

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

B E T W E E N:

IN THE MATTER OF THE *COMPANIES' CREDITORS  
ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE OR  
ARRANGEMENT OF BZAM LTD., BZAM HOLDINGS INC., BZAM  
MANAGEMENT INC., BZAM CANNABIS CORP., FOLIUM LIFE  
SCIENCE INC., 102172093 SASKATCHEWAN LTD., THE GREEN  
ORGANIC DUTCHMAN LTD., MEDICAN ORGANIC INC., HIGH ROAD  
HOLDING CORP. and FINAL BELL CORP.

Applicants

**AIDE MEMOIRE OF  
CORTLAND CREDIT LENDING CORPORATION**

May 6, 2024

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Corporation

TO: **THE SERVICE LIST**

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**PART I - OVERVIEW**

1. This case conference was scheduled to (i) fix a timetable for the security for costs motions served by BZAM Ltd. ("**BZAM**") and Cortland Credit Lending Corporation ("**Cortland**") on April 24, 2024, and (ii) if necessary, seek directions concerning a request by Final Bell Holding International Ltd. ("**Final Bell**") for production of the dockets of BZAM and Cortland.

2. An additional issue that has arisen since scheduling the case conference. On May 3, 2024, Final Bell advised BZAM and Cortland that it is no longer seeking to rescind the Share Purchase Agreement. Instead, Final Bell advised that it intends to amend its notice of motion to seek equitable damages and/or a constructive trust over the proceeds of sale of BZAM's shares or assets. As a result of this amendment, Cortland seeks its costs thrown away in relation to the abandoned rescission claim. Cortland proposes that its

request for costs thrown away be addressed at the security for costs hearing or as the Court directs.

3. Cortland requests that the Court fix a timetable to ensure that the security for costs motions proceed on the earliest available date, and, in any event, in advance of the hearing of the rescission trial. This is necessary so that any costs ordered to be posted as security will be paid into Court before the rescission trial. Otherwise, an order to post security becomes meaningless.

4. Cortland objects to Final Bell's demand that it delivers dockets to support its motion for security for costs. Cortland submits that dockets are not required for the Court to assess the appropriate quantum of costs, i.e. the fair and reasonable amount that should be paid by the unsuccessful party.

5. After Final Bell delivers its proposed amendment and the respondents have been afforded an opportunity to consider whether the amendment necessitates the filing of further evidence, the parties can return to schedule the return date of the trial.

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

6. On April 19, 2024, with objections from BZAM and Cortland, Final Bell sought and obtained an adjournment of the two-day trial that was scheduled to proceed on April 22-23, 2024.

7. In Final Bell's aide memoire seeking the adjournment of the hearing, it noted that it wished to conduct "documentary and oral discovery" concerning the issue of excise tax arrears and filings of a BZAM subsidiary, BZAM Management Inc.

8. On April 24, 2024, BZAM and Cortland served separate motions for security for costs as against Final Bell. BZAM seeks security for costs on a full indemnity basis of \$636,000, or in the alternative, on a substantial indemnity basis of \$575,000. Cortland seeks security for costs on a partial indemnity basis of \$243,595.

9. On April 26, 2024, the parties attended a case conference before Your Honour wherein, among other things, the parties sought direction from the Court on fixing a timetable for the security for costs motions. Your Honour directed the parties try to agree on a timetable failing which the parties could seek a further case conference.

10. That same day, on April 26, 2024, counsel for BZAM requested that Final Bell advise when they proposed to deliver Final Bell's responding material.

11. On April 29, 2024, BZAM delivered to Final Bell the supplemental productions.

12. It was only on May 1, 2024, having the security for costs motion material for a week, that Final Bell finally provided a specific date for which they would provide their responding motion records (May 9, 2024), albeit conditional on BZAM and Cortland providing their dockets by end of the week (May 3, 2024). Final Bell notified counsel that they were not examining Mr. Bovingdon on the supplementary productions.

13. On May 1, 2024, counsel for BZAM notified Final Bell that its position in respect of delivery of their responding motion record and requiring further production of dockets was unreasonable. The Monitor subsequently arranged this case conference.

### **PART III - ARGUMENT**

*(A) Timetable and Return Date for Security for Costs Motion*

14. The underlying claims asserted by Final Bell and corresponding security for costs motion are proceeding within the CCAA context. BZAM has been under CCAA protection since February 28, 2024. These matters are proceeding in the “hothouse of real-time litigation”.<sup>1</sup>

15. As of the date of the case conference (May 6, 2024), Final Bell will have had BZAM and Cortland’s motion material for 12 days without providing a firm commitment to a date to deliver their responding motion record. The date provided by Final Bell was conditional on additional and unnecessary disclosure by the moving parties.

16. Final Bell does not need further time to respond to the motion for security for costs. Final Bell has confirmed that it will not be re-examining Mr. Bovingdon on the supplementary productions (despite its prior indication to the Court that such examinations were necessary). Final Bell has already served their opening statement in respect of its claim setting out the alleged fraudulent misrepresentations. Any arguments advanced by Final Bell resisting the security for costs motion on the merits of their case have already been articulated once. Restating those arguments for purposes of this motion does not take over two weeks from delivery of the motion record seeking security for costs.

17. Cortland submits that a timetable be fixed for the security for costs motion as follows:

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<sup>1</sup> *Century Services Inc. v. Canada (Attorney General)*, [2010 SCC 60](#), at para 58.

- (a) Responding Motion Record and Factum of Final Bell: May 8, 2024.
- (b) Reply Motion Record and Reply Factum of BZAM and Cortland: May 10, 2024.
- (c) Hearing date for security for costs motion: week of May 13, 2024 (subject to Court availability).

18. Cortland submits that the argument of the relatively straightforward issue of security for costs should take no more than 90 minutes amongst the parties.

*(B) Dockets are Not Required to Assess Quantum of Costs*

19. Final Bell's demand that BZAM and Cortland be required to deliver redacted dockets as part of the security for costs motion and prior to the delivery of their responding motion record is unreasonable and unnecessary. Both BZAM and Cortland have already provided detailed bills of costs in their motion material which sets out fees incurred to date and additional estimated fees.<sup>2</sup>

20. The dockets of the moving party are not necessary to assess quantum of costs. The caselaw dictates that the quantum of security for costs should reflect a number that falls within the reasonable contemplation of the parties reflecting what the successful party would likely recover and the factors set out in Rule 57.01.<sup>3</sup> Put another way, in

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<sup>2</sup> See for example Cortland's bill of costs located at Exhibit "11" to the Affidavit of Jonathan Shepherd sworn April 24, 2024, Motion Record of Cortland Credit Lending Corporation, p 258 [\[link\]](#).

<sup>3</sup> *2176693 Ontario Ltd. v. The Cora Franchise Group Inc.*, [2017 ONSC 6600](#), at para 85.

setting the quantum, the Court has the discretion to determine what amount is fair and reasonable for the plaintiff to post as security for the defendant's costs. By way of guideline, the amount should reflect a number that falls within the reasonable contemplation of the parties, what the defendant would likely recover, if successful, and the factors set out in rule 57.<sup>4</sup>

21. None of the criterion in assessing quantum of costs require a detailed review of dockets. Rather the bill of costs is more than sufficient to prove that the number is within the reasonable contemplation of the parties and what the defendant would likely recover. Final Bell can choose to disclose their own bill of costs in their responding material to attempt to counter the reasonableness of the quantum.

22. Moreover, the relief sought by Final Bell requiring that Cortland produce its dockets does not accord with *rule 57.01(7)* that requires the Court to “devise and adopt the simplest, least expensive and most expeditious process for fixing costs”.<sup>5</sup> The production of dockets would require redactions and engages issues of privilege that could further delay the motions. There is little if any benefit to the Court if the production of dockets is ordered. The Courts (and particularly the Commercial List) does not typically scrutinize individual dockets as part of security for costs motions. That must be weighed against the burden of adding an unnecessary step to an already complicated piece of real-time litigation, and attendant risk of further derailing or delaying the ultimate adjudication of the issues.

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<sup>4</sup> *Sobhi v. Toronto Homes and Building Realty Inc.*, [2021 ONSC 8006](#), at para 15.

<sup>5</sup> *Rules of Civil Procedure*, [RRO 1990, Reg 194](#), s. 57.01(7).

23. Perhaps most importantly, there is no prejudice to Final Bell. The amount of security that may be ordered to be posted does not dictate the quantum of the costs payment that Cortland and BZAM will be entitled to in the event that they are successful at trial. Cortland submits that, to the extent it is ever appropriate to parse dockets, that exercise can be reserved for the argument of costs post-trial.

*(C) Scheduling the Return Date for the Hearing on the Merits*

24. Cortland proposes that the scheduling of the return date of the hearing can be spoken to at the security for costs motion. At that time Final Bell will presumably have delivered its proposed amended notice of motion and the respondents will have had an opportunity to consider whether the filing of further evidence is required.

**ALL OF WHICH IS RESPECTFULLY SUBMITTED** this 6<sup>th</sup> day of May, 2024.

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**SCHEDULE “A”**  
**LIST OF AUTHORITIES**

1. *2176693 Ontario Ltd. v. The Cora Franchise Group Inc.*, [2017 ONSC 6600](#).
2. *Century Services Inc. v. Canada (Attorney General)*, [2010 SCC 60](#).
3. *Sobhi v. Toronto Homes and Building Realty Inc.*, [2021 ONSC 8006](#).

## SCHEDULE "B"

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

1. *Rules of Civil Procedure*, [RRO 1990, Reg 194](#)

#### **General Principles**

#### ***Factors in Discretion***

**57.01** (1) In exercising its discretion under [section 131](#) of the [Courts of Justice Act](#) to award costs, the court may consider, in addition to the result in the proceeding and any offer to settle or to contribute made in writing,

- (0.a) the principle of indemnity, including, where applicable, the experience of the lawyer for the party entitled to the costs as well as the rates charged and the hours spent by that lawyer;
- (0.b) the amount of costs that an unsuccessful party could reasonably expect to pay in relation to the step in the proceeding for which costs are being fixed;
- (a) the amount claimed and the amount recovered in the proceeding;
- (b) the apportionment of liability;
- (c) the complexity of the proceeding;
- (d) the importance of the issues;
- (e) the conduct of any party that tended to shorten or to lengthen unnecessarily the duration of the proceeding;
- (f) whether any step in the proceeding was,
  - (i) improper, vexatious or unnecessary, or
  - (ii) taken through negligence, mistake or excessive caution;
- (g) a party's denial of or refusal to admit anything that should have been admitted;
- (h) whether it is appropriate to award any costs or more than one set of costs where a party,
  - (i) commenced separate proceedings for claims that should have been made in one proceeding, or
  - (ii) in defending a proceeding separated unnecessarily from another party in the same interest or defended by a different lawyer;
- (h.1) whether a party unreasonably objected to proceeding by telephone conference or video conference under [rule 1.08](#); and

- (i) any other matter relevant to the question of costs. R.R.O. 1990, Reg. 194, r. 57.01 [\(1\)](#); O. Reg. 627/98, s. 6; O. Reg. 42/05, s. 4 (1); O. Reg. 575/07, s. 1; O. Reg. 689/20, s. 37.

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***Bill of Costs***

(5) After a trial, the hearing of a motion that disposes of a proceeding or the hearing of an application, a party who is awarded costs shall serve a bill of costs (Form 57A) on the other parties and shall file it, with proof of service. O. Reg. 284/01, s. 15 (3).

***Costs Outline***

(6) Unless the parties have agreed on the costs that it would be appropriate to award for a step in a proceeding, every party who intends to seek costs for that step shall give to every other party involved in the same step, and bring to the hearing, a costs outline (Form 57B) not exceeding three pages in length. O. Reg. 42/05, s. 4 (3).

***Process for Fixing Costs***

(7) The court shall devise and adopt the simplest, least expensive and most expeditious process for fixing costs and, without limiting the generality of the foregoing, costs may be fixed after receiving written submissions, without the attendance of the parties. O. Reg. 42/05, s. 4 (3).

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Court File No. CV-24-00715773-00CL

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