

**ONTARIO
SUPERIOR COURT OF JUSTICE**

B E T W E E N:

PAUL TAYLOR

Applicant

and

THE WORKPLACE SAFETY & INSURANCE BOARD - WSIB
and
THE WORKPLACE SAFETY & INSURANCE APPEALS TRIBUNAL -
WSIAT

Respondents

**FACTUM OF THE RESPONDENT,
WORKPLACE SAFETY AND INSURANCE APPEALS TRIBUNAL
(Permission/Leave to hear Applicant's Application for Judicial Review
– Writ of Mandamus – March 20, 2018)**

March 14, 2018

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**FACTUM OF THE RESPONDENT,
WORKPLACE SAFETY AND INSURANCE APPEALS TRIBUNAL**

PART I. OVERVIEW

1. Paul Taylor has claimed certain benefits under the *Workplace Safety and Insurance Act, 1997* (“WSIA”)¹ from the Workplace Safety & Insurance Board (the “Board” or “WSIB”). The Board has not rendered a final decision in any of these matters, which he raised in October 2017 and January 2018. It is only once the Board renders a final decision that an appeal may be made to the Workplace Safety & Insurance Appeals Tribunal (the “Tribunal” or “WSIAT”).

2. Mr. Taylor brings this application, on an allegedly urgent basis, asking this Court to micro-manage the processes before the Board and the yet-to-be engaged Tribunal. Mr. Taylor’s application is wholly premature, and should be dismissed. There is no basis

¹ SO 1997, c 16, Sched A.

in the record or the law for this Court to dictate the manner of hearing, or the timetable for hearing and deciding a case, especially one which has not yet even crystallized, and may never crystallize if Mr. Taylor decides not to appeal any future final decisions of the Board related to these matters to the Tribunal.

PART II. FACTS

1. The Parties and the Appeal Procedure

3. Mr. Taylor is a *WSIA*-benefits claimant. He previously attempted to sue both the Board and the Tribunal, even though the Tribunal told Mr. Taylor the relief he was seeking was properly brought as a judicial review.² His action was dismissed both for want of jurisdiction, and because it disclosed no reasonable cause of action.³ The decision was upheld on appeal.⁴ There are two outstanding costs orders against Mr. Taylor, in favour of both the Board and Tribunal, totalling \$5,500 to each for the costs of the motion and appeal.⁵

4. The Board is an independent trust agency created under the *WSIA* to administer workplace accident benefits under that Act.

5. The Tribunal is an independent administrative tribunal created under the *WSIA*. The Tribunal hears and decides appeals from final decisions of the Board.

² Mr. Taylor initially commenced a judicial review in the wrong court, which he later abandoned in favour of his action for damages. Responding Record of the Tribunal, Tab 1, pp 2-3, paras 6-10, and the Exhibits thereto.

³ See *Taylor v. Workplace Safety & Insurance Board et al*, 2017 ONSC 1223, Tab 1 of the Tribunal's Book of Authorities.

⁴ See *Taylor v. Workplace Safety & Insurance Board et al*, 2018 ONCA 108, Tab 2 of the Tribunal's Book of Authorities.

⁵ Responding Record of the Tribunal, Tab 1, pp 3-4, paras 13-14.

6. In order for an appeal by a claimant to be heard by the Tribunal, the following must have occurred:

- (a) The Board must make a decision respecting a claimant's entitlement to *WSIA*-benefits;
- (b) If the claimant disagrees with the decision, the claimant may object to the Board's decision. Pursuant to s. 120 of the *WSIA*, the claimant must raise his or her objection within the statutory time limits;
- (c) If the Board does not change its decision following receipt of the claimant's objection, and the claimant wishes to continue with their objection, they must complete an Appeal Readiness Form;
- (d) Once the claimant has submitted an Appeal Readiness Form, the claimant's objection will be considered by an Appeals Resolution Officer who is part of the Board's Appeals Services Division (which is not *WSIAT*). The Appeals Resolution Officer will issue a final decision at the Board-level; and
- (e) If the claimant disagrees with the decision of the Board's Appeals Services Division, then and only then, may the claimant appeal to the Tribunal pursuant to s. 125 of the *WSIA*.⁶

7. As described more fully below, none of the concerns Mr. Taylor has raised are at the point where they could be the subject of an appeal to the Tribunal.

⁶ Responding Record of the Tribunal, Tab 1, pp 5-6, para 20.

2. The Current Disputes

8. On September 26, 2017, Mr. Taylor sought coverage from the Board related to certain over-the-counter medications.⁷

9. On October 2, 2017, Mr. Taylor sent a further letter to the Board's counsel, in which he sought to recover benefits Mr. Taylor alleges he was entitled to for August 13, 14, 17 and 18, 1998, and for which he alleges he was never paid.⁸ It does not appear the Board has made a decision respecting this issue to date.

10. In a letter dated October 4, 2017, the Board asked Mr. Taylor for updated medical information from his treating physician "if **non-narcotic** medications are continued to be prescribed beyond January 3, 2018" [emphasis in original].⁹ Mr. Taylor did not respond to this letter or provide the requested information from his treating physician.¹⁰

11. On October 5, 2017, the Board sent Mr. Taylor a letter confirming that the Board would review his letter received September 26, 2017, related to coverage for over-the-counter medications, on an expedited basis, and render a decision by October 11, 2017.¹¹

⁷ Application Record, Tab 4, Exhibit Y.

⁸ Application Record, Tab 4, Exhibit AA.

⁹ Application Record, Tab 4, Exhibit BB.

¹⁰ Responding Record of the Board, Tab 1, pp 2-3, para 5. In an email at Application Record, Tab 4, Exhibit FF, Mr. Taylor states, respecting this request, "it makes me wonder why I should waste my gas and time to travel almost an hour to see my doctor only to be denied" coverage for non-narcotic medications by the Board.

¹¹ Application Record, Tab 4, Exhibit CC.

12. On October 11, 2017, the Board sent Mr. Taylor a letter advising him that he would not be reimbursed for over-the-counter medications.¹²

13. On October 17, 2017, Mr. Taylor submitted his Notice of Objection to the Board's decision of October 11, 2017. In his Notice of Objection, he stated:

I will give the WSIB seven days to schedule, hear, and prepare, the oral appeal decision.

...

I caution the WSIB that failure to make a speedy decision may result in an application being filed with the Superior Court of Justice for a Writ of Mandamus.¹³

14. On October 24, 2017, the Board wrote to Mr. Taylor to advise him that access to his claim file would be expedited and that an Appeal Readiness Form would be sent to him to complete, if he wished to pursue his appeal before the Board's Appeal Services Division.¹⁴

15. The Board sent Mr. Taylor his claim file on November 9, 2017.¹⁵

16. In a letter dated December 15, 2017, Mr. Taylor states that he received his claim file the day before – on December 14, 2017 – but that the package did not include an Appeal Readiness Form. He requested such a form immediately. In his letter, Mr. Taylor also stated:

As I mentioned previously in my communication with the WSIB I will be seeking a "Writ of Mandamus" of the court to: order the WSIB to hold an oral hearing within five days of his/her honour's decision; that the WSIB will have five days after the oral hearing to render a written decision; that the WSIAT be ordered to hold an oral hearing within five days after they have been notified by me of my intent to appeal, if I choose to; and the WSIAT issue a written decision five days after the oral hearing. The WSIB will be served in accordance with the Rules of Civil Procedure. The reason I am taking this action

¹² Application Record, Tab 4, Exhibit DD.

¹³ Application Record, Tab 4, Exhibit FF.

¹⁴ Application Record, Tab 4, Exhibit GG.

¹⁵ Application Record, Tab 4, Exhibit II.

against the WSIB & the WSIAT, is that the delays in Canada's dispute system both legal and administrative law have become utterly untenable and must be stopped! ...¹⁶

17. It is unclear when Mr. Taylor received the Appeal Readiness Form from the Board. However, on January 20, 2018, Mr. Taylor submitted the Appeal Readiness Form to the Board's Appeal Services Division. As noted above, the Appeal Services Division is not WSIAT. In his covering email, Mr. Taylor stated:

I also wish to clarify that I am presently not covered for ANY medications. Previous to this issue being raised I was fully covered for any prescription medications. As a result I have, or will be filing a writ of mandamus with the court to compel the WSIB and the WSIAT to expedite the appeal process. [Emphasis in original.]¹⁷

18. Notwithstanding Mr. Taylor's failure to respond to the Board's letter dated October 4, 2017, Mr. Taylor interpreted as retaliation the fact that his prescription medication coverage had ended.¹⁸

3. The Application

19. By January 20, 2018, only one of Mr. Taylor's three concerns was ready for hearing by the Board's Appeal Services Decision (the decision related to over-the-counter medication coverage). The Board had not yet rendered a decision on Mr. Taylor's entitlement to benefits for four days in 1998, nor had Mr. Taylor formally objected or submitted an Appeal Readiness Form respecting his prescription drug coverage. The Board had rendered no final decisions on any of these matters.

20. However, Mr. Taylor decided to proceed with an application seeking relief in the nature of *mandamus* against both the Board and the Tribunal. On January 26, 2018, Mr. Taylor swore an affidavit in support of such an application. At some point prior to the

¹⁶ Application Record, Tab 4, Exhibit JJ.

¹⁷ Application Record, Tab 4, Exhibit KK.

¹⁸ Application Record, Tab 2, Notice of Motion, pp 19-20, paras 17-18.

current proceedings, Mr. Taylor also caused a notice of application to be issued, and set the matter down for hearing at an earlier date than March 20, 2018.¹⁹ These materials were not provided to the Tribunal.

21. Instead, on February 21, 2018, Mr. Taylor caused a new application to be issued, which he again did not immediately serve on the Tribunal. The new application was returnable March 20, 2018. He set it down without consulting the respondents. Mr. Taylor has confirmed that he was preparing his materials from January 20, 2018 onwards.²⁰

22. On March 6, 2018, Mr. Taylor served the Tribunal with his application and motion materials. Although he seeks an urgent judicial review before a single judge of the Superior Court of Justice, there is no evidence in the record that he sought to have this matter scheduled before the Divisional Court sitting in Brampton for its March 2018 hearing dates.

23. In his letter accompanying his materials, Mr. Taylor states:

I will, without question and until the day I die, expose the corruption of the workers compensation system within Ontario and in Canada. ...²¹

24. On March 12, 2018, the Tribunal's counsel requested a brief adjournment of this matter, and agreed to work with Mr. Taylor to have the matter heard at an early date.²²

Mr. Taylor responded on March 13, 2018, stating he would only agree to an adjournment on the following terms, which the Board declined:

¹⁹ Responding Record of the Tribunal, Tab 1, Exhibit G, p 25.

²⁰ *Ibid.*

²¹ Responding Record of the Tribunal, Tab 1, Exhibit E, p 19.

²² Responding Record of the Tribunal, Tab 1, Exhibit F, p 21,

To be clear that my compromise of agreeing to an adjournment of my motion, application and notice is conditional on the WSIB completely and fully covering all the above medications from this point forward. This would be for prescription and over the counter, as well as any other prescription and over the counter medications or topical creams my and only my doctor may deem that I need, until this matter is fully resolved by the courts. [Emphasis in original.]²³

25. As of March 14, 2018, none of the complaints raised by Mr. Taylor is ready or even capable of being heard by the Tribunal. It is not open to the claimant to appeal to the Tribunal until the Board has rendered final decisions.

PART III. ISSUES AND LAW

26. It is important to note upfront that the only relief Mr. Taylor is seeking in his application is the following:

- a) That the Workplace Safety & Insurance Board – WSIB be commanding by this honourable court to:
 - i. Schedule and hold an oral appeal hearing within five days after the date of the decision or whenever reasonable timeframe this honourable court sees fit;
 - ii. Render a written decision to Mr. Taylor within five days after holding the hearing or whenever reasonable timeframe this honourable court sees fit;
 - iii. To issue their decision(s) to Mr. Taylor by e-mail and regular mail.
- b) That the Workplace Safety & Insurance Appeals Tribunal – WSIAT, if in the event Mr. Taylor disagrees with the decision of the WSIB, that the WSIAT be ordered by this honourable court to:
 - i. Schedule and hold an oral hearing, within five days when requested by Mr. Taylor, or whenever reasonable timeframe this honourable court sees fit;
 - ii. To render a written decision to Mr. Taylor within five days after holding the hearing, or whenever reasonable timeframe this honourable court see fit;
 - iii. To issue the decision(s) to Mr. Taylor by e-mail and regular mail.²⁴

27. Mr. Taylor's motion and application raise the following issues:

²³ Responding Record of the Tribunal, Tab 1, Exhibit G, p 23.

²⁴ Application Record, Tab 1, Notice of Application, pp 10-11, para 8.

- (a) Does Mr. Taylor's application meet the threshold for leave to be heard by a single judge of the Superior Court of Justice pursuant to s. 6(2) of the *Judicial Review Procedure Act* ("JRPA")?
- (b) If so, is Mr. Taylor entitled to an order in the nature of *mandamus* compelling the timetable and procedure above?

1. The applicant should not be granted leave

28. Applications for judicial review must be made to the Divisional Court as provided in s. 6(1) of the *JRPA*. However, pursuant to s. 6(2) of the *JRPA*, such an application may be made to a single judge of the Superior Court of Justice with leave of a judge of that Court, which may be obtained at the hearing of the application. Sections 6(1) and (2) of the *JRPA* provide as follows:

6 (1) Subject to subsection (2), an application for judicial review shall be made to the Divisional Court.

(2) An application for judicial review may be made to the Superior Court of Justice with leave of a judge thereof, which may be granted at the hearing of the application, **where it is made to appear to the judge that the case is one of urgency and that the delay required for an application to the Divisional Court is likely to involve a failure of justice.**²⁵ [Emphasis added.]

29. The assessment of urgency and delay involving a failure of justice is inherently fact specific.²⁶ In the present case, the Tribunal submits that neither branch of the test has been satisfied.

30. First, there is nothing urgent about this proceeding. Mr. Taylor has been threatening to commence such a proceeding since at least October 17, 2017. If Mr.

²⁵ RSO 1990, c J1.

²⁶ *Michail v. OECTA et al*, 2017 ONSC 3986 at para 26 ("*Michail*"), Tab 3 of the Tribunal's Book of Authorities.

Taylor believes he is entitled to the relief he seeks, there was no reason – if this matter was truly urgent – for Mr. Taylor not to commence it sooner. In fact, Mr. Taylor commenced an application with an earlier return date, then aborted it, and recommenced these proceedings for a later date.

31. With respect to his prescription drug coverage, the evidence discloses that Mr. Taylor has not provided the supporting medical information required to continue these benefits, further undermining any alleged urgency.

32. There is also no evidence that Mr. Taylor attempted to schedule this hearing before the Divisional Court during its March 2018 sitting in Brampton.

33. Second, delay will not result in a failure of justice in the present case. The application is, to say the least, premature.²⁷ The relief sought against the Tribunal is entirely inchoate, as the prayer for relief indicates. There is no final decision of the Board related to any of Mr. Taylor's claims which may be appealed to the Tribunal at this time, and, as he acknowledges in his notice of application, he may ultimately decide not to appeal any final decisions of the Board, once rendered, to the Tribunal.

34. At this stage of the analysis, it is also appropriate to consider the merits of the application,²⁸ which are discussed more fully below. Suffice to say, there is no basis for an order in the nature of *mandamus* against the Tribunal in the present case since, among other reasons, to grant such an order would be an unprecedented interference

²⁷ *Savone v. Law Society of Upper Canada*, 2013 ONSC 1015 at para 8, Tab 4 of the Tribunal's Book of Authorities.

²⁸ *Michail*, *supra* note 26 at para 27, Tab 3 of the Tribunal's Book of Authorities.

by the Court in the Tribunal's processes and Mr. Taylor has no legal right entitling him to an order of the nature he seeks.

2. Mr. Taylor is not entitled to an order in the nature of *mandamus*

35. Mr. Taylor seeks relief in the nature of *mandamus*. The test for *mandamus* is well-settled. In the oft-quoted case of *Karavos v. Toronto (City)*, Justice Laidlaw held on behalf of a panel of the Court of Appeal for Ontario that there are four requirements before such an order will issue:

1. The applicant must demonstrate "a clear legal right to have the thing sought by it done, and done in the manner and by the person sought to be coerced".
2. The duty must be due and incumbent on the official at the time the relief is sought.
3. The duty must be purely ministerial in nature – in other words, "plainly incumbent upon an officer by operation of law or by virtue of his office, and concerning which he possesses no discretionary powers."
4. There must be a demand and a refusal to perform the act which the applicant seeks to have ordered.²⁹

36. None of these requirements is met in the present case.

37. First, the applicant has no legal right to compel a particular process or a particular timetable for his hypothetical appeals before the Tribunal. It is trite to say that the Tribunal is the master of its own process, and the courts should not be micromanaging processes and proceedings before administrative tribunals.³⁰ This is codified in s. 131 of the *WSIA*, which provides:

²⁹ *Karavos v. Toronto (City of and Gillies)*, 1947 CarswellOnt 398, [1948] DLR 294, at para 4, at Tab 5 of the Tribunal's Book of Authorities, cited with approval by numerous cases including in *Toth Equity Limited v. Ottawa (City of)*, 2011 ONCA 372 at para 31, at Tab 6 of the Tribunal's Book of Authorities.

³⁰ *Cooney Bulk Sales Limited v. Teamsters, Local Union No. 91*, 2017 ONSC 3651, paras 2-3, at Tab 7 of the Tribunal's Book of Authorities.

131(1) The Board shall determine its own practice and procedure in relation to applications, proceedings and mediation With the approval of the Lieutenant Governor in Council, the Board may make rules governing its practice and procedure.

(2) Subsection (1) applies with necessary modifications with respect to the Appeals Tribunal [i.e. WSIAT].

38. In other words, the Tribunal has no statutory duty to hold a hearing within five days; quite the opposite. Section 124(3) of the *WSIA* specifically grants the Tribunal the discretion not to hold an oral hearing. Section 127 of the *WSIA* provides that a decision of the Tribunal will be rendered within 120 days, not five. Moreover, nothing in the Tribunal's own procedures compels it to meet Mr. Taylor's timetable.

39. The applicant is asking this Court to micromanage the procedures and docket of the Tribunal. Such an order would be unprecedented. The Tribunal's duty is to the public generally. Directing the Tribunal to abide by a specific timetable or a particular procedure for one claimant's case risks undermining that duty, as the Tribunal will have to marshal resources it could otherwise expend on other matters to satisfy the order for Mr. Taylor's specific benefit.

40. Second, no duty to act is incumbent on the Tribunal. The Board has not rendered a final decision on any issue raised by Mr. Taylor, and so no appeal could possibly lie to the Tribunal at this time. Mr. Taylor's request is wholly premature. It is worth noting that *mandamus*, like *certiorari*, is discretionary relief, and courts routinely dismiss applications for judicial review where the case before them is premature.³¹

41. Third, the manner of hearing, the timing of that hearing, and the timing for the release of any decision, are discretionary, administrative decisions of the Tribunal and

³¹ *C.B. Powell Limited v. Canada (Border Services Agency)*, 2010 FCA 61, paras 31-33, at Tab 8 of the Tribunal's Book of Authorities.

of individual decision makers, and are at the heart of the autonomy of the Tribunal and its decision makers. The integrity of the Tribunal should not be interfered with by this Court in this manner. A fundamental principle of the law of judicial review is the Court's respect for administrative processes and decisions.

42. In this respect, it is worth noting the privative clause, which protects Tribunal decisions, which has been described by the Court of Appeal for Ontario as "the toughest privative clause known to Ontario law".³² Section 123(5) provides as follows:

123(5) **No proceeding by or before the Appeals Tribunal shall be restrained by injunction**, prohibition or other process or procedure in a court or be removed by application for judicial review or otherwise into a court. [Emphasis added.]

43. An order in the nature of *mandamus* is effectively injunctive relief, from which proceedings before the Tribunal are to be protected.

44. Finally, Mr. Taylor has made no demand of the Tribunal to abide by his unilateral timetable and procedural demands. However, the Tribunal concedes that if Mr. Taylor were to make such a demand it would be refused, given the nature of the Tribunal's responsibilities to the public generally, and its authority to control its own process.

45. For these reasons, the Tribunal submits the application should be dismissed.

46. Mr. Taylor's *Charter* arguments are doomed to fail. He does not challenge any provision of a statute or subordinate legislation, nor does he seek a declaration of invalidity, and so a s. 52 remedy is unavailable to him. Even assuming a s. 24 remedy could be available, and that Mr. Taylor articulates the scope of the rights he alleges are

³² *Rodrigues v. Ontario (Workplace Safety and Insurance Appeals Tribunal)*, 2008 ONCA 719, para 22, at Tab 9 of the Tribunal's Book of Authorities.

engaged correctly (which are denied), there is no evidence in the record that supports the conclusion that it would be appropriate and just for this Court to interfere with the institutional and adjudicative independence of the Tribunal in the manner urged by Mr. Taylor. His application is entirely premature as against the Tribunal as there is no final decision of the Board capable of being appealed, and he may elect never to appeal to the Tribunal once the Board renders any final decisions.

PART IV. ORDER SOUGHT

47. The Tribunal seeks an order dismissing Mr. Taylor's motion and application, with costs.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this day of, March, 2018.



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SCHEDULE A – TABLE OF AUTHORITIES

1. *Taylor v. Workplace Safety & Insurance Board et al*, 2017 ONSC 1223.
2. *Taylor v. Workplace Safety & Insurance Board et al*, 2018 ONCA 108.
3. *Michail v. OECTA et al*, 2017 ONSC 3986.
4. *Savone v. Law Society of Upper Canada*, 2013 ONSC 1015.
5. *Karavos v. Toronto (City of) and Gillies*, 1947 CarswellOnt 398, [1948] DLR 294.
6. *Toth Equity Limited v. Ottawa (City of)*, 2011 ONCA 372.
7. *Cooney Bulk Sales Limited v. Teamsters, Local Union No. 91*, 2017 ONSC 3651.
8. *C.B. Powell Limited v. Canada (Border Services Agency)*, 2010 FCA 61.
9. *Rodrigues v. Ontario (Workplace Safety and Insurance Appeals Tribunal)*, 2008 ONCA 719.

SCHEDULE B – TABLE OF STATUTORY AUTHORITIES

Workplace Safety and Insurance Act, 1997, SO 1997, c 16, Sched A, sections 120, 121, 123, 124, 125, 127, 129 and 131

Objection to Board decision

120 (1) A worker, survivor, employer, parent or other person acting in the role of a parent under subsection 48 (20) or beneficiary designated by the worker under subsection 45 (9) who objects to a decision of the Board shall file a notice of objection with the Board,

(a) in the case of a decision concerning return to work or a labour market re-entry plan, within 30 days after the decision is made or within such longer period as the Board may permit; and

(b) in any other case, within six months after the decision is made or within such longer period as the Board may permit.

Notice of objection

(2) The notice of objection must be in writing and must indicate why the decision is incorrect or why it should be changed. 1997, c. 16, Sched. A, s. 120.

Power to reconsider

121 The Board may reconsider any decision made by it and may confirm, amend or revoke it The Board may do so at any time if it considers it advisable to do so. 1997, c. 16, Sched. A, s. 121.

...

Appeals Tribunal

Jurisdiction

123 (1) The Appeals Tribunal has exclusive jurisdiction to hear and decide,

(a) all appeals from final decisions of the Board with respect to entitlement to health care, return to work, labour market re-entry and entitlement to other benefits under the insurance plan;

(b) all appeals from final decisions of the Board with respect to transfer of costs, an employer's classification under the insurance plan and the amount of the premiums and penalties payable by a Schedule 1 employer and the amounts and penalties payable by a Schedule 2 employer; and

(c) such other matters as are assigned to the Appeals Tribunal under this Act. 1997, c. 16, Sched. A, s. 123 (1).

Same

(2) For greater certainty, the jurisdiction of the Appeals Tribunal under subsection (1) does not include the jurisdiction to hear and decide an appeal from decisions made under the following Parts or provisions:

1. Repealed: 2011, c. 11, s. 22.
2. Sections 26 to 30 (rights of action) and 36 (health examination).
3. Section 60, subsections 62 (1) to (3) and sections 64 and 65 (payment of benefits).
4. Subsections 81 (1) to (6), 83 (1) and (2) and section 85 (allocation of payments).
5. Part VIII (insurance fund).
6. Part XII (enforcement), other than decisions concerning whether security must be given under section 137 or whether a person is liable under subsection 146 (2) to make payments. 1997, c. 16, Sched. A, s. 123 (2); 2011, c. 11, s. 22.

Decisions on an appeal

(3) On an appeal, the Appeals Tribunal may confirm, vary or reverse the decision of the Board. 1997, c. 16, Sched. A, s. 123 (3).

Finality of decision

(4) An action or decision of the Appeals Tribunal under this Act is final and is not open to question or review in a court. 1997, c. 16, Sched. A, s. 123 (4).

Same

(5) No proceeding by or before the Appeals Tribunal shall be restrained by injunction, prohibition or other process or procedure in a court or be removed by application for judicial review or otherwise into a court. 1997, c. 16, Sched. A, s. 123 (5).

Section Amendments with date in force (d/m/y)

Appeals Tribunal: miscellaneous rules

Principle of decision

124 (1) The Appeals Tribunal shall make its decision based upon the merits and justice of a case and it is not bound by legal precedent.

Same

(2) If, in connection with a claim for benefits under the insurance plan, it is not practicable to decide an issue because the evidence for or against it is approximately equal in weight, the issue shall be resolved in favour of the person claiming benefits.

Hearings

(3) The Appeals Tribunal may conduct hearings orally, electronically or in writing. 1997, c. 16, Sched. A, s. 124.

Appeal

125 (1) A worker, employer, survivor, parent or other person acting in the role of a parent under subsection 48 (20) or beneficiary designated by the worker under subsection 45 (9) may appeal a final decision of the Board to the Appeals Tribunal.

Notice of appeal

(2) The person shall file a notice of appeal with the Appeals Tribunal within six months after the decision or within such longer period as the tribunal may permit. The notice of appeal must be in writing and must indicate why the decision is incorrect or why it should be changed.

Notice by Appeals Tribunal

(3) The Appeals Tribunal shall promptly notify the Board and the parties of record of the appeal and the issues to be decided on the appeal and shall give them copies of any written submissions made in connection with the appeal.

Board records, etc.

(4) The Board shall give the Appeals Tribunal a copy of its records relating to the appeal promptly upon being notified of the appeal. 1997, c. 16, Sched. A, s. 125.

Board policies

126 (1) If there is an applicable Board policy with respect to the subject-matter of an appeal, the Appeals Tribunal shall apply it when making its decision.

Notice of Board policies

(2) The Board shall state in writing which policy, if any, applies to the subject-matter of an appeal after receiving notice of the appeal under subsection 125 (3).

Same

(3) If the Board does not state that a particular policy applies in respect of the subject-matter of an appeal, the tribunal may ask the Board to notify it if there is an applicable policy and the Board shall do so as soon as practicable.

Referral by Appeals tribunal

(4) If the tribunal, in a particular case, concludes that a Board policy of which it is notified is inconsistent with, or not authorized by, the Act or does not apply to the case, the tribunal shall not make a decision until it refers the policy to the Board for its review and the Board issues a direction under subsection (8).

Same

(5) The tribunal shall make the referral in writing and state the reasons for its conclusion.

Board review

(6) If there is a referral under subsection (4), the Board shall review the policy to determine whether it is consistent with, or authorized by, the Act or whether it applies to the case.

Submissions

(7) The Board shall provide the parties to the appeal in respect of which there is a referral an opportunity to make written submissions with respect to the policy.

Board direction

(8) Within 60 days after a referral to it, the Board shall issue a written direction, with reasons, to the tribunal that determines the issue raised in the tribunal's referral under subsection (4). 1997, c. 16, Sched. A, s. 126.

Time limit for decisions

127 (1) The Appeals Tribunal shall decide an appeal within 120 days after the hearing of the appeal ends or within such longer period as the tribunal may permit.

Transition

(2) If a notice of appeal is filed before January 1, 1998 and the Appeals Tribunal hears but does not decide the appeal before that date, the tribunal shall decide it not later than April 30, 1998 or such later date as the tribunal may permit.

Same

(3) If a notice of appeal is filed before January 1, 1998 and the Appeals Tribunal does not hear the appeal before that date, the tribunal shall decide it within 120 days after the hearing ends or within such longer period as the tribunal may permit. 1997, c. 16, Sched. A, s. 127.

...

Power to reconsider

129 The Appeals Tribunal may reconsider its decision and may confirm, amend or revoke it. The tribunal may do so at any time if it considers it advisable to do so. 1997, c. 16, Sched. A, s. 129.

...

Procedural and Other Powers

Practice and procedure

131 (1) The Board shall determine its own practice and procedure in relation to applications, proceedings and mediation. With the approval of the Lieutenant Governor in Council, the Board may make rules governing its practice and procedure.

Same, Appeals Tribunal

(2) Subsection (1) applies with necessary modifications with respect to the Appeals Tribunal.

Non-application

(3) The Statutory Powers Procedure Act does not apply with respect to decisions and proceedings of the Board or the Appeals Tribunal.

Notice of decisions

(4) The Board or the Appeals Tribunal, as the case may be, shall promptly notify the parties of record of its decision in writing and the reasons for the decision. The Appeals Tribunal shall also notify the Board of the decision. 1997, c. 16, Sched. A, s. 131.

PAUL TAYLOR
Applicant

-and- THE WORKPLACE SAFETY & INSURANCE BOARD - WSIB et al.
Respondents

Court File No. 81/18

**ONTARIO
SUPERIOR COURT OF JUSTICE**

PROCEEDING COMMENCED AT GUELPH

**FACTUM OF THE RESPONDENT,
WORKPLACE SAFETY AND INSURANCE APPEALS
TRIBUNAL**

**(Permission/Leave to hear Applicant's Application
for Judicial Review – Writ of Mandamus – March 20,
2018)**

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