

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

FORM 37A

Courts of Justice Act

NOTICE OF MOTION

ONTARIO SUPERIOR COURT OF JUSTICE (DIVISIONAL COURT)

BETWEEN:

KEVIN ALEXANDER MCLEAN

APPLICANT

- and -

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

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

RESPONDENTS

NOTICE OF MOTION

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

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

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

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

☐ In person;

X By telephone conference;

☐ By video conference.

at the following location

Address of Local Registrar court office Divisional Court

Superior Court of Justice
Osgoode Hall

130 Queen Street West
Toronto, ON MSH 2N5

THE MOTION IS FOR the following relief:

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

THE GROUNDS FOR THE MOTION ARE:

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

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

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

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

The Seminal Decision in Payne

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

Payne cited with approval by ONSC Divisional Court in 2024

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

General Principles

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

Endicott Decisions

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

Cases involving privacy or medical (contextual)

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

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

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

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

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

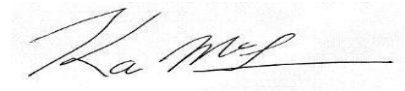
THE FOLLOWING DOCUMENTARY EVIDENCE will be used at the hearing of the motion are all filed documents with the ONSC Divisional Court and any documents that have been tendered for filing including but not limited to:

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

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

January 22, 2025:

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



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

TO:

Licence Appeal Tribunal/AABS

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

Jesse Aaron Boyce

Assumed Name

Jesse A. Boyce

Law Society Number

72486F

Class of Licence Definitions

Lawyer (L1)

Real Estate Insured [†]

No

Status Definitions

Practising Law - Employed

Business Name

SLASTO

Business Address

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

Phone

1 437 997 1235 Ext.

Trusteeships

None

Current Practice Restrictions

None

Current Regulatory Proceedings

None

Regulatory History

None

RCP-E 37A (September 1, 2020)

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

ⁱⁱDenoted *supra*

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

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

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

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

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

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

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