Important Changes To Prejudgment Interest Calculation in Motor Vehicle Accident Claims

January 12, 2015

On January 1, 2015, new legislation related to the calculation of prejudgment interest for non-pecuniary losses in actions arising from the use or operation of an automobile came into effect. The new legislation is contained in Bill 15, the *Fighting Fraud and Reducing Automobile Insurance Rates Act*, 2014 (the "*Act*"), passed on November 20, 2014, which amends various Ontario statutes, including the *Insurance Act*, R.S.O. 1990, c. I.8.

The *Act* amends section 258.3 of the *Insurance Act* by adding the following new provision:

(8.1) Subsection 128(2) of the *Courts of Justice Act* does not apply in respect of the calculation of prejudgment interest for damages for non-pecuniary loss in an action … [for loss or damage from bodily injury or death arising from the use or operation of an automobile].

The effect of the new provision is that the 5% prejudgment interest rate for non-pecuniary losses no longer applies. Instead, the prejudgment interest rate for non-pecuniary losses will be equal to the prejudgment interest rate for pecuniary losses. The current rate is 1.3%.

We anticipate that the Courts will consider this new legislation in the very near future.

It is important to note that this legislative change only applies to actions for bodily injury or death arising from the use or operation of an automobile. The prejudgment interest rate remains at 5% for non-pecuniary losses in all other actions for personal injury.

By

Jonathan Thoburn

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BLG Offices

Calgary

Centennial Place, East Tower
520 3rd Avenue S.W.
Calgary, AB, Canada
T2P 0R3

T 403.232.9500
F 403.266.1395

Ottawa

World Exchange Plaza
100 Queen Street
Ottawa, ON, Canada
K1P 1J9

T 613.237.5160
F 613.230.8842

Vancouver

1200 Waterfront Centre
200 Burrard Street
Vancouver, BC, Canada
V7X 1T2

T 604.687.5744
F 604.687.1415

Montréal

1000 De La Gauchetière Street West
Suite 900
Montréal, QC, Canada
H3B 5H4

T 514.954.2555
F 514.879.9015

Toronto

Bay Adelaide Centre, East Tower
22 Adelaide Street West
Toronto, ON, Canada
M5H 4E3

T 416.367.6000
F 416.367.6749

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