

**LICENCE APPEAL
TRIBUNAL**

**Safety, Licensing Appeals and
Standards Tribunals Ontario**

**TRIBUNAL D'APPEL EN MATIÈRE
DE PERMIS**

**Tribunaux de la sécurité, des appels en
matière de permis et des normes Ontario**



Tribunal File Number: **17-001746/AABS**

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

Between:

D.S.

Applicant

And

Royal Sun Alliance Insurance Company

Respondent

MOTION ORDER

Order made by: **Sandeep Johal, Adjudicator**

Date of Order: **October 12, 2017**

OVERVIEW

- [1] On September 12, 2017, the applicant brought a motion to exclude the respondent's surveillance evidence from the hearing.
- [2] The motion was heard by way of teleconference on October 4, 2017 with the applicant's representative, David Gillespie, and Cary Schneider counsel for the respondent in attendance.
- [3] The applicant submits that the respondent's surveillance evidence does not comply with the rules of evidence and the three part test as laid out by the Superior Court of Justice in the *Nemchin* case.¹
- [4] The respondent submits that the Ontario Court of Appeal case² sets out the general principles with respect to the admissibility of evidence and the *Nemchin* case is not based on the principles as set out from the Court of Appeal case of *Collins*.

RESULT

- [5] The applicant's motion is denied and the surveillance evidence shall be admissible as part of the hearing.

ANALYSIS

- [6] The submissions made by the parties are with respect to the rules of evidence in a court setting. I note that the Tribunal, like most administrative Tribunals in Ontario, does not adhere as strictly to the rules of evidence as a Court would. The Tribunal may consider evidence that would not be admitted in a court proceeding, such as video or audio surveillance or hearsay evidence, although such evidence may be given less weight than other direct or corroborated evidence. In considering the admissibility of evidence at a hearing, the Tribunal is guided by the *Statutory Powers Procedure Act* (the "SPPA")
- [7] Section 15 of the SPPA governs what evidence is admissible in a Tribunal hearing. The Tribunal may admit into evidence any document or other thing that is relevant to the subject matter of the proceeding.

¹ *Nemchin v Green* (2017), ONSC 1321 (Ont. S.C.J.)

² *R. v Collins*, 2001 CanLII 24124 (ON CA)

[8] The applicant has not persuaded me on why the surveillance evidence is not relevant and how the prejudice would be outweighed by its probative value if the surveillance were to be included in accordance with section 15 of the SPPA.

ORDER

[9] It is ordered that the surveillance evidence shall be admissible for the hearing.

[10] Unless explicitly stated in this order, all other orders and decision with respect to this matter remain in full force and effect.

Date of Issue: January 17, 2018



**Sandeep Johal
Adjudicator**