

PJI ON NON-PECUNIARY DAMAGES IN MOTOR VEHICLE CASES – NEW LEGISLATION AND DECISION

Cirillo v. Rizzo and 1643703 Ontario Inc.

Legislation which came into effect on January 1, 2015 changed the pre-judgment interest (PJI) rate for motor vehicle cases. Bill 15, the *Fighting Fraud and Reducing Automobile Insurance Rates Act, 2014*, changed the PJI rate on non-pecuniary damages to make it consistent with the rate determined under the *Courts of Justice Act* for pecuniary losses. The bill amended the *Insurance Act* and only applies to motor vehicle tort cases.

The legislation was silent on the effective date of the change and whether or not it is to apply to cases which are ongoing or whether it only applies to cases after January 1, 2015.

On April 15, 2015, the Ontario Superior Court released the first decision interpreting the new rule: *Cirillo v. Rizzo and 1643703 Ontario Inc.* Justice MacKenzie found that the legislative change is procedural in nature and not substantive and as such should apply retroactively. Substantive changes to laws are to apply only on an ongoing basis but procedural changes can apply to existing files. According to an earlier Ontario Court of Appeal decision (*Somersall*), entitlement to PJI is a substantive right, but quantifying it is a procedural matter. Justice MacKenzie found that the applicable prejudgment interest rate is determined by the default rate under section 128(1) of the *Courts of Justice Act*. He applied the posted pre-judgment interest rate (chart) at s.127.

Section 128 of the *Courts of Justice Act* provides that PJI is payable from the date the cause of action arose. However, in car accident cases, eligibility for interest only starts from the date of the “PJI notice.” Section 258 (8) of the *Insurance Act* provides that PJI is payable from the date of notice to the tort defendant, not from the date of loss or from the date of the issuance of the Statement of Claim or Notice of Action. Section 127 of the *Courts of Justice Act* provides that the PJI rate is determined by “the bank rate at the end of the first day of the last month of the quarter proceeding the quarter in which the proceeding was commenced, rounded to the nearest tenth of a percentage point.”

Therefore in order to determine the correct interest rate for non pecuniary damages in car accident cases, you need to know the date that the Statement of Claim (or Notice of Action) was issued (to get the correct quarter). Then, you need to know the date of the notice (to start the interest clock ticking).

Rates vary over time. In the published list at s.127, in 2008 the rates dropped from around 5% to, over the next few years, often to as low as 0.5%. The rate then stabilized at 1.3% in the first quarter of 2011. The current interest rate is 1.3%.

What was previously a straightforward calculation of 5% per annum since the date of notice is now replaced in motor vehicle cases by reference to a specific rate, easily found, in the *Courts of Justice Act*. This change applies to all open actions. The 5% PJI rate for non-pecuniary general damages continues to apply in non-motor vehicle cases.

If you would like a copy of this case or more information or a roadshow on motor vehicle litigation, please do not hesitate to call.

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