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Security For Costs: Denied on Basis That Employer Arguably Contributed to Plaintiff's Difficult Financial Condition

Security for costs motions are yet another road block that personal injury plaintiffs can expect if they live outside of Canada while their tort lawsuit is active. The theory being that if you live outside the jurisdiction and the defendant successfully defeats your lawsuit, then you will be a difficult target for the defendant to 'chase' for payment of their legal costs for having to defend your lawsuit.

In the recent case of [Kurtz v. Carquest Canada Ltd., 2013 ONSC 7683 \(CanLII\)](#), this arose in the context of a wrongful dismissal lawsuit, where after the alleged dismissal, the employee moved from Canada to live in the United States. Aggressively, the employer sought an Order that the plaintiff post up to \$80,000 as security in Court before being allowed to continue with his lawsuit.

Judge Kent noted that it was a possible argument that the employer's alleged mistreatment of the employee, if proven, was a cause of the plaintiff's current weak financial position. The Judge further noted that ordering such a security for costs would effectively end the plaintiff's lawsuit, when there appeared to be valid issues to be heard in this action.

The motion for security for costs was denied and costs awarded to the employee for having defended this motion successfully.

It is noted that a similar argument, that the defendant's conduct caused or contributed to the plaintiff's weak financial situation, can be applied in almost any personal injury or long-term disability insurance lawsuit.



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For more information on security for costs motions, you can review our historical blogs here:

- July 26, 2012 - [**You Must Pay Before You Can Sue: \\$200,000 in Security for Costs Awarded**](#)
- August 21, 2008 - [**Court orders security for costs, cites cost of enforcing costs award**](#)

Gregory Chang
Toronto Personal Injury and Insurance Lawyer