Court File No.

ONTARIO
SUPERIOR COURT OF JUSTICE – *DIVISIONAL COURT*

(Court seal)
BETWEEN:

PAUL TAYLOR

(Responding Party)
Applicant

- and -

PIVOTAL INTEGRATED HR SOLUTIONS

Respondent

FACTUM
OF THE RESPONDING PARTY
(Motion Returnable October 5th, 2020)

September 25, 2020

Paul Taylor
[redacted]

Applicant
Self-represented Litigant 😊

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(Moving Party)

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PART 1 – REPSONSE TO WSIAT STATED FACTS

1. Mr. Taylor respectfully submits the Workplace Safety and Insurance Appeals Tribunal ("**WSIAT**" or "**Tribunal**") MUST not be allowed standing in his Application for Judicial Review ("**Application**").

2. Mr. Submits the WSIAT was the decision maker in a dispute between him and his employer Pivotal Integrated HR Solutions ("**Pivotal**"), as such and in addition to numerous actions, the WSIAT's lacks any impartiality to properly advise the court. This is because the WSIAT was the decision maker in Mr. Taylor's dispute, between Mr. Taylor and his employer, Pivotal.

3. Mr. Taylor submits to allow WSIAT standing in his Application would be a clear conflict of interest on the part of the WSIAT, it would be a violation of s. 7 & 15 of the Charter, and it would be a violation of the Rule of Law.

4. Mr. Taylor submits to allow the WSIAT standing would encourage a lack of accountability and promote hatred within our justice system. This ultimately would cause Canadians to lose the faith in our justice system and surely bring the administration of justice into disrepute.[1]

5. Mr. Taylor submits that the WSIAT motion to dismiss his application was filed improperly, in that Mr. Taylor should have been afford the opportunity to bring a motion to request to an extension of time, which was his right to do under the **newly amended law** being s. 5(2) of

[1] See para 6 to 9, of affidavit of Paul Taylor, dated Sep. 25/20, Responding Motion Record **Tab10, pages 171 to172.**

the *Judicial Review Procedure Act.*[2] This would therefore make the WSIAT motion redundant.

6. Mr. Taylor resourcefully submits that the WSIAT motion should be dismissed in its entirety as his application has "*grounds for relief*" and that there is "*no substantial prejudice or hardship will result to any person affected by reason of the delay"*[3]

A. Corrected Facts stated by the WSIAT

7. The WSIAT have misstated the facts in their factum at para 8. Mr. Taylor suffered an injury to his entire back (low-back, mid-back, & upper-back), neck, and head, when a load consisting of six grey bins and ten cases of oil fell hitting Mr. Taylor's entire back (low-back, mid-back, & upper-back), neck, and head.[4]

8. Mr. Taylor's stated work accident and claim for workers compensation benefits was allowed in full, by the then Workers Compensation Board ("**WCB**" or the "**Board**"). Mr. Taylor was paid full Temporary Total Disability Benefits.[5] This was in accordance with Board policy 02-01-02.

> "*all necessary information is received, the facts of the claim are straightforward, and the employer is not disputing the allowance of the claim,* ***the claim can be allowed and paid immediately*** *by a Primary Adjudicator.*"[6]

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[2] R.S.O. 1990, c. J.1
[3] See s. 5(2) of the *Judicial Review Procedure Act* R.S.O. 1990, c. J.1
[4] See page 229 to 234, of **WSIAT Exhibit 2a, Case Record Volume 1,** Employer's Reports of Injury, dated Feb. 11/97, Responding Motion Record, **Tab 11, page 764.**
[5] See s. 37(1) of the *Workers' Compensation Act*, R.S.O. 1990, c. W.11
[6] See page 30, of **WSIAT Exhibit 3, Case Record Addendum 1,** Board Policy 02-01-02 Adjudicative Process, dated May 1989, Responding Motion Record, **Tab 14, page 1088.**

9. On April 30, 1997, Mr. Taylor was forced back to work, before he was fully recovered. This is confirmed in the medical discharge report of April 25, 1997. The report stated an unresolved injury of poor trunk strength. Also, that Mr. Taylor had missed 11 days of treatment, due to his work schedule. Additionally, this report confirmed an injury and treatment to Mr. Taylor's entire back being the lumbar and thoracic spine. While the report stated that Mr. Taylor "*was able to meet his regular work demands*" and "*was able to max. lift 60lbs and at that point in time* ***should be capable of meeting his regular job demands***."[7] This would be later proven to be an inaccurate statement, as Mr. Taylor regularly was expected to lift considerably more weight, as part of his regular duties.[8]

10. On July 7, 1997, Mr. Taylor was involved in another work accident, which result in work injuries. This was where product fell hitting the area of his shoulders and head. As a result, Mr. Taylor suffered an injury to his upper back, neck, and head. Mr. Taylor reported the accident and injuries to Pivotal.[9] However, Pivotal intentionally, knowingly, and deceptively failed to report the accident and injuries to the WCB, which was lawful requirement.[10] This was the second documented incident where Pivotal had intentionally, knowingly, and deceptively failed to report the accident and injuries to the WCB and it would not be the last. The next documented unreported accident by Pivotal was on August 27, 1998, when Mr.

[7] See page 85, of **WSIAT Exhibit 10, Case Record Addendum 8**, Physical Rehabilitation Discharge Report, dated Apr. 25/97, Responding Motion Record, **Tab 18, page 1110.**
[8] See para 16, of affidavit of Paul Taylor, dated Sep. 25/20, Responding Motion Record **Tab 10, page 174 & 175.**
[9] See para 16, of affidavit of Paul Taylor, dated Sep. 25/20, Responding Motion Record **Tab 10, page 174 & 175.** Also see **Exhibit "F"** Driver's Run Sheet, dated Jul. 7/97, Responding Motion Record **Tab10F, page 231.**
[10] See S. 22 of the *Workers' Compensation Act*, R.S.O. 1990, c. W.11

Taylor was attending Pivotal's early safe return to work program, Mr. Taylor suffered another injury to his lower-back, because of this new accident.[11]

11. On August 20, 1997, Mr. Taylor was removed from work by his family Doctor, due to his ongoing symptoms from the February 6, 1997 and other work accidents, being so severe.[12]

12. Pivotal would intentionally, knowingly, and deceptively claim that Mr. Taylor was claiming a recurrence of August 20, 1997, even though Mr. Taylor never fully recovered from his February 6, 1997 work accident. Additionally, Pivotal would falsely claim that Mr. Taylor never reported any symptoms or had taken numerous days off work as a result.[13] This even though, from the period of April 30, 1997 to August 20, 1997, Mr. Taylor had regularly reported to Pivotal of having severe ongoing symptoms from his February 6, 1997 work injury, as well as other work accidents and injuries. Mr. Taylor had also taken many days off work because of these severe symptoms. Pivotal's false claims would later be proven by Mr. Taylor, when proof was submitted documenting his reporting of ongoing problems and missed days of work to Pivotal.[14]

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[11] See page 18 of **WSIAT Exhibit 18/19,** Dr. Sauls' Clinical Notes, dated Aug. 27/98, Responding Motion Record **Tab 19, page 1113.**
[12] See page 271, of **WSIAT Exhibit 2a, Case Record Volume 1**, Doctor's Note, dated Aug. 20/97, Responding Motion Record **Tab 11, page 778.**
Also see page 12, of **WSIAT Exhibit 18/19**, Dr. Sauls' Clinical Notes, dated Aug. 20/97, Responding Motion Record **Tab 19, page 1113.**
[13] See page 503, of **WSIAT Exhibit 2a, Case Record Volume 1,** Pivotal/Action Force letter dated Sep. 2/97, Responding Motion Record **Tab 11, page 790.**
[14] See page 500, of **WSIAT Exhibit 2a, Case Record Volume 1,** Monique Rivard letter, dated Mar. 21/98, Responding Motion Record **Tab 11, page 789.**

14. To clarify Mr. Taylor was assessed by a WSIB paid doctor, who stated that Mr. Taylor was suffering from a work injury for more than a year and a half, and would be magically fully recovered in six to eight weeks and with no formal treatment. Additionally, the WSIB paid doctor was extremely prejudicial towards Mr. Taylor, by asserting that if Mr. Taylor was not fully recovered and still suffering from his injuries, then Mr. Taylor must have been faking. The WSIB paid doctor did this by asserting a fictious medical diagnosis of "*Functional Overlay*".[15] What is even more disturbing is that this WSIB paid doctor never discussed this fictious medical diagnosis of "*Functional Overlay*"[16] with Mr. Taylor. Nor did the WSIB paid doctor document this second fictious medical diagnosis in the report he handed Mr. Taylor, confirming he did not discuss with Mr. Taylor.[17]

15. Mr. Taylor was forced, against his concerns of safety & wellbeing and the concerns of safety & wellbeing of his doctor to return to his employer to work in their claimed early return to safe work program. This was from August 19, 1998 until October 2, 1998. Mr. Taylor's concerns of his wellbeing and safety were realized when Mr. Taylor was involved in yet another work accident, which resulted in another work injury to his low-back on August 27, 1998. Not surprisingly Pivotal choose not to report this accident and injury to the WSIB.[18]

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[15] See **Exhibit "D"**, "*Functional Overlay: An Illegitimate Diagnosis*", dated Jun. 1979, Responding Motion Record, **Tab 10D, page 222.**

[16] See para 11, of affidavit of Paul Taylor, dated Sep. 25/20, Responding Motion Record **Tab 10, page 172 & 173.**
Also see page 261, of **WSIAT Exhibit 2a, Case Record Volume 1**, REC Assessment Recommendations, dated Aug. 6/98, Responding Motion Record **Tab 11, page 770.**
Also see page 253, of **WSIAT Exhibit 2a, Case Record Volume 1**, Multi-Disciplinary Health Care Assessment Summary Report, dated Aug. 6/98, Responding Motion Record **Tab 11, page 770.**
Also see pages 247 to 252, of **WSIAT Exhibit 2a, Case Record Volume 1**, Regional Evaluation Center Report, dated Aug. 7/98, Responding Motion Record **Tab11, page 770.**

[17] See para 15, of affidavit of Paul Taylor, dated Sep. 25/20, Responding Motion Record **Tab 10, page 179.**

[18] See para 15, of affidavit of Paul Taylor, dated Sep. 25/20, Responding Motion Record **Tab 10, page 179.**

16. The WSIAT have misstated the facts in their factum at para 9 & 10. The WSIB never determined the work Mr. Taylor performed from August 17, 1998 to October 2, 1998 was unsuitable for Mr. Taylor. It was for the work Mr. Taylor performed after October 2, 1998. This even though Mr. Taylor suffered another work injury to his low-back on August 27, 1998.[19]

17. The WSIB would decide that Mr. Taylor was magically fully recovered and capable of returning to his regular work duties for the period between October 2, 1998 to December 16, 1998.[20] On December 16, 1998 until January 12, 1999 Mr. Taylor was forced to return to his regular work.[21] This was until January 13, 1999, when Mr. Taylor was removed from work by his doctor, due to serious health and safety concerns.[22]

18. Then in a decision letter of June 15, 1999, the WSIB would reverse its position and agreed that Mr. Taylor was not fully recovered. The WSIB then falsely alleged Mr. Taylor was not co-operating because Mr. Taylor did not "*to return to some type of employment in any capacity.*" This even though Mr. Taylor was ordered off work by his doctor.[23] As a result, the

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Also see page 18, of **WSIAT Exhibit 18/19**, Dr. Sauls' Clinical Notes, dated Aug. 27/98, Responding Motion Record **Tab 19, page 1113.**

[19] See page 18 of **WSIAT Exhibit 18/19,** Dr. Sauls' Clinical Notes, dated Aug. 27/98, Responding Motion Record **Tab 19, page 1113.**

[20] See pages 460 & 461, of **WSIAT Exhibit 2a, Case Record Volume 1,** WSIB letter, dated Dec. 4/98, Responding Motion Record **Tab 11, page787.**

[21] See page 374, of **WSIAT Exhibit 2a, Case Record Volume 1,** Pivotal/Action Force letter, dated Oct. 8/99, Responding Motion Record **Tab 11, page 783.**

[22] See page 88, of **WSIAT Exhibit 10, case Record Addendum 8,** Doctor note, dated Jan. 13/99, Responding Motion Record **Tab 18, page 1111.**

[23] See page 88, of **WSIAT Exhibit 10, case Record Addendum 8,** Doctor note, dated Jan. 13/99, Responding Motion Record **Tab18, page 1111.**

WSIB only paid Mr. Taylor 50% of what Mr. Taylor was lawfully entitled to.[24] Later, the WSIB's allegations were found to be unlawful and reversed on appeal, by the WSIAT.[25]

19. Mr. Taylor was again forced back to an employer claimed early return to safe work program from May 26, 1999 until August 25, 1999, until he was wrongfully terminated by Pivotal.[26] Pivotal's wrongful termination of Mr. Taylor was based on alleged sporadic attendance.[27] However, when Mr. Taylor and the WSIB investigator asked for proof of his lack of attendance, in the form of time cards and sign in sheets, Pivotal refused![28] Mr. Taylor admits there was days he was absence in June 1999, but these absences were from his work injury and he was authorized off work by his doctor.[29]

20. From August 25, until March 8, 2000, the WSIB would grant Mr. Taylor benefits and agreed to retrain Mr. Taylor. This was because of Pivotal's lack of co-operation with the WSIB. However, like in 1998, the WSIB would only pay Mr. Taylor 50% of his entitled benefits, claiming he should be working.[30] Again like before, the WSIB's allegations were found to be unlawful and were reversed on appeal, by the WSIAT.[31]

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[24] See page 408 & 409, of **WSIAT Exhibit 2a, Case Record Volume 1,** WSIB letter, dated Jun. 15/99, Responding Motion Record **Tab 11, page 785.**
[25] See para 204 to 209, & 236, of the WSIAT Decision 691/05, dated Feb. 11/08, Responding Motion Record **Tab 8, pages 144-146, 152.**
[26] See page 398, of **WSIAT Exhibit 2a, Case Record Volume 1,** Pivotal/Action Force letter dated Aug. 19/99, Responding Motion Record **Tab 11, page 784.**
[27] See page 374, of **WSIAT Exhibit 2a, Case Record Volume 1,** Pivotal/Action Force letter, dated Oct. 8/99, Responding Motion Record **Tab 11, page 783.**
[28] See page 371 to 372, of **WSIAT Exhibit 2a, Case Record Volume 1,** WSIB Letter, dated Jan. 5/00, Responding Motion Record **Tab 11, page 781.**
[29] See page 91, of **WSIAT Exhibit 10, Case Record Addendum 8**, Doctor's note, dated Jun. 8/99, Responding Motion Record **Tab 18, page 1112.**
[30] See page 344 to 345, of **WSIAT Exhibit 2a, Case Record Volume 1,** WSIB letter, dated Oct. 3/00, Responding Motion Record **Tab 11, page779.**
[31] See para 204 to 209, & 236, of the WSIAT Decision 691/05, dated Feb. 11/08, Responding Motion Record **Tab 8, page144-146, 152.**

21. While the stated fact in para 11 of the WSIAT factum, is correct, it should be noted that according to law[32] and Board policy,[33] Mr. Taylor should have been granted a noneconomic loss award in the spring of 1997 and not some three years later.

22. The facts stated in para 12 of the WSIAT is incorrect. On March 3, 2000, Mr. Taylor was referred for an assessment to determine if Mr. Taylor could be retrained. Within the referral for assessment, the assessor was provided specific accommodations for Mr. Taylor's work-related disabilities, from the WSIB. Commonly known to the WSIB as capabilities.[34]

23. At the first meeting Mr. Taylor had informed the WSIB service provider that he was partially colourblind. Mr. Taylor was informed this would not be a problem by the assessor. Mr. Taylor again raised concerns of suitability regarding his partial colour blindness in November of the same year, 2000, with the service provider. This time there was another person who also was partially colourblind and witnessed the service provider state that partial colourblindness would not be a problem.[35]

24. On May 30, 2000, an LMR plan proposal was submitted to the WSIB, which was NOT prepared or approved by Mr. Taylor, nor was Mr. Taylor provided a copy of this proposal.[36]

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[32] See s. 2(1) "*permanent impairment*", of the *Workplace Safety and Insurance Act*, 1997, S.O. 1997, c. 16, Sched. A
[33] See page 150 of **WSIAT Exhibit 6, Case record Addendum 4,** Board Policy 11-01-05, dated Oct. 12/04, Responding Motion Record **Tab 8, page 1093.**
[34] See page 870 to 872, of **WSIAT Exhibit 2b, Case Record Volume 2,** WSIB LMR Referral to Primary Service Provider, dated Mar. 3/00, Responding Motion Record **Tab 12, page 1084.**
[35] See page 378, of **WSIAT Reconsideration Record**, Mr. Sharma letter, dated Aug. 24/11, Responding Motion Record **Tab 20, page 1135.**
[36] See page 796 to 869, of **WSIAT Exhibit 2b, Case Record Volume 2,** LMR Plan Proposal, dated May 30/00, Responding Motion Record **Tab 12, pages 1025 to 1084.**

Within the plan, it stated that the recommended career, or suitable employment and/or business (SEB) as the WSIB refers to, was that of "*NOC 213 – Civil, Mechanical, Electrical, and Chemical Engineers.*"[37] The plan also stated that Mr. Taylor, with not having a high school diploma,[38] would be able to become an Engineer with a one-year college program.[39] Even though within the plan proposal it stated that to be an Engineer, an individual required long periods of sitting, standing and walking, someone who was not colour blind, and an individual who had a four year University degree and registration as a P.Eng.[40]

25. In addition to Mr. Taylor having suitability issues with his being partially colourblind, and his lack of proper education, there was documented suitability concerns in 14 out of 16 reports to the WSIB, from September 11, 2000 to December 27, 2002. This confirmed that it was well documented to the WSIB of physical suitability issues with Mr. Taylor being able to perform the career of Computers.[41]

26. In a LMR progress report to the WSIB dated February 8, 2002, the WSIB service provider alleged that the career of Engineer, that Mr. Taylor was alleged trained for, was changed by Human Resources Development Canada ("**HRDC**") to that of "*Technical Occupations in*

[37] See page 801, of **WSIAT Exhibit 2b, Case Record Volume 2,** LMR Plan Proposal, dated May 30/00, Responding Motion Record **Tab 12, page 1029.**
[38] See page 800, of **WSIAT Exhibit 2b, Case Record Volume 2,** LMR Plan Proposal, dated May 30/00, Responding Motion Record **Tab 12, page 1030.**
[39] See page 808, of **WSIAT Exhibit 2b, Case Record Volume 2,** LMR Plan Proposal, dated May 30/00, Responding Motion Record **Tab 12, page 1037.**
[40] See pages 810 & 811, of **WSIAT Exhibit 2b, Case Record Volume 2,** LMR Plan Proposal, dated May 30/00, Responding Motion Record **Tab 12, page 1039.**
[41] See pages 565 to 785, **WSIAT Exhibit 2b, Case Record Volume 2,** LMR Progress reports, dated various dates, Responding Motion Record **Tab 12, page 794 to 1025.**

Computer and Information systems, NOC 228."[42] Mr. Taylor would later learn this claim was a deliberate knowing, intentional, act of deception on the part of the WSIB to defraud him out of benefits. Mr. Taylor confirms this in a chart he obtained directly from the HRDC website, confirming both careers of Engineer and Computers existed before and after the HRDC change in 2002.[43]

27. The stated facts at para 13 of WSIAT was also incorrect. In February 2002, when the WSIB changed the stated career Mr. Taylor was retrained for, with the one-year college program, Mr. Taylor reviewed the HRDC working conditions for the career of computers. Mr. Taylor was able to confirm the career of computers was not suitable for him based on the working requirements being an individual cannot be colourblind, there is a requirement for long periods of sitting, standing, and walking, and the requirement of medium lifting which is lifting items between 10kg to 20 kg.[44]

28. Mr. Taylor raised concern with the WSIB, because he was required to lift more than four times than his stated accommodations, being he was limited to lifting less than 5kg.[45] Additionally there was concerns with being partially colour blind the long periods of sitting, standing and walking. In response to Mr. Taylor's stated concerns the WSIB changed Mr. Taylor's accommodation from the objectively stated list of accommodations in the March 3,

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[42] See page 644 to 648, **WSIAT Exhibit 2b, Case Record Volume 2,** LMR Progress report, dated Feb. 8/02, Responding Motion Record **Tab 12, page 873.**
[43] See para 17, of affidavit of Paul Taylor, dated Sep. 25/20, Responding Motion Record **Tab 10, page 175.** Also see **Exhibit "Y"**, HRDC Chart, obtained Mar. 18/13, Responding Motion Record **Tab 10Y, page 729.**
[44] See pages 380, 381, 384, & 385, of **WSIAT Reconsideration Record,** HRDC Computer & Descriptions, , Responding Motion Record **Tab 20, page 1139.**
[45] See page 870, of **WSIAT Exhibit 2b, Case Record Volume 2,** WSIB LMR Referral to Primary Service Provider, dated Mar. 3/00, Responding Motion Record **Tab 12, page 1084.**

2000 list to "*No heavy lifting, no repetitive bending and no prolonged positioning.*"[46] Additionally Mr. Taylor, was not consulted regarding the changes to his accommodations, nor was Mr. Taylor's doctor consulted.

29. While the facts stated in para 19 of the WSIAT fatcum is correct, it should be noted that the WSIAT allowed to reconsider Mr. Taylor's request for reconsideration, even regarding the length of time involved, because the majority of the delay was not Mr. Taylor's doing. Mr. Taylor was "*awaiting reasons from OHC, OWA and other organizations for assistance before filing the reconsideration*." Mr. Taylor provided documented proof of the delay to the WSIAT in his submissions.[47]

30. While the facts stated in para 20 of the WSIAT factum, the procedural advice was incorrect as according to s. 6(2) of the Act provides for an application to be brought before the Superior Court, as it states:

> "***Application to judge of Superior Court of Justice***
> *(2) An application for judicial review* ***may be made to the Superior Court of Justice*** *with leave of a judge thereof, which may be granted at the hearing of the application...*"[48]

[46] See page 129 to 130, of **WSIB Exhibit 5, Case Record Addendum 3,** WSIB letter, dated Dec. 2/04, Responding Motion Record **Tab 15, page 1090.**
[47] See page 359 to 360, of **WSIAT Reconsideration Record**, Mr. Taylor's letter dated Oct. 18/12, Responding Motion Record **Tab 20, page 1120.**
[48] See s. 6(2) of the *Judicial Review Procedure Act*, R.S.O. 1990, c. J.1

31. The facts stated at para 21 of the WSIAT factum are incorrect. Mr. Taylor followed the advice of Tribunal counsel in their letter of July 13, 2013,[49] and abandoned his application for judicial review.[50]

32. Afterwards, Mr. Taylor spent several months researching the law and learning the legal process. Mr. Taylor had learned he could bring a claim for damages against the WSIB and the WSIAT for intentional acts of harm, or "***Bad Faith***," under s. 179 (2)(3)[51] and under s. 5 of the *Proceedings Against the Crown Act*.[52] This was in addition to Mr. Taylor's lawful claim for benefits. Commonly known as the tort of public misfeasance. Additionally, it should be noted that Mr. Taylor did not list the staff of the WSIB or the staff of WSIAT, as plaintiffs, which was to avoid s. 179 (1).

33. As was documented by the WSIAT, Mr. Taylor was unsuccessful in his civil claim,[53] his appeal to the Court of Appeal[54] and his application to the Supreme Court of Canada which was issued on April 16, 2020.[55] This made clear, according to the Courts, that injured workers have no lawful right of redress for intentional wrong actions committed by the WSIB and/or the WSIAT.

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[49] See **Exhibit "J"**, WSIAT counsel letter, dated July 11, 2013, Responding Motion Record, **Tab 10J, Page 266.**
[50] See **Exhibit "K",** Application for Judicial Review, dated Jul. 4/13, Responding Motion Record, **Tab 10K, Page 269.**
Also see **Exhibit "L",** Notice of Abandonment, dated Aug. 7/13, Responding Motion Record, **Tab 10L, Page 273.**
[51] See s. 179(2)(3) of the *Workplace Safety and Insurance Act*, 1997, S.O. 1997, c. 16, Sched. A
[52] See s. 5 of the *Proceedings Against the Crown Act*, R.S.O. 1990, c. P.27
[53] See J. Price Reasons, of CV-14-0794-00, dated Feb. 22/17, Responding Motion Record, **Tab 6, Page 50.**
[54] See Court of Appeal for Ontario Reasons, C63503, dated Feb. 6/18, Responding Motion Record, **Tab 3, Page 17.**
[55] See Judgement of the Supreme Court of Canada Case No. 38980, Responding Motion Record, **Tab 1, Page 12.**

34. Once Mr. Taylor received the decision of the Supreme Court of Canada, on March 13, 2020, Mr. Taylor filed an application for Judicial Review.[56] Three days later, on March 16, 2020, Mr. Taylor wrote the Superior Court requesting his application be placed on hold due to COVID-19, as Mr. Taylor could not risk traveling to Toronto to severe the parties in person.[57]

35. On June 26, 2020, Mr. Taylor learned that the WSIAT can reconsider a decision at "*any time*."[58] Mr. Taylor then prepared a second request for reconsideration and submitted it to the WSIAT on July 29, 2020. Mr. Taylor provided the WSIAT until August 14, 2020 to respond to his request. This was due to the urgent nature of Mr. Taylor's situation. Mr. Taylor then he informed the WSIAT he would have to proceed with his application for judicial review on an urgent basis.[59]

36. On August 14, 2020, Mr. Taylor filed his application for judicial review with the *Divisional Court*,[60] as opposed to the Superior Court. This was because Mr. Taylor was under the impression the *Divisional Court* was hearing all urgent applications. Mr. Taylor in his e-mail to the *Divisional Court,* made clear that his application was of an urgent basis.[61]

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[56] See **Exhibit "T",** Application for Judicial Review, dated Mar 13/20, Responding Motion Record, **Tab 10T, Page 444.**
[57] See **Exhibit "U"**, Mr. Taylor's letter, dated Jul. Mar 16/20, Responding Motion Record, **Tab 10U, Page 455.**
[58] See s.129, of the *Workplace Safety and Insurance Act*, 1997, S.O. 1997, c. 16, Sched. A
[59] See **Exhibit "V",** Request for Reconsideration, dated Jul. 29/20, Responding Motion Record, **Tab 10V, Page 457**
[60] See **Exhibit "W1",** Application for Judicial Review, dated Aug. 14/20, Responding Motion Record, **Tab 10W1, Page 697.**
[61] **Exhibit "W2",** Mr. Taylor's E-mail to Divisional Court, dated Aug. 14/20, Responding Motion Record, **Tab 10W2, Page711.**

37. In 2007, Mr. Taylor appealed five decisions to the WSIAT.[62] The WSIAT hearing that was conducted in 2007 and confirmed the lack of impartiality and biased towards Mr. Taylor. It included extremely disparaging and venomous comments directed at Mr. Taylor for representing himself.[63] Including one panel member whose words were caught on the record, expressing more of a concern for going home early, than hearing Mr. Taylor's case in a fair and impartial manner, where they were heard saying "***We're never gonna get out of here***".[64] In reference to Mr. Taylor representing himself.

38. The WSIAT issued decision 691/05 on February 6, 2008. Upon reviewing the decision Mr. Taylor noted so many inconsistencies and unreasonable decisions within the WSIAT decision 691/05. One most obvious concern was that throughout the decision there was only one policy mentioned, yet the WSIAT is mandated by its governing statute to apply Board policies within its decision.[65] Another example was that the Vice Chair had confirmed with Mr. Taylor that Mr. Taylor's mid-back injury was accepted by the Board and was also accepted by the WSIAT,[66] but then this was changed in the WSIAT decision 691/05.[67]

39. Additionally, the WSIAT decision stated there was no initial diagnosis or treatment for an upper back injury in a medical report dated April 25, 1997,[68] yet in the referenced medical

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[62] See page 1, of WSIAT Decision 691/05, dated Feb. 11/08, Responding Motion Record, **Tab 8, page 92.**
[63] See para 30, of Affidavit of Paul Taylor, dated Sep. 25/20, Responding Motion Record, **Tab 10, page 181.**
[64] See para 15 to 16, of Affidavit of Paul Taylor, dated Sep. 25/20, Responding Motion Record, **Tab 10, page 174.** Also see page 3, of **Exhibit "H",** WSIAT Hearing Transcript, dated Jan. 10, Jul. 3, 4, & 5/07, Responding Motion Record, **Tab 10H, page 239.**
[65] See s. 126 of *Workplace Safety and Insurance Act*, 1997, S.O. 1997, c. 16, Sched. A
[66] See page 2, of **Exhibit "H",** WSIAT Hearing Transcript, dated Jan. 10, Jul. 3, 4, & 5/07, Responding Motion Record, **Tab 10H, page 239.**
[67] See para 234, of WSIAT Decision 691/05, dated Feb. 11/08, Responding Motion Record, **Tab 8, page 152.**
[68] See para 197, WSIAT Decision 691/05, dated Feb. 11/08, Responding Motion Record, **Tab 8, page 142.**

report it provides a diagnosis and treatment for an injury to Mr. Taylor's entire back being the lumbar and thoracic spine.[69] Additionally, the WSIAT knew what the thoracic and lumbar spine was as it was discussed with Mr. Taylor.[70]

40. Mr. Taylor submits that his application has considerable grounds and merit, as it does not meet one of the standards set in the guidelines established in the Supreme Court of Canada decision of *Canada v. Vavilov*[71] or a decision to be reasonable.

PART II – REPSONE TO WSIAT'S ARGUMENTS

B. The Tribunal Should Not be Added as a Party to Mr. Taylor's Application

41. Presently, the workers compensation law in Ontario has been intentionally unclear on applications for judicial review. The governing law currently bars individuals from bringing such applications, even though the Supreme Court of Canada has made clear judicial review is a protection under s. 96 of the *Constitution*. Additionally, the governing law provides no clarity on the position of the WSIB and the WSIAT on applications for judicial review. This is why the WSIAT has been forced to rely solely on s. 9(2) of the *Judicial Review Procedures Act*[72]

42. It is one thing for a tribunal to have "*standing to explain the record before the court and to advance its view of the appropriate standard of review*."[73] However, the Tribunal in, Mr.

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[69] See page 85 of **WSIAT Exhibit 10, Case Record Addendum 8,** Physical Rehabilitation Discharge Report, dated Apr. 25/97, Responding Motion Record, **Tab 8, page 1110.**
[70] See page 2, of **Exhibit "H",** WSIAT Hearing Transcript, dated Jan. 10, Jul. 3, 4, & 5/07, Responding Motion Record, **Tab 10H, page 239.**
[71] *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65
[72] R.S.O. 1990, c. J.1
[73] See para 22 *Children's Lawyer for Ontario v. Goodis*, 2005 CanLII 11786 (ON CA)

Taylor's case, is **Not** taking on the role of an advisor or intervenor to the court, but the role of a strong opposition party. Whose real sole purpose is to protect their decisions whether those decisions are right, wrong, or unreasonable.

43. The WSIAT's intent to overly unduly influence the court in its decision making process, when was proven when the WSIAT brought a motion to dismiss Mr. Taylor's application before Mr. Taylor could justify the intent of the delay, if any, to explain the merits of his application, and to argue the respondent, Pivotal, has not been prejudiced by the delay. Nor has any other party been prejudiced by the delay.

44. When the WSIAT goes from ***providing information about the record***, and the ***standard of review*** to ***telling the court to dismiss the application*** and intentionally muddying the waters with misstated and incorrect facts, the WSIAT is transitioning from providing invaluable information to the court, to unjustly influencing the court.

45. The WSIAT is demanding to act as a party, NOT because they are concerned about furtherance of justice, but simply because the WSIAT is arrogantly attempting to protect their decisions regardless, if their decisions are wrong, or unreasonable. The WSIAT arrogantly boasts of their influence over the courts when defending their almost perfect record.

Section 9(2) of Judicial Review Procedure Act is a violation of s. 7 of the Charter

46. Section 9(2) is a violation of s. 7 of the *Charter*, as it infringes an individual's right to security of their person. This is when the offending law allows a government decision

making body to go well beyond the capacity of advisor, by doing more than just "***explain the record before the court and to advance its view of the appropriate standard of review***." [74]

47. Section 9(2) allows decision making bodies, like that of the WSIAT, to take on an extremely adversarial role, that which MUST be reserved for a respondent. In doing so, s. 9(2) of the law infringes an individual's right to security of their person. This is because it prevents a fair and impartial hearing of the individual's case, both before the administrative tribunal and the reviewing court.

48. Alternatively, if the purpose of the law, 9(2) of the JRPA, is to provide fair and impartial input for the court, then the actions of the WSIAT have exceeded their lawful authority, by demanding action, as opposed to providing fair and impartial input. The actions being demanded, is the dismissing of Mr. Taylor's application, and the demanding of payment of costs from a separate matter.

C. Mr. Taylor's Application is NOT an abuse of process

49. The law has recently been changed for bringing application and as a result Mr. Taylor proposes the Court apply a more just test, one which is used by the higher courts.

This Court must create a more just test

50. The law governing judicial review in Ontario, has recently changed. The change included when a party can bring an application for judicial review.[75] In the past, there was no time

[74] See para 22 *Children's Lawyer for Ontario v. Goodis*, 2005 CanLII 11786 (ON CA)
[75] See Schedule 10, of the *Smarter and Stronger Justice Act*, 2020, S.O. 2020, c. 11 - Bill 161

limit for bringing an application, but an application could be dismissed, on motion for delay, after 6 months.[76]

51. The new law limits an application to be filed within 30 days, of a decision. The new law does allow the Court to grant an extension for a party to bring an application. [77] However, there is currently no test for the granting of an extension of time for the bringing of an application for Judicial Review under s. 5(1)(2)[78].

52. While there is a test for dismissing an application for judicial review for delay, there is no test for granting an extension of time. The test for dismissing an application for judicial review, by motion, for delay is:

    a. *"The length of the delay*
    b. *The explanation for the delay; and*
    c. *Whether the respondent has experienced prejudice as a result of the delay."* [79]

53. The test for dismissing an application for judicial review, on motion, due to delay is unjust. This is because the test leaves off two important elements. Whether the individual formed any intent to bring the application within the relevant period and whether the application has any merit. As the Court of Appeal for Ontario ("Court of Appeal") stated that "***The mere passage of time cannot be an insurmountable hurdle in determining prejudice, otherwise timelines would become inflexible and explanations futile***."

[76] See para 16 of *Toronto District School Board v. Child and Family Services Review Board*, 2019 ONSC 7064(CanLII)
[77] See s. 5(1)(2) *Judicial Review Procedure Act*, R.S.O. 1990, c. J.1
[78] See s. 5(1)(2) *Judicial Review Procedure Act*, R.S.O. 1990, c. J.1
[79] See para 22 of *Toronto District School Board v. Child and Family Services Review Board*, 2019 ONSC 7064(CanLII)

The test for granting extensions in Appeals

54. When reviewing the test at the Court of Appeal for granting extensions to parties, the test set by the Court of Appeal, in their decision of *Leighton v. Best*,[80] at para 1 and their previous decision of *Howard v. Martin*[81] at para 26, the Court of Appeal referenced the test for granting an extension to a party as:

> "1. *whether the moving party formed a bona fide* ***intention*** *to appeal within the relevant period;*
> *2. the length of, and explanation for, the delay in filing;*
> *3. any prejudice to the responding party that is caused, perpetuated, or exacerbated by the delay; and,*
> *4. the* ***merits*** *of the of the proposed appeal*." [82]

55. The Court of Appeal in creating their test, recognized the importance of the two additional elements, being ***intent*** and ***merit***. However, these two elements are missing in the test previous set by the *Divisional Court*. So, even though an individual had strong intent and a very strong case, they would be denied justice. Simply because they did not file the paperwork in time, or they did not have they the money to hire a lawyer to file the paperwork in time.

56. Additionally, the two key elements are well recognized in the higher courts, where Mr. Taylor's motion to extend time to file an application for leave was granted by the Supreme Court of Canada. That too was well beyond the limit of bringing an application.[83]

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[80] *Leighton v. Best*, 2014 ONCA 667 (CanLII)
[81] *Howard v. Martin*, 2014 ONCA 309 (CanLII)
[82] See para 26, of *Howard v. Martin*, 2014 ONCA 309 (CanLII)
[83] See *Howard v. Martin*, 2014 ONCA 309 (CanLII). Also see Supreme Court of Canada Judgement *Paul Taylor v. Workplace Safety & Insurance Board and Workplace Safety & Insurance Appeals Tribunal*, SCC Case No. 38980, Motion Record **Tab 1, page 12**.

D. This Court Must grant Mr. Taylor's request to extend time to bring Mr. Taylor's Application before this Court

57. Mr. Taylor's case is not an abuse of process. This is because if there were delay it is explainable, it is justified, the respondent and other parties are not prejudiced by the delay, due to their unlawful actions.

Mr. Taylor formed a bona fide intention to bring his Application within the relevant period

58. Contrary to *Leighton v. Best*,[84] Mr. Taylor did form a bona fide intention to bring his an application within the relevant period. Mr. Taylor did file an application for judicial review on July 4, 2013,[85] which was 21 days after the final decision of the WSIAT was issued, on June 13, 2013.

59. Even though Mr. Taylor abandoned his first application, due to misleading procedural information from WSIAT counsel, Mr. Taylor's intent was still there, when Mr. Taylor pursued another avenue within the civil courts.[86]

60. Every person in Canada has a protected right of redress. This is embodied within s. 7 of the *Charter*,[87] with a person's right to security of their person. Therefore, if a person, such as Mr. Taylor, is unable to seek their full lawful right to redress, with bringing an application for judicial review, then a reasonable person would have a rational belief they have a right to seek their right to redress for loss benefits and abuse of public office, within the civil courts.

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[84] 2014 ONCA 667 (CanLII), see para 9.
[85] See **Exhibit "K"** Application for Judicial Review, dated Jul. 4/13, Responding Motion Record **Tab 10K, page 269.**
[86] See **Exhibit "P1"** Statement of Claim, dated Feb. 20/14, Responding Motion record **Tab 10P1, page 288.**
[87] *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.

This would be under the specific tort of Misfeasance in Public Office.[88] This is because the law governing the WSIB and the WSIAT the WSIB[89] and the WSIAT[90] to be sued, as though they were a person committing a wrongful act. This was recently confirmed by the Court of Appeal in their recent case of *Castrillo v. Workplace Safety and Insurance Board.*[91]

61. However, the Court of Appeal contradicted this position when they stated:

> "*That **Ontario's Superior Court of Justice does not have jurisdiction** to grant relief against the respondents **in a civil action**. Relief against the Board and the Tribunal **must be sought on judicial review**.*"[92]

62. The issue was finally decided by the Supreme Court of Canada in their judgement of April 16, 2020.[93]

63. Mr. Taylor again confirmed his intention to file an application, within the relevant period, by filing a second application with the Court on March 13, 2020.[94] This was before the issuance of the judgement of the Supreme Court of Canada. However, Mr. Taylor's intention to proceed with his application was again thwarted by matters beyond his control, being the COVID-19 pandemic.

64. Mr. Taylor's intention was again confirmed, when he went back to the WSIAT, to have them resolve the matter before proceeding to Court. This caused Mr. Taylor to abandon his

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[88] See para 17 of *Castrillo v. Workplace Safety and Insurance Board*, 2017 ONCA 121 (CanLII)
[89] See s. 179(2) of the *Workplace Safety and Insurance Act*, 1997, S.O. 1997, c. 16, Sched. A
[90] See s. 179(3) of the *Workplace Safety and Insurance Act*, 1997, S.O. 1997, c. 16, Sched. A
[91] 2017 ONCA 121 (CanLII)
[92] See para 3 of Court of Appeal Reasons, dated February 6, 2018, Motion Record **Tab 3, page 18.**
[93] Supreme Court of Canada Judgement *Paul Taylor v. Workplace Safety & Insurance Board and Workplace Safety & Insurance Appeals Tribunal*, SCC Case No. 38980, Motion Record **Tab 1, page 12**.
[94] See **Exhibit "T"** Notice of Application, Dated March 13, 2020, Motion Record, **Tab 10T, page 444.**

application and then bring a second request for reconsideration with the WSIAT, that was sent on July 29, 2020. Mr. Taylor did this because he had learned just then that the WSIAT has the legal authority to reconsider its decisions "***at any time***."[95]

65. Mr. Taylor provided a reasonable timeframe of until August 14, 2020, for the WSIAT to respond. This is because the WSIB and the WSIAT does not have any policy or procedure to deal with urgent matters. The timeframe is reasonable because Urgent motions and applications in a Court, that are heard by the Court in much less time than regular applications and motions.[96]

66. After Mr. Taylor provided the WSIAT with the timeframe, on August 14, 2020, Mr. Taylor made a request pursuant to the *Notice to the Profession* to have his Application filed and heard on an urgent basis by the *Divisional Court*.

67. Mr. Taylor and thousands of other injured workers like Mr. Taylor have been intentionally misled. As there is confusion over the lawful avenue for injured workers to fight for their lawful right of redress. As the current law states that a decision of the Board or the Tribunal "***is not open to question or review in court.***"[97] However, according to the Supreme Court of Canada in their various decisions they make clear that:

> "***judicial review is protected by s. 96 of the Constitution Act, 1867, legislatures cannot shield administrative decision making from curial scrutiny entirely***."[98]

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[95] See s. 129 of the *Workplace Safety and Insurance Act*, 1997, S.O. 1997, c. 16, Sched. A
[96] See Rule 37, for urgent motions and Rule 38, for urgent applications. Rules of Civil Procedure
[97] See s. 118(4)(5) & 123(4)(5), of the *Workplace Safety and Insurance Act*, 1997, S.O. 1997, c. 16, Sched. A
[98] See para 24, of *Canada (Minister of Citizenship and Immigration) v. Vavilov* 2019 SCC 65
Also see para 31, of *Dunsmuir v. New Brunswick* 2008 SCC 9
Also see page 236 to 237, of Crevier v. A.G. (Québec) et al. 1981 SCC 2

68. The confusion lies with the legislature's intent to knowingly allow an unconstitutional law to stand for more than 16 years[99] and then pass a law, which has been on the books for more than 20 years that also is unconstitutional.[100]

69. Therefore, Mr. Taylor did form a bona fide intention to bring his application for judicial review, within the relevant period.

The length of delay for Mr. Taylor to bring his application

70. In determining the length of delay in Mr. Taylor's case is complex. This is because of the ongoing activity and confusion over the procedures and court process for individuals, like Mr. Taylor, injured at work seeking redress of intentional wrongs on the part of employers, and the abuse of public office on the part of the WSIB and the WSIAT.

71. Only looking at the time from the WSIAT decision of June 13, 2013 to Mr. Taylor's recent application request of August 14, 2020, then the delay is seven years, or 12 years, considering the first decision 691/05 on February 11, 1008. However, there are many mitigating or contributing factors that must be considered before determining the length of delay.

72. The first factor of delay, being that Mr. Taylor did file an application within the new required period of 30 days, but Mr. Taylor was providing misleading legal information by WSIAT

[99] See s. 69(1) & 86(3) of the *Workers' Compensation Act*, R.S.O. 1990, c. W.11
[100] See s. 118(4)(5) & 123(4)(5), of the *Workplace Safety and Insurance Act*, 1997, S.O. 1997, c. 16, Sched. A

counsel. The second factor of delay is the process for an injured worker to obtain their lawful right of redress is overly complex. The third factor of delay that the laws are contradictory to common law. All these factors of delay were outside of Mr. Taylor's control and most importantly caused Mr. Taylor to take a different approach than judicial review, which just completed on April 16, 2020.

73. Additionally, Mr. Taylor's last-ditch attempt to resolve the matter outside of Court, as instructed by the *Notice to the Profession*, which the WSIAT ignored the urgency, or in fact any injured workers claims for urgency.

74. Therefore, Mr. Taylor submits the time for calculating the delay should not be based on the WSIAT decision, which includes all the mitigating factors, but should only be based on the Supreme Court of Canada decision of April 16, 2020.

Mr. Taylor's delay for bringing his Application can be explained and is justified

75. Mr. Taylor submits that the delays to bring his Application were caused in part by his disabilities and limited means, which have prevented Mr. Taylor from obtaining proper representation. Additionally, Mr. Taylor submits that a large portion of the delay was from Mr. Taylor being provided intentionally misleading information and the confusion over the legal process/procedure for injured workers to seek their lawful right of redress.

Mr. Taylor's disabilities and limited means explain part of the delay and are justified

76. Mr. Taylor is an individual with numerous physical and psychological disabilities. These disabilities have caused Mr. Taylor to be delayed, on numerous occasions, with performing

research, preparing his work, and making proper logical decisions.[101] In addition to functional delays, like most Canadians with disabilities, Mr. Taylor is also a person with limited means and resources.

77. the Courts Disabilities Committee, in their report,[102] the services provided by our courts are services under the *Human Rights Code.*[103] Additionally, Mr. Taylor's right to accommodation to bring a delayed application is protected under s. 7, & 15 of the *Charter of Rights & Freedoms*.[104] As such, decision makers must provide reasonable accommodations to status individuals who require it. This includes providing extensions of time for the bringing of appeals and applications if the delays are caused, in part, by their disabilities.

Mr. Taylor was provided intentionally misleading legal advice, which caused delay

78. There is no question Mr. Taylor was provided intentionally misleading legal information from the WSIAT counsel, which caused this application to be delayed.[105] This is because the misleading information caused Mr. Taylor to abandon his application and go in an entirely different direction that resulted in a more than six, seven, or 12 year delay.

Conflicting laws and procedures for injured workers to get redress caused delay

79. There is also considerable confusion over the proper avenue for injured workers to obtain their lawful right of redress. The current law states no tribunal decision can be judicially

[101] See para 22 to 24 of affidavit of Paul Taylor, dated Sep. 25/20, Responding Motion Record **Tab10, pages 178.**
[102] See **Exhibit "BB"** Making Ontario's Courts Fully Accessible to Persons with Disabilities, dated December 2006, Motion Record, **Tab 10BB, page 743.**
[103] R.S.O. 1990, c. H.19
[104] *Canadian Charter of Rights and Freedoms*, s 7 & 15, Part 1 of the *Constitution Act*, 1982, being Schedule B to the *Canada Act* 1982 (UK), 1982, c 11.
[105] See **Exhibit "L"** WSIAT letter to Mr. Taylor, dated July 11/13, Responding Motion Record, **Tab 10L, page 273**.

reviewed.[106] Even though the Supreme Court has made clear this is unlawful, many decades ago.[107]

80. To further complicate the issue, judicial review will not award any damages, regardless of intentional wrongs. This is because the WSIAT "***does not have authority to award damages or other remedies.***"[108] This also applies to the Court, who only has been provided the power to set aside an administrative decision.[109]

81. However, the Court of Appeal has made clear that an injured worker's only avenue of redress of their benefits is judicial review. This is because injured workers cannot file a civil suit against the WSIB or the WSIAT, [110] even though the WSIB or the WSIAT governing statute allows for them to be sued.[111] This was confirmed by the Court of Appeal in their recent case of *Castrillo v. Workplace Safety and Insurance Board.*

82. All of which played a significant role in the delay of Mr. Taylor bringing his Application. Most importantly most of the delays were not caused by Mr. Taylor.

There is no prejudice to the respondent, or others because of the delay, due to their conduct

83. The stated test determining prejudice is stated by the Court of Appeal at para 49 to 50 of *Carioca's Import & Export Inc. v. Canadian Pacific Railway Limited*.[112] Ultimately, the Court of Appeal determined that the issue of ***non-compensable prejudice*** is a factual

[106] See s. 123(4)(5), of the *Workplace Safety and Insurance Act*, S.O. 1997, c. 16, Sched. A
[107] See page 236 to 237, of *Crevier v. A.G. (Québec) et al.* 1981 SCC 2
[108] See para 16 of Decision No. 829/10, 2013 ONWSIAT 2597 (CanLII)
[109] See s. 2(4) of *the Judicial Review Procedure Act*, R.S.O. 1990, c. J.1
[110] See para 3, of Court of Appeal Reasons, dated Feb. 6/18, Responding Motion Record **Tab 3, page 18.**
[111] See s. 179(2)(3), of the *Workplace Safety and Insurance Act*, 1997, S.O. 1997, c. 16, Sched. A
[112] See para 49 to 50 *Carioca's Import & Export Inc. v. Canadian Pacific Railway Limited*, 2015 ONCA 592

question, and that the mere passage of time is **NOT** in of itself an insurmountable hurdle in determining prejudice. The plaintiff bears the onus of demonstrating that the defendant would suffer no non-compensable prejudice if the action were allowed to proceed, although the court is entitled to also consider the conduct of the defendant in light of assertions of prejudice. There must be actual proof of lost evidence, lost memory, or unavailability of oral evidence to establish non-compensable prejudice.

There is no non-compensable prejudice to the respondent or other parties, due to their conduct

84. There is no prejudice to the respondent or to others because of the delay from Mr. Taylor bringing his Application. This is because there is no significant proof of prejudice against Pivotal or any other party. Pivotal did not participate in either WSIAT hearings. The entire WSIAT record and reconsideration record are available and have been made available. That no new evidence or witnesses would be allowed in an application for judicial review, much like that of an appeal. Therefore, there has been no "***proof of significant prejudice*** *which results from an unacceptable delay which results from an unacceptable delay."*[113]

The conduct of the Respondent and other parties

85. Additionally, the Court must consider the conduct of the respondent and other parties. This is because first, the respondent and other parties acted in bad faith towards Mr. Taylor. Second the WSIAT could have reversed its decision at any time but has chosen not to.

86. The Respondent committed numerous acts of bad faith towards Mr. Taylor. The first was when the respondent was deliberately deceptive when they falsely claimed Mr. Taylor was

[113] See para 101, of *Blencoe v. British Columbia (Human Rights Commission)* 2000 SCC 44

not an employee. The Respondent again knowingly committed an act of intentional deception when they deliberately failed to report several workplace accidents & injuries that Mr. Taylor was involved in. The respondent also intentionally & deceptively misstated Mr. Taylor's ongoing work injury symptoms, after his return to work. The Respondent refused to provide information to Mr. Taylor and the WSIB, when it was requested, even though it was a lawful requirement.[114] The Respondent did all this to avoid financial responsibility from Mr. Taylor's work injuries.

87. The conduct of the WSIAT, being a non-party in this matter, has been so serious that the Court must determine there was no prejudice, because of the delay. This is because the WSIAT knowingly issued a decision which was unreasonable, conducted itself in a very bad faith manner in its interactions with Mr. Taylor.

88. Additionally, the Court should note that the WSIAT has the lawful authority to reconsider any of their decisions at "***anytime.***"[115] However, the WSIAT has chosen not to, even after Mr. Taylor Mr. Taylor filed a second request for reconsideration[116] and pleaded with Mr. Lokan, counsel for the WSIAT to encourage the WSIAT to reconsider their position on the 2n reconsideration request.

89. Therefore, the bad faith conduct, on the part of the respondent, the WSIB and the WSIAT, **MUST NOT** be rewarded by the Court. Instead, Mr. Taylor's request for an extension to file

[114] See s. 132, of the *Workplace Safety and Insurance Act*, 1997, S.O. 1997, c. 16, Sched. A
[115] See s. 129, of the *Workplace Safety and Insurance Act*, 1997, S.O. 1997, c. 16, Sched. A
[116] See **Exhibit "V",** Second Request for Reconsideration of WSIAT decision 691/05, dated Jul. 29/20, Responding Motion Record, **Tab 10V, page 457**.

his Application MUST be granted by this Court, on the basis there is no prejudice to the respondent or other parties and on the basis of the bad faith conduct of the respondent and other parties.

Mr. Taylor's Application for Judicial Review has strong merit

90. Mr. Taylor requests of this Court, that the WSIAT's motion be dismissed and Mr. Taylor be granted an extension of time to bring his Application before this Court under s. 5(2) of the *Judicial Review Procedures Act*.[117] On the ground that Mr. Taylor's application has strong merit.

91. As stated by J. Law in their decision of *Falus v. Martap Developments 87* that:

> "*The "justice of the case"* ***requires some consideration of the merits****, but on a motion to extend the time for appeal, the Court should not be weighing the relative merits of the appeal.* ***It should only be satisfied that the appeal has some merit****, particularly in circumstances where the error is inadvertent, the delay is de minimis*"[118]

92. In support of Mr. Taylor's application, Mr. Taylor had identified many deficiencies that according to the standards set by the Supreme Court of Canada in *Canada v. Vavilov*, would make the WSIAT decisions 691/05 & 691/05R unreasonable and confirms that Mr. Taylor's application has strong merit.

93. One of the many examples of the decision 691/05 being unreasonable, is that according to the WSIAT's ***governing statute***,[119] the WSIAT must apply any applicable board polices in their

[117] R.S.O. 1990, c. J.1
[118] See para 7 of *Falus v. Martap Developments 87 Limited*, 2012 ONSC 5163 (CanLII)
[119] See 108 to 110 of *Canada (Minister of Citizenship and Immigration) v. Vavilov* 2019 SCC 65

decision.[120] However, within the 62 page WSIAT decision 691/05, only one policy was referenced in the decision[121], even though the WSIAT was provided many policy packages, containing countless policies by the WSIB in accordance with the law.[122] This was because the WSIAT ignored the law and made their own up.

E. The WSIAT demanding to be paid for another matter is irrelevant

94. The WSIAT is abusing the process of the court to bully an individual with numerous disabilities and in a low income situation, who has been placed there by the WSIAT's intentional bad faith actions, into paying a cost order they know he cannot presently pay.

95. It is overwhelmingly obvious from the rhetoric made in the WSIAT factum, that the WSIAT has continued to make this very personal with Mr. Taylor. Even though Mr. Taylor has always tried his very best to be professional with the WSIAT and tried his very best to not let it become personal even though the WSIAT has harm him. Even though Mr. Taylor has desperately attempted to resolve the matter outside of court.

96. The WSIAT has taken this personal position against Mr. Taylor because Mr. Taylor's appeal at the WSIAT was not denied because of a lack of supporting facts, evidence, or law, but simply because the WSIAT did not like Mr. Taylor representing himself. In fact, one may go so far as to say Mr. Taylor was hated for representing himself. This is because Mr. Taylor is easily able to prove the pure hatred towards injured workers by the WSIAT and the WSIB.

[120] See s. 126(1) of *Workplace Safety and Insurance Act*, 1997, S.O. 1997, c. 16, Sched. A
[121] See para 224, of WSIAT decision 691/05, dated February 11, 2008, Motion Record **Tab 8, page 149.**
[122] See s. 126(2) of *Workplace Safety and Insurance Act*, 1997, S.O. 1997, c. 16, Sched. A

When the WSIAT has made many false statements in their factum, too many to list, but some have been corrected at the beginning of this Factum.

97. The WSIAT is funded solely out of the insurance fund, a fund within excess of $35 billion. Where last November the Ontario government had to return $2 billion to employers. Mr. Taylor on the other hand is without question in a state of poverty and is presently homeless. For the WSIAT to demand costs award and then make such conditions is not only lacking in mercy but in any fairness.

98. In addition to WSIAT's motion being improper and unlawful it should also be noted by the Court that this type of motion is so commonly used against individuals who are like Mr. Taylor, ***self-represented***, that it raises **serious** ethical concerns for the over use of summary judgements.

99. The use of summary judgements, which is exactly what the WSIAT motion is, was raised in a 2013 scholarly report where it stated:

> "*presently, professional conduct rules in Canada require that members of the Bar are professional in their dealings with one another, prohibiting "**sharp practice**". If there were evidence of SRPs being used as a blanket strategy by counsel where they faced a SRL, would this count as a "**sharp practice**"? or is this behavior that could bring the profession into disrepute*? The Report goes on to say that: "*professional conduct rules in all the provinces require that members of the profession deal in **good faith with members of the public, treating them with courtesy and respect***."[123]

[123] See page 18, of **Exhibit "A",** NRSLP Report on The Use of Summary Judgement Procedures Against Self-Represented Litigants; Efficient Case Management or Denial of Access to Justice?, Responding Motion Record **Tab10A, page 211.**

100. The author of the report, Dr. Julie Macfarlane an eminent legal scholar and recipient of the Order of Canada, was so concerned about Mr. Taylor not being treated fairly as an SRL in the Courts and by the WSIAT they had prepared an affidavit in support of Mr. Taylor's application for leave to the Supreme Court of Canada. In their affidavit they confirm the unjust treatment of not just SRLs but SRLs who are persons with disabilities.[124]

101. What is extremely disturbing about the report, disturbing about the report, is that it confirms that less than 4% of SRLs are successful against these summary judgement motions. This is exactly what the WSIAT has again brought against Mr. Taylor.[125] Additionally Mr. Taylor has checked the case law on CanLii and has found all but one case that has been successful in *Divisional Court* against the WSIAT,[126] which should be extremely disturbing for most.

PART III – ORDER REQUESTED

102. Mr. Taylor respectfully request the following order to:

a. Dismiss the WSIAT motion; and

b. Granting of an extension of time for Mr. Taylor to file his Application under s. 5(2) of the newly amended *Judicial Review Procedures Act*.[127]

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[124] See Affidavit of Dr. Julie MacFarlane, Responding Motion Record **Tab 9, page__.**
[125] See page 8 & 9, of **Exhibit "A",** NRSLP Report on The Use of Summary Judgement Procedures Against Self-Represented Litigants; Efficient Case Management or Denial of Access to Justice?, Responding Motion Record **Tab10A, page 201 & 202.**
[126] See *Ferreira v. Workplace Safety and Insurance Appeals Tribunal*, 2019 ONSC 3437
[127] *Judicial Review Procedure Act,* R.S.O. 1990, c. J.1

ALL OF WHICH IS RESPECTFULLY SUBMITTED.

September 25, 2020

Paul Taylor
Self-Represented Litigant 😊

Schedule A – Authorities

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

2 *Dunsmuir v. New Brunswick* 2008 SCC 9

3 *Crevier v. A.G. (Québec) et al.* 1981 SCC 2

4 *Blencoe v. British Columbia (Human Rights Commission)* 2000 SCC 44

5 *Children's Lawyer for Ontario v. Goodis*, 2005 CanLII 11786 (ON CA)

7 *Carioca's Import & Export Inc. v. Canadian Pacific Railway Limited*, 2015 ONCA 592

8 *Leighton v. Best*, 2014 ONCA 667 (CanLII)

9 *Howard v. Martin*, 2014 ONCA 309 (CanLII)

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

11 *Toronto District School Board v. Child and Family Services Review Board*, 2019 ONSC 7064(CanLII)

12 *Falus v. Martap Developments 87 Limited*, 2012 ONSC 5163 (CanLII)

13 Decision No. 829/10, 2013 ONWSIAT 2597 (CanLII)

BACKSHEET

Paul Taylor (*Applicant*) **vs.** **Pivotal Integrated HR Solutions** (*Respondent*)

Court file No._____

***Ontario* Superior Court of Justice**
Divisional Court

PROCEEDING COMMENCED AT

Osgoode Hall
130 Queen St W, Toronto, ON M5H 2N5

FACTUM OF THE RESPONDING PARTY

Applicant:
Paul Taylor
[redacted]

Self-represented Litigant 😊