PART I – REPLY TO WSIB & WSIAT'S OVERVIEW AND FACTS

WSIAT improperly stated facts

1. Both the WSIAT and the WSIB have misstated numerous facts in their memorandums. The first being that Mr. Taylor suffered a second work accident on August 20, 1997, which was incorrect[1]. The incident on August 20, 1997 was, according to the WSIB ARO decision, a recurrence of the February 6, 1997 work accident[2]. Additionally, Mr. Taylor had suffered four work accidents with his employer's client prior to August 20, 1997, including one when he had returned to work in July 7, 1997. These are but a few of the misstated facts.

2. It is accepted that Mr. Taylor did not provide arguments, in his memorandum, as to the lack of accommodations by the WSIB, the WSIAT, and the Courts below, regarding his need for reasonable tolerance for his disabilities and being a self-represented litigant. Mr. Taylor did provide many pieces of evidence which confirm his claims. His arguments, he believed as an SRL, would be done if Mr. Taylor's Application for Leave is granted by this honourable Court.

3. Mr. Taylor is a person with numerous disabilities and requires accommodations for them. The WSIB, WSIAT, and the courts below failed to provide reasonable accommodations in their hearings and within their decisions. There are a very large number of Canadians and migrant workers who have disabilities, including injured workers and would benefit from this matter being decided by this Honorable Court. Therefore, Mr. Taylor raised this as one of his public importance factors for his Application to be granted.

4. Mr. Taylor has been a self-represent litigant throughout the entire process. Mr. Taylor has been treated unjustly, by the WSIB, the WSIAT, and the Courts below. This is simply because Mr. Taylor is a self-represent litigant and is confirmed in many scholarly reports and an affidavit provided by Dr. Julie MacFarlane. The unjust treatment by administrative boards & tribunals, and courts below, towards self-represent litigants is a national concern and impacts many Canadians, which is why Mr. Taylor also raised this as one of his public importance factors for his Application.

---

[1] See para 5, page 2, of the WSIAT's Response Memorandum of Argument.

[2] See WSIB decision dated April 17, 1998, which is located at tab 15, pages 174 to 179 of the Application Record.

5. Mr. Taylor is also an injured worker who has been treated cruelly and intentionally deceptively by both the WSIB and the WSIAT. It is a very common practice for workers compensation boards and tribunals to be intentionally deceptive towards injured workers, such as Mr. Taylor. Among the many deceptions discussed in the Application and provided in evidence is that both the WSIB and the WSIAT, have repeatedly informed and advised in an official capacity, that Mr. Taylor, or any other Canadian that has been intentionally wrong by them, has no legal right of redress against either the WSIB or the WSIAT, as they are absolutely immune.

6. If Mr. Taylor's application is granted leave, it will be proven that Mr. Taylor's recording, which was made for note taking purposes was not surreptitious, as the WSIAT has falsely alleged and that Mr. Taylor's actions were lawful[3].

7. It will also be proven that the panel members had taken no proper and easily applicable precautions to ensure their meeting was in fact a secret deliberation and not just a discussion among individuals. The panel members took no reasonable precautions when they spoke in the hearing room. A room, with an unlocked door and their own audio recorder sitting on the table. No reasonable person would expect a conversation in such a room to have a private deliberation occur. Finally, the recording revealed comments of the Panel members, that displayed not only biased but extremely hateful, and venomous behaviors towards Mr. Taylor and all injured workers with disabilities.

PART III – REPLY ARGUMENT TO WSIB AND WSIAT ARGUEMNTS

Reply regarding issue of SRLs, with disabilities being afforded more tolerance

8. The WSIB asserts that there is no evidence and no cause of action for bad faith. This would be something to be argued at an appeal, if Mr. Taylor is granted Leave by this Honorable Court. The only consideration, at this time, is whether Mr. Taylor's appeal raises to the level of public importance warranting of this Honorable Court attention. Mr. Taylor again reiterates it does for the number of groups of people involved, as well as the various forms of law.

---

[3] See page 166, of the WSIAT *Accessibility Policy for Customer Service*, which is Exhibit K and located at Tab K, Vol. III of the Application Record.

9. Mr. Taylor has provided ample evidence and arguments of intentional wrongdoing on the part of the WSIB and on the part of the WSIAT as submitted to this Honorable Court in the application record[4]. More importantly, the law, at least in Ontario, **provides <u>no immunity</u> to the WSIB or the WSIAT for good faith or bad faith actions**. The law only provides limited immunity to the WSIB & WSIAT staff, which is only applies when the staff's actions are performed **<u>in good faith</u>**[5].

10. The Court of Appeal for Ontario confirmed in *Castillo v. WSIB* that "*The law, as set out in Freeman-Maloy, is that the claimant need not allege or prove actual malice in order to make <u>out the mental element of the cause of action of misfeasance,</u> **<u>only bad faith</u>***"[6]. Therefore, Mr. Taylor need only prove the WSIB and the WSIAT acted in bad faith, to make out the element of tort of misfeasance in public office, which he has done, in his evidence, his revised claim, and will further elaborate on in his appeal, if granted leave by this Honorable Court.

11. Mr. Taylor asserts that the WSIB, the WSIAT, and the courts below, have routinely denied Mr. Taylor "*relief on the basis of a minor or **<u>easily rectified deficiency in their case</u>***"[7]. As stated by the Canadian Judicial Council in their *Principles on Self Represented Litigants* and was formally endorsed by this Honourable Court[8].

12. The WSIB failed to allow Mr. Taylor to establish his disability was recognized and that he required accommodations. This was an ***<u>easily rectified deficiency in their case</u>***"[9].This was also done by the WSIAT. Again, this was a ***<u>easily rectified deficiency in their case</u>***"[10].The courts below dismissed Mr. Taylors claim citing he failed to establish the elements or cause of action, but never explained to him what the elements were or allowed him the opportunity to rectify his deficiencies. This was the case in Alberta where in an identical case the court

---

[4] See Affidavit of Paul Taylor dated September 14, 2019, pages 163 to 218 of Volume II, of the Application Record
[5] See s. 179(2)(3) of the *Workplace Safety and Insurance Appeals Act*, 1997, S.O. 1997, c. 16, Sched. A
[6] See para 39 of *Castrillo v. Workplace Safety and Insurance Board*, 2017 ONCA 121, tab 20, page 14 of Volume VI of the Application Record
[7] See No. 2 of CJC Principles, which is located at page 25 of Volume IV of the Application Record.
[8] See para 4 of *Pintea v. Johns* 2017 SCC 23
[9] See No. 2 of CJC Principles, which is located at page 25 of Volume IV of the Application Record.
[10] ibid.

confirmed a court has jurisdiction to award damages to injured workers who suffer wrongs at the hands of the by the workers compensation board, by agreeing that injured workers do have a right to sue a worker's compensation board and/or tribunal. This Court confirmed the decision of the Alberta Court of Appeal, by refusing leave in the matter of *WCB & Randy Wolfert v. Thomas Shuchuk*[11].

Failure to accommodate Mr. Taylor's disabilities

13. Both the WSIB and the WSIAT determined that Mr. Taylor was able to perform the position of technical occupations in computers, without **any** accommodations for Mr. Taylor's disabilities, on the part of the WSIB[12] or the WSIAT[13]and made this determination outside of their legal jurisdiction[14]. The decision to act outside their statutory authority was intentional, deliberate, and knowing.

14. Evidence will confirm, if Mr. Taylor's Application is granted leave, by this Honorable Court, that Mr. Taylor had raised numerous concerns, on countless occasions to the WSIB regarding its failure to accommodation Mr. Taylor's disabilities. That the WSIB had selected the incorrect description of the job of engineer, for the job Mr. Taylor was to be trained for. The correct job was that of computers. When the WSIB realized they had made an error in the selection of the job description, the WSIB deceptively changed the job description to computers and claimed it was Human Resources Development Canada ("**HRDC**") who had made the change. Yet, evidence obtained from HRDC confirms both jobs existed before and after the HRDC number system change[15], which confirms the WSIB had acted intentionally deceptive.

15. Once the WSIB changed the job description, to the correct one of computers, the job became, what Mr. Taylor knew all along, was unsuitable. Mr. Taylor's concerns of suitability were well documented in over 14 written reports to the WSIB, and were sent to the WSIB well

---

[11] See tabs 32A,32B, 32C, 32D, pages 220 to 239 of Volume V, of the Application Record

[12] See WSIB decision dated January 18, 2005, located at page 161, tab 12 of the Application Record. Also see WSIB decision dated December 7, 2004, located at page 167, tab 11, of the Application Record.

[13] See WSIAT decision 691/05R dated June 13, 2013, located at page 7, tab 8 of the Application Record. Also see para 211 of WSIAT decision 691/05 dated February 11, 2008, located at page 141, tab 9 of the Application Record.

[14] See s. 118(2) and 123(1) of *Workplace Safety and Insurance Act*, 1997, S.O. 1997, c. 16, Sched. A

[15] See Exhibit J4, page 148, located at Tab 18J4 of Volume III of the Application Record.

before 2004. The computer job was unsuitable for Mr. Taylor, because it required that of colour discrimination (a person who is not being colour blind partially or totally), continually sitting, standing and walking, as well as medium lifting (lifting between 10kg to 20kg)[16].

16. Whereas Mr. Taylor's permanent capabilities or disabilities were that he had difficulty telling colours apart (he was colour blind), he was to avoid long periods of siting, standing, walking, of more than 15 minutes, and lifting weights in excessive of 5 kg (limited lifting)[17].

17. Once the WSIB realized the job description was unsuitable for Mr. Taylor, the WSIB simply changed Mr. Taylor's accommodations for his disabilities and claimed the new job description of computer was completely suitable for Mr. Taylor, as they claimed his only needed accommodation was not to lift anything heavy[18].

18. Evidence will also show that no request of any kind was made by the WSIB or the WSIAT for Mr. Taylor to consult with his doctor regarding his need for accommodations and provide any form of report or confirmation. Instead the WSIB and the WSIAT asserted that, Mr. Taylor's disabilities were not recognized; that Mr. Taylor failed to medically prove he has a disability; and therefore Mr. Taylor did not require any accommodations for his disabilities.

19. The *Ontario Human Rights Code*[19], and of the *Charter*[20] make clear that any persons with disabilities shall be provided accommodations from government agencies, when performing services. This Honourable court has stated that:

> "*the principle that discrimination can accrue* ***from a failure to take positive steps*** *to ensure that disadvantaged groups benefit equally from services offered to the general public is widely accepted in the human rights field*"[21]

20. Finally, Mr. Taylor asserts that the WSIB, WSIAT, and courts below, have failed to accommodate his disabilities. Instead the WSIB, WSIAT, and courts below have treated Mr.

---

[16] See Exhibit J5, pages 153, 154, 157, 160, located at Tab 18J5 of Vol. III of the Application Record.
[17] See Exhibit J1, page 61, located at tab 18J1, of Vol. III of the Application Record.
[18] See WSIB decision dated January 18, 2005 located at page 156, of Tab 12 of Vol. I of the Application Record. Also see WSIB decision dated December 7, 2004, located at page 163 of Tab 13 of Vol. I of the Application Record.
[19] See s. 1 of *Human Rights Code*, R.S.O. 1990, c. H.19
[20] Canadian Charter of Rights and Freedoms, s 2, 7, 12, & 15, Part 1 of the Constitution Act, 1982, being Schedule B to the Canada Act 1982 (UK), 1982, c 11.
[21] See para 78 of *Eldridge v. British Columbia (Attorney General)* [1997] 3 SCR 624

Taylor's requests for accommodation as nothing more than legal arguments to be decided, instead of disabilities to be for accommodated.

Reply regarding issue of Jurisdiction

21. The WSIB & the WSIAT have incorrectly framed Mr. Taylor's action, as just suing for benefits[22]. In their arguments, they wrongly assert that the WSIB & the WSIAT have absolutely immunity for any wrongdoing that they commit on injured workers. More importantly, the WSIB and the WSIAT argue that even if they are not immune, the courts cannot act. Thereby provided them with absolute immunity. This is because the WSIB and the WSIAT assert the courts lack jurisdiction to award any damages. However, if this were correct, then this would render all human and legal rights to individuals moot. It would violate the Rule of Law, the Constitution, and most importantly it would bring the administration of justice into complete disrepute. It would nullify the principle that "*a court of inherent jurisdiction is there to fulfill the adage that there is no right without a remedy"*.

22. Mr. Taylor's claim is much like that in the *WCB & Randy Wolfert v. Thomas Shuchuk*[23], where an injured worker brought a civil claim for damages against a worker's compensation board. This Honourable Court agreed that the matter should not have been summarily dismissed. This is when the court, refused leave of the Alberta WCB. Mr. Taylor is seeking his legal right of redress for intentional deliberate and knowing wrong doings, committed by the WSIB and the WSIAT upon him. A claim, which is allowed in all laws across Canada.

23. Additionally, this Honorable Court has recently affirmed the inherent jurisdiction of the courts when it stated that "*judicial review is protected by s.96 of the Constitution act, 1867,* ***legislatures cannot shield administrative decision making from curial scrutiny entirely***"[24]. Therefore, this Honorable Court has made clear provincial legislatures cannot oust the jurisdiction of the courts. **What is unclear is the direction this court should provide on matters which go well beyond that of judicial review, where decision makers act with deliberate, knowing, intent to cause harm by their actions and/or inactions.**

---

[22] See para 37 to 50 of the WSIB's Response Memorandum of Argument.
[23] See tabs 32A,32B, 32C, 32D, pages 220 to 239 of Volume V, of the Application Record
[24] See par 24 of *Canada (Minister of Citizenship and Immigration) v. Vavilov* 2019 SCC 65

24. This Honourable Court has made clear that courts of inherent jurisdiction do have jurisdiction to involve themselves in matters involving benefits in workers compensation matters as this court did in a matter before it regarding the workers compensation boards refusal to acknowledge chronic pain as a disability[25].

Regarding issue of time limitation

25. The WSIB and the WSIAT assert that Mr. Taylor's claim is out of time or beyond the two-year limitation period for making a claim against either the WSIB and/or the WSIAT.

26. Mr. Taylor argues that the matters with both the WSIB and the WSIAT are ongoing, even today. That Mr. Taylor's claim was filed in February 2014, less than six months' after the WSIAT issued their decision 691/05R in June 2013. The WSIB matters flowed from 2006 to 2013, as they were raised in the WSIAT decision 691/05R, as did the matters in the WSIAT decision 691/05.

27. Finally, Mr. Taylor asserts that both the WSIB and the WSIAT have repeated acted in bad faith towards him in their dealings with him. Both the WSIB and the WSIAT have been intentionally deceptive towards Mr. Taylor, including and most importantly falsely asserting that no person has a legal right of a claim against with the WSIB or the WSIAT, which is completely untrue according s. 179 of the WSIA[26]. These are exceptions to the limitations period.

Recording of WSIAT panel members

28. The panel members took no reasonable steps to ensure deliberative secrecy with their meeting. Therefore, the recorded discussions of the panel members cannot be reasonably considered as a breach of *deliberative secrecy*.

29. The cases referenced by the WSIAT in their arguments, citing clear violations of the principle of deliberative secrecy, are in no way similar in nature to Mr. Taylor's matter currently before this Honourable Court. In the case of *Cherubini Metal Works Ltd. v. Nova*

---

[25] See *Nova Scotia (Workers' Compensation Board) v. Martin; Nova Scotia (Workers' Compensation Board) v. Laseur* 2003 SCC 54

[26] See s. 179(2) (3) of the *Workplace Safety and Insurance Act*, 1997, S.O. 1997, c. 16, Sched. A

Scotia (Attorney General) the issue as stated by the Nova Scotia Court of Appeal was that whether "*The principle of deliberative secrecy* ***prevents disclosure*** *of how and why adjudicative decision-makers make their decisions.*"[27]. This was similarly stated in *Summitt Energy Management Inc. v. Ontario Energy Board*[28], where there was again a request to compel the decision maker to discuss secretive deliberations. Also, in *Ellis-Don Ltd. v. Ontario*[29], this Honourable Court also noted as well that there must be an allowance for decision makers to confer in private deliberations and not be compelled to reveal information.

30. In Mr. Taylor's matter there is not a demand for the seeking of disclosure or any request to the court to compel testimony that was clearly deliberatively secretive. In Mr. Taylor's case the issue is the discussions made in a room, which any reasonable person would conclude a conversation in such a room would not be considered secret or private.

31. Additionally, while this Honourable Court did recognize the importance of deliberative secrecy when it stated that if not allowed would "*thereby depriving administrative tribunals* of ***critically important means of achieving consistency***". However, this court nor the courts below have considered the issue of whether deliberative secrecy should be allowed rare cases such as this where decision makers intentionally abuse their privilege. This is especially important when evidence will show the discussions of the panel members were not of a tribunal purpose, were not considered secretive, and the discussions served no other purpose than to encourage hatred and prejudice towards a status group of Canadians – disabled persons. Evidence will confirm that the panel's discussions contained "*graphic and distressing evidence of venom directed towards"*[30] Mr. Taylor and other individuals who are injured workers with disabilities.

32. To allow such hatred and prejudicial behavior of decisionmakers to go unanswered and to stand is something that "*sufficiently shocks the conscience"*[31] and would much like in

---

[27] See para 1, of *Cherubini Metal Works Ltd. v. Nova Scotia (Attorney General),* 2007 NSCA 37
[28] See para 76, of Summitt Energy Management Inc. v. Ontario Energy Board, 2012 ONSC 2753
[29] See para Ellis-Don Ltd. v. Ontario (Labour Relations Board)
[30] See 42 of *Behrens v. Stoodley* 1999 CanLII 1626 (ON CA)
[31] See par 47 of *Canada v. Schmidt* [1987] 1 SCR 500

criminal matters when courts are faced with the danger of allowing illegally obtain evidence to stand, as to do so ***<u>would bring the administration of justice into disrepute!</u>***

ALL OF WHICH IS RESPECTFULLY SUBMITTED.

February 12, 2020 __________________________________

Paul Taylor

Self-Represented Litigant 😊