Publisher's Note

An Update has Arrived in Your Library for:

Please circulate this notice to anyone in your may be interested in this p	office who bublication. ribution List

CIVIL APPEALS

Donald J.M. Brown, K.C. Release No. 3, October 2025

HIGHLIGHTS

This release features updates to the commentary in Chs. 1 to 9. This release includes the following noteworthy decisions:

Note of Significant Developments

Rescinding a Notice of Abandonment

In a short judgment, in Aviva (Aviva Insurance Company of Canada v. 8262900 Canada Inc. (CarePartners/Community Nursing Services Foundation), 2024 ONCA 258) Pepall, J.A. addressed the issue of rescinding a Notice of Abandonment. Since there was a paucity of prior Ontario decisions dealing with the issue, Justice Pepall, in declining to permit the Notice of Abandonment to be rescinded, referred to the factors to be considered set out in Sherwood v. Cinnabar Brown Holdings Ltd., 2021 BCCA 88:

Thomson Reuters®	Customer Support
	1-416-609-3800 (Toronto & International)
	1-800-387-5164 (Toll Free Canada & U.S.)
	E-mail CustomerSupport.LegalTaxCanada@TR.com

This publisher's note may be scanned electronically and photocopied for the purpose of circulating copies within your organization.

...the presence of exceptional circumstances warranting a set aside order; prejudice should the notice of abandonment be set aside; the merits of the appeal sought to be revived; and the interests of justice. Examples of exceptional circumstances included: situations in which a party discontinues the wrong action or appeal; a misapprehension of instructions by the lawyer; abandonment procured by fraud; lack of mental capacity in the party abandoning; and an abandonment filed as part of a settlement that was subsequently repudiated.

In the result, since there had been no mistake, inadvertence or misunderstanding and it would be difficult to succeed on the merits since the issue had not been raised in the court below, Justice Pepall concluded that it was not in the interests of justice to set aside the Notice of Abandonment.

Dismissal of Summary Judgment

In 1819472 Ontario Corp. v. John Barrett General Contractors Limited, 2024 ONCA 333, the Ontario Court of Appeal took occasion to provide some practical guidance in the dismissal of a motion for summary judgment where there is ambiguity as to the basis for the decision. In this case, the Order did not make it clear whether the dismissal was because the limitation defence raised a triable issue or because the judge determined there was no such defence. That distinction was significant, because if it was decided that there was a triable issue, the order would be interlocutory and the appeal would lie to the Divisional Court. Here the record was clear that the order was based on the defence's not being available, a final decision from which the appeal lay to the Court of Appeal. The Court advised that "[As] a matter of best practice, a motion judge who intends to make a final determination on a question of fact or law ought to state the rule under which the determination has been made in the order issued."