

COURT OF APPEAL FOR ONTARIO

BETWEEN:

PAUL TAYLOR

Applicant
(Appellant)

and

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

Respondents
(Respondents in Appeal)

**RESPONDING FACTUM OF THE WORKPLACE SAFETY &
INSURANCE APPEALS TRIBUNAL - WSIAT**

July 19th, 2018

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TO:

PAUL TAYLOR

[REDACTED]

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Applicant (Appellant)

AND TO: **THE WORKPLACE SAFETY & INSURANCE BOARD - WSIB**

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THE WORKPLACE SAFETY & INSURANCE APPEALS TRIBUNAL -
WSIATRespondents
(Respondents in Appeal)**RESPONDING FACTUM OF THE WORKPLACE SAFETY &
INSURANCE APPEALS TRIBUNAL - WSIAT****PART I. OVERVIEW**

1. This is an appeal from a decision of Justice Petersen of the Superior Court of Justice, dated March 20, 2018. In the decision, Justice Petersen held that: (a) Paul Taylor's motion for leave to bring his application for judicial review as an application before a single judge of the Superior Court of Justice was dismissed because the application was not urgent; and (b) in the alternative, Mr. Taylor's application for an order in the nature of *mandamus* was denied because it was premature.

2. Underlying this appeal are three benefits claims Mr. Taylor made in September and October 2017, and in January 2018, to the Workplace Safety & Insurance Board (the "WSIB" or the "Board") for benefits under the *Workplace Safety and Insurance Act, 1997* ("WSIA" or the "Act"). The benefits claims at issue are: (a) a denial of

reimbursement for non-prescribed pain medication; (b) cessation of coverage for reimbursement of prescription medications; and (c) a request for benefits for certain dates in 1998 (*Taylor* 2018).

Workplace Safety and Insurance Act, 1997, SO 1997, c 16, Sched A [WSIA].
Taylor v. Ontario (Workplace Safety Insurance Board), 2018 ONSC 3791 at para 2, Tab 1 of the Tribunal's Book of Authorities [*Taylor* 2018]. The decision is included in the Respondent's Book of Authorities as the Appeal Book & Compendium includes only the handwritten endorsement.

3. The first level decision maker – the Board – had not rendered a final decision respecting Mr. Taylor's entitlement to any of these benefits claims. Hence, neither this appeal nor the underlying judicial review raises the merits of any of these claims. Mr. Taylor's application did not seek substantive review of any decision.

4. Instead, Mr. Taylor sought an order that the Court below micromanage on-going proceedings before the Board and (since none of these claims was before the Workplace Safety & Appeals Tribunal ("WSIAT" or the "Tribunal")) an order interfering with hypothetical proceedings before the Tribunal. Notwithstanding clear statutory language to the contrary, Mr. Taylor sought to compel the Board to: (a) hold an oral hearing within five days; and (b) render a written decision within five days of the hearing (WSIA; Notice of Application). He also sought a similar order compelling the Tribunal to conduct an oral hearing and render a written decision in the same timeframe, if he disagreed with the Board's decisions once rendered and chooses to appeal these decisions to the Tribunal (Notice of Application).

Workplace Safety and Insurance Act, 1997, S.O. 1997, c. 16, Sched. A, s. 131.
Notice of Application for Judicial Review – Writ of Mandamus, Dated February 21, 2016, Appeal Book and Compendium of the Appellant, Tab 5, at 36, para 8 [Notice of Application].
Ibid.

5. Justice Petersen was correct that Mr. Taylor's application did not meet the threshold for urgency under s. 6(2) of the *Judicial Review Procedure Act* ("JRPA"). By definition, the application cannot be urgent *vis a vis* the Tribunal since there was no appeal before the Tribunal. Similarly, the application *vis a vis* the Tribunal is manifestly premature.

Judicial Review Procedure Act, R.S.O 1990, c J1 [JRPA].

6. The appeal from Justice Petersen's order should be dismissed, with costs.

PART II. FACTS

1. The Parties and the Appeal Procedure

7. Mr. Taylor is a *WSIA*-benefits claimant. He previously attempted to sue both the Board and the Tribunal, even though the Tribunal told Mr. Taylor the relief he was seeking was properly brought as a judicial review.¹ His action was dismissed both for want of jurisdiction, and because it disclosed no reasonable cause of action (*Taylor* 2017). The decision was upheld by this Court on appeal (*Taylor* ONCA 2018). There are three outstanding costs orders against Mr. Taylor, in favour of both the Board and Tribunal, totalling \$16,000 in the aggregate for the costs of the motion to strike his action and the appeal from that decision, as well as from the proceedings below (*Affidavit of Michelle Alton; Taylor* 2018).

See *Taylor v. Workplace Safety & Insurance Board et al*, 2017 ONSC 1223, Tab 2 of the Tribunal's Book of Authorities [*Taylor* 2017].

See *Taylor v. Workplace Safety & Insurance Board et al*, 2018 ONCA 108, Tab 3 of the Tribunal's Book of Authorities [*Taylor* ONCA 2018].

¹ Mr. Taylor initially commenced a judicial review in the wrong court, which he later abandoned in favour of his action for damages. See *Affidavit of Michelle Alton*, Appeal Book & Compendium of the Appellant, Tab 12 at 171-172, paras 6-10 and the exhibits thereto.

Affidavit of Michelle Alton, Exhibit Book of the Appellant, Tab 6 at 375-376, paras 13-14[Affidavit of Michelle Alton].
Taylor v. Ontario (Workplace Safety Insurance Board), 2018 ONSC 3791 at para 21, Tab 1 of the Tribunal's Book of Authorities [*Taylor* 2018].

8. The Board is an independent trust agency created under the *WSIA* to administer workplace accident benefits under the Act.
9. The Tribunal is an independent administrative tribunal created under the *WSIA*. The Tribunal hears and decides appeals from final decisions of the Board.
10. In order for an appeal by a claimant to be heard by the Tribunal, the following must have occurred:
 - (a) The Board must make a decision respecting a claimant's entitlement to *WSIA*-benefits;
 - (b) If the claimant disagrees with the decision, the claimant may object to the Board's decision by submitting a Notice of Objection. Pursuant to s. 120 of the *WSIA*, the claimant must raise his or her objection within the statutory time limits;
 - (c) If the Board does not change its decision following receipt of the claimant's objection, and the claimant wishes to continue with their objection, they must complete and submit an Appeal Readiness Form;
 - (d) Once the claimant has submitted an Appeal Readiness Form, the claimant's objection will be considered by an Appeals Resolution Officer who is part of the Board's Appeals Services Division (which is not WSIAT).

The Appeals Resolution Officer will issue a final decision at the Board-level; and

- (e) If the claimant disagrees with the decision of the Board's Appeals Services Division, then and only then, may the claimant appeal to the Tribunal pursuant to s. 125 of the *WSIA* (Affidavit of Michelle Alton).

Affidavit of Michelle Alton, Exhibit Book of the Appellant, Tab 6 at 377-378, para 20[Affidavit of Michelle Alton].

2. The Relevant Benefits Claims

11. On September 20, 2017, Mr. Taylor sought coverage from the Board related to certain over-the-counter medications (Affidavit of Paul Taylor, Jan 2018). Mr. Taylor's evidence is that he had been taking these over-the-counter medications for some time, yet he had not previously sought reimbursement for them from the Board (Affidavit of Paul Taylor, Jan 2018).

Affidavit of Paul Taylor, Sworn January 28, 2018, Exhibit Book of the Appellant, Tab 1, Exhibit Y at 193 [Affidavit of Paul Taylor, Jan 2018].
Ibid.

12. On October 2, 2017, Mr. Taylor sent a further letter to the Board's counsel, in which he sought to recover benefits Mr. Taylor alleges he was entitled to for August 13, 14, 17 and 18, 1998, and for which he alleges he was never paid (Affidavit of Paul Taylor, Jan 2018). As of the date of Mr. Taylor's application, the Board had not made a preliminary decision respecting this issue.

Affidavit of Paul Taylor, Sworn January 28, 2018, Exhibit Book of the Appellant, Tab 1, Exhibit AA at 198 [Affidavit of Paul Taylor, Jan 2018].

13. In a letter dated October 4, 2017, the Board asked Mr. Taylor for updated medical information from his treating physician “if **non-narcotic** medications are continued to be prescribed beyond January 3, 2018” [emphasis in original] (Affidavit of Paul Taylor, Jan 2018). Mr. Taylor did not respond to this letter or provide the requested information from his treating physician (Affidavit of Jojit Labuntog). In a reply affidavit, Mr. Taylor deposed that he brought the letter to his physician, but it appears that Mr. Taylor’s physician did not submit the information to the WSIB on his behalf² since it has not been received by the Board (Affidavit of Paul Taylor, Mar 2018; Affidavit of Jojit Labuntog).

Affidavit of Paul Taylor, Sworn January 28, 2018, Exhibit Book of the Appellant, Tab 1, Exhibit BB at 204 [Affidavit of Paul Taylor, Jan 2018].

Affidavit of Jojit Labuntog, Exhibit Book of the Appellant, Tab 5 at 367-368, para 5 [Affidavit of Jojit Labuntog].

Affidavit of Paul Taylor, Sworn March 16, 2018, Exhibit Book of the Appellant, Tab 2 at 256, para 19 [Affidavit of Paul Taylor, Mar 2018]

Affidavit of Jojit Labuntog, Exhibit Book of the Appellant, Tab 5, at 367-368, para 5 [Affidavit of Jojit Labuntog].

14. On October 5, 2017, the Board sent Mr. Taylor a letter confirming that the Board would review his letter received September 26, 2017, related to coverage for over-the-counter medications, on an expedited basis, and render a decision by October 11, 2017 (Affidavit of Paul Taylor, Jan 2018).

² It appears from Mr. Taylor’s affidavit sworn March 16th 2018 that both Mr. Taylor and his physician misunderstood the request, which clearly requested that Mr. Taylor provide updated medical information if he still required coverage for prescription medications after January 1, 2018. Mr. Taylor deposes, “I asked her [his physician] to prepare a medical report, as requested by the WSIB. I observed my doctor to be very confused. It was clearly observed, what was the point, the WSIB had already denied my request for over the counter medications.” [Emphasis added.] It is unfortunate that Mr. Taylor and his physician misunderstood what was clearly set out in the letter; however, their misunderstanding cannot justify the lack of urgency or prematurity of this proceeding. Moreover, the fact that Mr. Taylor’s physician did not submit the requested information is also not attributable to the Board (or *a fortiori* to the Tribunal), and cannot be used to justify the alleged urgency or ripeness of the issues raised in Mr. Taylor’s application. In recent correspondence to the Registrar of the Court of Appeal for Ontario, the Board confirmed that if Mr. Taylor submitted the requested medical information, the Board would consider his entitlement to prescription drug coverage.

Affidavit of Paul Taylor, Sworn January 28, 2018, Exhibit Book of the Appellant, Tab 1, Exhibit CC at 207 [Affidavit of Paul Taylor, Jan 2018].

15. On October 11, 2017, the Board sent Mr. Taylor a letter advising him that he would not be reimbursed for over-the-counter medications (Affidavit of Paul Taylor, Jan 2018).

Affidavit of Paul Taylor, Sworn January 28, 2018, Exhibit Book of the Appellant, Tab 1, Exhibit DD at 210 [Affidavit of Paul Taylor, Jan 2018].

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

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

I caution the WSIB that failure to make a speedy decision may result in an application being filed with the Superior Court of Justice for a Writ of Mandamus (Affidavit of Paul Taylor, Jan 2018).

Affidavit of Paul Taylor, Sworn January 28, 2018, Exhibit Book the Appellant, Tab 1, Exhibit FF at 218 [Affidavit of Paul Taylor, Jan 2018].

17. On October 24, 2017, the Board wrote to Mr. Taylor to advise him that access to his claim file would be expedited and that an Appeal Readiness Form would be sent to him respecting the Board's initial decision to deny Mr. Taylor coverage for non-prescription medication (Affidavit of Paul Taylor, Jan 2018). That appeal would be before the Board's Appeal Services Division, not the Tribunal.

Affidavit of Paul Taylor, Sworn January 28, 2018, Exhibit Book of the Appellant, Tab 1, Exhibit GG at 221 [Affidavit of Paul Taylor, Jan 2018].

18. The Board sent Mr. Taylor his claim file on November 9, 2017 (Affidavit of Paul Taylor, Jan 2018).

Affidavit of Paul Taylor, Sworn January 28, 2018, Exhibit Book of the Appellant, Tab 1, Exhibit II at 225 [Affidavit of Paul Taylor, Jan 2018].

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

As I mentioned previously in my communication with the WSIB I will be seeking a “Writ of Mandamus” of the court to: order the WSIB to hold an oral hearing within five days of his/her honour’s decision; that the WSIB will have five days after the oral hearing to render a written decision; that the WSIAT be ordered to hold an oral hearing within five days after they have been notified by me of my intent to appeal, if I choose to; and the WSIAT issue a written decision five days after the oral hearing. The WSIB will be served in accordance with the Rules of Civil Procedure. The reason I am taking this action against the WSIB & the WSIAT, is that the delays in Canada’s dispute system both legal and administrative law have become utterly untenable and must be stopped! ... (Affidavit of Paul Taylor, Jan 2018).

Affidavit of Paul Taylor, Sworn January 28, 2018, Exhibit Book of the Appellant, Tab 1, Exhibit JJ at 233 [Affidavit of Paul Taylor, Jan 2018].

20. On January 20, 2018, Mr. Taylor submitted the Appeal Readiness Form to the Board’s Appeal Services Division. In his covering email, Mr. Taylor stated:

I also wish to clarify that I am presently not covered for ANY medications. Previous to this issue being raised I was fully covered for any prescription medications. As a result I have, or will be filing a writ of mandamus with the court to compel the WSIB and the WSIAT to expedite the appeal process. [Emphasis in original] (Affidavit of Paul Taylor, Jan 2018)

Affidavit of Paul Taylor, Sworn January 28, 2018, Exhibit Book of the Appellant, Tab 1, Exhibit KK at 236 [Affidavit of Paul Taylor, Jan 2018].

21. Mr. Taylor interpreted the Board’s decision to halt his prescription drug coverage as retaliation (Notice of Motion for Leave). He continues to maintain that position before this Court, notwithstanding the un-contradicted evidence that the Board never received the requested medical information related to that coverage (Affidavit of Paul Taylor, Mar 2018; Affidavit of Jojit Labuntog).

Notice of Motion for Leave, Appeal Book and Compendium of the Appellant, Tab 4 at 25-26, paras 17-18 [Notice of Motion for Leave].

Affidavit of Paul Taylor, Sworn March 16, 2018, Exhibit Book of the Appellant, Tab 2 at 255, para 55 [Affidavit of Paul Taylor, Mar 2018].
Affidavit of Jojit Labuntog, Sworn March 13, 2018, Exhibit Book of the Appellant, Tab 5 at 367-368, para 5 [Affidavit of Jojit Labuntog].

3. The Application

22. By January 20, 2018, only one of Mr. Taylor's three claims was ready for hearing by the Board's Appeal Services Decision. None were before the Tribunal. Nonetheless, Mr. Taylor decided to proceed with an application seeking relief in the nature of *mandamus* against both the Board and the Tribunal, as he had previously threatened many times.

23. On January 22, 2018, Mr. Taylor caused an application to be issued related to the same issues as are now under appeal, with a return date of February 6, 2018 (Affidavit of Paul Taylor, Mar 2018). He swore his affidavit in support of his application on January 28, 2018. These materials were not served or provided to the Tribunal.

Affidavit of Paul Taylor, Sworn March 16, 2018, Exhibit Book of the Appellant, Tab 2 at 261, para 36 [Affidavit of Paul Taylor, Mar 2018].

24. Instead, on February 21, 2018, Mr. Taylor caused a new duplicate application to be issued, which he again did not serve on the Tribunal until weeks later. The new application was returnable March 20, 2018. He set it down without consulting the respondents. Mr. Taylor has confirmed that he was preparing his materials from January 20, 2018 onwards (Affidavit of Paul Taylor, Mar 2018).

Affidavit of Paul Taylor, Sworn March 16, 2018, Exhibit Book of the Appellant, Tab 2 at 261, para 36-37 [Affidavit of Paul Taylor, Mar 2018].

25. On March 6, 2018, Mr. Taylor served the Tribunal with his application and motion materials. The Tribunal retained counsel on March 7, 2018 (Affidavit of Michelle Alton).

Affidavit of Michelle Alton, Sworn March 13, 2018, Exhibit Book of the Appellant, Tab 6, at 376, para 15 [Affidavit of Michelle Alton].

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

I will, without question and until the day I die, expose the corruption of the workers compensation system within Ontario and in Canada. ... (Affidavit of Michelle Alton)

Affidavit of Michelle Alton, Exhibit Book of the Appellant, Tab 6, Exhibit E at 391 [Affidavit of Michelle Alton].

27. On March 12, 2018, the Tribunal's counsel requested a brief adjournment of this matter, and agreed to work with Mr. Taylor to have the matter heard at an early date (Affidavit of Michelle Alton). Mr. Taylor responded on March 13, 2018, stating he would only agree to an adjournment on the following terms, which the Board understandably rejected:

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

Affidavit of Michelle Alton, Exhibit Book of the Appellant, Tab 6, Exhibit F at 393 [Affidavit of Michelle Alton].

Affidavit of Michelle Alton, Exhibit Book of the Appellant, Tab 6, Exhibit G at 395 [Affidavit of Michelle Alton].

4. Justice Petersen's Decision and Mr. Taylor's Appeal to this Court

28. Justice Petersen heard Mr. Taylor's motion and application on March 20, 2018. She decided the case that day and provided her endorsement.

29. Mr. Taylor served his Notice of Appeal on the Tribunal (dated March 20, 2018) on March 22, 2018.

30. In a letter dated April 23, 2018, the Registrar of the Court of Appeal for Ontario advised Mr. Taylor that if his appeal was not perfected by May 15, 2018, it would be dismissed for delay.

31. On May 16, 2018, Mr. Taylor wrote to the Registrar of the Court of Appeal for Ontario requesting an extension of the time to perfect his appeal. Both the Board and the Tribunal consented to such an extension. Mr. Taylor ultimately perfected his appeal on May 25, 2018. Notwithstanding the fact that his materials were filed more than one month late, Mr. Taylor subsequently wrote to the Registrar of the Court of Appeal for Ontario requesting an urgent hearing of this appeal.

PART III. ISSUES AND LAW

A. Preliminary Issue: Mr. Taylor did not seek leave to appeal

32. Pursuant to s. 6(4) of the *JRPA*, a decision of a single judge of the Superior Court of Justice on an urgent application for judicial review brought pursuant to s. 6(2) of the *JRPA* may only be appealed to the Court of Appeal with leave of this Court. While Mr. Taylor has not sought or obtained leave, and the Tribunal submits he would not have been granted leave, the Tribunal is nonetheless prepared to address this appeal on its merits, and respectfully submits that a substantive decision will be of assistance to the parties.

B. The legal issues raised by the appeal and the standard of review

33. The Tribunal is prepared to proceed on the basis that the appropriate standard of review on the appeal is correctness, even though Justice Petersen's analysis in some cases is highly fact specific.

34. Mr. Taylor's appeal raises two issues:

- (a) Was Justice Petersen's decision to dismiss Mr. Taylor's motion to bring his application for judicial review before a single judge of the Superior Court of Justice correct?
- (b) Was Justice Petersen's decision to dismiss Mr. Taylor's application seeking an order in the nature of *mandamus* correct?

1. Mr. Taylor's application was not urgent

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

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

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

Judicial Review Procedure Act, R.S.O. 1990, c. J.1.

36. Justice Petersen correctly held that Mr. Taylor's application was not urgent. There was no proceeding before the Tribunal when he filed his application. By definition, the relief Mr. Taylor was seeking against the Tribunal (i.e. to have his hypothetical appeal heard orally within five days and written reasons five days after that) cannot be urgent in these circumstances.

37. However, even if an appeal from a final decision of the Board relating to one of Mr. Taylor's benefits claims was before the Tribunal, Mr. Taylor's application would still not be urgent. As Justice Petersen correctly held:

- (a) Mr. Taylor's historical claim for benefits from 1998 cannot be urgent, as Mr. Taylor quite properly conceded (*Taylor* 2018);
- (b) Mr. Taylor's claim for reimbursement of non-prescribed medication cannot be urgent since the evidence is that he was using these medications for years without seeking reimbursement (*Taylor* 2018; Affidavit of Paul Taylor, Jan 2018); and
- (c) Mr. Taylor's claim relating to the cessation of his prescription drug coverage cannot be urgent because Mr. Taylor was given three months' notice to provide updated medical information to the Board, and he had not done so, resulting in the discontinuance of this benefit (*Taylor* 2018; Affidavit of Jojit Labuntog). Once Mr. Taylor provides updated medical information, the Board will consider his entitlement.

Taylor v. Ontario (Workplace Safety Insurance Board), 2018 ONSC 3791 at para 11, Tab 1 of the Tribunal's Book of Authorities [*Taylor* 2018].

Taylor 2018 at para 12.

Affidavit of Paul Taylor, Sworn January 28, 2018, Exhibit Book of the Appellant, Tab 1, Exhibit Y at 193 [Affidavit of Paul Taylor, Jan 2018].

Taylor 2018 at para 15.

Affidavit of Jojit Labuntog, Exhibit Book of the Appellant, Tab 5 at 367-368, para 5 [Affidavit of Jojit Labuntog].

38. Furthermore, while the Tribunal is sympathetic to Mr. Taylor's personal circumstances, Mr. Taylor has not conducted this litigation in a manner that reflects its alleged urgency. He threatened to commence these proceedings as early as October

17, 2017 (Affidavit of Paul Taylor, Jan 2018), but did not. There was no reason for Mr. Taylor to wait; nothing changed between October 2017 and March 2018, aside from the accumulation of more undecided claims. In fact, Mr. Taylor commenced an application with an earlier return date, then aborted it, and re-commenced these proceedings returnable on a later date (Affidavit of Paul Taylor, Mar 2018). He also failed to perfect this appeal in a timely manner.

Affidavit of Paul Taylor, Sworn January 28, 2018, Exhibit Book of the Appellant, Tab 1, Exhibit FF at 215 [Affidavit of Paul Taylor, Jan 2018].
Affidavit of Paul Taylor, Sworn March 16, 2018, Exhibit Book of the Appellant, Tab 2 at 261, para 36 [Affidavit of Paul Taylor, Mar 2018].

2. Mr. Taylor's application was premature

39. Judicial review is a discretionary remedy. It is well settled that courts will not exercise their discretion to hear a judicial review application that is premature, absent exceptional circumstances. As Justice Stratas has held, "courts should not interfere with ongoing administrative processes until after they are completed, or until the available, effective remedies are exhausted" (*C.B. Powell; Toth*). The principle has been applied "vigorously", and "the authorities show that very few circumstances qualify as 'exceptional' and the threshold for exceptionality is high" (*C.B. Powell*).

C.B. Powell Ltd. v. Canada (Border Services Agency), 2010 FCA 61 at para 31. Tab 4 of the Tribunal's Book of Authorities [*C.B. Powell*].
Toth Equity Ltd. v. Ottawa (City), 2011 ONCA 372 at para 35, Tab 5 of the Tribunal's Book of Authorities [*Toth*].
C.B. Powell at para 33.

40. In the present appeal, Justice Petersen correctly held that Mr. Taylor's application was premature (*Taylor* 2018). Respecting the Tribunal, it is manifestly so; the Tribunal was not seized of any matter, and the only relief Mr. Taylor sought was to

have Justice Petersen micromanage hypothetical future appeals from final decisions of the Board.

Taylor v. Ontario (Workplace Safety Insurance Board), 2018 ONSC 3791 at para 17, at Tab 1 of the Tribunal's Book of Authorities [*Taylor* 2018].

41. In any event, even if there was an appeal before the Tribunal, Mr. Taylor's application would be premature. Mr. Taylor seeks relief in the nature of *mandamus*. The test for *mandamus* is well-settled. In the oft-quoted case of *Karavos v. Toronto (City)*, Justice Laidlaw held on behalf of this Court held that there are four requirements before such an order will issue:

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

Karavos v. Toronto (City of and Gillies), [1948] DLR 294 (Ont CA), at 297, at Tab 6 of the Tribunal's Book of Authorities [*Karavosos*], cited with approval in numerous cases including in *Toth Equity Limited v. Ottawa (City of)*, 2011 ONCA 372 at para 31, at Tab 5 of the Tribunal's Book of Authorities [*Toth*].

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

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

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

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

Cooney Bulk Sales Limited v. Teamsters, Local Union No. 91, 2017 ONSC 3651, paras 2-3, at Tab 7 of the Tribunal's Book of Authorities [*Cooney*].
Workplace Safety and Insurance Act, 1997, S.O. 1997, c. 16, Sched. A [*WSIA*]

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

45. The Tribunal's duty is to the public generally. Directing the Tribunal to abide by a specific timetable or a particular procedure for one claimant's case risks undermining that duty, as the Tribunal will have to marshal resources it could otherwise expend on other matters to satisfy the order for Mr. Taylor's personal benefit.

46. Second, no duty to act is incumbent on the Tribunal. The Board has not rendered a final decision on any issue raised by Mr. Taylor, and so no appeal could possibly lie to the Tribunal at this time.

47. Third, the manner of hearing, the timing of that hearing, and the timing for the release of any decision, are discretionary, administrative decisions of the Tribunal and of individual decision makers, and are at the heart of the autonomy of the Tribunal and its decision makers. The integrity of the Tribunal should not be interfered with by this Court in this manner, and Justice Petersen was correct to refrain from doing so. A

fundamental principle of the law of judicial review is the Court's respect for administrative processes and decisions.

48. Notably, the privative clause that protects Tribunal decisions, and which has been described by the Court of Appeal for Ontario as "the toughest privative clause known to Ontario law" (*Rodrigues*), provides as follows:

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

Rodrigues v. Ontario (Workplace Safety and Insurance Appeals Tribunal), 2008 ONCA 719, para 22, at Tab 8 of the Tribunal's Book of Authorities [*Rodrigues*].
Workplace Safety and Insurance Act, 1997, S.O. 1997, c. 16, Sched. A [WSIA].

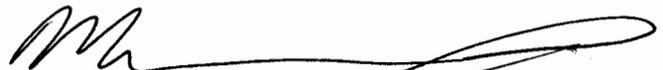
49. An order in the nature of *mandamus* is effectively injunctive relief, from which proceedings before the Tribunal are to be protected.

50. Finally, fourth, Mr. Taylor did not mail any demand of the Tribunal to abide by his unilateral timetable. However, the Tribunal concedes that if Mr. Taylor were to make such a demand it would be refused, given the nature of the Tribunal's responsibilities to the public generally, and its authority to control its own process.

PART IV. ORDER SOUGHT

51. The Tribunal seeks an order dismissing the appeal, with costs.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 19th day of July, 2018.



Michael Fenrick
Lawyer for the Respondent (Respondent in
Appeal), Workplace Safety and Insurance
Appeals Tribunal

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:

PAUL TAYLOR

Applicant

and

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

Respondents

CERTIFICATE

I estimate that 10 minutes will be needed for my oral argument of the appeal, not including reply. An Order under 61.09(2) (original record and exhibits) is not required.

DATED AT Toronto, Ontario this 19th day of July, 2018.



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SCHEDULE A – TABLE OF AUTHORITIES

1. *Taylor v. Ontario (Workplace Safety Insurance Board)*, 2018 ONSC 3791
2. *Taylor v. Workplace Safety & Insurance Board et al*, 2017 ONSC 1223
3. *Taylor v. Workplace Safety & Insurance Board et al*, 2018 ONCA 108
4. *C.B. Powell Ltd. v. Canada (Border Services Agency)*, 2010 FCA 61
5. *Toth Equity Ltd. v. Ottawa (City)*, 2011 ONCA 372
6. *Karavos v. Toronto (City of and Gillies)*, [1948] DLR 294 (Ont CA)
7. *Cooney Bulk Sales Limited v. Teamsters, Local Union No. 91*, 2017 ONSC 3651
8. *Rodrigues v. Ontario (Workplace Safety and Insurance Appeals Tribunal)*, 2008 ONCA 719

SCHEDULE B – TABLE OF STATUTORY AUTHORITIES

Judicial Review Procedure Act, R.S.O. 1990, c. J.1

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).

Appeal to Court of Appeal

(4) An appeal lies to the Court of Appeal, with leave of the Court of Appeal, from a final order of the Superior Court of Justice disposing of an application for judicial review pursuant to leave granted under subsection (2). R.S.O. 1990, c. J.1, s. 6 (4); 2006, c. 19, Sched. C, s. 1 (1).

Workplace Safety and Insurance Act, 1997, S.O. 1997, c. 16, Sched. A

DECISIONS BY THE BOARD

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Objection to Board decision

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

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

Notice of objection

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

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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.

Appeals Tribunal: miscellaneous rules**Principle of decision**

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

Same

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

Hearings

(3) The Appeals Tribunal may conduct hearings orally, electronically or in writing.

Appeal

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

Notice of appeal

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

Notice by Appeals Tribunal

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

Board records, etc.

(4) The Board shall give the Appeals Tribunal a copy of its records relating to the appeal promptly upon being notified of the appeal.

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Time limit for decisions

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

Transition

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

Same

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

PROCEDURAL AND OTHER POWERS

Practice and procedure

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

Same, Appeals Tribunal

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

Non-application

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

Notice of decisions

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

PAUL TAYLOR

Applicant (Appellant)

-and- THE WORKPLACE SAFETY & INSURANCE BOARD - WSIB et
al.
Respondents (Respondents in Appeal)

Court File No. C65144

COURT OF APPEAL FOR ONTARIO

PROCEEDING COMMENCED AT
TORONTO

**RESPONDING FACTUM OF THE
WORKPLACE SAFETY & INSURANCE
APPEALS TRIBUNAL - WSIAT**

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