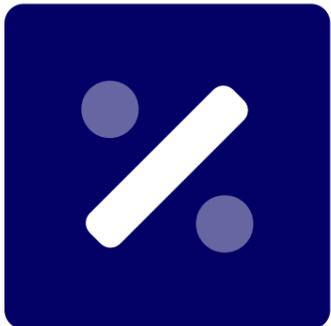


Guide to Understanding What Constitutes as Legal Interest Within Contracts



Businesses often attempt to add terms of interest by showing an interest clause upon an invoice; however, where an interest charge was without agreement at the time the contract was established, unilaterally adding terms of interest is insufficient in altering the originally discussed contract terms which were silent on an interest charge; *King Road Paving and Landscaping Inc. v. Plati*, [2017 ONSC 557](#) at 79 to 88.

For most contracts involving the sale of goods and services (i.e. other than mortgages) where an interest rate is stated as applying to late payment or overdue accounts will require that the annual interest rate be shown. The mandate to show an annual interest rate is found in [s.4](#) of the federal *Interest Act*, [R.S.C. 1985, c. I-15](#). In circumstances where an interest rate that is less than annual is shown, such as a two (2%) percent monthly interest charge, without also stating the annual interest rate, such an agreement is void and unenforceable.

The *Interest Act* also governs the interest rate that applies if an agreement for interest is made but the rate of interest undeclared. In such a situation, the *Interest Act* statutorily establishes a five (5%) annual rate. Counter-intuitively, many perceive that where a lesser rate is stated without the annualized rate such as the example of two (2%) percent mentioned above, this unenforceable rate should be substituted with the statutory five (5%) percent rate; however, the law will not operate in such a manner as to amend or adjust the defective rate of interest stated in the contract. The law within the *Interest Act* only establishes the rate at five (5%) percent when interest was agreed to but the rate unstated. Accordingly, in a situation where a rate is stated without the annualized interest rate, any interest becomes disallowed.

Additionally, even if stated 'correctly' as an annualized interest rate, any interest rate charged beyond sixty (60%) percent annual runs contrary to [s.347](#) of the *Criminal Code of Canada*, [R.S.C. 1985, c. C-46](#) and may be punishable by five (5) years imprisonment as an indictable offence or six (6) months imprisonment and/or twenty five thousand (\$25,000) dollar fine as a summary conviction offence. Lately, much legal news has come from concerns involving the fees and other charges as charged by pay day loan businesses and whether such fees are merely interest charges in disguise and if such are interest charges in 'disguise' whether such amounts to criminal activity when calculation of such interest charges in 'disguise' establishes a rate beyond sixty (60%) percent. These payday or short term loans businesses are regulated per the *Payday Loans Act, 2008*, [S.O. 2008, Chapter 9](#). The decision in the case of *The Director v. The Cash Store*, [2014 ONSC 980](#) has helped define some of the parameters established by this law.