

**ONTARIO
SUPERIOR COURT OF JUSTICE**

(Court seal)
BETWEEN:

PAUL TAYLOR

Applicant

- and -

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

- and -

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

Respondents

**FACTUM
OF
THE APPLICANT**
(Application 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 & APPLICATION FOR MANDAMUS

1. The applicant, 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 again on reconsideration in 2013. Both involved decisions surrounding issues from February 6, 1997 and later.
4. Throughout the WSIB and WSIAT decision and appeal process, Mr. Taylor has been forced to wait between 11 and 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-related injuries. Mr. Taylor is now 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.
6. Mr. Taylor requests and brings this application for Judicial Review – Writ of Mandamus, on the legal grounds of the following:
 - a. The Magna Carta of 1215, paragraph 40;
 - b. The Constitution Act of 1982, sections 2, 7, 11, 12, 15, 24, 52, 91, and 92;
 - c. The Judicial Review Procedure Act R.S.O. 1990, sections 2.1, 6.2, and 7;

- d. Workplace Safety and Insurance Act, 1997, R.S.O. 1997, sections 26, 32, and 33;
- e. The Courts of Justice Act R.S.O. 1990, sections 18(3) and 109; and
- f. The Rules of Civil Procedure, Rules, 37, 38, and 68.

PART II – THE FACTS

A. The Parties:

The Applicant:

- 7. Paul Taylor is the applicant in the application for Judicial Review – Writ of Mandamus.

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 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 employers being sued by workers, when they are injured during their employment.
- 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 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 and payment of benefits, at that time of the claim, were fast, in that there was no noticeable delay.

Application/Motion Record Pages 36 & 37,
Affidavit of Paul Taylor, Para 11 & 12.

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

17. After several attempts at return to unsafe & unsuitable 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. They both denied him reporting it.
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 37 & 40,

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 favor on April 17, 1998. However, Mr. Taylor was not paid his full benefits until May 22, 1998. **This is a delay with payment of benefits of more than nine months.**

20. Mr. Taylor suffered severe emotional, physical, and financial harm, as a direct result of the WSIB and the WSIB appeals department inability to render decisions for 'speedy benefits'. His injury became permanent, his credit was ruined, and he also suffered from severe depression and anxiety as a result.

Application/Motion Record Page 40,
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 unsafe & unsuitable work program, with his employer. Towards the end of the work program, Mr. Taylor attempted to raise concern with the WSIB, over the safety & suitability of the program, as well as his inability to complete the work program.

Application/Motion Record Pages 40 to 42,
Affidavit of Paul Taylor, Para 27 to 31

Escalation of complaints in 1998:

22. Mr. Taylor eventually escalated his complaints regarding his concerns with delays with decisions and payment of benefits, to as high as the Minister of Labour's office.

Application/Motion Record Pages 43 & 44,
Affidavit of Paul Taylor, Para 36 to 40

Decision after three-month delay

23. After more than a three months delay and after Mr. Taylor's written request to the WSIB of September 10, 1998, the WSIB finally 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 44,
Affidavit of Paul Taylor, Para 41 & 42.

Further Delay and Suffering due to WSIB Appeal Process

24. Mr. Taylor disagreed with both WSIB decisions and was then compelled to file an appeal with the WSIB appeals branch. This concerned Mr. Taylor greatly as delays with the WSIB appeal branch are even longer than operating area decisions. These delays would be devastating to Mr. Taylor. He would lose his good credit; be on the verge of eviction by his landlord; he would also be forced to pay additional late penalty fees; among many other things. Mr. Taylor also suffered emotionally and physically permanent harm.

Application/Motion Record Page 42,
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'. She also admits that WSIB cannot compensate injured workers for lengthy delays, aside from standard interest of ten percent.

Application/Motion Record Page 45,
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 and unsafe 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***.

Application/Motion Record Page 46,
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. This 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. This was 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 46,
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 safe and suitable work on Mr. Taylor's part **at any time.** In fact, Mr. Taylor worked in unsafe & unsuitable work environments on numerous occasions. This is where he suffered further subsequent workplace injuries.

30. The WSIB had an ulterior motive. This was to intentionally further delay the payment of benefits to Mr. Taylor. This only became clear to Mr. Taylor 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 an additional eight months.** However, **this was for only half** and the remainder would be **delayed for several more years.**

Application/Motion Record Page 47,
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 decisions by the WSIB, to the Ministry of Labour. In response to his escalated complaints, 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.**

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 again for a second time to the WSIB operation area, for a 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 benefits. Mr. Taylor was still owed half his benefits from October 2, 1998 onwards. ***The remainder would not be resolved until many years later.***

34. From 2000, to 2002 Mr. Taylor was involved in a WSIB job retraining program. Mr. Taylor had indicated many concerns regarding the suitability of the job retraining program for his abilities. Most of his concerns were documented in written reports to the WSIB by the WSIB service provider. The WSIB would for the most part, ignore his concerns and the reports of suitability. Ultimately, the WSIB would not make any 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 and denied any concerns.

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.***

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's 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 51,
Affidavit of Paul Taylor, Para 61 & 62.

37. Once the WSIAT hearing was scheduled for one day, Mr. Taylor was not allowed to schedule anymore. 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 51,
Affidavit of Paul Taylor, Para 61 & 62.

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

Application/Motion Record Page 53 & 54,
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, which was a direct result of his workplace injuries. This was in addition to the prescription medications he already takes, which was paid by the WSIB.

Application/Motion Record Page 54 & 55,
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 income replacement 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 55,
Affidavit of Paul Taylor, Para 74.

Delays in Response from WSIB

41. Mr. Taylor again expressed delay in response from the WSIB decisions. He also explained this was partly the reason he was attempting to communicate with the WSIB 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 56 & 57,
Affidavit of Paul Taylor, Para 76, 78 to 79.

WSIB Decides Before Information

42. On October 17, 2017, Mr. Taylor received two letters from the WSIB. One letter was dated Oct. 4/17, the other was dated Oct. 11/17. In the Oct. 4/17 letter, it was requesting additional medical information from his doctor. However, in the second letter dated Oct. 11/17, it denied Mr. Taylor's request for over the counter medications. In response, Mr. Taylor indicated he would be appealing.

Application/Motion Record Page 55 & 56,
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, had stopped paying all his medical benefits. This includes prescription medications. The prescription medications were previously paid for by the WSIB. Mr. Taylor is now being forced to suffer emotionally, physically, and financial hardship. This is due to him being expected to pay for his own medications until someday when a final decision can be rendered on the matter.

Application/Motion Record Page 58 & 59,
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. His medications cost more than \$600 per month. Mr. Taylor only receives \$1,000 in income replacement benefits from the WSIB per month. A reasonable person would agree that this alone would cause Mr. Taylor emotional and physical harm.

Application/Motion Record Page 59 & 60,
Affidavit of Paul Taylor, Para 87 to 90.

PART III - THE ISSUES AND THE LAW

K. Application for Judicial Review – Writ of Mandamus

Jurisdiction of the Court

45. The jurisdiction of the court is statutorily provided for a Judicial Review – Writ of Mandamus and is stated in the Judicial Review Procedure Act. Section 6 (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...”

Applicant Factum
Schedule “B” List of Statutory Authorities – Judicial Review Procedure Act

46. The jurisdiction of the Court is also clarified in the Courts of Justice Act R.S.O. 1990 under Section 18(3) where it states that: “Every judge of the Superior Court of Justice is also a judge of the Divisional Court”. Also Rule 38.02 States that an application is to be made to a judge.

Applicant Factum
Schedule “B” List of Statutory Authorities – Courts of Justice Act

47. The jurisdiction of the court is also clarified in common law in the case of *Lee v. Workers’ Compensation Board of Alberta*. Where a similar court exercised its jurisdiction and stated by his Honour Justice Clarke in his decision that “When a statutory delegate **refuses to comply with its statutory duties, the Court has the inherent jurisdiction to issue an order of mandamus compelling the performance of such duties.**” And “if a statutory body does not comply with the Court’s order **it is in contempt of court. This is a supervisory power that is unique to the Court.**” [Emphasis added] In the case before this honourable court, the court has the ***inherent jurisdiction*** to issue a Writ of Mandamus, as the WSIB has failed to render any decision in a “speedy manner”. The lack of action on the part of the WSIB and the WSIAT, has and will likely cause Mr. Taylor further harm and is also a violation of his Charter of Rights.

Applicant’s Book of Authorities Tab 9 pages 4 & 5,
Lee v. Workers’ Compensation Board of Alberta, 1999 ABQB 211 (CanLII) paras 19.

Requirement for Writ of Mandamus

48. The requirement or elements of Writ of Mandamus are set out in the case of *Apotex Inc. v. Canada*. At pages 18 & 19 where the Federal Court of Canada - Court of Appeal explains the principle requirements of Mandamus.

Applicant's Book of Authorities Tab 10, pages 18 & 19
Apotex Inc. v. Canada (Attorney General) (C.A.), 1994 F.C. 742 (CanLII)

49. The mandamus requirements were again discussed in another case of *Thompson v. Nova Scotia Workers Compensation Board*. This is more on point to Mr. Taylor's case as it was a worker's compensation board like the WSIB. In that case the judge ultimately granted a writ of mandamus against the WCB.

Applicant's Book of Authorities Tab 11, pages 2, 12, 16, & 23.
Thompson v. Nova Scotia (Workers' Compensation Board), 1996 CanLII 5457 (NS SC)

50. Also, in another case for Mandamus, which took place at the Federal Court, the court in that case granted Mandamus against the Minister of Citizenship and Immigration. This request for Mandamus was granted on the basis like Mr. Taylor's on the amount of ***institutional delays***.

Applicant's Book of Authorities Tab 12, pages 1,3, & 4,
Dee v. Canada (Minister of Citizenship and Immigration), 1998 CanLII 8974 (FC)

There must be a public legal duty to act, owed to the applicant

51. The WSIB and the WSIAT have a statutory requirement to manage the employer fund. As part of that requirement is to decide benefits. Furthermore, the WSIB and the WSIAT have a *common-law* requirement to render decisions and payment of benefits in a speedy or immediate fashion.

The duty must be owed to the applicant

52. Mr. Taylor, as previously mentioned is an injured worker and is statute barred from seeking legal redress against his accident employer. Mr. Taylor must apply for and seek workers compensation benefits under the WSIA. Therefore, there is a specific duty owed to Mr. Taylor from the WSIB and the WSIAT to render decisions and payment of benefits in a speedy manner.

There is a clear right to performance of that duty

53. Mr. Taylor had made several written attempts to have the decision made as quickly as possible. However, these demands were in many cases out right ignored, or intentionally delayed further.

No other adequate remedy is available to the applicant.

54. Mr. Taylor has no other remedy aside from judicial review – certiorari, or civil action. However, the option of judicial review – certiorari, or civil action, cannot happen until a decision is made by the WSIB and ultimately the WSIAT. Furthermore, it is commonly touted by the WSIB & the WSIAT that they and only they have exclusive jurisdiction to make any decisions. It is therefore argued, that not making decisions, or causing lengthy delays, is by virtue giving up their jurisdiction to render decisions.

The order sought, will be of some practical value or effect.

55. The practical effect would be to, confirm and enforce what the courts have previously made law in their decisions, regarding a right to speedy decisions for benefits, in lieu of workers suing their employers. Furthermore, as many injured workers are forced onto taxpayer funded social programs such as welfare, (*approximately 1,400 injured workers each month are forced onto OW or ODSP*). It would also be in the best interest of society - the taxpayers, which would provide a practical value of not having to fund the social programs as much.

Right to immediate/speedy decisions and benefits

56. The courts have commonly refused charter challenges, against the workers compensation law. The courts have claimed injured workers, in lieu of suing their employers, receive '**speedy/immediate decisions for benefits**'. At page 2 of *Medwid v. Ontario* (Tab 7), the court states: "*The disadvantage [of injured workers not being able to sue their employers] is accompanied by the advantages of **immediate [determination and] payment of benefits by the Workers' Compensation Board on a no-fault basis.***" [Emphasis Added].

Applicant's Book of Authorities Tab 7, page 2,
Medwid v. Ontario, 1988 CanLII 193 (ON SC).

57. The requirement for speedy determination was stated by the court in *Piecery v. General Bakeries Ltd* (1986), where the court stated at page 11 of their decision, that the worker shall have “**speedy determination of benefits**” and this is because of “*This no-fault scheme was designed to provide **speedy assessment of entitlement...***”.[Emphasis added] This confirmed the association of a common law right and the requirement of ‘speedy determination & payment of benefits’.

Applicant’s Book of Authorities Tab 5, page 11,
Piecery v. General Bakeries Ltd, 1986 CanLII 107 (NL SCTD)

58. This was also confirmed by the Newfoundland Court of Appeal where they were asked to review the decision mentioned above *Piecery v. General Bakeries Ltd* (1986). While the appellant court disagreed with the lower court on the matter of the charter issue, the court stated at page 8 of their decision: “...*that workers give up their common law rights of action against their own employers, in exchange for specific **guaranteed benefits** as a trade-off...*” The Court went on to state at page 13 of their decision that it was “*an acceptable limitation designed to make the scheme workable.*”

Applicant’s Book of Authorities Tab 6, pages 8 & 13,
Reference re: *WCA.*, 1983 (Nfld.), ss. 32, 34, 1987 CanLII 118 (NL CA)

Right to Speedy Justice

59. The legal argument and principle of law for a ‘*right to speedy justice*’, goes as far back as the Magna Carta of 1215, where it states: “*To no one will we sell, **to no one will we refuse, or delay, right or justice***”.

Applicant Factum
Schedule “B” List of Statutory Authorities – *The Magna Carta - 1215*

60. In some of the common law cases, discussed previously, the courts have made mention of acceptable human rights’ losses. Would forcing injured workers to wait indefinite periods of time not go against the very principle of justice? It was best stated by Justice Sir William Blackstone: “...*that every right when withheld must have a remedy, and every injury its proper redress.*” This allows for no tolerance, regarding rights violations. Not even one. If so, it would be a **complete failure of justice.**

61. In criminal law, the Supreme Court of Canada recently set a very clear standard of a time limit for charge to trial. In the case of *R. v. Jordan*, where the issue was brought to the court of a 'right to be tried within reasonable time', which caused a 'delay' of more than four years, from the laying of charges and end of trial. The Supreme Court of Canada attached a specific time limit of no more than thirty months for any charge to trial.
62. In the Court's decision they stated that under the current system there has developed "a culture of delay and complacency...". The court went on to make it clear that "...**its burden to justify a delay** that exceeds the ceiling. The seriousness or gravity of the offence cannot be relied on, nor can **chronic institutional delay**." While injured workers, such as Mr. Taylor, are NOT criminals, should they not be afforded at the very least similar equality in the eyes of the law?

Applicant's Book of Authorities Tab 13, pages 631-633,
R. v. Jordan, 2016 SCC 27 (CanLII)

Failure to provide 'speedy justice':

63. Mr. Taylor described, in detail, and provided unquestionable supporting documentation, which confirmed his and his families suffering. This was from his personal dealings with the workers compensation system over the past twenty years from the unquestionably admitted delays.
64. Mr. Taylor has described financial losses that were devastating to him and his family, for which he has never been able to recover from. These losses were from a direct result of the delayed decisions from the workers compensation system (WSIB & WSIAT).
65. Mr. Taylor's physical health has gotten much worse, due to the delayed decisions from the workers compensation system. Mr. Taylor's mental health was also placed at risk because of the lengthy numerous delays from the workers compensation system.

Charter violations:

66. The Constitution of Canada under section 52 (1) states: "**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” [Emphasis Added]. This means that no law, provincial or federal, shall conflict with the constitution.

Applicant Party Factum
Schedule “B” List of Statutory Authorities – The Constitution of Canada – Section 52

67. Furthermore, at section 24 what is commonly known as the Charter of Rights and Freedoms it states: *“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.”*

Applicant Factum
Schedule “B” List of Statutory Authorities – The Charter – Section 24

Section seven of the Charter violation:

68. Section seven of the Charter states that *“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.”*

Applicant Factum
Schedule “B” List of Statutory Authorities – The Charter – Section 7

69. Mr. Taylor has suffered emotional, physical, and financial harm, as a direct result of delays by the workers compensation system. In *R. v. Morgentaler* the Supreme Court of Canada made clear at page 33 of their decision that:

*“...the defence should not be **illusory** or so difficult to attain as to be practically illusory.”* and *“...make the defence illusory resulting in a failure to comply with the principles of fundamental justice.”*

70. The court was referring to the level of difficulty that women would have to endure to attempt to obtain an abortion, prior to *R. v. Morgentaler*. Having delays of decisions, which Mr. Taylor experienced in the past and presently, which could conceivably exceed a person’s lifetime would be ***“illusory” justice***, for payment of benefits and/or medical treatment.

71. Mr. Taylor is requesting medical treatment costs in the form of prescription medications, as well as over the counter medications and topical pain creams. A delay so ***illusory*** would constitute a deprivation of medical treatment, which also violates

this section of the Charter, as the court also stated at page 34 of their decision in *R. v. Morgentaler* where the court said: “*Security of the person*” within the meaning of s. 7 of the Charter ***must include a right to medical treatment...***”

Applicant’s Book of Authorities Tab 14, pages 33 & 34,
R. v. Morgentaler, [1988] 1 SCR 30, 1988 CanLII 90 (SCC)

72. In *Carter v. Canada* the Supreme Court of Canada determined that the criminal act of doctor assisted suicide, was unconstitutional under section 7 of the Charter. At page 335 of the court’s decision they state that the law “...has the effect of ***forcing some individuals to take their own lives prematurely...***” as a result, the court agreed that “The prohibition on physician-assisted dying ***infringes the right to life, liberty, and security of the person*** in a manner that is not in accordance with the principles of fundamental justice.” As Mr. Taylor stated in his affidavit, he attempted suicide twice, in the past. This was due to his lack of proper medical care and financial insecurity. This was from delays from the WSIB and the WSIAT. If Mr. Taylor’s actions were successful, the inactions of the WSIB and the WSIAT would have deprived Mr. Taylor of his right to life, liberty, and security of person as stated by the SCC in their decision.

Applicant’s Book of Authorities Tab 8, pages 333 & 335,
Carter v. Canada (Attorney General), [2015] 1 SCR 331, 2015 SCC 5 (CanLII)

73. Therefore, when the WSIB & the WSIAT forced Mr. Taylor to wait lengthy delays for decisions for ‘speedy benefits’, especially recently for medical treatment they violated section 7 of the Charter.

Section eleven of the Charter violation:

74. Section 11(b) of the Charter states that “*Any persons charged with an offence has the right...to be tried within a reasonable time.*”

Applicant Factum
Schedule “B” List of Statutory Authorities – The Charter – Section 11b

75. Section eleven of the charter does state that it applies to persons charged with an offence. Most would be under the impression that the workers compensation system is not a criminal proceeding, as the WSIB only renders decisions for benefits. However, the

WSIB and the WSIAT are a branch of government. Furthermore, the WSIB has convicted numerous injured workers under the WSIA R.S.O. 1997.

76. In the case of *R. v. Koomson*, the WSIB was able to successfully prosecute Douglas Koomson, who is an injured worker. The charge was failing to report a material change in accordance with section 149(2) of the WSIA R.S.O. 1997. The same was also found with Selvamenan Kathirkamapillai in *R. v. Kathirkamapillai*, who was also charged and not convicted by the WSIB under section 149 (2). There are several other similar examples. These two cases, along with *R. v. Curtis*, are of interest, as they have or will be going to the Court of Appeal for Ontario to challenge the convictions.

Applicant's Book of Authorities Tab 15, pages 2 & 49,
R(WSIB). v. Koomson 2011 ONCJ 755 (CanLII)
Applicant's Book of Authorities Tab 16, pages 2, 29, & 30
R(WSIB). v. Kathirkamapillai 2014 ONCJ 255 (CanLII)

77. The above-mentioned cases confirm that injured workers are in fact "*charged with an offence*" or there is a very likely possibility of it, as stated in Section 11 of the Charter. It is not unreasonable for any person to conclude that any injured worker could be under the presence of offences in dealing with their interactions with the WSIB. This confirms that section 11b not only applies to section 149, but also to section 33, as well as other sections of the WSIA R.S.O. 1997.

78. Therefore, when the WSIB and the WSIAT caused extremely lengthy delays when rendering decisions, they violated section 11b of the Charter. While the Supreme Court made no mention of time limits in *R. v. Jordan*, regarding administrative boards/tribunals. It is not unreasonable to suggest it be considerably less than limits imposed on matters conducted in Ontario Court of Justice. Especially knowing that the court has long adopted the principle that injured workers must receive "*speedy determination and payment of benefits*".

Section twelve of the Charter violation:

79. Section 12 of the charter states that "*Everyone has the right not to be subjected to any cruel and unusual treatment or punishment.*"

80. In the SCC case of *R. v. Boutilier* the court discussed the test for the infringement of section 12 of the Charter. The court explained, as they have many times in the past, the standard to be applied in determining whether **treatment** or punishment is cruel and unusual is whether the **treatment** or punishment is so excessive as to "**outrage standards of decency**" (page 10) and to surpass all rationale bounds of **treatment** or punishment.

Applicant's Book of Authorities Tab 17, page 10,
R. v. Boutilier 2017 SCC 64 (CanLII)

81. While most cases for section 12, involve criminal matters, the use of both words 'treatment' and 'punishment' indicates that parliament wished that this section meant to apply to actions other than criminal matters, as well. This was confirmed by the SCC in *R. v. Smith*, where the court stated at page 1047 "*...although primarily concerned with nature or type of treatment or punishment, it is **not confined to punishments** which are in their nature cruel...*". At page 1049 of the court's decision they, explain the criteria of what would violate section 12 regarding cruel punishment:

*"A punishment will be cruel and unusual and violate s. 12 of the Charter **if it has any one or more of the following characteristics:***

- (1) The punishment is of such character or duration as to outrage the public conscience or be degrading to human dignity;*
- (2) The punishment goes beyond what is necessary for the achievement of a valid social aim, having regard to the legitimate purposes of punishment and the adequacy of possible alternatives; or*
- (3) The punishment is arbitrary imposed in the sense that it is not applied on a rational basis in accordance with ascertainable standards."*

Applicant's Book of Authorities Tab 18, pages 1049 & 1050,
R. v. Smith 1987 SCC 64 (CanLII)

82. In comparing the above-mentioned criteria, with Mr. Taylor's case, the following is found:

- a. As previously mentioned the courts have adopted the principle that injured workers shall receive speedy determination and payment of benefits. Mr. Taylor stated he was injured in 1997, yet final determination by the workers compensation system was not made until August 2013. Regardless of fault, it

took the workers compensation system over sixteen years to render a final decision on Mr. Taylor's claims for compensation. Furthermore, the delays brought severe harm to Mr. Taylor where he admitted to attempting suicide twice because of the delays. Having to be forced into poverty and suffer with disabilities to the point of considering suicide is without question a violation of human dignity.

- b. The social aim of the workers compensation system is to ensure speedy determination and payment of benefits. It is clearly not meant or intended to cause harm to injured workers. The fact that it did cause severe emotional and physical harm to Mr. Taylor, meant that it did go well beyond "*what is necessary for the achievement of a valid social aim*".
- c. The 'treatment' of Mr. Taylor's claim with the lengthy delays by the WSIB and the WSIAT was so arbitrary that it was not applied in a rational basis. No reasonable person expects a person to wait months, years, decades, and certainly not a lifetime for decisions which are desperately needed for income replacement, retraining, or medical treatment, as in Mr. Taylor's claim. Both the WSIB and the WSIAT completely failed to comply with the standards set down by numerous courts in Canada of rendering speedy determination and payment of benefits.

83. Even though Mr. Taylor has committed no crime, he is seemingly being punished through this ***unusual treatment*** of countless lengthy delayed decisions. Therefore, the actions, or rather inactions of both the WSIB and the WSIAT is a violation of section 12 of the Charter on the grounds it is cruel and unusual treatment.

Section fifteen of the Charter violation:

84. Section fifteen of the Charter of Rights and Freedoms states that: "*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... mental or physical disability.”

Applicant Factum
Schedule “B” List of Statutory Authorities – The Charter – Section 11b

85. The courts have adopted a three-part test to determine if a person’s rights under section fifteen of the Charter have been violated. In *Law v. Canada* the SCC states at page 498 “*under s. 15(1) as guidelines for analysis, and not as a rigid test which might risk being mechanically applied.*” As a result, the SCC developed three questions to be asked when considering a violation of s. 15(1), which are referenced at page 499 of *Law v. Canada*. They are as follows: ***Has there been differential treatment?*** If yes, then the second part asks ***Is the differential treatment based on an enumerated or analogous ground?*** And finally, the third part asks ***Is there discrimination?***

Applicant’s Book of Authorities Tab 19, pages 498 & 499,
Law v. Canada 1999 CanLII 675 (SCC)

Has there been differential treatment?

86. Mr. Taylor has been treated differently by the WSIA law, which empowers the WSIB and the WSIAT. It does so in such a way by compelling Mr. Taylor to wait extremely lengthy periods of time to render decisions for benefits. This ultimately deprives Mr. Taylor of his fundamental freedoms. To be more precise, the WSIA imposes time limits for Mr. Taylor and other injured workers to make decisions to appeal. However, there is no time limit on the WSIB, WSIB Appeals branch, and/or the WSIAT to hold hearings and render decisions in a timely fashion. In failing to do so the WSIA law fails to comply with the common law practice of rendering determination and payment of benefits in a speedy manner.

Is the differential treatment based on an enumerated or analogous ground?

87. Mr. Taylor has been treated differently by the enactment of law based on his mental and physical disabilities from his work injuries, which are an enumerated ground.

Is there discrimination?

88. There is discrimination based on Mr. Taylor's mental and physical disabilities, when the WSIB and the WSIAT has knowingly and intentionally compelled Mr. Taylor to wait extremely lengthy periods of time for decisions.

89. Therefore, in failing to render decisions for Mr. Taylor in a timely fashion the WSIB and the WSIAT have knowingly violated section 15 of the Charter based on Mr. Taylor's mental and physical disabilities.

Closing arguments on Mandamus Application:

90. Therefore, the application for Mandamus against the WSIB and the WSIAT has been proven as summarized below:

- a. The court has jurisdiction to hear and issue the writ of mandamus;
- b. The requirements for Mandamus have been stated and more than met which are as follows;
 - i. Public legal duty to act, owed to the Mr. Taylor;
 - ii. The duty must be owed to the Mr. Taylor;
 - iii. There is a clear right to performance of that duty;
 - iv. No other adequate remedy is available to the Mr. Taylor;
 - v. The order sought will be of some practical value or effect
- c. It has also been argued that sections 7, 11, 12, & 15, of the charter were also violated in the application for mandamus.

91. Furthermore, if this application is allowed, it will benefit all injured workers in Ontario and Canada, who are forced into poverty and most cases onto taxpayer funded social programs such as: welfare, OHIP, OSAP and many others. Ultimately it will also benefit taxpayers as these programs will not require as much funding for injured workers. For example, it is estimated that every month there are over 1,400 injured workers receiving either Ontario Works or ODSP due to failures from the WSIB and the WSIAT to render speedy determination and payment of benefits to injured workers.

PART IV - ACTION REQUESTED

92. Mr. Taylor, who is the applicant requests of this court the following:

- a. That the Workplace Safety & Insurance Board – WSIB be commanded by way of Writ of Mandamus, to perform the following duties:
 - i. Schedule and hold an oral appeal hearing within five days after the date of the decision, or whenever reasonable timeframe this court sees fit;
 - ii. Render a written decision to Mr. Taylor within five days after holding the hearing, or whenever reasonable timeframe this court sees fit; and
 - 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 court to perform the following duties:
 - i. Schedule and hold an oral hearing, within five days when requested by Mr. Taylor, or whenever reasonable timeframe this court sees fit;
 - ii. To render a written decision to Mr. Taylor within five days after holding the hearing, or whenever reasonable timeframe this court sees fit; and
 - iii. To issue the decision(s) to Mr. Taylor by e-mail and regular mail; and

- c. That if either the WSIB and/or the WSIAT fails to comply with this court’s order that they be held in contempt of court.

ALL OF WHICH IS RESPECTFULLY SUBMITTED TO THIS HONOURABLE COURT

February 26, 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

**FACTUM
OF
APPLICANT**

Applicant:
Paul Taylor

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