ELECTRONIC NEWSLETTER

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August 2013

Important changes to Rule 53.09
of the Rules of Civil Procedure effective in 2014

The Ontario government recently implemented revisions to the discount rate formula used in the calculation of awards for future pecuniary damages in Ontario (Rule 53.09(1)).

The revised formula is applicable to trials commencing January 1, 2014.

In a nutshell...

1-	The new formula will result in a higher and always positive discount rate for the initial 15 year period
2-	A higher discount rate results in lower present values of future payments
3-	The discount rate after 15 years remains unchanged at 2.5%
4-	The rewording of the rule will end the debate over the discounting of payments expected over 15 years after the date of valuation

A higher and always positive discount rate for the initial 15 years

The discount rate for the initial 15 years can no longer be negative and will be higher than under the current rule because it is now based on the average yield on Canada long term real return bonds reduced by 0.5% as opposed to 1%.

Other changes: the rate is rounded to the nearest 1/10 per cent (as opposed to the nearest ¼ per cent) and based on yields in a prescribed 6 month period (is 12 months under the current rule).

Please note that the discount rates applicable to trials commencing in 2014 will be published shortly as soon as the August 2013 rates are available.

Lower present values

The example on the next page illustrates, had it been used in 2013, the effect of the new formula:

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Important changes to Rule 53.09
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<u>Situation</u>: Ms. Smith manages a library and earns $50,000/year. She is in a motor vehicle accident which injures her such that she is unable to work for the rest of her life. At the date of valuation Ms. Smith is 30 years old. Had the accident not occurred Ms. Smith would have earned $50,000/year in 2013 dollars until the age of 65.

<u>Aim</u>**:** To put a value on the future pecuniary loss suffered by Ms. Smith.

<u>Valuation</u>**:** In 2013, under the current formula (-0.5% for the first 15 years and 2.5% thereafter) the present value of her future earnings would be $1,599,100. If the new formula had been in effect in 2013 (0% for the first 15 years and 2.5% thereafter) the present value of her future earnings would be $1,510,800. This is approximately a 5.5% decrease in present value. (The reduction is almost identical if it were a male.)

<u>All experts should now consistently apply the discount rates</u>

In recent years, some experts came up with a different interpretation of Rule 53.09, by disregarding the discount rate applicable in the first 15 years for payments expected over 15 years after the date of valuation. That approach resulted in lower present value awards. In our previous illustration, Ms. Smith's claim would be approximately 19% lower.

In June 2011, the then president of the Canadian Institute of Actuaries wrote to Mr. Stephen Cavanagh, Chair of the Rule 53.09 and 53.10 Subcommittee, about the potential misinterpretation of Rule 53.09.

The new wording "for any later period covered by the award, 2.5 percent per year for each year in that period" (O. Reg. 488/99, s. 2; O. Reg. 263/03, s. 4 (1)) clarifies the application of the rule. It confirms the actuarially correct approach which we used all along.

See link below for the amended regulations:
http://www.e-laws.gov.on.ca/html/regs/english/elaws_regs_900194_e.htm

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