CITATION: Burke v. Bank of Montreal, 2026 ONSC 1644
COURT FILE NO.: CV-21-00001084-0000
DATE: 20260317
AMENDED: 20260318

SUPERIOR COURT OF JUSTICE – ONTARIO

RE: ANDREA BURKE, Plaintiff

AND:

BANK OF MONTREAL, Defendant

BEFORE: Associate Justice Mak

COUNSEL: Andrea Burke, acting in person

Delila Bikic, for the Defendant

HEARD: December 17, 2025, by videoconference

AMENDED REASONS FOR DECISION

Overview

[1] The defendant, Bank of Montreal ("BMO"), brings this motion for an order requiring the plaintiff, Andrea Burke, to post security for costs in the amount of $60,000 as follows: $10,000 within 30 days of the order arising from this motion; $20,000 at least seven days prior to the start of examinations for discovery; and $30,000 at least seven days prior to the start of trial.

[2] Ms. Burke opposes this motion. In her factum, she asks for judgment against BMO for damages as a result of BMO's negligence and breach of duty of care, in amounts to be determined by the court.

[3] This action arises from events in 2017 to 2019, when Ms. Burke applied for a mortgage from BMO to facilitate her purchase of a pre-construction property for the purchase price of $989,900. Ultimately, Ms. Burke did not obtain a mortgage, and did not complete the transaction on the closing date.

Factual Background

[4] The Statement of Claim was issued on March 26, 2021. In the claim, Ms. Burke alleges that BMO is responsible for the loss of her deposit in the amount of $106,000, and her inability to complete the purchase. She alleges BMO refused to provide her with mortgage financing after advising her that she was financially fit to purchase the property.

[5] Ms. Burke claims damages from BMO in the amount of $500,000 for negligence and breach of duty of care, and damages in the amount of $350,000 for health issues brought on due to severe anguish and stress.

[6] BMO served and filed its Statement of Defence in or around November 29, 2021. In its defence, BMO states it did not mislead Ms. Burke with any aspect of her pre-approval or mortgage application. BMO pleads that Ms. Burke's mortgage application was declined because she failed to meet the necessary terms and conditions of her pre-approval, which impacted her eligibility for a mortgage.

[7] Ms. Burke then noted BMO in default. Ms. Burke did not consent to setting aside the noting in default; therefore, BMO was required to bring a motion to do so. By Order dated December 21, 2022, the court set aside the noting in default.

[8] Ms. Burke served her Reply on January 30, 2023. Pleadings closed. On March 7, 2024, the parties participated in mediation.

[9] On March 5, 2025, Ms. Burke advised counsel for BMO that she was ready to proceed with examinations for discovery, and she had moved away from her property in East Gwillimbury, Ontario.

[10] On March 6, 2025, counsel for BMO advised she would circulate a discovery plan with proposed timelines for exchanging affidavits of documents and scheduling examinations for discovery. On the same day, in response, Ms. Burke advised counsel for BMO of her new mailing address in Edmonton, Alberta.

[11] On July 2, 2025, counsel for BMO advised Ms. Burke that they confirmed she now resides in Edmonton, and pursuant to r. 56.01 of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194 (the "*Rules*"), a party may be required to post security for costs if they are ordinarily resident outside of Ontario. BMO's counsel asked Ms. Burke to confirm, with supporting documentation, that she has sufficient assets in Ontario to satisfy a costs award should BMO succeed in the action, failing which they would seek instructions to bring this motion.

[12] On July 3, 2025, Ms. Burke stated in email correspondence to BMO's counsel that she does not have any assets to post security in Ontario.

[13] As of the date of the motion hearing, BMO has incurred costs of $70,115.94 in the defence of this action, inclusive of disbursements and HST. BMO estimates its costs to the end of the trial to be an additional $80,000 to $100,000.

The Law

[14] BMO seeks security for costs under rr. 56.01(1)(a) and (d) of the *Rules*, which states:

> 56.01 (1) The court, on motion by the defendant or respondent in a proceeding, may make such order for security for costs as is just where it appears that,

> (a) the plaintiff or applicant is ordinarily resident outside Ontario;
>
> […]
>
> (d) the plaintiff or applicant is a corporation or a nominal plaintiff or applicant, and there is good reason to believe that the plaintiff or applicant has insufficient assets in Ontario to pay the costs of the defendant or respondent;

[15] In *Coastline Corporation Ltd. v. Canaccord Capital Corporation,* 2009 CanLII 21758 (ON SC) ("*Coastline Corporation Ltd.*") at paragraph 7, Master Glustein (as he then was) set out the following legal principles for the court to apply on a motion for security for costs:

> (i) The initial onus is on the defendant to satisfy the court that it "appears" there is good reason to believe that the matter comes within one of the circumstances enumerated in Rule 56.01 (*Hallum v. Canadian Memorial Chiropractic College* (1989), 1989 CanLII 4354 (ON SC), 70 O.R. (2d) 119 (H.C.J.) at 123);
>
> (ii) Once the first part of the test is satisfied, "the onus is on the plaintiff to establish that an order for security would be unjust" (*Uribe v. Sanchez* (2006), 33 C.P.C. (6th) 94 (Ont. S.C.J. – Mast) ("*Uribe*") at para. 4);
>
> (iii) The second stage of the test "is clearly permissive and requires the exercise of discretion which can take into account a multitude of factors". The court exercises a broad discretion in making an order that is just (*Chachula v. Baillie* (2004), 2004 CanLII 27934 (ON SC), 69 O.R. (3d) 175 (S.C.J.) at para. 12; *Uribe*, at para. 4);
>
> (iv) The plaintiff can rebut the onus by either demonstrating that:
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> (a) the plaintiff has appropriate or sufficient assets in Ontario or in a reciprocating jurisdiction to satisfy any order of costs made in the litigation,
>
> (b) the plaintiff is impecunious and that justice demands that the plaintiff be permitted to continue with the action, *i.e.* an impecunious plaintiff will generally avoid paying security for costs if the plaintiff can establish that the claim is not "plainly devoid of merit", or
>
> (c) if the plaintiff cannot establish that it is impecunious, but the plaintiff does not have sufficient assets to meet a costs order, the plaintiff must meet a high threshold to satisfy the court of its chances of success
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> (See *Willets v. Colalillo*, [2007] O.J. No. 4623 (S.C.J. – Mast.) at paras. 46, 47, and 55; *Uribe*, at para. 5; *Zeitoun v. Economical Insurance*

Group (2008), 2008 CanLII 20996 (ON SCDC), 91 O.R. (3d) 131 (Div. Ct.) at para. 50; *Bruno Appliance and Furniture Inc. v. Cassels Brock & Blackwell LLP*, [2007] O.J. No. 4096 (S.C.J. – Mast.) ("*Bruno*") at para. 35);

(v) Merits have a role in any application under Rule 56.01, but in a continuum with Rule 56.01(1)(a) at the low end (*Padnos v. Luminart Inc.*, 1996 CanLII 11781 (ON SC), [1996] O.J. No. 4549 (Gen. Div.) ("*Padnos*"), at para. 4; *Bruno*, at para. 36);

(vi) The court on a security for costs motion is not required to embark on an analysis such as in a motion for summary judgment. The analysis is primarily on the pleadings with recourse to evidence filed on the motion, and in appropriate cases, to selective references to excerpts of the examination for discovery where it is available (*Padnos*, at para. 7; *Bruno*, at para. 37);

(vii) "If the case is complex or turns on credibility, it is generally not appropriate to make an assessment of the merits at the interlocutory stage. The assessment of the merits should be decisive only where (a) the merits may be properly assessed on an interlocutory application; and (b) success or failure appears obvious" (*Wall v. Horn Abbott Ltd.*, 1999 CanLII 7240 (NS CA), [1999] N.S.J. No. 124 (C.A.) at para. 83);

(viii) The evidentiary threshold for impecuniosity is high, and "bald statements unsupported by detail" are not sufficient. The threshold can only be reached by "tendering complete and accurate disclosure of the plaintiff's income, assets, expenses, liabilities and borrowing ability, with full supporting documentation for each category where available or an explanation where not available" (*Uribe*, at para. 12; *Shuter v. Toronto Dominion Bank*, 2007 CanLII 37475 (ON SC), [2007] O.J. No. 3435 (S.C.J. – Mast.) ("*Shuter*") at para. 76);

(ix) To meet the onus to establish impecuniosity, "at the very least, this would require an individual plaintiff to submit his most recent tax return, complete banking records and records attesting to income and expenses" (*Shuter*, at para. 76);

(x) A corporate plaintiff who claims impecuniosity must demonstrate that it cannot raise security for costs from its shareholders and associates, *i.e.* it must demonstrate that its principals do not have sufficient assets (*Smith Bus Lines Ltd. v. Bank of Montreal* (1987), 1987 CanLII 4190 (ON SC), 61 O.R. (2d) 688 (H.C.J.) at 705). Evidence as to the "personal means" of the principals of the corporation is required to meet this onus (*Treasure Traders International Co. v. Canadian Diamond Traders Inc.*, [2006] O.J. No. 1866 (S.C.J.) ("*Treasure Traders*"), at paras. 8-11). A corporate plaintiff must provide "substantial evidence about the ability of its shareholders or others with an interest in the litigation to post security".

"A bare assertion that no funds are available" will not suffice. (*1493677 Ontario Ltd. v. Crain*, [2008] O.J. No. 3236 (S.C.J. – Mast.) at para. 19);

(xi) Consequently, full financial disclosure requires the plaintiff to establish the amount and source of all income, a description of all assets including values, a list of all liabilities and other significant expenses, an indication of the extent of the ability of the plaintiffs to borrow funds, and details of any assets disposed of or encumbered since the cause of action arose (*Morton v. Canada* (2005), 2005 CanLII 6052 (ON SC), 75 O.R. (3d) 63 (S.C.J.) at para. 32);

(xii) Because the plaintiff has the onus to establish impecuniosity, a defendant "can choose not to cross-examine if the plaintiff fails to lead sufficient evidence". The decision not to cross-examine does not convert insufficient evidence into sufficient evidence (*Bruno*, at pars. 27-28; *Shuter*, at paras. 59 and 71); and

(xiii) When an action is in its early stages, an installment (also known as "pay-as-you-go") order for security for costs is usually the most appropriate (*Bruno*, at para. 65; *Hawaiian Airlines, Inc. v. Chartermasters Inc., et al.* (1985), 1985 CanLII 2155 (ON SC), 50 O.R. (2d) 575 (S.C.O. – Mast.)).

[16] In considering paragraph 15(iv)(c) above, i.e. whether the plaintiff meets the high threshold to satisfy the court of its chances of success, the court must review the pleadings, evidence, transcripts, and any other relevant facts before the court to determine if there is a good chance the plaintiff will succeed at trial. The standard falls between the standard of "not devoid of merit" and the standard of "proving the claim on a balance of probabilities at trial or establishing that there is no triable issue on a summary judgment motion". Further, the test must be higher than the plaintiff establishing a genuine issue requiring trial: *Bruno Appliance and Furniture v. Cassels Brock & Blackwell LLP*, 2012 ONSC 4038 ("*Bruno Appliance and Furniture*") at paragraphs 50 and 51.

[17] To the extent the plaintiff's "evidence" relies solely on allegations in their Statement of Claim which are denied by the defendant without further evidence from the plaintiff, the Statement of Claim does not support a good cause of action: *Bruno Appliance and Furniture* at paragraph 61.

[18] The defendant must bring a motion for security for costs promptly when the defendant discovers it has a reasonable basis for bringing the motion. A plaintiff should not be required to post security after incurring significant expense in advancing the litigation. The defendant should not be entitled to security for costs if its delay causes prejudice to the plaintiff, but its failure to explain the delay may be fatal to the motion even in the absence of prejudice: *688103 Ontario Inc. v. 5000917 Ontario Inc.*, 2025 ONSC 720 at para. 14.

[19] In considering the justness of an order for security for costs, each case must be considered on its own facts. It is neither helpful nor just to compose a static list of factors to be used in all cases in determining this justness. There is no utility in imposing rigid criteria on top

of the criteria already in the *Rules*. The correct approach is for the court to consider the justness of the order holistically, examining all the circumstances of the case and guided by the overriding interests of justice to determine whether it is just that the order be made: *Yaiguaje v. Chevron Corporation,* 2017 ONCA 827 at paragraph 25.

[20] In *Canadian Metal Buildings Inc. v. 1467344 Ontario Limited*, 2019 ONSC 566, at paragraph 19 McGraw A.J. stated the exercise of the court's broad discretion in determining a fair and reasonable amount for security is substantially similar to the exercise of its discretion in fixing costs pursuant to r. 57.01. The amount should reflect a number that falls within the reasonable contemplation of the parties, reflecting what the successful defendant would likely recover and the factors set out in r. 57.01. In most cases, security for costs will be ordered on a partial indemnity scale.

[21] The parties did not put forth any arguments or case law with respect to the relationship between a bank and its customer. However, the Court of Appeal has found that this relationship is generally found to be a purely commercial relationship, as stated in *Baldwin v Daubney*, 2006 CanLII 32901 (ON CA) ("*Baldwin*") at paragraph 12:

> It is settled law also that, barring a special relationship or exceptional circumstances, the relationship between a bank and its customer is that of debtor and creditor. The motion judge set out the applicable law at para. 78 of the reasons, as recently summarized by this court in *Pierce v. Canada Trustco Mortgage Co.*, 2005 CanLII 15706 (ON CA), [2005] O.J. No. 1886, 254 D.L.R. (4th) 79 (C.A.), at para. 27:
>
> > Generally speaking, the relationship between a financial institution lender and its customer borrower is a purely commercial relationship of creditor and debtor. Absent any special relationship or exceptional circumstances such as would give rise to a fiduciary duty (which is not pleaded by Mrs. Pierce), the courts have consistently held that the lender owes no duty to the borrower in connection with the making of the loan. In particular, the bank owes no duty to its customer to advise the customer not to undertake the loan: see *Bertolo v. Bank of Montreal*, (1986), 1986 CanLII 150 (ON CA), 57 O.R. (2d) 577, 33 D.L.R. (4th) 610 (C.A.), and *Bank of Montreal v. Duguid* (2000), 2000 CanLII 5710 (ON CA), 47 O.R. (3d) 737, 185 D.L.R. (4th) 458 (C.A.).

Analysis

[22] BMO brought this motion promptly upon discovering it had a reasonable basis for bringing this motion. BMO served its Notice of Motion on Ms. Burke on July 25, 2025, which is only just over three weeks after Ms. Burke advised BMO's counsel she had no assets to post security in Ontario. Although there is an unexplained gap in the correspondence between the parties from March 7 to July 2, 2025, the action did not advance during this period, and there is no evidence that Ms. Burke was prejudiced due to BMO not bringing this motion before July 25, 2025.

[23] I find BMO has proven there is a good reason to believe that Ms. Burke falls within two of the circumstances set out in r. 56.01(1), namely rr. 56.01(1)(a) and (d). At the motion hearing, Ms. Burke confirmed BMO's affidavit evidence that she resides in Edmonton, and advised she has lived there since April 2024. At the motion hearing, Ms. Burke also confirmed BMO's affidavit evidence that she does not own any assets in Ontario.

[24] Therefore, the onus is on Ms. Burke to establish that an order for security for costs would be unjust. For the following reasons, I find she has not met this onus.

[25] Ms. Burke has not demonstrated she has appropriate or sufficient assets in Ontario or in a reciprocating jurisdiction to satisfy any order for costs made in the litigation. Alberta is a reciprocal jurisdiction under the *Reciprocal Enforcement of Judgments Act*, R.S.O. 1990, c. R.5. Ms. Burke did not provide any evidence to support that she has sufficient assets in Alberta or in any other reciprocating jurisdiction. At the motion hearing, Ms. Burke also stated she has no assets or savings.

[26] Ms. Burke has not demonstrated that she is impecunious. Although she states she has no savings or assets, she has not provided any evidence in support of her statements, namely complete and accurate disclosure of her income, assets, expenses, liabilities and borrowing ability, with full supporting documentation for each category where available or an explanation where not available. Further, she has not provided her most recent tax return, complete banking records and any records attesting to income and expenses.

[27] Ms. Burke has stated she does not have any assets to post security in Ontario. Therefore, I now turn to whether Ms. Burke meets the high threshold to satisfy the court of her chances of success. The crux of Ms. Burke's position is that BMO is liable for damages because she alleges a BMO financial advisor told her, prior to her entering into the Agreement of Purchase and Sale ("APS"), that she was "financially fit" to purchase the property, thereby inducing her to enter into the APS. Ms. Burke claims the BMO financial advisor should have advised her that she was not financially fit to complete this purchase.

[28] Ms. Burke's claim against BMO is based in negligence. Ms. Burke also states in her claim that BMO has breached the *Consumer Protection Act* – presumably Ontario's *Consumer Protection Act, 2002*, S.O. 2002, c. 30, Sched A. Ms. Burke does not cite any provisions from this legislation in her Statement of Claim or her factum. In her Reply, Ms. Burke also references the *Bank Act*, S.C. 1991, c. 46 and the "rules" of "FSCO", which is presumably the Financial Services Commission of Ontario, now known as the Financial Services Regularity Authority of Ontario (FSRA). She did not cite any provisions in the *Bank Act* or any specific rules of FSCO/FSRA that BMO allegedly breached.

[29] Paragraphs 20 and 21 of the Statement of Claim state the legal argument Ms. Burke advances in support of her claim that BMO is liable for damages:

> 20. The Defendant owes a duty of care in calculating and providing financial advice to the Plaintiff.
>
> 21. The Defendant was Negligent and breached the duty of care in calculating the pre-approval given to the Plaintiff

a. The Defendant failed in their duty of care in calculating and assessing the financial commitment that the Plaintiff was capable of taking on. The Defendant breached the Consumer Protection Act.

b. The Defendant failed to include all debts that were required to be paid out in order for the Plaintiff to qualify for the commitment she was entering into with the Agreement of Purchase and sale between her and the builder. In providing the pre-approval letter and advising the Plaintiff that she qualified for the property this locked her into the deal.

[30] Ms. Burke did not provide an affidavit in support of her position on this motion. Therefore, the court has only the pleadings to determine if Ms. Burke has discharged her onus of satisfying the court there is a good chance she will succeed at trial. In considering the pleadings, I have disregarded the documents Ms. Burke appended to her Statement of Claim as exhibits, as they were not appended as exhibits to an affidavit prepared for this motion.

[31] On a review of the pleadings, liability and damages are both at issue. BMO, in its defence, clearly denies the allegations in the Statement of Claim, including the claim for damages. BMO's defence includes the statement that Ms. Burke was not receiving financial advice from any financial advisor employed by BMO at any material time regarding her debts and other obligations. BMO also states it did not breach the *Consumer Protection Act*. Ms. Burke's Reply responds to BMO's defence, improperly adds argument referencing the *Bank Act* and rules of FSCO, and reiterates her allegations that BMO gave her incorrect financial advice that she relied upon to her detriment.

[32] Applying *Bruno Appliance and Furniture*, as Ms. Burke's evidence relies solely on allegations in her claim which are denied by BMO without further evidence from Ms. Burke, I find the Statement of Claim and Reply does not support a good cause of action, and Ms. Burke has not satisfied the court there is a good chance she will succeed at trial on the basis of negligence or a breach of the *Consumer Protection Act*, *Bank Act*, or rules of FSCO/FSRA. With respect to the negligence claim, applying *Baldwin*, I find Ms. Burke has not demonstrated a good chance of establishing a special relationship or exceptional circumstances between her and BMO, such that the court would find BMO owes her a duty of care.

[33] At the hearing, Ms. Burke stated her case was not devoid of merit, and that she had proven her case by way of her Statement of Claim, Reply, and her factum for this motion. As noted above in paragraph 30, Ms. Burke appended various documents to the Statement of Claim. These documents include the APS and email communications between her and BMO. At the hearing, she also provided the court with additional correspondence between her and BMO.

[34] I have stated above at paragraph 30 that I disregarded these documents of Ms. Burke in my analysis. However, even if I were to accept the authenticity of these documents and to find them admissible for the purposes of this motion, I do not find they support that there is a good chance Ms. Burke will succeed at trial, for the following reasons:

(a) Email correspondence between Ms. Burke and BMO indicates that Ms. Burke took the position that BMO gave her incorrect financial advice, and was liable for her lost deposit and inability to obtain a mortgage. However, BMO's email communications to Ms. Burke contained no evidence that BMO provided financial advice to Ms. Burke, including any advice about her "financial fitness" or her entering into the APS.

(b) Taken together, the APS, executed by Ms. Burke on or about September 25, 2017, and BMO's Preliminary Mortgage Approval Notice, dated December 8, 2017, indicate that Ms. Burke signed the APS before securing mortgage financing from BMO and before obtaining the mortgage pre-approval from BMO. These two documents do not contain any evidence that BMO provided financial advice to Ms. Burke, including any advice about her "financial fitness" or her entering into the APS.

(c) With respect to damages, the medical note attached to the Statement of Claim does not state that BMO's actions caused Ms. Burke's health issues.

(d) As stated above in paragraph 31, in its defence, BMO has clearly denied Ms. Burke's allegations in her Claim. BMO's defence contains statements of events that BMO claims to have occurred, and these statements counter Ms. Burke's allegations. BMO also alleges certain claims are statute-barred because they were or ought to have been discoverable before the two-year limitation period in the *Limitations Act, 2002*, S.O. 2002, c. 24, Sched. B. Nothing in Ms. Burke's documents assists in countering any part of BMO's defence.

[35] At the motion, Ms. Burke states that she relied on BMO's mortgage pre-approval to "bind" her to the APS. She submits that if she had not received BMO's mortgage pre-approval, she would not have been bound to the APS, and she would have been able to seek alternative financing from others such as the vendor.

[36] In her Statement of Claim at paragraph 2, she states: "By the plaintiff providing the pre-approval letter to the builder it locked her into the [APS]." In her claim at paragraph 21, she states: "In providing the pre-approval letter and advising the Plaintiff that she qualified for the property this locked her into the deal."

[37] In support of her position that her providing BMO's mortgage pre-approval notice to the vendor "locked her into the deal", as stated in her Statement of Claim, Ms. Burke points to paragraph 25 of Schedule "B" to the APS, which required her to provide, within 20 days of acceptance of the APS, evidence satisfactory to the vendor of her financial ability to complete this transaction, including a commitment letter from Ms. Burke's proposed mortgagee together with evidence of the source and availability of the balance of the purchase price due on completion.

[38] I am unclear as to the exact argument Ms. Burke is advancing. Her argument appears to be one of the following:

(a) By providing the vendor with BMO's mortgage pre-approval letter, for this purchase Ms. Burke was forced to obtain a mortgage from only BMO. If she had not provided the vendor with BMO's mortgage pre-approval letter, she could have found another lender to help her complete this transaction; or

(b) The APS was not binding on Ms. Burke until she provided the vendor with BMO's mortgage pre-approval letter. If she had not provided the vendor with this letter, she could have extricated herself from this real estate transaction, presumably without being liable to the vendor for damages.

[39] I reject Ms. Burke's argument outlined in paragraph 38(a) above for two reasons:

(a) Nothing in the APS states Ms. Burke could only obtain financing from a lender who had provided her with a mortgage pre-approval letter; and

(b) Her submission that she could have found another lender is purely speculative. She did not provide any evidence to the court supporting her position that she could have and was able to close this transaction with another lender.

[40] I reject Ms. Burke's argument outlined in paragraph 38(b) above. The APS had a firm closing and was not conditional on Ms. Burke arranging for mortgage financing. Therefore, the APS was binding on Ms. Burke, with or without mortgage pre-approval or mortgage financing from BMO or another lender. When Ms. Burke failed to close this real estate transaction, she became liable for damages owing to the vendor, are as outlined in paragraphs 24 to 28 of *2174372 Ontario Ltd. v. Akbari*, 2023 ONSC 6047.

[41] Based on the foregoing reasons, and applying the principles in *Baldwin*, even if I were to admit Ms. Burke's documents for the purposes of this motion, Ms. Burke has not satisfied the court that she has a good chance of success at trial by establishing that BMO was negligent. This is because Ms. Burke has not satisfied the court that she has a good chance of establishing a special relationship or exceptional circumstances between BMO and her, such that the court would find BMO owes a duty of care towards Ms. Burke.

[42] Ms. Burke has also not satisfied the court she has a good chance of success at trial by establishing that BMO breached the *Consumer Protection Act*, *Bank Act*, or rules of FSCO/FSRA, even if I were to admit Ms. Burke's documents for the purposes of this motion. Ms. Burke's documents, together with the pleadings, do not contain evidence that BMO breached any provision in the *Consumer Protection Act*, *Bank Act*, or rules of FSCO/FSRA. Therefore, I find on a review of the pleadings and the documents provided by Ms. Burke that Ms. Burke has not discharged her onus of satisfying the court of her chances of success.

[43] In considering the justness of an order for security for costs, the factual circumstances of this case lead me to conclude that the interests of justice require an order for security for

costs be made. Ms. Burke claims a total of $850,000 in damages from BMO. She has not persuaded the court she has a good chance of success at trial.

[44] Regarding quantum, it is appropriate to order security for costs for the entire proceeding. As the action is still in its early stages, I find an installment order for security for costs is appropriate.

[45] I find both the amount and the timing of these amounts that BMO is requesting for security for costs for the first and third tranche to be reasonable, considering BMO's costs incurred to date and the estimate of BMO's costs for future stages of this proceeding. However, I have reduced the amount requested by BMO for the second tranche, based on its estimated partial indemnity fees of $11,600 rather than estimated actual fees of $19,340.

Disposition

[46] Based on the foregoing, I order Ms. Burke to post security as follows:

(a) $10,000 within thirty (30) days of receipt of **the order arising from this motion**, as security for BMO's costs and disbursements to date in this action, based upon partial indemnity fees to date of $42,535.33 inclusive of disbursements and HST;

(b) $11,600 at least seven days prior to the start of examinations for discovery, as security for BMO's costs associated with the examinations for discovery, based upon projected partial indemnity fees of $11,600 for the preparation and attendance at examinations for discovery, and subsequent steps involving answers to undertakings, questions under advisement and refusals of the parties; and

(c) $30,000 at least seven days prior to the start of trial, as security for BMO's costs associated with pre-trial and trial, based upon projected partial indemnity fees as follows: pre-trial – $5,800, preparation of trial – $11,700, and trial – $24,225.

Costs

[47] BMO provided a Costs Outline at the motion hearing. Ms. Burke did not. If the parties cannot agree to the disposition of the costs of the motion, they may make submissions in writing, not exceeding three pages each double-spaced – BMO within 20 days and Ms. Burke within 10 days thereafter – to the attention of the Trial Coordinator.

C. Mak AJ.

Released: March 17, 2026

Amended: March 18, 2026 – Paragraph 46(a).

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Plaintiff

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BANK OF MONTREAL

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REASONS FOR DECISION

C. Mak AJ.

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