SCC File Number:

**IN THE SUPREME COURT OF CANADA**
(ON APPEAL FROM THE COURT OF APPEAL FOR ONTARIO)

BETWEEN:

**LUCIA DERENZIS**

**APPLICANT**
(Appellant)

AND:

**GORE MUTUAL INSURANCE COMPANY and**
**LICENCE APPEAL TRIBUNAL**

**RESPONDENTS**
(Respondents)

---

**APPLICATION FOR LEAVE TO APPEAL**
**(LUCIA DERENZIS, APPLICANT)**
(Pursuant to s. 40(1) of the *Supreme Court Act*, RSC, 1985)

---


**CAMPISI LLP**
7050 Weston Road, Suite 101
Woodbridge, ON L4L 8G7

**Imtiaz Hosein**
**Joeseph Campisi**
**Christos Kakaletris**
Tel: (416) 203-1115
Fax: (416) 203-7775
Email: imtiaz@campisilaw.ca
joseph@campisilaw.ca
christos@campisilaw.ca

**Counsel for the Applicant**

**SUPREME ADVOCACY LLP**
340 Gilmour St., Suite 100
Ottawa, ON K2P 0R3

**Marie-France Major**
Tel.: (613) 695-8855
Fax: (613) 695-8580
Email: mfmajor@supremeadvocacy.ca

**Agent for Counsel for the Applicant**

**CAMPORESE SULLIVAN DI GREGORIO**
Commerce Place, Suite 1700
One King Street West
Hamilton, ON L8P 1A4

**Arthur Camporese**
Tel: (905) 522-7068
Fax: (905) 522-5734
Email: acamporese@csdlawyers.ca

**Counsel for the Respondent,**
**Gore Mutual Insurance Company**

**LICENCE APPEAL TRIBUNAL**
Automobile Accident Benefits Service
15 Grosvenor Street, Ground Floor
Toronto, ON M7A 2G8

**Morgana Kellythorne**
**Douglas Lee**
Tel: (416) 509-4767
Tel: (437) 221-7701
Fax: (416) 314-4270
Email: morgana.kellythorne@ontario.ca
douglas.lee@ontario.ca

**Counsel for the Respondent,**
**Licence Appeal Tribunal**

# TABLE OF CONTENTS

**Tab** **Page**

**3. DOCUMENT RELIED UPON**

1

SCC File Number:

**IN THE SUPREME COURT OF CANADA**
(ON APPEAL FROM THE COURT OF APPEAL FOR ONTARIO)

BETWEEN:

**LUCIA DERENZIS**

**APPLICANT**
(Appellant)

AND:

**GORE MUTUAL INSURANCE COMPANY and LICENCE APPEAL TRIBUNAL**

**RESPONDENTS**
(Respondents)

---

**NOTICE OF APPLICATION FOR LEAVE TO APPEAL**
**(LUCIA DERENZIS, APPLICANT)**
(Pursuant to section 40(1) of the *Supreme Court Act*)

---

**TAKE NOTICE** that Lucia Derenzis applies for leave to appeal to the Supreme Court of Canada, under section 40(1) of the *Supreme Court Act,* R.S.C., 1985, c. S-26, from the judgment of the Court of Appeal for Ontario, (File No. COA-25-OM-0181), dated October 2, 2025, denying leave to appeal of the decision of the Ontario Superior Court of Justice (Divisional Court), dated May 6, 2025, and for an Order granting Leave to Appeal, or such further or other order that this Court may deem appropriate.

**AND FURTHER TAKE NOTICE** that this application for leave to appeal is made on the following grounds:

1. The Court of Appeal for Ontario's refusal to grant leave to appeal leaves unanswered a constitutional question under s. 2(b) of the *Canadian Charter of Rights and Freedoms*: whether tribunals and courts may order sworn whistleblower evidence, filed in a proceeding, to be destroyed and never used again without treating that order as a limit on the open court principle protected by s. 2(b) and without applying this Court's framework in *Sherman Estate v. Donovan,* 2021 SCC 25.

2. In the underlying proceeding, the Divisional Court dismissed Ms. Derenzis's statutory appeal and application for judicial review and upheld as reasonable two orders requiring the destruction and non-dissemination of the affidavit of former adjudicator-turned whistleblower Dr. Karina Kowal and its attached internal Tribunal documents, with written undertakings of compliance from all parties, their counsel, and the affiant.

3. The Destruction and Gag Orders arise in the context of a long-running, high-conflict dispute between Ms. Derenzis, Gore Mutual Insurance Company and the Licence Appeal Tribunal ("LAT") that has generated more than twenty publicly reported decisions spanning eight years, including a separate ongoing constitutional challenge to the Tribunal's exclusive jurisdiction over statutory accident benefits matters. In that constitutional challenge proceeding, the Superior Court on May 5, 2025 took a conflicting approach by ordering Tribunals Ontario to produce adjudicators' notes, draft decisions and hundreds of internal emails among adjudicators, counsel and staff, despite claims of deliberative secrecy and solicitor-client privilege, on the basis that those records are necessary to test adjudicative independence ("Open and Transparent Orders").

4. The Destruction and Gag Orders upheld on judicial review by the Ontario Divisional Court on May 6, 2025 conflict with the Open and Transparent Orders made May 5, 2025 by the Ontario Superior Court. That sharp conflict in how openness, privilege claims and deliberative secrecy apply to the same kind of internal tribunal documentation also requires clarification from this Court.

5. The proposed appeal raises two related constitutional questions of national importance:

   (a) Does the constitutional open court principle protected under s. 2(b) of the *Charter* require administrative tribunals and reviewing courts to apply this Court's framework in *Sherman Estate* framework before ordering the destruction or permanent non-dissemination of sworn evidence filed in a proceeding, particularly where that evidence appears to substantiate institutional bias and lack of adjudicative independence?

(b) Can deliberative secrecy, solicitor-client privilege, or a tribunal's authority to control its own processes justify such destruction and gag orders without any analysis under s. 2(b) and *Sherman Estate*?

6. These constitutional questions have not been answered by any appellate court, and in this case neither the Tribunal nor the Divisional Court treated the destruction and non-dissemination orders as limits on s. 2(b) or applied Sherman Estate at all: they never identified any "serious risk to an important public interest", never asked whether anything short of destruction would suffice, and never weighed the impact on openness and expression. Instead, they justified the orders by mislabeling tribunal directives and bulletins to adjudicators as communications protected by solicitor-client privilege or deliberative secrecy. They treated Vice-Chairs, who were never proven to be lawyers, as the "solicitor" to establish solicitor-client privilege. They treated internal directives as deliberations when section 33(1)(b) of the *Freedom of Information and Protection of Privacy Act* requires such instructions and guidelines to be made publicly available. Left unreviewed, that approach invites tribunals to use privilege and deliberative secrecy to erase whistleblower evidence of their own institutional bias rather than subject it to the constitutional scrutiny that s. 2(b) and *Sherman Estate* demand.

7. The relief sought on this application is:

(a) an Order granting leave to appeal to this Court from the decision of the Court of Appeal for Ontario dated October 2, 2025; and

(b) costs of this application in the cause.

**DATED** at Woodbridge, Ontario this 1st day of December 2025.

**CAMPISI LLP**
7050 Weston Road, Suite 101
Woodbridge, ON L4L 8G7

**Imtiaz Hosein**
**Joseph Campisi**

**SUPREME ADVOCACY LLP**
340 Gilmour St., Suite 100
Ottawa, ON K2P 0R3

**Marie-France Major**
Tel.: (613) 695-8855

**Christos Kakaletris**
Tel: (416) 203-1115
Fax: (416) 203-7775
Email: imtiaz@campisilaw.ca
joseph@campisilaw.ca
christos@campisilaw.ca

**Counsel for the Applicant**

Fax: (613) 695-8580
Email: mfmajor@supremeadvocacy.ca

**Agent for Counsel for the Applicant**

ORIGINAL TO: THE REGISTRAR

COPIES TO:

**CAMPORESE SULLIVAN DI GREGORIO**
Commerce Place, Suite 1700
One King Street West
Hamilton, ON L8P 1A4

**Arthur Camporese**
Tel: (905) 522-7068
Fax: (905) 522-5734
Email: acamporese@csdlawyers.ca

**Counsel for the Respondent,**
**Gore Mutual Insurance Company**

**LICENCE APPEAL TRIBUNAL**
Automobile Accident Benefits Service
15 Grosvenor Street, Ground Floor
Toronto, ON M7A 2G8

**Morgana Kellythorne**
**Douglas Lee**
Tel: (416) 509-4767
Tel: (437) 221-7701
Fax: (416) 314-4270
Email: morgana.kellythorne@ontario.ca
douglas.lee@ontario.ca

**Counsel for the Respondent,**
**Licence Appeal Tribunal**

**LEGATE INJURY LAWYERS**
365 Queens Avenue
London, ON N6B 1X5

**Barbara Legate**
Email: blegate@legatelaw.ca

**WILL TRIAL LAWYERS**
1464 Cornwall Rd., Unit 4
Oakville, ON L6J 7W5

**Robert Serendynski**
Email: rseredynski@willtriallawyers.ca

**Counsel for the Intervener at the ONSC (Div Ct), Ontario Trial Lawyers Association**

**THE ATTORNEY GENERAL OF ONTARIO**
Crown Law Office – Civil
720 Bay Street, 8th Floor
Toronto, ON M7A 2S9

**Michael Sims**
**Matthew Chung**
Email: Michael.sims@ontario.ca
matthew.chung@ontario.ca

**Counsel for the Intervener at the ONSC (Div Ct), Attorney General of Ontario**

**NOTICE TO THE RESPONDENT**:

A respondent or intervener may serve and file a memorandum in response to this application for leave to appeal within 30 days after the day on which a file is opened by the Court following the filing of this application for leave to appeal or, if a file has already been opened, within 30 days after the service of this application for leave to appeal. If no response is filed within that time, the Registrar will submit this application for leave to appeal to the Court for consideration under section 43 of the *Supreme Court Act*.

6

## SCHEDULE "A"

**A.** Order of the Licence Appeal Tribunal by Adjudicator McGee, released September 1, 2023, *Derenzis v. Gore Mutual Insurance Company*, Licence Appeal Tribunal File No: 18-011978/AABS

**B.** Order of the Licence Appeal Tribunal by Adjudicator McGee, released September 1, 2023, *Derenzis v. Gore Mutual Insurance Company*, Licence Appeal Tribunal File No: 21-000394/AABS

**C.** Order of the Licence Appeal Tribunal by Adjudicator McGee, released September 20, 2023, *Derenzis v. Gore Mutual Insurance Company*, Licence Appeal Tribunal File No: 18-011978/AABS

**D.** Order of the Licence Appeal Tribunal by Adjudicator McGee, released September 20, 2023, *Derenzis v. Gore Mutual Insurance Company*, Licence Appeal Tribunal File No: 21-000394/AABS

**E.** Directions of the Ontario Superior Court of Justice (Divisional Court) by Justice Matheson, dated October 19, 2023

**F.** Reasons for Judgement of the Ontario Superior Court of Justice (Divisional Court) by Justice Matheson, dated February 29, 2024, *Derenzis v. Gore Mutual Insurance Company*, 2024 ONSC 1226

**G.** Reasons for Judgement of the Ontario Superior Court of Justice (Divisional Court) by Justices Lococo, Doyle and Corbett dated May 6, 2025, *Derenzis v. Gore Mutual Insurance Co.*, 2025 ONSC 2732

**H.** Order of the Ontario Superior Court of Justice (Divisional Court), dated May 6, 2025

**I.** Order of the Court of Appeal for Ontario by Justices Tulloch C.J.O, Lauwers and Dawe, dated October 2, 2025

Tribunals Ontario
**Licence Appeal Tribunal**

Tribunaux décisionnels Ontario
**Tribunal d'appel en matière de permis**

Ontario

**Licence Appeal Tribunal File Number: 18-011978/AABS**

In the matter of an Application for Dispute Resolution pursuant to subsection 280(2) of the *Insurance Act,* RSO 1990, c I.8., in relation to statutory accident benefits.

Between:

**Lucia Derenzis**

**Applicant**

and

**Gore Mutual Insurance Company**

**Respondent**

**ORDER**

**ADJUDICATOR:** Theresa McGee, Vice-Chair

**Date of Order:** **August 31, 2023**

## BACKGROUND

[1] On August 25, 2023, the applicant filed reply submissions in the ongoing reconsideration proceedings in 18-011978/AABS.

[2] Certain materials filed with the applicant's reply submissions appear to contain information that is subject to solicitor-client privilege and deliberative secrecy.

## ORDER

[3] By **September 8**, **2023** the parties shall file submissions with the Tribunal as to whether materials which may be covered by solicitor-client privilege and subject to deliberative secrecy, including but not limited to Exhibit 3 accompanying the applicant's reply submissions, should be struck from the record.

[4] Submissions shall be limited to **5 pages**, double-spaced, in 12-point font.

[5] Pending the Tribunal's decision on this issue, the parties shall not further distribute or disseminate the materials filed with the applicant's reply submissions in any form.

[6] **Except for the provisions contained in this Order all previous orders made by the Tribunal remain in full force and effect**.

[7] If the parties resolve the issue(s) in dispute prior to the hearing, the applicant shall immediately advise the Tribunal in writing.

**Released: September 1, 2023**

Theresa McGee

**Theresa McGee**
**Vice-Chair**

Tribunals Ontario
**Licence Appeal Tribunal**

Tribunaux décisionnels Ontario
**Tribunal d'appel en matière de permis**

Ontario

**Licence Appeal Tribunal File Number: 21-000394/AABS**

In the matter of an Application for Dispute Resolution pursuant to subsection 280(2) of the *Insurance Act,* RSO 1990, c I.8., in relation to statutory accident benefits.

Between:

**Lucia Derenzis**

**Applicant**

and

**Gore Mutual Insurance Company**

**Respondent**

**ORDER**

**ADJUDICATOR:** Theresa McGee, Vice-Chair

**Date of Order:** **August 31, 2023**

## BACKGROUND

[1] On August 29, 2023, the applicant filed reply submissions in the ongoing reconsideration proceedings in 21-000394/AABS.

[2] Certain exhibits filed with the applicant's reply submissions appear to contain information that is subject to solicitor-client privilege and deliberative secrecy.

## ORDER

[3] By **September 8**, **2023** the parties shall file submissions with the Tribunal as to whether materials which may be covered by solicitor-client privilege and subject to deliberative secrecy, including but not limited to Exhibits 7 and 8 accompanying the applicant's reply submissions, should be struck from the record.

[4] Submissions shall be limited to **5 pages**, double-spaced, in 12-point font.

[5] Pending the Tribunal's decision on this issue, the parties shall not further distribute or disseminate the materials filed with the applicant's reply submissions in any form.

[6] **Except for the provisions contained in this Order all previous orders made by the Tribunal remain in full force and effect**.

[7] If the parties resolve the issue(s) in dispute prior to the hearing, the applicant shall immediately advise the Tribunal in writing.

**Released: September 1, 2023**

**Theresa McGee**
**Vice-Chair**

Tribunals Ontario
**Licence Appeal Tribunal**

Tribunaux décisionnels Ontario
**Tribunal d'appel en matière de permis**

Ontario

**Licence Appeal Tribunal File Number: 18-011978/AABS**

In the matter of an Application for Dispute Resolution pursuant to subsection 280(2) of the *Insurance Act,* RSO 1990, c I.8., in relation to statutory accident benefits.

Between:

**Lucia Derenzis**

**Applicant**

and

**Gore Mutual Insurance Company**

**Respondent**

**ORDER**

| | |
|---|---|
| **ADJUDICATOR:** | Theresa McGee, Vice-Chair |
| **For the Applicant:** | Peter Murray, Counsel |
| **For the Respondent:** | Arthur Camporese, Counsel |
| **Date of Order:** | **September 11, 2023** |

## BACKGROUND

[1] On August 25, 2023, the applicant filed reply submissions in the ongoing reconsideration proceedings related to the Tribunal's June 27, 2023 decision in 18-011978/AABS ("the reply submissions"). Certain exhibits accompanying the reply submissions appeared to contain privileged and confidential information.

[2] On August 31, 2023, the Tribunal ordered submissions from the parties on whether the materials in question should be struck from the record on the basis of solicitor-client privilege and adjudicative privilege (deliberative secrecy). The Tribunal also ordered the parties not to further distribute or disseminate the materials pending its determination of the issue.

[3] The applicant set out her position on the questions posed in the Tribunal's August 31, 2023 order by way of a letter dated September 5, 2023 and submissions dated September 8, 2023. In the September 5, 2023 letter, the applicant's counsel, Mr. Peter Murray, requested that I recuse myself from any involvement in both this file and a related file, 21-000394/AABS, and that I void my August 31, 2023 orders on these files.

[4] The respondent filed submissions in accordance with the Tribunal's August 31, 2023 order. The respondent requests that the applicant's reply submissions be struck in their entirety irrespective of whether they contain privileged materials because the applicant improperly introduced new argument in reply not raised in initial submissions.

## RESULT

[5] The following materials are inadmissible by reason of privilege and are struck from the record:

A. paragraphs 6, 7, 8, 9, 10, 11, 12, 16, 17, 18 of Ms. Kowal's August 24, 2023 affidavit that accompanied the applicant's reply submissions filed August 25, 2023; and

B. Exhibits 3A, 3B, 3C, 3D, 3E, and 3F to Ms. Kowal's August 24, 2023 affidavit that accompanied the applicant's reply submissions filed August 25, 2023.

[6] All copies of the materials shall be destroyed and not further disseminated in any form.

[7] Recusal for bias is not warranted in the circumstances. There is no basis to void the Tribunal's August 31, 2023 orders in the related matters. These are not circumstances that would warrant the lifting of deliberative secrecy. There is no basis to award costs.

[8] I decline to consider the issue of whether the applicant made improper use of

reply submissions by introducing argument not raised in initial submissions and defer the question to the adjudicator hearing the merits of the reconsideration request.

## ANALYSIS

### *A description of the exhibits in issue*

[9] Exhibit 3 to the applicant's reply submissions is an affidavit of Ms. Karina Kowal, sworn August 23, 2023 ("the affidavit"). Ms. Kowal is a former Tribunal adjudicator whose appointment ended on October 21, 2021. The applicant submits Ms. Kowal kept notes and documents she obtained during her term of appointment when she left the Tribunal. The Law Society of Ontario directory identifies Ms. Kowal as a licensed paralegal currently in private practice with Campisi LLP, the applicant's counsel's firm. Ms. Kowal's affidavit addresses administrative aspects of the Tribunal's decision-making process including the assignment of adjudicators to proceedings, and purports to establish institutional bias against the firm. It documents internal consultations among adjudicators on legal and policy matters involving the exercise of adjudicative discretion. It also relays legal advice provided by Tribunal counsel to adjudicators. Ms. Kowal declares that she obtained this information in the course of her duties with the Tribunal and through conversations with members of the bar after her appointment ended. Her affidavit is accompanied by lettered exhibits A through F containing:

A. minutes of an August 11, 2017 adjudicative team meeting at the Tribunal addressing topics including the assignment of adjudicators to particular cases;

B. minutes of a July 7, 2017 adjudicative team meeting at the Tribunal documenting internal consultations on legal and policy matters involving the exercise of adjudicative discretion;

C. a draft memorandum authored by Tribunal legal counsel dated September 13, 2017;

D. a document containing "follow-up" notes from a September 28, 2018 adjudicative team meeting (authorship not indicated) documenting internal consultations on legal and policy matters involving the exercise of adjudicative discretion;

E. Ms. Kowal's handwritten notes from an adjudicative team meeting at the Tribunal on February 12, 2021 documenting internal consultations on legal and policy matters involving the exercise of adjudicative discretion; and

F. A "LAT-AABS Duty Bulletin" dated February 11, 2019 summarizing legal advice and internal consultations on legal and policy matters involving the exercise of adjudicative discretion.

***The reply submissions contain solicitor-client privileged communication***

[10] Solicitor-client privilege attaches to all communication made within the framework of the solicitor-client relationship: *Descôteaux et al. v. Mierzwinski*, 1982 CanLII 22 (SCC), [1982] 1 SCR 860. It extends to the seeking of legal advice from the solicitor by the client regardless of whether litigation is involved. It need not relate to a particular legal proceeding: *Ontario (Ministry of Community and Social Services) v. Cropley*, 2004 CanLII 11694 (ON SCDC) at para. 19. Whether the privilege attaches to communications depends on the nature of the relationship, the subject matter of the advice and the circumstances in which it is sought and rendered: *Pritchard* at para. 20, citing *R. v. Campbell*, [1999] 1 SCR 565. Solicitor-client privilege applies with equal force in the context of advice given to an administrative board by in-house counsel as it does to advice given in the realm of private law: see *Pritchard v. Ontario (Human Rights Commission)*, 2004 SCC 31 at para. 21 ("*Pritchard*").

[11] I find that certain sections of Ms. Kowal's August 24, 2023 affidavit and certain attached exhibits are covered by solicitor-client privilege. Solicitor-client privilege attaches to the draft legal memorandum authored by Tribunal counsel (Exhibit 3C), the "Duty Bulletin" which summarizes advice given by Tribunal counsel (Exhibit 3F), and paragraphs 6, 8, 16 and 17 of the affidavit, which discuss advice given by Tribunal counsel to adjudicators. The communications these materials contain were made within the framework of the solicitor-client relationship between in-house Tribunal legal counsel and their institutional client, the Tribunal. These communications contain legal opinions relating to the interpretation of legislation, the application of case law, and legal and practical recommendations for handling matters of law and policy within the discretion of adjudicators. There is no evidence before me that the Tribunal has waived solicitor-client privilege over these communications.

[12] I reject the applicant's position that the exhibits in question are not privileged solicitor-client communications because Ms. Kowal is not a lawyer giving legal advice. Ms. Kowal need not be a lawyer giving legal advice through her affidavit for the exhibits to contain privileged and confidential communication. It is the Tribunal, and not former adjudicator Kowal, who was the client receiving the legal advice in question, and the privilege attached to these communications is not hers to waive.

[13] Solicitor-client privilege is fundamental to the justice system in Canada, and the integrity of the administration of justice depends on it: *Pritchard* at para. 17, citing *R v McClure*, 2001 SCC 14 at para. 2. It should be apparent to both the applicant's counsel and the affiant, who are licensed legal professionals, that communications between legal counsel and a client are privileged, and that filing such materials in tribunal proceedings is both a violation of the law of privilege and a breach of professional ethical norms.

[14] For these reasons, I am ordering that the draft legal memorandum (Exhibit 3C),

the "Duty Bulletin" summarizing the advice of Tribunal counsel (Exhibit 3F), and the portions of Ms. Kowal's August 24, 2023 affidavit that discuss the advice given by legal counsel to the Tribunal (paragraphs 6, 8, 16 and 17) be struck from the record on the basis of solicitor-client privilege.

***The reply submissions contain materials subject to adjudicative privilege (deliberative secrecy)***

[15] The doctrine of deliberative secrecy (or adjudicative privilege) prevents the disclosure of how and why a decision-maker reached a decision: *Grogan v Ontario College of Teachers*, 2023 ONSC 2980 at para. 16 ("*Grogan*"). The Supreme Court of Canada has described deliberative secrecy as a "core component of the constitutional principle of judicial independence": *Commission scolaire de Laval v. Syndicat de l'enseignement de la région de Laval*, 2016 SCC 8 at para. 57. Deliberative secrecy does not apply equally to the deliberations of administrative decision makers as it does to judicial deliberations, as constitutional protections for judicial independence are absent in the administrative tribunal context. However, it is well-established that the privilege extends to administrative tribunals and that courts will generally assist in maintaining the secrecy of their deliberations: *Ellis-Don Ltd. v Ontario (Labour Relations Board)*, 2001 SCC 4 (CanLII), [2001] 1 SCR 221 ("*Ellis-Don*").

[16] In *Summitt Energy Management Inc. v. Ontario Energy Board*, 2012 ONSC 2753 at paras. 76-82, recently followed in *LifeLabs LP v. Information and Privacy Commr. (Ontario)*, 2022 ONSC 5751 at para. 15 ("*LifeLabs*"), Perrell J. summarized the principles of deliberative secrecy (or adjudicative privilege), which I accept and adopt:

> Under the doctrine or principle of deliberative secrecy, which promotes adjudicative independence, collegial debate, and the finality of decisions, a judge or an administrative tribunal adjudicator cannot be compelled to testify about the deliberations or the substance of the decision-making process or how or why a particular decision was reached by the court or administrative tribunal: *Re Clendenning and Board of Police Com'rs for City of Belleville* (1976), 1976 CanLII 696 (ON SC), 15 O.R. (2d) 97 (Div. Ct.); *Agnew v. Ontario Association of Architects* (1987), 1987 CanLII 4030 (ON SC), 64 O.R. (2d) 8 (H.C.J.); *156621 Canada Ltd. v. The City of Ottawa* (2004), 70 O.R. (3d) 291 (S.C.J.).
>
> The substance of the decision-making process includes what material was considered or not considered by the adjudicator, whether the adjudicator pre-judged the matter, and the extent to which the adjudicator was influenced by the views of others: *Agnew v. Ontario Association of Architects*, *supra,* at p. 17.
>
> Deliberative secrecy would cover the involvement of independent counsel unless there was good reason and a factual foundation to believe that

counsel transgressed the limits of fairness and natural justice: *Rudinskas v. College of Physican and Surgeons of Ontario*, 2011 ONSC 4819 (Div. Ct.); *Aronov v. Royal College of Dental Surgeons of Canada*, [2001] O.J. No. 1927 (Div. Ct.); *Stevens v. Canada (Attorney General)*, 2003 FC 1259.

Deliberative secrecy extends to the administrative aspects of the decision-making process, including the assignment of the adjudicator(s) to particular cases: *Cherubini Metal Works Ltd. v. Nova Scotia (Attorney General)* (2007), 2007 NSCA 37 (CanLII), 282 D.L.R. (4th) 538 at paras. 15-18 (N.S.C.A.); *Tremblay v. Québec (Commission des affaires sociales)*, 1992 CanLII 1135 (SCC), [1992] 1 S.C.R. 952.

Under the rule of deliberative secrecy, members of administrative tribunals generally cannot be required to testify about how or why they reach their decisions: *Cherubini Metal Works Ltd. v. Nova Scotia (Attorney General)*, *supra*. In *Cherubini Metal Works Ltd. v. Nova Scotia (Attorney General) supra* at para. 16, Cromwell, J.A., as he then was, noted that, although the principle of deliberative secrecy does not apply as strongly to administrative tribunals as to courts, the Supreme Court of Canada has confirmed that deliberative secrecy is the general rule for administrative tribunals.

The testimonial immunity of deliberative secrecy for the administrative aspects of the decision-making process is not absolute and will yield where it is alleged that the right of natural justice has been infringed: *Tremblay v. Québec (Commission des affaires sociales)*, 1992 CanLII 1135 (SCC), [1992] 1 S.C.R. 952; *Payne v. Ontario (Human Rights Commission)* (2000), 2000 CanLII 5731 (ON CA), 192 D.L.R. (4th) 315 (Ont. C.A.).

The testimonial immunity of deliberative secrecy can be lifted if a litigant can show clearly articulated and objectively sound reasons for believing that the process did not comply with the rules of natural justice or procedural fairness: *Cherubini Metal Works Ltd. v. Nova Scotia (Attorney General) supra; Payne v. Ontario (Human Rights Commission), supra*; *Agnew v. Ontario Association of Architects*), *supra,* at p. 15.

[17] As the respondent notes in its submissions, a reviewing court may lift the veil of deliberative secrecy when a litigant can present valid reasons for believing that the process followed did not comply with the rules of natural justice. However, the litigant must present some basis for a clearly articulated and objectively reasonable concern that a relevant legal right may have been infringed: *Grogan* at para. 20. Speculation, conjecture, or simple allegation is not sufficient: *LifeLabs* at para. 17.

[18] The applicant submits that deliberative secrecy does not apply in the first place because Ms. Kowal is not an adjudicator in either of the related files currently

under reconsideration and she is not being compelled to testify about any decision-making process. I am unpersuaded by these submissions. The affiant need not be an adjudicator in this matter who is being compelled to testify about her own decision-making process for deliberative secrecy to apply to the exhibits in question. The consultations documented in the materials involved numerous adjudicators at the Tribunal. The subject matter of those consultations included the decision-making process applicable to multiple Tribunal proceedings. To strip protection from such a consultative process in the absence of clearly articulated and objectively sound reasons for believing that the process did not comply with the rules of natural justice would have a chilling effect on what the Supreme Court of Canada has characterized as a critically important means of achieving consistency within administrative tribunals: *Ellis-Don* at para. 53.

[19] I find that adjudicative privilege protects against the disclosure of paragraphs 7, 9, 10, 11, 12, 16, 17, and 18 of Ms. Kowal's August 24, 2023 affidavit. Similarly, I find the minutes, "follow-up notes", and handwritten notes from adjudicative team meetings on August 11, 2017 (Exhibit 3A), July 7, 2017 (Exhibit 3B), September 28, 2018 (Exhibit 3D), and February 12, 2021 (Exhibit 3E) are protected by adjudicative privilege. As noted above, these exhibits address administrative aspects of the Tribunal's decision-making process to which the privilege extends including the assignment of adjudicators to particular cases and document internal consultations among adjudicators on legal and policy matters involving the exercise of adjudicative discretion. For these reasons, I find that adjudicative privilege applies to these materials.

***No reason to lift deliberative secrecy***

[20] The applicant takes the position that deliberative secrecy does not apply to the materials in question, but that if it were to apply, disclosure of the records would be necessary in the interests of natural justice. The applicant's submissions on this point fail to articulate objectively reasonable grounds for the assertion that the privileged materials reveal a violation of natural justice. Were a litigant to argue on appeal or judicial review that the veil of deliberative secrecy should be lifted, such a remedy would not be warranted. The materials show no violation of the principles of natural justice.

[21] The applicant submits, based on the sworn statements of Ms. Kowal, that the Tribunal has implemented practices and "directives" that undermine procedural fairness for clients of various firms including Campisi LLP, compromising the independence of adjudicators and inserting bias and prejudice into the adjudicative process. The applicant submits that a "task force" has been implemented to deal with this firm and that direction has been given to the adjudicators to take a "hard-line approach" to files of the applicant's counsel's firm. The applicant submits that the goal of these practices is to shut down arguments at case conferences by issuing interim orders that cannot be appealed. The applicant submits that the adjudicator who rendered the initial decision in this application is part of this "internal scheme" wherein adjudicators

are directed on how to adjudicate files from the applicant's counsel's firm.

[22] I reject these submissions. The applicant's allegations as to unfairness, bias, or a lack of adjudicative independence find no support in the documents tendered as exhibits. I have reviewed Ms. Kowal's affidavit and the accompanying documents in detail, and they do not establish an objectively reasonable concern that the Tribunal's process failed to comply with the principles of natural justice. Nor do they suggest the improper fettering of adjudicative discretion or the violation of procedural fairness in any matter involving clients of Campisi LLP. The materials address the assignment of adjudicators, the handling of procedural and legal complexities, and other administrative aspects of the decision-making process. They reference internal consultations among adjudicators on legal and policy matters involving the exercise of adjudicative discretion, including the issuance of procedural orders at case conferences, updates to rules of practice and procedure, and the interpretation of legislation and case law. The materials make no reference to discussions during internal consultations of the specific facts of any case before the Tribunal. The materials give no indication that these consultations deprived adjudicators of the freedom to decide matters independently. The word "directive" appears only in Ms. Kowal's affidavit, and nowhere in the attached exhibits. At para. 11 of the affidavit Ms. Kowal describes the purpose of these so-called "directives" to consult during deliberations as assisting adjudicators in making decisions at case conferences and hearings. One of the documents cited by Ms. Kowal further explains the purpose of internal consultations as an opportunity to take submissions from the parties, and to pause and consider whether a particular request for relief should be granted, such that reasons for the decision could be clearly articulated in the resulting order. This purpose comports with the principles articulated in *Iwa v Consolidated-Bathurst Packaging Ltd.*, 1990 CanLII 132 (SCC), [1990] 1 SCR 282 ("*Consolidated Bathurst*").

[23] There is nothing improper or procedurally unfair about a consultative process internal to administrative tribunals where adjudicators who have heard a case interact with adjudicators who have not. Internal consultations are a critically important means of achieving consistency and predictability in administrative decision-making. Institutional consultations are permissible so long as (i) the question for discussion is one of policy rather than fact, (ii) that in the end the panel is free to make its own decision, and (iii) that if the discussion at the full board raises matters not addressed by the parties, that the parties be put on notice and permitted to make representations before a decision is made: *Ellis-Don* at para. 78, citing *Consolidated Bathurst*.

***Privileged information is inadmissible as evidence in a Tribunal proceeding***

[24] I find that striking the privileged materials from evidence is necessary to preserve the integrity of the adjudicative record. Section 15(2)(a) of the *Statutory Powers Procedure Act*, R.S.O. 1990, c. S.22 ("*SPPA*") provides that nothing is admissible as evidence at a tribunal hearing that would be inadmissible in a court by reason

of any privilege under the law of evidence. The policy reasons for excluding privileged material from evidence in tribunal proceedings are well-established. The language of the *SPPA* is mandatory and unambiguous: if evidence tendered in a proceeding falls under any head of common law privilege, the Tribunal must exclude that evidence from the record, subject to waiver of the privilege by the privilege holder. The documents which I have found to be subject to solicitor client and adjudicative privilege and for which there has been no waiver cannot be admitted in evidence in this proceeding.

***Recusal for bias***

[25] Although the applicant has not complied with the requirement under Rule 15 of the *Licence Appeal Tribunal Rules, 2023* to file a notice of motion with supporting submissions to request my recusal, I find it necessary to address the issue of whether I lack impartiality to decide this matter and whether I should recuse myself and void my August 31, 2023 orders.

[26] The applicant has called for my recusal from any involvement in this file and the related file on the grounds of a reasonable apprehension of bias. The basis of the applicant's bias allegation is that I am named in one of the exhibits included in the Tribunal's August 31, 2023 order, and that I am seeking to suppress evidence supportive of the applicant's rights and prevent scrutiny of the provincial government from the official opposition. The applicant's submissions fail to note that I am not named in any of the materials filed with her reply submissions in 18-011978/AABS. I can only assume that the document to which the applicant refers is Ms. Kowal's 2021 Order-in-Council performance review, filed as an exhibit to the applicant's reply submissions in the related file, 21-000394/AABS.

[27] I find that the applicant has failed to satisfy the legal test for a reasonable apprehension of bias established over four decades ago in *Committee for Justice and Liberty et al. v National Energy Board et al.*, 1976 CanLII 2 (SCC), [1978] 1 SCR 369. The Supreme Court of Canada has repeatedly held that a party alleging a reasonable apprehension of bias must overcome the strong presumption of judicial or quasi-judicial impartiality by presenting serious and substantial grounds for the allegation: see *Wewaykum Indian Band v Canada*, 2003 SCC 45 at para. 76. Because bias allegations call into question the personal integrity of the adjudicator and the integrity of the administration of justice, establishing bias requires cogent evidence. Suspicion or conjecture is not enough: *R v S(RD)*, 1997 CanLII 324 (SCC), [1997] 3 SCR 484 at para. 117; *Marchand v The Public General Hospital Society of Chatham*, 2000 CanLII 16946 (ON CA) at para. 131. Unsubstantiated claims of bias erode the public's confidence in the administration of justice. As the Court of Appeal for Ontario held in *Beard Winter LLP v Shekhdar*, 2016 ONCA 493 ("*Beard Winter*"), litigants are not entitled to select their decision-maker by making unreasonable and unsubstantiated recusal demands, effectively eliminating adjudicators randomly assigned to their case by making specious partiality claims against them. In the words of Doherty J.A., "to step aside in the face of a specious bias claim is to

give credence to a most objectionable tactic" (*Beard Winter* at para. 10).

[28] First, setting aside the fact that my name appears nowhere in the materials filed in this matter, there is no rational connection between my authoring of Ms. Kowal's 2021 performance review and any reasonable apprehension of bias in this matter. The performance review is not among the exhibits I have struck from the record in 21-000349/AABS. I have no personal interest or investment in suppressing evidence of Ms. Kowal's performance as an adjudicator with the Tribunal. The information contained in Ms. Kowal's performance review is personal to her alone, and she is free to disseminate it if she wishes. Whether Ms. Kowal's performance review has any relevance to the request for reconsideration in this application is a question for the adjudicator hearing the reconsideration to decide.

[29] Second, this order is limited to the procedural question of whether certain exhibits filed by the applicant should be struck from the record. I will not be the adjudicator who decides the reconsideration. Having a separate adjudicator consider the exclusion of confidential material not properly before the Tribunal is consistent with the aims of upholding the Tribunal's statutory obligations, preserving the integrity of the record, and the resolution of the underlying dispute on its merits.

[30] Finally, the applicant has failed to clear the high threshold for rebutting the strong presumption of my impartiality as a decision-maker. The applicant's representative has presented no evidence that by inviting submissions on the striking of certain exhibits I am personally seeking to suppress evidence supportive of his client's rights, or that I have any interest in the outcome of the underlying dispute. The suggestion that I am seeking to prevent scrutiny of the provincial government from the official opposition is unfounded. It calls into question not only my personal integrity and independence as an impartial decision-maker sworn to non-partisan, professional and ethical public service, but the integrity and independence of the entire system of administrative justice in the province. Far from preserving the fairness and impartiality of the proceedings as the applicant suggests, acceding to the applicant's recusal demands and voiding my past procedural orders in these circumstances would legitimatize a most objectionable litigation tactic and corrode the principles of adjudicative independence I am sworn to uphold.

***I decline to strike the reply submissions in their entirety***

[31] The respondent submits that the applicant's reply submissions should be struck in their entirety irrespective of whether they are privileged because they introduce new argument not raised in initial submissions. I decline to consider this request, as I am not adjudicating the merits of the reconsideration. I defer to the adjudicator who will hear the reconsideration as to the propriety of the applicant's reply.

***Conclusion***

[32] The act of tendering improperly retained, privileged and confidential materials as evidence in a Tribunal proceeding is a breach of the professional ethical standards which both the applicant's counsel and the affiant, as licensed legal professionals, are bound to uphold. The Tribunal is mandated by statute to exclude these materials from the evidentiary record.

[33] The ancillary orders I make prohibiting the further dissemination of the materials and ordering their destruction are necessary for carrying out the Tribunal's duties under s. 15 of the *SPPA*, and for ensuring the proper conduct and control of the Tribunal's process in this matter under s. 23(1) and s. 25.0.1 of the *SPPA*. The orders are further authorized under s. 3(2) of the *Licence Appeal Tribunal Act, 1999*, S.O. 1999, c. 12, Sched. G.

[34] The materials I have ordered struck from the record fail to substantiate the applicant's counsel's specious and unsubstantiated allegations of individual and institutional bias. Allegations of this nature undermine the integrity of the Tribunal's process, add delay to the adjudication of the merits of disputes, and erode the proper administration of justice.

[35] The applicant's request for costs payable by the Tribunal for an abuse of its own process not only exceeds the scope of costs payable under Rule 19 of the *Licence Appeal Tribunal Rules, 2023* and fails to conform with the procedural requirements of that Rule, but is ultimately without merit. The request is accordingly denied.

**ORDER**

[36] The following materials are hereby struck from the record:

A. paragraphs 6, 7, 8, 9, 10, 11, 12, 16, 17, 18 of Ms. Kowal's August 24, 2023 affidavit that accompanied the applicant's reply submissions filed August 25, 2023; and

B. Exhibits 3A, 3B, 3C, 3D, 3E, and 3F to Ms. Kowal's August 24, 2023 affidavit that accompanied the applicant's reply submissions filed August 25, 2023.

[37] The struck materials shall be withheld from the reconsideration adjudicator. The Registrar will prepare a redacted version of the applicant's August 25, 2023 reply submissions according to the terms of this order to be put before the reconsideration adjudicator.

[38] All parties, representatives, and witnesses/affiants to this proceeding **shall immediately and permanently delete from their data storage systems or otherwise destroy** any and all copies of the privileged materials identified in paragraph 36 that may be in their possession.

[39] Immediately upon receipt of this Order, counsel for the parties, namely Mr. Murray and Mr. Camporese, shall give a written undertaking to the Tribunal that the documents identified in paragraph 36 of this order will be destroyed and not further disseminated. **Counsel shall confirm in writing with the Tribunal that the records have been destroyed no later than September 25, 2023.**

[40] Immediately upon receipt of this Order, the affiant, Ms. Karina Kowal, shall destroy the documents identified in paragraph 36, and shall refrain from further disseminating them. **No later than September 25, 2023, Ms. Kowal shall confirm in writing with the Tribunal that the documents identified in paragraph 36 of this order have been destroyed and will not be further disseminated.**

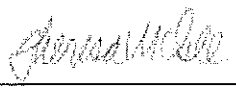
[41] The applicant's request for costs is denied.

[42] **Except for the provisions contained in this Order all previous orders made by the Tribunal remain in full force and effect.**

[43] I am **not seized** of this matter.

[44] If the parties resolve the issue(s) in dispute prior to the hearing, the applicant shall immediately advise the Tribunal in writing.

**Released: September 20, 2023**



**Theresa McGee**
**Vice-Chair**

Tribunals Ontario
**Licence Appeal Tribunal**

Tribunaux décisionnels Ontario
**Tribunal d'appel en matière de permis**

Ontario

**Licence Appeal Tribunal File Number: 21-000394/AABS**

In the matter of an Application for Dispute Resolution pursuant to subsection 280(2) of the *Insurance Act,* RSO 1990, c I.8., in relation to statutory accident benefits.

Between:

**Lucia Derenzis**

**Applicant**

and

**Gore Mutual Insurance Company**

**Respondent**

**ORDER**

| | |
|---|---|
| **ADJUDICATOR:** | Theresa McGee, Vice-Chair |
| **For the Applicant:** | Peter Murray, Counsel |
| **For the Respondent:** | Arthur Camporese, Counsel |
| **Date of Order:** | **September 18, 2023** |

## BACKGROUND

[1] On August 29, 2023, the applicant filed reply submissions in the ongoing reconsideration proceedings related to the Tribunal's June 27, 2023 decision ("the reply submissions"). Certain exhibits accompanying the reply submissions appeared to contain privileged and confidential information.

[2] On August 31, 2023, the Tribunal ordered submissions from the parties on whether the materials in question should be struck from the record on the basis of solicitor-client privilege and adjudicative privilege (deliberative secrecy). The Tribunal also ordered the parties not to further distribute or disseminate the materials pending its determination of the issue.

[3] The applicant set out her position on the questions posed in the Tribunal's August 31, 2023 order by way of a letter dated September 5, 2023 and submissions dated September 8, 2023. In the September 5, 2023 letter, the applicant's counsel, Mr. Peter Murray, requested that I recuse myself from any involvement in both this file and a related file, 18-011978/AABS, and that I void my August 31, 2023 orders on these files.

[4] The respondent filed submissions in accordance with the Tribunal's August 31, 2023 order. The respondent requests that the applicant's reply submissions be struck in their entirety irrespective of whether they contain privileged materials because the applicant improperly introduced new argument in reply not raised in initial submissions.

## RESULT

[5] The following materials are inadmissible by reason of privilege and are struck from the record:

A. paragraphs 6, 7, 8, 9, 10, 11, 12, 16, 17, 18 of Ms. Kowal's August 24, 2023 affidavit filed with the applicant's reply submissions filed August 29, 2023;

B. Exhibits 7A, 7B, 7C, 7D, 7E, and 7F to the applicant's reply submissions filed August 29, 2023.

[6] All copies of the materials shall be destroyed and not further disseminated in any form.

[7] Recusal for bias is not warranted in the circumstances. There is no basis to void the Tribunal's August 31, 2023 orders in the related matters. These are not circumstances that would warrant the lifting of deliberative secrecy. There is no basis to award costs.

[8] I decline to consider the issue of whether the applicant made improper use of reply submissions by introducing argument not raised in initial submissions and

defer the question to the adjudicator hearing the merits of the reconsideration request.

## ANALYSIS

### *A description of the exhibits in issue*

[9] Exhibit 7 to the applicant's reply submissions is an affidavit of Ms. Karina Kowal, sworn August 23, 2023 ("the affidavit"). Ms. Kowal is a former Tribunal adjudicator whose appointment ended on October 21, 2021. The applicant submits Ms. Kowal kept notes and documents she obtained during her term of appointment when she left the Tribunal. The Law Society of Ontario directory identifies Ms. Kowal as a licensed paralegal currently in private practice with Campisi LLP, the applicant's counsel's firm. Ms. Kowal's affidavit addresses administrative aspects of the Tribunal's decision-making process including the assignment of adjudicators to proceedings, and purports to establish institutional bias against the firm. It documents internal consultations among adjudicators on legal and policy matters involving the exercise of adjudicative discretion. It also relays legal advice provided by Tribunal counsel to adjudicators. Ms. Kowal declares that she obtained this information in the course of her duties with the Tribunal and through conversations with members of the bar after her appointment ended. Her affidavit is accompanied by lettered exhibits A through F containing:

A. minutes of an August 11, 2017 adjudicative team meeting at the Tribunal addressing topics including the assignment of adjudicators to particular cases;

B. minutes of a July 7, 2017 adjudicative team meeting at the Tribunal documenting internal consultations on legal and policy matters involving the exercise of adjudicative discretion;

C. a draft memorandum authored by Tribunal legal counsel dated September 13, 2017;

D. a document containing "follow-up" notes from a September 28, 2018 adjudicative team meeting at the Tribunal (authorship not indicated) documenting internal consultations on legal and policy matters involving the exercise of adjudicative discretion;

E. Ms. Kowal's handwritten notes from an adjudicative team meeting at the Tribunal on February 12, 2021 documenting internal consultations on legal and policy matters involving the exercise of adjudicative discretion; and

F. A "LAT-AABS Duty Bulletin" dated February 11, 2019 summarizing legal advice and internal consultations on legal and policy matters involving the exercise of adjudicative discretion.

[10] Exhibit 8 to the reply submissions is a supplementary affidavit sworn by Ms. Kowal on August 29, 2023 ("the supplementary affidavit"). The supplementary affidavit is accompanied by lettered exhibits A and B, including:

A. Ms. Kowal's performance review signed by her on August 18, 2021;

B. Ms. Kowal's handwritten notes from a performance review dated July 21, 2017.

***The reply submissions contain solicitor-client privileged communication***

[11] Solicitor-client privilege attaches to all communication made within the framework of the solicitor-client relationship: *Descôteaux et al. v. Mierzwinski*, 1982 CanLII 22 (SCC), [1982] 1 SCR 860. It extends to the seeking of legal advice from the solicitor by the client regardless of whether litigation is involved. It need not relate to a particular legal proceeding: *Ontario (Ministry of Community and Social Services) v. Cropley*, 2004 CanLII 11694 (ON SCDC) at para. 19. Whether the privilege attaches to communications depends on the nature of the relationship, the subject matter of the advice and the circumstances in which it is sought and rendered: *Pritchard* at para. 20, citing *R. v. Campbell*, [1999] 1 SCR 565. Solicitor-client privilege applies with equal force in the context of advice given to an administrative board by in-house counsel as it does to advice given in the realm of private law: see *Pritchard v. Ontario (Human Rights Commission)*, 2004 SCC 31 at para. 21 ("*Pritchard*").

[12] I find that certain sections of Ms. Kowal's August 24, 2023 affidavit and certain attached exhibits are covered by solicitor-client privilege. Solicitor-client privilege attaches to the draft legal memorandum authored by Tribunal counsel (Exhibit 7C), the "Duty Bulletin" which summarizes advice given by Tribunal counsel (Exhibit 7F), and paragraphs 6, 8, 16 and 17 of the affidavit, which discuss advice given by Tribunal counsel to adjudicators. The communications these materials contain were made within the framework of the solicitor-client relationship between Tribunal legal counsel and their institutional client, the Tribunal. These communications contain legal opinions relating to the interpretation of legislation, the application of case law, and legal and practical recommendations for handling matters of law and policy within the discretion of adjudicators. There is no evidence before me that the Tribunal has waived solicitor-client privilege over these communications.

[13] I reject the applicant's position that the exhibits in question are not privileged solicitor-client communications because Ms. Kowal is not a lawyer giving legal advice. Ms. Kowal need not be a lawyer giving legal advice through her affidavit for the exhibits to contain privileged and confidential communication. It is the Tribunal, and not former adjudicator Kowal, who was the client receiving the legal advice in question, and the privilege attached to these communications is not hers to waive.

[14] Solicitor-client privilege is fundamental to the justice system in Canada, and the integrity of the administration of justice depends on it: *Pritchard* at para. 17, citing *R v McClure*, 2001 SCC 14 at para. 2. It should be apparent to both the applicant's counsel and the affiant, who are licensed legal professionals, that communications between legal counsel and a client are privileged, and that filing such materials in tribunal proceedings is both a violation of the law of privilege and a breach of professional ethical norms.

[15] For these reasons, I am ordering that the draft legal memorandum (Exhibit 7C), the "Duty Bulletin" summarizing the advice of Tribunal counsel (Exhibit 7F), and the portions of Ms. Kowal's August 24, 2023 affidavit that discuss the advice given by legal counsel to the Tribunal (paragraphs 6, 8, 16 and 17) be struck from the record on the basis of solicitor-client privilege.

***The reply submissions contain materials subject to adjudicative privilege (deliberative secrecy)***

[16] The doctrine of deliberative secrecy (or adjudicative privilege) prevents the disclosure of how and why a decision-maker reached a decision: *Grogan v Ontario College of Teachers*, 2023 ONSC 2980 at para. 16 ("*Grogan*"). The Supreme Court of Canada has described deliberative secrecy as a "core component of the constitutional principle of judicial independence": *Commission scolaire de Laval v. Syndicat de l'enseignement de la région de Laval*, 2016 SCC 8 at para. 57. Deliberative secrecy does not apply equally to the deliberations of administrative decision makers as it does to judicial deliberations, as constitutional protections for judicial independence are absent in the administrative tribunal context. However, it is well-established that the privilege extends to administrative tribunals and that courts will generally assist in maintaining the secrecy of their deliberations: *Ellis-Don Ltd. v Ontario (Labour Relations Board)*, 2001 SCC 4 (CanLII), [2001] 1 SCR 221 ("*Ellis-Don*").

[17] In *Summitt Energy Management Inc. v. Ontario Energy Board*, 2012 ONSC 2753 at paras. 76-82, recently followed in *LifeLabs LP v. Information and Privacy Commr. (Ontario)*, 2022 ONSC 5751 at para. 15 ("*LifeLabs*"), Perrell J. summarized the principles of deliberative secrecy (or adjudicative privilege), which I accept and adopt:

> Under the doctrine or principle of deliberative secrecy, which promotes adjudicative independence, collegial debate, and the finality of decisions, a judge or an administrative tribunal adjudicator cannot be compelled to testify about the deliberations or the substance of the decision-making process or how or why a particular decision was reached by the court or administrative tribunal: *Re Clendenning and Board of Police Com'rs for City of Belleville* (1976), 1976 CanLII 696 (ON SC), 15 O.R. (2d) 97 (Div. Ct.); *Agnew v. Ontario Association of Architects* (1987), 1987 CanLII 4030 (ON SC), 64 O.R. (2d) 8 (H.C.J.); *156621 Canada Ltd. v. The City of Ottawa* (2004), 70 O.R. (3d) 291 (S.C.J.).

The substance of the decision-making process includes what material was considered or not considered by the adjudicator, whether the adjudicator pre-judged the matter, and the extent to which the adjudicator was influenced by the views of others: *Agnew v. Ontario Association of Architects*, *supra,* at p. 17.

Deliberative secrecy would cover the involvement of independent counsel unless there was good reason and a factual foundation to believe that counsel transgressed the limits of fairness and natural justice: *Rudinskas v. College of Physican and Surgeons of Ontario*, 2011 ONSC 4819 (Div. Ct.); *Aronov v. Royal College of Dental Surgeons of Canada*, [2001] O.J. No. 1927 (Div. Ct.); *Stevens v. Canada (Attorney General)*, 2003 FC 1259.

Deliberative secrecy extends to the administrative aspects of the decision-making process, including the assignment of the adjudicator(s) to particular cases: *Cherubini Metal Works Ltd. v. Nova Scotia (Attorney General)* (2007), 2007 NSCA 37 (CanLII), 282 D.L.R. (4th) 538 at paras. 15-18 (N.S.C.A.); *Tremblay v. Québec (Commission des affaires sociales)*, 1992 CanLII 1135 (SCC), [1992] 1 S.C.R. 952.

Under the rule of deliberative secrecy, members of administrative tribunals generally cannot be required to testify about how or why they reach their decisions: *Cherubini Metal Works Ltd. v. Nova Scotia (Attorney General)*, *supra*. In *Cherubini Metal Works Ltd. v. Nova Scotia (Attorney General) supra* at para. 16, Cromwell, J.A., as he then was, noted that, although the principle of deliberative secrecy does not apply as strongly to administrative tribunals as to courts, the Supreme Court of Canada has confirmed that deliberative secrecy is the general rule for administrative tribunals.

The testimonial immunity of deliberative secrecy for the administrative aspects of the decision-making process is not absolute and will yield where it is alleged that the right of natural justice has been infringed: *Tremblay v. Québec (Commission des affaires sociales)*, 1992 CanLII 1135 (SCC), [1992] 1 S.C.R. 952; *Payne v. Ontario (Human Rights Commission)* (2000), 2000 CanLII 5731 (ON CA), 192 D.L.R. (4th) 315 (Ont. C.A.).

The testimonial immunity of deliberative secrecy can be lifted if a litigant can show clearly articulated and objectively sound reasons for believing that the process did not comply with the rules of natural justice or procedural fairness: *Cherubini Metal Works Ltd. v. Nova Scotia (Attorney General) supra; Payne v. Ontario (Human Rights Commission), supra*; *Agnew v. Ontario Association of Architects*), *supra,* at p. 15.

[18] As the respondent notes in its submissions, a reviewing court may lift the veil of deliberative secrecy when a litigant can present valid reasons for believing that

the process followed did not comply with the rules of natural justice. However, the litigant must present some basis for a clearly articulated and objectively reasonable concern that a relevant legal right may have been infringed: *Grogan* at para. 20. Speculation, conjecture, or simple allegation is not sufficient: *LifeLabs* at para. 17.

[19] The applicant submits that deliberative secrecy does not apply in the first place because Ms. Kowal is not an adjudicator in either of the related files currently under reconsideration and she is not being compelled to testify about any decision-making process. I am unpersuaded by these submissions. The affiant need not be an adjudicator in this matter who is being compelled to testify about her own decision-making process for deliberative secrecy to apply to the exhibits in question. The consultations documented in the materials involved numerous adjudicators at the Tribunal. The subject matter of those consultations included the decision-making process applicable to multiple Tribunal proceedings. To strip protection from such a consultative process in the absence of clearly articulated and objectively sound reasons for believing that the process did not comply with the rules of natural justice would have a chilling effect on what the Supreme Court of Canada has characterized as a critically important means of achieving consistency within administrative tribunals: *Ellis-Don* at para. 53.

[20] I find that adjudicative privilege protects against the disclosure of paragraphs 7, 9, 10, 11, 12, 16, 17, and 18 of Ms. Kowal's August 24, 2023 affidavit. Similarly, I find the minutes, "follow-up notes", and handwritten notes from adjudicative team meetings on August 11, 2017 (Exhibit 7A), July 7, 2017 (Exhibit 7B), September 28, 2018 (Exhibit 7D), and February 12, 2021 (Exhibit 7E) are protected by adjudicative privilege. As noted above, these exhibits address administrative aspects of the Tribunal's decision-making process to which the privilege extends including the assignment of adjudicators to particular cases and document internal consultations among adjudicators on legal and policy matters involving the exercise of adjudicative discretion. For these reasons, I find that adjudicative privilege applies to these materials.

***No reason to lift deliberative secrecy***

[21] The applicant takes the position that deliberative secrecy does not apply to the materials in question, but that if it were to apply, disclosure of the records would be necessary in the interests of natural justice. The applicant's submissions on this point fail to articulate objectively reasonable grounds for the assertion that the privileged materials reveal a violation of natural justice. Were a litigant to argue on appeal or judicial review that the veil of deliberative secrecy should be lifted, such a remedy would not be warranted. The materials show no violation of the principles of natural justice.

[22] The applicant submits, based on the sworn statements of Ms. Kowal, that the Tribunal has implemented practices and "directives" that undermine procedural fairness for clients of various firms including Campisi LLP, compromising the

independence of adjudicators and inserting bias and prejudice into the adjudicative process. The applicant submits that a "task force" has been implemented to deal with this firm and that direction has been given to the adjudicators to take a "hard-line approach" to files of the applicant's counsel's firm. The applicant submits that the goal of these practices is to shut down arguments at case conferences by issuing interim orders that cannot be appealed. The applicant submits that the adjudicator who rendered the initial decision in this application is part of this "internal scheme" wherein adjudicators are directed on how to adjudicate files from the applicant's counsel's firm.

[23] I reject these submissions. The applicant's allegations as to unfairness, bias, or a lack of adjudicative independence find no support in the documents tendered as exhibits. I have reviewed Ms. Kowal's affidavit and the accompanying documents in detail, and they do not establish an objectively reasonable concern that the Tribunal's process failed to comply with the principles of natural justice. Nor do they suggest the improper fettering of adjudicative discretion or the violation of procedural fairness in any matter involving clients of Campisi LLP. The materials address the assignment of adjudicators, the handling of procedural and legal complexities, and other administrative aspects of the decision-making process. They reference internal consultations among adjudicators on legal and policy matters involving the exercise of adjudicative discretion, including the issuance of procedural orders at case conferences, updates to rules of practice and procedure, and the interpretation of legislation and case law. The materials make no reference to discussions during internal consultations of the specific facts of any case before the Tribunal. The materials give no indication that these consultations deprived adjudicators of the freedom to decide matters independently. The word "directive" appears only in Ms. Kowal's affidavit, and nowhere in the attached exhibits. At para. 11 of the affidavit Ms. Kowal describes the purpose of these so-called "directives" to consult during deliberations as assisting adjudicators in making decisions at case conferences and hearings. One of the documents cited by Ms. Kowal further explains the purpose of internal consultations as an opportunity to take submissions from the parties, and to pause and consider whether a particular request for relief should be granted, such that reasons for the decision could be clearly articulated in the resulting order. This purpose comports with the principles articulated in *Iwa v Consolidated-Bathurst Packaging Ltd.*, 1990 CanLII 132 (SCC), [1990] 1 SCR 282 ("*Consolidated Bathurst*").

[24] There is nothing improper or procedurally unfair about a consultative process internal to administrative tribunals where adjudicators who have heard a case interact with adjudicators who have not. Internal consultations are a critically important means of achieving consistency and predictability in administrative decision-making. Institutional consultations are permissible so long as (i) the question for discussion is one of policy rather than fact, (ii) that in the end the panel is free to make its own decision, and (iii) that if the discussion at the full board raises matters not addressed by the parties, that the parties be put on notice and permitted to make representations before a decision is made: *Ellis-*

*Don* at para. 78, citing *Consolidated Bathurst*.

***Privileged information is inadmissible as evidence in a Tribunal proceeding***

[25] I find that striking the privileged materials from evidence is necessary to preserve the integrity of the adjudicative record. Section 15(2)(a) of the *Statutory Powers Procedure Act*, R.S.O. 1990, c. S.22 ("*SPPA*") provides that nothing is admissible as evidence at a tribunal hearing that would be inadmissible in a court by reason of any privilege under the law of evidence. The policy reasons for excluding privileged material from evidence in tribunal proceedings are well-established. The language of the *SPPA* is mandatory and unambiguous: if evidence tendered in a proceeding falls under any head of common law privilege, the Tribunal must exclude that evidence from the record, subject to waiver of the privilege by the privilege holder. The documents which I have found to be subject to solicitor client and adjudicative privilege and for which there has been no waiver cannot be admitted in evidence in this proceeding.

***Recusal for bias***

[26] Although the applicant has not complied with the requirement under Rule 15 of the *Licence Appeal Tribunal Rules, 2023* to file a notice of motion with supporting submissions to request my recusal, I find it necessary to address the issue of whether I lack impartiality to decide this matter and whether I should recuse myself and void my August 31, 2023 orders.

[27] The applicant has called for my recusal from any involvement in this file and the related file on the grounds of a reasonable apprehension of bias. The basis of the applicant's bias allegation is that I am named in one of the exhibits included in the Tribunal's August 31, 2023 order, and that I am seeking to suppress evidence supportive of the applicant's rights and prevent scrutiny of the provincial government from the official opposition. In my capacity as Acting Associate Chair of the Tribunal, I authored Ms. Kowal's Order-in-Council performance review in the summer of 2021, several months before her term of appointment with the Tribunal ended. Ms. Kowal's performance review is Exhibit 8A to the applicant's reply submissions.

[28] I find that the applicant has failed to satisfy the legal test for a reasonable apprehension of bias established over four decades ago in *Committee for Justice and Liberty et al. v National Energy Board et al.*, 1976 CanLII 2 (SCC), [1978] 1 SCR 369. The Supreme Court of Canada has repeatedly held that a party alleging a reasonable apprehension of bias must overcome the strong presumption of judicial or quasi-judicial impartiality by presenting serious and substantial grounds for the allegation: see *Wewaykum Indian Band v Canada*, 2003 SCC 45 at para. 76. Because bias allegations call into question the personal integrity of the adjudicator and the integrity of the administration of justice, establishing bias requires cogent evidence. Suspicion or conjecture is not enough: *R v S(RD)*, 1997 CanLII 324 (SCC), [1997] 3 SCR 484 at para. 117;

*Marchand v The Public General Hospital Society of Chatham*, 2000 CanLII 16946 (ON CA) at para. 131. Unsubstantiated claims of bias erode the public's confidence in the administration of justice. As the Court of Appeal for Ontario held in *Beard Winter LLP v Shekhdar*, 2016 ONCA 493 ("*Beard Winter*"), litigants are not entitled to select their decision-maker by making unreasonable and unsubstantiated recusal demands, effectively eliminating adjudicators randomly assigned to their case by making specious partiality claims against them. In the words of Doherty J.A., "to step aside in the face of a specious bias claim is to give credence to a most objectionable tactic" (*Beard Winter* at para. 10).

[29] First, there is no rational connection between my authoring of Ms. Kowal's 2021 performance review and any reasonable apprehension of bias in this matter. Exhibit 8A is not among the exhibits I have struck from the record. I have no personal interest or investment in suppressing evidence of Ms. Kowal's performance as an adjudicator with the Tribunal. The information contained in Ms. Kowal's performance review is personal to her alone, and she is free to disseminate it if she wishes. Whether Ms. Kowal's performance review has any relevance to the request for reconsideration in this application is a question for the adjudicator hearing the reconsideration to decide.

[30] Second, this order is limited to the procedural question of whether certain exhibits filed by the applicant should be struck from the record. I will not be the adjudicator who decides the reconsideration. Having a separate adjudicator consider the exclusion of confidential material not properly before the Tribunal is consistent with the aims of upholding the Tribunal's statutory obligations, preserving the integrity of the record, and the resolution of the underlying dispute on its merits.

[31] Finally, the applicant has failed to clear the high threshold for rebutting the strong presumption of my impartiality as a decision-maker. The applicant's representative has presented no evidence that by inviting submissions on the striking of certain exhibits I am personally seeking to suppress evidence supportive of his client's rights, or that I have any interest in the outcome of the underlying dispute. The suggestion that I am seeking to prevent scrutiny of the provincial government from the official opposition is unfounded. It calls into question not only my personal integrity and independence as an impartial decision-maker sworn to non-partisan, professional and ethical public service, but the integrity and independence of the entire system of administrative justice in the province. Far from preserving the fairness and impartiality of the proceedings as the applicant suggests, acceding to the applicant's recusal demands and voiding my past procedural orders in these circumstances would legitimatize a most objectionable litigation tactic and corrode the principles of adjudicative independence I am sworn to uphold.

***I decline to strike the reply submissions in their entirety***

[32] The respondent submits that the applicant's reply submissions should be struck

in their entirety irrespective of whether they are privileged because they introduce new argument not raised in initial submissions. I decline to consider this request, as I am not adjudicating the merits of the reconsideration. I defer to the adjudicator who will hear the reconsideration as to the propriety of the applicant's reply.

***Conclusion***

[33] The act of tendering improperly retained, privileged and confidential materials as evidence in a Tribunal proceeding is a breach of the professional ethical standards which both the applicant's counsel and the affiant, as licensed legal professionals, are bound to uphold. The Tribunal is mandated by statute to exclude these materials from the evidentiary record.

[34] The ancillary orders I make prohibiting the further dissemination of the materials and ordering their destruction are necessary for carrying out the Tribunal's duties under s. 15 of the *SPPA*, and for ensuring the proper conduct and control of the Tribunal's process in this matter under s. 23(1) and s. 25.0.1 of the *SPPA*. The orders are further authorized under s. 3(2) of the *Licence Appeal Tribunal Act, 1999*, S.O. 1999, c. 12, Sched. G.

[35] The materials I have ordered struck from the record fail to substantiate the applicant's counsel's specious and unsubstantiated allegations of individual and institutional bias. Allegations of this nature undermine the integrity of the Tribunal's process, add delay to the adjudication of the merits of disputes, and erode the proper administration of justice.

[36] The applicant's request for costs payable by the Tribunal for an abuse of its own process not only exceeds the scope of costs payable under Rule 19 of the *Licence Appeal Tribunal Rules, 2023* and fails to conform with the procedural requirements of that Rule, but is ultimately without merit. The request is accordingly denied.

**ORDER**

[37] The following materials are hereby struck from the record:

A. paragraphs 6, 7, 8, 9, 10, 11, 12, 16, 17, 18 of Ms. Kowal's August 24, 2023 affidavit that accompanied the applicant's reply submissions filed August 29, 2023;

B. Exhibits 7A, 7B, 7C, 7D, 7E, and 7F to Ms. Kowal's August 24, 2023 affidavit that accompanied the applicant's reply submissions filed August 29, 2023.

[38] The struck materials shall be withheld from the reconsideration adjudicator. The Registrar will prepare a redacted version of the applicant's August 29, 2023 reply submissions according to the terms of this order to be put before the

reconsideration adjudicator.

[39] All parties, representatives, and witnesses/affiants to this proceeding **shall immediately and permanently delete from their data storage systems or otherwise destroy** any and all copies of the privileged materials identified in paragraph 37 that may be in their possession.

[40] Immediately upon receipt of this Order, counsel for the parties, namely Mr. Murray and Mr. Camporese, shall give a written undertaking to the Tribunal that the documents identified in paragraph 37 of this order will be destroyed and not further disseminated. **Counsel shall confirm in writing with the Tribunal that the records have been destroyed no later than September 25, 2023.**

[41] Immediately upon receipt of this Order, the affiant, Ms. Karina Kowal, shall destroy the documents identified in paragraph 37, and shall refrain from further disseminating them. **No later than September 25, 2023, Ms. Kowal shall confirm in writing with the Tribunal that the documents identified in paragraph 36 of this order have been destroyed and will not be further disseminated.**

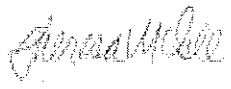
[42] The applicant's request for costs is denied.

[43] **Except for the provisions contained in this Order all previous orders made by the Tribunal remain in full force and effect.**

[44] I am **not seized** of this matter.

[45] If the parties resolve the issue(s) in dispute prior to the hearing, the applicant shall immediately advise the Tribunal in writing.

**Released: September 20, 2023**



**Theresa McGee**
**Vice-Chair**

**From:** Baweja, Saurabh S. (JUD) <Saurabh.Baweja@ontario.ca>
**Sent:** October 19, 2023 at 04:44 pm
**To:** Jenna Zorik <jenna@campisilaw.ca>
**Cc:** Collie, Connor (MAG) <Connor.Collie@ontario.ca>; 'acamporese@csdlawyers.ca' <acamporese@csdlawyers.ca>; Peter Murray <peter@campisilaw.ca>; Eric Winkworth <eric@campisilaw.ca>; 'kkowal@medicalresolutions.com' <kkowal@medicalresolutions.com>; Joseph Campisi <joseph@campisilaw.ca>; Crystal, Valerie (MAG) <Valerie.Crystal@ontario.ca>; Ashu Ismail <ashu@campisilaw.ca>; Lee, Douglas (He/Him) (MAG) <Douglas.Lee@ontario.ca>; 'Urania Godin' <ugodin@csdlawyers.ca>
**Subject:** RE: Lucia Derenzis v. Gore Mutual Insurance Company et al File No. 546/23 and 545/23
**Attachments:** Kilian Sealing Order 545-23 546-23

---

Good Afternoon,

Honourable Justice Matheson directs as follows:

Lucia Derenzis has commenced two proceedings in this Court, as follows:

1. 545/23: Appeal of LAT decision released September 20, 2023
2. 546/23: Application for Judicial Review (AJR) of LAT decision dated September 20,2023

The Registrar is directed to send a notice under r. 2.1 of the *Rules of Civil Proceedings* in these matters due to the following issues:

- There is no right of appeal from an interlocutory order of LAT
- There is no apparent basis to avoid the prematurity doctrine, with one exception addressed below, the AJR in 546/23

Exception: The 2.1 notice for File 546/23 will exclude that part of the application for judicial review seeking to quash the orders in paras. 38-40 of the September 20, 2023 decision, regarding the destruction of documents.
Further, I suspend the operation of those paragraphs of the order, pending further order of this Court. The parties and counsel, must, instead, seal the documents materials listed in para. 36 of the LAT order pending further order of this Court. Because the affiant is part of the applicant's counsel's firm, the affiant is included in this sealing obligation. The sealed documents shall be held by counsel and not distributed in any way pending further order of this Court. Counsel shall confirm to this Court in writing that these steps have been taken promptly upon receipt of these directions.

With respect to the above exception, the parties shall confer over a schedule for the exchange of the Court documents and provide their agreed or proposed schedule to the Court within two weeks from today. They should not await the 2.1 decisions. If necessary, the schedule can be adjusted at a later date.

With respect to the request for a protective order, LAT shall proceed as follows. LAT shall deliver a notice of motion and draft order to the parties and the parties shall provide their positions on the order. The LAT shall then email the court with that information, requesting directions about next steps. The LAT may request any form of order, but a sample of an order

that has been granted is attached.

There is no stay of the ongoing proceedings before the LAT. In the absence of a right of appeal, there is no automatic stay of the LAT orders at issue. Even with a right of appeal, there is no LAT order at issue the stay of which would mean that the ongoing proceedings before the LAT were also stayed.

Accordingly as directed, Please find attached notices issued by the Registrar pursuant to Rule 2.1.

Sincerely,
Saurabh Baweja

---

**From:** Baweja, Saurabh S. (JUD)
**Sent:** October 19, 2023 3:29 PM
**To:** 'Jenna Zorik' <jenna@campisilaw.ca>
**Cc:** Collie, Connor (MAG) <Connor.Collie@ontario.ca>; 'acamporese@csdlawyers.ca' <acamporese@csdlawyers.ca>; 'Peter Murray' <peter@campisilaw.ca>; 'Eric Winkworth' <eric@campisilaw.ca>; 'kkowal@medicalresolutions.com' <kkowal@medicalresolutions.com>; 'Joseph Campisi' <joseph@campisilaw.ca>; Crystal, Valerie (MAG) <Valerie.Crystal@ontario.ca>; 'Ashu Ismail' <ashu@campisilaw.ca>; Lee, Douglas (He/Him) (MAG) <Douglas.Lee@ontario.ca>; 'Urania Godin' <ugodin@csdlawyers.ca>
**Subject:** RE: Lucia Derenzis v. Gore Mutual Insurance Company et al File No. 546/23 and 545/23

Good Afternoon,

Please disregard the below directions.

Substituted directions will follow separating the two applicant groups (File #'s 545/23, 546/23) and (551/23 and 552/23)

Apologies of any confusion this may have caused.

Sincerely,
Saurabh Baweja

---

**From:** Baweja, Saurabh S. (JUD)
**Sent:** October 19, 2023 12:39 PM
**To:** 'Jenna Zorik' <jenna@campisilaw.ca>
**Cc:** Collie, Connor (MAG) <Connor.Collie@ontario.ca>; acamporese@csdlawyers.ca; Peter Murray <peter@campisilaw.ca>; Eric Winkworth <eric@campisilaw.ca>; kkowal@medicalresolutions.com; Joseph Campisi <joseph@campisilaw.ca>; Crystal, Valerie (MAG) <Valerie.Crystal@ontario.ca>; Ashu Ismail <ashu@campisilaw.ca>; Lee, Douglas (He/Him) (MAG) <Douglas.Lee@ontario.ca>; Urania Godin <ugodin@csdlawyers.ca>
**Subject:** RE: Lucia Derenzis v. Gore Mutual Insurance Company et al File No. 546/23 and 545/23

Good Afternoon,

Honourable Justice Matheson directs as follows:

Lyndon Handy has commenced four proceedings in this Court, as follows:

1. 545/23: Appeal of LAT decision dated September 20, 2023
2. 546/23: Application for Judicial Review (AJR) of LAT decision dated September 20,2023
3. 551/23: Appeal of LAT decision dated September 1, 2023
4. 552/23: AJR of LAT decision dated September 1, 2023

The Registrar is directed to send a notice under r. 2.1 of the *Rules of Civil Proceedings* in all four matters due to the following issues:

- There is no right of appeal from an interlocutory order of LAT
- There is no apparent basis to avoid the prematurity doctrine for the AJR in 552/23, and, with one exception addressed below, the AJR in 546/23

Exception: The 2.1 notice for File 546/23 will exclude that part of the application for judicial review seeking to quash the orders in paras. 38-40 of the September 20, 2023 decision, regarding the destruction of documents.
Further, I suspend the operation of those paragraphs of the order, pending further order of this Court. The parties and counsel, must, instead, seal the documents materials listed in para. 36 of the LAT order pending further order of this Court. Because the affiant is part of the applicant's counsel's firm, the affiant is included in this sealing obligation. The sealed documents shall be held by counsel and not distributed in any way pending further order of this Court. Counsel shall confirm to this Court in writing that these steps have been taken promptly upon receipt of these directions.

With respect to the above exception, the parties shall confer over a schedule for the exchange of the Court documents and provide their agreed or proposed schedule to the Court within two weeks from today. They should not await the 2.1 decisions. If necessary, the schedule can be adjusted at a later date.

With respect to the request for a protective order, LAT shall proceed as follows. LAT shall deliver a notice of motion and draft order to the parties and the parties shall provide their positions on the order. The LAT shall then email the court with that information, requesting directions about next steps. The LAT may request any form of order, but a sample of an order that has been granted is attached.

There is no stay of the ongoing proceedings before the LAT. In the absence of a right of appeal, there is no automatic stay of the LAT orders at issue. Even with a right of appeal, there is no LAT order at issue the stay of which would mean that the ongoing proceedings before the LAT were also stayed.

Accordingly as directed, please find attached notices issued by the Registrar pursuant to rule 2.1 of the Rules of Civil Procedure.

Sincerely,
Saurabh Baweja

---

**From:** Jenna Zorik <jenna@campisilaw.ca>
**Sent:** October 12, 2023 1:39 PM
**To:** SCJ-CSJ Div Court Mail (JUD) <scj-csj.divcourtmail@ontario.ca>

**Cc:** Collie, Connor (MAG) <Connor.Collie@ontario.ca>; acamporese@csdlawyers.ca; Peter Murray <peter@campisilaw.ca>; Eric Winkworth <eric@campisilaw.ca>; kkowal@medicalresolutions.com; MAG Correspondence <MAG.Correspondence@ontario.ca>; Joseph Campisi <joseph@campisilaw.ca>; Crystal, Valerie (MAG) <Valerie.Crystal@ontario.ca>; Ashu Ismail <ashu@campisilaw.ca>; Lee, Douglas (He/Him) (MAG) <Douglas.Lee@ontario.ca>; MAG Correspondence <MAG.Correspondence@ontario.ca>; Urania Godin <ugodin@csdlawyers.ca>
**Subject:** RE: Lucia Derenzis v. Gore Mutual Insurance Company et al File No. 546/23 and 545/23
**Importance:** High



**Re: Div. Court Files: 545/23 and 546/23**

Good Afternoon,

Pertaining to the e-mail below regarding file No.: 546/23 and a similar e-mail regarding file No.: 546/23, please be advised that we consulted with all parties and propose that **both matters should be heard together and that only one set of materials is to be provided for the hearing**.

All parties agree that a **half-day hearing** will suffice for this matter and that they will adhere to the following schedule:

**Respondent's LAT's record of proceeding** for the judicial review is to be **due November 13, 2023** – Please note that the counsel for this Respondent specifies as follows: *The ROP will be limited to the reconsideration proceedings that are at issue in the judicial review (plus certain other key documents such as the AABS applications and responses).*
**Applicant/Appellant Materials** are to be **due Nov 27 2023**
**Respondent Materials** are to be due **Jan 15 2023**
**LAT Materials** are to be due **Jan 29 2023**

Additionally, the counsel for the LAT intends to raise the following preliminary issues:

1. **Confidentiality Order.** The LAT intends to request a confidentiality order with respect a portion of the record on the appeal and judicial review. The requested confidentiality order will relate to documents retained by a former LAT adjudicator, as well as certain paragraphs of her affidavit, which the LAT found to be subject to solicitor-client privilege and deliberative secrecy. The former adjudicator retained these documents after her LAT appointment ended and then joined the law firm representing the applicant, who submitted the documents and affidavit in the LAT proceeding to purport to show institutional bias. The LAT will request a sealing order with respect to the documents and portions of the affidavit that were found to be privileged. The LAT requests to be given an opportunity to request the sealing order before the documents found to be privileged are filed with the court.

2. **Privileged documents not to be disseminated further pending appeal/review.** The LAT intends to request an interim order that the documents identified as privileged by the LAT, and which the LAT ordered to be destroyed, not be disseminated further pending these proceedings.

3. **Orders under Appeal/Review are Interlocutory.** The orders under review and appeal are interim orders in the LAT's reconsideration proceedings. The reconsideration process is still underway. As this is not the final order in the LAT proceeding, it cannot be appealed: see *Penney v. The Co-operators General Insurance Company*, 2022 ONSC 3874. However, due to the time-sensitive nature of the LAT's orders to destroy the documents identified as privileged, the LAT agrees that judicial review from the portions of its orders that require the destruction or deletion of documents, as well as an undertaking to do so, should proceed at this time. Importantly, however, the LAT's reconsideration process should not be put on hold because of this judicial review.

Please confirm receipt. I copied all parties on this e-mail.

Sincerely,

**Jenna Zorik**
Licensed Paralegal/Law Clerk

CAMPISI LLP
Personal Injury Lawyers
CHAMPIONS WITH HEART.
7050 Weston Road, Suite 101 | Vaughan, ON | L4L 8G7
Tel: 416-203-1115 | Fax: 416-203-7775 | E-mail: jenna@campisilaw.ca | www.campisilaw.ca



---

**From:** SCJ-CSJ Div Court Mail (JUD) <scj-csj.divcourtmail@ontario.ca>
**Sent:** Thursday, September 28, 2023 3:53 PM
**To:** LATregistrar (MAG) <LATregistrar@ontario.ca>; acamporese@csdlawyers.ca; peter@campisilaw.ca; eric@campisilaw.ca; kkowal@medicalresolutions.com; MAG Correspondence <MAG.Correspondence@ontario.ca>; joseph@campisilaw.ca; ashu@campisilaw.ca
**Subject:** Lucia Derenzis v. Gore Mutual Insurance Company et al File No. 546/23

Good Afternoon,

Your Divisional Court file number is **546/23**

As set out in Part I F, para. 26 , of the Consolidated Practice Direction for Divisional Court Proceedings, the parties shall send in an email including the following information within two weeks from today:

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

Regards,

**Jessa-Marie Clegg**
Toronto Divisional Court
Ministry of the Attorney General of Ontario
130 Queen Street West
Toronto, ON M5H 2N5

**CITATION**: Derenzis v. Gore Mutual Insurance Company, 2024 ONSC 1226
**DIVISIONAL COURT FILE NO.:** 546/23
**DATE:** 20240229

**SUPERIOR COURT OF JUSTICE – ONTARIO**
**DIVISIONAL COURT**

**RE:** LUCIA DERENZIS, Applicant

**AND:**

GORE MUTUAL INSURANCE COMPANY, Respondent

**BEFORE:** Matheson J.

**COUNSEL:** *Valerie Crystal and Douglas Lee,* for the Licence Appeal Tribunal, Moving Party

*Joseph Campisi,* for the Applicant

*Joseph Colangelo,* for the Non-party Karina Kowal

**HEARD at Toronto:** In writing,

## ENDORSEMENT

[1] The Licence Appeal Tribunal (LAT) moves for an order sealing part of the record of proceedings in the underlying application for judicial review and seeks an order preventing further dissemination of the documents at issue pending the determination of the application for judicial review.

[2] This motion arises in the context of two statutory accident benefits matters before the LAT regarding Lucia Derenzis. In the LAT reconsideration of those two matters, the applicant filed an affidavit from a former LAT member. The applicant now seeks judicial review of certain orders made regarding that evidence. Specifically, the applicant seeks to quash orders made in the decisions of the Licence Appeal Tribunal ("LAT") dated September 11, 2023 and September 18, 2023, both dated as released on September 20, 2023 (together, the Decision). Broader proceedings were initially commenced and some aspects were dismissed under r. 2.1 of the *Rules of Civil Procedure*.

[3] As set out in the Decision, the Adjudicator found that certain materials that had been put forward by that affiant were covered by the LAT's solicitor-client privilege and by deliberative secrecy. In turn, the Adjudicator made certain orders about the use, distribution, dissemination

and destruction of the specific documents covered by those privileges. The orders that are the subject of this application for judicial review prohibit dissemination, require destruction and require confirmation of compliance. Those orders extend to the affiant who put forward the documents, the former LAT adjudicator, who is participating in this motion as a non-party.

[4] The LAT seeks sealing and non-dissemination orders because, otherwise, the confidentiality that comes with solicitor-client privilege and deliberative secrecy will be lost before the application is even heard. The LAT relies on the leading case, *Sherman Estate v. Donovan*, 2021 SCC 25, at para. 38, providing the necessary criteria for a sealing order.

[5] The applicant contests this motion and focuses on the merits of the application for judicial review and the issues the applicant wishes to raise before the LAT based on the contested evidence. The applicant submits that solicitor-client privilege may be an important public interest but is not grounded in the evidence and is not available in some settings. The applicant disputes the findings of privilege and secrecy. The applicant also submits that the evidence at issue could be further redacted.

[6] The affiant submits that the public should not be denied access to the contested evidence. She disputes the orders made in the Decision, submitting that they were made without notice to her. However, she has not brought a challenge to Decision as it applies to her.

[7] The affiant further submits that the privileges are not absolute and do not override the public interest in an open court system. The affiant puts forward submissions about the merits of the Decision and the application for judicial review. Many of the submissions are predicated on the Decision being wrong. That remains to be decided in future proceedings. In that regard, I note that the LAT proceedings are also ongoing and other aspects of the Decision may well be at issue once those proceedings are final.

[8] The affiant also relies on the role of the LAT as a decision-maker. I have taken that into account along with the other submissions but note that even a decision-maker may have solicitor-client privilege and it is a decision-maker who may have deliberative secrecy.

[9] A factum has also been submitted by Peter Murray, a lawyer within the law firm that acts for the applicant. It is not clear why Mr. Murray took this step. If he is attempting to assert a personal interest separate from being a lawyer at the applicant's law firm, he must take express steps in that regard and address any issues that may arise at a result. In any event, the submissions mainly support the applicant's position and do not change the outcome of the motion.

[10] I conclude that the criteria in *Sherman Estate* are met. The privilege/secrecy that has been established in the documents at issue is recognized at law as an important public interest and is protected by confidentiality. To open them to the public before the ongoing proceedings have been decided would irreparably compromise that privilege/secrecy. I am not persuaded that an attempt at more fine-tuned redactions is a reasonable alternative. The order will be limited to the documents at issue and permit counsel access as needed to fully argue the application for judicial review. The sealing order is needed to preserve the ability of the court to do justice in this case.

[11] The LAT also seeks the continuation of an order I made in my directions of October 19, 2024. I suspended the order in the Decision that required destruction of the documents, instead requiring that they be sealed and held by counsel and not distributed in any way pending further order of the Court. These were court orders, as set out in Part I, Section G, para. 32, of the *Consolidated Practice Direction for Divisional Court Proceedings*, given at that time. They were not challenged and the time to do so has passed. On their terms, they continue – another order is not needed for that purpose. If the LAT wishes those orders in the form of a formal order it may submit a form of order as of that date after obtaining the position of the parties as to the form and content.

[12] The motion regarding the sealing order is granted. The moving party shall submit a draft order after obtaining the position of the parties as to form and content. The relief sought regarding a continuation of my prior order is not necessary. No costs are sought or granted on this motion.

Matheson J.

**Date:** February 29, 2024

**CITATION**: Derenzis v. Gore Mutual Insurance Co., 2025 ONSC 2732
**DIVISIONAL COURT FILE NO.:** 546/23, 109/24 and 114/24
**DATE:** 20250506

**ONTARIO**
**SUPERIOR COURT OF JUSTICE**
**DIVISIONAL COURT**

**D.L. Corbett, Lococo and Doyle JJ.**

| | |
|---|---|
| **BETWEEN:** | |
| LUCIA DERENZIS<br>Applicant/Appellant | *Ashu Ismail* and *Joseph Campisi*, for the Applicant/Appellant |
| – **and** – | |
| GORE MUTUAL INSURANCE COMPANY and LICENCE APPEAL TRIBUNAL<br>Respondents | *Arthur R. Camporese*, for Gore Mutual Insurance Company, Respondent<br>*Morgana Kellythorne* and *Douglas Lee*, for the Licence Appeal Tribunal, Respondent |
| – **and** – | |
| ATTORNEY GENERAL OF ONTARIO and ONTARIO TRIAL LAWYERS ASSOCIATION<br>Intervenors | *Michael J. Sims* and *Matthew Chung*, for the Attorney General of Ontario, Intervenor<br>*Barbara Legate* and *Robert Serendynski*, for the Ontario Trial Lawyers Association, Intervenor |
| | **HEARD at Toronto:** March 4, 2025, with additional written submissions to April 25, 2025 |

**REASONS FOR DECISION**

**LOCOCO and DOYLE JJ.**

## I. Introduction

[1] Lucia Derenzis appeals and seeks judicial review of various decisions described below (the "Decisions") of the respondent Licence Appeal Tribunal (the "Tribunal"). The Decisions arose from two applications Ms. Derenzis made to the Tribunal to resolve disputes about her claim for

no-fault accident benefits from the respondent Gore Mutual Insurance Company ("Gore Mutual"), following a motor vehicle accident.

[2] In the "IRB Decision" dated June 27, 2023 [reported at 2023 CanLII 74649 (ON LAT)], the Tribunal dismissed Ms. Derenzis's claim for income replacement benefits that were suspended on the basis that she failed to attend required medical examinations. In the "Expenses Decision" dated June 27, 2023 [2023 CanLII 58532 (ON LAT)], the Tribunal dismissed her claim for medical and rehabilitation expenses set out in treatment plans, finding that any delay in payment of benefits was caused by her failure to attend required examinations.

[3] The Tribunal also dismissed Ms. Derenzis's requests for reconsideration of those decisions in the "IRB Reconsideration Decision" [2024 CanLII 2662 (ON LAT)] and the "Expenses Reconsideration Decision" [2024 CanLII 2670 (ON LAT)], each dated January 16, 2024.

[4] In her reply submissions with respect to the requests for reconsideration, Ms. Derenzis provided an affidavit sworn by a former Tribunal adjudicator that contained information and internal Tribunal documents that the affiant obtained as a Tribunal adjudicator. In interim decisions (the "Document Decisions"), the Tribunal found that portions of the reply submissions and the affidavit were protected by privilege and struck them from the reconsideration record. The Tribunal also ordered that the impugned documents be destroyed and not further disseminated. Upon reconsideration, the Tribunal struck from the reconsideration record additional portions of the reply submissions on the basis that they were not proper reply.

[5] Upon appeal and judicial review, Ms. Derenzis challenges the Decisions on various grounds. Among other things, she asks the court to set aside the Decisions and order Gore Mutual to pay withheld benefits to her.

[6] For the reasons below, we would dismiss the appeal and the judicial review application.

## II. Background

[7] On November 24, 2015, Ms. Derenzis was involved in a motor vehicle accident. She was a pedestrian when she was struck by a vehicle. On December 4, 2015, she made an application to Gore Mutual, her automobile insurer, for no-fault accident benefits pursuant to the *Statutory Accident Benefits Schedule – Effective September 1, 2010*, O. Reg. 34/10 (the "*SABS*" or "*Schedule*") under the *Insurance Act*, R.S.O. 1990, c. I.8.

[8] In her initial application to Gore Mutual, Ms. Derenzis requested payment of income replacement benefits ("IRBs") under s. 5 of the *SABS*. In applications submitted in April and August 2018, Ms. Derenzis also requested determination that she sustained a catastrophic ("CAT") impairment as a result of the accident under s. 45 of the *SABS*: see IRB Decision, at para. 2.

[9] In addition, Ms. Derenzis sought medical and rehabilitation benefits under ss. 15-17 of the *SABS*, relating to expenses to be incurred pursuant to "treatment plans", including for physiotherapy and occupational therapy. The policy limit for reimbursement of such expenses was $50,000 unless the insurer determined that the insured sustained a CAT impairment as a result of the accident: Expenses Decision, at para. 2.

[10] By letter dated January 8, 2016, Gore Mutual notified Ms. Derenzis that she qualified for IRBs in the maximum amount of $400 per week, effective December 1, 2015. Gore Mutual paid IRBs to Ms. Derenzis effective from that date. However, disputes arose between the parties relating to Gore Mutual's requests that Ms. Derenzis attend insurers examinations ("IEs"), as provided in ss. 44 and 45 of the *SABS*. Those disputes led to suspension of IRB payments to Ms. Derenzis, as described below.

[11] Section 44 of the *SABS* provides in part:

> **Examination required by insurer**
> 44. (1) For the purposes of assisting an insurer to determine if an insured person is or continues to be entitled to a benefit under this Regulation for which an application is made, but not more often than is reasonably necessary, an insurer may require an insured person to be examined under this section by one or more persons chosen by the insurer who are regulated health professionals or who have expertise in vocational rehabilitation.
>
> . . .
>
> (5) If the insurer requires an examination under this section, the insurer shall arrange for the examination at its expense and shall give the insured person a notice setting out,
>
> (a) the medical and any other reasons for the examination;
>
> (b) whether the attendance of the insured person is required at the examination;
>
> (c) the name of the person or persons who will conduct the examination, any regulated health profession to which they belong and their titles and designations indicating their specialization, if any, in their professions; and
>
> (d) if the attendance of the insured person is required at the examination, the day, time and location of the examination and, if the examination will require more than one day, the same information for the subsequent days.

[12] As well, if the insured is seeking a determination of CAT impairment, the insurer is required by s. 45(3) of the *SABS* to notify the insured if the insurer requires an examination under s. 44 relating to whether the impairment is a CAT impairment.

[13] As indicated in the IRB Decision, at para. 58, Gore Mutual alleged that commencing in 2017, it attempted to set up a number of IEs to determine if Ms. Derenzis continued to be entitled to IRBs. Gore Mutual also alleged that from 2018 to 2021, it attempted to set up IEs to determine whether Ms. Derenzis sustained a CAT impairment. The requested IEs consisted of assessments by various health professionals that Gore Mutual scheduled through outside assessment companies. Until at least May 2021, Ms. Derenzis did not attend for requested IEs, alleging that the notices that Derenzis provided did not comply with s. 44 of the *SABS*, including because the

IEs were scheduled through assessment companies rather than directly with regulated health professionals: see IRB Decision, at paras. 3, 59, 61-65, 71, 88-94.

[14] For example, by letter dated March 13, 2017, Gore Mutual advised Ms. Derenzis that it had arranged appointments through an assessment company with four health professionals to assist in determining her further entitlement to IRBs and medical/rehabilitation benefits. Ms. Derenzis did not attend those examinations: see IRB Decision, at paras. 63-64. In addition, in June and September 2018, Gore Mutual provided Ms. Derenzis with further notices of IEs, some of which Gore Mutual canceled and others rescheduled with new notices dated September 24, 2018. Ms. Derenzis did not attend the rescheduled assessments: IRB Decision, at para. 66-68.

[15] As of October 8, 2018, Gore Mutual suspended payment of IRBs to Ms. Derenzis on the basis that she failed to attend IEs without reasonable excuse when required to do so under s. 44 of the *SABS*. By Explanation of Benefits dated October 12, 2021, Gore Mutual reinstated payment of IRBs to Ms. Derenzis effective May 31, 2021, based on Ms. Derenzis's attendance for a requested IE. Following her attendance for further IEs, Gore Mutual also accepted that Ms. Derenzis sustained a catastrophic impairment as a result of the accident: see IRB Decision, at para. 3.

## III. Proceedings before the Tribunal

### A. Tribunal applications

[16] In December 2018, Ms. Derenzis made an application to the Tribunal under s. 280 of the *Insurance Act* (the "IRB Proceeding") to resolve the parties' dispute relating to her entitlement to IRBs and her claim that she sustained a CAT impairment. Under s. 280, the Tribunal has exclusive jurisdiction "with respect to the resolution of disputes in respect of an insured person's entitlement to statutory accident benefits or in respect of the amount of statutory accident benefits to which an insured person is entitled": see *Insurance Act*, ss. 280(1), 280(3).

[17] In January 2021, Ms. Derenzis made a further application to the Tribunal (the "Expenses Proceeding") to resolve the parties' dispute relating to her claim for medical and rehabilitation expenses pursuant to proposed treatment plans. At issue in that application was Ms. Derenzis's entitlement to reimbursement of those expenses beyond the "non-catastrophic impairment policy limits of $50,000": Expenses Decision, at para. 2. Under s. 3(8) of the *SABS*, if the Tribunal finds that such an expense "was not incurred because the insurer unreasonably withheld or delayed payment of a benefit in respect of the expense," the Tribunal may "deem the expense to have been incurred."

[18] In both applications, Ms. Derenzis also sought an additional lump sum award ("Reg. 664 award") under s. 10 of R.R.O. 1990, Reg. 664: *Automobile Insurance* under the *Insurance Act*. Section 10 of Reg. 664 provides:

> 10. If the Licence Appeal Tribunal finds that an insurer has unreasonably withheld or delayed payments, the Licence Appeal Tribunal, in addition to awarding the benefits and interest to which an insured person is entitled under the Statutory Accident Benefits Schedule, may award a lump sum of up to 50 per cent of the amount to which the person was entitled at the time of the award together with interest on all amounts then owing to the insured (including unpaid interest) at the

> rate of 2 per cent per month, compounded monthly, from the time the benefits first became payable under the Schedule.

[19] The IRB Proceeding and the Expenses Proceeding advanced to separate hearings by videoconference before the same adjudicator, D. Neilson, in June 2022 (for the Expenses Proceeding) and January 2023 (for the IRB Proceeding). By that time, the matters in issue had narrowed, since Gore Mutual had accepted that Ms. Derenzis sustained a CAT impairment and it was no longer disputing the proposed treatment plans under which medical and rehabilitation expenses would be incurred: IRB Decision, at para. 2; Expenses Application, at para. 2. Since the evidence and issues in each application were essentially the same, the parties agreed that the evidence in both hearings would be applicable to both applications. As well, the Tribunal stayed the decision in the Expenses Application pending release of the IRB Decision: see IRB Decision, at para. 5; Expenses Decision, at para. 4.

[20] For the IRB Proceeding, the primary issue before the Tribunal was whether Ms. Derenzis was entitled to an IRB of $400 per week from October 8, 2018 to May 30, 2021, being the period in which Gore Mutual had suspended payment of IRBs based on Ms. Derenzis's alleged failure to attend for required IEs: see IRB Decision, at para. 6(1).

[21] For the Expenses Proceeding, the primary issue was whether the Tribunal should deem Ms. Derenzis to have incurred the medical and rehabilitation expenses set out in the treatment plans based on Gore Mutual's unreasonable delay in determining that she sustained a catastrophic impairment and in accepting the treatment plans: see Expenses Decision, at paras. 3, 6(1); *SABS*, s. 3(8).

[22] Also in issue in both applications was whether Ms. Derenzis was entitled to (i) a Reg. 664 award because it unreasonably withheld or delayed benefit payments, and (ii) interest on any overdue benefit payments.

### B. Initial Tribunal decisions

[23] On June 27, 2023, the Tribunal issued the IRB Decision and the Expenses Decision (the "Initial Decisions"), dismissing both applications in their entirety.

[24] In the IRB Decision, the Tribunal found that Ms. Derenzis failed to attend IEs without reasonable excuse contrary to s. 44 of the *SABS*. The Tribunal also found that Gore Mutual did not unreasonably withhold or delay payment of IRBs from October 8, 2018 to May 30, 2021. As a result, her claim for IRBs for that period was dismissed, together with her claims for a Reg. 664 award and interest.

[25] At para. 53, the Tribunal framed the issue before it in the IRB Proceeding as follows:

> The issue of whether the respondent unreasonably withheld or delayed payment of IRBs from 2018 to 2021 is dependant [*sic*] upon why it took 4 years for the IEs to be completed. The respondent submits that it is because the applicant failed to attend IEs properly scheduled during that period of time without a reasonable excuse. The applicant submitted it is because the respondent did not properly schedule the IEs or notify her of them.

[26] At para. 60, the Tribunal stated that to determine whether Ms. Derenzis was entitled to IRBs for the disputed period, it must determine (among other things), (i) whether Gore Mutual provided proper notice of the IEs, (ii) whether Gore Mutual requested more IEs than were reasonably required, and (iii) whether Gore Mutual was prohibited from using assessment companies to schedule IEs.

[27] At para. 61, the Tribunal summarized its findings on the enumerated issues, which were explained in greater detail in the balance of its reasons. Among other things, the Tribunal found that "some of the IE notices complied with the *Schedule* and, therefore, on a cumulative basis the applicant was provided with proper notice under the *Schedule* for the medical and other reasons why the respondent asked for the IE assessments." The Tribunal also found that "the assessments [Gore Mutual] sought were reasonably required" and that Gore Mutual "was entitled to use an assessment company to schedule the IEs": IRB Decision, at para. 61.

[28] In further explaining its finding that Gore Mutual provided adequate notice of the IEs, the Tribunal considered in detail Gore Mutual's IE notice set out in its letter dated March 13, 2017, which included "a number of enclosed forms titled 'examination notice' listing the name and specialty of each assessor, the address, date and time of the assessment, the contact information and the reasons for the assessment." The Tribunal found that the notice "complied with the notice requirements to provide medical reasons for why the respondent wanted to assess the applicant's entitlement to IRBs and gave the applicant enough information to make an informed decision on whether or not to attend the IEs": IRB Decision, at para. 63. As well, when considering the adequacy of later IE notices, the Tribunal found that the information contained in those notices, together with the medical and other information contained the March 13, 2017 notice, provided Ms. Derenzis with enough information to determine whether to comply with the notices: IRB Decision, at paras. 65-66.

[29] Similarly, in the Expenses Decision, the Tribunal found that Gore Mutual did not unreasonably withhold or delay payment of medical and rehabilitation expenses under the treatment plans. In doing so, the Tribunal rejected Ms. Derenzis's submission that Gore Mutual unreasonably delayed in determining that Ms. Derenzis sustained a catastrophic impairment and in accepting the treatment plans. The Tribunal found that any delay was caused by Ms. Derenzis's failure to attend IEs without reasonable excuse and rejected the submission that the number and type of examinations were excessive. As a result, the Tribunal found there was no basis for deeming Ms. Derenzis to have incurred those expenses. The Tribunal also dismissed her claims for a Reg. 664 award and interest.

### C. Additional issues arising upon reconsideration

[30] On July 18, 2023, Ms. Derenzis filed with the Tribunal requests for reconsideration of the Initial Decisions.

[31] Upon reconsideration, Ms. Derenzis sought to introduce fresh evidence that included documents produced to her counsel after the hearing by an assessment company that Gore Mutual used to book IEs for her. Ms. Derenzis alleged errors of law and fact by the Tribunal in its analysis relating to IE notices under s. 44 of the *SABS*. She also alleged that the Tribunal acted outside its jurisdiction or violated the rules of procedural fairness. Her submissions included statements to

the effect that it was "more likely than not that an unbiased adjudicator at a Tribunal lacking systemic bias would have appreciated and apprehended" such errors.

[32] In Responding Submissions dated August 18, 2023, Gore Mutual requested that the requests for reconsideration be dismissed. It opposed the introduction of fresh evidence and responded to Ms. Derenzis's submissions relating to alleged errors of law and fact and breaches of procedural fairness. Gore Mutual also submitted that Ms. Derenzis had not established a factual foundation for a reasonable apprehension of bias.

[33] In her reply submissions dated August 25, 2023, under the heading "Reasonable Apprehension of Bias", Ms. Derenzis alleged (among other things) that the Tribunal had internal processes that singled out for special scrutiny matters before the Tribunal that involved her counsel's law firm. In support of her submissions, Ms. Derenzis sought to introduce an affidavit sworn the previous day by a former Tribunal adjudicator, who was later employed by the law firm of Ms. Derenzis's counsel. The exhibits to that affidavit included information and internal Tribunal documents that the affiant obtained as a Tribunal adjudicator.

[34] On August 31, 2023, Vice-Chair McGee of the Tribunal ordered submissions from the parties on whether the former adjudicator's affidavit and attached exhibits should be struck from the record on the basis that they were protected by solicitor-client privilege and adjudicative privilege (deliberative secrecy). The Tribunal also ordered the parties not to further distribute or disseminate the documents pending determination of the issue.

[35] In decisions dated September 11, 2023 and September 18, 2023, both released on September 20, 2023 (the "Document Decisions"), Vice-Chair McGee on behalf of the Tribunal found certain paragraphs of and exhibits to the affidavit to be privileged. The Tribunal struck that material from the record and ordered the preparation of redacted reply submissions for use by the reconsideration adjudicator. In doing so, the Tribunal refused Ms. Derenzis's request that Vice-Chair McGee recuse herself. The Tribunal also ordered that all copies of the impugned materials be destroyed and not further disseminated in any form. The Tribunal also deferred to the reconsideration adjudicator the issue of whether Ms. Derenzis made improper use of reply submissions by introducing argument and evidence not raised in her initial submissions.

[36] In subsequent Divisional Court decisions, the requirement in the Document Decisions for the destruction of documents was suspended. The documents were instead ordered to be sealed and held by counsel and not distributed in any way pending further court order (the "Sealing Order"): see *Derenzis v. Gore Mutual Insurance Co.*, 2024 ONSC 1226 (Div. Ct.), at para. 11.

### D. Reconsideration decisions

[37] On January 16, 2024, Vice Chair Logan of the Tribunal released the IRB Reconsideration Decision and the Expenses Reconsideration Decision (the "Reconsideration Decisions").

[38] In the Reconsideration Decisions, the Tribunal granted Gore Mutual's motion to strike as improper reply portions of the redacted reply submissions and supporting material relating to Ms. Derenzis's allegations of reasonable apprehension of bias, including the balance of the former adjudicator's affidavit and attached exhibits. The Tribunal found that although Ms. Derenzis referred to "an 'unbiased adjudicator' in her [initial reconsideration] submissions, [she] did not

argue bias as a ground for reconsideration until her reply": IRB Reconsideration Decision, at para. 15; Expenses Reconsideration Decision, at para. 14.

[39] On the remaining evidence and submissions, the Tribunal dismissed the requests for reconsideration. Among other things, the Tribunal rejected Ms. Derenzis's submission that it erred in its analysis relating to the IE notices. The Tribunal also found that Ms. Derenzis had not satisfied the test for a reasonable apprehension of bias.

## IV. Divisional Court jurisdiction and standard of review

[40] Ms. Derenzis appeals the Initial Decisions and the Reconsideration Decisions. She also seeks judicial review of the Document Decisions to the extent that they order document destruction and non-dissemination. Gore Mutual opposes the appeal and the judicial review application. The Attorney General of Ontario (the "Attorney General") and the Ontario Trial Lawyers Association (the "OTLA") are intervenors in these proceedings.

[41] The Divisional Court has jurisdiction to hear an appeal from a Tribunal decision under the *SABS*, but only on a question of law: *Licence Appeal Tribunal Act, 1999*, S.O. 1999, c. 12, Sched. G, ss. 11(1), 11(6) (the "*LATA*").

[42] Despite any right of appeal, the Divisional Court has jurisdiction to hear Ms. Derenzis's judicial review application: *Judicial Review Procedure Act*, R.S.O. 1990, c. J.1 , ss. 2, 6(1). Judicial review is a discretionary and extraordinary remedy, but the existence of a right of appeal limited to questions of law does not in itself amount to a discretionary bar nor preclude a judicial review application for questions of fact or mixed fact and law: *Yatar v. TD Insurance Meloche Monnex*, 2024 SCC 8, 489 D.L.R. (4th) 191, at para. 57.

[43] When a party brings both an appeal and a judicial review application from the same decisions, the Divisional Court's practice is for both proceedings to be heard and decided by the same panel: see *Yatar v. TD Insurance Meloche Monnex*, 2022 ONCA 446, 25 C.C.C.L. (6th) 1, at paras. 55-56, rev'd. on other grounds, 2024 SCC 8; *Shearer v. Oz*, 2024 ONSC 1723 (Div. Ct.), at para. 30.

[44] On the appeal, the standard of review is correctness for questions of law: *Housen v. Nikolaisen*, 2002 SCC 33, [2002] 2 S.C.R. 235, at para. 8; see also *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65, [2019] 4 S.C.R. 653, at para. 37. There is no appeal with respect to questions of fact or questions of mixed fact and law except where there is an extricable legal principle, which is reviewable on a correctness standard: *Housen*, at paras. 26-37.

[45] Whether there has been a breach of the duty of procedural fairness is a question of law, subject to correctness review on appeal: *Law Society of Saskatchewan v. Abrametz*, 2022 SCC 29, 470 D.L.R. (4th) 328, at paras. 26-30, 129, 169, 179. The degree of procedural fairness required is determined by reference to all the circumstances of the case, including those set out in *Baker v. Canada (Minister of Citizenship and Immigration)*, [1999] 2 S.C.R. 817, at paras. 21-28; see also *Vavilov*, at para. 77.

[46] With respect to the application for judicial review, this court will not entertain the application or grant a remedy to the extent that the substance of the application is adequately addressed by another process, that "other process" in this case being the appeal: see *Strickland v. Canada (Attorney General)*, 2015 SCC 37, [2015] 2 S.C.R. 713, at paras. 40-45. Therefore, the only issues that this court will entertain for judicial review are questions of fact, mixed fact and law (where there is no extricable question of law) and exercises of discretion: see *Shearer*, at para. 32. Upon judicial review, the presumptive standard of review is reasonableness: *Vavilov*, at paras. 23-25. There is no dispute that the standard of review for those matters is reasonableness in this case.

[47] Reasonableness review "finds its starting point in the principle of judicial restraint" but remains "a robust form of review" rather than "a 'rubber-stamping' process or a means of sheltering administrative decision makers from accountability": *Vavilov*, at para. 13. A reasonable decision is one that is based on an internally coherent and rational chain of analysis that is justified in relation to the facts and law that constrain the decision maker. The reasonableness standard requires a reviewing court to defer to such a decision: *Vavilov*, at para. 85. The relative expertise of administrative decision makers with respect to the questions before them is a relevant consideration in conducting reasonableness review: *Vavilov*, at paras. 31, 92-93.

[48] The burden is on the party challenging the decision to show that it is unreasonable. Before a decision can be set aside on that basis, "the reviewing court must be satisfied that there are sufficiently serious shortcomings in the decision such that it cannot be said to exhibit the requisite degree of justification, intelligibility and transparency": *Vavilov*, at para. 100.

## V. Issues for determination

[49] In the appeal, Ms. Derenzis submits that the Initial Decisions and the Reconsideration Decisions were wrong in law and marred by apparent institutional bias. She asks the court to set aside those decisions and order Gore Mutual to pay withheld benefits to her. She also requests that the question of whether she should receive a Reg. 664 award and interest be remitted to the Tribunal for determination. While her submissions focus on the Tribunal decisions in the IRB Proceeding, Ms. Derenzis submits that the same errors permeate the decisions in the Expenses Proceeding, with the result that the latter decisions should be vitiated as well.

[50] Ms. Derenzis says that the Tribunal made errors of law in determining whether Gore Mutual's IE notices complied with its obligations under s. 44 of the *SABS*. Among other things, she argues that the Tribunal erred in considering the notices' cumulative effect when determining whether they were sufficient to meet the requirements of s. 44. She also submits that the Tribunal erred in law and breached procedural fairness in the Reconsideration Decision by striking as improper reply those parts of her reply submissions and evidence that were not ordered struck and destroyed in the Documents Decisions.

[51] In the judicial review application, Ms. Derenzis seeks to set aside the Documents Decisions to the extent they require the destruction and non-dissemination of documents she submitted as evidence of institutional bias. She challenges the Tribunal's jurisdiction to make the destruction and non-dissemination orders. She also submits that the orders were unreasonable, including because in making the orders the Tribunal misapprehended the scope of solicitor-client privilege

and adjudicative privilege (deliberative secrecy). She asks the court to set aside the document destruction and non-dissemination orders and lift the Sealing Order.

[52] The issues to be determined are:

a. Adequacy of IE notices: Did the Tribunal err in law in determining that Gore Mutual's IE notices complied with s. 44 of the *SABS*?

b. Improper reply: Did the Tribunal err in law or breach procedural fairness in the Reconsideration Decisions by striking as improper reply those parts of Ms. Derenzis's reply submissions and evidence not previously ordered struck and destroyed?

c. Jurisdiction to order dissemination and/or destruction: Did the Tribunal exceed its jurisdiction in ordering the destruction and non-dissemination of documents tendered in reply upon reconsideration?

d. Solicitor-client privilege: Was the decision to order the destruction and non-dissemination of documents on the basis of solicitor-client privilege unreasonable?

e. Deliberative secrecy: Was the decision to order the destruction and non-dissemination of documents on the basis of deliberative secrecy unreasonable?

[53] As explained below, we have concluded that the Tribunal did not make any reversible errors. Therefore, the appeal and the judicial review application should be dismissed.

## VI. Analysis

### A. Adequacy of IE notices

[54] Ms. Derenzis submits that the Tribunal made errors of law in determining whether Gore Mutual's IE notices complied with its obligations under s. 44 of the *SABS*.

[55] Given the "consumer protection purpose" of insurance legislation (and the *SABS* in particular), Ms. Derenzis argues that notices to the insured under insurance legislation are required to be in "straightforward and clear language, directed towards an unsophisticated person": see *Smith v. Co-operators General Insurance Co.*, 2002 SCC 30, [2002] 2 S.C.R. 129, at paras. 11, 14. In *Smith*, at para. 13, the Supreme Court also questioned whether a "verbatim reproduction" of the applicable legislative provisions would constitute sufficient notice to the insured. Consistent with that concern, Ms. Derenzis argues that the contents of Gore Mutual's IE notices (which in some cases included pages of verbatim *SABS* provisions before setting out reasons for the IE) ran afoul of the consumer protection purpose of the *SABS*.

[56] In *M.B. v. Aviva Insurance Canada*, 2017 CanLII 87160 (Ont. LAT), at para. 26 (referred to in the IRB Decision, at para. 62), the Executive Chair Lamoureux of the Tribunal applied the consumer protection principle in interpreting s. 44(5)(a) of the *SABS*, which requires that the insurer's IE notice explain the "medical and other reasons for the examination":

> In my view, an insurer satisfies its obligation to provide its "[medical] and any other reasons," whether under s. 44(5)(a) or elsewhere, by explaining its decision with reference to the insured's medical condition and any other applicable rationale. That explanation will turn on the unique facts at hand … [but] should, at the very least, include specific details about the insured's condition forming the basis for the insurer's decision or, alternatively, identify information about the insured's condition that the insurer does not have but requires. Additionally, an insurer should also refer to the specific benefit or determination at issue, along with any section of the Schedule upon which it relies. Ultimately, an insurer's "medical and any other reasons" should be clear and sufficient enough to allow an unsophisticated person to make an informed decision to either accept or dispute the decision at issue. Only then will the explanation serve the *Schedule*'s consumer protection goal. [Emphasis added.]

[57] Ms. Derenzis notes that the *M.B.* decision has been cited in subsequent Tribunal decisions, including *B.M. v Unica Insurance Inc.*, 2020 CanLII 72512 (ON LAT), in which the Tribunal also stated, at para. 27:

> An insured person should not be expected to piece together "medical or other reasons" for an examination from disparate notices and correspondence, or … to advise an insurer of deficiencies in those notices so they may be corrected. The duty to give reasoned notice rests with the insurer.

[58] Applying those principles, Ms. Derenzis submits that the Tribunal erred in considering the cumulative effect of various IE notices when determining whether they were sufficient to meet the requirements of s. 44 of the *SABS*.

[59] Ms. Derenzis says that the Tribunal's repeated determinations in the IRB Decision that s. 44 notices were valid when considered along with prior notices constituted an extricable error of law, subject to appeal on a correctness standard. She also argues that when considering the validity of IE notices provided in September 2018 shortly before Gore Mutual suspended IRB payments, the Tribunal was wrong in law to consider the reasons provided in an IE notice provided a year and seven months earlier on March 13, 2017 in deciding that the later notices met the requirements of s. 44. Ms. Derenzis says that doing so was an afront to the consumer protection purpose of the *SABS* and a direct breach of the language and object of s. 44(5)(b). She also submits that the Tribunal's error in the IRB Decision cannot be saved by its attempts on reconsideration to recharacterize the Tribunal's findings by stating that the adjudicator considered the adequacy of each notice individually and found each to be compliant: see IRB Reconsideration Decision, at paras 36, 39.

[60] We do not agree that Ms. Derenzis has established an error of law relating to the application of s. 44 of the *SABS* in this case.

[61] Consistent with Gore Mutual's submissions, the question of whether the IE notices it provided meet the requirements of s. 44 of the *SABS* is a question of mixed fact and law, involving the application of s. 44 to the facts. We see no extricable legal error in the Tribunal's analysis.

[62] When the Tribunal is determining whether an IE notice complied with s. 44, we agree with Gore Mutual that the Tribunal would be precluded from taking into account the information that the insured and their counsel had previously received from the insurer in connection with previous IE notices. As the Tribunal stated in *M.B.*, at para. 26, the insurer's explanation of the medical and other reasons for the examination turns on the "unique facts at hand" in each case. In *17-004358 v Economical Mutual Insurance Company*, 2018 CanLII 112110 (ON LAT), at paras. 13-14, the Tribunal referred to the *M.B.* decision, including its reference to the "consumer protection goal" of the *SABS*. In *Economical*, at paras. 16-17, the Tribunal considered three of the insurers' examination notices that the insured party challenged as insufficient. The Tribunal found that "sufficient notice was provided for all of the benefits in question": *Economical*, at para. 15. In doing so, the Tribunal took into account related reports and forms that had been exchanged between the parties. From these documents, taken together, the Tribunal concluded that the insured had sufficient information to make an informed decision about attending the examinations.

[63] Similarly, in the IRB Decision, in determining that Gore Mutual's IE notices met the requirements of s. 44, the Tribunal did not err in considering the course of conduct between the parties, including previous IE notices and other documents and information that Ms. Derenzis and her counsel received from Gore Mutual. We are not satisfied that Ms. Derenzis has established any basis for interfering with the Tribunal's finding that the IE notices complied with s. 44. In any case, the Tribunal found on reconsideration that the adjudicator at first instance considered that adequacy of each IE notice and found each compliant. It was open to the Tribunal to reach that conclusion on the record before it. We see no basis to interfere.

### B. Improper reply

[64] Ms. Derenzis submits that the Tribunal erred in law and breached procedural fairness in the Reconsideration Decision by striking as improper reply those parts of her reply submissions and evidence that were not ordered struck and destroyed in the Documents Decisions.

[65] As previously noted, in her reply submissions on reconsideration, Ms. Derenzis challenged the Initial Decisions on the basis of alleged institutional bias, relying on an affidavit of a former adjudicator that Ms. Derenzis sought to introduce as part of her reply submissions. In the Documents Decisions, the Tribunal ordered parts of her reply submissions and the affidavit struck from the record and destroyed. Those orders in the Documents Decisions are the subject of Ms. Derenzis's judicial review application addressed later in these reasons.

[66] What Ms. Derenzis challenges on appeal are those parts of the reconsideration reply submissions and the former adjudicator's affidavit that were not ordered struck or destroyed in the Documents Decisions. In the Reconsideration Decision, the Tribunal struck the balance of the reply submissions relating to the issue of institutional bias together with the rest of the affidavit from the reconsideration record on the basis that they were not proper reply. The Tribunal found that Ms. Derenzis did not raise the issue in her 276 pages of material in her initial reconsideration submissions and rejected her argument that the issue was raised in response to Gore Mutual's responding submissions: IRB Reconsideration Decision, at paras. 15-16. The Tribunal also found, at para. 16, that Ms. Derenzis had the opportunity to raise the issue as grounds for reconsideration but did not do so. The Tribunal also found that her submission that she could not have made the arguments earlier was unsupported by the evidence.

[67] Ms. Derenzis challenges the Tribunal's order striking the remaining reply submissions and evidence as wrong.

[68] We see no basis for interfering with the Tribunal's order. As the Tribunal stated in the reconsideration context in *E.M. and Aviva Insurance Company*, 2020 CanLII 12741 (ON LAT), at para. 20:

> The purpose of reply is for the party bearing the onus in the dispute to respond to any issues that were raised in the other party's submissions which could not have been reasonably raised in initial submissions. Reply is not an opportunity for the party to raise issues that should have been raised in initial submissions or to reformulate their argument.

[69] Improper reply deprives the responding party of the opportunity to provide a more particularized response and to effectively participate in the reconsideration process. Rather than being unfair to Ms. Derenzis, the Tribunal's striking of the improper reply submissions and evidence avoided unfairness to Gore Mutual that would have resulted from its admission.

[70] For the above reasons, the appeal is dismissed.

## C. Jurisdiction to order dissemination and/or destruction

### Parties' positions

*Ms. Derenzis's position*

[71] Ms. Derenzis also seeks to quash the Document Decisions that included non-dissemination and destruction orders made by the Tribunal on September 20, 2023.

[72] As stated above, as part of her reply submissions in her request for reconsideration, Ms. Derenzis filed the affidavit of Dr. Karina Kowal dated August 24, 2023 as evidence of institutional bias, arguing that there were additional processes within the Tribunal which stripped adjudicators of their adjudicative independence.

[73] Dr. Kowal, a licensed paralegal working with Ms. Derenzis's law firm, is a former adjudicator whose appointment ended on October 21, 2021.

[74] Dr. Kowal's affidavit discussed the following matters:

a. The assignment of adjudicators;

b. Internal consultations among adjudicators on legal and policy matters involving adjudicative directions;

c. Legal advice provided by Tribunal counsel to the adjudicators;

d. Dr. Kowal's notes and documents she obtained during her term which she attached as exhibits to her affidavit;

e. Information regarding mandatory instructions provided by the Tribunal's legal counsel and Vice Chairs to adjudicators on decision making at case conferences, hearings, on all resumption and adjournment requests;

f. Decisions regarding production and log notes and decisions relating to interlocutory decisions;

g. At her performance reviews, it was noted that the deponent had the highest number of scheduled resumptions and adjournments;

h. In 2019, the Tribunal changed its policy so that reconsiderations would exclude interim orders, a reform which was designed to decrease the influx of appeal motions on case conference decisions;

i. In 2019, there was a policy change that reconsiderations would be heard by the same member who made the initial decision; and

j. In bulletins issued by the Motions Duty team, adjudicators were told, when handling motions with a party known to be "difficult" or "high conflict", to deny their request or request that the parties submit a formal motion to the duty team with submissions.

[75] Ms. Derenzis seeks judicial review of the Document Decisions and submits that the Tribunal has no authority to make these orders as there is no specific statutory grant of authority. She argues that the Tribunal has the power to make confidentiality orders but not injunctive relief as it amounts to an order *in rem* prohibiting the dissemination of the information contained in the affidavit.

*Gore Mutual's position*

[76] Gore Mutual submits that the Tribunal has the power to set its own procedure and practices and to make orders to prevent abuse of its procedures: *Statutory Powers Procedure Act*, R.S.O. 1990, c. S.22, ss. 23(1), 25.0.1 (the "*SPPA*"). It further argues that the allegation of bias is based on conjectures and suspicions and not applicable to this case.

*Tribunal's position*

[77] The Tribunal submits that it has the jurisdiction to make injunction and destruction orders in accordance with the *SPPA* and that the powers granted are to be "liberally construed to secure the just, most expeditious and cost-effective determination of every proceeding on its merits": *SPPA*, s. 2.

[78] The Tribunal further cites s. 3(2) of the *LATA*, which grants Tribunal the powers necessary or expedient for carrying out its duties. It submits that this provision grants the Tribunal the powers to make destruction orders and non-dissemination orders as part of controlling its own processes. It argues that it did not exceed its jurisdiction when it ordered destruction of the evidence as only evidence that is admissible should be permitted to be heard in a hearing: *SPPA*, s. 15(2).

*OTLA*'s position

[79] The OTLA based their submissions on the public records and hence cannot comment on the characterization of the documents. It submits that the Tribunal does not have jurisdiction to order destruction of documents as such orders are not procedural. If there is an issue, the Tribunal should have sought relief at the Superior Court of Justice.

[80] The OTLA argues that the Tribunal cannot grant equitable remedies and does not have the power to bind non-parties as the destruction of documents are permanent mandatory injunctions. The power to make such orders is reserved to the Court of Appeal and the Superior Court of Justice.

**Discussion**

*Legal Framework*

[81] Section 96(3) of the *Courts of Justice Act* (the "*CJA"*) grants the Court of Appeal and the Superior Court of Justice the power to grant equitable relief "unless otherwise provided".

[82] Section 101(1) of the *CJA* limits jurisdiction over mandatory and injunctive relief to the Superior Court of Justice, unless explicitly conferred by statute: see *Fraser v. Beach* (2005), 75 O.R. (3d) 383 (C.A.), at para. 8.

[83] Turning to the powers of the Tribunal, it is important to note that pursuant to s. 2 of the *SPPA*, powers granted are to be "liberally construed to secure the just, most expeditious and cost-effective determination of every proceeding on its merits".

[84] The Tribunal has the power to control its own process which includes the power to strike evidence that is not admissible. It also has the power to strike segments of documents that are not admissible under the rules of evidence and to make ancillary orders under s. 15 of the *SPPA* to ensure proper conduct and control of its process under s. 23(1) and 25.0.1 of the *SPPA* and s. 3(2) of the *LATA.*

[85] Under s. 15(2) of the *SPPA*, the Tribunal has discretion to admit any relevant documents if it is not inadmissible and may determine if a document is privileged:

> (2) Nothing is admissible in evidence at a hearing,
>
> > (a) that would be inadmissible in a court by reason of any privilege under the law of evidence; or
> >
> > (b) that is inadmissible by the statute under which the proceeding arises or any other statute.

[86] The Tribunal's jurisdiction includes dealing with disputes in accordance with the *SABS* pursuant to the *SPPA*, s. 25.1:

> 25.0.1 A tribunal has the power to determine its own procedures and practices and may for that purpose,

> (a) make orders with respect to the procedures and practices that apply in any particular proceeding; and
>
> (b) establish rules under section 25.1.

[87] In accordance with s. 2(2) of the *Tribunal Adjudicative Records Act, 2019,* S.O. 2019, c. 7, Sched. 60 (the "*TARA*"), the Tribunal may on its own motion order a portion or all of a record be treated as confidential if it determines that its non-disclosure outweighs the principle that records are public.

[88] These confidentiality orders may be filed with the Superior Court and are enforceable: *TARA*, s. 5.

[89] Reference was made to *Davis v. Aviva General Insurance Co.,* 2024 ONSC 3054 (Div. Ct.), leave to appeal refused, 2024 ONCA 944, where the Divisional Court found that the Tribunal may have discretion to exercise equitable powers where it is just to do so on an application to ensure procedural fairness. The court found that these powers are available to ensure procedural fairness, in keeping with the objectives set out in *Baker v. Canada (Minister of Citizenship and Immigration),* [1999] 2 S.C.R. 817. At para. 63 of *Davis*, the court reiterates the "hallmarks of procedural fairness" stemming from *Baker:*

a. The nature of the decision being made, and the process followed in making it;

b. The nature of the statutory scheme and the terms of the statute pursuant to which that body operates;

c. The importance of the decision to the individual affected;

d. The legitimate expectations of the person challenging the decision; and

e. The choices of procedure made by the deciding body itself.

[90] In that case, the applicant had submitted that Aviva's acceptance of her application for benefits raised an issue of "estoppel" and argued that the Tribunal had equitable powers and should have denied Aviva's motion. The Divisional Court found that it had equitable powers and it was reasonable not to exercise those powers in the circumstances.

[91] The court relied on *Botbyl v. Heartland Farm Mutual Inc*., 2023 CanLII 72662 (ON LAT), where the applicants were spouses involved in a motor vehicle accident and sustained numerous injuries and had two motor vehicle policies at the time of the accident. They applied to Economical Insurance for accident benefits, but this policy did not have enhanced benefits. Heartland, the other insurer, denied any liability for the applicant's enhanced benefits, as the applicants had already submitted an application to Economical. The applicant's counsel requested relief from forfeiture and a request that Heartland reconsider their decision.

[92] The applicants first applied to the Superior Court requesting a declaration of relief from forfeiture. The court denied the application and found that the Tribunal holds the jurisdiction over such disputes and the matter should first be heard by the Tribunal as it has the jurisdiction to

address this dispute involving the applicant's entitlement to, or amount of accident benefits under s. 280(2) of the *Insurance Act.*

[93] The Tribunal found that the doctrine of relief from forfeiture can be applied and that the applicants were permitted to rescind their application for accident benefits with Economical and apply for benefits through Heartland. The Tribunal found that although the issue was framed as relief from forfeiture the applicants were really seeking entitlement to the enhanced accident benefits from Heartland that they had purchased which specifically would have increased the weekly IRB payment and increased monetary limits for medical and rehabilitation benefits: *Botbyl*, at para. 19.

[94] The adjudicator found the Tribunal was the most appropriate venue to hear the issue and referred to *Continental Casualty Co. v. Chubb Insurance Co. of Canada*, 2022 ONCA 188, 22 C.C.L.I (6th) 1, where the relief of forfeiture was directed to the Tribunal. At para. 108, the court stated in *obiter* that "potential unfairness arising from an insured's errors when applying for SABS may, in some cases, be corrected by invoking relief from forfeiture…."

[95] After a review of cases, the Tribunal agreed with Justice Turnbull's earlier decision in the case that there is another process in the *SABS* for the applicants and can be determined by the Tribunal.

[96] Other tribunals have made orders to control their own process to prevent its abuse.

[97] In *Law Society of Ontario v. McDonald*, 2024 ONLSTH 47, at paras. 1-3, 38 the Law Society Tribunal ordered a self-represented respondent to return a privileged document that had been inadvertently disclosed, destroy all electronic copies and notes and provide contact information on any individuals who had copies. The respondent was also restrained from using the information and ordered to keep it confidential.

[98] In *Ontario Public Service Employees Union (Fortin) v. Ontario*, 2017 CanLII 16719 (Ont. GSB), at paras. 25-31, the Tribunal refused to admit documents that the grievor had stolen from her government employer as it breached her duty of confidentiality. The Grievance Settlement Board ordered the grievor and her union to destroy any document and to confirm compliance.

[99] In *JP v. Ontario (Health Insurance Plan)*, 2005 CanLII 77253 (Ont. HSARB), the Health Services Appeal and Review Board ordered a confidential document inadvertently filed by the respondent to be removed from the record and destroyed by the parties.

*Application*

[100] Statutory tribunals are specialized tribunals dealing with specialized fields and discrete issues and have jurisdiction to control their own processes.

[101] The Tribunal is in the best position to ensure that it maintains procedural fairness while balancing efficiency and participation by litigants before the Tribunal to ensure that there is natural justice: *Prassad v. Canada (Minister of Employment and Immigration)*, [1989] 1 S.C.R. 560, at para. 16. It is "the master in its own house it also had the power to determine when it was most

efficient and just to conduct a hearing of the appeal": *Toronto (City) v. Avenue Road Eglinton Community Assn.*, 2019 ONSC 146, 84 M.P.L.R. (5th) 239 (Div. Ct.), at para. 60.

[102] It is within the Tribunal's purview to establish and control its own process and procedures as set out in the *SPPA*. Rules are to be liberally construed: *SPPA*, s. 2. Other tribunals have exercised this power to order parties not to distribute materials. However, in the past such orders have only involved the parties to the dispute.

[103] In *Toronto (City) v. Canadian Union of Public Employees (C.U.P.E.), Local 79*, 2003 SCC 63, 3 S.C.R. 77, the court states that the common law doctrine of abuse of process is flexible to ensure that the administration of justice and its integrity is not brought into disrepute. The Tribunal was not reaching beyond the matter at hand, as their order bound the parties, their counsel and the witness/affidavit, and the Tribunal was well placed to determine whether the parties and law firm had confidential information and its impact.

[104] The Tribunal has an obligation to establish and protect the record. It has the jurisdiction to direct the parties, their representatives and those involved in the case, i.e. witnesses and affiants to not disseminate materials that the Tribunal found to be privileged which had not been waived by the Tribunal. For that reason, the sealed documents in this court will remain sealed permanently.

[105] The Tribunal ordered the parties, their representatives and the witnesses and affiants in this case to not distribute the offending documents. Such an order does not constitute an order *in rem*.

[106] The Tribunal has the right to control its own process and record.

[107] The Tribunal can order destruction of materials. However, I note in passing that the more prudent process in many cases would be to seal the documents pending completion of any judicial review procedure or appeal which is what was done before the Divisional Court immediately following the Tribunal's decision.

[108] Alternatively, the Tribunal may preserve the originals for the purposes of appellate review. The Tribunal can order that all copies be destroyed or turned over to the Tribunal. Such a slightly more limited order would preserve the ability of the appellate court to restore the copies to the parties in the event of a successful appeal or judicial review.

[109] As stated above, the sealed documents will remain sealed.

## D. Solicitor-Client Privilege

*Ms. Derenzis's position*

[110] Ms. Derenzis submits that the Tribunal's order to destroy the evidence of institutional bias was unreasonable and was made without notice to the affected parties. She also argues that the Tribunal has the authority to make confidentiality orders but not injunctive relief orders. In any case, the Tribunal failed to articulate the test for a permanent mandatory injunction.

[111] With respect to the evidence alleged to be protected by solicitor-client privilege, Ms. Derenzis submits that evidence of the board's internal procedures is not protected by solicitor-client privilege, as this privilege only protects confidential communications containing legal

advice. Most of the documents were written by non-lawyers and had no indicia of legal advice and were not marked confidential.

[112] Exhibit C to the affidavit established additional requirements for contested adjournment decisions which was akin to policy and procedure implementation and was not legal advice.

[113] Pursuant to s. 27 of the *SPPA*, these policies and procedures should be publicly available.

[114] In addition, the test for injunctive relief in *RJR-MacDonald Inc. v. Canada (Attorney General)*, [1994] 1 S.C.R. 311, is three-fold:

a. Is there a serious issue to be tried?

b. Would the moving party otherwise suffer irreparable harm?

c. Does the balance of convenience favour granting the injunction?

[115] Here, a mandatory injunction was made without notice to the parties.

[116] The Tribunal did not articulate the test for a permanent mandatory injunction and why it did not utilize the statutory scheme regarding enforceable confidentiality orders.

*Gore Mutual's position*

[117] Gore Mutual submits that the Tribunal's order to destroy the evidence was a reasonable exercise of its authority. In addition, Ms. Derenzis failed to raise the issue of reasonable apprehension of bias in her initial reconsideration request and she only sought to raise this issue in reply submissions.

[118] Gore Mutual also submits this conduct constitutes a breach of procedural fairness as it was deprived of an opportunity to respond. It argues that it was reasonable for the Tribunal to strike portions of the affidavit as improper reply which is consistent with the Tribunal's jurisdiction and authority.

[119] It submits that the solicitor client privilege covers all communications within the ordinary scope of the professional relationship between an administrative tribunal and its in-house counsel and that procedural fairness does not restrict the application of this privilege between the Tribunal and its in-house counsel. It submits the solicitor-client privilege covers legal and procedural advice.

*Tribunal's position*

[120] The Tribunal submits that its decision to order destruction of the evidence was reasonable and it is owed considerable deference in light of its expertise, knowledge and discretion. It argues that it reasonably concluded that the evidence was covered by solicitor-client privilege and that it extends to all communications that fall within the usual and ordinary scope of the solicitor-client relationship.

[121] Ms. Derenzis sought to introduce a draft legal memorandum and advice by Tribunal counsel and the Tribunal reasonably concluded that they contained legal opinion and Exhibit C was on its face a legal memorandum.

[122] The Tribunal further submits that its rules must be made public but not its internal policies and procedures.

*OTLA's position*

[123] The OTLA submits that solicitor-client privilege does not apply where:

a. Tribunal counsel goes beyond providing legal advice and procedural guidance, instead acting as a fact finder or decision maker: *Super Save Disposal Inc. (Re),* 2004 CanLII 94399 (B.C. EST)

b. The communication is from a person who performs services incidental to legal advice, even where relevant to a legal problem: *Quadrangle Group LLC v. Canada (Attorney General)*, 2023 ONSC 7125, 170 O.R. (3d) 700, at para. 51.

c. The documents are operational in nature or relate to the conduct of general business: *Quadrangle*, at para. 60.

[124] Further, the OTLA argues that the *SPPA* does not address whether the party may retain possession of a document covered by solicitor-client privilege.

*Intervenor – Attorney General of Ontario's Position*

[125] The Attorney General of Ontario asks this court to find that deliberative secrecy is a class privilege that cannot be waived by individual adjudicators. He notes that recent decisions have recognized the settlement and litigation privileges as class privileges.

[126] The privilege should belong to the Tribunal as an institution and individual adjudicators cannot waive the privilege as it exists to enhance the administration of justice and covers administrative aspects of the decision-making process. The objective is not to protect an individual decision maker.

**Discussion**

[127] The Tribunal ordered the destruction and enjoined dissemination of the following portions of Dr. Kowal's affidavit based on solicitor-client privilege:

a. Para. 6 regarding mandatory instructions by legal counsel and Vice-Chairs to adjudicators on how to decide adjournments, interlocutory decisions and production requests, including production of log notes;

b. Para. 8 and Exhibit C: a memo from legal counsel setting out procedures to be followed when receiving requests for and deciding adjournments, including the requirement that the decision be reviewed by legal counsel; and

c. Para. 16 and Exhibit F: a bulletin authored by the Duty Team adjudicators and Vice Chairs on various topics.

[128] Solicitor-client privilege extends to communications where legal advice is sought or offered or where it is intended to be confidential and extends to government lawyers who provide policy advice and direction outside their legal responsibilities.

[129] As stated in *Pritchard v. Ontario (Human Rights Commission*), 2004 SCC 31, [2004] 1 S.C.R. 809, at paras. 19-21:

> 19 Solicitor-client privilege has been held to arise when in-house government lawyers provide legal advice to their client, a government agency: see *R. v. Campbell*, [1999] 1 S.C.R. 565, at para. 49. In *Campbell*, the appellant police officers sought access to the legal advice provided to the RCMP by the Department of Justice and on which the RCMP claimed to have placed good faith reliance. In identifying solicitor-client privilege as it applies to government lawyers, Binnie J. compared the function of public lawyers in government agencies with corporate in-house counsel. He explained that where government lawyers give legal advice to a "client department" that traditionally would engage solicitor-client privilege, and the privilege would apply. However, like corporate lawyers who also may give advice in an executive or non-legal capacity, where government lawyers give policy advice outside the realm of their legal responsibilities, such advice is not protected by the privilege.
>
> 20 Owing to the nature of the work of in-house counsel, often having both legal and non-legal responsibilities, each situation must be assessed on a case-by-case basis to determine if the circumstances were such that the privilege arose. Whether or not the privilege will attach depends on the nature of the relationship, the subject matter of the advice, and the circumstances in which it is sought and rendered: *Campbell*, *supra*, at para. 50.
>
> 21 Where solicitor-client privilege is found, it applies to a broad range of communications between lawyer and client as outlined above. It will apply with equal force in the context of advice given to an administrative board by in-house counsel as it does to advice given in the realm of private law. If an in-house lawyer is conveying advice that would be characterized as privileged, the fact that he or she is "in-house" does not remove the privilege, or change its nature.

[130] As stated in *Pritchard*, the fact that it is in-house counsel conveying advice does not remove privilege. However, owing to the nature of the work of in-house counsel having both legal and non-legal responsibilities, each situation must be assessed on a case-by-case basis to determine if privilege arose in the circumstances.

[131] The Tribunal is accorded considerable deference. Here, the adjudicator discussed the ambit of solicitor client communication with the framework of *Descôteaux v. Mierzwinski*, [1982] 1 S.C.R. 860.

[132] The Tribunal found that internal policies with respect to granting an adjournment is part and parcel of the tribunal's functioning. It is reasonable to find that documents and information relating to discussions with in-house counsel are covered by solicitor-client privilege. The solicitor-client privilege extended to (i) mandatory instructions by legal counsel and Vice-Chairs to adjudicators on how to decide adjournments, production requests, including production of log notes and interlocutory decisions; (ii) a memo from the legal department setting out procedures on how to deal with adjournments and an internal bulletin by them to be followed when receiving requests for and deciding adjournments, including the requirement that the decision be reviewed by legal; and (iii) a bulletin on various topics.

[133] The decision as a whole is transparent, intelligible and justified. The Tribunal's finding that the sections of the affidavit were protected by solicitor-client privilege was a reasonable exercise of the Tribunal's authority to control its own processes.

## E. Deliberative Secrecy

### Parties' positions

*Ms. Derenzis'sPosition*

[134] Ms. Derenzis submits that the Tribunal incorrectly interpreted the law of deliberative secrecy and privilege and hence its decision is unreasonable.

[135] Deliberative secrecy grants the adjudicators the right to refuse to give evidence, but it does not prevent a member from voluntarily giving evidence: *Tremblay v. Quebec (Commission des affaires sociales),* [1992] 1 S.C.R. 952. Its scope does not extend to administrative matters or policies and procedures set out in the affidavit filed. It does not protect the evidence, information or testimony related to the process.

[136] In addition, Ms. Derenzis argues that deliberative secrecy is not a class privilege, but one belonging to the adjudicators who are independent decision makers and, as whistleblowers, are protected under the *Charter of Rights and Freedoms*,[1] particularly s. 2(a), which guarantees freedom of conscience and s. 2(b), which protects freedom of expression: see *Beauregard v. Canada*, [1986] 2 S.C.R. 56; *International Woodworkers of America, Local 2-69 v. Consolidated-Bathurst Packaging Ltd*., [1990] 1 S.C.R. 282.

[137] Ms. Derenzis submits that, as in *Shuttleworth v. Ontario (Safety Licensing Appeals and Standards Tribunals),* 2019 ONCA 518, 146 O.R. (3d) 369, adjudicators should be entitled to speak up when their independence is compromised. Further, as stated in *Tremblay*, evidence, information or testimony related to the process under which decision making occurs is not protected by deliberative secrecy.

[138] Ms. Derenzis argues that the Tribunal in this case is attempting to stop from coming to light the control the executive of the Tribunal asserts over its decision makers.

---

[1] *Canadian Charter of Rights and Freedoms, 1982*, Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982* (U.K.), 1982, c. 11.

*Gore Mutual's Position*

[139] Gore Mutual submits that the Tribunal's decision was reasonable, as Dr. Kowal's affidavit disclosed the Tribunal's internal procedures and administrative aspects of its decision-making process. Thus, the contents of the affidavit were subject to deliberative secrecy.

[140] In *Grogan v. Ontario College of Teachers,* 2023 ONSC 2980 (Div. Ct.), the applicant sought to compel production of an adjudicator's notes on the strength of an affidavit from a retired tribunal member who had served on the panel in the proceeding. The affidavit was admitted as evidence but was found to be vague and speculative.

*Tribunal's Position*

[141] The Tribunal submits that the decision below was reasonable. Deliberative secrecy covers the administrative aspects of the decision-making process, including assignment of adjudicators.

[142] The Tribunal argues that it reasonably rejected Ms. Derenzis's argument that deliberative secrecy did not apply because Dr. Kowal was voluntarily offering her evidence. Dr. Kowal sought to introduce documents that involved consultations with other adjudicators. This should only be disclosed if there was a clearly articulated and reasonable basis to believe that natural justice was violated.

[143] Thus, the Tribunal argues that Exhibits A, B, D and E and certain portions of the affidavit discussed administrative aspects of the decision-making process and were protected by deliberative secrecy. Restricting the disclosure of such information is consistent with the objective of promoting adjudicative independence, collegial debate and finality of the Tribunal's decisions.

*OTLA's position*

[144] The OTLA argues that deliberative secrecy is not applicable here as the previous adjudicator was not involved in the case at bar. Also, deliberative secrecy is not absolute as it can be lifted where:

a. Decision making does not comply with the principles of natural justice;

b. The tribunal acted outside its jurisdiction or in bad faith; or

c. Where there is bias regarding a decision.

*Attorney General of Ontario's Position*

[145] The Attorney General of Ontario submits that deliberative privilege is a class privilege and belongs to the Tribunal, not the adjudicator. Thus, it cannot be waived by individual adjudicators. The Tribunal, as owner of the documents, was within its rights to demand them returned. The offending documents should have been placed in a sealed envelope pending review.

[146] The Attorney General further submits that it was quite proper for the Tribunal, as the master of its own process, to deal with the admissibility of the documents and demand they be returned.

**Discussion**

*Legal Framework*

[147] In *Tremblay*, at p. 968, the Supreme Court held that administrative tribunals cannot rely on deliberative secrecy in the same manner as judicial tribunals. It can be lifted when a litigant believes that the process did not follow the rules of natural justice. In that case, the issues raised by the litigants did not deal with matters of substance or the "decision makers' thinking", but instead was directed at the formal process established to achieve consistency in its decisions. The matters dealt with the "institutional setting in which the decision was made and how it functioned, and second with its actual or apparent influence on the intellectual freedom of the decision makers": at pp. 964-65.

[148] However, the Supreme Court was concerned that the consultation network could "impede the ability or freedom of the members of the tribunal to decide according to their consciences and opinions, or create an appearance of bias in the minds of litigants." In that case, compulsory consultation created an appearance of a lack of independence, if not actual constraint, circumventing the will of the legislature, by seeking to establish a prior consensus among persons not responsible for deciding the case. In addition, "[t]here [were] other facts which support[ed] this conclusion of an apparent lack of independence": at p. 975.

[149] In *Cherubini Metal Works Ltd. v. Nova Scotia (Attorney General),* 2007 NSCA 37, 282 D.L.R. (4th) 538, Cromwell J.A. (as he then was) discussed the *Tremblay* decision and confirmed that deliberative secrecy covers tribunals' internal processes and means of assigning cases to adjudicators. In *Tremblay*, deliberative secrecy is related

> not only to "matters of substance or the decision-makers' thinking on such matters", but also to matters relating to the "formal process established by the Commission to ensure consistency in its decisions."… The party seeking to have the court lift deliberative secrecy with respect to the tribunal's process of decision-making has a threshold to meet. As expressed by Gonthier, J. in *Tremblay*, the party must show that there are "valid reasons" for doing so. [Citations omitted.]

[150] In *Grogan*, the Divisional Court stated that:

> [16] Deliberative secrecy prevents the disclosure of how and why decision-makers reached their decision. The Supreme Court has described deliberative secrecy as a "core component of the constitutional principle of judicial independence": *Commission scolaire de Laval v. Syndicat de l'enseignement de la region de Laval*, 2016 SCC 8, at para. 57. The doctrine of deliberative secrecy promotes collegial debate and the finality of decisions. Under the doctrine, a judge cannot be compelled to testify about deliberations, the substance of the decision-making process, or how or why a particular decision was reached: *Agnew v. Ontario Association of Architects* (1987), 64 O.R. (2d) 8, 1987 CanLII 4030 (Div. Ct.).
>
> [17] Deliberative secrecy also applies to the decision-making process of an administrative tribunal. The principle protects against the production of notes created by adjudicators during the deliberation process. In *156621 Canada Ltd. v.*

*Ottawa (City)* (2004), 70 O.R. (3d) 201, 2004 CanLII 66333 (S.C.), the applicant in a judicial review application of a decision of the Ontario Municipal Board brought a motion for production of an adjudicator's notes. In dismissing the applicant's motion on the basis of deliberative privilege, the court stated as follows (at para. 4(e)):

> Deliberative privilege attaches to all matters which are at the heart of or integral to the decision-making process since the purpose of the privilege is to prevent the decision-making process from being penetrated. Notes made by a board member during a proceeding for the purpose of assisting the member to reach a decision and prepare reasons are integral to the decision-making process and are therefore protected by deliberative privilege, and are not compellable.

[18] However, secrecy "may nonetheless be lifted when the litigant can present valid reasons for believing that the process followed did not comply with the rules of natural justice": *Canada (Privacy Commissioner) v. Canada (Labour Relations Board,* 1996 CanLII 4084 (F.C.), aff'd on appeal, [2000] 180 F.T.R. 313, 2000 CanLII 15487 (F.C.A.).

…

[20] In *Payne v. Ontario Human Rights Commission,* [2000] O.A.C. 357, 2000 CanLII 5731 (C.A.), at para. 172, Sharpe J.A., for the majority, held that:

> … it seems to me that an applicant for judicial review who seeks to conduct an examination that will touch upon the deliberative secrecy of the decision maker must present **some basis for a clearly articulated and objectively reasonable concern that a relevant legal right may have been infringed**. I would emphasize that, in view of the importance of the principle of deliberative secrecy in the administrative decision-making process, examinations based on conjecture or mere speculation will not be allowed. [Emphasis added in *Grogan*.]

[21] In *Payne,* Sharpe J.A. rejected the argument that the party seeking to examine establish a "reasonable evidential foundation" or that they had to provide "reasonable, reliable, relevant evidence" to meet a "high threshold." Setting the onus too high would require an applicant to prove their case before being able to avail themselves of the Rules and would be "inimical to the inherent power of judicial review": *Payne,* at para. 171.

[22] As noted above, deliberative secrecy may be lifted where "the litigant can present valid reasons for believing the process followed did not comply with the rules of natural justice".

[151] In *Shuttleworth*, the court accepted evidence of institutional bias where the Executive Chair of the Tribunal interfered with an adjudicator's decision. In that case, the adjudicator decided that the threshold of "catastrophic impairment" had not been met but later learned by an anonymous letter that before the decision was released, the Executive Chair had reviewed and reversed her determination. The applicant brought an application for judicial review of the adjudicator's decision. The Divisional Court found that:

a. The SLASTO Legal Services Unit generally sent decisions to the executive chair without assent or input from the adjudicator;

b. The adjudicator in this case did not request the review and was unaware of it until it had taken place;

c. There was no formal or written policy protecting the adjudicator's right to decline to participate in the review or to decline to make changes proposed by the executive chair;

d. A manual describing the tribunal's procedure made no reference to the voluntariness of peer review; and

e. The executive chair had power over the reappointment of adjudicators.

[152] The Divisional Court concluded that the circumstances gave rise to a reasonable apprehension of a lack of adjudicative independence and the decision was upheld by the Court of Appeal.

[153] In *Bokhari v. Top Medical Transportation Services*, 2025 ONSC 1208, Matheson J. was also dealing with an affidavit of a prior adjudicator that spoke of the adjudicators' activities, the development of tribunal processes and case management, and development of standards. The court found that certain challenged portions of the affidavit were properly struck out as protected by deliberative secrecy.

[154] Matheson J. summarized the law in this area, and it is worth repeating here:

> [35] Deliberative secrecy protects the decision-making process. It is a core component of judicial independence: *Commission scolaire de Laval v. Syndicat de l'enseignement de la région de Laval*, 2016 SCC 8, [2016] 1 S.C.R. 29, at para. 57.
>
> [36] Although the principle of deliberative secrecy does not apply as strongly to administrative tribunals as to courts, the Supreme Court of Canada has confirmed that deliberative secrecy is the general rule for administrative tribunals: *Summitt Energy Management Inc. v. Ontario Energy Board*, 2012 ONSC 2753 (Div. Ct.), at para. 80; *Grogan*, at para. 16.
>
> [37] Under "the rule of deliberative secrecy, members of administrative tribunals generally cannot be required to testify about how or why they reach their decisions": *Summit Energy*, at para. 80.

> [38] Deliberative secrecy "also favours administrative consistency by granting protection to a consultative process that involves interaction between the adjudicators who have heard the case and the members who have not, within the rules set down in [*Consolidated-Bathurst*]. Without such protection, there could be a chilling effect on institutional consultations, thereby depriving administrative tribunals of a critically important means of achieving consistency": *Ellis-Don Ltd. v. Ontario (Labour Relations Board*) 2001 SCC 4, [2001] 1 S.C.R. 221, at para. 53.
>
> [39] Deliberative secrecy extends to internal communications and the administrative aspects of the decision-making process: Summit Energy, at para. 79; *Chestacow v. British Columbia (Workers' Compensation Appeal Tribunal),* 2023 BCCA 389, at paras. 33-34. However, the of the administrative decision-making is not absolute and will yield where there is an evidentiary basis to allege that the right of natural justice has been infringed: *Tremblay v. Québec (Commission des affaires sociales),* [1992] 1 S.C.R. 952; *Payne*, at para. 168; *Chestacow*, at para. 34.
>
> [40] The secrecy can be lifted if a litigant can show a "clearly articulated and objectively reasonable concern that a relevant legal right may have been infringed… [I]n view of the importance of the principle of deliberative secrecy in the administrative decision-making process, examinations based on conjecture or mere speculation will not be allowed": *Payne*, at para. 172.

[155] Ultimately, the court in *Bokhari* found that the applicant had not met this threshold as the court found that there was no objectively sound argument that the applicant's rights were infringed by the fact that there was a different internal policy that applied to his application that constrained the Adjudicator's discretion: at para. 41.

[156] The court found at para. 42 that "[t]he applicant's 'onus is not discharged on the basis of speculation, conjecture or simple allegation alone: there must be a foundation before the court for the allegation that not only raises an issue of procedural fairness, but also justifies displacing the privilege in order to adjudicate the procedural fairness issue': *LifeLabs LP v. (Ontario) Information and Privacy Commissioner*, 2022 ONSC 5751 (Div. Ct.), at para. 17."

**Conclusion**

[157] The Tribunal ordered and enjoined from dissemination the following portions of Dr. Kowal's affidavit based on deliberative secrecy:

a. Exhibit A: Team Meeting Minutes stating that vice chairs would triage and re-assign files related to Campisi. That is, Exhibit A to the affidavit dealing with minutes of a meeting with the Vice Chair triaging certain files including Campisi and certain types of claims to be handled by more experienced adjudicators is covered by deliberative secrecy. Also, minutes of meetings that deal with scheduling issues and adjournment requests and requiring to consult the vice chair or experienced adjudicator;

b. Para. 7: a directive to adjudicators requiring all adjournments to be approved by a Vice Chair before being granted;

c. Exhibit B: Team Meeting Minutes stating parties are to be put on hold while consulting a vice chair for adjournments, members' reports are to place the name of the Vice Chair granting the adjournment in a "bubble comment" for the "peer";

d. Para. 9 and Exhibit D: adjudicators were to always consult with a Vice Chair for an adjournment but are not to mention the consultation in their orders. That is, Exhibit D were follow up communications dealing with adjudicator meetings and discussion of adjournments which are discretional and the need to obtain submissions and give reasons and that if an adjournment that was previously denied it should be granted then should be discussed with a senior adjudicator. These types of orders are discretionary;

e. Paras. 10, 11: instruction of the Associate Chair and Vice Chairs that no more adjournments would be granted. Exhibit E: memo regarding discussions of reducing the number of adjournments granted and not allowing the parties to choose their own dates;

f. Para. 12: Dr. Kowal attests that she was admonished for not obtaining approval before granting adjournments (and resumptions);

g. Para. 16 and Exhibit F: Duty Bulletin advising of, in part, the removal of reconsideration of interlocutory decisions;

h. Para. 17: adjudicators are concerned with the inherent bias in reviewing their own decisions on reconsideration; and

i. Para. 18: a motions duty team was created to issue bulletins on how to decide motions, and where parties were known to be "high conflict" their request was either to be denied or put in writing.

[158] All parties and witnesses and counsel were ordered to destroy the documents. Counsel for the applicant were to confirm in writing that all documents were destroyed and not further disseminated and Ms. Kowal was to destroy the documents and confirm in writing.

[159] The Tribunal reasonably concluded that the documents which Dr. Kowal attached to her affidavit were the property of the Tribunal as they represented its internal memos or minutes and it held that they should be returned. It was reasonable for the Tribunal to find that the documents were covered by deliberative secrecy. In this case, the documents belonged to the Tribunal and it was for the Tribunal to waive deliberative secrecy, not Dr. Kowal.

[160] The documents attached and the paragraphs struck from Dr. Kowal's affidavit discussed the Tribunal's consultative process which entailed interaction between the adjudicators who have heard the case and the members who have not.

[161] The Tribunal reasonably concluded that deliberative secrecy extends to these internal communications and the administrative aspects of the decision-making process.

[162] In striking Exhibit 3C and 3F and paras. 6, 8, 16 and 17, Vice-Chair McGee found that these contained advice given by Tribunal counsel to adjudicators. This advice was within the solicitor-client privilege. The communication contained legal opinions relating to the

interpretation of application of case law and the legal and practical recommendations for handling matters of law and policy.

[163] At para. 18 of the September 11 Documents Decision, the adjudicator stated:

> The consultations documented in the materials involved numerous adjudicators at the Tribunal. The subject matter of those consultations included the decision-making process applicable to multiple Tribunal proceedings. To strip protection from such a consultative process in the absence of clearly articulated and objectively sound reasons for believing that the process did not comply with the rules of natural justice would have a chilling effect on what the Supreme Court of Canada has characterized as a critically important means of achieving consistency within administrative tribunals: *Ellis-Don* at para. 53.

[164] The materials address the assignment of adjudicators, the handling of procedural and the legal complexities and administrative aspects of the decision-making process. They reference internal consultations among adjudicators on legal and policy matters which involve the exercise of adjudicative discretions including issuing procedural orders at case conferences, updates on rules of practice and procedure and interpretation of legislation and case law.

[165] The materials do not reference any specific case, nor do they show that the adjudicators were deprived of the discretion to decide cases independently. There were no directives as Ms. Kowal alleges. One of the documents explains that internal consultations give adjudicators opportunities to consider the reasons after submissions are obtained from the parties.

[166] At para. 23 of the September 11 Documents Decision, the Tribunal stated:

> There is nothing improper or procedurally unfair about a consultative process internal to administrative tribunals where adjudicators who have heard a case interact with adjudicators who have not. Internal consultations are a critically important means of achieving consistency and predictability in administrative decision-making. Institutional consultations are permissible so long as (i) the question for discussion is one of policy rather than fact, (ii) that in the end the panel is free to make its own decision, and (iii) that if the discussion at the full board raises matters not addressed by the parties, that the parties be put on notice and permitted to make representations before a decision is made: *Ellis-Don* at para. 78, citing *Consolidated Bathurst*.

[167] The Tribunal referred to *Grogan* and *Summitt Energy Management Inc. v. Ontario Energy Board*, 2012 ONSC 2753, 292 O.A.C. 268 (Div. Ct.), stating that the court can lift the veil of deliberative secrecy if the litigant can present valid reasons that the process did not comply with natural justice. At para. 17 of the September 11 Document Decision, the Tribunal stated: "'However, the litigant must present some basis for a clearly articulated and objectively reasonable concern that a relevant legal right may have been infringed' *Grogan* at para. 20. Speculation, conjecture, or simple allegation is not sufficient: *LifeLabs LP*, at para. 17.

[168] The Tribunal was given no objectively reasonable ground for lifting this deliberative secrecy. Ms. Derenzis argued that within the Tribunal there was a violation of natural justice as the implemented practices and directives undermined procedural fairness for clients of particular firms, including Campisi LLP, thereby compromising the independence of adjudicators and inserting bias and prejudice in the process. This is done by shutting down arguments at case conferences so that they cannot be appealed and cases are directed to specific adjudicators if involving the Campisi LLP firm.

[169] Vice-Chair McGee found at para. 22 that the applicant failed to establish an objectively reasonable concern that the Tribunal's process failed to comply with the principles of natural justice or that there was improper fettering of adjudicative discretion or the violation of procedural fairness in any matter involving clients of Campisi LLP.

[170] An *in rem* proceeding adjudicates the rights to a particular piece of property for every potential rights holder, even potential rights holders who are not named in the lawsuit. For example, a plaintiff may bring an *in rem* action to conclusively determine ownership rights over a parcel of land.

[171] The document decisions were not orders binding the world, but rather narrowly restraining those involved in the case by directing them to destroy and not disseminate the material.

[172] During oral submissions, it was suggested that perhaps the parties would have to seek relief in the Superior Court or Divisional Court to deal with what should be done with this offending evidence. In our view, subordinate court proceedings are neither necessary nor efficient in respect to procedural issues that arise before the Tribunal.

[173] The decision of the Vice Chair was reasonable as she required only the parties and their representatives and any people involved in the matter such as witnesses and affiants to destroy and not further disseminate.

[174] Ms. Derenzis has failed to satisfy us that the decisions requiring the destruction and non-dissemination of the affidavit were unreasonable. We are satisified that the Document Decisions exhibit the requisite degree of justification, intelligibility and transparency.

[175] By order of this court, the documents were sealed pending further court order. We would extend this order until the appeal period for this decision has expired.

## VII. Disposition

[176] The appeal and the application for judicial review are dismissed.

[177] Based on the parties' agreements regarding costs, Ms. Derenzis shall pay, within 30 days, $3,000 costs to Gore Mutual and $7,500 costs to Tribunals Ontario, both figures inclusive. There shall be no costs for or against the Intervenors.

Lococo J.

Doyle J.

I agree: D.L. Corbett J.

**Date:** May 6, 2025

**CITATION**: Derenzis v. Gore Mutual Insurance Co., 2025 ONSC 2732
**DIVISIONAL COURT FILE NO.:** 546/23, 109/24 and 114/24
**DATE:** 20250506

**ONTARIO**
**SUPERIOR COURT OF JUSTICE**
**DIVISIONAL COURT**

**D.L. Corbett, Lococo and Doyle JJ.**

**BETWEEN:**

LUCIA DERENZIS

Applicant/Appellant

– **and** –

GORE MUTUAL INSURANCE COMPANY and LICENCE APPEAL TRIBUNAL

Respondents

– **and** –

ATTORNEY GENERAL OF ONARTIO and ONTARIO TRIAL LAWYERS ASSOCIATION

Intervenors

---

**REASONS FOR DECISION**

---

**LOCOCO and DOYLE JJ.**

**Date:** May 6, 2025

**CITATION:** Derenzis v. Gore Mutual Insurance Co., 2025 ONSC 2732
**DIVISIONAL COURT FILE NO.:** 546/23, 109/24 and 114/24
**DATE:** 2025/05/06

***ONTARIO***
**SUPERIOR COURT OF JUSTICE**
**DIVISIONAL COURT**

| | | |
|---|---|---|
| THE HONOURABLE JUSTICE LOCOCO | ) | TUESDAY, |
| THE HONOURABLE JUSTICE DOYLE | ) | THE 6TH DAY OF |
| THE HONOURABLE JUSTICE D.L CORBETT | ) | MAY, 2025 |

B E T W E E N:

LUCIA DERENZIS

Applicant/Appellant

and

GORE MUTUAL INSURANCE COMPANY

Respondent

and

LICENCE APPEAL TRIBUNAL

Respondent

and

ATTORNEY GENERAL OF ONTARIO and
ONTARIO TRIAL LAWYERS ASSOCIATION

Intervenors

**ORDER**

**THIS JUDICIAL REVIEW AND STATUTORY APPEAL** made by the Applicant/Appellant, Lucia Derenzis (the "**Applicant**"), from the decisions of the Licence Appeal Tribunal issued June 27, 2023, September 20, 2023, and January 16, 2024, determining that the

Applicant was not entitled to the disputed income replacement benefits, medical and rehabilitation benefits, a special award or interest; that paragraphs of the affidavit and accompanying exhibits submitted in the Applicant's reply submissions on the reconsiderations were subject to privilege and therefore struck from the record, and all copies of the documents to be destroyed and not further disseminated; and that the Applicant did not establish the grounds for the reconsiderations, were heard on March 4, 2025 at Osgoode Hall, 130 Queen Street West in Toronto, Ontario, with further written submissions to April 25, 2025.

**ON READING** the written materials of the parties and intervenors, and on hearing the submissions of the lawyers for the parties and intervenors.

**THIS COURT ORDERS THAT:**

1. The appeal and the application for judicial review are dismissed in their entirety.
2. The Applicant shall pay:
    - $3,000 in costs to the respondent, Gore Mutual Insurance Company, and
    - $7,500 in costs to Tribunals Ontario, both amounts inclusive of disbursements and applicable taxes.
3. There shall be no costs payable to or by the intervenors, Attorney General of Ontario, and the Ontario Trial Lawyers Association.
4. The documents sealed in these proceedings by order of this Court shall remain sealed, until the appeal period for this decision has expired.

**THIS ORDER BEARS COSTS** at the rate of 5.0% per year commencing on May 6th 2025.

Ariel Lawrence

Digitally signed by Ariel Lawrence
Date: 2025.06.17 10:03:01 -04'00'

Divisional Court File No.: 546/23, 109/24 and 114/24

**DERENZIS** **v.** **GORE MUTUAL INSURANCE CO.**
Applicant Respondents

77

*ONTARIO*
SUPERIOR COURT OF JUSTICE
DIVISIONAL COURT

**JUDGEMENT**

**CAMPISI LLP**
7050 Weston Road, Suite 101
Vaughan, On L4L 8G7

**Imtiaz Hosein (LSO: 72249O)**

Tel: (416) 203-1115
Email: Imtiaz@campisilaw.ca

Lawyers for the Applicant

**COURT OF APPEAL FOR ONTARIO**

BEFORE: TULLOCH C.J.O., LAUWERS & DAWE JJ.A.

HEARD: IN WRITING

COURT FILE NO.: COA-25-OM-0181

TITLE OF PROCEEDING: DERENZIS, LUCIA V. GORE MUTUAL INSURANCE COMPANY ET AL.

DISPOSITION OF COURT HEARING:

DATE RELEASED: OCTOBER 2, 2025

Imtiaz Hosein, for the moving party
Arthur Robert Camporese, for the responding party, Gore Mutual Insurance Company
Morgana Kellythorne and Douglas Lee, for the responding party, Licence Appeal Tribunal

Leave to appeal is denied. Costs fixed at $5,000, all inclusive, payable by the moving party to the responding parties.

C.J.O.

P Lauwers J.A.

J.A.

## PART I – OVERVIEW & STATEMENT OF FACTS

> *"This Court has been resolute in recognizing that the open court principle is protected by the constitutionally-entrenched right of freedom of expression and, as such, it represents a central feature of a liberal democracy. As a general rule, the public can attend hearings and consult court files and the press – the eyes and ears of the public – is left free to inquire and comment on the workings of the courts, all of which helps make the justice system fair and accountable."*
>
> ~ *Sherman Estate v. Donovan,* 2021 SCC 25 at para. 1

1. This case asks whether tribunals and courts can order sworn whistleblower evidence, filed in a live proceeding, to be destroyed and never used again without treating that order as a limit on the open court principle under section 2(b) of the *Canadian Charter of Rights and Freedoms*[1] and without applying the test established in this Court's decision in *Sherman Estate*.[2] This is the first known case dealing with the legal limits of a tribunal's authority to destroy and suppress evidence within a proceeding where the evidence appears to substantiate institutional bias of the tribunal itself. This question goes directly to public confidence in the transparency and independence of administrative tribunals across Canada.

2. This application for leave arises from a long-running, high-conflict battle between the applicant, Ms. Lucia Derenzis, her insurer Gore Mutual, and the Licence Appeal Tribunal ("LAT"). Since 2017, this dispute has resulted in more than twenty reported decisions at the LAT and in the Superior Court, as well as a separate ongoing constitutional challenge to the LAT's exclusive jurisdiction under section 280 of the *Insurance Act, R.S.O. 1990, c. I.8*.[3]

---

[1] *The Constitution Act*, 1982, Schedule B to the Canada Act 1982 (UK), 1982, c 11 at s. 2(b).
[2] *Sherman Estate v. Donovan,* 2021 SCC 25 at para. 38 ["*Sherman Estate*"].
[3] *L.D. v. Gore Mutual Insurance Company*, 2017 CanLII 152935 (ON LAT); *17-002762/AABS v. Gore Mutual Insurance Company*, 2017 CanLII 142564 (ON LAT); *L.D. v. Gore Mutual Insurance Company*, 2019 CanLII 76994 (ON LAT); *Applicant v. Gore Mutual Insurance Company*, 2019 CanLII 101509 (ON LAT); *L.D. v. Gore Mutual Insurance Company*, 2019 CanLII 122372 (ON LAT); *L.D. v. Gore Mutual Insurance Company*, 2020 CanLII 35471 (ON LAT); *L.D. v. Gore Mutual Insurance Company*, 2020 CanLII 98721 (ON LAT); *L.D. v. Gore Mutual Insurance Company*, 2020 CanLII 98747 (ON LAT); *L.D. v. Gore Mutual Insurance*

3. In the herein case, the LAT ordered in decisions September 20, 2023, that the affidavit of a former adjudicator turned whistleblower, Dr. Korina Kowal – filed in an ongoing proceeding and tendered as evidence of institutional bias at the LAT – be physically destroyed and never again used by the parties, their counsel, or the affiant herself (the "Destruction and Gag Orders").[4] [5]

4. On the Divisional Court's own description of the impugned portions, the affidavit exposes institutional directions and practices including that:

   a. Vice-Chairs triaged and reassigned files, including matters involving the applicant's counsel's firm, Campisi LLP, to particular adjudicators;[6]
   b. adjudicators were under mandatory instructions to always consult with a Vice Chair before granting an adjournment but not to mention the consultation in their orders;[7] and
   c. "motions duty team" bulletins directed adjudicators on how to decide motions and directed that when a party was known to be "high conflict", their motion request was to be denied or forced into a written motion process.[8]

5. Dr. Kowal's affidavit and exhibits in *Derenzis* reveal that Tribunal adjudicators are not exercising independent judgment but operating under the control of institutional masters.[9] Mandatory directives and enforced consultation protocols reduce adjudicators to mere

---

*Company*, 2021 CanLII 28704 (ON LAT); *Derenzis v. Ontario*, 2021 ONSC 3164; *Derenzis v. Gore Mutual Insurance Company*, 2021 ONSC 6575; *Derenzis v. Gore Mutual Insurance Company*, 2022 CanLII 46845 (ON LAT); *Derenzis v. Gore Mutual Insurance Company*, 2023 CanLII 58532 (ON LAT); *Derenzis v. Gore Mutual Insurance Company*, 2023 ONSC 6266; *L.D. v. Gore Mutual Insurance Company*, 2023 CanLII 74649 (ON LAT); *Derenzis v. Gore Mutual Insurance Company*, 2024 CanLII 2662 (ON LAT); *Derenzis v. Gore Mutual Insurance Company*, 2024 CanLII 2670 (ON LAT); *Derenzis v. Gore Mutual Insurance Company*, 2024 ONSC 1226; *Derenzis v. Gore Mutual et al*, 2024 ONSC 5367; *Derenzis v. Gore Mutual Insurance Company*, 2025 CanLII 16016 (ON LAT); *Derenzis v. Gore Mutual Insurance Co.*, 2025 ONSC 2732 ["*Derenzis*"]; *Derenzis et al v. His Majesty the King et al*, 2025 ONSC 2761; *Derenzis v. Gore Mutual Insurance Company*, 2025 CanLII 116984 (ON LAT).

[4] Tribunal Order in LAT file number: 18-011978/AABS, released September 20, 2023 at paras. 6, and 38-40.

[5] Tribunal Order in LAT file number: 21-000394/AABS, released September 20, 2023 at paras. 6, and 39-41.

[6] *Derenzis* at para. 157(a).

[7] *Ibid* at para. 157(d).

[8] *Ibid* at para. 157(i).

[9] *Ibid* at paras. 74 and 157.

puppets of the state, executing decisions predetermined behind the scenes. What appears outwardly as independent adjudication is, in substance, the performance of adjudication.

6. The Tribunal did not confront this whistleblower evidence in open proceedings or through the lens of *Sherman Estate*. Instead, a Vice-Chair who was not seized of the matter intercepted the applicant's submissions before the assigned adjudicator ever saw them,[10] [11] struck most of Dr. Kowal's affidavit and exhibits from the record, ordered that the impugned materials to be physically destroyed, and "not further disseminated in any form", and required written undertakings of compliance from the parties, their counsel, and the affiant.[12]

7. Court and tribunal proceedings are presumptively open. An order for the parties and affiant to destroy evidence filed in a proceeding limits that openness engaging section 2(b) of the Charter, and must therefore be justified under *Sherman Estate*. The LAT gave no consideration to the *Charter* right. It treated the destruction and non-dissemination order as a consequence of a finding that the affidavit was covered by solicitor-client privilege and deliberative secrecy.[13] It did not consider, as required by *Sherman Estate,* whether destroying the evidence and gagging the affiant, the parties and their counsel – rather than, at most, sealing it or redacting specific passages – was necessary or proportionate in light of the open court principle.[14]

8. On judicial review, the Divisional Court upheld the destruction and non-dissemination orders as reasonable applications of deliberative secrecy, solicitor-client privilege, and the Tribunal's power to control its own processes.[15] It also ordered that its own court file

---

[10] Tribunal Order in LAT file number: 18-011978/AABS, released September 1, 2023 at paras. 2-5.
[11] Tribunal Order in LAT file number: 21-000394/AABS, released September 1, 2023 at paras. 2-5.
[12] *Tribunal Order*, *supra* note 4 at paras. 6, and 38-40; *Tribunal Order*, *supra* note 5 at paras. 6, and 39-41.
[13] *Tribunal Order*, *supra* note 4 at paras. 14, 19, 32-33; *Tribunal Order*, *supra* note 5 at paras. 15, 20, and 33-34.
[14] *Sherman Estate* at para. 38.
[15] *Derenzis* at paras. 53, 100-109, 127-133, and 157-175.

remain sealed permanently, without treating its sealing order as a limit on the open court principle or applying the *Sherman Estate* framework.[16]

9. The Court of Appeal of Ontario refused leave to appeal without reasons.[17]

10. With leave refused, the Divisional Court's reasons now stand in Ontario for two broad propositions: that a tribunal may order sworn evidence destroyed without considering the open court principle, and that courts may uphold such destruction and permanent non-dissemination without any analysis under s. 2(b) or *Sherman Estate*. Left uncorrected, those reasons can be read as inviting tribunals to treat destroying evidence and gagging parties and affiants as routine process management rather than a constitutionally limited restriction on section 2(b), even where the evidence goes directly to adjudicative independence. That, in turn, risks the perception that destruction orders, if left unsupervised, may serve to erase evidence of institutional bias, undermining public confidence in the administration of justice.

11. In a separate proceeding involving Ms. Derenzis and the LAT, the Superior Court took a sharply different approach to the LAT's use of deliberative secrecy and privilege claims over the Tribunal's internal documents. In *Derenzis et al. v. His Majesty the King et al.*, 2025 ONSC 2761, Mandhane J. ordered Tribunals Ontario to produce adjudicators' notes, draft decisions, and hundreds of internal emails among adjudicators, counsel, and staff, despite the Tribunal's claims of deliberative secrecy and solicitor-client privilege.[18] She held that these records are relevant and necessary to Ms. Derenzis' constitutional challenge to the LAT's independence, and that while some communications attract privilege, deliberative secrecy must give way where there are serious natural justice concerns about executive interference and adjudicator independence.[19]

---

[16] *Ibid* at paras. 104 and 175.
[17] Order of the Court of Appeal for Ontario by Justices Tulloch C.J.O, Lauwers and Dawe, dated October 2, 2025.
[18] *Derenzis et al v. His Majesty the King et al*, 2025 ONSC 2761 at paras. 1 and 41-43.
[19] *Ibid* at paras. 5-6, 21, 23-24, and 28-36.

12. In one branch of her litigation, Ms. Derenzis is told that internal LAT records must be disclosed so that adjudicative independence can be tested. In another, she is told that a former adjudicator's affidavit describing those practices may be erased from the evidentiary record, ordered destroyed and ordered to never used again by the parties, their counsel or the affiant herself.

13. This case meets the criteria for leave under s. 40(1) of the *Supreme Court Act*. It raises a novel and important constitutional question about the limits that s. 2(b) and *Sherman Estate* place on the power of tribunals and courts to destroy and suppress sworn evidence. Notwithstanding the Court of Appeal of Ontario's denial of leave, the issues herein transcend the interests of the parties, affect the transparency and independence of administrative tribunals across Canada, and has already produced conflicting approaches within the Ontario Superior Court in proceedings involving the same applicant and tribunal.

## A. Statement of Facts

### (1) The accident benefits dispute

14. The underlying merits of Ms. Derenzis' benefits claims are not in issue on this application.

15. Ms. Derenzis was struck as a pedestrian by a motor vehicle on November 24, 2015. She applied to her insurer, Gore Mutual Insurance Company ("Gore Mutual"), for statutory accident benefits under the *Statutory Accident Benefits Schedule*.

16. The Tribunal later heard Ms. Derenzis' applications regarding medical/rehabilitation ("Med-Rehab Decision") and income replacement benefits ("IRB Decision") and, on June 27, 2023, dismissed both applications.[20] Ms. Derenzis sought reconsideration of both decisions, which the Tribunal directed would proceed in writing.

---

[20] *L.D. v. Gore Mutual Insurance Company*, 2023 CanLII 74649 (ON LAT) at para. 7; *Derenzis v. Gore Mutual Insurance Company*, 2023 CanLII 58532 (ON LAT) at para. 5.

**(2) Reconsideration and the Kowal whistleblower affidavit**

17. In her reply submissions on reconsideration, Ms. Derenzis filed an affidavit sworn by Dr. Korina Kowal, a former adjudicator, attaching Tribunal memoranda and bulletins obtained during her tenure.[21] The affidavit and exhibits described institutional practices mandating adjudicators to consult with Tribunal staff before ruling on certain motions, and directives prescribing how to decide specific matters, including automatically denying or triaging motions involving "high-conflict" parties.[22]

**(3) The Tribunal intercepts the reply and orders destruction of the Kowal affidavit**

18. On August 31, 2023, before the reconsideration adjudicator saw them, the applicant's reply submissions were redirected within the Tribunal to Vice-Chair McGee, who was not the reconsideration adjudicator.[23]

19. In two decisions dated September 11 and 18, 2023 (the "Destruction and Gag Orders"), Vice-Chair McGee held that specified paragraphs and exhibits of Dr. Kowal's affidavit were protected by solicitor-client privilege and deliberative secrecy, struck those portions from the record, and directed that only redacted reply materials go to the reconsideration adjudicator.[24] She further ordered that all copies of the impugned materials be destroyed and "not further disseminated in any form", and required every party, every lawyer of record, and the affiant to confirm in writing that all physical copies had been destroyed and all electronic copies deleted.[25]

---

[21] *Derenzis* at paras. 33, 74 and 157.
[22] *Derenzis* at para. 32.
[23] *Tribunal Order*, *supra* note 10 at paras. 2-5; *Tribunal Order*, *supra* note 11 at paras. 2-5.
[24] *Tribunal Order*, *supra* note 4 at paras. 5-6, 14, 19, and 36-37; *Tribunal Order*, *supra* note 5 at paras. 5-6, 15, 20, and 37-38.
[25] *Tribunal Order*, *supra* note 4 at paras. 36-40; *Tribunal Order*, *supra* note 5 at paras. 37-41.

20. The Divisional Court later temporarily suspended the destruction requirement and ordered that the impugned materials be sealed and held by counsel, not to be distributed in any way pending further order.[26]

**(4) The judicial review and statutory appeal**

21. Ms. Derenzis brought a statutory appeal from the LAT's IRB and Med-Rehab decisions, and an application for judicial review of the Destruction and Gag Orders to the extent that they required destruction and non-dissemination of the Kowal materials.[27]

22. The Attorney General of Ontario and the Ontario Trial Lawyers Association ("OTLA") intervened. The Attorney General supported the Tribunal, while OTLA opposed the destruction orders.[28]

23. The appeal and judicial review were heard together on March 4, 2025. On May 6, 2025, the Divisional Court dismissed both. It held that the Destruction and Gag Orders requiring document destruction and non-dissemination were reasonable.[29]

**(5) The Divisional Court's endorsement of the destruction power**

24. The Divisional Court upheld the Destruction and Gag Orders on the basis of deliberative secrecy, solicitor-client privilege, and the Tribunal's power to control its own processes.[30] It ordered that the materials in its own file remain sealed permanently.[31] Although the Court referred to s. 2(b) when summarizing Ms. Derenzis' submissions, it upheld the destruction and non-dissemination orders solely on those grounds, without treating them as limits on the open court principle or applying the *Sherman Estate* framework.[32]

---

[26] Directions of the Ontario Superior Court of Justice (Divisional Court) by Justice Matheson, dated October 19, 2023; *Derenzis v. Gore Mutual Insurance Company*, 2024 ONSC 1226 at paras. 11-12.
[27] *Derenzis* at paras. 40, 51-52 and 71.
[28] *Ibid* at paras. 79-80 and 145-146.
[29] *Ibid* at paras. 53, 100-109, 127-133, and 157-175.
[30] *Derenzis* at paras. 53, 100-109, 127-133, and 157-175.
[31] *Ibid* at paras. 104 and 175.
[32] *Ibid* at para. 136.

25. Following the Divisional Court's decision, Ms. Derenzis brought a motion for leave to appeal to the Court of Appeal for Ontario. In a further Notice of Constitutional Question filed in the Court of Appeal, she described the Kowal affidavit as evidence of institutional practices and internal directives within the Tribunal that usurped adjudicative independence, directly engaging the open court principle in s. 2(b).[33]

26. On October 2, 2025, without any reasons, the Court of Appeal for Ontario dismissed the applicant's leave for appeal.[34]

## PART II – STATEMENT OF THE QUESTIONS IN ISSUE

27. This application for leave to appeal raises two questions of law of national importance:

**(1) Open court, s. 2(b), and destruction orders:**
Does the open court principle protected under s. 2(b) of the *Charter* require administrative tribunals and reviewing courts to apply the *Sherman Estate* framework before ordering the destruction or permanent non-dissemination of sworn evidence filed in a proceeding, particularly where that evidence appears to substantiate institutional bias and lack of adjudicative independence?

**(2) Privilege and institutional directives to adjudicators:**
Can deliberative secrecy, solicitor-client privilege, or a tribunal's authority to control its own processes justify such destruction and gag orders without any analysis under s. 2(b) and *Sherman Estate*?

## PART III – STATEMENT OF ARGUMENT

### A. This Court's jurisdiction under s. 40(1)

28. Section 40(1) of the *Supreme Court Act* gives this Court jurisdiction, with leave, to hear an appeal from "any final or other judgment" of the highest court of final resort in a province where the proposed appeal raises a question of public importance. A refusal of leave by a provincial court of appeal is such a "final or other judgment".[35]

---

[33] Notice of Constitutional Question to Court of Appeal for Ontario at paras. 2 and 7-10.
[34] Order of the Court of Appeal for Ontario by Justices Tulloch C.J.O, Lauwers and Dawe, dated October 2, 2025
[35] *MacDonald v. City of Montreal*, [1986] 1 S.C.R. 460 at paras. 145-148.

29. This jurisdiction extends to refusals of leave where, without this Court's intervention, a serious constitutional or systemic issue would be put beyond the possibility of review. In *MacDonald v. City of Montreal*, this Court held that s. 40(1) (then s. 41(1)) extends to cases in which a provincial court of appeal has refused leave to appeal, and that this jurisdiction

> "we should exercise most sparingly, in those very rare cases where, as in this case, there is a risk that a question of major constitutional importance might otherwise be put beyond the possibility of review by this Court."[36] In such cases, this Court retains a "discretionary power to interfere with any final or other judgment of the intermediate appellate courts which raises an issue of national importance."[37]

30. In this matter, the Ontario Court of Appeal's refusal of leave leaves unresolved, at the appellate level, the constitutional question whether the open court principle protected by s. 2(b) of the *Charter* can be treated as inapplicable when an administrative tribunal orders the destruction and permanent non-dissemination of sworn evidence, especially where that evidence alleges institutional bias within the decision-maker itself.

31. The respondents may argue that the s. 2(b) issue was not perfectly framed in the first Notice of Constitutional Question. Even if that is accepted, *Guindon v. Canada, 2015 SCC 41,* confirms that this Court may, in "rare" but appropriate cases, determine a constitutional issue where it is fair and appropriate to do so. Relevant considerations include the state of the record, fairness to all parties, the importance of having the issue resolved by this Court, its suitability for decision, the broader interests of the administration of justice, and the absence of prejudice to affected Attorneys General and parties.[38] In this case, the destruction and non-dissemination orders and their underlying record are fully before the Court; notices of constitutional question were served in the Divisional Court and again in the Court of Appeal; the Attorney General of Ontario and a public-interest intervener participated; and the compatibility of tribunal destruction and permanent suppression of adjudicative materials with s. 2(b) and *Sherman Estate* has, to the applicant's knowledge, never been addressed by an appellate court. Those circumstances satisfy the *Guindon*

---

[36] *Ibid* at paras. 132 and 140-142.
[37] *Ibid* at para. 141.
[38] *Guindon v. Canada*, 2015 SCC 41, [2015] 3 SCR 3 at paras. 20-23 and 37.

criteria for exercising this Court's discretion to determine the constitutional issue on this application.

32. If leave to the Supreme Court of Canada is refused here, the proposition that a tribunal may order sworn evidence about its own internal adjudicative practices struck, destroyed and permanently suppressed, with no s. 2(b) analysis and no *Sherman* proportionality, will stand unreviewed. That is a question of national constitutional importance about the reach of the open court principle and the limits on administrative power. It is one of the "rare occasions" when this Court must intervene.

## B. The destruction and non-dissemination orders unjustifiably limit the open court principle

33. All exercises of state power must conform to the *Charter*,[39] which includes decisions that suppress information, restrict expression, or order the destruction of evidence.[40] Administrative decision-makers must identify and address applicable *Charter* provisions when their decisions engage *Charter* rights or values.[41]

34. Orders striking, destroying, and prohibiting the dissemination of sworn evidence in an adjudicative proceeding engage the open court principle protected by s. 2(b) of the *Charter*. They restrict public access to information about how adjudicative power is exercised, and therefore limit expressive and informational rights.[42]

---

[39] *Commission scolaire francophone des T.N.-O. v. Northwest Territories*, 2023 SCC 31 at para. 65 ["*Commission scolaire*"]; *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65, at para. 56.

[40] *Canadian Broadcasting Corp. v. New Brunswick (Attorney General),* [1996] 3 SCR 480 at para. 23.

[41] *Commission scolaire* at para. 65; *York Region District School Board v. Elementary Teachers' Federation of Ontario,* 2024 SCC 22 at para. 68.

[42] *Canadian Broadcasting Corp. v. New Brunswick (Attorney General)*, [1996] 3 S.C.R. 480 at paras. 22-26; *Vancouver Sun (Re)*, [2004] 2 S.C.R. 332 at paras. 4, 22-26, and 72; *Sherman Estate* at paras. 1 and 37-45.

35. In *Sherman Estate*, this Court held that any discretionary limit on openness over adjudicative records must satisfy a structured constitutional test under s. 2(b). The decision-maker must establish that:[43]

> (a) court openness poses a serious risk to an important public interest;
>
> (b) the order sought is necessary to prevent this serious risk to the identified interest because reasonably alternative measures will not prevent this risk; and,
>
> (c) as a matter of proportionality, the benefits of the order outweigh its negative effects

36. The same rationale informing the open court principle informs openness for tribunals, and as such, any limit on openness must be justified through application of the *Sherman* test.[44]

37. The orders at issue here go further than a sealing or publication ban. The Tribunal ordered that most of Dr. Kowal's affidavit and exhibits be "destroyed" and "not further disseminated in any form", and required undertakings of compliance from the parties, their counsel and the affiant.

38. The Divisional Court upheld those destruction and non-dissemination orders as reasonable and directed that the sealed materials in its own file "remain sealed permanently".

39. Neither the Tribunal nor the Divisional Court applied the *Sherman* framework.

a. Neither identified a "serious risk to an important public interest" that could only be addressed by destruction rather than redaction, anonymization, or sealing.
b. Neither considered less restrictive alternatives.
c. Neither weighed the impact of permanent suppression and destruction on the open court principle.

40. That failure to apply a binding constitutional test to a clear limit on s. 2(b) leaves the constitutional issue unresolved.

---

[43] *Sherman Estate* at para. 38.
[44] *CBC v. Chief of Police,* 2021 ONSC 6935 at para. 26.

41. In *S.E.C. v. M.P.*, 2023 ONCA 821, the Court of Appeal held that even where solicitor-client privilege is asserted over court materials, a sealing order cannot be granted before satisfying the *Sherman* test.[45]

42. The open court principle is not merely procedural; it is seen as "the very soul of justice" and acts as a guarantee that justice is administered in a non-arbitrary manner.[46] The lower court's reasons already disclose damning aspects of the affidavit that reveal that adjudicators are being directed or controlled behind the scenes. The greater threat to the public's confidence in the administration of justice is the lower court's failure to scrutinize the Tribunal's failure to consider the constitutional framework required, which reads as an endorsement of institutional cover-up. That perception, if left to stand, is corrosive to the rule of law.

**C. Solicitor-client privilege does not justify the destruction orders**

43. The Tribunal and reviewing courts erred in finding Dr. Kowal's affidavit and exhibits to be protected by solicitor-client privilege.

44. Solicitor-client privilege protects the confidentiality of communications between a client and their lawyer.[47]

45. Solicitor-client privilege protects communications where:

a. there is a communication between a solicitor and a client,
b. the communication entails the seeking or giving of legal advice, and
c. the communication is intended to be confidential.[48]

46. The privilege attaches only where the content falls within the ordinary scope of the solicitor-client relationship and will not apply to communications that are operational, managerial, or policy-driven in nature.[49] For example, where in-house counsel serves in a

---

[45] *S.E.C. v. M.P.*, 2023 ONCA 821 at paras. 86-87.
[46] *CBC v. New Brunswick,* 1996 SCC 184 at para. 22.
[47] *Pritchard v. Ontario (Human Rights Commission),* 2004 SCC 31 at para. 17 ["*Pritchard*"].
[48] *Ibid* at para. 15.
[49] *Pritchard* at paras. 20-21; *R. v. Campbell,* [1999] 1 S.C.R. 565 at paras. 50-55.

mixed advisory and executive role, the decision-maker must establish that the specific communication was advisory in substance and confidential in intent.[50] Privilege is not automatically triggered by the mere presence of a lawyer or the inclusion of legal staff in procedural directives.

47. The Divisional Court erred in its reasonableness review by accepting the Tribunal's claim of solicitor-client privilege over specific paragraphs of Dr. Kowal's affidavit despite the absence of any finding that:

a. that the communications were between a solicitor and client,
b. made for the purpose of legal advice,
c. and intended to be confidential.[51]

48. The Tribunal claimed solicitor-client privilege over three categories of content in Dr. Kowal's affidavit, all of which the Divisional Court accepted as protected:[52]

a. communications described as "mandatory instructions" from legal counsel and Vice-Chairs to adjudicators on how to decide adjournments, production requests, and interlocutory decisions;
b. a memo from the legal department, setting out adjournment procedures and requiring legal review before an adjudicator could decide (Exhibit C to the affidavit); and
c. a general bulletin addressing unspecified internal topics (Exhibit F to the affidavit).

49. The Divisional Court failed to assess whether the Tribunal's in-house lawyers were acting in a legal advisory role before accepting that solicitor-client privilege applied to the "mandatory instructions" from the Tribunal's in-house lawyers to adjudicators as described in Dr. Kowal's affidavit.[53]

50. The Divisional Court further erred in accepting that solicitor-client privilege applied to "mandatory instructions" *by Vice-Chairs* to adjudicators, without any evidence on record that the Vice-Chairs were lawyers.

---

[50] *Pritchard* at para. 20.
[51] *Pritchard* at para. 15.
[52] *Derenzis* at para. 127.
[53] *Derenzis* at para. 132.

51. The Divisional Court erred in accepting that solicitor-client privilege applied to the memo in Exhibit C to Dr. Kowal's affidavit, which imposed mandatory legal review before granting adjournments, without assessing whether the content reflected legal advice.[54]

52. The improper classification of these items as solicitor-client privileged enabled the destruction of uncontroverted evidence describing institutional protocols that displaced adjudicators' independence.

**D. Deliberative secrecy does not extend to institutional directives or justify destruction**

53. Deliberative secrecy is a constitutional safeguard for adjudicative independence, not a blanket of institutional secrecy. It protects the "how and why" of a decision-maker's reasoning in a particular case.[55] This protection may cover notes created by adjudicators during the deliberation process,[56] post-hearing discussions by panel members with non-hearing panel members,[57] or consultative processes that have sufficient safeguards to allay fears of violations of natural justice[58].

54. Deliberative secrecy does not protect against internal directives about who gets which files, when adjournments will be granted, or how "high-conflict" parties are to be treated. Treating those institutional instructions as "deliberative" is a serious error of law and raises an unresolved constitutional question about the outer limits of deliberative secrecy for administrative tribunals juxtaposed against the presumption of transparency in independent decision making required by an open court.

55. Deliberative secrecy extends to administrative decision makers and processes. This includes a decision maker's consultative processes with other decision makers or superiors within a Tribunal. [59]

---

[54] *Derenzis* at para. 127(b).
[55] *Commission scolaire de Laval v. Syndicat de l'enseignement de la region de Laval,* 2016 SCC 8 at para. 57 ["*Commission scolaire de Laval*"].
[56] *Grogan v. Ontario College of Teachers,* 2023 ONSC 2980 at para. 17.
[57] *IWA v. Consolidated-Bathurst Packaging Ltd*., [1990] 1 SCR 282.
[58] *Ellis-Don Ltd. v. Ontario (Labour Relations Board),* 2001 SCC 4 at para. 78 ["*Ellis-Don*"].
[59] *Ellis-Don* at paras. 52-53.

56. Deliberative secrecy in administrative processes cannot be relied upon to the same extent as in judicial processes because of the very nature of control that the government has over administrative decision making.[60] Moreover, deliberative secrecy can be lifted "when the litigant can present valid reasons for believing that the process followed did not comply with the rules of natural justice".[61]

57. Deliberative secrecy has been lifted in situations where an administrative tribunal had a compulsory consultation process that could create an appearance of a lack of independence or undue pressure on decision-makers, thereby infringing on a litigant's right to a decision by an independent tribunal.[62]

58. The Divisional Court erred in its reasonableness review by accepting the Tribunal's destruction of the materials listed in paragraph 157 without assessing how and why a decision maker reached a particular decision in a particular proceeding. Each item listed at paragraph 157 of the Divisional Court's reasons was either (A) not covered by the doctrine of deliberative secrecy, or (B) was presumptively covered but met the threshold to be lifted under *Tremblay v. Quebec*, [1992] 1 S.C.R. 952 and *Ellis-Don Ltd. v. Ontario (Labour Relations Board)*, 2001 SCC 4.

59. First, much of the Kowal evidence is simply *not* deliberative. Mandatory Vice-Chair approval before granting adjournments, 'no adjournments' pronouncements, duty bulletins eliminating reconsideration of interlocutory decisions, performance admonishments of adjudicators for failing to follow mandatory consultation protocols, and a directive on how to deal with "high-conflict" parties or firms are institutional rules and supervisory decisions. Under s. 33(1)(b) of the *Freedom of Information and Protection of Privacy Act*, such 'instructions and guidelines' for administering a statutory scheme must be made publicly available.[63] They cannot be retrofitted as 'secret deliberations' and then used to justify destruction of the very evidence that exposes them.

---

[60] *Tremblay v. Quebec (Commission des affaires sociales)*, [1992] 1 S.C.R. 952 ["*Tremblay*"].
[61] *Ibid*.
[62] *Ibid*.
[63] *Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. F.31 at s. 35.

60. Even where parts of the Kowal affidavit touch internal tribunal consultation – for example, team-meeting minutes and directions requiring adjudicators to consult a Vice-Chair in real time before granting adjournments, coupled with instructions not to disclose that consultation in reasons – the legal standard for deliberative secrecy was not applied.

61. *Tremblay* holds that secrecy yields where a litigant presents valid reasons to believe the process did not comply with natural justice.[64] As this Court explained in *Ellis-Don*, institutional consultation is permissible only if "the consultation proceeding could not be imposed," is "limited to questions of policy and law," and "even on questions of law and policy, the decision-makers had to remain free to take whatever decision they deemed right."[65]

62. *Ellis-Don* permits institutional consultation only where the panel remains free to decide, the discussion is confined to proper questions, and any new matters raised are disclosed so parties can respond. Here, a former adjudicator gave first-hand evidence of binding, undisclosed directions that appear to predetermine outcomes for certain firms and "high-conflict" parties and to require off-the-record approval from tribunal management before exercising procedural discretion. This is a constraint on adjudicative independence and precisely the kind of concern that engages the deliberative secrecy exception outlined in *Tremblay.*

63. The Divisional Court instead treated deliberative secrecy as an institutional entitlement belonging to the Tribunal: something the LAT could "own" and invoke to block use of the Kowal materials.[66] It did not ask, category by category, whether the materials fell within the limited scope of deliberative secrecy as defined in *Tremblay, Ellis-Don and Commission scolaire de Laval*, or whether the Kowal evidence met the threshold for lifting the veil. Instead, it accepted the Tribunal's characterization and used it to uphold orders requiring that evidence to be destroyed and never used again.

---

[64] *Tremblay*.
[65] *Ellis-Don* at para. 29.
[66] *Derenzis* at paras. 106-107.

64. If deliberative secrecy can be used to shield tribunal directives about file assignment, adjournments, reconsideration and the treatment of "high-conflict" parties, and to justify destruction and permanent non-dissemination of evidence describing those directives, tribunals across the country will have a legal mechanism to suppress evidence of institutional bias and constraints imposed on 'independent' adjudicators. Whether that use of deliberative secrecy is compatible with this Court's jurisprudence and with the open court principle in s. 2(b) is itself a question of national importance that warrants this Court's intervention.

## PART IV – SUBMISSION ON COSTS

65. The Applicant requests costs in the cause.

## PART V – ORDER SOUGHT

66. The Applicant seeks an order granting leave to appeal, with costs in the cause.

**ALL OF WHICH IS RESPECTFULLY SUBMITTED** THIS 1st day of December, 2025

**Imtiaz Hosein**
**Joseph Campisi**
**Christos Kakaletris**

**Counsel for the Applicant**

## PART VI – TABLE OF AUTHORITIES

| APPLICANT'S AUTHORITIES | CITED AT PARAGRAPH NO. |
|---|---|
| **CASES** | |
| *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65 | 33 |
| *Canadian Broadcasting Corp. v. New Brunswick (Attorney General),* [1996] 3 SCR 480 | 33, 34 |
| *CBC v. Chief of Police,* 2021 ONSC 6935 | 36 |
| *CBC v. New Brunswick,* 1996 SCC 184 | 42 |
| *Commission scolaire de Laval v. Syndicat de l'enseignement de la region de Laval,* 2016 SCC 8 | 33, 53, 63 |
| *Commission scolaire francophone des T.N.-O. v. Northwest Territories*, 2023 SCC 31 | 33 |
| *Ellis-Don Ltd. v. Ontario (Labour Relations Board),* 2001 SCC 4 | 53, 55, 61-63 |
| *Grogan v. Ontario College of Teachers,* 2023 ONSC 2980 | 53 |
| *Guindon v. Canada*, 2015 SCC 41 | 38 |
| *IWA v. Consolidated-Bathurst Packaging Ltd.*, [1990] 1 SCR 282 | 53 |
| *MacDonald v. City of Montreal*, [1986] 1 S.C.R. 460 | 28, 29 |
| *R. v. Campbell,* [1999] 1 S.C.R. 565 | 46 |
| *Pritchard v. Ontario (Human Rights Commission),* 2004 SCC 31 | 44-47 |
| *S.E.C. v. M.P.,* 2023 ONCA 821 | 41 |
| *Sherman Estate v. Donovan,* 2021 SCC 25 | 1, 6-8, 10, 13, 24, 27, 31, 32, 34-36, 39, 41 |
| *Tremblay v. Quebec (Commission des affaires sociales),* [1992] 1 S.C.R. 952 | 56-58, 61-63 |
| *Vancouver Sun (Re),* [2004] 2 S.C.R. 332 | 34 |
| *York Region District School Board v. Elementary Teachers' Federation of Ontario,* 2024 SCC 22 | 33 |
| **LOWER COURT DECISIONS** | |
| *17-002762/AABS v. Gore Mutual Insurance Company*, 2017 CanLII 142564 (ON LAT) | 2 |

| | |
|---|---|
| *L.D. v. Gore Mutual Insurance Company*, 2017 CanLII 152935 (ON LAT) | 2 |
| *L.D. v. Gore Mutual Insurance Company*, 2019 CanLII 76994 (ON LAT) | 2 |
| *Applicant v. Gore Mutual Insurance Company*, 2019 CanLII 101509 (ON LAT) | 2 |
| *L.D. v. Gore Mutual Insurance Company*, 2019 CanLII 122372 (ON LAT) | 2 |
| *L.D. v. Gore Mutual Insurance Company*, 2020 CanLII 35471 (ON LAT) | 2 |
| *L.D. v. Gore Mutual Insurance Company*, 2020 CanLII 98721 (ON LAT) | 2 |
| *L.D. v. Gore Mutual Insurance Company*, 2020 CanLII 98747 (ON LAT) | 2 |
| *L.D. v. Gore Mutual Insurance Company*, 2021 CanLII 28704 (ON LAT) | 2 |
| *Derenzis v. Ontario*, 2021 ONSC 3164 | 2 |
| *Derenzis v. Gore Mutual Insurance Company*, 2021 ONSC 6575 | 2 |
| *Derenzis v. Gore Mutual Insurance Company*, 2022 CanLII 46845 (ON LAT) | 2 |
| *Derenzis v. Gore Mutual Insurance Company*, 2023 CanLII 58532 (ON LAT) | 2, 16 |
| *Derenzis v. Gore Mutual Insurance Company*, 2023 ONSC 6266 | 2 |
| *L.D. v. Gore Mutual Insurance Company*, 2023 CanLII 74649 (ON LAT) | 2, 16 |
| *Derenzis v. Gore Mutual Insurance Company*, 2024 CanLII 2662 (ON LAT) | 2 |
| *Derenzis v. Gore Mutual Insurance Company*, 2024 CanLII 2670 (ON LAT) | 2 |
| *Derenzis v. Gore Mutual Insurance Company*, 2024 ONSC 1226 | 2, 20 |
| *Derenzis v. Gore Mutual et al*, 2024 ONSC 5367 | 2 |
| *Derenzis v. Gore Mutual Insurance Company*, 2025 CanLII 16016 (ON LAT) | 2 |
| *Derenzis v. Gore Mutual Insurance Co.*, 2025 ONSC 2732 | 2, 4,5, 8, 21-24, 48, 49, 51, 63 |
| *Derenzis et al v. His Majesty the King et al*, 2025 ONSC 2761 | 11 |
| *Derenzis v. Gore Mutual Insurance Company*, 2025 CanLII 116984 (ON LAT) | 2 |
| Tribunal Order in LAT file number: 18-011978/AABS, released September 20, 2023 | 3, 6, 7 |
| Tribunal Order in LAT file number: 21-000394/AABS, released September 20, 2023 | 3, 6, 7 |

| | |
|---|---|
| Tribunal Order in LAT file number: 18-011978/AABS, released September 1, 2023 | 6 |
| Tribunal Order in LAT file number: 21-000394/AABS, released September 1, 2023 | 6 |
| **LEGISLATION** | **SECTION(S)** |
| *Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. F.31<br>*Loi sur l'accès à l'information et la protection de la vie privée*, LRO 1990, c F.31 | 33, 35<br>33, 35 |
| *Insurance Act*, R.S.O. 1990, c. I.8<br>*Loi sur les assurances*, LRO 1990, c I.8 | 280<br>280 |
| *The Constitution Act, 1982*, Schedule B to the Canada Act 1982 (UK), 1982, c 11<br>*Loi constitutionnelle de 1982*, Annexe B de la Loi de 1982 sur le Canada (R-U), 1982, c 11 | 2<br>2 |

Court of Appeal File No.: COA-25-OM-0181
Divisional Court File No.: 546/23, 109/24 and 114/24

***ONTARIO***
**COURT OF APPEAL**

B E T W E E N:

**LUCIA DERENZIS**

Moving Party/Appellant

- and -

**GORE MUTUAL INSURANCE COMPANY**

Respondent

- and -

**LICENCE APPEAL TRIBUNAL**

Respondent

**NOTICE OF CONSTITUTIONAL QUESTION**

**THE MOVING PARTY/APPELLANT,** Lucia Derenzis, intends to question the constitutional validity of administrative decisions made by the Licence Appeal Tribunal (the "Tribunal") and upheld by the Divisional Court on the basis that the Tribunal's order of destruction and non-dissemination of an affidavit evidencing breaches of natural justice at the Tribunal constitutes an unjustified limit on the open court principle protected under section 2(b) of the *Charter*, contrary to the structured analysis required by *Sherman Estate v. Donovan*, 2021 SCC 25. Ms. Derenzis also seeks a remedy under subsection 24(1) of the *Charter* arising from the

Tribunal's destruction order and the Court's failure to apply the applicable constitutional framework.

**THE QUESTION IS TO BE ARGUED** in writing, at Osgoode Hall, 130 Queen Street West, Toronto, Ontario, on a date fixed by the Registrar to be heard, as part of a motion to seek leave to appeal to the Ontario Court of Appeal from a judicial review and statutory right of appeal decision of the Divisional Court of Ontario, and in the event that leave is granted, for the question to be argued in person before the Ontario Court of Appeal.

**The following are the material facts giving rise to the constitutional question:**

1. The constitutional question arises from orders made by the Licence Appeal Tribunal striking, destroying, and prohibiting dissemination of affidavit evidence filed by the appellant, Ms. Derenzis, in support of a reconsideration application.
2. The affidavit, sworn by Dr. Korina Kowal, a former Tribunal adjudicator, attested to institutional practices and directives that exposed internal directives and bulletins within the Tribunal that usurped adjudicative independence in decision making.
3. The destruction and non-dissemination orders were issued in the context of Ms. Derenzis' application for statutory accident benefits under the *Statutory Accident Benefits Schedule* and her contract of insurance with the respondent, Gore Mutual Insurance Company.
4. On September 27, 2023, Ms. Derenzis served a Notice of Constitutional Question that was argued before the Divisional Court in connection with the application for judicial review of the Tribunal's destruction order.
5. On May 6, 2025, the Divisional Court released its reasons dismissing the judicial review.
6. On May 21, 2025, Ms. Derenzis brought a Notice of Motion for Leave to Appeal to the Ontario Court of Appeal to be heard in writing on a date fixed by the Registrar.

**The following is the legal basis for the constitutional question:**

7. The destruction and non-dissemination order violates the open court principle under s. 2(b) of the *Canadian Charter of Rights and Freedoms.*

8. The Tribunal's order required that the affidavit be struck from the adjudicative record, physically destroyed by all parties and counsel, and permanently withheld from public dissemination. That order suppressed evidence that had already been filed in a live proceeding, served on all parties, and relied on by the applicant. It removed from the record information that directly concerned the fairness and independence of the Tribunal's adjudicative process.

9. Section 24(1) of the *Charter of Rights and Freedoms* establishes that anyone whose rights or freedoms, as guaranteed by this Charter, have been infringed or denied may apply to a court of competent jurisdiction to obtain such remedy as the court considers appropriate and just in the circumstances.

10. Ms. Derenzis intends to argue that the Divisional Court erred in law by failing to acknowledge or apply the open court principle as a constitutional constraint when conducting its reasonableness review of the Tribunal's Documents Decisions.

Dated: July 7, 2025

**CAMPISI LLP**
Personal Injury Lawyers
7050 Weston Road
Suite 101
Vaughan, ON L4L 8G7

**Imtiaz Hosein (LSO 722490)**
Email: imtiaz@campisilaw.ca
Tel: (416) 203-1115

Lawyers for the Moving Party/ Appellant

**TO**: **THE ATTORNEY GENERAL OF ONTARIO**
Constitutional Law Branch
4th floor
720 Bay Street
Toronto, Ontario M5G 2K1

Email: clbsupport@ontario.ca
Tel: 416-326-2220

**AND TO**: **THE ATTORNEY GENERAL OF CANADA**
120 Adelaide Street West
Suite 400
Toronto, Ontario M5H 1T1

Email: NCQ-AQC.Toronto@justice.gc.ca
Tel: 416-973-0942

**AND TO:** **CAMPORESE SULLIVAN DI GREGORIO**
Commerce Place, Suite 1700
One King Street West
Hamilton, Ontario L8P 1A4

**Arthur Camporese (LSO 23996R)**
Email: acamporese@csdlawyers.ca
Tel: 905-522-7068

Lawyers for the Insurer/Respondent, Gore Mutual Insurance Company

**AND TO**: **LICENCE APPEAL TRIBUNAL**
Automobile Accident Benefits Service
15 Grosvenor Street, Ground Floor
Toronto, ON M7A 2G8

**Morgana Kellythorne (LSO 49048C)**
**Douglas Lee (LSO 55874V)**
Email: morgana.kellythorne@ontario.ca / douglas.lee@ontario.ca
Tel: 416-509-4767 / 437-221-7701

Lawyers for the Respondent, Licence Appeal Tribunal

Court of Appeal File No.: COA-25-OM-0181
Division Court File No.: 546/23,
109/24 and 114/24

**DERENZIS**
Appellant

**v.**

**GORE MUTUAL et. al.**
Respondents

103

*ONTARIO*
COURT OF APPEAL

Proceeding commenced at Toronto

**NOTICE OF CONSTITUTIONAL QUESTION**

**CAMPISI LLP**
7050 Weston Road, Suite 101
Vaughan, Ontario L4L 8G7

**Imtiaz Hosein (LSO 72249O)**
Email: imtiaz@campisilaw.ca
Tel: (416) 203-1115

Lawyers for the Applicant