

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
(DIVISIONAL COURT)**

B E T W E E N:

MARGARITA CASTILLO

Applicant

and

XELA ENTERPRISES LTD., TROPIC INTERNATIONAL LIMITED, FRESH  
QUEST INC., 696096 ALBERTA LTD., JUAN GUILLERMO GUTIERREZ, and  
CARMEN S. GUTIERREZ, Executor of the Estate of Juan Arturo Gutierrez

Respondents

AND IN THE MATTER OF THE RECEIVERSHIP OF XELA ENTERPRISES LTD.

**RESPONDENT'S FACTUM**

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TO: **THE SERVICE LIST**

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**TABLE OF CONTENTS**

	<b>Page No.</b>
<b>PART I - INTRODUCTION.....</b>	<b>1</b>
<b>PART II - SUMMARY OF FACTS .....</b>	<b>2</b>
(i) Background to the Receiver’s Appointment.....	2
(ii) The Receivership .....	3
(iii) The Conduct of the Receivership Proceedings .....	3
(iv) The Receiver Schedules the Security for Costs Motion Expeditiously .....	6
(v) The Motion Judge’s Decision.....	7
<b>PART III - STATEMENT OF ISSUES, LAW &amp; AUTHORITIES.....</b>	<b>9</b>
A. CONFLICTING DECISIONS TEST .....	10
(i) There are no Conflicting Decisions .....	10
(A) The Jurisdiction of the Court to Grant Security for Costs .....	11

(B)	No Conflicting Decisions.....	12
(ii)	It is not Desirable that Leave to Appeal be Granted.....	15
B.	PUBLIC IMPORTANCE TEST.....	15
(i)	There is no Good Reason to Doubt the Correctness of the Security for Costs Order .....	16
(A)	Paragraph 33 of the Appointment Order.....	16
(B)	The Application of r. 56.01(1)(c).....	16
(C)	The Recusal Motion is Frivolous and Vexatious.....	17
(D)	Mr. Gutierrez Appears to Have Insufficient Assets in Ontario .....	18
(E)	Mr. Gutierrez Failed to Establish that he is Impecunious.....	19
(ii)	The Proposed Appeal Does not Involve Matters of Public Importance .....	20
	<b>PART IV - ORDER REQUESTED.....</b>	<b>21</b>

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**RESPONDENT'S FACTUM**

**PART I - INTRODUCTION**

1. The moving party, Juan Guillermo Gutierrez, seeks leave to appeal an Order of McEwen J. (the "**Motion Judge**") requiring Mr. Gutierrez to post security for costs in respect of Mr. Gutierrez' motion to replace KSV Restructuring Inc. ("**KSV**") (the "**Recusal Motion**") as the Court-appointed receiver of Xela Enterprises Ltd. ("**Xela**").
2. Mr. Gutierrez' factum on the motion for leave to appeal does not even mention the test for leave to appeal an interlocutory order, and as such does not even attempt to meet it.
3. The Motion Judge appropriately awarded security for costs against a person seeking to remove the Receiver in the context of a receivership. The motion for leave to appeal should be dismissed with costs:

- (a) there are no conflicting decisions about whether a receiver is entitled to security for costs in these circumstances;
- (b) it is not desirable for leave to appeal to be granted to the moving party, who has been found to be in contempt of this Court, who has advanced numerous frivolous appeals, and who has asserted various unsupported conspiracy claims against the Receiver;
- (c) there is no good reason to doubt the correctness of the Order of the Motion Judge, who has been case managing the proceeding and whose decision is entitled to deference; and
- (d) the proposed appeal involves no matters of public importance.

## **PART II - SUMMARY OF FACTS**

### ***(i) Background to the Receiver's Appointment***

4. In 2015, after an oppression remedy application, the Court ordered Mr. Gutierrez, Xela, and others to pay the Applicant (Margarita Castillo) \$4.25 million<sup>1</sup> plus \$889,858.21 in costs (collectively with the \$4.25 million judgment, the "**Judgment Debt**").<sup>2</sup> In 2016, this Court dismissed Mr. Gutierrez' appeal of the Judgment Debt.<sup>3</sup>

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<sup>1</sup> October 28, 2015 Judgement of Newbould J. re oppression and costs award, Respondent's Compendium ("**RC**"), Tab 1

<sup>2</sup> December 21, 2015 Order of Newbould J. re costs award, RC, Tab 2

<sup>3</sup> December 30, 2016 Order of the Divisional Court re dismissal of appeal, RC, Tab 3

5. From 2017 to 2018, the Applicant (not the Receiver, as suggested by Mr. Gutierrez<sup>4</sup>) recovered \$1,568,293.37.<sup>5</sup> However, the majority of the Judgment Debt was (and is) outstanding.

**(ii) The Receivership**

6. In January 2019, the Applicant commenced an application to appoint a receiver and manager over Xela. No application was brought (or granted) to appoint a receiver over Mr. Gutierrez personally.

7. In June 2019, Mr. Gutierrez commenced a competing application on behalf of Xela for protection under the *Companies' Creditors Arrangement Act* ("CCAA"). On July 5, 2019, McEwen J. dismissed Mr. Gutierrez' CCAA application and granted Ms. Castillo's receivership application. KSV was appointed as the Receiver of Xela (the "**Appointment Order**").<sup>6</sup>

**(iii) The Conduct of the Receivership Proceedings**

8. These receivership proceedings have involved a number of motions requiring Mr. Gutierrez to comply with Orders of the Court, and a number of allegations by Mr. Gutierrez against the Receiver and the "cousins", all of which are reflected on a summary basis in the Motion Judge's endorsement.

9. In 2021, the Receiver brought a motion to compel Mr. Gutierrez to provide passwords to certain devices on which were contained Xela's documents and records, obtain investigative powers, and other relief (the "**Investigative Powers Motion**"). Mr. Gutierrez opposed the

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<sup>4</sup> Factum of the Appellant on this motion for leave to appeal ("**FAP**"), at para. 105

<sup>5</sup> January 14, 2019 Excerpt of Affidavit of Margarita Castillo, at para. 43, Exhibit C to the Affidavit of Grace Tsakas (the "**Tsakas Affidavit**") sworn November 15, 2022, JGG MR, Tab 5C, pp. 905-906, RC, Tab 4

<sup>6</sup> July 5, 2019 Order of McEwen J. Appointing the Receiver (the "**Appointment Order**"), RC, Tab 5

motion,<sup>7</sup> making various allegations against the Receiver. In granting the Receiver’s Investigative Powers Motion, the Court found that the Receiver had acted in a “neutral” manner.<sup>8</sup> In making the related costs order his Honour stated that Mr. Gutierrez raised certain issues (relating to the “cousins”), which had “already been litigated and dealt with in my previous endorsements.”<sup>9</sup>

10. Mr. Gutierrez has a history of seeking numerous, unsuccessful appeals in this receivership—including using appeals to re-litigate issues, which have significantly impacted the costs of this proceeding and delayed the advancement of the receivership:

- (a) Mr. Gutierrez sought leave to appeal the March 25, 2021 Order arising from the Receiver’s Investigative Powers Motion. This Court dismissed his motion for leave to appeal on July 9, 2021;<sup>10</sup>
- (b) nearly a year later, on March 2, 2022, the Motion Judge directed Mr. Gutierrez to comply with His Honour’s prior Orders relating to production. Mr. Gutierrez did not immediately comply;<sup>11</sup>
- (c) instead, on March 25, 2022, Mr. Gutierrez sought to schedule a motion for an injunction preventing the enforcement of the March 25, 2021 Order.<sup>12</sup> The draft notice of motion advanced a conspiracy claim against the Receiver and alleged

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<sup>7</sup> February 22, 2021 Excerpt of Affidavit of Mr. Gutierrez, at paras. 23-108, Exhibit G to the Tsakas Affidavit, JGG MR, Tab 5G, pp. 964-1000, RC, Tab 6; March 18, 2021 Responding Factum of Mr. Gutierrez, at paras. 7 and 31, Exhibit H to the Tsakas Affidavit, RC, Tab 7

<sup>8</sup> March 25, 2021 Endorsement of McEwen J. re various issues, and unofficial transcription, RC, Tab 8; March 25, 2021 Order of McEwen J. re various issues, RC, Tab 9

<sup>9</sup> July 28, 2021 Endorsement of McEwen J. re Costs, and unofficial transcription, RC, Tab 10

<sup>10</sup> July 9, 2021 Endorsement of the Divisional Court re leave to appeal orders, RC, Tab 11

<sup>11</sup> March 2, 2022 Endorsement of McEwen J. re productions and contempt motion, RC, Tab 12

<sup>12</sup> March 25, 2022 Notice of Motion of Mr. Gutierrez, Exhibit I to the Tsakas Affidavit, RC, Tab 13

(without evidence) that “the Receiver is coordinating with the” cousins.<sup>13</sup> The Motion Judge declined to schedule this motion;

- (d) on March 25, 2022, the Motion Judge ordered Mr. Gutierrez to comply with the Investigative Powers Order made a year earlier;<sup>14</sup>
- (e) on March 28, 2022, Mr. Gutierrez brought a motion in this Court to stay the March 25, 2022 Order.<sup>15</sup> No stay was granted;
- (f) on March 31, 2022, Mr. Gutierrez brought a motion in this Court for leave to appeal the March 25, 2022 Order;<sup>16</sup> and
- (g) on April 29, 2022, Mr. Gutierrez abandoned his motion for leave to appeal the March 25, 2022 Order.<sup>17</sup> He still did not comply with the Motion Judge’s prior Orders at that time.

11. Also in 2021, the Receiver brought a motion to hold Mr. Gutierrez in contempt of Court for swearing a declaration (the “**Declaration**”) in support of a criminal complaint against the Receiver’s representatives in Panama. At the same time, Mr. Gutierrez served a notice of motion seeking to replace KSV as the Receiver of Xela (the “**February 9<sup>th</sup> Notice of Motion**”).<sup>18</sup> The February 9<sup>th</sup> Notice of Motion again contained various allegations against the Receiver.

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<sup>13</sup> March 25, 2022 Notice of Motion of Mr. Gutierrez, at para. g, Exhibit I to the Tsakas Affidavit, JGG MR, Tab 5I, RC, Tab 13

<sup>14</sup> March 25, 2022 Endorsement of McEwen J. re compliance with earlier orders, RC, Tab 14, and unofficial transcription, RC, Tab 15; March 25, 2022 Order of McEwen J. re Compliance with Production Orders, Issued and Entered, RC, Tab 16

<sup>15</sup> March 28, 2022 Notice of Motion of Mr. Gutierrez, Exhibit J to the Tsakas Affidavit, JGG MR, Tab 5J, RC, Tab 17

<sup>16</sup> March 30, 2022 Notice of Motion of Mr. Gutierrez, Exhibit K to the Tsakas Affidavit, JGG MR, Tab 5K, RC, Tab 18

<sup>17</sup> Tsakas Affidavit, at para. 20, JGG MR, Tab 5, RC, Tab 19

<sup>18</sup> February 9, 2021 Notice of Motion of Mr. Gutierrez, Exhibit F to the Tsakas Affidavit, JGG MR, Tab 5F, RC, Tab 20



12. On June 29, 2022, Conway J. held Mr. Gutierrez in contempt of the Appointment Order for swearing the Declaration. Her Honour noted that Mr. Gutierrez has a history of showing an “astounding lack of respect for this court.”<sup>19</sup>

13. On July 25, 2022, the parties and the Receiver attended a case conference before the Motion Judge. Mr. Gutierrez sought to schedule a recusal motion. His Honour declined to schedule the motion based on r. 60.12 of the *Rules of Civil Procedure*. His Honour provided these reasons:

1. Mr. Gutierrez has not served a Notice of Motion (although he has provided a draft);
2. costs remain outstanding (although he has promised to pay);
3. a finding of civil contempt has been made against Mr. Gutierrez by Justice Conway by way of her June [29, 2022] decision; and
4. significantly Mr. Gutierrez has still, inexplicably, failed to comply with my production orders, long outstanding, nor did he provide any explanation in his case conference brief for failing to do so, or at the hearing for that matter.<sup>20</sup>

14. Subsequently, Mr. Gutierrez paid his outstanding costs order. On the eve of the penalty hearing in the contempt proceedings, Mr. Gutierrez provided passwords to his devices, thereby complying with past production Orders.<sup>21</sup> Because he had finally complied with Court orders (although the contempt order remained in place), it opened up the door for the Court to consider whether to schedule the Recusal Motion.

***(iv) The Receiver Schedules the Security for Costs Motion Expeditiously***

15. On September 27, 2022, further to a case conference, the Motion Judge scheduled both the Recusal Motion (on January 18, 2023) and the Receiver’s security for costs motion (the “**Security**

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<sup>19</sup> *Castillo v. Xela Enterprises Ltd.*, 2022 ONSC 5594, at [para. 37](#)

<sup>20</sup> July 25, 2022 Endorsement of McEwen J. re refusal to schedule motion, RC, Tab 21

<sup>21</sup> Tsakas Affidavit, at para. 21, JGG MR, Tab 5, RC, Tab 19

**for Costs Motion**”), which is the subject of this motion for leave to appeal. The Security for Costs motion materials were delivered in November 2022 in accordance with the timelines set out in the *Rules of Civil Procedure*.

(v) ***The Motion Judge’s Decision***

16. On December 1, 2022, the Motion Judge granted the Receiver’s Security for Costs Motion, requiring Mr. Gutierrez to post security in the amount of \$100,000 (the “**Security for Costs Order**”) prior to advancing the Recusal Motion.

17. In his decision, the Motion Judge noted:

- (a) the Receiver was not directly pursuing any claims;<sup>22</sup>
- (b) Mr. Gutierrez had not delivered an affidavit in support of his allegations of misconduct against the Receiver;<sup>23</sup>
- (c) a law clerk and a forensic investigator swore affidavits in support of Mr. Gutierrez motion, alleging that the Receiver had mishandled data that Mr. Gutierrez was ordered to produce. However, that allegation was not in the notice of motion for the Recusal Motion;<sup>24</sup>
- (d) Mr. Gutierrez had recently been found in civil contempt by Conway J.<sup>25</sup> and
- (e) the Prosecutor in Panama closed its case against the Receiver’s lawyers in Panama.<sup>26</sup>

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<sup>22</sup> December 1, 2022 Endorsement (RC, Tab 22) and Unofficial Transcription of McEwen J. re motion for security for costs (“**Endorsement re Security for Costs**”), at para. 4, RC, Tab 23

<sup>23</sup> Endorsement re Security for Costs, at para. 4, RC, Tab 23

<sup>24</sup> Endorsement re Security for Costs, at para. 4, RC, Tab 23

<sup>25</sup> Endorsement re Security for Costs, at para. 4, RC, Tab 23

<sup>26</sup> Endorsement re Security for Costs, at para. 4, RC, Tab 23

18. Based on those findings, the Motion Judge applied the law and granted the Receiver's Security for Costs Motion (the "**Security For Costs Order**"). In doing so, the Motion Judge considered and rejected each of the arguments that Mr. Gutierrez re-argues on this motion for leave to appeal.

19. His Honour concluded that he had jurisdiction based on a purposeful reading of s. 101 of the *Courts of Justice Act* as well as rr. 1.04(1) and 56.01 of the *Rules of Civil Procedure*. The Motion Judge noted that Mr. Gutierrez' position, if accepted, would result in an absurd outcome: "a court officer ... could face any number of spurious motions brought directly against it and have no recourse to ask for security for costs."<sup>27</sup>

20. The Motion Judge held that r. 56.01(1)(c) applied, and the test was met. Mr. Gutierrez is a judgment debtor with an unpaid costs award to the Applicant, who is funding the receivership.<sup>28</sup>

21. The Motion Judge held that r. 56.01(1)(e) applied, and the test was met.

- (a) There is good reason to believe that the Recusal Motion is frivolous and vexatious. Mr. Gutierrez has delivered no affidavit and is re-litigating issues.<sup>29</sup> The complaints about the handling of data are not contained in any form of notice for the Recusal Motion;<sup>30</sup> and

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<sup>27</sup> Endorsement re Security for Costs, at para. 12, RC, Tab 23

<sup>28</sup> Endorsement re Security for Costs, at paras. 16-17, RC, Tab 23

<sup>29</sup> Endorsement re Security for Costs, at paras. 18-23, RC, Tab 23

<sup>30</sup> Endorsement re Security for Costs, at para. 23, RC, Tab 23

- (b) There is also good reason to believe that Mr. Gutierrez has insufficient assets in Ontario,<sup>31</sup> and Mr. Gutierrez failed to deliver any evidence that he was impecunious, which was his onus.<sup>32</sup>

### **PART III - STATEMENT OF ISSUES, LAW & AUTHORITIES**

22. The moving party frames the issues on this motion as whether the motion judge erred in ordering security for costs. That is not the test on this motion for leave to appeal.

23. The issues on this motion are whether:

- (a) there is a conflicting decision on the matter in the proposed appeal and whether it is desirable that leave to appeal be granted; or
- (b) whether there is good reason to doubt the correctness of the order and whether the appeal involves matters of such importance that leave to appeal should be granted.<sup>33</sup>

24. The moving party makes no argument that the issues on this appeal rise to the level of importance that leave to appeal should be granted. Instead, at best, it appears that the moving party relies upon r. 62.02(4)(a), which requires both that there be a conflicting decision on the matter addressed in the proposed appeal and that it is desirable that leave to appeal be granted.

25. There are no conflicting decisions, which address the unique circumstances of this appeal. Even if the cases which are raised by the moving party can be said to be in conflict, there is no reason leave to appeal should be granted in this case.

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<sup>31</sup> Endorsement re Security for Costs, at para. 26, RC, Tab 23

<sup>32</sup> Endorsement re Security for Costs, at para. 27, RC, Tab 23

<sup>33</sup> *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, at r. [62.02\(4\)](#)

26. The test for leave to appeal is “onerous”.<sup>34</sup> It must be “applied strictly”.<sup>35</sup> “Leave should not be easily granted”.<sup>36</sup> The rule is a “rigorous screening mechanism that is designed to narrow the number of interlocutory decisions that qualify for appellate review”.<sup>37</sup>

## A. CONFLICTING DECISIONS TEST

### (i) *There are no Conflicting Decisions*

27. Mr. Gutierrez asserts that there are “numerous conflicting Superior Court decisions” about whether a receiver is entitled to security for costs.<sup>38</sup> However, Mr. Gutierrez refers to no conflicting decisions and cites no cases with similar facts.

28. To succeed on a motion for leave to appeal, it is “essential” that the applicant satisfies the Court that there is a conflicting decision. A conflicting decision is one where “there is a difference in the principle chosen as a guide to the exercise of a Judge’s discretion.”<sup>39</sup> A motion judge, who is exercising their discretion based on different facts, is not making a “conflicting decision.”<sup>40</sup>

29. Absent a conflicting decision, the moving party cannot establish a basis for leave to appeal under r. 62.02(4)(a).

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<sup>34</sup> *Bell Expressvu Limited Partnership v. Morgan* (2008), 67 C.P.C. (6th) 263, 2008 CanLII 63136 (Ont. Sup. Ct. J. (Div. Ct.)) (“*Bell Expressvu*”), at [para. 1](#)

<sup>35</sup> *Blake v. Blake*, 2019 ONSC 5724, at [para. 33](#)

<sup>36</sup> *Belokon v. The Kyrgyz Republic*, 2016 ONSC 995, at [para. 9](#)

<sup>37</sup> *Silver v. Imax Corp.*, 2013 ONSC 6751, at [para. 34](#) (internal quotation marks deleted); referring to *Lloyd v. Economical Mutual Insurance Co.* (2008), 168 A.C.W.S (3d) 1070, 2008 CanLII 38364, at [para. 29](#) (Ont. Sup. Ct. J.)

<sup>38</sup> FAP, at para. 2(f)

<sup>39</sup> *Laurence v. Bridge*, 2016 ONSC 7324 (“*Laurence*”), at [para. 21](#); *Ramsey v. Weisenbacher*, 2012 ONSC 6938 (“*Ramsey*”), at [para. 14](#)

<sup>40</sup> *Laurence*, at [para. 22](#)

**(A) The Jurisdiction of the Court to Grant Security for Costs**

30. Rule 56.01 provides that the Court, on a motion, may make such an order for security for costs. Mr. Gutierrez asserts that he is a respondent in these proceedings and that the Court has no jurisdiction to order him to pay security for costs for steps in a proceeding taken against him.<sup>41</sup>

31. In particular, he relies upon the Court in *Blenkarn, Roche v. Beckstead*<sup>42</sup>, in which the Court holds that there is “no *inherent* power to order security for costs.” The conclusion in *Blenkarn* is not at all inconsistent with the decision of the Motion Judge. The Motion Judge does not rely upon any inherent jurisdiction of the Court but instead relies upon s. 101 of the *Courts of Justice Act*.

32. In addition, although not referred to in the Motion Judge’s decision, r. 56.09 of the *Rules of Civil Procedure* provides explicit jurisdiction for security for costs to be awarded against any party, despite rr. 56.01 and 56.02, where the Court has a discretion to impose terms as a condition of granting relief.

33. Under both r. 1.05 and s. 101 of the *Courts of Justice Act*, the Court is given a broad discretion to grant such orders and to impose such terms as are just.<sup>43</sup>

34. Rule 56.09 has been resorted to as a measure of fairness or where a party wishes to take a step in the proceeding that might cause the Court “deep concern”.<sup>44</sup> The Motion Judge exercised

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<sup>41</sup> FAP, at paras. 31-49

<sup>42</sup> *Blenkarn, Roche v. Beckstead*, [1995] O.J. No. 2777, 57 A.C.W.S. (3d) 924, Book of Authorities of the Respondent, The Receiver, Tab 1

<sup>43</sup> Rule 1.05 When making an order under these rules the court may impose such terms and give such directions as are just; s. 101 (1) In the Superior Court of Justice, an interlocutory injunction or mandatory order may be granted or a receiver or receiver and manager may be appointed by an interlocutory order, where it appears to a judge of the court to be just or convenient to do so. (2) An order under subsection (1) may include such terms as are considered just.

<sup>44</sup> See *1917196 Ontario Ltd. v. Kazmi*, 2022 ONSC 2289 (“*Kazmi*”), at [paras. 19-21](#)

his discretion to order security for costs here, and his use of discretion in such circumstances is not reviewable on a motion for leave to appeal.<sup>45</sup>

35. Section 101 of the *Courts of Justice Act* allows the Court to oversee a receivership and to protect the company in receivership—including protecting it from the costs of frivolous motions.<sup>46</sup> The Court has discretion, when it deems appropriate, to impose terms in a receivership that permit “the orderly execution of [the receiver’s] duties without concern that [the receiver] will be subject to needless litigation”.<sup>47</sup> The Security for Costs Order was part and parcel to the Court’s discretion to further these purposes, with an ultimate view to achieving the mandate of the receivership on such terms as were considered just.<sup>48</sup>

36. The remainder of the cases relied upon by Mr. Gutierrez as conflicting on the issue of jurisdiction are neither similar on their facts nor circumstances. For example, *Société Sepic S.A.*,<sup>49</sup> relied upon by Mr. Gutierrez,<sup>50</sup> related to applications for leave to appeal, with facts very far removed from the circumstances here.<sup>51</sup>

### **(B) No Conflicting Decisions**

37. Mr. Gutierrez relies on cases which state that there is “no jurisdiction to award security for costs against a defendant” and which provide that “no one can be required to post security for costs to defend themselves.”<sup>52</sup>

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<sup>45</sup> *Whitty v. Wells*, 2016 ONSC 2266, at [para. 29](#)

<sup>46</sup> *General Electric Canada Real Estate Financing Holding Co. v. Liberty Assisted Living Inc.*, 2011 ONSC 4704, at [paras. 15-16](#); *Akagi v. Synergy Group (2000) Inc.*, 2015 ONCA 368 (“*Akagi*”), at [para. 67](#)

<sup>47</sup> *Potentia Renewables Inc. v. Deltro Electric Ltd.*, 2019 ONCA 779 (“*Potentia*”), [para. 50](#)

<sup>48</sup> *Trez Capital Limited Partnership v. Dr. Bernstein*, 2018 ONSC 6771, at [para. 25](#)

<sup>49</sup> *Société Sepic S.A. v. Aga Stone Ltd. (1995)*, [1995 CanLII 1891](#) (ON CA), 21 O.R. (3d) 542 (“*Société Sepic*”)

<sup>50</sup> FAP, at para. 33

<sup>51</sup> *Di Paola, Re*, [2006] O.J. No. 4381, [2006 CanLII 37117](#) (ON CA) (“*Di Paola*”)

<sup>52</sup> FAP, at paras. 32-49

38. Mr. Gutierrez' argument relies almost entirely on the basis that he is a "defendant" or "respondent" and that defendants or respondents cannot be ordered to pay security for costs. Those cases do not apply because Mr. Gutierrez is not a defendant and the Receiver is not a claimant.

39. Receivers "are Officers of the Court. They are not litigants in the ordinary sense... They function as fiduciaries to multiple parties with disparate interests."<sup>53</sup> The Receiver is not an applicant or claimant by fulfilling its duties pursuant to the Appointment Order and other orders.<sup>54</sup>

40. All "persons" are required to cooperate with the Receiver pursuant to the Appointment Order, not just Mr. Gutierrez. The Receiver is not a receiver over Mr. Gutierrez<sup>55</sup>, but instead in respect of a company, Xela, in which Mr. Gutierrez is a shareholder.

41. In the context of the Xela receivership, in bringing the Recusal Motion, Mr. Gutierrez is a moving party or claimant on a motion.<sup>56</sup> He cannot declare himself a respondent or assert that he is simply "defending himself" when he is asserting claims of misconduct against the Receiver and its counsel.<sup>57</sup>

42. Since Mr. Gutierrez is not a respondent, none of the cases he relies upon are conflicting for the purposes of meeting the test for a motion for leave to appeal.<sup>58</sup>

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<sup>53</sup> *Jethwani v. Damji*, 2017 ONSC 1702, at [para.8](#)

<sup>54</sup> Appointment Order, at paras. 5-7, RC, Tab 5; August 28, 2020 Order of McEwen J. re Production of Documents, RC, Tab 24; October 27, 2020 Order of McEwen J. re Protocol to image Mr. Gutierrez's devices, RC, Tab 25; October 27, 2020 Order of McEwen J. re imaging servers under ATS' controls, RC, Tab 26; March 25, 2021 Order of McEwen J. re Investigative Powers and Fees, RC, Tab 9

<sup>55</sup> A personal Receivership would be an entirely different Receivership. See the discussion in *Akagi*, at [paras. 69-71](#)

<sup>56</sup> *Kramer Henderson Sidlofsky LLP v. Monteiro*, 2009 CanLII 38513, 98 O.R. (3d) 286 ("**Kramer**"), at [paras. 18-23](#) (ON SC)

<sup>57</sup> *Toronto Dominion Bank v. Szilagyi Farms Ltd.*, (1988) 65 O.R. (2d) 433, [1988 CanLII 4745](#) (ON CA) does not apply because Mr. Gutierrez is not a respondent and is not, in any event, "simply defending" himself.

<sup>58</sup> Mr. Gutierrez cites the following cases, none of which assist: in *Ogunlesi v. Talon International Inc.*, [2019 ONSC 1798](#), a counterclaim did not turn a respondent into a claimant; in *Donaldson International Livestock Ltd. v.*



43. Mr. Gutierrez claims that the trial judge erred in relying upon *Di Paola*, a case in which security for costs was awarded in the context of a motion in a bankruptcy proceeding.<sup>59</sup> There was no error in relying upon *Di Paola* to conclude that the moving party on a motion in a bankruptcy or receivership is a claimant for the purposes of r. 56.01. In any event, *Di Paola* is not a conflicting decision (nor does Mr. Gutierrez argue that it is a conflicting decision) with the result that the argument has no bearing on a motion for leave to appeal.

44. The same is true for *Kramer Henderson Sidlofsky LLP v. Monteiro*. No argument is made that the decision is conflicting—just that the decision was incorrectly applied. To the contrary, *Kramer*, a case in which the Court concludes a client on a costs assessment is a “claimant” for the purpose of r. 56.01, simply provides further support for this Court to conclude that there was a good reason for the Court to exercise its discretion to award security for costs in this case.

45. Like the bankruptcy proceedings in *Di Paola*, and the assessment proceedings in *Kramer*—receivership proceedings are proceedings to which r. 56 applies, and security for costs are available in appropriate circumstances.<sup>60</sup> There is no conflicting caselaw on this point.

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*Znamensky Selektionno-Gibridny Center LLC*, [2010 ONCA 137](#), a plaintiff in the underlying action was a respondent on appeal. Succeeding at first instance did not transform them into a claimant when they responded to the defendant’s appeal; and in *Willets v. Colalillo*, [2007] O.J. No. 4623, [2007 CanLII 51174](#) (ON SC) (“*Willets*”), the Court declined to grant security for costs against an individual who was not a party to the proceedings and had not personally brought any motions; in *Georgian (St. Lawrence) Lofts Inc. v Market Lofts Inc.*, [2006] O.J. No. 4797, [2006 CanLII 40490](#) the Court held that security for costs could not be sought in response to the appeal of an arbitration award.

<sup>59</sup> FAP, at paras. 57-64

<sup>60</sup> *Kramer*, at [paras. 18-22](#) (ON SC); *Di Paola*, at [para. 12](#)

**(ii) *It is not Desirable that Leave to Appeal be Granted***

46. It is not desirable that leave to appeal be granted. For it to be “desirable”, the issues involved must involve a question of general or public importance that requires appellate review.<sup>61</sup>

The issues must extend beyond the interests of the parties before the Court.<sup>62</sup>

47. Mr. Gutierrez has made no argument that the issues extend beyond the interest of the parties before the Court, because there is no such argument to be made.

48. Absent a conflicting decision, or any reason for it to be desirable for leave to appeal to be granted, the motion for leave to appeal must fail under r. 62.02(4)(a).

**B. PUBLIC IMPORTANCE TEST**

49. The other ground upon which this Court may grant leave is if “there is good reason to doubt the correctness of the order in question and the proposed appeal involves matters of such importance” that leave to appeal should be granted.<sup>63</sup>

50. Mr. Gutierrez does not argue this branch of the test. However, his re-argument of certain issues may fall under the first part of the public importance test, and the Receiver has analyzed it this way to assist the Court.

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<sup>61</sup> Ramsey, at [para. 15](#), citing *Rankin v. MacLeod, Young, Weir Ltd.*, [1986] O.J. No. 2380, 1986 CanLII 2749 (ON SC) (“*Rankin*”), at [para. 13](#)

<sup>62</sup> Ramsey, at [para. 15](#), citing *Rankin*, at [para. 13](#)

<sup>63</sup> *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, at r. [62.02\(4\)](#); *Laurence*, at [para. 30](#), citing *Bell ExpressVu*, at [paras. 1-3](#)

**(i) *There is no Good Reason to Doubt the Correctness of the Security for Costs Order***

**(A) *Paragraph 33 of the Appointment Order***

51. Mr. Gutierrez says that the Appointment Order prohibited the Receiver from bringing the Security for Costs Motion because security for costs was not an enumerated right or condition, at paragraph 33 of the Appointment Order, for a motion to replace the Receiver.<sup>64</sup>

52. In *GMAC Commercial Credit Corp. Canada v. TCT Logistics Inc.*, upon which Mr. Gutierrez relies, the Court deleted the security for costs provision contained in the order appointing the receiver.<sup>65</sup> Making security for costs a condition in *every* motion to vary an appointment order is far different than hearing and granting a security for costs motion, properly made, in these circumstances.

53. In any event, the Motion Judge's interpretation of the Appointment Order is an application of law to facts, which the Court of Appeal has held to be entitled to deference.<sup>66</sup>

54. It was reasonable for the Motion Judge to place equitable guardrails on what is another attempt to interfere with the Receiver's mandate.

**(B) *The Application of r. 56.01(1)(c)***

55. Mr. Gutierrez argues that the Receiver does not have an outstanding costs order against him. He argues that r. 56.01(1)(c) only applies where the moving party has an outstanding order against the party from whom they are seeking security for costs.<sup>67</sup>

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<sup>64</sup> FAP, at paras. 52-56

<sup>65</sup> *GMAC Commercial Credit Corporation - Canada v. T.C.T. Logistics Inc.*, 2006 SCC 35, at [para. 26](#)

<sup>66</sup> *Boily v. Carleton Condominium Corporation 145*, 2014 ONCA 574, at paras. [54-58](#), [64-70](#), applying *Sweda Farms Ltd. v. Ontario Egg Producers*, 2011 ONSC 3650, at [para. 34](#), aff'd 2012 ONCA 337

<sup>67</sup> FAP, at paras. 65-76

56. Mr. Gutierrez relies on three cases.<sup>68</sup> However, none of them are receivership cases—much less receivership cases in which the applicant was funding the receiver. The judges in those cases did not have the powers under s. 101 of the *Courts of Justice Act* that the Motion Judge has in this case to manage a process involving the interests of multiple stakeholders.

57. Having found that the Applicant was funding the receivership, it was open to the Motion Judge to hold that r. 56.01(1)(c) applied based on a purposeful reading of the Court of Appeal’s decision in *Di Paola* and s. 101 of the *Courts of Justice Act*.

**(C) *The Recusal Motion is Frivolous and Vexatious***

58. There is no good reason to doubt that Mr. Gutierrez’ Recusal Motion is frivolous and vexatious. The Motion Judge’s application of whether “it appears” that Mr. Gutierrez’ motion was frivolous and vexatious, pursuant to r. 56.01(1)(e), is entitled to deference.<sup>69</sup>

59. Mr. Gutierrez argues that r. 56.01(1)(e) does not apply to motions within a receivership proceeding because it is not an “action and/or application”.<sup>70</sup> His position (and the case upon which he relies) were considered and rejected by the Court of Appeal for Ontario in *Di Paola*.<sup>71</sup> Rule 56 applies to motions within proceedings.<sup>72</sup>

60. Mr. Gutierrez also argues that the Recusal Motion has merit.<sup>73</sup> It is not open to this Court on a motion for leave to appeal to weigh the evidence and make different factual findings from the Motion Judge, who has case managed a complex proceeding. The motion for leave to appeal is

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<sup>68</sup>*Massih v. AMA International Development Corp.*, [2015 ONSC 539](#); *Société Sepic*; and *Tricontinental Investments Co. v. Guarantee Co. of North America*, [1989] O.J. No. 1663, [1989 CanLII 4140](#) (ON CA)

<sup>69</sup>*McArthur v. Neumann*, 2020 ONSC 66 (“*McArthur*”), at [paras. 17-18](#)

<sup>70</sup>FAP, at paras. 78-80

<sup>71</sup>[Di Paola](#)

<sup>72</sup>*Kramer*, at paras. [18-23](#); [Di Paola](#)

<sup>73</sup>FAP, at paras. 81-104

not the place to address the merits of the Recusal Motion, particularly in circumstances where Mr. Gutierrez advances his argument on the Recusal Motion despite it not being supported by any affidavit by him.

61. A proceeding will “appear” to be frivolous and vexatious if the proceeding “suggests a tentative conclusion of absence of merit.”<sup>74</sup> Courts have defined frivolous as “lacking a legal basis or legal merit; not serious; not reasonably purposeful.”<sup>75</sup>

62. The Motion Judge considered the standard of when a proceeding may be vexatious and applied it.<sup>76</sup> His application of the law to the facts is entitled to deference.<sup>77</sup>

63. There is no good reason to doubt the correctness of the Motion Judge’s conclusions with respect to the frivolity of the Recusal Motion.

***(D) Mr. Gutierrez Appears to Have Insufficient Assets in Ontario***

64. Mr. Gutierrez has not addressed the issue of whether there is good reason to believe that he lacks sufficient assets in Ontario. He conflates the insufficient assets’ analysis with the impecuniosity analysis.

65. The Motion Judge appropriately considered the issue and concluded that Mr. Gutierrez appears to have insufficient assets in Ontario.<sup>78</sup>

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<sup>74</sup> *McArthur*, at [para. 18](#), citing *Pickard v. London Police Services Board*, 2010 ONCA 643, at [para. 18](#)

<sup>75</sup> *Currie v. Halton Regional Police Services Board*, [2003] O.J. No. 4516 (QL), 2003 CanLII 7815 (ON CA), at [para. 14](#)

<sup>76</sup> *Black v. McDonald*, 2018 ONSC 2825 (“**Black**”), at [para. 15](#)

<sup>77</sup> *McArthur*, at [paras. 17-18](#)

<sup>78</sup> Endorsement re Security for Costs, at para. 26, RC, Tab 23

- (a) in 2017, Mr. Gutierrez testified that the Judgement Debt will not be paid until he resolves his claims against the cousins (and, therefore, the Applicant);<sup>79</sup>
- (b) Mr. Gutierrez admitted that he has no assets in his name;<sup>80</sup>
- (c) Mr. Gutierrez' personal accounts were frozen, and his homes sold;<sup>81</sup> and
- (d) recent property searches show that Mr. Gutierrez, personally, owns no real property in Ontario.<sup>82</sup>

**(E) Mr. Gutierrez Failed to Establish that he is Impecunious**

66. The onus was on Mr. Gutierrez to prove that he was impecunious. There is a high burden of proof on a party who asserts impecuniosity to prove it by disclosing their financial status with particularity.<sup>83</sup> Mr. Gutierrez failed to tender any evidence of his alleged impecuniosity.<sup>84</sup>

67. Mr. Gutierrez asks this Court to assume that he is impecunious because, otherwise, “the Receiver would have seized whatever assets Mr. Gutierrez has.”<sup>85</sup> The Receiver was not appointed over Mr. Gutierrez personally. This submission is not even relevant to the issues before the Court.

68. Mr. Gutierrez also claims that the Motion Judge erred “in finding that Mr. Gutierrez had paid legal fees to his lawyers.”<sup>86</sup> However, the Motion Judge made this comment in the context

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<sup>79</sup> July 25, 2017 Excerpt of Transcript of Examination in Aid of Execution of Mr. Gutierrez, Q. 46-50, Exhibit A to the Tsakas Affidavit, JGG MR, Tab 5A, RC, Tab 27

<sup>80</sup> August 30, 2018 Excerpt of Transcript of Continued Examination in Aid of Execution of Mr. Gutierrez, Q. 671-674, Exhibit B to the Tsakas Affidavit, JGG MR, Tab 5B, RC, Tab 28

<sup>81</sup> August 30, 2018 Excerpt of Transcript of Continued Examination in Aid of Execution of Mr. Gutierrez, Q. 671-674, Exhibit B to the Tsakas Affidavit, JGG MR, Tab 5B, RC, Tab 28

<sup>82</sup> Exhibits N and O to the Tsakas Affidavit, JGG MR, Tab 5N and 5O, RC, Tabs 29 and 30, respectively

<sup>83</sup> *Willets*, at [para. 48](#); *DiFilippo v. DiFilippo*, 2013 ONSC 5460, at [para. 29](#); *Black*, at [para. 24](#); *Coastline Corp. v. Canaccord Capital Corp.*, [2009] O.J. No. 1790, 2009 CanLII 21758 (ON SC), at [para. 7\(viii\)](#)

<sup>84</sup> Endorsement re Security for Costs, at para. 27, RC, Tab 23

<sup>85</sup> FAP, at para. 105

<sup>86</sup> FAP, at para. 105

of the fact that Mr. Gutierrez had not “delivered any evidence on this motion” to support his assertion that he is impecunious.<sup>87</sup>

69. There is no basis to doubt the correctness of the Motion Judge’s conclusion that Mr. Gutierrez appears to lack sufficient assets in Ontario and that he is not impecunious. The Motion Judge considered the correct legal principles and came to a decision based on an assessment of the evidence, considered in the broader context of the procedural history of this proceeding.

***(ii) The Proposed Appeal Does not Involve Matters of Public Importance***

70. Even if Mr. Gutierrez could establish that there was good reason to doubt the correctness of the decision, he must establish that the proposed appeal involves matters of public importance.

71. The matter must be one of “general importance” and not just of particular importance to the litigants.<sup>88</sup> General importance relates to matters relevant to the development of the law and the administration of justice.<sup>89</sup>

72. Mr. Gutierrez provides no clear public importance argument in his factum.

73. Mr. Gutierrez suggests that appellate review of the Security for Costs Order is important because, if Mr. Gutierrez is required to post security for costs, there will be no way to scrutinize a receiver’s conduct.<sup>90</sup>

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<sup>87</sup> Endorsement re Security for Costs, at para. 27, RC, Tab 23

<sup>88</sup> *Todhunter v. Owles*, 2015 ONSC 5656 (“*Todhunter*”), at [para. 15](#), citing *Greslik v. Ontario Legal Aid Plan* (1988), 65 O.R. (2d) 110, 1988 CanLII 4842 (Div. Ct.) (“*Greslik*”), at [para. 7](#); *Ramsey*, at [para. 18](#)

<sup>89</sup> *Todhunter*, at [para. 15](#), citing *Greslik*, at [para. 7](#); *Ramsey*, at [para. 18](#)

<sup>90</sup> FAP, at para. 56

74. By granting the Security for Costs Order, the Receiver is not insulated from scrutiny as Mr. Gutierrez suggests.<sup>91</sup> A Court-appointed receiver's conduct is subject to the Court's scrutiny.<sup>92</sup> The Receiver, like other receivers, is accountable to the Court and all interested parties.<sup>93</sup> The Court will supervise its conduct.

75. A fact-specific decision does not give rise to issues of general, public importance or to the administration of justice.

#### **PART IV - ORDER REQUESTED**

76. The Receiver respectfully requests that this Court dismiss Mr. Gutierrez' motion for leave to appeal with full indemnity costs in the amount of \$49,506.43.

**ALL OF WHICH IS RESPECTFULLY SUBMITTED** this 13<sup>th</sup> day of February, 2023.



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Monique J. Jilesen

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<sup>91</sup> FAP, at para. 56

<sup>92</sup> *Potentia*, at [para. 51](#)

<sup>93</sup> *Potentia*, at [para. 40](#)



February 13, 2023

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## SCHEDULE “A”

### LIST OF AUTHORITIES

1. *1917196 Ontario Ltd. v. Kazmi*, [2022 ONSC 2289](#)
2. *Akagi v. Synergy Group (2000) Inc.*, [2015 ONCA 368](#)
3. *Bell Expressvu Limited Partnership v. Morgan* (2008), 67 C.P.C. (6th) 263, [2008 CanLII 63136](#) (Ont. Sup. Ct. J. (Div. Ct.))
4. *Belokon v. The Kyrgyz Republic*, [2016 ONSC 995](#)
5. *Black v. McDonald*, [2018 ONSC 2825](#)
6. *Blake v. Blake*, [2019 ONSC 5724](#)
7. *Blenkarn, Roche v. Beckstead*, [1995] O.J. No. 2777, 57 A.C.W.S. (3d) 924
8. *Boily v. Carleton Condominium Corporation 145*, [2014 ONCA 574](#)
9. *Castillo v. Xela Enterprises Ltd.*, [2022 ONSC 5594](#)
10. *Coastline Corp. v. Canaccord Capital Corp.*, [2009] O.J. No. 1790, [2009 CanLII 21758](#) (ON SC)
11. *Currie v. Halton Regional Police Services Board*, [2003] O.J. No. 4516 (QL), [2003 CanLII 7815](#) (ON CA)
12. *Di Paola, Re*, [2006] O.J. No. 4381, [2006 CanLII 37117](#) (ON CA)
13. *DiFilippo v. DiFilippo*, [2013 ONSC 5460](#)
14. *Donaldson International Livestock Ltd. v. Znamensky Selekcionno-Gibridny Center LLC*, [2010 ONCA 137](#)
15. *General Electric Canada Real Estate Financing Holding Co. v. Liberty Assisted Living Inc.*, [2011 ONSC 4704](#)
16. *Georgian (St. Lawrence) Lofts Inc. v Market Lofts Inc.*, [2006] O.J. No. 4797, [2006 CanLII 40490](#)
17. *GMAC Commercial Credit Corporation - Canada v. T.C.T. Logistics Inc.*, [2006 SCC 35](#)
18. *Greslik v. Ontario Legal Aid Plan* (1988), 65 O.R. (2d) 110, [1988 CanLII 4842](#) (Div. Ct.)
19. *Jethwani v. Damji*, [2017 ONSC 1702](#)
20. *Kramer Henderson Sidlofsky LLP v. Monteiro*, [2009 CanLII 38513](#), 98 O.R. (3d) 286

21. *Laurence v. Bridge*, [2016 ONSC 7324](#)
22. *Lloyd v. Economical Mutual Insurance Co.* (2008), 168 A.C.W.S (3d) 1070, [2008 CanLII 38364](#)
23. *Massih v. AMA International Development Corp.*, [2015 ONSC 539](#)
24. *McArthur v Neumann*, [2020 ONSC 66](#)
25. *Ogunlesi v. Talon International Inc.*, [2019 ONSC 1798](#)
26. *Pickard v. London Police Services Board*, [2010 ONCA 643](#)
27. *Potentia Renewables Inc. v. Deltro Electric Ltd.*, [2019 ONCA 779](#)
28. *Ramsey v. Weisenbacher*, [2012 ONSC 6938](#)
29. *Rankin v. MacLeod, Young, Weir Ltd.*, [1986] O.J. No. 2380, [1986 CanLII 2749](#) (ON SC)
30. *Silver v. Imax Corp*, [2013 ONSC 6751](#)
31. *Société Sepic S.A. v. Aga Stone Ltd.* (1995), [1995 CanLII 1891](#) (ON CA), 21 O.R. (3d) 542
32. *Sweda Farms Ltd. v. Ontario Egg Producers*, [2011 ONSC 3650](#)
33. *Todhunter v. Owles*, [2015 ONSC 5656](#)
34. *Toronto Dominion Bank v. Szilagyi Farms Ltd.*, (1988) 65 O.R. (2d) 433, [1988 CanLII 4745](#) (ON CA)
35. *Trez Capital Limited Partnership v. Dr. Bernstein*, [2018 ONSC 6771](#)
36. *Tricontinental Investments Co. v. Guarantee Co. of North America*, [1989] O.J. No. 1663, [1989 CanLII 4140](#) (ON CA)
37. *Whitty v. Wells*, [2016 ONSC 2266](#)
38. *Willets v. Colalillo*, [2007] O.J. No. 4623, [2007 CanLII 51174](#) (ON SC)

## **SCHEDULE “B”**

### **TEXT OF STATUTES, REGULATIONS & BY - LAWS**

#### **1. Courts of Justice Act, R.S.O. 1990, c. C.43**

##### **INTERLOCUTORY ORDERS**

###### **Injunctions and receivers**

**101 (1)** In the Superior Court of Justice, an interlocutory injunction or mandatory order may be granted or a receiver or receiver and manager may be appointed by an interlocutory order, where it appears to a judge of the court to be just or convenient to do so. R.S.O. 1990, c. C.43, s. 101 (1); 1994, c. 12, s. 40; 1996, c. 25, s. 9 (17).

###### **Terms**

**(2)** An order under subsection (1) may include such terms as are considered just. R.S.O. 1990, c. C.43, s. 101 (2).

#### **2. R.R.O. 1990, Reg. 194: RULES OF CIVIL PROCEDURE**

##### **under Courts of Justice Act, R.S.O. 1990, c. C.43**

###### **Interpretation**

###### **General Principle**

**1.04 (1)** These rules shall be liberally construed to secure the just, most expeditious and least expensive determination of every civil proceeding on its merits. R.R.O. 1990, Reg. 194, r. 1.04 (1).

###### **Proportionality**

**(1.1)** In applying these rules, the court shall make orders and give directions that are proportionate to the importance and complexity of the issues, and to the amount involved, in the proceeding. O. Reg. 438/08, s. 2.

###### **Matters Not Provided For**

**(2)** Where matters are not provided for in these rules, the practice shall be determined by analogy to them. R.R.O. 1990, Reg. 194, r. 1.04 (2).

[...]

## **Orders on Terms**

**1.05** When making an order under these rules the court may impose such terms and give such directions as are just.

[...]

## **COSTS**

### **RULE 56 SECURITY FOR COSTS**

#### **Where Available**

**56.01 (1)** The court, on motion by the defendant or respondent in a proceeding, may make such order for security for costs as is just where it appears that,

- (a) the plaintiff or applicant is ordinarily resident outside Ontario;
- (b) the plaintiff or applicant has another proceeding for the same relief pending in Ontario or elsewhere;
- (c) the defendant or respondent has an order against the plaintiff or applicant for costs in the same or another proceeding that remain unpaid in whole or in part;
- (d) the plaintiff or applicant is a corporation or a nominal plaintiff or applicant, and there is good reason to believe that the plaintiff or applicant has insufficient assets in Ontario to pay the costs of the defendant or respondent;
- (e) there is good reason to believe that the action or application is frivolous and vexatious and that the plaintiff or applicant has insufficient assets in Ontario to pay the costs of the defendant or respondent; or
- (f) a statute entitles the defendant or respondent to security for costs. R.R.O. 1990, Reg. 194, r. 56.01 (1).

(2) Subrule (1) applies with necessary modifications to a party to a garnishment, interpleader or other issue who is an active claimant and would, if a plaintiff, be liable to give security for costs. R.R.O. 1990, Reg. 194, r. 56.01 (2).

[...]

#### **Security for Costs as Term of Relief**

**56.09** Despite rules 56.01 and 56.02, any party to a proceeding may be ordered to give security for costs where, under rule 1.05 or otherwise, the court has a discretion to impose terms as a condition of granting relief and, where such an order is made, rules 56.04 to 56.08 apply with necessary modifications. R.R.O. 1990, Reg. 194, r. 56.09.

[...]

### **Motion for Leave to Appeal**

**62.02 (1)** Leave to appeal to the Divisional Court from any of the following orders shall be obtained from a panel of that court in accordance with this rule:

1. An interlocutory order of a judge of the Superior Court of Justice, under clause 19 (1) (b) of the Courts of Justice Act.
2. A final order of a judge of the Superior Court of Justice for costs, under clauses 19 (1) (a) and 133 (b) of the Courts of Justice Act. O. Reg. 536/18, s. 4 (1).

(1.1) Revoked: O. Reg. 82/17, s. 14 (1).

### **Motion in Writing**

**(2)** The motion for leave to appeal shall be heard in writing, without the attendance of parties or lawyers. O. Reg. 170/14, s. 22 (2).

### **Notice of Motion**

**(3)** Subrules 61.03.1 (2) and (3) apply, with necessary modifications, to the notice of motion for leave. O. Reg. 170/14, s. 22 (2).

### **Grounds on Which Leave May Be Granted**

**(4)** Leave to appeal from an interlocutory order shall not be granted unless,

(a) there is a conflicting decision by another judge or court in Ontario or elsewhere on the matter involved in the proposed appeal and it is, in the opinion of the panel hearing the motion, desirable that leave to appeal be granted; or

(b) there appears to the panel hearing the motion good reason to doubt the correctness of the order in question and the proposed appeal involves matters of such importance that, in the panel's opinion, leave to appeal should be granted. R.R.O. 1990, Reg. 194, r. 62.02 (4); O. Reg. 82/17, s. 14 (2, 3); O. Reg. 536/18, s. 4 (2).

MARGARITA CASTILLO  
Applicant

-and- XELA ENTERPRISE LTD. et al.  
Respondents

Divisional Court File No.: 703/22  
Superior Court File No. CV-11-9062-00CL

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
(DIVISIONAL COURT)**

PROCEEDING COMMENCED AT TORONTO

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