

To Members of the Drafting Committee
Uniform Registration of Canadian Money Judgments Act

From Arthur L. Close

I have received the documents for the April 5-6 meeting and have, apart from the observations below, little to say that will assist the Committee in its deliberations.

Part III of the issues memorandum addresses the question of currency conversion through reference to the respective Canadian and US versions of the *Uniform Foreign Money Claims Act*. It correctly observes that the two Acts are in harmony in that both adopt the date-of-payment rule for currency conversion. But they are not symmetrical in their treatment of judgment interest.

The Canadian *UFMCA* has been adopted in BC:

Foreign Money Claims Act
[RSBC 1996] CHAPTER 155

Payment in foreign money equivalent

1 (1) If, before making an order for the payment of money arising out of a claim or loss, the court considers that the person in whose favour the order will be made will be most truly and exactly compensated if all or part of the money payable under the order is measured in a currency other than the currency of Canada, the court must order that the money payable under the order will be that amount of Canadian currency that is necessary to purchase the equivalent amount of the other currency at a chartered bank located in British Columbia at the close of business on the conversion date.

(2) The conversion date is the last day, before the day on which a payment under the order is made by the judgment debtor to the judgment creditor, that the bank referred to in subsection (1) quotes a Canadian dollar equivalent to the other currency.

Interest

2 (1) Interest payable under the Court Order Interest Act must be paid at a rate determined

(a) under the regulations made under section 3 (a), or

(b) in the manner provided for in subsection (2).

(2) If

(a) due to a change in circumstances, the court considers it is not possible to determine a rate of interest under the regulations,

(b) the court considers it would be unjust to any of the parties that the rate so determined be utilized, or

(c) no regulation has been made under section 3 (a) with respect to the other currency,

the court may set a rate that is payable, having regard to rates that are being paid on the other currency in a country where that currency circulates as legal tender.

Power to make regulations

3 The Lieutenant Governor in Council may make regulations that are considered necessary or advisable respecting

(a) the manner of determining interest rates that are payable on particular currencies, for purposes of section

2 (1), and

(b) setting conversion dates, in respect of all processes to obtain money under the Court Order Enforcement Act, to satisfy an order for the payment of money that is made under section 1.

The following Regulation has been promulgated under the Act

Foreign Money Claims Act
Foreign Money Claims Regulation

Definitions

1 In this regulation:

"Act" means the Foreign Money Claims Act;

"currency jurisdiction" means, in respect of a foreign money judgment, the country in the currency of which the judgment was awarded;

"determination date" means, in respect of any calculation of interest that is to be added to or that has accrued on a foreign money judgment, the date on which that calculation is made;

"foreign money judgment" means a judgment to which section 1 of the Act applies;

"foreign prime rate" means the interest rate in effect from time to time in a country other than Canada that, for that country, is most closely analogous to the rate of interest referred to in section 7 (1) of the Court Order Interest Act;

"periodical" means a publication published weekly or more frequently that is available, or can be made available, in British Columbia;

"Table" means Table 60p of the International Financial Statistics published from time to time by the International Monetary Fund.

Foreign prime rate to be applied

2 (1) If, on one or more days in a calendar month, interest is to be added to or to accrue on a foreign money judgment under Part 1 or 2 of the Court Order Interest Act, the interest rate at which that interest is calculated must be the foreign prime rate applicable to that calendar month.

(2) For the purpose of subsection (1), the following is evidence of the foreign prime rate applicable to a calendar month:

(a) the rate that is, before the determination date, published in the Table as being the rate applicable to the currency jurisdiction for the calendar month;

(b) if paragraph (a) does not apply, the rate that is, before the determination date, published in the Table as being the rate applicable to the currency jurisdiction for the calendar quarter in which the calendar month falls;

(c) if paragraphs (a) and (b) do not apply, the rate that is, before the determination date, published in the Table as being the rate applicable to the currency jurisdiction for the calendar year in which the calendar month falls;

(d) if paragraphs (a) to (c) do not apply, the rate that is, before the determination date, published in a periodical as being the rate applicable to the currency jurisdiction for the calendar month and, if the parties propose different rates that comply with this paragraph, the proposed rate that has been most recently published;

(e) if paragraphs (a) to (d) do not apply, the most current monthly rate published in the Table that is applicable to the currency jurisdiction.

Enforcement process

3 (1) A person having a claim to payment of money owing under a foreign money judgment who wishes to enforce that claim in a manner contemplated by the Court Order Enforcement Act must convert the amount owing under the foreign money judgment into Canadian currency in the manner provided under section 1 (1) of the Foreign Money Claims Act and the conversion date for that purpose must be the business day preceding the day on which a record is filed in a court to initiate that manner of enforcement.

(2) Subsection (1) does not apply to the registration of a judgment at a land title office under section 88 of the Court Order Enforcement Act.

Thus a judgment from Washington State sought to be enforced in BC would attract judgment interest at the US “prime rate” determined in accordance with the regulation.

A judgment of a BC court sought to be enforced in Washington State would be subject to the US *UFMCA* as enacted there:

RCW 6.44.090

Prejudgment and judgment interest.

(1) With respect to a foreign-money claim, recovery of prejudgment or preaward interest and the rate of interest to be applied in the action or distribution proceeding, except as provided in subsection (2) of this section, are matters of the substantive law governing the right to recovery under the conflict of laws rules of this state.

(2) The court or arbitrator shall increase or decrease the amount of prejudgment or preaward interest otherwise payable in a judgment or award in foreign money to the extent required by the law of this state governing a failure to make or accept an offer of settlement or offer of judgment, or conduct by a party or its attorney causing undue delay or expense.

(3) A judgment or award on a foreign-money claim bears interest at the rate applicable to judgments of this state.
[1991 c 153 § 9.]

I have no idea what this means or how it would apply to the BC judgment.

The potential difference in the treatment of interest may be of little, or no, significance in the context of this project but I thought it worth pointing out since currency conversion had been flagged in the issues memo.

If it is a matter of concern that the plaintiff’s claim for interest may be left in a state of potential uncertainty I have one suggestion to make. The draft form appended to the issues memorandum would require that the registering party make a positive statement as to the interest claimed. It strikes me that this would be a useful feature of the process and would dispel any uncertainty, at least at the registration stage.

Sorry to not be more helpful on other issues.