

**RECENT CHANGES TO RULES OF CIVIL PROCEDURE
CALCULATION OF AWARDS FOR FUTURE PECUNIARY DAMAGES**

Rule 53.09 of the Ontario Rules of Civil Procedure was recently amended, for trials commencing on or after January 1, 2000, to:

53.09(1) Discount rate-

The discount rate to be used in determining the amount of an award in respect of future pecuniary damages, to the extent that it reflects the difference between estimated investment and price inflation rates, is,

- (a) *for the 15-year period that follows the start of the trial, the average of the value for the last Wednesday in each month of the real rate of interest on long-term Government of Canada real return bonds (Series B113911) as published in the Bank of Canada Weekly Financial Statistics for the 12 months ending August 31 in the year before the year in which the trial begins, less 1 per cent and rounded to the nearest 1/4 per cent; and*
- (b) *for any later period covered by the award, 2.5% per year.*

53.09(2) Gross up-

In calculating the amount to be included in the award to offset any liability for income tax on income from investment of the award, the court shall,

- (a) *assume that the entire award will be invested in fixed income securities; and*
- (b) *determine the rate to be assumed for future inflation in accordance with the following formula:
g +1 per cent, rounded to the nearest 1/4 per cent
where $g = \frac{(1+i)}{(1+d)} - 1$*

"i" is the average of the value for the last Wednesday in each month of the nominal rate of interest on long term Canada bonds (Series B113867), as published in the Bank of Canada Weekly Financial Statistics, for the 12 months ending on August 31 in the year before the year in which the trial begins,

"d" is

- (a) *for the 15-year period that follows the start of the trial, the average of the value for the last Wednesday in each month of the real rate of interest on long term Government of Canada real return bonds (Series B113911), as published in the Bank of Canada Weekly Financial Statistics for the 12 months ending on August 31 in the year before the year in which the trial begins, and*
- (b) *for any later period covered by the award, 2.5 per cent per year.*

Thus for trials commencing after January 1, 2000 the discount rate, formerly 2.5% per annum, is split between the first 15 years and subsequent periods. Additionally, the discount rate, to be applied to the initial 15 years, will be determined on an annual basis. For trials commencing after January 1, 2000 the rate is 3% per annum.

	Discount Rate New Rule 53.09	Discount Rate Old Rule 53.09
Initial 15 Years	3.0%	2.5%
After 15 Years	2.5%	2.5%

The new rule will produce lower present values and lower gross up values for the year 2000 when compared to the old 2.5% rule. If, hypothetically, in 2001 the rate is set at 2.0% then it will produce higher present values and higher gross up values when compared to the old 2.5% rule.

The impact hereof on awards in 2000 can be illustrated by the following example:

Jane Smith, aged 30, is awarded \$10,000 per annum payable for life. The present value of this award, assuming a normal female life expectancy, would be:

Jane Smith's Award	New Rule 53.09(1)	Old Rule 53.09(1)
Amount Payable For Life	\$10,000 p.a	\$10,000 p.a.
Present Value Multiplier	28.45	28.89
Present Value	\$284,500	\$288,900

Readers are cautioned against reliance on the information provided without first seeking detailed advice with respect to their or their client's unique situation.