

CITATION: *Quadrangle v. Attorney General of Canada*, 2026 ONSC 3209
COURT FILE NO.: CV-15-00010824-00CL
DATE: 20260601

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

BETWEEN:	)	
	)	
QUADRANGLE GROUP LLC, QCP CW	)	<i>Jonathan Lisus, Danielle Glatt, Vivien E.</i>
S.a.r.l. and OBELYSK MEDIA INC.	)	<i>Milat and Philip Underwood, for</i>
	)	<i>Quadrangle Group LLC and QCP CW</i>
Plaintiffs	)	<i>S.a.r.l., Plaintiffs</i>
	)	
	)	<i>Ken Rosenberg, Kris Borg-Olivier and</i>
	)	<i>Douglas Montgomery, for Obelysk Inc.,</i>
	)	<i>Plaintiff</i>
– and –	)	
	)	
ATTORNEY GENERAL OF CANADA	)	<i>Derek Rasmussen and Sanam Goudarzi,</i>
	)	<i>for the Attorney General of Canada,</i>
Defendant	)	<i>Defendant</i>
	)	
	)	
	)	
	)	

Supplementary Reasons Re: Costs and Pre-Judgment Interest

OSBORNE J.

1. Following the release of my reasons for judgment dated August 6, 2025 in this matter (2025 ONSC 4526) allowing the action, the parties made written submissions on costs and prejudgment interest.
2. While those two issues were under reserve, counsel advised the court that the parties had settled the issue of costs on the basis of a payment to the plaintiffs by the defendant in the

amount of \$6,680,632.45 if the defendant is not successful on the current appeal and any subsequent appeal. Accordingly, I need not address the issue of costs.

3. These supplementary reasons therefore address the issue of prejudgment interest.
4. Defined terms in these supplementary reasons have the definitions given to them in my reasons for judgment unless otherwise stated.

The Positions of the Parties on Prejudgment Interest

5. The plaintiffs seek prejudgment interest in the following total amounts:
 - a. Quadrangle: \$121,889,297; and
 - b. Obelysk: \$8,422,033.
6. They submit that they are entitled to compensation for the deprivation of their funds from the date of the accrual of their claims until the date of judgment. They further submit that the applicable interest rate should be equal to the average prejudgment interest rate over that period of time to account for the significant fluctuation in interest rates over the period since the claim accrued, which exceeds ten years. They also submit that prejudgment interest should be calculated on a compound (rather than simple) basis.
7. The defendant agrees that the plaintiffs are entitled to prejudgment interest, but submits that the amounts claimed are excessive and should be reduced.
8. The defendant submits that the plaintiffs should be awarded prejudgment interest in the following total amounts:
 - a. Quadrangle: \$44,894,644; and
 - b. Obelysk: \$2,751,153.
9. The defendant opposes the start date for the interest calculation in respect of Obelysk, the application of an average rate of interest, and the calculation of interest on a compounded rather than simple basis.
10. In addition, the defendant asks the court to exercise its discretion to reduce the period of time for which prejudgment interest would otherwise be payable as a result of conduct of the plaintiffs, which the defendant submits tended to unnecessarily lengthen the duration of the proceeding.

Analysis

The Legal Framework

11. Pursuant to s. 128(1) of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, a person who receives an order for the payment of money is entitled to have included in the order an

award of interest thereon at the prejudgment interest rate, calculated from the date the cause of action arose to the date of the order.

12. Section 128(4)(b) provides that interest shall not be awarded under subsection (1) on interest accruing under that section.
13. The “prejudgment interest rate” is defined in s. 127 to mean the bank rate at the end of the first day of the last month of the quarter preceding the quarter in which the proceeding was commenced, rounded to the nearest tenth of a percentage point. These interest rates are published, by quarter, by year, and are easily referable.
14. Pursuant to s. 130(1), the court has significant discretion with respect to interest and may, where it considers it just to do so, in respect of the whole or any part of the amount on which interest is payable under ss. 128 or 129:
 - a. disallow interest under either section;
 - b. allow interest at a rate higher or lower than that provided in either section; or
 - c. allow interest for a period other than that provided in either section.
15. Pursuant to s. 130(2), for the purpose of subsection (1), the court shall take into account:
 - a. changes in market interest rates;
 - b. the circumstances of the case;
 - c. the fact that an advance payment was made;
 - d. the circumstances of medical disclosure by the plaintiff;
 - e. the amount claimed and the amount recovered in the proceeding;
 - 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.
16. The Court of Appeal for Ontario set out the correct approach to the exercise of the court’s discretion under s. 130 in *Aubin v. Synagogue and Jewish Community Centre of Ottawa (Soloway Jewish Community Centre)*, 2024 ONCA 615, 174 O.R. (3d) 509, leave to appeal refused, [2024] S.C.C.A. No. 417, where, at para. 31, quoting with approval from *Graham v. Rourke*, [1991] 75 O.R. (2d) 622 (C.A.), at p. 627, it stated that a party is *prima facie* entitled to prejudgment interest at the rate prescribed in ss. [127] and [128] of the *Act*. The onus is on the party seeking a higher or lower rate to justify a deviation from that “presumptive rate”.

17. The Court of Appeal continued, at para. 32, relying on *Cobb v. Long Estate*, 2017 ONCA 717, 416 D.L.R. (4th) 222, at paras. 85 and 90, to state that a party's *prima facie* entitlement to a presumptive statutory prejudgment interest rate does not amount to an absolute or unvested entitlement to the presumptive rate. It does, however, set up a rebuttable presumption that should only be deviated from where the party seeking a higher or lower rate demonstrates that there are unusual or special circumstances sufficient to justify such a departure, having regard to the mandatory criteria under s. 130(2).
18. The Court of Appeal further stated that each factor informing the exercise of the court's discretion need not, by itself, amount to unusual or special circumstances, so long as the court is satisfied in considering the relevant circumstances as a whole, that there are unusual or special circumstances. The rationale for the rebuttable presumption and onus is that prejudgment interest should be viewed as part of the compensation due to the plaintiff: *Aubin*, at para. 32.
19. In that case, the court observed that the establishment of a presumptive prejudgment interest rate scheme represents the will of the legislature to establish a coherent scheme that sacrifices perfection "in the interest of consistency and certainty". Accordingly, it is not open to the courts to depart from it except where it is just to do so: *Aubin*, at paras. 33-34.
20. The court concluded by noting that "the court's exercise of its discretion under s. 130(1) must be a balanced one, based on the wide consideration of justice and not curtailed by any one particular factor. The specified factors [set out in s. 130(2)] go beyond a mathematical calculation and comparison of market interest rates" and "seek to animate in a measured consideration of all relevant factors the question of overall fairness as reflected in the legislative policy and purposes underlying these provisions": *Aubin*, at para. 35.
21. I have applied, to the best of my ability, the above framework in determining the issues related to the claim for prejudgment interest in this case.

Start Date for the Calculation of Interest

22. The plaintiffs submit that the cause of action in this case arose when Industry Canada "breached its duty of care by ... cancelling and revoking the right to transfer the spectrum licence ... through the adoption and implementation of the 2013 Transfer Framework".¹
23. That date was June 28, 2013. The plaintiffs submit that prejudgment interest for Obelysk should be calculated from that date.²
24. However, the defendant disagrees with the plaintiffs' proposed interest start date for Obelysk, and instead submits that its loss arose only with the closing of the Rogers

¹ Reasons for Judgment, at para. 275.

² The defendant also submits that the applicable prejudgment interest rate in effect on the date on which statement of claim was issued (September 4, 2014), should be used. This particular point is of no moment with respect to the rate: the prescribed rate in effect on either date was 1.3%.

transaction since the introduction of the Transfer Framework in 2013 had no immediate impact on Obelysk.

25. I do not agree. Obelysk succeeded in its action for damages equal to its original investment, plus interest, not damages equal to its net return from an appropriate alternative investment portfolio. Accordingly, its claim for damages crystallized when the 2013 Transfer Framework was enacted.
26. The plaintiffs submit that prejudgment interest for Quadrangle should be calculated from June 24, 2015, the date as of which the court assessed Quadrangle's damages, in order to avoid a double-counting of prejudgment interest, since the court already included in its damages award a "but for" rate of return for the period from June 28, 2013 to June 24, 2015.
27. The defendant agrees with the interest calculation start date of June 24, 2015 for Quadrangle, as do I, for the reasons submitted by the parties and for the reasons set out in my earlier reasons for judgment. The prejudgment interest rate in effect as at that date was 1.0%.
28. Accordingly, prejudgment interest for Obelysk should be calculated with a start date of June 28, 2013, and prejudgment interest for Quadrangle should be calculated with a start date of June 24, 2015.

Should the Applicable Interest Rate be Averaged?

29. The plaintiffs concede that prejudgment interest is usually calculated on the basis of the bank rate at the end of the first day of the last month of the quarter preceding the commencement of the proceeding (the basis for the rates noted above).
30. However, they submit that the court can, and should in this case, exercise its discretion under s. 130 to award interest on the basis of the average rate over the applicable time period, since the proceeding has been outstanding for a lengthy period of time (since 2013, in this case), and there has been a significant fluctuation of interest rates.
31. In short, they submit that there have been significant increases in market interest rates since 2013, with the result that the applicable interest rate will be materially higher if the average over the relevant period of time is used, compared to the rate in effect as of 2013 (or 2015).
32. They submit that a holistic consideration of the other factors set out in s. 130(2) also favours the application of an average rate of interest, and they rely on the decision of the Court of Appeal in *Cobb* for the proposition that since interest rates fluctuate over time, it only makes sense that the interest rate set by the court should reflect these changes as well. That flows from the legislative objective of fairly compensating an injured party for all that he or she has lost as a result of the injury. The provisions of the *Courts of Justice Act* concerning prejudgment interest achieve that by preserving the court's discretion not to apply the default rate: *Cobb*, at para. 86.

33. The plaintiffs point to cases in which this court has applied an average of prejudgment interest rates, particularly where a lengthy period of time had elapsed between the notice of claim and the date of judgment, and where rates fluctuated significantly during that period. See, for example: *Waxman v. Waxman (Trustee of)* (2003), 30 C.P.C. (5th) 121, at para. 15 (Ont. S.C.), and *Couper v. Nu-Life Corp et al*, 2016 ONSC 4104, 3 C.P.C. (8th) 192, at paras. 1-3.
34. In the present case, they submit that applying the average prejudgment interest rate calculated from June 2013, rather than the prejudgment interest rate applicable on the date of the claim, would increase the applicable rate from 1.3% to 1.93%. Given the very significant length of time involved, the quantum of the claims and of the judgment, the amount represented by this superficially modest increase in rates is significant and yields a material difference in dollar value.
35. The plaintiffs submit that even the higher interest rate is still below the average rate of inflation over the same period of time (2.41%) and is also less than the average 10-year Canadian government bond yield from 2008 to 2023 (2.3%), with the (notional) result that the defendant “borrowed” the plaintiffs’ money for less than market rate.
36. In my view, the applicable rate should not be averaged.
37. I am not persuaded that the fluctuation ought to be considered significant in the circumstances, unlike in the circumstances before the court in *Waxman* and *Couper*. As submitted by the defendant, other decisions have suggested that for a fluctuation to be significant, the difference in rates over a given period must exceed 4%: see *Robb Estate v. Canadian Red Cross Society*, 2001 CarswellOnt 545 (Ont. S.C), at para. 16, reversed in part on other grounds (2001), 152 O.A.C. 60 (C.A.); and *Graham v. Rourke* (1990), 75 O.R. (2d) 622 (C.A.). The defendant submits that here, the quarterly prejudgment interest rates from 2014 to the present reveals that the rate did not fluctuate by more than 2% for a period of eight years.³
38. Having considered the above, as well as all of the factors set out in s. 130(2), I see no reason to depart from the presumptively applicable interest rate established by the legislature, and the applicable interest rate should not be averaged.

Should the Interest Rate be Simple or Compounded?

39. The plaintiffs concede that the *Courts of Justice Act* contemplates an award of prejudgment interest calculated on a simple basis (s. 128(4)(b)), but ask the court to exercise its discretion to apply interest on a compounded basis here. The plaintiffs rely on two decisions in which the court has awarded compounded interest as a “more precise measure of the value of possessing money for a period of time”: *Bank of America Canada v. Mutual Trust Co*, [2002] 2 S.C.R. 601, 2002 SCC 43, at paras. 28 and 38-42; and *Enbridge Gas v. Michael*

³ I have addressed above the relevant start dates for the interest calculations in this case. For clarity, prejudgment interest would apply to the date of judgment, rather than “to the present”, as submitted.

Marinaccio et al, 2011 ONSC 4962, at para. 17, aff'd 2012 ONCA 650, leave to appeal refused, [2012] S.C.C.A. No. 517.

40. The plaintiffs submit that they are seeking compound interest but calculated only on an annual basis, not on a monthly basis (as was awarded in *Enbridge*), and that when viewed holistically, the application of a compound rate is not disproportionate or unreasonable, particularly when one considers that the 2008 Spectrum Auction in this case generated over \$4.2 billion in proceeds for the federal government.
41. I decline to direct that interest be compounded on the particular facts of this case. Unlike at least some other cases in which compound interest has been awarded, there was no wrongful retention of funds here by the defendant: see, for example: *SS & C v. the Bank of New York Mellon et al*, 2023 ONSC 4083, at para. 194; and *MDS Inc. v. Factory Mutual Insurance Company*, 2021 ONCA 594, 465 D.L.R. (4th) 294, at para. 103, leave to appeal refused, [2021] S.C.C.A. No. 382. In those cases, this factor was a relevant consideration. I agree with the defendant that in the present case, the funds paid for the spectrum licences were not wrongfully retained in the sense in which the funds were retained in those other cases. Here, the spectrum licences were used by Mobilicity for over five years.
42. Moreover, and as acknowledged by the plaintiffs, the Supreme Court of Canada observed in *Bank of America*, at para. 55, that compounded prejudgment interest will generally be limited to breach of contract cases where there is evidence that the parties agreed that compounding interest would apply. Even recognizing, as I do, that there remains a discretion to depart from that general rule, I am not persuaded that there are any facts present here to justify such a departure. For example, the Court of Appeal noted in *McFlow Capital Corp. v. James*, 2021 ONCA 753, at para. 59, citing *Bank of America*, at para. 55, that “[c]ompound prejudgment or post-judgment interest ‘may be awarded as consequential damages in other cases but there would be the usual requirement of proving that damage’ The same principles apply to interest at a rate in excess of the rate provided for in the CJA.” Consequential damages were neither claimed nor proven at trial in this case.
43. As submitted by the defendant, the plaintiffs’ own expert reports calculated the interest on a simple basis.⁴ Absent any evidence in the record with respect to compound interest, this issue and the specific quantum now sought cannot be tested (and was not tested at trial on the basis of any evidence in the record). Accordingly, I think it ought not to be awarded at this stage. To do otherwise would prejudice the defendant unfairly.

The Conduct of the Plaintiffs: Did it Tend to Lengthen the Proceeding and Should it affect Interest Payable?

44. Finally, the defendant submits that interest should be allowed, but for a period shorter than that provided for in s. 128, on the basis that the conduct of the plaintiffs tended to lengthen the duration of the proceeding unnecessarily.

⁴ KSV Quadrangle Report dated December 6, 2022, at paras. 6.14 and 7.13, and KSV Obelysk Reports dated January 3, 2023, at paras. 6.14 and 7.12, and August 23, 2023, at paras. 4.6, 4.15 and 5.25.

45. While this is a factor that the court should consider (see s. 130(2)(f)), I am not persuaded that there is any conduct of the plaintiffs in this particular case that ought to attract an adjustment to the period over which interest is payable. The defendant submits that the plaintiffs initially pleaded their claim broadly, and only much later (approximately seven years) substantially amended the claim to narrow the causes of action being pursued and the relief sought, thereby causing substantial unnecessary delay.
46. The defendant submits that the plaintiffs narrowed the nature and scope of the representations made by Industry Canada on which they relied, and that the plaintiffs subsequently abandoned some of their claims. This rendered useless and irrelevant the production of additional documents, and of some of the examinations for discovery.
47. The claims here were immensely complex. I am not persuaded that in amending their claim as they did, the plaintiffs acted in an egregious manner.
48. In my view, and notwithstanding that the plaintiffs' claim was certainly amended, the circumstances here do not justify a departure from the well-settled objective and purpose of prejudgment interest, which is to compensate a plaintiff for the loss of otherwise available funds. An award of interest is not intended as a proxy for punitive damages, or to otherwise punish (or in the reverse situation, reward) parties for their conduct during the proceedings. That is usually addressed in the context of an award of costs or, where appropriate, an award of punitive damages.
49. The defendant seeks a reduction in the period of time over which interest is calculated of three and one half years. That is significant, and as I explained above, there is no basis to make such an adjustment in the particular circumstances of this case.
50. The defendant itself notes in its submissions on interest that "it is difficult to precisely determine how much the pursuit of the abandoned claims delayed the progress of the action". I agree. Where I disagree with the defendant is that an estimated delay of three and a half years "is conservative". There is simply no basis for me to make such a finding in this case (and no basis for the quantum of that estimated delay is particularized in the submissions).

Result and Disposition

51. For all of the above reasons, and applying the factors set out in s. 130(2), prejudgment interest shall:
 - a. begin to run for Quadrangle on June 24, 2015;
 - b. begin to run for Obelysk on June 28, 2013;
 - c. be calculated on a simple and not compounded basis;
 - d. be calculated on the applicable prejudgment rates of interest set out in the Regulations and not be averaged;

- e. not be reduced by three and one half years (of the period over which interest is payable) on the basis that the plaintiffs' conduct in prosecuting this action was such that it tended to lengthen unnecessarily the duration of the proceeding.
52. Order to go in accordance with these reasons.

Osborne J.