

THE COURT OF APPEAL FOR ONTARIO

BETWEEN:

PAUL TAYLOR

Appellant
(Applicant)

-and-

WORKPLACE SAFETY & INSURANCE BOARD – WSIB

-and-

WORKPLACE SAFETY & INSURANCE APPEALS TRIBUNAL - WSIAT

Respondents
(Respondents)

APPELLANT’S FACTUM

April 28, 2018

PAUL TAYLOR

[REDACTED]

Appellant
(Applicant)

Self-represented

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INDEX

PART I – OVERVIEW AND ISSUES.....	4
A. Overview:.....	4
B. Issues:.....	5
PART II – THE FACTS	6
C. Workplace Accident Injury and the WCB/WSIB WSIAT Delays:	6
D. Judicial Review & Civil Action Against WSIB and WSIAT:	7
Judicial Review - Certiorari	7
Civil Action Against the WSIB & the WSIAT.....	7
Costs Endorsement.....	10
Appeal to the Court of Appeal for Ontario:	11
E. Current Issues with the WSIB & the WSIAT:	11
F. Act of Retaliation on the Part of the WSIB:	14
G. Motion for Leave.....	15
H. Dismissal of Motion & Applications	16
PART III – ISSUES AND THE LAW	16
I. Was There an Error of Law in Dismissing the Motion for Leave?	16
Jurisdiction of the Superior Court of Justice.....	16
Two-part Test for Leave	16
Misstatement of Lack of Urgency:	18
Unlawful Denial of Benefits:	19
J. Was there an Error of Law when the Application and Constitutional Question were Dismissed? 26	
K. Do Injured Workers Have a Right to Speedy Determination & Payment of Benefits?.....	27
PART IV – ORDER SOUGHT	28
PART V – CERTIFICATE.....	30
Schedule A – Common Laws	31
Schedule B – Statutory Laws.....	32
L. The Magna Carta of 1215 - <i>The Great Charter</i>	32
M. Canadian Charter of Rights and Freedoms – Constitution Act 1982.....	32
N. Rules of Civil Procedure R.S.O. 1990	32
O. Courts of Justice Act R.S.O. 1990	33
P. Judicial Review Procedure Act R.S.O. 1990	33
Q. Workplace Safety & Insurance Act R.S.O. 1997.....	34
R. CJC - Statement of Principles on Self-represented Litigants and Accused Persons - 2006.....	37

PART I – OVERVIEW AND ISSUES

A. Overview:

1. This is an appeal brought by the appellant, Mr. Paul Taylor, from a decision of the Honourable Madam Justice Petersen of the Ontario Superior Court of Justice, sitting in Guelph, Ontario.
2. Mr. Taylor has been an injured worker for more than twenty years. Mr. Taylor in this period has experienced countless lengthy delays with the workers compensation system. These delays have caused Mr. Taylor emotionally, physically, and financially irreparable harm.
3. To prevent any further harm, Mr. Taylor attempted to seek redress within the justice system. As he rightfully should be allowed to do. As stated by the late Sir William Blackstone “...*every right when withheld must have a remedy, and every injury its proper redress.*” However, Mr. Taylor was prevented his right to legal redress within the justice system, by her Honour Madam Justice Petersen.
4. Mr. Taylor had brought a motion before the Ontario Superior Court of Justice. This motion was for leave to have the Superior Court of Justice, in Guelph hear Mr. Taylor’s application for Judicial Review – Writ of Mandamus, on an urgent basis. Mr. Taylor had also submitted a request for a Notice of Constitutional Question to justify his urgency and application.
5. Mr. Taylor’s legal basis for bringing the motion for leave, was in accordance with section 6 (2) of the *Judicial Review Procedure Act* R.S.O. 1990. Mr. Taylor’s basis for the Constitutional Question was in accordance with section 24 of the *Charter* and section 109 of the *Courts of Justice Act* R.S.O. 1990.
6. Upon reviewing the materials filed by Mr. Taylor, the WSIB, the WSIAT, as well as hearing oral arguments from Mr. Taylor and counsel for the WSIB but her Honour did not hear from the

counsel for the WSIAT. Her Honour Madam Justice Petersen dismissed Mr. Taylor's motion for leave to the Superior Court, to hear Mr. Taylor's application for Judicial Review – Writ of Mandamus. Her Honour Madam Justice Petersen also dismissed Mr. Taylor's application for Judicial Review – Writ of Mandamus, and Mr. Taylor's Notice of Constitutional Challenge.

B. Issues:

7. This appeal has been brought before the Court of Appeal for Ontario to determine the following issues:
 - a. Did her Honour Madam Justice Petersen commit an error of law, when her Honour dismissed Mr. Taylor's Motion for Leave to the Superior Court of Justice to hear Mr. Taylor's application for Judicial Review – Writ of Mandamus at Guelph Superior Court;
 - b. Did her Honour Madam Justice Petersen commit an error of law, when her Honour dismissed Mr. Taylor's application for Judicial Review – Writ of Mandamus and Mr. Taylor's Application for Constitutional Question instead of referring it to the Superior Court of Justice – *Divisional Court*.
 - c. This also raises a very clear and serious issue of an individual right to seek speedy justice within our administrative justice system, specifically the workers compensation system.
 - d. Do injured workers have a common law right to speedy determination and payment of benefits. Furthermore, what constitutes a violation of this common-law right?

PART II – THE FACTS

C. Workplace Accident Injury and the WCB/WSIB WSIAT Delays:

8. On February 6, 1997, Mr. Taylor suffered a severe workplace accident and numerous subsequent workplace injuries. Initially the WCB, now the WSIB, provided for immediate income replacement and medical benefits for Mr. Taylor.

**Appeal Book & Appellant's Compendium Tab 9, Pages 126 & 127.
Affidavit of Paul Taylor, Sworn January 28, 2018, Paras 11 & 12.**

9. After several months of recovery, Mr. Taylor was forced back to unsafe and unsuitable work. The WCB/WSIB, would take a very aggressive and adversarial stand towards Mr. Taylor's recovery. Every time, Mr. Taylor would be '*deemed*' capable of returning to unsafe and unsuitable work, by the WCB/WSIB.

10. Mr. Taylor would then have to appeal the decision and he would be forced to wait months and years, before the decisions would be reversed. This would only confirm what Mr. Taylor and his Doctor was reporting to the WCB/WSIB all along. The decisions would only compensate Mr. Taylor's partial income losses. The decisions NEVER compensated Mr. Taylor for his actual losses due to the lengthy intentional delays on the part of the WCB/WSIB/WSIAT.

**Appeal Book & Appellant's Compendium Tab 9, Pages 127 to 142.
Affidavit of Paul Taylor, Sworn January 28, 2018, Paras 12 to 64.**

11. It would take the Workplace Safety & Insurance Appeals Tribunal 15 years, for Mr. Taylor to receive a final decision. Again, the decisions NEVER compensated Mr. Taylor for his actual losses due to the lengthy intentional delays on the part of the WCB/WSIB/WSIAT.

**Appeal Book & Appellant's Compendium Tab 9, Pages 142 to 144.
Affidavit of Paul Taylor, Sworn January 28, 2018, Paras 65 to 70.**

D. Judicial Review & Civil Action Against WSIB and WSIAT:

Judicial Review - Certiorari

12. In response to the final decision of the WSIAT, on July 4, 2013, Mr. Taylor filed an application for Judicial Review – Certiorari, in the Superior Court of Justice. In response to Mr. Taylor’s application, the WSIAT sent a letter to Mr. Taylor dated July 11, 2013. This letter *ill-advised* Mr. Taylor, that he had filed his application with the incorrect court. It advised Mr. Taylor he should have filed it with *Divisional Court*. The WSIAT letter dated July 11, 2013, is listed as WSIAT’s Exhibit “C” and *located at tab ‘6C’ at page 383 of the Exhibit Book*.

**Appeal Book & Appellant’s Compendium Tab 12, Pages 171 & 172.
Affidavit of Michelle Alton, Sworn March 13, 2018, Paras 8 & 9.**

14. It should be noted that under section 6(2) of the *Judicial Review Procedure Act* allows for the Superior Court of Justice to hear applications for Judicial Review. Also, the *Courts of Justice Act* confirms that every judge of Superior Court is also a judge of the *Divisional Court*. This confirms the letter was in fact ill-advised.

**Appellant’s Factum Schedule B.
Judicial Review Procedure Act R.S.O. 1990
Courts of Justice Act R.S.O. 1990**

15. In response to the WSIAT letter of July 11, 2013, Mr. Taylor served the WSIAT a Notice of Abandonment of his application for Judicial Review – Certiorari. The Notice of Abandonment, dated August 1, 2013, is listed as WSIAT’s Exhibit “D” and *located at tab ‘6D’ at page 386 of the Exhibit Book*.

**Appeal Book & Appellant’s Compendium Tab 12, Page 172.
Affidavit of Michelle Alton, Sworn March 13, 2018, Para 10.**

Civil Action Against the WSIB & the WSIAT

16. After more than six months of legal research, Mr. Taylor filed a Statement of Claim against both the WSIB and the WSIAT. Mr. Taylor also filed a subsequent Amended Statement of Claim.

**Appeal Book & Appellant’s Compendium Tab 12, Page 172.
Affidavit of Michelle Alton, Sworn March 13, 2018, Para 11.**

17. In response to the claim and amended claim, the WSIB and the WSIAT each brought separate motions to dismiss Mr. Taylor’s claim and subsequent amended claim. The WSIAT also brought a second motion to exclude the audio evidence which confirmed Mr. Taylor’s allegations of bad faith on the part of the WSIAT. The WSIAT, in their motion requested to have the court record sealed from the public and keep the information secret from the public.

Appeal Book & Appellant’s Compendium Tab 12, Page 172.
Affidavit of Michelle Alton, Sworn March 13, 2018, Para 12.
Appellant’s Book of Authorities, Tab 1
[Taylor v. WSIB, 2017 ONSC 1223, Dated February 22, 2017](#)

18. In his Reasons for Order of February 22, 2017, the Honourable Justice D. Price, only dealt with and responded to the WSIAT motion to dismiss Mr. Taylor’s claim, and the second WSIAT motion to exclude the audio evidence. His Honour Justice D. Price did not mention the WSIB motion to dismiss Mr. Taylor’s claim. It was later confirmed by his Honour’s clerk that his response was the same for the WSIB’s motion as it was for the WSIAT motion to dismiss.

19. In his Honour’s reasons, Justice D. Price’s identified four specific issues to be decided by the court they were as follows:

- a. *Does this court have jurisdiction over the subject-matter of the action?*
- b. *Does the WSIAT have the capacity to be sued?*
- c. *Is the action frivolous and vexatious or an abuse of process?*
- d. *Does the Claim disclose a reasonable cause of action?*

Appellant’s Book of Authorities, Tab 1, pages 10 & 11
[Taylor v. WSIB, 2017 ONSC 1223, Dated February 22, 2017, para 22.](#)

20. His Honour Justice D. Price, in his Reasons for Order, stated the court lacked the jurisdiction, as the “*Court does not have jurisdiction to engage in a judicial review...*”. He also explained that the “*Court has no jurisdiction to order some categories of relief...*”. [Emphasis added]

Appellant's Book of Authorities, Tab 1, page 14
[Taylor v. WSIB, 2017 ONSC 1223, Dated February 22, 2017](#), paras 28 & 29.

21. His Honour Justice D. Price also explained in his Reasons for Order that "*The Tribunal... lacks the legal status and capacity to be sued*" [Emphasis added] His Honour Justice D. Price also stated that "*Tribunal members and employees are immune from liability...*". His Honour Justice D. Price further confirmed that the WSIAT has a "*...status as an entity with no legal capacity to be sued...*" and referenced the case of *Aird v. WSIAT*.

Appellant's Book of Authorities, Tab 1, page 14 15
[Taylor v. WSIB, 2017 ONSC 1223, Dated February 22, 2017](#), paras 31 to 33.

22. His Honour Justice D. Price also stated in his Reasons for Order, that the claim was an abuse of process and was **NOT vexatious or frivolous**. In determining Mr. Taylor's claim was an abuse of process, his Honour stated Mr. Taylor's claim "*...would constitute a collateral attack on the WSIB and Tribunal's decisions and would constitute an abuse of process.*" Also, that "*Mr. Taylor's allegations dealing with "delays" of this motion are an abuse of process.*"

Appellant's Book of Authorities, Tab 1, page 18
[Taylor v. WSIB, 2017 ONSC 1223, Dated February 22, 2017](#), paras 38 & 39.

23. His Honour Justice D. Price confirmed that Mr. Taylor's claim disclosed no reasonable cause of action. His Honour's reasoning was "*...rulings made by the Tribunal, do not amount to torts recognized in law.*" Furthermore, the allegation of assault that Mr. Taylor "*...did not fully describe or disclose when or in what circumstances they were made*". Finally, regarding the audio recording his Honour stated that "*Deliberative secrecy privilege has long been recognized as an important privilege that warrants protection by the courts*". This provide privilege, but the Supreme Court of Canada has also long established that everyone, including the Honourable Prime Minister, is accountable under and before the law.

Appellant's Book of Authorities, Tab 1, pages 19, 20, & 25
[Taylor v. WSIB, 2017 ONSC 1223, Dated February 22, 2017](#), paras 46, 48, & 62.

24. His Honour Justice D. Price justified that Mr. Taylor’s claim was also statute-barred, by claiming that Mr. Taylor took no action after 2007 and did not pursue “*the WSIAT reconsideration or judicial review process in a timely fashion...*”. Even though Mr. Taylor had a complaint with the Ontario Human Rights Commission.

Appellant’s Book of Authorities, Tab 1, pages 29
[Taylor v. WSIB, 2017 ONSC 1223, Dated February 22, 2017, paras 77 &78.](#)

25. His Honour Justice D. Price also confirmed that leave was not to be granted to amend Mr. Taylor’s claim, on the basis that “...*where a corrected pleading would nevertheless disclose no reasonable cause of action.*” Even though later in his Costs endorsement he said the claim may have been successful had it been prepared by a lawyer.

Appellant’s Book of Authorities, Tab 1, pages 29
[Taylor v. WSIB, 2017 ONSC 1223, Dated February 22, 2017, para 79.](#)

Costs Endorsement

26. In his Honour Justice D. Price’s Endorsement of Costs, his Honour confirmed that Mr. Taylor alleged breaches of Human Rights and Charter violations. His Honour then confirmed that the Court “...*had no jurisdiction to order some categories of relief which Mr. Taylor sought...*”. [Emphasis added] His Honour also stated that “...*that Mr. Taylor’s claim, while not containing a cause of action that had a prospect of success in this Court, was not frivolous or vexatious.*” [Emphasis added] **His Honour also confirmed that Mr. Taylor’s claim may have been successful** if he was represented, as the flaws in Mr. Taylor’s claim “...*were more self-evident than they might have been if a lawyer had drafted them.*”.

Appellant’s Book of Authorities, Tab 2, pages 2, 5, 9, 11, 15, & 18
[Taylor v. WSIB, 2017 ONSC 7511, Dated December 14, 2017, para 3, 27, 36, & 42.](#)

Appeal to the Court of Appeal for Ontario:

27. In response to his Honour Justice D. Price's decision of February 22, 2017, Mr. Taylor filed an appeal with the Court of Appeal for Ontario. The matter was heard before Justice Laskin, Justice Huscroft, and Justice Paciocco, on December 18, 2017. The Court of Appeal for Ontario released their decision on February 6, 2018.

Appellant's Book of Authorities, Tab 3, pages 2
[Taylor v. WSIB, 2018 ONCA 108, Dated December 14, 2017.](#)

28. In their decision, the court of appeal stated that Mr. Taylor had raised two issues on the appeal. The first was "*Did the motion judge err in dismissing Taylor's claim for lack of jurisdiction?*" and the second was "*Did the motion judge err either by striking Taylor's pleadings as failing to disclose a reasonable cause of action for "bad faith" or misfeasance in public office, or by refusing to grant Taylor leave to amend his statement of claim?*" The court dismissed Mr. Taylor's appeal on both issues.

Appellant's Book of Authorities, Tab 3, pages 2
[Taylor v. WSIB, 2018 ONCA 108, Dated December 14, 2017, para 4, & 5.](#)

29. The court stated in their decision that they agreed with the motion judge, that the court lacks jurisdiction based on section 123 of the *Workplace Safety & Insurance Act* R.S.O. 1990. However, the court made no mention of the WSIB, nor section 179 of the *WSIA*, where it states the WSIB and the WSIAT can be sued and provides the court the jurisdiction.

Appellant's Book of Authorities, Tab 3, pages 3 & 4
[Taylor v. WSIB, 2018 ONCA 108, Dated December 14, 2017, paras 7, & 8.](#)

E. Current Issues with the WSIB & the WSIAT:

30. On September 20th, 2017, Mr. Taylor had made a written request to the WSIB, to be compensated for over the counter pain medications and topical pain cremes. Mr. Taylor uses these over counter medications and topical cremes, in addition to his prescription medications for

his work injuries. Mr. Taylor also uses these over the counter pain medications and cremes in an effort to reduce or eliminate his dependency on the prescription medications. The out of pocket expense for Mr. Taylor for these items are at times, very expensive. Mr. Taylor based his request on the WSIA nor doe any Board policy deny such reimbursement or payment for such items.

Appeal Book & Appellant's Compendium Tab 9, Pages 144 to 145.
Affidavit of Paul Taylor, Sworn January 28, 2018, Paras 71 to 73.

31. On October 2, 2017, Mr. Taylor had made a second written request to the WSIB. This request was for Mr. Taylor to be compensated for income replacement benefits that he was not paid for. In a review of his claim, Mr. Taylor had discovered he was not paid for these days and should have been for August of 1998.

Appeal Book & Appellant's Compendium Tab 9, Pages 145.
Affidavit of Paul Taylor, Sworn January 28, 2018, Paras 74.

32. On October 17, 2017, Mr. Taylor received two letters from the WSIB. The first was dated for October 4, 2017, and the second letter was dated for October 11, 2017. Mr. Taylor receiving the letters on October 17, 2017, was confirmed in an e-mail Mr. Taylor had sent to Mr. Parlak of the WSIB on October 17, 2017. The e-mail is listed as Exhibit FF and is ***located at Tab '1FF', page 214 of the Exhibit Book***. This is also confirmed in a letter by Mr. Labuntog of the WSIB dated October 24, 2017. The letter is listed as Exhibit "FF" and ***located at tab '1GG' at page 219, of the Exhibit Book***.

Appeal Book & Appellant's Compendium Tab 9, Pages 147.
Affidavit of Paul Taylor, Sworn January 28, 2018, Paras 79.

33. In the WSIB letter dated October 4, 2017, the WSIB had requested Mr. Taylor to "*Please take this letter to your doctor and have him/her submit a report with the required information...*".

This was for the WSIB to consider Mr. Taylor's previous request of September 20, 2017. This is

confirmed in the WSIB letter dated October 4, 2017. The letter is listed as Exhibit “BB” and *located at tab ‘1BB’ at page 203 of the Exhibit Book.*

**Appeal Book & Appellant’s Compendium Tab 9, Pages 145.
Affidavit of Paul Taylor, Sworn January 28, 2018, Paras 75.**

34. In the second WSIB letter, dated October 11, 2017, the WSIB had informed Mr. Taylor they had decided not to compensate Mr. Taylor’s request to be compensated for over the counter medications or topical pain cremes. The decision letter made no reference to any board policy or law. It only stated generally, that under section 33(1) and (2) of the *WSIA* which states that Mr. Taylor “*is entitled to such health care as may be necessary*”. This is confirmed in the WSIB letter dated October 11, 2017. The letter is listed as Exhibit “DD” and *located at tab ‘1DD’ page 209 of the Exhibit Book.*

**Appeal Book & Appellant’s Compendium Tab 9, Pages 146.
Affidavit of Paul Taylor, Sworn January 28, 2018, Paras 78.**

35. Mr. Taylor took both letters dated October 4, & 11, 2017, to his family doctor and as requested by the WSIB, asked his doctor to submit a report to the WSIB, as per the WSIB request made in the October 4, 2017 letter.

**Appeal Book & Appellant’s Compendium Tab 10, Pages 156 & 157.
Affidavit of Paul Taylor, Sworn March 16, 2018, Paras 14 & 19.**

36. In Mr. Taylor’s more than twenty-year experience with dealing with the WSIB, when the WSIB required updated or additional medical information, which they have never done to him and he confirmed this with countless other injured workers and advocates. It is a standard practice that Mr. Taylor would take the form, or request for medical information, to his doctor and/or specialist and have them send the report directly to the WSIB.

**Appeal Book & Appellant’s Compendium Tab 10, Pages 155 & 156.
Affidavit of Paul Taylor, Sworn March 16, 2018, Paras 10 to 14.**

F. Act of Retaliation on the Part of the WSIB:

37. On January 15, 2018, Mr. Taylor informed the WSIB, by E-mail, that he had learned the day before that the WSIB had stopped paying for Mr. Taylor's prescription medications and this was done with no reasonable or valid explanation as to why. Mr. Taylor also informed the WSIB that this was an act of retaliation against him. Mr. Taylor indicated that the WSIB had paid for his prescription medications for more than twenty years, with no difficulties. Mr. Taylor also raised concern with the WSIB that this act of retaliation, has placed Mr. Taylor in severe physical, emotional, and financial hardships.

**Appeal Book & Appellant's Compendium Tab 9, Pages 148 to 150.
Affidavit of Paul Taylor, Sworn January 28, 2018, Paras 84 to 89.**

38. With Mr. Taylor's experience of more than twenty years, of dealing with the WSIB/WSIAT, it was reasonable for Mr. Taylor from this history, to understand the pattern of behavior of the workers compensation system. This caused Mr. Taylor to be concerned that the appeal process would take conceivable years or more likely decades to be resolved.

**Appeal Book & Appellant's Compendium Tab 9, Pages 126 to 144.
Affidavit of Paul Taylor, Sworn January 28, 2018, Paras 11 to 70.**

39. Mr. Taylor has been placed in a position of extreme poverty for a very long period. Part of Mr. Taylor's poverty is a direct result of the institutional delays with the WSIB and the WSIAT. These delays have also caused Mr. Taylor further physical harm, due to a lack of proper medical care by the WSIB/WSIAT. The WSIB and the WSIAT have also knowingly and intentionally placed Mr. Taylor in a life-threatening situation on numerous occasions due to the lengthy unethical, immoral, and illegal institutional delays, where Mr. Taylor *has attempted suicide twice*, due to these numerous and lengthy institutional delays.

**Appeal Book & Appellant's Compendium Tab 9, Pages 149 to 150.
Affidavit of Paul Taylor, Sworn January 28, 2018, Paras 86 to 89.**

G. Motion for Leave

40. On February 21, 2018, Mr. Taylor attempted to resolve the issue of these numerous and lengthy institutional delays by filing a motion for leave with the Superior Court of Justice. This was for the Superior Court of Justice to hear Mr. Taylor's application for Judicial Review – Writ of Mandamus, as well as Mr. Taylor's Notice of Constitutional Question, as opposed to the *Divisional Court*. This was based on an urgent financial, emotional, and physical need for the matter to be heard and dealt with. This was in accordance with Rule 37 of the *Rules of Civil Procedure*, and under section 6 (2) of the *Judicial Review Procedure Act*.

**Appeal Book & Appellant's Compendium Tab 4, Pages 22.
Affidavit of Paul Taylor, Sworn January 28, 2018, Paras 1 & 2.**

41. Mr. Taylor's urgency was based on the premise that the *Divisional Court*, where an application for Judicial Review – Writ of Mandamus normally lies. The *Divisional Court* meets only twice a year, once in March, and again in October of each year in Mr. Taylor's court region. Mr. Taylor expressed concern that he would not be able to continue to pay for his medications until October of that year and would suffer as a result.

**Appeal Book & Appellant's Compendium Tab 9, Pages 150.
Affidavit of Paul Taylor, Sworn January 28, 2018, Paras 90.
Appeal Book & Appellant's Compendium Tab 10, Pages 154.
Affidavit of Paul Taylor, Sworn March 16, 2018, Paras 10.**

42. Mr. Taylor provided very detailed and clear examples of extremely lengthy institutional delays, in his past dealings with the workers compensation system. Where both the WSIB and the WSIAT have repeatedly admitted to and yet, provided no real justification for the delays. This goes to the character and behavior of the workers compensation system, as a collective whole in Ontario and **how it repeatedly violates Mr. Taylor and thousands of injured workers rights as human beings.**

**Appeal Book & Appellant's Compendium Tab 9, Pages 123 to 150.
Affidavit of Paul Taylor, Sworn January 28, 2018, Paras 90.**

H. Dismissal of Motion & Applications

43. On March 20, 2018, Mr. Taylor’s motion for leave, was heard before her Honour Madam Justice Petersen. In her endorsement, Madam Justice Petersen dismissed Mr. Taylor’s motion for leave, as well as his application for Judicial Review – Writ of Mandamus, and his application for Constitutional Challenge.

**Appeal Book & Appellant’s Compendium Tab 3, Pages 11 to 20.
Endorsement of Justice Madam Petersen, Dated March 20, 2018.**

44. In response, Mr. Taylor appeals her Honour Madam Justice Petersen’s decision to the Court of Appeal for Ontario.

PART III – ISSUES AND THE LAW

I. Was There an Error of Law in Dismissing the Motion for Leave?

Jurisdiction of the Superior Court of Justice

45. Mr. Taylor brought a motion for leave to the Superior Court of Justice, to hear his application for Judicial Review and Notice of Constitutional Question. The legal grounds for such a motion is set out in Section 6(2) of the *Judicial Review Procedure Act*, and Rule 37 of the *Rules of Civil Procedure*. The *Courts of Justice Act* also confirms that a Judge of the Superior Court of Justice is also a judge of the *Divisional court*.

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

Two-part Test for Leave

46. Mr. Taylor’s arguments before the Honourable Madman Justice Petersen, laid out the standard two-part test for a motion for leave to the Superior Court of Justice, to hear an application for Judicial Review. This was initially determined in the case of *Re Bennett and City of Belleville* by his Honour Justice Anderson, where his Honour stated:

“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].

Appellant’s Book of Authorities Tab 4 page 3,
[Re Bennett and City of Belleville, 1979 CanLII 2077 \(ON SC\).](#)

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

“There are circumstances in which financial loss might cause ... an individual to suffer extreme hardship”. The court also noted that “...the wait for a hearing in the Divisional Court would render the remedy nugatory.” [Emphasis added]

Appellant’s Book of Authorities Tab 5 page 3, & 4
[Re Canadian Pacific Express Ltd. et al. and Snow et al., 1981 CanLII 1633 \(ON CA\).](#)

48. There is no question after reviewing the facts Mr. Taylor has been placed in severe financial hardship, as a direct result of the institutional delays of the WSIB and the WSIAT. These delays were intentionally, controllable and deliberate in nature. This has been done by forcing Mr. Taylor to live/survive on a very low income. This has caused Mr. Taylor’s right to *security of person* to be violated, when he attempted suicide twice in the past. He has again now been told by her Honour Madam Justice Petersen to choose from buying his daughter and himself food or paying for his medications. Simply on the basis that he has survived on this very low income for such a long time, therefore her Honour felt Mr. Taylor can continue to survive this way.

Appeal Book & Appellant’s Compendium Tab 9, Pages 123 to 150.
Affidavit of Paul Taylor, Sworn January 28, 2018, Paras 90.

49. Mr. Taylor has been mocked, made fun of, slandered, and insulted, by both the WSIB and the WSIAT. They have gone so far as to state Mr. Taylor is a “*Fucking Joke*” and claiming Mr. Taylor “*deserves to have his ass kicked for not working*”. Among many other comments. This has caused Mr. Taylor severe emotional distress, as well as a complete lack of trust to be fair and impartial in both the workers compensation system and our justice system.

Appeal Book & Appellant’s Compendium Tab 9, Pages 123 to 150.

Misstatement of Lack of Urgency:

50. The WSIB abruptly stopped paying medical benefits for Mr. Taylor, which was something they have never done to Mr. Taylor in the more than twenty years. There is no question, that the WSIB, has acted in a retaliatory manner against Mr. Taylor. The alleged and false justification made by the WSIB was that it was Mr. Taylor's responsibility to send the medical report form, from his doctor to the WSIB. This was reiterated by Justice Petersen's endorsement and is completely incorrect and a deliberate deception according to the Oct. 4/17 letter.

***Appeal Book & Appellant's Compendium Tab 3, Pages 11 to 20.
Endorsement of Madam Justice Petersen, Dated March 20, 2018.***

51. Mr. Taylor argued before her Honour Madam Justice Petersen that the correct and accepted standard practice when injured persons are required to provide medical documentation, especially when they are requested, by the organizations, such as insurance companies and workers compensation boards like the WSIB.

52. The process is that:

- a. The organization sends the injured person a form and/or letter;
- b. The injured person is then requested to take the letter and/or form to their doctor; and
- c. have their doctor examine them and have their doctor send the report and/or form directly to the organization.

53. This process of obtaining medical information, would be something a reasonable person would expect, to be the process for collection of medical information. Simply, because it expedites the reporting process and more importantly, it ensures the integrity of information being reported.

54. The above described process was confirmed by the Queens Bench of Saskatchewan, in the case of *Branco v. AIG*. While this case is no way precedence setting for this court, it does however provide clear guidance for the court to understand the process of how medical forms are to be submitted to such organizations, as insurance companies and workers compensation boards. More importantly, it outlines who should be held responsible, when the forms are not properly submitted and why. The court found that the insurance company, AIG, wrongly punished Mr. Branco for something that was clearly out of his control. This case is very similar Mr. Taylor's matter, as he was wrongly punished for something that was and is out of his control.

Appellant's Book of Authorities Tab 6 page 3, & 4
[Branco v. AIG, 2013 SKOB 98 \(CanLII\)](#)

Unlawful Denial of Benefits:

55. Many insurance companies and workers compensation boards in Canada have intentionally denied legitimate claims for compensation. This places claimants who depend on the insurance and/or workers compensation in dire financial hardship. This is something the courts have dealt with and have taken a very strong position against in such cases as of the case which was reviewed by the Supreme Court of Canada in *Whitten v. Pilot Insurance Company*.

56. Whitten had made a claim on their home insurance, due to a fire. Pilot Insurance initially accepted the claim and paid some costs such as rent. Then, Pilot Insurance "*cut off the rent without telling the family*" and falsely accused the family that they "*had torched their own home*". This was a strategy, so the insurance company would not have to pay out – to save money. The matter was finally appealed to the Supreme Court of Canada – SCC.

57. The *Whitten v. Pilot* insurance SCC case draws on several similarities of comparison with the workers compensation system and private insurance in Canada. In their decision at the bottom of page 596, the SCC, identifies the important need and use of insurance, which is for “*peace of mind*”. This is much like workers compensation, which is also for “*peace of mind*” of the worker, when they suffer an injury that prevents them from earning a living. However, it is also for *peace of mind* for society. This is when society is relieved of the financial responsibility to take care of those persons, who become disabled and are no longer able to provide for themselves or their families. It has been estimated that more than 1,400 injured workers every month are forced on to Ontario’s welfare system due to intentional institutional delays and false denials.

58. Similarly, just like private insurance, workers compensation possesses a financial impact, on individuals when payments are delayed or ultimately intentionally withheld. As the SCC states “*The more devastating the loss, the more the insured may be at the financial mercy of the insurer...*” In the case of Mr. Taylor and the WSIB, the more the injured worker may be at the mercy of the workers compensation board. Mr. Taylor is at the mercy of the WSIB/WSIAT appeal system, which apparently can take as long as it feels like.

Appellant’s Book of Authorities Tab 14 pages 596-597
[Whitten v. Pilot Insurance Company, 2002 SCC 18](#) (CanLII).

59. Additionally, and more importantly Mr. Taylor argued that there is no such WSIB policy, as the WSIB and her Honour Madam Justice alleged. There was none provided upon numerous requests, *where a drug benefit plan is required to be renewed every two years*. Mr. Taylor argued that in the twenty years of his claim, there has been no formal request, nor was there any mention of any policy. Mr. Taylor also argued that he had inquired with many other injured workers and injured workers advocates like himself and confirmed this WSIB policy does not in

fact exist. Finally, Mr. Taylor sent a request to the WSIB for a copy of this policy. The WSIB has yet to ever provide such a claimed policy.

**Appeal Book & Appellant's Compendium Tab 10, Pages 154 to 158
Affidavit of Paul Taylor, Sworn March 16, 2018, Paras 10 to 23**

60. The issue of the WSIB implementing unwritten policies was raised in the case of *Castillo v. WSIB*. That was where “a number of injured workers whose NEL awards were similarly reduced by the WSIB on the basis of so-called pre-existing conditions.” This was alleged on a WSIB “secret policy”, which “...was done without “legal authority”...”. Mr. Taylor’s case is much like *Castillo* in that an unwritten policy is just as damaging and unlawful as a “secret policy.”

**Appellant's Book of Authorities Tab 12 pages 6, 13.
[Castrillo v. WSIB, 2017 ONCA 121](#) paras 6, 36**

61. Mr. Taylor argued that his case was of and is still of an urgent nature. As such, would be constituted as a violation of sections 2, 3, 7, 12, and 15 of the *Charter of Rights and Freedoms*. Mr. Taylor provided numerous caselaw, laying out the specific test for each *Charter* breach and compared it to his case confirming his case exceeded the test. This defined and compared what a matter of urgency was.

62. Such as in the case of; *Carter v. Canada* where **individuals were forced to take their own lives prematurely, constituted a violation of section 7 of the Charter**. Similarly, Mr. Taylor has declared he attempted suicide twice in the past. This was due to the lack of proper care and numerous lengthy institutional delays, on the part of the WSIB & the WSIAT. What can now only be defined as an act of retaliation. This clarified Mr. Taylor’s issues, as a violation of the *Charter*. The test was defined by the Supreme Court of Canada, therefore making Mr. Taylor’s matter of utmost urgency and importance.

Appellant's Book of Authorities Tab 7 page 334, 335

63. Mr. Taylor also argued that the numerous intentional delays, he has been experiencing by both the WSIB & the WSIAT, is a violation of common, statute, and constitutional law. First Mr. Taylor argued that the *Magna Carta* of 1215, which is part of British and Canadian Law states “*To no one will we sell, **to no one will we refuse or delay, right of justice**””. This was reiterated in Common-law. In a similar case where in *R. v. Morgentaler*, the Supreme Court of Canada stated that a delay so “**illusory** would constitute a deprivation of medical treatment” and therefore ultimately was a violation of Section 7, of the Charter.*

Appellant’s Factum Schedule B
Magna Carta, 1215
Appellant’s Book of Authorities Tab 8 page 380 to 381.
[R. v. Morgentaler, \[1988\] 1 SCR 30, 1988 CanLII 90 \(SCC\)](#)

64. The Supreme Court of Canada – SCC continues to reiterate & recognize the importance of **justice not being delayed**, in their recent decision in *R. v. Jordan*. Where the SCC stated that the current system of justice has created “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.**”

Appellant’s Book of Authorities Tab 9 page 632 & 633
[R. v. Jordan, 2016 SCC 27 \(CanLII\)](#)

65. While injured workers, such as Mr. Taylor, are NOT accused criminals, should they not be afforded similar equality in the eyes of our justice system? Regardless of the cost to the ‘Employer-funded’ worker’s compensation system. We should not forget of the principle of **Fiat justica ruat caelum**, which translates to “***Let justice be done, though the heavens may fall***”.

66. In his arguments Mr. Taylor laid out the common law requirements of urgency and confirmed his request exceeded these requirements for the urgency. Mr. Taylor also established that issue of **the high-handed tactics of retaliation against Mr. Taylor on the part of the WSIB**, which was due to Mr. Taylor seeking redress in the courts, as well as attempting to advocate for other injured workers.

**Appeal Book & Appellant's Compendium Tab 3, Pages 11 to 20.
Endorsement of Madam Justice Petersen, Dated March 20, 2018.**

67. While, Madam Justice Petersen disagreed with Mr. Taylor's arguments of urgency, her Honour provided no objective rationale for her view that Mr. Taylor's request was not urgent. Her Honour never made mention of the suicide attempts, which *were life threatening*, as in *Carter v. Canada*. There was no mention of the *financial hardship* on Mr. Taylor as defined as urgent by this court, in *Re Canada Pacific Express et al. and Snow et al.* where this court stated the following:

*"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 \(ON CA\).](#)
Appellant's Book of Authorities Tab 7 page 334 to 335.
[Carter v. Canada, \[2015\] SCC 5 \(CanLii\)](#)**

68. The numerous and lengthy historical delays, which caused Mr. Taylor severe financial hardship, were in the view of her Honour Madam Justice Petersen, just that, historical and bore no relevance on current matters. In fact, Madam Justice Petersen felt that even though Mr. Taylor had endured financial hardship for many months, by paying for non-prescription medications and treatments, in her Honour's view Mr. Taylor could endure longer hardships. This was in addition to the hardships with Mr. Taylor having to pay for his prescription medications, as well the over the counter medications. The reasoning of Madam Justice Petersen's decision was that Mr. Taylor was requested and therefore responsible for getting the updated medical

information to the WSIB. The WSIB did not receive the information, therefore her Honour's justification was that Mr. Taylor was to blame and should suffer as a result.

**Appeal Book & Appellant's Compendium Tab 3, Pages 11 to 20.
Endorsement of Madam Justice Petersen, Dated March 20, 2018.**

69. Unfortunately, Madam Justice Petersen was misled as to the truth. The fact is that Mr. Taylor was only required to provide his doctor with the letter. This is confirmed in the letter of October 4, 2017 where it states "...*please take this letter to your doctor and have him/her submit a report with the required information...*". As Mr. Taylor stated, he did what was required of him, when he stated in his affidavit "...*kindly asked my doctor to complete the report and send it to the WSIB.*" **Mr. Taylor is therefore only being punished for doing what he was asked to do.** This is therefore a complete failure of justice.

**Exhibit Book Tab 5A, Page 369.
Letter from WSIB to Mr. Taylor, Dated October 4, 2017.
Appeal Book & Appellant's Compendium Tab 10, Pages 157.
Affidavit of Paul Taylor, Dated March 16, 2018.**

70. In the case of *Pintea v. Johns* the Supreme Court of Canada endorsed the Canadian Judicial Council's *Statement of Principles on Self-represented Litigants and Accused Persons* (2006). Where at page 472 of their decision the SCC state "...*we endorse the Statement of Principles on Self-represented Litigants and Accused Persons (2006)*". In doing so the SCC has made the principles part of common law.

**Appellant's Book of Authorities Tab 10 page 472
[Pintea v. Johns, 2017 SCC 23 \(CanLII\)](#)**

71. At page 4 of the principles, it states that "**Self-represented persons should not be denied relief on the basis of a minor or easily rectified**". The minor or easily rectified issue was whether Mr. Taylor was required to provide the medical report to the WSIB, or was it the responsibility of the WSIB to obtain the report from the doctor. This could have easily and simply been rectified by

Madam Justice Petersen reviewing the letter of October 4, 2017, where it was submitted as evidence.

Appellant's Factum Schedule B
[CJC Statement of Principles on Self-represented Litigants and Accused Persons \(2006\)](#)

72. In page 7 of the CJC principles, it states that “**Judges should ensure that procedural and evidentiary rules are not used to unjustly hinder the legal interests of self-represented persons**”. Her Honour Madam Justice Petersen was more concerned with Mr. Taylor following WSIB appeal procedures no matter the length of delay or the hardship emotional, financial, or physical it causes to Mr. Taylor. Or that Mr. Taylor may jump the long cue for his appeals. In doing so deprived Mr., Taylor his right of justice and was a failure of justice.

Appellant's Book of Authorities Tab 10 page 472
[Pintea v. Johns, 2017 SCC 23 \(CanLII\)](#)
Appellant's Factum Schedule B
[CJC Statement of Principles on Self-represented Litigants and Accused Persons \(2006\)](#)

73. In Madam Justice Petersen's endorsement at page 3, states that historical matters are unimportant and are lacking in urgency. Madam Justice Petersen's endorsement overlooked the historical importance of the common practice of the workers compensation system to have extremely lengthy and numerous delays. Delays which inevitably caused hardships to Mr. Taylor. Madam Justice Peterson states at page 6 of her endorsement that Mr. Taylor could have brought his motion and application in October 2017. Her Honour makes the claim that because Mr. Taylor did not, this makes Mr. Taylor's matter not urgent. Madam Justice Petersen failed to consider that Mr. Taylor is self represented, lacking the proper legal abilities, resources, and means to take appropriate actions at the right times. In doing so committed an error of law as set down by the SCC in *Pintea v. Johns*.

Appeal Book & Appellant's Compendium Tab 3, Pages 11 to 20.
Endorsement of Madam Justice Petersen, Dated March 20, 2018.

74. Madam Justice Peterson states at pages 6 to 9, of her endorsement that the issue of cessation of prescription medications would have been urgent, had Mr. Taylor provided the medical information. Madam Justice Petersen relied on the WSIB argument that the WSIB policy, was that injured workers are required to send the medical reports into the WSIB. However, the October 4, 2017 letter, requests that Mr. Taylor is only to take the letter to the doctor and the doctor is required to send the medical report to the WSIB directly. This disregarded a standard procedure set by the courts in *Branco v. AIG*.

**Appeal Book & Appellant's Compendium Tab 3, Pages 11 to 20.
Endorsement of Madam Justice Petersen, Dated March 20, 2018.
Exhibit Book Tab 5A, Page 369.
Letter from WSIB to Mr. Taylor, Dated October 4, 2017.**

75. Therefore, Madam Justice Petersen committed an error of law, when her Honour dismissed Mr. Taylor's Motion for Leave, for the Superior Court to hear Mr. Taylor's application for Judicial Review – Writ of Mandamus and Constitutional Question. On the basis that there was more than enough evidence and facts confirming that the unlawful delay constituted an urgent matter.

J. Was there an Error of Law when the Application and Constitutional Question were Dismissed?

76. Her Honour Madam Justice Petersen committed an error of law when she dismissed Mr. Taylor's application for Judicial Review – Writ of Mandamus and Constitutional Question.

77. In Mr. Taylor's arguments for his application for Judicial Review – Writ of Mandamus, Madam Justice Petersen overlooked the fact that Mr. Taylor raised the legal argument that injured workers in Canada have a common law right to receive speedy determination & payment of benefits in lieu of suing their employers. This is a well accepted legal principle of workers compensation in Canada. As quoted in many cases such as *Medwid v. Ontario*. In Mr. Taylor's case the speedy determination & payment of benefits did not happen, therefore Judicial Review is warranted.

78. Mr. Taylor had shown that through the numerous lengthy delays constituted a violation of several sections of the Charter of Rights such as:

- e. Mr. Taylor had requested compensation for medical benefits, for over the counter medications and topical pain cremes in late September 2017. There was an initial decision made in October 2017, but no further final decision has yet been made.
- f. Mr. Taylor in October 2017 had requested to be compensated for loss of income in 1998, but no decision has been made on this matter at all and is still outstanding as of the preparation of these materials.
- g. Mr. Taylor's medical benefits were unlawfully suspended as of January 3, 2018 and still there has been no decision on this issue. This has been proven to be nothing short of a pure unlawful act of retaliation against Mr. Taylor for his redress in the courts and his advocacy efforts on behalf of injured workers.

79. The listed recent issues confirm that her Honour Madam Justice committed various errors of law when she failed to look at the overall delays from the WSIB in accordance with common law.

K. Do Injured Workers Have a Right to Speedy Determination & Payment of Benefits?

80. It has been a long-accepted practice in law that injured workers can not sue their employers and are statute barred. However, this is in place of a common law practice that injured workers shall receive *speedy determination & payment of benefits*. As stated by the then Ontario High Court

at page 2 of the case *Medwid v. Ontario* “*The disadvantage is accompanied by the advantages of immediate payment of benefits* by the Workers’ Compensation Board on a no-fault basis.” In Mr. Taylor’s case it is neither no fault as the WSIB has retaliated against him for failing to provide documentation which he was not required to provide, nor is there speedy determination or payment of benefits as he is now been waiting since January 3, 2018 for payment of medical benefits and since October for a decision on income replacement benefits.

Appellant’s Book of Authorities Tab 11 page 25
[*Medwid v. Ontario, 1988 ON SC 193 \(CanLII\)*](#)

81. Therefore, there is a common law right of speedy determination and payment of benefits for workers who suffer workplace injuries, such as Mr. Taylor. Her Honour Madam Justice Petersen committed an error of law when she failed to recognize this common law right.

PART IV – ORDER SOUGHT

82. Mr. Taylor who is the appellant in this appeal requests an order for the following:

- h. The Order of her Honour Madam Justice Petersen dated March 20, 2018, be set aside, and the following order be made in its place:
 - i. An order compelling the WSIB to:
 - i. Fully restore Mr. Taylor’s medical benefits, and compensate Mr. Taylor for any out of pocket expenses for any medications he has paid from January 3, 2018 onwards;
 - ii. Issue a written decision regarding Mr. Taylor’s request to be compensated for income replacement benefits for the period in August 1998 within five days of the

issue of the order. The WSIB to issue their decision(s) by E-mail and regular mail;

iii. Schedule and hold an oral appeal hearing, within five days after the issue of the order. This is appeal hearing would be regarding Mr. Taylor's request for to be compensated for over the counter medications & topical pain cremes, and income replacement

iv. Render a written decision to Mr. Taylor within five days after holding the oral hearing. The WSIB to issue their decision(s) by E-mail and regular mail; and

j. An order compelling the WSIAT that 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:

i. Schedule and hold an oral hearing, within five days when requested by Mr. Taylor;

ii. To render a written decision to Mr. Taylor within five days after holding the hearing. To issue the decision(s) to Mr. Taylor by e-mail and regular mail; and

83. An order for costs awarded to Mr. Taylor for \$500 for the motion hearing appearance and \$500 for the Appeal court appearance, in addition to Mr. Taylor's disbursements.

ALL OF WHICH IS RESPECTFULLY SUBMITTED TO THIS COURT.

PART V – CERTIFICATE

I, Paul Taylor, the Appellant, certify that:

- (i) The record and original exhibits from the court from which the appeal is taken are not required.
- (ii) The estimated time of my oral argument is 30 minutes, not including reply.

April 28, 2018

Paul Taylor
(Self-represented)

Schedule A – Common Laws

- 1 *Taylor v. WSIB*, 2017 ONSC 1223, Dated February 22, 2017
- 2 *Taylor v. WSIB*, 2017 ONSC 7511, Dated December 14, 2017
- 3 *Taylor v. WSIB*, 2018 ONCA 108, Dated February 6, 2018
- 4 *Re Bennett and City of Belleville*, 1979 CanLII 2077 (ON SC)
- 5 *Re Canadian Pacific Express Ltd. et al. and Snow et al.*, 1981 CanLII 1633 (ON CA)
- 6 *Branco v. AIG*, 2013 SKQB 98 (CanLII)
- 7 *Carter v. Canada*, 2015 SCC 5 (CanLII)
- 8 *R. v. Morgentaler*, [1988] 1 SCR 30, 1988 CanLII 90 (SCC)
- 9 *R. v. Jordan*, 2016 SCC 27 (CanLII)
- 10 *Pintea v. Johns*, 2017 SCC 23 (CanLII)
- 11 Canadian Judicial Council Principles on Self-represented Litigants, dated September 2006
- 12 *Medwid v. Ontario*, 1988 CanLII 193 (ON SC)

Schedule B – Statutory Laws

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. Canadian Charter of Rights and Freedoms – Constitution Act 1982

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.

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.

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.

N. Rules of Civil Procedure R.S.O. 1990

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).

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. O. Reg. 770/92, s. 10; O. Reg. 575/07, s. 3.

O. Courts of Justice Act R.S.O. 1990

DIVISIONAL COURT

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.

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).

Notice of constitutional question

109. (1) Notice of a constitutional question shall be served on the Attorney General of Canada and the Attorney General of Ontario in the following circumstances:

1. The constitutional validity or constitutional applicability of an Act of the Parliament of Canada or the Legislature, of a regulation or by-law made under such an Act or of a rule of common law is in question.

2. A remedy is claimed under subsection 24 (1) of the *Canadian Charter of Rights and Freedoms* in relation to an act or omission of the Government of Canada or the Government of Ontario.

Proceeding in wrong forum

110. (1) Where a proceeding or a step in a proceeding is brought or taken before the wrong court, judge or officer, it may be transferred or adjourned to the proper court, judge or officer.

Continuation of proceeding

(2) A proceeding that is transferred to another court under subsection (1) shall be titled in the court to which it is transferred and shall be continued as if it had been commenced in that court. R.S.O. 1990, c. C.43, s. 110.

P. Judicial Review Procedure Act R.S.O. 1990

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).

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

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.

Same

(3) The Board may establish such fee schedules for health care as it considers appropriate.

Penalty for late billing

(4) If the Board does not receive a bill for health care within such time as the Board may specify, the Board may reduce the amount payable for the health care by such percentage as the Board considers an appropriate penalty.

Prohibition

(5) No health care practitioner shall request a worker to pay for health care or any related service provided under the insurance plan.

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. 1997, c. 16, Sched. A, s. 33.

PART XI DECISIONS AND APPEALS Decisions by the Board

Jurisdiction

118. (1) The Board has exclusive jurisdiction to examine, hear and decide all matters and questions arising under this Act, except where this Act provides otherwise. 1997, c. 16, Sched. A, s. 118 (1).

Same

(2) Without limiting the generality of subsection (1), the Board has exclusive jurisdiction to determine the following matters:

1. Whether an industry or a part, branch or department of an industry falls within a class or group of industries in Schedule 1 or in Schedule 2 and, if so, which one.
2. Whether personal injury or death has been caused by an accident.
3. Whether an accident arose out of and in the course of an employment by a Schedule 1 or Schedule 2 employer.
4. Whether a person is co-operating in reaching his or her maximum medical recovery, in returning to work or in the preparation and implementation of a labour market re-entry plan.
5. Whether an employer has fulfilled his, her or its obligations under the insurance plan to return a worker to work or re-employ the worker.
6. Whether a labour market re-entry plan for a person is to be prepared and implemented.
7. Whether loss of earnings has resulted from an injury.
8. Whether permanent impairment has resulted from an injury, and the degree of the impairment.
9. The amount of a person's average earnings and net average earnings.
10. Whether a person is a spouse, child or dependant of an injured worker for the purposes of the insurance plan. 1997, c. 16, Sched. A, s. 118 (2); 1999, c. 6, s. 67 (41); 2005, c. 5, s. 73 (40).

Finality of decision

(3) An action or decision of the Board under this Act is final and is not open to question or review in a court. 1997, c. 16, Sched. A, s. 118 (3).

Same

(4) No proceeding by or before the Board shall be restrained by injunction, prohibition or other process or procedure in a court or be removed by application for judicial review or otherwise into a court. 1997, c. 16, Sched. A, s. 118 (4).

Appeals Tribunal

Jurisdiction

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

- (a) all appeals from final decisions of the Board with respect to entitlement to health care, return to work, labour market re-entry and entitlement to other benefits under the insurance plan;
- (b) all appeals from final decisions of the Board with respect to transfer of costs, an employer's classification under the insurance plan and the amount of the premiums and penalties payable by a Schedule 1 employer and the amounts and penalties payable by a Schedule 2 employer; and
- (c) such other matters as are assigned to the Appeals Tribunal under this Act. 1997, c. 16, Sched. A, s. 123 (1).

Same

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

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

Decisions on an appeal

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

Finality of decision

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

Same

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

General

Immunity

179. (1) No action or other proceeding for damages may be commenced against any of the following persons for an act or omission done or omitted by the person in **good faith** in the execution or intended execution of any power or duty under this Act:

1. Members of the board of directors, officers and employees of the Board.
2. The chair, vice-chairs, members and employees of the Appeals Tribunal.
3. Persons employed in the Office of the Worker Adviser or the Office of the Employer Adviser.
4. REPEALED: 2011, c. 11, s. 28 (1).
5. Physicians who conduct an assessment under section 47 (degree of permanent impairment).

6. Persons who are engaged by the Board to conduct an examination, investigation, inquiry, inspection or test or who are authorized to perform any function. 1997, c. 16, Sched. A, s. 179 (1); 2006, c. 19, Sched. M, s. 7; 2011, c. 11, s. 28 (1).

Transition

(1.1) Despite the repeal of paragraph 4 of subsection (1) by subsection 28 (1) of the *Occupational Health and Safety Statute Law Amendment Act, 2011*, no action or other proceeding for damages may be commenced against persons employed by a safe workplace association, a medical clinic or a training centre designated under section 6 for an act or omission done or omitted by the person in good faith in the execution or intended execution of any power or duty under this Act before the date on which subsection 28 (1) of the *Occupational Health and Safety Statute Law Amendment Act, 2011* comes into force. 2011, c. 11, s. 28 (2).

Exception

(2) Subsection (1) does not relieve the Board of any liability to which the Board would otherwise be subject in respect of a person described in paragraph 1, 4, 5 or 6 of subsection (1). 1997, c. 16, Sched. A, s. 179 (2).

Liability of the Crown

(3) Subsection (1) does not, by reason of subsections 5 (2) and (4) of the *Proceedings Against the Crown Act*, relieve the Crown of liability in respect of a tort committed by a person described in paragraphs 2 and 3 of subsection (1) to which the Crown would otherwise be subject. 1997, c. 16, Sched. A, s. 179 (3).

Immunity for health care practitioners, etc.

(4) No action or other proceeding may be commenced against a health care practitioner, hospital or health facility for providing information under section 37 or 47 unless he or she or it acts maliciously. 1997, c. 16, Sched. A, s. 179 (4).

R. CJC - Statement of Principles on Self-represented Litigants and Accused Persons - 2006

2. Self-represented persons should not be denied relief on the basis of a minor or easily rectified deficiency in their case.
2. Judges must exercise diligence in ensuring that the law is applied in an even-handed way to all, regardless of representation. The Council's statement of *Ethical Principles for Judges* (1998) has already established the principle of equality in principles governing judicial conduct. That document states that, "Judges should conduct themselves and proceedings before them so as to ensure equality according to law."
3. Judges should ensure that procedural and evidentiary rules are not used to unjustly hinder the legal interests of self-represented persons.

BACKSHEET

Taylor
(Applicant)

v.

The WSIB & The WSIAT
(Respondents)

Court file
no. C65144

Court of Appeal for Ontario

PROCEEDING COMMENCED AT

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