

Important Changes To Prejudgment Interest Calculation in Motor Vehicle Accident Claims

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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.

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