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<p><b>O'BRIEN'S DIVISION VIII</b> <b>ONTARIO — COURT FORMS</b> by W. Bruce Drake and Christopher Wirth Release No. 1, July 2025</p>
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**What’s New in this Update:**  
This release features updates to the forms and commentary in Appendix 1 (Words and Phrases) and Appendix 2 (Terms Legislatively Defined).

**Highlights include updates to:**  
**Words and Phrases — Cause of Action Estoppel** — Cause of action estoppel prohibits a plaintiff from bringing an action against another party if the same cause of action has been determined or could have been determined in an earlier proceeding between the same parties: *Canadian National Railway Company v. The Corporation of the City of Kitchener*, 2025 CarswellOnt 705 (Ont. S.C.J.).

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**Words and Phrases — Disability** — The term “disability”, where used in respect of a person, is defined in r. 1.03(1) [of Rules of Civil Procedure]. The definition includes that the person is “mentally incapable within the meaning of section 6 or section 45 of the *Substitute Decisions Act, 1992*, S.O. 1992, c. 30 in respect of an issue in the proceeding, whether the person has a guardian or not”. The definitions of incapacity in ss. 6 and 45 of the SDA address capacity to manage property and personal care, respectively:

Pursuant to s. 6 of the SDA, a person is incapable of managing property “if the person is not able to understand information that is relevant to making a decision in the management of his or her property or is not able to appreciate the reasonably foreseeable consequences of a decision or lack of decision.”

Pursuant to s. 45 of the SDA, a person is incapable of managing their personal care “if the person is not able to understand information that is relevant to making a decision concerning his or her own health care, nutrition, shelter, clothing, hygiene or safety, or is not able to appreciate the reasonably foreseeable consequences of a decision or lack of decision.”

Medical evidence is not a pre-requisite to a finding that a person is a party under disability within the meaning of r. 1.03 and/or for the purpose of Rule 7 (*Murphy v. Carmelite Order of Nuns*, 2004 CarswellOnt 9965 (S.C.J.) at para. 12). The refusal of a party to undergo an assessment of mental capacity for the purpose of Rule 7 is a factor the court may consider on a motion for the appointment of a litigation guardian: *Auriemma et al. v. Cristoveanu*, 2023 CarswellOnt 14459 (Ont. S.C.J.).

**Words and Phrases — Frivolous** — A frivolous action is one that is readily recognizable as devoid of merit, as one having little prospect of success. Put differently, a frivolous action is one that lacks a legal basis or legal merit or has been brought without reasonable grounds. A frivolous application is one that will necessarily or inevitably fail. A vexatious application is one taken to annoy or embarrass the opposite party or is conducted in a vexatious manner: *Howell v. Cullen*, 2025 CarswellOnt 2727 (Ont. S.C.J.).

**Words and Phrases — Market Interest Rates** — Interpreting “market interest rates” to mean prejudgment interest rates or bank rates does not conform with the plain meaning of the prejudgment interest provisions of the CJA [*Courts of Justice Act*, R.S.O. 1990, c. C.43], the object, or the legislative intention with respect to these provisions, as is required under the modern rules of statutory interpretation: *Aubin v. Synagogue and Jewish Community Centre of Ottawa (Soloway Jewish Community Centre)*, 2024 CarswellOnt 12242 (Ont. C.A.).

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