CITATION: Warren v. Canaccord Genuity Corp., 2026 ONSC 2680
COURT FILE NO.: CV-20-00634105-0000
DATE: 20260505

SUPERIOR COURT OF JUSTICE - ONTARIO

RE: CRAIG WARREN, Plaintiff

AND:

CANACCORD GENUITY CORP., Defendant

BEFORE: Schabas J.

COUNSEL: Gordon Capern and Douglas Montgomery, for the Plaintiff

Dena N. Varah, Aoife Quinn and Adam Davis, for the Defendant

HEARD: In writing

ENDORSEMENT – COSTS AND PRE-JUDGMENT INTEREST

[1] On January 28, 2026, I released my Reasons for Judgment in this wrongful dismissal matter: *Warren v. Canaccord Genuity Corp.*, 2026 ONSC 547. I awarded damages to the plaintiff, Craig Warren, in the amount of $2,540,073.95. I left it to counsel to work out pre- and post-judgment interest, and called upon the parties to provide written submissions respecting costs. Counsel have not been able to reach agreement on pre-judgment interest. I have now received submissions on both issues – costs and pre-judgment interest.

[2] Warren was successful in the action and now seeks his costs on a substantial indemnity scale for the entire proceeding in the amount of $1,170,427.25 or, alternatively, substantial indemnity from the date of an Offer to Settle delivered on January 20, 2025, and on a partial indemnity scale prior to that date, in the total amount of $1,078,315.36 Warren also seeks pre-judgment interest on the damages awarded to him at the average pre-judgment interest rate over the period since his dismissal to the date of judgment in the amount of $465,936.52.

[3] The defendant, Canaccord Genuity Inc. ("Canaccord"), submits that there is no basis for an elevated award of costs. It submits that costs should be awarded on a partial indemnity scale which, according to Warren's Bill of Costs, would be $798,453.91, an amount not challenged by the defendant. Canaccord also submits that there is no basis to depart from the usual practice of awarding pre-judgment interest at the prescribed rate, which results in a payment of $349,492.58.

Costs

[4] Warren made a written offer to settle on January 20, 2025. The Offer stated that Canaccord would pay Warren $2,700,000, less applicable statutory withholdings and deductions, but inclusive of any entitlements under the *Employment Standards Act, 2000*. The Offer also provided that Canaccord would pay Warren's costs on a partial indemnity scale and would pay pre-judgment interest as prescribed under the *Courts of Justice Act*, RSO 1990, c C.43 ("CJA").

[5] I awarded Warren less than $2.7 million. One of the reasons why the award was less than $2.7 million was because I deducted the payment Canaccord made to Warren on March 6, 2025, immediately prior to the first trial date, but after the offer was made. As set out in the Agreed Statement of Facts ("ASF"): "On or about March 6, 2025, Canaccord paid Mr. Warren $221,427.70, less taxes and withholdings and exclusive of any interest."

[6] The ASF stated that Canaccord "made this payment for the pro-rated bonus for the weeks Mr. Warren worked at Canaccord in fiscal year 2020 prior to the termination of his employment on September 6, 2019." The actual net payment made to Warren was $101,149.39. At the time the payment was made it was not clear what it was for, nor did it include any interest reflecting an amount that had been owing for five years. Had the gross sum of that payment ($221,427.70) been included in my award, the damages to Warren would have been $2,761,501.65, which exceeds the amount of the Offer to Settle.

[7] In an Amended Offer made on September 11, 2025, four days before the trial commenced, Warren recognized the March 6, 2025 payment would reduce the $2.7 million amount by the gross amount paid, $221,427.70. The Amended Offer stated, *inter alia*:

1. The Defendant shall pay to the Plaintiff the sum of $2,700,000 less applicable statutory withholdings and deductions (the "Settlement Amount") within 10 business days of the Defendant's acceptance of this offer.

2. The Settlement Amount is inclusive of and shall be reduced by the sum of the gross amount that the Defendant paid to the Plaintiff in or about March, 2025, upon the Defendant providing appropriate evidence of the gross amount and the calculation of the deductions and withholdings from the gross amount that resulted in the payment to the Plaintiff of a net amount of $101,149.39.

[8] Canaccord submits that the Offer is not "crystal clear" in light of the Amended Offer, and that the Amended Offer is not "crystal clear" either. Canaccord also argues that the Amended Offer was submitted late, just a few days before the trial commenced.

[9] I do not accept the defendant's submission that the offers lack clarity. The Offer made on January 20, 2025 was clear and straightforward. The proviso in the Amended Offer resulted from the payment made by the defendant in March 2025, but was clear that the gross amount was to be deducted from the $2.7 million figure in the earlier offer. In effect, this reduced the offer to $2,478,572.30.

[10] The plaintiff argues that "the effect of the September offer was to clarify what Canaccord already knew: that Mr. Warren would be willing to settle *all* of his claims (including the stub period bonus) for $2.7 million. The January 20, 2025, offer remained clear and unchanged." [emphasis in original].

[11] The situation changed after the March 2025 payment. Regardless of how it was characterized, money was paid to Warren in March 2025 which, as Warren recognized at trial, reduced the damages to be awarded to him. Consequently, Warren did not achieve a result "as favourable as or more favourable" than the January 20, 2025, offer.

[12] Warren did achieve a better result at trial than was contained in his Amended Offer, as my award of $2,540,073.95 exceeded the Amended Offer of $2,478,572.30. However, the Amended Offer was made just four days before the trial commenced, and therefore does not comply with Rule 49.10, which requires that offers be made at least seven days before the trial.

[13] Accordingly, the plaintiff is not "entitled" to substantial indemnity costs from the date of either offer. He did not achieve a result more favourable than the January 20, 2025 offer and his Amended Offer was made late and was not in accordance with Rule 49.10.

[14] Rule 49.13 suggests that I nevertheless have discretion to consider the offers to settle. It states:

> Despite rules 49.03, 49.10 and 49.11, the court, in exercising its discretion with respect to costs, may take into account any offer to settle made in writing, the date the offer was made and the terms of the offer.

[15] On its face, the wording of Rule 49.13, beginning with the word "despite", provides discretion to nevertheless give effect to an offer to settle that does not strictly comply with Rule 49.10. As the Court of Appeal noted in *Lawson v. Viersen*, 2012 ONCA 25, 108 O.R. (3d) 771 at para. 2, Rule 49.13 "gives a trial judge residuary discretion to consider offers to settle that do not meet the specific requirements of rules 49.10 and 49.11" And later in that decision the Court observed at para. 46 that "Rule 49.13 is not concerned with technical compliance with the requirements of rules 49.10 or 49.11. It calls on the judge to take a more holistic approach."

[16] The purpose of Rule 49 is to encourage parties to make reasonable offers in order to settle disputes and avoid the expense of litigation: *Lawson*, at para. 20. In this case, the plaintiff made two reasonable offers leading up to the trial. Further, the plaintiff offered to settle the dispute even before commencing the action, seeking a payment of $2,050,000 in November 2019. This is in contrast to the very low offer made by the defendant on March 6, 2025 to pay the plaintiff $300,000, "subject to applicable withholding." In my view, this supports exercising discretion to award substantial indemnity costs for the period following the January 20, 2025 Offer to Settle.

[17] However, despite the "despite" in rule 49.13, the Court of Appeal has long held that the discretion in Rule 49.13 "is not so broad as to permit" an award of substantial indemnity costs absent special circumstances required for such an award, namely, reprehensible conduct on the part of the unsuccessful party: *McBride Metal Fabricating Corp. v. H & W Sales Company Inc*., 59 O.R. (3d) 97 (C.A.) at paras. 38-39, quoting from *Mortimer v. Cameron* (1994), 17 O.R. (3d) 1

(C.A.). The Court's more recent decision in *Lawson*, while suggesting flexibility, does not address the holdings in those prior decisions, and I am bound by them.

[18] The plaintiff submitted that the "hard ball" tactics of the defendant during the litigation, including refusing a reasonable offer to settle made before the litigation started, forcing the plaintiff to bring a refusals motion, belatedly answering undertakings, producing relevant documents late and, it is alleged, failing to produce documents, among other things, support his claim for elevated costs. In my view, however, this conduct, which is disputed by the defendant, does not in any event rise to a level justifying substantial indemnity costs. Defendants are entitled to defend a case and take it to trial. Canaccord did not make the litigation easy for Warren, but the test for reprehensible conduct is high, and it is not met here: *Mara Technologies Inc. v. Eddy Smart Home Solutions Ltd*, 2025 ONSC 6976 at para. 22.

[19] Accordingly, as I am bound by the Court of Appeal's decisions in *McBride Metal Fabricating* and *Mortimer*, the defendant shall pay costs of the action to the plaintiff on a partial indemnity scale in the amount of $798,453.91.

Pre-judgment interest

[20] Section 128 of the *Courts of Justice Act*, entitles a successful litigant to interest on the amount awarded from the date the cause of action arose to the date of the judgment at the pre-judgment interest rate set pursuant to s. 127(2) of the CJA. Warren's employment was terminated by Canaccord in September 2019. The applicable pre-judgment interest rate is 2.0%, resulting in a total award of interest of $349,492.58, which includes interest on the stub period bonus of $24,363.11.

[21] Warren, however, seeks to have the Court allow interest at a higher rate, which the Court may do taking into account the following factors set out in s. 130(2) of the CJA:

> (a) changes in market interest rates;
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> (b) the circumstances of the case;
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> (c) the fact that an advance payment was made;
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> (d) the circumstances of medical disclosure by the plaintiff;
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> (e) the amount claimed and the amount recovered in the proceeding;
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> (f) the conduct of any party that tended to shorten or to lengthen unnecessarily the duration of the proceeding; and
>
> (g) any other relevant consideration.

[22] Warren relies on the fact that the matter has "been outstanding for a lengthy period of time and there has been a significant fluctuation in interest rates." He asserts that the "market rates" have fluctuated between 0.5% and 5.3%, and seeks to have the court apply the average rate over

the period, which is 2.67%, resulting in a pre-judgment interest award of $434,047.84, plus interest on the stub period bonus calculated at 2.62% of $31,915.68.

[23] Warren also relies on what he calls the "misconduct" of the defendant in depriving him of a "large sum of money." Warren's submission asserts that "as an experienced investment banker, Mr. Warren has the requisite skills and expertise to maximize the returns on his investments, and being deprived of these significant funds for almost seven years is highly prejudicial."

[24] I do not accept the plaintiff's submission. As the Court of Appeal stated in *Henry v. Zaitlen*, 2024 ONCA 614 at paras. 20-23, there is a presumption that the prescribed pre-judgment interest rate applies, and that the party seeking to depart from it bears the onus of persuading the court that it should not be applied. The prescribed rate should only be departed from where "there are unusual or special circumstances to justify such a departure having regard to the mandatory criteria under s. 130(2) of the *CJA* and all other relevant considerations." It must also be borne in mind that "interest awards are compensatory, not punitive." (para. 27)

[25] Applying the factors in s. 130(2) of the *CJA*, I cannot consider subsection (a) as Warren has led no evidence of "market rates", as is required of him: *Henry* at para. 50. Rather, it appears his range is taken from the pre-judgment rates set under the CJA. However, the Court of Appeal has stated that it is an error to equate "market interest rates" with those set under the CJA: *Henry* at para. 43.

[26] In any event, while the prescribed rates have indeed fluctuated, they have not fluctuated to such a degree that there is a compelling rationale to depart from the rate set in 2019, which was 2%. The prescribed rate declined to 0.5% for eight consecutive quarters between 2020 and 2022 before rising to a high of 5.3% in late 2023 and for much of 2024, before dropping again. Today, the rate is 2.5%. Accordingly, even if one used the prescribed rates to show a change, Warren's proposed average of 2.3%, rather than 2%, does not support a conclusion that there is a marked change in interest rates that would support a departure from the prescribed rate.

[27] My Reasons for Judgment were released a little over six years after the termination of Warren's employment. This is not the sort of "lengthy period of time" in which interest rates have been adjusted. Cases cited to me in which the Court varied the interest rate dealt with litigation which had taken a decade or more and where there was evidence of significant changes in interest rates: *Couper. v. Nu-Life Corp. et al*, 2016 ONSC 4104; *Waxman v. Waxman (Trustee of)* (2003), 30 C.P.C. (5th) 121 (Ont. S.C.).

[28] The plaintiff's reliance on the "circumstances of the case" is based on Canaccord's "tactical decision" to dispute liability and damages in the action, and is not persuasive. There is nothing "unusual" in a defendant taking such a position that would support a departure from the prescribed rate. Nor do I place any weight on Warren's claims of misconduct by Canaccord in lengthening the lawsuit or taking "hard ball" positions which, as I have already noted, are disputed by the defendant.

[29] Further, although Warren suggests he would have done better through his own investment activity as a sophisticated investment banker, no evidence of how he would have made more

money is provided. This is simply a bald statement and is the type of statement, regardless of who makes it, that should be treated with considerable skepticism. I note that a somewhat similar position was rejected in *Henry* at para. 52, and in that case the party had at least submitted tables of the growth rate of the Toronto Stock Exchange.

[30] I therefore accept the defendant's position that pre-judgment interest on the judgment should be $325,129.47 and that the plaintiff should also receive interest on the stub period bonus of $24,363.11.

Paul B. Schabas J.

Date: May 5, 2026