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

ONTARIO SUPERIOR COURT OF JUSTICE (DIVISIONAL COURT)

BETWEEN:

**KEVIN ALEXANDER MCLEAN**

APPLICANT

- and -

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

RESPONDENTS

THE MOTION PARTY'S (JRPA APPLICANT) MOTION RECORD INDEX
DATE: JANUARY 31, 2025

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

JRPA APPLICANT

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

RESPONDING PARTIES (AFTER AGO CONFIRMS HE WILL NOT PARTICIPATE IN THE MATTER AND NO FURTHER NEED FOR ANY SERVICE OF DOCUMENTS)

**RESPONDING PARTY[i] (1)**

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

Kind attention: it declared counsel in this JRPA Proceeding herein

Mr. Jesse Aaron Boyce[ii]
Lawyer licensee with the LSO
Jesse.Boyce@ontario.ca

RESPONDING PARTY (2): TDHA

TD HOME AND AUTO INSURANCE COMPANY ("TDHA")
FSRA Registration 1063
Last known address and addresses (mail and fax) at the time of its receipt of the Applicant's completed OCF-1 pursuant to Reg 283 (the "**McLean Completed Application**")
4th Floor-3650 Victoria Park Avenue,
North York, Toronto, Ontario
FAX: 416.774.3120

Attention (its declared counsel herein):

Mr. Matthew Nieuwland
Lawyer Licensee with the LSO
66 Wellington Street West, 38th Floor, Toronto, Ontario, M5K 1A2
T: 905-201-4092 | F: 416-599-7439
Email: Matthew.Nieuwland@tdinsurance.com
Legal Assistant: Christiana Ortiz | T: 416-486-2547 | E: christiana.ortiz@tdinsurance.com

RESPONDING PARTY (3): SNIC

SECURITY NATIONAL INSURANCE COMPANY ("SNIC")
FSRA Registration 397
Addresses provided after Applicant's notification of his intention to apply for accident benefits after the August 31, 2022, no fault accident (the "Accident" or "MVA")
Suite 200-101 McNabb Street
Markham, Ontario
No fax number provided for it or said physical address

Address provided by SNIC after fax recipient at 416.774.3120 sent fax to Applicant that it did not have any record of his claim number at said fax address

5054 South Service Road
[no floor or suite number provided]
Burlington, Ontario
L7L 5Y7
Fax: 905-315-1074

Adress found to be the correct address for SNIC in Tribunal proceedings by way of issued orders (no reconsideration sought):

5th floor-5045 South Service Rd ,
Burlington, ON
L7L 5Y7
Fax: 905-315-1074

Attention (its declared counsel herein):

Mr. Matthew Nieuwland
Lawyer Licensee with the LSO
66 Wellington Street West, 38th Floor, Toronto, Ontario, M5K 1A2
T: 905-201-4092 | F: 416-599-7439
Email: Matthew.Nieuwland@tdinsurance.com
Legal Assistant: Christiana Ortiz | T: 416-486-2547 | E: christiana.ortiz@tdinsurance.com

RESPONDING PARTY (4): TDGIC

TD General Insurance Company
FSRA registration number 353

Address found by Tribunal in issued orders for TDGIC despite no provision of the same to the Applicant during TD Claim #3 process, in any filed documents by TDGIC or otherwise:

3650 Victoria Park Ave
Floor 9,
North York, ON
M2H 3P7
FAX: 416.714.3629

Attention (its declared counsel herein):

Mr. Matthew Nieuwland
Lawyer Licensee with the LSO
66 Wellington Street West, 38th Floor, Toronto, Ontario, M5K 1A2
T: 905-201-4092 | F: 416-599-7439
Email: Matthew.Nieuwland@tdinsurance.com
Legal Assistant: Christiana Ortiz | T: 416-486-2547 | E: christiana.ortiz@tdinsurance.com

## INDEX[iii]

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[i] (see: Rule 1.03, "Definitions" under Rules of Civil Procedure):

[ii] Address in LSO Directory before Mr. Boyce's removal of the same at some time after receipt of Affidavit #2 of the Applicant

**Assumed Name**
Jesse A. Boyce
**Law Society Number**
72486F
**Class of Licence Definitions**
Lawyer (L1)
**Real Estate Insured** †
No
**Status Definitions**
Practising Law - Employed
**Business Name**
SLASTO
**Business Address**
25 Grosvenor[ii] 4th FloorToronto, OntarioM7A 2S8
**Phone**
1 437 997 1235 Ext.
**Trusteeships**
None
**Current Practice Restrictions**
None
**Current Regulatory Proceedings**
None
**Regulatory History**
None

[iii] Lengthier and voluminous materials (of relevance) will be provided in Compendium in bookmarked and hyperlinked fashion in accordance with the Rules of Civil Procedure

# TAB 1:

Court File No. DC-24-00000718-00JR
Applicant's Motion #2 (Motion in Writing; Request to Convert Motion into Motion for Judgment)

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

FORM 37A
*Courts of Justice Act*
NOTICE OF MOTION

ONTARIO SUPERIOR COURT OF JUSTICE (DIVISIONAL COURT)

BETWEEN:

**KEVIN ALEXANDER MCLEAN**

APPLICANT

- and -

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

RESPONDENTS

**NOTICE OF MOTION**

**(URGENT MOTION PURSUANT TO RULE 37.05(3))**
**(MOTION PURSUANT TO RULE 37.12(4) AND 37.13(2)(A))**

The Applicant will make a motion to the court on Friday, February 14, 2025, at 9:30 a.m. (to be heard in writing)

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

X In writing as an opposed motion under subrule 37.12.1 (4);
at the following location

Address of Local Registrar court office Divisional Court
Superior Court of Justice
Osgoode Hall
130 Queen Street West
Toronto, ON MSH 2N5

**THE MOTION IS FOR** the following relief:

| Order #1: Preliminary order (if applicable) |
|---|

1. A preliminary delegation by the ONSC Div. Ct. (Chief Justice) that the delegated or presiding motion judge (not an "associate judge" pursuant to 37.02(2)(f) of the *Rules Of Civil Procedure* and section 4 of the *JRPA*) for this written motion shall not be the Honourable Madam Justice Shore and/or any other justice that was employed by Epstein Cole and/or was a partner in the limited liability partnership of Epstein Cole LLP during the time from Fall of 2017 to present;

Order #2: Motion #1 (if applicable)

2. An Order that to the extent that some or all of the relief in his motion #1 (see: Schedule "A"), originally returnable on Thursday, January 30, 2025, or as soon thereafter has not determined by teleconference that it is heard and decided in this motion #2 by the presiding motion judge (in writing). A further order that the Applicant (moving party) shall advise the Court (Registrar) to the attention of the presiding justice with the following information one day before February 14, 2025;
    a. The status of motion #1;
    b. The attempts to have motion #1 heard;
    c. The status of the Tribunal's filing of the record of proceeding with the Divisional Court;
    d. What documents contained in the record of proceeding are not accounted for in the Applicant's Application Record, filed affidavit material herein, and the application records of the respondents to the motion in writing; and
    e. Any other information of assistance to this Court.

Order #3: The Disqualification of Madam Justice Shore or Recusal of Madam Justice Shore

3. An Order that Mr. Papadimitropoulos and Epstein Cole LLP provide copies of the separation agreement between Mr. Papadimitropoulos and Ms. Nicole Artopoulos (the named individual insured individual) and the divorce decree between them for review by the Court "in camera" to assess the issue of a reasonable apprehension of conflict of interest and bias involving Madam Justice Shore on account of Mr. Papadimitropoulos being a client of her former law firm in 2018 in Epstein Cole LLP. Further, Orders consistent with the following relief (see: SCHEDULE "B") in the Applicant's COI Recusal Submissions as follows:
    a. The Honourable Madam Justice Shore is disqualified from any further involvement in this *JRPA* Proceeding (the "**Disqualification Request**" or the "**Recusal Request**");
    b. The Case Management Appearance Requirement is declared as void and void *ab initio* (not merely voidable) (the "**Nullification Request**");
    c. A general and indefinite adjournment of the case conference pursuant to 77.04(1)(b) of the *Civil Rules* by the Associate Justice (the "**Adjournment Request**");
    d. A direction by the Honourable Chief Justice, pursuant to section 76 of the *CJA*, that the Registrar shall accept all outstanding requisition filings and provide confirmation of the same to the *JRPA* Applicant and respondents; and
    e. A direction by the Honourable Chief Justice, pursuant to section 76 of the *CJA*, that the Registrar comply with her duties (by law), pursuant to 68.05(2) of the *Civil Rules*[i], and provide the parties with a "Notice of Listing For Hearing".

("d" and "e" together, the "**Staff Direction Requests**").

(collectively, the "**Respectful Requests**" or "**Requests**").

Order #4: Converting the "motion in writing" to a "motion for Judgment"

4. An Order converting this motion into a motion for **Judgment** and the Applicant is entitled to judgment in accordance with the relief sought in his JRPA Application, Factum, and further particularized and referenced in the Oral Compendium with "Outline";

a. In the alternative, an Order that that the Court in accordance with Rule 37.13(2)(b) that the JRPA Application is heard and decided on a date in February 2025 that is within the approximate range provided by the Registrar as per a Form 68(B)

| Administrative and Costs Orders |
|---|

5. An Order abridging or shortening any prescribed time requirement to have this motion heard in writing on February 14, 2025, including any orders that allow for filing of any amendments to the Notice of Motion #2, Motion Record #2, Draft Order for Motion #2, and "Factum For Motion in Writing and Converting Motion to Motion for Judgment" by way of amendment, newly discovered evidence or fresh evidence, any filing of the record of proceeding by the Tribunal and/or inclusion of documents to be included in the record of proceeding by the Applicant or any other person in control or possession of the same for benefit of the court, by way of "reply submissions" or "reply evidence" and/or the status of motion #1 at any time thereafter. A further Order that any orders so granted at the time of the hearing of NOM #2 (in writing) are granted nunc pro tunc;

6. An Order that the respondent insurance companies, each and all, have not raised a preliminary objection in this JRPA Proceeding herein by not complying with the Practice Direction, specifically the section regarding "Information Submitted to the Court";

7. An Order that the respondents, excluding the AGO, have contravened Rule 68.04(4) of the Rules of Civil Procedure. A further order that if the respondents have not provided a proposed factum by way of affidavit at the hearing of this motion #2 herein, they are precluded from seeking leave of this Court to file their factums and application records one month after the prescribed time requirement;

8. An Order granting leave to the Applicant to file any responsive submissions or reply evidence and such order shall be granted nunc pro tunc;

9. An Order dispensing with the requirement for the Applicant to upload any filed documents to Case Center if he does not receive an invitation to Case Center prior to the prescribed time to discharge his obligation pursuant to the Civil Rules. Further, an Order that the court file shall be provided to the presiding motions judge (in writing) prior to February 14, 2025;

10. Costs against any of the respondents that do not consent and oppose motion #2.

**THE GROUNDS FOR THE MOTION ARE**:

1. The Applicant repeats and relies upon the facts contained in the following:
    a. The JRPA Application;
    b. Applicant's Factum of December 10, 2024;
    c. Applicant's Application Record of December 12, 2024;
    d. The Applicant's Motion Record for motion #1;
    e. The Applicant's Motion Record for motion #2;
    f. Applicant's Factum For Motion In Writing;
    g. Applicant's Oral Compendium and Oral Outline to be uploaded to Case Center by way of invitation in accordance with the Divisional Court Judicial Review Guide or contained within the Court File prior to February 14, 2025; and
    h. Other filings, that are duly served on the respondents or interested persons, that may be tendered and accepted by the Court.

Summary of the Evidence

2. The Applicant's summary of the evidence in the Tribunal is denoted in his JPRA Application, Applicant's Factum, Applicant's Application Record, record of proceeding (to have been filed forthwith by the Tribunal), affidavits filed herein, motion record #1, motion record #2 et al.

3. The Applicant's evidence for motion #2 is further particularized in the "Applicant's Factum For Motion in Writing and "Factum For Conversion to Motion For Judgment"

Legal Bases

4. The above noted statutes but more specifically, but not limited to, the following statutory subsections;

    a. Section 9(2) of the *JRPA*;

    b. Section 10 of the *JRPA*;

    c. Section 20 of the *SPPA*;

5. The *Courts of Justice Act* (the "CJA");

6. *Rules Of Civil Procedure*s including but not limited to the following rules:

    a. Rule 1.02(1.)(3);

    b. Rule 1.03 with respect to the following definitions:

        i. "applicant" means a person who makes an application;

        ii. "application" means a proceeding commenced by notice of application;

        iii. "court" means the court in which a proceeding is pending and, in the case of a proceeding in the Superior Court of Justice, includes an associate judge;

        iv. "deliver" means serve and file with proof of service, and "delivery" has a corresponding meaning;

        v. "document" includes data and information in electronic form;

        vi. "hearing" means the hearing of an application, motion, reference, appeal or assessment of costs, or a trial;

        vii. "motion" means a motion in a proceeding or an intended proceeding;

        viii. "moving party" means a person who makes a motion;

ix. "person" includes a party to a proceeding;

x. "proceeding" means an action or application;

xi. "respondent" means a person against whom an application is made or an appeal is brought, as the circumstances require;

xii. "responding party" means a person against whom a motion is made;

xiii. "statute" includes a statute passed by the Parliament of Canada; and

xiv. "substantial indemnity costs" mean costs awarded in an amount that is 1.5 times what would otherwise be awarded in accordance with Part I of Tariff A, and "on a substantial indemnity basis" has a corresponding meaning.

c. Rule 1.04;

d. Rule 1.05;

e. Rule 1.06;

f. Rule 1.08[ii];

g. Rule 2.03;

h. Rule 3.02;

i. Rule 4.01;

j. Rule 37 with particular reference to the following:

i. Rule 37.01;

ii. Rule 37.02;

iii. Rule 37.03;

iv. Rule 37.04 (by way of judge and not "associate judge" or "registrar")

k. Rule 39;

l. Rule 57 and 58;

m. Rule 59;

n. Rule 68;

7. The Applicant relies on the statues, regulations and authorities for this "Motion #2" that are contained within the JRPA Application, Factum, and Factum For Motion his Factum Motion in Writing.

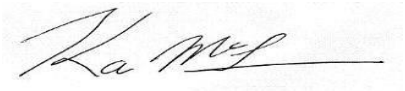
8. The statutes, regulations and authorities cited and/or cross-referenced in the JRPA Application, Factum, Application Record, COI Recusal Submissions, Motion #1 (Motion Record), Motion #2 (Motion Record) and Oral Compendium (to be uploaded to Case Center once or if the Applicant receives invitation from the ONSC Divisional Court, or to be provided to the presiding motion justice from the court file if no such invitation is ever provided).

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

1. The JRPA Application of the Applicant of November 15, 2024 (the "JRPA Application");
2. The Applicant's Factum of December 10, 2024 (the "Factum");
3. The Applicant's Application Record of December 12, 2024 (the "Application Record");
4. Affidavits of service of the Applicant in this JRPA Proceeding;
5. Affidavits of the Applicant in the Motion Record #2
6. The Applicant's tendered requisitions herein; and
7. Such other material as the Applicant may advise and this Honourable Court, by way of a judge, may accept.

January 31, 2025:

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



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

TO:

Licence Appeal Tribunal/AABS

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

Jesse Aaron Boyce
**Assumed Name**
Jesse A. Boyce
**Law Society Number**
72486F
**Class of Licence Definitions**
Lawyer (L1)
**Real Estate Insured** †
No
**Status Definitions**
Practising Law - Employed
**Business Name**
SLASTO
**Business Address**
25 Grosvenor[iii] 4th FloorToronto, OntarioM7A 2S8
**Phone**
1 437 997 1235 Ext.
**Trusteeships**
None
**Current Practice Restrictions**
None
**Current Regulatory Proceedings**
None
**Regulatory History**
None

TO:

TD Home and Auto Insurance Company
FSRA Registration Number 1063

Attention: Mr. Nieuwland

AND TO:

SECURITY NATIONAL INSURANCE COMPANY
FSRA REGISTRATION NUMBER 397

Attention: Mr. Nieuwland

AND TO (by way of courtesy):

TD General Insurance Company
FSRA Registration Number 353

AND TO:

Interested Persons

TO:

Mr. Andrew Papadimitropoulos
Via email: Andrew.papadimitropoulos@tdinsurance.com
Via email: Andrew.papadimitropoulos@td.com

AND TO:

EPSTEIN COLE LLP

Attention: Managing Partner in Ms. Tsao

SCHEDULE "A": Motion Form for NOM #1

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

FORM 37A

*Courts of Justice Act*

NOTICE OF MOTION

ONTARIO SUPERIOR COURT OF JUSTICE (DIVISIONAL COURT)

BETWEEN:

**KEVIN ALEXANDER MCLEAN**

APPLICANT

- and -

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

RESPONDENTS

**NOTICE OF MOTION**

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

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

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

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

□ In person;

X By telephone conference;

□By video conference.

at the following location

Address of Local Registrar court office Divisional Court

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

**THE MOTION IS FOR** the following relief:

1. An Order that the delegated or presiding motion judge (not an "associate judge" pursuant to 37.02(2)(f) of the *Rules Of Civil Procedure* and section 4 of the *JRPA*) shall not be the Honourable Madam Justice Shore and/or any other justice that was employed by Epstein Cole and/or was a partner in the limited liability partnership of Epstein Cole LLP during the time from Fall of 2017 to present;

2. An Order compelling the Licence Appeal Tribunal (the "**Tribunal**") to file the Record of Proceeding forthwith and in accordance with, *inter alia*, section 10 of the *JRPA* and in accordance, from a content standpoint with section 20 of the *SPPA*;

3. An Order that the Tribunal is prohibited from any form of participation in this JRPA Proceeding until it does so in full and strict compliance with aforementioned legislative sections in Order #2;

4. Costs in favour of the Applicant against the Tribunal on a substantial indemnity basis to be determined by this Honourable Court after providing leave to the Applicant to provide a costs outline or written argument within three days of the pronouncement of the orders herein and limited to three pages double spaced; and

5. Such other orders that are consistent with the above.

**THE GROUNDS FOR THE MOTION ARE**:

9. The above noted statutes but more specifically, but not limited to, the following statutory subsections;

    a. Section 9(2) of the *JRPA*;

    b. Section 10 of the *JRPA*;

    c. Section 20 of the *SPPA*;

10. The *Courts of Justice Act* (the "CJA");

11. *Rules Of Civil Procedure*s including but not limited to the following rules:

    a. Rule 1.02(1.)(3);

b. Rule 1.03 with respect to the following definitions:

   i. "applicant" means a person who makes an application;

   ii. "application" means a proceeding commenced by notice of application;

   iii. "court" means the court in which a proceeding is pending and, in the case of a proceeding in the Superior Court of Justice, includes an associate judge;

   iv. "deliver" means serve and file with proof of service, and "delivery" has a corresponding meaning;

   v. "document" includes data and information in electronic form;

   vi. "hearing" means the hearing of an application, motion, reference, appeal or assessment of costs, or a trial;

   vii. "motion" means a motion in a proceeding or an intended proceeding;

   viii. "moving party" means a person who makes a motion;

   ix. "person" includes a party to a proceeding;

   x. "proceeding" means an action or application;

   xi. "respondent" means a person against whom an application is made or an appeal is brought, as the circumstances require;

   xii. "responding party" means a person against whom a motion is made;

   xiii. "statute" includes a statute passed by the Parliament of Canada; and

   xiv. "substantial indemnity costs" mean costs awarded in an amount that is 1.5 times what would otherwise be awarded in accordance with Part I of Tariff A, and "on a substantial indemnity basis" has a corresponding meaning.

c. Rule 1.04;

d. Rule 1.05;

e. Rule 1.06;

f. Rule 1.08[v];

g. Rule 2.03;

h. Rule 3.02;

i. Rule 4.01;

j. Rule 37 with particular reference to the following:

i. Rule 37.01;

ii. Rule 37.02;

iii. Rule 37.03;

iv. Rule 37.04 (by way of judge and not "associate judge" or "registrar")

k. Rule 39;

l. Rule 57 and 58;

m. Rule 59;

n. Rule 68;

12. The doctrine of paramountcy (wherein statutory language prevails over language in regulations, and any "practice directions"); and

13. The statutes, regulations and authorities cited herein but not limited to:

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

| *The Seminal Decision in Payne* |
|---|

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

| Payne cited with approval by ONSC Divisional Court in 2024 |
|---|

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

| General Principles |
|---|

iii. *Jacko v. McLellan*, 2008 CanLII 22921 (ONSCDC) ["*Jacko*"] at paragraph 18)[vii];.

iv. *Rew v Association of Professional Engineers of Ontario (Discipline Committee)*, 2016 ONSC 4043 (CanLII) ["*REW*"], https://canlii.ca/t/gs5t9 as per Dambrot, J. (orally) at paragraph 8;

v. *Pritchard v. Ontario (Human Rights Commission)*, 2004 SCC 31 ["*Pritchard*"] https://canlii.ca/t/1h2c4

Endicott Decisions

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

Cases involving privacy or medical (contextual)

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

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

b. *UFCW Canada v. Rol-Land Farms Limited*, 2008 CanLII 6652 (ON SCDC), (see: https://canlii.ca/t/1vtm5) ("*Rol-Land Farms*") at paragraph 38[ix];

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

c. *Reflection Productions v. Ontario Media Dev. Corp*., 2022 ONSC 64 ["*Reflection Productions*"] at paragraph 74 and 75[x];

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

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

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

January 22, 2025:

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

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

TO:

Licence Appeal Tribunal/AABS

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

Jesse Aaron Boyce
**Assumed Name**
Jesse A. Boyce
**Law Society Number**
72486F
**Class of Licence Definitions**
Lawyer (L1)
**Real Estate Insured** †
No
**Status Definitions**
Practising Law - Employed
**Business Name**
SLASTO
**Business Address**
25 Grosvenor[xi] 4th FloorToronto, OntarioM7A 2S8
**Phone**
1 437 997 1235 Ext.
**Trusteeships**
None
**Current Practice Restrictions**
None

**Current Regulatory Proceedings**
None
**Regulatory History**
None

SCHEDULE "B": COI RECUSAL SUBMISSIONS EMAIL FILED ON JANUARY 16, 2025

ADF

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

ONTARIO COURT OF JUSTICE (DIVISIONAL COURT)

BETWEEN:

**KEVIN ALEXANDER MCLEAN**

APPLICANT

- and -

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

RESPONDENTS

Applicant's Submissions for his RESPECTFUL REQUESTS

To:

The ONSC Divisional Court
130 Queen Street West, Toronto, Ontario
Toronto, Ontario

Kind attention: ONSC Divisional Court Registrar (Madam Clerk Clegg)

AND TO: (pursuant to the Courts of Justice Act, (s. 75(1)(3)),) and section 76

The Honourable Geoffrey B. Morawetz
Chief Justice of the Superior Court of Justice

AND TO:

The Honourable Faye E. McWatt
Associate Chief Justice of the Superior Court of Justice

With a copy to:

The Honourable Stephen E. Firestone
Regional Senior Judge for the Toronto Region

With a copy to:

The Honourable Madam Justice Shore

COPIED TO THE RESPONDENTS AND THEIR COUNSEL

AND COPIED TO (FOR NOTICE PURPOSES):

Andrew Papadimitropoulos
Law Society Number
58696I
Class of Licence Definitions
Lawyer (L1)
Real Estate Insured †
No
Status Definitions
Practising Law - Employed
Business Name
TD Insurance
Business Address
101 Mcnabb St
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**VOLUME # #1: STATEMENT OF RECUSAL REQUEST, NULLIFICATION REQUEST, ADJOURNMENT REQUEST (SOLELY IN RELATION TO SHORE J. APPEARANCE REQUIREMENT) AND STAFF DIRECTION ORDERS (SEE: SECTION 76 OF THE CJA)**

1. Which Canadian jurist represented the following to the federal committee responsible for judicial appointments in her sworn and signed questionnaire to it, "Vital to the Canadian system is the impartiality of a judge. This is different than the system in the United States. In Canada, judicial independence is viewed as vital to fostering public confidence in the fairness and objectivity of the justice system. The Supreme Court of Canada has described judicial independence as "the cornerstone, a necessary prerequisite for judicial impartiality."

2. None other than The Honourable Madam Justice Sharon Store.

3. The Honourable Sharon Shore of our ONSC (not the Federal Court) also made a statement to that same federal committee that this Applicant certainly agrees with as follows

> Last, but not least, is integrity. I have always tried to conduct my personal and professional life with integrity. One of the lessons I learned from my mentors is that it takes a lifetime to build your reputation, and only minutes to destroy it.

4. Public confidence in our legal system is rooted in the belief that those who deliver legal judgments do so without bias or prejudice to one side or the other. In this regard, the appearance of justice is just as important as the reality.[xii]

5. Judges often disqualify themselves where the matter before them involves former clients or law partners. Herein, we have a situation of a former client of Epstein Cole LLP where Madam Justice Shore was a partner.

6. Lord Hewart C.J.'s aphorism that "it is not merely of some importance but is of fundamental importance that justice should not only be done, but should manifestly and undoubtedly be seen to be done" (The King v. Sussex Justices, Ex parte McCarthy, [1924] 1 K.B. 256, at p. 259). To put it differently, in cases where disqualification is argued, the relevant inquiry is not whether there was in fact either conscious or unconscious bias on the part of the judge, but whether a reasonable person properly informed would apprehend that there was. In that sense, the reasonable apprehension of bias is not just a surrogate for unavailable evidence, or an evidentiary device to establish the likelihood of unconscious bias, but the manifestation of a broader preoccupation about the image of justice. As was said by Lord Goff in Gough, supra, at p. 659, "there is an overriding public interest that there should be confidence in the integrity of the administration of justice" (see: paragraph 66 of *Weykaum*). The last is the most demanding for the judicial system, because it countenances the possibility that justice might not be seen to be done, even where it is undoubtedly done – that is, it envisions the possibility that a decision-maker may be totally impartial in circumstances which nevertheless create a reasonable apprehension of bias, requiring his or her disqualification (see: paragraph 67 of *Weykaum*).

7. The law of judicial bias is founded on two basic legal maxims: audi alteram partem ("listen to the other side") and nemo judex in sua causa ("no-one should be a judge in his own cause"). The former requires that parties affected by a decision have the right to be heard and that the decision-maker must not have pre-judged the issue. The latter prohibits the adjudicator of the case from

having an interest in the decision, thus safeguarding the right of the parties to be treated impartially and without prejudice. In other words, bias represents a predisposition or a state of mind which sways judgment.

8. Unlike tribunals, judicial impartiality is guaranteed by our *Constitution* under section 96 to 101 (see: *Ocean Port Hotel* (SCC)).

> **Volume #1(A):** The Anticipatory Counter to Justice Shore taking a similar position to Binnie J. in *Weykaum*

9. While the SCC has found that there is a distinction with a difference between government lawyers and private practice, the following statement of law is apropos. There is a strong inference that licensees who work together share confidences especially where they work under a "group" even if internal confidentiality screens are in place (see: *Mariangeli*, [2004] OJ 3082 (Ont Sup. Ct.). Where Confidential Information exchanged in a prior related matter sufficient related to a current retainer the "licensees" MUST rebut inference Confidential Information was exchange (see: *Mariangeli*, [2004] OJ 3082 (Ont Sup. Ct).

> ***VOLUME #1(B): BY ANALOGY***

10. The Applicant (also defined as the "**Requestor**") repeats and relies upon his letter in Appendix #1.

11. If a judge is aware of any relationship or personal interest that raises a reasonable apprehension of bias, it is generally desirable that disclosure is made in advance of a hearing, so that the case may be reassigned.

12. Under the Ontario *Courts of Justice Act* (s. 75(1)(3)), it is the Chief Justice of a court or one of the Associate Chief Justices who is responsible for the assignment or reassignment of cases.

13. Pursuant to the *Civil Rules*, the following is applicable to the Case Management Appearance Requirement:

> 77.04 (1) A judge or associate judge may,
>
> (b) adjourn a case conference;
>
> (2) A judge or associate judge may, on his or her own initiative, require the parties to appear before him or her or to participate in a conference call to deal with any matter arising in connection with the case management of the proceeding, including a failure to comply with an order or the rules. O. Reg. 438/08, s. 64; O. Reg. 383/21, s. 15.
>
> (3) For greater certainty, the powers set out in subrules (1) and (2) are in addition to any other powers set out in this Rule. O. Reg. 438/08, s. 64.

14. For sake of completeness, Rule 77(1) and (2) state the following:

RULE 77 CIVIL CASE MANAGEMENT

Purpose and General Principles

Purpose

77.01 (1) The purpose of this Rule is to establish a case management system that provides case management only of those proceedings for which a need for the court's intervention is demonstrated and only to the degree that is appropriate, as determined in reliance on the criteria set out in this Rule. O. Reg. 438/08, s. 64.

General Principles

(2) This Rule shall be construed in accordance with the following principles:

1. Despite the application of case management under this Rule to a proceeding, the greater share of the responsibility for managing the proceeding and moving it expeditiously to a trial, hearing or other resolution remains with the parties.

2. The nature and extent of the case management provided by a judge or associate judge under this Rule in respect of a proceeding shall be informed by any relevant practices, traditions, customs or judicial resource issues that apply locally in the region in which the proceeding is commenced or to which it is transferred. O. Reg. 438/08, s. 64; O. Reg. 383/21, s. 15.

15. The Canadian Judicial Council considers recusal inappropriate where no other adjudicator can be constituted to hear the case or where, as a result of an emergency, withdrawal would lead to a miscarriage of justice. Still, the exercise of judicial discretion is at the heart of judicial independence, and judges are presumed to have acted in good faith.

16. The urgency is in favour of the Applicant having his requisitions filed and receiving a Form 68(B) which is most outstanding despite requisitions for the same.

17. It is rather coincidental that there are 93 justices in the Toronto region and somehow the one justice who was a partner who acted, and remains as the sole law firm to have represented one Mr. Andrew Papadimtripoulos

18. It is current counsel to the three respondent insurance companies in Mr. Nieuwland who unequivocally admitted, as a matter of law, that there was a conflict of interest when TDGIC represented in a purported but unlawful response to the Applicant's *PIPEDA* request of SNIC in January 2024 that Mr. Andrew Papadimtripoulos had not been involved in any way with this claim or access request. However, the claim number provided therein was 035325709-04 [sic] (see: **page 66** of the **Oral Compendium**).

***VOLUME #2: RELIEF SOUGHT IN THE RECUSAL REQUEST, NULLIFICATION REQUEST AND REASSIGNMENT REQUEST***

19. The Requestor seeks the following relief as follows:

f. The Honourable Madam Justice Shore is disqualified from any further involvement in this *JRPA* Proceeding (the "**Disqualification Request**" or the "**Recusal Request**");
g. The Case Management Appearance Requirement is declared as void and void *ab initio* (not merely voidable) (the "**Nullification Request**");
h. A general and indefinite adjournment of the case conference pursuant to 77.04(1)(b) of the *Civil Rules* by the Associate Justice (the "**Adjournment Request**");
i. A direction by the Honourable Chief Justice, pursuant to section 76 of the *CJA*, that the Registrar shall accept all outstanding requisition filings and provide confirmation of the same to the *JRPA* Applicant and respondents; and
j. A direction by the Honourable Chief Justice, pursuant to section 76 of the *CJA*, that the Registrar comply with her duties (by law), pursuant to 68.05(2) of the *Civil Rules*[xiii], and provide the parties with a "Notice of Listing For Hearing".

("d" and "e" together, the "**Staff Direction Requests**").

(collectively, the "**Respectful Requests**" or "**Requests**").

**VOLUME #2(A): A note on section 76 of the *CJA*, "Direction of Court Staff"**

20. For ease of reference, Section 76 of the *CJA* states:

> 76 (1) In matters that are assigned **by law**[xiv] to the judiciary, registrars, court clerks, court reporters, interpreters and other court staff shall act at the direction of the chief justice of the court. 2006, c. 21, Sched. A, s. 14.

21. The following outlines the facts material to the ***JRPA* Application** and the LAT Appeal as it relates to the various requests herein. Painstaking detail is required because of the Tribunal's failure to comply with section 10 of the *JRPA* and to fill the lacunas creates by that intentional and egregious statutory non-compliance by the Tribunal. These submissions are provided in support of the **Requests** as a means of ensuring compliance and on the continued basis of urgency. The further details of the below are bookmarked and hyperlinked in the Applicant's oral compendium and oral outline that shall follow.

**VOLUME #3: FACTS**

22. The underlying facts in this ***JRPA* Application** are contained within the record of proceeding with reference to the filed documents such as the ***JRPA* Application**, Factum, Application Record, and Affidavit #2.

23. The Ontario Superior Court of Justice Guide to Judicial Review in Divisional Court, effective by its metadata which states, "Scarciolla, Claudia (JUD)" (author) and 11/24/22 (date) (the "*JRPA* Guide") which states [emphasis it the Applicant's]:

> "After you have brought an application for judicial review, you will receive an email to register for CaseLines and upload your materials. There is no fee to use CaseLines."

24. The ***JRPA* Applicant** tendered his ***JRPA* Application** and paid the requisite fees on November 15, 2024.
    a. After receipt of the issued ***JRPA* Application**, from the Registrar, with thanks, the ***JRPA* Applicant** did not receive an invitation to Case Center.

25. The ***JRPA* Applicant** delivered[xv] (served) and filed his **Factum**[xvi] on December 10, 2024.

26. The ***JRPA* Applicant** delivered (served) and filed his **Application Record** on December 12, 2024.

27. The ***JRPA* Applicant** filed and paid for the Certificate of Perfection on December 13, 2024;

28. The ***JRPA* Applicant** also filed the requisite affidavit of service thereafter;

29. The ***JRPA* Applicant** received confirmation of his filing thereafter;

30. The ***JRPA* Applicant**, based on his review of what has been received, has not received any mail or email of the Form 68(B) which was required to be delivered to the parties after the ***JRPA* Applicant** had filed and paid for the Certificate Of Perfection with an approximate date of the hearing. Based upon a reasonable interpretation of the relevant Civil Rule, which is 68.05(2) (see: (2) When the certificate of perfection has been filed, the registrar shall place the application on a list for hearing and give notice of listing for hearing (Form 68B) by mail to the parties and the other persons named in the certificate of perfection. R.R.O. 1990, Reg. 194, r. 68.05 (2).”), the Registrar was required to place the Applicant’s ***JRPA* Application** on a list for hearing and give notice of listing for hearing on or around Tuesday, December 17, 2024.

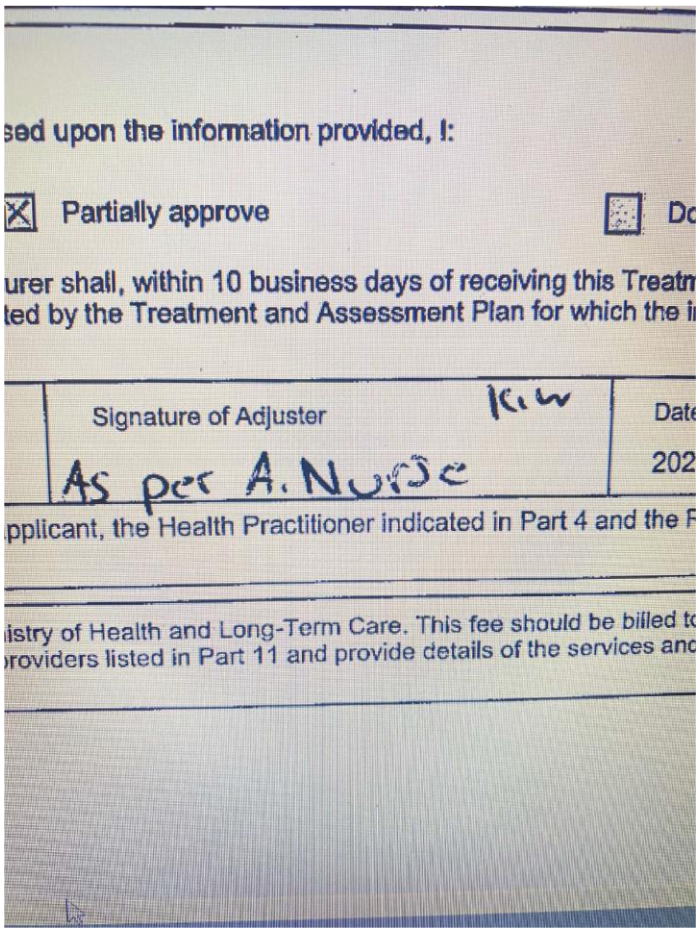
31. Despite filing his requisition #1 on December 24, 2024 (see: **Confirmation number 2787308**) requesting and requiring the Registrar to comply with her duties, there is currently no evidence that any such steps have been taken in this regard. Moreover, the ***JRPA* Applicant**, by usage of said service, was entitled to have any filing processed within five business days, which may be accepted or rejected. Five business days from December 24, 2024, was January 2, 2025.

32. Relevant to this Recusal Request and Nullification Request, on June 28, 2024, in relation to the Applicant’s NOM #6 and NOM #9, the Tribunal dismissed the Applicant’s COI motion and Mr. Andrew Papadimtripoulos (the “**Epstein Cole Client**”) remained as a representative of SNIC. The timing could not be more important because on June 20, 2024, the Tribunal granted the Applicant’s NOM #8 which removed the Fictitious Respondent (TDGIC) as the sole respondent party.

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

## VOLUME #3(A): THE FORTUITOUS DISCOVERY

34. The fortuitous discovery which merely solidified the Applicant’s uncontroverted evidence was the finding of an anniversary card penned to his ex wife presumably in 2015 and 2016 under the bed where the Applicant slept and where Mr. Papadimitropoulos used to reside. The evidence remains uncontroverted in the record of proceeding;



sed upon the information provided, I:

☒ Partially approve ☐ Do

urer shall, within 10 business days of receiving this Treatm
ted by the Treatment and Assessment Plan for which the i

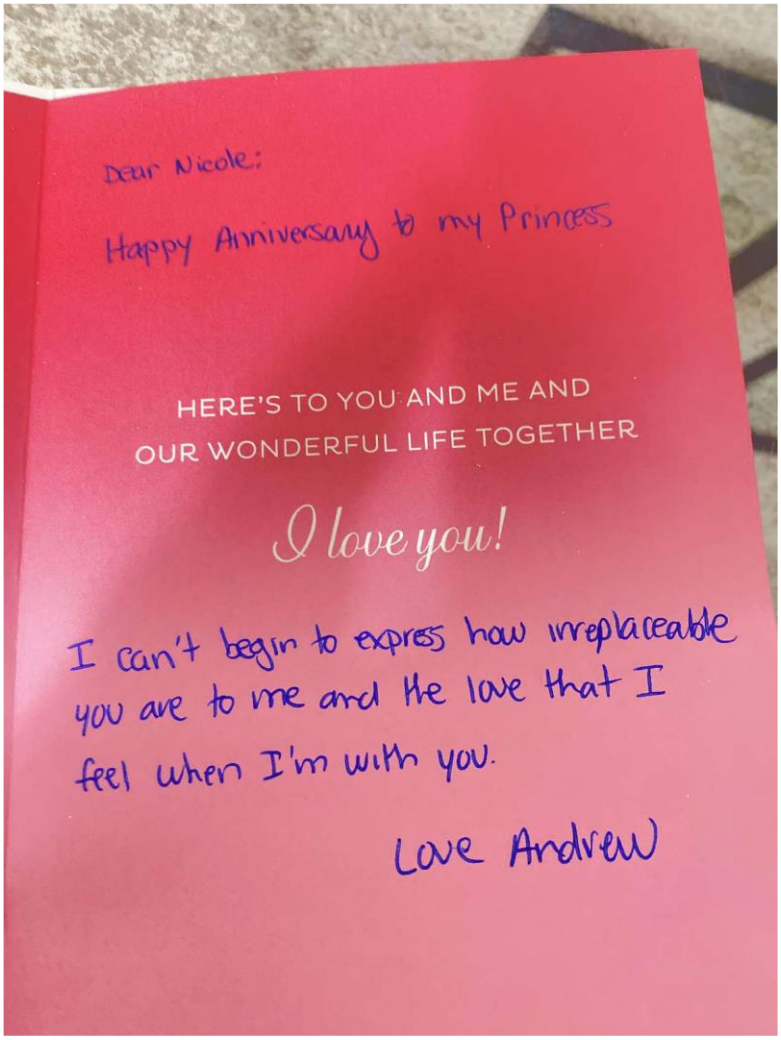
| Signature of Adjuster | Date |
|---|---|
| As per A. Nurse KW | 202 |

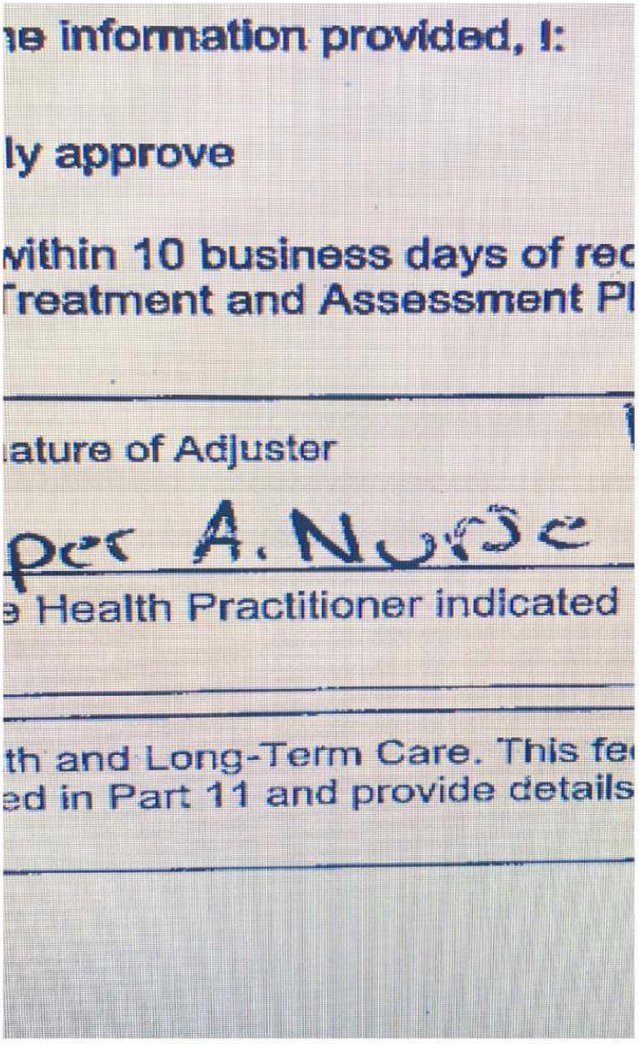
pplicant, the Health Practitioner indicated in Part 4 and the F

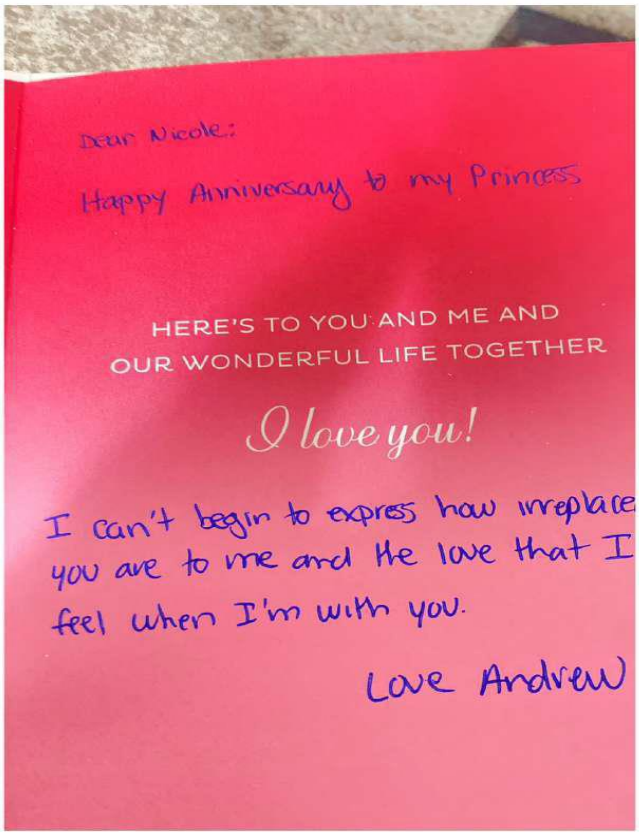
istry of Health and Long-Term Care. This fee should be billed to
roviders listed in Part 11 and provide details of the services and

Electronically filed / Déposé par voie électronique : 03-Feb-2025
Toronto Superior Court of Justice / Cour supérieure de justice








(see: Affidavit #3, Exhibit "A", pages 274 to 279, which was affidavit of the Applicant on September 19, 2024,

35. No handwriting expert was required with that glaring obvious similarities.

36. The backdrop to this Forged Signature of an adjuster with SNIC is that the cover letter therein (not a public interest issue per se) confirmed and represented that SNIC had approved the sum of approximately $2080 in medical and rehab benefits ($1995 +$85.87). However, it never issued a cheque for the same to the Applicant's relevant health practitioners. The only reasonable inference is that SNIC did not want to take further steps in affirmation of the fraud, forgery, false document and uttering of a false document. Does that it make it lawful? The question answer itself.

**VOLUME #3(B): NO ONE HAS MORE TO LOSE THAN MR. ANDREW PAPADIMITROPOULOS**

37. It is the very exhaustion of each and every avenue that has karmically come to save this Applicant at the most fortuitous of times. The dismissal of his NOM #6 and NOM #9 (which was repurposed and filed after the nullity case conference and the change of the style of cause) is what kept Mr.

Andrew Papadimitropoulos as a representative of SNIC from his post in Markham for "TD Insurance" but now has caused a further light to be shined on his misconduct whilst being a client of Epstein Cole and at the very least a continued address for notices within a separation agreement.

## VOLUME #5: ISSUES

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

    b. Is there a ROAB involving the Madam Justice Shore in light of her being a partner at Epstein Cole LLP at the time when Mr. Andrew Papadimtriopoulos retained Epstein Cole LLP along with the admission of law by counsel of record in this *JRPA* Proceeding to the three distinct insurance companies that Mr. Andrew Papadimitropoulos could not be involved in the Applicant's SABS Claim and LAT Appeal by his contractually agreed requirement that he not have any indirect or direct contact Ms. Nicole Artopoulos (spouse of the Applicant at material times) (see: Oral Compendium, page 66)?
    c. Pursuant to the common law in Canada that a RAOB cannot be remedied, what order must be granted in relation to the Shore J. Case Management Appearance Requirement?
    d. Pursuant to the *Civil Rules* and the common law requirement that justice must not just be done but seen to be done, what steps should and must the Associate Justice take after the Nullification Request is granted?
    e. In light of the delays experienced by the *JRPA* Applicant and the public interest along with the continued urgency of the Applicant's ***JRPA* Application**, what directions must the Chief Justice take as per section 76 of the *CJA*?

## *VOLUME #6: LEGAL BASES: RELATING TO THE LICENSEES AND CAST OF CHARACTERS BELOW*

### *Volume #6(A): Law Society Act*

39. To fully elucidate and outline the underlying conflict of interest and, bluntly, fraudulent conduct of one Mr. Andrew Papadimtriopoulos in executing documents for adjusters but in their name of "as per" (see: As per A. Nurse") (by way of the fortuitous discovery (see: Affidavit #3 herein), the underlying legal bases involving the non-licensee, Mr. Karat, acting contrary to the *LSA* and the LSO *By-Law*s is required.

40. Moreover, there is ostensibly some persistent discord between the decisions of Vice Chair McGee and Vice Chair Maedel in Dankha and Mosa respectively and the decisions of Vice Chair Morrissette and Vice Chair Lake (see: NOM #5 and reconsideration decision of Vice Chair Logan). As this Court would have seen had the Tribunal complied with its statutory obligation under the *JRPA*, the Applicant had to get most "creative" and "lucky" (see: the "one and the same" misrepresentation by Mr. Nieuwland at the May 2, 2024, nullity case conference) to have the Tribunal to comply with the law (which is completely antithetical to the consumer protection nature of the statutory scheme of the Insurance Act, SABS, Reg 283) to obtain the orders that he did in his NOM #8 (nota bene: which changed the style of cause while removing a party and adding a party i.e. the granting of the same which is interlocutory in nature whereas the refusal of the same is a final order and final decision):

41. For clarity as to the Applicant's positions regarding some of the other decision makers at the quasi-judicial tribunal known as "LAT" like Vice Chair McGee, Vice Chair Maedel and some others, they are clearly very articulate and have high legal acumen. The decisions of Vice Chair McGee in Dankha was yet another beautifully written and analytical precise decision wherein she ensured that the Tribunal did not condone the breaches of the *LSA* and LSO *By-Law*s by a paralegal engaging in the practice of law (not provision of legal services)

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

43. Ms. Watson, a lawyer licensee in good standing with the LSO, made the following arguments which were all rejected by Vice Chair McGee:
    a. Mr. Grabar submitted documents under the advisement of Mr. Faletta (a now suspended lawyer);
    b. Mr. Faletta oversaw Grabar's handling of the file; and
    c. A new lawyer (Watson) had recently took carriage of the file.

44. Mr. Karat was and is on far worse grounds that Mr. Grabar as Mr. Grabar was a licensed paralegal.

## *VOLUME #6(A)(I): LSA*, SECTIONS 1(5) AND (6)

45. A person provides legal services if the person engages in conduct that involves
    a. The application of legal principles; and
    b. Legal judgment with regard to the circumstances or objectives of a person.

    (see: section 1(5) of the *LSA*)

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

## *VOLUME #6(A)(II): SECTION 1(7) OF THE LSA: REPRESENTATION IN A PROCEEDING*

47. Doing any of the following SHALL BE CONSIDERED to be representing "a person" in a proceeding
    a. Determining what documents to serve or file in relation to the proceeding
    b. Determining on or with whom to serve or file a document; or
    c. Determining when, where or how to serve or file a document.

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

48. Doing any of the following SHALL BE CONSIDERED to be representing "a person":
    a. Conducting an examination for discovery; or
    b. Engaging in any other conduct necessary to the conduct of a proceeding.

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

50. "**Proceeding**" has the same meaning as in *By-Law* #4, section 6(1) ((see: **Hearing Brief**, Tab 26, page 285) and any intended proceeding was also vis-a-vis the Claimant (also defined as "Applicant" or "**Appellant**") and "*TD INSURANCE MELOCHE MONNEX*" (see: HB, Tab 38, page 561 for reference to "trade name") (Security National Insurance Company). The *LAT Rules* refers to the *LAT Rules* effective on August 21, 2023 (the "*LAT Rules*" or "New *LAT Rules*").

***VOLUME #6(B): THE "ADR REPRESENTATIVE" [NOT AN "OFFICER"]: KARAT – CONDUCT SOLELY IN RELATION TO SNIC***

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

52. Where a licensee (which the Appellant's uncontroverted evidence remains that the licensee (who is also deemed an "Officer" of SNIC by virtue of being a "manager" or "management" with SNIC) was the Mr. Papadimitropoulos) affiliates with a non-licensee, he remained exclusively liable for his professional practice when so affiliating. The Conflicted Lawyer (Mr. Papadimtriopoulos) has also acted for "TD Insurance Meloche Monnex" in *Mensah* (see: 2022 CanLII 452) and 18-00161 v. SNIC, 2019 CanLII 9628.

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

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

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

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

57. While **Nieuwland** was not on the email of January 25, 2024, rather conveniently, **Karat** represented in the email to the **Appellant**, "Kindly see the attached correspondence with today's date along with the Response of **AN** INSURANCE COMPANY" [emphasis is the **Appellant**'s] (see: Affidavit #13, Exhibit "A", page 5). **Mr. Karat** regularly confirmed by that auto-reply that is not authorized for **SNIC** (but for Primmum, TD Home & Auto, and ***NON-SABS INSURER***).

**Volume #6(C): Nieuwland's conduct solely in relation to the NON-SABS Insurer**

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

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

60. From early February 2024 to April 10, 2024, the **Appellant** provided notice to **Nieuwland** that his DOR for a **NON-***SABS* Insurer was a nullity and had no legal effect, and urged him to file a DOR on behalf of **SNIC**. **Nieuwland** did not respond and then stated that his DOR was unambiguous The **Appellant** also urged Mr. **Nieuwland** provide an affidavit if Ms. Moraes was his legal assistant. **Nieuwland** did not respond to the request

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

62. While, again, it matters not of the underlying facts and minutia of the relationships per se and the **EPSTEIN COLE** Client's involvement in representing SNIC, by reference to the As per A. Nurse signature and beyond as the Tribunal found that Mr. Andrew Papadimitropoulos was fully entitled to remain as a representative in the LAT Appeal, the Applicant provides the same primer no the LSO *By-Law*s in relation to the cast of characters. Put another way, the *JRPA* Applicant provides the same as per each case being determined on its own facts and out of abundance of caution.

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

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

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

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

66. The *JRPA* Applicant now copies and pastes from his speaking notes, filed with the Tribunal and later appended to an affidavit to meet the definition of record to be included in a record of proceeding under section 20 of the *SPPA*, as follows:

> "123. As Mr. Karat and Nieuwland has different clients in SNIC and NON-SABS Insurer respectively, Karat (if he meets the definition of a "Professional" with no dispute that Karat is experienced in providing services to licensees like the Mr. Papadimitropoulos and Ms. Francine Papadopoulos on behalf of their client in SNIC and Mr. Dugas, esteemed partner at McCague Borlack LLP on behalf of his client in Primmum Insurance Company), then Mr. Nieuwland (a licensee) may and shall NOT provide to NON-SABS INSURER the services of a person (Karat) who is not a licensee that support or supplements the licensed activity of Nieuwland on behalf of NON-SABS INSURER (see: *By-Law* #7, Part III, section 17).
>
> 124. As Karat solely signed, filed and served (as it is presumed) the Purported SNIC Response, with the cover letter on January 25, 2024 (see: HB, Tab 3, pages 85 to 88; email: enclosed response from "An Insurance Company" which was the Appellant's Insurer by virtue of the Insurance Act and no reference to "NON-SABS INSURER"), which referenced "TD INSURANCE MELOCHE MONNEX" with the return address of SNIC Markham, along with his sole signature of the Karat COS, he did so without Nieuwland copied on that email. There is no reference to Nieuwland in the Purported SNIC Response. Therefore, Karat's sole conduct (which were his sole signing, sole filing and sole serving) therein were not to support or supplement Nieuwland's client at the time or by way of retrospective analysis. Only a lawyer licensee was authorized under the *LSA* to SIGN the Purported SNIC Response as non-licensee is not authorized to even sign correspondence (except of a routine administrative nature) and a paralegal licensee is not authorized to sign a "responsive pleading" where an Appeal (not a "claim" under *By-Law* #4) involves even the appearance that an individual is CAT Impaired. (see: HB, Tab 3, page 27).
>
> 125. Kart was correct in the name of the "insurer" in that SNIC was the only insurer that undertook a "contract of insurance" with the Appellant's Spouse and BMW Financial Services Inc. as the "primary listed insureds". By virtue of the Appellant being the "occupant" (driver) of the Insured Automobile when Pembridge's insured rear ended the Insured Automobile, from a stopped position, at high velocity in her [tortfeasor insured] above average weight SUV, the Appellant was an "Insured Person" under the Insurance Act. Pursuant to the Insurance Act, the Appellant became a "party" to the Insurance Policy, and was deemed to have given consideration thereunder as if he had given consideration at the time of the formation of the Insurance Contract and thereafter.

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

127. By Nieuwland's inaction and then filing of the Purported Responsive Hearing Brief on April 11, 2024 in relation to NOM #6, Nieuwland affirmed and reaffirmed that his client was NON-SABS INSURER (NON-SABS Insurer). Nieuwland then made a succession of independent misrepresentations to the Tribunal about Karat and Moraes' roles herein and to him.
Therefore, Nieuwland did not comply with section 32(a) of *By-Law* #7. In relation to ss. 32(c), it is admitted by Karat (see: Purported SNIC Response and emails of Karat to Appellant along with cover letter referencing the Purported SNIC Response) that Karat operates from the premises at SNIC Markham and Nieuwland operates from the premises at 66 Wellington West, Toronto.

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

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

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

132. The Mr. Papadimitropoulos meets the definition of an "officer" under the Insurance Act by his title of "Consequence Management".

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

> 134. While the Conflicted Lawyer (Mr. Papadimtriopoulos) could assign tasks and functions to a non-licensee in connection with THE licensee's practice of law in relation to the affairs of THE licensee's client, including "its staff" (of the affiliated entity), the Impugned Licensees (except the Conflicted Lawyer (Mr. Papadimtropoulos)) are employed by TD Insurance Staff Legal are NOT the staff of Mr. Karat or any other non-licensee affiliated entity.
>
> 135. Simply put, the "consequences" were large and they had to be "managed" with assignments of tasks and functions to a non-licensee but the Conflicted Lawyer (Mr. Papadimtropoulos) could not have his name (publicly associated) with this TD Claim #3 and this **LAT Proceeding**. He could not covertly have be involved in the "handling" of TD Claim #3 and this **LAT Proceeding** but that was harder to prove.
>
> 136. What was not difficult to prove was that Nieuwland was out of office from January 24, 2024 to January 30, 2024, and Ms. Moraes was not known to the Tribunal or the Appellant, in this **LAT Proceeding**, until late January 2024. Therefore, the only supervising lawyer, and "manager", that could have authorized and assigned duties to Karat, in accordance with said licensee's practice of law, was the Conflicted Lawyer (Mr.Papadimtropoulos).

67. While Mr. Karat and Mr. Nieuwland had different clients for nearly six months and at the time of the case conference (with a bit of irony herein), SNIC in filing the SNIC Response had to act through an authorized representative or be directed by a "direct mind" – however clandestine and secret it may have been.

68. **SNIC** could only act through an individual, namely an authorized individual like an officer or one deemed to have the authority of an officer, particularly a senior officer (see: *Insurance Act*, "officer"). However, the *LSA* prohibited Mr. Karat from "signing" the SNIC Response as the sole representative at the time.

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

70. Therefore, the applicable and relevant definition is that of an "officer". "Officer" includes a trustee, director, **manager**, treasurer, secretary or member of the board or committee of **management** of AN INSURER and a person appointed by the insurer to sue and be sued in its behalf; (see: section 1(1) of the *Insurance Act*). While the **Mr. Papadimitropoulos** is not a "trustee" or "director" of **SNIC**, he does hold himself out as a "manager" and involved in "consequence management". **Mr. Papadimitropoulos** would meet the requirements of a licensee, officer and manager of **SNIC** at **SNIC Markham**. Therefore, on a balance of probabilities, the "officer" who ASSIGNED Mr. Karat with his duties and functions, to be the ADR specialist herein was the Mr. Papadimitropoulos for the particulars in affidavit evidence previously which are uncontroverted. More importantly, it is notable that Mr. Nieuwland misrepresented that Mr. Karat was an "ADR" 'officer' when he was not and never represented himself as such.

71. Even more compelling was that Mr. Karat signed the Purported SNIC Response without any reference to Nieuwland, and then served the Appellant (as defined in the LAT Appeal) with the

Purported SNIC Response and a cover letter referencing the Purported SNIC Response (filed on behalf of AN insurance company – namely SNIC) which had the address as the same as the Purported SNIC Response at SNIC Markham. The author of the cover letter was "TD Insurance Meloche Monnex" with Security National Insurance Company as the return address albeit allegedly in Markham, Ontario.

***VOLUME #6(D): KAISER***

72. While the Divorced Husband Conflicted Lawyer (Mr. Papadimtriopoulos) is NOT the declared tribunal advocate for SNIC and not declared herein at the *JRPA* Proceeding, his public denoted address with the LSO is SNIC Markham which was and is at material times in the TD Claim #3 the same address as Nurse (from DOL to Spring/Summer of 2023) and Karat (January 23, 2024 and onwards). It does not matter if the individual, admittedly in irreconcilable conflict of interest, is the "tribunal or court" advocate as found by the ONSC in Talisman. There is codification of the same under section 1(7) of the *LSA*.

***VOLUME #6(E): PUHL, TALISMAN, AND YELLOW CEDAR***

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

74. The legal test is not when an individual's personal interests could compromise judgment or actions in discharging job duties but the legal test is whether the **Appellant** has established on a balance of probabilities that a fair-minded and reasonably informed member of the public would conclude the removal of the

***VOLUME #6(F): SEMINAL POINT – COI COMING TO PASS FOR JUSTICE SHORE AS A RESULT OF THE MISCONDUCT, MISCHIEF AND FRAUD OF MR. PAPADIMITROPOULOS***

75. To belabour the point, the decision of the Tribunal dismissing the Applicant's COI Motion allowed Mr. Papadimitropoulos to remain as a representative whether or not he was in the forefront or back-office, declared or not. However, the difference now is that none of the tribunal decision makers were his counsel in a matrimonial litigation spanning some three years and ending in a divorce decree, and then issuing decisions involving him. However, that COI has come to pass on or around January 8, 2024.

***Volume #6(G): Martin – the administration of justice***

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

77. The expression "substantial risk" in the definition of "conflict of interest" describes the *likelihood* of impairment as opposed to nature and severity. substantial risk is one that is significant and plausible EVEN IF it is NOT certain or even probably that it will occur. There must be more than a "mere possibility" that impairment will occur. Ergo, not a "mere possibility" but a "possibility".

### *VOLUME #6(F): DUTIES TO THIRD PERSONS MATTER UNDER THE LSO BY-LAWS AND RULES OF PROFESSIONAL CONDUCT*

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

79. In *Bose,* The Honourable Mr. Justice Perrell on the Ontario Superior Court of Justice found that Canada has taken on an increasingly stricter approach to the law of COI by way of reference to cases involving *Martin* to *Neil*

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

### **VOLUME #6(G): FAMILY LAW AND FAMILY LAW FIRMS INVOKE DIFFERENT PRINCIPLES**

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

82. It is most fitting to note there are ongoing obligations arising from a "family dispute" between the Divorced Husband Conflicted Lawyer (Mr. Papadimtriopoulos) and the Individual Policyholder that are in perpetuity.

## *VOLUME #7: THE LEGAL BASES RELATING TO A REASONABLE APPREHENSION OF A BIAS ("RAOB") INVOLVING A JUSTICE*

### *VOLUME #7(A): THE TEST FOR RAOB*

83. The test for a reasonable apprehension of bias is fairly straight forward. It was first articulated by Supreme Court of Canada in Committee for Justice and Liberty v. National Energy Board, as follows:

> ". . . what would an informed person, viewing the matter realistically and practically — and having thought the matter through — conclude. Would he think that it is more likely than not that [the decision-maker], whether consciously or unconsciously, would not decide fairly."

84. This test — what would a reasonable, informed person think — has consistently been endorsed and repeated by the Supreme Court of Canada, most recently in *Yukon Francophone School Board, Education Area #23 v. Yukon* (*Attorney General).*

85. As such, the possibility of bias is not assessed from the perspective of the reviewing judge or the litigants themselves. Rather, the assessment of bias must be holistic and contextual, requiring "a careful and thorough examination of the proceeding", 6 to determine what a reasonable, neutral observer would see. The court reviews the ***FULL RECORD*** in its entirety "to determine the cumulative effect of any transgressions or improprieties".

86. By the Applicant being deprived of his right to upload his filed documents into Case Center, contrary to the explicit language in the JR Divisional Court Guide, it is unclear if Justice Shore had access to the Applicant's Filed Documents which an Originating Process, Factum, Application Record, Affidavit #1 and #2, and others.

## **VOLUME #7(B):** POTENTIAL GROUNDS FOR BIAS

87. There are six potential grounds for bias by which the impartiality of judges and administrative decision-makers can be brought into question under Canadian law.

88. This typology has been adapted from the categories formulated by Bryden, Philip, and Jula Hughes. "Legal Principles Governing the Disqualification of Judges." Available at SSRN 2473557 (2014) ["*Bryden & Phillips, Legal Principles of Disqualification*"].

a. Pecuniary or Personal Interest;
b. Personal Relationships;
c. **Past Associations** with Litigants or their Representatives; and
d. Prior judicial involvement with litigants.

89. There is no dispute that pursuant to the *LSA*, as a result of the substantial amendments in 2006 pursuant to the *Access To Justice Act, 2006*, that a representative need not be counsel of record. However, as per the record of proceeding in the LAT Appeal, pursuant to the contents required by the *SPPA*, section 20, the decision that allowed Mr. Papadimitropoulos remain as a binding one herein. If not a COI then, then certainly a COI came to pass now.

## **VOLUME #7(C): RECUSAL PROCEDURE**

90. For example, in *Benedict v. Ontario* the provincial Crown moved to disqualify the motion judge on a reasonable apprehension of bias, as the motions judge was a plaintiff in an ongoing wrongful dismissal action against the Crown in a case similar to the employment-related claim before her. The Crown appealed after the judge refused to recuse herself. The Ontario Court of Appeal disqualified the judge, holding that any decision she reached which was unfavourable to the Crown could be perceived as advancing or vindicating her own claim.

***VOLUME #7(D): PERSONAL RELATIONSHIPS***

91. This class of bias relates to situations where the adjudicator has a sufficiently close relationship with a person involved in the proceeding (e.g. witnesses, parties, counsel, etc.) that renders him or her incapable or potentially incapable of judging impartially. In these instances, the impartiality can be in the form of favouritism[xviii] or personal animus[xix] depending on the history of the relationship.[xx]

92. Three considerations are important here: (1) whether it is a current or a previous relationship (existing relationship give rise to greater apprehension of bias); (2) The nature of the relationship (i.e. friendship, family, professional, or business); and (3) The depth of the relationship (i.e. cordial, formal, social, intimate). [xxi]

***VOLUME #7(E): PERSONAL RELATIONSHIPS WITH LITIGANTS AND THEIR REPRESENTATIVES***

93. Judges often disqualify themselves where the matter before them involves former clients or law partners.

94. The SCC found in its seminal case of *Weykaum* Indian Bank at paragraph 65:

> "Second, when parties say that there was no actual bias on the part of the judge, they may be conceding that the judge was acting in good faith, and was not consciously relying on inappropriate preconceptions, but was nevertheless unconsciously biased. In R. v. Gough, [1993] A.C. 646 (H.L.), at p. 665, quoting Devlin L.J. in The Queen v. Barnsley Licensing Justices, [1960] 2 Q.B. 167 (C.A.), Lord Goff reminded us that:
>
> Bias is or may be an unconscious thing and a man may honestly say that he was not actually biased and did not allow his interest to affect his mind, although, nevertheless, he may have allowed it unconsciously to do so. The matter must be determined upon the probabilities to be inferred from the circumstances in which the justices sit."

95. Put another way, is it more likely than not that it can inferred, from an objective person's perspective, that Madam Justice Shore was not actually biased and did not allow her interest as being a partner of the law firm of Epstein Cole LLP during the time of a firm's representation of Mr. Papadimitropoulos but nonetheless the appearance of mischief and misconduct is one that this ONSC (Divisional Court) must distance itself from an appearance standpoint.

*96. What would an informed person, viewing the matter realistically and practically – and having thought the matter through – conclude? Would this person think that it is more likely than not that Binnie J., whether consciously or unconsciously, did not decide fairly?*

97. There are no textbook instances.

98. Whether the facts, as established, point to financial or personal interest of the decision-maker; present or past link with a party, counsel or judge; earlier participation or knowledge of the litigation; or expression of views and activities, they must be addressed carefully in light of the entire context. There are no shortcuts.[xxii]

99. The fact that a judge would have recused himself or herself ex ante cannot be taken to be determinative of a reasonable apprehension of bias ex post.[xxiii]

100. The following statement of Laskin C.J., in *Committee for Justice and Liberty v. National Energy Board*, *supra*, at p. 388:

> "Lawyers who have been appointed to the Bench have been known to refrain from sitting on cases involving former clients, even where they have not had any part in the case, until a reasonable period of time has passed. *A fortiori*, they would not sit in any case in which they played any part at any stage of the case. This would apply, for example, even if they had drawn up or had a hand in the statement of claim or statement of defence and nothing else (see: paragraph 80 of *Weykaum*).

101. While commending Madam Justice Shore for being ready, willing and able, she (and this Court) must live by the very representations that she made to the Judicial Advisory Committee for it to rely upon in determining her high level qualification to become a justice and ensure not only the impartiality of her actions but the *appearance of the same*.

102. It is not the grounds for automatic disqualification but it serves as a strong evidentiary foundation. It suggests that a reasonable and right-minded person would likely view unfavourably the fact that the judge acted as counsel in a case over which he or she is presiding, and could take this fact as the foundation of a reasonable apprehension of bias (see: paragraph 81 of *Weykaum*).

***VOLUME #7(F): GOVERNMENT PRACTICE IS DIFFERENT THAN PRIVATE PRACTICE***

103. Furthermore, in assessing the potential for bias arising from a judge's earlier activities as counsel, the reasonable person would have to take into account the characteristics of legal practice within the Department of Justice, as compared to private practice in a law firm. See the *Canadian Judicial Council's Ethical Principles for Judges*, supra, at p. 47.

***VOLUME #7(G): JUDGES' VOLUNTARY RECUSAL***

104. In Canada, the vast majority of recusal decisions are made by judges on their own motion. Judges are under an ethical and legal obligation to recuse themselves, if they believe they will be unable to judge impartially. In carrying out this responsibility, a judge is not required to consul with any other person, including with his or her Chief Justice.

105. If a judge is aware of any relationship or personal interest that raises a reasonable apprehension of bias, it is generally desirable that disclosure is made in advance of a hearing, so that the case may be reassigned.

***VOLUME #7(H): COURTS OF JUSTICE ACT: REASSIGNMENT***

106. Under the Ontario *Courts of Justice Act* (s. 75(1)(3)), it is the Chief Justice of a court or one of the Associate Chief Justices who is responsible for the assignment or reassignment of cases. However,

pursuant to section 77.04(1), the case management conference was required to be in front of the **same judge** who self-initiated (however coincidentally or unlikely, probabilistically speaking, that may seem) the same. As such, said Case Management Attendance Requirement must be nullified as per the Nullification Request. It is void and void *ab initio* not merely voidable.

107. In the alternative, it must be adjourned generally and indefinitely while all other duties and obligations of not only the Applicant but the respondents, and, where applicable, the staff of the ONSC (Divisional Court) must be complied with forthwith. There is no requirement of a case conference to be held in any proceeding let alone a judicial review proceeding which are to be summary in nature.

***VOLUME #7(I): NO UNIFORM PRACTICE BUT BEST GUIDANCE: "SEEK SUBMISSIONS"***

108. More obviously, the CJC notes that judges should not recuse themselves where the potential conflict of interest is "trifling" or unlikely to raise plausible basis for disqualification. However, where the potential for disqualification is arguable, or when an unexpected issue arises shortly before or during the proceeding, the judge is advised to make disclosure and to seek submissions from counsel.

***VOLUME #7(J): NO UNIFORM PRACTICE BUT BEST GUIDANCE: "OBJECT PROMPTLY"***

109. The Supreme Court of Canada affirmed in *Canada (Human Rights Commission) v. Taylor*, that where a party reasonably apprehensive of bias fails to allege a violation of natural justice at "the earliest practicable opportunity", there is an implied waiver of any future right to complain about bias. Cartwright J. put the rule as follows, by way of dicta, in delivering the Supreme Court judgment in *Ghirardosi v. Minister of Highways for British Columbia*:

> "There is no doubt that, generally speaking, an award will not be set aside if the circumstances alleged to disqualify an arbitrator were known to both parties before the arbitration commenced and they proceeded without objection.

110. Where both criteria are established, the reviewing court will often look to the failure to object or raise with suspicion, indicative of tactic to hold an objection in reserve in the event of an unfavourable ruling. This is especially the case where allegations of bias are raised on appeal at first instance. For instance, in *Eckervogt v. British Columbia (Minister of Employment and Investment)*, the Court of Appeal noted that it is "most unsatisfactory" for the court to hear an allegation of bias in the first instance:

> "I do not think it is proper for a party to hold in reserve a ground of disqualification for use only if the outcome turns out badly. Bias allegations have serious implications for the reputation of the tribunal and
> in fairness they should be made directly and promptly, not held back as a
> tactic in the litigation. Such a tactic should, I think, carry the risk of a

> finding of waiver. Furthermore, the genuineness of the apprehension becomes suspect when it is not acted on right away.[emphasis added]."

111. Hence the critical importance to formally note objections in the record. The *JRPA* Applicant has been anything but "silent" but ensuring that he had objected, reserved his rights and promptly notified the ONSC Registrar.

***VOLUME #7(J): NO UNIFORM PRACTICE BUT BEST GUIDANCE: MOTION OR REQUEST***

112. ***Mullan and Boyle*** suggest that objections to an adjudicators presence should be made in writing, preferably by way of a formal motion to recuse, "or at the very least by an unambiguous request, and not just by way of general expressions of potential concern".

113. In the context of a "non-endorsement" or "non-order" by Justice Shore, the Applicant respectfully submits that a request, as opposed to a motion, is most appropriate considering the same. The Applicant, the "Requestor" herein, will provide a "record" so it can be stamped accordingly on the same or by way of separate document at the election of the Court.

114. In this manner, Rule 59.06 of the Civil Rules need not be addressed and it is unlikely it could be addressed on strict reading of the same but would have, hypothetically speaking but for the RAOB herein, by analogy under the Civil Rules.

**VOLUME #8: CONCLUDING REMARKS WITH THANKS TO THIS COURT FOR DECIDING THE RESPECTFUL REQUESTS**

**VOLUME #8(A): MISUSE OF CONFIDENTIAL INFORMATION: NORMALLY NOT SUSCEPTIBLE TO PROOF (OR DISPROOF)**

115. This principle, legal in nature, is cited for the purposes that the ***JRPA* Applicant** cannot prove or disprove what was shared in a privileged setting between **Epstein Cole LLP** and Mr. Andrew Papadimitropoulos. All that he can prove is that current counsel of record in this ***JRPA* Proceeding** admitted (but misrepresented) that Mr. Papadimtripoulos could not be involved in the LAT Appeal. If he could not be involved in any way in the LAT Appeal, then there is agreement between the Applicant and the respondent insurance companies that his legal relationships, caused by a separation and a final divorce decree in 2019, along with his continuing duties pursuant to contract to cease and desist in any form of direct (Ms. Nicole Artopoulos (the "Named Individual Insured" in the **Insurance Policy** (the very "insurance policy" cited by VC Morrissette at paragraph 27 of the VCM Reasons (see: Oral Compendium, Tab 1, page 9) or indirect contact (which would be the Applicant)).

116. Litigation is not a "tea party". That being said, this Court's time need not be wasted in the minutia of the unlawful and, frankly, rather frightening conduct (from a mental health standpoint) that he engaged in by reference to affidavit #3 of the *JRPA* Applicant, made on January 8, 2025, by appending the very affidavits in the record of proceeding that he relied upon in support of his COI Motion.

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

118. With the benefit of hindsight, the Applicant's submissions in Spring 2024 were now somewhat prophetic:

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

119. It was prophetic because of the reference to 'future related proceedings" and it has come to roost yet again.

120. It is not in the Applicant's DNA or makeup to feel sorry for himself so nobody else needs to.

121. His primary concern is preventing this type of conduct from happening again (if systemic) to others who do not have the ability, determination, and/or skill to take on a collection of bullies.

122. To the extent that it is idiosyncratic to the *JRPA* Applicant, then it bolster the Applicant's respectful submission that the Recusal Request, Nullification Request, Adjournment Request, and Staff Direction Requests must be granted.

123. As found in *Dervisholli*, quoted by Madam Justice Marlyss Edwards in Transamerica, once a **NON-***SABS* Insurer collects, accesses, uses or discloses "**Confidential Information**" from the "Accident Benefits file" of '*SABS* insurer', said "counsel or licensees" are place in an irreconcilable conflict of interest. The only remedy that must be granted is their permanent disqualification and removal from any and all files which they are involved in. Unfortunately, this Tribunal, unlike the sound reasons for decision by Vice Chair McGee in *Mansuri* (which is well known to this Court by way of subsequent judicial review), did not decide in accordance with the law at that time. However, it turned out to be to the detriment to the respondent insurance companies considering their failure to comply with filing (not 'exchanging of materials' whatever that means in fact or at law) deadline of the *Civil Rules*.

124. In fairness to the Tribunal, the Applicant did not have said evidence of the mischief with respect to the forger of the "As per A. Nurse" 'signature' (used only for reference and not in the legal sense or any admission of its validity). The Applicant framed the legal issues as follows:

> *Has the Appellant in light of the filing and serving of the perfected Joint Hearing Record as of Friday, April 26, 2024 proven on a balance of probabilities that a fair minded and reasonably informed member of the public would conclude that the circumstances herein could be (a possibility) of perceived conflict of interest such that an order is required, for the proper administration of justice, regarding the disqualification and restraining for any further involvement, in TD Claim #3, this* ***LAT Proceeding*** *and any Future Related LAT Proceedings of the Mr. Papadimitropoulos, Nieuwland, Karat, Moraes, Saeed, and any other unknown*

*individuals who are Associates, Affiliated, Affiliated Entities, Supervisees, Assignees, Joint Entity Affiliated Providers et al (who must receive a copy of a LAT Order)?*

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

125. Simply put, since the record of proceeding is replete with only uncontroverted evidence of the Applicant regarding this rather fortuitous discovery (see: images above) for his self-interest and counter to that of the initial adjuster for SNIC and Mr. Andrew Papadimtriopoulos, Mr. Nieuwland's representations in defiance and response to the COI orders sought in NOM #6 and NOM #9 now bear heavily on Justice Shore recusing herself through no per se fault of her own but solely based on her former partnership status at **Epstein Cole LLP**. However, said law firm agreed to represent this "individual" and with that comes potential consequences that follow lawyers into retirement and into the bench. Simply put, the law firm cannot have it both ways where they accept funds for services and not have to bear the consequences (which is merely herein that Justice Shore cannot adjudicate this JRPA Proceeding in any fashion even at the triage or case management phase)

## VOLUME #9: RECAP OF RELIEF SOUGHT

126. As opposed to making a public spectacle of the above with a reported decision, the Applicant sincerely trusts that this Honourable Court appreciates resolving the above issues with findings, orders or granting of the Requested Relief in the Respectful Requests on an expedited basis:

1. The Honourable Madam Justice Shore is disqualified from any further involvement in this *JRPA* Proceeding (the "**Disqualification Request**" or the "**Recusal Request**");
2. The Case Management Appearance Requirement is declared as void and void *ab initio* (not merely voidable) (the "**Nullification Request**");
3. A general and indefinite adjournment of the case conference pursuant to 77.04(1)(b) of the *Civil Rules* by the Associate Justice (the "**Adjournment Request**");
4. A direction by the Honourable Chief Justice, pursuant to section 76 of the *CJA*, that the Registrar shall accept all outstanding requisition filings and provide confirmation of the same to the *JRPA* Applicant and respondents; and
5. A direction by the Honourable Chief Justice, pursuant to section 76 of the *CJA*, that the Registrar comply with her duties (by law), pursuant to 68.05(2) of the *Civil Rules*[xxiv], and provide the parties with a "Notice of Listing For Hearing".

("d" and "e" together, the "**Staff Direction Requests**").

(collectively, the "**Respectful Requests**" or "**Requests**").

127. In support of the Respectful Requests, the JRPA Applicant relies on the filed materials in the record of proceeding herein and those documents that the JRPA Applicant has tendered for filing which remain in "processing status" and/or are required to be issued or deemed filed by the ONSC Divisional Court Registrar with reference to Rule 4.08 and/or section 76 of the *CJA*.

128. All of which is respectfully submitted (with the filed affidavit #3 of the *JRPA* Applicant on January 8, 2025, as "materials" in support of the same) to the ONSC (Div. Ct.) (Chief Justice and Associate Chief Justice (where applicable above)) on Thursday, January 16, 2025:

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

Appendices of the *JRPA* Applicant's Factum

APPENDIX #1

January 16, 2025

VIA EMAIL

URGENT – NOTICE

Court file number: Court File No. DC-24-00000718-00JR
Type of document: email (three outstanding requisitions)
Short title of proceeding: McLean v. TDHA et al
Party: Mr. Kevin A. McLean, self-represented, Applicant, e: mcleansettlement@gmail.com;

Re: confirmation of the correct or preferred procedure to address my nullification request of Justice Shore initiated case management appearance requirement (the "**Case Management Appearance Requirement**") (the "**Nullification Request**") (see: affidavit #3 herein)

Re #2: recusal request of Madam Justice Shore (the "**Recusal Request**")

Re #3: to the extent applicable – dependent on other factor – the assignment request or reassignment

Re #4: Materials to follow today

Dear Madam Registrar Clegg:

1. I write regarding the above. I remain of the view and position, with great respect, that Justice Shore must recuse herself and withdraw her self-initiated Case Management Appearance Requirement.

2. You will kindly recall that I kindly informed you that I would review the law with respect to the preferred procedure. In that vein, There is no uniform practice in Canada with regard to raising the allegation of bias or a reasonable apprehension of bias at trial. Thus, the exact procedure to be followed in Ontario is unsettled (see: Paul Perell, "The Disqualification of Judges and Judgments on the Grounds of Bias or Reasonable Apprehension of Bias" (2004), 29 The Advocates' Quarterly 102, at 114 [Perell, "The Disqualification of Judges"].

3. Pursuant to our Courts of Justice Act, section 75(1) is relevant:

> Powers re sittings and assignment of judicial duties
>
> 75 (1) The powers and duties of a judge who has authority to direct and supervise the sittings and the assignment of the judicial duties of his or her court include the following:
>
> 1. Determining the sittings of the court.
>
> 2. Assigning judges to the sittings.
>
> 3. Assigning cases and other judicial duties to individual judges

4. As such, my request will be directed to the Honourable Chief Justice of the ONSC The Honourable Geoffrey B. Morawetz Chief Justice of the Superior Court of Justic and The Honourable Faye E. McWatt.

5. As noted, I have already filed my affidavit #3 on January 8, 2025, in support (i.e. materials exchanged already in support but also filed) of my Nullification Request and Request.

6. As noted by our SCC in *Newfoundland Telephone Co. v. Newfoundland (Board of Commissioners of Public Utilities)*, 1992 CanLII 84 (SCC), the damage caused by the reasonable apprehension of bias ("RAOB") cannot be remedied by Justice Shore. The only solution is the withdrawal of her Case Management Appearance Requirement.

7. The materials shall follow in short order which will be in the nature of a request with reliance on affidavit #3.

8. In relation to The Honourable Madam Justice Shore, and which will be relied upon in my requests of this Honourable Court, and as a brief "sneak preview" to the main argument, I note the following and certainly agree with Justice Shore's representations to the federal courts judicial appointment committee [hyperlinked to the specific paragraph for ease of reference]:

> "Vital to the Canadian system is the impartiality of a judge. This is different than the system in the United States. In Canada, judicial independence is viewed as vital to fostering public confidence in the fairness and objectivity of the justice system. The Supreme Court of Canada has described judicial independence as "the cornerstone, a necessary prerequisite for judicial impartiality."
>
> The Honourable Sharon Shore of our ONSC also made a statement to the Judicial Advisory Committee[xxv] that this Applicant certainly agrees with as follows:
>
> Last, but not least, is integrity. I have always tried to conduct my personal and professional life with integrity. One of the lessons I learned from my mentors is that it takes a lifetime to build your reputation, and only minutes to destroy it.

9. I repeat and rely upon the previous supra in this email thread and explicitly repeat and rely upon section 76 of the *CJA*. I note the importance of the record of this proceeding being complete, accurate and up-to-date for a variety of purposes not limited to the requirement it be so for my requests.

10. Thank you in advance for drawing this email and my affidavit #3 to the attention of the Chief Justice of the ONSC and the Associate Justice of the ONSC with the proviso that my written argument for my above noted requests will follow today.

Endnotes

[i]68.05(2) When the certificate of perfection has been filed, the registrar shall place the application on a list for hearing and give notice of listing for hearing (Form 68B) by mail to the parties and the other persons named in the certificate of perfection. R.R.O. 1990, Reg. 194, r. 68.05 (2).

[ii]Denoted *supra*

[iii]Where Mr. McLean's FIPPA request was delivered

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

[v]Denoted *supra*

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

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

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

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

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

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

[xi]Where Mr. McLean's FIPPA request was delivered

[xii]https://www.canlii.org/en/commentary/doc/2015CanLIIDocs5022#!fragment//BQCwhgziBcwMYgK4DsDWszIQewE4BUBTADwBdoByCgSgBpltTCIBFRQ3AT0otokLC4EbDtyp8BQkAGU8pAELcASgFEAMioBqAQQByAYRW1SYAEbRS2ONNWpA:~:text=Public,reality.

[xiii]68.05(2) When the certificate of perfection has been filed, the registrar shall place the application on a list for hearing and give notice of listing for hearing (Form 68B) by mail to the parties and the other persons named in the certificate of perfection. R.R.O. 1990, Reg. 194, r. 68.05 (2).

[xiv]Ironically, the same language under section 5 of the SPPA that is at issue in the JRPA Proceeding

[xv] "deliver" means serve and file with proof of service, and "delivery" has a corresponding meaning (see: Rule 1.03)

[xvi] "factum" includes a book of authorities, if one is required by rule 4.06.1 (see: Rule 1.03(1));

[xvii]These references are to the "hearing book" or "hearing record" at the time and are part of the "record of proceeding" which remains the obligation of the Tribunal to file the same forthwith.

[xviii]See G.W.L. Properties Ltd. v. W.R. Grace & Co. of Canada Ltd., 1992 CanLII 934 (BC CA). (There was no RAOB where brother of a pre-trial management judge was associated with the plaintiff's law firm in a major product liability case. The interlocutory nature of the judge's role, short period remaining until trial, and inconvenience of recusal were relevant factors).

[xix]See Blanchette v. C.I.S. Ltd., [1973] SCR 833, 1973 CanLII 3 (SCC). (The trial judge sitting an insurance defence matter was disqualified for a RAOB as he had actively pursued claims against the defendant-insurer on behalf of members of his family

[xx]Kligman, "Bias", supra note 17 at 1-6.

[xxi]Bryden & Phillips, Legal Principles of Disqualification", supra note 15 at 58-63.

[xxii]https://canlii.ca/t/51pj#par77

[xxiii]https://canlii.ca/t/51pj#par78

[xxiv]68.05(2) When the certificate of perfection has been filed, the registrar shall place the application on a list for hearing and give notice of listing for hearing (Form 68B) by mail to the parties and the other persons named in the certificate of perfection. R.R.O. 1990, Reg. 194, r. 68.05 (2).

[xxv]Under the new judicial application process introduced by the Minister of Justice on October 20, 2016, any interested and qualified Canadian lawyer or judge may apply for federal judicial appointment by completing a questionnaire. The questionnaires are then used by the Judicial Advisory Committees across Canada to review candidates and submit a list of "highly recommended" and "recommended" candidates for consideration by the Minister of Justice (see: https://www.canada.ca/en/department-justice/news/2018/12/the-honourable-sharon-shores-questionnaire.html)

# TAB 2:

Court File No. DC-24-00000718-00JR
Applicant's Motion #2 (Motion in Writing; Request to Convert Motion into Motion for Judgment)

Court File No.

ONTARIO COURT OF JUSTICE (DIVISIONAL COURT)

BETWEEN:

**KEVIN ALEXANDER MCLEAN**

APPLICANT

- and -

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

RESPONDENTS

NOTICE OF APPLICATION TO DIVISIONAL COURT FOR JUDICIAL REVIEW

TO THE RESPONDENTS:

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

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

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

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

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

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

Date:

Issued by

Address of Local Registrar court office Divisional Court

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

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

AND TO:

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

*APPLICATION*

**Volume #1: Relief Sought**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

q. Costs in favour of the Applicant; and

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

**Volume #2: The Grounds for the Application**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**Volume #3: Documentary Evidence**

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

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

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

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

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

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

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

(g) Such other affidavit material and evidence as counsel may advise and this Honourable Court may deem proper.

November 15, 2024

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Electronically filed / Déposé par voie électronique : 03-Feb-2025
Toronto Superior Court of Justice / Cour supérieure de justice


**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

a. (see: pages 70 to 132)

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

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

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

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

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

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

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

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

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

# TAB 3:

Court File No. DC-24-00000718-00JR
Applicant's Motion #2 (Motion in Writing; Request to Convert Motion into Motion for Judgment)

Divisional Court File No.: 718/24

**ONTARIO SUPERIOR COURT OF JUSTICE**
**(DIVISIONAL COURT)**

B E T W E E N:

**KEVIN ALEXANDER MCLEAN**

Applicant

**– and –**

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

Respondents

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## NOTICE OF APPEARANCE

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The Licence Appeal Tribunal intends to respond to this application.

November 27, 2024

**Licence Appeal Tribunal**
Tribunals Ontario, Legal Services
15 Grosvenor St, Ground Floor
Toronto, ON M7A 2G6

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Divisional Court File No.: 718/24

| | | |
|---|---|---|
| MCLEAN<br>Applicant | - and - | TD HOME AND AUTO INSURANCE COMPANY ET AL.<br>Respondents |

**ONTARIO SUPERIOR COURT OF JUSTICE**
**(DIVISIONAL COURT)**

PROCEEDING COMMENCED AT TORONTO

## NOTICE OF APPEARANCE

**Licence Appeal Tribunal**
Tribunals Ontario, Legal Services
15 Grosvenor St, Ground Floor
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# TAB 4:

Court File No. DC-24-00000718-00JR
Applicant's Motion #2 (Motion in Writing; Request to Convert Motion into Motion for Judgment)

Divisional Court File No.: 718/24

**ONTARIO SUPERIOR COURT OF JUSTICE**
**(DIVISIONAL COURT)**

BETWEEN:

**KEVIN ALEXANDER MCLEAN**

Applicant

**– and –**

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

Respondents

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## NOTICE OF APPEARANCE

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The Respondents, TD HOME AND AUTO INSURANCE COMPANY, SECURITY NATIONAL INSURANCE COMPANY and TD GENERAL INSURANCE COMPANY, intend to respond to this Application.

Date: December 3, 2024

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Electronically filed / Déposé par voie électronique : 03-Feb-2025
Toronto Superior Court of Justice / Cour supérieure de justice



**GOLLAN**
Applicant

and -

**SECURITY NATIONAL INSURANCE COMPANY et al**
Respondents

**Divisional Court File No.: 718/24**

**ONTARIO SUPERIOR COURT OF JUSTICE**
**(DIVISIONAL COURT)**

PROCEEDING COMMENCED AT TORONTO

## NOTICE OF APPEARANCE

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# TAB 5:

Court File No. DC-24-00000718-00JR
Applicant's Motion #2 (Motion in Writing; Request to Convert Motion into Motion for Judgment)

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

ONTARIO COURT OF JUSTICE (DIVISIONAL COURT)

BETWEEN:

**KEVIN ALEXANDER MCLEAN**

APPLICANT

- and -

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

RESPONDENTS

# APPLICANT'S FACTUM

## VOLUME # #1: STATEMENT OF JUDICIAL REVIEW APPLICATION

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**VOLUME #** #4(A): Issues

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

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

**VOLUME #4**(B): Law

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**VOLUME #** #4(III): Argument

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**VOLUME #**5: Conclusion and Orders Sought

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

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

**VOLUME #5(B):** Preliminary Orders

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

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

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

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

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

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

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

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

74. The Applicant seeks the following final orders:

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

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

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

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

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

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

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

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

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

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

## ***APPENDICES OF THE JRPA APPLICANT'S FACTUM***

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

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

a. An Order correcting the "date of the order" from September 6, 2024 to September 13, 20242;

b. An Order correcting **paragraph 2** from "was issued to the parties" to the following in substance "was issued to the Appellant and TDGIC, which was and is a non-party pursuant to the retroactive nature of my order issued on June 20, 2024, and released on June 21, 2024. As a parenthetical note, the Appellant sought clarification of my order in relation to this NOM #8 to confirm that the retroactive nature of the ordered changes from TDGIC to SNIC only related to documents and orders issued by the Tribunal and not those of TDGIC from January 30, 2024, to June 21, 2024. I confirmed the same in my reasons for decision in relation to the Appellant's order seeking clarification, which was his NOM #10;

c. An Order correcting **paragraph #2**, **sentence #2**: [this is corrected by the change above in Order #2];

d. An Order correcting **paragraph #3** to: from "on consent of the parties" to "by TDGIC not opposing the relief sought in NOM #8 (except costs) and the Appellant proceeding with his motion unopposed";

e. An Order correcting **paragraph #5** as follows in substance: [to be consistent between sentence #1 and sentence #2 as sentence #1 references twelfth, thirteenth, and fourteenth and sentence #2 references "NOM #13, NOM #14, and NOM #15"];

f. An order correcting the *"similar error" [technical deficiency error]*, in the form of incorrect language, at **paragraph 12**, as submissions are not affidavit evidence. Further, an order specifically correcting paragraph 12, sentence #2, from "He submits that he made demands..." to "He swore affidavit evidence that he made demands upon TDHA and exhibited the emails he sent to TDGIC along with filing a certificate of service that delivered the hearing brief, which was indexed, tabulated and consecutively numbered pursuant to *LAT Rule 9.4.5.*, on July 11, 2024. As the Tribunal did not provide TDGIC with an opportunity for submissions, contrary to LAT Rule 9.2.2., the Tribunal did not have the benefit of any written submissions, affidavit evidence or authorities."

g. An order correcting paragraph #18 as follows with the inclusion of the technically correct language and facts: was TDGIC. While TDGIC was the

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

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

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

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

i. Within the filed Appeal, the Appellant utilized the definition of TD SNIC. While the Appellant could not input the entirety of TD Insurance Meloche Monnex (Security National Insurance Company), he used TD Insurance with the definition of "TD SNIC" within the pleading for further specification. Attached to his pleading with the required
listed key documents were four pre-pleading affidavits that all referenced TD SNIC, which contained the "Denial Letters" therein.

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

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

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

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

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

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

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

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

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

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

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

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

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

***APPENDIX #2: REG 283***

**ONTARIO REGULATION 283/95**

**DISPUTES BETWEEN INSURERS**

Last amendment: 126/19.

***This Regulation is made in English only.***

**0.1** In this Regulation,

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

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

"completed application" means a completed and signed application;

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

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

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

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

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

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

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

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

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

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

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

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

(8) In subsection (7),

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1. The date and location of the examination.

2. The insured person’s entitlement to be represented in the manner described in subsection (5).

3. The reason for the examination.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**PART VIII**
**PROCEDURES FOR CLAIMING BENEFITS**

**General**

**Notice to insurer and application for benefits**

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

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

[Nota bene: Duties of the First Notified Insurer]

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

(a) the appropriate application forms;

(b) a written explanation of the benefits available;

(c) information to assist the person in applying for benefits; and

(d) information on the election relating to income replacement, non-earner and caregiver benefits, if applicable. O. Reg. 34/10, s. 32 (2).

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

1. The name, address, gender and date of birth of the person.

2. The date of the accident.

3. Particulars of the automobile insurance policy under which the person asserts he or she is entitled to a benefit or benefits, including,

i. the name of the insurer,

ii. the policy number, and

iii. the name of the person to whom the policy was issued.

4. The claim number assigned by the insurer.

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

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

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

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

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

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

[Nota bene: Duties of the First Insurer]

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

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

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

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

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

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

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

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

(a) 45 days after the day the insurer receives the completed and signed application; or

(b) 10 business days after the day the applicant complies with any request made by the insurer under subsection 33 (1) or (2). O. Reg. 34/10, s. 32 (10).

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

**Application**

**36.** (1) In this section and section 37

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

(a) pay the specified benefit;

(b) give the applicant a notice explaining the medical and any other reasons why the insurer does not believe the applicant is entitled to the specified benefit and, if the insurer requires an examination under section 44 relating to the specified benefit, advising the applicant of the requirement for an examination; or

(c) send a request to the applicant under subsection 33 (1) or (2). O. Reg. 34/10, s. 36 (4).

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

(a) pay the specified benefit; or

(b) give the applicant a notice described in clause (4) (b). O. Reg. 34/10, s. 36 (5).

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

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

(a) give a copy of the report to the applicant and to the person who completed the disability certificate submitted with the application; and

(b) provide the applicant with a notice indicating the amount, if any, that the insurer agrees to pay in respect of the specified benefit, the amount, if any, the insurer refuses to pay in respect of the

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

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

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

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

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

***APPENDIX #4: INSURANCE ACT, SECTIONS 224 AND 268***

***[SQUARE BRACKETS ARE THE APPLICANT'S]***

**PART VI**
**AUTOMOBILE INSURANCE**

**Interpretation, Part VI**

**224** (1) In this Part,

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

**Fees and Regulations**

**Regulations**

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

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

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

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

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

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

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

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

**Statutory accident benefits**

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

**Liability to pay**

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

1. In respect of an occupant of an automobile,

i. the occupant has recourse against the insurer of an automobile in respect of which the occupant is an insured,

ii. if recovery is unavailable under subparagraph i, the occupant has recourse against the insurer of the automobile in which he or she was an occupant,

iii. if recovery is unavailable under subparagraph i or ii, the occupant has recourse against the insurer of any other automobile involved in the incident from which the entitlement to statutory accident benefits arose,

iv. if recovery is unavailable under subparagraph i, ii or iii, the occupant has recourse against the Motor Vehicle Accident Claims Fund.

**Liability**

(3) An insurer against whom a person has recourse for the payment of statutory accident benefits is liable to pay the benefits. R.S.O. 1990, c. I.8, s. 268 (3); 1993, c. 10, s. 1.[111]

**Choice of insurer**

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

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

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

**Same**

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

**Same**

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

**Same**

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

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

**Payments pending dispute resolution**

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

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

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

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

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

Key Regulation Changes 1. Deflection of Applications for Accident Benefits a) Upon request, an insurer must provide a claimant timely access to OCF-1: Application for Accident Benefits (OCF-1 application). (Section 2.1(2)) Individuals who are injured in automobile accidents often contact the insurance company that they believe is liable to pay accident benefits before they complete and send their OCF-1 application to the insurer. In many cases, claimants are not aware of the priority rules that determine which insurer is liable to pay them benefits. The Statutory Accident Benefits *Schedule* (*SABS*) requires an insurer to provide an OCF-1 application to an injured person who expresses an intention to make a claim for benefits. This requirement is now reinforced by section 2.1(2) of Ontario Regulation 283/95. b) An insurer must not impede claimants from submitting OCF-1 applications or redirect them to other insurers or the MVACF. (Section 2.1(5)) When a claimant first contacts an insurer following an accident, it is not always clear, based on information reported by the claimant, if that insurer is responsible for paying the accident benefits in accordance with the priority rules. It is inappropriate for the insurer to discourage the injured person from filing an OCF-1 application, for example on the grounds that there is no insurance coverage (e.g., due to a cancelled insurance policy), or that there is another insurer to whom the person should make his or her claim. Insurers must provide claimants who express an intention to make an accident benefits claim with an OCF-1 application and not direct them to file it with MVACF or another insurer. Section 2.1(5) of Ontario Regulation 283/95 prohibits the deflection of OCF-1 applications. This includes deflection on the grounds that it is not clear which insurer is

required to pay accident benefits. c) The first insurer that receives an OCF-1 application must pay accident benefits in accordance with the *SABS*. (Section 2.1(6)) In order to prevent delays in payments, Ontario Regulation 283/95 requires the first insurer that receives a completed OCF-1 application to pay the accident benefits, as long as the claimant meets the requirements of the *SABS*. Although an insurer may believe that it is not responsible for paying accident benefits under the priority rules, the process to transfer, dispute and recover paid benefits is set out in Ontario Regulation 283/95. d) An insurer that fails to comply with this section will reimburse the MVACF or another insurer all related legal fees, administrative costs and disbursements. (Section 2.1(7) Section 2.1 (7) has been added to Ontario Regulation 283/95 to confirm the ability to recover costs incurred by the MVACF or an insurer in the administration of a claim (including adjusting costs) from the non-compliant insurer. 2. Definitions of "First Insurer" and "Completed Application" Several amendments are intended to provide clarity on issues that have arisen since the release of Ontario Regulation 283/95 in 1995; such as what is a "first insurer" and "completed application". a) A "completed application" is defined as a completed and signed OCF-1 application. (Section 0.1) b)The insurer that first receives a completed OCF-1 application is the "first insurer" for the purposes of Ontario Regulation 283/95. (Section 2.1(6)) A "first insurer" may not refuse to respond to the application on the basis that the application is not from an "insured person", or that there was no relevant policy in place on the date of the accident (e.g., the insurance policy was cancelled, expired or never existed). c) The applicant shall complete the OCF-1 application that is provided by the insurer and send it to only one insurance company. (Section 2.1(4)) Claimants are required to submit a completed OCF-1 application to only one insurer. This is intended to avoid potential disputes over which insurer first received a completed application, rather than creating confusion by submitting OCF-1 applications to more than one insurer. 3. Time Limitations for Notifying Other Insurers of Liability a) Before initiating a dispute against the MVACF, an insurer is required to complete a reasonable investigation to determine if any other insurer(s) is/are liable to pay benefits in priority to the MVACF and provide the MVACF with the particulars and results of the investigation. (Section 3.1(2)(a) and (b)) Section 3 of Ontario Regulation 283/95 provides the first insurer 90 days from the receipt of the completed application to conduct a reasonable investigation. This time frame allows the insurer to conduct an investigation to determine whether another insurer is liable to pay benefits, and to deliver written notice to other insurers if it believes they are liable to pay for accident benefits under the priority rules. Ontario Regulation 283/95 provides an extension beyond 90 days only if the first insurer has made reasonable investigation of the claim but cannot reach a decision within the 90-day period. Section 3.1 requires an insurer that wishes to put the MVACF on notice of a dispute to first complete a reasonable investigation and provide the results of the investigation to the MVACF.

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

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

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

**APPENDIX #6**:AF-143, "Notice to Applicant of Dispute between Insurers"

Fillable/saveable:

AF-143E

**Form details**

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

## Notice to Applicant of Dispute Between Insurers

**Name of Applicant**

Last Name | First Name

Mr. ☐ Mrs. ☐ Ms. ☐

Street Address

City | Province | Postal code

Date of Accident: Day / Month / Year

This notice is to inform you that the insurer to whom you have applied for accident benefits claims that another insurer is responsible for paying these benefits. You may be required to assist the insurers in resolving their dispute by providing them with any information that may be needed to determine which insurer should be paying your accident benefits claim.

**You will continue to receive accident benefits that you are entitled to from the insurer that you applied to while the insurers attempt to resolve their dispute.**

You also have the right to object to your claim being transferred to another insurer. If you wish to object please complete Part 5 of this form and send it within 14 days to the insurer that is currently paying you accident benefits. If you object, you are entitled to participate in any proceeding that may take place to determine which insurer is responsible for paying accident benefits to you. If you do not object, you will not be permitted to dispute the transfer of your claim to another insurer.

If you have any questions about this notice, or about the process that insurers use to determine who is responsible for paying your claim, please contact the representative of the insurance company that is paying your accident benefits claim. The name and telephone number of the representative is listed in Part 1.

**Part 1: Insurer that You Applied to for Accident Benefits**

Company Name

Mailing Address

City | Province | Postal code

Contact Person/Representative | Phone No. ( )

**Part 2: Insurer(s) Notified to Pay Benefits** (by Insurer Listed in Part 1)

First Company Name

Mailing Address

City | Province | Postal code

Contact Person/Representative | Phone No. ( )

**Attach additional sheets if necessary.** ☐ **Additional sheets attached.**

Second Company Name

Mailing Address

City | Province | Postal code

Contact Person/Representative | Phone No. ( )

**Attach additional sheets if necessary.** ☐ **Additional sheets attached.**

**Part 3: Reasons** (Why Notice is Given to Other Insurers)

Details

Attach additional sheets if necessary. ☐ Additional sheets attached.

**Part 4: Signature of Insurer Representative**

Name Date

Signature

**Part 5: Objection to Transfer of Claim** (optional)

You can object to your claim being transferred to the insurer(s) referred to in Part 2 by completing this section and returning the form to the insurer that you applied to in Part 1 within 14 days.

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

Please check the box below and return this form to the insurer listed in Part 1 within 14, days only if you wish to object to your claim being transferred to another insurance company.

☐ I Object to the claim being transferred.

Name Date

Signature

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

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

[page 1]

"This notice is to inform you that the insurer[112] to whom you have applied for accident benefits claims[113] that another insurer[114] is responsible for paying[115] these benefits. You[116] may be required to assist the insurers[117] in resolving their dispute by providing them with any information that may be needed to determine which insurer[118] should be paying your accident benefits claim. You will continue to receive accident benefits that you are entitled to from the insurer[119] that you applied to while the insurers attempt to resolve their dispute.

[Applicant's transfer of claim objection rights]

You also have the right to object to your claim being transferred[120] to another insurer[121]. If you wish to object please complete Part 5 of this form and send it within 14 days to the insurer that is currently paying you accident benefits[122].

[Applicant's arbitration participatory rights]

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

If you have any questions about this notice, or about the process that insurers use to determine who is responsible for paying your claim, please contact the representative of the insurance company that is paying your accident benefits claim. The name and telephone number of the representative is listed in Part 1.[124]

## APPENDIX #7: REMITTANCE FORM PURSUANT TO FSRA REQUIREMENT

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

**Insurer Details**

Date of Remittance

Reporting Insurance Company

Name of Authorized Insurer Representative

Telephone Number | Email Address

**Decision Details**

Date of Decision

Arbitrator

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

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

| | | |
|---|---|---|
| ☐ First Insurer/Nexus | ☐ 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 | | ☐ Coverage Issues: Other Automobiles |
| ☐ One Year/Commencement | ☐ Priority Rules: Occupant | ☐ Appeal Pending (Forward appeal decision once it is received.) |
| ☐ Reasonable Investigation | ☐ Priority Rules: Non – Occupant Struck By Vehicle | ☐ Priority Rules: Involved Vehicle |
| ☐ Restitution | | |

Print Form | Clear Form | Save Form | Submit by Email

AF-082E (2023) © King's Printer for Ontario Page 1 of 1

## Endnotes

[1]AABS division
[2] Along with the interplay between the enabling statute (*Insurance Act*) and binding pieces of legislation (regulations) in *Reg 283*, *SABS* and *Reg 664*:
[3]Effective date
[4](see: *Legislation Act*, wherein a statute and regulations are both "legislation"),
[5]*Dunsmuir v. New Brunswick*, 2008 SCC 9 (CanLII), [2008] 1 SCR 190, <https://canlii.ca/t/1vxsm>, retrieved on 2024-12-10
[6]Mr. Nieuwland filed a DOR on behalf of SNIC on June 28, 2024.
[7](iii) concerns about the Tribunal's undue influence or lack of independence, even subconsciously, from the insurance companies due to it being the only non-state funded Tribunal of the 13 tribunals in "Tribunals Ontario"; and (iv) an investigation report involving Ms. Trina Morrissette from the federal government regarding her conduct as a lobbyist for the Canadian Red Cross ("CRC").[7] The Applicant says her conduct amounts to "similar fact evidence" and contextual evidence that arises as a result of the **VCM Decision**.
[8]Balance of probabilities standard: is it more likely than not that there will be a failure of justice by the delay.
[9]Mr. Nieuwland's recent email to this ONSC (Divisional Court) has reignited the subsequent issues: (i) whether insurance companies in a group of insurers are 'one and the same', 'also known as' or 'also referred as'; (ii) the rule in *Foss v. Harbottle*; (ii) the FSRA guidance on affiliated entities only have an exemption on the non-adjuster broker side, and (iv) the motives for why such insurance companies in the TDI Group would engage in such misconduct.
[10]In this regard, the **VCM Decision** has again put two administrative bodies, at least, in the FSRA and the Tribunal against each other when they operate under the same enabling statute (*Insurance Act*) and the participants (insured persons, service providers and insurance companies) must comply with the *UDAP Rule* (2022 *et seq*).
[11]The Applicant is seeking by his factum to be heard before a single justice of the ONSC, with leave, due to the urgency of the issues herein.
[12]all people are equal under the law and have the right to equal protection and benefits with SABS benefits for all similarly situated persons to this Applicant
[13]all people, institutions, and entities are accountable to the law; (iii) *transparency*: the law-making process is transparent
[14]people have access to justice through independent and impartial courts
[15] (and patently unreasonable)
[16](with no distinction between a breach of *SABS* and *Reg 283* (see: *Chubb Insurance Co. of Canada v. Zurich Insurance Company*, 2024 ONSC 2929 (CanLII), <https://canlii.ca/t/k4tln>, retrieved on 2024-12-10 ["*Zurich* 2024"],
[17]on account of technicalities in the language of the LAT Rules which was different from the time this ONSC (Div. Court) upheld the reconsideration decision of VC Trojek in *Jia*
[18]*The Personal Insurance Company v. Jia*, 2020 ONSC 6361 (CanLII), <https://canlii.ca/t/jb7qm>, retrieved on 2024-12-10
[19]*Harold The Mortgage Closer Inc. v. Chief Executive Officer of the Financial Services Regulatory Authority of Ontario*, 2024 ONSC 2236 (CanLII), <https://canlii.ca/t/k43bl>, retrieved on 2024-12-10
[20]*Volochay v. College of Massage Therapists of Ontario*, 2012 ONCA 541 (CanLII)
[21]*Volochay v. College of Massage Therapists of Ontario*, 2012 ONCA 541 (CanLII), at para 68, <https://canlii.ca/t/fsdgd#par68>, retrieved on 2024-12-10 https://canlii.ca/t/fsdgd#par68
[22](see: [U]nless exceptional circumstances exist, a court should not interfere in an administrative proceeding until it has run its course. The principle has particular force where adequate alternative remedies are available under the administrative scheme. Ordinarily an affected individual must pursue these remedies before seeking relief from the court. The Federal Court of Appeal has endorsed this approach as well in Dugré v Canada (Attorney General), 2021 FCA 8, at para 37, framing the rule against prematurity, or interlocutory relief, as "next to absolute".).
[23]Herein, a multiplicity of proceedings will be avoided and the law will be clarified and settled, while avoiding a return by this Applicant to make the same arguments that he would even if all of his benefits and quantum were found in his favour because the wrong party would be liable for the same and required to respond *post-facto* the conclusion of the Hearing Proper. In this regard, the Applicant herein confirms, by his authorized signature, that he would bring the same *JRPA* Application and he respectfully submits that the principle of mootness, cited by the SCC in *Borowski*,

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

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

> [16] Sanscon's Application was not brought before the Divisional Court, contrary to the Consolidated Practice Direction.
>
> [17] Sanscon's factum does not seek leave under s. 6(2) of the JRPA to have this matter heard, nor is it in the Notice of Application. It does not reference this court's jurisdiction or address why the Application was not brought before a single judge of the Divisional Court, sitting as a judge of the Superior Court of Justice.

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

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

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

[28]https://lso.ca/about-lso/legislation-rules/by-laws/by-law-7-1

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

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

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

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

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

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

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

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

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

[38] *Chubb Insurance Co. of Canada v. Zurich Insurance Company*, 2024 ONSC 2929 (CanLII), <https://canlii.ca/t/k4tln>, retrieved on 2024-12-10 (see: *Zurich 2024*, paragraph 8).
[39] *Chubb Insurance Co. of Canada v. Zurich Insurance Company*, 2024 ONSC 2929 (CanLII), <https://canlii.ca/t/k4tln>, retrieved on 2024-12-10 (see: *Zurich 2024*, paragraph 29).
[40]Herein, there was no evidence that TDHA paid any benefits but there was also no evidence that TDHA disputed its liability and obligations.
[41] *Chubb Insurance Co. of Canada v. Zurich Insurance Company*, 2024 ONSC 2929 (CanLII), <https://canlii.ca/t/k4tln>, retrieved on 2024-12-10 (see: *Zurich 2024*, paragraph 10).
[42]on a provisional basis but with an ability to step out of those shoes if the First Insurer avails itself to the *Reg 283* protections and obtain reimbursement from the liable insurer after provisionally responding to the Claimant (i.e. legal fees, disbursements, administration fees et al)
[43]*Zurich Insurance Co. v. Chubb Insurance Co. of Canada*, 2015 SCC 19 (CanLII), [2015] 2 SCR 134, <https://canlii.ca/t/gh85t>, retrieved on 2024-12-10
[44] *Chubb Insurance Co. of Canada v. Zurich Insurance Company*, 2024 ONSC 2929 (CanLII), <https://canlii.ca/t/k4tln>, retrieved on 2024-12-10 (see: *Zurich 2024*, paragraph 12).
[45] *Chubb Insurance Co. of Canada v. Zurich Insurance Company*, 2024 ONSC 2929 (CanLII), <https://canlii.ca/t/k4tln>, retrieved on 2024-12-10 (see: *Zurich 2024*, paragraph 14).
[46]Zurich Insurance v. Chubb Insurance, 2012 ONSC 6363 (CanLII), <https://canlii.ca/t/ftr4c>, retrieved on 2024-12-10
[47]As this ONSC will know, that is such a unique event by our SCC where they do not even wish to put any such amendments or clarity to a dissenting decision of the ONCA. While the justices in our province are not in the "business of counting their press clippings", it is a testament to how analytically sound The Honourable Justice Jurianz was in those dissenting reasons.
[48]Zurich Insurance Company v. Chubb Insurance Company of Canada, 2014 ONCA 400 (CanLII), <https://canlii.ca/t/g6vrk>, retrieved on 2024-12-10
[49]https://www.torontomu.ca/criminaljusticefirsts/courts/Russell-Juriansz/
[50]Zurich Insurance Company v. Chubb Insurance Company of Canada, 2014 ONCA 400 (CanLII), <https://canlii.ca/t/g6vrk>, retrieved on 2024-12-10
[51]Zurich Insurance Co. v. Chubb Insurance Co. of Canada, 2015 SCC 19 (CanLII), [2015] 2 SCR 134, <https://canlii.ca/t/gh85t>, retrieved on 2024-12-10
[52](see: *Zurich 2024*, paragraph 15).
[53]*Chubb Insurance Co. of Canada v. Zurich Insurance Company*, 2024 ONSC 2929 (CanLII), <https://canlii.ca/t/k4tln>, retrieved on 2024-12-10
[54] *Chubb Insurance Co. of Canada v. Zurich Insurance Company*, 2024 ONSC 2929 (CanLII), <https://canlii.ca/t/k4tln>, retrieved on 2024-12-10 (see: *Zurich* 2024, paragraph 64).
[55]Beasley et al. v. Barrand, 2010 ONSC 2095 (CanLII), <https://canlii.ca/t/2984g>, retrieved on 2024-12-10
[56]wherein he overturned the decision of the adjudicator in the initial decision
[57]In this *JRPA* Application, the issue of whether a lawyer like Mr. Nieuwland could act for TDGIC for six months then act for SNIC when NOM #8 was granted in the Applicant's favour, despite six months of opposition and then non-opposition [not consent], thereafter, is not at issue *per se*. However, the backdrop regarding the same is an important one.
[58]What about, as a "test case", the duties of insurance companies (and their counsel) in relation to their holding, controlling and/or possession (solely, jointly or constructively) that are: (i) neither an underwriter nor a First Insurer, and masquerade as the liable insurance company in the LAT Proceeding; (ii) the obligations of a First Insurer who remains anonymous until effectively caught as having the mailing address and/or fax number that provides unequivocal proof that it was a First Insurer; and (iii) the obligations of an underwriter, who was not the First Insurer, who carries on as the solely liable insurance company but then does not participate after filing the sole Response, pursuant to section 280(2) of the *Insurance Act*, in a LAT proceeding?
[59]Pursuant to section 280(1) of the *Insurance Act*, "this section applies with respect to the resolution of disputes in respect of an insured person's entitlement to statutory accident benefits *or* in respect of the amount of statutory accident benefits to which an insured person is entitled." Pursuant to ss. 280(2) of the *Insurance Act*, "The insured person *or* the insurer *may* apply to the Licence Appeal Tribunal to resolve a dispute described in subsection (1)". No person may bring a proceeding in any court with respect to a dispute described in subsection (1), other than an appeal from a decision of the Licence Appeal Tribunal or an application for judicial review: ss. 280(3) of the *Insurance Act*. The dispute shall be resolved in accordance with the *Statutory Accident Benefits Schedule*
[60]. 2014, c. 9, Sched. 3, s. 14: ss. 280(4) of the *Insurance Act*.

[61](see: "statutory accident benefits" mean the benefits set out in the regulations made under paragraphs 9 and 10 of subsection 121 (1) of the *Insurance Act*; see: section 121(a): "121 (1) The Lieutenant Governor in Council may make regulations").
[62]The Applicant notified SNIC, pursuant to the *Schedule*, s. 32, in early September 2022, that he wished to apply for benefits making SNIC not only the Sole Underwriter but the First Notified Insurer.
[63]The Applicant, in his capacity as a *SABS* applicant, sent the Completed Application [OCF-1] to the **North York Fax Number** on October 12, 2022. Ergo, at law, the *SABS* Applicant sent, or "served" only one **Completed Application** to only one insurer in TDHA. TDHA was the sole insurer that first received (the "First Insurer") the ***SABS* Applicant's Completed Application**.
[64]In fact, and at law, SNIC did not stop the Applicant from submitting his Completed Application to TDHA in that it provided him with the **TDHA Fax Number**. It is the word "accept" that is so pivotal in this ***JRPA* Application** by VCM's choice of language at paragraph 27 therein.
[65]"first party insurer" means the insurer responsible under subsection 268 (2) of the Act for the payment of statutory accident benefits; ("assureur de première part"): Automobile Insurance, RRO 1990, Reg 664, s 9, <https://canlii.ca/t/tlw#sec9>,
[66]The word "accept" is of great importance considering the finding by VCM, without any evidence in the record of proceeding to support the same, that TDGIC and SNIC jointly ***accepted*** priority of the Applicant's [sic] insurance policy [sic] (see: paragraph 27 of the **VCM Decision**).
[67]As SNIC was the Sole Underwriter in the Insurance Policy, the Applicant has alleged that SNIC (as First Notified Insurer) breached section 2.1(5) of *Reg 283* by taking action, with intent (as it knew that its fax number was not the **North York Office Fax Number**), to prevent or stop the Applicant from submitting his Completed OCF-1 to it [SNIC] as it is an out-of-province insurer.
[68]In relation to the lack of promptness, SNIC somehow sent the Applicant's accident benefits package to the wrong postal code address yet his Spouse received her accident benefits package to the correct postal code when they lived in the same residence
[69]Further, the Applicant provided uncontroverted evidence that SNIC failed to provide its correct facsimile address in the Completed Application but instead provided the fax number of TDHA and thereby breached subsection 2.1(3) of *Reg 283*.
[70]Reimbursement by the non-compliant insurer during the period of non-compliance (see: ss. 2.1(7) of *Reg 283*): (i) legal fees; (ii) adjuster's fees; (iii) administrative costs; and (iv) disbursements
[71]Subsection 2.1 of *Reg 283* applies to this judicial review as the Accident occurred on August 31, 2022, which was after September 1, 2010.
[72]Whether SNIC was to remain for costs purposes in the McLean LAT Proceeding was a matter of discretion, but the sole respondent insurance company as a matter of obligations under *Reg 283*, *SABS* and *Reg 664* was not. However, the Applicant's argument was encapsulated by a rhetorical question: *why should he not have any ability to seek costs against SNIC for its conduct in the LAT Proceeding that he alleged and alleges was unreasonable, frivolous, and in bad faith?* Costs are not a matter that relate to the *Insurance Act*, and the binding regulations herein (*SABS* and *Reg 283*), as the Tribunal passed them under a different statute: section 17.1 of the SPPA. Put another way, is the Applicant's time not worth anything when it required hundreds of hours to obtain the order in NOM #8?
[73]Even when the OCF-19 was fax delivered, in November 2023, to the VP Bldg. 4th Floor Fax Number, and when SNIC's fax number (**Burlington 905 Fax Number**) was blocking the same, SNIC responded by misidentifying one of the legal tests for a duly completed OCF-19 and merely enclosed a copy of a blank OCF-19. Moreover, when considering the **Forged Signature** in the OCF-18, last page only, it could not have been SNIC, although it appeared that way in HCAI by insurer name but NOT physical address, with the "As per A. Nurse", it was TDHA's address (East Mall Etobicoke Address) that received the duly completed OCF-18 at first instance. Perhaps, this is why Ms. Nurse, an adjuster, was not amenable to executing the same.
[74]The same would have been applicable to TD Staff Legal and Mr. Nieuwland with its fax and his listed fax number with the LSO. Said unappealed findings are determinative that *neither* SNIC nor TDGIC were the First Insurers by way of the fax served Completed Application upon the 4th Floor VP Building Fax Number which was TDHA.
[75]"If the Licence Appeal Tribunal finds that an insurer has unreasonably withheld or delayed payments, the Licence Appeal Tribunal, in addition to awarding the benefits and interest to which an insured person is entitled under the Statutory Accident Benefits *Schedule*, may award a lump sum of up to 50 per cent of the amount to which the person was entitled at the time of the award together with interest on all amounts then owing to the insured (including unpaid interest) at the rate of 2 per cent per month, compounded monthly, from the time the benefits first became payable under the *Schedule*. O. Reg. 43/16, s. 4.".

[76](like the vacillation of findings and orders of the arbitrator, ONSC (Goldstein J. in the ONSC), reversed by the ONCA, and the ONCA reversed by the SCC adopting the dissent of Justice Jurianz)
[77]It is trite that while the Tribunal is required to determine whether Mr. McLean was entitled to certain benefits and in what amounts, it also must determine which insurance company was and is liable for certain benefits and at what times. It can only do that if that the First Insurer is found to be TDHA and that decision must come from the ONSC.
[78] There was no evidence and none in the Application Record that TDHA, or any insurer, ever did so. Even on the convoluted, tortuous, unsupported and absurd logic of VCM that SNIC and TDGIC accepted priority over the Insurance Policy, there was some form of "transfer of the claim" to TDGIC which would have required notice to, at least, TDGIC and the *SABS* Applicant. No evidence was ever provided of such written notice to either.
[79]Mr. McLean was also entitled to object to SNIC (and TDGIC as he had done previously) having any control or possession of his TD Claim #3 relating to "confidential information" and documents not subsequently received by it in accordance with standardized language in the OCF-1 and *PIPEDA*. There is no dispute that TD Claim #3 was transferred from TDHA to TDGIC and SNIC. SNIC claimed to have received documents but not directly from the Applicant. SNIC purported to respond or did respond to the Applicant in relation to some communications but not all communications. TDGIC then surfaced at the LAT Proceeding but only after inclusion by the Tribunal without the consent of the Applicant or without any legal authority. SNIC filed its Response ("SNIC Response") on January 25, 2024, and then Mr. Nieuwland filed a DOR on behalf of TDGIC – not SNIC. The charade continued for six months until Mr. McLean, relying on Mr. Nieuwland's misrepresentations in non-transcribed case conference, which was yet another irremediable nullity and without statutory power as TDGIC was a non-party, that SNIC and TDGIC were "one and the same" and "this is how we always do it" (in relation to TDGIC being some sort of insurance company that came "off the bench" to provide a "spark" to the "defence" for SNIC as if it were some kind of sporting event). While there is no dispute of some form of transfer from TDHA to SNIC and, of course, with some unknown terms and conditions involving TDGIC on some basis perhaps on a joint level but more likely some form of "staggered interventions" based on unknown terms and conditions in this "subsequent clandestine agreement", there are no particulars in the decision of VCM. Moreover, any such transfer was without notice to Mr. McLean, and without compliance with *Reg 283*. The scheme of *Reg 283* requires substantive and procedural compliance and TDHA along with SNIC and TDGIC intentionally breached *Reg 283* without any form of attempt to cure the same. The required FSRA form did not matter to TDHA. The closest evidence that this ONSC has is a fax from an unknown fax number to Mr. McLean that TDHA had no record of his claim as of March 2023 (and then another letter in August 2024 albeit after NOM #14 and NOM #15). It was a fax without any semblance of compliance with *Reg 283*, and *SABS* to some degree, and the FSRA Form 143. It directed Mr. McLean to other fax numbers in Calgary, Montreal, New Brunswick and Burlington without reference to any insurance company. Mr. McLean was entitled, after lengthy investigation and fortuitous discoveries, was entitled to object and required to bring the issue forward as to TDHA not complying with its duties to respond and to pay benefits as the First Insurer.
[80]Due to the public importance of the issues herein, the Applicant respectfully, yet forcefully, notes that the LGIC did not create any ability for an insured person (applicant) to consent or sanitize the breaches that have occurred herein. Put another way, the LGIC did not pass any provisions that would authorize an insured person to sanitize or remedy such clandestine breaches to provide post-facto consideration that cure such non-compliance with *Reg 283*. Therefore, this undisclosed agreement by the respondent insurance companies, known to the Tribunal but not the Applicant, has no legal force or effect. The purposes of the inflexible prescribed regulations are to promote compliance with the statutory scheme and not to assist insurance companies and insured persons in isolated incidents so that an "insured person" can assist delinquent and felonious activities. To not set aside the VCM Decision and replace it with a correct decision, while the ONSC commences *ab initio*, would represent a precedent that contains a "slippery slope". Perhaps, "insurance companies" like this collection of respondent insurance companies may send a late notice with a semi-contemporaneous phone call to an insured person that may be in the form of a bribe so that the "checks and balances" of various regulatory bodies (FSRA, LSO, OPCC et al) do not catch "wind of the unlawful scheme".
[81][3] .... The test for *res judicata* was applied by the Adjudicator as follows (Decision, para. 12). In my view, the four preconditions for *res judicata* are satisfied. The parties are the same in both proceedings. The prior claim was within the jurisdiction of the Tribunal. The decision in the first application was based on the merits. The Tribunal reviewed the submissions and evidence and found that the applicant was not entitled to the IRB or found that the applicant was not entitled to IRBs for the period of January 14, 2020 to date and ongoing. Moreover, he was not entitled to payment for the November 9, 2019 accounting report. The first decision was a final decision because he did <u>not</u> file a reconsideration request and nor did he appeal the decision.
[5] A LAT decision is final and authoritative, subject to a party's rights of reconsideration or appeal from that decision. A party that disagrees with a LAT decision may not ignore that decision and recommence the same claims all over again. That is what the Appellant has done in this case. Even if the LAT erred in the first decision

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

[98]The Applicant is not making any argument in costs savings but avoidance of having two JRPA proceedings before this ONSC with the identical challenges to NOM #14 and #15.
[99]*Gage v. Ontario (Attorney General)*, 1992 CanLII 8517 (ON SCDC), <https://canlii.ca/t/gbkgx.
[100]This is particularly the case when the Applicant has drawn it to the attention of not only the Tribunal but VCM when she made the same mistake previously.
[101]In November 2017, one Ms. Karen E. Shepard wrote to then The Honourable Speaker Furey (Senate of our Parliament), "Pursuant to section 10.5 of the *Lobbying Act*, I have the honour of presenting to you a Report on Investigation on the lobbying activities of Trina Morissette for tabling in the Senate. The investigation was conducted in accordance with the provisions of section 10.4 of the Act." A key duty of government officials is to interact with citizens. The *Lobbying Act* ensures that Canadians and public office holders know who is communicating with the government and on what subject.
[102]While similar fact evidence is presumptively inadmissible and must be pleaded in civil court proceedings, being one of the exceptions to pleading evidence, this was not a court proceeding and the probative value of the similar fact evidence of an adjudicator and Vice Chair who is fashioning decisions with pejorative language, slights at the Applicant, and sanctimoniously accusing him of abusing the process. The **VCM Decision** almost rings in a covert threat to stay away from "pandora's box". For the Court's edification, Mr. McLean doubled down on his FIPPA request including Mr. Sean Weir, Executive Chair of Tribunals Ontario, but without a response. He then tripled down by including the Attorney General Of Ontario in Mr. Downey as the LAT is a body of MAG and based on the recent, publicly available, MOU, Mr. Weir was delegated the authority of an "institutional head" by the AGO. How shameful can it get when the LAT requests payment of fees to obtain records and has 30 days to provide a response, then does not provide one, then the adolescent excuses flowed with "technical difficulties" and then stonewalling. It may perhaps be a fresh evidence matter. The conduct involving Ms. Morrissette was of such a serious nature that one Ms. Shephard had to immediately suspend her investigation and refer the matter to the Royal Canadian Mounted Police: "An administrative review concerning this matter was opened in February of 2015. It involved interviews, a review of correspondence and other materials and an examination of Ms. Trina Morissette's work on behalf of the Canadian Red Cross (CRC). In November of 2015, I opened an investigation based upon information provided to me in an administrative review report prepared by the Investigations Directorate of my Office. In accordance with subsection 10.4(8)[102] of the Act, I immediately suspended my investigation and referred this matter to the Royal Canadian Mounted Police (RCMP), as I had reasonable grounds to believe that a breach of the *Lobbying Act* had occurred. In December of 2016, I was informed by the RCMP following their investigation that no charges would be laid in the matter. The RCMP had determined that it was not in the public interest to prosecute Ms. Morissette." The RCMP did not find that she had not breached the Criminal Code, which is an astonishing matter considering it involved Ms. Morrissette's activities as a lobbyist for a well-known charity in the Red Cross, but it was not in the public interest to prosecute. That is an entirely different finding than there were not reasonable and probable grounds to charge. Ms. Morrissette was subject to the five-year prohibition and restrictions on lobbying after being a designated public office holder which implies that she had a role in government prior to her switch to the charitable activities of the CRC. "Prior to starting work as the CRC's manager of Government Relations in 2014, Ms. Morissette had worked as a member of a federal minister's staff from 2009 to 2013. Her final day as a member of a minister's staff was on June 14, 2013Investigator Shephard found: "I have concluded that Ms. Morissette was in breach of Rule 2 (Accurate Information) of the *Lobbyists' Code of Conduct* (1997), as well as the Principles of Professionalism and Integrity and Honesty in the Code." There are some obvious inaccuracies in the **VCM Decision** and she was given a chance to correct the same by the Applicant's section 21.1 of the *SPPA* motion and she has apparently decided not to correct the same despite carrying on with other rulings in this LAT Proceeding. It would quite one thing if VCM cross-referenced her findings to evidence in the record of proceeding or even an email that she found between Mr. Grant and another individual or representative of @tdinsurance.com but there is not even a scintilla of the same. Under the "Lessons Learned", Investigator Shepard found: "the purpose of the five-year prohibition is to ensure that designated public office holders do not use information and personal connections derived from those positions to the advantage of interests that they lobby on behalf of. This is in the public interest because it ensures that Canadians can have confidence in the integrity of government decision-making." LAT is a body of government and the MAG no less. It is where this court has to exercise its supervisory jurisdiction to ensure the conduct of VCM and to some extent VCL, who was on notice of a potential conflict of interest relayed to one Mr. Grant but then snapped out a decision in relation to NOM #7 and then was presumed gone until October 2024, is realigned with the integrity and professionalism requirements of a decision maker with the Tribunal. However, lobbying public office holders should be done in a transparent manner and in conformity with high standards of conduct (see: Investigator Shepard). The same applies to the decision-making process of the LAT. She worked for the CRC for approximately 16 months as she returned to the Minister of Health in late 2014. It is unclear if she was fired. Pursuant to subsection 10.11(1) of

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

[103]*Harold the Mortgage Closer Inc. v. Ontario (Financial Services Regulatory Authority, Chief Executive Officer*), 2024 ONSC 4464 (CanLII), <https://canlii.ca/t/k68mf>, retrieved on 2024-12-10
[104]*Lourenco v. Hegedus*, 2017 ONSC 3872 at para. 6
[105]London District Catholic School Board v. Weilgosh, 2024 ONSC 3857 (CanLII), <https://canlii.ca/t/k3gpr>, retrieved on 2024-12-10
[106]https://teao.fsrao.ca/?searchRequired=true&searchText=Security+National&enfActions=false&warnings=false&hasRelatedFiles=false&selectedStatus=0&startDate=&endDate=
[107]https://teao.fsrao.ca/?searchRequired=true&searchText=TD+General&enfActions=false&warnings=false&hasRelatedFiles=false&selectedStatus=0&startDate=&endDate=
[108]https://teao.fsrao.ca/?searchRequired=true&searchText=Primmum&enfActions=false&warnings=false&hasRelatedFiles=false&selectedStatus=0&startDate=&endDate=
[109]https://teao.fsrao.ca/?searchRequired=true&searchText=TD+Home+And+Auto&enfActions=false&warnings=false&hasRelatedFiles=false&selectedStatus=0&startDate=&endDate=
[110] *R.M. v CAA Insurance, 2020 CanLII 94775* (ON LAT), <https://canlii.ca/t/jbwwr>, retrieved on 2024-12-10
[111][nota bene: TDHA is an insurer. Mr. McLean has recourse for the payment of *SABS* against TDHA as TDHA is bound by *Reg 283*. A breach of *Reg 283* is legally equivalent to a breach of *SABS*. Moreover, various sections of *SABS* reference the "first insurer" (i.e. receipt of the Completed Application) which imposed, and continues to impose obligations upon TDHA, to: (i) respond; and (ii) pay.

[112]TDHA: October 13, 2022, by way of fax from Mr. McLean to TDHA albeit unbeknownst to him until August 2024
[113]In this hypothetical, it would have been TDHA
[114]Singular
[115]Duty to pay, albeit the updated A07 Bulleting from 2010 (May) which was the bases for the amendments to *Reg 283* in 2010 includes the duty to respond.
[116]In this hypothetical, it would have been McLean
[117]Based upon the VCM Decision, paragraph 27, it would have been a dispute between TDHA, as First Insurer, and SNIC, the Sole Underwriter and First Notified Insurer, and TDGIC, neither an underwriter nor a First Insurer and not even a First Notified Insurer but a "Fictitious Respondent" in the LAT Proceeding.
[118]One of three
[119]THE INSURER: TDHA
[120]Not "having already been transferred after October 13, 2022"
[121]Transfer of a claim objection rights
[122]Had TDHA sent the notice, then it would have been SNIC that was paying at the time, so it would have been a challenge to SNIC paying while TDHA was the First Insurer
[123]The LAT Proceeding is "any proceeding". The JRPA Application is "any proceeding". Although Mr. McLean did not have any "claim transfer objection rights" as TDHA failed to extend the same to him. Moreover, Mr. McLean did not have any "proceeding participation rights" as it relates to any potential arbitration before an arbitration pursuant to the Ontario legislation or statute known as the "Arbitration Act, 1991". Moreover, TDHA could not advance an arbitration without having paid any benefits to Mr. McLean. If TDHA was the payor of some or all of the $1499.98, then it could technically advance an arbitration claim but only after it provided a notice of potential transfer of claim pursuant to A143. However, it would be, if it did so in the month of December 2024, some 700 days late. Pursuant to *Reg 283*, section 2 and Zurich 2024, TDHA was provisionally liable to pay benefits from October 13, 2022, to January 10, 2023, (the "Provisional Payment Period"), and then permanently liable after January 10, 2023, subject to giving it notice of a transfer claim (A143) and then providing clear, cogent and convincing evidence as to why the 90 day period was insufficient to make a determination that *another insurer* or insurers (nota bene: conceivable could be two under section 268 per se) is liable under section 268; AND the insurer [TDHA] made the reasonable [nota bene: objective person standard] investigations necessary to determine if another insurer was liable within the 90 day period (see: section 3(2) of the *Reg 283*, passed in 1995, which was the year that *Reg 283* was passed by its namesake, "*Reg 283*/95". Where there is a dispute as to whether a First Insurer, like TDHA, had not given notice to other insurers and an Applicant pursuant to its receipt of a Completed Application by fax or mail, shall be resolved in an ARBITRATION pursuant to section 7 of *Reg 283* (see: ss. 3(3) of *Reg 283*). Pursuant to ss. 7(1) of *Reg 283*, it is ONLY an insurer that *has been* paying benefits under section 2 (nota bene: reference to section 268 of the Insurance Act (1990) and *Reg 283* passed in 1995) OR section 2.1 (nota bene: relating to an Accident (see: SABS, definition section), that occurred after September 1, 2010 and requires the dispute to be resolved in accordance with the Regulation 283 (not Insurance Act)) OR any other insurer against who the obligation to pay benefits is *claimed*. Subsection 3(3) dovetails to subsection 7(3) with a one year prescribed limitation period but that is tied to the insurer, 'first giving notice' under section 3 which is the insurers that it believes are liable to pay the benefits and the insured person, in his or her capacity as an "Applicant" after sending a Completed Application and it being *received* first by an insurance company making said insurance company the "First Insurer". However, if the First Insurer does not give a notice, pursuant to section 3(1) of *Reg 283* within 90 days (often means counting the "first day" and "last day"), it loses all of its dispute rights to pay benefits subject to overcoming the strenuous legal test under section 3(2) of *Reg 283*. It is here where TDHA, would hypothetically speaking, never be able to overcome said test by a decision of any reasonably-minded arbitrator rending a decision regarding the application of the facts to the legal test under ss. 3(2) of *Reg 283*. TDHA is an Ontario based insurer (not an out of province insurance company) and was the co-tenant with TDGIC at the "Spark Building", "North York Office Building" or the "VP Building" located at 3650 Victoria Park Avenue, District of North York, City of Toronto, where TDHA was located on the 4th floor (4th to 6th floors) with a fax of 416.774.3120 and its co-tenant in TDGIC had a fax number of 416.774.3629 and it was the commercial tenant on floors 7 to 9. By review of the information scribed on the Application (OCF-1), it had a sufficient period of time to make a determination that another insurer or insurers were liable under section 268 of the Act.
[124]Hence, by SNIC intentionally, as sworn by McLean, redirecting the Applicant to TDHA at first instance, and then purportedly paying benefits (unclear if that name is correct), TDHA became the First Insurer by McLean faxing of the same to it on October 13, 2022. However, if TDHA was the "actual payor" of the direct deposits at said time then it could have provided this notice to McLean. It was then caught in another dilemma by the fact that the representative known to McLean was that of Ms. Nurse of SNIC. Therefore, TDHA would have had to provide a phone number and representative for TDHA which would have caused issues and concerns for McLean.

# TAB 6:

Court File No. DC-24-00000718-00JR
Applicant's Motion #2 (Motion in Writing; Request to Convert Motion into Motion for Judgment)

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

Form 4E
*Courts of Justice Act*

Requisition

ONTARIO COURT OF JUSTICE (DIVISIONAL COURT)

BETWEEN:

**KEVIN ALEXANDER MCLEAN**

APPLICANT

- and -

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

RESPONDENTS

## REQUISITION

TO THE LOCAL REGISTRAR at The Ontario Superior Court of Justice (Divisional Court) Toronto, Osgoode Hall, 130 Queen Street W., Rm 174 (or any other room situate within said building and lands at the ONSC Divisional Court (Toronto) where the Registrar is so located), Toronto, ON, M5H 2N5 (the "**Toronto Divisional Court**") Phone: (416) 327 5100

I REQUIRE, with due respect and out of an abundance of caution, pursuant to *Rules Of Civil Procedure*, Rule 4.08[i], that the Registrar provide myself and the named respondents in the **Filed Certificate Of Perfection** (see: *infra*), with a Notice of Listing For Hearing in Form 68(B) pursuant to *Rules of Civil Procedure*, Rule 68, "**PROCEEDINGS FOR JUDICIAL REVIEW"**, Rule 68.05, "*Certificate of Perfection*", sub rule (2)[ii], pursuant to my filing and payment of the required fee for the **Certificate of Perfection** on December 15, 2024, (the "**Filed Certificate Of Perfection**").

December 24, 2024

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

Mr. Kevin A. McLean (B.A. J.D., CIM)
Self-represented or appearing *Pro Se*, the Applicant herein

RCP-E 4E (July 1, 2007)

---

[i] **4.08** Where a party is entitled to require the registrar to carry out a duty under these rules, the party may do so by filing a requisition (Form 4E) and paying the prescribed fee, if any. R.R.O. 1990, Reg. 194, r. 4.08.

[ii] (2) When the certificate of perfection has been filed, the registrar shall place the application on a list for hearing and give notice of listing for hearing (Form 68B) by mail to the parties and the other persons named in the certificate of perfection. R.R.O. 1990, Reg. 194, r. 68.05 (2).

# TAB 7:

Court File No. DC-24-00000718-00JR
Applicant's Motion #2 (Motion in Writing; Request to Convert Motion into Motion for Judgment)

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

FORM 4D

*Courts of Justice Act*

AFFIDAVIT

ONTARIO SUPERIOR COURT OF JUSTICE (DIVISIONAL COURT)

BETWEEN:

**KEVIN ALEXANDER MCLEAN**

APPLICANT

- and -

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

RESPONDENTS

**Affidavit #7[i] of Kevin A. McLean in this *JRPA* Proceeding**

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

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

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

2. I commenced drafting this affidavit on January 24, 2025

3. Attached hereto to this my affidavit is a copy of my email and submissions that were attached to the email regarding my request that Madam Justice Shore recuse herself

along with other ancillary relief ("**COI Recusal Request**"). As of today's date, I have not received any decision regarding my COI Recusal Request so I will file notice of motion with supporting materials to seek the same relief that I am seeking in the COI Recusal Request.

4. I am also concerned that I received an email from a Ms. Badwal that referenced a case conference before Madam Justice Shore on February 18, 2025. I confirm that I am not available on said date. However, I will bring my motion promptly and I intend to seek additional relief in the proposed motion.

5. In relation to the Ms. Badwal email, I am concerned that a different thread was commenced and it did not contain all of the emails that were in the previous thread with myself and the ONSC Divisional Court. It is unclear to me why that occurred but I am not castigating Ms. Badwal in any way. I will file an additional affidavit that contains all of those emails at the relevant time and in support of the intended motion.

6. I expressly adopt the facts in the attached email and submissions as my sworn evidence herein. I intend to pay for my notice and file the same, and then serve it on the respondents and in the "interested person" in Mr. Papadimitropoulos.

7. I will also provide a copy of my motion to Epstein Cole LLP so it can participate and provide its position should it wish to do so.

8. I will continue to object to Madam Justice Shore having any involvement in this matter as I remain of the view that Mr. Papadimitropoulos was the individual who signed the OCF-18 #1 (defined as the "Dhaliwal OCF-18") with the handprinted language of "As per A. Nurse" and that he was, he is, and remains in breach of his separation agreement with Ms. Nicole Artopoulos regarding a "provision" in said separation agreement of no indirect or direct contact. I repeat and rely upon my evidence in affidavit #4 in this regard.

9. I remain of the view that Mr. Boyce of the LAT is also in a conflict of interest by virtue of my previously stated positions in the emails to him with the respondents and the ONSC Divisional Court copied. I do not believe that the Tribunal can participate in an impartial manner with Mr. Boyce as its counsel. I intend to seek relief in this regard as well.

10. I note that the AGO, through Ms. Im, did not file a Notice of Appearance in this JRPA Proceeding.

11. As of tonight, I note that Ms. Im has done the same vis-à-vis her address and business name (employer) on the LSO directory website. I note my affidavit evidence in affidavit #2 which stated in part which was a copy and paste from the LSO website at the time of said affidavit:

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

Judie Yung-Mi Im
Back to resultsNew SearchPrint
Assumed Name
Judie Im
Law Society Number
44577V
Class of Licence Definitions
Lawyer (L1)
Real Estate Insured †
No
Status Definitions
Practising Law - Employed
Business Name
Ministry of Attorney General
Business Address
8-720 Bay StToronto, OntarioM7A 2S9
Phone
1 416 427 4611 Ext.
Email Address
judie.im@ontario.ca
Trusteeships
None
Current Practice Restrictions
None
Current Regulatory Proceedings
None
Regulatory History
None

12. Ms. Im's contact information on the LSO directory website is now:

# Judie Yung-Mi Im

Back to resultsNew SearchPrint
**Assumed Name**
**Law Society Number**
44577V
**Class of Licence Definitions**
Lawyer (L1)
**Real Estate Insured †**

No
**Status Definitions**
Practising Law - Employed
**Trusteeships**
None
**Current Practice Restrictions**
None
**Current Regulatory Proceedings**
None
**Regulatory History**

13. I swear this **Affidavit #7** for no improper purpose and for the above purposes.

Sworn before me via videoconference in accordance with O. Reg. 431/20 at **Toronto, Ontario** on this 24th day of January 2025

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

Vinh The Tran, Esq.
Barrister & Solicitor, Attorney-at-Law, Notary Public, Commissioner of Oaths/Affidavits etc., LSO# 57761C
188-639 Dupont Street, Toronto, Ontario, Canada M6G1Z4
www.ONeLAW.ca www.HouseCallNotary.ca
E-mail: vinhtranlaw@hotmail.com T. 647-209-7389

VINH THE TRAN NOTARY PUBLIC ONTARIO

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

[i]Three affidavits have been my affidavits of service

THIS IS EXHIBIT A ..... REFERRED TO IN THE
AFFIDAVIT OF Mr. Kevin A. McLean .....
AFFIRMED BEFORE ME, THIS 24th ..... DAY
OF January ..... 20 25 .....

..... .....
NER, ETC.

Vinh The Tran, Esq., LSUC #57761C
Lawyer, Notary, Oaths Commissioner
188-639 Dupont Street, Toronto, ON
M6G 1Z4, T. 647-209-7389
vinhtranlaw@hotmail.com

NOTARY PUBLIC ONTARIO

Gmail **Mr. Kevin McLean <mcleansettlement@gmail.com>**

# Re: LAT's Notice of Appearance : McLean v. TD Home and Auto Insurance et al. : 718/24

**Mr. Kevin McLean** <mcleansettlement@gmail.com> Thu, Jan 16, 2025 at 10:58 AM
To: "SCJ-CSJ Div Court Mail (JUD)" <scj-csj.divcourtmail@ontario.ca>
Cc: "SCJ-CSJ Div Court Mail (JUD)" <scj-csj.divcourtmail@ontario.ca>, "Maciel, Milene (MAG)" <Milene.Maciel@ontario.ca>, "Collie, Connor (MAG)" <Connor.Collie@ontario.ca>, "Im, Judie (She/Her) (MAG)" <Judie.Im@ontario.ca>, "Pasquini, Heather" <Heather.Pasquini@tdinsurance.com>, "Imafidon, Isibhakhomen (MAG)" <Isibhakhomen.Imafidon@ontario.ca>, Div Court Schedule <DivCourtSchedule@ontario.ca>, "Nieuwland, Matthew" <Matthew.Nieuwland@tdinsurance.com>, "christiana.ortiz@tdinsurance.com" <christiana.ortiz@tdinsurance.com>, scjcsj.divcourtmail@ontario.ca

January 16, 2025

***VIA EMAIL***

***URGENT – NOTICE***

***URGENT – ATTACHMENTS***

Court file number: Court File No. DC-24-00000718-00JR
Type of document: email
Short title of proceeding: McLean v. TDHA et al
Party: Mr. Kevin A. McLean, self-represented, Applicant, e: mcleansettlement@gmail.com;

| To: |
|---|

The ONSC Divisional Court
130 Queen Street West, Toronto, Ontario
Toronto, Ontario

Kind attention: ONSC Divisional Court Registrar (Madam Clerk Clegg)

| AND TO: (pursuant to the Courts of Justice Act, (s. 75(1)(3)),) and section 76 |
|---|

The Honourable Geoffrey B. Morawetz
Chief Justice of the Superior Court of Justice

| AND TO: |
|---|

The Honourable Faye E. McWatt
Associate Chief Justice of the Superior Court of Justice

| With a copy to: |
|---|

The Honourable Stephen E. Firestone
Regional Senior Judge for the Toronto Region

| With a copy to: |
|---|

COPIED TO THE RESPONDENTS AND THEIR COUNSEL

AND COPIED TO (FOR NOTICE PURPOSES REGARDING THE APPLICANT'S REQUEST(S))):

Andrew Papadimitropoulos
Law Society Number
58696I
Class of Licence Definitions
Lawyer (L1)
Real Estate Insured †
No
Status Definitions
Practising Law - Employed
Business Name
TD Insurance
Business Address
101 Mcnabb St
Markham, Ontario
L3R 4H8
Phone
416 983 5467 Ext.
Email Address
andrew.papadimitropoulos@tdinsurance.com

Re: enclosed written submissions for the Respectful Requests (defined therein)

Dear Madam Registrar Clegg (copied to the above or to be forward by the ONSC Divisional Court Registrar):

1. I write regarding the above. As promised, please find my PDF and signed submissions for the Respectful Requests. For ease of reference, they at paragraph 19 and 126:

a. The Honourable Madam Justice Shore is disqualified from any further involvement in this *JRPA* Proceeding (the "**Disqualification Request**" or the "**Recusal Request**");
b. The Case Management Appearance Requirement is declared as void and void *ab initio* (not merely voidable) (the "**Nullification Request**");
c. A general and indefinite adjournment of the case conference pursuant to 77.04(1)(b) of the *Civil Rules* by the Associate Justice (the "**Adjournment Request**");
d. A direction by the Honourable Chief Justice, pursuant to section 76 of the *CJA*, that the Registrar shall accept all outstanding requisition filings and provide confirmation of the same to the *JRPA* Applicant and respondents; and
e. A direction by the Honourable Chief Justice, pursuant to section 76 of the *CJA*, that the Registrar comply with her duties (by law), pursuant to 68.05(2) of the *Civil Rules*[i], and provide the parties with a "Notice of Listing For Hearing".

("d" and "e" together, the "**Staff Direction Requests**").

(collectively, the "**Respectful Requests**" or "**Requests**").

2. I rely on affidavit #2 and #3 in support of the same as my leading of evidence in this regard.

3. Should the Court require any further submissions or sworn evidence from me regarding the same, I remain available and please contact me at your earliest moment. Otherwise, I shall presume this is sufficient and the procedure is consistent with the case law in this niche and unique subset of a few areas of law.

4. Please extend my thanks to the Chief Justice and Associate Chief Justice (where applicable) for their consideration.

5. Thank you.

---

[i] 68.05(2) When the certificate of perfection has been filed, the registrar shall place the application on a list for hearing and give notice of listing for hearing (Form 68B) by mail to the parties and the other persons named in the certificate of perfection. R.R.O. 1990, Reg. 194, r. 68.05 (2).

Warm regards,

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

On Thu, Jan 16, 2025 at 6:42 AM Mr. Kevin McLean <mcleansettlement@gmail.com> wrote:

> January 16, 2025
>
> **VIA EMAIL**
>
> **URGENT – NOTICE**
>
> Court file number: Court File No. DC-24-00000718-00JR
> Type of document: email
> Short title of proceeding: *McLean v. TDHA et al*
> Party: Mr. Kevin A. McLean, self-represented, Applicant, e: mcleansettlement@gmail.com;
>
> Re: confirmation of the correct or preferred procedure to address my nullification request of Justice Shore initiated case management appearance requirement (the "**Case Management Appearance Requirement**") (the "**Nullification Request**") (see: affidavit #3 herein)
>
> Re #2: recusal request of Madam Justice Shore (the "**Recusal Request**")
>
> Re #3: to the extent applicable – dependent on other factor – the assignment request or reassignment
>
> Re #4: Written Submissions to follow today
>
> Dear Madam Registrar Clegg:
>
> 1. I write regarding the above. I remain of the view and position, with great respect, that Justice Shore must recuse herself and withdraw her self-initiated Case Management Appearance Requirement.

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

ONTARIO COURT OF JUSTICE (DIVISIONAL COURT)

BETWEEN:

**KEVIN ALEXANDER MCLEAN**

APPLICANT

- and -

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

RESPONDENTS

Applicant's Submissions for his RESPECTFUL REQUESTS

To:

The ONSC Divisional Court
130 Queen Street West, Toronto, Ontario
Toronto, Ontario

Kind attention: ONSC Divisional Court Registrar (Madam Clerk Clegg)

AND TO: (pursuant to the Courts of Justice Act, (s. 75(1)(3)),) and section 76

The Honourable Geoffrey B. Morawetz
Chief Justice of the Superior Court of Justice

AND TO:

The Honourable Faye E. McWatt
Associate Chief Justice of the Superior Court of Justice

With a copy to:

The Honourable Stephen E. Firestone
Regional Senior Judge for the Toronto Region

With a copy to:

The Honourable Madam Justice Shore

COPIED TO THE RESPONDENTS AND THEIR COUNSEL

AND COPIED TO (FOR NOTICE PURPOSES):

Andrew Papadimitropoulos
Law Society Number
58696I
Class of Licence Definitions
Lawyer (L1)
Real Estate Insured †
No
Status Definitions
Practising Law - Employed
Business Name
TD Insurance
Business Address
101 Mcnabb St
Markham, Ontario
L3R 4H8
Phone
416 983 5467 Ext.
Email Address
andrew.papadimitropoulos@tdinsurance.com

**VOLUME # #1: STATEMENT OF RECUSAL REQUEST, NULLIFICATION REQUEST, ADJOURNMENT REQUEST (SOLELY IN RELATION TO SHORE J. APPEARANCE REQUIREMENT) AND STAFF DIRECTION ORDERS (SEE: SECTION 76 OF THE CJA)**

1. Which Canadian jurist represented the following to the federal committee responsible for judicial appointments in her sworn and signed questionnaire to it, "Vital to the Canadian system is the impartiality of a judge. This is different than the system in the United States. In Canada, judicial independence is viewed as vital to fostering public confidence in the fairness and objectivity of the justice system. The Supreme Court of Canada has described judicial independence as "the cornerstone, a necessary prerequisite for judicial impartiality."

2. None other than The Honourable Madam Justice Sharon Store.

3. The Honourable Sharon Shore of our ONSC (not the Federal Court) also made a statement to that same federal committee that this Applicant certainly agrees with as follows

> Last, but not least, is integrity. I have always tried to conduct my personal and professional life with integrity. One of the lessons I learned from my mentors is that it takes a lifetime to build your reputation, and only minutes to destroy it.

4. Public confidence in our legal system is rooted in the belief that those who deliver legal judgments do so without bias or prejudice to one side or the other. In this regard, the appearance of justice is just as important as the reality.[1]

5. Judges often disqualify themselves where the matter before them involves former clients or law partners. Herein, we have a situation of a former client of Epstein Cole LLP where Madam Justice Shore was a partner.

6. Lord Hewart C.J.'s aphorism that "it is not merely of some importance but is of fundamental importance that justice should not only be done, but should manifestly and undoubtedly be seen to be done" (The King v. Sussex Justices, Ex parte McCarthy, [1924] 1 K.B. 256, at p. 259). To put it differently, in cases where disqualification is argued, the relevant inquiry is not whether there was in fact either conscious or unconscious bias on the part of the judge, but whether a reasonable person properly informed would apprehend that there was. In that sense, the reasonable apprehension of bias is not just a surrogate for unavailable evidence, or an evidentiary device to establish the likelihood of unconscious bias, but the manifestation of a broader preoccupation about the image of justice. As was said by Lord Goff in Gough, supra, at p. 659, "there is an overriding public interest that there should be confidence in the integrity of the administration of justice" (see: paragraph 66 of *Weykaum*). The last is the most demanding for the judicial system, because it countenances the possibility that justice might not be seen to be done, even where it is undoubtedly done – that is, it envisions the possibility that a decision-maker may be totally impartial in circumstances which nevertheless create a reasonable apprehension of bias, requiring his or her disqualification (see: paragraph 67 of *Weykaum*).

7. The law of judicial bias is founded on two basic legal maxims: audi alteram partem ("listen to the other side") and nemo judex in sua causa ("no-one should be a judge in his own cause"). The former requires that parties affected by a decision have the right to be heard and that the decision-maker must not have pre-judged the issue. The latter prohibits the adjudicator of the case from having an interest in the decision,

thus safeguarding the right of the parties to be treated impartially and without prejudice. In other words, bias represents a predisposition or a state of mind which sways judgment.

8. Unlike tribunals, judicial impartiality is guaranteed by our *Constitution* under section 96 to 101 (see: *Ocean Port Hotel* (SCC)).

> **Volume #1(A):** The Anticipatory Counter to Justice Shore taking a similar position to Binnie J. in *Weykaum*

9. While the SCC has found that there is a distinction with a difference between government lawyers and private practice, the following statement of law is apropos. There is a strong inference that licensees who work together share confidences especially where they work under a "group" even if internal confidentiality screens are in place (see: *Mariangeli*, [2004] OJ 3082 (Ont Sup. Ct.). Where Confidential Information exchanged in a prior related matter sufficient related to a current retainer the "licensees" MUST rebut inference Confidential Information was exchange (see: *Mariangeli*, [2004] OJ 3082 (Ont Sup. Ct).

> ***VOLUME #1(B): BY ANALOGY***

10. The Applicant (also defined as the "**Requestor**") repeats and relies upon his letter in Appendix #1.

11. If a judge is aware of any relationship or personal interest that raises a reasonable apprehension of bias, it is generally desirable that disclosure is made in advance of a hearing, so that the case may be reassigned.

12. Under the Ontario *Courts of Justice Act* (s. 75(1)(3)), it is the Chief Justice of a court or one of the Associate Chief Justices who is responsible for the assignment or reassignment of cases.

13. Pursuant to the *Civil Rules*, the following is applicable to the Case Management Appearance Requirement:

> 77.04 (1) A judge or associate judge may,
>
> (b) adjourn a case conference;
>
> (2) A judge or associate judge may, on his or her own initiative, require the parties to appear before him or her or to participate in a conference call to deal with any matter arising in connection with the case management of the proceeding, including a failure to comply with an order or the rules. O. Reg. 438/08, s. 64; O. Reg. 383/21, s. 15.
>
> (3) For greater certainty, the powers set out in subrules (1) and (2) are in addition to any other powers set out in this Rule. O. Reg. 438/08, s. 64.

14. For sake of completeness, Rule 77(1) and (2) state the following:

> RULE 77 CIVIL CASE MANAGEMENT
>
> Purpose and General Principles

Purpose

77.01 (1) The purpose of this Rule is to establish a case management system that provides case management only of those proceedings for which a need for the court's intervention is demonstrated and only to the degree that is appropriate, as determined in reliance on the criteria set out in this Rule. O. Reg. 438/08, s. 64.

General Principles

(2) This Rule shall be construed in accordance with the following principles:

1. Despite the application of case management under this Rule to a proceeding, the greater share of the responsibility for managing the proceeding and moving it expeditiously to a trial, hearing or other resolution remains with the parties.

2. The nature and extent of the case management provided by a judge or associate judge under this Rule in respect of a proceeding shall be informed by any relevant practices, traditions, customs or judicial resource issues that apply locally in the region in which the proceeding is commenced or to which it is transferred. O. Reg. 438/08, s. 64; O. Reg. 383/21, s. 15.

15. The Canadian Judicial Council considers recusal inappropriate where no other adjudicator can be constituted to hear the case or where, as a result of an emergency, withdrawal would lead to a miscarriage of justice. Still, the exercise of judicial discretion is at the heart of judicial independence, and judges are presumed to have acted in good faith.

16. The urgency is in favour of the Applicant having his requisitions filed and receiving a Form 68(B) which is most outstanding despite requisitions for the same.

17. It is rather coincidental that there are 93 justices in the Toronto region and somehow the one justice who was a partner who acted, and remains as the sole law firm to have represented one Mr. Andrew Papadimtripoulos

18. It is current counsel to the three respondent insurance companies in Mr. Nieuwland who unequivocally admitted, as a matter of law, that there was a conflict of interest when TDGIC represented in a purported but unlawful response to the Applicant's *PIPEDA* request of SNIC in January 2024 that Mr. Andrew Papadimtripoulos had not been involved in any way with this claim or access request. However, the claim number provided therein was 035325709-04 [sic] (see: **page 66** of the **Oral Compendium**).

***VOLUME #2: RELIEF SOUGHT IN THE RECUSAL REQUEST, NULLIFICATION REQUEST AND REASSIGNMENT REQUEST***

19. The Requestor seeks the following relief as follows:

a. The Honourable Madam Justice Shore is disqualified from any further involvement in this *JRPA* Proceeding (the "**Disqualification Request**" or the "**Recusal Request**");
b. The Case Management Appearance Requirement is declared as void and void *ab initio* (not merely voidable) (the "**Nullification Request**");

c. A general and indefinite adjournment of the case conference pursuant to 77.04(1)(b) of the *Civil Rules* by the Associate Justice (the "**Adjournment Request**");
d. A direction by the Honourable Chief Justice, pursuant to section 76 of the *CJA*, that the Registrar shall accept all outstanding requisition filings and provide confirmation of the same to the *JRPA* Applicant and respondents; and
e. A direction by the Honourable Chief Justice, pursuant to section 76 of the *CJA*, that the Registrar comply with her duties (by law), pursuant to 68.05(2) of the *Civil Rules*[2], and provide the parties with a "Notice of Listing For Hearing".

("d" and "e" together, the "**Staff Direction Requests**").

(collectively, the "**Respectful Requests**" or "**Requests**").

**VOLUME #2(A): A note on section 76 of the *CJA*, "Direction of Court Staff"**

20. For ease of reference, Section 76 of the *CJA* states:

> 76 (1) In matters that are assigned **by law**[3] to the judiciary, registrars, court clerks, court reporters, interpreters and other court staff shall act at the direction of the chief justice of the court. 2006, c. 21, Sched. A, s. 14.

21. The following outlines the facts material to the ***JRPA* Application** and the LAT Appeal as it relates to the various requests herein. Painstaking detail is required because of the Tribunal's failure to comply with section 10 of the *JRPA* and to fill the lacunas creates by that intentional and egregious statutory non-compliance by the Tribunal. These submissions are provided in support of the **Requests** as a means of ensuring compliance and on the continued basis of urgency. The further details of the below are bookmarked and hyperlinked in the Applicant's oral compendium and oral outline that shall follow.

**VOLUME #3: FACTS**

22. The underlying facts in this ***JRPA* Application** are contained within the record of proceeding with reference to the filed documents such as the ***JRPA* Application**, Factum, Application Record, and Affidavit #2.

23. The Ontario Superior Court of Justice Guide to Judicial Review in Divisional Court, effective by its metadata which states, "Scarciolla, Claudia (JUD)" (author) and 11/24/22 (date) (the "*JRPA* Guide") which states [emphasis it the Applicant's]:

> "After you have brought an application for judicial review, you will receive an email to register for CaseLines and upload your materials. There is no fee to use CaseLines."

24. The ***JRPA* Applicant** tendered his ***JRPA* Application** and paid the requisite fees on November 15, 2024.
    a. After receipt of the issued ***JRPA* Application**, from the Registrar, with thanks, the ***JRPA* Applicant** did not receive an invitation to Case Center.

25. The ***JRPA* Applicant** delivered[4] (served) and filed his **Factum**[5] on December 10, 2024.

26. The ***JRPA* Applicant** delivered (served) and filed his **Application Record** on December 12, 2024.

27. The ***JRPA* Applicant** filed and paid for the Certificate of Perfection on December 13, 2024;

28. The ***JRPA* Applicant** also filed the requisite affidavit of service thereafter;

29. The ***JRPA* Applicant** received confirmation of his filing thereafter;

30. The ***JRPA* Applicant**, based on his review of what has been received, has not received any mail or email of the Form 68(B) which was required to be delivered to the parties after the ***JRPA* Applicant** had filed and paid for the Certificate Of Perfection with an approximate date of the hearing. Based upon a reasonable interpretation of the relevant Civil Rule, which is 68.05(2) (see: (2) When the certificate of perfection has been filed, the registrar shall place the application on a list for hearing and give notice of listing for hearing (Form 68B) by mail to the parties and the other persons named in the certificate of perfection. R.R.O. 1990, Reg. 194, r. 68.05 (2).”), the Registrar was required to place the Applicant’s ***JRPA* Application** on a list for hearing and give notice of listing for hearing on or around Tuesday, December 17, 2024.

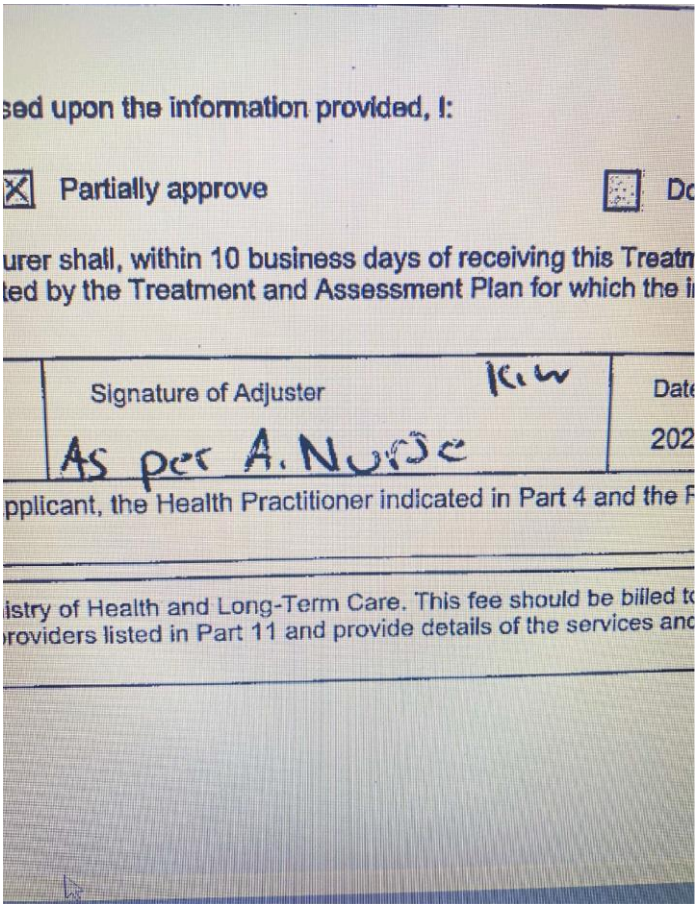
31. Despite filing his requisition #1 on December 24, 2024 (see: **Confirmation number 2787308**) requesting and requiring the Registrar to comply with her duties, there is currently no evidence that any such steps have been taken in this regard. Moreover, the ***JRPA* Applicant**, by usage of said service, was entitled to have any filing processed within five business days, which may be accepted or rejected. Five business days from December 24, 2024, was January 2, 2025.

32. Relevant to this Recusal Request and Nullification Request, on June 28, 2024, in relation to the Applicant’s NOM #6 and NOM #9, the Tribunal dismissed the Applicant’s COI motion and Mr. Andrew Papadimtripoulos (the “**Epstein Cole Client**”) remained as a representative of SNIC. The timing could not be more important because on June 20, 2024, the Tribunal granted the Applicant’s NOM #8 which removed the Fictitious Respondent (TDGIC) as the sole respondent party.

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

## VOLUME #3(A): THE FORTUITOUS DISCOVERY

34. The fortuitous discovery which merely solidified the Applicant’s uncontroverted evidence was the finding of an anniversary card penned to his ex wife presumably in 2015 and 2016 under the bed where the Applicant slept and where Mr. Papadimitropoulos used to reside. The evidence remains uncontroverted in the record of proceeding;



sed upon the information provided, I:

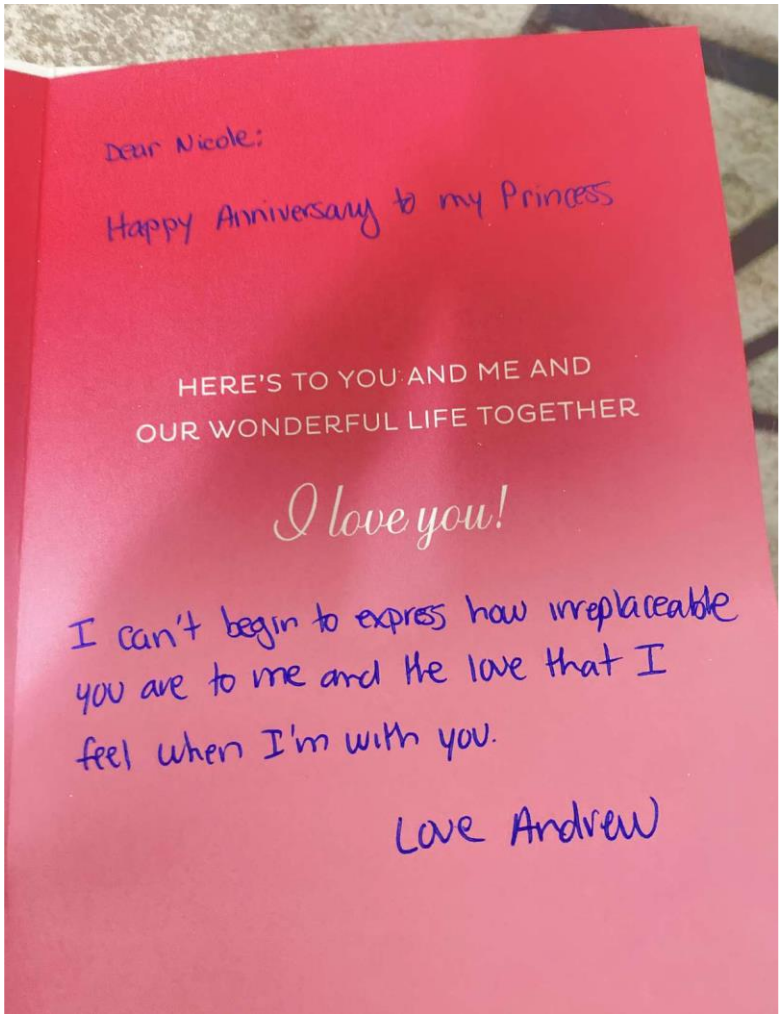
☒ Partially approve ☐ Do

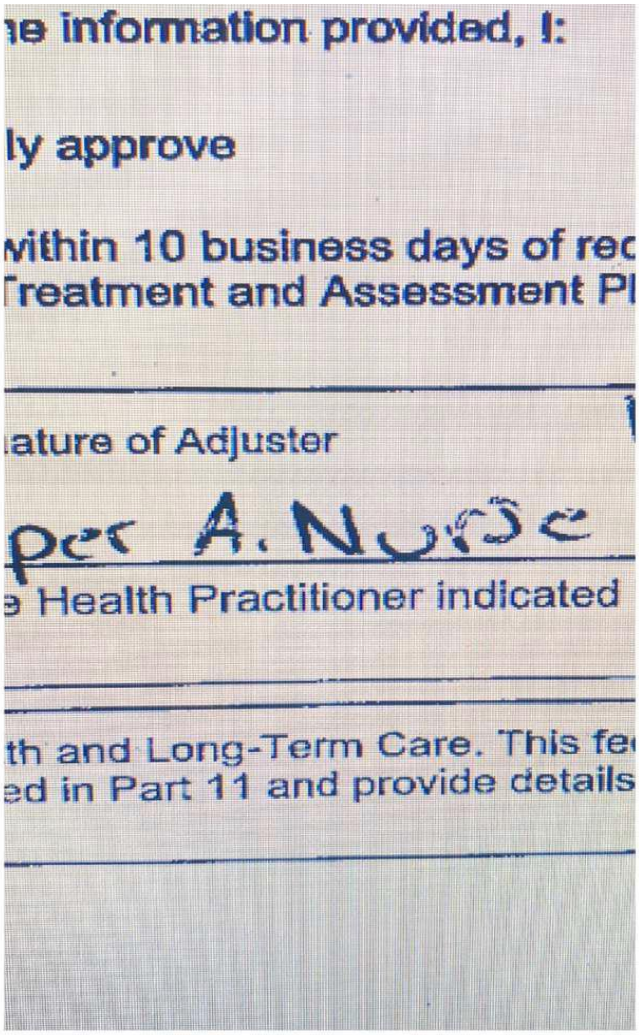
urer shall, within 10 business days of receiving this Treatm
ted by the Treatment and Assessment Plan for which the i

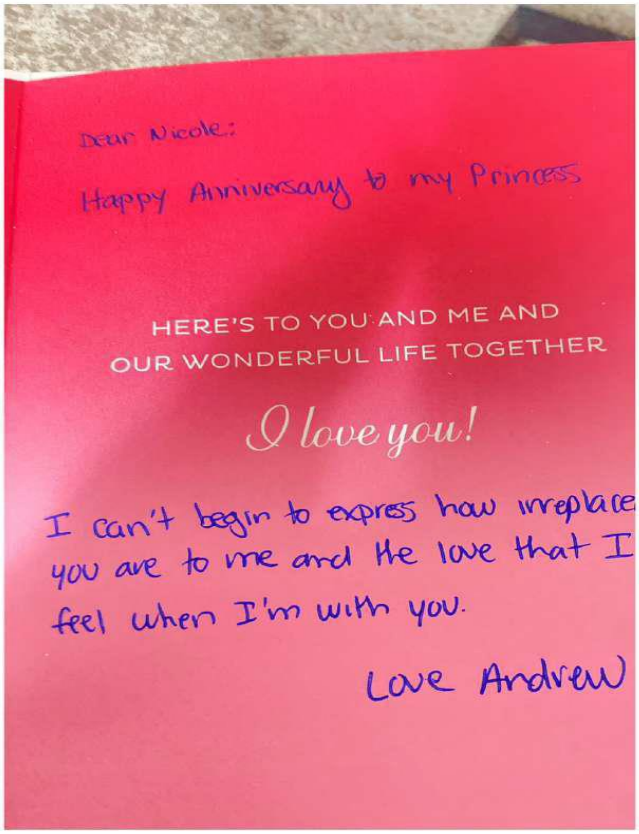
| Signature of Adjuster | Date |
|---|---|
| As per A. Nurse KW | 202 |

pplicant, the Health Practitioner indicated in Part 4 and the F

istry of Health and Long-Term Care. This fee should be billed t
roviders listed in Part 11 and provide details of the services and


Dear Nicole:
Happy Anniversary to my Princess
HERE'S TO YOU AND ME AND
OUR WONDERFUL LIFE TOGETHER
I love you!
I can't begin to express how irreplaceable
you are to me and the love that I
feel when I'm with you.
Love Andrew




(see: Affidavit #3, Exhibit "A", pages 274 to 279, which was affidavit of the Applicant on September 19, 2024,

35. No handwriting expert was required with that glaring obvious similarities.

36. The backdrop to this Forged Signature of an adjuster with SNIC is that the cover letter therein (not a public interest issue per se) confirmed and represented that SNIC had approved the sum of approximately $2080 in medical and rehab benefits ($1995 +$85.87). However, it never issued a cheque for the same to the Applicant's relevant health practitioners. The only reasonable inference is that SNIC did not want to take further steps in affirmation of the fraud, forgery, false document and uttering of a false document. Does that it make it lawful? The question answer itself.

**VOLUME #3(B): NO ONE HAS MORE TO LOSE THAN MR. ANDREW PAPADIMITROPOULOS**

37. It is the very exhaustion of each and every avenue that has karmically come to save this Applicant at the most fortuitous of times. The dismissal of his NOM #6 and NOM #9 (which was repurposed and filed after the nullity case conference and the change of the style of cause) is what kept Mr. Andrew

Papadimitropoulos as a representative of SNIC from his post in Markham for "TD Insurance" but now has caused a further light to be shined on his misconduct whilst being a client of Epstein Cole and at the very least a continued address for notices within a separation agreement.

**VOLUME #5: ISSUES**

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

    b. Is there a ROAB involving the Madam Justice Shore in light of her being a partner at Epstein Cole LLP at the time when Mr. Andrew Papadimtriopoulos retained Epstein Cole LLP along with the admission of law by counsel of record in this *JRPA* Proceeding to the three distinct insurance companies that Mr. Andrew Papadimitropoulos could not be involved in the Applicant's SABS Claim and LAT Appeal by his contractually agreed requirement that he not have any indirect or direct contact Ms. Nicole Artopoulos (spouse of the Applicant at material times) (see: Oral Compendium, page 66)?
    c. Pursuant to the common law in Canada that a RAOB cannot be remedied, what order must be granted in relation to the Shore J. Case Management Appearance Requirement?
    d. Pursuant to the *Civil Rules* and the common law requirement that justice must not just be done but seen to be done, what steps should and must the Associate Justice take after the Nullification Request is granted?
    e. In light of the delays experienced by the *JRPA* Applicant and the public interest along with the continued urgency of the Applicant's ***JRPA* Application**, what directions must the Chief Justice take as per section 76 of the *CJA*?

***VOLUME #6: LEGAL BASES: RELATING TO THE LICENSEES AND CAST OF CHARACTERS BELOW***

***Volume #6(A): Law Society Act***

39. To fully elucidate and outline the underlying conflict of interest and, bluntly, fraudulent conduct of one Mr. Andrew Papadimtriopoulos in executing documents for adjusters but in their name of "as per" (see: As per A. Nurse") (by way of the fortuitous discovery (see: Affidavit #3 herein), the underlying legal bases involving the non-licensee, Mr. Karat, acting contrary to the *LSA* and the LSO *By-Law*s is required.

40. Moreover, there is ostensibly some persistent discord between the decisions of Vice Chair McGee and Vice Chair Maedel in Dankha and Mosa respectively and the decisions of Vice Chair Morrissette and Vice Chair Lake (see: NOM #5 and reconsideration decision of Vice Chair Logan). As this Court would have seen had the Tribunal complied with its statutory obligation under the *JRPA*, the Applicant had to get most "creative" and "lucky" (see: the "one and the same" misrepresentation by Mr. Nieuwland at the May 2, 2024, nullity case conference) to have the Tribunal to comply with the law (which is completely antithetical to the consumer protection nature of the statutory scheme of the Insurance Act, SABS, Reg 283) to obtain the orders that he did in his NOM #8 (nota bene: which changed the style of cause while removing a party and adding a party i.e. the granting of the same which is interlocutory in nature whereas the refusal of the same is a final order and final decision):

41. For clarity as to the Applicant's positions regarding some of the other decision makers at the quasi-judicial tribunal known as "LAT" like Vice Chair McGee, Vice Chair Maedel and some others, they are clearly very articulate and have high legal acumen. The decisions of Vice Chair McGee in Dankha was yet another beautifully written and analytical precise decision wherein she ensured that the Tribunal did not

condone the breaches of the *LSA* and LSO *By-Laws* by a paralegal engaging in the practice of law (not provision of legal services)

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

43. Ms. Watson, a lawyer licensee in good standing with the LSO, made the following arguments which were all rejected by Vice Chair McGee:
    a. Mr. Grabar submitted documents under the advisement of Mr. Faletta (a now suspended lawyer);
    b. Mr. Faletta oversaw Grabar's handling of the file; and
    c. A new lawyer (Watson) had recently took carriage of the file.

44. Mr. Karat was and is on far worse grounds that Mr. Grabar as Mr. Grabar was a licensed paralegal.

## *VOLUME #6(A)(I): LSA*, SECTIONS 1(5) AND (6)

45. A person provides legal services if the person engages in conduct that involves
    a. The application of legal principles; and
    b. Legal judgment with regard to the circumstances or objectives of a person.

    (see: section 1(5) of the *LSA*)

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

## *VOLUME #6(A)(II): SECTION 1(7) OF THE LSA: REPRESENTATION IN A PROCEEDING*

47. Doing any of the following SHALL BE CONSIDERED to be representing "a person" in a proceeding
    a. Determining what documents to serve or file in relation to the proceeding
    b. Determining on or with whom to serve or file a document; or
    c. Determining when, where or how to serve or file a document.

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

48. Doing any of the following SHALL BE CONSIDERED to be representing "a person":
    a. Conducting an examination for discovery; or
    b. Engaging in any other conduct necessary to the conduct of a proceeding.

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

50. "**Proceeding**" has the same meaning as in *By-Law* #4, section 6(1) ((see: **Hearing Brief**, Tab 26, page 285) and any intended proceeding was also vis-a-vis the Claimant (also defined as "Applicant" or "**Appellant**") and "*TD INSURANCE MELOCHE MONNEX*" (see: HB, Tab 38, page 561 for reference to "trade name") (Security National Insurance Company). The *LAT Rules* refers to the *LAT Rules* effective on August 21, 2023 (the "*LAT Rules*" or "New *LAT Rules*").

***VOLUME #6(B): THE "ADR REPRESENTATIVE" [NOT AN "OFFICER"]: KARAT – CONDUCT SOLELY IN RELATION TO SNIC***

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

52. Where a licensee (which the Appellant's uncontroverted evidence remains that the licensee (who is also deemed an "Officer" of SNIC by virtue of being a "manager" or "management" with SNIC) was the Mr. Papadimitropoulos) affiliates with a non-licensee, he remained exclusively liable for his professional practice when so affiliating. The Conflicted Lawyer (Mr. Papadimtriopoulos) has also acted for "TD Insurance Meloche Monnex" in *Mensah* (see: 2022 CanLII 452) and 18-00161 v. SNIC, 2019 CanLII 9628.

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

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

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

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

57. While **Nieuwland** was not on the email of January 25, 2024, rather conveniently, **Karat** represented in the email to the **Appellant**, "Kindly see the attached correspondence with today's date along with the Response of **AN** INSURANCE COMPANY" [emphasis is the **Appellant**'s] (see: Affidavit #13, Exhibit "A", page 5). **Mr. Karat** regularly confirmed by that auto-reply that is not authorized for **SNIC** (but for Primmum, TD Home & Auto, and ***NON-SABS INSURER***).

**Volume #6(C): Nieuwland's conduct solely in relation to the NON-SABS Insurer**

58. **Nieuwland** is a lawyer licensee, with the LSO, who was employed by Simitrich Law and now as a lawyer licensee with "TD Insurance Staff Legal". There are some discrepancies between how Saeed (see: HB[6], Tab 3, page 17 and Nieuwland describe, on the LSO Directory, "TD Insurance Staff Legal" as the form describes it as "employed – practising law" whereas the latter describes himself being in "private practice").

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

60. From early February 2024 to April 10, 2024, the **Appellant** provided notice to **Nieuwland** that his DOR for a **NON-***SABS* Insurer was a nullity and had no legal effect, and urged him to file a DOR on behalf of **SNIC**. **Nieuwland** did not respond and then stated that his DOR was unambiguous The **Appellant** also urged Mr. **Nieuwland** provide an affidavit if Ms. Moraes was his legal assistant. **Nieuwland** did not respond to the request

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

62. While, again, it matters not of the underlying facts and minutia of the relationships per se and the **EPSTEIN COLE** Client's involvement in representing SNIC, by reference to the As per A. Nurse signature and beyond as the Tribunal found that Mr. Andrew Papadimitropoulos was fully entitled to remain as a representative in the LAT Appeal, the Applicant provides the same primer no the LSO *By-Law*s in relation to the cast of characters. Put another way, the *JRPA* Applicant provides the same as per each case being determined on its own facts and out of abundance of caution.

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

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

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

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

66. The *JRPA* Applicant now copies and pastes from his speaking notes, filed with the Tribunal and later appended to an affidavit to meet the definition of record to be included in a record of proceeding under section 20 of the *SPPA*, as follows:

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

124. As Karat solely signed, filed and served (as it is presumed) the Purported SNIC Response, with the cover letter on January 25, 2024 (see: HB, Tab 3, pages 85 to 88; email: enclosed response from "An Insurance Company" which was the Appellant's Insurer by virtue of the Insurance Act and no reference to "NON-SABS INSURER"), which referenced "TD INSURANCE MELOCHE MONNEX" with the return address of SNIC Markham, along with his sole signature of the Karat COS, he did so without Nieuwland copied on that email. There is no reference to Nieuwland in the Purported SNIC Response. Therefore, Karat's sole conduct (which were his sole signing, sole filing and sole serving) therein were not to support or supplement Nieuwland's client at the time or by way of retrospective analysis. Only a lawyer licensee was authorized under the *LSA* to SIGN the Purported SNIC Response as non-licensee is not authorized to even sign correspondence (except of a routine administrative nature) and a paralegal licensee is not authorized to sign a "responsive pleading" where an Appeal (not a "claim" under *By-Law* #4) involves even the appearance that an individual is CAT Impaired. (see: HB, Tab 3, page 27).

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

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

127. By Nieuwland's inaction and then filing of the Purported Responsive Hearing Brief on April 11, 2024 in relation to NOM #6, Nieuwland affirmed and reaffirmed that his client was NON-SABS INSURER (NON-SABS Insurer). Nieuwland then made a succession of independent misrepresentations to the Tribunal about Karat and Moraes' roles herein and to him.
Therefore, Nieuwland did not comply with section 32(a) of *By-Law* #7. In relation to ss. 32(c), it is admitted by Karat (see: Purported SNIC Response and emails of Karat to Appellant along with cover letter referencing the Purported SNIC Response) that Karat operates from the premises at SNIC Markham and Nieuwland operates from the premises at 66 Wellington West, Toronto.

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

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

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

132. The Mr. Papadimitropoulos meets the definition of an "officer" under the Insurance Act by his title of "Consequence Management".

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

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

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

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

67. While Mr. Karat and Mr. Nieuwland had different clients for nearly six months and at the time of the case conference (with a bit of irony herein), SNIC in filing the SNIC Response had to act through an authorized representative or be directed by a "direct mind" – however clandestine and secret it may have been.

68. **SNIC** could only act through an individual, namely an authorized individual like an officer or one deemed to have the authority of an officer, particularly a senior officer (see: *Insurance Act*, "officer"). However, the *LSA* prohibited Mr. Karat from "signing" the SNIC Response as the sole representative at the time.

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

70. Therefore, the applicable and relevant definition is that of an "officer". "Officer" includes a trustee, director, **manager**, treasurer, secretary or member of the board or committee of **management** of AN INSURER and a person appointed by the insurer to sue and be sued in its behalf; (see: section 1(1) of the *Insurance Act*). While the **Mr. Papadimitropoulos** is not a "trustee" or "director" of **SNIC**, he does hold himself out as a "manager" and involved in "consequence management". **Mr. Papadimitropoulos** would meet the requirements of a licensee, officer and manager of **SNIC** at **SNIC Markham**. Therefore, on a balance of probabilities, the "officer" who ASSIGNED Mr. Karat with his duties and functions, to be the ADR specialist herein was the Mr. Papadimitropoulos for the particulars in affidavit evidence previously which are uncontroverted. More importantly, it is notable that Mr. Nieuwland misrepresented that Mr. Karat was an "ADR" 'officer' when he was not and never represented himself as such.

71. Even more compelling was that Mr. Karat signed the Purported SNIC Response without any reference to Nieuwland, and then served the Appellant (as defined in the LAT Appeal) with the Purported SNIC Response and a cover letter referencing the Purported SNIC Response (filed on behalf of AN insurance company – namely SNIC) which had the address as the same as the Purported SNIC Response at SNIC Markham. The author of the cover letter was "TD Insurance Meloche Monnex" with Security National Insurance Company as the return address albeit allegedly in Markham, Ontario.

### *VOLUME #6(D): KAISER*

72. While the Divorced Husband Conflicted Lawyer (Mr. Papadimtriopoulos) is NOT the declared tribunal advocate for SNIC and not declared herein at the *JRPA* Proceeding, his public denoted address with the LSO is SNIC Markham which was and is at material times in the TD Claim #3 the same address as Nurse (from DOL to Spring/Summer of 2023) and Karat (January 23, 2024 and onwards). It does not matter if the individual, admittedly in irreconcilable conflict of interest, is the "tribunal or court" advocate as found by the ONSC in Talisman. There is codification of the same under section 1(7) of the *LSA*.

### *VOLUME #6(E): PUHL, TALISMAN, AND YELLOW CEDAR*

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

74. The legal test is not when an individual's personal interests could compromise judgment or actions in discharging job duties but the legal test is whether the **Appellant** has established on a balance of

probabilities that a fair-minded and reasonably informed member of the public would conclude the removal of the

***VOLUME #6(F): SEMINAL POINT – COI COMING TO PASS FOR JUSTICE SHORE AS A RESULT OF THE MISCONDUCT, MISCHIEF AND FRAUD OF MR. PAPADIMITROPOULOS***

75. To belabour the point, the decision of the Tribunal dismissing the Applicant's COI Motion allowed Mr. Papadimitropoulos to remain as a representative whether or not he was in the forefront or back-office, declared or not. However, the difference now is that none of the tribunal decision makers were his counsel in a matrimonial litigation spanning some three years and ending in a divorce decree, and then issuing decisions involving him. However, that COI has come to pass on or around January 8, 2024.

***Volume #6(G): Martin – the administration of justice***

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

77. The expression "substantial risk" in the definition of "conflict of interest" describes the *likelihood* of impairment as opposed to nature and severity. substantial risk is one that is significant and plausible EVEN IF it is NOT certain or even probably that it will occur. There must be more than a "mere possibility" that impairment will occur. Ergo, not a "mere possibility" but a "possibility".

***VOLUME #6(F): DUTIES TO THIRD PERSONS MATTER UNDER THE LSO BY-LAWS AND RULES OF PROFESSIONAL CONDUCT***

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

79. In *Bose*, The Honourable Mr. Justice Perrell on the Ontario Superior Court of Justice found that Canada has taken on an increasingly stricter approach to the law of COI by way of reference to cases involving *Martin* to *Neil*

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

**VOLUME #6(G): FAMILY LAW AND FAMILY LAW FIRMS INVOKE DIFFERENT PRINCIPLES**

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

82. It is most fitting to note there are ongoing obligations arising from a "family dispute" between the Divorced Husband Conflicted Lawyer (Mr. Papadimtriopoulos) and the Individual Policyholder that are in perpetuity.

## *VOLUME #7: THE LEGAL BASES RELATING TO A REASONABLE APPREHENSION OF A BIAS ("RAOB") INVOLVING A JUSTICE*

### *VOLUME #7(A): THE TEST FOR RAOB*

83. The test for a reasonable apprehension of bias is fairly straight forward. It was first articulated by Supreme Court of Canada in Committee for Justice and Liberty v. National Energy Board, as follows:

> ". . . what would an informed person, viewing the matter realistically and practically — and having thought the matter through — conclude. Would he think that it is more likely than not that [the decision-maker], whether consciously or unconsciously, would not decide fairly."

84. This test — what would a reasonable, informed person think — has consistently been endorsed and repeated by the Supreme Court of Canada, most recently in *Yukon Francophone School Board, Education Area #23 v. Yukon* (*Attorney General).*

85. As such, the possibility of bias is not assessed from the perspective of the reviewing judge or the litigants themselves. Rather, the assessment of bias must be holistic and contextual, requiring "a careful and thorough examination of the proceeding", 6 to determine what a reasonable, neutral observer would see. The court reviews the ***FULL RECORD*** in its entirety "to determine the cumulative effect of any transgressions or improprieties".

86. By the Applicant being deprived of his right to upload his filed documents into Case Center, contrary to the explicit language in the JR Divisional Court Guide, it is unclear if Justice Shore had access to the Applicant's Filed Documents which an Originating Process, Factum, Application Record, Affidavit #1 and #2, and others.

### VOLUME #7(B): POTENTIAL GROUNDS FOR BIAS

87. There are six potential grounds for bias by which the impartiality of judges and administrative decision-makers can be brought into question under Canadian law.

88. This typology has been adapted from the categories formulated by Bryden, Philip, and Jula Hughes. "Legal Principles Governing the Disqualification of Judges." Available at SSRN 2473557 (2014) ["*Bryden & Phillips, Legal Principles of Disqualification*"].

a. Pecuniary or Personal Interest;

b. Personal Relationships;
c. **Past Associations** with Litigants or their Representatives; and
d. Prior judicial involvement with litigants.

89. There is no dispute that pursuant to the *LSA*, as a result of the substantial amendments in 2006 pursuant to the *Access To Justice Act, 2006*, that a representative need not be counsel of record. However, as per the record of proceeding in the LAT Appeal, pursuant to the contents required by the *SPPA*, section 20, the decision that allowed Mr. Papadimitropoulos remain as a binding one herein. If not a COI then, then certainly a COI came to pass now.

**VOLUME #7(C): RECUSAL PROCEDURE**

90. For example, in *Benedict v. Ontario* the provincial Crown moved to disqualify the motion judge on a reasonable apprehension of bias, as the motions judge was a plaintiff in an ongoing wrongful dismissal action against the Crown in a case similar to the employment-related claim before her. The Crown appealed after the judge refused to recuse herself. The Ontario Court of Appeal disqualified the judge, holding that any decision she reached which was unfavourable to the Crown could be perceived as advancing or vindicating her own claim.

***VOLUME #7(D): PERSONAL RELATIONSHIPS***

91. This class of bias relates to situations where the adjudicator has a sufficiently close relationship with a person involved in the proceeding (e.g. witnesses, parties, counsel, etc.) that renders him or her incapable or potentially incapable of judging impartially. In these instances, the impartiality can be in the form of favouritism[7] or personal animus[8] depending on the history of the relationship.[9]

92. Three considerations are important here: (1) whether it is a current or a previous relationship (existing relationship give rise to greater apprehension of bias); (2) The nature of the relationship (i.e. friendship, family, professional, or business); and (3) The depth of the relationship (i.e. cordial, formal, social, intimate). [10]

***VOLUME #7(E): PERSONAL RELATIONSHIPS WITH LITIGANTS AND THEIR REPRESENTATIVES***

93. Judges often disqualify themselves where the matter before them involves former clients or law partners.

94. The SCC found in its seminal case of *Weykaum* Indian Bank at paragraph 65:

> "Second, when parties say that there was no actual bias on the part of the judge, they may be conceding that the judge was acting in good faith, and was not consciously relying on inappropriate preconceptions, but was nevertheless unconsciously biased. In R. v. Gough, [1993] A.C. 646 (H.L.), at p. 665, quoting Devlin L.J. in The Queen v. Barnsley Licensing Justices, [1960] 2 Q.B. 167 (C.A.), Lord Goff reminded us that:
>
> Bias is or may be an unconscious thing and a man may honestly say that he was not actually biased and did not allow his interest to affect his mind, although, nevertheless, he may have allowed it unconsciously to do so. The matter must be determined upon the probabilities to be inferred from the circumstances in which the justices sit."

95. Put another way, is it more likely than not that it can inferred, from an objective person's perspective, that Madam Justice Shore was not actually biased and did not allow her interest as being a partner of the law firm of Epstein Cole LLP during the time of a firm's representation of Mr. Papadimitropoulos but nonetheless the appearance of mischief and misconduct is one that this ONSC (Divisional Court) must distance itself from an appearance standpoint.

*96. What would an informed person, viewing the matter realistically and practically – and having thought the matter through – conclude? Would this person think that it is more likely than not that Binnie J., whether consciously or unconsciously, did not decide fairly?*

97. There are no textbook instances.

98. Whether the facts, as established, point to financial or personal interest of the decision-maker; present or past link with a party, counsel or judge; earlier participation or knowledge of the litigation; or expression of views and activities, they must be addressed carefully in light of the entire context. There are no shortcuts.[11]

99. The fact that a judge would have recused himself or herself ex ante cannot be taken to be determinative of a reasonable apprehension of bias ex post.[12]

100. The following statement of Laskin C.J., in *Committee for Justice and Liberty v. National Energy Board*, *supra*, at p. 388:

> "Lawyers who have been appointed to the Bench have been known to refrain from sitting on cases involving former clients, even where they have not had any part in the case, until a reasonable period of time has passed. *A fortiori*, they would not sit in any case in which they played any part at any stage of the case. This would apply, for example, even if they had drawn up or had a hand in the statement of claim or statement of defence and nothing else (see: paragraph 80 of *Weykaum*).

101. While commending Madam Justice Shore for being ready, willing and able, she (and this Court) must live by the very representations that she made to the Judicial Advisory Committee for it to rely upon in determining her high level qualification to become a justice and ensure not only the impartiality of her actions but the *appearance of the same*.

102. It is not the grounds for automatic disqualification but it serves as a strong evidentiary foundation. It suggests that a reasonable and right-minded person would likely view unfavourably the fact that the judge acted as counsel in a case over which he or she is presiding, and could take this fact as the foundation of a reasonable apprehension of bias (see: paragraph 81 of *Weykaum*).

***VOLUME #7(F): GOVERNMENT PRACTICE IS DIFFERENT THAN PRIVATE PRACTICE***

103. Furthermore, in assessing the potential for bias arising from a judge's earlier activities as counsel, the reasonable person would have to take into account the characteristics of legal practice within the Department of Justice, as compared to private practice in a law firm. See the *Canadian Judicial Council's Ethical Principles for Judges*, supra, at p. 47.

***VOLUME #7(G): JUDGES' VOLUNTARY RECUSAL***

104. In Canada, the vast majority of recusal decisions are made by judges on their own motion. Judges are under an ethical and legal obligation to recuse themselves, if they believe they will be unable to judge impartially. In carrying out this responsibility, a judge is not required to consul with any other person, including with his or her Chief Justice.

105. If a judge is aware of any relationship or personal interest that raises a reasonable apprehension of bias, it is generally desirable that disclosure is made in advance of a hearing, so that the case may be reassigned.

***VOLUME #7(H): COURTS OF JUSTICE ACT: REASSIGNMENT***

106. Under the Ontario *Courts of Justice Act* (s. 75(1)(3)), it is the Chief Justice of a court or one of the Associate Chief Justices who is responsible for the assignment or reassignment of cases. However, pursuant to section 77.04(1), the case management conference was required to be in front of the **same judge** who self-initiated (however coincidentally or unlikely, probabilistically speaking, that may seem) the same. As such, said Case Management Attendance Requirement must be nullified as per the Nullification Request. It is void and void *ab initio* not merely voidable.

107. In the alternative, it must be adjourned generally and indefinitely while all other duties and obligations of not only the Applicant but the respondents, and, where applicable, the staff of the ONSC (Divisional Court) must be complied with forthwith. There is no requirement of a case conference to be held in any proceeding let alone a judicial review proceeding which are to be summary in nature.

***VOLUME #7(I): NO UNIFORM PRACTICE BUT BEST GUIDANCE: "SEEK SUBMISSIONS"***

108. More obviously, the CJC notes that judges should not recuse themselves where the potential conflict of interest is "trifling" or unlikely to raise plausible basis for disqualification. However, where the potential for disqualification is arguable, or when an unexpected issue arises shortly before or during the proceeding, the judge is advised to make disclosure and to seek submissions from counsel.

***VOLUME #7(J): NO UNIFORM PRACTICE BUT BEST GUIDANCE: "OBJECT PROMPTLY"***

109. The Supreme Court of Canada affirmed in *Canada (Human Rights Commission) v. Taylor*, that where a party reasonably apprehensive of bias fails to allege a violation of natural justice at "the earliest practicable opportunity", there is an implied waiver of any future right to complain about bias. Cartwright J. put the rule as follows, by way of dicta, in delivering the Supreme Court judgment in *Ghirardosi v. Minister of Highways for British Columbia*:

> "There is no doubt that, generally speaking, an award will not be set aside if the circumstances alleged to disqualify an arbitrator were known to both parties before the arbitration commenced and they proceeded without objection.

110. Where both criteria are established, the reviewing court will often look to the failure to object or raise with suspicion, indicative of tactic to hold an objection in reserve in the event of an unfavourable ruling. This is especially the case where allegations of bias are raised on appeal at first instance. For instance, in *Eckervogt v. British Columbia (Minister of Employment and Investment)*, the Court of Appeal noted that it is "most unsatisfactory" for the court to hear an allegation of bias in the first instance:

> "I do not think it is proper for a party to hold in reserve a ground of disqualification for use only if the outcome turns out badly. Bias allegations have serious implications for the reputation of the tribunal and in fairness they should be made directly and promptly, not held back as a tactic in the litigation. Such a tactic should, I think, carry the risk of a finding of waiver. Furthermore, the genuineness of the apprehension becomes suspect when it is not acted on right away.[emphasis added]."

111. Hence the critical importance to formally note objections in the record. The *JRPA* Applicant has been anything but "silent" but ensuring that he had objected, reserved his rights and promptly notified the ONSC Registrar.

***VOLUME #7(J): NO UNIFORM PRACTICE BUT BEST GUIDANCE: MOTION OR REQUEST***

112. ***Mullan and Boyle*** suggest that objections to an adjudicators presence should be made in writing, preferably by way of a formal motion to recuse, "or at the very least by an unambiguous request, and not just by way of general expressions of potential concern".

113. In the context of a "non-endorsement" or "non-order" by Justice Shore, the Applicant respectfully submits that a request, as opposed to a motion, is most appropriate considering the same. The Applicant, the "Requestor" herein, will provide a "record" so it can be stamped accordingly on the same or by way of separate document at the election of the Court.

114. In this manner, Rule 59.06 of the Civil Rules need not be addressed and it is unlikely it could be addressed on strict reading of the same but would have, hypothetically speaking but for the RAOB herein, by analogy under the Civil Rules.

**VOLUME #8: CONCLUDING REMARKS WITH THANKS TO THIS COURT FOR DECIDING THE RESPECTFUL REQUESTS**

**VOLUME #8(A): MISUSE OF CONFIDENTIAL INFORMATION: NORMALLY NOT SUSCEPTIBLE TO PROOF (OR DISPROOF)**

115. This principle, legal in nature, is cited for the purposes that the ***JRPA* Applicant** cannot prove or disprove what was shared in a privileged setting between **Epstein Cole LLP** and Mr. Andrew Papadimitropoulos. All that he can prove is that current counsel of record in this ***JRPA* Proceeding** admitted (but misrepresented) that Mr. Papadimtripoulos could not be involved in the LAT Appeal. If he could not be involved in any way in the LAT Appeal, then there is agreement between the Applicant and the respondent insurance companies that his legal relationships, caused by a separation and a final divorce decree in 2019, along with his continuing duties pursuant to contract to cease and desist in any form of direct (Ms. Nicole Artopoulos (the "Named Individual Insured" in the **Insurance Policy** (the very "insurance policy" cited

by VC Morrissette at paragraph 27 of the VCM Reasons (see: Oral Compendium, Tab 1, page 9) of indirect contact (which would be the Applicant)).

116. Litigation is not a "tea party". That being said, this Court's time need not be wasted in the minutia of the unlawful and, frankly, rather frightening conduct (from a mental health standpoint) that he engaged in by reference to affidavit #3 of the *JRPA* Applicant, made on January 8, 2025, by appending the very affidavits in the record of proceeding that he relied upon in support of his COI Motion.

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

118. With the benefit of hindsight, the Applicant's submissions in Spring 2024 were now somewhat prophetic:

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

119. It was prophetic because of the reference to 'future related proceedings" and it has come to roost yet again.

120. It is not in the Applicant's DNA or makeup to feel sorry for himself so nobody else needs to.

121. His primary concern is preventing this type of conduct from happening again (if systemic) to others who do not have the ability, determination, and/or skill to take on a collection of bullies.

122. To the extent that it is idiosyncratic to the *JRPA* Applicant, then it bolster the Applicant's respectful submission that the Recusal Request, Nullification Request, Adjournment Request, and Staff Direction Requests must be granted.

123. As found in *Dervisholli*, quoted by Madam Justice Marlyss Edwards in Transamerica, once a **NON-***SABS* Insurer collects, accesses, uses or discloses "**Confidential Information**" from the "Accident Benefits file" of '*SABS* insurer', said "counsel or licensees" are place in an irreconcilable conflict of interest. The only remedy that must be granted is their permanent disqualification and removal from any and all files which they are involved in. Unfortunately, this Tribunal, unlike the sound reasons for decision by Vice Chair McGee in *Mansuri* (which is well known to this Court by way of subsequent judicial review), did not decide in accordance with the law at that time. However, it turned out to be to the detriment to the respondent insurance companies considering their failure to comply with filing (not 'exchanging of materials' whatever that means in fact or at law) deadline of the *Civil Rules*.

124. In fairness to the Tribunal, the Applicant did not have said evidence of the mischief with respect to the forger of the "As per A. Nurse" 'signature' (used only for reference and not in the legal sense or any admission of its validity). The Applicant framed the legal issues as follows:

> *Has the Appellant in light of the filing and serving of the perfected Joint Hearing Record as of Friday, April 26, 2024 proven on a balance of probabilities that a fair minded and reasonably informed member of the public would conclude that the circumstances herein*

*could be (a possibility) of perceived conflict of interest such that an order is required, for the proper administration of justice, regarding the disqualification and restraining for any further involvement, in TD Claim #3, this **LAT Proceeding** and any Future Related LAT Proceedings of the Mr. Papadimitropoulos, Nieuwland, Karat, Moraes, Saeed, and any other unknown individuals who are Associates, Affiliated, Affiliated Entities, Supervisees, Assignees, Joint Entity Affiliated Providers et al (who must receive a copy of a LAT Order)?*

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

125. Simply put, since the record of proceeding is replete with only uncontroverted evidence of the Applicant regarding this rather fortuitous discovery (see: images above) for his self-interest and counter to that of the initial adjuster for SNIC and Mr. Andrew Papadimtriopoulos, Mr. Nieuwland's representations in defiance and response to the COI orders sought in NOM #6 and NOM #9 now bear heavily on Justice Shore recusing herself through no per se fault of her own but solely based on her former partnership status at **Epstein Cole LLP**. However, said law firm agreed to represent this "individual" and with that comes potential consequences that follow lawyers into retirement and into the bench. Simply put, the law firm cannot have it both ways where they accept funds for services and not have to bear the consequences (which is merely herein that Justice Shore cannot adjudicate this JRPA Proceeding in any fashion even at the triage or case management phase)

## VOLUME #9: RECAP OF RELIEF SOUGHT

126. As opposed to making a public spectacle of the above with a reported decision, the Applicant sincerely trusts that this Honourable Court appreciates resolving the above issues with findings, orders or granting of the Requested Relief in the Respectful Requests on an expedited basis:

1. The Honourable Madam Justice Shore is disqualified from any further involvement in this *JRPA* Proceeding (the "**Disqualification Request**" or the "**Recusal Request**");
2. The Case Management Appearance Requirement is declared as void and void *ab initio* (not merely voidable) (the "**Nullification Request**");
3. A general and indefinite adjournment of the case conference pursuant to 77.04(1)(b) of the *Civil Rules* by the Associate Justice (the "**Adjournment Request**");
4. A direction by the Honourable Chief Justice, pursuant to section 76 of the *CJA*, that the Registrar shall accept all outstanding requisition filings and provide confirmation of the same to the *JRPA* Applicant and respondents; and
5. A direction by the Honourable Chief Justice, pursuant to section 76 of the *CJA*, that the Registrar comply with her duties (by law), pursuant to 68.05(2) of the *Civil Rules*[13], and provide the parties with a "Notice of Listing For Hearing".

("d" and "e" together, the "**Staff Direction Requests**").

(collectively, the "**Respectful Requests**" or "**Requests**").

127. In support of the Respectful Requests, the JRPA Applicant relies on the filed materials in the record of proceeding herein and those documents that the JRPA Applicant has tendered for filing which remain in "processing status" and/or are required to be issued or deemed filed by the ONSC Divisional Court Registrar with reference to Rule 4.08 and/or section 76 of the *CJA*.

128. All of which is respectfully submitted (with the filed affidavit #3 of the *JRPA* Applicant on January 8, 2025, as "materials" in support of the same) to the ONSC (Div. Ct.) (Chief Justice and Associate Chief Justice (where applicable above)) on Thursday, January 16, 2025:

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

Appendices of the *JRPA* Applicant's Factum

January 16, 2025

VIA EMAIL

URGENT – NOTICE

Court file number: Court File No. DC-24-00000718-00JR
Type of document: email (three outstanding requisitions)
Short title of proceeding: McLean v. TDHA et al
Party: Mr. Kevin A. McLean, self-represented, Applicant, e: mcleansettlement@gmail.com;

Re: confirmation of the correct or preferred procedure to address my nullification request of Justice Shore initiated case management appearance requirement (the "**Case Management Appearance Requirement**") (the "**Nullification Request**") (see: affidavit #3 herein)

Re #2: recusal request of Madam Justice Shore (the "**Recusal Request**")

Re #3: to the extent applicable – dependent on other factor – the assignment request or reassignment

Re #4: Materials to follow today

Dear Madam Registrar Clegg:

1. I write regarding the above. I remain of the view and position, with great respect, that Justice Shore must recuse herself and withdraw her self-initiated Case Management Appearance Requirement.

2. You will kindly recall that I kindly informed you that I would review the law with respect to the preferred procedure. In that vein, There is no uniform practice in Canada with regard to raising the allegation of bias or a reasonable apprehension of bias at trial. Thus, the exact procedure to be followed in Ontario is unsettled (see: Paul Perell, "The Disqualification of Judges and Judgments on the Grounds of Bias or Reasonable Apprehension of Bias" (2004), 29 The Advocates' Quarterly 102, at 114 [Perell, "The Disqualification of Judges"].

3. Pursuant to our Courts of Justice Act, section 75(1) is relevant:

> Powers re sittings and assignment of judicial duties
>
> 75 (1) The powers and duties of a judge who has authority to direct and supervise the sittings and the assignment of the judicial duties of his or her court include the following:
>
> 1. Determining the sittings of the court.
>
> 2. Assigning judges to the sittings.
>
> 3. Assigning cases and other judicial duties to individual judges

4. As such, my request will be directed to the Honourable Chief Justice of the ONSC The Honourable Geoffrey B. Morawetz Chief Justice of the Superior Court of Justic and The Honourable Faye E. McWatt.

5. As noted, I have already filed my affidavit #3 on January 8, 2025, in support (i.e. materials exchanged already in support but also filed) of my Nullification Request and Request.

6. As noted by our SCC in *Newfoundland Telephone Co. v. Newfoundland (Board of Commissioners of Public Utilities)*, 1992 CanLII 84 (SCC), the damage caused by the reasonable apprehension of bias ("RAOB") cannot be remedied by Justice Shore. The only solution is the withdrawal of her Case Management Appearance Requirement.

7. The materials shall follow in short order which will be in the nature of a request with reliance on affidavit #3.

8. In relation to The Honourable Madam Justice Shore, and which will be relied upon in my requests of this Honourable Court, and as a brief "sneak preview" to the main argument, I note the following and certainly agree with Justice Shore's representations to the federal courts judicial appointment committee [hyperlinked to the specific paragraph for ease of reference]:

> "Vital to the Canadian system is the impartiality of a judge. This is different than the system in the United States. In Canada, judicial independence is viewed as vital to fostering public confidence in the fairness and objectivity of the justice system. The Supreme Court of Canada has described judicial independence as "the cornerstone, a necessary prerequisite for judicial impartiality."
>
> The Honourable Sharon Shore of our ONSC also made a statement to the Judicial Advisory Committee[14] that this Applicant certainly agrees with as follows:
>
> Last, but not least, is integrity. I have always tried to conduct my personal and professional life with integrity. One of the lessons I learned from my mentors is that it takes a lifetime to build your reputation, and only minutes to destroy it.

9. I repeat and rely upon the previous supra in this email thread and explicitly repeat and rely upon section 76 of the *CJA*. I note the importance of the record of this proceeding being complete, accurate and up-to-date for a variety of purposes not limited to the requirement it be so for my requests.

10. Thank you in advance for drawing this email and my affidavit #3 to the attention of the Chief Justice of the ONSC and the Associate Justice of the ONSC with the proviso that my written argument for my above noted requests will follow today.

Endnotes

[1] https://www.canlii.org/en/commentary/doc/2015CanLIIDocs5022#!fragment//BQCwhgziBcwMYgK4DsDWszIQewE4BUBTADwBdoByCgSgBpltTCIBFRQ3AT0otokLC4EbDtyp8BQkAGU8pAELcASgFEAMioBqAQQByAYRW1SYAEbRS2ONWpA:~:text=Public,reality.

[2] 68.05(2) When the certificate of perfection has been filed, the registrar shall place the application on a list for hearing and give notice of listing for hearing (Form 68B) by mail to the parties and the other persons named in the certificate of perfection. R.R.O. 1990, Reg. 194, r. 68.05 (2).

[3] Ironically, the same language under section 5 of the SPPA that is at issue in the JRPA Proceeding

[4] "deliver" means serve and file with proof of service, and "delivery" has a corresponding meaning (see: Rule 1.03)
[5] "factum" includes a book of authorities, if one is required by rule 4.06.1 (see: Rule 1.03(1));
[6]These references are to the "hearing book" or "hearing record" at the time and are part of the "record of proceeding" which remains the obligation of the Tribunal to file the same forthwith.
[7]See G.W.L. Properties Ltd. v. W.R. Grace & Co. of Canada Ltd., 1992 CanLII 934 (BC CA). (There was no RAOB where brother of a pre-trial management judge was associated with the plaintiff's law firm in a major product liability case. The interlocutory nature of the judge's role, short period remaining until trial, and inconvenience of recusal were relevant factors).
[8]See Blanchette v. C.I.S. Ltd., [1973] SCR 833, 1973 CanLII 3 (SCC). (The trial judge sitting an insurance defence matter was disqualified for a RAOB as he had actively pursued claims against the defendant-insurer on behalf of members of his family
[9]Kligman, "Bias", supra note 17 at 1-6.
[10]Bryden & Phillips, Legal Principles of Disqualification", supra note 15 at 58-63.
[11]https://canlii.ca/t/51pj#par77
[12]https://canlii.ca/t/51pj#par78
[13]68.05(2) When the certificate of perfection has been filed, the registrar shall place the application on a list for hearing and give notice of listing for hearing (Form 68B) by mail to the parties and the other persons named in the certificate of perfection. R.R.O. 1990, Reg. 194, r. 68.05 (2).
[14]Under the new judicial application process introduced by the Minister of Justice on October 20, 2016, any interested and qualified Canadian lawyer or judge may apply for federal judicial appointment by completing a questionnaire. The questionnaires are then used by the Judicial Advisory Committees across Canada to review candidates and submit a list of "highly recommended" and "recommended" candidates for consideration by the Minister of Justice (see: https://www.canada.ca/en/department-justice/news/2018/12/the-honourable-sharon-shores-questionnaire.html)

# TAB 8:

Court File No. DC-24-00000718-00JR
Applicant's Motion #2 (Motion in Writing; Request to Convert Motion into Motion for Judgment)

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

FORM 4D

*Courts of Justice Act*

AFFIDAVIT

ONTARIO SUPERIOR COURT OF JUSTICE (DIVISIONAL COURT)

BETWEEN:

**KEVIN ALEXANDER MCLEAN**

APPLICANT

- and -

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

RESPONDENTS

**Affidavit #8[i] of Kevin A. McLean in this *JRPA* Proceeding**

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

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

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

2. I adopt the definitions from my served documents in this *JRPA* Proceeding and they have the same meaning therein as they do herein unless expressly noted otherwise.

3. I define, at times, Mr. Andrew Papadimitropoulos as the "**Interested Individual**" or "**Interested Person**".

4. I swear this affidavit in support of my second motion ("**Motion #2**" or "NOM #2") in this *JRPA* Proceeding. My Motion #2 will be seeking the relief in the COI Recusal Submissions (see: Affidavit #7, Exhibit "A", pages 6 to 33) and other relief contained in the Notice of Motion form (Form 37(A)) to be filed and paid for after my serving and filing of this Affidavit #8 on the respondents and **Interested Person**s.

5. My first motion ("**Motion #1**" or "**NOM #1**") in this *JRPA* Proceeding is my motion exclusively directed at relief to be obtained against the Tribunal discharging its statutory obligations in accordance with section 10 of the *JRPA* and section 20 of the *SPPA*.

6. I note that in relation to my Motion #1 that I am only seeking that the Tribunal file (not necessarily serve as per the language in section 10 of the *JRPA*) the record of proceeding from December 24, 2023, to September 12, 2024.

7. For ease of reference for the Tribunal, these are from "speaking notes" for Motion #1:

> "When notice of an application for judicial review of a decision made in the exercise or purported exercise of a statutory power of decision has been served on the person making the decision, such person shall *forthwith file* in the court for use *on the application* the record of the proceedings in which the decision was made: section 10 of the *JRPA*. When notice of an application for judicial review of a decision made in the purported exercise of a statutory power of decision which includes a decision of the committee is served on the person making the decision, that person is required by s.10 of the *Judicial Review Procedure Act*, to "forthwith" file the record of proceedings in which the decision was made: *Rew v Association of Professional Engineers of Ontario (Discipline Committee)*, 2016 ONSC 4043 (CanLII) ["*REW*"], https://canlii.ca/t/gs5t9 as per Dambrot, J. (orally) at paragraph 8;
>
> Any interlocutory orders made by the Tribunal would include the orders to the time the VCM Decision was made which was September 12, 2024: *Payne v. Ontario Human Rights Commission*, 2000 CanLII 5731 (ON CA), [2000] O.J. No. 2987, 136 O.A.C. 357 (C.A.) ["*Payne*"], at paragraphs 79 [the record of proceeding when the decision was made], paragraph 160, and paragraph 161. *Payne* was cited with approval by this ONSC Div. Ct. in the same year when the *JRPA* Application was made in Lachance: *Lachance v. Solicitor General of Ontario*, 2024 ONSC 975 (CanLII) as per Stewart, Myers, and Leiper JJ of the Divisional Court at paragraph 37 [copied by link to highlight as no hyperlink available on CanLII].

> In *Rol-Land Farms Limited*, Justice Swinton, Greer and Leitch of the ONSC Div. Ct. found that content that post-dated the decisions under review was not admissible (see: *UFCW Canada v. Rol-Land Farms Limited*, 2008 CanLII 6652 (ON SCDC), (see: https://canlii.ca/t/1vtm5) ("*Rol-Land Farms*") at paragraph 38[ii])
>
> Pursuant to s. 10 of the *JRPA*, since the VCM Decision was an exercise of a statutory power of decision [or the refusal of], she must, upon receipt of a judicial review application, file a record of proceedings: Endicott ONCA, paragraph 18. It is for use *on the application* which is the proceeding and not for select uses at select times: Endicott ONSC (as per Molloy, Lederer and Edwards JJ.), paragraph 20."

8. While I am aware of the law involving judicial reviews intended to be summary proceedings, I felt compelled to serve, pay for and file my Motion #1 in its current state so that I, *inter alia*, was not accused or prejudiced in the future by any allegation or finding that I did not object to the Tribunal's statutory non-compliance. In this regard, I again copy and paste from my 'draft speaking notes' for Motion #1 returnable on January 30, 2025, by teleconference:

> *"*In *Reflection Productions*, it was available to the applicant to bring a motion seeking production of documents it alleges were relied on by the decision-maker but are not contained in the record: see, for example *K.D. v. Peel Children's Aid Society*, 2017 ONSC 7392 (Div. Ct.) at paras. 16-17).

9. I remain of the belief that the Tribunal does not have a full and accurate record of the proceeding and it is unable, not unwilling per se to file the record of proceeding as it was from December 23, 2023, to September 13, 2024. I source my belief based upon Mr. Boyce provided his theories of the law, without citation to the statutory sections under the *JRPA* and SPPA, and providing a timeline of three to four weeks in his initial letter to myself and the ONSC Divisional Court and not being able to comply with the same.

**Volume #2: Exhibits**

**Volume #2(A): Exhibit "A"**

10. Attached hereto to this my affidavit and marked as **Exhibit "A"** are copies of documents which I found last evening of January 26, 2025, and this morning of January 27, 2025, which are denoted as follows with the corresponding pagination:

a. "***Consultation on Proposed Fraud Reporting Service Rule and Guidance***" issued by the FSRA on July 15, 2024, with a comment due date of October 15, 2024, under the ID 2024-008;
    i. Page count: 14 pages
        1. (see: pages 1 to 14);
b. "***TDI - Final - Feedback on FRS Guidance dated Oct 15 2024***" authored by Mr. Andrew Papadimitropoulos (see: **[2024-008] Andrew Papadimitropoulos - TD Insurance;** Attached is TD Insurance feedback on FRS Guidance TDI - Final - Feedback on FRS Guidance dated Oct 15 2024.pdf
    i. Page count: 3 pages
        1. (see: **Exhibit "A"**, pages 15 to 17);
c. Fraud Reporting Service by the Financial Services Regulatory Authority of Ontario, "Proposed Rule 2024 – 003" in the following FSRA class of insurance licence of Automobile Insurance – Fraud Reporting Service (the "**Proposed Rule**")
    i. Page count: 4 pages
        1. (see: **Exhibit "A"**, pages 18 to 21);
d. Automobile Insurance Fraud Reporting Guidance document, issued by the FSRA under identifier, "AU0140INT" (the "**Guidance Document**")
    i. Page count: 20 pages;
        1. (see: **Exhibit "A"**, pages 22 to 41);
e. Notice of Proposed rule under the *Financial Services Regulatory Authority of Ontario Act, 2016* issued by the FSRA ("**Proposed Rule Notice**"); and
    i. Page count: 12 pages
        1. (see: **Exhibit "A"**, pages 42 to 53).

11. I have alleged and sworn on belief, which is contained in the record of proceeding and some of my documents in my filed and served Application Record of December 12, 2024, that there are issues of *real unfairness* before the Tribunal and that, *inter alia*, that Mr. Papadimitropoulos was the individual who engaged in some of the impugned conduct like the 'As per A. Nurse' purported signature in the first OCF-18 (see: Affidavit #3 herein, Exhibit "A", page 199) that was tendered through HCAI on or around April 6, 2023. I have not received any evidence to the contrary. I challenge any of the three respondent insurance companies and any individual that were so involved to provide evidence to the contrary. I directly challenge Mr. Papadimitropoulos to swear evidence to the contrary.

12. Out of an abundance of caution and in light of Ms. Im and Mr. Boyce removing their business addresses and business name or employer names after my affidavit #2 was served on them and filed with the ONSC Divisional Court, I copy and paste as of today's date Mr. Papadimitropoulos' directory information[iii]:

> **"Assumed Name**
> Andrew Papadimitropoulos
> **Law Society Number**
> 58696I
> **Class of Licence Definitions**

Lawyer (L1)
**Real Estate Insured** †
No
**Status** Definitions
Practising Law - Employed
**Business Name**
TD Insurance
**Business Address**
101 Mcnabb StMarkham, OntarioL3R 4H8
**Phone**
416 983 5467 Ext.
**Email Address**
andrew.papadimitropoulos@tdinsurance.com
**Trusteeships**
None
**Current Practice Restrictions**
None
**Current Regulatory Proceedings**
None
**Regulatory History**
N"

13. While I appreciate that the FSRA Proposed Rule (defined supra) is not in effect as of today's date, I allege that there has been a situation of employee fraud at the various insurance companies including but not limited to: (i) TDHA; (ii) TDGIC; and (iii) SNIC. I have alleged with sworn evidence, on belief, contained in the record of proceeding, that Mr. Papadimitropoulos was involved in some of the internal employee fraud.

14. I believe that in relation to SNIC's Response, exclusively, on its face, completed, signed and filed by one Mr. David Karat, a non-licensee, Mr. Papadimitropoulos had a role in conduct that fell under the following at section 1(7)(1.) and (3.) of the Law Society Act:

> "Representation in a proceeding
>
> (7) Without limiting the generality of paragraph 3 of subsection (6), doing any of the following shall be considered to be representing a person in a proceeding:
>
> 1. Determining what documents to serve or file in relation to the proceeding, determining on or with whom to serve or file a document, or determining when, where or how to serve or file a document.

> 3. Engaging in any other conduct necessary to the conduct of the proceeding. 2006, c. 21, Sched. C, s. 2 (10)."

15. I have referenced some of the above noted issues in my Factum which was filed and served on December 10, 2024.

16. I believe that Mr. Papadimitropoulos remains in breach of the terms and provisions of the separation agreement (contract) that he and Ms. Nicole Artopoulos reached prior to their finalized and approved divorce decree. I have a copy of the divorce decree in storage. In relation to the first sentence in this paragraph, I believe that Mr. Papadimitropoulos was and is in breach of the "no direct and indirect contact provision" therein. I believe that I would fall under the "no indirect contact provision" which is why I believe and allege, and challenge Mr. Papadimitropoulos to swear evidence to the contrary, that he utilized the likes of the names of Ms. Alisha Anne-Nurse, Ms. Persaud and Mr. Karat without revealing or disclosing his involvement.

17. For consistency and accuracy purposes for the ONSC Divisional Court to assess the merits of my NOM #2, Ms. Nicole Artopoulos' legal counsel was Mr. Theodore Laan, barrister and solicitor of the LSO with the firm name at the time of "Laan Litigation"[iv].

18. I now copy and paste from the LSO directory the information relating to Mr. Ted Laan:

> **Assumed Name**
> **Law Society Number**
> 18492Q
> **Class of Licence** **Definitions**
> Lawyer (L1)
> **Real Estate Insured** †
> No
> **Status** **Definitions**
> In Private Practice
> **Business Name**
> Ted Roland Laan
> **Business Address**
> 207-145 Wellington St WToronto, OntarioM5J 1H8
> **Phone**
> 1 416 861 1071
> **Email Address**
> ted@lannlitigation.com
> **Trusteeships**
> None
> **Current Practice Restrictions**
> None
> **Current Regulatory Proceedings**
> None

**Regulatory History**
Yes
See Regulatory History Details

19. I note that the size of the firm of Epstein Cole LLP is, based upon my computation, some 30 lawyers. Based upon my review of the website, it appears to me that Epstein Cole LLP specializes in matrimonial and family law dispute resolution and litigation.

20. I provide the above noted fact when juxtaposing the facts involving a client of Epstein Cole LLP in Mr. Papadimitropoulos and the facts in *GWL Properties* wherein a case management judge had a brother at the then firm of Ladner Downs LLP in Vancouver, BC.

21. I have provided my intention to seek relief, informally and formally, that Madam Justice Shore recuse herself and/or the Associate Justice of the ONSC and/or the Chief Justice of the ONSC disqualify her from being involved in this *JRPA* Proceeding, since becoming aware of Madam Justice Shore's prior distinguished, in my view, legal career at Epstein Cole LLP.

22. I believe and will continue to request the consent of the respondents until my Motion #2 is heard or resolved in my favour based upon the case law that I cited in my COI Recusal Submissions but also my correspondence with the ONSC Divisional Court and respondents but also pursuant to section 71 of the CJA:

> "The administration of the courts shall be carried on so as to: (a) maintain the independence of the judiciary as a separate branch of government; (b) recognize the respective roles and responsibilities of the Attorney General and the judiciary in the administration of justice; (c) encourage public access to the courts and public confidence in the administration of justice; (d) further the provision of high-quality services to the public; and (e) promote the efficient use of public resources."

23. I wish to continue to make clear that I have not alleged, as I cannot prove a negative (i.e. a matter that is susceptible to proof or not susceptible to proof), that Madam Justice Shore is actually biased towards the respondent insurance companies and prejudiced towards me but that the appearance of impartiality is at the forefront of my Motion #2.

24. Based on the writing style in the above noted document attributed by the FSRA to the **Interested Individual**, I believe that he was responsible for what I have defined in my Factum and Application Record as the Spam Fax (Spring 2023) and the letter that one of my health practitioners received in August or September 2024 which were, in my view and based on memory in relation to the former, similar to each other. The

latter letter to which I refer was the one where I had delivered OCF-18's and invoices on my behalf or in relation to the services provided to me to TDHA and SNIC, along with any other insurance company that may have had carriage of my accident benefits file regarding the duty to respond and pay benefits. The response that I received was that no entity within TD Insurance had any record of my claim number with TD despite it being provided in each OCF-18 and invoice along with the cover letter therein.

25. I believe that the **Interested Individual** has much animus and malice towards me.

**VOLUME #2(B): EXHIBIT "B":**

26. I re-swear that I do not believe TD Insurance Staff Lawyers' representation to me and the Tribunal that Mr. Andrew Papadimitropoulos was never involved in my accident benefits claim. I note that said representation was tendered by Mr. Nieuwland in the Winter and Spring of 2024. I believe that he remains involved in any all aspects of the same and I continue to object to the same however clandestine or surreptitiously he has been, he is or intends to provides any form of representation to any of the three distinct insurance companies named as respondents in this *JRPA* Proceeding or otherwise.

27. I have not finished at this time the chart that outlines all of the justices of the ONSC (Toronto Region) and their previous affiliations, partnerships or associations prior to being appointed as justices of the ONSC. However, having completed some 88 of the 93 listed justices in the ONSC (Toronto Region), I cannot find any other justice that worked at the law firm of Epstein Cole LLP at the times denoted of 2017 and beyond.

28. Attached hereto to this my affidavit and marked as Exhibit "B" are copies of two sets or classes of documents which are particularized as follows:

a. Copies of images that I obtained from CAMH through a privacy request and now privacy complaint to the OIPC (ON) involving the theft of my property on Friday, October 25, 2024;
    i. Page count: 6 pages
        1. (see: Exhibit "B", pages 54 to 59); and
b. Copy of a printout or chart that I received from the TPL based on my second access request[v] made of it pursuant to my factual grounds that an individual had engaged in unauthorized collection, use, access and disclosure of my name, TPL library card[vi] (from the time after October 25, 2024 into January 2025);
    i. Page count: 3 pages
        1. (see: Exhibit "B", pages 60 to 62).

29. While I do not intend at this time to delve into all of the minutia of what transpired from October 25, 2024, to January 2025 involving the theft of my property and

subsequent and continued theft, impersonation, fraud, false pretenses et al, I will provide the evidence which I believe is currently relevant and/or material to this *JRPA* Proceeding and my Motion #2.

30. I swear that none of the activities but for one activity in the chart provided by the TPL to me were activities undertaken by myself. The sole activity undertaken by myself was the obtaining of a replacement library card despite not having any picture identification at the time in hard copy form as all of my identification, including my passport, were contained within the "backpack" or "laptop bag" that was stolen on October 25, 2024.

31. I received the above noted chart late last week and I was most appalled with further unauthorized activities of which I was unaware in substance and form. For example, while my primary laptop computer was stolen, as it was contained within the backpack, the unauthorized individual engaged in 'renting' or 'borrowing' a laptop on October 28, 2024 which was a Monday. He did so, as it has been confirmed to me for some time that I am looking for a male that is engaged in the impersonation of me, on the very day in which I was in the same branch at the TPL which was the Fort York branch. In conjunction with said unauthorized activity involving the 'borrowing of laptops in my name' with my library card, said individual also borrowed a library book later entitled "That Night in the Library" or words to that effect. Since that time of October 25, 2024, it was, is and remains a terribly traumatizing and debilitating experience at the hands of this individual.

32. With respect to the images (Exhibit "B", page 55 (albeit slightly dark therein due to the image at the top), one of the reasons, of which I now have many and further corroborating evidence (some of it hearsay per se) that "TD Insurance", including Mr. Papadimtriopoulos was involved in some of the above unauthorized activities, was that there is a black suitcase that was NOT taken on October 25, 2024. I had utilized said suitcase for a period of time before the theft on October 25, 2024, and it had a "TD Bank" logo or name tag on the same. On the day in question, I was in the washroom of the visitor area part of the hospital, known as CAMH, at 1025 Queen Street West, which has a park that is adjacent to the East of it known as the "TD Commons", for no more than five minutes. During that time of setting my backpack and black luggage suitcase or "carry on" (with the TD logo on the same), only my backpack, and all contents (including all electronic devices) were taken therein. I immediately reported the same to the security and then made an access request of CAMH.

33. The images appended to this my affidavit at Exhibit "B" are some of the images that I obtained in relation to my access request of CAMH.

34. In relation to the unauthorized borrowing of books from the Queen and Salter branch of the TPL in November 2024, I confirmed with the TPL that I had never attended said branch or knew of its existence. I believe that at the material time of November 2024 that Mr. Papadimitropoulos had resided at an apartment or condo unit that was

approximately three hundred metres from that branch. I believe the same based on information that Ms. Nicole Artopoulos had provided me at various time regarding his whereabouts and asking that I avoid that area when driving.

35. When referring to the residences in which I believe that Mr. Papadimitropoulos resided at, while not knowing if he had moved from that apartment building which is on the South side of Queen Street West, I am referring to the buildings situated where there is a Starbucks on the corner of Queen Street West and Carlaw Street.

36. In my view, the most disturbing of all of the unauthorized conduct was that after I had paid for, served and filed the Certificate of Perfection on December 13, 2024, there was further unauthorized conduct at seven p.m. on that Friday evening. The ONSC Divisional Court will be able to review the emails in the record of proceeding herein or at least by reference to the covering emails wherein Madam Registrar Ms. Clegg, with thanks, referred me to the online "Civil Claims Submissions Portal" to file and pay for my Certificate of Perfection.

37. I thank Registrar Ms. Clegg for her guidance in that regard and the correct manner to file at first instance such that the fees were paid prior to attempting to file at first instance through email.

38. In relation to the December 13, 2024, date, I note that it was one day after I had filed and served my Application Record which then only afforded the respondent insurance companies and the Tribunal 30 days to file any responsive factums and application records.

39. I have received or obtained further information involving December 13, 2024, and that it involved a male impersonating me at the Toronto Reference Library. I had been to the Toronto Reference Library (789 Yonge Street) but only for the purpose of delivering my fees for purposes of receiving access to the requested personal information and information (records as defined under *MFIPPA*).

40. I note that based upon my height and weight and that of Mr. Papadimitropoulos, we are similar in my view in height and weight. I have seen him before, based on information and belief, and Ms. Nicole Artopoulos confirming that we had seen him while driving in public from certain time periods of 2019 to 2024.

41. I was going to provide an image of Mr. Papadimitropoulos and an image of myself for comparison purposes but his LinkedIn profile does not appear to me to be active at this time. However, I can confirm for the ONSC Divisional Court that in order for an individual to have obtained a third library card, albeit under false pretenses, that said individual was required to provide identification. My identification was contained in my wallet which was in the aforementioned backpack which was stolen on October 25, 2024.

42. In relation to my evidence about what I believe to the most disturbing conduct on December 13, 2024, the unauthorized individual also changed my phone number associated with my library card and account to that of a CBC reported known as Ms. Valeria Ouellet who specializes in investigative reporting involving fraud, fraud investigations, RCMP corruption, money laundering *et al*.

**Volume #2(C): Madam Justice Shore**

43. It is unclear to me as to how Madam Justice Shore was delegated, if at all, to provide the email that she did to presumably the Registrar that was then relayed to myself and the respondents on or around January 7, 2025. I, in my view, promptly objected to her compulsory requirement of an attendance at a case conference. Based upon my review of the *Rules of Civil Procedure*, the case conference was required to be before her. In that regard, I swore an affidavit, served and filed the same on an urgent basis by way of email in the email thread that was commenced by the Tribunal with its Notice of Appearance albeit to the incorrect email to me as a matter of my email address for service.

44. As such, I believe and will submit that the issue is now far more serious and the circumstances are more compelling that Madam Justice Shore cannot have any involvement in this *JRPA* Proceeding. I will be relying on the case of *GWL Properties* that I cited in my correspondence to the ONSC Divisional Court, the respondents and **Interested Person**.

**VOLUME #3: JURAT**

45. I swear this affidavit in support of my Motion #2 and the relief that will be sought therein. To the extent that any respondent and **Interested Person** opposes my relief in Motion #2, I will seek costs in accordance with the *CJA* and the Rules of Civil Procedure.

46. In light of the above, my position remains that this *JRPA* Proceeding is more urgent than previously and any delays to have the matter heard before the Divisional Court inclusive of any case conferences, whether before Madam Justice Shore or not, will likely lead to a failure of justice.

47. I will be seeking in my Motion #2 an order that Mr. Papadimitropoulos and Epstein Cole produce and provide to the Court *'in camera*' for its review a copy of the separation agreement between Ms. Nicole Artopoulos and Mr. Papadimitropoulos to assess the validity of the underlying evidence and facts, and relief sought in my Motion #2. I will be seeking leave or ancillary relief in relation to the same if the Court does not find that there is a reasonably perceived apprehension of bias, conflict of interest or lack of independence between Madam Justice Shore and the respondent

insurance companies by virtue of, *inter alia*, Mr. Papadimitropoulos being a client of Epstein Cole LLP.

48. I swear that I will provide any necessary or requested evidence regarding the above as it becomes known to me.

49. I challenge any of the respondent insurance companies including Mr. Papadimitropoulos to provide any evidence to the contrary involving any of my sworn evidence that relates to the above. To the extent that they do not, I will ask that this Court to draw an adverse inference against them (some or all) and disqualify Madam Justice Shore, not through her wrongdoing, but "theirs" and refusing to consent to the relief that a different justice provide a similar type email and manage a case conference (if applicable).

50. In repeating and relying upon my previous evidence from the LAT Appeal, I kindly refer the Divisional Court (Toronto Region) to the sworn evidence that I filed and served in the LAT Appeal, which is appended to my affidavit #3, wherein Mr. Papadimitropoulos was attending the courtyard of the condo corporation denoted in my address for service which required further intervention of legal counsel and contacting of the police at the time. I again swear that I am not a party to the separation agreement but to the extent that there are consequences for non-compliance by a party to that contract, I am providing a copy of my affidavit material to one Epstein Cole LLP and Laan Litigation for their receipt and advising of their respective clients.

51. I again ask that the Tribunal consent to the relief that I am seeking in my proposed Motion #2.

52. I seek the consent of the respondent insurance companies as well on the bases above in relation to my proposed Motion #2.

53. To the extent that I do not hear from either or both, I will proceed accordingly and seek the relief on what I submit is an urgent bases. I will move as expediently as possible in order to have my Motion #2 heard and decided. I confirm that I am not available on February 18, 2025, as I will be away from February 16, 2025, to early March 2025. I have asked the ONSC Divisional Court to provide alternate dates for a potential case conference before Madam Justice Shore should I not be successful with Motion #2 in its entirety. I reserve my rights in relation to the same and I do not agree that a case conference is necessary in accordance with the *CJA*, *Civil Rules* et al when measured against the current status and non-compliance by the respondents with the *Rules of Civil Procedure* (defined herein at times as the "*Civil Rules*").

54. I swear this **Affidavit #8** for no improper purpose and for the above purposes.

Sworn before me via videoconference in accordance with O. Reg. 431/20 at **Toronto, Ontario** on this 27th day of January 2025

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

Vinh The Tran, Esq.
Barrister & Solicitor, Attorney-at-Law, Notary Public,
Commissioner of Oaths/Affidavits etc., LSO# 57761C
188-639 Dupont Street, Toronto, Ontario, Canada M6G1Z4
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E-mail: vinhtranlaw@hotmail.com T. 647-209-7389

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NO ILA PROVIDED.
Identification Confirmed.

[i] Three affidavits have been my affidavits of service

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

[iii] https://lso.ca/public-resources/finding-a-lawyer-or-paralegal/directory-search/member?MemberNumber=58696I

[iv] https://lso.ca/public-resources/finding-a-lawyer-or-paralegal/directory-search/member?MemberNumber=18492Q

[v] My first access request made of the TPL was when I learned in November 2024 that an individual had, while using my library card and library card number

[vi] While I later learned in receipt of this chart as of last week that the unauthorized individual had impersonated me on December 13, 2024 (the day after my filing and serving of the Application Record, which in turn put the respondents on the 30 day prescribed timeline to file responsive factums and application records pursuant to Rule 68 (nota bene: Rule 38.09 does not apply

THIS IS EXHIBIT "A" REFERRED TO IN THE AFFIDAVIT OF Mr. Kevin A. McLean

AFFIRMED BEFORE ME, THIS 27th DAY OF January 20 25

.....

.....NER, ETC.

Vinh The Tran, Esq., LSUC #57761C
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FSRA Financial Services Regulatory Authority of Ontario



# Consultation on Proposed Fraud Reporting Service Rule and Guidance

**ID: 2024-008**

**Type:** Rules
**Sector:** Auto Insurance
**Status:** Public comment closed
**Date:** July 15, 2024
**Comment Due Date:** October 15, 2024

Thank you for providing your feedback on FSRA's proposed Fraud Reporting Service Rule and Guidance .

The request for submissions is now closed.

We appreciate the comments and questions received to date and look forward to sharing with you the final Rule. Stay up to date on FSRA's Rules on our newsroom. Follow us on LinkedIn and subscribe to our mailing list for quick updates.

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To reduce consumer harm and the additional costs associated with auto insurance fraud, Ontario's Financial Services Regulator (FSRA) is proposing a new Rule on auto insurance fraud reporting. This will help to better determine the amount of auto insurance fraud in the province, identify and address fraud trends and establish a baseline to be able to track and reduce the amount of fraud in the future. Once the Proposed Rule is in effect, insurance companies will be required to provide specific information to FSRA.

FSRA is seeking feedback on a Proposed Rule and Guidance that includes:

- a proposed definition of what constitutes a 'fraud event'
- when insurers are required to report information about a fraud event
- how often insurers will need to report information about fraud events to FSRA
- FSRA's approach in administering the Proposed Rule

Once the Proposed Rule comes into force, insurers will be required to provide prescribed information about auto insurance fraud to the FSRA. With the benefit of this information, FSRA will determine what can be done to reduce fraud and the consumer harm and costs arising from fraud.

The consultation period for the Proposed Rule is now open and will close on October 15, 2024. FSRA invites stakeholders to review the Proposed Rule and Guidance and submit their feedback.

## Learn more:

- Fraud Reporting Service Proposed Rule
- Fraud Reporting Service Proposed Guidance
- Notice of Proposed Rule

everyone. Learn more at www.fsrao.ca.

*Before we begin, please make sure you do not include any personal or private financial information. If your inquiry does require this information be shared with us, please call us at 1-800-668-0128 or email us at contactcentre@fsrao.ca for instructions.*

*By submitting your content, you agree to have your materials posted on our engagement portal, used in reports and other materials prepared by Financial Services Regulatory Authority of Ontario (FSRA) that may be shared with the public. Content is moderated so that all posts are respectful and professional. The Freedom of Information and Protection of Privacy Act, R.S.O. 1990, c.F.31, applies to all online content.*

**Comments** | **Questions and Responses**

| Sector | Comment | Date posted |
|---|---|---|
| **Auto Insurance** | **[2024-008] Giuseppina Marra - Desjardins Group**<br><br>Bonjour,<br>Le Mouvement Desjardins soumet à l'attention de l'Autorité ontarienne de réglementation des services financiers ses commentaires relatifs à la consultation publique sur le projet de règle et ligne directrice proposées sur le service de signalement des fraudes.<br>Nous vous réitérons nos sincères remerciements pour l'occasion offerte de soumettre nos commentaires.<br><br>Bien cordialement.<br><br>2024-10-15_ ARSF - Projet règle et ligne directrice sur le service de signalement des fraudes_commentaires du Mouvement Desjardins.pdf | **November 19, 2024** |
| | **[2024-008] Laurence L. Wymant - Unica Insurance**<br><br>Please find enclosed Unica Insurance's feedback on the proposed Fraud Reporting Service Rule and Guidance<br><br>Unica - FSRA FRS Submission (002).pdf | **November 1, 2024** |

| Sector | Comment | Date posted |
|---|---|---|
| | **[2024-008] Derrick Ajmo - Heartland Mutual Insurance**<br><br>Hi there,<br><br>The below are the concerns that Heartland would like to submit regarding the proposed Fraud Reporting Service Rule.<br><br>1. Fraud is usually never alleged unless proven in court. Typically, insurers will never deny a claim under fraud unless we have proof which we then turn over to the authorities. Typically, the authorities deem this low value and nothing is done. Therefore, without a conviction, how can we allege fraud towards an insured or vendor under the proposed guidelines.<br>2. The verbal presentation indicated that the insured or vendor identifying information would not be required to be reported however the documents released indicate that insured name and contact details must be listed on the FSRA reporting system. If we do indeed need to declare the insured or vendor name on the site and this information gets released to the public, the insurer could be exposed to a bad faith claim. Will FSRA regulations or rules exempt this reporting from being disclosed to the relevant parties and/or will FSRA compensate the insurer if found to be acting in bad faith due to reporting the insured or vendor of fraud based upon what later on could be deemed unproven allegations by a court?<br>3. What safeguards will FSRA undertake to ensure that this information is not inadvertently released to the public? With FSRA compensate insurers for the unauthorized release of the data should the system be compromised? Is there a concern by FSRA of the reputational harm to individual insureds and vendors should these unproven allegations of fraud be released into the public domain.<br>4. Will this information submitted by the insurer be subject to release to the public under Freedom of Information or be open to being subpoenaed in a court case involving said insurer.<br>5. As the goal of this is to gather the extent of the fraud being perpetrated in auto insurance, how will the information gathered be released to the public or insurers in a manner that will protect insurers from any potential bad faith allegations due to the data that has been reported to FSRA by them?<br><br>If there is another format that the above feedback needs to be | **November 1, 2024** |

| Sector | Comment | Date posted |
|---|---|---|
| | submitted to FSRA, please let me know and I will provide.<br><br>Regards<br>Derrick Ajmo | |
| **Auto Insurance** | **[2024-008] Elliott Silverstein - CAA Insurance**<br><br>On behalf of CAA Insurance, please find our comments related to this consultation.<br><br>Thank you.<br><br>2024-10-15- CAA Insurance submission to Fraud Reporting Consultation (final).pdf | **October 15, 2024** |
| **Auto Insurance** | **[2024-008] Sarah Fong - Travelers Canada**<br><br>Please find attached Travelers Canada's submission to FSRA's Consultation on Proposed Fraud Reporting Service Rule and Guidance.<br><br>Travelers Canada Submission on FSRA Fraud Reporting Service 10 15 2024.pdf | **October 15, 2024** |

| Sector | Comment | Date posted |
|---|---|---|
| **Auto Insurance** | **[2024-008] Rhona DesRoches - FAIR Association of victims for Accident Insurance Reform**<br><br>FAIR Association of victims for Accident Insurance Reform response to:<br>FSRA Consultation on Proposed Fraud Reporting Service Rule and Guidance ID 2024-008<br><br>We are pleased to see the Regulator take steps to identify fraud in the auto insurance industry to better protect the public. No one supports fraud and this is a positive step.<br><br>1. Definition of what constitutes a 'fraud event'<br>Regarding the definition of a 'fraud event' at: 1. (e) "fraud event" means a deceptive act or omission, or series of deceptive acts or omissions intentionally committed by a person(s) to obtain advantage, financial gain, or benefits beyond that to which one is entitled to with regard to any policy, claim, provision of goods or services or other occurrence related to automobile insurance, and for greater clarity includes instances of:...<br><br>RECOMMENDATION: The wording be expanded to include: "committed by a person(s), business(es) or institution(s) to.."<br>The current language appears to specifically exclude businesses or institutions that are insurers and their associates or intermediaries.<br><br>3. Prescribed information under subsection 101.3(1) of the Act<br>In respect to: 3(2) An insurer shall within thirty days after the close of each quarter of the calendar year provide the information prescribed in subsection 3(1) of this Rule with respect to fraud events which in the preceding quarter the insurer has taken action or made a decision based on reasonable grounds for the insurer to believe that a fraud event has occurred or is likely to occur.<br><br>RECOMMENDATION: Insurers should have to provide information in subsection 3(1) within 30-60 days of the event rather than after the close of each quarter.<br>If all insurers report at the same time the effectiveness of the Regulator may be compromised by being overwhelmed. Perhaps it is presumptuous to assume that the Regulator might take action to protect vulnerable claimants but stale-dated fraud reporting is | **October 15, 2024** |

| Sector | Comment | Date posted |
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| | less helpful.<br><br>GENERAL COMMENT:<br>If the “purpose of collecting this information is to support the more effective assessment and detection of automobile insurance fraud in Ontario” and to support “FSRA’s goal of reducing consumer harm caused through fraud” then there should be some statement about what FSRA does with this information other than “information that has been collected will be available for insurers to access to enable the assessing and detecting of fraud” in a second phase. What about consumer access to industry fraud?<br><br>Not only is the hunt for fraud left entirely to insurers (who are themselves often fraudulent in their claims practices) but it also ignores the claimant experience where insurers’ (and their intermediaries) fraud is a very real issue tens of thousands of Ontario’s claimants face every day.<br><br>Where, in this document, is the protection of vulnerable injured car crash claimants who are exposed to the fraud? This shouldn’t just be about protecting insurer profits but rather about protecting people who are scammed along the claims corridor.<br><br>This document goes back and forth about prescribed information required but fails to inspire confidence as it becomes clear this is about gathering information to identify fraud and carefully doesn’t mention any action to be taken by Fraud Reporting Service (“FRS”).<br><br>FSRA has taken some recent action to address fraud in the medical examination process with the Dr. Romeo Vitelli case but the failure to put the interests of consumers as a high priority is obvious. We cannot tell if any action was taken against the assessment center, Novo Medical Services Inc., for whom this psychologist prepared the medical reports that were at the center of FSRA’s investigation.<br><br>In 2019, Dr. Vitelli entered into an Acknowledgement and Undertaking with the College of Psychologists following allegations of professional misconduct as a result of a complaint from a claimant and FSCO and FSRA were informed of the College’s actions. | |

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| | According to the FSRA website https://teao.fsrao.ca:7179/api/enforcement/downloadDocument?Id=2653&lang=en :<br>In 2019,<br>FSRA received an investigative report in support of Aviva's allegations. Documents in the report establish that Novo Medical submitted seven Psychological Evaluation Reports and one Catastrophic Impairment Determination Psychological Evaluation Report (dated between April 21, 2017 and May 4, 2018) for claimants (AK, CD, GC, JH, MM, MR, and NK). Sections of the reports are identical. The reports also include identical quotations presented as the claimants' verbatim descriptions of their injuries and symptoms. (for claimants (AK, CD, GC, JH, MM, MR, and NK)).<br>and;<br>On June 23, 2020, FSRA received a Business Activity Complaint Form from Desjardins General Insurance Group ("Desjardins") alleging that Novo Medical and Dr. Vitelli engaged in practices that contravene the Act. (five psychological assessment reports for claimants (NH, AL, KH, JS, and RR)).<br>and;<br>FSRA received an investigative report from Intact Insurance ("Intact"). (claimant (SR)).<br><br>Despite insurers reporting they had been defrauded there was no action taken by FSRA until February 8, 2021, when FSRA investigators interviewed Dr. Vitelli. It was during this process that "Dr. Vitelli also stated that Novo Medical's staff used his Treatment Plan for another claimant as a template, by switching out the names and pronouns where necessary. Dr. Vitelli did not confirm the content and accuracy of the Treatment Plans he completed."<br><br>Finally in 2021 action was taken by FSRA with the suggestion "an administrative penalty in the amount of $50,000 should be imposed on Dr. Vitelli for knowingly making false or misleading representations to insurers in order to obtain payment for goods or services provided, contrary to section 447(2)(a.3) of the Act."<br><br>The public was eventually informed in a press release on "Nov. 22, 2023 /CNW/ - The Financial Services Regulatory Authority of Ontario (FSRA) has imposed a compliance order and administrative penalty of $15,000 against Romeo Vitelli | |

| Sector | Comment | Date posted |
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(Vitelli)."

For 4 years innocent injured claimants interests were ignored, first by the College of Psychologists (CPO) whom the Regulator relies on to enforce quality control and then by FSRA during the process of deciding what to do about the fraud.

We could find no evidence that Novo Medical Services Inc. was ever held accountable for their participation in harming the most seriously injured car crash survivors. Nova Medical is still actively in business providing assessments of Ontario's auto insurance claimants for insurers.

FAIR's files indicate there are likely more victims of the fraudulent reports as well as through 'expert' evidence at hearings where Dr. Vitelli's testimony was often criticized. There is also evidence that more than one assessment center used the services of Dr.Vitelli "through four healthcare clinics" mentioned on the CPO website document at https://cpbao.ca/wp-content/uploads/Notice-of-Hearing-Vitelle-Dr.-Romeo-2.pdf.

As of May 2024 the CPO https://members.cpbao.ca/public_register/show/1461 has listed the current referrals of Dr. Vitelli to the Discipline Committee.

We see no evidence that the 13 plus victims of this fraud were informed by FSRA or the CPO that they'd been scammed and that their cases had been tainted by the fraudulent and uncaring actions of Dr. Vitelli and Nova Medical.

To this day AK, CD, GC, JH, MM, MR, NK, NH, AL, KH, JS, RR, and SK may all still be in the dark about how their cases and access to rehabilitation were recklessly ignored by the insurer's choice of assessment centers.

We bring up this particular case for several reasons but the most important is that there is no point to gathering information if there is no intent to protect the public's interest. It should never be just about insurer profit and gain over informing the public in a timely fashion and this should be reflected in the proposed Rule and Guidance.

Timely reporting from insurers coupled with judicious action

| Sector | Comment | Date posted |
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from the Regulator would better protect claimants. The promise to follow through on the insurer reporting fraud is missing in this Guidance along with a willingness to share fraud trends with the public and not just insurers.

Taking steps to enforce compliance with Dr. Vitelli was an important mile-stone for the Regulator and we recognize this. The problem lies in the two and half years from the Notice of Proposal to Impose Administrative Penalties on March 31, 2021 to informing the public on November 22, 2023 in a press release. It appears that for two and a half years vulnerable claimants lacked protection because FSRA withheld this information. This should never happen.

The investigation and the conclusion record poses other serious questions related to the outcomes for the victims of this fraud.

It's still an open question whether Dr. Vitelli will be able to continue to provide services for auto insurers through medical examinations and testimony going forward. None of that is clear in the information on the College of Psychologists (CPO) website or in FSRA's documentation and neither contribute to public confidence in the automobile insurance sector.

In this instance insurers did the right thing but we can tell you we routinely hear about bogus insurer medical exams and this Guidance presents deaf ears to claimants who are harmed in the current system that relies on the Regulator to take action to protect them. What about Nova? Should they have been subject to an Administrative Penalty and/or closed out of performing these medical assessments?

Our suggestion to include businesses and institutions in the wording is based on this case above as is our comment about the importance of timeliness in reporting fraud.

Something needs to be done about the regulatory hole that exists for assessment centers who currently have no oversight and who, in this case, appear to have participated in, or should have known about, the fraud taking place.

Consumers believe the Regulator has a distinct obligation to follow-through on the fraud they find by way of informing

| Sector | Comment | Date posted |
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| | victims of that fraud and, by extension, to protect the potential or future victims from the perpetrators by barring the fraudulent players from activity in the auto insurance medical landscape. This can be done by closing the door to Health Claims for Auto Insurance (HCAI) access. There should be an active dialogue to disclose this type of medical fraud activity between relevant Colleges and FSRA. Further, the Colleges should also be required to participate in cleaning up this fertile ground for fraud that harms Ontario's patients.<br><br>Thank you for the opportunity to voice our concerns.<br><br>FAIR Association of victims for Accident Insurance Reform | |
| **Auto Insurance** | **[2024-008] Amanda Dean - Insurance Bureau of Canada**<br><br>Please see the attached submission for your consideration. Thank you<br><br>2024 - 10 Oct 15 - IBC Submission-Consultation on Proposed Fraud Reporting Service Rule and Guidance - FINAL.pdf | **October 15, 2024** |
| **Auto Insurance** | **[2024-008] Andrew Papadimitropoulos - TD Insurance**<br><br>Attached is TD Insurance feedback on FRS Guidance<br><br>TDI - Final - Feedback on FRS Guidance dated Oct 15 2024.pdf | **October 15, 2024** |
| **Auto Insurance** | **[2024-008] Ryan Stein - Definity Insurance**<br><br>Good afternoon,<br>Thank you for the opportunity to participate in the consultation for the fraud reporting service. Attached is a response from Definity Insurance.<br>Sincerely,<br>Ryan<br><br>24-10-15-Ontario Fraud Reporting Service Consultation.pdf | **October 15, 2024** |

| Sector | Comment | Date posted |
|---|---|---|
| **Auto Insurance** | **[2024-008] Karin Ots - Aviva Canada**<br><br>Attached is Aviva's submission to FSRA Fraud Reporting Service consultation..<br><br>Aviva Submission to FSRA Fraud Reporting Service Consultation - Oct 15 2024.pdf | **October 15, 2024** |
| **Auto Insurance** | **[2024-008] Craig Bran - Co-operators**<br><br>Co-operators Submission on Proposed Fraud Reporting Service Rule and Guidance Consultation_FINAL_10Oct2024.pdf | **October 15, 2024** |
| **Cross Sector** | **[2024-008] Danielle Wilkinson - Equite Association**<br><br>Please accept the attached consultation submission on behalf of Equite Association.<br><br>2024.10.09 - Équité Association - FSRA FRS Consultation Submission FV.docx_0.pdf | **October 15, 2024** |

| Sector | Comment | Date posted |
|---|---|---|
| **Health Service Providers** | **[2024-008] Laurie Davis - Ontario Rehab Alliance**<br><br>To whom it may concern,<br><br>Please see attached for the Ontario Rehab Alliance's comments on the Consultation on Proposed Fraud Reporting Service Rule and Guidance<br>ID 2024-008<br><br>We welcome the opportunity to discuss our comments or respond to any questions you may have. Please feel free to reach out to the ORA at admin@ontariorehaballiance.com or to myself directly, Laurie Davis, Executive Director of the Ontario Rehab Alliance - lauriedavis@ontariorehaballiance.com<br><br>Sincerely,<br>Laurie Davis<br>Executive Director<br>The Ontario Rehab Alliance<br><br>2024 10 11 - ORA - Fraud Reporting Service - Comments.pdf | **October 11, 2024** |
| **Health Service Providers** | **[2024-008] Ralph Palumbo - The Hillcrest Consulting Group Inc.**<br><br>Attached are the submissions from the Ontario Psychological Association (OPA) on FSRA's Proposed Fraud Reporting Service Rule and Guidance.<br><br>The OPA would be pleased to discuss its submissions with FSRA at any time.<br><br>Respectfully submitted,<br><br>Ralph Palumbo<br><br>OPA Submission on Fraud Event October 7 2024.docx | **October 7, 2024** |

| Sector | Comment | Date posted |
|---|---|---|
| **Property and Casualty and General Insurance** | **[2024-008] John Taylor - Ontario Mutual Insurance Association**<br>Please find attached OMIA's submission.<br>2024 09 30 FSRA - Fraud Reporting - OMIA Response.pdf | **September 30, 2024** |

No questions have been asked about this consultation yet.

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October 15, 2024

Financial Services Regulatory Authority of Ontario
Auto Insurance Sector
25 Sheppard Avenue West, Suite 100
Toronto, ON M2N 6S6

Dear Sir / Madame:

**Subject: Consultation on Proposed Fraud Reporting Service Rule and Guidance**

TD Insurance ("TDI") appreciates the opportunity to respond to the current Consultation on Proposed Fraud Reporting Service Rule and Guidance initiated by Ontario's Financial Services Regulator ("FSRA") with stakeholders on future statutory fraud reporting requirements.

TDI overall supports FSRA's outcomes to reduce the costs to consumers & industry borne as a result of fraud.

**Data and Privacy Concerns**

TDI is always committed to ensuring compliance and transparency and we fully understand the importance of data in fighting fraud. Since much of our industry already provides fulsome data to Equite we suggest that FSRA consider leveraging this already established route to avoid duplication of effort.

Consumers trust insurers with sensitive information, and any regulation mandating the sharing of such data must ensure robust protections are in place. It would be appreciated that FSRA share with the Insurance Industry the security measures it will implement to safeguard; and furthermore to protect, any insurer from the release of personal information and to prevent identity theft and other privacy concerns. We also suggest that FSRA provide limited liability protections to insurers for any cybersecurity data breaches.

**Key Concerns & Recommendations**

TDI is committed to working with all stakeholders to effectively tackle fraud within the auto insurance sector. The phase one strategy of data collection is a significant step in building a Fraud Prevention Strategy, however it needs to be combined with other tools and resources to be effective. An over-reliance on quantitative metrics, that do not accurately capture the nuances of fraudulent activity, may therefore miss context and intent.

We recommend that FSRA first provide guidance to mandate that all auto insurers in the province design and implement a robust fraud framework to include policies and procedures, monitoring,

audits and governance for their respective book of business. Furthermore, FSRA should then inquire with all auto insurers about what their respective experiences were with law enforcement regarding the actioning of white-collar insurance fraud matters including whether fraud charges ever laid, convictions and whether the sentencing judge order restitution.

*Clarity and Ambiguity*

One of our primary concerns is the use of the term "fraud event" and how its proposed definition may lead to inconsistent interpretations within the industry. Specifically, the words *reasonable grounds for the insurer to believe that a fraud event has occurred or is likely to occur.*

We recommend that the words *likely to occur* be removed from the definition of fraud event. We suggest that only fraud events where there is confirmed evidence of fraud be reported to FSRA as this will provide a clearer picture of the actual fraud trends impacting the industry and expose the bad actors who bolster auto fraud.

**Recommendations**

We advocate for a collaborative approach that emphasizes information sharing among industry stakeholders (i.e. insurers/law enforcement) and regulatory bodies. Engaging in partnerships to share best practices, insights and trends could lead to more effective fraud prevention strategies without compromising operational integrity.

In addition, insurers need to have the tools to allow them to act on the information developed during the course of an investigation. We recommend that FSRA confirm that insurers have the right to cancel or refuse to renew a policy under appropriate circumstances including:

- providing false information on the approved application form
- making any misrepresentation in the information provided for the purposes of obtaining, updating, or renewing an automobile insurance policy, including on the application form;
- a history of fraudulent activity in relation to an automobile insurance policy and the most recent instance of such an activity occurred less than 7 years before the day of the request to obtain, update or renew an automobile insurance policy.

There is also a noticeable lack of resources allocated to investigating and prosecuting insurance fraud cases. This underfunding hampers the ability of law enforcement and regulatory bodies to effectively combat fraud, allowing dishonest practices to proliferate.

Fraudsters are becoming increasingly sophisticated in their tactics, yet our legal framework remains stagnant. Laws must evolve to address new methods of fraud and provide clear guidelines for insurers on how to identify and report suspicious activities.

**Conclusion**

We appreciate your dedication to addressing fraud in the auto insurance industry and acknowledge the challenges that come with it. We are committed to work with FSRA and other relevant stakeholders to promote collaboration and efficiency to properly prevent and detect insurance fraud, while maintaining consumer protection.

Thank you for your attention to our concerns.

Yours truly,

TD Insurance

# FRAUD REPORTING SERVICE

## FINANCIAL SERVICES REGULATORY AUTHORITY OF ONTARIO
## PROPOSED RULE 2024 – 003

## AUTOMOBILE INSURANCE – FRAUD REPORTING SERVICE

## 1 Definitions

1(1) In this Rule,

(a) "Act" means the *Insurance Act*, RSO 1990, c I.8, as amended;

(b) "FSRA Act" means the *Financial Services Regulatory Authority of Ontario Act, 2016*, SO 2016, c 37, Sched 8, as amended;

(c) "prescribed information" means the information an insurer is required to provide under subsection 101.3(1) of the Act in accordance with subsection 3(1) of this Rule.

(d) "Rule" means this Authority Rule 2024 – 003

(e) "fraud event" means a deceptive act or omission, or series of deceptive acts or omissions intentionally committed by a person(s) to obtain advantage, financial gain, or benefits beyond that to which one is entitled to with regard to any policy, claim, provision of goods or services or other occurrence related to automobile insurance, and for greater clarity includes instances of:

i. Obtaining an automobile insurance policy through fraudulent means, including underwriting fraud;

ii. Obtaining a benefit under a contract of insurance through fraudulent claims;

iii. Providing goods or services to a beneficiary under a contract of insurance through fraudulent means or in a fraudulent manner;

iv. Fraudulent activity in the selling or distribution of insurance products; and

v. Fraudulent activity committed by internal employees of an insurer.

## 2 Interpretation

2(1) If a term or phrase used in this Rule is defined in the Act, the definition used in the Act shall apply for the purposes of this Rule.

2(2) Words and phrases not defined in this Rule have the same meaning as ascribed thereto under section 1 of the FSRA Act unless a contrary intention appears.

2(3) References in this Rule to the Chief Executive Officer include reference to an authorized delegate or designated agency of the Chief Executive Officer as outlined in subsection 101.3(1) of the Act.

2(4) For the purposes of this Rule, references to “insurance” are limited only to “automobile insurance”.

**3 Prescribed information under subsection 101.3(1) of the Act**

3(1) Prescribed information includes all information, including personal information, in the insurer’s possession, control or power related to any policy, claim, provision of goods or services or any other occurrence or event where the information provides reasonable grounds for the insurer to believe that a fraud event has occurred or is likely to occur.

3(2) An insurer shall within thirty days after the close of each quarter of the calendar year provide the information prescribed in subsection 3(1) of this Rule with respect to fraud events which in the preceding quarter the insurer has taken action or made a decision based on reasonable grounds for the insurer to believe that a fraud event has occurred or is likely to occur.

3(3) An insurer shall not disclose personal information that is not necessary for the purposes set out in subsection 101.3(2) of the Act when providing the prescribed information to the Chief Executive Officer.

3(4) An insurer shall de-identify all names and identifying numbers, symbols or other particulars assigned to individuals before an insurer provides the prescribed information to the Chief Executive Officer unless disclosure of the names or other identifying information is necessary for the purposes set out in subsection 101.3(2) of the Act.

**4 Reporting requirements – Prescribed information**

4(1) An insurer shall ensure that all prescribed information is complete, up to date, and factually correct before an insurer provides the prescribed information to the Chief Executive Officer.

4(2) Every insurer who provides prescribed information that subsequently becomes aware that the information the insurer provided is or has become incomplete, out-of-date, or factually incorrect shall in the quarter following their becoming aware:

(a) inform the Chief Executive Officer of the deficiencies in the prescribed information provided; and

(a) take reasonable steps to remedy the deficiencies in the prescribed information provided to bring the information into compliance with subsection 5(1) of this Rule.

4(3) If an insurer provides information to the Chief Executive Officer and subsequently discovers that the information either:

(a) includes deficiencies that cannot be remedied as required by subsection 5(2)(b) of this Rule; or

(b) fails to meet the threshold of the reporting requirement outlined in subsection 3(1) of this Rule,

then the insurer must immediately give notice and recommend the Chief Executive Officer to withdraw the information provided.

4(4) Every insurer shall submit the prescribed information through the Authority's electronic or computer-based system for the filing, delivery or reporting of the prescribed information.

## 5 Transitional

5(1) An insurer is not required to report the information required in section 3 of this Rule until after [date].

## 6 Coming into force

6(1) This Rule will come into force on the later of the date that section 101.3 and clause 8.2 of subsection 121.0.1(1) of the Act comes into force and 15 days after the Rule is approved by the Minister.

FSRA
Financial Services Regulatory Authority of Ontario

# Guidance

☑Interpretation | ☑Approach | ☐ Information | ☐ Decision

**Effective date:** [TBD]
**Identifier:** No. AU0140INT

# Automobile Insurance Fraud Reporting

## Purpose

This Guidance outlines the Financial Services Regulatory Authority of Ontario's ("**FSRA**") interpretation of requirements under Authority Rule 2024-003 – Fraud Reporting Service ("**FRS Rule**") and section 101.3 of the *Insurance Act* (the "***Act***"), and outlines FSRA's approach to supervising against the reporting requirements outlined in the *Act* and the FRS Rule.

Specifically, this Guidance provides FSRA's interpretation of several requirements under the FRS Rule regarding:

- the scope of prescribed information an insurer is required to provide when reporting information about fraud events to the Chief Executive Officer ("**CEO**") or an agency designated by the CEO
- the threshold of what constitutes "reasonable grounds for the insurer to believe" that a fraud event has occurred or is likely to occur, and
- the "action" an insurer may take that triggers an insurer's requirement to report prescribed information to the Fraud Reporting Service ("**FRS**")



Ontario

The purpose of the collection of information in the FRS is to support FSRA's effective assessment and detection of automobile insurance fraud in Ontario. Key outcomes associated with this purpose include:

- quantifying the prevalence of automobile insurance fraud in Ontario
- creating a baseline for fraud detection, and
- identifying fraud trends throughout the automobile insurance industry

## Scope

This Guidance affects all insurers that are licensed to carry on automobile insurance business in Ontario.

## Rationale and background

FSRA's rule-making authority to enact a FRS is derived from paragraph 8.2 of subsection 121.0.1(1) of the *Act* in conjunction with subsection 101.3(1) of the *Act*.

The overall objective of the FRS is to improve the use of data in the auto insurance industry's fraud management activities by statutorily authorizing and enabling insurers to report automobile insurance fraud information to the FRS.

The requirement to report information about automobile insurance fraud to the FRS builds on FSRA's existing powers to supervise against unfair or deceptive acts and practices ("**UDAP**") in the insurance sector. These powers are grounded in section 5 of FSRA's UDAP Rule to address unfair claims practices, and section 6 of the UDAP Rule to address fraudulent or abusive conduct related to goods and services provided to a consumer. Conduct by policyholders, claimants, claims vendors, and other non-licensees is captured by many parts of the UDAP Rule, including sections 5 and 6.

FSRA's collection and consolidation of the information about automobile insurance fraud that insurers are required to report under the *Act* will help create a baseline of data that can serve the purpose of assessing the amount of fraud in the automobile insurance system in Ontario.

In supervising and regulating the automobile insurance sector, FSRA is guided by its statutory objects under section 3 of the *Financial Services Regulatory Authority of Ontario Act, 2016* ("***FSRA Act***").

Specifically, this Guidance supports outcomes consistent with the following objects:

- to deter deceptive or fraudulent conduct, practices and activities by the regulated sectors
- to promote transparency and disclosure of information by the regulated sectors
- to contribute to public confidence in the automobile insurance sector
- to monitor and evaluate developments and trends in the automobile insurance sector
- to promote high standards of business conduct, and
- to protect the rights and interests of consumers

The FRS aims to reduce consumer harm, including unnecessary costs borne by consumers, as a result of auto mobile insurance fraud.

The FRS Rule and this accompanying Guidance represent the first phase of the development of the FRS. In the second phase of the FRS, FSRA anticipates that information collected in phase one will be available for insurers to access to enable the assessment and detection of fraud by insurers. Phase two is subject to approval from the Ministry of Finance and will depend on the implementation of and outcomes achieved in phase one. Amendments to the Proposed Rule and Guidance are expected to be required before the FRS can proceed to this second phase.

With regards to the first phase of the FRS, FSRA's view is that "assessing and detecting automobile insurance fraud" includes:

- quantifying the prevalence of automobile insurance fraud in Ontario
- creating a baseline for fraud detection, and
- identifying trends throughout the industry

# Interpretation

## 1. What is a “fraud event”?

All insurers must report information about “automobile insurance fraud” to the FRS in accordance with subsection 101.3(1) of the *Act* and the FRS Rule.

A common understanding of what events, circumstances, or actions are considered to amount to a “fraud event” is important for insurers to understand how to comply with the requirement to provide information to the CEO about “automobile insurance fraud”.

Subsection 3(2) of the FRS Rule requires insurers to provide information in accordance with subsection 101.3(1) of the *Act* when an insurer has taken action or made a decision based on reasonable grounds for the insurer to believe that a “fraud event” has occurred or is likely to occur. Subsection 1(1) of the FRS Rule defines a “fraud event” as follows:

> “fraud event” means a deceptive act or omission, or series of deceptive acts or omissions intentionally committed by a person(s) to obtain advantage, financial gain, or benefits from an insurer beyond that to which one is entitled to in with regard to any policy, claim, provision of goods or services or other occurrence related to automobile insurance […]

FSRA interprets this phrase broadly to cover a wide range of “deceptive acts or omissions intentionally committed by a person(s) to obtain advantage, financial gain, or benefits from an insurer beyond that to which one is entitled to”. This broad interpretation empowers insurers to identify activities that meet this definition.

Recognizing that the scope of what may constitute a fraud event under the FRS Rule is constantly evolving and that a prescriptive list could not capture all potential occurrences within scope of the definition, subsection 1(1)(e) of the FRS Rule provides a non-exhaustive list of categories of “fraud events”. Examples of specific instances of “fraud events” under these broad categories is included as **Appendix A** in this Guidance.

## 2. What is the extent of information about automobile insurance fraud that an insurer must provide?

Section 3(1) of the FRS Rule outlines the scope of "prescribed information" that an insurer must provide:

> "Prescribed information includes **all information**, including personal information, in the insurer's possession, control or power […] where the information provides reasonable grounds for the insurer to believe that a fraud event has occurred or is likely to occur".

FSRA interprets "all information" to mean all relevant information, without restriction or limitation, where the information provides reasonable grounds for the insurer to believe that a "fraud event" has occurred or is likely to occur.

The scope of information in section 3(1) is unqualified. As a result, if an insurer knowingly or unknowingly withholds prescribed information in their possession, control or power, including any and all relevant data points outlined in **Appendix B** of this Guidance, then the insurer would be in contravention of the *Act* and the FRS Rule, which may result in FSRA initiating measures to enforce compliance.

## 3. What type of information provides "reasonable grounds for an insurer to believe that a fraud event has occurred or is likely to occur"?

Insurers are required under the FRS Rule to report all information about automobile insurance fraud where the information provides reasonable grounds for the insurer to suspect that a fraud event has occurred or is likely to occur.

Understanding the difference between the prescribed "reasonable grounds to believe" ("**RGB**") threshold for reportable information and other thresholds is important for an insurer to understand the standard and scope of information that must be reported to the FRS.

This RGB threshold is intentionally prescribed in the FRS Rule to prevent premature, unnecessary, or inaccurate information from being reported to the FRS, but also to encourage

reporting before an adjudicated finding of automobile insurance fraud is secured. The RGB is intended to reflect a middle-ground between suspicion, and confirmation of fraud, resulting in information most beneficial to the automobile insurance sector in assessing and detecting these fraud events.

To illustrate the RGB threshold, this guidance distinguishes between three thresholds of information: suspicion of fraud, reasonable grounds to believe fraud has occurred, a conclusion that fraud has occurred. A suspicion of fraud is the lowest threshold, and a conclusion that fraud has occurred is the highest threshold.

The highest threshold will include all information captured by the lower thresholds, with the only difference being an increased level of evidence or facts that confirm the existence of automobile insurance fraud.

## Lowest threshold: Suspicion that a fraud event has occurred

Insurers are not required to report information if they only have suspicion that a fraud event has occurred or is likely to occur.

Suspicion means an insurer may have an indication that something is unusual or suspicious, but does not yet have verified facts that can confirm the suspicion of a fraud event or elevate the suspicion into a reasonable belief that a fraud event has occurred. Indications of a fraud event may be based on not-yet-verified evidence received from an external source, such as a law enforcement agency or another insurer.

The suspicion could come from a discrepancy from: a written document that was filed on a claim, a claim filed shortly after a new policy is bound, a conversation with the insured, claimant or other involved party, a tip from a broker, police officer or other party, external intelligence (such as information from a conference or meeting), and an indicator from a fraud software solution.

Reasonable grounds to suspect that a fraud event has occurred may exist where the insurer investigates into their suspicion of a fraud event having occurred, and discovers further indicators or facts that warrant verification and further investigation. The suspicion at this stage is based on limited unverified evidence and does not raise to a belief that a fraud event has occurred.

Suspicion of a fraud event is relevant to the extent that it may prompt an insurer to assess the factual circumstances of the situation to identify any additional information or evidence that would support or confirm this simple suspicion.

Example: A consumer purchases an automobile insurance policy on their truck. 3 days after purchasing the policy, the individual reports the vehicle as stolen. At this point, the insurer has no evidence that the consumer has fraudulently reported the vehicle as stolen, but the insurer nevertheless suspects that the consumer may be engaging in automobile insurance fraud based on previous investigations with similar facts. The insurer does not report any information to the FRS as the information only rises to the threshold of suspicion.

## Prescribed threshold: Reasonable grounds to believe (“RGB”) a fraud event has occurred or is likely to occur

Insurers are required to report prescribed information once it meets this threshold.

Section 3(1) of the FRS Rule clarifies that information is prescribed information is only where “the information provides **reasonable grounds for the insurer to believe** that a fraud event has occurred or is likely to occur”.

FSRA interprets “reasonable grounds […] to believe” to include evidence, verified facts, context, or indicators that support a high degree of certainty that a fraud event has occurred or is likely to occur, warranting further action by the insurer but not allowing the insurer to conclude that a fraud event has occurred.

Information that meets the RGB threshold will allow an insurer to demonstrate and articulate their belief that a fraud event has occurred or is likely to occur in such a way that another insurer reviewing the same material with similar knowledge, experience, or training would likely reach the same conclusion.

Many factors will support an insurer’s assessment and conclusion that there are reasonable grounds to believe a fraud event has occurred or is likely to occur, all of which are required to be reported to the FRS.

Example: A consumer purchases an automobile insurance policy on their truck. 3 days after purchasing the policy, the consumer reports the vehicle as stolen. One week following the consumer reporting the theft, the insurer receives a tip from a credible source that the consumer has been implicated in a vehicle theft ring. After verifying the information provided by the tip, the insurer has reasonable grounds to believe that the consumer is engaging in automobile insurance fraud with respect to their own car that they have reported as stolen. Even though the insurer does not have any direct evidence to conclude that the consumer has engaged in fraud, the insurer has opened an investigation and has started gathering evidence relating to the consumer's claim. The insurer reports all information that supports their reasonable grounds to believe a fraud event has occurred to the FRS.

## Highest threshold: Conclusion of fraud

Insurers should update the reported information once they have concluded that a fraud event has in fact occurred. If an insurer comes into possession of information that allows them to bypass the lower thresholds and immediately conclude that a fraud event has concurred, then the insurer will still need to report the information to the FRS.

At this threshold, an insurer has investigated, verified, and concluded that a fraud event has in fact occurred.

The threshold of information may cause the insurer to:

- pay or process a claim despite having information that allows the insurer to conclude that fraud has occurred
- deny a claim on the basis of it being fraudulent
- refer the claim or policy to a law enforcement or state agency to further the investigation and pursue criminal or other action
- seek an adjudicated finding of civil or criminal fraud, or
- secure an "in-fact determination" that fraud has occurred

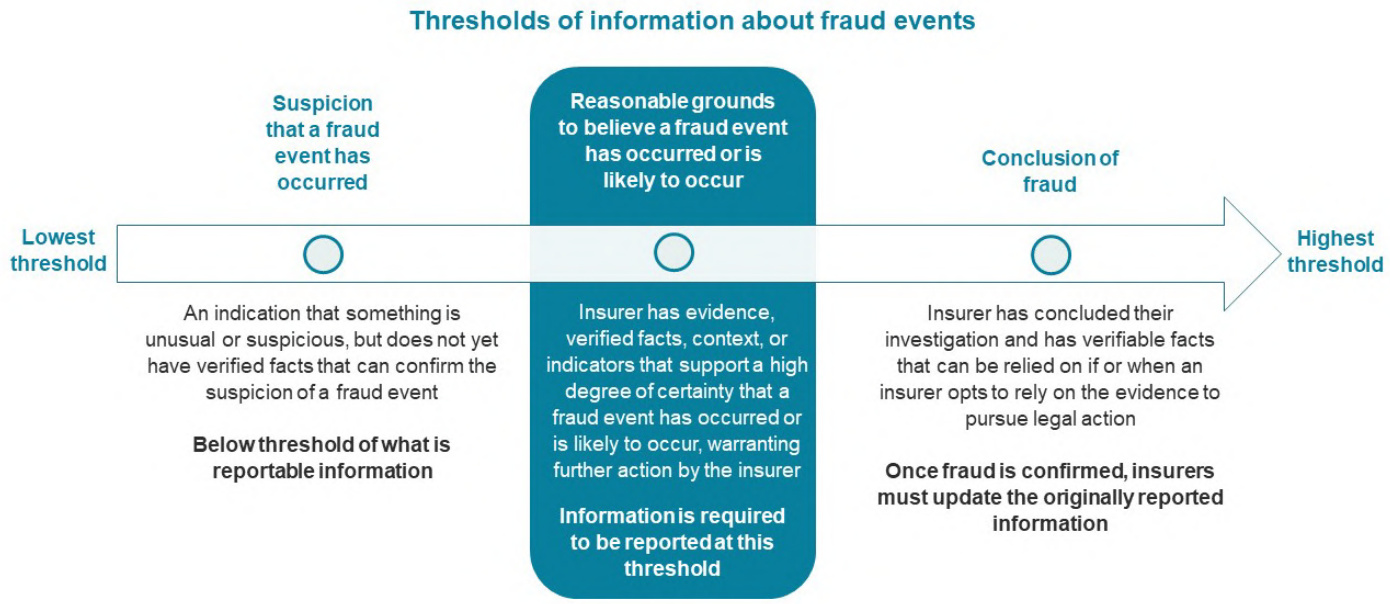
Example: A consumer purchases an automobile insurance policy on their truck. 3 days after purchasing the policy, the consumer reports the vehicle as stolen. One week following the consumer reporting the theft, the insurer receives a tip from a credible source that the consumer has been implicated in a vehicle theft ring. The insurer launches an investigation during which the insurer obtains video evidence that places the consumer in the vehicle at the location where the truck was later recovered. Based on this evidence, the insurer denies the claim on the basis of it being fraudulent and refers the claim to law enforcement to pursue criminal charges. The insurer updates the information they previously reported to the FRS, including a description of the video evidence that led to their conclusion that a fraud event had occurred.

## Insurers are required to update information in the FRS when the information meets the threshold of conclusion that a fraud event has occurred

Section 4 of the FRS Rule requires insurers to ensure all prescribed information provided to the CEO shall be complete, up to date, and factually correct.

If an insurer subsequently becomes aware that the information the insurer previously provided is or has become incomplete, out-of-date, or factually incorrect (e.g., the insurer has discovered information that has allowed them to conclude that fraud has occurred), then compliance with section 4 of the FRS Rule necessitates that the insurer take steps to update the information to ensure that the information provided to the FRS remains complete, up to date, and factually correct.

If an insurer reports information based on the RGB threshold, and subsequently collects further information that leads to a conclusion that a fraud event has occurred, the insurer shall update the originally-reported information based on the new information that resulted in a higher threshold.




# 4. What "action" triggers an insurer's requirement to report prescribed information about automobile insurance fraud to the FRS?

Subsection 3(2) of the FRS Rule requires that:

> An insurer shall within thirty days after the close of each quarterly period of the calendar year provide the information prescribed in subsection 3(1) with respect to instances of automobile insurance fraud which in the preceding quarter **the insurer has taken action or made a decision** based on reasonable grounds for the insurer to believe that a fraud event has occurred or is likely to occur.

"Action" is interpreted to mean any definitive decision to act based on reasonable grounds to believe a fraud event has occurred or likely to occur. To trigger an insurer's requirement to report the prescribed information, an insurer must both have information that meets the RGB threshold and the insurer must take action based on information that meets the RGB threshold.

The following is a non-exhaustive list of "actions" an insurer could take that would trigger an insurer's requirement to provide the prescribed information to the CEO:

- escalating a file for further investigation to SIU
- denying a claim
- voiding or otherwise terminating an insurance policy

The following is a non-exhaustive list of “decisions” an insurer could take that would trigger an insurer’s requirement to provide the prescribed information to the CEO:

- paying or processing a claim despite having information that provides reasonable grounds to believe that fraud has occurred or is likely to occur
- closing a claim made under a policy that has been abandoned by the claimant

## 5. How much personal information is necessary for the purposes of subsection 101.3 of the *Act*?

Subsections 3(3) and 3(4) of the FRS Rule limit insurers from providing more personal information than is necessary for the purposes set out in subsection 101.3(2) of the *Act* (“assessing and detecting automobile insurance fraud”), and requires insurers to de-identify all names and identifying numbers, symbols or other particulars assigned to individuals unless disclosure of this information is necessary for the purposes set out in the *Act*:

> 3(3) An insurer shall not disclose personal information that is not necessary for the purposes set out in subsection 101.3(2) of the Act when providing the prescribed information to the Chief Executive Officer.
>
> 3(4) An insurer shall de-identify all names and identifying numbers, symbols or other particulars assigned to individuals before an insurer provides the prescribed information to the Chief Executive Officer unless disclosure of the names or other identifying information is necessary for the purposes set out in subsection 101.3(2) of the Act.

Insurers are not required to report personal information that is not necessary for the purposes set out in subsection 101.3(2) of the *Act*.

FSRA interprets the statutory purpose, “assessing and detecting automobile insurance fraud” to enable FSRA to:

- quantifying the prevalence of automobile insurance fraud in Ontario
- creating a baseline for fraud detection, and
- identifying trends throughout the industry

This interpretation reflects the first phase of FSRA’s approach to building the FRS, which focuses solely on the FRS collection of information about automobile insurance fraud.

FSRA anticipates a second phase where information collected in phase one will enable insurers to use the information. The personal information listed in the Appendix may be necessary to include in phase two reporting.

FSRA will work with insurers to create unique identifiers for each instance of reporting. These unique identifiers will allow insurers to update information provided in phase one with personal information where necessary for phase two. This Guidance will need to be updated before proceeding to this second phase.

# Approach

## Supervision and enforcement

The main outcome that FSRA aims to achieve through administering the FRS requirements under the *Act* and the FRS Rule is to empower insurers to better manage and reduce automobile insurance fraud by mandating the reporting of prescribed information about automobile insurance fraud to the FRS. To that end, insurers should design and organize internal policies, processes, controls, and governance procedures in a manner that facilitates compliance with the requirements under the *Act* and the FRS Rule, as interpreted in this Guidance.

FSRA intends to supervise against the requirements outlined under the *Act* and the FRS Rule by using its investigation and examination powers under the *Act*. Following an investigation and examination of an insurer's acts and practices, pursuant to the provisions of the *Act*, FSRA has the authority to:

- issue a compliance order to insurers, or[1]
- lay provincial offence charges against insurers[2]

FSRA will exercise its discretion when conducting its supervisory activities by considering the extent to which an insurer's fraud reporting system has been implemented effectively by management through policies, processes, systems and associated controls.

FSRA will evaluate insurers' processes, controls, and governance during supervisory reviews. This includes verifying the presence of adequate controls and ensuring that reporting meets the requirements as outlined. While FSRA retains the authority to sanction non-compliance with the FRS requirements, the supervisory approach will take in account the efforts made by insurers to comply and their efforts to achieve the desired outcomes.

## Implementation of controls and governance

To comply with the FRS requirements, FSRA encourages insurers to design and implement a robust framework that encompasses the following elements:

- **Policies and procedures**: Clear and detailed policies and procedures that facilitate compliance with the FRS Rule and *Act*. This should include steps to identify and report information related to instances of automobile insurance fraud. These should be regularly updated to reflect any changes in the regulatory environment and/or emerging fraud trends.

[1] FSRA seek a court issued compliance order pursuant to s. 448(1) of the Act.
[2] FSRA may pursue the laying of provincial offences as set out in s. 447(2) of the Act.

- **Monitoring and reporting systems**: Systems for monitoring and detecting fraud events as outlined in the FRS Rule and *Act*. These systems should be capable of capturing and reporting the prescribed information in a timely and accurate manner.

- **Internal audits and reviews**: Regular internal audits and reviews to assess the effectiveness of the fraud management framework. This helps in identifying any gaps or areas for improvement.

- **Governance and oversight**: Strong governance structures with clear accountability and oversight mechanisms.

While the elements identified above are not mandatory, they can, depending on the circumstances, be reflective of whether an insurer has met their obligations with respect to the FRS requirements.

## Effective date and future review

This Guidance will become effective on **[TBD]** and will be reviewed no later than **[TBD]**.

## About this Guidance

This document is consistent with FSRA's Guidance Framework. As Approach guidance, it describes FSRA's internal principles, processes and practices for supervisory action and application of CEO discretion. It does not create compliance obligations for regulated parties but can be considered indicative of FSRA's position, and it does not alter requirement to comply with existing legal and regulatory framework. As Interpretation guidance, it describes FSRA's view of requirements under its legislative mandate (i.e. legislation, regulations and rules) so that non-compliance can lead to enforcement or supervisory action.

# Appendices and reference

## Appendix A: Examples of fraud events that insurers are required to report information about to the Fraud Reporting Service

The following is a non-exhaustive list of the types of fraud events that insurers must report to the Fraud Reporting Service. The following is categorized according to the automobile insurance life cycle.

| Fraud category | Description | Example |
|---|---|---|
| **Fraud perpetrated through underwriting fraud** | Fraud committed by persons which occurs when someone intentionally conceals or misrepresents information when obtaining insurance coverage | • Policy misrepresentation such as falsifying information on the insurance application to gain a lower premium. This could include non-disclosure of drivers, residency, and mileage driven on vehicles<br><br>• Quote manipulation (to generate the lowest premium) |
| **Fraud perpetrated through fraudulent claims** | Fraud committed by policy holder when a claim has been made on a policy | • Falsely claiming damage to a covered automobile as a result of an auto accident when another caused the damage<br><br>• Claim embellishment- exaggerated/fabricated vehicle contents, false car seat claims, false invoices for items (often to cover deductible) |
| **Fraud perpetrated by a service provider** | Fraud committed by persons who provide services to a policy holder after a claim has been made on a policy. | • Billing by practitioners for care that they never rendered |

| | | |
|---|---|---|
| | | • Auto body/repair shop that inflates cost of repairs/repairs areas that do not need repairs<br><br>• Tow truck company that inflates cost of repair/bills for tows not needed<br><br>• Re-VINing (stolen vehicles; reVINned with a registered VIN from another vehicle and sold or insured again) |
| **Fraud perpetrated by selling or distribution of insurance products** | Fraud perpetrated by individuals directly involved in the distribution or sale of an insurance policy | • **Independent Agents/Brokers**<br><br>o Backdating policy or misrepresenting true risk to assist the insured in gaining coverage and/or producing a gamified rate<br><br>o Deliberately failing to disclose policy information to obtain a lower premium for the insured<br><br>o Ghost brokering (selling fake pink slips, insured thinks they have insurance but they do not) |
| **Fraud perpetrated by internal employees of an insurer** | Fraud perpetrated by individuals employed within the insurance industry | • Creating fictitious claims and orchestrating claim payments to the employee<br><br>• Employees receive a kickback from a third-party vendor in exchange for engaging vendor services |

| | | |
|---|---|---|
| | | • Backdating transactions, not rating properly, insuring knowing impending claim |

# Appendix B: Data points to be submitted when reporting information about fraud events to the Fraud Reporting Service

The following is a non-exhaustive list of the data elements that may be necessary for the purposes of assessing and detecting fraud. To the extent that the following list includes personal information that is not necessary for the purposes of assessing and detecting fraud, an insurer should not report the personal information during phase one of the FRS.

| Category | Data type |
|---|---|
| **Insured/policyholder/claimant** | • Contact information<br>o (name, address, phone number, email address)<br>• Date of birth<br>• Driver's licence number<br>• Occupation<br>• Vehicle ownership type: owned/financed/leased/rental |
| **Insurance carrier** | • Corporate contact information<br>o (corporate name, address, phone number)<br>• Policy number |

| | |
|---|---|
| | • Claim number<br>• Agent/broker name and address<br>• Policy duration<br>• Status of the claim (ongoing, denied, withdrawn after investigation) |
| **Accident information** | • Date of loss<br>• Time of loss<br>• Location of loss (street address, city, province, country)<br>• Cause of loss |
| **Involved parties:** | • Insured vehicle passengers<br>o Contact information (name, address, phone number, email address)<br>• Claimant vehicle passengers<br>o Contact information (name, address, phone number, email address)<br>• Insured vehicle information<br>o VIN, make, model, year, owner, damage<br>• Claimant vehicle information<br>o VIN, make, model, year, owner, damage |

| | |
|---|---|
| | • Legal Counsel (contact information).<br>• Auto body/repair shop<br>o Contact information and repair details<br>• Tow truck<br>o Contact information, and towing details.<br>• Medical Provider<br>o Contact information<br>• Medical Clinic<br>o Contact information<br>• Adjuster<br>o Contact information<br>• Car Rental Company, Lienholder/Leaseholder, other Third Parties<br>o (direct third parties to the claim or individuals acting on behalf of the policyholder for policy/claim purposes, as an intermediary, translator, or general agent) |
| **Cost** | • Estimated cost of the claim fraud<br>• Estimated cost of the policyholder/underwriting fraud |
| **Category/Fraud Details** | • Fraud perpetrated through underwriting fraud |

| | |
|---|---|
| | • Fraud perpetrated through fraudulent claims<br>• Fraud by a service provider<br>• Fraud through selling or distribution of insurance products<br>• Fraud perpetrated by internal employees of an insurer<br>• Fraud details/description |

**FINANCIAL SERVICES REGULATORY AUTHORITY OF ONTARIO**

**NOTICE OF PROPOSED RULE UNDER THE *FINANCIAL SERVICES REGULATORY AUTHORITY OF ONTARIO ACT, 2016***

**PROPOSED RULE 2024 – 003**

**AUTOMOBILE INSURANCE – FRAUD REPORTING SERVICE**

[07/15/2024]

## 1. Introduction

Pursuant to subsection 22(1) of the *Financial Services Regulatory Authority of Ontario Act, 2016* (the "***FSRA Act***") the Financial Services Regulatory Authority of Ontario ("**FSRA**" or the "**Authority**") is publishing for public consultation the following Notice of Proposed Rule ("**Notice**"). In accordance with subsection 22(4) of the *FSRA Act*, interested persons are invited to make written representations to FSRA with respect to the Proposed Fraud Reporting Service Rule ("**Proposed Rule**"), within 90 days of publishing this Notice. The consultation period will close on [10/14/2024].

If approved by the Minister of Finance ("**Minister**"), the Proposed Rule will prescribe both the information insurers must report under section 101.3 of the *Insurance Act* (the "***Act***"), and the requirements associated with reporting the prescribed information. More specifically, the Proposed Rule will prescribe the threshold and scope of information insurers are required to report about automobile insurance fraud; and the timing and process requirements regarding how an insurer shall report the prescribed information to the Fraud Reporting Service ("**FRS**").

For the text of the Proposed Rule please see **Appendix A** to this Notice.

## 2. Statutory Authority under which the Rule is proposed

Section 101.3 of the *Act*, when proclaimed into force, will require insurers to provide the Chief Executive Officer or an agency designated by the Chief Executive Officer (referred to collectively as the "**CEO**" in this Notice) with information prescribed by the Proposed Rule about automobile insurance fraud at such times and in accordance with such requirements as may be prescribed by the Proposed Rule.

To this end, section 101.3 further provides FSRA the express statutory authority to directly or indirectly collect, use and disclose personal information about identifiable individuals

provided that the collection, use, or disclosure is for the purpose of assessing and detecting automobile insurance fraud.

Section 101.3 in conjunction with paragraph 8.2 of subsection 121.0.1(1) of the *Act* gives FSRA the authority to prescribe the information outlined in section 101.3 in accordance with the Proposed Rule included in this Notice.

## 3. Statement of the substance and purpose of the Proposed Rule

The **purpose** of the Proposed Rule is to prescribe information that automobile insurers must provide to FSRA, and the corresponding requirements regarding the reporting of the prescribed information. Once in force, the Proposed Rule will give operational effect to FSRA's Fraud Reporting Service ("**FRS**").

The main outcome FSRA aims to achieve through the implementation of the FRS is to collect information to create a baseline of data that will quantify the amount of automobile insurance fraud and better enable the automobile insurance sector to assess and detect such fraud in Ontario.

The purpose of collecting this information is to support the more effective assessment and detection of automobile insurance fraud in Ontario. Key outcomes associated with this purpose include:

- quantifying the prevalence of automobile insurance fraud in Ontario;
- creating a baseline for fraud detection; and
- identifying trends throughout the industry.

Achieving these outcomes supports FSRA's goal of reducing consumer harm caused through fraud, and reducing unnecessary externality costs to be borne by consumers.

The Proposed Rule and accompanying Interpretation Guidance (the "**Guidance**") represents the first phase of the development of a functional FRS. FSRA anticipates a second phase of the FRS where information that has been collected will be available for insurers to access to enable the assessing and detecting of fraud. Amendments to the Proposed Rule and Guidance are expected to be required before the FRS can proceed to this second phase.

The **substance** of the Proposed Rule centers around prescribed information about automobile insurance fraud, and requirements associated with the insurer's statutory duty to report the prescribed information.

With regards to the information prescribed about automobile insurance fraud, the Proposed Rule defines a "fraud event" as a deceptive act or omission intentionally committed by a person(s) to obtain advantage, financial gain, or benefits beyond that to which one is entitled to with regard to any policy, claim, provision of goods or services or other occurrence related to automobile insurance. Included in this definition is a non-exhaustive list of categories that each instance of a fraud event may fall under.

With regards to the prescribed information about automobile insurance fraud, the Proposed Rule prescribes that insurers must report all information that provides reasonable grounds for the insurer to believe that a fraud event has occurred or is likely to occur.

The Proposed Rule further clarifies that this prescribed information must be reported if and only if the insurer has taken action based on the information that provided reasonable grounds for the insurer to believe that a fraud event has occurred or is likely to occur.

Once an insurer holds information that provides reasonable grounds for the insurer to believe that a fraud event has occurred or is likely to occur and have taken action based on said information, an insurer is required to report the information to the FRS within thirty (30) days after the close of each quarterly period of the calendar year.

With regards to requirements associated with the insurer's statutory duty to report the prescribed information, the Proposed Rule requires that all prescribed information be complete, accurate and up-to-date, and imposes an ongoing obligation on the insurer to take reasonable steps to ensure the information remains complete, accurate and up-to-date or otherwise recommend that the information be removed from the FRS.

FSRA will be publishing for public consultation **Guidance** that will set out FSRA's interpretation of several requirements under the Proposed Rule regarding:

- The scope of information an insurer is required to provide when reporting information about a "fraud event" to the CEO;
- The threshold of what constitutes "reasonable grounds for the insurer to believe" that a fraud event has occurred or is likely to occur; and
- The "action" an insurer may take that triggers an insurer's requirement to report prescribed information to the FRS.

The Guidance will also set out FSRA's approach in administering the Proposed Rule, including:

- How FSRA will supervise insurers in reviewing their policies, processes, systems and associated controls to ensure compliance with the Proposed Rule;

- How FSRA will exercise its discretion when enforcing against the requirements in the Proposed Rule; and

- How FSRA will utilize its enforcement powers to address non-compliance with requirements in the Proposed Rule.

## 4. Summary of the Proposed Rule

This section describes the requirements outlined in the Proposed Rule, that, if approved by the Minister, will operationalize the reporting of information about automobile insurance fraud by insurers to the FRS.

Section 1 – Definitions

This section outlines key definitions used throughout the Proposed Rule, including the definition of a "fraud event". The broad scope of what may constitute a fraud event is further informed by the definition's non-exhaustive list of several categories of fraud that are pertinent to the automobile insurance sector.

Section 2 – Interpretation

This section outlines how the Proposed Rule is to be interpreted.

Section 3 – Prescribed information under subsection 101.3(1) of the *Act*

This section sets out the prescribed information under subsection 101.3(1) of the *Act*.

This section:

- prescribes the scope and threshold [or standard] of information that every insurer licensed under the *Act* is required to report under subsection 101.3(1) of the *Act*. Specifically, an insurer is required to *report all information* in the insurer's possession, control or power related to any policy, claim, provision of goods or services or any other occurrence or event *where the information provides reasonable grounds for the insurer to believe that a fraud event has occurred or is likely to occur*;

- prescribes the activity-based trigger for an insurer to report the prescribed information, such that an insurer is required to report prescribed information within thirty days after the close of each [quarter] only if they have taken action or made a decision based on the prescribed information;

- requires that insurers include personal information in the prescribed information *only if* the personal information is necessary the purpose of assessing and detecting automobile insurance fraud; and

- requires insurers to de-identify all personal information in the prescribed information unless disclosure of the personal information is necessary for the purpose of assessing and detecting automobile insurance fraud.

Section 4 – Reporting requirements – Prescribed information

This section sets out additional requirements regarding the reporting of the prescribed information outlined in section 3 of the Proposed Rule.

This section:

- requires that an insurer ensures that all prescribed information is complete, up to date, and factually correct prior to reporting the information as required; and

- requires an insurer to inform the CEO and take reasonable steps to correct information if the insurer becomes aware that information reported is not complete, up to date, or factually correct.

Section 5 – Transitional

This section clarifies that insurers are not required to report the prescribed information in accordance with the rule until after [date TBD].

Section 6 – Coming into Force

This section clarifies that the Proposed Rule will come into force on the later of the date that subsection 101.3(1) and clause 8.2 of subsection 121.0.1(1) of the *Act* comes into force and 15 days after the Rule is approved by the Minister.

## 5. Unpublished Material

In making the Proposed Rule, FSRA has retained the consultant services of the *International Fraud Training Group*, who have provided FSRA with unpublished written materials that have been relied in part to inform drafting of the Proposed Rule.

## 6. Alternatives Considered

### i. Prescribing specific data points that insurers would be required to report under subsection 101.3(1) of the *Act*

The Proposed Rule requires insurers to report all information in the insurer's possession, control or power related to any policy, claim, provision of goods or services or any other occurrence or event where the information provides reasonable grounds for the insurer to believe that a fraud event has occurred or is likely to occur.

As an alternative, FSRA considered prescribing an all-encompassing list of data points that insurers would be required to submit to the FRS. This approach was not followed for three reasons.

First, a prescriptive list of data points about a "fraud event" could only be amended via an amendment to the Proposed Rule. The time it takes to amend an Authority Rule would not be adaptable to an ever-evolving list of data points that may be material to assessing and detecting fraud events.

Second, prescribing an all-encompassing list of data points is inconsistent with FSRA's principles-based and outcomes-focused approach to regulation. A prescriptive approach would overshadow the intended outcome of insurers reporting information according to a particular standard of proof or threshold of materiality and would turn the Proposed Rule into a listing and indexing exercise of prescribed information.

Third, FSRA recognizes that the ever-evolving nature of automobile insurance fraud requires flexibility and adaptability in the types of information that insurers must report to the FRS. FSRA intentionally has chosen not to prescribe all relevant data points *before* information begins to be reported by insurers. In other words, the most relevant information that will ultimately achieve the FRS's purpose will become more apparent only *after* insurers begin reporting to the FRS. FSRA intentionally chose not to limit the scope of information to a prescribed list that may or may not be reflective of market realities.

### ii. Alternate thresholds of information an insurer would be required to report under subsection 101.3(1) of the *Act*

The Proposed Rule requires insurers to only report information to the FRS where the information provides *reasonable grounds for the insurer to believe* that a fraud event has occurred or is likely to occur. FSRA's interpretation of information that would constitute "reasonable grounds to believe" is outlined in the Guidance.

FSRA considered alternative thresholds that would impact the scope of information that insurers would ultimately need to report to the FRS including:

- **No threshold (i.e., "all information about a fraud event")**: This would require insurers to report all information, without any modification or clarification of scope, about a fraud event, as defined in the Proposed Rule. FSRA did not choose this option as it provided uncertainty to the scope of information to be provided.

- **"Reasonable grounds to suspect"**: This threshold is lower than the prescribed "reasonable grounds to believe" threshold in the sense insurers would be required to report information where the information provides mere "suspicion" that a fraud event has occurred or is likely to occur. FSRA did not choose this option as this threshold may invite information that may be premature, inaccurate, or unverifiable. Reasonable grounds to believe, on the other hand, require more than mere suspicion, as well as verifiable evidence relating to the belief. Further, "suspicion" may be inconsistently interpreted throughout the sector, resulting in ambiguity regarding the scope of information that is required to be provided.

- **"Belief based on a balance of probabilities"**: This threshold is higher than "reasonable grounds to believe" in the sense that this threshold is similar to the civil standard of proof required in civil trial cases. FSRA did not choose this option as this threshold may invite too little information to be reported. Once information has reached this threshold, it already provides a basis for seeking civil legal action. Rather, FSRA is requiring information that serves the purpose of enabling the assessing and detecting of automobile insurance fraud, information that reaches this civil standard includes instances of fraud has already been assessed and detected and is ready for adjudication.

- **"Adjudicated finding of a fraud event"**: Similar to the above, this is the highest threshold of information, that would require reporting to the FRS only if the information is used to adjudicate a finding a fraud event. This option was not chosen because it would result in the lowest amount of information being reported, albeit resulting in highly reliable information.

### iii. Alternate timing requirements for when an insurer is required to report information to the FRS

The Proposed Rule requires insurers to report the prescribed information to the FRS on a quarterly basis only if the insurer has taken action or made a decision based on information that meets the prescribed threshold. FSRA's interpretation of information that would constitute "action" or a "decision" is outlined in the Guidance.

FSRA decided on this requirement to provide sufficient time for the insurer to prepare information that must be reported, and to ensure that information that may be premature or not actionable is not reported to the FRS.

As an alternative, FSRA also considered alternate timing requirements for insurers to report the prescribed information to the FRS:

- **Reporting information within a prescribed number of days following the conclusion of an insurer's investigation about a fraud event:** FSRA considered an arbitrary number of days (e.g., 30 days) that an insurer would have following the conclusion of an investigation to report the information. This option was not chosen because of the arbitrariness of the time period and also because the conclusion of an investigation was determined by FSRA to be too high of a standard to require information to be reported.

- **Reporting information within a "reasonable" amount of time following the conclusion of an insurer's investigation about a fraud event:** Similar to the above, this option was not chosen because FSRA decided there needs to be some certainty about the timing requirement (i.e., a "reasonable" amount of time may differ significantly throughout the sector), and that the conclusion of an investigation is too high of a standard to require information to be reported.

- **Real-time Reporting once information reaches prescribed threshold:** This option was not chosen due to perceived inconsistencies and ambiguities regarding what point-in-time an insurer is required to report, as well as the administrative burden real-time reporting would place on insurers and FSRA. For example, it is possible that one insurer may subjectively determine that their information gathered does not reach the threshold of "reasonable grounds to believe" that a fraud event has occurred, whereas a different insurer with the same information may subjectively determine their information does reach the prescribed threshold and thus be required to report.

## 7. Anticipated Costs and Benefits

Qualitative benefits associated with operationalization of the Proposed Rule may include:

- Enabling FSRA to monitor and evaluate developments and trends of fraud in the automobile insurance industry;

- Holding insurers accountable for reporting fraud; and

- Developing a common understanding of automobile insurance fraud amongst all participants of the automobile insurance system.

Qualitative costs associated with operationalization of the Proposed Rule may include:

- Familiarization with a net-new reporting requirement;

- 'Growing pains' associated with net-new reporting requirement, including erroneous or premature reporting; and

- Understanding how to comply with a principles-based and outcomes-focused reporting requirement.

Quantitative benefits associated with operationalization of the Proposed Rule may include:

- Enabling FSRA's ability to quantify the prevalence of automobile insurance fraud in Ontario;

- Gathering of information about automobile insurance fraud may inform how resources can be most efficiently allocated to reduce costs to insurers and ultimately consumers.

New quantitative costs associated with operationalization of the Proposed Rule for both FSRA and insurers may include:

- Anticipated system and data collection resources needed to adapt to new reporting requirements.

- Data integrity and quality during the initial stages of reporting may cause initial challenges.

- Investment in data security and encryption technology will need to be considered to protect data.

## 8. Regulations to be Amended

FSRA does not intend to make any recommendations with respect to the amendment or revocation of a regulation or provision in a regulation that relates to the implementation of the Proposed Rule. FSRA expects that in due course certain regulations or provisions in regulations will be amended or revoked in a manner consistent with the operationalization of the Proposed Rule.

## Appendix A – PROPOSED RULE 2024 – 003

### 1 Definitions

1(1) In this Rule,

(a) "Act" means the *Insurance Act*, RSO 1990, c I.8, as amended;

(b) "FSRA Act" means the *Financial Services Regulatory Authority of Ontario Act, 2016*, SO 2016, c 37, Sched 8, as amended;

(c) "prescribed information" means the information an insurer is required to provide under subsection 101.3(1) of the Act in accordance with subsection 3(1) of this Rule.

(d) "Rule" means this Authority Rule 2024 – 003

(e) "fraud event" means a deceptive act or omission, or series of deceptive acts or omissions intentionally committed by a person(s) to obtain advantage, financial gain, or benefits beyond that to which one is entitled to with regard to any policy, claim, provision of goods or services or other occurrence related to automobile insurance, and for greater clarity includes instances of:

i. Obtaining an automobile insurance policy through fraudulent means, including underwriting fraud;

ii. Obtaining a benefit under a contract of insurance through fraudulent claims;

iii. Providing goods or services to a beneficiary under a contract of insurance through fraudulent means or in a fraudulent manner;

iv. Fraudulent activity in the selling or distribution of insurance products; and

v. Fraudulent activity committed by internal employees of an insurer.

### 2 Interpretation

2(1) If a term or phrase used in this Rule is defined in the Act, the definition used in the Act shall apply for the purposes of this Rule.

2(2) Words and phrases not defined in this Rule have the same meaning as ascribed thereto under section 1 of the FSRA Act unless a contrary intention appears.

2(3) References in this Rule to the Chief Executive Officer include reference to an authorized delegate or designated agency of the Chief Executive Officer as outlined in subsection 101.3(1) of the Act.

2(4) For the purposes of this Rule, references to “insurance” are limited only to “automobile insurance”.

**3 Prescribed information under subsection 101.3(1) of the Act**

3(1) Prescribed information includes all information, including personal information, in the insurer’s possession, control or power related to any policy, claim, provision of goods or services or any other occurrence or event where the information provides reasonable grounds for the insurer to believe that a fraud event has occurred or is likely to occur.

3(2) An insurer shall within thirty days after the close of each quarter of the calendar year provide the information prescribed in subsection 3(1) of this Rule with respect to fraud events which in the preceding quarter the insurer has taken action or made a decision based on reasonable grounds for the insurer to believe that a fraud event has occurred or is likely to occur.

3(3) An insurer shall not disclose personal information that is not necessary for the purposes set out in subsection 101.3(2) of the Act when providing the prescribed information to the Chief Executive Officer.

3(4) An insurer shall de-identify all names and identifying numbers, symbols or other particulars assigned to individuals before an insurer provides the prescribed information to the Chief Executive Officer unless disclosure of the names or other identifying information is necessary for the purposes set out in subsection 101.3(2) of the Act.

**4 Reporting requirements – Prescribed information**

4(1) An insurer shall ensure that all prescribed information is complete, up to date, and factually correct before an insurer provides the prescribed information to the Chief Executive Officer.

4(2) Every insurer who provides prescribed information that subsequently becomes aware that the information the insurer provided is or has become

incomplete, out-of-date, or factually incorrect shall in the quarter following their becoming aware:

(a) inform the Chief Executive Officer of the deficiencies in the prescribed information provided; and

(a) take reasonable steps to remedy the deficiencies in the prescribed information provided to bring the information into compliance with subsection 5(1) of this Rule.

4(3) If an insurer provides information to the Chief Executive Officer and subsequently discovers that the information either:

(a) includes deficiencies that cannot be remedied as required by subsection 5(2)(b) of this Rule; or

(b) fails to meet the threshold of the reporting requirement outlined in subsection 3(1) of this Rule,

then the insurer must immediately give notice and recommend the Chief Executive Officer to withdraw the information provided.

4(4) Every insurer shall submit the prescribed information through the Authority's electronic or computer-based system for the filing, delivery or reporting of the prescribed information.

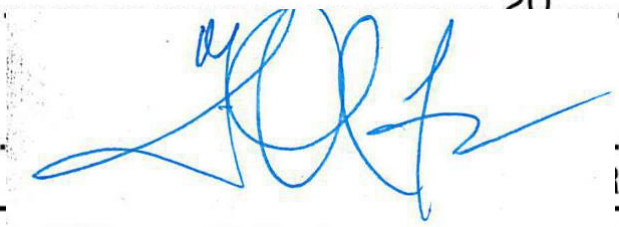
## 5 Transitional

5(1) An insurer is not required to report the information required in section 3 of this Rule until after [date].

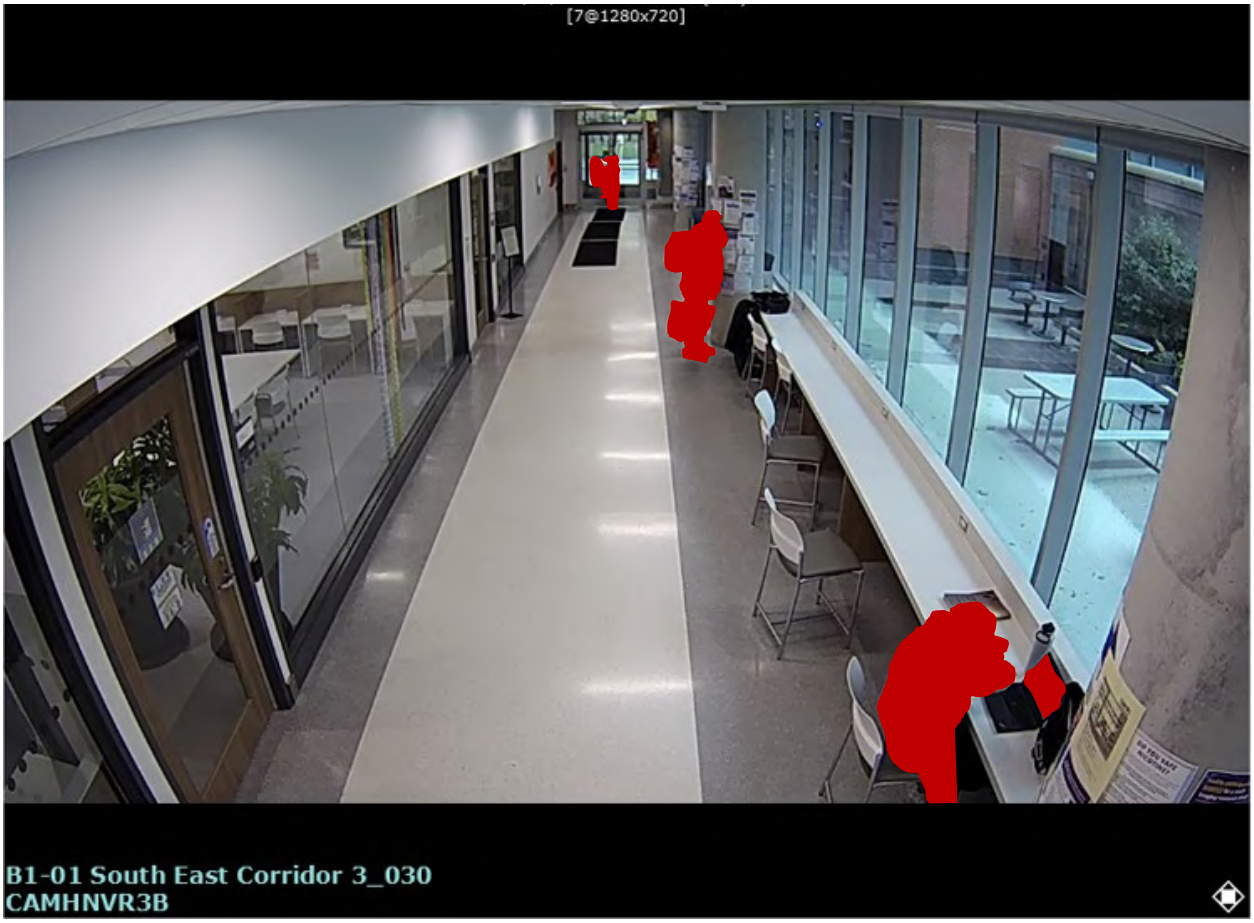
## 6 Coming into force

6(1) This Rule will come into force on the later of the date that section 101.3 and clause 8.2 of subsection 121.0.1(1) of the Act comes into force and 15 days after the Rule is approved by the Minister.

THIS IS EXHIBIT "B" REFERRED TO IN THE AFFIDAVIT OF Mr. Kevin A. McLean
AFFIRMED BEFORE ME, THIS 27th DAY OF January 20 25
, ETC.



Vinh The Tran, Esq., LSUC #57761C
Lawyer, Notary, Oaths Commissioner
188-639 Dupont Street, Toronto, ON
M6G 1Z4, T. 647-209-7389
vinhtranlaw@hotmail.com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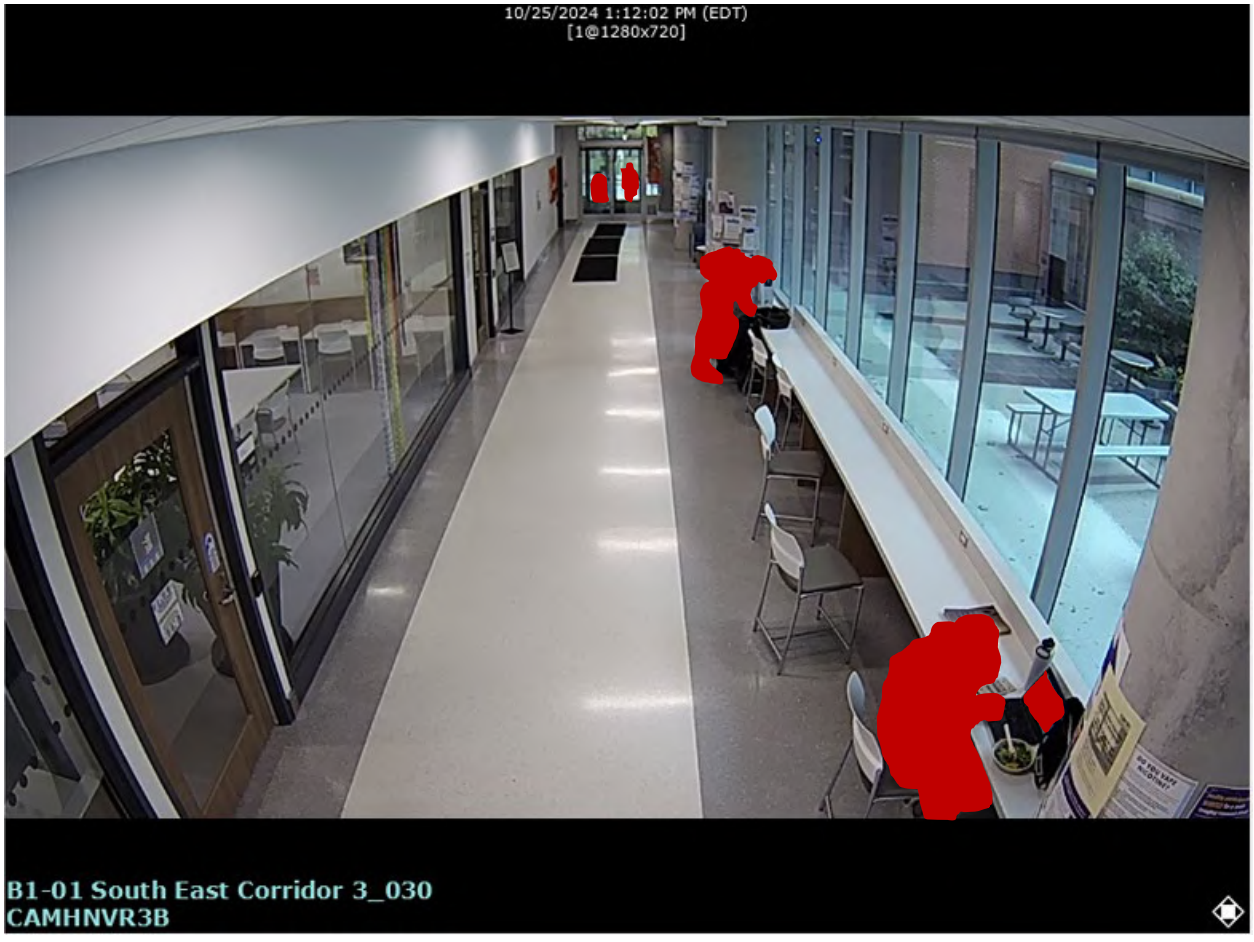
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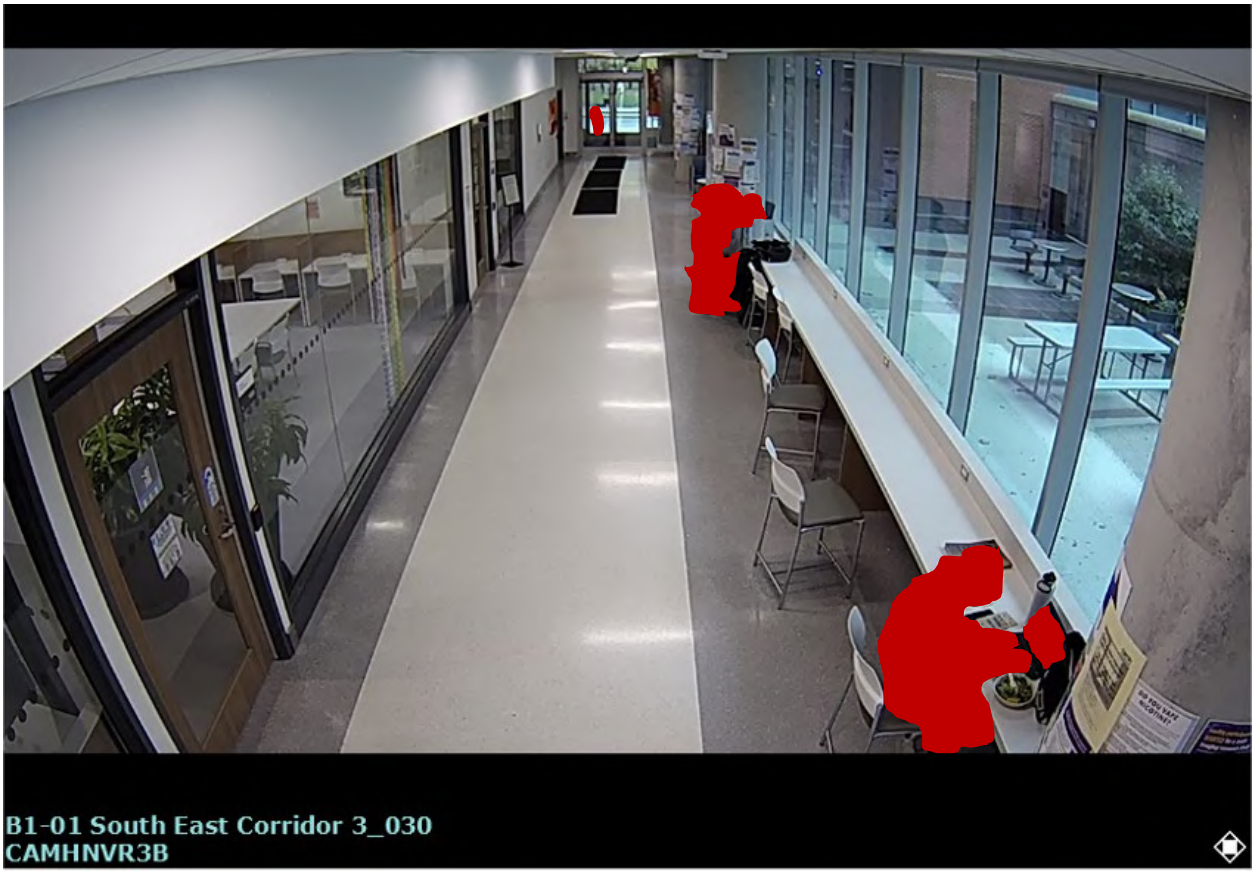
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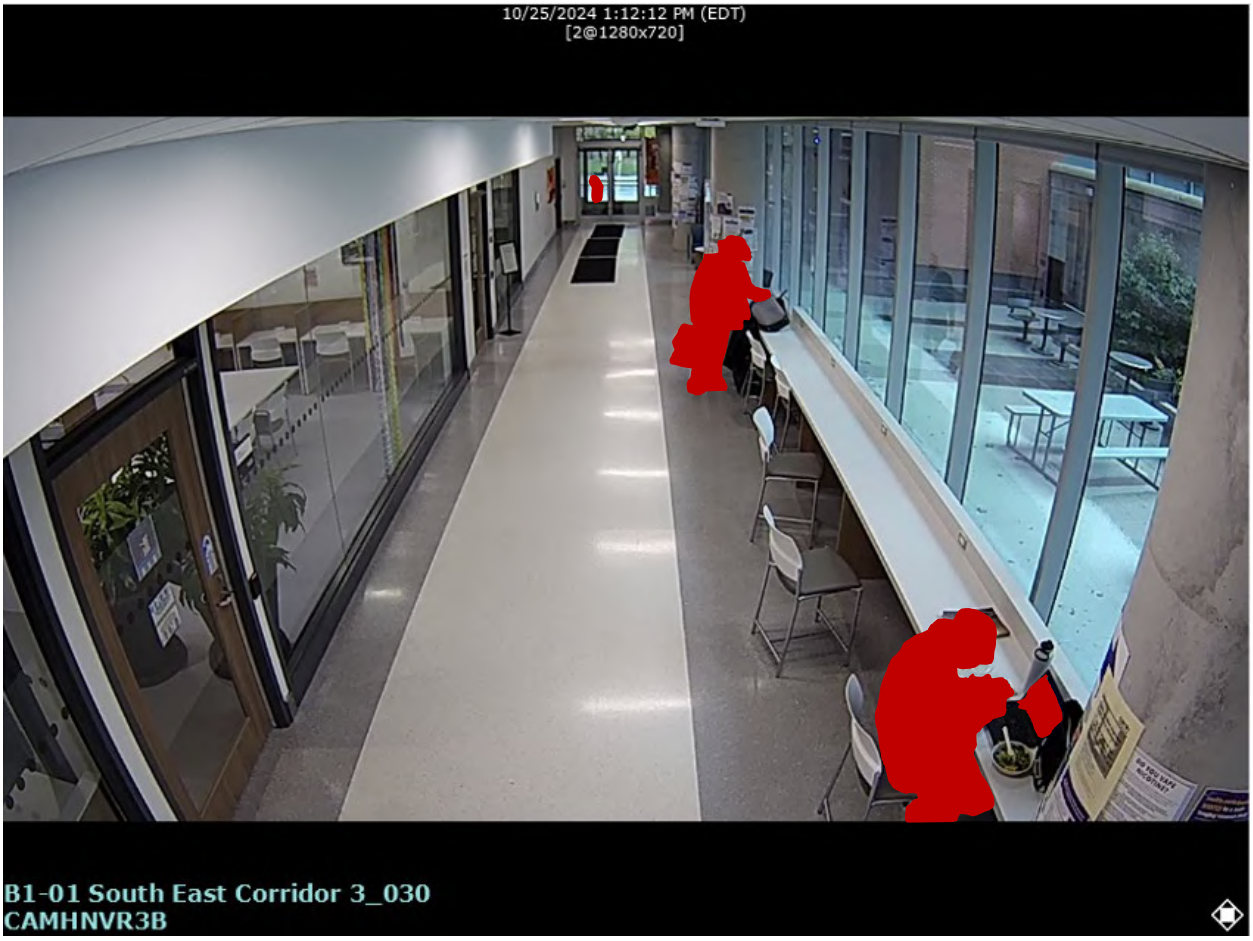
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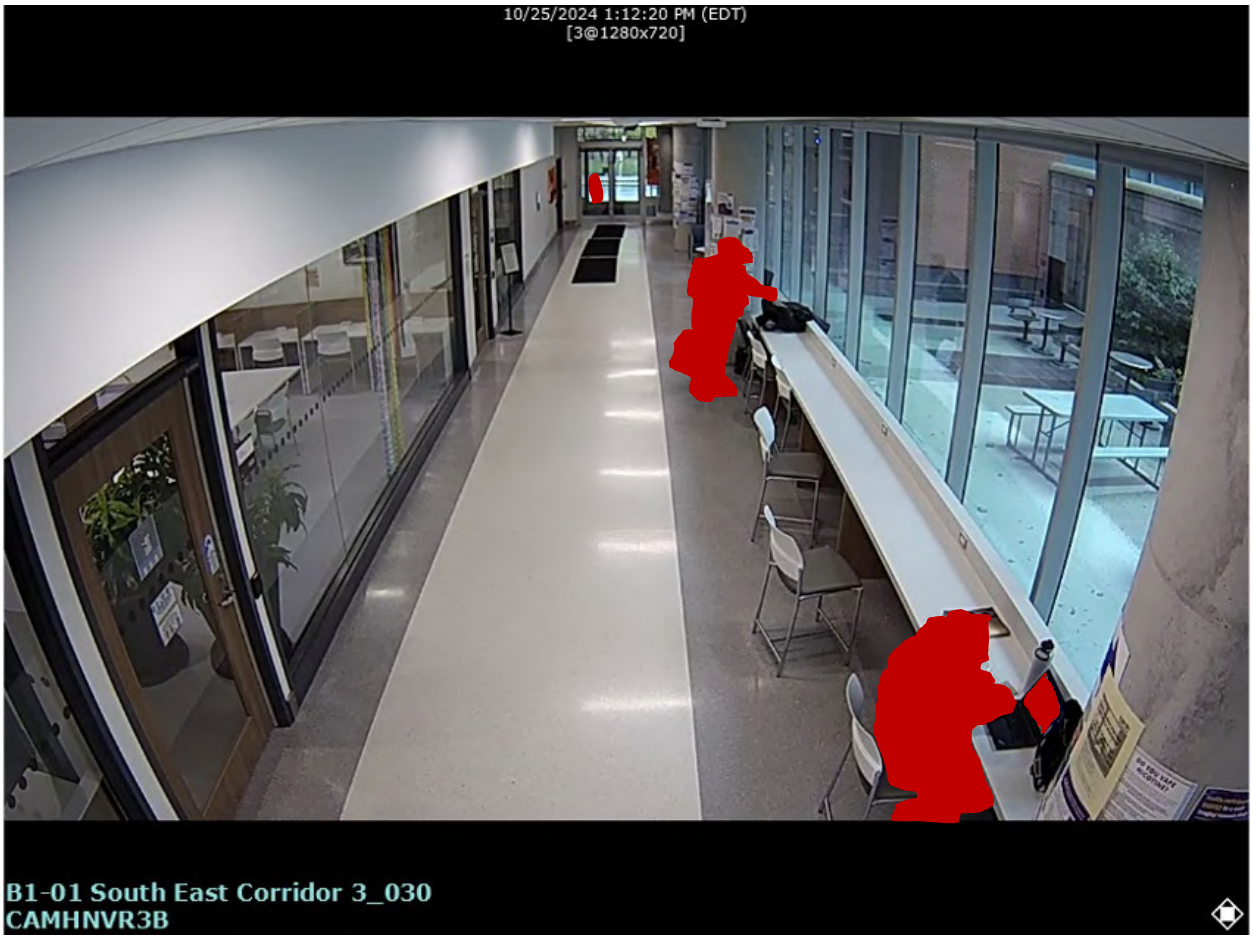
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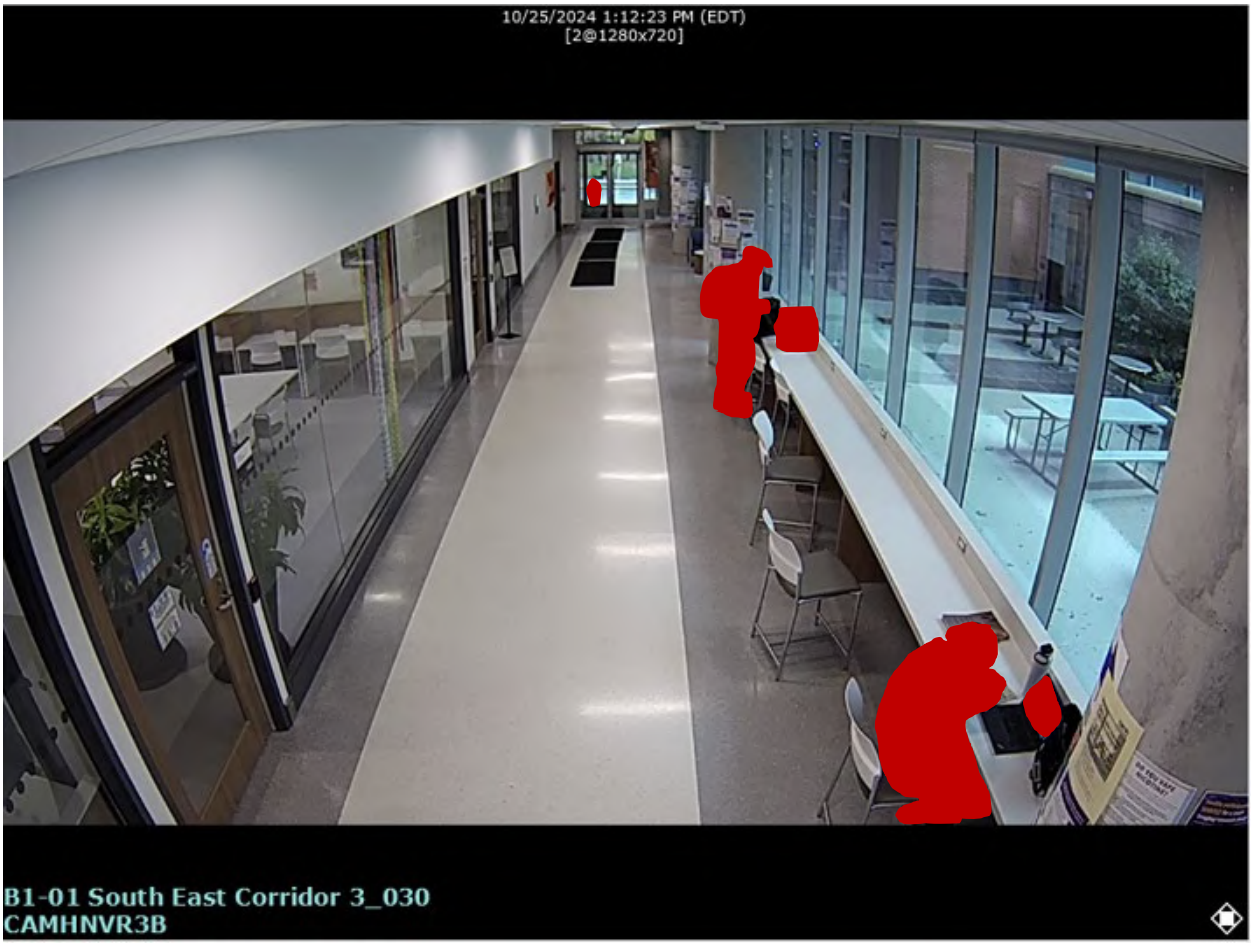
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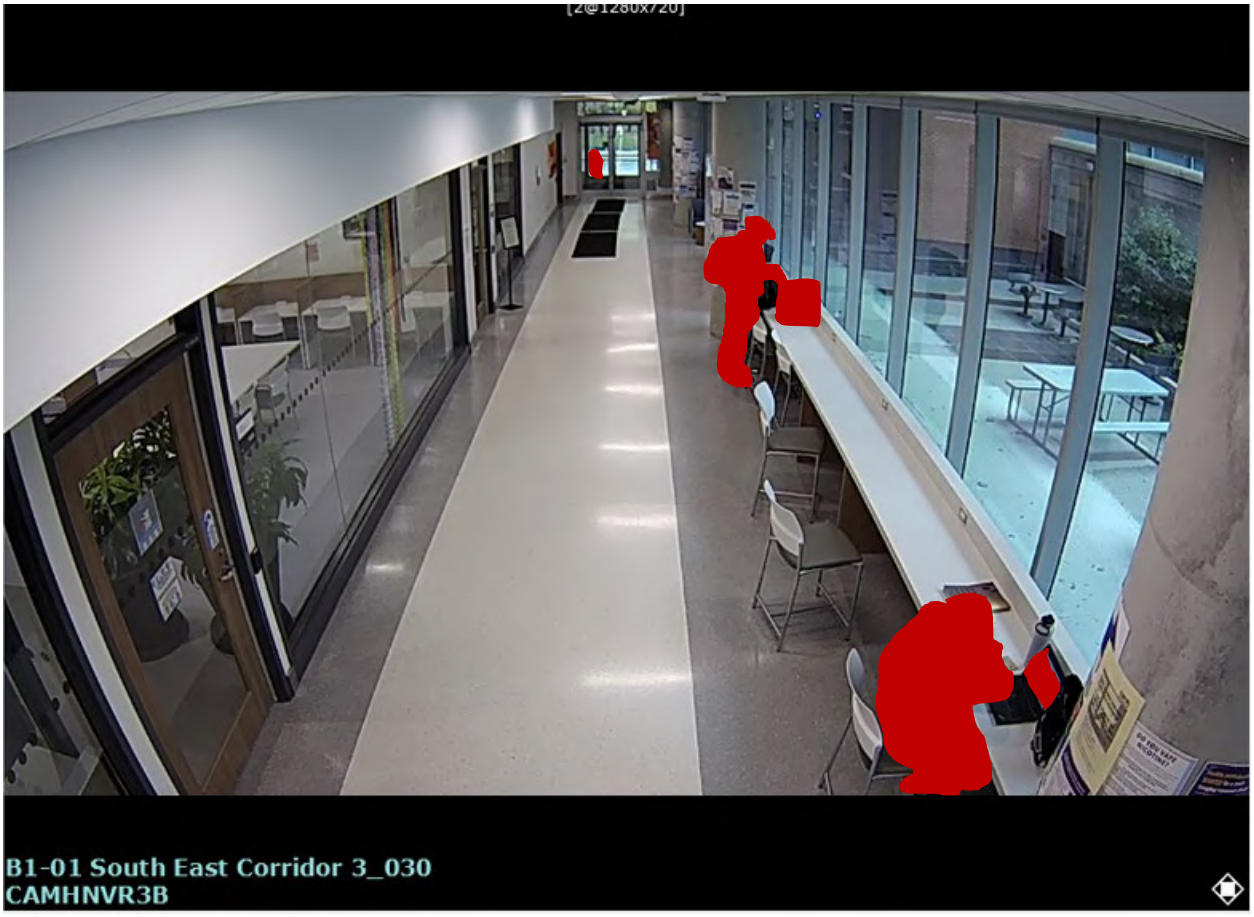
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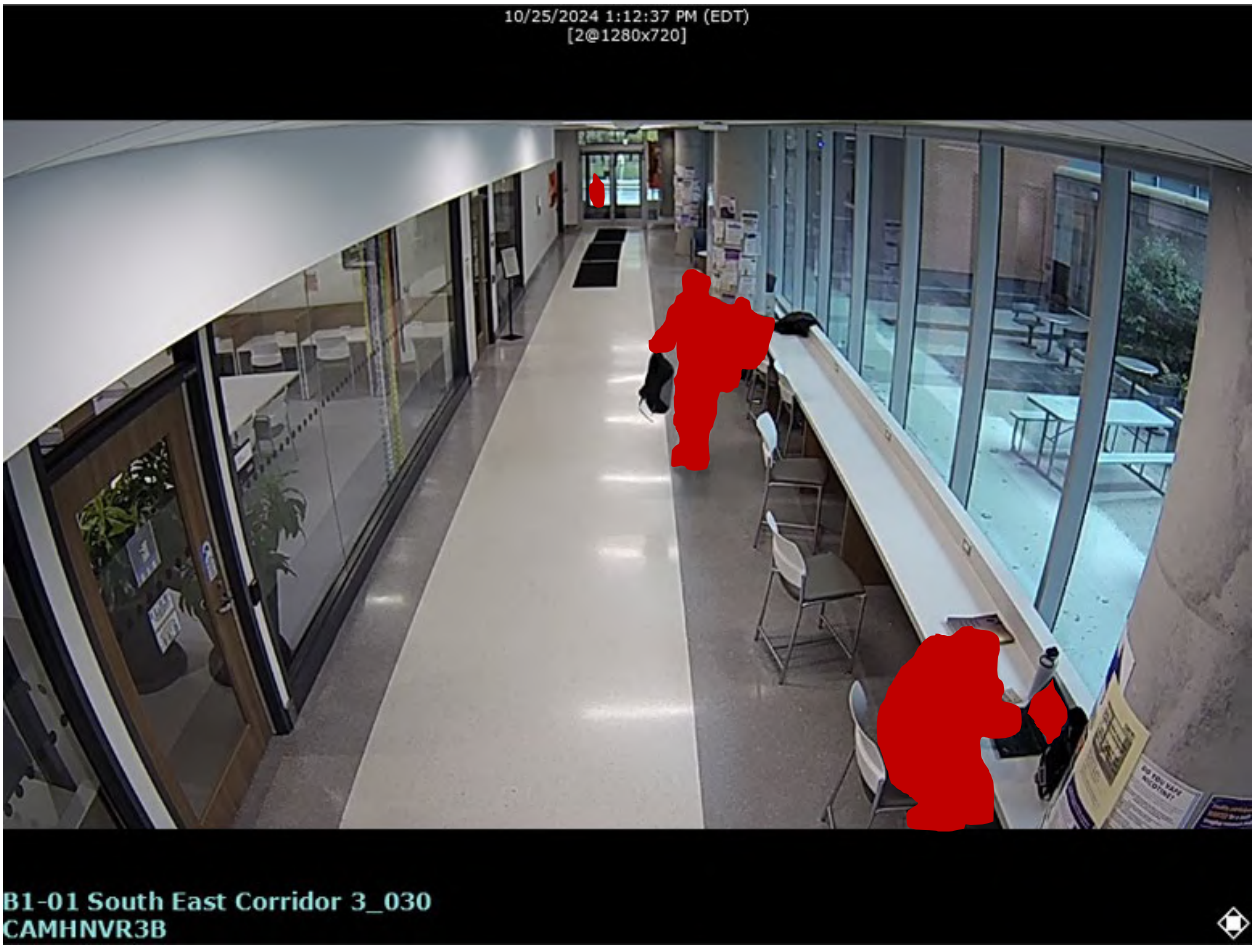
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Note: CircIT transactions cannot be separately identified as self-checkout vs staff-assisted checkout as they both use the same software.

| Date/Time | Branch / Location | Card # | Activity | Method of Transaction |
|---|---|---|---|---|
| 28/10/2024,16:35 | Fort York | 27131056572458 | Laptop check out.<br>Item returned | Symphony accessed by staff |
| 28/10/2024,16:36 | Fort York | 27131056572458 | Note added: Laptop form completed at Fort York Branch Oct 28/2024 | Symphony accessed by staff |
| 28/10/2024,19:41 | Fort York | 27131056572458 | Check out<br>1 Book | CircIT accessed either through self-checkout or staff-assisted station |
| 28/10/2024,19:43 | Fort York | 27131056572458 | Laptop check out.<br>Item returned | Symphony accessed by staff |
| 28/10/2024,20:16 | Fort York | 27131056572458 | Check out<br>1 book | CircIT accessed either through self-checkout or staff-assisted station |
| 8/11/2024,<br>11:57 – 12:29<br><br>11:57-11:58<br><br>12:04<br><br>12:13<br><br>12:29 | Queen/Saulter | 27131056572458 | Checked out 24 items<br>10 have been returned<br><br>3 Generic paperback<br>3 Books<br>(1 book returned)<br><br>9 Periodicals<br>(all 9 were returned)<br><br>5 Books<br><br>1 Book<br>3 Generic paperback | CircIT accessed either through self-checkout or staff-assisted station |
| 8/11/2024, 12:52 | Queen/Saulter | 27131056572458 | Check In<br>1 book<br>9 periodicals | CircIT accessed at staff-assisted station |

| Date/Time | Branch / Location | Card # | Activity | Method of Transaction |
|---|---|---|---|---|
| 16/11/2024,10:20 | Fort York | 27131066792070 | New card issued at Fort York Branch<br><br>Previous card 27131056572458 marked as LOSTCARD | Symphony accessed by staff |
| 13/12/2024,19:00 | Toronto Reference Library | 27131066991128 | New card issued at Toronto Reference Library<br><br>Previous card 27131066792070 marked as LOSTCARD | Symphony accessed by staff |
| 13/12/2024,19:09 | Toronto Reference Library | 27131066991128 | Renewed 16 items (2 borrowed at Fort York;<br>14 borrowed at Queen/Saulter Branch) | Symphony accessed by staff |
| 13/12/2024,19:12 | Toronto Reference Library | 27131066991128 | Phone number updated to 416-919-7820<br>Account renewed | Symphony accessed by staff |
| 13/12/2024,20:03 | Toronto Reference Library | 27131066991128 | Checkout<br>1 Book | CircIT accessed either through self-checkout or staff-assisted station |
| 21/12/2024,15:15 | Fort York | 27131067089492 | New card issued at Fort York Branch<br>Previous card 27131066991128 marked as LOSTCARD | Symphony accessed by staff |
| 21/12/2024,15:48 | Fort York | 27131067089492 | Laptop check out.<br>Item returned | Symphony accessed by staff |
| 21/12/2024,16:11 | Fort York | 27131067089492 | Check out<br>1 Book<br>4 Periodicals | CircIT accessed either through self-checkout or staff-assisted station |
| 21/12/2024,16:13 | Fort York | 27131067089492 | Laptop check out.<br>Item returned | Symphony accessed by staff |
| 28/12/2024, 15:30 | Fort York | 27131067089492 | Laptop check out.<br>Item returned | Symphony accessed by staff |

| Date/Time | Branch / Location | Card # | Activity | Method of Transaction |
|---|---|---|---|---|
| 28/12/2024,15:59 | Fort York | 27131067089492 | Check out<br>7 Periodicals | CircIT accessed either through self-checkout or staff-assisted station |
| 17/1/2025,16:03 | Answerline | 27131067089492 | Renewed – 29 items<br>1 item not renewed due to outstanding hold | Symphony accessed by staff |

# TAB 9:

Court File No. DC-24-00000718-00JR
Applicant's Motion #2 (Motion in Writing; Request to Convert Motion into Motion for Judgment)

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

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

FORM 4D

*Courts of Justice Act*

AFFIDAVIT

ONTARIO SUPERIOR COURT OF JUSTICE (DIVISIONAL COURT)

BETWEEN:

**KEVIN ALEXANDER MCLEAN**

APPLICANT

- and -

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

RESPONDENTS

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

**Affidavit #4 of Kevin A. McLean in this *JRPA* Proceeding**

(Affidavit in support of Applicant's Notice of Motion #1: compelling the Tribunal to comply with its statutory duties – forthwith filing of the Record of Proceeding pursuant to section 10 of *JRPA* and section 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 resultsNew SearchPrint
**Assumed Name**
Jesse A. Boyce
**Law Society Number**
72486F
**Class of Licence** Definitions
Lawyer (L1)
**Real Estate Insured** †
No
**Status** Definitions
Practising Law - Employed
**Business Name**
SLASTO
**Business Address**
25 Grosvenor[1] 4th FloorToronto, OntarioM7A 2S8
**Phone**
1 437 997 1235 Ext.
**Trusteeships**
None
**Current Practice Restrictions**
None
**Current Regulatory Proceedings**
None
**Regulatory History**
None"

[end of quotation]

5. I served the Tribunal with a copy of my filed and paid for JRPA Application of November 15, 2024, on November 15, 2024, by way of emails to the case manager of the LAT Proceeding in Ms. Hannah Lee. I also filed a copy of the same on or around November 15, 2024, in the LAT (AABS) e-filing portal.

6. I did not know Mr. Boyce until I became aware that the Licence Appeal Tribunal had purported to serve me, albeit at the incorrect address for service (i.e. 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 website[2]:

> "INTRODUCTION
> The Licence Appeal Tribunal (LAT or "the Tribunal") is an adjudicative tribunal included within the Safety, Licensing Appeals and Standards Tribunals Ontario (SLASTO). SLASTO is a cluster of adjudicative tribunals created on April 1, 2013. SLASTO is designated as a cluster pursuant to s. 15 of the *Adjudicative Tribunals Accountability, Governance and Appointments Act, 2009* and s. 4 of Ontario Regulation 126/10.
>
> The constituent tribunals of SLASTO are:
>
> Animal Care Review Board (ACRB)
>
> Fire Safety Commission (FSC)
>
> Licence Appeal Tribunal (LAT)
>
> Ontario Civilian Police Commission (OCPC)
>
> Ontario Parole Board (OPB)
>
> LAT adjudicates matters in a variety of diverse areas such as alcohol and gaming regulation, motor vehicle impoundments and driver's licences, new home warranties, consumer protection, regulation of various occupations and businesses, and starting on April 1, 2016, in relation to automobile insurance Statutory Accident Benefits Schedule (SABS) disputes. LAT conducts proceedings pursuant to the following statutes:
>
> Insurance Act
>
> You may contact LAT by mail at:
>
> Licence Appeal Tribunal
>
> 15 Grosvenor Street, Ground Floor
>
> Toronto, Ontario
>
> M7A 2G6

> Please note that AABS maintains a separate mailing address from the main LAT address. Please check the website referenced above for current AABS mailing address."

15. I note that Vice Chair Lake has represented on the LSO Directory that she is employed by LAT/AABS and located at 25 Grosvenor Street, Toronto, Ontario.

16. I note that Mr. Boyce represented on the LSO Directory that he was employed by SLASTO, which I believe is a cluster or sub-cluster within the cluster of the 13 tribunals that make up Tribunals Ontario.

17. I confirm that when I attempted to deliver my application fee for my access request of the LAT in September 2024 (ironically, in my view, the same date that VCM represented that the VCM Decision was dated albeit discrepantly with the signed copy of the same) that I could not enter 15 Grosvenor Street as it denoted that said building was closed to the public since the pandemic. I then attended the building and premises at 25 Grosvenor Street and was able to deliver the same to the privacy division of LAT.

***VOLUME #3: SOCIETY OF ONTARIO ADJUDICATORS AND REGULATORS: PUBLIC INFORMATION: JOB POSTING[3]***

18. I repeat and rely upon my references to *Shuttleworth* in my affidavit #2, paragraph 52.

19. I rely upon he above hyperlinked job posting regarding said job posting regarding a manger of legal services at SLASTO:

> "Manager, Legal Services - Safety, Licensing Appeals and Standards Tribunals Ontario (SLASTO)
> Posted on February 9, 2018 - 12:47pm
> The Safety, Licensing Appeals and Standards Tribunals Ontario (SLASTO) has a challenging opportunity for a strategic thinker with highly developed leadership skills to manage the provision of legal and strategic policy advice to the Executive Chair, SLASTO and its constituent tribunals.
>
> What can I expect to do in this role?
>
> Reporting to the Executive Lead and accountable to the Executive Chair, your duties will include:
>
> • Serving as counsel to the Executive Chair, SLASTO within a solicitor–client relationship
>
> • Leading a team of highly skilled legal professionals (in both unionized and excluded positions)

• Providing expert legal advice to provide quality assurance and maintain and enhance the consistency and coherence of Tribunal decisions, adjudicative processes and dispute resolution processes

• Overseeing investigations and prosecutions under the Police Services Act at the direction of the Executive Chair, SLASTO

• Representing, or overseeing the representation of SLASTO and its tribunals before the Courts, for appeals, judicial review applications and various court-related matters

• Reviewing and/or drafting contracts, agreements and internal policies and ensuring that they are in compliance with all statutory or legal requirements

• Monitoring trends in decisions and evolving jurisprudence for use in adjudicator training, and for targeting emerging legal and policy issues

• Providing leadership and direction in the preparation and delivery of orientation sessions and continuing education for Tribunal Members, Vice-Chairs and staff, including topics such as: legislation, rules and practice directions, case law, conduct of hearings, and decision writing

• Representing SLASTO at public symposia, conferences, and provincial and national meetings of organizations/practitioners, and other fora involving issues related to SLASTO, establishing contacts/networks, and delivering presentations

• Developing, managing, and growing complex relationships with multiple constituencies on behalf of SLASTO

• Cultivating a work environment that values respect, diversity and inclusion

• Contributing as a key member of the SLASTO executive management team"

***VOLUME #4: MR. BOYCE'S CURRENT CONTACT INFORMATION***

20. I now attach or copy and paste a screenshot from the LSO Directory website from Saturday, January 18, 2025, at approximately 9:38 a.m.:

Lawyer Contact Information

Jesse Aaron Boyce

Assumed Name:

Law Society Number
724868

Class of Licence Definitions
Lawyer (LI)

Real Estate Insured
No

Status Definitions
Practising Law - Employed

Trusteeships
None

Current Practice Restrictions
None

Current Regulatory Proceedings
None

Regulatory History
None

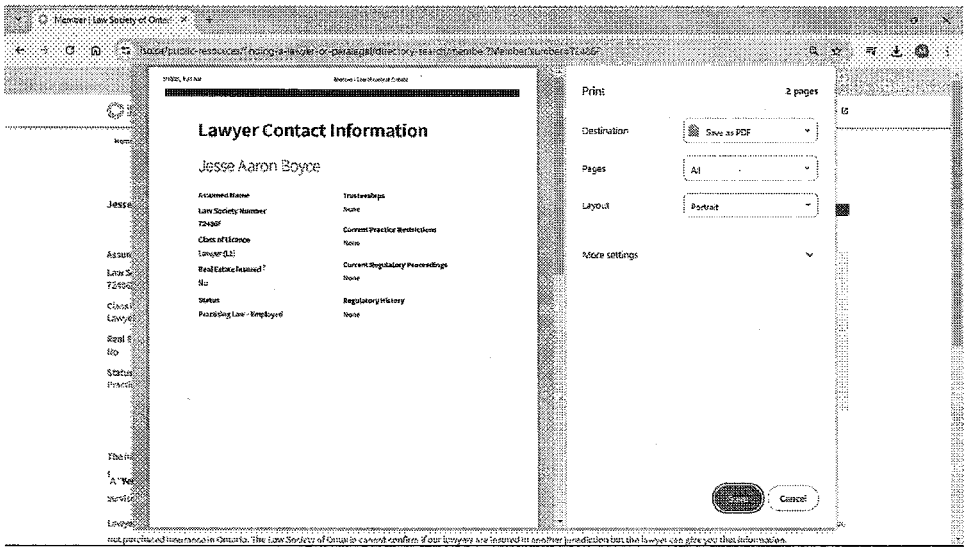
The information in this directory was prepared Saturday, January 18, 2025 at 7:18 AM.

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 practise 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.

The directory includes regulatory history information from February 27, 1998 onward. Discipline and other regulatory hearings that resulted in the suspension of a "Reprimand in 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:




22. For ease of reference, the missing components therein are:
    a. Employer; and
    b. Address.

***VOLUME #5: COPY OF SELECT RELEVANT PARAGRAPHS FROM MY DRAFT ORAL OUTLINE AND ORAL COMPENDIUM***

23. I now copy and paste from my oral outline (draft), contained at Tab 1 therein, which I have attempted to adhere to the principles on *Robertson*,

[start of quotation]

***ISSUE*** #4: ***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 JRPA Proceeding. Parenthetically, it does not mean that such conflict of interest does not arise in a LAT Act Appeal but it is more obvious and glaring when there is no stay of the 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 created conflicts of interest. It is trite that the more important, by a considerable distance, persons with respect to duties is that of this ONSC Divisional Court which includes its staff, and those crème de la crème former lawyers turned judges, when compared to that of the JRPA Applicant. Nonetheless, there are multiple third persons to which Mr. Boyce owes duties.

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 Morrissette 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 article[8], Mr. Lorne Neudorf (see: JD (Victoria), LLM (McGill), PhD (Cambridge); Member of the Law Society of Upper Canada[9]; 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 a 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***

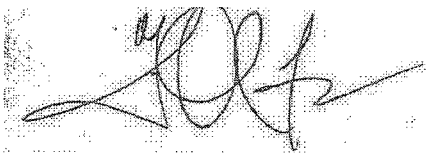
25. I swear, under the penalty of perjury, that I have raised the issues above as soon as they become known to me and then commenced the drafting of this affidavit for filing with the ONSC and for service upon the Tribunal and the respondent insurance companies.

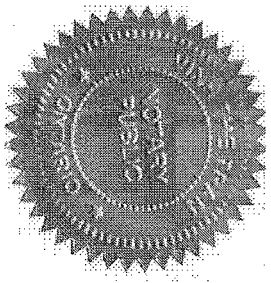
26. I most sincerely hope that this affidavit is of assistance to SLASTO, Tribunal, Mr. Boyce and any other potential counsel that the former two may seek to retain herein and in any future unrelated JRPA or LAT Act appeal proceedings. I have no personal animus to any of the counsel for the respondents 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 TLA 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 MSH 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 amended[15] notice of motion or the delivered[16] 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 Procedure*s including but not limited to the following rules:

    a. Rule 1.02(1.)(3);

    b. Rule 1.03 with respect to the following definitions:

        i. "applicant" means a person who makes an application;

        ii. "application" means a proceeding commenced by notice of application;

        iii. "court" means the court in which a proceeding is pending and, in the case of a proceeding in the Superior Court of Justice, includes an associate judge;

        iv. "deliver" means serve and file with proof of service, and "delivery" has a corresponding meaning;

        v. "document" includes data and information in electronic form;

        vi. "hearing" means the hearing of an application, motion, reference, appeal or assessment of costs, or a trial;

vii. "motion" means a motion in a proceeding or an intended proceeding;

viii. "moving party" means a person who makes a motion;

ix. "person" includes a party to a proceeding;

x. "proceeding" means an action or application;

xi. "respondent" means a person against whom an application is made or an appeal is brought, as the circumstances require;

xii. "responding party" means a person against whom a motion is made;

xiii. "statute" includes a statute passed by the Parliament of Canada; and

xiv. "substantial indemnity costs" mean costs awarded in an amount that is 1.5 times what would otherwise be awarded in accordance with Part I of Tariff A, and "on a substantial indemnity basis" has a corresponding meaning.

c. Rule 1.04;

d. Rule 1.05;

e. Rule 1.06;

f. Rule 1.08[17];

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 Grosvenor[19] 4th FloorToronto, OntarioM7A 2S8
**Phone**
1 437 997 1235 Ext.
**Trusteeships**
None
**Current Practice Restrictions**
None
**Current Regulatory Proceedings**
None
**Regulatory History**
None

RCP-E 37A (September 1, 2020)

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"**

---

[1]Where 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

[5]Ontario (Energy Board) v. Ontario Power Generation Inc., 2015 SCC 44 (CanLII), [2015] 3 SCR 147, at para 48, <https://canlii.ca/t/glb07#par48>, retrieved on 2024-12-25
[6]https://www.ontariocourts.ca/coa/about-the-court/archives/becomingprofessional/#:~:text=The%20privilege%20of%20calling%20yourself,interesting%20and%20stimulating%20and%20challenging.
[7]https://lso.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
[9]Now the LSO
[10]Footnote 48 therein: For a discussion of the role of amici curiae see Ontario v Criminal Lawyers' Association of Ontario,
2013 SCC 43, [2013] 3 SCR 3 at para 47 [emphasis in original], where the Supreme Court of Canada observes that, in the criminal law context, "amici should be used sparingly and with caution, in response to specific and exceptional circumstances" at para 47. The corollary is that this is not the criminal context.
[11]Footnote 49 therein: This language was used by the Supreme Court of Canada when it imposed a commission process to
separate the judiciary from the government in relation to salary negotiations to better protect judicial impartiality: Reference re Remuneration of Judges of the Provincial Court of Prince Edward Island; Reference re Independence and Impartiality of Judges of the Provincial Court of Prince Edward Island, [1997] 3 SCR 3 at para 170.
[12]To the extent that the Tribunal consents to the same or does not oppose, and/or comply with its obligations forthwith, the Applicant seeks relief to convert the mode of hearing from telephone conference to a brief written argument with a draft order to be provided, vetted by the Registrar, for immediate entry.
[13]With 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.
[14]Please see: Rule 1.3
[15]While there does not appear to be a provision under the Rules of Civil Procedure, an implicit order therein granting leave to the Applicant to amend this notice of motion in accordance with the Rules of Civil Procedure or by analogy
[16]Not merely "exchanged" and not merely a "material" or "materials"
[17]Denoted *supra*
[18]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
[19]Where Mr. McLean's FIPPA request was delivered

# TAB 10:

Court File No. DC-24-00000718-00JR
Applicant's Motion #2 (Motion in Writing; Request to Convert Motion into Motion for Judgment)

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

FORM 4D

*Courts of Justice Act*

AFFIDAVIT

ONTARIO SUPERIOR COURT OF JUSTICE (DIVISIONAL COURT)

BETWEEN:

**KEVIN ALEXANDER MCLEAN**

APPLICANT

- and -

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

RESPONDENTS

**Affidavit #7[i] of Kevin A. McLean in this *JRPA* Proceeding**

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

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

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

2. I commenced drafting this affidavit on January 24, 2025

3. Attached hereto to this my affidavit is a copy of my email and submissions that were attached to the email regarding my request that Madam Justice Shore recuse herself

along with other ancillary relief ("**COI Recusal Request**"). As of today's date, I have not received any decision regarding my COI Recusal Request so I will file notice of motion with supporting materials to seek the same relief that I am seeking in the COI Recusal Request.

4. I am also concerned that I received an email from a Ms. Badwal that referenced a case conference before Madam Justice Shore on February 18, 2025. I confirm that I am not available on said date. However, I will bring my motion promptly and I intend to seek additional relief in the proposed motion.

5. In relation to the Ms. Badwal email, I am concerned that a different thread was commenced and it did not contain all of the emails that were in the previous thread with myself and the ONSC Divisional Court. It is unclear to me why that occurred but I am not castigating Ms. Badwal in any way. I will file an additional affidavit that contains all of those emails at the relevant time and in support of the intended motion.

6. I expressly adopt the facts in the attached email and submissions as my sworn evidence herein. I intend to pay for my notice and file the same, and then serve it on the respondents and in the "interested person" in Mr. Papadimitropoulos.

7. I will also provide a copy of my motion to Epstein Cole LLP so it can participate and provide its position should it wish to do so.

8. I will continue to object to Madam Justice Shore having any involvement in this matter as I remain of the view that Mr. Papadimitropoulos was the individual who signed the OCF-18 #1 (defined as the "Dhaliwal OCF-18") with the handprinted language of "As per A. Nurse" and that he was, he is, and remains in breach of his separation agreement with Ms. Nicole Artopoulos regarding a "provision" in said separation agreement of no indirect or direct contact. I repeat and rely upon my evidence in affidavit #4 in this regard.

9. I remain of the view that Mr. Boyce of the LAT is also in a conflict of interest by virtue of my previously stated positions in the emails to him with the respondents and the ONSC Divisional Court copied. I do not believe that the Tribunal can participate in an impartial manner with Mr. Boyce as its counsel. I intend to seek relief in this regard as well.

10. I note that the AGO, through Ms. Im, did not file a Notice of Appearance in this JRPA Proceeding.

11. As of tonight, I note that Ms. Im has done the same vis-à-vis her address and business name (employer) on the LSO directory website. I note my affidavit evidence in affidavit #2 which stated in part which was a copy and paste from the LSO website at the time of said affidavit:

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

Judie Yung-Mi Im
Back to resultsNew SearchPrint
Assumed Name
Judie Im
Law Society Number
44577V
Class of Licence Definitions
Lawyer (L1)
Real Estate Insured †
No
Status Definitions
Practising Law - Employed
Business Name
Ministry of Attorney General
Business Address
8-720 Bay StToronto, OntarioM7A 2S9
Phone
1 416 427 4611 Ext.
Email Address
judie.im@ontario.ca
Trusteeships
None
Current Practice Restrictions
None
Current Regulatory Proceedings
None
Regulatory History
None

12. Ms. Im's contact information on the LSO directory website is now:

# Judie Yung-Mi Im

Back to resultsNew SearchPrint
**Assumed Name**
**Law Society Number**
44577V
**Class of Licence Definitions**
Lawyer (L1)
**Real Estate Insured †**

No
**Status Definitions**
Practising Law - Employed
**Trusteeships**
None
**Current Practice Restrictions**
None
**Current Regulatory Proceedings**
None
**Regulatory History**

13. I swear this **Affidavit #7** for no improper purpose and for the above purposes.

Sworn before me via videoconference in accordance with O. Reg. 431/20 at **Toronto, Ontario** on this 24th day of January 2025

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

Vinh The Tran, Esq.
Barrister & Solicitor, Attorney-at-Law, Notary Public, Commissioner of Oaths/Affidavits etc., LSO# 57761C
188-639 Dupont Street, Toronto, Ontario, Canada M6G1Z4
www.ONeLAW.ca www.HouseCallNotary.ca
E-mail: vinhtranlaw@hotmail.com T. 647-209-7389

VINH THE TRAN NOTARY PUBLIC ONTARIO

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

[i] Three affidavits have been my affidavits of service

THIS IS EXHIBIT A REFERRED TO IN THE
AFFIDAVIT OF Mr. Kevin A. McLean
AFFIRMED BEFORE ME, THIS 24th DAY
OF January 20 25

NER, ETC.

Vinh The Tran, Esq., LSUC #57761C
Lawyer, Notary, Oaths Commissioner
188-639 Dupont Street, Toronto, ON
M6G 1Z4, T. 647-209-7389
vinhtranlaw@hotmail.com

Gmail **Mr. Kevin McLean <mcleansettlement@gmail.com>**

# Re: LAT's Notice of Appearance : McLean v. TD Home and Auto Insurance et al. : 718/24

**Mr. Kevin McLean** <mcleansettlement@gmail.com> Thu, Jan 16, 2025 at 10:58 AM
To: "SCJ-CSJ Div Court Mail (JUD)" <scj-csj.divcourtmail@ontario.ca>
Cc: "SCJ-CSJ Div Court Mail (JUD)" <scj-csj.divcourtmail@ontario.ca>, "Maciel, Milene (MAG)" <Milene.Maciel@ontario.ca>, "Collie, Connor (MAG)" <Connor.Collie@ontario.ca>, "Im, Judie (She/Her) (MAG)" <Judie.Im@ontario.ca>, "Pasquini, Heather" <Heather.Pasquini@tdinsurance.com>, "Imafidon, Isibhakhomen (MAG)" <Isibhakhomen.Imafidon@ontario.ca>, Div Court Schedule <DivCourtSchedule@ontario.ca>, "Nieuwland, Matthew" <Matthew.Nieuwland@tdinsurance.com>, "christiana.ortiz@tdinsurance.com" <christiana.ortiz@tdinsurance.com>, scjcsj.divcourtmail@ontario.ca

January 16, 2025

***VIA EMAIL***

***URGENT – NOTICE***

***URGENT – ATTACHMENTS***

Court file number: Court File No. DC-24-00000718-00JR
Type of document: email
Short title of proceeding: McLean v. TDHA et al
Party: Mr. Kevin A. McLean, self-represented, Applicant, e: mcleansettlement@gmail.com;

| To: |
|---|

The ONSC Divisional Court
130 Queen Street West, Toronto, Ontario
Toronto, Ontario

Kind attention: ONSC Divisional Court Registrar (Madam Clerk Clegg)

| AND TO: (pursuant to the Courts of Justice Act, (s. 75(1)(3)),) and section 76 |
|---|

The Honourable Geoffrey B. Morawetz
Chief Justice of the Superior Court of Justice

| AND TO: |
|---|

The Honourable Faye E. McWatt
Associate Chief Justice of the Superior Court of Justice

| With a copy to: |
|---|

The Honourable Stephen E. Firestone
Regional Senior Judge for the Toronto Region

| With a copy to: |
|---|

The Honourable Madam Justice Shore

COPIED TO THE RESPONDENTS AND THEIR COUNSEL

AND COPIED TO (FOR NOTICE PURPOSES REGARDING THE APPLICANT'S REQUEST(S))):

Andrew Papadimitropoulos
Law Society Number
58696I
Class of Licence Definitions
Lawyer (L1)
Real Estate Insured †
No
Status Definitions
Practising Law - Employed
Business Name
TD Insurance
Business Address
101 Mcnabb St
Markham, Ontario
L3R 4H8
Phone
416 983 5467 Ext.
Email Address
andrew.papadimitropoulos@tdinsurance.com

Re: enclosed written submissions for the Respectful Requests (defined therein)

Dear Madam Registrar Clegg (copied to the above or to be forward by the ONSC Divisional Court Registrar):

1. I write regarding the above. As promised, please find my PDF and signed submissions for the Respectful Requests. For ease of reference, they at paragraph 19 and 126:

a. The Honourable Madam Justice Shore is disqualified from any further involvement in this *JRPA* Proceeding (the "**Disqualification Request**" or the "**Recusal Request**");
b. The Case Management Appearance Requirement is declared as void and void *ab initio* (not merely voidable) (the "**Nullification Request**");
c. A general and indefinite adjournment of the case conference pursuant to 77.04(1)(b) of the *Civil Rules* by the Associate Justice (the "**Adjournment Request**");
d. A direction by the Honourable Chief Justice, pursuant to section 76 of the *CJA*, that the Registrar shall accept all outstanding requisition filings and provide confirmation of the same to the *JRPA* Applicant and respondents; and
e. A direction by the Honourable Chief Justice, pursuant to section 76 of the *CJA*, that the Registrar comply with her duties (by law), pursuant to 68.05(2) of the *Civil Rules*[i], and provide the parties with a "Notice of Listing For Hearing".

("d" and "e" together, the "**Staff Direction Requests**").

(collectively, the "**Respectful Requests**" or "**Requests**").

2. I rely on affidavit #2 and #3 in support of the same as my leading of evidence in this regard.

3. Should the Court require any further submissions or sworn evidence from me regarding the same, I remain available and please contact me at your earliest moment. Otherwise, I shall presume this is sufficient and the procedure is consistent with the case law in this niche and unique subset of a few areas of law.

4. Please extend my thanks to the Chief Justice and Associate Chief Justice (where applicable) for their consideration.

5. Thank you.

---

[i] 68.05(2) When the certificate of perfection has been filed, the registrar shall place the application on a list for hearing and give notice of listing for hearing (Form 68B) by mail to the parties and the other persons named in the certificate of perfection. R.R.O. 1990, Reg. 194, r. 68.05 (2).

Warm regards,

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

On Thu, Jan 16, 2025 at 6:42 AM Mr. Kevin McLean <mcleansettlement@gmail.com> wrote:

> January 16, 2025
>
> **VIA EMAIL**
>
> **URGENT – NOTICE**
>
> Court file number: Court File No. DC-24-00000718-00JR
> Type of document: email
> Short title of proceeding: *McLean v. TDHA et al*
> Party: Mr. Kevin A. McLean, self-represented, Applicant, e: mcleansettlement@gmail.com;
>
> Re: confirmation of the correct or preferred procedure to address my nullification request of Justice Shore initiated case management appearance requirement (the "**Case Management Appearance Requirement**") (the "**Nullification Request**") (see: affidavit #3 herein)
>
> Re #2: recusal request of Madam Justice Shore (the "**Recusal Request**")
>
> Re #3: to the extent applicable – dependent on other factor – the assignment request or reassignment
>
> Re #4: Written Submissions to follow today
>
> Dear Madam Registrar Clegg:
>
> 1. I write regarding the above. I remain of the view and position, with great respect, that Justice Shore must recuse herself and withdraw her self-initiated Case Management Appearance Requirement.

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

ONTARIO COURT OF JUSTICE (DIVISIONAL COURT)

BETWEEN:

**KEVIN ALEXANDER MCLEAN**

APPLICANT

- and -

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

RESPONDENTS

Applicant's Submissions for his RESPECTFUL REQUESTS

To:

The ONSC Divisional Court
130 Queen Street West, Toronto, Ontario
Toronto, Ontario

Kind attention: ONSC Divisional Court Registrar (Madam Clerk Clegg)

AND TO: (pursuant to the Courts of Justice Act, (s. 75(1)(3)),) and section 76

The Honourable Geoffrey B. Morawetz
Chief Justice of the Superior Court of Justice

AND TO:

The Honourable Faye E. McWatt
Associate Chief Justice of the Superior Court of Justice

With a copy to:

The Honourable Stephen E. Firestone
Regional Senior Judge for the Toronto Region

With a copy to:

The Honourable Madam Justice Shore

COPIED TO THE RESPONDENTS AND THEIR COUNSEL

AND COPIED TO (FOR NOTICE PURPOSES):

Andrew Papadimitropoulos
Law Society Number
58696I
Class of Licence Definitions
Lawyer (L1)
Real Estate Insured †
No
Status Definitions
Practising Law - Employed
Business Name
TD Insurance
Business Address
101 Mcnabb St
Markham, Ontario
L3R 4H8
Phone
416 983 5467 Ext.
Email Address
andrew.papadimitropoulos@tdinsurance.com

**VOLUME # #1: STATEMENT OF RECUSAL REQUEST, NULLIFICATION REQUEST, ADJOURNMENT REQUEST (SOLELY IN RELATION TO SHORE J. APPEARANCE REQUIREMENT) AND STAFF DIRECTION ORDERS (SEE: SECTION 76 OF THE CJA)**

1. Which Canadian jurist represented the following to the federal committee responsible for judicial appointments in her sworn and signed questionnaire to it, "Vital to the Canadian system is the impartiality of a judge. This is different than the system in the United States. In Canada, judicial independence is viewed as vital to fostering public confidence in the fairness and objectivity of the justice system. The Supreme Court of Canada has described judicial independence as "the cornerstone, a necessary prerequisite for judicial impartiality."

2. None other than The Honourable Madam Justice Sharon Store.

3. The Honourable Sharon Shore of our ONSC (not the Federal Court) also made a statement to that same federal committee that this Applicant certainly agrees with as follows

> Last, but not least, is integrity. I have always tried to conduct my personal and professional life with integrity. One of the lessons I learned from my mentors is that it takes a lifetime to build your reputation, and only minutes to destroy it.

4. Public confidence in our legal system is rooted in the belief that those who deliver legal judgments do so without bias or prejudice to one side or the other. In this regard, the appearance of justice is just as important as the reality.[1]

5. Judges often disqualify themselves where the matter before them involves former clients or law partners. Herein, we have a situation of a former client of Epstein Cole LLP where Madam Justice Shore was a partner.

6. Lord Hewart C.J.'s aphorism that "it is not merely of some importance but is of fundamental importance that justice should not only be done, but should manifestly and undoubtedly be seen to be done" (The King v. Sussex Justices, Ex parte McCarthy, [1924] 1 K.B. 256, at p. 259). To put it differently, in cases where disqualification is argued, the relevant inquiry is not whether there was in fact either conscious or unconscious bias on the part of the judge, but whether a reasonable person properly informed would apprehend that there was. In that sense, the reasonable apprehension of bias is not just a surrogate for unavailable evidence, or an evidentiary device to establish the likelihood of unconscious bias, but the manifestation of a broader preoccupation about the image of justice. As was said by Lord Goff in Gough, supra, at p. 659, "there is an overriding public interest that there should be confidence in the integrity of the administration of justice" (see: paragraph 66 of *Weykaum*). The last is the most demanding for the judicial system, because it countenances the possibility that justice might not be seen to be done, even where it is undoubtedly done – that is, it envisions the possibility that a decision-maker may be totally impartial in circumstances which nevertheless create a reasonable apprehension of bias, requiring his or her disqualification (see: paragraph 67 of *Weykaum*).

7. The law of judicial bias is founded on two basic legal maxims: audi alteram partem ("listen to the other side") and nemo judex in sua causa ("no-one should be a judge in his own cause"). The former requires that parties affected by a decision have the right to be heard and that the decision-maker must not have pre-judged the issue. The latter prohibits the adjudicator of the case from having an interest in the decision,

thus safeguarding the right of the parties to be treated impartially and without prejudice. In other words, bias represents a predisposition or a state of mind which sways judgment.

8. Unlike tribunals, judicial impartiality is guaranteed by our *Constitution* under section 96 to 101 (see: *Ocean Port Hotel* (SCC)).

> **Volume #1(A):** The Anticipatory Counter to Justice Shore taking a similar position to Binnie J. in *Weykaum*

9. While the SCC has found that there is a distinction with a difference between government lawyers and private practice, the following statement of law is apropos. There is a strong inference that licensees who work together share confidences especially where they work under a "group" even if internal confidentiality screens are in place (see: *Mariangeli*, [2004] OJ 3082 (Ont Sup. Ct.). Where Confidential Information exchanged in a prior related matter sufficient related to a current retainer the "licensees" MUST rebut inference Confidential Information was exchange (see: *Mariangeli*, [2004] OJ 3082 (Ont Sup. Ct).

> ***VOLUME #1(B): BY ANALOGY***

10. The Applicant (also defined as the "**Requestor**") repeats and relies upon his letter in Appendix #1.

11. If a judge is aware of any relationship or personal interest that raises a reasonable apprehension of bias, it is generally desirable that disclosure is made in advance of a hearing, so that the case may be reassigned.

12. Under the Ontario *Courts of Justice Act* (s. 75(1)(3)), it is the Chief Justice of a court or one of the Associate Chief Justices who is responsible for the assignment or reassignment of cases.

13. Pursuant to the *Civil Rules*, the following is applicable to the Case Management Appearance Requirement:

> 77.04 (1) A judge or associate judge may,
>
> (b) adjourn a case conference;
>
> (2) A judge or associate judge may, on his or her own initiative, require the parties to appear before him or her or to participate in a conference call to deal with any matter arising in connection with the case management of the proceeding, including a failure to comply with an order or the rules. O. Reg. 438/08, s. 64; O. Reg. 383/21, s. 15.
>
> (3) For greater certainty, the powers set out in subrules (1) and (2) are in addition to any other powers set out in this Rule. O. Reg. 438/08, s. 64.

14. For sake of completeness, Rule 77(1) and (2) state the following:

> RULE 77 CIVIL CASE MANAGEMENT
>
> Purpose and General Principles

Purpose

77.01 (1) The purpose of this Rule is to establish a case management system that provides case management only of those proceedings for which a need for the court's intervention is demonstrated and only to the degree that is appropriate, as determined in reliance on the criteria set out in this Rule. O. Reg. 438/08, s. 64.

General Principles

(2) This Rule shall be construed in accordance with the following principles:

1. Despite the application of case management under this Rule to a proceeding, the greater share of the responsibility for managing the proceeding and moving it expeditiously to a trial, hearing or other resolution remains with the parties.

2. The nature and extent of the case management provided by a judge or associate judge under this Rule in respect of a proceeding shall be informed by any relevant practices, traditions, customs or judicial resource issues that apply locally in the region in which the proceeding is commenced or to which it is transferred. O. Reg. 438/08, s. 64; O. Reg. 383/21, s. 15.

15. The Canadian Judicial Council considers recusal inappropriate where no other adjudicator can be constituted to hear the case or where, as a result of an emergency, withdrawal would lead to a miscarriage of justice. Still, the exercise of judicial discretion is at the heart of judicial independence, and judges are presumed to have acted in good faith.

16. The urgency is in favour of the Applicant having his requisitions filed and receiving a Form 68(B) which is most outstanding despite requisitions for the same.

17. It is rather coincidental that there are 93 justices in the Toronto region and somehow the one justice who was a partner who acted, and remains as the sole law firm to have represented one Mr. Andrew Papadimtripoulos

18. It is current counsel to the three respondent insurance companies in Mr. Nieuwland who unequivocally admitted, as a matter of law, that there was a conflict of interest when TDGIC represented in a purported but unlawful response to the Applicant's *PIPEDA* request of SNIC in January 2024 that Mr. Andrew Papadimtripoulos had not been involved in any way with this claim or access request. However, the claim number provided therein was 035325709-04 [sic] (see: **page 66** of the **Oral Compendium**).

***VOLUME #2: RELIEF SOUGHT IN THE RECUSAL REQUEST, NULLIFICATION REQUEST AND REASSIGNMENT REQUEST***

19. The Requestor seeks the following relief as follows:

a. The Honourable Madam Justice Shore is disqualified from any further involvement in this *JRPA* Proceeding (the "**Disqualification Request**" or the "**Recusal Request**");
b. The Case Management Appearance Requirement is declared as void and void *ab initio* (not merely voidable) (the "**Nullification Request**");

c. A general and indefinite adjournment of the case conference pursuant to 77.04(1)(b) of the *Civil Rules* by the Associate Justice (the "**Adjournment Request**");
d. A direction by the Honourable Chief Justice, pursuant to section 76 of the *CJA*, that the Registrar shall accept all outstanding requisition filings and provide confirmation of the same to the *JRPA* Applicant and respondents; and
e. A direction by the Honourable Chief Justice, pursuant to section 76 of the *CJA*, that the Registrar comply with her duties (by law), pursuant to 68.05(2) of the *Civil Rules*[2], and provide the parties with a "Notice of Listing For Hearing".

("d" and "e" together, the "**Staff Direction Requests**").

(collectively, the "**Respectful Requests**" or "**Requests**").

**VOLUME #2(A): A note on section 76 of the *CJA*, "Direction of Court Staff"**

20. For ease of reference, Section 76 of the *CJA* states:

> 76 (1) In matters that are assigned **by law**[3] to the judiciary, registrars, court clerks, court reporters, interpreters and other court staff shall act at the direction of the chief justice of the court. 2006, c. 21, Sched. A, s. 14.

21. The following outlines the facts material to the ***JRPA* Application** and the LAT Appeal as it relates to the various requests herein. Painstaking detail is required because of the Tribunal's failure to comply with section 10 of the *JRPA* and to fill the lacunas creates by that intentional and egregious statutory non-compliance by the Tribunal. These submissions are provided in support of the **Requests** as a means of ensuring compliance and on the continued basis of urgency. The further details of the below are bookmarked and hyperlinked in the Applicant's oral compendium and oral outline that shall follow.

**VOLUME #3: FACTS**

22. The underlying facts in this ***JRPA* Application** are contained within the record of proceeding with reference to the filed documents such as the ***JRPA* Application**, Factum, Application Record, and Affidavit #2.

23. The Ontario Superior Court of Justice Guide to Judicial Review in Divisional Court, effective by its metadata which states, "Scarciolla, Claudia (JUD)" (author) and 11/24/22 (date) (the "*JRPA* Guide") which states [emphasis it the Applicant's]:

> "After you have brought an application for judicial review, you will receive an email to register for CaseLines and upload your materials. There is no fee to use CaseLines."

24. The ***JRPA* Applicant** tendered his ***JRPA* Application** and paid the requisite fees on November 15, 2024.
    a. After receipt of the issued ***JRPA* Application**, from the Registrar, with thanks, the ***JRPA* Applicant** did not receive an invitation to Case Center.

25. The ***JRPA* Applicant** delivered[4] (served) and filed his **Factum**[5] on December 10, 2024.

~~26.~~ The ***JRPA* Applicant** delivered (served) and filed his **Application Record** on December 12, 2024;

27. The ***JRPA* Applicant** filed and paid for the Certificate of Perfection on December 13, 2024;

28. The ***JRPA* Applicant** also filed the requisite affidavit of service thereafter;

29. The ***JRPA* Applicant** received confirmation of his filing thereafter;

30. The ***JRPA* Applicant**, based on his review of what has been received, has not received any mail or email of the Form 68(B) which was required to be delivered to the parties after the ***JRPA* Applicant** had filed and paid for the Certificate Of Perfection with an approximate date of the hearing. Based upon a reasonable interpretation of the relevant Civil Rule, which is 68.05(2) (see: (2) When the certificate of perfection has been filed, the registrar shall place the application on a list for hearing and give notice of listing for hearing (Form 68B) by mail to the parties and the other persons named in the certificate of perfection. R.R.O. 1990, Reg. 194, r. 68.05 (2).”), the Registrar was required to place the Applicant’s ***JRPA* Application** on a list for hearing and give notice of listing for hearing on or around Tuesday, December 17, 2024.

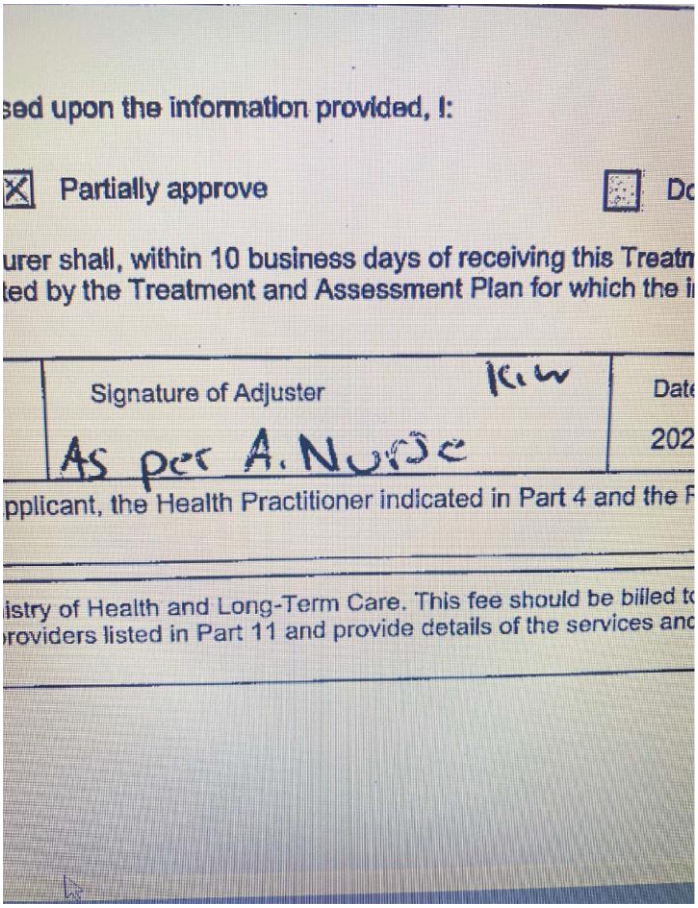
31. Despite filing his requisition #1 on December 24, 2024 (see: **Confirmation number 2787308**) requesting and requiring the Registrar to comply with her duties, there is currently no evidence that any such steps have been taken in this regard. Moreover, the ***JRPA* Applicant**, by usage of said service, was entitled to have any filing processed within five business days, which may be accepted or rejected. Five business days from December 24, 2024, was January 2, 2025.

32. Relevant to this Recusal Request and Nullification Request, on June 28, 2024, in relation to the Applicant’s NOM #6 and NOM #9, the Tribunal dismissed the Applicant’s COI motion and Mr. Andrew Papadimtripoulos (the “**Epstein Cole Client**”) remained as a representative of SNIC. The timing could not be more important because on June 20, 2024, the Tribunal granted the Applicant’s NOM #8 which removed the Fictitious Respondent (TDGIC) as the sole respondent party.

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

## VOLUME #3(A): THE FORTUITOUS DISCOVERY

34. The fortuitous discovery which merely solidified the Applicant’s uncontroverted evidence was the finding of an anniversary card penned to his ex wife presumably in 2015 and 2016 under the bed where the Applicant slept and where Mr. Papadimitropoulos used to reside. The evidence remains uncontroverted in the record of proceeding;


sed upon the information provided, I:

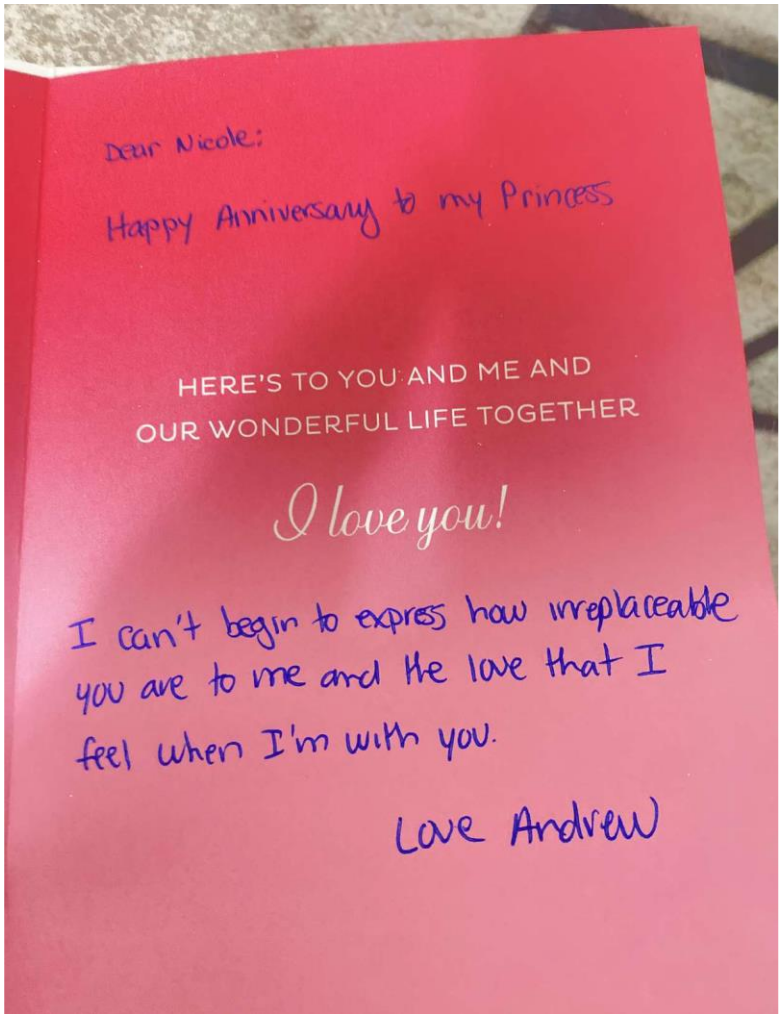
☒ Partially approve ☐ Do

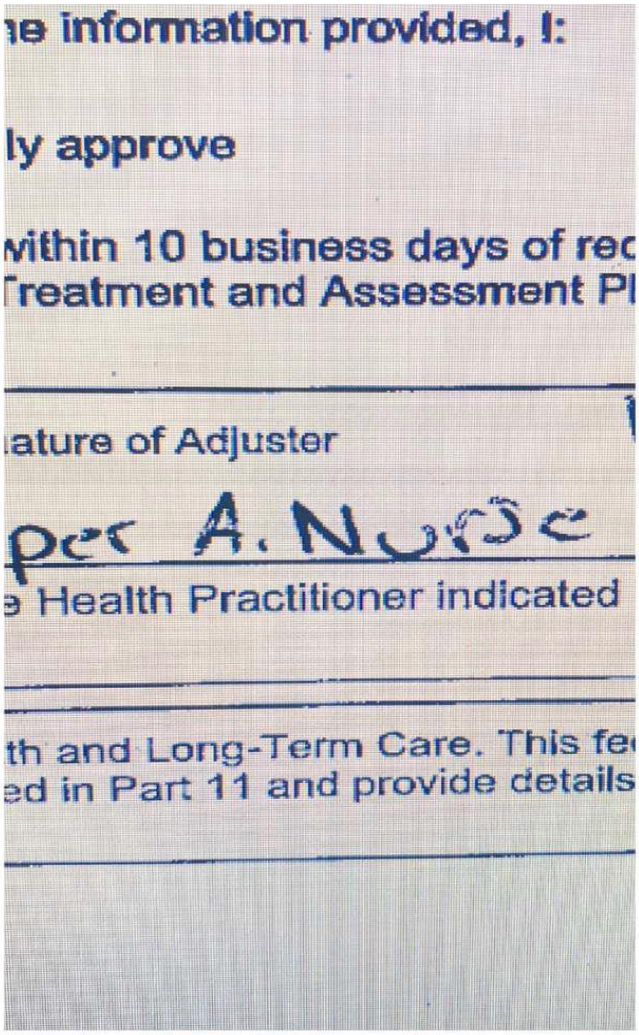
urer shall, within 10 business days of receiving this Treatm
ted by the Treatment and Assessment Plan for which the i

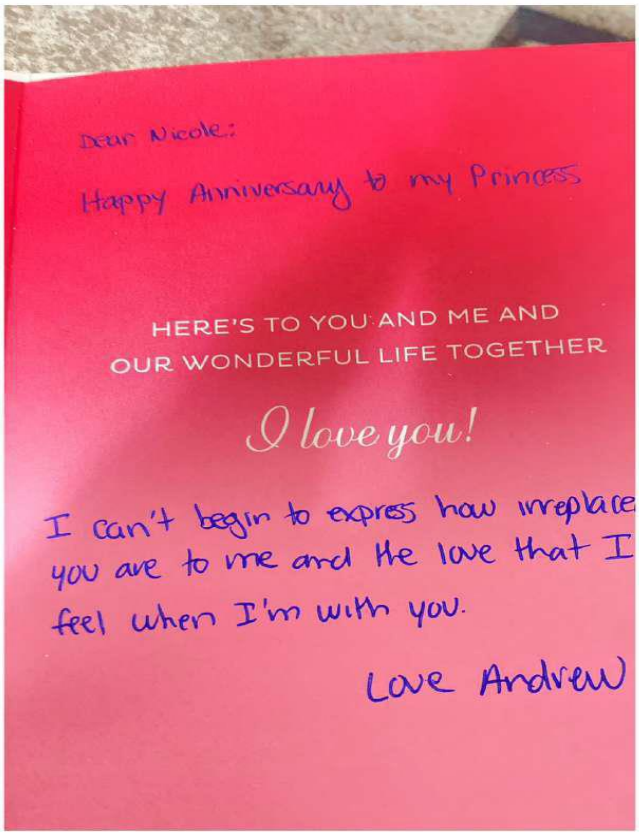
| Signature of Adjuster | Date |
|---|---|
| As per A. Nurse KW | 202 |

pplicant, the Health Practitioner indicated in Part 4 and the F

istry of Health and Long-Term Care. This fee should be billed t
roviders listed in Part 11 and provide details of the services and


Dear Nicole:
Happy Anniversary to my Princess
HERE'S TO YOU AND ME AND
OUR WONDERFUL LIFE TOGETHER
I love you!
I can't begin to express how irreplaceable
you are to me and the love that I
feel when I'm with you.
Love Andrew




(see: Affidavit #3, Exhibit "A", pages 274 to 279, which was affidavit of the Applicant on September 19, 2024,

35. No handwriting expert was required with that glaring obvious similarities.

36. The backdrop to this Forged Signature of an adjuster with SNIC is that the cover letter therein (not a public interest issue per se) confirmed and represented that SNIC had approved the sum of approximately $2080 in medical and rehab benefits ($1995 +$85.87). However, it never issued a cheque for the same to the Applicant's relevant health practitioners. The only reasonable inference is that SNIC did not want to take further steps in affirmation of the fraud, forgery, false document and uttering of a false document. Does that it make it lawful? The question answer itself.

**VOLUME #3(B): NO ONE HAS MORE TO LOSE THAN MR. ANDREW PAPADIMITROPOULOS**

37. It is the very exhaustion of each and every avenue that has karmically come to save this Applicant at the most fortuitous of times. The dismissal of his NOM #6 and NOM #9 (which was repurposed and filed after the nullity case conference and the change of the style of cause) is what kept Mr. Andrew

Papadimitropoulos as a representative of SNIC from his post in Markham for "TD Insurance" but now has caused a further light to be shined on his misconduct whilst being a client of Epstein Cole and at the very least a continued address for notices within a separation agreement.

**VOLUME #5: ISSUES**

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

    b. Is there a ROAB involving the Madam Justice Shore in light of her being a partner at Epstein Cole LLP at the time when Mr. Andrew Papadimtriopoulos retained Epstein Cole LLP along with the admission of law by counsel of record in this *JRPA* Proceeding to the three distinct insurance companies that Mr. Andrew Papadimitropoulos could not be involved in the Applicant's SABS Claim and LAT Appeal by his contractually agreed requirement that he not have any indirect or direct contact Ms. Nicole Artopoulos (spouse of the Applicant at material times) (see: Oral Compendium, page 66)?
    c. Pursuant to the common law in Canada that a RAOB cannot be remedied, what order must be granted in relation to the Shore J. Case Management Appearance Requirement?
    d. Pursuant to the *Civil Rules* and the common law requirement that justice must not just be done but seen to be done, what steps should and must the Associate Justice take after the Nullification Request is granted?
    e. In light of the delays experienced by the *JRPA* Applicant and the public interest along with the continued urgency of the Applicant's ***JRPA* Application**, what directions must the Chief Justice take as per section 76 of the *CJA*?

***VOLUME #6: LEGAL BASES: RELATING TO THE LICENSEES AND CAST OF CHARACTERS BELOW***

***Volume #6(A): Law Society Act***

39. To fully elucidate and outline the underlying conflict of interest and, bluntly, fraudulent conduct of one Mr. Andrew Papadimtriopoulos in executing documents for adjusters but in their name of "as per" (see: As per A. Nurse") (by way of the fortuitous discovery (see: Affidavit #3 herein), the underlying legal bases involving the non-licensee, Mr. Karat, acting contrary to the *LSA* and the LSO *By-Law*s is required.

40. Moreover, there is ostensibly some persistent discord between the decisions of Vice Chair McGee and Vice Chair Maedel in Dankha and Mosa respectively and the decisions of Vice Chair Morrissette and Vice Chair Lake (see: NOM #5 and reconsideration decision of Vice Chair Logan). As this Court would have seen had the Tribunal complied with its statutory obligation under the *JRPA*, the Applicant had to get most "creative" and "lucky" (see: the "one and the same" misrepresentation by Mr. Nieuwland at the May 2, 2024, nullity case conference) to have the Tribunal to comply with the law (which is completely antithetical to the consumer protection nature of the statutory scheme of the Insurance Act, SABS, Reg 283) to obtain the orders that he did in his NOM #8 (nota bene: which changed the style of cause while removing a party and adding a party i.e. the granting of the same which is interlocutory in nature whereas the refusal of the same is a final order and final decision):

41. For clarity as to the Applicant's positions regarding some of the other decision makers at the quasi-judicial tribunal known as "LAT" like Vice Chair McGee, Vice Chair Maedel and some others, they are clearly very articulate and have high legal acumen. The decisions of Vice Chair McGee in Dankha was yet another beautifully written and analytical precise decision wherein she ensured that the Tribunal did not

condone the breaches of the *LSA* and LSO *By-Laws* by a paralegal engaging in the practice of law (not provision of legal services)

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

43. Ms. Watson, a lawyer licensee in good standing with the LSO, made the following arguments which were all rejected by Vice Chair McGee:
    a. Mr. Grabar submitted documents under the advisement of Mr. Faletta (a now suspended lawyer);
    b. Mr. Faletta oversaw Grabar's handling of the file; and
    c. A new lawyer (Watson) had recently took carriage of the file.

44. Mr. Karat was and is on far worse grounds that Mr. Grabar as Mr. Grabar was a licensed paralegal.

## *VOLUME #6(A)(I): LSA*, SECTIONS 1(5) AND (6)

45. A person provides legal services if the person engages in conduct that involves
    a. The application of legal principles; and
    b. Legal judgment with regard to the circumstances or objectives of a person.

    (see: section 1(5) of the *LSA*)

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

## *VOLUME #6(A)(II): SECTION 1(7) OF THE LSA: REPRESENTATION IN A PROCEEDING*

47. Doing any of the following SHALL BE CONSIDERED to be representing "a person" in a proceeding
    a. Determining what documents to serve or file in relation to the proceeding
    b. Determining on or with whom to serve or file a document; or
    c. Determining when, where or how to serve or file a document.

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

48. Doing any of the following SHALL BE CONSIDERED to be representing "a person":
    a. Conducting an examination for discovery; or
    b. Engaging in any other conduct necessary to the conduct of a proceeding.

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

50. "**Proceeding**" has the same meaning as in *By-Law* #4, section 6(1) ((see: **Hearing Brief**, Tab 26, page 285) and any intended proceeding was also vis-a-vis the Claimant (also defined as "Applicant" or "**Appellant**") and "*TD INSURANCE MELOCHE MONNEX*" (see: HB, Tab 38, page 561 for reference to "trade name") (Security National Insurance Company). The *LAT Rules* refers to the *LAT Rules* effective on August 21, 2023 (the "*LAT Rules*" or "New *LAT Rules*").

***VOLUME #6(B): THE "ADR REPRESENTATIVE" [NOT AN "OFFICER"]: KARAT – CONDUCT SOLELY IN RELATION TO SNIC***

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

52. Where a licensee (which the Appellant's uncontroverted evidence remains that the licensee (who is also deemed an "Officer" of SNIC by virtue of being a "manager" or "management" with SNIC) was the Mr. Papadimitropoulos) affiliates with a non-licensee, he remained exclusively liable for his professional practice when so affiliating. The Conflicted Lawyer (Mr. Papadimtriopoulos) has also acted for "TD Insurance Meloche Monnex" in *Mensah* (see: 2022 CanLII 452) and 18-00161 v. SNIC, 2019 CanLII 9628.

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

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

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

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

57. While **Nieuwland** was not on the email of January 25, 2024, rather conveniently, **Karat** represented in the email to the **Appellant**, "Kindly see the attached correspondence with today's date along with the Response of **AN** INSURANCE COMPANY" [emphasis is the **Appellant**'s] (see: Affidavit #13, Exhibit "A", page 5). **Mr. Karat** regularly confirmed by that auto-reply that is not authorized for **SNIC** (but for Primmum, TD Home & Auto, and ***NON-SABS INSURER***).

**Volume #6(C): Nieuwland's conduct solely in relation to the NON-SABS Insurer**

58. **Nieuwland** is a lawyer licensee, with the LSO, who was employed by Simitrich Law and now as a lawyer licensee with "TD Insurance Staff Legal". There are some discrepancies between how Saeed (see: HB[6], Tab 3, page 17 and Nieuwland describe, on the LSO Directory, "TD Insurance Staff Legal" as the form describes it as "employed – practising law" whereas the latter describes himself being in "private practice").

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

60. From early February 2024 to April 10, 2024, the **Appellant** provided notice to **Nieuwland** that his DOR for a **NON-***SABS* Insurer was a nullity and had no legal effect, and urged him to file a DOR on behalf of **SNIC**. **Nieuwland** did not respond and then stated that his DOR was unambiguous The **Appellant** also urged Mr. **Nieuwland** provide an affidavit if Ms. Moraes was his legal assistant. **Nieuwland** did not respond to the request

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

62. While, again, it matters not of the underlying facts and minutia of the relationships per se and the **EPSTEIN COLE** Client's involvement in representing SNIC, by reference to the As per A. Nurse signature and beyond as the Tribunal found that Mr. Andrew Papadimitropoulos was fully entitled to remain as a representative in the LAT Appeal, the Applicant provides the same primer no the LSO *By-Law*s in relation to the cast of characters. Put another way, the *JRPA* Applicant provides the same as per each case being determined on its own facts and out of abundance of caution.

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

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

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

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

66. The *JRPA* Applicant now copies and pastes from his speaking notes, filed with the Tribunal and later appended to an affidavit to meet the definition of record to be included in a record of proceeding under section 20 of the *SPPA*, as follows:

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

124. As Karat solely signed, filed and served (as it is presumed) the Purported SNIC Response, with the cover letter on January 25, 2024 (see: HB, Tab 3, pages 85 to 88; email: enclosed response from "An Insurance Company" which was the Appellant's Insurer by virtue of the Insurance Act and no reference to "NON-SABS INSURER"), which referenced "TD INSURANCE MELOCHE MONNEX" with the return address of SNIC Markham, along with his sole signature of the Karat COS, he did so without Nieuwland copied on that email. There is no reference to Nieuwland in the Purported SNIC Response. Therefore, Karat's sole conduct (which were his sole signing, sole filing and sole serving) therein were not to support or supplement Nieuwland's client at the time or by way of retrospective analysis. Only a lawyer licensee was authorized under the *LSA* to SIGN the Purported SNIC Response as non-licensee is not authorized to even sign correspondence (except of a routine administrative nature) and a paralegal licensee is not authorized to sign a "responsive pleading" where an Appeal (not a "claim" under *By-Law* #4) involves even the appearance that an individual is CAT Impaired. (see: HB, Tab 3, page 27).

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

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

127. By Nieuwland's inaction and then filing of the Purported Responsive Hearing Brief on April 11, 2024 in relation to NOM #6, Nieuwland affirmed and reaffirmed that his client was NON-SABS INSURER (NON-SABS Insurer). Nieuwland then made a succession of independent misrepresentations to the Tribunal about Karat and Moraes' roles herein and to him.
Therefore, Nieuwland did not comply with section 32(a) of *By-Law* #7. In relation to ss. 32(c), it is admitted by Karat (see: Purported SNIC Response and emails of Karat to Appellant along with cover letter referencing the Purported SNIC Response) that Karat operates from the premises at SNIC Markham and Nieuwland operates from the premises at 66 Wellington West, Toronto.

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

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

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

132. The Mr. Papadimitropoulos meets the definition of an "officer" under the Insurance Act by his title of "Consequence Management".

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

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

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

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

67. While Mr. Karat and Mr. Nieuwland had different clients for nearly six months and at the time of the case conference (with a bit of irony herein), SNIC in filing the SNIC Response had to act through an authorized representative or be directed by a "direct mind" – however clandestine and secret it may have been.

68. **SNIC** could only act through an individual, namely an authorized individual like an officer or one deemed to have the authority of an officer, particularly a senior officer (see: *Insurance Act*, "officer"). However, the *LSA* prohibited Mr. Karat from "signing" the SNIC Response as the sole representative at the time.

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

70. Therefore, the applicable and relevant definition is that of an "officer". "Officer" includes a trustee, director, **manager**, treasurer, secretary or member of the board or committee of **management** of AN INSURER and a person appointed by the insurer to sue and be sued in its behalf; (see: section 1(1) of the *Insurance Act*). While the **Mr. Papadimitropoulos** is not a "trustee" or "director" of **SNIC**, he does hold himself out as a "manager" and involved in "consequence management". **Mr. Papadimitropoulos** would meet the requirements of a licensee, officer and manager of **SNIC** at **SNIC Markham**. Therefore, on a balance of probabilities, the "officer" who ASSIGNED Mr. Karat with his duties and functions, to be the ADR specialist herein was the Mr. Papadimitropoulos for the particulars in affidavit evidence previously which are uncontroverted. More importantly, it is notable that Mr. Nieuwland misrepresented that Mr. Karat was an "ADR" 'officer' when he was not and never represented himself as such.

71. Even more compelling was that Mr. Karat signed the Purported SNIC Response without any reference to Nieuwland, and then served the Appellant (as defined in the LAT Appeal) with the Purported SNIC Response and a cover letter referencing the Purported SNIC Response (filed on behalf of AN insurance company – namely SNIC) which had the address as the same as the Purported SNIC Response at SNIC Markham. The author of the cover letter was "TD Insurance Meloche Monnex" with Security National Insurance Company as the return address albeit allegedly in Markham, Ontario.

### *VOLUME #6(D): KAISER*

72. While the Divorced Husband Conflicted Lawyer (Mr. Papadimtriopoulos) is NOT the declared tribunal advocate for SNIC and not declared herein at the *JRPA* Proceeding, his public denoted address with the LSO is SNIC Markham which was and is at material times in the TD Claim #3 the same address as Nurse (from DOL to Spring/Summer of 2023) and Karat (January 23, 2024 and onwards). It does not matter if the individual, admittedly in irreconcilable conflict of interest, is the "tribunal or court" advocate as found by the ONSC in Talisman. There is codification of the same under section 1(7) of the *LSA*.

### *VOLUME #6(E): PUHL, TALISMAN, AND YELLOW CEDAR*

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

74. The legal test is not when an individual's personal interests could compromise judgment or actions in discharging job duties but the legal test is whether the **Appellant** has established on a balance of

probabilities that a fair-minded and reasonably informed member of the public would conclude the removal of the

***VOLUME #6(F): SEMINAL POINT – COI COMING TO PASS FOR JUSTICE SHORE AS A RESULT OF THE MISCONDUCT, MISCHIEF AND FRAUD OF MR. PAPADIMITROPOULOS***

75. To belabour the point, the decision of the Tribunal dismissing the Applicant's COI Motion allowed Mr. Papadimitropoulos to remain as a representative whether or not he was in the forefront or back-office, declared or not. However, the difference now is that none of the tribunal decision makers were his counsel in a matrimonial litigation spanning some three years and ending in a divorce decree, and then issuing decisions involving him. However, that COI has come to pass on or around January 8, 2024.

***Volume #6(G): Martin – the administration of justice***

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

77. The expression "substantial risk" in the definition of "conflict of interest" describes the *likelihood* of impairment as opposed to nature and severity. substantial risk is one that is significant and plausible EVEN IF it is NOT certain or even probably that it will occur. There must be more than a "mere possibility" that impairment will occur. Ergo, not a "mere possibility" but a "possibility".

***VOLUME #6(F): DUTIES TO THIRD PERSONS MATTER UNDER THE LSO BY-LAWS AND RULES OF PROFESSIONAL CONDUCT***

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

79. In *Bose*, The Honourable Mr. Justice Perrell on the Ontario Superior Court of Justice found that Canada has taken on an increasingly stricter approach to the law of COI by way of reference to cases involving *Martin* to *Neil*

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

**VOLUME #6(G): FAMILY LAW AND FAMILY LAW FIRMS INVOKE DIFFERENT PRINCIPLES**

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

82. It is most fitting to note there are ongoing obligations arising from a "family dispute" between the Divorced Husband Conflicted Lawyer (Mr. Papadimtriopoulos) and the Individual Policyholder that are in perpetuity.

## *VOLUME #7: THE LEGAL BASES RELATING TO A REASONABLE APPREHENSION OF A BIAS ("RAOB") INVOLVING A JUSTICE*

### *VOLUME #7(A): THE TEST FOR RAOB*

83. The test for a reasonable apprehension of bias is fairly straight forward. It was first articulated by Supreme Court of Canada in Committee for Justice and Liberty v. National Energy Board, as follows:

> ". . . what would an informed person, viewing the matter realistically and practically — and having thought the matter through — conclude. Would he think that it is more likely than not that [the decision-maker], whether consciously or unconsciously, would not decide fairly."

84. This test — what would a reasonable, informed person think — has consistently been endorsed and repeated by the Supreme Court of Canada, most recently in *Yukon Francophone School Board, Education Area #23 v. Yukon* (*Attorney General).*

85. As such, the possibility of bias is not assessed from the perspective of the reviewing judge or the litigants themselves. Rather, the assessment of bias must be holistic and contextual, requiring "a careful and thorough examination of the proceeding", 6 to determine what a reasonable, neutral observer would see. The court reviews the ***FULL RECORD*** in its entirety "to determine the cumulative effect of any transgressions or improprieties".

86. By the Applicant being deprived of his right to upload his filed documents into Case Center, contrary to the explicit language in the JR Divisional Court Guide, it is unclear if Justice Shore had access to the Applicant's Filed Documents which an Originating Process, Factum, Application Record, Affidavit #1 and #2, and others.

### VOLUME #7(B): POTENTIAL GROUNDS FOR BIAS

87. There are six potential grounds for bias by which the impartiality of judges and administrative decision-makers can be brought into question under Canadian law.

88. This typology has been adapted from the categories formulated by Bryden, Philip, and Jula Hughes. "Legal Principles Governing the Disqualification of Judges." Available at SSRN 2473557 (2014) ["*Bryden & Phillips, Legal Principles of Disqualification*"].

a. Pecuniary or Personal Interest;

b. Personal Relationships;
c. **Past Associations** with Litigants or their Representatives; and
d. Prior judicial involvement with litigants.

89. There is no dispute that pursuant to the *LSA*, as a result of the substantial amendments in 2006 pursuant to the *Access To Justice Act, 2006*, that a representative need not be counsel of record. However, as per the record of proceeding in the LAT Appeal, pursuant to the contents required by the *SPPA*, section 20, the decision that allowed Mr. Papadimitropoulos remain as a binding one herein. If not a COI then, then certainly a COI came to pass now.

**VOLUME #7(C): RECUSAL PROCEDURE**

90. For example, in *Benedict v. Ontario* the provincial Crown moved to disqualify the motion judge on a reasonable apprehension of bias, as the motions judge was a plaintiff in an ongoing wrongful dismissal action against the Crown in a case similar to the employment-related claim before her. The Crown appealed after the judge refused to recuse herself. The Ontario Court of Appeal disqualified the judge, holding that any decision she reached which was unfavourable to the Crown could be perceived as advancing or vindicating her own claim.

***VOLUME #7(D): PERSONAL RELATIONSHIPS***

91. This class of bias relates to situations where the adjudicator has a sufficiently close relationship with a person involved in the proceeding (e.g. witnesses, parties, counsel, etc.) that renders him or her incapable or potentially incapable of judging impartially. In these instances, the impartiality can be in the form of favouritism[7] or personal animus[8] depending on the history of the relationship.[9]

92. Three considerations are important here: (1) whether it is a current or a previous relationship (existing relationship give rise to greater apprehension of bias); (2) The nature of the relationship (i.e. friendship, family, professional, or business); and (3) The depth of the relationship (i.e. cordial, formal, social, intimate). [10]

***VOLUME #7(E): PERSONAL RELATIONSHIPS WITH LITIGANTS AND THEIR REPRESENTATIVES***

93. Judges often disqualify themselves where the matter before them involves former clients or law partners.

94. The SCC found in its seminal case of *Weykaum* Indian Bank at paragraph 65:

> "Second, when parties say that there was no actual bias on the part of the judge, they may be conceding that the judge was acting in good faith, and was not consciously relying on inappropriate preconceptions, but was nevertheless unconsciously biased. In R. v. Gough, [1993] A.C. 646 (H.L.), at p. 665, quoting Devlin L.J. in The Queen v. Barnsley Licensing Justices, [1960] 2 Q.B. 167 (C.A.), Lord Goff reminded us that:
>
> Bias is or may be an unconscious thing and a man may honestly say that he was not actually biased and did not allow his interest to affect his mind, although, nevertheless, he may have allowed it unconsciously to do so. The matter must be determined upon the probabilities to be inferred from the circumstances in which the justices sit."

95. Put another way, is it more likely than not that it can inferred, from an objective person's perspective, that Madam Justice Shore was not actually biased and did not allow her interest as being a partner of the law firm of Epstein Cole LLP during the time of a firm's representation of Mr. Papadimitropoulos but nonetheless the appearance of mischief and misconduct is one that this ONSC (Divisional Court) must distance itself from an appearance standpoint.

*96. What would an informed person, viewing the matter realistically and practically – and having thought the matter through – conclude? Would this person think that it is more likely than not that Binnie J., whether consciously or unconsciously, did not decide fairly?*

97. There are no textbook instances.

98. Whether the facts, as established, point to financial or personal interest of the decision-maker; present or past link with a party, counsel or judge; earlier participation or knowledge of the litigation; or expression of views and activities, they must be addressed carefully in light of the entire context. There are no shortcuts.[11]

99. The fact that a judge would have recused himself or herself ex ante cannot be taken to be determinative of a reasonable apprehension of bias ex post.[12]

100. The following statement of Laskin C.J., in *Committee for Justice and Liberty v. National Energy Board*, *supra*, at p. 388:

> "Lawyers who have been appointed to the Bench have been known to refrain from sitting on cases involving former clients, even where they have not had any part in the case, until a reasonable period of time has passed. *A fortiori*, they would not sit in any case in which they played any part at any stage of the case. This would apply, for example, even if they had drawn up or had a hand in the statement of claim or statement of defence and nothing else (see: paragraph 80 of *Weykaum*).

101. While commending Madam Justice Shore for being ready, willing and able, she (and this Court) must live by the very representations that she made to the Judicial Advisory Committee for it to rely upon in determining her high level qualification to become a justice and ensure not only the impartiality of her actions but the *appearance of the same*.

102. It is not the grounds for automatic disqualification but it serves as a strong evidentiary foundation. It suggests that a reasonable and right-minded person would likely view unfavourably the fact that the judge acted as counsel in a case over which he or she is presiding, and could take this fact as the foundation of a reasonable apprehension of bias (see: paragraph 81 of *Weykaum*).

***VOLUME #7(F): GOVERNMENT PRACTICE IS DIFFERENT THAN PRIVATE PRACTICE***

103. Furthermore, in assessing the potential for bias arising from a judge's earlier activities as counsel, the reasonable person would have to take into account the characteristics of legal practice within the Department of Justice, as compared to private practice in a law firm. See the *Canadian Judicial Council's Ethical Principles for Judges*, supra, at p. 47.

***VOLUME #7(G): JUDGES' VOLUNTARY RECUSAL***

104. In Canada, the vast majority of recusal decisions are made by judges on their own motion. Judges are under an ethical and legal obligation to recuse themselves, if they believe they will be unable to judge impartially. In carrying out this responsibility, a judge is not required to consul with any other person, including with his or her Chief Justice.

105. If a judge is aware of any relationship or personal interest that raises a reasonable apprehension of bias, it is generally desirable that disclosure is made in advance of a hearing, so that the case may be reassigned.

***VOLUME #7(H): COURTS OF JUSTICE ACT: REASSIGNMENT***

106. Under the Ontario *Courts of Justice Act* (s. 75(1)(3)), it is the Chief Justice of a court or one of the Associate Chief Justices who is responsible for the assignment or reassignment of cases. However, pursuant to section 77.04(1), the case management conference was required to be in front of the **same judge** who self-initiated (however coincidentally or unlikely, probabilistically speaking, that may seem) the same. As such, said Case Management Attendance Requirement must be nullified as per the Nullification Request. It is void and void *ab initio* not merely voidable.

107. In the alternative, it must be adjourned generally and indefinitely while all other duties and obligations of not only the Applicant but the respondents, and, where applicable, the staff of the ONSC (Divisional Court) must be complied with forthwith. There is no requirement of a case conference to be held in any proceeding let alone a judicial review proceeding which are to be summary in nature.

***VOLUME #7(I): NO UNIFORM PRACTICE BUT BEST GUIDANCE: "SEEK SUBMISSIONS"***

108. More obviously, the CJC notes that judges should not recuse themselves where the potential conflict of interest is "trifling" or unlikely to raise plausible basis for disqualification. However, where the potential for disqualification is arguable, or when an unexpected issue arises shortly before or during the proceeding, the judge is advised to make disclosure and to seek submissions from counsel.

***VOLUME #7(J): NO UNIFORM PRACTICE BUT BEST GUIDANCE: "OBJECT PROMPTLY"***

109. The Supreme Court of Canada affirmed in *Canada (Human Rights Commission) v. Taylor*, that where a party reasonably apprehensive of bias fails to allege a violation of natural justice at "the earliest practicable opportunity", there is an implied waiver of any future right to complain about bias. Cartwright J. put the rule as follows, by way of dicta, in delivering the Supreme Court judgment in *Ghirardosi v. Minister of Highways for British Columbia*:

> "There is no doubt that, generally speaking, an award will not be set aside if the circumstances alleged to disqualify an arbitrator were known to both parties before the arbitration commenced and they proceeded without objection.

110. Where both criteria are established, the reviewing court will often look to the failure to object or raise with suspicion, indicative of tactic to hold an objection in reserve in the event of an unfavourable ruling. This is especially the case where allegations of bias are raised on appeal at first instance. For instance, in *Eckervogt v. British Columbia (Minister of Employment and Investment)*, the Court of Appeal noted that it is "most unsatisfactory" for the court to hear an allegation of bias in the first instance:

> "I do not think it is proper for a party to hold in reserve a ground of disqualification for use only if the outcome turns out badly. Bias allegations have serious implications for the reputation of the tribunal and in fairness they should be made directly and promptly, not held back as a tactic in the litigation. Such a tactic should, I think, carry the risk of a finding of waiver. Furthermore, the genuineness of the apprehension becomes suspect when it is not acted on right away.[emphasis added]."

111. Hence the critical importance to formally note objections in the record. The *JRPA* Applicant has been anything but "silent" but ensuring that he had objected, reserved his rights and promptly notified the ONSC Registrar.

***VOLUME #7(J): NO UNIFORM PRACTICE BUT BEST GUIDANCE: MOTION OR REQUEST***

112. ***Mullan and Boyle*** suggest that objections to an adjudicators presence should be made in writing, preferably by way of a formal motion to recuse, "or at the very least by an unambiguous request, and not just by way of general expressions of potential concern".

113. In the context of a "non-endorsement" or "non-order" by Justice Shore, the Applicant respectfully submits that a request, as opposed to a motion, is most appropriate considering the same. The Applicant, the "Requestor" herein, will provide a "record" so it can be stamped accordingly on the same or by way of separate document at the election of the Court.

114. In this manner, Rule 59.06 of the Civil Rules need not be addressed and it is unlikely it could be addressed on strict reading of the same but would have, hypothetically speaking but for the RAOB herein, by analogy under the Civil Rules.

**VOLUME #8: CONCLUDING REMARKS WITH THANKS TO THIS COURT FOR DECIDING THE RESPECTFUL REQUESTS**

**VOLUME #8(A): MISUSE OF CONFIDENTIAL INFORMATION: NORMALLY NOT SUSCEPTIBLE TO PROOF (OR DISPROOF)**

115. This principle, legal in nature, is cited for the purposes that the ***JRPA*** **Applicant** cannot prove or disprove what was shared in a privileged setting between **Epstein Cole LLP** and Mr. Andrew Papadimitropoulos. All that he can prove is that current counsel of record in this ***JRPA*** **Proceeding** admitted (but misrepresented) that Mr. Papadimtripoulos could not be involved in the LAT Appeal. If he could not be involved in any way in the LAT Appeal, then there is agreement between the Applicant and the respondent insurance companies that his legal relationships, caused by a separation and a final divorce decree in 2019, along with his continuing duties pursuant to contract to cease and desist in any form of direct (Ms. Nicole Artopoulos (the "Named Individual Insured" in the **Insurance Policy** (the very "insurance policy" cited

by VC Morrissette at paragraph 27 of the VCM Reasons (see: Oral Compendium, Tab 1, page 9) of indirect contact (which would be the Applicant)).

116. Litigation is not a "tea party". That being said, this Court's time need not be wasted in the minutia of the unlawful and, frankly, rather frightening conduct (from a mental health standpoint) that he engaged in by reference to affidavit #3 of the *JRPA* Applicant, made on January 8, 2025, by appending the very affidavits in the record of proceeding that he relied upon in support of his COI Motion.

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

118. With the benefit of hindsight, the Applicant's submissions in Spring 2024 were now somewhat prophetic:

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

119. It was prophetic because of the reference to 'future related proceedings" and it has come to roost yet again.

120. It is not in the Applicant's DNA or makeup to feel sorry for himself so nobody else needs to.

121. His primary concern is preventing this type of conduct from happening again (if systemic) to others who do not have the ability, determination, and/or skill to take on a collection of bullies.

122. To the extent that it is idiosyncratic to the *JRPA* Applicant, then it bolster the Applicant's respectful submission that the Recusal Request, Nullification Request, Adjournment Request, and Staff Direction Requests must be granted.

123. As found in *Dervisholli*, quoted by Madam Justice Marlyss Edwards in Transamerica, once a **NON-***SABS* Insurer collects, accesses, uses or discloses "**Confidential Information**" from the "Accident Benefits file" of '*SABS* insurer', said "counsel or licensees" are place in an irreconcilable conflict of interest. The only remedy that must be granted is their permanent disqualification and removal from any and all files which they are involved in. Unfortunately, this Tribunal, unlike the sound reasons for decision by Vice Chair McGee in *Mansuri* (which is well known to this Court by way of subsequent judicial review), did not decide in accordance with the law at that time. However, it turned out to be to the detriment to the respondent insurance companies considering their failure to comply with filing (not 'exchanging of materials' whatever that means in fact or at law) deadline of the *Civil Rules*.

124. In fairness to the Tribunal, the Applicant did not have said evidence of the mischief with respect to the forger of the "As per A. Nurse" 'signature' (used only for reference and not in the legal sense or any admission of its validity). The Applicant framed the legal issues as follows:

> *Has the Appellant in light of the filing and serving of the perfected Joint Hearing Record as of Friday, April 26, 2024 proven on a balance of probabilities that a fair minded and reasonably informed member of the public would conclude that the circumstances herein*

*could be (a possibility) of perceived conflict of interest such that an order is required, for the proper administration of justice, regarding the disqualification and restraining for any further involvement, in TD Claim #3, this **LAT Proceeding** and any Future Related LAT Proceedings of the Mr. Papadimitropoulos, Nieuwland, Karat, Moraes, Saeed, and any other unknown individuals who are Associates, Affiliated, Affiliated Entities, Supervisees, Assignees, Joint Entity Affiliated Providers et al (who must receive a copy of a LAT Order)?*

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

125. Simply put, since the record of proceeding is replete with only uncontroverted evidence of the Applicant regarding this rather fortuitous discovery (see: images above) for his self-interest and counter to that of the initial adjuster for SNIC and Mr. Andrew Papadimtriopoulos, Mr. Nieuwland's representations in defiance and response to the COI orders sought in NOM #6 and NOM #9 now bear heavily on Justice Shore recusing herself through no per se fault of her own but solely based on her former partnership status at **Epstein Cole LLP**. However, said law firm agreed to represent this "individual" and with that comes potential consequences that follow lawyers into retirement and into the bench. Simply put, the law firm cannot have it both ways where they accept funds for services and not have to bear the consequences (which is merely herein that Justice Shore cannot adjudicate this JRPA Proceeding in any fashion even at the triage or case management phase)

## VOLUME #9: RECAP OF RELIEF SOUGHT

126. As opposed to making a public spectacle of the above with a reported decision, the Applicant sincerely trusts that this Honourable Court appreciates resolving the above issues with findings, orders or granting of the Requested Relief in the Respectful Requests on an expedited basis:

1. The Honourable Madam Justice Shore is disqualified from any further involvement in this *JRPA* Proceeding (the "**Disqualification Request**" or the "**Recusal Request**");
2. The Case Management Appearance Requirement is declared as void and void *ab initio* (not merely voidable) (the "**Nullification Request**");
3. A general and indefinite adjournment of the case conference pursuant to 77.04(1)(b) of the *Civil Rules* by the Associate Justice (the "**Adjournment Request**");
4. A direction by the Honourable Chief Justice, pursuant to section 76 of the *CJA*, that the Registrar shall accept all outstanding requisition filings and provide confirmation of the same to the *JRPA* Applicant and respondents; and
5. A direction by the Honourable Chief Justice, pursuant to section 76 of the *CJA*, that the Registrar comply with her duties (by law), pursuant to 68.05(2) of the *Civil Rules*[13], and provide the parties with a "Notice of Listing For Hearing".

("d" and "e" together, the "**Staff Direction Requests**").

(collectively, the "**Respectful Requests**" or "**Requests**").

127. In support of the Respectful Requests, the JRPA Applicant relies on the filed materials in the record of proceeding herein and those documents that the JRPA Applicant has tendered for filing which remain in "processing status" and/or are required to be issued or deemed filed by the ONSC Divisional Court Registrar with reference to Rule 4.08 and/or section 76 of the *CJA*.

128. All of which is respectfully submitted (with the filed affidavit #3 of the *JRPA* Applicant on January 8, 2025, as "materials" in support of the same) to the ONSC (Div. Ct.) (Chief Justice and Associate Chief Justice (where applicable above)) on Thursday, January 16, 2025:

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

Appendices of the *JRPA* Applicant's Factum

APPENDIX #1

January 16, 2025

VIA EMAIL

URGENT – NOTICE

Court file number: Court File No. DC-24-00000718-00JR
Type of document: email (three outstanding requisitions)
Short title of proceeding: McLean v. TDHA et al
Party: Mr. Kevin A. McLean, self-represented, Applicant, e: mcleansettlement@gmail.com;

Re: confirmation of the correct or preferred procedure to address my nullification request of Justice Shore initiated case management appearance requirement (the "**Case Management Appearance Requirement**") (the "**Nullification Request**") (see: affidavit #3 herein)

Re #2: recusal request of Madam Justice Shore (the "**Recusal Request**")

Re #3: to the extent applicable – dependent on other factor – the assignment request or reassignment

Re #4: Materials to follow today

Dear Madam Registrar Clegg:

1. I write regarding the above. I remain of the view and position, with great respect, that Justice Shore must recuse herself and withdraw her self-initiated Case Management Appearance Requirement.

2. You will kindly recall that I kindly informed you that I would review the law with respect to the preferred procedure. In that vein, There is no uniform practice in Canada with regard to raising the allegation of bias or a reasonable apprehension of bias at trial. Thus, the exact procedure to be followed in Ontario is unsettled (see: Paul Perell, "The Disqualification of Judges and Judgments on the Grounds of Bias or Reasonable Apprehension of Bias" (2004), 29 The Advocates' Quarterly 102, at 114 [Perell, "The Disqualification of Judges"].

3. Pursuant to our Courts of Justice Act, section 75(1) is relevant:

> Powers re sittings and assignment of judicial duties
>
> 75 (1) The powers and duties of a judge who has authority to direct and supervise the sittings and the assignment of the judicial duties of his or her court include the following:
>
> 1. Determining the sittings of the court.
>
> 2. Assigning judges to the sittings.
>
> 3. Assigning cases and other judicial duties to individual judges

4. As such, my request will be directed to the Honourable Chief Justice of the ONSC The Honourable Geoffrey B. Morawetz Chief Justice of the Superior Court of Justic and The Honourable Faye E. McWatt.

5. As noted, I have already filed my affidavit #3 on January 8, 2025, in support (i.e. materials exchanged already in support but also filed) of my Nullification Request and Request.

6. As noted by our SCC in *Newfoundland Telephone Co. v. Newfoundland (Board of Commissioners of Public Utilities)*, 1992 CanLII 84 (SCC), the damage caused by the reasonable apprehension of bias ("RAOB") cannot be remedied by Justice Shore. The only solution is the withdrawal of her Case Management Appearance Requirement.

7. The materials shall follow in short order which will be in the nature of a request with reliance on affidavit #3.

8. In relation to The Honourable Madam Justice Shore, and which will be relied upon in my requests of this Honourable Court, and as a brief "sneak preview" to the main argument, I note the following and certainly agree with Justice Shore's representations to the federal courts judicial appointment committee [hyperlinked to the specific paragraph for ease of reference]:

> "Vital to the Canadian system is the impartiality of a judge. This is different than the system in the United States. In Canada, judicial independence is viewed as vital to fostering public confidence in the fairness and objectivity of the justice system. The Supreme Court of Canada has described judicial independence as "the cornerstone, a necessary prerequisite for judicial impartiality."
>
> The Honourable Sharon Shore of our ONSC also made a statement to the Judicial Advisory Committee[14] that this Applicant certainly agrees with as follows:
>
> Last, but not least, is integrity. I have always tried to conduct my personal and professional life with integrity. One of the lessons I learned from my mentors is that it takes a lifetime to build your reputation, and only minutes to destroy it.

9. I repeat and rely upon the previous supra in this email thread and explicitly repeat and rely upon section 76 of the *CJA*. I note the importance of the record of this proceeding being complete, accurate and up-to-date for a variety of purposes not limited to the requirement it be so for my requests.

10. Thank you in advance for drawing this email and my affidavit #3 to the attention of the Chief Justice of the ONSC and the Associate Justice of the ONSC with the proviso that my written argument for my above noted requests will follow today.

Endnotes

[1] https://www.canlii.org/en/commentary/doc/2015CanLIIDocs5022#!fragment//BQCwhgziBcwMYgK4DsDWszIQewE4BUBTADwBdoByCgSgBpltTCIBFRQ3AT0otokLC4EbDtyp8BQkAGU8pAELcASgFEAMioBqAQQByAYRW1SYAEbRS2ONWpA:~:text=Public,reality.

[2] 68.05(2) When the certificate of perfection has been filed, the registrar shall place the application on a list for hearing and give notice of listing for hearing (Form 68B) by mail to the parties and the other persons named in the certificate of perfection. R.R.O. 1990, Reg. 194, r. 68.05 (2).

[3] Ironically, the same language under section 5 of the SPPA that is at issue in the JRPA Proceeding

[4] "deliver" means serve and file with proof of service, and "delivery" has a corresponding meaning (see: Rule 1.03)
[5] "factum" includes a book of authorities, if one is required by rule 4.06.1 (see: Rule 1.03(1));
[6]These references are to the "hearing book" or "hearing record" at the time and are part of the "record of proceeding" which remains the obligation of the Tribunal to file the same forthwith.
[7]See G.W.L. Properties Ltd. v. W.R. Grace & Co. of Canada Ltd., 1992 CanLII 934 (BC CA). (There was no RAOB where brother of a pre-trial management judge was associated with the plaintiff's law firm in a major product liability case. The interlocutory nature of the judge's role, short period remaining until trial, and inconvenience of recusal were relevant factors).
[8]See Blanchette v. C.I.S. Ltd., [1973] SCR 833, 1973 CanLII 3 (SCC). (The trial judge sitting an insurance defence matter was disqualified for a RAOB as he had actively pursued claims against the defendant-insurer on behalf of members of his family
[9]Kligman, "Bias", supra note 17 at 1-6.
[10]Bryden & Phillips, Legal Principles of Disqualification", supra note 15 at 58-63.
[11]https://canlii.ca/t/51pj#par77
[12]https://canlii.ca/t/51pj#par78
[13]68.05(2) When the certificate of perfection has been filed, the registrar shall place the application on a list for hearing and give notice of listing for hearing (Form 68B) by mail to the parties and the other persons named in the certificate of perfection. R.R.O. 1990, Reg. 194, r. 68.05 (2).
[14]Under the new judicial application process introduced by the Minister of Justice on October 20, 2016, any interested and qualified Canadian lawyer or judge may apply for federal judicial appointment by completing a questionnaire. The questionnaires are then used by the Judicial Advisory Committees across Canada to review candidates and submit a list of "highly recommended" and "recommended" candidates for consideration by the Minister of Justice (see: https://www.canada.ca/en/department-justice/news/2018/12/the-honourable-sharon-shores-questionnaire.html)

# TAB 11:

Court File No. DC-24-00000718-00JR
Applicant's Motion #2 (Motion in Writing; Request to Convert Motion into Motion for Judgment)

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

FORM 4D

*Courts of Justice Act*

AFFIDAVIT

ONTARIO SUPERIOR COURT OF JUSTICE (DIVISIONAL COURT)

BETWEEN:

**KEVIN ALEXANDER MCLEAN**

APPLICANT

- and -

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

RESPONDENTS

**Affidavit #8[i] of Kevin A. McLean in this *JRPA* Proceeding**

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

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

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

2. I adopt the definitions from my served documents in this *JRPA* Proceeding and they have the same meaning therein as they do herein unless expressly noted otherwise.

3. I define, at times, Mr. Andrew Papadimitropoulos as the "**Interested Individual**" or "**Interested Person**".

4. I swear this affidavit in support of my second motion ("**Motion #2**" or "NOM #2") in this *JRPA* Proceeding. My Motion #2 will be seeking the relief in the COI Recusal Submissions (see: Affidavit #7, Exhibit "A", pages 6 to 33) and other relief contained in the Notice of Motion form (Form 37(A)) to be filed and paid for after my serving and filing of this Affidavit #8 on the respondents and **Interested Person**s.

5. My first motion ("**Motion #1**" or "**NOM #1**") in this *JRPA* Proceeding is my motion exclusively directed at relief to be obtained against the Tribunal discharging its statutory obligations in accordance with section 10 of the *JRPA* and section 20 of the *SPPA*.

6. I note that in relation to my Motion #1 that I am only seeking that the Tribunal file (not necessarily serve as per the language in section 10 of the *JRPA*) the record of proceeding from December 24, 2023, to September 12, 2024.

7. For ease of reference for the Tribunal, these are from "speaking notes" for Motion #1:

> "When notice of an application for judicial review of a decision made in the exercise or purported exercise of a statutory power of decision has been served on the person making the decision, such person shall *forthwith file* in the court for use *on the application* the record of the proceedings in which the decision was made: section 10 of the *JRPA*. When notice of an application for judicial review of a decision made in the purported exercise of a statutory power of decision which includes a decision of the committee is served on the person making the decision, that person is required by s.10 of the *Judicial Review Procedure Act*, to "forthwith" file the record of proceedings in which the decision was made: *Rew v Association of Professional Engineers of Ontario (Discipline Committee)*, 2016 ONSC 4043 (CanLII) ["*REW*"], https://canlii.ca/t/gs5t9 as per Dambrot, J. (orally) at paragraph 8;
>
> Any interlocutory orders made by the Tribunal would include the orders to the time the VCM Decision was made which was September 12, 2024: *Payne v. Ontario Human Rights Commission*, 2000 CanLII 5731 (ON CA), [2000] O.J. No. 2987, 136 O.A.C. 357 (C.A.) ["*Payne*"], at paragraphs 79 [the record of proceeding when the decision was made], paragraph 160, and paragraph 161. *Payne* was cited with approval by this ONSC Div. Ct. in the same year when the *JRPA* Application was made in Lachance: *Lachance v. Solicitor General of Ontario*, 2024 ONSC 975 (CanLII) as per Stewart, Myers, and Leiper JJ of the Divisional Court at paragraph 37 [copied by link to highlight as no hyperlink available on CanLII].

> In *Rol-Land Farms Limited*, Justice Swinton, Greer and Leitch of the ONSC Div. Ct. found that content that post-dated the decisions under review was not admissible (see: *UFCW Canada v. Rol-Land Farms Limited*, 2008 CanLII 6652 (ON SCDC), (see: https://canlii.ca/t/1vtm5) ("*Rol-Land Farms*") at paragraph 38[ii])
>
> Pursuant to s. 10 of the *JRPA*, since the VCM Decision was an exercise of a statutory power of decision [or the refusal of], she must, upon receipt of a judicial review application, file a record of proceedings: Endicott ONCA, paragraph 18. It is for use *on the application* which is the proceeding and not for select uses at select times: Endicott ONSC (as per Molloy, Lederer and Edwards JJ.), paragraph 20."

8. While I am aware of the law involving judicial reviews intended to be summary proceedings, I felt compelled to serve, pay for and file my Motion #1 in its current state so that I, *inter alia*, was not accused or prejudiced in the future by any allegation or finding that I did not object to the Tribunal's statutory non-compliance. In this regard, I again copy and paste from my 'draft speaking notes' for Motion #1 returnable on January 30, 2025, by teleconference:

> *"*In *Reflection Productions*, it was available to the applicant to bring a motion seeking production of documents it alleges were relied on by the decision-maker but are not contained in the record: see, for example *K.D. v. Peel Children's Aid Society*, 2017 ONSC 7392 (Div. Ct.) at paras. 16-17).

9. I remain of the belief that the Tribunal does not have a full and accurate record of the proceeding and it is unable, not unwilling per se to file the record of proceeding as it was from December 23, 2023, to September 13, 2024. I source my belief based upon Mr. Boyce provided his theories of the law, without citation to the statutory sections under the *JRPA* and SPPA, and providing a timeline of three to four weeks in his initial letter to myself and the ONSC Divisional Court and not being able to comply with the same.

**Volume #2: Exhibits**

**Volume #2(A): Exhibit "A"**

10. Attached hereto to this my affidavit and marked as **Exhibit "A"** are copies of documents which I found last evening of January 26, 2025, and this morning of January 27, 2025, which are denoted as follows with the corresponding pagination:

a. "***Consultation on Proposed Fraud Reporting Service Rule and Guidance***" issued by the FSRA on July 15, 2024, with a comment due date of October 15, 2024, under the ID 2024-008;
    i. Page count: 14 pages
        1. (see: pages 1 to 14);
b. "***TDI - Final - Feedback on FRS Guidance dated Oct 15 2024***" authored by Mr. Andrew Papadimitropoulos (see: **[2024-008] Andrew Papadimitropoulos - TD Insurance;** Attached is TD Insurance feedback on FRS Guidance TDI - Final - Feedback on FRS Guidance dated Oct 15 2024.pdf
    i. Page count: 3 pages
        1. (see: **Exhibit "A"**, pages 15 to 17);
c. Fraud Reporting Service by the Financial Services Regulatory Authority of Ontario, "Proposed Rule 2024 – 003" in the following FSRA class of insurance licence of Automobile Insurance – Fraud Reporting Service (the "**Proposed Rule**")
    i. Page count: 4 pages
        1. (see: **Exhibit "A"**, pages 18 to 21);
d. Automobile Insurance Fraud Reporting Guidance document, issued by the FSRA under identifier, "AU0140INT" (the "**Guidance Document**")
    i. Page count: 20 pages;
        1. (see: **Exhibit "A"**, pages 22 to 41);
e. Notice of Proposed rule under the *Financial Services Regulatory Authority of Ontario Act, 2016* issued by the FSRA ("**Proposed Rule Notice**"); and
    i. Page count: 12 pages
        1. (see: **Exhibit "A"**, pages 42 to 53).

11. I have alleged and sworn on belief, which is contained in the record of proceeding and some of my documents in my filed and served Application Record of December 12, 2024, that there are issues of *real unfairness* before the Tribunal and that, *inter alia*, that Mr. Papadimitropoulos was the individual who engaged in some of the impugned conduct like the 'As per A. Nurse' purported signature in the first OCF-18 (see: Affidavit #3 herein, Exhibit "A", page 199) that was tendered through HCAI on or around April 6, 2023. I have not received any evidence to the contrary. I challenge any of the three respondent insurance companies and any individual that were so involved to provide evidence to the contrary. I directly challenge Mr. Papadimitropoulos to swear evidence to the contrary.

12. Out of an abundance of caution and in light of Ms. Im and Mr. Boyce removing their business addresses and business name or employer names after my affidavit #2 was served on them and filed with the ONSC Divisional Court, I copy and paste as of today's date Mr. Papadimitropoulos' directory information[iii]:

> **"Assumed Name**
> Andrew Papadimitropoulos
> **Law Society Number**
> 58696I
> **Class of Licence Definitions**

Lawyer (L1)
**Real Estate Insured** †
No
**Status** Definitions
Practising Law - Employed
**Business Name**
TD Insurance
**Business Address**
101 Mcnabb StMarkham, OntarioL3R 4H8
**Phone**
416 983 5467 Ext.
**Email Address**
andrew.papadimitropoulos@tdinsurance.com
**Trusteeships**
None
**Current Practice Restrictions**
None
**Current Regulatory Proceedings**
None
**Regulatory History**
N"

13. While I appreciate that the FSRA Proposed Rule (defined supra) is not in effect as of today's date, I allege that there has been a situation of employee fraud at the various insurance companies including but not limited to: (i) TDHA; (ii) TDGIC; and (iii) SNIC. I have alleged with sworn evidence, on belief, contained in the record of proceeding, that Mr. Papadimitropoulos was involved in some of the internal employee fraud.

14. I believe that in relation to SNIC's Response, exclusively, on its face, completed, signed and filed by one Mr. David Karat, a non-licensee, Mr. Papadimitropoulos had a role in conduct that fell under the following at section 1(7)(1.) and (3.) of the Law Society Act:

> "Representation in a proceeding
>
> (7) Without limiting the generality of paragraph 3 of subsection (6), doing any of the following shall be considered to be representing a person in a proceeding:
>
> 1. Determining what documents to serve or file in relation to the proceeding, determining on or with whom to serve or file a document, or determining when, where or how to serve or file a document.

> 3. Engaging in any other conduct necessary to the conduct of the proceeding. 2006, c. 21, Sched. C, s. 2 (10)."

15. I have referenced some of the above noted issues in my Factum which was filed and served on December 10, 2024.

16. I believe that Mr. Papadimitropoulos remains in breach of the terms and provisions of the separation agreement (contract) that he and Ms. Nicole Artopoulos reached prior to their finalized and approved divorce decree. I have a copy of the divorce decree in storage. In relation to the first sentence in this paragraph, I believe that Mr. Papadimitropoulos was and is in breach of the "no direct and indirect contact provision" therein. I believe that I would fall under the "no indirect contact provision" which is why I believe and allege, and challenge Mr. Papadimitropoulos to swear evidence to the contrary, that he utilized the likes of the names of Ms. Alisha Anne-Nurse, Ms. Persaud and Mr. Karat without revealing or disclosing his involvement.

17. For consistency and accuracy purposes for the ONSC Divisional Court to assess the merits of my NOM #2, Ms. Nicole Artopoulos' legal counsel was Mr. Theodore Laan, barrister and solicitor of the LSO with the firm name at the time of "Laan Litigation"[iv].

18. I now copy and paste from the LSO directory the information relating to Mr. Ted Laan:

> **Assumed Name**
> **Law Society Number**
> 18492Q
> **Class of Licence** **Definitions**
> Lawyer (L1)
> **Real Estate Insured** †
> No
> **Status** **Definitions**
> In Private Practice
> **Business Name**
> Ted Roland Laan
> **Business Address**
> 207-145 Wellington St WToronto, OntarioM5J 1H8
> **Phone**
> 1 416 861 1071
> **Email Address**
> ted@lannlitigation.com
> **Trusteeships**
> None
> **Current Practice Restrictions**
> None
> **Current Regulatory Proceedings**
> None

**Regulatory History**
Yes
See Regulatory History Details

19. I note that the size of the firm of Epstein Cole LLP is, based upon my computation, some 30 lawyers. Based upon my review of the website, it appears to me that Epstein Cole LLP specializes in matrimonial and family law dispute resolution and litigation.

20. I provide the above noted fact when juxtaposing the facts involving a client of Epstein Cole LLP in Mr. Papadimitropoulos and the facts in *GWL Properties* wherein a case management judge had a brother at the then firm of Ladner Downs LLP in Vancouver, BC.

21. I have provided my intention to seek relief, informally and formally, that Madam Justice Shore recuse herself and/or the Associate Justice of the ONSC and/or the Chief Justice of the ONSC disqualify her from being involved in this *JRPA* Proceeding, since becoming aware of Madam Justice Shore's prior distinguished, in my view, legal career at Epstein Cole LLP.

22. I believe and will continue to request the consent of the respondents until my Motion #2 is heard or resolved in my favour based upon the case law that I cited in my COI Recusal Submissions but also my correspondence with the ONSC Divisional Court and respondents but also pursuant to section 71 of the CJA:

> "The administration of the courts shall be carried on so as to: (a) maintain the independence of the judiciary as a separate branch of government; (b) recognize the respective roles and responsibilities of the Attorney General and the judiciary in the administration of justice; (c) encourage public access to the courts and public confidence in the administration of justice; (d) further the provision of high-quality services to the public; and (e) promote the efficient use of public resources."

23. I wish to continue to make clear that I have not alleged, as I cannot prove a negative (i.e. a matter that is susceptible to proof or not susceptible to proof), that Madam Justice Shore is actually biased towards the respondent insurance companies and prejudiced towards me but that the appearance of impartiality is at the forefront of my Motion #2.

24. Based on the writing style in the above noted document attributed by the FSRA to the **Interested Individual**, I believe that he was responsible for what I have defined in my Factum and Application Record as the Spam Fax (Spring 2023) and the letter that one of my health practitioners received in August or September 2024 which were, in my view and based on memory in relation to the former, similar to each other. The

latter letter to which I refer was the one where I had delivered OCF-18's and invoices on my behalf or in relation to the services provided to me to TDHA and SNIC, along with any other insurance company that may have had carriage of my accident benefits file regarding the duty to respond and pay benefits. The response that I received was that no entity within TD Insurance had any record of my claim number with TD despite it being provided in each OCF-18 and invoice along with the cover letter therein.

25. I believe that the **Interested Individual** has much animus and malice towards me.

**VOLUME #2(B): EXHIBIT "B":**

26. I re-swear that I do not believe TD Insurance Staff Lawyers' representation to me and the Tribunal that Mr. Andrew Papadimitropoulos was never involved in my accident benefits claim. I note that said representation was tendered by Mr. Nieuwland in the Winter and Spring of 2024. I believe that he remains involved in any all aspects of the same and I continue to object to the same however clandestine or surreptitiously he has been, he is or intends to provides any form of representation to any of the three distinct insurance companies named as respondents in this *JRPA* Proceeding or otherwise.

27. I have not finished at this time the chart that outlines all of the justices of the ONSC (Toronto Region) and their previous affiliations, partnerships or associations prior to being appointed as justices of the ONSC. However, having completed some 88 of the 93 listed justices in the ONSC (Toronto Region), I cannot find any other justice that worked at the law firm of Epstein Cole LLP at the times denoted of 2017 and beyond.

28. Attached hereto to this my affidavit and marked as Exhibit "B" are copies of two sets or classes of documents which are particularized as follows:

a. Copies of images that I obtained from CAMH through a privacy request and now privacy complaint to the OIPC (ON) involving the theft of my property on Friday, October 25, 2024;
    i. Page count: 6 pages
        1. (see: Exhibit "B", pages 54 to 59); and
b. Copy of a printout or chart that I received from the TPL based on my second access request[v] made of it pursuant to my factual grounds that an individual had engaged in unauthorized collection, use, access and disclosure of my name, TPL library card[vi] (from the time after October 25, 2024 into January 2025);
    i. Page count: 3 pages
        1. (see: Exhibit "B", pages 60 to 62).

29. While I do not intend at this time to delve into all of the minutia of what transpired from October 25, 2024, to January 2025 involving the theft of my property and

subsequent and continued theft, impersonation, fraud, false pretenses et al, I will provide the evidence which I believe is currently relevant and/or material to this *JRPA* Proceeding and my Motion #2.

30. I swear that none of the activities but for one activity in the chart provided by the TPL to me were activities undertaken by myself. The sole activity undertaken by myself was the obtaining of a replacement library card despite not having any picture identification at the time in hard copy form as all of my identification, including my passport, were contained within the "backpack" or "laptop bag" that was stolen on October 25, 2024.

31. I received the above noted chart late last week and I was most appalled with further unauthorized activities of which I was unaware in substance and form. For example, while my primary laptop computer was stolen, as it was contained within the backpack, the unauthorized individual engaged in 'renting' or 'borrowing' a laptop on October 28, 2024 which was a Monday. He did so, as it has been confirmed to me for some time that I am looking for a male that is engaged in the impersonation of me, on the very day in which I was in the same branch at the TPL which was the Fort York branch. In conjunction with said unauthorized activity involving the 'borrowing of laptops in my name' with my library card, said individual also borrowed a library book later entitled "That Night in the Library" or words to that effect. Since that time of October 25, 2024, it was, is and remains a terribly traumatizing and debilitating experience at the hands of this individual.

32. With respect to the images (Exhibit "B", page 55 (albeit slightly dark therein due to the image at the top), one of the reasons, of which I now have many and further corroborating evidence (some of it hearsay per se) that "TD Insurance", including Mr. Papadimtriopoulos was involved in some of the above unauthorized activities, was that there is a black suitcase that was NOT taken on October 25, 2024. I had utilized said suitcase for a period of time before the theft on October 25, 2024, and it had a "TD Bank" logo or name tag on the same. On the day in question, I was in the washroom of the visitor area part of the hospital, known as CAMH, at 1025 Queen Street West, which has a park that is adjacent to the East of it known as the "TD Commons", for no more than five minutes. During that time of setting my backpack and black luggage suitcase or "carry on" (with the TD logo on the same), only my backpack, and all contents (including all electronic devices) were taken therein. I immediately reported the same to the security and then made an access request of CAMH.

33. The images appended to this my affidavit at Exhibit "B" are some of the images that I obtained in relation to my access request of CAMH.

34. In relation to the unauthorized borrowing of books from the Queen and Salter branch of the TPL in November 2024, I confirmed with the TPL that I had never attended said branch or knew of its existence. I believe that at the material time of November 2024 that Mr. Papadimitropoulos had resided at an apartment or condo unit that was

approximately three hundred metres from that branch. I believe the same based on information that Ms. Nicole Artopoulos had provided me at various time regarding his whereabouts and asking that I avoid that area when driving.

35. When referring to the residences in which I believe that Mr. Papadimitropoulos resided at, while not knowing if he had moved from that apartment building which is on the South side of Queen Street West, I am referring to the buildings situated where there is a Starbucks on the corner of Queen Street West and Carlaw Street.

36. In my view, the most disturbing of all of the unauthorized conduct was that after I had paid for, served and filed the Certificate of Perfection on December 13, 2024, there was further unauthorized conduct at seven p.m. on that Friday evening. The ONSC Divisional Court will be able to review the emails in the record of proceeding herein or at least by reference to the covering emails wherein Madam Registrar Ms. Clegg, with thanks, referred me to the online "Civil Claims Submissions Portal" to file and pay for my Certificate of Perfection.

37. I thank Registrar Ms. Clegg for her guidance in that regard and the correct manner to file at first instance such that the fees were paid prior to attempting to file at first instance through email.

38. In relation to the December 13, 2024, date, I note that it was one day after I had filed and served my Application Record which then only afforded the respondent insurance companies and the Tribunal 30 days to file any responsive factums and application records.

39. I have received or obtained further information involving December 13, 2024, and that it involved a male impersonating me at the Toronto Reference Library. I had been to the Toronto Reference Library (789 Yonge Street) but only for the purpose of delivering my fees for purposes of receiving access to the requested personal information and information (records as defined under *MFIPPA*).

40. I note that based upon my height and weight and that of Mr. Papadimitropoulos, we are similar in my view in height and weight. I have seen him before, based on information and belief, and Ms. Nicole Artopoulos confirming that we had seen him while driving in public from certain time periods of 2019 to 2024.

41. I was going to provide an image of Mr. Papadimitropoulos and an image of myself for comparison purposes but his LinkedIn profile does not appear to me to be active at this time. However, I can confirm for the ONSC Divisional Court that in order for an individual to have obtained a third library card, albeit under false pretenses, that said individual was required to provide identification. My identification was contained in my wallet which was in the aforementioned backpack which was stolen on October 25, 2024.

42. In relation to my evidence about what I believe to the most disturbing conduct on December 13, 2024, the unauthorized individual also changed my phone number associated with my library card and account to that of a CBC reported known as Ms. Valeria Ouellet who specializes in investigative reporting involving fraud, fraud investigations, RCMP corruption, money laundering *et al*.

**Volume #2(C): Madam Justice Shore**

43. It is unclear to me as to how Madam Justice Shore was delegated, if at all, to provide the email that she did to presumably the Registrar that was then relayed to myself and the respondents on or around January 7, 2025. I, in my view, promptly objected to her compulsory requirement of an attendance at a case conference. Based upon my review of the *Rules of Civil Procedure*, the case conference was required to be before her. In that regard, I swore an affidavit, served and filed the same on an urgent basis by way of email in the email thread that was commenced by the Tribunal with its Notice of Appearance albeit to the incorrect email to me as a matter of my email address for service.

44. As such, I believe and will submit that the issue is now far more serious and the circumstances are more compelling that Madam Justice Shore cannot have any involvement in this *JRPA* Proceeding. I will be relying on the case of *GWL Properties* that I cited in my correspondence to the ONSC Divisional Court, the respondents and **Interested Person**.

**VOLUME #3: JURAT**

45. I swear this affidavit in support of my Motion #2 and the relief that will be sought therein. To the extent that any respondent and **Interested Person** opposes my relief in Motion #2, I will seek costs in accordance with the *CJA* and the Rules of Civil Procedure.

46. In light of the above, my position remains that this *JRPA* Proceeding is more urgent than previously and any delays to have the matter heard before the Divisional Court inclusive of any case conferences, whether before Madam Justice Shore or not, will likely lead to a failure of justice.

47. I will be seeking in my Motion #2 an order that Mr. Papadimitropoulos and Epstein Cole produce and provide to the Court *'in camera*' for its review a copy of the separation agreement between Ms. Nicole Artopoulos and Mr. Papadimitropoulos to assess the validity of the underlying evidence and facts, and relief sought in my Motion #2. I will be seeking leave or ancillary relief in relation to the same if the Court does not find that there is a reasonably perceived apprehension of bias, conflict of interest or lack of independence between Madam Justice Shore and the respondent

insurance companies by virtue of, *inter alia*, Mr. Papadimitropoulos being a client of Epstein Cole LLP.

48. I swear that I will provide any necessary or requested evidence regarding the above as it becomes known to me.

49. I challenge any of the respondent insurance companies including Mr. Papadimitropoulos to provide any evidence to the contrary involving any of my sworn evidence that relates to the above. To the extent that they do not, I will ask that this Court to draw an adverse inference against them (some or all) and disqualify Madam Justice Shore, not through her wrongdoing, but "theirs" and refusing to consent to the relief that a different justice provide a similar type email and manage a case conference (if applicable).

50. In repeating and relying upon my previous evidence from the LAT Appeal, I kindly refer the Divisional Court (Toronto Region) to the sworn evidence that I filed and served in the LAT Appeal, which is appended to my affidavit #3, wherein Mr. Papadimitropoulos was attending the courtyard of the condo corporation denoted in my address for service which required further intervention of legal counsel and contacting of the police at the time. I again swear that I am not a party to the separation agreement but to the extent that there are consequences for non-compliance by a party to that contract, I am providing a copy of my affidavit material to one Epstein Cole LLP and Laan Litigation for their receipt and advising of their respective clients.

51. I again ask that the Tribunal consent to the relief that I am seeking in my proposed Motion #2.

52. I seek the consent of the respondent insurance companies as well on the bases above in relation to my proposed Motion #2.

53. To the extent that I do not hear from either or both, I will proceed accordingly and seek the relief on what I submit is an urgent bases. I will move as expediently as possible in order to have my Motion #2 heard and decided. I confirm that I am not available on February 18, 2025, as I will be away from February 16, 2025, to early March 2025. I have asked the ONSC Divisional Court to provide alternate dates for a potential case conference before Madam Justice Shore should I not be successful with Motion #2 in its entirety. I reserve my rights in relation to the same and I do not agree that a case conference is necessary in accordance with the *CJA*, *Civil Rules* et al when measured against the current status and non-compliance by the respondents with the *Rules of Civil Procedure* (defined herein at times as the "*Civil Rules*").

54. I swear this **Affidavit #8** for no improper purpose and for the above purposes.

Sworn before me via videoconference in accordance with O. Reg. 431/20 at **Toronto, Ontario** on this 27th day of January 2025

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

[i] Three affidavits have been my affidavits of service

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

[iii] https://lso.ca/public-resources/finding-a-lawyer-or-paralegal/directory-search/member?MemberNumber=58696I

[iv] https://lso.ca/public-resources/finding-a-lawyer-or-paralegal/directory-search/member?MemberNumber=18492Q

[v] My first access request made of the TPL was when I learned in November 2024 that an individual had, while using my library card and library card number

[vi] While I later learned in receipt of this chart as of last week that the unauthorized individual had impersonated me on December 13, 2024 (the day after my filing and serving of the Application Record, which in turn put the respondents on the 30 day prescribed timeline to file responsive factums and application records pursuant to Rule 68 (nota bene: Rule 38.09 does not apply

THIS IS EXHIBIT "A" REFERRED TO IN THE
AFFIDAVIT OF Mr. Kevin A. McLean
AFFIRMED BEFORE ME, THIS 27th DAY
OF January 20 25

NER, ETC.

Vinh The Tran, Esq., LSUC #57761C
Lawyer, Notary, Oaths Commissioner
188-639 Dupont Street, Toronto, ON
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vinhtranlaw@hotmail.com

FSRA
Financial Services Regulatory Authority of Ontario



# Consultation on Proposed Fraud Reporting Service Rule and Guidance

**ID: 2024-008**

**Type:** Rules
**Sector:** Auto Insurance
**Status:** Public comment closed
**Date:** July 15, 2024
**Comment Due Date:** October 15, 2024

Thank you for providing your feedback on FSRA's proposed Fraud Reporting Service Rule and Guidance .

The request for submissions is now closed.

We appreciate the comments and questions received to date and look forward to sharing with you the final Rule. Stay up to date on FSRA's Rules on our newsroom. Follow us on LinkedIn and subscribe to our mailing list for quick updates.

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To reduce consumer harm and the additional costs associated with auto insurance fraud, Ontario's Financial Services Regulator (FSRA) is proposing a new Rule on auto insurance fraud reporting. This will help to better determine the amount of auto insurance fraud in the province, identify and address fraud trends and establish a baseline to be able to track and reduce the amount of fraud in the future. Once the Proposed Rule is in effect, insurance companies will be required to provide specific information to FSRA.

FSRA is seeking feedback on a Proposed Rule and Guidance that includes:

- a proposed definition of what constitutes a 'fraud event'
- when insurers are required to report information about a fraud event
- how often insurers will need to report information about fraud events to FSRA
- FSRA's approach in administering the Proposed Rule

Once the Proposed Rule comes into force, insurers will be required to provide prescribed information about auto insurance fraud to the FSRA. With the benefit of this information, FSRA will determine what can be done to reduce fraud and the consumer harm and costs arising from fraud.

The consultation period for the Proposed Rule is now open and will close on October 15, 2024. FSRA invites stakeholders to review the Proposed Rule and Guidance and submit their feedback.

## Learn more:

- Fraud Reporting Service Proposed Rule
- Fraud Reporting Service Proposed Guidance
- Notice of Proposed Rule

everyone. Learn more at www.fsrao.ca.

*Before we begin, please make sure you do not include any personal or private financial information. If your inquiry does require this information be shared with us, please call us at 1-800-668-0128 or email us at contactcentre@fsrao.ca for instructions.*

*By submitting your content, you agree to have your materials posted on our engagement portal, used in reports and other materials prepared by Financial Services Regulatory Authority of Ontario (FSRA) that may be shared with the public. Content is moderated so that all posts are respectful and professional. The Freedom of Information and Protection of Privacy Act, R.S.O. 1990, c.F.31, applies to all online content.*

**Comments** | **Questions and Responses**

| Sector | Comment | Date posted |
|---|---|---|
| **Auto Insurance** | **[2024-008] Giuseppina Marra - Desjardins Group**<br><br>Bonjour,<br>Le Mouvement Desjardins soumet à l'attention de l'Autorité ontarienne de réglementation des services financiers ses commentaires relatifs à la consultation publique sur le projet de règle et ligne directrice proposées sur le service de signalement des fraudes.<br>Nous vous réitérons nos sincères remerciements pour l'occasion offerte de soumettre nos commentaires.<br><br>Bien cordialement.<br><br>2024-10-15_ ARSF - Projet règle et ligne directrice sur le service de signalement des fraudes_commentaires du Mouvement Desjardins.pdf | **November 19, 2024** |
| | **[2024-008] Laurence L. Wymant - Unica Insurance**<br><br>Please find enclosed Unica Insurance's feedback on the proposed Fraud Reporting Service Rule and Guidance<br><br>Unica - FSRA FRS Submission (002).pdf | **November 1, 2024** |

| Sector | Comment | Date posted |
|---|---|---|
| | **[2024-008] Derrick Ajmo - Heartland Mutual Insurance**<br><br>Hi there,<br><br>The below are the concerns that Heartland would like to submit regarding the proposed Fraud Reporting Service Rule.<br><br>1. Fraud is usually never alleged unless proven in court. Typically, insurers will never deny a claim under fraud unless we have proof which we then turn over to the authorities. Typically, the authorities deem this low value and nothing is done. Therefore, without a conviction, how can we allege fraud towards an insured or vendor under the proposed guidelines.<br>2. The verbal presentation indicated that the insured or vendor identifying information would not be required to be reported however the documents released indicate that insured name and contact details must be listed on the FSRA reporting system. If we do indeed need to declare the insured or vendor name on the site and this information gets released to the public, the insurer could be exposed to a bad faith claim. Will FSRA regulations or rules exempt this reporting from being disclosed to the relevant parties and/or will FSRA compensate the insurer if found to be acting in bad faith due to reporting the insured or vendor of fraud based upon what later on could be deemed unproven allegations by a court?<br>3. What safeguards will FSRA undertake to ensure that this information is not inadvertently released to the public? With FSRA compensate insurers for the unauthorized release of the data should the system be compromised? Is there a concern by FSRA of the reputational harm to individual insureds and vendors should these unproven allegations of fraud be released into the public domain.<br>4. Will this information submitted by the insurer be subject to release to the public under Freedom of Information or be open to being subpoenaed in a court case involving said insurer.<br>5. As the goal of this is to gather the extent of the fraud being perpetrated in auto insurance, how will the information gathered be released to the public or insurers in a manner that will protect insurers from any potential bad faith allegations due to the data that has been reported to FSRA by them?<br><br>If there is another format that the above feedback needs to be | **November 1, 2024** |

| Sector | Comment | Date posted |
|---|---|---|
| | submitted to FSRA, please let me know and I will provide.<br><br>Regards<br>Derrick Ajmo | |
| **Auto Insurance** | **[2024-008] Elliott Silverstein - CAA Insurance**<br><br>On behalf of CAA Insurance, please find our comments related to this consultation.<br><br>Thank you.<br><br>2024-10-15- CAA Insurance submission to Fraud Reporting Consultation (final).pdf | **October 15, 2024** |
| **Auto Insurance** | **[2024-008] Sarah Fong - Travelers Canada**<br><br>Please find attached Travelers Canada's submission to FSRA's Consultation on Proposed Fraud Reporting Service Rule and Guidance.<br><br>Travelers Canada Submission on FSRA Fraud Reporting Service 10 15 2024.pdf | **October 15, 2024** |

| Sector | Comment | Date posted |
|---|---|---|
| **Auto Insurance** | **[2024-008] Rhona DesRoches - FAIR Association of victims for Accident Insurance Reform**<br><br>FAIR Association of victims for Accident Insurance Reform<br>response to:<br>FSRA Consultation on Proposed Fraud Reporting Service Rule and Guidance ID 2024-008<br><br>We are pleased to see the Regulator take steps to identify fraud in the auto insurance industry to better protect the public. No one supports fraud and this is a positive step.<br><br>1. Definition of what constitutes a 'fraud event'<br>Regarding the definition of a 'fraud event' at: 1. (e) "fraud event" means a deceptive act or omission, or series of deceptive acts or omissions intentionally committed by a person(s) to obtain advantage, financial gain, or benefits beyond that to which one is entitled to with regard to any policy, claim, provision of goods or services or other occurrence related to automobile insurance, and for greater clarity includes instances of:...<br><br>RECOMMENDATION: The wording be expanded to include: "committed by a person(s), business(es) or institution(s) to.."<br>The current language appears to specifically exclude businesses or institutions that are insurers and their associates or intermediaries.<br><br>3. Prescribed information under subsection 101.3(1) of the Act<br>In respect to: 3(2) An insurer shall within thirty days after the close of each quarter of the calendar year provide the information prescribed in subsection 3(1) of this Rule with respect to fraud events which in the preceding quarter the insurer has taken action or made a decision based on reasonable grounds for the insurer to believe that a fraud event has occurred or is likely to occur.<br><br>RECOMMENDATION: Insurers should have to provide information in subsection 3(1) within 30-60 days of the event rather than after the close of each quarter.<br>If all insurers report at the same time the effectiveness of the Regulator may be compromised by being overwhelmed. Perhaps it is presumptuous to assume that the Regulator might take action to protect vulnerable claimants but stale-dated fraud reporting is | **October 15, 2024** |

| Sector | Comment | Date posted |
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| | less helpful.<br><br>GENERAL COMMENT:<br>If the “purpose of collecting this information is to support the more effective assessment and detection of automobile insurance fraud in Ontario” and to support “FSRA’s goal of reducing consumer harm caused through fraud” then there should be some statement about what FSRA does with this information other than “information that has been collected will be available for insurers to access to enable the assessing and detecting of fraud” in a second phase. What about consumer access to industry fraud?<br><br>Not only is the hunt for fraud left entirely to insurers (who are themselves often fraudulent in their claims practices) but it also ignores the claimant experience where insurers’ (and their intermediaries) fraud is a very real issue tens of thousands of Ontario’s claimants face every day.<br><br>Where, in this document, is the protection of vulnerable injured car crash claimants who are exposed to the fraud? This shouldn’t just be about protecting insurer profits but rather about protecting people who are scammed along the claims corridor.<br><br>This document goes back and forth about prescribed information required but fails to inspire confidence as it becomes clear this is about gathering information to identify fraud and carefully doesn’t mention any action to be taken by Fraud Reporting Service (“FRS”).<br><br>FSRA has taken some recent action to address fraud in the medical examination process with the Dr. Romeo Vitelli case but the failure to put the interests of consumers as a high priority is obvious. We cannot tell if any action was taken against the assessment center, Novo Medical Services Inc., for whom this psychologist prepared the medical reports that were at the center of FSRA’s investigation.<br><br>In 2019, Dr. Vitelli entered into an Acknowledgement and Undertaking with the College of Psychologists following allegations of professional misconduct as a result of a complaint from a claimant and FSCO and FSRA were informed of the College’s actions. | |

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| | According to the FSRA website https://teao.fsrao.ca:7179/api/enforcement/downloadDocument?Id=2653&lang=en :<br>In 2019,<br>FSRA received an investigative report in support of Aviva's allegations. Documents in the report establish that Novo Medical submitted seven Psychological Evaluation Reports and one Catastrophic Impairment Determination Psychological Evaluation Report (dated between April 21, 2017 and May 4, 2018) for claimants (AK, CD, GC, JH, MM, MR, and NK). Sections of the reports are identical. The reports also include identical quotations presented as the claimants' verbatim descriptions of their injuries and symptoms. (for claimants (AK, CD, GC, JH, MM, MR, and NK)).<br>and;<br>On June 23, 2020, FSRA received a Business Activity Complaint Form from Desjardins General Insurance Group ("Desjardins") alleging that Novo Medical and Dr. Vitelli engaged in practices that contravene the Act. (five psychological assessment reports for claimants (NH, AL, KH, JS, and RR)).<br>and;<br>FSRA received an investigative report from Intact Insurance ("Intact"). (claimant (SR)).<br><br>Despite insurers reporting they had been defrauded there was no action taken by FSRA until February 8, 2021, when FSRA investigators interviewed Dr. Vitelli. It was during this process that "Dr. Vitelli also stated that Novo Medical's staff used his Treatment Plan for another claimant as a template, by switching out the names and pronouns where necessary. Dr. Vitelli did not confirm the content and accuracy of the Treatment Plans he completed."<br><br>Finally in 2021 action was taken by FSRA with the suggestion "an administrative penalty in the amount of $50,000 should be imposed on Dr. Vitelli for knowingly making false or misleading representations to insurers in order to obtain payment for goods or services provided, contrary to section 447(2)(a.3) of the Act."<br><br>The public was eventually informed in a press release on "Nov. 22, 2023 /CNW/ - The Financial Services Regulatory Authority of Ontario (FSRA) has imposed a compliance order and administrative penalty of $15,000 against Romeo Vitelli | |

| Sector | Comment | Date posted |
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(Vitelli)."

For 4 years innocent injured claimants interests were ignored, first by the College of Psychologists (CPO) whom the Regulator relies on to enforce quality control and then by FSRA during the process of deciding what to do about the fraud.

We could find no evidence that Novo Medical Services Inc. was ever held accountable for their participation in harming the most seriously injured car crash survivors. Nova Medical is still actively in business providing assessments of Ontario's auto insurance claimants for insurers.

FAIR's files indicate there are likely more victims of the fraudulent reports as well as through 'expert' evidence at hearings where Dr. Vitelli's testimony was often criticized. There is also evidence that more than one assessment center used the services of Dr.Vitelli "through four healthcare clinics" mentioned on the CPO website document at https://cpbao.ca/wp-content/uploads/Notice-of-Hearing-Vitelle-Dr.-Romeo-2.pdf.

As of May 2024 the CPO https://members.cpbao.ca/public_register/show/1461 has listed the current referrals of Dr. Vitelli to the Discipline Committee.

We see no evidence that the 13 plus victims of this fraud were informed by FSRA or the CPO that they'd been scammed and that their cases had been tainted by the fraudulent and uncaring actions of Dr. Vitelli and Nova Medical.

To this day AK, CD, GC, JH, MM, MR, NK, NH, AL, KH, JS, RR, and SK may all still be in the dark about how their cases and access to rehabilitation were recklessly ignored by the insurer's choice of assessment centers.

We bring up this particular case for several reasons but the most important is that there is no point to gathering information if there is no intent to protect the public's interest. It should never be just about insurer profit and gain over informing the public in a timely fashion and this should be reflected in the proposed Rule and Guidance.

Timely reporting from insurers coupled with judicious action

| Sector | Comment | Date posted |
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| | from the Regulator would better protect claimants. The promise to follow through on the insurer reporting fraud is missing in this Guidance along with a willingness to share fraud trends with the public and not just insurers.<br><br>Taking steps to enforce compliance with Dr. Vitelli was an important mile-stone for the Regulator and we recognize this. The problem lies in the two and half years from the Notice of Proposal to Impose Administrative Penalties on March 31, 2021 to informing the public on November 22, 2023 in a press release. It appears that for two and a half years vulnerable claimants lacked protection because FSRA withheld this information. This should never happen.<br><br>The investigation and the conclusion record poses other serious questions related to the outcomes for the victims of this fraud.<br><br>It's still an open question whether Dr. Vitelli will be able to continue to provide services for auto insurers through medical examinations and testimony going forward. None of that is clear in the information on the College of Psychologists (CPO) website or in FSRA's documentation and neither contribute to public confidence in the automobile insurance sector.<br><br>In this instance insurers did the right thing but we can tell you we routinely hear about bogus insurer medical exams and this Guidance presents deaf ears to claimants who are harmed in the current system that relies on the Regulator to take action to protect them. What about Nova? Should they have been subject to an Administrative Penalty and/or closed out of performing these medical assessments?<br><br>Our suggestion to include businesses and institutions in the wording is based on this case above as is our comment about the importance of timeliness in reporting fraud.<br><br>Something needs to be done about the regulatory hole that exists for assessment centers who currently have no oversight and who, in this case, appear to have participated in, or should have known about, the fraud taking place.<br><br>Consumers believe the Regulator has a distinct obligation to follow-through on the fraud they find by way of informing | |

| Sector | Comment | Date posted |
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| | victims of that fraud and, by extension, to protect the potential or future victims from the perpetrators by barring the fraudulent players from activity in the auto insurance medical landscape. This can be done by closing the door to Health Claims for Auto Insurance (HCAI) access. There should be an active dialogue to disclose this type of medical fraud activity between relevant Colleges and FSRA. Further, the Colleges should also be required to participate in cleaning up this fertile ground for fraud that harms Ontario's patients.<br><br>Thank you for the opportunity to voice our concerns.<br><br>FAIR Association of victims for Accident Insurance Reform | |
| **Auto Insurance** | **[2024-008] Amanda Dean - Insurance Bureau of Canada**<br><br>Please see the attached submission for your consideration. Thank you<br><br>2024 - 10 Oct 15 - IBC Submission-Consultation on Proposed Fraud Reporting Service Rule and Guidance - FINAL.pdf | **October 15, 2024** |
| **Auto Insurance** | **[2024-008] Andrew Papadimitropoulos - TD Insurance**<br><br>Attached is TD Insurance feedback on FRS Guidance<br><br>TDI - Final - Feedback on FRS Guidance dated Oct 15 2024.pdf | **October 15, 2024** |
| **Auto Insurance** | **[2024-008] Ryan Stein - Definity Insurance**<br><br>Good afternoon,<br>Thank you for the opportunity to participate in the consultation for the fraud reporting service. Attached is a response from Definity Insurance.<br>Sincerely,<br>Ryan<br><br>24-10-15-Ontario Fraud Reporting Service Consultation.pdf | **October 15, 2024** |

| Sector | Comment | Date posted |
|---|---|---|
| **Auto Insurance** | **[2024-008] Karin Ots - Aviva Canada**<br><br>Attached is Aviva's submission to FSRA Fraud Reporting Service consultation..<br><br>Aviva Submission to FSRA Fraud Reporting Service Consultation - Oct 15 2024.pdf | **October 15, 2024** |
| **Auto Insurance** | **[2024-008] Craig Bran - Co-operators**<br><br>Co-operators Submission on Proposed Fraud Reporting Service Rule and Guidance Consultation_FINAL_10Oct2024.pdf | **October 15, 2024** |
| **Cross Sector** | **[2024-008] Danielle Wilkinson - Equite Association**<br><br>Please accept the attached consultation submission on behalf of Equite Association.<br><br>2024.10.09 - Équité Association - FSRA FRS Consultation Submission FV.docx_0.pdf | **October 15, 2024** |

| Sector | Comment | Date posted |
|---|---|---|
| **Health Service Providers** | **[2024-008] Laurie Davis - Ontario Rehab Alliance**<br><br>To whom it may concern,<br><br>Please see attached for the Ontario Rehab Alliance's comments on the Consultation on Proposed Fraud Reporting Service Rule and Guidance<br>ID 2024-008<br><br>We welcome the opportunity to discuss our comments or respond to any questions you may have. Please feel free to reach out to the ORA at admin@ontariorehaballiance.com or to myself directly, Laurie Davis, Executive Director of the Ontario Rehab Alliance - lauriedavis@ontariorehaballiance.com<br><br>Sincerely,<br>Laurie Davis<br>Executive Director<br>The Ontario Rehab Alliance<br><br>2024 10 11 - ORA - Fraud Reporting Service - Comments.pdf | **October 11, 2024** |
| **Health Service Providers** | **[2024-008] Ralph Palumbo - The Hillcrest Consulting Group Inc.**<br><br>Attached are the submissions from the Ontario Psychological Association (OPA) on FSRA's Proposed Fraud Reporting Service Rule and Guidance.<br><br>The OPA would be pleased to discuss its submissions with FSRA at any time.<br><br>Respectfully submitted,<br><br>Ralph Palumbo<br><br>OPA Submission on Fraud Event October 7 2024.docx | **October 7, 2024** |

| Sector | Comment | Date posted |
|---|---|---|
| **Property and Casualty and General Insurance** | **[2024-008] John Taylor - Ontario Mutual Insurance Association**<br>Please find attached OMIA's submission.<br>2024 09 30 FSRA - Fraud Reporting - OMIA Response.pdf | **September 30, 2024** |

No questions have been asked about this consultation yet.

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October 15, 2024

Financial Services Regulatory Authority of Ontario
Auto Insurance Sector
25 Sheppard Avenue West, Suite 100
Toronto, ON M2N 6S6

Dear Sir / Madame:

**Subject: Consultation on Proposed Fraud Reporting Service Rule and Guidance**

TD Insurance ("TDI") appreciates the opportunity to respond to the current Consultation on Proposed Fraud Reporting Service Rule and Guidance initiated by Ontario's Financial Services Regulator ("FSRA") with stakeholders on future statutory fraud reporting requirements.

TDI overall supports FSRA's outcomes to reduce the costs to consumers & industry borne as a result of fraud.

**Data and Privacy Concerns**

TDI is always committed to ensuring compliance and transparency and we fully understand the importance of data in fighting fraud. Since much of our industry already provides fulsome data to Equite we suggest that FSRA consider leveraging this already established route to avoid duplication of effort.

Consumers trust insurers with sensitive information, and any regulation mandating the sharing of such data must ensure robust protections are in place. It would be appreciated that FSRA share with the Insurance Industry the security measures it will implement to safeguard; and furthermore to protect, any insurer from the release of personal information and to prevent identity theft and other privacy concerns. We also suggest that FSRA provide limited liability protections to insurers for any cybersecurity data breaches.

**Key Concerns & Recommendations**

TDI is committed to working with all stakeholders to effectively tackle fraud within the auto insurance sector. The phase one strategy of data collection is a significant step in building a Fraud Prevention Strategy, however it needs to be combined with other tools and resources to be effective. An over-reliance on quantitative metrics, that do not accurately capture the nuances of fraudulent activity, may therefore miss context and intent.

We recommend that FSRA first provide guidance to mandate that all auto insurers in the province design and implement a robust fraud framework to include policies and procedures, monitoring,

audits and governance for their respective book of business. Furthermore, FSRA should then inquire with all auto insurers about what their respective experiences were with law enforcement regarding the actioning of white-collar insurance fraud matters including whether fraud charges ever laid, convictions and whether the sentencing judge order restitution.

*Clarity and Ambiguity*

One of our primary concerns is the use of the term "fraud event" and how its proposed definition may lead to inconsistent interpretations within the industry. Specifically, the words *reasonable grounds for the insurer to believe that a fraud event has occurred or is likely to occur.*

We recommend that the words *likely to occur* be removed from the definition of fraud event. We suggest that only fraud events where there is confirmed evidence of fraud be reported to FSRA as this will provide a clearer picture of the actual fraud trends impacting the industry and expose the bad actors who bolster auto fraud.

**Recommendations**

We advocate for a collaborative approach that emphasizes information sharing among industry stakeholders (i.e. insurers/law enforcement) and regulatory bodies. Engaging in partnerships to share best practices, insights and trends could lead to more effective fraud prevention strategies without compromising operational integrity.

In addition, insurers need to have the tools to allow them to act on the information developed during the course of an investigation. We recommend that FSRA confirm that insurers have the right to cancel or refuse to renew a policy under appropriate circumstances including:

- providing false information on the approved application form
- making any misrepresentation in the information provided for the purposes of obtaining, updating, or renewing an automobile insurance policy, including on the application form;
- a history of fraudulent activity in relation to an automobile insurance policy and the most recent instance of such an activity occurred less than 7 years before the day of the request to obtain, update or renew an automobile insurance policy.

There is also a noticeable lack of resources allocated to investigating and prosecuting insurance fraud cases. This underfunding hampers the ability of law enforcement and regulatory bodies to effectively combat fraud, allowing dishonest practices to proliferate.

Fraudsters are becoming increasingly sophisticated in their tactics, yet our legal framework remains stagnant. Laws must evolve to address new methods of fraud and provide clear guidelines for insurers on how to identify and report suspicious activities.

**Conclusion**

We appreciate your dedication to addressing fraud in the auto insurance industry and acknowledge the challenges that come with it. We are committed to work with FSRA and other relevant stakeholders to promote collaboration and efficiency to properly prevent and detect insurance fraud, while maintaining consumer protection.

Thank you for your attention to our concerns.

Yours truly,

TD Insurance

# FRAUD REPORTING SERVICE

## FINANCIAL SERVICES REGULATORY AUTHORITY OF ONTARIO
## PROPOSED RULE 2024 – 003

## AUTOMOBILE INSURANCE – FRAUD REPORTING SERVICE

## 1 Definitions

1(1) In this Rule,

(a) "Act" means the *Insurance Act*, RSO 1990, c I.8, as amended;

(b) "FSRA Act" means the *Financial Services Regulatory Authority of Ontario Act, 2016*, SO 2016, c 37, Sched 8, as amended;

(c) "prescribed information" means the information an insurer is required to provide under subsection 101.3(1) of the Act in accordance with subsection 3(1) of this Rule.

(d) "Rule" means this Authority Rule 2024 – 003

(e) "fraud event" means a deceptive act or omission, or series of deceptive acts or omissions intentionally committed by a person(s) to obtain advantage, financial gain, or benefits beyond that to which one is entitled to with regard to any policy, claim, provision of goods or services or other occurrence related to automobile insurance, and for greater clarity includes instances of:

i. Obtaining an automobile insurance policy through fraudulent means, including underwriting fraud;

ii. Obtaining a benefit under a contract of insurance through fraudulent claims;

iii. Providing goods or services to a beneficiary under a contract of insurance through fraudulent means or in a fraudulent manner;

iv. Fraudulent activity in the selling or distribution of insurance products; and

v. Fraudulent activity committed by internal employees of an insurer.

## 2 Interpretation

2(1) If a term or phrase used in this Rule is defined in the Act, the definition used in the Act shall apply for the purposes of this Rule.

2(2) Words and phrases not defined in this Rule have the same meaning as ascribed thereto under section 1 of the FSRA Act unless a contrary intention appears.

2(3) References in this Rule to the Chief Executive Officer include reference to an authorized delegate or designated agency of the Chief Executive Officer as outlined in subsection 101.3(1) of the Act.

2(4) For the purposes of this Rule, references to “insurance” are limited only to “automobile insurance”.

## 3 Prescribed information under subsection 101.3(1) of the Act

3(1) Prescribed information includes all information, including personal information, in the insurer’s possession, control or power related to any policy, claim, provision of goods or services or any other occurrence or event where the information provides reasonable grounds for the insurer to believe that a fraud event has occurred or is likely to occur.

3(2) An insurer shall within thirty days after the close of each quarter of the calendar year provide the information prescribed in subsection 3(1) of this Rule with respect to fraud events which in the preceding quarter the insurer has taken action or made a decision based on reasonable grounds for the insurer to believe that a fraud event has occurred or is likely to occur.

3(3) An insurer shall not disclose personal information that is not necessary for the purposes set out in subsection 101.3(2) of the Act when providing the prescribed information to the Chief Executive Officer.

3(4) An insurer shall de-identify all names and identifying numbers, symbols or other particulars assigned to individuals before an insurer provides the prescribed information to the Chief Executive Officer unless disclosure of the names or other identifying information is necessary for the purposes set out in subsection 101.3(2) of the Act.

## 4 Reporting requirements – Prescribed information

4(1) An insurer shall ensure that all prescribed information is complete, up to date, and factually correct before an insurer provides the prescribed information to the Chief Executive Officer.

4(2) Every insurer who provides prescribed information that subsequently becomes aware that the information the insurer provided is or has become incomplete, out-of-date, or factually incorrect shall in the quarter following their becoming aware:

(a) inform the Chief Executive Officer of the deficiencies in the prescribed information provided; and

(a) take reasonable steps to remedy the deficiencies in the prescribed information provided to bring the information into compliance with subsection 5(1) of this Rule.

4(3) If an insurer provides information to the Chief Executive Officer and subsequently discovers that the information either:

(a) includes deficiencies that cannot be remedied as required by subsection 5(2)(b) of this Rule; or

(b) fails to meet the threshold of the reporting requirement outlined in subsection 3(1) of this Rule,

then the insurer must immediately give notice and recommend the Chief Executive Officer to withdraw the information provided.

4(4) Every insurer shall submit the prescribed information through the Authority's electronic or computer-based system for the filing, delivery or reporting of the prescribed information.

## 5 Transitional

5(1) An insurer is not required to report the information required in section 3 of this Rule until after [date].

## 6 Coming into force

6(1) This Rule will come into force on the later of the date that section 101.3 and clause 8.2 of subsection 121.0.1(1) of the Act comes into force and 15 days after the Rule is approved by the Minister.

FSRA
Financial Services Regulatory Authority of Ontario

# Guidance

☑Interpretation | ☑Approach | ☐ Information | ☐ Decision

**Effective date:** [TBD]
**Identifier:** No. AU0140INT

# Automobile Insurance Fraud Reporting

## Purpose

This Guidance outlines the Financial Services Regulatory Authority of Ontario's ("**FSRA**") interpretation of requirements under Authority Rule 2024-003 – Fraud Reporting Service ("**FRS Rule**") and section 101.3 of the *Insurance Act* (the "***Act***"), and outlines FSRA's approach to supervising against the reporting requirements outlined in the *Act* and the FRS Rule.

Specifically, this Guidance provides FSRA's interpretation of several requirements under the FRS Rule regarding:

- the scope of prescribed information an insurer is required to provide when reporting information about fraud events to the Chief Executive Officer ("**CEO**") or an agency designated by the CEO
- the threshold of what constitutes "reasonable grounds for the insurer to believe" that a fraud event has occurred or is likely to occur, and
- the "action" an insurer may take that triggers an insurer's requirement to report prescribed information to the Fraud Reporting Service ("**FRS**")



Ontario

The purpose of the collection of information in the FRS is to support FSRA's effective assessment and detection of automobile insurance fraud in Ontario. Key outcomes associated with this purpose include:

- quantifying the prevalence of automobile insurance fraud in Ontario
- creating a baseline for fraud detection, and
- identifying fraud trends throughout the automobile insurance industry

## Scope

This Guidance affects all insurers that are licensed to carry on automobile insurance business in Ontario.

## Rationale and background

FSRA's rule-making authority to enact a FRS is derived from paragraph 8.2 of subsection 121.0.1(1) of the *Act* in conjunction with subsection 101.3(1) of the *Act*.

The overall objective of the FRS is to improve the use of data in the auto insurance industry's fraud management activities by statutorily authorizing and enabling insurers to report automobile insurance fraud information to the FRS.

The requirement to report information about automobile insurance fraud to the FRS builds on FSRA's existing powers to supervise against unfair or deceptive acts and practices ("**UDAP**") in the insurance sector. These powers are grounded in section 5 of FSRA's UDAP Rule to address unfair claims practices, and section 6 of the UDAP Rule to address fraudulent or abusive conduct related to goods and services provided to a consumer. Conduct by policyholders, claimants, claims vendors, and other non-licensees is captured by many parts of the UDAP Rule, including sections 5 and 6.

FSRA's collection and consolidation of the information about automobile insurance fraud that insurers are required to report under the *Act* will help create a baseline of data that can serve the purpose of assessing the amount of fraud in the automobile insurance system in Ontario.

In supervising and regulating the automobile insurance sector, FSRA is guided by its statutory objects under section 3 of the *Financial Services Regulatory Authority of Ontario Act, 2016* ("***FSRA Act***").

Specifically, this Guidance supports outcomes consistent with the following objects:

- to deter deceptive or fraudulent conduct, practices and activities by the regulated sectors
- to promote transparency and disclosure of information by the regulated sectors
- to contribute to public confidence in the automobile insurance sector
- to monitor and evaluate developments and trends in the automobile insurance sector
- to promote high standards of business conduct, and
- to protect the rights and interests of consumers

The FRS aims to reduce consumer harm, including unnecessary costs borne by consumers, as a result of auto mobile insurance fraud.

The FRS Rule and this accompanying Guidance represent the first phase of the development of the FRS. In the second phase of the FRS, FSRA anticipates that information collected in phase one will be available for insurers to access to enable the assessment and detection of fraud by insurers. Phase two is subject to approval from the Ministry of Finance and will depend on the implementation of and outcomes achieved in phase one. Amendments to the Proposed Rule and Guidance are expected to be required before the FRS can proceed to this second phase.

With regards to the first phase of the FRS, FSRA's view is that "assessing and detecting automobile insurance fraud" includes:

- quantifying the prevalence of automobile insurance fraud in Ontario
- creating a baseline for fraud detection, and
- identifying trends throughout the industry

# Interpretation

## 1. What is a “fraud event”?

All insurers must report information about “automobile insurance fraud” to the FRS in accordance with subsection 101.3(1) of the *Act* and the FRS Rule.

A common understanding of what events, circumstances, or actions are considered to amount to a “fraud event” is important for insurers to understand how to comply with the requirement to provide information to the CEO about “automobile insurance fraud”.

Subsection 3(2) of the FRS Rule requires insurers to provide information in accordance with subsection 101.3(1) of the *Act* when an insurer has taken action or made a decision based on reasonable grounds for the insurer to believe that a “fraud event” has occurred or is likely to occur. Subsection 1(1) of the FRS Rule defines a “fraud event” as follows:

> “fraud event” means a deceptive act or omission, or series of deceptive acts or omissions intentionally committed by a person(s) to obtain advantage, financial gain, or benefits from an insurer beyond that to which one is entitled to in with regard to any policy, claim, provision of goods or services or other occurrence related to automobile insurance […]

FSRA interprets this phrase broadly to cover a wide range of “deceptive acts or omissions intentionally committed by a person(s) to obtain advantage, financial gain, or benefits from an insurer beyond that to which one is entitled to”. This broad interpretation empowers insurers to identify activities that meet this definition.

Recognizing that the scope of what may constitute a fraud event under the FRS Rule is constantly evolving and that a prescriptive list could not capture all potential occurrences within scope of the definition, subsection 1(1)(e) of the FRS Rule provides a non-exhaustive list of categories of “fraud events”. Examples of specific instances of “fraud events” under these broad categories is included as **Appendix A** in this Guidance.

## 2. What is the extent of information about automobile insurance fraud that an insurer must provide?

Section 3(1) of the FRS Rule outlines the scope of "prescribed information" that an insurer must provide:

> "Prescribed information includes **all information**, including personal information, in the insurer's possession, control or power […] where the information provides reasonable grounds for the insurer to believe that a fraud event has occurred or is likely to occur".

FSRA interprets "all information" to mean all relevant information, without restriction or limitation, where the information provides reasonable grounds for the insurer to believe that a "fraud event" has occurred or is likely to occur.

The scope of information in section 3(1) is unqualified. As a result, if an insurer knowingly or unknowingly withholds prescribed information in their possession, control or power, including any and all relevant data points outlined in **Appendix B** of this Guidance, then the insurer would be in contravention of the *Act* and the FRS Rule, which may result in FSRA initiating measures to enforce compliance.

## 3. What type of information provides "reasonable grounds for an insurer to believe that a fraud event has occurred or is likely to occur"?

Insurers are required under the FRS Rule to report all information about automobile insurance fraud where the information provides reasonable grounds for the insurer to suspect that a fraud event has occurred or is likely to occur.

Understanding the difference between the prescribed "reasonable grounds to believe" ("**RGB**") threshold for reportable information and other thresholds is important for an insurer to understand the standard and scope of information that must be reported to the FRS.

This RGB threshold is intentionally prescribed in the FRS Rule to prevent premature, unnecessary, or inaccurate information from being reported to the FRS, but also to encourage

reporting before an adjudicated finding of automobile insurance fraud is secured. The RGB is intended to reflect a middle-ground between suspicion, and confirmation of fraud, resulting in information most beneficial to the automobile insurance sector in assessing and detecting these fraud events.

To illustrate the RGB threshold, this guidance distinguishes between three thresholds of information: suspicion of fraud, reasonable grounds to believe fraud has occurred, a conclusion that fraud has occurred. A suspicion of fraud is the lowest threshold, and a conclusion that fraud has occurred is the highest threshold.

The highest threshold will include all information captured by the lower thresholds, with the only difference being an increased level of evidence or facts that confirm the existence of automobile insurance fraud.

## Lowest threshold: Suspicion that a fraud event has occurred

Insurers are not required to report information if they only have suspicion that a fraud event has occurred or is likely to occur.

Suspicion means an insurer may have an indication that something is unusual or suspicious, but does not yet have verified facts that can confirm the suspicion of a fraud event or elevate the suspicion into a reasonable belief that a fraud event has occurred. Indications of a fraud event may be based on not-yet-verified evidence received from an external source, such as a law enforcement agency or another insurer.

The suspicion could come from a discrepancy from: a written document that was filed on a claim, a claim filed shortly after a new policy is bound, a conversation with the insured, claimant or other involved party, a tip from a broker, police officer or other party, external intelligence (such as information from a conference or meeting), and an indicator from a fraud software solution.

Reasonable grounds to suspect that a fraud event has occurred may exist where the insurer investigates into their suspicion of a fraud event having occurred, and discovers further indicators or facts that warrant verification and further investigation. The suspicion at this stage is based on limited unverified evidence and does not raise to a belief that a fraud event has occurred.

Suspicion of a fraud event is relevant to the extent that it may prompt an insurer to assess the factual circumstances of the situation to identify any additional information or evidence that would support or confirm this simple suspicion.

Example: A consumer purchases an automobile insurance policy on their truck. 3 days after purchasing the policy, the individual reports the vehicle as stolen. At this point, the insurer has no evidence that the consumer has fraudulently reported the vehicle as stolen, but the insurer nevertheless suspects that the consumer may be engaging in automobile insurance fraud based on previous investigations with similar facts. The insurer does not report any information to the FRS as the information only rises to the threshold of suspicion.

## Prescribed threshold: Reasonable grounds to believe (“RGB”) a fraud event has occurred or is likely to occur

Insurers are required to report prescribed information once it meets this threshold.

Section 3(1) of the FRS Rule clarifies that information is prescribed information is only where “the information provides **reasonable grounds for the insurer to believe** that a fraud event has occurred or is likely to occur”.

FSRA interprets “reasonable grounds […] to believe” to include evidence, verified facts, context, or indicators that support a high degree of certainty that a fraud event has occurred or is likely to occur, warranting further action by the insurer but not allowing the insurer to conclude that a fraud event has occurred.

Information that meets the RGB threshold will allow an insurer to demonstrate and articulate their belief that a fraud event has occurred or is likely to occur in such a way that another insurer reviewing the same material with similar knowledge, experience, or training would likely reach the same conclusion.

Many factors will support an insurer’s assessment and conclusion that there are reasonable grounds to believe a fraud event has occurred or is likely to occur, all of which are required to be reported to the FRS.

Example: A consumer purchases an automobile insurance policy on their truck. 3 days after purchasing the policy, the consumer reports the vehicle as stolen. One week following the consumer reporting the theft, the insurer receives a tip from a credible source that the consumer has been implicated in a vehicle theft ring. After verifying the information provided by the tip, the insurer has reasonable grounds to believe that the consumer is engaging in automobile insurance fraud with respect to their own car that they have reported as stolen. Even though the insurer does not have any direct evidence to conclude that the consumer has engaged in fraud, the insurer has opened an investigation and has started gathering evidence relating to the consumer's claim. The insurer reports all information that supports their reasonable grounds to believe a fraud event has occurred to the FRS.

## Highest threshold: Conclusion of fraud

Insurers should update the reported information once they have concluded that a fraud event has in fact occurred. If an insurer comes into possession of information that allows them to bypass the lower thresholds and immediately conclude that a fraud event has concurred, then the insurer will still need to report the information to the FRS.

At this threshold, an insurer has investigated, verified, and concluded that a fraud event has in fact occurred.

The threshold of information may cause the insurer to:

- pay or process a claim despite having information that allows the insurer to conclude that fraud has occurred
- deny a claim on the basis of it being fraudulent
- refer the claim or policy to a law enforcement or state agency to further the investigation and pursue criminal or other action
- seek an adjudicated finding of civil or criminal fraud, or
- secure an "in-fact determination" that fraud has occurred

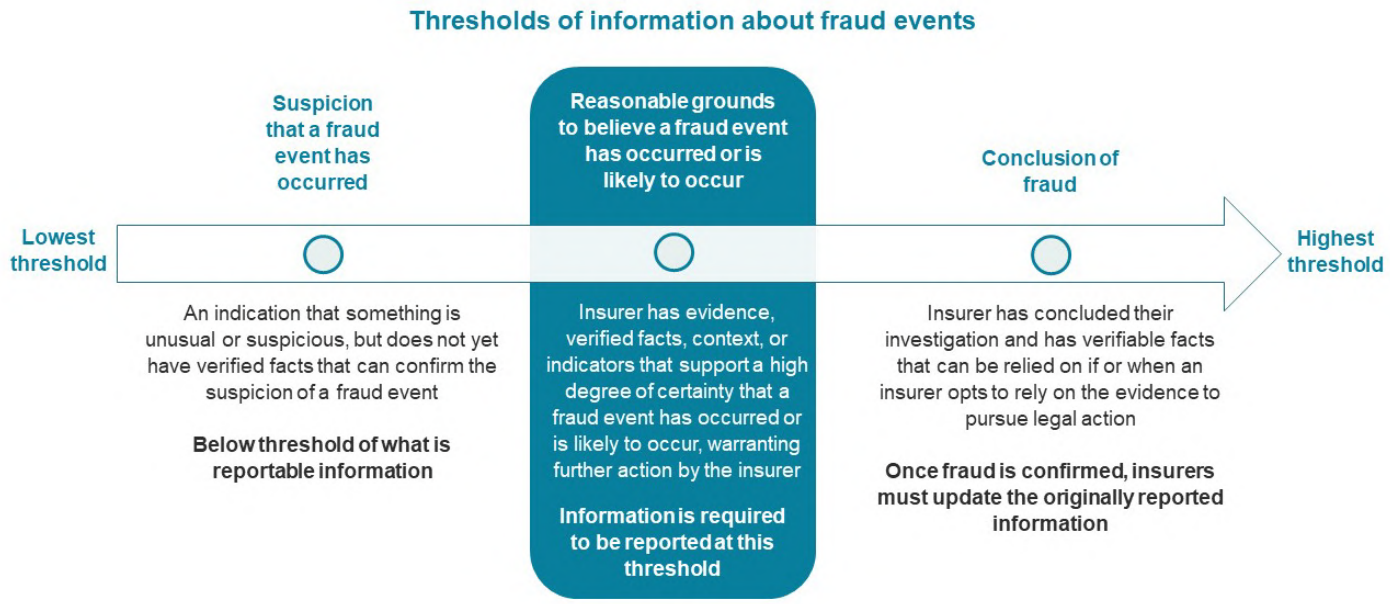
Example: A consumer purchases an automobile insurance policy on their truck. 3 days after purchasing the policy, the consumer reports the vehicle as stolen. One week following the consumer reporting the theft, the insurer receives a tip from a credible source that the consumer has been implicated in a vehicle theft ring. The insurer launches an investigation during which the insurer obtains video evidence that places the consumer in the vehicle at the location where the truck was later recovered. Based on this evidence, the insurer denies the claim on the basis of it being fraudulent and refers the claim to law enforcement to pursue criminal charges. The insurer updates the information they previously reported to the FRS, including a description of the video evidence that led to their conclusion that a fraud event had occurred.

## Insurers are required to update information in the FRS when the information meets the threshold of conclusion that a fraud event has occurred

Section 4 of the FRS Rule requires insurers to ensure all prescribed information provided to the CEO shall be complete, up to date, and factually correct.

If an insurer subsequently becomes aware that the information the insurer previously provided is or has become incomplete, out-of-date, or factually incorrect (e.g., the insurer has discovered information that has allowed them to conclude that fraud has occurred), then compliance with section 4 of the FRS Rule necessitates that the insurer take steps to update the information to ensure that the information provided to the FRS remains complete, up to date, and factually correct.

If an insurer reports information based on the RGB threshold, and subsequently collects further information that leads to a conclusion that a fraud event has occurred, the insurer shall update the originally-reported information based on the new information that resulted in a higher threshold.




# 4. What "action" triggers an insurer's requirement to report prescribed information about automobile insurance fraud to the FRS?

Subsection 3(2) of the FRS Rule requires that:

> An insurer shall within thirty days after the close of each quarterly period of the calendar year provide the information prescribed in subsection 3(1) with respect to instances of automobile insurance fraud which in the preceding quarter **the insurer has taken action or made a decision** based on reasonable grounds for the insurer to believe that a fraud event has occurred or is likely to occur.

"Action" is interpreted to mean any definitive decision to act based on reasonable grounds to believe a fraud event has occurred or likely to occur. To trigger an insurer's requirement to report the prescribed information, an insurer must both have information that meets the RGB threshold and the insurer must take action based on information that meets the RGB threshold.

The following is a non-exhaustive list of "actions" an insurer could take that would trigger an insurer's requirement to provide the prescribed information to the CEO:

- escalating a file for further investigation to SIU
- denying a claim
- voiding or otherwise terminating an insurance policy

The following is a non-exhaustive list of “decisions” an insurer could take that would trigger an insurer’s requirement to provide the prescribed information to the CEO:

- paying or processing a claim despite having information that provides reasonable grounds to believe that fraud has occurred or is likely to occur
- closing a claim made under a policy that has been abandoned by the claimant

## 5. How much personal information is necessary for the purposes of subsection 101.3 of the *Act*?

Subsections 3(3) and 3(4) of the FRS Rule limit insurers from providing more personal information than is necessary for the purposes set out in subsection 101.3(2) of the *Act* (“assessing and detecting automobile insurance fraud”), and requires insurers to de-identify all names and identifying numbers, symbols or other particulars assigned to individuals unless disclosure of this information is necessary for the purposes set out in the *Act*:

> 3(3) An insurer shall not disclose personal information that is not necessary for the purposes set out in subsection 101.3(2) of the Act when providing the prescribed information to the Chief Executive Officer.
>
> 3(4) An insurer shall de-identify all names and identifying numbers, symbols or other particulars assigned to individuals before an insurer provides the prescribed information to the Chief Executive Officer unless disclosure of the names or other identifying information is necessary for the purposes set out in subsection 101.3(2) of the Act.

Insurers are not required to report personal information that is not necessary for the purposes set out in subsection 101.3(2) of the *Act*.

FSRA interprets the statutory purpose, “assessing and detecting automobile insurance fraud” to enable FSRA to:

- quantifying the prevalence of automobile insurance fraud in Ontario
- creating a baseline for fraud detection, and
- identifying trends throughout the industry

This interpretation reflects the first phase of FSRA’s approach to building the FRS, which focuses solely on the FRS collection of information about automobile insurance fraud.

FSRA anticipates a second phase where information collected in phase one will enable insurers to use the information. The personal information listed in the Appendix may be necessary to include in phase two reporting.

FSRA will work with insurers to create unique identifiers for each instance of reporting. These unique identifiers will allow insurers to update information provided in phase one with personal information where necessary for phase two. This Guidance will need to be updated before proceeding to this second phase.

# Approach

## Supervision and enforcement

The main outcome that FSRA aims to achieve through administering the FRS requirements under the *Act* and the FRS Rule is to empower insurers to better manage and reduce automobile insurance fraud by mandating the reporting of prescribed information about automobile insurance fraud to the FRS. To that end, insurers should design and organize internal policies, processes, controls, and governance procedures in a manner that facilitates compliance with the requirements under the *Act* and the FRS Rule, as interpreted in this Guidance.

FSRA intends to supervise against the requirements outlined under the *Act* and the FRS Rule by using its investigation and examination powers under the *Act*. Following an investigation and examination of an insurer's acts and practices, pursuant to the provisions of the *Act*, FSRA has the authority to:

- issue a compliance order to insurers, or[1]
- lay provincial offence charges against insurers[2]

FSRA will exercise its discretion when conducting its supervisory activities by considering the extent to which an insurer's fraud reporting system has been implemented effectively by management through policies, processes, systems and associated controls.

FSRA will evaluate insurers' processes, controls, and governance during supervisory reviews. This includes verifying the presence of adequate controls and ensuring that reporting meets the requirements as outlined. While FSRA retains the authority to sanction non-compliance with the FRS requirements, the supervisory approach will take in account the efforts made by insurers to comply and their efforts to achieve the desired outcomes.

## Implementation of controls and governance

To comply with the FRS requirements, FSRA encourages insurers to design and implement a robust framework that encompasses the following elements:

- **Policies and procedures**: Clear and detailed policies and procedures that facilitate compliance with the FRS Rule and *Act*. This should include steps to identify and report information related to instances of automobile insurance fraud. These should be regularly updated to reflect any changes in the regulatory environment and/or emerging fraud trends.

[1] FSRA seek a court issued compliance order pursuant to s. 448(1) of the Act.
[2] FSRA may pursue the laying of provincial offences as set out in s. 447(2) of the Act.

- **Monitoring and reporting systems**: Systems for monitoring and detecting fraud events as outlined in the FRS Rule and *Act*. These systems should be capable of capturing and reporting the prescribed information in a timely and accurate manner.

- **Internal audits and reviews**: Regular internal audits and reviews to assess the effectiveness of the fraud management framework. This helps in identifying any gaps or areas for improvement.

- **Governance and oversight**: Strong governance structures with clear accountability and oversight mechanisms.

While the elements identified above are not mandatory, they can, depending on the circumstances, be reflective of whether an insurer has met their obligations with respect to the FRS requirements.

## Effective date and future review

This Guidance will become effective on **[TBD]** and will be reviewed no later than **[TBD]**.

## About this Guidance

This document is consistent with FSRA's Guidance Framework. As Approach guidance, it describes FSRA's internal principles, processes and practices for supervisory action and application of CEO discretion. It does not create compliance obligations for regulated parties but can be considered indicative of FSRA's position, and it does not alter requirement to comply with existing legal and regulatory framework. As Interpretation guidance, it describes FSRA's view of requirements under its legislative mandate (i.e. legislation, regulations and rules) so that non-compliance can lead to enforcement or supervisory action.

# Appendices and reference

## Appendix A: Examples of fraud events that insurers are required to report information about to the Fraud Reporting Service

The following is a non-exhaustive list of the types of fraud events that insurers must report to the Fraud Reporting Service. The following is categorized according to the automobile insurance life cycle.

| Fraud category | Description | Example |
|---|---|---|
| **Fraud perpetrated through underwriting fraud** | Fraud committed by persons which occurs when someone intentionally conceals or misrepresents information when obtaining insurance coverage | • Policy misrepresentation such as falsifying information on the insurance application to gain a lower premium. This could include non-disclosure of drivers, residency, and mileage driven on vehicles<br><br>• Quote manipulation (to generate the lowest premium) |
| **Fraud perpetrated through fraudulent claims** | Fraud committed by policy holder when a claim has been made on a policy | • Falsely claiming damage to a covered automobile as a result of an auto accident when another caused the damage<br><br>• Claim embellishment- exaggerated/fabricated vehicle contents, false car seat claims, false invoices for items (often to cover deductible) |
| **Fraud perpetrated by a service provider** | Fraud committed by persons who provide services to a policy holder after a claim has been made on a policy. | • Billing by practitioners for care that they never rendered |

| | | |
|---|---|---|
| | | • Auto body/repair shop that inflates cost of repairs/repairs areas that do not need repairs<br><br>• Tow truck company that inflates cost of repair/bills for tows not needed<br><br>• Re-VINing (stolen vehicles; reVINned with a registered VIN from another vehicle and sold or insured again) |
| **Fraud perpetrated by selling or distribution of insurance products** | Fraud perpetrated by individuals directly involved in the distribution or sale of an insurance policy | • **Independent Agents/Brokers**<br><br>o Backdating policy or misrepresenting true risk to assist the insured in gaining coverage and/or producing a gamified rate<br><br>o Deliberately failing to disclose policy information to obtain a lower premium for the insured<br><br>o Ghost brokering (selling fake pink slips, insured thinks they have insurance but they do not) |
| **Fraud perpetrated by internal employees of an insurer** | Fraud perpetrated by individuals employed within the insurance industry | • Creating fictitious claims and orchestrating claim payments to the employee<br><br>• Employees receive a kickback from a third-party vendor in exchange for engaging vendor services |

| | | |
|---|---|---|
| | | • Backdating transactions, not rating properly, insuring knowing impending claim |

# Appendix B: Data points to be submitted when reporting information about fraud events to the Fraud Reporting Service

The following is a non-exhaustive list of the data elements that may be necessary for the purposes of assessing and detecting fraud. To the extent that the following list includes personal information that is not necessary for the purposes of assessing and detecting fraud, an insurer should not report the personal information during phase one of the FRS.

| Category | Data type |
|---|---|
| **Insured/policyholder/claimant** | • Contact information<br>o (name, address, phone number, email address)<br>• Date of birth<br>• Driver's licence number<br>• Occupation<br>• Vehicle ownership type: owned/financed/leased/rental |
| **Insurance carrier** | • Corporate contact information<br>o (corporate name, address, phone number)<br>• Policy number |

| | |
|---|---|
| | • Claim number<br>• Agent/broker name and address<br>• Policy duration<br>• Status of the claim (ongoing, denied, withdrawn after investigation) |
| **Accident information** | • Date of loss<br>• Time of loss<br>• Location of loss (street address, city, province, country)<br>• Cause of loss |
| **Involved parties:** | • Insured vehicle passengers<br>o Contact information (name, address, phone number, email address)<br>• Claimant vehicle passengers<br>o Contact information (name, address, phone number, email address)<br>• Insured vehicle information<br>o VIN, make, model, year, owner, damage<br>• Claimant vehicle information<br>o VIN, make, model, year, owner, damage |

| | |
|---|---|
| | • Legal Counsel (contact information).<br>• Auto body/repair shop<br>o Contact information and repair details<br>• Tow truck<br>o Contact information, and towing details.<br>• Medical Provider<br>o Contact information<br>• Medical Clinic<br>o Contact information<br>• Adjuster<br>o Contact information<br>• Car Rental Company, Lienholder/Leaseholder, other Third Parties<br>o (direct third parties to the claim or individuals acting on behalf of the policyholder for policy/claim purposes, as an intermediary, translator, or general agent) |
| **Cost** | • Estimated cost of the claim fraud<br>• Estimated cost of the policyholder/underwriting fraud |
| **Category/Fraud Details** | • Fraud perpetrated through underwriting fraud |

| | |
|---|---|
| | • Fraud perpetrated through fraudulent claims<br>• Fraud by a service provider<br>• Fraud through selling or distribution of insurance products<br>• Fraud perpetrated by internal employees of an insurer<br>• Fraud details/description |

**FINANCIAL SERVICES REGULATORY AUTHORITY OF ONTARIO**

**NOTICE OF PROPOSED RULE UNDER THE *FINANCIAL SERVICES REGULATORY AUTHORITY OF ONTARIO ACT, 2016***

**PROPOSED RULE 2024 – 003**

**AUTOMOBILE INSURANCE – FRAUD REPORTING SERVICE**

[07/15/2024]

## 1. Introduction

Pursuant to subsection 22(1) of the *Financial Services Regulatory Authority of Ontario Act, 2016* (the "***FSRA Act***") the Financial Services Regulatory Authority of Ontario ("**FSRA**" or the "**Authority**") is publishing for public consultation the following Notice of Proposed Rule ("**Notice**"). In accordance with subsection 22(4) of the *FSRA Act*, interested persons are invited to make written representations to FSRA with respect to the Proposed Fraud Reporting Service Rule ("**Proposed Rule**"), within 90 days of publishing this Notice. The consultation period will close on [10/14/2024].

If approved by the Minister of Finance ("**Minister**"), the Proposed Rule will prescribe both the information insurers must report under section 101.3 of the *Insurance Act* (the "***Act***"), and the requirements associated with reporting the prescribed information. More specifically, the Proposed Rule will prescribe the threshold and scope of information insurers are required to report about automobile insurance fraud; and the timing and process requirements regarding how an insurer shall report the prescribed information to the Fraud Reporting Service ("**FRS**").

For the text of the Proposed Rule please see **Appendix A** to this Notice.

## 2. Statutory Authority under which the Rule is proposed

Section 101.3 of the *Act*, when proclaimed into force, will require insurers to provide the Chief Executive Officer or an agency designated by the Chief Executive Officer (referred to collectively as the "**CEO**" in this Notice) with information prescribed by the Proposed Rule about automobile insurance fraud at such times and in accordance with such requirements as may be prescribed by the Proposed Rule.

To this end, section 101.3 further provides FSRA the express statutory authority to directly or indirectly collect, use and disclose personal information about identifiable individuals

provided that the collection, use, or disclosure is for the purpose of assessing and detecting automobile insurance fraud.

Section 101.3 in conjunction with paragraph 8.2 of subsection 121.0.1(1) of the *Act* gives FSRA the authority to prescribe the information outlined in section 101.3 in accordance with the Proposed Rule included in this Notice.

## 3. Statement of the substance and purpose of the Proposed Rule

The **purpose** of the Proposed Rule is to prescribe information that automobile insurers must provide to FSRA, and the corresponding requirements regarding the reporting of the prescribed information. Once in force, the Proposed Rule will give operational effect to FSRA's Fraud Reporting Service ("**FRS**").

The main outcome FSRA aims to achieve through the implementation of the FRS is to collect information to create a baseline of data that will quantify the amount of automobile insurance fraud and better enable the automobile insurance sector to assess and detect such fraud in Ontario.

The purpose of collecting this information is to support the more effective assessment and detection of automobile insurance fraud in Ontario. Key outcomes associated with this purpose include:

- quantifying the prevalence of automobile insurance fraud in Ontario;
- creating a baseline for fraud detection; and
- identifying trends throughout the industry.

Achieving these outcomes supports FSRA's goal of reducing consumer harm caused through fraud, and reducing unnecessary externality costs to be borne by consumers.

The Proposed Rule and accompanying Interpretation Guidance (the "**Guidance**") represents the first phase of the development of a functional FRS. FSRA anticipates a second phase of the FRS where information that has been collected will be available for insurers to access to enable the assessing and detecting of fraud. Amendments to the Proposed Rule and Guidance are expected to be required before the FRS can proceed to this second phase.

The **substance** of the Proposed Rule centers around prescribed information about automobile insurance fraud, and requirements associated with the insurer's statutory duty to report the prescribed information.

With regards to the information prescribed about automobile insurance fraud, the Proposed Rule defines a "fraud event" as a deceptive act or omission intentionally committed by a person(s) to obtain advantage, financial gain, or benefits beyond that to which one is entitled to with regard to any policy, claim, provision of goods or services or other occurrence related to automobile insurance. Included in this definition is a non-exhaustive list of categories that each instance of a fraud event may fall under.

With regards to the prescribed information about automobile insurance fraud, the Proposed Rule prescribes that insurers must report all information that provides reasonable grounds for the insurer to believe that a fraud event has occurred or is likely to occur.

The Proposed Rule further clarifies that this prescribed information must be reported if and only if the insurer has taken action based on the information that provided reasonable grounds for the insurer to believe that a fraud event has occurred or is likely to occur.

Once an insurer holds information that provides reasonable grounds for the insurer to believe that a fraud event has occurred or is likely to occur and have taken action based on said information, an insurer is required to report the information to the FRS within thirty (30) days after the close of each quarterly period of the calendar year.

With regards to requirements associated with the insurer's statutory duty to report the prescribed information, the Proposed Rule requires that all prescribed information be complete, accurate and up-to-date, and imposes an ongoing obligation on the insurer to take reasonable steps to ensure the information remains complete, accurate and up-to-date or otherwise recommend that the information be removed from the FRS.

FSRA will be publishing for public consultation **Guidance** that will set out FSRA's interpretation of several requirements under the Proposed Rule regarding:

- The scope of information an insurer is required to provide when reporting information about a "fraud event" to the CEO;

- The threshold of what constitutes "reasonable grounds for the insurer to believe" that a fraud event has occurred or is likely to occur; and

- The "action" an insurer may take that triggers an insurer's requirement to report prescribed information to the FRS.

The Guidance will also set out FSRA's approach in administering the Proposed Rule, including:

- How FSRA will supervise insurers in reviewing their policies, processes, systems and associated controls to ensure compliance with the Proposed Rule;

- How FSRA will exercise its discretion when enforcing against the requirements in the Proposed Rule; and

- How FSRA will utilize its enforcement powers to address non-compliance with requirements in the Proposed Rule.

## 4. Summary of the Proposed Rule

This section describes the requirements outlined in the Proposed Rule, that, if approved by the Minister, will operationalize the reporting of information about automobile insurance fraud by insurers to the FRS.

Section 1 – Definitions

This section outlines key definitions used throughout the Proposed Rule, including the definition of a "fraud event". The broad scope of what may constitute a fraud event is further informed by the definition's non-exhaustive list of several categories of fraud that are pertinent to the automobile insurance sector.

Section 2 – Interpretation

This section outlines how the Proposed Rule is to be interpreted.

Section 3 – Prescribed information under subsection 101.3(1) of the *Act*

This section sets out the prescribed information under subsection 101.3(1) of the *Act*.

This section:

- prescribes the scope and threshold [or standard] of information that every insurer licensed under the *Act* is required to report under subsection 101.3(1) of the *Act*. Specifically, an insurer is required to *report all information* in the insurer's possession, control or power related to any policy, claim, provision of goods or services or any other occurrence or event *where the information provides reasonable grounds for the insurer to believe that a fraud event has occurred or is likely to occur*;

- prescribes the activity-based trigger for an insurer to report the prescribed information, such that an insurer is required to report prescribed information within thirty days after the close of each [quarter] only if they have taken action or made a decision based on the prescribed information;

- requires that insurers include personal information in the prescribed information *only if* the personal information is necessary the purpose of assessing and detecting automobile insurance fraud; and

- requires insurers to de-identify all personal information in the prescribed information unless disclosure of the personal information is necessary for the purpose of assessing and detecting automobile insurance fraud.

Section 4 – Reporting requirements – Prescribed information

This section sets out additional requirements regarding the reporting of the prescribed information outlined in section 3 of the Proposed Rule.

This section:

- requires that an insurer ensures that all prescribed information is complete, up to date, and factually correct prior to reporting the information as required; and

- requires an insurer to inform the CEO and take reasonable steps to correct information if the insurer becomes aware that information reported is not complete, up to date, or factually correct.

Section 5 – Transitional

This section clarifies that insurers are not required to report the prescribed information in accordance with the rule until after [date TBD].

Section 6 – Coming into Force

This section clarifies that the Proposed Rule will come into force on the later of the date that subsection 101.3(1) and clause 8.2 of subsection 121.0.1(1) of the *Act* comes into force and 15 days after the Rule is approved by the Minister.

## 5. Unpublished Material

In making the Proposed Rule, FSRA has retained the consultant services of the *International Fraud Training Group*, who have provided FSRA with unpublished written materials that have been relied in part to inform drafting of the Proposed Rule.

## 6. Alternatives Considered

### i. Prescribing specific data points that insurers would be required to report under subsection 101.3(1) of the *Act*

The Proposed Rule requires insurers to report all information in the insurer's possession, control or power related to any policy, claim, provision of goods or services or any other occurrence or event where the information provides reasonable grounds for the insurer to believe that a fraud event has occurred or is likely to occur.

As an alternative, FSRA considered prescribing an all-encompassing list of data points that insurers would be required to submit to the FRS. This approach was not followed for three reasons.

First, a prescriptive list of data points about a "fraud event" could only be amended via an amendment to the Proposed Rule. The time it takes to amend an Authority Rule would not be adaptable to an ever-evolving list of data points that may be material to assessing and detecting fraud events.

Second, prescribing an all-encompassing list of data points is inconsistent with FSRA's principles-based and outcomes-focused approach to regulation. A prescriptive approach would overshadow the intended outcome of insurers reporting information according to a particular standard of proof or threshold of materiality and would turn the Proposed Rule into a listing and indexing exercise of prescribed information.

Third, FSRA recognizes that the ever-evolving nature of automobile insurance fraud requires flexibility and adaptability in the types of information that insurers must report to the FRS. FSRA intentionally has chosen not to prescribe all relevant data points *before* information begins to be reported by insurers. In other words, the most relevant information that will ultimately achieve the FRS's purpose will become more apparent only *after* insurers begin reporting to the FRS. FSRA intentionally chose not to limit the scope of information to a prescribed list that may or may not be reflective of market realities.

### ii. Alternate thresholds of information an insurer would be required to report under subsection 101.3(1) of the *Act*

The Proposed Rule requires insurers to only report information to the FRS where the information provides *reasonable grounds for the insurer to believe* that a fraud event has occurred or is likely to occur. FSRA's interpretation of information that would constitute "reasonable grounds to believe" is outlined in the Guidance.

FSRA considered alternative thresholds that would impact the scope of information that insurers would ultimately need to report to the FRS including:

- **No threshold (i.e., "all information about a fraud event")**: This would require insurers to report all information, without any modification or clarification of scope, about a fraud event, as defined in the Proposed Rule. FSRA did not choose this option as it provided uncertainty to the scope of information to be provided.

- **"Reasonable grounds to suspect"**: This threshold is lower than the prescribed "reasonable grounds to believe" threshold in the sense insurers would be required to report information where the information provides mere "suspicion" that a fraud event has occurred or is likely to occur. FSRA did not choose this option as this threshold may invite information that may be premature, inaccurate, or unverifiable. Reasonable grounds to believe, on the other hand, require more than mere suspicion, as well as verifiable evidence relating to the belief. Further, "suspicion" may be inconsistently interpreted throughout the sector, resulting in ambiguity regarding the scope of information that is required to be provided.

- **"Belief based on a balance of probabilities"**: This threshold is higher than "reasonable grounds to believe" in the sense that this threshold is similar to the civil standard of proof required in civil trial cases. FSRA did not choose this option as this threshold may invite too little information to be reported. Once information has reached this threshold, it already provides a basis for seeking civil legal action. Rather, FSRA is requiring information that serves the purpose of enabling the assessing and detecting of automobile insurance fraud, information that reaches this civil standard includes instances of fraud has already been assessed and detected and is ready for adjudication.

- **"Adjudicated finding of a fraud event"**: Similar to the above, this is the highest threshold of information, that would require reporting to the FRS only if the information is used to adjudicate a finding a fraud event. This option was not chosen because it would result in the lowest amount of information being reported, albeit resulting in highly reliable information.

### iii. Alternate timing requirements for when an insurer is required to report information to the FRS

The Proposed Rule requires insurers to report the prescribed information to the FRS on a quarterly basis only if the insurer has taken action or made a decision based on information that meets the prescribed threshold. FSRA's interpretation of information that would constitute "action" or a "decision" is outlined in the Guidance.

FSRA decided on this requirement to provide sufficient time for the insurer to prepare information that must be reported, and to ensure that information that may be premature or not actionable is not reported to the FRS.

As an alternative, FSRA also considered alternate timing requirements for insurers to report the prescribed information to the FRS:

- **Reporting information within a prescribed number of days following the conclusion of an insurer's investigation about a fraud event:** FSRA considered an arbitrary number of days (e.g., 30 days) that an insurer would have following the conclusion of an investigation to report the information. This option was not chosen because of the arbitrariness of the time period and also because the conclusion of an investigation was determined by FSRA to be too high of a standard to require information to be reported.

- **Reporting information within a "reasonable" amount of time following the conclusion of an insurer's investigation about a fraud event:** Similar to the above, this option was not chosen because FSRA decided there needs to be some certainty about the timing requirement (i.e., a "reasonable" amount of time may differ significantly throughout the sector), and that the conclusion of an investigation is too high of a standard to require information to be reported.

- **Real-time Reporting once information reaches prescribed threshold:** This option was not chosen due to perceived inconsistencies and ambiguities regarding what point-in-time an insurer is required to report, as well as the administrative burden real-time reporting would place on insurers and FSRA. For example, it is possible that one insurer may subjectively determine that their information gathered does not reach the threshold of "reasonable grounds to believe" that a fraud event has occurred, whereas a different insurer with the same information may subjectively determine their information does reach the prescribed threshold and thus be required to report.

## 7. Anticipated Costs and Benefits

Qualitative benefits associated with operationalization of the Proposed Rule may include:

- Enabling FSRA to monitor and evaluate developments and trends of fraud in the automobile insurance industry;

- Holding insurers accountable for reporting fraud; and

- Developing a common understanding of automobile insurance fraud amongst all participants of the automobile insurance system.

Qualitative costs associated with operationalization of the Proposed Rule may include:

- Familiarization with a net-new reporting requirement;

- 'Growing pains' associated with net-new reporting requirement, including erroneous or premature reporting; and

- Understanding how to comply with a principles-based and outcomes-focused reporting requirement.

Quantitative benefits associated with operationalization of the Proposed Rule may include:

- Enabling FSRA's ability to quantify the prevalence of automobile insurance fraud in Ontario;

- Gathering of information about automobile insurance fraud may inform how resources can be most efficiently allocated to reduce costs to insurers and ultimately consumers.

New quantitative costs associated with operationalization of the Proposed Rule for both FSRA and insurers may include:

- Anticipated system and data collection resources needed to adapt to new reporting requirements.

- Data integrity and quality during the initial stages of reporting may cause initial challenges.

- Investment in data security and encryption technology will need to be considered to protect data.

## 8. Regulations to be Amended

FSRA does not intend to make any recommendations with respect to the amendment or revocation of a regulation or provision in a regulation that relates to the implementation of the Proposed Rule. FSRA expects that in due course certain regulations or provisions in regulations will be amended or revoked in a manner consistent with the operationalization of the Proposed Rule.

## Appendix A – PROPOSED RULE 2024 – 003

### 1 Definitions

1(1) In this Rule,

(a) "Act" means the *Insurance Act*, RSO 1990, c I.8, as amended;

(b) "FSRA Act" means the *Financial Services Regulatory Authority of Ontario Act, 2016*, SO 2016, c 37, Sched 8, as amended;

(c) "prescribed information" means the information an insurer is required to provide under subsection 101.3(1) of the Act in accordance with subsection 3(1) of this Rule.

(d) "Rule" means this Authority Rule 2024 – 003

(e) "fraud event" means a deceptive act or omission, or series of deceptive acts or omissions intentionally committed by a person(s) to obtain advantage, financial gain, or benefits beyond that to which one is entitled to with regard to any policy, claim, provision of goods or services or other occurrence related to automobile insurance, and for greater clarity includes instances of:

i. Obtaining an automobile insurance policy through fraudulent means, including underwriting fraud;

ii. Obtaining a benefit under a contract of insurance through fraudulent claims;

iii. Providing goods or services to a beneficiary under a contract of insurance through fraudulent means or in a fraudulent manner;

iv. Fraudulent activity in the selling or distribution of insurance products; and

v. Fraudulent activity committed by internal employees of an insurer.

### 2 Interpretation

2(1) If a term or phrase used in this Rule is defined in the Act, the definition used in the Act shall apply for the purposes of this Rule.

2(2) Words and phrases not defined in this Rule have the same meaning as ascribed thereto under section 1 of the FSRA Act unless a contrary intention appears.

2(3) References in this Rule to the Chief Executive Officer include reference to an authorized delegate or designated agency of the Chief Executive Officer as outlined in subsection 101.3(1) of the Act.

2(4) For the purposes of this Rule, references to “insurance” are limited only to “automobile insurance”.

**3 Prescribed information under subsection 101.3(1) of the Act**

3(1) Prescribed information includes all information, including personal information, in the insurer’s possession, control or power related to any policy, claim, provision of goods or services or any other occurrence or event where the information provides reasonable grounds for the insurer to believe that a fraud event has occurred or is likely to occur.

3(2) An insurer shall within thirty days after the close of each quarter of the calendar year provide the information prescribed in subsection 3(1) of this Rule with respect to fraud events which in the preceding quarter the insurer has taken action or made a decision based on reasonable grounds for the insurer to believe that a fraud event has occurred or is likely to occur.

3(3) An insurer shall not disclose personal information that is not necessary for the purposes set out in subsection 101.3(2) of the Act when providing the prescribed information to the Chief Executive Officer.

3(4) An insurer shall de-identify all names and identifying numbers, symbols or other particulars assigned to individuals before an insurer provides the prescribed information to the Chief Executive Officer unless disclosure of the names or other identifying information is necessary for the purposes set out in subsection 101.3(2) of the Act.

**4 Reporting requirements – Prescribed information**

4(1) An insurer shall ensure that all prescribed information is complete, up to date, and factually correct before an insurer provides the prescribed information to the Chief Executive Officer.

4(2) Every insurer who provides prescribed information that subsequently becomes aware that the information the insurer provided is or has become

incomplete, out-of-date, or factually incorrect shall in the quarter following their becoming aware:

(a) inform the Chief Executive Officer of the deficiencies in the prescribed information provided; and

(a) take reasonable steps to remedy the deficiencies in the prescribed information provided to bring the information into compliance with subsection 5(1) of this Rule.

4(3) If an insurer provides information to the Chief Executive Officer and subsequently discovers that the information either:

(a) includes deficiencies that cannot be remedied as required by subsection 5(2)(b) of this Rule; or

(b) fails to meet the threshold of the reporting requirement outlined in subsection 3(1) of this Rule,

then the insurer must immediately give notice and recommend the Chief Executive Officer to withdraw the information provided.

4(4) Every insurer shall submit the prescribed information through the Authority's electronic or computer-based system for the filing, delivery or reporting of the prescribed information.

## 5 Transitional

5(1) An insurer is not required to report the information required in section 3 of this Rule until after [date].

## 6 Coming into force

6(1) This Rule will come into force on the later of the date that section 101.3 and clause 8.2 of subsection 121.0.1(1) of the Act comes into force and 15 days after the Rule is approved by the Minister.

THIS IS EXHIBIT "B" REFERRED TO IN THE AFFIDAVIT OF Mr. Kevin A. McLean

AFFIRMED BEFORE ME, THIS 27th DAY OF January 20 25

, ETC.

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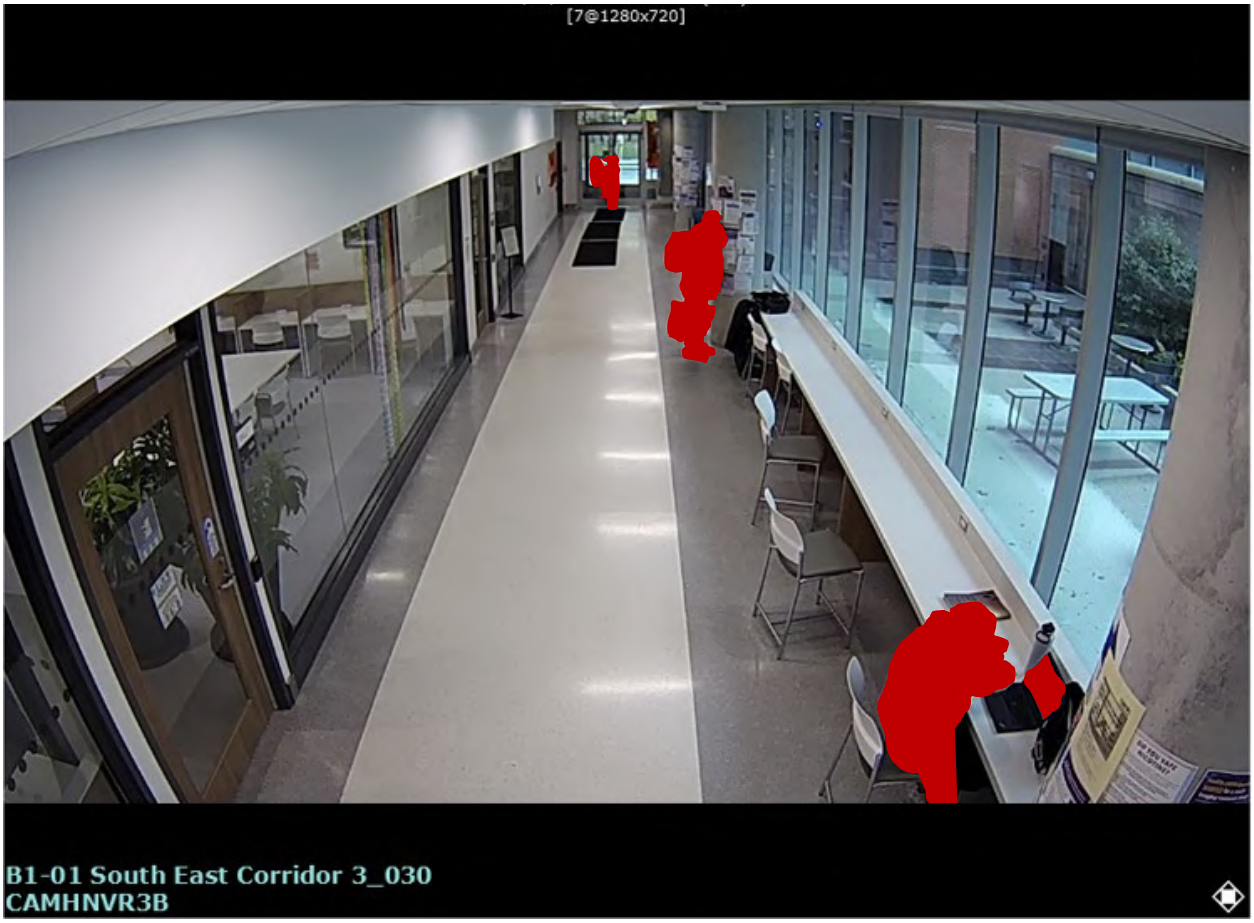
NOTARY PUBLIC ONTARIO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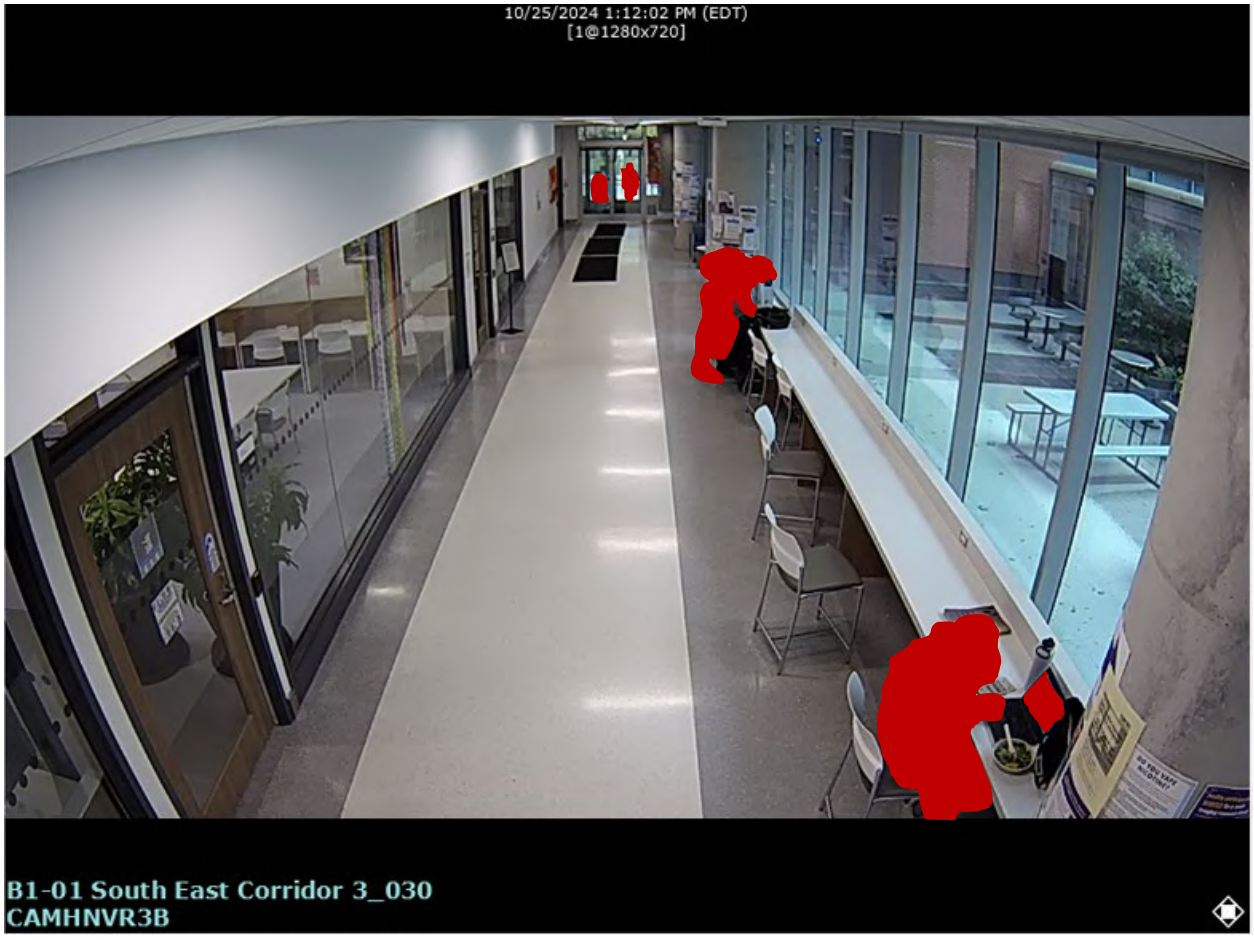
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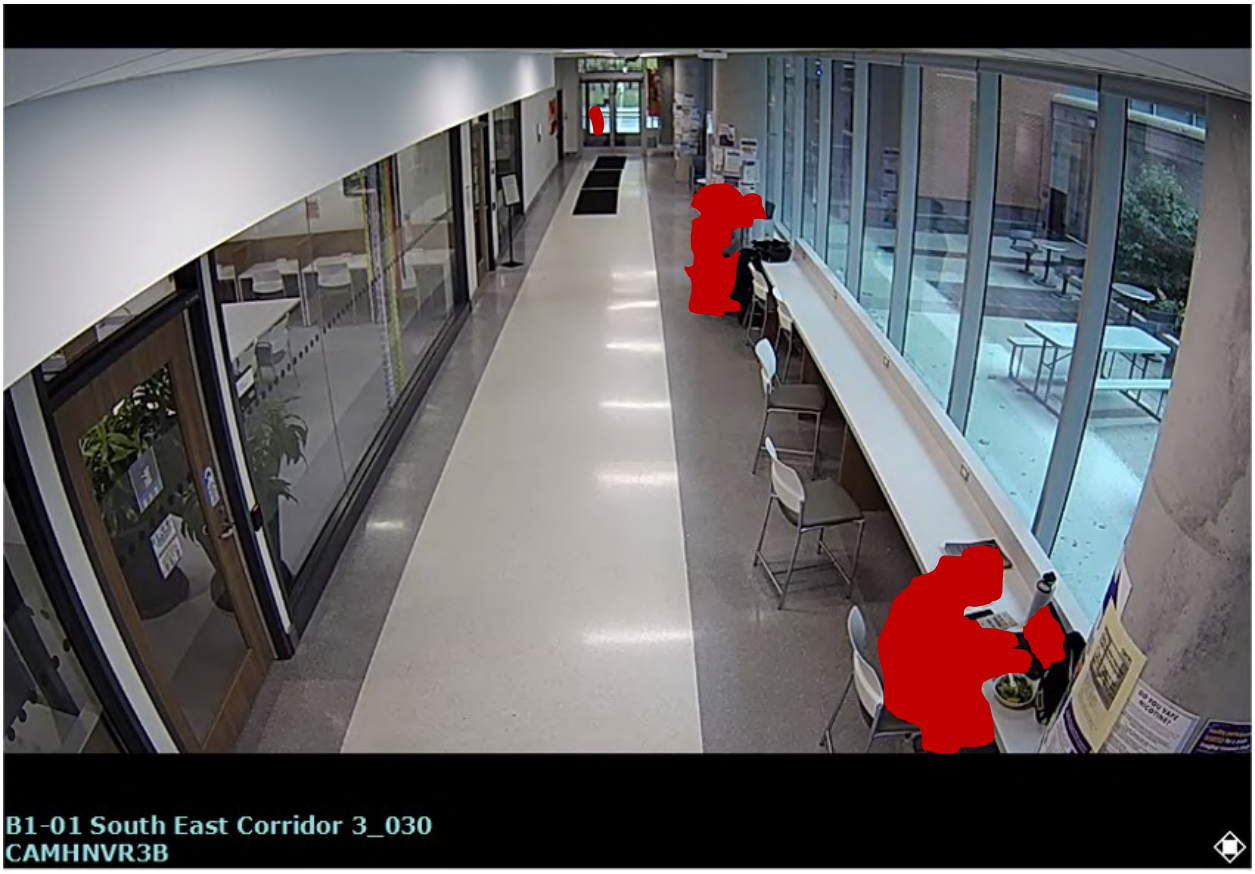


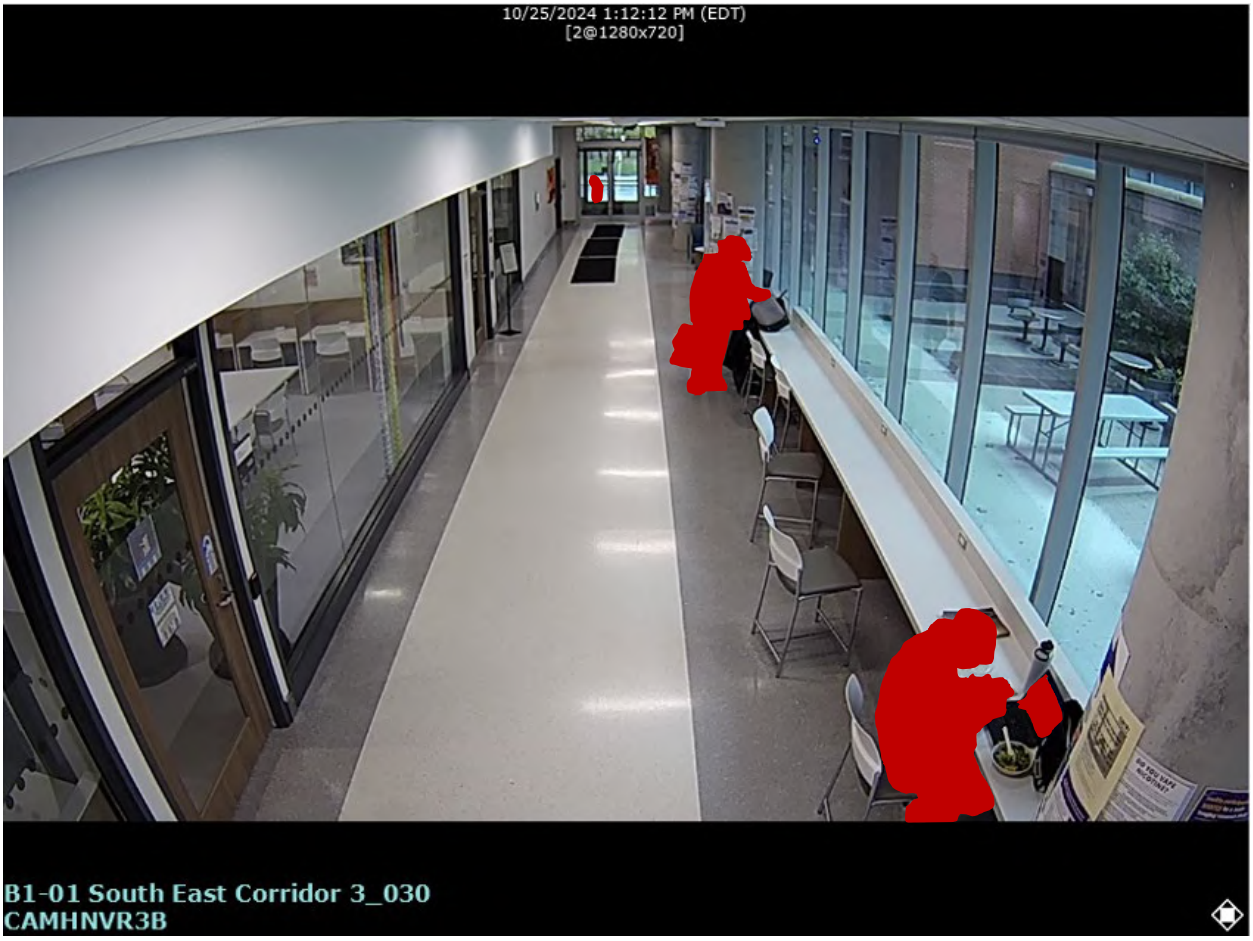

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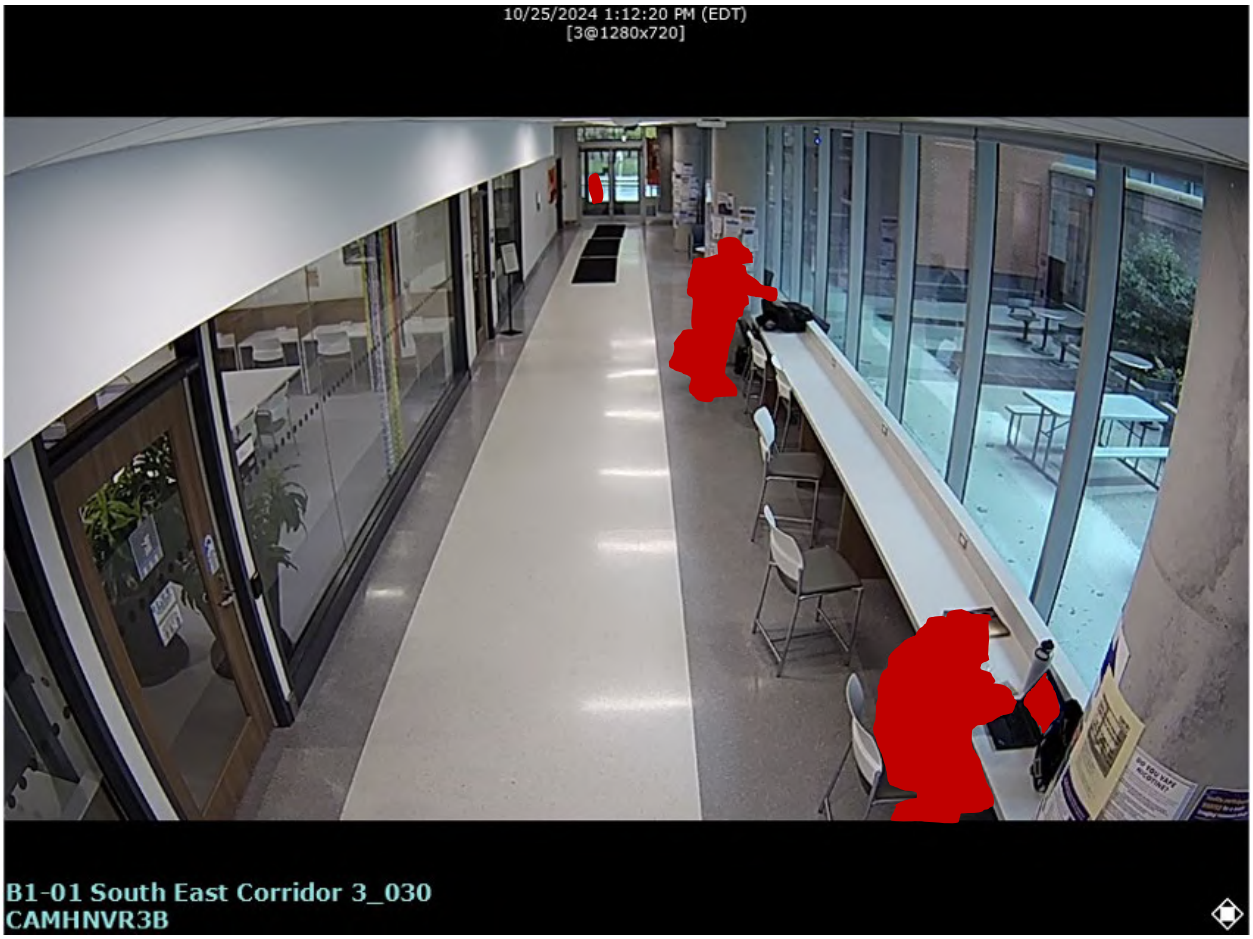


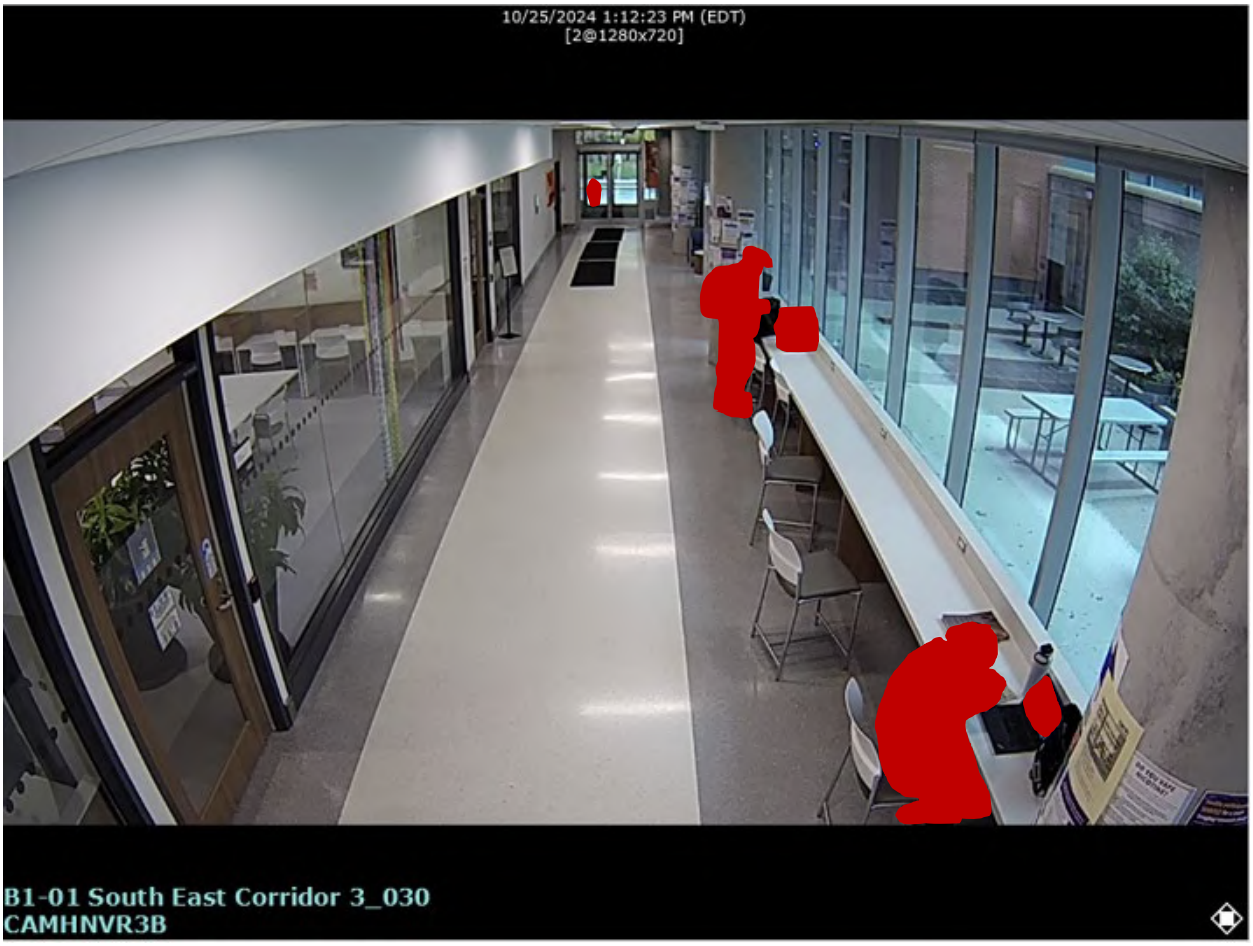

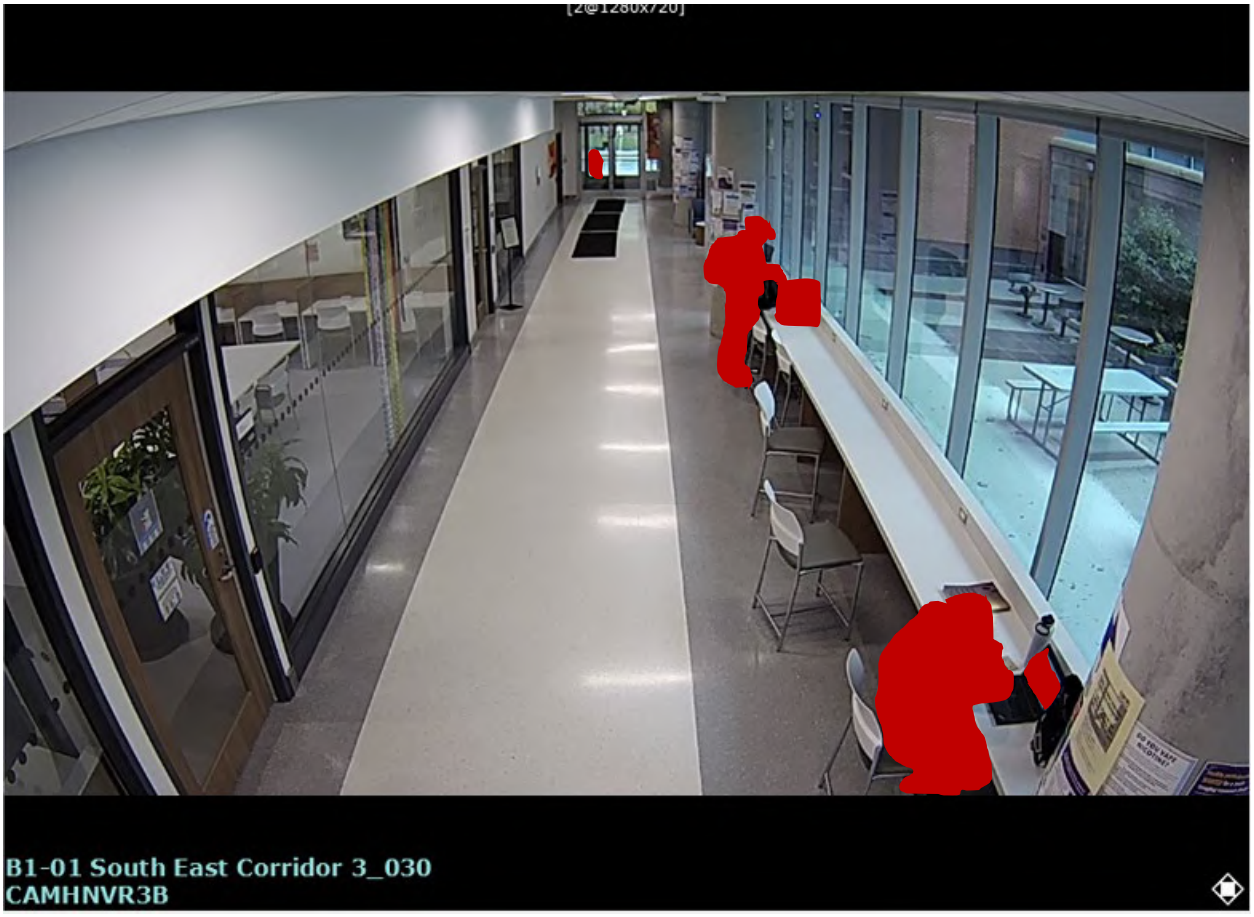
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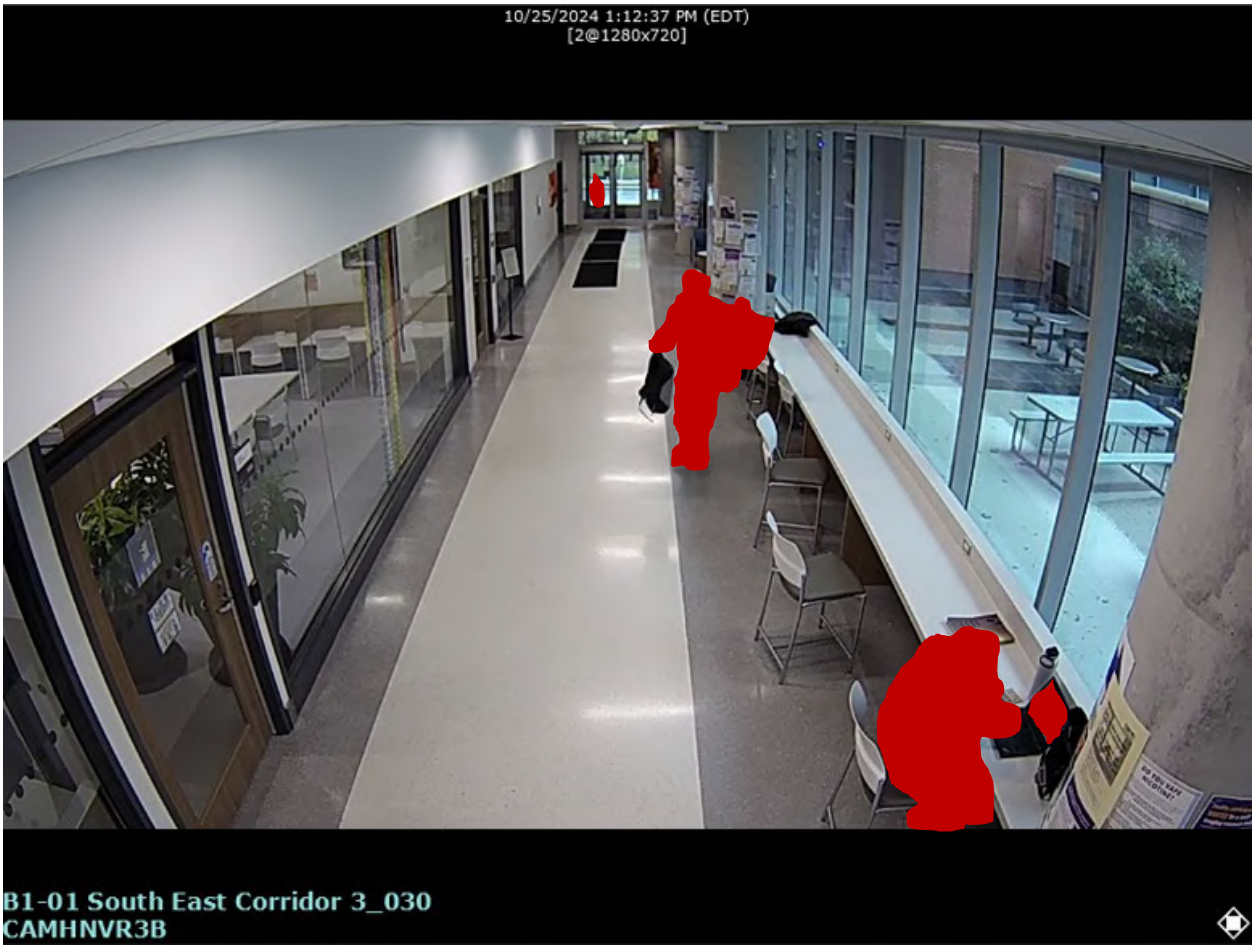
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Toronto Superior Court of Justice / Cour supérieure de justice



Note: CircIT transactions cannot be separately identified as self-checkout vs staff-assisted checkout as they both use the same software.

| Date/Time | Branch / Location | Card # | Activity | Method of Transaction |
|---|---|---|---|---|
| 28/10/2024,16:35 | Fort York | 27131056572458 | Laptop check out.<br>Item returned | Symphony accessed by staff |
| 28/10/2024,16:36 | Fort York | 27131056572458 | Note added: Laptop form completed at Fort York Branch Oct 28/2024 | Symphony accessed by staff |
| 28/10/2024,19:41 | Fort York | 27131056572458 | Check out<br>1 Book | CircIT accessed either through self-checkout or staff-assisted station |
| 28/10/2024,19:43 | Fort York | 27131056572458 | Laptop check out.<br>Item returned | Symphony accessed by staff |
| 28/10/2024,20:16 | Fort York | 27131056572458 | Check out<br>1 book | CircIT accessed either through self-checkout or staff-assisted station |
| 8/11/2024,<br>11:57 – 12:29<br><br>11:57-11:58<br><br>12:04<br><br>12:13<br><br>12:29 | Queen/Saulter | 27131056572458 | Checked out 24 items<br>10 have been returned<br><br>3 Generic paperback<br>3 Books<br>(1 book returned)<br><br>9 Periodicals<br>(all 9 were returned)<br><br>5 Books<br><br>1 Book<br>3 Generic paperback | CircIT accessed either through self-checkout or staff-assisted station |
| 8/11/2024, 12:52 | Queen/Saulter | 27131056572458 | Check In<br>1 book<br>9 periodicals | CircIT accessed at staff-assisted station |

| Date/Time | Branch / Location | Card # | Activity | Method of Transaction |
|---|---|---|---|---|
| 16/11/2024,10:20 | Fort York | 27131066792070 | New card issued at Fort York Branch<br><br>Previous card 27131056572458 marked as LOSTCARD | Symphony accessed by staff |
| 13/12/2024,19:00 | Toronto Reference Library | 27131066991128 | New card issued at Toronto Reference Library<br><br>Previous card 27131066792070 marked as LOSTCARD | Symphony accessed by staff |
| 13/12/2024,19:09 | Toronto Reference Library | 27131066991128 | Renewed 16 items (2 borrowed at Fort York;<br>14 borrowed at Queen/Saulter Branch) | Symphony accessed by staff |
| 13/12/2024,19:12 | Toronto Reference Library | 27131066991128 | Phone number updated to 416-919-7820<br>Account renewed | Symphony accessed by staff |
| 13/12/2024,20:03 | Toronto Reference Library | 27131066991128 | Checkout<br>1 Book | CircIT accessed either through self-checkout or staff-assisted station |
| 21/12/2024,15:15 | Fort York | 27131067089492 | New card issued at Fort York Branch<br>Previous card 27131066991128 marked as LOSTCARD | Symphony accessed by staff |
| 21/12/2024,15:48 | Fort York | 27131067089492 | Laptop check out.<br>Item returned | Symphony accessed by staff |
| 21/12/2024,16:11 | Fort York | 27131067089492 | Check out<br>1 Book<br>4 Periodicals | CircIT accessed either through self-checkout or staff-assisted station |
| 21/12/2024,16:13 | Fort York | 27131067089492 | Laptop check out.<br>Item returned | Symphony accessed by staff |
| 28/12/2024, 15:30 | Fort York | 27131067089492 | Laptop check out.<br>Item returned | Symphony accessed by staff |

| Date/Time | Branch / Location | Card # | Activity | Method of Transaction |
|---|---|---|---|---|
| 28/12/2024,15:59 | Fort York | 27131067089492 | Check out<br>7 Periodicals | CircIT accessed either through self-checkout or staff-assisted station |
| 17/1/2025,16:03 | Answerline | 27131067089492 | Renewed – 29 items<br>1 item not renewed due to outstanding hold | Symphony accessed by staff |