

CASE LAW UPDATE

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Liberty Mutual et al v. Donatelli et al

2010 ONSC 6318, Released 19 November 2010

Security for Costs—Libel and Slander Act—Civil Procedure

The security for costs provisions of the *Libel and Slander Act* do not preclude courts relying upon the similar provisions of the *Rules of Civil Procedure* unless there is a direct conflict between the provisions.

The main action in this case involved an insurance company, Liberty Mutual, suing an individual, Rose Donatelli, who held herself out as a practicing psychologist and billed the insurance company for services to several insureds. Later, criminal allegations surfaced that Ms. Donatelli was a fraud. The insurance company sued Ms. Donatelli for the cost of the billed services to its insureds. Ms. Donatelli counterclaimed for \$12.5 million in defamation damages. Ms. Donatelli repeatedly failed to provide required undertakings. Liberty Mutual received costs against Ms. Donatelli on motions pertaining to these undertakings. When these awards remained unpaid, Liberty Mutual moved to have costs secured into court on the counterclaim pursuant to rule 56 of the *Rules of Civil Procedure*.

Ms. Donatelli appealed, citing the costs provisions of the *Libel and Slander Act*. Based on paragraph 3 of subrule 1.02(1) of the *Rules of Civil Procedure* and jurisprudence, the Divisional Court held that the *Libel and Slander Act* is not a complete code and that rule 56 operates to the extent that there is no conflict with the express provisions of the Act. In this case, the *Libel and Slander Act* has no provisions for an order requiring security into court for the non-payment of costs in the same, or another, proceeding. The appeal was dismissed.

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