1975

PROCEEDINGS

OF THE

FIFTY-SEVENTH ANNUAL MEETING

OF THE

UNIFORM LAW CONFERENCE OF CANADA

HELD AT

HALIFAX, NOVA SCOTIA

AUGUST 18th TO AUGUST 22nd, 1975

REPRODUCTION AND DISTRIBUTION OF REPORTS

By resolution of the Conference, those who are responsible for the preparation of a report are also responsible for having the report reproduced and distributed. Distribution is to be made at least three months before the meeting at which the report is to be considered.

The Local Secretary of the jurisdiction charged with preparation and distribution of the report should send enough copies to each other Local Secretary to enable the latter to send one copy to each member of the Conference from his jurisdiction who may be interested in the subject matter of the report.

Three copies should be sent to the Executive Secretary of the Conference and the remaining copies should be taken to the meeting at which the report is to be considered.

All reports should be dated.

TABLE OF CONTENTS

UNIFORM LAW CONFERENCE OF CANADA

OFFICERS

1975-76

Honorary President	Robert Normand, Q.C., Quebec
President	Glen W. Acorn, Q.C., Edmonton
1st Vice-President	Wendall MacKay, Charlottetown
2nd Vice-President	H. Allan Leal, Q.C., LL.D., Toronto
Treasurer	A. N. Stone, Q.C., Toronto
Secretary	Robert G. Smethurst, Q.C., Winnipeg

CRIMINAL LAW SECTION

Chairman	Gordon F. Gregory, Q.C., Fredericton
Secretary	S. F. Sommerfeld, Q.C., Ottawa

LEGISLATIVE DRAFTING SECTION

Chairman	Arthur N. Stone, Q.C., Toronto
Secretary	James W. MacNutt, Charlottetown

LOCAL SECRETARIES

Alberta	Glen W. Acorn, Q.C., Edmonton
British Columbia	G. Allan Higenbottam, Victoria
Canada	F. E. Gibson, Ottawa
Manitoba	R. H. Tallin, Winnipeg
New Brunswick	M. M. Hoyt, Q.C., Fredericton
Newfoundland	Vincent McCarthy, Q.C., St. John's
Northwest Territories	Patricia W. Flieger, Yellowknife
Nova Scotia	Graham D. Walker, Halifax
Ontario	A. N. Stone, Q.C., Toronto
Prince Edward Island	Wendall MacKay, Charlottetown
Quebec	Yves Caron, Montreal
Saskatchewan	Louise Simard, Regina
Yukon Territory	Padraig O'Donoghue, Q.C., Whitehorse

(For local addresses, etc. see list of members, pages 7-10)

EXECUTIVE SECRETARY

Lachlan MacTavish, Q.C,
Box 1, Legislative Bldg., Queen's Park
Toronto, Ontario M7A 1A2

COMMISSIONERS

August, 1975

Alberta:

GLEN W. ACORN, Q.C., Legislative Counsel, 103 Legislative Bldg., Edmonton, T5K 2B6.

WILBUR F. BOWKER, Q.C., LL.M., Director, The Institute of Law Research and Reform, University of Alberta, Edmonton, T6G 2H5.

WM. F. MCLEAN, Q.C., Deputy Attorney General, 9919-105th St., Edmonton, T5K 1B1.

WM. E. WILSON, Bryan, Andrekson, Wilson & Co., 3 Sir Winston Churchill Square, Edmonton, T5V 2E1.

British Columbia:

CECIL O. D. BRANSON, Sullivan, Smith & Bigelow, 505-645 Fort St., Victoria.

LEON GETZ, Chairman, British Columbia Law Reform Commission, 1080-1055 West Hastings St., Vancouver.

G. ALLAN HIGENBOTTAM, Legislative Counsel, Legislative Bldg., Victoria, V8V 4S6.

GILBERT D. KENNEDY, Q.C., S.J.D., Associate Deputy Attorney General, Victoria.

J. DOUGLAS LAMBERT, Davis & Co., 1030 West Georgia St., Vancouver.

NEIL A. MCDIARMID, Q.C., Director, Criminal Law, Attorney General's Department, Victoria.

ALLAN R. ROGER, Assistant Legislative Counsel, Legislative Bldg., Victoria.

DAVID H. VICKERS, Deputy Attorney General, Victoria.

Canada:

FRED E. GIBSON, Q.C., Director, Legislation Section, Department of Justice, Ottawa, K1A 0H8.

JAMES W. RYAN, Q.C., Assistant Deputy Minister (Legislation), Department of Justice, Ottawa, K1A 0H8.

JOHN A. SCOLLIN, Q.C., Assistant Deputy Attorney General, Department of Justice, Ottawa, K1A 0H8.

S. F. SOMMERFELD, Q.C., Director, Criminal Law Section, Department of Justice, Ottawa, K1A 0H8.

ROGER TASSÉ, Q.C., Deputy Solicitor General, 349 Laurier Ave., Ottawa, K1A 0P8.

DONALD S. THORSON, Q.C., Deputy Minister of Justice and Deputy Attorney General of Canada, Ottawa, K1A 0H8.

Manitoba:

A. C. BALKARAN, Deputy Legislative Counsel, 249 Legislative Bldg., Winnipeg, R3C 0V8.

GIL R. GOODMAN, Q.C., Assistant Deputy Attorney General, Legislative Bldg., Winnipeg, R3C 0V8.

FRANCIS C. MULDOON, Q.C., Chairman, Manitoba Law Reform Commission, 200-219 Kennedy St., Winnipeg R3C 1S9.

MEL MYERS, Q.C., Pollock, Nurgitz, Skwark, Bromley & Myers, 204-215 Portage Ave., Winnipeg, R3B 1Z9.

GORDON E. PILKEY, Q.C., Deputy Attorney General, Legislative Bldg., Winnipeg, R3C 0V8.

ROBERT G. SMETHURST, Q.C., D'Arcy & Deacon, 300-286 Smith St., Winnipeg.

RAE H. TALLIN, Legislative Counsel, 249 Legislative Bldg., Winnipeg, R3C 0V8.

New Brunswick:

GORDON F. GREGORY, Q.C., Deputy Minister of Justice, Centennial Bldg., Fredericton.

MEL M. HOYT, Q.C., Legislative Counsel, Centennial Bldg., Fredericton.

A. R. LANDRY, 19th Floor, Assumption Place, Moncton.

H. HAZEN STRANGE, Director of Public Prosecutions, Centennial Bldg., Fredericton.

Newfoundland:

GEORGE B. MACAULAY, Q.C., B.L. (Glas.), Assistant Deputy Minister, Department of Justice, Confederation Bldg., St. John's.

VINCENT P. MCCARTHY, Q.C., Deputy Minister of Justice, Confederation Bldg., St. John's.

Northwest Territories:

PATRICIA W. FLIEGER, Legal Adviser, Government of the Northwest Territories, Yellowknife.

JAMES R. SLAVEN, Chief of Legal Services, Government of the Northwest Territories, Yellowknife.

Nova Scotia:

A. LLOYD CALDWELL, Q.C., Walker, Dunlop, 5212 Sackville St., Halifax.

GORDON F. COLES, Q.C., Deputy Attorney General, P.O. Box 7, Halifax.

GORDON S. GALE, Director (Criminal), Department of Attorney General, P.O. Box 7, Halifax.

J. A. MACLELLAN, Taylor, MacLellan & Cochrane, P.O. Box 485, Kentville.

C. M. ROSENBLUM, Q.C., P.O. Box 332, Sydney.

GRAHAM D. WALKER, Legislative Counsel, P.O. Box 1116, Halifax, B3J 2L6.

Ontario:

WARNER C. ALCOMBRACK, Q.C., Senior Legislative Counsel, Legislative Bldg., Queen's Park, Toronto, M7A 1A2.

FRANK W. CALLAGHAN, Q.C., Deputy Attorney General, 18 King St. East, Toronto, M5C 1C5.

ARCHIE G. CAMPBELL, Senior Crown Counsel, Policy Development Division, Ministry of the Attorney General, 18 King St. E., Toronto, M5C 1C5.

H. ALLAN LEAL, Q.C., LL.D., Chairman, Ontario Law Reform Commission, 18 King St. East, Toronto, M5C 1C5.

PATRICK J. LESAGE, Q.C., Director of Crown Attorneys, Ministry of the Attorney General, 18 King St. E., Toronto, M5C 1C5.

ARTHUR N. STONE, Q.C., Legislative Counsel, Legislative Bldg., Queen's Park, Toronto, M7A 1A2.

Prince Edward Island:

HORACE B. CARVER, Foster, MacDonald, Carruthers & Carver. P.O. Box 38, Charlottetown.

WENDALL MACKAY, Deputy Minister of Justice, P.O. Box 2000, Charlottetown.

JAMES W. MACNUTT, Legislative Counsel, P.O. Box 1628, Charlottetown.

Quebec:

PAUL EMILE BLAIN, Q.C., Blain, Piché, Godbout, Emery & Blain, 1405 Peel St., Montreal.

JEAN DROUIN, Judge, Sessions of the Peace, Quebec.

GERARD GIROUARD, Chief Crown Prosecutor, Court House, Montreal, H2Y 3B9.

YVES CARON, Civil Code Revision Office, 360 McGill St., Montreal, H2Y 2E9.

EMILE COLAS, Q.C., de Grandpre, Colas & Associates, 800 Place Victoria, Montreal, H4Z 1C2.

ROBERT NORMAND, Q.C., Deputy Minister of Justice, 225 Grande Allee East, Quebec, G1A 1M3.

HIS HONOUR JUDGE GERARD TRUDEL, Civil Code Revision Office, 360 McGill St., Montreal, H2Y 2E8.

Saskatchewan:

GENE EWASCHUK, Director of Criminal Justice, Legislative Bldg., Regina.

BRIAN A. GROSMAN, Chairman, Law Reform Commission of Saskatchewan, 403-21st St., Saskatoon, S7K 0C3.

SERGE KUJAWA, Q.C., Director of Policy and Planning Criminal Justice, 2765 Robinson St., Regina.

KENNETH M. LYSYK, Q.C., Deputy Attorney General, Legislative Bldg., Regina.

ROY S. MELDRUM, Q.C., Constitutional Adviser to Executive Council, Legislative Bldg., Regina.

LOUISE SIMARD, Acting Legislative Counsel, Legislative Bldg., Regina.

DAVID A. TICKELL, Crown Solicitor, Legislative Bldg., Regina.

Yukon Territory:

PADRAIG O'DONOGHUE, Q.C., Director of Legal Affairs, Government of the Yukon Territory, Box 2703, Whitehorse.

MEMBERS EX OFFICIO

August, 1975

Attorney General of Alberta: HON. JAMES L. FOSTER, Q.C.

Attorney General of British Columbia: HON. ALEX MACDONALD, Q.C.

Minister of Justice and Attorney General of Canada: HON. OTTO E. LANG, P.C., Q.C.

Attorney General of Manitoba: HON. HOWARD PAWLEY, Q.C.

Attorney General of New Brunswick: HON. PAUL C. CREAGHAN, Q.C.

Minister of Justice of Newfoundland: HON. T. A. HICKMAN, Q.C.

Attorney General of Nova Scotia: HON. ALLAN E. SULLIVAN, Q.C.

Attorney General of Ontario: HON. JOHN T. CLEMENT, Q.C.

Minister of Justice of Prince Edward Island: ALEXANDER B. CAMPBELL, Q.C.

Minister of Justice of Quebec: HON. JEROME CHOQUETTE, Q.C.

Attorney General of Saskatchewan: HON. ROY J. ROMANOW, Q.C.

OBSERVERS

57th Annual Meeting

Alberta:

M. M. DONNELLY, Director of Law Research and Analysis, De-

partment of the Attorney General, 9919-105th Street, Edmonton, T5K 1B1.

WM. HENKEL, Q.C., Assistant Deputy Attorney General, Edmonton, T5K 1B1.

L. R. MEIKLEJOHN, Associate Legislative Counsel, 103 Legislative Building, Edmonton, T5K 2B6.

British Columbia:

AL. MELVIN, Crown Counsel, Vancouver.

Canada:

ROGER TASSÉ, Deputy Solicitor General for Canada, Ottawa.

JEROME ATREUS, Law Reform Commission, Ottawa.

NEIL BROOKS, Law Reform Commission, Ottawa.

DAVID CUTHBERTSON, Executive President to the Ministry of Justice, Ottawa.

TANNER ELTON, Law Reform Commission, Ottawa.

PATRICK FITZGERALD, Law Reform Commission, Ottawa.

R. P. FRANCIS, Senior Counsel (Criminal Law Policy) Department of Justice, Ottawa.

HON. MR. JUSTICE E. P. HARTT, Chairman, Law Reform Commission, Ottawa.

KEITH JOBSON, Law Reform Commission, Ottawa.

PETER E. P. JOHNSON, Privy Council Section, Department of Justice, Ottawa.

MARK KRASNICK, Law Reform Commission, Ottawa.

G. V. LA FOREST, Member, Law Reform Commission, Ottawa.

HON. MR. JUSTICE A. LAMER, Vice Chairman, Law Reform Commission, Ottawa.

PIERRE LANDREVILLE, Law Reform Commission, Ottawa.

J. W. MOHR, Member, Law Reform Commission, Ottawa.

D. J. RUTHERFORD, Director, Winnipeg, Regional Office, Department of Justice, Winnipeg.

New Brunswick:

PETER PAGANO, Office of the Legislative Counsel, Centennial Building, Fredericton.

Nova Scotia:

WILLIAM H. CHARLES, Professor of Law, Dalhousie University, Halifax.

D. WILLIAM MACDONALD, Senior Legislative Solicitor, Halifax.

Ontario:

JOHN CAVARZAN, Exeuctive Counsel to the Deputy Attorney General, 18 King Street East, Toronto.

MORRIS MANNING, Senior Crown Counsel, Ministry of the At-

torney General, 18 King Street East, Toronto.
COLIN CAMPBELL, McCarthy & McCarthy, Toronto.
STEPHEN V. FRAM, Counsel, Policy Development Division, Ministry of the Attorney General, 18 King Street East, Toronto.
SIDNEY TUCKER, Counsel, Office of the Legislative Counsel, Legislative Building, Queen's Park, Toronto.

Saskatchewan:
CHAD MUSK, Department of the Attorney General, Legislative Building, Regina.
CLAIRE YOUNG, Office of the Legislative Counsel, Legislative Building, Regina.

PAST PRESIDENTS

SIR JAMES AIKINS, K.C., Winnipeg (five terms)
MARINER G. TEED, K.C., Saint John
ISAAC PITBLADO, K.C., Winnipeg (five terms)
JOHN D. FALCONBRIDGE, K.C., Toronto (four terms)
DOUGLAS J. THOM, K.C., Regina (two terms)
I. A. HUMPHRIES, K.C., Toronto
R. MURRAY FISHER, K.C., Winnipeg (three terms)
F. H. BARLOW, K.C., Toronto (two terms)
PETER J. HUGHES, K.C., Fredericton
W. P. FILLMORE, K.C., Winnipeg (two terms)
W. P. J. O'MEARA, K.C., Ottawa (two terms)
J. PITCAIRN HOGG, K.C., Victoria
HON. ANTOINE RIVARD, K.C., Quebec
HORACE A. PORTER, K.C., Saint John
C. R. MAGONE, Q.C., Toronto
G. S. RUTHERFORD, Q.C., Winnipeg
LACHLAN MACTAVISH, Q.C., Toronto (two terms)
H. J. WILSON, Q.C., Edmonton (two terms)
HORACE E. READ, Q.C., Halifax
E. C. LESLIE, Q.C., Regina
G. R. FOURNIER, Q.C., Quebec
J. A. Y. MACDONALD, Q.C., Halifax
J. F. H. TEED, Q.C., Saint John

E. A. DRIEDGER, Q.C., Ottawa
O. M. M. KAY, Q.C., Winnipeg
W. F. BOWKER, Q.C., Edmonton
H. P. CARTER, Q.C., St. John's
GILBERT D. KENNEDY, Q.C., Victoria
M. M. HOYT, Q.C., Fredericton
R. S. MELDRUM, Q.C., Regina
EMILE COLAS, C.R., Montreal
P. R. BRISSENDEN, Q.C., Vancouver
A. R. DICK, Q.C., Toronto
R. H. TALLIN, Winnipeg
D. S. THORSON, Q.C., Ottawa
ROBERT NORMAND, Q.C., Quebec

HISTORICAL NOTE

Nearly sixty years have passed since the Canadian Bar Association recommended that each provincial government provide for the appointment of commissioners to attend conferences organized for the purpose of promoting uniformity of legislation in the provinces.

The recommendation of the Canadian Bar Association was based upon, first, the realization that it was not organized in a way that it could prepare proposals in a legislative form that would be attractive to provincial governments, and second, observation of the National Conference of Commissioners on Uniform State Laws, which had met annually in the United States since 1892 (and still does) to prepare model and uniform statutes. The subsequent adoption by many of the state legislatures of these Acts has resulted in a substantial degree of uniformity of legislation throughout the United States, particularly in the field of commercial law.

The Canadian Bar Association's idea was soon implemented by most provincial governments and later by the others. The first meeting of commissioners appointed under the authority of provincial statutes or by executive action in those provinces where no provision was made by statute took place in Montreal on September 2nd, 1918, and there the Conference of Commissioners on Uniformity of Laws throughout Canada was organized. In the following year the Conference changed its name to the Conference of Commissioners on Uniformity of Legislation in Canada and in 1974 adopted its present name.

Although work was done on the preparation of a constitution for

the Conference in 1918-19 and in 1944 and was discussed in 1960-61 and again in 1974, the decision on each occasion was to carry on without the strictures and limitations that would have been the inevitable result of the adoption of a formal written constitution.

Since the organization meeting in 1918 the Conference has met during the week preceding the annual meeting of the Canadian Bar Association, and, with a few exceptions, at or near the same place. The following is a list of the dates and places of the meetings of the Conference:

1918. Sept 2-4, Montreal.
1919 Aug 26-29, Winnipeg
1920 Aug 30, 31, Sept 1-3, Ottawa
1921 Sept 2, 3, 5-8, Ottawa
1922 August 11, 12, 14-16, Vancouver
1923. Aug. 30, 31, Sept 1, 3-5, Montreal
1924 July 2-5, Quebec
1925 Aug. 21, 22, 24, 25, Winnipeg
1926 Aug. 27, 28, 30, 31, Saint John
1927 Aug 19, 20, 22, 23, Toronto.
1928 Aug. 23-25, 27, 28, Regina
1929 Aug. 30, 31, Sept 2-4, Quebec
1930 Aug. 11-14, Toronto
1931 Aug 27-29, 31, Sept 1, Murray Bay
1932. Aug 25-27, 29, Calgary
1933. Aug 24-26, 28, 29, Ottawa
1934 Aug. 30, 31, Sept 1-4, Montreal
1935 Aug 22-24, 26, 27, Winnipeg
1936 Aug. 13-15, 17, 18, Halifax
1937 Aug 12-14, 16, 17, Toronto.
1938 Aug. 11-13, 15, 16, Vancouver
1939 Aug. 10-12, 14, 15, Quebec
1941 Sept. 5, 6, 8-10, Toronto
1942 Aug 18-22, Windsor.
1943 Aug 19-21, 23, 24, Winnipeg
1944. Aug 24-26, 28, 29, Niagara Falls
1945 Aug. 23-25, 27, 28, Montreal
1946 Aug 22-24, 26, 27, Winnipeg
1947. Aug. 28-30, Sept. 1, 2, Ottawa
1948 Aug 24-28, Montreal
1949 Aug 23-27, Calgary.
1950 Sept. 12-16, Washington, D.C
1951. Sept 4-8, Toronto
1952. Aug 26-30, Victoria
1953 Sept. 1-5, Quebec.
1954 Aug 24-28, Winnipeg
1955 Aug 23-27, Ottawa
1956 Aug. 28-Sept. 1, Montreal
1957 Aug 27-31, Calgary.
1958 Sept 2-6, Niagara Falls
1959. Aug 25-29, Victoria
1960 Aug 30-Sept. 3, Quebec
1961 Aug 21-25, Regina
1962. Aug 20-24, Saint John
1963. Aug 26-29, Edmonton
1964 Aug 24-28, Montreal
1965 Aug 23-27, Niagara Falls
1966. Aug 22-26, Minaki
1967 Aug. 28-Sept 1, St John's.
1968. Aug 26-30, Vancouver
1969 Aug. 25-29, Ottawa
1970 Aug. 24-28, Charlottetown
1971 Aug 23-27, Jasper.
1972 Aug 21-25, Lac Beauport
1973 Aug 20-24, Victoria.
1974 Aug 19-23, Minaki
1975 Aug 18-22, Halifax

Because of travel and hotel restrictions, due to war conditions, the annual meeting of the Canadian Bar Association scheduled to be held in Ottawa in 1940 was cancelled and for the same reasons no meeting of the Conference was held in that year. In 1941 both the Canadian Bar Association and the Conference held meetings, but in 1942 the Canadian Bar Association cancelled its meeting which was scheduled to be held in Windsor. The Conference, however, proceeded with its meeting. This meeting was significant in that the National Conference of Commissioners on Uniform State Laws in the United States was holding its annual meeting at the same time in Detroit which enabled several joint sessions to be held of the members of both conferences.

While it is quite true that the Conference is a completely inde-

pendent organization that is answerable to no government or other authority, it does recognize and in fact fosters its kinship with the Canadian Bar Association. For example, one of the ways of getting a subject on the Conference's agenda is a request from the Association. Second, the Conference names two of its executive annually to represent the Conference on the Council of the Bar Association. And third, the president of the Conference each year makes a report on its current activities to the opening plenary session of the Bar Association's annual meeting.

Since 1935 the Government of Canada has sent representatives annually to the meetings of the Conference and although the Province of Quebec was represented at the organization meeting in 1918, representation from that province was spasmodic until 1942. Since then, however, representatives of the Bar of Quebec have attended each year, with the addition since 1946 of one or more representatives appointed by the Government of Quebec.

In 1950 the then newly-formed Province of Newfoundland joined the Conference and named representatives to take part in the work of the Conference.

Since the 1963 meeting the representation has been further enlarged by the attendance of representatives of the Northwest Territories and the Yukon Territory.

In most provinces statutes have been passed providing for grants towards the general expenses of the Conference and the expenses of the commissioners. In the case of those jurisdictions where no legislative action has been taken, representatives are appointed and expenses provided for by order of the executive The members of the Conference do not receive remuneration for their services. Generally speaking, the appointees to the Conference are representative of the bench, governmental law departments, faculties of law schools, the practising profession and, in recent years, law reform commissions and similar bodies.

The appointment of commissioners by a government does not of course have any binding effect upon the government which may or may not, as it wishes, act upon any of the recommendations of the Conference.

The primary object of the Conference is to promote uniformity of legislation throughout Canada or the provinces in which uniformity may be found to be possible and advantageous. At the annual meetings of the Conference consideration is given to those branches of the law in respect of which it is desirable and practicable to secure

uniformity. Between meetings, the work of the Conference is carried on by correspondence among the members of the Executive, the Local Secretaries and the Executive Secretary, and, among the members of *ad hoc* committees. Matters for the consideration of the Conference may be brought forward by the Commissioners from any jurisdiction or by the Canadian Bar Association.

While the primary work of the Conference has been and is to try to achieve uniformity in respect of subject matters covered by existing legislation, the Conference has nevertheless gone beyond this field on occasion and has dealt with subjects not yet covered by legislation in Canada which after preparation are recommended for enactment. Examples of this practice are the Survivorship Act, section 39 of the Uniform Evidence Act dealing with photographic records, and section 5 of the same Act, the effect of which is to abrogate the rule in *Russell v. Russell*, the Uniform Regulations Act, the Uniform Frustrated Contracts Act, the Uniform Proceedings Against the Crown Act, and the Human Tissue Gift Act. In these instances the Conference felt it better to establish and recommend a uniform statute before any legislature dealt with the subject rather than wait until the subject had been legislated upon and then attempt the more difficult task of recommending changes to effect uniformity.

Another innovation in the work of the Conference was the establishment of a section on criminal law and procedure. This proposal was first put forward by the Criminal Law section of the Canadian Bar Association in 1943. It was pointed out that no body existed in Canada with the proper personnel to study and prepare in legislative form recommendations for amendments to the Criminal Code and relevant statutes for submission to the Minister of Justice of Canada. This resulted in a resolution of the Canadian Bar Association urging the Conference to enlarge the scope of its work to encompass this field. At the 1944 meeting of the Conference the recommendation was acted upon and a criminal law section constituted, to which all provinces and Canada appointed representatives.

In 1950, as the Canadian Bar Association was holding a joint annual meeting with the American Bar Association in Washington, D.C., the Conference also met in Washington. This gave the members a second opportunity of observing the proceedings of the National Conference of Commissioners on Uniform State Laws which was meeting in Washington at the same time. It also gave the Americans an opportunity to attend sessions of the Canadian Conference which they did from time to time.

An event of singular importance in the life of this Conference oc-

curred in 1968. In that year Canada became a member of the Hague Conference on Private International Law whose purpose is to work for the unification of private international law, particularly in the fields of commercial law and family law where conflicts of laws now prevail.

In short, the Hague Conference has the same general objectives at the international level as this Conference has within Canada.

The Government of Canada in appointing six delegates to attend the 1968 meeting of the Hague Conference greatly honoured this Conference by requesting the latter to nominate one of its members as a member of the Canadian delegation. This pattern was again followed when this Conference was asked to nominate one of its members to attend the 1972 meeting of the Hague Conference as a member of the Canadian delegation.

A relatively new feature of the Conference was the Legislative Drafting Workshop which was organized in 1968 and which is now known as the Legislative Drafting Section of the Conference. It meets for the three days immediately preceding the annual meeting of the Conference and at the same place. It is attended by legislative draftsmen who as a rule also attend the annual meeting. The section concerns itself with matters of general interest in the field of parliamentary draftsmanship. The section also deals with drafting matters that are referred to it by the Uniform Law Section or by the Criminal Law Section.

One of the handicaps under which the Conference has laboured since its inception has been the lack of funds for legal research, the Commissioners being too busy with their regular work to undertake research in depth. Happily however this want has recently (1974) been met by a most welcome grant from the Government of Canada.

BIBLIOGRAPHY

L'Association Du Barreau Canadien et L'Uniformite des Lois, the Honourable Judge Surveyor, 1923 Can Bar Rev., p. 52

Uniformity of Legislation, R. W. Shannon, 1930 Can. Bar Rev, p 28

Uniformity Coast to Coast — A sketch of the Conference of Commissioners on Uniformity of Legislation in Canada, 1943

Notes and Comments, E H Silk, K C, Hon Valmore Bienvenue, K C, W P M Kennedy, University of Toronto Law Journal, 1943-44, pp 161, 164, 168

Uniformity of Legislation in Canada — An Outline, L R MacTavish, K C, 1947 Can Bar Rev., p. 36

Uniformity of Legislation in Canada — The Conditional Sales Experience, Jacob Ziegal, 1961 Can Bar Rev, pp 165, 663

Conference of Commissioners on Uniformity of Legislation in Canada, Model Acts Recommended from 1918 to 1961, 1962

See also Consolidated Index, Can Bar Rev Vols 1-50 (1923-1972)

LEGISLATIVE DRAFTING WORKSHOP

MINUTES

The following attended:

Alberta: Messrs. Acorn and Meiklejohn.

British Columbia: Messrs. Higenbottam, Kennedy and Roger.

Canada: Messrs. Johnson and Ryan.

Manitoba: Messrs. Balkaran and Tallin.

New Brunswick: Messrs. Hoyt and Pagano.

Newfoundland: Mr. Macaulay.

Nova Scotia: Messrs. MacDonald and Walker and Ms. Heather Gunn.

Ontario: Messrs. Stone and Tucker.

Prince Edward Island: Mr. MacNutt.

Saskatchewan: Ms. Louise Simard and Ms. Claire Young.

Yukon Territory: Mr. O'Donoghue.

FIRST DAY

(THURSDAY, AUGUST 14TH, 1975)

First Session

10:00 a.m.—12:30 p.m.

The Legislative Drafting Workshop opened with Mr. Ryan presiding and Mr. Stone as secretary.

Hours of Sitting

It was agreed to sit from 10:00 a m to 12:30 p m and from 2:00 p m to 5:30 p.m daily

Minutes of Last Meeting

Resolved that the Minutes of the 1974 meeting of the Workshop, as printed in the 1974 Proceedings, be adopted.

Matters arising out of Last Meeting

The motion of Mr. Acorn respecting the name of the Workshop, deferred at the last meeting, was discussed and the following motion adopted:

> Resolved that the name of the Workshop be the Legislative Drafting Section of the Uniform Law Conference of Canada subject to the approval of the Conference and that the matter be raised at the Opening Plenary Session

Metric Conversion

Mr. Tucker presented the report of Messrs. Ryan and Stone (Appendix. A, page 54) respecting developments in metric conversion in the various jurisdictions.

> Resolved that the Committee of Messrs Ryan and Stone be continued to prepare a similar report for the next meeting

Statutes Act (commenced)

Mr. Walker presented a draft Act prepared by Mr. Ryan and himself which was considered section by section.

> Resolved that Alan Roger prepare a report on words defined in the interpretation section of the Uniform Interpretation Act that ought to be made applicable to all statutes

Second Session

2:00 p.m.—5:35 p.m.

Statutes Act (concluded)

Consideration of the draft Act was concluded. Mr. Walker undertook to re-engross the draft for presentation to the Uniform Law Section (see page 32).

Canadian Legislative Drafting Conventions

Mr. Macaulay presented an oral report respecting the comments on the Drafting Conventions asked for in the 1974 resolution.

Discussion re-opened on the Drafting Conventions.

SECOND DAY

(FRIDAY, AUGUST 15TH, 1975)

Third Session

10:00 a.m.—12:35 p.m.

Drafting Conventions (continued)

Consideration of the Drafting Conventions was continued.

Resolved that the Conventions be referred to Messrs. Tallin, Hoyt and Acorn to review the drafting and to review English and American conventions for the purpose of incorporating any further matter that in their judgment is appropriate, and that this work be completed before the 31st day of January, 1976 to allow time for the preparation of comments

Resolved that the preparation of comments and introduction for the Conventions be referred to Messrs. Macaulay and Stone to be reported at the next meeting

It was agreed that no decision be made as to auspices and publication of the Conventions until they are completed.

Fourth Session

2:00 p.m.—5:10 p.m.

New Business

Mr. Ryan invited discussion of the status of the application of computers and automated printing to statutes in various jurisdictions and requested members to inform him of developments and undertook to circulate the information.

Resolved that each jurisdiction having statutes on a data base be encouraged to make available to all other jurisdictions a means of access to that data base by whatever means appears most practicable and economical

The Executive was asked to consider arranging for the next meeting a demonstration by Stephen Skelly of computerization and retrieval of statutes.

Mr. Ryan reviewed the state of education for legislative draftsmen and invited discussion of suggestions for the improvement of training resources and their use in Canada.

Resolved that Messrs Walker, McNutt, Macaulay and Hoyt form a committee, with Mr Walker as chairman, to prepare a report for the next meeting upon the education, training and retention of legislative draftsmen in Canada

Resolved that the Executive invite Dr Driedger to attend the next meeting for a discussion of education available for legislative drafting and problems involved

1976 Meeting

It was agreed that the time of the 1976 meeting be at the call of the Chairman after taking into account the length of the agenda and polling the jurisdictions.

Officers

The members expressed their gratitude to Jim Ryan, the founder of the workshop and its chairman since its inception, and accepted his

request to retire from office with reluctance

Mr. Stone was elected as chairman and Mr. McNutt as secretary of the Workshop for the year 1975-76.

OPENING PLENARY SESSION

(MONDAY, AUGUST 18TH, 1975)

10:00 a.m.—11:30 a.m.

MINUTES

Opening of Meeting

The 57th annual meeting of the Conference was convened in the Red Room, Province House, Halifax, Nova Scotia, with Mr. Normand in the chair and Mr. MacTavish as secretary.

The President, after opening the meeting, introduced the Hon. Gerald Regan, Premier of Nova Scotia, who welcomed the members of the Conference on behalf of the Government of Nova Scotia.

Minutes of Last Meeting

RESOLVED that the minutes of the 56th annual meeting as printed in the 1974 Proceedings be taken as read and adopted

President's Address

Mr. Normand then addressed the session (Appendix B, page 55).

Treasurer's Report

Mr. Stone presented his report in the form of a financial statement for the year ending August 12, 1975 (Appendix C, page 57).

RESOLVED that the Treasurer's Report be received

Appointment of Auditors

RESOLVED that the Treasurer's Report as received be referred to Messrs Higenbottam and O'Donoghue for audit and that they report thereon to the Closing Plenary Session

Secretary's Report

Mr. Smethurst presented his report for 1974-1975 (Appendix D, page 59).

RESOLVED that the report as presented be received

Executive Secretary's Report

Mr. MacTavish presented his annual report (Appendix E, page 61).

RESOLVED that the report as presented be received

Appointment of Resolutions Committee

RESOLVED that a Resolutions Committee be constituted, composed of Ms

Claire Young, Mr. Gibson and Mr MacNutt, to report to the Closing Plenary Session.

Appointment of Nominating Committee

RESOLVED that a Nominating Committee be constituted, composed of the past presidents of the Conference who are present at this meeting, with the most recent president as chairman, to report to the Closing Plenary Session

Printing of Proceedings

RESOLVED that all matters relative to the printing, publication and distribution of the 1975 Proceedings be referred by the Executive Secretary to the Executive, or its nominee or nominees, for direction

Next Annual Meeting

This item was deferred for consideration at the Closing Plenary Session.

New Business

Mr. Stone as the incoming chairman of the Legislative Drafting Workshop presented a motion on its behalf to the effect that the Workshop desired to be known as a section of the Conference with the name "Legislative Drafting Section".

After discussion it was agreed to adjourn the matter to the Closing Plenary Session and in the meantime to refer the matter to the Executive for consideration.

Adjournment

The plenary session adjourned to meet again in the Closing Plenary Session (Friday next at a place and hour to be announced by the President).

UNIFORM LAW SECTION

MINUTES

The following attended:

Alberta: Messrs. Acorn, Bowker, Meiklejohn, Wilson, and Ms. M. M. Donnelly.

British Columbia: Messrs. Higenbottam, Kennedy, Lambert and Roger.

Canada: Messrs. Gibson and Ryan.

Manitoba: Messrs. Balkaran, Muldoon, Smethurst and Tallin.

New Brunswick: Messrs. Hoyt and Landry.

Newfoundland: Mr. Macaulay.

Northwest Territories: Mr. Slaven.

Nova Scotia: Messrs. Charles, MacDonald, MacLellan, Walker, and Ms. Heather Gunn.

Ontario: Messrs. Cavarzan, Fram, Leal, Stone and Tucker.

Prince Edward Island: Messrs. Carver and MacNutt.

Quebec: Messrs. Blain, Caron, Colas and His Honour Judge Trudel.

Saskatchewan: Messrs. Grosman, Ketcheson, Meldrum, Tickell, and Ms. Claire Young.

Yukon: Mr. O'Donoghue.

FIRST DAY

(MONDAY, AUGUST 18TH, 1975)

First Session

1:30 p.m.—5.15 p.m.

The session opened with Mr. Acorn in the chair and Mr. MacTavish as secretary.

Hours of Sitting

It was agreed to sit from 9:30 a.m. to 12:30 p.m. and from 2:00 p.m. to 5:00 p.m. daily, subject to such changes as may be agreed upon from time to time.

Agenda

The preliminary agenda was discussed and priorities established.

The following items were put over for next year's meeting; they are to appear on the 1976 agenda.

1. *Limitation of Actions* — Report of the Alberta Commissioners (1972 Proceedings, page 27; 1973 Proceedings, page 31; 1974 Proceedings, page 27).

2. *Protection of Privacy (Evidence)* — The Ontario Commissioners to report with the advice of the Quebec Commissioners (1972 Proceedings, page 34; 1973 Proceedings, page 31; 1974 Proceedings, page 27).

3. *Protection of Privacy (Tort)* — Report of the Nova Scotia Commissioners (1972 Proceedings, pages 34, 35; 1973 Proceedings, page 31; 1974 Proceedings, page 27).

4. *International Travel Agents* — The joint report of the Prince Edward Island Commissioners and the Newfoundland Commissioners (1974 Proceedings, pages 31, 32) is to appear under the heading "Trades and Businesses Licensing" rather than "International Travel Agents" and the report is to contain a draft Act and Regulations for the licensing of trades and businesses generally.

One item which had inadvertently been omitted from the agenda was added:

> International Committee on Private International Law — Report of the Chairman (Mr. Leal) of the Special Committee.

It was decided that in addition to the annual report of Mr. Tallin on Amendments to Uniform Acts and the annual report of the Prince Edward Island Commissioners on Judicial Decisions Affecting Uniform Acts there should be a third annual report: Promotion of Uniformity of Company Law in Canada — Report of the Canada Commissioners, the Nova Scotia Commissioners and the Quebec Commissioners.

Rules of Procedure of the Uniform Law Section (1974 Proceedings, pages 35, 36).

Mr. Acorn turned the chair over to Mr. Smethurst and presented the Report of the Alberta Commissioners (Appendix F, page 63).

The draft rules attached to the report were then considered in detail.

Upon the completion of the discussion, the following resolution was passed:

> RESOLVED that the draft Rules of Procedure dated 4 July 1974 as amended at this meeting be adopted (Appendix G, page 63).

Contributory Negligence (Tortfeasors) (1972 Proceedings, page 27; 1973 Proceedings, page 31) (commenced).

Mr. Bowker presented the Report of the Alberta Commissioners (Appendix H, page 66).

Consideration of the Report was commenced.

SECOND DAY

(TUESDAY, AUGUST 19TH, 1975)

Second Session

9:30 a.m.—12:30 p.m.

Contributory Negligence (Tortfeasors) (concluded)

Upon completion of the consideration of the Alberta Report, the following resolution was passed:

> RESOLVED that the Report of the Alberta Commissioners be referred back to them for the preparation of a fresh draft incorporating therein the decisions and thinking of this meeting (with alternative provisions where appropriate) for consideration at the next annual meeting

Enactment of and Amendments to Uniform Acts (1965 Proceedings, page 25).

Mr. Tallin presented his annual report on the Acts of the Conference that have been enacted or, where already enacted, have been amended since his report a year ago (Appendix 1, page 76).

A few items were added; these have been incorporated in the text of the report.

Occupiers' Liability Act s.4(2).

This matter arose out of the discussion that occurred when this

subject was being discussed in Mr. Tallin's report on Amendments to Uniform Acts (Appendix 1A, page 78).

RESOLVED that the British Columbia Commissioners prepare and circulate as soon as may be a memorandum respecting the error referred to in Mr. Tallin's Report and if the British Columbia Commissioners' recommendation with respect to the error is not objected to by two or more jurisdictions on or before the 30th day of November, 1975, it be considered as adopted by the Conference

The memorandum dated September 15, 1975 (Appendix 1A, page 78) was prepared and circulated in accordance with the above resolution but because of the national postal strike the date for filing disapprovals was extended to the 31st day of January, 1976.

No disapprovals have been received by the Secretary.

The amendment recommended by the British Columbia Commissioners in their memorandum is therefore adopted and recommended for enactment.

Protection of Privacy — Credit and Personal Data Reporting (1972 Proceedings, page 34; 1973 Proceedings, page 29).

The Report of the Ontario Commissioners (Appendix J, page 80) was presented by Mr. Stone.

RESOLVED that this item be placed on the agenda of the 1976 annual meeting for further discussion of the Report and supporting material of the Ontario Commissioners.

RESOLVED that the Ontario Commissioners submit another report to the 1976 annual meeting containing an analytical statement of the policies involved

Third Session

2:20 p.m.—4:15 p.m.

Judicial Decisions Affecting Uniform Acts

Mr. MacNutt presented the Report of the Prince Edward Island Commissioners (Appendix K, page 140).

RESOLVED that the Report be received with thanks.

RESOLVED that the Prince Edward Island Commissioners prepare a similar report for presentation at the 1976 annual meeting.

Law Reform Agencies Reports

Mr. Bowker presented a copy of the 1974-1975 Annual Report (dated July 1975) of the Institute of Law Research and Reform of Alberta and outlined the major features of the Report and also the Institute's programme for the immediate future.

Mr. Grosman presented a copy of the First Annual Report 1974 of

the Law Reform Commission of Saskatchewan which he outlined. Mr. Grosman also presented a copy of the Commission's Background Paper on the Reform of Personal Property Security Law in Saskatchewan, dated May 1975.

Mr. Muldoon presented a report on the work of the Manitoba Law Reform Commission, containing a complete list of the reports of the Commission and a listing of the projects now in progress.

Mr. Leal presented a report on the present and past work of the Ontario Law Reform Commission. The report contains a list of the projects completed in 1974-75, a list of the projects completed in 1974-75, a list of the projects now in process and in Appendix A to his report a complete list of the reports of the Commission, giving references to the statutes where the Commission's recommendations have been implemented.

A copy of each of the above reports is on file in the office of the Executive Secretary.

Mr. Caron for Quebec, Mr. MacNutt for Prince Edward Island, and Mr. Walker for Nova Scotia, each gave oral reports on the current law reform work going on in their respective provinces.

After considerable discussion in which a variety of views were expressed, the following resolution was passed:

> RESOLVED that at the 1976 annual meeting and succeeding annual meetings the chairmen of law reform agencies present be prepared to make an oral presentation on the work of their respective commissions and to answer questions in this regard.
>
> RESOLVED that this item be placed late on the agenda

Support Obligations between Husband and Wife and between Parent and Child (1974 Proceedings, page 28) (commenced).

Mr. Roger on behalf of the British Columbia Commissioners presented an oral report on this subject in which he referred to the 1973 Resolution of the Canadian Bar Association.

General discussion followed.

THIRD DAY
(WEDNESDAY, AUGUST 20TH, 1975)

Fourth Session

9:00 a.m.—12:30 p.m.

Support Obligations between Husband and Wife and between Parent and Child (concluded).

After the discussion ended, the following resolutions were passed:

RESOLVED that the British Columbia Commissioners review the present Uniform Reciprocal Enforcement of Maintenance Orders Act and prepare a fresh draft uniform Act for consideration at the 1976 annual meeting

RESOLVED that the Ontario Commissioners prepare a report for consideration at the 1976 annual meeting containing a statement respecting the factors and elements relevant to the remedies and enforcement techniques of maintenance orders

RESOLVED that the British Columbia and the Ontario Commissioners collaborate insofar as that may be possible in the development of their respective projects on maintenance orders

RESOLVED that the Executive Secretary inform the Canadian Bar Association of the action taken by the Conference on this matter at this annual meeting

Evidence — Rule in Hollington v. Hewthorn (1974 Proceedings, pages 28, 29) (commenced)

The Report of the Alberta Commissioners (Appendix L, page 157), was presented by Mr. Meiklejohn after which the draft Act attached to the Report was considered in detail.

Fifth Session

2:00 p.m.—5:25 p.m.

Evidence — Rule in Hollington v. Hewthorn (concluded).

RESOLVED that the matter be referred back to the Alberta Commissioners to prepare a fresh draft having regard to the decisions taken at this meeting and that the new draft be circulated in the usual way and considered at the 1976 annual meeting

Convention on the Limitation Period in the International Sale of Goods (added to the agenda)

The Report of the Special Committee was presented by Mr. Hoyt (Appendix M, page 160).

RESOLVED that the Report be received with thanks and that it be referred back to the Special Committee for study and a report of its recommendations to the 1976 annual meeting

RESOLVED that the Executive Secretary request the Department of Justice, Ottawa, to arrange to have sent to him a copy of each international convention, treaty, agreement, or the like, actual or proposed, dealing with private international law that is being sent out to the provinces for study; and that every such document received by the Conference be referred to the Special Committee on Private International Law for study and report to the next annual meeting of the Conference.

Age of Consent to Medical, Surgical and Dental Treatment (1974 Proceedings, pages 29, 30).

Mr. Acorn presented the case of those who objected to the Act as set out in Appendix L1, page 120 of the 1974 Proceedings, namely, Alberta and Manitoba.

After considerable discussion, the following resolution was passed:

RESOLVED that the draft uniform *Medical Age of Consent Act* be referred to the Alberta Commissioners to redraft in accordance with the decisions taken at this meeting; that copies of the Act as so amended be sent to each Local Secretary for distribution by him to the Commissioners of his jurisdiction who normally attend the sessions of the Uniform Law Section (and one copy to the Executive Secretary); and that if the Act as so redrafted and distributed is not disapproved by two or more jurisdictions by notice to the Secretary of the Conference on or before the 30th day of November 1975, it be considered as adopted by the Conference and recommended for enactment in that form.

The draft Act was revised and distributed in accordance with the above resolution, but because of the postal strike in Canada the date for filing disapprovals was extended to the 31st day of January, 1976.

No disapprovals were received.

The Act as so revised and distributed (Appendix N, page 162) is therefore adopted and recommended as a uniform act in that form.

FOURTH DAY

(THURSDAY, AUGUST 21ST, 1975)

Sixth Session

10:00 a.m.—12:30 p.m.

Pension Trusts and Plans — Appointment of Beneficiaries (1974 Proceedings, page 30).

Mr. Lambert presented the Report of the British Columbia Commissioners (Appendix O, page 164).

After consideration of the Report and the draft Act attached, the

following resolution was passed:

RESOLVED that the draft Act, being Part 4 of the Report of the British Columbia Commissioners and having the title "Retirement Plan Beneficiaries Act", be referred back to the British Columbia Commissioners to amend in accordance with the decisions taken at this meeting; that copies of the Act as so amended be sent to each Local Secretary for distribution by him to the Commissioners of his jurisdiction who normally sit in the Uniform Law Section (and one copy to the Executive Secretary); and that if the Act as so amended and distributed is not disapproved by two or more jurisdictions on or before the 30th day of November, 1975, it be considered as adopted by the Conference and recommended for enactment in that form

The draft Act was revised and distributed in accordance with the above resolution but because of the postal strike in Canada the date for filing disapprovals was extended to the 31st day of January, 1976.

No disapprovals have been received.

The Act as so revised and distributed (Appendix P, page 178) is therefore adopted and recommended for enactment in that form.

Children Born Outside Marriage (1974 Proceedings, page 31).

Mr. Roger presented the Report of the British Columbia and the Ontario Commissioners (Appendix Q, page 180), pointing out that it is the result of the work of Keith B. Farquhar, Director of Research of the Law Reform Commission of British Columbia.

RESOLVED that the report be received with thanks and published in the Proceedings

RESOLVED that the matter be referred back to the British Columbia Commissioners to prepare a report for consideration at the 1976 annual meeting setting out therein the questions of policy involved and their recommendations with respect thereto.

Pleasure Boat Owners' Accident Liability (1974 Proceedings, page 34).

Mr. Gibson on behalf of the Canada Commissioners reported orally that there had been no developments with respect to this subject since the 1974 annual meeting.

The following resolution was then passed:

RESOLVED that the Canada Commissioners continue to keep a watch for developments in this field and report thereon at the 1976 annual meeting

Protection of Privacy — Collection and Storage of Personalized Data Bank Information (1974 Proceedings, pages 34, 35).

Mr. Gibson presented the Report of the Canada Commissioners (Appendix R, page 208).

RESOLVED that the Local Secretary for Canada (Mr Gibson) distribute to the other Local Secretaries copies of the proposed regulations under section 42 of Bill C-72 (set out as the Schedule to the Canada Commissioners Report) as soon as they become available in draft form in order to facilitate study

RESOLVED that the Canada Commissioners make a further report on this subject to the 1976 annual meeting

Presumption of Death (1974 Proceedings, page 35) (commenced).

Mr. Acorn presented the views of Alberta and Manitoba both of which disapproved the Uniform Act as it appears in the 1974 Proceedings at pages 219 and 220.

Seventh Session

2:00 p.m.—4:45 p.m.

Presumption of Death (concluded).

After discussion the following resolution was passed:

RESOLVED that the Alberta, Nova Scotia and Ontario Commissioners jointly prepare a fresh draft on this subject for distribution well before and consideration at the 1976 annual meeting

Use of Self-Criminating Evidence Before Military Boards of Inquiry (1974 Proceedings, page 31).

Mr. Ketcheson presented but did not read the Report of the Saskatchewan Commissioners (Appendix S, page 211).

Mr. Gibson presented but did not read the Report of the Canada Commissioners (Appendix T, page 215).

RESOLVED that the two reports be published in the 1975 Proceedings and that consideration of them be deferred until the 1976 annual meeting

Statutes Act (1974 Proceedings, pages 20, 21).

Mr. Ryan and Mr. Walker presented their Report (Appendix U, page 216). The draft Act attached to the Report was considered in detail.

RESOLVED that the Uniform Statutes Act as set out in the Schedule to *Messrs Ryan and Walker's Report (page 216) be adopted and recommended for* enactment in that form

Uniform Interpretation Act — Sections 9, 10, 11 (1974 Proceedings, page 35) (commenced).

Mr. Charles presented the Report of the Nova Scotia Commissioners (Appendix V, page 218).

The Alberta Commissioners filed a Memorandum of Comments on the Nova Scotia Report (Appendix W, page 249).

Discussion followed and adjourned to Friday morning (see page 34).

FIFTH DAY

(FRIDAY, AUGUST 22ND, 1975)

Eighth Session

9:00 a.m.—12:15 p.m.

Jurors — Qualifications, Disqualifications, Exemptions (1974 Proceedings, page 36)

Mr. Muldoon presented the Report of the Manitoba Commissioners (Appendix X, page 254). Upon the completion of a detailed study of the schedules to the Report, the following resolutions were passed:

RESOLVED that this matter be referred back to the Manitoba Commissioners to prepare a draft Uniform Act in accord with the decisions taken at this meeting for consideration at the 1976 annual meeting

RESOLVED that the draft Uniform Act to be prepared by the Manitoba Commissioners stand referred to the Legislative Drafting Section at its 1976 meeting for report back to this Section at its 1976 meeting

International Conventions on Private International Law (1974 Proceedings, page 32)

Mr. Leal, on behalf of the Special Committee, presented its Report (Appendix Y, page 261).

RESOLVED that the Report be received with thanks

RESOLVED that the Special Committee undertake a study of the Hague Convention on the International Administration of Estates of Deceased Persons and report thereon to the 1976 annual meeting

International Wills

Mr. Tallin stated that he wished to raise a point with respect to International Wills which subject he realized was not on the agenda as it had been disposed of at the 1974 annual meeting.

He then pointed out that at the 1974 Conference an amendment to The Wills Act was adopted by the Conference and recommended for enactment. The amendment provided for the use and validity of International Wills. The recommended amendment was printed in the 1974 Proceedings at page 171 *et seq.;* it refers in three places to ratification of the Convention by Canada. Since the 1974 Conference, the time for ratifying the Convention has expired (December 31, 1974). After that date Canada may only accede to the Convention. Therefore, the references to ratification should be changed to accession, as follows:

1. Subclause (ii) of clause (b) of section 45 (page 171 of the 1974 Proceedings) should be changed by striking out the words "sig-

nature or ratification" in the first line and substituting therefor the word "accession" and by striking out the word "ratification" in the last line and substituting therefor the word "accession".

2. Section 50 (page 172 of the 1974 Proceedings) should be changed by striking out the word "ratify" in the second line and substituting therefor the words "accede to".

New Business

— Powers of Attorney and Legal Incapacity

Mr. Fram read his letter to Mr. Normand dated 8 August 1975 (Appendix Z, page 265).

RESOLVED that the Ontario Commissioners prepare a draft Uniform Act for consideration at the 1976 annual meeting

— Prejudgment Interest on Damage Awards

Mr. Roger raised this matter as a possible item for consideration and development by the Conference.

RESOLVED that the British Columbia Commissioners prepare a report for presentation at the 1976 annual meeting

Uniform Interpretation Act — Sections 9, 10, 11 (concluded)

RESOLVED that as time did not permit the study that the Nova Scotia Report and the Alberta Comments on the Report warranted the consideration of this subject be deferred until the 1976 annual meeting

Conclusion

After receiving the thanks of the meeting for the manner in which he presided over its deliberations, Mr. Acorn closed the meeting.

CRIMINAL LAW SECTION

MINUTES

The following attended:

Alberta: Messrs. Henkel and McLean.

British Columbia: Messrs. Branson, McDiarmid, Melvin and Vickers.

Canada: Messrs. Scollin, Sommerfeld, Tassé and Thorson.

Manitoba: Messrs. Goodman, Myers and Pilkey.

New Brunswick: Messrs. Gregory and Strange.

Newfoundland: Mr. McCarthy.

Nova Scotia: Messrs. Caldwell, Coles and Gale.

Ontario: Messrs. Campbell, Lesage and Manning.

Prince Edward Island: Mr. MacKay.

Quebec: Messrs. Drouin, Girouard, and Normand.

Saskatchewan: Messrs. Ewaschuk, Grosman, Lysyk, and Musk.

Proposals of the Law Reform Commission of Canada Considered

The major part of the agenda which occupied August 19th, 20th, and 21st was devoted to consideration and discussion of proposals of the Law Reform Commission of Canada as reflected in working papers published in the criminal law area. The Commission and members of its staff were of great assistance in organizing this portion of the agenda on a seminar basis and the chairman and a number of members of the Commission and its staff were present and both led and participated in discussions. The sessions dealt not only with the particular areas of the law upon which the Commission had published papers but also considered the philosophical and practical problems of the development and implementation of law reform. The chairman of the Law Reform Commission, Mr. Justice Hartt, led an opening discussion on the morning of August 19th in which was indicated the approach of the Commission to law reform and the potential use of legislation, education and administration as techniques for law reform. It was emphasized that the Commission is offering no quick solution but seeks to identify areas where change is needed and to for-

mulate principles which will provide the foundation for legislative change. Its main emphasis is not on legislative change as such except in the area of evidence. A transcript of this discussion was taken and is on file with the Executive Secretary of this Conference.

The substantive areas covered during the balance of the three days included mental disorder, strict liability, principles of sentencing, diversion and imprisonment, and the reform of criminal procedure and evidence. This involved the following papers of the Law Reform Commission: Strict Liability (No. 2), Principles of Sentencing and Disposition (No. 3), Discovery in Criminal Cases (No. 4), Restitution and Compensation (No. 5), Fines (No. 6), Diversion (No. 7), Limits of Criminal Law (No. 10), The Criminal Process and Mental Disorder (No. 14), the working paper on Evidence and draft code of Evidence, and the draft working paper on Issues in Criminal Procedure (Control of the Process). Representatives of the Law Reform Commission who were present and took part in the very useful discussions and exchange of views were: Mr. Justice Patrick Hartt, Chairman, Law Reform Commission of Canada, Mr. Justice Antonio Lamer, Vice-Chairman, Law Reform Commission of Canada, J. W. Mohr, Commissioner, G. V. LaForest, Commissioner, Tanner Elton, Patrick Fitzgerald, Keith Jobson, Jerome Atrens, Pierre Landreville, Neil Brooks, Mark Krasnick, Colin Campbell.

The chairman of the Criminal Law Section, Mr. McDiarmid, expressed the thanks of the Uniform Law Conference Commissioners to the Law Reform Commission and its members for the valuable contribution they made to the Conference.

The afternoon of August 21st was devoted to a review of the Law Reform Commission discussions by the Commissioners of the Criminal Law Section. Following the discussion the following resolution was moved by Mr. David Vickers and seconded by Mr. Morris Manning and passed unanimously:

> (1) Without specifically endorsing any of the recommendations contained in the working papers of the Law Reform Commission published to date, the criminal section of the Uniform Law Conference of Canada finds the proposals of the Law Reform Commission of Canada for the reform of criminal law and criminal procedure of value and
>
> (2) Wishes to recommend to the Minister of Justice of Canada that initiatives in these fields should be continued by the Commission in the future; and
>
> (3) Urges the Law Reform Commission of Canada to continue to view law reform in its widest sense as a process only part of which may involve legislative change

The Commissioners also observed that some recommendations of the Law Reform Commission, such as those on Discovery, would not require legislative change and that pilot projects such as the bail su-

pervision program in British Columbia and community work projects as an alternative to a jail sentence are themselves experiments in law reform. It was recognized that an exchange of experience among provincial Commissioners would be useful in advancing law reform. The following resolution was moved by Mr. Gordon Coles and seconded by Mr. Robert Normand and passed unanimously.

> FURTHER to the publication by the Law Reform Commission of Canada of its working papers and proposals on Criminal Law and Procedures;
>
> AND acknowledging the need for the exchange of information on pilot projects and programs designed to reform the administration of criminal law and its procedures;
>
> BE IT RESOLVED that the Federal and Provincial delegations of Commissioners of the Criminal Law Section of the Conference report to the next meeting of the Criminal Law Section of the Conference on such pilot projects and programs instituted within their respective jurisdictions

There was some further discussion concerning how the Conference should deal with final reports of the Law Reform Commission. It was suggested that once the final reports are issued there should be a special meeting of the Criminal Law Section to collate reactions by the various provinces to final proposals. Mr. Thorson emphasized the need to obtain reactions from this group in order to guide federal legislative thinking. It was agreed that a Special Committee be formed consisting of Messrs. Christie, Girouard and an Ontario representative to be nominated to determine the proper timing for such a meeting in the light of final Law Reform Commission proposals as they appear and to serve as a steering committee to focus attention on particular aspects.

A transcript was also taken of the proceedings on the afternoon of August 21st and is on file with the Executive Secretary of the Conference.

The supplementary agenda of the Criminal Law Section was dealt with on the afternoon of August 18th and the morning of August 22nd. The following matters were considered:

Item 1 —

Section 507 (3) Criminal Code of Canada

The Commissioners were asked to consider whether this section should be amended in order to ensure that where an accused has been discharged following a preliminary inquiry he may not be subjected to a further preliminary inquiry but only to a preferred indictment pursuant to section 507 (3) of the Criminal Code. The Commissioners were generally of the view that the present practice is not being abused and that in some cases it might be prejudicial to the accused if

a process were adopted that would require the use of the direct indictment following a discharge on a preliminary inquiry.

The Commissioners unanimously recommended that no action be taken on the proposal.

Item 2—

Recommendations of the Canadian Fire Marshals and Fire Commissioners

The proposal was that motor vehicles, railway cars, trailers and mobile homes be added to the list of items in section 389 (1) of the Code and that a new section be added making it a specific offence to be in possession without lawful excuse of incendiary materials. There was some discussion as to the reasons for the inclusion of certain items that now appear in Section 389 (1) but there was general agreement that the additional items suggested should be covered in section 389.

The Commissioners recommended that section 389 (1) of the Criminal Code be amended in line with the recommendations of the Canadian Fire Marshals and Fire Commissioners but also recommended that the Federal Department of Justice review the provisions of section 389 (1) and the rationale for the inclusion of specific items.

The Commissioners recommended no action with respect to the specific offence of possession of incendiary materials since this appears to be covered now by section 80 of the Criminal Code.

Item 3—

Disposition of Burglar Tools Following a Conviction for Possession of Tools

The Commissioners recommended that the Criminal Code be amended to allow forfeiture of burglar tools where there has been conviction along the lines now provided for the forfeiture of weapons under section 446 (1) of the Criminal Code.

Item 4—

Claim of a Solicitor-Client Privilege in Relation to the Execution of Search Warrants

It was observed by some Commissioners that the solicitor-client relationship did not carry with it the right of absolute confidentiality but only went so far as to make privileged communications inadmissible at trial. It was also suggested that the process for resolving claims of privilege in relation to seizures under the Income Tax Act seemed to be satisfactory and some Commissioners favoured this approach. It was moved by Mr. Myers and seconded by Mr. Caldwell that the

search warrant provisions of the Criminal Code be amended to provide machinery by which a claim of privilege may be asserted in relation to documents seized under a search warrant at the time of the seizure similar to the provisions contained in section 232 of the Income Tax Act. The motion was defeated.

Item 5—

Proposed Increase in Scale of Fees and Allowances under Section 772 of the Criminal Code

The consensus seemed to be that section 772 and the Schedule of Fees and Allowances prevented provinces from either allowing or assessing costs in summary conviction matters other than those set out in section 772. The view was that this should be left to the provinces. The Commissioners recommended that section 772 and the Schedule be repealed along with those sections in Part XXIV concerning costs, namely, section 744 and section 758.

Item 6—

Items Carried over from 1974 Agenda

a) Imprisonment in Default of Payment of a Fine

Mr. McDiarmid presented a progress report on the experience of British Columbia under their new legislation abolishing imprisonment by reason only of default in paying a fine. He reported that the province had adopted the practice of filing certificates of conviction in Small Claims Court where there was default in payment and that up to the present time $90,000 in enforceable certificates had been filed and $8,000 collected. Mr. Vickers stated that in 1974 in British Columbia 37.8% of all admissions to provincial institutions were for non-payment of fines. This was not broken down as between federal and provincial offences. It was too early to tell how this figure might be reduced by the new legislation. Mr. McDiarmid undertook to furnish the Commissioners a more detailed statistical review of the experience in British Columbia over the past few months. Mr. Vickers observed that what is required is legislation under which community work service program may be implemented in lieu of payment of a fine. Mr. Lysyk spoke to the Saskatchewan experiment in this regard stating that it looks promising and that he would be glad to report further next year. Saskatchewan retains imprisonment in default of payment of a fine if the person convicted declines to volunteer for community service. Mr. McDiarmid suggested an amendment to the Criminal Code to provide for a requirement that community work be undertaken as a term of a probation order with imprisonment in default of

failing to comply with the order. It was agreed that the matter would be placed on the agenda again for next year.

b) Section 189 Criminal Code of Canada — Skill-Testing Questions

Mr. Lesage reported on this point stating that the consensus of the Special Committee struck at the 1974 Meeting was that there should be no amendment to the Criminal Code to eliminate the necessity for skill-testing questions.

c) FN and M1 Rifles

Mr. Tassé was not present to speak to this item. Mr. Thorson stated that a number of specific proposals relating to gun control legislation are now under consideration.

d) Admissions of Accused Driver

It had been proposed in 1974 that there be an amendment to make the statement of an accused driver who admits to being the driver, or to having the care and control of a motor vehicle, admissible without holding a *voir dire*. Mr. Lesage stated that although leave to appeal to the Supreme Court of Canada had not been obtained in the *Fex* Case which had raised the difficulty, he did not see this as a serious problem. The majority of the Commissioners recommended that no action be taken.

Item 7—

Bill C-71 An Act to amend the Criminal Code and to make Related Amendments to the Crown Liability Act, the Immigration Act, and the Parole Act.

The Commissioners devoted the morning of August 22nd to a discussion of this Bill.

Mr. Thorson indicated that a special effort had been made to ensure that the Bill was introduced before this Conference met so that there could be full consultation with the provinces on the proposed amendments. Many useful comments and suggestions were made which were noted by the federal Commissioners.

OTHER BUSINESS

The nominating Committee consisting of Mr. Robert Normand and Mr. Ken Lysyk expressed the thanks of the Commissioners to the Chairman and Secretary.

Mr. Gordon Gregory was elected Chairman of the Criminal Law Section for the year 1975/76 and Mr. S. F. Sommerfeld was elected Secretary.

CLOSING PLENARY SESSION

(FRIDAY, AUGUST 22ND, 1975)

2:00 p.m.—3:15 p.m.

MINUTES

The Closing Plenary Session convened with Mr. Normand in the chair and Mr. MacTavish acting as secretary.

Wilbur Fee Bowker, Q.C., LL.M.

The President, Mr. Normand, said that it had been brought to his attention that probably this would be the last meeting of the Conference that the Senior Commissioner from Alberta would be attending as he was about to retire as the Director of the Institute of Law Research and Reform of Alberta.

Mr. Normand pointed out that Wilbur Bowker had been appointed a Commissioner away back in 1952 at which time he was Dean of the Faculty of Law of the University of Alberta and that ever since he had been most active in the work of the Conference which devotion was rewarded by his being elected president in 1964-65.

Mr. James W. Ryan, Q.C., a former colleague of Mr. Bowker in Alberta, was then called upon to make a presentation — a souvenir of Wilbur's never-to-be-forgotten performances of "Casey at the Bat". The inscription read:

TO WILBUR "CASEY" BOWKER WITH
GRATITUDE AND MANY FOND MEMORIES
FROM ALL YOUR FELLOW PLAYERS
ON THE UNIFORMITY TEAM
HALIFAX, AUGUST 22, 1975.

Mr. Bowker responded with a typically appropriate speech of thanks, larded with anecdotes and home-spun philosophy.

Wilbur Fee Bowker has left an indelible mark in this Conference and his presence will be greatly missed.

Legislative Drafting Workshop

Mr. Normand stated that the Executive had considered the motion presented by Mr. Stone at the Opening Plenary Session that proposed that the Workshop become a section of the Conference.

The chairman stated that he believed a solution agreeable to all concerned had been worked out and then called upon Mr. Stone.

Mr. Stone withdrew his earlier motion and substituted the following which was carried unanimously:

RESOLVED that:

(1) there be a section of the Conference to be known as the Legislative Drafting Section;

(2) the members of the Legislative Drafting Section be persons who are members of the Conference;

(3) the Legislative Drafting Section report to the Conference annually at the Closing Plenary Session;

(4) the sittings of the Legislative Drafting Section be held at times other than when the Uniform Law Section is sitting

Report of the Legislative Drafting Section

Mr. Stone reported upon the meeting of the Legislative Drafting Workshop as follows:

Twenty-one persons attended meetings of the Drafting Workshop held on Thursday, August 14 and Friday, August 15.

The subjects considered included:

— detailed consideration of a uniform Statutes Act, subsequently adopted by the Uniform Law Section;

— detailed consideration of drafting conventions with a view to having them published as a product of the Conference;

— exchanges of information respecting computerization and automated printing of statutes and respecting metric conversion as it relates to statutes;

— an approach to the growing crisis in the education, training and retention of legislative draftsmen in Canada.

The members expressed their gratitude to Mr. Jim Ryan for his contribution as the founder of the Workshop and its leader since its inception.

The Workshop elected Arthur N. Stone as chairman and James W. MacNutt as secretary for 1975-1976.

Report of the Uniform Law Section

Mr. Acorn reported upon the work of the Uniform Law Section as follows:

The Uniform Law Section completed its lengthy agenda without foreclosing discussion on major topics.

This report will deal with the highlights of our discussions.

The Section adopted new rules of procedure. One of the major features of the new rules is the requirement to have a motion carried by a majority vote of those present at the meeting and not just of those present and voting on the motion.

A comprehensive report on Contributory Negligence and Tortfeasors was presented for the purpose of having major policy questions decided. This matter will be back on the agenda in 1976, likely with a first draft of a new Act.

The Ontario Commissioners presented an excellent and detailed report relating to a proposed Personal Reporting Information Act. The research that went into this report will make it a valuable reference for any jurisdiction wishing to study legislation in this field.

The Uniform Statutes Act was adopted by the Conference and recommended for enactment. This is a companion piece to the Uniform Interpretation Act adopted in 1973.

Considerable discussion arose out of the subject of support obligations between husband and wife and between parent and child. This has now been split into two major projects, one relating to the proposed revision of the Uniform Reciprocal Enforcement of Maintenance Orders Act and the other dealing with maintenance orders as such, that is, the factors and elements of remedies for maintenance and the enforcement techniques for maintenance orders.

An amendment to the Uniform Evidence Act which would reverse the rule in Hollington v. Hewthorn was discussed in some detail and the proposed amendment stands a good chance of being approved at the 1976 meeting.

A redraft of the Medical Consent of Minors Act will be distributed and will be deemed to be approved in the absence of disapprovals filed by two or more jurisdictions by November 30, 1975. In view of the discussion, the adoption of this Act by the Conference seems likely.

The British Columbia Commissioners presented an excellent report on the subject of the appointment of beneficiaries under pension trusts and plans. They were instructed to prepare and distribute a draft Uniform Retirement Plan Beneficiaries Act which will be deemed to be adopted as a Uniform Act in the absence of two or more disapprovals filed by November 30, 1975.

Work is proceeding on the subject of illegitimacy and a report will be submitted in 1976 outlining the policy questions to be decided before an initial draft Act can be prepared.

The revised Presumption of Death Act was discussed at length and will hopefully be completed by 1976.

The Manitoba Commissioners will report in 1976 with an initial draft of an Act to provide for uniform qualifications, disqualifications and exemptions for jurors in proceedings under provincial jurisdiction.

The Uniform Law Section will be considering over the next year the International Convention on the Limitation Period in the International Sale of Goods.

Two new items were added to the agenda, namely, a project relating to special powers of attorney that endure beyond the onset of the mental incompetence of the grantor and the other dealing with prejudgment interest on damage awards.

Report of the Criminal Law Section

Mr. McDiarmid reported upon the work of the Criminal Law Section. He said:

Pursuant to a direction from the Commissioners at the 1974 Conference, the Criminal Law Section devoted three days to a joint meeting with the Chairman of the Law Reform Commission of Canada, his fellow Commissioners and a full complement of consultants and researchers. The various working papers of the Commission dealing with the Administration of Justice were discussed and debated in considerable detail. In addition to these discussions, the Section dealt with six specific topics and the recent amendments to the Criminal Code set out in Bill C-71.

Two specific resolutions of the Commissioners recommended that:

(1) The Minister of Justice of Canada see to the continuing of the work of the Law Reform Commission of Canada with the reservation that this did not constitute an acceptance of any or all of the recommendations of the Law Reform Commission and to encourage future commissions to view law reform in its widest sense, only part of which is legislative in nature; and

(2) the Commissioners return to their various jurisdictions and report to the next meeting of the Conference the nature and extent of various projects including diversion, discovery, bail supervision, and others arising at the local level concerning changes in the direction of the Administration of Justice

A Special Committee consisting of Messrs. Girouard, Christie and a representative of the Ministry of the Attorney General of Ontario was constituted to convene a meeting of the Criminal Law Section to study and report on the final working papers of the Law Reform Commission of Canada upon their publication.

The Section elected Gordon F. Gregory as chairman and S. F. Sommerfeld as secretary for 1975-76.

Report of the Executive

Mr. Normand reported as follows upon the deliberations of the Executive at two sessions held during the week:

1. *Research (1974 Proceedings, pages 56, 57, 58).*

After full discussion of the rules adopted last year for administering the research funds of the Conference, the following resolutions were passed:

1 RESOLVED that the Executive recommend to the Conference at the Closing Plenary Session the addition of the following rule to the rules set out on pages 56, 57 and 58 of the 1974 Proceedings:

E1. Notwithstanding anything in these rules to the contrary, the Secretary and the Treasurer of the Conference jointly may authorize any research project so long as it will not cost more than $2,500 and so long as the total expenditures authorized by them in that Conference year will not exceed $10,000, otherwise the approval of the Executive must be obtained

2 RESOLVED that the Executive recommend to the Conference at the Closing Plenary Session that Rule H on page 57 of the 1974 Proceedings be struck out and the following substituted:

H That research money be paid out only for research work actually done, certified in writing as being satisfactory by the jurisdiction or committee in charge of the project and approved by the Secretary and the Treasurer of the Conference.

2. *Publication of a Book of Uniform Acts (1974 Proceedings, page 56).*

After discussion it was decided to recommend to the Conference at the Closing Plenary Session the adoption of the following policies:

1. To proceed to develop, prepare and publish a selected collection of the Acts that have been adopted by the Conference and that are recommended for enactment.

2. To adopt the loose-leaf system.

3. The financing of the work involved in the preparation of the material to be contained in the volume is to be paid out of the research funds of the Conference.

4. The printing costs and all incidental expenses are to be paid out of the general funds of the Conference with, hopefully, assistance grants from the Canadian Law Information Council and other organizations.

5. The Executive Secretary to select and edit the material to go in the new collection, based upon the Acts in the 1962 collec-

tion plus the Acts promulgated by the Conference since then.

6. The proposed table of contents will be circulated to the Local Secretaries for comment.

7. Copies of the new collection when published are to be distributed free of charge to the mailing list, and others upon request.

8. The project, if approved by the Conference, is to go ahead as quickly as may be but is not to go to the printers until after the 1976 annual meeting so that items finished at that meeting may be included if it is thought desirable to do so.

9. Detailed estimates of the cost of the project should be available for consideration at the 1976 annual meeting.

3. *Accreditation of Members of Conference (1974 Proceedings, page 55).*

It was agreed that I, as President, would speak on this subject at the Closing Plenary Session and that I would point out that it has become obvious with some eighty people attending this year's meeting that a problem does in fact exist that should be remedied. In order to bring about some improvement, I suggest that jurisdictions exercise restraint in the number of commissioners and observers that they send to annual meetings in order that the total may be of a size conducive to the efficient processing of the business of the Conference.

4. *Representatives of Conference on Council of the Canadian Bar Association (1974 Proceedings, pages 54, 55, 60).*

Pursuant to authority, the Executive has named Wendall MacKay of Charlottetown, Deputy Minister of Justice of Prince Edward Island and incoming 1st Vice-President of this Conference, and Robert Normand, Q.C. of Quebec, Deputy Minister of Justice and Immediate Past President of this Conference, as the representatives of this Conference on the Council of the Canadian Bar Association for the year 1975-76. The Executive Secretary was directed to so advise the Canadian Bar Association.

5. *Canadian Bar Association*

The Executive Secretary was directed to inform the Association of the action taken by the Conference at this meeting on: 1) Limitation Period for Actions against Medical Practitioners and Hospitals (1974 Proceedings, page 27); 2) Support Obligations between Husband and Wife and Parent and Child (1974 Proceedings, page 28).

6. *Annual Volume of Proceedings*

The Executive Secretary was directed,

1) to substitute "OBSERVERS" for "PARTICIPANTS";

2) to continue to edit and update the Historical Note;

3) to continue Tables I to IV and to develop, if possible, a diagrammatic presentation of the same information;

4) to continue to improve the Cumulative Index;

5) to continue to prepare and issue newsletters from time to time and on appropriate occasions, prod the Local Secretaries to see to the timely preparation and circulation of reports.

7. *1976 Annual Meeting*

It was decided to recommend to the Closing Plenary Session that the invitation of Mr. Slaven be accepted with thanks, that is, that the fifty-eighth annual meeting of the Conference be held in Yellowknife, Northwest Territories, from Monday, August 23rd to Friday, August 27th, both inclusive, with the Legislative Drafting Section meeting on the 19th, 20th and 21st of August.

8. *Presentations by Outsiders (Mr Smethurst's letter of 5.8.75).*

After considerable discussion of this matter it was decided to recommend to the Closing Plenary Session that outsiders should not be permitted to make submissions either orally or in writing to the Conference or its sections.

9. *Representative of Conference to attend the Annual Meeting of the National Conference of Commissioners on Uniform State Laws*

It was decided to recommend to the Closing Plenary Session that the Executive be authorized to designate one of its members to attend and represent this Conference at the annual meeting of the National Conference of Commissioners on Uniform State Laws to be held in late July or early August next year in Atlanta, Georgia, thus accepting the kind invitation extended by the Americans during the 1975 annual meeting in Quebec.

Furthermore, by way of reciprocating action, that this Conference, through its president, extend a warm invitation to our American counterpart to send a representative to our next annual meeting.

It is understood that if this exchange can be arranged, each Conference would take care of the expenses of its own representative.

10. *Legislative Drafting Workshop (1974 Proceedings, page 20).*

The matter of Mr. Stone's motion made at the Opening Plenary Session to the effect that the name of the Legislative Drafting Workshop be changed to Legislative Drafting Section was referred to the Executive to consider whether or not some amendments of a restrictive or definitive nature should be made to Mr. Stone's motion (he and his seconder being agreeable) such as restricting membership in the proposed section to members of the Conference and to make it clear that the proposed section would not meet concurrently with either the Uniform Law Section or the Criminal Law Section.

Finally, amendments along the above lines were settled upon which were agreeable to all concerned. As you know, these were adopted unanimously a few minutes ago.

11. *Enactment of Uniform Acts*

It was agreed that the President at the Closing Plenary Session would urge each Local Secretary to check the Tables in the 1974 Proceedings (pages 229-239) for errors and omissions and to advise the Executive Secretary as soon as possible of any necessary changes in so far as his own jurisdiction is concerned.

It was also agreed that the incoming President should write each Attorney General or Minister of Justice, as the case may be, and ask him to check his record of enactments of uniform Acts to see if that record could be improved.

Auditors' Report

Mr. Higenbottam reported that he and Mr. O'Donoghue had examined the Treasurer's Report as received at the Opening Plenary Session and the books and records of receipts and disbursements and that they correctly reflect the transactions of the Conference.

The Report also noted the quite satisfactory position of the Conference's funds from the point of view of their interest earning capabilities.

Next Annual Meeting (concluded)

After hearing the remarks of Mr. Slaven in which he extended a very cordial invitation for the Conference to meet in Yellowknife, Northwest Territories, in 1976, the following resolution was adopted:

> RESOLVED that the Conference accepts with thanks the kind invitation of the Northwest Territories to hold the Fifty-Eighth Annual Meeting of the Conference in Yellowknife

Resolutions Committee Report

Mr. Gibson, on behalf of the Committee, presented its report which was in the form of a motion and which was adopted unanimously.

BE IT RESOLVED that the Conference express its sincere appreciation:

To the Nova Scotia members of the Conference and the Government of Nova Scotia for the fine arrangements made and accommodation provided for the meetings of the Conference and the Drafting Workshop, for the reception tendered to the members of the Conference and their wives on Sunday evening, the reception and dinner on Wednesday evening and the many other interesting and entertaining activities throughout the week, including, in particular, the harbour cruises aboard Bluenose II on Tuesday and Thursday evenings, and the lobster party, at the Shore Club, Hubbards, on Friday evening;

To Premier Regan for the gracious welcome extended to us at the Opening Plenary Session in the Red Room, Province House, and to the Honourable Allan Sullivan, Attorney General of Nova Scotia, for attending the reception and dinner in the Chateau Halifax on Wednesday evening; and

To Mr and Mrs Lloyd Caldwell, Mr and Mrs Gordon Coles, Mr and Mrs Arthur Donahoe, Mr and Mrs Brian Fleming, Mr and Mrs Gordon Gale, Mr. and Mrs Bill Mingo and Mr and Mrs. Graham Walker who entertained us in their homes on Monday evening

AND FURTHER BE IT RESOLVED that the Secretary convey the thanks of the members of the Conference to those referred to above and to all others who contributed to the success of this Fifty-Seventh Annual Meeting of the Conference

Nominating Committee's Report

Mr. Thorson, on behalf of the Nominating Committee, submitted the following nominations for the year 1975-76:

Honorary President	Robert Normand, Q.C., Quebec
President	Glen W. Acorn, Q.C., Edmonton
First Vice-President	Wendall MacKay, Charlottetown
Second Vice-President	H. Allan Leal, Q.C., LL.D., Toronto
Treasurer	Arthur N. Stone, Q.C., Toronto
Secretary	Robert G. Smethurst, Q.C., Winnipeg

RESOLVED that the nominations be closed, that the report of the Nominating Committee be adopted, and that those nominated be declared to be duly elected

Close of Meeting

Mr. Normand expressed his thanks to the other members of the Executive and to Mr. MacTavish for their unfailing co-operation and help on all occasions throughout the year.

He also thanked all Commissioners for their hard work in the preparation and presentation of reports, thus making a very real contribution in the life of the Conference.

Mr. Normand then invited Mr. Acorn to take the chair.

Mr. Acorn thanked the Commissioners for elevating him to the office of president which he considered to be a great honour. He then expressed, on behalf of everyone present, sincere thanks to Mr. Normand for his most valuable and excellent work as the presiding officer of the Conference for the past year.

STATEMENT TO THE CANADIAN BAR ASSOCIATION

by

Robert Normand, C.R.

Monsieur le Président, distingués invités, mesdames, messieurs,

En ma qualité d'ancien président de la Conférence sur l'Uniformisation des Lois au Canada, j'ai l'honneur de vous faire rapport des activités de cette organisation pour l'année écoulée.

La conférence a tenu sa 57e assemblée annuelle à Halifax, la semaine dernière, soit du 17 au 22 août, sous le distingué patronage du Premier ministre de la Nouvelle-Ecosse, monsieur Gerald Regan, qui nous a honoré de sa présence à la séance inaugurale; plus de 70 membres y ont participé, soit le nombre le plus considérable depuis ses débuts. Ces membres comprenaient les Sous-ministres de la Justice et Sous-procureurs généraux du gouvernement fédéral et des provinces, la plupart des présidents des commissions de réforme du droit en existence au Canada, des légistes du gouvernement fédéral, des provinces, du Yukon et des Territoires du Nord-Ouest, les responsables des poursuites criminelles au Canada ainsi que plusieurs universitaires et praticiens du droit de même que divers autres officiers publics.

De façon générale, la conférence a décidé de procéder à la refonte des lois-modèles qu'elle a adoptées depuis ses debuts et à la publication de ces textes sur feuilles mobiles dans un cahier-relieur, pour en faciliter la mise à jour dans l'avenir; le travail devrait être complété dans quelques mois, elle entend aussi porter ces textes à l'attention des divers gouvernements de façon toute particulière cette année, afin d'accentuer le processus d'uniformisation des lois au Canada et, si besoin était, de modifier les textes proposés de façon qu'ils correspondent encore mieux aux besoins des gouvernements.

Mr. President, following the steps of my minister, that is to say, notwithstanding the terms of Bill 22 you will allow me to point out that the Conference decided, this year, to establish direct relations with its American counterpart, the National Conference of Commissioners on Uniform State Laws, in order to benefit from the valuable work done by this organization on matters that are of interest to us and to make available to the Americans the results of our studies.

Following an invitation sent to us by the authorities of that American body at the end of their last meeting in Quebec City, two weeks ago, we shall send one of our members to attend their next meeting in

Atlanta, Georgia, in August 1976; one of their members will, it is hoped, be with us next year.

The Conference, already comprising a Uniform Law Section and a Criminal Law Section, established a new section this year: the Legislative Drafting Section, in order to group the members of our organization who are legislative counsels or draftsmen, to allow them the opportunity to exchange ideas on that very particular type of work, and to give the Conference an adequate tool to improve the drafting quality of the Model Acts that we adopt.

That new section elected Mr. Arthur N. Stone, Q.C., of Toronto, as its chairman and Mr. James W. MacNutt, of Charlottetown, as its secretary.

The Uniform Law Section, with 40 members in attendance this year, adopted a new set of rules of procedures and a Model Statutes Act; it also adopted a new Pension Trusts and Plans Act, relating to the appointment of beneficiaries, and a new act dealing with the Age of Consent to Medical, Surgical and Dental Treatments; these two acts should become Model Acts of the Conference on the 30th of November unless disallowed by two or more jurisdictions before that date.

At the end of November 1974, three new acts received final approval according to that procedure and are now Model Acts of the Conference, that is to say, the Custody Orders (Reciprocal Enforcement) Act, the International Wills Act and the Interprovincial Subpoenas Act.

Following a request by the Canadian Bar Association, the Uniform Law Section started to study the possibilities of adopting model acts on a Uniform Period for Actions Against Medical Practitioners and Hospitals, on Support Obligations Between Husband and Wife and Parent and Child, and on Pleasure Boat Owners' Accident Liability; the executive secretary of the Conference was instructed to inform, in detail, the Director General of the C.B.A. on the progress of our work on these subjects.

La section de droit criminel a modifié ses habitudes cette année et a consacré trois journées complètes à l'étude des documents de travail de la commission de réforme du droit du Canada, portant sur le droit criminel. Nous avons pu bénéficier de la présence des juges Hartt et Lamer ainsi que des autres membres de cette commission et de leurs recherchistes, et nous avons été en mesure d'engager un dialogue intéressant et animé, que nous espérons également devoir être fructueux,

de part et d'autre. A cet égard nous avons chargé trois de nos membres de surveiller particulièrement l'évolution des travaux de la commission et nous avons prévu la possibilité d'une réunion spéciale, le printemps prochain, afin de nous prononcer sur le texte final de ces documents de travail, suivant l'évolution de la situation.

Cette section de droit criminel s'est aussi penché sur le Bill C-71, qui doit modifier substantiellement le code criminel et qui a été déposé récemment à la Chambre des Communes par le Ministre de la Justice; nos membres ont apprecié que le ministre leur donne l'occasion d'étudier ce texte avant qu'il soit adopté par le parlement.

Les membres de cette section ont désigné monsieur Gordon Gregory, Q.C., du Nouveau-Brunswick, comme prochain président de cette section et ont apprécié que monsieur S. F. Sommerfeld, Q.C., d'Ottawa, consente à continuer à agir comme secrétaire.

La conférence, siégeant en séance plénière, a désigné votre humble serviteur, ainsi que monsieur Wendall MacKay, Q.C., de Charlottetown, pour la représenter au conseil général de l'Association du Barreau Canadien.

At the closing Plenary Session, the Conference also decided to hold its next meeting in Yellowknife, Northwest Territories, for the first time in its history, and elected the following officers for the year 1975-1976:

Honorary President	Robert Normand, C.R., Quebec
President	Glen W. Acorn, Q.C., Edmonton
First Vice-President	Wendall MacKay, Q.C., Charlottetown
Second Vice-President	H. Allan Leal, Q.C., Toronto
Treasurer	Arthur N. Stone, Q.C., Toronto
Secretary	Robert G. Smethurst, Q.C., Winnipeg

The Executive Secretary of the Conference will continue to be Lachlan R. MacTavish, Q.C., of Toronto.

All of which is respectfully submitted on behalf of the Conference.

Robert Normand

August 25th, 1975

APPENDIX A

(See page 19)

Metric Conversion

At the 1974 meeting of the Legislative Drafting Workshop, Messrs. Ryan and Stone were constituted a committee to keep in touch with developments in metric conversion in the various jurisdictions and report them to the next meeting.

The committee requested reports from all jurisdictions and received the following information:

1. In Alberta, a special office has been set up to deal with metric conversion and a system has been organized under which each of the Departments and Boards is to examine the statutes and regulations under its jurisdiction to identify references to measurements. The Alberta Director of Program Co-Ordination expects the first phase of metric conversion to involve statutes, regulations and municipal by-laws related to highway traffic.

2. Canada reports two items of interest.
   First, the Government introduced a resolution before Parliament that the House of Commons approve the Government's program of guideline dates for metric conversion. This resolution has not yet been approved.
   Second, the Consumer Packaging and Labelling Act (Canada) 1970-71-72, c.41, requires that prepackaged products show the net quantity of the product in either numerical count or metric and Canadian units of measurement. This requirement of a dual net quantity declaration is carried through, with certain exceptions, in the regulations made under that Act.

3. There have been no developments in British Columbia, Manitoba or Saskatchewan.

4. New Brunswick is organizing for metric conversion.

5. The Northwest Territories report that their 1974 Revised Ordinances are computer-documented and a computer search is being made of all their legislation for measurement-sensitive clauses.

6. In Ontario, an Interministerial Committee has been set up that reports to a Metric Steering Committee. All ministries have been requested to examine the statutes and regulations adminis-

tered by them to locate sections containing measurements and references to standards and the Ministry of Health has begun using metric measurements in regulations prepared under statutes administered by that Ministry.

7. Newfoundland, Nova Scotia, Quebec and Yukon Territory have not reported any developments in metric conversion in their jurisdictions.

APPENDIX B

(See page 22)

President's Address

Mr. Normand then addressed the Conference. He opened his remarks by welcoming the Commissioners and others to the Fifty-Seventh Annual Meeting, pointing out that there appeared to be a record attendance of eighty or more governmental delegates. This he said pointed to the interest taken by the senior governments in Canada in the work of the Conference and showed impressively the vitality and strength of the Conference. This was especially so, he said, because it was obvious the delegates were coming from an increasing number of legal spheres and so were broadening the base of experience represented at the meetings.

The President then acknowledged with thanks the presence of the Premier of Nova Scotia, the Honourable Gerald Regan, and thanked him and the Nova Scotia committee in charge in providing such an interesting and enjoyable programme of events for all for the whole of the Conference week.

Mr. Normand then turned to the future of the Conference that to him was one of its finest qualities, namely, the ability to adapt itself to the changing needs of a constantly changing world. This faculty he illustrated by mentioning the recent growth of the Legislative Drafting Workshop for which he predicted further growth and responsibility in the life of the Conference. In this connection he also mentioned the presence at recent meetings of the chairmen of the various law reform agencies now functioning in Canada, pointing out the importance of their participation in the work of the Conference. While dealing with law reform, he made particular mention of the fact that this year not only was the chairman of the Law Reform Commission of Canada, the Honourable Mr. Justice Hartt, present, but also other members of

that Commission and a considerable number of the professional staff of the Commission, all of whom would be taking part in the work of the Criminal Law Section.

Reference was also made by Mr. Normand to the circumstance that the annual meetings of the Conference provided an ideal climate in which the deputy ministers of justice, deputy attorneys general, legislative counsel, and so on, could become better acquainted with their opposite numbers across the country, could discuss problems of common concern, and so establish closer links among themselves to the betterment of the entire legal-governmental structure in Canada.

Mr. Normand then turned to the recently held annual meeting in Quebec of the National Conference of Commissioners on Uniform State Laws and the pleasure he had in sitting in on some of their sessions and in entertaining them at a reception. He said he hoped the rapport thus established would pave the way to a more intimate relationship in the future with, hopefully, one of their members attending our annual meetings and one of our commissioners attending their annual meetings.

In closing his address President Normand spoke fittingly of the great loss the Conference had experienced in the death earlier this year of Horace E. Read, O.B.E., Q.C., S.J.D., D.C.L., LL.D., Dean Emeritus of Dalhousie University Law School, who for many years as a commissioner from Nova Scotia had contributed greatly to the work and renown of the Conference, particularly in the field of conflict of laws and other matters of an international nature. Dr. Read served as president of the Conference in 1957-1958. He said that Canada as a whole has lost a great scholar, writer, educator and, above all, this Conference had lost one of its hardest workers and dearest friends.

APPENDIX C

(See page 22)

REPORT OF THE TREASURER
for the year ending August 12, 1975

GENERAL ACCOUNT

BALANCE ON HAND August 8, 1974			$17,646.31
RECEIPTS			
Annual contributions by participating jurisdictions			18,750.00
Rebate Federal Sales Tax re 1973 Proceedings			650.58
Rebate Ontario Sales Tax re 1974 Proceedings			552.48
Bank interest to date			931.67
DISBURSEMENTS			
1974 Proceedings		$8,388.80	
1974-1975 letterhead		70.71	
Treasurer's signature stamp		11.98	
Treasurer and Secretary telephone calls		42.72	
Executive Secretary			
Expenses attending 1974 meeting	$ 539.57		
Petty cash	50.00		
Secretarial service	2,550.00		
Honorarium	7,000.00		
	$10,139.57	10,139.57	
TOTAL RECEIPTS AND DISBURSEMENTS		$18,653.78	$38,561.04
BALANCE ON HAND August 12, 1975		19,907.26	
		$38,561.04	$38,561.04

RESEARCH FUND

ASSETS

Shown on statement for 1973-1974 fiscal year	$25,000.00
1975 Canada contribution	25,000.00
Interest to August 7, 1975	1,904.79
	$51,904.79

DISBURSEMENTS

M. Groffier Atala re Hague conventions report	$2,025.00
Keith B. Farquhar re children born outside marriage	727.00
Sandra Chapnik re personal information reporting report	400.00
	$3,152.00
BALANCE IN FUND	$48,752.79

This fund is held as follows:

1 year Royal Bank term deposit	$25,000.00
Royal Bank 30 day term deposit	21,904.79
Province of Ontario Savings Accounts	1,848.00
	$48,752.79

Arthur N. Stone
Treasurer

August 12, 1975

APPENDIX D

(See page 22)

Report of the Secretary

As a consequence of the reduced responsibilities of your Secretary because of the work of our Executive Secretary, Lachlan MacTavish, whom you will be hearing from shortly, my report will once again be very brief.

Following last year's meeting, a report on the work of our Conference was prepared and submitted to the Canadian Bar Association publication "The National", and was published shortly thereafter. This report was intended to acquaint the members of the legal profession with the continuing work of our Conference. Copies of the report were also circulated to all provincial branch chairmen of the Association with the request that it be published in their provincial publications wherever and whenever possible. I am advised that a number of the provinces did publish the article, thereby assisting in the publicizing of our work.

In line with the decision taken at last year's meeting and as you have already been advised through the Treasurer's report, the expenditure of research funds on three projects during the year was authorized. In one case, as the amount to be expended was in excess of $1,000, a telephone conference of the members of the Executive took place, and following thorough discussion of the particular project, that relating to the Hague convention report, the expenditure was authorized. The other projects related to children born outside marriage and to personal information reporting, and as the amount involved in each was less than $1,000 and as we felt that both projects were worthy ones, your Treasurer, Arthur Stone, and I gave approval to the expenditure of research funds for each.

During the year a request was received from a national charitable organization for permission to appear at our annual meeting to make a presentation outlining a project they wished us to undertake. In answering their request, I took the position that our Conference was not set up for the purpose of hearing oral presentations of the type intended in this case and that I thought it would be better for the organization in question to contact Conference members from one or more jurisdictions and convince them of the desirability of proceeding with their project. It would then be up to the members of the jurisdiction in question to approve the project and then to obtain the necessary sup-

port from at least two other jurisdictions. If this was done, the matter would then be placed on the agenda for the next annual meeting. It is expected that this matter will be discussed by your Executive this week.

I am sure that our Executive Secretary, Lach MacTavish, will now report to you on his very considerable work performed over the past year, all of which I can assure you has been of the highest calibre as we have come to expect from him.

Winnipeg, Manitoba.
August, 1975.

R. G. Smethurst
Secretary

APPENDIX E

(See page 22)

Report of the Executive Secretary

You will have noticed that the 1974 Proceedings contain a number of what I hope are improvements but what at any rate are changes designed to improve and update the book. For example, I did what I could to revise the Historical Note on pages 13 to 17. In addition, in recognition of the fact that the Table of Model Statutes had become error-ridden and unmanageable, I discarded it and substituted the four tables you find on pages 228 to 239. I regret that I cannot vouch for their accuracy; all I can say is that I did my best and, as the note on page 18 says, the tables should be taken only as work in progress. Incidentally, the task of checking the tables must, I think, be done individually in each jurisdiction by someone familiar with the statutes of that jurisdiction.

Also I revised the Cumulative Index as best I could with a view to bringing it up to date. However, I know a great deal more can and should be done to correct errors and make this useful index as complete as possible. This would be, without doubt, a lengthy and exhausting project.

I made these changes without your specific authority but I think they are well within the scope of your views. It seemed to me that something had to be done and done quickly. The results are in your hands for criticism and improvement.

There is another aspect of the Proceedings upon which I wish to report and that is sales tax. Over the years the Conference has had to pay both a federal and a provincial sales tax on the cost of printing the book and then apply for, and eventually get, a refund. The trouble has been that the refund procedures are slow, and if I may so phrase it in this company, encrusted with red tape and bureaucratic nonsense. Suffice it to say that during the year with the most welcome help of Don Thorson we have been declared exempt from the federal sales tax and last month the same happy result was achieved in Ontario, thanks to the recently enlightened views of the Ministry of Revenue of Ontario.

My search for back copies of our Proceedings, particularly for the years prior to 1960, was quite successful, but nevertheless was not sufficient to permit us to meet the requests of all the law libraries that are

interested in our affairs. Should you run across copies of our Proceedings, please send them in — the demand always exceeds the supply.

One final word on the Proceedings. Before this year the Proceedings were placed in envelopes, the envelopes addressed, stamped and mailed to all those on our mailing list by the printers. This year this entire process was done in the office of your Executive Secretary — thus effecting a considerable saving to the Conference. I plan to repeat this system next year.

During the year the mailing list has been purged and thoroughly revised, that is, the 300 odd now on the list are alive, desire the Proceedings, and their addresses are correct. I have copies here of the list for each Local Secretary so that any of you who wish may inspect it at your convenience during the week. It is interesting to note that an unexpected interest in the work of this Conference is being shown in Africa and in Australia.

Another project that badly needed doing and on which I have made some progress during the year is that of pruning the deadwood from our files; the materials collected over the years has been reduced to manageable size.

There are a number of matters of concern to me, such as the procedures respecting research projects, which I expect the Executive will consider during this week and hopefully report upon at the Closing Plenary Session.

Let me now, as I did a year ago, point out to you the grand job the Attorney General of Ontario through his Deputy, Frank Callaghan, is doing for this Conference by way of office accommodation and supplies, mailing privileges, photocopying, etc., all of which has amounted to a saving to the Conference of a very considerable sum of money. Also, I would like to thank Mr. Alcombrack, Mr. Stone, the other counsel, and the staff of the Office of the Legislative Counsel of Ontario for their unfailing co-operation and help to me throughout the year.

Finally, I wish to thank my part-time secretary, Doris M. Stewart, for her skill in deciphering my writing, her forbearance with my foibles and, more importantly, her interest in and concern for the affairs of this Conference.

Toronto, Ontario
1 August 1975

Lachlan MacTavish
Executive Secretary

APPENDIX F

(See page 26)

Rules of Procedure of the Uniform Law Section

REPORT OF THE ALBERTA COMMISSIONERS

The Alberta Commissioners' draft of the Rules was considered at the last year's meeting (1974 Proceedings p. 222). The discussion was concluded with a resolution that the draft rules be referred back to the Alberta Commissioners to prepare a new draft in accordance with the decisions taken at the meeting for consideration as the first item on the agenda of the 1975 meeting. Accordingly, the Alberta Commissioners present a new draft attached hereto and marked Schedule 1 which hopefully reflects the decisions of 1974.

Wilbur F. Bowker
William E. Wilson
Glen Acorn
Leslie R. Meiklejohn
Alberta Commissioners

4 July 1975
Edmonton

Note

The draft Rules of Procedure attached to the above report are not reproduced in these Proceedings

However, these draft rules were considered in detail at the 1975 annual meeting (1975 Proceedings, page xxx) and as amended at that meeting and as adopted are set out as Appendix G (below)

APPENDIX G

(See page 26)

Rules of Procedure of the Uniform Law Section

(as adopted by the Uniform Law Section)

1. In these rules, "jurisdiction" means the Commissioners from

   (a) a province of Canada, or

   (b) a territory of Canada, or

   (c) the Government of Canada.

2. A motion shall be carried by a majority vote of the persons present at the meeting.

3. (1) A recommendation that a matter be placed on the agenda

(a) may be made only by a jurisdiction or the Canadian Bar Association, and

(b) must be filed with the Executive Secretary not later than the first day of June before the annual meeting at which the recommendation will be presented.

(2) A recommendation under subsection (1) shall state the reasons for the recommendation and shall be accompanied by a report on the subject which, where possible, shall include the questions of policy that the Conference should determine.

(3) Where a recommendation is filed with the Executive Secretary under this section, the person making the recommendation shall mail copies of the recommendation and report so filed to all Local Secretaries on or before the first day of June before the annual meeting at which the recommendation will be presented.

(4) Where subsections (1) and (2) have been complied with, the Executive Secretary shall include the matter on the agenda under "New Business".

(5) Where subsections (1), (2) and (3) have not been complied with, the recommendation will not be considered until the next annual meeting unless consent to consider it is given by at least two-thirds of those persons present at the meeting at which the recommendation is sought to be presented.

4. (1) Where a recommendation made under section 3 is before an annual meeting, the first matter to be decided shall be whether the item recommended is to remain on the agenda.

(2) Where the recommendation does not relate to an amendment or revision of a uniform Act then in determining the question of whether the item recommended should remain on the agenda, regard shall be had to the following:

(a) whether there is an obvious need for, or whether it is in the public interest to have, a uniform Act on the subject;

(b) whether there has been any demand from any quarter for uniformity in legislation on the subject;

(c) whether there is any indication that the proposed enactment would have some likelihood of being enacted.

5. (1) Where it is decided that an item is to remain on the agenda,

(a) the report accompanying the recommendation shall then be

considered and questions of policy raised in the report shall be answered, and

(b) one or more jurisdictions shall be directed to prepare a draft Act on the basis of the policy matters determined at the meeting.

(2) Notwithstanding subsection (1), clause (b), a report relating to an amendment to or a revision of a Uniform Act may be accompanied by a draft of the amendment or revision but in that case the report shall indicate what the changes are and the reasons for them and shall not consist of the draft Act only.

6. The jurisdiction charged with the preparation of a draft Act shall forward copies of it to the Executive Secretary and to each Local Secretary prior to the first day of June of the following year for consideration at the annual meeting to be held in that year.

7. On the final adoption of a draft Act, each jurisdiction shall advise its government of that fact and provide it with a copy of the uniform Act and the relevant material relating to it.

APPENDIX H

(See page 26)

Contributory Negligence and Tortfeasors

REPORT OF THE ALBERTA COMMISSIONERS

In 1967 the Alberta Commissioners made a preliminary report (1967 Proceedings pp. 74-86).

In March 1975 the Institute of Law Research and Reform in Alberta issued a working paper on the same subject.

The English Law Commission has produced Working Paper No. 59 on Contribution. It came out after the Alberta Institute's Working Paper. We have found it most helpful.

We shall examine this subject in the light of the Uniform Contributory Negligence Act (hereafter called the Uniform Act) and the Tortfeasors Acts which several provinces have, and which are taken from section 6 of England's Law Reform (Married Women's and Tortfeasors) Act 1935.

We shall consider:

I. The Concept of Concurrent Wrongdoers

II. Contribution Between Wrongdoers

III. Contributory Negligence

I. THE CONCEPT OF CONCURRENT WRONGDOERS

At common law a judgment against one joint tortfeasor released another; and there was no contribution between co-tortfeasors whether joint or not. The 1935 Act abolished the first of these rules. However it does not mention the related common law rule that a *release* of one joint tortfeasor releases the others. The late Dean Wright said "It is unfortunate, and somewhat strange, that neither the English Act nor the Canadian statutes contain any provision with respect to releases." (Wright, Cases on Torts 4 Ed. 390).

The 1935 Act also abolished the no-contribution rule. Moreover the Uniform Act does the same, at least in negligence cases.

WE RECOMMEND (a) that legislation dealing with tortfeasors be combined with the Uniform Act and (b) that the distinction between joint tortfeasors and other concurrent tortfeasors be abolished, and specifically that the release of one joint tortfeasor shall not be a bar to a claim against another.

We shall now put a number of questions that arise in connection with the concept of concurrent tortfeasors or wrongdoers.

(1) At present section 3 of the Uniform Act provides for a joint and several judgment against co-tortfeasors for the whole amount of P's damages. Should the law be changed so that there be separate judgments against D1 and D2 based on their respective fault? Such a change would eliminate the need for any contribution. On principle something is to be said for the change. Nevertheless we are reluctant to recommend a drastic change in a major provision that has been in effect in most provinces for many years, unless it works manifest injustice: and we are not sure that it has. WE SEEK GUIDANCE.

(2) Should the legislation as to contribution apply to all torts? At the present time the Tortfeasors Act literally applies to all torts, whether a crime or not. For example it applies to an action for conversion (*Wah Tat Bank* v. *Chan Cheng Kum*, [1975] 2 W.L.R. 475 (P.C.)). The Uniform Act speaks of fault and its contribution provision may be confined to negligence. It is arguable that contribution should not be available between two intentional tortfeasors, e.g., in the case of battery. Tentatively, however, we think that the contribution provision should apply to all torts. WE SEEK GUIDANCE.

(3) Should the legislation on contribution extend to wrongdoers other than tortfeasors, and specifically, to contractors? On this point the English Working Paper No. 59 is helpful. It points out that the common law itself provides for contribution between co-contractors, co-sureties and co-trustees. However, where P has a contract with D1 (e.g., an architect) and *a separate one* with D2 (e.g., a builder) there can be no contribution between D1 and D2 at common law where P suffers loss through breach of both contracts.

Moreover, the Tortfeasors Act does not cover this case, as the Law Commission has pointed out (W.P. No. 59, pp. 4 and 5). We now consider whether section 3 of the Uniform Act applies in this situation.

In British Columbia, the Court of Appeal in *Sealand* v. *McHaffie*, [1974] 6 W.W.R. 724 held both architect and contractor liable, but refused to apportion because the Contributory Negligence Act did not apply and there was no power to apportion at common law. At about the same time came the judgment at trial in *Groves-Raffin* v. *Bank of Nova Scotia*, [1975] 2 W.W.R. 97. In that case, P sued one bank, D1, in contract and another bank, D2, in tort. Both were held liable. The court quoted British Columbia's equivalent of Uniform's section 3, and held it to apply, and added that if it did not apply then the court could still apportion at common law.

In Ontario there are two recent trial judgments likewise hard to reconcile. In *Dominion Chain Co.* v. *Eastern Construction Co.* [1974], 46 D.L.R. (3d) 28 the plaintiff had a contract with an engineer and a separate contract with a builder. Judgment having been given against the engineer, the court held that the engineer could claim contribution against the builder under Ontario's counterpart of Uniform section 3. Then in *Dabous* v. *Zuliani* [1975], 52 D.L.R. (3d) 664 the architect and the builder were both negligent. The plaintiff obtained judgment against the architect who sought contribution. The court specifically held that Ontario's provision does not apply where either of the claims against D1 and D2 is in contract, and the court specifically disagreed with *Dominion Chain*.

Tentatively we think that the contribution provision should extend to cases where D1 and D2 are liable to P by reason of negligent breach of their respective contracts. The English Law Commission tentatively favours extension to all breaches of contract. WE SEEK GUIDANCE.

We might point out by way of postscript that although, according to one view, neither the Tortfeasors Act nor Uniform section 3 applies where either D1 or D2 has a contract with P, this seems to be overlooked where P is a passenger in D1's taxi or commercial bus and D1 collides with D2, both being at fault. Our impression is that the contribution provisions are applied without question.

(4) Should the legislation on contribution extend to co-trustees? It may be that the common law is adequate, and we are not sure that co-trustees should be included. WE SEEK GUIDANCE.

II. CONTRIBUTION BETWEEN CONCURRENT WRONGDOERS

Whether the meaning of tortfeasor is widened or not, a number of questions arise.

(1) For the basic contribution provision is it better to use the one in the Tortfeasors Act or section 3 of the Uniform Act? This is not a mere question of drafting, but one of substance. The Tortfeasors Act says that a tortfeasor may recover contribution from any other tortfeasor "who is, or would if sued, have been liable in respect of P's damage." The quoted words have caused endless difficulty.

See *Wimpey* v. *B.O.A.C.*, [1955] A.C. 169
Hart v. *Hall & Pickles*, [1968] 3 All E.R. 291 (C.A.)
Stott v. *West Yorkshire Car Co.*, [1971] 2 Q.B. 653 (C.A.)
Wah Tat Bank v. *Chan Cheng Kum*, cited above

(The last case deals with the provision on judgments against a tortfeasor, not with the contribution provision.)

We point out that Alberta has both statutes. In *County of Parkland* v. *Stetar*, [1975] 1 W.W.R. 441 (S.C.C.) P and D1 collided at an intersection. D2 is the county which had not maintained its warning sign. Both D1 and D2 were found negligent. However, P's action against D2 failed because P had not given prior notice of claim as required by the Municipal Government Act. D1 claimed contribution from D2. The court pointed out the differences between the two Acts and held that the Tortfeasors Act prevails and that under that Act D1 could not obtain contribution from D2. The judgment infers that possibly D1 could have recovered contribution under the Uniform Act because of the difference in wording. However, the judgment holds that the relevant section in the Tortfeasors Act "must prevail" over that in the Contributory Negligence Act.

We note that the English Law Commission expresses the provisional view (p. 24, para. 41) that D2 should be protected from contribution only when the decision in P's action in favour of D2 has been decided on the merits, and not on a pleading or limitation point. WE RECOMMEND that Uniform section 3, rather than the Tortfeasors Act, be used as the basic provision for contribution.

(2) The Tortfeasors Act clearly contemplates that D1 may claim contribution from D2 after P has obtained judgment against D1. Generally it is more satisfactory for D1 to bring in D2 in the original action, e.g., by third party proceedings, so that the question of contribution can be settled at the same time as that of liability to P. In Ontario, which does not have a Tortfeasors Act, but does have the equivalent of section 3 of the Uniform Act, it has been held that damages should be litigated but once and that D1 cannot claim contribution from D2 in a second action. It is clearly desirable to have all parties before the court in the first instance. In Alberta, at least, this is usually the case. There are two reasons for this. Short periods of limitation are virtually abolished and the Limitations Act in connection with tort actions permits D1 to bring in D2 by third party proceedings even after the limitation period in favour of D2 has expired.

While we think it best to encourage D1 to bring in D2 in the original action, there may be cases where it would be unfair to exclude subsequent proceedings for contribution. WE SEEK GUIDANCE.

(3) Assuming that there will be cases in which D1 seeks contribution against D2 after P has obtained judgment against D1, the question arises: Should D2 have the benefit of the limitation period that

he could have invoked had P sued him? If so, then D1's claim for contribution will frequently fail. In England it is settled that time begins to run against D1 in his claim for contribution only when D1's right of contribution arises and not from the time when P's cause of action against D2 arose. Indeed England has so provided by the Limitations Act 1963, section 4. The period is two years. England's Act does not deal with the case of a settlement without admission of liability, but the limitation provision has been treated as applying to this case. It might seem unfair to deprive D2 of a limitation period by exposing him to a claim for contribution after that period has expired. However, we incline toward the English position, with a short period of limitation.

Then there is the analogous situation that arose in *County of Parkland* v. *Stetar* discussed above. P's action against D2 (the County) failed for want of notice of claim, and D1's claim against D2 for contribution also failed. Should there be contribution in this case? WE SEEK GUIDANCE.

(4) If the contribution provisions are extended to contractors on the lines discussed in Part I(3) then there arises a problem analogous to that just discussed. Assume that D1 is an architect and D2 a contractor. In D2's contract with P there is a provision putting a time limit or a monetary limit on P's right to claim against D2 for breach of contract. Assuming both D1 and D2 are at fault, but that D2 is protected by the contractual limit, should D1 nevertheless be able to obtain contribution from D2? If not, should his liability to P be reduced to an amount based on his degree of fault?

In *Dominion Chain*, cited earlier, the builder had a successful defence because a clause in his contract protected him from claims after a specified time. Yet the court held that the engineer, who was found liable, could claim contribution against the builder under Ontario's counterpart of Uniform section 3. Then in *Dabous* v. *Zuliani*, also cited above, the court held that the architect could not claim contribution against the builder because the Act does not apply in the case of contracts. The court went on to say that, had the Act applied, the engineer could claim contribution against the builder notwithstanding the time limitation in the builder's contract.

> "In this regard, although I have some doubt, I am inclined to agree with the reasoning in *Dominion Chain*. I think that the language in section 2(1) [Uniform section 3] is capable of such an interpretation and that such an interpretation is a reasonable one"

The Law Commission (W.P. No. 59) considered the analogous case where P's contract with D1 contained an "upper limit" clause. After considering three alternatives, the Commission made the tenta-

tive proposal that the fault of D1 and D2 should be established and that then D1 should be required to pay no more than the contractual maximum so that the rest of P's damages would fall on D2 (pp. 29-31). WE SEEK GUIDANCE.

(5) The next question has to do with the situation when D1 *settles* in full with P either before or after P has brought action against D1, and then D1 seeks contribution from D2. The Tortfeasors Act does not mention this situation. In England, *Stott* v. *West Yorkshire Car Co.*, cited above, deals with the matter of settlement. This was a motor vehicle case in which D1 settled with P, without admitting liability. Then D1 sought contribution against D2 under the Tortfeasors Act. The key phrase says "any tortfeasor liable . . . may recover contribution". The court held that "liable" as used in the quoted phrase means "responsible in law" and not "held liable in judgment", even though it means the latter when used later in the same part of the section.

In Alberta there are two cases, cited in our 1967 report, in which D1 having settled, obtained contribution against D2 under the Tortfeasors Act.

The Uniform Act, like the Tortfeasors Act, does not mention settlements. However Ontario has provided for settlements in its Negligence Act, section 3; Saskatchewan in its Contributory Negligence Act, section 10; and Nova Scotia in its Tortfeasors Act, section 3(2). The sections are all to the same effect. Ontario's section 3 says:

> A tort feasor may recover contribution or indemnity from any other tort feasor who is, or would if sued have been, liable in respect of the damage to any person suffering damage as a result of a tort by settling with the person suffering such damage, and thereafter commencing or continuing action against such other tort feasor, in which event the tort feasor settling the damage shall satisfy the court that the amount of the settlement was reasonable, and in the event that the court finds the amount of the settlement was excessive it may fix the amount at which the claim should have been settled.

WE RECOMMEND inclusion of a provision for settlement.

One of the risks to which D2 is exposed is that of collusion between P and D1 in effecting the settlement. We think that the power in the court to determine reasonableness of the settlement is a sufficient safeguard. We do not think that D2 should be able to argue that D1 had no liability and therefore cannot claim contribution. In England, *Stott* v. *West Yorkshire Car Co.*, quoted earlier, holds that D2 can raise this defence and that D1 must show that he himself was liable. Ontario does not require this. The Law Commission has stated its disapproval of any such requirement (pp. 16-17) and favours Ireland's section 22(1) which in effect is much like Ontario's. Tentatively we prefer the Irish provision because it avoids the phrase "who is or

would, if sued, have been liable", that has been so hard to interpret and apply. WE SEEK GUIDANCE.

(6) In the last section we were considering a settlement that is in satisfaction of P's claim, as against D2 as well as against D1 who made the settlement. A different problem arises where P in his settlement with D1 has preserved his right to sue D2. In that event D1 should not be able to claim contribution. He is out of the litigation. However P still has an action against D2. In that action the court will fix the amount of P's damages and apportion the fault. The amount of the settlement plus the amount of the judgment against D2 may when added together give to P total compensation that is less or more than the amount of his damages. This depends on the amount of the settlement. Williams thinks that P should never recover more than 100% and suggests that D2 should be credited with the greater of D1's share and the amount paid by D1. Section 4 of the revised United States Uniform Act and section 22(2) of the Irish Act (which is close to the Glanville Williams Bill) seem designed to meet this end.

We can show the problem this way. D1 settles with P who reserves his rights against D2. In the action against D2, P's damages are fixed at $1,000, and D1 and D2 are found to be equally at fault.

Now let us assume that D1 had settled for $400. The judgment against D2 should be for $500. In other words D1 made a good settlement. Now let us assume that D1 had settled for $600. Should D2 still have to pay his $500, giving P a total of $1,100, or should D2 pay only $400? Williams and the U.S. Uniform Act would make him pay only $400. WE SEEK GUIDANCE on this question.

(7) The last point has to do with costs in contribution proceedings. The Tortfeasors Act does not deal with them. The only provision for costs in the Uniform Act is section 8 which is directed to the case of a plaintiff who is at fault and not to tortfeasors. Some provincial Contributory Negligence Acts provide that liability for costs is in proportion to liability (Saskatchewan Contributory Negligence Act, c. 91, s. 12). This seems to be a reasonable provision. WE SEEK GUIDANCE.

III. CONTRIBUTORY NEGLIGENCE

Basically the Uniform Act has worked well. We have no suggestions in connection with section 2(1) which is the basic provision. The 1969 amendment to the Uniform Act abolished the doctrine of last clear chance and we do not suggest re-examination of this provision. There is a small point in connection with vicarious liability. It is gen-

erally agreed that fault includes vicarious liability, but it would be better so to say. WE SO RECOMMEND.

We shall now mention a number of problems.

(1) Cases arise where P and D are both at fault and both suffer damage and each brings action against the other and obtains a judgment. Normally there is a setoff in this situation, but in contributory negligence cases each party is usually insured so that setoff ensures to the benefit of the insurers.

British Columbia's Contributory Negligence Act, section 3(d) specifically provides for setoff. So does section 36 of the Irish Act (which is s. 26 of the Glanville Williams Bill), though it has a complicated subsection (3) which may create an exception. Prince Edward Island's Contributory Negligence Act specifically provides in section 9 that there be no setoff in motor vehicle cases. We are told that in Alberta the practice is not to setoff. We do not know the practice in other provinces. WE SEEK GUIDANCE.

(2) The main question has to do with section 3. As we said in connection with contribution, that section is on its face not a contributory negligence section at all but a contribution section. Nevertheless it applies not only in the case of an innocent plaintiff but in the case of one who is himself at fault. We have already said that in the case of a plaintiff not at fault, we lean in favour of preserving the joint and several liability (Part I(1) above). However Glanville Williams' opinion is that it is unfair for a plaintiff who is at fault to obtain a joint and several judgment against D1 and D2 representing the total share of their combined fault. Williams points out, too, that where there are counterclaims the judgments become complicated.

The question is whether the Uniform Act should be modified so that where P is at fault, and D1 and D2 are also at fault, P should have a separate judgment against each for his share rather than a joint and several judgment against both for their combined shares. WE SEEK GUIDANCE.

(3) We now raise the question as to costs. Assume that the plaintiff's damages are $10,000 and that he is 50% at fault. Should he recover his full costs on the basis of a $5,000 judgment or should he be penalized in costs because he is at fault? The Uniform Act has only one section on costs. It is section 8 which says:

> Where the damages are occasioned by the fault of more than one party, the court has power to direct that the plaintiff shall bear some portion of the costs if the circumstances render this just.

In Manitoba, which has this section, *Carlson* v. *Chochinov*, [1948] 4 D.L.R. 556 holds that generally costs should follow the result.

Several provinces specifically say that liability for costs shall be in proportion to liability to make good the damages or loss. The Saskatchewan case of *Fallis* v. *Lewis*, [1948] 2 D.L.R. 620 holds that costs should be awarded in proportion to fault even without a section so providing, and Saskatchewan amended its Act in 1949 so to provide. Our 1967 report at page 84 sets out the comments of Bigelow J. on the lack of uniformity in the different provincial laws.

(4) The Highway Acts of most common law provinces require a gratuitous passenger to prove gross negligence in an action against his driver. It was this legislation that brought about section 4 of the Uniform Act. The arguments for and against the gross negligence provision are set out in the Institute's Working Paper (Part XV.1). On balance we think the provision should be repealed. British Columbia took this course in 1969 (1969, c. 20, s. 12) and then repealed the equivalent of Uniform section 4 (1970, c. 9, s. 1). WE SEEK GUIDANCE.

(5) In most provinces, the Married Women's Property Act preserves the common law rule that one spouse may not sue the other in tort. Thus the Supreme Court held in *Macklin* v. *Young*, [1933] S.C.R. 603 that where a wife is injured in an accident for which her husband and another are both at fault, the wife may obtain judgment in full against that other, and he may not obtain contribution from the husband. To allow this would be indirectly to permit the wife to sue the husband. It has often been pointed out that in most cases it is an insurer, not the wife, who raises the immunity. *Macklin* v. *Young* produced Uniform section 5. At present there is a movement toward ending interspousal immunity. The Institute's Working Paper XV.2 discusses the arguments for and against abolition of the immunity. Manitoba in 1973 enacted that a husband and wife have the same right to sue the other for tort as if they were not married (1973, c. 12), and at the same time repealed its equivalent of Uniform section 5 (1973, c. 13). It may not be necessary for the Conference here to decide on the total removal of the immunity. However our tentative view is that in an action by the wife against the third party, the latter should be able to obtain contribution against the husband and that this should be made clear in the Uniform Act. WE SEEK GUIDANCE.

(6) Lastly, there are cases analogous to those covered by sections 4 and 5 of the Uniform Act but that are not dealt with in that Act.

Those cases are:

(a) an action for loss of consortium by a husband in cases where both the wife and D were at fault;

(b) an action by a master for loss of the servant's services where the servant and D were both at fault;

(c) an action by a parent for reimbursement of hospital expenses and the like for an injured child where both the child and D were at fault;

(d) an action by a dependant under the Fatal Accidents Act where both the deceased and D were at fault.

In claims for loss of consortium the cases are divided. In some the plaintiff receives his full damages and in others the court apportions the damages according to the wife's fault.

In claims for loss of services there is apportionment.

Some doubt exists in the claim by a parent for hospital expenses for an injured child where both child and D were at fault, but probably there will be apportionment.

In fatal accident claims, the judgment in favour of the dependants is reduced in accordance with the fault of the deceased.

One can argue that the plaintiff in all these cases should not be identified with the negligence of the spouse, servant, child or deceased. However our inclination is to leave the law as it is. WE SEEK GUIDANCE.

Glen Acorn
W. F. Bowker
L. R. Meiklejohn
W. E. Wilson
Alberta Commissioners

Edmonton
7 July 1975

APPENDIX I

(See page 26)

Report on Enactment of and Amendments to Uniform Acts, 1974-75

Bills of Sale Act

Saskatchewan made a minor amendment to The Bills of Sale Act dealing with the office of the registration clerk and the time of business.

Dependant's Relief Act

Prince Edward Island enacted the Uniform Act.

Enforcement of Custody Orders

Manitoba enacted the Uniform Act.

Fatal Accidents

Ontario varied the limitation period for actions by personal representatives from 1 year (the uniform provision) to 2 years.

Human Tissue Gift Act

Prince Edward Island enacted a new Human Tissue Gift Act based on the Uniform Act.

Interpretation Act

New Brunswick varied the definition of "holiday".

Prince Edward Island added a definition of "Minister of Justice".

Interprovincial Subpoenas

Manitoba enacted the Uniform Act.

Reciprocal Enforcement of Judgments

British Columbia and Prince Edward Island amended their Acts to make it clear that the court may refuse to register an order where the court is satisfied of certain facts even though those facts are not shown by the judgment debtor. They also added a provision to make it clear that the Act applied only to that part of a judgment which relates to the payment of money.

Limitation of Actions

British Columbia enacted a new Act which re-enacts much of the

Uniform Act but with changes recommended by The Law Reform Commission.

Married Women's Property

Ontario repealed its Married Women's Property Act (not the Uniform Act) by its Family Law Reform Act and substituted new provisions of wider scope.

Saskatchewan enacted a provision authorizing a judge to make orders respecting the property of married persons. The amendment authorizes the judge to order sale and division of proceeds, partition or division of property, vesting property of one spouse in another or jointly or severally in both, conversion of joint ownership to common, transfer of property to children of marriage or of one of the spouses, possession of property by one spouse, etc.

Occupiers' Liability

British Columbia amended its Act, (the Uniform Act) to correct what appears to be an error in drafting of subsection (2) of section 4.

Pension Benefits — Designation of Beneficiaries

Prince Edward Island enacted a new Act dealing with this matter. The Act follows the Model Act recommended by the Conference but has a broader definition of "plan" that broadens the application of the Act.

Perpetuities

British Columbia enacted a Perpetuities Act which is similar in effect to the Uniform Act but with changes as recommended by the Law Reform Commission.

Presumption of Death

New Brunswick amended its Act to provide that an order under the Act is not proof of death of a person for the purposes of claim under a policy of life insurance.

Proceedings Against the Crown

Alberta amended its Act. It is no longer necessary to obtain authorization to bring an action against a Cabinet Minister or to apply for a prerogative writ.

British Columbia enacted a new Act in 1974 which is similar to the Uniform Act but with some changes recommended by the British Columbia Law Reform Commission.

Trustee Investments

Saskatchewan added shares in the Saskatchewan Development Fund Corporation as an authorized investment.

Vital Statistics

British Columbia, Alberta and Saskatchewan amended their Acts to authorize the change in designation of sex on record of birth consistent with results of transsexual surgery.

Wills — Conflict of Laws

Manitoba enacted the 1966 version of the Uniform Conflict of Laws provisions of The Wills Act.

Wills — International Form of Wills

Manitoba enacted the Uniform Act.

Winnipeg
1 August 1975

Rae Tallin

APPENDIX IA

(See page 27)

Victoria
September 15, 1975

To All Local Secretaries
Uniform Law Conference

Re: Amendment to Section 4 of the Uniform Occupiers' Liability Act

It was resolved at Halifax that section 4 (2) of the Uniform Occupiers' Liability Act (set out on pages 336 to 339 of the 1973 Proceedings) be amended as follows if objections are not received by the Secretary of the Conference by two or more jurisdictions by November 30, 1975.

Section 4 (1) and (2) presently reads as follows:

4. (1) Subject to subsections (2), (3), and (4), where an occupier is permitted by law to extend, restrict, modify, or exclude his duty of

care to any person by express agreement, or by express stipulation or notice, the occupier shall take reasonable steps to bring such extension, restriction, modification, or exclusion to the attention of that person.

(2) Subsection (1) does not apply to a person

(a) who is not privy to the express agreement;

(b) who is empowered or permitted to enter or use the premises without the consent or permission of the occupier

The amendment to the Uniform Act would be in the following form:

Section 4 (2) of the Occupiers' Liability Act (printed on pages 336 to 339 of the 1973 Proceedings) is amended by striking out "Subsection (1) does not apply to a person" and substituting "An occupier shall not restrict, modify, or exclude his duty of care under subsection (1) with respect to a person".

The difficulty with the opening words of subsection (2) is that it is not clear what it is in subsection (1) that is not applicable to a person who, as in clause (a), is not privy to the express agreement. Surely the intent of subsection (2) is not to relieve an occupier from taking reasonable steps to bring a restriction in an agreement to the notice of a third party affected by the agreement, and thereby presumably lawfully restricting his duty of care to that third party. Unfortunately there seems to be no other aspect of subsection (1) that appears relevant to subsection (2). We believe that the intent of subsection (2) was to prevent an occupier from restricting his duty of care with respect to the persons referred to in clauses (a) and (b).

Section 4 (2) as amended reads as follows:

4. (2) An occupier shall not restrict, modify, or exclude his duty of care under subsection (1) with respect to a person

(a) who is not privy to the express agreement,

(b) who is empowered or permitted to enter or use the premises without the consent or permission of the occupier.

The previous draft of section 4 of the Uniform Act (printed on page 331 of the 1973 Proceedings) was somewhat different than the adopted draft. The ambiguity caused by the opening words of subsection (2) existed even in the earlier draft but was less apparent. Our attention was drawn to the problem by a private practitioner who, in his attempts to make some sense of the provision, postulated some pretty

imaginative interpretations, none of which included what we thought the provision was intended to achieve.

Therefore, British Columbia, in section 12 of the Attorney-General Statutes Amendment Act, 1975, amended its Occupiers' Liability Act in the manner set out above. We recommend the amendment to the Conference.

Yours truly,
G. A. Higenbottam,
Legislative Counsel and
Secretary, British Columbia
Commissioners.

APPENDIX J

(See page 27)

Protection of Privacy (Credit and Personal Data Reporting)

REPORT OF THE ONTARIO COMMISSIONERS

At the 1973 meeting of the Conference consideration of a draft Act (1973 Proceedings, page 360) reported by the Ontario Commissioners was deferred with the request that a comparative analysis be provided of existing legislation in Canada.

At the 1974 meeting the matter was deferred until 1975.

The Schedules to this report contain a comparative analysis of the draft Model Act and the existing legislation in the seven provinces that now have Acts:

British Columbia: S.B.C. 1973 Second Session, c. 139

Manitoba: S.M. 1971, c. P33

Newfoundland: S. Nfld. 1973, Act No. 76

Nova Scotia: S.N.S. 1973, c. 4

Ontario: S.O. 1973, c. 97

Prince Edward Island: S.P.E.I. 1974, c. 67

Saskatchewan: S.S. 1972, c. 23

Also accompanying this report is a copy of each of the Acts considered.

The Ontario Commissioners wish to express their appreciation for the assistance of Sandra Chapnik, law student at Osgoode Hall Law School, York University, in the research and preparation necessary to produce this report.

H. Allan Leal
Arthur N. Stone
for the
Ontario Commissioners

Toronto
1 August 1975

Editorial Note: As copies of the 1973 draft Uniform Act and of the Acts of the seven provinces mentioned in the report are readily obtainable, they have not been reproduced in these Proceedings

SCHEDULE 1

TABLES FOR COMPARISON OF PRINCIPAL POLICY MATTERS

TABLE 1

APPLICATION OF REQUIREMENTS AS TO INFORMATION AND REPORTS

JURISDICTION	APPLICATION TO REPORTS ABOUT A BUSINESS	APPLICATION TO REPORTS GIVEN TO POLICE	APPLICATION TO REPORTS GIVEN TO GOVERNMENT
BRITISH COLUMBIA	No application	Applies	Applies as extended *
MANITOBA	Application limited to exclude corporations and factual information re officers	No application	Applies only to reports for employment, credit, insurance or tenancy and not for other matters
NEWFOUNDLAND	No application	Applies	Applies
NOVA SCOTIA	Applies re all natural persons	Applies	Applies as extended *
ONTARIO	No application	Applies as extended *	Applies as extended *
PRINCE EDWARD ISLAND	No application	Applies as extended *	Applies as extended *
SASKATCHEWAN	Applies re all individuals	Applies	Applies
MODEL	Applies re all natural persons and files rather than reports are controlled	Applies	Applies as extended *

*THE EXTENSION IN EACH CASE IS TO PERMIT REPORTS AS TO IDENTITY AND EMPLOYMENT FOR ANY PURPOSE

TABLE 2

NOTICE OF REPORTS

JURISDICTION	ALL REPORTS	INFORMATION ON DENIAL OF BENEFIT
BRITISH COLUMBIA	Notice by user	Notice by user
MANITOBA	Notice by user	Notice by user
NEWFOUNDLAND	Notice by user on request only	No provision
NOVA SCOTIA	Notice by user	Notice by user
ONTARIO	Notice of credit report on request and of personal information report by user in all cases	Notice by user
PRINCE EDWARD ISLAND	Notice by user in every case and on request	Notice by user
SASKATCHEWAN	Notice by user on request only	No provision
MODEL	Notice by agency Notice by user on request only	Notice by user re credit transactions only

TABLE 3
SOURCES OF INFORMATION

JURISDICTION	REQUIRED TO BE ON FILE	REQUIRED TO BE DISCLOSED
BRITISH COLUMBIA	YES	YES
MANITOBA	NO	Source of factual information only
NEWFOUNDLAND	NO	YES
NOVA SCOTIA	YES	YES
ONTARIO	NO	Sources of credit information only but source of personal information may be ordered in issue before tribunal
PRINCE EDWARD ISLAND	NO	YES
SASKATCHEWAN	NO	Sources of information other than investigative
MODEL	YES	Sources of information of record only but source of circumstantial information may be ordered in issue before tribunal

TABLE 4
CORROBORATION OF INFORMATION ON FILE REQUIRED

ALL INFORMATION TO BE CORROBORATED	PERSONAL OR INVESTIGATIVE INFORMATION ONLY	NO CORROBORATION REQUIRED
NEWFOUNDLAND	MANITOBA	NOVA SCOTIA
	SASKATCHEWAN	
MODEL	BRITISH COLUMBIA	
	ONTARIO	
	PRINCE EDWARD ISLAND	
	but in latter three uncorroborated information may be used if accompanied by notice	

TABLE 5
REGULATION OF INFORMATION ON FILE OR IN A REPORT

ON FILE	IN REPORT	BOTH
MODEL	BRITISH COLUMBIA	NEWFOUNDLAND
	MANITOBA	
	NOVA SCOTIA	
	ONTARIO	
	PRINCE EDWARD ISLAND	
	SASKATCHEWAN	

SCHEDULE 2

COMPARATIVE ANALYSIS OF MODEL DRAFT AND EXISTING LEGISLATION

PROVINCIAL ACTS INCLUDED:

BRITISH COLUMBIA	:	PERSONAL INFORMATION REPORTING ACT, S B.C 1973 (Second Session) c 139
MANITOBA	:	THE PERSONAL INVESTIGATIONS ACT, S M 1971, c P33
NEWFOUNDLAND	:	THE CREDIT REPORTING AGENCIES ACT, 1973, S.Nfld 1973, Act NO 76
NOVA SCOTIA	:	CONSUMER REPORTING ACT, S N S 1973, c 4
ONTARIO	:	THE CONSUMER REPORTING ACT, 1973, S O 1973, c 97
PRINCE EDWARD ISLAND	:	CONSUMER REPORTING ACT, S P E I 1974, c 67
SASKATCHEWAN	:	THE CREDIT REPORTING AGENCIES ACT, 1972, S S 1972, c 23

The Personal Information Reporting Act

1.—(1) In this Act,

(*a*) "circumstantial information" means information, other than information of record, about the character, health habits, physical or personal characteristics or mode of living of a person, or about any other matter concerning the person;

The expression defined is used only in the definition of "report" — s.1(*i*) — but is included for consideration of further use of the distinction between circumstantial information and information of record.

BRITISH COLUMBIA

1 "personal information" means information other than credit information respecting a consumer's character, reputation, medical information, physical or personal characteristics, or mode of living, or about any other matter respecting the consumer;

Used to require corroboration of unfavourable personal information included in a report — s.11(3) (*c*)

MANITOBA

1 (*c*) "investigative information" means any information in respect of the subject of a personal investigation that does not come within the definition of factual or medical information;

Used:

— to require corroboration of investigative information included in report — s.4(*g*)

— to require disclosure of investigative information obtained privately and used to deny a benefit — s.7(1) (*c*)

— to exclude disclosure of source to consumer — s.7(2) (*b*)

NEWFOUNDLAND

1. (*c*) "credit information" means information collected or stored for the purpose of assessing the credit rating of consumers;

No distinction between classes of information

NOVA SCOTIA

2. (*f*) "information" means information respecting a consumer's identity, residence, dependents, marital status, employment, borrowing and repayment history, income, assets and liabilities, credit worthiness, education, character, reputation, health, physical or personal characteristics or mode of living;

No distinction between classes of information

ONTARIO

1. (*j*) "personal information" means information other than credit information about a consumer's character, reputation, health, physical or personal characteristics or mode of living or about any other matter concerning the consumer;

Used:

— to require registration of personal information investigators

— to require corroboration of unfavourable personal information included in a report — s.9(3) (*b*)

— to require notice by user to consumer that intends to obtain report containing personal information — s.10(2)

— to prohibit divulging personal information to other users — s.10(5).

PRINCE EDWARD ISLAND

1 (*i*) "personal information" means information other than credit information about a consumer's character, reputation, health, physical or personal characteristics or mode of living or about any other matter concerning the consumer;

Used:

— to require registration of personal investigators

— to require corroboration of unfavourable personal information included in report — s.9(3) (*b*).

SASKATCHEWAN

2 (*e*) "investigative information" means information respecting a consumer's character, general reputation, personal characteristics or mode of living that is obtained through personal interviews with neighbors, friends or associates of the consumer or with others to whom the consumer is known;

Used:

— to require corroboration of investigative information included in report — s.18(*e*)

— to exclude disclosure of source to consumer — s.23

(*b*) "employment purposes" means the purposes of taking into employment, granting promotion, reassigning employment duties or retaining as an employee;

The expression defined is used in s.7(1) (*b*) (*iii*) as a permitted use for reports and in s.13(1) (*c*).

BRITISH COLUMBIA

"employment" means the evaluation of a person for employment, promotion, reassignment, or retention as an employee

Defined by regulation

Used:

— as a permitted use for reports — s.10(1) (*a*)

— to require notice to consumer of purpose of report — s.12(2).

MANITOBA
No definition

NEWFOUNDLAND
No definition

NOVA SCOTIA
No definition

ONTARIO

s 1(*f*) definition same as in model draft.

Used as a permitted use for reports — 2.8(1) (*d*).

PRINCE EDWARD ISLAND

s 1(*e*) definition same as in model draft

Used as a permitted use for reports — s.8(1) (*d*).

SASKATCHEWAN
No definition.

(*c*) "file", when used as a noun, means all of the information pertaining to a person that is recorded and retained by a reporting agency, regardless of the manner or form in which the information is stored;

BRITISH COLUMBIA

1. "file", when used as a noun, means all of the information pertaining to a consumer that is recorded or retained by a reporting agency, regardless of the manner or form in which the information is stored;

MANITOBA

1. (*f*) "personal file" means any collection or repository of information obtained from others in the course of making a personal investigation whether the information is stored in written, photographic, electronic or any other form;

NEWFOUNDLAND

No definition.

NOVA SCOTIA

2 (*e*) "file" when used as a noun, means all of the information pertaining to a consumer that is recorded or retained by a consumer reporting agency, regardless of the manner or form in which the information is stored;

ONTARIO

1. (*g*) "file" when used as a noun, means all of the information pertaining to a consumer that is recorded and retained by a consumer reporting agency, regardless of the manner or form in which the information is stored;

PRINCE EDWARD ISLAND

1 (*f*) "file" when used as a noun, means all of the information pertaining to a consumer that is recorded and retained by a consumer reporting agency, regardless of the manner or form in which the information is stored;

SASKATCHEWAN

2.(1) (*d*) "file" means all the information about a consumer recorded or retained by a credit reporting agency regardless of how the information is stored;

(*d*) "information of record" means information about a person as to his name, age, place of residence, previous places of residence, marital status, spouse's name and age, number of dependants, particulars of education or professional qualifications, place of employment, previous places of employment, income and assets, repayment history, outstanding credit obligations, cost of living obligations, medical information and any matter of public record concerning the person and any information voluntarily supplied to a reporting agency by the person;

The expression defined is used —

1. to exclude matters from definition of circumstantial information — s.1(1) (*a*).

2. to exclude disclosure of sources — s.13(1) (*b*).

BRITISH COLUMBIA

1 "credit information" means information respecting a consumer's credit, which may include his name, age, place of residence, previous place of residence, marital status, spouse's name and age, number of dependents, particulars of education or professional qualifications, place of employment, previous places of employment, estimated income, paying habits, outstanding debt obligations, cost of living, or obligations and assets;

Used to exclude matters from definition of personal information —s.1.

MANITOBA

1 (*b*) "factual information" means information on a subject as to name, age, place of residence, previous places of residence, marital status, spouse's name and age, number of dependants, particulars of education or professional qualification, place of employment, previous places of employment, estimated income, paying habits, outstanding credit obligations, cost of living obligations, matters of public record and any information voluntarily supplied by the subject of a personal investigation;

Used:

— to exclude matters from definition of personal information — s.1 (*c*).

— to require disclosure of factual information obtained privately —s.7 (*b*).

— to require disclosure of sources — s.7(2) (*a*).

NEWFOUNDLAND

"credit information" See under s.1(1) (*a*) —

No distinction between classes of information.

NOVA SCOTIA

"information" See under s.1(1) (*a*) —

No distinction between classes of information

ONTARIO

1(1) (*d*) "credit information" means information about a consumer as to name, age, occupation, place of residence, previous places of residence, marital status, spouse's name and age, number of dependants, particulars of education or professional qualifications, places of employment, previous places of employment, estimated income, paying habits, outstanding debt obligations, cost of living obligations and assets;

Used:

— to exclude matters from definition of personal information — s.1(1) (*j*).

— to require credit information in report to be based on best evidence reasonably available — s.9(3) (*a*).

— to require disclosure of source — s.11 (*b*).

PRINCE EDWARD ISLAND
See under Ontario above for text.

Used for same purposes as set out under Ontario, above.

SASKATCHEWAN
No definition.

(*e*) "medical information" means any information obtained with the consent of a person from a duly qualified medical practitioner, chiropractor, qualified psychologist, psychiatrist or hospital, clinic or other medically related facility in respect of the physical or mental health or condition of that person;

The expression defined is used —

1. in definition of information of record — s.1(1) (*d*).

2. to exclude certain medical information from requirement of disclosure to consumer — s.13(2).

BRITISH COLUMBIA

1 "medical information" means any information or record obtained, with the consent of the consumer to whom it relates, from a duly qualified medical practitioner, or a chiropractor, or a hospital, clinic, or other medically related facility in respect of the physical or mental health of the consumer;

Used:

— in definition of personal information — s.1.

— to exclude certain medical information from requirement of disclosure to consumer — s.14(8).

MANITOBA

1. (*d*) "medical information" means any information obtained with the consent of a subject from licensed physicians, medical practitioners, chiropractors, qualified psychologists, psychiatrists or hospitals, clinics or other medically related facilities in respect of the physical or mental health and attitude of the subject;

Used to exclude from definition of investigative information — s.1 (*c*), and by implication from disclosure — s.7(2).

NEWFOUNDLAND
No definition.

No special provision re medical information.

NOVA SCOTIA
No definition.

Certain medical information excluded from requirement for disclosure — s.12(2).

ONTARIO
No definition.

Certain medical information excluded from requirement for disclosure — s.11(2).

PRINCE EDWARD ISLAND
No definition.

No special provision re medical information.

SASKATCHEWAN
No definition.

No special provision re medical information.

(*f*) "person" means a natural person;

This definition raises the question of application respecting businesses or corporations and for comparison should be read with the application sections of some jurisdictions.

BRITISH COLUMBIA

1 "consumer" does not include a corporation or a person engaging in a transaction in the course of carrying on business, other than seeking employment;

MANITOBA

1. (*k*) "subject" means the person on whom a personal investigation is carried out or is being carried out;

See exemptions in application s.2 p.13.

NEWFOUNDLAND

2 (1) (*a*) "consumer" means a natural person seeking or obtaining credit for personal, family or household purposes;

(*h*) "person" means an individual, an association of individuals, a partnership or a corporation;

See exemptions in application s.1(2), p.13.

NOVA SCOTIA

2 (1) (*a*) "consumer" means a natural person;

(*h*) "person" means a natural person, an association of natural persons, a partnership, co-operative or a corporation, and their heirs, executors, administrators, successors and assigns;

ONTARIO

1 (1) (*a*) "consumer" means a natural person but does not include a person engaging in a transaction, other than relating to employment, in the course of carrying on a business, trade or profession;

(*i*) "person" means a natural person, an association of natural persons, a partnership or a corporation;

PRINCE EDWARD ISLAND

1 (1) (*a*) "consumer" means a natural person, but does not include a person engaged in a transaction, other than relating to employment, in the course of carrying on a business, trade or profession;

(*b*) "person" means a natural person, an association of natural persons, a partnership or a corporation;

SASKATCHEWAN

2 (1) (*a*) "consumer" means an individual;

See exemptions in application section 1(2) — p.13.

(*g*) "Registrar" means the Registrar of Personal Information Reporting Agencies;

(*h*) "regulations" means the regulations made under this Act;

(*i*) "report" means a written, oral or other communication by a reporting agency of information of record or circumstantial information, or both, pertaining to a person for consideration in connection with a purpose set out in section 7;

BRITISH COLUMBIA

1 "report" means a written, oral, or other communication, made, for valuable consideration, by a reporting agency of credit information or personal information, or both, respecting a consumer, in connection with a purpose set out in clause (*a*) of subjection (1) of section 10;

MANITOBA

1 (*h*) "personal report" means any report, whether written or oral, of information obtained from others in the course of making a personal investigation;

NEWFOUNDLAND

1 (*d*) "credit report" means a report of credit information or of a credit rating based on credit information, supplied by a credit reporting agency;

NOVA SCOTIA

2 (*b*) "consumer report" means a written, oral or other communication by a consumer reporting agency of information as that word is defined in this section pertaining to a consumer for consideration in connection with a purpose set out in clause (*c*) of subsection (1) of Section 9;

ONTARIO

1 (*b*) "consumer report" means a written, oral or other communication by a consumer reporting agency of credit information or personal information, or both, pertaining to a consumer for consideration in connection with a purpose set out in clause *d* of subsection 1 of section 8;

PRINCE EDWARD ISLAND

1 (*b*) "consumer report" means a written, oral or other communication by a consumer reporting agency of credit information or personal information, or both, pertaining to a consumer for consideration in connection with a purpose set out in clause (*d*) of subsection (1) of section 8;

SASKATCHEWAN

1 (*b*) "credit report" means any written, oral or other communication by a credit reporting agency as to the financial rating of consumers;

(*j*) "reporting agency" means a person or corporation who for gain or profit furnishes reports.

BRITISH COLUMBIA

1 "reporting agency" means a person who for gain or profit furnishes reports

MANITOBA

1 (*j*) "personal reporting agency" means any person whose main business is to regularly conduct personal investigations for the purpose of supplying personal reports or the contents of personal files to others for gain;

NEWFOUNDLAND

1 (*c*) "credit reporting agency" means a person who is engaged in providing credit reports to any other person, whether for remuneration or otherwise;

NOVA SCOTIA

2 (*c*) "consumer reporting agency" means a person who for gain or profit furnishes consumer reports;

ONTARIO

1 (*c*) "consumer reporting agency" means a person who for gain or profit or on a regular co-operative non-profit basis furnishes consumer reports;

PRINCE EDWARD ISLAND

1. (*c*) "consumer reporting agency" means a person who for gain or profit, or on a regular cooperative non-profit basis, furnishes consumer reports;

SASKATCHEWAN

2. (*c*) "credit reporting agency" means a person who is engaged in the business of furnishing information to subscribers as to the financial rating of persons;

(2) This Act applies notwithstanding any agreement or waiver to the contrary.

BRITISH COLUMBIA

No corresponding provision.

MANITOBA

14. Any contract, agreement or understanding entered into between a personal reporter and any user whereby either party binds himself to refuse to disclose any information to the subject of a personal report is void and the making of such an agreement or understanding is an offence against this Act; but a user may refer the subject of a report to the personal reporting agency for discussion of the content of any report supplied by the said agency

18. No agreement, oral or written shall provide or contain any provision, express or implied whereby the parties to the agreement agree that this Act or any provision thereof shall not apply to the agreement or to the parties; and any agreement so made is void and the making of such an agreement is an offence

NEWFOUNDLAND

27 This Act applies notwithstanding any agreement or waiver to the contrary

NOVA SCOTIA

4 (2) This Act applies notwithstanding any agreement or waiver to the contrary

ONTARIO

1.(2) This Act applies notwithstanding any agreement or waiver to the contrary

PRINCE EDWARD ISLAND

1 (2) This Act applies notwithstanding any agreement or waiver to the contrary

SASKATCHEWAN

No corresponding provision.

Exemptions.

The model draft has no special provision for exemptions.

BRITISH COLUMBIA

No special exemptions.

MANITOBA

2 This Act does not apply to

(*a*) provincial or municipal governments or their agencies, except in respect of an application by a subject for employment, credit, insurance or tenancy; or

(*b*) police officers acting in their official capacities or

(*c*) reports on corporations or partnerships that contain no information on any individual other than factual information regarding the officers or employees of the corporations or partnerships; or

(*d*) investigations conducted

(*i*) by a user without the knowledge of the subject, with a view to offering employment to the subject at an annual salary in excess of twelve thousand dollars; or

(*ii*) by a user, without the knowledge of the subject, with a view to inviting the subject to participate in the ownership of a private company or in a professional or business partnership for gain; or

(*iii*) by a user, for the purpose of making a decision in respect of an application for insurance on the life of a subject, if the face amount of coverage is twenty-five thousand dollars or more and the beneficiary is the employer of the subject

NEWFOUNDLAND

2 (2) This Act does not apply to a credit reporting agency where the reports of the agency deal only with industrial or commercial enterprises and are distributed only to such enterprises

NOVA SCOTIA

No special exemptions.

ONTARIO

No special exemptions.

PRINCE EDWARD ISLAND

No special exemptions.

SASKATCHEWAN

2.(2) This Act does not apply to a credited reporting agency where the reports of the agency deal only with industrial or commercial enterprises and are distributed only to such enterprises.

3. No person or corporation shall conduct or act as a reporting agency unless he is registered by the Registrar under this Act.

See s.1(1)(j) by which "for gain or profit" is incorporated.

BRITISH COLUMBIA

3 No person shall

(*a*) carry on business as a reporting agency unless he is registered under this Act; or

(*b*) carry on business as a reporting agency otherwise than in his registered name or elsewhere than at or from his registered address or addresses; or

(*c*) advertise or in any other way indicate that he is a reporting agency other than under his registered name

MANITOBA

No registration or licensing.

NEWFOUNDLAND

10 (1) A person shall not, after the expiration of sixty days following the day on which this Act comes into force, carry on business as a credit reporting agency in the province unless he is registered under this Act and the registration is still subsisting

(2) A person shall not publish or cause to be published any statement or representation that he is registered under this Act

NOVA SCOTIA

4. No person shall conduct or act as a consumer reporting agency unless he is registered by the Director under this Act

ONTARIO

3 No person shall conduct or act as a consumer reporting agency or act as a personal information investigator unless he is registered by the Registrar under this Act

PRINCE EDWARD ISLAND

3 No person shall conduct or act as a consumer reporting agency or act as a personal information investigator unless he is registered by the registrar under this Act

SASKATCHEWAN

3 No person shall operate or act as a credit reporting agency unless he is the holder of a licence under this Act

4. No person shall hold himself out as a credit reporting agency unless he is the holder of a licence under this Act

4.—(1) An applicant is entitled to registration or renewal of registration by the Registrar except where,

(*a*) having regard to his financial position, the applicant cannot reasonably be expected to be financially responsible in the conduct of his business; or

(*b*) the past conduct of the applicant affords reasonable grounds for belief that he will not carry on business in accordance with law and with integrity and honesty; or

(*c*) the applicant is a corporation and,

(*i*) having regard to its financial position, it cannot reasonably be expected to be financially responsible in the conduct of its business, or

(*ii*) the past conduct of its officers or directors affords reasonable grounds for belief that its business will not be carried on in accordance with law and with integrity and honesty; or

(*d*) the applicant is carrying on activities that are, or will be, if the applicant is registered, in contravention of this Act or the regulations.

(2) A registration is subject to such terms and conditions to give effect to the purposes of this Act as are consented to by the applicant, imposed by the (*tribunal holding hearings*) or prescribed by the regulations.

(3) A registration is not transferable.

BRITISH COLUMBIA

6 The registrar may consider an applicant unsuitable for registration under this Act where

(*a*) he has been convicted of an offence that, in the opinion of the registrar, involves a dishonest or fraudulent act, or an intent to commit a dishonest or fraudulent act; or

(*b*) having regard to his financial position, the applicant cannot reasonably be expected to be financially responsible in the conduct of his business; or

(*c*) the past conduct of the applicant affords reasonable grounds to believe that he may not carry on business in accordance with the law, or with integrity and honesty; or

(*d*) the applicant is a corporation and the past conduct of any of its officers or directors affords reasonable grounds to believe that its business may not be carried on in accordance with the law or with integrity and honesty; or

(*e*) he would be unable to comply with the provisions of section 14 or other

provisions of this Act or the regulations; or

(*f*) he has committed an offence against this Act

MANITOBA

No registration or licensing.

NEWFOUNDLAND

11 (1) Subject to this Act and the regulations, an applicant for registration as a credit reporting agency is entitled to be granted such registration except where

(*a*) his financial responsibility or record of past conduct is such that it would not be in the public interest for the registration to be granted;

(*b*) if the applicant is a corporation, its financial responsibility or the record of past conduct of the corporation or its officers or directors is such that it would not be in the public interest for the registration to be granted; or

(*c*) the applicant is or proposes to be in contravention of this Act or the regulations

(2) A registration is subject to such terms, conditions and restrictions as are consented to by the applicant, imposed by the Registrar or prescribed by the regulations.

NOVA SCOTIA

5.(1) An applicant is entitled to registration or renewal of registration by the Director except where,

(*a*) having regard to his financial position, the applicant cannot reasonably be expected to be financially responsible in the conduct of his business; or

(*b*) the past conduct of the applicant affords reasonable grounds for belief that he will not carry on business in accordance with law and with integrity and honesty; or

(*c*) the applicant is a corporation and,

(*i*) having regard to its financial position, it cannot reasonably be expected to be financially responsible in the conduct of its business, or

(*ii*) the past conduct of its officers or directors affords reasonable grounds for belief that its business will not be carried on in accordance with law and with integrity and honesty; or

(*d*) the applicant is carrying on activities that are, or will be, if the applicant is registered, in contravention of this Act or the regulations

(2) A registration is subject to such terms and conditions to give effect to the purposes of this Act as are consented to by the applicant or prescribed by the regulations

(3) A registration is not transferable

ONTARIO

s 4.—(1) An applicant is entitled to registration or renewal of registration as a consumer reporting agency by the Registrar except where,

(*a*) having regard to his financial position, the applicant cannot reasonably be expected to be financially responsible in the conduct of his business; or

(*b*) the past conduct of the applicant affords reasonable grounds for belief that he will not carry on business in accordance with law and with integrity and honesty; or

(*c*) the applicant is a corporation and,

(*i*) having regard to its financial position, it cannot reasonably be expected to be financially responsible in the conduct of its business or

(*ii*) the past conduct of its officers or directors affords reasonable grounds for belief that its business will not be carried on in accordance with law and with integrity and honesty, or

(*d*) the applicant is carrying on activities that are, or will be, if the applicant is registered, in contravention of this Act or the regulations

(2) An applicant is entitled to registration or renewal of registration as a personal information investigator by the Registrar except where the past conduct of the applicant affords reasonable grounds for belief that he will not carry out his duties in accordance with law and with integrity and honesty

(3) A registration is subject to such terms and conditions to give effect to the purposes of this Act as are imposed by the Tribunal or prescribed by the regulations.

(4) A registration is not transferable

PRINCE EDWARD ISLAND

s.4. — See under Ontario above for text.

SASKATCHEWAN

8 The registrar may grant a licence where, in his opinion, the applicant is suitable to be licensed and the proposed licensing is not for any reason objectionable; but the registrar may refuse to grant a licence if after investigation he is for any reason of the opinion that the applicant should not be granted a licence

9 (1) The registar may grant a licence subject to such terms, conditions and restrictions as he considers necessary

5.—(1) The Registrar may refuse to register an applicant where in the Registrar's opinion the applicant is disentitled to registration under section 4.

(2) The Registrar may refuse to renew or may suspend or revoke a registration for any reason that would disentitle the registrant to registration under section 4 if he were an applicant, or where the registrant is in contravention of this Act or the regulations or is in breach of a term or condition of the registration.

BRITISH COLUMBIA

7.(1) The registrar may, after giving the person registered under this Act an opportunity to be heard if a hearing is requested, suspend or cancel his registration where, in his opinion, that person

(*a*) would be unsuitable for registration under section 6 if he were an applicant; or

(*b*) is in breach of a condition of registration, or of any of the provisions of this Act or regulations; or

(*c*) has conducted or is conducting his business in a manner that is prejudicial to the public interest

(2) Where the length of time required to give the person an opportunity to be heard under subsection (1) would, in the registrar's opinion, be prejudicial to the public interest, he may suspend registration without giving the person registered under this Act an opportunity to be heard; but, in that case, he shall forthwith notify the person of the suspension of his registration and that a hearing and review will be held before him on a date that is within twenty-one days from the date of suspension

MANITOBA

No registration or licensing.

NEWFOUNDLAND

15 The Registrar may suspend or cancel the registration of any person upon any ground on which he might have refused to grant registration pursuant to section 11 or where he is satisfied that such person

(*a*) has violated any provision of this Act or of the regulations or has failed to comply with any of the terms, conditions or restrictions to which such person's registration is subject:

(*b*) has made a material mis-statement in the application for registration or in any of the information or material submitted by such person to the Registrar pursuant to section 16;

(*c*) has been guilty of misrepresentation, fraud, deceit or dishonesty; or

(*d*) has demonstrated incompetency or untrustworthiness to carry on the business of a credit reporting agency

NOVA SCOTIA

6 (1) The Director may refuse to register an applicant where in the Director's opinion the applicant is disentitled to registration under section 5

(2) The Director may refuse to renew or may suspend or

ONTARIO

5.(1) Subject to section 6, the Registrar may refuse to register an applicant where in the Registrar's opinion the applicant is disentitled to registration under section 4.

(2) Subject to section 6, the Registrar may refuse to renew or may suspend or revoke a registration for any reason that would disentitle the registrant to registration under section 4 if he were an applicant, or where the registrant is in breach of a term or condition of the registration

PRINCE EDWARD ISLAND

5 (1) The registrar may refuse to register an applicant where in the registrar's opinion the applicant is disentitled to registration under section 4

(2) The registrar may refuse to renew or may suspend or revoke a registration

for any reason that would disentitle the registrant to registration under section 4 if he were an applicant, or where the registrant is in breach of a term or condition of the registration

SASKATCHEWAN

11 (1) The registrar may suspend or cancel a licence upon any ground on which he might have refused to grant the licence or where he is satisfied that the licensee:

(*a*) has violated any provision of this Act or has failed to comply with any of the terms, conditions or restrictions to which his licence is subject;

(*b*) has made a material mis-statement in the application for his licence or in any of the information or material submitted by him to the registrar pursuant to a request of the registrar under section 13;

(*c*) has been guilty of any misrepresentation, fraud or dishonesty; or

(*d*) has demonstrated his incompetency, unfitness, or untrustworthiness to operate or act as a credit reporting agency

6. *(Each jurisdiction is to insert its own procedures for hearings and appeals respecting the granting, refusal or revocation of registrations.)*

7.—(1) Subject to section 13, no reporting agency and no officer or employee thereof shall knowingly furnish any information from the files of the reporting agency except in a report given.

(*a*) in accordance with the written instructions of the person to whom the information relates; or

(*b*) to a person or corporation who it has reason to believe,

(*i*) intends to use the information in connection with the extension of credit to or the purchase or collection of a debt of the person to whom the information pertains,

(*ii*) intends to use the information in connection with the entering into or renewal of a tenancy agreement,

(*iii*) intends to use the information for employment purposes,

(*iv*) intends to use the information in connection with the underwriting of insurance involving the person,

(*v*) intends to use the information to determine the person's eligibility for any matter under a statute or regulation where the information is relevant to the requirement prescribed by law,

(*vi*) otherwise has a direct business need for the information in connection with a business transaction involving the person.

(2) No person or corporation shall knowingly obtain any information from the files of a reporting agency respecting a person except for the purposes referred to in subsection 1.

BRITISH COLUMBIA

10 (1) No reporting agency and no officer or employee thereof shall knowingly furnish any information from the files of the reporting agency except in a report given

(*a*) to a person who, it has reason to believe,

(*i*) intends to use the information in connection with the extension of credit to, or the collection of a debt of, the consumer to whom the information pertains; or

(*ii*) intends to use the information in connection with the entering into or renewal of a tenancy agreement by the consumer; or

(*iii*) intends to use the information for employment purposes; or

(*iv*) intends to use the information in connection with the underwriting of insurance involving the consumer; or

(*v*) intends to use the information to determine the eligibility of a consumer in respect of a provision of a statute or regulation, where the information is relevant to a requirement prescribed by law; or

(*vi*) otherwise has a direct business requirement for the information in connection with a business transaction respecting the consumer; or

(*b*) in accordance with the written instructions of the consumer in respect of whom the information relates; or

(*c*) in response to the order of a court having jurisdiction to issue such an order

(2) No person shall knowingly obtain any information from the files of a reporting agency respecting a consumer except for the purposes referred to in subsection (1).

MANITOBA

5. No personal reporter, user or personal reporting agency, or any of their employees, shall knowingly divulge the contents of any personal report or personal file to any person other than to

(*a*) a user or his agent, who requires the information for purposes of a decision in respect of a subject's application for credit, insurance, employment or tenancy or any other legitimate business purpose; or

(*b*) the assignee of an agreement for credit, insurance or tenancy; or

(*c*) any federal, provincial or municipal government or any agencies thereof, or any police officer acting in that capacity; or

(*d*) the subject of the report on the request of the subject;

and any failure to comply with this provision is an offence under this Act

NEWFOUNDLAND

No corresponding provision but note that Newfoundland equivalent of s.8(3) includes collecting and storing.

NOVA SCOTIA

9 (1) No consumer reporting agency and no officer or employee thereof shall knowingly furnish any information from the files of the consumer reporting agency except in a consumer report given,

(*a*) in response to the order of a court having jurisdiction to issue such an order;

(*b*) in accordance with the written instructions of the consumer to whom the information relates; or

(*c*) to a person who it has reason to believe,

(*i*) intends to use the information in connection with the extension of credit to or the collection of a debt of the consumer to whom the information pertains,

(*ii*) intends to use the information in connection with the entering into or renewal of a tenancy agreement by the consumer,

(*iii*) intends to use the information for employment purposes,

(*iv*) intends to use the information in connection with the underwriting of insurance involving the consumer,

(*v*) intends to use the information to determine the consumer's eligibility for any matter under a statute or regulation where the information is relevant to the requirement prescribed by law,

(*vi*) otherwise has a direct business need for the information in connection with a business transaction involving the consumer

ONTARIO

8.(1) No consumer reporting agency and no officer or employee thereof shall knowingly furnish any information from the files of the consumer reporting agency except,

(*a*) in response to the order of a court having jurisdiction to issue such an order;

(*b*) in accordance with the written instructions of the consumer to whom the information relates;

(*c*) in response to an order or direction made under this Act; or

(*d*) in a consumer report given to a person who it has reason to believe,

(*i*) intends to use the information in connection with the extension of credit to or the purchase or collection of a debt of the consumer to whom the information pertains,

(*ii*) intends to use the information in connection with the entering into or renewal of a tenancy agreement,

(*iii*) intends to use the information for employment purposes,

(*iv*) intends to use the information in connection with the underwriting of insurance involving the consumer,

(*v*) intends to use the information to determine the consumer's eligibility for any matter under a statute or regulation where the information is relevant to the requirement prescribed by law,

(*vi*) otherwise has a direct business need for the information in connection with a business or credit transaction involving the consumer, or

(*vii*) intends to use the information for the purpose of up-dating the information in a consumer report previously given to him for one of the reasons referred to in subclauses i to vi.

PRINCE EDWARD ISLAND

8.(1) See under Ontario for text but excluding (d) (vii).

SASKATCHEWAN

17 No credit reporting agency shall knowingly divulge the contents of any file or furnish any credit report to any person other than to:

(*a*) a person who requires the information for the purpose of a decision in respect of a consumer's application for credit, insurance, employment or tenancy or any other legitimate business purposes;

(*b*) the assignee of an agreement for credit, insurance or tenancy;

(*c*) any federal, provincial or municipal government or any agencies thereof or any police officer acting in that capacity; or

(*d*) the consumer who is the subject of the credit report

(3) Notwithstanding subsections 1 and 2, a reporting agency may furnish identifying information respecting any person, limited to his name, address, former addresses, place of employment, or former places of employment, to any department of the Government of *(jurisdiction)* or of Canada or of any province thereof.

BRITISH COLUMBIA

10 (3) Notwithstanding subsections (1) and (2), a reporting agency may furnish identifying information respecting any consumer, limited to his name, address, former addresses, and places of employment, to the Government of Canada or of any province, or any agency thereof, or any municipality in Canada, or any agency thereof.

MANITOBA

s 2 This Act does not apply to

(2) provincial or municipal governments or their agencies, except in respect of an application by a subject for employment, credit, insurance or tenancy; or

NEWFOUNDLAND

No corresponding provision.

NOVA SCOTIA

9.(3) Notwithstanding subsections (1) and (2), a consumer reporting agency may furnish identifying information respecting any consumer, limited to his name, address, former addresses, place of employment, or former places of employment, to any department of the Province or of Canada or any province thereof, notiwthstanding that such information is not to be used for a purpose mentioned in clause (*c*) of subsection (1)

ONTARIO

8 (3) Notwithstanding subsections 1 and 2, a consumer reporting agency may furnish identifying information respecting any consumer, limited to his name, address, former addresses, place of employment, or former places of employment, to the Government of Ontario or of Canada or any province thereof or of any agency of such government or the government of any municipality in Canada or any agency thereof or to any police officer, acting in the course of his duties, notwithstanding that such information is not to be used for a purpose mentioned in clause *d* of subsection 1

PRINCE EDWARD ISLAND

See under Ontario for text.

SASKATCHEWAN

No corresponding provision.

(4) A reporting agency shall not sell, lease or transfer title to its files or any of them except to another reporting agency registered under this Act.

BRITISH COLUMBIA

10.(4) A reporting agency shall not sell, lease, or transfer title to its files or any of them except to another reporting agency registered under this Act

MANITOBA

No corresponding provision.

NEWFOUNDLAND

No corresponding provision.

NOVA SCOTIA

9.(4) A consumer reporting agency shall not sell, lease or transfer title to its files or any of them except to another consumer reporting agency registered under this Act

ONTARIO

8 (4) No person who is or has been registered as a consumer reporting agency shall sell, lease or transfer title to its files or any of them except to a consumer reporting agency registered under this Act.

PRINCE EDWARD ISLAND

8 (4) A consumer reporting agency shall not sell, lease or transfer title to its files or any of them except to another consumer reporting agency registered under this Act

SASKATCHEWAN

No corresponding provision.

8.—(1) Every reporting agency shall adopt all procedures reasonable for ensuring the greatest possible accuracy and fairness in the contents of its reports.

BRITISH COLUMBIA

11.(1) Every reporting agency shall adopt all reasonable procedures for ensuring accuracy and fairness in the contents of its reports

MANITOBA

No corresponding provision.

NEWFOUNDLAND

No corresponding provision.

NOVA SCOTIA

10.(1) Every consumer reporting agency shall adopt all procedures reasonable for ensuring the greatest possible accuracy and fairness in the contents of its consumer reports.

ONTARIO

9.(1) Every consumer reporting agency shall adopt all procedures reasonable for ensuring accuracy and fairness in the contents of its consumer reports

PRINCE EDWARD ISLAND

9 (1) Every consumer reporting agency shall adopt all procedures reasonable for ensuring the greatest possible accuracy and fairness in the contents of its consumer reports.

SASKATCHEWAN

19. Every credit reporting agency shall take reasonable steps to assure the maximum accuracy of any information in a credit report

(2) A reporting agency shall not report,

(*a*) any information that is not stored in a form capable of being produced under section 13; or

(*b*) any information that is not extracted from information appearing in files stored or collected in a repository located in *(insert jurisdiction)*.

BRITISH COLUMBIA

11 (2) No reporting agency shall report

(*a*) information that is not stored in a form capable of being produced under section 14; or

(*b*) information that is not extracted from information appearing in files stored or collected in a repository located in Canada, regardless of whether or not the information was obtained from a source outside Canada.

MANITOBA

No corresponding provision.

NEWFOUNDLAND

20 (4) A credit reporting agency shall not include in a credit report any information other than the information stored in a form producible under Section 23

NOVA SCOTIA

10 (2) A consumer reporting agency shall not report

(*a*) any information that is not stored in a form capable of being produced under Section 12;

(*b*) any information that is not extracted from information appearing in files stored or collected in a repository located in Canada

ONTARIO

9.(2) A consumer reporting agency shall not report,

(*a*) any information that is not stored in a form capable of being produced under section 11;

(*b*) any information that is not extracted from information appearing in files stored or collected in a repository located in Canada regardless of whether or not the information was obtained from a source outside Canada, except where the consumer report is in writing and contains the substance of any prior information orally acquired that conforms to the requirements of this Act

PRINCE EDWARD ISLAND

9 (2) A consumer reporting agency shall not report

(*a*) any information that is not stored in a form capable of being produced under section 11;

(*b*) any information that is not extracted from information appearing in files stored or collected in a repository located in Canada regardless of whether or not the information was obtained from a source outside Canada

SASKATCHEWAN
No corresponding provision.

(3) A reporting agency shall not enter or retain in the file of a person or include in a report about a person,

(*a*) any information based on evidence that is not corroborated;

(*b*) information as to judgments after seven years after the judgment was given, unless the creditor confirms in writing that it remains unpaid in whole or in part, and such confirmation appears in the file, or information in respect of a judgment fully paid;

(*c*) information as to any judgment against the person unless mention is made of the name and address of the judgment creditor as given at the date of entry of the judgment and the amount;

(*d*) information as to bankruptcies after five years from the date of discharge therefrom;

(*e*) information regarding any writs, judgments, collections or debts that are statute barred unless it is accompanied by evidence appearing in the file that recovery is not barred by the expiration of a limitation period;

(*f*) information as to the payment or non-payment of lawfully imposed fines after seven years;

(*g*) information as to convictions for crimes, after seven years from the date of conviction, provided information as to convictions for crimes shall not be reported if at any time it is learned that after a conviction a full pardon has been granted;

(*h*) information regarding writs that were issued against the person more than twelve months previously unless, when reported, the current status of the action has been ascertained and is included;

(*i*) information regarding any criminal charges against the person;

(*j*) any other adverse item of information that is more than seven years old unless it is voluntarily supplied

by the person to the reporting agency; or

(*k*) information as to race, creed, colour, ancestry, ethnic origin or political affiliation.

The model draft proposes that limits on information apply to the files. Every existing Act in Canada, except Newfoundland, imposes the limits only on reports.

BRITISH COLUMBIA

11 (3) No reporting agency shall include in a report

(*a*) information, unless the name and address of the source of the information is recorded or retained in its files, or can be readily ascertained by the consumer; or

(*b*) information not based upon the most reliable evidence reasonably available; or

(*c*) unfavourable personal information, unless it has made reasonable efforts to corroborate the evidence on which the personal information is based, and the lack of corroboration is noted with and accompanies the information; or

(*d*) information respecting a writ or other originating proceeding in court wherein the consumer is a nominal defendant, or the cause of action is primarily other than for a liquidated sum; or

(*e*) information respecting actions, accounts, or debts that, on their face, are statute-barred; or

(*f*) information respecting judgments after six years after the judgment was given, unless the creditor or his agent confirms that the judgment remains unpaid in whole or in part, and the confirmation appears in the file; or

(*g*) information respecting the bankruptcy of a consumer after six years after the date he was last discharged from bakruptcy; unless he has been bankrupt more than once; or

(*h*) information respecting criminal or summary conviction charges against the consumer unless the charges have resulted in conviction; or

(*i*) information respecting a conviction of the consumer for crimes or summary conviction offences after six years after the date of conviction or, where the conviction resulted in imprisonment, after the date of his release or parole; but information as to a conviction shall not be reported if, after the conviction, he has been granted a full pardon; or

(*j*) information given orally, unless the content of the oral report is noted in writing in the file; or

(*k*) any other information adverse to the consumer's interest that is more than six years old, unless the information is voluntarily supplied by the consumer to the reporting agency; or

(*l*) information respecting the race, creed, colour, ancestry, ethnic origin, or political affiliation of a consumer; or

(*m*) information respecting the payment or non-payment of lawfully imposed fines after six years after the fine was imposed; or

(*n*) information respecting a writ or other proceeding in court after twelve months after the date of issue, unless the current status of the action or proceedings has been ascertained and is included in the report; or

(*o*) any other information prescribed by regulation.

MANITOBA

4. No personal report shall contain

(*a*) any reference to race, religion, ethnic origin, or political affiliation of the subject unless this information is voluntarily supplied by the subject; or

(*b*) information regarding any bankruptcy of the subject which occurred fourteen years or more prior to the making of the report; or

(*c*) information regarding any writs, judgments, collections or debts that are statute barred; or

(*d*) information regarding writs issued against the subject more than twelve months prior to the making of the report if the present status of the action is not ascertained; or

(*e*) information as to any judgment against the subject unless mention is made of the name and address of the judgment creditor as given at the date of entry of the judgment and the amount of the judgment; or

(*f*) any other adverse factual or investigative information that is more than seven years old unless it is voluntarily supplied by the subject or is otherwise permitted by this Act; or

(*g*) any investigative information regarding the subject unless reasonable efforts have been made to corroborate the information

NEWFOUNDLAND

20.(1) Subject to subsection (2), a credit reporting agency shall not collect, store or report any information other than

(*a*) information as to judgments or judicial proceedings for the recovery of money owing for goods or services or based upon default under a conditional sale contract or mortgage on chattels or realty;

(*b*) information as to bankruptcies;

(*c*) information as to accounts unpaid after they become due: Provided, however, that the credit reporting agency shall, upon receiving subsequent information as to payment of any of such accounts, immediately rectify its records and ensure that any reports thereafter made shall contain such rectified information:

(*d*) information as to the payment or non-payment of taxes or lawfully imposed fines;

(*e*) information as to convictions for crimes, provided such information shall be deleted and not reported, if at any time, it is learned that after a conviction a full pardon has been granted; and

(*f*) any other information prescribed by the regulations

(2) A credit reporting agency shall not retain or report

(*a*) information under paragraph (*a*) of subsection (1) after seven years after the default first occurred or after the judgment was given;

(*b*) information under paragraph (*b*) of subsection (1) after fourteen years from the date of assignment or petition in the most recent bankruptcy;

(*c*) information under paragraph (*c*) of subsection (1) after six years after the account became due;

(*d*) information under paragraph (*d*) of subsection (1) as to the non-payment of taxes or fines after seven years; and

(*e*) information under paragraph (*e*) of subsection (1) after seven years from the date of the conviction.

(3) A credit reporting agency shall not collect, store, retain or report any information that is incapable of corroboration from another source, a reference to which source to appear in the records of that agency

NOVA SCOTIA

10 (3) A consumer reporting agency shall not include in a consumer report:

(*a*) any information unless the name and address of the source of the information is recorded or retained in its files or can be readily ascertained by the consumer;

(*b*) any information concerning the consumer unless it has made reasonable efforts to verify the information and unless it has recorded in its files the efforts taken to verify the information;

(*c*) information regarding any actions, judgments, accounts or debts that are on their face statute barred unless it is accompanied by evidence appearing in the file that recovery is not statute barred;

(*d*) information as to any judgment against the consumer unless mention is made of the name and, where available, the address of the judgment creditor as given at the date of entry of the judgment and the amount or, where the judgment is known to have been assigned, where available, the name and address of the assignee and the amount or in the case where a judgment has been fully paid or satisfied as appears from the records on file, at the office of the clerk of the court or the prothonotary of the court and six years has expired since the date of the satisfaction of the judgment information concerning the judgment unless the consumer has had more than one judgment recorded against him;

(*e*) information as to the bankruptcy of a consumer after six years from the date of the discharge of the consumer unless he has been bankrupt more than once;

(*f*) information regarding any criminal or summary conviction charges against the consumer where the charges have been dismissed, set aside, withdrawn or in respect of which a stay of proceedings has been entered;

(*g*) information as to convictions for crimes or summary offences after seven years from the date of conviction or, where the conviction resulted in imprisonment, from the date of the termination of the sentence, provided information as to convictions for crimes shall not be reported if at any time it is learned that after a conviction a full pardon has been granted;

(*h*) any information given orally unless the content of the oral report is noted in writing in the file; or

(*i*) any other information prescribed by the regulations

ONTARIO

9 (3) A consumer reporting agency shall not include in a consumer report,

(*a*) any credit information based on evidence that is not the best evidence reasonably available;

(*b*) any unfavourable personal information unless it has made reasonable efforts to corroborate the evidence on which the personal information is based, and the lack of corroboration is noted with and accompanies the information;

(*c*) information as to judgments after seven years after the judgment was given, unless the creditor or his agent confirms that it remains unpaid in whole or in part, and such confirmation appears in the file;

(*d*) information as to any judgment against the consumer unless mention is made of the name and, where available, the address of the judgment creditor or his agent as given at the date of entry of the judgment and the amount;

(*e*) information as to the bankruptcy of the consumer after seven years from the date of the discharge except where the consumer has been bankrupt more than once;

(*f*) information regarding any judgments, collections or debts that on their face are statute barred unless it is accompanied by evidence appearing in the file that recovery is not barred by the expiration of a limitation period;

(*g*) information as to the payment or non-payment of taxes or lawfully imposed fines after seven years;

(*h*) information as to convictions for crimes, after seven years from the date of conviction or, where the conviction resulted in imprisonment, from the date of release or parole, provided information as to convictions for crimes shall not be reported if at any time it is learned that after a conviction an absolute discharge or a full pardon has been granted;

(*i*) information regarding writs that are more than seven years old or writs that were issued against the consumer more than twelve months prior to the making of the report unless the consumer reporting agency has ascertained the current status of the action and has a record of this on file;

(*j*) information regarding any criminal charges against the consumer where the charges have been dismissed, set aside or withdrawn;

(*k*) any other adverse item of information where more than seven years have expired since the information was acquired or last reaffirmed;

(*l*) information as to race, creed, colour, sex, ancestry, ethnic origin, or political affiliation; or

(*m*) any information given orally in the consumer report unless the content of the oral report is recorded in the file

PRINCE EDWARD ISLAND

9(3) A consumer reporting agency shall not include in a consumer report

(*a*) any credit information based on evidence that is not the best evidence reasonably available;

(*b*) any unfavourable personal information unless it has made reasonable efforts to corroborate the evidence on which the personal information is based, and the lack of corroboration is noted with and accompanies the information;

(*c*) information as to judgments after ten years after the judgment was filed or renewed unless the creditor or his agent confirms that it remains unpaid in whole or in part and such confirmation appears in the file;

(*d*) information as to any judgment against the consumer unless mention is made of the name and where available, the address of the judgment creditor as given at the date of entry of the judgment and the amount;

(*e*) information as to the bankruptcy of the consumer after seven years from the date of the discharge except where the consumer has been bankrupt more than once;

(*f*) information regarding any judgments, collections or debts that are statute barred unless it is accompanied by evidence appearing in the file that recovery is not barred by the expiration of a limitation period;

(*g*) information as to the payment or nonpayment of taxes or lawfully imposed fines after seven years;

(*h*) information as to convictions for crimes, after seven years from the date of conviction or, where the conviction resulted in imprisonment, from the date of release or parole, provided information as to convictions for crimes shall not be reported if at any time it is learned that after a conviction a full pardon has been granted;

(*i*) information regarding writs that are more than seven years old or writs that were issued against the consumer more than twelve months prior to the making of the report unless the consumer reporting agency has ascertained the current status of the action and has a record of this on file;

(*j*) information regarding any criminal charges against the consumer where the charges have been dismissed, set aside or not proceeded with;

(*k*) any other adverse item of information that is more than seven years old unless it is voluntarily supplied by the consumer to the consumer reporting agency;

(*l*) information as to race, creed, colour, ancestry, ethnic origin, or political affiliation;

(*m*) any information given orally in the consumer report unless the content of the oral report is recorded in the file; or

(*n*) any other information prescribed by the regulations

SASKATCHEWAN

18. No credit reporting agency shall include in a credit report:

(*a*) information regarding any bankruptcy that occurred fourteen or more years prior to the making of the credit report;

(*b*) information regarding writs issued more than twelve months prior to the making of the credit report if the present status of the action is not ascertained;

(*c*) information regarding any writs, judgments or debts that are statute barred;

(*d*) any other adverse factual or investigative information that is more than seven years old unless it is voluntarily supplied by a consumer or is otherwise permitted by this Act; or

(*e*) any investigative information unless reasonable efforts have been made to corroborate the information

(4) A reporting agency shall not maintain in its files or report any information unless the source of the information also appears on the file including the identity of the orginator of the information and the identity of all persons by whom the information was collected or through whom it was disclosed to the reporting agency.

There is no equivalent provision in any jurisdiction.

British Columbia and Newfoundland obtain a similar result under their equivalent of s. 8(3) of the Model draft.

(5) Every reporting agency shall maintain in its file respecting a person all the information of which the person is entitled to disclosure under subsection 1 of section 13.

The only jurisdictions having an equivalent provision are Ontario and Prince Edward Island.

ONTARIO

9.(4) Every consumer reporting agency shall maintain in its file respecting a person all the material and information of which the person is entitled to disclosure under section 11.

PRINCE EDWARD ISLAND

9.(4) Every consumer reporting agency shall maintain in its file respecting a person all the material and information of which the person is entitled to disclosure under section 11

(6) Where a reporting agency gives a report orally, it shall note the particulars and content of the oral report in the file.

In the cases of British Columbia, Nova Scotia, Ontario and Prince Edward Island, a similar result is obtained by adding a clause to the provision equivalent to s. 8(3) of the Model draft as follows:

"No reporting agency shall include in a report

() information given orally, unless the content of the oral report is noted in writing in the file".

9.—(1) Where a reporting agency opens a file respecting a person, the reporting agency shall, within two weeks after doing so, notify the person in writing of the fact.

(2) Every registered reporting agency in operation immediately before this Act comes into force shall, before the day of notify in writing each person in respect of whom the agency maintains a file and who has not been notified under subsection 1 that such file is maintained.

Manitoba is the only other jurisdiction requiring notice of investigation or opening of file.

MANITOBA

3 (1) No person shall conduct, or cause to be conducted, a personal investigation

(*a*) without the express written consent of the subject of the investigation; or

(*b*) unless the subject is given written notice by the user that a personal investigation was conducted and such notice is given within ten days of the granting or denial of the benefit for which the subject has applied

(2) The consent referred to above may be contained in an application for credit, insurance, employment or tenancy if it is clearly set forth in type not less than ten point in size above the subject's signature and the consent shall be deemed to be a continuing consent during the term of any agreement for credit, insurance, employment or tenancy; but if the user refuses any application for increase of any benefits under any such agreement, the user shall give notice of any partial or complete denial of such application as required under sections 6 and 7.

10. Where a reporting agency gives a report respecting a person, the reporting agency shall notify the person of the fact within five days after the report is given, unless the person has previously consented in writing to the report being given.

This provision has no equivalent in other jurisdictions. The obligation of the user and the agency to inform at the request of the consumer remains.

11.—(1) Every person or corporation who obtains a report respecting a person shall, upon the request of such person, advise him of the fact and of the name and address of the reporting agency supplying the report.

BRITISH COLUMBIA

12.(1) No person shall obtain from a reporting agency a report respecting a consumer

(*a*) without the expressed written consent of the consumer; or

(*b*) unless he forthwith notifies the consumer in writing that a consumer report will be obtained.

(2) The notice and consent referred to in subsection (1) may be contained in an application for credit, insurance, employment, or tenancy, if it is clearly set forth in type not less than ten point in size above the signature of the consumer

MANITOBA

3.(1) No person shall conduct, or cause to be conducted, a personal investigation

(*a*) without the express written consent of the subject of the investigation; or

(*b*) unless the subject is given written notice by the user that a personal in-

vestigation was conducted and such notice is given within ten days of the granting or denial of the benefit for which the subject has applied.

(2) The consent referred to above may be contained in an application for credit. Insurance, employment or tenancy if it is clearly set forth in type not less than ten point in size above the subject's signature and the consent shall be deemed to be a continuing consent during the term of any agreement for credit, insurance, employment or tenancy; but if the user refuses any application for increase of any benefits under any such agreement, the user shall give notice of any partial or complete denial of such application as required under sections 6 and 7.

NEWFOUNDLAND

21 Where for any reason the credit risk of a person is assessed, the person assessing the credit risk shall, upon the request of the first-mentioned person, inform the first-mentioned person whether or not a credit report is referred to for the purpose of such assessment and of the name of the credit reporting agency supplying the report

NOVA SCOTIA

11 (1) No person shall procure or cause to be prepared a consumer report respecting a consumer

(*a*) without the express written consent of the consumer; or

(*b*) unless he notifies the consumer in writing that a consumer report has been or will be requested and advises him not later than ten days after the report has been requested of the name and address of the consumer reporting agency

(2) The notice and consent referred to in this Section may be contained in an application for credit, insurance, employment or tenancy if it is clearly set forth in type not less than ten point in size above the signature of the consumer

ONTARIO

10 (1) Every person shall, where requested by a consumer in writing or personally, inform the consumer whether or not a consumer report respecting him has been or is to be referred to in connection with any specified transaction or matter in which such person is engaged, and, if so, of the name and address of the consumer reporting agency supplying the report.

(2) No person shall procure from a consumer reporting agency or cause it to prepare a consumer report containing personal information respecting a consumer unless he notifies the consumer of the fact in writing before the report is requested and, where the consumer so requests in writing or personally, he shall inform the consumer of the name and address of the consumer reporting agency supplying the report

(3) Where a person proposes to extend credit to a consumer and a consumer report containing credit information only is being or may be referred to in connection with the transaction, he shall give notice of the fact to the consumer in writing at the time of the application for credit, or if the application is made orally, orally at the time of the application for credit

(4) Where, before extending credit, the proposed creditor obtains the acceptance or refusal of an assignment or proposed assignment of the credit transaction by an assignee or proposed assignee, subsection 3 applies to the assignee or proposed assignee in the same manner as to the person proposing

to extend credit, but the giving of a notice under subsection 3 by a person proposing to extend credit or under this subsection by his assignee or proposed assignee shall be deemed to be sufficient notice by both.

PRINCE EDWARD ISLAND

10 (1) Every person shall, where requested by a consumer in writing or personally, inform the consumer whether or not a consumer report respecting him has been or is to be referred to in connection with any specified transaction or matter in which such person is engaged, and, if so, of the name and address of the consumer reporting agency supplying the report

(2) No person shall procure from a consumer reporting agency or cause it to prepare a consumer report containing information respecting a consumer unless he notifies the consumer of the fact before the report is requested or he has already obtained the consent of the consumer, and where the consumer so requests in writing or personally, he shall inform the consumer of the name and address of the consumer reporting agency supplying the report; the giving of a notice under this subsection by a person proposing to extent [extend] credit, or by his assignee or proposed assignee, shall be deemed to be sufficient notice by both.

SASKATCHEWAN

21. Every person who has obtained a credit report concerning a consumer shall, upon the request of the consumer, state the date of any credit report obtained within the preceding twelve months respecting the consumer and shall state the name and address of the credit reporting agency that furnished the credit report

(2) Where credit involving a person is denied or the charge for such credit is increased either wholly or partly because of information received from a reporting agency or a person or corporation other than a reporting agency, the user of such information shall deliver to the person at the time such action is communicated to him notice of the fact and,

(*a*) of the nature of the information where the information is furnished by a person or corporation other than a reporting agency; or

(*b*) of the name and address of the reporting agency, where the information is furnished by a reporting agency.

BRITISH COLUMBIA

13 Where a user of information contained in a report denies a benefit in whole or in part to a consumer, or increases the cost of a benefit to a consumer, the user shall advise the consumer in writing immediately

(*a*) that a benefit has been denied him in whole or in part, or increased in cost;

(*b*) of his right to have disclosed to him all information pertaining to him in the

files of the reporting agency from whom the report was obtained;

(*c*) of the name and address of the reporting agency; and

(*d*) of the source and nature of information obtained elswhere than from a reporting agency

MANITOBA

6 Where a personal investigation has been conducted and the subject is subsequently denied a benefit, in whole or in part, the user shall, within ten days from the date of the denial, advise the subject in writing of the denial and the right of the subject to be advised as to any information obtained through the investigation, in accordance with section 7

7 (1) When a subject is notified of a denial, in whole or in part, of an application for a benefit, he has the right at any time within thirty days after the notification is given under section 6 to be informed by the user.

(*a*) of the name and address of any personal reporting agency from which information was obtained;

(*b*) as to the source and detail of all factual information obtained elsewhere than from a personal reporting agency;

(*c*) as to the nature of all investigative information obtained elsewhere than from a personal reporting agency; and

(*d*) as to his right to protest any information contained in the personal report or the personal file and the manner in which a protest may be made.

(2) Where a subject is notified as to the name and address of any personal reporting agency in accordance with clause (*a*) of subsection (1), the personal reporting agency shall disclose to the subject, within twenty-four hours of a demand by the subject

(*a*) the source and detail of all factual information contained in the personal report made by the personal reporting agency to the user;

(*b*) the nature of any investigative information contained in the personal report made by the personal reporting agency to the user; and

(*c*) the subject's right to protest any information contained in the personal report and the manner in which a protest may be made

NEWFOUNDLAND

21. Where for any reason the credit risk of a person is assessed, the person assessing the credit risk shall, upon the request of the first-mentioned person, inform the first-mentioned person whether or not a credit report is referred to for the purpose of such assessment and of the name of the credit reporting agency supplying the report.

NOVA SCOTIA

11.(3) Where a user of information contained in a consumer report denies a benefit in whole or in part to a consumer, or increases the cost of the benefit to a consumer, the user shall advise the consumer in writing immediately

(*a*) that a benefit has been denied him in whole or in part or increased in cost;

(*b*) of his right to have disclosed to him all information pertaining to him in the files of the consumer reporting agency from whom the report was obtained;

(*c*) of the name and address of the consumer reporting agency;

(*d*) of the source and nature of information obtained elsewhere than from a consumer reporting agency.

ONTARIO

10 (7) Where a benefit is denied to a consumer or a charge to a consumer is increased either wholly or partly because of information received from a consumer reporting agency or a person other than a consumer reporting agency, the user of such information shall deliver to the consumer at the time such action is communicated to the consumer notice of the fact and, upon the request of the consumer made within sixty days after such notice, shall inform the consumer,

(*a*) of the nature and source of the information where the information is furnished by a person other than a consumer reporting agency; or

(*b*) of the name and address of the consumer reporting agency, where the information is furnished by a consumer reporting agency,

and the notice required to be given by the user under this subsection shall contain notice of the consumer's right to request the information referred to in clauses *a* and *b* and the time limited therefor

PRINCE EDWARD ISLAND

10.(3) Where a benefit is denied to a consumer or a charge to a consumer is increased either wholly or partly because of information received from a consumer reporting agency or a person other than a consumer reporting agency, the user of such information shall forthwith advise the consumer at the time such action is communicated to the consumer notice of the fact and, upon the request of the consumer made within sixty days after such notice, shall inform the consumer,

(*a*) of the nature and source of the information where the information is furnished by a person other than a consumer reporting agency; or

(*b*) of the name and address of the consumer reporting agency, where the information is furnished by a consumer reporting agency,

and the notice required to be given by the user under this subsection shall contain notice of the consumer's right to request the information referred to in clauses (*a*) and (*b*) and the time limited therefor

SASKATCHEWAN

No equivalent provision.

(3) No person or corporation extending credit to a person shall divulge to other credit grantors any information as to transactions or experiences between himself and the person unless he notifies the person in writing at the time of the application for credit that he intends to do so.

British Columbia, Nova Scotia, Prince Edward Island and Saskatchewan have no equivalent provision. Manitoba and Newfoundland by wider definitions, include as reports information provided to the user from any source. Ontario has an equivalent provision as follows:

10 (5) No person extending credit to a consumer shall divulge to other credit grantors or to a consumer reporting agency any personal information respecting the consumer except with the consent of the consumer or on his referral unless he notifies the consumer in writing at the time of the application for credit that he intends to do so

12. No person or corporation shall obtain a report from a reporting agency that is not registered under this Act, except a reporting agency located outside (*jurisdiction*) in a jurisdiction that has legislation that, in the opinion of the Lieutenant Governor in Council, is equivalent to the provisions of this Act and the regulations and that is so designated by the regulations.

BRITISH COLUMBIA

No corresponding provision.

MANITOBA

11.(2) Where a personal report is made by a personal reporting agency to a user in Manitoba and the office of the personal reporting agency is not located in the Province of Manitoba, the user is responsible for complying with subsection (1)

(3) Where a personal reporting agency makes a report to a user whose office is located outside Manitoba, the personal reporting agency is responsible for complying with subsection (1)

NEWFOUNDLAND

No corresponding provision.

NOVA SCOTIA

14.(3) Where a consumer report is made by a consumer reporting agency to a user in Nova Scotia and the office of the consumer reporting agency is not located in the Province of Nova Scotia, the user is responsible for complying with subsection (2)

(4) Where a consumer reporting agency makes a report to a user whose office is located outside Nova Scotia, the consumer reporting agency is responsible for complying with subsection (2).

ONTARIO

No corresponding provision.

PRINCE EDWARD ISLAND

12.(3) Where a consumer report is made by a consumer reporting agency to a user in Prince Edward Island and the office of the consumer reporting agency is not located in the Province of Prince Edward Island, the user is responsible for complying with subsection (2)

(4) Where a consumer reporting agency makes a report to a user whose office is

located outside Prince Edward Island, the consumer reporting agency is responsible for complying with subsection (2)

SASKATCHEWAN

No corresponding provision.

13.—(1) Every reporting agency shall, at the written request of a person and during normal business hours clearly and accurately disclose to the person, without charge,

(*a*) the nature and substance of all information in its files pertaining to the person at the time of the request;

(*b*) the sources of information of record;

(*c*) the names of the recipients of any report pertaining to the person that it has furnished,

(*i*) for employment purposes, within the two year period preceding the request, and

(*ii*) for any other purpose, within the six month period preceding the request;

(*d*) copies of any written report made pertaining to the person to any other person or corporation or, where the report was oral, particulars of the content of such oral report,

and shall inform the person of his right to protest any information contained in the file under sections 14 and 15 and the manner in which a protest may be made.

BRITISH COLUMBIA

14 (1) Subject to subsection (8), every reporting agency shall, at the written request of a consumer and during normal business hours, clearly and accurately disclose to the consumer, without charge, unless a fee is prescribed by regulation,

(*a*) the nature and substance of all information in the file respecting that consumer at the date of the request;

(*b*) the sources of its information, unless the consumer is able to readily ascertain those sources;

(*c*) the names of the recipients of any report respecting that consumer that it has furnished within the preceding twelve months; and

(*d*) where requested by the consumer, copies of any written reports furnished within the preceding twelve months respecting that consumer or, where the report was oral, particulars of the content of such oral report,

and shall inform the consumer of his right to explain or protest any information contained in the file under section 15 or 16 and the manner in which an explanation or protest shall be made.

MANITOBA

7.(2) Where a subject is notified as to the name and address of any personal reporting agency in accordance with clause (*a*) of subsection (1), the personal reporting agency shall disclose to the subject, within twenty-four hours of a demand by the subject

(*a*) the source and detail of all factual information contained in the personal report made by the personal reporting agency to the user;

(*b*) the nature of any investigative information contained in the personal report made by the personal reporting agency to the user; and

(*c*) the subject's right to protest any information contained in the personal report and the manner in which a protest may be made

8.(1) Any person may enquire of a personal reporting agency at any time, but not more frequently than at intervals of six months, unless a notification has been received under section 7, as to whether the personal reporting agency maintains a personal file on him and if the personal reporting agency maintains such a file, the personal reporting agency shall disclose to that person the information as required under subsection (2) of section 7 upon payment by the person of such fee as may be prescribed by the regulations

NEWFOUNDLAND

22 (1) A credit reporting agency shall, upon the request of any person, and without charge,

(*a*) disclose to such person whether or not it has collected or retains information respecting him; and

(*b*) produce for examination in written form, clearly understandable to such person, the contents of all such credit information

NOVA SCOTIA

12 (1) Every consumer reporting agency shall, at the written request of a consumer and during normal business hours, clearly and accurately disclose to the consumer, without charge,

(*a*) the nature and substance of all information in its files pertaining to the consumer at the time of the request;

(*b*) the sources of its information unless they can be readily ascertained by the consumer;

(*c*) the names of the recipients of any consumer report pertaining to the consumer that it has furnished within the preceding twelve months;

(*d*) copies of any written report made pertaining to the consumer to any other person or, where the report was oral, particulars of the content of such oral report,

and shall inform the consumer of his right to protest any information contained in the file under Sections 13 and 14 and the manner in which a protest may be made

ONTARIO

11.(1) Every consumer reporting agency shall, at the written request of a consumer

and during normal business hours clearly and accurately disclose to the consumer, without charge,

(*a*) the nature and substance of all information in its files pertaining to the consumer at the time of the request;

(*b*) the sources of credit information;

(*c*) the names of the recipients of any consumer report pertaining to the consumer that it has furnished, containing,

(*i*) personal information, within the one year period, preceding the request and

(*ii*) credit information, within the six month period preceding the request;

(*d*) copies of any written consumer report pertaining to the consumer made to any other person or, where the report was oral, particulars of the content of such oral report, furnished,

(*i*) where the report contains personal information, within the one year period preceding the request, and

(*ii*) where the report contains credit information, within the six month period preceding the request,

and shall inform the consumer of his right to protest any information contained in the file under sections 12 and 13 and the manner in which a protest may be made.

PRINCE EDWARD ISLAND

11.(1) Every consumer reporting agency shall, at the written request of a consumer and during normal business hours clearly and accurately disclose to the consumer, without charge,

(*a*) the nature and substance of all information in its files pertaining to the consumer at the time of the request;

(*b*) the sources of its credit information or personal information;

(*c*) the names of the recipients of any consumer report pertaining to the consumer that it has furnished, within the preceding twelve months;

(*d*) contents of any written consumer report pertaining to the consumer made to any other person, or where the report was oral, particulars of the content of such oral report,

and shall inform the consumer of his right to protest any information contained in the file under sections 12 and 13 and the manner in which a protest may be made

SASKATCHEWAN

22 Every credit reporting agency shall, upon request of a consumer, state whether or not it has furnished a credit report concerning the consumer to any person within the preceding twelve months and shall state the name and address of each person to whom any such credit report was furnished

23. Every credit reporting agency shall, upon the request of, and after the presentation of reasonable identification by, a consumer, clearly and accurately disclose to the consumer the nature and substance of all information in its file respecting the consumer at the time of the request; but a credit reporting agency is not required to disclose the sources of investigative information

(2) A reporting agency shall withhold from the disclosures required by subsection 1 any medical information pertaining to the person which the person's own physician has specifically requested in writing be withheld from the person in his own best interest.

BRITISH COLUMBIA

14 (8) A reporting agency may withhold from the disclosure required by this section any medical information obtained with the written consent of the consumer in respect of which the consumer's own physician has requested the reporting agency in writing that it be withheld from the consumer in his own best interest

MANITOBA

No equivalent provision.

NEWFOUNDLAND

No equivalent provision.

NOVA SCOTIA

12 (2) A consumer reporting agency may withhold from the disclosures required by subsection (1) any medical information obtained from the consumer's own physician and which the physician has specifically requested in writing be withheld from the consumer in his own best interest.

ONTARIO

11 (2) A consumer reporting agency shall withhold from the disclosures required by subsection 1 any medical information obtained with the written consent of the consumer which the consumer's own physician has specifically requested in writing be withheld from the consumer in his own best interest

PRINCE EDWARD ISLAND

No equivalent provision.

SASKATCHEWAN

No equivalent provision.

(3) the disclosures required under this section shall be made to the person,

(*a*) in person if he appears in person and furnishes proper identification;

(*b*) by telephone if he has made a written request, with sufficient identification, for telephone disclosure and

the toll charge, if any, for the telephone call is prepaid by or charged directly to the person.

BRITISH COLUMBIA

14 (2) The disclosures required under this section shall be made to a consumer

(*a*) in person, if he appears in person and furnishes proper identification; or

(*b*) by telephone, if he has made written request, with sufficient identification, for telephone disclosure and the toll charge, if any, for the telephone call is prepaid by or charged directly to the consumer.

MANITOBA

9 Where a person has the right to obtain information under section 7 or 8 or under this section he may obtain the information by

(*a*) properly identifying himself by personally attending at the office of the user or the personal investigation agency and, accompanied by a witness if he so wishes; or

(*b*) by written request to the user or personal reporting agency if his identity is verified in the writing by a commissioner for oaths

NEWFOUNDLAND

No equivalent provision.

NOVA SCOTIA

12.(3) The disclosures required under this Section shall be made to the consumer

(*a*) in person if he appears in person and furnishes proper identification;

(*b*) by telephone if he has made a written request, with sufficient identification, for telephone disclosure and the toll charge, if any, for the telephone call is prepaid by or charged directly to the consumer.

ONTARIO

11 (3) The disclosures required under this section shall be made to the consumer,

(*a*) in person if he appears in person and furnishes proper identification;

(*b*) by telephone if he has made a written request, with sufficient identification, for telephone disclosure and the toll charge, if any, for the telephone call is prepaid by or charged directly to the consumer

PRINCE EDWARD ISLAND

11.(2) The disclosures required under this section shall be made to the consumer

(*a*) in person if he appears in person and furnishes proper identification;

(*b*) by telephone if he with sufficient identification, has made a written request for telephone disclosure and the toll charge, if any, for the telephone call is prepaid by or charged directly to the consumer.

SASKATCHEWAN

23 Every credit reporting agency shall, upon the request of, and after the presentation of reasonable identification by, a consumer, clearly and accurately disclose

to the consumer the nature and substance of all information in its file respecting the consumer at the time of the request; but a credit reporting agency is not required to disclose the sources of investigative information.

(4) Every reporting agency shall provide trained personnel to explain to a person any information furnished to him under this section.

BRITISH COLUMBIA

14 (3) Every reporting agency shall provide properly trained staff to explain to the consumer any information furnished to him under this section

MANITOBA

No equivalent provision.

NEWFOUNDLAND

No equivalent provision.

NOVA SCOTIA

12 (4) Every consumer reporting agency shall provide trained personnel to explain to the consumer any information furnished to him under this Section

ONTARIO

11.(4) Every consumer reporting agency shall provide trained personnel to explain to the consumer any information furnished to him under this section

PRINCE EDWARD ISLAND

11.(3) Every consumer reporting agency shall provide trained personnel to explain to the consumer any information furnished to him under this section

SASKATCHEWAN

No equivalent provision.

(5) A person shall be permitted to be accompanied by one other person of his choosing to whom the reporting agency may be required by the person to disclose his file.

BRITISH COLUMBIA

14 (4) The consumer shall be permitted to be accompanied by one other person of his choosing to whom the reporting agency may be required by the consumer to disclose his file

MANITOBA
No equivalent provision.

NEWFOUNDLAND
No equivalent provision.

NOVA SCOTIA

12 (5) The consumer shall be permitted to be accompanied by one other person of his choosing to whom the consumer reporting agency may be required by the consumer to disclose his file

ONTARIO

11 (5) The consumer shall be permitted to be accompanied by one other person of his choosing to whom the consumer reporting agency may be required by the consumer to disclose his file

PRINCE EDWARD ISLAND

11 (4) The consumer shall be permitted to be accompanied by one other person of his choosing to whom the consumer reporting agency may be required by the consumer to disclose his file

SASKATCHEWAN

24 A consumer may be accompanied by one witness who shall identify himself to the credit reporting agency and in whose presence a credit reporting agency shall make the disclosures required by section 23

(6) The reporting agency shall permit the person to whom information is disclosed under this section to make an abstract thereof.

BRITISH COLUMBIA

14 (5) The reporting agency shall permit the consumer to whom information is disclosed under this section to make an abstract thereof

MANITOBA
No equivalent provision.

NEWFOUNDLAND

22.(2) The credit reporting agency concerned shall permit a person to whom credit information is disclosed under subsection (1) to make a copy thereof

NOVA SCOTIA

12.(6) The consumer reporting agency shall permit the consumer to whom information is disclosed under this Section to make an abstract thereof

ONTARIO

11 (6) The consumer reporting agency shall permit the consumer to whom information is disclosed under this section to make an abstract thereof

PRINCE EDWARD ISLAND

11 (5) The consumer reporting agency shall permit the consumer to whom information is disclosed under this section to make an abstract thereof

SASKATCHEWAN

No equivalent provision.

(7) A reporting agency shall require reasonable identification of the person and, if he is accompanied, of the person accompanying him before making disclosures under this section.

BRITISH COLUMBIA

14.(6) A reporting agency shall require reasonable identification of the consumer and, if he is accompanied, the person accompanying him, before making disclosures under this section.

MANITOBA

No equivalent provision.

NEWFOUNDLAND

No equivalent provision.

NOVA SCOTIA

12.(7) A consumer reporting agency shall require reasonable identification of the consumer and a person accompanying him before making disclosures under this Section

ONTARIO

11.(7) A consumer reporting agency shall require reasonable identification of the consumer and a person accompanying him before making disclosures under this section.

PRINCE EDWARD ISLAND

11.(6) A consumer reporting agency shall require reasonable identification of the consumer and a person accompanying him before making disclosures under this section

SASKATCHEWAN

23. Every credit reporting agency shall, upon the request of, and after the presentation of reasonable identification by, a consumer, clearly and accurately disclose to the consumer the nature and substance of all information in its file respecting the consumer at the time of the request; but a credit reporting agency is not required to disclose the sources of investigative information

(8) A reporting agency shall not require any undertaking or waiver or release of any right or chose in action as a condition precedent to the access of a person to his file under this section.

BRITISH COLUMBIA

14 (7) No reporting agency shall require a consumer to give any undertaking, or waive, or release any right or chose in action as a condition precedent to his obtaining access to his file and the disclosure of information therein under this section

MANITOBA

No equivalent provision.

NEWFOUNDLAND

No equivalent provision.

NOVA SCOTIA

12 (8) A consumer reporting agency shall not require a consumer to give any undertaking or waive or release any right or chose in action as a condition precedent to his access to his file under this Section

ONTARIO

11 (8) A consumer reporting agency shall not require a consumer to give any undertaking or waive or release any right as a condition precedent to his access to his file under this section.

PRINCE EDWARD ISLAND

11 (7) A consumer reporting agency shall not require a consumer to give an undertaking or waive or release any right as a condition precedent to his access to his file under this section.

SASKATCHEWAN

No corresponding provision.

(9) A person may deliver to a reporting agency in writing of not more than one hundred words an explanation or additional information respecting the circumstances surrounding any item of information about him in his file, and the reporting agency shall maintain such explanation or additional information in the file accompanying the item and include it in any report given containing the item.

BRITISH COLUMBIA

15 A person may deliver to a reporting agency, in writing of not more than one hundred words, an explanation, or additional information, respecting the cir-

cumstances surrounding any item of information referring to him in his file, and the reporting agency shall maintain such explanation or additional information in the file accompanying the item and include it in any report given containing the item

All other jurisdictions have no corresponding provision.

14.—(1) Where a person disputes the accuracy or completeness of any item of information contained in his file, the reporting agency shall use its best endeavours to confirm or complete the information and shall correct, supplement or delete the information in accordance with good practice.

BRITISH COLUMBIA

16.(1) Where the consumer disputes the accuracy and completeness of any information referring to him in his file in a reporting agency, he may file a statement of protest, in writing of not more than one hundred words, with the reporting agency.

(2) Where a statement of protest is filed in accordance with subsection (1), the reporting agency shall use its best endeavours to confirm or complete the information and shall correct, supplement, or delete the information in accordance with good practice

MANITOBA

10 Where the subject of a report protests any information contained in a personal report or in a personal file, he has the right to file a statement of protest with the user or the personal reporter or both.

11.(1) Where the subject files a protest with a user or a personal reporter, or any person files a protest with a personal reporting agency, the user, personal reporter or personal investigation agency shall immediately

(*a*) attempt to verify the information and where the factual or investigative information cannot be verified, expunge the information from the personal file; or

(*b*) where the veracity of the information is sustained, record the protest in the personal file;

and report the action taken

(*c*) to the subject of the personal report or personal file; and

(*d*) to any person to whom the personal report may have been furnished within the previous sixty days.

(2) Where a personal report is made by a personal reporting agency to a user in Manitoba and the office of the personal reporting agency is not located in the Province of Manitoba, the user is responsible for complying with subsection (1).

NEWFOUNDLAND

No corresponding provision.

NOVA SCOTIA

13.(1) Where a consumer disputes the accuracy of any information relating to him in the files of a consumer reporting agency he may file a statement of protest with the consumer reporting agency or the user or both

ONTARIO

12 (1) Where a consumer disputes the accuracy or completeness of any item of information contained in his file, the consumer reporting agency within a reasonable time shall use its best endeavours to confirm or complete the information and shall correct, supplement or delete the information in accordance with good practice.

PRINCE EDWARD ISLAND

12 (1) Where a consumer disputes the accuracy or completeness of any item of information contained in his file the consumer reporting agency within a reasonable time shall use its best endeavours to confirm or complete the information and shall correct, supplement or delete the information in accordance with good practice

SASKATCHEWAN

25.(1) Where a consumer disputes the completeness or accuracy of any information respecting the consumer contained in the file of a credit reporting agency and gives notice thereof in writing to the agency, the agency shall within a reasonable time investigate and record the current status of that information

(2) Where a reporting agency corrects, supplements or deletes information under subsection 1, the reporting agency shall, at the request of the person who is the subject of the file, furnish notification of the correction, supplement or deletion to such of the persons or corporations to whom reports based on the unamended file were given within two years before the correction, supplement or deletion is made as are designated by the person who is the subject of the file.

BRITISH COLUMBIA

16.(3) Where a reporting agency corrects, supplements, or deletes information under subsection (2), the reporting agency shall, unless otherwise requested by the consumer, furnish notification of the correction, supplement, or deletion to every person to whom a report based on the unamended file was given within one year before the correction, supplement, or deletion is made

MANITOBA

11 (1) Where the subject files a protest with a user or a personal reporter, or any person files a protest with a personal reporting agency, the user, personal reporter or personal investigation agency shall immediately

(*a*) attempt to verify the information and where the factual or investigative

information cannot be verified, expunge the information from the personal file; or

(*b*) where the veracity of the information is sustained, record the protest in the personal file;

and report the action taken

(*c*) to the subject of the personal report or personal file; and

(*d*) to any person to whom the personal report may have been furnished within the previous sixty days

NEWFOUNDLAND

No corresponding provision.

NOVA SCOTIA

13 (2) Where a statement of protest is filed in accordance with subsection (1) the consumer reporting agency or the user shall immediately

(*a*) attempt to verify the information and where the information cannot be verified expunge the information from the consumer's file; or

(*b*) where the veracity of the information is sustained, record the protest in the consumer's file

and report the action taken

(*c*) to the consumer; and

(*d*) to any person to whom it furnished a consumer report within the preceding sixty days

ONTARIO

12.(2) Where a consumer reporting agency corrects, supplements or deletes information under subsection 1, the consumer reporting agency shall furnish notification of the correction, supplement or deletion to,

(*a*) all persons who have been supplied with a consumer report based on the unamended file within sixty days before the correction, supplement or deletion is made; and

(*b*) the persons specifically designated by the consumer from among those who have been supplied with a consumer report based on the unamended file,

(*i*) where the report contains personal information, within the one year period preceding the correction, supplement or deletion, and

(*ii*) where the report contains credit information, within the six month period preceding the correction, supplement or deletion.

PRINCE EDWARD ISLAND

12.(2) Where a consumer reporting agency corrects, supplements or deletes information under subsection (1), the consumer reporting agency shall furnish notification of the correction, supplement or deletion to

(*a*) the registrar and all persons who have been supplied with a consumer report based on the unamended file within sixty days before the correction, supplement or deletion is made; and

(*b*) the persons specifically designated by the consumer from among those who have been supplied with a consumer report based on the un-

amended file, where the report contains personal or credit information, within the one year period preceding the correction, supplement or deletion;

(*c*) to the consumer

SASKATCHEWAN

25 (5) Where:

(*a*) a credit reporting agency deletes information from the file respecting a consumer; or

(*b*) a statement of dispute is filed with a credit reporting agency by a consumer under this section;

the credit reporting agency shall forthwith notify every person to whom a credit report respecting the consumer was furnished during the twelve months immediately preceding of the deletion of the information or the details of the dispute, as the case may be

15.—(1) The Registrar may order a reporting agency to amend or delete any information, or by order restrict or prohibit the use of any information, that in his opinion is inaccurate or incomplete or that does not comply with the provisions of this Act or the regulations.

(2) The Registrar may order a reporting agency to furnish notification to any person who has received a report of any amendments, deletions, restrictions or prohibitions imposed by the Registrar.

BRITISH COLUMBIA

17 (1) The registrar may order a reporting agency to amend or delete any information, or may, by order, restrict or prohibit the use of any information that, in his opinion, is inaccurate or incomplete or does not comply with this Act or the regulations

(2) The registrar may order a reporting agency to furnish notification to any person who has received a consumer report of any amendments, deletions, restrictions, or prohibitions imposed by him

MANITOBA

No corresponding provision.

NEWFOUNDLAND

23 The Registrar may direct the alteration or amendment or restriction or prohibition of the use of any credit information that in his opinion is inaccurate or does not comply with the provisions of this Act, and the credit reporting agency concerned shall comply with the Registrar's directions under this section.

NOVA SCOTIA

14 (1) The Director may order a consumer reporting agency to amend or delete

any information, or by order restrict or prohibit the use of any information, that in his opinion is inaccurate or incomplete or that does not comply with the provisions of this Act or the regulations.

(2) The Director may order a consumer reporting agency to furnish notification to any person who has received a consumer report of any amendments, deletions, restrictions or prohibitions imposed by the Director.

ONTARIO

13 (1) The Registrar may order a consumer reporting agency to amend or delete any information, or by order restrict or prohibit the use of any information, that in his opinion is inaccurate or incomplete or that does not comply with the provisions of this Act or the regulations

(2) The Registrar may order a consumer reporting agency to furnish notification to any person who has received a consumer report of any amendments, deletions, restrictions or prohibitions imposed by the Registrar.

PRINCE EDWARD ISLAND

13.(1) The registrar may order a consumer reporting agency to amend or delete any information or by order restrict or prohibit the use of any information that in his opinion is inaccurate or incomplete or that does not comply with the provisions of this Act or the regulations

(2) The registrar may order a consumer reporting agency to furnish notification to any person who has received a consumer report of any amendments, deletions, restrictions or prohibitions imposed by the registrar.

SASKATCHEWAN

No corresponding provision.

(Insert appropriate provisions for hearings and appeals respecting decision of Registrar under this section)
(00). At a hearing before (*the tribunal holding hearing to review decisions of Registrar*), the person to whom information in the files of a reporting agency pertains may require the reporting agency to disclose the source of the information.

The provision requires disclosure of sources of circumstantial information where its accuracy is in issue at a hearing. In British Columbia, Nova Scotia, Newfoundland and Prince Edward Island the provision is not necessary as disclosure of all sources is required in the first place. Ontario has an equivalent as follows:

13 (4) At a hearing before the Tribunal for the purposes of subsection 3, the Tribunal may require the consumer reporting agency to disclose the source of any information contained in its files.

16. Every reporting agency shall, within five days after the event, notify the Registrar in writing of,

(*a*) any change in its address for service;

(*b*) any change in the officers in the case of a corporation or of the members in the case of a partnership; and

(*c*) in the case of a corporation, any change in the ownership of its shares.

BRITISH COLUMBIA

9 Every reporting agency shall, within five days after the event, notify the registrar in writing of

(*a*) any change in its registered address or addresses;

(*b*) any change in its officers or directors in the case of a corporation, or of its members in the case of a partnership; and

(*c*) in the case of a corporation, any change in the beneficial ownership of its shares

MANITOBA

No corresponding provision.

NEWFOUNDLAND

14 A registered credit reporting agency shall, within five days of such change, notify the Registrar in writing of

(*a*) any change in such agency's address for service;

(*b*) any change in the officers in the case of a corporation or of the members in the case of a partnership; and

(*c*) in the case of a corporation, any change in the ownership of its shares.

NOVA SCOTIA

15 Every consumer reporting agency shall, within five days after the event, notify the Director in writing of

(*a*) any change in its address for service;

(*b*) any change in the officers in the case of a corporation or of the members in the case of a partnership; and

(*c*) in the case of a corporation, any change in the ownership of its shares

ONTARIO

14. Every consumer reporting agency shall, within five days after the event, notify the Registrar in writing of,

(*a*) any change in its address for service;

(*b*) any change in the officers in the case of a corporation or of the members in the case of a partnership; and

(*c*) any commencement or termination of employment of a personal information investigator

PRINCE EDWARD ISLAND

14 Every consumer reporting agency shall, within five days after the event, notify the registrar in writing of

(*a*) any change in its address for service;

(*b*) any change in the officers in the case of a corporation or of the members in the case of a partnership; and

(*c*) in the case of a corporation, any change in the ownership of its shares

SASKATCHEWAN

6 (3) Every licensee shall, within ten days after a change in his address for service, notify the registrar in writing of his new address for service

17. *(insert appropriate provisions for inspections of reporting agencies)*

18.—(1) Any notice or order required to be given, delivered or served under this Act or the regulations is sufficiently given, delivered or served if delivered personally or sent by registered mail addressed to the person or corporation to whom delivery or service is required to be made at his last known address.

(2) Where service is made by registered mail, the service shall be deemed to be made on the third day after the day of mailing unless the person on whom service is being made establishes that he did not, acting in good faith, through absence, accident, illness or other cause beyond his control receive the notice or order until a later date.

19.—(1) Where it appears to the Registrar that any person or corporation does not comply with any provision of this Act, the regulations or an order made under this Act, notwithstanding the imposition of any penalty in respect of such non-compliance and in addition to any other rights he may have, the Registrar may apply to a judge of the High Court for an order directing such person or corporation to comply with such provision, and upon the application, the judge may make such order or such other order as the judge thinks fit.

(2) An appeal lies to the Court of Appeal from an order made under subsection 1.

20. No person or corporation shall knowingly supply false or misleading information to another who is engaged in making a report.

Every jurisdiction except Newfoundland has a provision virtually identical to this model draft provision.

See: British Columbia — section 24
Manitoba — section 15
Nova Scotia — section 22
Ontario — section 21
Prince Edward Island — section 21
Saskatchewan — section 26

21.—(1) Every person or corporation who,

(*a*) knowingly, furnishes false information in any application under this Act or in any statement or return required to be furnished under this Act or the regulations;

(*b*) fails to comply with any order, direction or other requirement made under this Act; or

(*c*) contravenes any provision of this Act or the regulations,

and every director or officer of a corporation who knowingly concurs in such furnishing, failure or contravention is guilty of an offence and on summary conviction is liable to a fine of not more than $2,000 or to imprisonment for a term of not more than one year, or to both.

(2) Where a corporation is convicted of an offence under subsection 1, the maximum penalty that may be imposed upon the corporation is $25,000 and not as provided therein.

(3) No proceeding under clause *a* of subsection 1 shall be commenced more than one year after the facts upon which the proceeding is based first came to the knowledge of the Registrar.

(4) No proceeding under clause *b* or *c* of subsection 1 shall be commenced more than two years after the time when the subject matter of the proceeding arose.

22. A statement as to,

(*a*) the registration or non-registration of any person or corporation;

(*b*) the filing or non-filing of any document or material required or permitted to be filed with the Registrar;

(*c*) the time when the facts upon which proceedings are based first came to the knowledge of the Registrar; or

(*d*) any other matter pertaining to such registration, non-registration, filing or non-filing,

purporting to be certified by the Registrar is, without proof of the office or signature of the Registrar, receivable in evidence as *prima facie* proof of the facts stated therein for all purposes in any action, proceeding or prosecution.

23. The Lieutenant Governor in Council may make regulations,

(*a*) exempting any class of persons or corporations from this Act or the regulations or any provision thereof;

(*b*) governing applications for registration or renewal of registration and prescribing terms and conditions of registration;

(*c*) requiring the payment of fees on application for registration or renewal of registration, and prescribing the amounts thereof;

(*d*) requiring registered reporting agencies to be bonded in such form and terms and with such collateral security as are prescribed, and providing for the forfeiture of bonds and the disposition of the proceeds;

(*e*) requiring and governing the books, accounts and records that shall be kept by reporting agencies;

(*f*) designating jurisdictions that, in the opinion of the Lieutenant Governor in Council, have legislation equivalent to the provisions of this Act and the regulations for the purposes of section 12;

(*g*) prescribing information that must be contained in a report;

(*h*) requiring reporting agencies to make returns and furnish information to the Registrar;

(*i*) prescribing forms for the purposes of this Act and providing for their use;

(*j*) requiring any information required to be furnished or contained in any form or return to be verified by affidavit.

Additional authority to make regulations in existing Acts:

BRITISH COLUMBIA

27. (*f*) prescribing information that may not be reported by a reporting agency or contained in its files;

MANITOBA

20. (*d*) exempting certain bulletins, journals or other publications from the application of this Act;

NEWFOUNDLAND

25 (*k*) providing for the approval of forms to be used by credit reporting agencies or any class or classes thereof;

(*l*) requiring any credit reporting agency or class or classes of credit reporting agencies to submit forms used or to be used by him or them to the Registrar for approval;

(*m*) requiring the use by credit reporting agencies or any class or classes thereof of forms approved by the Registrar and prohibiting the use by credit reporting agencies or any prescribed class or classes thereof of forms not approved by the Registrar;

(*n*) prescribing additional information that may be collected, stored, or reported by a credit reporting agency;

NOVA SCOTIA

25 (*f*) prescribing information that may not be reported by a consumer reporting agency or contained in its files;

ONTARIO

24. (*g*) prescribing information that may not be reported by a consumer reporting agency or contained in its files;

PRINCE EDWARD ISLAND

24 (*f*) prescribing information that may not be reported by a consumer reporting agency or contained in its files;

APPENDIX K

(See page 27)

Judicial Decisions Affecting Model Acts

REPORT OF THE PRINCE EDWARD ISLAND COMMISSIONERS

The Prince Edward Island Commissioners submit their report on the judicial decisions made in Canada reported and published during the 1974 calendar year that affect the Model Acts adopted by the Uniform Law Conference of Canada.

The decisions are listed in the annexed schedule Act by Act in their alphabetical order.

The report was prepared pursuant to a resolution adopted at the 1974 Conference.

James W. MacNutt
Horace Carver
Commissioners

SCHEDULE

ACCUMULATIONS ACT

Re Fairfoull (1974) 41 D.L.R (3rd) 152 (B.C Supreme Court)

The testator by his will, left a share of the income from his estate to his son and also a share of the residue of the estate upon one of the testator's daughters predeceasing the son. The son predeceased his sisters without issue. The will did not make provision for the disposition of the income in the event of the son's death.

Hutcheon, Co. Ct. J. held at page 156, that ". . . the income which would have been paid to the son had he lived follows the destination of and is an accretion to the residue . . . The period of accretion cannot extend beyond August 14, 1978 (21 years after death of testator) by reason of the *Accumulations Act*. Thereafter the income is to be paid as on an intestacy."

BILLS OF SALE ACT

Re Bentley (1974) 1 O R. (2d) 120 (Supreme Court of Ontario) in Bankruptcy.

The *Bills of Sale and Chattel Mortgages Act* requires that every chattel mortgage must contain a description of the goods and chattels mortgaged sufficiently to identify them. The chattel mortgage referred to a 1967 Ford automobile and to "household furniture and

chattels". The question was whether that description would include a Bellevue trailer.

Houlden J. at page 121, held that "The reason for this requirement (i.e. of describing the goods) is to enable unsecured creditors of the mortgagor or persons intending to become creditors of a mortgagor to know what assets are encumbered, and what assets are unencumbered." It was held that the description did not include a Bellevue trailer. The words "household furniture and chattels" would be (at p. 121) "restricted to chattels such as furniture, rugs, household utensils and other articles of like nature located in and about the mortgagor's residence."

CONDITIONAL SALES ACT

University Mercury Sales Ltd. vs *Phillips Housing Ltd* 8 N B R (2d) 562 (New Brunswick Supreme Court, Appeal Division)

After a default in payment under a conditional sales contract, the purchaser voluntarily returned the truck to the vendor and said ". . . if you have a chance to sell it, go ahead and sell it . . ." The vendor sold the truck, but the proceeds of the sale were insufficient to cover the outstanding indebtedness of the purchaser. The question was whether the vendor could recover the deficiency under Section 14 of the *Conditional Sales Act.*

Limerick, J. A. held that there had not been a repossession of the vehicle within the meaning of the Act. The sale was held to have been made on the direct authority of the purchaser, not under the conditional sales contract. The vendor was held to be entitled to the deficiency.

Traders Group Limited vs *The Guarantee Company of North America* (1974), 5 Nfld & P E I R 269 (Newfoundland Supreme Court)

The action was taken to recover the unpaid balance of the purchase price of a heating unit for an asphalt plant purchased under a conditional sales contract. The vendor assigned the conditional sales contract to the plaintiff on the date of sale. The purchaser in consideration for a second mortgage, gave as security, all his assets including the heating unit. The second mortgagee subsequently assigned his interest to the defendant. The purchaser defaulted in a payment and the action was commenced under Subsection 12(4) of the *Conditional Sales Act.*

Furlong, C. J. at p. 371 held that "the plaintiff is clearly entitled to recover the unpaid purchase price for this plant. The question is, to whom is it entitled to look for this payment? The defendant denies

that the plaintiff has any statutory rights because the defendant is not within the description of a buyer in clause 2(e), not being the person who bought or hired the goods or being the heir, executor, administrator successor or assign of that person."

At page 372 Furlong C. J. followed *Baily* v. *de Crespigny:* The word 'assigns' is a term of well known signification, comprehending all those who take either immediately or remotely from or under the assignor whether by conveyance, devise, descent or Act of law. "And quoting *Stoud's Judicial Dictionary*, 211, held that 'An assign is synonymous with assignee.' Judgment for plaintiff.

General Motors Acceptance Corporation of Canada, Limited vs *Carl B Potter Limited* (1974) 7 N.S.R (2d) 692 (Nova Scotia Supreme Court, Trial Division)

In an application to determine the ownership of a Tandem truck and body, the plaintiff is the assignee of the conditional seller and the defendant is the purchaser of the truck from the conditional buyer. Both the conditional seller and the conditional buyer were dealers and had done business together before.

Hart J. at p. 697 cited the common law principle that a bona fide purchaser from a trader in the ordinary course of business takes free from encumbrances. But, the principle is limited in its application to cases where the encumbrance has been placed by the trader himself, which is the situation in this case. At p. 698 Hart J. held that "In selling this truck to William Smith (conditional buyer), Mr. MacDonald (conditional seller) knew or should have known of the likelihood of resale in the course of trade and thereby impliedly consented to a resale by Mr. Smith, or through Bill Smith Sales Limited. I find that Carl B. Potter (purchaser from conditional buyer) is entitled to the protection of Section 5 of the *Conditional Sales Act*.

Section 5 reads: If the goods are delivered to a trader or other person and the seller expressly or impliedly consents that the buyer may resell them in the course of business and the trader or other person resells the goods in the ordinary course of his business, the property in the goods shall pass to the purchasers notwithstanding this Act.

Industrial Acceptance Corp Ltd vs *Hardybala, et al* (1974) 39 D L.R (3rd) (Saskatchewan Queen's Bench)

A vendor of goods having repossessed and intending under Section 16 of the *Conditional Sales Act* to sell the goods gave the purchaser a notice of intention to sell (under Subsection (4)). The notice was defective in that it did not state the minimum to be asked for the

goods on a private sale, or give the time and place of the public auctions. The purchaser had signed a waiver of notice.

MacPherson J. at p. 759 held that ". . . the notice is defective because it does not contain all that the Legislature directed that it should. A notice which is materially defective is no notice at all."

The waiver of notice was held to be invalid. At p. 760 MacPherson J. held that "I choose to apply S. 16(7) supra, in its plain meaning. That is that the right of the seller and guarantor to receive the notice of intention to sell with the necessary particulars is a right which cannot be waived by agreement. The 'Release and Consent to Sale', although unilateral in form refers to itself twice as an 'agreement' which in its own terms brings it within the subsection."

Subsection 16(7) of the *Conditional Sales Act* reads as follows: (7) This section applies notwithstanding any agreement to the contrary.

Traders Group Ltd vs *Concorde Truck & Camper Rentals Ltd et. al* (1974) 45 D.L R. (3rd) 732 (B C Supreme Court)

A vehicle purchased in Alberta under a conditional sales contract was removed to British Columbia where it was sold to a third party having no notice of the outstanding conditional sales contract in Alberta. The conditional seller in Alberta upon learning of the vehicle's removal to British Columbia registered the contract in British Columbia under clause 6(b) of the *Conditional Sales Act*. Upon application for a declaration that the conditional seller was the owner of the vehicle, the Court held that he was.

Anderson J. at p. 735 stated that "it should be noted that a 'conditional' vendor has, *prima facie*, a common law right to possession of the vehicle referred to in a conditional sales contract, and can only lose it by failure to comply with the requirements of the appropriate conditional sales legislation." And at p. 737 "(The) authorities appear to clearly state that a 'conditional' vendor who has complied with the relevant provisions of the applicable legislation relating to registration of conditional sales agreements, takes priority over a bona fide purchaser for value who acquired the goods referred to in the conditional sales agreement prior to registration.

It was also held that although ss 31(2) of the *Sale of Goods Act* provided that a buyer in possession of goods might, in certain circumstances transfer title to a bona fide purchaser, ss 31(3) excluded the application of that subsection to goods obtained by a buyer under a conditional sale agreement where the seller had complied with the provisions of the Conditional Sales Act. The seller having complied

with the *Conditional Sales Act*, its rights took priority over those of the subsequent purchaser.

IBM Canada Ltd vs *Wilray Securities Ltd et al* (1974) 46 D.L.R (3rd) 608 (Alberta Supreme Court)

IBM sold a quantity of equipment by conditional sale agreement to the defendant. Relying on subsection 11(1) of the *Conditional Sale Act* which exempts from registration goods to which the manufacturer's or vendor's name is painted printed or stamped. The goods in question bore markings stating that the goods were "patented by" or "reconditioned by". The question was whether these markings were adequate to bring IBM within subsection 11(1) and therefore exempt them from the requirement for registration.

Clement J. A. at p. 611 held that "What the Court must determine as an issue of fact, is whether the plate does 'give to subsequent purchasers, mortgagees, execution creditors and attachment creditors notice of the prior interest claimed by vendors in articles in the possession of others having a limited interest therein.' I am strongly of the opinion that a plate on which is inscribed only the name of the manufacturer or vendor does not meet this requirement. It would give no suggestion or warning of a claim of interest by the named person, and I think that if a plate fails to make reasonably clear to those classes of persons mentioned in s. 11(1) (b) that the named person is one who is within the protection of the section, it is not a plate that can be relied on for the purpose. In *Traders Finance Corp. Ltd.* vs. *Williams and Lange* this was accomplished by the words 'sold by'. It may be accomplished by the words 'manufactured by' ".

CONTRIBUTORY NEGLIGENCE ACT

There are no reported cases in which a substantive review or interpretation of this Act was made; however, the following cases involved an application of the *Contributory Negligence Act:*

1. Stewart vs Routhier (1974) 7 N B.R (2d) 251
2. Richards and Richards vs Morgan and Morgan (1974) 5 Nfld & P E I R 506
3 McCrady vs. James (1974) 5 Nfld & P E.I R. 67
4 Nicholson's Estate vs. MacPherson (1974) 5 Nfld. & P E I R 512
5. Doucette vs. Butler (1974) 5 Nfld & P E.I R 557
6. Blackwood Hodge Ltd. G. Tri-Max Ltd ; Canadian National Railways and MacKay (1974) 6 Nfld & P E I R 438
7. Strong vs Dawe (1974) 7 N S R (2d) 273
8. Newcombe vs. Klyn (1974) 8 N S.R (2d) 220
9 Thompson vs. Nanaimo Realty Co. Ltd et al (1974) 44 D L.R (3rd) 254

DEFAMATION ACT

Buro vs *Southam Press Limited* (1974) 6 W W R. 504

In an action under the *Defamation Act* arising from the defendant publishing a headline "City woman charged with witchcraft" the defense made application to strike out the plaintiffs statement of claim, on grounds of insufficient compliance with section 14 of the *Defamation Act.*

Bessemer, Master in determining whether the *Defamation Act* (s. 14) was to be strictly construed stated at p. 508: "It seems to me from a perusal of *The Defamation Act* as a whole that the Legislature showed a clear cognizance of the stultifying and even paralyzing effect which the conferring upon the general public of an unbridled right of suit for defamation, real or fanciful, could have upon the news media if denied fair and timely warning to permit public retraction and apology in appropriate cases, and that this provides the reason for the insertion of section 14. If such reason may be presumed, and I think it can, then the section falls squarely within the rights or immunities category, as distinguished from the public duties category, mentioned by Creschuk J. and as pointed out by Maxwell. Accordingly, in my opinion, the section is to be construed as imperative, and this view is further fortified by the employment of the imperative 'shall' in subsection (2) respecting manner of notice."

It was held that the notice referred to in section 14 could be given by the defendants lawyers.

The notice of intent to sue was given to the Calgary Herald which is published by the defendant: but, it was held that the notice should have been given to the defendant and not to the newspaper.

At p. 509 Bessemer, Master held that "If direction of the Notice in light of the provision of s. 14(1) was bad, then, and *a fortiorari*, the service thereof was bad. Subsection (2) of the section prescribes imperatively that such notice 'shall' be served in the same manner as a statement of claim. Service of a statement of claim by double registered mail is, under R.22, permissible, but only if served upon a person capable of signing receipt for the same, and the "Calgary Herald is such person."

With respect to the failure of "specifying the defamatory matter complained of" referred to in s. 14(1) of the Act Bessemer, Master stated at p. 510 that the defamation must be unambiguously identified in the document itself. In the present case, several material facts were omitted from the statement of claim. The statement of claim was set aside.

EVIDENCE ACT

Heal vs *Heal et al* Etobicoke Board of Education, Garnishee (1974) 45 D L R (3rd) 10 (Ontario Court of Appeal)

In a divorce decree nisi the plaintiff was awarded maintenance until the defendant attained the age of sixty-five years "so long as the plaintiff remains chaste or until she remarries . . .". The defendant carried out the provisions of the order until he learned that his wife had no longer remained chaste. The plaintiff's wife then applied for and obtained a garnishee order attaching the defendant husband's wages. Upon a motion to rescind the garnishee order during cross-examination of the wife on her affidavit, the wife refused to answer questions relating to the allegation that she remained unchaste, using s. 10 of the *Evidence Act* as authority.

Schroeder, J. A. at p. 12 stated that "It was contended on behalf of the wife that the proceedings to be regarded were the proceedings leading to the making of the garnishee order. It was contended that these proceedings flowed from the original divorce action and thus were proceedings instituted in consequence of adultery entitling the wife to invoke the provisions of s. 10 of the *Evidence Act*. We do not agree that the proceedings taken by the husband were proceedings instituted *ex necessitate* in consequence of adultery on the part of the wife. All that the husband has to establish in order to succeed upon his motion is that the wife has been guilty of conduct which constitutes a breach of the dum casta provision of the divorce decree, something considerably less than "adultery" and all that term implies . . . Section 10 of the *Evidence Act* (therefore) has no application in this case."

MacRae vs *MacRae* (1974) 6 Nfld. & P E I R 1 (Prince Edward Island Supreme Court)

During divorce proceedings in which the petitioning wife alleged cruelty, Nicholson J. at p. 32 stated that "The evidence to be considered on the Respondent's claim for divorce has presented some difficulty. The difficulty became apparent during the course of cross-examination of the petitioner. The question is: Can a Petitioner who is a witness in a divorce action based upon the grounds of physical and mental cruelty and in which corrollary relief of custody and maintenance of children of the marriage, be asked and compelled to answer questions tending to show she has committed adultery (a) in the case where no counter claim alleging her adultery is made; and (b) in a case where the Respondent has counter claimed for divorce on the ground of the Petitioner adultery.

And at p. 33 "A claim for custody of children is not a proceeding

such as is contemplated by section 8 of the *Evidence Act* and is in my opinion a proceeding in which either the husband or wife would . . . (being parents of the children), be liable to be asked and bound to answer questions tending to show that he or she has committed adultery . . . (and at p. 34) . . . Where one or other of the parents brings an action for custody of children of the marriage and is called as a witness in such proceedings, it is my opinion that the protection afforded by Section 8 of the *Evidence Act* . . . does not extend to such parties in such proceedings".

NOTE: Section 8 of the *Evidence Act* (P.E I) is the same as section 10 of the *Evidence Act* (Ont.)

Johnson vs *Nova Scotia Trust Co et al* (1974) 6 N.S R (2d) 88 (Nova Scotia Supreme Court, Appeal Division)

In an action for specific performance of an oral agreement with respect to a house and contents, the question arose as to what constitutes corroboration within the meaning of Section 42 of the *Evidence Act* (N.S.)

Quoting and following *Smallman* vs. *Moore* (1948) 3 D.L.R. 657 at p. 106 "As to what constitutes corroboration, it is clear from the authorities that it is not necessary that the whole of the evidence should be corroborated, but it should at least be so far corroborated as to justify the Court in treating the whole of it as credible. To corroborate, said one learned judge means to strengthen, to give additional strength to, to make more certain."

And at p. 107 "I do not think . . . that the authorities including some of those which I have quoted make it abundantly clear that corroboration does not require new evidence of the whole case, but merely evidence that supports the case in a material way . . ."

NOTE: Section 42 of the *Evidence Act* (N S) is Section 14 of the *Evidence Act* (Ont.)

ADDITIONAL CASES

The following cases involved the application of the *Evidence Act* but do not appear to involve a substantive review or interpretation of the Act:

1 Paul Burden Ltd vs Christie (1974) 7 N.B R (2d) 220

2 *Re* Official Languages Act (1974) 7 N.B R. (2d) 526

3 Bank of Montreal vs Boudreau (1974) 8 N.B R (2d) 487

4. Province of New Brunswick vs Carleton Enterprises Ltd (1974) 8 N B R (2d) 19

5. Power vs. Oakley's Estate (1974) 5 NFLD & P E I R 184

6 Watkins Products Inc. vs McDow (1974) 6 N S R (2d) 49

FATAL ACCIDENTS ACT

St. Onge vs. *Bel Air Rental Service Ltd.* (1974) 7 N B.R. (2nd) 543 (New Brunswick Supreme Court, Queen's Bench Division)

The plaintiff and her husband were seriously injured while passengers in one of the defendants taxicabs. The plaintiff's husband died some months later allegedly from injuries sustained in the accident.

Robichaud J. at p. 547 held that "Pursuant to the provisions of S. 3, ss(1) of *The Fatal Accidents Act* (1969) ch.6, the death of the person must have been caused by wrongful act, neglect or default . . . of someone, before a right of action can arise and such action maintained against the wrong doer . . . The effect of that section is that the defendant's negligence must be the cause of the death . . . In other words, the onus is on the plaintiff to show on a balance of probabilities that the accident did cause such death . . . Hence, the question of 'causality' becomes of primary importance in the case at bar."

At p. 548 quoting the decision of the Supreme Court in the case: "The settled rule is that causality does not have to be established with absolute certainty, but only by a preponderance of probabilities."

Held that the preponderance of probabilities as to the cause of death was not found.

Johnston vs. *Anderson* (1974) 5 Nfld. & P.E.I.R 198 (Prince Edward Island Supreme Court, On Appeal)

The plaintiff's son was killed in an automobile accident. The plaintiff had been supported by her son, and was the administratrix of his estate. The action was taken under the *Survival of Actions Act*, and the *Fatal Accidents Act* although the plaintiff did not plead the *Survival of Actions Act*.

Nicholson J. at p. 204 stated the issue before him: ". . . the Appellant's argument . . . is that the Respondent should have stated in the endorsement on the Writ of Summons or in the statement of claim that the action was brought pursuant to the provisions of the *Fatal Accidents Act* and the *Survival of Actions Act* . . ." A review of various books on forms and precedents might be said to support the Appellant's argument that where a statute gives the right to maintain an action which was not maintainable at common law the statute should be pleaded . . . Notwithstanding the . . . suggested forms in the text books on forms of pleading (*Canadian Court Forms* by S. C. French 1st ed. 1954 and *The Encyclopaedia of Court Forms and Precedents in Civil Proceedings*) there has been no statute or other authority cited to us which supports the Appellant's contention that the Respondent's

claims should not be allowed as no claim was made by the plaintiff under an *Act to Enable the Survival of Actions Act.*

And at p. 207 ". . . while it may be customary to plead such statutes, it is my opinion that it is probably unnecessary so long as the pleadings and subsequent proof set out and establish the circumstances which bring the action within the statutes, I do not see that the plaintiff should be required to plead the specific statute or statutes which provides the remedy for the wrong which the plaintiff has suffered."

At p. 208 "Since the pleadings may be classed as a choice of weapons upon which, subject to the right to apply for amendment, the parties agree to carry on the fight it would be manifestly unjust to allow the Appellant to succeed on the ground which he had seen fit not to raise in his defence, and to disallow the special damages awarded for reasons urged on behalf of the Appellant."

ADDITIONAL CASES

The following cases involved the application of the *Fatal Accidents Act*, but do not appear to involve a substantive review or interpretation of the Act:

1 Willey's Estate vs Cambridge Leaseholds Limited (1974) 5 Nfld & P E I R 473

2 Pelley vs. Stanley (1974) 6 Nfld. & P E I R 45

3 Ferguson et al vs Underwood et al (1974) 7 N.S R (2d) 459

4 Hamilton vs White (1974) 7 N.S R (2d) 47

5 Campbell et al. vs. Robinson (1974) N S R (2d) 364

6. Strong vs Dawe (1974) 7 N S.R. (2d) 273

7 Newcombe vs Klyn (1974) 8 N S R (2d) 220

INTERPRETATION ACT

Bell vs *Attorney General of Prince Edward Island* (1974) 5 Nfld & P.E I R 173 (Su-Court of Canada.

Section 32 of the *Interpretation Act* (P.E.I.) was held to apply in its reference to "Acts", to Acts of the Parliament of Canada as well as Provincial Acts.

Section 32 reads as follows:

"32. When an Act or enactment is repealed in whole or in part and other provisions are substituted by way of amendment, revision or consolidation,

(*b*) a reference, in an unrepealed Act or enactment or in a regulation made thereunder, to the repealed Act or enactment, shall, as regards a subsequent transaction, matter or thing be construed to be a reference to the provisions of the substituted Act or enactment relating to the same subject matter as the repealed Act of enactment

At p. 177 Pigeon J. held that "There is no reason for reading these provisions restrictively as applicable solely to references to Provincial Acts."

Regina vs *Essam Construction Ltd* (1974) 2 O.R. (2d) (Ontario High Court of Justice)

With respect to the meaning of the word "person" Lieff, J. held at p. 349 that ". . . it is a generally valid proposition that the word 'person' can refer to natural human beings and corporations, depending on the context . . . (at p. 350) . . . It is my view that this proposition is valid at common law and that s. 30 para. 28 of the *Interpretation Act* merely codifies it."

ADDITIONAL CASES

The following cases involved the applications of the *Interpretation Act*, but do not appear to involve a substantive review or interpretation of the Act:

1 H B Willis, Inc vs Prince Edward Island Vegetable Commodity Marketing Board (1974) 5 Nfld. & P E I R. 100

2 R. vs Wildsmith (1974) 8 N S.R. (2d) 58

LANDLORD AND TENANT ACT

Re Sunnybrook Meat Markets (Yonge) Ltd (1974) 1 O R (2d) 537 (Ontario High Court of Justice)

In an interpretation of the words "authorized assignment" in ss 38 (2) of the *Landlord and Tenant Act*, Houlden J. held at p. 538 "In my judgment, s. 39(2) of the *Bankruptcy Act* makes it clear that a deemed assignment under s. 39(1) is to be treated exactly the same as an assignment filed pursuant to s. 31 of the Act. I am of the view, therefore, that the words "authorized assignment" in s. 38(2) (of the *Landlord and Tenant Act*) encompass a deemed assignment which occurs by reasons of the provisions of s. 39(1) of the *Bankruptcy Act*."

ADDITIONAL CASES

The following cases involved the application of the *Landlord and Tenant Act*, but do not appear to involve a substantive review or interpretation of the Act:

1 *Levesque* vs. *J. Clark & Son Ltd.* (1974) 7 N B R. (2d) 478

2 *Affiliated Realty Corp. Ltd.* vs *Sam Berger Restaurant Ltd.* (1974) 2 O R (2d) 147

3. *Ocean Harvesters Ltd.* vs. *Quinlan Brothers Ltd.* (1974) 5 Nfld. & P.E.I R. 541

LIMITATION OF ACTIONS ACT

Fraser *vs.* Morrison and Beer *(1974) 7 N.S.R. (2d) 261 (Nova Scotia Supreme Court Trial Division)*

In an action for a declaration to bar the interests of the defendant in land under the authority of the *Statute of Limitations*, Jones J. citing and following *Brown vs. Phillips et al.* (1964) 42 D.L.R. (2d) 38: "While I consider that the plaintiff is entitled to judgment declaring that the title of the defendants to the lands above described has been extinguished, I do not consider that in this action the plaintiff can have an order declaring him to be the owner of these lands. The position of the former owner was stated by Strong J. in *Gray vs. Richford* (1878) 2 S.C.R. 431 at p. 454 as follows: *'The Statute of Limitations* is, if I may be permitted to borrow from other systems of law terms more expressive than any which our own law is conversant with, a law of extinctive, not one of acquisitive prescription — in other words, the statute operates to bar the right of the owner out of possession not to confer title on the trespasser or disseisor in possession. From first to last the Statute of 4. Wm. 4 says not one word as to the acquisition of title by length of possession, though it does say that the title of the owner out of possession shall be extinguished, in which it differs from the Statute of James, which only barred the remedy by action, but its operation is by way of extinguishment of title only.' "

ADDITIONAL CASES

The following cases involved the application of the *Limitation of Actions Act*, but do not appear to involve a substantive review or interpretation of the Act:

1. *Ocean Harvesters Ltd.* vs. *Quinlan Brothers Ltd.* (1974) 5 Nfld. & P E.I.R. 541
2. *Stone* vs. *Bennett* (1974) 6 Nfld & P.E.I.R. 153

MARRIED WOMEN'S PROPERTY ACT

Re Maskewycz and Maskewycz (1974) 44 D L.R. (3rd) 180 (Ontario Court of Appeal)

In an action under the *Married Women's Property Act* and the *Partition Act* by the plaintiff wife for a partition of the matrimonial home. The plaintiff left the defendant husband, leaving him in possession. The husband had paid for the house by himself but had it registered as a joint tenancy.

Arnup, J. A. stated the issue in the case at p. 183: "The basic question argued before us was whether a deserted husband who is in possession of the matrimonial home in which the spouses had been living until the breakdown of the marriage is entitled to assert the same rights, and to be treated in the same way, as a deserted wife would have and would be treated in the reverse situation.

At p. 197 ". . . the words in s. 12(1) of the *Married Women's Property Act:* 'In any question between husband and wife as to the title to

. . . property', require the Judge hearing the matter to determine what the respective interests of the parties are, in all the circumstances of the case, but do not entitle him to reallocate those interests." . . . "While the material filed by the husband indicates that he paid the entire purchase price (including paying off the mortgage assumed), neither counsel before us took the position that the respective interests of the parties were other than equal shares."

At p. 198 "I agree (with the Ontario Law Reform Commission report in March, 1969) without reservation with the view that the need for legislative clarification (with respect to the matrimonial home) is urgent — both as to procedure and as to substantive rights — where property is jointly owned by a husband and wife."

At p. 198 ". . . (the) interrelationship (of the *Partition Act* and the *Married Women's Property Act*) is far from clear to me . . ."

At p. 199 "This brings me to the narrow question raised by this appeal i.e., should the right of a deserted husband to remain in possession of the matrimonial home be equated in all respects to that of a deserted wife? I know of no Ontario case in which this alleged right of a deserted husband has heretofore been asserted, and counsel referred to no such case . . . the Court must now examine the basis upon which a deserted wife's right is founded, and determine whether that basis as a matter of principle and logic applies equally to the case of a deserted husband."

At pages 199 and 200: "It appears clear to me that the 'right of the wife is based in part on what is called 'the duty of married persons to live together' . . . That duty is coupled as to the husband with his duty to maintain his wife, including his duty to provide her with a home. There is no such duty on the part of the wife (apart from the *Divorce Act*). I must therefore ask myself: can the right of a deserted husband be founded upon the 'duty of married persons to live together, which duty does extend to the wife? If she fails to fulfil that duty, by deserting her husband, she does so at the peril of exposing herself to such legal consequences as the law may attach to that failure. One of such consequences is to provide her husband, in due time, with grounds for divorce. Does it also provide the husband with the right to remain in the matrimonial home, jointly owned by him with his wife, until such time as the Court, after considering all of the circumstances, orders him to give up possession (by order under the *Married Women's Property Act*) in order that his wife may obtain partition or sale of the jointly-owned matrimonial home?"

At p. 206 "In Ontario, a husband deserted by his wife does have

rights of occupation with respect to the matrimonial home which he is occupying, distinct from his right to possession arising from his own joint ownership, but that right should more readily be taken away from him than in the case of a wife, because the wife has a right to support, and the husband has not (apart from the provisions of the *Divorce Act*). Primarily, the Court's power is to postpone, or to refuse for the present, the exercise of the wife's right to partition and sale. The power is discretionary, to be exercised according to all of the circumstances of the case, including (but not limited to) the financial position of the spouses, whether there are children and who has custody of them, the existence or otherwise of other proceedings between the spouses, and the competing needs of the wife to realize upon her interest, and of the husband to have a place to live."

The plaintiff wife's application for partition was denied.

MacPherson vs. *MacPherson* (1974) 7 N S.R. (2d) 14 (Nova Scotia Supreme Court)

The plaintiff wife during her marriage with the defendant purchased a house that was their matrimonial home and registered in her husband's name. The action is one for possession and title to the house.

At p. 21 Gillis J. quoting *Auger and Honsberger* stated the basic principle: "The general rule is that, when a wife hands over to her husband property belonging to her separate use, whether real or personal, it is presumed that a gift was not intended and that he is a trustee of it for her unless there is evidence of a contrary intention."

At p. 23 "In respect of the real property, I am quite satisfied that the plaintiff should have the order asked for. The order will include a declaration that the lands and premises, subject of these proceedings, have been and are held in trust by the defendant for the plaintiff and provide for the vesting of them in the plaintiff, and for the possession by her."

PROCEEDINGS AGAINST THE CROWN ACT

Canadian Industrial Gas & Oil Ltd vs. *Government of Saskatchewan and Attorney General For Saskatchewan* (1974) 4 W W R 557

At p. 559 Johnson J. raised the issue relating to the *Proceedings Against the Crown Act:* "The first question for determination is whether or not this Court has jurisdiction to make an interim declaration of the plaintiff's rights, pending disposition of the action. Section 17(2) of The *Proceedings Against the Crown Act* provides:

'(2) Where in proceedings against the Crown, any relief is sought

that might, in proceedings between persons, be granted by way of an injunction or specific performance, the Court shall not, as against the Crown, grant an injunction or make an order for specific performance, but may in lieu thereof make an order declaratory of the rights of the parties'.

Quoting and following S. A. Smith in the *Judicial Review of Administrative Action* at p. 64: "Perhaps the most unfortunate aspect of the present law is that it would seem that no interlocutory relief can be obtained to restrain any unlawful act done by the Crown or its servants acting in that behalf, apart from the power of the High Court to suspend the operation of a compulsory purchase or similar order pending the determination of a statutory application to quash that order. It has been held that section 21(1) of the *Crown Proceedings Act*, which empowers the Court to make a declaratory order against the Crown in lieu of an injunction, applies only to declaratory orders that are definitive of the rights of the parties. It does not require the Court to make an interim declaration of rights, corresponding to an interlocutory injunction against the Crown, and it is not the practise of the Courts in any event, to grant interim declarations."

Auffrey *vs* Province of New Brunswick *(1974) 7 N B.R (2d) 634 (New Brunswick Supreme Court, Appeal Division)*

A commissionaire employed by five companies, one of which is a Crown corporation, while acting as a security guard strung a cable across a road leading to a dump. A vehicle was at the dump and upon leaving the dump became entangled in the cable causing damages.

The question at issue was whether the commissionaire was within the meaning of the *Proceedings Against the Crown Act* a servant or employee. At p. 641 Hughes C.J.N.B. held that "Had the evidence established the commissionaire was a servant of the Crown and at the material time was paid in respect of his duties as such servant wholly by the Crown, the Province would have been liable for his tortious acts. But the commissionaire was appointed by a committee of five, only one member of which was the New Brunswick Development Corporation. Even assuming that the commissionaire was found to have been indirectly appointed by the Province through the instrumentality of the New Brunswick Development Corporation the evidence fails to establish that he was paid in respect of his duties as commissionaire wholly by the Province and the liability of the Province for his tortious acts has therefore not been established."

ADDITIONAL CASES

The following cases involved the application of the *Proceedings*

Against the Crown Act, but do not appear to involve a substantive review or interpretation of the Act:

1 MacQuarrie and MacQuarrie vs The Province of Nova Scotia and Power (1974) 8 N S.R. (2d) 41

2. Can. Union of Public Employees, Local 501 vs. Village Commissioners of Parkdale (1974) 39 D.L.R. (3d) 28

3. Central Canada Potash Co. Ltd. vs A. G. for Saskatchewan (1974) 39 D.L.R. (3d) 88

RECIPROCAL ENFORCEMENT OF MAINTENANCE ORDERS ACT

Miller vs. *Shaw* (1974) 1 W W R. 72 (Northwest Territories Magistrate's Court)

The issue in this case centered on whether an affiliation order made in Alberta was enforceable in the Northwest Territories in light of clause 2(d), and subsections 3(2.1) (2.2).

de Weerdt, Magistrate at p. 76 held that "The amendment (to the *Reciprocal Enforcement of Maintenance Orders Ordinance*) is clearly intended to facilitate enforcement of maintenance provisions in divorce decrees and in judgments or orders not in the nature of affiliation orders . . . Had it been intended to include affiliation orders in the ambit of the amendment, alteration of the definition of 'maintenance order by removal of the words other than an order of affiliation' would have brought our legislation into line in this respect with British Columbia."

The meaning of the word 'affiliation' was reviewed extensively.

Johnston vs. *Anderson* (1974) 5 Nfld. & P E.I.R. 198
see *Fatal Accidents Act* for a brief of this case.

ADDITIONAL CASE

The following case involved the application of the *Survival of Actions Act*, but does not appear to involve a substantive review or interpretation of the Act:

1. *Ferguson et al.* vs. *Underwood et al* (1974) 7 N S.R (2d) 459

TESTATOR'S FAMILY MAINTENANCE ACT

Keane vs. *Keane Estate* (1974) 7 N.B.R. (2d) 187 (New Brunswick Supreme Court, Queen's Bench Division)

The plaintiff makes claim against her husband's estate for maintenance under the *Testator's Family Maintenance Act*. The plantiff had been separated from her husband for a period of forty one years before his death, and had not been supported by him during that time.

Stevenson J. at p. 190 quotes from and follows *Allordice* v. *Allordice* (1910) 29 N.Z.L.R. 959. "I think that the duty of the Court in this respect may be thus best expressed: It is the duty of the Court, as far as is possible, to place itself in all respects in the position of the testator, and to consider whether or not, having regard to all existing facts and circumstances, the testator has been guilty of a manifest breach of that moral duty which a just, but not a loving, husband or father owes towards his wife, or towards his children, as the case may be. If the Court finds that the testator has been plainly guilty of a breach of such moral duty, then it is the duty of the Court to make such an order as appears to be sufficient, but no more than sufficient, to repair it. In the discharge of that duty, the Court should never lose sight of the fact that at best it can but very imperfectly place itself in the position of the testator, or appreciate the motives which have swayed him in the disposition of his property, or the justification which he may really have for what appears to be an unjust will".

And at p. 191: "I have already reviewed the history of the marriage and its breakdown as disclosed by the evidence and I find it impossible to conclude that after an apparently mutually acceptable separation of more than forty-one years duration there was any duty marital, moral or otherwise, on the testator to provide for the maintenance and support of the plaintiff."

Re Phillips Estate (1974) 8 N B R (2d) 188 (New Brunswick Supreme Court, Queen's Bench Division)

The plaintiff is the thirty-five year old son of the testator, is married and self-supporting and except for a very short period before the age of ten, had not been supported by his father. By his will the testator left the residue of his estate to be distributed among the children of his second marriage, excluding the plaintiff.

Barry J. held that (at p. 191) . . . "the testator did not make adequate provision for the proper maintenance and support of the plaintiff who is a "dependent" within section 1(b) of the statute."

ADDITIONAL CASES

The following cases involved the application of the *Testator's Family Maintenance Act*, but do not appear to involve a substantive review or interpretation of the Act:

1. *Re Hurley Estate* (1974) 8 N B.R. (2d) 569
2. *Re Burnie's Will* (1974) 7 N.S.R. (2d) 38
3. *Jessinghouse* vs. *Jessinghouse et al* (1974) 7 N.S R (2d) 487

APPENDIX L

(See page 29)

The Rule in *Hollington* v. *Hewthorn*

REPORT OF THE ALBERTA COMMISSIONERS

The Alberta Commissioners reported last year (1974 Proceedings, pp. 96-107). The matter was referred back to the Alberta Commissioners to prepare a draft to include the principles agreed upon (p. 28).

We point out that the Institute of Law Research and Reform in Alberta issued a report on the same subject in February, 1975. Most of its recommendations are the same as the policy decisions that were reached here last year. The only differences of substance are these:

(1) In connection with filiation orders and divorce decrees, the Conference favoured admissibility on the lines of the English Act, whereas the Alberta Institute did not.

(2) On the question as the persons against whom the conviction should be admissible, the Conference thought that admissibility should be confined to admissibility against the convicted person or those privy to him, or those claiming through or under him, in the words of South Australia's statute. In most cases the party against whom the evidence is tendered is in fact the convicted person or someone privy to him. There are, however, cases where this is not so — for example, a defense of forgery in an action on a bill of exchange, and cases on insurance policies where the commission of a crime is the basis of a claim, or a defense to a claim.

(3) The Alberta Institute recommended against extension of the new rule to acquittals. The Conference rejected the recommendation of the Alberta Commissioners to the same effect on a vote of 15-12. The Alberta Commissioners think that this policy decision should be reconsidered. In the meantime, the draft Act attached to this report as the Schedule incorporates the policy decisions made in 1974 other than the restricted application to parties and those privy to them.

W. F. Bowker
W. E. Wilson
Glen Acorn
Leslie R. Meiklejohn
Alberta Commissioners

Edmonton
8 July 1975

SCHEDULE

An Act to amend The Evidence Act

The Evidence Act is hereby amended.

2. The following heading and sections are added after section 28:

ADMISSIBILITY OF PREVIOUS COURT PROCEEDINGS

28.1 (1) In this section,

(a) "conviction" means a subsisting conviction, and

(b) "offence" means an offence under any law of Canada or of any province or under any by-law of any municipality in Canada.

(2) Where

(a) a person has been convicted or acquitted anywhere in Canada of an offence, and

(b) the commission of that offence is relevant to any issue in a civil proceeding,

then, whether or not that person is a party to the civil proceeding, proof of the conviction or acquittal is admissible in evidence for the purpose of proving he did or did not commit the offence.

(3) Where proof of the conviction (or acquittal) of a person is tendered in evidence pursuant to subsection (2) in an action for defamation, the conviction (or acquittal) of that person is conclusive evidence that he did (or did not) commit the offence.

(4) Where a conviction or acquittal is admissible in evidence under this section, the contents of the information, complaint, indictment or charge-sheet relating to the offence for which the person was convicted or acquitted shall be admissible in evidence.

28.2 Where

(a) a person has been found guilty of adultery in any matrimonial proceedings, or

(b) a person has been adjudged to be the father of a child in an affiliation proceeding,

by any court in Canada and the fact of the adultery or paternity is relevant to any issue in a civil proceeding then, whether or not that person is a party to the civil proceeding, proof of the finding of adultery

or paternity, as the case may be, is admissible in evidence for the purpose of proving that the person committed the adultery to which the finding relates or that he is the father of the child.

28.3 For the purposes of sections 28.1 and 28.2 it is irrelevant to the admission of a conviction or a finding of adultery or paternity that no defence was offered.

28.4 Subject to section 28.1, subsection (3), the weight to be given the conviction, acquittal or finding of adultery or paternity shall be determined by the judge or jury, as the case may be.

APPENDIX M

(See page 29)

The UN Convention on the Limitation Period in the International Sale of Goods

REPORT OF THE SPECIAL COMMITTEE

The United Nations Convention on the Limitation Period in the International Sale of Goods was prepared at a conference held at the United Nations from May 20 to June 14, 1974, on the basis of a draft prepared by the United Nations Commission on International Trade Law (UNCITRAL). Canada participated in the elaboration of this Convention and sought agreement on provisions which departed as little as possible from the existing law on limitations periods in Canada, although some variation is obviously inevitable in a drafting context which includes representatives of nearly every country in the world.

The Convention applies only to claims arising out of a sale of goods of a commercial character which is "international", in the sense that the buyer and seller carry on business in different states. The limitation period selected is four years from the date on which the claim accrues, with specific rules to deal with the effect that an installment contract, fraud, or the existence of a warranty might have on the accrual of the claim. There are also express rules on the interruption of the running of time, the most significant innovation being that where proceedings end without a decision on the merits of the claim, a limitation period is to be extended to one year, if it has expired or has less than a year to run. A similar rule applies where the claimant has missed the limitation period through circumstances, such as temporary incapacity, beyond his control. The limitation period may be extended to an over-all limit of ten years, for example, by express acknowledgement of the claim by the defendant.

As of June 6, 1975, the Convention has been signed by 12 states; it will come into force on ratification by 6 states. As it stands, the Convention will become the basis of international uniformity on limitations in disputes involving the international sale of goods, once it comes into force. In view of the importance of international trade to Canada as a whole, the Convention warrants the close consideration of the Conference. It contains an acceptable form of Federal State clause, which enables Canada to accede to the Convention in respect of any jurisdiction which is disposed to adopt the necessary imple-

menting legislation, and an appropriate Model Act is attached (See the Schedule) along with the text of the Convention.

(**NOTE:** As the text of the Convention is easily obtainable, it has been omitted here A copy is on file in the office of the Executive Secretary)

Fredericton
15 July 1975

M. M. Hoyt
for the Special Committee

SCHEDULE

AN ACT RESPECTING THE LIMITATION PERIOD IN THE INTERNATIONAL SALE OF GOODS

1. The Convention on the Limitation Period in the International Sale of Goods set out in the Schedule is hereby adopted and applies as the law of the Province, notwithstanding the Limitations of Actions Act.

2. The Crown is bound by this Act.

3. This Act comes into force on a day to be proclaimed by the Lieutenant-Governor in Council.

APPENDIX N

(See page 30)

The following is recommended by the Uniform Law Conference of Canada for enactment as a Uniform Act.

Medical Consent of Minors Act

1. In this Act "medical treatment" includes

(a) surgical and dental treatment,

(b) any procedure undertaken for the purpose of diagnosis,

(c) any procedure undertaken for the purpose of preventing any disease or ailment,

any procedure undertaken for the purpose of preventing pregnancy, and

(e) any procedure that is ancillary to any treatment as it applies to that treatment.

2. The law respecting consent to medical treatment of persons who have attained the age of majority applies, in all respects, to minors who have attained the age of sixteen years in the same manner as if they had attained the age of majority.

3. (1) The consent to medical treatment of a minor who has not attained the age of sixteen years is as effective as it would be if he had attained the age of majority where, in the opinion of a legally qualified medical practitioner or dentist attending the minor, supported by the written opinion of one other legally qualified medical practitioner or dentist, as the case may be,

(a) the minor is capable of understanding the nature and consequences of the medical treatment, and

(b) the medical treatment and the procedure to be used is in the best interests of the minor and his continuing health and well-being.

(2) The consent of a minor who has not attained the age of sixteen years or of his parent or guardian is not required in relation to medical treatment performed with respect to that minor where

(a) the minor is incapable of understanding the nature and consequences of the medical treatment or, being capable of understanding the nature and consequences of the

medical treatment, is incapable of communicating his consent to the medical treatment, and

(b) a legally qualified medical practitioner or dentist attending the minor is of the opinion that the medical treatment is necessary in an emergency to meet imminent risk to the minor's life or health.

4. (1) Where the consent of a parent or guardian to medical treatment of a minor is required by law and is refused or otherwise not obtainable, any person may apply to (insert court as appropriate to the jurisdiction) for an order dispensing with the consent.

(2) The court shall hear the application in a summary manner and may proceed *ex parte* or otherwise and, where it is satisfied that the withholding of the medical treatment would endanger the life or seriously impair the health of the minor, may by order dispense with the consent of the parent or guardian to such medical treatment as is specified in the order.

5. Where, by or under this Act, the consent of the parent or guardian of a minor to his medical treatment is not required or is dispensed with, the medical treatment does not for the reason that the consent of the parent or guardian was not obtained, constitute a trespass to the person of the minor.

NOTE:

1. A jurisdiction considering enactment of this Act may wish to exclude particular kinds of procedures from its scope, e g , contraception, sterilization, or procurement of miscarriage In the case of any exclusion, however, consideration must also be given as to whether or not the exclusion is to apply generally or only with respect to section 3

2. Additional sections may be added in a jurisdiction to reserve the special provisions in the *Uniform Human Tissue Gift Act* concerning consent to *inter vivos* human organ transplant

3 A jurisdiction considering the enactment of this Act should also consider what changes, if any, are required in relation to the provisions in its *Child Welfare Act* dealing with children who are neglected by reason of lack of medical care and with the procedures for making those children wards of the government for the purpose of enabling medical care to be provided to them

APPENDIX O

(See page 30)

Pension Trusts and Plans
(Appointment of Beneficiaries)
(Re-examination of the 1957 Uniform Act)

REPORT OF THE BRITISH COLUMBIA COMMISSIONERS

TABLE OF CONTENTS

1. *HISTORY*

(a) *Pension Plans*

The records of the 1956 Conference show that The Association of Superintendents of Insurance of Canada, in correspondence with the President of the Conference, suggested that the Conference consider a recommendation to the Legislatures of the Provinces for the enactment of legislation similar to that contained in section 62 of the Conveyancing and Law of Property Act of Ontario, as that section was enacted by Chapter 12 of the Acts of 1954. The section enabled a participant in a pension plan to name a beneficiary to receive a death benefit in much the same way as an insured person might name a beneficiary to receive life insurance money. The matter was referred to the Manitoba Commissioners for study and report in 1957 with a draft Act if they considered that advisable.

The records of the 1957 Conference show that Mr. Rutherford presented a report including a draft Act. Some changes were made at

the 1957 meeting of the Conference. It was resolved that Mr Rutherford's report be referred back to him for review in accordance with the changes made at the meeting. The revised draft Act was adopted and recommended for enactment after not having been disapproved by two or more jurisdictions before 30th November 1957. The Uniform Act (Rutherford) is attached as Appendix A.

Table III of the 1974 Proceedings of the Conference, shows the following enactments of the Uniform Act or similar provisions:

"Pension Trusts and Plans;

Appointment of Beneficiaries — Enacted by

Alta. ('58); B.C. ('57); Man. ('59); Nfld. ('58); N.S. ('60); Ont. ('54); P.E.I. ('63); Sask. ('57). Total: 8."

The British Columbia adaptation of the Uniform Act now appears as section 38 of the Laws Declaratory Act, and is set out in Appendix B.

(b) *Registered Retirement Savings Plans*

The Rutherford draft did not extend to retirement savings plans where no employees were involved. Late in 1972, some or all of the provinces received a request from the Trust Companies Association of Canada asking for an amendment to the Uniform Act, as enacted by the provinces, which would extend the scope of the Uniform Act to registered retirement savings plans established in accordance with the Income Tax Act of Canada.

Some of the provinces may have varied their adaptation of the Uniform Act or may have enacted separate provisions in response to the request of the Trust Companies Association of Canada British Columbia enacted in 1973 a new section 41 of the Laws Declaratory Act which is set out in Appendix C.

At the 1973 meeting of the Conference it was resolved that the proposal for review of the 1957 Uniform Act be referred to the British Columbia Commissioners to submit a report to the 1974 meeting.

At the 1974 meeting it was resolved that this subject be referred back to the British Columbia Commissioners for review in the light of the discussion at the meeting and that the British Columbia Commissioners prepare a draft for distribution and for consideration at the 1975 meeting. The discussion at the 1974 meeting appeared to reflect a preference for a revision of the Rutherford Uniform Act rather than for the adoption of a separate Uniform Act, or Section, relating exclusively to registered retirement savings plans.

A draft of an Act, covering employee pension plans, registered retirement savings plans and other similar uninsured plans, is set out in Part 4 of this report.

2. *NOTES*

These notes set out some points which were considered in preparing the draft Act but which do not seem to be significant points of policy. However, they help to explain the ambit of the draft Act and should be considered in deciding whether the draft Act is appropriate for adoption by any particular province in its present form.

(1) The succession duty consequences of a designation of a beneficiary ought to be dealt with in the Succession Duty Act and not in this Act.

(2) The application of the perpetuities and accumulations rules to pension plans and retirement savings plans should be covered in perpetuities legislation and are indeed covered in section 22 of the Uniform Perpetuities Act adopted by the Conference in 1972.

Table III of the 1974 Conference Proceedings shows the following enactments of Uniform Acts or provisions similar in effect:

"Pensions Trusts and Plans; Perpetuities — Enacted by B.C. ('57); Man. ('59); N.B. ('55); Nfld. ('55); N.S. ('59); Ont. ('54); Sask. ('57); Yukon ('68). Total: 8.

Perpetuities Act —

Enacted by Alta. ('72); Ont. ('66). Total: 2."

The draft Act incorporated in this report does not deal with perpetuities or accumulations.

(3) When the registered retirement savings plan section was added to the British Columbia Laws Declaratory Act in 1973, it was given retroactive effect from 1 January 1971. A transitional provision would now be required if the draft Act was to be adopted in British Columbia. There is no section dealing with the effective date in the draft Act.

(4) The draft Act, if adopted, should presumably apply to provincial government employee pension plans. The Act should, therefore, be binding on Her Majesty. There is no section in the draft Act which makes the Act binding on Her Majesty. In

British Columbia, the Interpretation Act accomplishes that consequence.

(5) The draft Act has been prepared as a separate Act and has been given the winsome title — Retirement Plan Beneficiaries Act. Each province will wish to consider whether it may not be preferable to incorporate the draft Act as a section or part of another Act.

(6) While it might have been appropriate to group some of the sections of the draft Act together as subsections, this has not been done because a province may wish to make all of the sections into subsections of a section in a more comprehensive Act.

3. *POLICY QUESTIONS*

QUESTION 1.

Should the Act apply to plans for the benefit of agents and former agents as well as employees and former employees of an employer?

Comment

The Rutherford Act applies to all pension, welfare and profit sharing plans for the benefit of employees, former employees, agents and former agents of an employer. The reason given by Mr. Rutherford in his report to the 1957 Conference for including "agents or former agents" is as follows:

> "I have discussed the draft with representatives of the life insurance companies, as it was those companies which took the initiative in bringing the matter forward.
>
> At their suggestion, the draft provision is extended to "agents" of employers. This is primarily intended to cover, not any agent in the ordinary sense of the word, but "insurance agents" as popularly understood. The wording of the draft is not restricted to such insurance agents, but the word "participant" is defined to mean a person who "is participating in a plan" and the various plans will set forth the persons who may participate therein. I would assume that, in most cases, agents in the ordinary legal sense, who are not employees, would not be included."

The B.C. variation of the Rutherford Act excludes agents or former agents. There seems to be no harm in continuing the Rutherford extension to agents, for the benefit of those employers who prefer an agency relationship rather than an employee relationship

with part of their staff, but still wish their pension plan to cover all their staff.

Recommendation

The Act should apply to all plans to which the Rutherford Act applies.

QUESTION 2.

Should the Act as it applies to retirement savings plans be restricted to those plans which are registered under the Income Tax Act of Canada?

Comment

The B.C. Enactment for registered retirement savings plans is limited to plans registered under the Income Tax Act of Canada. The reason for the restriction may well have been that the Trust Companies Association did not request any wider applicability.

Recommendation

The Act should apply to all plans which create annuities which are not covered by the Insurance Acts, whether or not they are retirement savings plans under the Income Tax Act, (they are likely to be) and particularly, whether or not they are registered under the Income Tax Act (they may well not be so registered because of the limitations that Act imposes on investments in order to attain registration).

QUESTION 3.

Should the designation be made by written instrument prepared solely for the purposes of the plan or should it also be possible to make the designation by will?

Comment

This point was discussed by Mr. Rutherford in his report to the 1957 Conference and he attached as a schedule to his report a memorandum sent to him by one of the representatives of life insurance companies with whom he conferred, urging that designations be by written instrument prepared solely for the purposes of the plan, unless the plan expressly provided that the designation might be made by will. Other representatives of life insurance companies appeared to have preferred the position that designations could not be made by will, no matter what the plan provided.

Mr. Rutherford felt that a person making a will, perhaps on his deathbed, should have the right to designate, in his will, the bene-

ficiaries under his pension plan. With some hesitation Mr. Rutherford recommended that designations could be made by will "unless the plan prohibited such designations". This view was adopted in the original Rutherford draft and, by a different drafting technique, in the Rutherford Uniform Act. The Uniform Act applies only to designations made "in accordance with the terms of a plan".

The B.C. adaptation of the Rutherford Act neither specifically prohibits nor specifically allows designation by will. It also fails to deal with the results of designation by will except to say that a designation once made is not affected by a latter testamentary instrument. Under the B.C. provision, if a plan provides for designation by will, then such a designation appears to be irrevocable.

The B.C. registered retirement savings plan provisions specifically permit designation by will, if such designation is in accordance with the terms of the plan. The effects of such a designation are dealt with by reference to provisions of the Insurance Act.

If there are sound reasons for believing that designations by will should be permitted then the reasons for disallowing such designations where the plan prohibits them do not seem satisfactory. There is unlikely to be any real freedom of contract in settling the terms of the plan since many plans are compulsory and uniform for all employees and it is unrealistic to suggest that a person seeking and obtaining employment is genuinely consenting to being deprived of a right to designate by will.

Recommendation

That a designation may be made either by will or written instrument, without regard to restrictions in the plan under which the designation is made.

QUESTION 4.

Must the designation be made expressly for the purposes of the plan?

Comment

A designation made by written instrument is likely to be made for the purposes of a particular plan and probably on a form established for use under the plan requiring that it be submitted before the annuity payout starts and that it be accompanied by proof of the age of the beneficiary. A designation made in a will could also be made expressly for the purposes of a plan. The question is

whether a bequest of "all my estate, both real and personal, of whatsoever kind or nature" is to be treated as a designation. If a previous designation had been made then it is likely that the testator would not be intending by such a general bequest to revoke the previous designation.

Recommendation

A designation contained in a will must relate expressly to a plan or plans, described generally or by reference to the specific plan or plans.

QUESTION 5.

If a designation is made by will, then should it be possible to alter or revoke it by a written instrument that is not a will?

Comment

Section 135(2) of the British Columbia Insurance Act reads:

"135(2)
Notwithstanding the Wills Act, a designation in a will is of no effect against a designation made later than the making of the will."

The Rutherford Act is silent on this point.

Changes in employment and the efficiency of employers' pension administration make it very likely that many people will wish to change a designation without the trouble or expense of changing their wills. For that reason and also because it seems undesirable to have a different rule for pensions than for insurance, it appears to be preferable to allow a later designation by written instrument to supercede an earlier desination by will.

Recommendation

A designation made by will may be altered or revoked by a written instrument that is not a will.

QUESTION 6.

If a designation is made by written instrument and the designation is altered or revoked by a will, should a later revocation of the will, perhaps by intentional destruction, revive the first designation?

Comment

If the first designation had been by will it would not be revived by the revocation of the second will because of the change in the

common law incorporated in the various Wills Acts. It seems desirable that this Act should conform to the Wills Act in this respect.

Recommendation

That a designation made by written instrument should not be revived if it is altered or revoked by a will and the will is later revoked.

QUESTION 7.

Should the Act be a code which applies notwithstanding the terms of any specific plan, or should it be possible for a plan to override the Act?

Comment

It is being recommended that designations can be made by will notwithstanding the prohibition in a plan of such a mode of designation. If this recommendation is accepted by the Conference then the remainder of the Act should also override the terms of a plan, since the remainder of the Act really only works out the consequences of a designation by will. There seems to be no real injustice in overruling a plan on these matters of detail; and leaving these points to be dealt with in plans and having the Act apply only when a plan is silent would cause confusion and problems of interpretation.

Recommendation

Subject to the recommendation on question 8, a plan should not be permitted to override the Act.

QUESTION 8.

Should it be possible to change a designation after some benefits have been paid?

Comment

In cases where a lump sum or a fixed amount by fixed instalments over a fixed period is to be paid to the person designated, without regard to the age, sex or well-being of the person designated, then there seems no reason why the designation can not be changed at any time before the death of the participant.

The problem arises where an annuity has been selected of the "joint and last survivor" type so that the amount of each periodic payment to be paid to the participant in his life is fixed having regard to the age, sex and perhaps well-being of his specific benefi-

ciary, who may not receive any payment until after the death of the participant. In these circumstances, a change of designation after some periodical payments have been made to the participant will require, at least, a recalculation of the benefit. In some cases the full benefit calculated at the beginning of the payout period may already have been paid by the time an elderly participant wishes to change his beneficiary.

A rule that a participant may not change a designation after the start of the benefit payments to him seems unduly restrictive, but a rule that permits changes in designation at any time, notwithstanding the terms of a plan, seems sure to result in disputes about the existence of an entitlement in the beneficiary and about the extent of the entitlement, unless the particular plan deals adequately with those points.

Recommendation

That it should be permissible for a plan to prohibit or restrict the right to change a designation where a designation has been used to settle the amount of a benefit and the benefit has been paid in whole or in part. This recommendation is the single exception to the recommendation on question 7.

4. *DRAFT ACT*

Retirement Plan Beneficiaries Act

1. In this Act, unless the context otherwise requires,

"designation" means a written instrument, signed by a participant or on his behalf by another person in his presence and by his direction, by which the participant names a person to receive a benefit payable under a plan on the participant's death;

"participant" means a person who is entitled to appoint another person to receive a benefit payable under a plan on the first person's death;

"plan" means

(a) a pension, retirement, welfare or profit-sharing fund, trust, scheme or arrangement for the benefit of employees, former employees, agents, or former agents of an employer or their dependants or beneficiaries, and

(b) a contract, trust, fund, scheme or arrangement for the payment

of an annuity for life or for a fixed or variable term, created either before or after the coming into force of this Act.

"will" has the same meaning as in the Wills Act.

2. A participant may make a designation by will if, but only if, that designation relates expressly to a plan, either generally or specifically.

3. A participant may revoke a designation by an instrument of revocation or by will.

4. A designation or revocation contained in an instrument purporting to be a will is not invalid by reason only of the fact that the instrument is invalid as a will.

5. Notwithstanding the Wills Act, a later designation revokes an earlier designation, to the extent of any inconsistency.

6. Revocation of a will revokes a designation in the will.

7. Where a designation is contained in an instrument that purports to be but is not a valid will, and an event occurs that would have the effect of revoking the instrument if it had been a valid will, the occurrence of the event revokes the designation.

8. Revocation of a designation does not revive an earlier designation.

9. Notwithstanding the Wills Act, a designation or revocation in a will has effect from the time when the will is signed by or on behalf of the maker.

10. After the death of a participant who has made a designation which is in effect at the time of his death, the person designated may enforce payment of the benefit payable to him under the plan, but the person against whom the payment is sought to be enforced may set up any defences that he could have set up against the participant or his personal representative.

11. Where this Act is inconsistent with a plan, this Act applies, unless the inconsistency relates to a designation made or proposed to be made after a time when benefit payments have been made which would have been different if that designation had been made before those benefit payments, in which case the plan applies.

12. This Act does not apply to a contract or to a designation of a beneficiary to which the Insurance Act applies.

SCHEDULE 1

1957 Uniform Act (Rutherford)

An Act to amend The Act.

1. The , being chapter of the Revised Statutes, is amended by adding thereto the following section:

44.—(1) In this section,

(*a*) "designation" means a written instrument to which subsection (2) refers;

(*b*) "employer" includes the trustee under a plan;

(*c*) "participant" means a person who is participating in a plan established by an employer and who,

(*i*) is or has been employed by the employer, or

(*ii*) is an agent or former agent of the employer;

(*d*) "plan" means a pension, retirement, welfare, or profit-sharing fund, scheme, or arrangement, for the benefit of employees, former employees, agents, and former agents of an employer, or any of them.

(2) Where, in accordance with the terms of a plan, a participant, by a written instrument signed by him or on his behalf by another person in his presence and by his direction, has designated a person to receive a benefit payable under the plan in the event of the death of the participant,

(*a*) the employer is discharged on paying to the person designated the amount of the benefit; and

(*b*) subject to subsection (3), the person designated may, on the death of the participant, enforce payment of the benefit to himself for his own use.

(3) Where a person designated under subsection (2) seeks to enforce payment of the benefit, the employer may set up any defence that he could have set up against the participant or his personal representative.

(4) A participant may alter or revoke a designation made under a plan; but, subject to subsection (7), any such alteration or revocation may be made only in the manner set forth in the plan.

(5) Where a designation is contained in a will, the designation shall, notwithstanding section 20 of The Wills Act *(Manitoba, or sec-*

tion 26 of The Wills Act, Ontario) have effect from the time of its execution.

(6) A designation contained in an instrument purporting to be a will is not invalid by reason only of the fact that the instrument is invalid as a testamentary instrument; and it may be revoked or altered by any subsequent designation.

(7) Where a designation is contained in a will, and subsequently the will is revoked by operation of law or otherwise, the designation is thereby revoked.

(8) This section does not apply to a designation of a beneficiary to which The Insurance Act applies.

2. This Act comes into force on the day it receives the Royal Assent.

SCHEDULE 2

British Columbia Laws Declaratory Act, Section 38

38. (*a*) In this clause,

(*i*) "employee" includes a former employee who is participating in a plan;

(*ii*) "employer" includes a group of employers and the trustee under a plan;

(*iii*) "plan" means an employee pension, retirement, welfare, or profit-sharing fund, trust, or plan now or hereafter created.

(*b*) Where, in accordance with the terms of a plan, an employee has designated a person to receive a benefit payable under the plan in the event of the employee's death

(*i*) the designation shall be validly executed if in writing signed by the employee, and shall not be affected in any way by a will or other testamentary instrument executed by the employee after the making of the designation;

(*ii*) the employer is discharged upon paying the amount of the benefit to the person designated; and

(*iii*) the person designated may enforce payment of the benefit, but the employer is entitled to set up any defence he could have set up against the employee or his personal representatives.

(*c*) An employee may from time to time alter or revoke a designation made under a plan, but only in the manner set forth in the plan.

(*d*) The rules of law and statutory enactments relating to perpetuities and double possibilities and the suspension of the power of alienation of title to property and to accumulations do not apply, and shall be deemed never to have applied, to the trusts of a plan, trust, or fund established for the purpose of providing pensions, retirement allowances, annuities, or sickness, accident, death, or other benefits to employees or their widows, dependents, or other beneficiaries, and any such plan may continue as long as may be necessary to accomplish the purposes for which it is or has been created.

(*e*) This clause does not apply to a designation of a beneficiary to which the *Insurance Act* applies.

(*f*) This clause binds Her Majesty. R.S. 1948, c. 179, s. 2; 1950, c. 39, s. 2; 1957, c. 33, s. 2; 1964, c. 27, ss. 2, 3; 1969, c. 35, s. 14; 1973, c. 84, s 9 (proc. eff. May 8, 1973).

SCHEDULE 3

British Columbia Laws Declaratory Act, Section 41

41. (1) In this section,

(*a*) "annuitant" means a person who makes a payment under a registered plan and to whom, under the registered plan, an annuity for life is agreed to be paid or is to be provided; and

(*b*) "registered plan" means a retirement savings plan that

(*i*) was created before, or is created after, this section comes into force; and

(*ii*) is registered pursuant to the *Income Tax Act* (Canada).

(2) Where, in accordance with the terms of a registered plan, an annuitant designated a person to receive a benefit payable under the registered plan in the event of the annuitant's death,

(*a*) the designation shall be effective if in writing signed by the annuitant, or contained in a will or other testamentary instrument;

(*b*) the person designated may enforce payment of the benefit;

(*c*) the benefit is not part of the estate of the annuitant, but shall be deemed, for the purposes of the *Succession Duty Act*, to be property of the deceased annuitant and to be property passing on his death,

and the provisions of subsection (1) to (3) of section 135 of the *Insurance Act* apply, with the necessary changes and so far as they are applicable, to such a designation.

(3) An annuitant may from time to time alter or revoke a designation made under a registered plan.

(4) The law relating to perpetuities and double possibilities and the suspension of the power of alienation of title to property and to accumulations does not apply, and shall be deemed never to have applied, to the trusts of a registered plan, and any registered plan may continue as long as may be necessary to accomplish the purposes for which it is or has been created.

(5) This section does not apply to a designation of a beneficiary to which the *Insurance Act* applies.

(6) This section is retroactive and shall be deemed to have been in force on, from, and after the first day of January, 1971. 1973, c. 84, s. 9 (proc. eff. May 8, 1973); 1974, c. 87, s. 24 (eff. Jan. 1, 1971).

APPENDIX P

(See page 31)

Retirement Plan Beneficiaries Act

1. In this Act,

   (*a*) "participant" means a person who is entitled to designate another person to receive a benefit payable under a plan on the participant's death;

   (*b*) "plan" means

      (*i*) a pension, retirement, welfare or profit-sharing fund, trust, scheme, contract, or arrangement for the benefit of employees, former employees, agents, or former agents of an employer or their dependents or beneficiaries, or

      (*ii*) a fund, trust, scheme, contract, or arrangement for the payment of an annuity for life or for a fixed or variable term, created before or after the commencement of this Act;

   (*c*) "will" has the same meaning as in the *Wills Act*.

2. A participant may designate a person to receive a benefit payable under a plan on the participant's death

      (*a*) by an instrument signed by him or signed on his behalf by another person in his presence and by his direction, or

      (*b*) by will,

   and may revoke the designation by either of those methods.

3. A designation in a will is effective only if it relates expressly to a plan, either generally or specifically.

4. A revocation in a will is effective to revoke a designation made by instrument only if the revocation relates expressly to the designation, either generally or specifically.

5. Notwithstanding the *Wills Act*, a later designation revokes an earlier designation, to the extent of any inconsistency.

6. Revocation of a will is effective to revoke a designation in the will.

7. A designation or revocation contained in an instrument purporting to be a will is not invalid by reason only of the fact that the instrument is invalid as a will.

8. A designation in an instrument that purports to be but is not a

valid will, is revoked by an event that would have the effect of revoking the instrument if it had been a valid will.

9. Revocation of a designation does not revive an earlier designation.

10. Notwithstanding the *Wills Act*, a designation or revocation in a will is effective from the time when the will is signed.

11. After the death of a participant who has made a designation that is in effect at the time of his death, the person designated may enforce payment of the benefit payable to him under the plan, but the person against whom the payment is sought to be enforced may set up any defence that he could have set up against the participant or his personal representative.

12. Where this Act is inconsistent with a plan, this Act applies, unless the inconsistency relates to a designation made or proposed to be made after the making of a benefit payment where the benefit payment would have been different if the designation had been made before the benefit payment, in which case the plan applies.

13. This Act does not apply to a contract or to a designation of a beneficiary to which the *Insurance Act* applies.

APPENDIX Q

(See page 31)

Children Born Outside Marriage

REPORT OF THE BRITISH COLUMBIA AND ONTARIO COMMISSIONERS

INTRODUCTION

At the 1974 meeting of the Uniform Law Conference of Canada, the following resolution was adopted:[1]

> RESOLVED that the British Columbia and Ontario Commissioners jointly analyse the various law reform commission reports on this subject as they become available and report to the 1975 meeting as to each principle covered in these reports and as to the disposition or solution offered for each such matter and to report thereon to the 1975 meeting

As a result of this resolution Mr. Keith B. Farquhar, Director of Research of the Law Reform Commission of British Columbia, was asked by Mr. H. Allan Leal, one of the Ontario Commissioners, to prepare a report for the British Columbia and Ontario Commissioners, and submits the following.

REPORT

A. *Introduction*

This report has been prepared during June 1975, and to this date materials from five jurisdictions have become available and form the basis for the report. In British Columbia the Royal Commission on Family and Children's Law has reported to the Attorney-General;[2] this document represents the concluded views of that Commission. In New Brunswick the Law Reform Division of the Department of Justice has issued a Working Report;[3] it "can only be regarded as of a tentative nature. The report is intended to serve as a working document, to serve as a catalyst for further discussion so that areas of greatest concern can be identified, and areas requiring further research pointed out."[4] In Newfoundland in 1970 the Family Law Study made a series of final reports in which there were various recommendations to the Minister of Justice concerning children born outside marriage;[5] these recommendations were final. In Ontario, the Ontario Law Reform Commission submitted a Report on Children to the Attorney General in 1973;[6] the recommendations were final. In Quebec the Committee on the Law on Persons and the Family submitted a Report on the Family to the Civil Code Revision Office in 1974;[7] the Civil Code Revision Office has not yet issued a final report. It is un-

derstood that the Alberta Institute of Law Research and Reform is close to issuing a document on the subject, but at the time of writing it was not available.

Fortunately, most of the documents referred to contain summaries of recommendations, and extensive use of these has been made in the interest of avoiding the production of a report of unmanageable size. Nonetheless, it should be recognized that this carries with it the risk of distortion and misunderstanding. It is urged upon readers that reference should be made to the documents themselves where there appears to be ambiguity. It should be noted that because New Brunswick's proposals are tentative, its recommendations are more broadly worded than those of the other Provinces.

It has been thought most convenient to subdivide the topic into a number of separable areas, and to summarize the views expressed in the documents *seriatim* on a province-by-province basis.

B. *Status*

All jurisdictions, except for Newfoundland, have recommended a provision in the law whereby the distinction between children born within or outside marriage is abolished, and whereby all children are declared to have equal status.

British Columbia recommends that:

1. Legislation should abolish the legal status of illegitimacy by a statement that relationships between every person and his parent shall be determined without anything depending on whether or not his parents have been married.[8]

2. The new status of children legislation should be stated to apply to every person, whether born in British Columbia or not, and whether or not his father or mother has ever been domiciled in British Columbia.[9]

New Brunswick recommends that:

1. There should be legislation to effect a broad declaration of the status of children; this legislation should specify that in those cases where the natural parents of the child are established, the child shall be treated for all legal purposes as the child of those parents.[10]

2. Generally, the recommendations should apply to all children, whether born before or after the change in law.[11]

3. Consideration must be given to existing rules of private international law to determine the scope of the effect of the recommendations.[12]

Newfoundland adopts a much narrower approach, and retains the status of illegitimacy. It would change, however, the law relating to legitimation by recommending that:

An illegitimate child who has been legitimated shall be deemed to be legitimate for all purposes, provided however that property that has already vested shall not be affected.[13]

Ontario recommends that:

The law of Ontario should declare positively that for all its purposes children have equal status.[14]

Quebec recommends that:

All children, whose filiation is established, have the same rights and obligations with regard to their parents and to the families of their parents.[15]

C. *Determinations of Paternity*

The means of determining the paternity of a child fall into three categories — presumptions of paternity, acknowledgments, and judicial decrees.

1. *Presumptions of Paternity*

British Columbia recommends the following presumptions together with the repeal of the *Legitimacy Act*. They are designed to be presumptions of fact outside court proceedings, but are presumptions of law in court proceedings.[16]

(a) A man is presumed to be the father of a child if, at the time of the child's birth, he and the child's mother are or have been married to each other and the child is born during the marriage, or within 300 days after the marriage is terminated by death, a decree nisi of divorce, an order for judicial separation, or a declaration of nullity.

This presumption may be rebutted by evidence which proves, on a balance of probabilities, that the man and woman were living separate and apart under circumstances which made access to sexual intercourse unlikely, and that the child was born more than 300 days after the commencement of the period of living separate and apart.

(b) A man is presumed to be the father of a child if, before the child's birth, he and the child's mother have attempted to marry each other by a marriage solemnized in apparent compliance with the law of the place it was entered into.

The presumption applies whether the attempted marriage is void

ab initio or could be declared a nullity by a court, and

(i) if the attempted marriage could be declared invalid only by a court, the child is born during the attempted marriage, or within 300 days after its termination by death, a decree nisi of divorce, or a declaration of nullity;

(ii) if the attempted marriage is void without a court order (void *ab initio*), the child is born within 300 days after the man and woman commence living separate and apart.

(c) Presumption (b) will be applied to a father and his attempted marriage notwithstanding the requirement of "apparent compliance with the law of the place it was entered into" where the mother or father has a prior subsisting marriage to a spouse who

(i) is presumed dead by an order that is made effective with respect to remarriage;

(ii) was a member of the Canadian forces in respect of whom notification of death or presumed death has been given under the laws of Canada.

(d) A man is presumed to be the father of a child if, after the child's birth, he and the child's mother have married, or attempted to marry, each other by a marriage solemnized in apparent compliance with the law of the place it was entered into.

This presumption applies whether the attempted marriage is void *ab initio* or could be declared a nullity by a court, and only where the man

(i) has registered his paternity with the Director of Vital Statistics under section of the *Vital Statistics Act;* or

(ii) has been named as the father on the child's birth certificate, pursuant to section 4 or 6 of the *Vital Statistics Act;* or

(iii) is obligated to support the child under a written agreement or court order made before or after the coming into force of this section.

(e) Where no father has been registered or declared by a court, a man is presumed to be the father of a child if, while the child is under the age of majority, he receives the child into his home and openly holds out the child as his own child.

(f) If two or more presumptions under this section arise which conflict with each other, the presumption which best promotes the child's best interests shall take precedence.

In this determination of conflicting presumptions no preference shall be given to either evidence of biological parenthood or of psychological parenthood.

New Brunswick recommends that:

The *Legitimation Act* should be repealed. Certain of its present provisions should be modified to establish a legal presumption that a child born to parents who *bona fide* believe they are married when they are not is the child of those parents, and to establish a legal presumption that when parents of a child intermarry, after placing their names on the birth certificate of the child as parents, they are the parents of that child.[17]

Newfoundland, within the confines of its terms of reference, did not find it necessary to deal with this question.

Ontario recommends that:

The *Legitimacy Act* should be repealed, but a child born to a married woman should be presumed to be the child of her husband:

(i) where the child is born during the marriage;
or

(ii) where the child is born within eleven months after the marriage has been terminated by death or judicial decree.

The recommendation applies both to void and voidable marriages.[18]

Quebec recommends that:

(a) If a child is born during a marriage, or within three hundred days after the dissolution or annulment of the marriage, the husband of the mother of the child is presumed to be its father.

Such presumption is not admissible when the child is born more than three hundred days after the judgment ordering separation as to bed and board, unless there is reconciliation.[19]

(b) If a child is born less than three hundred days following the dissolution or annulment of a marriage, but his mother marries again within such time, the mother's second husband is presumed the father of that child.[20]

2. *Acknowledgments of paternity*

British Columbia recommends that:

An administrative procedure under the auspices of the Director of Vital Statistics should be established for the formal registration of pa-

ternity. This acknowledgment would be proof of the father-child relationship for all legal purposes. Only a judicial finding based on fresh evidence could alter this acknowledgment.[21]

New Brunswick recommends that:

There should be an acknowledgment procedure whereby an unmarried man and woman can through an administrative procedure acknowledge a child to be their child.[22]

Newfoundland does not refer to the matter of acknowledgment.

Ontario does not afford any conclusive value to an acknowledgment.[23]

Quebec recommends that:

(a) Paternity is acknowledged by a declaration made by a man that he is the father of the child.[24]

(b) Maternity is acknowledged following a declaration by a woman that she is the mother of the child.[25]

(c) Every acknowledgment of paternity or of maternity constitutes proof against the person who made it.

Such acknowledgment constitutes proof as regards third persons if it is indicated on the record of birth or made by a person who has contributed towards the support or education of the child since its birth.

Acknowledgment of paternity also constitutes proof as regards third persons if the mother declares it to be truthful; acknowledgment of maternity constitutes proof as regards third persons if consistent with the attestation of delivery or if the father declares such acknowledgment to be truthful.[26]

(d) No acknowledgment of paternity or maternity has any effect if it contradicts established filiation which is still legally valid.[27]

3. *Judicial Declaration*

British Columbia recommends that:

(a) A single procedure in provincial court should be available to a mother, father or child who seeks a judgment of the child's paternity. The judgment would be binding on all future situations where paternity is an issue except that:

(i) it should be open to parties from out of the province (or where the law of another jurisdiction applies) to continue to have paternity determined as a collateral question; and

(ii) in addition to normal appeal procedures, a judge should have the discretion to re-open his paternity judgment in the rare case where "fresh evidence" is produced or where fraud has contributed to the original result.[28]

(b) In all proceedings and directions relating to the establishment of a person's paternity, the best interests of the child should be the paramount consideration.[29]

(c) Proceedings to obtain a declaration of paternity should be civil in nature.[30]

New Brunswick recommends that:

(a) There should be a judicial procedure in the Provincial Court Family Division whereby either the mother, the child or the father may seek a declaration as to the paternity of a child.

(b) A judicial declaration of paternity should trigger, in respect of a child born outside marriage, most of the obligations that the law now recognizes to exist between a parent and his legitimate child.[31]

Newfoundland, for the purposes of the law of intestate succession, recommends that:

(a) Any person who alleges that the relationship of father and child exists between himself and any other named person and any woman who alleges that a named person is the father of her child should have the right to apply to the court for a declaration of paternity.[31a]

(b) The jurisdiction of the Supreme Court of Newfoundland be extended to include the hearing of applications for, and the making of, declarations of legitimacy.[32]

Ontario recommends that:

It should be possible for any interested person to obtain a judicial decree of a declaratory nature that a given man is the father of a given child. Such a decree should operate as a presumption that the man is the father of the child for all purposes unless and until the decree is vacated by the making of another decree.[33]

Quebec has made its recommendations concerning a judicial declaration within the concepts of "repudiation and contestation" of paternity.

(a) If the paternity of a child cannot be determined by applying the [articles concerning presumptions], paternal filiation of such child may be established by an acknowledgment of paternity[34] or by a judicial declaration.[35]

(b) Every husband may disown his wife's child.

Every mother may contest her husband's paternity.

Any person wishing to lay claim to a child whose filiation is already established must initiate proceedings to contest the child's status, which may only be done where it is not prohibited by Article 125.[36]

(c) Recourse is directed against the child or, as the case may be, against the mother or the alleged father of such child.[37]

D. *The Affiliation Proceeding*

British Columbia recommends that:

The *Children of Unmarried Parents Act* be repealed and replaced with the new legislation on parental identification, rights and obligations recommended in the Report.[38]

New Brunswick recommends that:

The affiliation proceeding, as it now exists under the *Children of Unmarried Parents Act*, should be abolished, and replaced with new proposals recommended in the Working Report.[39]

Newfoundland was not, by its terms of reference, required to address itself to whether the affiliation proceeding should be abolished.

Ontario recommends that:

The affiliation proceeding should be retained in order to provide a comparatively cheap and simple means for a mother to obtain maintenance for her child.[40]

In the *Quebec* document a distinction between a judicial declaration and an affiliation proceeding is not referred to.

E. *Evidence of Paternity*

There are a number of evidentiary reforms proposed in each document, but British Columbia, New Brunswick and Ontario also have specific recommendations concerning blood tests.

1. *General*

British Columbia recommends that:

(a) Informal acts of acknowledgment of paternity should have the status of *prima facie* evidence in an administrative or judicial proceeding to establish paternity.[41]

(b) In the consideration of evidence of paternity, including the re-

buttal of presumptions of paternity, the "balance of probabilities" should be the standard of proof. The "reasonable doubt" standard should be expressly abolished.[42]

(c) The requirement of corroboration of a mother's evidence in paternity proceedings should be abolished. The mother should continue to be a competent and compellable witness in all cases where she is available to testify.[43]

(d) All evidence of registration of paternity contained in public records should be admissible in paternity proceedings.[44]

(e) The Cabinet should be empowered to specify, by Order in Council, the extra-provincial declarations and formal acknowledgments of paternity that will be recognized by British Columbia courts. The courts should have the discretion to review these declarations and acknowledgments because they should be *prima facie* evidence of actual paternity.[45]

New Brunswick recommends that:

In judicial proceedings to establish paternity the burden of proof should be based upon the normal civil standard. The rule in *Russell* v. *Russell*, preventing spouses from giving evidence that would tend to bastardize a child, should be specifically removed.[46]

Newfoundland recommends that:

(a) *The Evidence Act* should be amended to provide that any presumption of law as to the legitimacy or illegitimacy of any person in any civil proceeding be rebutted by evidence which shows that it is more probable than not that that person is illegitimate or legitimate, as the case may be, and it shall not be necessary to prove that fact beyond reasonable doubt in order to rebut the presumption.[47]

(b) Section 8 of *The Children of Unmarried Parents Act 1964* should be repealed with substitution therefor providing that the judge has the power of summoning any person and requiring him to give evidence on oath and to produce all documents and things as may be relevant, and has the same power to enforce the attendance of witnesses and to compel them to give evidence and produce documents and things as is vested in any court in civil cases.[48]

(c) For the purposes of a claim under the law of intestate succession, an affiliation order made against one person should be taken as *prima facie* proof of his paternity.[48a]

Ontario recommends that:

(a) An assertion of paternity, whether made by a mother or any

other person, which may lead to a judicial declaration, should be supported by corroborative evidence before an order can be made.[49]

(b) A civil standard of proof should apply to the establishing of a paternal relationship.[50]

Quebec recommends that:

(a) Any evidence which can establish that the husband is not the father of the child is admissible.[51]

(b) The paternal and maternal filiation of every person are proven by such person's record of birth.

Failing such record, uninterrupted possession of status is sufficient.[52]

(c) Possession of status is established by any adequate combination of facts which indicate the relationship of filiation between the father or the mother and the child.[53]

(d) Proof of filiation may be made by testimony when there is neither a record of birth nor uninterrupted possession of status, or if the child has been registered under a false name or with no mention of the name of the mother or of the father.[54]

(e) Any evidence is admissible to contest an action concerning filiation.[55]

2. *Blood Tests*

British Columbia recommends that:

(a) The results of blood tests and anthropological examinations undertaken voluntarily should continue to be admissible in evidence in disputed paternity proceedings.[56]

(b) Upon the application of any party to a civil proceeding where paternity is an issue, the court should have the power to direct that the parties to the action, the child and its mother submit to blood tests.[57]

(c) No sample of blood should be taken from a person under a direction of the court unless that person consents to its being taken or, if he is incapable of consenting, unless consent is given in accordance with the following:

(i) A child aged 16 or over should be capable of giving a valid consent to giving a sample of blood unless, if of full age, he would not have the capacity to consent.

(ii) Where a child is under the age of 16, the consent of the person

having care and control of him should be required.

(iii) If a person is mentally incapable of giving a valid consent, it should be in order to take a blood sample from him if the person in whose care and control he is consents and the medical practitioner under whose care he is certifies that giving a sample will not be prejudicial to his proper care or treatment.[58]

(d) Where a person refuses to comply with the court's direction, the court should be entitled to draw whatever inferences it thinks appropriate from the refusal.[59]

(e) The court should be entitled to draw whatever inferences it thinks appropriate from a refusal of consent by a child's guardian or representative, notwithstanding that the refusal was made in the child's best interests.[60]

(f) Where a person applying for relief is relying on a presumption of paternity, if he refuses to comply with the court's direction to submit to a blood test the court should have power to adjourn or dismiss the application.[61]

(g) Both exclusion and non-exclusion results in blood tests should be admissible in evidence. These results should be fully shown and explained in a certificate provided by the serologist responsible for the tests. The serologist should be available for examination and cross-examination upon the request of any party to the proceeding.[62]

New Brunswick recommends that:

(a) While no person should be physically compelled to submit to a blood test without his consent, the importance of this evidence requires that a court should be empowered to direct that blood tests be taken and to draw inferences of fact adverse to the claim or position of any person who refuses, without just cause, to be tested.[63]

(b) The court should be empowered to receive, for what it is worth in any given case, evidence of blood tests confirming that the alleged father may have been the father of the child.[64]

(c) Provisions similar to those contained in the *Family Law Reform Act 1969* of England should be adopted in New Brunswick as a means of assisting the court in deciding the issue of paternity.[65]

Ontario recommends that:

(a) In all civil proceedings in which any court is called upon to determine the paternity of any child it should have the power to rule, on the application of any of the parties, that the parties to the action, the

child concerned or its mother, or all of them, should submit to blood tests.

(b) No sample of blood should be taken from a person as a result of a ruling by a court unless that person consents to its being taken.

(c) Where a person refuses to submit to a blood test after a court has ruled that he ought to do so, the court should be entitled to draw whatever inference it thinks appropriate from the refusal.

(d) If a person is incapable of giving a valid consent, it should be proper to take a blood sample from him if the person in whose care and control he is consents and the medical practitioner under whose care he is certifies that giving a sample will not be prejudicial to his proper care or treatment.

(e) A joint committee of lawyers and doctors should be set up to devise standards and procedures for the taking of blood tests and their admission in evidence. These standards and procedures should be promulgated by Order in Council.[66]

F. *Artificial Insemination*

British Columbia and Quebec make specific recommendations concerning artificial insemination. New Brunswick, Newfoundland and Ontario do not touch on the matter.

British Columbia recommends that:

1. Legislation should state that a donor of semen used in artificial insemination has no legally recognized relationship with a resulting child. An existing relationship between the parents who sought artificial insemination would not be affected, nor would their legal parent-child relationship.[67]

2. A man and woman who are married or living together and who consent to artificial insemination of the woman, should be the only legally recognized parents of the resulting child.[68]

3. When a paternity proceeding involving blood testing of a person who has consented to artificial insemination, evidence of that fact and evidence of the blood type of the donor should be heard in the judge's chambers.[69]

Quebec recommends that:

When a child has been conceived through artificial insemination, either by the husband or by a third person with the consent of both consorts, no repudiation or contestation of paternity is admissible.[70]

G. *Consequences of the Proposals*

Because of the structure of the common law, British Columbia, New Brunswick and Ontario have all found it necessary to propose detailed consequential changes in the common law and the relevant provincial statute law, to give effect to the principle of equality of status for all children. Newfoundland, although not embracing the concept of equality to its fullest extent, has also proposed changes to lessen the hardship on children born outside marriage.

It would appear that in Quebec, the statement embodied in Art. 130 that

> All children, whose filiation is established, have the same rights and obligations with regard to their parents and to the families of their parents

is sufficient to effect the required change.

1. *Abolition of the Common Law Rules of Construction*

British Columbia recommends that:

(a) The rules for construction of wills should be changed to recognize the relationship between a father and his child born outside marriage. Statutory construction rules and statutory definitions in the *Administration Act*, the *Succession Duty Act*, the *Testator's Family Maintenance Act* and the *Probate Fees Act* should also be amended to recognize such a relationship.[71]

(b) The *Interpretation Act* should be amended to add the following rule of general application: Unless otherwise stated, in the interpretation of all statutes, the relationship between every person and his father and mother shall be determined irrespective of whether the father and mother are or have been married to each other, and all other relationships shall be determined accordingly.

This same rule should be established as a general rule of construction for all instruments executed after the coming into force of new legislation governing children born within or outside marriage.[72]

New Brunswick recommends that:

(a) Except where legislation expressly states that the rights of children born outside marriage are to differ from those of children born within marriage, all statute law relating to the rights and obligations flowing between a parent and his child should apply in respect of children born outside marriage as well as children born within marriage.

(b) Where the word "child" or similar term is used in a statute or document in a manner that is intended to describe a relationship be-

tween the child and his parents, the word shall be deemed to have reference to his natural parents, whether or not the parents are married to one another.

(c) Words such as "legitimate," "illegitimate," "in lawful wedlock" and "lawful lineal descendants," which pervade legislation should be isolated and removed. If it is necessary to differentiate in certain cases between children born within and outside marriage, factual and inoffensive language should be used to describe the children.[73]

Newfoundland, within the confines of its terms of reference, did not find it necessary to enunciate such broad principles.

Ontario recommends that:

(a) There should be a reversal of the common law rule of construction that any reference to "child," "children," or "issue" in an instrument or statute should be taken to exclude children born outside marriage.

(b) The words "child," "children" or "issue" or other term having a similar meaning in a statute should specifically be stated to include all children, regardless of whether their parents have been married or not. This rule of construction should apply unless there is clear indication that the Legislature had in mind, in any particular case, a more limited class of children.[74]

2. *Inheritance*

British Columbia recommends that:

(a) See preceding section on abolition of the common law rules of construction.

(b) A child born outside marriage should be entitled to a share of his deceased mother's and father's estates equal to the share allotted to other issue in a similar position under the *Administration Act*.[75]

(c) The *Administration Act* should be amended to permit inheritance from and through the father of a child born outside marriage. The Act should allow recognized fathers to inherit from the child who died intestate.[76]

New Brunswick recommends that:

(a) See preceding section on the abolition of the common law rules of construction.

(b) As a general principle, children born outside marriage should be entitled to inherit from their natural parents on an intestacy. A similar right should exist to inherit through natural parents. Further

consideration must be given, however, to the question whether the right to inherit from the father should be limited to the child born outside marriage who is acknowledged by the father and mother to be their child, who is judicially declared, at the instance of the father, to be the father's child or who is dealt with in some other manner as the father's child.[77]

(c) A child born outside marriage should have standing to apply under dependant's relief legislation.[78]

Newfoundland recommends that:

(a) The *Intestate Succession Act* should be amended to provide that the relationship between a child and his or her father or mother be determined irrespective of whether the father or mother are or have been married to each other or not, and that all other relationships be determined accordingly.[79]

(b) The *Wills Act* should be amended to provide that the rule of construction whereby in a will words of relationship signify only legitimate relationship in the absence of contrary expression of intention be abolished.[80]

(c) The *Family Relief Act* should be amended to provide, *inter alia*, that the term "dependants" includes children of the deceased, whether legitimate or illegitimate.[81]

Ontario recommends that:

(a) See preceding section on abolition of the common law rules of construction.

(b) Section 28 of *The Devolution of Estates Act*, which prevents inheritance by any person claiming relationship to the intestate through a union outside marriage, should be repealed.[82]

(c) It may be necessary to amend *The Dependant's Relief Act* to put it beyond doubt that a child born to a testator outside marriage comes within the definition of a "dependant" entitled to claim "the adequate maintenance" which the testator is bound to provide under the Act.[83]

3. *Maintenance*

British Columbia recommends that:

(a) The child maintenance obligations of the mother and the presumed, acknowledged, or decreed father of a child born outside marriage should be set out in the *Family Relations Act*.[84]

(b) The *Family Relations Act* should be amended to include: (i) pre-natal expenses, and (ii) the costs associated with birth or death of

the child, among the considerations a judge must review in awarding maintenance for a child born outside marriage.[85]

(c) The *Unified Family Court Act* should be amended to allow a mother and a presumed, acknowledged, or decreed father to make agreements concerning maintenance, custody, and access for children born outside marriage. These agreements should be negotiated by family counsellors, reviewed by family advocates and filed in a unified family court.[86]

(d) The variation and enforcement of maintenance agreements and orders for children born outside marriage should become the responsibility of the staff and judges of the unified family court.[87]

(e) The issue of maintenance for a child born outside marriage should be decided in a hearing which is separate from, and subsequent to, any proceeding for the identification of the child-parent relationship.[88]

(f) The parental maintenance obligations contained in the *Family Relations Act* should be expressed as examples of a general definition of parent-child relationships. These definitions should be continued as a basis for child maintenance which is distinct from the legal identification of a father-child relationship.[89]

New Brunswick recommends that:

The present law requiring parents to support their children whether born within or outside marriage, should be continued, and the present law requiring children to support their dependant parents should be extended to children born outside marriage.[90]

Newfoundland recommends that:

(a) *The Maintenance Act* should be amended to provide that where a woman has lived and cohabited with a man for a period of one year or more and they are not married to each other, and he is the father of any child born to her, she, or any other person on her behalf, may within one year from her ceasing to live and cohabit with him, make an application under sections 5, 6 and 10 for maintenance in respect of herself and her children, and this Act, *mutatis mutandis*, applies in such a case.[91]

(b) The definition of "child" in section 2(b) of *The Maintenance Act* should be repealed, with the following substitution therefor: "child" means any child of both spouses, whether legitimate or illegitimate, . . . actually or apparently under the age of seventeen years . . .[92]

(c) Newfoundland also recommends a large number of amend-

ments to *The Children of Unmarried Parents Act*,[93] but as these do not have, as their primary objective, the assimilation of the position of the child born outside marriage to that of the child born within marriage, the proposed amendments are not set out here.

Ontario recommends, in another Report,[94] that all of its proposals concerning the maintenance of children apply equally to "a natural child, born out of lawful wedlock."[95]

4. *Adoption*

British Columbia recommends that:

(a) In revised adoption legislation, all reference to legitimacy or illegitimacy should be repealed and replaced by terms which identify the known parent-child relationships.[96]

(b) A father should have the right to consent or refuse consent to his child's adoption if:

(i) he is or has been married to the child's mother, unless

(a) he and the mother have been living separate and apart for 300 days prior to the birth of the child and there is evidence of non-access, or

(b) another man has been acknowledged or declared to be the child's father;

(ii) the father was living with the mother at the time of the child's birth provided that the father's paternity has been formally acknowledged or judicially declared;

(iii) the father is living with and maintaining the child.[97]

(c) New legislation on adoption should give a right to notice and an opportunity to be heard in adoption proceedings to fathers who have shown "sufficient interest" in their children. Guidelines in the legislation should indicate examples of "sufficient interest."[98]

The guidelines recommended are:

(i) where paternity has been declared by a court;

(ii) where paternity has been acknowledged formally by registration with the Director of Vital Statistics;

(iii) where paternity is presumed;

(iv) where paternity has been informally acknowledged by one or more of the following acts:

(a) the father is voluntarily supporting the child;

(b) the father is a party to an agreement to pay support for the child;

(c) the father is subject to a court order for maintenance, custody, or access to his child;

(d) the father has registered his interest in writing with the local representative of the Superintendent of Child Welfare.

New Brunswick recommends that:

A person who has been established as the father of a child under the voluntary acknowledgment or judicial declaration procedures suggested in the Report should be given notice of all proceedings under the *Adoption Act* in relation to his child, and his consent to the adoption of his child should be required.[99]

Newfoundland has no recommendations concerning adoption and children born outside marriage.

Ontario recommends that:

Where a putative father has taken steps to have his paternity of a child judicially declared, he should have the right to give or withhold consent to the adoption of the child. Such a consent should be subject to dispensation in the best interests of the child, as other consents now are under the existing law. If, on the other hand, the father has not brought declaration proceedings, but has had them brought against him, then he should be entitled only to notice of the adoption proceedings.[100]

Quebec recommends that:

(a) If the filiation of the child is established with regard to both parents, the father and the mother must both consent to the adoption.

If either parent is deceased, unable to make his will known, or deprived of parental authority, the consent of the other parent is sufficient.[101]

(b) If the filiation of the child is established with regard to only one of his parents, that parent alone consents to the adoption.[102]

5. *Protection*

British Columbia recommends that:

(a) For the general purposes of new protection of children legislation, "parents" should be defined to include presumed, acknowledged and declared fathers.[103]

(b) New legislation on the protection of children should give a right to notice and an opportunity to be heard in all protection proceedings to fathers who have shown "sufficient interest" in their children. Guidelines in the legislation should indicate examples of "sufficient interest."[104]

New Brunswick recommends that:
A person who has been established as the father of a child under the voluntary acknowledgment or judicial declaration procedures suggested in the Report should be given notice of all proceedings under the *Child Welfare Act* in relation to his child.[105]

Newfoundland does not appear to make any recommendation on this matter.

Ontario recommends that where a putative father cannot be found after reasonable inquiry, lack of notice to him (already required in Ontario by virtue of ss. 20 (1) (e) and 25(4) of *The Child Welfare Act*) should not deprive a court of jurisdiction to make an order.[106]

6. *Custody and Guardianship*

British Columbia recommends that:
(a) The *Unified Family Court Act* should be amended to allow a mother and a presumed, acknowledged, or decreed father to make agreements concerning custody and access for the child born outside marriage. These agreements should be negotiated by family counsellors, reviewed by family advocates and filed in a unified family court.[107]

(b) New legislation on child custody, access, and guardianship should give a right to notice and an opportunity to be heard in all custody proceedings to fathers who have shown "sufficient interest" in their children.[108]

(c) New legislation on child custody, access and guardianship should place all fathers on an equal footing with other applicants. The "best interests of the child" should be made the paramount test in all such cases.[109]

(d) In new guardianship legislation, an acknowledged or declared father should be entitled to apply for guardianship and to exercise the guardianship rights of a surviving parent. If he is living with the mother, the acknowledged or declared father should be a joint guardian of the child.[110]

New Brunswick recommends that:
(a) The father of a child born outside marriage, who has been es-

tablished as a father under the acknowledgment or judicial declaration procedures, should be put on an equal basis with the mother in respect of an application for the custody of the child, and should be given the right to apply for access and visitation rights with respect to the child. The court should decide these issues on the basis of the best interests of the child.[111]

(b) The father of a child born outside marriage should have the right to appoint a guardian under the *Guardianship of Children Act* where there is evidence of a parent-child relationship such as cohabitation with the mother and child or support of the child.[112]

Newfoundland appears to make no recommendation in this respect.

Ontario recommends that:

(a) There should be legislation to confirm the rule that a mother shall be the sole guardian of her child in all cases where the child is not born within, or not presumed to be born within marriage.[113]

(b) In any case where a declaration of paternity has been made, the declared father should be given the right to apply for custody of the child.[114]

7. *Miscellaneous Statutes*

British Columbia and Ontario have identified a number of statutes, in addition to those already mentioned, in which changes, consequent upon the basic proposal of principle, ought to be effected. These changes consist for the most part of either removal of words such as "legitimate" and "illegitimate" or a clarification that the statutes do apply to children born outside marriage.

British Columbia recommends that:

(a) The *Change of Name Act* should be amended to delete any references to legitimacy or legitimation.[115]

(b) The *Change of Name Act* should be amended to permit an acknowledged or declared father who has sole custody of his child to apply to change the child's name without the consent of the mother. If the father and mother are living together, their joint consent to the change should be required.[116]

(c) The *Marriage Act* should be amended to repeal all reference to legitimation and illegitimacy. The Director of Vital Statistics should be able to register automatically the paternity of an acknowledged father in any marriage validated by the terms of sections 40, 41, 41A, or 42 of the *Marriage Act*.[117]

(d) The definitions of "father" and "mother" in the *Mental Health Act, 1964* should be repealed and replaced by definitions which recognize the unmarried mother and the presumed, acknowledged or declared father.[118]

(e) The references to the "illegitimate child" in the *Criminal Injuries Compensation Act* and the *Worker's Compensation Act* should be repealed and replaced by definitions which recognize the relationship of the child to his mother and to a presumed, acknowledged or declared father. All benefits and family relationships which flow from the identification of the child-parent relationship should be determined according to these new definitions.[119]

(f) The references to the "illegitimate child" in the *Residence and Responsibility Act* should be repealed and replaced by terms which recognize that a presumed, acknowledged, or declared father could have sole custody of his child. If the mother and father are living together, their joint legal residence should determine the child's residence.[120]

Newfoundland recommends that:

The Fatal Accidents Act should be amended to provide that the term "child," when used in the Act, shall include an illegitimate child.[121]

Ontario recommends that among the statutes to be amended to make the law consistent with equality of status for all children are:

The Fatal Accidents Act, s. 1(a);
The Insurance Act, ss. 153, 254;
The Marriage Act, s. 8;
The Perpetuities Act, s. 7(4);
The Succession Duty Act, ss. 1(d) and (k), 7(11) (c);
The Vital Statistics Act, ss. 6(2), 12; and
The Workmen's Compensation Act, s. 1(1) (r).[122]

H. *Savings and Transitional*

Although it has been agreed in most of the jurisdictions under review that it is desirable that all children be accorded equal status, it has also been agreed that the realities of the situation do not permit the consequences of that change to take effect without certain reservations. Principal among these, of course, is the necessity for a child who is not presumed to have been born within marriage to be acknowledged as, or declared to be, the child of a particular father. There are, however, other recommendations of a similar nature.

British Columbia recommends that:

1. New legislation on the identification of paternity should not affect wills, deeds or other instruments executed before the coming into force of the new provisions or intestate deaths which occur before the coming into force of the new provisions.[123]

2. The onus of bringing a claim in the distribution of a father's estate should rest on the child born outside marriage. At the same time, trustees, executors and administrators should have a duty to make a reasonable inquiry into the existence of such children. Beyond that inquiry, these officials should be exempt from any personal liability.[124]

3. The duty on trustees, executors and administrators of a child's estate to search for the father should be limited to registrations and declarations of paternity. If no father is thereby determined, it should be presumed that the child was not survived by his father, unless the contrary is shown.[125]

4. As a general rule, new legislation on the status of children should apply to all children and their parents retroactively. Final judgments or orders of a court and all instruments executed before the coming into force of new legislation should be governed by the law that would have applied to them if no new legislation had been passed.[126]

New Brunswick recommends that:

1. Further consideration must be given to the question whether the right to inherit from the father should be limited to the child born outside marriage who is acknowledged by the father and mother to be their child, who is judicially declared, at the instance of the father, to be the father's child or who is dealt with in some other manner as the father's child.[127]

2. A registry of relationships recognized under the new legislation should be established to which reference can be made for purposes set out in the Report, especially for purposes of estate distribution. Executors, administrators and trustees of estates should not be required to search for children born outside marriage beyond this registry. Beyond that, the responsibility would be on the person claiming against the estate to establish his claim that he falls within the class of beneficiary entitled to an interest in the estate.[128]

3. Although the basic recommendations should apply to all children, whether born before or after the change in law, an exception may have to be made for some limited purposes, such as the preserva-

tion of an intended property distribution under a will or trust executed prior to the change in law.[129]

Ontario recommends that:

1. All instruments executed and all intestacies taking place before the implementation of these recommendations should be expressly said to be subject to the present law.[130]

2. The duty to seek out beneficiaries imposed on a trustee, an administrator or executor ought not to go beyond the duty to search for those children born outside marriage whose paternity is positively established or presumed, when the time for the ascertainment of possible beneficiaries arrives, by the means which are recommended.[131]

3. Trustees, administrators or executors should not have a duty to search outside Ontario for children born outside marriage who may be potential beneficiaries.[132]

4. Judicial declarations of paternity, wherever they are made in Ontario, should be recorded at a central location and indexed in such a way that executors, trustees and administrators may readily and conveniently obtain the information they require in ascertaining possible beneficiaries.[133]

Quebec recommends a number of limitation provisions, which are described in the next section.

I. *Limitation Provisions*

To prevent the possibility of parents and children making multiple claims on estates, to prevent fraud, and to prevent the disturbing of interests which have vested, some jurisdictions have recommended provisions which limit the circumstances in which claims of paternity may be asserted, or in which the consequences of that assertion have full effect.

British Columbia recommends that:

1. There should be no limitation period for commencement of declaration of paternity proceedings.[134]

2. No interest in property which has vested before the ascertainment of paternity should be affected by a subsequent finding of paternity.[135]

New Brunswick recommends that:

Except for recovery by the mother of birth expenses, in respect of which a two-year limitation period could be imposed, there should be no limitation period established barring an action being brought in a

court for a judicial declaration of paternity.[136]

Newfoundland recommends that:

1. Although *The Legitimacy Act* should be amended to provide that an illegitimate child who has been legitimated shall be deemed to be legitimate for all purposes, property that has already been vested shall not be affected.[137]

2. For the purposes of the proposed amendment to *The Intestate Succession Act*, paternity of an illegitimate child must have been admitted or established against the parent in his or her lifetime.[138]

Ontario recommends that:

1. There should be no limitation period as such on the establishing of paternal relationships, although interests which have vested before a finding of paternity should not be disturbed.[139]

2. Neither the paternal relationship in the case of a child born outside marriage or any other relationship traced through the paternal relationship should be recognized for any purpose relating to the disposition of property by will or by way of trust unless:

(a) the relationship has been established by or against the father in his lifetime; or

(b) if the purpose is for the benefit of the father, paternity has been established by or against him during the life of the child.

Exceptions should be made where:

(a) an affiliation order has been made between the father and the child during their respective lifetimes; or

(b) a court thinks it just, in its discretion, to allow the relationship between father and child to be established and recognized after the death of either of them.[140]

Quebec recommends that:

1. Unless expressly provided by law, no action relating to any person's status may be prescribed.[141]

2. If a child dies without establishing his status, his heirs may establish it within one year after the death.[142]

3. Every action for repudiation or for contestation of paternity is prescribed by six months after the birth of the child.

However, this delay begins to run against the husband on the day when he learns of the birth.[143]

4. The death of the child extinguishes the right of action for repudiation or contestation.

Any action instituted before such death is continued against the heirs.[144]

5. If the husband or the mother dies, the right of action is not extinguished provided such death occurs before expiry of the delay for repudiation or for contestation of paternity.

Every heir must exercise this right within six months after such death.[145]

J. *Miscellaneous*

British Columbia recommends that:

1. The Government of Canada should be urged to review and reform all federal laws which distinguish between the legitimate and illegitimate child.[146]

2. Should the Government of British Columbia accept the recommendations of the Report, the Government should urge the Uniform Law Conference of Canada to draft uniform legislation on the basis of the Report.[147]

FOOTNOTES

INTRODUCTION

1 *Proceedings of the Fifty-Sixth Annual Meeting of the Uniform Law Conference of Canada* 31.

REPORT

A. *Introduction*

2 *The Status of Children Born to Unmarried Parents*, Fifth Report (Part II), March 1975

3. *Status of Children Born Outside Marriage, Their Rights and Obligations and the Rights and Obligations of their Parents*, September 1974.

4 *Ibid* 1.

5 *Property Rights in the Family* (Project VIII, February 1970); *Evidence* (Project IX, February 1970); *Some Aspects of Conflicts in Family Law* (Project XI, May 1970); *Maintenance* (Project XIV, October 1970).

6. *Children* (Report on Family Law, Part III), September 1973

7. Rapport sur la Famille (Première partie, mai 1974)

B. *Status*

8. p. 21

9 p. 94

10. p 31.

11 pp. 93-103

12. *Ibid.*

13. Project VIII, pp. 68-70

14 pp. 12-13.

15. Art. 130

C *Determinations of Paternity*
16 pp 24-30.
17. pp 90-91
18. pp. 17-18.
19. Art. 109.
20. Art 110
21. p 17.
22 pp 36-40.
23 p 18.
24. Art. 112.
25 Art 113.
26 Art 114
27. Art. 115.
28 p. 19
29. p. 22
30 p. 37
31. pp. 41-43, 53-55
31a Project VIII, pp. 70-72.
32. Project XI, pp 51-52.
33 pp. 18-22
34 *supra.*
35 Art 111.
36 Art 116 Article 125 provides that: "No person may claim any status contrary to that assigned him by his record of birth and the possession of status consistent with such record Subject to Articles 118 and 119, no person may contest the status of any person whose status is consistent with his record of birth."
37 Art. 119.

D. *The Affiliation Proceeding*
38. p. 24.
39. p 53
40. p. 23

E *Evidence of Paternity*
41. p. 18.
42 p. 46.
43 p 46.
44 p. 47.
45 p 95
46 p 43.
47 Project IX, pp. 13-14.
48. Project IX, p. 36.
48a Project VIII, pp. 70-72
49 p. 24.
50. pp. 24-25.
51. Art 117.
52. Art 123.
53. Art 124
54. Art 126.
55 Art. 127.
56. p. 39.
57. *Ibid.*
58. p. 40
59. p. 41
60. p 42.
61. *Ibid*
62. p. 43
63. p. 49.

64. p. 51.
65. p. 52.
66 pp. 26-28

F. *Artificial Insemination*
67. p. 44.
68. *Ibid.*
69. p. 45.
70. Art 122.

G. *Consequences of the Proposals*
71. p. 49.
72. p. 83.
73. pp. 28-32.
74. p. 13.
75. p 52.
76. p. 53.
77. pp 60-69.
78. pp. 69-72
79 Project VIII, pp. 71-72
80. *Ibid.* pp. 72-73.
81. *Ibid.* p. 71.
82. p. 14
83. p. 14.
84. p. 59.
85. p 60.
86. p 61.
87. p. 62.
88. p. 64.
89 p. 66.
90. p. 60
91. Project XIV, pp. 43-44
92. *Ibid.* pp. 44-45
93 Project XIV.
94. *Support Obligations* (Report on Family Law, Part VI, April 1975)
95 *Ibid.* p. 154.
96. p. 68.
97. pp 70-71.
98. p 73.
99. pp. 82-86.
100. p. 43.
101. Art. 138.
102 Art. 139.
103. p. 73.
104 p. 74 *See* preceding section for the recommended guidelines relating to "sufficient interest."
105. p. 82.
106. p. 73
107 p 61
108 p. 76 *See* section on "Adoption" for the recommended guidelines relating to "sufficient interest"
109 p. 77
110. p. 78
111. pp. 73-78
112. p. 89
113 p. 119.
114. *Ibid*
115. p. 78.

116 p 79.
117. p 80
118 *Ibid.*
119 p 83.
120 p 84.
121 Project VIII, pp. 74-75.
122 pp 14-16

H. *Savings and Transitional*
123. p 55.
124 p 56.
125. p 57
126 p 86
127 pp. 60-68.
128. p 73
129. p. 95
130. p. 16
131. *Ibid.*
132. p. 17
133 p 22.

I. *Limitation Provisions*
134. p. 37
135. p 54
136 p. 57
137. Project VIII, pp 68-70
138 *Ibid.* pp 70-72
139. p 28
140. pp. 21-24.
141. Art. 128
142. Art. 129
143. Art. 118.
144. Art 120.
145. Art. 121

J *Miscellaneous*
146. p. 88
147 p. 92.

APPENDIX R

(See page 31)

Protection of Privacy (Collection and Storage of Personalized Data Bank Information)

REPORT OF THE CANADA COMMISSIONERS

At the 1974 meeting of the Conference, the Canada Commissioners presented a report on the above matter which is printed as Appendix X to the 1974 Proceedings commencing at page 213. At the conclusion of the discussion regarding that report, the following resolution was adopted:

> "RESOLVED that the Canada Commissioners present a progress report to the 1975 meeting"

The above mentioned report indicated that it was the intention of the Federal Government that a measure respecting egalitarian rights to be introduced during the now current Session of Parliament would contain authority for the making of regulations governing the policies and practices of Federal departments and agencies in relation to personal information controlled by them.

On July 21, 1975, the Minister of Justice introduced in the House of Commons Bill C-72 entitled "An Act to extend the present laws in Canada that proscribe discrimination and that protect the privacy of individuals". Section 42, attached hereto as the Schedule, provides authority for the making of regulations on the subject of protection of personal information contained in the records of government institutions. Consultations are now being conducted with regard to the form of the regulations contemplated by section 42.

Ottawa
August, 1975

Fred E. Gibson
for the Canada Commissioners

(Editorial Note: As copies of Bill C-72 are readily available, it is not published *in extenso* in these Proceedings. It is on file in the office of the Executive Secretary Section 42 is, however, included as the Schedule of the above Report)

SCHEDULE

C-72

**First Session, Thirtieth Parliament,
23-24 Elizabeth II, 1974-75**

PART IV

PROTECTION OF PERSONAL INFORMATION

42. (1) For the purposes of this section,

"government institution" means any department of the Government of Canada or any board, commission, body or office listed in the schedule;

"record" means a compilation of personal information recorded in any form about an individual's character, reputation, financial circumstances, housing, health, mode of living, associates, physical or personal characteristics or about any other similar matter concerning the individual if that information contains the individual's name or if the individual's identity is readily ascertainable from that information.

(2) The Governor in Council, on the recommendation of the Minister of Justice and the Minister of Communications, may make regulations respecting protection of the privacy of individuals in relation to records of any government institution and, without limiting the generality of the foregoing, may make regulations

(*a*) prescribing the circumstances in which an individual is to be informed that information about that individual is or will be contained in any record of any government institution;

(*b*) prescribing the circumstances in which an individual is to be informed of the method of identification of records of any government institution containing information about that individual;

(*c*) prescribing the circumstances in which an individual is to be informed of the use of information about that individual that is or will be contained in any record of any government institution;

(*d*) prescribing the conditions under which, and the manner by

which, an individual is to have access to information about that individual in any record of any government institution;

(*e*) prescribing the circumstances in which information in any record of any government institution about an individual that is inaccurate or out of date is to be corrected or altered;

(*f*) specifying the government institutions to which regulations under this Part apply;

(*g*) respecting the records or classes thereof to which any regulations under this Part relating to notice and access do not apply because the disclosure of information contained therein, in the opinion of a Minister of the Crown,

(*i*) would or might be injurious to international relations, national defence or security or federal-provincial relations, or

(*ii*) is likely to assist in the pursuit of unlawful purposes or acts or impede the prevention or detection of unlawful acts or the prosecution of alleged offenders;

(*h*) providing for the management and surveillance of records of any government institution to promote the protection of individual privacy and to ensure that regulations under this Part are complied with; and

(*i*) establishing procedures to be followed in dealing with complaints by individuals that relate to information in the records of any government institution.

APPENDIX S

(See page 32)

Use of Self-Criminating Evidence Given Before Military Boards of Inquiry

REPORT OF THE SASKATCHEWAN COMMISSIONERS

The Canada Commissioners, at the 1974 meeting of the Conference, presented a report entitled The Report of the Canada Commissioners on the Use of Self-Criminating Evidence Given Before Military Boards of Inquiry.

As a direct result of that report, the Conference passed two resolutions:

RESOLVED that the Saskatchewan Commissioners prepare a draft section for consideration at the 1975 meeting

RESOLVED that the Canada Commissioners prepare a draft amendment to the Canada Evidence Act or some other Federal statute to result in one law across Canada on this subject for consideration at the 1975 meeting

This report is an attempt to respond to the resolution of the Conference for which the Saskatchewan Commissioners are responsible.

The report of the Canada Commissioners at last year's Conference raised two basic legal issues. The first issue involves the preliminary consideration as to whether or not the term "witness" as used in the provincial legislation and the Uniform Evidence Act is broad enough to include certain witnesses compelled to testify in federal proceedings. The second issue relates to the absence, in four provincial jurisdictions, of complementary legislation with respect to witnesses in the same proceedings.

1. *INTERPRETATION OF THE TERM "WITNESS" AS USED IN PROVINCIAL LEGISLATION AND THE UNIFORM EVIDENCE ACT*

Having thoroughly canvassed the applicable provisions of the various provincial Acts and the case law, the Canada Commissioners, in last year's report, concluded that a witness who is compelled to testify before a board of inquiry or other federal tribunal is a witness within the meaning of the various provincial Acts and that amendments are unnecessary. The Saskatchewan Commissioners, having undertaken a similar examination of the case law, are in agreement with the conclusion of the Canada Commissioners but not with their recommendation. While agreeing that it is entirely likely that a judicial determination of the issue would result in a decision favouring the in-

clusion of such witnesses within the protections conferred by provincial legislation, we are not satisfied that the matter is entirely free from doubt. If only to avoid the possibility of conflicting court decisions similar to those encountered earlier with respect to the question of whether or not a witness examined for discovery was entitled to the protection of these provisions, we would recommend that section 8 of the Uniform Evidence Act be amended to clarify the matter. We would suggest that such amendment should be to subsection (1) of section 8 and that the proposed amendment should continue to include the extended definition of a witness currently contained in subsection (1).

Subsection (1) of section 8 of the Uniform Evidence Act defines a "witness" in the following terms:

> "(1) In this section "witness" includes a person who, in the course of an action is examined viva voce on discovery or who is cross-examined upon an affidavit made by him, or who answers any interrogatories or makes an affidavit as to documents"

For the reasons set out above, it is the recommendation of the Saskatchewan Commissioners that subsection (1) be amended so as to read as follows or to words of similar effect:

> "(1) In this section, "witness" means a person who testifies in the course of an action or a proceeding authorized by federal or provincial law and includes a person who:
>
> (a) is examined *viva voce* on discovery;
>
> (b) is cross-examined upon an affidavit made by him;
>
> (c) answers any interrogatories; or
>
> (d) makes an affidavit as to documents."

2. *A PROPOSED AMENDMENT TO ENSURE THE PROTECTION IN ALL PROVINCIAL JURISDICTIONS OF TESTIMONY REQUIRED BEFORE CERTAIN FEDERAL PROCEEDINGS*

As indicated previously, four provinces have not enacted sections in their provincial evidence legislation complementary to that present in the Canada Evidence Act. Accordingly, a witness who is compelled to testify in certain federal proceedings may not be protected against self-incrimination in a subsequent provincial proceeding in New Brunswick, Quebec, Prince Edward Island and Saskatchewan. As indicated in the report of the Canada Commissioners last year, there is very little justification for having an arbitrary geographical

limitation upon the protection conferred upon these witnesses against self-crimination.

In response to the 1974 resolution, the Saskatchewan Commissioners have considered with some care, the four provincial Acts in question with a view to developing draft wording that would satisfactorily produce a uniform and consistent result but after consideration would suggest another approach.

Accordingly consideration was given to the curing of this defect by a recommendation that the four provinces adopt subsection (3) of section 8 of the Uniform Evidence Act. This section provides as follows:

"(3) If, with respect to any question or the production of any document, a witness objects to answer or to produce upon any of the grounds mentioned in subsection (2), and if, but for this section or any Act of the Parliament of Canada, he would have been excused from answering the question, or from producing the document then, although the witness is by reason of this section or by reason of any Act of the Parliament of Canada compelled to answer or produce, the answer so given or the document so produced shall not be used or receivable in evidence against him in any proceeding to enforce any Act of the Province by the imposition of punishment by fine, imprisonment or other penalty or in any criminal trial or other criminal proceeding against him thereafter taking place other than a prosecution for perjury in the giving of such evidence "

But the view of the Saskatchewan Commissioners is that subsection (3) of section 8 of the Uniform Evidence Act would not adequately confer the necessary protection to an individual testifying before a federal board of inquiry if federal law compelled him to so testify because of the lack of protection afforded to a witness in civil actions by this subsection.

Accordingly, we recommend that the Conference consider the following amendment to subsection (3) of section 8 of the Uniform Evidence Act:

Subsection (3) of section 8 is amended by inserting the words "in any action," immediately after the word "him" in line 10.

RECOMMENDATIONS

The Saskatchewan Commissioners recommend:

1. THAT the Conference consider the adoption of amendments proposed above to subsections (1) and (3) of section 8 of the Uniform Evidence Act; and

2. THAT section 8 as amended be adopted by the Provinces of New Brunswick, Prince Edward Island, Quebec and Saskatchewan.

The Saskatchewan Commissioners recognize that our recommendations vary somewhat from the task we were assigned last year. A draft section capable of adoption by the four provinces has not been prepared. However, we thought it appropriate and in the interest of uniformity to concentrate our efforts upon the Uniform Act and to attempt to update and use that vehicle to resolve the problem identified by the Canada Commissioners last year.

H. M. Ketcheson, Q.C.
R. S. Meldrum, Q.C.
L. S. Simard
D. A. Tickell
for the Saskatchewan
Commissioners

Regina
August 1975

APPENDIX T

(See page 32)

Use of Self-Criminating Evidence Given Before Military Boards of Inquiry

REPORT OF THE CANADA COMMISSIONERS

At the 1974 meeting of the Conference, the Canada Commissioners presented a report on the above matter (1974 Proceedings, Appendix P, page 136). At the conclusion of the discussion regarding that report, the following resolution was adopted, among others:

> RESOLVED that the Canada Commissioners prepare a draft amendment to the *Canada Evidence Act* or some other Federal statute to result in one law across Canada on this subject for consideration of the 1975 meeting

As indicated in the 1974 report, if a policy decision were taken by the Federal Government to afford protection against self-crimination to all witnesses appearing before military boards of inquiry on a basis equivalent to that afforded by subsection 5(2) of the *Canada Evidence Act*, that policy could be implemented by the addition to the *National Defence Act* of a provision equivalent to subsection 20(2) of the *Combines Investigation Act*. That subsection reads as follows:

> "(2) No person shall be excused from attending and giving evidence and producing books, papers, records or other documents, in obedience to the order of a member of the Commission, on the ground that the oral evidence or documents required of him may tend to criminate him or subject him to any proceeding or penalty, but no oral evidence so required shall be used or receivable against such person in any criminal proceedings thereafter instituted against him, other than a prosecution for perjury in giving such evidence"

Ottawa
July, 1975

Fred E. Gibson
for the Canada Commissioners

APPENDIX U

(See page 32)

Statutes Act

REPORT OF MESSRS. RYAN AND WALKER

At the 1973 meeting of the Legislative Drafting Workshop a proposed draft Uniform Statutes Act was presented to the meeting. It was given clause by clause consideration (1973 Proceedings, page 19 and pages 53 to 77). As a result of consideration given by the meeting certain changes were to be made in the draft.

A revised Uniform Statutes Act was submitted to the Workshop in 1974 (see Proceedings, pages 20 and 21 and 68 to 70). As a result of that submission it was resolved that the draft Act be referred to Graham D. Walker and J. W. Ryan, Q.C. for a revision in accordance with the discussion and that a redraft be presented to the 1975 meeting.

The Uniform Statutes Act was redrafted and presented to the Workshop in 1975 with the recommendation that the new draft be submitted to the Uniform Law Section for approval. Attached hereto as the Schedule is the Statutes Act agreed upon by the members of the Workshop. It is respectfully submitted to the Uniform Law Section with the recommendation that the Conference approve the Statutes Act and recommend it for enactment in the form set forth in the Schedule attached hereto.

Respectfully submitted,
Graham D. Walker
J. W. Ryan, Q.C.

August 1975

SCHEDULE

STATUTES ACT

The following is recommended by the Uniform Law Conference of Canada for enactment as a Uniform Act

1. The enacting clause of an Act of the Legislature may be in the following form:

> "Her Majesty, by and with the advice and consent of the Legislative Assembly of , enacts as follows:"

2. (1) The Clerk of the Legislative Assembly shall endorse on each Act the date of assent to the Act.

(2) The endorsement is part of the Act.

(3) Every Bill reserved by the Lieutenant Governor for the signification of the Governor General's pleasure shall be endorsed by the Clerk of the Legislative Assembly with the date of the reservation.

3. All original Acts of the Legislature shall be and remain of record in the custody of the Clerk of the Legislative Assembly.

4. The Acts shall be published by the Queen's Printer.

NOTE: In this section where the words "Queen's Printer" are used, each province should use the appropriate person or agency.

5. Every Act shall be construed to reserve to the Legislature the power of repealing or amending it, and of revoking, restricting or modifying any power, privilege or advantage thereby vested in or granted to any person.

6. An Act may be amended or repealed by an Act passed in the same session.

7. An Act may be cited

(a) by reference to its chapter number in the Revised Statutes;

(b) by reference to its chapter number in the statutes for the year, regnal year or the session in which it was enacted; or,

(c) by reference to its title, with or without reference to its chapter number.

APPENDIX V

(See page 32)

SECTIONS 9, 10, 11 OF THE UNIFORM INTERPRETATION ACT (Revised 1973)

(1973 Proceedings, page 179)

A Comparative Study of the Admissibility of Extrinsic Material

REPORT OF THE NOVA SCOTIA COMMISSIONERS

SUMMARY OF RECOMMENDATIONS

1. That courts be permitted to consult headings and marginal notes included as part of enacted legislation.

2. That courts be permitted to consult explanatory memoranda and notes on specific clauses when attached to proposed legislation in Bill form.

3. That courts be permitted to consult the reports of law reform commissions, royal commissions, parliamentary committees and other fact finding investigatory bodies.

4. That the present rule excluding legislative history be amended to permit counsel to introduce in evidence statements made by members of both the federal and provincial legislatures during legislative discussion of proposed legislation and including statements made during discussion and debate in committee.

INTRODUCTION

The search for legislative intent, which is uniformly acknowledged by Canadian courts to be their proper function, is based on the theory that Parliament, as the sovereign law making body acting on behalf of the community, creates law in the form of binding rules. These rules, designed to guide the actions or activity of the public, are communicated to the public in the form of written statutes. In the process of settling disputes, courts may be required to officially determine whether or not a particular statute is applicable to a specific factual situation. To determine whether or not the sovereign, (Parliament) intended the law to apply, the court of necessity must examine the applicable legal rule to ascertain its sense or meaning. In so doing the

court interprets the statute. A former member of the Supreme Court of Canada, Mr. Justice Hall has declared that the traditional method of interpreting statutes adopted by Canadian judges is to look for the meaning of the words used by the legislature in the statute.[1] This is by no means the only approach to interpretation used by Canadian courts but, it seems to be one that has been used in the majority of cases.

The tendency to concentrate attention upon the meaning of the language of the statute is no doubt influenced by our constitutional theory that the words of the statutes, in theory at least, constitute the objective expression of the will of the sovereign law-maker. This literal approach, described by some commentators as analytical, has been criticized as being inadequate because it fails to recognize that words do not have fixed and absolute meanings. It is also considered to be unrealistic in its search for a legislative will or intention.

An alternative approach, which avoids most of the criticism leveled at the analytical or literal approach, has the court looking for the purpose of the statute and the reasons for its enactment. Having discovered the legislative purpose, the court then interprets the crucial words of the statutes in light of this newly discovered objective. But the question still remains, how is the court to find the purpose of the statute? If the main purpose or purposes of the statute is or are not readily apparent from reading the act as a whole, to what larger context is a court free to turn?

The Federal and Provincial Interpretation Acts provide general directions as to the approach that a court should adopt when interpreting a statute. Statutes are to be considered remedial rather than penal and are to be given a liberal rather than a strict construction so as to ensure that the objects of the statute are obtained. There is, however, no direction to the court as to how the objectives of the statute are to be found, apart from provisions concerning cross headings[2] or marginal notes.[3] In addition to this lack of direction as to permissible source materials for the discovery of legislative purposes, Canadian courts have declared that resort can only be had to the Interpretation Acts if the language of the statute is unclear.[4]

If a specific word or phrase in a statute is determined to be crucial to the decision of the court it will be ordinarily read by the court in its proper context. However, there appears to be no agreement within the judiciary in Canada or the United Kingdom as to what constitutes the proper context in a given case. For some courts, the proper context is limited to the four corners of the act. This internal context would in-

clude the title, preamble, headings, marginal notes and punctuation. Other courts and other judges within the same jurisdictions take a more liberal view of context and would include within that term the existing state of the law (both common law and statutory) and the history of the particular enactment. A few courts would go even further and in certain cases include as part of the context some aspects of parliamentary history. It is clear from an examination of cases involving statutory interpretation that the question as to the proper context within which to interpret a statute is one that has not been answered in the same way by all courts. The decision will depend very much upon the facts of particular cases, but also upon underlying principles which guide the court in its interpretative efforts, principles which are not always clearly articulated in the court's decision.

PART I

Internal Context

Even with regard to what might be called the internal context, there is uncertainty at the present time regarding the legitimacy of the court consulting some parts of the statute. The legal rules developed by the courts with regard to various parts of the internal context will now be considered.

Long Title

Although originally not part of the act, it is now considered to be part of the statute and may be looked at by the court in order to remove any ambiguity in the words of the statute.[5] The Uniformity Rules of 1948, Observation 17 suggests that the long title should indicate the leading theme or general purpose of the bill and to this extent it is useful in construing the act.

Preamble

As the United Kingdom Law Commission has indicated, there is no doubt that a court may consider the preamble as part of the context of the statute. Most Interpretation Acts provide specifically that the preamble is to be read as part of the act and to assist in explaining the object of the statute. The preamble has also been authorized as an aid to interpretation by the House of Lords.[6] The Law Lords warned, however, that the preamble is not of the same weight as an aid to the construction of a section of the Act as are other relevant and enacting words to be found elsewhere in the act or even in a related act.[7] His Lordship Lord Norman pointed out that,

> "the enactment may go beyond or may fall short of the indication that may be gathered from the preamble . It is only when it conveys a clear and definite

> meaning in comparison with a relatively obscure or indefinite enacting words that the preamble may legitimately prevail If they (the enacting words) admit of only one construction, that construction will receive effect even if it is consistent with the preamble, but if the enacting words are capable of either of the constructions offered by the parties, the construction which fits the preamble may be preferred "[8]

Headings and Marginal Notes

Headings

Although the position of long titles and preambles is reasonably well settled, this is not the case with headings, and marginal notes. Headings, and marginal notes, unlike the long title and preamble, are technically not part of the bill as it passes through Parliament in the sense that they cannot be debated and amended as the bill goes through its various stages. They are placed there initially by the draftsman, but as the bill proceeds they may be altered (probably in consultation with the draftsman) by the officials of Parliament to accord with the amendments made to the body of the bill.

Judicial use of headings in the United Kingdom has varied over the years. At one time there they were not considered to control the interpretation of the clauses that followed, and were inserted only for convenience of reference.[9] A contrary view is expressed by Lord Hershell in *Ingles* v. *Robertson and Baxter* [1898] AC 616 at p. 638 who claimed, "These headings are not, in my opinion, mere marginal notes, but the sections in the group to which they belong must be read in connection with them and interpreted by light of them."

However, decisions of other English courts in the first half of this century appeared to lay down a clear principle that headings could not be used to give a different effect to plain words in the section where their ordinary meaning was clear. They could only be used in cases of ambiguity.[10] But since the decision in these cases the pendulum has swung back in favour of the use of headings.[11]

The present attitude of the House of Lords is revealed by the recent decision in the case of the *D.P.P.* v. *Schildkamp*, Lord Reid, while admitting that the strict view required that headings should be disregarded because they were not the product of anything done in Parliament, suggested that "it might be more realistic to accept the act as printed as being the product of the whole legislative process and to give due weight to everything found in the printed act".[13] Headings in his view would not have equal weight with the words of the act and he warned that while they ought to indicate the scope of the sections which follow, it is always possible that the scope of the sections may have been widened by amendment. Lord Hodson also warned that

the construction of the relevant sections of the act ought not to be governed ultimately by consideration of headings, and they should not have controlling effect, because they are not part of the enacted legislation.

Viscount Dilhorne suggested that headings could be considered but that the weight to be given to them would be very slight and less than that given to preamble. In his opinion they served as guides, but should not be given controlling effect over the operation of the enacting words. In the same case Lord UpJohn concluded that it was wrong to confine the role of headings to a resolution of ambiguities in the body of the act. In his view the court must read the headings as part of the exercise of reading the statute and that they would always provide a useful pointer as to the intention of parliament in enacting the immediately following sections. Whether the headings would be anything more than a mere pointer or label, rather than of controlling effect, would depend on the individual case. In his lordship's view no firm rule should be laid down. The overall attitude clearly is to allow reference to headings, but not to the extent of giving them controlling weight or effect.

The few Canadian cases in which headings have been considered have followed the ruling of English Courts in cases such as *Fletcher* v. *Birkenhead* and declared that headings are of limited use and restricted to situations where the language is ambiguous.[14]

Marginal Notes

Canadian courts have consistently held that they are not authorized to consider marginal notes.[15] Mr. Justice Thorson summarized the Canadian position as of 1952 when he declared:

> "The law on the question whether marginal notes in a statute can be used as an aid to the interpretation has wavered. In the older cases there were conflicting opinions on whether a marginal note might be referred to in considering the sense in which words are used in a statute, but the modern cases are clear that it can afford no legitimate aid to their construction "[16]

The cases to which Mr. Justice Thorson referred in supporting the statement were those of English courts including the following;

> *Nixon* v. *A.G.* [1930] 1CH 566 at 593 per Lord Harmsworth and *Longdon - Griffith* v. *Smith* [1950] 2 ALL ER 622 at 672 per Slade J.

However, the more recent English authorities are not uniform on the point. For example, in cases such as *Parsons* v. *B.N.M. Laboratories Ltd.* [1964] 1 Q.B. 95 at p. 128 Harmon L. J. as a member of the Court of Appeal declared that he had "always been brought up to be-

lieve that to interpret an Act of Parliament by the side notes is quite inadmissible although there are judicial pronouncements seeming to show that judges have not always refrained, as in my judgment they should, from giving some weight to them."

In the same year the Court of Appeal was urged to consider marginal notes in the case of *Britt* v. *Buckinghamshire County Council* [1964] 1 Q.B. 77. Pearson L. J. referred to the Stephens case decided by the Court of Appeal in 1960[17] in which UpJohn L. J. speaking for the whole court has said;

> "While the marginal note to a section cannot control the language used in the section, it is at least permissible to approach a consideration of its general purpose and the mischief at which it is aimed with the note in mind "

Lord Justice Pearson then proceeded to take the marginal note into account for the limited purpose authorized in the Stephen's case. However, he found it to be of no assistance in construing or understanding or applying the section in question and he declared the marginal note to be inaccurate in two important respects.

In the Britt case, Sellers L. J. declared that the case was a good example of how unreliable the marginal note would be even if it were permissible to pay attention to it, thereby expressing his doubts about the admissibility of side notes, in spite of the earlier decision of the Court of Appeal in the Stephen's case. In the same year, 1964, Lord Reid in the case of *Chandler* v. *D.P.P.* [1964] A.C. 763 at 789 declared that in his view "side notes cannot be used as an aid to construction". However, in the later case of *Schildkamp* v. *D.P.P.* Lord Reid appeared to change his view somewhat in relation to marginal notes as well as headings and punctuation when he announced,

> "But it may be more realistic to accept the Act as printed as being the product of the whole legislative process, and to give due weight to everything found in the printed Act. I say more realistic because in very many cases the provision before the court was never even mentioned in debate in either House, and it may be that its wording was never closely scrutinized by anymember of either House In such a case it is not very meaningful to say that the words of the Act represent the intention of Parliament but that punctuation, headings and sidenotes do not
>
> So if the authorities are equivocal and one is free to deal with the whole matter, I would not object to taking all these matters into account, provided that we realise that they cannot have equal weight with the words of the Act "[19]

Lord Reid then went on to warn that a sidenote is a poor guide to the scope of a section for it can do no more than indicate the main subject with which the section deals.[20]

Other members of the House of Lords in the same case reacted as follows: Lord Guest did not deal specifically with marginal notes. Viscount Dilhorne followed Lord Reid's earlier pronouncement in the

Chandler Case and refused to refer to the marginal notes. Lord Up-John, admitting that they, as a general rule, afforded no guidance to the construction of an act because, being a very precis of the section they "constituted a most unsure guide to the construction of the enacting section", suggested that they were "as much a part of the Bill as a heading" and conceded that "in some very rare cases they might throw some light on the intentions of parliament just as a punctuation mark".[21]

The position taken by Canadian courts seems to have been based upon decisions of English courts prior to 1950. Decisions of the United Kingdom courts since 1950 show a wavering approach, but there appears to be a growing support in the House of Lords authorizing a consideration of marginal notes as a contextual aid. Although both Canadian and British courts are legitimately concerned about the reliability of marginal notes and thus are reluctant to use them, and although they are usually of less assistance than headings, they are no less authoritative than headings, which the courts seem prepared to consult. The courts realize this and, from a strictly logical point of view, feel they should be treated the same way.

The United Kingdom Law Commission in its report indicates that members of the profession who were consulted in connection with marginal notes, headings and punctuation were divided in their views as to whether marginal notes should be given contextual weight by the courts. However, the Commission recommended that the courts should be able to consider the provisions of the statute in the context of marginal notes, as well as in the context of headings, but cautioned that their weight might be very slight. Their recommendation also assumed that the procedures governing both headings and marginal notes in the course of legislation would be acceptable to Parliament. In view of the more liberal trends of the English courts and as a practical matter the approach of the United Kingdom Law Commission seems a reasonable one to take and one that we suggest should be adopted.

PART II
The External Context

In an age of ever increasing complexity requiring sophisticated legal solutions to complicated social problems, in many cases to fully understand a statute or to appreciate the significance of parts of it the court is forced to take in consideration many matters not found within the statute itself. One respected American jurist, after much experience interpreting legislative enactments, concluded that the basic

problem of interpretation involves the decision how much extrinsic material a court should admit as evidence of legislative intent to help construe provisions of the legislature. But, if the problem of extrinsic evidence is a difficult one for the courts, it is even more difficult for legal counsel who are equally uncertain when a court will resort to extrinsic aids.

If the court is to be considered as having a co-operative role to play with the legislature in the democratic process of government, in the sense that one of its major functions is to help carry out or implement the legislative purpose of the statute, then the use of extrinsic aid becomes extremely important. Extrinsic aids can include the existing law, statutes in pari materia, previous versions of the statute in question (the history of the act), previous judicial and administrative interpretations, social or economic conditions of the society at the time the statute was enacted and the legislative history of the act itself.

A liberal attitude towards the use of extrinsic evidence was shown by Viscount Simmons in his judgment in the case of *Attorney General* v. *Prince Ernest Augustus of Hanover*[22] when he declared that,

> "Words and particularly general words, cannot be read in isolation; their color and content are derived from their context So it is that I conceive it to be my right and my duty to examine every word of a statute in its context, and I use 'context' in its widest sense which I have already indicated as including not only the other enacting provisions of the same statute, but its preamble, the existing state of the law, other statutes in pari materia and the mischief which I can by these and other legitimate means discern the statute was intended to remedy."

The other members of the House of Lords in the same case were equally willing to admit that a court in order to discover the intention of Parliament could refer to external evidence such as related acts in pari materia, the mischief to be remedied, surrounding circumstances and the state of the law at the time.

Canadian courts have no hesitation consulting statutes in pari materia nor the history of a particular enactment in order to resolve an ambiguity. Particularly in constitutional cases, they have also permitted themselves to consider the conditions existing at the time the legislation was passed in order to determine legislative intent. In most of these situations contemporary social conditions were outlined in the reports of special royal commissions on other official investigatory bodies which preceded the enactment of the legislation the court was called upon to interpret.[23]

However in most of the cases where the royal commission reports were introduced to show contemporary social conditions, coun-

sel also argued that the same reports were important because they showed clear evidence of legislative purpose. It is the attempt to make use of royal commission reports as direct evidence of legislative intention that has caused the courts the greatest difficulty.

(1) *Royal Commission Reports and Reports of Special Fact Finding Committees*

Although Canadian and English courts have been prepared to look at the conditions existing at the time an enactment was passed, particularly in cases involving the legislative authority of the Parliament in question pass the statute, they have been troubled by the references to royal commission reports or reports of special investigatory committees. Much important legislation is the result of exhaustive research efforts by fact finding groups and within the last ten years much work in this regard has been done by law reform commissions. The reports produced by the law reform commissions in particular outline in detail social conditions in specific areas, define where the existing law if any is defective, and make recommendations to correct the outlined problem. In many cases, but not all, legislation is enacted as a result of these reports. When the legislation becomes the subject of interpretation by a court, the question of the use of such reports by the court to help resolve legislative ambiguities is raised. Can they be referred to all? If so, for what purpose? Can they be used merely to establish what the social conditions were at the time the legislation was enacted and in this sense outline the social problem or the evil or the mischief that existed, or can they be used to indicate the legislative solution to the problem that the investigatory body recommended? Can they be used even more directly to show what parliament meant when it used certain words in a particular piece of legislation, enacted sometimes after the report was completed?

The most recent authoritative Canadian pronouncement on the question has been made by some members of the Supreme Court in the Readers Digest case. Although the court was primarily concerned with the admissibility of the statements of a minister of the Crown, the court, because of the nature of counsel's argument, was given the opportunity, and to some extent almost required, to consider the position of royal commission reports. However, only four members of the Supreme Court actually mentioned the problem of royal commission reports in their decisions.

Justices Cartwright and Locke concluded that there is no Canadian decision requiring royal commission reports to be admitted and, in their opinion, the general rule was that if objected to (by op-

posing counsel) the report should be excluded. Justice Ritchie, with whom Mr. Justice Martland concurred, noted that his remarks were dicta and went on to stress the fact that "when such reports have been referred to by this Court and the Privy Council in cases involving the constitutional validity of a statute, they have been referred to otherwise than as direct evidence of intention."[25]

Mr. Justice Ritchie was quite correct. Both Canadian courts and the Privy Council have in the past consulted royal commission reports as an aid in determining the constitutional validity of Canadian legislation. They have been used to establish the true nature or the pith and substance of the legislation. Their use in this regard, has been considered an exception to the general rule of interpretation regarding this kind of material.

In the Home Oil case[27] Chief Justice Kerwin of the Supreme Court with Justice Rinfret concurring took into account a Report of the Commissioners but only to show what was present to mind of Parliament in enacting the principle act, as to what was the existing law, the evil to be abated and the suggested remedies. In adopting such a position they followed the approach of the House of Lords in the case of *Photographic Material Co.* v. *The Comptroller General of Patents* [1898] A.C. 571.[27](a) The English and Canadian courts have been careful to point out that it is dangerous and improper to use royal commission reports as conclusive evidence of solution that Parliament actually adopted in later legislation. Quite rightly, they warned that Parliament may not have adopted the recommendations of the commissioners and it would therefore be dangerous and erroneous to refer to the royal commission reports as direct evidence of legislative intent. The position of Mr. Justice Cartwright, in the Reader's Digest Case was approved by Mr. Justice Ritchie speaking for the majority in the later case of *Gaysek* v. *The Queen.* [1971] S.C.R. 888. However, Canadian courts have examined the reports of royal commissioners or special committees in cases not primarily involving constitutional issues.[28]

The greatly expanded research activities of provincial and federal law reform commissions, resulting in new legislation in many cases, renders the status of their research reports of prime importance. In this regard, recent developments in the United Kingdom are worth noting. During the enactment of two separate statutes, both based upon reports of the English Law Commission, attempts were made to have specific provisions inserted into the statutes which would have allowed the courts to consider the contents of the Law Commission Reports when dealing with the subject matter of the statute. For ex-

ample, during the report stage of the Animals Act in the House of Lords, Lord Wilberforce moved an amendment which read "in ascertaining the meaning of any of the provisions of this Act, regard MAY be had to the report of the Law Commission on civil liability for animals (Law Commission No. 13)."[29] The amendment was carried by a vote of 44 to 26 with all the Law Lords in favour of it, including the Lord Chancellor, Viscount Dilhorne, Lord Morris of Borth y Gest and Lord Wilberforce himself. However, the proposed amendment does not seem to have passed through the Commons and does not appear in the statute as enacted.

A similar attempt was made in the House of Lords when the Matrimonial Proceedings and Property Bill (a government bill) was passed by the House of Lords with the same provision inserted. A vigorous protest was raised in the House of Commons on the basis that such a provision would reduce the authority of Parliament and inflate the authority of the Law Commission, placing it in a sense even above the judges.[30] The attempted amendment failed in this case as well and the statute as enacted does not contain the proposed instructions to the courts.

In addition to the legislative attempts by members of the House of Lords to develop a more liberal approach to the use of extrinsic material, a recent judicial decision of the Law Lords suggests a change in judicial attitude in relation to the proper function of the court and the use of extrinsic materials in statutory interpretation. In the case of *Black-Clawson International Ltd.* v. *Papierweike Waldhof-Aschaffenberg AG 1975 1 A11ER 810*, the House of Lords was asked to take into consideration the report of a special parliamentary committee in its efforts to interpret the Foreign Judgments (Reciprocal Enforcement) Act of 1933. Although the court by a bare majority refused to do so, Viscount Dilhorne and Lord Simon, both of whom were prepared to change the rule and consult the report, stressed the particular relevance and importance of reports accompanied by draft legislation that is later enacted in substantially the form recommended.

With the recent growth of law reform commissions and the contemporary emphasis on law reform, it is reasonable to expect an ever increasing number of reform reports to be produced and acted upon. Many of the reports will be accompanied by draft legislation. Not all the suggested draft enactments will be accepted without change by the legislators and the changes made will inevitably vary in extent. But the degree of change will only affect the relevancy of the research report and recommendations and their importance as guides for the court. The court will have to decide how much weight to give individ-

ual reports. The present rule, barring all such material unless used in a particular way, denies the court, at least theoretically, whatever assistance it might obtain from these special reports insofar as it relates to legislative intention.

Another way by which the courts might justify reference to royal commissions reports and their contents if they were so inclined, is on the basis of judicial notice. This approach has received the official sanction of the Privy Council who in 1953 declared:

> "It was common ground between the parties and is in their Lordship's opinion the correct view, that judicial notice ought to be taken of such matters as the Reports of Parliamentary Commissions and of such other facts as must be assumed to have been within the contemplation of parliaments when the Acts in question were passed (cf, *Ladore* v. *Bennett* 1939 A C. 468, 477) and both parties have referred their Lordships to a number of paragraphs in the Report of the Soulbury Commission."[31]

The position of the Canadian Supreme Court on the admissibility of royal commission reports is still unclear. If Mr. Justice Cartwright's position in the Reader's Digest case prevails, counsel will determine whether commissions reports can be referred to. Mr. Justice Ritchie on the other hand appears to favour a limited use of royal commission or other committee reports in constitutional cases. His opinion seems to authorize their use only as indirect evidence of legislative intention in the sense of showing the material that Parliament had before it to indicate the social conditions that existed at the time the legislation was passed and the defect that the legislation was intended to remedy. From this material the court may presumably infer what the legislature's intention was in passing the statute.

Although the position of the Supreme Court of Canada cannot be definitely stated, since only some members of the court have indicated their position by way of dicta, the general approach would appear to be one that would limit the use of royal commission (and presumably law commission) reports quite severely. This position seems to contrast quite significantly with the recently expressed attitude of the law lords in England concerning law commission reports previously referred to in this report. The law lords are presumably that they can make the necessary distinction between a royal commission report whose recommendations were clearly accepted by the legislature in enacting the consequent legislation and those in which the recommendations were not followed. Not troubled by a divided legislative jurisdiction, the House of Lords did not have to make a distinction between constitutional issues and nonconstitutional issues involving interpretation problems. Whether they would agree with the distinction drawn by Mr. Justice Ritchie is uncertain.

(2) *Parliamentary or Legislative History*

A *CANADA AND THE UNITED KINGDOM*

In 1969 the Law Commission of the United Kingdom and Scotland published its report on the Interpretation of Statutes[32] and concluded that reports of parliamentary proceedings should not be used by the courts for the interpretation of statutes. Often referred to as legislative history, the material in question covers the explanations of legislators themselves or the documents officially used or produced by them in the process of enacting a specific law. This material can include the following more specific items:

I *Statements made in one or both Houses of Parliament in the form of:*

(a) The Speech from the Throne,

(b) The Speech made by the Minister responsible for the bill, upon its introduction or at later readings,

(c) Statements made by the Minister during the debate on the bill, generally in answer to questions put to him,

(d) Statements made by other Ministers of the Crown with reference to the bill at any stage of the proceedings,

(e) Statements of other members of the government party,

(f) Statements by opposition members supporting the bill,

(g) Statements by opposition members opposing the bill.

II *Reports to the House*

(a) By the legislative counsel's office in the form of explanatory memoranda or notes on clauses attached to the proposed legislation in bill form,

(b) By committees of the House, standing or special on specific bills or petitions,

(c) By royal commissions or other fact finding bodies or committees.

III *Statements made by Government members or members of Parliament outside the House*

The Present Legal Position

The position taken by the Canadian and British courts with reference to all this material (except royal commission reports) is that it cannot be considered by the court. The position taken in the United

States in both the state and federal courts is in favour of its admission. The Canadian position has been clearly stated by the Supreme Court in the Reader's Digest case, where it was the unanimous opinion of the court that the statements of Ministers of the Crown were inadmissible.

The present rule appears to have originated in the decision of Willes J. in the case of *Miller* v. *Taylor* in 1769 who declared,

> "The sense and meaning of an Act of Parliament must be collected from what it says when passed into a law; and not from the history of changes it underwent in the house, where it took its rise. That history is not known to the other house or to the Sovereign "[33]

Mr. Justice Willes then went on to consider the history of the changes that the bill underwent in the House of Commons. However unauthoritative the rule may have been initially, subsequent decisions of the courts have erected it into a formidable rule of exclusion. Why have the courts in the great majority of cases supported this exclusionary rule? In the Reader's Digest case Mr. Justice Cartwright gave the following reasons;

> "While I have reached the conclusion that the evidence in question in this appeal is inadmissible as a matter of law under the authorities and on principle and not from the consideration of the inconvenience that would result from a contrary view, it may be pointed out that if it were held that the Minister's statement should be admitted there would appear to be no ground on which anything said in either House between the introduction of the bill and its final passing into a law would be excluded "[34]

In addition to these reasons for excluding legislative history there are others that might be mentioned. These are as follows:

1. It would be unfair to the citizen to have him bound by a law which, according to the authoritative words of the statute, appears to be clear to him or, at most, is capable of two interpretations, one of which he has chosen and whose meaning only becomes clear, in the sense that it is a meaning the legislature intended, when the history, of which the citizen is unaware, is consulted.

2. There is a danger that legislators, knowing the courts will consult parliamentary history, will deliberately include in their remarks during debate their explanations as to the meanings or application of particular provisions, which may not reflect the understanding of other members of Parliament.

3. Reference to legislative history would encourage judges to forego the difficult task of analyzing the statute, in favour of a search of the legislative history for a ready answer.

4. The admission of this material would place an added heavy burden on both the courts and legal counsel. It would only provide additional material which would itself be subject to interpretation.

5. Parliamentary history material is not readily available to all lawyers and citizens.

6. The data gleaned from legislative history may represent the position of only a small portion of the law-making body, and the question becomes how far should the formal text agreed upon by Parliament be qualified or amplified by the expressions of one or more members of parliament in debate or reports which find no place in the enactment itself.

7. Permitting the court to resort to legislative history will enable the judge to legislate too easily, by allowing him to create ambiguities and then choosing the meaning he prefers.

8. The judge will find few answers to specific questions. The most that will be revealed in the majority of cases is evidence of the general purpose of the Act, and this can be found in other ways, such as by looking at the statute as a whole or at its particular historical development.

9. The process of enacting new legislation is not an intellectual exercise in the pursuit of truth; it is an essay in persuasion and perhaps almost seduction. The Minister trying to get a piece of legislation passed has to do a selling job, and his remarks about the application of the statute may not be completely truthful or accurate.

10. There is no evidence to show that by admitting evidence of parliamentary history the results will be better. The courts will be faced with the added difficulty of assigning the proper weight to each piece of evidence.

11. The executive has enough power now and should not be given more by letting them legislate through Hansard.

12. Legislative draftsmen knowing that uncertainties or ambiguities in a language will be corrected by the judges resorting to legislative history will not be as precise as they might otherwise be.

The arguments offered in support of the admissibility of legislative history are as follows:

1. In order to carry out its proper function of giving effect to the intention of the legislature the courts should be able to accurately

determine what that intention is. Without the use of legislative history the courts will be guessing to a large extent. To exclude parliamentary history is therefore to reduce their effectiveness in this regard and results in a consequent reduction of the effectiveness of the legislative and executive branches of government.

2. Modern statutes are so technical that a reading of the statutory text alone cannot provide the court with a full appreciation of its purpose.

3. Resort to parliamentary history would provide an effective check on the meaning the court has obtained and assigned to the statute by reading it.

4. Parliamentary history may suggest lines of analysis for the judge or may serve as a check on the judge's own analysis of the statute.

5. All material that is logically relevant should be admitted. The historical aspects of a piece of legislation are relevant and constitute part of the broad context of the enactment. Legislative history is not conclusive or binding on the court, but is merely added context for the court to consider.

6. By showing the actual and real intention of Parliament, legislative history will prevent judicial legislation by manipulative use of the literal approach.

7. The use of legislative history will make judges more aware of the social policy or social purposes behind the statutes, an awareness that cannot always be obtained by simply reading the words of the statute.

8. Use of legislative history will result in fewer judicial decisions based solely upon an application of the mechanical rules of construction.

In reaching their conclusion to retain the present exclusionary rule, the United Kingdom Law Commission evaluated the use of legislative history in light of its relevancy, reliability and availability. While recognizing that there was much to favour relaxation of the rule, the Commission indicated they were influenced by three considerations. These are as follows:

(a) The difficulty of isolating information that would assist the courts,

(b) The difficulty of providing this information in a reasonably convenient and readily accessible form,

(c) The possibility that in some cases it would be preferable to provide Parliament with specially prepared explanatory memoranda when a bill is introduced. These could be modified, if necessary, to take account of amendments during its passage through Parliament.

The present situation with regard to explanatory memoranda and notes on clauses was recently canvassed by the House of Lords in the Black-Clawson case referred to earlier in this report. Because it constitutes, in our opinion, further evidence of a desire to liberalize the existing rules governing the admissibility of extrinsic evidence on the part of the House of Lords, the case and the problems it presents for a court will be discussed in some detail at this point in our report.

EXPLANATORY MEMORANDA AND NOTES ON CLAUSES

Until very recently it has been uniformly accepted without question by members of the U.K. bar and bench alike that reference to explanatory memoranda or notes as part of the process of judicial interpretation is prohibited by the existing rules governing statutory interpretation. However, one or two recent events in the United Kingdom suggest that the long established rule may be in the process of being changed.

In 1968, Lord Wilberforce, a member of the House of Lords, moved an amendment to clause 33 of the Theft Bill 1968 in the following terms:

> "Reference may be made, for the interpretation of this Act, to the Notes on Draft Theft Bill contained in Annexe 2 of Command 2977 (i.e The 8th Report of the Criminal Law Revision Committee) but this commentary shall be for guidance only and shall have no binding force"

After the debate that followed Lord Wilberforce withdrew his motion but it is significant that it was made at all.

Of greater importance is the very recent decision of the House of Lords in the case of *Black-Clawson International Ltd. v. Papierweikie Waldhof — As Chaffenberg AG (1975) 1A11ER 810* in which the question of the admissibility of explanatory memoranda and notes (among other things), was thoroughly discussed. The Law Lords were divided on the question and only by a narrow margin (3/2) was the restrictive rule maintained.

In this case their Lordships were asked to take into account the Report of the Foreign Judgments (Reciprocal Enforcement) Committee as an aid to the interpretation of the Foreign Judgments (Re-

ciprocal Enforcement) Act of 1933 which had been passed as a result of the committee report. The report of the Parliamentary Committee contained as appendices among other things, a draft bill and a commentary and a clause by clause explanation of the draft bill. The legislation subsequently enacted was almost identical with the suggested draft. The House of Lords was asked to consider the Committee report and the material contained in the appendices in its interpretation of the Foreign Judgments (Reciprocal Enforcement) Act of 1933. The majority declined to do so.

The decision of the majority that it was not proper to consult the Committee report and the explanatory memoranda and notes was based on several grounds. The first argument, most strongly emphasized by Lord Wilberforce but also reflected in the judgments of the two other members of the majority, was that constitutional principles required a court rather than a committee or other government official to determine the proper meaning to be placed upon legislative enactments. A second reason, expressed by Lord Reid as justification for refusing to consider this extrinsic material, pointed to the fact that material of this kind was seldom of any use and only rarely provided conclusive evidence or answers to the questions being dealt with by the court. The third reason supporting a refusal to consider the memoranda and enunciated by Lord Wilberforce was the extra work that would be required of the court to interpret the additional material. A fourth reason, and one that appeared to influence all members of the majority and described by Lord Diplock as a constitutional principle, was that a citizen should be able to know in advance of his acting what the consequences should be. In other words, it would not be fair for the court to interpret a legislative provision with the assistance of material that was not available to the citizen at the time the citizen read and interpreted the statute prior to acting.

Members of the House of Lords who favoured admission of the disputed material did so on the ground that it was necessary to enable the court to put itself as closely as possible in the position of the legislature and that since it is now permissible to look at reports of commissions or committees it would be artificial to draw distinctions between the various parts of the reports and to distinguish between different kinds of uses. Lord Simon also emphasized that the Commission Report was available to the public and that in any event the court was not bound by the explanations or recommendations of a committee.

The arguments put forth by the majority justifying the present rule of non-admissibility are far from overwhelming. The courts will not

be bound, as the House of Lords seems to suggest, by committee recommendations or explanations as to the effect or application of the statute. Nor is it necessarily true that the material referred to would be useless for the most part. A thorough study of the problem might, on the contrary, reveal that there were many occasions where reference to explanatory memoranda would prove useful.

It is true that the amount of material to be read and digested by the judge would be increased but this might be a small price to pay for a more accurate application and effectuation of legislative purpose.

The real crux of the problem may centre around the question whether the court should lean in the direction of trying to give effect to the subjective intention of the legislature, however inaptly expressed it might be, or whether it should take what might be described as a protectionist role, and strive to protect the citizen from the effect of a legislative purpose of which he, the citizen, is not fully cognizant.

Will the court be doing a real injustice to the average citizen by interpreting legislation in the light of material which the citizen might not have seen? Although it may be more likely that a citizen will have read the report of a special parliamentary committee or law reform committee than the explanatory notes of legislative counsel as they appear as proposed legislation in bill form, it is not likely that many members of the public will have actually read any of the material, including the statute itself, before acting.

Canadian courts and members of the legal profession in Canada have traditionally been guided by the rules of interpretation as developed by the English courts. Counsel have not, up to this point, tried to argue for the admissibility of explanatory memoranda and notes. The House of Lords decision in *Black-Clawson* could provide the necessary judicial impetus that will eventually result in the exclusionary rule concerning explanatory memoranda and notes on clauses being changed. This decision appears to be further evidence of the development of a more liberal approach to the use of extrinsic material in statutory interpretation. It is a trend, we suggest that will continue to develop in both Canada and the United Kingdom as the pressure to provide workable legislative solutions to society's problems increases.

If the proper function of the courts is to strive to give effect to legislative intent and to place themselves as far as possible in the position of the legislature, then reference to extrinsic materials such as explanatory memoranda and notes on clauses should prove both use-

ful and necessary. This will be particularly true of situations where the explanatory memoranda or notes accompany a draft bill which is later enacted without significant change. The court is not, in any event, bound by the evidence it consults and will still have to decide what weight, if any, to give to it. The court will still have the discretion and the responsibility of deciding whether, in a given case, the citizen has been unduly prejudiced in the sense of having been unfairly surprised by the court's determination of legislative intent and the manner in which it was achieved.

With all these factors in mind, there would appear to be more benefits to be obtained by allowing a court to consult extrinsic evidence such as explanatory memoranda and notes than by retaining the present exclusionary rule and refusing court access to them. We would, therefore, recommend that the Uniform Interpretation Act permit a court to consult this kind of extrinsic material.

It is clear that all the material covered by the term legislative history does not have the same degree of relevancy or weight as evidence of legislative intention. But to speak of "intention" is itself misleading and open to objection by those who contend that the legislature in many instances has no intention in relation to a particular situation, or with regard to the meaning of specific words. For this reason it might be preferable to talk of the usefulness of the material. But even if we talk in terms of the usefulness of legislative history, its utility will depend greatly upon the approach taken to the material by the court.

The court is faced with the problem of applying a particular statute to a specific set of facts. To decide whether the statute applies or not, the court is required to place some meaning on the words of the statute. If, after reading the statute, the judge is not satisfied or cannot decide whether the statute applies or not he will declare the statute, or part of it to be ambiguous. If recourse to legislative history were legally permissible, the judge would ideally like to be able to find a clear answer to the specific question he has been asked to resolve, that is, whether the statute applies to the specific set of facts of the case before him. If the circumstances represented by the case before him were discussed during the debate on the provisions of the bill and a statement made as to whether or not the statute covered that particular situation, the judge would have evidence that would be difficult to ignore even though it may represent only the opinion of the speaker. However, the weight given to the statement as evidence of legislative intention would depend greatly upon the source of the statement. An explanatory statement made by a Minister introducing an act into

Parliament or the report of the chairman of a committee that has examined the Act in some detail would obviously have a far greater weight than the statements of a committee member or a member of Parliament made during a debate on the bill. However, the possibility that the legislative history will provide a specific answer to a specific question is very unlikely. More likely, the judge will not find a clear answer to his problem, but, at most, evidence concerning the general purpose or purposes of the Act or parts of it. This may or may not add to the evidence of purpose he has obtained from reading the statute itself. With this general purpose in mind the judge will then have to decide for himself whether the statute applies or not.

B *THE AMERICAN POSITION*

American courts have been using legislative history as a consistent basis since the 1940's. Initially they referred to legislative history only if the words of the statute proved to be ambiguous. This of course raises the troublesome question as to when the court will declare the words plain or clear and the further problem brought about by the court looking to legislative history in order to create ambiguities in situations where none appear to exist, if the words of the statute alone are consulted. This has resulted in several judicial warnings to the effect that legislative history should not be referred to in order to raise doubts or ambiguities. It is for this reason that many courts in the United States will adopt the rule that parliamentary history can only be admitted if the statute is unclear. Experience indicates, however, that even with the best of intentions a clear meaning is very much in the eye of the beholder thus making it easy for a judge to declare a statute unclear and free to proceed to a broader context.

The provisions of the Canadian Uniform Interpretation Act (Section 9) directing the courts to give effect to the purpose or object of the enactment, have been construed to apply only if the words of the statute are unclear. Mr. Justice Locke of the Supreme Court of Canada seems to have dealt with this point more frequently than any other member of that court. See for example, his comments in *Canadian Credit Trust Association Ltd.* v. *Beaver Trucking* [1959] S.C.R. 311 at 315 and in *City of Edmonton* v. *Northwestern Utilities Ltd.* [1961] S.C.R. 392 at 403. An example of the same approach by a provincial court can be found in the judgment of O'Hearn, Co., Ct. J. in the Halifax City Charter (1966) 53 M.P.R. 22 al 25-30. In practice, however, many courts, perhaps on the assumption that there must be some ambiguity in order to have the case before them at all, appear to consider the purpose of the Act without indicating that they find the words to be unclear or ambiguous.

Many American commentators have suggested that the proper function of legislative history is not to provide specific answers to specific problems, but rather to provide the judge with a clearer understanding of the general social policy the statute was designed to effect. No doubt this view has been adopted because of the great range of reliability of the different kinds of legislative history materials that are available. It is generally conceded by American courts that the reports of committees or statements made by committee chairmen are much more reliable than statements made by members of Congress in the course of debate, either within the committee or in the House. American legal commentators have, on the whole, accepted the use of legislative history by the courts as a worthwhile development. Any criticism that has been voiced has concerned the judicial judgment (or lack of it) in selecting materials upon which they have based their interpretation. The critics have complained that the American courts do not always appear to recognize the dangers of relying heavily upon a single document or statement by a single legislator as the basis for assigning meaning to uncertain statutory language.

Insofar as Canadian legislative history material is concerned, there have been significant changes in the procedure of the federal parliament that are worth noticing. Unlike the American legislative process with its emphasis on specialist committees, in Canada, discussion and debate concerning specific statutes has traditionally taken place on the floor of the whole House of Commons. However, beginning in 1965, the role and importance of standing committees has altered considerably. Standing orders since 1970 prescribe that "unless otherwise ordered in giving a bill a second reading, the same shall be referred to a Standing Committee, but a bill may be referred to a special or Joint Committee". The committees referred to in the standing orders examine the draft bill, clause by clause and report back to the House. However, the Canadian Committee Report (unlike the American counterpart) contains only the text of the bill as adopted and recommended by the Committee without an explanation or comment concerning the content of the bill or the reasons for the recommendation. The present practice in Canada at the Federal level is to have the discussions in committee recorded. These are, for the most part, published as proceedings of the committee. One effect of this new parliamentary procedure is to reduce the amount of discussion that takes place in the House of Commons, even though the report stage is debateable and any member on notice can propose an amendment.

As the Committee system is used to an increasingly great extent, members of the various committees will become more knowledgeable

within certain fields and their ability to influence policy changes in the draft bill will increase. If, as appears to be the case, the real law making in the federal parliament in the future will be done more and more in committees, the debates or discussions of those committees will assume greater importance. Whether the existing procedure will be altered so as to require the committee chairman to submit a report on the bill after it has been through the committee debates, remains to be seen. Given the present practice, however, what is considered the best evidence of parliamentary history in the United States is not as yet available in Canada at either the federal or provincial level. Generally speaking, at the provincial level the committee material in the form of published proceedings of specific committees is almost non-existent.

The availability of legislative materials at the state level in the United States has proven to be a matter of major concern for American courts and lawyers. With the exception of New York and California, legislative history at the state level consists only of the House journals. Various commentators have noted the need for legislative history materials to be readily available on a wide basis but cost apparently prohibits quick action by state legislatures. As a result the material is not available to anyone. If legislative history materials are not available to the court or counsel for either side, the only problem flowing from this fact will be that the court or lawyer might not be able to fully comprehend the purpose of the statute they have to use and interpret. If, on the other hand, the material is available to one counsel but not to the other, then the one counsel will have the advantage of using the legislative materials in framing and supporting an argument based upon the interpretation of the Act. Evidence supporting a contrary interpretation may also exist in the materials, but will not come to light unless the judge himself reads all the material.

(C) *THE CIVIL LAW APPROACH OF QUEBEC*

The courts of Quebec appear to adopt two distinctly different approaches to the problem of statutory interpretation depending upon whether it is dealing with the Civil Code of Quebec or a non-code federal or provincial statute. The approach of the courts to the interpretation of the Code Civile du Quebec may be summarized as follows:

(a) If the text of the Code is clear, no other external reference is necessary

(b) If the text of a particular article is ambiguous, then the court will look to other articles and the rest of the Code for clarification

(c) If after reading the particular article in the context of other articles and the Code as a whole the meaning is still ambiguous, the court may then resort to

the Reports of Commissioners, including all their preliminary reports, to see, for example, if the intention was to create a new law or to amend the existing law in some way.

(d) If the language in question is still ambiguous, the court may then refer to the opinion of legal commentators, treatises and the decided cases upon the point

Because the Code is drafted in broad, general terms, Quebec courts find that they are constantly having to interpret its provisions in its application to specific situations.

With regard to non-Code legislative provisions, the Quebec courts appear on the whole to take a more restrictive approach and one that might be described as a strict or liberal approach. This approach might be explained on the basis that because the Code is intended to be much more comprehensive in scope and is drafted in very general and flexible terms, greater guidance is required in order to determine the actual application of the Code to specific factual situations. Statutes, being enacted for much more specific purposes and drafted with a much greater degree of particularity, should not require the same external assistance in determining their application.

The foregoing describes only in a most general manner the approach of Quebec judges to statutory interpretation and cases can be found where individual judges have adopted a liberal approach to the interpretation of a non-Code statute.

In the Reader's Digest case, for example, a case involving a federal statute, and the statement of a Federal Minister, the justices in the Quebec Court of Appeal[38] were divided as to whether the evidence was admissable. Owen J. would have allowed it on the basis of the Canadian and English decisions in constitutional cases. Montgomery J. would also have admitted it on the basis that the Civil Code of Quebec and the Code of Civil Procedure did not prevent it, and in his opinion there was no other clear and conclusive authority barring it. Justices Pratte and Choquette on the other hand, would have excluded the evidence; Mr. Justice Choquette on the basis that the exclusionary rule should apply to constitutional cases as well as non-constitutional cases. His opinion in this regard accords with the subsequent judgment of Cartwright J. in the Supreme Court decision.

(D) *MAJOR PROBLEMS INVOLVED IN THE USE OF LEGISLATIVE HISTORY*

The use of extrinsic material in court, particularly use of legislative history, seems to create two main problems. The first problem is how wide a context is necessary from a linguistic point of view if the actual legislative purpose is to be discovered by the court. The answer to this

problem is complicated by the fact that there may be more than one legislative purpose underlying a particular enactment and the purposes may be quite different. Some purposes may be very specific, while others are very general. In addition, all statutes are not of the same type nor cover the same kind of subject matter. Some are very intricate and involve complex issues and principles of public law. while others, perhaps dealing with an area of private law, are often much simpler in their provisions. The second major problem is whether the court should concern itself with what the reader or citizen thinks the statute means or, looking at it from a purpose point of view, whether the court should interpret the statute in light of the purpose as revealed by the statute itself. The availability of legislative history materials is relevant here because it could be argued that even if the material is available it should not be required reading by every citizen, although the availability of the material should make required reading for the professional or the lawyer who is going to advise a client as to the application of specific statutory provisions.

Mr. Justice Hall of the Canadian Supreme Court has suggested that the proper function of the court is that of a partner of the legislature which attempts to further the public good by giving statutes an interpretation in accordance with their purpose.[35] In his opinion, this is not only a realistic approach but also the one which legislators expect the courts to adopt. In so doing courts would have to recognize that they can no longer be guided by the traditional principle which appears to underly the literal approach (but which is seldom articulated) of giving the statute a meaning which the reasonable reader would give to it. How the judge decides which meaning this is remains somewhat of a mystery, but presumably the cannons of construction are supposed to assist him in making this determination. Concern for the individual and his right to be informed clearly of what the law is, will, under this theory, have to be subordinated to the overriding principle of effective judicial implementation of legislative purposes. Although legislative directives are assumed to be directed to the public generally, or to specific parts of it, and theoretically the public is supposed to be aware of the legislative commands, realistically only a small group of professional advisors actually consult legislative enactments in advance of any action on their part. This is true whether the action involves their own personal activities or the activity of providing information and advice to clients. The statutory provisions in fact are invoked in most situations by individuals after the fact.

It has been suggested that a court cannot be sure it has placed the

average citizen's meaning of the statute until the court has canvassed and considered all the possible interpretations that might be placed on the statute. To do this, it is argued, the court will have to provide itself with the broadest context possible — and that means resorting to legislative history materials.

E *WHAT THE COURTS ACTUALLY DO*

In spite of the general rule in Canada excluding legislative history, and particularly statements made during the course of debate in parliament, it is still possible to find Canadian court decisions in which the judges made reference to such material in both constitutional and non-constitutional cases. For example, in the case of *Re Noah's Estate*, (1902) 82 DLR 2d 185 at 203 Sissons, J. referred to the legislative history to determine the defect or mischief the legislation sought to prevent. In the same year in the case of *The Queen* v. *Flemming* (1967) 35 D.L.R. (2d) 483 at 490, a decision of the Alberta District Court, Buchanan, C.J.D.C. looked at normally prohibited material in the form of a minister's statement in order to discover the intention of the minister in issuing a ministerial order, and in the case of *The Queen* v. *Board of Broadcast Governors,* (1962) 31 D.L.R. (2d) 385 at 398, Mr. Justice McRuer of the Ontario Surpeme Court referred to legislative history to determine the intention of the legislature. Even a member of the House of Lords has been prompted to refer to the remarks of the Minister made while introducing the Bill, because in his opinion, the object of the Act "could not be better described than in the language of the Minister in charge of the Bill when introducing it". The Law Lord in this case made it clear that such a reference is only made after he has ascertained the purpose of the Act from reading the Act itself.[36]

At this point we might note the provisions of the Interpretation Act of Ghana 1960, which provides as follows;

> *Subsection 1*
> "For the purpose of ascertaining the mischief and defect which an enactment was made to cure, and as an aid to the construction of the enactment, a court may have regard to any text book or any other work of reference, to the report of any commission of inquiry into the state of the law, to any memorandum published by authority in reference to the enactment or to the Bill for the enactment and to any papers laid before the National Assembly in reference to it, *but not to the debates in the Assembly* "
>
> *Subsection 2*
> "The aids of construction referred to in this section are in addition to any other accepted aid."

F *JUDICIAL NOTICE*

Reference has already been made to the suggestion of the Privy

Council in the Pillai case[40] that judicial notice might be taken by a court of the reports of parliamentary commissions and such other facts as must be assumed to have been within the contemplation of Parliament when the Acts in question were passed. In spite of this suggestion, English and Canadian courts have not used this device as a basis for taking notice of what was said in parliamentary debates. Some courts have however, on occasion, been prepared to take judicial notice of contemporary social conditions prevailing at the time the enactment was passed and the evil the statute was passed to remedy.[41] A similar practice was adopted by a British Columbia court[42] *The Utah Co.* v. *A.G.B.C.* (1958) 26 W.W.R. 481, where the judge declared,

> "It is inconceivable that any person of average intelligence, resident in British Columbia and having the slightest concern about the mining or the industrial affairs of his province, could come reasonably to the conclusion that this legislative scheme has as its purpose the raising of a revenue. Whether or not the well known or widely publicized statements of the Premier and Minister of Mines are proper matters for consideration by a court in its efforts to determine the real intention of the legislature, one would have to be very gullible indeed to think for a moment that the 'real intention' was other than the estimable Ministers of the Crown have stated it to be, or that the tax imposed or the mineral Property Taxation Act could be described accurately as anything but the 'iron ore export tax' "[43]

The judge in this case, seemed to be following the examples set by Sir Lyman Duff, C.J. in the Supreme Court of Canada who declared,

> "It is our duty as judges to take judicial notice of facts which are known to intelligent persons generally; and any suggestions that profits of banking as carried on in Canada could be such as to enable banks to pay taxes to the provinces of such magnitude would be incontinently rejected by anybody possessing the most rudimentary acquaintance with affairs."[44]

On the whole, however, Canadian courts have not, except in rather unusual cases, made use of the doctrine of judicial notice to inform themselves of the contents of royal commission and parliamentary commission reports. They have clearly not used the doctrine to take notice of what was said during parliamentary debate on a bill, but they have used it to take note of social conditions that existed at the time a particular piece of legislation was passed.

CONCLUSIONS

(1) *Commission Reports*

With the recent almost world-wide enthusiasm for law reform it would appear to be extremely useful, and perhaps even necessary, for our courts to be able to consult the reports of law reform bodies and other special parliamentary committees if they so wish in their efforts to discover the legislative intent. The importance of such reports is particularly evident in cases where the enacted legislation bears a

close resemblance to the draft legislation accompanying the report. As a practical matter lawyers do consult such material at the present time in an effort to build and support an argument based on statutory interpretation. In some cases courts openly refer to the same material and probably in many others take notice of it, although they may not specifically refer to it in their judgments.

The distribution drawn by the House of Lords and referred to in the Reader's Digest case by the Supreme Court of Canada between use of commission reports as indirect rather than direct evidence of intention is useful only to the extent that expresses the caution that a court must exercise when dealing with such material. It should not, in our opinion, be retained as a separate and distinct rule. Canadian courts should be able to use commission report evidence with the necessary awareness of the dangers involved in trying to make it say too much.

The distinction between constitutional and non-constitutional cases should also be ignored. United Kingdom courts use commission reports without such a distinction being made, it not being necessary in that jurisdiction.

The complexity of contemporary society which necessitates more complicated and technical legislation makes it increasingly difficult for the public, lawyers, and judges to comprehend even the broad principles of modern statutes. Legislative purposes in order to be effectively implemented must be understood, and the broader historical context of a statute should assist in this understanding. The need to make a government work in the broad interest of the public at large would appear to outweigh the disadvantage or inconvenience to lawyers and other professional advisors having to consult not only the statute, but the background material as well.

(2) *Legislative History*

(a) *Explanatory Memoranda and Notes on Clauses*

For the reasons outlined earlier in our report, it is our opinion that the benefits to be gained by permitting a court to consult this type of extrinsic evidence outweigh the disadvantages. We therefore recommend that the Uniform Interpretation Act declare such material admissible.

(b) *Legislative Debates*

The case for permitting a court to consult parliamentary debates is weaker because it greatly increases the amount of material to be consulted and the usefulness of some of the material is significantly less.

Statements about the alleged purposes of a particular enactment by the supporters of it are not always objectively made and it is because of this fact that American commentators have been critical of the kind of material that has been presented to and relied on by the court rather than the fact that extrinsic evidence is admissible. With a different parliamentary system in Canada we lack one of the items of legislative history found to be most useful in the United States, namely, the committee report. The closest Canadian equivalent in terms of value seem to be the statements of the Minister introducing the Act. But to allow this material in as evidence and yet to refuse other statements by the Minister may be difficult to justify. It might also be difficult to justify restricting the admissible evidence to remarks of the Minister in charge of the Bill.

Courts and lawyers now make reference to statements made by members of the legislature, and particularly the minister in charge of a bill, during the process of its enactment. As the role of parliamentary committees grows in importance, at the federal level particularly, discussion of the policy aspects of legislation should also prove more relevant. It is true that to allow statements made by any member of the legislature in the House or in Committee will require the judiciary to be extremely careful in determining the weight to be given to particular declarations, but the advantages of a broader context that are obtained as a result, in our opinion, warrants the risk. It would seem preferable to allow the judge to consider anything said by members of the legislature presented to him and to leave him free to assess its usefulness or weight.

As a practical matter, the legislative history that will in fact be made available for judicial consultation if the present rule is changed will be for the most part federal material. With the exception of one or two provinces, legislative history in the form of legislative debates and printed committee reports is still relatively scarce. However, the trend does appear to be in the direction of more material in greater detail and eventually all the provinces will hopefully publish reasonably complete legislative records.

On balance, it is our opinion that the rule excluding legislative history should be changed and a court should be permitted to consider statements made inside both the federal and provincial legislatures as well as statements made in committee debates if they are available.

As Mr. Aneurin Bevan once remarked: "Why gaze in the crystal ball when you can read the book?"

FOOTNOTES

1 These remarks were made in the course of delivering a paper entitled "Law Reform and the Judiciary's Role" to the John White Society, Osgoode Hall Law School, Toronto, September 29, 1971.

2 Federal Act, Section 12.

3 Federal Act, Section 13

4 (Lock J *Canadian Credit Trust Association* v *Beaver Trucking Limited* [1959] S.C R 311 at 315 and *City of Edmonton* v *North-Western Utilities Limited* [1961] S C R. 392 at 403.

5 See *Rex* v. *Lane*, Ex Parte Gould [1937] 1 D.L.R. 212 (N B. Sup Ct. App Div.); *Ireland* v. *Jacques* [1959] Que. S.C 164; *Rex* v *Bates* [1952] 2 All ER 1942 (Q B D.) and *DeWare* v *The Queen* [1954] S.C.R. 182 at 194 & 196 per Locke J

6. *Attorney-General* v *H R.H Prince Ernest Augustus of Hanover* [1957] A C 436 (per Lord Norman at pp. 467-468).

7 Ibid., per Lord Norman at pp. 467-468

8. Ibid

9. See the Judgment of Sir Robert Caller in *Union Steamship Company of New Zealand* v. *The Melbourne Harbour Trust Commissioners* (1884) 9 App Cases 365.

10 See *Fletcher* v *Birkenhead Corporation* 1907 K B 205 at 214 per Sir Richard H Collins M.R ; *Martins* v *Fowler* [1926] A.C 746, *R* v *Hare* [1934] 1 K.B. 354, *R.* v *Surrey* (North Eastern Area) Assessment Committee, Ex. P Surrey County Valuation Committee [1947] 2 ALL ER 276 at 278

11 (See Judgement of Harmon L L. and Donvan L. J. in *Qualter Hall & Company Limited* v *The Board of Trade* [1961] 3 ALL ER 389 at 393 & 394 and the Judgments of Lord Reid and Lord Hodson in *Beswick* v. *Beswick* [1967] 2 ALL ER 1197 at 1204 & 1207).

12 *D P P* v. *Schildkamp*, (1971), A C. 1

13 Ibid., at p. 10

14. (See *Fasken* v. *M N R* [1948] Ex. CR 580; *Commell* v. *M N R.* [1946] C T C 306 (Ex. C); *Stephenson* v *Parkdale Motors* [1924] 550 Ont. R 680 at 682 (Logie J.)

15. (See *Hershman* v *Beal* (1916) 38 O.L.R 40 at 45 (Ont C.A); *Stromberg* v *M N.B.* (1954) 54 D T C 28; *Mountain Park Coals Ltd.* v. *M N R* [1952] D T.C 1221 (Ex Ct. Thorson J)

16. *Mountain Park Coals Ltd.* v. *M N.R.,* Ibid , fn. 15

17 *Stephens* v *Cuckfield Rural District Counsel* [1960] 2 Q.B. 373

18. Ibid , at p 383.

19. Supra, footnote 12

20. Ibid

21 Ibid , at p 28.

22. Supra, footnote 6 at p. 461

23 (See *Home Oil Distributors* v *A.G.B C.* [1940] 2 D L.R 609; *A G.B.C.* v. *A.G. Can.* (1889) 14 A.C 295 at 303 and 14 S C R 345 at 361-369; Re Provincial Fisheries, [1895] 26 S.C.R 444 at 456-465; Re Representation in House of Commons (1903) 33 S.C.R 475 at 497 and 581-593 and *C P R* v *James Bay Railroad* (1905) 36 S.C R 72 at 90, 93 and 99)

24 *A G Canada* v. *Readers Digest Association* [1961] S C R 775.

25 Ibid., p 796

26. *A.G.B.C.* v. *A.G. Can.* [1937] I D.L.R. 688, A.C. 368 (P.C.); *LaDore* v. *Bennett* [1939] 3 D L.R I; A.C. 468; *Home Oil Distributors* v *A G B C.* [1940] 2 D L.R. 609; S.C R.. 444

27. Ibid

27(a) English courts have consulted the reports of commissions or committees in a number of other cases as well For example, in the cases of Rookes v Barnard[1] and Heatons Transport (58 Helens) Ltd v Transport and General Workers Union[2] the courts referred to the Report of the Royal Commission on Trade Unions and Employees Associations 1965-1968.[3] In the case of National Provincial Bank Ltd. v Ainsworth[4] the court referred to the Report of the Royal Commission on Marriage and Divorce[5] and in Latang v Cooper[6] the court referred to the Report of the Tucker Committee on the Limitation of Action[7]

(1) [1964] 1 A11ER 367, [1964] A.C 1129
(2) [1972] 3 A11ER 101, [1973] A.C 15
(3) CMND 3623.
(4) [1965] 2 A11ER 472, [1965] AC 1175
(5) (1956) CMND 9678
(6) [1964] 2 A11ER 929, [1965] 1 Q.B 232.
(7) (1949) CMND 7740.

28 See *Green* v *Charterhouse Group of Canada Limited* (1973) 35 D L.R. 3rd 161 (Ontario High Grant J) Re: International Petroleum Company Limited [1962] O R 705 at 741 (Ont. C.A.) and Re: Alberta Ombudsman) 1970 D L R 3rd 47 Alberta Supreme Court Milvaine J.

29. The New Law Journal, (1970) Vol 120, p 93.

30. The New Law Journal (1970) Vol. 120, p. 191.

31. *Pillai* v. *Mudanayake* [1953] A.C 514 at 548.

32. Item XVII of First Programme of the Law Commission and Paragraphs 20 and 21 of the First Programme of the Scottish Law Commission

33. 4 Burr. 2302, 98 ER 201 at 217

34. Supra, footnote 24 at p 791.

34(a) Supra p. 18.

35. Mr Justice Hall's suggestions were contained in a paper prepared for delivery to the John White Society, Supra, Note (1).

36 *Lord Moulton in Lumsden* v. *I.R C.* [1914] A.C. 877 at 900.

37. The position of the Quebec Courts concerning the use of extrinsic evidence is based upon material supplied by Quebec Commissioners

38. [1961] Que. Q.B 118

39. Supra, Note 37.

40. Supra, Note 31.

41. For example, See the New Zealand Court decisions in Re a Mortgage to W , [1933] N Z.L R 727 at 782, and *Hoslin* v *McGree* [1957] N.Z L.R. 731 at 733.

42. *The Utah Co.* v. *A G.B.C.* (1958) 26 W W R 481

43. Ibid., pp. 493-494.

44 Reference re Alberta Bill [1958] S.C.R 100 at 128

APPENDIX W

(See page 32)

Sections 9, 10, 11 of the Uniform Interpretation Act (Revised 1973) (1973 Proceedings, page 179)

COMMENT OF THE ALBERTA COMMISSIONERS ON THE 1975 REPORT OF NOVA SCOTIA COMMISSIONERS

These comments follow the main divisions of the 1975 Nova Scotia report (Appendix V, page 218):

Part I. Internal Context (N.S. p. 220).

Part II. External Context (N.S. p. 224).

(1) Royal Commission Reports (N.S. p. 226).

(2) Parliamentary or Legislative History (N.S. p. 230).

1. *The Internal Context*

The relevant sections of the 1973 Uniform Act are:

Enactments Remedial

9. Every enactment shall be construed as being remedial and shall be given such fair, large and liberal construction and interpretation as best ensures the attainment of its objects

Preambles

10. The preamble of an enactment shall be construed as part thereof intended to assist in explaining its purport and object

Marginal Notes, etc

11 In an enactment marginal notes, headings and references after the end of a section or other division to former enactments form no part of the enactment, but shall be construed as being inserted for convenience of reference only

(1) *Long Title (N.S. p. 220).*

We note that in 1964 the Conference agreed to abolish the long title in Uniform Acts (1964 proc. pp. 42, 53). There are of course many statutes that still have a long title. As the Nova Scotia Report says, a court may look at the long title but it does not prevail over specific sections. We doubt that the Uniform Act need be amended to refer to the long title.

(2) *The Preamble (N.S. p. 220).*

The only comment we have under this heading is to point out that Uniform section 10 in our opinion deals adequately with preambles.

(3) *Headings and Marginal Notes (N.S. p. 221)*

The Nova Scotia Report agrees with the recommendation of the United Kingdom Law Commissions in 1969 that a court should be able to consider the provisions of a statute in the context of headings and of marginal notes, though their weight may often be slight.

We have considered this recommendation in the light of section 11 of the Uniform Act. Our tentative opinion is that section 11 should stand, though we would like to hear elaboration of the case for reversing section 11 so as to enable courts to consider headings and marginal notes. Possibly a stronger case can be made for headings than for marginal notes.

2. *The External Context*

(1) *Royal Commission Reports and Reports of Fact Finding Committees (N.S. p. 226)*

We agree that the law is uncertain on the question of admissibility of reports. The rule in *Eastman* (1898) even as restricted by *Assam* (1935) is probably wider than the rule in Canada as illustrated by *Home Oil* (1940) and restricted by the dicta in *Readers Digest* (1961). In Canada, admissibility seems to depend in part on agreement of counsel. Moreover admissibility is sometimes related to issues of the constitutional validity of legislation.

May we now comment on *Black-Clawson* v. *Papierwerke* [1975] 2 W.L.R. 513. Doubtless the Nova Scotia Commissioners will refer to this case in their 1975 report. We mention it here because of the powerful statements supporting diverse views. The short summary which follows does not do justice to the lengthy discussion. The House of Lords had to consider the Foreign Judgments (Reciprocal Enforcement) Act, 1933. It was enacted pursuant to the recommendations of the Greer Report in 1932. Lords Reid, Wilberforce and Diplock were all agreed that a court could look at the Report to see the state of the existing law, and the mischief or defect in the existing law that the Report was designed to remove. They thought however that the court could not look at the Report to determine the intention of the proposed legislation.

Lord Wilberforce gave two reasons why a court should not look at the Report for a direct statement of what the proposed Act means. (1) The court would have to interpret two documents instead of one. (2) As a matter of *constitutional* principle, the courts construe acts of Parliament, and it would be a degradation of the process if the courts were to be merely a reflecting mirror of what some other interpretation agency might say.

> "It is sound enough to ascertain, if that can be done, the objectives of any particular measure, and the background of the enactment; but to take the opinion, whether of a Minister or an official or a committee, as to the intended meaning in particular applications of a clause or a phrase, would be a stunting of the law and not a healthy development"

Lord Diplock agreed that the court could have recourse to the Report as an aid to construction, in order to ascertain the existing law. Where words are ambiguous, the court may "pay regard to authoritative statements that were matters of public knowledge at the time the Act was passed, as to what were regarded as deficiencies in that branch of the existing law with which the Act deals."

Viscount Dilhorne and Lord Simon of Glaisdale held that the court could make wider use of the Greer Report than did the other three. Viscount Dilhorne concluded that the court could look at everything in the Report. No artificial line could be drawn between the "mischief" and the recommendations. In the present case the Report contained a draft bill and Parliament enacted it with no material change. Thus the recommendation in the Report becomes the most accurate source of information as to the intent of Parliament:

> "In my view the recommendations of the committee and their observations on the draft bill may form a valuable aid to construction which the courts should not be inhibited from taking into account."

Lord Simon of Glaisdale said that the draftsman and the court of construction "must be tuned in on the same wavelength", and "Where Parliament is legislating in the light of a public report I can see no reason why a court of construction should deny itself any part of that light and insist on groping for meaning in darkness or half-light." The court can look at the report not only to determine the "mischief" that Parliament was seeking to remedy, but to look at the commentary on the draft bill. "Certainly, a court of construction cannot be precluded from saying that what the committee thought as to the meaning of its draft was incorrect. But that is one thing: to dismiss, out of hand and for all purposes, an authoritative opinion in the light of which Parliament has legislated is quite another."

At the moment we do not have a firm opinion. We find the Reid-Wilberforce-Diplock position very persuasive. Yet we agree with the opposing argument that it is hard to look at the report for one purpose and close one's eyes for another purpose. Perhaps it would be best simply to provide that the court can look at the report, and leave it at that.

We suggest that the Conference would receive help by examining the draft clauses recommended by the United Kingdom Law Com-

missions. Clause 1(1) (b) says that a court may consider "any relevant report of a royal commission committee or other body which has presented or made to or laid before Parliament or either House before the time when the Act was passed."

We think, too, that the Conference should consider Nova Scotia's section 8(5). Although it does not mention reports of royal commissions and committees, it does permit the court to consider the occasion and necessity for the enactment, the circumstances existing at the time it was passed, the mischief to be remedied, the object to be obtained, the former law and the consequences of a particular interpretation. We suggest the Conference should consider whether a provision of this kind would serve the purpose of making it clear that the court can look at these reports.

It might be helpful, as well, to consider the Uniform Statutory Construction Act in the United States.

Section 15 says:

> 15. If a statute is ambiguous, the court, in determining the intention of the legislature, may consider among other matters:
>
> (1) the object sought to be attained;
>
> (2) the circumstances under which the statute was enacted;
>
> (3) the legislative history;
>
> (4) the common law or former statutory provisions, including laws upon the same or similar subjects;
>
> (5) the consequences of a particular construction;
>
> (6) the administrative construction of the statute; and
>
> (7) the preamble.

(2) *Parliamentary or Legislative History (N.S. p. 230)*

The Nova Scotia report sets out the arguments for and against admission of speeches in Parliament. This is a very helpful summary. Our present view is one of misgivings about permitting a court to look at speeches in the House. We note that in *Black-Clawson*, Lord Simon of Glaisdale was the only law lord who did not explicitly discuss this matter.

Lord Reid pointed out that questions which later come before the court are often not discussed in Hansard. "The difficulties in assessing references there might have been in Parliament to the question before the court are such that in my view our best course is to adhere to present practice."

Viscount Dilhorne, who had taken a broad view in connection with law reform reports, said "it does not follow that if one can

have regard to the whole of a committee's report, one ought also to be able to refer to Hansard to see what the Minister in charge of a Bill has said it was intended to do." Lord Wilberforce said that to take the opinion of a Minister as to the intended meaning in particular applications of a clause or a phrase, would be a stunting of the law and not a healthy development. Lord Diplock said "that any or all of the individual members of the two Houses of the Parliament that passed it may have thought the words bore a different meaning cannot affect the matter."

Our tentative view is that the law as laid down in *Readers Digest* should remain. After the *Wheat Board* case (1951), articles by Kilgour, Corry and Davis in the Canadian Bar Review debated the pros and cons. Our leaning is in favour of Professor Corry's view that on balance the present rule is sound. We are aware of the relaxed rule in the United States. However, their committee system is different from ours, as the Nova Scotia Report points out. Moreover there is a substantial body of opinion that too much use is made of proceedings in Congress, and that much of the material is inaccessible to anyone but the government.

Explanatory Notes Upon Bills

The 1975 Nova Scotia Report contains recommendations in respect of explanatory notes upon bills. We do not have any comment at this time, though we did find interesting the discussion of this subject in the report of the United Kingdom Law Commissions.

Wilbur F. Bowker
William E. Wilson
Glen Acorn
Leslie R. Meiklejohn
Alberta Commissioners

August 1975

APPENDIX X

(See page 33)

Jurors (Qualifications, Disqualifications and Exemptions)

REPORT OF THE MANITOBA COMMISSIONERS

This subject was an agenda item at the 1974 meeting of this Conference. The matter was not considered, but was referred to the Manitoba Commissioners to prepare a report for consideration at the 1975 meeting. It should be noted that this subject has been discussed during two annual meetings in the Criminal Law Section and from there referred to the Uniform Law Section for consideration.

Such reference, after discussion in the Criminal Law Section, no doubt signals the nice constitutional problem posed by the subject matter. The *Criminal Code*, itself, properly refers to, and employs the expression: "a court composed of a judge and jury" [e.g. sections 484(2); 492(1)].

The nice question relates to whether the qualification of jurors in criminal cases comes wholly or partly within the legislative jurisdiction of the Parliament of Canada or of the provincial legislatures. The *B.N.A. Act*, by section 91, accords to Parliament legislative authority over the following class of subject matter:

> 27. The criminal law, except the constitution of courts of criminal jurisdiction, but including the procedure in criminal matters

the *B.N.A. Act* also, by section 92, accords to each provincial legislature the exclusive authority to make laws in relation to the following class of subject matter:

> 14. The administration of justice in the province, including the constitution, maintenance and organization of provincial courts, both of civil and criminal jurisdiction, and including procedure in civil matters in those courts

Is then, the qualification of jurors in criminal cases a matter of criminal procedure or is it a matter of the administration of justice including the constitution, maintenance and organization of courts of criminal jurisdiction?

The question arose in the Senate at the instance of Hon. Muriel Fergusson, in March, 1971.[1] She moved, seconded by Senator Croll:

> That in the opinion of the Senate, the Governor in Council should refer the following questions to the Supreme Court of Canada for hearing and consideration pursuant to section 55 of the Supreme Court Act:
>
> 1 Is section 534(1)[2] of the Criminal Code *intra vires* of the Parliament of Canada?
>
> 2. Would it be within the legislative competence of the Parliament of Canada to

> make provision for the eligibility of women for jury service throughout Canada in criminal matters?

In her speech in the Senate, Senator Fergusson remarked:[3]

> If the Government considers it has no authority to make these changes then it had no authority to enact the 19 sections of the code which immediately follow section 534, and they should be struck out

On March 30, 1971[4] Senator Paul Martin, Government Leader in the Senate said:

> I have now had the opportunity of discussing this matter with the law officers of the Crown and obtaining their opinion that the position taken by Senator Fergusson is valid In their opinion, Parliament could repeal section 534(1) and legislate in relation to the qualifications of jurors without reference to provincial legislation They are satisfied that this would be legislation within head 27 of section 91 of the B N A Act, in that it concerns criminal law and procedure

Whether such legislation would, rather, come under head 14 of section 92 in that it would concern the constitution and organization of courts of criminal jurisdiction is a question which did not deter Parliament in enacting subsection (3) to what was by then section 554 of the *Criminal Code* in 1972 as chap. 13, section 46, thus:

> (3) Notwithstanding subsection (1), no person may be disqualified, exempted or excused from serving as a grand or petit juror in criminal proceedings on the grounds of his or her sex

And who would quarrel with such a provision? Apparently nobody has, despite the double imperatives in sections 91(27) and 92(14) of the *B.N.A. Act* denying federal, and conferring provincial, legislative authority over the constitution, maintenance and organization of courts of criminal jurisdiction.

At this time, however, the nice question is no problem because Parliament has, by what is now section 554 of the *Criminal Code*, expressed itself content with juror qualifications according to the laws in force for the time being in the provinces.

The Manitoba Commissioners noting that adjudication is an integral part of one of the three classical functions of government — executive, legislative, and judicial — consider that those persons who actually perform an adjudicative role in "a court composed of a judge and jury" ought to be citizens of Canada. In this regard no distinction is to be drawn between those who are citizens by birth and those who, having signified their commitment to Canada, are citizens by naturalization. The right and obligation to participate intensively in such important state functions is seen to be a necessary concomitant of citizenship. It would be anomalous to empower persons who are not citizens, and who have not made the commitment to Canada which naturalization bespeaks, to participate in the essential functions of a

Canadian criminal court composed of a judge and jury. Traditionally, British subjects have been qualified as jurors. It may be wondered, however, with no disrespect or antipathy, why at this present stage of our history the concept of "British subject" would be retained as a factor in jury selection. Presumably this policy has been based on historic connection and the probability that such persons were attuned to our institutions. We think that a British subject who, for whatever reasons, has not made the commitment to Canada, cannot be distinguished from any other non-citizen when it comes to having a say in the operation of Canadian institutions. THE BASIC QUALIFICATION FOR JURY SERVICE SHOULD BE CANADIAN CITIZENSHIP, INCLUDING REGISTERED INDIAN STATUS.

In some places, a qualification for jury service is the ownership of property as disclosed by real property tax assessment rolls. It may well have been assumed that property owners were those who, from the integrity of their character, the soundness of their judgment, and the extent of their information were the most discreet and competent for the performance of the duties of jurors. If the notion of a jury of one's peers means anything, then it is clear that ownership of real property is no reasonable qualification. To obtain a random slice of the community for a jury, one will have to qualify many more citizens than the property owners, alone. OWNERSHIP OF PROPERTY SHOULD NEVER BE A QUALIFYING FACTOR FOR JURY SERVICE.

To this point potential jurors are adult citizens of either sex, including in the range people of wealth to welfare recipients; people with extensive property, to people with none at all. Whether the best means of identification of such citizens be municipal or provincial electoral rolls, is not the burden of this paper, except to recommend that the net be cast as widely as possible. Whichever electoral lists are the more often revised would generally be the most aptly up to date. In some instances not only Canadian citizens, but all British subjects, may be eligible to be electors, but those persons who are not citizens would simply and ultimately be disqualified. CANADIAN CITIZENS LISTED ON MOST RECENT PROVINCIAL OR MUNICIPAL ELECTORAL LISTS, WHERE SUCH LISTS ARE KEPT UP TO DATE, ARE THOSE WHO SHOULD BE ELIGIBLE TO JURY SUMMONS AND SERVICE.

Having concluded and recommended the qualification for jury service, one ought next to consider what the disqualifications and exemptions, if any, should be.

Disqualification should be absolute, while exemption would be available to an otherwise qualified person in the appropriate circumstances. In some jurisdictions (Manitoba, for example) the terms are, in practice, of the same effect, with "disqualification" bearing a more permanent and somewhat more pejorative connotation. Thus by merely "exempting" holus-bolus certain occupational groups (i.e. all officials and employees of the Government of Canada or of a province) many intelligent and well informed people in the so-called "main-stream" of society are effectively excluded from ever serving as jurors. Some few of these people should be disqualified while engaged in the particular occupation or holding the specified status. Many others should be rendered proximately eligible, to be excused only upon demonstrating a need, or sufficient cause, for exemption. Collective contracts of work, which are more and more extending to white collar workers both in government and private industry, should, either by government encouragement or legislation, make provision for absence on jury service.

The basis of some disqualification is self-evident. The rationale of other proposed disqualifications is expressed in greater depth in the Manitoba Law Reform Commission's *Report on the Administration of Justice in Manitoba, Part II — A review of the jury system.*[5] Our recommendations for disqualifications of persons for jury service are drawn from that report, and are concisely set out in Schedule "A" hereto.

If disqualifications are to be absolute for the duration of some physical, mental, civil or occupational disability, exemptions on the other hand, are to be relative to certain designated circumstances. The circumstances will be found to vary greatly. A woman in a late stage of gestation or during lactation; any person who has the care of small children or of a handicapped person; a farmer during the seeding and harvest seasons; a vowed member of a cloistered religious order; a person who is required or scheduled to appear before a court or other tribunal at home or abroad; a rancher or milk producer who is unable to make suitable arrangements for the care of the herd; a person whose religious principle forbids participation in court proceedings — all such persons, and many others, should be able to claim and establish a right to exemption from jury service when summoned. In the concept of exemption, notions of undue hardship, public interest and religious precept will be appropriate. These notions are expressed, again, in the above mentioned Report[6] of the Manitoba Law Reform Commission, whose recommendations we respectfully adopt. Those recommendations are concisely set out in Appendix "B" hereto.

Whether it ought to be a judge or a sheriff, or some other official, who would accord exemptions, or not, is a matter to be left to the preference of each jurisdiction. Ultimately, it would be for a judge to determine disputed questions of disqualification and to hear appeals from the sheriff's declining to accord exemption where such power may be conferred on the sheriff. In any event one could foresee that the sheriff or other official to whom summoned persons must ordinarily report for jury service would most likely be making determinations of qualification or exemption, whether or not the statute formally conferred such authority. The procedure to determine qualifications and exemptions will vary from province to province.

The qualification of every person in the array should be confidently assumed so that counsel will not have to employ or exhaust peremptory challenges to clear away legally disqualified persons. In order to determine disqualifications there ought to be a statutory provision to this effect: That a person claiming disqualification or exemption may be required to produce evidence of the grounds for such disqualification or exemption and any person who participates in the providing of such evidence is subject to examination by the court at its discretion.

There will be little use to the exercise of formulating qualifications, if the basis of summoning prospective jurors were to be restricted or selective. The basis of summoning jurors, therefore, should be the widest and most random possible. How those objectives are to be achieved is not part of the burden of this paper, but should be left to the ingenuity and integrity of each jurisdiction.

A. C. Balkaran
F. C. Muldoon, Q.C.
R. G. Smethurst, Q.C.
R. H. Tallin
Manitoba Commissioners

Winnipeg
July, 1975

1. *Senate Debates*, Session of 1970-72, Vol. I, March 23, 1971, pp. 742-5
2 "A person who is qualified as a juror according to the laws in force . in a province is qualified to serve as a juror . in criminal proceedings in that province."
3. Ibid., page 745.
4 *Senate Debates*, Session of 1970-72, Vol. I, p 805
5. February 11th, 1975; available from The Queen's Printer, Publications, 200 Vaughan Street, Winnipeg, Manitoba R3C 0V8
6 *Ibid.*

SCHEDULE I

The following persons are disqualified from serving as jurors:

(a) every person who is afflicted with blindness, deafness, or other mental or physical infirmity incompatible with the discharge of the duties of a juror;

(b) (i) Every person who within the five previous years has been in prison or other detention on conviction for an indictable offence, without option of fine, unless sooner pardoned; and

(ii) every person who is charged with an indictable offence;

(c) members and officers of the Privy Council, or of the Senate, or of the House of Commons of Canada;

(d) members and officers of the Executive Council or of the Legislative Assembly of the Province;

(e) all persons engaged in the administration of justice or the enforcement of the law and, without restricting the generality of the foregoing:

(i) all officials and employees of the Department of Justice and Solicitor General's Department of Canada, and of the Attorney-General's Department of the province;

(ii) every officer of any court, including sheriffs, deputy sheriffs, sheriff's officers, constables and bailiffs;

(iii) judges, magistrates and justices of the peace;

(iv) police officers and police constables;

(v) gaolers;

(vi) practising barristers, solicitors and attorneys;

(f) the spouse of every person mentioned in paragraph (e);

(g) practising physicians, surgeons and dental surgeons;

(h) members of the Canadian Forces who are in the regular forces or special forces, or who are in the reserve force on active service.

SCHEDULE 2

A person may be exempted from serving as a juror upon any of the following grounds:

(a) that his conscience or religious vow is such as to preclude him from serving as a juror;

(b) that serving as a juror will cause the person exceptional hardship in terms of his livelihood or in terms of discharging legal or moral obligations to others who are immediately relying on that person;

(c) that serving as a juror would be contrary to the public interest because the person performs essential and urgent services of public importance which cannot reasonably be rescheduled or cannot reasonably be performed by another and which are not ordinarily performed by another during that person's absence on vacation.

APPENDIX Y

(See page 33)

International Conventions on Private International Law

REPORT OF THE SPECIAL COMMITTEE

GENERAL

The function of the Special Committee is to effect liaison between the Uniform Law Conference of Canada and the federal and provincial administrations in Canada in matters which are the subject of international conventions on private international law and unification of private law. Your Committee envisages this function as involving the study of existing treaties and conventions with a view to recommending ratification or accession of those which it is felt would be for the general benefit of Canada and the provinces and which are open for ratification or accession on behalf of Canada at large or on behalf of one or more of the several provinces. Where a particular international convention cannot be made the subject of ratification or accession due, for example, to a lack in the convention of a suitable federal state clause, the Committee might wish to recommend that the Uniform Law Conference adopt its provisions as a uniform law for enactment in the several jurisdictions in this country.

The membership of the Special Committee is composed of E. Colas, Esq., C.R.; M. M. Hoyt, Esq., Q.C.; K. M. Lysyk, Esq., Q.C.; R. Normand, Esq., C.R.; J. W. Ryan, Esq., Q.C.; and H. Allan Leal, Esq., Q.C., Chairman. This report covers the period since the last annual meeting of the Conference at Minaki in August 1974.

INTERNATIONAL INSTITUTE FOR THE UNIFICATION OF PRIVATE LAW (UNIDROIT)

(i) *Convention and Uniform Law on the Form of an International Will*

As of November 30, 1974, the Conference adopted and recommended for enactment a new Part IV and Schedule to the Uniform Wills Act dealing with the convention providing a uniform law on the form, and a system of registration, of an international will. This uniform legislation has been enacted in the Province of Manitoba and the way is now clear for ratification of the convention by the Government of Canada on behalf of that province. We would hope that other provincial jurisdictions would soon move to follow their example.

(ii) *Work in Progress*

A perusal of the editions of the News Bulletin of Unidroit, published since the last annual meeting of the Conference (October 1974

and January 1975) indicates nothing in their work program which is of immediate concern to our membership.

NOTE: Copies of the News Bulletins of Unidroit are on file in the office of the Executive Secretary of the Conference.

THE UNITED NATIONS COMMISSION ON INTERNATIONAL TRADE LAW (UNCITRAL)

(i) *Convention on the Limitation Period in the International Sale of Goods*

In our report last year reference was made to the United Nations Convention on the Limitation Period in the International Sale of Goods concluded on June 14, 1974. The convention was the product of a United Nations diplomatic conference working from a draft prepared by Uncitral. Canada participated in this diplomatic conference and our delegates were able to influence the adoption of a federal state clause which permits ratification by this country. It is contained in Article 31 of the convention.

After the meeting of the Uniform Law Conference a year ago, the final convention was studied by the Advisory Group on Private International Law and Unification of Law, Department of Justice, Ottawa and is now brought forward by that Group for consideration by the Conference with an appropriate Model Act for purposes of implementation.

Your Special Committee supports the view of the Advisory Group that this convention warrants the close consideration of the Conference.

THE HAGUE CONFERENCE ON PRIVATE INTERNATIONAL LAW

(i) *Ratification and Implementation of Past Conventions*

As we stated in our report last year, it would appear that none of The Hague conventions concluded before Canada became a member of that Conference in 1968 contain a federal state clause relevant and acceptable to this country and for that reason substantial difficulties in implementation are created and, indeed, implementation by ratification or accession may be precluded.

The Advisory Group on Private International Law and Unification of Law, Department of Justice, Ottawa, is devoting its attention, inter alia, to the study of the post-1968 conventions, that is the conventions concluded while Canada has been a member of the Conference, with a view to determining the desirability and method of their

implementation here. In our effort to avoid duplicating this work, your Special Committee decided to undertake a study of the pre-1968 conventions with a view to determining which might be made the subject of uniform legislation as an effective alternative to the treaty technique. To this end we commissioned a study by Professor E. Groffier-Atala, Faculty of Law, McGill University, financed by a grant from the research funds of the Uniform Law Conference and her "Rapport Sur Les Clauses De Reciprocite Contenues Dans Les Conventions De Droit International Prive De La Haye (No. 1 a No. XVII)" has been received. Through the generosity of the Constitutional, Administrative and International Law Section, Department of Justice, Ottawa, the Report is being translated into English and when available will be studied by your Special Committee and be made the subject of a report to the Conference. We are grateful to the Conference for making funds available for this work.

(ii) *The Hague Conference Current Program*

The next Plenary Session of The Hague Conference on Private International Law is scheduled to take place in October 1976.

The Department of Justice, Ottawa, as the national organ in Canada, in consultation with the provinces and the Advisory Group (Ottawa) is participating in the preparation of three Preliminary Draft Conventions for consideration by the Plenary Session which takes the form of a diplomatic conference. The three subject matters allocated for the 1976 Conference are Matrimonial Property Regimes, Agency and Marriage. In a manner traditional with The Hague Conference, Special Commissions of experts from the participating countries have been constituted in each of these three areas and have been at work. Canada has sent representatives on each Special Commission. The work of the Special Commission on the Law Applicable to Matrimonial Property Regimes has been completed and a Preliminary Draft Convention has been prepared. The interim report of the Rapporteur of this Special Commission has also been received. The work of the other two Special Commissions continues.

INTER-AMERICAN SPECIALIZED CONFERENCE ON PRIVATE INTERNATIONAL LAW

This Conference was convoked by the Organization of American States (OAS). All studies, reports and draft conventions submitted to the Conference were prepared by the Inter-American Judicial Committee of the OAS, composed of representatives of Argentina, Brazil, Chile, Colombia, Guatemala, Jamaica, Mexico, Uruguay and the U.S.A. Canada has Permanent Observer status only in the OAS, and

a legal representative of the Department of External Affairs, Ottawa, attended part of the Conference as an observer.

The Conference adopted the following conventions:

1. Inter-American Convention on Conflict of Laws concerning Bills of Exchange, Promissory Notes, and Invoices;
2. Inter-American Convention on Conflict of Laws concerning Checks:
3. Inter-American Convention on International Commercial Arbitration;
4. Inter-American Convention on Letters Rogatory;
5. Inter-American Convention on Taking of Evidence Abroad; and
6. Inter-American Convention on the Legal Regime of Powers of Attorney to be sent abroad.

Each of these conventions contains a federal state ratification clause, including at the request of the Canadian observer, reading as follows:

> "If a State Party has two or more territorial units in which different systems of law apply in relation to matters dealt with in this convention, it may, at the time of signature, ratification or accession, declare that this convention shall extend to all its territorial units or only to one or more of them.
>
> Such declaration may be modified by subsequent declarations, which shall expressly indicate the territorial unit or units to which the convention applies. Such subsequent declarations shall be transmitted to the General Secretariat of the Organization of American States, and shall become effective thirty days after the date of their receipt."

It is felt that none of these conventions has, at the present time, any particular interest for Canada but copies of them have been sent to the provinces for information and they are on file with the Executive Secretary of the Uniform Law Conference of Canada should any one wish to peruse them. No further action with respect to them is recommended by your Special Committee at this time.

All of which is respectfully submitted on behalf of the Special Committee.

Toronto
August, 1975

H. Allan Leal
Chairman

APPENDIX Z
(See page 34)

Ministry of the
Attorney
General of Ontario

18 King St. E.,
Toronto, Ontario.
August 8, 1975.

Mr. Robert Normand, Q.C.,
President, Uniform Law Conference of Canada,
Quebec, P.Q.

Dear Mr. Normand:

Re: *Powers of Attorney and Legal Incapacity*

Three Canadian law reform bodies have considered and reported on the topic of the law relating to the terminating effect of mental incapacity on powers of attorney: the Ontario Law Reform Commission in its *Report on Powers of Attorney (1972)*; the Law Reform Commission of Manitoba in its *Report on Special Enduring Powers of Attorney (1974)*; and the Law Reform Commission of British Columbia in its Working Paper No. 12, *Powers of Attorney and Mental Incapacity*. All three commissions recommended the creation of a special power of attorney which would survive the subsequent mental incapacity of the donor of the power.

While there is general agreement among the Commissions as to the need for such legislation, there is vast disparity in the recommendations of the Commissions with respect to the safeguards necessary to protect the interests of a donor of an enduring power of attorney. An even greater range of opinion with respect to safeguards exists among law reform bodies when the reports by Law Commission (England), *Powers of Attorney*, Law Com. No. 30, Cmnd. 4473 (1970) and the Law Reform Commission of New South Wales, *Working Paper on Powers of Attorney (1973)*, are considered.

To my knowledge, none of these reports has, as yet, been implemented, although legislation based on the Ontario Report was introduced for first reading in 1973. If one province enacts legislation allowing for the creation of an enduring power of attorney, problems could arise with respect to the effectiveness of the power to deal with property in another province. In addition, there seems to be considerable positive interest within the legal profession in several provinces regarding the creation of this type of power of attorney.

It would appear that this is a propitious time to attempt to arrive at a uniform Power of Attorney Act, or at least a uniform Act with respect to enduring powers of attorney.

I, therefore, respectfully suggest that the matter of a power of attorney which would survive the mental incapacity of its donor be added to the Conference agenda and that a resolution be put forward referring this matter as a joint project to the Ontario, Manitoba and British Columbia Commissioners and that they prepare a report for consideration at the 1976 meeting.

Yours Sincerely
Stephen V. Fram,
Counsel,
Policy Development Division.

TABLE I

UNIFORM ACTS PREPARED, ADOPTED AND PRESENTLY RECOMMENDED BY THE CONFERENCE FOR ENACTMENT

Title	Year First Adopted and Recommended	Subsequent Amendments and Revisions
Accumulations Act	1968	
Assignment of Book Debts Act	1928	Am. '31; Rev '50, '55; Am. '57
Bills of Sale Act	1928	Am. '31, '32; Rev. '55; Am '59, '64, '72
Bulk Sales Act	1920	Am '21, '25, '38, '49; Rev '50, '61
Conditional Sales Act	1922	Am '27, '29, '30, '33, '34, '42; Rev '47, '55; Am '59
Condominium Insurance Act	1971	Am '73.
Contributory Negligence Act	1924	Rev '35, '53; Am. '69
Criminal Injuries Compensation Act	1970	
Defamation Act	1944	Rev '48; Am '49.
Dependants' Relief Act	1974	
Devolution of Real Property Act	1927	Am '62.
Domicile Act	1961	
Effect of Adoption Act	1969	
Evidence Act	1941	Am '42, '44, '45; Rev. '45; Am. '51, '53, '57
—Affidavits before Officers	1953	
—Foreign Affidavits	1938	Am '51; Rev '53
—Judicial Notice of Acts, Proof of State Documents	1930	Rev '31
—Photographic Records	1944	
—*Russell v. Russell*	1945	
Extra-Provincial Custody Orders Enforcement Act	1974	
Fatal Accidents Act	1964	
Foreign Judgments Act	1933	Rev '64
Frustrated Contracts Act	1948	Rev '74
Highway Traffic —Responsibility of Owner & Driver	1962	
—Conflict of Laws (Traffic Accidents)	1970	
Hotelkeepers Act	1962	
Human Tissue Gift Act	1970	Rev '71
Interpretation Act	1938	Am '39; Rev '41; Am '48; Rev '53, '73.
Interprovincial Subpoenas Act	1974	
Intestate Succession Act	1925	Am '26, '50, '55; Rev '58; Am. '63.
Legitimacy Act.	1920	Rev '59

Limitation of Actions Act	1931	Am '33, '43, '44
Married Women's Property Act	1943	
Medical Consent of Minors Act	1975	
Occupiers' Liability Act	1973	Am '75.
Partnerships Registration Act	1938	Am '46
Perpetuities Act	1972	
Personal Property Security Act	1971	
Presumption of Death Act	1960	
Proceedings Against the Crown Act	1950	
Reciprocal Enforcement of Custody Orders Act	1974	
Reciprocal Enforcement of Judgments Act	1924	Am. '25; Rev. '56; Am '57; Rev '58; Am '62, '67.
Reciprocal Enforcement of Maintenance Orders Act	1946	Rev. '56, 58; Am '63, '67, 71; Rev '73
Reciprocal Enforcement of Tax Judgments Act	1965	Rev '66
Regulations Act	1943	
Retirement Plan Beneficiaries Act	1975	
Service of Process by Mail Act	1945	
Statutes Act	1975	
Survival of Actions Act	1963	
Survivorship Act	1939	Am. '49, '56, '57; Rev '60, '71
Testamentary Additions to Trusts Act	1968	
Trustee (Investments)	1957	Am. '70.
Variation of Trusts Act	1961	
Vital Statistics Act	1949	Am. '50, '60.
Warehousemen's Lien Act	1921	
Warehouse Receipts Act	1945	
Wills Act		
—General	1953	Am '66, '68.
—Conflict of Laws	1966	
—International Wills	1974	

TABLE II

ACTS PREPARED, ADOPTED and RECOMMENDED FOR ENACTMENT BY THE CONFERENCE WHICH HAVE BEEN SUPERSEDED BY OTHER ACTS, WITHDRAWN AS OBSOLETE, OR TAKEN OVER BY OTHER ORGANIZATIONS

Title	Year Adopted	No. of Jurisdictions Enacting	Year Withdrawn	Superseding Act
Accumulations Act	1968	1	1972	Perpetuities Act
Cornea Transplant Act	1959	11	1965	Human Tissue Act
Fatal Accidents Act	1964	1	1974	Dependants' Relief Act
Fire Insurance Policy Act	1924	9	1933	*
Highway Traffic —Rules of the Road	1955	3		**
Human Tissue Act	1965	6	1970	Human Tissue Gift Act
Landlord and Tenant Act	1937	4	1954	None
Life Insurance Act	1923	9	1933	*
Pension Trusts and Plans —Appointment of Beneficiaries	1957	8	1975	Retirement Plan Beneficiaries Act
—Perpetuities	1954	8	1975 1972	In part by Retirement Plan Beneficiaries Act and in part by Perpetuities Act

*Since 1933 the Fire Insurance Policy Act and the Life Insurance Act have been the responsibility of the Association of Superintendents of Insurance of the Provinces of Canada (*see* 1933 Proceedings, pp. 12, 13) under whose aegis a great many amendments and a number of revisions have been made The remarkable degree of uniformity across Canada achieved by the Conference in this field in the nineteen-twenties has been maintained ever since by the Association

**The Rules of the Road are now being reviewed and amended from time to time by the Canadian Conference of Motor Transport Administrators

TABLE III

ACTS OF THE CONFERENCE SHOWING THE JURISDICTIONS THAT HAVE ENACTED THEM IN WHOLE OR IN PART, WITH OR WITHOUT MODIFICATIONS, OR IN WHICH PROVISIONS SIMILAR IN EFFECT ARE IN FORCE

Note

(x) indicates that provisions similar in effect are in force.

Accumulations Act —

Assignment of Book Debts Act — Enacted by Alta. ('29, '58); Man. ('29, '51, '57); N.B. ('52); Nfld. ('50); N.S. ('31); Ont. ('31); P.E.I. ('31); Sask. ('29); N.W.T. ('48); Yukon ('54). Total: 10.

Bills of Sale Act — Enacted by Alta. ('29); Man. ('29, 57); N.B. (x); Nfld. ('55); N.S. ('30); P.E.I. ('47); Sask. ('57); N.W.T. ('48); Yukon ('54). Total: 9.

Bulk Sales Act — Enacted by Alta. ('22); Man. ('21, '51); N.B. ('27); Nfld. ('55); N.S. (x); P.E.I. ('33); N.W.T. ('48); Yukon ('56). Total: 8.

Compensation for Victims of Crime Act — Enacted by Alta. ('69); B.C. (x) '72 Criminal Injuries Compensation Act; Ont. ('71); N.W.T. ('73); Yukon ('72). Total: 4.

Conditional Sales Act — Enacted by N.B. ('27); Nfld. ('55); N.S. ('30); P.E.I. ('34); Sask. ('57); N.W.T. ('48); Yukon ('54). Total: 7.

Condominium Insurance Act — Enacted by B.C. ('74) Strata Titles Act; P.E.I. ('74). Total: 2.

Conflict of Laws (Traffic Accidents) Act — Enacted by Yukon ('72). Total: 1.

Contributory Negligence Act — Enacted by Alta. ('37); N.B. ('25, '62); Nfld. ('51); N.S. ('26, '54); P.E.I. ('38); Sask. ('44); N.W.T. ('50); Yukon ('55). Total: 8.

Cornea Transplant Act — Enacted by N.B. (x); Nfld. ('60); N.S. (x); P.E.I. ('60); Yukon ('62). Total: 5.

Corporation Securities Registration Act — Enacted by N.S. ('33); Ont. ('32); P.E.I. ('49); Sask. ('32); Yukon ('63). Total: 5.

Defamation Act — Enacted by Alta. ('47); B.C. (x) Libel and Slander Act; Man. ('46); N.B. ('52); N.S. ('60); P.E.I. ('48); N.W.T. ('49); Yukon ('54). Total: 8.

Dependants' Relief Act —

Devolution of Real Property Act — Enacted by Alta. ('28); N.B. ('34); Sask. ('28); N.W.T. ('54); Yukon ('54). Total: 5.

Domicile Act —

Evidence Act — Enacted by Man. ('60); Ont. ('60); N.W.T. ('48); Yukon ('55). Total: 4.

— Affidavits before Officers — Enacted by Alta. ('58); B.C. (x); Man. ('57); Nfld. ('54); Ont. ('54); Yukon ('55). Total: 6.
— Foreign Affidavits — Enacted by Alta. ('52, '58); B.C. ('53); Man. ('52); N.B. ('58); Nfld. ('54); N.S. ('52); Ont. ('52 '54); Sask. ('47); Can. ('43); N.W.T. ('48); Yukon ('55). Total: 11.
— Judicial Notice of Acts, etc. — Enacted by B.C. ('32); Man. ('33); N.B. ('31); P.E.I. ('39); N.W.T. ('48); Yukon ('55). Total: 6.
— Photographic Records — Enacted by Alta. ('47); B.C. ('45); Man. ('45); N.B. ('46); Nfld. ('49); N.S. ('45); Ont. ('45); P.E.I. ('47); Sask. ('45); Can. ('42); N.W.T. ('48); Yukon ('55). Total: 8.
— *Russell v. Russell* — Enacted by Alta. ('47); B.C. ('47); Man. ('46); N.S. ('46); Ont. ('46); P.E.I. ('46); Sask. ('46); N.W.T. ('48); Yukon ('55). Total: 9.

Fatal Accidents Act — Enacted by N.B. ('68). Total: 1.

Foreign Judgments Act — Enacted by N.B. ('50); Sask. ('34). Total: 2.

Frustrated Contracts Act — Enacted by Alta. ('49); B.C. ('74); Man. ('49); N.B. ('49); Nfld. ('56); Ont. ('49); P.E.I. ('49); N.W.T. ('56); Yukon ('56). Total: 9.

Hotelkeepers Act —

Human Tissue Act — Enacted by Alta. ('67); Man. ('68); Sask. ('68); N.W.T. ('68). Total: 4.

Human Tissue Gift Act — Enacted by B.C. ('72); Nfld. ('71); N.S. ('73); Ont. ('71). Total: 4.

International Wills Act —

Interpretation Act — Enacted by Alta. ('58); B.C. ('74); Man. ('39, '57); Nfld. ('51); P.E.I. ('39); Sask. ('43); N.W.T. ('48); Yukon ('54). Total: 8.

Interprovincial Subpoenas Act —

Intestate Succession Act — Enacted by Alta. ('28); B.C. ('25); Man. ('27); N.B. ('26); Nfld. ('51); P.E.I. ('44); Sask. ('28); N.W.T. ('48); Yukon ('54). Total: 9.

Legitimacy Act — Enacted by Alta. ('28, '60); B.C. ('22, '60); Man. ('20, '62); N.B. ('20, '62); Nfld. (x); N.S. (x); Ont. ('21, '62); P.E.I. ('20); Que. (x); Sask. ('20, '61); N.W.T. ('49, '64); Yukon ('54). Total: 12.

Limitation of Actions Act — Enacted by Alta. ('35); Man. ('32, '46); P.E.I. ('39); Sask. ('32); N.W.T. ('48); Yukon ('54). Total: 6.

Married Women's Property Act — Enacted by Man. ('45); N.B. ('51); N.W.T. ('52); Yukon ('54). Total: 4.

Occupiers' Liability Act — B.C. ('74). Total: 1.

Partnerships Registration Act — Enacted by N.B. (x); Sask. ('41). Total: 2.

Pension Trusts and Plans — Perpetuities — Enacted by B.C. ('57);

Man. ('59); N.B. ('55); Nfld. ('55); N.S. ('59); Ont. ('54); Sask. ('57); Yukon ('68). Total: 8.

—Appointment of Beneficiaries — Enacted by Alta. ('58); B.C. ('57); Man. ('59); Nfld. ('58); N.S. ('60); Ont. ('54); P.E.I. ('63); Sask. ('57). Total: 8.

Perpetuities Act — Enacted by Alta. ('72); B.C. ('75); Ont. ('66). Total: 3.

Personal Property Security Act —

Presumption of Death Act — Enacted by B.C. ('58); Man. ('68); N.S. ('63); N.W.T. ('62); Yukon ('62). Total: 5.

Proceedings Against the Crown Act — Enacted by Alta. ('59); Man. ('51); N.B. ('52); Nfld. ('73); N.S. ('51); Ont. ('63); P.E.I. ('73); Sask. ('52). Total: 8.

Reciprocal Enforcement of Custody Orders Act —

Reciprocal Enforcement of Judgments Act — Enacted by Alta. ('25, '58); B.C. ('25, '59); Man. ('50, '61); N.B. ('25); N.S. ('73); Ont. ('29); N.W.T. ('55); Yukon ('56). Total: 8.

Reciprocal Enforcement of Tax Judgments Act —

Reciprocal Enforcement of Maintenance Orders Act — Enacted by Alta. ('47, '58); B.C. ('72); Man. ('46, '61); N.B. ('51); Nfld. ('51, '61); N.S. ('49); Ont. ('48, '59); P.E.I. ('51); Que. ('52); Sask. ('68); N.W.T. ('51); Yukon ('55). Total: 12.

Regulations Act — Enacted by Alta. ('57); Man. ('45); N.B. ('62); Ont. ('44); Sask. ('63); Can. ('50); Yukon ('68). Total: 7.

Service of Process by Mail Act — Enacted by Alta. (x); B.C. ('45); Man. (x); Sask. (x). Total: 4.

Survival of Actions Act — Enacted by B.C. (x) Administrations Act; N.B. ('68). Total: 2.

Survivorship Act — Enacted by Alta. ('48, '64); B.C. ('39, '58); Man. ('42, '62); N.B. ('40); Nfld. ('51); N.S. ('41); Ont. ('40); P.E.I. ('40); Sask. ('42, '62); N.W.T. ('62); Yukon ('62). Total: 11.

Testamentary Additions to Trusts Act —

Testators Family Maintenance Act — Enacted by Alta. ('47); B.C. (x); Man. ('46); N.B. ('59); N.S. (x); Sask. ('40). Total: 6.

Trustee Investments — Enacted by B.C. ('59); Man. ('65); N.B. ('70); N.S. ('57); Sask. ('65); N.W.T. ('64); Yukon ('62). Total: 7.

Variation of Trusts Act — Enacted by Alta. ('64); B.C. ('68); Man. ('64); N.S. ('62); Ont. ('59); P.E.I. ('63); Sask. ('69). Total: 7.

Vital Statistics Act — Enacted by Alta. ('59); B.C. ('62); Man. ('51); N.S. ('52); Ont. ('48); P.E.I. ('50); Sask. ('50); N.W.T. ('52); Yukon ('54). Total: 9.

Warehousemen's Lien Act — Enacted by Alta. ('22); B.C. ('22); Man. ('23); N.B. ('23); N.S. ('51); Ont. ('24); P.E.I. ('38); Sask. ('21);

N.W.T. ('48), Yukon ('54). Total: 10.

Warehouse Receipts Act — Enacted by Alta. ('49); B.C. ('45); Man. ('46); N.B. ('47); N.S. ('51); Ont. ('46). Total: 6.

Wills Act — Enacted by Alta. ('60); B.C. ('60); Man. ('64); N.B. ('59); Sask. ('31); N.W.T. ('52); Yukon ('54). Total: 7.

Wills (Conflict of Laws) — Enacted by B.C. ('60); Man. ('55); Nfld. ('55); Ont. ('54). Total: 4.

TABLE IV

LIST OF JURISDICTIONS SHOWING THE ACTS OF THE CONFERENCE ENACTED THEREIN IN WHOLE OR IN PART, WITH OR WITHOUT MODIFICATIONS, OR IN WHICH PROVISIONS SIMILAR IN EFFECT ARE IN FORCE

Note

* *indicates that the Act has been enacted in part.*
° *indicates that the Act has been enacted with modifications.*
(x) *indicates that provisions similar in effect are in force.*

Alberta

Assignment of Book Debts Act ('29, '58); Bills of Sale Act ('29); Bulk Sales Act ('22); Compensation for Victims of Crime Act ('69); Contributory Negligence Act ('37); Cornea Transplant Act.° ('60); Defamation Act ('47); Devolution of Real Property Act ('28); Evidence Act — Affidavits before Officers ('58), Foreign Affidavits ('52, '58), Photographic Records ('47), *Russell v. Russell* ('47); Frustrated Contracts Act ('49); Highway Traffic — Rules of the Road*('58); Human Tissue Act ('67); Interpretation Act ('58); Intestate Succession Act ('28); Legitimacy Act ('28, '60); Limitation of Actions Act ('35); Pension Trusts and Plans — Appointment of Beneficiaries ('58); Perpetuities Act ('72); Proceedings Against the Crown Act° ('59); Reciprocal Enforcement of Judgments Act ('25, '58); Reciprocal Enforcement of Maintenance Orders Act ('47, '58); Regulations Act° ('57); Service of Process by Mail Act (x); Survivorship Act ('48, '64); Testators Family Maintenance Act° ('47); Variation of Trusts Act ('64); Vital Statistics Act° ('59); Warehousemen's Lien Act ('22); Warehouse Receipts Act ('49); Wills Act° ('60). Total: 31.

British Columbia

Compensation for Victims of Crime Act ('72) (Criminal Injuries Compensation Act); Condominium Insurance Act ('74) (Strata Titles Act). Defamation Act (x) (Libel and Slander Act); Evidence — Affidavits before Officers (x); Foreign Affidavits* ('53), Judicial Notice of Acts, etc. ('32), Photographic Records ('45), Russell v. Russell ('47); Frustrated Contracts Act ('74); Human Tissue Gift Act ('72); Interpretation Act ('74); Intestate Succession Act ('25); Legitimacy Act ('22, '60); Occupiers' Liability Act ('74); Perpetuities Act ('75); Presumption of Death Act ('58); Reciprocal Enforcement of Judgments Act ('25, '59); Reciprocal Enforcement of Maintenance Orders Act° ('72) (Family Relations Act); Service of Process by Mail Act° ('45) (Small Claims Act); Survival of Actions Act (x) (Administration Act); Survivorship Act°

('39, '58); Testators Family Maintenance Act (x); Trustee Investments* ('59) (Trustee Act); Variation of Trusts Act ('68); Vital Statistics Act°('62); Warehousemen's Lien Act ('22); Warehouse Receipts Act° ('45); Wills Act° ('60); Wills — Conflict of Laws ('60).

Manitoba

Assignment of Book Debts Act ('29, '51, '57); Bills of Sale Act ('29, '57); Bulk Sales Act ('51); Cornea Transplant Act (x); Defamation Act ('46); Evidence Act* ('60), Affidavits before Officers ('57), Foreign Affidavits ('52), Judicial Notice of Acts, etc. ('33), Photographic Records ('45), *Russell v. Russell* ('46); Frustrated Contracts Act ('49); Highway Traffic — Rules of the Road° ('60); Human Tissue Act ('68); Interpretation Act ('57); Intestate Succession Act° ('27); Legitimacy Act ('28, '62); Limitation of Actions Act° ('32, '46); Married Women's Property Act ('45); Pension Trusts and Plans — Appointment of Beneficiaries ('59), Perpetuities ('59); Presumption of Death Act° ('68); Proceedings Against the Crown Act ('51); Reciprocal Enforcement of Judgments Act ('50, '61); Reciprocal Enforcement of Maintenance Orders Act ('46, '61); Regulations Act° ('45); Service of Process by Mail Act (x); Survivorship Act ('42, '62); Testators Family Maintenance Act ('46); Trustee Investments° ('65); Variation of Trusts Act ('64); Vital Statistics Act° ('51); Warehousemen's Lien Act ('23); Warehouse Receipts Act° ('46); Wills Act° ('64); Wills — Conflict of Laws ('55). Total: 34.

New Brunswick

Assignment of Book Debts Act° ('52); Bills of Sale Act (x); Bulk Sales Act ('27); Conditional Sales Act ('27); Contributory Negligence Act ('25, '62); Cornea Transplant Act (x); Defamation Act° ('52); Devolution of Real Property Act* ('34); Evidence — Foreign Affidavits° ('58); Judicial Notice of Acts, etc. ('31); Photographic Records ('46); Fatal Accidents Act ('68); Foreign Judgments Act° ('50); Frustrated Contracts Act ('49); Intestate Succession Act ('26); Legitimacy Act ('20, '62); Married Women's Property Act ('51); Partnerships Registration Act (x); Pension Trusts and Plans — Perpetuities ('55); Proceedings Against the Crown Act* ('52); Reciprocal Enforcement of Judgments Act ('25); Reciprocal Enforcement of Maintenance Orders Act° ('51); Regulations Act ('62); Survival of Actions Act ('68); Survivorship Act ('40); Testators Family Maintenance Act ('59); Trustee Investments ('70); Warehousemen's Lien Act ('23); Warehouse Receipts Act ('47); Wills Act° ('59). Total: 29.

Newfoundland

Assignment of Book Debts Act° ('50); Bills of Sale Act° ('55); Bulk Sales Act° ('55); Conditional Sales Act° ('55); Contributory Negligence Act ('51); Cornea Transplant Act ('60); Evidence — Affidavits before Officers ('54), Foreign Affidavits ('54), Photographic Records ('49); Frustrated Contracts Act ('56); Human Tissue Gift Act ('71); Interpretation Act° ('51); Intestate Succession Act ('51); Legitimacy Act° (x); Pension Trusts and Plans — Appointment of Beneficiaries ('58); Perpetuities ('55); Proceedings Against the Crown Act° ('73); Reciprocal 'Enforcement of Maintenance Orders Act* ('51, '61); Survivorship Act ('51); Wills — Conflict of Laws ('55). Total: 19.

Nova Scotia

Assignment of Book Debts Act ('31); Bills of Sale Act ('30); Bulk Sales Act (x); Conditional Sales Act ('30); Contributory Negligence Act ('26, '54); Cornea Transplant Act (x); Corporations Securities Registration Act ('33); Defamation Act* ('60); Evidence — Foreign Affidavits ('52), Photographic Records ('45), *Russell v. Russell* ('46); Human Tissue Gift Act ('73); Legitimacy Act (x); Pension Trusts and Plans — Appointment of Beneficiaries ('60); Perpetuities ('59); Presumption of Death Act° ('63); Proceedings Against the Crown Act ('51); Reciprocal Enforcement of Judgments Act° ('73); Reciprocal Enforcement of Maintenance Orders Act ('49); Survivorship Act ('41); Testators Family Maintenance Act (x); Trustee Investments* ('57); Variation of Trusts Act ('62); Vital Statistics Act° ('52); Warehousemen's Lien Act ('51); Warehouse Receipts Act ('51). Total: 25.

Ontario

Assignment of Book Debts Act ('31); Compensation for Victims of Crime Act° ('71); Cornea Transplant Act (x); Corporation Securities Registration Act ('32); Evidence Act* ('60) — Affidavits before Officers ('54), Foreign Affidavits ('52, '54), Photographic Records ('45), *Russell v. Russell* ('46); Frustrated Contracts Act ('49); Human Tissue Act (x); Human Tissue Gift Act (x); Legitimacy Act ('21, '62); Pension Trusts and Plans — Appointment of Beneficiaries ('54); Perpetuities ('54), Perpetuities Act ('66); Proceedings Against the Crown Act° ('63); Reciprocal Enforcement of Judgments Act ('29); Reciprocal Enforcement of Maintenance Orders Act° ('59); Regulations Act° ('44); Survivorship Act ('40); Variation of Trusts Act ('59); Vital Statistics Act ('48); Warehousemen's Lien Act ('24); Warehouse Receipts Act° ('46); Wills — Conflict of Laws ('54). Total: 24.

Prince Edward Island

Assignment of Book Debts Act ('31); Bills of Sale Act ('47); Bulk Sales Act ('33); Conditional Sales Act ('34); Condominium Insurance Act° ('74); Contributory Negligence Act ('38); Cornea Transplant Act ('60); Corporation Securities Registration Act ('49); Defamation Act ('48); Evidence — Judicial Notice of Acts, etc. ('39), Photographic Records ('47), *Russell v. Russell* ('46); Frustrated Contracts Act ('49); Interpretation Act ('39); Intestate Succession Act° ('44); Legitimacy Act ('20); Limitation of Actions Act° ('39); Pension Trusts and Plans — Appointment of Beneficiaries ('63); Proceedings Against the Crown Act° ('73); Reciprocal Enforcement of Maintenance Orders Act° ('51); Survivorship Act ('40); Variation of Trusts Act° ('63); Vital Statistics Act ('50). Total: 22.

Quebec

Legitimacy Act (x); Reciprocal Enforcement of Maintenance Orders Act ('52). Total: 2.

Saskatchewan

Assignment of Book Debts Act ('29); Bills of Sale Act ('57); Conditional Sales Act ('57); Contributory Negligence Act ('44); Cornea Transplant Act (x); Corporation Securities Registration Act ('32); Devolution of Real Property Act ('28); Evidence — Foreign Affidavits ('47), Photographic Records ('45), *Russell v. Russell* (46); Foreign Judgments Act ('34); Human Tissue Act° ('68); Human Tissue Gift Act° ('68); Interpretation Act ('43); Intestate Succession Act ('28); Legitimacy Act° ('20, '61); Limitation of Actions Act ('32); Partnerships Registration Act* ('41); Pension Trusts and Plans — Appointment of Beneficiaries ('57); Perpetuities ('57); Proceedings Against the Crown Act° ('52); Reciprocal Enforcement of Maintenance Orders Act ('68); Regulations Act ('63); Service of Process by Mail Act (x); Survivorship Act ('42, '62); Testators Family Maintenance Act ('40); Trustee Investments ('65); Variation of Trusts Act ('69); Vital Statistics Act ('50); Warehousemen's Lien Act ('21); Wills Act ('31). Total: 29.

Canada

Evidence — Foreign Affidavits ('43), Photographic Records ('42); Regulations Act° ('50). Total: 3.

Northwest Territories

Assignment of Book Debts Act ('48); Bills of Sale Act° ('48); Bulk Sales Act ('48); Compensation for Victims of Crime Act ('73);

Conditional Sales Act° ('48); Contributory Negligence Act° ('50); Cornea Transplant Act (x); Defamation Act° ('49); Devolution of Real Property Act ('54); Evidence Act° ('48) — Foreign Affidavits ('48), Judicial Notice of Acts, etc. ('48), Photographic Records (48), *Russell v. Russell* ('48); Frustrated Contracts Act ('56); Human Tissue Act ('68); Human Tissue Gift Act ('66); Interpretation Act° ('48); Intestate Succession Act° ('49); Legitimacy Act* ('49, '64); Limitation of Actions Act* ('48); Married Women's Property Act* ('52); Presumption of Death Act ('62); Reciprocal Enforcement of Judgments Act ('55); Reciprocal Enforcement of Maintenance Orders Act° ('51); Survivorship Act ('62); Trustee Investments ('64); Vital Statistics Act ('52); Warehousemen's Lien Act ('48); Wills Act ('52). Total: 28.

Yukon Territory

Assignment of Book Debts Act° ('54); Bills of Sale Act° ('54); Bulk Sales Act ('56); Compensation for Victims of Crime Act° ('72); Conditional Sales Act° ('54); Conflict of Law (Traffic Accidents) Act ('72); Contributory Negligence Act° ('55); Cornea Transplant Act ('62); Corporation Securities Registration Act ('63); Defamation Act ('54); Devolution of Real Property Act ('54); Evidence Act° ('55), Foreign Affidavits ('55), Judicial Notice of Acts, etc. ('55), Photographic Records ('55), *Russell v. Russell* ('55); Frustrated Contracts Act ('56); Interpretation Act* ('54); Intestate Succession Act° ('54); Legitimacy Act* ('54); Limitation of Actions Act ('54); Married Women's Property Act* ('54); Pension Trusts and Plans — Perpetuities ('68); Presumption of Death Act ('62); Reciprocal Enforcement of Judgments Act ('56); Reciprocal Enforcement of Maintenance Orders Act° ('55); Regulations Act° ('68); Survivorship Act ('62); Trustee Investments ('62); Vital Statistics Act° ('54); Warehousemen's Lien Act ('54); Wills Act° ('54). Total: 31.

CUMULATIVE INDEX TO PROCEEDINGS OF THE CONFERENCE

1918-1975

This index is divided into two parts. The first deals with uniform Acts. The second deals with internal matters of the Conference, its organization, operation, etc Neither part includes routine recurring resolutions or other matters that do not fall in Part I or Part II

PART I

INDEX OF REFERENCES TO MATTERS RELEVANT TO UNIFORM ACTS

PART II

INDEX OF REFERENCES PERTAINING TO THE CONFERENCE ITSELF, INCLUDING NAME, CONSTITUTION, POLICY AND PROCEDURES

INDEX