

BRIEFING NOTE

Important change announced to discount rates in the Law and Equity Act

The discounting rate applied to damages set to manifest in the future has been amended down. Essentially, this means the present value of these awards will increase. ICBC, in its 2014-2016 Service Plan predicted that a reduction in the discount rate would “*have an estimated impact to claims costs of \$60 million annually and a one-time impact of \$200 million*”.¹

The Law and Equity Act [RSBC 1996] ch.253, s56 provides for the application of two discount rates to calculate the present value of future damages. Essentially, the first is used in respect of a loss of future income claim and a loss of dependency claim (the latter under the Family Compensation Act), and the second is used in all other cases of pecuniary damages manifesting in the future.

The rate is set by BC Regulation 352/81. BC Regulation 74/2014, proclaimed yesterday, changed the rates as follows:

- (a) was 2.5% per annum; it is now 1.5% per annum; and
- (b) was 3.5% per annum; it is now 2% per annum.

The quantum effect of the amendment will depend on a number of factors, including the age of the plaintiff and the nature of the damages. For example, for a cost of future care award (subject to the second rate), in the case of a 65 year old, the amendment would increase the present value by around 20%, but for a 20 year old, the increase is in the region of 40%. Awards for heads of damage that do not manifest for some time and extend far into the future (e.g. loss of pension for a 20 year old) will see the greatest increase. Conversely, those that incept earlier, and with a shorter time-frame, will be least impacted.

There will likely be some (modest) decreases to heads of damages also. For example, tax gross up ought, theoretically, to decrease on the assumption that a lower investment rate of return results in lower tax burden.

It will be interesting to see if structured settlements see a rise in popularity, given that their rates of return are now more in line with the new discount rates.

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¹ <http://bcbudget.gov.bc.ca/2014/sp/pdf/agency/icbc.pdf> (NB it is unclear from the report what rate was used to obtain these figures)