

FORM 61A
Courts of Justice Act
NOTICE OF APPEAL
TO
THE ONTARIO COURT OF APPEAL

BETWEEN:

Paul Taylor

Plaintiff
(Appellant)

and

Workplace Safety & Insurance Board – WSIB

and

Workplace Safety & Insurance Appeals Tribunal - WSIAT

Defendants
(Respondents)

NOTICE OF APPEAL

The Plaintiff, Paul Taylor APPEALS to the Ontario Court of Appeal from the judgment of his honour Justice J. Price, of the Ontario Superior Court of Justice, Ontario Court File No. 14-0794-00, decision dated February 22, 2017, made at the Superior Court of Justice in Brampton, Ontario.

THE APPELLANT ASKS that the judgment of his honour Justice J. Price dated February 22, 2017, is set aside and a judgment be granted, as follows:

1. That the plaintiff be allowed to cross examine both the WSIAT witnesses and the WSIB witness,
2. That the plaintiff be allowed to serve and file a further amended statement of claim pursuant to rules,
3. That the plaintiff claim be allowed to proceed to trial against both defendants, the WSIB and the WSIAT,
4. That the cost ordered against the plaintiff, be set aside and costs be awarded to the plaintiff for the dismissal motion of \$500, as well a cost order for this appeal, and

5. That the audio evidence that was mentioned during the motion hearing be allowed to be admitted as evidence, as well as a transcription of the audio evidence.

THE GROUNDS OF APPEAL are as follows:

Unreasonable Delay:

1. Both the defendants were served the plaintiff's claim in February 2014. The defendants did not file and serve their motions to strike the plaintiff's statement of claim until late September 2014. A delay in bringing a rule 21 motion is a sufficient ground to dismiss the defendant's motion to strike the plaintiff's claim and not merely a matter affecting costs. As stated in *Fleet Street Financial Corp. v. Levinson* (2003), 2003 Carswell Ont 373.

Immunity:

2. That under section 179 of the WSIA RSO 1997, both the WSIB and the WSIAT only have immunity, so long as their decisions were made in "good faith".
3. The plaintiff contends that both the WSIB and the WSIAT decisions were made in "bad faith", which removes both the WSIB and the WSIAT's immunity from civil liability.

Legal Capacity:

4. That both the WSIB and the WSIAT have in fact taken legal action against other parties, therefore they both do in fact have the legal capacity to be sued,
5. That the Proceedings Against the Crown Act allows for civil actions against any department of government for wrongful acts committed in "bad faith".
6. That in *Frankson v. WSIB* the Ontario Human Rights Tribunal accepted that the WSIB has the legal capacity in legal proceedings.

Jurisdiction:

7. That the Ontario Superior Court of Justice does in fact have jurisdiction to preside over the matter in accordance with rule 37 of the rules of civil procedure.
8. That the jurisdiction of the court is confirmed in numerous other civil cases against workers compensation boards in Canada:
 - a. *Wolfert v. Shuchuk*, 2003 ABCA 109
 - b. *Murray Goodwin v. Workplace Health, Safety and Compensation Commission*, 2014 NBQB 119
9. That the jurisdiction of the court is confirmed in numerous other civil cases against the WSIB in Ontario:
 - a. *Steinnagel v Workplace Health[& the WSIB]*, 2016 ONSC 2138
 - b. *Castrillo v. Workplace Safety and Insurance Board*, 2017 ONCA 121

Cause of Action:

10. That the statement of claim and the amended statement of claim do in fact provide a cause of action against both defendants the WSIB and the WSIAT, and that in the alternative the plaintiff was in the process of amending the claim further.
11. That the plaintiff was in fact in the process of amending the claim to include the specifics of the “Tort of Public Misfeasance. This action is confirmed as arguments were noted in the factum.

Limitations:

12. That the Limitations Act RSO 2002 does not apply to this case, as the WSIA RSO 1997 applies. In the alternatively, if the Limitations Act did apply, the last incident with the WSIAT was in August 2013. The statement of claim was filed in February 2014. Therefore the claim was filed well within the statutory two year limitation period.

Evidence Exclusion:

13. That in regards to the WSIAT motion to exclude evidence, their witness never provided any physical evidence that the WSIAT hearings cannot be recorded,
14. That the plaintiff was never allowed to cross examine the WSIAT’s new witness for the evidence exclusion.
15. That the plaintiff was never allowed to visit and document the WSIAT hearing site to confirm or deny there are no visible signs, stating no recording devices allowed or not.
16. Furthermore the WSIAT has a policy for allowing the use of assistive devices during hearings, such as what the plaintiff uses to record court hearings for note taking purposes.
17. If the WSIAT were to deny the plaintiff to use his audio recorder as a assistive device they would be in violation of:
 - a. The WSIAT’s Accessibility Policy for Customer Service, which is their own policy on accommodating persons at hearings with disabilities.
 - b. The Ontario Human Rights Code R.S.O. 1990,
 - c. The Accessibility for Ontarians with Disabilities Act, 2005,
 - d. Ontario Regulation 429/07, “Accessibility Standards for Customer Service”
 - e. The Ontarians with Disabilities Act R.S.O. 2001, and
 - f. Section 2, 7, 12, and 15 of the Charter of Rights and Freedoms.
18. This was confirmed in a previous court endorsement of his honour Justice Lemay who agreed that the plaintiff could use an audio recorder during court hearings, as an audio recorder was in fact an assistive device for person with disabilities, which is in accordance with the Ontario Court Practice Guidelines.
19. In the alternative, if the audio evidence was to be determined to be obtained illegally, then it is still admissible as evidence in a civil matter as confirmed by the Ontario Court of Appeal in Behrens v. Stoodley, 1999 CanLII 1626 (ON CA).

THE BASIS OF THE APPELLATE COURT'S JURISDICTION IS:

1. The Court of Appeal for Ontario has jurisdiction over this matter under section 6(b) of the Courts of Justice Act R.S.O. 1990
2. That the order of Justice Price is a final order of the Superior Court of Justice for an amount in excess of \$50,000 and no leave of the court is required.
3. That the Ontario Court of Appeal has already asserted their jurisdiction in a similar case under Castillo v. WSIB 2017 ONCA 121.

March 17, 2016

Paul Taylor



Plaintiff
Self-represented

TO:

**WORKPLACE SAFETY
& INSURANCE BOARD - WSIB**

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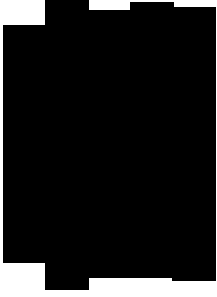
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