

CITATION: Beaulnes et. al. v. Pratt, 2026 ONSC 1722

COURT FILE NO.: CV-24-97590

MOTION HEARD: 2026-02-11

SUPERIOR COURT OF JUSTICE - ONTARIO

RE: JEAN-FRANÇOIS BEAULNES, PIERRE BEAULNES and MARIE JOSÉ
BENOIT, Plaintiffs

and

DR. MELANIE PRATT, Defendant

BEFORE: Associate Justice Kamal

COUNSEL: Pierre Beaulnes, self-represented
Stephanie Pearce and Isabelle Corbeil, for the Defendant

REASONS FOR DECISION

1. At the outset, I wish to express my deep sympathy for the Plaintiffs, particularly Jean-François Beaulnes. The record before me demonstrates that Jean-François Beaulnes has experienced significant hardships and challenges over the past few years and his parents have been taking care of him.
2. Regardless of the outcome of this motion, it is important that Jean-François Beaulnes and his parents understand that the Court has carefully considered both parties' evidence and submissions before reaching a conclusion. Nothing in this decision is intended to be punitive, disrespectful, or intended to undermine Jean-François's autonomy.
3. I am cognizant of the comments of the Supreme Court's seminal disability equality case, *Eldridge v. British Columbia (Attorney General)* [1997] 3 S.C.R. 624, in which the Court unanimously held at para. 56:

It is an unfortunate truth that the history of disabled persons in Canada is largely one of exclusion and marginalization. Persons with disabilities have too often been excluded from the labour force, denied access to opportunities for social interaction and advancement, subjected to invidious stereotyping and relegated to institutions. This historical disadvantage has to a great extent been shaped and perpetuated by the notion that disability is an abnormality or flaw. As a result, disabled persons have not generally been afforded the "equal concern, respect and consideration" that s. 15(1) of the *Charter* demands [references omitted].

Overview of this Motion

4. The moving party is the Defendant, Dr. Melanie Pratt (“Dr. Pratt”), who is a dermatologist and, at the relevant time between September 2022 and September 2023, practiced with privileges at the Ottawa Hospital.
5. The Plaintiffs are Jean-François Beaulnes (“Jean-François”) and his parents, Pierre Beaulnes and Marie José Benoit (respectively “Pierre” and “Marie José”).
6. Jean-François has been described by the Plaintiff as a severely disabled self-represented litigant. He went from being a highly functional young adult, who hiked the Alps alone for weeks and defended a complex master’s thesis in Botany in 2021, to living with a severe disability for more than four and a half years of documented illness. He experiences chronic maxillofacial pain and headaches, and for approximately the past 18 months has also had significant lower-extremity pain affecting mobility. His maxillofacial condition includes pain-provoked speech limitation (speaking increases pain), making sustained oral participation medically difficult. He has also been diagnosed with Generalized Anxiety Disorder (GAD) as well as chronic pain, sleep deprivation, medication effects, and persistent fatigue. This combination produces marked stress intolerance, particularly in adversarial, live, real-time settings. These conditions have also resulted in substantial loss of professional and social functioning.
7. Dr. Pratt brings a motion under Section 105 of the *Courts of Justice Act* for an order compelling the self-represented Plaintiff, Jean-François, to undergo a capacity assessment to determine if he has the capacity to self-represent in this action.
8. The Plaintiffs brings a cross-motion seeking the following relief:
 - a. An Order recognizing that the primary issue is disability-related functional limitation affecting the format of participation, and that the appropriate remedy is procedural accommodation and case-management directions, not a compelled assessment.
 - b. An Order that, to the greatest extent feasible, Jean-François Beaulnes’ participation proceed in a written and asynchronous manner, including:
 - (a) discovery steps involving Jean-François Beaulnes proceed by written questions and written answers (including interrogatories or another written mechanism directed by the Court), with timelines calibrated to medical limits; and
 - (b) case conferences and case-management attendances, insofar as they require Jean-François Beaulnes’ participation, proceed on the written record or by another non-oral, asynchronous method for him.
 - c. Case-management directions to move the action forward fairly and efficiently, including:
 - (a) a timetable for completion of productions;

- (b) a timetable and format for discovery;
 - (c) directions regarding the format and timing of future steps involving Jean-François Beaulnes; and
 - (d) such further directions as are appropriate.
- d. Directions to ensure accuracy of the record relied upon for any capacity-related narrative, including access to the official audio recording and/or transcript (if available) of the October 6, 2025, case conference, and restrictions on any inconsistent characterization of what was said at that attendance.
9. Although the Court is mindful that the request for a capacity assessment is opposed by the Plaintiffs, the evidence before me raises sufficient concern about Jean-François's capacity such that an independent assessment is both necessary and appropriate.
10. The purpose of directing a capacity assessment is not punitive, nor is it intended to undermine Jean-François' autonomy. Rather, it is intended to obtain reliable, impartial, and professional information that will assist the Court in ensuring that Jean-François' interests are properly protected and that any further proceedings are conducted appropriately. This assessment will ensure Jean-François' fair participation in this action. An independent assessment will confirm whether he has capacity to continue participating in the process as a self-represented litigant. For these reasons, I am satisfied that ordering a capacity assessment at this stage is in the interests of justice and will assist both the Court and the parties in moving the matter forward in a manner that is just and respectful of Jean-François' rights.
11. The request for Jean-François to participate in this proceeding in a written and asynchronous manner would result in undue hardship because it would unduly impact the fairness of the proceeding, jeopardize the integrity and orderly administration of the process, would not be feasible to implement, materially prejudice the Defendant's ability to present or test the evidence, and would significantly disrupt the court's ability to manage the proceeding.
12. For the reasons that follow, the Defendant's motion is granted, and the Plaintiffs' motion for an accommodation for Jean-François to participate in this proceeding in a written and asynchronous manner is dismissed without prejudice to return an appropriate accommodation request after the completion of the capacity assessment. The Plaintiffs' request for the transcript and audio recording of the October 6, 2025 case conference is dismissed. The Plaintiffs' request for case management directions is to be addressed after the completion of the capacity assessment.

Law and Analysis

13. This motion raises two issues:

- a. whether the Court should order Jean-François to attend and participate in a virtual capacity assessment with Dr. Regan Gale on a date mutually agreeable to Jean-François and Dr. Gale, but no later than June 30, 2026; and
- b. whether the Court should order a procedural accommodation and case-management directions, instead of a compelled assessment. If so, whether those accommodations be that Jean-François Beaulnes' participation in this action proceeds in a written and asynchronous manner.

Issue 1: Capacity Assessments

14. The Court's authority to order an assessment is grounded in s. 105 of the *Courts of Justice Act (CJA)*.

15. Section 105(2) of the *CJA* provides as follows:

Where the physical or mental condition of a party to a proceeding is in question, the court, on motion, may order the party to undergo a physical or mental examination by one or more health practitioners.

16. Section 105(3) provides that where the question of a party's physical or mental condition is first raised by another party, an order for a mental examination shall not be made unless a two-part threshold has been met. First, the allegation of mental incapacity must be relevant to a material issue in the proceeding. Second, there must be good reason to believe that there is substance to the allegation. See also *Agyemang v. The Great-West Life et al.*, 2024 ONSC 3295, at paras. 15-16 and *626381 Ontario Ltd. v. Kagan, Shastri*, 2013 ONSC 4114 at para. 35.

17. In *Abrams v. Abrams*, [2008] O.J. No. 5207, at para. 53, Justice Strathy (as he then was), stated that to determine whether the intrusive nature of a compelled psychological assessment is justified in all the circumstances, the motions judge should have regard to a non-exhaustive list of factors which include:

- a. The threshold requirements of s. 105(3), namely that the subject's capacity is in issue and that there are good reasons to believe the subject lacks capacity;
- b. The nature and circumstances of the proceedings in which the issue is raised;
- c. The nature and quality of the evidence before the court as to the person's capacity and vulnerability to exploitation;
- d. Whether the assessment will be necessary in order to decide the issue(s) before the court;
- e. Whether any harm will be done if an assessment does not take place;
- f. Whether there is any urgency to the assessment; and
- g. The wishes of the person sought to be examined, taking into account his or her capacity.

See also *Licursi v. Bank of Montreal*, 2026 ONSC 944 at para. 44.

18. In considering whether to order an assessment, whether on motion or on its own initiative, a court must balance the affected party's fundamental rights against the court's duty to protect the vulnerable. The appointment of an assessor to conduct what is essentially a psychiatric examination is a substantial intervention into the privacy and security of the individual. See *Abrams v. Abrams*, [2008] O.J. No. 5207 (S.C.J.) at para. 50.
19. The party seeking the assessment must prove that the Court should order the capacity assessment. See *Agyemang v. The Great-West Life et al.*, 2024 ONSC 3295, at para. 14.
20. It must be remembered that at the outset of litigation, an individual is presumed to have capacity. A person is under a “disability” under Rule 1.03 if he is mentally incapable within the meaning of section 6 or 45 of the *Substitute Decisions Act*, 1992 S.O. 1992, c.30 (“SDA”), in respect of an issue in the proceeding. See section 2 of the *Substituted Decisions Act (SDA)* and *Safee-Basir v. Wernham*, 2022 ONSC 6792, at paras. 6–7.
21. Sections 6 and 45 of the *SDA* define a mentally incapable person as one who is not able to understand information that is relevant in making a decision in the management of his or her own property, or is not able to appreciate the reasonably foreseeable consequences of the decision or lack of decision. See *Chung v. Dale*, 2018 ONSC 1820 at para. 12.
22. Section 105 of the *CJA* also permits the consideration of whether a physical condition of a party to a proceeding is in question.
23. The concept of global incapacity does not exist. Capacity may only be restricted in relation to specific choices or categories of choices. A person could be incapable in one area but not another. Furthermore, there are distinct tiers for certain decisions or classes of decisions. For example, the ability needed to represent oneself in court is greater than that needed to manage property or provide legal advice. See *Susan Eng v. Elizabeth Eng*, 2021 ONSC 464 at para. 15 and *Lummack v Campbell et. al.*, 2016 ONSC 3294 at para. 35.
24. To be able to represent oneself in court, a person must fully understand a number of concepts, such as the minimal decisions or choices that must be made, acted upon them, and recognize the implications of those actions. This is basically the capacity to evaluate risks and take into account a range of outcomes, both favourable and unfavourable. See *Huang v. Braga*, 2016 ONSC 6306 at para. 19 and *Torok v Toronto Transit Commission*, 2007 CanLII 15479 (ON SC) at para. 40.
25. Similarly, in assessing litigation capacity, the Court will take into account whether the person is able to comprehend the minimal decisions and choices that must be made, understand the implications of those decisions, understand the nature of the proceedings, and manage the litigation in other ways, such as by selecting and retaining counsel, differentiating between pertinent and irrelevant issues, and avoiding false beliefs about the law or court procedures that result from incapacity. See *Chung* at para. 29.

26. The Court may draw on multiple sources of information in determining whether there is a sufficient basis to order an assessment (and ultimately whether a litigation guardian is required), including medical or psychological evidence, evidence from persons who know the litigant well, the litigant's appearance and demeanour, the litigant's testimony, and the opinion of the litigant's own counsel. See *Chung* at para. 29; *Auriemma et al. v. Cristoveanu*, 2023 ONSC 5072, at paras. 37–38; *Costantino v Costantino*, 2016 ONSC 7279, at para. 58.

A. The question of mental capacity is relevant to a material issue in the action

27. On September 17, 2024, a Statement of Claim was issued under Court File No. CV-24-00097175-0000, naming Jean-François as the sole plaintiff and Dr. Pratt as the sole defendant. The pleading listed Pierre Beaulnes as Jean-François' "representative." Counsel for the Defendant advised Pierre that he was not permitted to act as his son's "representative".
28. The Plaintiffs then delivered a Fresh as Amended Statement of Claim proposing to add Pierre and Marie José as additional plaintiffs. In that pleading, the Plaintiffs described Pierre and Marie José as Jean-François' "primary caregivers." Counsel for the Defendant explained to the Plaintiffs that consent or leave of the Court is required to add parties to a lawsuit and asked if Jean-François had the capacity to represent himself, given the statement regarding his "caregivers".
29. The Plaintiffs, then, served a Notice of Discontinuance in that action and did not respond to the capacity query.
30. A second Statement of Claim was issued with Court File No. CV-24-0097590-0000 (this is the current action) and named Jean-François, Pierre and Marie José as plaintiffs.
31. In this action, the Plaintiffs make various allegations in negligence against Dr. Pratt related to the medical care and treatment she provided to Jean-François.
32. Specifically, the Plaintiffs seek general damages in the amount of \$600,000 to compensate Jean-François for the profound and ongoing physical and emotional pain, suffering, and distress caused by Dr. Pratt's misdiagnosis and prolonged mistreatment. They also seek special damages in the amount of \$500,000 to compensate Jean-François for the significant financial losses and career disruptions directly resulting from Dr. Pratt's misdiagnosis and prolonged mistreatment. They also seek damages under the *Family Law Act* in the amount of \$300,000 to compensate Jean-François's parents for the profound emotional distress, financial burden, and loss of personal well-being they have endured as a result of Dr. Pratt's misdiagnosis and the subsequent prolonged mistreatment of their son. They also seek aggravated damages in the amount of \$500,000 for the intensified emotional, psychological, and non-pecuniary harm suffered by Jean-François due to Dr. Pratt's negligent conduct. Finally, they seek punitive damages in the amount of \$1,000,000 to address the systemic failure that allowed Dr. Pratt to continue practicing despite clear evidence of multiple instances of egregious medical malpractice.

33. In the Fresh as Amended Statement of Claim, Jean-François' psychological capacity is repeatedly raised. The Plaintiffs plead that Jean-François has experienced "severe psychological distress", anxiety, depression and suicidal ideation, and that he has experienced a loss of independence and reliance on his parents for his basic needs.
34. In correspondence during the conduct of the litigation, the Plaintiffs have stated that Jean-François is "incapable" of managing the proceeding, and that he cannot attend video conferences or participate in oral examinations for discovery.
35. The question of mental capacity is relevant to a material issue in the lawsuit, and the Defendants have satisfied this prong of the test.
36. The pleadings also raise Jean-François' physical conditions as an issue in this case. The materials indicate that Jean-François' physical mental conditions are intertwined.

B. Good reason to believe that the litigant cannot manage the lawsuit on their own

37. The "good reason to believe" requirement demands more than speculation; it requires a foundation demonstrating a genuine concern that the litigant may be unable to understand the litigation and make decisions necessary to move it forward. See *Agyemang*, at paras. 15-16.
38. An assessment may be ordered where the litigant's own statements and conduct in the litigation bring their capacity at issue and demonstrate a lack of understanding of the proceeding and an inability to move the action forward. See *Agyemang*, at paras. 16-19
39. The Plaintiffs submitted that the record does not demonstrate that Jean-François cannot understand and appreciate the litigation. However, the test is not whether it is already established that Jean-François cannot manage the lawsuit. The question is whether there is *good reason to believe* that Jean-François cannot manage the lawsuit on his own.
40. The evidence before me demonstrates the following:
 - a. The plaintiffs wrote in the first action that Pierre was Jean-François' "representative";
 - b. The Plaintiffs plead that Pierre and Mari José are Jean-François' "caregivers" in the Fresh as Amended Statement of Claim;
 - c. The Plaintiffs submitted to the court in their case conference memorandum dated April 16, 2025 that due to Jean-François' "poor psychological and mental condition", he is incapable of "managing the proceeding";
 - d. The Plaintiffs submitted to the court in their case conference memorandum of September 29, 2025 that Jean-François could not attend the case conferences due to long-standing chronic pain, sleep deprivation, and medication side effects;
 - e. The Plaintiffs have commented on Jean-François' physical and mental health limitations, including two suicide attempts, resulting in him not being able to participate in the litigation (chronic pain, mental health issues, etc.); and

- f. Jean-François has not attended either Case Conference (despite Rule 50.13(2) requiring parties to attend a Case Conference).
41. The Plaintiffs rely on a disability certificate and a note from Jean-François' family physician, which describes his physical limitations and confirms that he receives disability benefits.
 42. However, the Plaintiffs appear to conflate disability with litigation capacity. A person may be disabled yet still have the capacity to understand and instruct in litigation and therefore may not be "a party under a disability" within the meaning of the *Rules*.
 43. Under the *Rules*, the term "Party Under a Disability" refers to a party who is under the age of 18 or to a party who is mentally incapable within the meaning of section 6 or 45 of the *SDA*, in respect of an issue in the proceeding. An individual may *have* physical or psychological disabilities without meeting the definition of being a "Party Under a Disability" per the *Rules*.
 44. The documents submitted by the Plaintiffs demonstrate that Jean François has been deemed to have a disability for tax purposes within the province of British Columbia. This is a distinct legal test and has no bearing on whether Jean-François is a "party under a disability" per Rule 7.
 45. In the present case, the issue is capacity and its relation to this litigation, particularly in relation to being able to self-represent. A self-represented litigant must be able not only to understand information and make decisions, but also to participate meaningfully in the procedural steps required to advance an action.
 46. If Jean-François cannot attend case conferences, motions, examinations, or trial, whether in person or remotely, he cannot, on his own, participate in this litigation in a meaningful way. A written/asynchronous process (as requested by the Plaintiffs) is not compatible with the obligations of a self-represented party.
 47. Up until now, including at two case conferences and this motion, Jean-François has not attended, and Pierre has been attending to make submissions on behalf of all Plaintiffs.
 48. Counsel for the Defendants raised concerns that Pierre may be conducting elements of the litigation on Jean-François' behalf without the appropriate legal appointment to do so.
 49. In Ontario, only licensed lawyers can represent clients in the Ontario Superior Court of Justice. Section 1(1) of the *Solicitors' Act* R.S.O. 1990 c. 1, which prohibits non-lawyers from representing others in Court. Further, section 26.1(1) of the *Law Society Act* R.S.O. 1990 c. L.8, which prohibits non-licensees from practising law or providing legal services. See *Solicitors' Act* R.S.O. 1990 c. s. 1(1) and *Law Society Act* R.S.O. 1990 c. L.8, s. 26.1(1).
 50. Rule 15.01(1) of the *Rules* requires that a party to a proceeding, other than a corporation, may act in person or be represented by a lawyer. However, a party to a proceeding who is under a disability or acts in a representative capacity shall be represented by a lawyer.

51. While capable individuals are entitled to act in person (i.e. self-represent), they are not permitted to just have anyone else (a non-lawyer) represent them. Those who are acting in a representative capacity (i.e. on behalf of a corporation, an estate, or a party with a disability) must have a lawyer.
52. As per Rule 7, a party under a disability shall be represented by a litigation guardian. A litigation guardian is required, under Rule 7.05, to diligently attend to the interests of the person under disability and take all steps necessary for the protection of those interests.
53. Therefore, it is not appropriate, nor is it permitted under the *Rules*, for Pierre to act as *de facto* representative for Jean-François without authority.
54. This is also a relevant and serious consideration to believe that the litigant cannot manage the lawsuit on their own.
55. Accordingly, there is good reason to believe that Jean-François cannot manage the litigation on his own because the evidence raises issues related to his mental and physical capacity as well as concerns about Jean-François' ability to meaningfully participate in the litigation as a self-represented litigant.

C. The nature and circumstances of the proceedings in which the issue is raised

56. The procedural history of this proceeding provides a window to look deeper into the circumstances of this case.
57. A case conference was scheduled for April 28, 2025.
58. On April 16, 2025, the Plaintiffs served a 49-page Memorandum for Case Management in which they asserted that Jean-François' "poor psychological and mental condition" rendered him incapable of "managing the proceeding." The Plaintiffs proposed that Pierre and Marie José would withdraw as plaintiffs, that Pierre "holds Power of Attorney" for Jean-François, and that Pierre consequently intended to seek appointment as Jean-François' litigation guardian. No medical documentation or other evidence establishing any litigation capacity findings for Jean-François was provided.
59. Only Pierre attended the case conference and sought to speak on behalf of all Plaintiffs.
60. At this case conference, I directed the Plaintiffs to advise by May 12, 2025 whether they intended to bring a motion to appoint a litigation guardian for Jean-François, and, if so, to bring that motion by June 30, 2025.
61. On May 7, 2025, the Plaintiffs delivered a "Notice to the Court and Counsel" confirming they would not be bringing such a motion.
62. A further case conference was scheduled for October 6, 2025.
63. The Plaintiffs submitted another memorandum wherein they, once again, brought up Jean-François' inability to represent himself in this litigation. In their case conference materials, the Plaintiffs took the position that Jean-François could not attend case conferences in person due to long-standing chronic pain, sleep deprivation, and medication side effects.

They requested permission for Pierre to attend the case conference on Jean-François' behalf. The Plaintiffs further sought guidance from the Court, explaining that they have not pursued the appointment of a litigation guardian given an inability to retain counsel.

64. At the case conference, counsel for Dr. Pratt proposed that Jean-François undergo a capacity assessment to determine whether he can self-represent in this action. Pierre agreed to the assessment; however, I noted that Jean-François' own consent was required. The process for the assessment was discussed, and I endorsed that counsel for Dr. Pratt would retain the assessor, who would then contact Jean-François directly to seek and obtain his consent to participate in the assessment.
65. On October 7, 2025, Jean-François advised the Defendant that he would not consent to a capacity assessment, asserting that his "disability" had already been established by the Government of British Columbia and his family physician.
66. The next day, on October 8, 2025, he indicated he would agree to a Zoom assessment, but only on specified conditions, including that it be limited to litigation capacity, not to "re-determine disability," and proceed largely on a records-based footing.
67. On October 10, 2025, counsel for Dr. Pratt confirmed that the necessary steps were being taken to retain the capacity assessor, and they were confirming the assessor's availability.
68. Pierre then wrote both the Court and counsel for Dr. Pratt, raising serious concerns regarding Jean-François' health, stating that he had had a marked clinical deterioration, and that after having read the October 6, 2026 endorsement, it caused Jean-François to collapse due to a sudden loss of muscle tone, an interrupted suicide attempt, and rapid unintentional weight loss.
69. Later on October 16, 2025, Pierre wrote to counsel for Dr. Pratt at 6:55 p.m. advising that Jean-François had attempted suicide. That same evening at 9:56 p.m., Jean-François wrote to confirm his consent to proceed with the capacity assessment contemplated by the October 6, 2025 endorsement.
70. Counsel for Dr. Pratt retained Dr. Reagan Gale to conduct a virtual capacity assessment and, because Jean-François resides in British Columbia, took steps for Dr. Gale to obtain the necessary temporary B.C. registration. Counsel then established a secure TitanFile channel to facilitate the exchange of materials for the assessment and provided the retainer letter and expert brief. Counsel for Dr. Pratt advised the Plaintiffs that they could also provide the documents they felt were relevant to Dr. Gale's assessment via the TitanFile channel.
71. After Dr. Gale obtained the temporary licence, her office proposed scheduling the assessment for March 5, 2026, and followed up regarding logistics. Jean-François subsequently advised the Court and counsel for Dr. Pratt that he would not participate in any live or real-time assessment and requested that the matter proceed on a written/asynchronous basis. Dr. Gale confirmed the temporal limits of her temporary registration (a 30-day consecutive practice window triggered by the initial assessment

date), and counsel for Dr. Pratt ultimately advised Jean-François that, in light of his refusal, a motion would be brought to compel his attendance at a capacity assessment.

72. In my view, the circumstances that led to these proceedings, and the Plaintiffs' conduct during the proceeding demonstrate that a capacity assessment is required in this case.

D. The nature and quality of the evidence as to the person's capacity and vulnerability to exploitation

73. The evidence before me is that there are concerns with respect to Jean-François' mental capacity as well as his physical ability to participate in these proceedings.

74. Section 105 of the *CJA* specifically allows the court to consider the physical or mental condition of a party to determine whether to order the party to undergo a physical or mental examination.

75. This consideration requires the court to examine both the type of evidence presented and its reliability and probative value. In the present case, the evidence before me includes medical documents presented by the Plaintiffs regarding Jean-François' medical conditions. However, the evidence also includes Jean-François' own lack of participation in the proceedings and Pierre's conduct in the proceeding. In my view, taken together, this evidence raises concern that could be sufficiently addressed through a capacity assessment.

76. The court must also consider whether the evidence demonstrates that the person may be vulnerable to exploitation or undue influence. Given that an order for a capacity assessment intrudes upon an individual's autonomy and privacy, the court must be satisfied that the evidence is of sufficient quality and substance to justify such an order.

77. In the present case, a capacity assessment would protect Jean-François and safeguard his vulnerabilities. The assessment may result in further safeguards, including the appointment of a litigation guardian and the involvement of counsel, if appropriate, so that Jean-François' interests are protected and the litigation proceeds in a fair and efficient manner.

E. Whether the assessment will be necessary in order to decide the issue(s) before the court

78. The assessment will be necessary to move this proceeding forward, and then in order to decide the issues.

79. There have already been two case conferences focused on dealing with the capacity issues. These issues have not been resolved.

80. This litigation will remain at a standstill until the capacity issue is addressed. Therefore, a capacity assessment is necessary to decide the issues before the court.

F. Whether any harm will be done if an assessment does not take place

81. This consideration requires the court to evaluate the potential consequences of declining to order an assessment. The court must consider whether the absence of an assessment could expose the person to financial loss, undue influence, neglect, or other forms of harm that might otherwise be prevented through the protection of a capacity assessment.
82. This factor reflects the court's obligation to balance respect for an individual's autonomy with the need to protect vulnerable persons, as well as the benefits afforded by such an assessment.
83. In the present case, there are concerns not only of Jean-François' ability to actively participate in the proceeding, but also whether he is able to direct the proceeding. A capacity assessment is required to confirm Jean-François' ability to actively participate in and direct this proceeding. A capacity assessment will also ensure that, if he lacks litigation capacity, the appropriate safeguards are put in place. Those safeguards would include the appointment of a litigation guardian and the involvement of counsel, so that Jean-François' interests are protected and the litigation proceeds in a manner that protects his interests.
84. There is significant risk of harm to Jean-François' rights and the administration of justice if the assessment does not take place.

G. Whether there is any urgency to the assessment

85. In my view, the litigation is on hold until this issue is decided. The urgency stems from the need to move this matter forward.

H. The wishes of the person sought to be examined, taking into account his capacity

86. Jean-François' wishes with respect to the assessment have vacillated throughout the proceeding.
87. As Jean-François did not attend the motion, his wishes were not properly ascertained.
88. Since the case conference on October 6, 2025, Jean-François has both consented and opposed participating in the capacity assessment.
89. While Jean-François provided an affidavit in this motion stating that he had capacity, he did not provide evidence regarding his wishes regarding the assessment.
90. Furthermore, there are concerns regarding whether Jean-François is actually directing this litigation, including whether he authored the affidavit free from any influence.
91. Accordingly, I am unable to appropriately ascertain Jean-François' wishes, nor am I able to give them appropriate weight.

I. Conclusion re: Jean-François' Capacity Assessment

92. The evidence before me raises enough concerns about Jean-François' capacity that an independent assessment is both required and appropriate, even though I am mindful that Jean-François has been opposed to the request for a capacity assessment at times. Requiring a capacity assessment is not meant to be punitive or to compromise Jean-François' independence. Instead, it is a purposeful process intended to ensure credible expert information that will help the Court ensure Jean-François' interests are safeguarded and that any subsequent procedures are carried out appropriately and respectfully.
93. In my view, the issue of capacity must be addressed before the proceeding can continue.
94. In addition to being in his best interests, this is required to preserve the integrity of the legal process.
95. For these reasons, I am satisfied that ordering a capacity assessment at this point serves the interests of justice and will help the Court and the parties proceed in a way that is fair and considerate of each party's rights.
96. However, the assessor should understand Jean-François' abilities and requests for accommodations. Therefore, to the extent possible, the assessor should try to accommodate Jean-François' participation in the assessment after considering his accommodation requests in this motion and the medical evidence provided in this motion. Specifically, to the extent possible, the assessor should try to accommodate Jean-François' participation in the assessment in a written and asynchronous manner. This is not intended to mean there will be no live interactions between the assessor and Jean-François; however, Jean-François' accommodation requests must be seriously considered and incorporated into the assessment process.

Issue 2: The Plaintiffs' Accommodations Request and Procedural Orders

97. In addition to seeking to dismiss the Defendant's request for a capacity assessment, the Plaintiffs submit that the proper remedy is procedural accommodation (rather than a compelled assessment). The Plaintiffs ask that Jean-François' participation in this proceeding occur in written, asynchronous formats where possible.
98. The Plaintiffs seeks an accommodation request *instead of* a capacity assessment.
99. While the Plaintiffs say "where possible" in their Notice of Motion, the submissions (both written and oral) imply that Jean-François is unable to participate in any way that is not a written and asynchronous format.
100. Specifically, the Plaintiffs seek an order that Jean-François' participation proceed in a written and asynchronous manner, including a written discovery process, and asynchronous and written participation in case conferences.
101. I appreciate the importance of an accessible court system. When people with disabilities attempt to participate in the legal system as parties, witnesses, judges, lawyers, court employees, jurors, or observers, obstacles to full access to the system may operate against them.

102. The right to equality for persons with disabilities includes a right to have disability-related needs reasonably accommodated, up to the point of undue hardship, to ensure that persons with disabilities can fully participate in and benefit from services and facilities available to the public.
103. Canadian law firmly establishes the right of people with disabilities to access to significant public institutions, including the legal system. Section 15 of the *Canadian Charter of Rights and Freedoms* upholds the fundamental right to equality before and under the law, as well as the right to equal protection and benefits under the law, free from discrimination based on physical or mental disabilities. Section 1 of the *Ontario Human Rights Code*, a statute that is almost constitutional in scope, supplements the *Charter* by guaranteeing that everyone has the right to equitable treatment with regard to services *and* facilities without discrimination because of disability.
104. My role in considering the request for accommodation as a cross-motion to the request for assessment involves a two-step inquiry:
 - a. Determine whether the requested accommodations cause undue hardship; and
 - b. Determine whether the accommodation request should be ordered prior to the capacity assessment.

A. Undue Hardship

105. In the context of court proceedings, undue hardship is when a sought disability-related accommodation will place a significant or disproportionate burden on the court or compromise the fairness or integrity of the legal system. Courts are generally required to provide reasonable accommodations to ensure meaningful access to justice, but they are not required to grant accommodations that would fundamentally alter the nature of the proceeding or create excessive difficulty.
106. In assessing whether undue hardship arises, the Court must consider the impact of the proposed accommodation on the fairness of the hearing, the integrity and orderly administration of the process, the feasibility of implementation, and the availability of alternative measures that may address the identified needs. An accommodation that would materially prejudice another party's ability to present or test the evidence, or that would significantly disrupt the court's ability to manage the proceeding, may constitute undue hardship.
107. In the present case, the accommodation request has two main components:
 - a. Jean-François' participation in this proceeding occur only in writing, and
 - b. Jean-François' participation in this proceeding be asynchronous – in other words, he would not need to attend any live court attendances, whether virtual or in-person.

108. The evidence before me includes evidence from Jean-François' treating physician. The evidence outlines that Jean-François has difficulty speaking as the vibrations involved in speech cause him substantial pain. As a result, he can only whisper to communicate, which makes verbal communications exceedingly difficult and exhausting. Jean-François also has considerable difficulty with mobility due to pain in his lower extremities. Even mild stressors can trigger severe reactions, including a complete loss of muscle tone and overwhelming suicidal ideation. However, Jean-François' treating physician states that he thrives in environments where communication is written and can be processed at his own speed, free from stress induced by real-time engagement. The physician recommends that live communication of any kind, whether in person or via voice, is detrimental to Jean-François' health, as it severely exacerbated both his anxiety and physical pain. All of his communications, interactions, and tasks should be conducted in writing to accommodate his condition and allow him to function effectively.
109. So far in this proceeding, Jean-François has not attended any court appearances. However, Jean-François has filed materials on this motion and has responded to correspondence from the Defendant's counsel.
110. In my view, the accommodation request for Jean-François' participation to be exclusively through writing and asynchronous communication causes undue hardship.
111. Firstly, the requested accommodations would impact the fairness of the proceeding in a negative and undue manner. While certain aspects of the proceeding may be conducted asynchronously and in writing, it would procedurally be unfair for a proceeding of this kind that is exclusively in writing and asynchronous. For example, if this matter reaches a trial, it would undermine the integrity and orderly administration of the trial process. It would procedurally be unfair not to allow oral submissions for any motions. The Court would not be able to conduct an effective pre-trial conference or assist with settlement discussions.
112. As a related point, the implementation of the accommodation request is not feasible in our system. We do not have the resources within the Court, either judicial resources or staff, to facilitate a process in which the judiciary would be able to conduct everything in writing and asynchronously. It would require an inordinate amount of resources for every motion, every case management conference, the pre-trial conference, and the trial to be conducted in writing and asynchronously. The resources required for this would amount to an undue hardship. Such an accommodation would significantly disrupt the court's ability to manage the proceeding.
113. Furthermore, a written-only process is not generally compatible with the process in the *Rules of Civil Procedure*.
114. The accommodation request would also materially prejudice the Defendant's rights, including the ability to present or test the evidence. While written interrogatories are sometimes appropriate, the entire litigation cannot be done in writing. At some point, the Defendant will need to cross-examine Jean-François to be able to test his credibility and make submissions regarding credibility. Furthermore, a process that is exclusively in

writing and asynchronous for Jean-François would lead to undue and unreasonable additional expenses for the Defendant.

115. There is evidence that the Plaintiffs have relied on Artificial Intelligence tools, including Large Language Models (LLMs), to assist with drafting and editing materials in this litigation. This raises a further concern about Jean-François' lack of live participation in this matter, and instead relying exclusively on written evidence and written submissions, and his request to only proceed asynchronously. The Defendant is entitled to a fulsome examination for discovery of the Plaintiffs, without the use of assistive artificial intelligence technology.
116. The purposes of discovery are: (a) to enable the examining party to know the case he has to meet; (b) to procure admissions to enable one to dispense with formal proof; (c) to procure admissions which may destroy an opponent's case; (d) to facilitate settlement, pre-trial procedure and trials; (e) to eliminate or narrow issues; (f) to avoid surprise at trial. See *Ontario Bean Producers' Marketing Board v. W. G. Thompson & Sons Ltd.; Farm Products Marketing Board, Third Party*, 1981 CanLII 1799 (ON SC).
117. Discovery is intended to enable the examining party to know the case it must meet, to assess the strengths and weaknesses of the opposing party's case and its own case, and to obtain admissions for use at trial. See *Jeffrey v. Open Storage*, 2024 ONSC 634, at para. 45 and *Ciardullo v. Premetalco Inc.*, 2009 CanLII 45445 (ON SC), at para. 19.
118. The discovery process would be compromised, and the Defendant's rights prejudiced, if discovery were conducted solely in writing and asynchronously, especially given the concerns about the Plaintiffs' use of AI. Allowing AI to assist in answering discovery questions would undermine the integrity of the process and run contrary to the fundamental purposes of discovery.
119. I acknowledge the importance of ensuring that all parties are able to participate meaningfully in these proceedings and recognize the Court's obligation to consider reasonable accommodations where appropriate. However, based on the materials submitted and the circumstances of this matter, the Court is not satisfied that the requested accommodation has been shown to be proportionate, feasible or appropriate. The accommodation requested at this time would result in an undue hardship. The Court, therefore, respectfully declines to grant the accommodation request for Jean-François' written and asynchronous participation at this time.

B. The Accommodation Request is Premature

120. In light of the order above that Jean-François shall participate in a capacity assessment, the accommodation request is premature. The litigation is now essentially on hold until the capacity assessment is completed. It is more appropriate for the capacity assessment to occur first. Then, the accommodation request may be reconsidered, with the benefit of the evidence from the capacity assessment.

121. The capacity assessment is a method to assist the court and the parties in determining the fair and just manner for Jean-François' participation.
122. Therefore, I am dismissing the accommodation request without prejudice that Jean-François may renew the accommodation request after the capacity assessment has been completed and should additional information or supporting documentation become available that would assist the Court in further assessing the necessity and scope of the accommodation sought. The Plaintiffs may seek a modified accommodation request having consideration for the concerns raised in this decision and the outcome of the capacity assessment.
123. The accommodation request should not be an "all or nothing" approach. For example, it may not be appropriate for *only* written and asynchronous participation. In this regard, after the capacity assessment is completed, the parties shall schedule a case conference before me to determine next steps. This will include whether an accommodation is still required. At a case conference, the court and counsel will be able to creatively find solutions to balance the needs of rights of all parties to address any accommodations required. If the issue cannot be resolved at the case conference, the Plaintiffs may renew their motion.

C. Procedural Orders Requested

124. The Plaintiffs also sought an order regarding case management and access to the recording of the October 6, 2025 case conference. Specifically, they seek an order for a timetable for completion of productions, a timetable and format for discovery and directions regarding the format and timing of future steps involving Jean-François Beaulnes. In light of the order above regarding Jean-François' capacity assessment, it is premature to set a timetable at this time.
125. I am prepared to case-manage this matter, and the parties shall schedule a case conference before me after the capacity assessment has been completed.
126. The request for the recording of the case conference is denied. The official record of a conference is the endorsement prepared by the presiding judge or associate judge. Discussions taking place at conferences are otherwise privileged and confidential. Although a reporter was present and the proceeding was recorded, such recordings at conferences are for the use of the presiding judicial official, similar to his or her own notes. As such, transcripts are not available. I am not satisfied that there is a specific reason to produce the transcript or audio recording of the case conference.

Conclusion

127. In my view, a motion to appoint an assessment under section 105 of the *Courts of Justice Act* should be granted where there is a legitimate question about a party's capacity to participate in the proceeding, rather than relying solely on a disability accommodation. Section 105 empowers the court to order an independent medical or psychological

assessment when capacity is in issue, allowing the court to obtain objective expert evidence regarding whether the individual can instruct counsel, understand the nature of the litigation, and make decisions in their own interests. While disability accommodations are designed to facilitate meaningful participation for individuals who retain legal capacity, they do not resolve uncertainty about whether a party actually possesses the capacity required to conduct litigation. An assessment ensures the court receives reliable evidence to protect the fairness and integrity of the proceeding, prevent potential prejudice to all parties, and determine whether additional measures (such as the appointment of a litigation guardian) may be necessary.

128. The capacity assessment also protects the rights and interests of that party.
129. Accordingly, where capacity is genuinely in doubt, an assessment under section 105 is an appropriate and proportionate step before the court considers accommodations alone.
130. For the foregoing reasons, I grant the following order:
 - a. The Plaintiff, Jean-François Beaulnes, shall attend and participate in a virtual capacity assessment with Dr. Regan Gale, capacity assessor, on a date that is mutually agreeable to both Jean-François Beaulnes and Dr. Gale, but before June 30, 2026.
 - b. To the extent possible, Dr. Regan Gale should try to accommodate Jean-François' participation in the assessment after considering his accommodation requests in this motion and the medical evidence provided in this motion. Specifically, to the extent possible, Dr. Regan Gale should try to accommodate Jean-François' participation in the assessment in a written and asynchronous manner.
 - c. The Plaintiffs' request for an accommodation for Jean-François to participate in this proceeding in a written and asynchronous manner is dismissed without prejudice to return an appropriate accommodation request after the completion of the capacity assessment.
 - d. The Plaintiffs' request for the transcript and audio recording of the October 6, 2025 case conference is dismissed.
 - e. The parties shall schedule a case conference before me after the capacity assessment has been completed.

Associate Justice Kamal

DATE: March 20, 2026