

BRIEFING NOTE

Introduction to Pre-Judgement Interest in British Columbia

The purpose of pre-judgement interest is to compensate the successful plaintiff for being deprived of their money for the period from which their claim arose until the date of judgement.¹ In British Columbia, the *Court Order Interest Act* RSBC 1996 Ch.79 (“*COIA*”) sets out what kinds of awards attract pre-judgement interest and how it is to be calculated.

If parties have come to an agreement regarding pre-judgement interest, or the entitlement is waived in writing, it is not to be added pursuant to the *COIA*.² Otherwise, pre-judgement interest is calculated on all pecuniary awards³ where the cause of action arose on or after June 1, 1974.⁴

Except in the case of special damages, interest must be added from the date the cause of action arose to the date of the Court Order. The language contained in section 1(1) of the *COIA* is explicit and mandatory in this regard. The commencement of interest on special damages is more complicated, but essentially the trigger is the date of each payment, rounded to the next July 1 or January 1.

While some may argue that it is inequitable to impose pre-judgement interest on a party who was unaware of a claim, unable to quantify it, or who did not expect a claim for interest, our legislation does not (and never has) granted Courts the discretion to select an alternative start date for the calculation of pre-judgement interest.

¹ Although the legislation clearly states that pre-judgement interest must be calculated from the date the cause of action arose, pinpointing that exact date is not always straightforward. In *Belpacific Excavating & Shoring Limited Partnership v. Crown and Mountain Creations Ltd.*, 2022 BCSC 412, the court, interpreting section 1(1) of the *COIA*, reaffirmed the long-standing principle that a cause of action arises at “the earliest time at which every fact necessary for the plaintiff to establish their claim is in existence.”

² See *COIA* s. 2(b) & (d).

³ In the context of the *COIA*, the term “pecuniary judgement” refers to any monetary award and is not used in the narrower sense typically associated with specific heads of damages: *J.L.V.M. v P.H.*, 1997 CanLII 1325 (BCSC).

⁴ See *COIA* s. 6

Guild Yule_{LLP}

BARRISTERS AND SOLICITORS

2100 – 1075 Georgia Street

Vancouver, BC V6E 3C9

www.guildyule.com

P 604 688 1221

F 604 688 1315

E feedback@guildyule.com

Why Calculate Pre-Judgement Interest from a Different Date?

The mandatory nature of our legislation might be frustrating to some. For instance, in subrogated claims, a defendant might argue that it is unjust to impose pre-judgement interest from the date the cause of action arose, when the subrogation package detailing the damages was only provided much later. In such cases, defence counsel may propose a reduced amount of pre-judgement interest as a part of settlement negotiations. However, if the matter proceeds to trial, the legislation is unequivocal: pre-judgment interest will be calculated from the date the cause of action arose, regardless of when the damages were quantified.

Is It Time for a Change?

The original version of the *COIA* became effective in 1974. In 1987, the Law Reform Commission of British Columbia (the “Commission”) released a report recommending reform (the “Report”).⁵ In the Report, the Commission suggested that allowing judicial discretion to select a different start date for the calculation of pre-judgement interest would be a much more equitable and practical approach.

The Report noted that in other jurisdictions Courts are granted discretion to determine when time starts running for the calculation of pre-judgement interest (for example, Ontario’s *Courts of Justice Act*). The Commission recommended that the Court should not be required to award pre-judgement interest from the date the cause of action arose in all cases and that there should be an exception for where the whole or part of an unliquidated claim for pecuniary loss is assessed with reference to a later date. However, the current version of the *COIA* was enacted as a part of the 1996 revision of statutes, and was not amended at that time to align with the Commission’s recommendation, further underlining the mandatory nature of the awarding of pre-judgement interest in this Province.

Conclusion

The wording of section 1(1) of the *COIA* is mandatory and incepts immediately an action is commenced (although the entitlement does not crystallize until trial). Accordingly, the authors respectfully suggest it should always be part of the analysis of the “best alternative to a negotiated agreement”, in the resolution of any action.

Eden Katz (articled student)

ekatz@guildyule.com

Adam Howden-Duke

ahd@guildyule.com

Guild Yule LLP

BARRISTERS AND SOLICITORS

2100 – 1075 Georgia Street

Vancouver, BC V6E 3C9

www.guildyule.com

P 604 688 1221

F 604 688 1315

E feedback@guildyule.com

⁵ See Law Reform Commission of British Columbia Backgrounder LRC 90-Report on the Court Order Interest Act, January 1987 and see Law Reform Commission of British Columbia Report on The Court Order Interest Act, January 1987, chapter 4.