

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

**BETWEEN:**

**GREGORY TOOMBS et al**

**Plaintiffs**

**-and-**

**WorkSafeBC (Also known as the Workers Compensation Board of British  
Columbia) et al**

**Defendants**

**JOINT CASE MANAGEMENT CONFERENCE BRIEF OF THE DEFENDANTS  
WORKPLACE SAFETY AND INSURANCE BOARD and WORKPLACE SAFETY AND  
INSURANCE APPEALS TRIBUNAL**

**WORKPLACE SAFETY AND  
INSURANCE BOARD**

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**AND TO: PAUL TAYLOR**



Self-representative for the Lead Plaintiffs

**PRELIMINARY MATTERS**

1. **The need for legal representation for the plaintiffs per rule 15.01(1) of the Rules of Civil Procedure (Ontario). Is a motion required to address this issue? Timetable for this motion. Should any further steps in the proceeding be stayed pending determination of this motion?** The WSIB and the WSIAT are of the view that legal representation per Rule 15.01(1) is required and cannot be dispensed with. This Class Action was issued almost one year ago giving the Lead Plaintiffs ample time to retain counsel on a contingency fee basis or otherwise. The Plaintiffs should be provided with a brief opportunity to retain counsel. These Defendants suggest the matter be adjourned for a period of 60 days to allow this to occur failing which the action should be dismissed in accordance with *Fenn v. Ontario* 28170 ONSC.
2. **Have all named defendants been properly served with the Statement of Claim?** All defendants outside of Ontario have not been served in accordance with Rule 17. Paul Taylor intends to bring a motion seeking leave under Rule 17 for this to occur.
3. **Are all named defendants represented by counsel?** Yes. Mr. Belec represents the WSIB, Mr. Lokan represents the WSIAT, Mr. Townsend represents the Workers' Compensation Appeal Tribunal of Nova Scotia and Mr. McKinnon represents all other compensation boards and appeal tribunals.
4. **Have all named self-represented plaintiffs consented to being named as representative plaintiffs in the proceeding?** This is a question within the knowledge of Paul Taylor that

he would need to answer at the Case Conference. We are aware of at least one (Eugene Laho) who on June 12, 2022 has indicated that he wishes to withdraw.

## **PROPOSED AMENDED STATEMENT OF CLAIM**

**5. Proposed amendment of the Statement of Claim - see draft Fresh as Amended Statement of Charter Class Claim. Is leave of the court required for this amendment?**

Since the pleadings have not closed and the amendments do not include the addition of a party, it is the position of the WSIB and WSIAT that leave of the Court is not required per Rule 26.02(a).

## **NOTICE OF CONSTITUTIONAL QUESTION**

**6. Notice of Constitutional Question has been filed by the plaintiffs. Has it been served?**

**Have any responses been received?** The Notice of Constitutional Question has been served on the WSIB and WSIAT. No responses have been prepared. In addition, to date we do not know whether or not the Attorney General of Ontario wishes to participate in this action or not.

## **PLEADINGS**

**7. Have any of the defendants delivered a Statement of Defence?** Neither the WSIB or the WSIAT have delivered their Statement of Defence pending their Rule 21 motions as discussed below.

8. **Do any of the defendants seek to postpone delivery of their Defence until after certification? If so, is this opposed by the plaintiffs?** As the WSIB and the WSIAT did in previous litigation with Paul Taylor where Rule 21 motions were brought, these Defendants propose that the delivery of the Statement of Defence be postponed until their Rule 21 motions in this proceeding are determined. To date, Mr. Taylor does not appear to be opposed to this method of proceeding.

### **RELATED PROCEEDINGS**

9. **Are there any other class proceedings in Canada with respect to the same matters in issue in this proposed class proceeding. If so, in which jurisdictions? Has the Statement of Claim been posted on the Canadian Bar Association Class Action Database in accordance with the Superior Court of Justice Practice Direction?** Two similar proceedings have been issued in Alberta and British Columbia. This will be canvassed more fully in the Joint Brief of the Workers' Compensation Appeal Tribunal of Nova Scotia and the other Boards and Tribunals. To the knowledge of the WSIB and the WSIAT, the Statement of Claim in this proceeding has not been posted on the CBA Class Action Database.

### **PRE-CERTIFICATION STEPS, INTENDED MOTIONS AND SEQUENCING**

10. **What steps will need to be taken in advance of certification?** The WSIB and the WSIAT intend to bring Rule 21 motions prior to Certification of the proceeding. Attached at Schedules "A" and "B" are the Draft Notice of Motion of the WSIB and WSIAT respectively. The other co-defendants also intend to bring motions of their own. It should also be noted that in regards to Paul Taylor, the WSIB and the WSIAT intend to bring

applications under s. 141 of the *Courts of Justice Act* seeking to have him declared a vexatious litigant based on his previous litigious history against the WSIB and the WSIAT.<sup>1</sup> This will have a bearing on the order and sequence of motions.

**11. Do the plaintiffs intend to file any motions prior to certification? If so, specify.** The WSIB and WSIAT are not aware of any other motions by the Plaintiffs prior to Certification other than the motion seeking to have counsel appointed and seeking leave to serve the Statement of Claim ex juris per Rule 17.

**12. Do any defendants intend to file any motions in advance of certification? If so, specify.**  
Please see the response to item number 10 above.

**13. If pre-certification motions are contemplated by any parties, has the issue of the sequencing of the other motions been agreed upon or will a sequencing motion be required? If so, timetable for this motion.** Assuming the Plaintiffs will have retained counsel, in accordance with s. 4.1 of the *Class Proceedings Act* and *Dufault v. Toronto Dominion Bank*, the Rule 21 motions should be heard prior to the Plaintiffs' Certification Motion. Correspondence to Mr. Taylor has been sent on May 25, 2022 seeking to reach consensus on this issue. On June 12, 2022, Mr. Taylor responded that he does not agree that the Rule 21 motions should precede the Certification motion.

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<sup>1</sup> *Taylor v. Workplace Safety & Insurance Board*, 2017 ONSC 1223 aff'd 2018 ONCA 108 leave to appeal dismissed 2020 CanLII 27698 (S.C.C.); *Taylor v. Workplace Safety & Insurance Board*, 2018 ONSC 3791 aff'd 2018 ONCA 771 leave to appeal dismissed 2020 CanLII 97863 (S.C.C.). See also *Taylor v. Pivotal Integrated HR Solutions*, 2020 ONSC 6108, *Taylor v. Pivotal Integrated HR Solutions*, 2021 ONSC 7720, *Taylor v. Pivotal Integrated HR Solutions*, 2021 ONSC 4954 and *Taylor v. Pivotal Integrated HR Solutions*, 2021 ONSC 7388.

**CERTIFICATION MOTION**

**14. Is certification opposed? If so, for each defendant, which certification criteria are disputed?** In light of the pending Rule 21 motions by the Defendants, the WSIB and the WSIAT believe this issue is premature at this time.

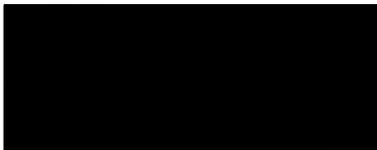
**15. Can the number of disputed issues be reduced or any facts agreed to?** Please see the response to item 14 above.

**16. What is the agreed upon or proposed length of the certification motion?** Please see the response to item 14 above.

**17. Has a timetable for the exchange of material and other steps leading to the certification motion been agreed upon? If not, what is the proposed timetable?** Please see the response to item 14 above.

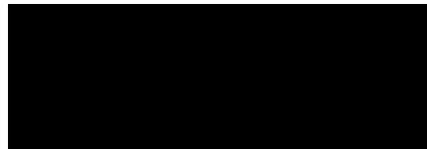
**18. Should there be page limits for certification motion facts?** Please see the response to item 14 above.

**ALL OF WHICH IS RESPECTFULLY SUBMITTED** this 25<sup>th</sup> day of July 2022.



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Jean-Denis Bélec  
Lawyer for the Defendant,  
Workplace Safety and Insurance Board



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Andrew Lokan  
Lawyer for the Defendant  
Workplace Safety and Insurance Appeals  
Tribunal

## **SCHEDULE "A"**

**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**

**B E T W E E N :**

**GREGORY TOOMBS, NORM RYDER, PATRICK JARDINE, DAVID HAMILTON,  
CHRISTOPHER SUMMERS, TERRY FEDORAK, ROD BARRETT, JENNIFER  
BAKER, BRUCE JUNKER, BLAINE GILBERTSON, KEN GRYSIUK, RICHARD  
LAST, DARREN SCHLAMB, CHRIS LAWSON, SARAH LAWSON, EUGENE LAHO,  
NORMAN TRAVERSY, DAVID CURTIS, PATRICIA O'CONNOR, GIUSEPPE  
MARCELLINO, JAMES ROLLO, ANDRE MARTIN, ARMAND DURELLE, GILLES  
MARTIN, GORDON WAYNNE SKINNER, AND PAUL TAYLOR.**  
**(On behalf of Canadians & others injured at work, while working in Canada)**

Lead Plaintiffs

- and -

**WorkSafeBC (*Also known as the Workers Compensation Board of British Columbia*),  
Workers' Compensation Appeal Tribunal of BC – WCATBC, Alberta Workers  
Compensation Board – AWCB, Alberta Appeals Commission – AAC, Saskatchewan  
Workers Compensation Board – SWCB, Saskatchewan Board Appeal Tribunal – SBAT,  
Workers Compensation Board of Manitoba – WCBM,**

**The Appeal Commission of Manitoba – ACM, Workplace Safety & Insurance Board –  
WSIB (*Also known as the Workers Compensation Board of Ontario*), Workplace Safety &  
Insurance Appeals Tribunal – WSIAT (*Also known as the Workers Compensation Appeals  
Tribunal of Ontario*), Commission des normes, de l'équité, de la santé et de la sécurité du  
travail – CNESST, WorkSafeNB (*Also known as the Workers Compensation Board of New  
Brunswick*), New Brunswick Workers' Compensation Appeals Tribunal – NBWCAT,  
Workers Compensation Board of PEI – WCBPEI, Workers' Compensation Appeal  
Tribunal of PEI – WCATPEI, Workers' Compensation Board of Nova Scotia – WCBNS,  
Workers' Compensation Appeal Tribunal of Nova Scotia – WCATNS, Workplace Health,  
Safety and Compensation Commission – WHSCC (*Also known as the Workers  
Compensation Board of Newfoundland & Labrador*), Workplace Health, Safety &**

**Compensation Review Division – WHSCRD, Yukon Workers’ Compensation Health and Safety Board – YWCHSB (*Also known as the Workers Compensation Board of Yukon Territory*), Yukon Workers’ Compensation Appeal Tribunal – YWCAT, Northwest Territories Workers’ Safety and Compensation Commission – NWTWSCC (*Also known as the Workers Compensation Board of Northwest & Nunavut Territories*) and NWT and Nunavut Workers' Compensation Appeals Tribunal – NWTNWCAT**

Defendants

**NOTICE OF MOTION**

THE DEFENDANT, Workplace Safety and Insurance Board (incorrectly named as “Workplace Safety & Insurance Board – WSIB) (hereinafter the “**WSIB**”), will make a motion to a judge on a date to be determined by the Trial Coordinator at 45 Main Street East, Hamilton, Ontario, L8N 2B7.

**PROPOSED METHOD OF HEARING:** The motion is to be heard:

- in writing under subrule 37.12.1(1) because it is on consent or unopposed or made without notice;
- in writing as an unopposed motion under subrule 37.12.1(4);
- orally.

**THE MOTION IS FOR:**

1. An Order dismissing the action against the WSIB;
2. In the alternative, an Order requiring the Lead Plaintiffs to disclose to the WSIB sufficient particulars identifying which of the Lead Plaintiffs have filed a workplace injury claim in Ontario, their respective claim file numbers and relevant accident dates;
3. An Order for substantial indemnity costs in favour of the WSIB; and

4. Such further and other relief as counsel may advise and this Honourable Court may permit.

**THE GROUNDS FOR THE MOTION ARE:**

***A. The action is frivolous, vexatious and an abuse of the court's process***

1. Paul Taylor, one of the Lead Plaintiffs and the representative of the Lead Plaintiffs in this action ("Mr. Taylor") has already brought several proceedings against the WSIB and the Workplace Safety and Insurance Appeals Tribunal ("WSIAT") of the same nature, all of which have been considered, heard and dismissed by different levels of Courts.
2. Mr. Taylor was injured in a workplace accident on February 6, 1997 and filed a claim with the WSIB. He disagreed with a number of WSIB decisions and pursued administrative appeals.
3. Mr. Taylor appealed the WSIB decisions to the WSIAT. In a decision dated February 11, 2008, the WSIAT only allowed entitlement to a neck injury and loss of earnings benefits for a certain period of time. All other claims advanced by Mr. Taylor were dismissed. Four years later, Mr. Taylor sought reconsideration of the WSIAT decision which was denied in reasons dated June 13, 2013.
4. After the WSIAT reconsideration decision, Mr. Taylor filed an application in the Superior Court of Justice seeking to set aside the WSIAT decisions. He later abandoned that application.
5. What followed next is a lengthy history of frivolous litigation, as described below:

## The 2014 Action

- a. On February 20, 2014, Mr. Taylor brought an action against the WSIB and the WSIAT over objections he had with the adjudication of his claim – alleging that, by numerous breaches of the *Ontario Human Rights Code* and the *Canadian Charter of Rights and Freedoms* (the “*Charter*”), the defendants acted in bad faith in requiring him to undergo training for positions that were unsuitable for him by reason of his colour-blindness and work-related injuries, and by intentionally trying to harm him.
- b. In the course of that proceeding, Mr. Taylor filed a Notice of Constitutional Question and raised numerous alleged *Charter* breaches of sections 7, 12 and 15 similar to the claims being advanced in this class proceeding.
- c. This action (Court File No. CV-14-0794-00) was dismissed with costs by Justice Price on February 22, 2017.
- d. Mr. Taylor’s appeal of the decision of Justice Price dated February 22, 2017 was dismissed with costs by the Court of Appeal on February 6, 2018 (Court File No. C63503).
- e. Mr. Taylor sought leave to appeal to the Supreme Court of Canada. In his materials filed with the Supreme Court, Mr. Taylor again raised sections 2, 7, 12 and 15 of the *Charter* in support of his application. He also raised the same issues in this class proceeding such as the practice of “deeming”, pre-existing conditions and “WCB paid doctors”. His leave application was dismissed on April 16, 2020 (Court File No. 38980) including his request for reconsideration.

## The 2018 Judicial Review Application

- f. In the midst of the above-noted litigation, Mr. Taylor brought an urgent judicial review application on February 20, 2018, which was dismissed by Justice Petersen on March 20, 2018 with costs (Court File No. 81/18). This application related to three outstanding issues that were before the WSIB at the time (i) a denial of reimbursement for non-prescription pain medication (ii) cessation of coverage for reimbursement of prescription medications and (iii) a request for loss of earnings benefits dating back to 1998. Issues raised by Mr. Taylor in his judicial review application also included sections 7, 12 and 15 of the *Charter*.
- g. Mr. Taylor's appeal of the decision of Justice Petersen dated March 20, 2018 was dismissed with costs by the Court of Appeal on September 21, 2018 (Court File No. C65144).
- h. In Mr. Taylor's second leave for application to the Supreme Court of Canada where one of the issues raised was whether there had been any inordinate delay in the hearing of his claim for WSIB benefits. Mr. Taylor also advanced several *Charter* arguments as he did in previous proceedings.
- i. For a second time, Mr. Taylor was denied leave to the Supreme Court of Canada and his application was dismissed on December 10, 2010 (Court File No. 39185). In his motion materials before the Supreme Court of Canada, Mr. Taylor relied upon the arguments of "deeming", pre-existing conditions and "WCB paid doctors" and sections 2, 7, 12 and 15 *Charter* arguments as he did before and as he is doing again in this class action.

- j. Any claims by Mr. Taylor regarding the unfairness of the proceedings or any inordinate delay were fully and fairly considered and disposed of by all levels of Courts.

### **The 2020 Judicial Review Application**

- k. In a separate proceeding, Mr. Taylor also brought a judicial review application against his former employer seeking to have the decisions of the WSIAT reversed. He brought this application over twelve and a half years since the Tribunal's original decision. In reality, the application was really an application against the WSIAT to determine Mr. Taylor's eligibility for benefits under the *Workplace Safety and Insurance Act* that Mr. Taylor tried to circumvent by naming his former employer as a respondent. The WSIAT intervened to have that application dismissed with costs by Justice Sachs on October 8, 2020 (Court File No.381/20).
- l. Even though the application was dismissed, Mr. Taylor brought a motion before a panel of the Divisional Court to set aside the Order of Justice Sachs. Mr. Taylor also brought a second motion on July 10, 2021 seeking interim relief and to reinstate his benefits and having amicus curia appointed. He also filed a Notice of Constitutional Question in support of his July 10, 2021 motion.
- m. In an endorsement of Justice Favreau dated July 19, 2021, the registrar was directed to provide notice to Mr. Taylor that the Court was considering to dismiss the motion pursuant to Rule 2.1. Mr. Taylor was given an opportunity to provide submissions as to why the Court should not exercise its discretion under Rule 2.1.

- n. Following receipt of Mr. Taylor's submissions, the Court dismissed his motion for interim relief and notice of constitutional question as being frivolous and an abuse of process.
- o. His motion seeking to set aside the Order of Justice Sachs was dismissed by a panel of the Divisional Court on November 26, 2021.

### **The outstanding costs awards**

- a. Mr. Taylor has not paid any of the costs ordered by the Court against him and continues to bring and raise the same issues before the Courts in different forums. Although he has named many other co-plaintiffs in this action, the real litigant in this matter is Mr. Taylor himself which he has acknowledged by taking the role of the Lead Class Plaintiff.
6. Mr. Taylor's motivation in bringing this action, as well as the other named Plaintiffs that have joined in, is clearly improper by virtue of Mr. Taylor's website where he indicates his desire to "piss off the WSIB & the WSIAT and all WCBs and WCATs everywhere!"
  7. Mr. Taylor's attempt to have his dispute with WSIB re-litigated as a class action is duplicative and an abuse of process in violation of Rule 21.01(3)(d) and 25.11 of the Rules of Civil Procedure. It is also a collateral attack on the decisions of the WSIB and WSIAT. The Plaintiffs' claims have been fully and fairly decided and considered by all levels of tribunals and courts.
  8. For all the above noted reasons, this action is frivolous, vexatious and/or an abuse of process.

***B. The claim fails to disclose any reasonable cause of action as the Charter Rights plead are not engaged***

9. The *Charter* rights plead by the Plaintiffs are not engaged or triggered by the facts (to which the WSIB maintains have been framed in the Statement of Claim as bald allegations devoid of any factual detail) or the law and as such the Statement of Claim fails to disclose a reasonable cause of action.
10. There is no basis in law or in fact in relation to the application of section 2 of the *Charter*. Although the Plaintiffs may be entitled to their own beliefs in regards to the extent of their disability, one's entitlement to benefits is determined by the evidence and facts before the WSIB and WSIAT, as decision-makers under the *Workplace Safety and Insurance Act* within the realm of administrative law and not one's particular belief in the correctness of their position. To allow the Plaintiffs to litigate this issue is tantamount to allowing them to circumvent the appeals process which has already run its course and is a collateral attack. Finality in litigation and in decision making is an important fundamental principle in Canadian law.
11. Section 7 of the *Charter* has not been interpreted by the courts to apply to protect purely economic interests that the Plaintiffs are seeking and on that basis, the claim must and should be struck. There is no basis for any claims of undue delays that would rise to a level of constitutional protection.
12. Section 12 of the *Charter* applies to actions of the state in the criminal, quasi criminal and/or immigration context. A denial or reduction in benefits provided by law, policy or practice by an administrative tribunal does not engage section 12 of the *Charter*.

13. The Statement of Claim is devoid of any factual detail. It does not provide any particulars in relation to WSIB's alleged conduct that infringed the Plaintiffs' section 14 and 15 *Charter* rights. In light of the conduct of the representative of the Lead Plaintiffs in previous litigation, leave to amend the Statement of Claim should not be granted.

14. As such, it is plain and obvious that the claim discloses no reasonable cause of action and the Statement of Claim must be struck without leave to amend.

***C. There are two other actions in other jurisdictions with respect to the same parties and the same subject matter***

15. It is appropriate for this court to dismiss or stay the within action as two other actions have also been commenced. The first being in the Supreme Court of British Columbia bearing Court File 240162 on August 25, 2021 between the same Plaintiffs and Defendants seeking the same relief and based on the same subject matter as the action in Ontario.

16. The second being in the Court of Queen's Bench of Alberta bearing Court File No. 2110 01080 on October 21, 2021 between Rodny Barrett and the same Defendants. Although there is only one plaintiff named in this action, it has been brought under rule 13.11 of the *Class Proceedings Act* and it is seeking the same relief and is based on the same subject matter as the action in Ontario.

17. It would be an abuse of process to allow the Plaintiffs to pursue these duplicative and frivolous actions across multiple jurisdictions that have been advanced for an improper purpose.

**WSIB's Unanswered Request for Particulars**

18. As mentioned above, the Statement of Claim is devoid of any merit and should be dismissed in its entirety prior to this court hearing a motion for certification. The WSIB relies upon sections 4.1 and 12 of the *Class Proceedings Act, 1992* and rule 21 of the *Rules of Civil Procedure* in this regard.
19. However, in the event this Honourable Court does not dispose of this matter in its entirety, the WSIB seeks in the alternative an order for particulars of the Lead Plaintiffs so that the WSIB may adequately respond to the action and the certification motion.
20. Not only does the Statement of Claim fail to identify which Lead Plaintiff has filed a claim in Ontario with the Workplace Safety and Insurance Board, it further does not identify any claim number or relevant accident date. This information is necessary for the WSIB to adequately respond to this action and the certification motion.
21. For instance one of the Plaintiffs, Eugene Laho has two claims with the WSIB, both of which exceed 2600 pages. Norman Traversy has fifteen claims registered with the WSIB. David Curtis has six separate claims filed with the WSIB. The Plaintiffs need to narrow matters down to enable the WSIB to respond in any meaningful way and to save time and expense.
22. The WSIB has requested this information from Mr. Taylor on multiple occasions prior to bringing this motion, to which it has yet to receive any meaningful reply.
23. The WSIB makes this request pursuant to section 12 of the *Class Proceedings Act, 1992*.

**Applicable Statutory and Regulatory Provisions**

24. 21.01(1)(a), 21.01(2)(a), 21.01(3)(a), 21.01(3)(c), 21.01(3)(d), 25.06 and 25.11 of the *Rules of Civil Procedure*.

25. Sections 4.1 and 12 of the *Class Proceedings Act*, 1992, S.O. 1992, c. 6.

26. Sections 26 and 118 of the *Workplace Safety and Insurance Act*.

27. Such other grounds as counsel may advise and this Honourable Court deem just.

**THE FOLLOWING DOCUMENTARY EVIDENCE** will be used at the hearing of the motion:

1. The Statement of Claim in this action;
2. The Affidavit of Diana Brienza sworn and exhibits referred to therein, subject to the leave of this Honourable Court should such leave be required.
3. Such further and other evidence as counsel may advise and this Honourable Court may deem just.

Date: August ●, 2022

**WORKPLACE SAFETY AND INSURANCE BOARD**

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TO: **PAUL TAYLOR**



Self-representative for the Lead Plaintiffs

AND TO: **THOMPSON DORFMAN SWEATMAN LLP**

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Workers' Compensation Appeal Tribunal of Nova Scotia

**TAYLOR et al.**

and

**WORKPLACE SAFETY &  
INSURANCE BOARD et al.**

Court File No. CV-21-00076781-  
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Plaintiffs

Defendants

***ONTARIO***  
**SUPERIOR COURT OF JUSTICE**

Proceeding commenced at Hamilton

**NOTICE OF MOTION**

**WORKPLACE SAFETY AND  
INSURANCE BOARD**

Legal Services Division  
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Lawyer for the Defendant,  
Workplace Safety and Insurance Board

## **SCHEDULE "B"**

**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**

**B E T W E E N :**

**GREGORY TOOMBS, NORM RYDER, PATRICK JARDINE, DAVID HAMILTON, CHRISTOPHER SUMMERS, TERRY FEDORAK, ROD BARRETT, JENNIFER BAKER, BRUCE JUNKER, BLAINE GILBERTSON, KEN GRYSIUK, RICHARD LAST, DARREN SCHLAMB, CHRIS LAWSON, SARAH LAWSON, EUGENE LAHO, NORMAN TRAVERSY, DAVID CURTIS, PATRICIA O'CONNOR, GIUSEPPE MARCELLINO, JAMES ROLLO, ANDRE MARTIN, ARMAND DURELLE, GILLES MARTIN, GORDON WAYNE SKINNER, AND PAUL TAYLOR.**

**(On behalf of Canadians & others injured at work, while working in Canada)**

Lead Plaintiffs

- and -

**WorkSafeBC (Also known as the Workers Compensation Board of British Columbia), Workers' Compensation Appeal Tribunal of BC – WCATBC, Alberta Workers Compensation Board – AWCB, Alberta Appeals Commission – AAC, Saskatchewan Workers Compensation Board – SWCB, Saskatchewan Board Appeal Tribunal – SBAT, Workers Compensation Board of Manitoba – WCBM, The Appeal Commission of Manitoba – ACM, Workplace Safety & Insurance Board – WSIB (Also known as the Workers Compensation Board of Ontario), Workplace Safety & Insurance Appeals Tribunal – WSIAT (Also known as the Workers Compensation Appeals Tribunal of Ontario), Commission des normes, de l'équité, de la santé et de la sécurité du travail – CNESST, WorkSafeNB (Also known as the Workers Compensation Board of New Brunswick), New Brunswick Workers' Compensation Appeals Tribunal – NBWCAT, Workers Compensation Board of PEI – WCBPEI, Workers' Compensation Appeal Tribunal of PEI – WCATPEI, Workers' Compensation Board of Nova Scotia – WCBNS, Workers' Compensation Appeal Tribunal of Nova Scotia – WCATNS, Workplace Health, Safety and Compensation Commission – WHSCC (Also known as the Workers Compensation Board of Newfoundland & Labrador), Workplace Health, Safety & Compensation Review Division – WHSCRD, Yukon Workers' Compensation Health and Safety Board – YWCHSB (Also known as the Workers Compensation Board of Yukon Territory), Yukon Workers' Compensation Appeal Tribunal – YWCAT, Northwest Territories Workers' Safety and Compensation Commission – NWTWSCC (Also known as the Workers Compensation Board of Northwest & Nunavut Territories) and NWT and Nunavut Workers' Compensation Appeals Tribunal – NWTNWCAT**

Defendants

## NOTICE OF MOTION

THE DEFENDANT, Workplace Safety and Insurance Appeals Tribunal (incorrectly named as “Workplace Safety & Insurance Appeals Tribunal – WSIAT) (hereinafter the “WSIAT”), will make a motion to a judge on a date to be determined by the Trial Coordinator at 45 Main Street East, Hamilton, Ontario, L8N 2B7.

PROPOSED METHOD OF HEARING: The motion is to be heard:

- in writing under subrule 37.12.1(1) because it is on consent or unopposed or made without notice;
- in writing as an unopposed motion under subrule 37.12.1(4);
- orally.

### THE MOTION IS FOR:

1. An Order dismissing the action against the WSIAT;
2. In the alternative, an Order requiring the Lead Plaintiffs to disclose to the WSIAT sufficient particulars identifying which of the Lead Plaintiffs have filed a workplace injury claim in Ontario, their respective claim file numbers and relevant accident dates;
3. An Order for substantial indemnity costs in favour of the WSIAT; and
4. Such further and other relief as counsel may advise and this Honourable Court may permit.

### THE GROUNDS FOR THE MOTION ARE:

#### *A. The action is frivolous, vexatious and an abuse of the court's process*

1. Paul Taylor, one of the Lead Plaintiffs and the representative of the Lead Plaintiffs in this action (“Mr. Taylor”) has already brought several proceedings against the Workplace Safety

and Insurance Board (“WSIB”) and the WSIAT of the same nature, all of which have been considered, heard and dismissed by different levels of Courts.

2. Mr. Taylor was injured in a workplace accident on February 6, 1997 and filed a claim with the WSIB. He disagreed with a number of WSIB decisions and pursued administrative appeals.
3. Mr. Taylor appealed the WSIB decisions to the WSIAT. In a decision dated February 11, 2008 (“WSIAT 2008 Decision”), the WSIAT only allowed entitlement to a neck injury and loss of earnings benefits for a certain period of time. All other claims advanced by Mr. Taylor were dismissed. Four years later, Mr. Taylor sought reconsideration of the WSIAT decision which was denied in reasons dated June 13, 2013 (“WSIAT 2013 Reconsideration Decision”).
4. After the WSIAT 2013 Reconsideration Decision, Mr. Taylor filed an application in the Superior Court of Justice seeking to set aside the WSIAT 2008 Decision and the WSIAT 2013 Reconsideration Decision. He later abandoned that application.
5. What followed next is a lengthy history of frivolous litigation, as described below:

## The 2014 Action

- a. On February 20, 2014, Mr. Taylor brought an action against the WSIB and the WSIAT over objections he had with the adjudication of his claim – alleging that, by numerous breaches of the *Ontario Human Rights Code* and the *Canadian Charter of Rights and Freedoms* (the “*Charter*”), the defendants acted in bad faith in requiring him to undergo training for positions that were unsuitable for him by reason of his colour-blindness and work-related injuries, and by intentionally trying to harm him.
- b. In the course of that proceeding, Mr. Taylor filed a Notice of Constitutional Question and raised numerous alleged *Charter* breaches of sections 7, 12 and 15 similar to the claims being advanced in this class proceeding.
- c. This action (Court File No. CV-14-0794-00) was dismissed with costs by Justice Price on February 22, 2017.
- d. Mr. Taylor’s appeal of the decision of Justice Price dated February 22, 2017 was dismissed with costs by the Court of Appeal on February 6, 2018 (Court File No. C63503).
- e. Mr. Taylor sought leave to appeal to the Supreme Court of Canada. In his materials filed with the Supreme Court, Mr. Taylor again raised sections 2, 7, 12 and 15 of the *Charter* in support of his application. He also raised the same issues in this class proceeding such as the practice of “deeming”, pre-existing conditions and “WCB paid doctors”. His leave application was dismissed on April 16, 2020 (Court File No. 38980). He requested reconsideration, but his request was denied.

## The 2018 Judicial Review Application

- f. In the midst of the above-noted litigation, Mr. Taylor brought an allegedly urgent judicial review application on February 20, 2018, which was dismissed by Justice Petersen on March 20, 2018 with costs (Court File No. 81/18). This application related to three outstanding issues that were before the WSIB at the time (i) a denial of reimbursement for non-prescription pain medication (ii) cessation of coverage for reimbursement of prescription medications and (iii) a request for loss of earnings benefits dating back to 1998. Issues raised by Mr. Taylor in his judicial review application also included sections 7, 12 and 15 of the *Charter*.
- g. Mr. Taylor's appeal of the decision of Justice Petersen dated March 20, 2018 was dismissed with costs by the Court of Appeal on September 21, 2018 (Court File No. C65144).
- h. In Mr. Taylor's second leave for application to the Supreme Court of Canada where one of the issues raised was whether there had been any inordinate delay in the hearing of his claim for WSIB benefits, Mr. Taylor also advanced several *Charter* arguments as he did in previous proceedings.
- i. For a second time, Mr. Taylor was denied leave to the Supreme Court of Canada and his application was dismissed on December 10, 2020 (Court File No. 39185). In his motion materials before the Supreme Court of Canada, Mr. Taylor relied upon the arguments of "deeming", pre-existing conditions and "WCB paid doctors" and sections 2, 7, 12 and 15 *Charter* arguments as he did before and as he is doing again in this class action.

- j. Any claims by Mr. Taylor regarding the unfairness of the proceedings or any inordinate delay were fully and fairly considered and disposed of by all levels of Courts.

### **The 2020 Judicial Review Applications**

- k. In March 2020, Mr. Taylor brought a separate allegedly urgent judicial review application in the Superior Court, naming WSIAT as the sole respondent, challenging the WSIAT 2008 Decision and the WSIAT 2013 Reconsideration Decision. He abandoned this application in June 2020.
- l. In a separate proceeding, Mr. Taylor also brought a judicial review application against his former employer seeking to have the decisions of the WSIAT reversed. He brought this application over twelve and a half years since the Tribunal's original decision. In reality, the application was in substance an application against the WSIAT to determine Mr. Taylor's eligibility for benefits under the *Workplace Safety and Insurance Act* that Mr. Taylor tried to circumvent by naming his former employer as a respondent. The WSIAT intervened to have that application dismissed with costs by Justice Sachs on October 8, 2020 (Court File No.381/20).
- m. Even though the application was dismissed, Mr. Taylor brought a motion before a panel of the Divisional Court to set aside the Order of Justice Sachs. Mr. Taylor also brought a second motion on July 10, 2021 seeking interim relief and to reinstate his benefits and having amicus curia appointed. He also filed a Notice of Constitutional Question in support of his July 10, 2021 motion.

- n. In an endorsement of Justice Favreau dated July 19, 2021, the registrar was directed to provide notice to Mr. Taylor that the Court was considering to dismiss the motion pursuant to Rule 2.1. Mr. Taylor was given an opportunity to provide submissions as to why the Court should not exercise its discretion under Rule 2.1.
- o. Following receipt of Mr. Taylor's submissions, on November 8, 2021 the Court dismissed his motion for interim relief and notice of constitutional question as being frivolous and an abuse of process.
- p. Mr. Taylor's motion seeking to set aside the Order of Justice Sachs was dismissed by a panel of the Divisional Court on November 26, 2021.
- q. Mr. Taylor sought leave to appeal from the Court of Appeal for Ontario from the decision of the Divisional Court dated November 8, 2021 and November 26, 2021. The Court of Appeal dismissed his leave application on July 20, 2022, with costs payable to the WSIAT in the amount of \$5,000.

### **The outstanding costs awards**

- a. Mr. Taylor has not paid any of the costs ordered by the Court against him and continues to bring and raise the same issues before the Courts in different forums. Although he has named many other co-plaintiffs in this action, the real litigant in this matter is Mr. Taylor himself which he has acknowledged by taking the role of the Lead Class Plaintiff.

6. Mr. Taylor's motivation in bringing this action, as well as the other named Plaintiffs that have joined in, is clearly improper by virtue of Mr. Taylor's website where he indicates his desire to "piss off the WSIB & the WSIAT and all WCBs and WCATs everywhere!"
  7. Mr. Taylor's attempt to have his dispute with WSIB re-litigated as a class action is duplicative and an abuse of process in violation of Rule 21.01(3)(d) and 25.11 of the Rules of Civil Procedure. It is also a collateral attack on the decisions of the WSIB and WSIAT. The Plaintiffs' claims have been fully and fairly decided and considered by all levels of tribunals and courts.
  8. For all the above noted reasons, this action is frivolous, vexatious and/or an abuse of process.
- B. The claim fails to disclose any reasonable cause of action as the Charter Rights pleaded are not engaged***
9. The *Charter* rights pleaded by the Plaintiffs are not engaged or triggered by the facts (which the WSIAT maintains have been framed in the Statement of Claim as bald allegations devoid of any factual detail) or the law and as such the Statement of Claim fails to disclose a reasonable cause of action.
  10. There is no basis in law or in fact in relation to the application of section 2 of the *Charter*. Although the Plaintiffs may be entitled to their own beliefs in regards to the extent of their disability, one's entitlement to benefits is determined by the evidence and facts before the WSIB and WSIAT, as decision-makers under the *Workplace Safety and Insurance Act* within the realm of administrative law and not one's particular belief in the correctness of their position. To allow the Plaintiffs to litigate this issue is tantamount to allowing them to circumvent the appeals process which has already run its course and is a collateral attack.

Finality in litigation and in decision making is an important fundamental principle in Canadian law.

11. Section 7 of the *Charter* has not been interpreted by the courts to apply to protect purely economic interests that the Plaintiffs are seeking and on that basis, the claim must and should be struck. There is no basis for any claims of undue delays that would rise to a level of constitutional protection.
  12. Section 12 of the *Charter* applies to actions of the state in the criminal, quasi criminal and/or immigration context. A denial or reduction in benefits provided by law, policy or practice by an administrative tribunal does not engage section 12 of the *Charter*.
  13. The Statement of Claim is devoid of any factual detail. It does not provide any particulars in relation to WSIB's alleged conduct that infringed the Plaintiffs' section 14 and 15 *Charter* rights. In light of the conduct of the representative of the Lead Plaintiffs in previous litigation, leave to amend the Statement of Claim should not be granted.
  14. As such, it is plain and obvious that the claim discloses no reasonable cause of action and the Statement of Claim must be struck without leave to amend.
- C. There are two other actions in other jurisdictions with respect to the same parties and the same subject matter***
15. It is appropriate for this court to dismiss or stay the within action as two other actions have also been commenced. The first being in the Supreme Court of British Columbia bearing Court File 240162 on August 25, 2021 between the same Plaintiffs and Defendants seeking the same relief and based on the same subject matter as the action in Ontario.

16. The second being in the Court of Queen's Bench of Alberta bearing Court File No. 2110 01080 on October 21, 2021 between Rodney Barrett and the same Defendants. Although there is only one plaintiff named in this action, it has been brought under rule 13.11 of the *Class Proceedings Act* and it is seeking the same relief and is based on the same subject matter as the action in Ontario.
17. It would be an abuse of process to allow the Plaintiffs to pursue these duplicative and frivolous actions across multiple jurisdictions that have been advanced for an improper purpose.

#### **WSIB's Unanswered Request for Particulars**

18. As mentioned above, the Statement of Claim is devoid of any merit and should be dismissed in its entirety prior to this court hearing a motion for certification. The WSIB relies upon sections 4.1 and 12 of the *Class Proceedings Act, 1992* and rule 21 of the *Rules of Civil Procedure* in this regard.
19. However, in the event this Honourable Court does not dispose of this matter in its entirety, the WSIB seeks in the alternative an order for particulars of the Lead Plaintiffs so that the WSIB may adequately respond to the action and the certification motion. The WSIAT joins in this request.
20. Not only does the Statement of Claim fail to identify which Lead Plaintiff has filed a claim in Ontario with the Workplace Safety and Insurance Board, it further does not identify any claim number or relevant accident date. This information is necessary for the WSIB and WSIAT to adequately respond to this action and the certification motion.

21. For instance one of the Plaintiffs, Eugene Laho has two claims with the WSIB, both of which exceed 2600 pages. Norman Traversy has fifteen claims registered with the WSIB. David Curtis has six separate claims filed with the WSIB. The Plaintiffs need to narrow matters down to enable the WSIB to respond in any meaningful way and to save time and expense.
22. The WSIB has requested this information from Mr. Taylor on multiple occasions prior to bringing this motion, to which it has yet to receive any meaningful reply.
23. The WSIB and WSIAT make this request pursuant to section 12 of the *Class Proceedings Act, 1992*.

#### **Applicable Statutory and Regulatory Provisions**

24. 21.01(1)(a), 21.01(2)(a), 21.01(3)(a), 21.01(3)(c), 21.01(3)(d), 25.06 and 25.11 of the *Rules of Civil Procedure*.
25. Sections 4.1 and 12 of the *Class Proceedings Act, 1992*, S.O. 1992, c. 6.
26. Sections 26 and 118 of the *Workplace Safety and Insurance Act*.
27. Such other grounds as counsel may advise and this Honourable Court deem just.

**THE FOLLOWING DOCUMENTARY EVIDENCE** will be used at the hearing of the motion:

1. The Statement of Claim in this action;

2. The Affidavit of Rebecca Woodrow, to be sworn, and exhibits referred to therein, subject to the leave of this Honourable Court should such leave be required.
3. Such further and other evidence as counsel may advise and this Honourable Court may deem just.

Date: July 25, 2022

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**TAYLOR et al.**

and

**WORKPLACE SAFETY & INSURANCE  
BOARD et al.**

Court File No. CV-21-00076781-00CP

Plaintiffs

Defendants

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**ONTARIO  
SUPERIOR COURT OF JUSTICE**

Proceeding commenced at Hamilton

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**NOTICE OF MOTION**

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and

**WORKPLACE SAFETY &  
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Court File No. CV-21-00076781-  
00CP

Plaintiffs

Defendants

***ONTARIO***  
**SUPERIOR COURT OF JUSTICE**  
Proceeding commenced at Hamilton

**JOINT CASE CONFERENCE BRIEF**

**WORKPLACE SAFETY AND INSURANCE  
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