

# CIVIL LITIGATION

## CONTENTS

### INTEREST

[§8.01]	Court Order Interest	121
	1. Introduction	121
	2. Pre-judgment Interest	121
	3. Post-judgment Interest	121
	4. Default Judgments	121



## Chapter 8

### Interest

#### [§8.01] Court Order Interest

##### 1. Introduction

The governing principle of the *Court Order Interest Act*, R.S.B.C. 1996, c. 79 (the “Act”), is that interest on damages is to be awarded to the successful litigant as compensation for the loss of the use of money. This basic principle is easier to state than to apply, however, and this has resulted in a series of inconsistent decisions.

##### 2. Prejudgment Interest

Section 1(1) of the Act requires a court to add prejudgment interest to a pecuniary judgment from the date on which the cause of action arose to the date of the order.

While a court has discretion as to the rate to be paid for prejudgment interest, courts generally award prejudgment interest "at the Registrar's rates as varied from time to time". District registrars set the rates for the calculation of prejudgment interest at three-month intervals; computer software packages are available to help lawyers make the calculations. The rates are available via the Internet at <http://www.courts.gov.bc.ca/Sc/sc-int.htm>.

The Act distinguishes between pecuniary or general damages and special damages for the purpose of when prejudgment interest is calculated. Special damages include out-of-pocket expenses, whereas general damages encompass all other damages. Interest on special damages is calculated at the conclusion of each six-month interval in which the loss was incurred (s. 1(2)). On the other hand, under s. 1(1), general damages attract interest from the date the cause of action arose. It is important to note that despite s. 1(1), no pre-judgment interest is awarded on parts of an order that represent nonpecuniary damages arising from personal injury or death (s. 2(e)).

It can be difficult to determine whether a particular item of damages should be classified as general or specific. Clearly damages for pain and suffering are general; damages for medical expenses clearly are special. By contrast, other types of damages, such as wage loss prior to the date of trial, are not easily classified.

The majority of cases treat past loss of income as special damages (see, for example, *Baart v. Kumar* (1985), 66 B.C.L.R. 61 (C.A.)). An acceptable alternative approach treats past income loss as general damages, and reduces the interest rate to reflect the fact that not all lost income accrued from the date of the accident (*Andrews v. Farrell Estates*, [1984] B.C.D. Civ. 3375-01 (C.A.)).

Section 2 of the Act provides that no interest is to be awarded on future losses (on that part of an order that represents pecuniary loss arising after the date of the order).

The court cannot order interest if the parties have already agreed on interest or if the judgment creditor has waived the right to interest (ss. 2(b) and 2(d)). No interest is awarded on interest or costs (s. 2(c)). In addition, interest is awarded only on the sum that the defendant must pay to the plaintiff after taking into account all proper discounts, such as the payment of no-fault benefits in a motor vehicle accident claim (*Ammerlaan v. Drummond* (1982), 36 B.C.L.R. 155 (S.C.)).

A defendant may make interim payments to a plaintiff on account of damages and will often do so where liability is not seriously contested. It is well established that when such voluntary payments are made, prejudgment interest is calculated on the declining balance of the liability as subsequently determined by the court.

##### 3. Postjudgment Interest

Section 7 of the *Court Order Interest Act*, R.S.B.C. 1996, c. 79 provides that money judgments will bear interest at an annual rate that is equal to the prime lending rate of the banker to the government of Canada. The governing rates will be set on January 1 and July 1 of each year, and those rates will prevail for the ensuing six months.

Under s. 8 of the Act, the court has the power to vary the rate of interest or fix a different date from which interest is to be calculated.

##### 4. Default Judgments

Under s. 3 of the *Court Order Interest Act*, where judgment is obtained by default, the registrar of the court is entitled to add pre-judgment interest to the award. Unless the date the cause of action arose is set out in the writ or statement of claim, however, the registrar will award interest only from the date the writ was filed (*Allen v. The New Naked Spud Drive-In Ltd.* (1980), 18 C.P.C. 251).