

# LAW REFORM COMMISSION OF BRITISH COLUMBIA

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## Backgrounder

### LRC 12—Report on Pre-Judgment Interest

Date: May 1973

This report focuses on the issues surrounding the awarding of pre-judgment interest and makes recommendations for reform. At the time this report was written, the law relating to pre-judgment interest was complex and unclear and only a relatively narrow range of claims would give rise to an award of pre-judgment interest. The law on pre-judgment interest was largely governed by an 1833 British statute that was received at the founding of the Colony of British Columbia in 1858.

The thrust of the commission's recommendation is that where money forms part of the judgment, interest prior to judgment should be recoverable as a matter of right, regardless of the nature of the cause of action that gave rise to the claim.

The report has five substantive chapters. Chapter one provides a general introduction to the difficulties surrounding the awarding of interest and pre-judgment interest in British Columbia, as well as a discussion of the nature of interest. The chapter then goes on to examine the position of the common law on whether pre-judgment interest should be awarded. The commission goes on to highlight three points of the common law position regarding the payment of interest: (1) mere non-payment of a debt does not give rise to any claim for interest on that debt; (2) no interest is recoverable whether by way of damages or on any other basis, when the claim is founded on tort; and (3) there is some support for the view that a claim for damages for breach of contract other than a contract to pay money will carry interest in certain circumstances.

Chapter two examines legislation in the area of pre-judgment interest, in particular provisions of particular legislation known as *Lord Tenterden's Act*, enacted in 1833. The report goes on to evaluate this legislation, and how case law has interpreted the provisions of the act. The commission recommends further legislation be enacted in order to clarify the law on pre-judgment interest.

The commission observes that *Lord Tenterden's Act* has been modified in every Canadian province save British Columbia. Specifically, the report compares modifications made in

Canada, which are largely based on modifications made by Ontario legislation, to modifications made in Great Britain and the effect of those modifications.

In the following chapter, the report approaches the problem of whether pre-judgment interest should be awarded, and if so, on what basis, by considering various specific circumstances. The commission concludes this discussion by making specific recommendations, namely that reforming legislation should embody the principle that interest is a form of compensation for the loss of use of money, that where a judgment involves the payment of money, interest prior to judgment should be a matter of right, regardless of how the claim arose, and that the only exception to the general right of recovery is that no interest should be recoverable on economic losses arising after the date of trial.

Chapter four contains a discussion of the period over which pre-judgment interest should be calculated and contains a detailed discussion of propositions emerging from the English case of *Jefford v. Gee* concerning the exercise of discretion in the awarding of pre-judgment interest in personal injury cases. The commission concludes the discussion by making specific recommendations regarding the time period over which pre-judgment interest should be calculated, of the appropriateness of the denial of a persons right to interest, of situations where an express provision for interest applies, and the mechanics of reform.

Finally, the report gives a brief conclusion and summarizes the commission's recommendations. The thrust of those recommendations is that the present law governing pre-judgment interest is uncertain and complex often the cause of injustice and hardship. The commission goes on to conclude that their recommendations, if implemented, would fairly compensate a person (the creditor) for the loss of use of his or her money without causing great hardship to the debtor.

### **Further Developments**

See *Pre-judgment Interest Act*, S.B.C. 1974, c. 65 (now *Court Order Interest Act*, R.S.B.C. 1996, c. 79).