

INSURANCE LAW BULLETIN

January 2013 – Graham J. MacLeod

DISCOUNT RATE CHANGE

[The information below is provided as a service by Shillingtons LLP and is not intended to be legal advice. Those seeking additional information on the issues above or any other matter should contact a member of the firm at (519) 645-7330.]

2013 has ushered in an unprecedented period in the life of the statutory discount rate¹ prescribed by Rule 53.09 of the Ontario *Rules of Civil Procedure*. For trials commencing in 2013, the applicable discount rate for the first 15 years of future losses will be -0.5%.

Historically, the average discount rate hovered around 1.5%, but in the last three years, there has been a dramatic reduction (the previous low being 0% in 2012). The effect of further reduction in 2013 to -0.5% will be profound; the lower the discount rate, the higher the present value. Consequently, settlements and awards will now require more present-day dollars than in 2012 to fund the same future benefits and compensation.

The following chart illustrates the evolution of the discount rate for the past three years and the anticipated discount rate for 2013:

Rule 53.09, Rules of Civil Procedure	2010	2011	2012	2013
Initial 15 Years	1.25%	0.5%	0%	-0.5%
Post-Initial 15 Years	2.5%	2.5%	2.5%	2.5%

In terms of the effect of the 2013 discount rate on dollar amounts, the following example provides valuable insight:

DISCOUNT RATE APPLIED TO SETTLEMENT/TRIAL AWARD IN 2012

- A plaintiff requiring \$100,000.00 per year for a period of 20 years
- Using the 2012 Ontario blended rate², the 20-year present value factor by which to multiply the \$100,000.00 annual payment is **19.6988**
- Therefore, the present value is **\$1,969,880.00**

¹ The discount rate is the difference between the rate of return on an investment (yields on Government of Canada bonds) and the rate of inflation. In the current economic market, interest rates are declining and, as a result, the gap between the return on investment rate and the inflation rate is closing, which, in turn causes a reduction in the discount rate.

² The blended rate accounts for the discount rate during the initial 15-year period and the post-initial 15-year period.

DISCOUNT RATE APPLIED TO SETTLEMENT/TRIAL AWARD IN 2013

- Same plaintiff requiring \$100,000.00 per year for a period of 20 years
- Using the 2013 Ontario blended rate, the 20-year present value factor by which to multiply the \$100,000.00 annual payment is **20.6473**
- Therefore, the present value is **\$2,064,730.00**

As illustrated above, there is a marked increase between the 2012 and 2013 present value dollar amounts. In order to support the settlement requirements, an **additional \$94,850.00** in funding is required in 2013. Such an increase must be considered when setting reserves, negotiating settlements, and potentially agreeing to damages awards.