

**ONTARIO
SUPERIOR COURT OF JUSTICE**

(Court seal)
BETWEEN:

PAUL TAYLOR

Applicant
(Moving Party)

- and -

**THE WORKPLACESAFETY &
INSURANCE BOARD – WSIB,**

- and -

**THE WORKPLACESAFETY &
INSURANCE APPEALS TRIBUNAL – WSIAT**

Respondents
(Responding Party)

**FACTUM
OF THE
MOVING PARTY**

(Motion returnable March 20, 2018)

February 26, 2018

Paul Taylor

[Redacted signature block]

Applicant
(Moving Party)

Self-represented

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PART I – NATURE AND OVERVIEW OF MOTION FOR LEAVE FOR APPLICATION FOR MANDAMUS

1. The moving party, Paul Taylor, was involved in a workplace accident and suffered a subsequent workplace injury on February 6, 1997.
2. Mr. Taylor's entitlement to worker's compensation benefits were determined by the Ontario Workers Compensation Board – WCB. Subsequently after January 1, 1998 further entitlement was determined by the Workplace Safety & Insurance Board – WSIB.
3. Mr. Taylor's appeals of the WSIB's decisions were reviewed by the Workplace Safety & Insurance Appeals Tribunal – WSIAT in 2008 and on reconsideration in 2013. Both involved decisions surrounding issues from February 6, 1997.
4. Throughout the WSIB and WSIAT decision and appeal process, Mr. Taylor has been forced to wait up to 11 to 15 years for decisions.
5. Recently the WSIB, in what can only be an act of retaliation, has refused to cover any further medications for Mr. Taylor's work injury. Mr. Taylor is expected by the WSIB and the WSIAT to wait months, years, or even decades for medications he needs now. Furthermore, Mr. Taylor is expected to live on \$1,000 per month, which he receives each month for income replacement. He is also now expected to pay for his medications out of this small amount. This makes it an extreme urgent matter.
6. Mr. Taylor, who is the moving party brings this motion for leave, to have an application for Judicial Review – Writ of Mandamus, and to be heard by the Guelph Superior Court of Justice, as opposed to the Divisional Court in Brampton on the grounds of the following:
 - a. In the Judicial Review Procedure Act R.S.O. 1990, sections 2, and 6

- b. In accordance with the Courts of Justice Act R.S.O. 1990 section 18
- c. In accordance with the Workplace Safety and Insurance Act - WSIA, 1997, S.O. 1997 sections 26, 32, and 33
- d. In accordance with numerous Canadian common-law cases such as, *Piecery v. General Bakeries Ltd* (1986), injured workers shall receive 'speedy determination of benefits' in lieu of civil action against their respective employers for workplace accidents.

PART II – THE FACTS

A. The Parties:

The Applicant/Moving Party:

- 7. Paul Taylor is the moving party for the motion for leave, to have the application heard in Guelph Superior Court.

The First Responding Party:

- 8. The Workplace Safety & Insurance Board – WSIB, which replaced the Ontario Workers Compensation Board – WCB, on January 1, 1998, was created by the Workplace Safety & Insurance Act R.S.O. 1997, is the first responding party to the motion for leave and is also the responding party in the application.
- 9. The WSIB is an administrative board, which operates at arms-length from the Ministry of Labour. The WSIB manages the 'employer fund', which is funded through employer contributions. The employer fund is **NOT funded by taxpayers**. The employer fund is funded from premiums received from employers in Ontario. This is in lieu of being sued by injured workers.
- 10. The WSIB, among other things, pays injured workers, like Mr. Taylor, benefits in the form of: income replacement; medical treatment, care, & medications/drugs; retraining

programs; and other expenditures because of a workplace injury. The WSIB's operating income, for operational costs, comes solely from the employer fund.

11. The WSIB also makes decisions to pay or not pay these benefits to injured workers like Mr. Taylor. If injured workers do not agree with these decisions, they may appeal the WSIB decisions to the WSIB appeals branch. The WSIB appeals branch, is within the WSIB, but is separate of the operational area, where the initial decisions were made. The WSIB appeals branch has the authority to reverse, modify, or uphold the initial level decision.

The Second Responding Party:

12. The Workplace Safety & Insurance Tribunal – WSIAT, is an administrative tribunal, which was enacted & empowered by the same law as the WSIB, the WSIA R.S.O. 1997. The WSIAT, is separate and independent of the WSIB.
13. The WSIAT operating income, for operational costs, comes solely from the employer fund, which is funded from employer premiums.
14. If an injured worker or employer disagrees with a decision of the WSIB appeals branch, they may appeal the decision to the WSIAT.
15. The decisions of the WSIAT at one time, were final and not open to interpretation or review by any court. However, overtime common law has evolved to allow for Judicial Review of WSIAT decisions.

B. Initial Decisions for Benefits Very Speedily

16. When Mr. Taylor suffered his work accident and subsequent work injuries in February 1997, the decisions for benefits, at that time of the claim, were fast (speedy), in that there was no noticeable delay.

C. WCB/WSIB Decisions for Benefits Became Delayed in 1997

17. After several attempts at return to unsafe work, Mr. Taylor suffered a second workplace accident and subsequent injuries. He reported this to his employer in writing, as well as verbally. He also reported it verbally to the WCB.

18. Mr. Taylor's reporting of his workplace accident, was not acknowledged by his employer, or the WCB. From this point onwards, Mr. Taylor observed that decisions for benefits from the WCB became extremely delayed, if acknowledged at all.

Application/Motion Record Pages 25 & 28,
Affidavit of Paul Taylor, Para 13 & 26.

D. Decisions with Delayed WSIB Appeals Decisions in 1998

19. The WSIB appeals department did not deal with Mr. Taylor's appeal for benefits from August 20, 1997, until the following year. The WSIB rendered a decision in Mr. Taylor's favour on April 17, 1998. However, Mr. Taylor was not paid his full benefits until May 22, 1998. ***This is a delay of benefits of more than nine months.***

20. Mr. Taylor suffered severe emotional, physical, and financial harm, as direct result of the WSIB and the WSIB appeals department inability to render decisions for 'Speedy Benefits'.

Application/Motion Record Page 28,
Affidavit of Paul Taylor, Para 24 to 26.

E. More Delayed Decisions from WSIB in Fall 1998

Request for decisions go unanswered/ignored by WSIB in 1998:

21. After the WSIB appeals granted Mr. Taylor's appeal, Mr. Taylor was then forced back to unsuitable work program, with his employer. Towards the end of the work program, Mr. Taylor attempted to raise concern with the WSIB, over the suitability of the program, as well as his inability to complete the work program.

Application/Motion Record Pages 28 & 29,
Affidavit of Paul Taylor, Para 27 to 31

Escalation of complaints in 1998:

22. Mr. Taylor eventually escalated his complaints regarding his concerns to as high as the Minister of Labour's office.

Application/Motion Record Pages 31 & 32,
Affidavit of Paul Taylor, Para 36 to 40

Decision after three-month delay

23. After more than three months, and after Mr. Taylor's written request to the WSIB of September 10, 1998, the WSIB renders a decision for medical and income replacement benefits. In the WSIB decision of December 3, 1998, they ***admit fault with lengthy delayed decisions to render speedy benefits***. However, they deny Mr. Taylor any medical benefits. In a second WSIB letter dated December 4, 1998, the WSIB denied Mr. Taylor any income replacement benefits.

Application/Motion Record Page 32,
Affidavit of Paul Taylor, Para 41 & 42.

Further Delay and Suffering due to WSIB Appeal Process

24. Mr. Taylor disagrees with both WSIB decision, is now compelled to file an appeal with the WSIB appeals branch. This concerns Mr. Taylor greatly as delays with the WSIB appeal branch are even longer than operating decisions. These delays would be devastating to Mr. Taylor. He would lose his good credit, be on the verge of eviction, and pay additional late penalties, among many other things. Mr. Taylor also suffered emotionally and physically.

Application/Motion Record Page 30,
Affidavit of Paul Taylor, Para 32 & 35.

Second admittance of fault with delays

25. In a letter from a WSIB Director, Ms. Luck admits fault with delays, regarding the WSIB rendering decisions for 'Speedy benefits'. Admits that WSIB cannot compensate injured workers for lengthy delays aside from standard interest.

Application/Motion Record Page 33,
Affidavit of Paul Taylor, Para 43.

Suitability of Work Offers

26. In February 1999, the WSIB writes to Mr. Taylor, in response to his letter of November 1998 to the Minister of Labour's office. Ms. Luck, states that offers of work were made

by the employer to Mr. Taylor. However, all of these offers of work were all unsuitable for Mr. Taylor. The WSIB would not make that determination until October 3, 2000, which met the decision was ***delayed for more than twenty months*** to make that determination.

Application/Motion Record Page 33,
Affidavit of Paul Taylor, Para 44 & 45.

F. More WSIB Appeal Delay decisions in 1999

27. In March 1999, Mr. Taylor confirmed his appeal with the WSIB. This was decisions of December 3 & 4 1998, which was denying benefits for October 2, 1998 onwards. Mr. Taylor had observed that there was already a ***five-month delay*** before the appeal process had commenced.

28. In April 1999, the WSIB informs Mr. Taylor they have stopped his appeal as they have reconsidered their previous decision. However, they were unwilling to pay any benefits. Until they could clarify the work offered by the employer. The matter for speedy benefits is ***now at six months delayed.***

Application/Motion Record Page 34,
Affidavit of Paul Taylor, Para 46 & 48.

G. More Delayed Decisions from WSIB in 1999

Letter of Co-operation Obligations

29. In May 1999, rather than deciding on benefits, that Mr. Taylor had been waiting for since September 1998. ***A delay of more than eight months.*** Instead the WSIB issues a letter to Mr. Taylor reminding him of his obligations to co-operate in return to work programs. A review of the claim file, can find no direct or indirect refusals of work on Mr. Taylor's part. In fact, Mr. Taylor worked in unsafe environments on numerous occasions. Where he suffered further injury.

30. The WSIB had an ulterior motive, which was to intentionally further delay the payment of benefits to Mr. Taylor. This was made clear in the WSIB letter of June 1999, where the WSIB was able to further delay payment of benefits by reducing them by half. This

meant that Mr. Taylor's benefit payments were **delayed by eight months**. However, this was for only half and the remainder would be **delayed for several more years**.

Application/Motion Record Page 35 & 36,
Affidavit of Paul Taylor, Para 49 to 51.

Escalation of Complaints with Delays

31. In September 1999, Mr. Taylor again escalates his complaints regarding, delays with decision by the WSIB, to the Ministry of Labour. In response Mr. Taylor receives a letter from the Minister of Labour. He also receives a letter from N. Clarke of the WSIB. In N. Clarke's letter to Mr. Taylor she "**...admits there was numerous delays in the claim file**". She also states the claim has been referred to the WSIB Appeals Branch, for a second time.

Application/Motion Record Page 36,
Affidavit of Paul Taylor, Para 52 & 53.

H. Delays with WSIB Decisions & WSIB Appeals Branch – 2000 to 2004

32. As previously mentioned the appeal was referred to the WSIB appeals branch, in the fall of 1999. This was for a second time in the same year. However, in January 2000, the WSIB appeals branch reviewed the appeal and referred it back for a second time to the WSIB operation are for decision to be made.

WSIB operating decision delays 2000-2002

33. In February 2000, after another **delay of more than six months**, the WSIB agrees to pay Mr. Taylor benefits for August 1999 to present. However, again they only agree to pay him half his benefits. Then the WSIB would wait until April 2000, to fully restore his current benefits. Mr. Taylor was still owed half his benefits from October 2, 1998 onwards. The remainder would not be resolved until many years later.

Application/Motion Record Page 36,
Affidavit of Paul Taylor, Para 52 & 53.

34. From 2000, to 2002 Mr. Taylor was involved in a WSIB retraining program. Mr. Taylor had indicated many concerns regarding the suitability of the program for his abilities. Most of his concerns were documented in written reports to the WSIB by a service provider. The WSIB would for the most part, ignore his concerns and make no decision. This caused Mr. Taylor emotional, physical and financial hardships. It would be another

delay of more than four years before the WSIB addresses Mr. Taylor's concerns of suitability.

Application/Motion Record Page 39,
Affidavit of Paul Taylor, Para 63.

WSIB Appeal Decision Delays - 2001

35. In September 2001, the WSIB appeals officers renders a decision regarding such issues as benefit payment, medical care and initial entitlement. This was a ***delay of more than four years.***

Application/Motion Record Page 38,
Affidavit of Paul Taylor, Para 59.

I. WSIAT Delays in Rendering Decisions – 2002 to 2013

36. Mr. Taylor had filed an appeal with the WSIAT. This was confirmed by the WSIAT in January 2002. From this point forward, there would be a delay of more than six years before Mr. Taylor hearing was scheduled. When Mr. Taylor raised concern over the delay he was advised the delays were solely his fault. While Mr. Taylor did incur some delays, this was a result of him trying to obtain free representation.

Application/Motion Record Page 39,
Affidavit of Paul Taylor, Para 61 & 62.

37. Once the WSIAT hearing was scheduled for one day, Mr. Taylor was not allowed to schedule any more. At the start of the hearing, he was blamed for not setting more time and a further delay of more than six months resulted. The final decision of the WSIAT was not made until February 2008, which was a ***delay of more than eleven years*** after the initial injury.

Application/Motion Record Page 39,
Affidavit of Paul Taylor, Para 61 & 62.

38. The WSIAT reconsideration decision was made on June 2013, which was some eight-month delay after the request and an additional ***sixteen-year delay*** from the initial injury.

Application/Motion Record Page 41 & 42,
Affidavit of Paul Taylor, Para 66 & 69.

J. Current Delays with WSIB, WSIB Appeals & WSIAT

Mr. Taylor's Requests for Benefits

39. In September of 2017, Mr. Taylor had sent a request to the WSIB to be compensated for over the counter medications as a direct result of his workplace injury and in addition to the prescription medications he already takes, which was covered by the WSIB.

Application/Motion Record Page 42 & 43,
Affidavit of Paul Taylor, Para 71 to 73.

40. In October 2017, Mr. Taylor prepared a second request to the WSIB for benefits. This was for benefits he should have been paid for many years earlier. He had been reviewing his claim and realized he was not paid for several days.

Application/Motion Record Page 43,
Affidavit of Paul Taylor, Para 74.

Delays in Response from WSIB

41. Mr. Taylor again expressed delay in response from the WSIB decisions and is partly the reasons he was attempting to communicate by e-mail, which is faster than standard mail. The level of service was acknowledged by the WSIB in a letter of October 24/17.

Application/Motion Record Page 43,
Affidavit of Paul Taylor, Para 76, 78 to 79.

WSIB Decides Before Information

42. On 17, 2017 Mr. Taylor received two letters from the WSIB. One was dated Oct. 4/17, the other was dated Oct. 11/17. In the Oct. 4/17 letter it was requesting additional information in the second Oct. 11/17 it denied Mr. Taylor's request for Over the counter medications. In response Mr. Taylor indicates he will be appealing.

Application/Motion Record Page 43 & 44,
Affidavit of Paul Taylor, Para 75, to 77.

43. Mr. Taylor did not receive the WSIB appeal form, from the WSIB until mid-January 2018. At which time Mr. Taylor then filed his appeal. Mr. Taylor is still awaiting a response for speedy benefits. Mr. Taylor learned on January 14, 2018, that the WSIB, in what could only be consider a retaliatory act, has stopped paying all his medical benefits. This includes prescription medications, which the WSIB previously paid for. Mr. Taylor is now being forced to suffer emotionally, physically, and financial as he is expected to pay for

his own medications until someday when a final decision can be rendered on the matter.

Application/Motion Record Page 46 & 47,
Affidavit of Paul Taylor, Para 83 to 87.

44. Mr. Taylor uses his prescription medications to manage his day to day life, without the WSIB coverage, he has been placed in extreme financial hardship. This has also caused him emotional and physical harm.

Application/Motion Record Page 47 & 48,
Affidavit of Paul Taylor, Para 87 to 90.

PART III - THE ISSUES AND THE LAW

K. Motion for Leave to Superior Court

45. The moving party, Mr. Taylor, brings a motion for leave to file an application for Judicial Review – Writ of Mandamus, with the Guelph Superior Court of Justice, as opposed to the Divisional Court in Brampton.

Jurisdiction of Court to hear motion for leave

46. This is in accordance with Section 6. (2) of the Judicial Review Procedure Act R.S.O. 1990, where it states:

“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.

Applicant/Moving Party Factum
Schedule “B” List of Statutory Authorities – *Judicial Review Procedure Act*

47. Rule 37.01 of the Rules of Civil Procedure provide that *“A motion shall be made by a notice of motion (Form 37A) unless the nature of the motion or the circumstances make a notice of motion unnecessary”*. Also Rule 37.02, provides that *“A judge has jurisdiction to hear any motion in a proceeding”* also Rule 37.05 states regarding urgent motions *“An urgent motion may be set down for hearing on any day on which a judge or master is scheduled to hear motions, even if a lawyer estimates that the hearing is likely to be more than two hours long.”*

Applicant/Moving Party Factum

The test for leave:

48. The standard test for a motion for leave to the Superior Court of Justice, to review an application for Judicial Review, is a two-part test. This was initially determined in the case of *Re Bennett and City of Belleville* by his Honour J. Anderson where it is stated in his decision:

*"It must first appear that the case is one of **urgency** and, secondly it must appear that the delay required for an application to the Divisional Court is likely to **involve a failure of Justice**"* [Emphasis Added].

Applicant/Moving Party's Book of Authorities Tab 1 page 3,
Re Bennett and City of Belleville, 1979 CanLII 2077 (ON SC).

49. In the Court of Appeal for Ontario case of *Re Canadian Pacific Express Ltd. et al. and Snow et al.*, reconfirmed the above-mentioned test. The Appeal Court case also agree with the lower court and added that:

*"There are circumstances in which financial loss might cause a ... **an individual to suffer extreme hardship**"* [Emphasis added]. It also made mention that *"...the wait for a hearing in the Divisional Court would render the remedy nugatory."*

Applicant/Moving Party's Book of Authorities Tab 2 page 3 & 4,
Re Canadian Pacific Express Ltd. et al. and Snow et al., 1981 CanLII 1633 (ON CA).

50. Also, the Ontario High Court of Justice confirmed that when a person lacks financial security, losing their ability to earn an income is a form of urgency.

Applicant/Moving Party's Book of Authorities Tab 3 page 4,
Re Roy and College of Nurses of Ontario, 1979 CanLII 2070 (ON SC).

51. In the case of *Chapples v. the City of Thunder Bay* the court stated *"...the delay required for an application to the Divisional Court **is likely to involve a failure of justice**"*.

[Emphasis Added]. Therefore, the issue of financial hardship is one matter, but there are others.

Applicant/Moving Party's Book of Authorities Tab 4 page 1,
Re Chapples Ltd. and City of Thunder Bay et al. 1980 CanLII 1667 (ON SC).

How the Charter of Rights Applies

52. It is well accepted principle of common law that 'workers when injured during their employment, are barred from suing their employers in place of **'speedy benefits/speedy determination of benefits'** or as stated by his honor Justice J. Montgomery: *"The disadvantage [of a worker not being able to sue an employer] is accompanied by the*

advantages of immediate [and determination of] payment of benefits by the Workers' Compensation Board on a no-fault basis". Furthermore, in Reference re: Workers' Compensation Act, 1983, the Supreme Court of Newfoundland — Court of Appeal stated at page 27 of their decision that "It is the displacement of a right. There is put in place another right — the "right to compensation provided by this Act". While it is agreed by the courts throughout Canada, that a right to sue an employer is statute barred, it is clearly accepted in the alternative, that workers compensation is a right and determination of benefits MUST be immediate.

Applicant/Moving Party's Book of Authorities Tab 5 pages 11 & 13,
Piercey v. General Bakeries Ltd, 1986 CanLII 107 (NL SCTD)
Applicant/Moving Party's Book of Authorities Tab 6 page 27,
Reference re: Workers' Compensation Act, 1983 (Nfld.), ss. 32, 34, 1987 118 (NL CA)
Applicant/Moving Party's Book of Authorities Tab 7 page 1 & 25,
Medwid v. Ontario, 1988 CanLII 193 (ON SC).

53. In reviewing common law regarding section 7, of the Charter, it is a well-accepted principle that freedom from suffering, is part of security of person. It is more clearly defined in *Carter v. Canada* where the Supreme Court of Canada stated that a section 7 violation occurs when

*"that causes **enduring suffering that is intolerable**, to the individual in the circumstances of his or her condition." And "by leaving them **to endure intolerable suffering, it impinges on their security of the person**" [Emphasis added]*

Applicant/Moving Party's Book of Authorities Tab 8 page 334 & 335,
Carter v. Canada, 2015 SCC 5 (CanLII)

The test for leave, compared to this case

54. Mr. Taylor has suffered financial, emotional, and physical suffering from his injury. However, Mr. Taylor has also suffered and from the lengthy and numerous delays from the workers compensation system, or more accurately a lack of **"speedy benefits and speedy determination of benefits"**. Mr. Taylor being deprived of his medication, prescription or otherwise, is nothing short of suffering as defined under Sec. 7 of the Charter above. Mr. Taylor's application request, is of a medical and financial urgency. If it were not allowed it would be a complete failure of justice.

Application/Motion Record Page 46 to 48,
Affidavit of Paul Taylor, Para 84 to 90.

PART IV - ACTION REQUESTED

55. Mr. Taylor, who is the moving party on the motion for leave to have the Application heard by the Guelph Superior Court of Justice:

- a. An order granting the application based on the need of urgency, for a writ of Mandamus be heard by the Guelph Superior Court of Justice, or
- b. In the alternatively the matter be transferred to Divisional Court to be heard;
and
- c. Also, an order that until the matter is heard by the Divisional Court, the WSIB be ordered to cover all of Mr. Taylor's medical expenses.
- d. That if either the WSIB and/or the WSIAT fails to comply with this honourable court's order that they be held in contempt of court.
- e. Costs for this motion and application in the amount of \$1,500 award to Mr. Taylor.

ALL OF WHICH IS RESPECTFULLY SUBMITTED TO THIS HONOURABLE COURT

February 12, 2018

Paul Taylor
(Self-represented)

SCHEDULE "A" – LIST OF COMMON LAW AUTHORITIES

- 1 Re Bennett and City of Belleville, 1979 CanLII 2077 (ON SC)
- 2 Re Canadian Pacific Express Ltd. et al. and Snow et al., 1981 CanLII 1633 (ON CA)
- 3 Re Roy and College of Nurses of Ontario, 1979 CanLII 2070 (ON SC)
- 4 Re Chapples Ltd. and City of Thunder Bay et al. 1980 CanLII 1667 (ON SC)
- 5 Piercey v. General Bakeries Ltd, 1986 CanLII 107 (NL SCTD)
- 6 Reference re: Workers' Compensation Act, 1983 (Nfld.), ss. 32, 34, 1987 CanLII 118 (NL CA)
- 7 Medwid v. Ontario, 1988 CanLII 193 (ON SC)
- 8 Carter v. Canada, 2015 SCC 5 (CanLII)
- 9 Lee v. Workers' Compensation Board of Alberta, 1999 ABQB 211 (CanLII)
- 10 Apotex Inc. v. Canada (Attorney General) (C.A.), 1994 F.C. 742 (CanLII)
- 11 Thompson v. Nova Scotia (Workers' Compensation Board), 1996 CanLII 5457 (NS SC)
- 12 Dee v. Canada (Minister of Citizenship and Immigration), 1998 CanLII 8974 (FC)
- 13 R. v. Jordan, 2016 SCC 27 (CanLII)
- 14 R. v. Morgentaler, [1988] 1 SCR 30, 1988 CanLII 90 (SCC)
- 15 R(WSIB). v. Koomson 2011 ONCJ 755 (CanLII)
- 16 R(WSIB). v. Kathirkamapillai 2014 ONCJ 255 (CanLII)
- 17 R. v. Boutilier 2017 SCC 64 (CanLII)
- 18 R. v. Smith 1987 SCC 64 (CanLII)
- 19 Law v. Canada 1999 CanLII 675 (SCC)

SCHEDULE "B" – LIST OF STATUTORY AUTHORITIES

L. The Magna Carta of 1215 - *The Great Charter*

40. To no one will we sell, to no one will we refuse or delay, right or justice.

Breay, C. and Harrison, J. (2015). Magna Carta an introduction. [online] The British Library. Available at: <http://www.bl.uk/magna-carta/articles/magna-carta-an-introduction> [Accessed 8 Aug. 2015].

M. Constitution of Canada/Canadian Charter of Rights and Freedoms

2. Everyone has the following fundamental freedoms:

- (a) freedom of conscience and religion;
- (b) freedom of thought, belief, opinion and expression, including freedom of the press and other media of communication;
- (c) freedom of peaceful assembly; and
- (d) freedom of association.

7. Everyone has the right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice.

11. Any persons charged with an offence has the right
(b) to be tried within a reasonable time;

12. Everyone has the right not to be subjected to any cruel and unusual treatment or punishment.

15.(1) Every individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination and, in particular, without discrimination based on race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.

ENFORCEMENT

Enforcement of guaranteed rights and freedoms

24. (1) 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.

Exclusion of evidence bringing administration of justice into disrepute

(2) Where, in proceedings under subsection (1), a court concludes that evidence was obtained in a manner that infringed or denied any rights or freedoms guaranteed by this Charter, the evidence shall be excluded if it is established that, having regard to all the circumstances, the admission of it in the proceedings would bring the administration of justice into disrepute.

PART VII GENERAL

Primacy of Constitution of Canada

52. (1) The Constitution of Canada is the supreme law of Canada, and any law that is inconsistent with the provisions of the Constitution is, to the extent of the inconsistency, of no force or effect.

Constitution of Canada

(2) The Constitution of Canada includes

- (a) the Canada Act 1982, including this Act;
- (b) the Acts and orders referred to in the schedule; and
- (c) any amendment to any Act or order referred to in paragraph (a) or (b).

EXCLUSIVE POWERS OF PROVINCIAL LEGISLATURES

Subjects of exclusive Provincial Legislation

92. In each Province the Legislature may exclusively make Laws in relation to Matters coming within the Classes of Subjects next hereinafter enumerated; that is to say,

1. Repealed. **(48)**

2. Direct Taxation within the Province in order to the raising of a Revenue for Provincial Purposes.

3. The borrowing of Money on the sole Credit of the Province.

4. The Establishment and Tenure of Provincial Offices and the Appointment and Payment of Provincial Officers.

5. The Management and Sale of the Public Lands belonging to the Province and of the Timber and Wood thereon.

6. The Establishment, Maintenance, and Management of Public and Reformatory Prisons in and for the Province.
7. The Establishment, Maintenance, and Management of Hospitals, Asylums, Charities, and Eleemosynary Institutions in and for the Province, other than Marine Hospitals.

8. Municipal Institutions in the Province.

9. Shop, Saloon, Tavern, Auctioneer, and other Licences in order to the raising of a Revenue for Provincial, Local, or Municipal Purposes.

10. Local Works and Undertakings other than such as are of the following Classes:
 - (a) Lines of Steam or other Ships, Railways, Canals, Telegraphs, and other Works and Undertakings connecting the Province with any other or others of the Provinces, or extending beyond the Limits of the Province:

 - (b) Lines of Steam Ships between the Province and any British or Foreign Country:

(c) Such Works as, although wholly situate within the Province, are before or after their Execution declared by the Parliament of Canada to be for the general Advantage of Canada or for the Advantage of Two or more of the Provinces.

11. The Incorporation of Companies with Provincial Objects.
12. The Solemnization of Marriage in the Province.
13. Property and Civil Rights in the Province.
14. The Administration of Justice in the Province, including the Constitution, Maintenance, and Organization of Provincial Courts, both of Civil and of Criminal Jurisdiction, and including Procedure in Civil Matters in those Courts.
15. The Imposition of Punishment by Fine, Penalty, or Imprisonment for enforcing any Law of the Province made in relation to any Matter coming within any of the Classes of Subjects enumerated in this Section.
16. Generally all Matters of a merely local or private Nature in the Province.

N. Judicial Review Procedures Act

Applications for judicial review

2. (1) On an application by way of originating notice, which may be styled “Notice of Application for Judicial Review”, the court may, despite any right of appeal, by order grant any relief that the applicant would be entitled to in any one or more of the following:

1. Proceedings by way of application for an order in the nature of **mandamus**, prohibition or certiorari.

Application to Divisional Court

6. (1) Subject to subsection (2), an application for judicial review shall be made to the Divisional Court. R.S.O. 1990, c. J.1, s. 6 (1).

Application to judge of Superior Court of Justice

(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***. R.S.O. 1990, c. J.1, s. 6 (2); 2006, c. 19, Sched. C, s. 1 (1).

Transfer to Divisional Court

(3) Where a judge refuses leave for an application under subsection (2), he or she may order that the application be transferred to the Divisional Court. R.S.O. 1990, c. J.1, s. 6 (3).

O. Court of Justice Act

Divisional Court

[18.](#) [\(1\)](#) The branch of the Superior Court of Justice known as the Divisional Court is continued under the name Divisional Court in English and Cour divisionnaire in French. R.S.O. 1990, c. C.43, s. 18 (1); 1996, c. 25, s. 9 (17).

Jurisdiction of judges

[\(3\)](#) Every judge of the Superior Court of Justice is also a judge of the Divisional Court. R.S.O. 1990, c. C.43, s. 18 (3); 1996, c. 25, s. 9 (17).

P. Rules of Civil procedure

MOTIONS AND APPLICATIONS

RULE 37 MOTIONS — JURISDICTION AND PROCEDURE

NOTICE OF MOTION

37.01 A motion shall be made by a notice of motion (Form 37A) unless the nature of the motion or the circumstances make a notice of motion unnecessary. R.R.O. 1990, Reg. 194, r. 37.01.

JURISDICTION TO HEAR A MOTION

Jurisdiction of Judge

37.02 (1) A judge has jurisdiction to hear any motion in a proceeding. R.R.O. 1990, Reg. 194, r. 37.02 (1).

37.05

Urgent motion

(3) An urgent motion may be set down for hearing on any day on which a judge or master is scheduled to hear motions, even if a lawyer estimates that the hearing is likely to be more than two hours long.

RULE 38 APPLICATIONS — JURISDICTION AND PROCEDURE

APPLICATION OF THE RULE

38.01 (1) Rules 38.02 to 38.11 apply to all proceedings commenced by a notice of application under rule 14.05, subject to subrule (2). R.R.O. 1990, Reg. 194, r. 38.01 (1).

Note: On July 1, 2014, subrule (1) is revoked and the following substituted: (See: O. Reg. 43/14, ss. 8 (1), 23 (1))

APPLICATION OF THE RULE

(2) Rules 38.02 and 38.09 do not apply to applications to the Divisional Court. R.R.O. 1990, Reg. 194, r. 38.01 (2).

APPLICATIONS — TO WHOM TO BE MADE

38.02 An application shall be made to a judge. R.R.O. 1990, Reg. 194, r. 38.02.

Urgent application

(3.1) An urgent application may be set down for hearing on any day on which a judge is scheduled to hear applications, even if a lawyer estimates that the hearing is likely to be more than two hours long. O. Reg. 770/92, s. 11; O. Reg. 575/07, s. 3.

Q. Workplace Safety & Insurance Act R.S.O 1997

Insured workers

11. (1) The insurance plan applies to every worker who is employed by a Schedule 1 employer or a Schedule 2 employer. However, it does not apply to workers who are,

Rights of Action

No action for benefits

26. (1) No action lies to obtain benefits under the insurance plan, but all claims for benefits shall be heard and determined by the Board. 1997, c. 16, Sched. A, s. 26 (1).

Benefits in lieu of rights of action

(2) Entitlement to benefits under the insurance plan is in lieu of all rights of action (statutory or otherwise) that a worker, a worker's survivor or a worker's spouse, child or dependant has or may have against the worker's employer or an executive officer of the employer for or by reason of an accident happening to the worker or an occupational disease contracted by the worker while in the employment of the employer. 1997, c. 16, Sched. A, s. 26 (2); 1999, c. 6, s. 67 (6); 2005, c. 5, s. 73 (6).

Certain rights of action extinguished

28. (1) A worker employed by a Schedule 1 employer, the worker's survivors and a Schedule 1 employer are not entitled to commence an action against the following persons in respect of the worker's injury or disease:

1. Any Schedule 1 employer.
2. A director, executive officer or worker employed by any Schedule 1 employer.

PART IV HEALTH CARE

Definition

32. In this Part,

"health care" means,

- (a) professional services provided by a health care practitioner,
- (b) services provided by or at hospitals and health facilities,
- (c) drugs,
- (d) the services of an attendant,
- (e) modifications to a person's home and vehicle and other measures to facilitate independent living as in the Board's opinion are appropriate,
- (f) assistive devices and prostheses,
- (g) extraordinary transportation costs to obtain health care,
- (h) such measures to improve the quality of life of severely impaired workers as, in the Board's opinion, are appropriate. 1997, c. 16, Sched. A, s. 32.

Entitlement to health care

33. (1) A worker who sustains an injury is entitled to such health care as may be necessary, appropriate and sufficient as a result of the injury and is entitled to make the initial choice of health professional for the purposes of this section.

Arrangements for health care

(2) The Board may arrange for the worker's health care or may approve arrangements for his or her health care. The Board shall pay for the worker's health care.

No right of action

(6) No action lies against the Board to obtain payment of an amount greater than is established in the applicable fee schedule for health care provided to a worker. No action lies against a person other than the Board for payment for health care provided to a worker.

Questions re health care

- (7) The Board shall determine all questions concerning,
- (a) the necessity, appropriateness and sufficiency of health care provided to a worker or that may be provided to a worker; and
 - (b) payment for health care provided to a worker.

Offences

Offence, false or misleading statement

149. (1) A person who knowingly makes a false or misleading statement or representation to the Board in connection with any person's claim for benefits under the insurance plan is guilty of an offence. 1997, c. 16, Sched. A, s. 149 (1).

Same, material change in circumstances

(2) A person who wilfully fails to inform the Board of a material change in circumstances in connection with his or her entitlement to benefits within 10 days after the change occurs is guilty of an offence. 1997, c. 16, Sched. A, s. 149 (2).

Restriction on prosecution

157.1 (1) A prosecution for an offence under this Act shall not be commenced more than two years after the day on which the most recent act or omission upon which the prosecution is based comes to the knowledge of the Board. 2001, c. 9, Sched. I, s. 4 (5).

Exception

(2) Despite subsection (1), there is no limitation period for prosecuting an offence under section 149. 2001, c. 9, Sched. I, s. 4 (5).

Penalty

158. (1) A person who is convicted of an offence is liable to the following penalty:

1. If the person is an individual, he or she is liable to a fine not exceeding \$25,000 or to imprisonment not exceeding six months or to both.
2. If the person is not an individual, the person is liable to a fine not exceeding \$100,000.

Fines

(2) Any fine paid as a penalty for a conviction under this Act shall be paid to the Board and shall form part of the insurance fund. 1997, c. 16, Sched. A, s. 158.

BACKSHEET

Taylor
(Applicant) v. **The WSIB & The WSIAT**
(Respondents)

Court file no. 81/18

Ontario Superior Court of Justice

PROCEEDING COMMENCED AT

Guelph Superior Court of Justice
74 Woolwich Street Guelph, Ontario N1H 3T9

**MOTION FACTUM
OF MOVING PARTY**

Applicant:
Paul Taylor

