

COURT OF APPEAL FOR ONTARIO

CITATION: Curridor v. Millstone Homes Inc., 2026 ONCA 571

DATE: 20260807

DOCKET: COA-25-CV-0290

Gillese, Madsen and Pomerance JJ.A.

BETWEEN

Kevin Curridor

Plaintiff (Respondent)

and

Millstone Homes Inc.

Defendant (Appellant)

Alexander Verrilli, for the appellant

Colin Bondy and Ioana Vacaru, for the respondent

Heard: March 30, 2026

On appeal from the judgment of Justice Evelyn M. ten Cate of the Superior Court of Justice, dated February 4, 2025, with reasons reported at 2025 ONSC 745 and supplementary reasons dated April 16, 2025, with reasons reported at 2025 ONSC 2368.

Gillese J.A.:

I. OVERVIEW

[1] This appeal arises from a dispute over ownership of a new home constructed in Komoka, Ontario. The parties met and agreed the vendor would extend a “family and friends deal” (the “**Friends and Family Deal**”) to the

purchaser. Under the Friends and Family Deal, the corporate vendor sold homes to friends and family at a discounted price but only the vendor's owner could approve such deals. In this case, the parties agreed the property was to be sold "at cost" to the purchaser and when the property was sold, they would share the profit on a 50/50 basis.

[2] After construction of the house on the property was well under way, and while the vendor's owner was away on extended vacation, the purchaser received from the vendor what he believed was a valid agreement of purchase and sale (the "**APS**"). The vendor contended the APS had been fraudulently created and the purchaser began this proceeding.

[3] The central question at trial was whether the APS was a valid and binding agreement. The trial judge found that it was, relying on the "indoor management rule" as codified by s. 19 of the *Ontario Business Corporations Act*, R.S.O. 1990, c. B.16 (the "**OBCA**"). At common law, the indoor management rule provides that a good faith third party is entitled to assume that a corporation's internal policies and procedures have been followed.

[4] By judgment dated February 4, 2025, the trial judge ordered the vendor to pay the purchaser damages, pre-judgment interest, and costs (the "**Judgment**"). The trial judge later ordered that the statutory pre-judgment interest rate (the "**PJI Rate**") be raised from 0.5% to 3.17%.

[5] The vendor appeals. It asks this court to set aside the Judgment and order a new trial. In addition to its submission that the trial judge erred in finding the APS to be valid, it submits the trial judge made several other errors including by ordering an increased PJI Rate.

[6] In my view, the trial judge's determination that the APS was a binding agreement must be set aside because it is based on legal and procedural errors. I am also of the view that the trial judge made legal errors in ordering an increased PJI Rate.

[7] Accordingly, I would allow the appeal and remit the matter for a new trial before a different judge of the Superior Court of Justice.

II. BACKGROUND

[8] Nothing in the following is to be taken to be findings of fact. Because I have concluded that this action must be remitted for a new trial, the following background information is limited to that necessary to decide the issues raised on this appeal.

[9] The appellant, Millstone Homes Inc. ("**Millstone**"), is a residential homebuilder that develops subdivisions, and constructs and sells homes in the region of London, Ontario. Vasile Caniuca ("**Vasile**")¹ and his wife Helen Caniuca

¹ For ease of reference, I use first names because a number of the people involved in this dispute share the same last name.

are Millstone's owners and principals. The respondent, Kevin Curridor ("**Kevin**") is the son of Gianni Curridor ("**Gianni**"). Gianni was, at the relevant times, Millstone's General Manager.

[10] Kevin and Vasile knew one another through Gianni but independently had a friendly relationship. They talked frequently about their shared interests and worked out together in Vasile's home gym.

[11] Kevin and his then girlfriend (now wife) lived in Windsor but were thinking of moving to the London area to be closer to their families. Gianni told them about a Millstone development in Komoka, Ontario, including a particular lot located at 121 Crestview Drive (the "**Property**").

[12] Kevin and Vasile met in person to discuss Kevin's possible purchase of the Property. It appears to be common ground that Vasile told Kevin he could purchase the Property under the Friends and Family Deal but no particulars were discussed apart from one: they agreed that when the Property was eventually sold, they would split the profit from the sale on a 50/50 basis.

[13] Phillip Alves, Millstone's design manager, prepared a spreadsheet with estimated construction costs of approximately \$570,000. Gianni maintained that later Vasile told him to use the figure of \$600,000 as the purchase price for the Property in the APS. Vasile denied that such a conversation ever took place.

[14] House construction on the Property began in late November 2020. To keep costs down, Kevin wanted to pay some of the subtrades directly, in cash. Gianni communicated with the subtrades and delivered the cash payments to them.

[15] In early January 2021, Vasile went on an extended vacation. Before leaving, he had two stamps made that bore his signature. He gave one stamp to his lawyer and the other to Dimitrij Pylypei, Millstone's construction manager. He instructed both that before any APS was stamped with his signature, he had to be reached by phone for approval.

[16] Kevin asked Gianni for an APS. Gianni gave him a partially pre-filled APS on January 5, 2021. It showed a purchase price of \$600,000 for the Property, a \$1,500 deposit, and a closing date of May 28, 2021. Kevin signed the APS on January 7, 2021. That same day, he gave Gianni the signed APS and a \$1,500 deposit cheque payable to Millstone.

[17] Kevin's deposit cheque was deposited by Millstone on January 8, 2021.

[18] On February 11, 2021, Kevin received an email from Melissa Watt, Millstone's office administrator, attaching the APS with Vasile's signature stamped at the bottom of it.

[19] Vasile returned from vacation and learned of alleged theft, fraud and other wrongdoing on the part of Gianni. On March 29, 2021, Millstone fired Gianni based on those allegations.

[20] After Millstone told Kevin it was unwilling to complete the sale of the Property because the APS had been fraudulently executed, Kevin began this legal proceeding by way of an application.

The Legal Proceedings

[21] The application record is dated June 21, 2021 (the “**Application Record**”). The essence of Kevin’s claim was that the APS was valid and he was entitled to rely on it based on the indoor management rule. He sought a declaration of validity of the APS, specific performance thereof and, alternatively, damages.

[22] Millstone’s responding Application record is dated June 28, 2021 (the “**Responding Party’s Application Record**”). Its position was that Gianni fraudulently had the APS created and affixed Vasile’s signature to it by using Vasile’s signature stamp without his knowledge, approval, or authority. Therefore, it contended, the APS was invalid and of no effect.

[23] Kevin filed a supplementary application record dated July 7, 2021 (the “**Supplementary Application Record**”).

[24] Millstone’s responding supplementary application record is dated July 7, 2021 (the “**Responding Party’s Supplementary Application Record**”).

[25] Millstone moved to have the Application converted into an action. The motion was heard on August 23, 2021; the order sought was granted on consent (the “**Consent Order**”).

[26] The relevant terms of the Consent Order are as follows:

- Para. 2 Kevin shall deliver a Statement of Claim on or before September 20, 2021; Millstone shall deliver a Statement of Defence 20 days thereafter; and Kevin shall have 10 days thereafter to deliver a Reply, if he so chooses.
- Para. 3 Kevin shall file a Trial Record comprised of the pleadings listed in para. 2 along with a copy of this Consent Order forthwith on the close of the pleadings.
- Para. 4 Subject to the entitlement to object to the admissibility of evidence contained therein, the Affidavits found in the following shall form part of the evidentiary record: the Application Record, the Responding Party's Application Record, the Supplementary Application Record, and the Responding Party's Supplementary Application Record.

Trial Rulings

[27] The trial began on October 2, 2024. At the outset of trial, Kevin abandoned his claim for specific performance, leaving only two issues for determination: whether the APS was valid and enforceable and, if so, the quantum of damages.

[28] The trial judge issued a mid-trial ruling dated October 9, 2024 (the "**Mid-trial Ruling**"). The Mid-trial Ruling related to evidence that Millstone had filed relating

to Gianni's alleged fraud, forgery and embezzlement during his employment with Millstone (the "**Gianni Evidence**"). Kevin submitted that the Gianni Evidence was inadmissible because it was irrelevant and "purely vexatious". Millstone argued that the Gianni Evidence, including the reasons for his termination, was admissible because, among other things, it showed that Gianni had a pattern of forging documents. Thus, Millstone contended, the Gianni Evidence was relevant to whether the APS had been fraudulently created and signed.

[29] In the Mid-trial Ruling, the trial judge said the Gianni Evidence was "irrelevant, purely vexatious to this action and that its probative value is outweighed by its prejudicial effect". She then stated that Millstone could neither cross-examine Gianni about the reasons his employment with Millstone was terminated nor adduce evidence about the termination.

[30] In closing submissions, for the first time, counsel for Kevin asked the trial judge to exclude the affidavit of Melissa Watt (the "**MW Affidavit**") because Millstone had not called Melissa as a witness. The MW Affidavit contained information of: Gianni's instructions to her on how to prepare the APS; what schedules would normally be included in an APS (and which were not included); and, what Gianni told her about Vasile's review and execution of the APS.

[31] The trial judge relied on r. 53.02 (2) of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194 (the "**Rules**") to exclude the MW Affidavit. She referred to the

general rule in r. 53.01(1) that evidence is to be given orally. She acknowledged that the Consent Order required that the affidavits filed in the Application were to form part of the evidentiary record but said that it was in the interest of justice that she exclude the MW Affidavit because Kevin had been unfairly deprived of his right to cross-examine Melissa.

[32] Because Millstone had not called Melissa as a witness at trial, the trial judge also drew the adverse inference that she had prepared the APS on Millstone's behalf.

III. THE TRIAL JUDGE'S REASONS

[33] The trial judge found the APS valid and enforceable. She said that because the arrangement between the parties was a Friends and Family Deal, some details were left out of the APS but all the essential terms were present: the price, deposit, property description, and closing date.

[34] The trial judge accepted Kevin's evidence that he had no idea there was an issue with the validity of Vasile's signature on the APS when he received it.

[35] Although Millstone sought a finding that Gianni had fraudulently signed the APS, using Vasile's signature stamp without his consent, the trial judge said it was unnecessary to make such a finding. She found that Vasile's signature was applied in his capacity as the owner and president of the company. Based on s. 19 of the *OBCA*, she found that Millstone was precluded from asserting the APS was

unenforceable because Millstone could not prove that Kevin knew or ought to have known the APS was executed fraudulently.

[36] The parties agreed the Property was valued at \$1.2 million on November 1, 2021. Kevin claimed damages based on the difference between the Property's assessed value and the \$600,000 he paid for it, less some post-APS upgrades.

[37] The trial judge stated that the parties' agreement they would share the profits when the Property was sold was a "collateral agreement" between Kevin and Vasile. Accordingly, she said it was not relevant to the calculation of damages which she found to be \$538,349.75, plus pre-judgment interest.

Supplementary Reasons for Varying the PJI Rate

[38] Pursuant to s. 129 of the *Courts of Justice Act*, R.S.O. 1990, c. C. 43 (the "**CJA**"), and based on the cause of action having arisen on March 29, 2021, the parties agreed the statutory PJI Rate was 0.5%. However, in supplementary reasons for judgment dated April 16, 2025 (the "**Supplementary Reasons**"), acting pursuant to s. 130 of the *CJA*, the trial judge exercised her discretion and ordered PJI at the rate of 3.17%. After setting out the factors listed in s. 130(2) of the *CJA*, the trial judge noted that departure from the prescribed PJI Rate is warranted only where the court determines there are "*unusual or special circumstances* sufficient to justify such a departure" (emphasis in original). She also noted it was Kevin's onus to demonstrate such circumstances.

[39] In exercising her discretion, the trial judge relied mainly on ss. 130(2)(a), (f) and (g) of the CJA, namely: changes in market interest rates; the conduct of any party that tended to unnecessarily lengthen the duration of the proceeding; and, as a relevant consideration, the fluctuation of PJI rates during the course of the proceeding.

[40] With respect to changes in market interest rates, the trial judge relied on trial evidence that Millstone had leased the Property to a third party for \$3,495 per month or \$41,940 per year. Based on that information and the parties' agreed on valuation of the Property of \$1.2 million on November 1, 2021, the trial judge concluded that Millstone "earned" 3.495% interest annually on the Property. Accordingly, she stated, 3.495% was the "best evidence of the market interest rate" from November 1, 2021, to February 5, 2025.

[41] The trial judge also found that Millstone's conduct unnecessarily delayed the proceeding. She said that because Millstone's allegations of fraud were ultimately "unfounded", any delay due to converting the Application to an action lay at Millstone's feet because it failed to prove its fraud allegations at trial. She further found that Millstone caused a two-year delay in the proceeding because it did not accept Kevin's settlement offer.

[42] Ultimately, the trial judge determined that 3.17% was the appropriate PJI Rate based on reference to the fluctuation in PJI rates over the course of the

litigation. At the outset of the litigation, the PJI Rate was 0.50% (Q2 2021) but by the time of trial (Q1 2025) the rate was 4.00%. The average rate over the period was 3.17%.

IV. THE ISSUES

[43] Millstone submits that the trial judge erred in:

1. finding the APS was a binding agreement between the parties;
2. excluding the Gianni Evidence;
3. excluding the MW Affidavit;
4. failing to consider the parties' agreement to split the profit on the sale of the Property; and
5. varying the statutory PJI Rate.

V. ANALYSIS

[44] I begin by addressing issues 1 and 4 together. Thereafter, I address separately each of issues 2, 3, and 5.

Issues 1 and 4 Validity of the APS

[45] The trial judge concluded that the APS was valid and enforceable because it contained all the necessary elements and Kevin was entitled to rely on it based on s. 19 of the *OBCA*. In my view, the trial judge committed two key legal errors in

reaching this conclusion and, as a result, the matter must be remitted for a new trial.

[46] First, as the trial judge found, the parties agreed that when the Property was sold, any profit made on the sale would be split between them on a 50/50 basis. However, she failed to adequately address the profit-sharing term and its role in determining whether the APS was valid and enforceable. She simply dismissed it on the basis it was a “collateral agreement to split the profits” between Kevin and Vasile personally, and not between Kevin and Millstone. She did not state the legal principles governing collateral contracts nor did she give reasons for concluding that it was a collateral contract and therefore irrelevant to a determination of whether the APS was valid and enforceable.

[47] Given the significance of the profit-sharing term, the trial judge had to adequately explain the legal basis for her treatment of it. Absent legal analysis, her determination is not owed appellate deference. This matter is critical to the trial judge’s determination of this matter. As it cannot stand, the matter must be remitted for a new trial.

[48] Second, the trial judge failed to address the primary issue Millstone raised in this matter: was the signature on the APS the result of wrongdoing on the part of Gianni? That issue was inextricably intertwined with her determination that Kevin was entitled to rely on the signature pursuant to s. 19 of the *OBCA*.

[49] Section 19 states that it applies “except where the person has or ought to have, by virtue of the person’s position with or relationship to the corporation, knowledge to that effect”. While the trial judge found that Kevin was “entitled to reasonably assume that the signature was genuine and that all internal protocols had been followed”, she did not address the evidence that could have supported a finding that the exception in s. 19 was satisfied. Based on the record, Kevin may have had sufficient knowledge that the exception was triggered. He knew that Vasile alone decided who got the Friends and Family Deal and that the terms of such a deal were outside Millstone’s usual business practices. He also knew that the terms had not been settled before Vasile went on extended holiday. Yet he relied on Gianni – without checking with Vasile – to finalize the terms of the Family and Friends Deal and have the APS prepared and signed. He also knew that the APS did not reflect the one term that he and Vasile had agreed on, namely to share the profit when the Property was sold.

[50] The indoor management rule is designed to protect third parties in their dealings with corporations. In deciding whether it applies, the court must look to the relationship, interaction, business, and dealings between the parties to determine whether a person had knowledge that the company processes were not followed or a signature not genuine: *1264777 BC Ltd. v. 0694813 BC Ltd.*, 2023 BCCA 410, at paras. 50-52.

[51] This second error was compounded by the procedural errors described in Issues 2 and 3 below as a result of which significant evidence going to the creation and signing of the APS was excluded.

Issue 2 Error to Exclude the Gianni Evidence

[52] The Mid-trial Ruling resulted in the exclusion of the Gianni Evidence, including the reasons Millstone terminated Gianni's employment. In making this ruling, the trial judge stated the Gianni Evidence was "irrelevant, purely vexatious to this action, and that its probative value is outweighed by its prejudicial effect".

[53] In my view, the trial judge erred in law in excluding the Gianni Evidence for two reasons.

[54] First, the Mid-trial Ruling was procedurally unfair to Millstone. Millstone's position was that, through his position as Millstone's General Manager, Gianni had caused a false APS to be created and delivered to Kevin. It maintained that Gianni had wrongly affixed a stamp of Vasili's signature on the APS and given false information/instructions to Melissa Watt for the preparation of the APS. By excluding the Gianni Evidence, Millstone was unfairly deprived of its right to prove that the APS had been fraudulently created and/or signed.

[55] Second and in any event, the trial judge erred in finding the Gianni Evidence was "irrelevant" and "purely vexatious". That evidence was relevant not only to a determination of the validity of the APS but also to whether Kevin could rely on the

indoor management rule in s. 19 of the *OBCA*. As noted above, s. 19 applies “except where the person has or ought to have, by virtue of the person’s position with or relationship to the corporation, knowledge to that effect”. Given the critical role that Gianni played in the preparation and signing of the APS, admission of the Gianni Evidence was necessary so the court could fairly determine what Kevin knew or ought to have known for the purposes of the s. 19 exception.

[56] The procedural unfairness worked on Millstone by means of the Mid-trial Ruling was compounded by the trial judge’s exclusion of the MW Affidavit, discussed below.

Issue 3 Error to Exclude the MW Affidavit

[57] Paragraph 4 of the Consent Order stipulated that the affidavits found in the Application Record, the Respondent’s Application Record, the Supplementary Application Record, and the Respondent’s Supplementary Application Record were to form part of the evidentiary record at trial. However, para. 4 also stated that it was “subject to the entitlement to object to the admissibility of evidence contained therein”.

[58] The MW Affidavit was one of the affidavits governed by para. 4 of the Consent Order. Therefore, subject to Kevin objecting to its admissibility, the MW Affidavit was to form part of the evidence at trial.

[59] After both parties had presented their evidence and closed their cases, counsel for Kevin sought a ruling that the MW Affidavit be excluded because Melissa had not appeared as a witness. Millstone had been given no notice before then that Kevin intended to ask that the MW Affidavit be excluded.

[60] Nor had counsel for Kevin objected to the admissibility of the MW Affidavit. On the contrary, the record shows that, in presenting his case, counsel for Kevin entered the parties' Joint Document Brief in accordance with para. 4 of the Consent Order. That brief contained the affidavits found in the Application before it was converted into an action, including the MW Affidavit. In short, the MW Affidavit had been admitted into evidence at trial before Millstone made its case and before the trial judge ruled that it was excluded.

[61] In my view, the trial judge erred in a number of ways in excluding the MW Affidavit.

[62] First, Millstone was entitled to rely on the MW Affidavit when it presented its case because that affidavit had already been admitted into evidence. To rule the MW Affidavit inadmissible after Millstone closed its case deprived Millstone of the opportunity to call Melissa as a witness and elicit the evidence she gave in her affidavit.

[63] Second, exclusion of the MW Affidavit was unfair because that evidence was relevant to Millstone's contention that Gianni had acted fraudulently in the

creation of the APS. The MW Affidavit described Gianni's instructions to her on how to prepare the APS, what its terms were, and what Gianni told her about its review and execution by Vasile. In the circumstances, it was unfair to exclude it.

[64] Third, it is not clear to me that r. 53.02 (2) of the *Rules* was available to the trial judge. That rule empowers a trial judge to vary a pre-trial order where it appears "necessary to do so in the interest of justice". However, the pre-trial order governing the affidavit evidence had been acted on by the parties – and the evidence admitted by the trial judge – before she purported to exercise her discretion under r. 53.02(2). It appears to me that provision is prospective in operation and not to be read as empowering a trial judge to reverse a pre-trial order already in effect.

[65] In any event, assuming that the trial judge was empowered to act pursuant to r. 53.02(2), for the reasons given above, the interest of justice dictated that the MW Affidavit be allowed to remain in evidence at trial.

[66] Finally, given that the MW Affidavit had been admitted into evidence when Millstone presented its case, there was no basis on which the trial judge could draw the adverse inference that because Melissa had not been called as a witness, Melissa had prepared the APS on Millstone's behalf.

Issue 5 Errors in ordering a Variation of the PJI Rate

[67] In my view, the trial judge committed three legal errors in exercising her discretion and increasing the statutory PJI rate pursuant to ss. 130(1) and (2) of the CJA. For ease of references, those provisions are set out below.

130 (1) The court 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 section 128 or 129,

- (a) disallow interest under either section;
- (b) allow interest at a rate higher or lower than that provided in either section;
- (c) allow interest for a period other than that provided in either section.

(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.

No evidence of changes in market interest rates

[68] The trial judge's first legal error arose from her use of the trial evidence relating to Millstone's receipt of lease income on the Property during the course of

this proceeding. Based on that evidence, the trial judge found: i) Millstone “earned” an annual interest rate of 3.495% on the Property; and ii) the 3.495% interest rate was the best evidence of a “change in the market interest rate” within the meaning of s. 130(2(a)). Neither finding is correct.

[69] In calculating the amount Millstone “earned” from leasing the Property, the trial judge relied on the monthly amount Millstone received from leasing the Property. However, the amount Millstone received as lease income is not the amount Millstone earned from the Property. To determine how much Millstone earned from leasing the Property, the trial judge had to deduct the reasonable amounts Millstone expended in maintaining the Property. That evidence was not before the trial judge because Millstone had no notice that Kevin would advance a claim for an increase in the PJI Rate based on its receipt of lease income. The absence of timely notice raises concerns about procedural unfairness. That aside, the trial judge’s use of lease income without regard for associated expenses was not a legally acceptable basis on which to find that Millstone earned income on the Property at a rate of 3.495% per year.

[70] Further and importantly, even if the rate of interest attributed to Millstone from leasing the Property had been correctly calculated, in my view, that information does not fall within the meaning of “changes in the market interest rates” in s. 130(2)(a) of the CJA. On a plain reading of those words, they are

referring to general market conditions, not idiosyncratic information based on the lease income on a single property.

Millstone’s conduct did not unnecessarily lengthen the proceedings

[71] The trial judge’s second legal error arose in finding that Millstone’s conduct unnecessarily lengthened the duration of the proceeding because: (i) Millstone “made allegations of fraud but failed to prove them at trial”; and (ii) Millstone refused Kevin’s settlement offer. Neither reason is legally sound.

[72] The trial judge’s finding that Millstone failed to prove its fraud allegations must be considered in light of her rulings that precluded Millstone from leading evidence in support of its fraud allegations. This is discussed above in relation to Issues 2 and 3 but, in short, those rulings barred Millstone from leading evidence that bore directly on whether the APS had been fraudulently created. It is not that Millstone failed to prove its fraud allegations but, rather, that it was prevented from attempting to prove them.

[73] In any event, the trial judge did not decide the matter of the fraud allegations. As she explicitly stated in her reasons for decision, she found it unnecessary to make such a determination despite having been asked to do so by Millstone.

[74] The trial judge also erred in finding that Millstone unnecessarily delayed the trial because it did not accept Kevin’s settlement offer. In my view, it is a legal error to consider the parties’ settlement offers when deciding whether to depart from the

prescribed PJI rate. The consequences of failing to accept a settlement offer are governed by r. 49.10 of the *Rules* and relate to costs orders. It is not a matter for consideration when determining whether the prescribed PJI rate should be altered.

Improper to Consider Fluctuations in the CJA Rates

[75] The trial judge’s third reason for exercising her discretion was based on fluctuations in the statutorily prescribed PJI rates in the relevant period. However, this court’s decision in *Aubin v. Synagogue and Jewish Community Centre of Ottawa (Soloway Jewish Community Centre)*, 2024 ONCA 615, 174 O.R. (3d) 509 provides that such an approach is legal error.

[76] In *Aubin*, the trial judge fixed the PJI rate based on the average of the CJA imposed rates during the relevant period. At para. 58 of *Aubin*, this court held that the PJI rates under ss. 127 and 128 of the CJA are not “determinative or indicative of the meaning of ‘market interest rates’ under s. 130(2)(a)”.

[77] In this case, the trial judge relied on the fluctuation in PJI rates as “other evidence” for the purpose of s. 130(2)(g). However, she used the PJI rates to inform her understanding of the market interest rates at the relevant times. She stated that the PJI rates “while not identical to the ‘market interest rate’ ... [are] a proxy for the relative cost of borrowing”. Despite her characterization of the PJI rates as “other evidence”, this court’s admonition in *Aubin* remains applicable.

Thus, she erred in considering the fluctuation in PJI rates as relevant to whether the PJI Rate in this case should have been increased.

VI. DISPOSITION

[78] For these reasons, I would:

1. allow the appeal;
2. set aside the Judgment;
3. order a new trial of the action before a different judge of the Superior Court of Justice;
4. order costs of the appeal to Millstone in the agreed-on sum of \$25,000, all inclusive; and
5. direct that costs of the trial below be decided by the judge hearing the new trial.

Released: August 7, 2026 “E.E.G.”

“E.E. Gillese J.A.”
“I agree. L. Madsen J.A.”
“I agree. R. Pomerance J.A.”