

CITATION: City of Ottawa v. MacEwen Petroleum Inc., 2025 ONSC 6955
DIVISIONAL COURT FILE NO.: 2984/25
DATE: 20260113

ONTARIO
SUPERIOR COURT OF JUSTICE
DIVISIONAL COURT
Nakatsuru, O'Brien, I. Smith JJ

BETWEEN:)
)
CITY OF OTTAWA) *Emma Blanchard and Laura E. Robinson,*
) for the Appellant, City of Ottawa
Appellant)
)
– and –)
)
MACEWEN PETROLEUM INC.) *Tara M. Sweeney and Philip Osterhout, for*
) the Respondent, MacEwen Petroleum Inc.
Respondent)
)
) **HEARD virtually in Ottawa on November**
) **17, 2025**

REASONS FOR DECISION

O'Brien J.:

Overview

[1] The issue on this appeal is whether a business claiming compensation for the expropriation of property was entitled to interest on legal fees prior to the date of the tribunal order fixing its legal costs. In my view, the tribunal erred in finding interest could be ordered on costs from a date before the tribunal's order.

[2] The City of Ottawa expropriated property on which the appellant MacEwen Petroleum Inc., was a lessee. The property was needed for a segment of the City's rail transit line. MacEwen sublet the property to an entity that ran a gas station and convenience store, from which MacEwen received rent and profit from the sale of fuel. The City and MacEwen settled MacEwen's claims under the *Expropriations Act*, R.S.O. 1990, c. E. 26 (the *Act*), except for MacEwen's entitlement to costs. The motion for costs was brought before the Ontario Land Tribunal.

[3] In its January 24, 2025, decision, the Tribunal determined the quantum of costs to be \$356,755.45. This conclusion is not in dispute. The Tribunal also ordered the City to pay interest

on the costs from the date McEwen provided its bill of costs to the City, which was November 1, 2023. The Tribunal reasoned that interest could be ordered from a date before its order because such an award would be reasonable and in accordance with the principle of fully indemnifying claimants in expropriation proceedings.

[4] The City appeals the decision on the basis that interest cannot be awarded from a date prior to the Tribunal's order. McEwen cross-appeals. It submits the Tribunal intended to order that interest be paid from the date of the parties' settlement, which was September 28, 2023, but then ordered payment from the date of the bill of costs in error.

[5] The question of whether the Tribunal was entitled to order interest on costs running from before the date of its order turns on whether the *Act* or the *Courts of Justice Act*, R.S.O. 1990, c. C. 43 (*CJA*) permit it to do so. I conclude neither statute authorizes interest to be ordered on costs from a date before the Tribunal's decision. For the reasons further elaborated below, the appeal is allowed.

Did the Tribunal err in awarding interest from a date prior to the Tribunal's costs order?

[6] Pursuant to s. 31 of the *Act*, an order of the Tribunal may be appealed to the court on a question of law or fact or both. The standard of review for a question of law is correctness and for a question of fact is palpable and overriding error: *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65, [2019] 4 S.C.R. 653, at para. 37.

[7] The City argues the Tribunal made a legal error by ordering interest on costs when it had no statutory authority to do so. It relies on the plain wording of the provisions of the *Act*, specifically: s. 33, which deals with the payment of interest, and s. 32, which addresses the payment of costs. The City does not dispute the Tribunal can rely on the *CJA* to award interest, but submits that under that statute, it is limited to ordering interest from the date of the Tribunal's award.

[8] MacEwen submits the Tribunal has broad jurisdiction to award costs under s. 32 of the *Act* and that this provision provides for full compensation, including allowing interest, in accordance with the principle that an expropriated party is entitled to be made economically whole. MacEwen also argues the Tribunal's order does not conflict with the *CJA*, relying in part on section 130 of the *CJA*, which it says provides flexibility to the Tribunal in ordering interest.

[9] I agree with the City that the Tribunal erred in law by awarding interest from a date before the Tribunal's order. MacEwen raises important principles of fully indemnifying claimants and deferring to the Tribunal's assessment of costs. But my review of the statutes and case law leads me to conclude there is no statutory authority for the Tribunal's order of interest.

No authority to order interest on costs under the Act

[10] I turn first to the *Act*, s. 33, which addresses orders of interest, and which is limited to interest on payments representing the value of an owner’s land or for injurious affection.¹ Subsection 33(1) provides in relevant part that an owner of expropriated lands “is entitled to be paid interest on the portion of the market value of the owner’s interest in the land and on the portion of any allowance for injurious affection to which the owner is entitled.” Subsections 33(2) to 33(4) grant the Tribunal discretion regarding the payment of interest where there was a delay in determining the compensation payable to the owner. There is no provision in s. 33 for the payment of interest on costs.

[11] Subsection 32(1) of the *Act* authorizes the Tribunal to make costs orders to owners who receive an award that is 85% or more of the amount offered by the statutory authority but does not address interest. There was no dispute before the Tribunal that MacEwan was entitled to costs in this case. The only question was the quantum and whether interest was owed.

[12] Subsection 32(1) provides:

32(1) Where the amount to which an owner is entitled upon an expropriation or claim for injurious affection is determined by the Tribunal and the amount awarded by the Tribunal is 85 per cent, or more, of the amount offered by the statutory authority, the Tribunal shall make an order directing the statutory authority to pay the reasonable legal, appraisal and other costs actually incurred by the owner for the purposes of determining the compensation payable, and may fix the costs in a lump sum or may order that the determination of the amount of such costs be referred to an assessment officer who shall assess and allow the costs in accordance with this subsection and the tariffs and rules prescribed under clause 44 (d). (emphasis added)

[13] I agree that by authorizing the Tribunal to order the payment of “reasonable” legal and other costs, the statute grants the Tribunal broad discretion to determine the appropriate costs. The payment of reasonable legal, appraisal and other costs on a full indemnity basis is intended to ensure that an expropriated party is made economically whole: *Smith v. Alliance Pipeline Ltd.*, 2011 SCC 7, [2011] 1 S.C.R. 160, at paras. 52-54. The Supreme Court of Canada has said that the *Act* is a remedial statute that “should be read in a broad and purposive manner in order to comply with the aim of the *Act* to fully compensate a land owner whose property has been taken”: “the power of an expropriating authority should be strictly construed in favour of those whose rights have been affected”: *Smith*, at para. 56; *Dell Holdings Ltd. v. Toronto Area Transit Operating Authority*, [1997] 1 S.C.R. 32, at para. 23.

[14] These important interpretive principles raise the question of whether, although s. 32 does not directly address interest on costs, it remains open to the Tribunal to order interest. After a close reading of the relevant cases, I conclude that the Tribunal may order interest on costs after the date of the order but is precluded from doing so before that date.

¹ An “owner” is defined in the *Act* to include a tenant. There is no dispute that MacEwan was an owner under the *Act*.

[15] I start with the High Court’s decision in *WMI Waste Management of Canada v. Metropolitan Toronto (Municipality)*, 1982 CarswellOnt 639, 34 O.R. (2d) 708. The question there was whether an award of costs made pursuant to an order of the Land Compensation Board (now the Tribunal) could bear interest after the order was filed with the court under the *Statutory Powers Procedure Act*, 1971 (Ont.), c. 47. The court concluded it could not for two reasons. The first was that, like the current *Act*, the 1980 version of the *Expropriations Act*, R.S.O. 1980, c. 148 did not provide for the payment of interest on costs. It included the same provision for fixing “reasonable legal, appraisal and other costs” as under the current *Act*, with references to the “Board” replaced by “Tribunal.” The 1980 *Act* also included the same provision for ordering interest on the market value of the owner’s land. The court reasoned that the legislature intended the act to “govern all substantive rights in relation to all matters relevant to an expropriation.” It had precisely defined the circumstances in which interest was payable to a claimant and that provision did not confer a right to interest on costs.

[16] The second reason in *WMI* was that the filing of the Board’s award with the court under the *Statutory Powers Procedure Act*, did not create a right to interest on costs. The provisions of the *Judicature Act*, R.S.O. 1980, c. 223 and rules of practice in relation to interest therefore had no bearing on the Board’s costs award.

[17] The court’s reasoning in *WMI* was only partially endorsed by the Court of Appeal in *Ministry of Transportation v. Tripp*, 1999 CanLII 3762 (ON CA). On the critical point of whether the 1980 *Act* could be read to permit an award of interest on costs, the Court of Appeal agreed with the reasoning in *WMI*.

[18] However, the Court of Appeal in *Tripp* found interest could be paid on a costs award arising from expropriation proceedings, reasoning that the *Courts of Justice Act*, 1984, S.O. 1984, c. 11 was not simply a procedural enactment but conferred substantive rights. Among those was the right to seek post-judgment interest on an award made by a statutory tribunal that had been made enforceable by the courts.

[19] Although the Court of Appeal concluded interest could be payable, its conclusion was limited to post-judgment interest following the filing of the award of costs in court. Moreover, with respect to whether the 1980 *Act* authorized an order of interest on costs, the Court of Appeal endorsed *WMI*’s conclusion that the 1980 *Act* was a complete code that did not provide for awards of interest on costs. At para. 26, the Court of Appeal rested its reasoning on the *Courts of Justice Act*, while also endorsing the characterization of the 1980 *Act* as a “complete code”:

Although the *Expropriations Act* is undoubtedly, as stated by Callaghan J. in *WMI*, a complete code, the fact remains that the *Courts of Justice Act* is not simply a procedural enactment, but does confer substantive rights.

[20] I note that the Court of Appeal also stated that s. 32 of the 1980 *Act* was “silent on the matter of interest.” In its decision, the Tribunal reproduced several paragraphs of *Tripp* with underlining, including the statements that the 1980 *Act* was silent on interest, as part of its summary of MacEwen’s position. But the Tribunal did not directly provide its own analysis of the decision. In any event, the references to s. 32 being silent on interest do not change my conclusion. The

Court of Appeal made those comments to explain why permitting interest under the *Courts of Justice Act* did not create a conflict with the 1980 *Act*. They do not undermine the Court's acceptance of the 1980 *Act* as a complete code that does not itself provide for interest on costs. Because the relevant provision of the 1980 *Act* is substantively identical to s. 32, the same conclusion applies to the current *Act*.

No authority to order prejudgment interest on costs under the CJA

[21] The next question is whether the Tribunal could make an order for interest on costs running from before its order under the *CJA*. In its decision, the Tribunal cited the relevant provisions of the *CJA* in its discussion of the rate of interest but does not appear to have relied on them to support its conclusion that prejudgment interest could be ordered. I conclude the provisions of the *CJA* do not support the award of prejudgment interest in this case.

[22] Subsection 129(1) of the *CJA* provides that money owing under an order, including costs to be assessed or fixed by the court, bears interest at the post-judgment interest rate, calculated from the date of the order. The parties agree this provision authorizes the Tribunal to award interest on costs from the date of its order. Rule 23.11 of the Tribunal's *Rules of Practice and Procedure* expressly provides that the Tribunal's costs award may bear interest in the same manner as those made under s. 129 of the *CJA*.

[23] Subsection 129(4) also authorizes interest on costs but does not apply here. It states that where costs are assessed without an order, they bear interest at the post-judgment interest rate "in the same manner as if an order for the payment of costs on the date the person to whom the costs are payable became entitled to the costs." In this case, the parties asked the Tribunal to refer the costs to an assessment officer, but the Tribunal declined to do so. The Tribunal decided to exercise its own discretion to award costs. Because an order was made, s. 129(4) is not relevant to the situation here.

[24] I also reject the submission that s. 130(1) provides a route for the Tribunal to order interest running from a date before an order for costs. It provides in relevant part:

s. 130(1)(c) 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,

(c) allow interest for a period other than provided in either section.

[25] The problem with relying on s. 130(1)(c) to order interest before the making of the costs order is s. 128(4), dealing with prejudgment interest. Subsection 128(4) expressly prohibits ordering prejudgment interest on an award of costs. It provides:

128(1) A person who is entitled to an order for the payment of money is entitled to claim and 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.

...

(4) interest shall not be awarded under subsection (1),

...

(c) on an award of costs in the proceeding.

[26] In *United States of America v. Yemec*, 2007 CanLII 65619 (ON SCDC), 85 O.R. (3d) 751, this court considered whether an award of costs could run from a date of a party's original success on a motion, rather than the date on which the motion judge awarded costs. The court found s. 130(1)(c) only permitted an order for the payment of interest on costs from the date costs were awarded. Importantly for our purposes, because s. 128(4)(c) prohibits prejudgment interest on an award of costs, s. 130 could not be used to authorize a court to order interest payable for a period prior to the order for the payment of costs.

[27] MacEwen attempts to distinguish *Yemec* by saying *Yemec* stands for the proposition that interest can only be awarded from the date of *entitlement* to costs. In *Yemec*, the party's entitlement did not arise until the motion judge made an order for costs. MacEwen submits that in the case at bar, its entitlement arose on the date of settlement.

[28] I disagree. The first problem with MacEwen's argument is that is not what *Yemec* says. The court's reasoning in *Yemec*, at para. 74, relies on the specific wording of s. 129(1) of the *CJA*, which states costs run from the date of the "order." The court states:

In our view, the wording of s. 129(1) is clear. Post-judgment interest is to run on "money owing under an order, including costs to be assessed or costs fixed by the court" from the date of the order. The wording of the section makes it clear that interest can run from a date prior to the date of quantification of the costs. However, it can only run from the date of an order for the payment of costs. (emphasis added)

[29] The second problem is MacEwen's reading is inconsistent with the Court of Appeal's decision in *Rajic v. Spivak*, 2025 ONCA 363. In that case the appellant made the same argument MacEwen is making here, but in the context of interest on a settlement in a solicitor's negligence case. The appellant argued costs on the settled amount should be payable from the date of settlement, not from the date of a court order. The motion judge rejected this analysis, finding that s. 129 of the *CJA* provides for post-judgment interest from the date of an order, not from the date of a settlement. The Court of Appeal agreed with her analysis.

[30] I recognize that in *Hume v. Ontario (Transportation)*, 2019 CanLII 117324 (LPAT), the Tribunal ordered costs from the date of the settlement. It did so based on the principle of fully indemnifying the claimants, but did not explain its statutory authority for doing so. For the reasons

provided above, I disagree that it had the authority to order interest on costs running from the date of settlement.

[31] Under the *CJA*, then, post-judgment interest runs from the date of the Tribunal's order, not from the settlement. All parties agree this interpretation does not foreclose compensation for interest that has already been paid by a party, for example, on a solicitor's account. Interest that has already been paid could entitle the party to compensation under s. 32 of the *Act*. My interpretation of the *Act* and *CJA* also does not foreclose interest that the parties agree must be paid as part of a settlement. The parties therefore may bargain for the payment of interest and need not obtain a Tribunal order in every case.

[32] Considering my conclusion that interest cannot be awarded on costs from before the date of the Tribunal's order, there is no need to address the cross-appeal.

Disposition

[33] The appeal is allowed. In view of my analysis above, there is no need to remit the matter to the Tribunal. There is only one possible outcome from my analysis, which is that interest shall be paid from the date of the Tribunal's costs order.

[34] As agreed by the parties, each party shall bear its own costs of the appeal.

O'Brien, J.

I agree

Nakatsuru J.

I agree

I. Smith J

Released: January 13, 2026

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– and –

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O'BRIEN, J.

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