UNIFORM LAW CONFERENCE OF CANADA

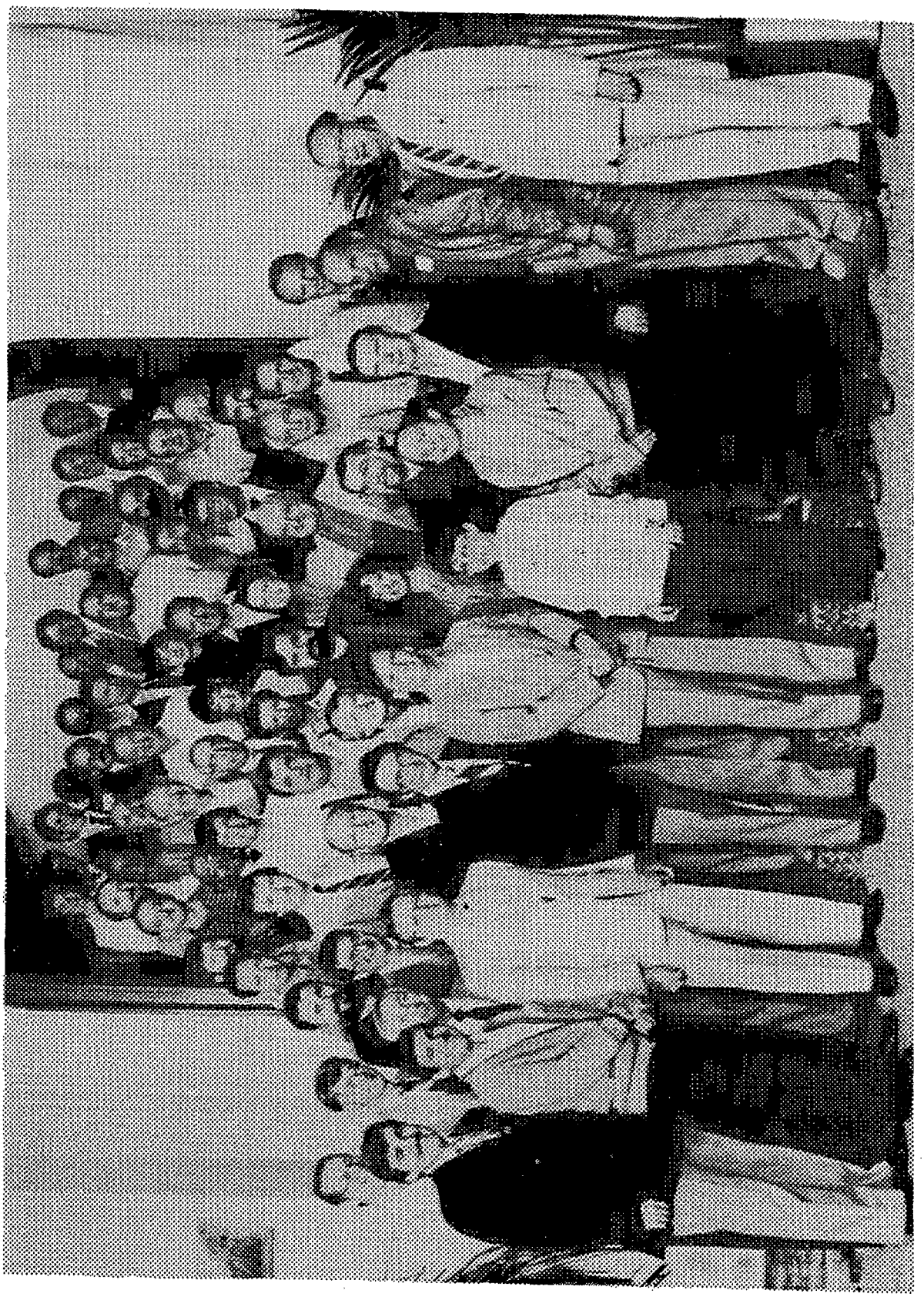
CONFERENCE SUR L'UNIFORMISATION DES LOIS AU CANADA

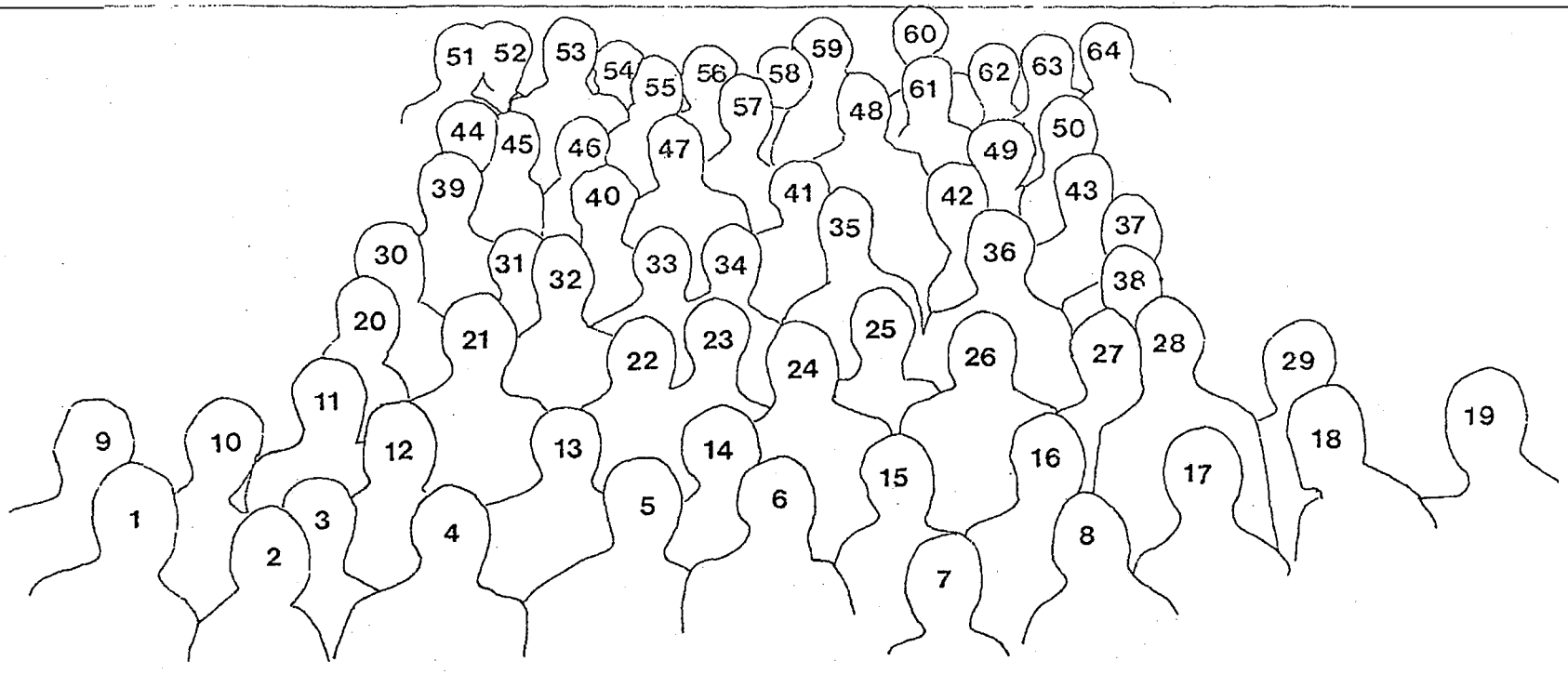
PROCEEDINGS
OF THE
SIXTY-SIXTH ANNUAL MEETING

HELD AT

CALGARY, ALBERTA

August, 1984





1. Elton, Man.
2. Prefontaine, Can.
3. Bouchard, Que.
4. Letourneau, Que.
5. Schmeiser, Sask.
6. Reid, Can.
7. Rasmussen, Sask.
8. Morton, Ont.
9. Hodges, Sask.
10. Dionne, Que.
11. Mosley, Can.
12. Lagace, Que.
13. Guy, Man.
14. Tasse, Can.
15. Einbinder-Miller, Can.
16. Close, B.C.
17. Gregory, N.B.
18. Weinstein, Man.
19. Gale, N.S.
20. Roche, Nfld.
21. Rutherford, Can.
22. Quinney, Sask.
23. Pagano, Alta.
24. Del Buona, Can.
25. Jackson, Sask.
26.
27. Roslak, Alta.
28. Maingot, Can.
29. Thomas, Ont.
30. DeRosenroll, Sask.
31. Balkaran, Man.
32. Hebb, N.S.
33. Pigeon, Can.
34. Noonan, Nfld.
35. Edwards, Man.
36. Daviault, Que.
37. Filmer, B.C.
38. Piragoff, Can.
39. Hewitt, Sask.
40. Smethurst, Man.
41. Meldazy, N.W.T.
42. Moore, P.E.I.
43. MacDonald, N.S.
44. Johnson, N.S.
45. Longtin, Que.
46. Bertrand, Can.
47. Fordham, N.S.
48. Rioux, Que.
49. Bellemare, Can.
50. Doleman, N.B.
51. Dawson, Can.
52. Guerette, N.B.
53. Horton, Yukon
54. Murray, N.B.
55. Dalton, Alta.
56. Ewart, Ont.
57. Cossette, Que.
58. Hurlburt, Alta.
59. Bellmore, Ont.
60. Perkins, Ont.
61. Stone, Ont.
62. Beecroft, Ont.
63. Walker, N.S.
64. Leal, Ont.

Absent: *Alta.*, Perras, Greer, Bradley, Abbott, Wineberg, Hartman, Duncan, Clegg, Mapp, Hammond, Beames; *B.C.*, Roger; *Canada*, Gibson, Jewett, Rolla, duPlessis, Audcent, Pelletier, Beaupre, Stoltz, Greenspan; *Man.*, Yost, Wade; *N.B.*, Stapleton, Lalonde, Teed; *Nfld.*, Noel; *N.W.T.*, Bentivegna, Orr; *N.S.*, Coles; *Ont.*, Fader, Revell, Drapkin, Ward; *Que.*, Allaire; *Sask.*, Gosse, Kujawa, MacKay, Strutt, Ozirny.

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Tables

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 1949-1950
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

PADRAIG O'DONOGHUE, Q.C., Whitehorse 1980-1981
GEORGE B. MACAULAY, Q.C., Victoria 1981-1982
ARTHUR N. STONE, Q.C., Toronto 1982-1983
SERGE KUJAWA, Q.C., Regina 1983-1984

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Yukon Territory ..... Sydney B. Horton

(For addresses of the above, see List of Delegates, page 10.)

EXECUTIVE DIRECTOR

Melbourne M. Hoyt, Q.C.
P.O. Box 6000
Fredericton, N.B. E3B 5H1
(506) 453-2226

DELEGATES

1984 Annual Meeting

The following persons (103) attended one or more Sections of the Sixty-Sixth 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:

D. C. ABBOTT, Q.C., Regional Agent (Edmonton/Calgary), Criminal Division, Department of the Attorney General, 3rd Floor, Bowker Building, 9833-109th Street, Edmonton, T5K 2E8 *(C.L.S.)*

JAMES W. BEAMES, Q.C., Barrister and Solicitor, Milner & Steer, 2900 Manulife Place, 10180-101st Street, Edmonton, T5J 3V5 *(U.L.S.)*

ROWENA BRADLEY, Legislative Counsel Office, Department of the Attorney General, 2nd Floor, Bowker Building, 9833-109th Street, Edmonton, T5K 2E8 *(L.D.S.)*

MICHAEL CLEGG, Parliamentary Counsel, Legislative Assembly Office, 313 Legislature Building, Edmonton, T5K 2B6 *(U.L.S.)*

CLARK W. DALTON, Director, Legal Research and Analysis, Department of the Attorney General , 4th Floor, Bowker Building, 9833-109th Street, Edmonton, T5K 2E8 *(U.L.S.)*

BRUCE DUNCAN, Assistant Senior Agent of the Attorney General, Department of the Attorney General, 15th Floor, Rocky Mountain Plaza, 615 MacLeod Trail, S.E., Calgary, T2G 4T8 *(C.L.S.)*

BRIAN GREER, Assistant Chief Legislative Counsel, Department of the Attorney General , 2nd Floor, Bowker Building, 9833-109th Street, Edmonton, T5K 2E8 *(L.D.S.)*

R. GRANT HAMMOND, Counsel to the Institute of Law Research & Reform, Institute of Law Research and Reform, 402 Law Centre, University of Alberta, Edmonton, T6G 2H5 *(U.L.S.)*

PEGGY HARTMAN, Crown Counsel, Legal Research and Analysis, Department of the Attorney General , 4th Floor, Bowker Building, 9833-109th Street, Edmonton, T5K 2E8 *(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.)*

TOM MAPP, Associate Director, Institute of Law Research and Reform, 402 Law Centre, University of Alberta, Edmonton, T6G 2H5 *(U.L.S.)*

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

DELMAR W. PERRAS, Assistant Deputy Minister (Criminal), Department of the Attorney General , 2nd Floor, Bowker Building, 9833-109th Street, Edmonton, T5K 2E8 *(C.L.S.)*

YAROSLAW ROSLAK, Q.C., Director, Special Services, Criminal Division, Department of the Attorney General , 3rd Floor, Bowker Building, 9833-109th Street, Edmonton, T5K 2E8 *(C.L.S.)*

British Columbia:

ARTHUR CLOSE, Vice-Chairman, Law Reform Commission of British Columbia, Box 10135, Pacific Centre, 700 W. Georgia Street, Vancouver, V7Y 1C6 *(U.L.S.)*

ALLAN E. FILMER, Q.C., Assistant Deputy Attorney General, Criminal Law, Ministry of the Attorney General, Parliament Buildings, Victoria, V8V 1X4 *(C.L.S.)*

ALLAN R. ROGER, Chief Legislative Counsel, Ministry of the Attorney General, Parliament Buildings, Victoria, V8V 1X4 *(L.D.S.)*

Canada:

MARK AUDCENT, Assistant Law Clerk, The Senate, Ottawa, K1A 0A4 *(L.D.S.)*

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

D. -A. BELLEMARE, Section de la Politique et des modifications du droit en matière pénale, Ministère de la Justice, Ottawa, K1A 0H8 *(S.D.P.)*

GÉRARD BERTRAND, c.r., Premier conseiller législatif, Ministère de la Justice, Ottawa, K1A 0H8 *(S.U.L. & S.R.L.)*

MARY DAWSON, Q.C., Associate Chief Legislative Counsel, Department of Justice, Ottawa, K1A 0H8 *(L.D.S. & U.L.S.)*

VINCENT DEL BUONO, Criminal Law Review, Department of Justice, Ottawa, K1A 0H8 *(C.L.S.)*

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

RHONA EINBINDER-MILLER, Legislative Counsel, Department of Justice, Ottawa, K1A 0H8 *(C.L.S.)*

FRED E. GIBSON, Q.C., Deputy Solicitor General, Department of the Solicitor General, Ottawa *(C.L.S.)*

EDWARD GREENSPAN, Q.C., Barrister and Solicitor, Greenspan Moldaver, Suite 110, 390 Bay Street, Toronto, M5H 1T7 *(C.L.S.)*

MARC JEWETT, Q.C., General Counsel, Constitutional and International Law, Department of Justice, Ottawa, K1A 0H8 *(U.L.S.)*

J. P. J. MAINGOT, c.r., Membre de la commission de réforme du droit du Canada, Ministère de la Justice, Ottawa, K1A 0H8 *(C.L.S.)*

RICHARD MOSLEY, General Counsel, Criminal Law Policy and Amendments Section, Department of Justice, Ottawa, K1A 0H8 *(C.L.S.)*

M. R. PELLETIER, c.r., Légiste et Conseiller parlementarie, Chambre des Communes, Ottawa, K1A 0A6 *(S.R.L.)*

HON. LOUIS-PHILIPPE PIGEON, Faculté de Droit, Université d'Ottawa, Ottawa, K1N 6N5 *(S.U.L. & S.R.L.)*

DON PIRAGOFF, Criminal Law Policy and Amendments Section, Department of Justice, Ottawa, K1A 0H8 *(C.L.S.)*

DANIEL PRÉFONTAINE, c.r., Sous-ministre adjoint, Direction de la politique des programmes et de la recherche, Ministère de la Justice, Ottawa, K1A 0H8 *(S.D.P.)*

ALAN REID, Q.C., Commissioner, Law Reform Commission of Canada, 130 Albert Street, Ottawa, K1A 0L6 *(C.L.S.)*

BETTY ANN ROLLO, Privy Council Section, Department of Justice, Ottawa, K1A 0H8 *(L.D.S.)*

DOUGLAS RUTHERFORD, Q.C., Assistant Deputy Attorney General, Criminal Law, Department of Justice, Ottawa, K1A 0H8 *(C.L.S.)*

DOUGLAS STOLTZ, Director, Legislation Program, Faculty of Law, University of Ottawa, Ottawa, K1N 6N5 *(L.D.S.)*

ROGER TASSÉ, c.r., Sous-ministre de la justice et Sous-procureur général du Canada, Ministère de la Justice, Ottawa, K1A 0H8 *(S.D.P.)*

Manitoba:

ANDREW BALKARAN, Q.C., Associate Deputy Minister, Registrar of Regulations, Department of the Attorney-General, 116 Legislative Building, Winnipeg, R3C 0V8 *(L.D.S. & U.L.S.)*

CLIFFORD H. C. EDWARDS, Q.C., Chairman, Law Reform Commission, Department of the Attorney-General, 5th Floor, Woodsworth Building, 405 Broadway Avenue, Winnipeg, R3C 3L6 *(U.L.S.)*

TANNER ELTON, Deputy Attorney-General, Department of the Attorney-General, 110 Legislative Building, Winnipeg, R3C 0V8 *(C.L.S.)*

JOHN GUY, Q.C., Assistant Deputy Attorney-General, Department of the Attorney-General, 6th Floor, Woodsworth Building, 405 Broadway Avenue, Winnipeg, R3C 3L6 *(C.L.S.)*

ROBERT G. SMETHURST, Q.C., D'Arcy and Deacon, Barristers and Solicitors, 12th Floor, Royal Trust Building, 330 St. Mary Avenue, Winnipeg, R3C 4E1 *(U.L.S.)*

TERENCE WADE, Director adjoint, Traduction juridique, Procureur Général, 6e étage, 177 rue Lombard, Winnipeg, R3B 0W5 *(S.R.L.)*

HYMIE WEINSTEIN, Q.C., Barrister and Solicitor, Skward, Myers, Baizley and Weinstein, 204-215 Portage Avenue, Winnipeg, R3B 1Z9 *(C.L.S.)*

R. GREG YOST, Director, Traduction juridique, Procureur Général, 6e étage, 177 rue Lombard, Winnipeg, R3B 0W5 *(S.R.L.)*

New Brunswick:

ELAINE DOLEMAN, Legislative Counsel, Department of the Attorney General, P.O. Box 6000, Fredericton, E3B 5H1 *(L.D.S. & U.L.S.)*

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

RAYMOND GUERETTE, Barrister and Solicitor, Palmer, O'Connell, Leger, Turnbull & Turnbull, P.O. Box 1324, Saint John, E2L 4H8 *(L.D.S. & U.L.S.)*

BRUNO LALONDE, Conseiller legislatif associe, Ministère de la Justice, P.O. Box 6000, Fredericton, E3B 5H1 *(S.R.L. & S.U.L.)*

ROBERT MURRAY, Director, Public Prosecution, Department of Justice, P.O. Box 6000, Fredericton E3B 5H1 *(C.L.S.)*

ERIC L. TEED, Q.C., Barrister and Solicitor, Teed & Teed, P.O. Box 6639, Saint John, E2L 2B5 *(C.L.S.)*

BASIL STAPLETON, Director, Law Reform Branch, Department of Justice, P.O. Box 6000, Fredericton E3B 5H1 *(L.D.S. & U.L.S.)*

Newfoundland:

A. JOHN NOEL, Senior Legislative Counsel, Office of Legislative Counsel, Confederation Building, St. John's, A1C 5T7 *(L.D.S.)*

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

MICHAEL ROCHE, Senior Crown Attorney (Western), Crown Attorney's Office, Department of Justice, Confederation Building, St. John's, A1C 5T7 *(C.L.S.)*

Northwest Territories:

GIUSEPPA BENTIVEGNA, Legislative Counsel, Legislation Division, Department of Justice and Public Services, Yellowknife, X1A 2L9 *(L.D.S.)*

STIEN LAL, Q.C., Deputy Minister, Department of Justice and Public Services, Yellowknife, X1A 2L9 *(U.L.S.)*

DEBORAH MELDAZY, Chief, Legislation Division, Department of Justice and Public Services, P.O. Box 1320, Yellowknife, X1A 2L9 *(L.D.S. & U.L.S.)*

PATRICK ORR, Legislative Counsel, Legislation Division, Department of Justice and Public Services, P.O. Box 1320, Yellowknife, X1A 2L9 *(L.D.S.)*

Nova Scotia:

GORDON COLES, Q.C., Deputy Attorney General and Deputy Provincial Secretary, Department of the Attorney General, P.O. Box 7, Halifax, B3J 2L6 *(C.L.S.)*

ARTHUR H. FORDHAM, Q.C., Legislative Counsel, Legislative Counsel Office, House of Assembly, P.O. Box 1116, Halifax, B3J 2X1 *(L.D.S. & U.L.S.)*

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

GORDON D. HEBB, Legislative Counsel, Legislative Counsel Office, House of Assembly, P.O. Box 1116, Halifax, B3J 2X1 *(L.D.S. & U.L.S.)*

GORDON C. JOHNSON, Legislative Counsel, Legislative Counsel Office, House of Assembly, P.O. Box 1116, Halifax, B3J 2X1 *(U.L.S.)*

D. WILLIAM MACDONALD, Q.C., Legislative Counsel, Legislative Counsel Office, House of Assembly, P.O. Box 1116, Halifax, B3J 2X1 *(L.D.S. & U.L.S.)*

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

Ontario:

DOUGLAS A. BEECROFT, Counsel, Policy Development Division, Ministry of the Attorney General, 18 King Street East, 15th Floor, Toronto, M5C 1C5 *(U.L.S.)*

BRIAN BELLMORE, Barrister and Solicitor, Lockwood, Bellmore, Moore, 439 University Avenue, Toronto, M5G 1Y8 *(U.L.S.)*

ROSEMARY E. DRAPKIN, Deputy Registrar General, Ministry of Consumer and Commercial Relations, 2nd Floor, Room M2-25, MacDonald Block, 900 Bay Street, Toronto, M7A 1Y5 *(U.L.S.)*

DOUGLAS EWART, Director, Policy Development Division, Ministry of the Attorney General, 18 King Street East, Toronto, M5C 1C5 *(U.L.S.)*

JACK A. FADER, Q.C., Deputy Senior Legislative Counsel, Ministry of the Attorney General, Box 1, Legislative Building, Queen's Park, Toronto, M7A 1A2 *(L.D.S.)*

ALLAN LEAL, Q.C., Vice-Chairman, Ontario Law Reform Commission, 18 King Street East, Toronto, M5C 1C5 *(U.L.S.)*

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

CRAIG PERKINS, Counsel, Policy Development Division, Ministry of the Attorney General, 18 King Street East, Toronto, M5C 1C5 *(U.L.S.)*

DONALD L. REVELL, Legislative Counsel, Ministry of the Attorney General, 18 King Street East, Toronto, M5C 1C5 *(L.D.S.)*

ARTHUR N. STONE, Q.C., Senior Legislative Counsel, Ministry of the Attorney General, Box 1, Legislative Building, Queen's Park, Toronto, M7A 1A2 *(L.D.S. & U.L.S.)*

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

BLAKE WARD, Q.C., Crown Attorney, 21 7th Street, Chatham, N7M 4K1 *(C.L.S.)*

Prince Edward Island:

RAYMOND MOORE, Q.C., Legislative Counsel, Legislation, Department of Justice, P.O. Box 1628, Charlottetown, C1A 7N3 *(L.D.S. & U.L.S.)*

Quebec:

JEAN ALLAIRE, Directeur du Bureau des lois, Direction générale des Affaires legislatives, Ministère de la Justice, 1200 Route de l'Eglise, Sainte-Foy, G1V 4M1 *(S.U.L. & S.R.L.)*

RÉMI BOUCHARD, Sous-ministre associé, Affaires criminelles et pénales, Ministère de la Justice, 1200 Route de l'Eglise, Sainte-Foy, G1V 4M1 *(S.D.P)*

ANDRÉ COSSETTE, Directeur du droit civil, Direction générale des Affaires législatives, Ministère de la Justice, 1200 Route de l'Eglise, Sainte-Foy, G1V 4M1 *(S.U.L.)*

FRANÇOIS DAVIAULT, Avocat, 800, Boulevard Dorchester Ouest, Bureau 2536, Montréal, H3B 1X9 *(S.D.P.)*

JEAN-FRANÇOIS DIONNE, Affaires criminelles, Ministère de la Justice, 1200 Route de l'Eglise, Sainte-Foy, G1V 4M1 *(S.D.P.)*

YVES LAGACÉ, Substitut en chef, Bureau des procureurs de la Couronne, Palais de Justice, 1 Notre Dame Est, Montréal, H2Y 1B6 *(S.D.P.)*

GILLES LÉTOURNEAU, Conseiller du sous-ministre associé, Affaires criminelles, Ministère de la Justice, 1200 Route de l'Eglise, Sainte-Foy, G1V 4M1 *(S.D.P.)*

MARIE-JOSÉ LONGTIN, Directrice de la législation ministerielle, Direction générale des Affaires législatives, Ministère de la Justice, 1200 Route de l'Eglise, Sainte-Foy, G1V 4M1 *(S.U.L.)*

ROCH RIOUX, Sous-ministre associé, Direction générale des Affairs législatives, Ministère de la Justice, 1200 Route de l'Eglise, Sainte-Foy, G1V 4M1 *(S.U.L.)*

Saskatchewan:

RICHARD GOSSE, Q.C., Deputy Minister of Justice and Deputy Attorney General, Department of Justice, 15th Floor, City Hall Building, 2476 Victoria Avenue, Regina, S4P 3V7 *(C.L.S. & U.L.S.)*

RON HEWITT, Coordinator, Legislative Services, Department of Justice, 12th Floor, City Hall Building, 2476 Victoria Avenue, Regina, S4P 3V7 *(U.L.S.)*

KEN HODGES, Director of Research, Law Reform Commission of Saskatchewan, Sturdy-Stone Centre, 122-3rd Avenue North, Saskatoon, S7K 2H6 *(U.L.S.)*

GEORGINA JACKSON, Master of Titles, Director of Land Titles and Property Registration, Department of Justice, 12th Floor, City Hall Building, 2476 Victoria Avenue, Regina, S4P 3V7 *(U.L.S.)*

SERGE KUJAWA, Q.C., Associate Deputy Minister and General Counsel, Criminal Law, Department of Justice, 15th Floor, City Hall Building, 2476 Victoria Avenue, Regina, S4P 3V7 *(C.L.S.)*

KEN W. MACKAY, Q.C., Director, Public Prosecutions Branch, Department of Justice, City Hall Building, 2476 Victoria Avenue, Regina, S4P 3V7 *(C.L.S.)*

BONNIE OZIRNY, Assistant Legislative Counsel, Office of the Legislative Council, 101 Legislative Building, Regina, S4S 0B3 *(L.D.S.)*

RICHARD QUINNEY, Assistant Director of Public Prosecutions, Public Prosecutions Branch, Department of Justice, City Hall Building, 2476 Victoria Avenue, Regina, S4P 3V7 *(C.L.S.)*

MERRILEE RASMUSSEN, Legislative Counsel and Law Clerk, 101 Legislative Building, Regina, S4S 0B3 *(L.D.S. & U.L.S.)*

MIKE DE ROSENROLL, Director, Legal Services Branch, Department of Justice, City Hall Building, 2476 Victoria Avenue, Regina, S4P 3V7 *(U.L.S.)*

DOUGLAS SCHMEISER, Q.C., Chairman, Law Reform Commission of Saskatchewan, Sturdy-Stone Centre, 122-3rd Avenue North, Saskatoon, S7K 2H6 *(C.L.S. & U.L.S.)*

SHIRLEY STRUTT, Legislative Counsel and Law Clerk, Legislative Assembly, 101 Legislative Building, Regina, S4S 0B3 *(L.D.S.)*

Yukon:

SYDNEY B. HORTON, Legislative Counsel, Department of Justice, P.O. Box 2703, Whitehorse, Y1A 2C6 *(L.D.S. & U.L.S.)*

DELEGATES EX OFFICIO

1984 Annual Meeting

Attorney General for Alberta: HON. NEIL S. CRAWFORD, Q.C.
Attorney General of British Columbia. HON BRIAN R. D. SMITH, Q.C.
Minister of Justice and Attorney General of Canada: HON. DONALD J. JOHNSTON, P.C., M.P.
Attorney-General of Manitoba: HON. ROLAND PENNER, Q.C.
Attorney General of New Brunswick: HON. FERNAND G. DUBE, Q.C.
Minister of Justice and Attorney General of Newfoundland: HON. GERALD R. OTTENHEIMER, Q.C.
Attorney General of Nova Scotia: HON. RONALD C. GIFFIN, Q.C.
Attorney General of Ontario: HON. R. ROY MCMURTRY, Q.C.
Minister of Justice and Attorney General of Prince Edward Island: HON. GEORGE R. MCMAHON, Q.C.
Minister of Justice of Quebec: HON. PIERRE-MARC JOHNSON
Attorney General for Saskatchewan: HON. J. GARY LANE, Q.C.
Minister of Justice of the Yukon: HON. ANDY PHILIPSEN

HISTORICAL NOTE

More than sixty-five 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
1937 Aug 12-14, 16, 17, Toronto
1938 Aug 11-13, 15, 16, Vancouver
1939 Aug 10-12, 14, 15, Quebec
1941. Sept 5, 6, 8-10, Toronto
1942 Aug 18-22, Windsor
1943 Aug 19-21, 23, 24, Winnipeg
1944 Aug 24-26, 28, 29, Niagara Falls
1945 Aug 23-25, 27, 28, Montreal.
1946 Aug 22-24, 26, 27, Winnipeg
1947 Aug: 28-30, Sept 1, 2, Ottawa
1948 Aug 24-28, Montreal
1949 Aug 23-27, Calgary
1950 Sept 12-16, Washington, D C
1951. Sept 4-8, Toronto
1952 Aug 26-30, Victoria
1953 Sept 1-5, Quebec
1954 Aug 24-28, Winnipeg.
1955 Aug 23-27, Ottawa
1956 Aug 28-Sept 1, Montreal
1957 Aug 27-31, Calgary.
1958 Sept 2-6, Niagara Falls
1959 Aug 25-29, Victoria
1960 Aug 30-Sept 3, Quebec
1961 Aug 21-25, Regina
1962 Aug. 20-24, Saint John
1963 Aug 26-29, Edmonton
1964 Aug 24-28, Montreal
1965 Aug 23-27, Niagara Falls
1966 Aug 22-26, Minaki.
1967 Aug 28-Sept 1, St John's
1968 Aug 26-30, Vancouver
1969 Aug 25-29, Ottawa.
1970 Aug 24-28, Charlottetown
1971 Aug 23-27, Jasper
1972. Aug 21-25, Lac Beauport
1973. Aug 20-24, Victoria
1974. Aug 19-23, Minaki
1975. Aug 18-22, Halifax
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
1981 Aug 20-29, Whitehorse
1982 Aug 19-28, Montebello
1983. Aug. 18-27, Quebec
1984 Aug 18-24, Calgary

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, representa-

tion 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 the *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 Proceeding's 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.

The most concrete example of sustained collaboration between the American and Canadian conferences is the Transboundary Pollution Reciprocal Access Act. This Act was drafted by a joint American-Canadian Committee and recommended by both Conferences in 1982. That was the first time that we have joined in this sort of bilateral lawmaking.

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 teh 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.

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LEGISLATIVE DRAFTING SECTION

MINUTES

Attendance

Thirty-five delegates representing the thirteen jurisdictions in Canada were in attendance. In addition, the Section was pleased to welcome one guest, Mr. Carlyle C. Ring of Washington, D.C. Mr. Ring is President of the National Conference of Commissioners on United States Laws.

Opening

The Section opened with the Chairman, Mr. Bruno Lalonde, presiding. Mr. Allan Roger acted as Vice-Chairman and Mrs. Merrilee Rasmussen acted as Secretary.

Hours of Sitting

It was agreed to sit on Saturday, August 18th and Sunday, August 19th from 9:30 a.m. to 12: 30 p.m. and from 2:00 p.m. to 5:00 p.m.

Adoption of Minutes

The minutes of the 1983 meeting of the Section were adopted.

Nominating Committee

Mr. Arthur Stone and Mr. Graham Walker were appointed to the Nominating Committee and were authorized to add other members to the Committee.

Recording of the Deliberations

The Section accepted that the Conference Secretariat proceed with the recording of the deliberations of the meeting for the internal use of the Conference only.

Bilingual Uniform Interpretation Act

The Section considered the French and English version of the draft Uniform Interpretation Act prepared by Mr. M. Beaupré and Mr. Arthur Stone. As a result of these deliberations, the Section

> RESOLVED that the draft of the Uniform Interpretation Act prepared by the Section in French and English be accepted as amended and be referred to the Uniform Law Section for adoption.

Purposes and Procedures

The Section received a report from the Committee on Purposes and Procedures and conducted a general and lengthy discussion of its pur-

poses and procedures on the basis of the report of the Committee. As a result of the discussion, it was

> RESOLVED that the Report of the Committee on Purposes and Procedures be adopted as amended.

Education, Training and Retention of Draftsmen

The Section received information and conducted a brief discussion on this matter.

Charter of Rights and Freedoms

The Section received information from its members as to their attitude concerning this matter. It is a continuing preoccupation to adjust the legislation to the Charter.

Numbering under the National Building Code

The Section considered a question from Mr. Allan Roger who explained the problem of the decimal numbering of the National Building Code and, after discussion, it was

> RESOLVED that the Legislative Drafting Section urge the National Research Council of Canada in the preparation of its national codes to give serious consideration to adopting the numbering system as set out in the Drafting Conventions of the Uniform Law Conference of Canada.

Officers

The Nominating Committee reported through Mr. Arthur Stone that the incumbent officers be carried in office. The report was unanimously approved. So, for 1984-85, Mr. Bruno Lalonde is Chairman, Mr. Allan Roger is Vice-Chairman and Mrs. Merrilee Rasmussen is Secretary. The Chairman will continue to represent the Section on the Board of the Canadian Law Information Council.

French Language Drafting Conventions

Mr. Gérard Bertrand tabled a working paper on French Language Drafting Conventions to be examined, discussed and approved by the Section. The paper was referred to the French Language Drafting Conventions Committee.

French Language Drafting Conventions Committee

The Section conducted a lengthy discussion concerning the appointment of the French Language Conventions Committee mentioned in the Report of the Committee on Purposes and Procedures approved by the Section and, as a result of the discussion, it was

RESOLVED that the jurisdictions interested in participating on the French Drafting Conventions Committee do participate, and

RESOLVED that, for the election of the Chairman of the Committee, each jurisdiction has one note, and

RESOLVED that, on deciding matters related to the conventions, each jurisdiction has one note.

Manitoba, New Brunswick, Northwest Territory, Ontario, Ottawa and Québec indicated their intention to participate on the Committee.

French Version of Uniform Acts

Mr. Gérard Bertrand tabled preliminary French versions of 36 Uniform Acts, a joint venture Ottawa-Manitoba. After discussion, it was

RESOLVED that the revision of the preliminary French versions of Uniform Acts tabled at this meeting of the Legislative Drafting Section be proceeded with by Committees, composed of Francophones and Anglophones drafters, appointed by the Chairman, with authority to refer questions to the French Drafting Conventions Committee if necessary, and

RESOLVED that the revised versions be reported by the revising Committees at the Annual Meeting following their completion.

Polls

The Section proceeded with two polls around the table at the request of Mr. Allan Roger. One poll was related to the mode of reference to divisions of Acts (e.g. Section 5(2) or Subsection 5(2)). The other poll was to find out the different utilizations of marginal notes, or only at the section level, or at the subsection and section levels or none at all.

Close

A unanimous show of appreciation and thanks was tendered Mr. Bruno Lalonde for his handling of his duties during the session.

There being no further business, upon motion duly made, the Section adjourned at 4:40 p.m. on Saturday, August 18th, 1984 to meet again at the time of the next Conference or earlier at the call of the Chair.

OPENING PLENARY SESSION

MINUTES

Opening of Meeting

The meeting opened at 8 p.m. on Sunday, August 19, in the Palliser Hotel in Calgary with Mr. Kujawa, Q.C. in the chair and Mr. Hoyt, Q.C. as secretary.

Address of Welcome

The President extended a warm welcome to all those delegates in attendance.

Mr. Justice Kirby

The President introduced Mr. Justice Kirby of the Australian Law Reform Commission and expressed our appreciation for honouring us with his presence.

Mr. Carlyle C. Ring, Jr.

The President introduced Mr. Carlyle C. Ring Jr. of Washington, D.C. Mr. Ring is President of the National Conference of Commissioners on Uniform State Laws. He brought greetings from our colleagues in the United States who share with us the pleasure and opportunity of working in a special and unique way to improve the laws of our respective countries.

Introduction of Delegates

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

Minutes of the Last Annual Meeting

RESOLVED that the minutes of the 65th annual meeting as printed in the 1983 Proceedings be adopted.

President's Report

Mr. Kujawa gave a verbal report. He brought us up to date on two projects now under study. They are the Financial Exploitation of Crime and the Personal Property Security Act. He introduced a new subject, the Possibility of Initiating a Mental Health Law Project. If we decide to proceed with this, it may mean the postponement of legislation now contemplated by any jurisdiction. It is so difficult, so imperfect and so far reaching that we know there is no easy cure.

Treasurer's Report

Mr. Bouchard presented his report regarding a Statement of Receipts and Disbursements and Cash Position as of July 15, 1984, together with a report of the Conference's Auditors, Clarkson, Gordon, Chartered Accountants.

RESOLVED that the Treasurer's Report, Appendix A, page 52, be approved.

RESOLVED that the same auditors, Clarkson, Gordon be appointed auditors for the coming year.

RESOLVED that the usual banking motion be passed authorizing the Treasurer to draw upon the Conference's accounts.

Executive Director's Report

Mr. Hoyt presented his report, Appendix B, page 55.

RESOLVED that the report be received.

Appointment of Resolutions Committee

RESOLVED that a Resolutions Committee be constituted, composed of Mr. Raymond Moore, Mrs. Mary Dawson and Mr. Allan Filmer, whose report will be presented at the Closing Plenary Session.

Appointment of 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 pesent to bring the Committee's membership up to five, and in either event the most recently retired president shall be chairman.

Canadian Bar Association

There was a resolution last year for more liaison with the Canadian Bar Association. This year we have received favourable comments. Reference was made to the now established joint committee working on the Personal Property Security Act. That committee is composed of members appointed by the Canadian Bar Association and the Uniform Law Conference. It is hoped that the establishment of this joint committee is only the beginning of more productive cooperation with the Canadian Bar Association.

Reference was also made to our association with the Canadian Bar Association on the Evidence Act. Various members of our Conference got together last year with representatives from the Canadian Bar Association to iron out what seemed to be insoluble problems that arose from that Act. As a result of a number of meetings, about 98% of those

problems were resolved in a friendly manner, and, in addition, we established good relationships for the future. Cooperation between the Canadian Bar Association and our Conference with regard to the Evidence Act has been excellent and no doubt will lead to more good association in the future.

Adjournment

There being no further business, the meeting adjourned at 9:15 p.m. to meet again in the Closing Plenary Session on Friday, August 24.

UNIFORM LAW SECTION

MINUTES

Attendance

Forty-eight delegates were in attendance. For details see list of delegates, page 10.

Sessions

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

Distinguished Visitors

The Section was honoured by the participation of Mr. Carlyle C. Ring, Jr., President of the National Conference of Commissioners on Uniform State Laws and Mr. Justice Kirby of the Australian Law Reform Commission.

Arrangement of Minutes

A few of the matters discussed were opened 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 session opened with Mr. Walker as Chairman and Mr. Hoyt as Secretary.

Hours of Sitting

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

Agenda

A tentative agenda was considered and the order of business for the week agreed upon.

Change of Name

The Saskatchewan Commissioners presented a report on this matter as set out in Appendix E page 64.

RESOLVED that the matter be referred back to the Saskatchewan Commissioners for a further report and draft Act in 1985.

Child Abduction

This was referred to the Quebec Commissioners for a report in 1985 having in mind the Uniform Maintenance and Custody Enforcement Act.

Class Actions

This matter stands referred to the Quebec and Ontario Commissioners for a report in 1985.

Company Law

The capacity of corporations to sue and carry on business in another jurisdiction in Canada without extra-provincial licensing or registration was referred to the Federal Commissioners for further study and report in 1985.

Contributory Fault

A draft Act was tentatively approved by the Conference in 1983. However disapprovals were received from two jurisdictions and the Alberta Commissioners agreed to make certain changes in the draft. At this 1984 meeting those changes were explained and agreed to.

RESOLVED that the revised draft Contributory Fault Act as set out in Appendix F page 98 be adopted as a uniform Act and recommended for enactment in that form.

Defamation

This matter stands referred to the Saskatchewan Commissioners for a report and draft Act in both English and French in 1985.

Effect of Adoption

The Manitoba Commissioners were to review the Effect of Adoption Act in light of discussions relating to Intestate Succession. There was no report.

Extra-Provincial Child Welfare Orders

The Alberta Commissioners requested that this matter be deferred indefinitely.

Financial Exploitation of Crime

This was referred to the Uniform Law Section by the Criminal Law Section with a view to establishing a joint committee to review the matter.

The recommendation of the Steering Committee is that this is not an appropriate item for the Uniform Law Section at this time. However the Steering Committee is to discuss the matter further with the Criminal Law Section.

Franchises

A report was submitted by the Alberta, Quebec and Federal Commissioners as set out in Appendix G page 108.

RESOLVED that the draft Franchises Act be referred back to the Alberta and Federal Commissioners for incorporation of certain amendments to be made as a result of discussions had at this meeting; that the amended Act be referred to the Legislative Drafting Section for approval, and that if the draft Franchises Act is not disapproved by two or more jurisdictions on or before November 30, 1984, by notice to the Executive Director, it be approved by the Conference as a uniform Act and recommended for enactment in that form

Note: No disapprovals were received.

Home Owner's Protection

This matter was referred to the Conference by the Consumers' Association of Canada. That Association has asked this Conference to prepare uniform legislation for all provinces of Canada:

(1) for real estate brokers and home builders to use the same "Offer to Purchase" form in all provinces of Canada,

(2) to ensure the purchaser's deposit on a new house be put in an interest-bearing trust account held by the builder until the Transfer is signed, all interest to be credited to the purchaser,

(3) that uniform warranty protection be provided for the renovation of houses in all provinces of Canada.

RESOLVED that the matter be referred to the Federal Commissioners for a report to the Steering Committee on exactly what the problem is and what the need is; then, the Steering Committee can decide whether it should be on the agenda in 1985.

Interpretation Act

A verbal report was given by the Chairman of the Legislative Drafting Section.

RESOLVED that the draft Interpretation Act as set out in Appendix H page 123 in both French and English be adopted by the Conference as a uniform Act in both languages and recommended for enactment in that form.

Intestate Succession Act

The Act stands referred to the Legislative Drafting Section for a redrafted Act in both English and French in 1985.

Limitations

This was referred to the Alberta and Saskatchewan Commissioners for a report in 1984. There was no report.

Maintenance and Custody Enforcement

A report was presented on this matter by the Ontario and Manitoba Commissioners.

RESOLVED that the Act be referred to the Ontario Commissioners for redrafting to implement the decisions of this Section and complementary amendments to the Uniform Family Support Act. The redraft is to be reported to the Executive Director and distributed to all commissioners before September 22, 1984, and the redraft is to be brought back to the Conference in 1985 for further consideration. See Appendix N page 190.

Matrimonial Property

As a result of correspondence between one of the Commissioners on Uniform State Laws and the Chairman of our Uniform Law Section, this matter was placed on the agenda.

RESOLVED that the Quebec and Ontario Commissioners undertake a study of uniform choice of law rules with special reference to the Hague Convention on Matrimonial Property Law; that, in doing so, consideration be given to the substantive property regimes in the various jurisdictions.

It was also resolved that the Chairman of our Uniform Law Section liaise with the National Conference of Commissioners on Uniform State Laws on Marital Property.

Mental Health Law Project

This was referred for study to the Ontario and Newfoundland Commissioners with power to add other jurisdictions that express a willingness to participate. The Ontario and Newfoundland Commissioners have been asked to set out for the Steering Committee

(a) terms of reference for the project,

(b) what support staff and funding will be required, and

(c) what liaison groups are to be involved.

Personal Property Security

The first annual report of the joint committee on the Uniform Personal Property Security Act, 1982, was received. It is set out in Appendix I page 147. The Conference is looking forward to a further report in 1985.

Private International Law

A report of the Special Committee on Private International Law as set out in Appendix J page 151 was received. A further report by the Federal Commissioners on Canadian Activities in the Area of Private International Law as set out in the same Appendix was also received.

RESOLVED that the 1980 Vienna Sales Convention and the 1958 New York Convention on the Recognition and Enforcement of Arbitral Awards be referred to the Nova Scotia and Federal Commissioners for drafting purposes and a report in 1985.

Products Liability

A report including a draft Act submitted by the Manitoba and Ontario Commissioners is set out in Appendix K page 160.

RESOLVED that the draft Products Liability Act as set out in Appendix K page 160 in both French and English be adopted by the Conference as a uniform Act in both languages and recommended for enactment in that form.

Protection of Privacy: Tort

This matter is included in Defamation and is to be deleted from the agenda.

Reciprocal Enforcement of Maintenance Orders Act

The Alberta Commissioners gave a report on the modifications that various jurisdictions have made in enacting the Uniform Reciprocal Enforcement of Maintenance Orders Act. A survey of Canadian Jurisdictions re the Uniform Law Conference's Reciprocal Enforcement of Maintenance Orders Act is set out in Appendix L page 170.

RESOLVED that the Reciprocal Enforcement of Maintenance Orders Act be referred back to the Alberta Commissioners for a further report and proposed amendments in 1985.

Sale of Goods Act

The Chairman reported on correspondence he has had with Judge Mendes Da Costa and Professor Ziegel concerning substantive changes made in the drafting process of the final Act.

RESOLVED that the Sale of Goods Act be referred to the Ontario Commissioners and any other jurisdiction that might want to participate, who in consultation with Professor Jacob Ziegel are to try to arrive at some concensus with regard to those areas where substantive changes might have been made by the drafting committee. The Ontario Commissioners are to report back to this Section in 1985.

Statement on Adoption of Uniform Acts

At the request of the Prince Edward Island Commissioners, the Section discussed the necessity for an information package to go out to the various Attorneys General whenever the Conference adopts a uniform Act. This should include a statement as to what the mischief was, and what we have done to remedy it, together with a summary that will carry the reader through the Act.

RESOLVED that for this year, the President of the Conference, in consultation with the Steering Committee and the Executive Director, write to all Attorneys General advising them of the Acts adopted this year including a short statement of the purpose and purport of each Act, and that this matter be referred to the Purposes and Procedures Committee for an amendment to the Rules of Procedure formally incorporating this provision for future years.

Time Sharing

An extensive report on this matter was presented by the Manitoba Commissioners together with comments from Mr. Harvey C. Korman both of which are set out in Appendix M page 173. The matter was referred back to the Manitoba Commissioners for a draft Act in 1985 in both English and French.

Transboundary Pollution Reciprocal Access Act

As of August 16, 1984, the Act has been enacted in three American jurisdictions, Montana, Colorado and New Jersey. It has been introduced but not enacted in two other American jurisdictions, Wisconsin and Minnesota. In Canada, Ontario has introduced it.

Vital Statistics

The British Columbia and Federal Commissioners presented a verbal report on this matter and many policy decisions were reached.

RESOLVED that the matter be referred back to the British Columbia and Federal Commissioners for a draft Act incorporating the complex provisions already discussed together with any other items as they come to light.

Wills

There appears to be consensus in most jurisdictions where the formalities governing the execution of wills are based upon the provisions of the English Wills Act, 1837, that the resort to compliance with excessively detailed provisions has led to invalidation of many wills which ought to be valid.

This has led to the enactment in some jurisdictions of the principle of "substantial compliance". Such a proposal came before this Conference in 1982 but was rejected.

The perception remains that something else should be attempted to alleviate the hardship resulting from the application of existing rules.

RESOLVED that the Conference designate the Saskatchewan and Alberta Commissioners to revisit this matter and report back in 1985 on what, if any, amendments should be made to the existing rules governing formalities of execution of wills.

Officers 1984-1985

Mr. Walker was elected Chairman of the Section with Mr. Hoyt as Secretary.

Close of Meeting

A unanimous vote of appreciation and thanks was tendered Mr. Walker for his handling of the arduous duties of Chairman throughout the week.

CRIMINAL LAW SECTION

MINUTES

Attendances

Thirty-nine (39) delegates were in attendance. For details, see list of delegates.

Opening

Mr. Rémi Bouchard, presided and Mr. Daniel A. Bellemare acted as secretary. Each delegation was introduced by its leader.

Rapport du Président

Les trente-neuf (39) délégués qui ont participé à la section de droit pénal comprenaient des représentants des provinces, et du gouvernement fédéral. La délégation fédérale était constituée de représentants du ministère de la Justice, du Ministère du Solliciteur général de même que de la Commission de réforme du droit du Canada; un avocat de pratique privée faisait aussi parti de cette délégation. Certaines des délégations provinciales comptaient aussi dans leur rang des avocats de la défense. Cette année, il nous a semblé utile de présenter une consolidation et une mise à jour des règles de pratique existantes. A cet égard, le secrétaire, Me Daniel A. Bellemare, a préparé une codification de ces règles qui incorpore les règles adoptées en 1977 (1977 U.L.C. 36) de même que les autres règles de procédure adoptées depuis, dans le but de faciliter les délibérations. Ces règles sont libellées en termes généraux afin de leur permettre de s'adapter aux situations les plus diverses. Les nouvelles régles ont été adoptées à l'unanimité par l'assemblée et elles sont reproduites en annexe.

Conformément à la règle 7, nous avons demandé à Me Roger Tassé, c.r. chef de la délégation fédérale, de donner à l'assemblée un aperçu du sort des résolutions adoptées par la Conférence en 1983 (1983 U.L.C. 33 ss). Me Richard G. Mosley, avocat général à la section de la politique et de la modification du droit en matière pénale a dressé le tableau suivant: Des vingt-deux (22) résolutions adoptées en 1983, dix (10) d'entre elles furent retenues par le Ministère de la Justice et incorporées dans le projet de loi C-19, la *loi de 1984 sur la réforme du droit pénal*, déposé en première lecture le 7 février 1984. Quant aux douze (12) autres résolutions, neuf (9) d'entre elles sont actuellement à l'étude, et les trois dernières ont été traitées comme suit: (a) la résolution de l'Ontario relative au vandalisme (1983 U.L.C. 41-42) n'a pas été retenue; (b) la résolution de l'Ontario relative à l'article 246.2 du *Code criminel* (1983 U.L.C. 40) n'a pu être retenue vu le projet de loi C-127; toutefois, avec la

publication du rapport du Comité Badgley, la situation pourra être réexaminée; (c) finalement, la résolution présentée par le Manitoba relativement à la création d'un nouvel article 576.3 concernant la sollicitation d'informations relatives aux procédures du jury (1983 U.C.L. 38) n'a pas été retenue.

A tout événement, comme le projet de loi C-19 est mort au feuilleton lors de la dissolution du Parlement et vu qu'un nouveau gouvernement sera élu le 4 septembre prochain, les politiques qui sous-tendent le projet de loi C-19 devront être revues par le nouveau Ministre de la Justice.

Discussion Items

Several discussion items were submitted to delegates to obtain the benefit of their views.

Pre-Trial Disclosure

Mr. Paul Chumak, Q.C., reviewed for the delegates report No. 22 of the Law Reform Commission of Canada entitled, *"Disclosure by the prosecution"*. Discussion of this item was lively. The provincial delegates in general objected to codification of the proposed disclosure rules; in that regard, the following resolution was presented from the floor:

"That this organization endorses full Crown disclosure, but opposes the Law Reform Commission's proposal to legislate same and that a committee be struck composed of members of the Uniform Law Conference (Criminal Section), including defence counsel, to formulate uniform disclosure guidelines for the consideration of the Attorneys General."[1]

(CARRIED: 18-0-11)

Mental Disorder Project

The May 1984 draft report of the Mental Disorder Project was reviewed. Mr. Tassé traced the history of the project, and Mr. Gilbert Sharpe, project chief, presented an overview of the draft report. The delegates commented on the various recommendations contained in the

(1) Mr. Tassé, head of the federal delegation, indicated that his delegation would abstain from voting on the resolution; he indicated further, however, that members of the federal delegation would participate in the Committee if formed.

A committee was appointed to study the matter and it is to be composed of the following members:

Alberta: Mr. Yaroslaw Roslak; *British Columbia:* Mr. Alan E. Filmer; *Manitoba:* Mr. John Guy (Chairman of the Committee) and Mr. Hymie Weinstein; *Canada:* Mr. Douglas J.A. Rutherford; *Saskatchewan:* Mr. Serge Kujawa; *Québec:* Me Jean-François Dionne; and *Ontario:* Messrs. Ronald Thomas and Howard Morton.

report. A letter from Dr. J.W. Elias, (appended to these minutes) on behalf of the Provincial Directors of Mental Health and the Mental Health Division of Health and Welfare Canada, was raised by Mr. Serge Kujawa, Q.C., Conference Chairman. The letter recommended that "mental health law be made the subject of a special project under the auspices of the Uniform Law Conference."

Mr. Gilbert Sharpe explained that this letter did not purport to terminate the current mental disorder project in favor of another. Indeed, since extensive studies have been carried out concerning the criminal law aspects of mental disorder, the purpose of the letter, instead was to ask the Uniform Law Conference of Canada to create a committee to study the feasibility of adopting uniform civil legislation concerning mental disorder law that would complement the federal effort in criminal matters. Further to these explanations, the following resolution was presented from the floor:

"In a letter dated July 31, 1984, Dr. John W. Elias, on behalf of the Provincial Directors of Mental Health and Mental Health Division of Health and Welfare Canada, requested that the Uniform Law Conference of Canada set up a Mental Health Law Project for the purpose of drafting uniform mental health legislation. As the Criminal Law Section has reviewed the proposals of the Federal Department of Justice concerning criminal law, and as a more extensive review is required concerning civil legislation, it is resolved that the request of Dr. John W. Elias be referred to the Uniform Law Section of the Conference for further study."

(CARRIED: 25-0-0)

Reclassification of Law Enforcement Officers

The delegates were asked to discuss a document of the Criminal Law Review Section of the federal Department of Justice entitled, *"Possible reclassification of law enforcement officers in the Criminal Code."* It was agreed that a new definition of the word 'police officer' should be adopted, but further discussion and study are required.

Treason

The delegates reviewed a document of the federal Department of Justice on procedural provisions of the *Criminal Code* related to Treason and unanimously agreed that section 532 of the *Criminal Code* is an anachronism that should be repealed.

Badgley Report

Mr. Tassé distributed to each delegation, a copy of the *Report of the Committee on Sexual Offences Against Children and Youths* (Badgley

Report) made public on Wednesday, August 22, 1984. Participants were asked to forward their comments to the federal Department of Justice at a future date.

Publication of Literary Accounts of Crime

The 1983 Conference adopted a resolution of the province of New Brunswick which advocated the creation of a committee to study the phenomenon of the publication of literary accounts of crime to the financial advantage of the criminal or his assigns. A committee chaired by Mr. R. Murray of New Brunswick was accordingly established[2](1983 U.L.C. 39) and its report was tabled for dicussion (appended to these minutes). Delegates were of the view that while the goal was laudable, the means to effectively achieve the result sought should be reviewed within a civil legislative context. A resolution was presented from the floor in that regard:

"It is resolved that the report of the Committee on the Financial Exploitation of Crime be referred to the Uniform Law Section with a view to establishing a Joint Committee to review the matter."

(CARRIED: 24-0-0)

RESOLUTIONS

A total of 23 resolutions were submitted by the delegations concerning both procedural and substantive amendments to the *Criminal Code* and to the *Narcotic Control Act*. The resolutions were presented by each jurisdiction as follows:

I - ALBERTA

Item 1

That subsection 615(2) of the *Criminal Code* be amended to provide that an appellant or respondent who is in custody and who is represented by Counsel is not entitled to be present at the hearing of an appeal or leave to appeal, unless the Court of Appeal or a Judge thereof grants leave to be present.

(CARRIED: 15-12-1)

Item 2

The proposed resolution, that some remedial legislative action be taken to empower a provincial court judge, presiding over a preliminary

(2) The Committee was composed of Messrs. John D. Takach, Ontario, Richard G. Mosley, Canada, Alan E. Filmer, British Columbia and Serge Kujawa, Saskatchewan.

inquiry, to resort to the powers of contempt of court when a witness refuses to testify, was divided and reworded as follows:

That s. 116 of the *Criminal Code* be amended (or a new section created) to provide for an offence to cover the situation where a witness refuses to testify, either at trial or at a preliminary, if section 472 has not been applied.[3]

(DEFEATED: 12-13-4)

The proposed resolution, that section 472 of the *Criminal Code* be amended to provide for the power to cite for contempt in addition to the current power to commit the person to prison from time to time until the person consents to do what is required of him, was withdrawn and was replaced by the following:

"That the federal government review the provisions of the *Criminal Code* with reference to a witness refusing to testify and amend the *Criminal Code* to provide a clear and effective mode of procedure to deal with such situations in any judicial proceeding; a suggested way to effect such an amendment would be to add to the present section 116 a subsection (3) with the following general provision:

"Without restricting the generality of the foregoing, refusal to testify before a court in any judicial proceeding constitutes a refusal to obey a lawful order of the court. A charge under this subsection may be proceeded with notwithstanding that other remedies are available."

That present section 472 of the *Criminal Code* be repealed."

(CARRIED: 19-0-6)

Item 3

The proposed resolution that section 381 of the *Criminal Code* be amended to provide for dual procedure on all the subsections of section 381, or alternatively only in cases of intimidation of victims or witnesses, was withdrawn.

Item 4

That a provision be adopted in the *Criminal Code* similar to section 57 of the *Young Offenders Act* to facilitate proof of age or parentage when it is in issue.

(CARRIED: 24-3-4)

(3) An amendment to that resolution that would have proposed to modify s.116 to make it clear that refusal to testify is included in that section and that s.472 be repealed was also DEFEATED: 9-18-1.

II - BRITISH COLUMBIA

Item 1

The proposed resolution was amended to read:

That section 629(1) of the *Criminal Code* be amended to provide that a subpoena can be served by anyone qualified within the province to serve civil process and need not be served by a peace officer.

(CARRIED: 31-0-0)

The alternative resolution that recommended an amended definition of the word 'peace officer' in section 2 of the *Criminal Code* was not presented and, accordingly, was withdrawn.

Item 2

That section 237(1)(c) of the *Criminal Code* be amended to provide that the onus of proving "the absence of any evidence to the contrary" be upon the accused on a balance of probabilities.

(DEFEATED: 1-23-1)

Item 3

That standard forms of the technician's (s.237(1)(f)) and analyst's (s.237(1)(d) and (e)) certificate be prescribed in the *Criminal Code.*

(CARRIED: 24-0-0)

Item 4

The proposed resolution, that subsection 137(1) of the *Criminal Code* be amended to give a court the option of imposing a consecutive sentence for the offences of escape or being unlawfully at large and that the consecutive sentence is to be served prior to the remainder of the term of imprisonment for life, was withdrawn in favour of the following resolution:

If the sentencing judge so orders, any minimum time to be served before parole eligibility on a life sentence be extended by that portion of a latter sentence that would be required to be served before consideration for parole if the latter sentence were the sole sentence to which the person was subject.

(CARRIED: 20-6-0)

III - MANITOBA

Item 1

The proposed resolution that a provision be enacted in the *Criminal Code* to empower a court to remand a person, arrested and charged with

an offence, for a psychiatric examination as to his (a) fitness to instruct counsel and elect his mode of trial and enter a plea and (b) mental state at the time of the offence, was withdrawn and replaced by the following:[4]

"That a provision be enacted in the *Criminal Code* to empower a court to remand a person, arrested and charged with an offence, for a psychiatric examination concerning his fitness to instruct counsel and elect his mode of trial and enter a plea."

(CARRIED: 21-6-2)

Item 2

The proposed resolution, to amend sections 306(1)(a) and 307 of the *Criminal Code* to provide that it be an offence to break into or be found inside a dwellinghouse or a place, without proof that an indictable offence had been committed or that the person found inside a dwellinghouse or place had the intention to commit an indictable offence, was withdrawn.

IV - NEW BRUNSWICK

That the *Narcotic Control Act* be amended to provide that the offences of trafficking and possession for the purpose of trafficking be amended to become hybrid offences with an appropriate reduction in maximum penalty for summary conviction offences.

(CARRIED: 26-0-5)

V - NEWFOUNDLAND

No submissions presented.

VI - NORTHWEST TERRITORIES

No submissions presented.

VII - NOVA SCOTIA

No submissions presented.

VIII - ONTARIO

Item 1

That section 214 of the *Criminal Code* be amended to provide that any murder committed by a person while confined in a prison facility be a first degree murder.

(DEFEATED: 2-27-0)

(4) An amendment to that resolution that would have restricted this resolution to indictable offences was DEFEATED (10-11-12)

Item 2

That section 222 of the *Criminal Code* be amended to provide that an intention to cause bodily harm that one knows is likely to cause death, and being reckless whether death ensues or not, is sufficient to support a conviction for attempted murder.

(CARRIED: 18-6-5)

Item 3

That the *Criminal Code* be amended so that an authorization to intercept a private communication under Part IV.I, or a renewal thereof, be valid anywhere in Canada, subject to the consent of the host province's Attorney General before the authorization could be implemented in that province.[5]

(CARRIED: 21-8-1)

Item 4

The proposed resolution, that the *Criminal Code* be amended to give a trial judge jurisdiction to try in a single trial several informations or indictments against one or more accused persons, was AMENDED (27-0-1) to add "with the consent of all parties".

(CARRIED: 30-0-0)

IX - PRINCE EDWARD ISLAND

No submissions presented.

X - QUEBEC

Item 1

That section 88 of the *Criminal Code* be amended so that the transformation of an otherwise legal weapon into a prohibited weapon be a criminal offence.

(CARRIED: 13-0-9)

That the *Criminal Code* be amended to provide that the penalty for such an offence be consecutive to any other penalty imposed for another offence based on the same facts and to any other sentence being served at the time.

(CARRIED: 9-8-7)

(5) An amendment that would have added the words 'and the endorsement of a Superior Court Judge of the host province' was DEFEATED (7-18-1)

Item 2

The proposed resolution to amend s. 178.2(2)(e) of the *Criminal Code* to allow disclosure to the Attorney General or to a person specifically designated by him for that purpose was amended to read as follows:

"That s. 178.2(2)(e) of the *Criminal Code* be amended to read: ". . . where disclosure is made to a peace officer or prosecutor and is intended to be in the interest of the administration of justice."

(CARRIED: 18-0-6)

Item 3

The proposed resolution was divided in two:

That section 165(a) of the *Criminal Code* be amended to increase the penalty from two to five years.[6]

(CARRIED:14-6-4)

The second part of the resolution was withdrawn, and the assembly agreed (16-4-2) to receive a new resolution that read as follows:

"To amend s. 498 of the *Criminal Code* to read as follows:

'The Attorney General may, notwithstanding that an accused elects, under section 464, 484, 491 or 492, to be tried by a judge or magistrate, as the case may be, require the accused to be tried by a court composed of a judge and jury *if* the alleged offence is one that is punishable with imprisonment *for more than* five years or the alleged *offence is an offence under s. 159, 161, 162, 163 and 164,* and where . . ."

(CARRIED: 12-9-2)

Item 4

That sections 246.6 and 246.7 of the *Criminal Code* be amended to include references to sections 146(1) and 150 of the *Criminal Code.*

(CARRIED: 18-0-5)

Item 5

That sections 582 and seq. of the *Criminal Code*, under the heading *'Evidence on Trial'* be amended to introduce a presumption by which the value and ownership of property, as alleged in the information or charge, are deemed to have been proven or admitted by the accused, unless he requests, at least ten days before the hearing, that the Crown establishes these elements;

(6) Mr. Tassé indicated that this resolution would be transmitted to the Canadian Sentencing Commission for further review.

That a Court be empowered to relieve the accused of his failure to give notice if he requests that evidence be adduced on these elements and, for good reason, has failed or was unable to give the notice within the required time. In such a case, the court could allow the prosecutor to adjourn the hearing to call its witnesses, if necessary;

And that the necessary adjustments be made to Part XV (ss. 469 and seq.) and Part XXIV (ss. 733 and seq.).

(DEFEATED: 9-16-2)

XI - SASKATCHEWAN

No submissions presented.

XII - YUKON

No submissions presented.

XIII- CANADA

Item 1

That section 773 of the *Criminal Code* be amended to provide that any pre-printed portion of any form used, as set out in Part XXV varied to suit the case or forms to like effect, shall be in both of the official languages of Canada.[7]

(CARRIED: 19-2-6)

Item 2

That the *Criminal Code* be amended to permit an accused, who is charged with an indictable offence, to appear in some situations by counsel rather than in person, or to authorize the Court to issue a summons in order to maintain its jurisdiction.

(CARRIED: 25-1-0)

CLOSING

Mr. Yaroslaw Roslak of the province of Alberta was elected Chairman of the Criminal Law Section for the 1985 Conference which is to be held in Halifax, N.S. Mr. D.A. Bellemare will continue as Secretary.

(7) An amendment to that resolution that would have provided that "the amendment to s. 733 as enacted shall come into force in any province only on a day fixed in a proclamation declaring that the amendment be in force in that province" was DEFEATED: (6-15-4)

CLOSING PLENARY SESSION

MINUTES

The Closing Plenary Session opened with the President, Mr. Kujawa, in the chair and the Executive Secretary, Mr. Hoyt, acting as Secretary.

Legislative Drafting Section

The Chairman, Mr. Lalonde, reported on the work of the Section.

Uniform Law Section

The Chairman, Mr. Walker, reported that the work of the Section was not completed at the time, but a report would be made and published in the Proceedings.

Criminal Law Section

The Chairman, Mr. Bouchard, reported on the work of the Section.

Resolutions Committee's Report

Mr. Moore presented the Committee's Report.

Resolved that the Conference express its appreciation by way of letter from the Secretary to:

1. the Government of Alberta and, in particular the Honourable Neil Crawford, Q.C., Attorney General of Alberta, for their generous hospitality in hosting the Sixty-sixth Annual Meeting of the Uniform Law Conference, and for the delightful dinner and reception enjoyed by the delegates;
2. the Law Society of Alberta for the convivial reception preceding the annual dinner;
3. the Government of Canada and the Government of Alberta for hosting a reception for members of the Legislative Drafting Section;
4. Peter Pagano and Michael Clegg for their untiring devotion to ensuring that our visit to Alberta was memorable;
5. Carlyle C. Ring, the President of the National Conference of Commissioners on Uniform State Laws, for the hospitality extended to our President at the recent meeting in Keystone, Colorado, for his contribution to the enhancement of the relations between our Conferences and for giving us the benefit of his counsel in our discussions;
6. Mr. Justice Kirby of the Australian Law Reform Commission for honouring us with his presence;

7. Rosemary Drapkin, Deputy Registrar General, Ministry of Consumer and Commercial Relations of Ontario, and Bill Gilroy, Director of Vital Statistics of Alberta, for their assistance to the Uniform Law Section in connection with its deliberations on the Uniform Vital Statistics Act;
8. Victoria Meikle and members of the Canadian Intergovernmental Conference Secretariat for the efficiency of many services provided in facilitating the operation of the Conference; and
9. André Meunier and Guy Jourdain and members of their staff for the excellent translation services.

Report on the Executive

The Chairman, Mr. Kujawa, announced that future meetings of the Conference have been arranged as follows:

1985 Halifax, Nova Scotia, from August 9 to 16
1986 Manitoba, from August 15 to 23
1987 British Columbia from August 14 to 22
1988 Ontario subject to final confirmation

With regard to the Special Committee on Private International Law, it was felt that the western provinces should be asked to select a replacement from the West for Mr. Rae Tallin who is no longer with the Committee, and in place of Mr. Tallin as Chairman, the Executive has selected Mr. Graham Walker.

Nominating Committee's Report

The following officers were elected for the year 1984-1985:

Honorary President:	Serge Kujawa, Q.C., Regina
President:	Gerard Bertrand, Q.C., Ottawa
1st Vice-President:	Graham Walker, Q.C., Halifax
2nd Vice-President:	M. Rémi Bouchard, Sainte-Foy
Treasurer:	Georgina Jackson, Regina
Secretary:	Gordon Gregory, Q.C., Fredericton

Close of Meeting

Mr. Kujawa after making his closing remarks turned the chair over to the incoming President, Mr. Bertrand.

Special tributes were paid to Mr. Kujawa for his outstanding contribution to the work of the Conference.

There being no further business, the President declared the meeting closed.

UNIFORM LAW CONFERENCE OF CANADA
REPORT TO THE CANADIAN BAR ASSOCIATION

by

SERGE KUJAWA, Q.C.

The Uniform Law Conference of Canada held its 66th annual meeting in Calgary, Alberta from August 18th to August 24th.

The Legislative Drafting Section met on August 18th under the Chairmanship of Mr. Bruno Lalonde of Fredericton, New Brunswick. The Section is made up of draftsmen from all 13 jurisdictions in Canada. Also attending as a guest was Mr. Carlyle C. Ring, Jr., of Washington, D.C. Mr. Ring is President of the National Conference of Commissioners on Uniform State Laws.

The Section received, discussed and accepted the French and English versions of the Uniform Interpretation Act.

The Section adopted rules and procedures for the execution of its mandate.

The Section received a working paper on drafting conventions in the French language, to be examined by the Section.

The Section received the French version of 36 Uniform Acts as working papers to be examined by the Section. The Section also discussed the numbering under the National Building Code.

The Officers of the Section for 1984-85 are:

Chairman — Bruno Lalonde, New Brunswick
Vice-Chairman — Allan Roger, British Columbia
Secretary — Merrilee Rasmussen, Saskatchewan

The Uniform Law Section met from August 20th to 25th, inclusive, under the chairmanship of Mr. Graham D. Walker, Q.C. of Nova Scotia. The Section was honoured by the participation of Mr. Carlyle C. Ring, Jr. and Mr. Justice Kirby of Australian Law Reform Commission.

The Section completed consideration of, and adopted, the Uniform Contributory Fault Act, the Uniform Franchises Act, a new Uniform Interpretation Act, a new Uniform Intestate Succession Act, and the Uniform Products Liability Act. Other projects in progress that were reported on and debated for ultimate uniform Acts were:

(a) Change of Name;
(b) Automatic Enforcement of Maintenance and Custody Orders;
(c) Time sharing;
(d) Vital Statistics.

The Uniform Law section has undertaken for consideration and report next year the following topics:

(a) Class Actions;
(b) inter-provincial application of the International convention on Child Abduction;
(c) capacity of corporations to sue and carry on business in all jurisdictions in Canada without extra provincial licensing or regulation;
(d) Defamation;
(e) Marital Property;
(f) standardization of laws relating to the committal of mentally disordered persons;
(g) Protection of Privacy: Tort;
(h) standardization and review of the formalities relating to the execution of wills.

The Section received informational reports in the following areas:

(a) Joint CBA/ULC committee on Personal Property Security;
(b) Transboundary Pollution Reciprocal Access Act.

According to the procedures of the Section Mr. Walker will be chairman again in 1985 and Mr. Hoyt will be Secretary.

The Criminal Law Section met August 20-23, under the chairmanship of Me. Rémi Bouchard. The Section debated and voted on sixteen resolutions from the provinces. The resolutions dealt with a wide variety of criminal matters.

The head of the federal Department of Justice delegation reported on last year's resolutions expressing considerable support.

A major part of the deliberations of the section related to the federal Department of Justice submissions on their projects in relation to:

(a) a mental disorder study;
(b) pre-trial disclosure;
(c) police powers.

As a result of these discussions a committee of provincial representatives was formed to draft a uniform pre-trial disclosure directive. The objective in forming this committee to have all Attorneys General

voluntarily issue such a directive. This was considered to be peferable to a lengthy legislated disclosure procedure. The chairman for the next session is Mr. Yaroslaw Roslak, Q.C. of Edmonton.

The Conference enjoys an exchange with the National Conference of Commissioners on Uniform State Laws. As President of this conference I attended the annual meeting of the American conference held at Keystone, Colorado from July 27th to August 3rd as an Advisory Member. In return our conference enjoyed the presence of Mr. Carlyle C. Ring, Jr. as President of the American Conference.

The Uniform Law conference continued its close relations with the Canadian Bar Association on two matters:

(a) a Model Uniform Personal Property Security Act;
(b) a Uniform Evidence Act.

The Executive for 1984-85 was constituted as follows:

Honorary President	Serge Kujawa, Q.C., Saskatchewan
President	Gerard Bertrand, Q.C., Ottawa
First Vice-President	Graham D. Walker, Q.C., Nova Scotia
Second Vice-President	Rémi Bouchard, Quebec
Treasurer	Georgina Jackson, Saskatchewan
Secretary	Gordon F. Gregory, Q.C., New Brunswick

APPENDIX A

(See page 29)

AUDITORS' REPORT

To the Members of the
Uniform Law Conference of Canada:

We have examined the statement of receipts and disbursements and cash position of the Uniform Law Conference of Canada for the year ended July 15, 1984. 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 circumstances.

In our opinion, this statement presents fairly the cash position of the organization as at July 15, 1984 and the cash transactions for the year then ended, in accordance with the accounting principles as described in Note 1 to the statement applied on a basis consistent with that of the preceding year.

Saint John, Canada
August 3, 1984.

Clarkson Gordon
Chartered Accountants

UNIFORM LAW CONFERENCE OF CANADA

Statement of Receipts and Disbursements and Cash Position

Year Ended July 15, 1984

	General Fund	Research Fund	Total 1984	Total 1983
Receipts:				
Annual contributions (note 2)	$50,000		$50,000	$52,599
Government of Canada		$33,139	33,139	
Interest	776	2,787	3,563	1,785
	50,776	35,926	86,702	54,384
Disbursements:				
Printing of 1982 proceedings	42,942		42,942	8,360
Executive secretary honorarium	16,500		16,500	13,583
Secretarial services	2,470		2,470	3,360
National Conference of Commissions on Uniform State Laws	413		413	5,477
Executive travel	1,811		1,811	2,470
Annual meeting	785		785	1,403
Professional fees	984		984	964
Postage	825		825	1,252
Printing and stationery	590		590	659
Miscellaneous	3		3	76
Telephone	452		452	770
Products Liability Project		1,500	1,500	1,338
Evidence task force printing				8,135
Contributory fault and contributions		1,156	1,156	
	67,775	2,656	70,431	47,847
Excess (deficiency) of receipts over disbursements before interfund transfer	(16,999)	33,270	16,271	6,537
Interfund transfer (note 3)	750	(750)		
Balance in bank, beginning of year	33,712	41,861	75,573	69,036
Balance in bank, end of year	$17,463	$74,381	$91,844	$75,573
Balance in bank consists of:				
Term deposits	$27,000	$59,053	$86,053	$70,000
Current account (overdraft)	(9,550)	14,855	5,305	2,173
Savings account	13	473	486	3,400
	$17,463	$74,381	$91,844	$75,573

(See accompanying notes)

UNIFORM LAW CONFERENCE OF CANADA

Notes to the Statement of Receipts and Disbursements and Cash Position July 15, 1984

1. *Accounting policies*

   The accompanying statement of receipts and disbursements and cash position reflects only the cash transactions of the organization during the year.

   This statement is prepared on a fund basis. 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. *Amounts not yet received*

   Alberta's 1984 annual contribution of $4,000 had not been received by fiscal year end.

3. *Interfund transfer*

   Interest revenue received by the Research Fund during the year is transferred to the General Fund in the following year.

4. *Tax status*

   The Conference qualifies as a non-profit organization, as defined in Section 149(1)(1) of the Income Tax Act, and is exempt from income taxes.

5. *Statement presentation*

   A balance sheet and a statement of changes in financial position have not been presented since they would not provide additional useful information over and above that presented in the statement of receipts and disbursements and cash position.

APPENDIX B

(See page 29)

EXECUTIVE DIRECTOR'S REPORT

From time to time, we have received constructive external criticisms; we have not ignored those criticisms. Given the range of problems, there are no easy answers. Neither are there acceptable uniform answers because the viewpoint of one government will differ from that of another.

Several years ago, it was realized that the Canadian Bar Association was not organized in a way that it could prepare proposals in a legislative form that would be attractive to provincial governments. As a consequence, this Conference was organized for the purpose of promoting uniformity of legislation in the provinces.

Bearing in mind our main purpose, we should keep our governments advised of the Uniform Acts adopted at each meeting of the Conference, and furthermore, we should promote the implementation of those Acts with as much uniformity as possible.

M. M. Hoyt
Executive Director

APPENDIX C

(See page 25)

LEGISLATIVE DRAFTING SECTION

Report of the Committee on Purposes and Procedures

At the 1983 meeting of the Section in Québec City, a working paper on Purposes and Procedures was represented and discussed. In the light of the discussion and after further consideration by the Committee, the Committee recommends the adoption by the Section of the following Rules of Procedure.

RULES OF PROCEDURE

1.-(1) The purposes and functions of the Section are:

(a) to serve as a means of contact and interchange among legislative drafters;

(b) to develop uniformity in drafting style and practices;

(c) to draft Uniform Acts for the Conference.

(2) The objective of the Legislative Drafting Section in the preparation of drafts of Uniform Acts in the French language or in the English language is to achieve the greatest acceptability in the jurisdictions that are likely to adopt them.

2. The members of the Legislative Drafting Section must be members of the Uniform Law Conference of Canada.

3. There shall be a Chairman, Vice-Chairman and Secretary of the Legislative Drafting Section, and the offices of Chairman and Vice-Chairman shall not both be held at the same time by persons who are English-language drafters, or by persons who are French-language drafters.

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

(Rules 2 and 4(1) are, at present, in effect by virtue of the resolution constituting the Section - see 1975 Proceedings p.42. Rule 3 is, at present, in effect by resolution of the Section - see 1979 Proceedings p.27).

(2) Committees of the Legislative Drafting Section shall not sit at the same time as the Section is sitting.

5.-(1) The Chairman of the Legislative Drafting Section, in consultation with the Vice-Chairman, may appoint members to drafting committees as the need arises through the year or at meetings of the Uniform Law Section.

(2) When the Chairman of the Legislative Drafting Section appoints a drafting committee for a matter referred to the Section by the Uniform Law Section or a committee of it, the Chairman shall, where possible, arrange for a person who is knowledgeable on the intent of the legislation to be available to the drafting committee for consultation.

(3) Each drafting committee of the Section shall contain both English and French drafting capacity.

FRENCH LANGUAGE DRAFTING CONVENTIONS COMMITTEE

The Committee further recommends that a committee be established to prepare French language drafting conventions.

August 9, 1984

Purposes and Procedures Committee
Arthur N. Stone, Q.C., Chairman
Graham D. Walker, Q.C.
Bruno Lalonde

APPENDIX D

(See page 37)

RULES OF PROCEDURE

(CRIMINAL LAW SECTION)

1. *Delegations*

   1.1 Each province and territory, as well as the federal government, shall designate the number of delegates participating in the conference.

   1.2 Each delegation shall submit a list of its delegates in writing to the secretary on or before August 1, 1984.

   1.3 Each delegation shall be headed by a senior delegate for the purpose of these rules.

   1.4 All senior delegates shall identify themselves to the secretary at the beginning of the conference.

2. *Agenda materials*

   2.1 Each senior delegate sponsoring an agenda item is responsible for preparing the agenda materials.

   2.2 The agenda materials for each agenda item or supplementary agenda item shall consist of:
   a) an agenda item summary page
   b) briefing notes
   c) such supporting materials as the senior delegate sponsoring the agenda item wishes to add.

   2.3 The agenda item summary page provided for in section 2.2(a) shall:
   a) be limited to one (1) legal-sized page.
   b) contain the following headings or comparable substitutes:
   — submitted by
   — brief summary
   — factors for
   — factors against
   — recommendation

   2.4 The briefing notes provided for in section 2.2(b) shall not exceed two (2) legal-sized pages.

3. *Agenda and supplementary agenda*

   3.1 Senior delegates shall present the agenda items sponsored by their delegations during the deliberations of the Criminal Law

Section; a senior delegate moving a resolution shall orally state the resolution or amended resolution before a vote is taken.

3.2 The agenda shall be composed of agenda items submitted with the relevant agenda materials to the secretary on or before June 30.

3.3 Agenda materials shall be sent to the senior delegates by the secretary before August 1.

3.4 The supplementary agenda shall be composed of additional agenda items submitted with the relevant materials to the secretary after June 30 but before August 1.

3.5 The secretary may request any senior delegate who adds an item to the supplementary agenda to be responsible for distributing the relevant agenda materials to the other delegations.

3.6 Supplementary agenda items shall be considered during the deliberations of the Criminal Law Section only if permission is granted by means of a majority vote of the delegates.

3.7 Each senior delegate may, with a majority vote, submit items for addition to the agenda or supplementary agenda.

4. *Resolutions*

4.1 The chairman shall propose the order of the agenda items.

4.2 The order of discussion by delegates shall be at the recognition of the chairman.

4.3 Where the resolution or amended resolution is different from that contained in the agenda materials, the senior delegate shall provide the secretary with a written copy.

5. *Individual voting*

5.1 The resolving of agenda items and supplementary agenda items shall be carried out by means of resolutions put to a vote of the delegates.

5.2 A majority vote shall determine if a resolution is carried or defeated.

5.3 The delegates may, by majority vote, decide that an item is to be carried over for another year or that no action is to be taken in regard to an item.

6. *Delegation vote*

6.1 A delegation vote may be called for any agenda item or supplementary agenda item where:

a) the chairman declares that the item shall be so decided;
b) any senior delegate requests that the item shall be so decided.

6.2 A delegation vote may be requested in accordance with section 6.1 before or after a vote of individual delegates.

6.3 Where a delegation vote is called, each delegation is entitled to cast three votes which may be unanimous or in any of the following combinations:
a) for the resolution;
b) against the resolution; or
c) as an abstention.

6.4 The votes of the delegation shall be cast by a representative selected beforehand by the delegation.

6.5 Votes not cast shall be counted as abstentions.

6.6 The resolution is carried if it receives a majority of votes.

6.7 Where a delegation vote is called, this vote takes precedence over the vote of individual delegates.(1)

7. *Report*

The senior federal delegate shall report to the delegates each year as to the status of the resolutions passed the previous year.

(1) Section 6 is based on section 5 of the Rules of Procedure of the Uniform Law Section printed in 1983 ULC 259, pp 260-261. A few changes applicable to the Criminal Law Section have been made.

APPENDICE D

(Voir page 37)

REGLES DE PRACTIQUE

(SECTION DE DROIT PÉNAL)

1. *Les délégations*

   1.1 Chaque province et territoire désigne le nombre de délégués qui participent à la Conférence; le gouvernement fédéral fait de même.

   1.2 Chaque délégation doit fournir par écrit au secrétaire au plus tard le 1er août, la liste de ses délégués.

   1.3 Pour l'application des présentes règles, chacune des délégations est présidée par un chef de délégation.

   1.4 Chacun des chefs de délégation doit s'identifier auprès du secrétaire au début de la Conférence.

2. *La documentation de soutien*

   2.1 Le chef de la délégation qui soumet un sujet de discussion est responsable de la préparation de la documentation de soutien.

   2.2 Chaque sujet de discussion à l'ordre du jour ou à l'ordre du jour supplémentaire doit être accompagné des documents suivants:
   a) un résumé du sujet de discussion
   b) des notes de discussion
   c) tout autre matériel jugé pertinent par le chef de délégation qui soumet le sujet de discussion.

   2.3 Le résumé du sujet de discussion prévu à l'alinéa 2.2(a) doit:
   a) être consigné sur une (1) seule page de format légal
   b) contenir les rubriques suivantes ou similaires:
   — soumis par
   — résumé
   — éléments pour
   — éléments contre
   — recommandation

   2.4 Les notes de discussion prévues à l'alinéa 2.2(b) ne doivent pas excéder deux (2) pages format légal.

3. *Ordre du jour et ordre du jour supplémentaire*

   3.1 Lors des délibérations de la section de droit pénal, le chef de délégation doit présenter les sujets de discussion soumis par sa

délégation; s'il propose une résolution, il doit, avant le vote, exposer oralement le contenu de sa résolution ou de la résolution amendée.

3.2 L'ordre du jour est constitué des sujets de discussion qui sont transmis au secrétaire avec la documentation de soutien au plus tard le 30 juin.

3.3 Le secrétaire transmet aux différents chefs de délégation la documentation de soutien avant le 1er août.

3.4 L'ordre du jour supplémentaire est constitué des sujets additionnels de discussion qui sont transmis au secrétaire avec la documentation de soutien après le 30 juin mais avant le 1er août.

3.5 Le secrétaire peut requérir que le chef de délégation qui ajoute un sujet de discussion à l'ordre du jour supplémentaire se charge lui-même de distribuer la documentation de soutien aux autres délégations.

3.6 Les sujets à l'ordre du jour supplémentaire sont considérés lors des délibérations de la section de droit pénal uniquement sur permission de la marjorité des votes des délégués.

3.7 Chaque chef de délégation peut, avec la majorité des voix, soumettre des sujets de discussion pour addition à l'ordre du jour ou à l'ordre du jour supplémentaire.

4. *Les résolutions*

4.1 Le président propose l'ordre dans lequel les sujets de discussion contenus à l'ordre du jour sont discutés.

4.2 L'ordre des interventions est celui déterminé par le président.

4.3 Lorsque la résolution ou la résolution amendée est différente de celle qui est contenue dans la documentation de soutien, le chef de délégation doit en transmettre une copie écrite au secrétaire.

5. *Le vote individuel*

5.1 La décision sur les sujets contenus à l'ordre du jour et à l'ordre du jour supplémentaire sera prise par voie de résolution soumise au vote des délégués.

5.2 Le vote majoritaire des délégués décidera de l'adoption ou du rejet d'une résolution.

5.3 Par vote majoritaire, les délégués peuvent aussi décider qu'un sujet sera reporté à une autre année ou qu'aucune action ne sera prise en ce qui a trait à ce sujet.

6. *Le vote par délégation*

6.1 Un vote par délégation peut être convoqué, pour tout sujet à l'ordre du jour ou à l'ordre du jour supplémentaire, dans les cas suivants:
a) lorsque le président en décide ainsi;
b) lorsque le chef d'une délégation l'exige.

6.2 Un vote par délégation peut être demandé conformément au paragraphe 6.1 avant ou après la tenue du vote individuel des délégués.

6.3 Lors d'un vote par délégation, chaque délégation dispose de trois votes qui peuvent être unanimes ou constituer une combinaison des options suivantes:
a) en faveur de la résolution;
b) contre la résolution; ou
c) comme abstention.

6.4 Les votes de la délégation seront donnés par le porte-parole qu'elle aura choisi.

6.5 Les votes qui ne seront pas donnés seront comptés comme abstention.

6.6 Les résolution est adoptée s'il y a majorité des voies.

6.7 Lorsque'un vote par délégation est convoqué, ce vote a priorité sur le vote individuel des délégués.[1]

7. *Compte-rendu*

Le chef de la délégation fédérale doit, à chaque année, informer les délégués du statut des résolutions adoptées l'année précédente.

(1) L'article 6 reprend, avec quelques modifications applicables à la Section de droit pénal, l'article 5 des règles de procédure de la Section de l'Uniformisation du droit reproduit à 1983 U L.C. 259, pp. 260-261.

APPENDIX E

Report on Change of Name Legislation

(See page 31)

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INTRODUCTION

There is not presently a Uniform *Change of Name Act*. Several jurisdictions were of the view following consideration of the report of British Columbia on the Uniform *Vital Statistics Act* at the 1983 meeting of the Uniformity Commissioners, that consideration should be given to enactment of a Uniform *Change of Name Act*. Registrars of Vital Statistics, normally given the responsibility for regulating changes of name, are themselves requesting uniformity across Canada in the area. As a result, Saskatchewan agreed to prepare a report for consideration by the Uniformity Commissioners at their 1984 meeting. By way of a grant administered through Statistics Canada, Mr. Dennis Burrowes, former Director of Vital Statistics for British Columbia, was retained as a consultant for the review. The assistance of Mr. Burrowes and Statistics Canada is gratefully acknowledged. The participation

and input of Val Cloarec, Director of Vital Statistics for Saskatchewan, must also be acknowledged with utmost appreciation.

Historically, the Conference has considered the advisability of enacting a Uniform *Change of Name Act*. The proceedings of the Conference indicate that, from 1960 to 1963, a survey was conducted throughout the jurisdictions to determine whether uniform procedures for name changes were feasible. Diversity of opinion at the time apparently led to the decision that uniformity was not possible and the topic was dropped. Consideration was not given to substantive issues such as the right of a married person to change his or her name. Both changing social expectations and the increased mobility of the Canadian population over the past twenty years now require that these issues be addressed in a uniform Act.

Since no Uniform *Change of Name Act* presently exists, this report relies on existing provincial legislation regarding change of name. Prince Edward Island is excluded from this study because, at the time of the preparation of this report, its *Change of Name Act* consisted of two sections and provided for changes of name by publication of deed poll only. For convenient reference, a table comparing existing provincial legislation is attached as a Schedule.

In all provinces except Ontario and New Brunswick applications for change of name are made to a government official called a Director or Registrar or in Newfoundland and Quebec to the responsible Minister. In Ontario and New Brunswick the applications are made to a judge. It would appear that most change of name decisions are of an administrative nature, and that there is no valid reason why they should be burdening our already overcrowded courts. An appeal to the court from the Registrar's decision is sufficient to protect the public when court intervention is necessary while maintaining the much less expensive system of applying to the Registrar in the normal, straightforward cases. In this report it is assumed that applications are made to the Registrar, unless otherwise indicated.

I. EXCLUSIVITY OF THE *UNIFORM CHANGE OF NAME ACT*

The main issue which must be first determined is whether the Act will invalidate, forbid or allow changes of name made outside the Act. In British Columbia changes outside the Act are forbidden, while in Saskatchewan and Manitoba they are declared to have no effect. Nova Scotia's Act is at the other end of the spectrum and states that it does not affect existing rights to change names.

At common law changes of names were not regulated. Anyone could assume and use any surname as long as its use was not intended to deceive or inflict pecuniary loss. Since, initially, surnames were arbitrarily assumed, they could be changed at pleasure. A surname acquired by use and reputation was a legal name. There was no legal compulsion on a married woman to adopt her husband's surname but, as the common law evolved, it was considered to be her real surname unless she acquired another one by repute. If her marriage was dissolved, she could continue to use her married surname, revert to her birth surname, or assume any other surname she chose. Christian or given names, on the other hand, were considered much more permanent, and could only be changed by statute or at confirmation.[1]

While retaining the common law rights may be an attractive alternative, codifying the law regarding change of name would be much more orderly and less confusing. The basis for this legislation is a desire for a system from which the legal name of an individual can be clearly determined. A mechanism for determining the legal name of a person is of particular importance in our society today due to greater mobility of people and increased incidence of fraud relating to such things as benefit programs and credit cards. If any of the common law rights are considered desirable, they could be included in the Act. Forbidding changes of name outside the Act, however, does not appear realistic, because informal changes continue to occur in British Columbia despite their restrictive provisions, and rarely, if ever is anyone prosecuted for violating the Act by informally changing his name.

If the common law choices of surname are to be retained for married women, section 28 of *The Canadian Charter of Rights and Freedoms* makes it necessary to extend this right to married men. In 1976 the Ontario Law Reform Commission recommended that at marriage both spouses should have a choice of surname: "The surname chosen may be the person's own surname before marriage, or that of the person's spouse alone, or that of the person's spouse placed either before or after the person's own surname, and separated by a hyphen should the couple wish".[2] This extension to men of the right to choose a surname on marriage has already been enacted in the Newfoundland legislation.

RECOMMENDATION

The Act should provide that changes of name shall have no effect unless they are made in accordance with the Act. Exceptions to this rule should be allowed in the following situations:

(a) a change in the surname of a person to that of his spouse or to a

combination of his surname and his spouse's surname at the time of marriage by either party to the marriage;

(b) a change in the surname of a person upon the annulment or dissolution of his marriage to the surname he used prior to the marriage;

(c) a change in name resulting from adoption under the *Adoption Act*;

(d) a change of name appearing on a certificate of naturalization;

(e) a change in the name of a child born out of wedlock whose birth has been legitimized under *The Uniform Legitimacy Act*;

(f) a change authorized under *The Uniform Vital Statistics Act.*

II. MARRIED WOMAN'S NAME

Probably the most contentious and most widely publicized and discussed issue in this area revolves around a married woman's surname. There is no doubt that the simplest and most efficient system would be to have all women retain their birth surnames after marriage, as is the case in Quebec. Although this would be the simplest system, it is not recommended in this report because in our view, the common law jurisdictions would not consider it a reasonable, acceptable alternative.

Most provinces now recognize the common law freedom granted to a woman at her marriage to either retain the surname she was using prior to marriage or assume her husband's surname. If the recommendation set out in Part I is adopted, her common law rights in this regard will be recognized.

A supplementary issue to be studied is what effect such a change will have on vital statistics records regarding the woman. In British Columbia a woman is required to make an election at the time of her marriage of what surname she will use, and a notation of the election is made on her marriage certificate. In Saskatchewan a married woman may elect to use her birth surname, her husband's surname or her legal surname prior to marriage, at the time of her marriage and at any time thereafter. A notice of the election is required to be registered to give her the right to use the chosen surname as her legal surname, unless she elects, at the time of her marriage, to use her husband's surname. Both of these systems have proved to be unsatisfactory. From an administrative point of view, the best system would be to have no notation of records. As long as the Act recognizes a woman's common law rights regarding name changes, proof of surname should be required only in exceptional circumstances. In those few cases (which would likely be the result of confusion arising from too much switching back and forth among different surnames by the woman), it does not appear to be unreasonable to make her follow a prescribed change of name procedure.

A third issue related to changing a married person's name is whether they should be required to file his or her spouses's consent to the change. At common law, when a married woman changed her surname by usage, her husband's consent was not required. In 1975 the British Columbia Royal Commission on Family and Children's Law recommended that as a general rule neither spouse should require the consent of the other to apply for a change of name.[3] Most change of name Acts presently require the consent of the spouse. The public policy reason for this has been to ensure that one spouse is not changing his name for the purpose of trying to evade his spouse. This purpose could be achieved by adopting the Manitoba provision requiring satisfactory evidence that the spouse has been given notice of the application or by a requirement that she prove that she has been living separate and apart from her spouse for a specified period of time. The Manitoba statute goes on to allow the spouse who has received notice to apply to the court for an order directing the Registrar not to allow the change, but this additional provision is not recommended because he should not have the right to prevent the name change.

Some provinces currently have provisions which allow a court, during or subsequent to a divorce proceeding, to make an order changing the wife's surname and, in some provinces, changes can also be made to the wife's given name and to the names of the children of the marriage. The provisions appear to have been originally inserted for the purpose of recognizing a woman's common law right to revert to the surname she used prior to marriage, on the dissolution of her marriage. If this is the reason, there is little justification for expanding the right to allow changes to a woman's given name or to a child's name, and in the provinces where this is being done, it is causing confusion and inequity.

RECOMMENDATION

Notwithstanding anything in the Act, a married woman should be allowed, after marriage, to assume her husband's surname or retain the surname she used prior to the marriage. If the name she is using prior to the marriage is not her birth surname or if she has a surname from another previous marriage which she wishes to use after her marriage, she must assume this other surname before her marriage; otherwise, the woman would be required to apply for a change of name in the regular way.

In exceptional circumstances, when a woman requires documentary proof of her surname, a certificate should be provided to her after she has complied with the prescribed change of name procedure. A notation reflecting her application will not be made on the vital statistics records pertaining to her because she will not, by the application, acquire new rights but merely clarify existing ones. The application should be

refused as unnecessary unless the Registrar is satisfied that the circumstances warrant the clarifying procedure.

A married woman who is formally changing her name must file the consent of her spouse to the change or satisfactory evidence that he has been given notice of the application, unless she satisfies the Registrar that they are living separate and apart, perhaps for a prescribed period of time, not more than one year. The change of name should be made in the prescribed form and filed with the Registrar.

Where a court grants a decree of divorce it may also, upon the application of a spouse, order that his surname be changed from his spouse's surname to the surname he used immediately prior to the marriage. No provision should be included which would allow a court, on such an application, to change given names or the names of the children of the marriage. Neither will a spouse be allowed, on this application, to assume any surname other than the one he was using immediately prior to the marriage which is being dissolved. This order will not, of course, grant a new right, but in the provinces where it is now available many women are taking advantage of this opportunity to have their right to use this surname confirmed in writing.

III. MARRIED MAN'S NAME

As with married women, the question arises here whether a married man needs his wife's consent to change his name. If the recommendation in Part II, which states that a woman does not require her husband's consent to change her name, is accepted, human rights legislation would appear to demand that the same rules apply to husbands. The basis for current change of name legislation, which requires the wife's consent, is the antiquated requirement that when a man changes his surname, his wife's and children's surnames automatically change, too. Such a requirement is no longer reasonable in our society, where husbands, wives and children do not necessarily have or desire the same surname. Ontario change of name legislation has been interpreted to mean that even though a husband applying for a change of his surname must concurrently apply for a change of his wife's surname, the court is not required to change the wife's surname if the court does not consider such a change to be proper.[4] In 1976 the Ontario Law Reform Commission concluded on this issue that:

> "there is a general feeling that family unity, though of crucial importance in our society, should not, as an abstract value, override the wishes of families who wished to depart from past conventions."[5]

RECOMMENDATION

When a married man applies to change his name, he must file the consent of his wife to the change or satisfactory evidence that she has been given notice of the application, unless he satisfies the Registrar

that they are living separate and apart, perhaps for a prescribed period of time, not more than one year.

A change of a married man's surname does not necessarily effect a change in the surname of his wife and children. If his wife consents and all children aged 12 or over consent, his application may include an application to also change their surnames.

IV. CHILDREN'S NAMES

With the increase in the divorce rate, this issue is becoming very contentious. The most controversial question: who must consent to the change of a child's name? Where the parents are married to each other and living together there is general agreement that both parents must consent. Dispensing with consent of a parent is discussed in Part VI. Problems arise when the parents are separated or not married to each other.

In New Brunswick and Alberta the consent of both parents is required whether they are married or divorced, before a child's name can be changed. In Saskatchewan if the parents are divorced, the parent with legal custody of the child can change the child's name without the consent of the other parent. This procedure has been accepted with remarkably little opposition and Saskatchewan's experience ought to be considered carefully by all jurisdictions. Quebec is similar in that it requires the consent of the "spouse" and provides that a child's surname will change when the applicant changes the family name. There are many cases where the location of the non-custodial parent is unknown and requiring his consent imposes an unreasonable barrier. It is true that a court may, on application, dispense with the consent, but this is a costly procedure with no guarantee of success. To provide recourse for a non-custodial parent who feels strongly enough about the issue, provision can be made to allow a term to be included in the decree of divorce requiring his consent to any change in his children's names. It is not recommended that such a term in a separation agreement be binding on the Registrar because this would put the onus on the Registrar to examine unofficial separation agreements to determine in every case whether such a provision exists.

Since a separation does not have the same finality as a divorce and issues such as custody may not be completely settled, the consent of both parents in this situation should similarly be required. However, even though the parents are married to each other, circumstances may exist which make this requirement unreasonable, in which case the Registrar should be empowered to dispense with the consent of the non-custodial parent. Where a non-custodial parent has not contacted the

child for a long period of time, this in itself should be sufficient to prove his lack of interest in the child permitting the Registrar to dispense with his consent. Failure to provide financial assistance for the child may be another factor which may be considered relevant. In determining an issue such as this, we should be careful not to lose sight of the fact that protecting the best interests of the child is more important than protecting the rights of the parents. Some would argue that the decision to dispense with consent of any parent should rest only with a court, but the limited exceptions proposed here will restrict the authority of the Registrar, and an appeal to the court will always be available.

There are circumstances in which it would be desirable to allow a person other than a parent to change a child's name. In Manitoba and Saskatchewan when a child has been made a ward of the province, the Minister may apply to change the child's name. If the recommendations in Part I are accepted, a change of name consequent on adoption will also be allowed.

There are many cases where a child is in the care of a personal guardian other than a government agency. If a child is accepted into another family, but is not adopted, it is often desirable and in the child's best interests to change his surname to coincide with the family's surname. Alberta and Newfoundland provide for this to be done; in Manitoba a guardian may apply if he has the consent of the Director of Child Welfare; in Newfoundland he must have the consent of a judge. Some mechanism ought to be provided, but the onus should probably not be put on the Registrar to override both parents. Therefore, if the child's parents are alive, their consent should normally be required for any such change. Because this may cause problems if the whereabouts of the parents is unknown, in those cases, the guardian should be allowed to apply to a court for an order dispensing with their consent. This may be considered too strict a requirement, in light of the recommendations made elsewhere for changing children's names when their parents are separated or not married, but it will be the widely-held view that non-parents should not have the same privileges as are given to parents. Although this may appear to be contrary to the previous submission that the best interests of the child should be the overriding consideration, it is our view that since no parent has input into the decision, the Registrar should not be placed in a position which would leave him open to challenge by a returning parent.

Most provinces require the consent of a child aged 12 or over to a change of his name. It appears that in the present social context this is the appropriate age at which to draw the line. By this age, a child will

have established a psychological attachment to his name, and his wishes should be considered before it is changed.

The Ontario Law Reform Commission found that there was very strong support for expanding surname options for children. They recommended that parents be granted the option of giving a child his father's surname, his mother's surname, or the surnames of both parents in combination, separated by a hyphen if they wish.[6] The British Columbia Royal Commission recommended that parents be entitled to give a child his father's surname, mother's surname or a new marriage surname to be adopted by the entire family (including a hyphenated surname).[7] Both Commissions recommended that parents be legally bound to give all of their children the same surname. In principle this condition sounds reasonable, but there are valid reasons why, even though governments may wish to encourage it, such a provision should not be included as a requirement in a Uniform Act. Firstly it would be almost impossible, from an administrative point of view, for Registrars to enforce such a condition particularly when the births of several different children of a marriage may take place in many different jurisdictions. Secondly, it would be inconsistent with the recommended approach of the legislation permitting spouses to choose their own surname from a variety of alternatives, to impose such a condition. One of the reasons for expanding surname options for children is to facilitate members of cultural groups, such as Spanish-speaking people, who do not customarily adhere to a patronymical system of assigning surnames. There are also certain cultures, such as the orthodox Sikh, who do not customarily assign the same surname to all of their children. They should also be given the freedom to assign surnames in accordance with their cultural beliefs.

Finally, all provinces except Saskatchewan differentiate between parents who have never been married and those who are no longer married. That approach is not recommended. There is no reason for the principles which apply to divorced parents not to apply with equal force to parents who are not married.

RECOMMENDATIONS

Where the parents of a child are married to each other, both parents should normally consent to a change of the child's name. If the Registrar is satisfied that the parents have not been living together for at least two years and that the non-custodial parent has not contacted the child or contributed to his support for the two years immediately preceding the application, he may dispense with the consent of the non-custodial parent. An appeal will lie to the courts from his refusal to dispense with consent.

A single parent (this would include persons widowed, divorced or never married) may apply to change the name of his unmarried infant chidren of whom he has legal custody without the consent of the other parent. When a court grants a decree of divorce it may, on the application of the non-custodial parent, include a term in the decree of divorce which provides that the custodial parent may not change the names of the children of the marriage without the consent of the non-custodial parent or a further court order.

Where a child has been made a ward of the province, the Minister may apply for a change in the child's name and is not required to obtain the consent of the child's parents to the change.

Where a person other than a parent or the Minister has legal custody of a child, he may apply for a change in the name of the child. If a parent of the child is alive, his consent to the change must be obtained before the change may be effected. The court will be empowered to dispense with consent of the parents where the change of name is in the best interests of the child.

In all circumstances, the consent of a child of the age of 12 years or over is required before a change of his name may be effected.

Parents should be entitled to give their children a surname which is the father's surname, the mother's surname or the surnames of both parents in combination, and children may be given different surnames from their siblings.

V. QUALIFICATIONS FOR CHANGE OF NAME

Age is one requirement which all of the change of name statutes address: applicants must be adults. New Brunswick allows married minors to apply and in Saskatchewan applicants must be "at least 18 years of age, or married, widowed or divorced". The reason for allowing a minor with a marital status other than "never married" to apply for a change of name was to provide a mechanism for changing the names of children of minors. This provision should be enlarged to apply to unmarried minors who are parents.

The requirement that applicants be Canadian citizens was introduced during World War II for security reasons, to prevent infiltration of our society by persons from "unfriendly nations". Most provinces have now removed this requirement and substituted residence or domicile as qualifications. Nova Scotia's provision is similar to the *Divorce Act* (Canada) in its requirement that applicants be ordinarily resident in the province for at least one year and actually resident there for at least ten months of that time. Alberta requires that applicants be "bona fide" residents of Alberta. Newfoundland allows applications by persons who are "ordinarily resident" in the province.

Proof that a person is ordinarily resident in the province of application is desirable to prevent applications by students or visitors. A period

of actual residence would also appear to be reasonable. The provinces which have set a time qualification for residency range from three months (Saskatchewan) to two years (British Columbia). A shorter time will assist immigrants who have inconvenient foreign names. A longer time will discourage applications made for fraudulent purposes. It may be more desirable to control abuses through the procedures of the application (such as advertising and statement of reasons for change of name) than to penalize large numbers of potential bona fide applicants. Care must also be taken to ensure that residency requirements are not so strict that bona fide residents who, for example, spend their winters in warmer climes, are excluded.

The provision in Nova Scotia that a person born in the province may apply there for a change of name no matter where he resides is not recommended. A change of name should be effected and published in the place where the applicant has social and business associations.

Closely tied to the issue of qualifications is the question of what particulars must be filed with an application for a change of name. Most provinces require a statement of all relevant facts, an affidavit of bona fides and the consent of every person whose consent is required under the Act. New Brunswick's Act has an extensive list of required information including particulars regarding any outstanding judgments against the applicant or any criminal offences of which he has been convicted. Those requirements may be acceptable when, as in New Brunswick, the application is made to the court, but when the application is made to a Registrar, such information would appear to be irrelevant and requiring it, an invasion of the applicant's privacy. Publication of the name change should give any individual or corporation with an interest in keeping abreast of name changes for commercial or security reasons, sufficient opportunity to be aware of name changes designed for purposes of evasion.

RECOMMENDATION

An applicant for a change of name must have attained the age of majority, have a marital status other than "never married" or be a parent with legal custody of his child.

The applicant must be ordinariy resident in the province where he makes his application.

Applicants must have been ordinarily and actually resident in the province for three months preceding the date of the application.

An application for change of name should be submitted in the prescribed form and include:

(a) present and proposed names in full and address(es) of residence during the three months preceding the application of all persons whose names are to be changed;
(b) all consents required under the Act or a certified copy of any court order dispensing with the consent;
(c) details of previous changes of name, formal or informal, in Canada or elsewhere, including a statement of where they were obtained;
(d) reason for proposed change of name;
(e) affidavit of qualification and bona fides signed by the applicant;
(f) such further documentary evidence or information as the Registrar may require.

VI. DISPENSING WITH CONSENT

Most provincial Acts include provisions which allow the Registrar or a judge to dispense with any consent required under the Act. These provisions are frequently used and clearly necessary. Registrars generally believe that cost and litigation can be avoided by giving them limited discretion to dispense with consent when the decision could reasonably be made by them. They also believe that contentious and legal decisions should be left to the court.

If the recommendations in this report are accepted it will only be necessary to file consents in the following situations:

(a) consent of parents required to change name of child when parents are married to each other and living together;
(b) consent of parents required to change name of child when parents are separated;
(c) consent of parents required to change name of child in legal custody of another person other than the province;
(d) consent of child aged 12 or over required to change his name.

In all of these cases, the Registrar should be empowered to dispense with the consent of a person who is mentally incompetent.

In situation (a) described above, there may be circumstances where it would be in the best interests of a child to change his name even though one of his parents will not consent. Deciding what is in the best interests of a child would be an onerous duty to impose on a Registrar. A fairer decision would more likely result if both parents are given a chance to present their arguments in open court to a judge. A judge would be in a better position to determine what is in the best interests of a child because of his legal education and because both sides, presumably, will be presented to him. If the decision were to be made by the Registrar it is inevitable that the applicant would have a greater chance than the

opposing parent would have to influence the Registrar. Requiring an application to the court would impress upon the applicant the significance of his action and prevent frivolous applications.

Different considerations may arise in situation (b). As mentioned before, it is recommended that the Registrar be empowered to dispense with the consent of the non-custodial parent if he has not contacted the child or contributed to his support for two years or more. It is submitted that these conditions would show a sufficient lack of interest in the child to justify dispensing with his consent. If these conditions cannot be established, it is submitted that the non-custodial parent's consent be dispensed with only by a court, for the reasons mentioned in the previous paragraph.

Situation (c) gives rise to a difficult dilemma. Non-parents with legal custody of a child stand in a different position in law than do parents, in some circumstances but not in others. What should their rights be with regard to changing a child's name? It is submitted that in general the standard should be that consent of the parents should be required. If, as in situation (b), a parent has not contacted or contributed to the support of the child for two years or more, the Registrar should be empowered to dispense with his consent. It may be advisable to include a provision allowing the Registrar in this situation to dispense with the consent of the father of a child where his identity is unknown. In any other case, the court may dispense with the consent of either or both parents if it is in the best interests of the child to do so.

Situation (d) is another case where consent should not be dispensed with too easily. Psychological damage could be caused to a child by forcing him to give up a name which he wishes to retain or take on a name that he does not want. There may be circumstances in which the change would be in the best interests of the child, though, and it is recommended that the court be empowered to dispense with his consent should such a situation arise.

RECOMMENDATION:

The Registrar should be empowered to dispense with the consent:

(a) of a person who is mentally incompetent;

(b) of a parent who has not contacted or contributed to the support of a child, whose name is to be changed, for two years or more.

A judge may dispense with the consent of a parent or child whose consent is required under the Act if it would be in the best interests of the child to do so.

VII. PUBLICATION

At the present time, British Columbia and Quebec require publication in a local newspaper and the provincial gazette of the application for a change of name as well as publication in the gazette of the completed change of name. Manitoba and Saskatchewan require publication in the gazette of the completed change of name only. Advertising in a newspaper is very expensive and serves no apparent purpose except perhaps providing a source of gossip. When the requirement to advertise in a local newspaper was removed from the Saskatchewan Act in 1976, it was noted in the Legislature that publication had never revealed a fraudulent intent or resulted in objections to the proposed name change being raised by the public, but had proved to be a source of embarrassment for applicants. In 1976, the Ontario Law Reform Commission found that advertising in a newspaper was "an excessive hindrance, whose marginal utility is fare outweighed by the cost".[8] They recommended that there be no general requirement of advertising changes of name. There are some people and agencies with a legitimate interest in name changes, though, and advertising in the gazette should be retained to give them notice.

Requiring publication twice also increases the expense unnecessarily. Since no one is entitled to prevent another person's legitimate change of name, giving notice of the application serves no purpose. This was established in *Re Rezek or Rennie*.[2] Jaroslav Rezek applied to change his family's surname to Rennie. For persons named Rennie filed objections based on what the judge perceived as "resentment to a person of foreign extraction assuming the old Scottish name of Rennie, a family name of good repute". The judge held that the objections were not valid in law, and granted the changes. He relied on the following passage from *Cowley v. Cowley*[10] in arriving at his decision: "Speaking generally, the law of this country allows any person to assume and use any name, provided its use is not calculated to deceive and to inflict pecuniary loss."

Another issue relevant to publication is whether any changes should be exempt from publication. At the present, different provinces exempt from publication changes of given names (Alberta), changing the surname of a minor to the surname of the applicant (British Columbia), changing the surname of a minor to a surname which is a hyphenation of his parents' surnames (Saskatchewan), a change in the name of a child who has been made a ward of the province (Saskatchewan) and a change in the surname of a married woman (Saskatchewan). In addition, most vital statistics statutes provide an informal change of name procedure for changing the given name of a child under 12 years, in

which case no publication is required. With the increased automation in our society it is no longer reasonable to exempt changes in given names. Amost all records are now computerized alphabetically and a search for a name using an incorrect given name will turn up invalid or no information about a person who has changed his given name without notifying the proper authorities. Publication of a change of given name will reduce the opportunity for fraud. If the recommendation in Part II regarding married women's surnames is accepted, there will be no reason to exempt changes of their surnames because, in the exceptional cases where they take advantage of the change of name procedure, their purpose will be to clarify their surnames, and publication will be appropriate. Exempting publication of changes to names of children is not recommended, for the same reasons that exempting changes of given names is no longer appropriate.

Some provinces grant the Registrar discretion to waive the necessity of publication. It is especially important that he has this power in cases where the change of name is being made to allow a person, with police assistance, to establish a new identity.

RECOMMENDATION

The Registrar should cause notice of every change of name made pursuant to this Act to be published in the provincial gazette at the applicant's expense. The Registrar may waive this requirement in exceptional circumstances where publication would cause undue hardship for the individual or be contrary to the public interest. Publication of notice of the application for a change of name should not be required.

VIII. MISCELLANEOUS RECOMMENDATIONS

In addition to the major issues discussed above, there are also some relatively non-contentious housekeeping provisions which are necessary to facilitate administration of the Act.

(a) *Definition of Name*

It is generally agreed that all persons require a given name and a surname, and that initials, phonemes and numerals (or other words which identify successive generations) should not be allowed. Most provinces allow an initial as a second given name but require a full name for the first name. It is important that a definition of name be included in the Act for Registrars to use as a basis for refusing applications which propose phonemes or numbers.

(b) *Registrar's Discretion to Refuse Application*

There are two circumstances in which Registrars refuse applications. The first is when the applicant has not complied with all the

requirements of the Act. These refusals generally lead to reapplication. This right to refuse can be adequately provided for by stating that the Registrar shall, if he is satisfied that the proposed change is authorized by the Act, register the change of name. It should be noted here that in Quebec serious reasons are required before a change will be allowed. This approach is not recommended because, it is suggested, it would be totally unacceptable to residents in other provinces who are accustomed to much greater freedom in choosing names.

It is also necessary to give the Registrar discretion to refuse an application where the proposed name change is undesirable. The British Columbia Act states this provision clearly. It provides that the Registrar shall refuse an application where he is of the opinion that the proposed name "might reasonably cause mistake or confusion or be a cause of embarrassment or confusion to any other person or that the change of name is sought for an improper purpose or is on any other ground objectionable". One reason for refusal which now falls within the general "objectionable" category, but which maybe should be enumerated specifically is where the applicant has made frequent previous changes of name. An appeal should lie from the refusal of the Registrar.

(c) *Issue of Certificate*

Once the Registrar has registered a change of name, a certificate should be issued to the applicant as proof of the change. The issuance of a certificate is the normal conclusion of the name change process and should be covered by the fee charged for the application. The Act should clearly state that the name change is legally effected by the act of registering the change, rather than by the issuance of the certificate. This will make the change valid from the earlier date even if issuance of the certificate is for any reason not immediately issued through delay or inadvertence.

When a change of name is registered, and the person whose name is changed was born or married in the province, the Registrar shall by marginal notation amend the name shown on the original birth or marriage record. Any subsequent birth or marriage certificate issued from that record will use the new name and include no evidence of the former name. This provision will not apply to changes in a married person's surname made on the basis of her common law rights as described in Part I.

When a change of name is effected in a province other than the one in which the applicant's birth or marriage was registered, the Registrar for the province of the applicant's birth or marriage shall,

upon application, register the applicant's new name in the records, upon production of satisfactory proof of the change of name and of the identity of the individual.

A certificate or duplicate certificate issued pursuant to the Act should be prima facie evidence of its contents, without proof of the appointment or signature of the Registrar.

There are circumstances in which persons other than the person with respect to whom a record is maintained may have a legitimate reason for requesting a search of records or a duplicate copy of a certificate. One example would be a person who is exploring his genealogy. Change of name certificates are also requested at times for fraudulent purposes. Therefore it is appropriate to allow a Registrar to issue a certificate to or conduct a search of his records for "any person", but also to give him discretion to refuse such a request if he is not satisfied that it is made for a proper purpose.

(d) *Offences and Penalties*

All provinces except Quebec make it an offence for a person to obtain a change of name under the Act by fraud or misrepresentation. Though prosecutions are very rare, the provisions are believed to have a deterrent effect and should therefore be maintained. All provinces establishing an offence have a maximum fine of $500.00; imprisonment for up to 3 months or 6 months is also provided for by six provinces. The fine level should be considered carefully to ensure it acts as a sufficient deterrent to fraudulent applications.

In Nova Scotia and Saskatchewan, the Registrar may annul a change of name if he is satisfied that it was obtained by fraud or misrepresentation. In British Columbia the Registrar may take such action only after the applicant has been convicted of obtaining the name by fraud or misrepresentation. Since prosecutions are virtually unknown in practice, it is preferable to give the Registrar the power of annulment without a conviction if the provision is to be a meaningful deterrent. The Registrar shall publish notice of the annulment in the gazette, annotate his records accordingly and may order the return of any certificate issued.

(e) *Appeals*

Since a decision made by a Registrar under this Act may have legal implications, it is desirable to provide for an appeal from his decisions to the court. British Columbia and Alberta provide for an appeal to the Minister and, in British Columbia, from him to the Lieutenant Governor in Council and then to the court. A determination of an issue under this Act would appear to be more accurately described as a legal judgment than a political judgment, so an

appeal to a court would seem to be more appropriate. Decisions which applicants may wish to appeal would include:

(a) refusal to register change of name;

(b) refusal to dispense with consent;

(c) decision to dispense with consent;

(d) annulment of a change of name;

(e) refusal to issue a certificate or conduct a search for any person.

(f) *Application by Married Person to Change Birth Surname*

In Alberta a person who is married, widowed or divorced and who has adopted his spouse's surname may apply to change the surname which he had prior to marriage to another surname. In Nova Scotia a married person may apply to change the name on his birth registration to the name he was commonly known by before the marriage. In many circumstances, persons wish to change their registered birth surname even if they are not currently using it. If a specific provision is not included to provide for this situation, the change cannot be made. There does not appear to be any reason why a person should be prevented from making such a change, but since he is really asking that a record be amended it is submitted that the provision would more properly belong in the *Uniform Vital Statistics Act*. It is therefore recommended that the *Uniform Vital Statistics Act* include a provision which would allow a married person who has adopted his spouse's surname to apply to change the surname on his birth registration to the surname by which he was commonly known prior to the marriage. However if he wishes to change the surname on his registration of birth to a totally new surname this would require action under the *Uniform Change of Name Act* and a procedure to allow this would have to be developed.

FOOTNOTES

1. *Power on Divorce and Other Matrimonial Causes* (3rd ed. Christine Davies 1980), Vol. II, 33-36,60-61.
2. *Changes of Name* (Ontario Law Reform Commission 1976) p. 7.
3. *Eleventh Report of the Royal Commission on Family and Children's Law: Change of Name* (British Columbia 1975) p. 6.
4. *Re Czudyjowycz* (1980), 28 O.R. (2d) 222 (Ont. Co. Ct.). The wife had retained her own surname at the time of their marriage and did not wish to adopt her husband's proposed surname.
5. *Changes of Name, supra,* p. 5.
6. *Changes of Name, supra,* p. 10.
7. *Eleventh Report* etc., *supra,* p. 13
8 *Ibid,* p. 15.
9. [1947] O.W.N. 21 (Ont. Co. Ct.)
10. [1901] A.C. 450 (H.L.)

SCHEDULE

EXCLUSIVITY OF ACT

Alberta: —

British Columbia:

s. 2 No person in the Province shall change his name unless authorized by the Act. Changes allowed: woman adopting husband's surname; on adoption; on certificate of naturalization; given name of child under age 12 pursuant to VSA; on legitimization; on dissolution or nullity of marriage, by court.

Manitoba:

s. 11 No change has any effect unless made in accordance with the Act except woman adopting husband's surname or change pursuant to VSA or s. 96(2) of *Child Welfare Act* (adoption).

New Brunswick:

s. 2(1) No person shall change his name except under this Act. Changes allowed: woman adopting husband's surname; woman adopting maiden name at annulment or dissolution of marriage; pursuant to VSA or Part V of *Child and Family Services and Family Relations Act* (adoption).

Newfoundland:

s. 3(1) An individual may change a surname in any manner acceptable to common law.

Nova Scotia:

s. 23 Nothing in the Act affects or shall be deemed to affect any right at law to change a name in any manner except to the extent that such right is affected by this Act.

Ontario:

s. 2(1) A person shall change his name only under this Act. Changes allowed: pursuant to VSA or *Child Welfare Act* s. 78 (adoption); woman adopting husband's surname; woman adopting maiden name at annulment or dissolution of marriage.

Quebec: —

Saskatchewan:

s. 3 No change of name shall have any effect unless made in accordance with the Act. Changes allowed: woman adopting husband's surname; pursuant to VSA or The Family Services Act s. 62 (adoption).

CHOICE OF SURNAME FOR MARRIED WOMEN

Alberta: —

British Columbia:

s. 3(2) She may elect at marriage to retain or revert to maiden surname or retain the surname she used immediately prior to the marriage; notation on marriage certificate.

Manitoba:

s. 2(9.1) Divorced woman who assumed husband's surname may revert to maiden name without application.

New Brunswick: —

Newfoundland:

s. 3(2) A spouse may adopt spouse's surname or combination of spouses' surnames or revert to his own surname or a previously acquired surname.

Nova Scotia: —

Ontario: —

Quebec: —

Saskatchewan:

s. 19 A married woman may elect to use her husband's surname, maiden surname or legal surname immediately prior to marriage. If she elects at marriage not to assume husband's surname or later wants to change her election, she must register the surname with the director to be entitled to use it as her legal surname.

CONSENT OF SPOUSE TO CHANGE OF OWN NAME

Alberta:

s. 5, 9 Need consent of spouse to change surname unless surname is not the same as spouse's or child's.

British Columbia:

s. 3 Consent required.

Manitoba:

s 2, 2.1 Need consent of spouse or evidence that he has notice of application; spouse who receives notice may apply to County Court for order directing director not to register the change.

s. 2(13) Married person living separate and apart from spouse may apply for a change of name.

New Brunswick:

s. 8 Married woman who is deserted may apply for a change of name.

s. 9(1) Judge may proceed without the consent of the other spouse if they have been living apart for 5 years.

Newfoundland:

s. 5, 7 Need consent of spouse to change surname.

Nova Scotia:

s. 4 Consent required.

Ontario:

s. 4, 9 Same as New Brunswick s. 9(1).

Quebec:

s. 6 Consent required save for exceptional reasons deemed sufficient.

Saskatchewan:

s. 5(1), 11(2) Consent required.

APPENDIX E

CHANGE OF NAME ON DIVORCE

Alberta: —

British Columbia:

s. 4 On or after granting a decree judge may change name of wife to the name she desires; may also change children's names with consent of both parents.

Manitoba: —

New Brunswick: —

Newfoundland: —

Nova Scotia:

s. 7 Same as B.C. except available to both spouses.

Ontario: —

Quebec: —

Saskatchewan: —

CONSENT OF PARENTS TO CHANGE OF CHILD'S NAME

Alberta:

s. 5(3), 7 Consent of both parents necessary, except if parents never married.

British Columbia:

s. 3 Same as Alberta.

Manitoba:

s. 2, 2.1 Consent of both parents necessary except if parents are divorced, mother has custody, remarries and wishes to change children's surname to new husband's surname, she need only give notice to previous husband. He may apply to the County Court for an order directing the director not to register the change. Consent of non-custodial parent not required if parents never married.

New Brunswick:

s. 6, 8, 9(1) Consent of both parents necessary except if spouses have been living apart for 5 years, judge may proceed without the consent of the other spouse. Consent of non-custodial parent not required if parents never married.

Newfoundland:

s. 5, 9 Same as Alberta.

Nova Scotia:

s. 5, 6, 8 Consent of both parents necessary. If parents never married, father's consent required if child was registered with his surname.

Ontario:

s. 6 Same as Alberta.

Quebec:

s. 6 Consent of both parents necessary if they are married to each other.

Saskatchewan:

s. 6 Consent of both parents necessary if they are married to each other.

CHANGE OF NAME BY INDIVIDUAL GUARDIAN

Alberta:

s. 12 A guardian may apply to change the child's name. A parent who has been deprived of guardianship is not required to consent to the change.

British Columbia: —

Manitoba:

s. 2(12) May apply to change child's name with the consent of the Director of Child Welfare, if guardian and Director think it would be in the best interest of the child to do so.

New Brunswick: —

Newfoundland:

s. 11 Same as Alberta.

Nova Scotia:

s. 9 Guardian under *Guardianship Act* or *Incompetent Persons Act* may apply to change name of person for whom he acts as guardian, with the consent of a judge.

Ontario: —

Quebec: —

Saskatchewan: —

CHANGE OF NAME OF CHILD COMMITTED TO THE CARE OF THE PROVINCE

Alberta: —

British Columbia: —

Manitoba:

s. 2(12) Director of Child Welfare or society as defined in *The Child Welfare Act* may apply to change the name of a child of which it is guardian, if Director or society thinks it would be in the best interests of the child to do so.

New Brunswick: —

Newfoundland:

s. 11 Guardian (not defined) may apply to change name of child, parent deprived of guardianship is not required to consent.

Nova Scotia:

s. 9 Guardian under *Guardianship Act* or *Incompetent Persons Act* or agency as defined by *Children's Services Act* may apply.

Ontario: —

Quebec: —

Saskatchewan:

s. 7 Director as defined in *The Family Services Act* in the Department of Social Services may apply to change the name of a person committed to the Minister of Social Services under *The Family Services Act*..

CONSENT OF CHILD

Alberta:

s. 4 Given name or surname, 12 years.

British Columbia:

s. 3(9) Name, 12 years.

Manitoba:

s. 2(7) Name, 12 years.

New Brunswick:

s. 9(1) Name, 14 years.

Newfoundland:

s. 6 Name, 12 years.

Nova Scotia: —

Ontario:

s. 9 Name, 14 years.

Quebec:

s. 6 Name, 14 years.

Saskatchewan:

s. 5(2) Given name, 14 years.

s. 6(6) Change surname to that of parent with custody when parents divorced or change surname to hyphenation of parents' surnames, 14 years.

APPENDIX E

QUALIFICATIONS

Alberta:

s. 2 Bona fide resident of Alberta; 18 years of age.

British Columbia:

s. 3(1) Domiciled in province for one year or resided in province for two years; not a minor.

Manitoba:

s. 2(1) Resided in province at least one year; 18 years of age.

New Brunswick:

s. 10 Ordinarily resident in judicial district where application is made for at least one year;

s.3(2) 19 years or over or married.

Newfoundland:

s. 4 Ordinarily resident in province; at least 19 years of age.

Nova Scotia:

s. 3 Ordinarily resident in province for at least one year and actually resided in province at least 10 months of that time or born in province; of the age of majority.

Ontario:

s. 3 Ordinarily resident in province for at least one year; at least 18 years of age;

s. 9 Resided for one year in county or district where application is made.

Quebec:

s. 3 Domiciled in Quebec for one year or more; Canadian citizen of major age.

Saskatchewan:

s. 4 Resident of province for 3 months; Canadian citizen or other British subject; at least 18 years of age or married, widowed or divorced.

DISPENSING WITH REQUIRED CONSENTS

Alberta:

s. 14 Queen's Bench Court – Act requires application to change another person's surname and they will not consent; court may authorize application to proceed with that person's name excluded; if person will not consent to change of child's name, court may dispense with consent, having regard to the best interests of the child.

British Columbia:

s. 3(10) Director – person is dead, mentally disordered or cannot after reasonable, diligent and adequate search be located.

s. 3(11) Supreme Court – if change of name will not unduly prejudice the person whose consent is to be dispensed with.

Manitoba: —

New Brunswick:

s. 9(3) Queen's Bench judge – other parent (divorced) or husband (who deserted wife) does not contribute to the support of applicant or child or cannot be found or is incapable of giving consent or for any other reason is a person whose consent ought to be dispensed with.

Newfoundland:

s. 12(1) Minister – may authorize application to be made with other person's name excluded in which case his consent is not required.

s. 12(3) Family Court or Unified Family Court Judge – re change of child's name, having regard to the best interests of the child.

Nova Scotia:

s. 10 County Court judge – dead; unsound mind; missing or cannot be found; has deserted or neglected to provide proper care and maintenance for spouse or child; has suffered the child to be supported by a child placing agency for more than two years; divorced, does not have custody, not contributing to child's support; living separate and apart from applicant; or is a person whose consent in all the circumstances of the case ought to be dispensed with, if it is in the interest of the person whose name is to be changed to do so. May dispense with consent of parent if child has been known by proposed name for at least 3 years.

Ontario:

s. 9(3) County or District Court judge - divorced parent who does not contribute to support of applicant or children or cannot be found or is incapable of giving consent or for any reason is a person whose consent ought to be dispensed with.

Quebec:

s. 6 For exceptional reasons deemed sufficient (presumably by Minister of Justice who considers application).

Saskatchewan:

s. 6.1 Queen's Bench or Provincial Court judge - may dispense with consent of parent, spouse or child.

PUBLICATION

Alberta:

s. 16 Notice of application for change of *surname* - one issue of gazette. Queen's Bench Court may dispense with publication if applicant would be unduly prejudiced or embarrassed by it, change is minor or applicant has been commonly known under surname applied for.

s. 21 Notice of change in one gazette unless Queen's Bench dispensed with publication of notice of application.

British Columbia:

s. 5 Notice of application in one gazette and one local newspaper except when changing *surname* of minor to surname of applicant.

s. 10 Notice of change in one gazette, same exception.

Manitoba:

s. 4(2) Notice of change in one gazette.

New Brunswick:

s. 13(1) Notice of application in one gazette and once a week for three consecutive weeks in local newspaper.

s. 13(3) Queen's Bench judge may dispense with publication if applicant would be unduly prejudiced or embarrassed by it.

Newfoundland:

s. 14, 19 Same as Alberta except Minister has authority to dispense instead of judge.

Nova Scotia:

s. 11, 16 Same as Newfoundland except Registrar has authority to dispense.

Ontario:

s. 13 Same as New Brunswick except County or District Court judge, can also dispense with publication if change is minor or applicant has been commonly known under the name applied for.

Quebec:

s. 5 Notice of application in one gazette and once a week for two consecutive weeks in a local French and a local English newspaper.

s. 9 Notice of change in one gazette.

Saskatchewan:

s. 14 Notice of change in one gazette except change of given name; change of child's surname to the surname of the applicant or a hyphenation of his parents' surnames; change of child's name applied for by Director under *The Family Services Act*; change of surname by married woman to her husband's surname, her maiden surname or her legal surname immediately prior to marriage.

REFUSAL OF APPLICATION

Alberta:

s. 18 If the proposed name could be used in a manner that could defraud or mislead the public.

British Columbia:

s. 7 The name sought might reasonably cause mistake or confusion or be a cause of embarrassment or confusion to any other person, or the change is sought for an improper purpose or is on any other ground objectionable.

Manitoba: —

New Brunswick:

s. 16(1) Name sought is same as another person's or resembles the name of another person to such an extent that the change might reasonably cause mistake or confusion or be a cause of embarrassment or inconvenience to such person or the change is sought for any improper purpose or is on any other ground objectionable or the application should be refused for any other reason.

Newfoundland:

s. 16(2) Proposed name could be used to defraud or mislead the public.

Nova Scotia: —

Ontario:

s. 16 Same as New Brunswick.

Quebec:

s. 3 Applicant must have "serious reasons for desiring a change of name".

s. 6 Minister of Justice must consider the reasons sufficient and the change expedient.

Saskatchewan: —

UNIFORM CHANGE OF NAME ACT

Summary of Discussions Regarding Proposals for a Uniform Change of Name Act

Meeting of Vital Statistics Council of Canada - July 19, 1984

I. EXCLUSIVITY

1. There was majority agreement that The Change of Name Act should have some degree of exclusivity, with exceptions made for changes of name at the time of adoption or under provisions of a Vital Statistics Act. However, there was considerable discussion and lack of consensus regarding exceptions pertaining to surnames following marriage and divorce (see items II and III).

II and III. MARRIED WOMEN'S/MARRIED MEN'S SURNAMES

1. No consensus was reached on surname options following marriage. There was majority agreement that the most effective way to resolve this issue would be to have married persons retain the birth surname as the legal surname after marriage. This has worked successfully in Quebec where, after a specified date, women have retained the birth surname as the legal surname following marriage. This system would eliminate the question of what surname a person could legally use after marriage or divorce. However, there was the related question of whether it would be acceptable to the public in other provinces.
2. There was majority agreement that a married person applying for a change of name should file the consent of the spouse or, in lieu of this consent, should file satisfactory evidence that the spouse had been given notice of the application for change of name.
3. There was general agreement that a change of surname for a married person should not affect a change of surname for the spouse and the children unless they are named in the application. The consent of the spouse and of any children aged twelve years or over should be required in order for their names to be changed.

IV. CHILDREN'S NAMES

1. There was general agreement that parents should have the option to give their children the surname of the father, the surname of the mother, or a hyphenation of parents' surnames. There was majority agreement that the order of surnames in hyphenation should be optional but that the surname should be limited to two parts where one or both parents have hyphenated surnames.
2. There was general agreement that there should be consistency between The Vital Statistics Act and The Change of Name Act regarding choice of surnames for children.
3. There was general agreement that, while uniformity of surnames within a family is desirable and to be encouraged, there should be no provision that all children in a family must have the same surname since this would be contrary to the accepted practices for some cultural groups and would also be extremely difficult to enforce.
4. There was general agreement that, where parents are married and living together, both parents must consent to change the child's name. In addition, any child aged twelve years or over must consent to a change in his/her name.
5. There was general agreement that a single parent (never married, widowed or divorced) should have the right to apply to change the name of a child where he/she has legal custody of the child. In cases of divorce, this right could be restricted if the divorce decree specifies that the child's name cannot be changed without the consent of both parents. Some members expressed the view that, in cases of divorce, the non-custodial parent should be notified of the intention to change the child's name.
6. There was majority agreement that, where a child is a permanent ward of the province, the appropriate government official should be allowed to apply to change the child's name.
7. There was general agreement that, where a person other than a parent has legal custody of a child, he/she should be allowed to apply for a change of name for the child. However, if a parent of a child is alive, the parental consent should be obtained for the change of name unless such consent is dispensed with by the court.
8. In all circumstances, the consent of a child aged twelve years or over should be required when an application is made to change his/her name.

V. QUALIFICATIONS FOR CHANGE OF NAME

1. There was general agreement that applicants for change of name should:
   (i) have reached the age of majority or be married, widowed or divorced; or
   (ii) be a parent who has legal custody of his/her child.
2. There was majority agreement that an applicant for change of name should be ordinarily resident in the province where the application for change of name is made. However, a minority view was expressed that students or visitors should not be excluded if they meet the time period specified in the definition of residency. Agreement was not reached regarding the time period to be included in the definition of residency – opinions ranged from three months to one year.
3. There was a split decision regarding the information to be included on a change of name application, with approximately 50% in favour of including details of previous changes of name.

VI. DISPENSING WITH CONSENT

1. There was general agreement that a judge of the court should have the power to dispense with any required consents.
2. There was general agreement that the Registrar/Director should be empowered to dispense with consents where:
   (i) there is a court decision that the person whose consent is required is mentally incompetent; or
   (ii) the parent whose consent would normally be required has not contacted or contributed to the support of the child for two years or more.

VII. PUBLICATION

No consensus was reached regarding publication requirements. While there was general agreement that newspaper advertising regarding change of name should be eliminated, approximately 50% of the members believed that there should be publication in the provincial Gazette before the change of name while 50% believed that publication in the Gazette after the change of name would suffice.

VIII. MISCELLANEOUS

1. *Definition of Name*
   There was general agreement with the points made regarding a

definition of name and the importance of having such a definition included in legislation.

2. *Registrar's Discretion to Refuse Applications*
   There was general agreement that the Registrar/Director should be given discretion to refuse "improper" applications.
3. *Offences and Penalties*
   (i) There was general agreement that the Registrar/Director should have the power to annul a change of name if he/she is satisfied that it was obtained by fraud or misrepresentation. Notice of the annulment would be published in the provincial Gazette and records would be notated accordingly.
   (ii) There was general agreement that any fine specified for offences should be sufficient to act as an effective deterrent.
4. *Appeals*
   There was general agreement that there should be provision for appeals to the court in regard to decisions made by the Registrar/Director.
5. *Application by Married Person to Change Birth Surname*
   No consensus was reached on this point. It was noted that it would be effectively resolved if both parties to a marriage retained the birth surname as the legal surname after marriage.

Prepared by
Val Cloarec
Saskatchewan Vital Statistics

July 30, 1984

APPENDIX F

(See page 32)

UNIFORM CONTRIBUTORY FAULT ACT

Interpretation

1. In this Act,

"concurrent wrongdoers" means

(a) two or more persons whose wrongful acts contribute to the same damage suffered by another, and any other person liable for the wrongful act of any of those persons; or

(b) a person whose wrongful act causes damage suffered by another and a person liable for the wrongful act;

"damage" includes economic loss;

"fault" means an act or omission that constitutes

(a) a tort,

(b) a breach of a statutory duty that creates a liability for damages,

(c) a breach of duty of care arising from a contract that creates a liability for damages, or

(d) a failure of a person to take reasonable care of his own person, property or economic interest,

whether or not it is intentional.

"release" includes a settlement or any other agreement limiting the liability of a person for damages, either in whole or in part;

"wrongful act" means an act or omission that constitutes

(a) a tort,

(b) a breach of contract or statutory duty that creates a liability for damages, or

(c) a failure of a person to take reasonable care of his own person, property or economic interest,

whether or not it is intentional;

GENERAL

Act binds Crown

2. Her Majesty is bound by this Act.

Last clear chance

3. This Act applies where damage is caused or contributed to by the act or omission of a person notwithstanding that another person had the opportunity of avoiding the consequences of that act or omission and failed to do so.

Questions of fact

4. In every action,

(a) the fault or the wrongful act, if any;

(b) the degree to which the fault or wrongful act of a person contributed to damage; and

(c) the amount of damages,

are questions for the trier of fact.

CONTRIBUTORY FAULT

Reduction of liability

5. (1) Where the fault of two or more persons contributes to damage suffered by one or more of them, the liability for damages of a person whose fault contributed to the damage is reduced by an amount of the damages proportionate to the degree to which the fault of the person suffering the damage contributed to the damage.

Claim by 3rd person

(2) Where a person, other than a person referred to in subsection (1), makes a claim arising from the damage suffered by a person referred to in subsection (1), the liability for damages of a person whose fault contributed to the damage is reduced by an amount of the damages proportionate to the degree to which the fault of the person who suffered the damage from which the claim arose contributed to the damage.

Equal contribution

(3) If the degrees to which the fault of persons contributed to damage cannot be determined in relation to each other, those persons shall be deemed to have contributed equally in relation to each other.

CONCURRENT WRONGDOERS

Liability joint and several

6. The liability of concurrent wrongdoers for damages is joint and several.

Contribution between concurrent wrongdoers

7. Subject to sections 8 to 14, a concurrent wrongdoer is entitled to contribution from the other concurrent wrongdoers.

Amount

8. (1) The amount of contribution to which a concurrent wrongdoer is entitled from another concurrent wrongdoer is that amount of the total liability for damages of all concurrent wrongdoers that is proportionate to the degree to which the wrongful act of the other concurrent wrongdoer contributed to the damage.

Equal contribution

(2) If the degrees to which the wrongful acts of persons contributed to damage cannot be determined in relation to each other, those persons shall be deemed to have contributed equally in relation to each other.

Apportionment of uncollectible contribution

9. Where the court is satisfied that the contribution of a concurrent wrongdoer cannot be collected, the court may, on or after giving judgment for contribution, make an order that it considers necessary to apportion the contribution that cannot be collected among the other concurrent wrongdoers, proportionate to the degrees to which their wrongful acts contributed to the damage.

Indemnity

10. No person is entitled to contribution under this Act from a person who is entitled to be indemnified by him for the damages for which the contribution is sought.

Reduction of liability when statutory exceptions

11. Where a concurrent wrongdoer is exempt from liability for damages under the *(Workers' Compensation Act)*, the liability for damages of the concurrent wrongdoers who are not exempt is reduced by an amount of the damages proportionate to the degree to which the wrongful acts of the concurrent wrongdoers who are exempt contributed to the damage, and there shall be no contribution between those concurrent wrongdoers who are exempt and those who are not exempt.

(NOTE: Any other statute that exempts a concurrent wrongdoer from liability for damages can also be inserted.)

12. (1) This section applies where a person suffering damage enters into a release with a concurrent wrongdoer, whether before or after the damage is suffered.

Reduction of liability when partial release

(2) Where the person suffering the damage does not release all concurrent wrongdoers, the liability for damages of those concurrent wrongdoers who are not released is reduced by an amount of the damages proportionate to the degree to which the wrongful acts of the concurrent wrongdoers who are released contributed to the damage, and there shall be no contribution between those concurrent wrongdoers who are released and those who are not released.

Contribution when full release

(3) Where all concurrent wrongdoers are released, a person who gives consideration for the release, whether he is a concurrent wrongdoer or not, is entitled to contribution in accordance with this Act from any other concurrent wrongdoer based on the lesser of

(a) the value of the consideration actually given for the release; and

(b) the value of the consideration that in all the circumstances it would have been reasonable to give for the release.

Effect of holding of no liability

13. In proceedings against a person for contribution under this Act, the fact that the person has been held not liable for damages in an action brought by or on behalf of the person who suffered the damage is conclusive proof in favour of the person from whom contribution is sought as to any issue that has been determined on its merit in the action.

Execution between concurrent wrongdoers

14. Unless the person suffering the damage has been fully compensated or the court otherwise orders, a concurrent wrongdoer shall not issue execution on a judgment for contribution from another concurrent wrongdoer until

(a) he satisfies that amount of the total damages that is proportionate to the degree to which his wrongful act contributed to the damage; and

(b) the court makes provision for the payment into court of the proceeds of the execution to the credit of those persons that the court may order.

Releases and judgments

15. An action against one or more concurrent wrongdoers is not barred by

(a) a release of any other concurrent wrongdoer; or

(b) a judgment against any other concurrent wrongdoer,

and may be continued notwithstanding the release or judgment.

Previous judgment binding in second action

16. (1) Where a judgment determines the total liability for damages of concurrent wrongdoers in an action against one or more of them, the person suffering the damage is not entitled to have the total liability determined in a higher amount by a judgment in the same or any other action against any other concurrent wrongdoer.

Costs

(2) Except in an action first taken against a concurrent wrongdoer, the persons suffering damage is not entitled to costs in an action taken against any other concurrent wrongdoer unless the court is of the opinion that there were reasonable grounds for bringing more than one action.

APPENDICE F

(Voir page 32)

LOI UNIFORME SUR LA FAUTE CONTRIBUTIVE

(Contributory negligence)

1. Les définitions qui suivent s'appliquent à la présente loi. *Définitions*

«acte illicite»Acte ou omission, intentionnel ou non, qui constitue, selon le cas, «acte illicite» " "

a) un délit civil;

b) une rupture d'un contrat ou d'une obligation légale créant une responsabilité en dommages-intérêts;

c) une défaut de la part d'une personne de prendre soin d'elle-même, de ses biens ou de ses intérêts économiques.

«auteurs conjoints de délits civils» «auteurs conjoints de délits civils» " "

a) soit plusieurs personnes dont les actes illicites contribuent au même dommage subi par une autre personne, ainsi que toute autre personne responsable des actes illicites d'une de ces personnes;

b) soit la personne dont les actes illicites sont la cause du dommage subi par une autre personne, ainsi que la personne responsable de ces actes illicites.

«dommage» Est assimilée au dommage la perte économique. «dommage» " "

«faute» Acte ou ommission, intentionnel ou non, qui constitue, selon le cas, «faute» " "

a) un délit civil;

b) une rupture d'une obligation légale créant une responsabilité en dommages-intérêts;

c) un manquement à une obligation de prudence résultant d'un contrat qui crée une responsabilité en dommages-intérêts;

d) un défaut de la part d'une personne de prendre soin d'elle-même, de ses biens ou de ses intérêts économiques.

«libération» " "

«libération» Est assimilé à la libération un règlement ou une autre entente limitant en totalité ou en partie la responsabilité en dommages-intérêts d'une personne.

Dispositions Générales

Couronne liée

2. Sa Majesté est liée par la présente loi.

Théorie de l'ultime chance

3. La présente loi s'applique si l'acte ou l'omission d'une personne cause un dommage ou y contribue, même si une autre personne avait l'occasion d'éviter les conséquences de cet acte ou de cette omission et qu'elle ne l'a pas fait.

Questions de fait

4. Dans chaque action, sont des questions laissées au juge des faits:

a) la faute ou l'acte illicite, le cas échéant;
b) la proportion dans laquelle la faute ou l'acte illicite d'une personne a contribué au dommage;
c) le montant des dommages-intérêts.

Faute contributive

Réduction de la responsabilité en dommages-intérêts

5. (1) Si la faute de plusieurs personnes contribue au dommage subi par une ou plusieurs d'entre elles, la responsabilité en dommages-intérêts d'une personne dont la faute a contribué au dommage est réduite d'un montant calculé d'après la proportion dans laquelle la faute de la personne subissant le dommage y contribue.

Réclamation faite par un tiers

(2) Lorsqu'une personne, autre que celles mentionnées au paragraphe (1), fait une réclamation résultant du dommages subi par une des personnes qui y est mentionnée, la responsabilité en dommages-intérêts d'une personne dont la faute a contribué au dommage est réduite d'un montant calculé d'après la proportion dans laquelle a contribué au dommage la faute de cette personne ayant subi le dommage dont résulte la réclamation.

Contributions égales

(3) Si l'on ne peut fixer la proportion dans laquelle la faute des personnes a contribué au dommage, chacune de celles-ci est réputée y avoir contribué également.

Auteurs conjoints de délits civils

Responsabilité solidaire

6. La responsabilité en dommages-intérêts des auteurs conjoints de délits civils est solidaire.

Compensation entre les auteurs conjoints de délits civils

7. Sous réserve des articles 8 à 14, chacun des auteurs conjoints de délits civils a droit de recevoir une compensation des autres.

Montant

8. (1) La compensation qu'un auteur conjoint de délits civils a droit de recevoir d'un autre des auteurs conjoints correspond au montant de la responsabilité totale en dommages-intérêts de ceux-ci, calculé d'après la proportion dans laquelle l'acte illicite de l'autre auteur conjoint a contribué au dommage.

Contributions égales

(2) Si l'on ne peut fixer la proportion dans laquelle les actes illicites des personnes ont contribué au dommage, chacune de ces personnes est réputée y avoir contribué également.

Répartition de la compensation irrécouvrable

9. Si le tribunal est convaincu que la compensation d'un auteur conjoint de délits civils ne peut être recouvrée, il peut, lorsqu'il rend un jugement en compensation ou après qu'un tel jugement a été prononcé, rendre une ordonnance qu'il considère nécessaire à la répartition de la compensation ne pouvant être recouvrée parmi les autres auteurs conjoints, calculée d'après la proportion dans laquelle leurs actes illicites ont contribué au dommage.

Indemnité

10. Nul n'a droit de recevoir, en vertu de la présente loi, une compensation provenant d'une personne qui a droit d'exiger de lui une indemnité relative aux dommages-intérêts pour lesquels la compensation est demandée.

Réduction de la responsabilité en cas d'exceptions légales

11. Lorsqu'un auteur conjoint de délits civils est exempté d'une responsabilité en dommages-intérêts en vertu de la *Loi sur les accidents du travail*, la responsabilité en dommages-intérêts des auteurs conjoints de délits civils qui ne bénéficient pas de l'exemption est réduite d'un montant calculé d'après la proportion dans laquelle ont contribué au dommage les actes illicites des auteurs conjoints bénéficiant de l'exemption. De plus, il ne peut y avoir aucune compensation entre les auteurs conjoints exemptés de la responsabilité et ceux qui ne le sont pas.

(REMARQUE: Toute autre loi qui exempte un auteur conjoint de délits civils d'une responsabilité en dommages-intérêts peut aussi être insérée dans le présent article)

Libérations et compensation

12. (1) Le présent article s'applique si une personne qui a subi un dommage passe un acte de libération avec un auteur conjoint de délits civils, avant ou après qu'elle ait subi le dommage.

Réduction de la responsabilité en cas de libération partielle

(2) Lorsque la personne qui subit le dommage ne libère pas tous les auteurs conjoints de délits civils de leur responsabilité en dommages-intérêts, la responsabilité de ceux qui ne bénéficient pas de la libération est réduite d'un montant calculé d'après la proportion dans laquelle ont contribué au dommage les actes illicites des auteurs conjoints qui ont été libérés. De plus, il ne peut y avoir aucune compensation entre les auteurs conjoints libérés de la responsabilité et ceux qui ne le sont pas.

Compensation en cas de libération totale

(3) Lorsque tous les auteurs conjoints de délits civils sont libérés de leur responsabilité en dommages-intérêts et qu'une personne fournit une contrepartie pour la libération, qu'elle soit ou non un auteur conjoint, elle a droit, en vertu de la présente loi, à une compensation de la part de tout autre auteur conjoint, basée sur la moindre des valeurs suivantes:

a) la contrepartie réellement fournie pour la libération;

b) la contrepartie qu'il aurait été raisonnable de fournir pour la libération, compte tenu des faits.

Effet d'un jugement de non-responsabilité

13. Lors d'une instance en compensation introduite contre une personne en vertu de la présente loi, le fait que celle-ci n'ait pas été tenue responsable à la suite d' une action en dommages-intérêts intentée par la personne qui a subi le dommage ou au nom de celle-ci, constitue une preuve concluante en faveur de la personne à qui une compensation est demandée, relativement á toute question ayant été jugée sur le fond au cours de l'action.

Exécution d'un jugement entre les auteurs conjoints de délits civils

14. Sauf si la personne subissant le dommage a été complètement indemnisée ou si le tribunal ne l'ordonne autrement, un auteur conjoint de délits civils ne peut procéder à une saisie-exécution à la suite d'un jugement en compensation rendu contre un autre auteur conjoint:

a) jusqu'à ce qu'il s'acquitte du montant total des dommages-intérêts calulé d'après la proportion dans laquelle son acte illicite a contribué au dommage;

b) jusqu'à ce que le tribunal prévoit des dispositions pour que soit versé au tribunal le produit de la saisie-exécution, au profit des personnes qu'il peut indiquer.

Libérations et jugements

15. Une action peut être intentée et continuée contre un ou plusieurs auteurs conjoints de délits civils malgré:

a) soit la libération de tout autre auteur conjoint;
b) soit un jugement contre tout autre auteur conjoint.

Action ultérieure liée par le premier jugement

16. (1) Lorsqu'un jugement établit la responsabilité totale en dommages-intérêts d'auteurs conjoints de délits civils dans une action intentée contre l'un ou plusieurs d'entre eux, la personne qui subit le dommage n'a pas droit, au moyen d'un jugement rendu dans la même action ou dans toute autre action contre un autre auteur conjoint, à un montant plus élevé relativement à cette responsabilité.

Frais

(2) Sauf dans le cas de la première action intentée contre un auteur conjoint de délits civils, les personnes qui subissent les dommages n'ont pas droit aux frais dans une action intentée contre toute autre auteur conjoint, à moins que le tribunal soit d'avis qu'il y ait des motifs raisonnables d'intenter plusieurs actions.

APPENDIX G

(See page 33)

UNIFORM FRANCHISES ACT
PART 1
Interpretation and Application

Definitions

1. (1) In this Act,

"area franchise" means the right granted pursuant to a franchise agreement to sell or negotiate the sale of a franchise in the name of or on behalf of the franchisor;

"associate", when used to indicate a relationship with any person, includes

(a) a corporation of which that person beneficially owns, directly or indirectly, equity shares carrying more than ten per cent of the voting rights attached to all equity shares of the corporation for the time being outstanding,

(b) an associated corporation within the meaning of the *Income Tax Act* (Canada),

(c) an affiliated corporation,

(d) a trust or estate in which that person has a beneficial interest or as to which that person serves as trustee or in a similar capacity,

(e) a relative or the spouse of that person or a relative of that spouse who, in any such case, has the same home as that person,

or

(f) a partner, fellow member of a syndicate or joint trustee;

"franchise" means either or both of the following in respect of which a franchise fee is payable:

(a) the right to

(i) engage in a business of offering, selling or distributing goods or services under a marketing plan or system prescribed or controlled by a franchisor, and

(ii) engage in a business that is associated with the franchisor's trademark, service mark, trade name, logotype, advertis-

ing or any business symbol designating the franchisor or its associate, or

(b) the right to sell or negotiate the sale of a franchise described in clause (a) for a stipulated area;

"franchise agreement" means a contract, agreement or arrangement, either expressed or implied, whether oral or written, between two or more persons whereby a person is granted a franchise, but does not include contracts, agreements or arrangements between manufacturers;

"franchisee" means a person to whom a franchise is granted and includes a sub-franchisor;

"franchise fee" means any consideration exchanged or agreed to be exchanged for the granting of a franchise and, without limiting the generality of the foregoing, includes

(a) any fee or charge that a franchisee is required to pay or agrees to pay,

(b) any payment for goods or services.

(c) any service that the franchisee is required to perform or agrees to perform, or

(d) any loan, guarantee or other commercial consideration exigible from the franchisee or at the discretion of the franchisor for the right to engage in business under a franchise agreement,

but does not include

(e) the purchase of or agreement to purchase goods in a reasonable amount at the current wholesale market rate;

(f) the purchase of or the agreement to purchase services in a reasonable amount at the current market rate;

(g) the payment of a reasonable service charge to the issuer of a credit card by an establishment accepting or honouring the credit card, and

(h) the payment, directly or indirectly of a franchise fee which, on an annual basis, does not exceed $1000;

"franchisor" means a person who grants a franchise and includes a sub-franchisor when exercising his rights under an area franchise;

"officer" means the chairman or a vice-chairman of the board of directors, the president, vice-president, secretary, assistant secretary,

treasurer, assistant treasurer or general manager of a corporation, or any other person designated an officer of a corporation by by-law or similar authority;

"sale" includes

(a) an offer for sale or disposition of, or other dealing in, or a solicitation in respect of a franchise for valuable consideration whether the terms of the payment are by instalment or otherwise, or any attempt to do any of the foregoing, or

(b) any act, advertisement, conduct or negotiation, directly or indirectly in furtherance of any of the activities referred to in clause (a);

"sub-franchisor" means a person to whom an area franchise is granted.

(2) A corporation shall be deemed to be an affiliate of another corporation if one of them is the subsidiary of the other or if both are subsidiaries of the same corporation or if each of them is controlled by the same person.

(3) A corporation shall be deemed to be controlled by another person or persons if

(a) equity shares of the corporation carrying more than fifty per cent of the votes for the election of directors are held, otherwise than by way of security only, by or for the benefit of that other person or persons, and

(b) the votes carried by those shares are sufficient, if exercised, to elect a majority of the board of directors of the corporation.

(4) A corporation shall be deemed to be a subsidiary of another corporation if

(a) it is controlled by

(i) that other,

(ii) that other and one or more corporations each of which is controlled by that other, or

(iii) two or more corporations each of which is controlled by that other,

or

(b) it is a subsidiary of a corporation that is that other's subsidiary.

(5) A corporation shall be deemed to be another's holding corporation or parent corporation if that other is its subsidiary.

Waiver

2. The waiver of any provision of this Act is void.

PART II
DISCLOSURE

Application

3. This part applies if

(a) an offer to sell or a sale in a franchise is made in the Province,

(b) an offer to purchase a franchise is accepted in the Province,

(c) the franchisee is domiciled or ordinarily resident in the Province,

(d) the franchise business will be operated in the Province,

(e) an offer to sell the franchise is made from the Province, or

(f) an offer to sell or an offer to purchase the franchise is accepted by communicating the acceptance to a person in the Province either directly or through an agent in the Province.

Statement of material facts

4. (1) A franchisor shall supply each prospective franchisee with a statement of material facts at least ten days, exclusive of Saturdays, Sundays or holidays, before

(a) a franchise agreement is entered into by the prospective franchisee, or

(b) any consideration is received by or on behalf of the franchisor.

(2) A franchisor shall forthwith advise a prospective franchisee of a material adverse change arising before the franchise agreement is entered into that makes contrary or misleading any statement in the statement of material facts provided to the franchisee.

(3) For the purpose of this section, when a statement of material facts is sent by prepaid mail, the statement of material facts shall be deemed to be received in the ordinary course of mail by the person to whom it was addressed.

(4) The receipt of a statement of material facts by a person who is acting as agent of, or who thereafter commences to act as agent of, the

prospective franchisee with respect to the purchase of a franchise referred to in subsection (1) is, for the purpose of this section, receipt by the prospective franchisee as of the date on which the agent received the statement of material facts.

(5) For the purpose of this section, a person shall not be considered to be acting as agent of the franchisee unless the person is acting solely as the agent of the franchisee with respect to the franchise agreement in question and has not received and has no agreement to receive compensation from or on behalf of the franchisor with respect to the franchise agreement.

Contents of Statement of Material Facts

5. (1) The statement of material facts shall contain the following information:

(a) the name of the franchisor, the name under which the franchisor is doing or intends to do business and the name of any associate that will engage in business transactions with the franchisee;

(b) the franchisor's principal business address and the name and address of his agent for service in the Province;

(c) the business form of the franchisor, whether corporate, partnership or otherwise;

(d) a copy of the most recent audited financial statement of the franchisor;

(e) the business experience of the franchisor, including the length of time the franchisor

(i) has conducted a business of the type to be operated by the franchisee,

(ii) has granted franchises for that business, and

(iii) has granted franchises in other lines of business;

(f) a copy of a typical franchise agreement proposed for use or in use in the Province;

(g) a statement of the franchise fee charged, the proposed application of the proceeds of the fee by the franchisor and the formula by which the amount of the fee is determined if the fee is not the same in all cases, together with a notation concerning the existence of any continuing royalties;

(h) a statement describing any payments or fees other than franchise fees that the franchisee is required to pay to the franchisor, including royalties and payments or fees that the franchisor collects in whole or in part on behalf of third parties, and the names of the third parties;

(i) a statement indicating whether the cash investment required for the franchise business covers payment for fixtures and equipment;

(j) a statement of the conditions under which

(i) the franchisee may withdraw from the franchise agreement,

(ii) the franchise agreement may be rescinded,

(iii) the franchise agreement may be terminated,

(iv) the renewal of the franchise agreement may be refused, or

(v) the franchise business may be repurchased at the option of the franchisor;

(k) a statement as to whether the franchisee is able to sell the franchise business and, if so, what conditions, if any, attach to the sale;

(l) a statement as to whether, by the terms of the franchise agreement or by other device or practice, the franchisee is required to purchase from the franchisor or his designate, services, supplies, products, fixtures or other goods relating to the establishment or operation of the franchise business together with a description of them;

(m) a statement as to whether the services, supplies, products, fixtures, or other goods relating to the establishment or operation of the franchise business are available from sources other than the franchisor;

(n) a statement as to whether, by the terms of the franchise agreement or other device or practice, the franchisee is limited in the goods or services that may be offered by him to his customers;

(o) a statement as to whether the franchisor has, by contract, agreement, arrangement or otherwise, agreed with a third party that the products or services of the third party will be made available to the franchisee on a discount or bonus basis;

(p) a statement of the terms and conditions of any financing arrangements that are offered directly or indirectly by the franchisor or his associate;

(q) a statement of any past or present practice of or any intent of the franchisor to sell, assign or discount to a third party any note, contract or other obligation of the franchisee in whole or in part;

(r) if any statement of estimated or projected franchisee earnings is made or is to be made to the franchisee, the data on which it is based;

(s) a statement as to whether franchisees receive any exclusive rights or territory and if so, the extent thereof;

(t) a statement indicating whether the franchisee is required to participate in a promotion or publicity campaign sponsored by the franchisor;

(u) a statement as to whether the benefit of any patent or liability insurance protection of the franchisor is extended to the franchisee;

(v) a statement as to whether any procedure has been adopted by the franchisor for the settlement of disputes between the franchisor and franchisee;

(w) a statement as to whether the franchisor provides continuing assistance in any form to the franchisee and, if so, the nature, extent and cost of the assistance;

(x) a list of other franchisees operating in the Province and if no such franchisees exist, a list of the franchisees operating in the next closest jurisdiction; and

(y) a copy of this Act.

(2) If a solicitor, auditor, accountant, engineer, appraiser or any other person is named as having prepared or certified any part of a statement of material facts, the written consent of that person to the inclusion of any report or valuation shall be included in the statement of material facts.

(3) The consent of an auditor or accountant referred to in subsection (2)

(a) shall refer to the report required to be made by him under the regulations, stating the date of it and the dates of the financial statements on which the reports are made, and

(b) shall contain a statement that he has read the statement of material facts and that the information contained in the state-

ment, which is derived from the financial statements contained in the statement of material facts or that is within his knowledge, is, in his opinion, presented fairly and is not misleading.

(4) If a person referred to in subsection (2)

(a) has, directly or indirectly, received or expects to receive any interest, direct or indirect, in the property of the franchisor or an affiliate, or

(b) beneficially owns, directly or indirectly, any securities of the franchisor or an affiliate,

that interest or ownership shall be disclosed in the statement of material facts.

(5) If a person referred to in subsection (2) is or is expected to be elected, appointed or employed as a director, officer or employee of the franchisor or an affiliate, that fact shall be disclosed in the statement of material facts.

Sub-franchisor

6. (1) A sub-franchisor shall provide to a prospective franchisee a copy of the franchisor's statement of material facts, and the statement binds the sub-franchisor except as it may be varied in writing by the sub-franchisor.

(2) The franchisor shall provide each sub-franchisor with sufficient copies of the statement of material facts to enable him to comply with this section.

Records

7. A franchisor shall at all times keep and maintain a complete set of books, records and accounts of his respective sales in the Province at his principal place of business within the Province shown on the statement of material facts.

Withdrawal from franchise agreement

8. (1) A franchise agreement is not binding on the franchisee if the franchisor receives written or telegraphic notice evidencing the intention of the franchisee not to be bound by the franchise agreement not later than midnight on the tenth day, exclusive of Saturdays, Sundays and holidays, after entering into the franchise agreement.

(2) Subsection (1) does not apply if the franchisee sells or otherwise transfers beneficial ownership of the franchise, otherwise than to secure

indebtedness, before the expiration of the time referred to in subsection (1).

(3) The receipt of the notice referred to in subsection (1) by a person who acted as agent of the franchisor with respect to the sale of a franchise shall, for the purpose of this section, be receipt by the franchisor as of the date on which the agent received the notice.

(4) The onus of proving that the time for giving notice under subsection (1) has expired is on the person from whom the franchisee agreed to purchase the franchise.

Rescission of franchise agreement

9. (1) A franchisee, while he is still the owner of the franchise, may rescind a franchise agreement

(a) if he was not supplied a statement of material facts in accordance with section 5, or

(b) if the statement of material facts received by the franchisee, as of the date of entering into the franchise agreement, contains an untrue statement of a material fact or omits to state a material fact necessary in order to make any statement contained therein not misleading in the light of the circumstances in which it was made.

(2) No action shall be commenced under this section more than two years after

(a) the statement of material facts is received by the franchisee, or

(b) the franchise agreement is entered into,

whichever is the later.

(3) Subsection (1)(b) does not apply to an untrue statement of a material fact or an ommission to state a material fact

(a) if the untruth of the statement or the fact of the omission was unknown to the person whose franchises are being offered by the statement of material facts and, in the exercise of reasonable diligence, could not have been known to that person,

(b) if the statement or omission is disclosed in an amended statement of material facts and the statement was received by the franchisee; or

(c) if the franchisee knew of the untruth of the statement or knew of the omission at the time he purchased the franchise.

(4) The cause of action conferred by this section is in addition to and without derogation from any other right the franchisee may have at law.

PART III
TERMINATION AND RENEWAL

Application

10. This Part applies

(a) if the franchisee is domiciled in this Province or the franchise business is or has been operated in this Province; and

(b) if the franchise agreement entered was into or renewed on or after . . . . . .

"good cause"

11. (1) In this section, "good cause" includes a failure of the franchisee to comply with any requirement of a franchise agreement after being given notice of the failure and a reasonable opportunity to comply.

(2) Subject to this Act, no franchisor may terminate a franchise agreement prior to the expiration of its term, except for good cause.

Termination

12. A franchise agreement may be terminated on immediate notice and without an opportunity to correct if, during the period in which the franchise agreement is in effect, there occurs any of the following events that is relevant to the franchise agreement:

(a) the business to which the franchise relates is declared bankrupt or judicially determined to be insolvent, all or a substantial part of the assets of the business are assigned to or for the benefit of any creditor or the franchisee admits his inability to pay his debts as they come due;

(b) the franchisee abandons the franchise business by failing to operate the business for five consecutive days during which the franchisee is required to operate the business under the franchise agreement, or for any shorter period after which it is not unreasonable under the facts and circumstances for the franchisor to conclude that the franchisee does not intend to continue to operate the franchise business, unless the failure to operate is due to fire, flood, earthquake or other similar causes beyond the franchisee's control;

(c) the franchisor and franchisee agree in writing to terminate the franchise agreement;

(d) the franchisee makes any material misrepresentations relating to the acquisition of the franchise business;

(e) the franchisee fails, for a period of ten days after notification of non-compliance, to comply with any enactment or municipal by-law applicable to the operation of the franchise;

(f) the franchisee, after correcting any failure referred to in clause (e), engages in the same non-compliance whether of not the non-compliance is corrected after notice;

(g) the franchisee repeatedly fails to comply with one or more requirements of the franchise agreement, whether or not corrected after notice;

(h) the franchise business or business premises of the franchisee are seized, taken over or foreclosed by a creditor, lienholder or lessor, if

(i) a final judgment against the franchisee remains unsatisfied for thirty days, or

(ii) execution has been made on the licence granted by the franchise agreement or on any property used in the franchise business, and it is not discharged within five days of the execution;

(i) the franchisee engages in conduct that reflects materially and unfavourably on the operation and reputation of the franchise business or system;

(j) the franchisee fails to pay any franchise fees or other amounts due to the franchisor or its affiliate within fifteen days after receiving written notice that the fees are overdue; or

(k) the franchisor makes a reasonable determination that continued operation of the franchise business by the franchisee will result in an imminent danger to public health or safety.

Non-renewal

13. (1) In addition to providing a franchisee with at least 180 days prior written notice, a franchisor may refuse to renew a franchise agreement under any of the following conditions:

(a) during the one hundred and eighty days immediately prior to the expiration of the franchise agreement the franchisor permits the franchisee to sell his business to a purchaser meeting the franchisor's current requirements for granting new franchises or, if the franchisor is not granting a significant number of new franchises, the current requirements for granting renewal franchises;

(b) the refusal to renew is not for the purpose of converting the franchisee's business premises to operation by employees or agents of the franchisor for the franchisor's own account and, on the expiration of the franchise agreement, the franchisor agrees not to seek to enforce any covenant of the franchisee not to compete with the franchisor or franchisees of the franchisor;

(c) termination is permitted pursuant to section 12 or 13;

(d) the franchisor and the franchisee agree not to renew the franchise agreement;

(e) the franchisor withdraws from distributing its products or services through franchises in the geographic market served by the franchisee, and

(i) on the expiration of the franchise agreement, the franchisor agrees not to enforce any covenant of the franchisee not to compete with the franchisor or franchisees of the franchisor,

(ii) the refusal to renew is not for the purpose of converting the business conducted by the franchisee pursuant to the franchise agreement to operation by employees or agents of the franchisor for the franchisor's own account, and

(iii) where the franchisor determines to sell, transfer or assign its interest in a marketing premises occupied by a franchisee whose franchise agreement is not renewed pursuant to this clause

(A) the franchisor, during the one hundred and eighty day period after giving notice, offers the franchisee a right of first refusal of at least thirty days duration of an offer made in good faith by another to purchase such franchisor's interest in such premises, or

(B) in the case of the sale, transfer or assignment to another person of the franchisor's interest in one or more other controlled marketing premises, the other person

in good faith offers the franchisee a franchise on substantially the same terms and conditions currently being offered by the other person to other franchisees; or

(f) the franchisor and the franchisee fail to agree to changes or additions to the terms and conditions of the franchise agreement, if the changes or additions would result in renewal of the franchise agreement on substantially the same terms and conditions on which the franchisor is then customarily granting renewal franchises or, if the franchisor is not then granting a significant number of renewal franchises, the terms and conditions on which the franchisor is then customarily granting new franchises.

(2) The franchisor may give the franchisee written notice of a date that is at least thirty days after the date of the notice, on or before which a proposed written agreement of the terms and conditions of the renewal franchise shall be accepted in writing by the franchisee.

(3) Notice under subsection (2), when given not less than 180 days before the end of the franchise term, may state that in the event of failure of such acceptance by the franchisee, the notice shall be deemed a notice of intention not to renew at the end of the franchise term.

Exception

14. (1) Nothing in section 13 prohibits a franchisor from offering or agreeing before the expiration of the current franchise term to extend the term of the franchise for a limited period in order to satisfy the time of notice of non-renewal requirement of that section.

(2) Nothing in clause 13(1)(b) prohibits a franchisor from exercising a right of first refusal to purchase the franchisee's business.

Notices

15. All notices of termination or non-renewal required by this Part

(a) shall be in writing,

(b) shall be sent by registered or certified mail, delivered by telegram or personally delivered to the franchisee, and

(c) shall contain a statement of the intent to terminate or not to renew the franchise, as the case may be, and

(i) the reasons for the termination or non-renewal, and

(ii) the effective date of the termination or non-renewal.

Repurchase of inventory

16. (1) Where a franchisor terminates or refuses to renew a franchise agreement otherwise than in accordance with this Part, the franchisor shall offer to repurchase from the franchisee the franchisee's resaleable current inventory that meets the franchisor's present standards, that is required by the franchise agreement or commercial practice and that is held for use or sale in the franchised business at the lesser of

(a) the fair wholesale market value, and

(b) the price paid by the franchisee.

(2) The franchisor shall not be liable for offering to purchase personalized items that have no value to the franchisor in the business in which it grants franchises.

Set-offs

17. The franchisor may offset against any repurchase offer made pursuant to section 17 any sums owed the franchisor or its affiliates by the franchisee pursuant to the franchise agreement or any ancillary agreement.

Application of other laws

18. Except as expressly provided, nothing in sections 16 and 17 abrogates the right of a franchisee to bring an action under any other law.

PART IV
REGULATIONS

Regulations

19. The Lieutenant Governor in Council may make regulations

(a) regulating the purchase and sale of franchises and the keeping of records relating to purchases and sales;

(b) governing the keeping of accounts and records, the preparation and filing of financial statements of franchisors and the audit requirements with respect thereto;

(c) prescribing the documents, reports, statements, agreements and other information that are required to be furnished or delivered under this Act and the regulations and the form, content and other particulars relating to them;

(d) prohibiting or otherwise regulating the distribution of written or printed material by a person in respect of a franchise whether in the course of selling or otherwise; and

(e) exempting, or providing for the exemption of, any person, goods, services or business or any class thereof from the operation of this Act.

PART V
ENFORCEMENT
Offences and Penalties

Offences and penalties

20. (1) A person who

(a) in a statement of material facts makes a statement

(i) that, at the time and in the circumstances under which it is made, is false or misleading with respect to a material fact, or

(ii) that omits to state a material fact, the omission of which makes the statement false or misleading, or

(b) contravenes this Act or the regulations,

is guilty of an offence and liable

(c) to a fine of not more than $2000 or to imprisonment for a term of not more than one year, or to both, or

(d) in the case of a corporation, to a fine of not more than $25 000.

(2) No person is guilty of an offence under clause (1)(a) if he establishes that he did not know that the statement was false or misleading and in the exercise of reasonable diligence could not have known that the statement was false or misleading.

(3) If a corporation is found guilty of an offence under subsection (1) every director or officer of the corporation who authorized, permitted or acquiesced in the offence is also guilty of an offence and is liable to a fine of not more than $2,000 or to imprisonment for a term of not more than one year, or to both.

Limitation period

21. A prosecution under this Act may be commenced within one year after the commission of the alleged offence, but not afterward.

APPENDIX H

(See page 33)

Legislative Drafting Section

UNIFORM LAW CONFERENCE OF CANADA

UNIFORM INTERPRETATION ACT

1. (1) In this Act *Interpretation*

"Act" means an Act of the Legislature; *"Act" «loi»*

"enact" includes issue, make, establish or prescribe; *"enact" «édicter»*

"enactment" means an Act or a regulation or any portion of an Act or regulation; *"enactment" «texte »*

"public officer" includes any person in the public service of the Province who is authorized by or under an enactment to do or enforce the doing of an act or thing or to exercise a power or upon whom a duty is imposed by or under an enactment; *"public officer" «fonctionnaire»*

"regulation" means a regulation, order, rule, form, tariff of costs or fees, proclamation, or by-law enacted in the execution of a power conferred by or under the authority of an Act or enacted by or under the authority of the Lieutenant Governor in Council, but does not include an order of a court made in the course of an action or an order made by a public officer or administrative tribunal in a dispute between two or more persons; *"regulation" «règlement»*

"repeal" includes revoke, cancel or rescind. *"repeal" «abroger»*

(2) For the purpose of this Act, an enactment that has expired or lapsed or otherwise ceased to have effect shall be deemed to have been repealed. *Lapsed enactments*

2. Her Majesty is bound by this Act. *Crown bound*

3. (1) Every provision of this Act extends and applies to every enactment, whether enacted before or after the commencement of this Act, unless a contrary intention appears in this Act or in the enactment. *Application to all enactments*

(2) The provisions of this Act apply to the interpretation of this Act. *Application to this Act*

Other rules of construction

(3) Nothing in this Act excludes the application to an enactment of a rule of construction applicable thereto and not inconsistent with this Act.

COMMENCEMENT AND OPERATION

Date of commencement

4. (1) The date of the commencement of an Act or of any portion thereof for which no other date of commencement is provided in the Act is the date of assent to the Act.

Idem

(2) A provision to bring an Act or any portion of an Act into force on a day later than the date of assent to the Act comes into force on the date of assent to the Act.

"date of assent" of reserved Acts

(3) In this section, "the date of assent" with reference to an Act that has been reserved for the signification of the Governor General's pleasure, means the date of the signification by the Lieutenant Governor that the Governor General in Council assented to the Act.

Regulations

(4) Every regulation of a class that is exempted from the application of the *Regulations Act* or to which that Act does not apply and which is not expressed to come into force on a particular day comes into force the day the regulation is enacted.

Effective time of enactment

5. An enactment takes effect on the first moment of the day on which it comes into force.

Exercise of delegated power before commencement

6. A power in an enactment to make a regulation or to do any other thing may be exercised at any time before the enactment comes into force, but a regulation so made or a thing so done has no effect until the enactment comes into force except in so far as may be necessary to make the enactment effective upon its coming into force.

Proclamations: effective date

7. (1) A proclamation issued on the order of the Lieutenant Governor in Council may purport to have been issued on the date of the order and, if so, takes effect on that date.

Reference to order in council

(2) It is not necessary to refer in a proclamation to the order of the Lieutenant Governor in Council recommending its issue.

Judicial notice of proclamations

(3) Judicial notice shall be taken of any proclamation bringing an Act or any portion of an Act into force without being specially pleaded.

(4) The authority to make a proclamation fixing a day upon which an Act comes into force may be exercised in respect of any provision of the Act, and proclamations may be made at different times as to different provisions. *Proclamation of part of Act*

8. No enactment is binding on Her Majesty or affects Her Majesty or Her Majesty's rights of prerogatives in any manner, except only as therein mentioned or referred to. *Crown not bound except as stated*

CONSTRUCTION

9. (1) Every enactment shall be construed as always speaking. *Enactments always speaking*

(2) A provision in an enactment expressed in the present tense shall be applied to the circumstances as they arise. *Idem*

10. Every enactment shall be construed as being remedial and shall be given such fair, large and liberal construction and interpretation as best ensures the attainment of its objects. *Enactments remedial*

11. The preamble of an enactment shall be construed as part thereof intended to assist in explaining its purport an object. *Preambles part of enactments*

12. In an enactment, marginal notes, headings and references after the end of a section or other division to former enactments form no part of the enactment but shall be construed as being inserted for convenience of reference only. *Reference aids not part of enactments*

13. No provision in a private Act affects the rights of any person, except only as there in mentioned or referred to. *Effect of private Acts*

14. Definitions or interpretation provisions in an enactment apply to the whole enactment including the section containing the definitions or interpretation provision. *Definitions and interpretation provisions*

15. Expressions used in a regulation have the same meaning as in the enactment conferring the power to make the regulation. *Application of expressions in enactments to regulations*

16. Words in an enactment establishing a corporation shall be construed *Corporate rights and powers*

(a) to vest in the corporation the capacity and power

(i) to sue in its corporate name,

(ii) to contract and be contracted with by its corporate name,
(iii) to have a common seal and to alter or change it at pleasure,
(iv) to have perpetual succession,
(v) to acquire and hold personal property or movables for the purposes for which the corporation is established and to alienate the same at pleasure, and
(vi) to regulate its own procedure and business;

(b) to make the corporation liable to be sued in its corporate name;
(c) to vest in a majority of the members of the corporation the power to bind the others by their acts;
(d) to exempt from personal liability for its debts, obligations or acts such individual members of the corporation as do not contravene the provisions of the enactment establishing the corporation;
(e) in the case of a corporation having a name consisting of an English and a French form or a combined English and French form, to vest in the corporation power to use either the English or French form of its name or both forms and to show on its seal both the English and French forms of its name or to have two seals, one showing the English and the other showing the French form of its name.

Majority

17. (1) Where in an enactment an act or thing is required or authorized to be done by more than two persons, a majority of them may do it.

Quorums

(2) Where an enactment establishes a board, commission or body consisting or three or more members (in this section called the "association"),

(a) if the number of members of the association provided for by the enactment is a fixed number, then one-half of that number of members constitutes a quorum at a meeting of the association;
(b) if the number of members of the association provided for by the enactment is not a fixed number, then one-half of the number of members in office constitutes a quorum at a meeting of the association;

(c) an act or thing done by a majority of the members of the association present at a meeting, if the members present constitute a quorum, shall be deemed to have been done by the association; and

(d) a vacancy in the membership of the association does not invalidate the constitution of the association or impair the right of the members in office to act, if the number on members in office is not less than a quorum.

Powers to judges and court officers

18. (1) Where by an enactment judicial or quasi-judicial powers are given to a judge or officer of a court, the judge or officer shall be deemed to exercise those powers in his official capacity and as representing that court, and he may for the purpose of performing the duties imposed upon him by the enactment, subject to the provisions thereof, exercise the powers he possesses as a judge or officer of that court.

Appeals

(2) Without restricting the generality of subsection (1), where under any enactment an appeal is given from any person, board, commission or other body to a court or judge, an appeal lies from the decision of the court or judge as in the case of any other action, matter or proceeding in that court or in the court of which the judge is a member.

Appointments of officers

19. (1) The authority under an enactment to appoint a public officer is authority to appoint during pleasure.

Commencement

(2) The appointment of a person to an office on a specified day takes effect on the commencement of that day.

Termination

(3) The termination of the appointment of a person to an office on a specified day takes effect on the expiration of that day.

Included powers

20. Words in an enactment authorizing the appointment of a public officer include the power of

(a) fixing his term of office;

(b) terminating his appointment or removing or suspending him;

(c) reappointing or reinstating him;

(d) fixing his remuneration and varying or terminating it;

(e) appointing another in his stead or to act in his stead whether or not the office is vacant; and

(f) appointing a person as his deputy.

Power to act for ministers and public officers

21. (1) A power or duty given by an enactment to a Minister of the Crown by his name of office may be exercised or performed by

(a) any member of the Executive Council acting as or for the incumbent of the named office; and

(b) the person holding the office of deputy of the Minister named by office, except in respect of the power to make regulations as defined in the *Regulations Act*.

Idem

(2) Words in an enactment directing or empowering any public officer other than a Minister to do any act or thing, or otherwise applying to him by his name of office, include

(a) the holder of the office of deputy to that public officer; and

(b) a person appointed to act in the stead of the holder of the office, whether or not the office is vacant.

Computation of time

22. (1) Where in an enactment the time limited for the doing of a thing expires or falls upon a holiday, the thing may be done on the day next following that is not a holiday.

Idem

(2) Where in an enactment the time limited for registration or filing of any instrument, or for the doing of any thing, expires or falls on a day on which the office or place in which the instrument or thing is required to be registered, filed or done is not open during its regular hours of business on that day, the instrument or thing may be registered, filed or done on the day next following on which the office or place is open.

Idem

(3) Where an enactment contains a reference to a number of clear days or to "at least" or "not less than" a number of days between two events, in calculating the number of days there shall be excluded the days on which the events happen.

Idem

(4) Where an enactment contains a reference to a number of days, not expressed to be clear days or "at least" or "not less than" a number of days between two events, in calculating the number of days there shall be excluded the day on which the first event happens and there shall be included the day on which the second event happens.

Idem

(5) Where in an enactment a time is expressed to begin or end at, on or with a specified day, or to continue to or until a specified day, the time includes that day.

(6) Where in an enactment a time is expressed to begin after or to be from a specified day, the time does not include that day. *Idem*

(7) Where an enactment provides that any thing is to be done within a time after, from, of or before a specified day, the time does not include that day. *Idem*

(8) Where an enactment contains a reference to a period of time consisting of a number of months after or before a specified day, the number of months shall be counted from, but not so as to include, the month in which the specified day falls, and the period shall be reckoned as being limited by and including *Idem*

(a) the day immediately after or before the specified day, according as the period follows or precedes the specified day; and

(b) the day in the last month so counted having the same calendar number as the specified day, but if such last month has no day with the same calendar number, then the last day of that month.

(9) A person attains an age that is specified in an enactment as a number of years upon the commencement of the day that is the anniversary, of the same number, of the day of his birth. *Idem*

23. (1) Anything required or authorized by an enactment to be done by or before a judge, magistrate, justice of the peace, or public officer shall be done by or before one whose jurisdiction or powers extend to the place where such thing is to be done. *Territorial jurisdiction*

(2) The power given in an enactment to a person to do or enforce the doing of any act or thing, includes such powers as are necessary for the purpose. *Ancillary powers*

(3) A power conferred or a duty imposed by an enactment may be exercised or performed from time to time as occasion requires. *Exercise of power from time to time*

(4) A power conferred by an enactment to make regulations includes the power exercisable in the like manner, and subject to the like consent and conditions, if any, to repeal or amend the regulations and make others. *Amendment and repeal of regulations*

Implied authority

(5) Where in an enactment the doing of an act that is expressly authorized is dependent upon the doing of any other act by the Lieutenant Governor in Council or by a public officer, the Lieutenant Governor in Council or public officer, as the case may be, has the power to do that other act.

Use of forms and words

24. (1) Where a form is prescribed by or under an enactment, deviations therefrom not affecting the substance or calculated to mislead, do not invalidate the form used.

Gender

(2) In an enactment, words importing male persons include female persons and corporations.

Singular and plural

(3) In an enactment, words in the singular include the plural and words in the plural include the singular.

Words defined

(4) In an enactment, the definition of a word or expression applies correspondingly to other parts of speech and grammatical forms of the word or expression.

General definitions

25. In an enactment

"Assembly" «Assemblée»

"Assembly" means the Legislative Assembly of the Province;

"bank" «banque»

"bank" or "chartered bank" means a bank to which the *Bank Act (Canada)* applies;

"commencement" Version anglaise seulement

"commencement" when used with reference to an enactment, means the time at which the enactment comes into force;

"Executive council" «Conseil exécutif»

"Executive Council" means the Executive Council of.....;

"Government" «gouvernement»

"Government" or "Government of ....." means Her Majesty in right of the Province;

"Government of Canada" «gouvernement du Canada»

"Goverment of Canada" means Her Majesty in right of Canada;

"Governor" «gouverneur»

"Governor", "Governor of Canada" or "Governor General" means the Governor General of Canada and includes the Administrator of Canada;

"Governor in Council" or "Governor General in Council" means the Governor General acting by and with the advice of, or by and with the advice and consent of, or in conjunction with, the Queen's Privy Council for Canada; *"Governor in Council" «gouverneur en conseil»*

"Great Seal" means the Great Seal of the Province; *"Great Seal" «grand sceau»*

"hereafter" shall be construed as referring to the time after the commencement of the enactment containing that word; *"hereafter" «désormais»*

"herein" used in a section or part of an enactment shall be construed as referring to the whole enactment and not to that section or part only; *"herein" «les présentes»*

"Her Majesty", "His Majesty", "the Queen", "the King", "the Crown" or "the Sovereign" means the Sovereign of the United Kingdom, Canada and Her other Realms and Territories, Head of the Commonwealth and Defender of the Faith; *"Her Majesty" «Sa Majesté»*

"holiday" includes (NOTE. — *Each jurisdiction should fill in the days appropriate to its own jurisdiction.)* *"holiday" «jour férié»*

"Legislature" means the Lieutenant Governor acting by and with the advice and consent of the Assembly; *"Legislature" «Législature»*

"Lieutenant Governor" means the Lieutenant Governor of the Province and includes the Administrator of the Province; *"Lieutenant Governor" «lieutenant gouverneur»*

"Lieutenant Governor in Council" means the Lieutenant Governor acting by and with the advice of, or by and with the advice and consent of, or in conjunction with, the Executive Council; *"Lieutenant Governor in Council" «lieutenant-gouverneur en conseil»*

"may" is to be construed as permissive and empowering; *"may" Version anglaise seulement*

"month" means a calendar month; *"month" «mois»*

"now" and "next" shall be construed as referring to the time of commencement of the enactment containing the word; *"now", "next" «maintenant® «prochain»*

"oath" includes a solemn affirmation or declaration, whenever the context applies to any person by whom and in which case a solemn affirmation or declaration may be made instead of an oath; and in like cases the expression "sworn" includes the expression "affirmed" or "declared"; *"oath" "sworn" «serment»*

"person" «personne»

"person" includes a corporation;

"prescribed" «prescrit»

"prescribed" means prescribed by or under the enactment in which the word occurs;

"proclamation" «proclamation»

"proclamation" means a proclamation of the Lieutenant Governor under the Great Seal issued pursuant to an order of the Lieutenant Governor in Council;

"Province" «Province»

"Province," means the Province of .....;

"province" «province»

"province" when used as meaning a part of Canada other than ....., includes the Northwest Territories and the Yukon Territory;

"shall" Version anglaise seulement

"shall" is to be construed as imperative;

"statutory declaration" «déclaration solennelle»

"statutory declaration" or "solemn affirmation" means a declaration or affirmation authorized by law to be made in lieu of an oath being taken.

"will" «testament»

"will" includes codicil;

"writing" «écrit»

"writing", "written" or any term of like import includes words printed, typewritten, painted, engraved, lithographed, photographed or represented or reproduced by any mode of representing or reproducing words in visible form;

"year" «année»

"year" means any period of twelve consecutive months.

Common names

26. In an enactment, the name commonly applied to any country, place, body, corporation, society, officer, functionary, person, party or thing, means the country, place, body, corporation, society, officer, functionary, person, party or thing to which the name is commonly applied, although the name is not the formal or extended designation thereof.

Citation includes amendments

27. In an enactment, a citation of or reference to another enactment is a citation of or reference to the other enactment as amended from time to time whether before or after the commencement of the enactment in which the citation or reference occurs.

References in enactments

28. (1) A reference in an enactment to a series of numbers or letters by the first and last numbers or letters of the series includes the number or letter first mentioned and the number or letter last mentioned.

Idem

(2) A reference in an enactment to a part, division, section, schedule, appendix or form is a reference to a part,

division, section, schedule, appendix or form of the enactment in which the reference occurs.

Idem

(3) A reference in an enactment to a subsection, clause, subclause, paragraph or subparagraph is a reference to a subsection, clause, subclause, paragraph or subparagraph of the section, subsection, clause, subclause or paragraph, as the case may be, in which the reference occurs.

Idem

(4) A reference in an enactment to regulations is a reference to regulations made under the enactment in which the reference occurs.

Idem

(5) A reference in an enactment to another enactment identified by number, letter or line is a reference to the number, letter or line as it appears in the other enactment as printed by authority of the .....*Act*.

Amending enactments part of enactment amended

29. An amending enactment shall be construed as part of the enactment that it amends.

Repeal

30. The repeal in whole or in part of an enactment does not

(a) revive an enactment or thing not in force or existing immediately before the time when the repeal takes effect;

(b) affect the previous operation of the enactment so repealed or anything done or suffered thereunder;

(c) affect any right, privilege, obligation or liability acquired, accrued, accruing or incurred under the enactment so repealed;

(d) affect any offence committed aganst or a contravention of the provisions of the enactment so repealed, or any penalty, forfeiture or punishment incurred in respect of or under the enactment so repealed; or

(e) affect any investigation, proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment, and the repealed enactment continues to apply for the purposes of such investigation, proceeding or remedy as if it had not been repealed.

Repeal and replacement

31. (1) Where an enactment (in this section called the "former enactment") is repealed and another enactment (in this section called the "new enactment") is substituted therefor,

(a) every person acting under the former enactment shall continue to act as if appointed or elected under the new enactment until another is appointed or elected in his stead;

(b) every proceeding commenced under the former enactment shall be continued under and in conformity with the new enactment so far as it may be done consistently with the new enactment;

(c) the procedure established by the new enactment shall be followed as far as it can be adapted thereto

(i) in the recovery or enforcement of penalties and forfeitures incurred under the former enactment,

(ii) in the enforcement of rights existing or accruing under the former enactment, and

(iii) in a proceeding in relation to matters that have happened before the repeal;

(d) when any penalty, forfeiture or punishment is reduced or mitigated by the new enactment, the penalty, forfeiture or punishment if imposed or adjudged after the repeal shall be reduced or mitigated accordingly;

(e) all regulations made under the former enactment remain in force and shall be deemed to have been made under the new enactment in so far as they are not inconsistent with the new enactment, until they are repealed or others made in their stead; and

(f) any reference in an unrepealed enactment to the former enactment shall, as regards a subsequent transaction, matter or thing, be construed as a reference to the provisions of the new enactment relating to the same subject matter as the former enactment, but where there are no provisions in the new enactment relating to the same subject matter, the former enactment shall be construed as being unrepealed in so far as is necessary to maintain or give effect to the unrepealed enactment.

Idem

(2) Where an enactment of any other province of Canada or of Canada is repealed in whole or in part and other provisions are substituted by way of amendment, revision or consolidation, a reference in an enactment of (*Province*) to the repealed enactment shall, as regards a subsequent trans-

action, matter or thing be construed to be a reference to the provisions of the substituted enactment relating to the same subject-matter as the repealed enactment.

No implications from repeal, amendment, etc

32. (1) The repeal of an enactment in whole or in part, the substitution therefor of another enactment or the amendment of an enactment does not imply a declaration as to the previous state of the law or that the enactment was in force.

Amendment not a declaration of an intention to change the law

(2) The amendment of an enactment does not imply a declaration that the prior law was different.

Re-enactment not an adoption of judicial construction

(3) The re-enactment, revision, consolidation or amendment of an enactment does not imply that the construction that has, by judicial decision or otherwise, been placed upon the language used in the enactment or upon similar language is adopted.

APPENDICE H

(Voir page 33)

Section de rédaction des lois

CONFÉRENCE SUR L'UNIFORMISATION DES LOIS AU CANADA

LOI UNIFORME D'INTERPRÉTATION

Définitions

1. (1) Les définitions qui suivent s'appliquent à la présente loi.

«abroger» *"repeal"*

«abroger» S'entend également de révoquer, annuler, rescinder.

«édicter» *"enact"*

«édicter» S'entend également d'établir, faire, prendre, prescrire.

«fonctionnaire» *"public officer"*

«fonctionnaire» S'éntend à tout membre de la fonction publique de (*la Province*) auquel, par un texte ou sous son régime, l'autorisation d'accomplir ou d'ordonner un acte est accordée, un pouvoir est attribué ou un devoir est imposé.

«loi» *"Act"*

«loi» Loi de la Législature.

«règlement» *"regulation"*

«réglement» Formulaire, ordonnance, proclamation, régle, réglement ou tarif édictés soit en vertu d'un pouvoir conféré par une loi ou sous son régime, soit par le lieutenant-gouverneur en conseil ou sous son autorité, sauf une ordonnance rendue par un tribunal ou un fonctionnaire au sujet d'un litige.

«texte» *"enactment"*

«texte» Tout ou partie d'une loi ou d'un règlement.

Textes périmés

(2) Aux fins de la présente loi, tout texte qui a cessé d'avoir effet est tenu pour abrogé.

Sa Majesté est liée

2. La présente loi lie Sa Majesté.

Textes actuels et futurs

3. (1) La présente loi s'applique à tout texte actuel ou futur, sauf indication contraire dans le texte ou dans la présente loi.

La présente loi

(2) Les dispositions de la présente loi s'applique à sa propre interprétation.

(3) La présente loi n'exclut l'application à aucun texte d'une règle d'interprétation pertinente qui n'est pas incompatible avec la présente loi. *Autres règles d'interprétation*

ENTRÉE EN VIGUEUR ET EFFET DES TEXTES

4. (1) Sauf disposition contraire, toute loi ou partie de loi entre en vigueur le jour de sa sanction. *Date de l'entrée en vigueur*

(2) Une disposition portant que la loi ou une partie entrera en vigueur un jour postérieur à celui de sa sanction entre en vigueur dés ce jour-là. *Idem*

(3) A l'égard d'une loi réservée, le «jour de ca sanction» désigne, dans le présent article, le jour où le lieutenant-governeur fait connaître qu'elle a reçu la sanction du gouverneur général en conseil. *«Jour de la sanction» des lois réservées*

(4) Sauf disposition contraire, tout règlement auquel la *(Loi sur les règlements)* ne s'applique pas entre en vigueur le jour où il est édicté. *Réglements*

5. Un texte est en vigueur dès le début du jour où il entre en vigueur. *Entrée en vigueur*

6. Le pouvoir d'édicter un réglement ou de faire un autre acte peut être exercé avant l'entrée en vigueur du texte qui le confère, mais, jusque-la, le règlement ou l'acte n'a d'effet que dans la mesure nécessaire pour que le texte ait effet dès ce jour-là. *Exercise du pouvoir délégué avant l'entrée en vigueur*

7. (1) Une proclamation prise en conséquence d'un décret du lieutenant-gouverneur en conseil peut porter la date de ce décret, ce qui lui fait prendre effet de ce jour-là. *Proclamations: date*

(2) Il n'est pas nécessaire de mentionner dans une proclamation le décret du lieutenant-gouverneur en conseil qui l'autorise. *Décret*

(3) Il est pris connaissance d'office, sans allégation spéciale, de toute proclamation prise pour fixer le jour de l'entrée en vigueur d'une loi ou d'une de ses dispositions. *Connaissance d'office des proclamations*

(4) Le pouvoir de prendre une proclamation fixant le jour de la mise en vigueur d'une loi peut être exercé en visant toute disposition de la loi; diverses proclamations peuvent être prises à l'occasion au sujet de diverses dispositions. *Proclamations d'une partie d'une loi*

8. Aucun texte ne lie Sa Majesté ni n'a d'effet sur ses droits et prérogatives, sauf dans la mesure qui y est prévue. *Sauvegarde des prérogatives*

INTERPRÉTATION

Les textes ont valeur permanente

9. (1) Le texte a valeur permanente.

Idem

(2) Le texte rédigé au présent s'applique en toute circonstance.

Les textes sont réparateurs

10. Chaque texte est censé réparateur et s'interprète de la façon juste, large et libérale la plus propre à assurer la réalisation de son objet.

Le préambule fait partie du texte

11. Le préambule fait partie du texte et sert à en expliquer la portée et l'objet.

Les renvois ne font pas partie du texte

12. Les notes marginales, les intertitres et les renvois à un texte antérieur insérés à la suite des articles paragraphes ou autres subdivisions d'un texte ne font pas partie du texte et n'y sont ajoutés que pour en faciliter la consultation.

Droits des tiers

13. Une loi d'intérêt privé n'influe sur les droits des tiers que s'ils y sont mentionnés ou visés.

Application au texte entier

14. Les définitions et autres dispositions interprétatives d'un texte s'appliquent à son ensemble, y compris l'article qui les renferme.

Application aux règlements

15. Les expressions employées dans un règlement ont le même sens que dans le texte qui donne le pouvoir de l'edicter.

Attributs des personnes morales

16. Le texte qui constitue une personne morale a pour effet:

a) de lui attribuer la capacité ou les pouvoirs suivants:
   (i) ester en justice sous son nom propre,
   (ii) s'obliger et obliger les autres envers elle par contrat en son nom propre,
   (iii) avoir un sceau et le changer à volonté,
   (iv) se perpétuer indéfiniment,
   (v) acquérir et posséder des biens mobiliers aux fins pour lesquelles elle est constituée et les aliéner à volonté;
   (vi) établir son règlement intérieur;

b) de la rendre passible de poursuites sous son nom propre;

c) de conférer à une majorité de ses membres la faculté de lier les autres membres par leurs actes;

d) d'exempter de toute responsabilité personnelle pour les actes ou obligations de la personne morale les membres qui n'enfreignent pas les dispositions de son texte constitutif;

e) de l'autoriser, si son nom comprend une appellation française et une appellation anglaise ou une appellation mixte française et anglaise, à utiliser soit la française ou l'anglaise, soit les deux et à inscrire les deux sur son sceau ou à en avoir un avec chacune.

Majorité

17. (1) Lorsqu'un texte permet ou exige qu'un acte soit accompli par plus de deux personnes, il peut l'être par la majorité de ces personnes.

Quorum

(2) Lorsqu'un texte établit un conseil, un office, une commission ou un autre organisme de trois membres ou plus:

a) si le nombre en est fixe, la moitié des membres constitue le quorum à une réunion de l'organisme;

b) si le nombre n'en est pas fixe, la moitié des membres en fonction constitue le quorum à une réunion de l'organisme;

c) un acte accompli par la majorité des membres présents à une réunion où ils constituent le quorum est l'acte de l'organisme;

d) une vacance dans l'organisme n'invalide pas sa constitution et, si les membres en fonction constituent le quorum, elle ne les empêche pas d'agir.

Pouvoirs

18. (1) Le juge ou fonctionnaire d'une cour auquel un texte confère une compétence de nature judiciaire ou quasi-judiciaire exerce cette compétence comme tel au nom de la cour et, à cette fin, sauf disposition contraire, il jouit de tous les pouvoirs dont il est investi à titre de juge ou fonctionnaire de cette cour.

Appels

(2) En particulier, quand un texte donne un droit d'appel d'une décision d'une personne, d'un conseil, d'un office, d'une commission ou d'un autre organisme à une cour ou à un juge, il y a droit d'appel de la décision de cette cour ou de

ce juge comme dans toute autre instance devant elle ou devant la cour dont il est membre.

Nominations

19. (1) Le pouvoir de nommer un fonctionnaire ne vise que la nomination à titre amovible.

Entrée en fonctions

(2) La personne nommée à une charge publique à compter d'un jour indiqué entre en fonctions au début de ce jour-là.

Cessation des fonctions

(3) Les fonctions d'une personne nommée à une charge publique se terminent à la fin du jour fixé pour leur expiration.

Pouvoirs implicites

20. Le droit de nomination à une charge publique comporte le pouvoir:

a) de fixer la durée des fonctions de la personne nommée;
b) d'y mettre fin, de l'en suspendre ou destituer;
c) de l'y réinstaller ou réintégrer;
d) de fixer sa rémunération, de la modfier ou supprimer;
e) d'en nommer une autre pour la remplacer ou agir à sa place, même si la charge n'est pas vacante;
f) de lui nommer un adjoint.

Pouvoirs d'un ministre

21. (1) L'ordre ou l'autorisation d'accomplir un acte donnés par un texte à un ministre du gouvernement en le visant à ce titre, s'appliquent:

a) à tout membre du Conseil exécutif agissant pour lui;
b) à la personne qui occupe la charge de sous-chef ou sous-ministre, sauf quant au pouvoir d'édicter un règlement au sens de la *Loi sur les règlements.*

Pouvoirs d'un autre fonctionnaire

(2) L'ordre ou l'autorisation d'accomplir un acte donnés à un fonctionnaire, de même que toute autre disposition le visant à ce titre, s'appliquent:

a) à la personne qui occupe la charge d'adjoint;
b) à la personne nommée pour agir à sa place, même si sa charge n'est pas vacante.

Jour férié

22. (1) Si le jour ou le délai fixé par un texte pour accomplir un acte tombe ou expire un jour férié, l'acte peut être accompli le jour ouvrable suivant.

Idem

(2) Si le jour ou le délai fixé par un texte pour y enregistrer ou produire un document, ou pour y accomplir un acte,

tombe ou expire un jour où le bureau ou greffe visé n'est pas ouvert pendant les heures normales de travail, le document peut être enregistré ou produit, ou l'acte accompli, le jour suivant où le bureau ou greffe visé est ouvert.

Jours francs

(3) Si le texte prévoit un certain nombre de jours francs ou un nombre minimum de jours entre deux événements, chacun des jours où ils ont lieu est exclu du calcul.

Jours non francs

(4) Si le texte prévoit un certain nombre de jours entre deux événements sans spécifier des jours francs ni un nombre minimum, seul le jour du premier événement est exclu du calcul.

Point de départ et échéance

(5) Le jour auquel le texte énonce qu'un délai commence, se termine ou se poursuit y est compté.

Idem

(6) Le jour après lequel ou à partir duquel le texte énonce qu'un délai commence n'y est pas compté.

Idem

(7) Si le texte dispose qu'un acte doit être accompli dans un certain délai avant, après ou à partir d'un jour déterminé, ce jour n'y est pas compté.

Mois

(8) Si, dans un texte, il est fait mention d'un certain nombre de mois qui suivent ou précèdent un jour déterminé, la période visée se calcule à partir du mois où tombe ce jour et sans y compter ce mois, mais de façon qu'elle comprenne sans plus:

a) le jour qui précède ou qui suit le jour déterminé, selon que la période le précède ou le suit;

b) le jour du dernier mois ainsi compté qui a le même quantième que le jour déterminé ou, à défaut, le dernier jour du mois.

Âge

(9) Une personne atteint un âge déterminé au début du jour anniversaire de sa naissance qui correspond au nombre d'années spécifié dans le texte.

Compétence territoriale

23. (1) L'acte qui, d'après un texte, peut ou doit être fait par ou devant un juge, magistrat ou fonctionnaire, doit être fait par ou devant celui dont la compétence s'étend au lieu où l'acte est fait.

Pouvoirs accessoires

(2) L'autorisation par un texte de faire ou de faire faire un acte comporte tous les pouvoirs nécessaires à cette fin.

Exercice répété

(3) Tout pouvoir conféré ou devoir imposé par un texte s'exerce ou s'accomplit chaque fois qu'il y a lieu.

Modification et abrogation des règlements

(4) Le pouvoir accordé par un texte d'établir un règlement comprend celui de l'abroger, modifier ou remplacer de la même maniére et aux mêmes conditions.

Conséquence d'une condition expresse

(5) Le lieutenant-gouverneur en conseil ou le fonctionnaire visé est implicitement autorisé à accomplir tout acte dont l'accomplissement est la condition de l'autorisation expresse, prévue par un texte, d'accomplir un autre acte.

Formules

24. (1) Lorsqu'une formule est prescrite, des variantes qui n'en modifient pas la substance et ne sont pas de nature à induire en erreur ne sont pas cause de nullité.

Genre

(2) Dans un texte visant des personnes, chaque genre comprend les deux sexes.

Singulier et pluriel

(3) Dans un texte, le singulier s'étend au pluriel et réciproquement.

Adjectifs et verbes

(4) Dans un texte, la définition d'un substantif s'applique normalement à l'adjectif, au verbe et à l'adverbe correspondants et réciproquement.

Définitions

25. Les définitions qui suivent s'appliquent à toute texte.

«année» *"year"*

«année» Une période quelconque de douze mois consécutifs.

«Assemblée» *"Assembly"*

«Assemblée» L'Assemblée législative de la Province.

«banque» *"bank"*

«banque» ou «banque à charte» Une banque au sens de la *Loi sur les banques.*

«Conseil exécutif» *"Executive Council"*

«Conseil exécutif» Le Conseil exécutif de la Province.

«déclaration solennelle» *"statutory declaration"*

«déclaration solennelle» ou «affirmation solennelle» Une déclaration ou une affirmation permises par la loi au lieu du serment.

«désormais» *"hereafter"*

«désormais» A partir de l'entrée en vigueur du texte.

«écrit» *"writing"*

«écrit» Représentation de la parole par des signes visibles produits ou reproduits par un procédé quelconque.

«gouvernement» *"Government"*

«gouvernement» Sa Majesté du chef de la Province.

«gouvernement du Canada» Sa Majesté du chef du Canada. «gouvernement du Canada» *"Government of Canada"*

«gouverneur», «gouveneur du Canada» ou «gouverneur général» Le gouverneur général ou l'administrateur du Canada. «gouverneur» *"Governor"*

«gouverneur en conseil» ou «gouverneur général en couseil» Le gouverneur général agissant sur l'avis du Conseil privé de la Reine pour le Canada. «gouverneur du conseil» *"Governor in Council"*

«grand sceau» Le grand sceau de la Province. «grand sceau» *"Great Seal"*

«jour férié» (NOTE: *Chaque province rédige sa propre liste.)* «jour férié» *"Holiday"*

«Législature» Le lieutenant-gouverneur agisant sur l'avis et avec le consentement de l'Assemblée. «Législature» *"Legislature"*

«les présentes» L'ensemble du texte et non pas seulement l'article ou la disposition dans laquelle se trouve l'expression. «les présentes» *"herein"*

«lieutenant-gouverneur» Le lieutenant-gouverneur ou l'administrateur de la Province. «lieutenant-gouverneur» *"Lieutenant Governor"*

«lieutenant-gouverneur en conseil» Le lieutenant-gouverneur agissnat sur l'avis du Conseil exécutif. «lieutenant-gouverneur en conseil» *"Lieutenant governor in Council"*

«maintenant» Le jour où le texte entre en vigueur. «maintenant» *"now"*

«mois» Un mois civil. «mois» *"month"*

«personne»—S'étend aux personnes morales. «personne» *"person"*

«prescrit» Prescrit en vertu du texte. «prescrit» *"prescribed"*

«prochain» Suivant le jour où le texte entre en vigueur. «prochain» *"next"*

«proclamation» Proclamation du lieutenant-gouverneur sous le grand sceau lancée en vertu d'un décret du lieutenant-gouverneur en conseil. «proclamation» *"proclamation"*

«Province» La province de..... «Province» *"Province"*

«province» S'étend aux territoires du Yukon et du Nord-Ouest s'il vise une partie du Canada autre que la Province. «province» *"province"*

«Sa Majesté» *"Her Majesty"*

«Sa Majesté», «La Reine», «le Roi», «la Couronne» ou «Le souverain» Le souverain du Royaume-Uni, du Canada et de ses autres royaumes et territoires, chef du Commonwealth et Défenseur de la Foi.

«serment» *"oath"*

«serment» S'entend aussi de l'affirmation ou de la déclaration solennelles dans un contexte applicable à une personne à laquelle un texte permet de les faire au lieu de prêter serment.

«testament» *"will"*

«testament» S'entend aussi d'un codicille.

Noms courants

26. Rien n'empêche d'utiliser dans un texte au lieu de la désignation officielle ou complète, le nom courant d'un pays, l'un lieu, d'un corps, d'une personne morale, d'une société, d'une association, d'un fonctionnaire, d'un officier, d'une personne ou d'une chose.

Modifications comprises

27. Dans un texte, le renvoi à un autre texte, ou sa mention, vise cet autre texte avec les modifications passées et futures.

Séries de numéros ou de lettres

28. (1) La mention dans un texte d'une série de numéros ou de lettres en vise le premier et le dernier avec les autres qui y sont compris.

Articles, annexes, etc

(2) La mention dans un texte de quelque partie, division, article, annexe, appendice ou formule s'entend de telle partie, division, etc. du texte où figure la mention.

Paragraphes, alinéas, etc

(3) La mention dans un texte de quelque paragraphe, alinéa, sous-alinéa, clause ou autre subdivision s'entend d'une subdivision de l'article, du paragraphe, de l'alinéa, du sous-alinéa ou de la clause où figure la mention.

Règlements

(4) La mention d'un règlement dans un texte s'entend d'un règlement établi en vertu du texte où figure la mention.

Articles d'un autre texte

(5) La mention dans un texte d'un autre texte par numéro, letter ou ligne s'entend du numéro, de la lettre ou de la ligne de cet autre texte imprimé en conformité de la *Loi*.....

Modifications intégrées au texte

29. Un texte modificatif s'interprète comme partie intégrante du texte qu'il modifie.

Effet de l'abrogation

30. L'abrogation totale ou partielle d'un texte:

a) ne fait pas revivre un texte qui n'est pas alors en vigueur ou un acte inexistant;

b) ne porte pas atteinte aux effets antérieurs du texte abrogé ni aux actes accomplis ou subis sous son régime;

c) ne porte pas atteinte aux droits, privilèges, obligations ou responsabilités acquis, nés, naissants ou encourus sous son régime;

d) n'a pas d'effet sur les infractions ou contraventions au texte abrogé ni sur les peines ou confiscations encourues sous son régime;

e) ne met pas fin à une enquête, une instance ou un recours concernant quelque droit, privilège, obligation, responsabilité, peine ou confiscation susvisés et le texte abrogé continue de s'appliquer aux fins de l'enquête, de l'instance ou du recours comme si le texte n'avait pas été abrogé.

Abrogation et remplacement

31. (1) Lorsqu'un texte (ci-après désigné le «texte antérieur») est abrogé et un autre texte (ci-après désigné le «nouveau texte») y est substitué:

a) quiconque exerce une fonction sous l'autorité du texte antérieur continue de l'exercer comme s'il avait été nommé ou élu en vertu du nouveau texte jusqu'à ce qu'une autre personne soit nommée ou élue à sa place;

b) toute instance introduite selon le texte antérieur se continue en conformité du nouveau texte en autant que possible;

c) la procédure établie par le nouveau texte s'applique, autant qu'elle peut s'y adapter, quant il s'agit:

(i) de recouvrer ou infliger une peine ou confiscation encourue en vertu du texte antérieur,

(ii) de faire valoir un droit né ou naissant sous son régime,

(iii) d'une instance relative à des faits antérieurs à l'abrogation;

d) lorsqu'une peine ou confiscation est réduite ou mitigée par le nouveau texte, celle qui est infligée après l'abrogation est réduite ou mitigée en conséquence;

e) tout règlement établi en vertu du texte antérieur reste en vigueur et est réputé établi en vertu du nouveau texte dans la mesure où il n'y est pas incompatible et cela, jusqu'à ce qu'il soit abrogé ou remplacé;

f) en ce qui concerne un acte ou fait subséquent, tout renvoi au texte antérieur dans un texte non abrogé s'interprète comme un renvoi aux dispositions du nouveau texte portant sur le même sujet et, s'il n'y en a pas, le texte antérieur subsiste autant qu'il est nécessaire pour donner effet au texte non abrogé.

Idem

(2) Lorsqu'un texte du Canada ou d'une autre province est abrogé en tout ou en partie et remplacé par d'autres dispositions sous forme de modification, refonte ou codification, tout renvoi au texte abrogé dans un texte de (*la Province*) s'interprète, quant à un acte ou fait subséquent, comme un renvoi aux dispositions du texte substitué portant sur le même sujet.

Implications à ne pas tirer

32. (1) L'abrogation totale ou partielle, le remplacement ou la modification d'un texte n'impliquent pas une affirmation de l'état antérieur du droit ou que le législateur considérait ce texte en vigueur.

La modification n'implique pas changement du droit

(2) La modification d'un texte n'implique pas une affirmation que le droit antérieur est différent.

Interprétation judiciaire non entérinée

(3) La réadoption, la refonte, la codification ou la modification d'un texte n'impliquent pas l'entérinement par le législateur de l'interprétation qui, par décision judiciaire ou autrement, a été donnée à certains termes du texte ou à des termes analogues.

APPENDIX I

(See page 34)

Canadian Bar Association
and
Uniform Law Conference of Canada

Joint Committee on
the Uniform Personal Property Security Act, 1982

First Annual Report

Our Committee was established in August 1982 under the joint auspices of the Canadian Bar Association and the Uniform Law Conference of Canada concurrently with the adoption by the two sponsoring organizations of the Uniform Personal Property Security Act 1982. The terms of reference of our Committee are:[1]

i. To correct any minor drafting errors or structural deficiences in the Act;

ii. To keep the Act under study and from time to time recommend to the sponsoring parent bodies any substantial changes in the Act which may be required in the light of changed circumstances; and

iii. To monitor the adoption of the Act in the Provinces and Territories and to encourage adopting jurisdictions to maintain interjurisdictional uniformity.

Our Committee has six members, each of the sponsors having nominated three of them. The members are: Mr. Bradley Crawford, Toronto, Professor R.C.C. Cuming, Saskatoon, Mr. Robert Goodwin, Winnipeg, Mr. H. Allan Leal, Q.C., Toronto, Mr. Graham Walker, Q.C., Halifax, and Professor Jacob S. Ziegel, Toronto. The Committee subsequently elected Professor Ziegel to act as chairman of the Committee and Professor Cuming to act as secretary.

Important regions of the country, particularly British Columbia, Alberta and Quebec are not represented on the Committee. In the Committee's view, it is advisable that they should be. We therefore recommend that the Committee be given powers to co-opt additional members, up to a maximum of four, to enable us to ensure this wider representation.

The Committee decided to defer its first meeting until after publication of the report of the Advisory Committee on the Ontario Personal

Property Security Act. That report appeared in July of this year[2] and the Committee held its first meeting on August 8 in Toronto.

The report recommends the adoption of a revised Personal Property Security Act in Ontario to take account of the many changes that have occurred since the adoption of the original Act in 1970.[3] The proposed draft Act incorporates many of the features of the Uniform Personal Property Security Act 1982. Nevertheless, our Committee is of the view that in the interest of uniformity greater harmonization should be brought between the proposed new Ontario Act and the Uniform Act. The Committee anticipates making representation to this effect later this year to the Ontario Minister of Consumer and Commercial Relations.

The Committee has been advised that Manitoba is also giving active consideration to revising its Personal Property Security Act, and that there is a substantial possibility that the Province will adopt the Uniform Personal Property Security Act rather than making piecemeal amendments to its existing Act.

In 1975 the Law Reform Commission of British Columbia recommended the adoption of a Personal Property Security Act in that Province. No decision to implement the recommendation has been taken so far, although considerable work has been done at the governmental level in anticipation of such a decision. Earlier this year the Deputy Attorney-General of British Columbia advised the Business Law Section of the B.C. Branch of the Canadian Bar Association that he intended to re-examine the question and to lend his support to the implementation of the recommendation of Law Reform Commission.

Alberta has also been studying the adoption of a Personal Property Security Act for a number of years and we understand the question is still under active consideration. We have also been advised that the recommendations of the Quebec Civil Code Revision Office, made as far back as 1975, in favour of the adoption of comparable provisions in the Quebec Civil Code have been approved in principle by the Department of Justice of Quebec and that the drafting work is proceeding apace.

The basic conceptual differences between the chattel security provisions in the federal Bank Act[4] and the provincial personal property security Acts and the Uniform Personal Property Security Act was a matter of considerable concern to our predecessors, the Committee on a Model Uniform Personal Property Security Act. It is likewise of great concern to us. The Model Act Committee made representations to the Finance Committee of the House of Commons at the time of its

consideration of the revised Bank Act[5] but unfortunately this did not lead to a much overdue review of the federal provisions. The Ontario Advisory Committee has also expressed its concerns about the conflict to the Ontario Minister of Consumer and Commercial Relations and, at its urging, the Honourable Dr. R.G. Elgie, M.D., wrote a letter last year to the federal Minister of Finance, drawing attention to the need for greater harmonization between the federal and provincial provisions.

It will be seen therefore that the disparities between the federal and provincial provisions governing this branch of the law are of widespread concern. Our Committee expects to make contact with the relevant officials in the Department of Finance to encourage the federal Government to bring the federal chattel security law into line with the Uniform Personal Property Security Act so far as possible.

Our Committee feels it would be useful to prepare an official commentary on the Uniform Act and two of its members, Professor Ziegel and Professor Cuming, have agreed to prepare such a commentary. Subject to the availability of funds, the Committee has approved the preparation of the commentary.

At the moment the Committee has no budget of its own and no funds at its disposal to cover expenses. The Canadian Bar Association earmarked a small sum during the past year to cover the travel expenses of the CBA nominees on the Committee. No similar funds were made available by the ULC to cover the expenses of its nominees. The Committee intends to approach each of its sponsors in the coming months to seek agreement on the establishment of a budget to enable the Committee to cover its various expenses and to proceed with the programme of work approved by the Committee.

Progress by the Provinces and Territories towards the adoption of a substantially uniform personal property security Act is slow, but the Committee is confident that it is only a matter of time before all the common law provinces will have adopted this new type of legislation. The Committee is no less convinced of the importance of maintaining maximum uniformity between the provincial Acts and will continue to use its influence in this direction. We do not recommend any changes to the Uniform Act at the present time because we feel it would be better to allow more time for the adoption of the Uniform Act by a greater number of Provinces and the accumulation of a greater body of experience in its operation.

Respectfully Submitted
Jacob S. Ziegel, Chairman
August 14, 1984

FOOTNOTES

1. The summary that follows is based on the resolution adopted by the ULCC and reproduced in Uniform Law Conference, Proc. 64th Ann. Meeting, 1982, pp. 33-34. The resolution adopted by the Council of the Canadian Bar Association on August 29, 1982 appears to omit these details of the Committee's terms of reference.

2. *Report of the Minister's Advisory Committee on the Personal Property Security Act,* Ministry of Consumer and Commercial Relations, Toronto (1984).

3. See now R.S.O., 1980, c.375 as am.

4. Stat. Can. 1980, c. C.40.

5. *Submission to the Finance, Trade and Economic Affairs Committee of the House of Commons on Bill C-57 and C-15,* reproduced in 4 C.B.L.J. 369 (1979-80).

APPENDIX J

(See page 34)

REPORT OF THE SPECIAL COMMITTEE ON PRIVATE INTERNATIONAL LAW

The Special Committee on Private International Law was formed by the Uniform Law Conference eleven years ago to promote effective cooperation between the Federal and Provincial Governments and to smooth the way of Canadian ratification or accession to international treaties and conventions. The Committee maintains a close liaison with the Advisory Group on Private International Law and Unification of Law established by the Federal Department of Justice. A member of your Conference's Special Committee, Marc Jewett, is Chairman of that group. Another member, Doug Ewart, is also a member of the Advisory Group, and Graham Walker and Rae Tallin are former members of the group.

The Report on Canadian Activities in the Area of Private International Law which follows illustrates both the significant level of activity in this area and the vital role which the Uniform Law Conference can play in facilitating Canadian ratifications or accession to international conventions. Your Committee is recommending that model implementing legislation be drafted.

During the coming year the Committee will maintain its close relationship with the Advisory Group on Private International Law and Unification of Law and report to this Conference at its 1985 meeting.

All of which is respectfully submitted.

Rae Tallin, Chairman
Emile Colas, Q.C., LL.D.
Doug Ewart
Marc Jewett, Q.C.
Graham D. Walker, Q.C.

REPORT ON CANADIAN ACTIVITIES IN THE AREA OF PRIVATE INTERNATIONAL LAW

In the past year, two noteworthy events have occurred in Canada in the area of private international law: the signing of a Convention with the United Kingdom on Recognition and Enforcement of Judgments

and the coming into force of the Child Abduction Convention. In both cases, the model implementing legislation produced by the Uniform Law Conference has been of great importance. This report will elaborate on the status of these and other private international law conventions and draft conventions.

Canada/United Kingdom Judgments Convention

The *Convention between Canada and the United Kingdom of Great Britain and Northern Ireland Providing for the Reciprocal Recognition and Enforcement of Judgments in Civil and Commercial Matters,* was signed in Ottawa on April 24th, 1984. The Convention applies to the recognition and enforcement of normal civil and commercial money judgments rendered after its coming into force. It does not apply to matters of family law, taxation, legal status, succession law and bankruptcy. It states the grounds for refusing to recognize a judgment and the circumstances in which the court rendering the judgment shall be regarded as having jurisdiction. The provisions of the Convention reflect the principles of existing British and Canadian law in the area which means that it represents the consolidation of the law and not a fundamental change in the law.

The main reason for negotiating this Convention was the imminent coming into force of the *1968 European Convention on Jurisdiction and Enforcement of Judgments.* This Convention enables courts of a contracting State to assume jurisdiction and requires the courts of other contracting States to enforce judgments on grounds that would not be otherwise recognized under Canadian or British law, e.g., nationality of the plaintiff. As a member of the European Communities, the United Kingdom is now obliged to accede to and implement this Convention and will then have to enforce judgments based on tenuous and undesirable grounds against Canadian defendants with assets in the United Kingdom.

The European Convention, however, permits the United Kingdom to enter into an agreement with Canada whereby the requirement to enforce judgments based on tenuous and undesirable grounds against defendants from Canada would be abolished. In article 13 of the Canada/United Kingdom Convention, the United Kingdom undertakes to make a declaration to this effect.

Before the signing, all jurisdictions in Canada, except Québec, had agreed to adopt the necessary legislation to implement this Canada/United Kingdom Convention. At the federal level, the implementing Bill received Royal Sanction on June 29th, 1984. The necessary legisla-

tion has also been adopted by the provinces of Ontario, Nova Scotia, New Brunswick and Manitoba.

The Convention provides for a federal state clause that will enable Canada to ratify while limiting the application of the Convention to certain jurisdictions. The British have advised, however, that a ratification would not be feasible if the Convention did not extend to a sufficient number of jurisdictions.

The United Kingdom was aiming at an October accession to the European Convention. This Convention, however, will not come into force until the six original signatory States ratify: The Belgian ratification (the only one missing) is being delayed until the beginning of next year. Consequently, the United Kingdom will not be acceding to the Convention before the month of March. Notwithstanding, efforts should be made to bring the Canada/U.K. Convention into force as soon as possible since in any event it simplifies the procedure for the recognition and enforcement of judgments.

The Hague Convention on International Child Abduction

It will be remembered that Canada had ratified on June 2nd, 1983, the *Hague Convention on the Civil Aspects of International Child Abduction*. At that time, the application of the Convention had been extended to Ontario, New Brunswick, Manitoba and British Columbia. Since then, it entered into force for the province of Nova Scotia on May 1st, 1984. It has recently been extended to the province of Newfoundland where it will come into force on October 1st, 1984. Shortly, a declaration will be made concerning the province of Québec.

The Convention came into force on December 1st, 1983, upon ratification by Portugal, the third State to ratify after Canada and France. On January 1st, 1984, Switzerland also became party to the Convention. American officials are still optimistic that their country will ratify this Convention within the next two years.

In Canada, three provinces, that is Alberta, Saskatchewan and Prince Edward Island, have yet to adopt necessary legislation to implement this Convention. The two first jurisdictions are expected to adopt the implementing Bills at the autumn session of their Legislatures.

The Vienna Sales Convention

The *United Nations Convention on Contracts for the International Sale of Goods* was adopted in Vienna in 1980. Canada participated actively in this Conference. The Canadian delegation included Profes-

sor Jacob S. Ziegel of the University of Toronto and Professor Claude Samson of Laval University. A report prepared by these two professors, and commissioned by the Federal Department of Justice, was circulated at the Uniform Law Conference in 1981. At that time, the general view was that Canada should take a "wait and see" attitude. This was mostly based on considerations as to what our main trading partners would do and the need to reflect on the advantages of the Convention for Canadians.

The Convention now enjoys praise throughout the world as a successful attempt to devise legal rules and practical procedures for international sale transactions. Favourable attitudes prevail from countries from all over the world. The following States have already ratified or acceded to it: Argentina, Egypt, France, Hungary, Lesotho and Syria. The President of the United States of America has referred the Convention to the American Senate to obtain its approval to enable the United States to accede to it. Initially, American officials thought that the Senate's approval to the accession to the Vienna Sales Convention would be obtained easily. However, certain groups in the United States have now voiced reservations. Nevertheless, American officials remain optimistic that the United States will become party to this Convention, notwithstanding any temporary difficulties which these reservations may engender.

The Convention provides uniform rules to resolve questions that have not been answered by the international sale contract made by the seller and the buyer. It does not cover every aspect of the contract. The specific topics addressed are: the formation of the contract, the obligation of the seller and of the buyer and the passing of risk.

The Federal Minister of Justice has recently written to the twelve jurisdictions requesting that consideration be given to the adoption of legislation to implement the Vienna Sales Convention. The main thrust of the argument put forth by the Minister on the desirability of this Convention is as follows. The Convention provides uniform rules to regulate an important part of international sale of goods, consequently, Canadians would have to deal with only one set of rules, instead of resorting to private international law rules that could lead to one of a variety of domestic legal systems. The text of the Convention is in both French and English. Finally, the provisions are considered to be compatible with both the law of the common law provinces and the civil law of Québec. It is to be noted that the parties to the contract, in agreement, may decide that the Convention does not apply to their transaction.

The Vienna Sales Convention contains a federal state clause which will enable Canada to ratify and extend the application of the Convention to one or more of its territorial units. The Committee recommends that implementing legislation be drafted by the Uniform Law Conference.

The Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York, 1958)

The New York *Convention on the Recognition and Enforcement of Foreign Arbitral Awards* was adopted by the United Nations at New York on June 10, 1958. Canada is not yet a party to the Convention although Canadian participation in the Convention regime would be of substantial value to business interests throughout Canada.

The New York Convention is an international agreement intended to provide a means by which arbitral awards made in one State may be readily enforced in another State. Article III of the Convention provides that:

> "Each Contracting State shall recognize arbitral awards as binding and enforce them in accordance with the rules of procedure of the territory where the award is relied upon, under the conditions laid down in the following articles .."

In brief, the conditions are as follows. An applicant for recognition and enforcement of a foreign arbitral award must supply to the court the originals or certified copies of the arbitration agreement and the award. If those documents are not in an official language of the country in which the award is relied upon, a certified translation into such language must be provided. There may not be imposed on the applicant substantially more onerous conditions or higher fees or charges than are imposed on the recognition or enforcement of domestic arbitral awards.

Recognition and enforcement of a foreign arbitral award may be refused at the instance of the respondent only if he furnishes proof to the court that the parties to the arbitration agreement were under some legal incapacity; that the agreement was not valid; that proper notice was not given to him in the arbitration; that the award does not fall within the ambit of the arbitration agreement; that the composition of the arbitral tribunal was defective; or that the award has not yet become binding or has been set aside or suspended by a competent authority. The court may also refuse to recognize and enforce an award if it would be contrary to the public policy of the jurisdiction to do so or if the dispute would not be capable of settlement by arbitration within the jurisdic-

tion. None of these grounds for refusal seems to be incompatible with legal principles followed in Canada.

Paragraph 3 of Article I authorizes any State, when acceding to the Convention, to declare that it will apply the Convention to the recognition and enforcement of foreign awards made only in the territory of another Contracting State, and also to declare that it will apply the Convention only to differences arising out of legal relationships, whether contractual or not, which are considered as commercial under the national law of the State making such declaration. About one-third of the Contracting States have made the so-called "commercial reservation." It appears Canadian interest in the Convention is primarily in the commercial sphere.

As mentioned above, Canada is not yet a party to the New York Convention. If it were, arbitral awards made in foreign States that are also parties to it would have to be enforceable in each Canadian jurisdiction in the same manner as domestic awards, i.e., generally by leave of a court or a judge in the same manner as a judgment or order of the court. At the present time, it would appear that foreign arbitral awards are not enforceable in this way in the common law jurisdictions of Canada. Rather, they are enforced by suing upon the award as a binding obligation arising out of the agreement to arbitrate, or enforcing it as a foreign judgment, if it has such status in the place where it was made.

The complexity of modern international commercial contracts, which now often involve enterprises from several different countries, contributes to the advantages arbitration can have over litigation, especially when it occurs in different States, for settling business disputes effectively, fairly quickly and with a minimum of international bitterness. A lawsuit may be perceived as tending to bring the whole agreement into question and possibly to paralyze the normal flow of business. Also, because of a lack of familiarity with foreign judicial procedures and a reluctance to submit oneself to the national courts of the other party to the contract, parties to international contracts frequently wish to insert into them a provision that disputes arising out of such contracts will be settled by arbitration.

In spite of all the advantages of arbitration, Canadian businesses are in a weak bargaining position with respect to insisting upon it because foreign arbitral awards cannot easily be enforced in Canada. Of the 66 States that were parties to the New York Convention on January 1st, 1984, including many States with which Canada has major trading relations, 44 have made the so-called "reciprocity reservation" under paragraph 3 of Article I of Convention by declaring that they will only

apply it to the recognition and enforcement of arbitral awards made in the territory of another Contracting State. A key element leading two parties to an international contract to agree to arbitrate their differences is the assurance that an arbitral award will be readily enforceable in the home States of the contracting parties. Because Canada has not acceded to and implemented the New York Convention, there is an unnecessary barrier to the enforcement of Canadian awards abroad. Therefore, in the field of international trade, Canadian businessmen find themselves at a considerable disadvantage in the use of arbitration.

Accession by Canada to the New York Convention would help to promote Canadian international trade and would give Canadian businessmen much more flexibility in arranging foreign transactions. It would simplify the enforcement of foreign arbitral awards, give more binding effect to such awards and help to standardize enforcement procedures. It would help to protect Canadian businessmen by assuring that agreements to arbitrate and arbitral awards will be enforced in the other States that are parties to the Convention. There is substantial support for Canadian accession among members of the business community concerned with international trade and in its Report of May, 1982, the Law Reform Commission of British Columbia recommended participation in the Convention.

These reasons militate in favour of Canada acceding to the New York Convention. However, in order for it to be securely implemented in this country, agreement of the provinces ought to be obtained because the enforcement of a foreign arbitral award would ordinarily fall within provincial jurisdiction as a matter relating to property and civil rights or the administration of justice. To ensure certainty of application, provincial legislation would therefore be appropriate. Such legislation need not be lengthy or complex. The Federal Minister of Justice has recently written to all jurisdictions recommending that the ratification process should proceed. The Uniform Law Conference is well equipped to prepare model implementing legislation, and the Committee recommends that this be done.

The Convention on the Service Abroad of Documents

The compilation of information to enable Canada to ratify the *Hague Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil and Commercial Matters* is proceeding. Draft declarations to be deposited at the Hague Conference upon Canada's accession will be shortly forwarded to the twelve jurisdictions. A fuller report on this subject will be made for the Conference's 1985 meeting.

Preliminary Draft Convention on Trusts

The 15th Session of the Hague Conference on Private International Law will be held October 8-20, 1984 in The Hague. This Session will be studying a *Preliminary Draft Convention on the Law Applicable to Trusts and on their Recognition.* This preliminary Draft Convention is the result of a series of meetings attended by delegates of member States in the past year and a half.

The Preliminary Draft Convention is designed to meet the type of problem that can arise when a testamentary or inter vivos trust, almost invariably created in a common law jurisdiction, or by the will of a former common law domiciliary, has assets or beneficiaries in a jurisdiction (probably of the civil law tradition) which does not know the common law trust. It applies only to express trusts created by act of parties, provided that such trusts are created, or evidenced, in writing. The Convention is not concerned with the formal validity of the instruments creating or evidencing the trust, or with the capacity of the settlor, the trustee or the beneficiary. It determines the applicable law of the trust and provides for the recognition of a foreign trust by a contracting State.

The Federal Deputy Minister of Justice has recently written to the twelve jurisdictions providing them with a copy of the Preliminary Draft Convention and an explanatory report on this text prepared by Professor D.W.M. Waters of the University of Victoria Law School, who was part of the Canadian delegation to the Special Commission that prepared this text. Mr. Tassé stressed the importance of trusts for Canadians and asked the twelve jurisdictions for their comments on the Preliminary Draft Convention.

International Trade Law Seminar

In October 1983, the Department of Justice held its first International Trade Law Seminar. In view of the enthusiastic response received from those who attended this event, the Department is now proceeding with the organization of a second International Trade Law Seminar, which will be held on October 22, 1984 in Ottawa. This second International Trade Law Seminar will be largely devoted to a discussion of international commercial arbitration, including the question of accession to the 1958 New York *Convention on the Recognition and Enforcement of Arbitral Awards* and the *International Convention on the Settlement of Investment Disputes,* and consideration of the UNCITRAL Draft Model Law on International Commercial Arbitration.

The first International Trade Law Seminar dealt with the activities of the United Nations Commission on International Trade Law (Speaker: Professor K. Sono, Secretary to the Commission and head of the UNCITRAL Secretariat); the United Nations Convention on Contracts for the International Sale of Goods (Speakers: Professors John O. Honnold, Jacob S. Ziegel and Claude Samson); International Negotiable Instruments and Electronic Funds Transfer (Mr. Bradley Crawford); and International Commercial Arbitration Mr. Brian Crane, Q.C.). The Minister of Justice gave the luncheon address. The Seminar was presided over by Mr. M.L. Jewett, Q.C., General Counsel, Constitutional and International Law.

Conclusion

It will be seen that there is substantial activity in the area of private international law calling for a coordinated response. Legislation to implement the 1980 Vienna Sales Convention and the 1958 New York Convention on the Recognition and Enforcement of Arbitral Awards appear to be the items requiring priority attention, and model implementing legislation should be drafted. Considerable satisfaction can be drawn from the successful implementation of the Canada/United Kingdom Judgments Convention and the Child Abduction Convention. In the near future, consideration will need to be given to the Hague Trusts Convention and the Convention on the law applicable to the international sale of goods. This is a busy but tractable agenda for the Uniform Law Conference to undertake in this area.

APPENDIX K

(See page 35)

Uniform Products Liability Act

Interpretation

1. In this Act,

false statement "fausses"

"false statement" includes any mis-statement of fact, whether made by words, pictures, conduct or otherwise;

product "produit"

"product" means tangible goods, whether of not they are attached to or incorporated into real property;

supply "fournir"

"supply" means make available or accessible by sale, gift, bailment, manufacture, distribution, importation or any way but not including transportation only.

Crown bound

2. The Crown is bound by this Act.

Defective product

3. (1) A product is defective for the purposes of this Act if it falls short of the standard that may reasonably be expected of it in all the circumstances.

Matters to be considered

(2) Without limiting the generality of subsection (1), in determining whether a product is defective, the matters to be taken into account may include

(a) any relevant standard established by law or otherwise;

(b) the technological or practical feasibility of a product designed so as to prevent injury or damage while substantially serving the likely user's expected needs;

(c) the effect of any proposed alternative design on the usefulness of the product;

(d) the difference in cost between producing, supplying, using and maintaining the product as designed and as alternatively designed;

(e) the uses to which it is reasonably foreseeable that the product may be put and the persons or property that it is reasonably foreseeable may be affected by such uses;

(f) the user's ability to avoid danger by the exercise of reasonable care in the use of the product;

(g) the user's anticipated awareness of inherent dangers in the use of the product because of general public knowledge, obvious condition or suitable warnings or instructions; and

(h) the period of time during which the product may reasonably be expected to be used safely.

Strict liability for defective products

4. (1) Where in the course of his business a person supplies a product of a kind that it is his business to supply and the product is a defective product which causes personal injury or damage to property, that person is liable in damages

(a) for the personal injury or damage to property directly and naturally resulting in the ordinary course of events; and

(b) for any economic loss directly and naturally resulting in the ordinary course of events from the injury or damage referred to in clause (a).

Costs of averting injury

(2) A supplier who is or would have been liable under subsection (1) for personal injury if personal injury had occurred is liable for economic loss incurred in reasonable attempts to avoid such personal injury, whether or not the personal injury occurs.

Strict liability for false statements about products

5. Where in the course of his business a person supplies a product of a kind that it is his business to supply and makes a false statement concerning the product, reliance upon which causes personal injury or damage to property, that person is liable in damages

(a) for the personal injury or damage to the property directly and naturally resulting in the ordinary course of events; and

(b) for any economic loss directly and naturally resulting in the ordinary course of events from the injury or damage referred to in clause (a),

whether of not the reliance is that of the person suffering the injury or damage.

New business and promotions

6. A person may be liable under section 4 or 5 notwithstanding that he has not previously supplied products of the same kind as the product supplied or that he supplied the product for promotional purposes.

Contributory negligence

7. (1) Where personal injury or damage to property is caused or contributed to partly by a supplier of a product or by reliance upon a false statement made by a supplier concerning a product and partly by the person suffering the injury or damage, damages shall be apportioned in accord-

ance with the degree of the responsibility of each for the injury or damage.

Where parties deemed equally responsible

(2) Where under subsection (1) it is not practicable to determine the respective degree of responsibility of the supplier and of the person suffering the injury or damage, the parties shall be deemed to be equally responsible for the injury or damage suffered and damages shall be apportioned accordingly.

Joint tort feasors

8. (1) Where personal injury or damage to property is caused or contributed to partly by a supplier of a product or by reliance upon a false statement made by a supplier concerning a product and partly by the fault or neglect of another person, whether of not a supplier of the product, for which the other person would be liable to the person suffering the injury or damage, both the supplier and the other person are jointly and severally liable to the person suffering the injury or damage, but as between the supplier and the other person, subject to any agreement, express or implied, each shall contribute to the amount of the damages in accordance with the degree of the responsibility of each for the injury or damage.

Where parties deemed equally responsible

(2) Where under subsection (1) it is not practicable to determine the respective degree of responsibility of the supplier and of the other person, the supplier and the other person shall be deemed to be equally responsible for the injury or damage suffered and each shall contribute to the amount of damages accordingly.

Settlement

(3) A person who settles for a reasonable sum a claim for injury or damage under section 4 or 5 is entitled to claim contribution under subsection (1) and, in the event that the amount of the settlement is determined to be excessive, contribution shall be calculated in accordance with the amount for which the claim should have been settled.

Indemnity by prior suppliers

9. Subject to section 8 and to any agreement, express or implied, a person who is liable for or who settles for a reasonable sum a claim under this Act or otherwise for personal injury or damage to property caused by a product or by reliance upon a false statement made by a supplier concerning a product is entitled to be indemnified by any prior supplier of the product who would be liable under this

Act for the injury or damage that gave rise to the liability and, in the event that the amount of the settlement is excessive, the indemnity shall be calculated in accordance with the amount for which the claim should have been settled.

Limitation for contribution and indemnity

10. Proceedings for contribution under section 8 or for indemnity under section 9 shall not be brought after

(a) the expiration of any limitation period that would bar an action against the person from whom contribution or indemnity is claimed; or

(b) one year after judgment or settlement, whichever is later.

Restriction on liability void - Exception

11. Any oral or written agreement, notice, statement or provision of any kind purporting to exclude or restrict liability under section 4 or 5 or to limit any remedy thereunder is void, except in respect of loss suffered by damage to property used in the course of carrying on a business.

Other rights not affected

12. The rights and liabilities created by this Act are in addition to rights and liabilities otherwise provided by law.

Trial by judge

13. Any action under section 4 or 5 shall be tried by a judge without a jury.

Extended jurisdiction

14. An action may be brought under this Act where apart from this section the court would have jurisdiction or where the supplier at the time of the supply of the product carried on business in (the enacting province) and any party to such an action may be served out of (the enacting province) in the manner prescribed by the rules of court.

Enforcement of judgements

15. Where a supplier carries on business in another province and judgment is given against him under a statute similar to this Act, that judgment is enforceable in (the enacting province) as though it were a judgment of the (superior court of the enacting province).

Choice of law

16. In an action under this Act, the rights and liabilities of the supplier are governed by the internal law of (the enacting province) where the internal law of (the enacting province) would apart from this section apply or where the supplier at the time of the supply of the product carried on business in (the enacting province).

Carrying on business

17. For the purposes of sections 14 to 16, a supplier shall be deemed to have carried on business in a province where he

had reason to foresee that the product, or identical products supplied by him, would be available or accessible in that province through commercial channels or where the supplier has acted in any way to further the supply of the product in that province.

Rights of dependants

18. Where the death of a person is caused by a defective product and the person would have been entitled, if not killed, to maintain an action under section 4 to 5 of this Act, the persons entitled to recover under the (Fatal Accidents Act) may maintain an action against the supplier and the provisions of the (Fatal Accidents Act) apply mutatis mutandis to any such action.

Application of Act

19. This Act applies to personal injury or damage to property occurring on or after the day on which this Act comes into force.

APPENDICE K

(Voir page 35)

LOI SUR LA RESPONSABILITE EN MATIERE DE PRODUITS DEFECTUEUX

PRODUCTS LIABILITY ACT

Sa Majesté, sur l'avis et avec le consentement de l'Assemblée législative de la province de (province compétente) décrète:

1. (1) Les définitions qui suivent s'appliquent à la présente loi. *Définitions*

«fausses représentations» Description erronée de faits, que ce soit en paroles, en images, par le comportement ou autrement. *«fausses représentations» "/false /"*

«fournir» Rendre accessible par vente, don, dépôt, fabrication, distribution, importation ou de toute façon mais ne s'entend pas du transport comme tel. *«fourni» "/supply/"*

«produit» Tout bien corporel qu'il soit ou non fixé ou incorporé à un bien réel (immeuble). *«produit» "/product/"*

2. La présente loi lie la Couronne (Sa Majesté du chef de ...). *Responsabilité de la Couronne (Sa Majesté du chef de)*

3. (1) Pour l'application de la présente loi un produit est défectueux s'il ne correspond pas aux normes auxquelles une personne pourrait raisonnablement (normalement) s'attendre quelque soient les circonstances. *Produit défectueux*

(2) Sans pour autant restreindre la portée du paragraphe (1), pour déterminer si un produit est défectueux, les facteurs à être pris en considération peuvent inclure: *Facteurs à prendre en considération*

a) toute norme pertinente établie par une règle de droit ou autrement;

b) la possibilité, d'un point de vue technique ou pratique, de concevoir le produit de manière à prévenir les blessures ou les dommages tout en répondant en majeure partie aux besoins prévus de l'utilisateur;

c) l'effet de tout autre mode de fabrication proposé sur l'utilité du produit;

d) la différence de coût entre le produit actuel et le même produit conçu autrement relativement à sa

production, sa fourniture, son utilisation et son entretien;

e) l'utilisation du produit qui pourrait raisonnablement (normalement) être prévue et les personnes ou les objets que telle utilisation est raisonnablement susceptible d'atteindre;

f) la capacité pour l'utilisateur d'éviter le danger en usant d'une prudence raisonnable lors de l'utilisation du produit;

g) la connaissance que l'utilisateur devrait vraisemblablement avoir des risques inhérents à l'utilisation du produit en raison du fait qu'ils soient de notoriété publique, des conditions évidentes de son utilisation, de l'avertissement ou des directives accompagnant le produit;

h) la durée escomptée de l'utilisation du produit en sécurité.

Responsabilité stricte pour produits défectueux

4. (1) Lorsque, dans le cours de ses activités, une personne fournit un produit qu'elle a l'habitude de fournir et que ce produit est défectueux et cause des blessures ou des dommages matériels, elle est responsable en dommages-intérêts:

a) pour les blessures ou les dommages résultant directement et naturellement de cette défectuosité dans le cours normal des choses;

b) pour toute perte financière résultant directement ou naturellement de tels blessures ou dommages dans le cours normal des choses.

Dépenses supportées pour éviter des blessures

(2) Un fournisseur qui est ou aurait pu être responsable de blessures en vertu du paragraphe (1), est également responsable des pertes financières subies par une personne pour les efforts raisonnables qu'elle a déployés pour éviter de telles blessures, qu'il y ait effectivement eu blessure ou non.

Responsabilité stricte pour fausses représentations

5. (1) Lorsque, dans le cours de ses activités, une personne fournit, sous de fausses représentations, un produit qu'elle a l'habitude de fournir et, qu'à cause de ces représentations, une personne subit des blessures ou des dommages matériels, elle est responsable en dommages-intérêts peu importe si la personne qui s'est fiée aux représentations est celle qui a subi ces blessures ou ces dommages,

a) pour les blessures ou les dommages résultant directement ou naturellement de ces fausses représentations dans le cours normal des choses;

b) pour toute perte économique résultant directement ou naturellement de tels blessures ou dommages dans le cours normal des choses.

Nouvelle entreprise, publicité

6. Une personne peut être tenue responsable en vertu des articles 4 ou 5, nonobstant le fait qu'elle n'ait pas fourni de produits semblables auparavant ou qu'elle ait fourni le produit pour fins de publicité.

Négligence contributive

7. (1) Lorsque des blessures ou des dommages sont causés partiellement, d'une part, par le fournisseur d'un produit ou à cause de fausses représentations par le fournisseur concernant un produit partiellement, d'autre part, par la personne qui a subi les blessures ou les dommages, les dommages-intérêts sont supportés en proportion du degré de responsabilité de chacun.

Cas où les parties sont réputées également responsables

(2) Lorsque, en vertu du paragraphe (1), il n'est pas possible de déterminer la part respective de responsabilité du fournisseur et de la personne qui a subi les blessures ou les dommages, les parties sont réputées être également responsables, et les dommages-intérêts sont répartis en conséquence.

Coauteurs d'un délit

8. (1) Lorsque des blessures ou des dommages sont causés partiellement, d'une part, par le fournisseur d'un produit ou à cause de fausses représentations comme le prévoit l'article 4, et, d'autre part, par la faute ou la négligence d'une autre personne, que ce soit un fournisseur du produit ou non, cette personne serait responsable à l'égard de celui qui a subi les blessures ou les dommages, le fournisseur et cette personne sont conjointement et solidairement responsables à l'égard de la victime, mais, entre eux, les dommages-intérêts sont répartis en proportion du degré de responsabilité de chacun, sous réserve de toute entente expresse ou implicite.

Cas où les parties sont réputées également responsables

(2) Lorsqu'il n'est pas possible de déterminer le degré de responsabilité respectif du fournisseur et de l'autre personne en vertu du paragraphe (1), le fournisseur et cette personne sont réputés être également responsables et les dommages-intérêts sont répartis en conséquence.

Réglement d'une réclamation

(3) Une personne qui régle, pour un montant raisonnable, une réclamation pour blessures ou dommages en vertu des articles 4 ou 5, peut réclamer une indemnité en vertu du paragraphe (1) et, dans le cas où le montant du règlement est jugé excessif, l'indemnité est calculée en fonction du montant qui aurait dû être versé pour la réclamation.

Indemnité provenant de fournisseurs antérieurs

9. Sous réserve de l'article 8 et de toute entente expresse ou implicite, une personne qui est responsable de blessures ou de dommages dus à un produit défectueux ou à de fausses reprêsentations, ou qui règle une réclamation à cet égard pour un montant raisonnable en vertu de la présente loi ou autrement, peut réclamer une indemnisation d'un fournisseur antérieur du produit qui pourrait être tenu responsable en vertu de la présente loi pour les blessures ou les dommages qui ont donné lieu à l'attribution de responsabilité et, dans le cas où le montant du règlement est jugé excessif, l'indemnité est calculée en fonction du montant qui aurait dû être versé pour la réclamation.

Prescription

10. Les instances en vue d'obtenir une indemnité en vertu des articles 7 ou 8 ne peuvent être introduites, selon le cas,

a) après l'expiration des délais impartis pour intenter une action contre la personne contre qui l'indemnité est réclamée;

b) après l'année qui suit la date du jugement ou du règlement si les délais prévus à l'alinéa *a)* sont inférieurs à un an.

Nullité des clauses restrictives de responsabilité: exception

11. Toute entente verbale ou écrite, avis, déclaration ou stipulation de toute sore prévoyant l'exclusion ou la restriction de la responsabilité en vertu des articles 4 ou 5, ou visant à restreindre les recours en vertu de ces articles, sont nuls sauf en ce qui a trait aux pertes subies en raison de dommages aux biens utilisés dans le cours normal des activités.

Maintien des droits acquis

12. Les droits et responsabilités créés en vertu de la présente loi s'ajoutent à tout autre droit et responsabilité prévus par toute autre règle de droit.

Procès avec juge sans jury

13. Toute action intentée en vertu des articles 4 ou 5 est entendue par juge sans jury.

Extension de juridiction

14. Une action peut être intentée en vertu de la présente loi là où le tribunal aurait juridiction, indépendamment du

présent article, ou encore là où le fournisseur était établi au moment où il a fourni le produit dans (nom de la province), et toute partie à l'action peut recevoir signification à l'extérieur de (nom de la province) selon la procédure prescrite par les règles de procédure du tribunal.

Exécution des jugements

15. Lorsqu'un fournisseur est établi dans une autre province et qu'un jugement est rendu contre lui en vertu d'une loi semblable à la présente loi, le jugement est exécutoire dans (nom de le province) comme s'il avait été rendu par une cour supérieure de cette province.

Choix du droit

16. Dans une action intentée en vertu de la présente loi, les droits et responsabilités du fournisseur sont régis par le droit de (nom de la province) lorsque ce droit s'appliquerait si ce n'était du présent article, ou lorsque le fournisseur, au moment où il a fourni le produit, était établi dans (nom de la province).

Lieu d'établissement

17. Pour l'application des articles 14 à 16, un fournisseur est réputé être établi dans une province s'il y a lieu de prévoir que le produit où des produits identiques qu'il fournit seraient disponibles ou accessibles sur les marchés commerciaux de cette province ou lorsque le fournisseur a agi de manière à assurer la circulation de ce produit dans celle-ci.

Droits des personnes à charge

18. Lorsqu'un produit défectueux cause la mort d'une personne et que cette personne aurait eu droit, si ce n'était de son décès, d'intenter une action en vertu des articles 4 ou 5 de la présente loi, les personnes habilitées à obtenir réparation en vertu de la *Loi sur les accidents mortels*, peuvent intenter une action contre le fournisseur, et les dispositions de la *Loi sur les accidnets mortel*s'appliquent compte tenu des adaptations de circonstance.

Application de la loi

19. La présente loi s'applique á l'égard des des blessures ou dommages causés à partir de la date de son entrée en vigueur.

APPENDIX L

(See page 35)

A SURVEY OF CANADIAN JURISDICTIONS RE THE UNIFORM LAW CONFERENCE'S RECIPROCAL ENFORCEMENT OF MAINTENANCE ORDERS ACT PREPARED BY LEGISLATIVE COUNSEL OFFICE, EDMONTON, ALBERTA AUGUST 1984

JURISDICTION

HAS THE UNIFORM R.E.M.O. ACT (AS ADOPTED BY THE CONFERENCE IN 1979 AND AMENDED IN 1982) BEEN ADOPTED?

SIGNIFICANT DIFFERENCES BETWEEN UNIFORM R.E.M.O. ACT AND ACT IN FORCE IN JURISDICTION

British Columbia

British Columbia retains the pre-1979 Uniform Act. The Uniform R.E.M.O. Act is being looked at for enactment in the near future.

Alberta

Enacted May 22, 1980
Not proclaimed

1. Adds a subsection (2) to s. 10 of the Uniform Act. Subsection (2) sets out that where a subrogated right exists in a province to claim maintenance, that province is deemed to be a claimant under the Act for purposes of commencing proceedings.
2. Subsection (1) of s. 15 of the Uniform Act has been deleted. Subsection (1) provides that spouses are competent and compellable witnesses against each other.
3. Subsection (1) of s. 18 of the Uniform Act has been deleted.

   Subsection (1) authorized the enactment of ancillary regulations.
4. Alberta's Act does not include the amendment to s. 7 of the Uniform Act made in 1982.

Saskatchewan

Enacted June 2, 1983
Proclaimed January 1, 1984

1. Adds a subsection (8) to s.2 of the Uniform Act. Subsection (8) provides that a final order from a reciprocating state which is unenforceable in Saskatchewan may be dealt with as a provisional order.
2. Adds a new subsection to s.5 of the Uniform Act. The new subsection provides that the onus of satisfying the Court that a provisional order should not be confirmed in on the respondent.

Manitoba

Enacted May 25, 1982
Proclaimed Oct. 1, 1983

1. Section 9(4) of the Uniform Act has been deleted. Subsection (4) provides that where an order is registered with the Supreme Court, it may be enforced as if it were an order of that Court.
2. Adds a subsection (3) to s.18 of the Uniform Act providing that the LG in C may revoke an order made under subsection (2).

Ontario

Enacted June 15, 1982
Proclaimed October 1, 1982

1. Subsection (3) of s.4 of the Uniform Act has been deleted. Subsection (3) provides that a determination of affiliation may be used only for the purpose of maintenance proceedings under the R.E.M.O. Act.
2. A new section has been added, being s.13 of the Ontario Act. S.13 provides that procedures taken in a reciprocating state shall be presumed to have been within the jurisdiction of that state and to be regular and complete.
3. See Alberta, item #3.
4. See Saskatchewan, item #1.

Quebec

Quebec passed a small package of amendments in 1982 to their Act (a 1964 act) but these amendments do not bring the Act into a comparable position with the Uniform Act. It is proposed that the

Uniform R.E.M.O. Act might be adopted at the Fall 1984 session of the assembly.

Nova Scotia

Enacted and in force June 1, 1983

1. Subsection (3) of s.13 of the Uniform Act has been deleted. Subsection (3) provides that a translation shall accompany an order which is not in the English or French language.

P.E.I.

Enacted June 23, 1983
Proclaimed

1. Subsections (2) and (3) of section 7 of the Uniform Act have been deleted, but note definition of "Registrar" which refers only to the Supreme Court of that jurisdiction.
2. See Ontario, item #3.

Newfoundland

Newfoundland has passed various amendments to its Act but these amendments do not bring the Act into a comparable position with the Uniform Act. It is proposed that a new R.E.M.O. bill will be presented for the 1984 Fall sitting of the Legislature that will follow the Uniform Act with two exceptions.

New Brunswick

New Brunswick has passed amendments in 1981 and 1982 to their old Act. The Uniform R.E.M.O. Act is being looked at for enactment in the near future.

Yukon Territories

Enacted 1980
Proclaimed in 1980

1. The Yukon's Act does not include the amendment to s.7 of the Uniform Act made in 1982.

N.W.T.

The N.W.T. still has its Maintenance Order (Facility for Enforcements) Ordinance in effect, but is looking at enacting the Uniform Act in the near future.

APPENDIX M

(See page 36)

REPORT OF THE MANITOBA COMMISSIONERS UNIFORM TIME SHARE ACT

At the 1983 meeting of the Conference the Manitoba Commissioners presented a preliminary report on Time Share legislation. That report includes a rough draft statute that had been prepared by Calgary lawyer Harry Korman, along with a series of questions that were intended to direct the Commissioners attention to the many complex policy matters that must be resolved if we are to draft uniform Time Share legislation.

In this year's report the Manitoba Commissioners examine the various policy questions and give you their answers to same for your consideration.

If time permits the completion of the review of the policy questions and recommendations contained herein and any others that may be dealt with during the course of the discussion the Manitoba Commissioners recommend that the draft act and policy decisions be referred to one of the provincial jurisdictions who have had some experience with Time Share developments for the purpose of preparing a draft uniform Time Share Act for consideration at next year's meeting of the conference. This will enable the conference to have the benefit of detailed review by another provincial jurisdiction and as well, the benefit of another year's experience in dealing with this relatively new concept. Also it would be our recommendation that the draft Time Share Act be circulated to those bodies already dealing with Time Share developments in the various provincial jurisdictions for their comments and recommendations on the proposed uniform legislation. Such input would be extremely beneficial in formulating our final report and recommendations.

R.G. Smethurst

for the Manitoba Commissioners

DRAFT TIME SHARE ACT

Section 1 - Short Title

No comments or questions.

Section 2 - Definitions

The terms to be defined in this section will depend somewhat on the answer to what is probably the most basic question to be dealt with, namely:

1. *Should the legislation be enabling and regulatory per se, or should it simply require disclosure?*

The argument in favour of enabling and regulatory legislation is that it is needed in order to give legal authority and justification for the creation of a Time Share because of the fact that Time Sharing is something relatively new and is of a specific nature. It may be argued that it cannot be dealt with by other legislation that is already in place. The converse argument favouring legislation that simply requires disclosure is based on the argument that Time Shares can be created and regulated under present legislation and that disclosure type legislation is all that is required in order to protect the consumer. The Manitoba Commissioners recommend disclosure legislation rather than enabling and regulatory as it is their opinion that it should be easier to obtain uniformity with such legislation and then after some time to gather experience dealing with Time Share developments it should be possible to develop enabling legislation that will be more suitable to all concerned.

2. *Should it be possible for purchasers of Time Share units to record their ownership interest against the land in question in the L.T.O.? If so, how and what type of instrument?*

The problem with allowing the recording of the Time Share interests against the land in question in the Land Titles Office is that it would unduly complicate the various recording systems in place across the country. They have not been developed with Time Sharing in mind and having regard to the number of Time Share unit interests that might be registered in a development (up to 52 separate interests on each dwelling unit) it is easily recognized the difficulties that could be encountered. At the same time however, Time Share purchasers must be given some protection in order to avoid the property in question being sold out from under them without recognition of their prior interests in the case of right to use developments. Time Share owners can be protected through a requirement that title to the land be made subject to the rights of any Time Share owners. This might be accomplished by allowing a caveat to be filed against the property evidencing the right of all future Time Share owners of that property. Similarly, leases of the property in question and subsequent encumbrances would be required to contain a clause recognizing the prior rights to Time Share owners. In the case of ownership, a system may have to be worked out with the various Land Titles Offices wherby the ownership of the Time Share unit week(s) can be recorded and some form of certificate of ownership be issued. It is our understanding that some such system is in operation in Ontario and

we recommend that this be explored to see whether such system could be developed for use across Canada. Until such time however, we recommend against the recording of ownership except as noted above.

3. *Who should be responsible for supervision and administration of the Act - the real estate governing body, the securities commission, consumer protection or a specially set up department?*

The Manitoba Commissioners are of the view that the real estate governing body, which in some jurisdictions is administered through the securities Commission, should be given the responsibility to supervise and administer the Time Share legislation. Time Sharing is predominently a transaction involving real estate although it is recognized that some types of Time Sharing might be more closely equated with the dealing with a security. However, because of the predominance of real estate involved the manner in which most Time Shares are sold and the instrumentation involved we recommend Time Sharing come under the purview of the real estate governing body.

4. *Should the legislation apply to Time Share projects both within and outside the Province?*

Although in some of the earlier Time Share developments, provinces seem to be concerned with regulating the sale of Time Share projects located outside the province, we see no reason why the legislation should only apply to such projects. It seems to us that whether a project is located within the province or without the province the same disclosure requirements should apply for the protection of the public at large.

5. *Should reciprocity be spelled out in some way for projects filed elsewhere?*

In view of our answer to Question No. 4 we see no need for reciprocity to be a requirement for dealing with projects filed elsewhere.

6. *How should the legislation treat projects already in existence or underway (grandfathering)?*

We recognize that some type of grandfathering legislation is necessary in dealing with projects already in existence or underway. We suggest that such projects be given a reasonable period of time to comply with the new legislation with the further right for them to apply for an extension of time to comply under reasonable circumstances. In our view a minimum period of compliance would be three months although some longer period may be necessary.

SECTION 3 - PUBLIC OFFERING STATEMENT REQUIREMENT

1. Should it be called a "Public Offering Statement" or "Prospectus" of "Information Statement" or?

The Manitoba Commissioners did not have any particular preferences on this item although they are inclined to the view that "Public Offering Statement" likely best reflects the type of document required. Therefore, we would recommend adopting that name for the document in question.

2. *Should the developer be able to sell Time Share periods before filing, and/or approval?*

In view of the legislation being of the disclosure type we are of the view that no selling of Time Share periods should be allowed before the filing and approval of the Public Offering Statement except in the case of those projects already in existence or underway. In those cases they should be allowed to continue selling pending their filing of the necessary compliance documents within the time stipulated in Section 2.

3. *Should the contents of the Offering Statement be in the Act or in Regulations?*

In view of the fact that this type of legislation is so new and the concept of Time Sharing is still being developed, we recommend that the contents of the Offering Statement be set out in the regulations rather than in the statute. It is much easier to amend regulations as required than it is to obtain an amendment to the Act. As well, in our view, the subject matter of the Offering Statement can better be handled in the regulations.

SECTION 4 - CONTENTS OF PUBLIC OFFERING STATEMENT

1. Is it necessary to provide that the Offering Statement shall be accompanied by an affidavit attesting to "full and true disclosure"?

We are of the view that the Offering Statement should be accompanied by an affidavit attesting to the "full and true disclosure". This would serve to emphasize to the persons filing the Offering Statement that all of the information contained therein must be true and that they have set out all matters requiring disclosure.

2. *Are there other matters that should be set out in Section 4?*

Off hand, we could not come up with any other matters which should be set out in the Offering Statement, however, it is quite possible that the

Commissioners will think of other matters that should be included. The intention of this question is merely to draw your attention to the possibility that there may be other matters that should be disclosed.

SECTION 5 - OBLIGATIONS OF SUPERINTENDENT

A review of this section discloses that the draftsman did not give the superintendent power to cancel or suspend the selling by a developer in the event that the superintendent becomes aware at some future date that the Offering Statement is either not correct or is incomplete. In such circumstances, the Manitoba Commissioners feel that the superintendent should be given the power to suspend or cancel the right of selling until the Offering Statement has been corrected to the satisfaction of the superintendent. This power could be included in this section or perhaps it would be preferable to set it out in Section 24.

SECTION 6 - FILING FEE

The Manitoba Commissioners are of the view that this section should more properly be included in the regulations rather than in the statute. The amount of the filing fee and whether it be a maximum and/or a minimum fee should be matters left to the discretion of each provincial jurisdiction.

The regulations should make it clear that the requirement of the payment of a filing fee and the filing of a public offering statement is only applicable to the developers and does not apply in the case of persons reselling their Time Share unit weeks.

SECTION 7 - PUBLIC INTEREST

No comment or questions.

SECTION 8 - MATERIAL CHANGE

On further consideration of Section 8 which deals with material changes to the Public Offering Statement, we recommend that time for approval of the material changes by the superintendent be increased to fourteen days from the seven days stipulated in the draft act.

SECTION 9 - RECEIPT

No comments or questions.

SECTION 10 - CONTRACT

This section sets out certain matters that must be set out in any contract covering a sale of Time Share period. Although the question was not asked in the 1983 report, Manitoba Commissioners now ask the question as to whether this section should be set out in the Act or whether it would be preferable in the regulations. Certainly the contents of this section are very important and an argument can be made for including the terms in the statute itself. On the other hand, for the reasons mentioned in dealing with the contents of the Public Offering Statement it may be preferable at this time to take this section out of the statute and include it in the regulations so that the requirements can be more easily changed as experience dictates.

SECTION 11 - TRUST

In the 1983 report, Section 11 was entitled "Escrow" and reference throughout Section 11 and other Sections was to "Escrowed Funds". Manitoba Commissioners feel that the term "Trust" would be more appropriate than "Escrow", wherever the term is used in Section 11 and elsewhere in the statute.

1. *How long should the funds be held in trust - for rescission period only or until premises are ready for occupation?*

If a purchaser of a Time Share period is to be fully protected, the Manitoba Commissioners feel that any payments on account of the purchase price should be held in trust until the premises are ready for occupation. It should be pointed out however, that many jurisdictions, particularly those with disclosure type legislation, merely provide for a rescission period during which purchase moneys must be held in trust and then go on to allow the release of those moneys on the expiry of the rescission period. Presumably, it has been the prevailing opinion in those jurisdictions that the state or province should not involve itself in the contractual relationship between the parties and should allow them to work out those details themselves. This and the other questions raised with respect to Section 11 might be considered to be regulatory in nature and not properly dealt with in a disclosure type statute. Your Commissioners, therefore, seek guidance on this and the following questions.

2. *Should the developer have access to any of the funds prior to completion for use in construction, or furnishing?*

For the reasons set out in dealing with Question 1 above, Manitoba Commissioners are of the view that the developers should not have

access to any of the funds prior to completion of the project and that they should not be able to use them for either construction of the project or for the furnishings. In other words, the developer would be responsible for his own interim financing throughout until the premises were ready for occupancy.

3. *Should purchasers be allowed to waive rescission periods?*

Manitoba Commissioners are firmly of the view that purchasers should not be allowed to waive rescission periods. At the same time, they recognize that the rescission period must be a reasonable period and should not be unduly long.

SECTION 12

This section deals with the obtaining of deposits for the purpose of reserving a Time Share period. Upon reviewing the draft statute, Manitoba Commissioners were made aware that there is no provision in Section 12 giving the person reserving a Time Share period the right to cancel same. We recommend that such a clause be added in Section 12.

SECTION 13 - EXEMPTION FROM FILING

No comments or questions.

SECTION 14 - ADDITIONAL DEVELOPERS' AND SELLERS' OBLIGATIONS

No comments or questions.

SECTION 15 - PARTITION

No comments or questions.

SECTION 16 - ADVERTISING

1. *Should there be a requirement that copies of all advertising be filed and/or approved prior to use?*

As a result of the experience in many other jurisdictions where misleading or unsuitable advertising has been used in the marketing of Time Share projects, Manitoba Commissioners recommend that there be a requirement that copies or all advertising be filed with the administering bodies and that they be deemed approved unless rejected or questioned within a reasonable period of time. In our view, fourteen

days would be a reasonable period of time. This would give the authorities some control on the type of advertising material being used but the control would be restricted to those matters set out in Section 16.

SECTION 17 - IMPROVEMENTS

No comments or questions.

SECTION 18 - OWNERS' ASSOCIATION

Manitoba Commissioners recommend that Section 18 dealing with an Owners' Association be deleted from the statute and be replaced by a requirement that the Public Offering statement specifically mention whether or not there is to be a formal Owners' Association set up by the developer for the owners. The individual provincial jurisdictions may wish to consider whether or not their regulations should spell out the requirements for maintenance, repair and furnishing of the Time Share units and for the overall management and operation of the Time Share plan.

1. *Should an Owners' Association be mandatory?*

Because this is to be disclosure legislation, Manitoba Commissioners are of the opinion that legislation should not spell out the requirement for an Owners' Association but rather should require the developer to indicate in the Public Offering statement whether or not there is to be an Owners' Association.

2. *If so, should the by-laws setting up same be required to be filed as part of the filing requirements and also disclosed in detail in the offering statement?*

For the reasons previously mentioned any by-laws of an Owner's Association would more properly be covered in the regulations and would not be part of the filing requirements or contained in the Public Offering statement.

3. *Should it be given status to sue etc. as in Condominium legislation?*

If the legislation were to be enabling legislation then perhaps the Owners' Association should be given the power to sue etc. as is provided in the Condominium legislation. However, as our recommendation is for disclosure legislation only, we do not feel that it should contain such a provision. In addition, presumably under the provincial legislation, individual owners or an association of owners could institute court action in appropiate cases.

SECTION 19 - MANAGEMENT CONTRACT

1. *Should the legislation require that managers of Time Share projects be registered?*

At the present time, the Manitoba Commissioners do not feel that the legislation should require that managers of Time Share projects be registered. Management is either handled through the developer, a subsidiary of the developer or through the Owners' Association. We cannot see that anything would be gained at this time by requiring the registration of managers under provincial legislation.

2. *If so, what about situations where the owners themselves take on the responsibility?*

Already answered

3. *Should there be a requirement that management contracts be filed as part of the filing requirements or simply given to each purchaser at time of sale?*

If a management contract is entered into then perhaps a precis of the relevant terms of any management contract should be included in the filing requirements or alternatively there might be a requirement that a copy of same be given to each purchaser at the time of sale.

4. *Should there be any provisions in the Act re managers duties e.g. preparing budgets, keeping books, register of owners etc.?*

There would appear to be no need for the Act to set out the duties of managers as this would likely vary by project and the question of the managers' duties would more properly be left to the individual contracts rather than in the statute.

5. *Should there be provision for replacement of managers?*

Once again, the Manitoba Commissioners are of the view that provisions respecting the replacement of managers be left to the specific situation, contract, etc.

SECTION 20 - MAINTENANCE

No comments or questions.

SECTION 21 - EXCHANGE PROGRAMS

1. *Should information re any Exchange Program being offered to purchasers be filed as part of the filing requirements or simply given to each purchaser at time of sale?*

In view of the importance of exchange programs in the marketing of Time Share projects, the Manitoba Commissioners feel that the required information on such programs should both be filed as part of the filing requirements and also given to each purchaser at the time of sale.

SECTION 22 - LICENSES

1. *Should "Sellers" be required to be licensed? If so, what requirements, if any, should be set out in the Act?*

Manitoba Commissioners recommend that any licensed real estate agent be able to sell Time Share units. Also, as it is recognized that the marketing and selling of Time Share units is quite different from the selling of real estate, that each province would likely wish to set up separate licensing requirements for those persons selling Time Share units only. Many developers in this field have special training courses for their sales personnel in recognition of the particular requirements of Time Share selling, and accordingly, provinces could authorize the issuing of real estate agent licenses specifically limited to the Time Share units and that they be issued to those completing a required course of instruction.

2. *Should employees of developer be exempt?*

Manitoba Commissioners recommend that employees of developers be exempt from the licensing requirements so long as the developer is registered as the broker and maintains the necessary control over his employees.

SECTION 23 - ZONING

No questions or comments.

SECTION 24 - SUPERINTENDENT'S AUTHORITY

In addition to the powers given to the superintendent in Section 24, we recommend that he also be given the authority to suspend the selling of Time Share periods for any of the reasons of the reasons set out in Section 24. (See our comment on Section 5.)

1. *Should there be a right of Appeal of the Superintendents' decisions?*

We recommend that there be a right of appeal of the superintendents' decisions.

2. *If so, to whom and how should the appeal be dealt with?*

It is the recommendation of the Manitoba Commissioners that the appeal would be either to the Securities Commission or to the Real Estate Licensing Board, whichever would be most appropriate.

3. *What about the handling of sales while the appeal is in progess?*

In recognition of the fact that the decisions under appeal might be of major concern or alternatively may be dealing with a relatively minor matter, we recommend that the decision as to whether or not sales should be allowed to continue pending the outcome of the appeal should be left either to the discretion of the superintendent or to the appeal body. It would seem that on balance the superintendent would probably be the person best in a position to make such a decision (although as it is the superintendent's decision that is under appeal he may well be biased against the developer). The problem would be whether the appeal body would be in a position to make a decision on the continued selling of the project in sufficient time for the decision to be meaningful.

SECTION 25 - EXEMPTION

No comments or questions.

KORMAN & CO.
Barristers & Solicitors

August 17, 1984
R.G. Smethurst, Q.C.,
Winnipeg

Dear Sir:

Re: Uniform Time Share Act

Further to our last correspondence and recent telephone conversations, what follows are the writer's submissions regarding the form and content of proposed time share legislation seen from the perspective of the timesharing industry and a legal practitioner in this area. As a result of time constraints, the writer unfortunately did not have the opportunity to complete a third draft of the proposed Uniform Act. We felt it important however to comment by way of letter.

Section 2 1

It is our position that time share legislation (hereinafter "the Act") would be inadequate were it to merely require

disclosure by interested parties. The Act must be enabling so as to give legitimacy to the concept and practise of time sharing. On the other hand, it should not be so complex as to be incomprehensible to regulators, developers and consumers alike. In addition, the Act must not be so intrusive as to displace the principle of caveat emptor.

It is our submission that the Act is necessary only for the above stated purposes and should not attempt to provide a "Hammurabi's Code" approach which simply would have no value whatsoever. We further submit that the Provincial Government should have little discretion to exercise in dealing with the provisions of the Act, otherwise the paternalism would be most regrettable. As was stated by Millward J. in the case of *Scoones et al vs. Superintendant of Insurance* (Victoria, B.C., No.S.C. 1378/81, unreported):

> "To substitute the view of the Superintendant as to what is desirable for members of the public to consider with respect to the purchase of these lands, for the informed views of those very members of the public, *is not simply paternalism but rather a denial of the fundamental rights of the citizenry to exercise their own freedom of economic choice.*" (emphasis added)

We believe that the best approach is for the Act to outline general principles and the preferred structure of the industry and to leave the detailed mechanics to accompanying regulations.

Section 2 4

Time share must be given statutory definition. The Act should apply to time share interests in real property located both within and outside the Province. It should be made clear that the law of Alberta will govern in all cases where an Alberta resident purchases a timeshare interest as a result of direct solicitations which take place in Alberta. If the solicitations take place outside of the Province, the law of the jurisdiction where the property is sold should govern. A "grandfathering" provision of some sort should extend the application of the Act, after a reasonable period, to projects already in existence or under way. The Act should not apply to chattels being utilized for timesharing such as yachts, recreational vehicles and aircraft to name just a few examples.

Section 2 6

Section 2 3

Because of the focus on real property, jurisdiction over the Act and the time share industry should be accorded to the Provincial superintendent of real estate. This is a critical area as a result of the present potential for overlapping jurisdictions. It should be made clear that projects and transactions which fall within the ambit of time share legislation need not comply with Provincial securities legislation, and contra, that the filing provisions in the Act do not apply to a developer who has filed an approved prospectus under the securities legislation. Developers should also be exempted from the filing requirements of the Act in a limited number of situations such as were set out in our preliminary draft Act.

Section 2 2

Regarding registration of time share interests in the Land Titles Office, we do not agree with the Manitoba Commissioners that the recording of separate time share interests would unduly complicate the various recording systems in place across the country.

The writer is not aware of any rule in the Torrens System of land registration which limits the number of parties which can be registered as having undivided interests in a single parcel of land. In Alberta, the *Land Titles Act* R.S.A., 1980, Chpt. L-5 contains no such limit (except for S.55 which limits to 20 the number of undivided interests which may be registered on a title which includes mines and minerals). In addition, we are advised by the Alberta Land Titles Office that they are aware of no reason, other than a lack of space on existing forms, for refusing to register a substantial number (eg. 51) of undivided interests on any one title.

Section 15

It must be expressly stated in the Act that the law of partition does not apply to time share interests. As well, it should be made clear that each time share interest is not to be treated separately for real property tax purposes.

In addition to the Act's enabling function, the industry is seeking and the public interest requires that a certain degree of disclosure be officially mandated. Developers marketing time share interests should be required to file a Prospectus *Section 3 2* (which may alternatively be called a disclosure statement) before being allowed to make their inventory available to the public.

The one exception to this rule should be that prior to obtaining approval, developers should be permitted to accept deposits from prospective purchasers for the purpose of reserving particular time share periods which the purchasers wish to purchase. All such deposits would have to be held in trust until there is approval of the Prospectus. Under no circumstances should these funds be available to developers, as collateral or to supplement their cash flow, until the project in question is completed and is ready for use and occupation. If approval is not forthcoming, the funds would have to be returned forthwith. Purchasers should have a right of rescission regarding these deposits similar to that regarding the main purchase contract, which is discussed below.

Section 11 2

Section 3 3

Regarding the Prospectus, we believe the Act should set out the requirements for disclosure but that the contents should be dealt with in accompanying Regulations. Our first Draft of the Act set out the subjects in some detail.

New Section 3

Despite the all encompassing nature of the Prospectus and perhaps because of it, we do not feel that it is reasonable to require developers to present a complete copy of the Prospectus to Prospective purchasers and obtain an acknowledgement from them that they have read the Prospectus. We know that most consumers only refer to it briefly and do not read it entirely. Secondly, the cost of printing is simply added to the cost of the interval and developers have no choice but to pass on this cost to consumers. Prospective purchasers should be presented with an abridged version describing the project generally, advising them to obtain independent advice regarding their purchase, and advising them of their rights of rescission. The Prospectus presented to purchasers should be concise and readable and need not contain the numerous appendices which will accompany the prospectus which is filed with the superintendent. In this area more than any other, the principle of caveat emptor should govern.

Section 5

Rather than require a positive act by the superintendent to signify approval of the prospectus, my personal opinion on this controversial subject is that the Act should prescribe a specific period within which the developer must be notified

of any deficiencies in or rejection of the Prospectus. Failing such notification, approval would be deemed to be granted. In the event of deficiencies and the filing of appropriate corrections, the superintendant would, again, be deemed to approve the Prospectus in the absence of a further indication of deficiencies or rejection. We believe a fourteen (14) day period for such notices would be appropriate.

Section 7

As aforestated, the discretionary power of the superintendent should be clearly defined and should be limited to determining whether or not there has been compliance with the Act. It should not include the authority to make a determination of the "public interest" as this would allow for much too great uncertainty and, in some instances, unwarranted delay. Where the Act is not complied with, the superintendent should have the authority to suspend trading. Any such suspension must be followed by a hearing within a specified period and the decision must be appealable to the Court of Queen's Bench.

Section 5

Section 24 1 & 2

Section 8

In the event of a material change in a Prospectus or project, an amendment would have to be filed forthwith by the developer. The fourteen (14) day approval procedure set out above would apply to all amendments. Minor changes however, such as changes in personnel, designated inventory, etc., should not require an actual amendment but merely notification to the Superintendant. We also believe that the present annual refiling requirement for Prospectuses is an anomaly which should be done away with.

Section 10

The detailed contents of the purchase contract need not be spelled out in the Act. Once again this type of material would be best dealt with in accompanying regulations.

Regarding the period in which rescission should be available, we firmly believe that seven (7) days is the optimum. A three (3) day period, as is sometimes favoured, may be too short to realistically allow a purchaser time to contemplate and respond to what he has done. A longer period creates an excessive financial burden on the developer, impacts on commissions, and adds a great deal of uncertainty to the financing and marketing considerations of any project. Rights of rescission should not be capable of being waived by prospective purchasers.

Section 11 3

Section 11 1

During the rescission period, all purchase monies received by developers should be held in trust, in a separate account designated for that purpose or in the developer's lawyer's trust account. The money should not be releasable until:

(a) The rescission period has expired;

(b) The purchaser of a fee simple interest is provided with a copy of a recorded non-disturbance instrument from every encumbrancer registered on title, which shall provide that in the event of foreclosure, the title to the fee simple interest is to be subject to the right of possession of the purchaser as a first priority. The instrument must also contain a partial release clause to ensure that purchasers be able to obtain their time share interests free and clear of any blanket encumbrances on the project;

(c) The developer signs a sworn declaration that no notice of rescission was received from the purchaser whose funds are being released.

Section 16 1

Regarding advertising, we feel that copies of all material to be used in the marketing of time share interests should be forwarded to the superintendent prior to use, but that approval of same should not be required. Advertising which misrepresents a project may constitute a violation of the requirements of the Act and the developer would suffer the consequences which flow from that fact and from resulting civil litigation. In all other instances, the principle of caveat emptor should prevail.

Section 18

Developers should only be required to manage and maintain their projects initially, either for a specific period of time or until a threshold number of units have been sold or leased. Thereafter, the onus should be upon the holders of the time share interests to arrange for continued management, maintenance and repair. Owners associations should not be specifically mandated by the Act to reflect the fact that many time share owners clearly do not wish to be responsible for the management of the property. Because of this freedom, however, the Regulations should contain a procedure for establishing operating budgets once the developers' obligations come to an end.

Section 21

In light of the importance of exchange programs to prospective purchasers, the Act should require stringent disclo-

sure regarding, inter alia, the availability, exchange rate and cost of those programs which are available to prospective purchasers. The effects of a developer terminating an exchange contract and the consequential changes to the Public Offering Statement which would be required must also be addressed in the Act.

Section 22 1

We continue to support the principle that persons engaged in selling time share interests should be licensed specifically for that purpose. Licenses granted to real estate sales personnel generally should not be considered adequate. Developers' full time employees should be exempt from the licensing requirement however.

Section 22 2

Although the foregoing remarks have been presented in an informal manner, we trust they are of value to the Commission. The writer greatly appreciates the Commission's continued interest in time sharing and hopes to be available to participate in its deliberations the next time the subject of time sharing is dealt with.

Yours very truly,
Korman & Company

APPENDIX N

(See page 34)

MAINTENANCE AND CUSTODY ENFORCEMENT REPORT OF THE ONTARIO COMMISSIONERS

The following are the decisions on policy issues taken by the Uniform Law Conference of Canada at its meeting at Calgary in August:

1. The government should establish an office responsible for the enforcement of maintenance and custody orders on behalf of those entitled to maintenance or custody. The services of this office should be available free of charge.

2. The enforcement office would have the power to demand and receive information from the records of government and private individuals concerning the location of a respondent. For the purpose of the Act, records should not include correspondence between family members. The Act should not expressly override solicitor-client privilege.

3. The office would have the power to commence and conduct court proceedings and initiate and complete administrative steps for enforcement of orders.

4. The office would be under a duty to maintain the confidentiality of any information received.

5. Every maintenance order made in the jurisdiction, other than a provisional order, would provide by its terms that it would be enforced by the enforcement office, and would in fact be enforced by the office, unless the applicant opted out of the enforcement system. All extra-provincial maintenance orders would be filed for enforcement with the office.

6. Any custody order enforceable in the jurisdiction could be filed in the office by the person entitled to custody.

7. Where a marriage contract, cohabitation agreement or separation agreement is enforceable in the jurisdiction as if it were a court order, the agreement could be filed in and enforced by the enforcement office.

8. A person entitled to maintenance or custody could withdraw an order from the office at any time and take over the enforcement of it himself or herself, but where the person was receiving welfare

benefits, he or she could not withdraw a maintenance order without the consent of the Minister responsible.

9. Where a maintenance order has been assigned to a government agency providing welfare benefits, the government agency could enforce the order.

10. Where an order has been filed in the enforcement office, no one other than the enforcement office could take steps to enforce it.

11. Where a demand for location information made by the enforcement office has not been complied with, or where a person enforcing his or her own order requires location information concerning the respondent, there should be a procedure to obtain a court order requiring disclosure of information available under number two above.

12. Support orders should be enforceable by a continuing garnishment procedure that does not require judicial intervention unless the notice of garnishment is not complied with.

13. The Act should not deal with the question of exemptions from seizure, but the question of exemptions from seizure should be noted for consideration and action by each enacting jurisdiction.

14. The Act should provide a procedure for recognition of extra-provincial garnishments and their enforcement by the courts within the jurisdiction. This recognition should not be dependent on reciprocity, but rather should recognize that inter-jurisdictional enforcement of maintenance orders is of paramount concern. The procedure for recognition should include a means of converting the extra-provincial garnishment into process of the local court.

15. Maintenance orders should also be enforceable by seizure and sale of real and personal property, appointment of a receiver, registration against land and a default hearing or show cause procedure. Further consideration must be given to the mechanics of registration of a maintenance order against land.

16. At the default hearing, there should be presumption that the arrears alleged by the enforcement office are correct as to the period during which the order is enforced by the office. There should also be a presumption that the debtor has the ability to pay the enforceable arrears and to make subsequent payments.

17. Where the debtor fails to satisfy the court of an inability to pay, the court should have power to order the imprisonment of the debtor, among other matters.

18. Where the debtor attempts to leave the jurisdiction in order to evade responsibility for payment of maintenance or fails to comply with a notice of default hearing, there should be a power to order the arrest of the debtor for the purpose of bringing him or her before the court.

19. There should be a power in the court to restrain a debtor from disposing of assets so as to impair the ability to pay maintenance.

20. A maintenance order should have priority over other judgment debts to the extent of twelve months arrears. Payments under a maintenance order should not form part of a creditor's relief distribution.

BILL

Uniform Maintenance and Custody Enforcement Act

Interpretation 1. (1) In this Act,

(a) "custody order" means a provision in an order of a court in or outside *(enacting jurisdiction)* enforceable in *(enacting jurisdiction)* for custody of a child other than right of access, and includes a like provision in a marraige contract, cohabitation agreement or separation agreement that is enforceable under the law of *(enacting jurisdiction)* as if it were a custody order;

(b) "Director" means the Director of Maintenance and Custody Enforcement appointed under section 2;

(c) "maintenance order" means a provision in an order of a court in or outside *(enacting jurisdiction)* enforceable in *(enacting jurisdiction)* for the payment of money as support or maintenance, and includes a provision incidental to such provision for,

(i) the payment of an amount periodically, whether annually or otherwise and whether for an indefinite or limited period, or until the happening of a specified event,

(ii) a lump sum to be paid or held in trust,

(iii) any specified property to be transferred to or in trust for or vested in a party, whether absolutely, for life or for a term of years,

(iv) one spouse to be given exclusive possession of a matrimonial home or part thereof for life or for such lesser period as the court directs,

(v) a spouse to whom exclusive possession of a matrimonial home is given to make such periodic payments to the other spouse as are prescribed in the order,

(vi) one spouse to be given exclusive possession of the contents of a matrimonial home or household goods or any part thereof,

(vii) fixing the obligation to repair and maintain a matrimonial home or to pay other liabilities arising in respect thereof,

(viii) all or any of the moneys payable under the order to be paid into court or to any other appropriate person or agency for the benefit of a party,

(ix) payment of maintenance in respect of any period before the date of the order,

(x) payment to the *(Minister of social allowances)* of any amount in reimbursement for a benefit or assistance provided to a party, including an amount in reimbursement for such benefit or assistance provided before the date of the order,

(xi) payment of expenses in respect of the pre-natal care and birth of a child,

(xii) the designation by a spouse who has a policy of life insurance or an interest in a benefit plan of the other spouse or a child as the beneficiary irrevocably,

(xiii) the securing of payment under the order, by a charge on property or otherwise, or

(xiv) interest or the payment of legal fees or other expenses arising in relation to maintenance,

and includes a like provision in a marriage contract, cohabitation agreement or separation agreement that is enforceable under the law of *(enacting jurisdiction)* as if it were a maintenance order.

Acting by solicitor

(2) Anything required by this Act to be signed or done by a person, or referred to in this Act as signed or done by a

person, may be signed or done by a lawyer acting on the person's behalf.

Act binds Crown

(3) This Act binds the Crown.

PART I

ENFORCEMENT BY DIRECTOR

Director of Maintenance and Custody Enforcement

2. (1) There shall be a Director of Maintenance and Custody Enforcement who shall be appointed by the Lieutenant Governor in Council.

Duty and powers of Director

(2) It is the duty of the Director to enforce maintenance orders and custody orders that are filed in the office of the Director in such manner, if any, as appears practicable and the Director may, for the purpose, commence and conduct a proceeding and take steps for the enforcement of the order in the name of the Director for the benefit of the person entitled to enforcement of the order, or of his or her child.

Fees

(3) The Director shall not charge a fee for services to persons on whose behalf he or she acts.

Enforcement officers

(4) The Director may appoint employees of the office of the Director to be enforcement officers for the purposes of this Act.

Powers of enforcement officers

(5) An enforcement officer may act for and in the name of the Director.

Filing of orders

3. (1) A maintenance order or custody order may be filed in the office of the Director by a person entitled to maintenance or custody under the order.

Filing of maintenance orders by Minister of ____

(2) A maintenance order may be filed in the office of the Director by the *(Minister of social allowances)*

Filing of maintenance orders by the court

(3) Every maintenance order made by a court in *(enacting jurisdiction)*, other than a provisional order, shall,

(a) state in the operative part of the order that it shall be enforced by the Director and amounts owing under the order shall be paid to the person to whom it is owed through the Director, unless the order is withdrawn from the office of the Director; and

(b) be filed in the office of the Director by the clerk or registrar of the court that made it, forthwith after it is signed,

unless the person who instituted the application for the order files with the court and the office of the Director a notice in writing signed by the person stating that he or she does not wish to have the order enforced by the Director.

Filing of maintenance orders made outside jurisdiction

(4) Every maintenance order made by a court outside *(enacting jurisdiction)* that is received by the Ministry of *(as appropriate)* or a court for enforcement in *(enacting jurisdiction)* shall be filed in the office of the Director forthwith after it is received unless the order is accompanied by a notice in writing signed by the person seeking to enforce the order stating that he or she does not wish to have the order enforced by the Director.

Filing of past maintenance orders enforced by court

(5) A maintenance order that was made before this Act comes into force and filed for enforcement under *(provision for automatic or court-initiated enforcement)* shall be filed in the office of the Director by the clerk or registrar of the court in which it is filed, forthwith after this Act comes into force.

Withdrawal of filing

4. (1) A maintenance order or custody order filed in the office of the Director may be withdrawn by a notice in writing signed by the party by or on whose behalf it was filed.

Refiling

(2) A maintenance order or custody order that has been withdrawn may be refiled at any time by any person entitled to file the order under section 3.

Notice of filings and withdrawals

(3) The Director shall give notice of the filing or withdrawal of a maintenance order or custody order to all the parties to it and, on request of the *(Minister of social allowances)*, to the Minister.

Filing by Minister of (social allowances)

(4) Where a person who is entitled to maintenance under a maintenance order has applied and is eligible for, or has received, a benefit under *(social allowances Acts)* the Minister of *(social allowances Ministry)* may file the order in the office of the Director regardless of whether the notice referred to in subsection 3(3) or (4) has been given, and the order shall not be withdrawn except by, or with the consent in writing of *(the Minister or other official)*.

Enforcement by Director exclusive

5. (1) No person other than the Director shall enforce a maintenance order or custody order that is filed in the office of the Director.

Past orders and arrears

(2) The Director may enforce arrears of maintenance under a maintenance order notwithstanding that the arrears were incurred before the order was filed in the office of the Director or before this Act comes into force.

Access by Director to information

6. (1) The Director may, for the purposes of enforcing a maintenance order or custody order that is filed in the office of the Director,

(a) demand and receive from any person or public body, including the Crown in right of *(enacting jurisdiction)*, information as to the location, address and place of employment of the person against whom the order is being enforced, that is shown on a record in the possession or control of the person or body other than personal correspondence between family members, notwithstanding the provisions of any other Act restricting the disclosure of the information; and

(b) provide information obtained under clause (a) to a person performing similar functions in another jurisdiction.

Information confidential

(2) Information obtained under clause (1)(a) shall not be disclosed to any person except as provided in clause (1)(b) or to the extent necessary for the enforcement of the order.

Order of court for access to information

(3) Where, on motion to a court, it appears that,

(a) the Director has been refused information after making a demand under clause (1)(a); or

(b) a person has need of an order under this subsection for the enforcement of a maintenance order or custody order that is not filed in the office of the Director,

the court may order any person or public body, including the Crown in right of *(enacting jurisdiction)*, to provide the court or such person as the court directs with any information as to the location, address or place of employment of the person against whom the order is being enforced, that is shown on a record in the possession or control of the person or public body, other than personal correspondence between

family members, notwithstanding the provisions of any other Act restricting the disclosure of the information.

Costs

(4) Where the Director has been refused information after making a demand under clause (1)(a) and obtains an order under subsection (3), the court shall award the costs of the motion to the Director.

Information confidential

(5) Information obtained under an order under subsection (3) shall not be disclosed except as permitted by the order or a subsequent order or as necessary for the enforcement of the maintenance order or custody order, and shall be sealed in the court file.

PART II

ENFORCEMENT REMEDIES

Interpretation

7. In this Part, "court" means the *(appropriate family court)*.

GARNISHMENT

Garnishment

8. (1) An obligation to pay money under a maintenance order may be enforced by garnishment of money payable to the debtor by another person, in accordance with the *(rules of court)*.

Notice

(2) On the filing of the material prescribed by the *(rules of court)*, the clerk *(or registrar)* of the court shall issue a notice of garnishment.

Recognition of extra-provincial garnishments

(3) On the filing of a notice of garnishment that,

(a) is issued outside *(enacting jurisdiction)*;

(b) states that it is issued in respect of support or maintenance; and

(c) is written in or accompanied by a sworn or certified translation into *(language of enacting jurisdiction)*,

the clerk *(or registrar)* of the court shall issue a notice of garnishment.

Obligation of garnishee

(4) On service of a notice of garnishment, the garnishee shall pay to the court or other person as specified in the notice any money that is payable by the garnishee to the debtor named in the notice, and money as it becomes pay-

able to the debtor from time to time after service of the notice, up to the amount shown in the notice.

Effect of payment

(5) Payment by a garnishee of money in accordance with a notice of garnishment discharges the obligation of the garnishee to the debtor to the extent of the payment.

Order of court for payment by garnishee

(6) Where a garnishee fails to pay money that is payable or becomes payable in accordance with the notice of garnishment or fails to respond to the notice as provided by the *(rules of court)*,

(a) the court may order payment by the garnishee of the amount unpaid;

(b) the order under clause (a) may be enforced in any manner that an order of the court may be enforced; and

(c) the court shall award costs of the order and its enforcement against the garnishee.

Motion to set aside

(7) The debtor, creditor or garnishee may make a motion at any time for an order setting aside a notice of garnishment.

Garnishee not to charge fee

(8) A garnishee shall not charge a fee for receiving or responding to a notice of garnishment. *(Each jurisdiction to provide for its own exemptions in appropriate place).*

Service of garnishment outside (enacting jurisdiction)

9. A notice of garnishment may be issued in respect of a garnishee who is outside *(enacting jurisdiction)* and shall,

(a) be signed and sealed by the clerk *(or registrar)* of the court;

(b) state that it is issued in respect of maintenance;

(c) set out the name, address and telephone number of the person who caused it to be issued and the name and address of the garnishee; and

(d) be written in or accompanied by a sworn or certified translation into a language ordinarily used in the courts of the jurisdiction where it is to be served.

SALE OF PROPERTY

Seizure and sale of property

10. (1) An obligation to pay money under a maintenance order may be enforced by seizure and sale of the debtor's real and personal property.

(2) On the filing of the material prescribed by the *(rules of court)*, the clerk *(or registrar)* of the court shall issue a writ of *(seizure and sale, etc.)*. *Procedure*

11. (1) A maintenance order may be registered against the land of the person against whom an obligation to pay money under the order is enforceable in the *(land registry office)* and on registration the obligation under the order becomes a charge on the property. *Registration against real property*

(2) A charge created by subsection (1) may be enforced by sale of the property against which it is registered in the same manner as a sale to realize on a mortgage. *Sale of property*

(3) A court may order the discharge, in whole or in part, or the postponement, of a charge created by subsection (1), on such terms as to security or other matters as the court considers just. *Discharge or postponement of charge*

(4) An order under subsection (3) may be made only after notice to the Director. *Director to be served*

(Each jurisdiction to provide for its own exemptions from seizure and sale in appropriate place.)

RECEIVERSHIP

12. An obligation to pay money under a maintenance order or agreement may be enforced by the appointment of a receiver under the *(appropriate Act)*. *Appointment of receiver*

DEFAULT EXAMINATIONS AND ORDERS

13. (1) Where an obligation to pay money under a maintenance order that is filed in the office of the Director is in default, the Director may prepare a statement of the arrears, not including arrears that accrued before this Act comes into force, and the Director may by notice served on the debtor together with the statement of arrears require the debtor to file in the office of the Director a financial statement in the form prescribed by *(rules of court)*and to appear before the court to explain the default. *Filing of financial statement with Director*

(2) Where an obligation to pay money under a maintenance order that is not filed in the office of the Director is in default, on the filing of a request, together with a statement of arrears in the form prescribed by the *(rules of court)*, the *Filing financial statement in court*

clerk *(or registrar)* of the court shall by notice served on the debtor together with the statement of arrears require the debtor to file a financial statement in the form prescribed by the *(rules of court)* and to appear before the court to explain the default.

Arrest of debtor

(3) Where the debtor fails to file the financial statement or to appear as required by the notice, the court may issue a warrant for the arrest of the debtor for the purpose of bringing him or her before the court.

Presumptions at hearing

(4) At the default hearing, unless the contrary is shown, the debtor shall be presumed to have the ability to pay the arrears and to make subsequent payments under the order, and the statement of arrears prepared and served by the Director shall be presumed to be correct as to arrears accruing while the order is filed in the office of the Director.

Powers of court

(5) The court may, unless it is satisfied that there are no arrears or that the debtor is unable for valid reasons to pay the arrears or to make subsequent payments under the order, order that the debtor,

(a) discharge the arrears by such periodic payments as the court considers just;

(b) discharge the arrears in full by a specified date;

(c) comply with the order to the extent of the debtor's ability to pay, but an order under this clause does not affect the accruing of arrears;

(d) provide security in such form as the court directs for the arrears and subsequent payment;

(e) report periodically to the court, the Director or a person specified in the order;

(f) provide forthwith to the court, the Director or a person specified in the order particulars of any future change of address or employment;

(g) be imprisoned continuously or intermittently for not more than *(ninety)* days unless the arrears are sooner paid; and

(h) be imprisoned continuously or intermittently for not more than *(ninety)* days on default in any payment ordered under this subsection.

Power to vary order

(6) The court that made an order under subsection (5) may vary the order where there is a material change in the debtor's circumstances.

(7) Imprisonment of a debtor under clause (5)(g) or (h) does not discharge arrears under an order. *Imprisonment does not discharge arrears*

(8) An order for security under clause (5)(d) or a subsequent order of the court may provide for the realization of the security by seizure, sale or other means, as the court directs. *Realizing on security*

(9) Proof of service on the debtor of a maintenance order is not necessary for the purpose of a default hearing. *Proof of service not necessary*

(10) A default hearing under this section and a hearing on an application for variation of the maintenance order in default may be heard together or separately. *Joinder of default and variation hearings*

(11) The remedies available under this section are civil process and the *(Act for summary convictions procedure)* does not apply. *Civil remedies*

(12) Spouses are competent and compellable witnesses against each other on a default hearing. *Spouses compellable witnesses*

EVASION OF DEBTOR

14. A court may make an interim or final order restraining the disposition or wasting of assets that may hinder or defeat the enforcement of a maintenance order. *Restraining order*

15. Where it appears that a debtor is about to leave *(enacting jurisdiction)* in order to evade or hinder enforcement of a maintenance order against him or her, a court may issue a warrant for the arrest of the debtor for the purpose of bringing him or her before the court and may make any order provided for in subsection 13(5). *Arrest of absconding debtor*

PRIORITIES

16. Money paid on account of a maintenance order shall be credited, *Application of payments*

(a) first to the principal amount most recently due and then to any interest owing on that amount; and

(b) then to the balance outstanding in the manner set out in clause (a),

unless the debtor specifies otherwise at the time the payment is made or the court orders otherwise.

Other judgment debts

17. Arrears of payment under a maintenance order in an amount not exceeding one year's maintenance at the current rate,

(a) have priority over other judgment debts; and

(b) rank equally with like arrears under another maintenance order,

regardless of when an enforcement process is issued or served.

Exemption from creditors' relief

18. Money realized under an enforcement process taken by or on behalf of the Director in respect of money owing under a maintenance order is not subject to distribution among creditors under the *Creditors' Relief Act*.

R.S.O. 1980, c. 103

SPECIAL PROVISIONS

Capacity of minor

19. A minor may commence, conduct and defend a proceeding and initiate and complete steps for enforcement of a maintenance order without the intervention of a *(litigation guardian)*.

Assignment to Crown

20. The *(Crown etc.)* may enforce a maintenance order that is assigned to the *(Crown, etc.)*.

(It is intended that the limitation period for enforcement of a maintenance order be ten years as provided in section 4 of the *Uniform Limitations Act*. In jurisdictions where that is not the case, the following section should be added:

Limitation

21. The limitation period for the enforcement of arrears of payment under a maintenance order is ten years.

PROJET DE LOI

Loi uniforme sur l'exécution forcée d'ordonnances alimentaires et de garde d'enfants

1 (1) Les définitions qui suivent s'appliquent à la présente loi. *Définitions*

"directeur" Le directeur de l'exécution forcée des ordonnances alimentaires et de garde d'enfants nommé aux termes de l'article 2. *"Director"*

"ordonnance alimentaire" La disposition contenue dans l'ordonnance émanant d'un tribunal de *(compétence législative)* ou situé hors de cette compétence et exécutoire dans *(compétence législative)*, et qui a trait au versement de sommes d'argent à titre d'aliments. S'entend en outre de la disposition relative ou accessoire à cette disposition comportant: *"maintenance order"*

(i) le versement périodique d'une somme d'argent, notamment chaque année, pour une durée indéterminée ou limitée ou jusqu'à l'arrivée d'un événement précis,

(ii) le versement d'une somme forfaitaire ou la remise d'une telle somme à un fiduciaire,

(iii) le transfert, le versement en fiducie ou l'assignation d'un bien en faveur d'une partie, en propriété absolue, viagère, ou pour un nombre d'années déterminé,

(iv) l'attribution à un conjoint de la possession exclusive du foyer conjugal ou d'une partie de celui-ci, soit à vie, soit pour la période plus courte que fixe le tribunal,

(v) le versement par le conjoint à qui est attribuée la possession exclusive du foyer conjugal, de paiements périodiques à l'autre conjoint, selon les prescriptions de l'ordonnance,

(vi) l'attribution à un conjoint de la possession exclusive du contenu du foyer conjugal, des effets mobiliers ou d'une partie de ceux-ci,

(vii) l'obligation de pourvoir aux réparations et à l'entretien du foyer conjugal de même qu'aux frais qui en découlent,

(viii) la consignation au greffe du tribunal ou le versement au bénéfice d'une partie, à la personne ou à l'organisme désignés, de la totalité ou d'une partie des sommes d'argent payables en vertu de l'ordonnance.

(ix) le paiement d'aliments relativement à toute période de temps antérieure à la date de l'ordonnance,

(x) le versement au *(ministre responsable des allocations sociales)* d'une somme en retour d'un avantage ou d'une aide procurés à une partie, y compris ceux fournis antérieurement à la date de l'ordonnance,

(xi) l'acquittement des frais reliés aux soins prénatals ou à la naissance d'un enfant,

(xii) la désignation d'un conjoint ou d'un enfant à titre de bénéficiaire irrévocable d'une police d'assurance sur la vie de l'autre conjoint ou du droit de ce dernier dans un régime d'avantages sociaux,

(xiii) une garantie de paiement aux termes de l'ordonnance, notamment au moyen d'une sûreté réelle contre un bien,

(xiv) le versement d'intérêts, le paiement de frais juridiques ou d'autres frais engagés en regard de l'obligation alimentaire.

S'entende en outre de la disposition semblable contenue dans un contrat de mariage ou un accord de cohabitation ou de séparation exécutoires dans *(compétence législative)* comme s'il s'agissait d'une ordonnance alimentaire.

"custody order" "ordonnance de garde d'enfants" La disposition contenue dans l'ordonnance émanant d'un tribunal de *(compétence législative)* ou situé hors de cette compétence et exécutoire dans *(compétence législative)* et qui a trait à la garde d'un enfant, à l'exclusion du droit de visite. S'entend en outre de la disposition semblable contenue dans un contrat de mariage ou un accord de séparation exécutoires dans *(compétence législative)*, comme s'il s'agissait d'une ordonnance de garde d'enfants.

Agir par avocat (2) Tout ce que la présente loi exige qu'une personne signe ou fasse ou tout ce qui est mentionné dans la présente

loi comme étant signé ou fait par cette personne, peut l'être par un avocat qui agit pour le compte de cette personne.

(3) La présente loi lie la Couronne. *Loi lie la Couronne*

PREMIÈRE PARTIE

EXÉCUTION FORCÉE PAR LE DIRECTEUR

2 (1) Il est désigné par le lieutenant-gouverneur en conseil un directeur de l'exécution forcée des ordonnances alimentaires et de garde d'enfants. *Le directeur de l'exécution forcée des ordonnances alimentaires et de garde d'enfants*

(2) Il incombe au directuer d'assurer l'exécution forcée des ordonnances alimentaries et de garde d'enfants déposées à son bureau de la façon qui lui paraît réalisable, le cas échéant. Celui-ci peut, à cet égard, en tant que directeur, intenter ou poursuivre un recours au bénéfice du créancier de l'ordonnance ou de l'un de ses enfants et prendre les mesures nécessaires à l'exécution forcée de cette ordonnance. *Attributions du directeur*

(3) Le directeur ne peut exiger de rémunération pour les services dispensés aux personnes pour le compte desquelles il agit. *Rémunération*

(4) Le directeur peut, pour l'application de la présente loi, désigner comme agents d'exécution des employés affectés au bureau du directeur. *Agents d'exécution*

(5) L'agent d'exécution peut agir au nom et pour le compte du directeur. *Pouvoirs des agents d'exécution*

3 (1) L'ordonnance alimentaire ou de garde d'enfants peut être déposée au bureau du directeur par le créancier des aliments ou la personne à qui est confiée la garde d'un enfant aux termes de l'ordonnance. *Dépôt de l'ordonnance*

(2) L'ordonnance alimentaire peut être déposée au bureau du directeur par le *(ministre responsable des allocations sociales)*. *Dépôt des ordonnances alimentaires par le ministre de*

(3) L'ordonnance alimentaire, autre que l'ordonnance conditionnelle, rendue par un tribunal de *(compétence législative)*, doit: *Dépôt des ordonnances alimentaires par le tribunal*

a) contenir dans son dispositif la mention que celle-ci peut être exécutée par le directeur et que ce dernier doit pourvoir à ce que les sommes dues aux termes

de l'ordonnance soient versées à leurs créanciers, sauf si l'ordonnance est retirée du bureau du directeur;

b) être déposée au bureau du directeur immédiatement après sa signature par le greffier de la cour qui l'a rendue,

sauf si l'auteur de la requête dépose auprès du tribunal et au bureau du directeur, un avis écrit, signé de sa main, à l'effet que l'exécution forcée de l'ordonnance par le directeur n'est pas requise.

Dépôt des ordonnances alimentaires en dehors de la compétence législative

(4) L'ordonnance alimentaire rendue par un tribunal situé hors de *(compétence législative)* et reçue par le ministère de *(inscrire la mention pertinente)* ou le tribunal chargé de l'exécution forcée de l'ordonnance dans *(compétence législative)* doit être déposée au bureau du directeur dès sa réception, sauf si l'ordonnance s'accompagne d'un avis écrit signé de la main de la personne qui en requiert l'exécution, à l'effet que son exécution forcée par le directeur n'est pas requise.

Exécution par le tribunal des ordonnances antérieures

(5) L'ordonnance alimentaire rendue antérieurement à l'entrée en vigueur de la présente loi, doit, en vue de son exécution forcée aux termes de *(disposition relative à l'exécution judiciaire ou de plein droit)*, être déposée au bureau du directeur par le greffier de la cour où elle est déposée, dès l'entrée en vigueur de la présente loi.

Retrait du dépôt

4 (1) L'ordonnance alimentaire ou de garde d'enfants déposée au bureau du directeur, peut être retirée au moyen d'un avis écrit signé par la partie qui l'a déposée ou par la personne qui l'a fait pour le compte de cette dernière.

Nouveau dépôt

(2) L'ordonnance alimentaire ou de garde d'enfants qui a été retirée, peut être déposée à nouveau par la personne fondée à déposer l'ordonnance aux termes de l'article 3.

Avis de dépôt et retraits

(3) Le directeur donne avis du dépôt ou du retrait d'une ordonnance alimentaire ou de garde d'enfants à ceux qui en sont parties et au *(ministre responsable des allocations sociales)*, à sa demande.

Dépôt par le ministre (responsable des allocations sociales)

(4) Si une personne qui a droit aux aliments aux termes d'une ordonnance alimentaire a fait une demande en vue d'obtenir un avantage en vertu de *(lois relatives aux allocations sociales)*, y est admissible ou l'a effectivement reçu, le

ministre *(responsable des allocations sociales)* peut déposer l'ordonnance au bureau du directeur, que l'avis visé au paragraphe 3 (3) ou (4) ait été donné ou non. L'ordonnance ne peut toutefois être retirée que du consentement écrit du *(ministre ou d'un fonctionnaire autorisé)*.

Exécution réservée au directeur

5 (1) Seul le directeur peut exécuter l'ordonnance alimentaire ou de garde d'enfants qui est déposée à son bureau.

Ordonnances antérieures et l'arriéré

(2) Le directeur peut voir à l'exécution forcée de l'arriéré d'aliments aux termes d'une ordonnance alimentaire, en dépit du fait que celui-ci ait été dû antérieurement au dépôt de l'ordonnance au bureau du directeur ou à l'entrée en vigueur de la présente loi.

Accès du directeur aux renseignements

6 (1) Aux fins de l'exécution forcée de l'ordonnance alimentaire ou de garde d'enfants déposée à son bureau, le directeur peut:

a) par dérogation à toute disposition contraire d'une autre loi interdisant la divulgation de renseignements, se procurer auprès d'une personne ou d'un organisme public, y compris la Couronne du chef de *(compétence législative)*, les renseignements concernant l'adresse personnelle ou le lieu de travail de la personne atteinte par l'ordonnance ou l'endroit où elle se trouve, lorsque ces renseignements figurent aux dossiers que ces derniers ont en leur possession, sauf en ce qui a trait à la correspondance échangée avec les membres de sa famille;

b) fournir les renseignements obtenus aux termes de l'alinéa a) à la personne qui exerce des fonctions analogues auprès d'une autre compétence.

Renseignements confidentiels

(2) La divulgation des renseignements obtenus aux termes de l'alinéa (1) a) est interdite sauf en ce qui a trait aux dispositions de l'alinéa (1) b) ou dans la mesure nécessaire à l'exécution forcée de l'ordonnance.

Ordonnance du tribunal concernant l'accès aux renseignements

(3) Par dérogation à toute disposition d'une autre loi interdisant la divulgation de renseignements, le tribunal peut ordonner à quiconque, notamment un organisme public, y compris la Couronne du chef de *(compétence législative)* de lui fournir ou à la personne qu'elle désigne, les renseignements concernant l'adresse personnelle ou le lieu

de travail de la personne atteinte par l'ordonnance ou l'endroit où elle se trouve, lorsque ces renseignements figurent aux dossiers que ces derniers ont en leur possession, sauf en ce qui a trait à la correspondance échangée avec les membres de sa famille. Ceci, dans le cas où le tribunal est saisi d'une motion à l'effet que:

a) le directeur s'est vu refuser les renseignements dont il a fait la demande aux termes de l'alinéa (1) a);
b) la délivrance d'une ordonnance en vertu du présent paragraphe est nécessaire afin de permettre l'exécution forcée d'une ordonnance alimentaire ou de garde d'enfants, qui n'a pas été déposée au bureau du directeur.

Dépens

(4) Le tribunal accorde au directeur qui s'est vu refuser les renseignements demandés aux termes de l'alinéa (1) a) et qui a obtenu une ordonnance en vertu du paragraphe (3), les dépens de la motion.

Renseignements confidentiels

(5) Les renseignements obtenus en vertu d'une ordonnance rendue aux termes du paragraphe (3) ne doivent être divulgués que si les dispositions de l'ordonnance ou d'une ordonnance ultérieure le permettent ou si leur divulgation est nécessaire à l'exécution forcée de l'ordonnance alimentaire ou de garde d'enfants. Ces renseignements sont conservés sous pli scellé dans le dossier de la cour.

DEUXIÈME PARTIE

MESURES D'EXÉCUTION FORCÉE

Définition

7 Pour l'application de la présente partie, "tribunal" s'entend du *(tribunal de la famille compétent)*.

SAISIE-ARRÊT

Saisie-arrêt

8 (1) L'obligation de verser des sommes d'argent en vertu d'une ordonnance alimentaire, peut être exécutée par la saisie-arrêt de sommes d'argent dues au débiteur par un tiers, conformément aux *(règles de pratique)*.

Avis

(2) Le greffier de la cour délivre un avis de saisie-arrêt lors du dépôt des documents prescrits par les *(règles de pratique)*.

Reconnaissance des saisies-arrêts hors province

(3) Lors du dépôt de l'avis de saisie-arrêt:

a) délivré en dehors de *(compétence législative)*;

b) qui porte une mention à l'effet qu'il a trait à des aliments;

c) qui est écrit en *(langue en usage dans la compétence législative)* ou s'accompagne d'une traduction authentifiée ou certifiée conforme vers cette langue,

le greffier de la cour délivre un avis de saisie-arrêt.

Obligation du tiers saisi

(4) Le tiers saisi doit, lors de la signification de l'avis de saisie-arrêt, consigner au greffe de la cour ou verser à une autre personne, selon ce que précise l'avis, les sommes d'argent qu'il doit au débiteur désigné dans l'avis, de même que les sommes d'argent dues à ce dernier postérieurement à la signification de l'avis, au fur et à mesure de leur échéance, jusqu'à concurrence du montant qui y est prévu.

Conséquences du paiement

(5) Le paiement des sommes d'argent effectué par le tiers saisi conformément à l'avis de saisie-arrêt, est libératoire pour celui-ci à l'égard du débiteur, jusqu'à concurrence du montant versé.

Ordonnance de paiement par le tiers saisi

(6) Si le tiers saisi fait défaut d'effectuer le paiement des sommes dues ou qui le deviennent conformément à l'avis de saisie-arrêt, ou omet de donner suite à l'avis visé par les *(règles de pratique)*:

a) le tribunal peut ordonner le paiement par le tiers saisi de la somme échue;

b) l'ordonnance aux termes de l'alinéa a) peut être exécutée de la même manière qu'une ordonnance du tribunal;

c) le tribunal condamne le tiers saisi aux dépens découlant de l'ordonnance et de son exécution forcée.

Motion en annulation

(7) Le débiteur, le créancier ou le tiers saisi peuvent présenter une motion en vue d'obtenir une ordonnance du tribunal en annulation de l'avis de saisie-arrêt.

Gratuité

(8) Le tiers saisi ne peut pas exiger d'honoraires lorsqu'il reçoit un avis de saisie-arrêt ou y donne suite. *(Chaque compétence doit indiquer ses propres critères d'insaisissabilité à l'endroit pertinent).*

Signification de la saisie-arrêt hors de (compétence législative)

(9) L'avis de saisie-arrêt peut être signifié au tiers saisi en dehors de *(compétence législative)* et doit:

a) porter la signature et le sceau du greffier du tribunal;

b) porter une mention à l'effet qu'il a trait à des aliments;

c) indiquer les nom, adresse et numéro de téléphone de son auteur de même que le nom et l'adresse du tiers saisi;

d) être écrit dans une langue normalement en usage devant les tribunaux de la compétence qui en reçoit signification ou s'accompagner d'une traduction authentifiée ou certifiée conforme vers cette langue.

VENTE DES BIENS

Saisie et vente des biens

10 (1) L'obligation de verser une somme d'argent aux termes de l'ordonnance alimentaire ou de garde d'enfants peut être exécutée par la saisie-exécution des biens meubles et immeubles du débiteur.

Procédure

(2) Le greffier de la cour délivre un bref de *(saisie-exécution, etc.)*, lors du dépôt des documents prescrits par les *(règles de pratique)*.

Enregistrement contre les biens

11 (1) L'ordonnance alimentaire peut être enregistrée contre les biens-fonds du débiteur de l'ordonnance au *(bureau d'enregistrement des droits immobiliers)*. L'obligation découlant de l'ordonnance constitue alors une sûreté réelle contre les biens.

Vente des biens

(2) La sûrete réelle constituée aux termes du paragraphe (1) peut être réalisée par la vente des biens contre lesquels celle-ci est enregistrée comme s'il s'agissait de l'exercice du droit de vente en justice afin de réaliser l'hypothèque.

Mainlevée ou cession de rang

(3) Le tribunal peut ordonner la mainlevée, même partielle, ou la cession du rang d'une charge constituée aux termes du paragraphe (1) aux conditions qu'il estime pertinentes, notamment en ce qui a trait aux sûretés.

Signification au directeur

(4) L'ordonnance aux termes du paragraphe (3) ne peut être rendue que postérieurement à l'envoi d'un avis au directeur. *(Chaque compétence doit indiquer ses propres critères d'insaisissabilité à l'endroit pertinent)*.

GESTION PAR LE SÉQUESTRE

Nomination d'un séquestre

12 L'obligation de verser une somme d'argent aux termes de l'ordonnance alimentaire ou de l'accord conclu à cette fin, peut être exécutée par la nomination d'un séquestre aux termes de la *(loi pertinente)*.

INTERROGATOIRES ET ORDONNANCES LORS DU DÉFAUT

Dépôt de l'état financier auprès du directeur

13 (1) Si le débiteur d'une ordonnance alimentaire qui est déposée au bureau du directeur manque à son obligation de verser une somme d'argent, le directeur peut dresser un relevé de l'arriéré, à l'exclusion de celui couru avant l'entrée en vigueur de la présente loi, accompagné d'un avis qu'il signifie au débiteur lui enjoignant de déposer à son bureau un état financier dans la forme prescrite par les *(règles de pratique)* et de comparaître devant le tribunal pour y exposer les motifs de son défaut.

Dépôt de l'état financier auprès du tribunal

(2) Si le débiteur d'une ordonnance alimentaire qui n'est pas déposée au bureau du directeur manque à son obligation de verser une somme d'argent, le greffier de la cour, lors du dépôt d'une demande qui s'accompagne d'un relevé de l'arriéré dans la forme prescrite par les *(règles de pratique)*, doit signifier au débiteur un avis accompagné de ce relevé , lui enjoignant de déposer un état financier dans la forme prescrite par les *(règles de pratique)* et de comparaître devant le tribunal pour y exposer les motifs de son défaut.

Arrestation du débiteur

(3) Le tribunal peut décerner un mandat d'arrêt contre le débiteur en défaut de déposer l'état financier ou de comparaître, tel que l'exige l'avis, afin que celui-ci soit amené devant le tribunal.

Présomptions lors de l'audience

(4) Sauf preuve à l'effet contraire, le débiteur est présumé, lors de l'audience concernant le défaut, être en mesure d'acquitter l'arriéré et d'effectuer les paiements ultérieurs aux termes de l'ordonnance. Le relevé de l'arriéré dressé et signifié par le directeur, est alors présumé exact quant à l'arriéré accumulé pendant que l'ordonnance est déposée au bureau du directeur.

Pouvoirs du tribunal

(5) Sauf s'il ne reconnaît pas d'arriéré ou s'il estime que le débiteur, pour des motifs valables ne peut acquitter l'ar-

riéré ou effectuer de paiements ultérieurs aux termes de l'ordonnance, le tribunal peut par ordonnance:

a) enjoindre au débiteur d'acquitter l'arriéré au moyen de paiements périodiques que le tribunal estime équitables;

b) enjoindre au débiteur d'acquitter la totalité de l'arriéré antérieurement à une date fixée;

c) enjoindre au débiteur de se conformer aux dispositions de l'ordonnance en proportion de ses facultés, l'ordonnance aux termes de cet alinéa n'affectant pas toutefois l'accumulation de l'arriéré;

d) enjoindre au débiteur de fournir des sûretés selon le mode fixé par le tribunal, en garantie de l'arriéré et des paiements ultérieurs;

e) enjoindre au débiteur de se présenter, à intervalles réguliers, au tribunal, au directeur ou à la personne précisée dans l'ordonnance;

f) enjoindre au débiteur de communiquer immédiatement au tribunal, au directeur ou à la personne précisée dans l'ordonnance les détails de tout changement d'adresse ou d'emploi;

g) sauf l'acquittement préalable de l'arriéré, ordonner l'incarcération du débiteur de façon continue ou intermittente pour une période ne dépassant pas *(quatre-vingt-dix)* jours;

h) ordonner l'incarcération du débiteur de façon continue ou intermittente pour une période ne dépassant pas *(quatre-vingt-dix)* jours s'il fait défaut d'effectuer un versement aux termes du présent paragraphe.

Modification de l'ordonnance

(6) Le tribunal qui a rendu l'ordonnance aux termes du paragraphe (5), peut la modifier s'il survient quelque changement dans la situation du débiteur.

L'incarcération n'emporte pas quittance de l'arriéré

(7) L'incarcération du débiteur aux termes de l'alinéa (5) g) ou h) n'empore pas quittance de l'arriéré dû en vertu de l'ordonnance.

Réalisation de la sûreté

(8) Les dispositions de l'ordonnance qui impose une sûreté aux termes de l'alinéa (5) d) ou l'ordonnance ultérieure rendue par le tribunal peuvent permettre la réalisation de cette sûreté, notamment au moyen de la saisie ou de la vente.

(9) La preuve de la signification préalable au débiteur de l'ordonnance alimentaire n'est pas nécessaire à la tenue d'une audience sur le défaut. *Preuve de signification non nécessaire*

(10) La demande d'une audience sur le défaut en vertu du présent article et la requête en modification de l'ordonnance alimentaire reliée au défaut peuvent être entendues ensemble ou séparément. *Jonction d'audiences*

(11) Les recours prévus aux termes du présent article sont de nature civile et la *(Loi relative à la procédure sur les poursuites sommaires)* n'a pas d'application. *Recours civils*

(12) Les conjoints constituent, aux fins de l'audience sur le défaut, des témoins aptes et contraignables qui peuvent déposer l'un contre l'autre. *Conjoints témoins contraignables*

FRAUDE DU DÉBITEUR

14 Le tribunal peut rendre une ordonnance provisoire ou définitive afin d'empêcher l'aliénation ou la dilapidation des biens qui peut entraver ou gêner l'exécution de l'ordonnance alimentaire. *Ordonnance de ne pas faire*

15 S'il appert que le débiteur se prépare à quitter *(compétence législative)* afin de se soustraire à une ordonnance alimentaire rendue contre lui ou d'en gêner l'exécution forcée, le tribunal peut décerner un mandat d'arrêt contre le débiteur afin que celui-ci soit amené devant le tribunal et ce dernier peut rendre l'ordonnance visée au paragraphe 13 (5). *Arrestation du débiteur*

PRIORITÉS

16 Sauf indications contraires du débiteurs lors du paiement ou si le tribunal l'ordonne autrement, les sommes versées à valoir sur la dette en vertu de l'ordonnance alimentaire, sont imputées: *Imputation des paiements*

a) en premier lieu à la dette en principal la plus récente et par la suite, aux intérêts échus sur cette dette;
b) en second lieu, au solde impayé, selon le mode prévu à l'alinéa a).

17 L'arriéré des paiements en vertu de l'ordonnance alimentaire dont le montant ne dépasse pas celui des versements alimentaires d'un an au taux courant: *Autres créances constatées par jugement*

a) prime les autres créances constatées par jugement;
b) se situe au même rang que l'arriéré de même nature aux termes d'une autre ordonnance alimentaire,

sans égard à la date de délivrance du bref d'exécution ou de sa signification.

Non-application de la Loi sur le désintéressement des créanciers

18 Les deniers réalisés aux terms du bref d'exécution délivré par le directeur ou pour son compte relativement à des sommes d'argent dues aux termes de l'ordonnance alimentaire, n'ont pas à être répartis entre les créanciers, aux termes de la *Loi sur le désintéressement des créanciers.*

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DISPOSITIONS PARTICULIÈRES

Capacité du mineur

19 Le mineur peut, sans l'intervention d'un *(tuteur à l'instance)*, ester en justice et peut de même entreprendre et accomplir les démarches en vue de l'exécution forcée de l'ordonnance alimentaire.

Cession à la Couronne

20 La Couronne peut procéder à l'exécution forcée de l'ordonnance alimentaire qui a été cédée à *(la Couronne, etc.)*.
(Le délai de prescription envisagé pour l'exécution forcée des ordonnances alimentaires est de dix ans, tel que stipulé à l'article 4 de la *Loi uniforme sur la prescription des actions.* Toutefois, dans les ressorts où un délai différent est prévu, l'article suivant doit être ajouté):

Prescription

21 Le délai de prescription pour l'exécution forcée de l'arriéré des versements aux termes d'une ordonnance alimentaire est de dix ans.

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.
Child Status Act	1980	Rev. '82.
Condominium Insurance Act	1971	Am. '73.
Conflict of Laws (Traffic Accidents) Act	1970	
Contributory Fault Act	1984	
Contributory Negligence Act	1924	Rev. '35, '53; Am. '69.
Criminal Injuries Compensation Act	1970	Rev. '83.
Custody Jurisdiction and Enforcement Act	1974	Rev. '81.
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; Rev. '81.
— 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	
Family Support Act	1980	
Fatal Accidents Act	1964	
Foreign Judgments Act	1933	Rev. '64.
Franchises Act	1984	
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	
International Child Abduction Act	1981	
Interpretation Act	1938	Am. '39; Rev. '41; Am. '48; Rev. '53, '73; Rev. '84.
Interprovincial Subpoenas Act	1974	
Intestate Succession Act	1925	Am. '26, '50, '55; Rev. '58; Am '63.
Judgment Interest Act	1982	
Jurors' Qualifications Act	1976	

Title	Year First Adopted and Recommended	Subsequent Amendments and Revisions
Legitimacy Act	1920	Rev. '59.
Limitation of Actions Act	1931	Am. '33, '43, '44
Limitations Act	1982	
— 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	Rev. '82
Powers of Attorney Act	1978	
Presumption of Death Act	1960	Rev '76.
Proceedings Against the Crown Act	1950	
Products Liability Act	1984	
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; Am '82.
Reciprocal Recognition and Enforcement of Judgments Act	1981	
Regulations Act	1943	Rev. '82
Retirement Plan Beneficiaries Act	1975	
Sale of Goods Act	1981	Rev. '82.
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	
Transboundary Pollution Reciprocal Access Act	1982	
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, '82
— 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 Beneficiaries	1957	8	1975	Retirement Plan 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); ('29, '57); N.B.ˣ; Nfld.° ('55); N.W.T.° ('48); N.S. ('30); P.E.I.* ('47, '82). Total: 7.

Bulk Sales Act— Enacted by Alta. ('22); Man. ('21, '51); N.B. ('27, '82); Nfld.° ('55); N.W.T.† ('48); N.S.ˣ; P.E.I. ('33); Yukon° ('56). Total: 8.

Child Abduction (Hague Convention) Act—Enacted by B.C.° ('82); Man. ('82); N.B.ˣ ('82); Nfld. ('83); N.S. ('82); Yukon ('81). Total: 6.

Condominium Insurance Act—Enacted by B.C. ('74) *sub nom.* Strata Titles Act; Man. ('76); P.E.I. ('74); Yukon ('81). Total: 4.

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, '82); B.C. ('72); Nfld.ˣ ('68); N.W.T. ('73); Ont. ('71); Yukon° ('72, '81). Total: 6.

Custody Jurisdiction and Enforcement Act—Enacted by Man.* ('83); Nfld.° ('83). Total: 2.

Defamation Act—Enacted by Alta.† ('47); B.C.ˣ *sub nom.* Libel and Slander Act; Man. ('46); N.B.° ('52); Nfld.° ('83); N.W.T.° ('49); N.S. ('60); P.E.I.° ('48); Yukon ('54). Total: 9.

Dependants' Relief Act—Enacted by 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; Yukon ('81). Total: 4.

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.

Domicile Act—0.

Effect of Adoption Act—P.E.I. ('). Total: 1.

Evidence Act—Enacted by Man.* ('60); Nfld. ('54); N.W.T.° ('48); P.E.I.* ('39); Ont. ('60); Yukon° ('55). Total: 6.

Extra—Provincial Custody Orders Enforcement Act—Enacted by Alta. ('77); B.C. ('76); Man.° ('82); Nfld.° ('76); N.W.T. ('81); N.S. ('76); Ont. ('82); P.E.I. ('76); Sask.° ('77). Total: 9.

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); Yukon ('81). Total: 5.

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 ('81). Total: 9.

Highway Traffic and Vehicles Act, Part III: Responsibility of Owner and Driver for Accidents—0.

Hotelkeepers Act—Enacted by Nfld.° ('82). Total: 1.

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, '81); Sask.° ('68); Yukon ('81). Total: 9.

Information Reporting Act—

Interpretation Act—Enacted by Alta.° ('81); B.C.° ('74); Man. ('39, '57); Nfld.° ('51); N.W.T.°† ('48); P.E.I.° ('81); Que.ˣ; Sask.° ('43); Yukon* ('54). Total: 9.

Interprovincial Subpoenas Act—Enacted by Alta.* ('81); B.C. ('76); Man. ('75); N.B.° ('79); Nfld.° ('76); N.W.T.° ('76); Ont. ('79); Sask.° ('77); Yukon ('81). Total: 9.

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: 9.

Jurors Act (Qualifications and Exemptions)—Enacted by B.C. ('77); *sub nom.* Jury Act; Nfld. ('81); P.E.I.° ('81). Total: 3.

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: 10.

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—Enacted by N.B. ('76). Total: 1.

Occupiers' Liability Act—Enacted by 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 ('81). Total: 8.

Perpetuities Act—Enacted by Alta. ('72); B.C. ('75); N.W.T.* ('68); Ont. ('66); Yukon ('68). Total: 5.

Personal Property Security Act—Enacted by Man. ('77); Ont.[o] ('67); Sask.[o] ('79); Yukon[o] ('81). Total: 4.

Powers of Attorney Act—Enacted by B.C.* ('79); Man.[o] ('79); Ont.[o] ('79); Sask. ('83). Total: 4.

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 ('81). Total: 5.

Proceedings Against the Crown Act—Enacted by Alta.[o] ('59); Man. ('51); N.B.* ('52); Nfld.[o] ('73); N.S. ('51); Ont.[o] ('63); P.E.I.* ('73); Sask.[o] ('52). Total: 8.

Reciprocal Enforcement of Judgments Act—Enacted by Alta. ('25, '58); B.C. ('25, '59); Man. ('50, '61); N.B. ('25); Nfld.[o] ('60); N.W.T.* ('55); N.S. ('73); Ont.('29); P.E.I.[o] ('74); Sask. ('40); Yukon ('56, '81). Total: 11.

Reciprocal Enforcement of Maintenance Orders Act—Enacted by Alta. ('47, '58, '79, '81); B.C.[o] ('72); Man. ('46, '61, '83); N.B. ('51, '81); Nfld.[x] ('51, '61); N.W.T.[o] ('51); N.S.* ('49, '83); Ont.[o] ('48, '59); P.E.I.[o] ('51, '83); Que. ('52); Sask. ('68, '81, '83); Yukon ('81). Total: 12.

Regulations Act—Enacted by Alta.[o] ('57); B.C. ('83); Can.[o] ('50); Man.[o] ('45); N.B. ('62); Nfld.[o] ('77); N.W.T.[o] ('73); Ont.[o] ('44); Sask.[o] ('63, '82); Yukon[o] ('68). Total: 10.

Retirement Plan Beneficiaries Act—Enacted by Man. ('76); N.B. ('82); Ont. ('77 *sub nom.* Law Succession Reform Act: Part V); P.E.I.[x]; Yukon ('81). Total: 5.

Service of Process by Mail Act—Enacted by Alta.[x], B.C.[o] ('45); Man.[x]; Sask.[x]. Total: 4.

Statutes Act—Enacted by B.C.[o] ('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], Yukon ('81). Total: 4.

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 ('81). 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, '81). 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, '83); N.W.T.° ('52); N.S.° ('52); Ont. ('48); P.E.I.* ('50); Sask. ('50); Yukon° ('54). Total: 10.

Warehousemen's Lien Act—Enacted by Alta. ('22); B.C. ('22); Man. ('23); N.B. ('23); Nfld. ('63); N.W.T.° ('48); N.S. ('51); Ont. ('24); P.E.I.° ('38); Sask. ('21); Yukon ('54). Total: 11.

Warehouse Receipts Act—Enacted by Alta. ('49); B.C.° ('45); Man.° ('46); N.B. ('47); Nfld. ('63); N.S. ('51); Ont.° ('46). Total: 7.

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); Sask. ('81). Total: 4.

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.
ˣindicates 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° ('81); Interprovincial Subpoena Act ('81); 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, '81); Service of Process by Mail Actˣ; 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: 32.

British Columbia

Child Abduction (Hague Convention) Act ('82); Criminal Injuries Compensation Act ('72); Condominium Insurance Act ('74); *sub nom.* Condominium Act*; Defamation Act*; *sub nom.* Libel and Slander Act; Evidence—Affidavits before Officersˣ; 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*; Jurors 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. 7008 Family Relations Act; Regulations Act ('83); 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: 37.

Canada

Evidence—Foreign Affidavits ('43), Photographic Records ('42); Regulations Act° ('50), superseded by the Statutory Instruments 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); Child Abduction (Hague Convention) Act ('82); Condominium Insurance Act ('76); Custody Jurisdiction and Enforcement Act ('83); Defamation Act ('46); Extra Provincial Custody Orders Enforcement Act° ('82); Evidence Act* ('60); Affidavits before Officers ('57); Interprovincial Subpoenas Act ('75); Intestate 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, '83); Regulations Act° ('45); Retirement Plan Beneficiaries Act ('76); Service of Process by Mail Act×, 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: 40.

New Brunswick

Accumulations Act[x] *sub nom.* Property Act; Bills of Sales Act° ('52); Bulk Sales Act† ('27); Canada U.K. Convention on the Recognition and Enforcement of Judgments° ('82); Child Status[x] ('80) *sub nom.* Family Services Act; Contributory Negligence Act ('25)° ('62); Criminal Injuries Compensation Act[x] ('71); Custody Jurisdiction and Enforcement Act[x] ('80) *sub nom.* Family Services Act; Defamation Act* ('52); Dependants Relief Act[x] ('59); Devolution of Real Property Act° ('34) *sub nom.* Devolution of Estates Act; Effect of Adoption Act[x] ('80) *sub nom.* Family Services Act; Fatal Accidents Act* ('69); Family Support Act[x] ('80) *sub nom.* Family Services Act; Foreign Judgments Act° ('50); Highway Traffic Act[x]; Hotelkeepers Act[x] *sub nom.* Innkeepers Act; Human Tissue Gift Act[x] *sub nom.* Human Tissue Act; Interpretation Act[x]; Interprovincial Subpoenas Act° ('79); Intestate Succession Act° ('26) *sub nom.* Devolution of Estates; Judgment Interest[x] *sub nom.* Judicature Act, see also Rules of Court; Jurors Qualification Act[x] *sub nom.* Jury Act; Limitations of Actions* ('52); Married Women's Property Act° ('51); Medical Consent of Minors° ('76); Partnership Registration Act° ('51); Presumption of Death Act[x] ('60); Proceedings Against the Crown°('52); Reciprocal Enforcement of Judgments ('25),[x] ('51); Reciprocal Enforcement of Maintenance Orders† ('52); Reciprocal Recognition and Enforcement of Judgments° ('84); Regulations Act° ('62); Retirement Plan Beneficiaries° ('82); Sale of Goods[x]; Statutes Act° ('73) *sub nom.* Interpretation Act; Survival of Actions Act* ('69); Survivorship Act† ('40); Trustees (Investments) ('71); Vital Statistics[x] ('79); Warehousemen's Lien Act[x] ('23); Warehouse Receipts° ('47); Wills Act° ('59). Total: 43.

Newfoundland

Bills of Sale Act° ('55); Bulk Sales Act° ('55); Contributory Negligence Act° ('51); Criminal Injuries Compensation Act[x] ('68); Custody Jurisdiction and Enforcement Act° ('83); Defamation Act° ('83); Evidence – Affidavits before Officers ('54); Extra-Provincial Custody Orders Enforcement Act° ('76);; Foreign Affidavits ('54) *sub nom.* Evidence Act; Frustrated Contracts Act ('56); Human Tissue Gift Act° ('71); International Child Abduction Act ('83); International Wills ('76) *sub nom.* Wills Act; Interpretation Act° ('51); Interprovincial Subpoena Act° ('76); Intestate Succession Act ('51); Judgment Interest Act° ('83); Jurors Act (Qualifications and

Exemptions) ('81) *sub nom.* Jury Act; Legitimacy Act°ˣ; Pension Trusts and Plans-Appointment of Beneficiaries ('58) *sub nom.* Pension Plans (Designation of Beneficiaries) Act; Perpetuities Act ('55); Photographic Records ('49) *sub nom.* Evidence Act; Proceedings Against the Crown Act° ('73); Reciprocal Enforcement of Judgments Act°('60); Reciprocal Enforcement of Maintenance Orders Act ˣ ('51, '61) *sub nom.* Maintenance Orders (Enforcement) Act; Regulations Act° ('77) *sub nom.* Statutes and Subordinate Legislation Act; Survivorship Act ('51); Warehousemen's Lien Act ('63); Warehouse Receipts Act ('63); Wills-Conflict of Laws Act ('76) *sub nom.* Wills Act. Total: 30.

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 ('81);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 Actˣ; Child Abduction (Hague Convention) Act ('82); 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 Actˣ; 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, '83); 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: 22.

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); Extra-Provincial Custody Orders Enforcement Act ('82); Fatal Accidents 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); Perpetuities Act ('66); Proceedings Against the Crown Act° ('63); Reciprocal Enforcement of Judgments Act ('29); Reciprocal Enforcement of Maintenance Orders Act° ('59); Regulations Act° ('44); Retirement Plan Beneficiaries Act ('77) *sub nom.* Successsion 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: 27.

Prince Edward Island

Bills of Sale Act*('47, '82); 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, '81); Interpretation Act° ('81); Jurors Act (Qualifications and Exemptions)° ('81); 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, '83); 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: 18.

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 sur l'indemnisation des victimes d'actes criminels, L.R.Q. (1977) ch. I-6 – 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 L.R.Q. (1977) ch. I-16 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 sur les déclarations des compagnies et sociétés, L.R.Q. (1977) ch. D-1 – similar; Presumption of Death Act: see a. 70, 71 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. 981a et.sq. C.C. – very similar; Warehouse Receipts Act: see Loi sur les connaissements L.R.Q. (1977) ch. C-53 – 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 Act—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); Powers of Attorney Act ('83); Proceedings Against the Crown Act° ('52); Reciprocal Enforcement of Judgments Act ('24, '25); Reciprocal Enforcement of Maintenance Orders Act ('68, '81, '83); Regulations Act° ('63, '82); Service of Process by Mail Act×; 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

Bulk Sales Act ('56); Child Abduction (Hague Convention) Act ('81); Condominium Insurance Act ('81); Conflict of Laws (Traffic Accidents) Act ('72); Contributory Negligence Act° ('55); Criminal Injuries Compensation Act° ('72, '81) *sub nom.* Compensation for Victims of Crime Act; Defamation Act ('54, '81); Dependants Relief Act ('81); 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); Family Support Act× ('81); *sub nom.* Matrimonial Property and Family Support Act; Frustrated Contracts Act ('81); Human Tissue Gift Act ('81); Interpretation Act* ('54); Interprovincial Subpoena Act ('81); Intestate Succession Act° ('54); Legitimacy Act* ('54); Limitation of Actions Act ('54); Married Women's Property Act° ('54); Perpetuities Act° ('81); Personal Property Security Act° ('81); Presumption of Death Act ('81); Reciprocal Enforcement of Judgments Act ('56, '81); Reciprocal Enforcement of Maintenance Orders Act ('81); Regulations Act° ('68); Retirement Plan Beneficiaries Act ('81); Survival of Actions Act ('81); Survivorship Act ('81); Testamentary Additions to Trusts ('69) see Wills Act, s. 29; Trustee (Investments) ('62, '81); Vital Statistics Act° ('54); Warehousemen's Lien Act ('54); Wills Act° ('54). Total: 33.

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.

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