

**ONTARIO
SUPERIOR COURT OF JUSTICE – *Divisional Court***

(Court seal)

BETWEEN:

PAUL TAYLOR

Applicant

- and -

PIVOTAL INTEGRATED HR SOLUTIONS

Respondent

**NOTICE OF URGENT APPLICATION
FOR JUDICIAL REVIEW – CERTIORARI**

August 14, 2020

TO THE RESPONDENT

A LEGAL PROCEEDING HAS BEEN COMMENCED by the applicant. The claim made by the applicant appears on the following pages.

THIS APPLICATION for Judicial Review – Writ of Certiorari will be heard by oral hearing before the Ontario Superior Court of Justice on a **date to be determined by the Court, on an urgent basis**, to be held by **video conference**.

IF YOU WISH TO OPPOSE THIS APPLICATION, to receive notice of any step in the application or to be served with documents in the application, you or an Ontario lawyer acting for you must forthwith prepare a notice of appearance in Form 38A prescribed by the Rules of Civil Procedure, serve it on the applicant's lawyer or, where the applicant does not have a lawyer, serve it on the applicant, and file it with proof of service, in the office of the Ontario Superior Court of Justice, and you or your lawyer must appear at the hearing.

IF YOU WISH TO PRESENT AFFIDAVIT OR OTHER DOCUMENTARY EVIDENCE TO THE COURT OR TO EXAMINE OR CROSS-EXAMINE WITNESSES ON THE APPLICATION, you or your lawyer must, in addition to serving your notice of appearance, serve a copy of the evidence on the applicant's lawyer or, where the applicant does not have a lawyer, serve it on the applicant, and file it, with proof of service, in the office of the Ontario Superior Court of Justice within thirty days after service on you of the applicant's application record, or at least four days before the hearing, whichever is earlier.

IF YOU FAIL TO APPEAR AT THE HEARING, JUDGEMENT MAY BE GIVEN TO IN YOUR ABSENCE AND WITHOUT FURHTER NOTICE TO YOU. IF YOU WISH TO DEFEND THIS PROCEEDING BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

Date: _____

Issued by: _____

Registrar

Address of
Court office 74 Woolwich Street,
Guelph, Ontario N1H 3T9
Tel: (519) 822-7061
Fax: (510) 824-4435
E-mail: GuelphOffice.SCJ@ontario.ca

TO **Pivotal Integrated HR Solutions – Respondent**
2333 North Sheridan Way, Suite 200
Mississauga, Ontario, L5K1A7
Tel: (905) 890-8558
Email: contact@pivotalolutions.com

AND TO **Attorney General of Ontario – AGO – Intervenor**
Constitutional Law Branch
720 Bay Street - 4th Floor
Toronto, Ontario M5G 2K1
Tel: (416) 326-2220
Fax (416) 326-4015
E-mail: attorneygeneral@ontario.ca

Lawyers for the Government of Ontario

AND TO **Department of Justice Canada – DJC – Intervenor**
120 Adelaide Street West Suit 400
Toronto, Ontario M5H 1T1
Tel: (416) 973-0942
Fax (416) 952-0298
E-mail: Tor.leadadmissions@justice.gc.ca

Lawyers for the Government of Canada

As a courtesy, a copy will be (has been) served on Mr. Lokan (LSO# 31629Q), of Paliare Roland Rosenberg Rothstein LLP 155 Wellington Street W. Toronto Ontario M5V 3H1 Tel: (416) 646-4324 by e-mail at andrew.lokan@paliareroldan.com, counsel for the Workplace Safety & Insurance Appeals Tribunal.

**URGENT APPLICATION FOR
JUDICIAL REVIEW – CERTIORARI**

**THE APPLICANT MAKES AN APPLICATION FOR JUDICIAL REVIEW-
CERTIORARI TO THE ONTARIO SUPERIOR COURT OF JUSTICE:**

1. Mr. Taylor respectfully seeks an order from this Honourable Court, the Ontario Superior Court – *Divisional Court* (The “**Court**”) under s. 6(2) of the *Judicial Review Procedures Act*,¹ for the Superior Court of Justice hear Mr. Taylor’s application and to have two decisions of the Workplace Safety & Insurance Appeals Tribunal (“**WSIAT**”) judicially reviewed, set aside, and a new decision put in their place by this Court, under s. 6(2) of the *Judicial Review Procedure Act*. The two decisions being, WSIAT decision 691/05, issued February 11, 2008, and WSIAT decision 691/05R, issued on June 13, 2013. Mr. Taylor respectfully seeks the following to be put in place of the two WSIAT decisions that:
 - a. Mr. Taylor is granted initial entitlement to benefits for an injury to his mid-back, upper-back, and head, because of the February 6, 1997 work accident.
 - b. Mr. Taylor is granted entitlement to benefits for a permanent impairment to Mr. Taylor’s mid-back, upper-back, neck and head, because of the February 6, 1997 work accident.

¹ R.S.O. 1990, c. J.1

- c. Mr. Taylor is granted initial entitlement to benefits for an injury to his upper-back, neck, and head, because of the July 7, 1997 work accident.
- d. Mr. Taylor is granted entitlement to benefits for a permanent impairment to Mr. Taylor's upper-back, neck and head, because of the July 7, 1997 work accident.
- e. Mr. Taylor be reimbursed from the Workplace Safety & Insurance Board ("WSIB"), out of the injury fund, for \$220.00 for healthcare treatment.
- f. Mr. Taylor continues to receive ongoing healthcare benefits, as required by Mr. Taylor's treating healthcare professional and this healthcare to be paid by the WSIB, out of the injury fund.
- g. The retraining program, or Labour Market Re-entry ("LMR") plan be declared unsuitable for Mr. Taylor.
- h. The occupation, or suitable employment or business ("SEB"), of Engineer stated in the LMR plan, be declared unsuitable for Mr. Taylor.
- i. The changed occupation, or SEB, of Technical Occupations in Computers, be declared unsuitable for Mr. Taylor.

- j. Mr. Taylor be granted entitlement to 100% Future Economic Loss (“**FEL**”) benefits from April 1, 2003 to present and until the completion of a new retraining program – LMR.
 - k. Mr. Taylor’s FEL benefits be recalculated to include his daughter and other tax deductions and that Mr. Taylor be provided the calculations and statements from the WSIB.
2. If this Court is unable to render a decision on the above-mentioned issues, then the matter be referred to the WSIAT to be heard on an urgent basis. Specifically, the WSIAT be ordered to hold a hearing within 30 days of this Court’s decision and a decision be rendered within one week after the hearing. That Mr. Taylor’s FEL benefits be restored to 100%, until the final decision is issued by the WSIAT and implemented by the WSIB.

GROUND FOR THIS APPLICATION FOR JUDICIAL REVIEW:

3. Mr. Taylor was employed as a truck driver for Action Force Driver Services, which transitioned in 2003 to Pivotal Integrated HR Solutions (“**Pivotal**”).
4. Mr. Taylor was sent to work at Pivotal’s client, where the work environment was extremely dangerous for workers. This is because the workers would suffer multiple work injuries from sudden and overtime work accidents.
5. During the period of his employment with Pivotal, Mr. Taylor was involved in several work accidents, which resulted in numerous work injuries.

6. On February 6, 1997 Mr. Taylor was involved in a debilitating work accident. Mr. Taylor's claim for workers compensation benefits were fully accepted by the then Workers Compensation Board ("WCB").
7. Mr. Taylor was involved in several other workplace accidents that were reported to Pivotal. However, Pivotal choose not to report them to the WCB/WSIB. Three of these accidents have been documented.
8. Some three years after the February 6, 1997, work accident, the Workplace Safety & Insurance Board ("**WSIB**"), that replaced the WCB on January 1, 1998, claimed that Mr. Taylor only injured his low-back and mid-back.
9. After Mr. Taylor's employer was found to have wrongly terminated Mr. Taylor and also not be co-operating with the WSIB, the WSIB agreed to retrain Mr. Taylor for a suitable occupation, within Mr. Taylor's skills and physical abilities.
10. The WSIB determined that after a one-year college program, Mr. Taylor, with no prior post-secondary education, would be able to work in an occupation as an Engineer.
11. Some two years after the one-year college retraining program, the WSIB changed the occupation Mr. Taylor was trained for from "Engineer" to "Computers".
12. Mr. Taylor had established that the occupation of Computers was unsuitable for him according to his agreed upon physical capabilities or need for accommodations.

- 13.
14. In response to Mr. Taylor claim, the WSIB then changed Mr. Taylor's need for accommodations, due to his disabilities. The WSIB had done this without consulting Mr. Taylor or Mr. Taylor's doctor.
15. Mr. Taylor appealed the various issues in dispute to the WSIB appeals branch. After which Mr. Taylor appealed a total of five WSIB decisions to the Workplace Safety & Insurance Appeals Tribunal ("WSIAT").
16. After a four-day hearing in 2007, the WSIAT agreed in part with Mr. Taylor, in the WSIAT's decision 601/05 dated February 11, 2008.
17. Mr. Taylor then filed a request for reconsideration of the WSIAT decision 691/05. subsequent on various grounds including, all but one Board policy was referenced in the decision, and the decision breached the principles of natural justice. Mr. Taylor was delayed in his request due to his complaint to the Human Rights Commission, as well as waiting for his request to be approved by the WSIAT that the same decision makers not preside over the request for reconsideration.
18. The WSIAT reviewed Mr. Taylor's request for reconsideration of WSIAT decision 691/05 and in their decision 691/05R, dated June 11, 2013, denied Mr. Taylor's request for reconsideration.

19. Due to the conflict between statute law and the common law, Mr. Taylor sought other legal remedies within the courts, which as a Self Represented Litigant (“**SRL**”) Mr. Taylor genuinely believed was the best avenue for him to restore the intentional, deliberate, & knowing wrongs committed against him by the WSIB and the WSIAT.

20. Mr. Taylor has learned, after pursuing an appeal at the Court of Appeal in Ontario, that:

- a. Even though the law allows for action against the WSIB and the WSIAT, as though they were a person, an individual injured worker can not sue the WSIB and/or the WSIAT for damages, which appears to be benefits. Only a class claim can be brought against the WSIB & the WSIAT for damages which are not benefits.
- b. That contrary to statute, the WSIAT & the WSIB lacks the legal capacity to be sued in a court.
- c. That an injured worker’s only legal recourse is to bring an application for judicial review
- d. That the law & actions of courts in other Provinces & Territories across Canada is vastly different. Some allow judicial review. Some allow appeals to Provincial/Territorial courts of appeal. Some allow the workers compensation Board/Tribunal to be sued for bad faith actions or abuse of public office.

21. Mr. Taylor brings an application for Judicial Review of the WSIAT decision 691/05, dated February 11, 2008, and WSIAT decision 691/05R, dated June 13, 2013, on the grounds that both decisions are unreasonable by the standards set by the Supreme Court of Canada (“*Supreme Court*”) in their decision of *Canada v. Vavilov*.² Therefore, the WSIAT decision 691/05 and 691/05R must be set aside and a new decision put in their place by this Court.

22. Both WSIAT decisions 691/05 & 691/05R are unreasonable because they **FAIL** to be “*based on internally coherent reasoning*.”³ This is because:

- a. The WSIAT failed to reveal a rational chain of analysis, or if they reveal that the decision was based on an irrational chain of analysis,⁴
- b. The conclusions reached, by the WSIAT, in the decisions, can not follow from the analysis undertaken,⁵
- c. When the WSIAT’s reasons are read in conjunction with the record, they do not make it possible to understand the WSIAT’s reasoning on a critical point, and⁶

² *Canada (Minister of Citizenship and Immigration) v. Vavilov* 2019 SCC 65

³ See para 102 to 104 of *Canada (Minister of Citizenship and Immigration) v. Vavilov* 2019 SCC 65

⁴ See para 103 of *Canada (Minister of Citizenship and Immigration) v. Vavilov* 2019 SCC 65

⁵ See para 103 of *Canada (Minister of Citizenship and Immigration) v. Vavilov* 2019 SCC 65

⁶ See para 103 of *Canada (Minister of Citizenship and Immigration) v. Vavilov* 2019 SCC 65

- d. The WSIAT's reasons exhibit clear logical fallacies, such as circular reasoning, false dilemmas, unfounded generalizations and were based on absurd premises.⁷

23. Both WSIAT decisions 691/05 & 691/05R are unreasonable because they **FAIL** to be "*justified in the light of the legal and factual constraints that bear on them.*"⁸ This is because:

- a. The WSIAT failed to apply their governing statutory scheme correctly and fairly, when they rendered their decisions 691/05 & 691/05R,⁹
- b. The WSIAT failed to apply other governing statutory scheme correctly and fairly, when they rendered their decisions 691/05 & 691/05R,¹⁰
- c. The WSIAT failed to apply the principles of statutory interpretation correctly and fairly, when they rendered their decisions 691/05 & 691/05R,¹¹
- d. The WSIAT failed to correctly and fairly, assess the evidence before them, when they rendered their decisions 691/05 & 691/05R,¹²

⁷ See para 104 of *Canada (Minister of Citizenship and Immigration) v. Vavilov* 2019 SCC 65

⁸ See para 105 to 107 of *Canada (Minister of Citizenship and Immigration) v. Vavilov* 2019 SCC 65

⁹ See para 108 to 110 of *Canada (Minister of Citizenship and Immigration) v. Vavilov* 2019 SCC 65

¹⁰ See para 111 to 114 of *Canada (Minister of Citizenship and Immigration) v. Vavilov* 2019 SCC 65

¹¹ See para 115 to 124 of *Canada (Minister of Citizenship and Immigration) v. Vavilov* 2019 SCC 65

¹² See para 125 to 126 of *Canada (Minister of Citizenship and Immigration) v. Vavilov* 2019 SCC 65

- e. The WSIAT failed to assess the submissions of the parties correctly and fairly, when they rendered their decisions 691/05 & 691/05R,¹³
 - f. The WSIAT failed to consider past practices and decisions correctly and fairly, when they rendered their decisions 691/05 & 691/05R, and¹⁴
 - g. The WSIAT failed to consider the impact of the decisions on Mr. Taylor correctly and fairly when they rendered their decisions 691/05 & 691/05R.¹⁵
24. That the WSIAT, in rendering their decisions 691/05 & 691/05R, breached the principles of Natural Justice and Procedural Fairness.
25. That the WSIAT, in rendering their decisions 691/05 & 691/05R, deprived Mr. Taylor of his *Charter of Rights of Freedom*.¹⁶ Specifically, Mr. Taylor's freedom of a belief, under section 2 of the *Charter*.¹⁷ Mr. Taylor's right to the security of his person under section 7 of the *Charter*.¹⁸ Mr. Taylor's right to be from any cruel and unusual punishment or treatment under section 12 of the *Charter*.¹⁹ Mr. Taylor's right to be treated with equality under section 15 of the *Charter*.²⁰

¹³ See para 127 to 128 of *Canada (Minister of Citizenship and Immigration) v. Vavilov* 2019 SCC 65

¹⁴ See para 129 to 132 of *Canada (Minister of Citizenship and Immigration) v. Vavilov* 2019 SCC 65

¹⁵ See para 133 to 135 of *Canada (Minister of Citizenship and Immigration) v. Vavilov* 2019 SCC 65

¹⁶ Canadian Charter of Rights and Freedoms, Part 1 of the Constitution Act, 1982, being Schedule B to the Canada Act 1982 (UK), 1982, c 11

¹⁷ Canadian Charter of Rights and Freedoms, s 2, Part 1 of the Constitution Act, 1982, being Schedule B to the Canada Act 1982 (UK), 1982, c 11

¹⁸ Canadian Charter of Rights and Freedoms, s 7, Part 1 of the Constitution Act, 1982, being Schedule B to the Canada Act 1982 (UK), 1982, c 11

¹⁹ Canadian Charter of Rights and Freedoms, s 12, Part 1 of the Constitution Act, 1982, being Schedule B to the Canada Act 1982 (UK), 1982, c 11

²⁰ Canadian Charter of Rights and Freedoms, s 15, Part 1 of the Constitution Act, 1982, being Schedule B to the Canada Act 1982 (UK), 1982, c 11

26. That regardless of the Ontario Legislature's intent to oust the jurisdiction of the Superior Court, the Supreme Court of Canada has made clear in numerous decisions, that the Superior Court's jurisdiction is inherent and cannot be ousted under s. 96 of the *Constitution*.²¹
27. That section 52 of the *Constitution* provides that the *Constitution* of Canada is the supreme law of Canada and any other law that is in conflict, with the *Constitution*, is of no force or effect.
28. That sections 91 and 92 of the *Constitution* distinguishes the powers of Parliament and the Provinces/Territories and the power of the judiciary lies solely to Parliament.
29. That section 24 of the *Constitution* provides that anyone whose rights or freedoms have been deprived of, may apply to a court to obtain remedy.
30. That section 2 of the Judicial Review Procedures Act R.S.O. 1990 provides that a decision of a tribunal can be judicially review by a court for an error of law and/or an error of fact based on a lack of evidence. Additionally, s. 6(2) provides that an application for judicial review maybe made, on an urgent basis, to the Superior Court, as opposed to the *Divisional Court*.
31. Various sections of the *Workers Compensation Act* R.S.O. 1990

²¹S. 96 of the Constitution Act, 1982, being Schedule B to the Canada Act 1982 (UK), 1982, c 11

32. Various sections of the *Workplace Safety and Insurance Act*, S.O. 1997.

33. Section 18(3) and other sections, of the Courts of Justice Act R.S.O. 1990.

34. Rule 37, 38, and 68 of the *Rules of Civil Procedure*.

35. As well as any other applicable statutes.

THE FOLLOWING DOCUMENTARY EVIDENCE WILL BE USED AT THE HEARING OF THE APPLICATION:

36. Affidavit of Mr. Paul Taylor & supporting documents, Factum of Mr. Taylor, Book of Authority of Mr. Taylor, WSIAT Exhibits 1 to 19, and the WSIAT Reconsideration record, and

37. Such further and other materials as Mr. Taylor may advise and this Court may permit.

Date: August 14th, 2020 .

Paul Taylor

[Redacted signature block]

Applicant

Self-represented Litigant 😊