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O'BRIEN'S DIVISION VIII
ONTARIO — COURT FORMS
by W. Bruce Drake and Christopher Wirth
Release No. 3, December 2025

What’s New in this Update:
This release features updates Chapter 29 and Appendix 1, Words and Phrases.

Highlights include updates to:
Judicial Review — The Ontario Court of Appeal considered whether an employment screening decision made by the Toronto Police Service at the request of Toronto Community Housing Corporation in connection with an applicant’s application as a special constable could be subject to judicial review. Ultimately, the court determined that this initial security screening decision made by the Toronto Police Service was akin to a classic job reference check, concluding that although the decision was made by public bodies, the screening decision itself was not sufficiently public to render it subject to judicial review: *Khorsand v. Toronto Police Services Board*, 2024 ONCA 597 (C.A.).

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Judicial Review — The Divisional court rejected a motion to strike an application for judicial review which had been brought seeking to challenge the removal of a party's counsel before the tribunal below. It was argued that it was plain and obvious that the application would be dismissed as premature as interim decisions from administrative tribunals are not ordinarily subject to judicial review given that a fragmentation of proceedings is to be avoided and that judicial reviews of interim decisions are available only in exceptional circumstances. However, the court found that there was a reasonable basis to conclude that this was a case of exceptional circumstances such that the court should decide the application for judicial review and determine whether it was appropriate to remove the party's counsel: *Whearty v. Waypoint Centre for Mental Health Care*, 2024 ONSC 5638 (Div. Ct.).

Judicial Review — The Divisional Court considered the issue of whether to strike affidavits which the applicant was seeking to rely upon in support of its application for judicial review, the timing of when such a decision should be made, whether notices of examination which had been issued should be struck, and if not, should their scope be restricted, and whether a *subpoena duces tecum* should be struck or narrowed in its scope. With respect to the issue of striking the affidavits, the court noted that on applications for judicial review, affidavits containing material that was not before the decision-maker at first instance are not permitted and only will be allowed in narrow circumstances. Only the material that was before the decision-maker at the time the decision was made should be considered by the reviewing court. The narrow circumstances which provide exceptions were discussed in detail: *Rockcliffe Park Residents Association v. City of Ottawa*, 2024 ONSC 2690 (Div. Ct.).

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