

## Judicature Act, RSA 2000, c J-2

### Periodic payment of damages

19.1(1) In this section,

- (a) “damages” means damages
  - (i) for personal injuries or for the death of a person, or
  - (ii) provided for under the [\*Fatal Accidents Act\*](#);
- (b) “judgment” means a judgment under which damages are to be paid in whole or in part by periodic payments;
- (c) “judgment creditor” means a person who is entitled to receive periodic payments under a judgment;
- (d) “periodic payment termination date” means the date or event on which periodic payments are to cease being paid;
- (e) “proceeding” means a proceeding under which damages are claimed.

(2) On application by any party to a proceeding, the Court may order that damages awarded be paid in whole or in part by periodic payments, and where no party to a proceeding has made an application for periodic payments, the Court nevertheless

- (a) may, in the Court’s discretion and on the terms that the Court thinks just, order that an award for damages be paid by periodic payments if the Court considers it to be in the best interests of the plaintiff, and
- (b) shall order that an award for damages be paid by periodic payments if the plaintiff requests that an amount be included in the award to compensate for income tax payable on income from investment of the award.

(2.1) Notwithstanding subsection (2), the Court shall not make an order under this section

- (a) if all the parties agree otherwise,
- (b) if one or more of the parties in respect of whom the order would be made satisfies the Court that the parties do not have sufficient means to fund the order, or

(c) if the Court, on considering all the circumstances, including but not limited to considering whether an order for periodic payments would have the effect of preventing the plaintiff or another person from obtaining full recovery for damages awarded, is satisfied that such an order would not be in the best interests of the plaintiff.

**(3)** Where the Court orders that damages are to be paid by periodic payments, the Court in its judgment

(a) must identify the specific damages for which periodic payments are to be made and, with respect to each of those specific damages, set out

(i) the amount of each periodic payment,

(ii) the date of each periodic payment or the interval between periodic payments,

(iii) the recipient of each periodic payment,

(iv) the annual percentage increase, if any, in the amount of each periodic payment, and

(v) the periodic payment termination date,

and

(b) in addition to any matter referred to in clause (a), may make any direction and include any material that the Court considers appropriate.

**(4)** The Court may, for the purposes of assuring payment of a judgment, order any party liable under the judgment to provide security in the form of an annuity contract that complies with the requirements of the [Income Tax Act](#) (Canada) regarding the tax-free status of the payments, issued by a life insurer satisfactory to the Court and irrevocably payable to the plaintiff, subject to any terms or conditions the Court considers appropriate.

**(5)** and **(6)** Repealed 2006 c4 s2.

**(7)** Periodic payments of damages for loss of future earnings are exempt from civil enforcement proceedings to the same extent that wages or earnings are exempt from civil enforcement proceedings.

**(8)** Periodic payment of damages that are for the cost of future care of the judgment creditor are not assignable to another person unless

(a) the person who is to be the assignee is a provider of care to the judgment creditor and the assignment is to pay for the costs of products, services and accommodation, or any one or more those items, in respect of the judgment creditor, and

(b) the Court, on application, approves the assignment.

**(9)** This section applies to any proceeding, whether the proceeding was commenced before or after this section comes into force.

2004 c11 s3;2006 c4 s2