CITATION: Vander Doelen v. Leighway Enterprises Inc., 2026 ONSC 6259
COURT FILE NO.: CV-20-00000312-0000
DATE: 20261106

2026 ONSC 6259 (CanLII)

ONTARIO

SUPERIOR COURT OF JUSTICE

BETWEEN:	
NICOLE VANDER DOELEN Plaintiff	Rebekah Koury, for the Plaintiff
– and –	
LEIGHWAY ENTERPRISES INC. operating as THE JOHNSON'S RESIDENCE, DUSTIN LEIGH, and POTERHOUSE RESTAURANT INC. Defendants	Colleen MacKeigan, for the Defendants
	HEARD: October 28, 2026

REASONS FOR DECISION

DUNN J.:

[1] The defendants move under Rule 56 for an order requiring the plaintiff to pay security for costs into court. The plaintiff lives and works in Vernon, British Columbia. The matter has been set down for trial in January 2027.

[2] The defendants argue that the plaintiff does not have sufficient assets to satisfy a costs award against her if she is unsuccessful at trial.

[3] Rule 56.01 governs security for costs and requires a two-stage process. First, the defendant must show that it appears that the plaintiff falls into one of four enumerated categories. Once the defendant meets this onus, the burden shifts to the plaintiff to show that an order for security for costs would be unjust. This second stage is discretionary and permits the court to consider a multitude of factors. The court must "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 para. 25; *Nexgen v. Podgorniak*, 2020 ONSC

22, at paras. 22-29; *Coastline Corp. v. Canaccord Capital Corp.*, 2009 CanLII 21758, at para. 7 (ON SC).

[4] On this motion, the defendants argue that the plaintiff falls within R. 56.01(1)(a) (ordinarily resident outside of Ontario) and R. 56.01(1)(e) (there is good reason to believe that the action is frivolous and vexatious and that the plaintiff has insufficient assets in Ontario to pay the costs of the defendant). The strength of the claim is contested. Counsel for the defendants reasonably agreed that I should not delve too far into the question of the merits of this action on this record.

[5] The plaintiff agrees, and I accept, that she is not ordinarily resident in Ontario. The threshold question under R. 56.01(1)(a) is therefore satisfied.

[6] However, I find that this is not an appropriate case for security for costs, for three reasons.

[7] First, I accept the plaintiff's primary argument that the delay in bringing this motion should weigh against ordering security for costs. Delay in bringing a motion for security for costs is a significant factor in assessing whether the order would be just. As explained in *Pelz v. Anderson*, "One of the reasons for the rule against delay is that the plaintiff should not be placed in the position of having to post security for costs after having incurred considerable expense in advancing the lawsuit": *Pelz v. Anderson,* 2006 CanLII 39571, at para. 23 (ON SC); *Mountainwide Auto Parts Ltd., et al. v. UAP Inc.*, 2022 ONSC 5462, at paras. 12-13; *Kawkaban Corporation v. Second Cup Ltd.*, 2005 CanLII 35683, at paras. 27-28 (ON SCDC).

[8] The defendant argues that it only learned that the plaintiff was a resident of British Columbia in January 2026, when the plaintiff served a Future Cost of Care Report. In that report, the plaintiff self-reported that she had permanently moved to British Columbia.

[9] I accept that this report indicates that the plaintiff intends to remain in British Columbia. However, R. 56.01 applies where the plaintiff is ordinarily resident outside of Ontario. At the time of discovery in August 2023, the plaintiff resided in Nova Scotia. As counsel for the plaintiff points out, there was no reason to think the plaintiff would again be resident of Ontario. The fact that the plaintiff lives in British Columbia, as opposed to Nova Scotia, is irrelevant under R. 56.01.

[10] The defendant indicated in April 2026 that it may seek security for costs. That was well after the defendant would have reasonably known that the plaintiff was not resident in Ontario. Further, the plaintiff has expended significant resources (including obtaining expert reports) since examinations for discovery were completed.

[11] Second, I am not satisfied that the defendant has shown, based on this record, that the claim is frivolous or vexatious. I accept that the merits of the claim are relevant to the analysis under R. 56.01(1)(a). However, I find that the merits should not be weighted too heavily in this case.

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[12] At this stage, it is difficult to assess the strength of the claim. There are contested issues of credibility. The caselaw establishes that if a case turns on credibility, it is generally not appropriate to assess the merits at this stage: see e.g. *2179548 ONTARIO INC. v. 2467925 ONTARIO INC.*, 2017 ONSC 469, at para. 8. The plaintiff argues that she has a strong case, while the defendant argues that the claim is very unlikely to succeed. Based on the record before me, I cannot make a clear finding on this question, and I decline to do so.

[13] Third, British Columbia has a regime to enforce judgments obtained in Ontario. British Columbia, like Ontario, has a statute that provides for the enforcement of judgments obtained in other Canadian jurisdictions: *Enforcement of Canadian Judgments and Decrees Act*, SBC 2003 C. 29; *Reciprocal Enforcement of Judgments Act*, RSO 1990, c. R 5. This factor weighs against an order for security for costs. In my view, the exercise of discretion under R. 56.01 must be informed by the fact that a judgment obtained in Ontario can likely be enforced in British Columbia: *Pitkeathly v. 1059288 Ontario Inc.*, 2004 CanLII 33018, at paras. 15-17 (ON SC), citing *Morguard Investments Ltd. v. De Savoye*, [1990] 3 SCR 1077, at paras. 35-37.

[14] The motion is dismissed.

[15] The plaintiff seeks her costs. The defendant argued that this was not an appropriate case for costs. I find that the plaintiff is entitled to her costs on a partial indemnity basis. I fix those costs at $4,000.00, inclusive of taxes and disbursements, payable forthwith.

Justice M.S. Dunn

Released: November 6, 2026

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