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ORKIN ON THE LAW OF COSTS

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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 2 (Party-and-Party Costs), Chapter 3 (Solicitor-and-Client Costs), Chapter 4 (Costs of Motions), Chapter 5 (Security Costs), 8 (Appeals), Chapter 11 (Costs in the Federal Court) and Chapter 14 (Costs in the Family Court and the Small Claims Court).

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Highlights

- **Solicitor-and-Client Costs—Charging Orders—General**—This was an application in the Ontario Superior Court of Justice by the applicant law firm for a charging order against the respondents. The personal respondent was a former client of the applicant. The applicant was originally retained by the personal respondent in order to pursue both tort and accident benefits claims. There was a breakdown in the solicitor-client relationship. According to the applicant, the personal respondent attempted to resolve her AB claim directly with her insurance company. No tort claim had been commenced and it appeared likely that none would be commenced. The court determined that the applicant should not be entitled to a charging order against the respondents. The application was dismissed. The personal respondent signed a retainer agreement with the applicant. Under this agreement, the applicant was to pursue the personal respondent's claim for benefits under the Statutory Accident Benefits Schedule ("SABS"). Under the retainer agreement there was a provision that addressed disbursements as a first charge. That provision stated: "We have the right to be reimbursed for these disbursements as a first charge on any amount you recover under an award of settlement of the matter". [para. 5]. There was also a provision in the agreement directing that funds received from the settlement of the matter had to be sent to the applicant and placed in trust with them. In addition, the agreement also provided that the applicant had a right to recover disbursements and legal fees in the event that the retainer agreement was terminated before the case was concluded. In reviewing the law, the judge stated, "For a solicitor to be entitled to a lien under this section [section 34 of the Act], there would have to be a Superior Court action that the solicitor had prosecuted or defended. By statute, the SABS claim must be brought before the License Appeal Tribunal. As a result, a SABS claim cannot be the subject of a charging order under the Solicitors Act." [Citation omitted] [Paragraph 14]. if there were an assignment of SABS benefits from the client to the applicant, that assignment would be void. Therefore, even if I am wrong about whether the criteria for a charging lien has been met, I would exercise my discretion and refuse the request for the lien. The Court should not grant an equitable remedy that would circumvent the legislative intention to limit assignments of benefits." [para. 22]: *Alam Law Firm Professional Corporation v. Roberts et al*, 2025 CarswellOnt 2206 (Ont. S.C.J.).
- **Security for Costs—When Security will be Ordered—Plaintiff Residing Out of Jurisdiction—General**—The Supreme Court of Prince Edward Island heard argument

regarding a motion for security for costs brought by the defendant, Air Canada, against the plaintiff, a resident of the United States of America. The motion was brought under rule 56.01 of the Rules of Civil Procedure (P.E.I.). The action arose out of injuries suffered by the plaintiff while she was boarding a flight at the Charlottetown Airport. The plaintiff had no assets in the Province. The plaintiff was employed as a medical secretary at a doctor's office in New Jersey. This case mostly centred on the interpretation of what constituted an accident within the meaning of the Montréal convention. Based on the record, the judge was satisfied that the plaintiff could point to an interaction by the carrier that provided a link in a claim of causation resulting in her falling off the aircraft and suffering bodily injury. Accordingly, the judge found in the circumstances that the plaintiff had met the onus of showing, on a *prima facie* basis that there was merit to her claim. It was up to the trial to decide if she was ultimately successful. The court was of the view that the plaintiff had a good chance of success on the merits. In the circumstances, requiring her to provide security for costs simply because she resided out of the jurisdiction did not provide her with that access to justice which she deserved as an individual who sustained bodily harm while in Prince Edward Island: *Freid v. Air Canada*, 2024, A.C.W.S. 4755 (P.E.I.S.C.).