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Backgrounder

LRC 121—Report on the Foreign Money Claims Act: Regulations

Date: August 1991

The *Foreign Money Claims Act* was enacted in 1990, but was not yet in force at the time of this report's publication.¹ The Act contemplates the existence of regulations that will harmonize its operation with provincial legislation concerning interest and the machinery for the enforcement of judgments. This creation of regulations is a necessary step before the Act is brought into force.

When calculating the amount of interest that should be payable on prejudgment interest, it makes sense to use the interest rate attached to the currency that one is converting from. If this were not the case, then the person receiving payment would not be "truly and exactly compensated" as the Act requires. Although post-judgment interest was, at the time of publication, subject to Federal legislation, the report discusses what measures could be taken if the issue was given to the provinces.

The project examines attaching regulations to the *Foreign Money Claims Act* that would fix the rate of interest to a published source. This would prevent costly and potentially inconsistent findings by the Court on this issue. The Commission wanted to find a source that was relevant, authoritative, accessible, and timely; and they concluded that the *International Monetary Fund Statistics* table of lending rates (Table 60p) fit those criteria. This would provide a presumptive interest rate, although the Courts would not be prevented from examining other relevant evidence. Also, creditors filing a writ of seizure and sale or a garnishing order should use the Canadian value of the judgment on the day the enforcement is issued. This would not crystallize the amount for all purposes, as the amount by which the judgment is discharged would still be determined at the time of payment.

This report sets out recommendations as to the approach that should be taken in framing the regulations. It also includes draft regulations that deal with the issues raised in the report.

1. The Act was eventually brought into force on 1 August 1996.

Further Developments

See *Foreign Money Claims Regulation*, B.C. Reg. 165/96.