Court of Appeal File No.: C63503

COURT OF APPEAL FOR ONTARIO

BETWEEN:

Paul Taylor

Plaintiff
(Appellant)

and

Workplace Safety & Insurance Board – WSIB
and
Workplace Safety & Insurance Appeals Tribunal – WSIAT

Defendants
(Respondents)

Revised **FACTUM**
of
APPELLANT, PAUL TAYLOR

April 17, 2017
Revised May 6th, 2017

Paul Taylor
[redacted]

Plaintiff
(Appellant)
Self-represented

TO:

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PART I – Overview and Issues

A. Overview

1. This is an appeal brought by Mr. Paul Taylor, from a decision dated February 22, 2017, of the Honourable Mr. Justice J. Price of the Superior Court of Justice sitting in Brampton Ontario. Mr. Taylor was the plaintiff in a claim CV-14-0794-00 filed on February 20, 2014, in which the Workplace Safety & Insurance Board ("WSIB"), and the Workplace Safety & Insurance Appeals Tribunal ("WSIAT") were the defendants.

2. This is an appeal to determine the following issues and in doing so, it would determine that both the WSIB and the WSIAT should be held accountable for their wrong actions that were committed in bad faith, which a reasonable person would consider themselves to be fully aware of and knowingly were intentionally wrong and caused Mr. Taylor harm:

    a. The Superior Court of Justice of Ontario, not only has the jurisdiction over the subject-matter, that in previous identical cases, the Court has in fact asserted authority.
    b. The WSIB and the WSIAT not only has the legal capacity to sued in civil court, but they have been sued in the past and have sued others.
    c. The Limitations Act does not override the requirements that victims of workplace accidents must follow in accordance with the Workplace Safety & Insurance Act
    d. Mr. Taylor's claim is not frivolous, is not vexatious, and is not an abuse of process.
    e. The Claim does disclose a reasonable cause of action. In the alternative Mr. Taylor in two separate instances indicated that he would be further amending the claim to further clarify the cause of actions.

3. Mr. Taylor received notification from the defendants that they were intending on filing a defense. However, no defense was filed, instead Mr. Taylor received a letter confirming they

were instead filing a motion to strike Mr. Taylor's claim. A motion date was not scheduled until the fall of that year (2014).

4. In response to the WSIB and the WSIAT failing to make their motion to strike promptly, in accordance with the rules (rule 21.02), Mr. Taylor filed a requisition for default judgement with the Superior Court of Justice on May 15, 2014. Mr. Taylor's request for default judgement was denied by his Honourable Mr. Justice L. Ricchetti on May 20, 2014.

5. In response to Mr. Taylor's claim against the WSIB, on September 23, 2014, the WSIB brought a separate motion to dismiss Mr. Taylor's claim against the WSIB. On October 2, 2014, the WSIAT also brought a separate motion to dismiss Mr. Taylor's claim against the WSIAT. The WSIAT also filed an additional motion on September 29, 2015, to exclude Mr. Taylor's audio evidence and to include additional WSIAT evidence.

6. Mr. Taylor, the WSIB, and the WSIAT were before the Brampton Superior Court of Justice on two separate occasions. On both occasions, there was an adjournment. On February 23, 2015, the matter was adjourned by his Honour Mr. Justice K. Barnes. Then on October 21, 2015, the matter was adjourned by his Honour Mr. Justice W. Le May.

7. The matter was heard on August 15, 2016, in Brampton at the Ontario Superior Court of Justice, before his honour Mr. Justice J. Price. In his decision dated February 22, 2017 of the Honourable Mr. Justice J. Price of the Superior Court of Justice sitting at Brampton Ontario dismissed the claim against the WSIB and the WSIAT. His honour's reasoning was neither the WSIB nor the WSIAT have the legal capacity to be sued. His Honour also disallowed Mr. Taylor's audio evidence, and awarded court costs to the WSIB and WSIAT.

8. Mr. Taylor filed an appeal with this court, the Court of Appeal for Ontario on March 17, 2017 for the decision dated February 22, 2017 from his Honour Mr. Justice J. Price.

B. Issues

9. As well as the previously stated obvious issues this appeal also deals with some obscured issues. Which is whether the WSIB and the WSIAT can and should be held accountable for their knowing and intentionally wrong actions against Mr. Taylor. The legal obligatory requirement for persons with disabilities to be properly and respectfully accommodated without harassment or intimidation. The clearly quantified issues are as follows:

    a. The defendants were intentionally delayed in filing their motion to strike.
    b. The Superior Court of Justice of Ontario, not only has the jurisdiction over the subject-matter, that in previous identical cases, the Court has in fact asserted authority.
    c. The WSIB and the WSIAT not only has the legal capacity to sued in civil court, but they have been sued in the past and have sued others.
    d. The Limitations Act does not override the requirements that victims of workplace accidents must follow in accordance with the Workplace Safety & Insurance Act
    e. Mr. Taylor's claim is not frivolous, it is not vexatious, and it is not an abuse of process.
    f. The Claim does disclose a reasonable cause of action. However, in the alternative Mr. Taylor in two separate instances indicated that he would be further amending the claim to further clarify the cause of actions.

PART II – THE FACTS

10. Mr. Taylor filed his statement of claim against only the WSIB and the WSIAT, with the Ontario Superior Court of Justice in Brampton Ontario, on February 20, 2014. The only parties listed as defendants were the WSIB and the WSIAT. There was no WSIB or WSIAT staff, agents, or any other individuals listed as defendants in Mr. Taylor's claim.

Statement of Claim, dated February 20, 2014 **Appeal Book and Compendium, Tab 10, pages 70-75.**

11. The WSIB filed an "Intent to defend" the statement of claim on February 25, 2014. The WSIAT also filed a notice of intent to defend on March 4, 2014.

WSIB Notice of Intent to defend, dated February 25, 2014 **Appeal Book and Compendium, Tab 16, pages 252-255.**
WSIAT Notice of Intent to defend, dated March 4, 2014 **Appeal Book and Compendium, Tab 17, pages 256-257.**

12. Mr. Lokan, counsel for the WSIAT sent a letter to Mr. Taylor dated March 17, 2014, informing Mr. Taylor of the intention of the WSIAT to file a motion to strike Mr. Taylor's statement of claim. This was not seeking permission to extend time to file the motion to dismiss promptly.

Letter from Mr. Lokan, dated March 17, 2014, **Appeal Book and Compendium, Tab 18, page 258.**

13. Mr. Taylor filed a requisition for default judgement with the Ontario Superior Court of Justice in Brampton, Ontario on May 15, 2014. Mr. Taylor's request was denied by his Honourable Mr. Justice L. Ricchetti on May 20, 2014.

Requisition for Default Judgement, dated May 15, 2014, **Appeal Book and Compendium, Tab 14, page 241-245.**
Endorsement of his Honourable Mr. Justice Ricchetti, dated may, 20, 2014, **Appeal Book and Compendium, Tab 6, pages 49-50.**

14. The WSIB prepared their motion to dismiss Mr. Taylor's claim on September 23, 2014. The WSIAT prepared their motion to dismiss Mr. Taylor's claim on October 2, 2014.

WSIB motion to dismiss, dated September 23, 2014 **Appeal Book and Compendium, Tab 9, pages 63-69.**
WSIAT motion to dismiss, dated October 2, 2014 **Appeal Book and Compendium, Tab 8, pages 56-62.**

15. Mr. Taylor had requested that he be allowed to cross examine the WSIB witness, Karen Wouri and the WSIAT witness Michelle Alton. An arrangement was made between the parties to meet on May 7, 2015. When Mr. Taylor arrived at the location, he was informed off the record, that

neither witness was present and he would be expected to pay for court reporting, in advance to cross-examining the witnesses. This forced Mr. Taylor to withdraw his request to cross-examine their witnesses. The WSIB and WSIAT witnesses were never documented as being present at the cross-examination and is confirmed on page 2 of the transcript.

> Transcript of Cross -Examination of Paul Taylor, dated May 7, 2015 **Appeal Book and Compendium, Tab 13a, pages 135 & 227-228.**

16. During the cross examination of Mr. Taylor there was a question about when he was at the WSIAT hearing, whether he left the room and was not present during the WSIAT conversation where they threaten Mr. Taylor. Mr. Taylor on cross examination repeatedly stated that he was in the room and would enter the room when they were meeting. However, Mr. Lokan implied that Mr. Taylor was not in the room during the conversation.

> Transcript of Cross -Examination of Paul Taylor, dated May 7, 2015 **Appeal Book and Compendium, Tab 13a, pages 165-173.**

17. Mr. Taylor on cross-examination stated that he did not agree that he had done nothing in response to the WSIAT threats and wrongful actions against him during the two and half year period from when the WSIAT hearing took place and when he filed his claim in court. Mr. Taylor reported that he had raised on numerous occasions complaints to the WSIAT, to no avail. Mr. Taylor also had filed a complaint with the Ontario Human Rights Commission. Also Mr. Taylor was awaiting approval for legal representation from the Office of the Worker Advisor. Finally, Mr. Taylor was awaiting confirmation from the WSIAT that the same panel would not be hearing his reconsideration request, which explains the lengthy delay from 2008 until October 28, 2012, when Mr. Taylor filed his reconsideration to the WSIAT. The cause of the delay was not Mr. Taylor, but other parties.

> Transcript of Cross-Examination of Paul Taylor, dated May 7, 2015 **Appeal Book and Compendium, Tab 13a, pages 174.**

Mr. Taylor's Reconsideration Request, dated October 28, 2012 **Appeal Book and Compendium, tab 21, pages 338-352.**

18. On cross-examination of Mr. Taylor, he testified that he knew exactly who it was and named them, that made the extremely derogatory statements towards Mr. Taylor.

Transcript of Cross-Examination of Paul Taylor, dated May 7, 2015 **Appeal Book and Compendium, Tab 13a, pages 168.**

19. On Cross examination of Mr. Taylor, the following question was asked "…what you were doing is surreptitiously recording the caucus with your recording device, weren't you?" In his reply, Mr. Taylor stated "no".

Transcript of Cross-Examination of Paul Taylor, dated May 7, 2015 **Appeal Book and Compendium, Tab 13a, pages 170.**

20. On cross-examination of Mr. Taylor, the WSIB counsel incorrectly implies that Mr. Taylor does not suffer from a disability known as colour blindness or colour discrimination. WSIB counsel's justification for Mr. Taylor not being colour-blind was that Mr. Taylor's ability to obtain a driver's license, and was able to drive for a living. However, in response Mr. Taylor pointed out that Ontario is the only Province that does not test colour vision with people when they are obtaining their driver's license. This is a commonly known fact for any person who obtained their driver's license in Ontario.

Transcript of Cross -Examination of Paul Taylor, dated May 7, 2015 **Appeal Book and Compendium, Tab 13a, pages 213-215.**

21. On cross-examination of Mr. Taylor, counsel for the WSIB implied that Mr. Taylor did not suffer an injury or a permanent injury as according to his implication of confirming that Mr. Taylor did not suffer any fractures or broken bones.

Transcript of Cross -Examination of Paul Taylor, dated May 7, 2015 **Appeal Book and Compendium, Tab 12a, pages 187-190.**

22. The WSIB on cross-examination of Mr. Taylor raised issue that Mr. Taylor had made a point in his affidavit about a WSIB policy that injured workers were not allowed to consult with consulting physicians. Mr. Taylor testified that he was led to believe by a WSIB consultant that there was such a policy, rule, or practice, which in retrospect there was no such thing. This confirms the common theme of deception by WSIB staff and contractors. This is an act of "covert bad faith".

> Transcript of Cross -Examination of Paul Taylor, dated May 7, 2015 **Appeal Book and Compendium, Tab 13a, pages 192-195.**

23. Mr. Taylor confirmed that he was referred to the Regional Evaluation Centre more than a year and a half after the original injury. This was more than six months after an evaluation is allowed to happen according to Board policy.

> Transcript of Cross -Examination of Paul Taylor, dated May 7, 2015 **Appeal Book and Compendium, Tab 13a, pages 191.**

24. On Cross-examination, Mr. Taylor confirmed that he never prepared the "LMR Plan Proposal" in part or in whole. He also did not see the report prior to and up until several years later. Mr. Taylor also testified that he constantly raised issue with the WSIB agent that he was continually experiencing problems with his colorblindness during the retraining program. Mr. Taylor was always told his colorblindness would not be an issue. The WSIB implied on cross examination of Mr. Taylor, that if he could complete the retraining program and obtain employment, then he was not colourblind in their opinion, or had no issues with accommodation.

> Transcript of Cross -Examination of Paul Taylor, dated May 7, 2015 **Appeal Book and Compendium, Tab 13a, pages 196-206.**

25. The WSIB had such a problem with the LMR retraining program, that they eventually cancelled the program several years after Mr. Taylor had completed his. The WSIB denies any problems

with injured workers experiencing problems with the program. Any problems like Mr. Taylor experienced, the WSIB would just blame the injured workers.

26. Prior to the hearing of August 15, 2016, the WSIAT filed another motion, which was to exclude Mr. Taylor's audio evidence of the WSIAT hearing. In their motion record, the WSIAT include a copy of the cross-examination of Mr. Taylor, but numerous sections were redacted.

> Transcript of Cross -Examination of Paul Taylor, dated May 7, 2015 **Appeal Book and Compendium, Tab 13a, pages 134-240.**

27. At the motion hearing before the Honourable Mr. Justice W. LeMay on October 21, 2015, Mr. Taylor had confirmed with his honour that due to a disability Mr. Taylor could record the court proceedings with his own recording device. This was in accordance with Consolidated Provincial Practice Direction for Superior Court. In the Practice Directive, it states under section D that: "*This section does not apply to persons who require electronic devices (or services requiring the use of electronic devices) to accommodate a disability.*"

> Consolidated Provincial Practice Direction, dated July 1, 2014 **Appeal Book and Compendium, Tab 19, page 272.**
> Endorsement of Justice W. Le May, dated October 21, **Appeal Book and Compendium, Tab 4, pages 44-46.**

28. His Honour Mr. Justice Lemay in his endorsement also confirmed that no further materials will be allowed to be filed. This prevented or left the impression with Mr. Taylor that he could not file responding materials against the WSIAT.

> Endorsement of Justice W. Le May, dated October 21, **Appeal Book and Compendium, Tab 4, pages 44-46.**

29. On August 15, 2016, both the WSIB & the WSIAT motions to dismiss Mr. Taylor's statement of claim against them and the WSIAT's motion to exclude Mr. Taylor's audio evidence were argued before his Honour Mr. Justice J. Price in Superior Court. In the opening arguments of the WSIAT, the counsel Mr. Lokan stated the following at 2:33:57PM:

Mr. Lokan "*Now since we filed the original factum we have received instructions not to rely on strictly on the sue or be sued point, because that has come up in other litigation for the tribunal, so you need not concern yourself with the parts of the factum or arguments that the tribunal is not a sueable entity and those submissions are at paragraphs 34 and 35 of the original factum, so you can disregard those. We continue to rely on section 179 which says you can't sue a tribunal member, section 179 of the act which says you can't sue someone for an act in a course of their duties, as long as it is done in good faith. That does feed into the jurisdiction and no reasonable cause of action and frivolous and vexatious claims. I just want to make clear that for reasons unconnected to this case we are not seeking a ruling that the tribunal can't sue or be sued."*

Justice Price then stated, "*so it's not based on the fact that you concede the point that Mr. Taylor would take opposition to your position but rather that* point has already been dealt with by other courts."

Mr. Lokan replied "*I understand it is an issue in other proceedings."*

Justice Price stated: "*That are still to be decided*"

Mr. Lokan replied "*that is my understanding and of course sue or be sued could be a two-edge sword if you ever want to serve in that capacity to be a plaintiff, anyway my instructions are that that is now off the table."*

Court recording of the Motion hearing of Taylor V. WSIB & WSIAT heard on August 15, 2016 in Ontario Superior Court of Justice in Brampton Ontario.

PART III – ISSUES AND THE LAW

A. WSIAT & WSIB motions to dismiss should have been denied for delay:

30. Both the WSIB and the WSIAT motions to dismiss should have been denied due to delay in filing their motion & motion materials. This is in accordance with the rules of Civil Procedure 21.02 and more specifically in the case Fleet Street Financial Corp. v. Levison. In this case, a delay in bringing a rule 21 motion is a sufficient ground to dismiss the motion, and not merely a matter affecting costs.

> *Ontario Courts of Justice Act Rules of Civil Procedures R.S.O. Rule 26.* **Schedule B**
> *Fleet Street Financial Corp v. Levinson* (2003), 2003 CanLII 21878 (ON SC), **Appellant's Book of Authorities, Tab 1.**

31. The WSIB and the WSIAT had set the motion to dismiss hearing for the Fall of 2014, but when Mr. Taylor verified with the court there was in fact numerous earlier dates. Those available

dates were in July and August of 2014. In response, WSIB counsel stated they were unavailable for all the dates. This was confirmed in Mr. Taylor's amended statement of claim at lines 62-63.

> *Amended Statement of Claim: Taylor v. WSIB & WSIAT, dated July 23, 2014,* **Appeal Book & Compendium, Tab 11 page 87.**

B. The Superior Court of Justice has the jurisdiction over the subject-matter of the action.

32. There are numerous cases that confirm that the court does in fact have jurisdiction over the subject matter, both in Ontario and in other Provinces.

33. In Castrillo v. Workplace Safety and Insurance Board. The matter was a Class Action certification, which was struck by the motion judge. In response, the plaintiff filed an appeal with the Court of Appeal for Ontario. In their decision, one reason the motion Judge struck the claim was like this case, at paragraph 9 on page 4 "*The court lacks jurisdiction*". The Appellant Court stated in their decision at paragraph 13 on page 6 "*whether the privative clause in the WSIA applied to oust the court's jurisdiction. This was an error in principle."* The court went on to clarify that "*Section 179 does shield certain people from personal liability for acts and omissions undertaken **in good faith**. But it also clearly recognizes that the Board may be **vicariously liable** for any such actionable acts or omissions* [Emphasis added]. The Ontario Court of Appeal has confirmed that the Superior Court of Justice does in fact have jurisdiction over cases involving administrative Boards and tribunals.

> *Castrillo v. Workplace Safety and Insurance Board* (2017), 2017 ONCA 121 (CanLII), **Appellant's Book of Authorities, Tab 2.**

34. In the case of Steinnagel v. Workplace Health & the WSIB. The Honourable Justice J. Stewart of the Ontario Superior Court of Justice did assert authority over the subject matter and further dismissed the defendants motion to dismiss the plaintiff's claim against the Workplace Health

and the WSIB. This case further confirmed that the court does have jurisdiction over the subject matter and the WSIB as an entity can be sued.

Steinnagel v. Workplace Health & WSIB, 2016 ONSC 2138 (CanLII), **Appellant's Book of Authorities, Tab 3.**

35. In the case of Shuchuk v. Wolfert and the Alberta Workers Compensation Board this matter was initially denied at the lower court on June 13, 2001. Master M. Funduk in his decision stated the following:

> "*Anyone who has not been living in a sealed glass bubble on an ocean floor for the last 25 years knows that there is a measure of dissatisfaction by some injured workers with The Workers Compensation Board. That is what this lawsuit is about."* And they went on to state in their decision "*It is not the Court's function to rewrite legislation.*"
> *Shuchuk v. Wolfert, 2001 ABQB 500 (CanLII),* **Appellant's Book of Authorities, Tab 4.**

36. Mr. Shuchuk appealed the decision of Master M. Funduk to a higher court. The Honourable Mr. Justice R.P. Marceau overturned the lower court's decision. His Honour's decision clarified that the court did in fact have jurisdiction over the subject matter, regarding suing a WCB and an employee of a WCB. At line 5 of his decision he stated the following; "With respect I do not agree that the claim as framed seeks only to appeal the findings of the WCB from which there is only a limited statutory right of appeal to the Court of Appeal, not the trial level of this Court." His honour further stated at line 11 of his decion "*The words "**vindictive, malicious, biased and in breach of a duty of good faith**", generously interpreted, **might be construed as claiming the tort of abuse of public office or misfeasance in public office**"* [Emphasis added].

> *Shuchuk v. Wolfert, 2001 ABQB 937 (CanLII),* **Appellant's Book of Authorities, Tab 5.**

37. In response to the decision of the Honourable Mr. Justice R.P. Marceau decision, the defendants Alberta WCB & Mr. Wolfert, appealed to the Alberta Court of Appeal. On April 7, 2003, the Alberta Court of Appeal upheld the Honourable Mr. Justice R.P. Marceau decision to allow the claim to proceed against Mr. Wolfert and the Alberta Workers Compensation Board. At line 3 of

their decision they state the following: “We can discern no error in the chambers judge’s analysis ***regarding the tort of abuse of public office***” [Emphasis added]

Shuchuk v. Wolfert, 2003 ABCA 109 (CanLII), **Appellant’s Book of Authorities, Tab 6.**

38. In response to the Alberta Court of Appeal’s decision Mr. Wolfert and the Alberta Workers Compensation Board appealed to the Supreme Court of Canada. On April 28, 2003, the Supreme Court of Canada denied Mr. Wolfert and the Alberta Workers Compensation Board motion for leave to appeal.

Shuchuk v. Wolfert, 2003 SCC, **Appellant’s Book of Authorities, Tab 7.**

39. In House v. Alberta Workers Compensation Board, the Alberta Workers Compensation Board filed a motion to dismiss Mr. House’s claim on the basis that the court lacked the territorial jurisdiction. The court in their decision found that they did in fact have the territorial jurisdiction to preside over the subject matter and dismissed the Alberta Worker’s Compensation Board’s motion.

House v. Alberta (Workers’ Compensation Board), 2011 NLTD(G) 25 (CanLII), **Appellant’s Book of Authorities, Tab 8.**

40. In the case of Mr. Goodwin v. Workplace Health, Safety and Compensation Commission The court asserted jurisdiction over his claim and further allowed Mr. Goodwin to amend his statement of claim.

Murray Goodwin v. Workplace Health, Safety and Compensation Commission 2014 NBQB 119, **Appellant’s Book of Authorities, Tab 9.**

41. In reviewing the five cases, it has been proven that the Court does in fact have the jurisdiction over the subject matter it also confirmed that the plaintiff may not have to plead the facts of the Tort exactly a review of the following cases:

    a. one was before the Ontario Court of Appeal just one week before his Honour Mr. Justice J. Price released his decision;

b. another was also in Ontario, while not an injured worker, it still confirms that the Court does in fact have jurisdiction;

c. in another two case that occurred in Alberta, included not just the WCB, but also an employee. The matter went before the Supreme Court of Canada confirming that that the highest Court agrees that the courts do have jurisdiction;

d. in another case that involved the Newfoundland Court they assert territorial jurisdiction over an Alberta WCB matter;

e. finally, there was a case in New Brunswick which the court there also asserted authority.

C. The WSIB and the WSIAT do have the legal capacity to be sued.

42. Regarding the WSIB having the legal capacity to be sued is stated in section 179 (2) of the WSIA (law), where it states *"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)."* This confirms that even if the WSIB staff acted in good or bad faith this does not relieve the Board of liability.

Workplace Safety & Insurance Act R.S.O. 1997 Section 179 (2). **Schedule B**

43. The WSIB staff as described in section 179 of the WSIA states that the actions of the WSIB must be in **good faith**, for them to have the immunity. Mr. Taylor contends in his Statement of Claim and Amended Statement of Claim that the staff acted in "bad faith" and as such do not have immunity. The WSIB is therefore liable for their actions through vicariously liability.

Workplace Safety & Insurance Act R.S.O. 1997 Section 179 (1). **Schedule B**

44. The WSIAT does have the legal capacity to be sued and is stated in section 179 (3) that states: "*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." To clarify, the WSIAT is a part of the Crown and is therefore libel or the Crown is, for the actions of its staff.

Workplace Safety & Insurance Act R.S.O. 1997 Section 179 (3). **Schedule B**

45. As previously stated, counsel for the WSIAT accepted that the WSIAT does have the legal capacity to be sued. As WSIAT counsel stated they can sue others. However, his Honour Mr. Justice J. Price still decided on this issue. This issue was listed at line 23 b) on page 11 and on line 30 to 31 on page 14 of his Honourable Mr. Justice J. Price's reasons for decision. In his reasons Honourable Mr. Justice J. Price stated that the WSIAT staff enjoy immunity. As previously argued this does not relieve the WSIAT from liability for their staff's actions, and is confirmed in in section 179 (3) for liability to the Crown.

Reasons of Honourable Mr. Justice J. Price, **Appeal Book & Compendium, Tab 2 pages 11-41.**
Workplace Safety & Insurance Act R.S.O. 1997 Section 179 (3). **Schedule B**

46. It has been proven that both the WSIB and the WSIAT have the legal capacity to be sued as stated in statutory law, common law and conceded by WSIAT counsel.

D. The action is not frivolous, it is not vexatious, and it not an abuse of process.

47. In his reasons Honourable Mr. Justice J. Price stated that in Aird v. WSIB the court faced similar facts. This was error in that Mr. Aird had already lost his case against the WSIB and WSIAT in Divisional court and then proceed to relitigate the matter in Superior Court through civil means. Mr. Taylor on the other hand, was considerably different than Mr. Aird's case. Mr. Taylor had initially filed for Judicial review, yes in the wrong court. At this point, before any decision was render at Divisional court, that Mr. Taylor filed an abandonment. Then Mr. Taylor proceed to file his claim in Superior Court of Justice for "Bad Faith" a key component of the Tort of Public Misfeasance, as well as the shield for the WSIB and the WSIAT staff.

48. As proven so far, the Court does have jurisdiction over the matter, the WSIB & the WSIAT do have the capacity to be sued. Therefore, the claim is not frivolous, it is not vexatious, and it not an abuse of process.

E. The Claim discloses a reasonable cause of action.

49. Mr. Taylor's claim is like all the cases that were previously discussed above under the topic court's jurisdiction. The cases discussed were: Castrillo v. Workplace Safety & Insurance Board, Steinnagel v. Workplace Health & the WSIB, Shuchuk v. Wolfert & Alberta WCB, House v. Alberta WCB, Goodwin v. Workplace Health, Safety and Compensation Commission of New Brunswick.

> *Castrillo v. Workplace Safety and Insurance Board* (2017), 2017 ONCA 121 (CanLII), **Appellant's Book of Authorities, Tab 2.**
> *Steinnagel v. Workplace Health & WSIB*, 2016 ONSC 2138 (CanLII), **Appellant's Book of Authorities, Tab 3.**
> *Shuchuk v. Wolfert, 2001 ABQB 500 (CanLII),* **Appellant's Book of Authorities, Tab 4.**
> *Shuchuk v. Wolfert, 2001 ABQB 937 (CanLII),* **Appellant's Book of Authorities, Tab 5.**
> *Shuchuk v. Wolfert, 2003 ABCA 109 (CanLII),* **Appellant's Book of Authorities, Tab 6.**
> *Shuchuk v. Wolfert, 2003 SCC,* **Appellant's Book of Authorities, Tab 7.**
> *House v. Alberta (Workers' Compensation Board), 2011 NLTD(G) 25 (CanLII),* **Appellant's Book of Authorities, Tab 8.**
> *Murray Goodwin v. Workplace Health, Safety and Compensation Commission 2014 NBQB 119,* **Appellant's Book of Authorities, Tab 9.**

50. It should be noted that if Mr. Taylor did not clearly state "Tort of Public Misfeasance" in his Statement of Claim he did mention the content of the tort "Bad Faith". In the case of Shuchuk v. Wolfert and the Alberta Workers Compensation Board this matter was initially denied at the lower court on June 13, 2001. Then Mr. Shuchuk appealed the decision to a higher court, which overturned the lower court's decision. At paragraph 11 of the Honourable Mr. Justice R.P. Marceau stated that "***generously interpreted, might be construed as claiming the tort of abuse of public office or misfeasance in public office***." This was also the action of the Court of Appeal in Castillo v. WSIB.

> *Castrillo v. Workplace Safety and Insurance Board* (2017), 2017 ONCA 121 (CanLII), **Appellant's Book of Authorities, Tab 2.**
> *Shuchuk v. Wolfert, 2001 ABQB 937 (CanLII),* **Appellant's Book of Authorities, Tab 5.**

51. Mr. Taylor had stated during his opening oral arguments that he was in the process of amending his statement of claim to clarify the cause of action and include the specifics for the "Tort of Public Misfeasance". Mr. Taylor had included the "Tort of Public Misfeasance" in his factum and it was confirmed by Honourable Mr. Justice J. Price at line 71-75 on page 26-27 of his reasons.

Reasons of Honourable Mr. Justice J. Price, **Appeal Book & Compendium, Tab 3 pages 39-40.**

52. In Honourable Mr. Justice J. Price's reasons for his decision he states at lines 67 to 70 that Mr. on page 26, Taylor did not state the "full particulars for malice conduct", nor did he name the tortfeasor. Mr. Taylor did however clarify the name of the Tortfeasor in his cross-examination and if permitted could have amended the claim to allow for the correction of any failings, as allowed by the rules and the numerous other previously cited cases.

Reasons of Honourable Mr. Justice J. Price, **Appeal Book & Compendium, Tab 3 page 39**
Transcript of cross-examination of Paul Taylor, dated May 7, 2015, **Appeal Book & Compendium, Tab 13a page 134-240**
Ontario Courts of Justice Act Rules of Civil Procedures R.S.O. Rule 26. **Schedule B**

53. The claim does in fact discloses a reasonable cause of action. It should be noted that Mr. Taylor is self-represented and while arguing the case he is at the same time learning the Torts, and legal process. In the alternative as indicated in numerous previous other cases the claim can be amended in accordance with the rules to show a cause of action more clearly, as well as outlining the requirements of the Torts.

Ontario Courts of Justice Act Rules of Civil Procedures R.S.O. Rule 26. **Schedule B**

F. WSIAT Motion to Dismiss Mr. Taylor's Evidence

54. As previously mentioned The WSIAT filed a motion for leave to include evidence and their motion to have Mr. Taylor's evidence excluded and sealed. The WSIAT's basis for their motion was that the recording was made surreptitiously. They further argued that Mr. Taylor did not have permission to make any recordings.

WSIAT Motion to exclude audio evidence, dated September 29, 2015. **Appeal Record & Compendium the tab 7 pages 51-55.**

55. The Honourable Mr. Justice J. Price in his reasons for decision stated that he allowed the affidavit of Mary Ferrari, and denied the evidence of Mr. Taylor. Justice J. Price also stated that even if he had admitted the evidence it would not change the outcome as the Claim does not plead the necessary facts.

Reasons of the Honourable Mr. Justice J. Price Justice. **Appeal Record & Compendium tab 3, pages 14-43.**

56. Mr. Taylor did not have an opportunity to cross examine the WSIAT's witness in response to the WSIAT motion to exclude evidence or the opportunity to prepare proper motion response materials. This is confirmed by the absence of any further transcripts or evidence. Had there been a proper voir dire hearing, Mr. Taylor would have been able to question the witness as well as provide evidence in response, and response witnesses. This is confirmed in his Honourable Mr. Justice M. LeMay endorsement of October 21, 2015.

Endorsement of Justice William M. Le May, dated October 21, 2015, **Appeal Record & Compendium tab 4, pages 44-46.**

57. Mr. Taylor required an audio recorder during the WSIAT hearing. This was an assistive device to aid Mr. Taylor for note taking purposes, because of his disability. As confirmed previously, Mr. Taylor should have been accommodated for his disabilities, as this is a mandatory requirement of the Ontario Human Rights Code, the Ontarians with Disabilities Act, and as well as the WSIAT customer service policy. All these documents confirm that that accommodations must be made. The WSIAT policy confirms **that no permission is needed or required to use the assistive devices** is require. This is also confirmed in the Consolidated Provincial Practice Direction – Superior Court of Justice, dated July 1, 2014. Superior Court motion hearing of October 21, 2015

and reconfirmed by Justice's Lemay agreement of allowing Mr. Taylor to record the court motion hearing.

> *Affidavit of Paul Taylor, sworn May 2015,* **Appeal Record & Compendium tab 12, page 118.**
> *Ontario Human Rights Code R.S.O. 1990 Part I & II.* **Schedule B**
> *Ontario Ontarians with Disabilities Act R.S.O. 2001 Section (2).* **Schedule B**
> *WSIAT Accessibility Policy for Customer Service, dated October 28, 2009.* **Schedule B**
> *Consolidated Provincial Practice Direction, dated April 11, 2014.* **Schedule B**
> *Endorsement of Justice William M. Le May, dated October 21, 2015,* **Appeal Record & Compendium tab 4, pages 44-46.**

58. The Honourable Mr. Justice J. Price in his reasons for decision also mentioned the comments of Justice Cromwell when he was presiding at the Nova Scotia Court of Appeal. In their decision, which Justice Cromwell wrote they discussed the issue of "deliberative secrecy". In the Appellant Court's decision of Cherubini Metal Works Lt. v. Nova Scotia. Stated that "*'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…"* In this matter the Appellant Court was deciding whether to allow a decision maker to testify in court as to how they came about their decision. There was no prior evidence or proof to provide a reason for the deliberative secrecy to be overruled. It was nothing more than a "fishing expedition" of the plaintiffs. There was no reason for the 'deliberative secrecy' to be lifted, as stated by the Appellant Court.

> *Cherubini Metal Works Ltd. v. Nova Scotia (Attorney General), 2007 NSCA 37,* **Appellant's Book of Authorities, Tab 10.**

59. However, in the same decision Justice Cromwell states in reference to, the Supreme Court of Canada case of Tremblay v. Quebec [1992] that at line 16 in "*the Court has also made it clear that administrative tribunals cannot rely on deliberative secrecy to the same extent as judicial tribunals: Tremblay at 968*". In reviewing the Appellant Court's decision more closely, while "deliberative secrecy" is protection for decision makers, it is not absolute, especially with

administrative tribunals. Justice Cromwell goes on to lay out the grounds for the lifting of "deliberative secrecy". At line 35 of his decision Justice Cromwell states the following:

> "*the party seeking to lift deliberative secrecy* ***must show valid reasons for believing that the process followed did not comply with the rules of natural justice or procedural fairness or that the discretionary authority has been otherwise exceeded****: Tremblay at 966 and Waverley at para. 17. In other words, the party must establish valid reasons for believing that lifting deliberative secrecy will show that the tribunal made a reviewable error."*
> *Cherubini Metal Works Ltd. v. Nova Scotia (Attorney General), 2007 NSCA 37,* **Appellant's Book of Authorities, Tab 10.**

60. In Mr. Taylor's statement of claim, amended statement of claim, affidavit of Paul Taylor of May 2015, as well as the transcript from the cross examination of Paul Taylor of May 6, 2016. There are more than enough documented reasons as to why the "deliberative secrecy" should be removed in his case, as outlined by Justice Cromwell. They are as follows:

    a. At lines 42, 44, 45, 46, and 47 of Mr. Taylor's Statement of Claim it indicates that the WSIAT panel broke the laws. The specific laws are: Ontario Human Rights Code, Ontarians with Disabilities act, and WSIAT customer Service Policy. This is when the WSIAT failed to accommodate Mr. Taylor's disabilities when rendering their decisions. It was also when they stated that Mr. Taylor had to provide medical proof of having a disability. They further acted in bad faith when they led Mr. Taylor to believe he had to provide proof of disability.

    b. At line 51 of Mr. Taylor's Statement of Claim indicates that the WSIAT panel member stated that Mr. Taylor deserved to have his ass kicked. This confirms the WSIAT panel's lack of impartiality and willingness to intentionally, willingly, and knowingly pervert the course of justice, as well as to wish harm on another.

c. At line 45 & 46 of Mr. Taylor's Amended Statement of Claim indicates that the WSIAT intentionally denied crucial and reasonable witnesses. The real reason was that the panel did not want to adjourn to another date, for the witnesses to be called.

d. At lines 47 to 53 of Mr. Taylor's Amended Statement of Claim indicates that the WSIAT it indicates that the WSIAT panel broke the laws. The specific laws are: Ontario Human Rights Code, Ontarians with Disabilities act, and WSIAT customer Service Policy. This is when the WSIAT failed to accommodate Mr. Taylor's disabilities when rendering their decisions. It was also when they stated that Mr. Taylor had to provide medical proof of having a disability. They further acted in bad faith when they led Mr. Taylor to believe he had to provide proof of disability. They also created their own guidelines or rules rather than following set policies and law.

e. At line 57 of Mr. Taylor's Amended Statement of Claim indicates that the WSIAT panel member stated that Mr. Taylor deserved to have his ass kicked. This confirms the WSIAT panel's lack of impartiality and willingness to intentionally, willingly, and knowingly pervert the course of justice, as well as to wish harm on another. Mr. Taylor also raised concern that the WSIAT refused to investigate his complaint, which proved the level of prejudice by the WSIAT, against persons with disabilities like Mr. Taylor.

f. At line 60 of Mr. Taylor's Amended Statement of Claim indicates that the WSIAT panel had a duty to follow WSIB policy and law regarding "Benefit of Doubt", but they intentionally and knowingly failed that duty.

g. At lines 76 – 77 of Mr. Taylor's affidavit of May 2015, indicates that the WSIAT had declined his request for witnesses and further confirmed they were needed to prove his case, as well as to explain inconsistencies.

h. At lines 79 – 80 of Mr. Taylor's affidavit of May 2015, indicates that the WSIAT had intentionally interrupted his questioning of his witnesses as to intentionally disrupt his ability to carry out his case. The questions he was asking were reasonable and lawful.

i. At lines 81 – 82 of Mr. Taylor's affidavit of May 2015, indicates that Mr. Taylor was using a recorder for note taking purposes to accommodate his disability. Mr. Taylor stated that when he heard the recording, this is when he learned that the WSIAT had already decided the case, before hearing any evidence. Mr. Taylor also indicated the panel members went so far as to make fun of him and laughed at him. He also stated that one panel member said that Mr. Taylor was a joke and the panel member liked to kick his ass. After hearing, what was stated by the panel member Mr. Taylor stated he lost trust in the system and felt "*extremely threatened*" and was concerned with filing an immediate appeal/reconsideration for fear it would be with the same panel.

Statement of Claim: Taylor v. WSIB & WSIAT, dated February 20, 2014, **Appeal Record & Compendium tab 10, pages 70-75.**
Amended Statement of Claim: Taylor v. WSIB & WSIAT, dated July 23, 2014, **Appeal Record & Compendium tab 11, pages 76-89.**
Cherubini Metal Works Ltd. v. Nova Scotia (Attorney General), 2007 NSCA 37, **Appellant's Book of Authorities, Tab 10.**

61. While his Honour Mr. Justice J. Price stated that his reasons for not admitting the audio evidence as mainly "deliberative secrecy", his honour also mentioned at line 64 of his reasons that the recording could be considered illegal under section 184(5) of the Criminal Code of

Canada. For this reason, his Honour Mr. Justice J. Price stated that at line 64 "*its probative value, if any, is outweighed by the prejudicial effect of admitting such evidence*".

> *Reasons of the Honourable Mr. Justice J. Price Justice.* **Appeal Record & Compendium tab 3, page 38.**

62. What his Honour Mr. Justice J. Price stated regarding the possibility of the evidence being illegal obtained, maybe convincing. However, in the case of Behrens v. Stoodley it was found that the trial judge admitted audio evidence which was illegally obtained and relied heavily on to decide a case. This was appealed to the Ontario Court of Appeal and in a 2 to 3 decision, the Court upheld the Trial judge's decision to admit and use the illegal audio evidence. In the Appeal Court's decision which was written by Honourable Mr. Justice R. J. Sharpe at line 42 his honour states the following in his decision:

> "*With respect to the audio tape, it was more or less conceded before this court that the trial judge was perfectly entitled to conclude that the tape constituted "**graphic and distressing evidence of venom** directed towards the father and pressure exerted upon the child" and these statements to the child "**were extremely distressing**" and "**harmful to her emotional well-being**".*
> *Behrens v. Stoodley, 1999 CanLII 1626 (ON CA),* **Appellant's Book of Authorities, Tab 11.**

63. The trial judge and the Ontario Court of Appeal were concerned with the content of the audio recording, then the illegal nature of how it was obtained. The wording used was "***graphic and distressing evidence of venom***" and "***were extremely distressing***" and "***harmful to her emotional well-being***". In comparing the words to Mr. Taylor's audio recording in what he has stated the recording contained, it is easy to compare that when a WSIAT panel member says Mr. Taylor is a joke and he'd like to kick Mr. Taylor's ass. Also, another panel member was heard laughing at him. All this is easily compared to the describing words of ***venom, extremely distressing, and harmful to emotional well-being***.

> *Behrens v. Stoodley, 1999 CanLII 1626 (ON CA),* **Appellant's Book of Authorities, Tab 11.**

64. In another similar case, audio recording evidence was admitted in the case of Lam v. Chiu. The matter was heard in British Columbia Supreme Court by The Honourable Madam Justice Gray. It was a conversation that was recorded between the plaintiff and the defendant. The defendant had no knowledge of the conversation being recorded. The Honourable Madam Justice Gray stated the recording was "*surreptitious"*. After considering several other cases her Honour ruled the "*surreptitious"* audio recording was admissible as evidence.

Lam v. Chiu, 2012 CanLII BCSC 440, **Appellant's Book of Authorities, Tab 12.**

65. To summarize on the matter of admissibility of Mr. Taylor's audio evidence His Honour Mr. Justice J. price should have admitted the evidence on the following grounds:

a. Mr. Taylor had a right to use a recorder during the hearing in accordance with various laws and WSIAT policy to accommodate his disability;

b. The recording was not a violation of "deliberative secrecy", and several reasons were provided to break the secrecy;

c. Justice J. Price considered the recording to be made, illegally in contravention of the Criminal Code section 185. However, as shown in Behrens v. Stoodley in certain extreme cases, the audio evidence was admissible. That are very similar in nature with Mr. Taylor's case;

d. Even though it has been labeled as a "surreptitious" recording a similar case in Lam v. Chiu allowed a "surreptitious" recording into evidence;

e. Finally, Mr. Taylor was not properly able to prepare to respond to the WSIAT's motion to exclude the evidence, if he was it would have been admitted as evidence.

G. Failing to accommodate Mr. Taylor's disabilities.

66. The WSIB and the WSAT would knowingly, intentionally, and routinely refuse to recognize and accommodate Mr. Taylor's disabilities in rendering their decisions and in accommodations during their hearing process and other matters.

67. The Ontario Human Rights Code states that every person has a right to equal treatment with respect to services, goods and facilities, without discrimination because of disability. The code further states that no employee shall be harassed by an employer or agent because of a person having a disability. It also defines what a disability specifically is any degree of physical disability and/or a physical reliance on a remedial appliance or device. It further defines disability as mental impairment, developmental, learning disability, mental disorder, or an injury or disability which benefits were claimed or received under the WSIA. The code also states that a person has or has had a disability if the person "***believed* to have or to have had a disability."**

Ontario Human Rights Code R.S.O. 1990 Part I & II. **Schedule B**

68. The Persons with Disabilities Act also defines what a disability is, which is similar in nature to the OHRC, however the act also defines what "Barriers" are specifically. It states that barriers are also nonphysical barriers such as "***an information or communications barrier, an attitudinal barrier, a technological barrier, a policy or a practice***".

Ontario Ontarians with Disabilities Act R.S.O. 2001 Section (2). **Schedule B**

69. The WSIAT Accessibility Policy for Customer Service states that it applies to **all** of its services and **all** of its staff. It further states that if persons attending hearings require assistive devices [which include recorders for note taking purposes] will be allowed to access these devices.

WSIAT Accessibility Policy for Customer Service, dated October 28, 2009. **Schedule B**
Consolidated Provincial Practice Direction, dated April 11, 2014. **Schedule B**

70. The WSIB routinely would force Mr. Taylor back to his regular work informing the employer that Mr. Taylor was fully recovered and had no work-related or other disabilities. In doing so the WSIB knowingly and intentionally violated the Ontario Human Rights code, the Ontarians with Disabilities Act, and the Charter of Rights and Freedoms section 2, 7, 12, and 15. In doing so the WSIB caused Mr. Taylor financial, emotional, and physical harm. This is one of many examples of the Tort of Public Misfeasance.

71. In cross examination as previously stated the WSIB implied that Mr. Taylor did not have a disability as he did not suffer any "broken bones" from his work injury. They also implied that Mr. Taylor was not colourblind for two reasons 1. Mr. Taylor could obtain a driver's license and drive a transport truck, and 2. Mr. Taylor was able to attend and complete the computer training courses, as well as get a job.

72. This is a fallacy argument that is intentionally deceptive. The Ministry of Transport does not colour test drivers. A person attending a course and performing a job, especially when they lost the job, is not a measurable factor for determining disability.

73. With the WSIB and the WSIAT making these determinations regarding Mr. Taylor's disabilities, it is without question that it is based solely on personal subjective opinions, rather than factual based objective measurable evidence. This practice has been frowned upon by many courts.

PART IV – ORDER REQUESTED

74. Mr. Taylor, the appellant, is therefore respectfully requesting the order of His Honour Mr. Justice J. Price be set aside and the following be ordered:

    a. That Mr. Taylor's claim be allowed to proceed to trial against the WSIB & the WSIAT,

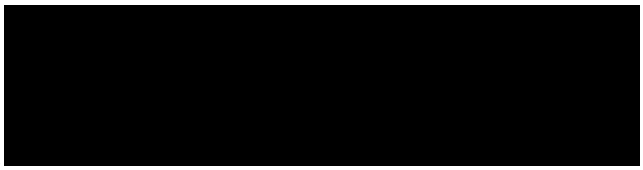
    b. That Mr. Taylor be allowed to serve and file a further amend statement of claim,

c. That the audio evidence that was mentioned during the motion hearing as “Exhibit U5” be admitted as evidence, as well as a transcript of the audio evidence, and

d. That court costs for the motion be set for Mr. Taylor at $500, as well as a cost order for this appeal.

All of which is respectfully submitted to this Appeal Court.

April 18, 2017
Revised May 6th, 2017



Paul Taylor
Appellant – Self-represented

PART V – CERTIFICATE

I, Paul Taylor, the Appellant, certify that:

(i) The record and the original exhibits from the court or tribunal from which the appeal is taken are not required.

(ii) The estimated time of my oral argument is two hours, not including reply.

April 17, 2013
Revised May 6th, 2017

[redacted]

Paul Taylor

Schedule A – Authorities

1 Fleet street Financial Corp. v. Levinson 2003 CanLII 21878 (ON SC)

2 Castrillo v. Workplace Safety and Insurance Board, 2017 ONCA 121 (CanLII)

3 Steinnagel v. Workplace Health & WSIB, 2016 ONSC 2138 (CanLII)

4 Shuchuk v. Wolfert & Alberta WCB, 2001 ABQB 500 (CanLII)

5 Shuchuk v. Wolfert & Alberta WCB, 2001 ABQB 937 (CanLII)

6 Wolfert v. Shuchuk & Alberta WCB, 2003 ABCA 109 (CanLII)

7 The Worker's Compensation Board and Randy Wolfert v. Thomas Shuchuk (Alta.) (Civil) (By Leave) SCC 29737

8 House v. Alberta (Workers' Compensation Board), 2011 NLTD(G) 25 (CanLII)

9 Murray Goodwin v. Workplace Health, Safety and Compensation Commission 2014 NBQB 119 (CanLII)

10 Cherubini Metal Works Ltd. v. Nova Scotia (Attorney General), 2007 NSCA 37 (CanLII)

11 Behrens v. Stoodley, 1999 CanLII 1626 (ON CA), (CanLII)

12 Lam v. Chiu, 2012 BCSC 440 (CanLII)

Schedule B – Relevant Statues

A. Consolidated Provincial Practice Direction – Ontario Superior Court of Justice

D. Electronic Devices in the Courtroom

92. 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

93. 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.

B. WSIAT Accessibility Policy for Customer Service

Introduction

In accordance with the *Accessibility for Ontarians with Disabilities Act, 2005*, and *Ontario Regulation 429/07, "Accessibility Standards for Customer Service"*, the Tribunal has established the following policy, practices and procedures governing the provision of its services to persons with disabilities.

75. Goods or services must be provided in a manner that respects the dignity and independence of persons with disabilities.
76. The provision of goods or services to persons with disabilities and others must be integrated[1] unless an alternate measure is necessary (permanent or temporary) to enable a person with a disability to obtain, use or benefit from the goods or services.
77. Persons with disabilities must be given an opportunity equal to that given to others to obtain, use and benefit from the goods or services.

Application of the Policy

This policy applies to all of the Tribunal's services. The Tribunal, using reasonable efforts, will provide equal access for all individuals, including parties to appeals, witnesses and representatives, to fully participate in its processes.

This policy applies to all Tribunal staff and members. The term member is used to designate all adjudicative positions at the Tribunal.

Use of Assistive Devices

Persons with disabilities who require personal assistive devices will be permitted access to these devices while attending hearings at the Tribunal's premises at 505 University Avenue and while at regional hearing centres. When requested, the Tribunal will work with individuals to accommodate the use of personal assistive devices, but will not provide these devices.

C. Ontario Rules of Civil Procedure

RULE 21 DETERMINATION OF AN ISSUE BEFORE TRIAL

WHERE AVAILABLE

To Any Party on a Question of Law

21.01 (1) A party may move before a judge,

(a) for the determination, before trial, of a question of law raised by a pleading in an action where the determination of the question may dispose of all or part of the action, substantially shorten the trial or result in a substantial saving of costs; or

(b) to strike out a pleading on the ground that it discloses no reasonable cause of action or defence,

and the judge may make an order or grant judgment accordingly. R.R.O. 1990, Reg. 194, r. 21.01 (1).

(2) No evidence is admissible on a motion,

(a) under clause (1) (a), except with leave of a judge or on consent of the parties;

(b) under clause (1) (b). R.R.O. 1990, Reg. 194, r. 21.01 (2).

To Defendant

(3) A defendant may move before a judge to have an action stayed or dismissed on the ground that,

Jurisdiction

(a) the court has no jurisdiction over the subject matter of the action;

Capacity

(b) the plaintiff is without legal capacity to commence or continue the action or the defendant does not have the legal capacity to be sued;

Another Proceeding Pending

(c) another proceeding is pending in Ontario or another jurisdiction between the same parties in respect of the same subject matter; or

Action Frivolous, Vexatious or Abuse of Process

(d) the action is frivolous or vexatious or is otherwise an abuse of the process of the court,

and the judge may make an order or grant judgment accordingly. R.R.O. 1990, Reg. 194, r. 21.01 (3).

MOTION TO BE MADE PROMPTLY

21.02 A motion under rule 21.01 shall be made promptly and a failure to do so may be taken into account by the court in awarding costs. R.R.O. 1990, Reg. 194, r. 21.02.

RULE 26 AMENDMENT OF PLEADINGS

GENERAL POWER OF COURT

26.01 On motion at any stage of an action the court shall grant leave to amend a pleading on such terms as are just, unless prejudice would result that could not be compensated for by costs or an adjournment. R.R.O. 1990, Reg. 194, r. 26.01.

WHEN AMENDMENTS MAY BE MADE

26.02 A party may amend the party's pleading,

(a) without leave, before the close of pleadings, if the amendment does not include or necessitate the addition, deletion or substitution of a party to the action;

(b) on filing the consent of all parties and, where a person is to be added or substituted as a party, the person's consent; or

(c) with leave of the court. R.R.O. 1990, Reg. 194, r. 26.02.

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

PART I
INTERPRETATION

Definitions
2. (1) In this Act

"permanent impairment" means impairment that continues to exist after the worker reaches maximum medical recovery; ("déficience permanente")

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).

E. Criminal Code of Canada

Interception of Communications

Interception

184 (1) Every one who, by means of any electro-magnetic, acoustic, mechanical or other device, wilfully intercepts a private communication is guilty of an indictable offence and liable to imprisonment for a term not exceeding five years.

Marginal note: Saving provision

(2) Subsection (1) does not apply to

> **(a)** a person who has the consent to intercept, express or implied, of the originator of the private communication or of the person intended by the originator thereof to receive it;
>
> **(b)** a person who intercepts a private communication in accordance with an authorization or pursuant to section 184.4 or any person who in good faith aids in any way another person who the aiding person believes on reasonable grounds is acting with an authorization or pursuant to section 184.4;
>
> **(c)** a person engaged in providing a telephone, telegraph or other communication service to the public who intercepts a private communication,
>
> > **(i)** if the interception is necessary for the purpose of providing the service,
> >
> > **(ii)** in the course of service observing or random monitoring necessary for the purpose of mechanical or service quality control checks, or
> >
> > **(iii)** if the interception is necessary to protect the person's rights or property directly related to providing the service;
>
> **(d)** an officer or servant of Her Majesty in right of Canada who engages in radio frequency spectrum management, in respect of a private communication intercepted by that officer or servant for the purpose of identifying, isolating or preventing an unauthorized or interfering use of a frequency or of a transmission; or
>
> **(e)** a person, or any person acting on their behalf, in possession or control of a computer system, as defined in subsection 342.1(2), who intercepts a private communication originating from, directed to or transmitting through that computer system, if the interception is reasonably necessary for
>
> > **(i)** managing the quality of service of the computer system as it relates to performance factors such as the responsiveness and capacity of the system as well as the integrity and availability of the system and data, or
> >
> > **(ii)** protecting the computer system against any act that would be an offence under subsection 342.1(1) or 430(1.1).

F. Ontarians with Disabilities Act, R.S. O. 2001

Interpretation

Purpose

1. The purpose of this Act is to improve opportunities for persons with disabilities and to provide for their involvement in the identification, removal and prevention of barriers to their full participation in the life of the province. 2001, c. 32, s. 1.

Definitions

2. (1) In this Act,

"barrier" means anything that prevents a person with a disability from fully participating in all aspects of society because of his or her disability, including a physical barrier, an architectural barrier, an information or communications barrier, an attitudinal barrier, a technological barrier, a policy or a practice; ("obstacle")

"disability" means,

(a) any degree of physical disability, infirmity, malformation or disfigurement that is caused by bodily injury, birth defect or illness and, without limiting the generality of the foregoing, includes diabetes mellitus, epilepsy, a brain injury, any degree of paralysis, amputation, lack of physical co-ordination, blindness or visual impediment, deafness or hearing impediment, muteness or speech impediment, or physical reliance on a guide dog or other animal or on a wheelchair or other remedial appliance or device,

(b) a condition of mental impairment or a developmental disability,

(c) a learning disability, or a dysfunction in one or more of the processes involved in understanding or using symbols or spoken language,

(d) a mental disorder, or

(e) an injury or disability for which benefits were claimed or received under the insurance plan established under the *Workplace Safety and Insurance Act, 1997*; ("handicap")

G. Ontario Human Rights Code R.S.O.

A. PART I
FREEDOM FROM DISCRIMINATION

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.

Harassment in employment

(2) Every person who is an employee has a right to freedom from harassment in the workplace by the employer or agent of the employer or by another employee because of race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sexual orientation, gender identity, gender expression, age, record of offences, marital status, family status or disability. R.S.O. 1990, c. H.19, s. 5 (2); 1999, c. 6, s. 28 (6); 2001, c. 32, s. 27 (1); 2005, c. 5, s. 32 (6); 2012, c. 7, s. 4 (2).

PART II
INTERPRETATION AND APPLICATION

Definitions re: Parts I and II

10. (1) In Part I and in this Part,

"age" means an age that is 18 years or more; ("âge")

"disability" means,

(a) any degree of physical disability, infirmity, malformation or disfigurement that is caused by bodily injury, birth defect or illness and, without limiting the generality of the foregoing, includes diabetes mellitus, epilepsy, a brain injury, any degree of paralysis, amputation, lack of physical co-ordination, blindness or visual impediment, deafness or hearing impediment, muteness or speech impediment, or physical reliance on a guide dog or other animal or on a wheelchair or other remedial appliance or device,

(b) a condition of mental impairment or a developmental disability,

(c) a learning disability, or a dysfunction in one or more of the processes involved in understanding or using symbols or spoken language,

(d) a mental disorder, or

(e) an injury or disability for which benefits were claimed or received under the insurance plan established under the *Workplace Safety and Insurance Act, 1997*; ("handicap")

"equal" means subject to all requirements, qualifications and considerations that are not a prohibited ground of discrimination; ("égal")

"harassment" means engaging in a course of vexatious comment or conduct that is known or ought reasonably to be known to be unwelcome; ("harcèlement")

Past and presumed disabilities

(3) The right to equal treatment without discrimination because of disability includes the right to equal treatment without discrimination because a person has or has had a disability or is believed to have or to have had a disability. 2001, c. 32, s. 27 (4).

Schedule C – Legal Definitions

The Canadian Law Dictionary 4th Edition Carswell 2011

MISFEASANCE. *n*. The improper execution of a lawful act, e.g. to be guilty of negligence in fulfilling a contract.

MISFEASANCE IN PUBLIC OFFICE. What then are the essential ingredients of the tort, at least insofar as it is necessary to determine the issues that arise on the pleadings in this case? In Three Rivers [Three Rivers District Council v. Bank of England (No. 3), [2000] 2 W.L.R. 1220 (H.L.)] the House of Lords held that the tort of misfeasance of public office can arise in one of two ways, what I shall call Category A and Category B. Category A involves conduct that is specifically intended to injure a person or class of persons. Category B involves a public officer who acts with knowledge both that she or he has no power to do the act complained of and that the act is likely to injure the plaintiff. This understanding of the tort has been endorsed by a number of Canadian courts [cases cited]. It is important, however, to recall that the two categories merely represent two different ways in which a public officer can commit the tort; in each instance, the plaintiff must prove each of the tort's constituent elements. It is thus necessary to consider the elements. First, the public officer must have engaged in deliberate and unlawful conduct in his or her capacity as a public officer. Second, the public officer must have been aware both that his conduct was unlawful and that it was likely to harm the plaintiff. What distinguishes one form of misfeasance in a public office from the other is the manner in which the plaintiff proves each ingredient of the tort. In Category B, the plaintiff must prove the two ingredients of the tort independently of one another. In Category A, the fact that the public officer has acted for the express purpose of harming the plaintiff is sufficient to satisfy each ingredient of the tort, owing to the fact that a public officer does not have the authority to exercise his or her powers for an improper purpose, such as deliberately harming a member of the public. In each instance, the tort involves deliberate disregard of official duty coupled with knowledge that the misconduct is likely to injure the plaintiff. *Odhavji Estate v. Woodhouse,* [2003] 3 S.C.R. 263, 2003 SCC 69, Iacobucci J. for the court, para. 22.

MISLEAD. *v.* "To withhold truthful, relevant and pertinent information may very well have the effect of 'misleading' just as much as to provide, positively, incorrect information." *Hilario v. Canada (Minister of Manpower & Immigration)*, 18 N.R. 529 at 530, [1978] 1 F.C. 697 (C.A.), the court per Heald J.A.

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GOOD FAITH. "… an honest and reasonable held belief. If the belief is honest, but not reasonably held, it cannot be said to constitute good faith. But it does not follow that it is therefore bad faith. **To constitute bad faith the actions must be knowingly or intentionally wrong**…. The presence of good faith is established by the absence of bad faith…[Emphasis added]

BAD FAITH. 1. To constitute bad faith the actions must be knowingly or intentionally wrong [R v. Smith 2005] … 3. Used in municipal and administrative case law to cover a wide range of

conduct in the exercise of legislatively delegated authority. Bad faith has been held to include **dishonesty, fraud, bias, conflict of interest, discrimination, abuse of power, corruption, oppression, unfairness, and conduct that is unreasonable. The words have also been held to include conduct based on an improper motive, undertaken for an improper, indirect or ulterior purpose…."** [Emphasis added]
The Canadian Law Dictionary 4th Edition Carswell 2011, pp. 101-102

MALICIOUSLY. *adv.*With an intent to cause harm or while being reckless about whether that harm will occur.
The Canadian Law Dictionary 4th Edition Carswell 2011, pp. 765

FRIVOLOUS. *adj.* "…[L]acking in substance'…" *halliday v. Gouge,* 14 Alta. L.R. 296 at 303, [1919] 1 W.W.R. 359 (C.A.), Walsh J.A.

FRIVOLOUS AND VEXATIOUS. Said of a pleading which is hopeless factually and plainly cannot succeed in its purpose.
The Canadian Law Dictionary 4th Edition Carswell 2011, pp. 532

VEXATIOUS. *adj.* Annoying, distressing; multiplicitous; the bringing of one or more actions to determine an issue which has already been determined; the bringing of actions which cannot succeed
or lead to any possible positive outcome. See FRIVOLOUS AND ~.

VEXATIOUS ACTION. 1. "an action may be vexatious if it is obvious that it cannot succeed: to obtain relief in it:… or if the Court has no power to grant the relief sought: … or if the applicant has no status to pursue the remedy, or relief might be sought in a subsisting action: … in a previous action: … In some cases the Courts have considered the lack of bona fides in classifying an action as an action as vexatious, as where the plaintiff had no cause of action at all: … A legal proceeding may be vexatious even though there were reasonable grounds for its institution if, for instance, the plaintiff is asking for relief in a way which necessarily involves injustice." *Foy v. Foy (No. 2)* (1979), 12 C.P.C. 188 at 197, 26 O.R. (2d) 220, 102 D.L.R. (3d) 342 (C.A.), Howland C.J.O. (Brooke J. A. concurring). 2. Vexatious was said to involve overtones of an irresponsible pursuit of litigation by someone who either knows he has no proper cause of action or is mentally incapable of forming a rational opinion on topic. *Whitehead v. Taber,* 1983 CarswellALTA 379, 46 A.R. 14 (Q.B.), Crossley J.

VEXATIOUS PROCEEDING. A proceeding in which the party bringing it wishes only to embarrass or annoy the other party.
The Canadian Law Dictionary 4th Edition Carswell 2011, pp. 1364

FORM 4C
Courts of Justice Act
BACKSHEET

Paul Taylor v. WSIB and WSIAT
(Appellant) (Respondents)

Court file no. C63503

Ontario Court of Appeal

PROCEEDING COMMENCED AT

Ontario Court of Appeal
130 Queen Street West Toronto, Ontario M5H 2N5

Revised **Factum of Appellant**

Paul Taylor
Vs
Workplace Safety & Insurance Board – WSIB
AND
Workplace Safety & Insurance Appeals Tribunal – WSIAT

Paul Taylor
[redacted]