

## **Courts of Justice Act, RSO 1990, c C.43**

### **Periodic payment, medical malpractice actions**

**116.1** (1) Despite [section 116](#), in a medical malpractice action where the court determines that the award for the future care costs of the plaintiff exceeds the prescribed amount, the court shall, on a motion by the plaintiff or a defendant that is liable to pay the plaintiff's future care costs, order that the damages for the future care costs of the plaintiff be satisfied by way of periodic payments. 2006, c. 21, Sched. A, s. 17.

#### **The order**

(2) If the court makes an order under subsection (1), the court shall determine the amount and frequency of the periodic payments without regard to inflation and shall order the defendant to provide security for those payments in the form of an annuity contract that satisfies the criteria set out in subsection (3). 2006, c. 21, Sched. A, s. 17.

#### **Form of security**

(3) The annuity contract shall satisfy the following criteria:

1. The annuity contract must be issued by a life insurer.
2. The annuity must be designed to generate payments in respect of which the beneficiary is not required to pay income taxes.
3. The annuity must include protection from inflation to a degree reasonably available in the market for such annuities. 2006, c. 21, Sched. A, s. 17.

#### **Directions from the court**

(4) If the parties are unable to agree on the terms of the annuity, either party may seek directions from the court about the terms. 2006, c. 21, Sched. A, s. 17.

#### **Filing and approval of plan**

(5) Unless the court orders otherwise, a proposed plan to provide security required by an order under subsection (2) shall be filed with the court within 30 days of the judgment or within another period that the court may specify, and the court may approve the proposed plan, with or without modifications. 2006, c. 21, Sched. A, s. 17.

### **Effect of providing security**

(6) If security is provided in accordance with a plan approved by the court, the defendant by whom or on whose behalf the security is provided is discharged from all liability to the plaintiff in respect of damages that are to be paid by periodic payments, but the owner of the security remains liable for the periodic payments until they are paid. 2006, c. 21, Sched. A, s. 17.

### **Effect of not providing security**

(7) If a proposed plan is not filed in accordance with subsection (5) or is not approved by the court, the court shall, at the request of any party to the proceeding, vacate the portions of the judgment in which periodic payments are awarded and substitute a lump sum award. 2006, c. 21, Sched. A, s. 17.

### **Application for lump sum**

(8) The court may order that the future care costs be paid in whole or in part by way of a lump sum payment to the extent that the plaintiff satisfies the court that a periodic payment award is unjust, having regard to the capacity of the periodic payment award to meet the needs for which the damages award for future care costs is intended to provide compensation. 2006, c. 21, Sched. A, s. 17.

### **Amount to offset liability for income tax**

(9) If the court does not make an order for periodic payments under subsection (1) or makes an order for a lump sum payment under subsection (7) or (8), the court shall make an award for damages that shall include an amount to offset liability for income tax on income from investment of the award except to the extent that the evidence shows that the plaintiff will not derive taxable income from investing the award. 2006, c. 21, Sched. A, s. 17.

### **Periodic payments exempt from garnishment, etc.**

(10) Periodic payments of damages for future care costs are exempt from seizure or garnishment to the same extent that wages are exempt under [section 7](#) of the [Wages Act](#), unless the seizure or garnishment is made by a provider of care to the plaintiff and the seizure or garnishment is to pay for the costs of products, services or accommodations or any one of them with respect to the plaintiff. 2006, c. 21, Sched. A, s. 17.

### **Future review**

(11) In an order made under this section, the court may, with the consent of all the affected parties, order that the award be subject to future review and revision in such circumstances and on such terms as the court considers just. 2006, c. 21, Sched. A, s. 17.

## **Regulations**

(12) The Lieutenant Governor in Council may make regulations prescribing or calculating the amount of future care costs for the purpose of subsection (1). 2006, c. 21, Sched. A, s. 17.

## **Definitions**

(13) In this section,

“future care costs” means the cost of medical care or treatment, rehabilitation services or other care, treatment, services, products or accommodations that is incurred at a time after judgment; (“coûts des soins futurs”)

“medical malpractice action” means an action for personal injuries alleged to have arisen from negligence or malpractice in respect of professional services requested of, or rendered by, a health professional who is a member of a health profession as defined in the [Regulated Health Professions Act, 1991](#) or an employee of the health professional or for which a hospital as defined in the [Public Hospitals Act](#) is held liable; (“action pour faute professionnelle médicale”)

“prescribed amount” means \$250,000 or such greater amount as may be prescribed by regulation, calculated as a present value at the time of judgment in accordance with the [Rules of Civil Procedure](#). (“montant prescrit”) 2006, c. 21, Sched. A, s. 17.

## **Transition**

(14) This section applies to all proceedings in which a final judgment at trial or final settlement has not been made on the day the *Access to Justice Act, 2006* receives Royal Assent. 2006, c. 21, Sched. A, s. 17.