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<p><b>ORKIN ON THE LAW OF COSTS</b> <b>Mark M. Orkin</b> <b>Robert G. Schipper</b> <b>Release No. 8, December 2024</b></p>
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This is a unique looseleaf service that covers all costs issues in legal proceedings, with relevant decisions analyzed and rules of court and tariffs referenced for every jurisdiction. This practical all-in-one resource provides coverage of the awarding and fixing or assessment of costs between party-and-party and between solicitor-and-client; costs in both civil and criminal proceedings; and costs awards in bankruptcy and insolvency proceedings and construction liens.

**What’s New in this Update**

This release includes updates to Chapter 1. Classification of Costs and Chapter 2. Party-and-Party Costs.

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## Highlights

- **Solicitor-and-Client Costs—Other Matters—Interim Accounts**—The appellants appealed the motion judge’s decision setting aside an assessment order under the *Solicitors Act* (Ont.) [the Act] dated October 3, 2018 as statute-barred and ordering them to pay the respondents’ outstanding fees [relating to the last three unpaid accounts]. The matter came before the motion judge as a result of the respondents challenging the jurisdiction of the assessment officer at the outset of the scheduled assessment, on October 1, 2021, on the basis that the reference for assessment of at least some of the accounts was statute-barred. That question turned, in part, on whether the accounts were final or interim. The assessment officer referred the issue of whether the accounts were final or interim to a judge for directions. The Court of Appeal in this case found that the assessment order was statute-barred as it related to the first 29 of the 32 invoices. The Court of Appeal referred the last three invoices for assessment and found that the motion judge committed legal errors in her analysis regarding the last three invoices: *Crosslink Bridge Corp. v. Fogler Rubinoff LLP*, 2024 ONCA 230 (Ont. C.A.).
- **Security for Costs—Appeals—General**—In this Ontario Court of Appeal decision, the justice heard motions for security for costs of the appeal. The appellants on the appeal had borrowed considerable sums from the responding parties and gave them mortgages over two properties. The mortgages went into default. The properties were sold under power of sale. The proceeds were paid into court after payment of the first mortgages and related expenses. The responding parties appealed the judgment of the motion judge who ordered payment of the monies paid into court to the moving parties in satisfaction of their respective mortgages and several outstanding costs orders that the responding parties failed to pay. The moving parties’ motions for security for costs of the appeal were heard together. There is no automatic entitlement to security for costs of an appeal under rule 61.06 of the Rules of Civil Procedure (Ont.). Even when the criteria under rule 61.06 are met, a motion judge may refuse to make the order. In determining whether to exercise discretion to make the order, “the overarching principle to be applied to all the circumstances is the justness of the order sought”. The moving parties relied on rule 61.06 (1)(a),(b) and (c). In this case, if not frivolous and vexatious, the responding parties’ grounds of appeal had a very low prospect of success. Moreover, even if the responding parties had sufficient assets to pay appeal costs as they alleged, their past failures to pay their mortgages and the outstanding costs orders demonstrated that

they would not voluntarily pay appeal costs and that it would be “nearly impossible to collect” those costs. The motion justice stepped back “to consider the justness of the order holistically, examining all the circumstances of the case and guided by the overriding interests of justice to determine whether it was just that the order be made.” Having reviewed all the circumstances the motion justice concluded that it was just that the order be made. Accordingly, responding parties were ordered to post security for costs of the appeal in the aggregate amount of \$35,605.12: *Rathod v. Chijindu*, 2024 CarswellOnt 5907 (Ont. C.A.).