

Court File No. CV-17-61135

ONTARIO
SUPERIOR COURT OF JUSTICE

BETWEEN:

OMAR FAROOQ KALAIR

Plaintiff

-and -

BMO FINANCIAL GROUP and
BMO BANK OF MONTREAL a.k.a. BANK OF MONTREAL

Defendants



**AMENDED STATEMENT OF CLAIM
(NOTICE OF ACTION ISSUED MARCH 31, 2017)**

Proceeding under the *Class Proceedings Act, 1992*

1. The Plaintiff Omar Farooq Kalair and on behalf of other Class members (hereinafter "Kalair") claims:
 - (a) general and compensatory damages in an amount as yet unknown, but which will be provided to the Court prior to trial;
 - (b) exemplary and/or aggravated damages in the amount of \$50,000.00;
 - (c) pre-and post-judgment interest in accordance with ss. 128 and 129 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43 as amended;
 - (d) Costs on a substantial indemnity basis; and
 - (e) Such further and other relief as this Honourable Court may deem just.

- (f) The Plaintiff, on his own behalf and on behalf of the Class, claim:
an order pursuant to the *Class Proceeding Act*, 1992, S.O. 1992, c. 6 (the “CPA”),
certifying this action as a class proceeding and appointing him as representative
Plaintiff of this Class;

The Parties

2. Kalair is an individual who resides in the City of Brampton in the Province of Ontario. Prior to the matters subject of this action, Kalair had been a client in good standing of one or both of the Defendants BMO Bank of Montreal and BMO Financial Group for many years.

3. The Defendant BMO Financial Group is a financial services provider which provides retail banking services and products through the Defendant BMO Bank of Montreal. The Defendant BMO Bank of Montreal is a Canadian Chartered Bank listed on Schedule I of the *Bank Act*, S.C. 1991 c.46, as amended.

4. The exact internal business structure and reporting relationship between the Defendants is known to the Defendants but not known to Kalair. For the purposes of this pleading, the Defendants will be jointly referred to as “BMO”.

5. In or around March 1999, Kalair became a client of BMO when he opened a personal bank account. At various times thereafter he opened other accounts and credit facilities with BMO. In or around November 2011, Kalair opened a business chequing account on behalf of UM Financial Group Corporation (hereinafter the “UM Account”).

6. As of June 2014, Kalair had two personal bank accounts, two personal Mastercard credit cards, a personal line of credit and was the signing officer for the UM Account.

Kalair states and the fact is that he was not at any time in default of his obligations as a customer of BMO.

7. Kalair pleads and the fact is that it was an implied condition of his banking relationship with BMO that BMO would not terminate its banking relationship with him without cause or in a capricious and arbitrary manner.

Kalair is M-Barred

8. On or about July 2, 2014 while Kalair was travelling abroad in Saudi Arabia, BMO unilaterally froze Kalair's banking accounts without cause or prior warning, which caused him significant embarrassment, inconvenience and expense. In particular, the sudden closure affected various pre-authorized payment arrangements which Kalair had made with third parties, which negatively impacted his credit.

9. Kalair states and the fact is that immediately upon his return to Canada, he contacted BMO, whose representatives were unwilling or unable to explain BMO's decision to close his banking accounts. On or about August 12, 2014 BMO then reinstated his banking privileges without any further explanation of its prior actions.

10. On or about August 21, 2014 Kalair received a registered letter from BMO notifying him that BMO would be terminating its banking relationship with him and would be closing his personal accounts and the UM Account forthwith.

11. Kalair states and the fact is that immediately after receiving this letter, he contacted BMO for an explanation and was ultimately directed to one Adrian Moscher, who advised him that BMO had made the decision to close his personal accounts and the UM Account based on certain disparaging media articles about Kalair which had come to the BMO's attention.

12. Kalair states and the fact is that he has no criminal record and has never been convicted of any criminal or fraudulent activity. Kalair further states and the fact is that at

no time was he a shareholder, officer or director of UM Financial Group Corporation and that at times relevant to this action UM Financial Group Corporation was a validly subsisting corporation in good standing.

13. Kalair states and the fact is that BMO terminated its banking relationship with him on or about November 14, 2014 by closing his accounts and the UM Account, without ever providing him with adequate or sufficient reasons for doing so or any reason at all.

14. Despite repeated requests by Kalair, BMO has refused or neglected to compensate Kalair for his loss or reinstate his banking privileges

15. Kalair states that the decision by BMO to terminate its banking relationship with him was entirely arbitrary, unjustified, unlawful and undertaken for a wrongful collateral purpose.

16. Kalair states and the fact is that BMO terminated its banking relationship with him because he is a prominent member of the Ontario Muslim community and BMO's decision to terminate the relationship was wholly based on "Islamophobia."

17. Kalair states and the fact is that as a result of BMO's termination of its banking relationship and subsequent closure of his bank accounts, he was "blacklisted" in the Canadian banking community by BMO and has been denied banking and credit facilities by other financial institutions as a result.

18. Kalair pleads and the fact is that, as a result of BMO's actions, he has suffered and continues to suffer financial losses, reputational damages and loss of business opportunity. He has also been obliged to expend further and other resources as a result.

Duty of Care

19. Kalair pleads that at all material times BMO was in a relationship of proximity whereby they owed him a duty of care:

20. Kalair pleads that BMO was negligent in that it:
- (a) failed to act reasonably in advising Kalair about his banking and financing needs;
 - (b) failed to exercise reasonable care in managing Kalair's accounts;
 - (c) failed to exercise reasonable care in properly investigating allegations made against Kalair before arbitrarily ending its banking relationship with him;
 - (d) failed to conduct its security investigations in a proper, impartial and non-discriminatory manner; and
 - (e) failed to properly monitor and supervise its employees and/or agents; or in having procedures and systems in place to ensure that
 - (i) Kalair's accounts were managed in a conscientious and diligent manner;
 - (ii) BMO conducted its communications with Kalair in an honest and forthright manner; and
 - (iii) BMO generally provided its banking, professional and advisory services to Kalair in a conscientious and diligent manner.
21. Kalair pleads and the fact is that BMO failed to train, monitor or supervise its employees and/or agents adequately or at all.
22. Kalair, pleads that BMO conducted its internal investigation against him in a negligent and reckless manner.

23. Kalair pleads and the fact is that BMO knew or ought to have known that its negligent acts or omissions would cause him harm and were reckless as to the result.

24, Kalair pleads and the fact is that the damages which he has sustained were wholly foreseeable to BMO.

25. In all the circumstances, the acts of BMO and its employees and agents were unreasonable.

26. BMO is in law vicariously responsible for the acts and omissions of its employees and agents.

Breach of Contract

27. Kalair states and the fact is, that BMO is in breach of its contract to provide banking services to him.

28. Kalair states and the fact is that BMO has been unjustly enriched at his expense.

29. The financial loss and damages suffered by Kalair were caused solely by the breach of contract and negligent acts or omissions of BMO and/or of those individuals or entities for whom BMO is responsible.

30. Kalair states and the fact is that BMO's conduct in "railroading" Kalair out of his banking relationship with BMO, based on BMO's own "flawed" internal investigation is discriminatory, reprehensible, high-handed and callous.

Relief Sought

31. Kalair seeks general and compensatory damages in an amount as yet unknown, but which will be provided to the Court prior to trial.

32. Kalair pleads that the conduct of BMO as set out in the aforesaid paragraphs is so outrageous as to support an award of aggravated and exemplary damages in the amount of \$50,000.00.

33. Kalair pleads and relies upon Part VIII of the *Bank Act*, S.C. 1991, c. 46 as amended from time to time.

34. Kalair pleads and relies upon Part 1 of the *Canadian Human Rights Act*, R.S.C., 1985, c. H-6

35. Kalair pleads and relies upon the *Negligence Act*, R.S.O. 1990, c. N. 1. as amended

36. Kalair pleads and relies upon the rule of *Hadley v. Baxendale* (1854), 9 Ex. 341.

37. Kalair seeks pre-and post- judgement interest pursuant to ss. 128 and 129 of the Courts of Justice Act, R.S.O. 1990, c. C.43, as amended.

38. Kalair seeks further and other relief as this Honourable Court may deem just.

39. Kalair proposes that this action be tried in Hamilton.

April 28, 2017

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ONTARIO SUPERIOR COURT OF JUSTICE

PROCEEDING COMMENCED AT
HAMILTON

AMENDED STATEMENT OF CLAIM

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