of proceeding under the JRPA. However, time remains of the essence in this urgent JRPA and hence the Applicant’s motion of Friday, January 18, 2025. While this JRPA Application had numerous public issues before Mr. Boyce “bait and switch” or “intentional hiding of his address of employment and employer”, it has more now.

The JRPA Applicant still has the burden of proving, on a balance of probabilities, that the VCM Decisions and VCM Orders (or failure to even address certain issues and orders sought), was incorrect and must be substituted, and this ONSC Court, like the Tribunal has found many times, cannot force the Tribunal or the respondent insurance companies, who had no interest in complying with the Practice Direction regarding "Information Submitted to the Court", cannot force respondents to file notices of appearances, factums and application records. However, actions or inactions come with consequences and that is the complete deprivation of participation rights. However, the Tribunal must still be compelled to file the record of proceeding. The only "silver lining" is that it makes scheduling easier."

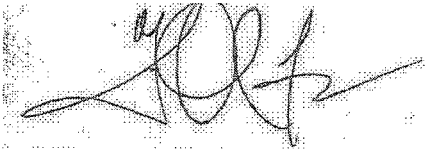
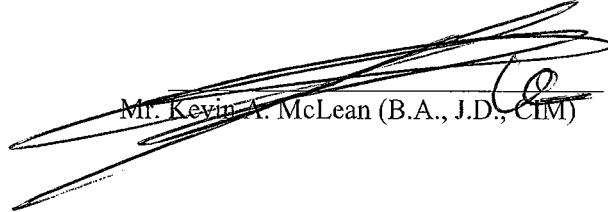
[end of quotation]

VOLUME #6: JURAT

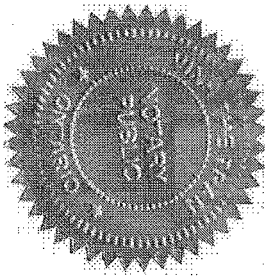
25. I swear, under the penalty of perjury, that I have raised the issues above as soon as they become known to me and then commenced the drafting of this affidavit for filing with the ONSC and for service upon the Tribunal and the respondent insurance companies.
26. I most sincerely hope that this affidavit is of assistance to SLASTO, Tribunal, Mr. Boyce and any other potential counsel that the former two may seek to retain herein and in any future unrelated JRPA or LAT Act appeal proceedings. I have no personal animus to any of the counsel for the respondents but I felt compelled to draw this to their attention so I was not seen to have waived or acquiesced to the same. I object on the above grounds to Mr. Boyce or any counsel at the LAT (SLASTO) engaging in any form of representation of the LAT herein. As the respondent insurance companies did not participate in NOM #14 and #15, and have not filed a factum and application record, I remain ready, willing and able to proceed on any date commencing next week.

27. I swear this **Affidavit #4** for no improper purpose and for the above purposes.

Sworn before me at **Toronto, Ontario**
On this 18th day of January of 2025

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



Unlimited. No Expiration.
NO ILA PROVIDED.
Identification Confirmed.

Schedule "A": the served (or exchanged) motion of the Applicant on Friday, January 17, 2025

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

FORM 37A

Courts of Justice Act

NOTICE OF MOTION

BETWEEN:

KEVIN ALEXANDER MCLEAN

APPLICANT

- and -

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

RESPONDENTS

NOTICE OF MOTION

The Applicant will make a motion to the court on Wednesday, January 22, 2025, at 9:30 a.m.
or as soon after that time as the motion can be heard.

PROPOSED METHOD OF HEARING: The motion is to be heard:

☐ In writing under subrule 37.12.1 (1) because it is *(insert one of on consent, unopposed or made without notice)*¹²;

☐ In writing as an opposed motion under subrule 37.12.1 (4);

☐ In person;

X By telephone conference;

☐ By video conference.

at the following location

Address of Local Registrar court office Divisional
Court

Superior Court of Justice
Osgoode Hall
130 Queen Street West
Toronto, ON M5H 2N5

THE MOTION IS FOR the following relief:

1. An Order abridging the time, prescribed under Rule 37 and 39 of the *Rules Of Civil Procedure*¹³, for this motion to be heard on the date above;
2. An Order abridging the time for any requirement for the Applicant to provide a confirmation of his motion in the prescribed form from three days under (Rule 37.10.1(1)) to the day before the motion hearing or the day of the hearing including any orders of a “nunc pro tunc” applicable generally and specifically;
3. An Order that the date of the receipt of this unfiled yet served motion shall be deemed to be the date of **delivery**¹⁴ of this motion and/or by operation of the “nunc pro tunc” principle;
4. An Order dispensing with the need for the delivery of any motion record;
5. An Order that the delegated or presiding motion judge (not an “associate judge” pursuant to 37.02(2)(f) of the *Rules Of Civil Procedure* and section 4 of the *JRPA*) shall not be the Honourable Madam Justice Shore and/or any other justice that was employed by Epstein Cole and/or was a partner in the limited liability partnership of Epstein Cole LLP during the time from Fall of 2017 to present;
6. An order compelling the Licence Appeal Tribunal (the “**Tribunal**”) to file the Record of Proceeding forthwith and in accordance with, inter alia, section 10 of the *JRPA* and in accordance, from a content standpoint with section 20 of the *SPPA*;
7. An Order that the Tribunal is prohibited from any form of participation in this JRPA Proceeding until it does so in full and strict compliance with aforementioned legislative sections;
8. An Order dispensing with the need for the signature on behalf, “as per”, “per procurationem”, by proxy or agent of the Licence Appeal Tribunal and a forthwith

endorsement of the pronounced order by the Honourable presiding judge on this notice of motion, any amended¹⁵ notice of motion or the delivered¹⁶ notice of motion (if applicable);

9. Costs in favour of the Applicant against the Tribunal on a substantial indemnity basis to be determined by this Honourable Court after providing leave to the Applicant to provide a costs outline or written argument within three days of the pronouncement of the orders herein and limited to three pages double spaced; and
10. Such other orders that are consistent with the above.

THE GROUNDS FOR THE MOTION ARE:

1. The above noted statutes but more specifically, but not limited to, the following statutory subsections;
 - a. Section 9(2) of the *JRPA*;
 - b. Section 10 of the *JRPA*;
 - c. Section 20 of the *SPPA*;
2. The *Courts of Justice Act* (the “CJA”);
3. *Rules Of Civil Procedures* including but not limited to the following rules:
 - a. Rule 1.02(1.)(3);
 - b. Rule 1.03 with respect to the following definitions:
 - i. “applicant” means a person who makes an application;
 - ii. “application” means a proceeding commenced by notice of application;
 - iii. “court” means the court in which a proceeding is pending and, in the case of a proceeding in the Superior Court of Justice, includes an associate judge;
 - iv. “deliver” means serve and file with proof of service, and “delivery” has a corresponding meaning;
 - v. “document” includes data and information in electronic form;
 - vi. “hearing” means the hearing of an application, motion, reference, appeal or assessment of costs, or a trial;

- vii. “motion” means a motion in a proceeding or an intended proceeding;
 - viii. “moving party” means a person who makes a motion;
 - ix. “person” includes a party to a proceeding;
 - x. “proceeding” means an action or application;
 - xi. “respondent” means a person against whom an application is made or an appeal is brought, as the circumstances require;
 - xii. “responding party” means a person against whom a motion is made;
 - xiii. “statute” includes a statute passed by the Parliament of Canada; and
 - xiv. “substantial indemnity costs” mean costs awarded in an amount that is 1.5 times what would otherwise be awarded in accordance with Part I of Tariff A, and “on a substantial indemnity basis” has a corresponding meaning.
- c. Rule 1.04;
 - d. Rule 1.05;
 - e. Rule 1.06;
 - f. Rule 1.08¹⁷;
 - g. Rule 2.03;
 - h. Rule 3.02;
 - i. Rule 4.01;
 - j. Rule 37 with particular reference to the following:
 - i. Rule 37.01;
 - ii. Rule 37.02;
 - iii. Rule 37.03;
 - iv. Rule 37.04 (by way of judge and not “associate judge” or “registrar”)

- k. Rule 39;
 - l. Rule 57 and 58;
 - m. Rule 59;
 - n. Rule 68;
4. The doctrine of paramountcy (wherein statutory language prevails over language in regulations, and any “practice directions”); and
 5. *Payne v. Ontario Human Rights Commission*, 2000 CanLII 5731 (ON CA), [2000] O.J. No. 2987, 136 O.A.C. 357 (C.A.), at para. 23; *Jacko v. McLellan*, 2008 CanLII 22921 (ON SCDC) at paragraph 18).¹⁸;

THE FOLLOWING DOCUMENTARY EVIDENCE will be used at the hearing of the motion are all filed documents with the ONSC Divisional Court and any documents that have been tendered for filing including but not limited to:

1. Affidavit #2 of the Applicant made on December 30, 2024;
2. Affidavit #3 of the Applicant made on January 8, 2025;
3. The JRPA Application of the Applicant of November 15, 2024;
4. The Applicant’s Factum of December 10, 2024;
5. The Applicant’s Application Record of December 12, 2024;
6. The Applicant’s filed and issued Certificate of Perfection;
7. The Applicant’s tendered requisitions herein;
8. The Applicant’s written submissions of January 16, 2025, with respect to the ‘requests’ sought therein;
9. The Applicant’s Oral Compendium, including Oral Outline, to be filed (subject to any discharge of obligations by any persons between now and the time of the hearing or any consent or non-opposition by the Tribunal);
10. Any “Oral Outline” or “Speaking Notes” of the Applicant that may be filed and served (or merely exchanged between the Applicant and the Tribunal); and
11. Such other material as the Applicant may advise and this Honourable Court, by way of a judge, may accept.

The Applicant estimates five minutes in opening oral argument and two minutes in reply (if applicable).

January 17, 2025:

DULY EXECUTED IN ELECTRONIC
FORM BY THE JRPA APPLICANT ON
THE DATE ABOVE:



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

TO:

Licence Appeal Tribunal/AABS

By way of attention to its declared representative (see: section 1 and 10 of the *SPPA*) at the following address as denoted in Affidavit #3 of the Applicant (copied and pasted herein):

Jesse Aaron Boyce
Assumed Name
 Jesse A. Boyce
Law Society Number
 72486F
Class of Licence Definitions
 Lawyer (L1)
Real Estate Insured †
 No
Status Definitions
 Practising Law - Employed
Business Name
 SLASTO
Business Address
 25 Grosvenor¹⁹ 4th Floor Toronto, Ontario M7A 2S8
Phone
 1 437 997 1235 Ext.
Trusteeships
 None
Current Practice Restrictions
 None
Current Regulatory Proceedings
 None
Regulatory History
 None

RCP-E 37A (September 1, 2020)

Schedule "B": particulars involving the Applicant's claim under Reg 283 and SABS from August 31, 2022

Insurance Policy #: #001013511806

Insurance Program: "TD INSURANCE MELOCHE

MONNEX" (Alumni And Professional Program)

Broker: Meloche Monnex Financial Services Inc.

Underwriter/Insurer: Security National Insurance Company, FSRA registration number of 397 (location determined be that of SNIC was the SNIC Burlington Address with a fax number provided by SNIC of 905.305.1074)

First Insurer (insurance company to first receive the Completed Application): TD Home And Auto Insurance Company, FSRA registration number 1063 (nota bene: TDHA acquired Liberty Mutual Insurance Company of Canada in 2005)

Named Insureds: BMW Financial Services Inc. (A Division of BMW Canada Inc.); and Nicole Artopoulos (B.A., M.A.) ("McLean Spouse")

Insured Automobile: BMW 3 Series Xi Drive 2019

Insured Person/Appellant: Mr. Kevin A.

McLean (B.A., J.D., CIM) ("Artopoulos Spouse")

Date of Loss: August 31, 2022 ("DOL")

Location of Loss: Spadina Road (between Heath Rd and St. Clair Avenue), Toronto, Ontario

Police File Number (North York Reporting Collision Centre):

TD Insurance Claim #: 035325790-3 ("TD Claim #3")

Fictitious TD Insurance Claim # provided when Mr. Karat (an non-licensee who had been listed as an ADR Specialist in conjunction with Mr. Andrew Papadimitropoulos on public reported decisions involving Security National Insurance Company) purported to respond to the Applicant's PIPEDA request on January 16, 2024 of SNIC and so referenced by Mr. Nieuwland, on behalf of TDGIC, in response to the Applicant's COI motion (NOM #6 and NOM #9) wherein he represented that Mr. Papadimitropoulos had never been involved in the Applicant's claim or access request: 035425790-3
AABS File Number: "23-015662/AABS"

¹Where Mr. McLean's FIPPA request was delivered

²<https://tribunalsontario.ca/documents/lat/LAT%20Rules%20of%20Practice%20and%20Procedure%20Version%201%20April%201%202016.htm>

³<https://soar.on.ca/node/879>

⁴*Ontario (Energy Board) v. Ontario Power Generation Inc.*, 2015 SCC 44 (CanLII), [2015] 3 SCR 147, at para 50, <<https://canlii.ca/t/glb07#par50>>, retrieved on 2024-12-25

⁵Ontario (Energy Board) v. Ontario Power Generation Inc., 2015 SCC 44 (CanLII), [2015] 3 SCR 147, at para 48, <<https://canlii.ca/t/glb07/#par48>>, retrieved on 2024-12-25

⁶<https://www.ontariocourts.ca/coa/about-the-court/archives/becomingprofessional/#:~:text=The%20privilege%20of%20calling%20yourself,interesting%20and%20stimulating%20and%20challenging.>

⁷<https://iso.ca/lawyers/practice-supports-and-resources/topics/the-lawyer-client-relationship/conflicts-of-interest>

⁸<https://albertalawreview.com/index.php/ALR/article/view/465/457>

⁹Now the LSO

¹⁰Footnote 48 therein: For a discussion of the role of amici curiae see Ontario v Criminal Lawyers' Association of Ontario,

2013 SCC 43, [2013] 3 SCR 3 at para 47 [emphasis in original], where the Supreme Court of Canada observes that, in the criminal law context, "amici should be used sparingly and with caution, in response to specific and exceptional circumstances" at para 47. The corollary is that this is not the criminal context.

¹¹Footnote 49 therein: This language was used by the Supreme Court of Canada when it imposed a commission process to

separate the judiciary from the government in relation to salary negotiations to better protect judicial impartiality: Reference re Remuneration of Judges of the Provincial Court of Prince Edward Island; Reference re Independence and Impartiality of Judges of the Provincial Court of Prince Edward Island, [1997] 3 SCR 3 at para 170.

¹²To the extent that the Tribunal consents to the same or does not oppose, and/or comply with its obligations forthwith, the Applicant seeks relief to convert the mode of hearing from telephone conference to a brief written argument with a draft order to be provided, vetted by the Registrar, for immediate entry.

¹³With particular reference to the following rules: (i) Rule 37.07: (6) Where a motion is made on notice, the notice of motion shall be served at least seven days before the date on which the motion is to be heard; and (ii) (2) Where a motion or application is made on notice, the affidavits on which the motion or application is founded shall be served with the notice of motion or notice of application and shall be filed with proof of service in the court office where the motion or application is to be heard at least seven days before the hearing.

¹⁴Please see: Rule 1.3

¹⁵While there does not appear to be a provision under the Rules of Civil Procedure, an implicit order therein granting leave to the Applicant to amend this notice of motion in accordance with the Rules of Civil Procedure or by analogy

¹⁶Not merely "exchanged" and not merely a "material" or "materials"

¹⁷Denoted *supra*

¹⁸The purpose of requiring a tribunal or adjudicator to file a "record of proceedings" is to ensure that when the court reviews the tribunal's decision, it has the information and evidence as it appeared before the tribunal in the first instance. A court reviewing an adjudicative decision may look at decisions to admit evidence, submissions of witnesses, and other evidence and may substitute its judgment for that of the court [or tribunal] of first instance

¹⁹Where Mr. McLean's FIPPA request was delivered