LAW REFORM COMMISSION
OF BRITISH COLUMBIA

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LRC 60

The Law Reform Commission of British Columbia was established by the *Law Reform Commission Act* in 1969 and began functioning in 1970.

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Appendix C

MINOR REPORT
(LRC 59)

July 14, 1982

The Hon. Allan Williams, Q.C.
Attorney General of the Province
of British Columbia
Parliament Buildings
Victoria, B.C. V8V 1X4

Dear Mr. Attorney:

Re: Interest and Jurisdictional Limits
in the County and Provincial Courts

The *Court Order Interest Act,* R.S.B.C. 1979, c.76 (formerly entitled the *Prejudgment Interest Act)* was enacted in 1974 to implement recommendations made in a Report (LRC 12) submitted by the Commission in 1973. The Commission has been monitoring the operation of the Act with a view to isolating any difficulties that have emerged that might be remedied by legislation. Complementing our work is the work of the Uniform Law Conference of Canada aimed at developing a *Uniform Prejudgment Interest Act* suitable for adoption across Canada. That body will be considering a draft Act at its meeting in August 1982.

An issue has arisen, however, which the Commission believes can be dealt with independently of any broad study and without amending the *Court Order Interest Act.* In *Buckler* v. *Earthwood Manufacturing Ltd.,* [1980] B.C.D. Civ. 2058-08, (1981) 18 C.P.C. 223, (B.C. Co. Ct.), it was held that prejudgment interest must be taken into account when determining whether a claim falls within the monetary jurisdiction of the Provincial Court as prescribed by section 4 (e) of the *Small Claims Act,* R.S.B.C. 1960, c. 359. section 4 (e) provided:

> 4. Every judge, among other powers conferred by this Act, has jurisdiction in the following cases:
> (e) in all other personal actions where the debt or damages claimed does not exceed $2,000.

This section was carried forward in substantially the same terms in the Revised Statutes of 1979 as section 2 (1) (e) of the *Small Claim Act,* 1979, c. 387. That section provides:

> 2 (1) The court, among other powers, has jurisdiction in
> (e) all other personal actions where the debt or damages claimed does not exceed $2,000.

The *Small Claim Act,* R.S.B.C. 1979, c. 387 was amended in 1981 to make it clear that the substitution of "court" for "judge" did not change the law. Section 65 of the *Miscellaneous Statutes Amendment (No. 1), 1981 Act,* S.B.C. 1981, c. 20 provides:

> 65. Section 1 of the *Small Claim Act,* R.S.B.C. 1979, c. 387, is amended by renumbering it as section 1 (1) and by adding the following:
> (2) Where a provision in the former Act referred to a judge, and a corresponding provision of this Act altered under the Revised Statutes Act, S.B.C. 1966, c. 42, refers to a court, the change to "court" has not changed the law.

In the *Buckler* case, the plaintiffs commenced an action in the County Court, claiming the sum of $2,000 plus prejudgment interest. The defendants moved to have the action struck out for want of jurisdiction, claiming that the matter should have been brought in the Provincial Court. The question before the Court was whether the claim for prejudgment interest was within the words "debt . . . claimed", with the result that the plaintiff∗s claim would exceed $2,000 and would, therefore, be within the jurisdiction of the County Court and beyond the jurisdiction of the Provincial Court. It was held that the claim for interest was part of the "debt . . . claimed;" consequently, the action was within the jurisdiction of the County Court.

In so holding, the Court purported to follow the Court of Appeal∗s decision in *Kellner* v. *Greig,* (1979) 103 D.L.R. (3d) 244, where it was held, on the ground that the *Court Order Interest Act* gives a plaintiff a claim to interest which the Court has no discretion to refuse, that interest is a "claim" for which the plaintiff sues and, therefore, falls within the meaning of the word "claim" as used in Rule 37(1) of the Rules of Court. Under Rule 37(1), a defendant, at any time before trial, may pay a sum of money into Court in satisfaction of "the whole or part of the plaintiff∗s claim." The plaintiff receives notice of the payment in and may elect to accept the money paid in "and take out of Court the whole sum or any one or more of the specified sums paid in satisfaction of his claim or claims." If the plaintiff does not accept the payment into Court and proceeds to trial and recovers an amount equal to or less than the amount paid into Court, he is only allowed those costs reasonably incurred up to delivery of the notice of payment in and, provided the notice was delivered at least seven days prior to the commencement of the trial, the defendant is entitled to costs reasonably incurred after delivery of the notice.

The effect of the ruling in *Keller* v. *Grieg* is set out in the headnote as follows:

> For the purposes of determining the right to costs after the date of a payment into Court, a plaintiff is entitled to add to the amount recovered by way of damages the amount awarded by way of prejudgment interest. Accordingly, although the plaintiff∗s recovery in damages was for an amount less than the amount paid into Court, where the addition of prejudgment interest results in a net recovery in excess of the payment into Court, the plaintiff is entitled to costs after the date of payment in.

While the Commission does not wish to express an opinion on whether the Court in *Buckler* was correct in construing the ratio in *Kellner* v. *Greig* as applicable to the case before it,

we are concerned that the Court∗s decision raises difficulties. Our principal concern is that uncertainties may arise. A plaintiff, for example, may issue his summons when his total claim, consisting of the debt or damages plus prejudgment interest, up to the date of the issuance of the writ, is within the monetary jurisdiction of the Provincial Court. By the time the matter comes to trial, however, the plaintiff∗s total claim—because interest does not cease to run—exceeds the monetary jurisdiction of that Court. It is uncertain in this situation whether the Court would still have jurisdiction.

Apart from this pragmatic concern, as a matter of principle the Commission believes that interest should not be taken into account when determining whether a claim is within the jurisdiction of the Provincial Court. As to this we would exclude *any* claim to interest, not only interest under the *Court Order Interest Act.* If only prejudgment interest was excluded when determining the monetary jurisdiction of the Provincial Court, interest would still be taken into
account when it is payable by agreement between the parties. In such cases the interest would be part of the "debt" claimed by the plaintiff. In the result, while the principal owing might be within the monetary jurisdiction of the Court, whether in fact the court has jurisdiction would in some instances depend on whether accrued interest due owing by agreement takes the claim over the jurisdictional limit of $2,000. In our view, interest payable by agreement should be treated in the same way as prejudgment interest, and should not be allowed to determine jurisdiction.

The Commission has concluded that the simplest solution to this problem would be to amend the *Small Claim Act* to make it clear that interest, prejudgment or otherwise, should not be taken into account in determining whether the plaintiff∗s claim falls within the monetary jurisdiction of the Court. This is the approach adopted in Ontario, where section 55 (a) of the *Small Claims Courts Act,* R.S.O. 1980, c. 476, provides that the Small Claims Court in Ontario has jurisdiction in any action "where the amount claimed does not exceed $1 ,000 exclusive of interest."

One potential difficulty with the Ontario formulation is that it could lead to a claim for a substantial amount of interest being brought in the Small Claims Court. For example, A lends B $100,000 at 15% per annum interest, after three years B repays $99,000 of the principal, or that amount is appropriated to principal, but nothing has been paid or appropriated in respect of the accumulated interest of $45,000. A∗s claim against B would be for $1,000 of principal plus accrued interest of $45,000. On the Ontario formulation it is arguable that this claim, which totals $46,000, would be within the jurisdiction of the Small Claims Court. This is an extreme example to demonstrate the point. The situation described, however, may often arise in less extreme forms. In any event, this situation should be guarded against in any amendment to the *Small Claim Act.*

Having in mind the considerations discussed in this letter, the Commission unanimously recommends that section 2 (1) (e) of the *Small Claim Act* be amended by adding the words "exclusive of interest, payable pursuant to the *Court Order Interest Act,* by agreement or otherwise, on the debt or damages claimed." A section in the *Attorney General∗s Statutes Amendment Act* could suffice. Following the above suggestion it would read:

Section 2 (1) of the *Small Claim Act,* R.S.B.C. 1979, c. 387 is amended by repealing paragraph (e) and substituting the following:

(e) all other personal actions where the debt or damages claimed does not exceed $2,000 exclusive of interest, payable pursuant to the *Court Order Interest Act,* by agreement or otherwise, on the debt or damages claimed.

This would mean, in the example above, that the Provincial Court would only have jurisdiction to hear a claim for $1,000 of principal, i.e., the debt claimed, plus interest accrued on that amount, but would have no jurisdiction to hear a claim for all of the interest owing, namely the $45,000. To recover that amount, as well as his claim, the plaintiff would have to bring the action in the Supreme Court.

A similar problem exists in connection with the jurisdiction of the County Court. Under section 29 of the *County Court Act,* the County Courts have jurisdiction:

(a) in all personal actions where the debt, demand or damages claimed do not exceed $25,000.
(b) in any action where the debt or demand claimed consists of a balance not exceeding $25,000, after an admitted set off of any debt or demand claimed or recoverable by the defendant from the plaintiff.

The Commission unanimously recommends that paragraphs (a) and (b) should also be amended by the addition of the words "exclusive of interest, payable pursuant to the *Court Order Interest*

Act, by agreement or otherwise." Again, a section in the *Attorney General∗s Statutes Amendment Act* could suffice. It might read:

Section 29 of the *County Court Act,* R.S.B.C. 1979, c.72, is amended

(a) by repealing paragraph (a) and substituting the following:

(a) in all personal actions where the debt, demand or damages claimed do not exceed $25,000 exclusive of interest, payable pursuant to the *Court Order Interest Act,* by agreement of otherwise, on the debt, demand or damages claimed.

(b) by repealing paragraph (b) and substituting the following:

(b) in any action where the debt or demand claimed consists of a balance not exceeding $25,000 exclusive of interest, payable pursuant to the *Court Order Interest Act,* by agreement or otherwise, on the debt or demand claimed, after an admitted set off of any debt or demand claimed or recoverable by the defendant from the plaintiff.

This letter is to be taken as a Report by the Commission recommending changes in the statute law as herein set out. The recommendations for changes in the law set out in this letter were approved by the Commission at a meeting on the 28th of June last.

The issue addressed by the Commission is narrow and free of controversy. In view of this, the Commission decided that it would be inappropriate to send you a full-dress Report and that a less formal report by letter would suffice. Moreover, the Commission decided not to follow its usual practice of preparing and circulating an exhaustive Working Paper for comment and

criticism. Instead, we sent draft copies of this letter to the Honourable the Chief Justice of the Supreme Court, His Honour the Chief Provincial Court Judge, His Honour Judge David Campbell of the Vancouver County Court, and the judges of the Judges Law Reform Committee. His Honour Chief Judge Goulet and His Honour Judge Campbell were kind enough to circulate our draft letter to a number of judges of their respective courts. Members of the Judges Committee were to write us only if they saw any difficulties with our proposals. None of them wrote us with any objections. The responses received overwhelmingly favoured implementation of the proposals for change in the law set out in this letter.

I enclose an additional copy of this letter for your convenience. I have taken the liberty of sending additional copies of this letter to the following in your Ministry: R.H. Vogel, Q.C., Robert Adamson, Allan R. Roger, and George Copley.

Yours truly,
Hon. Mr. Justice J.S. Aikins
Chairman

JSA/je
Encl.

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