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cc

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Subject Security for costs and associated costs orders [C1]

Submissions in relation to the above discussion paper:

Security for costs should be abolished. There is no compelling reason for security for costs. Requiring such costs to be secured is archaic, distortive and unfairly favours defendants. But most importantly, under the current law, there is no logic or symmetry at all between the position on security for costs and security for judgment. In other words, a defendant is able to get security for costs. However, plaintiffs are very rarely entitled to get security for judgment. This is a glaring anomaly, since both concern the concept of securing a potential/ anticipated payment due from/to the plaintiff to the defendant.

There is no compelling reason to secure a defendant's POTENTIAL claim for costs, but not a plaintiff's POTENTIAL judgement. Both are simple unsecured claims on the other party. In many cases the judgment is for a much larger amount. Yet, plaintiffs are illogically forced to bear the defendant's credit risk on enforcing judgment. This flies against the face of corporate finance 101, since security should reflect the credit quality or "riskiness" of the anticipated cashflows.

Unless a compelling argument can be made for security of one but not the other, there is no basis for security at all. Parties, whether primary claimants for a judgment or a defendant with a potential costs order in their favour, should be content with a simple unsecured claim.

By mandating security against plaintiffs for potential costs, but not also allowing security against defendants for potential judgment, the current law unfairly and without logic assumes plaintiffs have a poorer credit quality than defendants.

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Regards

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