

ONTARIO
SUPERIOR COURT OF JUSTICE

BETWEEN:

Paul Taylor

Plaintiff
(Responding Party)

and

Workplace Safety & Insurance Board – WSIB,
AND
Workplace Safety & Insurance Appeals Tribunal – WSIAT

Defendants
(Moving Parties)

FACTUM
of PAUL TAYLOR
(Motion Returnable October 22, 2015)

Paul Taylor

[Redacted signature block]

Plaintiff
Self-represented

TO:

**WORKPLACE SAFETY
& INSURANCE BOARD**

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PART I – RESPONSE TO MOTION AND OVERVIEW

1. This Factum is in opposition to the WSIB and the WSIAT’s Rule 21 motion to dismiss the Amended Statement of Claim prepared by the plaintiff. It will be proven that:
 - a. The WSIB and the WSIAT committed the Tort of Misfeasance in a Public Office;
 - b. The WSIB and the WSIAT do have the capacity to be sued;
 - c. The Court has jurisdiction over matters of the WSIB & the WSIAT;
 - d. The Amended Claim is not Limitation barred;
 - e. The Amended Claim discloses a cause of action; and
 - f. The Amended Claim is neither frivolous, vexatious, nor an abuse of process.

PART II – THE FACTS

A. The Parties:

2. Paul Taylor is the plaintiff and responding party to the motion to strike. On February 6, 1997 the plaintiff was injured in a work related accident. The plaintiff was paid benefits by the Workers Compensation Board – The WCB under the Workers' Compensation Act.

**Responding Motion Record of Paul Taylor, Vol I, Tab 1, page 8
Paul Taylor Affidavit, Para 5**

3. The Workers Compensation Board – The WCB is a Provincial Administrative Board, which administers employer funded benefits to injured workers. The WCB was replaced by the Workplace Safety & Insurance Board – The WSIB on January 1, 1998. The WCB/WSIB is listed as a defendant in this matter. The Workplace Safety & Insurance Appeals Tribunal – WSIAT is a Provincial

Administrative Tribunal, which hears appeals from the WSIB. The WSIAT is also listed as a defendant in this matter.

**Responding Motion Record of Paul Taylor, Vol I, Tab 1, page 7 & 8
Paul Taylor Affidavit, Para 2 & 3**

B. Acceptance & Changing of Workplace Injury by the WCB/WSIB:

4. On February 6, 1997 a workplace accident occurred, which caused an injury to the plaintiff's back, neck, and head. The accident and subsequent injury were fully accepted by the WCB. Then in October 2000, the WSIB stated the original injury was just to the plaintiff's lower back only. Then on February 11, 2008, the WSIAT stated there was an injury to the lower back and neck.

**Responding Motion Record of Paul Taylor, Vol I, Tab 1, page 8, 12, 13, 31
Paul Taylor Affidavit, Para 5, 16, 17, 19, & 68**

C. WCB Failed to Provide an Election for Third Party Liability:

5. In February 1997, the WCB received the employer's report of injury form. This indicated the employer as "*ACTION FORCE*" and the worksite as "*CANADIAN TIRE TRANSPORTATION (STORE IN ALDERSHORT, ONT)*". The WCB never sent an election for third party liability to the plaintiff. The plaintiff was never afforded the opportunity to consult with a lawyer.

**Responding Motion Record of Paul Taylor, Vol I, Tab A1, page 45
Employer's Report of injury Form**

D. The Plaintiff was Forced Back to Work:

6. The WSIB on several occasions would order the Plaintiff back to work. Knowing the plaintiff was not medically ready, or physically capable to return to work. This occurred in: spring and fall of 1997, the summer and fall of 1998, spring and fall of 1999, and summer of 2000. The WCB had been informed by the plaintiff and his doctor with concerns of his work as a truck driver where he drove for 10-14 hours per day.

**Responding Motion Record of Paul Taylor, Vol I, Tab 1, page 17, 18, 21
Paul Taylor Affidavit, Para 31 – 33, 40**

E. WSIB Failed to Acknowledge Dangers With Side Effects of Prescription Medications:

7. After the initial injury of February 6, 1997, pain medication was prescribed by the plaintiff's doctor.

The WCB/WSIB paid for the medications. They were informed by the plaintiff of the side effects of the medication. The plaintiff drove truck for 10-14 hours per day. In October 1998, the defendant was again informed of the dangers with the plaintiff taking pain medications, the side effects, and how it impeded the safe operation of a truck. The plaintiff did not take any precautionary measures to prevent further harm to the plaintiff.

**Responding Motion Record of Paul Taylor, Vol I, Tab 1, page 9, 11, & 18
Paul Taylor Affidavit, Para 7, 11, & 33**

F. WSIB Accepted and Then Changed Permanent Work Related Physical Capabilities:

8. On March 8, 2000 a detailed list of "Permanent Physical Capabilities" were prepared by the WSIB.

This was in preparation for a job retraining program for the plaintiff. When the plaintiff proved the job retraining program was unsuitable, due to the permanent physical capabilities, the WSIB in response changed the Permanent Physical Capabilities to a much less restrictive amount. They did this some two years after setting the permanent physical capabilities.

**Responding Motion Record of Paul Taylor, Vol I, Tab 1, page 22, 27, 29
Paul Taylor Affidavit, Paras 44, 56, 63**

G. WSIB Failed to Accommodate Non-organic Disability:

9. Prior to and in preparation for a job retraining program (LMR), the plaintiff informed the WSIB that he was colour-blind. The WSIB stated to the Plaintiff it would not be an issue. The plaintiff again raised concerns with the WSIB in a meeting with the WSIB service provider, the school, and another

student. The other student and the plaintiff were advised that being colour-blind would not be an issue. Several years later on appeal, the WSIB appeals officer falsely claimed being colour-blind was not a recognized disability, under the Code. The WSIB ignoring non organic disabilities is confirmed in the Butterworth's and KPMG report on Workers compensation service in Ontario.

**Responding Motion Record of Paul Taylor, Vol I, Tab 1, page 23, 25, & 27
Paul Taylor Affidavit, Paras 45, 51, & 60**

H. WSIB Selected Incorrect Job Retraining Program and Then Changed It to Cover up Mistake:

10. The WSIB confirmed the retraining program as "Network Engineer" and stated this would be achieved with a one year college program. The job retraining program proposal (LMR Plan Proposal) was never prepared by or in consultation with the plaintiff nor was the plaintiff provided a copy of the plan. This behavior of the WSIB is confirmed and noted in the independent KMPG report dated December 2009. The program approved by the WSIB of "Network Engineer" actually required 4 years of University with an Engineering Professional designation of P. Eng. It also required a person not to be colour-blind. The WSIB came to the realization on February 8, 2000 that the retraining program of "Network Engineer" was incorrect. In response the WSIB changed the program to "Occupations in Computers". They deceptively claimed it was due to an HRDC change. In fact both careers existed before and after the HRDC's NOC 2000 change.

**Responding Motion Record of Paul Taylor, Vol I, Tab 1, page 23, 26, 28
Paul Taylor Affidavit, Paras 47, 48, 55, 60**

I. The WSIB Intimidates Plaintiff Into Signing Job Agreement:

11. On May 16, 2000, the plaintiff was forced to sign the retraining agreement (an LMR plan agreement). Even after the plaintiff had expressed concerns and stated he was signing the agreement under duress. The plaintiff was informed by the WSIB service provider, if the LMR

agreement was not signed, regardless of concerns he would lose his benefits. She did not have the legal capacity to perform such an action. The practice of intimidating injured workers into signing retraining agreements was raised and confirmed in both the KMPG and the Butterworth's reports.

**Responding Motion Record of Paul Taylor, Vol I, Tab 1 page 23
Paul Taylor Affidavit, Paras 48**

J. WSIB Attacks Plaintiff's Character:

12. When the Plaintiff would have to take long bus rides of over an hour to and from an employer's work program. The WSIB accepted this was unsuitable for the plaintiff, according to his permanent physical capabilities.

**Responding Motion Record of Paul Taylor, Vol I, Tab 1 page 19
Paul Taylor Affidavit, Paras 34**

13. In the fall of 2000, when the plaintiff raised concern over taking a bus ride in excess of an hour and 45 minutes, for job retraining. The WSIB responded in a board memo dated October 2, 2000, which stated that the injured worker suffered from "*self-perceived limitations*". The WSIB did not obtain any medical consultation before making a personal opinion. The person who made the comment was not a medical doctor. The WSIB never informed the plaintiff of this comment. It was kept from the plaintiff and it was not mentioned in the letter they sent on October 3, 2000. It was not until at a WSIB appeal that the comment was discovered. This was when the employer successfully used the comment to attack the character of the plaintiff.

**Responding Motion Record of Paul Taylor, Vol I, Tab 1 page 19
Paul Taylor Affidavit, Paras. 35 & 36**

14. The plaintiff submitted a letter to the WSIB dated November 2, 2000, from his family doctor. The letter confirmed the plaintiff's problems with long bus travel. The plaintiff was requesting to use a

taxi, until he could obtain a car. The doctor had stated in response to the plaintiff's request to take taxi cabs: *"He has asked that he receive funding for taxicab fare to his retraining site and I would leave that to your decision."*

**Responding Motion Record of Paul Taylor, Vol I, Tab I6 page 172
Paul Taylor Affidavit, Exhibit I6 Para 2**

K. WSIB Failed to Monitor the Retraining Program for Suitability:

15. The WSIB service provider reported to the WSIB in some twenty reports over a two year period.

The majority of the reports contained concerns of suitability with the retraining program. The WSIB never took any appropriate investigative action or any preventative measures. Nor did the WSIB consult with the plaintiff's doctor as to the concerns of suitability, as per Board policy.

**Responding Motion Record of Paul Taylor, Vol I, Tab 1 page 25
Paul Taylor Affidavit, Para 50**

16. The WSIB service provider intentionally left off the issue of the plaintiff being colour blind, in her reports to the WSIB. She did this for the simple fact she did not consider it to be a recognized disability. The WSIB never took any appropriate investigative action to confirm it was or was not a recognized disability.

**Responding Motion Record of Paul Taylor, Vol I, Tab 1 page 25
Paul Taylor Affidavit, Para 51 & 52**

L. WSIAT Denies Witness Lists:

17. After the plaintiff filed an appeal with the WSIAT, a witness list was prepared and submitted to the WSIAT. A portion of witnesses were denied, by the WSIAT. The witnesses that were denied were: WSIB staff, the family doctor, and other witnesses. The reason given by the WSIAT is they do not ever call WSIB staff or doctors. This is their policy.

**Responding Motion Record of Paul Taylor, Vol I, Tab 1 page 34
Paul Taylor Affidavit, Para 76**

M. WSIAT Interferes with Hearing Process:

18. During the hearing, in the middle of questioning a witness, the questioning was interrupted by a panel member. They claimed that the witness was incapable of giving advice, as in their opinion, the witness was a layperson. The witness was being asked about their work experience of over fifteen years to what they observed in a day to day basis in comparison a list of physical capabilities.

**Responding Motion Record of Paul Taylor, Vol I, Tab 1 page 37
Paul Taylor Affidavit, Para 79**

19. During the hearing, in the middle of questioning another witness, the questioning was interrupted and stopped by the panel. Claiming the questioning of the witness was hostile in nature. In fact the plaintiff was attempting to clarify an error that the witness had made in their testimony.

**Responding Motion Record of Paul Taylor, Vol I, Tab 1 page 37
Paul Taylor Affidavit, Para 80**

N. WSIAT Threatens and Insults Worker:

20. During the hearing a recorder was used for note taking purposes. When listening to the audio recording, it was heard that a panel member laughed at the plaintiff while another panel member stated the plaintiff was a “fucking joke” and said “he deserves to have his ass kicked” for having a family, and not providing for them. The plaintiff delayed filing an appeal or taking legal action against the WSIAT as he was concerned with a reprisal by WSIAT staff. After the completion of the hearing a complaint was filed with the Ontario Human Rights Commission. They advised to file a request for reconsideration and a written complaint with the WSIAT.

Responding Motion Record of Paul Taylor, Vol I, Tab 1 page 38

Paul Taylor Affidavit, Para 81, 82, 83

O. Reconsideration Request of WSIAT Decision:

21. A considerable amount of new evidence was provided to the WSIAT, which was not available prior to the hearing. Along with the new evidence included a detailed explanation for each item, why it should be admitted as evidence, and how it would have impacted the final decision, if it was available during the original hearing. After reviewing all the evidence the WSIAT ruled that although a request for reconsideration was warranted, the evidence would not be considered. The reconsideration decision was denied.

PART III – THE ISSUES AND THE LAW

A. Introduction

22. The plaintiff submits that both the defendants' motions to strike the amended statement of claim, should be dismissed and the claim should be allowed to proceed for the following reasons:
- a. The WSIB and the WSIAT committed the Tort of Misfeasance in a Public Office;
 - b. The WSIB and the WSIAT do have the capacity to be sued;
 - c. The Court has jurisdiction over matters of the WSIB & the WSIAT;
 - d. The Amended Claim is not Limitation barred;
 - e. The Amended Claim discloses a cause of action; and
 - f. The Amended Claim is neither frivolous, vexatious, nor an abuse of process

B. The WSIB and the WSIAT Committed the Tort of Misfeasance in a Public Office.

23. In *Granite Power v. Ontario* the Court of Appeal defines and allows for actions against Public Office and individuals in Public office. The Ontario Court of Appeal stated that the Tort of Misfeasance in Public Office is defined as: *"requires an element of "bad faith" or "dishonesty""*

**Granite Power v. Ontario, 2004 (ON CA) No. 44786 at pp. 19, para. 39
Paul Taylor's Book of Authorities., Tab 01**

24. The Canadian Law Dictionary makes the following definition for Tort of Misfeasance in Public Office:

The improper execution of a lawful act...conduct that is specifically intended to injure a person or class of persons. ...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.

The Canadian Law Dictionary 4th Edition Carswell 2011, pp 556

25. The WSIB acted with bad faith, intentional dishonesty, and malice towards the plaintiff, when they performed the following acts in dealings with the plaintiff. Their actions have or would have likely caused further harm to the plaintiff:

a) WSIB Failed to Provide the Option of Third Party Liability Election:

When the plaintiff was injured, the WCB had an obligation to notify the plaintiff that he had the option to sue a third party, but failed to provide that information to the plaintiff. Confirmation of third party liability is confirmed in the Ontario Appeals Court decision of *West v. WSIB* where the court stated the following:

"The Board was required to consider all of the exceptional circumstances here, including the failure of its own employees to recognize and consider a potential third party action and to forward the election form to Mr. West..."

**West v. WSIB, 2005 (ON SCDC) No. 34354 at pp. 10, para. 30
Paul Taylor's Book of Authorities., Tab 02**

The WCB failed to recognize that the plaintiff had an action against a third party and in doing so caused further harm to the plaintiff by forcing him to deal with the WSIB & WSIAT appeals.

b) Area of Injury:

The defendants changed the area of injury from the entire back, neck, & head and then changed it three years later to just the lower back. The defendants had intentionally and dishonestly misled the plaintiff to believe the WSIB had accepted the area of injury to the entire back, neck, and head. This caused further injury to the Plaintiff as the plaintiff and others had a false belief he was recovered or had no injury when the plaintiff in fact did.

c) Dangers with Side Effects of Medications:

The Defendants knew the Plaintiff was under the influence of prescription medication and he was experiencing side effects as a result. Knowing this, they informed the Plaintiff it was safe to return to regular work of driving a tractor trailer for 10 to 14 hours per day. As result the plaintiff suffered numerous injuries as a result.

d) The Defendants Acted in Bad Faith with the Job Retraining Program:

- i. The Defendants refused to acknowledge and accommodate a nonorganic disability of being colour blind. In do so the defendants violated 10 (1)a and (3) of the Ontario Human Rights Code.

“The right to equal treatment without discrimination because of disability”.
Ontario Human Rights Code Act, R.S.O. 1990, c. H.19

This is also confirmed in a very similar case of *Frankson v. WSIB*, which was heard by the Ontario Human Rights Tribunal.

.. the WSIB explicitly acknowledges that in formulating a LMR plan, the WSIB has a duty to provide equal treatment under the Code, including accommodation of a disability. [Emphasis added]

Frankson v. WSIB, 2011 (OHRTO) No. 2107 at pp. 7, para. 29
Paul Taylor’s Book of Authorities., Tab 03

- ii. The WSIB selected the wrong job retraining program – LMR plan. Then they attempted to cover up their mistake up by changing the retraining program.

- iii. The defendants used intimidation to force the plaintiff to sign a retraining agreement – LMR agreement, which the plaintiff did not want to sign, due to concerns. This is in violation of the Ontario Human Rights Code.

Services 1. Every person has a right to equal treatment with respect to services, goods and facilities, without discrimination...

Contracts 3. Every person having legal capacity has a right to contract on equal terms without discrimination...or disability. [Emphasis added]

Ontario Human Rights Code Act, R.S.O. 1990, c. H.19

- iv. The Defendants set/accepted the permanent physical capabilities of the Plaintiff and then changed the permanent physical capabilities, some two years later. For the sole purpose of making the new retraining program suitable. This was an intentionally deceptive act that caused the plaintiff further injury and harm.

e) The Defendants Acted in Bad Faith When They Forced the Plaintiff to Return to Regular Work:

In the spring and fall of 1997, the summer and fall of 1998, spring and fall of 1999, and summer of 2000. The plaintiff returned to work with unresolved injuries. This caused the plaintiff further injuries and harm. The plaintiff also suffered injuries in an employer work program. The WCB was aware of this, took no precautionary actions. In forcing the plaintiff back to work, the defendants violated sections 10 (1)a and (3) of the Ontario Human Rights Code:

“The right to equal treatment without discrimination because of disability”.
Ontario Human Rights Code Act, R.S.O. 1990, c. H.19

f) The Defendants Acted in Bad Faith when Determining the Plaintiff’s Permanent Impairment.

The defendants stated over a year and a half after the injury, in August 1998 that the plaintiff would be fully recovered in two months. However, WCB/WSIB Board Policy 02-03-03 states after three months a soft tissue injury would be permanent. The defendants did not acknowledge the Plaintiff’s permanent impairment (lower back) until three years after the injury. This caused further injury and harm to the plaintiff.

g) The Defendants Acted in Bad Faith When They Insulted and Threatened the Plaintiff:

The defendants acted in bad faith when they insulted and attacked the plaintiff’s character. By stating the plaintiff suffered from self-perceived limitations. The defendants also specifically wanted physical harm on the plaintiff, by stating they felt the plaintiff should have his ass

kicked. Both of these incidents as well as many more over the years are defined as

“harassment” under the Ontario Human rights code and is an act of bad faith. Which states:

“harassment” means engaging in a course of vexatious comment or conduct that is known or ought reasonably to be known to be unwelcome; (“harcèlement”)
Ontario Human Rights Code Act, R.S.O. 1990, c. H.19

C. The WSIB and the WSIAT have the Capacity to be Sued:

26. The WSIB, the WSIAT, their staff, and agents do have the capacity to be sued according to the

WSIA, the Proceedings Against the Crown Act, Common-law and the law of Tort.

27. In reviewing the WSIA, at section 179, while it allows for immunity for decisions of the WSIB and the WSIAT, this immunity is in no way absolute. There are two attached conditions to the WSIB/WSIAT immunity.

a. The decisions must be made in “Good Faith”; and

b. The WSIB and WSIAT are still liable in respect to Torts committed by their staff.

(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). [Emphasis added]

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

28. In reviewing the Proceedings Against the Crown Act it allows for actions against the crown and its agents or servants for acts committed under Tort.

the Crown is subject to all liabilities in tort to which, if it were a person of full age and capacity, it would be subject,

(a) in respect of a tort committed by any of its servants or agents; [Emphasis added]

Proceedings Against the Crown Act, RSO 1990

D. The Court Has Jurisdiction over Matters of the WSIB & the WSIAT

29. Statutory law and common law confirm that the court has the jurisdiction in this matter.

Statutory Law:

30. While the WCB Act provides for exclusive jurisdiction of the WCB/WSIB, however the act confirms that the exclusivity is in no way absolute and can be challenged by/to this court.

(4) Subsection (3) does not relieve the Board of any liability to which it would otherwise be subject. [Emphasis added]

Workers Compensation Act, R.S.O. 1990, s. 69, c. W.11, Schedule B.

31. Under Section 88 (2)(3) of the WCB Act it allows for a Tort claim if the cause was the result of an action that was made not in good faith.

Liability of the Crown

(3) Subsection (2) 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 subsection (1) to which the Crown would otherwise be subject; the Crown is liable under that Act for any such tort in like manner as if subsection (2) had not been enacted. 1994, c. 24, s. 24 (2). [Emphasis added]

Workers Compensation Act, R.S.O. 1990, s. 69, c. W.11, Schedule B.

32. Under section 179 (1) (3) (4) of the Workplace Safety and Insurance Act allows for a claim in tort, to be brought for an action that was done not in good faith and/or maliciously.

Liability of the Crown

179 (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). [Emphasis added]

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). [Emphasis added]

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

33. In Carswell's 4th Edition Canadian Law Dictionary the term "Good Faith" is defined as the absence of bad faith. It also defines Bad faith to include: dishonesty, fraud, bias, conflict of interest, discrimination, abuse of power, corruption, oppression, unfairness, and conduct that is unreasonable. They also define malicious as to intentionally cause harm to another person.

Common Law:

34. The Ontario Human Rights Tribunal, as well as other Courts and Tribunals have asserted their authority over the WSIB, and the WSIAT. The following are some examples:

a. The Ontario Human Rights Tribunal – OHRT has successfully asserted jurisdiction over matters of the WSIB & WSIAT in the following cases:

i. In *Doppelhamer v. WSIB*, the OHRT stated that:

"...judicial immunity should be extended or because the WSIB has exclusive jurisdiction over the subject-matter of the Application. I find that there are no such bars in operation in this case." [Emphasis added]

"...the Supreme Court of Canada has ruled that a broad, policy-based and liberal interpretation must be given to human rights legislation and the policies behind such legislation..." [Emphasis added]

"This does not mean, however, that statutory tribunals enjoy blanket immunity from complaints grounded in the Code. In providing their services to the public, it is possible that statutory tribunals could run afoul of the Code." [Emphasis added]

“In the light of these considerations, I cannot conclude that s. 118(1) can properly be read to give the WSIB exclusive jurisdiction over a claim that that WSIB staff breached the Code in the course of their duties.” [Emphasis added]

***Dopelhamer v. WSIB*, [2010] HRTO No. 765 at pp. 04-06, 13, 19, para. 18, 26, 47, 70 Paul Taylor’s Book of Authorities., Tab 04**

ii. In *Frankson v. WSIB*, the OHRT stated that:

“Sections 118 and 123 of the WSIA may speak to exclusive jurisdiction of the WSIB and WSIAT, but the intent of these sections is to establish the respective jurisdiction of these two bodies, and not to exclude the jurisdiction of the [Ontario Human Rights] Tribunal under the Code.” [Emphasis added]

***Frankson v. WSIB*, [2011] HRTO No. 2107 at pp. 15, para. 61 Paul Taylor’s Book of Authorities., Tab 03**

b. The Ontario Superior Court has successfully asserted jurisdiction over matters of the WSIB & WSIAT in the following cases:

i. In *West v. WSIB*, the Superior Court of Ontario - Divisional Court stated that:

“Despite the deference this court routinely gives to exercises of discretion by the WSIB and other Tribunals, in all of the circumstances here, this particular exercise of discretion cannot stand.” [Emphasis added]

***West v. WSIB*, [2005] ON SCDC No. 34354 at pp. 15, para. 30 Paul Taylor’s Book of Authorities., Tab 02**

ii. In *Lawley v. WSIB*, the Superior Court of Ontario - Divisional Court stated that:

“Even if we allow the Board [the WSIB] the deference that it deserves in such matters, the exercise of its discretion here cannot stand and this part of the application for Judicial Review is allowed.” [Emphasis added]

***Lawley v. WSIB*, [2008] ON SCDC No. 81703 at pp. 5, para. 20 Paul Taylor’s Book of Authorities., Tab 05**

iii. In *Amin v. WSIAT*, the Superior Court of Ontario - Divisional Court stated that:

“The conclusions of the Tribunal cannot be reconciled with the undisputed medical evidence filed by the applicant, and hence are not reasonable.” [Emphasis added]

**Amin v. WSIAT, [2009] ON SCDC No. 75629 at pp. 9, para. 21
Paul Taylor’s Book of Authorities., Tab 06**

- c. In West v. WSIB the Ontario Appeals court ruled they had the authority to

“Despite the deference this court routinely gives to exercises of discretion by the WSIB and other Tribunals, in all of the circumstances here, this particular exercise of discretion cannot stand.” [Emphasis added]

**West v. WSIB, 2005 (ON SCDC) No. 34354 at pp. 10, para. 30
Paul Taylor’s Book of Authorities., Tab 02**

- d. In other Provincial Jurisdictions decisions of the Provincial Workers Compensation Boards have had their jurisdiction asserted by the courts.

- i. In Goodwin v. New Brunswick Workplace Health, Safety and Compensation. In the decision it referred to a previous court decision where the court ruled against a motion to strike the plaintiff’s statement of claim. In his decision Justice Raymond T. French quoted Justice McLellan J. where he denied the motion to strike the claim by stating the following:

“It seems to me that I must respect the primary jurisdiction of the appeals tribunal. However in this exceptional case we already have a clear situation of delayed justice for many years culminating in the decision reinstating compensation for 10 years back. Thus it seems to me that it is my duty to also affirm the jurisdiction of this court to deal with the allegations that might not be dealt with by the appeals tribunal.” [Emphasis added]

**Goodwin v. NBWSHC, [2014] NBQB No. 119 at pp. 04-05, para 4
Paul Taylor’s Book of Authorities., Tab 07**

- ii. In *Kelly v. New Brunswick Workplace Health, Safety and Compensation*. In the Appeals Court for New Brunswick ruled that they did in fact have the authority and jurisdiction to deal with the matter and ruled in favor of the injured worker to receive benefits. In their decision the justices' stated the following:

*"Decisions of the Appeals Tribunal are protected by a privative clause...
This is done within the context of the courts' constitutional duty to ensure that public authorities do not overreach their lawful powers..."*

***Kelly v. NBWSHC, [2009] NBCA No. 36 at pp. 09-10, para. 4
Paul Taylor's Book of Authorities., Tab 08***

- iii. In *Dowling v. WCB of PEI*. The court ruled that they did in fact have the authority and jurisdiction to deal with the matter. They found that the WCB (P.E.I.) had for a second time misinterpreted the law. In their decision the court stated:

*"I would allow the appeal because the respondent [WCB of PEI] erred in law in its interpretation of the Workers' Compensation Act. The proper approach to the interpretation of this legislation is as already stated by this Court in *Macleod v. Workers' Compensation Board (P.E.I.) (1983)*"*

***Dowling v. WCB of PEI, [1994] NBQB No. 119
Paul Taylor's Book of Authorities., Tab 09***

E. The Amended Claim is Not Limitation barred:

35. In reviewing the WSIA Act the Plaintiff was first compelled to seek remedy through following the WSIB appeal process.

Objection to Board decision

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

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

(b) in any other case, within six months after the decision is made or within such longer period as the Board may permit. [Emphasis added]

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

36. The WSIB appeals were filed within the time limits. There is no dispute over this by the defendants.

The act also states that the time limit for appealing to WSIB appeals department are flexibility.

37. In reviewing the WSIA Act the Plaintiff was then compelled to seek remedy through following the WSIAT appeal and reconsideration process.

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

[Emphasis added]

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

38. The WSIAT appeals and reconsiderations were filed by the plaintiff within the time limits. There is no dispute over this, by the defendants. The act also states that the time limit for an appeal to the WSIAT is flexibility. In the case of the request for reconsideration it was well beyond the time limit, but the WSIAT still allowed it.

39. In reviewing the Limitations Act it defers to other Acts that set time limits for appeals. In this case the WSIA Act sets time limits for appeals. The time limits for WSIB and WSIAT appeals are flexible.

Application

2. (1) This Act applies to claims pursued in court proceedings other than,

(a) proceedings to which the Real Property Limitations Act applies;

(b) proceedings in the nature of an appeal, if the time for commencing them is governed by an Act or rule of court; [Emphasis added]

Limitations Act, 2002 S.O. 2002, CHAPTER 24

F. The Amended Claim Discloses a Cause of Action.

40. The claim discloses numerous causes of action, but specifically the Tort of Misfeasance in a Public Office. The cause of action has been explained in detail as well as the allowance for the jurisdiction of this court to deal with the matter.

G. The Amended Claim is Neither Frivolous, Vexatious, nor an Abuse of Process:

41. The Amended Statement of claim discloses a cause of action against the defendants. In reviewing the evidentiary facts and applicable law and policies the claim will succeed with this court. Therefore the claim is not Frivolous, Vexatious, nor an Abuse of Process.

PART IV ACTION REQUESTED

29. The plaintiff is therefore requesting of this court the following:

- a. That the motion of the WSIB to strike the amended statement of claim be dismissed and the claim against the WSIB be allowed to commence;
- b. That the motion of the WSIAT to strike the amended statement of claim be dismissed and the claim against the WSIAT be allowed to commence; and
- c. That court costs be award to the plaintiff.

All of which is respectfully submitted to the court

June 8, 2015

Paul Taylor
Plaintiff – Self represented

SCHEDULE "B" RELEVANT STATUTES

A. *Workers' Compensation Act, RSO 1990, c W.11*

Definitions

1. (1) In this Act,

“permanent impairment”, in relation to an injured worker, means impairment that continues to exist after maximum medical rehabilitation of the worker has been achieved; (“déficience permanente”)

APPLICATIONS, APPEALS AND PROCEEDINGS

General jurisdiction of Board

69.(1) Except as provided by this Act, the Board has exclusive jurisdiction to examine into, hear and determine all matters 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 proceeding by or before the Board shall be restrained by injunction, prohibition or other process or procedure in any court or be removable by application for judicial review or otherwise into any court. [R.S.O. 1990, c. W.11, s. 69 \(1\)](#).

Specific jurisdiction of Board

(2) Without limiting the generality of subsection (1), such exclusive jurisdiction includes the power of determining,

- (a) whether any industry or any part, branch or department of any industry falls within any of the classes for the time being included in Schedule 1, and, if so, which of them;
- (b) whether any industry or any part, branch or department of any industry falls within any of the classes for the time being included in Schedule 2, and, if so, which of them;
- (c) whether any part of any such industry constitutes a part, branch or department of an industry within the meaning of this Part;
- (d) the existence of, and degree of, disability or impairment by reason of any injury;
- (e) the permanence of impairment by reason of any injury;
- (f) the amount of average earnings;
- (g) the future loss of earnings by reason of any injury;
- (h) the existence of the relationship of member of the family within the meaning of [subsection 1 \(1\)](#);
- (i) the existence of dependency;
- (j) the question whether personal injury or death has been caused by accident;
- (k) the question whether an accident arose out of and in the course of an employment within the scope of this Act;

- (l) the net average earnings of a worker;
- (m) whether a person is a spouse or child;
- (m.1) whether vocational rehabilitation services or a vocational rehabilitation program is to be provided under [section 53](#);
- (n) whether an employer has fulfilled the employer's obligation under [section 54](#) to reinstate or re-employ a worker. [R.S.O. 1990, c. W.11, s. 69 \(2\)](#); 1994, c. 24, s. 20.

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

Definitions

2. (1) In this Act,

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

Objection to Board decision

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

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

Notice of objection

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

Appeal

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

Notice of appeal

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

Notice by Appeals Tribunal

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

Board records, etc.

(4) The Board shall give the Appeals Tribunal a copy of its records relating to the appeal promptly upon being notified of the appeal. 1997, c. 16, Sched. A, s. 125.

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).

C. Proceedings Against the Crown Act, RSO 1990, c P.27

Definitions

1. In this Act,

“agent”, when used in relation to the Crown, includes an independent contractor employed by the Crown; (“mandataire”)

“proceeding against the Crown” includes a claim by way of set-off or counterclaim raised in a proceeding by the Crown and includes an interpleader proceeding to which the Crown is a party; (“instance contre la Couronne”)

Liability in tort

5. (1) Except as otherwise provided in this Act, and despite section 71 of Part VI (Interpretation) of the [Legislation Act, 2006](#), the Crown is subject to all liabilities in tort to which, if it were a person of full age and capacity, it would be subject,

- (a) in respect of a tort committed by any of its servants or agents;
- (b) in respect of a breach of the duties that one owes to one’s servants or agents by reason of being their employer;
- (c) in respect of any breach of the duties attaching to the ownership, occupation, possession or control of property; and
- (d) under any statute, or under any regulation or by-law made or passed under the authority of any statute. [R.S.O. 1990, c. P.27, s. 5 \(1\)](#); 2006, c. 21, Sched. F, s. 124.

Where proceedings in tort lie

(2) No proceeding shall be brought against the Crown under clause (1) (a) in respect of an act or omission of a servant or agent of the Crown unless a proceeding in tort in respect of such act or omission may be brought against that servant or agent or the personal representative of the servant or agent. [R.S.O. 1990, c. P.27, s. 5 \(2\)](#).

Liability for acts of servants performing duties legally required

(3) Where a function is conferred or imposed upon a servant of the Crown as such, either by a rule of the common law or by or under a statute, and that servant commits a tort in the course of performing or purporting to perform that function, the liability of the Crown in respect of the tort shall be such as it would have been if that function had been conferred or imposed by instructions lawfully given by the Crown. [R.S.O. 1990, c. P.27, s. 5 \(3\)](#).

Application of enactments limiting liability of servants of the Crown

(4) In a proceeding against the Crown under this section, an enactment that negatives or limits the liability of a servant of the Crown in respect of a tort committed by that servant applies in relation to the Crown as it would have applied in relation to that servant if the proceeding against the Crown had been a proceeding against that servant. [R.S.O. 1990, c. P.27, s. 5 \(4\)](#).

Property vesting in the Crown

(5) Where property vests in the Crown independent of the acts or the intentions of the Crown, the Crown is not, by virtue of this Act, subject to liability in tort by reason only of the property being so vested. 2007, c. 7, Sched. 34, s. 1.

Same

(5.1) Property that vests in the Crown as a consequence of the dissolution of a corporation by the Crown is property that vests in the Crown independent of the acts or the intentions of the Crown within the meaning of subsection (5). 2007, c. 7, Sched. 34, s. 1.

Same

(5.2) Subsection (5) does not affect the liability of the Crown under this Act in respect of any period after the Crown, or a servant or agent of the Crown,

- (a) in respect of personal property, begins to use the property for Crown purposes; or
- (b) in respect of land, has registered a notice against the title to the property that it intends to use the property for Crown purposes. 2007, c. 7, Sched. 34, s. 1.

Notice

(5.3) Notice under [subsection 1 \(3\)](#) of the *Escheats Act* is not notice for the purposes of clause (5.2) (b). 2007, c. 7, Sched. 34, s. 1.

No liability for investigation, etc.

(5.4) The Crown is not liable in tort by reason of any activity conducted either by the Crown or anyone acting on its behalf or with its approval to investigate any aspect of property that vests in the Crown in the manner described in subsection (5), to restore that property to productive use or to respond to complaints or to preserve public health and safety, or similar actions for similar purposes, including, without being limited to, the following:

1. Any action taken for the purpose of conducting, completing or confirming an investigation.
2. Any action taken for the purpose of securing, managing or maintaining the property, including action to,
 - i. ensure or end the supply of water, sewage services, electricity, artificial or natural gas, steam, hot water, heat or maintenance,
 - ii. secure the property by means of locks, gates, fences, security guards, cameras or other means, or
 - iii. repair, demolish or remove anything that is or might create a safety risk or a hazard.
3. Any action taken on the property for the purpose of responding to,
 - i. any danger to the health or safety of any person that results or may result from the presence of anything on the property or the presence or discharge of a contaminant on, in or under the property,
 - ii. any impairment or serious risk of impairment of the quality of the natural environment for any use that can be made of it that results or may result from the presence or discharge of a contaminant on, in or under the property, or
 - iii. any injury or damage or serious risk of injury or damage to any property or to any plant or animal life that results or may result from the presence or discharge of a contaminant on, in or under the property.
4. Any action taken under the *Escheats Act*.
5. Any other action prescribed by the regulations. 2007, c. 7, Sched. 34, s. 1.

Regulations

(5.5) The Lieutenant Governor in Council may make regulations prescribing actions for the purposes of subsection (5.4). 2007, c. 7, Sched. 34, s. 1.

D. *Limitations Act, 2002 S.O. 2002, CHAPTER 24 Schedule B*

Definitions

1. In this Act,

“claim” means a claim to remedy an injury, loss or damage that occurred as a result of an act or omission; (“réclamation”)

Application

2. (1) This Act applies to claims pursued in court proceedings other than,

(a) proceedings to which the Real Property Limitations Act applies;

(b) proceedings in the nature of an appeal, if the time for commencing them is governed by an Act or rule of court;

(c) proceedings under the Judicial Review Procedure Act;

(d) proceedings to which the Provincial Offences Act applies;

(e) proceedings based on the existing aboriginal and treaty rights of the aboriginal peoples of Canada which are recognized and affirmed in section 35 of the Constitution Act, 1982; and

(f) proceedings based on equitable claims by aboriginal peoples against the Crown. 2002, c. 24, Sched. B, s. 2 (1).

Exception, aboriginal rights

(2) Proceedings referred to in clause (1) (e) and (f) are governed by the law that would have been in force with respect to limitation of actions if this Act had not been passed. 2002, c. 24, Sched. B, s. 2 (2).

E. Ontario Human Rights Code Act, R.S.O. 1990, c. H.19

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.

Contracts

3. Every person having legal capacity has a right to contract on equal terms 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. 3; 1999, c. 6, s. 28 (4); 2001, c. 32, s. 27 (1); 2005, c. 5, s. 32 (4); 2012, c. 7, s. 3.

Employment

5. (1) Every person has a right to equal treatment with respect to employment without discrimination because of race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, 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 (1); 1999, c. 6, s. 28 (5); 2001, c. 32, s. 27 (1); 2005, c. 5, s. 32 (5); 2012, c. 7, s. 4 (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).

Reprisals

8. Every person has a right to claim and enforce his or her rights under this Act, to institute and participate in proceedings under this Act and to refuse to infringe a right of another person under this Act, without reprisal or threat of reprisal for so doing. R.S.O. 1990, c. H.19, s. 8.

Infringement prohibited

9. No person shall infringe or do, directly or indirectly, anything that infringes a right under this Part. R.S.O. 1990, c. H.19, s. 9.

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 coordination, 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" RELEVANT 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.

The Canadian Law Dictionary 4th Edition Carswell 2011, pp 556

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 Vs WSIB and WSIAT

Court file no. CV-14-0794-00

Ontario Superior Court of Justice

PROCEEDING COMMENCED AT

7755 Hurontario St. Brampton, Ontario L6W 4T1

Paul Taylor

Vs

Workplace Safety & Insurance Board – WSIB

AND

Workplace Safety & Insurance Appeals Tribunal – WSIAT

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