

Court of King's Bench of Alberta

Citation: Yakubow v Edmonton Granite Memorials Ltd., 2026 ABKB 613

Date: 20260903
Docket: 2303 01893
Registry: Edmonton

Between:

Dwayne Yakubow

Applicant

- and -

Edmonton Granite Memorials Ltd.

Respondent

**Ruling on Prejudgment Interest and Costs
of the
Honourable Justice K.H. Oviatt**

Overview

[1] This is a ruling on prejudgment interest and costs following a constructive dismissal trial. Reasons on the merits were provided in *Yakubow v Edmonton Granite Memorials Ltd.*, 2026 ABKB 360.

[2] The plaintiff, Dwayne Yakubow, was successful at trial and brings this application. The parties disagree on how prejudgment interest should be calculated, and what costs are appropriate in the circumstances.

[3] For the reasons that follow, I direct a midpoint calculation of prejudgment interest in accordance with the Alberta Court of Appeal's decision of *Christianson v North Hill News Inc.*, 1993 ABCA 232 [*Christianson*], with prejudgment interest calculated from September 10, 2023.

[4] I further direct costs based on Column 2 of Schedule C, varied slightly to reduce the tariff for trial preparation and to include a line item for preparation of agreed statement of facts.

Issues

[5] The following issues arise in this application:

1. How should pre-judgment interest be calculated for wrongful dismissal damages?
2. What costs award is Yakubow entitled to?
 - a. Should double or enhanced costs be awarded because Yakubow made a formal offer that came close but did not beat the final amount awarded?
 - b. Should double or enhanced costs be awarded because of Defendant misconduct?
 - c. Is the Schedule C line item for trial preparation proportionate in the circumstances?
 - d. Is preparation of an Agreed Statement of Facts appropriate for inclusion in the Plaintiff's Bill of Costs?

Prejudgment Interest

[6] The parties presented two different ways of calculating pre-judgment interest. Yakubow asserts that pre-judgment interest should be calculated on a lump sum basis. That is, pre-judgment interest should run on the entire damages award from the date of constructive dismissal to the date of judgment. In contrast, Edmonton Granite Memorials Ltd. (the Employer), argues that pre-judgment interest on damages should be calculated on an installment, month-by-month basis as they would have been paid had Yakubow's employment continued.

[7] Yakubow relies on the decision of *Tull v Norske Skog Canada Limited* 2004 BCSC 1098 [*Tull*] in which the British Columbia Supreme Court held that damages for wrongful dismissal must be assessed on a once and for all, one time basis: at para 60. It then awarded pre-judgment interest from the date of wrongful dismissal: at para 68.

[8] The Employer, on the other hand, relies on *Lowndes v Summit Ford Sales Ltd.*, 2006 CanLII 14 (ON CA) [*Lowndes*], a case in which the Ontario Court of Appeal held that the trial judge was incorrect in applying a lump sum approach to prejudgment interest, and held that prejudgment interest should have been calculated on a month-to-month basis on the shortfall of the amount paid to the employee. The rationale was based on ensuring that the employee was not put into a better position than they would have been had there been no termination of the employment contract.

[9] The only Alberta case directly on point is the 1993 decision of the Alberta Court of Appeal in *Christianson* in which the Court recognized the installment approach as the most technically correct but for the sake of simplicity opted for a midpoint calculation, at para 26:

Here the bulk of the damages are lost salary. Had the defendant honored its contract and given notice, the salary would have been paid twice a month during

the notice period. Therefore, **in principle, interest should be calculated on each payment**, at the rate of two each month. That is **too complicated** for the sums involved. Like some other courts, **we will pick a date halfway** between the date of firing and the expiry of what should have been the notice period. Interest on all damages will run from that halfway day. **The result should be fairly close to the more elaborate calculation we eschew.** [emphasis added]

[10] Several Alberta cases adopted this mid-point calculation approach: *Zimmermann v Calgary District Hospital Group*, 1994 CanLII 9083 at para 46; *Pauloski v Nascor Inc.*, 2002 ABQB 171 at para 117; *Chabot v William Roper Hull Child and Family Services*, 2003 ABQB 49 at para 45; *Broer v Acropolis Steel Industries*, 2009 ABPC 290 at para 38; *Lavallee v Siksika Nation*, 2011 ABQB 282 at paras 36-38; *Beaudoin v Agriculture Financial Services Corporation*, 2018 ABQB 627 at para 84.

[11] However, in recent years, a trend has shifted towards calculating prejudgment interest from the date of termination to the date of judgment: *McDonald v Sproule Management GP Limited*, 2023 ABKB 587 at para 195; *Stonham v Recycling Worx Inc*, 2023 ABKB 629 at para 121; *Brown v Hrt Motors Inc*, 2020 ABQB 620 at para 100; *Luan v ADP Canada Co*, 2020 ABQB 387 at para 263; *Dalskog v Crowsnest Pass Ecomuseum Trust Society*, 2019 ABPC 36 at para 113; *Eggers v Rocky Mountain Soap Company Inc.*, 2016 ABPC 202 at para 45.

[12] Although some of these more recent cases applied *Christianson* for other principles, none directly considered the appellate court's approach to prejudgment interest.

[13] The simplest approach is to calculate prejudgment interest from the date of termination to the date of judgment. That is the approach applied in more recent Alberta cases and as described in *Tull*. There is benefit to the predictability and transparency in considering all the pay in lieu of notice as owing as of the date of termination.

[14] On the other hand, the most technically correct position is likely the installment approach. Wrongful dismissal damages aim to put the plaintiff in the position they would have been in if the wrongful dismissal had not happened. That would mean wages, bonuses, and benefits paid out during the reasonable notice period over time.

[15] SM Waddams & Patrick Healy in *The Law of Damages* (Toronto: Thomson Reuters, 2023) (loose-leaf updated 2025, release 1) [Heay & Waddams] at § 7:10 explain why the installment approach is likely the most principled for putting the plaintiff in the position they would have been in but for the wrongful dismissal:

The argument for full interest is that the defendant, having wrongfully dismissed the plaintiff, had an immediate obligation to pay the full amount of the salary measured by the period of reasonable notice. However, the counter-argument is that **if notice had been given, the employer's obligation to pay salary during the notice period would not have been accelerated**: a salary payable monthly would continue to be payable monthly while the notice period was running. If instant justice had been done and the court sat on the day of the wrongful dismissal, a just measure of compensation would require future salary to be discounted on account of advance payment. Although it has often been assumed in the past that full damages are due on the date of termination, this assumption should (in the writer's view) yield to the more basic principle that the **plaintiff**

should not by an award of compensatory damages be put into a better position than would have been occupied if the wrong had not been done.
[emphasis added]

[16] That appears to be the Court of Appeal's concern in *Christianson* as well. However, the Court also expressed concern with the complication of doing the calculations for prejudgment interest on these types of damages. Waddams & Healy argue that this concern may not be as relevant over thirty years later "[i]n an age that has put an electronic calculator into everyone's pocket, there seems no overwhelming difficulty in calculating the exact amount of interest due on each item of loss claimed."

[17] While Waddams & Healy make a valid point, I am bound by Alberta Court of Appeal in *Christianson*. I am also interested in efficiency and simplicity. Further, I agree with the Court of Appeal that the midpoint approach results in a sum very close to what the installment approach would give. This includes bonuses. The bulk of the damages are salary and the bonuses paid out at regular increments. The midway approach balances fairness by not overcompensating Yakubow while avoiding unnecessarily complicated calculations.

[18] I direct that prejudgment interest be calculated based on the midpoint approach. The notice period was 15 months. 7 months and 15 days from the date of constructive dismissal on January 26, 2023 was September 10, 2023.

Costs

Applicable Principles on Costs

[19] The general rule is that the successful party is entitled to costs: *Alberta Rules of Court*, Alta Reg 124/2010 [Rules], R 10.29. Yakubow was substantially successful at trial and is therefore entitled to costs.

[20] Determining the reasonable and proper costs of a successful party at the end of trial is a highly discretionary process, but the discretion needs to be exercised judicially and in accordance with established principles.

[21] Rule 10.33 sets out the factors the Court may consider in quantifying a costs award:

- (a) the result of the action and the degree of success of each party;
- (b) the amount claimed and the amount recovered;
- (c) the importance of the issues;
- (d) the complexity of the action;
- (e) the apportionment of liability;
- (f) the conduct of a party that tended to shorten the action;
- (g) any other matter related to the question of reasonable and proper costs that the Court considers appropriate.

[22] Yakubow was successful on the central issue at trial, whether he was constructively dismissed. He was not successful on aggravated or punitive damages, and the length of the notice period awarded was less than claimed. The total amount claimed was \$327,000 for all heads of damage, while the final award was \$149,812.50.

[23] The issues were important to the parties, but this was not complex litigation or emerging areas of law. The trial proceeded under a streamlined process, including a single day for trial, affidavits for some evidence in chief, an agreed statement of facts, and an agreed exhibit book. Both parties participated in ensuring that efficient approach to the trial process.

[24] The *Rules* include a tariff of recoverable fees specifying the lawyers' fees that may be recovered as costs. This tariff is found in Schedule C. In exercising its broad discretion to award reasonable and proper costs, the Court may do so "with or without reference to Schedule C": Rule 10.31(3)(a); **McAllister v Calgary (City)**, 2021 ABCA 25 [**McAllister**] at para 29.

[25] Both parties based their submissions on Schedule C, and I agree that it is appropriate in this case. Schedule C provides "a rough measure of how much should have been incurred": **Petropoulos v Petropoulos**, 2023 ABCA 193 at para 18. Further, Schedule C is "a convenient and transparent foundation for judicial determination of costs" and "may be appropriate in the 'common stream of litigation': **McAllister** at para 59.

[26] Schedule C has different columns based on the value of the claim. When applying Schedule C, the Court may use the applicable column or a multiplier or fraction of the applicable column, depending on the circumstances and overall proportionality in the circumstances.

[27] Yakubow's Bill of Costs was prepared under Column 2, being the appropriate range for the amount awarded at trial. However, he asks for double costs under Column 2, or alternatively costs under Column 3.

Formal Offer Not Beaten

[28] The first reason Yakubow asks for enhanced costs is because of a formal offer. Yakubow acknowledges the formal offer was higher than the ultimate judgment, but argued it should be considered because it was close. The formal offer was for \$180,000 while the judgment awarded was \$149,812.50.

[29] Rule 4.29 sets out the costs consequences of a formal offer to settle; a party who makes a formal offer and beats it at trial is entitled to double costs. The onus is on the party seeking double costs to demonstrate that the Rule applies. I cannot find that it does here. There was a formal offer to settle, but it was lower than the ultimate judgment. While all settlement offers are encouraged to move the parties towards resolution, the significant consequences of double costs only apply under the Rules where the party beats their formal offer.

[30] Even if my discretion on costs extends to award double costs where the requirements of Rule 4.29 have not been met, I decline to do so. While Yakubow's formal offer was in the range of the final judgment, it was still higher. This suggests that he did not compromise enough in making the formal offer to obtain the benefit of enhanced costs.

Defendant's Conduct

[31] The second reason that Yakubow requests enhanced costs, through double costs or under Column 3 instead of Column 2, is due to the alleged misconduct of the Employer. Yakubow argued that the Employer made the litigation needlessly complex by forcing the matter to trial on constructive dismissal. I disagree. The Employer was entitled to defend itself and its position was not obviously hopeless. Ultimately, this proceeded as a one-day streamlined trial with an agreed statement of facts and mostly agreed exhibits. I do not find the Employer's conduct such that enhanced costs are appropriate.

Trial Preparation

[32] Yakubow's Bill of Costs includes an entry for trial preparation under s 10(1) of Schedule 2. The Employer argues that should be removed or reduced for proportionality. Section 10(2) of Schedule C notes that this "item amount may be varied up or down depending on the length and complexity of the trial or streamlined trial."

[33] I agree that overall proportionality requires a reduction in the amount claimed for trial preparation. This was a one-day streamlined trial with only two witnesses. The trial was also supported by written briefs, for which Yakubow claimed costs under s 12 of Schedule C.

[34] I reduce the amount claimed for trial preparation by 50% given the relative simplicity of the trial and claims for other preparation work.

Agreed Statement of Facts

[35] Yakubow included an amount of \$1,000 on his bill of costs for an agreed statement of facts. The Employer objected to this amount, noting it is not an itemized step in the Schedule C tariff. I agree with Yakubow that it is an appropriate step to include, notwithstanding its absence from the tariffs in Schedule C.

[36] As the Alberta Court of Appeal noted in *McAskill* at para 55:

Schedule C arbitrarily selects certain steps in a lawsuit and compensates parties for taking them, but it omits other steps which can be just as significant to advancing the litigation, and often just as costly. For example, **an agreed statement of facts may be a significant step in advancing an action**, as was the case here. An agreed statement of facts can be an important tool to ensure trial time is used effectively. However, it is not included as a compensable step in Schedule C. [emphasis added]

[37] The agreed statement of facts materially contributed to trial efficiency and allowed the Court to proceed with a one day streamlined trial. It also helped the Court, not only for chronology and context, but also for calculating damages. I find that it was appropriate to include this step in the Bill of Costs.

Conclusion on Costs

[38] Yakubow's Bill of Costs based on Column 2 of Schedule C is mostly accepted. However, I vary the line item on trial preparation by 50% for overall proportionality. It is not appropriate to award double costs or costs under Column 3. The total amount of costs and disbursements payable is \$25,984.11.

Conclusion

[39] The Employer shall pay prejudgment interest under the *Judgment Interest Act* based on a midpoint calculation starting on September 10, 2023.

[40] The Employer shall pay costs and disbursements to Yakubow in the amount of \$25,984.11.

Heard by written submissions June 15 and 26, 2026

Dated at the City of Edmonton, Alberta this 03rd day of September, 2026.

K.H. Oviatt
J.C.K.B.A.

Appearances:

Illya Shcherba
Taylor Janis LLP
for the Applicant

Paul D. Anderson
Ritzen Warshawski Anderson Manning LLP
for the Respondent