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O'BRIEN'S DIVISION VIII ONTARIO — COURT FORMS by W. Bruce Drake and Christopher Wirth Release No. 3, December 2024

What's New in this Update:

This release features updates to the forms and commentary in Chapter 28 (Appeals) and Appendix 2 (Terms Legislatively Defined).

Highlights include updates to:

Appeals — Motions in Appeal Courts — Motion to Extend Time for Commencing an Appeal — In determining whether to grant an extension of time for a party to appeal, in considering the question of prejudice, it applies to prejudice arising from or perpetuated by the delay itself. Broader questions of prejudice, beyond that occasioned simply by the delay are to be considered as part of whether the justice of the case requires the extension of time. Denying litigants access to the courts for past conduct is a serious step and must be considered carefully before doing so: see *Hordo v. CAA Insurance Company*, 2023 ONSC 6774 (Ont. Div. Ct.).

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In considering prejudice to the responding party on a motion for leave to extend the time for appeal, a submission that there has been prejudice by the delay because it considers the proposed appellant to be a vexatious litigant and with whom it has been required to engage is not the sort of prejudice contemplated by the test for leave to extend the time for appeal: see *Deokaran v. Law Society of Ontario*, 2023 ONCA 602 (C.A.).

Appeals — Factum — A court has jurisdiction to reopen an appeal where it is clearly in the interest of justice to do so. While there is no jurisdictional impediment to a court reconsidering its decision when no order has been taken out and entered, a party seeking to reopen an appeal after the appeal decision has been rendered faces a high hurdle. In that regard, the court will only re-open an appeal prior to the entering of the order sparingly and only where it is clearly in the interests of justice. In *Pomata Investment Corp. (Treasure Hill Homes) v. Yang*, 2023 ONCA 618 (C.A.), the court of appeal concluded that the fact that the moving parties' counsel had failed to tell them of the appeal hearing date nor did he advise them that he did not intend to appear or that he wished to be removed as their lawyer of record and as a result they were unaware of the hearing date, and only learned that it had been heard after their appeal was dismissed, were rare circumstances in which it was appropriate for the court to re-open the appeal.

Appeals — Motion in Appeal Courts — Motion to Quash Appeal — Under Rule 2.1.01 of the *Rules of Civil Procedure*, the court may stay or dismiss an appeal if it appears to be frivolous, vexatious, or an abuse of process. In this regard, a court may, on its own initiative, stay or dismiss a motion if the motion appears on its face to be frivolous or vexatious otherwise an abuse of the process of the court. This is permitted by Rule 2.1.02 and pursuant to that rule, subrules 2.1.01(2) to (7) apply, with necessary modifications, to the making of an order under subrule (1). Use of this rule to either dismiss an appeal or a motion may only be in the clearest of cases where the abusive nature of the proceedings is apparent on the face of the pleading and there is a basis in the pleadings to support the resort to the attenuated process: see *Mehedi v. Tamlin*, 2024 ONSC 275 (Ont. Div. Ct.).

Appendix 2, Terms Legislatively Defined — The following terms, among others, were updated to account for legislative developments:

Defence; Labour Dispute; National Class Action Database

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