

## WARNING

This appeal is subject to a publication ban issued March 30, 2023 which prohibits the publication or disclosure by anyone of information in, from or about the appeal that identifies or would tend to identify: (1) the passenger at issue (“YYY”), (2) the estate of the passenger at issue (“the Estate of YYY”), (3) the individual respondent (“XXX”), (4) all family members of YYY, and (5) any other claimants, other than the representative plaintiffs in the class action, that may be identified from the record in the appeal or the record on any motion brought in the appeal.

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COURT OF APPEAL FOR ONTARIO

CITATION: Molani Estate v. Iran, 2023 ONCA 279

DATE: 20230420

DOCKET: M54059 (COA-23-CV-0070)

Doherty, Zarnett and Sossin JJ.A.

BETWEEN

Omid Arsalani in the Capacity of Estate Trustee Without a Will of Hiva Molani,  
Fatholla (Vahid) Hezarkhani in the Capacity of Administrator of the Estate of  
Naser Pourshabosibi, Fatholla (Vahid) Hezarkhani in the Capacity of  
Administrator of the Estate of Firouzeh Madani and Habib Haghjoo

Plaintiffs

(Appellants/Responding Parties)

and

Islamic Republic of Iran, Islamic Revolutionary Guard Corps, Ukraine  
International Airlines PJSC, and John Doe Missile Operator

Defendants

(Respondent/Responding Party)

Proceeding under the *Class Proceedings Act, 1992*

AND BETWEEN

The Estate of YYY and XXX

Plaintiffs

(Respondents/Moving Parties)

and

Ukraine International Airlines

Defendant

(Respondent/Responding Party)

Vincent Genova and Alessandra Ottaviano, for the respondents/moving parties  
The Estate of YYY and XXX

Tom Arndt, for the appellants/responding parties Omid Arsalani *et al.*

No one appearing for the respondent/responding party Ukraine International  
Airlines PJSC/ Ukraine International Airlines

Heard and released orally: April 17, 2023

On appeal from the order of Justice Benjamin T. Glustein of the Superior Court of  
Justice, dated December 6, 2022.

## REASONS FOR DECISION

[1] The respondents/moving parties seeks to quash the appeal from the order insofar as it appoints XXX, a litigation administrator. They submit that part of the order is interlocutory. They do not seek to quash the appeal from the part of the order validating the provisional “opt-out” form: see at para. 1 of the order dated December 6, 2022. Counsel for the respondents/moving parties concedes that this part of the order is final.

[2] In several cases, this court has held that the appointment or removal of a litigation guardian is an interlocutory order: see e.g. *Divitaris v. Gerstel*, 2022 ONCA 605, at paras. 2, 6; *Huang v. Braga*, 2017 ONCA 268, 30 E.T.R. (4th) 19, at paras. 3, 5; *Must v. Shkuryna*, 2015 ONCA 665, at paras. 1, 3, leave to appeal refused, [2015] S.C.C.A. No. 482; and *Willmot v. Benton*, 2011 ONCA 104, at paras. 3, 6. We are satisfied that those cases have application to an order

appointing a litigation administrator, at least in the context of an order that appoints a litigation administrator and goes no further.

[3] Counsel for the appellants/responding parties, however, submits that this order does go further. He submits that, even if the appointment of a litigation administrator is an interlocutory order when considered as a standalone order, it becomes final in circumstances like this, when it is joined with a final order, such as the opt-out order made in this case.

[4] We cannot agree with counsel for the appellants'/responding parties' submission. The two parts of the order do different things. The appointment of the litigation administrator gives control of the litigation to XXX. It does not determine any issue in the litigation. The other part of the order validating the provisional opt-out form addresses a particular decision made by XXX in her capacity as litigation administrator. The appointment of XXX and the decisions made under the authority of that appointment are distinct. The former is an interlocutory order, some, at least of the latter, will generate final orders.

[5] The appeal from the order appointing XXX as the litigation administrator is quashed as interlocutory. The appeal from the order validating the provisional opt-out form remains extant in this court. If so inclined, counsel for the appellants/responding parties may move for an extension of time for leave to appeal the appointment of the litigation administrator order to the Divisional Court

in that court. The appeal in this court regarding the order validating the provisional opt-out form will be held in abeyance pending notification from counsel of the outcome of the Divisional Court proceeding.

[6] Costs of this motion will be left to the panel that deals with the appeal.

“Doherty J.A.”  
“B. Zarnett J.A.”  
“L. Sossin J.A.”