

# PART 41

## PROVISIONAL DAMAGES

### CONTENTS OF THIS PART

Application and definitions	Rule 41.1
Order for an award of provisional damages	Rule 41.2
Application for further damages	Rule 41.3

### APPLICATION AND DEFINITIONS

- 41.1 | (1) This Part applies to proceedings to which SCA s.32A or CCA s.51 applies.
- (2) In this Part –
- (a) ‘SCA s.32A’ means section 32A of the Supreme Court Act 1981<sup>(62)</sup>;
  - (b) ‘CCA s.51’ means section 51 of the County Courts Act 1984<sup>(63)</sup>; and
  - (c) ‘award of provisional damages’ means an award of damages for personal injuries under which –
    - (i) damages are assessed on the assumption referred to in SCA s.32A or CCA s.51 that the injured person will not develop the disease or suffer the deterioration; and
    - (ii) the injured person is entitled to apply for further damages at a future date if he develops the disease or suffers the deterioration.

### ORDER FOR AN AWARD OF PROVISIONAL DAMAGES

- 41.2 | (1) The court may make an order for an award of provisional damages if –
- (a) the particulars of claim include a claim for provisional damages; and
  - (b) the court is satisfied that SCA s.32A or CCA s.51 applies.
- (Rule 16.4(1)(d) sets out what must be included in the particulars of claim where the claimant is claiming provisional damages)
- (2) An order for an award of provisional damages –

<sup>(62)</sup> 1981 c.54. Section 32A was inserted by section 6(1) of the Administration of Justice Act 1982 (c.53).

<sup>(63)</sup> 1984 c.28.

- (a) must specify the disease or type of deterioration in respect of which an application may be made at a future date;
  - (b) must specify the period within which such an application may be made; and
  - (c) may be made in respect of more than one disease or type of deterioration and may, in respect of each disease or type of deterioration, specify a different period within which a subsequent application may be made.
- (3) The claimant may make more than one application to extend the period specified under paragraph (2)(b) or (2)(c).

## APPLICATION FOR FURTHER DAMAGES

- 41.3 |
- (1) The claimant may not make an application for further damages after the end of the period specified under rule 41.2(2), or such period as extended by the court.
  - (2) Only one application for further damages may be made in respect of each disease or type of deterioration specified in the award of provisional damages.
  - (3) The claimant must give at least 28 days' written notice to the defendant of his intention to apply for further damages.
  - (4) If the claimant knows –
    - (a) that the defendant is insured in respect of the claim; and
    - (b) the identity of the defendant's insurers,
 he must also give at least 28 days' written notice to the insurers.
  - (5) Within 21 days after the end of the 28 day notice period referred to in paragraphs (3) and (4), the claimant must apply for directions.
  - (6) The rules in Part 25 about the making of an interim payment apply where an application is made under this rule.