**HUMAN RIGHTS TRIBUNAL OF ONTARIO**

BETWEEN:

**KEVIN ALEXANDER MCLEAN**

**APPLICANT**

AND:

TORONTO POLICE SERVICES BOARD, ANTHONY ROMANO, MICHAEL KOLANKOWSKI, SERGEANT CASSIDY, GOLDVIEW PROPERTY MANAGEMENT LTD., LATOYA FERGUSON, AND APHRODITE ARTOPOULO

RESPONDENTS

**RE: SUBMISSIONS OF THE APPLICANT PURSUANT TO RULE 23 OF THE HRTO SPECIFIC RULES**

## VOLUME #1: STATEMENT OF MOTION SUBMISSIONS

1. These motion submissions adopt the definitions from the filed documents in the HRTO record of proceeding (the "ROP") from October 2024 to present (the "ROP Temporal Period"). The Orders sought are at **VOLUME #**1(C) herein.

2. The *HR Code* has had a quasi-constitutional status of the *Code* requires that it be given a liberal interpretation that best ensures its anti-discriminatory goals are attained. The latter part was codified in the *Legislation Act*, 2006 (see: section 64).

3. The issues and requested orders as a result of the same, that have arisen since the production of records by Ms. Anguelova for the TPS Respondents that strikes at the bedrock of the Canadian legal system and of the administration of justice in this province.

4. The HRTO cannot sit idle because if this 'Intake Court Endorsement' is NOT idiosyncratic to the Applicant and 'Intake Court Endorsements' absent an endorsement by a justice, but are fraudulent and false in nature and form, are utilized to mislead citizens and residents of Ontario that the police have arrest warrants, the damage will continue in perpetuity without 'checks and balances'.

5. Neither can other branches of government including the Executive Branch of Ontario government. Moreover, neither can the AGC. To the extent that an individual engaged in manipulation of a document without the digital signature of a Justice Of the Pece (in this case JP Jiri), then the Courts play an important role in providing information or the absence of information (i.e. did not exist involving an ONCJ courthouse or an ONSC courthouse) in weeding out this corruption that strikes to the bedrock of the Charter rights of all.

6. The Applicant filed the **HRTO** Application on October 15, 2024, that arose out of a variety of alleged instances of discrimination involving the **TPS Respondents**, Goldview Respondents, and Ms. Aphrodite Artopoulos (the "**Landlord**", "**Landlord Respondent**" or "**Accommodation Occupancy Respondent**"). Like most frauds in life and in litigation, once caught, those engaged in the same reap what they sow. It is why the SCC in *Landreville v. Town of Boucherville*, 1978 CanLII 202 (SCC) ["*Landreville*" or "*Boucherville (Town)*"] , adopting the wise words of Lord Denning, found as follows:

> "Estey J., speaking for the majority of this Court in *Kuchma v. Rural Municipality of Taché*[i] at p. 239.
>
>> Fraud, dishonesty, bad faith, extortion and bribery form a special category of causes of nullity, which transends [sic] all others.
>>
>> FRAUD UNRAVELS EVERYTHING. The Court is careful not to find fraud unless it is distinctly pleaded and proved; but once it is proved, it vitiates judgments, contracts and all transactions whatsoever…
>>
>> Lord Denning in *Lazarus Estates Ltd. v. Beasley*[8], at p. 712."

7. Whether there was an "arrest warrant" or not, is a seminal fact that needs to be determined herein. It is not an issue in the hypothetical. Rather, it is an issue of fact that will affect the outcome of this **HRTO** Proceeding. It cannot be determined on the basis of what Ms. Anguelova does or does not find in the manipulated court

file or that which has remained undisclosed. The principles of the requirements for disclosure of the Crown in a criminal proceeding are distinct from that of an HRTO proceeding.

8. The issue of law that is determinative of this **HRTO** Proceeding as it relates to liability of **TPS Respondents** and others is whether the Intake Court Endorsement is a forged document, false document and/or amounts to a valid arrest warrant (Form 7) of the *Criminal Code*. If it is not, then the Applicant's factum or memorandum of law that supported his NOCQ and NOM #1 must be granted because if there was no 'arrest warrant', then the **TPS Respondents** engaged in adverse treatment and adverse decisions, absent the authority of a 'justice', where the Applicant's Disabilities were 'a factor' in the adverse treatment and adverse decisions and/or that had adverse consequences and adverse effects.

9. The OSC in *Bridge Finance* confirmed that the **HRTO** and ONSC in Dua found that the **HRTO** has the power pursuant to its home statute (*HR Code*), the Legislation Act, and section 16.1 of the *SPPA* authorizes substantive interim orders (as opposed to merely procedural):

> "This Tribunal has not canvassed the issue in any of its previous decisions. Numerous decisions of other bodies have considered whether s. 16.1(1) authorizes substantive orders (*e.g.*, a stay), as opposed to other kinds of orders that are merely procedural in nature. *Toussaint v Ontario (Health and Long Term Care)*,[11] a decision of the Human Rights Tribunal of Ontario, reviews conflicting tribunal decisions on the question and adopts an interpretation of s. 16.1(1) that confers upon tribunals the power to make substantive interim decisions.[12] That tribunal, in reasons that were recently endorsed by the Divisional Court,[13] found that:
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> a. the broad language of s. 16.1(1) suggests an intention to confer broad powers;
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> b. there is nothing in s. 16.1(1) that suggests that the provision is limited to purely procedural questions;
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> c. the widespread presence of procedural provisions elsewhere in the *Statutory Powers Procedure Act* would make s. 16.1(1) redundant if s. 16.1(1) were limited to procedural orders; and
>
> d. a statutory provision that is remedial should be given a fair, large and liberal interpretation as best ensures the attainment of the provision's objects.[14]
>
> [42] We adopt that reasoning and conclude that s. 16.1(1) authorizes tribunals to grant substantive orders, including stays.

10. Ergo, this HRTO has the power to issue substantive interim orders. While on first blush, 'interim' and 'interlocutory' may seem to be the same in definition and meaning, they are not.

11. To determine whether relief is substantive or procedural, the OSC had an articulation of or a benchmark to whether an order was either of the above (see: Bridge Finance):

> "In our view, the plain and ordinary meaning of these words indicates that they relate to how a hearing (or a proceeding consisting of multiple hearings) is run. The Confidentiality Decision was not a procedural ruling. It disposed of the substantive relief that Sharpe was seeking in the proceeding. We must point out again that the outcome in the Confidentiality Decision survives the proceeding; that is, the adjudicative record remains open to the public even after the proceeding concludes. The converse would be true as well – if we had disposed

of Sharpe's request by ordering (without time limitation) that the adjudicative record would remain confidential, that order would have continued to be effective beyond the end of the proceeding."

12. Herein, the Orders above may be primarily substantive in nature because of the open court principle which applies to tribunals and if a finding, determination, decision and/or order denied the Applicant with access to the same, it would be final in nature because it would deny his substantive right to be able to advance the necessary evidence to seek the orders he is seeking.

**VOLUME #1(A):** Open Court Principle (the "**OCP**")

13. The leading case in Ontario, as per the ONSC (as per The Honourable Justice E.M. Morgan) regarding the right of the media is *Toronto Star v. AGO*, in 2018. It provided the interpretation of what constituted "**Adjudicative Records**" in the context of section 20 of the *SPPA*.[ii] It also provided insight into the requirements of courts with respect to those records that it is required to keep and that which are producible by the Court along with other parties and persons.

14. In *Toronto Star*, the were substantive infringements of the rights of *Toronto Star* along with procedural infringements as a consequence of FIPPA which invoked section 52(1) of the Constitution.

15. In relation to the substantive infringements, reverse onus under FIPPA (as the civil proceeding did not involve the review of specific decisions or conduct although context and underlying facts were important) on disclosing personal information was inconsistent with the open court principle, which presumes openness and transparency. The court held that the burden of justifying non-disclosure should rest on the party seeking to limit access, not the requester (see: (paras 57-65, 91-95).

16. In relation to the procedural infringements, the delays caused by FIPPA's procedural requirements, including notice periods and decision timelines, burdened the right to timely access to information. However, the court found these delays to be minimal impairments of section 2(b) (paras 66-71, 96-109).

17. The open court principle applies to those adjudicative records that were subsequent to the document (**Purported Rojas Information**) that commenced the criminal proceeding against the Applicant. The Applicant is a party to that criminal proceeding and entitled to the underlying documents, particularly the actual and authentic ones.

18. Litigation, whether before a tribunal (particularly an adjudicative one) or a court, is an exercise searching for truth. Disclosure over suppression is the standard.

19. Former Chief Justice Lamer has pointed out that characterizing administrative bodies depends on their function in the circumstances: "the principles for judicial independence . . . are applicable in the case of an administrative tribunal, where the tribunal is functioning as an adjudicative body settling disputes and determining the rights of parties" (see: paragraph 42 of *Toronto Star*).

20. The open court principle is one of the hallmarks of a democratic society . . . [and] is inextricably tied to the rights guaranteed by s. 2(b) of the *Charter* (see: paragraph 54 of *Toronto Star*).

21. This open access, and concomitant protection of freedom of the press, is in keeping with those tribunals' obligation "in exercising their statutory functions . . . [to] act consistently with the *Charter* and its values". This is not optional or discretionary on the part of administrative tribunals. As the Supreme Court has stated, "the protection of *Charter* guarantees is a fundamental and pervasive obligation, no matter which adjudicative forum is applying it". (see: paragraph 55 of *Toronto Star*).

22. It is important to keep in mind that freedom of expression "protects listeners as well as speakers" (see: paragraph 56 of *Toronto Star*).

23. But the open court principle in s. 2(*b*) of the *Charter* only applies to Adjudicative Records (see: paragraph 62 of *Toronto Star*).

24. Statutory tribunals exercising judicial or quasi-judicial functions involving adversarial-type processes which result in decisions affecting rights truly constitute part of the "administration of justice": *Southam Inc v Canada (Minister of Employment and Immigration),* [1987] FCJ no 658 (QL). The legitimacy of such tribunals' authority requires that confidence in their integrity and understanding of their operations be maintained, and this can be effected only if their proceedings are open to the public: *Germain v Saskatchewan (Automobile Injury Appeal Commission),* 2009 SKQB 106.

25. Tribunals like the **HRTO** conduct administrative hearings governed by the *Statutory Powers Procedure Act* ("*SPPA*") are required to be open to the public. In principle, therefore, it is uncontroversial that "[t]he 'open court' principle" -- at least in some version -- "is a cornerstone of accountability for decision-making tribunals and courts" (see: paragraph 6 of *Toronto Star*).

26. The Supreme Court of Canada has stated that "[a]ll law and law-makers that touch the people must conform to [the *Charter*]. Tribunals and commissions charged with deciding legal issues are no exception." (see: *Toronto Star*, paragraph 14).

27. The open court principle, which is inextricably tied to the rights guaranteed by s. 2(b) of the *Charter*, applies to administrative tribunals as well as to courts.

**VOLUME #1(B):** Adjudicative Records: what are they and what do they cover?

28. The ONSC in *Toronto Star* found as follows at paragraph 9:

> "[9] To this definition I would add tribunal dockets or schedules of hearings and registers of actions or proceedings kept by the [page 275] adjudicative tribunals. These are included in a similar list of **Adjudicative Records** published by the Canadian Judicial Council. That list is accompanied by an advisory, which is equally applicable here, as to a number of items that are not included as Adjudicative Records, as follows:
>
>> 'This definition does not include other records that might be maintained by court staff, but that are **not** connected with court proceedings, such as license and public land records. It does not include any information that merely pertains to management and administration of the court, such as judicial training programs, scheduling of judges and trials and statistics of judicial activity. Neither does it include any personal note, memorandum, draft and similar document or information that is prepared and used by judges, court officials and other court personnel (see: Model Policy for Access to Court Records in Canada, Judges Technology Advisory Committee, Canadian Judicial Council, September 2005.)

29. The 'adjudicative records' that the Applicant is seeking from either or both of the levels of courts (ONCJ and ONSC) that is connected to the criminal proceeding of which the conduct of the Respondents is impugned in the context of this **HRTO** Application.

30. Herein, the Applicant is not seeking any personal note of the justice, who, in fact (if any), duly executed the Intake Court Endorsement but the actual documents themselves.

## VOLUME #1(C): Interlocutory vs. Final Decisions

31. The following is trite law. Interim decisions can be temporary or permanent as can injunctions. Permanent injunctions are often referred to as 'quia timet injunctions'.

32. Where an order is temporary or provisional, it therefore does not meet the standard set by the Supreme Court of Canada in *Bell Canada v Canada (Canadian Radio-Television and Telecommunications Commission)*. In that case, the court held that it is "inherent in the nature of interim orders that their effect as well as any discrepancy between the interim order and the final order may be reviewed and remedied by the final order."

33. In a legal context, "interim" generally means temporary or provisional, referring to a court order or situation that is in place until a final decision or resolution is reached. Interim measures are often used to address urgent issues or preserve the status quo while a case is pending. These are temporary court orders issued before a final judgment is made. These are temporary measures taken to address urgent situations, often involving human rights or legal protections. For example, the European Court of Human Rights may grant interim measures to prevent irreparable harm before a case is fully decided. They are designed to address immediate concerns or preserve the existing state of affairs until a more thorough investigation or final ruling can be made.

34. Order #1 may be seen to be temporary as there is a provision that the **TPS Respondents** may be relieved of the same. Order #2 and #3 are not because once the records are produced and the affidavit, verifying compliance with the Order #2, are filed, they fall under the ambit of the 'open court principle' subject to any confidentiality orders sought in relation to the same.

35. There is also a distinction between interlocutory and final decisions. Ergo, an interlocutory interim decision may be a substantive one or it may be fashioned or classified as an 'interlocutory interim decision' that is procedural in nature. Whether a substantive interim decision is an interlocutory or final decision is the subject of much debate because it often affects judicial review or appellate rights (whether statutory or prescribed).

36. Further, a decision issued by this Tribunal which one party may believe to be interlocutory is a final one even though it did not decide all of the merits of the case but it affected a right, substantive in nature, such it was final for purposes of a judicial review or appeal.

37. Even motions that were dismissed that sought leave to issue third- and fourth-party claims were **FINAL** (***SEE:*** *Khalil et al. v. United Investment Services Ltd. et al.*, 1975 CanLII 490 (ONSC) ["*Khalil*"]. Khalil has been cited positively in cases like *Denison Mines Ltd. v. Ontario Hydro*, 2001 CanLII 5681 (ON CA) at paragraph 21. In order to advance a third party or fourth party claim herein or an amendment to pleadings can only be responsibly exercised if an applicant has the material facts to do so.

38. In *Hollinger*, an order maintaining a sealing order ***FINALLY*** determined that a newspaper could not exercise its right to have access to the court file and was thus **FINAL** for the purposes of appeal (see *Hollinger Inc. v. Ravelston Corp.*, 2008 ONCA 207 ["*Hollinger*"].

39. Herein, since the document is titled "**Intake Court Endoresement**", the documents leading to the creation of the same must be producible. Moreover, if a different justice, in fact, executed the "Intake Court Endoresement" and the document purporting to be an 'intake court endorsement' and apparent 'warrant in the first' (whatever that means in fact or at law), then the ONSC Chief Justice and ONCJ Chief Justice must

have a record of the same. It is not a personal note, draft or otherwise because of what Constable Romano represented to the Applicant.

40. Even further, where a question of law is at issue, even when the ongoing inferior tribunal proceeding is ongoing, is a final order or decision. An order dismissing a motion for summary judgment on a **question of law**, where the only genuine issue is the question of law should probably be regarded as giving rise to *res judicata* and, hence, a ***FINAL* order (*SEE:*** *David Polowin Real Estate Ltd. v. Dominion of Canada General Insurance Co.*, 2004 CanLII 19916 (ON CA) ["*Polowin*"]). In Polowin, Polowin Real Estate Ltd. was the plaintiff, respondent and moving party and Dominion Insurance Company [abbreviated] was the defendant, **Applicant**, and responding party [on motion] wherein the moving party sought to quash the appeal involving order of Justice Roland J. Haines of the Superior Court of Justice dated July 14, 2003. Its quashing motion was predicated on the distinction between interlocutory vs. final orders with naturally the moving party seeking an order, declaration or finding that the orders were interlocutory. The ONCA disagreed, while later finding that McNaughton was wrongly decided,

> "[5] The orders are also not just a declaration that the principle of *stare decisis* applies because there is an order dismissing the motions. As stated in *S (R) v. H. (R)* (2000), 2000 CanLII 17038 (ON CA), 52 O.R. (3d) 152 (C.A.) 159- 160:
>
> > …an order dismissing a motion for summary judgment on a question of law, where the only genuine issue is the question of law (as provided for in rule 20.04(4)) should probably be regarded as giving rise to a *res judicata* and, hence, a final order.
>
> [6] The effect of the order of the motions judge was to preclude the defendants from contesting that they were not entitled to deduct the deductible portion of an insurance policy and claim salvage in the cases before him. Thus, the orders are final."

41. The natural corollary is that orders that **grant** the adding of a party, causes of action and/or amendments to pleadings are ***interlocutory***. **Permitting** amendments to pleadings are generally ***interlocutory* (*SEE:*** *Dynasty Furniture Manufacturing Ltd. v. Toronto-Dominion Bank*, 2015 ONCA 137 ["*Dynasty Furniture*"]). Order g**ranting** leave to amend a statement of claim was ***interlocutory* (*SEE:*** *Merling v. Southam Inc., et al*, 2000 CanLII 5621 (ONCA) ["*Merling*"]).

42. An order ADDING a defendant is ***interlocutory*** (*nota bene*: *supra*, order refusing or denying the addition of a proposed party is ***FINAL*** which is trite in the sense that if a party has a cause of action and can seek relief against said proposed party, the refusal ***FINALLY*** disposes of that substantive right) (***SEE:*** *Prescott & Russell (United Counties) v. David S. Laflamme Construction Inc.*, 2018 ONCA 495 ["*Prescott*"]). Order granting leave to amend paragraphs in a statement of claim was **interlocutory (*SEE:*** *Natario v. Rodriguez,* 2015 ONCA 227 ["*Natario*"]).

***VOLUME #1(C):*** Orders Sought

43. The Applicant seeks the following orders pursuant to, inter alia, the *HR Code*, section 16.1 of the *SPPA, Specific Rules* 1.7(i),(k), (o), (p), (q) and (t) in the form of interlocutory orders with some of the interlocutory orders being of a permanent nature:

   a. **Order #1**: An **Order** requiring that the **TPS Respondents** to retain, preserve and not destroy or delete any and all records, documents and materials involving or relating to the **Purported Rojas Information** and the **Intake Court Endorsement** that are about or relate to the Applicant from August 2024 to December 19, 2024 on a permanent basis and until relieved by the Tribunal of said order (the "**Preservation Order**");

b. Order #2: an **Order** that the **TPS Respondents** search for and produce all of the underlying documents involving the seeking of and purported obtaining of an "Intake Court Endorsement" (fictitiously represented as an 'arrest warrant') including but not limited to:
   i. documents to and from the TPS and presiding justice(s);
   ii. originals of all documents involved in the same;
   iii. documents to and from the TPS and Crown Counsel involving the same;
   iv. a copy of the Intake Court Endorsement that was in fact executed by a justice (not the *document* in the court file as represented by Ms. Anguelova provided by Ms. Anguelova to the HRTO and the Applicant); and
   v. any other documents related to the above but not captured to the above.

   (the "**TPS Production Order**")

c. Order #3: An **Order** that the **TPS Respondents** produce an affidavit by the 'officers in charge' and/or 'responsible police officers' who engaged in the search, denoted supra, as to where they searched, how they searched, what was obtained and what may have been deleted or destroyed (the "**Affidavit Order**" or "**Compliance Verification Order**");

d. Order #4: an **Order** the ONCJ (Brampton Courthouse) produce for inspection by the Applicant and Respondents copies of any communications between the TPS and court officers, the TPS and **JP Jiri** regarding the Intake Court Endorsement (if any), and an Order that to the extent that the ONCJ (Brampton Courthouse) does not have any documents that said ONCJ courthouse confirm the same (the "**Brampton Courthouse Order**");

e. Order #5: An order that the **ONCJ** (including 10 Armoury Courthouse or any other courthouse wherein a justice of the ONCJ received the Purported Rojas Information) produce for inspection by the Applicant and Respondents copies of any communications between the TPS and court officers to its justices or court staff regarding or about the Purported Rojas Information and Intake Court Endorsement (the "**ONCJ Production Order**");

f. Order #6: An order that the ONSC including the Divisional Court produce for inspection by the Applicant and Respondents copies of any communications from the TPS and court officers to any justice or court staff member of its courthouses regarding or about the Purported Rojas Information and Intake Court Endorsement (the "**ONSC Production Order**");

g. Order #7: An Order that Ontario Crown counsel of the ONCJ or ONSC produce any of the denoted records above for inspection by the Parties herein (the "**Crown Counsel Production Order**");

h. **Order #8**: An Order requiring Mrs. Aphrodite Artopoulos and the Goldview Respondents to produce any of the denoted records captured by the above for inspection by the Parties herein (the "**Artopoulos Goldview Production Order**").

i. Order #9: An Order compelling Mrs. Aphrodite Artopoulos to produce a sworn or declared statement, under the penalty of perjury, as to whether she attended the premises of CAMH including the land and premises located at 1025 Queen Street, Toronto, Ontario, on Friday, October 25, 2024, and whether she had involving in the theft of the Applicant's property on said date or thereafter (the "**Artopoulos Affidavit Order**"). An Order granted *nunc pro tunc* amending the HRTO Application to include the material fact that the Landlord engaged in further adverse treatment towards the Applicant regarding said theft and relief sought against her pursuant to the *HR Code* on a restitutionary and non-restitutionary level (the "**Pleading Amendment Order**");

j. **Order #10**: Such other relief that is consistent with the above and that may arise after the Respondents and interested persons provide their responsive material and/or positions.

**VOLUME #1(D):** The importance of robust evidentiary record for Charter issues

44. *Charter* cases, particularly those involving Charter damages, require a robust factual basis. The Supreme Court of Canada has emphasized that *Charter* decisions should not be made in a "factual vacuum" and that courts must insist upon the careful preparation and presentation of a factual basis in most *Charter* cases. This means that claims of *Charter* violations, and the justification for those violations (under section 1), must be supported by concrete and meaningful evidence.

45. The Respondents failed to respond to the Applicant's NOM #1 which sought an order of expedited proceedings.

46. The Supreme Court, in cases like *MacKay v Manitoba and Danson v Ontario (Attorney General*), has highlighted the importance of a factual basis in *Charter* cases. This is because *Charter* cases often involve fundamental principles and concepts that are of great importance to Canadian society, and courts must ensure that decisions are not based on unsupported hypotheses or assumptions. In essence, Charter questions, which require the procedural requirement of an NOCQ to be served on the AGO and AGC in Ontario, are often ones where no deference is shown to the decision maker of a tribunal or inferior court.

47. This HRTO Proceeding is no exception. The *HR Code* is paramount to all other provincial legislation in this province (the "**Paramountcy Provision**").

48. The Crown is bound by the *HR Code*.

49. Simply placing large volumes of expert opinion on the record does not automatically render it admissible, and a rigorous admissibility analysis is necessary. Courts may require evidence to demonstrate that a law or action has a disproportionate impact on a specific group, potentially requiring statistical evidence or evidence of broader group disadvantage. The constitutional (and other) cases the Supreme Court of Canada handed down during the recent year confirm it: the contextual approach is the right approach. One should no longer be seen to be abstract and formalistic. The so-called contextual approach is the proper one for the analysis of equality rights, the concept of cruel and unusual punishment, the principles of fundamental justice, the issue of reasonable limits imposed on rights, as well as for the interpretation of provincial human rights codes and for the application of the common law confessions rule.

50. The increased emphasis placed on the human dignity aspect in equality rights analysis gives the impression that the relevant context becomes more and more a context of values, of opinions promoted and symbolic messages sent, rather than one of empirical facts about disadvantaged people. What counts is one's self-esteem, how one feels, how one is made to feel when one is denied a social benefit, and not the actual empirical facts, i.e., the loss or non-access to a "targeted ameliorative program," for example. If the approach is still a contextual one, it has more to do with a context of values, feelings, ideas and impressions than with an empirical one concerned with how the world works, with how people live, with "*conditions matériel's d'existence*". The assessment as to whether a person's dignity has been demeaned requires the very orthodox tools judges have always used to make value judgments. It is far from a wild judicial incursion into empirical facts. It preserves the judicial power to decide and limits the role that parties can play by bringing social science evidence to the courts.

51. The quest for factual foundations in constitutional cases will sometimes take the form of an explicit elaboration of reasonable hypothetical facts having nothing to do with the case at bar, or even with social facts empirically observed.

52. Perhaps, this form of a purported warrant in the first by way of an Intake Court Endorsement is a current method or procedure utilized by the TPS. If it is, it needs to be known herein and to the public by way of a public decision. HRTO decisions involving the police have shaped our country for the better by shining a light on procedures and practices that needed immediate remediation.

53. Perhaps, the TPS are utilizing *justices of the peace* in different courts with specific reference to those appointed justices of the peace that were formerly of TPS police divisions. To the extent that TPS is doing so, the issue of whether that rises to a conflict of interest (or an apparent one), it must be decided. A 'justice of the peace' in refusing or granting any warrant is required to be independent and impartial. If Justice Of the Peace Jiri was the individual who received evidence regarding the above, then this must be known. What is known is that he did not include his 'digital signature' therein.

54. The Applicant has been exhaustive in this submission, as per the public interest issue, general legal questions of central importance to the legal system as a whole, questions of boundaries between a multitude of administrative bodies (federally and provincially), and questions that are evasive of this judicial review and potentially of great importance to practice before the **HRTO**.

55. A potential standard of review for either parties would involve the following principles from *Vavilov*:

a. a statutory appeal mechanism;
b. whether any errors would be potential errors of law;
c. general legal questions of central legal importance to the legal system;
d. questions involving the jurisdictional boundaries between multiple administrative bodies; and
e. potential persistent discord *intra* the **HRTO** on various decisions of importance.

56. The Applicant would add two potential additional potential grounds to rebutting the presumptive standard of review of reasonableness which could occur herein:

a. questions are evasive of the judicial review along with those issues potentially a matter of general practice important in proceedings before the HRTO; and
b. questions involving the jurisdictional boundaries of the HRTO (i.e. the administrative tribunal where the Legislature evinced its will to have the HRTO be paramount in upholding human rights of all individuals in Ontario) and that of the Courts as it relates to compelling records that may be subject to 'administrative privilege' of the Courts.

57. The Charter is of course paramount to the *HR Code*. Nonetheless, there have not been any challenges to the provisions of the *HR Code* being inconsistent with the Charter.

58. The HRTO Specific Rules are unequivocal that the obtaining of documents and information (subject to them being redundant per se) intra the HRTO Proceeding is subject to a quasi-implied undertaking. There is no dispute that these documents are required to be produced herein and the issues involving the Respondents, including whether the prima facie non-governmental respondents, were acting as agents as of the TPS cannot be decided *in the abstract* or in the dark.

59. It is why 'fraud unravels everything' when it is specifically proven.

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| **VOLUME #1**(E): New Evidence (see: Declaration #10) |

60. The now obtained evidence by the Applicant is contained in Declaration #10. This new and fresh evidence was not only game-changing and groundbreaking to the Applicant in various other matters and for his life, liberty and security but herein.

61. The **nine (9) unredacted images** from CAMH video surveillance from October 25, 2024 from **1:11:53** to **1:12:39 p.m.** (E.S.T.):

   a. the time span of 46 seconds involving the following events:
   b. the male individual arrived directly at the table where the McLean Property was placed with a female individual by the door where the Applicant customarily would enter and leave when placing down his property to review a matter or otherwise;
   c. he inspected one piece of black luggage (with TD Bank insignia) but did not take the same;
   d. then stole the McLean Backpack and all property located therein; and
   e. then was at approximately the area between the corridor and main entrance foyer.

62. Further images from prior to 1:11:53 p.m. and after 1:12:39 p.m. have been requested by the Applicant through *FIPPA* processes. Ergo, there will be an external verification of the conduct of certain respondents in relation to certain orders sought.

63. The individual thief is that of Mr. David Karat, an individual ADR specialist (neither a paralegal nor a lawyer), who was clearly motivated by estopping the Applicant from exercising his rights in the potential JRPA Proceeding and/or potential statutory appeal.

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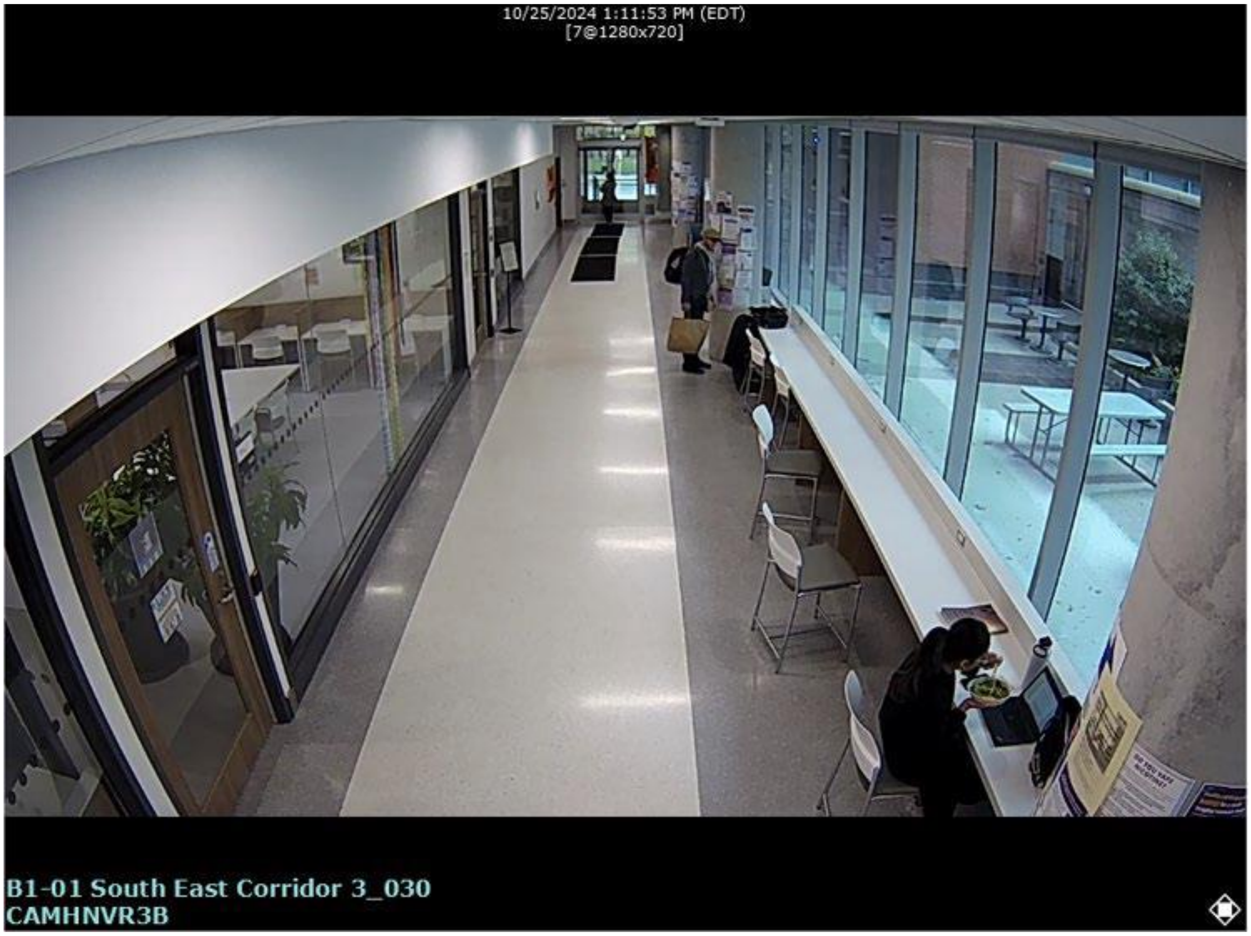
| **<u>VOLUME #1</u>**(E)(i): Mrs. Artopoulos on the lookout for Mr. Karat of TDI in the first image from CAMH (albeit now unredacted) |

64. The Applicant has sworn evidence that the lady who is keeping lookout for Mr. David Karat is that of Mrs. Afrodite Artopoulos:




65. The height and weight, along with hair colour, are the same of that Mrs. Artopoulos. It resembles an individual standing on the lookout in the proverbial sense.

66. The Applicant has sworn that he has seen Mrs. Artopoulos wear a similar clothing ensemble to the same one.

67. The timing of the same in that Mrs. Artopoulos was served with the **HRTO** Application on the day preceding October 25, 2024.

68. Was it merely a coincidence? The HRTO need not speculate and nor does the Applicant and other parties.

69. In an odd sense, the rights of a complainant must be respected because complaints should be taken seriously (if they are meritorious) and improper police conduct under the Police ID **457197,** must not lead to post facto conduct that jeopardizes valid and meritorious criminal investigations.

70. However, the Applicant's Charter rights were breached out of the gate by the Purported Rojas Information.

71. Why would Constable Romano and the TPS not have on them, despite being required by the Criminal Code, this "Intake Court Endorsement" when Constable Romano represented to the Applicant after the False Pretense Email and Fictitious DC Kolankowski Warning? Simply put, because the Applicant would have reviewed it and confirmed with them that it was not a Form 7, and walked out of the TPS which would have been well within his rights.

72. There is no dispute that the Applicant demanded a copy of the purported arrest warrant.

73. So why could the Landlord have been involved in the October 25 2024 theft of the Applicant's property? She may have realized that the Applicant would obtain disclosure with the benefit of his identification and taking the identification would assist him in that proceeding or others.

## VOLUME #2: Material Facts and Seminal Rules involved in this Motion

74. The material facts are outlined in the following:

a. **HRTO** Application;
b. Memorandum of Law supporting the NOCQ and the NOCQ itself;
c. **NOM #1** and Declaration #1 in support of the same and the NOCQ;
d. Declarations #2 to #9; and
e. Declaration #10 of May 28, 2025, in support of this Motion.

75. The Applicant filed and served his NOCQ in accordance with Rule 4 of the *Specific Rule*s. The *Specific Rule* Number 4 states:

> "Where a party intends to question the constitutional validity or applicability of any law, regulation, by-law or rule or where a party claims a remedy under s. 24(1) of the *Charter* of Rights and Freedoms, in relation to an act or omission of the Government of Canada or the Government of Ontario, a Notice of Constitutional Question must be delivered to the Attorneys General of Canada and Ontario and all other parties and filed with the Tribunal as soon as the circumstances requiring the notice become known and, in any event, at least 15 days before the question is to be argued."

76. *Specific Rule* 16 states the following:

**RULE 23 INTERIM REMEDIES**

23.1

> An Applicant may request that the Tribunal order an interim remedy in an Application. A Request for an Interim Remedy **must** be made in Form 16. If the Request is made at the same time the Application is filed, it need not be delivered to the other parties. If it is made at a later stage, it must be delivered to the **other parties** and filed with the Tribunal.

23.2

The Tribunal may grant an interim remedy where it is satisfied that:

- the Application **appears** to have merit;
- the balance of harm or convenience favours granting the interim remedy requested; and,
- it is just and appropriate in the circumstances to do so.

23.3

A Request for an Interim Remedy must include:

- a detailed description of the order sought;

- one or more declarations signed by persons with direct first-hand knowledge detailing all of the facts upon which the Applicant relies; and,
- submissions with respect to the merits of the Application, the balance of harm or convenience and why an interim remedy would be just and appropriate in the circumstances, in accordance with the Rule 23.2.

23.4

The other parties must file their response, if any, in Form 17, Response to Request for Interim Remedy, not later than **seven days** after the Form 16 was delivered. The Form 17 must be delivered to the other parties and any affected persons identified in the Application and filed with the Tribunal not later than seven days after the request was sent or as the Tribunal directs.

23.5

A Response to Request for Interim Remedy must be delivered to all other parties and filed with the Tribunal and must include:

- one or more declarations signed by persons with direct first-hand knowledge detailing all of the facts upon which the Respondent relies; and,
- submissions with respect to the merits of the Application, the balance of harm or convenience and why an interim remedy would not be just and appropriate in the circumstances, in accordance with the Rule 23.2.

77. Rule 23.2 contains a conjunctive legal test that is distinct from the common law test (see: infra, with respect to the comments regarding the 'wholesale nature of the common law test').

78. The appearance of merit could be analogized to a serious question to be tried but they are distinct. The appearance of merit is a lower test than the serious question to be tried part of the *RJR MacDonald* test.

79. "**Appearance**" is defined as: the way that someone or something looks (see: Oxford Online Dictionaries).

80. "**Merit**" is defined as: the substance of a legal case *apart* from matters of jurisdiction, procedure, or form (see: Oxford Online Dictionary).

81. The Tribunal clearly has jurisdiction herein as the Application was sent out to the Respondents after the slight clerical addition to the name of Sergeant Cassidy. The Respondents have done everything they could to 'drag, stall and delay' and it is understandable as to why in light of the Purported Rojas Information et al.

82. The Respondent Landlord has gone as far as intentionally misleading the Tribunal.

83. The balance of convenience or harm is the second leg of the test in Rule 23 but it is branch three of the *RJR MacDonald* test. The test for irreparable harm is a much tougher part of the test to meet in the *RJR MacDonald* part of the test than an others.

84. In *Law Society of British Columbia v British Columbia*, 2024 BCSC 1292, The Honourable Madam Justice Gropper articulated in beautiful fashion the legal test in *RJR MacDonald* and with a focus on irreparable harm found that the LSBC in its challenge to the new Legal Professions Act (2024) could not overcome that second part of the test. As such, the third part of the test became moot.

85. The HRTO Application obviously has much in the way of merit. However, only an *appearance* of merit is required. The Applicant meets the first part of that test. The merits of the Application are addressed in the submissions to date along with declarations.

86. In addressing the 'serious question to be tried' part of the test, Justice Gropper noted the following which is applicable to legal counsel herein as well as others:

> "[70] The Province agrees that based upon the low threshold required, the plaintiffs have likely satisfied this first test, but point out that there are "some frailties" in the plaintiffs' submissions. These include whether unwritten constitutional principles can invalidate legislation and whether the independence of the bar means that lawyers must be "free from influence or incursion by any source", and whether they are under the current *LPA*. The Province says that lawyers are not and have never been "free from influence or incursion by any source". Lawyers have always been subject to some kinds of influence by non-lawyers and external regulation, including from the Law Society, and the Truth and Reconciliation Commission. They are subject to the provisions of the *Criminal Code*, R.S.C. 1985, c. C-46 and the *Human Rights Code*, R.S.B.C. 1996, c. 210."

87. Madam Justice Gropper found the following in her reasons for decision under the irreparable harm part of the legal test under the following heading and then commencing at paragraph 80. She commenced with outlining the position of the LSBC and Trial Lawyers vis-à-vis the BC government:

> "Will irreparable harm result if the interlocutory injunction is not granted?
>
> > [83] The Trial Lawyers support that position. They say that the Province is committed to its path. If the plaintiffs are shown to be correct at trial, the Act, without suspending the transitional provisions, "the constitution has been and will continue to be infringed each day moving forward as the 'transition' unfolds."
> >
> > [84] The Province asserts that when assessing the irreparable harm and the balance of convenience criteria, it is necessary to distinguish between the two orders sought: One is a stay of the transitional provisions that are currently in force. The other is quia timet injunction, enjoining the LGIC from bringing the substantive provisions into force. These orders are different and the legislative provisions at issue are different.
> >
> > [85] Robert J. Sharpe describes quia timet injunctions in his text, Injunctions and Specific Performance (Toronto: Thomson Reuters, 2023) at §1:20.:
> >
> > Where the harm to the plaintiff has yet to occur the problems of prediction are encountered. Here, the plaintiff sues *quia timet*—because he or she fears—and the judgment as to the propriety of injunctive relief must be made without the advantage of actual evidence as to the nature of harm inflicted on the plaintiff. The court is asked to predict that harm will occur in the future and that the harm is of a type that ought to be prevented by injunction. Thus, while all injunctions involve predicting the future, the label *quia timet* and the problem of prematurity relate to the situation where the difficulties of prediction are more acute in that the plaintiff is asking for injunctive relief before any of the harm to be prevented by the injunction has been suffered."

88. The Applicant herein fears that the TPS Respondents may destroy documents that are relevant to what actually occurred in relation to the without notice, ex parte and in camera (or perhaps manipulated altogether) "Intake Court Endoresement". The Applicant is not suggesting that a justice (or justice of the peace) engaged in the same as there is no endorsement by a justice in that Intake Court Endorsement.

89. Ms. Anguelova's explanation for how she obtained the same and her lack of discharge of her obligations as a lawyer, as required by the Response Form (which requires listing of key evidence), which was by way of

order of the HRTO, must draw an adverse inference (see: section 43(9) of the *HR Code*). No further efforts have been provided by Ms. Anguelova.

90. The 'doom and gloom view' of the LSBC turned out to be false as per the LPA Transition website but for purposes of its apocalyptical view, it is reproduced:

> "[86] The Law Society asserts that all of the provisions of the Act must be suspended and enjoined. The transitional provisions are inextricably intertwined with the substantive provisions. The irreparable harm begins with the transitional provisions and continues with the substantive provisions.
>
> [87] The Law Society says that the injunction sought regarding the substantive provisions is not premature. It is skeptical that the LGIC will not enact the substantive provisions for 18-24 months or will let the transitional planning process complete. It provides this example:
>
> > The Province goes so far as to suggest that it would be better to wait and see if the Transitional Board and transitional Indigenous Council reach an irreconcilable impasse in trying to make the first rules, with the attendant consequences for public confidence in the administration of justice, than to prevent this impasse from happening while the constitutional challenge is determined.
>
> [88] The irreparable harm the Law Society says that it will suffer is its continued existence is in doubt, and its administrative programs will be irreparably interrupted. It will be forced to discharge a duty to participate in the transitional planning process that does not uphold and protect the public interest in the administration of justice. It will have been forced to act against both the independence of the bar and its mandate. The benchers will have been forced to act against their oaths of office. This harm to the Law Society's institutional fabric and to its reputation could not be repaired."

91. The province countered in relation to all but with respect to the quia timet injunction:

> "[101] In respect of the substantive provisions, the Province argues that the plaintiffs have not established a *quia timet* injunction to prevent prospective harm should be granted. They have not shown that "a high degree of probability the alleged harm will in fact occur imminently or in the near future" without the injunction."

92. The Applicant has declared evidence in his Declaration #10 regarding the same. This relates to Order #1.

93. Nonetheless, the Applicant is required to meet a much lower test which is that of the balance of convenience.

94. "**Just**" is based on or behaving according to what is morally right and fair (see: Oxford Online Dictionaries).

95. What is morally right and fair when an individual has his life, liberty and security placed in jeopardy along with adverse treatment and decisions which continue to have adverse consequences and effects upon him

96. "**Appropriate**" is suitable or proper in the circumstances (see: Oxford Online Dictionaries).

97. The balance of convenience favours the Applicant for all of the reasons in evidence relied upon here with specific reference to Declaration #10. However, the Respondents and other persons will have the opportunity to swear evidence in response to the same.

98. Simply put, in relation to documents that existed at the material and relevant time 'extinct is forever'.

## VOLUME #3: STATEMENT OF ISSUES (GENERAL)

99. The issues are as follows:

a. While the *HR Code* is paramount to any other statutes or provisions therein, is the **HRTO** entitled to grant interim orders pursuant to the *HR Code*, HRTO Specific Rules and/or section 16.1 of the *SPPA*? If so, may the **HRTO** grant substantive interim orders?

b. In relation to the interim substantive orders sought which legal test (i.e. the legal test under the HRTO Specific Rule 23 or the common law test pursuant to *RJR MacDonald*) is required to be met? Which legal test is more favourable or easier to meet for a moving party?

c. How does the false document and forged signature involving Justice of the Peace Mr. George Jiri ("JP Jiri") factor into the analysis of adjudicative privilege versus administrative privilege of court records, the open court principle, and access to justice involved in the same?
   *i.* Should the various branches and divisions of Ontario courts be able to rely on 'administrative privilege' or 'administrative immunity' when there is no threat of testimonial compulsion by any justice per se, and the Court staff including the offices of chief justices are employed pursuant to a collective bargaining agreement between their 'group' and The Crown In Right of Ontario?
   *ii.* Further, while the seeking of arrest warrant, search warrants and approval of charges (but for private prosecutions) are typically conducted *in camera* and *ex parte* to the potential accused, how do the legal principles involving the same factor in the Orders Sought at **VOLUME** #1(C)?

d. Should the Landlord be required to produce an affidavit denying or admitting her involvement in the theft of the Applicant's property on October 25, 2024, by Mr. David Karat of TD Insurance Group, and denying or admitting that she is in the female who is approximately 5'4", with brown hair, wearing long pants, an approximate three quarter length shawl, and facing Eastbound towards the entry and exit point of the CAMH building at 1025 Queen Street, Toronto, Ontario?

e. Should the Goldview Respondents be required to produce documents in light of the Threat and Extortion by Ms. Ferguson on the same date as the Purported Rojas Information?

## VOLUME #4: ARGUMENT

### **VOLUME** #4(A): THE *HR CODE*

100. The *Human Rights Code* (the "*HR Code*") has its preamble as follows:

> And Whereas it is public policy in Ontario to recognize the dignity and worth of <u>every person</u> and to provide for equal rights and opportunities without discrimination that is contrary to law, and having as its aim the creation of a climate of understanding and mutual respect for the dignity and worth of each person so that each person feels a part of the community and able to contribute fully to the development and well-being of the community and the Province;
>
> And Whereas these principles have been confirmed in Ontario by a number of enactments of the Legislature and it is desirable to revise and extend the protection of human rights in Ontario;

Therefore, Her Majesty, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

Part 1 of the *HR Code*

Sections 1 and 2

101. Section 1 and 2 of the *HR Code* are relevant herein:

> Services
>
> 1 Every person has a right to equal treatment with respect to services, goods and facilities, without discrimination because of race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, sexual orientation, gender identity, gender expression, age, marital status, family status or disability. R.S.O. 1990, c. H.19, s. 1; 1999, c. 6, s. 28 (1); 2001, c. 32, s. 27 (1); 2005, c. 5, s. 32 (1); 2012, c. 7, s. 1.
>
> Accommodation
>
> 2 (1) Every person has a right to equal treatment with respect to the occupancy of accommodation, without discrimination because of race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, sexual orientation, gender identity, gender expression, age, marital status, family status, disability or the receipt of public assistance. R.S.O. 1990, c. H.19, s. 2 (1); 1999, c. 6, s. 28 (2); 2001, c. 32, s. 27 (1); 2005, c. 5, s. 32 (2); 2012, c. 7, s. 2 (1).

102. The obvious issue involving discrimination is that of the Applicant's physical and mental disabilities as sworn or declared herein. The **TPS Respondents** and Goldview Respondents are subject to section 1 of the *HR Code*.

103. Mrs. Artopoulos was and is subject to section 2 of the *HR Code*.

104. There is no dispute that the Respondents engaged and continue to engage, by their unremedied conduct, in adverse treatment and adverse decisions towards the Applicant commencing at various distinct times. The Landlord's adverse treatment towards the Applicant is particularized in his Declarations with particular reference to declarations, uncontroverted evidence at this time, involving her spoken views of his and what to do to him on account of his Mental Disorders.

105. The conduct to be known involving the Goldview Respondents will be in their document production involving the above. There is no dispute that the conduct of Ms. Ferguson and Goldview on September 23, 2024, was adverse treatment. This was the same day of the Court Officer Rojas Purported Information. The timing cannot be coincidental.

106. The conduct involving the TPS and **TPS Respondents** was and is adverse treatment of the Applicant. As it was holding the Applicant's medication without his consent and utilized as a 'dangling carrot' to lure him to the TPS 14th Division, the Applicant's disabilities were a factor in THAT adverse treatment. Whether his disabilities were a factor in other adverse treatment can only be determined after the granting of the above orders.

Section 8 of the *HR Code*

107. Section 8 of the *HR Code* deals with reprisals:

> Reprisals
> 8 Every person has a right to claim and enforce his or her rights under this Act, to institute and participate in proceedings under this Act and to refuse to infringe a right of another person under this Act, without reprisal or threat of reprisal for so doing. R.S.O. 1990, c. H.19, s. 8.

108. Section 9 of the *HR Code* states:

> **9** No person shall infringe or do, directly or indirectly, anything that infringes a right under this Part. R.S.O. 1990, c. H.19, s. 9.

109. The definitions are relevant herein along with ss. 10(3) of the *HR Code*:

> "disability" means,
>
> (a) any degree of physical disability, infirmity, malformation or disfigurement that is caused by bodily injury, birth defect or illness and, without limiting the generality of the foregoing, includes diabetes mellitus, epilepsy, a brain injury, any degree of paralysis, amputation, lack of physical co-ordination, blindness or visual impediment, deafness or hearing impediment, muteness or speech impediment, or physical reliance on a guide dog or other animal or on a wheelchair or other remedial appliance or device,
>
> (b) a condition of mental impairment or a developmental disability,
>
> (c) a learning disability, or a dysfunction in one or more of the processes involved in understanding or using symbols or spoken language,
>
> (d) a mental disorder, or
>
> (e) an injury or disability for which benefits were claimed or received under the insurance plan established under the *Workplace Safety and Insurance Act, 1997*; ("handicap")

> **Past and presumed disabilities**
>
> (3) The right to equal treatment without discrimination because of disability includes the right to equal treatment without discrimination because a person has or has had a disability or is believed to have or to have had a disability. 2001, c. 32, s. 27 (4).

110. None of the Respondents could rely on section 17 of the *HR Code* which is the undue hardship defence. Ergo, if the HRTO finds at the appropriate time that the Applicant's Disabilities were a factor in the adverse treatment, discrimination is proven.

111. The Supreme Court of Canada in *Meiorin*, sets out a framework for examining whether the duty to accommodate has been met. If *prima facie* discrimination is found to exist, the person responsible for accommodation must establish on a balance of probabilities that the standard, factor, requirement or rule:

a. was adopted for a purpose or goal that is rationally connected to the function being performed;
b. was adopted in good faith, in the belief that it is necessary for the fulfilment of the purpose or goal; and
c. is reasonably necessary to accomplish its purpose or goal, in the sense that it is impossible to accommodate the claimant without undue hardship.

112. Supreme Court of Canada in *Meiorin*, sets out a framework for examining whether the duty to accommodate has been met. If prima facie discrimination is found to exist, the person responsible for accommodation must establish on a balance of probabilities that the standard, factor, requirement or rule of which the following were considered (see: *Meiorin*, para. 65):

a. whether the person responsible for accommodation investigated alternative approaches that do not have a discriminatory effect;
b. reasons why viable alternatives were not implemented;
c. ability to have differing standards that reflect group or individual differences and capabilities;
d. whether persons responsible for accommodation can meet their legitimate objectives in a less discriminatory manner;
e. whether the standard is properly designed to ensure the desired qualification is met without placing undue burden on those to whom it applies; and
f. whether other parties who are obliged to assist in the search for accommodation have fulfilled their roles.

113. Even assuming that there were sufficient reasonable grounds to believe that an arrest warrant should be issued over a summons, which there has not been any evidence to support the same, then the police officers and court officers should have considered the same in seeking the same and providing that necessary evidence to the attention of the justice who received the same. Moreover, it should have been considered in how the TPS executed their process (although no arrest warrant process existed and no justice direct peace officers to engage in the same).

114. The issue of double compensation or double damages is one that can be addressed with the hearing of the NOCQ.

115. The requirements of the HRTO to decide issues of facts and/or law before it, along with the speed and manner in which it must decide the same et al are reproduced:

**Powers of Tribunal**
**39** The Tribunal has the jurisdiction to exercise the powers conferred on it by or under this Act and to determine all questions of fact or law that arise in any application before it. 2006, c. 30, s. 5.
**Disposition of applications**
**40** The Tribunal shall dispose of applications made under this Part by adopting the procedures and practices provided for in its rules or otherwise available to the Tribunal which, in its opinion, offer the best opportunity for a fair, just and expeditious resolution **of the merits** of the applications. 2006, c. 30, s. 5.
**Interpretation of Part and rules**
**41** This Part and the Tribunal rules shall be liberally construed to permit the Tribunal to adopt practices and procedures, including alternatives to traditional adjudicative or adversarial procedures that, in the opinion of the Tribunal, will facilitate fair, just and expeditious resolutions of the merits of the matters before it. 2006, c. 30, s. 5.

**41.1** Repealed: 1995, c. 4, s. 3 (3).
***Statutory Powers Procedure Act***
**42** (1) The provisions of the *Statutory Powers Procedure Act* apply to a proceeding before the Tribunal unless they conflict with a provision of this Act, the regulations or the Tribunal rules. 2006, c. 30, s. 5.
**Conflict**

(2) Despite section 32 of the *Statutory Powers Procedure Act*, this Act, the regulations and the Tribunal rules prevail over the provisions of that Act with which they conflict. 2006, c. 30, s. 5.

**Tribunal rules**

**43** (1) The Tribunal may make rules governing the practice and procedure before it. 2006, c. 30, s. 5.

**Required practices and procedures**

(2) The rules shall ensure that the following requirements are met with respect to any proceeding before the Tribunal:

1. An application that is within the jurisdiction of the Tribunal shall not be finally disposed of without affording the parties an opportunity to make **oral submissions** in accordance with the rules.
2. An application may not be finally disposed of without written reasons. 2006, c. 30, s. 5.

**Same**

(3) Without limiting the generality of subsection (1), the Tribunal rules may,

(a) provide for and require the use of hearings or of practices and procedures that are provided for under the *Statutory Powers Procedure Act* or that are alternatives to traditional adjudicative or adversarial procedures;

(b) authorize the Tribunal to,

(i) define or narrow the issues required to dispose of an application and limit the evidence and submissions of the parties on such issues, and

(ii) determine the order in which the issues and evidence in a proceeding will be presented;

(c) authorize the Tribunal to conduct examinations in chief or cross-examinations of a witness;

(d) prescribe the stages of its processes at which preliminary, procedural or interlocutory matters will be determined;

(e) authorize the Tribunal to make or cause to be made such examinations of records and such other inquiries as it considers necessary in the circumstances;

(f) authorize the Tribunal to require a party to a proceeding or another person to,

(i) produce any document, information or thing and provide such assistance as is reasonably necessary, including using any data storage, processing or retrieval device or system, to produce the information in any form,

(ii) provide a statement or oral or affidavit evidence, or

(iii) in the case of a party to the proceeding, adduce evidence or produce witnesses who are reasonably within the party's control; and

(g) govern any matter prescribed by the regulations. 2006, c. 30, s. 5.

**General or particular**

(4) The rules may be of general or particular application. 2006, c. 30, s. 5.

**Consistency**

(5) The rules shall be consistent with this Part. 2006, c. 30, s. 5.

**Not a regulation**

(6) The rules made under this section are not regulations for the purposes of Part III of the *Legislation Act, 2006*. 2006, c. 30, ss. 5, 11.

**Public consultations**

(7) The Tribunal shall hold public consultations before making a rule under this section. 2006, c. 30, s. 5.

**Failure to comply with rules**

(8) Failure on the part of the Tribunal to comply with the practices and procedures required by the rules or the exercise of a discretion under the rules by the Tribunal in a particular manner is not a ground for setting aside a decision of the Tribunal on an application for judicial review or any other form of relief, unless the failure or the exercise of a discretion caused a substantial wrong which affected the final disposition of the matter. 2006, c. 30, s. 5.

**Adverse inference**

(9) The Tribunal may draw an adverse inference from the failure of a party to comply, in whole or in part, with an order of the Tribunal for the party to do anything under a rule made under clause (3)(f). 2006, c. 30, s. 5.

116. The Tribunal does not have the power to defer a motion and there is no power of a respondent party to avoid responding to the same.

117. However, the Respondents did so in relation to NOM #1.

118. To not grant the relief herein would cause a substantial wrong to the Applicant.

119. The best opportunity to dispose of the merits herein is with the benefit of the orders sought being granted.

**VOLUME** #4(A)(II): What is 'a factor' in adverse treatment?

120. The legal test for discrimination which is not by definition under the *HR Code* is from the common law. In cases like *Radek v. Henderson Development (Canada) Ltd*. (No. 3) (2005), 52 C.H.R.R. D/430, 2005 BCHRT 302 at para. 482 and those decisions that have followed and adopted the legal test, the legal test incorporated racial stereotyping or racial profiling therein. As such, the Applicant submits that the concepts of mental health profiling and physical disability profiling can be substituted:

(a) The prohibited ground or grounds of discrimination need not be the sole or the major factor leading to the discriminatory conduct; it is sufficient if they are **a factor**;

(b) There is no need to establish an intention or motivation to discriminate; the focus of the enquiry is on the effect of the respondent's actions on the complainant;

(c) The prohibited ground or grounds need not be the cause of the respondent's discriminatory conduct; it is sufficient if they are **a factor** or operative element;

(d) There need be no direct evidence of discrimination; discrimination will more often be proven by circumstantial evidence and inference; and

(e) Racial stereotyping will usually be the result of subtle unconscious beliefs, biases and prejudices.

121. Therefore, a plain reading indicates that 'a factor' may be a minor factor in the adverse treatment that an individual sustains by another individual or persons.

122. However, there may be evidence of direct discrimination by the Respondents which is producible by the above. As such, that is consistent with the *HR Code* requiring the Tribunal to decide applications in an expeditious, cost-effective and just manner with respect to the merits.

**VOLUME** #4(B): **HRTO** Rules

**VOLUME** #4(B)(I): The *Common Rules*

123. The relevant common rules are as follows.

124. Rule A3.1 states:

> “The rules and procedures of the tribunal shall be liberally and purposively interpreted and applied to:
> promote the fair, just and expeditious resolution of disputes, allow parties to participate effectively in the process, whether or not they have a representative,
> ensure that procedures, orders and directions are proportionate to the importance and complexity of the issues in the proceeding
>
> Rules and procedures will be interpreted and applied in a manner consistent with the *Human Rights Code*.”

125. Rule A4.2 states:

> “The tribunal may vary or waive the application of any rule or procedure, on its own initiative or on the request of a party, except where to do so is prohibited by legislation or a *Specific Rule*”

**VOLUME #**4(B)(II): **HRTO** *Specific Rule*s

126. Rule 1.7 of the *Specific Rule*s has the following relevant aspects:

> In order to provide for the fair, just and expeditious resolution of any matter before it the Tribunal may:
>
> i. make or cause to be made an examination of records or other inquiries, as it considers necessary;
>
> k. on the request of a party, direct another party to adduce evidence or produce a witness when that person is reasonably within that party's control
> o. advise when additional evidence or witnesses may assist the Tribunal
> p. require a party or other person to produce any document, information or thing and to provide such assistance as is reasonably necessary, including using any data storage, processing or retrieval device or system, to produce the information in any form;
> q. on the request of a party, require another party or other person to provide a report, statement, or oral or affidavit evidence;
> t. attach terms or conditions to any order or direction

127. These specific subrules are relied upon by the Applicant in support of the granting of the orders sought.

**VOLUME #4(C): Section 16.1 of the *SPPA***

128. Section 16.1 of the *SPPA* states:

**Interim decisions and orders**

**16.1** (1) A tribunal may make interim decisions and orders.

**Conditions**

(2) A tribunal may impose conditions on an interim decision or order.

**Reasons**

(3) An interim decision or order need not be accompanied by reasons. 1994, c. 27, s. 56 (32).

**VOLUME #4(C)(I): The legal precedents involving interim orders**

129. The precedent in *Toussaint v. Ontario (Health and Long Term Care)*, 2010 **HRTO** 2102 (CanLII) interpreted section 16.1 of the *SPPA* along with finding that there was no conflict between the *HR Code* and the *SPPA*.

130. Prior to that decision of the **HRTO**, other decisions allowed interim orders. The Tribunal has granted substantive interim remedies in four decisions: *Lavallee v. Zulich Enterprises*, 2009 **HRTO** 402; C.D. v. Wal-Mart Canada, 2009 **HRTO** 801 (CanLII); *Mitchell v. Halton Condominium Corporation #499*, 2010 **HRTO** 1507 (CanLII); and Andersen v. Carleton Condominium Corporation #8, 2010 **HRTO** 1761 (CanLII).

131. The Tribunal has also dealt with various other requests for interim remedy on the basis that it had the power to do so, see, in particular, *TA v. 60 Montclair*, 2009 **HRTO** 369 (CanLII). However, in none of those cases has the Tribunal's power to order an interim remedy been challenged. The respondent in Toussaint was the first to raise this issue and the respondent government failed on the law.

132. *Do the orders sought herein advance the remedial objects of the HR Code?* The question answers itself. However, for completeness, if the dignity and value of humans in this province is in fact and at law valued, then ordering various persons to produce for inspection in this HRTO Proceeding that which is in their power, possession and control is consistent with ensuring that humans are protected from abuses of process and police forces being able to circumvent the requirements of endorsements by justices of the Ontario courts and then able to restrain individuals from their Charter entrenched liberties by falsely claiming that police forces have 'arrest warrants'. In fact herein, no 'arrest warrant' (Form 7) has ever been produced.

133. *Will the production of the above records and responses put an end to the dispute?* It is impossible to know whether they will or will not without production of the same. The Applicant cannot prove a negative.

134. The TPS are bound by the Criminal Code and complying with the Charter. Subjecting it to orders involving what in fact occurred is not an inconvenience but a requirement by law.

135. The Courts are protectors of the constitution and Charter so providing an answer as to whether a different justice may have entertained and received a Form 2 is not a matter of inconvenience but a matter of being honest, open and transparent while protecting the integrity of the Courts including JP's, PCJ's and ONSC justices.

136. There is no dispute that the Applicant was and is the subject of a theft on October 25, 2024. He has to pull off miny miracles while exhausting resources with FIPPA and MFIPPA requests and OIPC appeals of different organizations and institutions.

137. While the Applicant has a surfeit of technological expertise and coding experience, the unredacting of the CAMH images which he had tried for months can only be chalked up to 'divine intervention'. It occurred on May 4, 2025. The Applicant was in the process of including the same into affidavit material and when he was copying the redacted images into another document, the redactions disappeared.

138. The decision in *TA v. 60 Montclair*, above, acknowledged that, while the jurisprudence and common law principles and criteria governing the issuance of interlocutory injunctions can be of assistance, neither the test laid out in RJR-MacDonald Inc. v. Canada (Attorney General), 1994 CanLII 117 (SCC), [1994] 1 S.C.R. 311, nor the common law approach to injunctions ought to be adopted in a wholesale way, or seen as determinative. The Chair took a purposive approach, referring to the statutory context in which the Tribunal operates. He concluded that "the Tribunal should also develop an "indigenous" approach which reflects the remedial objects of the Code, and the requirement to resolve applications fairly and expeditiously".

The Threshold for whether the Application has merit

139. In *TA v 60 Montclair*, Adjudicator Keene found:

> [12] As noted in TA v. 60 Montclair, courts and tribunals have generally taken the view that the threshold for meeting the first element is low. Whether the criteria is described as a "serious issue to be tried", a "prima facie" or "strong prima facie case", or as here "appears to have merit", the traditional view is that it would be inappropriate to set the bar any higher than requiring the applicant show it has an arguable case and that the claim is neither frivolous nor vexatious.
> [13] A review of the Application, the Response and accompanying materials shows that the applicant has stated facts which, if proven, could amount to a breach of the Code. In this case, the low threshold requirements of Rule 23.2 (a) are clearly met.

Balance of Convenience

140. In *TA v. 60 Montclair*, the HRTO found:

> Does the Balance of Harm or Convenience Favour Granting the Interim Remedy Requested?
> [14] The second element in Rule 23.2 involves the balancing of the relative harm or convenience in granting or refusing the request. In TA v. 60 Montclair the Tribunal stated the question as whether the harm the applicant will suffer if the Request is not granted outweighs the harm to the respondent if the Request is granted.
> [15] In this case, the applicant has maintained that she still has difficulties with the doors which she uses to enter and leave her apartment building. She has also detailed, in her Application, the effect on her of frequently having to ask others to assist her with so fundamental a task as entering and exiting her apartment building:
> Having to ask someone to help you enter and exit your apartment building puts you in a situation where you feel you have to justify your very existence. You feel like you better have a really good and valid reason to want to go out if you are going to bother people to help you...This makes you feel constantly indebted to them. The end result is that you think twice about going out at all.

> [16] As noted above, the applicant's doctor indicates that the access difficulties experienced by the applicant have had a significant effect on the applicant's mental and physical health.
> [17] By contrast, while the respondent opposes the granting of an interim remedy, the respondent cites no harm or inconvenience that would result from the granting of the remedy requested. In fact, the respondent states that the assistance requested is being given. The balance of harm and convenience favours the granting of the remedy.

141. The Applicant has condescended upon a variety of particulars relating to the harm and damage he is suffering as a result of the false document, forged signature et al, and the inability to argue his constitutional question and to have his **HRTO** Application heard on its merits in an expeditious, just and cost-effective manner.

| Just and Convenient |
|---|

142. In *TA v. Montclair*,

> Is it "Just and Appropriate in the Circumstances" to Award the Remedy Sought?
>
> [18] As noted in TA v. 60 Montclair:
>
> the last element recognizes the discretionary nature of interim relief. There will be a number of factors the Tribunal will consider, but ultimately it calls upon the Tribunal member to decide whether the request is necessary to further the remedial purposes of the Code, and is fair in all of the circumstances.
> [19] The respondent's position is that the remedy requested is unnecessary, as "there is no suggestion or evidentiary basis for concluding that any of this assistance will be withdrawn". It may be true that the assistance would continue to be available, but in this case, an order would apparently give the respondent **no inconvenience**, and might alleviate the difficulty being experienced by the applicant that stems from the uncertainty of her situation. Providing the remedy furthers the remedial purposes of the Code and is fair in these circumstances.

143. There is no dispute that breaches of the Applicant's human rights occurred but it is to the extent that they occurred. There is no inconvenience to having the Respondent Parties list and produce records for inspection. As for production by JP Jiri, the ONCJ and ONSC, the distinction between administrative privilege versus adjudicative privilege is analyzed infra.

| *Dua* |
|---|

144. The decision of the ONSC Divisional Court addressed section 16.1 of the *SPPA* and the doctrine of prematurity in Dua.

145. The licensee (veterinarian) was of the most unsavoury and criminal type licensee.

146. The Discipline Committee of the College of Veterinarians of Ontario imposed an interim suspension on a veterinarian pending the outcome of disciplinary proceedings. The proceedings arose after the veterinarian was criminally charged with sexual touching and invitation to sexual touching involving a minor, the daughter of the owner of a veterinary facility where he worked. The veterinarian had a history of professional misconduct and criminal convictions for similar conduct, including sexual misconduct with minors and breaches of conditions on his license (paras 1, 4-9).

147. The procedural history was a sordid and lengthy one:

a. Discipline Committee, September 27, 1996: Found the veterinarian guilty of professional misconduct for inappropriate touching of staff members and imposed a six-month suspension, a fine, and monitoring conditions. The appeal was dismissed on January 21, 1999 (paras 4-5).
b. Discipline Committee, January 22, 1999: Found the veterinarian guilty of sexual misconduct with minors and revoked his license. The appeal was dismissed on February 28, 2001 (para 5).
c. Criminal Court, July 30, 1999: Convicted the veterinarian on 29 counts of sexual offences involving minors and sentenced him to 31 months in prison with conditions upon release (para 6)
d. Criminal Court, November 24, 2003: Convicted the veterinarian of obtaining sexual services from minors and sentenced him to eight months in prison and probation (para 7).
e. College of Veterinarians of Ontario, July 22, 2013: Reinstated the veterinarian's license with conditions, including restrictions on being alone with minors (para 8).
f. Discipline Committee, June 17, 2021: Granted an interim suspension of the veterinarian's license pending the outcome of disciplinary proceedings (para 12).

148. The issues in *Dua* were:

a. Did the Discipline Committee have jurisdiction to impose an interim suspension under section 16.1 of the *SPPA*?
b. Was the interim suspension reasonable based on the evidence?
c. Should the application for judicial review be dismissed on the basis of prematurity
d. Should the disciplinary proceedings be stayed pending the outcome of the criminal proceedings?

149. The ONSC found that the Committee had jurisdiction to grant the section 16.1 of the *SPPA* relief.

150. The Committee reasonably concluded that section 16.1 of the *SPPA* granted it the authority to impose substantive interim orders, including suspensions. The language of section 16.1 is broad and does not limit the power to procedural matters. The Committee's interpretation was consistent with case law and statutory principles, including the need to protect the public (paras 22-33).

151. Reasonableness of Interim Suspension: The Committee applied the correct legal test for interim relief, considering whether there was a serious issue to be tried, irreparable harm, and the balance of convenience. It reasonably found that the allegations were serious, the risk of harm to the public and the profession outweighed the harm to the veterinarian, and the evidence supported the suspension. The Committee also reasonably considered the veterinarian's prior misconduct and criminal history, which were relevant to assessing the risk

152. Prematurity: The application was not premature because the interim suspension had immediate and significant effects on the veterinarian's ability to practice, and there were no alternative remedies available within the administrative process (paras 17-21).

153. Stay of Disciplinary Proceedings Refused: The Committee reasonably denied the stay, finding that the veterinarian failed to demonstrate irreparable harm or that the public interest would be better served by delaying the proceedings. The decision was consistent with case law on parallel criminal and professional misconduct proceedings (para 42).

154. The following were the orders in the JRPA before a tripartite panel of the Divisional Court:

a. the application for judicial review was dismissed (para 44).

b. The motion for a stay of the disciplinary proceedings was dismissed (para 44).
c. Costs of $7,500 were awarded to the College (para 44).

**VOLUME #**4(D): The Common Law Test by Analogy For Good Measure: Principles of interim, interlocutory injunction

155. The following are the principle from the common law. The test for whether an order is final or interlocutory is set out in *Hendrickson v. Kallio*, 1932 CarswellOnt 148 (ONCA). The case concerned an application to quash an appeal of an interim decision. The Court held that:

> "The interlocutory order from which there is no appeal is an order which does not determine the real matter in dispute between the parties – the very subject matter of the litigation, but only some matter collateral. It may be final in the sense that it determines the very question raised by the application [to quash the appeal of the interim decision], but it is interlocutory if the merits of the case remain to be determined."

156. To the extent that the HRTO would find that the granting of some orders, with specific reference to which orders, decided the real matter in disputes vis-à-vis the Applicant and the Respondents (some or all), it would need to be specified.

**VOLUME #4(E): The Justice Perrell Article**

157. In 1989, the now Honourable Mr. Justice Paul M. Perrell, in his capacity as a member of the Ontario LSUC (now the LSO) wrote an article in 1989, in the Canadian Bar Review, titled, "**THE INTERLOCUTORY INJUNCTION AND IRREPARABLE HARM**". It should go without saying that Justice Perrell is one of the great legal minds in Canadian history. His judicial decisions often involve complex class actions and many of his decisions have been affirmed in the SCC. For ease of reference, the article will be referred to and defined as the "Justice Perrell Article".

158. The synopsis of the Justice Perrell Article is as follows:

a. The concept of irreparable harm is a critical element in the test for granting an interlocutory injunction. Irreparable harm was originally a manifestation of the principle that equity would not act if the common law remedy was adequate;
b. In the context of injunctions, irreparable harm is concerned with the ***adequacy of damages***; and
c. the adequacy of damages in the particular context of interlocutory injunctions, showing that the meaning of irreparable harm is that the plaintiffs injury, combined with the effect of the delays inherent in the administration of justice, cannot be compensated for or overcome by an award of money or other remedy at trial.

159. The word "just" connotes equity. There is no ability for compensation in delays intra proceeding to assist in overcoming the lack of document production and the necessity of the arguing of the constitutional questions which were tendered in early November 2024.

160. In in the context of this Tribunal, there is no jurisdiction to award costs like other tribunals within the cluster of the Tribunals Ontario.

161. Moreover, the damages are confined to breaches of the *HR Code* and the jurisdiction thereunder.

162. The article argues and demonstrates by a detailed review of the case law that without ignoring the other elements of the test, a plaintiff should be granted an interlocutory injunction if, and only if, the remedy at trial, whatever it might be, will come too late to do justice.

163. The Applicant respectfully submits that the **HRTO** should not regularly entertain interim relief motions, and particularly injunctive relief motions on a regular basis, but only when the statute will not provide sufficient relief at the hearing proper or if bifurcated at the damages hearing, specifically adequacy of damages in quantum and proprietary in nature.

164. The underlying purpose of the administrative statutory tribunal in the  is to provide more affordable, quicker, and just access to receiving access to justice. It is not supposed to mirror complex litigation

165. However, any applicant should not be further prejudiced because he or she is suffering daily losses that could, by the time of a hearing proper, render those amounts non- recoverable.

**VOLUME #4(F): Irreparable harm: originally a manifestation of equity**

166. Justice Perrell Article notes irreparable harm was originally a manifestation of the principle that equity would not act if the common law remedy was adequate. The corollary is that if the common law was not adequate then equity could act.

**VOLUME #4(F)(i): Irreparable harm: adequacy of damages**

167. In the context of injunctions, irreparable harm is concerned with the “adequacy of damages”. In the **HRTO** context, a creature of statute, the segue or extrapolation would be where the “statute does not provide enough in damages”. In this regard, the “statute” is the *HR Code*. In the context of procedure, the statute is the “*SPPA*”. It is trite that “damages” and “compensation” are interchangeable in the context of this interim motion before the **HRTO**.

**VOLUME #4(G): Nature of the harm rather than magnitude**

168. The Court noted the nature of irreparable harm and provided some examples at para 64:

> "Irreparable" refers to the nature of the harm suffered rather than its magnitude. It is harm which either cannot be quantified in monetary terms or which cannot be cured, usually because one party cannot collect damages from the other.

**VOLUME #4(H): Clear and Convincing Evidence**

169. In *Glooscap Heritage Society v Minister of National Revenue*, 2012 FCA 255 at para 31, [2012] FCJ No. 1661 [“*Glooscap*”], the Federal Court of Appeal noted the need for clear and convincing evidence of unavoidable harm, noting that speculation and assertions are not sufficient. This guidance reflects the earlier statement of the Court of Appeal in *Centre Ice Ltd. v National Hockey League*, [1994] FCJ No 68, 46 ACWS (3d) 519 [“*Centre Ice*”].”

**VOLUME #4(I): Submissions are not evidence**

170. It is trite that submissions are not evidence. However, the **Applicant** has been fastidious in swearing declarations to include his current status in how he is suffering from a health, life, and security standpoint, and not having access to the underlying documents produced by the TPS Respondents continues to cause suffering and loss which attracts restitution and non-restitutionary relief.

**VOLUME #4**(J): the historically amorphous nature of irreparable harm

171. The nature of irreparable harm, however, was not easy to define in 1989. Justice Perrell undertook an exhaustive analysis of the history and demarcation between the courts of equity and the courts of common law.

**VOLUME #4**(K): What is meant by inadequacy of damages

172. As a concept, irreparable harm responds to the principle that equity act in response to inadequacies in the common law with a formula or definition based on the inadequacy of common law damages. The definition, however, only identifies and does not elucidate the operative principle.

173. *What precisely is meant in the theory of equity by the inadequacy of the damages? Put more simply, why and how are damages inadequate?*

174. An investigation of these questions may begin with the example of specific performance, another equitable remedy, the availability of which has also been explained by the inadequacy of the damages.

**VOLUME #4**(L): Substitutional Relief, Liability Rule, and Property Rule

175. By comparison, the common law provides "substitutional" relief for breach of contract. The innocent party is required to mitigate his or her injury and the defaulting party is ordered to pay money, called damages, to substitute for his or her failure to perform.

176. A liability rule means a person may take another's entitlement in this instance, the benefit of the contract at the cost of the court's assessment of value.

177. A property rule means that a party may take another party's entitlement only if that other party is prepared to sell or release the entitlement at an agreed upon price.

**VOLUME #4**(M): The intertwining nature of Sachs L.J. precedent, the *HR Code* and section 16.1 of *SPPA*: what is just in the circumstances?

178. In *Evans Marshall C&R Co . Ltd. v. Bertola SA*, Sachs L.J. of English Court of Appeal in 1973 comes closer still: The standard question in relation to the grant of an injunction, "Are damages an adequate remedy?", might perhaps, in the light of the authorities of recent years, be rewritten: "Is it just, in all the circumstances, that a plaintiff should be confined to his remedy in damages?

179. That damages are awarded only after a trial and are thus not subject to interlocutory error, then it is also understandable and it makes abundant sense that the adequacy of damages be a measure of the necessity of an interlocutory injunction and a prerequisite to interlocutory relief.

Volume 4(N): the role of the interlocutory injunction when comparing it the case of Toussaint

180. While it may sound trite, the most salient feature of an interlocutory injunction is that it is interlocutory. While circular reasoning indeed, interlocutory is merely that it is provisional pending a final decision.

**VOLUME #4**(O): Law of Nuisance: inadequacy of common law or statutory damages

181. Moving the investigation outside the law of contracts, the law of nuisance sheds light on the nature of the inadequacy of common law damages when compared to an injunction. In the case of a continuing nuisance, while damages are difficult to calculate and do not prevent future injury, a permanent injunction recognizes the full extent of the plaintiff's property rights and stops the continuance of injury. Further, in these cases, damages may be regarded as a cost of doing business and the courts are understandably adverse to allowing the wrongdoer to buy, or in effect expropriate, the innocent party's right to enjoy reasonably his or her property.

**VOLUME** #4(P): Property at issue: interlocutory injunction reigns supreme

182. Viewed in this way, common law damages and a liability rule may be seen to be inadequate when compared to equitable relief and a property rule.

**VOLUME #4**(Q): Inadequacy of damages: injunction better than damages

183. The meaning of inadequacy of damages is that the injunction is better than damages: Irreparable harm simply means that in a particular context an equitable remedy is better than damages.

**VOLUME** #4(R): Nuisance: ongoing nuisance with the Applicant

184. In cases involving a continuing nuisance, although common law damages remain an alternative remedy and although the courts are empowered by statute to grant damages in lieu of an injunction, the permanent injunction is the preferred remedy and the onus is on the wrongdoer to show that another remedy is adequate.

185. The "working rule" as to the substitution of damages comes from the case of *Shelfer v. London Electric Lighting Co.* where A.L. Smith L.J. stated:

a. In my opinion, it may be stated as a good working rule that: ‘If the injury to the plaintiff's legal right is small’;
b. And is one which is capable of being estimated in money;
c. And is one which can be adequately compensated by a small money payment;
d. And the case is one in which it would be oppressive to the defendant to grant an injunction; and
e. then damages in substitution for an injunction may be given.

186. There are no damages or compensation that the HRTO can grant for destruction of documents or the inability

**VOLUME #4(S): Application of the Law to the Facts**

187. The injury to the **Applicant**’s legal rights are not small. Whether there are documents that can lead to the inference, conclusion or finding that there was intentional, premeditated, and direct discrimination can only be determined with the documents.

**VOLUME #4(T): Professor Sharpe Comes Closer to the Point (see: Justice Perrell Article)**

188. When injunctions are sought in relation to **property rights** – they are the presumed remedy. While injunctions are sought to restrain interference with property rights or to restrain breach of negative covenants, injunctions are in fact so strongly favored that is mor accurate to say that they are the presumed remedy.

**VOLUME #4(U): Balance of convenience**

189. This arm of the test like the first branch is a foregone conclusion. The Court has repeatedly found in citing *Metropolitan Stores*:

> “[42] With respect to the balance of convenience, in RJR the Supreme Court of Canada adopted the description from Metropolitan Stores (at 129) of “a determination of which of the two parties will suffer the greater harm from the granting or refusal of an interlocutory injunction, pending a decision on the merits”. The SCC noted that the factors to be considered will vary from case to case.”

190. It is important to note, which will be well-known to the Tribunal, that third party interests are not considered in the interlocutory injunction test. The Applicant has provided a surfeit of evidence as to how he will suffer and only time will tell. has presented none.

**VOLUME #**5: System in the Hands of Solicitors

191. The reasoning proffered with Ms. Anguelova is far removed from the standard of being a called member of the bar of the LSO. The recent firing of the CEO of the LSO shows that it, like the soon-to-be-defunct LSBC, is struggling with some of its integrity at the highest level, pardon the pun.

192. The ONSC (as per Reid J.) in <u>*Grossman*</u> found as follows:

> “The system is, in a sense, in the hands of the lawyers. The opportunity for stonewalling and improper concealment is there. Some solicitors grasp it. They will make only such production as can be forced from them. That is bad practice. It can work real injustice. It causes delay and expense while the other side struggles to see that which they had a right to see from the first. In such a contest the advantage is to the long purse. The worst consequence is that the strategy is sometimes successful, giving its perpetrators a disreputable advantage. The practice must be condemned. If it were widespread it would undermine the trial system.”

193. The purpose of litigation is to find the truth which is only possible with production of documents.

194. While Grossman applies to civil proceedings before the Court, the principle by analogy is apropos.

**VOLUME #**6: Administrative Privilege vs . Adjudicative Privilege

**VOLUME #**6(A): Adjudicative Privilege is not the same as Administrative Privilege

195. In Canadian law, "adjudicative privilege" (also defined as “**Deliberative Privilege**”) protects internal deliberations and communications of adjudicative bodies, including courts and tribunals. This privilege prevents disclosure of these documents, like memos, recommendations, and personal notes, to ensure the integrity of the decision-making process.

196. "Administrative privilege" (which dovetails to “**Administrative Immunity**”) generally protects the administrative functions of the judiciary, but it is not absolute and can be overridden in certain circumstances. For example, the administrative functions of a judge, like assigning cases or managing court operations, are generally protected from outside scrutiny, but this immunity can be lifted if there's a valid reason to review the administration of justice, according to *MacKeigan*.

197. The key differences are:

a. **Scope::** Adjudicative privilege is focused on internal deliberations of adjudicative bodies, while administrative privilege protects the administrative functions of the judiciary.
b. **Purpose:** Adjudicative privilege aims to ensure the integrity and impartiality of the decision-making process, while administrative privilege protects the independence of the judiciary from external interference.
c. **Enforcement:** Adjudicative privilege is typically raised to prevent the disclosure of internal documents, while administrative privilege can be invoked to protect judges from certain types of scrutiny or challenges.
d. **Limitations:** While adjudicative privilege is generally absolute, administrative privilege is not. It may be overridden if there's a compelling reason to review the administration of justice, according to the Supreme Court of Canada.

**VOLUME** #6(B): *MacKeigan*

198. While the SCC upheld the trial court decision and the NSCA decision, three justices of the seven dissented in part on whether the similar level of immunity existed in respect of a judge's administrative functions:

> "An important distinction must be drawn between the two types of judicial immunity. The privilege of the judiciary not to be questioned as to the decisions they have made on cases is of fundamental importance and absolute in nature. The privilege as to the administration of the courts, however, is not of the same fundamental importance and is qualified in nature. It is an adjunct to the adjudicative privilege."

199. Another restriction on the application of the doctrine of inherent jurisdiction appears to be that inherent jurisdiction cannot be used to create new rules of substantive law. Of course, the AGC and AGO must disassociate themselves from the conduct particularized herein but the question of remedy is one that can only be determined with the benefit of the documents, answers and information sought by the orders above.

200. *It is the appearance of justice that is required and not just actual conflicts of interest. Did JP Jiri in fact receive the Purported Rojas Information?*

**VOLUME** #6(C): Injured citizen's right to remedy

201. In *R. v. Germain*, the accused faced charges for aggravated assault and other related offenses, allegedly committed on July 18, 1983, in Plamondon, Alberta. After multiple court appearances without legal representation, the accused attempted to plead not guilty and elected trial by jury. The Provincial Court judge, concerned about the accused's repeated appearances without counsel and perceived delays, decided to remand the accused into custody to ensure legal representation was obtained, despite the accused's financial inability to secure legal aid or private counsel (paras 3-5). The Applicant argued for the quashing or staying of proceedings against him or dismissing the indictment based on an application pursuant to s. 24(1) of the Canadian *Charter* of Rights and Freedoms, citing violations of his rights due to the process leading to his remand in custody (para 1). The Crown opposed but not detailed arguments were presented.

202. The judge found that the accused's conduct did not constitute contempt of court and that the power to find a person guilty of contempt must be exercised with great prudence, which was not the case here (paras 8-9).

203. The judge determined that the accused's right under s. 11(a) of the *Charter*, to be informed without unreasonable delay of the specific offence, was infringed due to the summary conviction for contempt without clear communication of the specific nature of the contempt charged (paras 10-11).

204. The decision elaborated on the interpretation of "charge" in the context of contempt proceedings and the applicability of *Charter* rights, siding with the view that summary contempt proceedings can involve an "offence" under the *Charter* (paras 12-14).

205. The judge concluded that the accused's detention was arbitrary under s. 9 of the *Charter* and that the procedure leading to his deprivation of liberty was not in accordance with the principles of fundamental justice as required by s. 7 of the *Charter* (paras 15-16).

206. In considering the appropriate remedy under s. 24(1) of the *Charter*, the judge discussed the need for a remedy to be both just and appropriate, taking into account the seriousness of the offence and the community's expectations for the enforcement of criminal law. The judge suggested that remedies such as a lesser sentence upon conviction, a declaration of rights infringement, or monetary compensation could be considered in other circumstances (paras 17-31).

207. Ultimately, the judge decided that quashing or staying the proceedings or dismissing the indictment would not be just or appropriate in this case, given the nature of the charges and the unconnectedness of the rights infringement to the quality of the prosecution. The decision to deny the remedies sought was made with the possibility of the accused seeking other forms of relief (paras 32-37).

208. In essence, the decision of *Germani* opened the door for *Charter* relief when a justice is the cause of the *Charter* breach.

209. Where the accused's *Charter* rights were breached, liability was not imposed on the judge personally as found by Justice McDonald of the then Alberta Queen's Bench in 1984:

> [29] In the present case the accused was deprived of his liberty by virtue of an order of a judge. There can be no suggestion that an order of compensation could be made against the judge personally. Making such an order against a judge personally would subvert the long-established rule of public policy that, as Lord Diplock said in *Maharaj (No. 2), supra,* at p. 679, "a judge cannot be made personally liable for what he has done when acting or purporting to act in a judicial capacity". He continued:
>
>> The claim or redress under s. 6(1) for what has been done by a judge is a claim against the state for what has been done in the exercise of the judicial power of the state. This is not vicarious liability: it is a liability of the state itself. It is not a liability in tort at all: it is a liability in the public law of the state, not of the judge himself, which has been newly created by s. 6(1) and (2) of the Constitution.
>
> Whether the other observations made by Lord Diplock at pp. 679-680 as to the limits of this form of redress are applicable to the interpretation of s. 24(1) of the *Charter* need not be the subject of comment at this time, but I accept the passage just quoted as being an apt description of the juristic nature of the liability that may be imposed upon the state under s. 24(1) in the form of an order of monetary compensation.

210. In this regard, both the injured citizen's right to a remedy and the adjudicatory independence of justices in Ontario can be accommodated. Moreover, there is no 'personal risk' for any justice for speaking truth to power.

211. This is distinguished from the USA rule of law and doctrines; particularly the doctrine of sovereign immunity which preclude a remedy (direct against the government or state for the violation of the individual's or constitutional rights. The rationale behind the same is: The principle behind sovereign immunity is that the government should not be held to the same standard of due care as private parties, and its actions should not be subject to routine judicial review through individual tort litigation.

212. While testimonial privilege is not at issue herein, such immunity should only arise when the public interest demands. As the order sought herein is merely the production of records involved in the purported assignment and/or presiding justice over the Purported Rojas Information, the public interest and the human rights of all requires production of the same. The public confidence in the administration of justice is an interest that must be paramount; particularly when the *Charter* rights of an individual are at issue irrespective of whether it is a criminal matter.

213. A measure of accountability in administrative functions does not deflect the courts from the proper performance of their adjudicative functions but rather it encourage its and bolsters the same. Any form of privilege should not be used as a shield for any potential impropriety. *The reflexive question must be asked: if no wrongdoing, then what is the need to resist the disclosure of administrative records?* Administrative records being disclosed becomes necessary to protect that which non-disclosure was designed to protect; the proper functioning of the judiciary and its required independence including the appearance thereof. This was illustrated when a serious allegation is made in government operations (see: *Carey v. The Queen*, at 182).

**VOLUME** #6(D): Assignment and Composition of Panels

214. The minority in *MacKeigan* was cognizant of the above heading being a matter where testimony from a justice should have been required in relation to the composition of the panel. Practical concerns must also factor in as well like the avoidance of testifying when the administrative records can be disclosed. Avoidance of a multiplicity of proceedings must also be paramount. Where there is no threat of civil suit against a justice, the administrative privilege is most qualified and favours disclosure of the administrative records sought.

215. The competing interests become overwhelming when considering the following:

a. Rights of a citizen who are injured as a result of judicial misconduct (or the appearance of); and
b. Public interest in the disclosure of relevant evidence.

**VOLUME** #6(E): Distinction between impartiality and independence

216. In *Valente v. The Queen* (1983), the ONCA held that the alleged controls of provincial court judges did not impair the essential capacity of a PCJ to make an independent and impartial adjudication for purposes of section 11(d) of the *Charter*. The decision was appealed to the SCC. Le Dain J., for the SCC distinguished between the requirements of impartiality and independence:

a. **Impartiality**: subjective attitudes possessed by members of the court in relation to the issues and parties of a particular case; and
b. **Independence**: the traditional constitutional value of judicial independence involved with a status or relationship to others.
    i. Independence provides the foundation for a judge’s impartiality or lack of independence provides the foundation for a judge’s prima facie partiality to interested persons.

**VOLUME** #6(E)(I): Independence: individual and institutional

217. Unlike impartiality, independence involves both individual and institutional relationships. Le Dain J found that there was no set formula or relational standards, in terms of subjective measures and procedural rules, existed to secure the judiciary independence.

**VOLUME** #6(F): Three Essential Conditions: Independence under section 11(d) of the *Charter*

218. Those three conditions are:

a. Security of tenure;
b. Financial security; and
c. Administration matters bearing directly on the exercise of judicial function.

219. The third condition is not only defined in terms of adjudicative independence but administrative independence. In *Valente*, 1985 CanLII 25 (SCC), it quoted the following then Chief Justice of Ontario in The Honourable Justice Howland:

> "Howland C.J.O. drew a distinction, for purposes of the issues in the appeal, between adjudicative independence and administrative independence, which is reflected in the following passages from his reasons for judgment at pp. 432-33:
>
> When considering the independence of the judiciary, it is necessary to draw a careful distinction between independent adjudication and independent administration. It is independent adjudication about which the Court is concerned in this appeal. The position of the judiciary under the English and Canadian Constitutions is quite different from that under the American Constitution. In the United States the federal judiciary is a separate branch which includes judicial administration. While the report of Chief Justice Jules Deschênes, "Masters in their Own House", September, 1981, recommended the independent judicial administration of the courts, the Canadian Judicial Council, in September, 1982, only approved of the first two stages of consultation and decision sharing between the Executive and the Judiciary and was not prepared to approve at that time of the third stage of independent judicial administration.
>
> In Ontario, the primary role of the judiciary is adjudication. The Executive on the other hand is responsible for providing the court rooms and the **court staff**. The assignment of judges, the sittings of the court, and the court lists are all matters for the judiciary. The Executive must not interfere with, or attempt to influence the adjudicative function of the judiciary. However, there must necessarily be reasonable management constraints. At times there may be a fine line between interference with adjudication and proper management controls. The heads of the judiciary have to work closely with the representatives of the Executive unless the judiciary is given full responsibility for judicial administration."

220. This is an interesting point that if the Executive is responsible for the court staff, *yet the court staff of the Divisional Court have emails that reference the judiciary website, then does this remain today?*

**VOLUME** #6(F)(I): Masters In their Own House

221. Administration of the courts BY THE JUDICIARY is essential to judicial independence. It raises an interesting question as to how was JP Jiri if he was assigned at all? If not, when, how, where, and why did the TPS seek the approval of a criminal charge and a 'warrant in the first' (somewhat 'overkill' considering the evidence in support).

222. Three levels of independence were referred to by **Justice Jules Deschênes** in the aforementioned report by His Lordship:

a. Freedom from excessive interference with the judiciary's security of tenure; case flow management and access to support services;
b. Judicial control over rule making power of the courts; and
c. Complete independence.

**VOLUME #**6(F)(II): The Third Stage to Achieve Complete Judicial Independence in Administration: Free from Executive or Legislative Interference

223. It is the language of free from '**any** executive or legislative interference'. The Honourable Mr. Downey is de facto a member of the legislative and executive branch of the Ontario government.

224. The Court is NOT an agency of the State and judges are not factotums of the State.

**VOLUME #**6(G): Three Foundations of Judicial Independence

225. In *Beauregard*, Justice Dickson adopted the analysis of Le Dain J. in Valente, but specifically pointed to judicial independence resting on three foundations:

a. Impartial umpire;
b. Courts as defender of constitutions and *Charter* rights from government intervention; and
c. Constitution Act, 1867, judicial independence in the Superior Court by the *Judicature Sections*.

226. CJC Dickson was of the view that the principle of judicial independence will ONLY be achieved if the courts were, "completely separate in authority and function from ALL other participants in the justice system."

**VOLUME #**6(H): Judicial Independence: broad enough: (1) history: impartial arbiter; and (2) modern: defender of the Constitution

227. Judicial independence as a constitutional principle fundamental to the Canadian system of government possessing both institutional and individual elements. Actions by other branches of government which undermine the independence of the judiciary therefore attack our Constitution.

228. In order not to infringe the principle of judicial independence, any relations must be of a kind and of a degree that they do NOT encroach:

> " What is required, as I read *Beauregard v. Canada,* is avoidance of incidents and relationships which could affect the independence of the judiciary in relation to the two critical judicial functions -- judicial impartiality in adjudication and the judiciary's role as arbiter and protector of the Constitution." (see: *MacKeigan* at paragraph).

229. If justices invoke testimonial compulsion on the legal bases of absolute immunity so that they cannot be compelled by executive or legislative branch of governments to explain or account for his or her judgment, then the corollary must be that they are free to speak truth to power even when it is against the Executive or Legislative Branches.

**230.** ***There is a distinction between a justice having to account for an assignment of a certain justice and providing the answer or record as to whether a justice was assigned or not to the decision involved in the Form 2 Purported Rojas Information.***

231. In this regard, any breach of those orders granted would amount to contempt if done intentionally. In this manner, the judiciary takes back the judicial control and demonstrates its individual and institutional independence. *To the extent that it does not, what is the natural inference?*

232. This is not counter to the principle of judicial independence as it serves to maintain public confidence in the impartial administration of justice. The operation of our supreme law of the land is not held in abeyance because the *Charter* breaches are intra proceeding.

**VOLUME #6(I): Assignment of a Justice and whether a justice received the Form 2 Purported Rojas Information**

233. The orders above do not go to the heart or essential adjudicatory function of the judiciary. They may also involve administrative functions which were and are not only inconsistent with the integrity of judicial functions.

234. A flexible approach is required as opposed to a dogmatic one when no testimonial compulsion arises but rather the production of records that are required for a fully argued, with the benefit of an evidentiary record, in relation to the issues in this motion. The questions are primarily evasive of this motion and require a consistent and uniform answer.

235. When justices act malicious, corruptly or in bad faith, or in violation of an individual's natural justice and constitutional rights, they too must be held accountable over and above that which the Canadian Judicial Council can do. With respect to Provincial Court Judges, there is a different process. There is also a different process for justices of the peace.

236. The CJC does not afford the injured citizen a remedy for the loss he has suffered. As seen above in *R. v. Germain*, it is the imposition of liability on the state – not the justice personally. Hence, the requirement of bringing a *Charter* claim with an NOCQ as required by the CJA and by procedure in the Civil Rules upon having a reasonable belief of impugned conduct by the legislative branch (a section 52(1) remedy) (i.e. judicial review of legislation), impugned conduct by the Executive Branch (a section 24(1) remedy or section 24(2) remedy in the criminal sphere) or impugned conduct by the judiciary in rare circumstances but nonetheless under section 24(1) of the *Charter*.

**VOLUME #7: DENOUEMENT**

237. Like the decision in Yatar of the SCC, not hearing judicial reviews is not an option available to the Divisional Court any further, the same is applicable herein where there are constitutional questions posed that involve factual and legal issues not yet determined by the HRTO and the courts.

238. Justice delayed is justice denied. Justice is not free. Whether what happened to the Applicant (good, bad, indifferent, lawful or not) is systemic or idiosyncratic, it cannot be conducted in the dark or the abstract.

239. The public interest deserves that the orders above are granted so the HRTO is best situated to discharge its obligations as an independent and impartial adjudicative body of human rights in this province and whether any public interest remedies must follow:

All of which is respectfully submitted:

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

## ENDNOTES

[i]https://www.canlii.org/en/ca/scc/doc/1945/1945canlii27/1945canlii27.html

[ii]The application is restricted even further to those documents that qualify as records of tribunal proceedings. The *SPPA* contains a list of "records" for the purposes of hearings by tribunals covered by that Act. This list provides a ready definition of the documents to which the present application applies ("Adjudicative Records"). These include:

(a) any application, complaint, reference or other document, if any, by which the proceeding was commenced;
(b) the notice of any hearing;
(c) any interlocutory orders made by the tribunal;
(d) all documentary evidence filed with the tribunal, subject to any limitation expressly imposed by any other Act on the extent to or the purposes for which any such documents may be used in evidence in any proceeding;
(e) the transcript, if any, of the oral evidence given at the hearing; and
(f) the decision of the tribunal and the reasons therefor, where reasons have been given.