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.

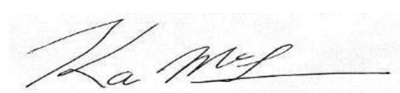
8. The statutes, regulations and authorities cited and/or cross-referenced in the JRPA Application, Factum, Application Record, COI Recusal Submissions, Motion #1 (Motion Record), Motion #2 (Motion Record) and Oral Compendium (to be uploaded to Case Center once or if the Applicant receives invitation 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 <u>Definitions</u>
Lawyer (L1)
Real Estate Insured [†]
No
Status <u>Definitions</u>
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
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.[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:

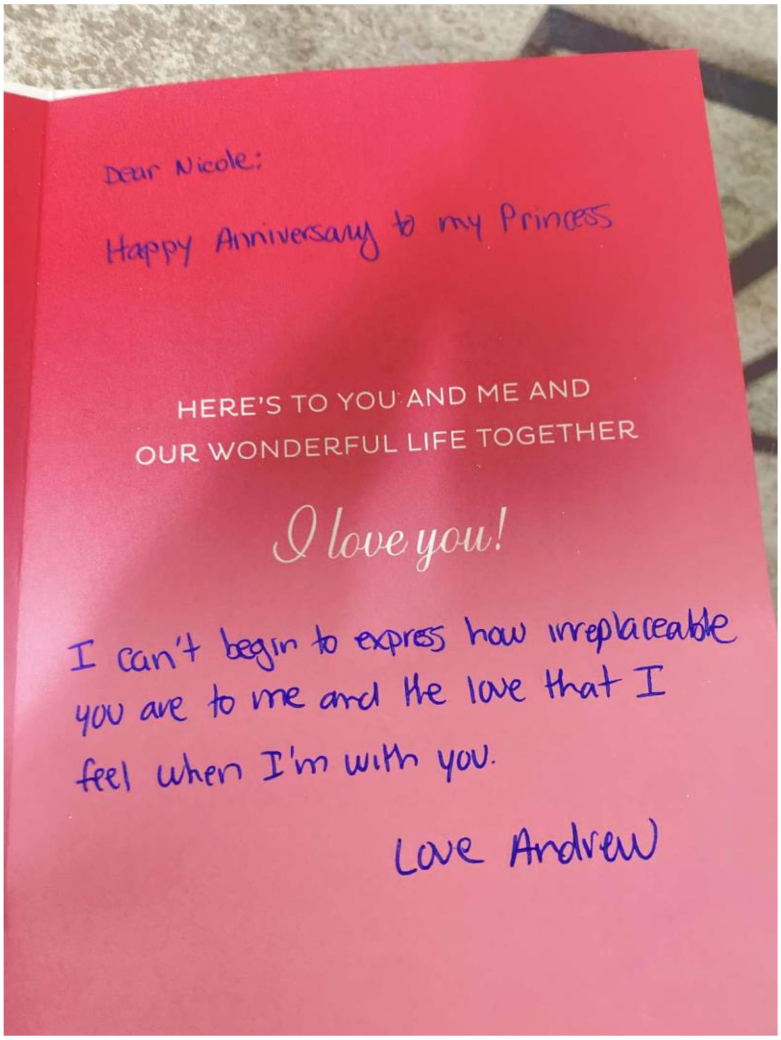
☒ Partially approve ☐ Dc

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

	Signature of Adjuster Kiw As per A. Nurse	Date 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
providers listed in Part 11 and provide details of the services and



Dear Nicole:

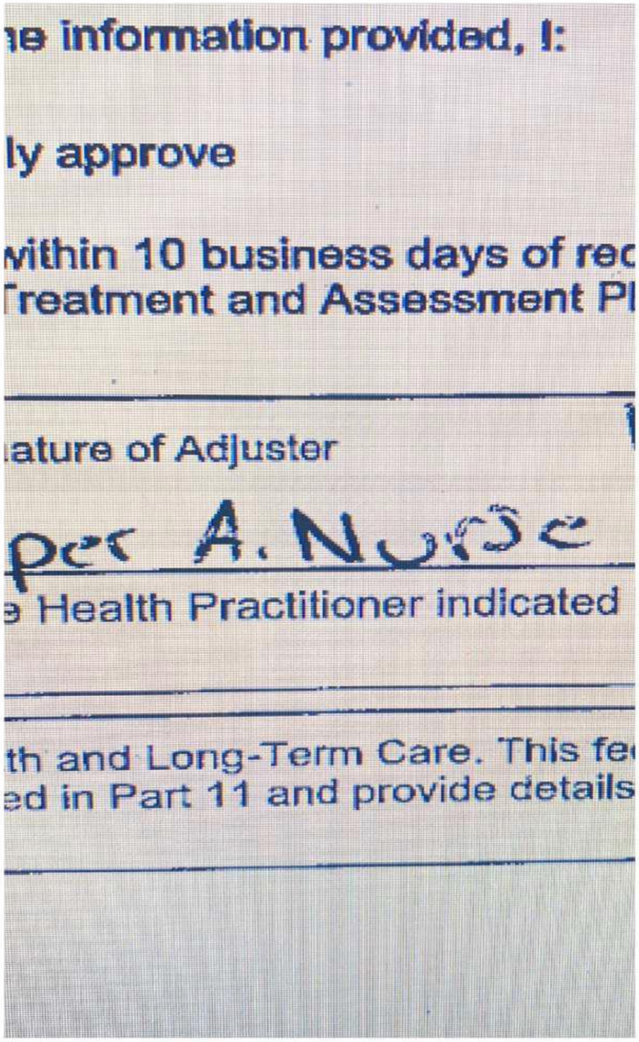
Happy Anniversary to my Princess

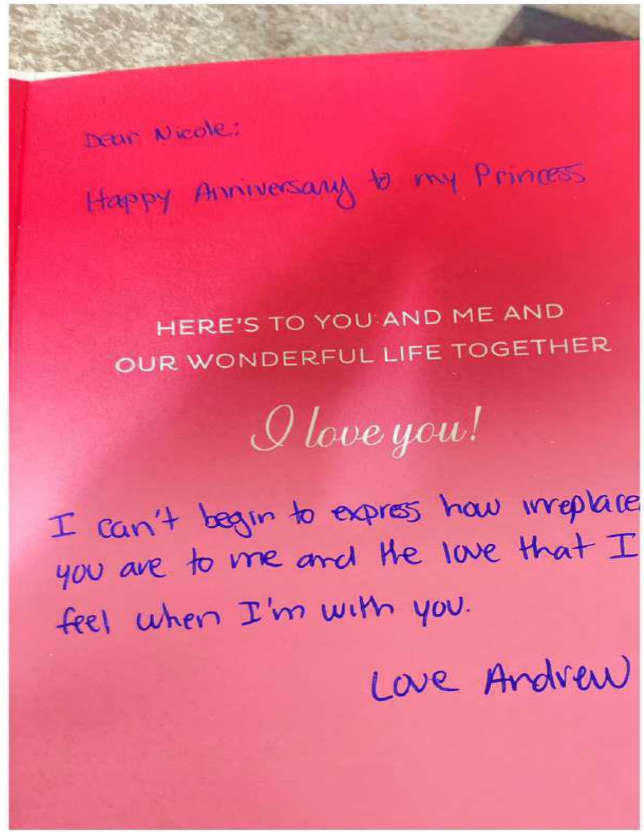
HERE'S TO YOU AND ME AND
OUR WONDERFUL LIFE TOGETHER

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-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 <u>without</u> 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//BQCwhgziBcwMYgK4DsDWszIQewE4BUBTADwBdoByCgSgBpltTCIBFRQ3AT0otokLC4EbDtyp8BQkAGU8pAELcASgFEAMioBqAQQByAYRW1SYAEbRS2ONWpA:~: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)