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**ANNUAL REPORT**  
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**LAW REFORM  
COMMISSION OF  
BRITISH COLUMBIA**

MINISTRY OF ATTORNEY GENERAL

# 141

**APPENDIX E**  
**SUPPLEMENTARY REPORT ON THE *FOREIGN MONEY CLAIMS ACT: REGULATIONS***

The Honourable Colin Gabelmann  
Attorney General for the  
Province of British Columbia  
Parliament Buildings  
Victoria, B.C., V8V 1X4

January 5, 1995

Dear Mr. Attorney:

**Re: Supplementary Report on the *Foreign Money Claims Act: Regulations*  
(Minor Report LRC 141)**

The *Foreign Money Claims Act*, an important piece of international trade legislation, was enacted in 1990 but its proclamation was deferred pending the development of a regulation to harmonize the operation of the Act with provincial legislation concerning interest. In 1991, the Law Reform Commission submitted a Minor Report that set out recommendations as to its content, including the text of a draft regulation.

An issue the 1991 Report did not address concerned post-judgment interest on foreign money claims. At that time post-judgment interest was still a matter for federal legislation. While provincial legislation was on the horizon, its precise form and content was not yet fixed. In 1992 Part 2 of the *Court Order Interest Act* was brought into force and it is now clearer what supplementary measures, if any, might be needed to allow our 1991 recommendations to operate smoothly with this new post-judgment interest legislation.

We have reviewed our 1991 draft regulation in the light of this new legislation and we are satisfied that the scheme of the draft regulation fits very well with Part 2. We have only two suggestions to make. First, to dispel any uncertainty concerning the application of the draft regulation to Part 2, the defined expression "final prejudgment period" should be renamed and revised. Second, the term "foreign prime rate" should be revised to harmonize it with a corresponding expression in Part 2.

There are two appendices to this Minor Report. Appendix A sets out a revised version of the 1991 draft regulation. It incorporates the drafting changes we suggest. Words to be deleted are contained in square brackets and words added have been underlined. Appendix B contains, for convenient reference, Part 2 of the *Court Order Interest Act*.

Yours sincerely,

Arthur L. Close, Q.C.  
Chair

ALC/ss

**Appendix to Minor Report (A)**

Recommended Regulation (Revised)

**Foreign Money Claims Act  
Foreign Money Claims Act Regulations**

**Definitions**

1. In these regulations

"[final prejudgment] post IMF Table period" means the period from

(a) the time to which the most recently published interest rate pertaining to a foreign currency in the IMF Table relates, to

(b) the date [judgment is given] to which interest is calculated.

"foreign prime rate" means the interest rate in effect from time to time in a country other than Canada, applicable to the currency of that country, which is most closely analogous to the rate of interest [charged by Canadian chartered banks on loans to their most creditworthy customers] referred to in section 7(1) of the Court Order Interest Act.

"IMF Table" means the Lending Rates Table 60p of the International Financial Statistics issued by the International Monetary Fund.

"periodical" means a publication which is issued weekly or more frequently, and which is, or can be made, available in the province.

**Foreign Prime Rate to be Applied**

2. Interest awarded under the *Court Order Interest Act* on a judgment to which section 1 of the *Foreign Money Claims Act* applies shall be at the foreign prime rate.

**Ascertaining Foreign Prime Rate for Scheduled Countries**

3. (1) An interest rate set out in the IMF Table for the currency of a country listed in the Schedule is presumed to be the foreign prime rate, and a statement in the IMF Table that an interest rate was in effect at a particular time is proof that the interest rate was in effect at that time.

(2) Publication in a periodical that a purported foreign prime rate was in effect at a particular time during the [final prejudgment] post IMF Table period is proof that the interest rate was in effect at that time.

(3) Where an interest rate is not proved under subsection (2), the interest rate in effect during the [final prejudgment] post IMF Table period shall be presumed to be the interest rate pertaining to the currency in issue most recently published in an IMF Table

(4) An interest rate proved under subsection (1) or (2) or presumed under subsection (3) may be rebutted by evidence to the contrary.

**Enforcement Process**

4. (1) Legal process for the enforcement of money judgments, to which the *Court Order Enforcement Act* applies, shall issue only for the money payable under the order as of the date the process issues, determined in accordance with section 1(1) of the *Foreign Money Claims Act*, and for the purposes of determining the amount for which legal process is issued the conversion date is the last day, before the day on which the process is issued, that the bank referred to in section 1(1) quotes a Canadian dollar equivalent to the other currency.
- (2) Subsection (1) does not apply to the registration of a judgment at a Land Title Office under section 80 of the *Court Order Enforcement Act*.

**SCHEDULE**

Section 3 applies to the currencies of the following countries:

|               |           |             |             |                |
|---------------|-----------|-------------|-------------|----------------|
| Australia     | Belgium   | Finland     | France      | Germany        |
| Greece        | Indonesia | Ireland     | Italy       | Japan          |
| Korea         | Malaysia  | Netherlands | Norway      | Portugal       |
| South Africa  | Spain     | Sweden      | Switzerland | United Kingdom |
| United States | Venezuela | New Zealand |             |                |

**Appendix to Minor Report (B)**

**Court Order Interest Act, R.S.B.C. 1979, c. 76**  
**Part 2: Post-judgment Interest**

**Interest rate**

7. (1) In this section "interest rate" means an annual simple interest rate that is equal to the prime lending rate of the banker of the government.
- (2) A pecuniary judgment shall bear simple interest from the later of the date the judgment is pronounced or the date money is payable under the judgment.
- (3) During the first 6 months of a year interest shall be calculated at the interest rate as at January 1 and during the last 6 months interest shall be calculated at the interest rate as at July 1.
- (4) Notwithstanding subsection (2), interest in respect of a judgment pronounced before the coming into force of this Part shall be calculated from the later of the date this Part comes into force or the date money is payable under the judgment.

**Court may vary rate**

8. Where the court of original jurisdiction considers it appropriate, it may, on the application of a person affected by or interested in a judgment, vary the rate of interest applicable under section 7 or fix a different date from which interest shall be calculated.

**Interest deemed included in judgment**

9. (1) Interest under this Part shall be deemed to be included in the judgment for enforcement purposes.
- (2) A partial payment of a judgment shall be applied first to outstanding interest owed on the judgment.