UNIFORM LAW CONFERENCE OF CANADA

CONFERENCE SUR L'UNIFORMISATION DES LOIS AU CANADA

PROCEEDINGS

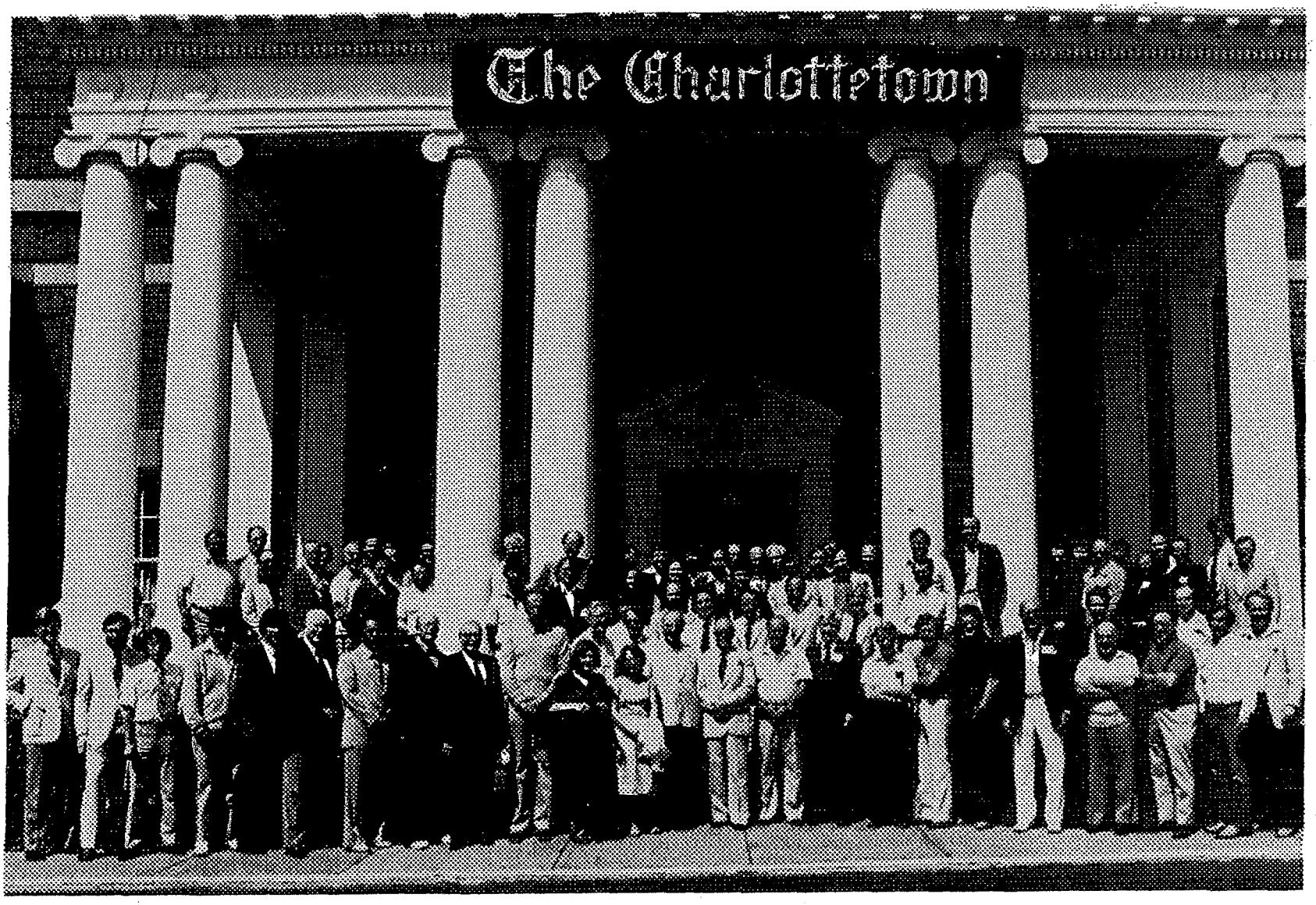
OF THE

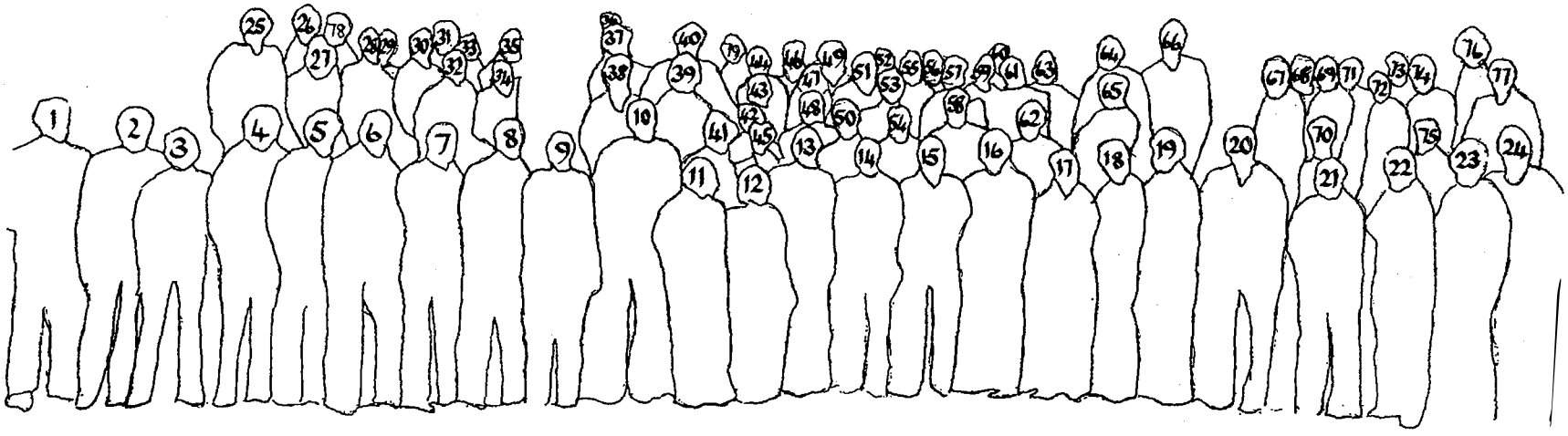
SIXTY-SECOND ANNUAL MEETING

HELD AT

CHARLOTTETOWN PRINCE EDWARD ISLAND

August, 1980


The Charlottetown



1. Guerette, N.B.
2. Connolly, C.I.C.S.
3. Gibson, Can.
4. McLeod, Ont.
5. MacDonald, Alta.
6. Tallin, Man.
7. Balkaran, Man.
8. Muldoon, Can.
9. Colas, Que.
10. Weinstein, Man.
11. Longtin, Que.
12. Charowsky, Sask.
13. Houston, Can.
14. MacTavish, Ex. Sec.
15. Coles, N.S.
16. O'Donoghue, Yuk.
17. Macaulay, B.C.
18. Baugh, Alta.
19. Schmidt, Alta.
20. Leal, Ont.
21. Bertrand, Can.
22. Cassels, Can.
23. Hunter, B.C.
24. Thomas, Ont.
25. McDiarmid, B.C.
26. Gale, N.S.
27. Charles, N.S.
28. Smith, N.S.
29. Bonin, Que.
30. Teed, N.B.
31. Tremblay, Que.
32. Ducros, Can.
33. Ewaschuk, Can.
34. Lalonde, N.B.
35. Gosse, Sask.
36. Kujawa, Sask.
37. Ketcheson, Sask.
38. Roger, B.C.
39. Reid, N.B.
40. Handfield, Que.
41. Smethurst, Man.
42. Noonan, Nfld.
43. Ozirny, Sask.
44. MacKenzie, B.C.
45. Dussault, Que.
46. Greenspan, Can.
47 Jackson, Can.
48. Cuming, Sask.
49. Dawson,Can.
50. Mendes da Costa, Ont.
51. Lal, N.W T
52. Gamache, Alta.
53. Koval, Alta.
54. Sterling, Ont.
55. Brien, N.W.T
56. Aikins, B.C.
57. Pink, N.S.
58. Braidwood, B.C.
59. Close, B.C.
60. Hurley, Nfld.
61. O'Reilly, Nfld.
62. Bisson, Que.
63. Goodyear, Nfld.
64. Goodman, Man.
65. MacIntosh, P.E.I.
66. Newman, Man.
67 MacDonald, N.S.
68. Takach, Ont.
69. Wilson, Alta.
70. Moore, P.E.I.
71. Campbell, Ont.
72. Morton, Ont.
73. Doran, Ont.
74. Chaloner, Ont.
75. Hurlburt, Alta.
76. Chester, Ont.
77 Letourneau, Que.
78. Hodges, Sask.
79. Roslak, Alta.

Absent: *Alta.*, Pagano; *Can.*, Beaupre, Bergeron, Bissonette, Lowe, Pigeon, Sisk, Stoltz,, Tasse; *Man.*, Pilkey; *N.B.*, Cosman, Gregory, Strange; *Nfld.*, Black, Noel; *N.S.*, Gumpert, Walker; *Ont.* Fader, Gauthier, Richardson; *P.E.I.*, Campbell, Hubley; *Que.*, Carrier, Fredette, Gaudry; *Sask.*, Perras, Quinney.

CONTENTS

Appendices

PAST PRESIDENTS

Sir James Aikins, K.C., Winnipeg (five terms)	1918-1923
Mariner G. Teed, K.C., Saint John	1923-1924
Isaac Pitblado, K.C., Winnipeg (five terms)	1925-1930
John D. Falconbridge, K.C., Toronto (four terms)	1930-1934
Douglas J. Thom, K.C., Regina (two terms)	1935-1937
I. A. Humphries, K.C., Toronto	1937-1938
R. Murray Fisher, K.C., Winnipeg (three terms)	1938-1941
F. H. Barlow, K.C., Toronto (two terms)	1941-1943
Peter J. Hughes, K.C., Fredericton	1943-1944
W. P. Fillmore, K.C., Winnipeg (two terms)	1944-1946
W. P. J. O'Meara, K.C., Ottawa (two terms)	1946-1948
J. Pitcairn Hogg, K.C., Victoria	1948-1949
Hon. Antoine Rivard, K.C., Quebec	1948-1950
Horace A. Porter, K.C., Saint John	1950-1951
C. R. Magone, Q.C., Toronto	1951-1952
G. S. Rutherford, Q.C., Winnipeg	1952-1953
Lachlan MacTavish, Q.C., Toronto (two terms)	1953-1955
H. J. Wilson, Q.C., Edmonton (two terms)	1955-1957
Horace E. Read, O.B.E., Q.C., LL.D., Halifax	1957-1958
E. C. Leslie, Q.C., Regina	1958-1959
G. R. Fournier, Q.C., Quebec	1959-1960
J. A. Y MacDonald, Q.C., Halifax	1960-1961
J. F. H. Teed, Q.C., Saint John	1961-1962
E. A. Driedger, Q.C., Ottawa	1962-1963
O. M. M. Kay, C.B.E., Q.C., Winnipeg	1963-1964
W. F. Bowker, Q.C., LL.D., Edmonton	1964-1965
H. P. Carter, Q.C., St. John's	1965-1966
Gilbert D. Kennedy, Q.C., S.J.D., Victoria	1966-1967
M. M. Hoyt, Q.C., B.C.L., Fredericton	1967-1968
R. S. Meldrum, Q.C., Regina	1968-1969
Emile Colas, K.M., C.R., LL.D., Montreal	1969-1970
P. R. Brissenden, Q.C., Vancouver	1970-1971
A. R. Dick, Q.C., Toronto	1971-1972
R. H. Tallin, Winnipeg	1972-1973
D. S. Thorson, Q.C., Ottawa	1973-1974
Robert Normand, Q.C., Quebec	1974-1975
Glen Acorn, Q.C., Edmonton	1975-1976
Wendall MacKay, Charlottetown	1976-1977
H. Allan Leal, Q.C., LL.D., Toronto	1977-1978
Robert G. Smethurst, Q.C., Winnipeg	1978-1979
Gordon F. Coles, Q.C., Halifax	1979-1980

OFFICERS: 1980-81

Honorary President	Gordon F. Coles, Q.C., Nova Scotia
President	Padraig O' Donoghue, Q.C., Yukon
1st Vice-President	George Macaulay, Q.C., British Columbia
2nd Vice-President	René Dussault, Quebec
Treasurer	Claire Young, Alberta
Secretary	Arthur N. Stone, Q.C., Ontario

UNIFORM LAW SECTION

Chairman	George Macaulay, Q.C., British Columbia
Secretary	Lachlan MacTavish, Q.C., Executive Secretary

CRIMINAL LAW SECTION

Chairman	Rod M. McLeod, Q.C., Ontario
Secretary	Donald G. Gibson, Canada

LEGISLATIVE DRAFTING SECTION

Chairman	Graham Walker, Q.C., Nova Scotia
Vice-Chairman	Bruno Lalonde, New Brunswick
Secretary	Linda Black, Newfoundland

LOCAL SECRETARIES

Alberta	Emile Gamache
British Columbia	Allan Roger
*Canada	Robert Bergeron
Manitoba	Rae Tallin
New Brunswick	Alan Reid
Newfoundland	John Noel
Northwest Territories	S. K. Lal
Nova Scotia	Graham Walker, Q.C.
Ontario	Arthur Stone, Q.C.
Prince Edward Island	Arthur Currie
Quebec	Marie-José Longtin
Saskatchewan	Georgina Jackson
Yukon Territory	Padraig O' Donoghue, Q.C.

(For local addresses, telephone numbers, etc., of the above see List of Delegates, page 9)

EXECUTIVE SECRETARY

Lachlan MacTavish, Q.C.
Box 1, Legislative Bldg., Queen's Park
Toronto, Ontario M7A 1A2
(416) 965-2841
(416) 485-1387

*In December 1980 Mr Bergeron was succeeded as Local Secretary for Canada by Donald Maurais, Legislation Section, Department of Justice, Ottawa

DELEGATES

1980 Annual Meeting

The following persons (106) attended one or more Sections of the Sixty-Second Meeting of the Conference

Legend

(*L.D.S.*) Attended the Legislative Drafting Section.
(*U.L.S.*) Attended the Uniform Law Section.
(*C.L.S.*) Attended the Criminal Law Section.

Alberta

BRUCE G. BAUGH, Legislative Counsel, Department of the Attorney General, 9833-109th Street, Edmonton T5K 2E8. (*L.D.S. & U.L.S.*)

E. F. GAMACHE, Director, Legal Research and Analysis, Department of the Attorney General, 9833-109th Street, Edmonton T5K 2E8. (403) 427-2217. (*U.L.S.*)

WILLIAM H. HURLBURT, Q.C., Director, Institute of Law Research and Reform, 402 Law Centre, University of Alberta, Edmonton T6G 2H5. (*U.L.S.*)

J. S. KOVAL, Acting Senior Agent, Department of the Attorney General, 9803-102A Avenue, Edmonton T5J 3A3 (*C.L.S.*)

A. WEBSTER MACDONALD, JR., Burnet Duckworth, 800, 335-8th Avenue, S.W., Calgary T2P 2T5. (*C.L.S.*)

PETER J. PAGANO, Chief Legislative Counsel, Department of the Attorney General, 9833-109th Street, Edmonton T5K 2E8. (*L.D.S. & U.L.S.*)

YAROSLAV ROSLAK, Q.C., Director, Criminal Justice, Department of the Attorney General, 9833-109th Street, Edmonton T5K 2E8. (*C.L.S.*)

PETER G. SCHMIDT, Assistant Chief Legislative Counsel, Department of the Attorney General, 9833-109th St., Edmonton T5K 2E8. (*L.D.S. & U.L.S.*)

WILLIAM E. WILSON, Q.C., Bryan Andrekson, 900 Chancery Hall, Edmonton T5J 2E1. (*U.L.S.*)

British Columbia:

HON MR. JUSTICE J. S. AIKINS, Chairman, Law Reform Commission, 1080-1055 West Hastings Street, Vancouver V6E 2E9. (*U.L.S.*)

TOM R. BRAIDWOOD, Q.C., 1500-510 West Hastings Street, Vancouver V6B 1M6. (*C.L.S.*)

ARTHUR L. CLOSE, Commissioner, Law Reform Commission 1080-1055 West Hastings Street, Vancouver V6E 2E9. (*U.L.S.*)

ROBERT C. HUNTER, Regional Crown Counsel, 1165 Battle Street, Kamloops. (*C.L.S.*)

GEO. B. MACAULAY, Q.C., Associate Deputy Legislative Counsel Parliament Buildings, Victoria V8V 1X4. (604) 384-4434. (*L.D.S. & U.L.S.*)

KEN C. MACKENZIE, Guild, Yule & Co., 1680-505 Burrard Street, Vancouver V7X 1C9. (*U.L.S.*)

NEIL A. MCDIARMID, Q.C., Associate Deputy Attorney General, 609 Broughton Street, Victoria V8W 1C8. (*C.L.S.*)

ALLAN R. ROGER, Legislative Counsel, Parliament Bldgs., Victoria V8V 1X4. (604) 387-6391. (*L.D.S. & U.L.S.*)

Canada:

R. MICHAEL BEAUPRÉ, Assistant Parliamentary Counsel, House of Commons, Parliament Bldgs., Ottawa K1A 0A6, (*L.D.S.*)

ROBERT C. BERGERON, Legislative Counsel, Department of Justice, Ottawa K1A 0H8. (613) 996-1519 (*L.D.S*)

GERRARD BERTRAND, Q.C., Chief Legislative Counsel, Department of Justice, Ottawa K1A 0H8. (*U L.S.*)

ANDRÉ BISSONNETTE, Deputy Solicitor General of Canada, 340 Laurier Avenue West, Ottawa K1A 0P8. (*C.L.S.*)

MARY DAWSON, Associate Chief Legislative Counsel, West Memorial Bldg., 344 Wellington Street, Ottawa K1A 0H8. (*L.D.S. & U.L.S*)

THE HONOURABLE MR. JUSTICE JACQUES DUCROS, Member, Law Reform Commission of Canada, 130 Albert Street, Ottawa K1A 0L6. (*C.L S.*)

R. L. DUPLESSIS, Q.C., Law Clerk and Parliamentary Counsel, The Senate, Ottawa K1A 0A4 (*L D.S*)

E. G. EWASCHUK, Q.C., Director, Criminal Law Amendments Section, Department of Justice, Ottawa K1A 0H8. (*C.L.S.*)

DONALD G. GIBSON, Special Adviser, Criminal Law Amendments Section, Department of Justice, Ottawa K1A 0H8. (*C.L.S.*)

EDWARD L. GREENSPAN, Greenspan Moldaver, 390 Bay Street, Toronto M5H 1T7. (*C.L.S.*)

HIS HONOUR JUDGE E. J. HOUSTON, Member, Law Reform Commission of Canada, 130 Albert Street, Ottawa K1A 0L6. (*C.L.S.*)

D. MARTIN LOW, Executive Assistant to the Deputy Minister of Justice, Department of Justice, Ottawa K1A 0H8. (*U.L.S.*)

FRANCIS C. MULDOON, Q.C., Chairman, Law Reform Commission of Canada, 130 Albert Street, Ottawa K1A 0L6. (*U.L.S. & C.L.S.*)

HON. LOUIS-PHILIPPE PIGEON, Q.C., Professor of Law, Programme de la rédaction legislative, University of Ottawa, Ottawa K1N 6N5. (*L.D.S.*)

P. SISK, Privy Council Office Section, Department of Justice, Ottawa K1A 0H8. (*L.D.S.*)

DOUGLAS E. STOLTZ, Assistant Parliamentary Counsel, House of Commons, Ottawa K1A 0A6. (*C.L.S.*)

ROGER TASSÉ, Q.C., Deputy Minister, Department of Justice, Ottawa K1A 0H8. (*C.L.S.*)

Manitoba

ANDREW C. BALKARAN, Associate Deputy Minister (Legislation), 116 Legislative Bldg., Winnipeg R3C 0V8. (*L.D.S. & U.L.S.*)

GILBERT R. GOODMAN, Q.C., Assistant Deputy Attorney General, 543-405 Broadway, Winnipeg R3C 3L6. (*C.L.S.*)

DAVID G. NEWMAN, Member, Manitoba Law Reform Commission, 601-386 Broadway, Winnipeg R3C 3R6. (*U.L.S.*)

GORDON E. PILKEY, Q.C., Deputy Attorney General, 110 Legislative Bldg., Winnipeg R3C 0V8. (*C.L.S.*)

ROBERT G. SMETHURST, Q.C., D'Arcy & Deacon, 300-286 Smith Street, Winnipeg R3C 1K6. (*U.L.S.*)

RAE H. TALLIN, Deputy Minister and Legislative Counsel, 116 Legislative Bldg., Winnipeg R3C 0V8. (204) 944-3708. (*L.D.S. & U.L.S.*)

HYMIE WEINSTEIN, Pollock, Nurgitz & Associates, 204-215 Portage Avenue, Winnipeg R3B 1Z9. (*C.L.S.*)

New Brunswick:

ROBERT COSMAN, Director, Regulations Project, Office of the Attorney General, P.O. Box 6000, Fredericton E3B 5H1. (*L.D.S.*)

GORDON F. GREGORY, Q.C., Deputy Attorney General, P.O. Box 6000, Fredericton E3B 5H1. (*C.L.S.*)

RAYMOND J. GUERETTE, Palmer, O'Connell, P.O. Box 1324, Saint John E2L 4H8. (*U.L.S.*)

BRUNO LALONDE, Director, Legal Translation and Computerization, Office of the Attorney General, P.O. Box 6000, Fredericton E3B 5H1. (*L.D.S.*)

ALAN D. REID, Legislative Counsel, Office of the Attorney General, P.O. Box 6000, Fredericton E3B 5H1. (506) 453-2569. (*L.D.S. & U.L.S.*)

H. HAZEN STRANGE, Q.C., Director of Public Prosecutions, Office of the Attorney General, P.O. Box 6000, Fredericton E3B 5H1. (*C.L.S.*)

ERIC L. TEED, Q.C., Teed & Teed, P.O. Box 6639, Station A, Saint John E2L 4S1. (*U.L.S. & C.L.S.*)

Newfoundland:

LINDA BLACK, Legislative Counsel, Office of the Legislative Counsel, Confederation Bldg., St. John's A1C 5T7. (*L.D.S.*)

CYRIL J. GOODYEAR, Associate Deputy Attorney General, Department of Justice, Confederation Bldg., St. John's A1C 5T7. (*C.L.S.*)

DAVID F. HURLEY, Halley, Hunt, 1 Church Hill, St. John's A1C 5L3. (*C.L.S.*)

A. JOHN NOEL, Senior Legislative Counsel, Office of the Legislative Counsel, Confederation Bldg., St. John's A1C 5T7. (709) 737-2877. (*L.D.S. & U.L.S.*)

MARY NOONAN, Solicitor, Department of Justice, Confederation Bldg., St. John's A1C 5T7. (*U.L.S.*)

THOMAS J. O'REILLY, O'Neill, Riche, O'Reilly and Noseworthy, 323 Duckworth Street, St. John's A1C 1G9. (*U.L.S.*)

Northwest Territories:

ALFRED H. BRIEN, Assistant Deputy Minister, Department of Justice and Public Services, Government of the Northwest Territories, Yellowknife X0E 1H0. (*U.L.S. & C.L.S.*)

S. K. LAL, Chief, Legal Division, Department of Justice and Public Services, Government of the Northwest Territories, Yellowknife X0E 1H0. (403) 873-7437.(*U.L.S.*)

Nova Scotia:

WILLIAM H. CHARLES, Dean, Dalhousie Law School, Halifax B3H 4B7. (*U.L.S.*)

GORDON F. COLES, Q.C., Deputy Attorney General, P.O. Box 7, Halifax B3J 2L6. (902) 424-4223. (*C.L.S.*)

GORDON S. GALE, Director, Criminal Law, Department of the Attorney General, P.O. Box 7, Halifax B3J 2L6. (*C.L.S.*)

JAMES A. GUMPERT, Legislative Counsel, House of Assembly, Province House, Halifax B3J 2T3. (*L.D.S.*)

D. WILLIAM MACDONALD, Legislative Counsel, House of Assembly, Province House, Halifax, B3J 2T3. (*L.D.S. & U.L.S.*)

JOEL E. PINK, Stewart, McKeen & Covert, 1583 Hollis Street, Halifax B3J 1V4. (*C.L.S.*)

LINDEN M. SMITH, Q.C., Chairman, Law Reform Advisory Commission, P.O. Box 99, Wolfville B0P 1X0. (*U.L.S.*)

GRAHAM D. WALKER, Q.C., Chief Legislative Counsel, P.O. Box 1116, Halifax B3J 2X1. (902) 424-8941. (*L.D.S. & U.L.S.*)

Ontario:

ARCHIE CAMPBELL, Q.C., Assistant Deputy Attorney General and Director of Policy Planning and Intergovernmental Affairs, 18 King Street, East, Toronto M5C 1C5. (*U.L.S.*)

JOHN CASSELLS, Q.C., Crown Attorney, Ottawa-Carleton, Court House, Ottawa, (*C.L.S.*)

RICHARD F. CHALONER, Q.C., Regional Crown Attorney, Court House, Guelph. (*C.L.S.*)

R. S. G. CHESTER, Executive Counsel, Ministry of the Attorney General, 18 King Street East, Toronto M5C 1C5. (*U.L.S.*)

BURKE DORAN, Q.C., Lang Michener, Box 10, First Canadian Place, Toronto M5X 1A2. (*U.L.S.*)

J. A. FADER, Legislative Counsel, Box 1, Legislative Bldg., Queen's Park, Toronto M7A 1A2. (*L.D.S.*)

SUZANNE GAUTHIER, Direction de la traduction des lois, Bureau du Procureur général de l'Ontario, 2^{e} étage, 863, rue Bay, Toronto M5S 1Z2. (*L.D.S.*)

H. ALLAN LEAL, Q.C., LL.D., Deputy Attorney General, 18 King Street East, Toronto M5C 1C5. (*U.L.S.*)

R. M. MCLEOD, Q.C., Assistant Deputy Attorney General and Director of Criminal Law, 18 King Street, East Toronto M5C 1C5. (*C.L.S.*)

DEREK MENDES DA COSTA, Q.C., S.J.D., Chairman, Ontario Law Reform Commission, 18 King Street East, Toronto M5C 1C5. (*U.L.S.*)

HOWARD F. MORTON, Q.C., Director, Crown Law Office-Criminal, 18 King Street East, Toronto M5C 1C5. (*C.L.S.*)

M. PATRICIA RICHARDSON, Counsel, Law Reform Commission, 18 King Street East, Toronto M5C 1C5. (*L.D.S.*)

NORMAN STERLING, M.L.A., Parliamentary Assistant to the Attorney General, 18 King Street East, Toronto M5C 1C5. (*U.L.S.*)

JOHN D. TAKACH, Deputy Director of Criminal Law and Director of Crown Attorneys, 18 King Street East, Toronto M5C 1C5. (*C.L.S.*)

RONALD G. THOMAS, Q.C., 110 Yonge Street, Toronto M5C 1V6. (*C.L.S.*)

Prince Edward Island:

DIANE CAMPBELL, Member, Law Reform Commission, P.O. Box 96, Summerside C1N 4P6. (*U L S.*)

ARTHUR J. CURRIE, Deputy Minister of Justice, P.O. Box 2000, Charlottetown, C1A 7N8 (902) 892-5411 (*C.L.S.*)

R. B. HUBLEY, Director of Prosecutions, Department of Justice, 42 Water Street, Charlottetown. (*C.L.S.*)

HUGH D. MACINTOSH, Member, Law Reform Commission, P.O. Box 2000, Charlottetown C1A 7N3. (*L.D.S & U.L.S.*)

M. RAYMOND MOORE, Legislative Counsel, P.O. Box 2000 Charlottetown C1A 7N3. (*L.D S. & U.L.S*)

Quebec:

ME ALAIN-F. BISSON, Directeur de la législation gouvernementale, Ministere de la Justice, 1200, rte de L'Eglise, Sainte-Foy G1V 4M1. (*U.L.S.*)

ME JEAN-PIERRE BONIN, Substitut en chef du Procureur général du Québec, 4e étage, 1 est, rue Notre-Dame, Montréal.(*C.L.S.*)

ME DENIS CARRIER, Directeur adjoint de la Recherche, Ministère de la Justice, 1200, rte de L'Eglise, Sainte-Foy G1V 4M1. (*L.D.S.*)

ME EMILE COLÀS, K.M., C.R., LL.D., 800, Place Victoria, Montréal H4Z 1C2. (*U.L.S.*)

ME RENÉ DUSSAULT, Sous-ministre, Ministère de la Justice, 1200, rte de L'Eglise, Sainte-Foy G1V 4M1. (*C.L.S.*)

ME ALAIN FREDETTE, Avocat, Commission des Valeurs mobilières du Québec, C.P. 240, Tour de la Bourse, Montréal H4Z 1G3. (*U.L.S.*)

ME HUBERT GAUDRY, Directeur du Service des compagnies, Ministère des Consommateurs, Coopératives et Institutions financièrés, 800, Place d'Youville, Quebec G1R 4Y5. (*U.L.S.*)

ME FRANCOIS HANDFIELD, Prosecuteur, Department of Justice, Government of Quebec, 239 Wellington Street, Ottawa K1A 0H8. (*C.L.S.*)

ME GILLES LÉTOURNEAU, Directeur de la Recherche, Ministère de la Justice, 1200, rte de L'Eglise, Sainte-Foy G1V 4M1. (*U.L.S. & C.L.S.*)

ME MARIE-JOSÉ LONGTIN, Directeur de la législation ministerielle, Ministère de la Justice, 1200, rte de L'Eglise, Sainte-Foy G1V 4M1. (418) 643-7222. (*L.D.S. & U.L.S.*)

ME FRANCOISE TREMBLAY, Sous-ministre associé and affaires criminelles, Ministère de la Justice, 1200, rte de L'Eglise, Sainte-Foy G1V 4M1. (*C.L.S.*)

Saskatchewan:

MERRILEE CHAROWSKY, Legislative Counsel, Room 101, Legislative Bldg., Regina S4S 0B3. (*L.D.S. & U.L.S.*)

RONALD C. C. CUMMING, Chairman, Law Reform Commission of Saskatchewan, 122-3rd Avenue North, Saskatoon S7K 2H6. (*U.L.S.*)

RICHARD GOSSE, Q.C., D.Phil., Deputy Attorney General, 2476 Victoria Avenue, Regina S4P 3V7. (*U.L.S. & C.L.S.*)

KENNETH P. R. HODGES, Research Director, Law Reform Commission of Saskatchewan, 122-3rd Avenue North, Saskatoon S7K 2H6. (*U.L.S.*)

GEORGINA R. JACKSON, Crown Solicitor, Department of the Attorney General, 2476 Victoria Avenue, Regina S4P 3V7. (306) 565-5494. (*U.L.S.*)

HUGH M. KETCHESON, Q.C., Director, Civil Law Branch, Department of the Attorney General, 2476 Victoria Avenue, Regina S4P 3V7. (*U.L.S.*)

SERGE KUJAWA, Q.C., Associate Deputy Minister and General Counsel (Criminal Law), Department of the Attorney General, 2476 Victoria Avenue, Regina S4P 3V7. (*C.L.S.*)

BONNIE OZIRNY, Assistant Legislative Counsel, Room 101, Legislative Bldg., Regina S4S 0B3. (*L.D.S. & U.L.S.*)

DEL W. PERRAS, Director, Public Prosecutions, 2476 Victoria Avenue, Regina S4P 3V7. (*C.L.S.*)
RICHARD QUINNEY, Crown Counsel, Department of the Attorney General, 2476 Victoria Avenue, Regina S4P 3V7. (*C.L.S.*)

Yukon Territory.

PADRAIG O'DONOGHUE, Q.C., Deputy Minister of Justice, Box 2703, Whitehorse Y1A 2C6. (403) 667-5124. (*L.D.S & U.L.S.*)

DELEGATES EX OFFICIO

1980 Annual Meeting

Attorney General of Alberta. HON. NEIL S. CRAWFORD.
Attorney General of British Columbia HON. ALLAN WILLIAMS, Q.C.
Minister of Justice and Attorney General of Canada: HON. JEAN CHRÉTIEN, P.C.
Attorney General of Manitoba. HON. GERALD W. J. MERCIER, Q.C.
Minister of Justice of New Brunswick. HON. RODMAN E. LOGAN, Q.C.
Minister of Justice of Newfoundland: HON. GERALD R. OTTENHEIMER
Attorney General of Nova Scotia: HON. HARRY HOW, Q.C.
Attorney General of Ontario: HON. R. ROY MCMURTRY, Q.C.
Minister of Justice of Prince Edward Island. HON. HORACE B. CARVER.
Minister of Justice of Quebec: HON. MARC-ANDRE BÉDARD, Q.C.
Attorney General of Saskatchewan: HON. ROY J. ROMANOW, Q.C.
Minister of Justice of the Yukon. HON. DOUGLAS R. GRAHAM

IN MEMORIAM

HARRY PYNE CARTER

Died 24 March 1980

A Member of this Conference

Representing Newfoundland

From 1950 to 1969

And Its President

in 1965-66

REQUIESCAT IN PACE

HISTORICAL NOTE

More than 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. Aug 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
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
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
1976. Aug 19-27, Yellowknife
1977 Aug 18-27, St Andrews
1978 Aug. 17-26, St John's.
1979. Aug 16-25, Saskatoon
1980 Aug 14-23, Charlottetown

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 independent 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 executives annually to represent the Conference on the Council of the Bar Association. And third, the honorary president of the Conference each year makes a statement on its current activities to 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 delegates appointed by the Government of Quebec.

In 1950 the then newly-formed Province of Newfoundland joined the Conference and named delegates 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 providing for grants towards the general expenses of the Conference and the expenses of the delegates. 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 delegates 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 delegates from any jurisdiction or by the Canadian Bar Association.

While the chief 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 *Uniform 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 *Uniform 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, following a recommendation of 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 a criminal law section was constituted, to which all provinces and Canada appointed representatives.

In 1950, the Canadian Bar Association held a joint annual meeting with the American Bar Association in Washington D.C. The Conference also met in Washington which 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.

The interest of the Canadians in the work of the Americans and *vice versa* has since been manifested on several occasions, notably in 1965 when the president of the Canadian Conference attended the annual meeting of the United States Conference, in 1975 when the Americans held their annual meeting in Quebec, and in subsequent years when the presidents of the two Conferences have exchanged visits to their respective annual meetings.

An event of singular importance in the life of this Conference occurred 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.

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, the 1976 and the 1980 meetings of The Hague Conference as a member of the Canadian delegation.

A relatively new feature of the Conference is 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 two days 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 delegates being too busy with their regular work to undertake research in depth. Happily, however, this want has been met by most welcome grants in 1974 and succeeding years from the Government of Canada.

A novel experience in the life of the Conference—and a most important one—occurred at the 1978 annual meeting when the Canadian Intergovernmental Conference Secretariat brought in from Ottawa its first team of interpreters, translators and other specialists and provided its complete line of services, including instantaneous French to English and English to French interpretation at every sectional and plenary session throughout the ten days of the sittings of the Conference.

Another first in this area occurred in 1979 when through the good offices of the Canadian Intergovernmental Conference Secretariat a complete edition in French of the 1978 Proceedings of this Conference was published and distributed throughout Canada and elsewhere to those who would be most interested in it. L.R.M.

BIBLIOGRAPHY

(arranged chronologically)

L'Association Du Bureau Canadien et L'Uniformité des Lois The Honourable Judge Surveyor 1923 Can Bar Rev., p. 52.

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

Conference on Uniformity of Legislation in Canada Sidney Smith 1930 Can. Bar Rev , p 593

Uniformity Coast to Coast—A Sketch of the Conference of Commissioners on Uniformity of Legislation in Canada Published by the Conference in 1943

Notes and Comments E H Silk, K C , Hon Valmore Bienvenue, K C., W P M Kennedy, 1943-44 U of Toronto L J , pp 161, 164, 168

Securing Uniformity of Law in a Federal System—Canada. John Willis, 1943-44 U of Toronto L J , p. 352.

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

Uniformity of Legislation in Canada (In English with French translation) Henry F Muggah 1956 Yearbook of the International Institute for the Unification of Private Law (UNIDROIT), p 104

Uniformity of Legislation in Canada (1957) (In English with French translation) Henry F Muggah 1957 Yearbook of the International Institute for the Unification of Private Law (UNIDROIT), p. 240

Uniformity of Legislation in Canada—The Conditional Sales Experience Jacob Ziegel. 39 Can Bar Rev , 1961, pp. 165, 231

Conference of Commissioners on Uniformity of Legislation in Canada—Model Acts recommended from 1918 to 1961 Published by the Conference in 1962.

La Conférence des Commissionaires pour l'uniformité de la législation au Canada. (In French and English) J W Ryan and Gregoire Lehoux 1970 Yearbook of the International Institute for the Unification of Private Law (UNIDROIT), p 126 For a reprint of this article and for a list of the materials consulted in its preparation, *see* 1971 Proceedings of the Conference of Commissioners on Uniformity of Legislation in Canada, p 414 For a review of this article, see Kurt H. Nadelmann The American Journal of Comparative Law, Vol. 12, No 2, Spring, 1973

Consolidation of Uniform Acts of the Uniform Law Conference of Canada Published by the Conference 1978 A loose-leaf collection with annual supplements.

Preserving the Uniformity of Law. Shiroky and Trebilcock Canadian Confederation at the Crossroads: The Search for a Federal-Provincial Balance The Fraser Institute, Vancouver 1978, pp 189-218.

Uniform Law Conference of Canada W H Hurlburt, Q C Commonwealth Law Bulletin, Vol 5, No. 1, Jan 1979, p 246 A paper presented to the Meeting of Commonwealth Law Reform Agencies held at Marlborough House, London, England

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

LEGISLATIVE DRAFTING SECTION

MINUTES

Attendances

Thirty-three delegates were in attendance.

Opening

The Section opened with the chairman, Mr. Walker presiding. Mr. Lalonde acted as vice-chairman and Mrs. Black acted as secretary.

Hours of Sitting

It was agreed to sit on Thursday, August 14th, and Friday, August 15th, from 9:00 a.m. to 12:00 noon and 1:30 p.m. to 5:00 p.m., except when circumstances dictated otherwise.

Uniform Act respecting the Convention of the Hague Conference on Private International Law on the Civil Aspects of International Child Abduction

RESOLVED that the draft Act proposed by the Section, in both its English and French texts, be referred to the Uniform Law Section for its consideration

Uniform Act respecting the Convention between the United Kingdom of Great Britain and Northern Ireland and Canada providing for the Reciprocal Enforcement and Recognition of Judgments in Civil and Commercial Matters

RESOLVED that the draft Act prepared by the Section, in both its English and French texts, be referred to the Uniform Law Section for its consideration

Canadian Legislative Drafting Conventions:

(a) Generally:

RESOLVED that the recommendations contained in Nova Scotia's Report be adopted and that the Report be printed in the *Proceedings* (Appendix A, page 56).

(b) Convention 9: E. A. Driedger's Comments (*1979 Proc. 26)*

RESOLVED that Convention 9(2) be struck out and the following substituted therefor:

(2) A section may be composed of two or more sentences having closely related subject matters

(2.1) A section not divided into subsections or a subsection should be composed of one sentence.

RESOLVED that Convention 9(4) be amended by striking out the word "sentence" and substituting the words "section or subsection "

RESOLVED that the Secretary write Dr Driedger to let him know of the action taken by the Section in relation to his comments and to thank him for his participation.

Education, Training and Retention of Draftsmen: Legislative Program Development (1979 Proc. 27)

Alan Roger reported that he had sent out a questionnaire to all jurisdictions. Responses were circulated to the delegates for their information.

RESOLVED that no publication of the replies be made.

Computerization of Statutes and Related Matters (1979 Proc. 26)

RESOLVED that this item not be carried on next year's agenda as a separate item but be incorporated with the questionnaire on legislative program development

Child Status Act

RESOLVED that the draft *Uniform Child Status Act* as prepared by the Committee of the Section chaired by Mr Moore, be presented to the Uniform Law Section for adoption subject to direction on the questions of policy that arose during drafting

RESOLVED that the question of the conflict of law rules be referred back to the Uniform Law Section for further direction

RESOLVED that the draft Act be referred to Mr Lalonde's committee for preparation of a French version

Uniform Drafting Technique in French Language and Translation of Uniform Acts into French (1979 Proc. 26)

RESOLVED that the report of Mr Lalonde be adopted

Uniform Interpretation Act in Light of Bilingual Uniform Acts (1979 Proc. 27)

RESOLVED that a working committee of experts be set up to study the issues raised in the report of Mr Beaupré and to consider and develop uniform drafting conventions for French draftsmen

RESOLVED that the select committee (Mr Beaupré, chairman) include representatives from Ontario Quebec, New Brunswick, Manitoba and Canada, and that the general working committee include representatives from all jurisdictions.

RESOLVED that Mr Beaupré's paper be printed in the Proceedings (Appendix B, page 59)

New Business

RESOLVED that the chairman, from time to time, of the Section represent the Section and be its delegate on the Canadian Law Information Council

RESOLVED that a request be made to the Conference that for the purposes of preparing draft Acts, the Section may be given access to the tapes, if any, of the discussions of the Conference in relation to the proposed Act

Officers

Mr. Walker was re-elected as chairman and Mr. Lalonde as vice-chairman, and Mrs. Black was elected as secretary for 1980-81.

OPENING PLENARY SESSION

MINUTES

Opening of Meeting

The meeting opened at 8:00 p.m. on Sunday, 17 August, in The Charlottetown Hotel with Mr. Coles in the chair and Mr. MacTavish as secretary.

Address of Welcome

The President introduced the Honourable Horace B. Carver, Minister of Justice and Attorney General of Prince Edward Island.

Mr. Carver extended a warm welcome to the Island on behalf of the government and the people of P.E.I.

In his remarks Mr. Carver drew attention to the fact that he was at one time a member of this Conference and attended the annual meetings in 1975, 1976 and 1977 as a Commissioner for Prince Edward Island.

Joshua M. Morse III

The President called upon Mr. Leal to introduce our guests of honour, Dean Morse and Mrs. Morse of Florida. The Dean is Vice-President of the National Conference of Commissioners of Uniform State Laws.

Introduction of Delegates

The President asked the senior delegate from each jurisdiction to introduce himself and the other members of his delegation.

Minutes of Last Annual Meeting

> RESOLVED that the minutes of the 61st annual meeting as printed in the 1979 Proceedings, subject to the addition of the following note, be taken as read and adopted
>
> > Credit should have been given to Andrew Pritchard for his work in preparing Mr Tallin's Reports set out in the *1979 Proceedings* at pages 232 and 251 respectively
> >
> > The first report has to do with the Service Abroad of Judicial and Extra-Judicial Documents in Civil or Commercial Matters: The Hague Convention The second, the Taking of Evidence Abroad in Civil and Commercial Matters: The Hague Convention.

Mr. Pritchard's authorship of these reports is hereby acknowledged with thanks.

President's Address

Mr. Coles then addressed the meeting (Appendix C, page 76).

Treasurer's Report

In the absence of the Treasurer who was overseas, Ms. Young's report (Appendix D, page 79) was presented by her colleague, Mr. Pagano.

The Report was a Statement of Receipts and Disbursements for the period 17 July 1979 to 15 July 1980, together with the Report of the Conference's Auditors, Clarkson, Gordon, Chartered Accountants.

As neither of these reports had been distributed prior to the meeting, the motion to adopt was not put until the closing Plenary Session (see page 49).

Executive Secretary's Report

Mr. MacTavish presented his report (Appendix E, page 83).

RESOLVED that the report be received

Appointment of Resolutions Committee

RESOLVED that a Resolutions Committee be constituted, composed of Mr Ketcheson, Chairman and Messrs Roger and Pink, to report to the Closing Plenary Session

Nominating Committee

RESOLVED that where there are five or more past presidents present at the meeting, the Nominating Committee shall be composed of all the past presidents present, but when fewer than five past presidents are present, those who are present shall appoint sufficient persons from among the delegates present to bring the Committee's membership up to five, and in either event the most recently retired president shall be chairman

Evidence—Uniform Evidence Act

Mr. E. A. Tollefson, Q.C., Chairman of the Federal/Provincial Task Force on Uniform Rules of Evidence, presented a progress report (Appendix F, page 86).

Joint Liaison Committee with the NCCUSL

Mr. Chester on behalf of the Committee presented a progress report (Appendix G, page 91).

Close

There being no further business, the meeting adjourned to meet again in the Closing Plenary Session next Saturday morning.

UNIFORM LAW SECTION

MINUTES

Attendance

Fifty-four delegates were in attendance. For details see List of Delegates page 9.

Sessions

The Section held ten sessions, two each day from Monday to Friday.

Distinguished Visitor

The Section was honoured by the participation of Mr. Dean Morse, Vice-President, National Conference of Commissioners on Uniform State Laws.

Arrangement of Minutes

A few of the matters discussed were opened on one day, adjourned, and concluded on another day. For convenience, the minutes are put together as though no adjournments occurred and the subjects are arranged alphabetically.

Opening

The sessions opened with Mr. O'Donoghue as chairman and Mr. MacTavish as secretary.

Hours of Sitting

RESOLVED that the Section sit from 9:00 a m to 12:30 p m and from 2:00 p m to 5:00 p m daily, subject to change from time to time as circumstances require

Agenda

The revised agenda of 22 July 1980 was considered and the order of business for the week agreed upon.

Child Status, formerly sub nom *Children Born Outside Marriage (1979 Proc. 32, CICS Doc 840-189 024)*

The draft *Child Status Act* prepared by Mr. Roger was considered clause by clause, following which the comments of Karen Weiler under the title *Suggestions for Extra-Provincial Recognition of*

Paternity Declarations were considered (see Report of the Ontario Commissioners (1977 Proc. 187, 199).

The following resolutions were adopted:

RESOLVED that the draft *Uniform Child Status Act* considered at this meeting be referred to the British Columbia Commissioners to incorporate in it the decisions taken at this meeting, that the re-draft be circulated to the Local Secretaries, and that if it is not disapproved by two or more jurisdictions by notice to the Executive Secretary on or before 30 November 1980 it be adopted by the Conference as a Uniform Act and recommended for enactment in that form (Appendix H, page 103).

RESOLVED that because of its tentative nature the draft considered at this meeting be not printed in the *Proceedings* but that the Uniform Act as distributed to the Local Secretaries be printed in the *1980 Proceedings*

RESOLVED that section 12 of the draft considered at this meeting be deleted from the *Uniform Child Status Act* and put into the proposed separate conflict provisions which are hereby referred to the Ontario Commissioners for consideration and development as a separate group of uniform conflict provisions, that is, provisions respecting the extra-provincial recognition of paternity declarations

Note No disapprovals were received.

Class Actions (1979 Proc. 32: CICS Doc. 840-189 024)

The report of the Committee (Appendix I, page 109) was presented by Me Longtin, the chairwoman of the Committee.

After consideration, the following resolution was adopted:

RESOLVED that the Report be adopted and printed in the Proceedings.

Commercial Franchises (1979 Proc. 32; CICS Doc. 840-189 036)

Me Fredette presented the Quebec report (Appendix J, page 119). Mr. Leal then spoke to it. After the discussion ended, the following resolution was adopted:

RESOLVED that the Quebec report be received and referred to Alberta, Canada and Quebec for further study of the subject and report to the next annual meeting with a draft Uniform Act if such should be thought appropriate

Company Law (1979 Proc. 32; CICS Doc. 840-189 037; Annual Report)

Part I of the Report (Appendix K, page 126), outlining the situation in Quebec, was presented by Mr. Gaudry for the Quebec Commissioners and Part II, outlining the situation in the common law jurisdictions of Canada, was presented by Mr. Moore on behalf of the Prince Edward Island Commissioners.

RESOLVED that the Report be received and printed in the Proceedings

Contributory Negligence. Tortfeasors (1979 Proc. 33)

Mr. Hurlburt presented the Alberta Report (1979 Proc. 95) including the draft Act attached to the Report (1979 Proc. 101-115).

RESOLVED that the draft *Uniform Contributory Negligence and Contribution Act* considered clause by clause at this meeting be referred to British Columbia (Mr. Macaulay) to redraft in line with the decisions taken at this meeting, that the redraft be referred by him to the Legislative Drafting Section to review the drafting, that the product be circulated and considered at the 1981 annual meeting for approval

Enactments of and Amendments to Uniform Acts (1979 Proc. 33, Annual Report)

Mr. Balkaran presented his report (Appendix L, page 130).

RESOLVED that the report be received and printed in the Proceedings.

Family Support Obligations Act (1979 Proc. 36 sub nom *Support Obligations; CICS Doc. 840-189 042)*

The Ontario Report was presented by Mr. Campbell who recognized Karen Weiler and Craig Perkins of the Policy Development Division of the Ontario Ministry of the Attorney General as co-authors.

The draft Uniform Act attached to the Report was considered clause by clause.

RESOLVED that the draft *Uniform Family Support Obligations Act* considered at this meeting be referred back to the Ontario Commissioners (Mr. Campbell with Mr. MacDonald of Nova Scotia) to incorporate therein the decisions taken at this meeting; that the redraft be circulated and that if the *Act* as so redrafted and circulated (Appendix M, page 138) is not disapproved by two or more jurisdictions on or before the 30 November 1980 by notice to the Executive Secretary it be adopted by the Conference as a Uniform Act and recommended for enactment in that form.

RESOLVED that the Ontario Report considered at this meeting not be printed in the *Proceedings* but that the redrafted Act be printed.
Note: No disapprovals were received

International Conventions on Private International Law (1979 Proc. 34; CICS Doc. 840-189 038)

The chairman of the Committee, Mr. Leal, presented the Committee's Report (Appendix N, page 152).

Judicial Decisions Affecting Uniform Acts (1979 Proc. 35; CICS Doc. 840-189 043)

The Annual Report of Prince Edward Island (Appendix O, page 223) was presented by Mr. Moore.

RESOLVED that the Report be received and printed in the *Proceedings.*

Law Reform Agencies

Verbal reports of activities were given by representatives of agencies of Nova Scotia, Prince Edward Island, New Brunswick, Quebec, Ontario, Manitoba, Saskatchewan, Alberta, British Columbia, Northwest Territories and Canada.

After discussion, the following resolution was adopted:

RESOLVED that the item be carried on the agendas of future annual meetings of the Section for a report from the current chairman of the law reform group as to matters that he feels may be of interest to the Section.

Limitations (1979 Proc. 35)

Consideration of the *Uniform Limitation of Actions Act* which stands referred to the Legislative Drafting Section was deferred to the 1981 Annual Meeting.

Matrimonial Property (1979 Proc. 35, 1977 Proc 394)

Consideration of Manitoba's 1977 Memorandum was put over to the 1981 Annual Meeting.

Prejudgment Interest (1979 Proc 35; CICS Doc 840-189 009)

The Saskatchewan Report (Appendix P, page 230) was presented by Georgina Jackson.

After discussion of the questions posed in the Report, the following resolution was adopted:

RESOLVED that the draft *Uniform Prejudgment Interest Act* considered at this meeting be referred back to Saskatchewan (Merrilee Charowsky) to redraft in accordance with the decisions taken at this meeting and that the redraft be referred to the Legislative Drafting Section for review and that the redraft as reviewed be distributed and considered for approval at the 1981 Annual Meeting

RESOLVED that the Saskatchewan Report be printed in the *Proceedings*

Protection by Privacy: Tort (1979 Proc 36,314)

As explained by Mr. Walker, because of current public inquiries in Newfoundland and Ontario, it was agreed to continue the committee (Nova Scotia, Ontario and Quebec) for report to the 1981 Annual Meeting.

Purposes and Procedures of the Uniform Law Section

The chairman referred to the letter he had received from the President respecting the Report of the Committee on this subject (1979 Proc. 307) and read parts of it.

After discussion, it was agreed to adjourn the matter for discussion and clarification at next year's annual meeting.

Revision of Uniform Acts (1979 Proc. 32; CICS Doc. 840-189 013)

In the absence of the chairman of the Committee, Mr. Stone, Mr. Tallin presented the Report (Appendix Q, page 266).

RESOLVED that the Committee be continued with same membership and terms of reference with power in the Executive to fill vacancies and add to the Committee

RESOLVED that the Report with the exception of the Schedules be adopted and that Schedules 2, 3 and 4 be dealt with separately

RESOLVED that Schedule 2 be adopted and the four Uniform Acts listed therein be removed from the current list of recommended Acts, namely:

Uniform Assignment of Book Debts Act
Uniform Conditional Sales Act
Uniform Corporation Securities Registration Act
Uniform Reciprocal Enforcement of Tax Judgments Act

RESOLVED that the following Uniform Acts listed in Schedule 3 be assigned for review as follows:

1 *Uniform Defamation Act* Saskatchewan to revise this Act and report to the 1981 Annual Meeting

2 *Uniform Foreign Judgments Act* Nova Scotia and Quebec to revise this Act and report to the 1981 Annual Meeting

3 *Uniform Intestate Succession Act* British Columbia to revise this Act and report to the 1981 or 1982 Annual Meeting

4. *Uniform Legitimacy and Uniform Vital Statistics Act* were referred for study and revision to the Legislation Drafting Section in conjunction with its review of the *Uniform Child Status Act*

5 *Uniform Personal Property Security Act and Uniform Bills of Sale Act* Saskatchewan as leader and Alberta British Columbia and New Brunswick to study the situation in this field across Canada and to make recommendations to the 1981 Annual Meeting

6 *Uniform Regulations Act* Alberta, British Columbia and Saskatchewan to revise this Act and report to the 1981 Annual Meeting

RESOLVED that the 30 Uniform Acts listed in Schedule 4 (which the Committee recommended be retained as Uniform Acts without change) be referred to the Legislative Drafting Section to produce French versions and to report progress to the 1981 Annual Meeting

Sale of Goods (1979 Proc. 36; CICS Doc. 840-189 040)

The chairman of the Committee, Dr. Mendes da Costa, presented a progress report which showed that substantial progress was being made and that the Committee should have no difficulty in completing its work in time to present its findings and recommendations to the 1981 Annual Meeting.

RESOLVED that the Report be received and that it not be printed in the Proceedings.

Trans-Boundary Pollution Claims

It was agreed on the suggestion of the chairman of the Liaison Committee, Mr. Smethurst, that the Committee will present a report to the Uniform Law Section at the 1981 Annual Meeting.

Uniform Acts· French Versions

It was agreed that all uniform acts adopted by the Conference at this and subsequent meetings stand referred to the appropriate committee of the Legislative Drafting Section to produce French versions of these Uniform Acts.

New Business

1. *Products Liability*
   New Brunswick, assisted by Saskatchewan, Manitoba and Ontario, undertook to review all Canadian legislation, case law and the reports of law reform agencies, to consider the feasibility of uniformity in this field, and to report thereon to the 1981 Annual Meeting.

   Editorial Note: Since the meeting B.C. has expressed a desire to participate in this project.
2. *Real Property· Time Sharing.*
   Manitoba to present a report to the 1981 Annual Meeting.
3. *Substantial Compliance in Execution of Wills.*
   Manitoba to present a report to the 1981 Annual Meeting.

Officers· 1980-81

Mr. Macaulay was elected as chairman of the Section and it was agreed that Mr. MacTavish continue to act as secretary of the Section.

Close of Meeting

A unanimous vote of appreciation and thanks was tendered Mr. O'Donoghue for his handling of the arduous duties of chairman throughout the week as well as at the 1979 Annual Meeting.

Mr. O'Donoghue then turned the chair over to the incoming chairman, Mr. Macaulay, who closed the meeting.

CRIMINAL LAW SECTION

MINUTES

Attendances

Forty-four delegates were in attendance. For details see List of Delegates, page 9.

Opening

Mr. Pilkey presided and Mr. Don Gibson, acted as secretary.

Chairman's Report

The forty-four delegates included representatives from all the provinces, the federal government, the Law Reform Commission of Canada and the private bar. They discussed some sixty-two matters relating to criminal law and procedure and made recommendations relative thereto. Discussions included a review of the provisions of section 142 of the *Code* relating to the questioning of the complainant in regard to sexual conduct with persons other than the accused and orders of non-publication; detention orders in respect of accused persons in custody awaiting trial; the requirement to consider reports on ability to pay a fine before issuing a warrant in respect of persons between sixteen and twenty-one where time to pay had previously been granted; some aspects of the breathalyzer provisions of the *Code* and the definition of age to clarify jurisdiction where the alleged offence or delinquency occurs on the birth date. The Section also considered *Code* provisions relating to the operation of boats and aircrafts while intoxicated, procedures to expedite the return of seized property and the adequacy of provisions relating to the fraudulent use of telecommunications facilities and services having in mind the increasing use and development of computer systems.

As in previous years, the work of the Section was facilitated by the able assistance of the Canadian Intergovernmental Conference Secretariat and our own secretary, Don Gibson, who will continue as secretary next year.

Rod McLeod, Q.C., Assistant Deputy Attorney General of Ontario, was elected Chairman of the Section for next year.

Gordon Pilkey
Chairman

Resolutions CICS 840-189 047

The resolutions referred to above follow. It is to be noted that the word "*Code*" in the resolutions is a reference to the *Criminal Code*, Canada.

1. *Costs for Acquitted Accused*

That whenever a person is summoned to appear in Court by a federal civil servant to answer an alleged charge that a breach of the law has taken place, and if the court should decide that a breach of the law did not in fact occur, the Crown shall pay the entire legal fees that were incurred by the defendant in the course of defending himself from the prosecution.

DEFEATED UNANIMOUSLY

2. *Drinking and Driving Offences — Intermittent Sentence*

That paragraphis 234(1)(c), 234.1(2)(c), 235(2)(c) and 236(1)(c) of the *Code* be amended to read: "for each subsequent offence, to imprisonment for not more than two years and not less than ninety days".

CARRIED UNANIMOUSLY

3. *Judicial Interim Release — S. 457.8*

That the provisions of section 457.3 of the *Code* be expressly incorporated into section 457.8.

CARRIED UNANIMOUSLY

4. *Judicial Interim Release — S. 457.8(2)(a)*

That the *Code* be amended to provide that no application should be heard under paragraph 457.8(2)(a) if an order has been made under sections 457.5 or 457.6 within the previous thirty days without the leave of the trial court.

CARRIED 20 to 1

5. *Judicial Interim Release — S. 459(2)*

That subsection 459(2) of the *Code* be amended to read: "Upon receiving an application under subsection (1), the judge shall fix a date for the hearing described therein of the question, to be held in the jurisdiction where the accused is in custody or in the jurisdiction where the trial is to take place, and direct that notice of the hearing be given to such persons, including the prosecutor and the accused, and in such manner as the judge may specify."

CARRIED UNANIMOUSLY

6. *Judicial Interim Release — S. 457.5*

That section 457.5 of the *Code* be amended to incorporate therein the effect of subsection 459(9).

CARRIED UNANIMOUSLY

7. *Judicial Interim Release — S. 459(4)*

That subsection 459(4) of the *Code* be amended to provide as follows: "If, following the hearing described in subsection (1), the judge is not satisfied that the continued detention of the accused in custody is justified within the meaning of subsecion 457(7), he shall order that the accused be released from custody pending the trial of the charge, upon his giving an undertaking or entering into a recognizance described in any of paragraphs 457(2)(a) to (d) with such conditions, described in subsection 457(4) as the judge considers desirable.

CARRIED 19 to 4

8. *Liability of Passenger in Stolen Automobile*

That the *Code* be amended to include in section 312 a provision to deem that entry and conveyance in a stolen automobile, knowing it to be stolen, is in the absence of any evidence to the contrary, proof of the accused's possession of that automobile.

DEFEATED 27 to 8

9. *Liability of Passenger in Stolen Automobile*

That section 312 of the *Code* be amended to make it a summary conviction offence for a person to enter any conveyance and allow himself to be carried in or on it when he knows it to have been obtained by the commission of an indictable offence.

DEFEATED 22 to 13

10. *Questioning of Complainant in Sexual Cases — S. 142*

That section 142 of the *Code* be amended to add as subsection (6): "The complainant is not a compellable witness on any *in camera* hearing held under subsection (1)."

CARRIED 19 to 6

11. *Questioning of Complainant in Sexual Cases — S. 142*

That paragraph 142(1)(b) of the *Code* be amended to read: "the judge, magistrate or justice after holding a hearing *in camera* in the absence of the jury, if any, is satisfied that there is a substantial nexus between the previous sexual conduct and that which is in issue on the alleged offence before the court such that

the exclusion of the evidence would prevent the just determination of an issue of fact in the proceedings.

CARRIED 25 to 1

12. *Questioning of Complainant in Sexual Cases — S. 142*

That the list of offences enumerated in subsection 142(1) of the *Code* be amended to include sections 155 (buggery and bestiality), 156 (indecent assault male) and 157 (gross indecency).

CARRIED UNANIMOUSLY

13. *Non-Publication of Evidence in Sexual Cases — S. 442(3)*

That Section 442(3) of the *Code* be amended to read as follows: "Where an accused is charged with an offence mentioned in subsection 142(1), the presiding judge, magistrate or justice shall if application therefore is made by the prosecutor or the complainant, make an order directing that either the identity of the complainant or her evidence or both taken in the proceedings shall not be published in any newspaper or broadcast or both."

and

That section 442 of the *Code* be amended to add as subsection (3.1): "Where a complainant is not represented by counsel at trial, in the absence of an order, on the application by the Crown, directing no publication of both her identity and her evidence, the presiding judge, magistrate or justice shall, prior to the commencement of the taking of evidence at the trial, inform the complainant of her right to make application under subsection (3)."

CARRIED UNANIMOUSLY

14. *First Degree Murder — S. 214(5)*

That subsection 214(5) of the *Code* be amended to delete the words "by that person" when applied to paragraph (a).

CARRIED 21 to 7

15. *First Degree Murder — S. 214(5)*

That subsection 214(5) of the *Code* be amended to delete the words "by that person" when applied to paragraph (b).

DEFEATED 16 to 12

16. *First Degree Murder — Robbery — S. 214(5)*

That the list of offences enumerated in paragraph 214(5)(b) of the *Code* be amended to include section 302 (robbery).

CARRIED 20 to 8

17. *First Degree Murder—Arson—S. 214(5)*

That the list of offences enumerated in paragraph 214(5)(b) of the *Code* be amended to include section 389 (arson).

DEFEATED 19 to 5

18. *Arrest Without Warrant—S. 450(1)(c)*

That the definition of warrant in section 448 of the *Code* be amended to include all forms of warrant when applied to paragraph 450(1)(c).

CARRIED UNANIMOUSLY

19. *Warrant for Material Witness—S. 626(2)*

That subsection 626(2) of the *Code* be amended to vest in all courts of criminal jurisdiction the power to issue a warrant in Form 12.

CARRIED 22 to 4

20. *Possession of Firearm—S. 83*

That subsection 83(1) of the *Code* be amended to include possession of a firearm or imitation thereof.

DEFEATED 15 to 12

21. *Possession of Firearm—S. 83*

That subsection 83(1) of the *Code* be amended to add a reverse onus clause to provide that an object resembling a firearm is rebuttably presumed to be a firearm.

CARRIED 17 to 9

22. *Consecutive Sentences—S. 645*

That paragraph 645(4)(a) of the *Code* be amended to read: "is sentenced while under sentence for an offence, and a term of imprisonment, whether in default of payment of a fine or otherwise is imposed;"

and

That paragraph 664(4)(d) of the *Code* be amended to read: "Where the probation order was made under paragraph 663(1)(a), revoke the order and impose any sentence provided for the offence for which the passing of sentence had been suspended;"

and

That subsection 662.1(4) of the *Code* be amended to read: "Where an accused who is bound by the conditions of a probation order made at the time when he was directed to be discharged

under this section is convicted of an offence, including an offence under section 666, the court that made the probation order may, in addition to or in lieu of exercising its authority under subsection 664(4), at any time when it may take action under that subsection, revoke the discharge, convict the accused of the offence to which the discharge relates and impose any sentence *provided for the offence for which the discharge was granted*, and no appeal lies from a conviction under this subsection where an appeal was taken from the order directing that the accused be discharged."

CARRIED 29 to 2

23. *Approved Instruments — S. 237*

That section 237 of the *Code* be amended to delete the word "chemical" where it appears in the expression "chemical analysis" in paragraphs 237(1)(c), 237(1)(f) and subsection 237(6).

CARRIED UNANIMOUSLY

24. *Impaired Boating and Flying*

That subsection 240(4) and section 240.2 of the *Code* be amended to include aircraft as well as vessels, to provide for prosecution both by indictment and on summary conviction, and to have the same penalty structure as sections 234 and 236.

CARRIED UNANIMOUSLY

25. *Possession of Stolen Goods — S. 312*

That the French version of subsection 312(1) of the *Code* be amended to add the translation of the words: "or derived directly or indirectly from".

CARRIED UNANIMOUSLY

26. *Return of Seized Property*

That subsection 443(1) of the *Code* be amended to allow for the return of seized property, whatever the method of seizure, to its lawful owner, immediately after seizure, by adding after the words "may at any time issue a warrant . . . to seize and carry it" the following words: "if the ownership is not in dispute or retention of the thing is not necessary for purposes of expert testimony or the giving of evidence, the peace officer may return it to its lawful owner and inform the justice that he has done so. In other cases, the peace officer shall carry it before the justice who issued the warrant or some other justice for the same territorial division to be dealt with by him according to law."

and

That subsection 443(4) of the *Code* be amended by adding after the words "An endorsement that is made upon . . . to execute the warrant and" the following words: "dispose of the property in accordance with subsection (1)."

and

That section 446 of the *Code* be amended to provide for a report on the seizure by the peace officer to the justice, by adding after the words "Where anything has been seized . . . pursuant to section 443" the following words: "or in the course of the duties of the peace officer."

CARRIED UNANIMOUSLY

27. *Restitution of Property — S. 655*

That section 655 of the *Code* be amended to add a provision similar to that found in subsection 446(3) so that where the court finds that:

(1) property before the court was obtained by the commission of an indictable offence,

(2) the possession of the goods by the person before the court is not lawful, and

(3) the identity of the lawful owner or person entitled to possession of the goods is not known

the court may order the forfeiture of the property to the Crown

and

That a further provision be added to permit an application for an order for the restoration of the previously confiscated goods, or the proceeds of the sale if they have been sold, or the value of the goods if they have been destroyed, to the lawful owner or to the person entitled to possession upon his becoming known.

CARRIED 23 to 4

28. *Restitution of Property — S. 655*

That a further provision be added to prevent the police from converting the goods into cash until six months after the date of the forfeiture order.

CARRIED 19 to 8

29. *Ability of Young Offenders to Pay Fines*

That subsections 646(10) and 722(9) of the *Code* be repealed.

CARRIED 16 to 13

30. *Absolute Jurisdiction of Magistrate — S 483*

That section 483 of the *Code* be amended to provide that the jurisdiction of a magistrate to try an accused is absolute in all cases of theft and possession.

DEFEATED 25 to 2

31. *Theft and Possession under $200 — Ss. 294, 313 and 483*

That sections 294, 313 and 483 of the *Code* be amended to increase the amount of two hundred dollars to the amount of one thousand dollars.

CARRIED 16 to 10

32. *Fraud and False Pretences under $200 — Ss. 320, 338 and 483*

That sections 320, 338 and 483 of the *Code* be amended to increase the amount of two hundred dollars to the amount of one thousand dollars.

CARRIED 16 to 8

33. *Firearms Acquisition Certificate — S. 104*

That paragraph 104(3)(b) of the *Code* be amended by adding words to the effect that where the person's mental disorder is such that his judgment is impaired in regard to the handling of firearms, then the firearms officer may refuse to issue a firearms acquisition certificate.

CARRIED 15 to 2

34. *Information as to Right to Counsel*

That in the circumstances, the following proposed amendment of the Manitoba Branch of the Canadian Bar Association does not merit the support of the provincial Attorneys General and Ministers of Justice: "Be it therefore resolved that the *Code* be amended to ensure accused persons are informed of the right to counsel immediately upon being taken into custody with or without arrest."

CARRIED 26 to 3

35. *Fingerprints of Acquitted Accused*

That the *Identification of Criminals Act* be amended to provide for the destruction of the fingerprints and photographs of accused persons upon acquittal, withdrawal of charges or expiration of a stay of proceedings.

CARRIED 17 to 16

36. *Preliminary Inquiry—S. 463*

That section 463 of the *Code* be amended to read: "Where an accused who is charged with an indictable offence is before a justice, the justice shall, in accordance with this Part, inquire into that charge and any other charge of an indictable offence that may be disclosed by the evidence against that person."

CARRIED 19 to 3

37. *Probation Orders—S. 663*

That the *Code* be amended to provide that the filling of a completed and signed probation order with the court be *prima facie* proof of identity and compliance with subsection 663(4).

and

That Form 44 of the *Code* be amended to include a signed acknowledgement by the accused of compliance with subsection 663(4).

CARRIED UNANIMOUSLY

38. *Penalties for Driving Offences*

That the penalty provisions in subsection 233(1) (criminal negligence in operation of motor vehicle), 233(2) (failing to stop at scene of accident), and 233(4) (dangerous driving) of the *Code* be amended to correspond with the penalty provisions in subsection 234(1).

DEFEATED 22 to 2

39. *Appearance Notice Form*

That Forms 8.1, 8.2 and 8.3 of the *Code* be amended to set out the current wording of subsections 133(5) and (6), and that Form 28 be amended to set out the current wording of subsections 133(5) and (6) and section 453.4.

CARRIED UNANIMOUSLY

40. *Determination of Age — S. 3(1)*

That subsection 3(1) of the *Code* be repealed.

CARRIED UNANIMOUSLY

41. *Printing Anything in Likeness of Bank Notes—S. 415(2)*

That subsections 415(2) and (3) of the Code be repealed.

CARRIED 19 to 4

42. *Compelling Appearance of Accused—S. 455.3*

That subsection 455.3(1) be amended to add the following paragraph after paragraph (a): "where the accused has been arrested without warrant, order that the accused be brought before a justice in accordance with section 457"

and

That paragraph 455.3(1)(b) be renumbered as 455.3(1)(c).

CARRIED UNANIMOUSLY

43. *Previous Convictions—Ss. 592 and 740*

That subsections 592(2) and 740(2) of the *Code* be amended by striking the word "admit" and substituting therefore the word "deny".

DEFEATED 19 to 6

44. *Proof of Previous Convictions—S. 594*

That subsection 594(2) of the *Code* be amended by striking the words "is, upon proof of the identity of the accused, evidence" and substituting therefore the words "is, in the absence of evidence to the contrary, proof".

CARRIED 27 to 1

45. *Firearms—Return by Attorney General—S. 101(3)*

That subsection 101(3) of the *Code* be amended by striking the words "shall forthwith make a return" and substituting therefore the words "shall cause a return to be made."

CARRIED UNANIMOUSLY

46. *Pardons Following Probation*

That the *Criminal Records Act* be amended to provide that the required waiting period for investigation when there is a probation order be the greater of the probation term or the existing periods, to be computed from the commencement of the probation term.

CARRIED UNANIMOUSLY

47. *Discharge for Breathalyzer Refusal—S. 235*

That the penalty provisions in sections 234.1 and 235 be amended to provide for a conditional discharge for curative treatment as in subsections 234(2) and 236(2).

DEFEATED 16 to 3

48. *Discharge for Impaired Driving — S. 234*

That subsections 234(2) and 236(2) of the *Code* be amended to require that a conviction be entered and to provide that the minimum penalties for second and subsequent offences shall not apply in cases where the judge orders curative treatment.

CARRIED 23 to 4

49. *Breathalyzer certificates — S. 237*

That paragraphs 237(1)(c) and (f) of the *Code* be amended to refer to "suitable samples" instead of "samples"

DEFEATED 15 to 7

50. *Stay of Proceedings — S. 732.1*

That subsection 732.1(2) of the *Code* be amended to contain a fixed six-month period for recommencement, to run from the date the stay was entered.

DEFEATED 14 to 10

51. *Proof of Service of Documents*

That the *Code* be amended to allow for proof of service of documents (such as breathalyzer certificates, disqualified driving certificates and second conviction notices) by affidavit, with a provision that the accused may, with leave of the court, require attendance of the serving officer for the purposes of cross examination.

CARRIED 27 to 1

52. *Concealed Weapons — S. 87*

That section 87 of the *Code* be repealed and replaced with the following:

(1) Everyone who without lawful excuse carries — concealed anything that may be used as a weapon, or is intended to be used as a weapon, whether or not it is designed to be used as a weapon, under circumstances that give rise to the reasonable inference that the thing has been used or is or was intended to be used as a weapon, is guilty of an indictable offence and liable to imprisonment for five years;

(2) The burden of establishing lawful excuse within the meaning of sub-section (1) is on the accused;

(3) If the accused establishes that he did not use or intend to use the thing as a weapon, he shall be acquitted of the

offence alleged against him under this subsection on that basis.

DEFEATED 16 to 2

53. *Detention of Things Seized—S. 446*

That section 446 of the *Code* be amended to add the following provision: "Where the specified period for detention of a thing seized has expired, a justice may on application order its detention for such further period of time as is warranted by the nature of the investigation."

DEFEATED 15 to 14

54. *Detention of Things Seized—S. 446*

That section 446 of the *Code* be amended to add the following provision: "Where the specified period for detention of a thing seized has expired, a justice may on application order its detention for such further period of time as is warranted by the nature of the investigation, but the order of continued detention shall not exceed one year from the date of seizure, unless proceedings have been instituted, subject to this period of one year being extended by order of a superior court judge, upon such terms as he considers just, these terms to include a specific time period, and with notice having been given to the person from whom the thing was seized."

CARRIED 25 to 2

55. *Theft of Computer Services—S 287*

That subsection 287(2) of the *Code* be amended to read: "In this section and in section 287.1, "telecommunication" means any transmission, emission or reception of signs, signals, writing, images, sounds or intelligence of any nature by radio, visual, electronic or other electromagnetic system and includes computers, computer systems, the component parts of computers or computer systems and any information stored therein.

CARRIED UNANIMOUSLY

56. *Computer Crime*

That the federal government study on an urgent basis the subject of computer crime, including theft, destruction and obliteration of information, access to information, possession of information and determination of the value of information.

CARRIED UNANIMOUSLY

57. *Vagrancy — S. 175*

That the reference in paragraph 175(1)(e) be corrected to read: "paragraph 687(a) or (b)".

CARRIED UNANIMOUSLY

58. *Interception of Private Communications — S. 178.11*

That section 178.11 be amended to provide: "Where a person is being held as a hostage, his consent to the interception of a private communication shall be implied, and no person shall be subject to prosecution by reason of such interception."

CARRIED UNANIMOUSLY

59. *Interception of Private Communications — S. 178.11*

That subsection 178.11(2) is amended to add the following as paragraph (e): "a person who intercepts a private communication if such interception is made in good faith in the belief that it is necessary for the protection of his property."

DEFEATED 18 to 2

60. *Compelling Answers from Witnesses During Investigations*

That the written submissions on this topic prepared by Barry J. Cavanagh be forwarded to the Law Reform Commission of Canada for use during the *Code* review.

CARRIED 19 to 1

61. *Definition of Magistrate — S 2*

That part of the definition of magistrate in section 2 of the *Code* be amended to read: "with respect to the Province of Alberta, a judge of the provincial court appointed under *The Provincial Court Act, 1978*."

CARRIED UNANIMOUSLY

62. *Explanations in Possession Cases*

That self serving explanations by persons accused of possession offences present a problem to the administration of justice, and that the federal government is urged to resolve that problem.

CARRIED 20 to 4

CLOSING PLENARY SESSION

MINUTES

The Closing Plenary Session opened with the President, Mr. Coles, in the chair and the Executive Secretary, Mr. MacTavish, acting as secretary.

Legislative Drafting Section

The chairman of the Section, Mr. Walker, reported upon the accomplishments of the Section during the week.

Uniform Drafting Section

The chairman, Mr. O'Donoghue, reported upon the work of the Section.

Criminal Law Section

The chairman, Mr. Pilkey, reported upon the work of the Section during the meeting.

Report of the Executive

The President made a report on the work of the Executive at its meetings held during the week, mentioning particularly the following matters which he thought would be of special interest to the delegates.

(a) Future annual meetings will be as follows:

1981—Whitehorse, Yukon Territory—The C.B.A. will meet in Vancouver.

1982—Canada will host this meeting. It is to be held at the Chateau Montebello on the Ottawa River, about half-way between Ottawa and Montreal. The C.B.A. will meet in Toronto.

1983—The Government of Quebec will be host for this meeting to be held in or near Quebec City. The C.B.A. annual meeting is at Quebec City.

1984—The site will be chosen at a later date, probably a year from now. Invitations are standing from Alberta and Manitoba.

(b) In accordance with custom, the president and the first vice-president will represent the Conference on the Council of the Canadian Bar Association.

(c) Padraig O'Donoghue will present the Conference's Statement on behalf of Gordon Coles to the annual meeting of the Canadian Bar Association next week in Montreal.

(d) The general financial position of the Conference has been and continues to be of concern owing to our fixed income on the one hand and increasing costs on the other hand. The situation will be reviewed upon the return of the Treasurer from overseas.

(e) The mandates of the Task Force on Evidence, the Joint Liaison Committee with the NCCUSL, the Committee on Sale of Goods, and the Committee on Class Actions have been continued and their budgets have been or will be submitted to and approved by the Executive.

Treasurer's Report

RESOLVED that the Treasurer's Report (Appendix D, page 79) be adopted

Uniform Rules of Evidence

The following resolution was adopted:

WHEREAS the Federal/Provincial Task Force on Uniform Rules of Evidence has reported that it will have completed its task and be ready to submit its report and comprehensive legislative statement on evidence on or before October 31st next;

AND WHEREAS sufficient time for an in-depth consideration of the report of the Task Force is not available at an annual meeting of the Conference;

THEREFORE BE IT RESOLVED:

1) That a special meeting of the Conference be convened for the purpose of receiving and considering the report of the Task Force;
2) That the special meeting be held in Ottawa not earlier than 1 February 1981;
3) That each jurisdiction limit its delegates attending the special meeting to four in total; and
4) That the incoming Executive be authorized to determine the format and procedures of the Ottawa meeting

Resolutions Committee Report

Mr. Ketcheson presented the report in the form of a motion which was carried unanimously.

RESOLVED that the Conference express its appreciation by way of letters from the Secretary:

1 To the Government of Prince Edward Island and the delegates of Prince Edward Island for hosting the 62nd Annual Meeting of the Uniform Law Conference of Canada and ensuring that it was the success that it was

2. To the Honourable Horace B Carver, Minister of Justice and Attorney General of Prince Edward Island, for attending our opening Plenary Session with a warm address of welcome to the Island and for providing members of his staff to assist delegates with special mention of Mr Arthur J. Currie, Deputy Minister, Mr Al MacRae, and Ms Lois Thompson for their unfailing kindness and helpful advice throughout the meeting
3. To the Province of Prince Edward Island for the reception and lobster dinner at New Glasgow on the Tuesday evening
4 To his Honour J Aubin Doiron, Lieutenant Governor of Prince Edward Island and Mrs Doiron, and Mr. N Douglas Ross, President of The Law Society of Prince Edward Island and Mrs. Ross, for extending an invitation and hosting a reception in honour of the delegates of the Conference and their wives at Fanningbrook, the official residence of the Lieutenant Governor, on the Thursday afternoon.
5 To Mr Justice Frederick Large for the use of his yacht for tours of the Charlottetown harbour and to Captain Ralph Thompson who skippered the yacht
6 To the National Conference of Commissioners on Uniform State Laws for the invitation to attend and the hospitality which they extended to our President, Mr Gordon F. Coles and Mrs. Coles at the National Conference in Hawaii and to Joshua M Morse III and his wife Nel for honouring this year's Conference with their presence

New Business

Mr. MacIntosh spoke with regard to the composition and financial problems of the Sale of Goods Committee and advocated the removal of the restrictions as to the number and geographic distribution of members and as to how its funds are to be expended.

Mr. Leal spoke in sympathy of the financial plight of the Committee and offered to increase Ontario's contribution by one-sixth the present cost to Ontario.

Canadian Intergovernmental Conference Secretariat

RESOLVED that this Conference again notes the successful assistance of the Canadian Intergovernmental Conference Secretariat in this the Sixty-Second Annual Meeting and wishes to express its thanks to the Secretariat for its many services so very well performed under the able direction of Mr John Connolly. The Conference is most grateful.

Secretary Stone

The chairman expressed the regrets of the meeting at the absence of the Secretary, Mr. Stone, because of illness and on behalf of all delegates wished Mr. Stone a speedy and complete recovery.

Robert Smethurst

Mr. Leal paid tribute to the fine work over the years of Mr. Smethurst and expressed his regret that Mr. Smethurst was leaving the

Executive. In closing, he said he knew he was speaking for all delegates in the hope that Mr. Smethurst would continue for many years as a Commissioner from Manitoba.

Nominating Committee's Report

On behalf of the Nominating Committee, Mr. Leal submitted the following report:

The Nominating Committee submits the following names for nomination as the officers for the Uniform Law Conference of Canada for the year 1980-1981:

Honorary President	— Gordon F. Coles, Q.C., Halifax
President	— Padraig O'Donoghue, Q.C., Whitehorse
1st Vice-President	— George B. Macaulay, Q.C., St. John's
2nd Vice-President	— René Dussault, Quebec
Treasurer	— Claire Young, Edmonton
Secretary	— Arthur N. Stone, Q.C., Toronto

RESOLVED that nominations be closed and that those nominated by the Nominating Committee be declared to be duly elected to their respective offices.

Close of Meeting

Mr. Coles after making his closing remarks turned the chair over to the incoming president, Mr. O'Donoghue.

Mr. O'Donoghue after paying tribute to Mr. Coles for his outstanding contribution to the work and the interests of the Conference, closed the meeting.

STATEMENT TO THE CANADIAN BAR ASSOCIATION

by

PADRAIG O'DONOGHUE

As the outgoing president of the Uniform Law Conference of Canada is unable to be here this morning, he has asked me to apologize for his absence and to deliver in his stead the annual president's statement to this Association.

As many of the members know, there are great advantages to the public and the bar in bringing as much uniformity as possible to the laws which govern private and public affairs throughout Canada. The Uniform Law Conference of Canada which was established jointly by this Association and the various jurisdictions in Canada has been working towards this end for over sixty years.

The Conference is held annually in a different province each year, this time Prince Edward Island. It is now organized in three sections and the Legislative Drafting Section met a few days ahead of the others, as its members attend and assist at the other meetings. Thirty-three members attended this section, an increase of six over last year. The section considered a number of technical matters in uniform preparation of legislation including the uniform rules of drafting, the computerization of statutes and techniques in preparing French language legislation. It established a committee of experts to deal with this matter and consider the development of Bilingual Uniform Acts. Three uniform draft Acts were referred to the Uniform Law Section.

The Criminal Law Section met in the second week and was attended by forty-four delegates, a drop from the forty-seven who had attended the previous year. A number of delegates were absent because of their involvement in the current constitutional talks. Sixty-two matters relating to criminal law and procedure were discussed. These included the questioning of complainants in sexual matters, orders for non publication, detention orders in respect of accused persons, the requirement to consider reports on ability to pay fines by young persons, breathalyzer matters, procedures to expedite return of seizures and the adequacy of provisions relating to fraudulent use of telecommunication facilities and services.

The Uniform Law Section also met during the second week of the conference from Monday, August 18 to Friday, August 22. The number in attendance, fifty-four, was slightly down from the previous year. The work of this section has benefitted greatly from the work of the Drafting Section. The practice of referring drafts to the Drafting Section both before the commencement of the conference and during discussions, has eliminated steps in the study process and has thus speeded the adoption of uniform laws by a year in some cases.

A number of important reports were presented and recommendations accepted. A study has commenced designed to clarify the issues in Class Actions with a view to adopting a uniform law governing this new field of development. A study on Commercial Franchise legislation is also underway.

The first report of the committee revising all existing uniform acts showed the need for modernizing or re-drafting a number of them and reports on the more urgently required has begun. This will increase the agenda in future years.

The work of the Committee on International Conventions on Private International Law reported on a number of items including International Administration of Estates, Service Abroad of Documents, and Taking Evidence Abroad. Uniform Acts recommended by the Committee were adopted which will help to resolve the problems which Canada faces in obtaining the benefits of a number of International Conventions. Notably the prevention of child abduction across international boundaries.

A new *Uniform Child Status Act* and a new *Uniform Family Support Act* were adopted. This work, now completed, will round out the tremendous work in unifying the laws relating to the family which has occupied the Conference for several years. The work of replacing the *Uniform Sale of Goods Act* by a modern act which will make this area of law reflect modern mercantile practice is expected to be completed next year. When completed, the provinces will be able to make their laws uniform not only with the majority of American states in the American *Uniform Commercial Code* but perhaps with European states also.

An interim report of the Evidence Task Force received by the Conference in plenary session indicates that the work will shortly be completed. In order to deal adequately with this gigantic report, the Conference decided for the first time in its history to hold a special

conference in February 1981 in Ottawa. A full week will be allotted to this.

All jurisdictions of Canada are represented in all sections of the Conference. The Canadian Intergovernmental Conference Secretariat provides interpretation, translation and secretarial services. The efficiency of the secretariat staff has vastly improved the work of the Conference. These services will continue to be available and will be used for the Special Evidence Conference in February next.

The following officers were elected for the coming year:

Honorary President	Gordon F. Coles, Q.C. Halifax
President	Padraig O'Donoghue, Q.C. Whitehorse
1st Vice President	George B. Macaulay, Q.C. Victoria
2nd Vice President	René Dussault, Quebec City
Treasurer	Claire Young, Edmonton
Secretary	Arthur N. Stone, Q.C. Toronto

Legislative Drafting Section

Chairman	Graham D. Walker, Q.C. Halifax
Vice Chairman	B. Lalonde, Fredericton
Secretary	Ron Penney, St. John's

Criminal Law Section

Chairman	Rod McLeod, Q.C. Toronto
Secretary	Don Gibson, Ottawa

Uniform Law Section

Chairman	George B. Macaulay, Q.C. Victoria
Secretary	L. MacTavish, Q.C. Toronto

The Conference continues to develop its expertise in the international law field. In addition to its interest in assisting in the development and implementation of important conventions at the Hague Conference, close links are maintained with our American counterpart, the National Conference of Commissioners on Uniform State Laws. The Conference had as its distinguished guest this year, Joshua M. Morse III, Vice President of the N.C.C.U.S.L., an eminent jurist and the senior member from Florida. Our Conference will be represented at the next American Conference in New Orleans by its new president.

Our Conference is represented on a special liaison Committee of the two conferences which is attempting to bring about an imaginative proposal on removing the legal obstacles which prevent citizens

who are injured by trans-boundary pollution from having access to the administrative and legal systems of the jurisdiction where the pollution arises.

If the proposals are successful, citizens of either country will be able to sue in respect of damage caused from beyond their jurisdiction as easily as in their own jurisdiction.

Full details, including the reports, drafts and recommended new uniform Acts, will be published early next year and will be available from the Conference's Executive Secretary, Lachlan MacTavish, Q.C., Toronto.

Next year, the Conference will be held in Whitehorse, Yukon Territory, the first time in that jurisdiction.

APPENDIX A

(See page 24)

DR. DRIEDGER'S COMMENTS
on
CANADIAN LEGISLATIVE DRAFTING CONVENTIONS

REPORT OF NOVA SCOTIA

At the Legislative Drafting Section in 1979 it was resolved (see page 27 of the *Proceedings*) that the paper prepared by Dr. Driedger be referred to a representative of Nova Scotia for review and that a report be made to the Legislative Drafting Section in 1980.

Conventions 2(1), 4, 5, 6, 16(2) and 17

The thrust of Dr. Driedger's comments in respect of Conventions 2(1), 4, 5, 6, 16(2) and 17 is that they should be applied with flexibility. They are useful guidelines, however, there will be special circumstances where the departure from a strict convention will be desirable.

This is consistent with the position adopted by the drafting workshop in 1974 (*1974 Proceedings* p. 73) that the Conventions are to reflect conventional practices followed in the drafting of legislation by professional draftsmen in Canada as opposed to being rules of drafting. No changes are recommended in these Conventions.

Conventions 9(2) and 9(4)

Dr. Driedger's comments on each of these Conventions are the subject of a separate Report.

Convention 14(1) states:

14 (1) An expression should be defined only where

(a) it is not being used in its dictionary meaning or is being used in one of several dictionary meanings,

(b) it is used as an abbreviation of a longer one,

(c) defining it will avoid repetition of words, or

(d) the definition is intended to limit or extend the provisions of the Act.

Dr. Driedger comments that he has added a use for a definition other than those listed in Convention 14(1), although the use may be similar to Convention 14(1)(c). On page 51 of his text he states that the definition technique can usefully be employed to make a sentence more comprehensive by removing lengthy descriptive material from the case so as to expose more prominently the main subject and predicate.

It is recommended that Convention 14(1) be amended by adding the following clause:

(e) the expression is lengthy and its shortening by means of a definition will make the sentence in which the expression is contained more easily understood.

Convention 18 states:

18 (1) The word "may" should be used as permissive or to confer a power or privilege.

(2) The word "shall" should be used to impose a duty or express a prohibition.

Dr. Driedger comments that, although there are difficulties, he agrees with Convention 18(1).

However, Dr. Driedger comments that Convention 18(2) is wrong, or at least incomplete. He states that the Convention fails to recognize that "shall" is a future auxiliary also, and can and should in proper situations be used in legislation otherwise than to order or prohibit a course of conduct. He therefore states that Convention 18 and the corresponding provisions of our Interpretation Acts should be deleted. He states that what it takes Fowler to explain in whole chapters cannot be condensed into a line and a half.

While the texts on English usage support the contention that the word "shall" may be used as a future auxiliary, the laws of the various jurisdictions in Canada have for many years required that "shall" be construed as imperative. For example, this requirement has been part of the laws of Nova Scotia since prior to 1900. This interpretation has been followed by the Courts and is applied in daily practice by lawyers in providing advice to the clients. To make the change suggested at this time would introduce an unnecessary element of uncertainty.

It is doubtful that all the jurisdictions in Canada would amend their Interpretation Acts in the manner suggested. If all do not make the change, then uniformity of construction would be destroyed. No change is recommended.

Convention 19 states:

19 (1) Where the operation of a provision is limited to a particular condition, the circumstance or condition should be set out at the beginning of the provision.

(2) Where the operation of a provision is limited to a particular circumstance and by a particular provision, the circumstance should be set out before the condition and both should be set out at the beginning of the provision.

In Dr. Driedger's opinion Convention 19 is wrong. Following this Convention creates artificial elements and an artificial word order. He states that a more literary or grammatical order should be followed.

Convention 19 is not a hard and fast rule to be followed in all circumstances. The commentary on this Convention states in part "... but like the other conventions there will be occasions when the meaning of a legislative sentence will be more immediately understood if the convention is not observed." If this is borne in mind, there is no need to alter Convention 19.

The Convention permits adequate flexibility and no change is recommended.

James A. Gumpert
D. William Macdonald
Graham D. Walker, Q.C.
of the Nova Scotia Delegation

Halifax, Nova Scotia
August 1980

APPENDIX B

(See page 25)

CICS Doc. 840-189/016

REPORT
OF
R. MICHAEL BEAUPRÉ

On a French Version for the Uniform Interpretation Act

Introduction

The Legislative Drafting Section has asked the undersigned to "examine the *Uniform Interpretation Act* in light of the existence of bilingual uniform acts." I suppose one should add that the ultimate purpose of such an examination is to provide for a *Uniform Interpretation Act* that would support the drafting and interpretation of the French version of uniform acts to the same extent that the Act now supports the drafting and interpretation of their English version. Investigation into the question, as well expected, indicates that the solution demands more than a mere translation of the present Act. Consideration of the *Uniform Interpretation Act* for purposes of drafting and interpreting French versions of uniform acts re-opens the matter of the contents of the Act as it now reads.

A comparison of the *Uniform Interpretation Act* with the interpretation acts of the three bilingual jurisdictions of Québec, Canada and New Brunswick indicates a good deal of uniformity between them. However, as the Table of Concordance and Commentary appended to this report will verify, there are some real problems that must be addressed by a working committee of the Conference representing the views of those jurisdictions, along with the views of Manitoba and Ontario who, for obvious reasons, should be represented.

It has also occurred to the undersigned that a comparison of the interpretation acts as they now read may not be sufficient. For example, there has already been some criticism of the adequacy of the Canadian *Uniform Interpretation Act* for purposes of French drafting and interpreting French versions of federal enactments.[1] It would, therefore, be useful to have the views of all interested jurisdictions on the adequacy of their acts as perceived by them for those purposes. It may well be concluded that there is at present no model act in existence in Canada for French drafting and interpretative purposes,

which would then leave great scope for originality and leadership by this Conference.

As an interpretation act goes to the very root of linguistic expression and to the very root of the general system of law in a jurisdiction, it would be presumptuous for the undersigned to make any specific substantive recommendations at this time on the question put to him. Without thorough consultation and discussion with all interested jurisdictions, it would be premature to evaluate whether in this area anything but the most minimal uniformity can be expected. The ultimate answer will depend on a synthesis of the views of all bilingual jurisdictions after analysis of their particular needs and interests. Their interests may well be at odds when one considers that a bilingual common law New Brunswick, a bilingual civil law Québec and a bilingual and bijural Canada, to attain a uniform result[2], may at times be required to address different issues because of the institutions and framework of their system of law. Attempting to do all that uniformly in any language is a challenge in itself. One might even have the impertinence of asking if one French version is adequate to serve the uniform interests of Québec, New Brunswick and Manitoba?[3]

With that rather large caveat in mind, it is possible to suggest at least some basic principles that should be observed by the draftsmen of a relevant, bilingual *Uniform Interpretation Act* for Canada. The matters raised below are in essence questions for consideration by a committee of experts that would have the benefit of the advice of francophone draftsmen who had gained some experience in drafting uniform acts in French.

Purpose of an Interpretation Act

What should be included and indeed what should be left out of an Interpretation Act will largely depend on one's view of the purpose of such an act. It should be readily transparent that matters such as rules of grammar have no place in a bilingual interpretation act. Rules of English grammar can simply not be expected to be translated and transposed for purposes of French drafting and interpretation. In a sense, an interpretation act is the privileged son of this Conference. Its aim is to contribute to uniformity of expression in a given body of law — here, the Consolidation of Uniform Acts. To accomplish such an end, an interpretation act attempts, primarily, to codify rules of construction[4], rules governing the operation of statutes, rules of law and certain rules of language.[5] It has also become fashionable in this country to include long lists of so-called definitions in an interpretation

act, which are in fact no more than words designated to represent institutions and concepts that occur over and over again in the body of law, and whose purpose, therefore, is to provide a kind of shorthand for legislative draftsmen (sometimes to the detriment of the uninitiated reader). The practice has long been accepted in all jurisdictions, including Québec.[6]

Drafting and Interpretation

A definitive *Uniform Interpretation Act* cannot be considered for French uniform acts until some of these have been produced. It is no doubt obvious to members of the Section that interpretation is closely allied to draftsmanship. It has even been described as a reversal of the drafting process.[7]

The Lalonde Committee has already reported to the Section that uniform French drafting conventions[8] should not be enunciated until the Section has had experience translating and drafting uniform acts. In theory, the same could be said of a *Uniform Interpretation Act*, which would normally serve as a necessary adjunct to the French draftsman's work. The conundrum is apparent. A beginning must be made somewhere.

Civil law French or Common law French?

What goes into a definitive *Uniform Interpretation Act* serving the French version as well as the English version of uniform acts will also largely depend on whether the French version is to serve primarily common law New Brunswick or civil law Québec, or both.[9]

"Some of the rules in the interpretation acts were originally rules of interpretation prescribed by the courts, which now have been elevated to statutory declarations."[10] There is a potential danger here that, because of their origin, such legislated rules of construction may not be compatible with the civil law system. When reviewing the Uniform Interpretation Act for the purposes of creating a valid French version, one must ensure that the rules of construction enunciated therein are not perceived as a straitjacket by the civil law draftsman or interpreter-lawyer. At what point a rule in the *Interpretation Act* becomes more a hindrance than a help is a very valid question in this context. One should also consider the status of legislated rules of construction: are they to serve as guides only, or are they to be considered peremptory. Whatever one chooses to include in the *Interpretation Act*, the rules should be flexible enough to allow for doctrinal consistency

with the context of the general system of the law of the relevant jurisdiction.

Most common law canons of construction also exist on the civil law side as accepted principles "de droit commun". In so far as they are to be codified in the *Interpretation Act*, however, they should each be looked at in some detail. There may be some that should be added, on the one hand for their reciprocal usefulness, or on the other hand removed, because of a lack of commonality between the two legal systems. A third alternative is, of course, to expressly limit the application of any strictly common law rules or strictly civil law rules of construction to the applicable jurisdiction. At that point, however, draftsmen of the other uniform acts dependent on such rules would have to be most careful if uniformity of result is to be expected. It has already been suggested that uniform *expression* of the law for both common law and civil law jurisdictions may well lead to quite separate or "un-uniform" results.[11]

Conclusion

In principle, therefore, the undersigned would prefer that a *Uniform Interpretation Act*, because of its obvious influence on draftsmanship, should include matters that are not only common to English and French expression but also shared by the Canadian common law and civil law systems. If that results in a much shorter Uniform Act, so be it. The Act remains uniform. It would then be left to individual jurisdictions to expand on the skeleton Act for their own purposes. For example, it is clear that the real problems for New Brunswick, Manitoba and Ontario to express their common law institutions in French are not shared by the other provinces, that the real problems for Québec and Canada to express civil law institutions in English are also not shared by other jurisdictions, and finally that the real problems for Canada and Québec to reflect both common law and civil law notions in their laws are in no way shared by the other jurisdictions.[12] The competing and complex interests of the eleven jurisdictions, therefore, pose a very large challenge to this Conference to come up with a *Uniform Interpretation Act* that would serve as a common denominator for all interests and not pose a threat of assimilation of any kind, as feared by Pigeon.[13]

A final matter to be looked at under rules of construction. When the Conference is ready to proceed with the adoption of uniform acts in both languages, consideration will also have to be given to the advisability of asserting a principle respecting the construction of the

bilingual provisions of a uniform act where their two versions prove to be in some way incongruous. It would, in my opinion, be a necessary addition to the bilingual *Uniform Interpretation Act*. Such a provision should be formulated with great care, in light of Québec, New Brunswick and federal Canadian experience and the jurisprudence attaching to their legislation on the subject.[14]

Recommendation

Because so much is tied to the question of the evolution of common uniform drafting conventions for English and French draftsmen, the present report can be only tentative. To assist the preparation of other uniform acts, there is nothing to prevent the preparation of a French version of those provisions of the *Uniform Interpretation Act* that obviously coincide with provisions found in the laws of the three jurisdictions already. The one firm recommendation that suggests itself from the above is that a working committee of experts should be set up immediately, with representatives from all interested jurisdictions, to study the issues raised in this report and to work closely with any committee established to consider and develop uniform drafting conventions for French draftsmen. Without prior participation by the interested jurisdictions, and input from them as to the effectiveness of their own interpretation acts vis-à-vis the preparation and interpretation of their own legislation in French, valuable insights could be lost, and further substantive recommendations would be premature at this time if they were to suggest that anything but the most minimal uniformity can be assured.

10 July 1980

R.-M. Beaupré
of the Canada Commissioners

FOOTNOTES

1 " il faudrait que le vieil édifice législatif français déjà en place soit restauré de fond en comble, sinon entièrement reconstruit, à commencer par la Loi d'interprétation, qu'il était aussi stupide de traduire telle quelle que de vouloir traduire une grammaire anglaise pour l'usager écrivant en français.": Alexandre Covacs, "Bilinguisme officiel et double version des lois Un pis-aller: la traduction. Une solution d'avenir: la corédaction" in (1979) 24 Meta 103, p 108. Some have also questioned the merit of attempting to codify rules and processes of interpretation at all. See, for example, Daniel Jacoby, *La composition des lois*, (1980) 40 Revue du Barreau 3, p 11: "Ces maximes et procédés d'interprétation sont multiples et, de toutes façons, pour la plupart discutables, puisqu'une analyse serrée des décisions judiciares me laissent (*sic*) croire que ces normes sont elles-mêmes sujettes à interprétation suivant les besoins du moment On peut même s'interroger sur le bien-fondé des lois d'interprétation." For further discussion of this matter, see *Legislating rules*

to interpret bilingual legislation in R -M Beaupré: *Construing Bilingual Legislation in Canada*, pp. 192ff of unpublished manuscript, to be published in 1980 by Butterworths (Toronto)

2 Pigeon aptly makes the point that often, for uniformity of result, a policy must first be assimilated by the jurist and then formulated in a manner suitable to the applicable system of law. Thus, an attempt to retain uniformity of expression between two versions of a uniform act in order to carry out identical policy purposes in civil law Québec and common law New Brunswick may inevitably, as it has in the past, accomplish quite divergent results See L -P Pigeon, *A propos d'uniformité législative*, (1942) 2 Revue du Barreau 381, pp 385-6

3. The undersigned is not the first to suggest such a thing. See Jean Kerby, *Problèmes particuliers à la traduction juridique au Canada*, (1979) 12 Revue de l'Université de Moncton 13, p. 14: "Certains juristes estiment que la législation fédérale, pour bien atteindre son but, devrait comporter une double version anglaise et une double version française: une version française à l'usage de la francophonie québécoise et une autre pour les francophones des autres provinces, et une version anglaise à l'usage des anglophones du Québec et une autre destinée aux anglophones des autres provinces " Some practical examples in the jurisprudence of the problems that arise when the expression of federal law is not sufficiently sensitive to the bijural nature of the country are examined in R.-M. Beaupré: *Construing Bilingual Legislation in Canada*, Butterworths (1980) Toronto (to be published). The debate has only begun on the issue of "creating" common law French expressions that are not to be confused with civil law institutions See the very interesting article by Elmer Smith J: *Peut-on faire de la common law en français?* in (1979) 12 Revue de l'Université de Moncton 39. Jean Kerby also comments in the same volume: ". il n'existe généralement pas de terme français pour désigner l'institution ou le concept de common law, qui n'a pas d'équivalent civiliste " (*Problèmes particuliers à la traduction juridique au Canada*, (1979) 12 Revue de l'Université de Moncton 13, p 15)

4. "These interpretation acts do much more than define terms in common usage They also state explicitly a number of convenient rules which settle important problems in construction A careful study of these rules will be found indispensable to draftsmen in the wording of uniform statutes' (1942 *Proceedings of the Conference of Commissioners on Uniformity of Legislation in Canada* p 19).

5 An interpretation act contains many rules to assist the draftsman and lawyer-interpreter, which may include ordinary rules of language: "Many rules of interpretation are simply Rules of Language The following rules may be brought under this head:

(1) the golden rule;
(2) the context rule;
(3) the *ejusdem generis* rule;
(4) *expressio unius exclusio alterius*,
(5) the rule that technical words are to be construed in a technical sense;
(6) the rule that the same words are to be given the same meaning;
(7) the rule that when different words are used, different meanings are intended;
(8) the rules about punctuation; and
(9) the rules for ascertaining the scope of qualifying words and phrases " See E.A Driedger *A New Approach to Statutory Interpretation*, (1951) 29 Canadian Bar Review 838, p. 841

6. "The proper observance of the provisions of the general interpretation acts of the different provinces will materially shorten the language of statutory enactments and contribute to uniformity of expression." (1942 *Proceedings of the Conference of Commissioners on Uniformity of Legislation in Canada*, p 19).

7. E A. Driedger: *The Construction of Statutes*. Butterworths (1974) Toronto, p 73.
8 In so far as established English drafting conventions are concerned, it does appear obvious that certain of these will have to be reconsidered if the French draftsman is to have room to work and the French version is to become an independent and valuable expression of legislative policy for the Conference If one is to retain a certain parallelism between the two versions appearing on the same page, legislative drafting conventions for the one version will without question influence the draftsmanship of the other For example, the use in English versions of long lists of definitions, and the paragraphing style that would continue a single sentence without more than a pause as it runs on from paragraph to subparagraph to clause will have to be reconsidered in the light of not just readability but especially in light of the unreasonable constraints they may impose on the french draftsman and the artificiality they may inflict of the French version, where parallel structures are expected.
9 For a highly sceptical view of any participation by Québec in the objects of the Conference, see L.-P Pigeon, *A Propos d'uniformité législative* (1942) 2 Revue du Barreau 381; "L'adoption des lois uniformes équivaut à introduction graduelle du droit commun anglais " (p 383); "Un autre aspect extrêmement important de l'uniformité législative: le texte français perd toule valeur juridique; il devient une traduction." (p 384); Le text français d'une loi uniforme devient donc an lieu d'un double original, une simple traduction dépourvue de valeur juridique puisqu'au cas de conflit, il faut avoir recours exclusivement au texte anglais ofin de juger comme les tribunaux des autres provinces " (p 384)
10 E A Driedger, *A New Approach to Statutory Interpretation* (1951) 29 Canadian Bar Review 838, p 844.
11 See Note 2
12. For an interesting éxpose of the hybrid or mixed nature of the Québec legal system, see Maurice Tancelin, *How can a legal system be a mixed system?* in F P Walton: *The Scope and Interpretation of the Civil Code of Lower Canada* (reprint of 1907 ed), Butterworths (1980) Toronto, p. 1
13. See note 9.
14 See R -M. Beaupré: *Construing Billingual Legislation in Canada,* Butterworths (1980) Toronto (to be published).

INTERPRETATION ACTS IN BILINGUAL JURISDICTIONS

TABLE OF CONCORDANCE

Uniform Interpretation Act (Consolidation of Uniform Acts, 1978)	Québec R.S.Q. 1977, c. I-16	Canada R.S.C. 1970, c. I-23	New Brunswick R.S.N.B. 1973, c. I-13	Remarks
Section	*Similar Provision* Section	*Similar Provision* Section	*Similar Provision* Section	
1. (1) Interpretation				Numbering definitions is unsuited to bilingual enactments. To allow an independent alphabetical listing in the French version, the "(a), (b), (c)'s" should be removed. This should also become a drafting convention for Uniform Acts: definitions are not numbered. Bilingual marginal notes should be added for purposes of easy cross-reference to the corresponding definitions in the other language.
(a) "Act"	X	2(1)	X	
(b) "enact"	X	2(1)	X	
(c) "enactment"	X	2(1)	X	
(d) "public officer"	X	2(1)	X	
(e) "regulation"	X	2(1)	X	
(f) "repeal"	X	2(1)	X	
(2) Lapsed enactments	X	2(2)	X	
2. Crown bound	X	X	X	
APPLICATION				
3. (1) Application	1	3(1)	1(1)	
(2) Idem	X	3(2)	X	
(3) Idem	38	3(3)	33	
OPERATION				Substantive lack of uniformity here by Québec. Québec Acts come into effect on the 60th day after assent. . . . Nevertheless, art. 2(1) Civil Code speaks of "promulgation" from date of assent.
4. (1) Date of commencement	5	5(1)	3(2)	
(2) Idem	X	5(2)	X	

	(3) "date of assent"— reserved Acts	X	X	X	Art. 2(2) Civil Code speaks of "promulgation" from date of signification by Lt.-Governor.
	(4) Regulations	X	X	X	
5	(1) Time of commencement	X	6(1)	5(1)	The common law preoccupation with the exact moment that a day begins and other time computations is apparently not shared by civil law Québec. (See also s. 19 23 of Uniform Act).
	(2) Time of repeal	X	6(1)	6(1)	
6.	(1) Preliminary proceedings	55(2) In part	7	5(2)	
	(2) Proclamations	X	X	X	
	RULES OF CONSTRUCTION				
7	Effect of private Acts	42	9	X	
8.	(1) Enactment always speaking	49	10	12	
	(2) Idem	49	10	12	
9.	Enactments remedial	41	11	17	
10.	Preambles part of enactments	40	12	15	
11.	Reference aids not part of enactments	X	13	16	
12.	Definitions and interpretation	X	14(1)	X	
13.	Application of expressions in enactments to regulations	X	15	18	
14.	Crown not bound except as	42	16	32	
15	(1) Proclamations	X	17(1)	19	
	(2) Idem	X	17(3)	X	
	(3) Judicial notice	X	17(4)	4	
16.	Corporate rights and powers	X	20(1)	14	Uniform Act may require provision similar to s. 20(2) of federal Act and s. 13 of N.B. Act (corporate name).
	a)		a)	X	

Uniform Interpretation Act (Consolidation of Uniform Acts, 1978)		Québec R.S.Q. 1977, c. I-16	Canada R.S.C. 1970, c. I-23	New Brunswick R.S.N.B. 1973, c. I-13	Remarks
Section		*Similar Provision* Section	*Similar Provision* Section	*Similar Provision* Section	
	b)		*a*)	X	
	c)		c)	X	
	d)		d)	X	
	e)		b)	14	
17	(1) Majority	59	21(1)	22(d)	
	(2) Quorums	X	21(2)	X	
18.	(1) Powers to judges and court officers	X	X	X	
	(2) Appeals	X	X	X	
19.	(1) Appointments of officers	X	22(1)	20	Same remark as for s. 5 Uniform Act.
	(2) Commencement of appointments	X	22(5)	X	
	(3) Termination of appointments	X	22(5)	X	
20.	Included powers	55	22(4) & 23	21(1)	
	a)	X	X	X	
	b)	55	23(1)(a)	(a)	
	c)	X	23(1)(b)	(b)	
	d)	X	22(4)	(d)	
	e)	X	23(1)(c)	(c)	
	f)	X	X	X	
21.	(1) Power to act for ministers and public officers	X	23(2)	X	
	(2) Idem	56(2)	23(3) & (4)	X	

22. Documentary evidence	X	24(1)	X	
23. (1) Computation of time (holidays)	X	25(1)	22(j)	Same remark as for s. 5 Uniform Act
(2) Idem (registration)	X	X	X	
(3) Idem (clear days)	X	25(2)	X	
(4) Idem (not clear days)	X	25(3)	X	
(5) Idem (beginning and end of prescribed periods)	X	25(4)	X	
(6) Idem (after specified time)	X	25(5)	22(k)	
(7) Idem (within a time)	X	25(6)	X	
(8) Idem (period of months)	X	25(7)	X	
(9) Idem (specified age)	X	25(9)	X	
24. (1) Ancillary powers	56(1)	26(1)	22(*a*)	
(2) Idem	57	26(2)	22(b)	
(3) Idem (from time to time)	X	26(3)	21(2), 22(*e*)	
(4) Idem (power to repeal)	11	26(4)	X	Québec provision is more general in scope.
(5) Idem (dependent acts)	X	X	22(c)	
25. (1) Use of forms and words	48	26(5)	22(f)	
(2) Idem — male forms	53	26(6)	22(g)	Québec provision does not include corporations.
(3) Idem — singular/plural	54	26(7)	22(h)	Québec Act does not provide plurals to include singulars. (French drafting).
(4) Idem — other parts of speech	X	26(8)	22(i)	
26. General definitions				"Legislative Assembly" (Canada). Same remark as for section 1 Uniform Act. Remove numbering of definitions. Insert bilingual marginal notes in both versions.
1. "Assembly"	X	28	38	
2. "bank" or "chartered bank"	X	28	38	
3. "commencement"	X	28	38	
4. "Executive Council"	61(12)	X	X	
5. "*Gazette*"	X	X	X	

Uniform Interpretation Act (Consolidation of Uniform Acts, 1978)	Québec R.S.Q. 1977, c. I-16	Canada R.S.C. 1970, c. I-23	New Brunswick R.S.N.B. 1973, c. I-13	Remarks
Section	*Similar Provision* Section	*Similar Provision* Section	*Similar Provision* Section	
6. "Government" or "Government of . "	61(12)	X	X	
7 "Government of Canada"	X	X	X	
8. "Governor", "Governor of "Canada" or "Governor General"	61(2)	28	38	
9. "Governor in Council" or "Governor General in Council"	61(3)	28	38	
10. "Great Seal"	61(18)	28	X	
11. "hereafter"	X	X	X	
12. "herein"	X	28	38	
13. "Her Majesty", "His Majesty", "the Queen", "the King" "the Crown" or "the Sovereign"	61(1)	28	38	
14. "holiday"	61(23)	28	38	
15 "Legislature"	61(8)	28	38	
16. "Lieutenant Governor"	61(2)	28	38	
17 "Lieutenant Governor in Council"	61(3)	28	38	
18. "may"	51	28	X	
19. "month"	61(24)	28	38	
20. "now" and "next"	61(25)	28	38	
21. "oath" and "sworn"	61(26)	28	38	
22. "person"	61(16)	28	38	

26. 23. "prescribed"	X	X	X	
24. "proclamation"	61(20)	28	X	
25. "Province"	X	X	38 (English version only)	Not used in French. Uniform Act should omit this.
26. "province"	61(7)	28	38 (French version only)	
27. "shall"	51	28	38	
28. "statutory declaration" or "Solemn declaration"	X	28	X 38	
29. "will"	X	X	X	
30. "writing", "written" etc.	61(21)	28	38	
31. "year"	X	28	38	
27. Common names	61(17)	30	X	
28. Citation includes amendments	X	32(2)	39(2)	
29. (1) References in enactments	44	33(1)	34(1)	
(2) Idem (reference in enactments to parts)	X	33(2)	34(2)	Québec Act refers only to section numbers. (French drafting).
(3) Idem (two or more parts)	X	33(3)	34(3)	
(4) Idem (regulations)	X	33(4)	34(4)	
(5) Idem (another enactment)	X	33(5)	X	
30. Amending enactments part of enactment amended	X	34(3)	7(3)	
31. Repeal	9 and 12	35	8(1)	
a)	9	a)	a)	Québec Act is more succinct.
b)	12	b)	b)	
c)	12	c)	c)	

Uniform Interpretation Act (Consolidation of Uniform Acts, 1978) Section		Québec R.S.Q. 1977, c. I-16 *Similar Provision* Section	Canada R.S.C. 1970, c. I-23 *Similar Provision* Section	New Brunswick R.S.N.B. 1973, c. I-13 *Similar Provision* Section	Remarks
31.					
d)		12	*d)*	*d)*	
e)		12	e)	e)	
32. (1)	Repeal and replacement	13	36	8(2) and 9	Québec Act speaks of replacement or revision. 32(1)(a) Uniform Act is not reproduced in Québec Act, totally "until another is appointed or elected in his stead" is omitted.
a)		13	a)	a)	
b)		13	c)	c)	
c)		X	d)	d)	
d)		X	e)	e)	
e)		X	g)	9	
f)		13	h)	9	
(2)	Idem	X	X	X	
33. (1)	No implications from repeal, amendment, etc.	X	37(1) & (3)	11(1) & (3)	
(2)	Amendment not a declaration of an intention to change the law	45?	37(2)	11(2)	
(3)	Re-enactment not an adoption of judicial construction	45?	37(4)	11(4)	

Commentary after a comparison of the *Uniform Interpretation Act* with the *Interpretation Acts* of Québec, Canada and New Brunswick

1. Presentation of the *Uniform Interpretation Act*
2. Rules of language
3. Rules of operation
4. Rules of construction
5. Rules of law

(Caveat: the absence in an *Interpretation Act* of provisions similar to those found in the Uniform Act does not necessarily mean that such provisions do not exist elsewhere in the body of law of a jurisdiction or that the provisions are considered incompatible with its general system of law.)

1. Presentation of the *Uniform Interpretation Act*

Numbering definitions is unsuited to bilingual enactments. To allow an independent alphabetical listing in the French version, the letters "(a), (b), (c)" etc. in s. 1 and the numbers "1, 2, 3" etc. in s. 26 of the *Uniform Act* should be removed. Such should also become a drafting convention for all Uniform Acts: definitions are listed alphabetically in both languages without enumeration of any kind; bilingual marginal notes should be added, where parallel alphabetical listing is impossible, for easy cross-reference to the corresponding definitions in the other language.

2. *Rules of language*

S. 25(3) *Uniform Interpretation Act* is largely a matter for English expression. While English sentences tend to be expressed by plural nouns, French adheres to the opposite practice of using singular nouns to express generality of application. (That such a statement is an obvious over-simplification is, I suppose, one reason for including some sort of rule on the subject in the *Interpretation Act.*)
S. 25(4) *Uniform Interpretation Act* might benefit from some comment by French linguists.

3. *Rules of operation*

S. 4 *Uniform Interpretation Act.*
Québec might want to explain the apparent inconsistency between s. 5 of its Interpretation Act and art. 2(1) of the *Civil Code.* Any lack of uniformity in this area would appear to be strictly a matter of policy to be discussed by the Uniform Law Section.

Ss. 5, 19, 23 *Uniform Interpretation Act.*

The common law preoccupation with the exact moment that a day begins, and other time computations, is apparently not shared by Québec. It is, however, not apparent that the rule is any different in Québec or that a difference would be inherent to the civil law system. For example, art. 2240 *Civil Code* provides that "prescription is acquired when the last day of the term has expired; the day on which it commences is not counted."

4. *Rules of construction*

While several so-called rules of construction in the *Uniform Interpretation Act* are not included in the Québec *Act,* there are, in my view, few classic canons of construction as we know them that are incompatible with the Québec interpretative jurisprudence. This can be verified on a comparison of Pigeon's *Rédaction et interprétation des lois*[1] *with Driedger's The Construction of Statutes*[2]. Detailed comment on this aspect of the question should, however, be left to the Québec delegates to the Conference.

5. *Rules of law*

Because the Québec civil law system is arranged especially around its *Civil Code,* there are some rules of law in the *Uniform Interpretation Act* that, although not found in the Québec *Interpretation Act,* are reflected in various ways in the *Civil Code* itself.

S. 16 *Uniform Interpretation Act* (Corporate rights and powers). This goes especially for the nature of legal entities such as corporations (see arts. 352 ff *Civil Code*)—one example of a common law concept adapted to the Québec body of law. No substantive lack of uniformity is implied here. The placement of rules of law relating to corporations is simply more logical in the *Civil Code* than in the *Interpretation Act.* I suspect that the same would be done by other jurisdictions if they were ever to embark on a codification of their civil law.

S. 22 *Uniform Interpretation Act* (documentary evidence). While it is difficult to say that there is anything specifically incompatible here with civil law concepts of evidence, s. 22 was obviously not written for Québec use. It over-simplifies the regime of documentary evidence in Québec, in that it does not respect the elaborate rules relating to "proof by writings" codified according to a hierarchy of "authentic" and "private" writings (arts. 1207-1229 *Civil Code*). It is also not clear what effect the very broad s.22 *Uniform Interpretation Act* would have on art. 1234 *Civil Code,* which pro-

vides that oral evidence "cannot in any case, be received to contradict or vary the terms of a valid written instrument."

FOOTNOTES

1 Louis-Philippe Pigeon, *Rédaction et Interprétation des lois*, Editeur officiel (1978) Quebec

2 Elmer A Driedger, *The Construction of Statutes*, Butterworths (1974) Toronto

APPENDIX C

(See page 27)

PRESIDENT'S ADDRESS: GORDON F. COLES, Q.C.

Fellow Commissioners, Ladies and Gentlemen: It is my pleasure, as President, to welcome you to this, the 62nd annual meeting of the Uniform Law Conference of Canada. I am delighted to see so many old friends, and look forward to meeting with the new commmissioners, to whom I extend a special welcome. Your attendance is testimony of the importance which you and the jurisdictions which you represent attach to the work of the Conference. I wish also to extend a very special thanks to the many commissioners who are here, notwithstanding that their families and associates have seen very little of them during the past six weeks due to their involvement in trying to negotiate a consensus—if not an agreement, on constitutional changes in this confederation of ours. Our meeting in Charlottetown at this particular time should be particularly significant to them.

I join with Dr. Leal in extending a very warm welcome to Dean Joshua Morse and his lovely wife, Nell, and hope they enjoy their visit with us as much as Barb and I enjoyed our recent visit with them when we had the opportunity to represent this Conference at the 89th annual meeting of the National Conference of Commissioners on Uniform State Laws held this year in Hawaii.

Your executive held four meetings during the year, three of which were through the facility of a telephone conference call. The conference call was found to be a very useful way of dealing with limited agendas. The advantages are obvious, particularly when members of the executive reside in places as distant as the Yukon and Newfoundland. I certainly recommend the telephone conference forum to my successors in office as one way of facilitating the work of the executive.

We are pleased with the continued growth in our membership and the changes in the structure and scope of our Conference. As welcome as these changes are, they will impact on the work of the Conference. To respond to this situation, you will recall setting up a committee last year to review the present rules and regulations governing the proceedings of the Uniform Law Section.

The recommendations of the committee have been considered by the executive, which is of the view that further consideration ought to be given to certain of the recommendations. Hopefully the necessary changes arrived at will not unduly formalize our proceedings.

The research funds available to the Conference through the continued generous support of the federal government has enabled us to undertake important projects which, but for the Uniform Law Conference, probably would not have been undertaken.

We will be receiving this evening a report from the chairman of the Evidence Task Force, Dr. Ed. Tollefson. You will have noted from the progress report circulated that the task force has just about completed its work and will be presenting its report and its comprehensive legislative statement later this year. Your executive will be presenting a resolution for your consideration proposing the holding of a special session of the Conference for this purpose.

You will also be receiving a report from the chairman of a special committee on the Sale of Goods, Dr. Mendes da Costa. This committee has made excellent progress in a very short time and I commend the chairman for his dedication and commitment.

Contributions of work such as is being done by these two committees certainly enhance the achievement of our primary purpose of promoting uniformity of legislation. I hope that we will continue to have the necessary resources to undertake more such deserving projects in this manner in the future.

As you know, consideration is being given to a review of the criminal code. It is expected that the Criminal Law Section will be called upon to play a very important role in the process and it may be necessary, over the next few years, for that section of our Conference to meet more often than at the annual meeting for the purpose of the criminal code review.

During the past year I was privileged to serve on a committee to liaise with a committee of the National Conference of Commissioners on Uniform State Laws dealing with trans-boundary pollution. Our immediate past president, Robert G. Smethurst, Q.C., will be reporting to you on this subject. I would like to say, however, that a joint liaison committee may serve as a useful vehicle for both our conferences to address matters of mutual concern which can best be responded to through uniform legislation enacted by the states and provinces of our respective countries.

We are again pleased to have the services of the Canadian Inter-Governmental Conference Secretariat, which has become an integral part of this Conference. We shall miss Ann Vice, who has left the Secretariat to take up a position with the British Columbia Government—I understand she is their high commissioner in Ottawa. On your behalf I welcome Mr. John Connolly who will be directing the CICS services this year and his staff of twelve.

Before concluding these remarks, I wish to draw your attention to Table IV of our annual proceedings. This schedule, of course, lists the jurisdictions in which uniform acts have been enacted in whole or in part, with or without modification, or in which provisions similar in effect are in force. It is very noticeable that a great deal of our efforts during the past number of years, particularly in the sixties and seventies, have not found acceptance in our provincial jurisdictions. I do not know why this should be but we would be remiss if this were not a concern deserving of our most serious attention. Too many talented and experienced people have contributed their time and effort in developing uniform acts and amendments to the criminal code for such efforts not to have received more favourable consideration from our respective jurisdictions. The burden of propagating and promoting the work of this Conference rests with each of us and unless we do the job, it won't be done. The purpose for which this Conference was organized is deserving of better efforts on the part of all.

In conclusion, I wish to thank our host for arranging an interesting and entertaining schedule of events for us. I hope our work will permit us an opportunity to enjoy these events and some of the other offerings of this beautiful garden province.

APPENDIX D

(See page 27)

TREASURER'S REPORT

Statement of Receipts and Disbursements for the period July 17, 1979 to July 15, 1980

GENERAL FUND

Receipts:		
Annual contributions (Schedule 1)		$ 33,000
Interest — earned on general funds		2,753
— transferred from Research Fund (Note 3)		3,942
		39,695
Disbursements:		
Printing of 1979 proceedings		15,454
Printing of 1978 proceedings		12,025
Executive-secretary — honorarium		12,500
— other		500
Secretarial services — 1978/79		3,500
— 1979/80	3,500	
National Conference of Commissioners on Uniform State Laws meeting — 1979/80		2,657
— 1980/81 advance		2,900
Annual meeting		3,049
Executive meeting		1,139
Other meetings		537
Professional fees		534
Telephone		189
Printing and stationery		129
		58,613
Excess of disbursements over receipts		(18,918)
Balance in bank, beginning of period		42,216
Balance in bank, end of period		$ 23,298
Balance in bank consists of:		
Term deposits		$ 23,339
Current account balance		(41)
		$ 23,298

RESEARCH FUND

Receipts:	
Government of Canada contribution	$ 25,000
Interest earned	3,163
University of Manitoba	259
	28,422
Disbursements:	
Evidence Task Force	29,812
Sale of Goods Project	8,422
Interest transferred to General Fund (Note 3)	3,942
Bank charges	8
	42,184
Excess of disbursements over receipts	(13,762)
Balance in bank, beginning of period	42,657
Balance in bank, end of period	$28,895
Balance in bank consists of:	
Term deposits	$ 28,299
Current account balance	596
	$ 28,895

Notes to Financial Statements

1. *Basis of financial statements*

   The accompanying statements of receipts and disbursements reflect only the cash transactions of the organization during the period. The Research Fund includes the receipts and disbursements for specific projects. The General Fund includes the receipts and disbursements for all other activities of the organization.

2. *Contributions not yet received*

   At July 15, 1980 the annual contribution to the General Fund of $2,500 had not been received from the Government of Canada.

   In addition, an anticipated contribution of $25,000 by the Government of Canada to the Research Fund had not been received.

3. *Interest transfer*

   Interest earned in the preceding year is transferred from the Research Fund to the General Fund.

APPENDIX D

SCHEDULE OF MEMBERS' ANNUAL CONTRIBUTIONS FOR THE PERIOD JULY 17, 1979 TO JULY 15, 1980

Re: 1978/79 —	
Northwest Territories	$ 1,250
New Brunswick	1,000
Canada	2,500
	4,750
Re: 1979/80 —	
British Columbia	2,500
Ontario	2,500
Prince Edward Island	1,250
New Brunswick	2,500
Newfoundland	2,500
Quebec	2,500
Northwest Territories	1,250
Manitoba	2,500
Nova Scotia	2,500
Alberta	2,500
Saskatchewan	2,500
Yukon	1,250
	26,250
Re: 1980/81 —	
Quebec	2,000
	$ 33,000

AUDITORS' REPORT

To the Members of the
Uniform Law Conference of Canada:

We have examined the statements of general fund receipts and disbursements and research fund receipts and disbursements of the Uniform Law Conference of Canada for the period July 17, 1979 to July 15, 1980. Our examination was made in accordance with generally accepted auditing standards, and accordingly included such tests and other procedures as we considered necessary in the circumstnces.

In our opinion these statements present fairly the cash operations of the organization for the period July 17, 1979 to July 15, 1980 in accordance with accounting principles as described in Note 1 to the financial statements.

Clarkson Gordon

Edmonton, Canada
July 16, 1980

Chartered Acountants

APPENDIX E

(See page 27)

EXECUTIVE SECRETARY'S REPORT

Arthur Stone, our Secretary, has asked me to convey to you his regrets at being unable to attend this year's annual meeting. He is under active treatment in an out of hospital for a very painful and obstinate type of arthritis. Happily, he expects to be back in harness before too long.

Arthur also asked me to report on his behalf that his secretarial duties during the past year have been normal and that he has been able to carry them out as usual.

I would like to add here, if I may, that it has been a great comfort to me to have had an experienced member of the Executive close at hand to turn to for advice from time to time. This proximity has expedited my work, and so the work of the Conference, for which I am grateful to Arthur.

The year now ending, so far as the office of the Executive Secretary has been concerned, has been normal. I won't bore you with the features which are well known to most of you.

It is hard for me to realize that seven years have passed since a special committee of the Executive of the Conference, chaired by Glen Acorn, caught me off-guard by telephoe from Victoria and prevailed upon me to become your hired man. Looking back, I have enjoyed it all.

Perhaps I should confess that these nostalgic comments are deliberately devised as a platform upon which you may allow me, out of respect for my seniority, to assume the mantle of an advocate, a special pleader if you will, for a cause that is dear to my heart, namely, uniformity, a target that is, I think, sometimes inadvertently overlooked in the rush of more urgent legislative matters. I think I can, very briefly, draw your attention to some facts that may surprise you and, if I make my pitch at all well, may result in legislation across Canada that will enhance the stature of this Conference as well as improve the common weal of all Canadians.

Back in 1943, when I was the junior Commissioner for Ontario, this Conference featured the slogan "Uniformity—Coast to Coast" and published a brochure on the aims and the work of the Conference

which had a wide distribution and did a lot to promote its objects. This is the theme that I want to resurrect and emphasize tonight. I address these remarks to all delegates but particularly to the many of you who have a hand in formulating the legislative programmes for the legislatures of this country.

Most of you are familiar with Tables III and IV in our annual *Proceedings.* Table III lists the uniform acts and shows the jurisdictions that have enacted them. Table IV is the reverse; it lists the jurisdictions and shows the uniform acts that each has enacted. While it would be unwise to accept these tables as correct and up to date, they constitute the best record we have of the situation. What I propose to do is draw some highlights from the bare statistics and thus to show the remarkable degree of success your hard work and that of your predecessors has had while at the same time raising the question as to why the results are not unanimous in more of the more popular uniform acts.

For example, you will be pleased to know that the *Uniform Reciprocal Enforcement of Maintenance Orders Act* has been enacted in all provinces and territories—a fine achievement. Please make a note that the new revision of this Uniform Act, finished last year, is entitled to your immediate attention.

All common law provinces and the two territories have passed the *Uniform Reciprocal Enforcement of Judgments Act* and the *Uniform Survivorship Act* or something similar.

Section 41 of the *Uniform Evidence Act*, which deals with the admissibility of photographic records is law federally, in the common law provinces and in the territories. The same good record, with the exception of Prince Edward Island, applies in the case of section 61 of the same Uniform Act; it provides for the admissibility of foreign affidavits.

Ten common law jurisdictions have enacted the *Uniform Assignment of Book Debts Act* (all except British Columbia) and the *Uniform Warehousemen's Lien Act* (all but Newfoundland); nine have enacted the *Uniform Intestate Succession Act* (the exceptions are Nova Scotia and Prince Edward Island) and the *Uniform Regulations Act*; and eight have enacted the *Uniform Proceedings Against the Crown Act.*

Perhaps we are entitled to cry, well done! Perhaps we are entitled to surmise that with a little effort some of the exceptions I have mentioned can be removed.

Perhaps, to put the picture in perspective, I should add that five uniform acts have not been adopted anywhere and seven have been enacted in only one jurisdiction. I suspect that this negative feature of the Tables will be addressed in the report of Arthur Stone's committee on the revision of the uniform acts which will be considered later this week in the Uniform Law Section.

I would like to close this report with a special plea for the *Uniform Human Tissue Gift Act.* I submit that this piece of non-political, non-sectarian, humanitarian legislation should be in effect from coast to coast without any exceptions. It is now the law in nine jurisdictions, *in toto* in eight: British Columbia, Yukon, Alberta, Northwest Territories, Ontario, Prince Edward Island, Nova Scotia, and Newfoundland. Saskatchewan has it with modifications, Manitoba has its prededessor the *Human Tissue Act* of 1959, and, I understand the Civil Code of Quebec contains provisions to much the same effect.

Is it too much to ask Manitoba and New Brunswick to take a look or another look, as the case may be, at this model uniform act with a view to its implementation? Kidneys and corneas are in short supply; let us move to keep the law across Canada up to date and uniform in this extremely important field.

With this thought in mind, I have made a check with the chief administrator of the Act in Ontario, Dr. Beattie Cotnam, who is familiar with the situation from coast to coast. He has assured me that our uniform act is working well in all aspects and is serving a vital, necessary purpose in that it wipes away the uncertain rules of the past and brings the law into line with current public opinion and the developments of medical science.

Ladies and gentlemen, I submit it would be a fine thing if the Conference could proclaim that we have achieved "Uniformity Coast to Coast" in this truly humanitarian field.

And here I end my plea. Please think about it and, hopefully, do something about it when you get home.

14 August 1980
Queen's Park
Toronto, Ontario

Lachlan MacTavish

APPENDIX F

(See page 27)

FEDERAL/PROVINCIAL TASK FORCE ON UNIFORM RULES OF EVIDENCE

PROGRESS REPORT

The Task Force was established in August, 1977, with six jurisdictions (Canada, Ontario, Québec, Nova Scotia, British Columbia and Alberta) participating on a part-time basis. The terms of reference approved for the Task Force were:

> To attempt to bring about uniformity among the provincial and federal rules of evidence by,
>
> (1) stating the present law, and
> (2) surveying the Report on Evidence of the Law Reform Commission of Canada, the Report on the Law of Evidence of the Ontario Law Reform Commission, the reports of the other provincial law reform commissions on various subjects in the law of evidence, the major codifications of the law of evidence in the United States and the major reports on the law of evidence from England and the other Commonwealth countries, for the purposes of,
>
> (a) setting out the alternative solutions for the various problems in the law of evidence, and
> (b) recommending the preferred solutions amongst those alternatives.

The tentative deadline for completion of the task was September, 1980.

Reports were submitted by the Task Force to the Annual Meetings of the Commissioners in 1978 and 1979. The latter report indicated that a problem had arisen within the Task Force as to the interpretation of its terms of reference: was the Task Force to develop a comprehensive draft Uniform Evidence Act or only to recommend amendments dealing with problem areas? If it was the former, then it was most unlikely that the Project could be completed by the 1980 deadline.

The 1979 Report was dealt with at a one-day plenary session of the

Commissioners of Uniformity, and the following new directions were issued:

The ultimate objective of the exercise is the development of as comprehensive a legislative statement of the rules of evidence as may be consistent with the following principles:

1. Legislative statement of the law is desirable wherever possible, but there may be areas of the law of evidence where it is better not to attempt to legislate but rather rely on common law evolution and precedent.
2. The rules of evidence should be as understandable as possible to the practising bar and the judiciary, but it should be recognized that some of the rules of evidence may be complex, and to a certain extent technical areas of the law not admitting of a single statement.
3. Although legislative statement can assist in making the law of evidence more understandable and more certain, provisions which create wide discretions in the trial judge, especially with respect to admissibility, can reduce, rather than increase, the very certainty and uniformity that are rationales of legislating. For example, broad exclusionary rules requiring an individual trial judge to decide what an "abuse of process" is, or what "brings the administration of justice into disrepute", without further legislative guidelines, may create more uncertainty and lack of uniformity than is desirable. The Task Force should therefore strive to avoid submitting model sections creating wide unfettered judicial discretion.

The Commissioners also reaffirmed the high priority assigned to the completion of the project, and while not fixing a firm deadline, a strong desire was expressed to have the final report and draft Uniform Evidence Act available in time for consideration at the 1980 conference. It was felt, however, particularly in the light of the new statement of principles, that if the Task Force was to have a realistic chance of meeting this target date it needed some assistance in the preparation of background materials, options, draft sections, etc. With this aid the Task Force could devote its time and attention to considering its recommendations to uniformity. The Conference therefore endorsed the establishment of a full-time research team that would be part of the Task Force and be co-ordinated by the Chairman of the Task Force. The Federal Government and the Provinces of Ontario and Québec agreed to provide one researcher each to the team for up to a year, while British Columbia and Alberta made the same commitment for up to a half year.

The Research Team commenced operations in October, 1979, with full-time representatives from the Federal Department of Justice, the Attorney-General's Department of Québec and the Attorney-General's Department of Ontario, and part-time representatives from the Attorney-General's Department of Alberta. British Columbia's researcher began work in May, 1980, and will work on the project throughout the summer.

As approximately two-thirds of the Task remained to be done, the re-structured Task Force adopted some new approaches with a view to finishing the project on time. In order to make effective and economical use of time, the meeting schedule was revised from once a month for two days to once every six weeks for three days. Telephone conferences were arranged to deal with specific topics between meetings. The format of discussion papers was revised to focus Task Force deliberations more sharply on the issues amd alternatives so that decisions could be taken after the first or second discussion rather than after the third or fourth as had been the previous practice. Inevitably, this pressure created problems for some of the provincial advisory committees which often found they did not have enough time to consider discussion papers and advise their provincial representatives before subjects were debated in the Task Force. As the understanding and co-operation of the local Bars were seen as vital to the success of the project, two of the participating jurisdictions asked that the deadline be extended to permit full prior consultation with their provincial advisory committees. This proposal was agreed to by the participating jurisdictions and the Executive of Uniformity in April, and a new deadline of October 31 was given to the Task Force for submission of a final report. At the same time, the Executive called for a short progress report to be submitted to the 1980 annual meeting of the Uniform Law Conference.

Good progress has been made since the 1979 Annual Meeting. Since that time the Task Force has considered and made recommendations on the following topics:

The Rule in *Hollington* v. *Hewthorn*
Interpreters and Translators
Refreshing Memory
Past Recollecton Recorded
Hearsay (general)
Exceptions to the Hearsay Rule
Res Gestae
Manner of Questioning Witnesses

Exclusion of Witnesses
Privileges
—the Privilege against Self-Incrimination
—State Privilege
—Other Privileges
Admissions and Confessions
Illegally Obtained Evidence
Evidence Likely to bring the Administration of Justice into Disrepute
Real and Demonstrative Evidence
The Best Evidence Rule
Documents
Business and Government Records
Burden of Proof (including reverse onus clauses)
Presumptions and Inferences
Corroboration
Formal Admissions
Estoppel
Judicial Notice
Relevance
Role of Judge and Jury
Evidence on Appeal
Trial Problems
Interpretation of the Act

Two topics are yet to be discussed, the Parol Evidence Rule (which was added as a topic only this Spring) and Applicability of the Uniform Evidence Act to other Tribunals.

The English version of the final report and draft Uniform Act are both well underway, and it is hoped to have a first draft of each available for distribution to the Task Force members by the end of August. The Task Force will meet in September to consider the Report and Draft Act. At that time it will tidy up any loose ends and examine its decisions, reconsidering any that may seem out of place in the context of the total report or in the light of comments from advisory committees. By the end of September, the English version of the Report should be in its final stages and ready for translation, which it is estimated will take approximately a month. As far as the Draft Act is concerned, the plan is to have two original versions—one English and one French—rather than one being a translation of the other. The English version is being drafted by legislative counsel provided to the project by the Federal Department of Justice. The Department of the Attorney-General of the Provice of Québec has undertaken to play the

lead role in the preparation of the French version, and it is hoped to have it ready at the same time or shortly after the English version.

Perhaps a few words would be approriate concerning the nature of the Draft Uniform Evidence Act. As directed by Uniformity, it will be "a comprehensive legislative statement", but it will not be a code, i.e. it will not be exhaustive. In a number of instances the Task Force has concluded that it would be better to leave matters to case law. For example, matters of a trivial nature, or peripheral to the Law of Evidence or that would involve legislative control of judicial common sense have been purposely left out of the Draft Act. Even in relation to some important topics, such as Similar Facts, the Task Force was of the opinion that a legislative statement would have to be quite complex, and likely would lead to a great deal of litigation simply to clarify its meaning; hence it was decided to let the law continue to develop on a case by case basis, at least for the time being. Finally, and perhaps most importantly, the common law will be in the background to fill in the interstices. In this regard the Draft Act will be quite different from the Evidence Code of the Law Reform Commission of Canada which, in section 3, stated that "Matters of evidence not provided for by this Code shall be determined in the light of reason and experience so as to secure the purpose of this Code."

The members of the Task Force look forward to the opportunity to present their report and Draft Act to Uniformity later this year. We hope that you will find our product to be a happy blend of exposition, clarification and reform.

J. Cassells, Q.C.* (Ontario)	Hon. G. Murray, J. (British Columbia)
K. Chasse (member at large)	B. Pannu** (Alberta)
E. Ewaschuk, Q.C. (Canada)	B. Shaffer, (Canada, *Draftsman*)
F. Handfield* (Québec)	Prof. A Sheppard** (British Columbia)
L. LeBlanc (Québec, alternate)	M. Shone** (Alberta)
G. Létourneau (Québec)	D. Solberg (Canada, alternate)
P. Lockett (Ontario)	E. Tollefson* (Canada, *Chairman*)
W. MacDonald (Nova Scotia)	G. Walker, Q.C. (Nova Scotia)

* Full-time member of Task Force Research Team
** Part-time member of Task Force Research Team

The Task Force also wishes to acknowledge the participation from time to time of Messrs. R. McLeod, Q.C., J. Takach, Q.C. and J. Polika, Q.C., all of the Ontario Ministry of the Attrorney General, as observers.

Ottawa
August 1980

E. Tollefson
Chairman

APPENDIX G

(See page 27)

CICS Doc. 840-189/033

LIAISON COMMITTEE
of the
NATIONAL CONFERENCE OF COMMISSIONERS ON UNIFORM STATE LAWS
and the
UNIFORM LAW CONFERENCE OF CANADA

PROGRESS REPORT

In 1975 representatives of the American Bar Association contacted counterparts in the Canadian Bar Association with an imaginative proposal for the two associations to take a step forward together toward the creation of a legal structure for world peace. Out of discussions between the two bodies came a modified proposal for a research project into Canada-U.S.A. dispute settlement. This project was to be conducted by a committee drawn from the International Law Section of the American Bar Association and the Constitutional and International Law Section of the Canadian Bar Association. Under the co-chairmanship of T. Bradbrooke Smith, Q.C., and Henry T. King, Jr., the group worked throughout 1977 and 1978 producing a report entitled "Settlement of International Disputes between Canada and the U.S.A."

While the work of the joint American Bar Association/Canadian Bar Association group spanned the whole range of disputes between the two countries, a decision was taken early on to concentrate efforts in two areas where it was felt that there was a realistic possibility of significant progress and early adoption: the equalization of rights and remedies of private parties in both countries in relation to transboundary pollution, and the arbitration of differences of a legal nature between the two governments. To this end the report contains draft bilateral treaties on these two topics.

The Report of the joint American Bar Association/Canadian Bar Association group was formally presented to the Annual Meeting of the American Bar Association in Dallas on 15 August 1979, and the Annual Meeting of the Canadian Bar Association in Calgary on 30 August 1979. Appropriate resolutions on the subject were adopted by both Bar Associations.

Contained within the ABA/CBA Report was a suggestion that "a liaison group" be established between the Uniform Law Conference of Canada and the United States National Conference of Commissioners on Uniform State Laws to provide for continuous review and co-ordination of legislation on matters of common interest. Such a group might even draft model or uniform legislation for the two governments and their subdivisions.

During the summer of 1979 contact was established between the two Conferences and a formal liaison group set up at the Closing Plenary Session of the 1979 meeting of the Canadian Conference at Saskatoon, held on 25 August 1979:

> The Executive has accepted a request of a joint working group of the American Bar Association and the Canadian Bar Association concerned with making arrangements for the settlement of international disputes to set up a special committee to co-oparate and work jointly with a similar committee from the National Conference of Commissioners on Uniform State Laws to explore the feasibility of taking on this new proposal.
>
> It is expected the joint committees will look first at the subject of the handling of transfrontier pollution claims.
>
> Initially the special committee will be composed of Messrs. Leal, Smethurst and Coles.
>
> *Editorial Note: The Committee will be known as the Liaison Committee with the NCCUSL.*

During the last year, work has commenced on the joint liaison project. At a Federal-Provincial Conference of Deputy Ministers Responsible for Justice held on 11, 12 February 1980, in Vancouver the Deputy Ministers were briefed by Gordon Coles and R. G. Smethurst on the work of the joint liaison group. Mr. Smethurst sought the support of all deputy ministers for the group's work and asked them to respond by June 1980 if they had any concerns about the recommendations contained in the joint American Bar Association/Canadian Bar Association Report.

The liaison group itself has met twice with its American counterparts, firstly in Toronto on 2 May 1980 and most recently in Chicago on 20 June 1980.

Purpose of Project

The work of the liaison group is an outgrowth of many years of work by a variety of organizations. The liaison group's work can be seen as the North American implementation of a Recommendation of the Council of the Organization for Economic Co-operation and Development to which both Canada and the U.S. belong, made in Paris on 23 May 1977. This recommendation concerned

the "Implementation of a Regime of Equal Right of Access and Non-Discrimination in Relation to Transfrontier Polution"; it recommends that member countries remove the obstacles that prevent foreigners injured by transboundary pollution from having access to the members' administrative and judicial systems. The OECD believed removal of such obstacles would "lead to improved protection of the environment without prejudice to other channels available for the solution of transfrontier pollution problems".

The OECD and American Bar Association/Canadian Bar Association initiatives both recognize the serious effects that pollution originating in one jurisdiction may have on another. To give a practical example, it has recently been proposed that a large seam of high grade coal should be mined at a site on Cabin Creek in southern British Columbia. Eight miles downstream, Cabin Creek crosses the American border, flowing through a wilderness area into the Flathead River and Flathead Lake. If pollutants were to enter the Flathead from the mining projects, thousands of Montana residents will suffer damage, since that area of Northern Montana is a tourist area, which in turn depends on the purity of the environment.

Similarly, public attention has been focussed recently on the problems of 'acid rain', where sulphur dioxide and nitric oxide from industrial plants in the manufacturing areas of the Northern United States, falls onto Canadian lakes and forests as dilute sulphuric acid destroying the delicate balance of water and forest systems. In short, we are daily made aware of both the fragility of our environment and the artificiality of legal concepts which permit us to deal with pollution only on a local and fragmented basis.

Currently, the private international law rules concerning the jurisdiction of a Canadian court over extra-territorial claims prevent those affected by pollution from Ontario from suing those responsible unless the damage also takes place within Ontario.

Since there may be some doubt about the need for action to estalish a new regime and to reform the current private international law rules, we have prepared a supplementary memorandum dealing with the state of the current Canadian law on this topic. The conclusion of the memorandum is that Canadian law is clearly deficient in this area and would require reform to permit the extension of equal access and remedy to non-residents affected by pollution.

This was the situation addressed by the American Bar Association/ Canadian Bar Association group. Their report was directed towards

practical suggestions to ameliorate the legal problems faced in the resolution of Canada/U.S.A. disputes.

While the entire area of disputes between the two countries is canvassed in its Report, the American Bar Association/Canadian Bar Association Committee confined its substantive recommendations to two areas where it felt there was some real prospect of early adoption. These areas are the equalization of rights and remedies for private parties from both countries in cases of transfrontier pollution and the arbitration of differences of a legal nature between the two governments. For each a draft treaty was prepared that both subsumed the issues involved and provided a possible basis for negotiation between Canada and the United States.

The thrust of the proposed transfrontier pollution regime is that persons in both countries should have equal access to judicial and administrative procedures for prevention of and compensation for pollution damage. It should not matter on which side of the border the polluter is located, where the person affected lives, or in which jurisdiction the judicial or administrative protection is available. What is being proposed here is not a new legal system, but the adjustment of the two countries' existing municipal legal systems to accommodate equally residents of both in pollution matters. Moreover, the regime presented in the draft articles would not alter substantive rights or obligations on either side of the border; it would merely grant equal access to whatever procedures and remedies exist in either country. Thus, if a North Dakotan has a right of action for pollution prevention in a court somewhere in the United States, so should a Manitoban similarly affected, and vice versa.

The report relies heavily on the 1977 OECD recommendation for the "Implementation of a Regime of Equal Right of Access and Non-Discrimination in Relation to Transfrontier Pollution." Both Canada and the United States are members of OECD and should take the lead in putting the Council's recommendation into practice. The Group recognized the fact that there might be questions of detail and concerns about the practicalities of implementation of this proposal in the two federal systems.

The substantive provisions of the treaty can be summarized as follows:

Article 1 defines the critical descriptive terms to be used in the remainder of the treaty including "Pollution", "domestic pollution" and "transfrontier pollution". Article 2 is the main operative provision of the treaty. It ensures that the actual or potential victim of trans-

frontier pollution will have a remedy in the courts of the country where the pollution originated, if a victim residing in that country would have had a remedy in the case of domestic pollution. Article 3 enables public and private environmental groups in one country to have the same right to protect the general environmental interests of their country in the courts or administrative proceedings of the other as comparable groups in the latter have. Article 4 ensures that each party will have sufficient information from the other so that the residents of the country affected by transfrontier pollution may make full and effective use of all remedies available under the treaty. Article 5 is designed to ensure that the treaty does not inadvertently put the nationals of one state in a better position to enforce the pollution laws of the other states than can be done by the citizens of that other state.

In recommending this approach the American Bar Association/ Canadian Bar Association Report had in mind the requirements of private parties and litigants. It felt that it should not be necessary, and it certainly would not be desirable, for the intercession of Governments to be necessary in cases of pollution damage. Bearing in mind the similarities in the legal systems and in the approach taken by legislatures in relation to pollution, the Report regarded this proposal as not only just but eminently practical. It recognized that the problems of implementation are considerable, having in mind the federal systems, but concluded that the goal is by no means out of reach.

The unsatisfactory state of the present law led to the joint American Bar Association/Canadian Bar Association Report, which has been discussed at length in our meetings. The American Bar Association/Canadian Bar Association Report has provided the joint liaison group with a framework through which to approach the problem of transfrontier pollution. While we see some individual practical problems in the American Bar Association/Canadian Bar Association Report which will require further study and thought, it is fair to say that there has been in the joint liaison group a broad acceptance of the principles and policies expressed in that Report.

There has, however, been some divergence of views on the question of the modalities of implementation. The American Bar Association/ Canadian Bar Association Report on page 44 at paragraphs 314 *et seq.* expresses a strong preference for implementation through a bilateral treaty, with a federal state clause permitting application on a partial or phased basis as provinces brought their domestic law into conformity with the treaty.

At the Joint Liaison Committee meeting on 2 May 1980, the Commissioners from the two Conferences discussed whether the approach should be by treaty between the two countries followed by either federal legislation or by state and provincial legislation, or whether the approach should be the adoption of uniform laws by the states and provinces without a treaty.

A strong preference was expressed for the provinces and the states to adopt a uniform act. The committee also agreed that as part of the act, right must be provided for relief in the jurisdiction in which pollution originates for damages suffered by someone in another jurisdiction, whether the other jurisdiction in another state or province of the same country or a state or province of the other country.

The most recently circulated draft of the *Uniform Transboundary Pollution Act* is attached to this Report as Schedule 1. The draft will be discussed further at future meetings of the Joint Liaison Committee in the coming year. At this time, it is published here as a tentative working document for the information of the Conference.

Among the questions which need further discussion are

— would it be desirable to provide a clear definition of pollution and pollutant?
— what effect does divided constitutional jurisdiction over the environment, and in particular jurisdiction over international pollution, have upon the proposed statute?
— should the jurisdictional provisions in the draft be more specific?
— should the draft encompass access to other environmental tribunals and agencies?

The draft will be refined over the coming year and brought back for full discussion at the 1981 meeting of the Conference.

At this time we would like to express our appreciation and thanks to our colleagues from the National Conference of Commissioners on Uniform State Laws. In addition, we would like to thank Mr. Sidney Tucker, Legislative Counsel, Ontario, for his invaluable assistance in providing comments on the draft legislation and to Mr. John Mark Keyes, Student-at-Law, Policy Development Division, Ministry of the Attorney General, Ontario, for his research on the current state of Canadian Law with respect to the standing of extra-provincial residents in suits for environmental damage (Schedule 2).

R. S. G. Chester
Co-rapporteur
Joint Liaison Committee

SCHEDULE 1

Uniform Transboundary Pollution Act

1. In this Act — Definitions

(a) "jurisdiction" means a state of the United States of America or a province or territory of Canada;

(b) "person" means a natural person, corporation, business trust, estate, trust, partnership, association, joint venture, government, governmental subdivision or agency, or any other legal or commercial entity.

2. An action for injury or potential injury to person or property in another jurisdiction caused by pollution originating in this jurisdiction may be brought in the courts of this jurisdiction. — Venue

3. A person who is not a resident of and who suffers injury or potential injury outside this jurisdiction from a pollutant discharged within this jurisdiction — Right to relief

(a) has the same rights in respect to the injury or potential injury; and

(b) may enforce these rights as if the person were a resident of and had suffered the injury or potential injury within this jurisdiction.

4. The law applicable in such an action shall be the law of the place in this jurisdiction where the pollution originated, excluding its choice of law rules. — Choice of law

5. This Act does not provide to a person not a resident of this jurisdiction any right greater than that person would have if he were a resident of this jurisdiction; or provide to an organization not located within this jurisdiction any right greater than that organization would have if if it were located within this jurisdiction. — Equality of rights

6. Alternate A. The defence of sovereign immunity may not be raised in any action brought pursuant to this Act. — Waiver of sovereign immunity

Alternate B. This Act binds the Crown in right of |Province or Territory|. — Crown liability

7. This Act shall be applied and construed to carry out its general purpose to make uniform the law — Uniformity of application and construction

with respect to the subject of this Act among states, provinces and territories enacting it.

Severability

8. If any provision of this Act, or its application to any person or circumstances, is held invalid, the invalidity does not affect other provisions or applications of the Act which can be given effect without the invalid provision or application; and to this end the provisions of this Act are severable.

SCHEDULE 2

Memorandum on the Current Status of Canadian Law Concerning the Standing of Non-Residents of a Canadian Province to Sue in the Province Over Trans-Boundary Pollution

1. *Suits by Non-Residents for Damage to Property in a Canadian Province*

According to Castel, *Canadian Conflict of Laws,* Vol. 1 (Toronto: 1975) at pp. 373-379, and Graveson, *The Conflict of Laws,* 6th ed., (London: 1969) at pp. 153-154; Dicey & Morris, *The Conflict of Laws,* 9th ed. (London: 1973) at pp. 133-136, the only persons who cannot invoke the jurisdiction of Canadian Courts are enemy aliens during the existence of a state of war between Canada and an enemy country: *Dangler v. Hollinger Gold Mines* (1915), 23 D.L.R. 384 (Ont.). An enemy alien is one who "voluntarily *resides* or *carries on business* in a territory belonging to, or occupied by, a nation or power at war".

The only cases which are at all relevant to this point concern suits by foreigners on causes of action arising outside the court's territorial jurisdiction: *Granatstein v. Chechik* [1924] 4 D.L.R. 150 (N.S.C.A.); *Tytler v. Canadian Pacific Railway Co.* (1899), 26 O.A.R. 467. These indicate that, as long as the defendant is properly served, the court has jurisdiction (though it may decline on the basis of *forum non conveniens*), regardless of the nationality or residency of either party. If this result obtains in respect of actions arising *ex juris,* then the argument is even stronger where the action arises within the court's territorial limits.

2. *Suits by Non-Residents Over Damage to Property or Personal Injury Sustained Outside a Canadian Province*

In determining the question of jurisdiction over actions involving extra-territorial damage or injury, the Canadian and British courts have sharply distinguished actions involving foreign land and immovables from most other (usually *in personam*) actions. Courts normally acquire jurisdiction over the latter through proper service of a writ of summons: see *Castel*, Vol. 1 at p. 213. Hence, if the activity which causes personal injury and damage to property occurs in a Canadian Province, then service upon the defendant will be possible and the court should have no trouble finding jurisdiction. Even where the defendant is non-resident, there is no problem since most provinces have rules such as Ontario Rule 25(1)(g) which allows service *ex juris* "in respect of a tort committed in Ontario".

Generally, in actions involving land and immovables, the common law rule is that the court can only try the action if the subject matter is situated within its territorial jurisdiction: see Castel, Vol. 1 at p. 344. However, the scope of this rule is somewhat doubtful and, as will become clear below, there are a number of exceptions to it which seriously undermine its rationale.

British South Africa Co. v. Companhia de Mozambique [1893] A.C. 602 (H.L.) is the *locus classicus* on the rule. It dealt with an action to recover damages for trespass to lands situate in a foreign country. Lord Herschell, L.C. based his decision not to allow the action on a distinction drawn between "local" and "transitory" actions:

> That is, between those in which the facts relied on as the foundation of the plaintiff's case have no necessary connection with a particular locality and those in which there is such a connection. [p. 606].

The distinction is of ancient origin and apparently arose when juries ceased to be drawn from the particular locality in which the cause of action arose. This requirement was retained in respect of local actions as it seems to have been thought to be better that members of the jury be familiar with the area in which the cause of action arose since such familiarity was likely to bear upon the particular facts in issue.

Lord Herschell, L.C. also canvassed a number of cases involving the rule and found that local actions had been considered to include not only those for trespass (*quare clausum fregit*), but also those involving negligent damage to real property: see *The M. Moxham* 1 P.D. 107 (collision between a ship and a pier).

The rationale for the rule is, according to Lord Herschell, L.C., not merely the difficulty in enforcing judgments *in rem* against foreign land, a difficulty which may be overcome by an award of damages instead. He also enunciated a basic distrust of foreign land systems and raised the prospect of a plaintiff obtaining judgment for damages in England and then returning to the foreign country and re-possessing the land in question (p. 625).

This reasoning is manifestly weak when one considers the established systems of land-holding in most jurisdictions. The rule is further weakened by the exceptions to it which exist in equity. *Castel*, Vol. 1, at pp. 345-7 notes that Canadian courts have exercised their equitable jurisdiction *in personam* to:

> grant decrees imposing a personal obligation on a defendant with respect to contractual or equitable obligations arising out of a transaction involving a foreign immovable.

He goes on to note that the courts have, accordingly, decreed specific performance or rescission of contracts for the sale of land, granted damages for their breach, decreed the exchange of land within the jurisdiction for land without it, and foreclosed the right of a mortgagor of foreign land to redeem.

A third major weakness becomes clear when one attempts to define the scope of the rule. Some courts have allowed persona actions to be tried before them even though they incidentally involve questions of title to foreign land; see *Gorash v. Gorash* [1949] 4 D.L.R. 296 (B.C.); *Malo and Bertrand v. Clement* [1943] O.W.N. 555; *MacLaren v. Ryan* (1875), 36 U.C.Q.B. 307 (C.A.); *Stuart v. Baldwin* (1877), 41 U.C.Q.B. 466 (C.A.); *Mann v. Chamberlain* (1828), 1 N.B.R. 187 (C.A.). Thus, in *MacLaren v. Ryan,* the plaintiff was permitted to bring an action in Ontario alleging that the defendant had taken timber from his land in Quebec. Wilson, J. held that because the timber had been cut from the land, it became personalty and the action became transitory. The fact that questions of title to the land and boundaries were in issue seems to have made no difference to the court.

Despite the dubious character of the rule in *Mozambique,* courts in both *Albert v. Fraser Companies Ltd.,* [1937] 1 D.L.R. 39 (N.B.C.A) and *Brereton v. C.P.R.* (1898), 29 O.R. 57 (H.C.) have not only accepted the reasoning of the case, but have constructed the decision broadly. In *Brereton,* the defendants had allegedly started a fire in Ontario which spread across the border into Manitoba, burning the plaintiff's house and its contents. Boyd, C. began by noting the court's discretion to decline jurisdiction on the basis of convenience. He seems

clearly to have considered that the case provided ample grounds for doing so since both of the parties were resident in Manitoba and all of the damage had occurred there. However, he went further and reviewed *Mozambique,* finding that, since:

> [the] land with its fixtures is capable of being injured only at the place of its site, so that damage thereto (whether direct, as in trespass *quare clausum fregit,* or indirect and consequential, as in case) is essentially a local thing. [p. 61]

Thus, he saw no distinction between trespass to land and trespass on the case for injury to land, holding that *Mozambique* covered the latter as well. However, Boyd, C. would have allowed an action to recover damages for the lost chattels, though (to avoid splitting the cause of action) only if the rest of the claim were abandoned.

Albert v. Fraser Companies Ltd. also extends the rule in *Mozambique* to actions in negligence where the subject matter is land or immovables. However, in this case there were no arguments of convenience as there were in *Brereton.* The defendant's logging operations in New Brunswick were allegedly causing the Madawaska River to back up and flood the plaintiff's land in Quebec. Baxter, C.J. construed *Mozambique* to apply regardless of whether or not the title to the land was in issue, holding simply that the court had no jurisdiction if the "controversy related to foreign land" [p. 45]. His reasoning rested on two points: (a) the unenforceability beyond New Brunswick of the injunction sought by the plaintiff [the fact that the injunction claimed would have applied only to the logging operations in New Brunswick seems not to have occured to him]; and (b) that it was "too late in the day to contend that an action founded upon trespass to realty in a foreign country, whether the title does or does not come into question, can be tried here" [p. 46].

In a strong dissenting opinion, Harrison, J. confined *Mozambique* to actions of trespass *quare clausum fregit* [p. 51]. He distinguished the case before him from *Mozambique* by noting that one of the two components of the cause of action—the tortious act—had taken place in New Brunswick. Thus, he considered the matter to be local in that province:

> The controversy here involves matters affecting land in two jurisdictions, and therefore the Courts in both jurisdictions should have jurisdiction over the action. [p. 53]

Harrison, J. also noted the practical considerations involved: since the tortious activity was occurring in New Brunswick, only the courts of that province could issue an enforceable decree of specific performance.

The most recent authority on the rule in *Mozambique* is *Hesperides Hotels Ltd. v. Muftizade,* [1978] 2 All E.R. 1168 (H.L.). In this case, the plaintiff brought an action for damages alleging conspiracy to effect trespass to his hotel property in Cyprus. The House of Lords considered the rule, decided to affirm its validity and held that the action for conspiracy was in substance an action for trespass and therefore came within the rule. However, the court did allow the action to proceed in respect of the chattels contained in the hotel.

The court's reasoning was that, since the rule was accepted in most other common law jurisdictions and involved matters affecting international relations, there should be no judicial interference with it [see p. 1175, per Lord Wilberforce]. Thus, Lord Fraser stated:

> The main reason is that I do not think that the House in its judicial capacity has enough information to enable it to see the possible repurcussions of making the suggested change in the law. [p. 1182]

3. *Conclusions*

It is evident that no difficulty arises in respect of suits by non-residents for damage occurring within Ontario. Similarly, where personal injury or damage to personalty occurs outside the province, there should be no bar to bringing an action in Ontario, subject to the principles of *forum non conveniens.* However, problems do arise from the rule set out in *Mozambique.* Although, as the decision in *Hesperides Hotels* demonstrates, it would be difficult to argue that the rule does not apply in Ontario, there seems to be some room to debate its scope. The argument advanced by Harrison, J. in *Albert v. Fraser Companies Ltd.* is persuasive and no English authority has extended the rule to cases where the tortious act occurs in one jurisdiction and the damage in another. The House of Lords in *Hesperides Hotels* confirmed the rule in respect of trespass, but did not consider the extension given to it by Canadian courts. This broad application merely magnifies the inconsistency, on the one hand, of allowing courts to deal with matters related to foreign land in equitable actions and those involving chattels, but, on the other hand, of excluding jurisdiction in all other such matters.

The strongest decision in Ontario on the issue comes from a single judge of the High Court, sitting over 80 years ago: *Brereton v. C.P.R.* It is submitted that a similar court or the Court of Appeal, would today be more than justified in overruling it, at least to the extent of narrowing the scope of the rule to torts committed wholly outside of the jurisdiction. However, as Read notes in *Recognition and Enforcement of Foreign Judgments* (Cambridge, Mass.: 1938) at p. 198, it may well be that "only legislation can excise it."

APPENDIX H

(See page 28)

UNIFORM CHILD STATUS ACT

(as adopted by the Conference: 1980 Proceedings, page 28)

1. (1) In sections 5 to 8 "court" means (*insert name of court to have jurisdiction*). Court

(2) In this Act "director" means the Director of Vital Statistics. Director

(3) For the purposes of sections 9 and 11, Void and voidable marriage

(a) where a man and a woman go through a form of marriage with each other with at least one of them doing so in good faith and they cohabit and the marriage is void, they shall be deemed to be married during the time they cohabit, and

(b) where a voidable marriage is decreed a nullity, the man and woman shall be deemed to be married until the date of the decree of nullity.

2. (1) Subject to subsection 11(2), for all purposes of the law of (*enacting jurisdiction*) a person is the child of his natural parents, and his status as their child is independent of whether he is born inside or outside marriage. Person is child of natural parents

(2) Where an adoption order has been made, sections of the Act apply and the child is in law the child of the adopting parents as if they were the natural parents. Effect of adoption

[NOTE: THE BLANKS IN THIS SUBSECTION ARE TO BE FILLED IN WITH REFERENCE TO THE ENACTING JURISDICTION'S ADOPTION LEGISLATION AND ITS PROVISIONS RESPECTING TERMINATION OF RELATIONSHIPS WITH NATURAL PARENTS AND RECOGNITION OF FOREIGN ADOPTIONS.]

(3) Kindred relationships shall be determined according to the relationships described in subsection 11(1) or (2). Kindred relationships

(4) Any distinction between the status of a child born inside marriage and a child born outside marriage is Abolition of distinction

abolished and the relationship of parent and child and kindred relationships flowing from that relationship shall be determined in accordance with this section and section 11.

Construction of instruments and enactments

3. For the purpose of construing an instrument or enactment, a reference to a person or group or class of persons described in terms of relationship to another person by blood or marriage shall be construed to refer to and include a person who comes within the description by reason of the relationship of parent and child as determined under sections 2 and 11.

Application

4. This Act applies to an enactment enacted before, on or after the day this Act comes into force and to an instrument made on or after the day this Act comes into force, but it does not affect

(*a*) an instrument made before this Act comes into force; or

(*b* a disposition of property made before this Act comes into force.

Declaration

5. (1) Any person having an interest may apply to the court for a declaratory order that a person is or is not in law the mother of a child.

Order

(2) Where the court finds on the balance of probabilities that a person is or is not the mother of a child, the court may make a declaratory order to that effect.

Declaration

6. (1) Any person having an interest may apply to the court for a declaratory order that a person is or is not in law the father of a child.

Order

(2) Where the court finds on the balance of probabilities that a person is or is not the father of a child, the court may make a declaratory order to that effect.

One presumption

(3) Where the court finds that a presumption of paternity under section 9 applies, the court shall make a declaratory order confirming that the paternity is recognized in law unless it is established on the balance of probabilities that the presumed father is not the father of the child.

Conflicting presumptions

(4) Where circumstances exist that give rise under section 9 to conflicting presumptions as to the paternity

of a child and the court finds on the balance of probabilities that a person is the father of a child, the court may make a declaratory order to that effect.

No order if father or child dead

(5) A declaratory order that a person is in law the father of a child shall not be made under this section unless the father and the child whose relationship is sought to be established are living.

Exception if presumption

(6) Notwithstanding subsection (5), where only the father or the child is living, a declaratory order that a male person is in law the father of a child may be made under this section if circumstances exist that give rise to a presumption of paternity under section 9.

Blood tests

7. (1) On the application of a party to a proceeding under section 5 or 6 the court may, subject to conditions it considers appropriate, give the party leave to obtain blood tests of persons named by the court and to submit the results in evidence.

Incapacity

(2) Where a person named by the court is not capable of consenting to having a blood test taken, the consent shall be deemed to be sufficient,

(*a*) where the person is a minor of the age of 16 years or more, if the minor consents,

(*b*) where the person is a minor under the age of 16 years, if the person having the charge of the minor consents, and

(*c*) where the person is not capable of consenting for any reason other than minority, if the person having his charge consents and a medical practitioner certifies that the giving of a blood sample would not be prejudicial to his proper care and treatment.

Inference from refusal

(3) Where a person named by the court refuses to submit to a blood test, the court may draw any inference it considers appropriate.

Order to be recognized

8. (1) Subject to this section, a declaratory order made under section 5 or 6 shall be recognized for all purposes.

New evidence

(2) Where a declaratory order has been made under section 5 or 6 and evidence that was not available at the previous hearing becomes available, the court may, on application, discharge the order.

Effect of new order

(3) Where an order is discharged under subsection (2),

(*a*) rights and duties which have been exercised and observed; and

(*b*) interests in property which have been distributed as a result of the order before its discharge, are not affected.

Presumption of paternity

9. Unless the contrary is proved on the balance of probabilities, a person shall be presumed to be the father of a child in one or more of the following circumstances:

(*a*) he was married to the mother at the time of the child's birth;

(*b*) he was married to the mother by a marriage that was terminated by

(i) death or judgment of nullity that occurred, or

(ii) divorce where the decree nisi was granted within 300 days, or a longer period the court may allow, before the birth of the child;

(*c*) he married the mother after the child's birth and acknowledges that he is the father;

(*d*) he and the mother have acknowledged in writing that he is the father of the child;

(*e*) he was cohabiting with the mother in a relationship of some permanence at the time of the child's birth or the child was born within 300 days, or a longer period the court may allow, after the cohabitation ceased;

(*f*) he has been found or recognized by a court to be the father of the child.

Orders to be filed with registrar

10. (1) The registrar or clerk of every court in (*enacting jurisdiction*) shall file in the office of the director a statement respecting each order or judgment of the court which makes a finding of parentage or that is based on a recognition of parentage.

Acknowledgements to be filed with registrar

(2) A written acknowledgement of paternity referred to in section 9 may be filed in the office of the director.

Inspection of filings

(3) On application and on satisfying the director that the information is not to be used for an unlawful or improper purpose, any person may inspect and obtain from the director a certified copy of

(*a*) a statement or acknowledgement filed under this section,

(*b*) a statutory declaration filed under section 3(6) of the *Uniform Vital Statistics Act*, or

(*c*) a request filed under section 3(8) of the *Uniform Vital Statistics Act.*

Director need not amend

(4) Subject to subsection (5), the director is not required to amend the register of births in relation to a statement or acknowledgement filed under this section.

Director shall amend

(5) On receipt of a statement under subsection (1) in relation to a declaratory order made under section 5 or 6, the director shall, subject to section 39 of the *Uniform Vital Statistics Act*, amend the register of births accordingly.

Interpretation

11. (1) In this section, "artificial insemination" includes the fertilization by a man's semen of a woman's ovum outside of her uterus and subsequent implantation of the fertilized ovum in her.

Father by artificial insemination

(2) A man whose semen was used to artificially inseminate a woman is in law the father of the resulting child if he was married to or cohabiting with the woman at the time she is inseminated even if his semen were mixed with the semen of another man.

Husband deemed father

(3) A man who is married to a woman at the time she is artificially inseminated solely with the semen of another man shall be deemed in law to be the father of the resulting child if he consents in advance to the insemination.

Cohabiting man deemed father

(4) A man who is not married to a woman with whom he is cohabiting at the time she is artificially inseminated solely with the semen of another man shall be deemed in law to be the father of the resulting child if he consents in advance to the insemination unless it is proved that he refused to consent to assume the responsibilities of parenthood.

Treated as child

(5) Notwithstanding a married or cohabiting man's failure to consent to the insemination or consent to assume the responsibilities of parenthood under subsection (3) or (4), he shall be deemed in law to be the father of the resulting child if he has demonstrated a settled intention to treat the child as his child unless it is proved that he did not know that the child resulted from artificial insemination.

Certain persons not fathers

(6) A man whose semen is used to artificially inseminate a woman to whom he is not married or with whom he is not cohabiting at the time of the insemination is not in law the father of the resulting child.

Consequential Amendments

The *Uniform Legitimacy Act* should be repealed.

The *Uniform Vital Statistics Act* should be amended as follows:

(1) Section 3(3), by striking out "an illegitimate child" and substituting "a child born outside marriage".

(2) Section 5(1) by striking out "Where a child is legitimated by the intermarriage of his parents subsequent to his birth," and substituting "Where after the birth of a child his parents marry each other,".

(3) Section 5(1)(b), by striking out "as to the legitimation".

(4) Section 32(2), repeal.

NOTE: ENACTING JURISDICTIONS SHOULD CHECK RELEVANT STATUTES AND AMEND THEM ACCORDINGLY TO ENSURE COMPATIBILITY WITH THIS ACT.

APPENDIX I

(See page 29)

CLASS ACTIONS

REPORT OF THE COMMITTEE

1. *Committee Activities*

1.1 The Class Action Committee is composed of representatives of the Québec, Ontario and British Columbia delegations: This year, there participated: from Québec, Marie-José Longtin, Chairman of the Committee; from Ontario, Simon Chester and Derek Mendes da Costa, the latter represented by Patricia Richardson; and from British Columbia, Ken C. Mackenzie.

Another representative from Québec is yet to be appointed.

1.2 The Committee met on 14 April 1980 in Toronto to study a working paper prepared by Québec based on earlier Conference documents.

Those attending this meeting were: Marie-José Longtin, Patricia Richardson and Simon Chester. Ken Mackenzie was unable to be present but was informed of the discussions and the decisions made.

1.3 At the meeting and using the submitted working paper as a basis, the members discussed Committee directions, the problems in presenting a draft Uniform Act on such a subject before agreement is reached on the basic principles of this type of action, and the methods of working best suited to achieving the desired goal of submitting a draft Uniform Act and the report to the Conference within a reasonable time.

1.4 Another meeting of the Committee was held on 19 August to discuss the recommendations of this report.

2. *The Need for Reform*

2.1 A class action is a court action brought by an individual, the class representative, on behalf of himself and a substantial number of others having similar claims, the class members. In a class action, the claim of the class representative and all persons similarly situated is settled in a single court proceeding, rather than in many separate actions.

2.2 In recent years, there has been increasing pressure towards the formulation and adoption of revised class action procedures, first in the United States and more recently in Canadian jurisdictions and in Australia. These pressures can be seen as a logical outgrowth of an increasingly complex society: with the advent of mass production and advertising and the growing concentration of economic power, the actions of individuals or corporations can be prejudicial to large numbers of persons, thus rendering inadequate the traditional two-party scheme of litigation. This "mass" nature of injury in contemporary society creates a corresponding need for the development of new procedures to deal with mass wrongs.

One important perceived advantage of the class action is that it grants access to the courts to large numbers of persons who would otherwise effectively be denied recovery for their injuries because their claims are too small to justify independent litigation. In other cases, where the claims of individuals similarly situated are sufficiently large to be brought individually, class actions can promote efficiency and judicial economy by permitting the disposition in a single proceeding of common questions that would otherwise have to be litigated separately. Finally, class actions can play an important role in enforcing substantive statutory policy; for example, American anti-trust and securities legislation relies heavily for its enforcement on the initiation of class actions for breach of relevant statutory provisions.

2.3 In the common law jurisdictions of Canada at the present time, as well as in England and Australia, class actions are governed by Rules of Practice similar to Ontario Rule 75, which provides as follows:

> Where there are numerous persons having the same interest, one or more may sue or be sued or may be authorized by the courts to defend on behalf of, or for the benefit of, all.

2.4 The present rule has a number of recognized deficiences. It does not, for example, ensure protection of the interests of absentee class

members: there are no notice provisions and no requirement that the court consider whether the class representative and his solicitor will adequately represent the class. Despite a number of recent cases[1] that have expanded somewhat the very restrictive interpretation accorded to the rule in the past, class actions involving individual assessment of damages are still precluded under Anglo-Canadian law. In addition, the application of the ordinary cost rules whereby an unsuccessful plaintiff will be responsible for the costs of the defendant serves as a severe disincentive to act as class plaintiff, particularly in cases where the plaintiff's claim is very small.

Notwithstanding these disincentives to class litigation, the pressures for some method of resolving mass claims have led to the bringing of a number of class actions in the past few years. In the recent decision of the Ontario Court of Appeal, *Naken* v. *General Motors of Canada Limited*,[2] Arnup, J.A., commented upon the potential for mass injury in today's society and the resulting need to develop procedures to deal with mass litigation.[3] Faced with a consumer class action under Ontario Rule 75, he stated, "If we are to have consumer class actions in Ontario it would be highly desirable that there be enacted legislation or rules of practice or both, pursuant to which such actions would be conducted."[4]

2.5 In the United States, major class action reform was introduced in 1966 with the amendment of Rule 23 of the Federal Rules of Civil Procedure. Rule 23 provides for judicial "certification" of class actions that meet specified prerequisites and contains provisions designed to ensure protection of absentee class members' interests. Because Rule 23 does not contain the very restrictive "same interest" requirement present in the Anglo-Canadian rules, class members' interests need not be identical, and class actions involving individual assessment of damages are not precluded. Moreover, the American costs rules, including contingent fees and attorneys' fees provisions in certain statutes, do not serve to discourage the bringing of class suits. As a result, a large number of class actions have been brought under Federal Rule 23 in many areas of substantive law. Since the amendment of Federal Rule 23 in 1966, many other American jurisdictions have introduced similar class action legislation, and a number of other legislative proposals have been put forward.[5]

2.6 In Canada, only one jurisdiction has enacted revised class action legislation: in 1978, Québec enacted *An Act Respecting the Class Action*.[6] Both the Province of New Brunswick and the Federal Government have proposed class action legislation. In 1976, the Law

Reform Division of the New Brunswick Department of Justice recommended the enactment in New Brunswick of legislation permitting consumer class actions.[7] Two competition policy bills introduced by the Federal Government, Bill C-42 and Bill C-13,[8] contained a detailed class action procedure designed to provide a mass remedy when certain enumerated kinds of proscribed activity injured large numbers of persons. While these bills were not enacted, they do represent recognition of the role that class actions can play in compensating individuals injured by mass wrongs and in enforcing substantive statutory policy.

2.7 In addition to legislation enacted and proposed, several jurisdictions are now studying class actions. In November, 1976, the Attorney General of Ontario asked the Ontario Law Reform Commission to study the desirability of the development in Ontario of an expanded class action mechanism. The Commission is currently engaged in an in-depth study of this question. The British Columbia Law Reform Commission has also added the topic to its programme, but has deferred study pending completion of the Ontario Report. The Saskatchewan Law Reform Commission is studying class actions, in the context of its Consumer Credit Law Project, as a means of enforcing credit consumer rights.

3. *The Need for Uniformity*

Class action law is an area where uniform provincial legislation seems highly desirable. The type of mass injuries and claims to which the class action procedure is a response do not respect provincial boundaries. For example, the cars which are claimed to be defective in *Naken* v. *General Motors of Canada* were not sold only in Ontario, the jurisdiction where the litigation on their defects is taking place. Shareholders who suffer damages from a corporate crash, or tourists whose travel plans are scrapped because of a dishonest tour organizer, may come from every part of Canada.

The possibility of duplicative litigation is clearly something which no one would want to encourage. Just as the class action vehicle is designed to eliminate a multiplicity of litigation through combining claims, so also uniform legislation could serve to reduce the number of related suits in the various jurisdictions.

General Motors or other national industries should be able to expect that the legal ground rules under which they operate will be broadly identical across Canada or will not be significantly different for unnecessary reasons. A uniform class actions act would be more

efficient economically, would provide for the sharing of experiences in a new area of jurisprudence and could effectively deal with the problem of classes which draw their membership from a number of provinces. Economic and legal fragmentation in yet another area would be avoided and the need for possible federal legislation on the subject obviated.

4. *Legislative Policies in this Field*

4.1 Given the nature of the class action, its objectives and effects, it seems to the members of the Committee that no proposal for uniform legislation can be validly made unless there is agreement on certain principles on which the class action is to be founded, and without which there could scarcely be legislative reciprocity. These principles are not too many but their methods of application can give rise to multiple approaches. For that reason, we shall first identify the basic principles that could be retained and, secondly, we shall indicate other issues which will require further discussion.

4.2 *Basic Principles*

1. *Availability of the action:* The class action should extend to all fields of law; it should not be designed just for special sectors, although its application could be later restricted or particular rules developed to attenuate the effect of problems that arise only in certain fields.
2. *Accessibility of the action:* The class action should be accessible to every natural person who wishes to bring it in making application therefor. The action should ultimately be allowed in defence, although that is not a priority. Accessibility could be restricted as regards legal persons.
3. *Prior control:* A form of control should be exercised before the action can be brought. In view of the complexity inherent in an action of this type, its cost, and its effects on the parties or third parties, a mechanism should be set up to assess the relevance or seriousness of the action or the sufficiency of the grounds.

   Several modes of control can be envisaged; for example, the action could be subject to prior judicial leave, preliminary inquiry, strict legislative conditions, or Attorney General authorization or participation, or that of an agency.
4. *The right of opting out:* The class action may result from a desire by members to group themselves together and to

appoint one of their number to represent them, or it may originate through the action of a member who does not have a mandate from the rest of the members, other than an implicit one. To be efficient, the modern class action should, particularly in the sectors where the right concerned has become one of general application, or in those sectors treating of mass production, be based on the second premise. In that case, rules should then be provided to allow a person who is a member of the class to opt out. There next remains to be determined the mode of opting out and the time-limit allowed for doing so.

5. *Protecting absentee members' interests:* The very nature of the class action should require us to consider the establishment of several measures to protect the interests of the members of a class bound together in judgments without their being able to individually assert their claims. This situation should entail the making of rules relating to:
   - adequate representation of the members;
   - publishing of proceedings and judgments and also to the quality and flexibility of notices;
   - prescription in regard to actions;
   - intervention by the members or third parties;
   - the exercise of wider discretion by the courts on the admissibility of admissions, proof, transactions, interventions, etc. . . . ;
   - the authority of res judicata;
   - the equitable control of distribution of monies granted in judgments, "fluid" or individual.
6. *The effect of judgments:* The effect of judgments resulting from class actions should be binding on all the members, even absentee members, saving special provisions.
7. *Global assessment of damages:* The courts should have the right to make a global and fluid assessment of the monetary value of the damages they award. They should be empowered, therefore, in certain cases where they realize that individual distribution is impracticable, to order "fluid" recovery and, if need be, apply the "cy-près" doctrine.

4.3 *Particular Issues:* If agreement on the basic principles of the class action is reached, next we will have to proceed to an examination of the more specific issues which would permit us to

prepare a detailed report on the policies and possible solutions in this matter and, ultimately, to prepare a draft Uniform Act acceptable to the majority of the delegates. Among these specific issues we should address ourselves to are the following:

1. What criteria should there be for determining the existence of a class?
2. Must the class be divisible? Who can be a member of a class?
3. Who can be the representative? Intervenant?
4. Should attorney representation be compulsory?
5. How should action-related costs problems be settled?
6. What will be the role of Attorneys General in these actions? Must it be their prerogative to authorize the bringing of the action, intervene, or substitute themselves for the plaintiff?
7. Which courts should be empowered to try these actions? Can they be brought before administrative tribunals?
8. What special rules should be provided to ensure the orderly conduct of the trial?
9. What will be the prescription rules applicable to actions?
10. In what manner and under what circumstances can the courts proceed to make a global assessment of damages? Order "fluid" recovery?
11. If there is "fluid" recovery, in which cases should there be "fluid" or individual distribution? How are such distributions to be carried out?
12. If the judgment provides for individual claims, what rules should be adopted to ensure speedy, simple and equitable distribution?

5. *Conference Issues:*

5.1 It is the opinion of the Committee that uniform legislation on class actions is desirable and that the Uniform Law Conference is the appropriate vehicle to propose uniform legislation.

5.2 However, we think that a whole string of policy issues must be faced in the design of uniform class action legislation before drafting can actually commence and, it seems to us desirable that the Conference be provided with a full account of the approach which the Committee is taking.

5.3 There are certain practical problems, which will prevent the Committee from moving immediately to the formulation of a draft Uniform Act. Chief among these is the fact that three comprehensive reports are expected to be published during the next two years on the subject of class actions by the Australian Law Reform Commission, the American Bar Foundation and the Ontario Law Reform Commission.

5.4 In the light of these developments and of the lack of an actual broad consensus on the question of reform, the Committee feels that it would be somewhat premature to draft legislative proposals at this stage. However, we do feel that much useful work can be done to clarify the issues, to present policy options, and to stimulate interest on the subject of class actions within the Uniform Law.

5.5 Therefore, in the coming year, the Committee will continue to assess current experiences and the jurisprudence that will be available and also future amendments that may be adopted or proposed from time to time by some jurisdictions. The Committee will also prepare a policy paper for consideration by the Uniform Law Conference. It will thus be possible to obtain a consensus and will facilitate our task of drafting a uniform statute.

6. *Report on the Québec Experience*

6.1 It is still too soon for us to be in a position to make an overall judgment on the value of the Québec legislation regarding the class action. As of now, twenty-six applications for leave to exercise the class action have been presented: six are outstanding, ten were allowed, nine refused and one applicant withdrew. Two actions are at present in progress but eight appeals have been lodged from the decisions on the applications, five of which being on the decisions allowing the applications. However, only two decisions have been handed down by the Court of Appeal, but both quashed the judgments of the lower court which allowed the application.

These two decisions turned on the interpretation of the conditions for bringing the class action. They are matters to be watched as the Supreme Court of Canada has, in both cases, consented to have them referred to it. One of the cases is the Comité régional des usagers des transports en commun de Québec (Québec Regional Committee of Public Transport Users) v. la Commission des transports de la Communauté urbaine de Québec (Québec Urban Community Transport Commission), and the other is Robert Nault v. Canadian Consumer Co. Ltd.

6.2 As was to be expected, the main difficulties stem from the particular application of the various conditions for bringing the action. That means determination by the courts as to whether a class exists in deciding if the action of the members arises from identical, similar or related questions of law or fact; or again, consideration by the court as to whether or not the alleged facts appear to justify the conclusions sought; if the composition of the class makes the proceeding of action by mandate or the joinder of actions difficult or impractical; and finally, evaluation of the quality of the representation.

We can appreciate why the courts are still proceeding warily in their interpretation of these provisions, when that attitude is viewed in the light if the novelty of the class action.

7. *Recommendations*

The Committee asks the Conference:

1. that this report be adopted;
2. that the Committee's mandate be extended along the lines recommended in item 5.5 of this report.

The Committee per: Marie-José Longtin, Québec
Simon Chester, Ontario
Derek Mendes da Costa, Ontario
Ken Mackenzie, British Columbia

FOOTNOTES

[1] For example, *Shaw v Real Estate Board of Greater Vancouver* (1972), 29 D.L.R. (3d) 774 (B.C.S.C.); *Chastain v. British Columbia Hydro and Power Authority* (1972), 32 D.L.R. (3d) 443 (B C.S.C.); *Farnham v Fingold*, [1972] 3 O.R. 688 (C.A.); *Cobbold v Time Canada Ltd* (1976), 13 O R. (2d) 567, (subsequent trial decision of Carruthers, J , February 1, 1980, unreported); *Naken v General Motors of Canada Limited* (1979), 21 O.R. (2d) 780 (C.A.); *Prudential Assurance Co Ltd. v. Newman Industries Ltd.*, [1979] 3 All E.R. 507 (Ch.). It would now appear that class actions are no longer precluded simply on the grounds that the class members had entered into separate contracts with the defendant or that a claim for damages not involving individual assessment is involved.

[2] (1979), 21 O.R. (2d) 780 (C.A.).

[3] *Ibid.*, at pp. 784-85

[4] *Ibid.*, at pp. 793-95.

[5] See, for example, New York Civil Practice Law and Rules, McKinney's Consolidated Laws of New York, Book 7B, Article 9, sections 901-09; *Illinois Civil Practice Act*, Ill. Revised Statutes, c. 110, section 57.2-.7 (Smith Hurd, 1977 Supp.); Texas Rules of Practice, Rule 42; *Uniform Class Actions Act*, 12 Uniform Laws Annotated, 1979 Annual Pocket Part; Bill H.R. 5103, 96th Cong., 1st. Sess., originating with the Office for Improvements in the Administration of Justice of the U.S. Department of Justice.

[6] S.Q. 1978, c. 8. See also, an exposé: *The Québec Act respecting the Class Action* in Uniform Law Conference of Canada, Proceedings of the Sixtieth Annual Meeting (1978), p. 113.

[7] Law Reform Division, New Brunswick Department of Justice, *Third Report of the Consumer Protection Project* (1976), Vol. 1, at pp. 399 et seq.

[8] Bill C-42, *An Act to amend the Combines Investigation Act*, First Reading March 16, 1977, Second Session, Thirtieth Parliament; Bill C-13, *An Act to amend the Combines Investigation Act*, First Reading November 18, 1977, Third Session, Thirtieth Parliament.

APPENDIX J

(See page 29)

COMMERCIAL FRANCHISES

REPORT OF QUEBEC

INTRODUCTION

While the Committee on Uniform Franchising Legislation was facing problems which prevented any work since the last Conference held in Saskatoon last year, the Government of Québec passed an act aiming at the regulation of the granting of concessions and franchises. Indeed, on December 21, 1980, *Bill* 70, entitled *An Act to amend the*

Securities Act in its applicability to the contract of concession or of franchising, was assented to.

The Commission des valeurs mobilières du Québec, who is in charge of the application of the *Securities Act* (L.R.Q., chapter V-1) was invited to get involved in the activities of the present conference. At the request of the Commission, Mr. Gérald Lacoste, I would like to deliver to you the following report.

First, I will describe the main features of the Quebec legislation and will compare its approach with those of other legislation on franchising.

Then the benefits of uniform legislation will be discussed. Examples of subjects on which uniformity could be made will be mentioned.

My aim today is only to present a few basic elements upon which a committee on uniform franchising legislation could possibly carry on a deeper study and make proper recommendations.

It is obvious, however, that the opinions contained in the following are those of the undersigned only and do not bind in any way the Government of Québec, the Commission des valeurs mobilières du Québec or an eventual committee on franchising.

1.0 *The Law on Franchising*

1.1 *The Features of the Quebec Legislation*

Bill 70 extends the application of the *Securities Act* to the granting of concessions and of franchises. It amends the definition of "securities" in order to include "... a contract of concession or of franchising under which the concessionary or the franchisee obtains certain special rights respecting the operation of an undertaking."

Due to the present unavailability of proper regulations, *Bill 70* is not yet proclaimed in force[1].

Although the exact effect of *Bill 70* is not perceivable at this time because of the unavailability of the regulations, it is possible to ascertain the general approach that was followed by the Quebec legislator in order to protect the purchasers of concessions and of franchises. The result of *Bill 70* is to apply to contracts of concession or of franchising the mechanisms already provided by the *Securities Act*, namely: 1) registration of corporations and of individuals who offer securities to the public and 2) the compulsory transmission to prospective purchasers of a prospectus containing full, true and clear disclosure of all material facts relating to the security issued.

With the mean of registration, the Commission des valeurs mobilières du Québec will seek information on the firms who grant concessions and franchises. Registration must be obtained before offering concessions or franchises to the public and will be granted only if the firm and its directors and officers meet standards of competency, of solvency and of integrity. In the same way, salesmen employed by these firms and promoting in the public the sale of concessions and of franchises will have to meet similar standards.

The obligation for the firms to remit a prospectus to the prospective purchaser of a concession or of a franchise at least four days before the signing of the contract and before any payment will allow the purchaser to obtain essential information concerning the firm, its financial health and the rights and obligations of the parties to the contract.

By having access to this information and to a copy of the contract, the prospective purchaser will be in a better position to make a rational decision taking advices from experts if he wished, before entering the contract.

Of course, the Commission will previously review the content of the prospectus and of the other documents filed. It will ask the required explanations or modifications. When deemed necessary, it will hold investigations and lay charges.

The *Securities Act* is not only an act requiring disclosure. Like the equivalent security legislation in other provinces, it includes a "Blue sky law"[2] concept, imported from the American states legislation on investor's protection. In virtue of this "Blue sky law" concept, the Commission des valeurs mobilières du Québec can refuse to allow the sale of securities when one or some of the aspects of the investment is totally inacceptable, although the disclosure in the prospectus is sufficient. Technically, this authority is exercised by refusing the registration, the granting of which is at the discretion of the Director in virtue of section 32. The Commission will be able to use this mean if, for instance, a franchising contract contains unreasonable provisions, causing prejudice to the franchisee.

1.2 *Other Legislative Approaches*

1.2.1 *The Franchises Act (Alberta), (1971), C.38)*

Alberta is the only province, other than Quebec, who has legislated on franchising. Passed in 1971, Alberta's legislation is modelled on California's *Franchise Investment Act*, the first American legislation

ever enacted on franchising. Like Quebec's *Securities Act*, the Alberta legislation does not regulate the content of the contract. The latter remains the expression of the will of the parties. It is at the time of the execution of the contract that the legislator interpose itself by requiring the delivery of a prospectus. Registration is required for both franchisors (section 5) and salesmen.

A special feature of Alberta's act is that well-established franchisors, having a net worth of more than $5 000 000 (or of more than $1 000 000 in some cases) are entitled to an exemption from registration provided that they file a statement of material facts, which is a somewhat shortened prospectus.

Franchise agreements fall within the scope of Alberta's act only if franchise fees are charged, directly or indirectly, to the franchisee (section 1(1)6).

It should be observed finally that the franchisee has a right to withdraw from the agreement within the four days following the receipt of the prospectus or of the statement of material facts (section 34(2)); he also benefits from a right of rescission in case the prospectus or statement of material facts are false (section 35).

1.2.2 *Michigan Franchise Investment Law (Act No 269, Public Acts of 1974*

This act, in force since 1974 is similar in many respects to Alberta's legislation: it contains the same registration and prospectus requirements.

Michigan went further however by regulating the content of the contract itself. The intent was to prevent certain unfair practises imposed by franchisors to franchisees. Are aimed at more specifically clauses impairing with the franchisee's freedom of association and its territorial exclusivity or permitting the franchisor to terminate the franchise agreement without cause or to refuse the renewal of the agreement without reasonable compensation for the franchisee, except in certain circumstances.

1.2.3 *The Control of Franchisors Interpretation of the Franchise Agreement*

Franchise legislation can push further the protection of the franchisee and deal not only with the content of the franchising agreement but also with the application and the interpretation thereof. This approach was taken in 1971 by an Ontario committee on franchising[3].

This committee proposed the adoption of a legislation requiring the franchisor, among other things, to deal fairly with the franchisee, at all times before, during and upon the termination of the franchise. The franchisee would have had the faculty to apply to a tribunal for a determination of its right under the agreement.

Upon such hearing the franchisor would have had the burden to show that the contract is fair and that his dealings with the franchisee are equitable in the circumstances.

2.0 *Uniforming Franchising Legislation*

2.1 *Benefits From Uniform Legislation*

Time is now favourable for a policy of uniform franchising legislation. Only two provinces, Alberta and Quebec have passed legislation on franchising. Alberta is the only province having a specific act. It is conceivable that Quebec, after having acquired some experience on franchising under the Securities Act, may like to give itself a more specific and more elaborate legislation on franchising. It could then take into account proposals for uniform franchising legislation.

In addition, it seems that other provinces are considering franchise legislation. They could also benefit from the work of a committee on uniform franchising legislation.

There is no doubt that franchisors themselves, who often do business in more than one province, would view favorably the prospect of uniform franchising legislation. Franchisees also would benefit from uniform legislation as they would enjoy everywhere the same rights and the same protection.

2.2 *Subjects on Which Uniformity Could Rest*

Most of the American acts on franchising prescribes some kind of registration and the delivery of a disclosure document to the franchisee. These requirements can however apply in different ways depending on the States. It is probable that the legislation that Canadian provinces would enact would follow the same pattern. Here is consequently a few examples of subjects on which uniformity seems desirable.

2.2.1 *Form and Content of Prospectus*

Franchisors would benefit from being able to prepare a single prospectus which would be accepted in all the provinces where they do

business. In order to achieve this, form requirements of the prospectus must be the same in all provinces and content requirements must be compatible in all provinces.

In United States the proliferation of State legislation on franchising led the authorities to develop rules permitting the presentation of same document in many States. the UFOC[4] and Federal Trade Commission rules[5] are the result of these efforts for greater uniformity.

2.2.2 *Rights Related to the Prospectus*

The time for delivery of the prospectus to the prospective franchisee should be the same in all jurisdictions. The lapse of time during which the franchisee can withdraw from the contract should be uniform. In case of false prospectus the same right of rescission should be given to franchisees everywhere.

2.2.3 *Kind of Agreement Subject to the Law*

In franchising legislation, definitions are necessary because of the recent development of the concept. Many acts (as the Alberta legislation) regulate only franchises for which franchise fees are charged to the franchisees. The Quebec act does not make such a distinction.

2.2.4 *Exemptions from Registration*

Virtually all legislations contain some exemptions from registration. These exemptions refer to situations where the risk borne is negligible or where the purchaser is deemed to be so sophisticated that he does not need the protection conferred by the legislation. Many different criteria, however, can be used to identify such situations. Some kind of uniformity among those criteria seems preferable.

These criteria can be:

- the size of the franchisor: franchisees would have a lesser need of protection when they deal with well-established firms;
- The franchise fees charges to the franchisee: if they are very small, there is little risk involved; if they are very important, the franchisee could very well be a sophisticated purchaser;
- the investment required from the franchisee: if it is very small, there is little risk involved; if the investment is substantial, the franchisee may very well be a sophisticated purchaser;
- the fact that the franchise consist in a business accessory to the present business of the franchisee: the risk involved should be smaller in view of the experience of the franchisee.

Conclusion

Franchising having developed to a great extent in Canada during the recent years, one can expect that more and more provinces will decide to legislate in that field, in the same way that it happened in United States. The unbalance in bargaining power between the franchisor and the franchisee is too often detrimental to the latter.

Various approaches can be considered in franchising legislation. These approaches do not exclude themselves mutually. A single act can include more than one approach.

Uniformity should first be considered at the level of these basic principles.

Taking for granted that the disclosure and registration approach would be retained, I gave a few examples of subjects on which uniformity looks desirable.

These examples are in no way exhaustive and a committee on franchising could very well identify many others.

So far as I am concerned, my only hope is that this too short survey of franchising legislation will be of some usefulness to those who are interested in the subject of uniform franchising legislation.

Alain Fredette
Lawyer
Commission des valeurs mobilières
du Québec

FOOTNOTES

1 Draft regulations have been recently presented however to the Ministre des Consommateurs, Coopératives et Institutions financières
2. See on this concept: Johnston, David L., *Canadian Securities Regulation*, Butterworths, Toronto, p. 158
3. Report of the Minister's Committee on Franchising ("Grange Report"), Department of Financial and Commercial Affairs, Ontario, July 1971, p. 62.
4 Midwest Securities Commissioners Association, Committee on Uniform Franchise Regulation, *Guidelines for preparation of the Uniform Franchise Offering Circular and related Documents*, October 1, 1977.
5. Federal Trade Commission, *Disclosure Requirements and Prohibitions Concerning Franchising and Business Opportunity Ventures; Promulgation of Final Interpretive Guides* 16 CFR 436, Federal Register, Volume 44, No. 66, August 24, 1979, Rules and Regulations

APPENDIX K

(See page 29)

COMPANY LAW

Report of the Committee

In 1979, the Report was submitted by Mr. Gaudry from Québec, Mr. Walker from Nova Scotia and Mr. Moore from Prince Edward Island.

This year again, the Report will be presented in two parts, one bearing on the changes that have been brought to Québec legislation and the other on the changes that have been brought to the legislation of the common law jurisdictions of Canada.

Part I — Legislative Changes in Québec Company Law

No changes have been brought to the *Québec Companies Act* since the coming into force on the 30th of January 1980 of the amendments that had been adopted during the month of June 1979.

However, the Government is currently drawing up further modifications that should be introduced before the National Assembly in the Fall of 1980 respecting the following points:

- the purchasing of shares by a company;
- company amalgamations;
- pre-incorporation contracts;
- the possibility for private companies to dispense with an auditor;
- the possibility for a company to assume the defence of an administrator against whom a third party has taken legal action concerning the discharge of the administrator's duties, provided no serious fault has been committed;
- shareholders' unanimous agreement;
- the revision of the mechanisms by which the company's solvency is ensured when there is a reduction of capital;
- the achievement of greater flexibility with regard to the continuance and control procedures concerning corporate names.

On the other hand, the revision of the Companies Law has been proceeding at an accelerated pace. The *Civil Code* and the federal law as well as other pieces of recent Canadian legislation containing

innovative material should prove an extremely worthwhile source of inspiration.

Part II—Legislative Changes in Common Law Jurisdictions

The purpose of this Part of the Report is to review activities and legislative changes that have occurred in the various common law jurisdictions in Canada in the past year in relation to company law.

NEWFOUNDLAND

As stated in the Reports for 1978 and 1979, the Minister of Justice in June of 1978 presented a paper entitled "Proposals for a new Company Law for Newfoundland" and stated that the Government would like to have the views of business, the legal profession, accountants and other members of the public on the proposals as submitted. Since that time the Department of Justice has been receiving briefs and comments on that report but no legislation has been introduced to implement it. In addition no other changes in company law have been passed with the exception of some minor housekeeping amendments passed in late 1979.

NEW BRUNSWICK

While no legislation has been enacted in the past year, the Speech from the Throne at the beginning of the 1980 Session indicated the possible introduction of a new *Companies Act.*

PRINCE EDWARD ISLAND

Amendments were made in the past year to the *Companies Act* concerning matters which are to be disclosed by provincially incorporated companies in their annual return. These expanded disclosure requirements relate mainly to landholdings of and shareholdings in provincially incorporated companies. In addition changes have been made in other legislation respecting the acquisition and ownership of land by corporations.

NOVA SCOTIA

In the Spring of 1980 amendments were made to the *Companies Act* to set out in the *Act* rights of shareholders in specific terms where a company transfers its corporate status from federal jurisdiction to provincial jurisdiction. In addition a *Venture Corporations Act* was passed respecting the establishment, operation and encouragement of Nova Scotia venture corporations which are to provide assistance to operations engaged in prescribed business activities.

ONTARIO

A new *Limited Partnerships Act* which is similar in many ways to that of Alberta has been introduced.

A draft of a complete revision of the Ontario *Business Corporations Act* has been prepared and circulated to the public in December of 1979. Based on the comments received a revision of this draft Act is being prepared.

Finally, amendments were made in the past year to *The Corporations Act* in relation to mutual insurance companies.

MANITOBA

At the time of writing this Report no amendments relating to uniformity of company law had been enacted in the past year. In addition any amendments to company legislation due to be introduced in the Spring 1980 Session will be of a minor "housekeeping" nature.

SASKATCHEWAN

In the past year no new legislation respecting companies has been enacted. However, the *Non-profit Corporations Act*, which is the successor to the *Societies Act*, was proclaimed in force on October 1st, 1979 with the exception of two provisions. The first provision requires the filing of a petition by incorporators under the *Act*. The second provision deems a standard set of by-laws to be the by-laws of a corporation unless modified.

ALBERTA

In the past year amendments have been made to the *Companies Act* to authorize the Securities Commission to exempt a company from the requirements that normally apply if it wants to purchase its own shares. The remaining amendments to the *Act* were of a "housekeeping" nature. Amendments have also been made to the *Societies Act* adopting the definitions of "director" and "special resolution" used in the *Companies Act*. In addition a society must maintain a register of members open to the inspection of its members. Finally, amendments have been made to the *Trust Companies Act* relating to conditions of amalgamation of trust companies and to investments by trust companies.

The special committee referred to in last year's report which was organized to study and propose revision of Alberta's company law has made its report to the Goverment.

BRITISH COLUMBIA

No legislation has been enacted in the past year respecting company law. However it should be noted that at the time of writing this report, *Bill 10* had been introduced into the Legislature of British Columbia. This Bill proposes changes in company law only of a "housekeeping" nature.

The Policy, Legislation and Program Planning Branch in the Ministry of Consumer and Corporate Affairs referred to in last year's Report is continuing its examination of company legislation with a view to promoting uniformity, simplification and deregulation. Examples of some of the areas under study are personal property security legislation, trust company legislation, co-operative association legislation and securities legislation.

NORTHWEST TERRITORIES

There have been no amendments made to the *Companies Ordinance* in the past year, although there have been some changes to regulations respecting fees payable on incorporation of a company under the *Ordinance*..

YUKON

Certain amendments were made to the *Companies Ordinance* in the Spring of 1980, to come into effect on July 1, 1980. These amendments are of a "housekeeping" nature with the exception of one amendment authorizing continuation of a company incorporated in another jurisdiction as a company incorporated under the Yukon *Companies Ordinance.*

A *Personal Property Security Ordinance* is planned for introduction in the Fall of 1980. This will replace provisions in the *Companies Ordinance* and in the *Corporation Securities Registration Ordinance.*

CANADA

Bill C-10 introduced at the Spring 1980 Session of Parliament proposes a *Canada Non-Profit Corporations Act* This Act is similar to the *Saskatchewan Non-Profit Corporations Act* which was proclaimed into force on October 1, 1979. Other than this no amendments to company legislation have been introduced or enacted in the past year.

HUBERT GAUDRY
for the Quebec Commissioners

GRAHAM D. WALKER, Q.C.
for the Nova Scotia Commissioners

RAYMOND MOORE
for the P.E.I. Commissioners

August 1980

APPENDIX L

(See page 30)

ENACTMENTS OF AND AMENDMENTS TO UNIFORM ACTS 1979-80

REPORT OF MR. BALKARAN

Assignment of Book Debts Act

Saskatchewan repealed its *Assignment of Book Debts Act.* Alberta amended its *Assignment of Book Debts Act* by repealing the section dealing with postponement of assignments.

Bills of Sale Act

Saskatchewan repealed its *Bills of Sale Act*

Conditional Sales Act

Saskatchewan repealed its *Conditional Sales Act.*

Condominium Insurance Act

We received from the Yukon Territory a list of Ordinances passed by the Territory. The *Condominium Ordinance* is shown as enacted by them; unfortunately we were unable to ascertain whether their Ordinance related to condominium insurance.

Contributory Negligence Act

Manitoba amended its *Tortfeasors and Contributory Negligence Act (Uniform Contributory Negligence Act)* by repealing section 5 thereof. That section required a guest passenger in an automobile, who suffered damages as a result of a traffic accident involving the automobile, to prove gross negligence against the owner or operator of the automobile. As a result of this repeal, a guest passenger need only establish ordinary negligence to succeed in his action for damages.

Criminal Injuries Compensation Act

British Columbia amended its *Criminal Injuries Compensation Act* to provide for inflation indexing of awards by a reference to a provision in the *Workmen's Compensation Act.*

New Brunswick amended its *Compensation of Victims of Crime Act* to require application to be made in the first instance to the Minister and to permit the Minister to direct that compensation be paid where he is satisfied that a hearing is unnecessary. This amendment deletes the requirement that a copy of the application be served on the Minister along with notice of hearing. The Minister would already have received the application. The Minister is authorized to file a certificate with the Court to recover the amount paid as compensation without conducting a suit. This would only apply where the person against whom the certificate was issued was given notice of the proceedings.

The *Act* was amended (under the *Child and Family Services and Family Relations Act)* to define a child as including a stepchild, a child *en ventre sa mere* and a child with respect to whom a parent stands in *loco parentis.*

Defamation Act

Alberta and Manitoba amended their *Defamation Acts* by passing the Conference amendment adopted in Saskatoon last year.

The amendment adopted by the Conference was as a result of the Supreme Court's decision in the "Cherneskey" case in which the Court held that in order for a newspaper to rely on the defence of fair comment it was necessary for the newspaper to show that it agreed with the opinions expressed in any letter published by the newspaper.

Manitoba also re-enacted its definition of "broadcasting" to include references to broadcasting by cable, wires, signs, symbols, pictures and sounds of any kind.

New Brunswick and the Northwest Territories amended their *Defamation Acts* to overrule the decision in *Cherneskey v. Armadale Publishers,* (1979) 1 S.C.R. 1067 in which the defence of fair comment was held not to be available to the publisher of a letter to the editor where the publisher did not hold the opinion expressed in the letter.

Dependents' Relief Act

New Brunswick repealed its Parents Maintenance Act (under the *Child and Family Services and Family Relations Act.*).

Evidence Act

Alberta amended its *Evidence Act* to provide that where a party to a legal proceeding intends to call more than three expert witnesses that

party may now apply to the court for leave to call those witnesses at any time prior to or during the trial of the action.

Manitoba amended its *Manitoba Evidence Act* to provide that no witness in any proceedings, whether a party thereto or not, shall be excused from answering any question that might tend to show that he has been guilty of adultery.

New Brunswick amended its *Evidence Act* to authorize the court to order an independent medical examination, by one or more legally qualified medical practitioners, of a party to a civil proceeding where the physical or mental condition of that party is in issue in the proceeding. The procedure for the examination and preparation of a report with respect to the examination is established. This amendment applies also to a medical examination conducted by the consent of the parties.

The *Act* was also amended to provide that where an expert witness is to be called in a civil proceeding, a report signed by the expert, or the solicitor for the party calling the expert, outlining the expert's identity, qualification and testimony, must be served on all parties and delivered to the trial judge.

The amendment also provides for the examination of expert witnesses before the trial of a civil proceeding. The examination may be recorded by videotape or other similar means in addition to or in substitution for a typewritten transcript. The transcript, videotape or other means of recording such evidence may be offered in evidence at the trial, and the expert shall not be called to give evidence at the trial except with leave of the trial judge or unless the trial judge requires his presence.

As well, the amendment provides for the admission into evidence of a medical report, without proof of the signature or qualifications of the medical practitioner who prepared the report, where notice of the intention so to do and a copy of the report have been delivered to every party, unless a party requires the attendance at trial of that medical practitioner. Where the court is of the opinion a medical practitioner was unnecessarily called to give oral evidence, the court may order the party who required his attendance to pay the costs of the attendance.

The *Act* was also amended (under the *Child and Family Services and Family Relations Act)* to allow a husband or wife, in an action, matter or any proceeding in any court, to give evidence that he or she did not have sexual intercourse with the other party to the marriage at any time, or within any period of time, before or during the marriage.

Nova Scotia enacted sections similar to sections 15 and 22 of the *Uniform Evidence Act* to deal with the reception of evidence of a child of tender years in a legal proceeding.

Extra-Provincial Custody Orders Enforcement Act

New Brunswick repealed its *Extra-Provincial Custody Orders Enforcement Act* (under the *Child and Family Services and Family Relations Act)* and has included similar provisions in the latter Act.

Fatal Accidents Act

The Yukon Territory indicated on its list submitted to us that it adopted the *Fatal Accidents Ordinance.* There was no indication as to whether it was a new ordinance, although it appears from a perusal of Table IV on page 417 of the 1979 Proceedings that it is likely a new ordinance.

Manitoba amended its *Fatal Accidents Act* to allow the inclusion in damages awarded an amount for the loss of guidance, care and companionship that a deceased person, if he had lived, might reasonably have expected to give to any person for whose benefit the action was brought.

Frustrated Contracts Act

The Yukon Territory enacted the *Frustrated Contracts Ordinance,* although from the information supplied to us it was not clear if it was new or an amendment. Table IV aforesaid indicates that the Yukon Territory adopted a *Frustrated Contracts Ordinance* in 1956. Presumably the *Ordinance* enacted is an amendment to the *Frustrated Contracts Ordinance* adopted by it in 1956.

Human Tissue Act

Another ordinance enacted by the Yukon Territory was the *Human Tissue Gift Bill Ordinance.* It would appear from Tabel IV (already referred to earlier) that it is a new ordinance.

Interpretation Act

New Brunswick amended its *Interpretation Act* to define "issue" to mean the lineal descendants of the ancestor.

Interprovincial Subpoenas Act

Ontario enacted the *Uniform Interprovincial Subpoenas Act* with no modifications.

Legitimacy Act

New Brunswick repealed its *Legitimation Act* (under the *Child and Family Services and Family Relations Act*).

Limitation of Actions Act

Manitoba amended *The Limitation of Actions Act* to conform largely with the recommendations of The Manitoba Law Reform Commission to provide for extension of the limitation period for children and disabled persons and to state that any period of time during which a person entitled to bring an action of any kind is under a disability shall not be included in calculating the time within which the action is required to be brought.

Provision is made for a person against whom a person under a disability might have a right of action to give a notice to the person under the disability to commence his action, in which case, time will commence to run against the person under the disability from the date the notice is given.

The court may on application extend the time for commencing or continuing an action if it is satisfied that not more than 12 months have elapsed between the date on which an applicant first knew or ought to have known all the material facts of a decisive nature upon which the action is based and the date on which the application was made to the court.

The limitation period in any event expires after 30 years from the date that the cause of action arose.

Married Women's Property Act

New Brunswick repealed section 7 of the *Married Women's Property Act.*

Occupiers' Liability Act

Ontario enacted the *Occupiers' Liability Act* in principle except that its *Act* provides for a lower standard of care with respect to trespass and land use for recreational purposes with permission.

Partnership Registration Act

New Brunswick amended its *Partnership Registration Act* by changing the name to include references to business names; Minister and register were defined; the definition "Proper Office" was repealed as it applied to the old system of registration in registry offices;

the definition "registered" is repealed as being unnecessary; and the definition "registration district" applies to the old system of registration in registry offices. The amendments allow the Minister to designate a person to be registrar of partnerships and business names.

The amended *Act* will apply to all partnerships, except limited partnerships, and all persons carrying on business in the province.

Members of a firm carrying on business in the province, in addition to registering a certificate of partnership, will be required to register a certificate of renewal every five years.

A certificate of dissolution of partnership will be required to be registered. The existing provision does not make specific reference to the registration requirement.

The amendment prescribes the contents of certificates which will, in the amended provisions, be prescribed by regulation, and requires the registration of a certificate where a person ceases to carry on business in a name registered under the Act, and requires the registration of a certificate of renewal with respect to any certificate of business name registered under the *Act* where the person continues to carry on business.

A person doing business outside the province may register a certificate of business name and, when he does so, shall be deemed to be a person required to register a certificate of business name so that all relevant provisions of the *Act* will apply to him.

Certificates registered under the *Act* prior to these amendments shall be deemed to be registered in accordance with the *Act*. This is a transitional provision.

The registrar is responsible for establishing and maintaining a register of partnerships and business names.

Perpetuities Act

The Yukon Territory enacted the *Perpetuities Ordinance* which would appear to be an amendment since it adopted a *Perpetuities Ordinance* in 1968.

Personal Property Security Act

Saskatchewan adopted the *Uniform Personal Property Security Act* with some modifications.

Powers of Attorney Act

Manitoba enacted the *Uniform Powers of Attorney Act* with minor modifications. It provides for the operation of a power of attorney with respect to property owned by the donor at the time of the execution of the power of attorney as well as property acquired by the donor after the execution of the power. Provision is also made for the power of attorney to endure notwithstanding the subsequent mental infirmity of the donor.

Ontario adopted a *Powers of Attorney Act* which is the same as the Uniform Act in principle although the language is somewhat different.

Presumption of Death Act

The Yukon Territory enacted a *Presumption of Death Ordinance.* Table IV referred to earlier indicates that the Territory enacted the *Presumption of Death Act* in 1962. Hence, it would appear that the *Ordinance* enacted by the Yukon Territory was an amendment of the *Presumption of Death Ordinance* enacted by them in 1962.

Proceedings Against the Crown Act

Alberta amended the *Proceedings Against the Crown Act.* This was a consequential amendment to their *Corporate Income Tax Act.*

Reciprocal Enforcement of Maintenance Orders Act

Alberta and the Yukon enacted the *Reciprocal Enforcement of Maintenance Orders Act.*

Regulations Act

New Brunswick amended its *Regulations Act* to authorize the Registrar of Regulations to publish an edition of the regulations in loose leaf form to be known as the *Consolidated Regulations of New Brunswick.*

This amendment authorizes a system for numbering regulations including the *Consolidated Regulation of New Brunswick* and for citing a regulation. The existing numbering and citation systems will be retained for annual regulations that are not included in the *Consolidated Regulations.*

This amendment clarifies that regulations published by the Registrar of Regulations are to be printed by the Queen's Printer.

Trustee (Investments) Act

The Yukon Territory enacted a *Trustee Ordinance* but from the information submitted to us it is not clear if it refers to the *Uniform Trustee (Investments) Act.*

Warehousemen's Lien Act

Saskatchewan amended their *Warehousemen's Lien Act* to bring the terminology in that *Act* in line with the provisions of their *Personal Property Security Act.*

Note: At the time this report was compiled, we did not have time to contact Quebec and the Northwest Territories

APPENDIX M

(See page 30)

UNIFORM FAMILY SUPPORT OBLIGATIONS ACT

(As adopted by the Conference: 1980 Proceedings, page 30)

Interpretation **1.** In this Act

(*a*) "child" means a person who is the child of a parent by birth, whether within or outside marriage, or by virtue of (*the provisions relating to the effect of adoption*) and includes a person whom the parent has demonstrated a settled intention to treat as a child of his or her family other than under an arrangement where the child is placed for valuable consideration in a foster home by a person having lawful custody;

(*b*) "court" means (*Insert appropriate court or courts*);

(*c*) "dependant" means a person to whom another has an obligation to provide support under this Act;

(*d*) "domestic contract" means a marriage contract or separation agreement;

(*e*) "order for support" or "order for the support of a dependant" means an order made in proceedings under sections 5, 11 or 12 and an order for maintenance or alimony made before the coming into force of this Act;

(*f*) "parent" means the father or mother of a child by birth, whether within or outside marriage, or by virtue of (*the provisions relating to the effect of adoption*) and includes a person who has demonstrated a settled intention to treat a child as a child of his or her family other than under an arrangement where the child is placed for valuable consideration in a foster home by a person having lawful custody;

(*g*) "spouse" means either of a man and woman,

(i) who are married to each other,

(ii) who are married to each other by a marriage that is voidable and has not been voided by a judgment of nullity,

notwithstanding that the marriage is actually or potentially polygamous if the marriage was celebrated in a jurisdiction whose system of law recognizes the marriage as valid,

(iii) who have gone through a form of marriage with each other, in good faith, that is void and are cohabiting or have cohabited within the preceding year,

(iv) who, not being married to each other and not having gone through a form of marriage with each other, have cohabited in a relationship of some permanence, or

[*Subparagraph (iv) to be enacted at the option of each jurisdiction.*]

(v) between whom an order for support has been made under this Act or an order for alimony or maintenance has been made before the coming into force of this Act.

Obligation of spouses for support

2. Every spouse has an obligation to provide support for himself or herself and for the other spouse, in accordance with need, to the extent that he or she is capable of doing so.

Obligation of parent to support child

3. Every parent has an obligation, to the extent the parent is capable of doing so, to provide support, in accordance with need, for his or her child who is a minor and unmarried.

Obligation of child to support parent

4. Every child who is not a minor has an obligation to provide support, in accordance with need, for his or her parent who has cared for or provided support for the child, to the extent that the child is capable of doing so.

Order for support

5. (1) A court may, upon application, order a person to provide support for his or her dependants and determine the amount thereof.

Applicants

(2) An application for an order for the support of a dependant may be made by the dependant or a parent of the dependant or under subsection (4).

Capacity of minors

(3) A minor who is a spouse has capacity to commence, conduct and defend a proceeding under this Act without the intervention of a next friend or guardian *ad litem* and to give any consent required or authorized for the purpose.

Application by social agency

(4) An application for an order for the support of a dependant who is a spouse or a dependent child of the spouse may be made by the Ministry of (*insert appropriate social service Ministry*) in the name of the Minister or a municipal corporation if the Ministry or municipality is providing a benefit under (*insert appropriate Act for general welfare allowances*) in respect of the support of the dependant.

Idem

(5) An application for an order for the support of a spouse, who has not gone through a form of marriage with the other spouse, shall be made during cohabitation or not later than three months after the cohabitation has ceased.

Setting aside domestic contract

(6) The court may set aside a provision for support in a domestic contract or in a paternity agreement referred to in section 26 and may determine and order support in an application under subsection (1), notwithstanding that the contract or agreement contains an express provision excluding the application of this section,

(*a*) where the provision for support or the waiver of the right to support results in circumstances that are unconscionable;

(*b*) where the provision for support or the waiver of the right to support is in respect of a person who qualifies for an allowance for support out of public money; or

(*c*) where there has been default in the payment of support under the contract or agreement and the payment or a portion thereof is outstanding when the court considers the application,

and where an order is made under this subsection, the order terminates the support provisions in the domestic contract or paternity agreement.

Determination of amount

(7) In determining the amount, if any, of support in relation to need, the court shall consider all the circumstances of the parties, including,

(*a*) the assets and means of the dependant and of the respondent and any benefit or loss of benefit under a pension plan or annuity;

(*b*) the capacity of the dependant to provide for his or her own support;

(*c*) the capacity of the respondent to provide support;

(*d*) the age and the physical and mental health of the dependant and of the respondent;

(*e*) the length of time the dependant and respondent cohabited;

(*f*) the needs of the dependant, in determining which the court may have regard to the accustomed standard of living while the parties resided together;

(*g*) the measures available for the dependant to become financially independent and the length of time and cost involved to enable the dependant to take such measures;

(*h*) the legal obligation of the respondent to provide support for any other person;

(*i*) the desirability of the dependant or respondent remaining at home to care for a child;

(*j*) the conduct of the dependant and respondent;

(*k*) a contribution by the dependant to the realization of the career potential of the respondent;

(*l*) where the dependant is a child, his or her aptitude for and reasonable prospects of obtaining an education;

(*m*) where the dependant is a spouse, the effect on his or her earning capacity of the responsibility assumed during cohabitation;

(*n*) where the dependant is a spouse, whether the dependant has undertaken the care of a child who is of the age of majority and unable by reason of illness, disability or other cause to withdraw from the charge of his or her parents;

(*o*) where the dependant is a spouse, whether the dependant has undertaken to assist in the continuation of a program of education for a child who is of the age of majority and unable for that reason to withdraw from the charge of his or her parents;

(*p*) where the dependant is a spouse, any housekeeping, child care or other domestic service performed by the spouse for the family; and

(*q*) any other legal right of the dependant to support other than out of public money.

Refusal to make order

(8) Where a dependant claims the obligation of the respondent to provide support arises under section 2 (obligation to support spouse), the court may refuse to make an order to provide support where, at the time of the bringing of the application, the dependant has married or remarried or has entered into a course of conduct that is so unconscionable as to constitute an obvious and gross repudiation of the relationship.

Powers of court

6. (1) In an application under section 5 the court may order

(*a*) an amount payable periodically, whether annually or otherwise and whether for an indefinite or limited period, or until the happening of a specified event;

(*b*) a lump sum to be paid or held in trust;

(*c*) any specified property to be transferred to or in trust for or vested in the dependant, whether absolutely, for life or for a term of years;

(*d*) where other provision for shelter is inadequate or where it is in the best interest of a child to do so, that a spouse have a right to possession of a residence to which the other spouse is entitled, upon such terms and for such period as the court considers appropriate;

(*e*) that all or any of the money payable under the order be paid into court or to any other appropriate person or agency for the benefit of the dependant;

(*f*) the payment of support to be made in respect of any period before the date of the order;

(*g*) the payment to an agency referred to in subsection 5(4) of any amount in reimbursement for a benefit or assistance referred to therein, including an amount in reimbursement for such benefit or assistance provided before the date of the order;

(*h*) the payment of expenses in respect of the prenatal care and birth of a child;

(*i*) that the obligation and liability for support continue after the death of the respondent and be a debt of his order or her estate for such period as is fixed in the order;

(*j*) that a spouse whose life is insured assign the policy of life insurance, if it is not otherwise assigned, to the other spouse;

(*k*) that a spouse whose life is insured designate the other spouse or a child as the beneficiary irrevocably;

(*l*) that a spouse pay premiums on an insurance policy which provides protection for the other spouse or a child; and

(*m*) the securing of payment under the order, by a charge on property or otherwise.

Incorporation of contract in order

(2) Any matter provided for in a domestic contract may be incorporated in an order made under this section.

Effect of subsequent order for dependant's relief

(3) An order made under this section that provides that the obligation and liability for support continue after the death of the respondent is subject to any subsequent order for support out of the estate of the deceased respondent made under (*insert appropriate Act that provides for dependant's relief*).

Interim orders

(4) Where an application is made under section 5, the court may make such interim order as the court considers appropriate.

Assignment of support

(5) An order for support is assignable to an agency referred to in subsection 5(4).

Object of court

7. Where practicable, the court shall exercise its jurisdiction under this Act so as to encourage the dependant to achieve financial independence.

Effect of divorce proceedings

8. (1) Where an action for divorce is commenced under the *Divorce Act* (Canada), any application for support under this Act that has not been determined is stayed except by leave of the court.

Idem

(2) Where a marriage is terminated by a decree absolute of divorce or judgment of nullity and the question of support was not judicially determined in the divorce or nullity proceedings, an order for support made under this Act continues in force according to its terms.

Absconding respondent or debtor

9. Where an application is made under section 5 and a judge of the (*insert appropriate court*) is satisfied that the respondent or debtor is about to leave (*insert jurisdiction*) and that there are reasonable grounds for believing that the respondent intends to evade his or her responsibilities under this Act, the judge may issue a

warrant in the form prescribed by the rules of the court for the arrest of the respondent or debtor.

Restraining orders

10. In or pending an application under section 5 or appearance to a notice under section 17, or where an order for support has been made, the court may make such interim or final order as it considers necessary for restraining the disposition or wasting of assets that would impair or defeat the claim or order for the payment of support.

Domestic contract or paternity agreement

11. Any person who is obligated to pay support under a domestic contract or under a paternity agreement referred to in section 26 may apply to the court to set aside the provision for support in the contract or agreement, and where the court is satisfied that,

(*a*) requiring the person to continue to pay support under the terms of the contract or agreement would be unconscionable; or

(*b*) the person obligated under the contract or agreement qualifies for support out of public money,

the court may set aside the provision for support in the contract or agreement and determine and order support in accordance with this Act in the same manner and subject to the same considerations as apply in the case of an application made under section 5, and where an order is made under this section the order terminates the support provisions in the contract or agreement.

Review and variation of orders

12. (1) Where an order for support has been made or confirmed and where the court is satisfied,

(*a*) that there has been a material change in the circumstances of the dependant or the respondent;

(*b*) that the dependant has not taken reasonable steps that are available to improve self-sufficiency;

(*c*) that, where the obligation to provide support arises under section 2 (obligation to support spouse), the dependant has entered into a course of conduct that is so unconscionable as to constitute an obvious and gross repudiation of the relationship; or

(*d*) evidence has become available that was not available on the previous hearing,

the court may, upon the application of any person named in the order or the personal representative of the person

named in the order or a person referred to in subsection 5(4),

(*e*) discharge, vary or suspend any term of the order, prospectively or retroactively;

(*f*) relieve the respondent from the payment of part or all of the arrears or any interest due thereon;

(*g*) order that the assignment of a policy of life insurance to a spouse be revoked;

(*h*) order that an irrevocable designation of a beneficiary under a policy of life insurance be revoked; and

(*i*) make such other order under section 6 as the court considers appropriate in the circumstances referred to in section 5.

Court

(2) An application under subsection (1) shall be made to the court that made the order or to a coordinate court in another part of (*insert jurisdiction*).

Limitation on applications for review

(3) No application under subsection (1) shall be made within six months after the making of the order for support or the disposition of any other application under subsection (1) in respect of the same order, except by leave of the court.

Existing orders

(4) This section applies to orders for maintenance or alimony made before this section comes into force or in a proceeding commenced before this section comes into force.

Financial statements

13. (1) Where an application is made under section 5, 11 or 12, each party shall file with the court and serve upon the other a financial statement in the manner and form prescribed by the rules of the court.

Waiver of financial statements

(2) Where the parties consent in writing, the financial statement mentioned in subsection (1) need not be filed and served.

Order for sealing statement

(3) Where, in the opinion of the court, the public disclosure of any information required to be contained in a statement under subsection (1) would be a hardship on the person giving the statement, the court may order that the statement and any cross-examination upon it before the hearing be treated as confidential and not form part of the public record.

Access to records

14. Where it appears to a court that, for the purpose of

(*a*) bringing an application under this Act; or

(*b*) for the purpose of the enforcement of an order for support, alimony, or maintenance enforceable in (*insert jurisdiction*),

the proposed applicant or person in whose favour the order is made has need to learn or confirm the name and address of the employer or the whereabouts of the proposed respondent or person against whom the order is made, the court may order any such person or public agency to provide the court with such particulars thereof as are contained in the records in its custody or control and the person or agency shall provide to the court such particulars as it is able to provide.

Section binds Crown

(2) This section binds the Crown.

Order for return by employer

15.—(1) In an application under section 5, 11 or 12 or a proceeding under section 17, the court may order the employer of a party to the application or the debtor, as the case may be, to make a written return to the court showing the wages or other remuneration resulting from the employment of the party or debtor over the preceding twelve months.

Return as evidence

(2) A return made under subsection (1) purporting to be signed by the employer may be received in evidence as *prima facie* proof of its contents.

Section binds Crown

(3) This section binds the Crown.

Provisional orders

16.—(1) Where an application is made under section 5, 11 or 12 in a court and,

(*a*) the respondent in the application fails to appear;

(*b*) it appears to the court that the respondent resides in a locality in (*insert jurisdiction*)that is outside the territorial jurisdiction of the court; and

(*c*) in the circumstances of the case, the court is of the opinion that the issues can be adequately determined by proceeding under this section,

the court may proceed in the absence of the respondent and without the financial statement of the respondent required by section 13 and in place of a final order may make an order for support that is provisional only and the

order has no effect until it is confirmed by the court in the locality in which the respondent resides.

Transmission for hearing

(2) Where a provisional order is made under subsection (1), the court making the order shall send to the court having jurisdiction in the locality in which the respondent resides copies of such documents and records, certified in such manner, as are prescribed by the rules of the court.

Show cause

(3) The court to which the documents and records are sent under subsection (2) shall cause them to be served upon the respondent together with a notice to file with the court the financial statement required by section 13 and to appear and show cause why the provisional order should not be confirmed.

Confirmation of order

(4) At the hearing, the respondent may raise any defence that might have been raised in the original proceedings, but, if on appearing the respondent fails to satisfy the court that the order ought not to be confirmed, the court may confirm the order without variation or with such variation as the court considers proper having regard to all the evidence.

Adjournment for further evidence

(5) Where the respondent appears before the court and satisfies the court that for the purpose of any defence or for the taking of further evidence or otherwise it is necessary to remit the case to the court where the applicant resides, the court may so remit the case and adjourn the proceedings for that purpose.

Where order not confirmed

(6) Where the respondent appears before the court and the court, having regard to all the evidence, is of the opinion that the order ought not to be confirmed, the court shall remit the case to the court that made the order together with a statement of the reasons for so doing, and in that event the court that made the order may dispose of the application in such manner as it considers proper.

Certificates as evidence

(7) A certificate certifying copies of documents or records for the purpose of this section and purporting to be signed by the clerk of the court is, without proof of the office or signature of the clerk, admissible in evidence in a court to which it is transmitted under this section as *prima facie* proof of the authenticity of the copy.

Right of appeal

(8) No appeal lies from a provisional order made under this section, but, where an order is confirmed under this section, the person bound thereby has the same right of appeal as he would have had if the order had been made under section 6.

Examination of debtor

17.—(1) Where there is default in payment under an order for support, alimony or maintenance, a clerk of the court may require the debtor, upon notice,

(*a*) to file a financial statement referred to in section 13;

(*b* to submit to an examination as to assets and means; and

(*c*) to appear before the court to explain the default.

Compelling attendance

(2) If the debtor fails to appear as required after being served with a notice, or if the court is satisfied that the debtor cannot be served or intends to leave (*insert jurisdiction*) without appearing as required after being served, the court giving the notice may issue a warrant for the arrest of the debtor for the purpose of compelling attendance.

Penalty for default

18.—(1) Where the debtor fails to satisfy the court that the default is owing to his or her inability to pay and where the court is satisfied that all other practicable means that are available under this Act for enforcing payment have been exhausted, the court may,

(*a*) order imprisonment for a term of not more than ninety days to be served intermittently or as ordered by the court; or

(*b*) make such order as may be made upon (summary) conviction for an offence that is punishable by imprisonment.

Conditions of sentence

(2) The order for imprisonment under subsection (1) may be made conditional upon default in the performance of a condition set out in the order.

Attachment of wages

19. (1) Where the court considers it appropriate in a proceeding under section 17, the court may make an attachment order directing the employer of the debtor to deduct from any remuneration of the debtor due at the time the order is served on the employer or thereafter due or accruing due such amount as is named in the order and to pay the amounts deducted into court.

Variation of attachment

(2) Where an application is made under section 12 the court may discharge, vary or suspend any term of an order made under subsection (1).

Priority of order

(3) An order under subsection (1) has priority over any other seizure or attachment of wages arising before or after the service of the order.

[*Note: A jurisdiction may wish to maintain specific Crown priorities by setting out exceptions in subsection (3).*]

Security for payment

20. Where the court considers it appropriate in a proceeding under section 17, the court may order the debtor to give security for the payment of support or may charge any property of the debtor [*where the power is to be exercised by a provincially appointed judge add,* "with payment of an amount for the provision of necessaries or preventing the dependant from becoming a public charge" to comply with *Reference as to Constitutionality of the Adoption Act, the Children's Protection Act, the Children of Unmarried Parents Act, the Deserted Wives' and Children's Maintenance Act*].

Crown subject to attachment for support

21. An attachment under subsection 19(1) and any other execution, garnishment or attachment or process in the nature thereof for the payment of an amount owing or accruing under an order for support or maintenance may be issued against the Crown.

[*Note: Section 21 is not necessary in a jurisdiction where the law permits an execution, garnishment or attachment in respect of wages of a Crown employee.*]

[*Refer to employment standards legislation for protection against dismissal where employer receives execution, garnishment or attachment process.*]

Realization of security

22. Where a court orders security for the payment of support under this Act or charges property therewith, the court may, upon application and notice to all persons having an interest in the property, direct its sale for the purpose of realizing the security or charge.

Order restraining harassment

23. (1) Upon application, a court may make an order restraining the spouse of the applicant from molesting, annoying or harassing the applicant or children in the lawful custody of the applicant and may require the spouse of the applicant to enter into such recognizance as the court considers appropriate.

Interim order

(2) Where an application is made under subsection (1), the court may make such interim order as the court considers appropriate.

Termination of support order on death

24. Unless an order for support otherwise provides, it terminates upon the death of the person having the obligation to provide support, and the amount under the order due and unpaid is a debt of his or her estate.

Pledging credit for necessaries

25. (1) During cohabitation, a spouse has authority to render himself or herself and his or her spouse jointly and severally liable to a third party for necessaries of life, except where the spouse has notified the third party that he or she has withdrawn the authority.

Liability for necessaries of minor

(2) Where a person is entitled to recover against a minor in respect of the provision of necessaries for the minor, each parent who has an obligation to support the minor is liable therefor jointly and severally with the minor.

Recovery between person jointly liable

(3) Where persons are jointly and severally liable with each other under this section, their liability to each other shall be determined in accordance with their obligation to provide support.

Common law supplanted

(4) The provisions of this section apply in place of the rules of common law by which a wife may pledge the credit of her husband.

Paternity agreements

26. (1) Where a man and a woman who are not spouses enter into an agreement for,

(*a*) the payment of the expenses of prenatal care and birth in respect of a child;

(*b*) support of a child; or

(*c*) burial expenses of the child or mother,

on the application of a party to the agreement or a children's aid society made to a court, the court may incorporate the agreement in an order, and this Act applies to the order in the same manner as if it were an order for support made under this Act.

Absconding respondent

(2) Where an application is made under subsection (1) and a judge of the (*insert appropriate court*) is satisfied that the respondent is about to leave (*insert jurisdiction*) and that there are reasonable grounds for believing that the respondent intends to evade his responsibilities under the agreement, the judge may issue a

warrant in the form prescribed by the rules of the court for the arrest of the respondent.

Capacity of a minor

(3) A minor who has capacity to contract marriage has capacity to enter into an agreement under subsection (1) that is approved by the court, whether the approval is given before or after the agreement is entered into.

Application to pre-existing agreements

(4) This section applies to agreements referred to in subsection (1) that were made before this Act comes into force.

Extenson of time

27. The court may extend any time prescribed by this Act where the court is satisfied that

(*a*) there are *prima facie* grounds for relief;

(*b*) relief is unavailable because of delay that has been incurred in good faith; and

(*c*) no substantial prejudice or hardship will result to any person affected by reason of the delay.

Closed hearings

28. The court may exclude the public from a hearing, or any part thereof, where, in the opinion of the presiding judge, the desirability of protecting against the consequences of possible disclosure of intimate financial or personal matters outweighs the desirability of holding the hearing in public and the court may by order prohibit the publication of any matter connected with the application or given in evidence at the hearing.

APPENDIX N

(See page 30)

INTERNATIONAL CONVENTIONS ON PRIVATE INTERNATIONAL LAW

REPORT OF THE SPECIAL COMMITTEE

Chapter I

INTRODUCTION

Since its creation seven years ago, the Special Committee on International Conventions on Private International Law has maintained a continuous watching brief over developments in the private international law area which are of interest to provincial jurisdictions in Canada. Its work has been largely devoted to promoting effective co-operation between the federal and provincial governments and to smooth the way for Canada's ratification of or accession to any convention or treaty, on behalf of several provinces. On occasion if a particular treaty or convention would be difficult to accede to or ratify, perhaps because of a defective federal state clause, the Committee may recommend that uniform legislation on the subject be drafted for enactment by the provinces. The Committee is chaired by H. Allan Leal of Ontario, and its members are Emile Colas |Québec|, F. J. E. Jordan |Canada|, Alan Reid |New Brunswick| and Rae Tallin |Manitoba|.

Although there have been significant developments on the private international legal plane during the last year, the Committee has only succeeded in meeting once, on Sunday, August 17, 1980. However the Committee maintains close liaison with the Minister of Justice's Advisory Committee on Private International Law whose members are Denis Carrier, D. M. M. Goldie, Michel Hétu, F. J. E. Jordan, H. Allen Leal, D. M. Low, Francois Mathys, Michel Shore and Graham D. Walker. This Advisory Committee has met twice in Ottawa: on October 29 and 30, 1979 and on May 26 and 27, 1980.

Chapter II

LEGAL KIDNAPPING

Work has continued apace during the last year towards an effective international regime to prevent the proliferating practice of abduction of children by one parent.

The Special Commission on the Civil Aspects of International Child Abduction met at The Hague from November 5 to 16, 1979 for the purpose of preparing a Preliminary Draft Convention on the Civil Aspects of International Child Abduction. Representatives from 22 countries attended the meeting with observers present from the Council of Europe, the Commission of the European Economic Community, International Social Service and the Commonwealth Secretariat. The meeting was chaired by Professor A. E. Anton of the United Kingdom, with H. Allan Leal, Deputy Attorney General of Ontario, serving both as Vice-Chairman and as Chairman of the Drafting Committee.

The session was a remarkably successful one, resulting in the drafting of a rational and practical international legislative scheme, in the form of a preliminary draft convention. The scheme embodied in the convention is designed to ensure the re-establishment of the factual situation which existed before the abduction. The convention deliberately steers clear of questions concerning the merits of custody determinations. Similarly it does not deal with the recognition and enforcement of decisions concerning custody. Where a child is wrongfully removed or retained [in violation of existing custody rights under the law of the child's habitual residence] the person whose custody rights have been breached may apply to a Central Authority [either in his own State, or in the State where the child currently is] seeking the return of the child, either voluntarily or by court order. Alternatively he can apply directly to the judicial authorities in the jurisdiction where the child is. The "Central Authorities", whose operation is pivotal to the success of the *Convention*, are designated in each state to discharge the duties imposed by the *Convention*. In a federal state like Canada, there may be more than one.

The central authorities are responsible for a broad range of tasks. The *Convention* states that they shall:

(a) take steps to discover the whereabouts of wrongfully removed or retained children;

(b) take or promote the taking of such provisional measures as may be necessary to prevent further harm to the child or further prejudice to interested parties;
(c) Exchange, where appropriate, information relating to the social background of the child;
(d) take or cause to be taken all steps appropriate either to ensure the voluntary return of the child or to bring about an amicable resolution of the issues;
(e) provide information of a general character as to the law of their State relating to the application of the *Convention*;
(f) initiate or facilitate the institution of judicial or administrative proceedings with a view to obtaining the return of the child and, where appropriate, the determination of issues relating to rights of custody and access;
(g) where appropriate, provide or facilitate the provision of legal aid and advice, including the services of legal counsel;
(h) provide such administrative arrangements as may be necessary and appropriate to achieve the safe return of the child.

Article 12 of the *Convention* provides the only avenue of defence available to an abducting parent: either that the alleged abduction was not in fact an abduction, because at the time of the alleged breach the applicant was not actually exercising custody rights or acting in good faith; or because there is a substantial risk that the return would expose the child to physical or psychological harm, or otherwise place him in an intolerable situation. The judicial authority may also refuse the child if he or she objects to the return and is of an age and maturity where it is appropriate to take account of his or her views. No prejudice is done to existing custody claims under the *Convention*— the aim is to re-establish the situation which existed before the unlawful removal, and to allow parties to assert their claims in the jurisdiction to which the child is returned.

Detailed analyses of the *Convention* have been prepared under date 8/4/80 by M. Michel Hétu, Director of Legal Services for the Secretary of State in Canada and by Professor Elisa Perez-Vera, Rapporteur to the Special Commission [Child Abduction, Prel. Doc. No. 6, May 1980]. The former has been distributed to all member jurisdictions of this Conference; accordingly there is no need for us to provide a discursive commentary here.

Suffice it to say that the principles embodied in the Convention command broad support and we are sanguine that the draft *Convention* or something broadly similar to it will be adopted when the Plenary

Session of the Hague Conference is held this October. Indeed, recently, we have been informed that arrangements have been made by the Permanent Bureau of the Hague Conference that the *Convention* should be opened at the end of the Fourteenth Session for signature by plenipotentiaries of the member states.

Editorial Note

The Convention mentioned above as adopted by the Hague Conference in October 1980 is set out as Schedule 1 to this Chapter (page 156).

The resolution adopting the *Uniform International Child Abduction (Hague Convention) Act* is set out as Schedule 2 to this Chapter (page 169).

The *Uniform International Child Abduction (Hague Convention) Act* in the form in which it was adopted by the Conference is set out as Schedule 3 (page 169).

SCHEDULE 1

HAGUE CONVENTION PRIVATE INTERNATIONAL LAW

FOURTEENTH SESSION FINAL ACT

THE HAGUE, 25th OCTOBER 1980

The undersigned, Delegates of the Governments of Argentina, Australia, Austria, Belgium, Canada, Czechoslovakia, Denmark, the Arab Republic of Egypt, Finland, France, the Federal Republic of Germany, Greece, Ireland, Israel, Italy, Japan, Jugoslavia, Luxemburg, the Netherlands, Norway, Portugal, Spain, Surinam, Sweden, Switzerland, Turkey, the United Kingdom of Great Britain and Northern Ireland, the United States of America and Venezuela, and the Representatives of the Governments of Brazil, the Holy See, Hungary, Monaco, Morocco, the Union of Soviet Socialist Republics and Uruguay participating by invitation or as Observer, convened at The Hague on the 6th October 1980, at the invitation of the Government of the Netherlands, in the Fourteenth Session of the Hague Conference of Private International Law.

Following the deliberations laid down in the records of the meetings, have decided to submit to their Governments—

A The following draft Conventions—

I

CONVENTION ON THE CIVIL ASPECTS OF INTERNATIONAL CHILD ABDUCTION

The States signatory to the present Convention.

Firmly convinced that the interests of children are of paramount importance in matters relating to their custody.

Desiring to protect children internationally from the harmful effects of their wrongful removal or retention and to establish procedures to ensure their prompt return to the State of their habitual residence, as well as to secure protection for rights of access,

Have resolved to conclude a Convention to this effect, and have agreed upon the following provisions—

CHAPTER 1 – SCOPE OF THE CONVENTION

Article 1

The objects of the present Convention are:

a to secure the prompt return of children wrongfully removed to or retained in any Contracting State; and

b to ensure that rights of custody and of access under the law of one Contracting State are effectively respected in the other Contracting States.

Article 2

Contracting States shall take all appropriate measures to secure within their territories the implementation of the objects of the Convention. For this purpose they shall use the most expeditious procedures available.

Article 3

The removal or the retention of a child is to be considered wrongful where:

a it is in breach of rights of custody attributed to a person, an institution or any other body, either jointly or alone, under the law of the State in which the child was habitually resident immediately before the removal or retention; and

b at the time of removal or retention those rights were actually exercised, either jointly or alone, or would have been so exercised but for the removal or retention.

The rights of custody mentioned in sub-paragraph *a* above, may arise in particular by operation of law or by reason of a judicial or administrative decision, or by reason of an agreement having legal effect under the law of that State.

Article 4

The Convention shall apply to any child who was habitually resident in a contracting State immediately before any breach of custody or access rights. The Convention shall cease to apply when the child attains the age of 16 years.

Article 5

For the purposes of this Convention:

a 'rights of custody' shall include rights relating to the care of the person of the child and, in particular, the right to determine the child

and, in particular, the right to determine the child's place of residence;

b 'rights of access' shall include the right to take a child for a limited period of time to a place other than the child's habitual residence.

CHAPTER II – CENTRAL AUTHORITIES

Article 6

A Contracting State shall designate a Central Authority to discharge the duties which are imposed by the Convention upon such authorities.

Federal States, States with more than one system of law or States having autonomous territorial organizations shall be free to appoint more than one Central Authority and to specify the territorial extent of their powers. Where a State has appointed more than one Central Authority, it shall designate the Central Authority to which applications may be addressed for transmission to the appropriate Central Authority within that State.

Article 7

Central Authorities shall co-operate with each other and promote co-operation amongst the competent authorities in their respective States to secure the prompt return of children and to achieve the other objects of this convention.

In particular, either directly of through any intermediary, they shall take all appropriate measures –

a to discover the whereabouts of a child who has been wrongfully removed or retained;

b to prevent further harm to the child or prejudice to interested parties by taking or causing to be taken provisional measures;

c to secure the voluntary return of the child or to bring about an amicable resolution of the issues;

d to exchange, where desirable, information relating to the social background of the child;

e to provide information of a general character as to the law of their State in connection with the application of the Convention;

f to initiate or facilitate the institution of judicial or administrative proceedings with a view to obtaining the return of the child and, in a proper case, to make arrangements for organizing or securing the effective exercise of rights of access;

g where the circumstances so require, to provide or facilitate the provision of legal aid and advice, including the participation of legal counsel and advisers;

h to provide such administrative arrangements as may be necessary and appropriate to secure the safe return of the child;

i to keep each other informed with respect to the operation of this Convention and, as far as possible, to eliminate any obstacles to its application.

CHAPTER III – RETURN OF CHILDREN

Article 8

Any person, institution or other body claiming that a child has been removed or retained in breach of custody rights may apply either to the Central Authority of the child's habitual residence or to the Central Authority of any other Contracting State for assistance in securing the return of the child.

The application shall contain –

a information concerning the identity of the applicant, of the child and of the person alleged to have removed or retained the child;

b where available, the date of birth of the child;

c the grounds on which the applicant's claim for return of the child is based;

d all available information relating to the whereabouts of the child and the identity of the person with whom the child is presumed to be.

The application may be accompanied or supplemented by –

e an authenticated copy of any relevant decision or agreement;

f a certificate or an affidavit emanating from a Central Authority, or other competent authority of the State of the child's habitual residence, or from a qualified person, concerning the relevant law of that State;

g any other relevant document.

Article 9

If the Central Authority which receives an application referred to in Article 8 has reason to believe that the child is in another Contracting State, it shall directly and without delay transmit the application to the Central Authority of that Contracting State and inform the requesting Central Authority, or the applicant, as the case may be.

Article 10

The Central Authority of the State where the child is shall take or cause to be taken all appropriate measures in order to obtain the voluntary return of the child.

Article 11

The judicial or administrative authorities of Contracting States shall act expeditiously in proceedings for the return of children.

If the judicial or administrative authority concerned has not reached a decision within six weeks from the date of commencement of the proceedings, the applicant or the Central Authority of the requested State, on it own initiative or if asked by the Central Authority of the requesting State, shall have the right to request a statement of the reasons for the delay. If a reply is received by the Central Authority of the requested State, that Authority shall transmit the reply to the Central Authority of the requesting State, or to the applicant, as the case may be.

Article 12

Where a child has been wrongfully removed or retained in terms of Article 3 and, at the date of the commencement of the proceedings before the judicial or administrative authority of the Contracting State where the child is, a period of less than one year has elapsed from the date of wrongful removal or retention, the authority concerned shall order the return of the child forthwith.

The judicial or administrative authority, even where the proceedings have been commenced after the expiration of the period of one year referred to in the preceding paragraph, shall also order the return of the child, unless it is demonstrated that the child is now settled in its new environment.

Where the judicial or administrative authority in the requested State has reason to believe that the child has been taken to another State, it may stay the proceedings or dismiss the application for the return of the child.

Article 13

Notwithstanding the provisions of the preceding Article, the judicial or administrative authority of the requested State is not bound to order the return of the child if the person, institution or other body which opposes its return establishes that:

a the person, institution or other body having the care of the person

of the child was not actually exercising the custody rights at the time of removal or retention, or had consented to or subsequently acquiesced in the removal or retention; or

b there is a grave risk that his or her return would expose the child to physical or psychological harm or otherwise place the child in an intolerable situation.

The judicial or administrative authority may also refuse to order the return of the child if it finds that the child objects to being returned and has attained an age and degree of maturity at which it is appropriate to take account of its views.

In considering the circumstances referred to in this Article, the judicial and administrative authorities shall take into account the information relating to the social background of the child provided by the Central Authority or other competent authority of the child's habitual residence.

Article 14

In ascertaining whether there has been a wrongful removal or retention within the meaning of Article 3, the judicial or administrative authorities of the requested State may take notice directly of the law of, and of judicial or administrative decisions, formally recognized or not, in the State of the habitual residence of the child without recourse to the specific procedures for the proof of that law or for the recognition of foreign decisions which would otherwise be applicable.

Article 15

The judicial or administrative authorities of a Contracting State may, prior to the making of an order for the return of the child, request that the applicant obtain from the authorities of the State of the habitual residence of the child a decision or other determination that the removal or retention or other determination that the removal or retention was wrongful within the meaning of Article 3 of the Convention, where such a decision or determination may be obtained in that State. The Central Authorities of the Contracting States shall so far as practicable assist applicants to obtain such a decision or determination.

Article 16

After receiving notice of a wrongful removal or retention of a child in the sense of Article 3, the judicial or administrative authorities of the Contracting State to which the child has been removed or in which it

has been retained shall not decide on the merits of rights of custody until it has been determined that the child is not to be returned under this Convention or unless an application under this Convention is not lodged within a reasonable time following receipt of the notice.

Article 17

The sole fact that a decision relating to custody has been given in or is entitled to recognition in the requested State shall not be a ground for refusing to return a child under this Convention, but the judicial or administrative authorities of the requested State may take account of the reasons for that decision in applying this Convention.

Article 18

The provisions of this Chapter do not limit the power of a judicial or administrative authority to order the return of the child at any time.

Article 19

A decision under this Convention concerning the return of the child shall not to be taken to be a determination on the merits of any custody issue.

Article 20

The return of the child under the provisions of Article 12 may be refused if this would not be permitted by the fundamental principles of the requested State relating to the protection of human rights and fundamental freedoms.

Article 21

An application to make arrangements for organizing or securing the effective exercise of rights of access may be presented to the Central Authorities of the Contracting States in the same way as an application for the return of a child.

The Central Authorities are bound by the obligations of co-operation which are set forth in Article 7 to promote the peaceful enjoyment of access rights and the fulfilment of any conditions to which the exercise of those rights may be subject. The Central Authorities shall take steps to remove, as far as possible, all obstacles to the exercise of such rights.

The Central Authorities, either directly or through intermediaries, may initiate or assist in the institution of proceedings with a view to organizing or protecting these rights and securing respect for the conditions to which the exercise of these rights may be subject.

CHAPTER V—GENERAL PROVISIONS

Article 22

No security, bond or deposit, however described, shall be required to guarantee the payment of costs and expenses in the judicial or administrative proceedings falling within the scope of this Convention.

Article 23

No legalization or similar formality may be required in the context of this Convention.

Article 24

Any application, communication or other document sent to the Central Authority of the requested State shall be in the original language, and shall be accompanied by a translation into the official language or one of the official languages of the requested State or, where that is not feasible, a translation into French or English.

However, a Contracting State may, by making a reservation in accordance with Article 42, object to the use of either French or English, but not both, in any application, communication or other document sent to its Central Authority.

Article 25

Nationals of the Contracting States and persons who are habitually resident within those States shall be entitled in matters concerned with the application of this Convention to legal aid and advice in any other Contracting State on the same conditions as if they themselves were nationals of and habitually resident in that State.

Article 26

Each Central Authority shall bear its own costs in applying this Convention.

Central Authorities and other public services of Contracting States shall not impose any charges in relation to applications submitted under this Convention. In particular, they may not require any payment from the applicant towards the costs and expenses of the proceedings or, where applicable, those arising from the participation of legal counsel or advisers. However, they may require the payment of the expenses incurred or to be incurred in implementing the return of the child.

However, a Contracting State may, by making a reservation in accordance with Article 42, declare that it shall not be bound to assume any costs referred to in the preceding paragraph resulting from the participation of legal counsel or advisers or from court proceedings, except insofar as those costs may be covered by its system of legal aid and advice.

Upon ordering the return of a child or issuing an order concerning rights of access under this Convention, the judicial or administrative authorities may, where appropriate, direct the person who removed or retained the child, or who prevented the exercise of rights of access, to pay necessary expenses incurred by or on behalf of the applicant, including travel expenses, any costs incurred or payments made for locating the child, the costs of legal representation of the applicant, and those of returning the child.

Article 27

When it is manifest that the requirements of this convention are not fulfilled or that the application is otherwise not well founded, a Central Authority is not bound to accept the application. In that case, the Central Authority shall forthwith inform the applicant or the Central Authority through which the application was submitted, as the case may be, of its reasons.

Article 28

A Central Authority may require that the application be accompanied by a written authorization empowering it to act on behalf of the applicant, or to designate a representative to act.

Article 29

This Convention shall not preclude any person, institution or body who claims that there has been a breach of custody or access rights within the meaning or Article 3 or 21 from applying directly to the judicial or administrative authorities of a Contracting State, whether or not under the provisions of this Convention.

Article 30

Any application submitted to the Central Authorities or directly to the judicial or administrative authorities of a Contracting State in accordance with the terms of this Convention, together with documents and any other information appended thereto or provided by a Central Authority, shall be admissible in the courts or administrative authorities of the Contracting States.

Article 31

In relation to a State which in matters of custody of children has two or more systems of law applicable in different territorial units—

a any reference to habitual residence in that State shall be construed as referring to habitual residence in a territorial unit of that State;

b any reference to the law of the State of habitual residence shall be construed as referring to the law of the territorial unit in that State where the child habitually resides.

Article 32

In relation to a State which in matters of custody of children has two or more systems of law applicable to different categories of persons, any reference to the law of that State shall be construed as referring to the legal system specified by the law of that State.

Article 33

A State within which different territorial units have their own rules of law in respect of custody of children shall not be bound to apply this Convention where a State with a unified system of law would not be bound to do so.

Article 34

This Convention shall take priority in matters within its scope over the *Convention of 5 October 1961 concerning the powers of authorities and the law applicable in respect of the protection of minors*, as between Parties to both Conventions. Otherwise the present Convention shall not restrict the application of an international instrument in force between the State of origin and the State addressed or other law of the State addressed for the purposes of obtaining the return of a child who has been wrongfully removed or retained or of organizing access rights.

Article 35

This Convention shall apply as between Contracting States only to wrongful removals or retentions occurring after its entry into force in those States.

Where a declaration has been made under Article 39 or 40 the reference in the preceding paragraph to a Contracting State shall be taken to refer to the territorial unit or units in relation to which this Convention applies.

Article 36

Nothing in this Convention shall prevent two or more Contracting States, in order to limit the restrictions to which the return of the child may be subject, from agreeing among themselves to derogate from any provisions of this Convention which may imply such a restriction.

CHAPTER VI – FINAL CLAUSES

Article 37

The Convention shall be open for signature by the States which were Members of the Hague Conference on Private International Law at the time of its Fourteenth Session.

It shall be ratified, accepted or approved and the instruments of ratification, acceptance or approval shall be deposited with the Ministry of Foreign Affairs of the Kingdom of the Netherlands.

Article 38

Any other State may accede to the Convention.

The instrument of accession shall be deposited with the Ministry of Foreign Affairs of the Kingdom of the Netherlands.

The Convention shall enter into force for a State acceding to it on the first day of the third calendar month after the deposit of its instrument of accession.

The accession will have effect only as regards the relations between the acceding State and such Contracting States as will have declared their acceptance of the accession. Such a declaration will also have to be made by any Member State ratifying, accepting or approving the Convention after an accession. Such declaration shall be deposited at the Ministry of Foreign Affairs of the Kingdom of the Netherlands; this Ministry shall forward, through diplomatic channels, a certified copy to each of the Contracting States.

The Convention will enter into force as between the acceding State and the State that has declared its acceptance of the accession on the first day of the third calendar month after the deposit of the declaration of acceptance.

Article 39

Any State may, at the time of signature, ratification, acceptance, approval or accession, declare that the Convention shall extend to all

the territories for the international relations of which it is responsible, or to one or more of them. Such a declaration shall take effect at the time the Convention enters into force for that State.

Such declaration, as well as any subsequent extension, shall be notified to the Ministry of Foreign Affairs of the Kingdom of the Netherlands.

Article 40

If a Contracting State has two or more territorial units in which different systems of law are applicable in relation to matters dealt with in this Convention, it may at the time of signature, ratification, acceptance, approval or accession declare that this Convention shall extend to all its territorial units or only to one or more of them and may modify this declaration by submitting another declaration at any time.

Any such declaration shall be notified to the Ministry of Foreign Affairs of the Kingdom of the Netherlands and shall state expressly the territorial units to which the Convention applies.

Article 41

Where a Contracting State has a system of government under which executive, judicial and legislative powers are distributed between central and other authorities within that State, its signature or ratification, acceptance or approval of, or accession to this Convention, or its making of any declaration in terms of Article 40 shall carry no implication as to the internal distribution of powers within that State.

Article 42

Any State may, not later than the time of ratification, acceptance, approval or accession, or at the time of making a declaration in terms of Article 39 or 40, make one or both of the reservations provided for in Article 24 and Article 26, third paragraph. No other reservation shall be permitted.

Any State may at any time withdraw a reservation it has made. The withdrawal shall be notified to the Ministry of Foreign Affairs of the Kingdom of the Netherlands.

The reservation shall cease to have effect on the first day of the third calendar month after the notification referred to in the preceding paragraph.

Article 43

The Convention shall enter into force on the first day of the third

calendar month after the deposit of the third instrument of ratification, acceptance, approval or accession referred to in Articles 37 and 38.

Thereafter the Convention shall enter into force—

1 for each State ratifying, accepting, approving or acceding to it subsequently, on the first day of the third calendar month after the deposit of its instrument of ratification, acceptance, approval or accession;

2 for any territory or territorial unit to which the Convention has been extended in conformity with Articles 39 or 40, on the first day of the third calendar month after the notification referred to in that Article.

Article 44

The Convention shall remain in force for five years from the date of its entry into force in accordance with the first paragraph of Article 43 even for States which subsequently have ratified, accepted, approved it or acceded to it.

If there has been no denunciation, it shall be renewed tacitly every five years.

Any denunciation shall be notified to the Ministry of Foreign Affairs of the Kingdom of the Netherlands at least six months before the expiry of the five year period. It may be limited to certain of the territories or territorial units to which the Convention applies.

The denunciation shall have effect only as regards the State which has notified it. The Convention shall remain in force for the other Contracting States.

Article 45

The Ministry of Foreign Affairs of the Kingdom of the Netherlands shall notify the States Members of the Conference, and the States which have acceded in accordance with Article 38, of the following—

1 the signatures and ratifications, acceptances and approvals referred to in Article 37;

2 the accessions referred to in Article 38;

3 the date on which the Convention enters into force in accordance with Article 43;

4 the extensions referred to in Article 39;

5 the declarations referred to in Articles 38 and 40;

6 the reservations referred to in Article 24 and Article 26, third paragraph, and the withdrawals referred to in Article 42;

7 the denunciations referred to in Article 44.

In witness whereof the undersigned, being duly authorized thereto, have signed this Convention.

Done at The Hague, on the 25th day of October 1980 in the English and French languages, both texts being equally authentic, in a single copy which shall be deposited in the archives of the Government of the Kingdom of the Netherlands, and of which a certified copy shall be sent, through diplomatic channels, to each of the States Members of the Hague Conference on Private International Law at the date of its Fourteenth Session.

Editorial Note: The Convention was signed by Canada, France, Greece and Switzerland.

SCHEDULE 2

RESOLVED that the draft *Uniform International Child Abduction (Hague Convention) Act* in the form agreed upon at this meeting be distributed by the Local Secretary for Nova Scotia to the Local Secretaries of the other jurisdictions together with a copy of the *Convention* as soon as may be after the latter is concluded, and that if the *Uniform Act* is not disapproved by two or more jurisdictions by notice to the Executive Secretary within 90 days of its distribution, it be recommended for enactment in that form

Editorial Note

The Uniform Act was distributed in accordance with the above resolution on the 15th day of January 1981. If it is not disapproved by two or more jurisdictions before the 15th day of April 1981 by notice to the Executive Secretary, it is adopted and recommended for enactment in that form.

SCHEDULE 3

UNIFORM INTERNATIONAL CHILD ABDUCTION (HAGUE CONVENTION) ACT

Interpretation

1. In this Act

(a) "Convention" means the Convention on the Civil Aspects of International Child Abduction set out in the Schedule hereto;

(b) "effective date" means the day (that is six months after the date) on which the Government of Canada

submits to the Ministry for Foreign Affairs of the Kingdom of the Netherlands a declaration that the Convention extends to the Province.

Convention in force in Province

2. On, from and after the effective date, except (*note any reservation which is allowed and made under the convention*), the Convention is in force in the Province and the provisions thereof are law in the Province.

Central Authority

3. The (Minister of *or*) shall be the Central Authority for the Province for the purpose of the Convention.

Request to ratify convention

4. The (Minister of *or*) shall request the Government of Canada to submit a declaration to the Ministry for Foreign Affairs of the Kingdom of the Netherlands declaring that the convention extends to the Province except (*note any reservation which is allowed and made under the Convention*).

Publication of effective date

5. As soon as the effective date is determined, (the Minister of *or*) shall publish in the Gazette a notice indicating the date that is the effective date for the purpose of this Act.

Regulations

6. The Lieutenant Governor in Council may make such regulations as are necessary to carry out the intent and purpose of this Act.

This Act prevails

7. Where there is a conflict between this Act and any other enactment of the Province, this Act prevails.

SCHEDULE

Editorial Note

Although the Convention forms part of the Act as the Schedule indicated above, it is not set out here; it appears on pages 156 to 169 in these *Proceedings.*

EXPLANATORY NOTE

This Act was prepared in order to assist jurisdictions that are adopting the Convention.

Chapter III

UNIFORM EXTRA-PROVINCIAL CUSTODY ORDERS ENFORCEMENT ACT

At the 1979 Conference, the Report of the Special Committee included a suggested redraft of the Uniform Extra-Provincial Custody Orders Enforcement Act. During the past year, this question has received considerable study in Ontario, resulting in provisions which are incorporated into Ontario Bill 140 of 1980 entitled "An Act to amend the *Children's Law Reform Act, 1977*". The Bill has had first reading.

The relevant sections with respect to extra-provincial matters are contained in sections 48 to 52 of the Bill (See the Schedule, page 171). Section 48(a) provides that where a court is satisfied that a child has been wrongfully removed to Ontario or has been wrongfully detained in Ontario, it has power to order the return of the child to the place the court considers appropriate and to order payment of the cost of reasonable travel and other expenses of the child and any parties to or witnesses at the hearing of the application. Under the Ontario Act, the wrongful removal of the child does not arise only upon a custody order having been made. Section 27(4) provides that where the parents of the child live separate and apart and the child resides with one of them, the right of the other to exercise the entitlement to custody and incidents of custody, are suspended until a separation agreement or a court order otherwise provides. Thus, the non-custodial parent is not entitled to custody in the absence of a court order where the child is residing with one parent only. In addition, restrictions have been placed on the assumption of jurisdiction by an Ontario court to make a custody order in section 29 of the bill. It is important therefore that the provisions of the bill relating to extra-provincial matters be regarded in light of sections 27 to 34 inclusive.

With respect to the mechanics of enforcement, the provisions in the bill contained in sections 42 to 47 should be considered optional to those provinces which might wish to adopt same not only for enforcement of custody orders locally but for enforcement of extra-provincial custody orders.

SCHEDULE

CUSTODY AND ACCESS—EXTRA-PROVINCIAL MATTERS

48. Upon application a court,

Interim powers of court

(*a*) that it satisfied that a child has been wrongfully removed to or is being wrongfully retained in Ontario;

(*b*) that has declined to exercise jurisdiction under section 32; or

(*c*) that is asked to supersede an extra-provincial order in respect of custody of or access to a child and that is of the opinion that it is more appropriate for jurisdiction to be exercised outside Ontario,

may do any one or more of the following:

1. Make such interim order in respect of the custody or access as the court considers is in the best interests of the child.

2. Stay the application subject to,

i. the condition that a party to the application promptly commence a similar proceeding before an extra-provincial tribunal, or

ii. such other conditions as the court considers appropriate.

3. Order a party to return the child to such place as the court considers appropriate and, in the discretion of the court, order payment of the cost of the reasonable travel and other expenses of the child and any parties to or witnesses at the hearing of the application.

Enforcement of foreign orders

49.—(1) Upon application by any person in whose favour an order for the custody of or access to a child has been made by an extra-provincial tribunal, a court shall recognize the order if the court is satisfied,

(a) that reasonable notice of the commencement of the proceeding in which the order was made was given to every person entitled to be a party to the proceeding;

(b) that every person entitled to be a party to the proceeding was given an opportunity to be heard by the extra-provincial tribunal before the order was made;

(c) that the law of the place in which the order was made required the extra-provincial tribunal to have regard for the best interests of the child;

(d) that the order of the extra-provincial tribunal is not contrary to public policy in Ontario; and

(e) that the jurisdiction of the extra-provincial tribunal is recognized as determined by the application of the rules in section 29, and, for the purpose, references in section 29 to "Ontario" shall be deemed to be references to the place where the extra-provincial tribunal has jurisdiction.

Effect of recognition of order

(2) An order made by an extra-provincial tribunal that is recognized by a court shall be deemed to be an order of the court and enforceable as such.

Conflicting orders

(3) A court presented with conflicting orders made by extra-provincial tribunals for the custody of or access to a child that, but for the conflict, would be recognized and enforced by the court under subsection 1 shall recognize and enforce the order that appears to the court to be most in accord with the best interests of the child.

Further orders

(4) A court that has recognized an extra-provincial order may make such further orders under this Part as the court considers necessary to give effect to the order.

Superseding order material change in circumstances

50. Upon application, a court by order may supersede an extra-provincial order in respect of custody of or access to a child where the court is satisfied that there has been a material change in circumstances that affects or is likely to affect the best interests of the child and,

(*a*) the child is habitually resident in Ontario at the commencement of the application for the order, or

(*b*) although the child is not habitually resident in Ontario, the court is satisfied,

(i) that the child is physically present in Ontario at the commencement of the application for the order,

(ii) that the child no longer has a real and substantial connection with the place where the extra-provincial order was made,

(iii) that substantial evidence concerning the best interests of the child is available in Ontario,

(iv) that the child has a real and substantial connection with Ontario, and

(v) that, on the balance of convenience, it is appropriate for jurisdiction to be exercised in Ontario.

Superseding order serious harm

51. Upon application, a court by order may supersede an extra-provincial order in respect of custody of or access to a child if the court is satisfied that the child will suffer serious harm if,

(*a*) the child remains in the custody of the person legally entitled to custody of the child;

(*b*) the child is returned to the custody of the person entitled to custody of the child; or

(*c*) the child is removed from Ontario.

True copy of extra-provincial order

52. A copy of an extra-provincial order certified as a true copy by a judge, other presiding officer or registrar of the tribunal that made the order or by a person charged with keeping the orders of the tribunal is *prima facie* evidence of the making of the order, the content of the order and the appointment and signature of the judge, presiding officer, registrar or other person.

We recommend that this matter be referred back to the Ontario Commissioners to redraft the proposed Act taking into account the policy decisions arrived at during the Saskatoon Conference, the revised Ontario provisions and the Hague Convention when it is concluded.

Editorial Note: This recommendation was adopted.

Chapter IV

INTERNATIONAL ADMINISTRATION OF ESTATES OF DECEASED PERSONS

At page 34 of last year's *Proceedings*, this matter was dealt with as follows:

> Mr Tallin's memorandum with a draft Bill attached was referred to the Special Committee on International Conventions on Private International Law for consideration and report to the 1980 annual meeting.
>
> It was decided not to print Mr. Tallin's memorandum and draft Bill in this year's Proceedings.

Mr. Tallin's Memorandum (see page 175) was considered by the Special Committee, which endorses it and recommends the adoption of his draft bill by the Uniform Law Section.

Editorial Note: The draft Uniform Act attached to Mr. Tallin's memorandum in the form adopted by the Conference is set out herein on page 180.
The draft Hague Conference is set out herein on page 187.

We understand that there may be an attempt by the delegates of France attending the Fourteenth Session of the Hague Conference in October to re-open *The Hague Convention on the International Administration of Estates of Deceased Persons* with a view to broadening its scope. However, we consider that much may be gained by the Uniform Law Section considering the issue at this stage since even if a broader international regime were to be established as a result of the forthcoming Hague discussions, it would not be incompatible with the existing *Convention.*

CICS Doc. 840-173/046

THE HAGUE CONVENTION CONCERNING THE INTERNATIONAL ADMINISTRATION OF THE ESTATES OF DECEASED PERSONS.

MEMORANDUM OF MR TALLIN

In 1977 the recommendation of the Manitoba Commissioners that the matter of legislation to enable the provinces to ratify or accede to The Hague Convention Concerning the International Administration of Estates of Deceased Persons was approved. Although it is not recorded in the Minutes, I believe that I undertook to present a

report on the matter. I was unable to prepare such a report for the 1978 meeting of the Conference and requested that the matter be put over for a year.

Attached (page 180) is a proposed draft for legislation which might be used to bring the *Convention* into force in a province. Many of the provisions of the proposed draft relate directly to specific Articles of the *Convention.* In those cases I have attempted to retain, as far as possible, the wording of the *Convention.* This results in drafting in the proposed draft which departs considerably from our own rules of drafting. However, it seemed to me that internal consistency between a provision of the draft Act and the corresponding Article of the *Convention* to which it relates was of greater importance than the consistency between this draft Act and other draft Acts which might be recommended by the Conference.

The *Convention* is of such a nature that any jurisdiction contemplating ratification or accession is required to make a number of substantive policy decisions with respect to various Articles. Many of these decisions must be communicated by way of declaration or designation to the Ministry of Foreign Affairs of the Netherlands at the time notice of ratification or accession. On studying the *Convention* I concluded that it would be necessary to provide not only for the specific instruction to the Government of Canada with respect to communicating the declaration or designation to the Netherlands but also specific substantive provisions which would make sure that the courts or administrative personnel actually carried out the intent of the declaration or designation. There is, therefore, apparent overlapping between some of the substantive provisions of the draft and the directory provisions relating to the request to the Government of Canada. However, I believe this overlapping is advisable if not necessary.

It is possible that a province wishing to bring the *Convention* into force may not wish to adopt all the substantive provisions and the corresponding directory clauses because of internal policy considerations. However, I have inserted provisions for every decision which I thought was possible on the premise that some province might possibly wish to make a decision of that kind. It may, of course, be necessary in some provinces to add additional provisions to make the operation of the *Convention* coincide more closely with the practice in the province. However, I did not think it was advisable to attempt to include any such provisions in the draft at this stage as there is so much variation between the provinces in estate practices.

The draft includes a section which outlines a simple procedure with respect to recognition. This is intended as a guide only as it would be necessary for each province to decide what procedure for recognition would be most suitable having regard to the practice in their courts if indeed any such procedure is desired by the province.

The draft contemplates a court being designated as the competent authority for the issuing of certificates. I assumed that in most cases whatever court deals with probate and estate administration would be the competent authority. Some provinces have such courts in several different districts and therefore the draft refers to provincial court districts within which a deceased had his habitual residence. In provinces in which there are no districts for the purposes of probate or estate administration such a distinction would not be necessary — reference could be made only to the court which has jurisdiction in probate and estate administration matters. It is possible that a province may wish to designate an adminstrative official rather than a court as the competent authority. If that is the case, only minor adjustments need be made to the draft for that purpose. However, I would think that in such a situation a court would be more suitable to have any hearing with respect to recognition of foreign certificates or with respect to any proceeding for annulment or modification of the certificate. If a province wished to follow such a pattern, other adjustments would have to be made to the draft.

Section 1 of the draft provides some definitions. The definition of "effective date" relates to Article 44 which deals with the entry into force of the *Convention* for ratifying states. The other definitions need no comment.

Section 2 provides for the application of the *Convention* in the enacting province from the effective date.

Section 3 provides for the designation of the competent authority for the purposes of drawing up and issuing certificates. These provisions relate to Articles 2 and 6 specifically. Subsection (2) of the section would not be necessary if the enacting province did not wish to declare that some professional person could draw up a certificate and have it confirmed by the court. As mentioned above the designation of the court would depend upon the practice in the enacting province.

Section 4 relates to Article 3 which deals with the selection of the law in accordance with which the holder of a certificate will be designated and his powers indicated. Article 31 authorizes a declaration in this respect to be made and I have tried to fit the concept

contained in Article 36 paragraph 4 into section 4 of the draft. It seems to me to be the only way in which a province in a country such as Canada could use the authority granted under Article 31 with respect to the application of Article 3.

Editorial Note: As section 4 of the draft Uniform Act was struck out during the consideration of the draft by the Uniform Law Section and the draft renumbered from there on, it will be necessary for the reader to adjust accordingly. For example, section 5 of the Memorandum is section 4 of the Uniform Act.

Section 5 of the draft relates to Article 4, which authorizes a declaration with respect to the choice of law by the deceased himself. Unfortunately the *Convention* does not indicate how the choice of the deceased should be indicated and the draft section 5 has the same deficiency. It is possible that some indication could be given as to how the deceased is required to indicate his choice. I think that it would not be beyond the intent of the *Convention* to require the choice to be expressed in writing.

Section 6 of the draft relates to Article 5 and the responsibility of Contracting States to provide information to other Contracting States with respect to the designation and powers of the holder of a certificate. It seemed to me that in this particular case it would be wiser to have a minister of the government or some administrative official deal with such inquiries rather than have them referred to a court which under normal practice is not expected to give abstract opinions on request.

Section 7 is intended as a suggestion for a simple procedure for annulment or modification of a certificate. Article 8 contemplates the possibility of annulment or modification of a certificate after issue and it seemed to me reasonable to provide a simple procedure of this kind.

Section 8 of the draft relates to Article 8 of the *Convention* and deals with requests for information as to the status of certificates. Here again, I thought it would be advisable to have an administrative officer deal with such requests rather than the court itself and I have therefore suggested in the draft that an officer of the court be designated for this purpose.

Section 9 suggests a simple procedure to deal with recognition of a certificate. Such a procedure is authorized under Article 1 and Article 10. However, the grounds for refusing recognition are restricted to those set out in Articles 13 to 17. This provision is intended only

as a suggestion and should be re-drawn by any province wishing to use such a procedure to comply with whatever practice is carried out in the court which is designated as the competent authority. The form of notice set out in subsection (3) of section 9 is also intended merely as a suggestion and, of course, could be improved upon having regard to the nature of the practice adopted by any province. It is, however, necessary that the procedure be expeditious and any publicity required be simple.

Section 10 of the draft relates to Article 21 of the *Convention*. As Article 21 is couched in permissive terms it seemed to me necessary to provide substantive provision which would indicate whether or not the enacting province had opted to exercise the authority of Article 21.

Section 11 relates to Article 30 of the *Convention* which deals with the power of the holder of a certificate over immovables.

Section 12 of the draft is a direction to a minister of the enacting province to request the Government of Canada to take the necessary steps to ratify the *Convention* and to delcare that it applies to the province. It also sets out the list of information which the Government of Canada should give to the Ministry of Foreign Affairs of the Netherlands with respect to various options which might be adopted by the enacting province. It would be necessary to make sure that the proper clauses of section 12 which reflect the options adopted correspond with the substantive provisions preceding section 12 and which also reflect the options adopted.

Section 13 is merely instruction to publish the effective date when it has been determined.

Section 14 of the draft is intended to exclude the Convention itself from the application of any general definition clause in the *Interpretation Act*. It is possible that words and phrases used in the *Convention* itself have been defined in the *Interpretation Act* of the enacting province. It is unlikely that the *Convention* was drafted having in mind specific definitions contained in a provincial *Interpretation Act* I thought it advisable therefore, to add a provision, for discussion purposes, which would allow the courts to give the meaning to words and phrases used in the *Convention* which are ordinarily given to those words and phrases in Private International Law without being restricted to some specific definitions which might be enacted in the *Interpretation Act*.

Section 15 is a departure from existing practice. It is authority for a court, in interpreting the *Convention*, to look to the commentary

of the raporteur of the committee which prepared the *Convention.* It seems to me that this is a specialized type of document and that the commentary of the raporteur might be of considerable assistance to the courts in trying to understand what was intended by the *Convention* You will note that the drafting of the *Convention* is not typical of the drafting in Canadian statutes. Therefore, it seems to me that the comments of the rapporteur might be of considerable assistance to the courts in trying to interpret Articles which might otherwise seem ambiguous to the court.

August 1979 R. H. Tallin.

UNIFORM INTERNATIONAL ADMINISTRATION OF ESTATES OF DECEASED PERSONS (HAGUE CONVENTION) ACT

(As Adopted by the Conference)

(See page 175)

Definitions **1.** In this Act (Part)

(*a*) "certificate" means an international certificate in the form set out in the annex to the Convention;

(*b*) "Contracting State" means a state that has ratified or acceded to the Convention;

(*c*) "Convention" means the Convention Concerning the International Administration of the Estates of Deceased Persons set out in the schedule hereto;

(*d*) "deceased" means a deceased in respect of the administration of whose estate a certificate has been requested or issued;

(*e*) "effective date" means the later of

(i) the first day of the 3rd calendar month after the Government of Canada deposits an instrument of ratification with the Ministry of Foreign Affairs of the Netherlands if, at the time of ratification, the Government of Canada declares that the Convention extends to the Province, or

(ii) the first day of the 3rd calendar month after the Government of Canada submits to the Ministry of Foreign Affairs of the Netherlands

a declaration that the Convention extends to the Province.

Convention in force in province

2. On, from and after the effective date, the Convention is in force in the Province and the provisions thereof are law in the Province.

Competent authority under chapter II

3. (1) For the purposes of drawing up or confirming a certificate under chapter II of the Convention, the (Surrogate Court of the Surrogate Court district in (*enacting province*) in which the deceased was habitually resident immediately before his death) is the competent authority and the issuing authority.

Lawyers may draw up certificate

(2) For the purposes of chapter II of the Convention, a certificate drawn up in (*enacting province*) by a member of (the Law Society of *or other professional body*) and confirmed by (the Surrogate Court of the Surrogate Court district in (*enacting province*) in which the deceased was habitually resident immediately before his death) shall be deemed to be drawn up by that (Surrogate court).

Application of internal law

4. (*Deleted*)

Choice of deceased in indication of powers

4. In designating the holder of a certificate and indicating his powers, the appropriate Surrogate Court shall apply the internal law of (*enacting province*) or the internal law of the state of which the deceased was a national in accordance with the choice made by the deceased.

Receipt of inquiries under Article 5

5. The (Attorney General *or* Minister of Justice) of (*enacting province*) shall receive inquiries under Article 5 of the Convention as to whether the contents of a certificate proposed to be issued by the competent authority. ofanotherContractingStateaccordswiththelawof(*enacting province*) and shall cause the inquiries to be answered.

Dispute of certificate

6. Any person who disputes the designation or the powers of the holder of a certificate issued by a Surrogate Court in (*enacting province*) may apply to the court to annul or modify the certificate and after hearing the application the court may make such order as it deems appropriate annulling or modifying the certificate or dismiss the application.

Request for information

7. The (registrar) of the (Surrogate Court of the Surrogate Court District in (*enacting province*) in which the deceased was habitually resident immediately before his death) shall,

on request and without fee inform any interested person or authority that a certificate has or has not been issued in respect of the estate of the deceased and if it has as to its content and of any annulment or modification or suspension.

(Note: Articles 1 and 10 of the Convention authorize a procedure to precede recognition of a certificate. Section 8 is included as a suggestion only. If a province wishes to subject the recognition to such procedure it should consider what changes are needed in the procedure set out in Section 8 to make it consistent with the practice in the appropriate court. However, the grounds for refusing recognition are restricted by Articles 13 to 17 of the Convention; it is therefore important to include a provision dealing with those restrictions similar in effect to subsection (6) of Section 8).

Recognition of certificate required

8. (1) The recognition of a certificate issued by the competent authority of another Contracting State is dependant in (*enacting province*) upon the decision of (the Surrogate Court of the Surrogate Court district in the province in which the assets of the deceased within the province, or the major or most valuable portion thereof are situated) in accordance with the procedure set out in this section.

Application by holder of certificate

(2) Where the holder of a certificate issued by the competent authority of another Contracting State wishes the certificate recognized in (*enacting province*), he shall apply to the (Surrogate Court of the Surrogate Court district in the province in which the assets of the deceased within the province, or the major or most valuable portions thereof, are situated) for recording recognition of a certificate.

Publication of notice

(3) The court shall not record recognition of a certificate issued by the competent authority of another Contracting State unless the holder of the certificate publishes in the (*Gazette*) and in a newspaper published in the province and having a general circulation in the area of the province in which the assets of the deceased, or the major or most valuable portions thereof are situated, a notice in the following form completed in an appropriate manner with the correct information:

APPENDIX N

FORM OF NOTICE

Estate of

(name and deceased and his address at time of death)

and

(name of holder of certificate) (address of holder)

being the holder of an international certificate for the administration of the estate of late of

(name of deceased) (address of deceased at the time of his death)

issued under the Convention concerning the International Administration of the Estates of Deceased Persons by the

(name of issuing authority)

of

(name of issuing authority) (name of Contracting State from which certificate was issued)

as applied to the (Surrogate Court of the Surrogate Court district) for recognition of the certificate recorded.

Any person objecting to the recognition of the certificate may file a notice of objection stating his name and address and the reasons for the objection in the office of (the registrar) of (the Surrogate Court of the Court district) at

(address of office)

at any time within one month of the date of the publication of this notice.

(name of the holder of certificate or name and address of solicitor or agent of the holder)

Where no objection filed

(4) Where no person files a notice of objection in the office of the (registrar) of the (Surrogate Court) to which the application for recording recognition of the certificate is made within one month after the publication of the notices under subsection (3), the court may order the recognition of the certificate and the recording of the recognition in the records of the court without a hearing.

Appointment or hearing objection

(5) Where a person files a notice of objection in the office of the (registrar) of the (Surrogate Court) to which the application for recognition of the certificate is made within one month after publication of the notices under subsection (3), the (registrar) shall obtain an appointment for a time and place for hearing the application and the objection and cause notice thereof to be given to the applicant and the objector or their solicitors.

Order of court

(6) If on the hearing of the application and the objection the court is satisfied that recognition of the certificate should be refused on one or more of the grounds set out in Articles 13, 14, 15, 16 and 17 of the Convention, it

may refuse recognition of the certificate otherwise it shall order the recognition of the certificate and the recording of the recognition in the records of the court.

Copies of order

(7) The (registrar) of a court that has ordered the recognition of a certificate issued under the Convention by an issuing authority of another Contracting State shall, on request (and with or without fee) issue to the holder of a certificate one or more copies of the order certified under the hand of the (registrar) and the seal of the court.

Supervision of holder of certificate

10. (1) The holder of a certificate recognized by a court in (*enacting province*) is subject to the supervision and control of the court in respect of the estate of the deceased in (*enacting province*) in the same manner and to the same extent as an executor of a will in respect of which letters probate have been issued by the court.

Responsibility of holder of certificate for payment of debts

(2) Where the holder of a certificate issued in respect of the estate of a deceased takes possession of the assets of a deceased situated in (*enacting province*), the holder of a certificate is responsible to the value of those assets for the payment of the debts of the deceased to the same extent as the executor of a will of a deceased person is responsible for the payment of the debts of the deceased person.

Power of holder of certificate over immovables

11. Where a certificate isssued by the competent authority of another Contracting State indicates that the law in accordance with which the certificate was drawn up gives the holder of the certificate powers over immovables situated abroad, those powers shall be recognized in (*enacting province*) to the extent that an executor of the will of a deceased person has power in (*enacting province*) over immovables in (*enacting province*) where the will ot the deceased does not give any special powers to the executor over immovables or impose any special restrictions on the powers of the executor over immovables.

Request to ratify Convention

12. The (Provincial Secretary *or* other provincial minister) shall request the Government of Canada (to ratify the Convention and) to submit a declaration to the Ministry of Foreign Affairs of the Netherlands declaring that the Con-

vention extends to (*enacting province*) and to inform the Ministry of Foreign Affairs of the Netherlands of the following designations, declarations and indications with respect to the extension of the Convention to (enacting province):

(*a*) The (Surrogate Court of the Surrogate Court district in (*enacting province*) in which the deceased was habitually resident immediately before his death) is designated as the competent judicial authority to draw up a certificate under the Convention.

(*b*) It is declared that a certificate drawn up within (*enacting province*) shall be deemed to be drawn up by the competent authority if it is drawn up by a member of (The Law Society of *or* other professional body) and is confirmed by the (Surrogate Court of the Surrogate Court district in (*enacting province*) in which the deceased was habitually resident immediately before his death).

(*c*) For the purposes of, and subject to the conditions set out in, Article 3 of the Convention, it is declared that if the deceased was a national of Canada and was most closely connected with (*enacting province*) the internal law of (*enacting province*) shall be applied in order to designate the holder of a certificate and to indicate his powers.

(*d*) It is declared that in designating the holder of a certificate and indicating his powers, the competent authority in (*enacting province*) will apply the internal law of (enacting province) or the internal law of the state of which the deceased was a national in accordance with the choice made by him.

(*e*) The (Attorney General *or* Minister of Justice) of (*enacting province*) is designated as the authority or the purpose of receiving inquiries under Article 5 of the Convention as to whether the contents of a certificate accord with the law of (*enacting province*).

(*f*) An indication that the information provided for under Article 8 of the Convention may be obtained by inquiring of the (registrar) of the (Surrogate Court of the Surrogate Court district in (*enacting province*) in which the deceased was habitually resident immediately before his death).

(*g*) An indication that recognition of a certificate issued by the competent authority of another Contracting State is subject to and depends upon a procedure and certain publicity and (the Surrogate Court of the Surrogate Court district in (*enacting province*) in which the assets of the deceased within the province, or the major or most valuable portions thereof, are situated) is designated as the authority before which the proceedings are to be brought.

(*h*) An indication that where a certificate issued by the competent authority of another Contracting State indicates that the law in accordance with which the certificate was drawn up gives the holder of the certificate powers over immovables situated abroad, those powers will be recognized in (*enacting province*) to the extent that an executor of the will of a deceased has power in (*enacting province*) over immovables in (*enacting province*) where the will of a deceased does not give any special powers to the executor over immovables or impose any special restrictions on the powers of the executor over immovables.

Effective date determined

13. As soon as the effective date is determined, (the Provincial Secretary *or* other provincial minister) shall publish in the_____ *Gazette* a notice indicating the date that is the effective date for the purposes of this Act (Part).

Meanings of words in *Convention*

14. Notwithstanding The Interpretation Act, words and expressions used in the Convention shall be construed and given the meaning that those words and expressions are given in Private International Law by courts of Contracting States, including courts in Canada.

Assistance in construction of Convention

15 For the purposes of construing and interpreting the Convention, the courts in (*enacting province*) may seek information from and take into consideration the commentary prepared by the rapporteur of the committee of The Hague Conference on Private International Law which proposed the Convention and published by The Hague Conference on Private International Law.

Convention Concerning the International Administration of the Estates of Deceased Persons

The States signatory to this Convention,
Desiring to facilitate the international administration of the estates of deceased persons.
Have resolved to conclude a Convention to this effect and have agreed upon the following provisions—

CHAPTER I – THE INTERNATIONAL CERTIFICATE

Article 1

The Contracting States shall establish an international certificate designating the person or persons entitled to administer the movable estate of a deceased person and indicating his or their powers

This certificate, drawn up in the Contracting State designated in Article 2 in accordance with the model annexed to this Convention, shall be recognized in the Contracting States

A Contracting State may subject thhis recognition to the procedure or to the publicity provided for in Article 10

CHAPTER II – THE DRAWING UP OF THE CERTIFICATE

Article 2

The certificate shall be drawn up by the competent authority in the State of the habitual residence of the deceased

Article 3

For the purpose of designating the holder of the certificate and indicating his powers, the competent authority shall apply its internal law except in the following cases, in which it shall apply the internal law of the State of which the deceased was a national—

1 if both the State of his habitual residence and the State of his nationality have made the declaration provided for in Article 31;

2 if the State of which he was a national but not the State of his habitual residence has made the declaration provided for in Article 31, and if they deceased had lived in the State of the issuing authority for less than 5 years immediately prior to his death

Article 4

A Contracting State may declare that in designating the holder of the certificate and in indicating his powers it will, notwithstanding Article 3, apply its internal law or that of the State of which the deceased was a national in accordance with the choice made by him

Article 5

Before issuing the certificate, the competent authority, when applying the internal law of the State of which the deceased was a national, may enquire of an authority of that State, which has been designated for that purpose, whether the contents of the certificate accord with that law and, in its discretion, fix a time-limit for the submission of a reply If no reply is received within this period it shall draw up the certificate in accordance with its own understanding of the applicable law

Article 6

Each Contracting State shall designate the competent judicial or administrative authority to draw up the certificate

A Contracting State may declare that a certificate drawn up within its territory shall be deemed to be drawn up by the competent authority if it is drawn up by a

member of a professional body which has been designated by that State, and if it is confirmed by the competent authority

Article 7

The issuing authority shall, after measures of publicity have been take to inform those interested, in particular the surviving spouse, and after investigations, if any are necessary, have been made, issue the certificate without delay

Article 8

The competent authority shall, on request, inform any interested person or authority that a certificate has been issued and of its contents, and of any annulment or modification of the certificate or of any suspension of its effects

The annulment or modification of the certificate or the suspension of its effects by the issuing authority shall be brought to the attention of any person or authority that has been notified in writing that the certificate had been issued

CHAPTER III – RECOGNITION OF THE CERTIFICATE – PROTECTIVE OR URGENT MEASURES

Article 9

Subject to the provisions of Article 10, in order to attest the designation and powers of the person or persons entitled to administer the estate, the production only of the certificate may be required in the Contracting States other than that in which it was issued

No legalisation or like formality may be required.

Article 10

A Contracting State may make the recognition of the certificate depend either upon a decision of an authority following an expeditious procedure, or upon simple publicity

This procedure may comprise 'opposition' and appeal, insofar as either is founded on Articles 13, 14, 15, 16 and 17

Article 11

If the procedure or the publicity envisaged in Article 10 is required, the holder of the certificate may, on mere production, take or seek any protective or urgent measures within the limits of the certificate, as from the date of its entry into force and throughout the duration of the procedure of recognition, if any, until a decision to the contrary is made

A requested State may require that interim recognition is to be subject to the provisions of its internal law for such recognition, provided that the recognition is the subject of an expeditious procedure

However, the holder may not take or seek the measures mentioned in paragraph 1 after the sixtieth day following the date of entry into force of the certificate, if by then he has not initiated the procedure for recognition or taken the necessary measures of publicity

Article 12

The validity of any protective or urgent measures taken under Article 11 shall not be affected by the expiry of the period of time specified in that Article, or by a decision refusing recognition

However, any interested person may request the setting aside or confirmation of these measures in accordance with the law of the requested State.

Article 13

Recognition may be refused in the following cases—

1 if the certificate is not authentic, or not in accordance with the model annexed to this Convention;

2 if it does not appear from the contents of the certificate that it was drawn up by an authority having jurisdiction within the meaning of this Convention

Article 14

Recognition of the certificate may also be refused if, in the view of the requested State—

1 the deceased had his habitual residence in that State; or

2 the deceased had the nationality of that State, and for that reason, according to Articles 3 and 4, the internal law of the requested State should have been applied with respect to the designation of the holder of the certificate and to the indication of his powers However, in this case recognition shall not be refused unless the contents of the certificate are contrary to the interanl law of the requested State

Article 15

Recognition may also be refused if the certificate is incompatible with a decision on the merits, rendered or recognised in the requested State

Article 16

Where a certificate mentioned in Article 1 is presented for recognition, and another certificate mentioned in the same Article which is incompatible with it has previously been recognised in the requested State, the requested authority may either withdraw the recognition of the first certificate and recognise the second, or refuse to recognise the second.

Article 17

Finally, recognition of the certificate may be refused if such recognition is manifestly incompatible with the public policy (ordre public') of the requested State

Article 18

Refusal of recognition may be restricted to certain of the powers indicated in the certificate

Article 19

Recognition may not be refused partially or totally on any grounds other than those set out in Articles 13, 14, 15, 16 and 17. The same shall also apply to the withdrawal or reversal of the recognition

Article 20

The existence of a prior local administration in the requested State shall not relieve the authority of that State of the obligation to recognise the certificate in accordance with this Convention

In such a case the powers indicated in the certificate shall be vested in the holder alone The requested State may maintain the local administration in respect of powers which are not indicated in the certificate

CHAPTER IV—USE OF THE CERTIFICATE AND ITS EFFECTS

Article 21

The requested State may subject the holder of the certificate in the exercise of his powers to the same local supervision and control applicable to estate representatives in that State

In addition the requested State may subject the taking of possession of the assets situate in its territory to the payment of debts.

The application of this Article shall not affect the designation and the extent of the powers of the holder of the certificate.

Article 22

Any person who pays, or delivers property to, the holder of the certificate drawn up, and, where necessary, recognised, in accordance with his Convention shall be discharged, unless it is proved that the person acted in bad faith

Article 23

Any person who has acquired assets of the estate from the holder of a certificate drawn up, and where necessary, recognised, in accordance with his Convention shall, unless it is proved that he acted in bad faith, be deemed to have acquired them from a person having power to dispose of them

CHAPTER V– ANNULMENT – MODIFICATION - SUSPENSION OF THE CERTIFICATE

Article 24

If, in the course of a procedure of recognition, the designation or powers of the holder of a certificate are challenged on the merits, the authorities of the requested State may suspend the provisional effects of the certificate, stay judgment and, if the case so requires, settle a period of time within which an action on the merits must be instituted in the court having jurisdiction

Article 25

If the designation or powers of the holder of a certificate are put in issue in a dispute on the merits before the courts of the State in which the certificate was issued, the authorities of any other Contracting State may suspend the effects of the certificate until the end of the litigation

If a dispute on the merits is brought before the courts of the requested State or of another Contracting State, the authorities of the requested State may likewise suspend the effects of the certificate until the end of the litigation

Article 26

If the certificate is annulled or if its effects are suspended in the State in which it was drawn up, the authorities of every Contracting State shall give effect within its territory to such annulment or suspension, at the request of any interested person or if they are informed of such annulment of suspension in accordance with Article 8

If any provisions of the certificate are modified in the State of the issuing authority, that authority shall annul the existing certificate and issue a new certificate as modified.

Article 27

Annulment or modification of the certificate or suspension of its effects according to Articles 24, 25 and 26 shall not affect acts carried out by its holder within the territory of a Contracting State prior to the decision of the authority of that State giving effect to the annulment, modification or suspension

Article 28

The validity of dealings by a person with the holder of the certificate shall not be challenged merely because the certificate has been annulled or modified, or its effects have been suspended, unless it is proved that the person acted in bad faith

Article 29

The consequences of the withdrawal or reversal of recognition shall be the same as those set out in Articles 27 and 28

CHAPTER VI – IMMOVABLES

Article 30

If the law in accordance with which the certificate was drawn up gives the holder powers over immovables situate abroad, the issuing authority shall indicate in the certificate the existence of these powers

Other Contracting States may recognise these powers in whole or in part

Those Contracting States which have made use of the option provided for in the foregoing paragraph shall indicate to what extent they will recognise such powers.

CHAPTER VII – GENERAL CLAUSES

Article 31

For the purposes of, and subject to, the conditions set out in Article 3, a Contracting State may declare that if the deceased was a national of that State its internal law shall be applied in order to designate the holder of the certificate and to indicate his powers

Article 32

For the purposes of this Convention, 'habitual residence and 'nationality' mean respectively the habitual residence and nationality of the deceased at the time of his death

Article 33

The standard terms in the model certificate annexed to this Convention may be expressed in the official language, or in one of the official languages of the State of the issuing authority, and shall in all cases be expressed either in French or in English.

The corresponding blanks shall be completed either in the official language or in one of the official languages of the State of the issuing authority or in French or in English.

The holder of the certificate seeking recognition shall furnish translations of the information supplied in the certificate, unless the requested authority dispenses with this requirement.

Article 34

In relation to a Contracting State having, in matters of estate administration, two or more legal systems applicable to different categories of persons, any reference to the law of that State shall be construed as referring to the legal system specified by the law of that State, as applicable to the particular category of persons

Article 35

If a Contracting State has two or more territorial units in which different systems of law apply in relation to matters of estate administation, it may declare that this Convention shall extend to all its territorial units or only to one or more of them, and may modify its declaration by submitting another declaration at any time

These declarations shall state expressly the territorial units to which the Convention applies.

Other Contracting States may decline to recognise a certificate if, at the date on which recognition is sought, the Convention is not applicable to the territorial unit in which the certificate was issued.

Article 36

In the application of this Convention to a Contracting State having two or more territorial units in which different systems of law apply in relation to estate administration—

1 any reference to the authority or law or procedure of the State which issues the certificate shall be construed as referring to the authority or law or procedure of the territorial unit in which the deceased had his habitual residence;

2 any reference to the authority or law or procedure of the requested State shall be construed as referring to the authority or law or procedure of the territorial unit in which the certificate is sought to be used;

3 any reference made in the application of sub-paragraph 1 or 2 to the law or procedure of the State which issues the certificate or of the requested State shall be construed as including any relevant legal rules and principles of the Contracting State which apply to the territorial units comprising it;

4 any reference to the national law of the deceased shall be construed as referrng to the law determined by the rules in force in the State of which the deceased was a national, or, if there is no such rule, to the law of the territorial unit with which the deceased was most closely connected

Article 37

Each Contracting State shall, at the time of the deposit of its instrument of ratification acceptance, approval or accession notify the Ministry of Foreign Affairs of the Netherlands of the following—

1 the designation of the authorities, pursuant to Article 5 and the first paragraph of Article 6;

2 the way in which the information provided for under Article 8 may be obtained;

3 whether or not it has chosen to subject the recognition to a procedure or to publicity, and, if a procedure exists, the designation of the authority before which the proceedings are to be brought

Each Contracting State mentioned in Article 35 shall at the same time, notify the Ministry of Foreign Affairs of the Netherlands of the information provided for in paragraph 2 of that Article

Subsequently, each Contracting State shall likewise notify the Ministry of any modification of the designations and information mentioned above

Article 38

A Contracting State desiring to exercise one or more of the options envisaged in Article 4, the second paragraph of Article 6, the second and third paragraphs of Article 30 and Article 31, shall notify this to the Ministry of Foreign Affairs of the Netherlands, either at the time of the deposit of its instrument of ratification, acceptance, approval or accession or subsequently

The designation envisaged by the second paragraph of Article 6, or the indication envisaged by the third paragraph of Article 30, shall be made in the notification

A Contracting State shall likewise notify any modification to a declaration, designation or indication mentioned above

Article 39

The provisions of this Convention shall prevail over the terms of any bilateral Convention to which Contracting States are or may in the future become Parties and which contains provisions relating to the same subject matter, unless it is otherwise agreed between the Parties to such Convention.

This Convention shall not affect the operation of other multilateral Conventions to

which one or several Contracting States are or may in the future become Parties and which contain provisions relating to the same subject-matter

Article 40

This Convention shall apply even if the deceased died before its entry into force.

CHAPTER VIII - FINAL CLAUSES

Article 41

This Convention shall be open for signature by the States which were Members of the Hague Conference on Private International Law at the time of its Twelfth Session

It shall be ratified, accepted or approved and the instruments of ratification, acceptance or approval shall be deposited with the Ministry of Foreign Affairs of the Netherlands

Article 42

Any State which has become a Member of the Hague Conference on Private International Law after the date of its Twelfth Session, or which is a Member of the United Nations or of a specialised agency of that Organisation, or a Party to the Statute of the International Court of Justice may accede to this Convention after it has entered into force in accordance with Article 44 The instrument of accession shall be deposited with the Ministry of Foreign Affairs of the Netherlands

Such accession shall have effect only as regards the relations between the acceding State and those Contracting States which have not raised an objection to its accession in the twelve months after the receipt of the notification referred to in sub-paragraph 3 of Article 46 The objection may also be raised by Member States at the time when they ratify, accept or approve the Convention after an accession Any such objection shall be notified to the Ministry of Foreign Affairs of the Netherlands

Article 43

Any State may, at the time of signature, ratification, acceptance, approval or accession, declare that this Convention shall extend to all the territories for the international relations of which it is responsible, or to one or more of them Such a declaration shall take effect on the date of entry into force of the Convention for the State concerned

At any time thereafter, such extensions shall be notified to the Ministry of Foreign Affairs of the Netherlands

The extension shall have effect as regards the relations between the Contracting States which have not raised an objection to the exxtension in the twelve months after the receipt of the notification referred to in Article 46, sub-paragraph 4, and the territory or territories for the international relations of which the State in question is responsible and in respect of which the notification was made

Such an objection may also be raised by Member States when they ratify, accept or approve the Convention after an extension

Any such objection shall be notified to the Ministry of Foreign Affairs of the Netherlands

Article 44

This Convention shall enter into force on the first day of the third calendar month after the deposit of the third instrument of ratification, acceptance or approval referred to in the second paragraph of Article 41

Thereafter the Convention shall enter into force

– for each State ratifying, accepting or approving it subsequently, on the first day of the third calendar month after the deposit of its instrument of ratification, acceptance or approval:

— for each acceding State, on the first day of the third calendar month after the expiry of the period referred to in Article 42;

— for a territory to which the Convention has been extended in conformity with Article 43, on the first day of the third calendar month after the expiry of the period referred to in that Article.

Article 45

This Convention shall remain in force for five years from the date of its entry into force in accordance with the first paragraph of Article 44, even for States which have ratified, accepted, approved or acceded to it subsequently.

If there has been no denunciation, it shall be renewed tacitly every five years

Any denunciation shall be notified to the Ministry of Foreign Affairs of the Netherlands, at least six months before the expiry of the five year period It may be limited to certain of the territories to which the Convention applies.

The denunciation shall have effect only as regards the State which has notified it. The Convention shall remain in force for the other Contracting States

Article 46

The Ministry of Foreign Affairs of the Netherlans shall notify the States Members of the Conference, and the States which have acceded in accordance with Article 42 of the following—

1 the signatures and ratifications, acceptances and approvals referred to in Article 41;

2 the date on which this Convention enters into force in accordance with Article 44;

3 the accessions referred to in Article 42 and the dates on which they take effect;

4 the extensions referred to in Article 43 and the dates on which they take effect;

5 the objections raised to accessions and extensions referred to in Articles 42 and 43;

6 the designations, indications and declarations referred to in Articles 37 and 38;

7 the denunciations referred to in Article 45

In witness whereof the undersigned, being duly authorized thereto, have signed this Convention

Done at The Hague, on the 2nd day of October, 1973 in the English and French languages, both texts being equally authentic, in a single copy which shall be deposited in the archives of the Government of the Netherlands, and of which a certified copy shall be sent, through the diplomatic channel, to each of the States Members of the Hague Conference on Private International Law at the date of its Twelfth Session

APPENDIX N

Chapter V

SERVICE ABROAD OF JUDICIAL AND EXTRA-JUDICIAL DOCUMENTS IN CIVIL OR COMMERCIAL MATTERS

A comprehensive report on the possible implementation in Canada of *The Hague Convention on the Service Abroad of Judicial and Extra-Judicial Documents in Civil or Commercial Matters* was prepared last year by Mr. Andrew Pritchard, student-at-law, working under the supervision of Mr. Rae Tallin. The report is to be found in the *1979 Proceedings* at pages 232-250 and the *Hague Convention* Is printed at pages 292-304.

We agree with the conclusion of the memorandum that no specific provincial legislation would be required to implement the *Convention*, though some minor amendments to rules of court might be required. We also believe that the *Convention* is a very valuable one, which ought to be ratified by Canada. Accordingly, we would propose the following resolution on this topic:

THAT this Conference recommend to the Hague Conference that Canada should move to ratify The Hague Convention on the Service Abroad of Judicial and Extra-Judicial Documents in Civil or Commercial Matters, and that the provincial governments in Canada should be requested by Ottawa to amend their rules of practice where necessary, so that Canada may ratify the *Convention*.

Editorial note: The above resolution was adopted.

Chapter VI

TAKING OF EVIDENCE ABROAD IN CIVIL OR COMMERCIAL MATTERS

A comprehensive report on *The Hague Convention on the Taking of Evidence Abroad in Civil or Commercial Matters* was prepared by Andrew Pritchard, student-at-law, under the direction of Rae Tallin and printed in last year's *Proceedings* at pages 252-292. The Committee has decided that the question of what reservations to the *Convention* might be desirable on Canada's part requires additional study. Accordingly, such a review will be conducted by the Committee during the coming year and a further report prepared for the 1981 annual meeting.

The text of this *Convention* was omitted from last year's *Proceedings*, so we are including it herein on page 211. We are also including on page 203 a draft Uniform Act respecting the *Convention* and a commentary upon it prepared by Mr. Tallin.

C I C S Doc. 840-173/047

MEMORANDUM OF MR. TALLIN

In 1977 the recommendation of the Manitoba Commissioners that the matter of legislation to enable provinces to bring into force *The Hague Convention on the Taking of Evidence Abroad in Civil or Commercial Matters* was approved. Although it is not recorded in the *Proceedings*, I believe that I undertook to present a report on the matter. I was unable to prepare such a report in 1978 and requested the matter be put over for a year. Also in 1978, the report of the Special Committee on International Conventions on Private International Law mentioned the *Convention* in its report and later recommended that a special research project be undertaken in respect of the *Convention*. That recommendation was approved by the Executive and a research paper has indeed been completed.

Commencing on page 203 is a proposed draft for legislation which might be used to bring the *Convention* into force in a province. As almost all the provisions in the proposed draft relate directly to specific Articles of the *Convention*, I have tried to retain, as far as possible, the wording of the *Convention*. This results in the drafting style of the Federal legislation that departs to a considerable extent

from our own Conference's drafting. However, it seemed to me that internal consistency, i.e. consistency between a provision in the draft Act and the Article of the *Convention* to which it relates, was of greater importance than the consistency between this draft Act and other draft Acts which might be recommended by the Conference.

The *Convention* is of such a nature that any jurisdiction contemplating ratification or accession is required to make a number of substantive policy decisions with respect to various Articles. Many of these decisions must be communicated by way of declaration or designation to the Ministry of Foreign Affairs of the Netherlands at the time of notice of ratification or accession. In view of the fact that Canada, not the province, is the member of The Hague Conference and must make the communication and be responsible for their accuracy, I concluded that it would be necessary to provide not only specific instructions to the Government of Canada as to the nature of these declarations and designations but also specific substantive provisions that will give instructions to the courts or administrative personnel as to the course to be followed with respect to these decisions. There is therefore an apparent, though I think necessary, overlapping between many substantive provisions in the draft and the directory provisions relating to the request to the Government of Canada in section 13.

It is unlikely that any province will wish to adopt all the substantive provisions and the corresponding directory clauses. Some of them are contradictory and others would not be consistent with general ideas of provinicial governments as to how they should respond to the decisions required. However, I have inserted provisions for every decision which I thought was possible on the premise that no one could be absolutely sure that all provinces might wish to reject one or more of the options. I think that after consideration, the Uniform Law Conference should give some guidance as to which options it recommends in the hope of achieving some uniformity in any possible application of the *Convention* in several provinces. However, I also think that a provision should be made in the draft for every possible option.

Section 1 of the draft provides some definitions. The definitions of "Contracting State" and "Convention" need no comment. The definition of "effective date" relates to the Articles of the *Convention* determining the entry into force with respect to any state.

Section 2 of the draft provides for the application of the *Convention* in the enacting province from the effective date. There is pro-

vision in Article 33 authorizing a Contracting State to exclude the application of paragraph 2 of Article 4 and chapter II or either of them. Therefore, this is one of the matters which must be considered. Article 4, paragraph 2, deals with the acceptance of Letters of Request in either English or French, and with respect to this decision 13(b) of the draft would provide the appropriate instruction. Chapter II deals with the taking of evidence by diplomatic officers, consular agents, etc. If this is not to be made applicable to the province then 13(k) of the draft would have to be enacted as well. However, if chapter II were not to be made applicable to the province a number of the other clauses of section 13 of the draft would have to be omitted because they are only pertinent to the application of chapter II.

Section 3 designates the Central Authority under the *Convention* for the enacting province. As the Central Authority merely receives the Letters of Request and makes sure that they are presented to the proper court for execution I suggest that the Central Authority be a minister who has some responsibility for the administration of justice within the province. The section, as drafted, would also identify for the first time the competent authority, the court, which is required to execute the Letters of Request. This section ties in with 13(a) of the draft which would instruct the Government of Canada to inform the Ministry of Foreign Affairs of the Netherlands as to the Central Authority for the province. This designation is required under Article 2 of the *Convention* and some of the duties of the Central Authority are mentioned in Articles 5 and 6.

Section 4 of the draft designates a court as the competent authority to execute the Letters of Request. This separate designation is contemplated under Articles 2 and 6. There is no corresponding provision in section 13 dealing with the designation of the competent authority as it does not appear to be specifically required by the Convention. However, it is possible that it would be advisable to include the designation of the competent authority for information purposes. The courts of other Contracting States would normally wish to address a Letter of Request to the proper court in the province although it would have to be sent to the Central Authority.

Section 5 of the draft would allow the provincial courts to continue their existing practices with respect to Letters of Request, assistance in the execution of commissions to take evidence and the methods of taking evidence. A declaration with respect to clause (a) of the section is authorized under clause (a) of Article 27. There is a corresponding instruction clause (j) of section 13 of the draft. Clauses (b) and (c)

of section 5 are added out of an abundance of caution. Article 27 provides that nothing shall "prevent a Contracting State from" continuing an existing practice in these matters but it might be wise to specifically indicate that existing practices can be continued.

Section 6 of the draft, which relates to Article 8, would authorize members of the judicial personnel of the authority of another Contracting State to be present at the execution of the Letter of Request. A corresponding direction is contained in clause (c) of section 13.

Section 7 of the draft deals with privileges and duties of witnesses beyond those of the enacting province and the Contracting State from which the Letters of Request issued. This relates to Article 11 which authorized a declaration that additional privileges and duties existing under the law of other states will be respected. Although I am not sure, I presume that this was intended to authorize a state to declare that the privileges and duties of a witness under the law of the state of which he is a national would be respected to some extent. However, other concepts relating to a declaration under Article 11 could likely be developed. There is a corresponding clause (d) in section 13 of the draft.

Sections 8, 9, alternative 9, 10, alternative 10, and 11 would all be unnecessary if a province decided to exclude the application of chapter II of the *Convention.* The same applies to clauses (e), (f), alternative (f), (g), alternative (g) and (h) of section 13.

All these provisions of the draft relate to the taking of evidence within the enacting province by diplomatic officers, consular agents and commissioners authorized to take evidence.

Section 8 deals with the right of a diplomatic officer or consular agent of a Contracting State to take evidence, without compulsion, of a national of that Contracting State. It relates to Article 15 of the *Convention.* Article 15 commences by giving permission to the diplomatic officer and consular agent to giving permission to the diplomatic officer and sonsular agent to take such evidence. The second part of the Article authorizes the Contracting State to declare that prior permission would be required for the diplomatic officer or consular agent to take such evidence. Section 8 would only therefore be required if the enacting province wanted to restrain the diplomatic officer or consular agent from taking evidence, without compulsion, from nationals of the Contracting State by requiring the diplomatic officer or consular agent to obtain prior permission from a court or some other agency. It would, of course, be necessary to designate the court or

agency to give the permission. There is a corresponding clause (e) in section 13.

Section 9 and alternate section 9 relate to Article 16. This Article contemplates a diplomatic officer or consular agent taking evidence, without compulsion, from nationals of Canada or any other state. The general tenor of the Article is that prior permission would be required for the taking of this kind of evidence although there is authority for a declaration to the effect that the evidence could be taken under this Article without prior permission. Section 9 of the draft deals with allowing the evidence to be taken without prior permission. It should be noted that it would be inconsistent to require prior permission under section 8 of the draft (Article 15) and allow evidence to be taken without prior permission under section 9 of the draft (Article 16). If prior permission is to be required under Article 16 then it would be necessary to designate the competent authority, probably a court, to give that permission. Alternative section 9 deals with this matter. There are corresponding clause (f) and alternative clause (f) in section 13 of the draft.

Section 10 and alternate 10 relate to Article 17 of the draft which deals with the right of a commissioner appointed by a foreign court to take evidence without compulsion within the enacting province. The Article contemplates that the commissioner would require prior permission before taking the evidence but also authorizes a declaration that the evidence might be taken without such prior permission. Section 10 would be required if the commissioners were to be allowed to take the evidence without prior permission. Again, this would have some inconsistency with any requirement under section 8 for prior permission of a diplomatic officer or consular agent to take evidence. If the concept of prior permission is to be continued, alternative section 10 would be necessary in order to designate the agency, probably a court, from which the permission could be obtained. There are corresponding clauses (g) and alternate (g) in section 13.

Section 11 of the draft, which relates to Article 18, deals with the concept of a court or some other agency granting assistance to compel witnesses to give evidence before a diplomatic officer, consular agent or commissioner. Article 18 would not be operative unless the enacting province made the declaration. There is a corresponding clause (h) in section 13.

Section 12 of the draft, which relates to Article 23, would be necessary if the enacting province wished to exclude the application of

the *Convention* to the obtaining of pre-trial discovery of documents. There is a corresponding clause (i) in section 13.

Section 13 is a direction to a minister of the enacting province to request the Government of Canada to take the necessary steps to ratify the *Convention* to declare that it applies to the province. It also sets out the list of information which the Government of Canada would give to the Ministry of Foreign Affairs of the Netherlands with respect to various declarations and designations which are required or may be made by the enacting province. It would be necessary for the enacting province to be careful that the proper clauses of section 13 which reflected their options with respect to the various designations and declarations corresponds with the substantive sections which precede section 13 and which also reflect the options of the enacting province.

Section 14 is merely instruction to publish the effective date when it has been determined.

Section 15 of the draft is a new concept. It is possible that words and phrases used in the *Convention* itself have been defined in The Interpretation Act of the enacting province. It is unlikely that those drafting the *Convention* had in mind the specific definitions contained in a provincial *Interpretation Act*. Therefore, I thought it advisable to add a provision, for discussion purposes, which would allow the courts to give the meaning to words and phrases used in the *Convention* which are ordinarily given to those words in private international law without being restricted to some specific definitions which might be enacted in the *Interpretation Act*.

Section 16 is a departure from the existing practice. It is authority for a court, in interpreting the *Convention*, to look at the commentary of the raporteur of the committee which prepared the *Cnvention*. It seems to me that this is a specialized type of document and that the commentary of the raporteur might be of considerable assistance to the courts in trying to understand what was intended by the *Convention*. You will not ethat the draftaing of the *Convention* is not typical of the drafting in Canadian statutes. Therefor, it seems to me that the comments of the raporteur might be of considerable assistance toa the courts in trying to interpret Articles which might otherwise seem ambiguous to the court.

In July, 1978, a Special Commission on the operation of the *Convention* was convened at The Hague to discuss the operation of the *Convention* up to them. One of the fruits of that meeting was a model form of Letter of Request for use under the *Convention* which

was recommended by the Special Commission. A copy of the model form is attached as Annex I. Section 17 of the draft would direct the courts of the province to use the form in issuing Letters of Request under the *Convention.*

August, 1979.

R. H. Tallin.

UNIFORM TAKING OF EVIDENCE ABROAD IN CIVIL OR COMMERCIAL MATTERS (HAGUE CONVENTION) ACT

1. In this Act (Part) Definitions

(*a*) "Contracting State" means a state that has ratified or acceded to the Convention;

(*b*) "Convention" means the Convention on the Taking of Evidence Arbroad in Civil or Commercial Matters set out i the Schedule hereto;

(*c*) "effective date" means the later of

(i) The 60th day after the date on which the Government of Canada deposits its instrument of ratification with the Ministry of Foreign Affairs f the Netherlands if, at the time of ratification, the Government of Canada declares that the Convention extends to the Province, or

(ii) the 60th day after the date on which the Government of Canada notifies the Ministry of Foreign Affairs of the Netherlands that the Convention extends to the Province.

2. On, from and after the effective date, the date the Convention (except the 2nd paragraph of Article 4 thereof and chapter II thereof) is in force in the Province and the provisions thereof are law in the Province. Convention in force in province

3. The (Attorney General *or* Minister of Justice) for (*enacting province*) is designated as the Central Authority for the province for the purposes of the Convention and shall receive letters of request issued pursuant to the Convention by the judicial authority of another Contracting State and transmit them to the (Court) to execute them. Central Authority

4. The (Court) is the competent authority for the province for the purposes of the Convention and shall execute in accordane with the Convention letters of request issued pursuant to the Convention by a judicial authority of another Contracting State and transmitted to it by the (Attorney General *or* Minister of Justice) for (*enacting province*). Competent authority

Validity of other practices

5. Nothing in this Act (Part) prevents or restricts a court in the province

(*a*) from executing under the laws in force within the province other than this Act (Part) letters of request to take evidence transmitted to it through channels other than those provided for in the Convention; or

(*b*) from assisting, under the laws in force within the province other than this Act (Part) in a manner not provided for in the Convention, in the execution of commissions to take evidence issued by courts outside the Province; or

(*c*) from taking evidence in accordance with the laws in force within the province other than this Act (Part) by methods other than those provided for in the Convention.

Judicial personnel may be present

6. Members of the judicial personnel of the authority of another Contracting State which has issued a letter of request may be present at the execution of the letter of request in (*enacting province*).

Additional privileges and duties

7. In the execution of a letter of request within (enacting province) the privileges and duties existing under the law of (name or describe states) to the extent (*describe extent*) shall be respected.

Permission required for diplomatic officers etc

8. A diplomatic officer or consular agent of a Contracting State shall not take the evidence within (*enacting province*) of a national of that Contracting State under Article 15 of the Convention unless he has, on application, obtained an order of (Court) granting him permission to take the evidence and (Court) is designated as the appropriate authority for the purposes of granting such permission under Article 15 of the Convention.

Diplomatic officers etc taking evidence under Article 16

9. In a civil or commercial matter a diplomatic officer or consular agent of a Contracting State may without compulsion take the evidence in (*enacting province*) of a national of Canada or of any other state under Article 16 of the Convention without any prior permission.

Alternative section 9.

Competent authority for Article 16

9. (Court) is designated as the competent authority for the purpose of giving permission under Article 16

of the Convention for a diplomatic officer or consular agent of a Contracting State to take the evidence in (*enacting province*) without compulsion of nationals of Canada or of any other state under Article 16 of the Convention.

Commissioner taking evidence under Article 17

10. In a civil of commercial matter, a person duly appointed as a commissioner for the purpose may, without compulsion, take evidence in (*enacting province*) in aid of proceedings commenced in a court of another Contracting State without any prior approval.

Alternative section 10.

Permission for Commissioners

10. (Court) is designated as the competent authority for the purposes of giving permission under Article 17 of the Convention for a commissioner appointed for the purpose to take evidence in (*enacting province*) in aid of proceedings commenced in the court of another Contracting State.

Assistance for compulsory taking of evidence

11. Upon application of a diplomatic officer or consular agent of another Contracting State or of a commissioner authorized by a judicial authority of another Contracting State to take evidence in aid of proceedings commenced in the court of the Contracting State, (Court) shall grant appropriate assistance to obtain the evidence by any measures of compulsion which are appropriate and are prescribed by the law of (*enacting province*) for use in proceedings in (Court).

Pre-trial discoveries

12. A letter of request issued by a competent authority of another Contracting State for the purpose of obtaining pre-trial discovery of documents shall not be executed in (*enacting province*).

Request to ratify convention

13. The (Provincial Secretary *or* other provincial minister) shall request the Government of Canada (to ratify the Convention and) to submit a declaration to the Ministry of Foreign Affairs of the Netherlands declaring that the Convention extends to (*enacting province*) and to inform the Ministry of Foreign Affairs of the Netherlands of the following designations and declarations with respect to the extension of a Convention to (*enacting province*):

(*a*) That the (Attorney General *or* Minister of Justice) for (*enacting province*) is designated the Central

Authority for (*enacting province*) under Article 2 of the Convention (and that the Court is designated as the competent authority for (enacting province) to execute letters of request transmitted to it by the Central Authority.

(*b*) That the (French *or* English) language is declared to be the language in which a letter of request shall be expressed for execution in (*enacting province*).

(*c*) That it is declared that members of the judicial personnel of the requesting authority of another Contracting State may be present at the execution of a letter of request in (*enacting province*) without any prior authorization by the competent authority (or with prior authorization by the (Court).

(*d*) That it is declared that, in addition to the privileges and duties mentioned in the 1st paragraph of Article 11 of the Convention, the privileges and duties existing under the law of (*name or describe states*) to the extent (*describe extent*) will be respected in (*enacting province*).

(*e*) That it is declared that a diplomatic officer or consular agent of a Contracting State may, in (*enacting province*), take the evidence without compulsion of nationals of that Contracting State only if permission to that effect is given by the (Court) which is designated as the appropriate authority for the purposes of Article 15 of the Convention.

(*f*) That it is declared that a diplomatic officer or consular agent of a contracting State may, in (*enacting province*), without any prior permission, take the evidence without compulsion of nationals of Canada or of any other state under Article 16 of the Convention.

Alternative clause (f)

(*f*) That (Court) is designated as the competent authority for the purpose of giving permission under Article 16 of the Convention for a diplomatic officer or consular agent of a Contracting State, in (*enacting province*) to take the evidence without compulsion of nationals of Canada or of any other state under Article 16 of the Convention.

(*g*) That it is declared that a person duly appointed as a commissioner for the purpose may, in (*enacting province*), without any prior permission, and without compulsion, take evidence in aid of proceedings in civil or commercial matters commenced in the courts of other Contracting States under Article 17 of the Convention.

Alternative clause (g)

(*g*) That (Court) is designated as the competent authority for the purposes of giving prior permission to a person duly appointed as a commissioner for the purpose to take evidence under Article 17 of the Convention in (*enacting province*) in aid of proceedings commenced in the courts of another Contracting State.

(*h*) That it is declared that a diplomatic officer, consular agent or commissioner authorized to take evidence under Articles 15, 16 or 17 of the Convention may apply to (Court) which is designated as the competent authority for (*enacting province*) for the purposes of Article 18 of the Convention, for appropriate assistance to obtain evidence by compulsion.

(*i*) That it is declared that letters of request issued for the purpose of obtaining pre-trial discovery documents as known in the common law courts will not be executed in (*enacting province*).

(*j*) That it is declared that letters of request may be transmitted to the judicial authorities of (*enacting province*) through channels other than those provided for in Article 2 of the Convention.

(*k*) That in applying the Convention in (*enacting province*), the application of chapter II of the Convention is excluded and the application of paragraph 2 of Article 4 of the Convention is excluded to the extent that a letter of request in (English *or* French) or a translation into that language shall not be accepted.

Effective date determined

14. As soon as the effective date is determined, (the Provincial Secretary *or* other provincial minister) shall publish in the *Gazette* a notice indicating the date that is the effective date for the purposes of this Act (Part).

Meanings of words in Convention

15. Notwithstanding the *Interpretation Act*, words and expressions used in the Convention shall be construed and given the meaning that those words and expressions are given in private international law by courts of Contracting States, including courts in Canada.

Assistance in construction in Convention

16. For the purposes of construing and interpreting the Convention, the courts in (*enacting province*) may seek information from and take into consideration the commentary prepared by the rapporteur of the committee of The Hague Conference on Private International Law which proposed the Convention and published by The Hague Conference on Private International Law.

Form of Letters of Request

17. A Letter of Request issued by a court in (*enacting province*) shall be in the form set out in Annex I hereto.

ANNEX I

MODEL FOR LETTERS OF REQUEST RECOMMENDED FOR USE IN APPLYING THE HAGUE CONVENTION OF 18 MARCH 1970 ON THE TAKING OF EVIDENCE ABROAD IN CIVIL OR COMMERCIAL MATTERS

REQUEST FOR INTERNATIONAL JUDICIAL ASSISTANCE PURSUANT TO THE HAGUE CONVENTION OF 18 MARCH 1970 ON THE TAKING OF EVIDENCE IN CIVIL OR COMMERCIAL MATTERS

N B Under the first paragraph of article 4, the Letter of Request shall be in the language of the authority requested to execute it or be accompanied by a translation into that language However, the provisions of the second and third paragraphs may permit use of other languages

In order to avoid confusion, please spell out the name of the month in each date

I (*Items to be included in all letters of Request*)

1 Sender

_____
(*identity and address*)

2. Central Authority of the Requested State

_____
(*identity and address*)

3. Person to whom the executed request is to be returned

_____
(*identity and address*)

II (*Items to be included in all Letters of Request*)

4 In conformity with article 3 of the Convention, the undersigned applicant has the honour to submit the following request:

5 *a* Requesting judicial authority (article 3, a) _____
(*identity and address*)

b To the competent authority of (article 3, a) _____
(*the requested State*)

6 Names and addresses of the parties and their representatives (article 3, b)

a Plaintiff _____

b Defendant _____

c Other parties _____

7 Nature and purposes of the proceedings and summary of the facts (article 3, c) _____

8. Evidence to be obtained or or other judicial act to be performed (article 3, d) _____

III (*Items to be completed where applicable*)

9 Identity and address of any person to be examined (article 3, *e*) _____

10 Questions to be put to the persons to be examined or statement of the subject-matter about which they are to be examined (article 3, *f*) _____
(*or see attached list*)

11 Documents or other property to be inspected _____
(*specify whether it is to be produced copied valued etc.*)

12. Any requirement that the evidence be given on oath or affirmation _____
(*In the event that the evidence cannot be taken in the manner requested specify whether it is to be taken in such manner as provided by local law for the formal taking of evidence*)

13 Special methods or procedure to be followed (articles 3, *i*) and 9) _____

14. Request for notification of the time and place for the execution of the Request and identity and address of any person to be notified (article 7) _____

15 Request for attendance or participation of judicial personnel of the requesting authority at the execution of the Letter of Request (article 8) _____

16. Specification of privilege or duty to refuse to give evidence under the law of the State of origin (article 11, *b*) _____

17 The fees and costs incurred which are reimbursable under the second paragraph of article 14 or under article 26 of the Convention will be borne by _____
(identity and address)

IV (*Items to be included in all Letters of Request*)

18. Date of request _____

19. Signature and seal of the requesting authority _____

XX. CONVENTION ON THE TAKING OF EVIDENCE ABROAD IN CIVIL OR COMMERCIAL MATTERS

(Concluded March 18, 1970)

The States signatory to the present Convention,

Desiring to facilitate the transmission and execution of Letters of Request and to further the accommodation of the different methods which they use for this purpose,

Desiring to improve mutual judicial co-operation in civil or commercial matters,

Have resolved to conclude a Convention to this effect and have agreed upon the following provisions:

CHAPTER I – LETTERS OF REQUEST

Article 1

In civil or commercial matters a judicial authority of a Contracting State may, in accordance with the provisions of the law of that State, request the competent authority of another Contracting State, by means of a Letter of Request, to obtain evidence, or to perform some other judicial act

A Letter shall not be used to obtain evidence which is not intended for use in judicial proceedings, commenced or contemplated

The expression 'other judicial act' does not cover the service of judicial documents or the issuance of any process by which judgments or orders are executed or enforced, or orders for provisional or protective measures

Article 2

A Contracting State shall designate a Central Authority which will undertake to receive Letters of Request coming from a judicial authority of another Contracting State and to transmit them to the authority competent to execute them Each State shall organize the Central Authority in accordance with its own law

Letters shall be sent to the Central Authority of the State of execution without being transmitted through any other authority of that State.

Article 3

A Letter of Request shall specify—

a) the authority requesting its execution and the authority requested to execute it, if known to the requesting authority;
b) the names and addresses of the parties to the proceedings and their representatives, if any;
c) the nature of the proceedings for which the evidence is required, giving all necessary information in regard thereto;
d) the evidence to be obtained or other judicial act to be performed. Where appropriate, the Letter shall specify, *inter alia*—
e) the names and addresses of the persons to be examined;
f) the questions to be put to the persons to be examined or a statement of the subject-matter about which they are to be examined;
g) the documents or other property, real or personal, to be inspected;
h) any requirement that the evidence is to be given on oath or affirmation, and any special form to be used;
i) any special method or procedure to be followed under Article 9.

A Letter may also mention any information necessary for the application of Article 11

No legalization or other like formality may be required

Article 4

A Letter of Request shall be in the language of the authority requested to execute it or be accompanied by a translation into the language

Nevertheless, a Contracting State shall accept a Letter in either English or French, or a translation into one of these languages, unless it has made the reservation authorized by Article 33.

A Contracting State which has more than one official language and cannot, for reasons of internal law, accept Letters in one of these languages for the whole of its territory, shall, by declaration, specify the language in which the Letter or translation thereof shall be expressed for execution in the specified parts of its territory. In case of failure to comply with this delcaration, without justifiable excuse the costs of translation into the required language shall be borne by the State of origin.

A Contracting State may, by declaration, specify the language or languages other than those referred to in the preceding paragraphs in which a Letter may be sent to its Central Authority.

Any translation accompanying a Letter shall be certified as correct either by a diplomatic officer or consular agent or by a sworn translator or by any other person so authorized in either State

Article 5

If the Central Authority considers that the request does not comply with the provisions of the present Convention, it shall promptly inform the authority of the State of origin which translated the Letter of Request, specifying the objections to the Letter

Article 6

If the authority to whom a Letter of request has been transmitted is not competent to execute it, the Letter shall be sent forthwith to the authority in the same State which is competent to execute it in accordance with the provisions of its own law.

Article 7

The requesting authority shall, if it so desires, be informed of the time when, and the place where, the proceedings will take place, in order that the parties concerned, and their representatives, if any, may be present this information shall be sent directly to the parties or their representatives when the authority of the State of origin so requests

Article 8

A Contracting State may declare that members of the judicial personnel of the requesting authority of another Contracting State may be present at the execution of a Letter of Request Prior authorization by the competent authority designated by the declaring state may be required.

Article 9

The judicial authority which executes a Letter of Request should apply its own law as to the methods and procedures to be followed.

However, it will follow a request of the requesting authority to a special method or procedure be followed, unless this is incompatible with the internal law of the State of execution or is impossible of performance by reason of its internal practice and procedure or by reason of practical difficulties

A Letter of Request shall be executed expeditiously

Article 10

An executing a Letter of Request the requested authority should apply the appropriate measures of compulsion in the instances and to the same extent as are provided by its internal law for the execution of orders issued by the authorities of its own country or of requests made by parties in internal proceedings.

Article 11

In the execution of a Letter of Request the person concerned can refuse to give evidence in so far as he has a privilege or duty to refuse to give the evidence—

(*a*) under the law of the State of execution; or

(*b*) under the law of the State of origin, and the privilege or duty has been specified in the Letter, or, at the instance of the requesting authority, has been otherwise confirmed to that authority by the requesting authority

A Contracting State may declare that, in addition, it will respect privileges and dutiies existing under the law of States other than the State of origin and the State of execution, to the extent specified in that declaration.

Article 12

The execution of a Letter of Request may be refused only to the extent that—

(*a*) In the State of execution the execution of the Letter does not fall within the functions of the judiciary; or

(*b*) The State addressed considers that its sovereignty or sedurity would be prejudiced thereby.

Execution may not be refused solely on the ground that under the internal law the State of execution claims exclusive jurisdiction over the subject-matter of the action or that its intermal law would not admit a right of action on it.

Article 13

The documents establishing the execution of the Letter of Request shall be sent by the requested authority to the requesting authority by the same channel which was used by the latter.

In every instance where the Letter is not executed in whole or in part, the requesting authority shall be informed immediately through the same channel and advised of the reasons.

Article 14

The execution of the Letter of Request shall not give rise to any reimbursement of taxes or costs of any nature

Nevertheless, the State of execution has the right to require the State of origin to reimburse the fees paid to experts and interpreters and the costs occasioned by the use of a special procedure requested by the State of origin under Article 9, paragraph 2

The requested authority whose law obliges the parties themselves to secure evidence, and which is not able itself to execute the Letters may, after having obtained the consent of the requesting authority, appoint a suitable person to do so When seeking this consent the requested authority shall indicate the approximate costs which would result from this procedure If the requesting authority gives its consent it shall reimburse any costs incurred; without such consent the requesting authority shall not be liable for costs

CHAPTER II – TAKING OF EVIDENCE BY DIPLOMATIC OFFICERS CONSULAR AGENTS AND COMMISSIONERS

Article 15

In civil or commercial matters, a diplomatic officer or consular agent of a Contracting State may, in the territory of another Contracting State and within the area where he

exercises his functions, take the evidence without compulsion of nationals of a State which he represents in aid of proceedings commenced in the courts of a State which he represents.

A Contracting State may declare that evidence may be taken by a diplomatic officer or consular agent only if permission to that effect is given upon application made by him or on his behalf to the appropriate authority designated by the declaring State.

Article 16

A diplomatic officer or consular agent of a Contracting State may in the territory of another Contracting State and within the area where he exercises his functions, also take the evidence, without compulsion, of nationals of the State in which he exercises his functions or of a third State, in aid of proceedings commenced in the courts of a State which he represents,if—

(*a*) a competent authority designated by the State in which he exercises his functions has given its permission either generally or in the particular case, and
(*b*) he complies with the conditions which the competent authority has specified in the permission.

A Contracting State may declare that evidence may be taken under this Article without its prior permission

Article 17

In civil or commercial matters, a person duly appointed as commissioner for the purpose may, without compulsion, take evidence in the territory of a Contracting State in aid of proceedings commenced in the courts of another Contracting State, if—

(*a*) A competent authority designated by the State where the evidence is to be taken has given its permission either generally or in the particular case; and
(*b*) he complies with the conditions which the competent authority has specified in the permission

A contracting State may declare that evidence may be taken under this Article without its prior permission.

Article 18

A Contracting State may declare that a diplomatic officer, consular agent or commissioner authorized to take evidence under Articles 15, 16 or 17, may apply to the competent authority designated by the declaring State for appropriate assistance to obtain the evidence by compulsion The declaration may contain such conditions as the declaring State may see fit to impose.

If the authority grants the application it shall apply any measures of compulsion which are appropriate and are prescribed by its laws for use in internal proceedings

Article 19

The competent authority, in giving the permission referred to in Articles 15, 16 or 17, or in granting the application referred to in Article 18, may lay down such conditions as it deems fit, *inter alia*, as to the time and place of the taking of the evidence Similarly it may require that it be given reasonable advance notice of the time, day and place of the taking of the evidence; in such a case a representative of the authority shall be entitled to be present at the taking of the evidence

Article 20

In taking of evidence under any Article of this Chapter persons concerned may be legally represented

Article 21

Where a diplomatic officer, consular agent or commissioner is authorized under Articles 15, 16 or 17 to take evidence—

(*a*) He may take all kinds of evidence which are not incompatible with the law of the State where the evidence is taken or contrary to any permission granted pursuant to the above Articles, and shall have power within such limits to administer an oath or take an affirmation;

(*b*) a request to a person to appear or to give evidence shall, unless the recipient is a national of the State where the action is pending, be drawn up in the language of the place where the evidence is taken or be accompanied by a translation into such language;

(*c*) the request shall inform the person that he may be legally represented and, in any State that has not filed a declaration under Article 18, shall also inform him that he is not compelled to appear or to give evidence;

(*d*) The evidence may be taken in the manner provided by the law applicable to the court in which the action is pending provided that such manner is not forbidden by the law of the State where the evidence is taken;

(*e*) a person requested to give evidence may invoke the privileges and duties to refuse to give the evidence contained in Article 11.

Article 22

The fact that an attempt to take evidence under the procedure laid down in this Chapter has failed, owing to the refusal of a person to give evidence, shall not prevent an application being subsequently made to take the evidence in accordance with Chapter I

CHAPTER III – GENERAL CLAUSES

Article 23

A Contracting State may at the time of signature, ratification or accession, declare that it will not execute Letters of Request issued for the purpose of obtaining pre-trial discovery of documents as known in Common Law countries

Article 24

A Contracting State may designate other authorities in addition to the Central Authority and shall determine the extent of their competence. However, Letter of Request may in all cases be sent to the Central Authority

Federal States shall be free to designate more than one Central Authority

Article 25

A Contracting State which has more than one legal system may designate the authorities of one of such systems, which shall have exclusive competence to execute Letters of Request pursuant to the Convention.

Article 26

A Contracting State, if required to do so because of constitutional limitations, may request the reimbursement by the State of original fees and costs, in connection with the execution of Letters of Request for the service of process necessary to compel the appearance of a person to give evidence, the costs of attendance of such persons, and the cost of any transcript of the evidence

Where a State has made a request pursuant to the above paragraph, any other Contracting State may request from that State the reimbursement of similar fees and costs.

Article 27

The provisions of the present Convention shall not prevent a Contracting State from—

(*a*) declaring that Letters of Request may be transmitted to the judicial authorities through channels other than those provided for in Article 2;

(*b*) permitting, by internal law or practice, any act provided for in this Convention to be performed upon less restrictive conditions;

(*c*) permitting, by internal law or practice, methods of taking evidence other than those provided for in this Convention

Article 28

The present Convention shall not prevent an agreement between any two or more Contracting States to derogate from –

(*a*) the provisions of Articles with respect to methods of transmitting Letters of Request:
(*b*) the provisions of Article 4 with respect to the languages which may be used:
(*c*) the provisions of Article 8 with respect to the presence of judicial personnel at the execution of Letters;
(*d*) the provisions of Article 11 with respect to the privileges and duties of witnesses to refuse to gove evidence;
(*e*) the provisions of Article 13 with respect ot the methods of returning executed Letters to the requesting authority;
(*f*) the provisions of Article 14 with respect to fees and costs;
(*g*) the provisions of Chapter II.

Article 29

Between Parties to the present Convention who are also Parties to one or both of the Conventions on Civil Procedure signed at the Hague on the 17th of July 1905 and the 1st of March 1954, this Convention shall replace Articles 8-16 of the earlier Conventions.

Article 30

The present Convention shall not affect the application of Article 23 of the Convention of 1905, or of Article 24 of the Convention of 1954

Article 31

Supplementary Agreements between Parties to the Convention of 1905 and 1954 shall be considered as equally applicable to the present Convention unless the Parties have otherwise agreed

Article 32

Without prejudice to the provisions of Articles 29 and 31, the present Convention shall not derogate from conventions containing provisions on the matters covered by this Convention to which Contracting States are, or shall become Parties.

Article 33

A State may, at the time of signature, ratification or accession, exclude, in whole or in part, the application of the provisions of paragraph 2 of Article 4 and of Chapter II No other reservations shall be permitted

Each Contracting State may at any time withdraw a reservation it has made; the reservation shall cease to have effect on the sixtieth day after notification of the withdrawal

When a State has made a reservation, any other State affected thereby may apply the same rule against the reserving State.

Article 34

A State may at any time withdraw or modify a declaration

Article 35

A Contracting State shall, at the time of the deposit of its instrument of ratification or accession, or at a later date, inform the Minister of Foreign Afairs of the Netherlands of the designation of authorities, pursuant to Articles 2, 8, 24 and 25

A Contracting State shall likewise inform the Ministry, when appropriate, of the following—

(*a*) the designation of the authorities to whom notice must be given or whose permission may be required, and whose assistance shall be invoked in the taking of evidence by diplomatic officers or consular agents, pursuant to Articles 15, 16 and 18 respectively

(*b*) the designation of the authorities whose permission may be required in the taking of evidence by commissioners pursuant to Article 17 and of those who may grant the assistance provided for in Article 18;

(*c*) declarations pursuant to Articles 4, 8, 11, 15, 16, 17, 18, 23 and 27 ;

(*d*) any withdrawals or modification of the above designations are declarations;

(*e*) the withdrawals of any reservation

Article 36

Any difficulties which may arise between Contracting States in connection with the operation of this Convention shall be settled through diplomatic channels

Article 37

The present Convention shall be open for signature by the States represented at the Eleventh Session of the Hague Conference on Private International Law

It shall be ratified, and the instruments of ratification shall be deposited with the Ministry of Foreign Affairs of the Netherlands

Article 38

The present Convention shall enter into force on the sixtieth day after the deposit of the third instrument of ratification referred to in the second paragraph of Article 37

The Convention shall enter into force for each signatory State which ratifies subsequently on the sixtieth day after the deposit of its instrument of ratification.

Article 39

Any State not represented at the Eleventh Session of the Hague Conference on Private International Law which is a Member of this Conference or of the United Nations or of a specialized agency of that Organization, or a Party to the Statute of the International Court of Justice may accede to the present Convention after it has entered into force in accordance with the first paragraph of Article 38

The instrument of accession shall be deposited with the Minister of Foreign Affairs of the Netherlands

The Convention shall enter into force for a State acceding to it on the sixtieth day after the deposit of its instrument of accession

The accession will have effect only as regards the relations between the acceding State and such Contracting States as will have declared their acceptance of the accession Such declaration shall be deposited at the Ministry of Foreign Affairs of the Netherlands; this Ministry shall forward, through diplomatic channels, a cerified copy to each of the Contracting States.

The Convention will enter into force as between the acceding State and the State that has declared its acceptance of the accession on the sixtieth day after the deposit of the declaration of acceptance

Article 40

Any State may, at the time of signature, ratification or accession, declare that the present Convention shall extend to all the territories for the international relations of which it is responsible, or to one or more of them Such a declaration shall take effect on the date of entry into force of the Convention for the State concerned

At any time thereafter, such extensions shall be notified to the Ministry of Foreign Affairs of the Netherlands.

The Convention shall enter into force for the territories mentioned in such an extension on the sixtieth day after the notification indicated in the preceding paragraph

Article 41

The present Convention shall remain in force for five years from the date of its entry into force in accordance with the first paragraph of Article 38, even for States which have ratified it or acceded to it subsequently

If there has been no denunciation, it shall be renewed tacitly every five years

Any denunciation shall be notified to the Ministry of Foreign Affairs of the Netherlands at least six months before the end of the five year period

It may be limited to certain of the territories to which the Convention applies.

The denunciatin shall have effect only as regards the State which has notified it. The Convention shall remain in force for the other Contracting States.

Article 42

The Ministry of Foreign Affairs of the Netherlands shall give notice to the States referred to in Article 37, and to the States which have acceded in accordance with Article 39, of the following—

(*a*) the signatures and ratifications referred to in Article 37;
(*b*) the date on which the present Convention enters into force in accordance with the first paragraph of Article 38;
(*c*) the accessions referred to in Article 39 and the dates on which they take effect;
(*d*) the extensions referred to in Article 40 and the dates on which they take effect;
(*e*) the designations, reservations and declarations referred to in Articles 33 and 35;
(*f*) the denunciations referred to in the third paragraph of Article 41;

In witness whereof the undersigned, being duly authorized thereto, have signed the present Convention

Done at The Hague, on the 18th day of March, 1970, in the English and French languages, both texts being equally authentic, in a single copy which shall be deposited in the archives of the Government of the Netherlands, and of which a certified copy shall be sent, through the diplomatic channel, to each of the States represented at the Eleventh Session of the Hague Conference on Private International Law.

CICS Doc. 840-189/045

Chapter VII

RECIPROCAL ENFORCEMENT OF JUDGMENTS IN CIVIL AND COMMERCIAL MATTERS (UNITED KINGDOM—CANADA CONVENTION)

This matter, which was added to the agenda, was presented by Mr. Walker.

Mr. Walker explained the urgency of the situation and, as a guide to the provinces that may propose to adopt the Canada-United Kingdom Convention, submitted a draft Uniform Act for their consideration.

Upon agreement as to the form of the Uniform Act (Schedule 1, page 219) a resolution adopting the Uniform Act was passed (Schedule 2, page 220).

SCHEDULE 1

UNIFORM RECIPROCAL ENFORCEMENT OF JUDGMENTS IN CIVIL AND COMMERCIAL MATTERS (UNITED KINGDOM-CANADA CONVENTION) ACT

1. In this Act, Interpretation

(a) "Convention" means the Convention Between the United Kingdom of Great Britain and Northern Ireland and Canada Providing for the Reciprocal Enforcement and Recognition of Judgments in Civil and Commercial Matters set out in the Schedule hereto;

(b) "effective date" means the day that is six months after the date on which instruments of ratification are exchanged.

2. On, from and after the effective date, the Convention is in force in the Province and the provisions thereof are law in the Province. Convention in force in Province

Request to ratify convention

3. The (Minister of *or*) shall request the government of Canada to exchange instruments of ratification in accordance with the Convention declaring that the Convention extends to the Province.

Publication of effective date

4. As soon as the effective date is determined, (the Minister of *or*) shall publish in the Gazette a notice indicating the date that is the effective date for the purposes of this Act.

Regulations

5. The Lieutenant Governor in Council may make such regulations as are necessary to carry out the intent and purpose of this Act.

(*Note: If there are any reservations allowed under the convention and made, additional words will be required to be added to Sections 2 and 3.*)

Explanatory Note: This Act was prepared in order to assist jurisdictions that are adopting the Convention.

Editorial Note: The Convention is not set out in these Proceedings as its final form has not yet been settled.

SCHEDULE 2

Resolution

RESOLVED that the *Uniform Reciprocal Enforcement of Judgments in Civil and Commercial Matters (United Kingdom-Canada Convention) Act* in the form agreed upon at this meeting (Schedule 1, page) be distributed by the Local Secretary for Nova Scotia to the Local Secretaries of the other provinces together with the Convention as soon as the latter is concluded and copies available, and that if the *Uniform Act* is not disapproved by two or more jurisdictions within 90 days of its distribution, it be adopted and recommended for enactment in that form.

Chapter VIII

RECOGNITION AND ENFORCEMENT OF JUDGEMENTS

The Committee briefly discussed the progress of negotiations with the United Kingdom on an agreement for the reciprocal recognition and enforcement of judgements which would ensure that Canadian litigants are not adversely affected by British accession to *The EEC Conventions on Jurisdiction and the Recognition and Enforcement of*

Judgements in Civil and Commercial Matters. With regard to the form of the agreement, the Committee was not opposed to the development of a detailed agreement on this subject, notwithstanding the possibility that this might necessitate changes in the *Uniform Reciprocal Enforcement of Judgements Act.*

Editorial Note: The consideration of this subject was put over to the 1981 Annual Meeting of the Conference.

Chapter IX

LEGAL AID AND SECURITY FOR COSTS

Last year, we reported that a proposal to revise Chapters III and IV of *The Hague Convention on Civil Procedure 1954* (to which Canada is not a party) was under study by a special commission of the Hague Conference. Since then, further study of the legal aid chapter had been undertaken by officials in Nova Scotia and of the security for costs chapter by Ontario. These studies had cast doubt on the value of this *Convention* for the provinces. However, Canada has not yet expressed a formal position on adherence to the *Convention.* Since a draft convention on this topic will be presented at the Fourteenth Session of the Hague Conference in October, the Committee reserves its comments upon this topic until it has had an opportunity to study the Draft Convention. We shall, accordingly, be reporting on Legal Aid and Security for Costs at the 1981 Annual Meeting of the Conference.

Chapter X

UNCITRAL

The United Nations' Commission on International Trade Law organized a Diplomatic Conference on Contracts for the International Sale of Goods in Vienna from March 10-April 11, 1980 at which Canada was represented by D. Martin Low and Michel Shore of the Department of Justice, Professor Jacob S. Ziegel of the Faculty of Law, University of Toronto, and Professor Claude Samson of the Faculté de Droit, Université de Laval. A special research study on the subject of Contracts for the International Sale of Goods has been commissioned by the Government of Canada and we understand that this will be made available to the Uniform Sale of Goods Committee which has a considerable interest in this matter.

Chapter XI

CONCLUSION

We would like to acknowledge with thanks the assistance in the preparation of this Report of the Private International Law officials of the Federal Department of Justice, Messrs. F.J.E. Jordan, D.M. Low, and M. Hétu. The Special Committee is also greatly indebted to Mr. Andrew Pritchard, Student-at-Law for his research memoranda on the subjects of Service Abroad of Judicial and Extra-Judicial Documents in Civil or Commercial Matters and the Taking of Evidence Abroad in Civil or Commercial Matters, and to Rae Tallin for his work on these two topics and on the International Administration of Estates of Deceased Persons. D.M. Low assisted us greatly in dealing with the Recognition and Enforcement of Judgements. We would also like to acknowledge the invaluable assistance of F.J.E. Jordan and Holly Harris of the Federal Department of Justice on the subject of Extra-Provincial Custody Orders Enforcement. Finally, we would also like to expess our thanks to Simon Chester, Executive Counsel to the Deputy Attorney General for Ontario, for his extensive contribution to the research and drafting of this Report.

H. Allan Leal
Chairman

18 August 1980

APPENDIX O

(See page 31)

JUDICIAL DECISIONS AFFECTING UNIFORM ACTS

PRINCE EDWARD ISLAND REPORT

ASSIGNMENT OF BOOK DEBTS

Re *Royal Bank of Canada* and *Revelstroke Companies Ltd* 94 D.L.R (3d) 692 (Alta S.C T.D.)

This case involved a question of priorities between competing assignees. The bank claimed under a registered general assignment of book debts. Revelstroke claimed under a specific assignment of two specified debts later in time but the subject of prior actual notice to the solicitors acting for the debtor

Laycraft J. held that the provisions of the *Assignment of Book Debts Act* R.S.A. 1970, c 25 [same as Uniform Act] do not change the rule in *Dearle* v. *Hall* (1827), 3 Russ, 1, 38 E.R. 475, that as between competing equitable assignments the first to give notice to the debtor obtains priority

BILLS OF SALE

Watson v *Bank of Nova Scotia* (1979), 37 N.S.R. (2d) 189 (N.S.S.C.T.D.)

A chattel mortgage had been recorded in the Registry of Deeds against a motor vehicle. The vehicle was described in the chattel mortgage as a "Mercury Lincoln". The description included the manufacturer's serial number and the license number of the vehicle All of the digits in the manufacturer's serial number were incorrect except for the last six digits In addition, the vehicle was in fact a "Lincoln Continental" not a "Mercury Lincoln".

The question arose whether or not the description in the chattel mortgage was a "sufficient and full description" of the chattels for the purposes of section 4 of the *Bills of Sale Act* [s 3(3) Uniform Act].

HELD that the description in the mortgage adequately described the vehicle The error in the manufacturer's serial number and the reference to "Mercury Lincoln" might have been misleading had no other information been put on the chattel mortgage However, the inclusion of the license number of the vehicle cleared this up and the description was held to be sufficient for the purposes of section 4

Nova Scotia has not adopted the detailed provisions for the description of motor vehicles on registration set out in section 8 of the Uniform Act

Pozdnekoff v *Royal Bank of Canada* 96 D L.R. (3d) 627 (N.S.S.C.T.D)

Section 11 of the *Bills of Sale Act* R.S N S. 1967, c.23 [same Uniform Act] provides that where goods subject to a chattel mortgage are permanently removed into a new registration district the bill of sale shall "within thirty days after the grantee has received notice of the place to which the chattels have been removed" be registered in the new district.

Where a mortgagor of a motor vehicle notifies the mortgagee that he is changing his place of residence, and the motor vehicle has in fact been removed to the same district as

the mortgagor's new residence, the mortgagee has received the requisite notice under the *Act*, even though in point of fact the motor vehicle has been previously sold without the mortgagee's consent to a good faith purchaser, and it is by pure chance that it happens to be in the same registration district as the mortgagor's new residence.

On receiving notice that the mortgagor has moved, the mortgagee is put on inquiry whether or not the motor vehicle has also been moved into the same registration district. Accordingly, the chattel mortgage is void against the purchaser.

CONTRIBUTORY NEGLIGENCE

Peter et al. v. *Anchor Transit Ltd et al* 100 D L R (3d) 37 (B C C A)

A parent may be liable to his child where his failure to control or supervise his child results in damage to the child, and in such circumstances a defendant who is being sued for damages by the infant may seek contribution from the parent Where the parent is already a party to the action as guardian ad litem he should not be added as a defendant, and the defendant may, on the basis of the *Contributory Negligence Act*, R S B C 1960, c 74 [similar to Uniform Act], obtain contribution from such parent even though he is plaintiff A claim for contribution against a parent who is not a party should be advanced by way of third party proceedings rather than by adding the parent as a defendant to the action

Bell Canada v *Cope (Sarnia) Ltd* 11 C.C.L.T. (Ont S C)

The defendants were digging out a roadbed and requested Bell Canada to locate telephone cables. Bell sent an inexperienced junior employee who identified one cable but failed to locate a second cable which was severed in subsequent excavation Bell sued in trespass and negligence to recover the cost of repairing the cable Section 4 of the *Negligence Act* (Ont) R S O 1970, Chap 296 [similar to s 1 & 2 Uniform Act] provides for apportionment of damages which is founded upon the fault or negligence of the defendant. HELD that the "fault" is a broader concept than "negligence" and embraces all intentional wrongdoing and that the apportionment regime established by the statute was therefore applicable to actions founded upon trespass

For example of application of the principle of equal apportionment of liability where it is impossible to establish different degrees of fault [s 1 Uniform Act] see *Lomax et al* v *Oshawa Groups Ltd et al* 102 D L R. (3d) 67

Brown and Vanderschee v *MacDonald* (1980) 37 N S R (2d) 1 and *Fumo Construction Canada Ltd* v *Le Vatte Construction Co Ltd* (1980) 34 N S R (2d) 336

CROWN PROCEEDINGS ACT

The *Queen in Right of British Columbia* v *City of Victoria* 99 D L R (3d) 667

The City of Victoria imposed a "business tax" pursuant to powers conferred by the *Municipal Act* R S B C 1960, C 255 The Crown claimed immunity on the ground that though particular enterprises may fall within the term "business" the appropriate test was that of preponderant purpose and the preponderant purpose of the Crown was to provide services to the public

HELD the preponderant purpose test was inappropriate and each enterprise must be separately considered and commercial enterprises of the Crown are taxable The Court of Appeal ruled that the Crown lost its former immunity from taxation by enacting in the *Interpretation Act* 1974, B.C c 42 that all Acts bind the Crown and by providing in the *Crown Proceedings Act* s.2(c) that "the Crown is subject to all those liabilities to which it would be liable if it were a person". It is noteworthy that section 4(1) of the Uniform Act

merely provides that the Crown is subject to all those liabilities *in tort* to which, if a person, it would be subject.

See also *Daigle and Rideout* v *Province of New Brunswick* 25 N B R. (2d) 261 where it was held that an action for negligent misstatement or misrepresentation does not lie against the Crown but note that in the New Brunswick Act in section 4(1)(a) adds the following words which do appear in the Uniform Act "tort to real or personal property or causing injury"

INTERPRETATION

Fidelity Insurance Co of Canada v *Workers' Compensation Board et al* 102 D L R (3d) 255 (S C C.)

The issue in this case was whether Fidelity could claim mechanic's liens against land owned by the Board The Board argued that it was an agency of the Crown and entitled to rely on section 35 of the *Interpretation Act* R S B C. 1960, c 199 [equivalent to s. 14 Uniform Act] "No provision or enactment in any Act shall affect in any manner or way whatsoever the rights of Her Majesty, her heirs or successors, unless it is expressly stated that Her Majesty shall be bound thereby " The Supreme Court, applying the test of nature and extent of control exercised by the Crown, ruled that the Board was not a Crown agency.

Gould et al v *Yorke and Kelly* (1980), 37 N.S R. (2d) 473 (N S.S C T D)

This case involved a claim made pursuant to the *Fatal Injuries Act* The death in question occurred on August 7th, 1977 and an action was commenced on August 8th, 1978 The *Fatal Injuries Act* required the action to be commenced within twelve months of the death of the deceased person August 7th, 1978 was a holiday granted to the Prothonotary's Office pursuant to regulations made under the *Civil Service Act* However, this day was not one of the days listed in the definition of "holiday" in clause 6(1)(j) of the *Interpretation Act* [subsection 26(14) of the Uniform Act]

Clause 18(k) of the Interpretation Act R S N S 1967, Chap 151 [subsection 23(1) of the Uniform Act] provided that where the time limited for doing something expires on a holiday, the time limit was extended to the first following day that is not a holiday.

The argument was made that "holiday" in clause 6(1)(j) of the *Interpretation Act* [subsection 26(14) of the Uniform Act] meant only the specific days listed in that clause and none others

HELD that the word "includes" used in the definition of "holiday" indicated that the definition was not exhaustive and August 8th, 1978 was held to be a holiday within the meaning of clause 18(k) of the *Interpretation Act*

P A N S Social and Recreation Club v *City of Dartmouth* (1980), 36 N.S.R (2d) 633 (N S S C App Div)

The plaintiff, P A.N S Social and Recreation Club, sought to have a resolution of the Dartmouth City Council quashed for illegality. The resolution provided for expropriation of the plaintiff's land

One of the arguments of the plaintiff was that the statutory provisions authorizing the City of Dartmouth to expropriate land required the City to first negotiate with the owner of the land with a view to acquiring the land. Subsection 317(2) of the *Dartmouth City Charter*, S N.S 1978, c 43A, stated that the council "may" negotiate with the owners of the land The City argued that it was not mandatory for it to negotiate as subsection 8(3) of the *Interpretation Act* [clause 26(18) of the Uniform Act] provided that "may" is permissive

HELD that section 317 of the Dartmouth City Charter provided the City Council with a power to expropriate coupled with a duty requiring it to attempt to negotiate as a condition precedent to expropriation

In addition, subsection 5(1) of the *Interpretation Act* [subsection 3(1) of the Uniform Act] provided that the provisions of the *Act* apply unless a contrary intention appears. In this case it was clear that the intention of section 317 was that negotiation be a condition precedent to expropriation by the City

Therefore, although subsection 317(2) used the words "may negotiate", the council was nevertheless under a duty to negotiate with the owner prior to expropriation.

For another instance where "may" was held to mean "shall" see *Clarkson Co Ltd* v. *White et al* 102 D.L.R. (3d) 403 (N.S.S.C App. Div.)

For discussion of the meaning of "shall" see *Morgan* v *Chappel* (1980) 2 SR 405.

Re *International Association of Firefighters Local 209 and City of Edmonton et al.* 99 D.L.R. (3d) 109 (Alta. S.C. App. Div.)

Although s. 18(1) of the *Interpretation Act* R.S.A. 1970, c.189 [s.25(3) Uniform Act], provides that words in the singular include the plural and words in the plural include the singular, and although s 3(1) of the *Firefighters and Policemen Labour Relations Act*, R.S.A. 1970, c. 143 excludes from the bargaining unit "the chief and the deputy chief", the provisions of the *Interpretation Act* should not be applied to the provisions of the *Firefighters and Policemen Labour Relations Act* so as to permit exclusions from the bargaining unit of more than one chief and one deputy chief. The philosophy and purpose leading to the enactment of a special labour code for firefighters, together with the weight that must be given to the definition in the *Firefighters and Policemen Labour Relations Act*, and the use of the definite article "the" in the exclusionary clause referred to in the *Act* governing collective bargaining for firefighters and policemen, exhibits an intention contrary to the application of s.18(1) of the *Interpretation Act*.

Canada Employment and Immigration Commission v. *Isaac Dallialian* (S.C.C.) not yet reported.

Dallialian qualified for benefits under section 31 of the *Employment Insurance Act* S.C. 1970-71-72. c.48. The section was repealed and replaced with effect from January 1, 1976 The effect of the amendment was to reduce the age of entitlement to benefits from 70 to 65 Dallialion was over 65 but under 70 on January 1, 1976 but no provision was made expressly for persons falling within that category. The issue was whether the old law or the new law should be applied. The Supreme Court relied on clause 35(c) of the *Interpretation Act* [section 31(c) Uniform Act] and found that Dallialian had acquired "a right or privilege .. accruing .. under the enactment. . repealed". The respondents therefore enjoyed benefits subject to the old law and on receipt of a retirement pension under the Quebec Pension Plan he became disqualified for further benefits.

For a useful discussion of the authorities on retroactivity [s. 31 Uniform Act] see *Ozog* v. *Registrar of Motor Vehicles* 102 D.L.R. (3d) 147.

For construction of the words "by way of amendment, revision or consolidation" [s.32(2) Uniform Act] see *Dogniez* v *Brierly and Welfare Board* 2 SR 165.

MARRIED WOMEN'S PROPERTY

Guinness v *Guinness* 97 D.L.R. (3d) 760 (Ont. C.A.)

The appellant wife inherited a substantial estate from her parents and advanced money to her husband to repay bank loans The husband was then living with another woman but the advances were made in the belief that the marriage would continue and he would soon join his wife. The wife sued to recover the moneys advanced.

HELD that the wife's action was based on the allegation of deceit by the husband and though an action sounding in tort was not precluded by section 7 of the *Married Women's Property Act* R S.O. 1970, c. 262 [section 6 Uniform Act]

The bar to a suit founded in tort between husband and wife applied only to suits unrelated to the wife's separate property Although the money had been dispersed by the husband and was untraceable, the action could still be considered one to protect the wife's separate property

PERSONAL PROPERTY SECURITY

Re *Johnson* 98 D L.R (3d) 187 (Ont. S.C.)

A security agreement was registered out of time but prior to an assignment in bankruptcy by the debtor The security holder subsequently obtained an order under the curative provisions of s.63 of the *Personal Property Security Act* R.S.O , 1970, Chap. 344 [s 64 Uniform Act] validating the registration prior to the date of bankruptcy. HELD that s. 22 of the Act [same Uniform Act] provides that an unperfected security interest is subordinate to the interest of a trustee in bankruptcy. On the date of bankruptcy the security interest was unperfected and the rights of the trustee therefore prevail Another decision to the same effect is Re *Hillstead Ltd* 103 D.L R (3d) 347.

Re *Traid Financial Services and Thaler Metal Industries Ltd et al* 98 D L R (3d) 555 (Ont. High Court)

By s. 53(1)(c) of the *Personal Property Security Act* R S.O. 1970, c 344 [same Uniform Act], where the late renewal of registration of a security interest prejudices the rights that a person acquires by any act or thing done by him during the period that the security interest was unperfected, the registration shall be presumed not to have occurred for the purpose of obtaining such rights The effect of this provision is to give priority over the security interest to a creditor who makes an advance under a debenture during the period that the security interest was unperfected, even though the creditor does not search the register The debenture creditor is "prejudiced" within the meaning of s. 53(1)(c) whether or not he consciously relies on the state of perfection of the disputed security interest.

Re *McMullen and Avco Financial Services Canada Ltd* 98 D.L R. (3d) 560 (Ont. High Court)

Where a financing statement registered under the *Personal Property Security Act* R S O 1970, c 344 erroneously omits two digits from the serial number of a motor vehicle described therein, and subsequently a purchaser of the vehicle is misled after searching under the correct serial number, the financing statement is defective and fails to perfect the security interest of the person claiming under it. Section 47(5) of the *Personal Property Security Act* [same Uniform Act] providing for the correction of clerical errors does not by its own terms apply to an error "that has misled".

However, section 47(5) may not be applied to a financing statement which fails to disclose the debtor's name Re *Ovens* 103 D.L.R. (3d) (Ont. C.A.).

RECIPROCAL ENFORCEMENT OF JUDGMENTS

McCain Foods v *Agricultural Publishing Co Ltd et al* 103 D.L.R. (3d) 724 (Ont. S.C)

The word "proceeding" as contained in s. 3(b) of the *Reciprocal Enforcement of Judgments Act* R S O 1970, Chap 402 [s. 2(6)(b) Uniform Act] includes preliminary motions. By entering an appearance to dispute court's jurisdiction and participating in a preliminary hearing to determine that issue, the defendants voluntarily submitted to the jurisdiction and are bound by the final decision However, an ineffectual attempt to

appear and engage in correspondence with the plaintiff's solicitors does not constitute a submission to the jurisdiction of the original court *G A Racicot Enterprises Ltd* v *Moore* 26 N B.R. (2D) 151.

The phrase in s. 2(6)(b) of the Uniform Act "being a person who was neither carrying on business nor ordinarily resident within the jurisdiction of the original court" refers to that period of time when the cause of action arose which gave rise to the foreign judgment obtained.

Weigand v *Calgary Joint Ventures Ltd* 1979 2 W W R. 671.

RECIPROCAL ENFORCEMENT OF MAINTENANCE ORDERS

Gould v. *Gould (not yet reported) (Sask C A) July 28, 1980)*

Mary Gould was granted a decree absolute in 1977 under which her husband was ordered to pay maintenance for his two children. The decree absolute was registered in Saskatchewan pursuant to section 3 of the *Reciprocal Enforcement of Maintenance orders Act* 1968, S.S. Chap. 59 [same Uniform Act prior to 1979] and Mary sought to invoke the Act to recover arrears of maintenance.

The issue was whether the phrase "a maintenance order . . . made . by a court in a reciprocating state" in section 3 embraced a maintenance order contained in a decree of divorce granted in another province pursuant to the *Divorce Act.*

The court held that despite the fact that the province of Ontario had been declared a reciprocating state the Supreme Court of Ontario was not "a court in a reciprocating state" because in exercising its divorce jurisdiction the court acts *qua* court in the "state" of Canada and Canada is not a reciprocating state for the purposes of the *Act* The only means of enforcing the decree is registration pursuant to the Rules of Court under section 15 of the *Divorce Act* The *Reciprocal Enforcement of Maintenance Orders Act* has no application.

In a recent Newfoundland Supreme Court case in the matter of the application of *Christie Murphy* against *William Thomas Murphy* (not yet reported) the opposite conclusion was reached on the same issue In Newfoundland there are no specific rules for the enforcement of maintenance orders under the *Divorce Act* and the court quoting Wright J. in *Emerson* v *Emerson* 1972, 27 D.L R (3d) at p. 283 "It would be a great pity if constitutional doctrines had to be so applied as to prevent a court able to help a child, from doing so" decided to exercise jurisdiction under the Act.

WAREHOUSE RECEIPTS

National Drugs Ltd. v *Dominion Storage Co Ltd* 106 D.L R (3d) 76 (Man C.A)

A clause limiting the liability of a warehouseman does not "impair his obligation" to exercise due care within the meaning of s. 3(4)(b) of the *Warehouse Receipts Act* R.S.M 1970, c. W-30 [s 2(4) Uniform Act].

Evans Products Ltd v. *Crest Warehousing Co Ltd* discussed at p. 153 1979 Proceedings applied.

WILLS

Re *Philip* 100 D.L.R (3d) 209 (Man. C.A.)

The testatrix employed a stationer's form for her will It was unattested. An application for letters of administration with the will annexed in solemn form was dismissed in the Surrogate Court on the ground that it was not "wholly in [her] own handwriting and signature", as required by s. 7 of the *Wills Act* R.S.M. 1970, c. W150 [s. 6

Uniform Act] and because the testatrix intended to incorporate at least some of the printed words of the will form. Thus, in the view of the Surrogate Court Judge, it could not be a valid holograph will On appeal, held, Monnin, J A., dissenting, the appeal should be allowed

Whether the testatrix intended to incorporate the printed words is a matter of inference. The testatrix did not fill in any of the blanks but rather appears to have used the printed words as a guide. Thus, for example, after the printed words, "All the residue of my estate . . I give . . unto", she inserted a list of beneficiaries preceded by the preposition "to", which a literate person, such as the testatrix, would not have included had she intended to incorporate the previous preposition "unto"

However, having regard to the presumption against intestacy, the presumption that citizens know the law and the maxim that a court should give a liberal interpretation to language employed by a lay person in an instrument prepared by him so as to give effect of his intention, the inference that she did not intend to incorporate the printed words should be adopted. Accordingly, the written part of the will should be admitted to probate

Re *Fenton Estate* (1978) 26 N.S.R (2d) 662 (N.S.S.C.T D.)

Certain alterations to a will were found to have been made to it after its execution These alterations were not made in the manner required by section 19 of the Wills Act [s. 18 of the Uniform Act].

HELD that section 19 of the *Wills Act* applied to make these alterations invalid and of no effect

In *Wiers* v. *Beers et al* 24 N B.R. 627 a postscript added to a holograph will was held to be invalid where it could not be incorporated into the body of the will by reference (section 7(3) of the *Wills Act* R S.N.B., Cap. W-9 [same Uniform Act] applied) See also *Kennedy* v *MacEachern* 27 N.S R. (2d) 329 (N.S.S.C App. Div).

Raymond Moore
of the Prince Edward
Island Commissioners

August 1980

APPENDIX P

(See page 32)

PREJUDGMENT INTEREST

SASKATCHEWAN REPORT

Contents

SCHEDULES

Introduction and Background

The topic of prejudgment interest was first raised in 1975 by the British Columbia Commissioners who agreed to prepare a report for the 1976 Uniform Law Conference. This report, which can be found at page 216 of the *1976 Proceedings* was based on the British Columbia Law Reform Commission Report of 1973. Consideration of this report was deferred in 1976, 1977, and 1978 to the subsequent year in each case. In 1978, the Ontario commissioners distributed a document, reproduced at page 239 of the *1978 Proceedings,* on the topic of prejudgment interest indicating a divergent view to that taken by the B.C. Law Reform Commission with respect to many of the issues raised by the B.C. Commissioners. In 1979, the Conference indicated its desire to have one report which would present the British Columbia and Ontario positions and make recommendations. Saskatchewan volunteered for this task. The format for Saskatchewan's report is to cite the issue involved, discuss the various approaches to its resolution and make recommendations. A draft Act forms Schedule 8 (page 264).

Saskatchewan has approached each of the issues in this report based on the premise that the power to award prejudgment interest is necessary to compensate the plaintiff for being "kept out of his money". In the same way as the object of an award of damages is to give the plaintiff compensation for the loss that he has suffered, prejudgment interest must also be considered compensation for the plaintiff. In *Riches* v. *Westminster Bank Ltd.*, [1947] A.C. 390, Lord Wright said at page 400:

> "The essence of interest is that it is a payment which becomes due because the creditor has not had his money at the due date It may be regarded either as representing the profit he might have made if he had had the use of the money, or conversely the loss he suffered because he had not that use. The general idea is that he is entitled to compensation for the deprivation From that point of view it would seem immaterial whether the money was due to him under a contract express or implied or a statute or whether the money was due for any other reason in law."

The same principle was applied in *Harbutt's "Plasticine" Ltd.* v. *Wayne Tank and Pump Co. Ltd.*, [1970] 1 Q.B. 447. Lord Denning M.R. at page 468 said:

> "The basis of an award of interest is that the defendant has kept the plaintiff out of money; and the defendant has had the use of it himself. So he ought to compensate the plaintiff accordingly "

The principle that prejudgment interest should be viewed as compensation for the plaintiff rather than as punishment for the defendant was accepted by both British Columbia and Ontario in their respective

reports and is put forward as a reason for encouraging the enactment of prejudgment interest legislation.

Another reason that is often given for awarding prejudgment interest is the possibility that it will increase settlements and thereby reduce court congestion. Although the New York Law Revision Commission, in its 1966 *Study Relating to the Award of Interest on Causes of Action for Personal Injury,* questions whether the award of prejudgment interest will have any significant impact on calendar congestion, it is a commonly held view that the lack of power in the court to award prejudgment interest encourages defendants to delay settlement and thereby clogs court calendars. Saskatchewan also accepts this latter view.

I. *Is Prejudgment Interest Legislation an Appropriate Topic for the Uniform Law Conference?*

Prior to 1973 most jurisdictions in Canada had legislation providing for a form of prejudgment interest based on an 1833 English Act, commonly referred to as *Lord Tenterden's Act.* Schedule I (page 254) contains the provincial and territorial legislation on point as it existed prior to 1973 and *Lord Tenterden's Act.* Since 1973 we have moved away from comparative uniformity. New Brunswick, British Columbia and Ontario have enacted comprehensive prejudgment interest legislation with each jurisdiction taking a different approach; (see Schedules 2, 3 and 4) (pages 258, 259). Also in 1977, the Report on the Quebec Civil Code recommended the expansion of the court's power to award prejudgment interest, (see Schedule 5) (page 261).

An argument can be made that prejudgment interest legislation need not be uniform in each province. The number of plaintiffs suing on a regular basis in various provincial jurisdictions must be small. However, it would be useful to have a body of jurisprudence applicable to more than one jurisdiction. Also, it is desirable, given the amount of time and thought that has been given to the subject, for the Conference to develop, if not a uniform Act, a Model Act. In addition, it is significant that at one time in Canada when a court would award prejudgment interest was fairly consistent.

Recommendation:

The Uniform Law Conference should develop a uniform Act on the topic of prejudgment interest.

II. *When Should a Court Award Prejudgment Interest?*

At the present time in those jurisdictions which have adopted a version of *Lord Tenterden's Act* prejudgment interest is awarded in the following cases (there is some variation from province to province):

(a) where there is a quantifiable debt payable by virtue of a written agreement at a time certain;
(b) where the defendant is guilty of conversion;
(c) where the defendant is guilty of *trespass de bonis asportatis* (wrongful taking of personal property);
(d) where money is due and payable pursuant to an insurance contract; and
(e) where "it has been usual for a jury to allow it" interest is available where a defendant has "improperly withheld a *"debt"*; see *Toronto Railway Company* v. *The City of Toronto,* 1906] A.C. 117; *Gregga* v. *Leippi,* [1944] 3 W.W.R. 396 (Sask. C.A.).

New Brunswick has extended the cases in which prejudgment interest is allowable to "all proceedings for the recovery of any debt or damages". Courts in British Columbia are required to add interest to any "pecuniary judgment". Ontario courts award interest to any "person who is entitled to a judgment for the payment of money".

Section 3(1) of the *Law Reform (Miscellaneous Provisions) Act* which was enacted in 1934 and contained in Schedule 6 (page 262) awards interest with respect to the same causes of action as does New Brunswick.

Although there are differences in wording, each of these Acts allow the awarding of interest in the following cases:

(a) economic harm resulting from breach of contract which includes such causes of action as:
    (i) breach of contract resulting in failure to pay a sum of money on a specific date;
    (ii) breach of contract resulting in failure to provide services or goods, the value of which is quantifiable;
    (iii) breach of warranty;
(b) economic harm arising from tort;
(c) non-economic harm arising from breach of contract or tort which includes such categories as:
    (i) pain and suffering
    (ii) assault;
    (iii) libel and slander;

(iv) personal injuries;
(v) breach of promise of marriage;
(vi) seduction;
(vii) malicious prosecution;
(viii) false imprisonment;

(d) breach of statute.

One area where law reformers and text book writers have expressed reservation about awarding prejudgment interest is with respect to non-economic harm arising from breach of contract or tort. This issue has been canvassed thoroughly by the Report of the British Columbia Law Reform Commission, at pages 18 and 19. The argument against awarding interest on damages for non-economic loss is that the process of measurement in awarding damages in these kinds of cases is not certain. To add a requirement that prejudgment interest must be awarded on this essentially arbitrary figure is considered to be an over refinement. The British Columbia commissioners refute this argument in the following way at page 19:

> The essence of the argument is that since the loss is noneconomic, it is absurd to apply economic criteria to it. This, of course, would warrant an exception in the case of awards for noneconomic loss, to the normal rule that interest does run from the date of judgment Yet no one has made this argument, and doubtless few would This, however, may be a debating point. The substantial argument is that the effect of the judgment is to declare a liability to pay which, had the defendant discharged it when the claim was made, would have enabled the plaintiff to enjoy the fruits of those funds from the date of payment. The defendant's failure to discharge the liability deprives the plaintiff of the use of those funds and, for that deprivation, the defendant ought to compensate the plaintiff.

Saskatchewan agrees with the B.C. position in this regard.

It is noted that each of the models before us have chosen a different wording to convey the meaning that a plaintiff is entitled to prejudgment interest on any judgments sounding in money. Of the three approaches, the Ontario approach seems the best. Is is simple and at the same time appears to be the most comprehensive.

Recommendation:

(1) Prejudgment interest should be awarded in all cases where economic or non-economic harm arises as a result of a tort or breach of contract or statute. (The question of future economic loss will be dealt with later.)

(2) The uniform Act should utilize the wording in the Ontario amendment to the *Judicature Act*, i.e., "a person who is entitled to a judgment for the payment of money is entitled to claim and have included in the judgment an award of interest thereon".

III. *Should Special Direction be Given with Respect to Future Economic Loss?*

According to the "juristic theory of damages", damages are an indivisible lump sum to which the plaintiff is deemed to have become entitled on the happening of the event giving rise to liability. It is therefore immaterial that the physical or material consequences of the injury have not been felt at the time of injury or assessment. Theoretically, the loss is occasioned on the happening of the event and what happens after is nothing more than the consequences of the loss or damage which he has suffered.

The principle that courts should not award prejudgment interest for future economic loss is often referred to as the "practical concept". With respect to future pecuniary loss, it cannot be said that the plaintiff has been "kept from his money" because he will not receive that money until a future date. In fact, the plaintiff actually receives the money in advance.

The British Columbia legislation implements the "practical concept" by stating that no awards shall be made, ". . . on that part of a judgment that represents pecuniary loss arising after the date of judgment", see *Prejudgment Interest Act,* S.B.C. 1974, c. 65, s. 2(a). However, this solution does not deal with the rights of parties where a judge awards a lump sum without specifying which portion of that lump sum, if any, is for future economic loss.

The Ontario solution to this problem has been to provide that the court shall not award interest ". . . on that part of the judgment that represents pecuniary loss arising after the date of judgment and that is identified by a finding of the court", see an *Act to amend the Judicature Act,* S.O. 1977, c. 52, s. 3. Although the Ontario approach recognizes that a court usually makes lump sum awards, it gives a judge the opportunity to choose not to differentiate between economic loss occurring before and after judgment. It would seem that a compromise between the British Columbia and Ontario approaches would be to direct that a court should award prejudgment interest on a judgment including future economic loss only in those cases where it is not possible to ascertain or quantify future economic loss.

It must be noted that this recommendation is confined to "future economic loss" and not those types of losses such as "pain and suffering, loss of amenities and of expectation of life, physical inconvenience and discomfort, social discredit, injury to reputation, mental suffering, injury to feelings, or loss of society of spouse or child".

Recommendation:

Prejudgment interest should not be awarded on that part of a judgment that represents economic loss arising after the date of judgment unless it is not possible to differentiate between economic loss arising before and after judgment in which case the court shall award interest on the total amount.

IV. *Should Prejudgment Interest be Awarded on Exemplary or Punitive Damages?*

The British Columbia, New Brunswick and Great Britain legislation is silent on the question of whether or not prejudgment interest should be awarded where exemplary or punitive damages are awarded.

The Ontario legislation provides that interest shall not be awarded "on exemplary or punitive damages". This approach appears to be consistent with the intent of the Act. Since exemplary and punitive damages are not intended to compensate the plaintiff, but rather are awarded to punish the defendant for his wrongful conduct, it would be inappropriate to award interest on this type of "damage".

Recommendation:

Prejudgment interest should not be awarded on exemplary or punitive damages.

V. *Should Prejudgment Interest be Awarded on Costs?*

Both the British Columbia and Ontario Acts provide that interest shall not be awarded on costs. The New Brunswick and British Acts are silent on this point.

To award prejudgment interest on costs would seem to be an over refinement. Furthermore, it would be difficult to calculate interest on costs which accrue throughout the pretrial period unless costs are treated the same way as special damages. Of course this recommendation should be confined to costs recovered in the main action in which interest is awarded. If the plaintiff must take out a judgment to recover the costs, he should be entitled to interest from the time the costs are payable.

Recommendation:

Prejudgment interest should not be awarded with respect to costs awarded in the action.

VI. *Should the Court be Given Power to Disallow a Plaintiff's Right to Prejudgment Interest?*

It is with respect to this question that there is the most divergence of opinion in Canadian legislation. The B.C. *Prejudgment Interest Act* provides that there shall be no discretion in the court to allow or disallow interest. Section 1(1) of the B.C. Act states that " . . . a court shall add on to a pecuniary judgment an amount of interest . . . the court considers appropriate in the circumstances . . .".

The Ontario approach is that legislative guidelines should be established to permit a court, in its discretion, to depart from the obligation to award prejudgment interest where there is good reason to do so. Section 38(2) of Ontario's *Judicature Act*, as amended by S.O. 1977, c. 51 states that a person who receives a judgment for the payment of money may claim an award of interest. However, section 38(2) is "subject to subsection (6)", which gives the court an absolute discretion. It reads as follows:

> The judge may, where he considers it to be just to do so in the circumstances:
>
> (a) disallow interest under this section;
> (b) fix a rate of interest higher or lower than the prime rate;
> (c) allow interest under this section for a period other than that provided, in respect for the whole or any part of the amount for which judgment is given.

A similar approach is followed by the State of South Australia, (see Schedule 7, page 262).

To determine whether a court should be given the power to disallow a plaintiff's right to interest, it is important to determine whether there are any situations when a court should be able to exercise a power to disallow. It is usually said that a court should be able to disallow interest when the plaintiff delays in bringing his case on for trial, see *Jefford* v. *Gee*, [1970] 2 Q.B. 130 at 151. Other examples usually depend on the conduct of the plaintiff, see *Shaw* v. *New Brunswick Society for the Prevention of Cruelty to Animals* (1976), 13 N.B.R. (2d) 435 (N.B.S.C.) It seems that factors such as delay or unacceptable conduct on the part of the plaintiff should be irrelevant to this essentially economic issue. As has been stated previously, the plaintiff's entitlement to interest is based upon the principle that he is entitled to be compensated for being kept from money which is rightfully his. As soon as the court gives judgment to plaintiff, there is a finding that the defendant has had the use of money that belongs to the plaintiff for which the plaintiff is entitled to interest.

Furthermore, the B.C. approach withdraws from the courts the temptation to revert back to the situations in which prejudgment interest was allowed at common law. For example, in England by virtue of the *Law Reform (Miscellaneous Provisions) Act*, 1934, it is quite clear that prejudgment interest can be awarded on any claim for debt or damages, without any restriction related to the nature of the cause of action in respect of which the claim is made. Nevertheless there was only one contested personal injury case in England in which interest on damages was awarded between 1934 and 1969. As a result of the courts' refusal to exercise the discretion to award prejudgment interest in personal injury actions, Parliament passed the 1969 amendment making such awards compulsory unless there are special reasons for not doing so; (see Schedule 6) (page 262).

It appears that Ontario adapted the position it did with respect to this issue largely to prevent unfairness to a defendant as well as a plaintiff and to avoid legal anomalies. No examples of cases in which unfairness to a defendant would be accomplished by the B.C. approach are cited. An example of a legal anomaly is found in the case of *Schweickardt* v. *Thorne*, [1976] W.W.R. 249 (B.C. S.C.). In this case Meredith, J. felt compelled to award damages in substitution for specific performance which damages represented the difference between a contract price for the sale of land and the value of the property at the date the plaintiffs knew their action for specific performance would fail. Since the value of the property had increased, the interest award, given on the total shifting balance, represented an increase in the liability of the defendant. However, this problem of awarding prejudgment interest on a shifting balance is not unique to actions where damages are awarded for specific performance and is perhaps better dealt with in a separate section which will be discussed later.

Taking all matters into consideration it would seem that the B.C. approach in not allowing the court a discretion to disallow interest is the best approach.

Recommendation:

The awarding of prejudgment interest should not be a matter of discretion in the court. Furthermore, the court should not be given the power to disallow the plaintiff's right to interest under any prejudgment interest legislation.

VII. *Should the Legislation Fix a Rate of Interest?*

There are three ways in which a legislature can fix a rate of interest:

(1) by statute;
(2) by regulation; or
(3) by referring to an extraneous source.

The legislature can fix a specific rate by putting a percent figure in the statute itself. This is the course followed in the Interest Act (Canada) which fixes 5% as the interest rate in all cases. The problem with this approach is obvious. It is doubtful that the legislation would be amended with sufficient frequency to reflect the changing commercial rates.

Alternatively, the legislature can fix a rate by regulation. This approach allows the rate to be amended more frequently and is also easily ascertainable. However, in the same way as a rate fixed by statute, a rate established by regulation has to be amended frequently in order to approximate interest rates.

The best way in which to fix a rate of interest which is both flexible and readily ascertainable is to make reference to a rate found outside the legislation which fluctuates with economic conditions. This method ensures consistency, flexibility and, depending on the source chosen, would be easily ascertainable.

The alternative to fixing a rate of interest is to leave the question of the appropriate interest rate to the court's discretion. This is the approach taken by Great Britain and New Brunswick. Although Ontario chose the prime rate as defined in the Bank of Canada Review as the prejudgment interest rate, the Ontario legislation allows the court to increase or decrease interest.

The discussion on whether the court should have a power to disallow a plaintiff's right to interest is applicable here. If the Conference accepts the recommendation that the court should not have a disallowance power, it follows that the rate of interest should not be in the discretion of the court. If the court has a discretion with respect to the rate of interest, it is possible that the discretion could be exercised in such a way as to effectively take away the plaintiff's right to interest. It invites the court to depart from the principle that prejudgment interest is intended to compensate the plaintiff and either punish a defendant with a high interest rate or penalize a plaintiff with a low rate. Furthermore an interest rate "appropriate in the circumstances" may not reflect commercial rates. It is asking the court to make a decision in an area not familiar to it. Perhaps most importantly, an interest rate fixed by reference to an easily ascertainable

extraneous source will lend certainty to the law. A defendant knows that if he is unsuccessful he must be prepared to pay interest at a certain rate.

The British Columbia Law Reform Commission felt that an award should be fixed but felt constrained by sections 3, 12 and 13 of the *Interest Act*, R.S.C. 1970, c. I-18 to confine this fixed interest rate to five percent. Those sections provide as follows:

> 3 Except as the liabilities existing immediately before the 7th day of July 1900, whenever any interest is payable by the agreement of parties or by law, and no rate is fixed by such agreement or by law, the rate of interest should be five per cent per annum
>
> 12. Sections 13, 14 and 15 apply to the Provinces of Manitoba, British Columbia, Saskatchewan and Alberta and to the Northwest Territories and the Yukon Territory only.
>
> 13 Every judgment debt shall bear interest at the rate of five per cent per annum until it is satisfied

In February, 1976 the Supreme Court of Canada in *Prince Albert Pulp Co. Ltd.* v. *Foundation Company*, [1976] 4 W.W.R. 586 held that a judge has the power to fix the rate of prejudgment interest greater than the "legal rate" set under section 3 of the Federal *Interest Act*. Mr. Justice Martland, who delivered the unanimous judgment of the court held that section 46 of *The Queen's Bench Act*, R.S.S. 1965, c. 73 (now R.S.S. 1978, c. Q-1) permitted a judge to set a rate higher than five percent and that the provision was *intra vires* the provincial jurisdiction. He found that a judge had the power to fix by law in a judgment the interest rate applicable to that judgment.

Accordingly, it is within the purview of the province's jurisdiction to establish a rate of interest in prejudgment interest legislation.

Recommendation:

(1) The method of fixing the prejudgment interest rate should be established by statute by reference to an extraneous source.

(2) There should be no discretion in the court to vary the rate of prejudgment interest.

VIII. *Which Source Should Set the Prejudgment Interest Rate?*

The Ontario legislation provides a method of fixing the rate of prejudgment interest by reference to "the prime rate" as it exists for the month preceding the month on which the action was commenced. "Prime rate" is defined in the same way as it is defined

in the *Borrowers' and Depositors' Protection Act* (Federal Bill C-16) to be "the lowest rate of interest quoted by chartered banks to the most credit-worthy borrowers for prime business loans, as determined and published by the Bank of Canada."

The Ontario Report reproduced in the *1978 Proceedings* concludes that the "prime rate" is the most appropriate prejudgment interest rate because:

> (a) it approximates true commercial rates and together with the legal costs of prolonging an action would remove any incentive that a defendant might have in protracting litigation;
> (b) while it exceeds the rate which a plaintiff would receive on bank deposits, or for money paid into court, it is not as high as many other investments. If the plaintiff was required to borrow to cover his expenses, the interest would cover most but not all his interest charges Incentive to arrive at a determination would still exist;
> (c) it could be easily ascertained by the court, or by the court administrative staff;
> (d) it is the rate which likely will be applied after judgment pursuant to the *Borrowers' and Depositors' Protection Act*

Courts, in those jurisdictions where the court selects the rate of interest, have chosen a variety of rates: the legal rate of 5%, *Chambers* v. *Leech et al.*, [1976] 4 W.W.R. 568 (Man. C.A.); rate that the Crown pays on suitor's funds held in court pursuant to British Columbia Supreme Court Rule 58(5), *Crown Zellerbach Canada Ltd. et al.* v. *R.* (1979), 13 B.C.L.R. 276 (B.C.C.A.); the interest rate prescribed by the Supreme Court Fund Rules as accruing on money paid into court and placed on a short term investment account, *Jefford* v. *Gee,* [1970] 2 Q.B. 130; one to three year average bond yield rate as established for Government of Canada securities, *Schriver* v. *Clark* (1977), 17 N.B.R. (2d) 63 (N.B.S.C.).

If it is accepted that prejudgment interest is intended to compensate the plaintiff, the appropriate rate must approach the rate of return on the average plaintiff's investments. Of the various rates chosen by the legislatures and courts, the two rates which most closely approximate a commercial rate are the prime rate or the one to three year bond yield rate for Government of Canada securities. Both rates can be defined by referring to the Bank of Canada Review. In some respects, the bond yield rate is the better rate in that it is more probable that a plaintiff will invest in Government of Canada securities than an investment that would bring a rate of return at the prime rate. However, the prime rate is the rate most likely to be chosen by the Government of Canada when it sets the rate of interest for the

collection of judgments. It is also the rate that has some precedent in Canada in the form of the Ontario legislation.

The date for fixing the prime rate should be either the date the cause of action arose or it should be an average of the prime rate taken at each calendar quarter. The Ontario approach allows the plaintiff to effectively choose the rate of interest to which he may eventually be entitled by timing the issuing of his writ of summons. Now when interest rates fluctuate from week to week, this does not seem to be acceptable.

If the prime rate is determined as of the date of the cause of action, it supports the theory that at the time of the plaintiff's injury he suffers all loss. Also the calculation of prejudgment interest is not complicated any more than need be by mathematical calculations which would be required if an average of prime rates was chosen.

Averaging prime rates as these exist at each calendar quarter has the advantage of more closely approximating the plaintiff's loss. However, it adds one more task to the process which ultimately must be checked by the local registrars.

For special damages, it would seem appropriate to select the prime rate as it exists at the end of each three month period.

Recommendation

For general damages, the rate for prejudgment interest should be the prime rate as determined by reference to the Bank of Canada Review as that rate exists on the date of the cause of action.

For special damages, the rate for prejudgment interest should be the prime rate as this rate exists at the end of the three month period for calculation of the special damages.

IX. *Should Prejudgment Interest be Compounded?*

The Acts of Great Britain, British Columbia and Ontario expressly state that no interest shall be awarded on interest. The New Brunswick Act is silent on this point. There have been several cases in New Brunswick where the courts have awarded interest compounded over varying periods, see *Will Millar Associates Co. Ltd.* v. *Carr & Grass* (1978), 19 N.B.R. (2d) 561 (N.B.S.C.)—compounded semi-annually; *Duplisea* v. *The T. Eaton Life Assurance Co.* (1978), 19 N.B.R. (2d) 462 (N.B.S.C.)—compounded monthly. In the case of *Minister of Highways & Public Works* v. *British Pacific Properties*

Ltd., [1978] 5 W.W.R. 536 (B.C.S.C.) the court discussed the arguments against compound interest and listed them as follows:

(1) in the absence of agreement the B.C. courts have never awarded compound interest;
(2) to allow compound interest provides not only compensation but profit;
(3) it is not reasonable to assume that all plaintiffs would invest money received to maximum advantage so as to entitle them to receive compound interest;
(4) compound interest is a formidable deterrent against the possibility of losing one's case and therefore might deprive a defendant of his right to put forward a defence.

Other arguments against compound interest are:

(1) a plaintiff does not receive compound interest on a judgment;
(2) additional burdens are placed on court staff by complicating the mathematical calculations.

On the other hand, it can be said that compound interest better reflects economic reality. It would be expected that a defendant who invests would receive interest compounded at least annually.

If the prime rate is chosen as the appropriate rate for prejudgment interest on the basis that it is the best reflection of a commercial rate then commercial reality would seem to dictate that a plaintiff should be entitled to compound interest, compounded annually. To compound annually would seem to do justice to the principle and the plaintiff, without overburdening the defendant unduly.

In the absence of agreement, compound interest would only be awarded at common law where the debtor has used the money in trade and has presumably earned compound interest or where compound interest is in accordance with a usage of a particular trade or business; see *Halsbury's Laws of England,* 3rd ed., vol. 27, page 8.

Although compound interest appears to be justified if the prime rate is selected as the appropriate rate, there is no precedent in Canada for awarding prejudgment interest compounded. In addition, it is unlikely that any jurisdiction will compound interest receivable on a judgment.

Recommendation:

Prejudgment interest should not be compounded.

X. *From What Date Should Interest be Calculated on Prejudgment Awards?*

(A) *General Damages*

Great Britain, Ontario and British Columbia have selected different dates from which prejudgment interest should be calculated. New Brunswick follows the British approach. In Great Britain, the guidelines set out by the Court of Appeal in *Jefford* v. *Gee, supra,* suggest that interest should run from the date of service of the writ. This is also the date that is chosen by Quebec and many of the American states. This approach can be criticized on the basis that it forces the plaintiff to initiate proceedings in order to preserve his rights. It is an arbitrary approach and depends on a successful plaintiff having contacted his solicitor at an early date.

In Ontario the Legislature has chosen a dual approach. Where there are liquidated general damages, interest is calculated from the date the cause of action accrued. With respect to unliquidated general damages, the Ontario legislation provides that the entitlement to interest does not exist until the time the defendant is notified of the claim. With respect to liquidated damages, the Ontario report states that the action is likely based on contract and the parties are or ought to be aware of their obligations. On the other hand, with respect to unliquidated damages it is believed that the plaintiff has experienced no loss until he makes a demand of the defendant and is not paid; and, furthermore, it would be unfair to the defendant to make him liable for interest on damages of which he has no knowledge and has not had the opportunity to settle.

The Ontario approach appears to complicate the calculation of prejudgment interest by requiring the court to distinguish between liquidated and unliquidated damages. More importantly, if the defendant causes damage which is not discovered by either the defendant or the plaintiff until some time after the damage has occurred, it is more equitable to have the defendant liable for the interest on the damages since his wrongful act caused the damage. Furthermore, the argument with respect to not requiring the defendant to pay interest on damages of which he is not aware is equally applicable to the damage itself. Once this extension of the argument is made it shows that interest and damages should be treated in the same way and should both be ascertained as of the time the cause of action arose.

The B.C. Law Reform Commission recommended that, in the case of general damages, interest for the prejudgment period should be calculated from the date the cause of action arose. The rationale behind this suggestion appears to be that the plaintiff is considered to have suffered damage from the date of the alleged wrong. Thus, it is from this time that the plaintiff has been denied compensation. Furthermore, it is from this time that the defendant has had the benefit of money which ultimately belongs to the plaintiff. It would seem that this is the best approach.

Recommendation:

With respect to general damages, interest for the prejudgment period should be calculated from the date the cause of action arose.

(B) *Special Damages*

In theory, the plaintiff should be entitled to interest for each particular item of special damage from the time that particular item of damage was incurred. For example, in the case of loss of wages the interest should be calculated on each week's loss from that week to the date of trial and in the case of medical expenses interest should run from the date on which such expenses are paid. Practically speaking it would be extremely difficult to award damages from the time the individual item of special damage occurred. Thus, the various jurisdictions have attempted to simplify the calculations by devising a standard method for the awarding of interest on special damages.

Two approaches have been adopted. The approach established by the Court of Appeal in *Jefford* v. *Gee* provides that interest should be awarded on the total sum of special damages from the date of written notification of the claim to the date of judgment at one-half the normal rate. This approach is simple and allows the question of interest on special damages to be dealt with easily and expeditiously, but it does not accurately reflect the plaintiff's loss.

The approach adopted by British Columbia and Ontario is more complex. This approach provides that interest should be awarded on six-monthly totals from the date of written notification (in Ontario), or from the date the cause of action arose (in British Columbia), to the date of judgment at the normal rate. This approach more accurately reflects the real situation. One

argument used to support it is that in most cases the heaviest expense in personal injury cases occur during the first six months and then taper off toward the date of trial. This approach was first recommended by the Winn Commission on Personal Injury Litigation in 1968 and it would seem to be the better approach.

A strong argument can be made that six months is too long. If a heavy expenditure occurs early in a six month period, it does not seem justifiable that the plaintiff should be made to suffer a loss of interest in order to simplify calculations. A three month period would compensate a plaintiff better without being too cumbersome.

Recommendation:

With respect to special damages, prejudgment interest should be calculated from the end of each three month period after the cause of action to the date of judgment on the total of such damages incurred during each three month period, and from the end of the last three month period to the date of judgement.

XI. *Should Special Damages be Defined?*

One problem that occurs when general damages and special damages are treated separately is that one is forced to distinguish between the two types of damage. In *Hope Hardware and Building Supply Co. Ltd.* v. *Fields Stores Ltd.* (1978), 7 B.C.L.R. 321 (B.C.S.C.) a British Columbia court for the first time considered what kinds of claim involve general damages and what involve special damages for the purposes of the *Prejudgment Interest Act,* S.B.C. 1974, c. 65. Bouck, J. said at page 330 that it was "unfortunate that the legislature had failed to define what are general damages and what are special damages for the purposes of the Act". The learned judge then points out that there are at least three distinct meanings for the terms general and specific damages: (1) the first meaning concerns liability: In *Hadley* v. *Baxendale* (1854), 9 Ex. 341 the court distinguished between damages arising naturally (general damages) and cases where there were special and extraordinary circumstances beyond the reasonable provision of the parties; (2) the second meaning concerns proof: In *Prehn* v. *Royal Bank of Liverpool* (1870), L.R. 5 Ex. 92 the court said general damages are such as the jury may give when the judge cannot point out any measure by which they are to be assessed, except the opinion and judgment of a reasonable man, while special damages are given in respect of any consequences reasonably and probably arising from the breach complained of; (3)

the third meaning concerns pleading: In *Susquehanna,* [1926] A.C. 655 the court said that special damage must be averred and proved, and, if proved, will be awarded. General damages must be averred, but the quantification is a question for the jury. After surveying the common law, Mr. Justice Bouck concludes at page 333:

> Because special and general damages have different meanings for different purposes both in contract and in tort and in relation to liability, proof and pleading, it is difficult to say with precision that any particular claim falls within the meaning as set out in the Prejudgment Interest Act, particularly since it has another objective

If no definition of special damages is provided, the court must first determine what is special damages according to the common law and independent of the theory behind an award of prejudgment interest.

Another problem in not defining special damages or giving the court some guidelines on this point is that the jurisdictions are not unanimous on what type of damage is special and what type of damage is general. For example, in Saskatchewan and British Columbia loss of wages prior to trial is considered to be general damages because the loss is not certain. Meanwhile in most other provinces and the United Kingdom loss of wages is considered special damages because the loss is considered to be a pretrial loss of a quantifiable character.

Essentially what is intended by distinguishing between special and general damages is to gather together those quantifiable losses that connot be said to have occurred or been suffered at the time the cause of action arose. The defendant should not have to pay interest on these amounts from the earlier date because the plaintiff did not suffer them at that time. Accordingly, it would seem appropriate to state this in the legislation.

Recommendation:

The legislation should distinguish between general damages and damages in respect of expenses incurred or ascertainable loss of income.

XII. *Payment Into Court*

(A) *Should a Payment Into Court by a Defendant Include Pre judgment Interest?*

Most jurisdictions in Canada allow a defendant to pay into court a sum of money in satisfaction of a claim against him. The defendant is required to notify the plaintiff of a payment in at which time the plaintiff has a right to accept the money or proceed with the action. If the plaintiff proceeds with the action

and recovers less than or equal to the amount paid into court the plaintiff may be required to pay the defendant's total costs or his costs incurred after the payment in.

Lord Denning M.R. in *Jefford v. Gee*, *supra*, expressed the opinion that interest is not a cause of action in itself and that the Rules of Court only permit payment in respect of a cause of action. Accordingly, he concluded that no payment in could be made with respect to interest. It seems that if a payment into court does not include interest, a plaintiff, who is prepared to accept that the amount paid into court represents his loss, and, who wishes interest must either negotiate with the defendant to pay interest over and above the amount paid into court or he must proceed to trial. Such a situation should be avoided.

Recommendation:

A payment into court should include the interest to which the plaintiff is entitled up to the date of payment in.

(B) *Should the Defendant's Obligation to Pay Interest be Affected by a Payment Into Court Which is Less Than or Equal to the Final Award?*

This question is essentially whether the allowance of interest prior to judgment should affect or be affected by a payment into court. It seems that a plaintiff who fails to accept a sufficient payment into court has deprived himself of the use of the money with respect to any period following the date of payment into court. However, in most jurisdictions in Canada the defendant is entitled to receive interest on money paid into court. It would seem that a plaintiff should be entitled to this money.

It is recognized that after the passage of prejudgment interest legislation a defendant runs a risk of loss in paying money into court. If the court awards the plaintiff a greater sum of money than that which the defendant has paid in, the defendant has not had the use of the money since the time of payment in, but yet he is required to pay interest on the total amount at a rate which is probably higher than the rate paid by the court account. But this is also the same for a plaintiff who does not accept money paid in and who is awarded a sum less than or equal to the amount paid in. In such a case the plaintiff not only receives a smaller principal with interest thereon, but, if this recommendation is accepted, the plaintiff also receives less interest from the date of payment into court to the date of judgment.

Recommendation:

Where money is paid into court and the judgment is less than or equal to the amount so paid in, the defendant should not be required to pay prejudgment interest from the time of the payment into court at a rate greater than that which he received while the funds were in court.

XIII. *Should the Plaintiff Remain Entitled to Prejudgment Interest on a Consent Judgment?*

British Columbia takes the position that the court shall not award prejudgment interest "where the judgment creditor waives in writing his right to an award of interest", (see s. 2(d)). The Ontario legislation provides that prejudgment interest shall not be awarded "except by consent of the judgment debtor where the judgment is given on consent", (see s. 38(5)).

Each of these approaches creates a different presumption in favour of either the plaintiff or defendant for the purposes of negotiating a settlement. The British Columbia approach recognizes that the legislation has given the plaintiff a right which he must waive before he is thereby disentitled on a consent judgment. It would seem to be a better approach to provide that prejudgment interest not be awarded on consent judgments unless the parties agree. This would be in keeping with the expectations of the parties and should facilitate settlement.

Recommendation:

Prejudgment interest should not be awarded on consent judgments unless the parties have agreed in the judgment.

XIV. *Should Prejudgment Interest Apply Where There is an Agreement Between the Parties Respecting Interest or Where There is Other Legislation on Point?*

The B.C. Law Reform Commission recommended that where the parties to a transaction have made express provision for the payment of interest or where there is a statutory provision concerning interest that agreement or provision should prevail. However, the B.C. legislation provides that interest shall not be awarded where there is an agreement between the parties respecting interest without providing that prejudgment interest shall not be awarded where there is a statutory provision concerning interest.

The Ontario legislation adopts the approach recommended by the B.C. Law Reform Commission.

It seems sensible that the proposed Act should not apply where the parties have an agreement with respect to interest. Similarly, it would seem that, where there is a statutory provision providing for interest, the specific legislation should determine a person's entitlement to interest.

Recommendation:

Prejudgment interest legislation should not apply where there is an agreement between the parties respecting interest or where there is any other rule of law respecting the payment of interest.

XV. *Whether Court Registry Staff Should be Required to Calculate Prejudgment Interest on Default Judgments?*

Section 3 of the B.C. Act provides:

> Where a judgment is obtained by default under an Act or the Rules of Court, the registrar of the court may exercise and carry out the powers and duties of the court under this Act

Such a section is necessary in British Columbia because the operative words in section 1 direct the "court" to award interest in certain cases.

There is no specific provision giving the local registrars and local clerks in Ontario the power to award prejudgment interest but it appears that a specific provision is not necessary. The operative wording of the Ontario legislation is that "a person who is entitled to a judgment for the payment of money is entitled to claim and have included in the judgment an award of interest thereon", (see section 38(3)). Thus, in Ontario, in the event of a non-appearing defendant, the plaintiff in preparing his judgment includes an interest claim which is checked by the court staff. This would seem to be acceptable and parallels the existing practice with respect to prejudgment interest.

Recommendation:

The legislation should be drafted so as to ensure that a plaintiff entitled to judgment is entitled to have included in the judgment an award of interest.

XVI. *Whether Interest Should be Deemed to be Included in the Judgment?*

Section 5 of the B.C. Act provides:

> Interest added on to a judgment under this Act shall, for the purpose of enforcing the judgment, be deemed to be included in the judgment

Again, there is no specific provision in Ontario but the operative wording referred to under the preceding heading ensures that

interest is included in the judgment. This would seem to be an acceptable approach. Accordingly, if the preceding recommendation is adopted by the Conference no further action is necessary to ensure that an award of interest is included in a judgment.

XVII. *Special Problems*

(A) *Whether the Legislation Should Provide a Solution to the Calculation of Prejudgment Interest on a Shifting Principal?*

Both the British Columbia and Ontario Commissioners have adverted, in their respective reports, to the problem and fact situation outlined in the case of *Schweickardt et ux.* v. *Thorne et al.*, [1976] 4 W.W.R. 249. Briefly, the facts of this case were that the plaintiffs agreed to purchase certain real property which was subsequently sold to a third party. In an action for specific performance the court chose to award damages based on the difference between the contract price and the market value of the land on the date that the plaintiffs knew their action for specific performance would fail. During that time the property appreciated in value so as to increase the amount of the plaintiffs' final entitlement not only in capital terms but with respect to interest payable. The court found that the plaintiff was entitled to interest on the total amount as though the total loss was suffered from the date the cause of action arose.

This problem will not only occur in actions for the recovery of property. It can occur in those jurisdictions where loss of income before trial is considered a general as opposed to a special damage. Also, argument can be made that most unliquidated damage claims increase until trial.

One approach to this problem would be to treat "a shifting damage" like special damage and allow the court to calculate interest on three-monthly totals. The problem with this approach is that the court in most cases is hard pressed to calculate loss to arrive at a final award let alone to do so at periodic intervals.

The other alternative might be to allow the court a discretion to lower the interest rate where it finds that a judgment consists in whole or in part of damages which increase or decrease between the date the cause of action arose and the date of judgment. It would seem that this

approach might do the most justice to the plaintiff without overburdening the defendant. However, it is recognized that this approach offends the principle that general damages are deemed to be suffered as of the date the cause of action accrued. In addition, it could be an inducement to the court to award a lower interest rate in all cases involving unliquidated amounts.

Recommendation:

Except in the case of special damages, the legislation should not attempt to provide a solution to the problem created by a damage claim that increases until the date of trial.

(B) Whether the Legislation Should Provide a Solution to the Fact Situation Where a Plaintiff Borrows Money to Pay for Items Considered to be Special Damages?

Where a plaintiff borrows money with interest to pay for a certain item resulting in special damages he is entitled to an award which encompasses the actual sum borrowed and the interest incurred. In such a case it would seem to be contrary to the principle of compensation to the plaintiff for interest to be ordered.

Recommendation:

The legislation should provide that no interest shall be awarded on amounts of special damage which represent monies borrowed and interest thereon.

XVIII. *Should the Legislation Apply to Existing Causes of Action?*

The B.C. Act does not apply in respect of a cause of action arising before the Act came into force. The Ontario Act applies to judgments delivered after the legislation came into force, but no interest should be awarded for a period before the Act came into force.

The Ontario approach has immediate effect. However, it does not recognize that the bulk of defendants affected by the new legislation are insurance companies which should be given the opportunity, if they so desire, to increase premiums and thereby spread the increased loss.

Recommendation:

The Act should not affect causes of action arising before the Act comes into force.

XIX. *Matters to be Left to Provincial Discretion*

The Conference's final report on prejudgment interest should point out:

(1) the Uniform Act does not address the issue of whether it should bind the Crown;

(2) if the Uniform Act is incorporated into superior court legislation consideration should be given to the application of such legislation to small claims courts and other provincial courts which award pecuniary amounts in the form of maintenance.

SCHEDULE 1

(i) *British Columbia*

Lord Tenterden's Act presumably applied unaltered until the *Prejudgment Interest Act*, S.B.C. 1974, c. 65, was passed. *Lord Tenterden's Act*, namely, ss. 28 and 29 of the *Civil Procedure Act*, 3 & 4 Will. 4, c. 42, provided as follows:

> 28 That upon all debts or sums certain, payable at a certain time or otherwise the jury, on the trial of any issue, or on any inquisition of damages may, if they shall think fit, allow interest to the creditor at a rate not exceeding the current rate of interest from the time when such debts or sums certain were payable, if such debts or sums be payable by virtue of some written instrument at a certain time, or if payable otherwise then from the time when demand of payment shall have been made in writing so as such demand shall give notice to the debtor that interest will be claimed from the date of such demand until the term of payment: Provided that interest shall be payable in all cases in which it is now payable by law
>
> 29. That the jury on the trial of any issue, or on any inquisition of damages may, if they shall think fit, give damages in the nature of interest, over and above the value of the goods at the time of the conversion or seizure, in all actions of trover or trespass *de bonis asportatis*, and over and above the money recoverable in all actions on policies of assurance made after the passing of this Act

(ii) *Alberta*

The Judicature Act, R.S.A. 1970, c. 193, s. 34(16) reads as follows:

> "16. In addition to the cases in which interest is payable by law or may be allowed by law, the Court in all cases where in the opinion of the Court the payment of a just debt has been improperly withheld, and it seems to the Court fair and equitable that the party in default should make compensation by the payment of interest, may allow interest for such time and at such rate as the Court thinks proper"

(iii) *Saskatchewan*

The Queen's Bench Act, R.S.S. 1978, c. Q-1, ss. 46, 47 reads as follows:

> "46 Interest shall be payable in all cases in which it is now payable by law, or in which it has been usual for a jury to allow it"

"47. (1) On the trial of an issue, or on an assessment of damages, upon a debt or sum certain, payable by virtue of a written instrument at a time certain, interest may be allowed from the time when the debt or sum became payable.

(2) If such debt or sum is payable otherwise than by virtue of a written instrument at a time certain, interest may be allowed from the time when a demand of payment was made in writing, informing the debtor that interest would be claimed from the date of the demand

(3) In actions for the conversions of goods or for trespass *de bonis asportatis*, the jury may give interest in the nature of damages over and above the value of the goods at the time of the conversion or seizure, and in actions on policies of insurance may give interest over and above the money recoverable thereon

(4) Unless otherwise ordered by the court, a verdict or judgment shall bear interest from the time of the rendering of the verdict, or of giving the judgment, as the case may be, notwithstanding that the entry of judgment shall have been suspended by any proceeding in the action including an appeal."

(iv) *Manitoba*

The Queen's Bench Act, R.S.M. 1970, c. 280, ss. 71, 72, reads as follows:

"71. Interest is payable in all cases in which it is now payable by law or in which it has been usual for a jury to allow it."

72. (1) On the trial of an issue, or an assessment of damages, upon a debt or sum certain, payable by virtue of a written instrument at a time certain, interest may be allowed from the time when the debt or sum became payable

(2) Where such a debt or sum is payable otherwise than by virtue of a written instrument at a time certain, interest may be allowed from the time when a demand of payment was made in writing, informing the debtor that interest would be claimed from the date of the demand.

(3) In actions for the conversion of goods or for trespass *de bonis asportatis*, the jury, or the judge if the case is tried without a jury, may give interest in the nature of damages over and above the value of the goods at the time of the conversion or seizure, and in actions on policies of insurance may give interest over and above the money recoverable thereon.

(4) Unless otherwise ordered by the court, a verdict or judgment bears interest from the time of the rendering of the verdict, or of giving the judgment, as the case may be, notwithstanding that the entry of judgment has been suspended by any proceeding in the action, including an appeal; and in cases where there is an agreement between the parties that a special rate of interest shall be secured by the judgment, the judgment, if it so provides, shall bear interest at the rate so agreed."

(v) *Ontario*

Before being amended in 1977 by S.O. 1977, c. 51, s. 3(1) and (2), the Ontario *Judicature Act*, R.S.O. 1970, c. 228, ss. 38, 39 read as follows:

"38. Interest is payable in all cases in which it is now payable by law or in which it has been usual for a jury to allow it

39. (1) On the trial of an issue or on an assessment of damages upon a debt or sum certain, payable by virtue of a written instrument at a time certain, interest may be allowed from the time when the debt or sum became payable.

(2) If such debt or sum is payable otherwise than by virtue of a written instrument at a time certain, interest may be allowed from the time when a demand of payment was made in writing, informing the debtor that interest would be claimed from the date of the demand

(3) In actions for the conversion of goods or for trespass *de bonis asportatis*, the jury may give interest in the nature of damages over and above the value of the goods at the time of the conversion or seizure, and in actions on policies of insurance may give interest over and above the money recoverable thereon "

(vi) *Quebec*

Article 1056c of the Quebec Civil Code reads as follows:

1056c (Added February 21, 1957)

The amount awarded by judgment for damages resulting from an offence or a quasi-offence shall bear interest at the legal rate as from the date when the action at law was instituted

There may be added to the amount so awarded an indemnity computed by applying to the amount, from such date, a percentage equal to the excess of the interest rate fixed according to section 53 of the Revenue Department Act (Revised Statutes, 1964, chapter 66) over the legal interest rate

(vii) *Prince Edward Island*

The *Judicature Act*, R.S.P.E.I. 1974, c. J-3, ss. 33-34 read as follows:

"33 (1) On the trial of any issue, or on any assessment of damages, upon any debt or sum certain, payable by virtue of a written instrument at a time certain, interest may be allowed from the time when the debt or sum became payable

(2) If the debt or sum is payable otherwise than by virtue of a written instrument at a time certain, interest may be allowed from the time when a demand of payment was made in writing informing the debtor that interest would be claimed from the date of the demand

34 In actions for the conversion of goods or for trespass *de bonis asportatis*, the jury or the judge when the case is tried without a jury, may give interest in the nature of damages over and above the value of the goods at the time of the conversion or seizure, and in actions on policies of insurance, may give interest over and above the money recoverable thereon "

(viii) *New Brunswick*

Before being amended in 1973, the *Judicature Act*, R.S.N.B. 1953, read as follows:

"44 (1) On the trial of any issue, or any assessment of damages, upon any debt or sum certain, payable by virtue of a written instrument at a certain time, interest may be allowed to the plaintiff from the time when the debt or sum became payable.

If such debt or sum is payable otherwise than by virtue of a written instrument at a certain time, interest may be allowed from the time when demand of payment is made in writing, informing the debtor that interest will be claimed from the date of the demand

45. In actions for the conversion of goods or for the trespass *de bonis asportatis*, the jury, or the judge when the case is tried without a jury,

may give interest in the nature of damages over and above the value of the goods at the time of the conversion or seizure, and in actions on policies of insurance may give interest over and above the money recoverable thereon "

(ix) *Nova Scotia*

The applicable legislation in Nova Scotia is the *Interest Act*, R.S.N.S. First Series 1851, c. 82, s. 4, which reads as follows:

"4 Upon all debts or sums certain payable at a certain time, or otherwise, the jury, and the court where there is no jury, on the trial of any issue or inquisition of damages, may, if they shall think fit, allow interest from the time when such debts, or sums certain, were payable, if such debts or sums be payable by virtue of some written instrument at a certain time, or if payable otherwise, then from the time when demand of payment shall have been made in writing, such demand giving notice to the debtor that interest will be claimed from the date thereof

5 The jury on the trial of any issue, or on any inquisition of damages, may, if they shall think fit, give damages in the nature of interest about the value of the goods at the time of the conversion or seizure, in all actions of trover, or trespass *de bonis asportatis*, and above the money recoverable in all actions on policies of insurance."

(x) *Newfoundland*

Newfoundland has no legislation dealing with prejudgment interest. Moreover, it is submitted that *Lord Tenterden's Act* of 1833 does not apply because the above statute was passed after the reception of English law into Newfoundland. English law was received into Newfoundland on December 31, 1832.

(xi) *Northwest Territories*

The Northwest Territories' legislation is the *Judicature Ordinance,* R.O. 1974, c. J-1 which reads as follows:

Allowance of interest in special cases

20. In addition to the cases in which interest is by law payable, or may by law be allowed, a court may in all cases where in the opinion of the court the payment of a just debt has been improperly withheld, and it seems to the court fair and equitable that the party in default should make compensation by the payment of interest, allow interest for such time and at such rate as the court deems just 1970 (3rd), c 5, s 21

Interest on debts certain

21. (1) On the trial of an issue, or on an assessment of damages, upon a debt or sum certain

(a) payable by virtue of a written instrument at a time certain, interest may be allowed from the time when the debt or sum became payable; or

(b) payable otherwise than by virtue of a written instrument at a time certain, interest may be allowed from the time when a written demand for payment was made informing the debtor that interest would be claimed from the date of the demand

Interest by way of damages in certain actions

(2) In an action for the conversion of goods or for trespass *de bonis asportatis,* the jury, or a judge, may give interest in the nature of damages over and above the value of the goods at the time of the conversion or seizure, and in actions on policies of insurance may give interest over and above the money recoverable thereon

Interest on Judgments

(3) Unless otherwise ordered by the court, a verdict or judgment bears interest from the time of the rendering of the verdict or of giving the judgment, as the case may be, notwithstanding that the entry of judgment has been suspended by any proceeding in the action including an appeal 1970 (3rd), c. 5, s 22.

(xii) *Yukon Territory*

The Yukon legislation is the Judicature Ordinance, R.O. 1978, c. J-1, ss. 11 & 12 and is the same as the Northwest Territories Ordinance.

SCHEDULE 2

The law presently in New Brunswick is governed by the *Judicature Act,* R.S.N.B. 1973, c. J-2, which reads as follows:

"45(1) In any proceedings for the recovery of any debt or damages, the Court may order that there shall be included in the sum for which judgment is given interest on the whole or any part of the debt or damages for the whole or any part of the period between the date when the cause of action arose and the date of judgment.

(2) Subsection (1) applies in respect of causes of action arising after the coming into force of that subsection; and all causes of action arising prior to the coming into force of subsection (1) shall be governed by the applicable law prior to the coming into force of that subsection

46 Unless it is otherwise ordered by the Court, a verdict or judgment bears interest from the time of the rendering of the verdict, or of the giving of the judgment, as the case may be, notwithstanding that the entry of judgment upon the verdict, or upon the giving of the judgment, has been suspended by any proceedings in the action, whether in the Court in which the action is pending or on appeal."

SCHEDULE 3

The law in British Columbia on prejudgment interest is presently governed by the *Prejudgment Interest Act,* S.B.C. 1974, c. 65, which reads as follows:

1. (1) Subject to section 2, a court shall add on to a pecuniary judgment an amount of interest calculated on the amount of the judgment at a rate the court considers appropriate in the circumstances, but the rate shall not be less than the rate that applies in respect of interest on a judgment under the *Interest Act* (Canada), from the date on which the cause of action arose to the date of judgment

(2) Notwithstanding subsection (1), where a judgment consists in whole or in part of special damages, the interest in respect of those damages shall be calculated:

(a) on the total of the special damages incurred in the six month period immediately following the date on which the cause of action arose; and

(b) on the total of the special damages incurred in any subsequent six month period,

from the end of each six month period in which the special damages were incurred to the date of judgment

(3) For the purpose of calculating interest under subsection (2), and notwithstanding subsection (2), where the date of judgment occurs

(a) before a date six months after the date on which the cause of action arose; or

(b) after the end of a six month period but before the end of the subsequent six month period,

interest shall be calculated from the date on which the special damages were incurred to the date of judgment.

2. The court shall not award interest under section 1

(a) on that part of a judgment that represents pecuniary loss arising after the date of judgment; or

(b) where there is an agreement between the parties respecting interest; or

(c) upon interest; or

(d) where the judgment creditor waives in writing his right to an award of interest; or

(e) upon costs

3. Where a judgment is obtained by default under an Act or the rules of court, the registrar of the court may exercise and carry out the powers and duties of the court under this Act

4. Where a party pays money into court in satisfaction of a claim and another party does not accept the payment and obtains a judgment for an amount equal or less than that paid into court, the court shall, notwithstanding section 1, award interest only from the date the cause of action arose to the date of payment into court as if the date of payment into court had been the date of judgment

5. Interest added on to a judgment under this Act shall, for the purpose of enforcing the judgment, be deemed to be included in the judgment

6. This Act does not apply in respect of a cause of action that arose before the first day of June, 1974

SCHEDULE 4

The law in Ontario on prejudgment interest is presently governed by the following sections contained in the *Judicature Act* which read as follows:

38.—(1) In this section, "prime rate" means the lowest rate of interest quoted by chartered banks to the most credit-

worthy borrowers for prime business loans, as determined and published by the Bank of Canada.

(2) For the purposes of establishing the prime rate, the periodic publication entitled the Bank of Canada Review purporting to be published by the Bank of Canada is admissible in evidence as conclusive proof of the prime rate as set out therein, without further proof of the authenticity of the publication.

(3) Subject to subsection 6, a person who is entitled to a judgment for the payment of money is entitled to claim and have included in the judgment an award of interest thereon,

(*a*) at the prime rate existing for the month preceding the month on which the action was commenced; and

(*b*) calculated,

(i) where the judgment is given upon a liquidated claim, from the date the cause of action arose to the date of judgment, or

(ii) where the judgment is given upon an unliquidated claim, from the date the person entitled gave notice in writing of his claim to the person liable therefor to the date of the judgment.

(4) Where the judgment includes an amount for special damages, the interest calculated under subsection 3 shall be calculated on the balance of special damages incurred as totalled at the end of each six month period following the notice in writing referred to in subclause (ii) of clause (*b*) of subsection 3 and at the date of the judgment.

(5) Interest under this section shall not be awarded,

(*a*) on exemplary or punitive damages;

(*b*) on interest accruing under this section;

(*c*) on an award of costs in the action;

(*d*) on that part of the judgment that represents pecuniary loss arising after the date of the judgment and that is identified by a finding of the court;

(*e*) except by consent of the judgment debtor where the judgment is given on consent;

(*f*) where interest is payable by a right other than under this section.

(6) The judge may, where he considers it to be just to do so in all the circumstances,

(*a*) disallow interest under this section;

(*b*) fix a rate of interest higher or lower than the prime rate;

(*c*) allow interest under this section for a period other than that provided,

in respect of the whole or any part of the amount for which judgment is given.

SCHEDULE 5

The report on the Quebec Civil Code recommended the expansion of the court's power to award interest in the following way:

Article 297

Damages awarded to a creditor for the inexecution of an obligation bear interest at the legal rate, as of the institution of the action.

However, in cases of physical injury, the court may order that the interest on the damages will accrue as from the date of the act which caused the injury.

The court may add an indemnity to the amount so awarded, computed by applying to this amount, from these dates, a percentage equal to the excess of the interest rate fixed under Section 28 of the *Revenue Department Act,* over the legal interest rate.

Article 298

Damages which result from the inexecution of an obligation to pay a sum of money consist of interest at the rate agreed upon or, in the absence of agreement, of interest at the legal rate.

A creditor is entitled to those damages from the time the debtor is put in default, without being required to prove damage.

A creditor, however, may stipulate that he will be entitled to additional damages provided he justifies them, but this stipulation is not required in the event of inexecution of a legal obligation.

Article 299

Interest accrued on capital bears interest:

1. when provision is made for this in an agreement or by law;
2. when new interest is specially demanded in a suit.

SCHEDULE 6

Section 3(1) of the *Law Reform (Miscellaneous) Act* which was enacted in 1934 provides as follows:

> **3.**—(1) In any proceedings tried in any court of record for the recovery of any debt or damages, the court may, if it thinks fit, order that there shall be included in the sum for which judgment is given interest at such rate as it thinks fit on the whole or any part of the debt or damages for the whole or any part of the period between the date when the cause of action arose and the date of the judgment:
>
> Provided that nothing in this section—
>
> (*a*) shall authorise the giving of interest upon interest; or
> (*b*) shall apply in relation to any debt upon which interest is payable as of right whether by virtue of any agreement or otherwise; or
> (*c*) shall affect the damages recoverable for the dishonour of a bill of exchange.

Section 22 of the *Administration of Justice Act*, 1969, added additional sections to the 1934 legislation, reading as follows:

> (1A) Where in any such proceedings as are mentioed in subsection (1) of this section judgment is given for a sum which (apart from interest on damages) exceeds £200 and represents or includes damages in respect of personal injuries to the plaintiff or any other person, or in respect of a person's death then (without prejudice to the exercise of the power conferred by that subsection in relation to any part of that sum which does not represent such damages) the court shall exercise that power so as to include in that sum interest on those damages or on such part of them as the court considers appropriate, unless the court is satisfied that there are special reasons why no interest should be given in respect of those damages.
>
> (1B) Any order under this section may provide for interest to be calculated at different rates in respect of different parts of the period for which interest is given, whether that period is the whole or part of the period mentioned in subsection (1) of this section
>
> (1C) For the avoidance of doubt it is hereby declared that in determining, for the purposes of any enactment contained in the *County Courts Act 1959* whether an amount exceeds, or is less than, a sum specified in that enactment no account shall be taken of any power exercisable by virtue of this section or of any order made in the exercise of such a power
>
> (1D) In this section "personal injuries" includes any disease and any impairment of a person's physical or mental condition, and any reference to the *County Courts Act, 1959* is a reference to that Act as (whether by virtue of the *Administration of Justice Act, 1969* or otherwise) that Act has effect for the time being

SCHEDULE 7

BE IT ENACTED by the Governor of the State of South Australia, with the advice and consent of the Parliament thereof, as follows:

Enactment of s. 30c of principal Act

4. The following section is enacted and inserted in the principal Act immediately after section 30b:—

Power to award interest

30c. (1) Unless good cause is shown to the contrary, the court shall, upon the application of a party in favour of whom a judgment for the payment of damages, compensation or any other pecuniary amount has been, or is to be, pronounced, include in the judgment an award of interest in favour of the judgment creditor in accordance with the provisions of this section.

(2) The interest—

(*a*) shall be at the rate of seven per centum per annum or such lower rate as may be fixed by the court;

(*b*) shall be calculated—

(i) where the judgment is given upon an unliquidated claim—from the date of the commencement of the proceedings to the date of the judgment;

or

(ii) where the judgment is given upon a liquidated claim—from the date upon which the liability to pay the amount of the claim fell due to the date of the judgment,

or in respect of such other period as may be fixed by the court;

and

(*c*) shall be payable in respect of the whole or any part of the amount for which judgment is given in accordance with the determination of the court.

(3) No interest shall be awarded in respect of—

(*a*) damages or compensation in respect of loss or injury to be incurred or suffered after the date of the judgment;

or

(*b*) exemplary or punitive damages.

(4) This section does not—

(*a*) authorize the award of interest upon interest;

(*b*) apply in relation to any sum upon which interest is recoverable as of right by virtue of an agreement or otherwise;

(*c*) affect the damages recoverable upon the dishonour of a negotiable instrument;

(*d*) authorize the award of any interest otherwise than by consent upon any sum for which judgment is pronounced by consent;

or

(*e*) limit the operation of any other enactment or rule of law providing for the award of interest.

SCHEDULE 8

Draft Uniform Prejudgment Interest Act

Interpretation

1. (1) In this Act, "prime rate" means the lowest rate of interest quoted by chartered banks to the most credit-worthy borrowers for prime business loans, as determined and published by the Bank of Canada.

Proof of prime rate

(2) For the purposes of establishing the prime rate, the periodic publication entitled The Bank of Canada Review purporting to be published by the Bank of Canada is admissible in evidence as conclusive proof of the prime rate as set out therein, without further proof of the authenticity of the publication.

Right to interest

2. A person who is entitled to a judgment for the payment of money is entitled to claim and have included in the judgment an award of interest at the prime rate existing on the day the cause of action arose calculated from that day to the day of judgment.

Expenses

3. Where a judgment includes damages in respect of expenses incurred or ascertainable loss of income arising between the day the cause of action arose and the day of judgment, the interest in respect of those damages shall be calculated

(*a*) from the end of each period of three months after the cause of action arose on the total of such damages incurred during each three-month period at the prime rate existing on the last day of each three-month period; and

(*b*) from the end of the last three-month period to the date of judgment on the total of such damages incurred during that period at the prime rate existing on the last day of the period.

Pecuniary loss defined

4. (1) In this section, "pecuniary loss" does not include pain and suffering, loss of amenities and of expectation of

life, physical inconvenience and discomfort, social discredit, injury to reputation, mental suffering, injury to feelings or loss of society of spouse or child.

Where no interest to be awarded

(2) Interest shall not be awarded under this Act

(*a*) on that part of the judgment that represents pecuniary loss arising after the day of judgment unless it is not possible for the court to distinguish that portion of the loss from other loss;

(*b*) on interest accruing under this section;

(*c*) on exemplary or punitive damages;

(*d*) on an award of costs in the action;

(*e*) where the judgment is given on consent, except by consent;

(*f*) where there is an agreement between the parties respecting interest or where interest is payable by other rule of law;

(*g*) on money and interest thereon borrowed by the party entitled to judgment in respect to damages referred to in section 3.

Money in court

5. (1) Money paid into court in satisfaction of a claim shall include thereon an amount with respect to interest calculated in accordance with this Act as of the day of payment into court.

Idem

(2) Notwithstanding sections 2 and 3, but subject to section 4, where a party pays money into court in satisfaction of a claim and another party does not accept the payment and obtains a judgment for an amount less than or equal to that paid into court, the court shall

(*a*) award interest calculated in accordance with this Act from the day the cause of action arose to the day of payment into court,

(*b*) award interest from the day of payment into court to the day of judgment at the actual rate of interest earned on the money paid into court.

Where Act does not apply

6. This Act does not apply to a cause of action that arose prior to the coming into force of this Act.

APPENDIX Q

(See page 33)

REVISION OF THE UNIFORM ACTS

Report of the Committee

At the 1979 meeting of the Conference held at Saskatoon the report of the Manitoba Commissioners respecting Consolidation of Uniform Acts was adopted and the Executive was delegated to establish the Committee of three referred to in the report. (*1979 Proceedings, 33.*) The Executive appointed Mr. Arthur Stone to be chairman of the Committee and to designate two other members to serve on the Committee. The members designated were Mr. Rae Tallin and Mr. Alan Reid.

The Committee examined all the Acts listed in Table III of the *1979 Proceedings* and the legislation of all jurisdictions on the same subject-matter.

The Committee found that the record of adoptions in Table III of the *1979 Proceedings* is incomplete and its validity is further complicated by

1. the inclusion of the adoption of former and outdated recommended uniform enactments without clear differentiation; and
2. the question of the degree of similarity that constitutes an adoption.

The recommendations and comments of the Committee in respect of each Uniform Act are set out in Schedule 1 to this report.

For the reasons set out in Schedule 1, the Committee recommends that:

1. the Acts set out in Schedule 2 be deleted from the list of Uniform Acts;
2. the Acts set out in Schedule 3 be reviewed by the Conference; and
3. the Acts set out in Schedule 4 be retained without change.

The Committee further recommends that an item be added to the agenda under the heading Review of Uniform Acts under which Acts

listed in Schedule 3 can be assigned to jurisdictions for review and recommendations until the reviews are complete.

August 1980

Alan Reid
Arthur Stone
Rae Tallin

SCHEDULE 1

Accumulations Act

—Recommended in 1968.
—Adopted in three jurisdictions (Ontario, New Brunswick and British Columbia) but since repealed in one (British Columbia).
—In British Columbia and Alberta the accumulation of income is governed by the same rule against perpetuity as the fund. Other provinces make no provisions on the subject.
—Recommended: no action.

Assignment of Book Debts Act

—Recommended in 1928 and revised in 1955.
—Adopted in ten jurisdictions but since repealed in two (Manitoba and Ontario) on adoption of *Personal Property Security Acts.*
—The recommendation by the Conference of the Uniform *Personal Property Security Act* has superseded the *Uniform Assignment of Book Debts Act.*
—Recommended: deletion.

Bills of Sale Act

—Recommended in 1928 and revised in 1955.
—Adopted in nine jurisdictions but since repleaed in Manitoba and amended in Ontario to delete application to chattel mortgages. In both cases the action was related to the enactment of Personal Property Security Acts.
—The *Uniform Bills of Sale Act* includes chattel mortgages which are now covered in the *Uniform Personal Property Security Act.*
—Recommended: review for purpose of,

1. considering its deletion;
2. if retained, rewriting to delete reference to chattel mortgages and generally revising content.

Bulk Sales Act

—Recommended in 1920 and revised in 1950 and 1961.

—Adopted in nine jurisdictions but only Ontario has adopted the latest revised version.
—Recommended: no action.

Conditional Sales Act

—Recommended in 1922 and since revised in 1947 and 1955.
—Adopted in seven jurisdictions.
—The recommendation of the *Uniform Personal Property Security Act* by the Conference has superseded the *Uniform Conditional Sales Act.*
Recommended: deletion.

Condominium Insurance Act

—Recommended in 1971.
—Adopted in five jurisdictions.
—All five jurisdictions, although using certain elements of the Uniform Act, depart from it in a variety of important differences.
—Recommended: review in light of experience.

Conflict of Laws Act (Traffic Accidents Act)

—Recommended in 1970.
—Adopted in one jurisdiction (Yukon).
—Although not widely adopted, no jurisdiction has enacted legislation on the subject in a different form.
—Recommended: no action.

Contributory Negligence Act

—Recommended in 1924 and since revised in 1935 and 1953.
—Adopted in eight jurisdictions.
—Recommended: no action.

Corporations Securities Registration Act

—Recommended in 1931.
—Adopted in six jurisdictions.
—This Act was omitted from the *Consolidation of Uniform Acts* on the basis that it was being superseded by improved provincial securities legislation. The *Uniform Personal Property Security Act* includes provision for registration of the same security interests, and the effect of registration.
—Recommended: deletion.

Criminal Injuries Compensation Act

—Recommended in 1970.

—Adopted in nine jurisdictions.
—Recommended: no action.

Defamation Act

—Recommended in 1944, revised in 1948, and amended in 1979.
—Adopted in eight jurisdictions.
—Recommended: review for the purpose of revising the definition of "broadcasting" in the light of more recent forms of transmission and general revision.

Dependants' Relief Act

—Recommended in 1974.
—Adopted in three jurisdictions.
—Corresponding legislation in most jurisdictions predates the Uniform Act.
—Recommended: no action, subject to review for changes complementary to *Uniform Child Status Act* upon its adoption.

Devolution of Real Property Act

—Recommended in 1927.
—Adopted in six jurisdictions.
—Virtually all the jurisdictions that have adopted the Uniform Act have made amendments in the last thirty years.
—Recommended: review for general revision in light of modern experience.

Domicile Act

—Recommended in 1961.
—Not adopted in any jurisdiction.
—The poor record of adoption would appear to be more because of lack of interest in the subject than because of the content of the Act. No jurisdiction has enacted any equivalent measure to codify the common law rule for domicile.
—Recommended: no action.

Effect of Adoption Act

—Recommended in 1969.
—Adopted in four jurisdictions (Prince Edward Island, Ontario, Northwest Territories and Yukon).
—Corresponding provisions in other jurisdictions predate the Uniform Act.
—Recommended: no action.

Evidence Act

—Recommended: no action pending the completion of the work of the Task Force on Evidence.

Extra-Provincial Custody Orders Enforcement Act

—Recommended: no action pending the completion of work by the Conference on custody jurisdiction and enforcement.

Fatal Accidents Act

—Recommended in 1964.
—Adopted in four jurisdictions.
—The adopting jurisdictions, although using certain elements of the Uniform Act, depart from it in a variety of important differences.
—Recommended: review in light of experience.

Foreign Judgments Act

—Recommended in 1933 and revised in 1964.
—Adopted in two jurisdictions (New Brunswick and Saskatchewan) both old versions.
—Recommended: referral to Committee on Private International Law to see whether this could be changed to Act for adoption of The Hague Convention.

Frustrated Contracts Act

—Recommended in 1948 and revised in 1974.
—Old version adopted in nine jurisdictions. New version adopted only in British Columbia.
—Recommended: no action.

Highway Traffic Act — Responsibility of Owner and Driver for Accidents

—Recommended in 1962.
—Not adopted in any jurisdiction, but all provinces have legislation on subject in varying forms.
—Recommended: deletion or review possibility of achieving greater uniformity.

Hotelkeepers Act

—Recommended in 1962.
—Not adopted in any jurisdictions.
—Recommended: reconsideration possibly in conjunction with travel industry legislation.

Human Tissue Gift Act — (Formerly *Cornea Transplant Act* and *Human Tissue Act)*

- —Recommended in 1970 and revised in 1971.
- —Adopted in eight jurisdictions.
- —Recommended: no action.

Information Reporting Act

- —Recommended in 1977.
- —No record of adoptions.
- —Recommended: no action at this time, too soon to tell.

Interpretation Act

- —Recommended in 1938 and revised in 1953 and 1973.
- —Older versions adopted in eight jurisdictions with substantial variations. Latest revision adopted only in British Columbia.
- —Recommended: possibly this could be a continuing study for Legal Drafting Section.

Interprovincial Subpoenas Act

- —Recommended in 1974.
- —Adopted in five jurisdictions with some modification in jurisdictions.
- —Recommended: no action.

Intestate Succession Act

- —Recommended in 1925, revised in 1958 and amended in 1963.
- —Adopted with variations in ten jurisdictions, some predating the 1958 revision.
- —Recommended: recent changes in family property law may have caused further amendments in some provinces. Further study of this might indicate whether differences are substantive or in drafting style or approach. Review.

Jurors Qualifications Act

- —Recommended in 1976.
- —Adopted in two provinces.
- —Recommended: no action.

Legitimacy Act

- —Recommended in 1920 and revised in 1959.
- —Adopted in eleven jurisdictions with modification.
- —Recommended: review in conjunction with the *Uniform Child Status Act.*

Limitation of Actions Act

—Presently being revised.

Married Women's Property Act

—Recommended in 1943.
—Adopted in four jurisdictions.
—Recommended: Review in conjunction with Matrimonial Property.

Medical Consent of Minors Act

—Recommended in 1975.
—Adopted in one jurisdiction.
—Recommended: no action.

Occupiers' Liability Act

—Recommended in 1973 and amended in 1975.
—Adopted in one jurisdiction.
—Recommended: no action.

Partnerships Registration Act

—Recommended in 1938 and amended in 1946.
—Adopted with modifications in one jurisdiction. Similar provisions in force in two jurisdictions.
—Recommended: either review completely or delete.

Perpetuities Act

—Recommended in 1972.
—Adopted in four jurisdictions.
—Recommended: no action.

Personal Property Security Act

—Recommended in 1971.
—Adopted in two jurisdictions with variations.
—Recommended: no action or review in light of recent amendments made in Ontario and Manitoba and proposals in British Columbia and Saskatchewan.

Presumption of Death Act

—Recommended in 1960 and revised in 1976.
—Substantially similar legislation has been passed in three jurisdictions, British Columbia, New Brunswick, and Nova Scotia, although there are both procedural and substantive differences from province to province.

—In four other jurisdictions, legislation on the same subject-matter is in part similar to the Uniform Act.
—Recommended: no action.

Proceedings Against the Crown Act

—Recommended in 1950.
—Adopted in nine jurisdictions.
—There are considerable differences from province to province, comprising modifications and additions to the *Act*, which may suggest local conditions or a need for review in the light of the age of the Uniform Act. Many of the additions have been made in more than one province.
—Recommended: review.

Reciprocal Enforcement of Judgments Act

—Recommended in 1924; amended in 1925, 1957 and 1962; revised in 1956 and 1958.
—Adopted in eleven jurisdictions.
—There are considerable differences between the New Brunswick Act and the Uniform Act. There are less extensive differences with respect to the Nova Scotia Act and the Northwest Territories and Yukon Ordinances.
—Recommended: no action.

Reciprocal Enforcement of Maintenance Orders Act

—Recommended in 1946; amended in 1963 and revised in 1956 and 1958.
—Adopted in twelve jurisdictions.
—New Uniform Act recommended in 1979.
—Recommended: no action.

Reciprocal Enforcement of Tax Judgments Act

—Recommended in 1965 and revised in 1966.
—Not adopted in any jurisdiction.
—Recommended: deletion.

Regulations Act

—Recommended in 1943.
—Only New Brunswick appears to have substantially similar legislation.
—Other jurisdictions have passed legislation similar in many respects, but containing major modifications and additions.
—Recommended: review.

Retirement Plan Beneficiaries Act

—Recommended in 1975.
—Only Manitoba, Ontario and British Columbia appear to have substantially similar provisions.
—New Brunswick and Prince Edward Island have passed legislation in part similar to the Uniform Act.
—Recommended: no action.

Service of Process by Mail

—Recommended in 1945.
—Only Alberta and British Columbia appear to have enacted substantially similar legislation.
—Recommended: review or delete.

Statutes Act

—Recommended in 1975.
—Four jurisdictions, Alberta, British Columbia, Ontario and Saskatchewan, have passed substantially similar legislation.
—Similar provisions exist in other jurisdictions, e.g., the New Brunswick *Interpretation Act.*
—No jurisdiction has clearly adopted the 1975 Uniform Act.
—Recommended: no action.

Survival of Actions Act

—Recommended in 1963.
—Adopted in seven jurisdictions.
—There are considerable differences from province to province. Only New Brunswick has adopted the Uniform Act virtually unchanged.
—Recommended: no action.

Survivorship Act

—Recommended in 1935; amended in 1949, 1956 and 1957; revised in 1960 and 1971.
—Adopted in part in nine jurisdictions.
—The principal subsection of the Act with respect to the presumption of survivorship does not appear to have been adopted in any jurisdiction except Ontario and British Columbia.
—Recommended: review.

Testamentary Addition to Trusts Act

—Recommended in 1968.

—This Act does not appear to have been adopted in any jurisdiction.
—Recommended: no action.

Trustee Investments

—Recommended in 1957 and amended in 1970.
—Adopted in whole or in part in eleven jurisdictions.
—With the exception of New Brunswick and the Northwest Territories there have been wide departures from the Uniform Act. Most jurisdictions have not enacted the general power of investment provisions.
—Recommended: review.

Variation of Trusts Act

—Recommended in 1961.
—Adopted in ten jurisdictions.
—With minor differences the uniform provisions appear to have been broadly adopted. In seven jurisdictions there is a specific Act or Ordinance. In three jurisdictions the provisions are included in the *Trustee Act.*
—Recommended: no action.

Vital Statistics Act

—Recommended in 1949 and amended in 1950 and 1960.
—Adopted in ten jurisdictions.
—Although there are considerable differences from jurisdiction to jurisdiction the Uniform Act has been broadly adopted.
—Recommended: No action, except perhaps with respect to change of registration after transsexual surgery. As well, the Act will have to be modified to accord with the proposed *Uniform Child Status Act.*

Warehouseman's Lien Act

—Recommended in 1921.
—Adopted in eleven jurisdictions.
—Only Ontario and Nova Scotia have made any substantive changes to the Uniform Act.
—Recommended: no action.

Warehouse Receipts Act

—Recommended in 1945.
—Adopted in seven jurisdictions.
—For the most part, any variations from the Uniform Act are drafting measures.
—Recommended: no action.

Wills Act

General — Recommended in 1953 and amended in 1966 and 1974.
— Adopted in eleven jurisdictions, although there are considerable differences from jurisdiction to jurisdiction.

Conflict of Laws — Recommended in 1966.
— Adopted in four jurisdictions.

International Wills — Recommended in 1974.
— Adopted in five jurisdictions.

Section 17 revised — Recommended in 1978.
— Adopted in three jurisdictions.

Recommended: no action.

SCHEDULE 2

Assignment of Book Debts Act
Conditional Sales Act
Corporation Securities Registration Act
Reciprocal Enforcement of Tax Judgments Act

SCHEDULE 3

Bills of Sale Act
Condominium Insurance Act
Defamation Act
Devolution of Real Property Act
Fatal Accidents Act
Foreign Judgments Act
Highway Traffic Act (Responsibility of Owner and Driver for Accidents)
Hotelkeepers Act
Intestate Succession Act
Legitimacy Act
Married Women's Property Act
Partnerships Registration Act
Personal Property Security Act
Proceedings Against the Crown Act
Regulations Act
Service of Process by Mail Act
Survivorship Act
Trustee Investments Act
Vital Statistics Act

SCHEDULE 4

Accumulations Act
Bulk Sales Act
Conflict of Laws Act (Traffic Accidents Act)
Contributory Negligence Act
Criminal Injuries Compensation Act
Dependants Relief Act
Domicile Act
Effect of Adoption Act
Evidence Act
Extra-Provincial Custody Orders Enforcement Act
Frustrated Contracts Act
Human Tissue Gift Act (formerly Cornea Transplant Act)
Information Reporting Act
Interpretation Act
Interprovincial Subpoenas Act
Jurors Qualifications Act
Medical Consent of Minors Act
Occupiers' Liability Act
Perpetuities Act
Presumption of Death Act
Reciprocal Enforcement of Judgments Act
Reciprocal Enforcement of Maintenance Orders Act
Retirement Plan Beneficiaries Act
Statutes Act
Survival of Actions Act
Testamentary Addition to Trusts Act
Variation of Trusts Act
Warehousemen's Lien Act
Warehouse Receipts Act
Wills Act

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	
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
Condominium Insurance Act	1971	Am. '73
Conflict of Laws (Traffic Accidents) Act	1970	
Contributory Negligence Act	1924	Rev. '35, '53; Am. '69
Criminal Injuries Compensation Act	1970	
Defamation Act	1944	Rev '48; Am. '49, '79.
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.
—*Hollington v Hewthorne*	1976	
—Judicial Notice of Acts, Proof of State Documents	1930	Rev '31.
—Photographic Records	1944	
—*Russell v Russell*	1945	
—Use of Self-Criminating Evidence Before Military Boards of Inquiry	1976	
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 for Accidents	1962	
Hotelkeepers Act	1962	
Human Tissue Gift Act	1970	Rev '71
Information Reporting Act	1977	

TABLE I

Title	Year First Adopted and Recommended	Subsequent Amendments and Revisions
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.
Jurors' Qualifications Act	1976	
Legitimacy Act	1920	Rev. '59.
Limitation of Actions Act	1931	Am. '33, '43, '44.
—Convention on the Limitation Period in the International Sale of Goods	1976	
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	
Powers of Attorney Act	1978	
Presumption of Death Act	1960	Rev '76.
Proceedings Against the Crown Act	1950	
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, '79.
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, '74.
—Conflict of Laws	1966	
—International Wills	1974	
—Section 17 revised	1978	

TABLE II

UNIFORM ACTS PREPARED, ADOPTED AND RECOMMENDED FOR ENACTMENT 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
Assignment of Book Debts Act	1928	10	1980	Personal Property Security Act
Conditional Sales Act	1922	7	1980	Personal Property Security Act
Cornea Transplant Act	1959	11	1965	Human Tissue Act
Corporation Securities Registration Act	1931	6	1980	Personal Property Security 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				Retirement Plan
—Beneficiaries	1957	8	1975	Beneficiaries Act
—Perpetuities	1954	8	1975	In part by Retirement Plan Beneficiaries Act and in part by Perpetuities Act
				Dependants Relief Act
Reciprocal Enforcement of Tax Judgments Act	1965	None	1980	None
Testators Family Maintenance Act	1945	4	1974	

*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 Uniform Rules of the Road are now being reviewed and amended from time to time by the Canadian Conference of Motor Transport Authorities.

TABLE III

UNIFORM ACTS NOW RECOMMENDED 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

* *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.*
† *indicates that the Act has since been revised by the Conference.*

Accumulations Act—Enacted by N.B. *sub. nom.* Property Act; Ont. ('66). Total: 2.

Bills of Sale Act—Enacted by Alta.† ('29); Man. ('29, '57); N.B.ˣ; Nfld.° ('55); N.W.T.° ('48); N.S. ('30); P.E.I.* ('47); Yukon° ('54). Total: 9.

Bulk Sales Act—Enacted by Alta. ('22); Man. ('21), '51); N.B. ('27); Nfld.° ('55); N.W.T.† ('48); N.S.ˣ; P.E.I. ('33); Yukon° ('56). Total: 8.

Condominium Insurance Act—Enacted by B.C. ('74) *sub nom* Strata Titles Act; Man. ('76); P.E.I. ('74). Total: 3.

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.W.T.° ('50); N.S. ('26, '54); P.E.I.° ('38); Sask. ('44); Yukon ('55). Total: 8.

Criminal Injuries Compensation Act—Enacted by Alta.† ('69); B.C. ('72); N.W.T. ('73); Ont. ('71); Yukon ('72). Total: 5.

Defamation Act—Enacted by Alta.† ('47); B.C.ˣ *sub nom* Libel and Slander Act; Man. ('46); N.B.° ('52); N.W.T.° ('49); N.S. ('60); P.E.I.° ('48); Yukon ('54). Total: 8.

Dependants' Relief Act—N.W.T.* ('74); Ont. ('77) *sub nom.* Succession Law Reform Act, 1977: Part V; P.E.I. ('74) *sub nom* Dependants of a Deceased Person Relief Act. Total: 3.

Devolution of Real Property Act—Enacted by Alta. ('28); N.B.* ('34); N.W.T.° ('54); P.E.I.* ('39) *sub nom.* Probate Act: Part V; Sask. ('28); Yukon ('54). Total: 6.

Domicle Act—0.

Effect of Adoption Act—P.E.I. ('). Total: 1.

Evidence Act—Enacted by Man.* ('60); N.W.T.° ('48); P.E.I.* ('39); Ont. ('60); Yukon° ('55). Total: 5.

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); Can. ('43); Man. ('52); N.B.° ('58); Nfld. ('54); N.W.T. ('48); N.S. ('52); Ont. ('52, '54); Sask. ('47); Yukon ('55). Total: 11.

—*Hollington v. Hewthorne*—Enacted by B.C. ('77). Total: 1.

—Judicial Notice of Acts, etc.—Enacted by B.C. ('32); Man. ('33); N.B. ('31); N.W.T. ('48); Yukon ('55). Total: 5.

—Photographic Records—Enacted by Alta. ('47); B.C. ('45); Can. ('42); Man. ('45) N.B. ('46); Nfld. ('49); N.W.T. ('48); N.S. ('45); Ont. ('45); P.E.I. ('47); Sask. ('45); Yukon ('55). Total: 12.

—*Russell v. Russell*—Enacted by Alta. ('47); B.C. ('47); Man. ('46); N.W.T. ('48); N.S. ('46) Ont. ('46); Sask. ('46); Yukon ('55). Total: 8.

Extra-Provincial Custody Orders Enforcement Act—Alta. ('77); B.C. ('76); Man. ('76); Nfld. ('76); N.S. ('76); P.E.I. ('76); Sask.° ('77). Total: 8.

Fatal Accidents Act—Enacted by N.B. ('68); N.W.T. ('48); Ont. ('77) *sub nom.* Family Law Reform Act: Part V; P.E.I.° ('77). Total: 4.

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); N.W.T.† ('56); Ont. ('49); P.E.I. ('49); Yukon ('56). Total: 9.

Highway Traffic and Vehicles Act, Part III: Responsibility of Owner and Driver for Accidents—0.

Hotelkeepers Act—0.

Human Tissue Gift Act—Enacted by Alta. ('73); B.C. ('72); Nfld. ('71); N.W.T. ('66); N.S. ('73); Ont. ('71); P.E.I. ('74); Sask.° ('68); Yukon ('80). Total: 9.

Information Reporting Act—

Interpretation Act—Enacted by Alta. ('58); B.C. ('74); Man. ('39, '57); Nfld.° ('51); N.W.T.°† ('48); Que.[x] P.E.I. ('39); Sask. ('43); Yukon* ('54). Total: 9.

Interprovincial Subpoenas Act—B.C. ('76); Man. ('75); N.B.° ('79); Nfld.° ('76); N.W.T.° ('76); Ont. ('79); Sask.° ('77). Total: 7.

Intestate Succession Act—Enacted by Alta. ('28); B.C. ('25); Man.° ('27, '77) *sub nom.* Devolution of Estates Act; N.B. ('26); Nfld. ('51); N.W.T. ('48); Ont.° ('77) *sub nom.* Succession Law Reform Act: Part II; Sask. ('28); Yukon° ('54). Total: 10.

Jurors' Qualifications Act—Enacted by B.C. ('77) *sub nom* Jury Act. Total: 1.

Legitimacy Act—Enacted by Alta. ('28, '60); B.C. ('22, '60); Man. ('20, '62); Nfld.[x]; N.W.T.° ('49, '64); N.S.[x]; Ont. ('21, '62); P.E.I.* ('20) *sub nom* Children's Act: Part I; Sask.° ('20, '61); Yukon* ('54). Total: 11.

Limitation of Actions Act—Enacted by Alta. ('35); Man.° ('32, '46); N.W.T.* ('48); P.E.I.* ('39); Sask. ('32); Yukon ('54). Total: 6.

Married Women's Property Act—Enacted by Man. ('45); N.B. ('51); N.W.T. ('52); Yukon* ('54). Total: 4.

Medical Consent of Minors Act—N.B. ('76). Total: 1.

Occupiers' Liability Act—B.C. ('74). Total: 1.

Partnerships Registration Act—Enacted by N.B.[x]; P.E.I.[x]; Sask.* ('41). Total: 3.

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.
—Appointment of Beneficiaries—Enacted by Alta. ('58); B.C. ('57); Man. ('59); Nfld. ('58); N.S. ('60); Ont. ('54); Sask. ('57). Total: 7.

Perpetuities Act—Enacted by Alta. ('72); B.C. ('75); N.W.T.* ('68); Ont. ('66); Yukon ('68). Total: 5.

Personal Property Security Act—Man. ('77); Ont.° ('67); Sask.° ('79); Total: 3.

Powers of Attorney Act—B.C.* ('79); Man.° ('79); Ont.° ('79). Total: 3.

Presumption of Death Act—Enacted by B.C. ('58, '77) *sub nom* Survivorship and Presumption of Death Act; Man. ('68); N.W.T. ('62, '77); N.S. ('63, '77); 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 Judgments Act—Enacted by Alta. ('25, '58); B.C. ('25, '59); Man. ('50, '61); N.B. ('25); Nfld.° ('60); N.W.T.* ('55); N.S. ('73); Ont. ('29); P.E.I.° ('74); Sask. ('40); Yukon ('56). Total: 11.

Reciprocal Enforcement of Maintenance Orders Act—Enacted by Alta. ('47, '58, '79); B.C.° ('72); Man.° ('46, '61); N.B. ('51); Nfld.* ('51, '61); N.W.T.° ('51); N.S. ('49); Ont.° ('48, '59); P.E.I.* ('51); Que. ('52); Sask. ('68); Yukon° ('55, '79). Total: 12.

Regulations Act—Enacted by Alta.° ('57); Can.° ('50); Man.° ('45); N.B. ('62); Nfld. ('56); N.W.T.° ('73); Ont.° ('44); Sask. ('63); Yukon° ('68). Total: 9.

Retirement Plan Beneficiaries Act—Enacted by Man. ('76); Ont. ('77 *sub nom.* Law Succession Reform Act: Part V); P.E.I. . Total: 3.

Service of Process by Mail Act—Enacted by Alta.ˣ; B.C.° ('45); Man.ˣ; Sask.ˣ. Total: 4.

Statutes Act—B.C.° ('74); P.E.I.ˣ. Total: 2.

Survival of Actions Act—Enacted by B.C.ˣ *sub nom.*. Administrations Act; N.B. ('68); P.E.I.ˣ. Total: 3.

Survivorship Act—Enacted by Alta. ('48, '64); B.C. ('39, '58); Man. ('42, '62); N.B. ('40); Nfld. ('51); N.W.T. ('62); N.S. ('41); Ont. ('40); P.E.I. ('40); Sask. ('42, '62); Yukon ('62). Total: 11.

Testamentary Additions to Trusts Act—Enacted by Yukon ('65) *sub nom.* Wills Act, s. 25.

Testators Family Maintenance Act—Enacted by 6 jurisdictions before it was superseded by the Dependants Relief Act.

Trustee Investments—Enacted by B.C.* ('59); Man.° ('65); N.B. ('70); N.W.T. ('64); N.S. ('57); Sask. ('65); Yukon ('62). Total: 7.

Variation of Trusts Act—Enacted by Alta. ('64); B.C. ('68); Man. ('64); N.W.T. ('63); N.S. ('62); Ont. ('59); P.E.I. ('63); Sask. ('69). Total: 8.

Vital Statistics Act—Enacted by Alta.° ('59); B.C.° ('62); Man.° ('51); N.B.° ('79); N.W.T.° ('52); N.S. ('52); Ont. ('48); P.E.I.* ('50); Sask. ('50); Sask. ('50); Yukon° ('54). Total: 10.

Warehouseman's Lien Act—Enacted by Alta. ('22); B.C. ('22); Man. ('23); N.B. ('23); N.W.T.° ('48); N.S. ('51); Ont. ('24); P.E.I.° ('38); Sask. ('21); 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); N.W.T.° ('52); Sask. ('31); Yukon° ('54). Total: 7.

—Conflict of Laws—Enacted by B.C. ('60); Man. ('55); Nfld. ('55); Ont. ('54). Total: 4.

—(Part 4) International—Enacted by Alta. ('76); Man. ('75); Nfld. ('76). Total: 3.

Section 17—B.C.° ('79). Total: 1.

TABLE IV

LIST OF JURISDICTIONS SHOWING THE UNIFORM ACTS NOW RECOMMENDED ENACTED IN WHOLE OR IN PART, WITH OR WITHOUT MODIFICATIONS, OR IN WHICH PROVISIONS SIMILAR IN EFFECT ARE IN FORCE

* *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.*
† *indicates that the Act has since been revised by the Conference.*

Alberta

Bills of Sale Act† ('29); Bulk Sales Act† ('22); Contributory Negligence Act† ('37); Criminal Injuries Compensation Act† ('69); 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); Extra-Provincial Custody Orders Enforcement Act ('77); Frustrated Contracts Act† ('49); Human Tissue Gift Act ('73); 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); Retirement Plan Beneficiaries Act ('77); 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); International Wills ('76). Total: 31.

British Columbia

Criminal Injuries Compensation Act ('72); Condominium Insurance Act ('74) *sub nom.* Condominium Act*; Defamation Act^{x} (') *sub nom.* Libel and Slander Act; Evidence—Affidavits before Officers^{x} ( ); Foreign Affidavits* ('53), *Hollington v. Hewthorne* ('77) Judicial Notice of Acts, etc. ('32), Photographic Records ('45), *Russell* v. *Russell* ('47); Extra-Provincial Custody Orders Enforcement Act ('76) *sub nom.* Family Relations Act*; Frustrated Contracts Act ('74) *sub nom.* Frustrated Contract Act; Human Tissue Gift Act ('72); Interpretation Act ('74); Interprovincial Subpoenas Act ('76) *sub nom* Subpoena (Interprovincial Act*; Intestate Succession Act ('25) *sub nom.* Estate Administration Act*; Juror's Qualification Act ('77) *sub nom* Jury Act; Legitimacy

Act ('22, '60); Occupiers' Liability Act ('74) *sub nom.* Occupiers' Liability Act*; Perpetuities Act ('75) *sub nom.* Perpetuity Act*; Powers of Attorney Act ('79) *sub nom.*Power of Attorney Act*; Presumption of Death Act ('58, '77) *sub nom.* Survivorship and Presumption of Death Act; Reciprocal Enforcement of Judgments Act ('25, '59) *sub nom.* Court Order Enforcement Act*; Reciprocal Enforcement of Maintenance Orders Act° ('72) in Regulations under Sec. 70 08 Family Relations Act; Service of Process by Mail Act° ('45) *sub nom.* Small Claims Act*; Survival of Actions Act *sub nom.* Estate Administration Act*; Statutes Act° ('74) Part in Constitution Act; Part in Interpretation Act; Survivorship Act° ('39, '58) *sub nom.* Survivorship and Presumption of Death Act*; Testators Family Maintenance Act, Provisions now in Wills Variation Act*; Trustee (Investments) ('59) Provisions now in Trustee Act; Variation of Trusts Act ('68) *sub nom.* Trust Variation Act; Vital Statistics Act° ('62); Warehousemen's Lien Act ('52) *sub nom.* Warehouse Lien Act*; Warehouse Receipts Act* ('45); Wills Act° ('60); Wills—Conflict of Laws ('60), Sec. 17° ('79). Total: 36.

Canada

Evidence—Foreign Affidavits ('43), Photographic Records ('42); Regulations Act° ('50), superseded by the Statutory Investments Act, S.C. 1971, c. 38. Total: 3.

Manitoba

Assignment of Book Debts Act ('29, '51, '57); Bills of Sale Act ('29, '57); Bulk Sales Act ('51); Condominium Insurance Act ('76); Defamation Act ('46); Evidence Act* ('60), Affidavits before Officers ('57), Foreign Affidavits ('52) Judicial Notice of Act, etc. ('33), Photographic Records ('45); *Russell v. Russell* ('46); Frustrated Contracts Act ('49); Human Tissue Act ('68); Interpretation Act ('57); Interprovincial Subpoenas Act ('75); Inestate Succession Act° ('27, '77) *sub nom* Devolution of Estates Act; Jurors' Qualifications Act ('77); 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); Personal Property Security Act ('77); 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); Retirement Plan Beneficiaries Act ('76); 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), Conflict of Laws ('55). Total: 38.

New Brunswick

Accumulations Act *sub nom.* Property Act; Bills of Sale Act[x]; Bulk Sales Act ('27); Contributory Negligence Act ('25, '62); Defamation Act° ('52); Devolution of Real Property Act* ('34); Evidence — Foreign Affidavits° ('58), Judicial Notice of Acts, etc. ('31), Photographic Records ('46); Extra-Provincial Custody Orders Enforcement Act ('77); Fatal Accidents Act ('68); Foreign Judgments Act° ('50); Frustrated Contracts Act ('49); Interprovincial Subpoenas Act° ('79); Intestate Succession Act ('26); Married Women's Property Act ('51); Medical Consent of Minors Act ('76); 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); Vital Statistics Act° ('79); Warehousemen's Lien Act ('23); Warehouse Receipts Act ('47); Wills Act° ('59). Total: 29.

Newfoundland

Bills of Sale Act° ('55); Bulk Sales Act° ('55); Contributory Negligence Act ('51); Evidence — Affidavits before Officers ('54); Foreign Affidavits ('54); Photographic Records ('49); Extra-Provincial Custody Orders Enforcement Act° ('76); Frustrated Contracts Act ('56); Human Tissue Gift Act ('71); Interpretation Act° ('51); Interprovincial Subpoena Act° ('76); 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 Judgments Act° ('60); Reciprocal Enforcement of Maintenance Orders Act* ('51, '61); Regulations Act° ('77) *sub nom.* Statutes and Subordinate Legislation Act; Survivorship Act ('51); Wills — Conflict of Laws ('76), International Wills ('76). Total: 22.

Northwest Territories

Bills of Sale Act° ('48); Bulk Sales Act† ('48); Contributory Negligence Act° ('50); Criminal Injuries Compensation Act ('73); Defamation Act° ('49); Dependants' Relief Act* ('74); Devolution of Real Property Act° ('54); Effect of Adoption Act ('69) *sub nom*

Child Welfare Ordinance: Part IV; Extra-Provincial Custody Orders Enforcement Act ('76); Evidence Act° ('48); Fatal Accidents Act† ('48); Frustrated Contracts Act† ('56); Human Tissue Gift Act ('66); Interpretation Act°† ('48); Interprovincial Subpoenas Act° ('79); Intestate Succession Act° ('48); Legitimacy Act° ('49,'64); Limitation of Actions Act* ('48); Married Women's Property Act ('52, '77); Perpetuities Act* ('68); Presumption of Death Act ('62, '77); Reciprocal Enforcement of Judgments Act* ('55); Reciprocal Enforcement of Maintenance Orders Act° ('51); Regulations Act° ('71); Survivorship Act ('62); Trustee (Investments) ('71); Variation of Trusts Act ('63); Vital Statistics Act° ('52); Warehousemen's Lien Act° ('48); Wills Act° — General (Part II) ('52), — Conflict of Laws (Part III) ('52) — Supplementary (Part III) ('52). Total: 32.

Nova Scotia

Bills of Sale Act ('30); Bulk Sales Act[x]; Contributory Negligence Act ('26, '54); 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°; Trustee Investments* ('57); Variation of Trusts Act ('62); Vital Statistics Act° ('52); Warehousemen's Lien Act ('51); Warehouse Receipts Act ('51). Total: 21.

Ontario

Accumulations Act ('66); Criminal Injuries Compensation Act ('71) *sub nom.* Compensation for Victims of Crime Act° ('71); Dependants' Relief Act ('73) *sub nom.* Succession Law Reform Act; Part V; Evidence Act* ('60) — Affidavits before Officers ('54), Foreign Affidavits ('52, '54), Photographic Records ('45), *Russell v. Russell* ('46); Fatal Accident's Act ('77) *sub nom.* Family Law Reform Act: Part V; Frustrated Contracts Act ('49); Human Tissue Gift Act ('71); Interprovincial Subpoenas Act ('79); Intestate Succession Act° ('77) *sub nom.* Succession Law Reform Act: Part II; Legitimacy Act ('21, '62), rep. '77; Perpetuities ('54); Perpetuties Act ('66); Proceedings Against the Crown Act° ('63); Reciprocal Enforcement of Judgments Act ('29); Reciprocal Enforcement of Maintenance Orders Act° ('59); Regulations Act° ('44); Retirement Plan Beneficiaries Act ('77) *sub nom.* Succession Law Reform

Act: Part V; 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: 26.

Prince Edward Island

Bills of Sale Act* ('47); Contributory Negligence Act° ('38); Defamation Act° ('48); Dependants' Relief Act° ('74) *sub nom.* Dependants of a Deceased Person Relief Act; Devolution of Real Property Act* ('39) *sub nom.* Part V of Probate Act; Effect of Adoption Act[x]; Evidence Act* ('39); Extra- Provincial Custody Orders Act ('76); Fatal Accidents Act°, Human Tissue Gift Act ('74); Interpretation Act ('39); Legitimacy Act* ('20) *sub nom.* Part I of Children's Act; Limitation of Actions Act* ('39); Partnerships Registration Act[x]; Proceedings Against the Crown Act* ('73); Reciprocal Enforcement of Judgments Act° ('74); Reciprocal Enforcement of Maintenance Orders Act* ('51); Retirement Plan Beneficiaries Act[x]; Statutes Act[x]; Survival of Actions Act[x]; Variation of Trusts Act ('63); Vital Statistics Act* ('50); Warehousemen's Lien Act° ('38). Total: 17.

Quebec

The following is a list of the Uniform Acts which have some equivalents in the laws of Quebec. With few exceptions, these equivalents are in substance only and not in form.

Bulk Sales Act: see a. 1569a and s. C.C. (S.Q. 1910, c. 39, mod. 1914, c. 63 and 1971, c. 85, s. 13)—similar; Criminal Injuries Compensation Act: see Loi d'indemnisation des victimes d'actes criminels, L.Q. 1971, c. 18—quite similar; Evidence Act; Affirmation in lieu of oath: see a. 299 C.P.C.—similar; Judicial Notice of Acts, Proof of State Documents: see a. 1207 C.C.—similar to "Proof of State Documents"; Human Tissue Gift Act: see a. 20, 21, 22 C.C.—similar; Interpretation Act: see Loi d'interprétation, S.R.Q. 1964, c. 1, particularly, a. 49: cf. a. 6(1) of the Uniform Act, a. 40: cf. a. 9 of the Uniform Act, a. 39 para. 1: cf. a. 7 of the Uniform Act, a. 41: cf. a. 11 of the Uniform Act, a 42 para. 1: cf. a. 13 of the Uniform Act—these provisions are similar in both Acts; Partnerships Registration Act: see Loi des déclarations des compagnies et sociétés, S.R.Q. 1964, c. 272, mod. L.Q. 1966-67, c. 72—similar; Presumption of Death Act: see a. 70, 21 and 72 C.C.—somewhat similar; Service of Process by Mail Act: see a. 138 and 140 C.P.C.—s. 2 of the Uniform Act is identical; Trustee Investments: see a. 981o C.C.—very similar; Warehouse Receipts Act: see Bill of Lading Act, R.S.Q. 194, c. 318—s. 23 of the Uniform

Act is vaguely similar; Wills Act: see C.C. a. 842 para. 2: cf. s. 7 of the Uniform Act, a. 864 para. 2: cf. s. 15 of the Uniform Act, a. 849: cf. s. 6(1) of the Uniform Act, a. 854 para. 1: cf. of s. 8(3) of the Uniform Act—which are similar.

NOTE

Many other provisions of the Quebec Civil Code or of other statutes bear resemblance to the Uniform Acts but are not sufficiently identical to justify a reference. Obviously, most of these subject matters are covered one way or another in the laws of Quebec.

Saskatchewan

Bills of Sale Act ('57); Contributory Negligence Act ('44); Devolution of Real Property Act ('28); Evidence—Foreign Affidavits ('47), Photographic Records ('45), *Russell v. Russell* ('46); Foreign Judgments Act ('34); Human Tissue Gift Act° ('68); Interpretation Act ('43); Interprovincial Subpoenas Act ('77); 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 Judgments Act ('24, '25); 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: 28.

Yukon Territory

Bills of Sale Act° ('54); Bulk Sales Act ('56); Criminal Injuries Compensation Act° ('72) *sub nom.* Compensation for Victims of Crime Act; Conditional Sales Act° ('54); Conflict of Laws (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); Testamentary Additions to Trusts ('69) see Wills Act, s. 29; Trustee (Investments) ('62); Vital Statistics Act° ('54); Warehousemen's Lien Act ('54); Wills Act° ('54). Total: 31.

CUMULATIVE INDEX

EXPLANATORY NOTE

This index specifies the year or years in which a matter was dealt with by the Conference.

If a subject was dealt with in three or more consecutive years, only the first and the last years of the sequence are mentioned in the index.

The inquiring reader, having learned from the cumulative index the year or years in which the subject in which he is interested was dealt with by the Conference, can then turn to the relevant annual *Proceedings* of the Conference and ascertain from its index the pages of that volume on which his subject is dealt with.

If the annual index is not helpful, check the relevant minutes of that year.

Thus the reader can quickly trace the complete history in the Conference of his subject.

The cumulative index is arranged in parts:

Part I. Conference: General
Part II. Legislative Drafting Section
Part III. Uniform Law Section
Part IV. Criminal Law Section

An earlier compilation of the same sort is to be found in the 1939 *Proceedings* at pages 242 to 257. It is entitled: TABLE AND INDEX OF MODEL UNIFORM STATUTES SUGGESTED, PROPOSED, REPORTED ON, DRAFTED OR APPROVED, AS APPEARING IN THE PRINTED PROCEEDINGS OF THE CONFERENCE 1918-1939.

PART I

CONFERENCE: GENERAL

PART II

LEGISLATIVE DRAFTING SECTION

PART III

UNIFORM LAW SECTION

PART IV

CRIMINAL LAW SECTION

Subjects considered each year are listed in the minutes of the year and published in the Proceedings of that year.

INDEX

INDEX