

IN THE SUPREME COURT OF CANADA

(ON APPEAL FROM THE COURT OF APPEAL FOR ONTARIO)

BETWEEN:

PAUL TAYLOR

Applicant
(Appellant)

-and-

THE WORKPLACE SAFETY & INSURANCE BOARD – WSIB

Respondent
(Respondent)

-and-

THE WORKPLACE SAFETY & INSURANCE APPEALS TRIBUNAL – WSIAT

Respondent
(Respondent)

APPLICANT’S MEMORANDUM OF ARGUMENT

Regarding the Court of Appeal for Ontario Decision C63503

PART I – STATEMENT OF FACTS:

Overview of applicant’s position with respect to issues of public importance

1. This case raises some of the most fundamentally questions that a court can consider in

Canada:

- a. Can a court have a negative indifference towards self-represented parties, who are Canadians or Migrants injured at work, and suffer from numerous physical and psychological disabilities? In this case, the Court of Appeal for Ontario (“**Court of Appeal**”) has held that it can.
- b. Can Provincial/Territorial legislation absolutely immunize a government agency, simply by ousting the inherent jurisdiction of the court by redefining what damages are? In this case, the Court of Appeal has held that it can.

- c. Can the common law practice of deliberative secrecy completely immunize an administrative board and/or tribunal, regardless of what they have said or done? In this case, the Court of Appeal has held that it can.
2. This case and the questions arising from this case, are of great public importance, simply because of who it involves and what it involves.
3. This case involves the rights of Canadians who are disabled, it involves the rights of Canadians & Migrants who suffer injuries at work, and it involves the rights of Canadians who are forced to represent themselves in legal matters across Canada. Moreover, the public importance of these groups, are amplified by the issue that all the groups, are predominately underprivileged.
4. Additionally, this case is of great public importance because what it involves, with the presence of several public importance considerations within the various forms of law: Constitutional law, inconsistency with Provincial/Territorial laws, inconsistency in many Provincial/Territorial Courts of Appeal, and it involves a novel point of law.
5. The applicant, Paul Taylor (“**Mr. Taylor**” or the “**Applicant**”), sustained numerous injuries, from several workplace accidents. Mr. Taylor’s claim for workers compensation benefits were not lawfully adjudicated by the WSIB and the WSIAT. Mr. Taylor brought a civil claim, for breeches of his civil and *Charter* rights, as a Self-represented Litigant (“**SRL**”) for damages against the WSIB and the WSIAT in the Ontario Superior Court of Justice (“**Superior Court**”).
6. Mr. Taylor’s claim against the WSIB and the WSIAT was dismissed on summary judgment and was subsequently dismissed on appeal, by the Court of Appeal. In both decisions, Mr. Taylor was denied leave to amend his statement of claim.

7. Both the Superior Court and the Court of Appeal held that Mr. Taylor's claim, lacked a proper cause of action. First, deciding that Mr. Taylor's claim for damages was nothing more than a claim for benefits. This allowed the courts below to make use of the 'jurisdiction' clause of [s. 123 of the WSIA](#)¹ ousting the inherent jurisdiction of a Superior Court. Thus, completely barring Mr. Taylor's civil and *Charter* claims against the WSIB and the WSIAT. Second deciding that Mr. Taylor's civil claim was based on an improper tort of *bad faith* and claimed that Mr. Taylor failed to plead the *tort of public misfeasance*. Third the courts below also implied that Mr. Taylor's claim was statute bared. Finally, the courts below stated Mr. Taylor's claim was based on an audio recording, which was allegedly made surreptitiously & improperly.
8. Further, the Superior Court held that the general "*immunity*" clause contained in [s. 179 of the WSIA](#)², applies to the WSIAT, as well as its staff. This even though the law states contrary. Therefore, in the view of the Superior Court, the WSIAT lacks the capacity to be sued and thus completely bars the applicant's civil and *Charter* claims.
9. Although Mr. Taylor was partially successful in advancing a claim against the WSIB and the WSIAT. Specifically, the claim was not frivolous or vexatious. Mr. Taylor was not able to avoid the above noted allegation of abuse of process, due to the claimed lack of jurisdiction by the courts below.

Events leading up to this application

10. Mr. Taylor suffered numerous injuries as a result of several workplace accidents. All of Mr. Taylor's injuries (low-back, mid-back, upper-back, neck & head) were initially accepted by the WCB/WSIB. However, some three years later, the WSIB took the position that they had only ever accepted an injury to Mr. Taylor's lower-back. The other areas of injury (mid-back, upper-back, neck & head), Mr. Taylor appealed and followed the proper appeal process. However, during both the adjudicative and appeal process, the

¹ *Workplace Safety & Insurance Act*, S.O. 1997, c. 16 Sched. A.,

² *Ibid.*

WSIB and the WSAIT acted unlawfully towards Mr. Taylor and against his Human & *Charter* rights³.

11. Initially, Mr. Taylor did what most do, when they do not agree with a decision of an administrative tribunal, he had applied for Judicial Review – *Certiorari*. However, upon reflection and learning a bit of the law, Mr. Taylor realized he would never be compensated for his losses. Common law has shown Mr. Taylor, that Judicial Review – *Certiorari*, at least in Ontario, would only refer the matter back to the WSIAT. Any matters before the WSIAT, bans any additional damage awards. The law only allows Mr. Taylor to recover his benefits for income replacement, medical care, and retraining⁴ and not for what Mr. Taylor was seeking, which was damages for his losses.

12. Mr. Taylor, on his own and as an SRL, then filed a civil claim for damages against the WSIB and the WSIAT in Superior Court. The claim was for violating Mr. Taylor’s civil, human rights, and *Charter* rights. The WSIB and the WSIAT responded to Mr. Taylor’s claim by filing motions for summary judgment. In addition, the WSIAT filed a second motion to exclude Mr. Taylor’s audio evidence. Mr. Taylor’s claim was dismissed by the Superior Court⁵. The reasoning of the Superior Court was the court lacks jurisdiction over the subject matter, the WSIAT lacks the capacity to be sued, Mr. Taylor’s claim is an abuse of process, Mr. Taylor’s claim lacks a cause of action, and Mr. Taylor’s claim was statute barred. Additionally, the court denied Mr. Taylor leave to amend his pleading⁶.

13. Mr. Taylor, again acting as an SRL, filed an appeal with the Court of Appeal. The basis of Mr. Taylor’s appeal was that the motion judge committed an error when dismissing Mr. Taylor’s claim for a lack of jurisdiction. That the motion judge committed an error of law in dismissing Mr. Taylor’s claim failing to disclose a reasonable cause of action for “bad faith” or misfeasance in public office, or by refusing to grant leave to amend Mr.

³ See para 30 to 32, 39, 52, 58 to 84, of affidavit of Paul Taylor, sworn September 14th, 2019 | **Tab 18, Vol. II, at pages 170 to 171, 174, 177 to 185** |

⁴ See para 85 to 88, of affidavit of Paul Taylor, September 14th, 2019 | **Tab 18, Vol. II, at pages 185 to 186** |

⁵ See para 89 to 99, of affidavit of Paul Taylor, sworn September 14th, 2019 | **Tab 18, Vol. II, at pages 186 to 189** |

⁶ See para 29, 33, 38, 45, 46, 75, 78, & 79 of Reasons for Order of J. Price’s, dated Feb. 22, 2017 | **Tab 7, Vol. I, pages 57, 58, 60, 62, 70, & 71** |

Taylor's statement of claim. The Court of Appeal dismissed Mr. Taylor's appeal on both grounds⁷.

Public Importance of this Application

14. Mr. Taylor seeks leave of this Honourable Court to appeal the Court of Appeal decision, as in effect, it declared that: individuals, like the applicant, have no constitutional rights under s. 2, s. 7, s. 12, or s.15 of the *Canadian Charter of Rights and Freedoms* ("**Charter**"); the Rule of Law does not apply to WCBs and/or to WCATs; the common-law right of access to justice, and that s. 96 of the Constitution can be overridden by a provincial/territorial legislature by simply having the courts infer that injured worker claims for damages are really just claims for benefits. Thus, outside the inherent constitutional jurisdiction of the courts.

15. The Court of Appeal stated that Mr. Taylor's claim against the WSIB and the WSIAT was exclusively a claim for benefits, simply because it was an individual claim for damages and not a class claim for damages⁸. Yet Mr. Taylor's claim was for loss of income; medical care; damages for harm to reputation, physical harm, emotional harm, financial harm, and punitive damages⁹. This then allowed the Court of Appeal to declare that under s. 118 & s. 123 of the *Workplace Safety & Insurance Act*¹⁰ ("**WSIA**") a court of inherent jurisdiction, has no jurisdiction to grant relief in a civil matter involving the WSIB or the WSIAT. Every Province and Territory in Canada has a similar jurisdictional clause.

16. The Court of Appeal stating that a court of inherent jurisdiction lacked jurisdiction, was contrary to the same court's decision in *Castrillo v. WSIB*¹¹. To justify this inconsistency, the Court of Appeal then attempted to distinguish between the two similar cases, by alleging that Mr. Taylor's claim is an individual claim, as opposed to a class claim¹².

⁷ See para 4 & 5, Reasons of Court of Appeal, Decision C63503, dated Feb. 6, 2018|**Tab 4, Vol. I, at page 12**|

⁸ See para 9, Reasons of Court of Appeal, Decision C63503, dated Feb. 6, 2018|**Tab 4, Vol. I, at page 14**|

⁹ See the Fresh as Amended Statement of Claim |**Tab 17, Vol. II, pages 53 to 162**|

¹⁰ S.O. 1997 C17

¹¹ See *Castrillo v. WSIB* 2017 ONCA 121, 136 O.R. (3d) 654|**Tab 20, Vol. VI, at pages 1 to 32**|

¹² See para 9, Reasons of Court of Appeal, Decision C63503, dated Feb. 6, 2018|**Tab 4, Vol. I, at page 14**|

17. The Court of Appeal stated that the applicant's claim and any similar individual claim should have been advanced only as an application for Judicial Review – *Certiorari*¹³. However, Mr. Taylor would not receive the damages he was entitled to for defamation, the intentional wrong acts committed by the WSIB, the WSIAT & their staff, and the punitive damages he was seeking. Moreover, the success of applications for Judicial Review – *Certiorari* are extremely rare against the WSIAT. So rare that the WSIAT boasts that the Courts have only ever reversed one decision¹⁴.

This application is of great public importance, simply because who it involves

18. This application is of great public importance, simply because it involves the rights of Canadians who are disabled, it involves the rights of Canadians & Migrants who suffer injuries at work, and it involves the rights of Canadians who are forced to represent themselves in legal matters. Moreover, the public importance of these groups, are amplified by the concern that the majority of which all represent low income Canadians.

This application involves Canadians who are disabled:

19. This application is of great public importance as it involves those Canadians who suffer from physical and/or psychological disabilities. What amplifies this issue is that most disabled persons in Canada are of low income.

20. There are approximately 3.8 million Canadians who suffer from physical and/or psychological disabilities¹⁵. Most Canadians with disabilities are living in poverty, which is defined as being below Statistics Canada's Low-Income Cut-offs ("**LICO**")¹⁶.

21. Courts have struggled to respond to persons with disabilities to accommodate their needs. This is so much an issue, that this Honourable Court made mention of it in *Eldridge v.*

¹³ See para 3, Reasons of Court of Appeal, Decision C63503, dated Feb. 6, 2018 | **Tab 4, Vol. I, at page 14** |

¹⁴ See para 88 of the affidavit of Paul Taylor, sworn September 14th, 2019 | **Tab 18, Vol. II, at page 185** |

¹⁵ See para 27, of the Affidavit of Dr. Julie MacFarlane dated April 12, 2019 | **Tab 19, Vol. V, at page 149** |

¹⁶ See para 120, 121, 160 to 179, of affidavit of Paul Taylor sworn July 1st, 2019 | **Tab 18, Vol. II, at pages 194, 202 to 207** |

*British Columbia (Attorney General)*¹⁷ where this Honourable Court stated that “**It is an unfortunate truth that the history of disabled persons in Canada is largely one of exclusion and marginalization**”.

22. Having a disability coupled with self-representation makes access to justice virtually an impossible task. It is a well-recognized reality that “...*SRLs with disabilities experience a significant disadvantage in the Canadian justice system.*¹⁸” Furthermore, the Ontario Courts commissioned a study on access to justice for persons with disabilities. The authors of the report found that there was, among several other issues, an “***attitudinal factor***”, that:

“*too many persons involved in the justice system fail to understand how to accommodate persons with disabilities. At times, there is a lack of sensitivity exhibited towards persons with disabilities, and a lack of presumption of full participation in the justice system.*”¹⁹

However, the report made no mention of persons with disabilities representing themselves in the court system, which has become an increasingly important public interest matter.

23. Mr. Taylor suffers from numerous physical and psychological disabilities²⁰, which are well recognized under the *Ontario Human Rights Code*²¹, *Ontarians with Disabilities Act*²² and s. 2 & s. 15 of the *Charter*²³.

This application involves those Canadians & Migrants who are injured at work:

24. This application is of great public importance, as it involves those Canadians & Migrants who have suffered injuries from workplace accidents, through no fault of their own. What

¹⁷ [1997] 3 S.C.R. 624 at para. 56 [Eldridge]; Also see *Granovsky v. Canada*, [2000] 1 S.C.R. 703.

¹⁸ See para 28, of the Affidavit of Dr. Julie MacFarlane dated April 12, 2019 | **Tab 19, Vol. V, at page 149** |

¹⁹ See para 121, of the affidavit of Paul Taylor, sworn September 14th, 2019 | **Tab 18, Vol. II, at page 194** |

²⁰ See para 169 to 181, of the affidavit of Paul Taylor sworn September 14th, 2019 | **Tab 18, Vol. II, at pages 204 to 207** |

²¹ R.S.O. 1990, c. H.19

²² 2001, S.O. 2001, c. 32

²³ *Charter of Rights and Freedoms, Part 1 of the Constitution Act, 1982, being Schedule B to the Canada Act 1982 (UK), 1982, c 11.*

amplifies the importance of this issue is that it directly impacts Canadian & foreign taxpayers. Additionally, the reality that most injured workers have been placed in a very low-income situation, as a result of just being hurt at work.

25. Workplace injuries & deaths affect a large portion of Canada's working and Migrant population. Annually more than 750,000 Canadians & Migrants suffer an injury because of a workplace accident and almost 1,000 Canadians Migrants are killed in the workplace each year²⁴. Canadians & Migrants injured or killed at work is such a national public interest issue, that on February 1, 1991 the Federal Government declared that April 28th of every year as a *Workers Day of Mourning*²⁵.
26. For more than a hundred years, Canadians & Migrants, when injured at work, like Mr. Taylor, were deprived of their civil and constitutional right of redress. These rights, which were statutorily guaranteed, were removed by provincial/territorial statutes²⁶. In its place, Canadians injured at work were given an entitlement/guarantee of workers compensation benefits. However, this entitlement/guarantee has been unlawfully taken away by WCBs across Canada, through several unlawful means.
27. After the enactment of the *Charter*, in 1982, injured workers, across Canada, attempted to seek redress against their employers. They argued that the legislation was a violation of their *Charter* rights. This argument was denied by the courts. The Courts declared that workers would receive an entitlement/guarantee to speedy determination and payment of benefits, in place of workers being able to sue their employers²⁷. To the many Canadians & Migrants who were unjustly denied their benefits, by WCBs, the courts considered it an acceptable loss. However, this acceptance has placed Canada's system of justice into

²⁴ See para 130 & 131 of the affidavit of Paul Taylor sworn September 14th, 2019 | **Tab 18, Vol. II, at page 197** |

²⁵ [Workers Mourning Day Act \(S.C. 1991, c. 15\)](#)

²⁶ See Part VII of this Memorandum for a list of Provincial/Territorial Legislation.

²⁷ See [Medwid v. Ontario 1988 CanLII 193 \(ON SC\) | Tab 21, Vol. VI, at pages 33 to 57](#) |, also see [Piercey v. General Bakeries Ltd. 1986 CanLII 107 \(NL SC\) | Tab 22, Vol. VI, at pages 58 to 72](#) |, see also [Roncato v. O'Brien, \[1987\] O.J. No. 1285 | Tab 23, Vol. VI, at pages 73 to 77](#) | See also [Katnich v. British Columbia \(WCB\), \[1988\] B.C.J. No. 171 | Tab 24, Vol. VI, at pages 78 to 87](#) |, and see also [Horn v. Canada, \[1994\] F.C.J. No. 105 | Tab 25, Vol. VI, at pages 88 to 97](#) |

serious disrepute. As stated in the famous English case of *Somerset v Stewart*²⁸, that *Fiat jūstitia ruat cælum* which translates to “*Let justice be done, though the heavens may fall*”.

28. Over the last few decades, WCBs across Canada have intentionally, and deceptively denied legitimate claims for workers compensation benefits to Canadians & Migrants injured at work²⁹. As a result, many Canadians injured at work have been forced onto taxpayer funded social programs, just like Mr. Taylor was³⁰. Sadly, many Migrant workers were shipped back to their home country, broken and in many cases dead, by employers, like a person returning a broken or dead piece of equipment, back to the store for an exchange³¹.

29. This has been done with the use of three common methods to deny legitimate entitlement/guaranteed claims to workers compensation benefits for Canadians & Migrants injured at work. These methods have been categorized as: the use of deeming, the use of pre-existing conditions and the use of WCB paid doctors. These three main methods were exposed by the Ontario Network of Injured Worker Groups (“**ONIWG**”). ONIWG is a provincial group in Ontario representing more than 22 injured work groups across Ontario.

Deeming:

30. The first method WCBs use to deprive injured workers of their legitimate entitlement to claims for benefits is through the unlawful use of deeming. “*Deeming refers to a practice used by the [WCBs] in which they pretend an injured worker has a job that they do not actually have. The [WCBs] then uses the "phantom job" as an excuse to cut benefit payments*³².

²⁸ [Somerset v Stewart \(1772\) 98 ER 499 | Tab 37, Vol. VI, at pages 516 to 527 |](#)

²⁹ See para 134 to 166 of the affidavit of Paul Taylor, sworn September 14th, 2019 | [Tab 18, Vol. II, at pages 197 to 202 |](#)

³⁰ See para 133 & 134 of the affidavit of Paul Taylor sworn September 14th, 2019 | [Tab 18, Vol. II, at page 197 |](#)

³¹ See para 164 to 166 of the Affidavit of Paul Taylor sworn September 14th, 2019 | [Tab, Vol. II, at page 203 |](#)

³² See para 1 of **Exhibit “U1”** of *No Cuts Based on Phantom Jobs* | [Tab 18U1, Vol. V, at page 22 |](#)

31. Frequently, the applicant was intentionally deceived by the WSIB, when the applicant was told he could perform normal work, or the work he was performing was modified, was safe, and was suitable for him, when it was not. The WSIB knew this and wrongfully punished the applicant if he refused³³. Just like many thousands of Canadians injured at work, who were intentionally deceived by the WCBs.
32. The applicant was then forced onto taxpayer funded social programs³⁴. Just like many thousands of Canadians injured at work. This is one method of how the WCBs across Canada have unlawfully transferred the cost of workplace injuries from employers onto Canadian & Foreign taxpayers³⁵.
33. Deeming affects Canadians & Migrants injured at work and makes these two classes such a national public importance matter for this Honourable Court, that on September 4 & 5, 2019 ONIWG will be presenting seven separate recommendations to be considered by submissions to the United Nations Committee on the Rights of Persons with Disabilities. ONIWG will argue that the laws and practices of WCBs across Canada violates “*Articles 4, 8 and 28 of the UN Convention on the Rights of Persons with Disabilities as well as the overall human right to social security*”³⁶.

Pre-existing Conditions:

34. The second method WCBs use to deprive injured workers of their legitimate entitlement to claims for benefits, is through the unlawful use of pre-existing conditions. This is when a WCB makes use of any prior condition a person may have. This is so the WCBs can reduce or suspend benefits to Canadians injured at work³⁷.

³³ See para 27, 32, 37, 40 to 51, 57, & 58, of the affidavit of Paul Taylor, sworn September 14th, 2019 | **Tab 18, Vol. II, at pages 170, 171, 173, 174, 177, & 178** |

³⁴ See para 134, of the affidavit of Paul Taylor, sworn September 14th, 2019 | **Tab 18, Vol. II, at pages 197 & 198** |

³⁵ See para 3, of **Exhibit “U1”** of *No Cuts Based on Phantom Jobs* | **Tab 18U1, Vol. V, at page 26** |

³⁶ See #3 of **Exhibit “U2”**, of affidavit of Paul Taylor sworn September 14th, 2019 | **Tab 18U2, Vol. V, at page 36** |

³⁷ See para 1, of **Exhibit “U1”** of “*Stop cutting benefits based on ‘Pre-existing Conditions’*” | **Tab 18U1, Vol. V, at page 28** |

35. In common law, the use of pre-existing conditions or aggravating pre-existing conditions is referred to as the eggshell, crumbling skull, or thin skull approach. The courts have long accepted the legal principle that the courts must accept the victim, as they are³⁸. Yet, the WSIB routinely claimed Mr. Taylor's work-related repetitive strain injuries of Degenerative Disc Disease was the result of an age-related condition, when they knew or ought to have known it was the result of his heavy physical repetitive work environment³⁹.

WCB Paid Doctors:

36. The third method WCBs use to deprive injured workers of their legitimate entitlement to claims for benefits is through the unlawful use of WCB paid doctors and medical consultants⁴⁰. The WCBs routinely influence, doctors and medical consultants, through negative financial billings to force injured Canadians back to work even before they are capable. If the financial disincentives to doctors do not work, then WCBs use threats and intimidation on the doctors to get workers back to work before they are capable⁴¹. The purpose of these behaviors by the WCBs, was their effort to be fiscally responsible, but it has left the WCBs being socially irresponsible.

37. The WCBs unlawful actions across Canada, have had a devastating impact on Canadians & Migrants injured at work. It has also had a massive impact on taxpayers, when Canadians injured at work have been forced to use taxpayer funded social programs⁴². Thus, the WCBs across Canada have been extremely effective in transferring the cost of workplace injuries from employers onto the backs of Canadian & Foreign taxpayers and Canadians & Migrants injured at work & their families. Finally, this has had an

³⁸ See *Athey v. Leonati*, [1996] 3 S.C.R. 458, 140 D.L.R. (4th) 235, [1997] 1 W.W.R. 97

³⁹ See #3, on page 2 of the WSIB ARO decision, dated April 17, 1998 | **Tab 15, Vol. I, at page 175** |, Also see para 27, 28, 142 to 149, affidavit of Paul Taylor, sworn September 14th, 2019 | **Tab 18, Vol. II, at pages 170, 199, 200** |,

Also see **Exhibit "B"**, Medical paper "*What does degeneration mean? The use and abuse of an ambiguous word*" | **Tab 18B, Vol. III, at pages 13 to 20** |

⁴⁰ See para 1 of **Exhibit "U1"** of the article *We Demand: Listen to Our Doctors* | **Tab 18U1, Vol. V, at pages 30** |

⁴¹ See *Steinnagel v Workplace Health*, 2016 ONSC 2138, | **Tab 26, Vol. VI, at pages 98 to 104** |

⁴² See para 133, of affidavit of Paul Taylor, sworn September 14th, 2019 | **Tab 18, Vol. II, at pages 197** | See also **Exhibit "T3"**, of affidavit of Paul Taylor, sworn September 14th, 2019 | **Tab 18T3, Vol. V, at pages 15 to 20** |

unanticipated negative effect on the medical community, where like the justice system, people are losing trust in the medical profession, as a result.

This application involves those Canadians who represent themselves:

38. This application involves those Canadians who are forced to represent themselves within Canada's justice system. These Canadians are commonly referred to as self-represented litigants. The majority of which are forced to represent themselves mainly due to a lack of financial ability to pay for representation.

39. The volume of SRLs within Canada's court system and issue of SRLs being forced to represent themselves, out of necessity, due to low income, makes this issue an extremely important public interest matter in Canada⁴³.

40. While there is a growing concern over the exponential growth of SRLs in Canada's court system, what is even more disconcerting, is the shocking number of summary dismissals, against SRLs in Canadian courts. Researching cases from 2002 to 2014, the NSRLP concluded in their report that "***a represented party had a 96% success rate when using summary judgement procedures against SRLs***". This has caused many, including the authors of the report, to raise concern over the professional ethical use of summary judgment procedures against SRLs⁴⁴.

41. In 2006, the Canadian Judicial Council adopted the *Statement of Principles for Self-represented Litigants*⁴⁵. These principles were adopted by this Honourable Court in *Pintea v. Johns*⁴⁶. Mr. Taylor's case will confirm that these steps, though honourable in their efforts, have borne little real effect for SRLs to access justice within Canada's court and administrative justice system.

⁴³ See paragraph 14 of the Affidavit of Dr. Julie MacFarlane dated April 12, 2019 [Tab 19, Vol. V, at page 147]

⁴⁴ See para 92 of affidavit of Paul Taylor, sworn September 14th, 2019 [Tab 18, Vol. II, at page 187] also see page 9, of Exhibit "M2" of affidavit of Paul Taylor, September 14th, 2019 [Tab 18M2, Vol. IV, at page 9]

⁴⁵ See para 114, of affidavit of Paul Taylor, sworn September 14th, 2019 [Tab 18, Vol. II, at page 192] also see page 1, of Exhibit "N" of affidavit of Paul Taylor, sworn July 1st, 2019 [Tab 18N, Vol. IV, at page 22]

⁴⁶ 2017 SCC 23 SCR 1

42. Moreover, the biases towards SRLs are commonplace within our justice system across Canada. What is extremely concerning is that **these biases “...are eroding the public confidence in the Canadian Justice system”**⁴⁷. So much so that Canadians are losing faith in our justice system.

43. Like most SRLs, the applicant was forced to represent himself, not by choice, but due to economic hardship⁴⁸. The applicant had little if any understanding of the legal process and was forced to learn as he went, the best he could. This was his attempt to comply with the Judicial Council’s principles on SRLs.

44. The applicant, acting as an SRL, has experienced numerous difficulties from his low income, his disabilities, and limited knowledge of the legal process. It would be reasonable for a person to expect that the WSIAT, the Superior Court, and the Court of Appeal ought to have taken these issues into account when rendering decisions against the applicant, but they chose not.

This application is of great public importance, simply because what it involves

45. This application is of great public importance simply because of what it involves and the presence of several public important considerations within the various forms of law, that being: constitutional law, inconsistency with Provincial/Territorial laws, inconsistency with common law between Provincial/Territorial Courts of Appeal, and it involves a novel point of law.

This application involves Constitutional matters:

46. This application is of great public importance simply because it involves several constitutional issues. That being a right to equal treatment before the law, the right to a belief, the right of security of one’s person, and the right not to be treated with cruel and unusual treatment and/or punishment. It also impacts the issue of the power of the courts, Provinces/Territorial governments and the Federal government.

⁴⁷ See para 13 of the affidavit of Dr. Julie MacFarlane, sworn May 11, 2019 | **Tab 19, Vol. V, at page 147** |

⁴⁸ See para 7 & 9 of the affidavit of Dr. Julie MacFarlane, sworn May 11, 2019 | **Tab 19, Vol. V, at page 146** |

47. The first being Canadians with physical and/or psychological disabilities have a right to equal treatment under s. 15 of the *Charter*, which this Honourable Court stated in *Eldridge v. British Columbia (Attorney General)*⁴⁹ that “It is an unfortunate truth that the history of disabled persons in Canada is largely one of exclusion and marginalization”. This Honourable Court established the test for discrimination in *Law v. Canada*⁵⁰ and rearticulated the test in *R. v. Kapp*⁵¹. If this application is granted leave, the appeal intends to confirm a right to equality applies to services provided by our courts, as well as administrative boards and tribunals. Moreover, it is not justified under s. 1 of the *Charter*.
48. The second being that Canadians have a right to a belief under s. 2 of the *Charter*. As discussed by this Honourable Court in *R. v. Canadian Broadcasting Corp.*⁵². However, if this application is granted leave, the appeal will argue that a disability is so much as a belief, much like one’s belief in being a gender, or one’s belief in a religion.
49. The third being that Canadians including those injured at work have a right to security of one’s person, under s. 7 of the *Charter*, as discussed by this Honorable Court in *Trial Lawyers Association of British Columbia v. British Columbia (Attorney General)*⁵³. If this application is granted leave, the appeal intends to confirm that: a right to self-representation is a *Charter* right, under this section, as much as it is a common-law right, that depriving persons with disabilities equal treatment regarding tribunal, and court decisions is a violation of the *Charter* under this section, and Canadians injured at work, have a right to security of their person, regardless of being injured at work, or elsewhere.
50. The fourth being that Canadians have a right under s. 12 of the *Charter* to be free from being treated with cruel and/or unusual treatment and/or punishment. If this application is granted leave, the appeal intends to confirm that: Often injured workers pleas for justice

⁴⁹ [1997] 3 S.C.R. 624 at para. 56 [Eldridge]; See also *Granovsky v. Canada (Minister of Employment)*, [2000] 1 S.C.R. 703.

⁵⁰ [1999] 1 S.C.R. 497

⁵¹ [2008] 2 SCR 483

⁵² [2018] 1 SCR 196

⁵³ [2014] SCC 59

and equality have fallen on deafen ears, within the legislatures, and the judiciary of Canada. This allows Canada's WCBs and WCATs to inflict the most cruel and unusual treatment upon Canadians injured at work. Such as forcing disabled persons to perform unsafe and unsuitable work. This often causes new injuries and aggravates previous injuries.

51. Finally, if this application is granted leave, the appeal intends to confirm that: this application is also of great public importance as it deals with the constitutional authority and obligation of the Superior Court's inherent jurisdiction under s. 96 of the *Constitution*. Specifically, was taking of the court's authority by the Provinces/Territories under s. 96 to transfer the duty of the federal superior courts under s. 96 to provincial administrative boards and tribunals and would be a violation of s. 91 and s. 92 of the *Constitution*.

This Application involves inconsistency in many Provincial/Territorial laws:

52. The law regarding workers compensation matters in Canada is unclear and inconsistent across the country, in three areas of law involving workers compensation matters. They are specifically of appealing a WCAT decision, bringing an application for Judicial Review of a WCAT decision, and when an individual or a class of individuals can take civil action against a WCB and/or a WCAT.

Appealing WCAT decisions:

53. The law across Canada is inconsistent regarding appeals to higher courts from WCATs. In some provinces/territories Canadians are afforded a right of appeal to appeal decisions of WCATs to the Provincial/Territorial Courts of Appeal. For example, an appeal is allowed in Alberta, New Brunswick, Nova Scotia, PEI, and Yukon Territory. However, in all the other jurisdictions any right of appeal to the Provincial/Territorial Courts of Appeal is statute barred⁵⁴.

⁵⁴ See Part VII - Legislation of the Memorandum for excerpts of each legislation regarding appeals.

Applications for Judicial Review of WCAT decisions:

54. The law across Canada is inconsistent regarding applications for Judicial Review of WCATs decisions. All jurisdictions, but the Yukon and Northwest Territories, statute bar applications for Judicial Review⁵⁵. Then to add more inconsistency, in some provinces where it has been statute barred, it has been allowed by the courts below in some jurisdictions, where these courts cited s. 96 of the *Constitution*⁵⁶;

Civil actions against WCBs and/or WCATs:

55. The statute law across Canada regarding an individual or a class of individuals taking civil action against a staff member of either the WCB and/or the WCAT is relatively consistent. That the law bars civil actions, so long as the staff/decision makers acted in “good faith” or alternatively did not act in bad faith⁵⁷. Therefore, a litigant must first prove the defendant acted in bad faith before bringing an action against a staff of the WCB and/or the WCAT. Interestingly to note, that bad faith is a key element in the Tort of Public Misfeasance.

56. The laws regarding actions against a WCB and/or WCAT are very inconsistent across Canada. The action is only allowed if decisions were made not in good faith in BC, Alberta, Saskatchewan, Manitoba. However, in all other jurisdictions the law allows for actions against the WCBs and/or the WCATs, whether done in bad or good faith⁵⁸.

This application involves inconsistency in many provincial/territorial courts:

57. This application involves the presence of a conflict between the different provincial courts on issues that should be dealt with uniformly.

⁵⁵ See Part VII – Legislation, of this Memorandum, for excerpts of each legislation regarding Judicial Review.

⁵⁶ See *Jozipovic v. British Columbia*, 2011 BCSC 329 [Tab 27, Vol. VI, at pages 105 to 159], see also *Tompkins v Alberta*, 2012 ABQB 418 [Tab 28, Vol. VI, at pages 159 to 168], see also *Taylor v. Saskatchewan*, 2004 SKQB 123 [Tab 29, VI, at pages 169 to 181], see also *Toronto Star Newspapers Limited v WSIAT*, 2017 ONSC 4537 [Tab 30, Vol. VI, at pages 182 to 201] and see *Oxford Frozen Foods Ltd, v. Nova Scotia*, 2017 NSSC 245 [Tab 31, Vol. VI, at pages 202 to 219]

⁵⁷ See Part VII - Legislation of this Memorandum for excerpts of each legislation regarding staff immunity.

⁵⁸ See Part VII - Legislation of this Memorandum for excerpts of each legislation regarding WCB/WCAT immunity.

58. In Alberta, the Court of Queen's Bench on Appeal and the Court of Appeal agreed that individuals must be afforded the opportunity to prove their claim even if it is against a staff member and/or the WCB, and/or WCAT⁵⁹. In New Brunswick the court allowed a civil action to proceed against a member of the WCB and the WCB⁶⁰. In Ontario, the Court of Appeal has presently taken a split approach. It has allowed civil actions against a WCB in class proceedings only⁶¹ and denied them for individual actions⁶².

This application involves a novel point of law:

59. This application is of great public importance in Canada, as it involves a novel point of law. It was argued by the WSIB and the WSIAT, and the courts below agreed, that any injured worker seeking damages in a civil action against a WCB and/or a WCAT is in fact seeking benefits as defined in the various workers compensation acts in Canada⁶³. In effect the courts below are incorrectly redefining what damages are, which makes this a novel point of law. In the alternative, the provincial legislatures are then attempting to limit the court's inherent jurisdiction through the barring payment of damages.

Part II - Statement of the Questions in Issue

60. This case raises some of the most fundamental constitutional questions of public interest a court could ever consider:

- a. Can a court have a negative indifference towards persons who are injured at work, disabled, and self-represented parties within their decisions. Further, to what extent should courts accommodate persons who are disabled and self-represented, within their decisions? In this case, the Court of Appeal has held that no accommodation or tolerance should be made to persons who are self-represented and disabled, within their decisions.

⁵⁹ See the case history of *Wolfert v. Shuchuk* [Tab 32a, 32b, 32c, 32d, Vol. VI, at pages 220 to 239]

⁶⁰ See *Murray Goodwin v. WHSC*, 2015 NBQB 32 [Tab 33, Vol. VI, at pages 240 to 446]

⁶¹ See *Castrillo v. Workplace Safety and Insurance Board*, 2017 ONCA 121 [Tab 20, Vol. VI, at pages 1 to 32]

⁶² See para 9, of Reasons of Court of Appeal for Decision C63503, dated Feb. 6, 2018 [Tab 4, Vol. I, page 15]

⁶³ *ibid.*

- b. Can a provincial/territorial legislation absolutely immunize a government agency, and/or individuals acting on behalf of the government agency for serious intentional wrong doings - bad faith, by simply ousting the constitutional jurisdiction of the court, based on a pleading for damages? In this case, the Court of Appeal for Ontario has held it can.

- c. Can the common-law principle of deliberative secrecy regarding administrative tribunals and boards, be absolute? In this case the Court of Appeal for Ontario has held it is.

Part III – Statement of Argument

Issue #1: Can a court have a negative indifference towards persons who are injured at work, disabled, and self-represented parties?

61. This question raises a most fundamental constitutional question of law, a court can consider: should courts, administrative commissions, boards, & tribunals provide a greater latitude/tolerance for those individuals who are injured at work, disabled, and self-represented, in the interest & furtherance of justice? In this case, The WSIB⁶⁴; the WSIAT⁶⁵; the Ontario Superior Court of Justice⁶⁶; and the Court of Appeal for Ontario⁶⁷ have all found that they should have no indifference/tolerance towards Canadians injured at work, who are disabled and SRLs, regarding their decisions.
62. This case intends to confirm, and ultimately strengthen the right of disabled persons and SRLs by confirming that the right to self-representation is in fact a constitutionally protected right under s. 7 of the *Charter*. To protect individual rights and freedoms, it is merely not enough for the courts below to physically allow a person to be present, at their

⁶⁴ WSIB ARO Decision of September 28, 2001 | **Tab 14, Vol. I, at pages 164 to 183** |
See also, WSIB ARO Decision of December 7, 2004 | **Tab 13, Vol. I, at pages 158 to 163** |
See also, WSIB ARO Decision January 18, 2005 | **Tab 12, Vol. I, at pages 156 to 157** |
See also WSIB ARO Decision of October 18, 2005 | **Tab 11, Vol. I, at page 149** |
and see also WSIB ARO Dec. April 18, 2006 | **Tab 10, Vol. I, at page 148** |

⁶⁵ WSIAT Decision of February 11, 2008 | **Tab 9, Vol. I, at pages 86 to 147** |
and also see WSIAT Decision of June 13, 2013 | **Tab 8, Vol. I, at pages 74 to 85** |

⁶⁶ See Reasons for Order of J. Price, dated February 22, 2017 | **Tab 7, Vol. I, at pages 44 to 73** |
and also see Costs Endorsement of J. Price dated December 14, 2017 | **Tab 5, Vol. I, at pages 21 to 40** |

⁶⁷ Reasons of the Court of Appeal for Ontario Decision C63503, dated February 6, 2018 | **Tab 4 at pages 11 to 20** |

hearing. The courts below MUST allow them to be active in the process and most of all have tolerance regarding the limited abilities of an SRL in comparison to a represented party, especially when the SRL suffers from disabilities. This is in the interests & furtherance of justice.

63. The findings of the courts below serve to impoverish the right to effective self-representation and access to justice for disabled persons and SRLs. In doing so, deprives two classes of Canadians who are SRLs and disabled the right of security of person, liberty and equality as defined in s. 7 & s. 15 of the *Charter*.

64. The applicant seeks leave to appeal this case so that this Honourable Court may consider the boundaries between the rights of Canadians to seek access to justice as an SRL, with disabilities and those who are represented. In addition, whether denial of such access to justice would constitute breaches of their *Charter* rights pursuant to s.24(1). The applicant respectfully submits the critical question of whether the courts below should afford more indifference/tolerance towards SRLs with disabilities is most deserving of this Honourable Court's attention for five reasons.

65. First, while the *Charter* has been extensively litigated over the past 36 years, the fundamental question of whether a person has a constitutional right, to not just representation but effective representation, has not. This is especially the case when they are self-represented under the *Charter*, specifically s. 7, has not been squarely considered by the Supreme Court. The closest this Honourable Court has come was in *Pintea v. Johns* 2017 SCC 23. Where this Honourable Court endorsed the *Statement of Principles on Self-represented Litigants and Accused Persons* adopted by the Canadian Judicial Council⁶⁸. The matter did not speak of those SRLs with disabilities. Moreover, no further action has been taken thus far to protect and strengthen the rights of SRLs and the furtherance to access to justice for SRLs with disabilities.

⁶⁸ See **Exhibit "N"** of the affidavit of Paul Taylor, sworn September 14th, 2019 | **Tab 18N, Vol. IV, at pages 20 to 32** |

66. Second, this case raises an additional issue of who are SRLs. According to a study conducted in 2013, by the National Self Represented Litigants Project “**NSRLP**”, most SRLs were of low-income Canadians⁶⁹. This brings a very relevant point of a national public importance to this case for this Honourable Court, as eloquently stated by the eminent law Professor Dr. Julie Macfarlane⁷⁰. That being, low-income individuals should and must be afforded access to justice. This may, at times, translate into providing more indifference/tolerance in rendering decisions to SRLs.
67. Third, many injured workers, when acting as an SRL, and attempting to seek redress through the courts, have failed. In these cases, their loss ends up costing the injured worker themselves, their family, *but most importantly, it also costs taxpayers*⁷¹. Which on its own, makes this case a most important public interest matter for this Honourable Court to decide.
68. Fourth, that many SRLs, with disabilities suffer from numerous physical and psychological disabilities, who also struggle with low incomes, like Mr. Taylor. This means they have great difficulties to respond and act in the same fashion as a person without disabilities, let alone a learned lawyer. Therefore, this raises an addition equality issue with the *Charter* under s. 15, when the courts below fail to accommodate SRLs with disabilities.
69. Fifth, that SLRs are in every facet of law and are in every region of Canada. Moreover, as previously mentioned the numbers of SRLs are only increasing, with no hope of ever decreasing⁷². Therefore, if but for this matter alone, which is critically important for this Honourable Court to decide on, not just for injured workers, but for all Canadians.

⁶⁹ See **Exhibit “A”** of the affidavit of Julie Macfarlane, sworn May 11, 2019 |**Tab 19A, Vol. V, at pages 151 to 163**|

⁷⁰ See para 9 of the affidavit of Julie Macfarlane, sworn May 11, 2019 |**Tab 19, Vol. V, at pages 146**|

⁷¹ See para 132 to 133 of the affidavit of Paul Taylor, sworn July 1st, 2019 |**Tab 18, Vol. II, at page 197**|

⁷² See para 5, 6, & 9 of the affidavit of Julie Macfarlane, sworn May 11, 2019 |**Tab 19, Vol. V, at pages 145 & 146**|

Issue #2: Can provincial/territorial legislation absolutely immunize a government agency simply by ousting the inherent jurisdiction of the court?

70. This case will confirm the overwhelming concern with the legal principle of barring injured workers to any form of redress, is knowingly and intentionally being abused by many stakeholders, including the respondents of this appeal. This abuse is in the form of physical, emotional, and financial harm. Moreover, it is not just Mr. Taylor but all injured workers in Canada, who have been unlawfully stripped of their rights, as citizens of Canada. In doing so, this has created a form of unlawful ‘*absolute immunity*’ for: employers, employer staff; workers compensation boards (*WCBs*), WCB staff; and workers compensation appeals tribunals (*WCATs*), and WCAT staff, in Canada. Finally, they are unjustly enriched by their unlawful actions.

71. Mr. Taylor seeks leave to appeal this case, so that the Supreme Court may consider the boundaries between the rights of Canadians to seek remedies for breaches of their civil rights and *Charter* rights pursuant to s.24(1), and the ability of provincial legislatures to eliminate those rights by ousting the inherent jurisdiction of the courts, to award damages. Mr. Taylor respectfully submits the critical question of whether provincial legislation can absolutely immunize a government agency, and/or government individuals raised by this appeal is deserving of the Supreme Court’s attention for five reasons.

72. First, while the *Charter* has been extensively litigated over the past 36 years, the fundamental question of whether a legislature can bar *Charter* claims made pursuant to s. 24(1) and common law has not been squarely considered by the Supreme Court. The closest this Honourable Court has come to adjudicating this issue directly was in the case of *The Worker's Compensation Board and Randy Wolfert v. Thomas Shuchuk* SCC File No. 29737 (2003)⁷³. Mr. Shuchuk, an injured worker, brought a civil action against the Alberta WCB and an Alberta WCB worker - Randy Wolfert for their bad faith actions towards Mr. Shuchuk. Initially, Mr. Shuchuk’s matter was dismissed⁷⁴. However, it was reversed on appeal⁷⁵. The Alberta WCB appealed, to the Albert Court of Appeal, which

⁷³ See *WCB & Wolfert v. Thomas Shuchuk* (By Leave) SCC File No. 29737 (2003) | **Tab 32A, Vol. VI, at page 220** |

⁷⁴ See *Shuchuk v. Wolfert*, 2001 ABQB 500 | **Tab 32D, Vol. VI, at pages 238 to 239** |

⁷⁵ See *Shuchuk v. Wolfert*, 2001 ABQB 937 | **Tab 32C, Vol. VI, at pages 225 to 238** |

was denied⁷⁶. The Alberta WCB applied for leave to appeal to this Honourable Court, which was denied⁷⁷. This present case provides an excellent opportunity to directly address this fundamental question of whether WCBs, WCATS, and employers hold absolute immunity over Canadians, who happen to be injured at work and are afterwards treated very badly by their employers, and board & tribunal staff.

73. Second, this case raises an important “separation of powers” question – namely whether it is the legislatures or the courts that may determine what is a “just and appropriate” remedy under s. 24(1) of the *Charter*. This case raises a matter of the jurisdiction of the court being ousted by their alleged inability to award damages. In this case at bar, the Court of Appeal for Ontario found that there are strong policy reasons to completely oust the jurisdiction of the courts, with matters involving accident employers, workers compensation boards, and workers compensation tribunals. This regardless of the actions or the harm to injured workers. Thereby providing the parties (WCBs, WCATs, and employers) absolute powers of immunity, over injured workers in Ontario and Canada. While this issue has not been squarely considered by the Supreme Court, the Court of Appeal for Ontario’s reasoning appears to contradict the following:

- a. The judicial independence and rule of law set by this Honourable Court in the *British Columbia v. Imperial Tobacco Canada Ltd.*,⁷⁸
- b. The common law right of redress, well accepted and established by this Honourable Court;
- c. Most importantly the general nature of s. 24(1) set by this Honourable Court in *Doucet-Boudreau v. Nova Scotia*⁷⁹.

74. Third, the decision of the Court of Appeal for Ontario in this case puts the common law in Ontario at odds with the common law in Alberta, New Brunswick, and many other

⁷⁶ See *Wolfert v. Shuchuk*, 2003 ABCA 109 [Tab 32B, Vol. VI, at pages 221 to 224]

⁷⁷ See *WCB & Wolfert v. Thomas Shuchuk* (By Leave) SCC File No. 29737 (2003) [Tab 32A, Vol. VI, at page 220]

⁷⁸ See page 32 of *British Columbia v. Imperial Tobacco Canada Ltd.*, [2005] 2 S.C.R. 473, 2005 SCC 49

⁷⁹ See paras 41-51 of *Doucet-Boudreau v. Nova Scotia (Minister of Education)*, 2003 SCC 62. [2003] 3 SCR 3.

Canadian Jurisdictions. The Court of Appeal for Alberta agreed that “*there is no statutory or common law claim to **absolute immunity***”.⁸⁰ As things stand now, the uneasy reality is that the rights of Albertans, and many other Canadians to seek redress and *Charter* remedies are significantly more robust than the rights of Ontarians.

75. Fourth, general “*protection from action*” clauses like s. 179, s. 118, and s. 123 of the *Workplace Safety & Insurance Act* S.O. 1997 are found in dozens of statutes across Canada. They are nearly identical clauses in the statute books of each Province & Territory in Canada⁸¹. The Supreme Court’s guidance on whether provincial/territorial legislation can limit the remedies available under common law and under s. 24(1) of the *Charter* will benefit all Canadians.

76. Fifth, that the definition of what damages are have been made clear by this court in *Canson Enterprises Ltd. v. Boughton & Co.*, where this Honourable Court stated that “*Damages are a monetary payment awarded for the invasion of a right at common law*”⁸². What damages are not, is benefits. However, the legislation section 118 & 123 of the WSIA, referenced by the lower courts serve to redefine the meaning of damages as including *benefits*. In doing so, would unconstitutionally oust the jurisdiction of the courts and thereby violating the principle of judicial independence and the rule of law⁸³.

Issue #3: Can the common law practice of deliberative secrecy completely immunize an administrative tribunal?

77. This case raises yet another most fundamental constitutional question a court can consider: can common law practice of deliberative completely immunize an administrative body such as a commission, board and/or tribunal? In this case the Court of Appeal has held that it can.

⁸⁰ *Dechant v. Stevens*, 2001 ABCA 39 at para 78 [Tab 34, Vol. VI, at pages 447 to 489]

⁸¹ See examples from each of the Provinces/Territories at Part VII of this memorandum.

⁸² See *Canson Enterprises Ltd. v. Boughton & Co.* [1991] 3 S.C.R. 534 at para. 39, per La Forest J.

⁸³ See *British Columbia v. Imperial Tobacco Canada Ltd.*, [2005] 2 S.C.R. 473, 2005 SCC 49

78. Mr. Taylor was an SRL, during his hearing at the WSIAT in 2007. Mr. Taylor also suffers from numerous disabilities which make it very difficult for him to take handwritten notes. Mr. Taylor used a recorder, as an assistive device, which sole purpose was for notetaking purposes during the panel hearing. This is a legally acceptable practice within the courts⁸⁴ for persons who are SRLs with disabilities.
79. The use of a recorder as an assistive device is also an accepted practice by the WSIAT, as stated in the WSIAT *Accessibility Policy for Customer Service*. A policy which “...applies to all of the Tribunal’s services.” states that “*Persons with disabilities who **require personal assistive devices will be permitted access to these devices while attending hearings...***”⁸⁵. The use of a recorder for note taking purposes for disabled persons is an assistive device, as defined by the courts below in the court’s procedure⁸⁶. *It is no different than allowing a person with a wheelchair into the courtroom or tribunal hearing room.*
80. In reviewing the audio notes, Mr. Taylor found that the recorder had recorded comments of the following WSIAT panel members: Mr. Gale, Mr. Wheeler and Ms. Ferrari. Specifically, Mr. Wheeler and Ms. Ferrari acted viciously and venomously towards Mr. Taylor. They were heard mocking, laughing at, and threatening physical harm onto Mr. Taylor. Mr. Wheeler was heard saying that Mr. Taylor “*was a fucking joke*” and that Mr. Taylor “*deserved to have his ass kicked for not working and supporting his family*” and that “*Mr. Taylor is faking as all injured worker are faking*”⁸⁷. As well as other vexatious, vicious and venomous comments.
81. The recording clearly confirms a lack of impartiality on the part of the WSIAT panel members and a violation of the principles of Natural Justice. There was no interest to attempt to be impartial with Mr. Taylor’s appeal or likely any other injured worker’s

⁸⁴ See [S. 136\(b\) Courts of Justice Act](#) R.S.O. 1990,

also see Part D of **Exhibit “L”** of the affidavit of Paul Taylor sworn Sep. 14th, 2019 |**Tab 18L, Vol. III, at page 181**|

⁸⁵ See page 3 of **Exhibit “K”** of the affidavit of Paul Taylor sworn Sep. 14th, 2019 |**Tab 18K, Vol. III, at page 166**|

⁸⁶ See Part D of **Exhibit “L”** of the affidavit of Paul Taylor sworn Sep. 14th, 2019 |**Tab 18L, Vol. III, at page 579**|

⁸⁷ See para 106, of the Fresh as Amended Statement of Claim, dated May 2019 |**Tab 17, Vol. II, at page 89**|

appeal. There were covert efforts to deny Mr. Taylor a fair hearing. After Mr. Taylor's numerous attempts to resolve his concerns with the WSIAT, including filing of verbal and written complaints to the WSIAT; the filing a request for reconsideration; and the filing of an application for Judicial Review, Mr. Taylor then brought a civil action in court against both the WSIB and the WSIAT.

82. Both the Ontario Superior Court of Justice⁸⁸ and the Court of Appeal for Ontario⁸⁹ has held that the common law principle of deliberative secrecy is absolute.

*“The principle of deliberative secrecy prevents disclosure of how and why adjudicative decision-makers make their decisions. This protection is necessary to help preserve the independence of decision-makers, to promote consistency and finality of decisions and to prevent decision-makers from having to spend more time testifying about their decisions than making them. At the core of the principle is protection of the substance of the matters decided and the decision-maker's thinking with respect to such matters...”*⁹⁰

83. The findings of the court below in their interpretation of deliberative secrecy serve to impoverish Canadian's common law right of redress, as well as their constitutional right of redress under s. 24(1) of the *Charter*. It is also directly contrary to the principle of constitutional supremacy as stated in s. 52 of the *Constitution*.

84. Mr. Taylor seeks leave to appeal in this case so that the Supreme Court may consider the boundaries between the rights of Canadians to seek remedies for common law breeches and to also seek remedies for breeches of their *Charter* rights pursuant to s. 24(1). Also, the ability of Canada's Provincial legislatures and Federal Parliament to eliminate rights of redress, with the creation of administrative boards and tribunals. Mr. Taylor respectfully submits that the critical questions raised by this issue within this appeal are deserving of the Supreme Court's attention for three reasons.

⁸⁸ See paras 58 to 64, Reasons for Order of J. Price, dated February 22, 2017 at **[Tab 7, Vol. I, at pages 66 to 68]**

⁸⁹ See para 19, Reasons of the Court of Appeal for Ontario, dated February 6, 2018 **[Tab 4, Vol. I, at page 14]**

⁹⁰ See paras 14 & 15 *Cherubini Metal Works Ltd. v. Nova Scotia*, 2007 NSCA 37 **[Tab 35, Vol. VI, at page 494]**

85. First, it is the contention of Mr. Taylor that the argument of deliberative secrecy is being incorrectly applied by the courts below. It is an effort to shroud the hatred that individuals possess, in positions of decision-making authority, towards specific groups in Canada. The specific groups being disabled persons, SRLs, and Canadians & Migrants injured at worker, and could be any other status groups in Canada.
86. Secondly, to do as the courts below have claimed, would again provide the administrative boards & tribunals with an authority of absolute immunity that regardless of vexatious, vicious, and venomous comments and possible actions, they have more immunity than the judiciary.
87. Third, the tasks of the judiciary have been unlawfully transferred to, administrative decision makers. This transfer of authority has been done by the Provincial/Territorial legislatures and is unconstitutional under s. 91, s. 92, and s. 96 of the *Constitution*. It also violates the principles of Natural Justice of impartiality and fairness.

Part IV- Submissions in Support of Order Sought Concerning Costs

88. This application for leave to appeal is a) brought by a disabled applicant who is reliant on a very low income⁹¹, and against whom a costs order would impose an even greater hardship, and b) is public interest litigation advanced on behalf of all injured workers in Canada, all disabled persons in Canada, and all SRLs in Canada.
89. Mr. Taylor has struggled with finances to prepare a proper case and still is unable to provide the important transcripts of the tribunal and court hearings. The purpose of which will be to confirm Mr. Taylor's allegations towards the WSIAT panel member's actions, as well as what was stated to him as an SRL, with disabilities by the courts below.

⁹¹ Mr. Taylor's income is less than half of the Low-Income Cutoff (LICO) as stipulated by Statistics Canada for a family of two, based on an income of \$31,000 per year. Mr. Taylor's average annual income is \$14,000.

90. The respondents both the WSIB and the WSIAT are government agencies, who are funded by privately funded premiums, which hold no financial risk to the government, or taxpayers. The WSIB presently has a surplus fund of more than \$36 billion. The WSIB also had a revenue surplus of more than \$2 billion in 2018, which it returned to employers, under the false pretense it was saving taxpayers.

91. For these reasons Mr. Taylor respectfully requests of this Honourable Court, that costs be awarded to him, in any event of the cause and if successful in the application an advance costs order be granted.

Part V – Order or Orders Sought

92. That leave to appeal be granted with costs, in any event of the cause.

93. That the costs order of J. Price be stayed

94. That the costs order of the Court of Appeal for Ontario be stayed.

95. That an advanced costs order be made on this application.

All of which is respectfully submitted to this Honourable Court.

Dated this 14th day of September 2019.



Paul Taylor
Applicant
Self-represented Litigant

Part VI Table of Authorities

Tab	Case
20	<i>Castrillo v. Workplace Safety and Insurance Board</i> , 2017 ONCA 121
21	<i>Medwid v. Ontario</i> 1988 ONSC 193
22	<i>Piercey v. General Bakeries Ltd.</i> 1986 CanLII 107 (NL SC)
23	<i>Roncato v. O'Brien</i> , [1987] O.J. No. 1285
24	<i>Katnich v. British Columbia (WCB)</i> , [1988] B.C.J. No. 171
25	<i>Horn v. Canada</i> , [1994] F.C.J. No. 105
26	<i>Steinnagel v workplace health</i> , 2016 onsc 2138
27	<i>Jozipovic v. British Columbia</i> , 2011 BCSC 329
28	<i>Tompkins v Alberta</i> , 2012 ABQB 418
29	<i>Taylor v. Saskatchewan</i> , 2004 SKQB 123
30	<i>Toronto Star Newspapers Limited v WSIAT</i> , 2017 ONSC 4537
31	<i>Oxford Frozen Foods Ltd, v. Nova Scotia</i> , 2017 NSSC 245
32a	<i>The Worker's Compensation Board and Randy Wolfert v. Thomas Shuchuk (Alta.) (Civil) (By Leave)</i> SCC File No. 29737 (2003)
32b	<i>Wolfert v. Shuchuk</i> , 2003 ABCA 109
32c	<i>Shuchuk v. Wolfert</i> , 2001 ABQB 937
32d	<i>Shuchuk v. Wolfert</i> , 2001 ABQB 500
33	<i>Murray Goodwin v. Workplace Health, Safety and Compensation</i> , 2015 NBQB 32
34	<i>Dechant v. Stevens</i> , 2001 ABCA 39
35	<i>Cherubini Metal Works Ltd. v. Nova Scotia (Attorney General)</i> , 2007 NSCA 37
36	<i>Behrens v. Stoodley</i> 1999 ONCA 1626
37	<i>Somerset v Stewart</i> (1772) 98 ER 499

Supreme Court of Canada Authorities not Included

Athey v. Leonati, [1996] 3 S.C.R. 458, 140 D.L.R. (4th) 235, [1997] 1 W.W.R. 97

Pintea v. Johns 2017 SCC 23 SCR 1

Eldridge v. British Columbia (Attorney General) [1997] 3 S.C.R. 624

Granovsky v. Canada (Minister of Employment), [2000] 1 S.C.R. 703

Law v. Canada [1999] 1 S.C.R. 497

R. v. Kapp [2008] 2 SCR 483

R. v. Canadian Broadcasting Corp [2018] 1 SCR 196

Trial Lawyers Association of British Columbia v. British Columbia (Attorney General)
[2014] SCC 59

British Columbia v. Imperial Tobacco Canada Ltd., [2005] 2 S.C.R. 473, 2005 SCC 49

Doucet-Boudreau v. Nova Scotia (Minister of Education), 2003 SCC 62. [2003] 3 SCR 3

Canson Enterprises Ltd. v. Boughton & Co. [1991] 3 S.C.R. 534

Crevier v. A.G. (Quebec) et al., [1981] 2 S.C.R.

Part VII Legislation

(Ontario) *Courts of Justice Act* R.S.O. 1990

Prohibition against photography, etc., at court hearing

136. (1) Subject to subsections (2) and (3), no person shall,

- (a) take or attempt to take a photograph, motion picture, audio recording or other record capable of producing visual or aural representations by electronic means or otherwise,
 - (i) at a court hearing,
 - (ii) of any person entering or leaving the room in which a court hearing is to be or has been convened, or
 - (iii) of any person in the building in which a court hearing is to be or has been convened where there is reasonable ground for believing that the person is there for the purpose of attending or leaving the hearing;
- (b) publish, broadcast, reproduce or otherwise disseminate a photograph, motion picture, audio recording or record taken in contravention of clause (a); or
- (c) broadcast or reproduce an audio recording made as described in clause (2) (b). R.S.O. 1990, c. C.43, s. 136 (1).

Exceptions

(2) Nothing in subsection (1),

- (a) prohibits a person from unobtrusively making handwritten notes or sketches at a court hearing; or
- (b) prohibits a lawyer, a party acting in person or a journalist from unobtrusively making an audio recording at a court hearing, in the manner that has been approved by the judge, for the sole purpose of supplementing or replacing handwritten notes. R.S.O. 1990, c. C.43, s. 136 (2); 1996, c. 25, s. 1 (22).

Exceptions

(3) Subsection (1) does not apply to a photograph, motion picture, audio recording or record made with authorization of the judge,

- (a) where required for the presentation of evidence or the making of a record or for any other purpose of the court hearing;
- (b) in connection with any investitive, naturalization, ceremonial or other similar proceeding; or
- (c) with the consent of the parties and witnesses, for such educational or instructional purposes as the judge approves.

Offence

(4) Every person who contravenes this section is guilty of an offence and on conviction is liable to a fine of not more than \$25,000 or to imprisonment for a term of not more than six months, or to both. R.S.O. 1990, c. C.43, s. 136 (3, 4).

Section Amendments with date in force (d/m/y)

1996, c. 25, s. 1 (22) - 31/10/1996

(Ontario) *Human Rights Code* R.S.O. 1990 c. H.19

Services

1. Every person has a right to equal treatment with respect to services, goods and facilities, without discrimination because of race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, sexual orientation, gender identity, gender expression, age, marital status, family status or disability. R.S.O. 1990, c. H.19, s. 1; 1999, c. 6, s. 28 (1); 2001, c. 32, s. 27 (1); 2005, c. 5, s. 32 (1); 2012, c. 7, s. 1.

Act binds Crown

47. (1) **This Act binds the Crown and every agency of the Crown.** R.S.O. 1990, c. H.19, s. 47 (1).

Act has primacy over other Acts

(2) **Where a provision in an Act or regulation purports to require or authorize conduct that is a contravention of Part I, this Act applies and prevails unless the Act or regulation specifically provides that it is to apply despite this Act.** R.S.O. 1990, c. H.19, s. 47 (2).

(Ontario) *Consolidated Provincial Practice Direction 2018*

D. Electronic Devices in the Courtroom

93. This section outlines the protocol on how electronic devices may be used in courtrooms of the Ontario Superior Court of Justice by counsel, licensed paralegals, law students and law clerks assisting counsel, self-represented litigants, and media or journalists. **Note:** This section does not apply to persons who require electronic devices (or services requiring the use of electronic devices) to accommodate a disability.

Definitions

94. Electronic Devices

For the purposes of this section, “electronic devices” include all forms of computers, personal electronic and digital devices, and mobile, cellular, and smart phones.

95. Publicly Accessible Live Communications

For the purposes of this section, “publicly accessible live communications” are defined as the act of using an electronic device to transmit information from the courtroom to a publicly accessible medium (e.g. via Twitter or live blogs).

96. Judge

For the purposes of this section, “judge” means:

- a. all judges, traditional masters, and case management masters of the Superior Court of Justice, and
- b. judges of the Small Claims Court and deputy judges.

Prohibited Use of Electronic Devices by the Public

97. Members of the public are not permitted to use electronic devices in the courtroom unless the presiding judge orders otherwise.

Use of Electronic Devices in the Courtroom

98. ***Unless the presiding judge orders otherwise***, the use of electronic devices in silent mode and in a discreet and unobtrusive manner is ***permitted*** in the courtroom by:

- a. counsel;
- b. paralegals who are licensed by the Law Society of Ontario;
- c. law students and law clerks assisting counsel during the proceeding;
- d. self-represented parties; and,

e. media or journalists

subject to the following restrictions:

i. The electronic device cannot interfere with courtroom decorum or otherwise interfere with the proper administration of justice.

ii. The electronic device cannot interfere with the court recording equipment or other technology in the courtroom.

iii. The electronic device cannot be used to send publicly accessible live communications where to do so would breach a restriction on publication made in the proceeding. Note: Anyone using an electronic device to transmit publicly accessible live communications from the courtroom has the responsibility to identify and comply with any publication bans, or other restrictions that have been imposed either by statute or by court order.

iv. The electronic device cannot be used to take photographs or videos unless the judge has granted permission to do so, in accordance with s. 136 of the Courts of Justice Act.

v. Only counsel, self-represented parties, the media and journalists are permitted to use electronic devices to make an audio recording of the proceeding and only for the purpose of note-taking. However, such audio recordings cannot be sent from the electronic device.

vi. Talking on electronic devices is not permitted in the courtroom.

(Ontario) *Workers Compensation Act R.S.O. 1990 c W.11*

Right of action as against employer in Schedule 1

(9) No employer in Schedule 1 and no worker of an employer in Schedule 1 or dependant of such worker has a right of action for damages against any employer in Schedule 1 or any executive officer or any director or any worker of such employer, for an injury for which benefits are payable under this Act, where the workers of both employers were in the course of their employment at the time of the happening of the injury, but, in any case where the Board is satisfied that the accident giving rise to the injury was caused by the negligence of some other employer or employers in Schedule 1 or their workers, the Board may direct that the benefits awarded in any such case or a proportion of them shall be charged against the class or group to which such other employer or employers belong and to the accident cost record of such individual employer or employers.

(Ontario) *Workplace Safety and Insurance Act, 1997, S.O. 1997, c. 16, Sched. A*

No action for benefits

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

Benefits in lieu of rights of action

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

Certain rights of action extinguished

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

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

Same, Schedule 2 employer

(2) A worker employed by a Schedule 2 employer and the worker's survivors are not entitled to commence an action against the following persons in respect of the worker's injury or disease:

1. The worker's Schedule 2 employer.
2. A director, executive officer or worker employed by the worker's Schedule 2 employer.

Restriction

(3) If the workers of one or more employers were involved in the circumstances in which the worker sustained the injury, subsection (1) applies only if the workers were acting in the course of their employment.

Exception

(4) Subsections (1) and (2) do not apply if any employer other than the worker's employer supplied a motor vehicle, machinery or equipment on a purchase or rental basis without also supplying workers to operate the motor vehicle, machinery or equipment. 1997, c. 16, Sched. A, s. 28.

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).

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).

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).

(Manitoba) *The Workers Compensation Act* C.C.S.M c. W200

General jurisdiction

60(1) The board has exclusive jurisdiction to examine into, hear, and determine, all matters

Compétence générale

60(1) La Commission a compétence exclusive pour examiner, entendre et décider toutes les

and questions arising under this Part and as to any matter or thing in respect of which any power, authority, or discretion, is conferred upon the board; and the action or decision of the board thereon is final and conclusive and is not open to question or review in any court; and no proceedings by or before the board shall be restrained by injunction, prohibition, or other process or proceeding in any court, or are removable by certiorari or otherwise into any court.

Particular jurisdiction

60(2) Without hereby limiting the generality of subsection (1), it is declared that the exclusive jurisdiction of the board extends to determining

- (a) whether any injury or death in respect of which compensation is claimed was caused by an accident within the meaning of this Part;
- (b) the question whether any injury has arisen out of or in the course of an employment within the scope of this Part;
- (c) the existence and degree of disability by reason of any injury;
- (d) the existence and degree of an impairment, and whether it is the result of an accident;
- (e) the loss of earning capacity resulting from an accident;
- (f) the amount of average earnings and net average earnings;
- (g) the existence, for the purpose of this Part, of the relationship of any member of the family of a worker as defined by this Act;

affaires et questions se rapportant à la présente partie et toute affaire ou chose à l'égard de laquelle un pouvoir, une autorisation ou une discrétion lui est conféré; l'action ou la décision de la Commission est alors définitive et péremptoire et elle ne peut faire l'objet d'une contestation ou d'une révision devant un tribunal.

Aucune procédure engagée par la Commission ou devant elle ne peut être entravée par injonction, prohibition ou autre acte de procédure ou procédure devant un tribunal, ni être évoquée par certiorari ou autrement devant un tribunal.

Compétence particulière

60(2) Sans préjudice de la portée générale des dispositions du paragraphe (1), cette compétence exclusive s'étend à la détermination :

- a) de la question de savoir si la lésion ou le décès qui fait l'objet d'une demande d'indemnisation a été causé par un accident au sens de la présente partie;
- b) de la question de savoir si une lésion est survenue du fait et au cours d'un emploi assujetti à la présente partie;
- c) de l'existence et du degré de l'incapacité due à une lésion;
- d) de l'existence et du degré de la déficience, et si celle-ci est attribuable à un accident;
- e) de la perte de la capacité de gain résultant d'un accident;
- f) du montant des gains moyens et des gains moyens nets;
- g) de l'existence, pour l'application de la présente partie, du lien de parenté de tout

(h) the existence of dependency;

(i) whether or not an employer's undertaking or any part, branch or department of an employer's undertaking is in an industry within the scope of this Part, and the class, sub-class, group or sub-group to which an employer's undertaking or any part, branch or department thereof should be assigned;

(j) whether or not any worker in any industry is within the scope of this Part and entitled to compensation thereunder;

(k) whether any particular disease is peculiar to, or characteristic of, any particular industrial process, trade, or occupation, to which this Part applies;

(l) [repealed] S.M. 1989-90, c. 47, s. 30;

(m) whether the commuted value of a periodic payment under this Part is equivalent to the periodic payment;

(n) whether an annuity is of equal value to a lump sum payable under this Part;

(o) the costs for the year for a class, sub-class, group, sub-group or undertaking;

(p) the future cost of claims and the administrative expenses of the board;

(q) whether an employer employs fewer than 25 full-time or regular part-time workers;

(r) whether an employer is a new employer or a successor employer for the purpose of determining the employer's experience;

(s) whether a person is an artisan or a mechanic for the purposes of this Act.

membre de la famille d'un ouvrier au sens de la présente loi;

h) de l'état de dépendance de la personne à charge;

i) de la question de savoir si l'entreprise d'un employeur ou une partie, une succursale ou un service de celle-ci est une industrie qui entre dans le champ d'application de la présente partie, ainsi que dans quelle catégorie, sous-catégorie, groupe ou sous-groupe la ranger;

j) de la question de savoir si un ouvrier employé dans une industrie est visé par la présente partie et a droit à une indemnité;

k) de la question de savoir si une certaine maladie est une particularité ou une caractéristique d'un procédé industriel, d'un métier ou d'un travail auxquels la présente partie s'applique;

l) [abrogé] L.M. 1989-90, c. 47, art. 30;

m) de la question de savoir si la valeur escomptée d'un paiement périodique visé à la présente partie est l'équivalent du paiement périodique;

n) de la question de savoir si la valeur d'une rente est égale à une somme forfaitaire payable en vertu de la présente partie;

o) des frais annuels pour une catégorie, une sous-catégorie, un groupe, un sous-groupe ou une entreprise;

p) des coûts des réclamations futures et des frais d'administration de la Commission;

q) de la question de savoir si l'employeur compte moins de 25 ouvriers à temps plein ou ouvriers réguliers à temps partiel;

r) de la question de savoir si l'employeur est un nouvel employeur ou le successeur de l'employeur, aux fins de l'évaluation de son expérience;

s) de la question de savoir si une personne est un artisan ou un mécanicien pour l'application de la présente loi.

Jurisdiction of appeal commission

60.8(1) Subject to section 60.9, the appeal commission has exclusive jurisdiction to examine, inquire into, hear and determine all matters and questions arising under this Part in respect of

- (a) appeals under subsection 60.1(5);
- (b) determinations under subsection 68(4);
- (b.1) appeals of administrative penalties under section 109.7;
- (c) any matter referred to it by the Board of Directors.

Board to determine right of action

68(4) Where an action in respect of an injury is brought against an employer, a director of a corporation that is an employer or a worker of an employer, the board has jurisdiction, on the application of a party to the action, to adjudicate and determine whether the right of action is removed by this Act; and the adjudication and determination is final and conclusive, and if the board determines that the right of action is removed by this Act, the action shall be forever stayed.

Compétence de la Commission d'appel

60.8(1) Sous réserve de l'article 60.9, la Commission d'appel a compétence exclusive pour entendre et trancher les affaires visées à la présente partie et qui ont trait :

- a) aux appels prévus au paragraphe 60.1(5);
- b) aux décisions prises en application du paragraphe 68(4);
- b.1) aux appels des sanctions administratives visées à l'article 109.7;
- c) aux questions que le conseil 'administration lui renvoie.

Droit d'action déterminé par la Commission

68(4) Lorsqu'une action relative à une lésion est intentée contre un employeur, un administrateur d'une corporation qui est un employeur ou un ouvrier d'un employeur, la Commission a compétence pour décider, à la demande de toute partie à l'action, si le droit d'action est retiré par la présente loi; la décision de la Commission à cet égard est définitive et péremptoire et si la Commission décide que le droit d'action est retiré par la présente loi, l'action devient caduque.

(Saskatchewan) *The Workers' Compensation Act, 2103 Chapter W-17.11*

Jurisdiction

20(1) The board has exclusive jurisdiction to examine, hear and determine:

- (a) all matters and questions arising pursuant to this Act; and

(b) any other matter with respect to which a power, authority or discretion is conferred on the board.

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

(a) whether any condition or death with respect to which compensation is claimed was caused by an injury;

(b) whether any injury has arisen out of or in the course of employment;

(c) the existence and degree of functional impairment to a worker resulting from an injury;

(d) the permanence of a functional impairment resulting from an injury;

(e) the degree of diminution of earning capacity resulting from an injury;

(f) the average earnings of a worker;

(g) the existence of the relationship of any member of the family of a worker and the degree of dependency;

(h) whether any industry or employer is within the scope of this Act and the class to which the industry or employer is assigned; and

(i) whether any worker is within the scope of this Act.

(3) The actions and proceedings of the board are final and conclusive.

(4) The board's decisions and findings on all questions of fact and law are not open to question or review in any court, and any proceeding before the board must not be restrained by injunction, prohibition, mandamus, *quo warranto*, *certiorari* or other process or proceeding in any court or be removable by application for judicial review or otherwise into any court on any grounds.

(5) Notwithstanding subsections (3) and (4), the board may:

(a) reconsider any matter that it has dealt with; and

(b) rescind, alter or amend any decision or order it has made.

2013, c.W-17.11, s.20.

(Alberta) *Workers' Compensation Act* R.S.A. 2000 Chapter W-15

Power of Appeals Commission

13.1(1) Subject to sections 13.2(11) and 13.4, the Appeals Commission has exclusive jurisdiction to examine, inquire into, hear and determine all matters and questions arising under this Act and the regulations in respect of

(a) appeals from decisions under section 46 made by a review body appointed under section 45,

(b) appeals from decisions under section 120 made by a review body appointed under section 119,

(c) appeals from determinations of the Board under section 21(3), and

(d) any other matters assigned to it under this or any other Act or the regulations under this or any other Act,

and the decision of the Appeals Commission on the appeal or other matter is final and conclusive and is not open to question or review in any court.

(2) The chief appeals commissioner may authorize a panel of 2 or more appeals commissioners to act on behalf of the Appeals Commission under subsection (1) and that panel may exercise the powers of the Appeals Commission for that purpose.

(9) No proceedings by or before the Appeals Commission shall be restrained by injunction, prohibition or other process or proceedings in any court or are removable by certiorari or otherwise into any court, nor shall any action be maintained or brought against the Appeals Commission or any member of the Appeals Commission in respect of any act done or decision made in the honest belief that it was within the jurisdiction of the Appeals Commission.

Jurisdiction of Board

17(1) Subject to section 13.1, the Board has exclusive jurisdiction to examine, inquire into, hear and determine all matters and questions arising under this Act or the regulations and the action or decision of the Board on such matters and questions is final and conclusive, and is not open to question or review in any court.

(2) No proceedings by or before the Board shall be restrained by injunction, prohibition or other process or proceedings in any court or are removable by certiorari or otherwise into any court, nor shall any action be maintained or brought against the Board, any employee or officer of the Board or any member of the board of directors in respect of any act or decision done or made in the honest belief that it was within the jurisdiction of the Board.

(British Columbia) Workers Compensation Act R.S.B.C. 1996 Chapter 492

Jurisdiction of Board

96. (1) Subject to sections 239 and 240, the Board has exclusive jurisdiction to inquire into, hear and determine all matters and questions of fact and law arising under this Part, and the action or decision of the Board on them is final and conclusive and is not open to question or review in any court, and proceedings by or before the Board must not be restrained by injunction, prohibition or other process or proceeding in any court or be removable by certiorari or otherwise into any court, and an action may not be maintained or brought against the Board or a director, an officer, or an employee of the Board in respect of any act, omission or decision that was within the jurisdiction of the Board or that the Board, director, officer or employee believed was within the jurisdiction of the Board; and, without restricting the generality of the foregoing, the Board has exclusive jurisdiction to inquire into, hear and determine

- (a) the question whether an injury has arisen out of or in the course of an employment within the scope of this Part;
- (b) the existence and degree of disability by reason of an injury;
- (c) the permanence of disability by reason of an injury;
- (d) the degree of diminution of earning capacity by reason of an injury;
- (e) the amount of average earnings of a worker, whether paid in cash or board or lodging or other form of remuneration, for the purpose of levying assessments, and the average earnings of a worker for purposes of payment of compensation;
- (f) the existence, for the purpose of this Part, of the relationship of a member of the family of a worker as defined by this Act;
- (g) the existence of dependency;
- (h) whether an industry or a part, branch or department of an industry is within the scope of this Part, and the class to which an industry or a part, branch or department of an industry within the scope of this Part should be assigned;
- (i) whether a worker in an industry within the scope of this Part is within the scope of this Part and entitled to compensation under it; and
- (j) whether a person is a worker, a subcontractor, a contractor or an employer within the meaning of this Part.

113. (1) Subject to sections 239 and 240, the Board has exclusive jurisdiction to inquire into, hear and determine all those matters and questions of fact and law arising or required to be determined under this Part, and the action or decision of the Board is final and conclusive and is not open to question or review in any court.

Exclusive jurisdiction

254. The appeal tribunal has exclusive jurisdiction to inquire into, hear and determine all those matters and questions of fact, law and discretion arising or required to be determined under this Part and to make any order permitted to be made, including the following:

- (a) all appeals from review officers' decisions as permitted under section 239;
- (b) all appeals from Board decisions or orders as permitted under section 240;
- (c) all matters that the appeal tribunal is requested to determine under section 257;
- (d) all other matters for which the Lieutenant Governor in Council by regulation permits an appeal to the appeal tribunal under this Part.

Appeal tribunal decision or action final

255. (1) Any decision or action of the chair or the appeal tribunal under this Part is final and conclusive and is not open to question or review in any court.

- (2) Proceedings by or before the chair or appeal tribunal under this Part must not
- (a) be restrained by injunction, prohibition or other process or proceeding in any court, or
 - (b) be removed by certiorari or otherwise into any court.
- (3) The Board must comply with a final decision of the appeal tribunal made in an appeal under this Part.
- (4) A party in whose favour the appeal tribunal makes a final decision, or a person designated in the final decision, may file a certified copy of the final decision with the Supreme Court.
- (5) A final decision filed under subsection (4) has the same force and effect, and all proceedings may be taken on it, as if it were a judgment of the Supreme Court.

2002-66-33; 2004-45-188.

(Yukon) Workers' Compensation Act S.Y. 2008, c.12

Jurisdiction of the appeal tribunal

65(1) The appeal tribunal has exclusive jurisdiction to examine, inquire into, hear, and determine all matters arising in respect of an appeal from a decision of the board under subsection 14(2), from a decision of a hearing officer under subsection 53(1), or from a decision of the president of the board under subsection 56(4) and it may confirm, reverse, or vary the decision.

- (2) Without restricting the generality of subsection (1), the exclusive jurisdiction includes the power to determine, on an appeal pursuant to subsection 15(2) or 54(1)
- (a) whether a worker's injury was work-related;
 - (b) the duration and degree of a work-related injury;
 - (c) the weekly loss of earnings of a worker resulting from a work-related injury;
 - (d) the average weekly earnings of a worker;
 - (e) whether a person is a member of the family of a worker;
 - (f) whether a person is a dependent;
 - (g) whether a person is a worker, and to deem a person to be a worker; and

Compétence du tribunal d'appel

65(1) Le tribunal d'appel a compétence exclusive pour procéder à un examen, à une enquête, à une audience ou à une détermination se rapportant à toutes les questions relatives à l'appel de la décision de la Commission rendue en vertu du paragraphe 14(2), de la décision d'un agent enquêteur rendue en vertu du paragraphe 53(1) ou de la décision du président de la Commission rendue en vertu du paragraphe 56(4), et il peut confirmer, infirmer ou modifier la décision.

- (2) Sans que soit limitée la portée générale du paragraphe (1), la compétence exclusive du tribunal d'appel comprend notamment le pouvoir de déterminer, relativement à l'appel d'une décision rendue en vertu du paragraphe 15(2) ou à l'appel interjeté en vertu du paragraphe 54(1) :
- a) si une lésion subie par un travailleur était liée au travail;
 - b) la durée et la gravité d'une lésion liée au travail;
 - c) la perte de gains hebdomadaire d'un travailleur découlant d'une lésion liée au travail;
 - d) les gains hebdomadaires moyens d'un travailleur;

(h) whether a worker or a dependent is entitled to compensation.

e) si une personne est membre de la famille du travailleur;

f) si une personne est une personne à charge;

g) si une personne est un travailleur, et de la considérer ainsi;

h) si un travailleur ou une personne à charge a droit à indemnisation.

(3) Subject to subsections 64(8) and (12), the acts or decisions of the appeal tribunal on any matter within its jurisdiction are final and conclusive and not open to question or review in any court.

(3) Sous réserve des paragraphes 64(8) et (12), les actes qu'accomplit le tribunal d'appel ou les décisions qu'il rend à l'égard de toute question relevant de sa compétence sont définitifs et concluants et ne peuvent être ni contestés ni révisés devant un tribunal judiciaire.

(4) No proceedings by or before the appeal tribunal shall be restrained by injunction, declaration, prohibition, or other process or proceedings in any court or be removed by certiorari, judicial review, or otherwise in any court, in respect of any act or decision of the appeal tribunal within its jurisdiction.

(4) Nulle procédure engagée par le tribunal d'appel ou devant lui ne peut être limitée par voie d'injonction, de déclaration, de prohibition ou autre acte de procédure ou instance devant un tribunal judiciaire ni déferée à un tribunal judiciaire, notamment par voie de certiorari ou de révision judiciaire, relativement aux actes qu'il accomplit ou aux décisions qu'il rend dans les limites de sa compétence.

(5) No action shall be maintained or brought against the appeal tribunal, or any member, employee, or agent thereof in respect of any act or decision done or made in good faith or in the honest belief that it was done within the appeal tribunal's jurisdiction.

(5) Nulle action ne peut être maintenue ou introduite contre le tribunal d'appel ou l'un de ses membres, de ses employés ou de ses mandataires relativement aux actes qu'il a accomplis ou aux décisions qu'il a prises ou rendues de bonne foi ou en croyant honnêtement respecter les limites de la compétence du tribunal d'appel.

Jurisdiction of the board of directors or the board

105(1) Subject to subsection 65(1), the board of directors has the exclusive jurisdiction to examine, inquire into, hear, determine, and interpret all matters and questions under this Act.

Compétence du Conseil d'administration

105(1) Sous réserve du paragraphe 65(1), le Conseil d'administration a compétence exclusive pour procéder à un examen, à une enquête, à une audience, à une détermination et à une interprétation se rapportant à toutes les affaires et les questions que prévoit la présente loi.

(2) Without restricting the generality of subsection (1), the exclusive jurisdiction includes the power to determine

- (a) whether an industry is within the scope of this Act;
- (b) whether any person or entity is an employer, and to deem a person or entity to be an employer; and
- (c) employment safety.

(3) The acts or decisions of the board of directors on any matter within its exclusive jurisdiction are final and conclusive and not open to question or review in any court.

(4) No proceedings by or before the board of directors shall be restrained by injunction, declaration, prohibition, or other process or proceedings in any court or be removed by certiorari, judicial review, or otherwise into any court, in respect of any act or decision of the board of directors within its jurisdiction nor shall any action be maintained or brought against the board of directors, individual directors, employees, or agents of the board in respect of any act or decision done or made in good faith or in the honest belief that it was done within its jurisdiction.

(2) Sans que soit limitée la portée générale du paragraphe (1), la compétence exclusive comprend notamment le pouvoir :

- a) de déterminer si une industrie entre dans le champ d'application de la présente loi;
- b) de déterminer si une personne physique ou un organisme est un employeur et de considérer la personne physique ou l'organisme comme étant un employeur;
- c) de trancher la question de la sécurité au travail.

(3) Les actes qu'accomplit le Conseil d'administration ou les décisions qu'il rend à l'égard de toute question relevant de sa compétence exclusive sont définitifs et concluants et ne peuvent être ni contestés ni révisés devant un tribunal judiciaire.

(4) Nulle procédure engagée par le Conseil d'administration ou devant lui ne peut être limitée par voie d'injonction, de déclaration, de prohibition ou autre acte de procédure ou instance devant un tribunal judiciaire ni déferée à un tribunal judiciaire, notamment par voie de certiorari ou de révision judiciaire, relativement aux actes qu'il accomplit ou aux décisions qu'il rend dans les limites de sa compétence. Nulle action ne peut être maintenue ou introduite contre le Conseil d'administration ou l'un de ses membres, de ses employés ou de ses mandataires relativement aux actes qu'il a accomplis ou aux décisions qu'il a prises ou rendues de bonne foi ou en croyant honnêtement respecter les limites de sa compétence.

(Northwest Territories) *Workers' Compensation Act* S.N.W.T. 2007 c. 21

Jurisdiction of the Commission

90. (1) No action lies for the recovery of compensation from the Commission, and no action may be maintained or brought against the Commission, in respect of any act done or decision made by it in the honest belief that it was within its jurisdiction.

Compétence de la Commission

90. (1) Aucune action ne peut être intentée en recouvrement d'une indemnité auprès de la Commission. De même, aucune action ne peut être engagée ni soutenue contre la Commission à l'égard des actes qu'elle a accomplis ou des décisions qu'elle

(2) All claims for compensation shall be determined pursuant to this Act.

91. (1) Subject to the jurisdiction of the Appeals Tribunal, the Commission has exclusive jurisdiction to examine, inquire into, hear and determine all matters and questions arising under this Act.

(2) For greater certainty, the exclusive jurisdiction of the Commission extends to examining, inquiring into, hearing and determining the following matters:

- (a) whether a person is a worker or the spouse, child or family member of a worker, and whether he or she is dependent on a worker;
- (b) whether something is a personal injury, disease or death arising out of and during the course of employment;
- (c) whether a disability exists because of a personal injury or disease, and the degree and duration of the disability;
- (d) whether earning capacity has been impaired because of a personal injury or disease, and the degree of impairment;
- (e) the amount of annual remuneration, deductions or net annual remuneration;
- (f) whether a person is entitled to compensation and the nature and amount of compensation to which the person is entitled, including the impairment rating schedule for workers;
- (g) any matter arising in a cause of action vested in the Commission, other than an application under section 63 on whether a person is immune from action;
- (h) whether a person or entity is an employer or the successor to a former employer;
- (i) whether there is common control or direction among two or more

a prises ou rendues en croyant honnêtement respecter les limites de sa compétence.

(2) Toutes les demandes d'indemnité sont tranchées en conformité avec la présente loi.

91. (1) Sous réserve de la compétence du Tribunal d'appel, la Commission a compétence exclusive pour examiner, instruire et trancher les affaires et les questions se rapportant à la présente loi.

(2) Il est entendu que l'examen, l'instruction et le règlement des questions suivantes relèvent exclusivement de la compétence de la Commission :

- a) celle de savoir si une personne est un travailleur ou le conjoint, l'enfant ou un membre de la famille du travailleur et si, par ailleurs, cette personne est à la charge du travailleur;
- b) celle de savoir s'il y a blessure corporelle, maladie ou décès survenant du fait et au cours de l'emploi;
- c) celle de savoir si une incapacité est attribuable à une blessure corporelle ou à une maladie et celle du degré d'incapacité et de sa durée;
- d) celle de savoir si la capacité de gain a été diminuée du fait d'une blessure corporelle ou d'une maladie et celle du degré de diminution;
- e) celle du montant de la rémunération annuelle, des retenues et de la rémunération annuelle nette;
- f) celle de savoir si une personne a droit à une indemnité et celle de la nature et du montant de cette indemnité, y compris en ce qui a trait au barème d'évaluation de la déficience;
- g) toute question soulevée dans une cause d'action dévolue à la Commission, à l'exception de la demande présentée en vertu de l'article 63 en vue de savoir si une personne bénéficie de l'immunité

corporations, individuals, firms, syndicates or associations, or any combination of them;

(j) the rate or basis for calculating assessments, and any formula for varying the rate or basis;

(k) all matters related to the levy and collection of assessments, including the classification of an employer, the employer's claims experience, the accuracy of an employer's payroll statement and any estimate of the payroll.

Appeals to the Appeals Tribunal

126. (1) The Appeals Tribunal has exclusive jurisdiction to examine, inquire into, hear and determine all matters and questions in respect of

- (a) an appeal of a decision of the Review Committee; and
- (b) whether a person is immune from action pursuant to this Act.

(2) Subject to sections 131 and 132, a decision of the Appeals Tribunal is final and conclusive.

(3) No action may be maintained or brought against the Appeals Tribunal in respect of any act or decision done or made by it in the honest belief that it was within its jurisdiction.

No Judicial Review

judiciaire;

h) celle de savoir si une personne ou une entité est un employeur ou le successeur d'un employeur;

i) celle de savoir si plusieurs personnes morales, particuliers, firmes, coopératives ou associations sont sous une direction ou un contrôle communs;

j) celle du taux ou de la base devant servir au calcul des cotisations et celle des formules de modification de ce taux ou de cette base;

k) toutes les questions relatives à l'établissement et à la perception des cotisations, notamment la classification des employeurs, les dossiers d'employeurs en matière de demandes d'indemnités, l'exactitude des relevés de masse salariale et les estimations de la masse salariale.

Appels au Tribunal d'appel

126. (1) Le Tribunal d'appel a compétence exclusive pour examiner, instruire et trancher les affaires et les questions se rapportant :

- a) aux appels des décisions du comité d'examen;
- b) aux demandes présentées en vue de savoir si une personne bénéficie de l'immunité judiciaire sous le régime de la présente loi.

(2) Sous réserve des articles 131 et 132, les décisions du Tribunal d'appel sont définitives et péremptoires.

(3) Aucune action ne peut être engagée ni soutenue contre le Tribunal d'appel à l'égard des actes qu'il a accomplis ou des décisions qu'il a prises ou rendues en croyant honnêtement respecter les limites de sa compétence.

Irrecevabilité des recours en révision judiciaire

133. Except where there has been a denial of natural justice or an excess of jurisdiction, no act by or decision of the Commission, including the Governance Council and the Review Committee, or the Appeals Tribunal, may be questioned or reviewed in any court, and for greater certainty no act by, decision of or proceeding before the Commission or Appeals Tribunal may be restrained by injunction, prohibition or other process or proceedings in any court.

133. Sauf en cas de déni de justice naturelle ou d'excès de compétence, les actions et les décisions de la Commission, notamment du conseil de gestion et du comité d'examen, et celles du Tribunal d'appel ne peuvent faire l'objet d'une contestation ou d'une révision judiciaire, étant entendu qu'aucune action ou décision de la Commission ou du Tribunal d'appel ni aucune procédure engagée devant eux ne peuvent être entravées par voie d'injonction, de prohibition ou de quelque autre acte ou procédure judiciaire.

(Quebec) Workers Compensation Act R. S. 1964 c. A-3

63. (1) Subject to section 70 and to the proceeding provided for in section 65, the Commission has exclusive jurisdiction to examine into and determine all matters and questions arising under this Act and to dispose of any other matter or thing in respect of which any power, authority or discretion is conferred upon the Commission.

Except on a matter of jurisdiction, no application for judicial review under the Code of Civil Procedure (chapter C-25.01) shall lie, nor may any injunction be granted, against the Commission or its members in their official capacity.

A judge of the Court of Appeal may, on an application, annul by summary procedure any proceeding brought or decision rendered contrary to the provisions of the preceding paragraph.

(2) Without limiting the generality of the provisions of the preceding subsection 1, the Commission has exclusive jurisdiction to decide:

- (a) the nature of the industry operated by an employer, according to his principal activities;
- (b) the sector of economic activity, the unit or the class of units in which a particular industry or a part, a branch or a subsidiary of such industry is to be included;
- (c) any matter or question relating to the classification of industries, employers' assessment, medical aid or rehabilitation.

(3) Except in those cases in which it has delegated its powers in accordance with subsections 4 and 5, the Commission may at any time, with respect to matters within its jurisdiction, reconsider any question decided by it, and rescind, amend or alter its decisions and orders.

(New Brunswick) Workplace Health, Safety and Compensation Commission and Workers' Compensation Appeals Tribunal Act R.S.N.B. 2014, c.49, s.1

21(12) Any decision, order or ruling of the Appeals Tribunal shall be final, subject only to an appeal to the Court of Appeal involving

21(12) Toute décision du Tribunal d'appel est définitive, sujet seulement à un appel devant

any question as to its jurisdiction or any question of law.

la Cour d'appel concernant toute question de compétence ou de droit.

22.1(2) Any decision, order or ruling under subsection (1) shall be final, subject only to an appeal to the Court of Appeal involving any question as to jurisdiction or any question of law, and section 23 applies with the necessary modifications.

22.1(2) Toute décision ou ordonnance rendue en vertu du paragraphe (1) est définitive, sous la seule réserve d'un appel interjeté à la Cour d'appel portant sur toute question de compétence ou de droit, et l'article 23 s'y applique avec les adaptations nécessaires.

(Prince Edward Island) *Workers' Compensation Act* R.S.P.E.I. 1988, c W-7.1

32. Jurisdiction, general

(1) Subject to sections 56 and 56.1, the Board has exclusive jurisdiction to examine into, hear, and determine, all matters and questions arising under this Act and as to any matter or thing in respect of which any power, authority, or discretion, is conferred upon the Board; and the action or decision of the Board thereon is final and conclusive and is not open to question or review in any court, and no proceedings by or before the Board shall be restrained by injunction.

Questions of fact

(2) Without limiting the generality of subsection (1) the decisions and findings of the Board upon all questions of law and fact are final and conclusive, and in particular, the following shall be deemed to be questions of fact:

- (a) whether any injury or death in respect of which compensation is claimed was caused by an accident within the meaning of this Part;
- (b) the question whether any injury has arisen out of or in the course of an employment within the scope of this Part;
- (c) the existence and degree of disability by reason of any injury;
- (d) the permanence of disability by reason of any injury;
- (e) the existence and degree of an impairment and whether it is the result of an accident;
- (f) the amount of loss of earning capacity by reason of any injury;
- (g) the amount of average earnings;
- (h) the existence of the relationship of a member of the family;
- (i) the existence of dependency;
- (j) whether or not an employer's undertaking or any part, branch or department of an employer's undertaking is in an industry within the scope of this Part, and the class, sub-class, group or sub-group to which an employer's undertaking or any part, branch or department thereof should be assigned;
- (k) whether or not any worker in any industry within the scope of this Part is himself or herself within the scope of this Part and entitled to compensation thereunder;
- (l) whether any particular disease is peculiar to or characteristic of any particular industrial process, trade or occupation, to which this Part applies;
- (m) the costs for the year for a class, sub-class, group, sub-group or undertaking.

(5) The Court of Appeal shall hear and determine the questions of law arising thereon and remit the matter to the Board, with the opinion of the court thereon.

Jurisdiction

(20) The Appeal Tribunal has exclusive jurisdiction to hear and determine all matters and questions arising under this Part in respect of

- (a) appeals under subsection (6);
- (b) any matter referred to it by the Board.

Powers

(21) The Appeal Tribunal has all the powers conferred on the Board by section 26.

56.2 Appeal on question of law

(1) Subject to subsection (2), a person directly affected by a final decision of the Appeal Tribunal may appeal the decision to the Court of Appeal on a question of law or jurisdiction.

Leave to appeal required

(2) Subject to subsection (6.1), no appeal may be made pursuant to subsection (1) without leave to appeal granted by the Court of Appeal.

Requirements for leave to appeal

(3) Leave to appeal shall not be granted by the Court of Appeal unless

- (a) application for leave to appeal is made by the appellant within 30 days of the date of the decision of the Appeal Tribunal; and
- (b) all avenues of reconsideration or appeal under this Part have been exhausted.

Service

(4) An application for leave to appeal shall be served in accordance with the rules of court on

- (a) the Board;
- (b) the Appeal Tribunal; and
- (c) the parties to the decision.

Notice of appeal

(5) Where leave to appeal has been granted or where the Court of Appeal has ordered pursuant to subsection (6.1) that the application for leave to appeal and the appeal be heard together, the appellant shall serve the Notice of Appeal on-- the persons referred to in subsection (4) not

(Nova Scotia) Workers' Compensation Act S.N.S. 1994

Exclusive jurisdiction of Board

104 All questions as to the necessity, character and sufficiency of any medical aid furnished shall be determined by the Board. 1994-95, c. 10, s. 104.

Jurisdiction and powers of Board

185 (1) Subject to the rights of appeal provided in this Act, the Board has exclusive jurisdiction to inquire into, hear and determine all questions of fact and law arising pursuant to this Part, and any decision, order or ruling of the Board on the question is final and conclusive and is not subject to appeal, review or challenge in any court.

(2) Notwithstanding subsection (1) but subject to Sections 71 to 73, the Board may

- (a) reconsider any decision, order or ruling made by it; and
- (b) confirm, vary or reverse the decision, order or ruling.

1994-95, c. 10, s. 185.

Appeal to Court of Appeal

256 (1) Any participant in a final order, ruling or decision of the Appeals Tribunal may appeal to the Nova Scotia Court of Appeal on any question as to the jurisdiction of the Appeals Tribunal or on any question of law but on no question of fact.

(2) No appeal shall be made pursuant to subsection (1) without leave of the Nova Scotia Court of Appeal.

(3) The Nova Scotia Court of Appeal shall not grant leave to appeal pursuant to this Section unless

- (a) leave is applied for in accordance with the *Civil Procedure Rules* within thirty days of the receipt of written communication of the decision of the Appeals Tribunal; and
- (b) all other avenues of appeal provided for in this Act have been exhausted.

(4) Any participant applying for leave to appeal pursuant to subsection (1) shall ensure that notice of the hearing of the application is given to

- (a) the Board;
- (b) the Appeals Tribunal; and
- (c) all participants of record in the matter being appealed, at least four clear days before the application is heard.

(5) Where leave to appeal has been granted, the participant to whom the leave has been granted shall commence the appeal by serving a notice of appeal on

- (a) the Board;
- (b) the Appeals Tribunal; and
- (c) any other party to the appeal, within ten days after the leave to appeal is granted.

(6) The notice of appeal served pursuant to subsection (5) shall contain

- (a) the names of the parties to the appeal;
- (b) the date of the decision appealed from; and
- (c) any other particular the judge granting leave to appeal may require. 1994-95, c. 10, s. 256; 1999, c. 1, s. 36.

(Newfoundland & Labrador) *Workplace Health, Safety and Compensation Act* R.S.N.L. 1990 Chapter W-11

Exclusive jurisdiction

19. (1) The commission has exclusive jurisdiction to examine, hear and determine matters and questions arising under this Act and a matter or thing in respect of which a power, authority or distinction is conferred upon the commission, and the commission has exclusive jurisdiction to determine

- (a) whether an injury has arisen out of and in the course of an employment within the scope of this Act;
- (b) the existence and degree of impairment because of an injury;
- (c) the permanence of impairment because of an injury;
- (d) the degree of diminution of earning capacity because of an injury;
- (e) the amount of average earnings;
- (f) the existence of the relationship of a member of the family of a worker as defined by this Act;
- (g) the existence of dependency;
- (h) the class to which an industry or a part, branch or department of the industry should be assigned;
- (i) whether a worker in an industry is within the scope of this Act and entitled to compensation under the Act;
- (j) whether or not, for the purpose of this Act, a person is a worker, subcontractor, independent operator or an employer;
- (k) whether a particular disease is peculiar to, or characteristic of, a particular industrial process, trade or occupation to which this Act applies;
- (l) whether a worker is co-operating in reaching medical recovery, in returning to work and in all aspects of the labour market re-entry assessment and plan provided to the worker;
- (m) whether an employer has fulfilled the obligation to return a worker to work or re-employ a worker; and
- (n) whether a labour market re-entry plan shall be prepared for a worker.

(2) Subject to Part II, an action or decision of the commission is final and conclusive and is not open to question or review in a court of law and proceedings by or before the commission shall not be restrained by injunction, prohibition or other process or proceedings in a court of law or be removable by certiorari or otherwise into a court of law.

(3) Nothing in subsection (1) or (2) shall be construed to prevent the commission from reconsidering a matter which has been dealt with by it or from rescinding, altering or amending a decision or order previously made by it.

(4) The decisions of the commission shall be upon the real merits and justice of the case and it is not bound to follow strict legal precedent.

Review by review commissioner

26. (1) Upon receiving an application under subsection 28(1) a review commissioner may review a decision of the commission to determine if the commission, in making that decision, acted in accordance with this Act, the regulations and policy established by the commission under subsection 5(1) as they apply to

(a) compensation benefits;

(a.1) rehabilitation and return to work services and benefits;

(b) an employer's assessment;

(c) the assignment of an employer to a particular class or group;

(d) an employer's merit or demerit rating; and

(e) the obligations of an employer and a worker under Part VI.

(2) An order or decision of a review commissioner is final and conclusive and is not open to question or review in a court of law and proceedings by or before a review commissioner shall not be restrained by injunction, prohibition or other process or proceedings in a court of law or be removable by *certiorari* or otherwise in a court of law.

Paul Taylor v. WSIB AND WSIAT
Applicant Respondents

Court file no.: _____

SUPREME COURT OF CANADA
(ON APPEAL FROM THE COURT OF APPEAL FOR ONTARIO)

PROCEEDING COMMENCED AT

ONTARIO SUPERIOR COURT OF JUSTICE
7755 Hurontario Street
Brampton, Ontario L6W 4T1

APPLICANT'S
MEMORANDUM OF ARGUMENT

Paul Taylor

Appellant
Self-represented