

A. AVAILABILITY OF SECURITY FOR COSTS

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CHAPTER 5 MATTERS ARISING SUBSEQUENT TO PLEADINGS

5.8 Security for Costs

A. AVAILABILITY OF SECURITY FOR COSTS

1. Following the delivery of a Notice of Appearance or Statement of Defence (r. 56.03), consider whether a motion for security for costs would be appropriate. Security for costs may be awarded where:
 - the plaintiff or applicant is ordinarily resident outside Ontario;
 - the plaintiff or applicant has another proceeding for the same relief pending in Ontario or elsewhere;
 - the defendant or respondent has an order for costs against the plaintiff which remains unpaid;
 - the plaintiff or applicant is a corporation or nominal plaintiff/applicant, and there is good reason to believe that it has insufficient assets in Ontario to pay costs;
 - there is good reason to believe the action or application is frivolous and vexatious, and the plaintiff or applicant has insufficient assets in Ontario to pay costs (r. 56.01(1))
2. Remember that security for costs may also be ordered as a condition of granting relief on any other motion (r. 56.09)
3. If there is doubt as to the place of residence of the plaintiff/applicant, serve a demand in writing on the plaintiff/applicant's lawyer to declare whether the plaintiff/applicant is ordinarily resident in Ontario (r. 56.02). Where the lawyer fails to respond, bring a motion to stay or dismiss the proceeding
4. Obtain evidence from any documents or other available sources as to the place of residence of the plaintiff/applicant, whether the plaintiff/applicant is a corporation or nominal plaintiff/applicant, and whether the plaintiff/applicant has sufficient assets in Ontario to satisfy an award of costs. Speak to your client to obtain any documents and other sources of information containing this information
5. Consider whether the responding party may have a defence based on:
 - impecuniosity;
 - the merits of the action;
 - assets in a jurisdiction to which reciprocal enforcement of judgments legislation applies; or
 - s. 4(2) of the *Victims' Bill of Rights, 1995*, which may preclude a "victim" from providing security for costs
6. Provide opinion to client on prospects for success and seek instructions