UNIFORM LAW
CONFERENCE OF CANADA

CONFERENCE SUR
L'UNIFORMISATION
DES LOIS AU CANADA

PROCEEDINGS
OF THE
SEVENTY-SECOND ANNUAL MEETING

HELD AT

SAINT JOHN, NEW BRUNSWICK

August, 1990

CONTENTS

PAGE

Past Presidents 2
Officers: 1990-91 4
Delegates: 1990 5
Delegates *Ex Officio* 14
Historical Note 15
Bibliography 20
Drafting Section
    Minutes 21
Opening Plenary Session
    Minutes 23
Uniform Law Section
    Minutes 35
Joint Session of the Uniform Law and Criminal Law Sections
    Minutes 49
Criminal Law Section
    Minutes 53
Closing Plenary Session
    Minutes 78

Appendices

A. Arbitration Report and Act 86
B. Auditor's Report 149
C. Disclosure of Cost of Consumer Credit Report 153
D. Expropriation Report 160
E. Law Reform Conference of Canada Report 166
F. Private International Law Report 177
G. Provincial Offences Procedures Report 200
H. Renewing Consensus for Harmonization of Laws in Canada Report 210
I. Sale of Goods Report and Amendments to the Act .. 307
J. Search and Seizure under the Charter of Rights Report 313
K. Substitute Decision Making in Health Care Report .. 321
L. Trafficking in Children Report 324

Tables

I. Uniform Acts Recommended 359
II. Uniform Acts Withdrawn 361
III. Enactments of Uniform Acts 362
IV. Enactments of Uniform Acts by Jurisdictions 366

Cumulative Index, 1989-1990 373
Index, 1990 Proceedings 384

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

PAST PRESIDENTS

GÉRARD BERTRAND, c.r., Ottawa 1984-1985
GRAHAM D. WALKER, Q.C., Halifax 1985-1987
M. REMI BOUCHARD, Sainte-Foy 1987-1988
GEORGINA R. JACKSON, Regina 1988-1990

OFFICERS: 1990-91

Past President .... Georgina R. Jackson, Regina
President .... Basil D. Stapleton, Q.C. Fredericton
Vice-President .... Daniel C. Préfontaine, c.r., Ottawa
Chairperson,
Drafting Section .... Peter Pagano, Q.C., Edmonton
Chairperson,
Criminal Law Section .... Richard B. Hubley, Q.C., Charlottetown
Chairperson,
Uniform Law Section ..... Professor Peter J.M. Lown, Edmonton

UNIFORM LAW SECTION

Chairperson .... Professor Peter J.M. Lown, Edmonton
Secretary .... Melbourne M. Hoyt, Q.C., Fredericton

CRIMINAL LAW SECTION

Chairperson .... Richard B. Hubley, Q.C., Charlottetown
Secretary .... Michael E. N. Zigayer, Ottawa

DRAFTING SECTION

Chairperson .... Peter Pagano, Q.C., Edmonton
Vice-Chairperson .... Lionel Levert, Ottawa
Secretary .... Donald L. Revell, Toronto

LOCAL SECRETARIES

Alberta .... Clark W. Dalton
British Columbia .... Clifford S. Watt, Q.C.
Canada .... Serge Lortie
Manitoba .... Shirley Strutt
New Brunswick .... Basil D. Stapleton, Q.C.
Newfoundland .... A. John Noel
Northwest Territories .... Miles H. Pepper, Q.C.
Nova Scotia .... Gordon C. Johnson
Ontario .... Donald L. Revell
Prince Edward Island ...... M. Raymond Moore
Quebec .... Marie-José Longtin
Saskatchewan .... Douglas E. Moen
Yukon Territory .... Sydney B. Horton

(For addresses of the above, see List of Delegates, page 5.)

EXECUTIVE SECRETARY

Melbourne M. Hoyt, Q.C.
Centennial Building
670 King St.
P.O. Box 6000
Fredericton, N.B. E3B 5H1
(506) 458-1247

DELEGATES

1990 Annual Meeting

The following persons (88) attended one or more sections of the Seventy-second Meeting of the Conference

Legend

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

Alberta:

MICHAEL ALLEN, Q.C., Assistant Deputy Minister (Criminal Justice), Department of the Attorney General, 2nd Floor, Bowker Building, 9833-109th Street, Edmonton T5K 2E8 [TEL: 403-427-5046] [FAX: 403-422-9639] *(C.L.S.)*

PAUL C. BOURQUE, Director, Appeals, Research & Special Projects Branch, Criminal Justice Division, Department of the Attorney General, 3rd Floor, Bowker Building, 9833-109th Street, Edmonton T5K 2E8 [TEL: 403-427-5042] [FAX: 403-422-9747] *(C.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 [TEL: 403-498-3305] [FAX: 403-425-0307] *(U.L.S.)*

DARWIN J. GREAVES, Chief Crown Prosecutor, Department of the Attorney General, 301, 556-4th Street S.E., Medicine Hat T1A 0K8 [TEL: 403-529-3672] [FAX: 403-529-3121] *(C.L.S.)*

ALAN D. HUNTER, Q.C., Code Hunter, Barristers and Solicitors, 1900, 736-6th Avenue, S.W., Calgary T2P 3W1 [TEL: 403-298-1000] [FAX: 403-263-9193] *(U.L.S.)*

PROFESSOR P. J. M. LOWN, Director, Alberta Law Reform Institute, 402 Law Centre, The University of Alberta, 89th Avenue and 114th Street, Edmonton T6G 2H5 [TEL: 403-492-5291] [FAX: 403-492-1790] *(U.L.S.)*

PETER PAGANO, Q.C., Chief Legislative Counsel, Legislative Counsel Office, Department of the Attorney General, 2nd Floor, Bowker Building, 9833-109th Street, Edmonton T5K 2E8 [TEL: 403-427-2217] [FAX: 403-422-7366] *(D.S. & U.L.S.)*

British Columbia:

ARTHUR CLOSE, Q.C., Chairman, Law Reform Commission of British Columbia, 601-865 Hornby Street, Vancouver V6Z 2G3 [TEL: 604-660-2366] [FAX: 604-660-2378] *(U.L.S.)*

JOHN HOGG, Senior Legislative Counsel, Ministry of the Attorney General, 609 Broughton Street, Victoria V8V 1X4 [TEL: 604-356-8464] [FAX: 604-387-1010] *(U.L.S.)*

PETER LEASK, Q.C., Barrister and Solicitor, 300-111 Water Street, Vancouver V6B 1A7 [TEL: 604-669-6200] [FAX: 604-681-0912] *(C.L.S.)*

ROBERT A. MULLIGAN, Criminal Justice Branch, Ministry of Attorney General, 3rd Floor, 910 Government Street, Victoria V8V 1X4 [TEL: 604-387-5176] [FAX: 604-387-0090] *(C.L.S.)*

CLIFFORD S. WATT, Q.C., Chief Legislative Counsel, Ministry of the Attorney General, 609 Broughton Street, Victoria V8V 1X4 [TEL: 604-356-8464] [FAX: 604-387-1010] *(U.L.S.)*

HAL YACOWAR, Director, Policy and Legal Services, Criminal Justice Branch, Ministry of Attorney General, 3rd Floor, 910 Government Street, Victoria V8V 1X4 [TEL: 604-387-5176] [FAX: 604-387-0090] *(C.L.S.)*

Canada:

JIM BISSELL, General Counsel, Halifax Regional Office, Department of Justice of Canada, 5161 George Street - 4th Floor, Halifax B3J 1M7 [TEL: 902-426-7592] *(C.L.S.)*

DIANE DAVIDSON, Acting General Legal Counsel, Office of the Law Clerk and Parliamentary Counsel, House of Commons, 151 Sparks Street - Room 610, Ottawa K1A 0A6 [613-992-1511] *(D.S.)*

RAYMOND DU PLESSIS, Law Clerk and Parliamentary Counsel, The Senate, 140 Wellington Street - Room 907, Ottawa K1A 0A4 [TEL: 613-992-2416] *(D.S.)*

RICHARD DUPUIS, Staff Sergeant, Enforcement Support Branch, Royal Canadian Mounted Police, 1200 Vanier Parkway - Room G520, Ottawa K1A 0R2 [TEL: 613-993-1236] *(C.L.S.)*

PETER JOHNSON, Chief Legislative Counsel, Department of Justice of Canada, 344 Wellington Street - Room 2040, Ottawa K1A 0H8 [TEL: 613-957-0013] *(D.S.)*

PAULA KINGSTON, A/Director, Strategic and Legislative Policy, Corrections Branch, Ministry of the Solicitor General of Canada, 340 Laurier Avenue West - 11th Floor, Ottawa K1A 0P8 [TEL: 613-991-2842] *(C.L.S.)*

LOUISE LAVALLEE, Legislative Counsel, Legislation Section, Department of Justice of Canada, 344 Wellington Street - Room 2066, Ottawa K1A 0H8 [TEL: 613-957-0035] *(C.L.S.)*

GILLES LETOURNEAU, President, Law Reform Commission of Canada, 130 Albert Street, Ottawa K1A 0H8 [TEL: 613-996-2284] *(C.L.S.)*

LIONEL LEVERT, Deputy Chief Legislative Counsel, Department of Justice of Canada, 344 Wellington Street - Room 2065, Ottawa K1A 0H8 [TEL: 613-957-0041] *(D.S.)*

SERGE LORTIE, Chief of Liaison, Department of Justice of Canada, 239 Wellington Street - Room 210-B, Ottawa K1A 0H8 [TEL: 613-952-8347] *(U.L.S.)*

BRUCE MACFARLANE, Assistant Deputy Attorney General, Criminal Law, Department of Justice of Canada, 239 Wellington Street - Room 462, Ottawa K1A 0H8 [613-957-4756] *(C.L.S.)*

SANDRA MARKMAN, Legislative Counsel, Legislation Section, Department of Justice of Canada, 344 Wellington Street - Room 2103, Ottawa K1A 0H8 [TEL: 613-957-0046] *(C.L.S.)*

LINDA MCLAREN, Assistant Director, Strategic Planning, Correctional Service of Canada, 340 Laurier Avenue West - Room 4E, Ottawa K1A 0P8 [TEL: 613-992-7623] *(C.L.S.)*

RICHARD MOSLEY, Senior General Counsel, Policy, Programs and Research Sector, Department of Justice of Canada, 239 Wellington Street - Room 725, Ottawa K1A 0H8 [TEL: 613-957-4725] *(C.L.S.)*

JOAN NUFFIELD, Director, Release Policy, Corrections Policy and Program Analysis, Ministry of the Solicitor General of Canada, 340 Laurier Avenue West - 11th Floor, Ottawa K1A 0P8 [TEL: 613-991-2802] *(C.L.S.)*

RICHARD PECK, Robertson, Peck, Thompson, 808 Nelson Street - Suite 1811, Vancouver V6Z 2H2 [TEL: 604-669-1277] *(C.L.S.)*

DANIEL PRÉFONTAINE, Q.C., Assistant Deputy Minister, Policy, Programs and Research, Department of Justice of Canada, 239 Wellington Street - Room 750, Ottawa K1A 0H8 [TEL: 613-957-4702] *(C.L.S.)*

PAUL SAINT-DENIS, Senior Counsel, Policy, Programs and Research Sector, Department of Justice of Canada, 239 Wellington Street - Room 709, Ottawa K1A 0H8 [TEL: 613-957-4751] *(C.L.S.)*

ED TOLLEFSON, Senior General Counsel, Policy, Programs and Research Sector, Department of Justice of Canada, 239 Wellington Street - Room 703, Ottawa K1A 0H8 [TEL: 613-957-4747] *(C.L.S.)*

ANNE-MARIE TRAHAN, Q.C., Associate Deputy Minister - Civil Law, Department of Justice of Canada, 239 Wellington Street, Room 150, Ottawa K1A 0H8 [TEL: 613-957-4997] *(U.L.S.)*

GÉRALD TREMBLAY, Q.C., McCarthy, Tétrault, 1170 Peel Street - 5th Floor, Montréal H3B 4S8 [TEL: 514-397-4157] *(U.L.S.)*

CHRISTIANE VERDON, General Counsel, Constitutional and International Law Section, Department of Justice of Canada, 239 Wellington Street - Room 625, Ottawa K1A 0H8 [TEL: 613-957-4950] *(U.L.S.)*

TERENCE WADE, Director of Legislation and Law Reform, Canadian Bar Association, 50 O'Connor Street - Room 902, Ottawa K1P 6L2 [TEL: 613-237-2925] *(U.L.S.)*

ROBERT WAKEFIELD, Wakefield and McMunagle, 200 Elgin Street - Suite 204, Ottawa K2P 1L5 [TEL: 613-238-1895] *(C.L.S.)*

MICHAEL ZIGAYER, Counsel, Policy, Programs and Research Sector, Department of Justice of Canada, 239 Wellington Street - Room 714, Ottawa K1A 0H8 (TEL: 613-957-4736] *(C.L.S.)*

Manitoba:

CLIFFORD EDWARDS, Q.C., Chairman, Law Reform Commission, 12th Floor - 405 Broadway, Winnipeg R3C 3L6 [TEL: 204-474-9773] *(U.L.S.)*

TOM HAGUE, Acting Assistant Deputy Minister - Justice Division, 5th Floor - 405 Broadway, Winnipeg R3C 3L6 [TEL: 204-945-4597] *(U.L.S.)*

BRUCE MILLER, Director, Winnipeg Prosecutions, Manitoba Justice, 5th Floor - 405 Broadway, Winnipeg R3C 3L6 [TEL: 204-945-4597] *(C.L.S.)*

MICHEL NANTEL, Director, Legal Translation, 350-444 St. Mary Avenue, Winnipeg R3C 3T1 [TEL: 204-945-4597] *(D.S.)*

JEFFREY A. SCHNOOR, Executive Director, Law Reform Commission, 12th Floor – 405 Broadway, Winnipeg R3C 3L6 [TEL: 204-945-2900] *(D.S. & U.L.S.)*

SHIRLEY STRUTT, Legislative Counsel and Assistant Deputy Minister, 350-444 St. Mary Avenue, Winnipeg R3C 3T1 [TEL: 204-945-3708] *(D.S. & U.L.S.)*

HYMIE WEINSTEIN, Q.C., Meyers Weinberg Kussin Weinstein Byrk, Barristers & Attorneys-at-Law, 724-240 Graham Avenue, Winnipeg R3C 0J7 [TEL: 204-942-0501] *(C.L.S.)*

STUART WHITLEY, Q.C., Assistant Deputy Minister, Public Prosecutions Division, 5th Floor, 405 Broadway, Winnipeg R3C 3L6 [TEL: 204-945-2873] *(C.L.S.)*

New Brunswick:

MARY BETH BEATON, Assistant Director – Family Law, Public Prosecutions Branch, Department of Justice, P.O. Box 6000, Fredericton E3B 5H1 [TEL: 506-453-2784] [FAX: 506-453-5364] *(U.L.S.)*

BRUNO LALONDE, Conseiller legislatif associé, Ministère de la Justice, Case Postale 6000, Fredericton E3B 5H1 [TEL: 506-453-2651] [FAX: 506-453-3275] *(D.S. & U.L.S.)*

JAMES MCAVITY, Crown Prosecutor, Department of Justice, P.O. Box 5001, Saint John E2K 1E8 [TEL: 506-658-2580] [FAX: 506-658-3061] *(C.L.S.)*

RORBERT A. MURRAY, Director of Public Prosectuions, Department of Justice, P.O. Box 6000, Frederiction E3B 5H1 [TEL: 506-453-2784] [FAX: 506-453-5364] *(C.L.S.)*

TIM RATTENBURY, Co-ordinator of Legal Research, Law Reform Branch, Department of Justice, P.O. Box 6000, Fredericton E3B 5H1 [TEL: 506-453-2544] [FAX: 506-453-3275] *(U.L.S.)*

BASIL D. STAPLETON, Q.C., Director of Law Reform, Department of Justice, P.O. Box 6000, Fredericton E3B 5H1 [TEL: 506-453-2668] [FAX: 506-453-3275] *(U.L.S.)*

Newfoundland:

CHRISTOPHER CURRAN, Executive Director, Newfoundland Law Reform Commission, 21 Church Hill, St. John's A1C 3Z8 [TEL: 709-576-0537] [FAX: 709-576-0790] *(U.L.S.)*

DEBORAH E. FRY, Associate Deputy Minister, Department of Justice, P.O. Box 8700, St. John's A1B 4J6 [TEL: 709-576-2880] [FAX: 709-576-2129] *(U.L.S.)*

TOM MILLS, Crown Attorney, Crown Attorney's Office, Department of Justice, P.O. Box 8700, St. John's A1B 4J6 [TEL: 709-576-2897] [FAX: 709-576-2129] *(C.L.S.)*

A. JOHN NOEL, Senior Legislative Counsel and Law Clerk of the House of Assembly, Office of the Legislative Counsel, P.O. Box 8700, St. John's A1B 4J6 [TEL: 709-576-2877-2881] [FAX: 709-576-2129] *(D.S.)*

LORNA PROUDFOOT, Legislative Counsel, Office of the Legislative Counsel, P.O. Box 8700, St. John's A1B 4J6 [TEL: 709-576-2881-2882] [FAX: 709-576-2129] *(D.S.)*

Northwest Territories:

MICHAEL CHANDLER, District Superintendent, Department of Justice, Box 1000, Iqaluit X0A 0H0 *(C.L.S.)*

NORA SANDERS, Director, Policy and Planning Division, Department of Justice, Box 1320, Yellowknife X1A 2L9 *(U.L.S.)*

Nova Scotia:

ARTHUR G. H. FORDHAM, Q.C., Legislative Counsel, Office of the Legislative Counsel, 9th Floor, Joseph Howe Building, 1690 Hollis Street, P.O. Box 1116, Halifax B3J 2X1 [TEL: 902-424-8941] [FAX: 902-424-0547] *(D.S. & U.L.S.)*

ANNA J. FRIED, Registrar of Regulations, Department of Attorney General, P.O. Box 725, Station M, Halifax B3J 2T3 [TEL: 902-424-5476] [FAX: 902-424-0510] *(U.L.S.)*

GORDON S. GALE, Q.C., General Counsel, Public Prosecutions, Department of the Attorney General, P.O. Box 7, Halifax B3J 2L6 [TEL: 902-424-4222] *(C.L.S.)*

GORDON C. JOHNSON, Legislative Counsel, Office of the Legislative Counsel, 9th Floor, Joseph Howe Building, 1690 Hollis Street, P.O. Box 1116, Halifax B3J 2X1 [TEL: 902-424-8941] [FAX: 902-424-0547] *(U.L.S.)*

GRAHAM D. WALKER, Q.C., Chief Legislative Counsel, Office of the Legislative Counsel, 9th Floor, Joseph Howe Building, 1690 Hollis Street, P.O. Box 1116, Halifax B3J 2X1 [TEL: 902-424-8941] [FAX: 902-424-0547] *(U.L.S.)*

Ontario:

ELIZABETH BALDWIN, Legislative Counsel, Ministry of the Attorney General, 1st Floor - 1401 Whitney Block, 99 Wellesley Street West, Toronto M7A 1A2 [TEL: 416-326-2743] *(D.S.)*

JEFF CASEY, Senior Crown Counsel, Policy, Crown Law Office Criminal, Ministry of the Attorney General, 10th Floor, 720 Bay Street, Toronto M5G 2K1 [TEL: 416-326-2303] *(C.L.S.)*

MICHAEL COCHRANE, Counsel, Policy Development Division, Ministry of the Attorney General, 7th Floor, 720 Bay Street, Toronto M5G 2K1 [TEL: 416-326-2506] *(U.L.S.)*

KAREN COHL, Acting Deputy Director, Equality Rights Branch, Ministry of the Attorney General, 7th Floor - 720 Bay Street, Toronto M5G 2K1 [TEL: 416-326-2511] *(U.L.S.)*

DOUGLAS J. EWART, Director, Policy Development Division, Ministry of the Attorney General, 7th Floor, 720 Bay Street, Toronto M5G 2K1 [TEL: 416-326-2620] *(U.L.S.)*

JOHN GREGORY, Acting Deputy Director, Policy Development Division, Ministry of the Attorney General, 7th Floor - 720 Bay Street, Toronto M5G 2K1 [TEL: 416-326-2503] *(U.L.S.)*

LUCINDA MIFSUD, Registrar of Regulations, Ministry of the Attorney General, 1st Floor - 1401 Whitney Blook, 99 Wellesley Street West, Toronto M7A 1A2 [TEL: 416-326-2748] *(D.S.)*

HOWARD F. MORTON, Q.C., Senior Crown Counsel, Criminal Law Policy, Ministry of the Attorney General, 10th Floor - 720 Bay Street, Toronto M5G 2K1 [TEL: 416-326-4661] *(C.L.S.)*

DONALD L. REVELL, Chief Legislative Counsel, Ministry of the Attorney General, 1st Floor - 1401 Whitney Block, 99 Wellesley Street West, Toronto M7G 1A2 [TEL: 416-326-2770] *(D.S. & U.L.S.)*

SIDNEY TUCKER, Deputy Chief Legislative Counsel, Ministry of the Attorney General, 1st Floor - 1401 Whitney Block, 99 Wellesley Street West, Toronto M7A 1A2 [TEL: 416-326-2777] *(D.S.)*

MICHAEL WOOD, Deputy Cheif Legislative Counsel, Ministry of the Attorney General, 1st Floor - 1401 Whitney Block, 99 Wellesley Street West, Toronto M7A 1A2 [416-326-2766] *(D.S.)*

Prince Edward Island:

RICHARD B. HUBLEY, Q.C., Director of Prosecutions, 42 Great George St., Charlottetown C1A 4J9 [TEL: 902-368-4595] [FAX: 902-368-5544] *(C.L.S.)*

M. RAYMOND MOORE, Legislative Counsel, P.O. Box 1628, Charlottetown C1A 7N3 [TEL: 902-368-4291] [FAX: 902-368-5544] *(D.S. & U.L.S.)*

Saskatchewan:

SUSAN C. AMRUD, Crown Solicitor, Legislative Services, Department of Justice, 1874 Scarth Street, Regina S4P 3V7 [TEL: 306-787-8990] [FAX: 306-787-9111] *(U.L.S.)*

IVAN R. BROWN, Chief Legislative Crown Counsel, Legislative Drafting, Department of Justice, 1874 Scarth Street, Regina S4P 3V7 [TEL: 306-787-9346] [FAX: 306-787-9111] *(D.S.)*

KENNETH CHUTSKOFF, Legislative Crown Counsel, Legislative Drafting, Department of Justice, 1874 Scarth Street, Regina S4P 3V7 [TEL: 306-787-2379] [FAX: 306-787-9111] *(D.S.)*

ROBERT COSMAN, Legislative Counsel and Law Clerk, Room 225, Legislative Building, Regina S4S 0B3 [TEL: 306-787-2298] *(D.S.)*

AARON FOX, McDougall Ready, 700 Royal Bank Building, 2010 - 11th Avenue, Regina S4P 0J3 [TEL: 306-757-1641] [FAX: 306-359-0785] *(C.L.S.)*

PHILLIP GALLET, McDougall Ready, 700 Royal Bank Building, 2010-11th Avenue, Regina S4P 0J3 [TEL: 306-757-1641] [FAX: 306-359-0785] *(U.L.S.)*

KENNETH HODGES, Q.C., Director of Research, Law Reform Commission of Saskatchewan, 122 - 3rd Avenue North, Saskatoon S7K 2H6 [TEL:306-933-6127] [FAX: 306-933-6999] *(U.L.S.)*

GEORGINA R. JACKSON, MacPherson, Leslie & Tyerman, Barristers and Solicitors, 15th Floor, 1874 Scarth Street, Regina S4P 4E9 [TEL: 306-347-8430] [FAX: 306-352-5250] *(U.L.S.)*

DOUGLAS E. MOEN, Co-ordinator, Legislative Services, Department of Justice, 1874 Scarth Street, Regina S4P 3V7 [TEL: 306-787-5360] [FAX: 306-787-9111] *(U.L.S.)*

CAROL SNELL, Crown Solicitor, Policy Planning and Evaluation, Department of Justice, 1874 Scarth Street, Regina S4P 3V7 [TEL: 306-787-3684] [FAX: 306-787-8084] *(C.L.S.)*

Yukon:

SYDNEY B. HORTON, Chief Legislative Counsel, Department of Justice, Box 2703, Whitehorse Y1A 2C6 [TEL: 403-667-3448] [FAX: 403-668-3279] *(D.S. & U.L.S.)*

DELEGATES EX OFFICIO

1990 Annual Meeting

Attorney General for Alberta: HON. KEN ROSTAD, Q.C.

Attorney General of British Columbia: HON. RUSS FRASER, Q.C.

Minister of Justice and Attorney General of Canada:
HON. KIM CAMPBELL, P.C., Q.C.

Minister of Justice and Attorney General of Manitoba:
HON. JAMES C. MCCRAE

Attorney General and Minister of Justice of New Brunswick:
HON. JAMES LOCKYEAR, Q.C.

Minister of Justice and Attorney General of Newfoundland:
HON. PAUL D. DICKS, Q.C.

Minister of Justice of the Northwest Territories:
HON. MICHAEL A. BALLANTYNE

Attorney General of Nova Scotia: HON. THOMAS J. MCINNES, Q.C.

Attorney General of Ontario: HON. IAN G. SCOTT, Q.C.

Minister of Justice and Attorney General of Prince Edward Island: HON.
JOSEPH A. GHIZ, Q.C.

Minister of Justice and Attorney General of Quebec:
HON. GIL RÉMILLARD

Minister of Justice and Attorney General for Saskatchewan:
HON. J. GARY LANE, Q.C.

Minister of Justice of the Yukon: HON. MARGARET JOE

HISTORICAL NOTE

Seventy-two 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 and 1990, 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, with a few exceptions, during the week preceding the annual meeting of the Canadian Bar Association. 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.
1985. Aug. 9-16, Halifax.
1986. Aug. 8-15, Winnipeg.
1987. Aug. 8-14, Victoria.
1988. Aug. 6-12, Toronto.
1989. Aug. 12-18, Yellowknife.
1990. Aug. 11-17, Saint John.

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 one of its executives annually to represent the Conference on the Council of the Bar Association. And third, the past president of the Conference each year files a written report on its current activities with the Bar Association.

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 from 1946 to 1990 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*, the *Uniform International Commercial Arbitration Act* and the *Uniform Human Tissue Donation 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 and subsequent 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 Drafting Section of the Conference. It meets the same time as the annual meeting of the Conference and at the same place. It is attended by legislative draftsmen who 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.

BIBLIOGRAPHY

(arranged chronologically)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Law Reform in Canada: Diversity or Uniformity. Frank Muldoon. 1983 12 Manitoba Law Journal, p. 257.

Law Reform in Canada: The Impact of the Provincial Law Reform Agencies on Uniformity. Thomas Mapp. 1983 Dalhousie Law Journal, p. 277.

Perspectives on the Harmonization of Law in Canada. Volume 55 in the series of studies commissioned as part of the research program of the Royal Commission on the Economic Union and Development Prospects for Canada published by the University of Toronto Press.

Harmonization of Business Law in Canada. Volume 56 in the series of studies commissioned as part of the research program of the Royal Commission on the Economic Union and Development Prospects for Canada published by the University of Toronto Press.

Harmonization of Provincial Legislation in Canada: The Elusive Goal. W. H. Hurlburt, Q.C. Canadian Business Law Journal, Vol. 12, 1986-87, p. 387.

Harmonization of Provincial Legislation in Canada. Arthur L. Close. Canadian Business Law Journal, Vol. 12, 1986-87, p. 425.

The American Experience on Harmonization (Uniformity) of State Laws. Morris Shanker. Canadian Business Law Journal, Vol. 12, 1986-87, p. 433.

DRAFTING SECTION

MINUTES

First Meeting

The Drafting Section met twice at the Uniform Law Conference. At the first meeting held on August 11, 1990, The Drafting Section discussed the Sub-committee's report (a copy was included with the Agenda). It was approved.

In addition the Section approved that portion of the Harmonization Report relating to the Drafting Section with two changes:

1. It had been proposed that there be a position of past-chairperson. It was decided that a vice-chairperson be elected instead.
2. It had been proposed that the Drafting Section would also provide the constitutional advice. The role of the Drafting Section relating to constitutional matters will be only to raise constitutional issues. If a consitutional issue arises the drafter should seek an opinion and advice from the constitutional lawyers in his or her jurisdiction.

It will no longer be necessary for the Drafting Section to meet before the Conference. Meetings can take place during the Conference.

The Executive for 1990/91 is:

Chairman	Peter J. Pagano, Q.C.
Vice-Chairman	Lionel Levert
Secretary	Donald Revell

Second Meeting

The following were in attendance at the second meeting held on August 16, 1990:

Peter J. Pagano, Lionel Levert, Shirley Strutt, Cliff Watt, Bruno Lalonde and Arthur Fordham.

At that meeting, the Drafting Section assigned Principal Drafters (for both the English and French versions) for each project for which a draft is required at the next Conference. In addition, a Reviewer was assigned to each Principal Drafter.

The role of the Reviewer is to provide drafting comments to the Principal Drafter to ensure that the Drafting Conventions are adhered to.

Attached is a list of the projects and the jurisdictions assigned to be the Principal Drafters and Reviewers for the particular projects.

In the event that the Principal Drafter and the Reviewer cannot resolve a drafting issue, the matter is to be referred to the Drafting Section Executive for resolution.

When the Principal Drafters and Reviewers are satisfied that a draft is complete, the final draft is to be sent to each jurisdictional representative (local secretary). I will be providing you a copy of those persons in due course.

PARLIAMENTARY COUNSEL MEETING

Discussions on the meetings of Legislative Counsel and Parliamentry Counsel concluded as follows:

1. The Parliamentary Counsel will not be meeting prior to the ULC. In 1991 the meeting is being planned for September in Regina.

2. The Chief Legislative Counsel (CLC) will meet after the Parliamentary Counsel meetings to discuss administrative matters.

3. Conferences for all persons interested in legislative drafting will be organized either through conferences of the Canadian Institute for the Administration of Justice (CIAJ) or Conferences arranged by the CLC. A CIAJ Conference is being held on November 22 and 23, 1990 in Ottawa.

4. The Drafting Section will meet during the ULC primarily to assign Principal Drafters and Reviewers and to raise and discuss constitutional matters. If in the drafting process a constitutional issue is raised, an attempt should be made to resolve it.

OPENING PLENARY SESSION

MINUTES

Opening of Meeting

The meeting opened at 8:00 p.m. on Sunday, August 12, 1990 at the Trade and Convention Centre in Saint John with Georgina Jackson in the chair and Mel Hoyt as secretary.

Address of Welcome

The President extended a warm welcome to all those delegates in attendance. The Attorney General and Minister of Justice for the Province of New Brunswick also welcomed all the delegates to the Province of New Brunswick and in particular to the City of Saint John and hoped an enjoyable time would be had by all.

Introduction of the Executive

The President identified each officer of the Conference and named the office each one fills.

National Conference of Commissioners on Uniform State Laws

The President of the National Conference of Commissioners on Uniform State Laws, Mr. Lawrence J. Bugge, and his wife, Elaine, were introduced to the Conference.

The Chairman of the Committee on Liaison with Canada and International Organizations, and Co-chairman of the Joint Committee on Cooperation with the Uniform Law Conference of Canada and the National Conference of Commissioners on Uniform State Laws, Mr. Jeremiah Marsh, and his wife, Marietta, were also introduced to the Conference.

Caribbean Law Institute

It was announced that Mrs. Velma Newton, a member of the Caribbean Law Institute, would be attending the Conference this year on Tuesday, August 14 and through to the end of the week.

Introduction of Delegates

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

Auditor's Report

The Treasurer presented the Auditor's Report regarding the Financial Statements of the Conference as at June 30, 1990. It is set out in Appendix B, page 149.

RESOLVED

1. that the Auditor's Report be approved;
2. that the same auditors, Ernst & Young (Clarkson, Gordon), be appointed for the coming year; and
3. that a banking resolution be approved authorizing any two members of the Executive, or one member and the Executive Secretary, as signing officers for banking matters.

Appointment of Resolutions Committee

RESOLVED that a Resolution Committee be constituted, composed of Carol Snell as Chairperson, Shirley Strutt and Lionel Levert 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 present to bring the Committee's membership up to five, and in either event, the most recently retired president shall be Chairman.

If the Report on Harmonization passes as is, then the report that will be brought in will not be adopted by the Conference except perhaps for one officer. The intent is to avoid a hiatus.

President's Report

The primary work of the Executive Committee this year was to solicit responses to the Report "Renewing Consensus for Harmonization of Laws in Canada" which was released last year in Yellowknife. Approximately twenty responses were received from the jurisdictions, past presidents and other interested individuals and were distributed to members of the Executive.The Executive met for a day and a half in Montreal at the end of February to consider the responses and to plan the preparation of a revised Report, a revised Statement of Renewal, Procedures and Statements of Policies. These were subsequently prepared and distributed to the Executive and subsequently distributed to all of the delegates. The Executive met today and affirmed the decision made in Montreal that the Report would be merely introduced tonight

as part of the President's report, but the debate on the Report would take place in two stages. First of all in the Sections tomorrow, each Chairman will set aside sufficient time to allow for a debate on the Report and secondly in Plenary Session on Wednesday. The Report would then be debated by the group as a whole. By way of introducing the Report only, it should be said that the responses received from the jurisdictions were invaluable and for this we are very grateful. We believe that this revised Report has benefited from the comments made during the year and also from the thorough debate that seems to have taken place in the jurisdictions and among the members of the Executive, and of course we will continue to benefit from the discussions that will take place here.

In addition to the Harmonization Report, the Executive took steps to move forward with three joint projects. Initiative was taken last year in Yellowknife to accommodate three joint projects being the Summary Offences Procedures Project, the Civil and Criminal Contempt Project and the Civil and Criminal Aspects of Trafficking in Children. Those three projects were organized during the year and will be the subject matter of our first sessions tomorrow. We will begin our sessions jointly, the Uniform Law Section and the Criminal Law Section, and go through each of those reports in that order.

In summary of the excellent work of the Executive Committee, the President thanked the Executive for the help and support during the past two and one-half years and thanked also the Conference for the opportunity to serve it.

Report on the Vice President's Visit to the National Conference of Commissioners on Uniform State Laws

First Vice President, Basil D. Stapleton, Q.C. I did have the opportunity to represent the Conference at the annual meeting of the National Conference in Milwaukee in July. As Chairman of the Uniform Law Section and as a member of the Executive who has been involved in the Renewal Process for the past two years, I was particularly interested in observing the functioning of the National Conference first hand to see if there were any lessons that might be of use to us. I should say that the President of the National Conference, Larry Bugge, had been particularly generous and helpful with information and advice that he conveyed to the Executive in Yellowknife last summer. Certainly our Renewal Report reflected some of what he had to suggest. In a sense, my presence in Milwaukee gave me a better understanding of the importance of the work of the Conferences.

Many of the Commissioners there attend at their own expense. Six life-time members were installed in Milwaukee. That designation is reserved for those who have been Commissioners for at least twenty years. Those six joined a large number of others in the lifetime membership category, some of whom have been participating for upwards of forty years. At the same time, about twenty first-time Commissioners were introduced. There was a significant injection of new blood to complement the experience of the long-time participants. I also found the mix of participants to be particularly interesting as well. I was especially struck by the presence in numbers of judges, legislators and law teachers. They were very prominent among those assigned to the working committees in relation to specific agenda items. To my knowledge sitting legislators have never been actively engaged in our Conference and in recent times, at least, we have not had the benefit of participation of judges and law teachers per se at our table in significant numbers. Those professors who do participate usually do so because of their law reform agency associations.

I might say that in the existence and participation of the law reform agencies in the work of our Conference, we do have a valuable resource that is not available at the National Conference. I do hope and expect that this very significant contribution to our cause of harmonization of laws will continue and grow.

I hope as well that we will find the means of having more input from the academic community and from the bench and even from legislators at our table. In my view that could not help but facilitate the attainment of our goal by among other things hoping to create the political will that is really needed for the ultimate implementation of our objectives.

It was remarkable as well at the National Conference to see very active participation of the American Bar Association, representation from the White House and the Association of Attorneys General. The interest of the latter was engendered particularly by the Conference's consideration of new controlled substances legislation. It is a very hot issue, of course, in a number of respects including the political and the civil rights implication. It was very interesting to see representations being made to the Conference from the White House and other political service.

I am not going to detail as to the agenda of the National Conference and the items that may be of interest to us either independently or in liaison with our Conference. These are matters that I will be pursuing with the Steering Committee of the Uniform Law Section and with the Liaison Committee.

Let me say that I did certainly appreciate meeting again with Larry and Elaine Bugge and also meeting for the first time Jerry and Marietta Marsh, and having a firsthand experience with the working of the Liaison Committee. I think that is a Committee that has great potential, and we were pleased that Jerry accepted the invitation to come to New Brunswick so that we could continue the preliminary meeting that was commenced in Milwaukee.

That, I think, for the time being Madame Chairman will suffice.

Resolution to Congratulate the National Conference of Commissioners on Uniform State Laws on its 100th Anniversary

In August, 1991, the National Conference of Commissioners on Uniform State Laws begins its 100th year as a uniform law and law reform body. It is appropriate that this Conference is probably the first group to issue such congratulations to them. Their meeting next year is in Florida, and they would like to receive as many good wishes as they can receive. Nova Scotia is the only body outside the United States that is a member of the National Conference.

The Resolution is as follows:

RESOLUTION TO CONGRATULATE THE NATIONAL CONFERENCE OF COMMISSIONERS ON UNIFORM STATE LAWS ON ITS 100TH ANNIVERSARY

WHEREAS the National Conference of Commissioners on Uniform State Laws will, beginning in August, 1991, be celebrating its 100th year of service to the principle of uniformity of laws between the states of the United States of America;

AND WHEREAS the National Conference of Commissioners on Uniform State Laws has made a consistent and lasting contribution to the betterment of the law through its unwavering advocacy of uniformity of law when uniformity is justified and through its commitment to quality work;

AND WHEREAS the vital role the National Conference of Commissioners on Uniform State Laws has played in creating uniformity of law between states where uniformity is desirable and practicable is reflected in the significant contribution that Conference has made to the development of the law, particularly, in the areas of commercial law, real estate, family law and conflicts of law;

AND WHEREAS a representative of the Uniform Law Conference of Canada serves on the Joint Committee for Cooperation Between the Uniform Law Conference of Canada and the National Conference of Commissioners on Uniform State Laws;

AND WHEREAS the National Conference of Commissioners on Uniform State Laws has established a Committee on Liaison With the Uniform Law Conference of Canada and International Organizations;

AND WHEREAS continued liaison and cooperation between the National Conference of Commissioners on Uniform State Laws and the Uniform Law Conference of Canada will enable each organization to better achieve its objectives;

THEREFORE, BE IT RESOLVED that the Uniform Law Conference of Canada congratulate the National Conference of Commissioners on Uniform State Laws on the occasion of its 100th anniversary and wish it continued success in serving the interests of the states of the United States of America and the people of that nation through its patient insistence for uniformity of the law.

This Resolution in both the English and French languages is to be duly certified by the appropriate members of the Executive, and is to be forwarded to Larry Bugge, the President of the National Conference of Commissioners on Uniform State Laws.

Events of the Week

Basil D. Stapleton, Q.C., gave us an outline of events for the week.

Adjournment

There being no further business, the meeting adjourned at 9:00 p.m. to meet again in the Closing Plenary Session on Friday, August 17.

L'OUVERTURE DE LA SESSION PLÉNIÈRE

PROCÈS-VERBAL

L'Ouverture de la réunion

La réunion a été ouverte à 8h le dimanche 12 août 1990 au Trade and Convention Centre à Saint-Jean avec Georgina Jackson, présidente et Mel Hoyt, secrétaire.

Bienvenue

La présidente a fait un accueil, chaleureux à tous. Le Procureur-Général et le Ministre de la Justice pour la province du Nouveau-Brunswick ont aussi souhaité la bienvenue aux délégués de la part de la province du Nouveau-Brunswick et, en particulier, la ville du Saint-Jean. Ils ont espéré que la visite fera plaisir à tout le monde.

Présentation du Comité Exécutif

La Présidente a identifié chaque officier de la conférence et leurs postes.

National Conference of Commissioners on Uniform State Laws

Le président du National Conference of Commissioners on Uniform State Laws, M. Lawrence J. Bugge, et sa femme, Elaine, ont été présenté aux membres de la Conférence.

Le Président du comité sur Liaison with Canada and International Organizations, et le Président-adjoint du Joint Committee on Cooperation with the Uniform Law Conference of Canada et la National Conference of Commissioners on Uniform State Laws, M. Jeremiah Marsh, et sa femme, Marietta, ont aussi été présenté aux membres de la Conférence.

Caribbean Law Institute

Il a été annoncé que Mme. Velma Newton, membre du *Caribbean Law Institute*, sera présentée à la Conférence cette année, depuis le mardi 14 août jusqu'à la fin de la semaine.

Présentation des délégués

La Présidente a demandé aux délégués supérieurs de chaque juridictions de se présenter et ensuite, de présenter les membres de sa délégation.

Rapport du trésorier

Le trésorier a présenté le rapport du expert-comptable qui traitait des relevés de compte de la Conférence du 30 juin 1990. Ce rapport se trouve à l'Appendice B, page 149.

RÉSOLU

1. que le rapport du expert-comptable soit approuvé;
2. que les mêmes experts-comptables, Ernst et Young (Clarkson, Gordon) soient désignés pour l'année prochaine; et
3. qu'une résolution bancaire soit approuvé qui donnera le pouvoir a n'importe deux membres du Comité -Exécutif ou un membre et le secrétaire-exécutif d'agir comme officiers ayant droit de signer des affaires bancaires.

Nomination du comité sur résolutions

RÉSOLU qu'un comité sur résolutions sera constitué, compris de Carol Snell, présidente; Shirley Strutt et Lionel Levert. Le rapport de ces derniers sera présenté à la séance plénière finale.

Nomination des membres du Comité sur nominations

RÉSOLU que lorsque cinq anciens présidents ou plus se présentent à une réunion, le Comité sur nominations sera compris de tous ces anciens présidents. Mais au cas où moins que cinq anciens présidents se présentent à la réunion, ceux qui se sont présent vont désigner le nombre de personnes suffisant à ce que le comité comptera cinq. Dans chaque cas, l'ancien président le plus récemment retraité jouera le rôle du président.

Si le rapport sur l'Harmonisation est accepté sans modifications, le rapport qui sera introduit sera rejeté par la Conférence, à l'exception peut-être d'un officier. L'intention est d'éviter un hiatus.

Rapport du Comité-Exécutif

L'objet primaire du Comité-Exécutif cette année a été de solliciter des réponses au rapport "Renouvellement du consensu pour harmonisation au Canada" qui a été présenté l'année dernière à Yellowknife. A peu près vingt réponses ont été reçue des juridictions, anciens présidents, et d'autres individus intéressés et ils ont été distribué aux membres du Comité-Exécutif. Le Comité-Exécutif a réuni pendant un jour et demi à Montréal vers la fin du février pour discuter ces réponses et aussi pour dresser un plan pour la préparation d'un rapport modifié, un rapport sur renouvellement révisé, procédures et déclarations des politiques. A la suite, ces derniers ont été préparés et distribués à tous les délégués. Aujourd'hui, les membres du Comité-Exécutif ont rencontré et ont affirmé la décision prise à Montréal que le rapport sera simple-

ment introduit ce soir comme partie du rapport présidentiel mais que le débat sur la question aura lieu en deux étapes. Premièrement, dans chaque sections demain, chaque président va allouer du temps suffisant à débattre le rapport et en deuxième lieu, en séance plénière mercredi. Ensuite, le rapport sera débattu par le groupe entier. Seulement pour présenter le rapport, on dirait que les réponses reçues des juridictions étaient inappréciables et pour cela nous sommes très reconnaissants. Nous croyons que ce rapport révisé a profité des commentaires faites pendant l'année et aussi du débat qui semble avoir eu lieu dans les juridictions et entre les membres du Comité-Exécutif. En plus, nous continuerons de profiter des discussions qui aura lieu ici.

En plus du Rapport sur l'Harmonisation, le Comité-Exécutif à avancer trois autres projets. L'initiative a été prise l'année dernière à Yellowknife d'accommoder trois projets étant: *Summary Offences Procedures Project, the Civil and Criminal Contempt Project* et *the Civil and Criminal Aspects of Trafficking in Children*. Ces trois projets ont été organisé pendant l'année et seront le sujet de nos premières sessions demain. Nos sessions demain, débuteront avec la section sur la Loi Uniforme et la section du droit criminel et ensuite on examineront chacun de ces rapports dans cet ordre.

En résumé de l'excellent travail du part du Comité-Exécutif, le Président a remercié les membres du Comité-Exécutif pour l'aide et le soutien qu'ils on offert pendant les dernières deux années et demie et aussi, le Président a remercié la Conférence pour l'occasion de la servir.

Rapport sur la visite du Président-adjoint au National Conference of Commissioners on Uniform State Laws

Le premier Président-Adjoint, Basil D. Stapleton, c.r. J'avais l'occasion de représenter la Conférence à la réunion annuelle de la Conférence Nationale à Milwaukee en juillet. Comme président de la section sur la Loi Uniforme et comme membre du Comité-Exécutif impliqué dans le processus de renouvellement pendant deux années, j'étais, en particulier, intéressé à observer de près le fonctionnement de la Conférence Nationale pour voir s'il y avait de quoi nous aider. Je devrais dire que le Président de la Conférence Nationale, Larry Bugge, a été vraiment généreux et serviable avec l'information et les conseils donnés au Comité-Exécutif à Yellowknife l'année dernière. Certainement, notre Rapport sur renouvellement a reflété ses suggestions. Dans un sens, ma présence à Milwaukee m'a donné une meilleure connaissance de l'importance du travail des Conférences.

Plusieurs commissaires fréquentent les conférences à leurs propres

frais. À Milwaukee, six membres pour vie ont été installés. Cette appellation est réservée pour ceux qui ont été des commissaires pour les dernières vingt années. Ces six ont joint un grand nombre d'autres dans la catégorie de membres pour vie, certains ont participé pendant plus de quarante ans. En même temps, à peu près vingt nouveaux commissaires ont été présenté. Il y avait une injection importante de nouveau sang pour compléter l'expérience des anciens participants. J'ai aussi trouvé la mélange de participants d'être très intéressante. En particulier, j'ai remarqué la présence des nombreux juges, législateurs et professeurs de droit. Ils étaient remarquables parmi ceux qui ont été désigné au comités de travail sur les points spécifiques de l'ordre du jour. À ma connaissances, les législateurs en pouvoir n'ont jamais été engagé activement dans notre conférence et récemment, au moins, nous n'avons pas eu l'avantage de la participation de juges et professeurs de droit (comme tel) à notre table en nombres importants. Ceux qui participent, le font d'habitude à cause de leurs liens avec les associations de réforme des lois. Je peux dire que avec l'existence et la participation des agences de réforme des lois au travail de notre conférence, nous avons une ressource valable qui n'est pas disponible à la Conférence Nationale. Je souhaite et m'attends à ce que cette contribution remarquable à notre cause d'harmonisation des lois va continuer à croître.

En plus, j'espère qu'on trouvera un moyen d'augmenter les informations que fournissent la communauté académique et les magistrats et aussi les législateurs à notre table. À mon avis, cela peut seulement faciliter l'achèvement de notre but en parmi d'autres choses, aidant à la création de la volonté politique qui est essentiel pour l'implémentation ultime de nos objectives.

Il a été également remarquable, à la Conférence Nationale, de voir la participation active de The American Bar Association, la représentation de la Maison Blanche et l'Association des Procureurs-Généraux. L'intérêt de ces derniers était engendré en particulier par la considération de nouvelle législation sur les substances contrôlées de la part de la Conférence. C'est une question prêtant à controverse bien sûre, de plusieurs façon. Les implications politiques et sur des droits curques inclusivement. Il était intéressant de voir les présentations faîtes à la Conférence par la Maison Blanche et autres services politiques.

Je ne vais pas en détails du programme de la Conférence Nationale et des points qui peuvent nous intéresser soient indépendamment soient en liaison avec notre Conférence, Voici la matière que je traiterai avec le Comité sur l'organisation de la section des lois uniformes et avec le comité de liaison.

Laissez-moi dire que j'ai vraiment apprécié l'occasion de rencontrer encore une fois Larry et Elaine Bugge et aussi de rencontrer pour la première fois, Jerry et Marietta Marsh, et aussi l'expérience de travailler de près avec le Comité de Liaison. A mon avis, c'est un comité d'un potentiel important et nous sommes heureux que Jerry a accepté l'invite de venir au Nouveau-Brunswick pour qu'on puisse continuer la rencontre préliminaire débutée à Milwaukee.

Cela, je crois, pour le moment Mme. Présidente suffit.

Résolution à féliciter The National Conference of Commissioners on Uniform State Laws à l'occasion de son centième anniversaire

En août 1991, the National Conference of Commissioners on Uniform State Laws commencera son centième année de services. Il est juste que cette conférence est probablement le premier group a les félicité. Leur réunion est en Floride l'année prochaine et ils aimeront reçevoir autant de souhaites de réussite que possible. La Nouvelle Écosse est la seule région hors des Etats-unis qui est membre de la Conférence Nationale.

La Résolution ce suis après:

RÉSOLUTION À FÉLICITER THE NATIONAL CONFERENCE OF COMMISSIONERS ON UNIFORM STATE LAWS À L'OCCASION DE SON CENTIÈME ANNIVERSAIRE

ATTENDU QUE The National Conference of Commissioners on Uniform State Laws fêterai dès août 1991 son centième année de service au principe d'harmonisation des lois parmi les états des États-unis d'Amérique;

ET ATTENDU QUE The National Conference of Commissioners on Uniform State Laws a fait une contribution ferme et durable à l'amélioration de droit par son inébranlable défense de l'harmonisation des lois où l'harmonisation est justifiée et par son engagement au travail de qualité;

ET ATTENDU QUE le rôle joué par The National Conference of Commissioners on Uniform State Laws dans l'harmonisation des lois parmi les états où l'harmonisation est souhaitable et praticable est indispensable et reflété dans la contribution importante que The Conference a fait au développement de droit, surtout dans les domaines de droit commercial, droit immobilier, droit de la famille et droit de conflit des lois;

ET ATTENDU QUE l'un représentant de la Conférence Canadienne sur l'Harmonisation des Lois est membre du Joint Committee for Cooperation between the Uniform Law Conference of Canada and the National Conference of Commissioners on Uniform State Laws;

ET ATTENDU QUE The National Conference of Comissioners on Uniform State Laws a établi un Committee on Liaison with the Uniform Law Conference of Canada and International Organizations;

ET ATTENDU QUE la basin continue entre, et la cooperation avec, The National Conference of Commissioners on Uniform State Laws et la Conférence canadienne sur l'harmonisation des lois permettra chaque organisation à bien accomplir ses objectifs;

PAR CONSÉQUENT, soit-il résolu que la Conférence canadienne sur l'harmonisation des lois félicite The National Conference of Commissioners on Uniform State Laws à l'occasion de son centième anniversaire et la souhaite encore de succès en répondant aux intérêts des états des États de l'Amérique et du peuple de cette nation par son insistence patiente pour l'harmonisation des lois.

Cette résolution en Anglais aussi que Français sera certifiée comme il faut par les membres appropriés du Comité-Exécutif. Elle est supposé d'être livré à Larry Bugge, le président de The National Conference of Commissioners on Uniform State Laws.

Événements de la semaine

Basil D. Stapleton, c.r., nous a donné un aperçu des événements de la semaine.

Ajournement

À 21h00 on a levé la séance. On a ajourné à la séance plénière finale du vendredi 17 août.

UNIFORM LAW SECTION

MINUTES

Attendance

Eighty-eight delegates were in attendance. For details see list of delegates, page 5.

Sessions

The Section held eight sessions, two each day from Monday to Thursday, August 13-16, 1990.

Distinguished Visitors

The Section was honoured by the participation of:

(a) Mr. Lawrence J. Bugge, the President of the National Conference of Commissioners on Uniform State Laws.

(b) Mr. Jeremiah Marsh, the Chairman of the Committee on Liaison with Canada and International Organizations, and Co-chairman of the Joint Committee on Cooperation with the Uniform Law Conference of Canada and the National Conference of Commissioners on Uniform State Laws.

(c) Mrs. Velma Newton, a member of the Caribbean Law Institute.

Arrangements 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 Basil D. Stapleton as Chairman and Mel Hoyt as Secretary.

Hours of Sitting

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

Agenda

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

Administrative Procedures

The Federal Commissioners presented a report on Administrative Procedures.

RESOLVED that the matter be referred back to the Steering Committee for further action.

Arbitration

The Ontario Commissioners presented a report on Arbitration.

RESOLVED

1. that the report on Arbitration and the revised draft Act with commentaries be received and presented in the Proceedings (see Appendix A, page 86);
2. that the revised Act be adopted by the Conference as a Uniform Act and recommended for enactment.

Child Status Amendment Act
(See 1989 New Reproductive Technologies)

The Saskatchewan Commissioners presented a report on the Child Status Amendment Act.

RESOLVED

1. that the revised draft amendments with commentaries be circulated, and if the amendments with commentaries are not disapproved by two or more jurisdictions on or before November 30, 1990, by notice to the Executive Secretary, the amendments be adopted by the Conference as amendments to the Uniform Child Status Act and recommended for enactment.

Note: Canada and Manitoba abstained.

Note: The revised draft amendments with commentaries were not available at press time on November 30. They will be printed in later Proceedings.

Class Actions

The Ontario Commissioners presented a report on Class Actions.

RESOLVED that the Steering Committee of the Section be directed to establish a broadly based working group that would include varied experience and expertise both jurisdictionally and in terms of the nature of the practice to report back next year, probably not with draft legislation but at least with proposals for the content of draft legislation.

Custody and Access Jurisdiction and Enforcement Act

The Saskatchewan Commissioners presented a report on Custody and Access Jurisdiction and Enforcement Act.

RESOLVED that the matter be referred to Ontario and Alberta for drafting and circulation, and if the Act with commentaries is not disapproved by two or more jurisdictions on or before January 31, 1991, by notice to the Executive Secretary, the Act be adopted by the Conference and recommended for enactment.

Note: The draft Act with commentaries was not available at press time on November 30. It will be printed in later Proceedings.

Defamation

A report on Defamation was presented by the Saskatchewan Commissioners.

RESOLVED

1. that the draft Act with commentaries be received and printed in the Proceedings;

2. that the draft Act with commentaries be circulated, and if the Act with commentaries is not disapproved by two or more jurisdictions on or before January 31, 1991, by notice to the Executive Secretary, the Act be adopted by the Conference as a Uniform Act and recommended for enactment.

Note: The draft Act with commentaries was not available at press time on November 30. It will be printed in later Proceedings.

Disclosure of Cost of Consumer Credit

The Alberta Commissioners presented a report on Disclosure of Cost of Consumer Credit.

RESOLVED that the report be received and printed in the Proceedings (see Appendix C, page 153).

RESOLVED further, subject to the caveat set out on page 2 of the report:

1. that the Uniform Law Section undertake the preparation and adoption of uniform statutory provisions regarding the disclosure of the cost of credit in consumer credit transactions;

2. that the uniform statutory provisions be compatible with different (i.e. non-uniform) legislative approaches to related issues in the consumer credit field;

3. that the uniform statutory provisions be suitable for incorporation into relevant federal and provincial legislation;

4. that the Uniform Law Section direct one or more jurisdictions to prepare for consideration at the Section's 1991 annual meeting a report setting out the policy issues to be addressed by the Section before the uniform statutory provisions can be prepared; and

5. that the uniform statutory provisions be prepared by the Drafting Section in

accordance with the policy decisions of the Uniform Law Section made at its 1991 annual meeting.

Expropriation

The British Columbia Commissioners presented a report on Expropriation.

RESOLVED

1. that the matter not be proceeded with further as a Conference matter;
2. that the report be received and printed in the Proceedings (see Appendix D, page 160); and
3. that the report be commended for consideration to any jurisdiction considering new expropriation legislation.

Foreign Money Claims Act

The Saskatchewan Commissioners presented a report on the Foreign Money Claims Act and the consequential amendments to the Reciprocal Enforcement of Maintenance Orders Act.

RESOLVED

1. that the report be received;
2. that this issue be referred to the next meeting of the Federal/Provincial/Territorial Committee of Directors of Maintenance Enforcement which will be held in September, 1990. Their recommendations can then be reviewed by the Federal/Provincial/Territorial Family Law Committee at their next meeting in October, 1990. The Saskatchewan Commissioners would then prepare a recommendation for resolution of the issue to be circulated and if the recommendation for resolution of the issue is not disapproved by two or more jurisdictions on or before November 30, 1990, by notice to the Executive Secretary, the recommendations for resolution of the issue be adopted and recommended by the Conference

Note: After discussing the issue with the Federal/ Provincial/Territorial Committee of Directors of Maintenance Enforcement, it was decided not to pursue the issue further.

Inter-Jurisdictional Child Welfare Orders

In 1989, the Saskatchewan Commissioners raised an objection to the Inter-Jurisdictional Child Welfare Orders Act that was approved by the Conference in 1988.

This year, the Saskatchewan Commissioners reported that in light of the response from the Directors of Child Welfare, the Federal-Provincial Family Law Committee was not consulted again on the issue and Saskatchewan is withdrawing its objection to the proposed Uniform Inter-Jurisdictional Child Welfare Orders Act.

Law Reform Conference of Canada

The Law Reform Conference of Canada presented a report on its Sixth Annual Meeting.

RESOLVED that the report on the Sixth Annual Meeting of the Law Reform Conference of Canada be received and printed in the Proceedings (see Appendix E, page166).

Private International Law

The Chairman of the Special Committee on Private International Law presented his report. No action was taken on the matter at this time.

The Federal Commissioners presented a report on the Department of Justice's Activities in Private International Law.

RESOLVED that the report be received and printed in the Proceedings (see Appendix F, page 177).

Protection of Privacy: Tort

The Saskatchewan Commissioners presented a report on Protection of Privacy: Tort.

RESOLVED

1. that the revised draft Act with commentaries be received and printed in the Proceedings;
2. that the revised draft Act with commentaries be circulated and if the Act with commentaries is not disapproved by two or more jurisdictions on or before January 31, 1991, by notice to the Executive Secretary, the Act be adopted by the Conference as a Uniform Act and recommended for enactment.

Note: The revised draft Act with commentaries was not available at press time on November 30. It will be printed in later Proceedings.

QUEBEC

The Criminal Law Section considered a resolution with respect to Quebec's absence this year and passed the following resolution.

The Criminial Law Section noted the valuable contribution historically made to the Conference by the Province of Quebec. All members have missed the professional association and congeniality shared with colleagues from Quebec. We look forward to Quebec's participation in further years.

It was resolved by concurrence with both the Criminal Law Section and the Uniform Law Section that the above resolution be that of the Conference as a whole, not just the two Sections.

Renewing Consensus for Harmonization of Laws in Canada

The President presented the Renewal Report and led the Section through that Report recommendation by recommendation.

Sale of Goods

The Saskatchewan Commissioners presented a report on Sale of Goods.

RESOLVED

1. that Saskatchewan's report on the Sale of Goods Act without the amended Act be received and printed in the Proceedings (see Appendix I, page 307);
2. that amendments be printed in the loose-leaf consolidation as amendments;
3. that the Act be adopted as amended.

Search and Seizure under the Charter of Rights

The Federal Commissioners presented a report on Search and Seizure under the Charter of Rights.

RESOLVED that the report on Search and Seizure under the Charter of Rights be received and printed in the Proceedings (see Appendix J, page 313);

Substitute Decision Making in Health Care

The Alberta Commissioners presented a report on Substitute Decision Making in Health Care.

RESOLVED

1. that the report be received and printed in the Proceedings (see Appendix K, page 321);
2. that the Alberta Commissioners assess whether or not this area is a suitable area for uniform action, and that they come back next year with an analysis, at which time a decision will be made as to whether it should be put on the agenda.

New Agenda Items

Some of the items suggested for consideration by the Steering Committee include the following:

1. Taking of Evidence from Certain Types of Witnesses.
2. Potential Development of Guidelines for Public Inquiries in terms of both their establishment and their operation.
3. Negotiable Documents of Title Law.

Nominating Committee's Report

Professor Peter J. M. Lown was elected Chairman of the Uniform Law Section for the year 1990-91.

Close of Meeting

Special tributes were paid to the Chairman, Basil D. Stapleton, Q.C., for his outstanding contribution to the work of the Section.

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

SECTION DE LOI UNIFORME

PROCÉS-VERBAL

La présence

Quatre vingt-huit délégués ont été présent. Pour les détails voir la liste des délégués page 5.

Sessions

La section a tenu huit sessions, deux chaque jour de lundi jusqu'à jeudi, du 13 au 16 août 1990.

Visiteurs distingués

La section a été honoré par la participation de:

(a) M. Lawrence J. Bugge, le président du National Conference of Commissioners on Uniform State Laws.

(b) M. Jeremiah Marsh, le président du comité sur Liaison with Canada and International Organizations, et président-adjoint du Joint Committee on Cooperation with the Uniform Law Conference of Canada et le National Conference of Commissioners on Uniform State Laws.

(c) Mme. Velma Newton, membre du Caribbean Law Institute.

L'ordre du procés-verbal

Quelques sujets discutés ont été considérés un jour, ajournés et conclus un autre jour. Pour la convenance, les procés-verbaux sont mis ensemble comme s'ils n'avaient aucune ajournements et les sujets sont arrangés en ordre alphabétique.

L'ouverture

La session a été ouverte par Basil D. Stapleton comme président et Mel Hoyt comme secrétaire.

Horaire de séance

Il a été résolu que la section siège de 21h00 à 12h30 et de 14h00 à 17h00 chaque jour avec des changements lorsque les circonstances méritent.

L'ordre de jour

L'ordre du jour proposé a été considéré et l'ordre de travail pour la semaine approuvée.

Procédures administratives

Les commissions fédéraux ont présenté un rapport sur les procédures administratives.

RÉSOLU que la question soit encore remise au comité de direction.

Arbitrage

Les commissions d'Ontario ont présenté un rapport sur l'arbitrage.

RÉSOLU

1. Que le rapport sur l'arbitrage et la loi proposée modifiée avec commentaires soient reçus dans le procès-verbal (voir appendice A, page 86);
2. Que la loi modifiée soit adoptée par la Conférence comme une Loi Uniforme et recommandée à être statuer.

Loi modifiant le statut des enfants

(Voir 1989 nouvelles technologies de reproduction)

Les commissions de Saskatchewan ont présenté un rapport sur la loi modifiant le statut des enfants.

RÉSOLU

1. Que les amendements proposés modifiés avec commentaires, soient circulés et que si les amendements avec commentaires ne sont pas désapprouvés par deux juridictions ou plus le 30 novembre 1990 ou avant par avis à la secrétaire exécutif, les amendements seront adoptés par la Conférence comme amendements à la Loi Uniforme sur le statut des enfants et recommandé à être statuer.

Notez : Canada et Manitoba ont abstenu

Notez : Les amendements proposés modifiés avec commentaires n'étaient pas disponibles à l'heure d'impression, le 30 novembre. Ils seront publiés plus tard.

Recours collectifs

Les commissions d'Ontario ont présenté un rapport sur les recours collectifs.

RÉSOLU que le comité de direction de la section soit dirigé d'établir un groupe de travail de base large qui incluera l'expérience et l'expertise variées des juridictions et de nature pratique à faire un rapport dans une année, non probablement dans la forme de législation proposée mais au moins avec des propositions pour le fond de législation proposée.

Loi sur la juridiction et l'application de garde et accès

Les commissionnaires du Saskatchewan ont présenté un rapport sur la Loi sur la juridiction et l'application de garde et accès

RÉSOLU que la question soit référée à Ontario et Alberta pour rédaction et présentation, et que si l'Acte avec commentaires n'est pas désapprouvé par deux juridictions ou plus le 31 janvier 1991, ou avant par demande du secrétaire exécutif, l'Acte soit adopté par la Conférence et recommandé à être statuer.

Notez: L'Acte avec commentaires n'était pas disponible à l'heure d'impression. Il sera publié plus tard.

Diffamation

Un rapport sur Diffamation a été présenté par les commissionnaires du Saskatchewan.

RÉSOLU

1. Que la loi proposée avec commentaires soit reçu et imprimé dans le procès-verbal;
2. Que la loi proposée avec commentaires soit circulé, et que si l'Acte avec commentaires n'est pas désapprouvé par deux juridictions ou plus le 31 janvier 1991 ou avant par demande du secrétaire-exécutif, l'Acte soit adopté par la Conférence et recommande à être statuer.

Notez: L'Acte comme étant une loi uniforme avec commentaires n'était pas disponible à l'heure d'impression. Il sera publié plus tard.

Loi sur la divulgation du coût du crédit consommateur

Les Commissions d'Alberta ont présenté un rapport sur la Loi sur la divulgation du coût du crédit consommateur.

RÉSOLU que le rapport soit reçu et imprimé dans le procès-verbal (voir Appendice C, page 153).

RÉSOLU ENSUITE, sujet au caveat de page 2 du rapport;

1. Que la section de Loi Uniforme commence la préparation et adoptions des provisions uniformes qui touchent à la divulgation du coût de crédit pour des actes consommateurs;
2. Que les provisions uniformes des lois soient compatibles avec les approches législatives différentes (c'est-à-dire non-uniformes) touchantes d'autres questions dans le domaine du crédit consommateur;
3. Que les provisions uniformes soient convenables pour incorporation dans la législation pertinente fédérale et provinciale;
4. Que la section «Loi Uniforme» demande à au moins une juridiction de préparer pour considération par la section à son assemblée annuelle en 1991 un rapport exposant des questions de nature politique qui doivent être adressées par la section avant que les provisions uniformes puissent être préparées; et

5. Que les provisions uniformes soient préparées par la section de rédaction en accorde avec les politiques de la section de Loi Uniforme faites a l'assemblée annuelle en 1991.

Expropriation

Les commissionnaires de la Colombie-Britannique ont présenté un rapport sur l'expropriation.

RÉSOLU

1. Que la question ne soit pas plus considérée par la Conférence;
2. Que le rapport soit reçu et imprimé dans le procès-verbal (voir Appendice D, page 160); et
3. Que le rapport soit confier pour la considération de n'importe quel juridiction qui considère de nouvelle législation sur l'expropriation.

Loi sur les demandes en monnaie étrangère

Les commissionnaires du Saskatchewan ont présenté un rapport sur la Loi sur les demandes en monnaie étrangère et les amendements conséquents à la Loi sur l'application réciproque des ordonnances alimentaires.

RÉSOLU

1. Que le rapport soit reçu;
2. Que la question soit référée à la prochaine réunion du comité fédéral/provincial/territorial des directeurs de l'application des ordonnances alimentaires, qui aura lieu en septembre 1990. Leur recommandations peuvent ensuite être étudier par le comité fédéral/provincial/territorial sur le droit de la famille à leur prochaine réunion en octobre 1990. Les commissionnaires du Saskatchewan vont ensuite préparer une recommandation pour résolution de la question a être présentée et si la recommandation pour résolution de la question n'est pas désapprouvée par deux juridiction ou plus le 30 novembre 1990 ou avant, par demande du secrétaire-exécutif, les recommandations pour résolution de la question soient adoptées et recommandées par la Conférence.

   Notez: Après une discussion avec le comité fédéral/provincial/territorial des directeurs de l'application des ordonnances alimentaires, il a été décider de ne plus poursuivre cette question.

Ordonnances inter-juridictionnelles les sur le bien-être des enfants

En 1989, les commissionnaires du Saskatchewan ont soulevé une objection à la Loi sur les ordonnances inter-juridictionnelles qui a été approuvée par la Conférence en 1988.

Cette année, les commissionnaires du Saskatchewan ont rapporté qu'à la lumière de la réponse des directeurs du bien-être des enfants, le comité fédéral/provincial/territorial sur le droit de la famille encore une

fois n'a pas été consulté sur cette question et le Saskatchewan retire son objection à la Loi Uniforme sur les ordonnances inter-provinciales du bien-être des enfants.

Conférence canadienne sur la réforme des lois

L'Assemblée de CRL du Canada a présenté un rapport sur son sixième assemblée générale.

RÉSOLU que le rapport sur la sixième Assemblée annuelle de CRL du Canada soit reçu et imprimé dans le procès-verbal (voir Appendice E, page 166).

Droit privé international

Le président du comité spécial sur le droit privé international a présenté son rapport. Il n'y avait pas d'action sur ce rapport à ce moment.

Les commissionnaires fédéraux ont présenté un rapport sur les activités du Département de Justice dans le domaine, du droit privé international.

RÉSOLU que le rapport soit reçu et imprimé dans le procès-verbal (voir Appendice F, page 177).

Protection de la vie privée: délit

Les commissionnaires du Saskatchewan ont présenté un rapport sur atteinte à la vie privée-délit.

RÉSOLU

1. Que la loi proposée modifiée et commentaires soient reçues et imprimées dans le procès-verbal;
2. Que la loi proposée modifiée et commentaires soient circulées et que si « la loi et commentaires » n'est pas désapprouvée par deux juridictions ou plus le 31 janvier 1991 ou avant, par demande du secrétaire-exécutif, la loi soit adoptée par la Conférence comme étant une loi uniforme recommandée à être statuer.

Notez: La loi proposée modifiée avec commentaries n'était pas disponible à l'heure d'impression. Elle sera publiée plus tard.

Québec

La section du droit criminel a considéré une résolution traitant l'absence du Québec cette année, et a fait la résolution suivante:

La section du droit criminel note la contribution valable dans le passé de la province du Québec à la Conférence. L'association professionnelle et la congénialité

partageaient avec nos collègues québécois se manquent aux membres. On s'attend à la participation du Québec dans les années à venir.

Il a été résolu par la concurrence de la section du droit criminel de la section de Loi Uniforme que cette résolution doit être celle de la Conférence entière et non seulement des deux sections.

Renouvellement du consensus pour l'harmonisation des lois au Canada

Le président a présenté le rapport sur renouvellement en le lisant une recommandation à la fois.

Vente des biens

Les commissionnaires du Saskatchewan ont présenté un rapport sur la vente des biens.

RÉSOLU

1. Que le rapport sur la vente des biens (la loi modifiée non attachée) soit reçu et imprimé dans le procès-verbal (voir Appendice I, page 307);
2. Que des amendements soient faits à la consolidation à feuilles-mobiles;
3. Qu'une note de l'éditeur suive le rapport qui expliquera que la Loi modifiée a été déposée avec la secrétaire-exécutif; et
4. Que la Loi soit adoptée comme modifiée.

Fouille et saisie et la Charte des droits

Les commissionnaires fédéraux ont présenté un rapport sur la fouille et saisie et la Charte.

RÉSOLU que le rapport sur ce sujet soit reçu et imprimé dans le procès-verbal (voir Appendice J, page 313).

Prive de décisions par substituts-loins médicaux

Les commissionnaires d'Alberta ont présenté un rapport sur la prise de décisions par substituts.

RÉSOLU

1. Que le rapport soit reçu et imprimé dans le procès-verbal (voir Appendice K, page 321);
2. Que les commissionnaires d'Alberta décide si cette région est convenable à l'action uniforme; et qu'ils reviennent l'an prochain avec une analyse. A ce temps, une décision sera prise pour incluer ou non cette question à l'ordre.

Affaires nouvelles

Quelques sujets suggérés pour la considération du comité de directions sont :

1. Preuve et témoignage de certains témoins.
2. Développement potentiel de règles pour la conduite des enquêtes publiques – constitution et opération.
3. Loi sur des documents de titre négociables.

Rapport du comité de nomination

M. le professeur Peter J. M. Lown a été élu président de la section de Loi Uniforme pour 1990-91.

Levée de la séance

On a rendu hommage au président Basil D. Stapleton, c.r., pour sa contribution au travail de la section.

Attendu qu'il n'avait plus de matière à considérer la séance a été levée.

JOINT SESSION OF THE UNIFORM LAW AND CRIMINAL LAW SECTIONS

MINUTES

Law of Contempt (Civil)

A report on Civil Contempt was presented by Professor G. L. Bladon.

A further report on Criminal Contempt was presented by Ed Tollefson.

> RESOLVED that the Executive be authorized to establish a working group to pursue the matter of reform with respect to determining whether there should be a recommendation for uniformity of legislation respecting the Law of Contempt

Provincial Offences Procedures Act

A report on Provincial offences Procedures was presented by Arthur N. Stone, Q.C. and Howard F. Morton, Q.C.

RESOLVED

1. that the report on Provincial offences Procedures be received and printed as amended in the Proceedings (see Appendix G, page 200);
2. that the working committee be directed to continue its task referred to in the 1989 resolution and to that end to prepare a uniform draft Act with commentaries to be tabled next year.

Renewing Consensus for Harmonization of Laws in Canada

The President summarized amendments to the Renewal Report that had been approved during the week by both the Uniform Law Section and the Criminal Law Section.

RESOLVED

1. that the Renewal Report as amended by the Sections and approved by the Conference be adopted (see Appendix H, page 210);
2. that the Executive Committee be authorized and directed to make the necessary amendments to the text as agreed and adopted by the Conference; and
3. that the Executive Committee be authorized and directed to take all steps necessary to implement the report including contacting and advising the appropriate jurisdictions and ensuring that the materials are translated into French and also making the decision as to what of these materials will be reproduced in the Proceedings.

Trafficking in Children

A report on Trafficking in Children was presented by the Saskatchewan and Federal Commissioners.

RESOLVED that the report on Trafficking in Children be received and printed in the Proceedings (see Appendix L, page 324).

RESOLVED FURTHER

1 that the issue of Trafficking in Children be referred to the Federal-Provincial-Territorial Family Law Committee with a request that they review the issue as to whether there is a gap in existing Canadian legislation respecting the "sale" of children which needs to be addressed by federal or provincial legislative amendments;

2 that the Federal-Provincial-Territorial Family Law Committee be requested to discuss their findings with the Executive Committee of the Uniform Law Conference by March, 1991.

SESSION RÉUNIE DE LA SECTION DU DROIT UNIFORME ET LA SECTION DU DROIT CRIMINEL

PROCÉS-VERBAL

Outrage a la cour

Un rapport sur l'outrage dans le contexte du droit civil a été présenté par M. le professeur G.L. Bladon.

Un rapport supplémentaire sur l'outrage dans le contexte du droit criminel a été présenté par Ed Tollefson.

RÉSOLU que le Comité-Exécutif soit autorisé d'établir un groupe de travail pour étudier la question des réformes et de déterminer si une recommandation pour Législation Uniforme est nécessaire pour loi concernant outrage à la cour.

Loi sur la procédure des infractions provinciales

Un rapport sur la Loi sur la procédure a été présenté par Arthur N. Stone, c.r. et Howard F. Morton, c.r.

RÉSOLU

1. Que le rapport sur la procédure des infractions provinciales soit reçu et imprimé, comme modifié, dans le procès-verbal (voir Appendice G, page 200);
2. Que le Comité de Travail soit instruit à continuer la tache décrite dans la résolution de 1989 afin de préparer une Loi Uniforme proposée avec commentaires qui seront discutés l'année prochaine.

Renouvellement de consensus pour l'harmonisation des lois au Canada

Le président a résumé les amendements au Rapport de renouvellements qui ont été approuvé pendant la semaine par la Section du Droit Uniforme et la Section du Droit Criminel.

RÉSOLU

1. Que le rapport de renouvellements comme modifié par les sections et approuvé par la Conférence soit adopté (voir Appendice H, page 210);
2. Que le Comité-Exécutif soit autorisé et instruit à faire les amendements nécessaires au texte et adopté par la Conférence; et
3. Que le Comité-Exécutif soit autorisé et dirigé à suivre les étapes nécessaires pour assurer l'implémentation de le rapport. Ceci inclus le fait de contacter et conseiller les juridictions appropriés et en plus, d'assurer que le matériel soit traduis en français. Il est aussi nécessaire de décider quels matériels seront reproduits.

Trafic d'enfants

Un rapport sur le Trafic d'Enfants a été présenté par les commissaires fédéral et Saskatchewan.

> RÉSOLU que le rapport sur le trafic d'Enfants soit reçu et imprimé dans le procès-verbal (voir Appendice L, page 324).
>
> RÉSOLU ENSUITE
>
> 1. Que la question du trafic d'enfants soit dirigé vers le Comité Fédéral-Provincial-Territorial sur Droit de la Famille avec une demande qu'il étudie la question pour voir s'il y a un vide dans la Législation Canadienne existante sur la «vente» d'enfants qui a besoin d'être adressé par des amendements législatives fédéraux ou provinciaux;
> 2. Que le Comité Fédéral-Provincial-Territorial sur le Droit de la Famille soit demandé a discuté leur conclusions avec les membres de la Comité-Exécutif de la Conférence sur l'harmonisation des lois avant mars 1991.

CRIMINAL LAW SECTION

MINUTES

Attendance

Thirty-seven delegates attended the meetings of the Criminal Law Section of the Uniform Law Conference held at Saint John, New Brunswick. There were representatives from nine provinces and one territory as well as the Federal Government.

Opening

Richard G. Mosley presided as Chairman and Michael E. N. Zigayer acted as Secretary for the Meetings of the Criminal Law Section.

Report of the Chairman

The Criminal Law Section of the Uniform Law Conference addressed a large number of matters as it preceded through its deliberations in Saint John. The delegates considered a total of 42 Resolutions submitted by the provinces and the Federal government. Of these 29 were passed and 7 were defeated with 6 being withdrawn after some discussion. In addition to the Resolutions, there were a number of matters that were submitted for discussion by the Federal Government. Discussion Papers were submitted which dealt with the following topics:

1) Sentencing – Directions for Reform

2) Corrections and Conditional Release – Directions for Reform

3) Recommendations of the Federal-Provincial Working Group on Homicide

4) Consultation Document on Section 25 of the *Criminal Code* – Use of Deadly Force by Police Officers

In addition to the foregoing, Bill C-80, *An Act to Amend the Criminal Code and Customs Tariff in Consequence thereof* (the firearms bill) and the nature of a possible legislative response to the decision of the Supreme Court of Canada in *R. v. Duarte* [(1990) 53 CCC (3d) 1] were examined.

There were a number of joint sessions with the Uniform Law Section which examined areas of the law which were of mutual interest including Contempt of Court, a Uniform Regulatory Offences Procedure Act, and the issue of the Trafficking in Children.

Finally, in response to the Report, "Renewing Consensus for Harmonization of Laws in Canada", the Criminal Law Section of the Uniform

Law Conference discussed and participated in the process of renewal structures and procedure of the Conference as a whole.

Closing

There were two special resolutions adopted by the Criminal Law Section of the Uniform Law Conference. The first, proposed by Richard Peck of the Canadian Bar Association, arose in the course of the discussion of the recently introduced federal legislative initiative, Bill C-80, *An Act to Amend the Criminal Code and Customs Tariff in Consequence thereof* amending a number of the gun control provisions of the Code. The resolution read as follows:

> That the Criminal Law Section of the Uniform Law Conference of Canada recommends that the Government of Canada delete the provisions in Bill C-80 which provide for the "grandfathering" of converted fully-automatic firearms.

(CARRIED: 14-2-8)

The absence of a Quebec delegation at their 1990 meetings prompted the delegates to adopt unanimously a second special resolution which read:

> The Criminal Law Section noted the valuable contributions historically made to the Conference by the Province of Quebec.
>
> All members have missed the congenial professional association with colleagues from Quebec.
>
> We look forward to Quebec's participation in future years.

Richard B. Hubley, Q.C. of Prince Edward Island was elected unanimously as Chairman of the Criminal Law Section for the 1991 conference to be held in Regina, Saskatchewan. Michael E. N. Zigayer will again serve as Secretary of the Section.

RESOLUTIONS

I - ALBERTA

Item 1

AMENDMENT TO SECTION 4 OF THE CANADA EVIDENCE ACT

(The original resolution was withdrawn and replaced.)

That there be added to section 4 of the *Canada Evidence Act*, the following:

(7) The spouse of a person charged with murder or manslaughter is a competent witness for the prosecution without the consent of the person charged.

(CARRIED: 23-0-5 [murder alone])
(CARRIED: 21-0-6 [murder or manslaughter])

Item 2

HIT AND RUN (FAIL TO STOP AT A SCENE OF ACCIDENT)

That section 252(1) of the *Criminal Code* be amended to delete the words "and with intent to escape civil, or criminal liability", and to substitute: "who without lawful excuse."

It is further recommended that section 252(2) be repealed, as it would then become superfluous.

(DEFEATED: 5-11-3)

Item 3

AMENDMENT TO SECTION 343 OF THE *CRIMINAL CODE*

That a qualification be appended to section 343 as follows:

343(2) In any prosecution under this section, it is no defence to the charge that the offence was committed by the husband or wife during cohabitation.

(WITHDRAWN)

Item 4

AMENDMENT TO SECTION 718(10) OF THE *CRIMINAL CODE*

Elimination of section 718(10) from the *Criminal Code*.

(DEFEATED: 7-13-4)

Item 5

AMENDMENT TO SECTION 255(1)(c) OF THE *CRIMINAL CODE*

That section 255(1) of the *Criminal Code* be amended to read:

"Every one who commits an offence under section 253 or 254 is guilty of an indictable offence or an offence punishable on summary conviction and is liable,

(a) whether the offence is prosecuted by indictment or punishable on summary conviction, to the following minimum punishment, namely,

(i) for a first offence, to a fine of not less than three hundred dollars,

(ii) for a second offence, to imprisonment of not less than fourteen days, and

(iii) for each subsequent offence, to imprisonment for not less than ninety days;

(b) where the offence is prosecuted by indictment, to imprisonment for a term not exceeding five years; and

(c) where the offence is punishable on summary conviction, to a fine not exceeding $5000.00 or to a term of imprisonment not exceeding two (2) years."

(DEFEATED: 9-12-2)

II - BRITISH COLUMBIA

Item 1

RETURNING PERSONS WANTED OUT OF PROVINCE/TERRITORY

That the *Criminal Code* amended to authorize the immediate return of accused wanted on warrants out of the province/territory on the basis of a facsimile of the warrant satisfactory to a local justice.

(CARRIED: 25-1-1)

Item 2

RELIEF FROM SENTENCES PENDING APPEAL

That the *Criminal Code* be amended to:

a) authorize a single appeal judge to stay sentences pending appeal;

b) allow relief against probation orders pending appeal; and

c) permit a judicial interim release order to be substituted for all types of sentence pending appeal.

(CARRIED: UNANIMOUS)

Item 3

INTERIM INVESTMENT OF SEIZED PROPERTY

That the *Criminal code* be amended to authorize a judge to order the interim investment of property seized in criminal cases upon notice and an opportunity for hearing to interested parties.

(CARRIED: UNANIMOUS)

Item 4

RENAMING THE CRIMES OF MISCHIEF

Amend the *Criminal Code* to provide more suitable and distinctive names for the crimes in s.140 [public mischief] and s.430 [mischief].

(CARRIED: UNANIMOUS)

Item 5

FIXING TRIAL DATES AFTER PRELIMINARY HEARINGS

That s.548 of the *Criminal Code* be amended to authorize fixing of a trial date at the time there is an order to stand trial at the end of a preliminary hearing.

(CARRIED: 18-1-8)

III - MANITOBA

Item 1

CHARGES ARISING FROM FAMILY VIOLENCE - ASSAULT CAUSING BODILY HARM AND OTHER THREATS

These offences could be made hybrid by amending the provisions to require the Crown to elect how it will be proceeding; summarily or by indictment.

An alternative is to make the offences absolute jurisdiction offences, except where the fiat of the Attorney-General requires it or some such mechanism for serious cases which in the public interest require a trial in the Superior Courts.

(CARRIED: 20-0-6)

IV - NEW BRUNSWICK

Item 1

AMEND ss.38(1) OF THE *YOUNG OFFENDERS ACT*

It is recommended that s.38 of the *Young Offenders Act* be amended to extend the publication ban on identity until either the 30-day appeal period has expired or until the conclusion of appeal proceedings where an application for review has been initiated under s.16 of the *Young Offenders Act*.

(CARRIED: 24-0-2)

Item 2

AMEND S.175 OF THE *CRIMINAL CODE* (CAUSING DISTURBANCE)

That section 175 of the *Criminal Code* be amended to make it clear that it is not necessary for conviction that a secondary disturbance or any kind of secondary activity should result.

(DEFEATED: 2-19-3)

Item 3

AMENDMENT TO SS.737(1)(A) AND ss.738(4)(A) OF THE *CRIMINAL CODE* (SENTENCING PROVISIONS)

a) That ss.737(l)(a) of the *Criminal Code* be amended to provide that the Court, after imposing a sentence, may suspend the operation of that sentence and direct that the accused be released on the conditions prescribed in a probation order.

b) That ss.738(4)(a) of the *Criminal Code* be amended to provide where a probation order was made pursuant to ss.737(l)(a), the Court may revoke, affirm or modify the sentence suspended.

(CARRIED AS AMENDED: 13-5-5)

Item 4

AMENDMENT TO SS.9(2) OF THE *CANADA EVIDENCE ACT*

That s.9(2) of the Canada Evidence Act be amended to refer to a prior statement recorded by any means; not just a statement "in writing or reduced to writing".

(CARRIED AS AMENDED: 23-0-1)

Item 5

AMENDMENT TO s.144(a) OF THE *CRIMINAL CODE*

That the maximum penalty for the offence of prison break in s.144(a) of the *Criminal Code* be increased to at least 14 years imprisonment to recognize the seriousness of the offence in exceptional circumstances.

(WITHDRAWN AND REPLACED WITH THE FOLLOWING)

1. That the maximum penalty for the offence of prison break in s.144(a) be reduced to 5 years imprisonment.

2. Everyone who commits an offence under this section, where the break or escape, or any attempt to do so is accompanied by the use or possession of firearms or explosives, is liable to imprisonment for life.

(CARRIED: 24-0-1)

V - ONTARIO

Item 1

IMPRISONMENT FOR DEFAULT IN PAYMENT OF VICTIM FINE SURCHARGE *CRIMINAL CODE,* SECTION 727.9

That the *Criminal Code* be amended to provide an express power to impose a consecutive term of imprisonment in default of payment of the victim fine surcharge.

(DEFEATED: 7-14-5 IN REGULAR VOTE)
(CARRIED: 17-12-2 IN JURISDICTIONAL VOTE)

Item 2

PUBLICATION OF IDENTITY OF JURORS

That the *Criminal Code* be amended to provide that, upon motion by the prosecutor, defence or of its own motion, the Court may order a ban on the publication of the identity of the jurors where such an order is expedient to the due administration of justice.

(CARRIED 20-2-5)

That the *Criminal Code* be amended to provide a mandatory ban on the publication of the identity of jurors in all cases.

(CARRIED 16-5-6)

Item 3

PUBLICATION BANS ON IDENTITY OF COMPLAINANTS AND WITNESSES *CRIMINAL CODE,* SECTION 486(3)

That section 486(3) be amended to encompass all offences related to an enumerated offence preferred in a single indictment.

(CARRIED: 24-1-1)

Item 4

COMPLAINANT TESTIFYING BEHIND SCREEN
***CRIMINAL CODE,* SECTION 486(2.1)**

Broaden the terms of section 486(2.1) to:

1) include physical assaults and other such related offences, eg. kidnapping.

(DEFEATED: 9-12-5)

2) apply to any witnesses who are children and not just the complainant.

(CARRIED: 15-5-7)

Item 5

DRINKING/DRIVING - DEMAND FOR BLOOD SAMPLES
***CRIMINAL CODE,* SECTION 254(3)**

That section 254(3) be amended in such a way so as to permit any police officer to make a demand for a blood sample even though he may not be the investigating police officer who had the reasonable and probable grounds within the two hour limitation period.

(CARRIED AS AMENDED: 27-0-3)

Item 6

IMPAIRED DRIVERS ENTERING CANADA/AUTHORITY OF CUSTOMS OFFICERS

That the *Criminal Code* or other appropriate Federal legislation be amended to confer the powers of a peace officer in relation to drinking/driving offences on customs and excise officers.

(WITHDRAWN AND REPLACED WITH THE FOLLOWING)

That the *Customs* Act be amended to give Customs Officers the power to detain persons suspected of committing the offence of drinking and driving pending the arrival of a police officer.

(CARRIED: 17-6-3)

Item 7

JUDICIAL AUTHORIZATION OF INTERCEPTION OF PRIVATE COMMUNICATIONS WHERE ONE PARTY CONSENTS TO THE INTERCEPTION SECTION 186(1)
CRIMINAL CODE

Amend Part VI of the *Criminal Code* to specifically provide for a judicial authorization to intercept private communications where the

authorities have the consent of one of the parties to the private communication.

(CARRIED: UNANIMOUS)

Item 8

STAY PENDING APPEAL OF ORDER OF MANDATORY ORDER OF DRIVING PROHIBITION SECTION 261 *CRIMINAL CODE*

Amend section 680 to provide for an application to the Chief Justice to have a panel of the court review any order made under this section.

(CARRIED: 24-0-1)

Item 9

STAY OF TERMS OF PROBATION ORDER PENDING APPEAL SECTION 683(5) *CRIMINAL CODE*

Amend section 683(5) to specifically provide that the Court of Appeal has the jurisdiction to suspend the terms of a probation order pending appeal.

(WITHDRAWN)

VI - SASKATCHEWAN

Item 1

DEFINITION OF BODILY HARM IN THE *CRIMINAL CODE*

Repeal sub-section 267(2) and place the identical definition of "bodily harm" in section 2 of the *Criminal Code* so that the definition will apply wherever the term "bodily harm" appears.

(CARRIED: 24-0-1)

Item 2

LENGTH/AVAILABILITY OF PROBATION ORDERS

That the Federal Department of Justice immediately commence a study regarding the need for long-term follow-up of sexual offenders to determine if a change should be made to the limitations on the length of and availability of probation orders for sentenced sexual offenders.

(CARRIED: 16-0-11)

Item 3

SECTION 708 *CRIMINAL CODE* – CONTEMPT BY A WITNESS WHO FAILS TO ATTEND/REMAIN IN ATTENDANCE

1. That section 708(1) be amended to remove the words "is guilty of contempt of court" and replace them by the words "is guilty of an offence punishable upon summary conviction".
2. That sub-section (2) be repealed so that the normal penalties provided for summary conviction offences in section 787 of the *Criminal Code* (fine not greater than $2,000 dollars or imprisonment for 6 months or both) will apply.

(CARRIED: 18-6-3)

Item 4

JOINDER OF TRIALS AND APPEALS

That the federal government be urged to implement the proposals noted above and in addition to address the problem of absolute jurisdiction offences in order that multiple trials will be avoided whenever possible and to ensure that when a single trial has occurred the matters continue to be joined for the purposes of an appeal.

(CARRIED: UNANIMOUS)

Item 5

GROSS INDECENCY

That an offence similar to gross indecency be re-enacted but that the consent of the Attorney General be required before a prosecution may commence. In order to avoid problems which were created by the old terminology of the offence relating to gross indecency "with" another person, the new provision should refer to "with or in the presence of" another person.

(DEFEATED AS AMENDED: 4-17-6)

Item 6

PROOF OF AGE

That section 57 of the *Young Offenders Act* and section 658 of the *Criminal Code* be consolidated so that the same rules apply to both *Criminal Code* and *Young Offenders Act* proceedings.

(CARRIED: UNANIMOUS)

VII - CANADA

Item 1

DELAY OF NOTIFICATION SECTION 195(2) AND (3), 196(2)

Amend the sections to make it clear that an ongoing investigation into activities that constitute a threat to the security of Canada is another separate and sufficient reason to delay the notification required by subsection 196(1) and extend the maximum time for a delay of notification to three (3) years or such other greater time as may be fixed by the Court.

(WITHDRAWN AND REPLACED WITH THE FOLLOWING)

That s. 196(3) of the *Criminal Code* be amended to permit a delay in notification, in accordance with the provisions of that section, where the CSIS is conducting an investigation into activities that constitute a threat to the security of Canada.

(CARRIED: 21-1-2)

Item 2

INFORMATION-SHARING

That the *Criminal Code* be amended to require the following:

"Where a person is sentenced to serve a term of imprisonment that is required to be served in a penitentiary, the court that sentenced the person shall order that a copy of the reasons for sentence, and any relevant reports considered by the court during the trial or sentencing be forwarded to the appropriate correctional authority."

(WITHDRAWN)

Item 3

SENTENCES FOR ESCAPE

Repeal the portion of subsection 149(1) dealing with the manner in which the sentence for escape is to be served and repeal all of subsection 149(2). This will allow judges to direct the manner in which escape sentences are to be served in relation to any other sentences previously imposed. Maintain the discretionary provision to direct that a judge may order a sentence of less than 2 years for escape to be served in a penitentiary and the definition of escape found in subsection 149(3).

(CARRIED: 25-0-1)

Item 4

ADMINISTERING FOREIGN SENTENCES

Add *Transfer of Offenders Act* to the other legislative provisions mentioned in section 20 of the *Parole Act*.

(WITHDRAWN)

Item 5

EXTRADITION OF INCARCERATED OFFENDERS

Add a section to the *Extradition* Act which clearly specifies the impact of extraditing an incarcerated offender on the sentence that is being served. It is recommended that the section direct that the sentence will continue to run until its expiry and if the offender returns to Canada prior to the expiration of the sentence, he/she will be arrested and required to serve any remaining portion.

(WITHDRAWN)

Item 6

IDENTIFICATION OF CRIMINALS ACT
(footprints and palm prints)

An Order in Council be obtained which will include the authority to take fingerprints, palmprints and footprints under the *Identification of Criminals Act*.

(WITHDRAWN)

Item 7

CERTIFICATE OF ANALYSIS FOR FIREARMS

Section 115 of the *Criminal Code* be expanded to provide for designation of firearms analysts and certificates of analysis for firearms so that a certificate of analysis could be submitted in court in lieu of a court appearance by the firearms analysts.

(CARRIED: 22-0-1)

SECTION DU DROIT PÉNAL

PROCÈS-VERBAL

Présences

Au total, il y avait trente-sept délégués à la réunion de la section de droit pénal de la Conférence sur l'uniformisation des lois tenue à Saint-Jean, Nouveau-Brunswick. Des représentants de neuf gouvernements provinciaux, d'un territoire et du gouvernement fédéral étaient présents.

Ouverture

Monsieur Richard G. Mosley a présidé la réunion alors que Monsieur Michael E.N. Zigayer a agi à titre de secrétaire.

Rapport du président

La section de droit pénal de la Conférence sur l'uniformisation des lois a examiné bon nombre de questions tout au long de ses délibérations. Un total de 42 résolutions ont été soumises par les gouvernements provinciaux et fédéral. De ces 42 résolutions, 29 furent adoptées, 7 rejetées et 6 retirées suite aux discussions. A ces résolutions s'ajoute un certain nombre de questions soulevées par le gouvernement fédéral pour fins de discussion. Les résultats des travaux portant sur les sujets suivants y furent déposés:

1) La détermination de la peine – Vers une réforme.

2) Les affaires correctionnelles et la mise en liberté sous condition – Vers une réforme.

3) Recommandations du groupe de travail Fédéral-Provincial sur l'homicide.

4) Document de consultation sur l'article 25 du *Code criminel,* emploi de la force meurtrière par des policiers.

On y examina également le projet de loi C-80, *Loi modifiant le Code criminel et le Tarif des douanes en conséquence* (projet de loi sur les armes à feu) ainsi que la nature possible d'une éventuelle réponse à la décision de la Cour suprême du Canada dans la cause de *R. v. Duarte* [(1990) 53 CCC (3d) 1].

Il y eut un certain nombre de réunions conjointes avec la section de l'uniformisation des lois portant sur des questions d'intérêt commun tells l'outrage au tribunal, la rédaction d'une loi uniforme relative à la

procédure applicable aux infractions provinciales, et le trafic d'enfants.

Finalement, la section de droit pénal de la Conférence sur l'uniformisation des lois a participé à des discussions portant sur le rapport intitulé «Renouvellement du consensus sur l'harmonisation des lois au Canada» et sur le renouvellement de la structure et de la procédure de la Conférence dans son ensemble.

Conclusion

Deux résolutions spéciales ont été adoptées par la section de droit pénal de la Conférence sur l'uniformisation des lois. La première, proposée par Monsieur Richard Peck de l'Association du barreau canadien, fut soulevée au cours des discussions portant sur le projet de loi C-80, *Loi modifiant le Code criminel et le Tarif douanier en conséquence*, qui amende nombre de dispositions du *Code criminel* en matière de contrôle des armes à feu. La résolution se lit comme suit :

> Que la Section de droit criminel de la Conférence sur l'uniformisation des lois au Canada recommande au gouvernement canadien de supprimer les dispositions d'exception du projet de loi C-80 à l'égard des armes à feu entièrement automatiques modifiées.

(ADOPTÉE : 14-2-8)

L'absence de la délégation québécoise aux réunions de 1990 a amené les délégués à adopter unanimement une deuxième résolution spéciale qui se lit comme suit :

> La Section de droit criminel tient à souligner l'apport précieux qu'a traditionnellement apporté le Québec à la Conférence.
>
> Les délégués regrettent de n'avoir pu profiter cette année des excellentes relations professionnelles qu'ils ont entretenues avec leurs collègues du Québec.
>
> Ils espèrent que le Québec sera de nouveau parmi eux lors des prochaines conférences.

Monsieur Richard B. Hubley, Q.C. de l'Île du Prince-Édouard a unanimement été élu au poste de président de la réunion de la Section de droit pénal de 1991 qui doit se tenir à Régina en Saskatchewan. Monsieur Michael E.N. Zigayer agira encore à titre de secrétaire pour cette prochaine réunion.

RÉSOLUTIONS

I - ALBERTA

Item 1

MODIFICATION DE L'ARTICLE 4 DE LA *LOI SUR LA PREUVE AU CANADA*
(la résolution originale fut retirée et remplacée par ce qui suit)

Que soit ajouté à l'article 4 de la *Loi sur la preuve au Canada* le paragraphe suivant :

«(7) Le conjoint d'une personne accusée de meurtre ou d'homicide involontaire est un témoin habile à témoigner et contraignable pour le poursuivant sans le consentement de la personne accusée.»

(ADOPTÉE 23-0-5 [MEURTRE SEULEMENT])
(ADOPTÉE 21-0-6 [MEURTRE OU HOMICIDE INVOLONTAIRE])

Item 2

DÉLIT DE FUITE (DÉFAUT D'ARRÊTER LORS D'UN ACCIDENT)

Que le paragraphe 252(1) du *Code criminel* soit modifié de manière à remplacer les mots «dans l'intention d'échapper à toute responsabilité civile ou criminelle» par les mots «sans excuse légitime».

Il est en outre recommandé d'abroger le paragraphe 252(2) qui deviendrait alors inutile.

(REJETÉE 5-11-3)

Item 3

MODIFICATION DE L'ARTICLE 343 DU *CODE CRIMINEL*

Qu'une précision soit ajoutée l'article 343 de la façon suivante :

«343(2) Dans toute poursuite intentée en vertu du présent article, il n'importe pas que l'infraction ait été commise par le conjoint durant la cohabitation.»

(RETIRÉE)

Item 4

MODIFICATION DU PARAGRAPHE 718(10) DU *CODE CRIMINEL*

Que soit abrogé le paragraphe 718(10) du *Code criminel*.

(REJETÉE 7-13-4)

Item 5

MODIFICATION DE L'ALINÉA 255(1)c) DU *CODE CRIMINEL*

Que le paragraphe 255(1) du *Code criminel* soit modifié de la façon suivante :

«Quiconque commet une infraction prévue à l'article 253 ou 254 est coupable d'une infraction punissable sur déclaration de culpabilité par procédure sommaire ou par mise en accusation et est passible :

a) que l'infraction soit poursuivie par mise en accusation ou par procédure sommaire, des peines minimales suivantes :

(i) pour la première infraction, une amende minimale de trois cents dollars,

(ii) pour la seconde infraction, un emprisonnement minimal de quatorze jours,

(iii) pour chaque infraction subséquente, un emprisonnement minimal de quatre-vingt-dix jours;

(b) si l'infraction est poursuivie par mise en accusation, d'un emprisonnement maximal de cinq ans;

(c) si l'infraction est poursuivie par procédure sommaire, d'une amende ne dépassant pas 5 000 $ ou d'un emprisonnement maximal de deux ans.»

(REJETÉE 9-12-2)

II - COLOMBIE-BRITANNIQUE

Item 1

RENVOI DES PERSONNES RECHERCHÉES DANS UNE AUTRE PROVINCE OU UN AUTRE TERRITOIRE

Modifier le *Code criminel* afin d'autoriser le renvoi sans délai d'un prévenu recherché aux termes d'un mandat émanant de l'extérieur de la province ou du territoire où il a été arrêté, sur la foi d'un fac-similé de ce mandat jugé satisfaisant par un juge de paix du ressort d'arrestation.

(ADOPTÉE 25-1-1)

Item 2

SUSPENSION DE L'EXÉCUTION DES PEINES PENDANT UN APPEL

Modifier la *Code criminel* pour :

a) autoriser un juge d'appel seul à suspendre l'exécution des peines pendant l'appel;

b) permettre de suspendre l'exécution des ordonnances de probation pendant l'appel;

c) permettre de substituer une ordonnance de mise en liberté provisoire par voie judiciaire à tous les autres types de peines pendant l'appel.

(ADOPTÉE À L'UNANIMITÉ)

Item 3

PLACEMENT TEMPORAIRE DES BIENS SAISIS

Modifier le *Code criminel* afin d'autoriser le juge à ordonner le placement temporaire de biens saisis dans le cours d'affaires pénales après avoir avisé les parties intéressées et leur avoir accordé l'occasion de se faire entendre.

(ADOPTÉE À L'UNANIMITÉ)

Item 4

REDÉSIGNATION DES CRIMES DE MÉFAIT

Modifier le *Code criminel*, afin de désigner par des termes plus appropriés et distinctifs, les crimes prévus à l'article 140 [méfait public] et à l'article 430 [méfait].

(ADOPTÉE À L'UNANIMITÉ)

Item 5

DÉTERMINATION DE LA DATE DU PROCÈS APRÈS L'ENQUÊTE PRÉLIMINAIRE

Modifier l'article 548 du *Code criminel* pour permettre que la date du procès soit fixée au terme de l'enquête préliminaire, lorsqu'il y a renvoi à procès.

(ADOPTÉE 18-1-8)

III - LE MANITOBA

Item 1

ACCUSATIONS PORTÉES DANS LES CAS DE VIOLENCE FAMILIALE - INFLICTION DE LÉSIONS CORPORELLES ET PROFÉRATION DE MENACES

Il est recommandé que le *Code criminel* soit modifié de façon à

prévoir que ces infractions sont des infractions mixtes et que la décision de procéder par voie de mise en accusation ou par procédure sommaire appartient à la Couronne.

Une autre solution consisterait à prévoir qu'il s'agit d'une infraction de juridiction absolue, sauf dans les cas où le procureur général ou l'intérêt public à cause de la gravité d'une affaire donnée exigent que le procès soit tenu devant une cour supérieure.

(ADOPTÉE 20-0-6)

IV - NOUVEAU-BRUNSWICK

Item 1

MODIFICATION AU PARAGRAPHE 38(1) DE LA *LOI SUR LES JEUNES CONTREVENANTS*

Il est recommandé que l'article 38 de la *Loi sur les jeunes contrevenants* soit modifié pour étendre l'interdiction de publication d'identité de l'accusé jusqu'à l'expiration du délai d'appel de 30 jours ou jusqu'à la fin des procédures d'appel, s'il y a eu une demande d'appel conformément à l'article 16 de la *Loi sur les jeunes contrevenants*.

(ADOPTÉE 24-0-2)

Item 2

MODIFICATION À L'ARTICLE 175 DU *CODE CRIMINEL* (TROUBLER LA PAIX)

Que l'article 175 du *Code criminel* soit modifié pour y indiquer clairement que, pour établir la culpabilité, il n'est pas nécessaire de démontrer que l'action reprochée a de plus troublé la paix ou a eu un résultat secondaire.

(REJETÉE 2-19-3)

Item 3

MODIFICATION AUX ALINÉAS 737(1)a) ET 738(4)a) DU *CODE CRIMINEL* (DISPOSITIONS CONCERNANT LA DÉTERMINATION DE LA PEINE)

a) Que l'alinéa 737(1)a) du *Code criminel* soit modifié pour prévoir qu'après avoir infligé une peine, le tribunal peut en suspendre l'application et ordonner que l'accusé soit remis en liberté selon les modalités prescrites à l'ordonnance de probation.

b) Que l'alinéa 738(4)a) du *Code criminel* soit modifié pour prévoir que, lorsqu'il y a eu une ordonnance de probation conformément à

l'alinéa 737(1)a), le tribunal peut annuler la suspension de la peine à laquelle est rattachée l'ordonnance de probation.

(ADOPTÉE TEL QUE MODIFIÉE 13-5-5)

Item 4

MODIFICATION AU PARAGRAPHE 9(2) DE LA *LOI SUR LA PREUVE AU CANADA*

Que le paragraphe 9(2) de la *Loi sur la preuve au Canada* soit modifié pour s'appliquer à toutes les déclarations antérieures recueillies de quelque manière que ce soit, non pas seulement à une déclaration «par écrit, ou qui a été prise par écrit».

(ADOPTÉE TEL QUE MODIFIÉE 23-0-1)

Item 5

MODIFICATION À L'ALINÉA 144(a) DU *CODE CRIMINEL*

La peine maximale applicable à l'infraction de bris de prison figurant à l'alinéa 144(a) du *Code criminel* devrait être portée à au moins quatorze ans d'emprisonnement, de manière à reconnaître la gravité de l'infraction dans des circonstances exceptionnelles.

(RETIRÉE ET REMPLACÉE PAR LES SUIVANTES)

1. Que la peine maximale de l'infraction de bris de prison figurant à l'article 144(a) du *Code criminel* soit réduite à 5 ans d'emprisonnement.
2. Quiconque commet ou tente de commettre une infraction en vertue de cette disposition où le bris ou l'évasion sont accompagnés de l'utilisation ou possession d'armes à feu ou explosives est passible d'un emprisonment à perpétuité.

(ADOPTÉE 24-0-1)

V – Ontario

Item 1

EMPRISONNEMENT POUR DÉFAUT DE PAIEMENT DE LA SURAMENDE COMPENSATOIRE (ARTICLE 727.9 DU *CODE CRIMINEL*)

Il est recommandé que le *Code criminel* soit modifié de façon à conférer expressément le pouvoir d'ordonner qu'une peine d'emprisonnement pour défaut de paiement d'une suramende compensatoire soit purgée après toute autre peine.

(REJETÉE 7-14-5 PAR VOTE RÉGULIER)
(ADOPTÉE 17-12-2 PAR VOTE JURISDICTIONELLE)

Item 2

PUBLICATION DE L'IDENTITÉ DES JURÉS

Il est recommandé que le *Code criminel* soit modifié de façon que le tribunal puisse, sur requête présentée par le poursuivant ou la défense ou de sa propre initiative, rendre une ordonnance interdisant la publication de l'identité des jurés dans les cas où la bonne administration de la justice exige que pareille ordonnance soit rendue.

(ADOPTÉE 20-2-5)

Il est recommandé que le *Code criminel* soit modifié de façon à prévoir l'interdiction de la publication de l'identité des jurés dans tous les cas.

(ADOPTÉE 16-5-6)

Item 3

ORDONNANCES INTERDISANT LA PUBLICATION DE L'IDENTITÉ DES PLAIGNANTS ET DES TÉMOINS (PARAGRAPHE 486(3) DU *CODE CRIMINEL*)

Il est recommandé que le paragraphe 486(3) soit modifié de façon à s'appliquer à toutes les infractions mentionnées dans l'acte d'accusation présenté par le procureur général relativement à l'une des infractions visées par ce paragraphe.

(ADOPTÉE 24-1-1)

Item 4

PLAIGNANT QUI TEMOIGNE DERRIÈRE UN ÉCRAN (PARAGRAPHE 486(2.1) DU *CODE CRIMINEL*)

Il est recommandé d'étendre la portée du paragraphe 486(2.1) de façon qu'il s'applique:

(1) aux mauvais traitements corporels et aux infractions connexes, par ex. l'enlèvement;

(REJETÉE 9-12-5)

(2) à tous les témoins qui sont des enfants et pas seulement au plaignant.

(ADOPTÉE 15-5-7)

Item 5

CONDUITE AVEC FACULTÉS AFFAIBLIES – DEMANDE DE FOURNIR DES ÉCHANTILLONS DE SANG (PARAGRAPHE 254(3) DU *CODE CRIMINEL*)

Il est recommandé de modifier le paragraphe 254(3) de façon à permettre à un policier autre que celui chargé de l'enquête qui avait des motifs raisonnables et probables de le faire de sommer une personne de fournir un échantillon de sang dans le délai de deux heures prévu par la loi.

(MODIFIÉE ET ADOPTÉE 27-0-3)

Item 6

CONDUCTEURS AUX FACULTÉS AFFAIBLIES QUI ENTRENT AU CANADA

Il est recommandé que le *Code criminel* ou les autres lois fédérales applicables soient modifiées de façon à donner aux agents des douanes les pouvoirs des agents de la paix en ce qui concerne les infractions de conduite avec facultés affaiblies.

(RÉSOLUTION RETIRÉE ET REMPLACÉS PAR LA SUIVANTE)

Que la Loi sur les douanes soit modifiée de façon à permettre aux agents de douanes de détenir les personnes soupsonnées d'avoir commit l'infraction de conduite affaiblie en attendant l'arrivée d'un policier.

(ADOPTÉE 17-6-3)

Item 7

AUTORISATION JUDCIAIRE EN MATIÈRE D'INTERCEPTION DES COMMUNICATIONS PRIVÉES AVEC LE CONSENTEMENT D'UNE PARTIE PARAGRAPHE 186(1) DU *CODE CRIMINEL*

Il est recommandé de modifier la Partie VI du *Code criminel* de façon à prévoir expressément l'autorisation d'un tribunal pour intercepter des communications privées lorsque les autorités ont obtenu le consentement de l'une des parties à ces communications privées.

(ADOPTÉE À L'UNANIMITÉE)

Item 8

EFFET DE L'APPEL SUR L'ORDONNANCE D'INTERDICTION OBLIGATOIRE ARTICLE 261 DU *CODE CRIMINEL*

Il est recommandé de modifier l'article 261 de façon à remplacer les

mots «le tribunal» par l'expression «un juge du tribunal» et de modifier l'article 680 pour permettre de demander au juge en chef d'ordonner la révision d'une ordonnance rendue en vertu de cet article.

(ADOPTÉE 24-0-1)

Item 9

SUSPENSION DE L'EXÉCUTION DES CONDITIONS D'UNE ORDONNANCE DE PROBATION EN ATTENDANT L'APPEL PARAGRAPHE 683(5) DU *CODE CRIMINEL*

Il est recommandé de modifier le paragraphe 683(5) de façon à prévoir expressément que la cour d'appel a la compétence voulue pour suspendre l'exécution d'une condition prévue dans une ordonnance de probation en attendant l'appel.

(RETIRÉE)

VI - SASKATCHEWAN

Item 1

DÉFINITION DE LÉSIONS CORPORELLES DANS LE *CODE CRIMINEL*

Il est recommandé d'abroger le paragraphe 267(2) et de reproduire la même définition de «lésions corporelles» à l'article 2 du *Code criminel* de façon qu'elle s'applique à toutes les dispositions où cette expression est employée.

(ADOPTÉE 24-0-1)

Item 2

DURÉE DES ORDONNANCES DE PROBATION ET CONDITIONS NÉCESSAIRES AU PRONONCÉ DE CELLES-CI

Il est recommandé que le ministère fédéral de la Justice prenne immédiatement les mesures qui s'imposent en vue de donner suite à la recommandation formulée par la Colombie-Britannique en 1986.

(ADOPTÉE 16-0-11)

Item 3

ARTICLE 708 DU *CODE CRIMINEL* - OUTRAGE COMMIS PAR LE TÉMOIN QUI OMET D'ÊTRE PRÉSENT OU DE DEMEURER PRÉSENT

1. Il est recommandé que le paragraphe 708(1) soit modifié par suppression des mots «est coupable d'outrage au tribunal» et

leur remplacement par les mots «est coupable d'une infraction punissable par procédure sommaire».

2. Il est en outre recommandé que le paragraphe (2) soit abrogé de façon que les peines applicables soient celles que prévoit l'article 787 du *Code criminel* à l'égard des infractions punissables par procédure sommaire (une amende maximale de deux mille dollars et un emprisonnement maximal de six mois ou l'une de ces peines).

(ADOPTÉE 18-6-3)

Item 4

JONCTION DE PROCÈS ET D'APPELS

Il est recommandé que le gouvernement fédéral soit encouragé à donner suite aux recommandations susmentionnées et à aborder le problème des infractions de compétence absolue de façon à ce que l'on puisse le plus souvent possible éviter les procès multiples et assurer la jonction d'appels dans les cas où les questions portées en appel ont été tranchées dans le cadre d'un seul procès.

(ADOPTÉE À L'UNANIMITÉ)

Item 5

GROSSIÈRE INDÉCENCE

Il est recommandé que l'infraction de grossière indécence figure à nouveau dans le *Code criminel* mais que le consentement du procureur général soit exigé avant d'engager des poursuites. Afin de régler le problème soulevé par le libellé des anciennes dispositions, il est recommandé que le mot «avec» soit remplacé par les mots «avec ou devant» une autre personne.

(REJETÉE 4-17-6)

Item 6

PREUVE DE L'ÂGE

Il est recommandé que l'article 57 de la *Loi sur les jeunes contrevenants* et l'article 658 du *Code criminel* soient refondus de façon que les mêmes règles s'appliquent dans le cadre des procédures engagées aux termes du *Code criminel* et de la *Loi sur les jeunes contrevenants*.

(ADOPTÉE 20-0-6)

VII - CANADA

Item 1

DÉLAI DE NOTIFICATION 195(2) ET (3), 196(2)

Modifier les dispositions pertinentes pour préciser que le fait qu'une enquête est en cours relativement à des activités menaçant la sécurité du Canada constitue un motif distinct et suffisant pour retarder la notification requise par le paragraphe 196(1) et pour prolonger la période maximale prescrite pour donner l'avis à trois (3) ans ou à la période plus longue fixée par le tribunal.

(RETIRÉE ET REMPLACÉE PAR LA SUIVANTE)

Que le paragraphe 196(3) du *Code criminel* soit modifié pour permettre un delai de la notification en conformité avec les dispositions de cet article où le SCRS mène une enquête relativement à des activités menaçant la sécurité du Canada.

(ADOPTÉE 21-1-2)

Item 2

ÉCHANGE DE RENSEIGNEMENTS

Apporter la modification suivante au *Code criminel:*

«Le tribunal qui condamne une personne à purger une peine d'emprisonnement dans un pénitencier doit ordonner que soient transmis aux autorités correctionnelles concernées une copie des motifs de la condamnation, ainsi que les rapports pertinents examinés par le tribunal au cours du procès ou de la détermination de la peine.»

(RETIRÉE)

Item 3

PEINES APPLICABLES EN CAS D'ÉVASION 149 DU *CODE CRIMINEL*

Abroger complètement le paragraphe 149(2) et abroger la partie du paragraphe 149(1) qui indique de quelle manière la peine appliquée pour l'évasion doit être purgée. Cette modification aura pour effet d'autoriser les juges à ordonner de quelle manière les peines appliquées pour l'évasion doivent être purgées en regard des autres peines qui ont pu être infligées auparavant. Maintenir la définition du terme évasion figurant au paragraphe 149(3) ainsi que le pouvoir discrétionnaire du juge d'ordonner que les peines de moins de deux ans appliquées pour l'évasion soient purgées dans un pénitencier.

(ADOPTÉE 25-0-1)

Item 4

EXÉCUTION DES PEINES INFLIGÉES À L'ÉTRANGER 20 DE LA *LOI SUR LA LIBÉRATION CONDITIONNELLE*

Ajouter la *Loi sur le transfèrement des délinquants* aux autres dispositions législatives mentionnées à l'article 20 de la *Loi sur la libération conditionnelle.*

(RETIRÉE)

Item 5

EXTRADITION DES CONTREVENANTS INCARCÉRÉS

Ajouter à la *Loi sur l'extradition* une disposition indiquant clairement les conséquences de l'extradition d'un contrevenant incarcéré sur la peine qu'il est en train de purger. Il est recommandé d'indiquer, dans la disposition, que la peine continue de s'appliquer jusqu'à son échéance et que, si le contrevenant revient au Canada avant l'expiration de sa peine, celui-ci sera arrêté et tenu de purger la partie non encore purgée de cette peine.

(RETIRÉE)

Item 6

LOI SUR L'IDENTIFICATION DES CRIMINELS

Qu'un décret soit pris de façon à prévoir le prélèvement d'empreintes digitales, palmaires et plantaires aux termes de la *Loi sur l'identification des criminels.*

(RETIRÉE)

Item 7

CERTIFICAT D'ANALYSE D'ARMES À FEU

Que la portée de l'article 115 du *Code criminel* soit étendue pour y prévoir non seulement les analystes d'armes à feu, mais aussi les certificats d'analyse d'armes à feu et que les certificats d'analyse puissent être assimilées à la comparution de l'analyste d'armes à feu devant la cour.

(ADOPTÉE 22-0-1)

CLOSING PLENARY SESSION

MINUTES

Opening of Meeting

The meeting opened at 10:30 a.m. on Friday, August 17, with Georgina Jackson in the chair and Mel Hoyt as secretary.

Drafting Section

The Chairman, Peter Pagano, Q.C., reported on the work of the Section. The minutes of the Section are set out at page 21.

It was also resolved that the Drafting Conventions passed by the Legislative Drafting Section last year be printed in the Consolidation of Uniform Acts.

Criminal Law Section

The Chairman, Richard Mosley, reported on the work of the Section. The minutes of the Section are set out at page 53.

The Section expressed (a) its regret at the absence of the Quebec delegation, (b) its appreciation for their professional contributions and commentaries on past occasions, and (c) an indication that we are looking forward to working with them in the context of the Conference again in the future.

The Section regards it participation in the Conference very positively and wishes to offer as a simply constructive suggestion that perhaps a few paragraphs might be included in the closing banquet speech of the Attorney General next year to reflect the participation of the Section in the Conference and its positive role in the development of criminal law in this country.

Uniform Law Section

The Chairman, Basil D. Stapleton, Q.C., reported on the work of the Section. The minutes of that Section are set out at page 35.

It was resolved that the Section concur with the expression contained in the resolution from the Criminal Law Section and that that concurrence be reported to the Plenary Session.

It was resolved that the issue of Trafficking in Children be referred to the Federal-Provincial-Territorial Family Law Committee with a request that they review the issue of whether there is a gap in existing Canadian legislation respecting the "sale" of children which needs to be ad-

dressed by Federal or Provincial amendment. That the Federal-Provincial-Territorial Family Law Committee be requested to discuss their findings with the Executive Committee of the Uniform Law Conference by March, 1991.

Quebec's Future Participation in the Conference

It is appropriate for us as a Conference in Plenary Session to move the resolution as the plenary group of the three Sections with respect to Quebec's future participation in the Conference. The motion was carried unanimously.

Resolutions Committee's Report

Lionel Levert presented the Resolutions Committee's Report.

RESOLVED that the Conference express its appreciation by way of letter from the secretary to:

1. The Attorney General for New Brunswick, Honourable James Lockyer, Q.C., for his greetings at the Opening Plenary Session and his presentation at the banquet on Thursday evening.

2. The Government of New Brunswick, for its generous hospitality in hosting the seventy-second meeting of the Uniform Law Conference and in particular:

   (a) for hosting the reception following the Opening Plenary Session;

   (b) for providing the refreshments available during the meetings;

   (c) for hosting the sports evening and lobster dinner at St. Martins on Tuesday evening;

   (d) for the bus tour to and in Fredericton;

   (e) for hosting the banquet Thursday evening;

   (f) for providing clerical, secretarial and support services.

3. The organizing committee consisting of Basil Stapleton, Q.C., Joyce Gagnon, Bruno Lalonde, Susan Landine, Cindy McCallum, Bob Murray, Stephen Wood and James McAvity for their enormous contributions which resulted in a successful and enjoyable conference

4 The Law Society of New Brunswick for hosting the reception on Thursday evening

5. Lawrence Bugge, the President of the National Conference of Commissioners on Uniform State Laws (NCCUSL), for the hospitality extended to our First Vice-President at the recent meeting in Milwaukee, and for contributing to the enhancement of relations between our Conferences by honouring our Conference for the second year with the attendance of himself, his wife Elaine and children Carol and David.

6 Jeremiah Marsh, Chairman of the Committee on Liaison with Canada and International Organizations and Co-Chairman of the Joint Committee on Cooperation with Uniform Law Conference of Canada of the NCCUSL for contributing to the enhancement of relations between our Conferences by

honouring our Conference with the attendance for the first time of himself and his wife, Marietta.

7. Richard Mosley, Q.C., Chairman of the Criminal Law Section, Basil D. Stapleton, Q.C., Chairman of the Uniform Law Section, and Peter Pagano, Q.C., who acted as Chairman of the Legislative Drafting Section in the absence of Merrilee-Rasmussen.

8. To Josette Duchesne, Jean-Pierre Lessard, Louise Mercier, Louise Meunier, Donald Gilmour, Jean-Pierre Robichaud and Louise Béland for the excellent interpretation services provided to the Conference.

Future Meetings

The President announced that our meeting in 1991 will be held in Regina at the Regina Inn commencing on August 11 through to Friday, August 16, and that the Opening Plenary Session will be in the evening of the 11th at 8:00 p.m.

The President also announced that we have received an invitation from Newfoundland for the following year, 1992, and then for 1993, an invitation from Prince Edward Island. The Executive Committee will be asked to follow up on those two invitations.

Nominating Committee's Report

The Executive Secretary, on behalf of its Chairman, Graham D. Walker, Q.C., presented the Nominating Committee's Report.

RESOLVED that the following officers of the Conference be elected for the year 1990-91

President	Basil D. Stapleton, Q.C
Vice-President	Daniel C Préfontaine,, c.r.

The New President

The gavel was handed over by Georgina R. Jackson to Basil D. Stapleton, Q.C.

The new President, having been very intimately involved in the development of the Renewal Report, expressed his keen interest in its implementation. This will be the year of implementation. There will be some innovating going on. One of the first things proposed is to establish a committee with respect to the implementation of the Report. In the Report we have set out in broad brushed strokes what we think the Conference should be doing and where it should be going. It now becomes a matter of determining the methodology and the procedure by which that should be done. We made something of a start on that yesterday by meeting with the current local secretaries who presumably, as jurisdictional representatives, will have a very key role to play in the

implementation process. We will follow up on that very quickly, keep the momentum going and hopefully by the time we return next year in Regina, we will have very concrete proposals with respect to the details as to how the Renewal process is being and should in the future be implemented. We have made some progress even this morning with respect to the mandate of the Steering Committee and how items will be placed on the agenda with respect to the Uniform Law Section.

Saskatchewan

Douglas Moen, jurisdictional representative from Saskatchewan, issued the warmest invitation to the Uniform Law Conference in 1991 in Regina. Every effort will be made to host a tremendous Conference whereby we will be in receipt of Saskatchewan's brand of western hospitality. Saskatchewan will use as a guide the warmth and generosity of our host at this Conference in New Brunswick.

Close of Meeting

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

LA SESSION PLÉNIÈRE FINALE

PROCÈS-VERBAL

L'ouverture de la Réunion

La réunion a été ouverte à 10h30 le vendredi 17 août avec Georgina Jackson, présidente et Mel Hoyt, secrétaire.

Section des révisions

Le président, Peter Pagano, c.r., a donné un rapport sur le travail de la section. Le compte rendu se trouve à page 21.

Il a été aussi résolu que les Conventions de Révision passées par la Section Législative des Révisions l'année dernière soient imprimées dans La Consolidation Des Lois Uniformes.

La Section du droit criminel

Le président, M. Richard Mosley, a présenté un rapport sur l'ouvrage de la section. Le compte rendu se trouve à page 53.

La section a exprimé (a) le regret de l'absence de la délégation du Québec, (b) l'appréciation pour leur contributions professionnelles et commentaires dans le passé et (c) une indication qu'elle attende avec impatience le plaisir de travailler ensemble dans le contexte de la Conférence à l'avenir.

La section voit la participation de Québec dans la Conférence comme étant une chose positive. Elle veut simplement offrir la suggestion que peut-être quelques paragraphes peuvent être inclus l'année prochaine dans le discours du Procureur-Général au banquet final. Ces paragraphes seront inclues pour indiquer que la participation de la section a la Conférence et le rôle positif qu'elle a joué dans le développement du droit criminel dans ce pays.

La section de loi uniforme

Le président, Basil D. Stapleton, c.r., a présenté un rapport sur le travail de la section. Le compte rendu de la section se trouve à la page 35.

Il a été résolu que la Section s'accorde avec le message contenu dans la résolution de la Section du Droit Criminel et que la concurrence soit noté à la Session Plénière.

Il a été résolu que la question du Trafic des Enfants soit référée au Fédéral-Provincial-Territorial sur le Droit de la Famille avec une demande qu'il fasse une révision de la question pour déterminer s'il y a

une lacune entre la Législation Canadienne qui existe concernant la «vente» d'enfants qui devra être adressée par un amendement fédéral ou provincial. Que «The Federal-Provincial-Territorial Family Law Committee» soit demandé de discuter leurs conclusions avec le Comité-Exécutif de Uniforme Droit Conférences avant mars 1991.

La participation du Québec à la Conférence dans l'avenir

Il est approprié pour nous comme une Conférence dans la Session Plénière de proposer la motion comme le group plénière des trois sections en ce qui concerne la participation du Québec à les Conférences à l'avenir. La motion a été votée unanimement.

Rapport du comité des résolutions

Lionel Levert a présenté le rapport du comité des résolution.

Il est proposé que la Conférence exprime sa reconnaissance, par lettre expédiée par le Secrétaire, aux personnes et organismes suivants:

1. le procureur général du Nouveau-Brunswick l'honorable James Lockyer, c.r., pour le remercier de ses salutations lors de la séance plénière initiale et de l'allocution qu'il a prononcée au banquet jeudi soir;
2. le gouvernement du Nouveau-Brunswick, pour le remercier de sa généreuse hospitalité à l'occasion de la soixante-douzième rencontre de la Conférence sur l'uniformisation des lois, et plus particulièrement pour:
   (a) la réception qu'il a donnée après la séance plénière initiale;
   (b) les rafraîchissements qu'il a fournis aux cours de la Conférence;
   (c) la soirée d'activités sportives et le dîner de homard qu'il a organisés a St. Martins mardi soir;
   (d) la visite de Frédéricton en autobus;
   (e) le banquet qu'il a donné jeudi soir;
   (f) les services de bureau, de secrétariat et de soutien qu'il a fournis;
3. le comité organisateur, composé de Basil Stapleton, c r., Joyce Gagnon, Bruno Lalonde, Susan Landine, Cindy McCallum, Bob Murray, Stephen Wood et James McAvity, pour sa collaboration remarquable, qui a assuré le succès de la Conférence et en a fait une expérience très agréable;
4. l'Association du barreur du Nouveau-Brunswick, pour la réception qu'elle a donné jeudi soir;
5. le président du National Conference of Commissioners on Uniform State Laws (NCCUSL), monsieur Lawrence Bugge, pour son hospitalité a l'égard de notre premier vice-président à l'occasion de la rencontre qui a eu lieu à Milwaukee récemment et pour sa contribution à l'amélioration des relations avec notre Conférence en nous honorant pour la deuxième année de sa présence de même que celle de son épouse, Elaine, et des ses enfants, Carol et David;
6. le président du comité de liaison avec le Canada et les organisations internationales et co-président du comité mixte sur la coopération avec la Conférence sur l'uniformisation des lois au Canada du NCCUSL, monsieur Jeremiah

Marsh, pour sa contribution à l'amélioration des relations avec notre Conférence en nous honorant pour la première fois de sa présence et de celle de son épouse, Marietta;

7. le président de la Section de droit criminel, monsieur Richard Mosley, c.r., le président de la Section de droit uniforme, monsieur Basil D Stapleton, c.r., et monsieur Peter Pagano, qui a assumé la présidence de la Section de rédaction législative en l'absence de Merrilee Rasmussen;

8. Josette Duchesne, Jean-Pierre Lessard, Louise Mercier, Louise Meunier, Donald Gilmour, Jean-Pierre Robichaud et Louise Béland, pour les excellents services d'interprétation qu'ils ont fournis à la Conférence.

Réunions futures

Le président a annoncé que la réunion en 1991 aura lieu à Régina au Ramada Renaissance le 11 août jusqu'à le 16 août et que la première Session Plénière aura lieu le soir du 11 août à 20h.

Le président a aussi annoncé que nous avons reçu une invitation de Terre-Neuve pour l'année prochaine 1992 et ensuite, pour 1993, une invitation à l'Ile-du-Prince-Edouard. Le Comité-Exécutif sera responsable à poursuivre d'avantage ces deux invitations.

Rapport du Comité sur les nominations

Le secrétaire-exécutif, de la part du président, Graham D. Walker, c.r., a présenté le rapport du Comité sur les nominations.

RÉSOLU que les suivants soient élus pour l'année 1990-91:

Président	Basil D. Stapleton, c r.
Président-adjoint	Daniel C. Préfontaine, c.r.

Le nouveau président

Georgina R. Jackson a donné le marteau de président de réunion à Basil D. Stapleton, c.r.

Le nouveau président qui a travaillé de près avec le rapport de renouvellement, a exprimé un grand intérêt dans son implémentation. Cette année sera l'année de l'implémentation. Une des premières choses proposées est l'établissement d'un comité à part, de l'implémentation de ce rapport. Dans le rapport, nous avons établi d'une façon générale ce que nous pensons la Conférence devrait faire et dans quelle direction elle devrait aller. C'est maintenant à déterminer la méthodologie et les procédures. On a abordé ce sujet hier avec la réunion des Secrétaires régionaux, qui dans le rôle de représentants des juridictions sont essentiel dans l'implémentation. On s'attend d'avoir des propositions fermes (en ce qui concerne les détails de l'implémentation, maintenant et dans l'avenir) pour la Conférence l'année prochaine à Régina. Nous avons

fait du progrès même ce matin concernant le mandat du comité de direction et comment l'ordre du jour va suivre relativement à la Section de Loi Uniforme.

Saskatchewan

Douglas Moen, représentant de la juridiction du Saskatchewan a invité la Conférence a siégé à Régina en 1991. Il espère nous montrer l'hospitalité qui est caractéristique de l'ouest. Le Saskatchewan va se guider du zèle et générosité démontré par la province du Nouveau-Brunswick à la Conférence cette année.

Levée de la Séance

On a déclaré la séance levée.

APPENDIX A
(See Page 36)

UNIFORM ARBITRATION ACT

Contents

INTRODUCTORY MATTERS
1. Definitions 89
2. Application of Act 89
3. Contracting out 90
4. Waiver of right to object 91
5. Arbitration agreements 91

COURT INTERVENTION
6. Court intervention limited 92
7. Stay 92
8. Powers of court 93

COMPOSITION OF ARBITRAL TRIBUNAL
9. Number of arbitrators 94
10. Appointment of arbitral tribunal 94
11. Duty of arbitrator 95
12. No revocation 95
13. Challenge 96
14. Termination of arbitrator's mandate 97
15. Removal of arbitrator by court 97
16. Appointment of substitute arbitrator 98

JURISDICTION OF ARBITRAL TRIBUNAL
17. Jurisdiction, objections 99
18. Detention, preservation and inspection of property and documents 100

CONDUCT OF ARBITRATION
19. Equality and fairness 100
20. Procedure 100
21. Evidence 101
22. Time and place of arbitration and meetings 101
23. Commencement of arbitration 101
24. Matters referred to arbitration 102
25. Procedural directions 102
26. Hearings and written proceedings 103
27. Default 103
28. Appointment of expert 104
29. Obtaining evidence 104
30. Restriction 105

AWARDS AND TERMINATION OF ARBITRATION

31. Application of law and equity 105
32. Conflict of laws 105
33. Application of arbitration agreement, contract and usages of trade 106
34. Decision of arbitral tribunal 106
35. Mediation and conciliation 106
36. Settlement 107
37. Binding nature of award 107
38. Form of award 107
39. Extension of time limits 108
40. Explanation 108
41. Interim awards 108
42. More than one final award 108
43. Termination of arbitration 108
44. Corrections 110

REMEDIES

45. Appeal 110
46. Setting aside award 111
47. Time limit 113
48. Declaration of invalidity of arbitration 114
49. Further appeal 114
50. Enforcement of award 115

GENERAL

51. Crown bound 117
52. Limitation periods 118
53. Service of notice 119
54. Costs 120
55. Arbitrator's fees and expenses 121
56. Taxation of costs, fees and expenses 121
57. Interest 122

UNIFORM ARBITRATION ACT

COMMENTARIES

General

The Uniform Arbitrations Act has been prepared in accordance with the policy decisions made at the annual meeting of the Uniform Law Conference in Yellowknife in 1989. The commentary for individual sections will refer where appropriate to the propositions contained in the report of the Alberta Commissioners to the 1989 Conference on Domestic Arbitrations.

The present draft of the Uniform Arbitration Act complies with Proposition 2 in the report of the Alberta Commissioners, in that it has used as a model the UNCITRAL Model Law on international commercial arbitration. Its principles have been modified only slightly to apply to domestic arbitrations. Its terminology has been somewhat domesticated and expanded for the assistance of Canadian users. The most notable change is that the numbering of the sections does not follow strictly the numbering of the articles of the Model Law, though the sequence is largely the same. The drafters felt that the need to amplify and in a few cases rearrange the rather Spartan terms of the Model Law outweighed the desire for consistent numbering. Despite this change, the organisation and the principles of the Uniform Arbitration Act are recognizably those of the Model Law.

The guiding principles are these:

(1) people who enter into valid arbitration agreements should be held to those agreements;

(2) the parties should have broad freedom to design the arbitral process as they see fit;

(3) that process should nevertheless be fair to both parties; and

(4) the award resulting from the arbitration should be readily enforceable, subject only to review for a specific list of fatal flaws of form or procedure.

The Act attempts to minimize the opportunities to delay the arbitration, either by refusing to participate or by seeking the intervention of the courts. The courts do have their place in arbitration under the Uniform Act, however. They can keep proceedings moving in the face of resistance, they can protect the position of parties during proceedings,

they can help ensure that the arbitral award applies with the law, and they can lend their weight to the enforcement of the award.

INTRODUCTORY MATTERS

Definitions

1. In this Act,

"arbitration agreement" means an agreement by which two or more persons agree to submit to arbitration a dispute that has arisen or may arise between them; ("convention d'arbitrage")

"arbitrator" includes an umpire; ("arbitre")

"court", except in sections 6 and 7, means the (*appropriate court*) ("tribunal judiciaire")

Commentary: The definition of "arbitration agreement" includes an agreement to arbitrate a dispute already in existence or a dispute that may arise in the future. The agreement may be free standing or it may be part of any other kind of agreement between the parties.

The definition of "arbitrator" includes an umpire, in order that any agreements now in existence that provide for umpires may come within the new Act, without making special provisions for a procedure which is very rarely followed.

Each jurisdiction will fill in the name of a court of unlimited trial jurisdiction. (Proposition 1(4))

Application of Act

2.-(1) This Act applies to an arbitration conducted under an arbitration agreement unless,

(a) the application of this Act is excluded by the agreement or by law; or

(b) Part II of the *Uniform International Commercial Arbitration Act* applies to the arbitration.

(2) This Act applies with necessary modifications to an arbitration conducted in accordance with another Act, unless that Act provides otherwise; however, in the event of conflict between this Act and the other Act or regulations made under the other Act, the other Act or the regulations prevail.

Commentary: The Act will apply unless the parties contract out of the whole statutory regime, or unless some other statute applies to it (Pro-

position 3). The Act does not contain a transition provision as such, as there is no existing Uniform Act on the subject. Each enacting jurisdiction should provide whether the Act will apply to arbitrations under agreements made before it comes into force (though not to an arbitration proceeding that has already been begun under the previous statute.) This is consistent with the principle that the new Act will be beneficial even to people who did not contemplate it when they made their agreements.

Contracting out

3. The parties to an arbitration agreement may agree, expressly or by implication, to vary or exclude any provision of this Act except the following:

(a) subsection 5(4) (*"Scott* v. *Avery"* clauses);

(b) section 19 (equality and fairness);

(c) section 39 (extension of time limits);

(d) subsection 45(1) (appeal on question of law);

(e) section 46 (setting aside award);

(f) section 48 (declaration of invalidity of arbitration);

(g) section 50 (enforcement of award).

Commentary: The parties to an arbitration agreement are permitted to design their own process, subject to a few specific limits (Proposition 1(1)). The exceptions are generally self-explanatory. The exception for section 5(4) is intended to ensure that arbitration containing a *Scott* v. *Avery* clause falls under the new Act. The exception for section 39, which ensures that courts can dispense with time limits agreed by the parties, prevents an otherwise valid arbitration from being lost on a technicality, if the court is persuaded that such a loss would be unjust.

Because this section contains a general permission to vary or exclude any other provisions of the Act, the rest of the Act does not expressly give this permission. An agreement that is inconsistent with the Act takes precedence to the extent of the inconsistency, except for the excluded sections. It is not necessary to exclude the Act expressly to vary it. Parties to arbitration agreements and their advisors must keep this in mind in drafting the agreements.

The alternatives are to insert "unless the parties agree otherwise" in all the other sections or to include those words in some sections, leaving the parties and the courts to wonder what their omission might mean with respect to the other non- obligatory sections.

Waiver of right to object

4. A party who participates in an arbitration despite being aware of non-compliance with a provision of this Act, except one mentioned in section 3, or with the arbitration agreement, and does not object to the non-compliance within the time limit provided or, if none is provided, within a reasonable time, is deemed to have waived the right to object.

Commentary: This section could lose a party its right to object to something if the objection were not raised promptly. A requirement to object promptly will curb game-playing and the holding back of objections for tactical reasons. (Proposition 7)

Arbitration agreements

5.-(1) An arbitration agreement may be an independent agreement or part of another agreement.

(2) If the parties to an arbitration agreement make a further agreement in connection with the arbitration, it is deemed to form part of the arbitration agreement.

(3) An arbitration agreement need not be in writing.

(4) An agreement requiring or having the effect of requiring that a matter be adjudicated by arbitration before it may be dealt with by a court has the same effect as an arbitration agreement.

(5) An arbitration agreement may be revoked only in accordance with the ordinary rules of contract law.

Commentary: The arbitration agreement may be free-standing or contained in another agreement. Agreements as to procedure in an arbitration or other interim or collateral agreements are deemed to form part of the arbitration agreement, so that they are all covered by the statute.

An arbitration agreement may be oral or in writing. (Proposition 5) Parties to oral agreements may have difficulties in proving the scope of their agreement, but that is a problem within the control of the parties. Oral agreements to extend the scope of an arbitration or to deal with a procedural question may be more common than those to submit a dispute to arbitration in the first place.

Subsection 4 deems clauses known as *Scott* v. *Avery* clauses to be arbitration agreements generally subject to this Act. As noted earlier, section 3 prohibits the parties from opting out of this provision.

COURT INTERVENTION

Court intervention limited

6. No court shall intervene in matters governed by this Act, except as this Act provides.

Comentary: Court supervision is necessary to ensure justice and fairness. Rather than conferring broad discretion on the court, however, the Uniform Arbitration Act prescribes the kinds of circumstance in which court intervention is necessary and confers upon the court the powers needed to intervene effectively in those circumstances. (Proposition 1(3)).

Stay

7.-(1) If a party to an arbitration agreement commences a proceeding in respect of a matter to be submitted to arbitration under the agreement, the court in which the proceeding is commenced shall, on the motion of another party to the arbitration agreement, stay the proceeding.

(2) However, the court may refuse to stay the proceeding in any of the following cases:

(a) a party entered into the arbitration agreement while under a legal incapacity;

(b) the arbitration agreement is invalid;

(c) the subject-matter of the dispute is not capable of being the subject of arbitration under (*enacting jurisdiction*) law;

(d) the motion was brought with undue delay;

(e) the matter is a proper one for default or summary judgment.

(3) An arbitration of the dispute may be commenced and continued while the motion is before the court.

(4) If the court refuses to stay the proceeding,

(a) no arbitration of the dispute shall be commenced; and

(b) an arbitration that has been commenced shall not be continued, and anything done in connection with the arbitration before the court made its decision is without effect.

(5) The court may stay the proceeding with respect to the matters

dealt with in the arbitration agreement and allow it to continue with respect to other matters if it finds that,

(a) the agreement deals with only some of the matters in respect of which the proceeding was commenced; and

(b) it is reasonable to separate the matters dealt with in the agreement from the other matters.

(6) There is no appeal from the court's decision.

Commentary: If a party to an arbitration agreement brings an action in a court about a matter which is agreed to be submitted to arbitration, the court in which the action is brought must stay the action, except in specific listed circumstances which render the arbitration void. The application for a stay must be brought in a timely way. If the court would grant a summary or default judgment, it may do so rather than referring the parties to a pointless arbitration. The arbitration may be carried on while the application to the court is pending, but if the court continues with the litigation, the arbitration has no effect. There is no appeal from the order of the court staying an action or refusing the stay. (Proposition 11).

Powers of court

8.-(1) The court's powers with respect to the detention, preservation and inspection of property, interim injunctions and the appointment of receivers are the same in arbitrations as in court actions.

(2) The arbitral tribunal may determine any question of law that arises during the arbitration; the court may do so on the application of the arbitral tribunal, or on a party's application if the other parties or the arbitral tribunal consent.

(3) The court's determination of a question of law may be appealed to the (*appellate court*), with leave of that court.

(4) On the application of all the parties to more than one arbitration the court may order, on such terms as are just,

(a) that the arbitrations be consolidated;

(b) that the arbitrations be conducted simultaneously or consecutively; or

(c) that any of the arbitrations be stayed until any of the others are completed.

(5) When the court orders that arbitrations be consolidated, it may appoint an arbitral tribunal for the consolidated arbitration; if all the parties agree as to the choice of arbitral tribunal, the court shall appoint it.

(6) Subsection (4) does not prevent the parties to more than one arbitration from agreeing to consolidate the arbitrations and doing everything necessary to effect the consolidation.

Commentary: The court is expressly given the power to protect the rights of the parties during an arbitration, in the same way as it could do during a court action. (Proposition 1(2)).

The arbitral tribunal is expressly given the power to determine a question of law. The power of the tribunal under existing law is sometimes questioned. The tribunal or all the parties may refer a question of law to the court at any time during the arbitration. However, one party alone cannot require the court to deal with questions of law, or to compel the arbitrator to state a case for determination by the court. In this way the possibility of delay is reduced without sacrificing the principle of legality. (Proposition 13)

Consolidation of a related string of arbitrations is likely to be efficient. Providing express powers for the court to assist in this process may be useful to the parties. (Proposition 12(8)).

COMPOSITION OF ARBITRAL TRIBUNAL

Number of arbitrators

9. If the arbitration agreement does not specify the number of arbitrators who are to form the arbitral tribunal, it shall be composed of one arbitrator.

Commentary: Self-explanatory (Proposition 9(2))

Appointment of arbitral tribunal

10.-(1) The court may appoint the arbitral tribunal, on a party's application, if,

(a) the arbitration agreement provides no procedure for appointing the arbitral tribunal; or

(b) a person with power to appoint the arbitral tribunal has not done so after a party has given the person seven days notice to do so.

(2) There is no appeal from the court's appointment of the arbitral tribunal.

(3) Subsections (1) and (2) apply, with necessary modifications, to the appointment of individual members of arbitral tribunals that are composed of more than one arbitrator.

(4) If the arbitral tribunal is composed of three or more arbitrators, they shall elect a chair from among themselves; if it is composed of two arbitrators, they may do so.

Commentary: This section ensures that an arbitration can begin in a timely way, even if the parties have not provided a method for appointment or if one or more parties is not cooperating. (Proposition 9(3)).

Some provisions of the Uniform Arbitration Act give powers to the chair of the arbitral tribunal, notably on procedural matters. Subsection 10(4) therefore provides for the election of a chair.

Duty of arbitrator

11.-(1) An arbitrator shall be independent of the parties and shall act impartially.

(2) Before accepting an appointment as arbitrator, a person shall disclose to all parties to the arbitration any circumstances of which he or she is aware that may give rise to a reasonable apprehension of bias.

(3) An arbitrator who, during an arbitration, becomes aware of circumstances that may give rise to a reasonable apprehension of bias shall promptly disclose them to all the parties.

Commentary: An arbitrator must be independent and impartial. This distinguishes an arbitrator under this Act from one appointed, for example, under certain labour relations and statutes. ((Proposition 15) The Yellowknife meeting decided to spell out the duty of impartiality.) The primary burden is on the arbitrator to disclose any circumstances likely to give rise to a reasonable apprehension of bias. (Proposition 16(1)).

No revocation

12. A party may not revoke the appointment of an arbitrator.

Commentary: A party may not interfere with the course of an arbitration by withdrawing support of its own arbitrator. Once the arbitrator is appointed, he or she is in place unless there is a resignation or successful challenge. (Proposition 16(3)).

Challenge

13.-(1) A Party may challenge an arbitrator only on one of the following grounds:

(a) circumstances exist that may give rise to a reasonable apprehension of bias;

(b) the arbitrator does not possess qualifications that the parties have agreed are necessary.

(2) A party who appointed an arbitrator or participated in his or her appointment may challenge the arbitrator only for grounds of which the party was unaware at the time of the appointment.

(3) A party who wishes to challenge an arbitrator shall send the arbitral tribunal a statement of the grounds for the challenge, within fifteen days of becoming aware of them.

(4) The other parties may agree to remove the challenged arbitrator, or the arbitrator may resign.

(5) If the challenged arbitrator is not removed by the parties and does not resign, the arbitral tribunal, including the challenged arbitrator, shall decide the issue and shall notify the parties of its decision.

(6) Within ten days of being notified of the arbitral tribunal's decision, a party may make an application to the court to decide the issue and, in the case of the challenging party, to remove the arbitrator.

(7) While an application is pending, the arbitral tribunal, including the challenged arbitrator, may continue the arbitration and make an award, unless the court orders otherwise.

Commentary: The grounds for challenge are intended to be limited. The party may not challenge an arbitrator for grounds known to that party at the time of the appointment. (Proposition 16(1))

The procedure for challenge goes through the arbitral tribunal to the court. There are strict time limits for bringing a challenge. The arbitration may continue pending the challenge, though at the risk of its becoming a nullity if the court found an arbitrator without jurisdiction. (Proposition 16(2)).

Termination of arbitrator's mandate

14.-(1) An arbitrator's mandate terminates when,

(a) the arbitrator resigns or dies;

(b) the parties agree to terminate it;

(c) the arbitral tribunal upholds a challenge to the arbitrator, ten days elapse after all the parties are notified of the decision and no application is made to the court; or

(d) the court removes the arbitrator under subsection 15(1).

(2) An arbitrator's resignation or a party's agreement to terminate an arbitrator's mandate does not imply acceptance the validity of any reason advanced for challenging or removing him or her.

Commentary: Self-explanatory (Proposition 16(3)).

Removal of arbitrator by court

15.-(1) The court may remove an arbitrator on a party's application under subsection 13(6) (challenge), or may do so on a party's application if the arbitrator becomes unable to perform his or her functions, commits a corrupt or fraudulent act, delays unduly in conducting the arbitration or does not conduct it in accordance with section 19 (equality and fairness).

(2) The arbitrator is entitled to be heard by the court if the application is based on an allegation that he or she committed a corrupt or fraudulent act or delayed unduly in conducting the arbitration.

(3) When the court removes an arbitrator, it may give directions about the conduct of the arbitration.

(4) If the court removes an arbitrator for a corrupt or fraudulent act or for undue delay, it may order that the arbitrator receive no payment for his or her services and may order that he or she compensate the parties for all or part of the costs, as determined by the court, that they incurred in connection with the arbitration before his or her removal.

(5) The arbitrator or a party may, within thirty days after receiving the court's decision, appeal an order made under subsection (4) or the refusal to make such an order to the (*appellate court*), with leave of that court.

(6) Except as provided in subsection (5), there is no appeal from the court's decision or from its directions.

Commentary: The court may remove an arbitrator for the stated grounds. The court may also penalize an arbitrator in costs and in loss of fees if the arbitrator is removed for corrupt or fraudulent acts or for undue delay. The arbitrator is entitled to be heard in a proceeding where such a penalty is a possibility. The penalty provision is subject to appeal, but the removal is not. (Proposition 16(4), as amended by discussion).

Appointment of substitute arbitrator

16.-(1) When an arbitrator's mandate terminates, a substitute arbitrator shall be appointed, following the procedure that was used in the appointment of the arbitrator being replaced.

(2) When the arbitrator's mandate terminates, the court may, on a party's application, give directions about the conduct of the arbitration.

(3) The court may appoint the substitute arbitrator, on a party's application, if,

(a) the arbitration agreement provides no procedure for appointing the substitute arbitrator; or

(b) a person with power to appoint the substitute arbitrator has not done so after a party has given the person seven days notice to do so.

(4) There is no appeal from the court's decision or from its directions.

(5) This section does not apply if the arbitration agreement provides that the arbitration is to be conducted only by a named arbitrator.

Commentary: A substitute arbitrator is named, either by the parties or by the court, according to the procedure set out for appointing the original arbitrator. However, if the arbitration agreement can be read as conditional on the participation of a particular named arbitrator, then no substitute arbitrator can be named by the court. Since the parties may vary subsection 15(5), they could agree to appoint a substitute arbitrator regardless of the original agreement and carry on under that agreement. (Proposition 9(3)).

JURISDICTION OF ARBITRAL TRIBUNAL

Jurisdiction, objections

17.-(1) An arbitral tribunal may rule on its own jurisdiction to conduct the arbitration and may in that connection rule on objections with respect to the existence or validity of the arbitration agreement.

(2) If the arbitration agreement forms part of another agreement, it shall, for the purposes of a ruling on jurisdiction, be treated as an independent agreement that may survive even if the main agreement is found to be invalid.

(3) A party who has an objection to the arbitral tribunal's jurisdiction to conduct the arbitration shall make the objection no later than the beginning of the hearing or, if there is no hearing, no later than the first occasion on which the party submits a statement to the tribunal.

(4) The fact that a party has appointed or participated in the appointment of an arbitrator does not prevent the party from making an objection to jurisdiction.

(5) A party who has an objection that the arbitral tribunal is exceeding its authority shall make the objection as soon as the matter alleged to be beyond the tribunal's authority is raised during the arbitration.

(6) Despite section 4, if the arbitral tribunal considers the delay justified, a party may make an objection after the time limit referred to in subsection (3) or (5), as the case may be, has expired.

(7) The arbitral tribunal may rule on an objection as a preliminary question or may deal with it in an award.

(8) If the arbitral tribunal rules on an objection as a preliminary question, a party may, within thirty days after receiving notice of the ruling, make an application to the court to decide the matter.

(9) There is no appeal from the court's decision.

(10) While an application is pending, the arbitral tribunal may continue the arbitration and make an award.

Commentary: Disputes to jurisdiction are to be made in the first instance to the arbitral tribunal and if its resolution of the question is not

satisfactory, then to the court. The arbitration agreement is separate from a contract of which it may be a part for this purpose, so that the submission to arbitration may be valid even if the contract itself is not. Objections to general jurisdiction must be made by the beginning of the hearing, while objections to the exercise of authority during the arbitration must be brought as soon as practicable. However, the tribunal may waive these time limits. An appeal to the court respecting jurisdiction does not prevent the arbitration from continuing. (Proposition 10. It was agreed at Yellowknife to remove the discretion of the court as to whether the arbitration could continue.)

Detention, preservation and inspection of property and documents

18.-(1) On a party's request, an arbitral tribunal may make an order for the detention, preservation or inspection of property and documents that are the subject of the arbitration or as to which a question may arise in the arbitration, and may order a party to provide security in that connection.

(2) The court may enforce the direction of an arbitral tribunal as if it were a similar direction made by the court in an action.

Commentary: This section gives the tribunal similar powers to the court to protect the interests of the parties before the award. (Proposition 12(5)).

CONDUCT OF ARBITRATION

Equality and fairness

19.-(1) In an arbitration, the parties shall be treated equally and fairly.

(2) Each party shall be given an opportunity to present a case and to respond to the other parties' cases.

Commentary: This is the basic rule about procedure and it cannot be waived by the parties. This language, together with the grounds for setting aside contained in section 46, take the place of any express reference to "natural justice". The terms in the statute are considered more readily understandable, particularly non-lawyers. (Proposition 12(2)).

Procedure

20.-(1) The arbitral tribunal may determine the procedure to be followed in the arbitration, in accordance with this Act.

(2) An arbitral tribunal that is composed of more than one arbi-

trator may delegate the determination of questions of procedure to the chair.

Commentary: In the absence of provisions by the parties, the arbitral tribunal determines the procedure. (Proposition 12(4)). The right of the arbitrators to delegate questions of procedure to the chair is found in the Model Law, article 29.

Evidence

21.-(1) In an arbitration, the arbitrator shall admit all evidence that would be admissible in a court and may admit other evidence that he or she considers relevant to the issues in dispute.

(2) The arbitrator may determine the manner in which evidence is to be admitted.

Commentary: All evidence admissible in a court is admissible in an arbitration. In addition, other relevant evidence is admissible. (Proposition 14(6)) The Yellowknife meeting referred with approval to the language of section 6(2) ofthe British Columbia Commercial Arbitration Act, which is substantially followed here.

Time and place of arbitration and meetings

22.-(1) The arbitral tribunal shall determine the time, date and place of arbitration, taking into consideration the parties' convenience and the other circumstances of the case.

(2) The arbitral tribunal may meet at any place it considers appropriate for consultation among its members, for hearing witnesses, experts or parties, or for inspecting property or documents.

Commentary: In the absence of an agreement of the parties, the arbitral tribunal determines the time, date and place of arbitration, having regard to the circumstances. (Proposition 14(2)). The arbitral tribunal may also wish to meet for its own purposes, other than for a hearing. Subsection 2 allows this. It is based on article 20(2) of the Model Law.

Commencement of arbitration

23.-(1) An arbitration may be commenced in any way recognized by law, including the following:

(a) a party to an arbitration agreement serves on the other parties notice to appoint or to participate in the appointment of an arbitrator under the agreement;

(b) if the arbitration agreement gives a person who is not a party power to appoint an arbitrator, one party serves notice to exercise that power on the person and serves a copy of the notice on the other parties; or

(c) a party serves on the other parties a notice demanding arbitration under the agreement.

(2) The arbitral tribunal may exercise its powers when every member has accepted appointment.

Commentary: This section sets out some methods in which an arbitration may be begun. This date is important with respect to a number of time limits in the Act. The methods of service are described more fully in section 53. (Proposition 12(1)). The provision of subsection (2) is based on Proposition 9(1).

Matters referred to arbitration

24. A notice that commences an arbitration without identifying the dispute is deemed to refer to arbitration all disputes that the arbitration agreement entitles the party giving the notice to refer.

Commentary: The purpose of this is self explanatory. It is taken from ALRI section 22(2).

Procedural directions

25.-(1) An arbitral tribunal may require that the parties submit their statements within a specified period of time.

(2) The parties' statements shall indicate the facts supporting their positions, the points at issue and the relief sought.

(3) The parties may submit with their statements the documents they consider relevant, or may refer to the documents or other evidence they intend to submit.

(4) The parties may amend or supplement their statements during the arbitration; however, the arbitral tribunal may disallow a change that is unduly delayed.

(5) With the arbitral tribunal's permission, the parties may submit their statements orally.

(6) The parties and persons claiming through or under them shall, subject to any legal objection, comply with the arbitral tribunal's directions, including directions to,

(a) submit to examination on oath or affirmation with respect to the dispute;

(b) produce records and documents that are in their possession or power.

(7) The court may enforce the direction of an arbitral tribunal as if it were a similar direction made by the court in an action.

Commentary: This section deals with pleadings and the compulsion of evidence. It reflects Proposition 12(6) and Proposition 14(3).

Hearings and written proceedings

26.-(1) The arbitral tribunal may conduct the arbitration on the basis of documents or may hold hearings for the presentation of evidence and for oral argument; however, the tribunal shall hold a hearing if a party requests it.

(2) The arbitral tribunal shall give the parties sufficient notice of hearings and of meetings of the tribunal for the purpose of inspection of property or documents.

(3) A party who submits a statement to the arbitral tribunal or supplies the tribunal with any other information shall also communicate it to the other parties.

(4) The arbitral tribunal shall communicate to the parties any expert reports or other documents on which it may rely in making a decision.

Commentary: A hearing is not necessary unless a party requests one. The proceedings are however to be fair, in ways spelled out in the section. (Propositions 14(1), 12(3)).

Default

27.-(1) If the party who commenced the arbitration does not submit a statement within the period of time specified under subsection 25(1), the arbitral tribunal may, unless the party offers a satisfactory explanation, make an award dismissing the claim.

(2) If a party other than the one who commenced the arbitration does not submit a statement within the period of time specified under subsection 25(1), the arbitral tribunal may, unless the party offers a satisfactory explanation, continue the arbitration, but shall not treat the failure to submit a statement as an admission of another party's allegations.

(3) If a party fails to appear at a hearing or to produce documentary evidence, the arbitral tribunal may, unless the party offers a satisfactory explanation, continue the arbitration and make an award on the evidence before it.

(4) In the case of delay by the party who commenced the arbitration, the arbitral tribunal may make an award dismissing the claim or give directions for the speedy determination of the arbitration and may impose conditions on its decision.

(5) If the arbitration was commenced jointly by all the parties, subsections (2) and (3) apply, with necessary modifications, but subsections (1) and (4) do not.

Commentary: The arbitral tribunal may dismiss a claim that is not pursued, strike out a defence that is not maintained and continue the arbitration in the absence of a party without reasonable excuse. (Proposition 12(6)).

Appointment of expert

28.-(1) An arbitral tribunal may appoint an expert to report to it on specific issues.

(2) The arbitral tribunal may require parties to give the expert any relevant information or to allow him or her to inspect property or documents.

(3) At the request of a party or of the arbitral tribunal, the expert shall, after making the report, participate in a hearing in which the parties may question the expert and present the testimony of another expert on the subject-matter of the report.

Commentary: Self-explanatory. (Proposition 14(4))

Obtaining evidence

29.-(1) A party may serve a person with a notice requiring him or her to attend and give evidence at the arbitration at the time and place named in the notice.

(2) The notice has the same effect as a notice in a court proceeding requiring a witness to attend at a hearing or produce documents, and shall be served in the same way.

(3) An arbitral tribunal has power to administer an oath or affirmation and power to require a witness to testify under oath or affirmation.

(4) On the application of a party or of the arbitral tribunal, the court may make orders and give directions with respect to the taking of evidence for an arbitration as if it were a court proceeding.

Commentary: Notices to people requiring them to attend and give evidence are served personally, in the same way as an in-court proceeding. The arbitral tribunal may administer an oath or an affirmation. (Proposition 14(4)).

Restriction

30. No person shall be compelled to produce information, property or documents or to give evidence in an arbitration that the person could not be compelled to produce or give in a court proceeding.

Commentary: No evidence is compellable in an arbitration that is not compellable at a trial. A similar provision is found in the common law provinces' arbitrations acts. The present section is a combination of ALRI sections 26(3) and 27(4).

AWARDS AND TERMINATION OF ARBITRATION

Application of law and equity

31. An arbitral tribunal shall decide a dispute in accordance with law, including equity, and may order specific performance, injunctions and other equitable remedies.

Commentary: The arbitral tribunal is required to apply the law, which extends to rules of equity and specified equitable remedies. The parties can opt out of this, to permit the arbitration to be decided on the basis of what is fair in the circumstances. (Proposition 17(1)).

Conflict of laws

32.-(1) In deciding a dispute, an arbitral tribunal shall apply the rules of law designated by the parties or, if none are designated, the rules of law it considers appropriate in the circumstances.

(2) A designation by the parties of the law of a jurisdiction refers to the jurisdiction's substantive law and not to its conflict of laws rules, unless the parties expressly indicate that the designation includes them.

Commentary: If the parties do not designate rules of law, then the tribunal must apply the rules it considers appropriate. (Proposition 17(1)).

Application of arbitration agreement, contract and usages of trade

33. The arbital tribunal shall decide the dispute in accordance with the arbitration agreement and the contract, if any, under which the dispute arose, and shall also take into account any applicable usages of trade.

Commentary: The arbitral award is an interpretation of the agreement and the contract, unless the parties agree otherwise, and the usages of the trade surrounding such agreements and contracts must be taken into account. (Proposition 17(1)).

Decision of arbitral tribunal

34. If an arbitral tribunal is composed of more than one member, a decision of a majority of the members is the arbitral tribunal's decision; however, if there is no majority decision or unanimous decision, the chair's decision governs.

Commentary: A majority of the tribunal may decide, and if there is, for example, a three-way split, the chair decides. (Proposition 19(2)).

Mediation and conciliation

35. (*Each jurisdiction should choose Option A or Option B.*)

Option A

The members of an arbitral tribunal may, if the parties consent, use mediation, conciliation and similar techniques during the arbitration to encourage settlement of the dispute and may afterwards resume their roles as arbitrators without disqualification.

Option B

The members of an arbitral tribunal shall not use mediation, conciliation or similar techniques during the arbitration.

Commentary: Enacting jurisdictions may choose either to allow the arbitrators to practise mediation and conciliation or to forbid them from doing so. The Uniform International Commercial Arbitration Act allows the arbitrators to engage in mediation on the consent of the parties.

The present statute provides for a single consent at the beginning of mediation, without a separate consent when the arbitrator goes back to arbitrating, the mediation presumably having failed. The reason for eliminating the double consent found in the international statute was to

prevent a party from subverting an arbitration in bad faith at the end of mediation, by refusing consent to return to arbitration.

The reason for forbidding a change of role is that a mediator or conciliator may learn things from one party in confidence that he or she may not disclose to the other parties. Knowing this information might be perceived to prevent a judicial disposition of the case on the merits if the person then returns to arbitration.

Settlement

36. If the parties settle the dispute during arbitration, the arbitral tribunal shall terminate the arbitration and, if a party so requests, may record the settlement in the form of an award.

Commentry: The parties may settle the dispute and have the settlement incorporated into an award unless the tribunal objects, for example on the ground that the proposed settlement is illegal. (Proposition 17(5)).

Binding nature of award

37. An award binds the parties, unless it is set aside or varied under section 45 or 46 (appeal, setting aside award).

Commentary: Self-explanatory. (Proposition 17(4)).

Form of award

38.-(1) An award shall be made in writing and, except in the case of an award made on consent, shall state the reasons on which it is based.

(2) The award shall indicate the place where and the date on which it is made.

(3) The award shall be dated and shall be signed by all the members of the arbitral tribunal, or by a majority of them if an explanation of the omission of the other signatures is included.

(4) A copy of the award shall be delivered to each party.

Commentary: Self-explanatory. (Proposition 17(6)). The proposals adopted at Yellowknife did not require the place of the award to be shown, though the Model Law does so. Since the present Act provides for interprovincial enforcement while the proposals originally did not, a reference to place has been added.

Reasons help the sense of fairness, and in many cases they can be easily given. The parties may waive this provision if they find the obligation onerous. (Propoposition 19(7)).

Extension of time limits

39. The court may extend the time within which the arbitral tribunal is required to make an award, even if the time has expired.

Commentary: Self-explanatory. This is not waivable, so the court may be able to save any arbitration. The Act provides other remedies for undue delay on the part of the arbitrator. (Proposition 17(8)).

Explanation

40.-(1) A party may, within thirty days after receiving an award, request that the arbitral tribunal explain any matter.

(2) If the arbitral tribunal does not give an explanation within fifteen days after receiving the request, the court may, on the party's application, order it to do so.

Commentary: Self-explanatory. (Proposition 17(7)). The Act provides that a party may request an explanation of any matter, including better reasons, before going to court for an order to that effect.

Interim awards

41. The arbitral tribunal may make one or more interim awards.

Commentary: Self-explanatory. (Proposition 17(3)). The Yellowknife meeting agreed that the tribunal could make more than one interim award if it desired.

More than one final award

42. The arbitral tribunal may make more than one final award, disposing of one or more matters referred to arbitration in each award.

Commentary: The arbitral tribunal may finally dispose of issues one by one rather than all at the same time. (Proposition 17(3)).

Termination of arbitration

43.-(1) An arbitration is terminated when,

(a) the arbitral tribunal makes a final award in accordance with this Act, disposing of all matters referred to arbitration;

(b) the arbitral tribunal terminates the arbitration under subsection (2), (3), 27(1) (claimant's failure to submit statement) or 27(4) (delay); or

(c) an arbitrator's mandate is terminated, if the arbitration agreement provides that the arbitration shall be conducted only by that arbitrator.

(2) An arbitral tribunal shall make an order terminating the arbitration if the claimant withdraws the claim, unless the respondent objects to the termination and the arbitral tribunal agrees that the respondent is entitled to obtain a final settlement of the dispute.

(3) An arbitral tribunal shall make an order terminating the arbitration if,

(a) the parties agree that the arbitration should be terminated; or

(b) the arbitral tribunal finds that continuation of the arbitration has become unnecessary or impossible.

(4) The arbitration may be revived for the purposes of section 44 (corrections) or subsection 45(5) (appeal), 46(7), 46(8) (setting aside award) or 54(3) (costs).

(5) A party's death terminates the arbitration only with respect to claims that are extinguished as a result of the death.

Commentary: This section sets out the cases in which an arbitration terminates. The most obvious one is a final award disposing of all the matters referred to arbitration. The section also covers termination in the discretion of the arbitrator, such as for delay. Termination in some cases will be compulsory: when the only possible arbitrator is removed, when the claimant withdraws the claim (in most cases), when the parties agree to terminate the proceeding, or when the continuation of the arbitration has become impossible. However, the arbitration may be reopened for the purposes mentioned in the section. (Proposition 17(9), (10), (12)). The Alberta proposals do not specifically refer to reviving a terminated arbitration for corrections, but this is a logical place to refer to all the possibilities that a final determination will be reopened.

Corrections

44.-(1) An arbitral tribunal may, on its own initiative within thirty days after making an award or at a party's request made within thirty days after receiving the award,

(a) correct typographical errors, errors of calculation and similar errors in the award; or

(b) amend the award so as to correct an injustice caused by an oversight on the part of the arbitral tribunal.

(2) The arbitral tribunal may, on its own initiative at any time or at a party's request made within thirty days after receiving the award, make an additional award to deal with a claim that was presented in the arbitration but omitted from the earlier award.

(3) The arbitral tribunal need not hold a hearing or meeting before rejecting a request made under this section.

Commentary: The open-endedness which a power of correction for oversight will produce should be weighed against the possibility of injustice which may occur in the absence of such a power. The Act minimizes this indeterminacy by requiring an application for correction of the oversight to be made within 30 days. However, the tribunal is not so limited in issuing supplementary awards of its own initiative. Further, the tribunal may decide not to hold a hearing before rejecting a request to make a correction, since the tribunal should know whether it made an oversight or not, without holding a hearing to find out. (Proposition 17(12)).

REMEDIES

Appeal

45.-(1) A party may appeal an award to the court on a question of law with leave, which the court shall grant only if it is satisfied that,

(a) the importance to the parties of the matters at stake in the arbitration justifies an appeal; and

(b) determination of the question of law at issue will significantly affect the rights of the parties.

(2) If the arbitration agreement so provides, a party may appeal an award to the court on a question of law.

(3) If the arbitration agreement so provides, a party may appeal an award to the court on a question of fact or on a question of mixed fact and law.

(4) The court may require the arbitral tribunal to explain any matter.

(5) The court may confirm, vary or set aside the award or may remit the award to the arbitral tribunal, with the court's opinion on the question of law, in the case of an appeal on a question of law, and give directions about the conduct of the arbitration.

Commentary: An appeal is made to the court of general jurisdiction of the enacting jurisdiction. Appeals on questions of law may be brought if the parties agree or if the court gives leave to appeal. Except where the appeal is brought on consent of the parties, the court must be satisfied that the importance of arbitration to the parties justifies the intervention of the court and that the determination of the point of law is likely to affect significantly the rights of one or all of the parties (Proposition 19(4)). The parties may also agree to provide an appeal on a question of fact or a question of mixed fact and law but in the absence of agreement no such appeal lies. The right of appeal on a question of law, subject to leave, may not be be waived by the parties. (Proposition 19(1), and Section 3 of this Act).

Setting aside award

46.-(1) On a party's application, the court may set aside an award on any of the following grounds:

(a) a party entered into the arbitration agreement while under a legal incapacity;

(b) the arbitration agreement is invalid or has ceased to exist;

(c) the award deals with a dispute that the arbitration agreement does not cover or contains a decision on a matter that is beyond the scope of the agreement;

(d) the composition of the tribunal was not in accordance with the arbitration agreement or, if the agreement did not deal with that matter, was not in accordance with this Act;

(e) the subject-matter of the dispute is not capable of being the subject of arbitration under (*enacting jurisdiction*) law;

(f) the applicant was not treated equally and fairly, was not given an opportunity to present a case or to respond to another party's case, or was not given proper notice of the arbitration or of the appointment of an arbitrator;

(g) the procedures followed in the arbitration did not comply with this Act;

(h) an arbitrator has committed a corrupt or fraudulent act or there is a reasonable apprehension of bias;

(i) the award was obtained by fraud.

(2) If clause (1)(c) applies and it is reasonable to separate the decisions on matters covered by the arbitration agreement from the impugned ones, the court shall set aside the impugned decisions and allow the others to stand.

(3) The court shall not set aside an award on grounds referred to in clause (1)(c) if the party has agreed to the inclusion of the dispute or matter, waived the right to object to its inclusion or agreed that the arbitral tribunal has power to decide what disputes have been referred to it.

(4) The court shall not set aside an award on grounds referred to in clause (1)(h) if the party had an opportunity to challenge the arbitrator on those grounds under section 13 before the award was made and did not do so, or if those grounds were the subject of an unsuccessful challenge.

(5) The court shall not set aside an award on a ground to which the applicant is deemed under section 4 to have waived the right to object.

(6) If the ground alleged for setting aside the award could have been raised as an objection to the arbitral tribunal's jurisdiction to conduct the arbitration or as an objection that the arbitral tribunal was exceeding its authority, the court may set the award aside on that ground if it considers the applicant's failure to make an objection in accordance with section 17 justified.

(7) When the court sets aside an award, it may remove the arbitral tribunal or an arbitrator and may give directions about the conduct of the arbitration.

(8) Instead of setting aside an award, the court may remit it to the arbitral tribunal and give directions about the conduct of the arbitration.

Commentary: The Act sets out all the grounds for what is in effect a judicial review of the application, to replace the present vague term "misconduct". The list of grounds is intended to give those involved in arbitration advance notice of things to be avoided. The grounds, stated broadly, include a fundamental flaw in the arbitration or in the composition of the tribunal and a fundamental departure from equal treatment or fair opportunity to put or meet a case.

The rights to have an award set aside are limited. If the party seeking to set the award aside has waived the objection under the provisions of the Act, or has raised a challenge earlier on the same ground and has failed, or has had the opportunity to raise the point and has not done so, then the award shall not be set aside. (Proposition 19(3)).

The Act specifies the power of the court when an award is set aside and allows the court to remit the award to the tribunal rather than setting it aside. (Proposition 19(5)).

Time limit

47.-(1) An appeal of an award or an application to set aside an award shall be commenced within thirty days after the appellant or applicant receives the award, correction, explanation, change or statement of reasons on which the appeal or application is based.

(2) Subsection (1) does not apply if the appellant or applicant alleges corruption or fraud.

Commentary: An appeal or an application to set aside must be brought within 30 days after receiving notice of the award, unless the appellant or applicant alleges corruption or fraud. This is intended to reduce uncertainty and permit speedy enforcement of the award. (ALRI Section 34(9))

Declaration of invalidity of arbitration

48.-(1) At any stage during or after an arbitration, on the application of a party who has not participated in the arbitration, the court may grant a declaration that the arbitration is invalid because,

(a) a party entered into the arbitration agreement while under a legal incapacity;

(b) the arbitration agreement is invalid or has ceased to exist;

(c) the subject-matter of the dispute is not capable be being the subject of arbitration under *(enacting jurisdiction)* law; or

(d) the arbitration agreement does not apply to the dispute.

(2) When the court grants the declaration, it may also grant an injunction against the commencement or continuation of the arbitration.

Commentary: A party who does not participate in the arbitration may seek a declaration from the court that the arbitration is invalid through a defect in the agreement or the subject matter. As the parties might have this option at common law, it seemed worthwhile to spell it out and limit it. Arbitrators cannot have ultimate authority to decide where the boundary is between an arbitration which has been agreed to and a legal nullity. Ultimate court intervention is necessary to keep arbitrations within arbitration agreements. This section would allow a person to have the court make this decision without having to participate in the arbitration that the person claims is void. (Proposition 19(2)).

Further appeal

49. An appeal from the court's decision in an appeal of an award, an application to set aside an award or an application for a declaration of invalidity may be made to the *(appellate court)*, with leave of that court.

Commentary: An appeal may be carried further, and the result of an application to set aside may be appealed, if the court of appeal gives leave. The parties are free to exclude this provision. (ALRI 34(10)).

Enforcement of award

50.-(1) A person who is entitled to enforcement of an award made in (*enacting jurisdiction*) or elsewhere in Canada may make an application to the court to that effect.

(2) The application shall be made on notice to the person against whom enforcement is sought, in accordance with the rules of court, and shall be supported by the original award or a certified copy.

(3) The court shall give a judgment enforcing an award made in (*enacting jurisdiction*) unless,

(a) the thirty-day period for commencing an appeal or an application to set the award aside has not yet elapsed;

(b) there is a pending appeal, application to set the award aside or application for a declaration of invalidity; or

(c) the award has been set aside or the arbitration is the subject of a declaration of invalidity.

(4) The court shall give a judgment enforcing an award made elsewhere in Canada unless,

(a) the period for commencing an appeal or an application to set the award aside provided by the laws of the province or territory where the award was made has not yet elapsed;

(b) there is a pending appeal, application to set the award aside or application for a declaration of invalidity in the province or territory where the award was made;

(c) the award has been set aside in the province or territory where it was made or the arbitration is the subject of a declaration of invalidity granted there; or

(d) the subject-matter of the award is not capable of being the subject of arbitration under (*enacting jurisdiction*) law.

(5) If the period for commencing an appeal, application to set the award aside or application for a declaration of invalidity has not yet elapsed, or if such a proceeding is pending, the court may,

(a) enforce the award; or

(b) order, on such conditions as are just, that enforcement of the award is stayed until the period has elapsed without such a proceeding being commenced, or until the pending proceeding is finally disposed of.

(6) If the court stays the enforcement of an award made in (*enacting jurisdiction*) until a pending proceeding is finally disposed of, it may give directions for the speedy disposition of the proceeding.

(7) If the award gives a remedy that the court does not have jurisdiction to grant or would not grant in a proceeding based on similar circumstances, the court may,

(a) grant a different remedy requested by the applicant; or

(b) in the case of an award made in *(enacting jurisdiction)*, remit it to the arbitral tribunal with the court's opinion, in which case the arbitral tribunal may award a different remedy.

(8) The court has the same powers with respect to the enforcement of awards as with respect to the enforcement of its own judgments.

Commentary: This section provides for enforcement of awards made within the jurisdiction or elsewhere in Canada. It is made on notice served according to the rules of court. The basic rule is that judgment will be given unless the award may still be appealed or set aside where it was made, or there is a pending appeal, application to set aside or application for declaration of invalidity. Where the award has in fact been set aside, reversed on appeal or declared a nullity, enforcement will of course not be given.

These rules apply to awards made within or outside the jurisdiction. For awards made outside the jurisdiction, a court within the jurisdiction may also refuse to enforce if the subject matter of the award is not capable of being the subject of arbitration under the enforcing jurisdic-

tion's law. Very few subjects are not capable of being the subject of arbitration under Canadian law.

This means that the award cannot be resisted on any ground outside the jurisdiction where it was made. This is different from the Model Law rules which permit a party to resist enforcement where enforcement is sought on the same grounds as the party could have used to set the award aside in the jurisdiction where the award was made. The principle behind the present section is that the losing party should have only one opportunity to attack the award, and the best place to exercise that opportunity is in the jurisdiction where it was made.

Even if the jurisdiction where the award was made does not yet have the Uniform Arbitration Act, its processes should be deemed to be just, because it is a Canadian jurisdiction.

Another consequence of this structure is that the party who has notice of an award must act within 30 days to appeal it, or to apply to set it aside, or to have it declared invalid if the party has not participated. The losing party cannot sit back and wait for an application to enforce. If the award is not attacked for 30 days after it is made, then its enforcement will in effect be automatic in every jurisdiction in the country (that adopts the Uniform Arbitration Act.)

This structure builds on what was discussed at Yellowknife but treats it in more detail.

If the award gives a remedy that the court does not have the jurisdiction to grant or would not grant in a proceeding based on similar circumstances, the court may grant a different remedy or remit the matter to the arbitral tribunal for a different remedy. This contemplates an award that the court would not enforce, though there might be no legal objection if the parties simply complied with the agreement. This point was discussed and agreed at Yellowknife.

The rest of the section is self-explanatory.

GENERAL

Crown bound

51. This Act binds the Crown.

Section 51: Self-explanatory. (Proposition (4)). The language does not restrict the Act to the Crown in right of the enacting jurisdiction, though

this would in most cases be the constitutional effect. One purpose in leaving the language open is to permit an argument to be made concerning arbitrations involving Crown agents or Crown corporations from another jurisdiction.

Limitation periods

52.-(1) The law with respect to limitation periods applies to an arbitration as if the arbitration were an action and a claim made in the arbitration were a cause of action.

(2) If the court sets aside an award, terminates an arbitration or declares an arbitration to be invalid, it may order that the period from the commencement of the arbitration to the date of the order shall be excluded from the computation of the time within which an action may be brought on a cause of action that was a claim in the arbitration.

(3) An application for enforcement of an award may not be made more than two years after the day on which the applicant receives the award.

Commentary: The Act makes clear for the first time that limitation periods apply to claims in arbitration as if the arbitration were an action. (Proposition 8(1)). In order to encourage people to arbitrate their claims, subsection 2 provides that if a court sets aside an award or otherwise ends an arbitration, it may exclude the period spent in arbitration from the computation of the limitation period. This prevents the parties from being prejudiced in their ultimate right to bring an action by having gone to arbitration first. (Proposition 8(2)). In any event, the other party to litigation is not prejudiced by the lapse of time spent on arbitration. The remedy is discretionary, so the respondent would have a chance to persuade the court that it would be unfair to allow the extra time.

A party winning an arbitration must apply to enforce an award within two years from receiving the award. This is intended to encourage the parties to exercise their rights within a reasonable time, once they are made definite by the award. (Proposition 8(3)).

The drafters of this Act and their correspondents in Alberta and British Columbia felt that these provisions should be in the Uniform Arbitration Act rather than in the Uniform Limitation Act.

APPENDIX A

Service of notice

53.-(1) A notice or other document may be served on an individual by leaving it with him or her.

(2) A notice or other document may be served on a corporation by leaving it with an officer, director or agent of the corporation, or at a place of business of the corporation with a person who appears to be in control or management of the place.

(3) A notice or other document may be served by sending it to the addressee by telephone transmission of a facsimile to the number that the addressee specified in the arbitration agreement or has furnished to the arbitral tribunal.

(4) If a reasonable effort to serve a notice or other document under subsection (1), or (2) is not successful and it is not possible to serve it under subsection (3), it may be sent by prepaid registered mail to the mailing address that the addressee specified in the arbitration agreement or furnished to the arbitral tribunal or, if none was specified or furnished, to the addressee's last-known place of business or residence.

(5) Unless the addressee establishes that the addressee, acting in good faith, through absence, illness or other cause beyond the addressee's control failed to receive the notice or other document until a later date, it is deemed to have been received,

(a) on the day it is given or transmitted, in the case of Service under subsection (1), (2) or (3);

(b) on the fifth day after the day of mailing, in the case of service under subsection (4).

(6) The court way make an order for substituted service or an order dispensing with service, in the same manner as under the rules of court, if the court is satisfied that it is necessary to serve the notice or other document to commence an arbitration or proceed towards the appointment of an arbitral tribunal and that it is impractical for any reason to effect prompt service under subsection (1), (2), (3) or (4).

(7) This section does not apply to the service of documents in respect of court proceedings.

Commentary: The service provisions are intended to have the same effect as service under the rules of court. The enacting jurisdiction should consider whether it is content with this formulation. The rules of court are, however, extended by section 53(3), which allow an originating notice to be served by facsimile transmission, if the parties have acquiesced by providing a facsimile number in the arbitration agreement, or have otherwise made it available in the context of the arbitration. The parties to an arbitration, because of the agreement, have a pre-existing relationship which justifies this method of service even at the outset while the parties to a lawsuit may have no such existing connection.

Costs

54.-(1) An arbitral tribunal may award the costs of an arbitration.

(2) The arbitral tribunal may award all or part of the costs of an arbitration on a solicitor and client basis, a party and party basis or any other basis if it does not specify the basis, the costs shall be determined on a party and party basis.

(3) The costs of an arbitration consist of the parties' legal expenses, the fees and expenses of the arbitral tribunal and any other expenses related to the arbitration.

(4) If the arbitral tribunal does not deal with costs in an award, a party may, within thirty days of receiving the award, request that it make a further award dealing with costs.

(5) In the absence of an award dealing with costs, each party is responsible for the party's own legal expenses and for an equal share of the fees and expenses of the arbitral tribunal and of any other expenses related to the arbitration.

(6) If a party makes an offer to another party to settle the dispute or part of the dispute, the offer is not accepted and the arbitral tribunal's award is no more favourable to the second-named party than was the offer, the arbitral tribunal may take the fact into account in awarding costs in respect of the period from the making of the offer to the making of the award.

(7) The fact that an offer to settle has been made shall not be communicated to the arbitral tribunal until it has made a final determination of all aspects of the dispute other than costs.

Commentary: The tribunal may award costs, which consist of legal fees, the fees and expenses of the tribunal, and any other expenses. In the absence of an award dealing with costs, each party is responsible for the party's own legal expenses and for an equal share of the fees and expenses of the arbitral tribunal. The arbitral tribunal may take into account any offer to settle, in a fashion similar to that provided under the rules of court of some jurisdictions. (Proposition 17(13)).

Arbitrator's fees and expenses

55. The fees and expenses paid to an arbitrator shall not exceed the fair value of the services performed and the necessary and reasonable expenses actually incurred.

Commentary: This is a "default" rule on arbitrators' fees and expenses, which the parties may override by specific provisions for fees. It sets a standard that can be applied by a taxing officer in the appropriate case. (ALRI s.37(l)).

Taxation of costs, fees and expenses

56.-(1) A party to an arbitration may have an arbitrator's account for fees and expenses taxed by a taxing officer in the same manner as a solicitor's bill under *(appropriate statute).*

(2) If an arbitral tribunal awards costs and directs that they be taxed, or awards costs without fixing the amount or indicating how it is to be ascertained, a party to the arbitration may have the costs taxed by a taxing officer in the same manner as costs under the rules of court.

(3) In assessing the part of the costs represented by the fees and expenses of the arbitral tribunal, the taxing officer shall apply the same principles as in the taxation of an account under subsection (1).

(4) Subsection (1) applies even if the account has been paid.

(5) On the application of a party to the arbitration, the court may review a taxation of costs or of an arbitrator's account for fees and expenses and may confirm the taxation, vary it, set it aside or remit it to the taxing officer with directions.

(6) On the application of an arbitrator, the court may review a taxation of his or her account for fees and expenses and may confirm the taxation, vary it, set it aside or remit it to the taxing officer with directions.

(7) The application for review may not be made after the period specified in the taxing officer's certificate has elapsed or, if no period is specified, more than thirty days after the date of the certificate, unless the court orders otherwise.

(8) When the time during which an application for review may be made has expired and no application has been made, or when court has reviewed the taxation and made a final determination, the certificate may be filed with the court and enforced as if it were a judgment of the court.

Commentary: The taxation of fees is carried out in the same way as the taxation of costs in a court action, with the difference that the part of the costs represented by the fees and expenses of the arbitral tribunal are taxed like a solicitor's bill rather than as legal costs in litigation.

The court may review the taxation of an account and may vary it, set it aside or remit it if it chooses not to confirm the taxation. A certificate of taxation may be enforced as if it were a judgment of the court, once it is final or approved on appeal.(ALRI s. 37)

The intention of sections 54 through 56 is that each jurisdiction should amend its statutes or rules with the following effect:

(a) arbitrators may award costs;

(b) arbitrators may determine the basis of costs, whether party-party, solicitor and client, or other;

(c) in default of such determination, costs are to be awarded as party-party costs;

(d) the party in whose favour they are awarded may have them taxed in the same way as costs in an action.

Interest

57. *(Each jurisdiction should give arbitral tribunals power to order the payment of "pre-award" interest in the same manner as courts may order pre-judgment interest, and should provide that awards bear interest in the same manner as judgments.)*

Commentary: Proposition 17(13), adopted at Yellowknife, provided that an arbitral tribunal may award interest, including prejudgment interest. Since the methods used to effect this end vary considerably across Canada, the Uniform Act makes reference to the principle rather than attempting to prescribe specific language.

APPENDICE A

(voir page 36)

LOI UNIFORME SUR L'ARBITRAGE

Tables des matières

QUESTIONS PRÉLIMINAIRES

1. Définitions 125
2. Application de la Loi 125
3. Exclusion de dispositions 125
4. Renonciation au droit d'objection 126
5. Convention d'arbitrage 126

INTERVENTION DU TRIBUNAL JUDICIAIRE

6. Intervention limitée du tribunal judiciaire 126
7. Sursis 126
8. Pouvoirs du tribunal judiciaire 127

COMPOSITION DU TRIBUNAL ARBITRAL

9. Nombre d'arbitres 128
10. Désignation du tribunal arbitral 128
11. Obligations de l'arbitre 129
12. Révocation impossible 129
13. Récusation 129
14. Fin du mandat de l'arbitre 130
15. Révocation de l'arbitre par le tribunal judiciaire 130
16. Désignation d'un arbitre remplaçant 131

COMPÉTENCE DU TRIBUNAL ARBITRAL

17. Compétence, objections 132
18. Garde, conservation et examen de biens et de documents 133

CONDUITE DE L'ARBITRAGE

19. Égalité et équité 133
20. Procédure 133
21. Preuves 133
22. Date, heure et lieu de l'arbitrage et réunions 133
23. Début de l'arbitrage 134
24. Questions soumises à l'arbitrage 134
25. Directives en matière de procédure 134
26. Procédure orale et procédure écrite 135
27. Défaut 135
28. Nomination d'un expert 136
29. Obtention de preuves 136
30. Restriction 137

SENTENCES ET CLÔTURE DE L'ARBITRAGE

31. Application de la loi et de l'equity 137
32. Conflit de lois 137
33. Application de la convention d'arbitrage, du contrat et des usages du commerce 137
34. Décision du tribunal arbitral 137
35. Médiation et conciliation 138
36. Règlement 138
37. Caractère obligatoire de la sentence 138
38. Forme de la sentence 138
39. Prorogation du délai 138
40. Explications 138
41. Sentences provisoires 139
42. Plus d'une sentence définitive 139
43. Clôture de l'arbitrage 139
44. Corrections 140

RECOURS

45. Appel 140
46. Annulation de la sentence 141
47. Délai 142
48. Déclaration de nullité de l'arbitrage 143
49. Nouvel appel 143
50. Exécution de la sentence 143

DISPOSITIONS GÉNÉRALES

51. Couronne liée 145
52. Délais de prescription 145
53. Signification d'avis 145
54. Dépens 146
55. Honoraires et frais de l'arbitre 147
56. Liquidation des dépens, frais et honoraires 147
57. Intérêts 148

APPENDICE A

QUESTIONS PRÉLIMINAIRES

Définitions

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

«arbitre» S'entend en outre d'un surarbitre. («arbitrator»)

«convention d'arbitrage» Convention par laquelle plusieurs personnes conviennent de soumettre à l'arbitrage un différend survenu ou susceptible de survenir entre elles. («arbitration agreement»)

«tribunal judiciaire» Sauf aux articles 6 et 7, s'entend du (*tribunal judiciaire compétent*). («court»)

Application de la Loi

2 (1) La présente loi s'applique à tout arbitrage effectué en vertu d'une convention d'arbitrage à moins que, selon le cas:

a) l'application de la présente loi ne soit exclue de par la convention ou de par la loi;

b) la partie II de la *Loi uniforme sur l'arbitrage commerciale international* ne s'applique à l'arbitrage.

(2) La présente loi s'applique, avec les adaptations nécessaires, aux arbitrages effectués conformément à une autre loi, sauf disposition contraire de cette loi. Toutefois, en cas de conflit entre la présente loi et l'autre loi ou les règlements pris en application de cette dernière, l'autre loi ou les règlements l'emportent.

Exclusion de dispositions

3 Les parties à une convention d'arbitrage peuvent convenir, expressément ou implicitement, de modifier ou d'exclure une disposition de la présente loi, à l'exception de celles qui suivent :

a) le paragraphe 5 (4) (clauses du type «*Scott* c. *Avery*»);

b) l'article 19 (égalité et équité);

c) l'article 39 (prorogation du délai);

d) le paragraphe 45 (1) (appel sur une question de droit);

e) l'article 46 (annulation de la sentence);

f) l'article 48 (déclaration de nullité de l'arbitrage);

g) l'article 50 (exécution de la sentence).

Renonciation au droit d'objection

4 Est réputée avoir renoncé à son droit d'objection la partie qui, tout en sachant qu'une disposition de la présente loi, à l'exclusion d'une disposition mentionnée à l'article 3, ou la convention d'arbitrage n'est pas respectée, participe à un arbitrage sans s'opposer à ce non-respect dans le délai prévu ou, s'il n'est pas prévu de délai, dans un délai raisonnable.

Convention d'arbitrage

5 (1) La convention d'arbitrage peut constituer une convention distincte ou faire partie d'une autre convention.

(2) Si les parties à une convention d'arbitrage concluent une autre convention relativement à l'arbitrage, celle-ci est réputée faire partie de la convention d'arbitrage.

(3) Il n'est pas nécessaire que la convention d'arbitrage soit sous forme écrite.

(4) La convention qui exige ou qui a pour effet d'exiger qu'une question soit tranchée par la voie arbitrale avant de pouvoir être portée devant un tribunal judiciaire a le même effet qu'une convention d'arbitrage.

(5) La convention d'arbitrage ne peut être révoquée que conformément aux règles ordinaires du droit des obligations.

INTERVENTION DU TRIBUNAL JUDICIAIRE

Intervention limitée du tribunal judiciaire

6 Aucun tribunal judiciaire ne doit intervenir dans les questions régies par la présente loi, sauf dans les cas prévus par celle-ci.

Sursis

7 (1) Si une partie à une convention d'arbitrage introduit une instance à l'égard d'une question que la convention oblige à soumettre à l'arbitrage, le tribunal judiciaire devant lequel l'instance est introduite doit, sur la motion d'une autre partie à la convention d'arbitrage, surseoir à l'instance.

(2) Cependant, le tribunal judiciaire peut refuser de surseoir à l'instance dans l'un ou l'autre des cas suivants :

a) une partie a conclu la convention d'arbitrage alors qu'elle était frappée d'incapacité juridique;

b) la convention d'arbitrage est nulle;

c) l'objet du différend ne peut faire l'objet d'un arbitrage aux termes des lois de (*province ou territoire qui légifère)*);

d) la motion a été présentée avec un retard indû;

e) la question est propre à un jugement par défaut ou à un jugement sommaire.

(3) L'arbitrage du différend peut être engagé et poursuivi pendant que la motion est devant le tribunal judiciaire.

(4) Si le tribunal judiciaire refuse de surseoir à l'instance:

a) d'une part, aucun arbitrage du différend ne peut être engagé;

b) d'autre part, l'arbitrage qui a été engagé ne peut être poursuivi, et tout ce qui a été fait dans le cadre de l'arbitrage avant que le tribunal judiciaire ne rende sa décision est sans effet.

(5) Le tribunal judiciaire peut surseoir à l'instance en ce qui touche les questions traitées dans la convention d'arbitrage et permettre qu'elle se poursuive en ce qui touche les autres questions, s'il constate:

a) d'une part, que la convention ne traite que de certaines des questions à l'égard desquelles l'instance a été introduite;

b) d'autre part, qu'il est raisonnable de dissocier les questions traitées dans la convention des autres questions.

(6) La décision du tribunal judiciaire n'est pas susceptible d'appel.

Pouvoirs du tribunal judiciaire

8 (1) Les pouvoirs du tribunal judiciaire en ce qui concerne la garde, la conservation et l'examen des biens, les injonctions provisoires et la nomination de séquestres sont les mêmes dans le cas d'arbitrages que dans le cas d'actions en justice.

(2) Le tribunal arbitral peut statuer sur toute question de droit qui est soulevée au cours de l'arbitrage. Le tribunal judiciaire peut également le faire à la requête du tribunal arbitral, ou à la requête d'une partie, si les autres parties ou le tribunal arbitral y consentent.

(3) La décision du tribunal judiciaire sur une question de droit peut faire l'objet d'un appel devant le (*tribunal d'appel*), sur autorisation de celle-ci.

(4) À la requête de toutes les parties à plusieurs arbitrages, le tribunal judiciaire peut ordonner, selon le cas et aux conditions qui sont justes :

a) que les arbitrages soient joints;

b) que les arbitrages soient effectués simultanément ou consécutivement;

c) qu'il soit sursis à l'un des arbitrages jusqu'à ce que l'un ou l'autre des arbitrages soit terminé.

(5) Si le tribunal judiciaire ordonne la jonction d'arbitrages, il peut désigner un tribunal arbitral pour effectuer les arbitrages joints. Si toutes les parties s'entendent sur le choix du tribunal arbitral, le tribunal judiciaire doit le désigner.

(6) Le paragraphe (4) n'a pas pour effet d'empêcher les parties à plus d'un arbitrage de s'entendre pour joindre les arbitrages et de prendre toutes les mesures nécessaires à cette fin.

COMPOSITION DU TRIBUNAL ARBITRAL

Nombre d'arbitres

9 Si la convention d'arbitrage ne précise pas le nombre d'arbitres qui doivent former le tribunal arbitral, celui-ci se compose d'un seul arbitre.

Désignation du tribunal arbitral

10 (1) Le tribunal judiciaire peut désigner le tribunal arbitral, à la requête d'une partie, dans les cas suivants :

a) la convention d'arbitrage ne prévoit aucune procédure de désignation du tribunal arbitral;

b) une personne investie du pouvoir de désigner le tribunal arbitral n'a pas procédé à sa désignation après la remise par une partie d'un préavis de sept jours à cette fin.

(2) La désignation du tribunal arbitral par le tribunal judiciaire n'est pas susceptible d'appel.

(3) Les paragraphes (1) et (2) s'appliquent, avec les adaptations nécessaires, à la désignation de chacun des membres des tribunaux arbitraux qui comprennent plus d'un arbitre.

(4) Si le tribunal arbitral se compose d'au moins trois arbitres, ceux-ci doivent élire un président choisi parmi eux. S'il se compose de deux arbitres, ces derniers peuvent le faire.

Obligations de l'arbitre

11 (1) L'arbitre doit être indépendant des parties et agir en toute impartialité.

(2) Avant d'accepter sa désignation comme arbitre, la personne désignée doit communiquer à toutes les parties à l'arbitrage toutes les circonstances dont elle a connaissance qui pourraient susciter des craintes raisonnables de partialité.

(3) L'arbitre qui, au cours d'un arbitrage, apprend l'existence de circonstances pouvant susciter des craintes raisonnables de partialité les communique promptement à toutes les parties.

Révocation impossible

12 Une partie ne peut révoquer la désignation d'un arbitre.

Récusation

13 (1) Une partie ne peut récuser un arbitre que pour l'un des motifs suivants :

a) il existe des circonstances qui peuvent susciter des craintes raisonnables de partialité;

b) l'arbitre ne possède pas les compétences nécessaires dont sont convenues les parties.

(2) Une partie ne peut récuser l'arbitre qu'elle a désigné ou à la désignation duquel elle a participé que pour des motifs dont elle ignorait l'existence au moment de la désignation.

(3) La partie qui veut récuser un arbitre envoie au tribunal arbitral un énoncé des motifs de la récusation, dans les quinze jours de la date où elle en a appris l'existence.

(4) Les autres parties peuvent convenir de révoquer l'arbitre récusé, ou ce dernier peut démissionner.

(5) Si l'arbitre récusé n'est pas révoqué par les parties et ne démissionne pas, le tribunal arbitral, y compris l'arbitre récusé, tranche le litige et avise les parties de sa décision.

(6) Dans les dix jours de la date où elle a reçu avis de la décision du tribunal arbitral, une partie peut présenter une requête au tribunal judiciaire pour qu'il tranche le litige et, dans le cas de la partie récusante, pour qu'il révoque l'arbitre.

(7) En attendant qu'il soit statué sur la requête, le tribunal arbitral, y compris l'arbitre récusé, peut poursuivre l'arbitrage et rendre une sentence, à moins que le tribunal judiciaire n'en ordonne autrement.

Fin du mandat de l'arbitre

14 (1) Le mandat d'un arbitre prend fin dans les cas suivants:

a) l'arbitre démissionne ou décède;

b) les parties conviennent d'y mettre fin;

c) le tribunal arbitral maintient une récusation de l'arbitre, il s'écoule dix jours après que toutes les parties ont été avisées de la décision et aucune requête n'est présentée au tribunal judiciaire;

d) le tribunal judiciaire révoque l'arbitre aux termes du paragraphe 15 (1).

(2) Le fait qu'un arbitre démissionne ou qu'une partie accepte de mettre fin au mandat d'un arbitre n'implique pas que les motifs avancés pour le récuser ou le révoquer sont considérés comme valides.

Révocation de l'arbitre par le tribunal judiciaire

15 (1) Le tribunal judiciaire peut révoquer un arbitre à la requête d'une partie présentée aux termes du paragraphe 13 (6) (récusation). Il peut également le révoquer à la requête d'une partie si l'arbitre n'est plus en mesure d'exercer ses fonctions, commet un acte vénal ou frauduleux, tarde indûment à effectuer l'arbitrage ou ne l'effectue pas conformément à l'article 19 (égalité et équité).

(2) L'arbitre a le droit d'être entendu par le tribunal judiciaire si la requête est fondée sur l'allégation selon laquelle il a commis un acte vénal ou frauduleux, ou a tardé indûment à effectuer l'arbitrage.

(3) Lorsqu'il révoque un arbitre, le tribunal judiciaire peut donner des directives touchant la conduite de l'arbitrage.

(4) Si le tribunal judiciaire révoque un arbitre pour avoir commis un acte vénal ou frauduleux, ou pour un retard indû, il peut interdire qu'une rémunération lui soit versée en contrepartie de ses services et lui ordonner de dédommager les parties pour tout ou partie des frais, selon la décision du tribunal judiciaire, qu'elles ont engagés relativement à l'arbitrage avant sa révocation.

(5) L'arbitre ou une partie peut, dans les trente jours de la date où ils ont reçu la décision du tribunal judiciaire, faire appel devant le (*tribunal d'appel*), sur autorisation de ce tribunal, d'une ordonnance rendue aux termes du paragraphe (4) ou du refus de rendre une telle ordonnance.

(6) Sauf disposition contraire du paragraphe (5), ni la décision ni les directives du tribunal judiciaire ne sont susceptibles d'appel.

Désignation d'un arbitre remplaçant

16 (1) Lorsque le mandat d'un arbitre prend fin, un arbitre remplaçant est désigné selon la procédure qui a été suivie pour la désignation de l'arbitre remplacé.

(2) Lorsque le mandat de l'arbitre prend fin, le tribunal judiciaire peut, à la requête d'une partie, donner des directives touchant la conduite de l'arbitrage.

(3) Le tribunal judiciaire peut désigner l'arbitre remplaçant, à la requête d'une partie, dans les cas suivants :

a) la convention d'arbitrage ne prévoit aucune procédure de désignation de l'arbitre remplaçant;

b) la personne investie du pouvoir de désigner l'arbitre remplaçant n'a pas procédé à sa désignation après la remise par une partie d'un préavis de sept jours à cette fin.

(4) Ni la décision ni les directives du tribunal judiciaire ne sont susceptibles d'appel.

(5) Le présent article ne s'applique pas si la convention d'arbitrage prévoit que l'arbitrage ne doit être effectué que par un arbitre donné.

COMPÉTENCE DU TRIBUNAL ARBITRAL

Compétence, objections

17 (1) Le tribunal arbitral peut statuer sur sa propre compétence en matière de conduite de l'arbitrage et peut, à cet égard, statuer sur les objectives relatives à l'existence ou à la validité de la convention d'arbitrage.

(2) La convention d'arbitrage qui fait partie d'une autre convention est considérée, aux fins d'une décision sur la compétence, comme une convention distincte pouvant subsister même si la convention principale est déclarée nulle.

(3) Une partie qui a une objection touchant la compétence du tribunal arbitral en matière de conduite de l'arbitrage doit la présenter au plus tard au début de l'audience ou, en l'absence d'audience, au plus tard à la première occasion à laquelle la partie soumet une déclaration au tribunal arbitral.

(4) Le fait qu'une partie ait désigné un arbitre ou participé à sa désignation ne l'empêche pas de présenter une objection touchant sa compétence.

(5) Une partie qui a une objection selon laquelle le tribunal arbitral outrepasse ses pouvoirs la présente dès que la question qui est prétendue constituer un abus de pouvoir du tribunal judiciaire est soulevée pendant l'arbitrage.

(6) Malgré l'article 4, une partie peut présenter une objection une fois expiré le délai visé au paragraphe (3) ou (5), selon le cas, si le tribunal arbitral estime le retard justifié.

(7) Le tribunal arbitral peut statuer sur une objection en la traitant comme une question préalable ou peut en traiter dans une sentence.

(8) Si le tribunal arbitral statue sur une objection en la traitant comme une question préalable, une partie peut, dans les trente jours de la date où elle a reçu avis de la décision, présenter une requête au tribunal judiciaire pour qu'il rende une décision sur la question.

(9) La décision du tribunal judiciaire n'est pas susceptible d'appel.

(10) En attendant qu'il soit statué sur une requête, le tribunal arbitral peut poursuivre l'arbitrage et rendre une sentence.

Garde, conservation et examen de biens et de documents

18 (1) À la demande d'une partie, le tribunal arbitral peut rendre une ordonnance portant sur la garde, la conservation ou l'examen des biens et des documents qui font l'objet de l'arbitrage ou à l'égard desquels une question peut être soulevée au cours de l'arbitrage. Il peut aussi ordonner à une partie de fournir un cautionnement à cet égard.

(2) Le tribunal judiciaire peut exécuter la directive d'un tribunal arbitral comme s'il s'agissait d'une directive similaire donnée par le tribunal judiciaire dans une action.

CONDUITE DE L'ARBITRAGE

Égalité et équité

19 (1) Au cours de l'arbitrage, les parties sont traitées sur un pied d'égalité et avec équité.

(2) Chaque partie doit avoir la possibilité de présenter son exposé des faits et de répliquer à ceux des autres parties.

Procédure

20 (1) Le tribunal arbitral peut déterminer la procédure à suivre au cours de l'arbitrage, conformément à la présente loi.

(2) Le tribunal arbitral qui est composé de plus d'un arbitre peut déléguer au président la détermination des questions de procédure.

Preuves

21 (1) Au cours de l'arbitrage, l'arbitre admet toutes les preuves qui seraient admissibles devant un tribunal judiciaire et peut également admettre d'autres preuves qu'il estime pertinentes aux questions en litige.

(2) L'arbitre peut déterminer la manière dont les preuves doivent être admises.

Date, heure et lieu de l'arbitrage et réunions

22 (1) Le tribunal arbitral décide de la date, de l'heure et du lieu de l'arbitrage, en tenant compte des convenances des parties et des autres circonstances de l'affaire.

(2) Le tribunal arbitral peut se réunir à tout endroit qu'il juge approprié pour la tenue de consultations entre ses membres,

pour l'audition des témoins, des experts ou des parties, ou pour l'examen de biens ou de documents.

Début de l'arbitrage

23 (1) L'arbitrage peut être engagé de quelque manière reconnue par la loi, y compris les suivantes:

a) une partie à une convention d'arbitrage signifie aux autres parties un avis leur enjoignant de désigner un arbitre ou de participer à sa désignation aux termes de la convention;

b) si la convention d'arbitrage confère à une personne qui n'est pas une partie le pouvoir de désigner un arbitre, une partie signifie à cette personne un avis lui enjoignant d'exercer ce pouvoir et signifie une copie de l'avis aux autres parties;

c) une partie signifie aux autres parties un avis par lequel elle demande la tenue d'un arbitrage aux termes de la convention.

(2) Le tribunal arbitral peut exercer ses pouvoirs une fois que chacun des membres a accepté sa désignation.

Questions soumises à l'arbitrage

24 L'avis qui introduit une procédure d'arbitrage sans préciser la nature du différend est réputé soumettre à l'arbitrage tous les différends que la convention d'arbitrage autorise la partie qui signifie l'avis à soumettre.

Directives en matière de procédure

25 (1) Le tribunal arbitral peut exiger des parties qu'elles soumettent leur déclaration dans un délai précis.

(2) Dans leur déclaration, les parties énoncent les faits à l'appui de leur point de vue, les points litigieux et le redressement demandé.

(3) Les parties peuvent soumettre avec leur déclaration les documents qu'elles jugent pertinents ou y faire mention des documents ou autres preuves qu'elles comptent soumettre.

(4) Les parties peuvent modifier ou compléter leur déclaration au cours de l'arbitrage. Toutefois, le tribunal arbitral peut rejeter tout changement présenté avec un retard indû.

(5) Sur autorisation du tribunal arbitral, les parties peuvent soumettre leur déclaration oralement.

(6) Les parties et leurs ayants droit doivent, sous réserve de toute objection légale, se conformer aux directives du tribunal arbitral, y compris celles voulant :

a) qu'elles se soumettent à un interrogatoire sous serment ou sous déclaration solennelle relativement au différend;

b) qu'elles produisent des dossiers et des documents qui sont en leur possession ou sous leur garde.

(7) Le tribunal judiciaire peut exécuter la directive d'un tribunal arbitral comme s'il s'agissait d'une directive similaire donnée par le tribunal judiciaire dans une action.

Procédure orale et procédure écrite

26 (1) Le tribunal arbitral peut effectuer l'arbitrage en se fondant sur des documents ou tenir des audiences aux fins de la production de preuves et de la plaidoirie. Toutefois, si une partie en fait la demande, le tribunal arbitral doit tenir une audience.

(2) Le tribunal arbitral donne aux parties un préavis suffisant de ses audiences et de ses réunions aux fins de l'examen de biens ou de documents.

(3) Toute partie qui soumet une déclaration au tribunal arbitral ou lui fournit d'autres renseignements les communique également aux autres parties.

(4) Le tribunal arbitral communique aux parties tous les rapports d'expert ou autres documents sur lesquels il peut s'appuyer pour rendre une décision.

Défaut

27 (1) Si la partie qui a introduit la procédure d'arbitrage ne soumet pas de déclaration dans le délai précisé en vertu du paragraphe 25 (1), le tribunal arbitral peut, à moins que la partie ne fournisse une explication satisfaisante, rendre une sentence qui rejette la demande.

(2) Si une partie autre que celle qui a introduit l'arbitrage ne soumet pas de déclaration dans le délai précisé en vertu du paragrahe 25 (1), le tribunal arbitral peut, à moins que la partie ne fournisse une explication satisfaisante, poursuivre l'arbitrage. Cependant, il ne doit pas considérer le fait qu'il ne soit pas soumis de déclaration comme une reconnaissance des allégations d'une autre partie.

(3) Si une partie ne comparaît pas à une audience ou ne produit pas de preuves documentaires, le tribunal arbitral peut, à moins que la partie ne fournisse une explication satisfaisante, poursuivre l'arbitrage et rendre une sentence en se fondant sur les preuves dont il dispose.

(4) En cas de retard de la partie qui a introduit la procédure d'arbitrage, le tribunal arbitral peut rendre une sentence qui rejette la demande ou donner des directives en vue d'une résolution expéditive de l'arbitrage, et peut assortir sa décision de conditions.

(5) Si la procédure d'arbitrage a été introduite conjointement par toutes les parties, les paragraphes (2) et (3) s'appliquent, avec les adaptations nécessaires, mais les paragraphes (1) et (4) ne s'appliquent pas.

Nomination d'un expert

28 (1) Le tribunal artibral peut nommer un expert chargé de lui faire rapport sur des questions précises.

(2) Le tribunal arbitral peut exiger des parties qu'elles fournissent à l'expert tous renseignements pertinents ou qu'elles permettent à ce dernier d'examiner des biens ou des documents.

(3) À la demande d'une partie ou du tribunal arbitral, l'expert, après avoir préparé son rapport, participe à une audience au cours de laquelle les parties peuvent l'interroger et présenter le témoignage d'un autre expert sur l'objet du rapport.

Obtention de preuves

29 (1) Une partie peut signifier à une personne un avis exigeant qu'elle comparaisse à l'arbitrage et qu'elle y témoigne aux date, heure et lieu indiqués dans l'avis.

(2) L'avis a la même valeur qu'un avis donné dans une instance judiciaire qui exige d'un témoin qu'il comparaisse à une audience ou produise des documents, et est signifié de la même manière.

(3) Un tribunal arbitral a le pouvoir de faire prêter serment ou de recevoir des déclarations solennelles et celui d'exiger d'un témoin qu'il témoigne sous serment ou sous déclaration solennelle.

(4) À la requête d'une partie ou du tribunal arbitral, le tribunal judiciaire peut rendre des ordonnances et donner des directives concernant l'obtention de preuves dans le cadre d'un arbitrage, comme si l'arbitrage constituait une instance judiciaire.

Restriction

30 Nul ne doit être contraint, au cours d'un arbitrage, de fournir ou de produire des renseignements, des biens, des documents ou un témoignage qu'il ne pourrait être contraint de fournir ou de produire dans une instance judiciaire.

SENTENCES ET CLÔTURE DE L'ARBITRAGE

Application de la loi et de l'equity

31 Le tribunal arbitral tranche le différend conformément à la loi, et notamment selon l'equity, et peut ordonner des exécutions en nature, prononcer des injonctions et ordonner d'autres redressements reconnus en equity.

Conflit de lois

32 (1) Pour trancher un différend, le tribunal arbitral applique les règles de droit désignées par les parties ou, si elles n'en ont pas désigné, les règles de droit qu'il juge appropriées dans les circonstances.

(2) Toute désignation de la loi d'une autorité législative par les parties vise ses règles juridiques de fond et non ses règles de conflit de lois, à moins que les parties n'indiquent expressément que la désignation les comprend également.

Application de la convention d'arbitrage, du contrat et des usages du commerce

33 Le tribunal arbitral tranche le différend conformément à la convention d'arbitrage et au contrat, s'il en est, dans le cadre desquels le différend est survenu, et tient également compte de tout usage du commerce applicable.

Décision du tribunal arbitral

34 Si le tribunal arbitral comporte plus d'un membre, une décision prise à la majorité des membres constitue la décision du tribunal arbitral. Toutefois, s'il n'y a pas de décision prise à la majorité ou de décision unanime, c'est la décision du président qui l'emporte.

Médiation et conciliation

35 (*Chaque compétence territoriale doit choisir entre l'option A ou l'option B.*)

Option A

Les membres du tribunal arbitral peuvent, si les parties y consentent, user, durant l'arbitrage, de techniques de médiation et de conciliation, ainsi que de techniques similaires en vue de favoriser un règlement du différend, et peuvent par la suite reprendre leur rôle d'arbitres sans être frappés d'inhabilité.

Option B

Les membres du tribunal arbitral n'usent pas de techniques de médiation, de conciliation ni d'autres techniques similaires durant l'arbitrage.

Règlement

36 Si les parties règlent le différend durant l'arbitrage, le tribunal arbitral met fin à l'arbitrage et, si une partie en fait la demande et que le tribunal arbitral n'y voit pas d'objection, peut constater le règlement par une sentence.

Caractère obligatoire de la sentence

37 La sentence lie les parties, à moins qu'elle ne soit annulée ou modifiée en vertu de l'article 45 ou 46 (appel, annulation d'une sentence).

Forme de la sentence

38 (1) La sentence est rendue sous forme écrite et, sauf s'il s'agit d'une sentence rendue par accord des parties, est motivée.

(2) La sentence indique le lieu et la date où elle a été rendue.

(3) La sentence est datée et signée par tous les membres du tribunal arbitral, ou par la majorité d'entre eux à condition que soit fournie la raison de l'omission des autres signatures.

(4) Une copie de la sentence est remise à chaque partie.

Prorogation de délai

39 Le tribunal judiciaire peut proroger le délai dans lequel le tribunal arbitral est tenu de rendre une sentence, même si ce délai a expiré.

Explications

40 (1) Une partie peut, dans les trente jours de la date où une

sentence lui a été communiquée, demander que le tribunal arbitral donne des explications sur un point quelconque.

(2) Si le tribunal arbitral ne donne pas d'explications dans les quinze jours de la réception de la demande, le tribunal judiciaire peut, à la requête de la partie, lui ordonner de le faire.

Sentences provisoires

41 Le tribunal arbitral peut rendre une ou plusieurs sentences provisoires.

Plus d'une sentence définitive

42 Le tribunal arbitral peut rendre plus d'une sentence définitive et trancher une ou plusieurs questions soumises à l'arbitrage dans chaque sentence.

Clôture de l'arbitrage

43 (1) L'arbitrage prend fin dans les circonstances suivantes :

a) le tribunal arbitral rend une sentence définitive conformément à la présente loi, par laquelle sont tranchées toutes les questions soumises à l'arbitrage;

b) le tribunal arbitral met fin à l'arbitrage aux termes du paragraphe (2), (3), 27 (1) (cas où le demandeur ne soumet pas de déclaration) ou 27 (4) (retard);

c) le mandat d'un arbitre prend fin, si la convention d'arbitrage prévoit que l'arbitrage ne doit être effectué que par cet arbitre.

(2) Le tribunal arbitral rend une ordonnance mettant fin à l'arbitrage si le demandeur retire sa demande, à moins que le défendeur ne s'oppose à la clôture de l'arbitrage et que le tribunal arbitral ne convienne que le défendeur a droit à un règlement définitif du différend.

(3) Le tribunal arbitral rend une ordonnance qui met fin à l'arbitrage dans les cas suivants :

a) les parties conviennent qu'il faut clore l'arbitrage;

b) le tribunal arbitral estime que la poursuite de l'arbitrage s'avère superflue ou impossible.

(4) L'arbitrage peut être repris pour l'application de l'article 44 (corrections) ou du paragraphe 45 (5) (appel), 46 (7), 46 (8) (annulation d'une sentence) ou 54 (3) (dépens).

(5) Le décès d'une partie ne met fin à l'arbitrage qu'en ce qui concerne les demandes qui s'éteignent par suite du décès.

Corrections

44 (1) Le tribunal arbitral peut, de son propre chef, dans les trente jours suivant le prononcé de la sentence ou à la demande d'une partie présentée dans les trente jours de la date où la sentence lui est communiquée:

a) corriger dans le texte de la sentence des erreurs de typographie, des erreurs de calcul et d'autres erreurs de ce genre;

b) modifier la sentence de façon à réparer une injustice qu'il aurait causée par inadvertance.

(2) Le tribunal arbitral peut, de son propre chef en tout temps ou à la demande d'une partie présentée dans les trente jours de la date où la sentence lui est communiquée, rendre une sentence additionnelle pour donner suite à une demande qui a été présentée au cours de l'arbitrage, mais omise dans la sentence précédente.

(3) Il n'est pas nécessaire que le tribunal arbitral tienne une audience ou une réunion avant de rejeter une demande présentée aux termes du présent article.

RECOURS

Appel

45 (1) Une partie peut faire appel d'une sentence devant le tribunal judiciaire relativement à une question de droit, sur autorisation de ce tribunal. Il n'accorde son autorisation que s'il est convaincu:

a) d'une part, que l'importance pour les parties des questions en cause dans l'arbitrage justifie un appel;

b) d'autre part, que le règlement de la question de droit en litige aura une incidence importante sur les droits des parties.

(2) Si la convention d'arbitrage le prévoit, une partie peut faire appel devant le tribunal judiciaire d'une sentence relativement à une question de droit.

(3) Si la convention d'arbitrage le prévoit, une partie peut faire

appel devant le tribunal judiciaire d'une sentence relativement à une question de droit ou à une question mixte de fait et de droit.

(4) Le tribunal judiciaire peut exiger du tribunal arbitral qu'il donne des explications sur un point quelconque.

(5) Le tribunal judiciaire peut confirmer, modifier ou annuler la sentence ou la renvoyer devant le tribunal arbitral, accompagnée de l'avis du tribunal judiciaire sur la question de droit, dans le cas d'un appel sur une question de droit, et donner des directives touchant la conduite de l'arbitrage.

Annulation de la sentence

46 (1) À la requête d'une partie, le tribunal judiciaire peut annuler une sentence pour l'un des motifs suivants:

a) une partie a conclu la convention d'arbitrage alors qu'elle était frappée d'incapacité juridique;

b) la convention d'arbitrage est nulle ou a cessé d'exister;

c) la sentence porte sur un différend que la convention d'arbitrage ne prévoit pas, ou comporte une décision sur une question qui dépasse les termes de la convention;

d) la composition du tribunal arbitral n'était pas conforme à la convention d'arbitrage ou, si la convention ne traitait pas de cette question, n'était pas conforme à la présente loi;

e) l'objet du différend ne peut faire l'objet d'un arbitrage aux termes des lois de (*province ou territoire qui légifère*);

f) le requérant n'a pas été traité sur un pied d'égalité et avec équité, n'a pas eu la possibilité de présenter son exposé des faits ou de répliquer à celui d'une autre partie, ou n'a pas été avisé en bonne et due forme de la tenue de l'arbitrage ou de la désignation d'un arbitre;

g) les procédures suivies au cours de l'arbitrage n'étaient pas conformes à la présente loi;

h) un arbitre a commis un acte vénal ou frauduleux, ou il exite des craintes raisonnables de partialité;

i) la sentence a été obtenue frauduleusement.

(2) Si l'alinéa (1) c) s'applique et qu'il est raisonnable de dissocier les décisions portant sur des questions prévues par la

convention d'arbitrage de celles qui sont attaquées, le tribunal judiciaire annule les décisions attaquées, les autres restant valides.

(3) Le tribunal judiciaire ne doit pas annuler une sentence pour des motifs visés à l'alinéa (1) c) si la partie a donné son accord à l'inclusion du différend ou de la question dans l'arbitrage, a renoncé à son droit de s'opposer à son inclusion ou a convenu que le tribunal arbitral avait le pourvoir de déterminer les différends qui lui ont été soumis.

(4) Le tribunal judiciaire ne doit pas annuler une sentence pour des motifs visés à l'alinéa (1) h) si la partie avait la possibilité de récuser l'arbitre pour ces motifs en vertu de l'article 13 avant le prononcé de la sentence et s'en est abstenue, ou si ces motifs ont fait l'objet d'une récusation déboutée.

(5) Le tribunal judiciaire ne doit pas annuler une sentence pour un motif au sujet duquel le requérant est réputé avoir renoncé à son droit d'objection aux termes de l'article 4.

(6) Si le motif allégué pour annuler la sentence aurait pu être soulevé à titre d'objection à la compétence du tribunal arbitral en matière de conduite de l'arbitrage ou à titre d'objection selon laquelle le tribunal arbitral a outrepassé ses pouvoirs, le tribunal judiciaire peut annuler la sentence pour ce motif s'il estime justifié que le requérant n'ait pas présenté d'objection conformément à l'article 17.

(7) Lorsque le tribunal judiciaire annule une sentence, il peut révoquer le tribunal arbitral ou un arbitre et donner des directives touchant la conduite de l'arbitrage.

(8) Plutôt que d'annuler une sentence, le tribunal judiciaire peut la renvoyer devant le tribunal arbitral et donner des directives touchant la conduite de l'arbitrage.

Délai

47 (1) L'appel d'une sentence ou l'appel relatif à une question de droit doit être interjeté, ou la requête en annulation d'une sentence doit être introduite, dans les trente jours de la date où la sentence, la correction, les explications, le changement ou l'énoncé des motifs sur lesquels porte l'appel ou la requête sont communiqués à l'appelant ou au requérant.

(2) Le paragraphe (1) ne s'applique pas en cas d'allégations par l'appelant ou par le requérant de corruption ou de fraude.

Déclaration de nullité de l'arbitrage

48 (1) À quelque étape que ce soit durant ou après un arbitrage, à la requête d'une partie qui n'a pas participé à l'arbitrage, le tribunal judiciaire peut, par jugement déclaratoire, déclarer nul l'arbitrage pour l'un des motifs suivants:

a) une partie a conclu la convention d'arbitrage alors qu'elle était frappée d'incapacité juridique;

b) la convention d'arbitrage est nulle ou a cessé d'exister;

c) l'objet du différend ne peut faire l'objet d'un arbitrage aux termes des lois de (*province ou territoire qui légifère*);

d) la convention d'arbitrage ne s'applique pas au différend.

(2) Lorsque le tribunal judiciaire rend le jugement déclaratoire, il peut également accorder une injonction interdisant l'engagement ou la poursuite de l'arbitrage.

Nouvel appel

49 Il peut être interjeté appel devant le (*tribunal d'appel*), sur autorisation de ce tribunal, de la décision du tribunal judiciaire rendue à l'égard de l'appel d'une sentence, de la requête en annulation d'une sentence ou de la requête en vue d'obtenir une déclaration de nullité.

Exécution de la sentence

50 (1) Quiconque a droit à l'exécution d'une sentence rendue en/à (*province ou territoire qui légifère*) ou ailleurs au Canada peut présenter une requête à cet effet au tribunal judiciaire.

(2) La requête doit être présentée avec préavis à la personne contre laquelle l'exécution est demandée, conformément aux règles de pratique, et être appuyée par l'original ou par une copie certifiée conforme de la sentence.

(3) Le tribunal judiciaire rend un jugement mettant à exécution une sentence rendue en/à (*province ou territoire qui légifère*) à moins, selon le cas:

a) que le délai de trente jours imparti pour interjeter appel ou introduire une requête en annulation de la sentence ne soit pas encore écoulé;

b) qu'un appel, une requête en annulation de la sentence ou une requête en vue d'obtenir une déclaration de nullité ne soit en instance;

c) que la sentence n'ait été annulée ou que l'arbitrage ne fasse l'objet d'une déclaration de nullité.

(4) Le tribunal judiciaire rend un jugement mettant à exécution une sentence rendue ailleurs au Canada à moins, selon le cas :

a) que le délai pour interjeter appel ou introduire une requête en annulation de la sentence prévu par les lois de la province ou du territoire où a été rendue la sentence ne soit pas encore écoulé;

b) qu'un appel, une requête en annulation de la sentence ou une requête en vue d'obtenir une déclaration de nullité ne soit en instance dans la province ou le territoire où a été rendue la sentence;

c) que la sentence n'ait été annulée dans la province ou le territoire où elle a été rendue ou que l'arbitrage n'y fasse l'objet d'une déclaration de nullité;

d) que l'objet de la sentence ne puisse pas faire l'objet d'un arbitrage aux termes des lois de (*province ou territoire que légifère*).

(5) Si le délai imparti pour interjeter appel, pour introduire une requête en annulation de la sentence ou une requête en vue d'obtenir une déclaration de nullité n'est pas encore écoulé, ou si une telle instance est en cours, le tribunal judiciaire peut :

a) soit exécuter la sentence;

b) soit ordonner, aux conditions qui sont justes, qu'il soit sursis à l'exécution de la sentence jusqu'à ce que le délai soit écoulé sans qu'une telle instance soit introduite, ou jusqu'à ce que l'instance en cours soit définitivement réglée.

(6) Si le tribunal judiciaire surseoit à l'exécution d'une sentence rendue en/à (*province ou territoire qui légifère*) jusqu'à ce que l'instance en cours soit définitivement réglée, il peut donner des directives pour assurer le règlement rapide de l'instance.

(7) Si le sentence accorde un redressement que le tribunal judiciaire n'a pas compétence pour accorder ou n'accorderait pas dans une instance fondée sur des circonstances similaires, le tribunal judiciaire peut :

a) soit accorder un autre redressement, demandé par le requérant;

b) soit, dans le cas d'une sentence rendue en/à (*province ou territoire qui légifère*), la renvoyer devant le tribunal arbitral accompagnée de l'avis du tribunal judiciaire, auquel cas le tribunal arbitral peut accorder un redressement différent.

(8) Le tribunal judiciaire a les mêmes pouvoirs en ce qui concerne l'exécution des sentences qu'en ce qui concerne celle de ses propres jugements.

DISPOSITIONS GÉNÉRALES

Couronne liée

51 La présente loi lie la Couronne.

Délais de prescription

52 (1) À l'égard des délais de prescription, la loi s'applique à l'arbitrage comme s'il constituait une action et qu'une demande présentée au cours de l'arbitrage constituait une cause d'action.

(2) Si le tribunal judiciaire annule une sentence, met fin à un arbitrage ou déclare nul l'arbitrage, il peut ordonner que la période allant du début de l'arbitrage à la date de l'ordonnance ne soit pas comprise dans le calcul du délai dans lequel une action peut être intentée pour une cause d'action qui constituait une demande faisant l'objet de l'arbitrage.

(3) Une requête en vue d'obtenir l'exécution d'une sentence ne peut être présentée plus de deux ans après la date à laquelle la sentence est communiquée au requérant.

Signification d'avis

53 (1) On peut signifier un avis ou autre document à un particulier en le laissant à ce dernier.

(2) On peut signifier un avis ou autre document à une personne morale en le laissant à un dirigeant, à un administrateur ou à un mandataire de cette dernière, ou à une personne qui paraît assumer la direction d'un établissement de la personne morale.

(3) On peut signifier un avis ou autre document en l'envoyant au destinataire par télécopie au numéro que ce dernier a précisé dans la convention d'arbitrage ou fourni au tribunal arbitral.

(4) Si des efforts raisonnables pour signifier un avis ou autre document aux termes du paragraphe (1) ou (2) ne donnent pas de résultat et qu'il n'est pas possible de le signifier aux termes du paragraphe (3), l'avis ou autre document peut être envoyé, par courrier affranchi recommandé, à l'adresse postale que le destinataire a indiquée dans la convention d'arbitrage ou, si aucune n'y est indiquée, à son dernier établissement ou dernier domicile connus.

(5) À moins que le destinataire ne démontre qu'en ayant agi de bonne foi, en raison de son absence, d'une maladie ou d'un autre motif indépendant de sa volonté, il n'a reçu l'avis ou autre document qu'à une date ultérieure, l'avis ou autre document est réputé avoir été reçu :

a) à la date de sa remise ou de sa transmission, dans le cas d'une signification effectuée aux termes du paragraphe (1), (2) ou (3);

b) le cinquième jour qui suit la date de la mise à la poste, dans le cas d'une signification effectuée aux termes du paragraphe (4).

(6) Le tribunal judiciaire peut rendre une ordonnance en vue d'obtenir une signification indirecte ou une dispense de signification de la même manière qu'aux termes des règles de pratique, s'il est convaincu qu'il est nécessaire de signifier l'avis ou autre document pour engager un arbitrage ou procéder à la désignation d'un tribunal arbitral et qu'il est difficile d'effectuer cette signification promptement, pour quelque motif que ce soit, aux termes du paragraphe (1), (2), (3) ou (4).

(7) Le présent article ne s'applique pas à la signification de documents effectuée dans le cadre d'instances judiciaires.

Dépens

54 (1) Le tribunal arbitral peut adjuger les dépens d'un arbitrage.

(2) Le tribunal arbitral peut adjuger la totalité ou une partie des dépens de l'arbitrage sur la base procureur-client, sur la base partie-partie ou sur toute autre base. S'il ne précise pas la base d'adjudication des dépens, ceux-ci sont déterminés sur la base partie-partie.

(3) Les dépens de l'arbitrage comprennent les frais d'avocat des parties, les honoraires et frais du tribunal arbitral, ainsi que tous les autres frais reliés à l'arbitrage.

(4) Si le tribunal arbitral ne traite pas des dépens dans sa sentence, une partie peut, dans les trente jours de la date où la sentencelui est communiquée, demander qu'il rende une autre sentence touchant les dépens.

(5) En l'absence de sentence touchant les dépens, chaque partie assume ses propres frais d'avocat ainsi qu'une quote-part égale des honoraires et frais du tribunal arbitral et de tous les autres frais reliés à l'arbitrage.

(6) Si une partie présente à une autre partie une offre de règlement du différend ou d'une partie du différend, que l'offre n'est pas acceptée et que la sentence du tribunal arbitral n'est pas plus favorable à la partie nommée en second lieu que ne l'était l'offre, le tribunal arbitral peut tenir compte de ce fait dans l'adjudication des dépens, en ce qui concerne la période allant de la présentation de l'offre au prononcé de la sentence.

(7) Le fait qu'une offre de règlement a été présentée ne doit pas être communiqué au tribunal arbitral avant qu'il n'ait rendu de décision définitive sur tous les aspects du différend à l'exclusion des dépens.

Honoraires et frais de l'arbitre

55 Les honoraires versés et les frais payés à un arbitre ne doivent pas être supérieurs à la juste valeur des services rendus et aux frais nécessaires et raisonnables effectivement engagés.

Liquidation des dépens, frais et honoraires

56 (1) Une partie à un arbitrage peut faire liquider la note d'honoraires et de frais d'un arbitre par un liquidateur des dépens de la même manière que le mémoire d'un procureur aux termes de la (*loi pertinente*).

(2) Si un tribunal arbitral adjuge les dépens et ordonne leur liquidation, ou adjuge les dépens sans en fixer le montant ou sans indiquer comment ce montant doit être établi, une partie à l'arbitrage peut faire liquider les dépens par un liquidateur des dépens de la même manière que pour les dépens aux termes des règles de pratique.

(3) En liquidant la partie des dépens que représentent les hono-

raires et les frais du tribunal arbitral, le liquidateur des dépens met en application les mêmes principes que ceux qui s'appliquent dans le cas de la liquidation d'une note visée au paragraphe (1).

(4) Le paragraphe (1) s'applique même si la note a déjà été payée.

(5) À la requête d'une partie à l'arbitrage, le tribunal judiciaire peut réviser la liquidation des dépens ou celle de la note d'honoraires et de frais d'un arbitre et peut la confirmer, la modifier, l'annuler ou la renvoyer au liquidateur des dépens en y joignant des directives.

(6) À la requête d'un arbitre, le tribunal judiciaire peut réviser la liquidation de sa note d'honoraires et de frais et peut la confirmer, la modifier, l'annuler, ou la renvoyer au liquidateur des dépens en y joignant des directives.

(7) La requête en révision ne peut être présentée passé le délai précisé dans le certificat du liquidateur des dépens ou, si aucun délai n'y est précisé, plus de trente jours après la date du certificat, sauf disposition contraire du tribunal judiciaire.

(8) Lorsque le délai dans lequel une requête en révision peut être présentée expire sans qu'aucune requête soit présentée, ou une fois que le tribunal judiciaire a vérifié la liquidation et a rendu une décision définitive, le certificat peut être déposé auprès du tribunal judiciaire et exécuté comme s'il s'agissait d'un jugement de ce tribunal.

Intérêts

57 (*Chaque province ou territoire devrait investir les tribunaux arbitraux du pouvoir d'ordonner le paiement d'intérêts antérieurs à la sentence de la même manière que les tribunaux judiciaires peuvent ordonner le paiement d'intérêts antérieurs au jugement, et devrait prévoir que le montant fixé dans les sentences porte intérêt comme c'est le cas dans les jugements, conformément à la loi applicable.*)

APPENDIX B

(See page 24)

AUDITORS' REPORT

To the Members of the
Uniform Law Conference of Canada:

We have examined the General Fund and Research Fund balance sheets of the **Uniform Law Conference of Canada** as at June 30, 1990 and the statement of revenues, expenses and equity for the year then ended. 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, these financial statements present fairly the financial position of the conference as at June 30, 1990 and the results of its operations for the year then ended in accordance with generally accepted accounting principles applied, on a basis consistent with that of the preceding year.

Saint John, Canada
July 19, 1990.

Ernst & Young
Chartered Accountants

UNIFORM LAW CONFERENCE OF CANADA

Balance Sheet
As at June 30, 1990

GENERAL FUND

Assets

	1990	1989
Cash	$ 8,371	$16,310
Accounts receivable	—	3,000
	$ 8,371	$19,310

Liabilities and Equity

	1990	1989
Accounts Payable	$ 4,737	$ 4,785
Equity	3,634	14,525
	$ 8,371	$19,310

RESEARCH FUND

Assets

	1990	1989
Cash	$ 938	$ 1,774
Term Deposits	65,000	52,000
Accounts receivable	9,062	21,226
	$75,000	$75,000

Equity

	1990	1989
Equity	$75,000	$75,000

(See accompanying notes)

UNIFORM LAW CONFERENCE OF CANADA

Statement of Revenue, Expenses and Equity
Year Ended June 30, 1990

	General Fund	Research Fund	Total 1990	Total 1989
Revenues:				
Annual contributions	$69,000	—	$69,000	$69,000
Interest	6,036	—	6,036	5,146
Government of Canada	—	$ 9,062	9,062	24,686
	75,036	9,062	84,098	98,832
Expenses:				
Printing	19,259	2,531	21,790	29,717
Executive Director honorarium	22,493	—	22,493	21,352
Annual meeting	19,947	—	19,947	10,836
Secretarial services	4,289	—	4,289	3,112
Executive travel	9,964	—	9,964	8,071
Professional fees	1,233	—	1,233	800
Postage	1,889	—	1,889	1,291
Stationery	1,776	—	1,776	1,319
Telephone	2,042	—	2,042	1,258
Bad Debts	3,000	—	3,000	—
Miscellaneous	35	—	35	48
Human Tissue Project	—	2,775	2,775	4,010
Uniform Provincial Offences Procedures Act	—	3,756	3,756	4,900
	85,927	9,062	94,989	86,714
Excess of revenues over expenses	(10,891)	—	(10,891)	12,118
Equity, beginning of year	14,525	75,000	89,525	77,407
Equity, end of year	$ 3,634	$75,000	$78,634	$89,525

(See accompanying notes)

UNIFORM LAW CONFERENCE OF CANADA

Notes to Financial Statements
June 30, 1990

1. *Accounting Policies*

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. *Statement of Cash Flows*

A statement of cash flows has not been presented as it is not considered to provide additional information.

3. *Tax Status*

The Conference qualifies as a non-profit organization and is exempt from income taxes.

APPENDIX C

(see page 37)

THE UNIFORM LAW CONFERENCE
REPORT OF THE ALBERTA COMMISSIONERS
DISCLOSURE OF COST OF CONSUMER CREDIT

Purpose of Report

The purposes of this report are

1. to present the recommendations of the Alberta Commissioners set out below, and

2. to give reasons for the recommendations.

Recommendatons of the Alberta Commissioners

Subject to the caveat which follows this list, the Alberta Commissioners recommend that

1. the Uniform Law Section undertake the preparation and adoption of uniform statutory provisions regarding the disclosure of the cost of credit in consumer credit transactions,

2. the uniform statutory provisions be compatible with different (i.e. non-uniform) legislative approaches to related issues in the consumer credit field,

3. the uniform statutory provisions be suitable for incorporation into relevant federal and provincial legislation,

4. the Uniform Law Section direct one or more jurisdictions to prepare for consideration at the Section's 1991 annual meeting a report setting out the policy issues to be addressed by the Section before the uniform statutory provisions can be prepared, and

5. the uniform statutory provisions be prepared by the Drafting Section in accordance with the policy decisions of the Uniform Law Section made at its 1991 annual meeting.

Caveat

It would be inappropriate for the Uniform Law Section to undertake a project that would be likely to duplicate the work of another body that is attempting to achieve uniformity in this or any other area. The potential for such duplication exists in this area.

The provincial, territorial and federal Ministers responsible for Con-

sumer and Corporate Affairs hold regular meetings to discuss matters of inter-jurisdictional concern. Their group is called the Federal-Provincial-Territorial Conference of Ministers of Consumer and Corporate Affairs ("Conference of Ministers"). The Conference of Ministers have established a Federal-Provincial-Territorial Working Group on Cost of Credit Disclosure ("Working Group").

To date, the Working Group's activities have centered on disclosure in the context of credit cards. The future directions of the Working Group's activities have not yet been determined. The next Conference of Ministers is to be held this September. At that time, we understand that it is possible that the Working Group will be directed to produce proposals for uniform disclosure legislation for all areas of consumer credit. But it is also possible that the Conference of Ministers will decide to discontinue the activities of the Working Group.

One possible outcome of the September Conference of Ministers is that any project the Uniform Law Section undertakes would be redundant to the work to be undertaken by the Working Group. Other possibilities are that there will be scope for cooperation and a division of labour between the Working Group and the Uniform Law Section, or that there will be no Working Group at all. The picture will become clearer after the September meeting of the Conference of Ministers. Thus, adoption of the foregoing recommendations should be conditional on the proposed project not being redundant to the activities of the Working Group, as determined at the September meeting of the Conference of Ministers.

Reasons for Recommendations (Rules of Procedure 4(2)(a))

All provinces and the federal Parliament have enacted cost of credit disclosure legislation that shares certain basic policy objectives, but differs substantially in important details. The reasons of the Alberta Commissioners for recommending the preparation and adoption of uniform statutory provisions are disclosed under the next three headings.

Desirability of Uniformity (Rules of Procedure 5(2)(a))

The Alberta Commissioners submit that uniformity is desirable for the following reasons.

1. Many grantors of consumer credit carry on business throughout Canada. Uniformity of cost of credit disclosure requirements between provinces will reduce the administrative burden for credit grantors of complying with these requirements.

2. Within each province, chartered banks must comply with the Cost of Borrowing Disclosure Regulations under the Bank Act, while provincially regulated financial institutions must comply with the relevant provincial disclosure legislation. Where the disclosure requirements are not the same, direct comparison of the credit charges stated by a bank with those stated by a provincially regulated institution may be extremely difficult.

3. To the extent that the federal Interest Act requires disclosure of interest rates for certain transactions in a particular format, it may well be in direct conflict with relevant provincial legislation. Credit grantors may be in a position of having to comply with either the Interest Act or the relevant provincial legislation, because they can do both. To illustrate this point, the recent decision of the Alberta Court of Queen's Bench in a recent case that which drew notice in the national press interprets section 4 of the Interest Act so as to require the disclosure of interest rates in a different manner than is required by the disclosure legislation of probably every province.

4. The benefits of uniformity in cost of credit disclosure requirements can be achieved while allowing individual provinces to deal with related consumer credit issues as they say fit. For example, a uniform set of disclosure requirements would be consistent with a variety of approaches to the enforcement of "acceleration clauses" in consumer credit agreements.

Demand For Uniformity (Rules of Procedure 5(2)(b)

The desirability of uniformity in this area has been recognized by industry as well as government. In fact Alberta's current legislation, the Consumer Credit Transaction Act was enacted in response to an understanding reached by the provinces and the federal government in the early 1980s that legislation in this area should be made more uniform. In commenting on a draft of the CCTA, an association of major financial institutions made the following statement:

> ... we strongly endorse the view that federal and provincial legislation should be uniform in this area. Uniformity benefits the consumer by ensuring the maximum comparability of services offered by various financial institutions...

However, few provinces actually modified their existing legislation to achieve this uniformity. Part of the reason may have been that the model chosen for the uniform requirements, the Cost of Borrowing Disclosure Regulations under the Bank Act, is far from perfect.

Efforts to achieve greater uniformity have continued. As already mentioned, there is a federal-provincial-territorial working group on cost of credit disclosure. So far, its work has been primarily concerned with disclosure in the context of credit card agreements, but its terms of reference extend to all cost of credit disclosure requirements. The very existence of such a group, established by the several Ministers responsible for Consumer and Corporate Affairs, indicates a demand for uniformity.

Apart from express demands for uniformity, there have been calls for reform of cost of credit disclosure legislation within particular jurisdictions. Even though Alberta's Consumer Credit Transactions Act only came into force in 1987, the Legislative Review Committee of the Canadian Bar Association's Alberta Branch has urged the Minister to conduct a thorough review of policy and drafting issues raised by the Act. The Minister has requested the Alberta Law Reform Institute to examine the policy issues raised by the Act. In Ontario, the Ministry of Consumer and Commercial Relations is undertaking a major review of the whole area of consumer protection. The regulation of consumer credit transactions is one of the particular topics under review. So far as disclosure of cost of credit is concerned, we understand that the review is still some way from completion.

The activities mentioned in the preceding paragraph are perhaps not direct evidence of a demand for uniformity. However, they do indicate a demand for reform. It goes without saying that the best time to put forward a proposal for a uniform law is when the need for reform is apparent to government and other interested groups.

Likelihood of Adoption (Rules of Procedure 5(2)(c))

As indicated above the desirability of uniform disclosure legislation, both inter-provincially and as between provincial and federal legislation, is well recognized. In addition the need for reform of the law in this area has been brought home to the governments of Alberta and Ontario (and probably other provinces as well). In these circumstances, it seems likely that a well thought out proposal for uniform cost of credit disclosure provisions would enjoy a warm reception from governments and other interested groups.

Past Consideration by the Commissioners on Uniformity

At the 1966 annual meeting the Conference requested the Ontario Commissioners to report on the state of consumer credit legislation in Ontario and the other provinces at the next annual meeting. The Ont-

ario Commissioners presented a brief report at the 1967 meeting. The report dealt with consumer protection legislation, rather than the narrower topic of consumer credit legislation that was originally assigned to the Ontario Commissioners.

Enough interest was expressed in this topic (i.e. consumer protection) by the various provinces for the Ontario Commissioners to be directed to prepare an additional report for the 1968 meeting. This second report referred to the energetic activities of the Consumer Protection Conference, which consisted of representatives of all ten provinces and the Government of Canada. This Conference, one of whose aims was developing "uniform methods and controls", had met in June of 1967 and was continuing its work through sub-committees. Accordingly, the Ontario report made the following recommendation, that was adopted at the 1968 meeting:

> ... that further action on uniform legislation be suspended while the Consumer Protection Conference is making progress and that the Secretary be instructed to write... expressing the interest of the Conference ... and offering our cooperation at any point where the Consumer Protection Conference feels it would be useful.

Prior to the 1970 annual meeting, the Secretary of the Conference received a letter from the Director of the Consumer Protection Division of the Ontario Department of Financial and Commercial Affairs. The letter enclosed a standard form consumer credit contract prepared by an inter-provincial sub-committee of the Consumer Protection Conference. The letter suggested that the Uniform Law Conference "take this matter on for consideration". The Conference adopted a resolution "that the matter of a Uniform Consumer Protection Act be referred to the Manitoba Commissioners for a report and recommendations at the next meeting of the Conference." At the 1971 meeting this matter was again referred to the Manitoba Commissioners for a report at the 1972 meeting, but the matter was again deferred to the 1973 meeting.

At the 1973 meeting the Manitoba Commissioners presented a report that advised that the 1970 resolution was inaccurate, and that what had actually been referred to the Conference by the Consumer Protection Conference was the narrow matter of a standard form contract. The report then went on to point that given the diversity of legislation in the various provinces, designing a standard form contract that would be compatible with the legislation of every province would be impossible. As a result the report recommended that the matter be dropped from the agenda, and it was. The matter of consumer protection or consumer credit transactions has not been on the agenda since that time.

The Questions of Policy the Section Should Determine (Rules of Procedure 4(2)(b) and 5(2)(d)

The following are policy issues that would have to be considered and resolved in order to prepare uniform cost of credit disclosure provisions. It should be noted that there are certain issues upon which a degree of uniformity from one jurisdiction to the next is probably desirable, but not essential. An example of such an issue is how one defines a "consumer", or, indeed, whether the disclosure requirements should even try to distinguish between business and consumer borrowers. The following list is confined to the core of critical uniformity issues.

1. Definition of transaction types

Consumer credit transactions and arrangements come in many different forms. Personal loans with fixed repayment schedules, overdraft facilities, lines of credit, time sale agreements, revolving credit agreements, credit card agreements and chattel leases are a few examples. Although the object in every case must be to ensure full and effective disclosure, the peculiarities of the different kinds of transactions or arrangements require somewhat different approaches to the detailed disclosure requirements. Each of the issues listed below would have to be considered separately for each sort of transaction or arrangement. Thus, a uniform approach to cost of credit disclosure must begin with a uniform demarcation of the various kinds of credit transactions and arrangements.

2. Manner of stating credit charges

It is generally accepted that where it is possible to do so, credit charges (or "cost of borrowing") should be stated both as a dollar amount and as an annual percentage rate ("APR"). Although this is not in itself particularly controversial as a general principle, its application raises a variety of thorny issues.

3. Credit charges and additional charges

One area where there is presently considerably diversity is in the demarcation between credit charges and other charges (although these are not necessarily the terms used). Credit charges are charges, whether described as interest or not, that are required to be included in calculating the APR cost of credit. Other charges are any charges – such as an administration charge, appraisal fees, or registration ("official") fees – that the consumer must pay for the privilege of getting credit, but which are not required to be included in calculating the APR (although they must be disclosed as a dollar amount). In theory, there is no reason why most if not all of the various charges that usually are treated as other

charges could not be moved to the category of credit charges, so that they would be taken into account in calculating the APR. It is argued that doing so would give consumers a better idea – especially for comparison purposes – of the true cost of credit from a particular source. On the other side, it is argued that doing so would cause administrative headaches for credit grantors, and is more likely to confuse than to enlighten the consumer.

4. Nominal or effective annual percentage rate

Suppose that a consumer borrows $1000 at "12% interest", to be repaid in 12 equal monthly installments of blended interest and mortgage. The effective annual rate of interest is just under 12.7%. The question is whether credit grantors should be permitted to state the interest as "12%, calculated monthly", or should be required to state what the effective annual rate of interest really is. The advantage of the former is convenience for the credit grantor. The main advantage of the latter is that it gives the consumer a better basis for comparing the credit charges of different credit grantors. It should be noted that stating credit charges for variable credit arrangements such as a credit card account as a true effective annual rate is not possible, so long as the account remains open. The concept of effective annual rate is most useful in the case of credit for a fixed amount, repayable in fixed instalments at fixed intervals over a defined period.

5. Calculation of APR

Once it has been decided what APR is supposed to represent for any given transaction or arrangement, one must get down to brass tacks. In essence, the legislation (it is often subordinate legislation) that does this must prescribe the formulas for calculating APR in various situations, or prescribe tables, or both. The necessary formulas can appear quite complicated. However, given the proliferation of computers in the business world, the complexity of the underlying formulas need not be a matter of great concern to those who actually have to use them.

6. Tolerances

Existing legislation permits the stated APR to be off by a certain amount. One eighth of a percent is the most common, but not the only, tolerance permitted by existing legislation. Obviously, uniformity in the degree of permitted inaccuracy is important.

7. Advertising. [?]

Consideration should be given to the formulation of uniform rules for the disclosure of credit terms in advertising. This is especially important for national advertising.

APPENDIX D

(see page 38)

A UNIFORM EXPROPRIATION ACT? - OVERVIEW OF THE BIGGER ISSUE

by Clifford S. Watt, Q.C.
Chief Legislative Counsel
British Columbia

INTRODUCTION

From a uniformity point of view, law of expropriation in Canada does not measure up. The Federal Government, Ontario, Manitoba, New Brunswick, Nova Scotia, Alberta and British Columbia all have enacted legislation that endeavours to reform the law of expropriation following the McRuer Commission's Inquiry Into Civil Rights and the reports of several law reform commissions. Even so, there is great divergence in the law of expropriation among those jurisdictions that have enacted the so-called "reform" legislation. It is clear, however, that regardless of what jurisdiction is exercising expropriation powers, the same issues arise both in the acquisition process and on compensation matters.

This paper will summarize the major issues that must be dealt with in any expropriation statute, with particular emphasis on how the British Columbia legislation deals with these issues, given that it is the most recent expropriation legislation in Canada.

PART 1 - THE ACQUISITION PROCESS

Political Accountability

1. Most of the reform Acts have incorporated the principle of political accountability into the expropriation process by requiring that all expropriations must be approved by someone that is politically accountable for the decision. In British Columbia, this "approving authority" is the minister responsible for the Act under which the expropriation occurs, unless that minister is the expropriating authority (i.e. the person or body that is actually empowered to carry out the expropriation) in which case it is the Lieutenant Governor in Council. The British Columbia legislation is probably unique that it recognizes that, at the local level, political accountability lies with local government bodies. It is felt that political accountability was best achieved by allowing the school boards and municipal councils to be their own approving authorities.

Like most of the legislation providing for political accountability, there are exceptions for emergencies or where there would be "undue delay". In those circumstances, the Lieutenant Governor in Council can order that the approval and pre-expropriation inquiry process be dispensed with. The Attorney General is under an obligation to report the exercise of this power to the Legislative Assembly at the earliest practicable opportunity.

The Expropriation Notice

2. It is fundamental that all owners (persons having interest in the land subject to the expropriation) be notified of the intention of the expropriating authority to compulsorily acquire the land. These notices must be filed in the land title office and set out the material particulars of the expropriation.

The Pre-Expropriation Inquiry

3. Many of the reform jurisdictions have provided for a pre-expropriation inquiry - the so-called "hearing of necessity". The purpose and scope of this inquiry varies among those jurisdictions who have adopted it. The principle that seems to be common to all of them is that a person whose land is being expropriated should have the right to question "whether the proposed expropriation of the land is necessary to achieve the objectives of the expropriating authority with respect to the proposed work or project, or whether those objectives could be better achieved by an alternative site or route or varying the amount of land to be taken or the nature of the interest in the land to be taken". The pre-expropriation inquiry is not intended to question the necessity of the project but simply whether or not the expropriating authority's choice of the land to carry it out is appropriate. In British Columbia the inquiry officer is named on an ad hoc basis by the Expropriation Compensation Board to ensure that there is independence. As well - and this is common to most jurisdictions - the inquiry officer's report is not binding. It simply takes the form of a recommendation to the approving authority. There are adequate provisions in the Act to permit the expropriation to be modified that meet the recommendations that are contained in the inquiry officer's report, should the approving authority choose to accept those recommendations.

The Advance Payment

4. Perhaps the most desirable feature of the reform legislation is the

statutory requirement that there be an advance payment made to the expropriated owner. The payment is usually accompanied by an appraisal report upon which the amount of the payment is based. In British Columbia, before the new legislation, many expropriating authorities were not required to make an advance payment. This tended to discourage settlements in that owners in these circumstances felt the whole of the value of their property was up for grabs and not simply the difference between what they wanted and what was being offered. To induce expropriating authorities to make reasonable advance payments and therefore encourage settlement, if the advance payment in less than 90% of the compensation awarded, the expropriating authority is required to pay a penalty interest at a rate of 5%. In addition, if the owner receives less than 115% of the advanced payment, the board has a discretion with respect to the matter of the owner's costs. This is to encourage the owner to accept reasonable advance payments.

Vesting and Possession

5. The legislation needs to provide the mechanism whereby the expropriating authority actually obtains both title and possesseion to the expropriated land. Naturally, the statutory scheme is required to fit within the land title or registration scheme that is in place in each jurisdiction. The reform legislation makes it clear that the owner is given a reasonable opportunity to use the advance payment in order to find alternative property should the expropriation be one that requires the owner to move. The British Columbia legislation contains a provision permitting the Supreme Court to restrain a harmful activity – for example, an irate owner cutting down trees in a proposed park.

PART 2 – COMPENSATION

Who Determines Compensation?

1. The British Columbia Law Reform Commission in its 1973 report recommended that there be established an independent expropriation compensation tribunal that would determine compensation in all expropriation cases. This replaced the previous system that varied from ad hoc arbitration tribunals to courts. Ease of access, expertize, consistency and somewhat lower costs are the main rationales for having an independent tribunal. The situation across Canada is quite mixed indeed. Ontario began with a separate tribunal, but this was replaced by having members of the municipal board hear expropriation cases. New Brunswick created a tribunal and then went back to

courts in 1983. Manitoba has an unique situation where the parties can submit the claim for compensation to the Land Value Appraisal Commission, however their decision is not binding and either of the parties can go to court to have the amount determined. Alberta appears to have stuck with the independent tribunal model, - which seems to have worked very well. British Columbia has an Expropriation Compensation Board to hear compensation matters. The issue of whether it should be the courts or a specialized tribunal has always invoked lively debate.

Compensation Principals

2. Most of the reform legislation endeavours to codify the pre-existing common law with respect to determination of compensation. These provisions define market value and set out what must be excluded when determining it. The headings in the British Columbia legislation illustrate the matters that are typically dealt with. These include:
   - disturbance damages generally
   - limited market – churches, hospitals, schools, etc.
   - frustration of leases
   - market value of security interests
   - occupiers and lessees
   - disturbance damages for lessees
   - partial takings
   - injurious affection where no land is taken
   - substituted land
   - work or use benefiting claimant

One of the most difficult areas addressed by the new expropriation statutes is the question of injurious affection where no land is taken. The common law principles date back to the mid-1800's and were developed in the English courts. The Supreme Court of Canada is *Loiselle v. the Queen* (1962) S.C.R. 624 approved these principles. Most jurisdictions enacting reform legislation have endeavoured in some way or other to try to codify the common law principles but include some of the reforms that have been suggested by law reform commissions and other writers on the subject. Some of these attempts have, on occasion, met with what some might regard as unforseeable results. This is a very complex area. British Columbia's solution is to expressly preserve the pre-existing common law although at the same time giving the Compensation Board jurisdiction to hear claims for compensation where the owner can establish a claim under the pre-existing common law.

Costs

3. Subject to the 115% rule referred to above, an owner is entitled to be paid "actual reasonable legal, appraisal and other costs necessarily incurred by him for the purpose of ascertaining his claim for compensation". There is also the power to prescribe a tariff of costs. This has not been utilized as yet. The assessing officer is the chairman of the Compensation Board and, in determining the amount of costs, statutory direction is given to take into account

   (a) the number and complexity of the issues,

   (b) the degree of success, taking into account

      (i) the determination of the issues, and

      (ii) the difference between the amount awarded and the advance payment, and

   (c) the manner in which the base was prepared and conducted.

Interest

4. There is much litigation on the interest provisions in the various jurisdictions. The British Columbia Act provides that interest is payable on the difference between the amount paid in the advance payment and the amount of compensation determined by the board, calculated from the date that the owner gave up possession. The rate is equal to the prime lending rate that the government must pay to its bank. With respect to interest on other amounts, interest is calculated from the date that the loss or damages were incurred or, from any other date that the board considers reasonable. This is intended to give flexibility with respect to the calculation of interest. There are also interest penalties for delays caused by both the owners and the expropriating authority.

SHOULD THERE BE UNIFORMITY?

In Favour of Uniformity

- The subject matter and legal and policy issues are the same in every jurisdiction.

- The state of the law is very non-uniform, although those jurisdictions that have enacted reform legislation certainly have addressed many of the issues in a similar way.

- The adoption of a uniform Act could encourage activity in those jurisdictions who have taken no steps at all to reform the law in this area.

- The adoption of uniform legislation could set a standard against which reforms in this area of the law could be measured.

Against Uniformity

- This is not an area of the law where, for example, commerce would be improved by the existing of uniform legislation throughout the country.
- Experience has shown that many of these issues are quite sensitive. The political will to embark upon reform in this area could be lacking.

APPENDIX E

(see page 39)

Law Reform Conference of Canada
Minutes of a Meeting Held
August 12, 1990
International Hilton
St. John, New Brunswick

Present:

Mr. Basil Stapleton, Q.C., President of the Conference
Mr. Arthur Close, Q.C., British Columbia
Mr. Richard Simeon, Ontario
Mr. Mel Springman, Ontario
Mr. Graham Walker, Q.C., Nova Scotia
Mr. Gordon Johnson, Nova Scotia
Mr. Alan D. Hunter, Q.C., Alberta
Mr. Peter J. Lown, Alberta
Mr. Dale Linn, Saskatchewan
Mr. Kenneth P. R. Hodges, Saskatchewan
Mr. Clifford H. C. Edwards, Q.C., Manitoba
Mr. Jeffrey Schnoor, Manitoba
Mr. Christopher P. Curran, Newfoundland

Regrets:

The Law Reform Commission of Canada
Northwest Territory Committee on Law Reform

1. Call to Order

The meeting was called to order by the President at 1:30 p.m.

2. Introduction of Delegates

The President invited the representatives of the law reform agencies present to introduce themselves and to provide a brief profile of their respective agencies. Regrets were received from the Law Reform Commission of Canada and the Northwest Territory's Committee on Law Reform.

3. Minutes of Meeting at Yellowknife, August 13, 1989

The minutes of the meeting of the Conference held at Yellowknife on August 13, 1989, were approved with the following corrections:

Mr. Graham Walker, Q.C., felt the paragraph on Nova Scotia on page one was misleading. The Law Reform Advisory Committee of Nova Scotia does not work through the Office of the Legislative Counsel but reports as a separate entity direct to the Attorney General.

Mr. Walker also reported that a new Law Reform Commission Act is expected to be proclaimed in Nova Scotia before the year end. The Commission will constitute 5 or 7 members, which might consist of the following members: two from the Bar, one Judge of the Courts of the Province, one full-time professor of the faculty of Dalhousie Law School, one member not a law graduate and two members appointed by the Cabinet.

An amendment was asked to be made on page 2 regarding Alberta's Report – the word *profiles* was changed to *profile.*

4. Business Arising from the Minutes

Five issues were identified as arising either directly or indirectly out of the Minutes of the Yellowknife meeting. These were:

(i) Law Reform Newsletter

(ii) Staff Development Workshop

(iii) Law Reform Database

(iv) Report of the Special Committee on the Future of the Law Reform Conference of Canada

(v) Response of the Conference to the Report "Renewing Consensus for Harmonization of Laws in Canada"

In light of the significance of these issues, in particular items (iv) and (v), delegates opted to move the annual jurisdictional review of agency activities to the bottom of the Meeting Agenda and to deal with the business arising out of the Yellowknife meeting on a priority basis.

5. Law Reform Newsletter

The President read a letter from Mr. Gilles Letourneau, President of the Law Reform Commission of Canada, requesting direction from the Conference as to the future role, format and content of the Law Reform Newsletter. The Newsletter first appeared in March 1985. It was conceived as a quarterly publication by and for the law reform community. In recent years, however, the Newsletter has fallen into disuse. The question raised in light of this development was whether there continues to be a need for the publication.

All members of the Conference reaffirmed the need for a Law Reform Newsletter. It was pointed out that the Newsletter facilitates the exchange of information between jurisdictions. There continues to be a role for this kind of "hard-copy exchange," notwithstanding the recent development of a computerized electronic Law Reform Bulletin Board (see item 7 below). There was a consensus that the real issue was how to make the Newsletter more effective. It was determined that an editorial committee composed of Conference members should confer with Mr. Letourneau to decide how this might best be achieved. The Conference noted its appreciation of the generous efforts of the federal Law Reform Commission in producing the Newsletter which serves the entire Canadian Law Reform Community.

6. Law Reform Staff Development Workshop: March 8-10, 1990

The first staff development workshop of the Law Reform Conference of Canada was held March 8-10, 1990, in Vancouver, British Columbia. The Workshop, hosted by the British Columbia Law Reform Commission, provided staff of the law reform agencies across the country with an opportunity to meet and discuss issues of mutual concern. The Workshop Agenda included such items as: The Rationale for Law Reform, Public Profile, The Law Reform Programme, Project Management, Research and Writing, Consultation, Implementation, Technology and Cooperation Between Law Reform Agencies. Mr. Arthur Close, Q.C., Chairman of the British Columbia Law Reform Commission, reported that the Workshop was well attended and was regarded by those who attended as an unqualified success. This last sentiment was echoed by Mr. Peter Lown, Alberta; Mr. Jeffrey Schnoor, Manitoba; and Mr. Christopher Curran, Newfoundland. Mr. Lown indicated that the Workshop provided career law reformers with a unique opportunity for professional self-development.

Mr. Graham Walker, Q.C., indicated that staff from his office was not in attendance at the staff development workshop because they were unaware that such had been scheduled. He asked that he be kept apprised of future workshops. He agreed that the exercise appeared worthwhile.

The Conference thanked Mr. Close and Mr. Thomas Anderson, Counsel to the Law Reform Commission of British Columbia, for their efforts in making the first Staff Development Workshop a reality.

A second workshop is in the planning stages. It will be held in Winnipeg under the auspices of the Manitoba Law Reform Commis-

sion. Mr. Jeffrey Schnoor indicated that the tentative dates for the Workshop are May 9, 10 and 11, 1991.

7. Law Reform Bulletin Board

Mr. Jeffrey Schnoor reported on this item. The Law Reform Bulletin Board grew out of two Agenda items at the Vancouver Staff Development Workshop: (i) Technology and (ii) Cooperation Between Law Reform Agencies. The Bulletin Board was conceived, on an experimental basis, as an electronic newsletter. Manitoba agreed to have carriage of the project. Mr. Schnoor reported that the Bulletin Board is now up and running. All that is required to access the Board are: a phone line, modem, personal computer and a communications programme. The number is (204) 943-1274. The Bulletin Board is operational during the following hours: 5:30 p.m. Monday - 8:30 a.m. Tuesday; 5:30 p.m. Tuesday - 8:30 a.m. Wednesday; 5:30 p.m. Wednesday - 8:30 a.m. Monday. The Conference thanked Manitoba for its initiative in developing this inter-agency communication tool.

8. Law Reform Database

This Report was given by Mr. Arthur Close, Q.C. Mr. Close indicated that the Law Reform Database is an undertaking of the Law Reform Commission of British Columbia in cooperation with the University of Saskatchewan and the Saskatchewan Law Reform Commission. The object of the project is to provide easy access to the reports and studies of law reform agencies and other organizations performing a similar function. The inspiration for the project derived from a 1983 publication of the Australian Law Reform Commission: *The Law Reform Digest. A Digest of the Reports of Law Reform Agencies in Australia, New Zealand, and Papua New Guinea 1910-1980.*

The first edition of the Law Reform Database was made available for distribution in February 1990. It contained approximately 1800 records covering the reports and consultative documents of the major law reform agencies in Canada, the United Kingdom, Australia, Hong Kong, and New Zealand. A second edition containing 3000 records was released in August 1990. This edition continued the focus on Commonwealth law reform. A third edition is proposed. This edition will add approximately 1000 records relating to law reform activity in the United States.

The Law Reform Commission of British Columbia has made the Law Reform Database available to the Canadian law reform community on a cost-free basis. The package made available contains instructions for installation of the files containing the database and customized soft-

ware for users who do not have Q&A software but who want to use the database on a trial basis.

There was some discussion of the possibility of marketing the data base commercially. Apparently, interest has been expressed by a number of the standard legal data base services. Mr. Close raised the possibility of turning any proceeds derived from sales over to the Conference. A number of members expressed the opinion that this last idea could be best pursued if and when the Conference acquired a formal constitution and corporate personality.

On behalf of the Conference, the President thanked Mr. Close and the Law Reform Commission of British Columbia for their work on the database. There was general agreement that the comprehensive nature of the database made it a research tool of great utility.

9. Report of the Special Committee on the Future of the Law Reform Conference of Canada

Mr. Peter Lown, Chairman of the Steering Committee on Organization, reported on this item. At the Yellowknife meeting, a Steering Committee composed of Mr. Lown, Judge Rosalie S. Abella and Mr. Arthur L. Close, Q.C., was struck and mandated to report back to the conference on methods by which the Law Reform Conference might be strengthened. The Committee was asked specifically to look at the desirability of corporate status. The Committee determined that corporate status would be beneficial, particularly as regards the receipt and disbursement of funds. The Committee took steps to prepare incorporating documents for a federal non-profit body corporate to be known tentatively as *The Federation of Law Reform Agencies.* The objects of the Corporation are as follows:

(i) to advance law reform in Canada;

(ii) to encourage the growth of cooperation between law reform agencies;

(iii) to educate the public on the role of law reform agencies;

(iv) to discuss and promote issues of interest and concern to law reform agencies;

(v) to provide a forum for meetings of persons engaged or interested in law reform and to encourage professional self-development; and

(vi) to cooperate with other organizations which tend to promote the objects of the corporation.

The incorporating documents provide for Class A and Class B memberships. Class A membership is restricted to independent law reform agencies created by statute or agreement. Only Class A members have the right to vote. Class B membership is open to any person interested in furthering the objects of the corporation. Class B members have no voting rights.

The first directors of the Corporation will be:

Peter Lown, Director, Alberta Law Reform Institute
Rosalie S. Abella, Chairperson, Ontario Law Reform Commission
Arthur L. Close, Q.C., Chairman, British Columbia Law Reform Commission

The corporation will be registered with Revenue Canada as a non-profit organization.

Mr. Lown's report was followed by animated discussion. Membership classification was an issue of especial concern to some Conference members. The question was raised as to whether the proposed division would result in Class A and Class B Agencies, since institutional independence appeared to be a determinative criterion? Mr. Springman suggested that *independence* be given a broad construction. There was general agreement on this point.

Discussion was followed by three motions:

Motion: It was moved by Dale Linn and seconded by Arthur Close, Q.C., that the Conference approve the draft constitutional structure described in the Alberta memorandum.

Motion: It was moved by Dale Linn and seconded by Arthur Close, Q.C., that the Conference approve the incorporation of the Federation of Law Reform Agencies as a Canada not-for-profit Corporation.

Motion: It was moved by Peter Lown and seconded by Clifford Edwards, Q.C., that the Executive Committee of the Federation of Law Reform Agencies (FLRA), when formed, consider and bring forward proposals with respect to the activities that the FLRA ought to undertake. Nova Scotia abstained.

All three motions carried. Mr. Lown agreed to take immediate steps to finalize the new Corporation's name. Consent forms permitting the use of the name would be forwarded to Conference members. Thereafter, application would be made for federal incorporation.

10. Response to the "Renewing Consensus" Report

Mr. Basil Stapleton, Q.C., in his dual capacity as President of the Law Reform Conference of Canada and Chairman of the Uniform Law Section of the Uniform Law Conference of Canada, opened discussion of this issue. The focus of his remarks was the written Report outlining the response of the Law Reform Agencies to the Document on "Renewing Consensus." The response was a synthesis of the views of the individual member agencies of the Conference. The synthesis was prepared by Mr. Peter Lown.

The response by the Law Reform Agencies to the Discussion Document on Renewing Consensus contained some hard criticism of the Conference but also a number of concrete suggestions for revitalization. The tone was one of optimism so long as the Conference returned to the three R's:

(i) Relevance – in the choice and scope of topics such that harmonization and implementation are realizable goals;

(ii) Responsiveness – to the needs of the constituency the Conference serves and meeting those needs in a timely fashion; and

(iii) Respect – through broadening high-profile participation and producing a quality product.

It was proposed that immediate action be taken on four fronts to:

(i) Expand the balance of members to ensure that there is a focal and critical analysis of the issues placed before the Conference;

(ii) Fit the agenda to the topics which are acceptable to those whose responsibility it will be to enact the proposals, by seeking specific direction of the Attorneys General as to topics on which uniform Action is required;

(iii) Set the goal as harmonization rather than super-reform; and

(iv) Tighten the constitution and operations of the Conference.

It was suggested that action on these fronts would give a clear focus to the work of the Conference, would help create a better Conference profile, and would avoid the *black hole* problem; namely, the preparation of draft uniform Acts which none of the member jurisdictions are prepared to implement. There was agreement that progress in all these areas was essential to the success of the renewal process.

It was resolved that the written response by the law reform agencies to the Discussion Document on Renewing Consensus would be forwarded to the Uniform Law Conference for discussion during the time period set by that Conference for general debate of the renewal process. The members of the Law Reform Conference applauded the courage of the Executive of the Uniform Law Conference in undertaking the arduous task of critical self-evaluation and indicated that they looked forward to many years of fruitful cooperation with the Uniform Law Conference.

11. Jurisdictional Reports

Mr. Basil Stapleton, Q.C., indicated that because of other commitments it was necessary that he take his leave of the meeting. It was proposed that Mr. Dale Linn, Chairman of the Law Reform Commission of Saskatchewan and President Designate of the Law Reform Conference of Canada, assume the Chair for purposes of member Agencies giving their annual jurisdictional reports.

Because of the length of time devoted to other agenda items, jurisdictional reports were somewhat hurried. The view was expressed that the work of the Annual Meeting had grown beyond that which could be covered in one-half day. It was suggested that in the coming year thought be given to expanding meeting time to at least one full day.

Each of the member Agencies gave an informal summary of activities in their respective jurisdictions over the course of the past year. Reports indicated that the year was a busy and productive one for all Agencies.

Manitoba: Paper on Independence of Provincial Judges was well received by the public. Attorney General announced proposals for evaluation. Living Wills paper received tremendous publicity.

Current Projects: Retirement Plan Beneficiaries Act; Short informal report on Limitations of Action; Discussion paper on Sterilization of Minors and Mentally Handicapped; Publications on Distress; Commercial Tenancies; Independence of Magistrates and Justices of the Peace; Animal Protection and Control; Regulation of Professions and Occupations. Paper on Trusts by early winter (ethical investments non-charitable trusts).

British Columbia: *Reports published.* Family Law Project re Property Rights; Notice Requirements Against Municipal Bodies; Limitation; Ultimate Limitations Period; Commercial Tenancy.

The Commission wrote approximately three hundred interested persons for suggestions for reform. It was felt to be a useful means of facilitating public involvement in the law reform process. Positive re-

sponses were received, and from fifty or sixty suggestions ten or twelve projects were instituted including non-charitable trusts. Among those still left on program: Division of Pensions on Marriage Breakdown; Execution Against Shares and Securities; Enforcement of Judgments between Canadian Provinces. Legislation this year: Foreign Money Claims Act.

Ontario: *Reports published this past year:* Report on the Law of Standing; Report on Damages for Environmental Harm; Report on the Liability of the Crown and a Study Paper on Wrongful Interference with Goods.

Current Projects: Mandatory testing in respect of HIV Sero-positivity; Drug and Alcohol; Genetic Screening and Psychological Testing; Cleaning up the Administration of Estates of Deceased Persons project; project on Exemplary Damages (in the final stage); project on Judicial Appointments; Reference on Law of Charities.

Future Projects: Dispute Resolution in Workplace and Child Witnesses. Things that might possibly come up: Public Inquiries; Coroners Act; and Group Defamation.

Newfoundland: Under the Newfoundland Law Reform Commission Act, on May 21 of this year the appointments of all Commissioners came to an end. There has been no official announcement of new appointments to date. A new Commission is expected shortly.

The Commission has moved. The new address is 345-347 Duckworth Street, St. John's, NF, AIC IH6; telephone: (709) 576-0537 and 576-0781. The new offices can accommodate the Federation of Law Reform Agencies' meetings in 1992.

Projects: Mechanics' Liens (at printer); Section 9 of the Registration of Deeds Act: Priorities and the Conveyancing Process (at printer); Statute of Frauds (Professor Robertson of U.N.B. is working on this with a December deadline. Funds for this from Law Foundation). U.N.B. and Dalhousie Law Schools expressed interest in undertaking work for the Commission. Registration of Business Names – Internal Working Paper distributed for comment; Medical Legal Issues; Sub-Committee has been struck to identify issues in need of being addressed.

Proposed first topics: Living Wills and Consent for Medical Treatment.

Alberta: The Institute works closely with, but independently of, the Attorney General and has a good relationship with the Law Society.

Reports issued: Cohabitation Outside Marriage; Financial Assistance by a Corporation: Section 42 of the Business Corporations Act; Limitations; Bulk Sales Act; Section 16 of Matrimonial Property Act; Enduring Powers of Attorney; Referees; Dispute Resolution.

Work in progress: Creditors Rights and Canada Pension Plan Benefits. Reports proceeding for discussion - Securities Depositories; Section 14 Interpretation Act; Mortgage Remedies.

Special projects: Crown Liability; Surrogate Rules – Provincial Family Legislation; Investigation of Dispute Resolution - research paper within next three weeks.

Feasibility studies that have been approved: Appropriate Protocol Regarding Child Witnesses; Cost of Credit; Unfair Contract Terms; Procedures of Administrative Tribunals.

The scope of the Creditors' Rights report is significant, including a complete review of the enforcement process, the area of exemptions, garnishment, seizure and methods thereof.

Several meetings have been held with the Law Society with respect to recommendations on Limitations and Enduring Powers of Attorney. The climate for implementation of reports is now improved with encouraging prospects for the next legislative sessions.

It was noted that there has been increasing interest in the community regarding law reform. The view was expressed that the manner in which reports are presented to the public and the ability of the law reform agency to defend its proposals are very important to its success.

Saskatchewan: *Projects finalized:* The State of English Law in Saskatchewan and Bulk Sales.

Meetings have been held on study of Personal Property Security Act. Working on Structured Judgments; Arbitration; Trustees; Creditors Rights; Debtor and Creditor; Living Wills; Enduring Powers of Attorney.

New Brunswick: *Work completed:* Credit Unions Study with Cabinet approval to undertake legislative drafting; a study concerning marketable titles and submission to Cabinet of a proposal for a new Clarification of Titles Act; Securities Legislation Study and submission to the Minister of a report recommending enactment of a new Securities Act; draft reports concerning proposed Administrative Procedures legislation and amendments to various Acts concerning aspects of family law; submission to the Legislative Assembly of a Succession Law Amendment Act dealing with various aspects of the distribution of estates.

Work in progress: Study Concerning Personal Property Security legislation with a final report expected in the fall of 1990; second draft of a Report on Reform of the Right to Information Act.

12. Other Business

Mr. Dale Linn, Chairman of the Law Reform Commission of Saskatchewan, was acclaimed the new President of the Law Reform Conference of Canada, which body will shortly be reborn as the Federation of Law Reform Agencies of Canada. Members congratulated Mr. Linn.

13. Next Meeting

It was agreed that the next Annual Meeting of Law Reform Agencies will be held in Regina in 1991 on the Sunday in August immediately prior to the Uniform Law Conference meetings unless, in the meantime, the Executive Committee determines otherwise.

14. Adjournment

The Meeting adjourned at 5:30 p.m.

APPENDIX F

(see page 39)

DEPARTMENT OF JUSTICE REPORT TO THE UNIFORM LAW CONFERENCE

Saint John, August 13-17, 1990

This has been a busy year for Canada in the field of private international law. In particular, Canada participated in the activities of The Hague Conference on Private International Law, UNCITRAL and UNIDROIT. Also, the Department of Justice submitted several conventions to the provinces for review and twice consulted the Uniform Law Conference.

I would first like to talk about the consultation with the Uniform Law Conference, the assistance provided by the Advisory Group on Private International Law and, finally, the latest developments in our activities in private international law.

CONSULTATION WITH THE UNIFORM LAW CONFERENCE

We have always greatly appreciated the contribution made by the Uniform Law Conference in the Private International Law area. This year, we consulted the Conference regarding the compatibility with domestic law of the Hague Convention on the Taking of Evidence Abroad in Civil or Commercial Matters and the implementation of conventions on private international law.

I understand that you have provided the information needed to update the Tallin report on the compatibility of the Convention on the Taking of Evidence with Canadian law. This information will be very useful in implementing this convention. As of now, six jurisdictions have stated that they are in favour of implementing the Convention, while the others are still studying the matter.

With respect to the implementation of conventions on private international law, we consulted the Conference to examine the possibility of accelerating and standardizing the procedure. The question was raised at a meeting of the Advisory Group on Private International Law with a view to establishing a procedure that would ensure that conventions are implemented as soon as possible once Ministers have decided to do so. The other concern of the members of the Group was the accessibility of information on a convention, such as lists of member States, that might be improved by the implementation process. We hope to receive your

comments on this matter so that we can find a common solution for all the provinces and territories.

ADVISORY GROUP ON PRIVATE INTERNATIONAL LAW

The Advisory Group on Private International Law was first established by the Department of Justice in 1973 to provide it with close and continuing guidance in matters of provincial interest that are under consideration by certain international organizations in private international law. The Group, which is reconstituted every four years, is composed of four regional representatives, one each from the western provinces, the Atlantic provinces, Ontario and Quebec and, in addition, one private practitioner. We ensure that at least one member of the Group is also a member of the Uniform Law Conference. The Group has met on two occasions since last August: in November 1989 and April 1990. The agenda for these meetings was very full and gave rise to a very productive exchange of views on conventions of The Hague Conference, UNIDROIT and UNCITRAL, the Council of Europe and the Organization of American States. The Group recommended that the provinces be consulted on The Hague Convention Abolishing the Requirement of Legalization for Foreign Public Documents, The Hague Convention on the Law Applicable to the Succession to the Estates of Deceased Persons and two conventions of the Council of Europe on service and the taking of evidence in administrative matters.

STATUS CHART OF CANADIAN ACTIVITIES IN PRIVATE INTERNATIONAL LAW

Before telling you of the most recent developments in our activities in private international law, I would like to remind you of our Status Chart.

In an effort to better inform provinces and interested groups on developments in private international law in Canada, the Department of Justice of Canada distributes a Status Chart of Canadian Activities in Private International Law. This Chart is distributed twice a year to give updated information on all conventions in private international law to which Canada is a party or is considering.

The Chart mentions the various organizations under the auspices of which the conventions are negotiated or were adopted, the status of Canada's participation, special clauses, the legislation required for implementation, the contribution of the Uniform Law Conference, whether in drafting a uniform act or in making recommendations or carrying out studies, the adopted implementing legislation and the action that remains to be taken.

The Chart is sent to all provinces and territories as well as to bar associations, law societies, and universities.

LATEST DEVELOPMENTS IN PRIVATE INTERNATIONAL LAW

THE HAGUE CONFERENCE ON PRIVATE INTERNATIONAL LAW

The Hague Conference on Private International Law now has thirty-six member States.

This year, Canada participated in a Special Commission on the Operation of the Convention on the Civil Aspects of International Child Abduction from October 23 to 27, 1989, and in the Special Commission on the Elaboration of a Convention on Inter-country Adoption from June 11 to 21, 1990.

We sent the provinces the report of the Canadian delegation as well as the general conclusions drafted by the Permanent Bureau of the Conference concerning the Special Commission on the Hague Convention on the Abduction of Children. We will forward to them the report of the Canadian delegation to the commission on inter-country adoption in the weeks ahead.

The Special Commission for the Elaboration of a Convention on Inter-country Adoption

Canada was honoured at the Special Commission when Mr. T. B. Smith, formerly of the Department of Justice and now in private practice, was elected chairman. The commission will carry out its work over a three-year period, and the next meeting will be held in April 1990, to be followed by a meeting in 1992, with the objective of adopting a convention in 1993.

There is such a crying need for a convention on inter-country adoption, that even States that are not members of the Hague Conference but which are important sources of children for adoption, are participating in its drafting. There is a profound desire to establish a system for administrative cooperation so that there is greater legal certainty and transparency in the inter-country adoption process.

We will consult the appropriate authorities in the provinces throughout the negotiation process in order to develop a convention that will satisfy their concerns as far as possible.

Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil and Commercial Matters

This convention has been in force since May 1, 1989. The rules of practice in one territory have not yet been amended to comply with it. We hope that this will be done as soon as possible.

Convention on the Law Applicable to Trusts and their Recognition

Five provinces, New Brunswick, Prince Edward Island, British Columbia, Newfoundland and Alberta, have already adopted implementing legislation following the Uniform Act adopted by the Uniform Law Conference in 1987. Other provinces are drafting implementing legislation, and we hope Canada will be in a position to ratify this convention in the near future.

Convention on the Taking of Evidence Abroad In Civil or Commercial Matters

In 1989, on the recommendation of the Advisory Group on Private International Law, we submitted the Convention on the Taking of Evidence Abroad in Civil or Commercial Matters to all administrations in order to determine whether it would be desirable for Canada to participate. As I mentioned earlier, so far we have received the support of six governments, and we are awaiting replies from the others. We hope the update of the Tallin report will facilitate the review of this Convention so that Canada may become party to it as soon as possible.

I remind you that there is no federal State clause in the Convention, so we must have the unanimous support of all the provinces and territories in order to become party to it.

Convention Abolishing the Requirement of Legalization for Foreign Public Documents

By letter of May 8, 1990, and on the recommendation of the Advisory Group on Private International Law, we submitted this Convention to the provinces and territories in order to have their opinion on its implementation. Three provinces have already expressed their support for the Convention, and others have informed us that their initial reaction is positive, but that a more detailed study should be carried out.

Convention on the Law Applicable to the Succession to the Estates of Deceased Persons

The reports of the "Rapporteur special" and the Canadian expert are now complete and will soon be sent to the provinces for a review of the Convention to determine whether it should be implemented in Canada.

APPENDIX F

UNCITRAL

The United Nations Commission on International Trade Law is the "core legal body within the United Nations system in the field of international trade law" and has the mandate to further the progressive harmonization and unification of the law of international trade.

The membership of UNCITRAL is limited at present to thirty-six States, structured so as to be representative of the various geographic regions and the principal economic and legal systems of the world. Observers from States and international governmental and non-governmental organizations are welcome to participate at meetings of UNCITRAL and of its working groups. Canada is now a member of UNCITRAL.

The Commission now has three working groups: the Working Group on the New International Economic Order, the Working Group on International Payments and the Working Group on International Contract Practices.

Uncitral Work of Current Interest

United Nations Convention on Contracts for the International Sale of Goods (Vienna, 1980)

Legislation to implement the Vienna Convention on Contracts for the International Sale of Goods (1980) has now been enacted in nine jurisdictions, namely, Nova Scotia, Prince Edward Island, Ontario, New Brunswick, the Northwest Territories, Manitoba, Newfoundland, Alberta and British Columbia. Federal implementing legislation for federal entities is now being drafted, and we hope that Canada will accede to the Convention in the near future.

Draft Convention on International Bills of Exchange and International Promissory Notes

The UNCITRAL draft Convention on International Bills of Exchange and International Promissory Notes was adopted by the General Assembly of the United Nations on December 9, 1988. Canada participated in drafting the Convention, which will establish a new international regime based on a viable compromise between the common law and the civil law systems. Canada was the first country to sign this Convention, and the United States have just done so. The Convention will come into force after ten ratifications or accessions. In order to implement it in Canada, federal legislation would be required.

Model Rules on Electronic Funds Transfers

The UNCITRAL Working Group on International Payments, of which Canada is a member, is continuing the preparation of model rules on electronic funds transfers based on the Legal Guide on EFT that was prepared by UNCITRAL. The model rules could provide a basis for domestic regulation and Canada is participating actively in their preparation. To that end, the Department of Justice is consulting very widely within the federal government, the provincial governments, with private industry and with academics. The Working Group has already had six meetings, and it is possible UNCITRAL may adopt the model rules at its 1991 session.

Stand-by Letters of Credit and Guarantees

The Working group on International Contract Practices recommended to the Commission that it should undertake the drafting of a model uniform law on stand-by letters of credit and guarantees which could be adopted by States. The Working Group began this work at its session in New York in February 1990 and is now pursuing it. The next meeting will be held in Vienna next month.

Draft Convention on Liability of Operators of Transport Terminals In International Trade

At its 22nd session at Vienna during May 1989, UNCITRAL adopted a draft Convention on Liability of Operators of Transport Terminals in International Trade and recommended to the General Assembly of the United Nations that a diplomatic conference be held with a view to its adoption by the United Nations. This conference will be held in Vienna in April 1991.

The purpose of the Convention is to establish uniform limits of liability for the operators of transport terminals engaged in international trade. The Convention does not apply to the carriage of goods, but rather to their transfer by, for example, stevedores or air or land terminal operators. The liability regime is similar to that established under the Montreal Protocols of the Warsaw Convention. In addition to establishing the limits of liability, the draft Convention provides the operators with a security interest in the goods for non-payment of charges for services rendered.

The Department of Justice is consulting industry representatives and the provinces on the draft Convention, with the cooperation of the Department of Transport. We have already begun to receive their comments. We require these comments by August 31 if we are to be able to convey to UNCITRAL the observations of the Government of Canada before September 30, as requested by UNCITRAL.

Government Procurement

Work on government procurement has been commenced by the Working Group on the New International Economic Order. It is expected that the Working Group will agree upon a model law on procurement which could be adopted by States. The project will probably take about two years to complete. This subject is considered important by developing States who often perceive their access to markets in developed States as being unnecessarily limited by governmental procurement practices, in particular. The Department of Justice is participating very actively in the work on international procurement. The Department will consult with federal and provincial government departments and with industry as the work progresses. Some consultation has already taken place within the Government and with the Advisory Group on Private International Law. A first draft of several chapters of the model legislation was submitted to the Work Group in February 1990 for review, and work will resume in October 1990.

Countertrade

During its last session in July, 1990, the Commission examined several draft chapters from a legal guide prepared by the UNCITRAL Secretariat on countertrade and other barter-like transactions. Other draft chapters will be considered next year.

UNIDROIT

The International Institute for the Unification of Private Law, known as Unidroit, is a 53-member governmental organization based in Rome, of which Canada has been a member since 1969. Current members include the Soviet Union, China, Australia, States from eastern and western Europe, North and South America and Africa. The mandate of Unidroit is to harmonize and coordinate the private law of States by preparing draft laws and conventions to establish uniform law and improve international relations in the field of private law. Canada is an active participant in Unidroit. Anne-Marie Trahan, Associate Deputy Minister, Civil Law, Department of Justice, is a member of the Governing Council of Unidroit, one of the Institute's principal organs.

Leasing and Factoring Conventions

In May 1988, Canada hosted a Diplomatic Conference, organized by the Department of Justice, for the purpose of adopting two conventions prepared under the auspices of Unidroit, namely, the Convention on International Financial Leasing and the Convention on International Factoring. Both Conventions were adopted, and seven states have thus

far signed them: Ghana, Guinea, Nigeria, Morocco, the Philippines, Tanzania and France. Canada has not yet signed the Conventions.

The Leasing Convention was designed essentially to respond to the need to develop an internationally uniform approach to regulating international financial leasing. The type of arrangement with which the Convention is concerned is a tri-partite arrangement involving a lessee, a lessor and a supplier. The lessee arranges with a financier (lessor) to purchase equipment from a named supplier and to make it available through a contractual arrangement that is essentially a financing device. The lessor is technically the purchaser (owner) of the equipment, but the lessee will use and retain possession of it.

The purpose of the Factoring Convention is to provide uniformity among States with respect to their domestic laws dealing with international factoring. The concept of factoring governed by the Convention concerns an arrangement whereby a finance company (factor) purchases the trade debts of an exporter and in most cases undertakes to recover the debts from the latter's foreign customers for a fee.

The Department of Justice has not yet proceeded with its plans to consult the provinces, territories and interested private sector groups and experts on the desirability of Canada becoming a party to the Conventions.

Unidroit's Work Program

Unidroit has a number of projects on its current Work Program, listed in the headings that follow:

Security Interests in Mobile Equipment

The subject of security interests in mobile equipment is of particular interest to Canada. Following on the momentum established at the 1988 Diplomatic Conference on Leasing and Factoring, Canada proposed that Unidroit look into the desirability and feasibility of developing uniform laws on security interests in mobile equipment. Unidroit agreed and requested Professor Ronald Cuming of the University of Saskatchewan to prepare a report on the subject.

In his report, Professor Cuming stated that the conflict of laws rules of western European and North American jurisdictions are inadequate to meet the needs of those who engage in modern financing transactions involving collateral in the form of mobile equipment (such as trucks and construction equipment). He concluded that there is a need to establish

a legal framework within which the financing of high-value mobile equipment can function effectively, although it would not be necessary to develop a complete code on international secured transactions law.

Unidroit recently circulated a questionnaire designed to elicit further information on this matter to commercial and financial circles around the world.

Principles for International Commercial Contracts

The Department has also followed the progress of the Unidroit Working Group that was established to develop an international instrument on principles for international commercial contracts. The Group is not attempting to develop a convention or any international instrument that would place obligations on States. Rather, they are drafting rules in non-technical language that incorporate concepts of the various legal systems around the world with a view to developing a document that could assist negotiators or arbitrators who deal with international commercial contracts.

The Working Group is a non-governmental body composed of 13 experts representing various legal systems. The Department is kept informed of the Group's progress by Professor Paul-Andr Crpeau, a member of the Group.

The Hotelkeeper's Contract

Last year, Unidroit asked member States to give their observations on a new draft convention on the hotelkeeper's contract. Country-wide consultations carried out by the Department indicated a firm opposition to such a project.

The lack of real or major problems with respect to the hotelkeeper's contract, along with the existence of adequate legal rules, were put forward in support of this position.

In light of these reactions and the study conducted by the Department, Canada recently informed Unidroit that it would find it difficult to support the continuation of this work by Unidroit.

International Protection of Cultural Property

The Study Group on the international protection of cultural property held its third session in January 1990, during which it approved the text of a preliminary draft Unidroit convention on stolen or illicitly exported cultural property.

The scope of this preliminary draft comprises demands for the recov-

ery of stolen cultural property and demands for the recovery of cultural property exported from the territory of a reciprocating State in violation of its export legislation.

The general rule with respect to stolen cultural property is that the party in possession of such property is required to return it to the requesting party, provided that the latter pays fair compensation at the time of return and that the party in possession proves that the necessary diligence was used when the property was acquired.

With respect to illegally exported property, the basic principle is that the courts or other competent government authorities of the requested State return the property to the requesting State, subject to certain conditions regarding the eligibility of the demand and on condition that an interest of the requesting State has been undermined.

Canada believes that it is important that this preliminary draft Convention, which is one of Unidroit's priorities, be studied as quickly as possible.

The Franchising Contract

Last year, the Department conducted consultations across Canada with a view to determining whether Unidroit should proceed with the development of an international instrument on franchising. Although there was some support for further work on franchising, there was considerable doubt as to the merits of attempting to develop an international instrument to unify the law in this area. Canada recommended to Unidroit that it redirect its work in this area by pursuing the preparation of a legal guide on the franchising contract. Unidroit is now cooperating with the international franchising committee of the business law section of the International Bar Association.

Relations Between Principal and Agent In the International Sale of Goods

Unidroit commissioned a study on this subject from Professor Dietrich Maskow of the Institute of Potsdam-Babelsberg. Professor Maskow concluded in his study that work should be undertaken with a view to concluding a "Convention on Contracts of Commercial Agency in the International Sale of Goods." The Convention would complement the Unidroit Convention on Agency in the International Sale of Goods, which was adopted in 1983 although it is not yet in force. The Department is now concentrating on the influence taking of the Vienna Convention on Contracts for the International Sale of Goods and will give consideration later to the 1983 Convention.

APPENDIX F

OTHER CONVENTIONS ON MUTUAL LEGAL ASSISTANCE

The Convention between Canada and the United Kingdom on the Reciprocal Recognition and Enforcement of Judgments in Civil and Commercial Matters has now been implemented in all the provinces and territories, except Quebec. This exception resulted in particular from problems related to the translation of documents and the compatibility of grounds of jurisdiction with Quebec law.

We also completed the consultation with the provinces and territories concerning the negotiation of a convention with France on mutual legal assistance. The majority of them supported the negotiation, and we are now preparing a draft convention to submit to France.

We are about to submit to the provinces and territories two Council of Europe conventions on mutual legal assistance: the European Convention on the Service Abroad of Documents Relating to Administrative Matters and the European Convention on the Obtaining Abroad of Information and Evidence in Administrative Matters. These two Conventions would complete the mutual legal assistance regime of The Hague Conventions on the Taking of Evidence and Service Abroad.

CONCLUSION

1. As many private international law conventions deal with matters within provincial legislative jurisdiction, Canadian participation in those conventions and in their drafting requires very close coordination between the provinces and the federal government.

2. The Advisory Group in private international law established by the Department of Justice to advise the Department on private international matters as well as the Uniform Law Conference play a key role in the coordination process. They both make it possible for Canada to fully participate in the development of private international law on the international level.

3. More particularly, the Uniform Law Conference can play a key role in the harmonization of private law by drafting uniform acts facilitating the implementation in Canada of private international law conventions.

4. We also see a role for the Conference in monitoring the uniform acts implementing international conventions in order to ensure that amendments to those uniform acts comply with the conventions they implement.

APPENDICE F

(voir page 39)

RAPPORT DU MINISTÈRE DE LA JUSTICE À LA CONFÉRENCE SUR L'UNIFORMISATION DES LOIS

Saint-Jean, du 13 au 17 août 1990

Le Canada a été très actif cette année dans le domaine du droit international privé. Plus particulièrement, le Canada a participé aux activités de la Conférence de La Haye de droit international privé, de la CNUDCI et UNIDROIT. De plus, le ministère de la Justice a soumis plusieurs conventions à l'examen des provinces et a consulté la Conférence sur l'uniformisation des lois a deux reprises.

Dans un premier temps, j'aimerais parler de la consultation avec la Conférence sur l'uniformisation des lois, de l'assistance fournie par le Groupe consultatif sur le droit international privé, pour ensuite vous informer des derniers développements de nos activités en droit international privé.

CONSULTATION AVEC LA CONFÉRENCE SUR L'UNIFORMAISATION DES LOIS

Nous avons toujours grandement apprécié l'apport de la Conférence d'uniformisation des lois en droit international privé. Cette année nous l'avons consultée à propos de la compatibilité avec le droit canadien de la Convention de La Haye sur l'obtention des prevues à l'étranger en matière civile ou commerciale et de la mise en oeuvre des conventions de droit international privé en général.

Au sujet de la Convention sur l'obtention des preuves, je comprends que vous avez fourni les renseignements nécessaires à la mise à jour du Rapport Tallin sur sa compatiblité avec le droit canadien. Cet effort nous sera très utile dans la mise en oeuvre de cette convention. A cet égard, six administrations se sont prononcées en faveur alors que les autres sont encore à étudier la question.

Concernant la mise en oeuvre des conventions de droit international privé, nous avons consulté la Conférence afin d'examiner la possibilité d'accélérer et d'uniformiser le processus. La question a été soulevée au Groupe consultatif sur le droit international privé afin d'établir une procédure qui assurerait la mise en oeuvre des conventions aussitôt que possible lorsque les ministres en ont décidé. L'autre préoccupation

des membres du Groupe concernait l'accessibilité de l'information relative à une convention, par exemple, le liste des États membres, qui pourrait être améliorée par le processus de mise en oeuvre. Nous espérons recevoir vos commentaires à ce sujet afin d'arriver à une solution commune à toutes les provinces et aux territoires.

GROUPE CONSULTATIF SUR LE DROIT INTERNATIONAL PRIVÉ

Le Groupe consultatif sur le droit international privé a été créé en 1973 par le ministère de la Justice afin de fournir à ce dernier des conseils judicieux et soutenus concernant les affaires d'intérêt provincial sur lesquelles des organismes internationaux se penchent dans le domaine du droit international privé. Le Groupe, qui est reconstitué tous les quatre ans, se compose de quatre représentants régionaux (l'Ouest canadien, les provinces de l'Atlantique, l'Ontario et le Québec) et d'un juriste du secteur privé. Au moins un membre du Groupe est aussi membre de la Conférence sur l'uniformisation des lois. Le Groupe s'est réuni a deux reprises depuis août dernier, soit en novembre 1989 et en avril 1990. L'ordre du jour de ces réunions était très chargé et a donné lieu à un échange de vues très fructueux sur des conventions de la Conférence de La Haye, d'Unidroit, de la CNUDCI, du Conseil de l'Europe et de l'Organisation des États américains. Le Groupe a recommandé de porter à l'attention des provinces la Convention de la Haye supprimant l'exigence de la légalisation des actes publics étrangers, la Convention de La Haye sur la loi applicable aux successions à cause de mort et deux Conventions du Conseil de l'Europe portant sur la signification et l'obtention des preuves en matière administrative.

TABLEAU D'ÉTAPES DES ACTIVITÉS CANADIENNES EN DROIT INTERNATIONAL PRIVÉ

Avant de vous informer des derniers développements dans nos activités en droit international privé j'aimerais vous rappeler l'existence de notre Tableau d'étapes.

Afin de mieux informer les provinces et les groupes intéressés des faits nouveaux en matière de droit international privé au Canada, le ministère fédéral de la Justice diffuse un Tableau d'étapes des activités canadiennes en droit international privé. Ce document qui paraît deux fois l'an met à jour les renseignements sur toutes les conventions en droit international privé auxquelles le Canada est partie ou envisage de le devenir.

Le Tableau d'étapes fait état des divers organismes sous l'égide desquels des conventions sont négociées ou adoptées, de la participation canadienne, des clauses spéciales, de la législation nécessaire à la mise en oeuvre, de l'apport de la Conférence sur l'uniformisation des lois (qu'il s'agisse de la rédaction d'une loi uniforme, de recommandations ou d'études), de l'adoption de lois de mise en oeuvre et des mesures qui s'imposent pour y donner suite.

Les provinces, les territoires, les associations de Barreau et les universités reçoivent ce Tableau d'étapes.

DERNIERS DÉVELOPPEMENTS EN DROIT INTERNATIONAL PRIVÉ

CONFÉRENCE DE LA HAYE DE DROIT INTERNATIONAL PRIVÉ

À l'heure actuelle, la Conférence de La Haye de droit international privé est composée de trente-six États membres.

Cette année, le Canada a participé, du 23 au 27 octobre 1989, à la Commission spéciale relative au fonctionnement de la Convention sur les aspects civils de l'enlèvement international d'enfants et du 11 au 21 juin 1990 à la Commission spéciale pour l'élaboration d'une convention sur l'adoption interétatique.

Nous avons fait parvenir aux provinces le Rapport de la délégation canadienne ainsi que les Conclusions générales rédigées par le Bureau permanent de la Conférence concernant la Commission spéciale sur la Convention sur l'enlèvement d'enfants. Nous leur transmettrons le Rapport de la délégation canadienne à la Commission sur l'adoption interétatique dans les semaines qui suivent.

Commission spéciale sur l'élaboration d'une convention sur l'adoption interétatique

Le Canada a eu l'honneur de se voir confier la présidence de cette Commission spéciale en la personne de Me T.B. Smith, anciennement du ministère de la Justice et maintenant en pratique privée. Les travaux de cette Commission s'échelonneront sur une période de trois ans, la prochaine réunion étant prévue pour avril 1990, suivie d'une réunion en 1992 de façon à adopter la convention en 1993.

L'élaboration d'une convention sur l'adoption interétatique répond à un besoin si criant qu'un nombre exceptionnel d'États, même des États non-membres de la Conférence mais qui sont d'importants États d'origine des enfants à adopter, participent à son élaboration. On constate

une volonté profonde d'établir un système de coopération administrative qui apporterait une plus grande certitude juridique et une plus grande transparence au processus d'adoption interétatique.

Nous consulterons les autorités compétentes des provinces tout au long de cette négociation afin d'élaborer une convention qui réponde à leurs préoccupations dans la mesure du possible.

Convention relative à la signification et la notification à l'étranger des documents judiciaires et extrajudiciaires en matière civile ou commerciale

Cette convention est en vigueur depuis le 1er mai 1989. Les règles de pratique dans un territoire n'ont pas encore été amendées pour s'y conformer. Nous espérons que ce soit fait dans les meilleurs délais.

Convention relative à la loi applicable au trust et à sa reconnaissance

Cinq provinces, soit le Nouveau-Brunswick, l'Ile-du-Prince-Edouard, la Colombie-Britannique, Terre-Neuve et l'Alberta ont déjà adopté une loi de mise en oeuvre de cette convention selon la loi uniforme adoptée par la Conférence d'uniformisation des lois en 1987. D'autres provinces préparent des lois de mise en oeuvre et nous espérons pouvoir ratifier cette convention dans un avenir rapproché.

Convention sur l'obtention des preuves à l'étranger en matière civile ou commerciale

En 1989, sur recommandation du Groupe consultatif sur le droit international privé, nous avons présenté la Convention sur l'obtention des preuves à l'étranger en matière civile ou commerciale à toutes les administrations afin de déterminer s'il était opportun que le Canada y devienne partie. Comme je le mentionnais plus tôt, jusqu'à présent, nous avons reçu l'appui de six administrations qui sont favorables à la mise en oeuvre de la Convention et nous attendons la réponse des autres. Nous espérons que la mise à jour du Rapport Tallin facilitera l'étude de cette convention afin que le Canada puisse y adhérer dans les meilleurs délais.

Je vous rappelle que la Convention ne contient pas de clause fédérale de sorte que nous avons besoin de l'appui unanime des provinces et des territoires pour y devenir partie.

Convention supprimant l'exigence de légalisation des actes publics étrangers

Par lettre du 8 mai 1990, et sur recommandation du Groupe consultatif sur le droit international privé, nous avons soumis cette convention

aux provinces et aux territoires afin de connaître leur avis sur sa mise en oeuvre. Trois provinces ont déjà exprimé leur appui à la convention et d'autres nous ont laissé savoir que, sous réserve d'une étude plus approfondie, la convention leur paraissait à première vue avantageuse.

Convention sur la loi applicable aux successions à cause de mort

Les rapports du Rapporteur spécial et de l'expert canadien sont maintenant complétés et sont sur le point d'être transmis aux provinces pour étude de la convention concernant l'opportunité de la mettre en oeuvre au Canada.

CNUDCI

La Commission des Nations Unies pour le droit commercial international privé, «principal organe juridique du système des Nations Unies dans le domaine du droit commercial international», a pour mandat de promouvoir l'harmonisation et l'unification progressives du droit commercial international.

Actuellement, ne peuvent être membres de la CNUDCI que trente-six États, représentatifs des diverses régions géographiques et des principaux systèmes économiques et juridiques du monde. Les États et les organismes gouvernementaux et non gouvernementaux internationaux peuvent participer aux séances de la CNUDCI et de ses groupes de travail à titre d'observateurs. Le Canada est maintenant membre de la CNUDCI.

Il existe à l'heure actuelle trois groupes de travail institués par la Commission : le Groupe de travail du nouvel ordre économique international, le Groupe de travail des paiements internationaux et le Groupe de travaildes pratiques en matière de contrats internationaux.

Travaux actuels de la CNUDCI intéressant le Canada

Convention des Nations Unies sur la loi applicable aux contrats de vente internationale de marchandises (Vienne, 1980)

Huit provinces, soit la Nouvelle-Écosse, l'Île-du-Prince-Édouard, la Colombie britannique, l'Ontario, le Nouveau-Brunswick, le Manitoba, Terre-Neuve et l'Alberta ainsi que les Territoires du Nord-Ouest, ont adopté une loi pour assurer la mise en oeuvre de la Convention de Vienne sur les contrats de vente internationale de marchandises (1980). La loi fédéral de mise en oeuvre pour les organismes fédéraux est en préparation et nous espérons que le Canada adhérera à cette convention dans un proche avenir.

Projet de convention sur les lettres de change internationales et les billets à ordre internationaux

Le 9 décembre 1988, l'Assemblée générale des Nations Unies a adopté la Convention sur les lettres de change internationales et les billets à ordre internationaux. Le Canada a participé activement à la rédaction de la Convention, qui instituera un nouveau régime international fondé sur un compromis viable entre la *common law* et le droit civil. Le Canada a été le premier à signer cette Convention et les États-Unis viennent de signer. La Convention entrera en vigueur après le dépôt de dix ratifications ou adhésions. Il faudra adopter une loi fédérale pour assurer sa mise en oeuvre au Canada.

Règles types relatives aux virements de crédits internationaux

Le Groupe de travail de la CNUDCI sur les paiements internationaux, dont le Canada est membre, poursuit l'élaboration de règles types sur les virements de crédits internationaux s'inspirant du Guide juridique sur les transfers électriques de fonds rédigé par la CNUDCI. Le Canada participe activement à l'élaboration de ces règles types qui pourraient servir de base à une réglementation nationale. À cette fin, le ministère de la Justice procède à de vastes consultations tant au sein du gouvernement fédéral que des gouvernements provinciaux, ainsi que de l'industrie privée et des universités. Les membres du Groupe de travail se sont déjà réunis à six reprises. Il est possible que la CNUDCI adopte les règles types lors de sa session en 1991.

Lettres de crédit stand-by et garanties

Le Groupe de travail des pratiques en matière de contrats internationaux a recommandé à la Commission d'entreprendre la rédaction d'une loi uniforme sur les lettres de crédits stand-by et les garanties qui pourrait être adoptée par États. Il a entrepris ces travaux lors de la séance qui s'est tenue en février 1990 et les poursuit. La prochaine réunion du Groupe aura lieu à Vienne le mois prochain.

Projet de convention sur la responsabilité des exploitants de terminaux de transport dans le commerce international

À sa 22ième session, tenue à Vienne en mai dernier, la CNUDCI a adopté un Projet de convention sur la responsabilité des exploitants de terminaux de transport dans le commerce international et a recommandé à l'Assemblée générale des Nations Unies de tenir une conférence diplomatique en vue de son adoption par les Nations Unies. La conférence se tiendra à Vienne en avril 1991.

Cette Convention vise à uniformiser les limites à la responsabilité

des exploitants de terminaux de transport dans le commerce international. Elle ne s'applique pas au transport de marchandises, mais plutôt à leur transbordement par des dockers ou des exploitants de terminaux aériens ou routiers par exemple. Le régime de responsabilité est similaire à celui établi aux termes des Protocoles de Montréal de la Convention de Varsovie. En plus d'établir les limites à la responsabilité, le Projet de convention prévoit, pour les exploitants, une sûreté sur les biens en cas de non-paiement des frais pour services rendus.

Le ministère de la Justice, en collaboration avec le ministère des Transports, mène actuellement des consultations auprès des représentants de l'industrie et des provinces au sujet de ce Projet de convention. Nous avons déjà commencé à recevoir des commentaires. Nous avons besoin de ces commentaires d'ici le 31 août afin de pouvoir transmettre à la CNUDCI les observations du Gouvernement du Canadien avant le 30 septembre à la demande de la CNUDCI.

Marchés publics

Le Groupe de travail du nouvel ordre économique international a commencé ses travaux sur l'adjudication des marchés publics. On s'attend à ce que les membres du Groupe de travail s'entendent sur une loi type d'adjudication des marchés publics, qui pourrait être adoptée par les États. Il faudra compter deux ans environ avant que ce projet ne soit terminé. Cette question importe particulièrement aux États en développement, qui considèrent souvent que leurs débouchés sur les marchés internationaux sont injustement limités en raison des pratiques en matière d'adjudication des marchés publics. Le ministère de la Justice participe très activement aux travaux sur les marchés publics. Il consultera les ministères fédéraux et provinciaux ainsi que les industries au fur et à mesure que les travaux progresseront. Des consultations ont déjà été entamées au sein du gouvernement et avec le Groupe consultatif sur le droit international privé. Un premier projet de quelques chapitres de la loi type a été soumis à l'examen du Comité de travail en février 1990. Les travaux se poursuivront en octobre 1990.

Échanges compensés

Au cours de sa dernière session en juillet la Commission a examiné plusieurs projets de chapitres d'un Guide juridique préparé par le Secrétariat de la CNUDCI sur les échanges compensés et autres transactions similaires. D'autres projets de chapitres seront considérés l'an prochain.

UNIDROIT

Depuis 1969 le Canada est membre d'Unidroit, soit l'Institut interna-

tional pour l'unification du droit privé. Unidroit est un organisme intergouvernemental composé de 53 États, qui a son siège à Rome. On compte parmi ses membres actuels l'Union soviétique, la Chine, l'Australie ainsi que des États de l'Europe de l'Est et de l'Ouest, de l'Amérique du Nord et du Sud et de l'Afrique. Unidroit a pour mandat d'harmoniser et de coordonner le droit privé, en rédigeant des projets de loi et de convention qui visent à établir des règles uniformes de droit privé et à améliorer les relations internationales en matière de droit privé. Le Canada participe activement aux travaux de cet organisme; Anne-Marie Trahan, sous-ministre déléguée, Droit civil, au ministère de la Justice, siège présentement au Conseil de direction, un des principaux organes d'Unidroit.

Conventions sur le crédit-bail et l'affacturage

En mai 1988, le Canada a accueilli une Conférence diplomatique organisée par le ministère de la Justice en vue d'adopter deux conventions, rédigées sous l'égide d'Unidroit, soit la Convention sur le crédit-bail international et la Convention sur l'affacturage international. Ces deux Conventions ont été adoptées et, depuis, ont été signées par sept États, soit le Ghana, la Guinée, le Nigeria, le Maroc, les Phillipines et la Tanzanie et la France. Le Canada n'a pas encore signé ces conventions.

La Convention sur le crédit-bail a été conçue spécialement dans le but de régir uniformément le crédit-bail à l'échelle internationale. Elle s'applique aux contrats tripartites où les co-contractants sont le crédit-preneur, le crédit-bailleur et le fournisseur. Le crédit-preneur s'oblige envers un financier (le crédit-bailleur) à acheter du matérial d'un fournisseur désigné et à en faire l'objet d'un contrat qui n'est ni plus ni moins un instrument de financement. Le crédit-bailleur est, à toutes fins utiles, l'acheteur (propriétaire) du matériel, mais le crédit-preneur en a la jouissance et la possession.

La Convention sur l'affacturage vise à uniformiser le droit national des États relativement à l'affacturage international. La notion de l'affacturage à laquelle la Convention s'applique est le contrat par lequel une société de financement (cessionnaire) achète les créances commerciales d'un exportateur et, la plupart du temps, entreprend de recouvrer les créances, moyennant des frais, des clients étrangers de ce dernier.

Le ministère de la Justice n'a pas encore entamé les consultations prévues avec les provinces, les territoires, les experts et les groupes du secteur privé sur l'opportunité pour le Canada d'adhérer à ces Conventions.

Programme de travail d'Unidroit

Sur le programme de travail d'Unidroit figurent les projets qui suivent:

Sûretés sur le matériel pouvant être déplacé

Les sûretés sur le matériel pouvant être déplacé intéressent particulièrement le Canada. Emporté par l'élan de la Conférence diplomatique de 1988 sur le crédit-bail et l'affacturage, le Canada a proposé qu'Unidroit fasse une étude sur l'opportunité et la faisabilité d'élaborer des lois uniformes sur les sûretés sur le matériel mobile. Unidroit a accepté la proposition et a chargé le Professeur Ronald Cuming de l'Université de la Saskatchewan de rédiger un rapport sur ce sujet.

Dans son rapport, le Professeur Cuming indique que les règles sur le conflit des lois des pays de l'Europe de l'Ouest et de l'Amérique du Nord ne répondent pas aux besoins de ceux qui s'engagent dans des opérations financières modernes assorties de charges sur du matériel mobile (tel que les camions et l'équipement de construction). Il a conclu que la création d'un cadre juridique pour le financement de matériel mobile de grande valeur comblerait une lacune bien qu'il ne soit pas nécessaire d'élaborer un code complet sur les transactions internationales garanties.

Unidroit a récemment distribué aux milieux commerciaux et financiers à travers le monde un questionnaire visant à obtenir de l'information additionnelle à ce sujet.

Principes relatifs aux contrats commerciaux internationaux

Le Ministère suit le progrès du Groupe de travail d'Unidroit chargé d'élaborer un instrument international sur les principes relatifs aux contrats commerciaux internationaux. Le Groupe de travail ne vise pas à élaborer une convention ni aucun autre instrument international qui créerait des obligations pour les États; il rédige plutôt des règles en langue non spécialisée qui incorporeraient des notions de divers régimes juridiques du monde dans le but d'élaborer un document qui aiderait éventuellement aux négociations ou à l'arbitrage en matière de contrats commerciaux internationaux.

Le Groupe de travail est un organisme non gouvernemental composé de 13 experts représentant divers régimes juridiques. Le Professeur Paul-André Crépeau, membre du Groupe de travail, tient le Ministère au courant des travaux du Groupe.

Contrats d'hôtellerie

Unidroit a demandé l'an dernier aux États membres de faire con-

naître leurs observations sur un nouveau projet de convention sur le contrat d'hôtellerie. Des consultations menées par le ministère à l'échelle du pays ont révélé une nette opposition à l'égard de ce projet.

L'absence de problèmes réels ou majeurs dans le domaine du contrat d'hôtellerie, ainsi que l'existence de règles juridiques adéquates ont été les motifs essentiels mis de l'avant pour justifier cette position.

En raison de ces réactions et de l'analyse menée au sein du ministère, le Canada a récemment informé Unidroit qu'il lui était difficile d'appuyer la poursuite des travaux à ce sujet au sein d'Unidroit.

Protection internationale des biens culturels

Le comité d'étude sur la protection des biens culturels a tenu en janvier 1990 sa troisième session, au cours de laquelle il a approuvé le texte d'un avant-projet de Convention d'Unidroit sur les biens culturels volés ou illicitement exportés.

Cet avant-projet a pour champ d'application «les demandes de restitution de biens culturels volés ainsi que les demandes visant au retour de biens culturels exportés du territoire d'un État contractant en violation de sa législation en matière d'exportation».

En ce qui a trait aux biens culturels volés, la règle générale est que le possesseur d'un tel bien soit tenu de le restituer au demandeur à condition que ce dernier paie, au moment de la restitution, une indemnité équitable, sous réserve que le possesseur prouve qu'il a exercé la diligence requise lors de l'acquisition du bien.

En ce qui concerne les biens exportés illégalement, le principe fondamental est à l'effet que les tribunaux ou toutes autres autorités compétentes de l'État requis ordonnent le retour de ces biens dans l'État demandeur sous réserve du respect de certaines conditions relatives à l'admissibilité des demandes, et à condition qu'une atteinte ait été portée à l'un ou l'autre intérêt de l'État demandeur.

Le Canada estime qu'il est important de procéder rapidement à l'examen de cet avant-projet de Convention qui fait partie des priorités d'Unidroit.

Franchisage

Le ministère a mené l'an dernier des consultations à l'échelle du pays afin de déterminer si Unidroit devait poursuivre l'élaboration d'un instrument international sur la franchisage. Bien que certains aient été favorables à la poursuite des travaux sur le franchisage, le bien-fondé du projet d'uniformiser ce domaine du droit fut largement mis en doute.

Le Canada a alors recommandé à Unidroit de réorienter ses travaux dans ce domaine et de rédiger un guide juridique sur le franchisage. A ce titre, Unidroit coopère présentement avec le Comité (Franchisage international) de la Section de droit des affaires de l'International Bar Association.

Lien entre représentant et représenté dans la vente internationale de marchandises

Unidroit a chargé le Professeur Dietrich Maskow de l'Institut de Potsdam-Babelsberg de mener une étude sur ce sujet. Dans son étude, le Professor Maskow a conclu que des travaux devraient être entreprise en vue de conclure une «Convention sur la représentation commerciale dans la vente internationale de marchandises». Cette Convention serait le complément de la Convention d'Unidroit sur la représentation en matière de vente internationale de marchandises, qui a été adoptée en 1983 mais qui n'est pas encore en vigueur. Le ministère se concentre actuellement sur la mise en oeuvre de la Convention de Vienne sur les contrats de vente internationale de marchandises et se penchera plus tard sur la Convention de 1983.

AUTRES CONVENTIONS D'ENTRAIDE JUDICIAIRE

La Convention entre le Canada et le Royaume-Uni pour assurer la reconnaissance et l'exécution réciproques des jugements en matière civile et commerciale a maintenant été mise en oeuvre dans toutes les provinces et les territoires sauf au Québec, particulièrement à cause d'un problème de traduction des documents et de compatibilité des motifs de compétence avec le droit québécois.

Aussi, nous avons terminé la consultation avec les provinces et les territoires concernant la négociation d'une convention avec la France sur l'entraide judiciaire. La grande majorité se sont prononcés en faveur de cette négociation et nous préparons un projet de convention à soumettre à la France.

Finalement, nous sommes sur le point de soumettre aux provinces et aux territoires deux conventions d'entraide judiciaire du Conseil de l'Europe, soit la Convention européenne sur la notification à l'étranger des documents en matière administrative et la Convention européenne sur l'obtention à l'étranger d'informations et de preuves en matière administrative. Ces deux conventions complètent le régime d'entraide judiciaire des Conventions de La Haye sur l'obtention des preuves et sur la signification à l'étranger.

APPENDICE F

CONCLUSION

1. Comme bon nombre de conventions de droit international privé élaborées au plan international touchent à des matières qui relèvent de la compétence législative des provinces la participation du Canada au développement du droit international privé au niveau international requiert une coordination étroite entre les provinces et le gouvernement fédéral.

2. Le Groupe consultatif établi par le ministère de la Justice pour le conseiller en droit international privé ainsi que la Conférence sur l'uniformisation des lois jouent un rôle essentiel dans ce processus de coordination. Ils permettent au Canada de participer pleinement aux activités internationales de développement du droit international privé.

3. En particulier, la Conférence sur l'uniformisation des lois peut jouer un rôle essentiel dans le domaine de l'harmonisation du droit privé en rédigeant des lois uniformes qui facilitent la mise en oeuvre à travers le Canada des conventions de droit international privé.

4. Nous croyons aussi que la Conférence pourrait jouer un rôle de surveillance des lois uniformes visant à mettre en oeuvre des conventions internationales afin de faire en sorte que les amendements qui pourraient être apportés à ces lois uniformes soient compatibles avec les conventions qu'ils mettent en oeuvre.

APPENDIX G

(see page 49)

REPORT OF COMMITTEE FOR A UNIFORM REGULATORY OFFENCES PROCEDURE ACT

DRAFTING INSTRUCTIONS

(Amended to reflect the discussion by the Uniform Law Section at its meeting in August, 1990)

Title

The proposed uniform Act will provide for the procedures for charging, trying, convicting and imposing penalties for those offences that are created by provincial legislation and necessary for the enforcement of laws that are within provincial jurisdiction, and also the corresponding offences in legislation of the territories and of Canada. The title should be wide enough to include all these jurisdictions and it is recommended that the uniform Act be entitled the Uniform Regulatory Offences Procedure Act.

Objective

The general objective of the uniform Act is to provide procedures for the prosecution of regulatory offences that will recognize a distinction between crimes and most regulatory offences, that will eliminate some of the technicalities and procedural steps that are peculiar to criminal behaviour and punishment and that will provide appropriate procedures for bringing the vast number of minor regulatory offence proceedings to an expeditious conclusion in a manner that is appropriate to their nature.

Court

It is desirable, if possible, for trials and hearings for regulatory offences to be held in a place and at a time that are separate from those for criminal offences. The advantages are:

1. to remove the association of the offence with criminality;
2. to permit the court, on a hearing day, to deal with all matters coming before it under one code of procedure and not change from case to case;
3. to encourage the assignment of workload to judges who will specialize in regulatory offences.

Although it is appropriate to leave the court system for the administration of justice to the enacting jurisdiction, the uniform Act should contain optional terminology for proceedings to be in a Regulatory Offences Court presided over by a judge of that court. The creation of the Court and the appointment or designation of judges should be left to the enacting jurisdiction to provide for it in appropriate legislation for the establishment of courts and the appointment of judges. For example, the vesting of existing provincial judges with jurisdiction and assigning their duties would be sufficient.

The jurisdiction over each case ought to be in the Court and not in the judge (cf the Criminal Code where the jurisdiction is in the magistrate or judge).

There should be the statutory authority for a court that is trying a summary conviction offence to also constitute itself as a Regulatory offences Court in order to try concurrently a regulatory offence that arises out of the same circumstances.

Because the judges who have jurisdiction over regulatory offences are appointed by the province for provincial courts, they have no inherent jurisdiction as a traditional common law court has. There is a tendency for the judges to decline to act if there is not a specific procedure provided, on the basis that they have no authority except as is specifically provided by statute. There should by a provision giving the judges the personal duty of exercising the court's jurisdiction, in the absence of express provisions, in any manner that is consistent with the due administration of justice.

Regulatory offences officers

Who may lay a charge on behalf of the Crown needs to be specified in the Act. Charges may be laid and proceedings commenced by any police officer. The Act could contain authority for designating persons as Regulatory Offences officers by a Minister of the Crown in writing or by regulation to permit a regulatory agency or Ministry to act on breaches of its statutes or regulations directly through its own inspectors. For purposes of uniformity, the manner of appointing enforcement officers can be left to the enacting jurisdiction.

Procedure for the Commencement of Proceedings

It is recommended that there be one uniform procedure for commencing an action but that certain actions be proceeded with summarily and others by a full but revised procedure. It is important to retain the capacity to dispose rapidly and in an administrative way with, for

example, civil penalties for parking and regulatory traffic offences. These are regarded by the public as little more than paying bills and it is sufficient to be satisfied that they are properly due. In fact, there is so little motive to litigate them that the greater justice lies in informal access rather than formal legal procedures.

Proceedings should be commenced in all cases by the issuance and service of a notice of offence issued by a regulatory offences officer.

The officer may choose to proceed to have adjudicated the penalty that is prescribed by the statute that creates the offence. If so, the offence notice indicates that it is for a full proceeding and the officer also serves a summons to attend in court. Either or both of these documents may be served at the scene of the offence or later. This procedure would be taken in all cases involving young offenders.

The officer may choose to proceed summarily in which case the officer does not serve a summons to attend in court and the offence notice indicates that it is for a summary proceeding and contains a provision for a write-in plea. Where the set fine is set out in the notice of offence, the procedure taken must be summary. The penalty is the set fine if there is one or a maximum fine prescribed for summary proceedings in the uniform Act (e.g. $300) and no imprisonment, regardless of the maximum in the offence provision. Furthermore, no consequence that may follow a conviction under the terms of the Act that creates the offence may be imposed (e.g.confiscation of property or revocation of licence,etc.).

The officer makes out a certificate that he or she has personally reasonable and probable grounds to believe that the offence named in the certificate and notice of offence has been committed by the defendant, and the proceeding is commenced when the certificate is filed in the court office.

A private prosecution is to be commenced by its own form of notice and to be subject to leave of a judge of the Regulatory Offences Court.

Full Proceeding

Where a full proceeding is commenced the defendant responds to the summons for a regular trial.

Summary Proceeding

In some jurisdictions the senior judge in a municipality or district, possibly with the concurrence of the judges, sets in advance appropriate fines for the purposes of standard offences. In other jurisdictions these

set fines are fixed by the government by regulation. The uniform Act should contain a delegation for the purpose of fixing set fines for summary proceedings, preferrably by judges. The question of how they are fixed is not crucial to the purposes of uniformity, but if they are fixed by regulation there is the danger that the prescribed fine will be treated as a government enactment that conflicts with the prescribed maximum. It is best left as a court practice.

Where a summary proceeding is taken the defendant may,

(a) sign the plea of guilty and send it to the court office with the set fine, if any;

(b) sign the not guilty plea and send it to the court office with an indication of intent to attend the hearing;

(c) sign the not guilty plea and send it to the court office with a written submission in defence or mitigation which may be considered by the court;

(d) attend at the hearing to plead guilty and make submissions as to penalty;

(e) do nothing.

In a case where the defendant does not attend the hearing, the court may enter a conviction in the defendant's absence without a hearing but after at least ensuring that the documents and proceedings up to that point are proper.

In the case of parking offences, certain special provisions are necessary:

(a) service of the notice of offence by affixing it to the vehicle;

(b) service of the notice of offence on the owner by serving the driver or by affixing it to the vehicle;

(c) in most cases the collection of parking fines is not done by the court but by the municipal administration or its agency (parking authority). Because of the volume, if someone sends in the fine no plea reaches the court, no conviction is made and the matter is closed. The court office only gets the cases where there is a plea of not guilty and a hearing is required or there is no response or payment and a conviction is necessary to enforce payment. Because of the importance of accurate commnunication among the defendant, the parking authority and the court office, it is essential that the defendant be able to re-open the case after conviction on the grounds that there has been an error or failure in communication.

Arrest

Where the issuance of an offence notice is justified, there should be a power of arrest only on the following grounds:

1. Where it is necessary to identify the defendant;

2. Where it is necessary to preserve evidence;

3. Where it is necessary to prevent the continuation of the offence;

4. Where the defendant is from out of the jurisdiction and unlikely to respond to the offence notice and a deposit is required by a bail procedure.

Bail

Where an arrest is made in respect of a regulatory offence, whether under the authority of a statute or warrant or under the circumstances set out under the heading *Arrest,* the person arrested must be released within a reasonable time, subject to such conditions as may be fixed by a judge. The conditions should relate only to the grounds for arrest. A surety or bond should not be required unless the penalty for the offence may include imprisonment.

Trial

Where the defendant has a trial at which the defendant appears or is represented, the trial should be similar in procedure to summary criminal trials and the uniform Act should contain the full trial procedure.

The procedure should contain:

1. simplification of the trial of an issue and examination on the question of whether the defendant is, because of mental disorder, incapable of conducting his defence. For a regulatory offence, this is the only issue. If dangerous conduct were involved the proceeding would be under the Criminal Code or the Mental Health Act for involuntary treatment and for continuing custody for the purpose;

2. provision for amending the charge by the Court at trial;

3. authority for the Court to award costs that are payable by the defendant and costs payable to the defendant by the Crown for limited purposes and amounts;

4. provision for a Court to order the taking of evidence by commission outside the jurisdiction.

Liability

The uniform Act should codify the principles to apply to liability and onus of proof for regulatory offences as distinct from criminal offences, and include the principles established in *R v City of Sault Ste Marie* [1978] 2 S.C.R. 1299.

The principles should be as follows:

1. Every element of an offence must be proved beyond a reasonable doubt;
2. It is not necessary to prove that the defendant intended to commit the offence except insofar as intent is expressly stated to be an element of the offence;
3. It is a defence to a charge of an offence that the defendant took all reasonable care to avoid the commission of the offence;
4. Imprisonment shall not be imposed unless the standard of care exercised by the defendant is a marked and substantial departure from the standard required in paragraph 3;
5. There is a presumption that the standard of care required for paragraphs 3 and 4 is absent unless there is evidence to the contrary that is sufficient to raise a reasonable doubt.

Since the offences and penalties are not criminal law, it would be an appropriate precaution to include a provision that the taking of a proceeding under the Regulatory offences Procedure Act does affect any civil liability arising out of the same circumstances.

Young Offenders

The provisions of the Young Offenders Act (Canada), which apply in respect of offences against Federal Acts, ought to be made to apply to offences against the Acts of the provinces and territories. To implement the Federal Act requires statutory provisions for the creation of appropriate facilities for the degrees of safe custody, for an administrative structure based in a child welfare social administration of the government, and special provisions for alternatives on sentencing that may involve the children's services administration. These are best placed in legislation for children's institutions and child welfare and should simply be made applicable to regulatory offences. Similarly, alternative measures to charging a child with an offence belongs in child welfare legislation, and should be made applicable to regulatory offences.

Where a provincial offence procedure is taken, certain adaptations of

the procedures would be appropriate as qualifications to the procedures in the uniform Act:

1. requiring a summons to be served on the issuance of any offence notice;

2. requiring notice of the offence to be given to a parent of the young offender;

3. prohibiting the imposition of the penalty of imprisonment except for breach of a condition of probation;

4. requiring the presence of the young offender in Court during the trial;

5. restricting publication of the identity of a young offender;

6. authorizing a presentence report;

7. prescribing maximum penalties that override those prescribed in the offence provisions;

8. providing for no imprisonment for non-payment of a fine but for the use of probation orders instead;

9. requiring that imprisonment for breach of probation be served in a facility that is designated under the *Young Offenders Act Canada*.

Limitations

Limitations for the commencement of proceedings will often be provided in the statute creating the offence. The uniform Act should provide for a general limitation to apply in the absence of any provision elsewhere.

The general limitation should be one year from the date that the offence was committed. At the meeting of the Section in August, 1989 it was proposed that there be another limitation period of six months after the identity of the defendant was known. This proposal is difficult to implement. The Act would need to say to whom the identity is to be known and deal with the defendant's evidentiary difficulties by presuming that it is known unless the prosecution establishes that is was not known.

There should be a provision enabling a judge to extend a limitation period with the consent of the defendant. This would enable the defendant to plead guilty to a lesser included offence for which the limitation period has expired.

Penalties and Sentencing

The appropriate place for the penalties and consequences for regulatory offences is in the statute that creates the offence and where the legislature had specific conduct in mind. These would include things like suspension or revocation of licences, the performance of conditions upon the suspension of fines and confiscation of property. It is therefore impossible in the uniform Act to control the policy for setting penalties. However, supplementary provisions for the just implementation of the penalty provisions and to relieve against their strict application can be provided. For example, minimum penalties can be relieved against by authorizing the Court to impose less than the prescribed minimum in special circumstances where the Court considers that the minimum would be unjust. The Court could be authorized to suspend a sentence in a proper case despite minimums, or to impose a fine in lieu of a minimum that includes imprisonment. The general policy in the uniform Act should be to minimize imprisonment where possible.

Where imprisonment is imposed, the statute should provide for a period of grace of up to 30 days before custody commences to permit the defendant to make arrangements for his or her absence from family and work. There should also be authority for the judge to order that imprisonment be served intermittently at specified intervals.

The conditions of probation should be directed to civil purposes and as an appropriate alternative to traditional penalties rather than to be directed to control criminal conduct. The conditions might include:

1. Performance of community service;
2. Attendance at educational programs;
3. Alcohol and drug abuse treatment;
4. Compensation or restitution.

Control over movements should only be allowed where the penalty might include imprisonment.

The uniform Act should contain provisions respecting the payment of fines as follows:

1. to fix 15 days of grace for the payment of a fine;
2. to provide for the extension of time for payment of a fine by the Court on request of the defendant on sentencing or later in writing, with authority for the Court to inquire as to the circumstances of the defendant;
3. to authorize the Court to order payment by instalments;

4. to authorize the Court to order payment by means of credits for work performed in a program that is established by the regulations for the purpose;

5. to authorize the Court to suspend a fine on conditions, with a maximum period for the suspension to permit the Court to order a remedial training course or other rehabilitative measure in lieu of the fine;

6. to collect fines through civil courts on default;

7. to prohibit imprisonment on default in payment of a fine unless all other means of collection fail and unless the Court is satisfied that the defendant is able to pay. Imprisonment should be for a specific maximum period that is scaled to the amount owing.

Search and Seizure

The Act should have a complete system for the issuance of search warrants and the examination, seizure, retention and return of things found under the search warrant, and including procedures where solicitor-client privilege is claimed. These provisions should provide a procedure that is capable of being adopted by reference for other searches under inspections and investigations powers under other statutes.

Appeals

Appeals should be on the record to a superior court.

However, where the proceeding is summary, the defendant ought to have an easy access to a review of the conduct of his or her case. The place where most citizens have their experience with courts is for these minor offences. Too often, to their dismay, the speed of the proceedings, the technicalities that are not understood and the finality of the delivered decision causes them to go away feeling disappointed that their point was never received or that the procedure worked against them. It is surely unreasonable to expect the defendant in such a case for a small fine to appeal on the record to a superior court and have it argued by counsel. The review should be not an appeal but a free-wheeling limited second chance in which a judge other than the convicting judge reviews the record, the evidence and whether the procedure has failed the defendant or whether a point that the defendant wished to make was not received. The Court would be authorized to:

1. review the recorded evidence or transcript and receive the evidence of any witness whether or not the witness gave evidence at the hearing;

2. require the judge who made the decision to convict to report on any matter as to the procedures and processes taken;

3. review and act upon statements of agreed facts and admissions.

The normal rule that an appeal operates as a stay of the order appealed against should apply, except by order of the appeal court.

Committee for a Uniform Regulatory Offences Act
Howard Morton, Chairman
Arthur N. Stone, Project Director

August, 1990

APPENDIX H

(See page 49)

THE UNIFORM LAW CONFERENCE OF CANADA APPROVED PLAN OF RENEWAL

Adopted by the ULC
at its 1990 Meeting in Saint John
New Brunswick

INTRODUCTORY NOTE

In 1989 a report entitled "Renewing Consensus for Harmonization of Laws in Canada" was prepared by the Executive of the Uniform Law Conference and distributed to the jurisdictions at the annual meeting of the Conference in Yellowknife. The jurisdictions and other interested bodies and persons were invited to study the report and to provide the Executive with their assessments and recommendations.

Representations were received and studied by the Executive during the winter and in the spring of 1990 the report was revised and distributed to the jurisdictions as a discussion document to be considered and debated at the annual meeting in Saint John. In the course of that meeting certain proposed amendments were brought forward, several of which were adopted. The report was then approved as amended.

The report which follows under the title "The Uniform Law Conference of Canada Approved Plan of Renewal" is essentially the report that was presented for discussion in Saint John. It has, however, been redrafted in part to incorporate the amendments that were adopted in the course of that meeting.

APPENDIX H

TABLE OF CONTENTS

The Uniform Conference of Canada Approved Plan of Renewal . . 212

Revised Recommendations 234

Statement of Renewal 239

Uniform Law Conference of Canada Procedure 241

THE UNIFORM LAW CONFERENCE OF CANADA APPROVED PLAN OF RENEWAL

In October, 1989 copies of the Report entitled "Renewing Consensus for Harmonization of Laws in Canada" were sent to each jurisdiction, to former presidents of the Conference and to other interested individuals and organizations. Each of the recipients was invited to study the Report and to provide such response as was considered appropriate.

As of mid-March, a total of 20 responses had been received, including those from most of the jurisdictions.

We have been encouraged to find that the respondents generally applaud the initiative that the Report represents. While there is some disagreement among them as to the nature and extent of the Conference's "ills", there is general agreement as to the wisdom and timeliness of the decision to undertake the study. There is general agreement as well with the approach and thrust of the Report.

The responses were instructive in a number of respects. They disclose, among other things, that the Conference is differently perceived by various respondents in a number of important respects including its mandate, status and methodology. It is also apparent that the Report may not have been sufficiently clear as to the intention of the Executive Committee on certain matters. It would appear advisable, therefore, to provide some clarification of those matters to ensure that the discussion to be held in Saint John this year will be properly focused.

A very central matter that seems to require further clarification and elaboration is the nature of the relationship between the Conference and the constituent jurisdictions. The Report has left the impression with some that the intent is to bring about a fundamental change in that relationship by loosening the ties with the jurisdictions and establishing closer ties with other organizations such as the Law Reform Conference and the Canadian Bar Association. This is not the intention.

Although the Conference was created in response to an initiative of the Canadian Bar Association, it was created by the jurisdictions to serve their joint and several interests. Accordingly, the Conference is not only a creature of the jurisdictions, it is also their agent. It is and must continue to be the servant of the jurisdictions, the mechanism by which they are enabled to pursue the important national objective of harmonization of laws.

Rather than propose means by which the Conference can loosen its ties with the jurisdictions and gain an independent status, or establish a

partnership with other organizations, the Report seeks to find means by which the Conference can become a more efficient and effective servant of the jurisdictions. This is the primary thrust of the Report and is the objective that the several recommendations seek to attain. The Conference sought means of enhancing its ability to carry out its mandate so that the jurisdictions would be encouraged to recognize its potential and to make greater use of its services. This is the context in which the Report's recommendations should be read and assessed. It is the context in which we intend to present and assess the responses that have been received.

Another matter of fundamental importance that has occasioned some diverse reaction is the role of the Conference in relation to law reform. The Report states that "Law reform on a national scale is one of the purposes of the Uniform Law Conference". Some respondents interpreted this to mean that the Conference is seeking to become a national law reform body in competition with the other law reform agencies across the country. Since that is not our intention, the meaning and intent of this statement from the Report must be made more clear. The simple but important message that the statement was intended to convey is explained in the following passages of a letter from the President of the Conference to the Deputy Minister of Justice of Canada dated December 13, 1989:

> The proper relationship between law reform and harmonization of laws as objectives to be pursued by the Conference has been somewhat troublesome for a number of people. The source of the difficulty seems to lie in regarding them as competing rather than complimentary objectives. There is no doubt that uniformity, or preferably, harmonization of laws has been and must continue to be the primary objective of the Conference. What we are really seeking are ways and means of enabling that goal to be pursued more effectively.
>
> In the discussion paper we have characterized harmonization as law reform on a national scale to distinguish it from the law reform that takes place within each jurisdiction and in which the law reform agencies play a leading role. We have characterized it in that way because in order to bring about harmony of the laws among the jurisdictions it is necessary to convince the jurisdictions to amend their laws, where necessary, to adopt the principles that the Conference considers to be appropriate.
>
> Neither harmonization of laws nor the process of law reform

> by which it is to be achieved is, of course, an end in itself. The ultimate objective is the realization of those benefits to the nation that such harmonization can foster. The potential benefits are many and varied including the economic, financial, commercial, political, cultural and social, among others.

A related matter concerns those proposals in the Report that are intended to enhance the Conference's legal research capability through the availability of additional financial and human resources. The purpose is not to enable the Conference to establish and pursue a research agenda in competition with those of the law reform agencies or legislative policy bodies across the country, or to take on research projects in relation to which there is no demonstrated interest or need. Rather it is to put the Conference in a position to be able to respond in a more timely manner to requests for harmonization projects that are received from the jurisdictions. Where the jurisdictions or their law reform bodies are in a position to offer the required research facilities to enable such demands to be pursued appropriately, then that is how the Conference should proceed. Experience has shown, however, that such volunteer resources are not always available on a priority basis. In such cases the Conference is unable to meet its mandate satisfactorily without access to adequate research funds.

In this as in all matters, the Report seeks to put the Conference in a position to serve the constituent jurisdictions effectively. The availability of an enhanced research capability is not an end in itself, but could be an important means by which the attainment of the Conference's objective could be realized appropriately.

It is important as well to make reference in these general remarks to some additional key areas where all of the respondents were unanimous. First, the selection of agenda items for the ULS has to be derived from the current agenda of the governments of the jurisdictions. This requires a close link with the Deputy Attorneys General which would be facilitated by their presence at the Conference.

A second key factor which is supported by all respondents is the need to promote the work of the Conference. This was described variously by the respondents as marketing, selling or lobbying, but what is essentially required is a better reporting back to the deputies as to progress on agenda items which they have identified to be placed on the agenda in the first instance. The third additional factor upon which all agree is the importance of producing work of consistently high quality.

In essence these three factors are the foundation upon which the Conference must exist. It is only if these three factors can be made to characterize the Conference that it will have succeeded in its goal of renewing consensus for harmonization of laws in Canada.

We will now turn to the individual recommendations contained in the Report and analyze the responses in relation to each of the recommendations. Approved recommendations appear at the end of this paper.

Original Recommendation 1:

1. That the Conference adopt a written constitution and by-laws dealing with all matters appropriate to the Conference.

2. That the Executive give consideration to recommending the enactment of Uniform legislation updating the early legislation dealing with the appointment of commissioners.

There was general agreement to formalize the structure of the Conference. In addition to the reasons articulated in the Report for adopting a written constitution and by-laws, notably, to provide a sound structure and base not dependent on the memory of individuals, written rules will make the Conference more visible. However, some were concerned that the existence of a written constitution and by-laws could cause the Conference to get bogged down in endless debate over interpretation or amendment of the provisions. To meet this concern, but to also provide a written structure for the Conference, it was decided that the same needs could be met by adopting a statement of renewal, some written procedures and guidelines.

Some support was expressed with respect to the second part of this recommendation. However, two respondents expressed strong objection which has caused us to re-think this recommendation. The main reason for an appointing statute would be to further lend visibility to the Conference and to affirm the link between government and the Conference. However, the American experience with their appointing statute has not been all that successful (only 12 states have enacted the statute). For some jurisdictions in Canada the strictures of an appointing statute may not be acceptable. It may be that the goal we are trying to achieve, i.e. visibility and affirmation of the government's role in appointing delegates, can best be achieved by the development of a policy statement or guidelines which reflect the Conference's position with respect to the appointment of delegates. Accordingly it would be our intention to modify this recommendation to direct the Executive to give consider-

ation to recommending guidelines as to the appointment of commissioners.

The revised recommendation, as approved in Saint John follows:

Approved Recommendation 1:

1. *That the Conference adopt a statement of renewal, written procedures and statements of policies in areas where to do so will provide a sound structure and base for the operations of the Conference.*

Original Recommendation 2:

That the Conference pursue the establishment of a substantial research fund to be used for the funding of legal research on contract and employment bases.

As mentioned above, one of the key factors that will influence the success of the Conference is the consistent production of quality work. Closely allied to this factor is the need to respond quickly to meet the needs identified by the governments we serve. This recommendation is designed to meet both of these goals.

Although all respondents agreed with the need for timely production of consistently good work, some respondents questioned the need for a true research component on the basis that the role of the Conference is harmonization of laws and not law reform. We believe we have addressed this point above, that is the primary method of ensuring a harmonized approach to a particular area of law is through the coordinated reform of law which will, from time to time, result in the need to access research funds.

Another concern that has been raised is that access to the research fund should be limited to those areas of law not only identified by government for placement on the agenda but where there is substantial agreement on the policy. We are in full agreement as identified above with the need for the agenda to be driven only by the larger agenda of the jurisdictions. However, we also believe that the policy decisions and substantive content of proposed legislation must be based on solid, quality research. As recommended in the Report, the working group approach seems best suited to provide such a base.

To some extent both consistent good quality research and timely production of Reports are addressed by ensuring that the items on the agenda of the Conference are fully supported by several governments, thereby creating the probability that on a project by project basis the

research resources will be there for the particular project and also ensuring commitment by the project group to timely completion.

Clearly, this is a legitimate view for which support can be found in the history of the Conference. However, it is submitted that the history of the Conference also contains examples of the Conference undertaking projects supported by several goverments and thus meeting the threshold criterion, but where the Conference was unable to produce a quality product in a timely manner. This inconsistency of approach and results which is often dependent on the size of the goverments involved and the availability of the individuals involved as well, provides ammunition to those who question whether the Conference has been or could be an effective organization. A substantial research fund does not preclude projects from being undertaken which follow the first model i.e. no conference research money required because the jurisdictions involved have been able to budget for the project. However, the availability of such a fund would ensure that requests from governments to the Conference would not go unanswered for several years for lack of resources. Undue delay in completing projects is bound to undermine confidence in the Conference and to discourage its use by governments. That is a reputation and attitude that must be avoided.

Several respondents have reminded us of the budgetary restrictions that governments are facing. We are sensitive to this factor and realize that the establishing of a substantial research fund is a long term project requiring close scrutiny. While we would expect the governments to be the principal sources of such funds we would not be averse to having private donations as well as long as such funding is not provided by organizations or individuals who may be perceived as trying to turn the Conference into a lobby group rather than what it is, a tool or agency of government. However, there are sources of funding, even among past and present commissioners, who have expressed interest in supporting an endowment fund. There may be other sources in addition to governments who would support an endowment fund without adversely affecting the link between the Conference and governments.

In the course of the discussion in Saint John it was indicated that the recommendation was unnecessarily specific and restrictive, as regards the application of the research fund. Accordingly it was agreed that the words "on contract and employment bases" should be deleted. The following is the recommendation, as approved.

Approved Recommendation 2:

That the Conference pursue the establishment of a substan-

tial research fund to be used for the funding of legal research.

Original Recommendation 3:

That the Conference develop and implement a program of activities designed to enhance the awareness and understanding of the nature and importance of its work.

There is unanimous agreement that it is vital to the future success of the Conference that it establish a closer working relationship with the jurisdictions particularly through the Ministers and Deputy Ministers of Justice. This could serve to provide input into the Conference agenda and, as a reporting mechanism, by the Conference. It has been suggested that the Conference should attempt to get on the agenda of the Deputy Attorneys General on a regular basis e.g. every two years. It was also suggested that the President offer to address the Attorneys General as well.

The discussion at Saint John emphasized the importance to the work of the Conference of developing means of determining the level of interest and political will of the jurisdictions in relation to potential Uniform Law projects. This would not only ensure the relevance of the Conference's work, but would serve to enhance the awareness and acceptance of its work by the sponsoring jurisdictions. Accordingly, the recommendation coming out of Saint John is as follows:

Approved Recommendation 3:

(1) To ensure its relevance, the Conference must:

(a) develop criteria and procedures for determining the degree of interest that the jurisdictions have in proposed agenda topics and adopt a policy of undertaking projects that have an acceptable degree of priority in the jurisdictions;

(b) develop and implement policies, procedures and activities designed to bring the work of the Conference to the attention of those in the jurisdictions to whom that work, and its implementation, should be of interest; and

(c) establish a program to monitor, assess and appraise its performance.

The parties referred to in clause (b) should include, among others, Attorneys General or other Ministers responsible for legislative programs and their deputy ministers, the heads of

other departments of government to which specific works of the Conference are relevant and other interest groups such as the organized Bar, the judiciary and the academic community.

(2) That the Conference develop and implement a program of activities designed to enhance the awareness and understanding of the nature and importance of its work.

Original Recommendation 4:

1. That each jurisdiction should be encouraged to ensure Conference participation by policy advisers, legislative drafters, law reform agencies, private practitioners and the academic community from that jurisdiction and that each commissioner be appointed for a minimum three year term.

2. That the Executive Committee liaise with such organizations as the CBA, Association of Law Deans, Canadian Association of Law Teachers, Federation of Law Societies, CLIC and the Canadian Association of Law Librarians for the purpose of exploring ways and means of permitting participation by these organizations in the harmonization process without impairing the autonomy of the Uniform Law Conference.

The first part of this recommendation raised concerns on the part of a couple of respondents that there is some intent by the Report to alter the authority of the jurisdictions to decide upon or to appoint their delegates. That is not the intention of the Report. The objective is to encourage the jurisdictions to serve their own best interests by providing them with the advice of the Conference as to the appropriate mix of delegates who will be the most effective in doing the work of the Conference. On the question of three year appointments it has been suggested that there should be some understanding that a person appointed for a particular project may not be required to attend for three years. What is intended is that a core of participants from each jurisdiction be permitted to attend for a three year term in order to ensure continuity and commitment to the Conference.

The second part of this recommendation raised some question as to whether the purpose is to change the Conference from its present status to one in which it is relieved of a degree of government control. It should be reiterated that this is not the intention of the recommendation. Rather ways are being sought by which the Conference as a servant of

government might be facilitated and enhanced by the recognition, support and promotion of its work by other interested organizations. The "participation" anticipated by this recommendation would include their presence at the table of the Conference only insofar as a jurisdiction may choose to appoint a delegate who is affiliated with one of these organizations. The recommendation should be clarified in this regard.

Recommendation 4 as approved is as follows:

Approved Recommendation 4:

1. *That the Executive Committee prepare a policy statement with respect to the composition of delegations. Jurisdictions should be encouraged through such a policy statement to appoint a core of delegates to participate in the Conference for a minimum period of three years.*

2. *That the Executive Committee liaise with such organizations as the CBA, Association of Law Deans, Canadian Association of Law Teachers, Federation of Law Societies, CLIC and the Canadian Association of Law Librarians for the purpose of exploring ways and means of working together in advancing their mutual interest in the harmonization of laws without impairing the autonomy of the Uniform Law Conference.*

Original Recommendation 5:

1. That each of the Sections have a Steering Committee composed of a Chairman and such regional representation as may be deemed appropriate. Further detail as to the proposed composition of the individual Section's Steering Committee is provided below.

2. That the Executive of the Conference should consist of:

   (a) the Past President;

   (b) the President and Chairman of the Executive Committee who would be a former Section Chairman, would serve a term of one year and would be eligible for re-election in certain circumstances;

   (c) the Section Chairmen, who would serve for the length of their individual terms, and be served by the Executive Secretary of the Conference.

In the course of the discussion in Saint John it was agreed that the Chairpersons of the Sections would be taking on enhanced roles in the Conference and that, as a result, the President would be relieved of some of the more onerous duties that have been attached to that office. While it was recognized that prior experience as a Section Chairperson would be of some advantage to a President, such a qualification should not be made a prerequisite for the office of President. Also, it was agreed that experience might be gained and continuity provided through the addition of an office of Vice-President. Accordingly, the recommendation approved in Saint John is as follows:

Approved Recommendation 5:

1. *That each of the Criminal Law Section and the Uniform Law Section have a Steering Committee composed of a Chairperson and persons appointed to represent regional and other interests in the Section. Further detail as to the composition of the individual Section's Steering Committee is provided below.*

2. *That the Executive of the Conference should consist of:*

   (a) the Immediate Past President;

   (b) the President and Chairperson of the Executive Committee who would serve a term of one year;

   (c) the Vice-President; and

   (d) the Section Chairpersons, who would serve for the length of their individual terms;

   and be served by the Executive Secretary of the Conference.

3. *The Nominating Commitee for the Executive Committee will be the most immediate Past President present who will act as chair and at least four other members chosen by the chair in consultation with the jurisdictional representatives to ensure representation of regional and other interests. The composition of the nominating committee should be reported to the Conference.*

Original Recommendation 6:

That steps be taken to have the Uniform Law Conference and the Law Reform Conference participate with each other to achieve harmonization of provincial laws.

Two jurisdictions questioned the need to formalize the relationship

between the two Conferences when there appears to be ample participation by the Law Reform Conference in the work of the ULC. Some questioned the appropriateness of the word "participate" and preferred the word "work".

The Law Reform Conference in its response to the Report indicated general agreement with and support of its objectives while raising some questions as to the role of the Uniform Law Conference in law reform as such. There was agreement that the two bodies should work together to promote harmonization of laws where appropriate. The approved recommendation is as follows:

Approved Recommendation 6:

> *That steps be taken to have the Uniform Law Conference and the Law Reform Conference of Canada work with each other to achieve harmonization of laws.*

Original Recommendation 7:

> That steps be taken to ensure that the extent to which services and products are provided in both French and English be increased and that even greater emphasis be placed on the simultaneous preparation of draft legislation in both languages.

One respondent urged that the bilingual services of the Conference extend to the provision of services and documents. With a permanent office and staff, it would be much easier to accommodate this request. In addition one respondent wanted it made clear that drafting should take into account the different linguistic approaches to drafting in each language.

Approved Recommendation 7:

> *That steps be taken to ensure that the extent to which services and products are provided in both French and English be increased and that even greater emphasis be placed on the simultaneous preparation of draft legislation in both languages taking into account the different linguistic approaches to drafting in each language.*

Original Recommendation 8:

> That a committee be appointed to study the need for the establishment of a permanent office consisting of a full-time administrative/research officer and sufficient support staff and, if found to be necessary to recommend ways and means to bring it about.

The only comment that was made with respect to this recommendation was that it was premature to commence such a study until a decision is made to revitalize the Conference.

Approved Recommendation 8:

> *That the Executive Committee examine the need for an enhanced administrative capoability and, if necessary, bring forward recommendations.*

Original Recommendation 9:

> We recommend that the Conference establish a realistic budget in terms of the services that it should be capable of providing and that it seek means of acquiring the appropriate funding.

Reference was made above in recommendation to the recognition that must be paid to issues of fiscal restraint. Any substantial increase in funding will have to be justified.

Approved Recommendation 9:

> *That the Conference establish a realistic budget in terms of the services required to meet its mandate and the funds that are likely to be available to it.*

Original Recommendation 10

1. That each Section have an election process that includes a Nominating Committee for the position of Chairman, provision for nominations from the floor and an election.
2. The Nominating Committee for the Section should be governed by the following rules:
   (a) it should be composed of five commissioners one of whom would be the President of the Conference;
   (b) the remaining four members of the Nominating Committee should be Past Chairmen of the Section with the immediate Past Chairman present at the Conference acting as the Chairman of the Nominating Committee; and
   (c) in the event that there are insufficient numbers of Past Chairmen present to form the Nominating Committee, the Chairman of the Nominating Committee should advise the Section and nominate additional

commissioners to the the vacant positions on the Nominating Committee and provision should be made allowing for an informal election with respect to such positions;

(d) any commissioners nominated to serve on the Nominating Committee should have been commissioners for the previous four years.

One respondent questioned the workability of the proposed process while another expressed concern that only persons known to the chairpersons could hope to aspire to play a role in the governance of a Section. The Executive felt that the reference to four years should be changed to three years and the emphasis should change to have a majority of the members of the nominating committee having been members of the Conference for three years.

Although part 1 of this recommendation was approved in Saint John, there was a strong feeling that part 2 would maintain control of the section in the hands of a few. A mechanism which would see more participation in the nominating process through consultation with the jurisdictional representatives was desired. Accordingly Recommendation 10 as approved is as follows:

Approved Recommendation 10:

1. *That each of the Criminal Law Section and the Uniform Law Section should have an election process that includes a nominating committee for the position of Chairperson, provision for nominations from the floor and an election.*

2. *The Nominating Committee for a Section should be composed of:*

   (a) the most immediate Past Chairperson of the Section present who would act as chairperson of the Nominating Committee;

   (b) the President of the Conference; and

   (c) at least three members of the Section who would be selected by the chairperson of the Nominating Committee in consultation with the jurisdictional representatives and reported to the Section.

Original Recommendation 11:

Jurisdictional votes should continue to be held when re-

quested with the rule being that no more than three votes can be cast by a jurisdiction regardless of the number of delegates from the jurisdiction who are present.

No respondent or delegate to Saint John raised any objection to this recommendation.

Approved Recommendation 11:

Jurisdictional votes should continue to be held when requested with the rule being that no more than three votes can be cast by a jurisdiction regardless of the number of delegates from the jurisdiction who are present.

Original Recommendation 12:

1. That jurisdictional representatives for each of the CLS and the ULS should be appointed by their respective Steering Committees in consultation with and on the recommendation of the jurisdiction from among the jurisdiction's delegates with his or her duties being prescribed in the Section's governing rules.

2. That the jurisdictional representatives meet at the annual general meeting with the Steering Committee to which they are attached.

Some respondents have expressed concern about, if not opposition to, vesting authority in the Conference to appoint the jurisdictional representatives. This is so even if the representatives were nominated for that purpose by the jurisdictions. It should be recalled that to be a delegate to the Conference one must be appointed by a jurisdictions. It is from this group that the jurisdictional representative after consultation with the government will come. It is felt that appointment by the Conference will strengthen the bond to continue to carry out the work of the Conference. However, the jurisdiction's authority in this regard must be reflected in the Conference's decision on this point.

The recommendation as presented was approved in Saint John as follows:

Approved Recommendation 12:

1. *That each of the Chairpersons of the Uniform Law Section and the Criminal Law Section invite the constituent jurisdictions to nominate a member of each delegation to each section to be appointed as the section's jurisdictional representative. On the advice of such Chairperson*

the Steering Committee shall appoint the person nominated by a jurisdiction as its jurisdictional representative. The duties of the jurisdictional representatives should be prescribed in the procedures of the Conference.

2. *That the jurisdictional representatives meet at the annual general meeting with the Steering Committee to which they are attached.*

Original Recommendation 13:

The Steering Committee of the ULS should encompass the following:

(a) the Chairman of the Section who will be the presiding officer;

(b) the Past Chairman of the Section;

(c) the President of the Conference;

(d) no more than three members of the ULS appointed by the Chairman of the ULS with a view to ensuring regional representation, one of whom should be a jurisdictional delegate from the private Bar;

(e) a representative of the Law Reform Conference of Canada nominated by that body and who is also a jurisdictional delegate of the Uniform Law Conference;

(f) the Chairman of the DS.

The Chairman would be nominated by the Nominating Committee of the Section and would serve according to his or her term of office. e.g. for two years in the office with eligibility for re-election. The Executive Secretary would serve as the secretary to the Steering Committee.

It has been noted that the recommendation does not make reference to the inclusion of government members on the Steering Committee with the suggestion that this be corrected. It has also been suggested that the inclusion of law reform representatives and private practitioners be placed on the same basis as other members i.e. through the nominating process, which may or may not result in their inclusion. The Executive agreed with this suggestion and felt that if the members selected were required to be representative of regional and other interests that this would meet the concerns expressed.

With respect to the government lawyers, it was assumed that many of the members of the Steering Committee will be lawyers working with a government since the Committee will reflect the composition of the Section.

One respondent raised the question whether a Steering Committee of potentially eight persons may be too large considering that the Committee must meet during the year. It was suggested that the presence of the President of the Conference was not required because the Chairman of the Section can maintain any liaison with the President that is necessary. Perhaps a better way to recognize the role of the President in all of the activities of the Conference is to consider that office as an ex officio member of every committee of the Conference. Furthermore, in the context of the Steering Committee, the issue only arises when the President is not the Past Chairman the Section.

A resolution was presented by a delegate in Saint John under which the whole of the Steering Committee would be elected. That resolution was not approved. However, it was agreed in Saint John that the reference to "no more than three members" be changed to "at least four members" to ensure full regional representation. The recommendation drafted to accommodate the above policy decisions and the one amendment in Saint John is as follows:

Approved Recommendation 13:

The Steering Committee of the ULS should encompass the following:

(a) the Chairperson of the Section who will be the presiding officer;

(b) the Immediate Past Chairperson of the Section;

(c) ***at least*** *four delegates to the Section who shall be appointed by the Chairperson taking into account the regional and other interests represented in the Section;*

(d) the Chairperson of the Drafting Section or the nominee of that Chairperson.

The Chairperson would be nominated by the Nominating Committee of the Section and would serve for two years with eligibility for re-election for one additional year. The Executive Secretary would serve as the Secretary to the Steering Committee of the Uniform Law Section.

Original Recommendation 14:

> That the authority of the Steering Committee be increased to encompass substantive and procedural matters concerning the ULS.

There were no specific objections to this recommendation. However, the Conference felt that the exercise of the authority of the Steering Committee should be subject to the approval of the Uniform Law Section. The authority of the Steering Committee in the setting of the agenda was affirmed and extended in Saint John to facilitate the work of the Section.

Approved Recommendation 14:

> *That the authority of the Steering Committee, subject to the approval of the Uniform Law Section, be increased to encompass substantive and procedural matters concerning the Uniform Law Section.*

Original Recommendation 15:

> That the ULS through the Steering Committee take steps to ensure a strong, active planning function, and that the constituent documents of the Conference recognize this function.

There were no specific objections to this recommendation although one respondent emphasized the importance of ensuring that the projects and priorities arising out of the planning process reflect needs identified by the jurisdictions. *This was also accepted in Saint John.*

Approved Recommendation 15:

> *That the Uniform Law Section through its Steering Committee take steps to ensure a strong, active planning function and that the constituent documents of the Conference recognize this function.*

Original Recommendation 16:

1. That the use of broadly based working committees of individuals be continued.

2. That in addition to the experts that may be required by a working committee, the Steering Committee give consideration to requesting the Canadian Bar Association to appoint two representatives to each working committee.

It is agreed that the use of broadly based working committees to advance the research work of the ULS is appropriate.

It is generally agreed that the CBA because of its mandate which includes harmonization of law and because of the expertise included in its membership is an appropriate organization to be invited to participate in the working groups of the Section. However, concern was expressed that specific reference to that organization in the recommendation might be construed by some as an indication that other bodies such as the Canadian Association of Law Teachers, the Law Deans and law reform agencies ought not to be given the opportunity to participate from time to time. Accordingly, it was agreed to express the recommendation in more general terms regarding sources of expertise in the full expectation that the CBA and other relevant organizations will be approached to participate on a "no cost" basis to the Conference.

Approved Recommendation 16:

> *That the use of the broadly based working committees of individuals in connection with ULS projects be continued.*

Original Recommendation 17:

> That a Steering Committee for the CLS should be established composed of the following members:
>
> (a) the Chairman of the Section who will be a presiding officer;
>
> (b) the Past Chairman of the Section;
>
> (c) President of the Conference and Chairman of the Executive Committee;
>
> (d) no more than four members of the CLS who will be appointed by the Chairman with a view to ensuring regional representation one of whom should be a jurisdictional delegate from the defence Bar.
>
> The Chairman would be nominated by the Nominating Committee of the Section and would serve according to his or her term of office, e.g. for two years in the office with eligibility for re-election.

As with recommendation 13 this Committee was orginally criticized as being too large and the above response in relation to recommendation 13 to this concern is applicable here. However, in order to ensure representation of regional and other interests, it was decided to provide

for "at least four members..". This makes the composition of this Committee consistent with that of the Steering Committee for the Uniform Law Section.

It has also been suggested that the recommendation be amended to require that both the Crown and the defence Bar be represented. The Executive Committee agreed. Again by redrafting this recommendation to ensure representation by regional and other interests, this concern can be met.

At Saint John the CLS voted to change the requirement that the chairperson of the CLS serve for a two year term with the possibility of re-election to a one year term with the of possibility re-election. The recommendation with this change was approved by the Conference.

Approved Recommendation 17:

> *That a Steering Committee for the Criminal Law Section be established composed of the following members:*
>
> *(a) the Chairperson of the Section who will be the presiding officer;*
>
> *(b) the Immediate Past Chairperson of the Section;*
>
> *(c) at least four delegates to the Section who shall be appointed by the Chairperson taking into account the regional and other interests represented in the Section.*
>
> *The Chairperson will be nominated by the Nominating Committee of the Section and will serve for one year in the office with eligibility or re-election for one additional year. The Secretary for the Section will be appointed by the Steering Committee from among the members of the Section.*

Original Recommendation 18:

> That the authority of the CLS in the context of the Conference be similar to that of the ULS.

There is general agreement with this recommendation, however, some questions and concerns have been raised about the functioning of the CLS. For example, the quality of the deliberations suffers from the fact that the Section lacks formalized procedures. One jurisdiction has indicated that the role of CLS is to look at practical problems with the Criminal Code and that matters of a significant policy nature that are of relevance to the constituent governments should be taken up in a more appropriate federal-provincial/territorial forum. To some extent this observation goes to the matter of the mandate of the Section and is not

affected by any changes proposed by the Report. However, the steps for formalizing the procedures of the Section that have been recommended in the Report may forestall any questions or concerns about the appropriateness of items on the agenda. *No changes were made to the recommendation as presented in Saint John.*

Approved Recommendation 18:

> *That the authority of the CLS in the context of the Conference be similar to that of the ULS.*

THE DRAFTING SECTION

At its annual meeting in 1988 the Drafting Section of the Conference established a special committe to study the purpose of the Section and to recommend as to its future. Accordingly, the Report contained no recommendations dealing with the Drafting Section. Early in 1990 the Executive of the Conference learned that the committee would be recommending that the Drafting Section as such be discontinued and that legislative drafters establish an organization independent of the Conference to pursue and promote matters of common interest and concern to drafters, which matters were not of direct relevance to the work of the Conference.

Recognizing that the Conference would continue to require the advice and services of legislative drafters the Executive decided to recommend that the Drafting Section be restructured with a mandate limited to matters directly relevant to the work of the Conference, namely, the drafting of uniform or model acts and to raise appropriate questions in the area of constitutional law. This was not intended to interfere with any decision that the legislative drafters might take to establish an independent organization to pursue other objectives.

It is intended that the Drafting Section will consist only of drafters who are delegates to the other Sections and will meet during the annual meeting of the Conference. A recommendation to that effect was approved in Saint John as follows:

Approved Recommendation 19:

1. *That the Drafting Section be comprised of legislative drafters who are appointed by the constituent jurisdictions and designated by them to participate in the work of the Uniform Law Section or Criminal Law Section; and that the executive of the Drafting Section consist of a Chairperson, Vice-Chairperson and Secretary who shall be elected by the Section.*

2. *That the mandate of the Section be generally to provide advice and service to the other Sections in relation to drafting and with respect to raising constitutional questions as approptriate.*

Additional Comments Arising from the Respondents and the Executive Committee

The following additional observations and suggestions appear in the responses:

(a) Harmonization of laws can be used to supplement uniformization as the objective of the Conference for a number of reasons including the fact that it can be more readily accommodated by both the common law and civil law systems. Harmonization can give greater scope to the Uniform Law Section.

(b) The federal government should be a more active participant in the work of the Uniform Law Section in relation to matters of interest to the federal, provincial and territorial jurisdictions such as bankruptcy, personal property security and environmental law.

(c) The less affluent jurisdictions that have fewer resources to devote to legal research and law reform have more to gain from strengthening the Conference and should be encouraged to do so on that basis.

(d) If the governance of the Conference is rendered cumbersome by the fact that it has to accommodate the separate Sections then consideration should be given to the possibility and consequences of re-establishing the Sections as separate, independent bodies.

(e) The goal of enhancing the awareness and understanding of the nature and importance of the work of the Conference would be promoted by reinstating the policy of including in the Uniform Act a provision such as "This Act shall be so interpreted and construed as to effect its general purpose of making uniform the law of those provinces which enact it". The jurisdictions in enacting Uniform Acts should be encouraged to include a note to the effect that the legislation is based on a model Act recommended by the Uniform Law Conference of Canada.

(f) The Sections should be able to adopt resolutions that do not concern the conference as a whole without reporting to the Plenary. Sections should be encouraged to meet at the call of their Chairpersons with full authority to approve and adopt proposals in order to expedite results.

(g) The Sections should also be encouraged to meet in joint sessions.

In Saint John the observations and suggestions contained in clauses (d) and (e) did not find support. The balance were accepted and appear as additional recommendations immediately at the end of this paper.

Process

The changes to the recommendations contained in the Report as further modified and subsequently approved by the Conference are attached as Schedule A to this report. Schedule B contains a Statement of Renewal and two appendices being a Procedure for the Conference and the Statements of Policy for the Conference.

The Uniform Law Conference of Canada

SCHEDULE A

Approved Recommendation 1:

1. That the Conference adopt a statement or renewal, written procedures and statements of policies in areas where to do so will provide a sound structure and base for the operations of the Conference.

Approved Recommendation 2:

That the Conference pursue the establishment of a substantial research fund to be used for the funding of legal research.

Approved Recommendation 3:

(1) To ensure its relevance, the Conference must:

(a) develop criteria and procedures for determining the degree of interest that the jurisdictions have in proposed agenda topics and adopt a policy of undertaking projects that have an acceptable degree of priority in the jurisdictions;

(b) develop and implement policies, procedures and activities designed to bring the work of the Conference to the attention of those in the jurisdictions to whom that work, and its implementation, should be of interest; and

(c) establish a program to monitor, assess and appraise its performance.

The Parties referred to in clause (b) should include, among others, Attoneys General or other Ministers responsible for legislative programs and their deputy ministers, the heads of other departments of government to which specific works of the Conference are relevant and other interest groups such as the organized Bar, the judiciary and the academic community.

(2) That the Conference develop and implement a program of activities designed to enhance the awareness and understanding of the nature and importance of its work.

Approved Recommendation 4:

1. That the Executive Committee prepare a policy statement with respect to the composition of delegations. Jurisdictions should be encouraged through such a policy statement to appoint a core of delegates to participate in the Conference for a period of three years.

2. That the Executive Committee liaise with such organizations as the

CBA, Association of Law Deans, Canadian Association of Law Teachers, Federation of Law Societies, CLIC and the Canadian Association of Law Librarians for the purpose of exploring ways and means of working together in advancing their mutual interest in the harmonization of laws without impairing the autonomy of the Uniform Law Conference.

Approved Recommendation 5:

1. That each of the Criminal Law Section and the Uniform Law Section have a Steering Committee composed of a Chairperson and persons appointed to represent regional and other interests in the Section. Further detail as to the composition of the individual Section's Steering Committee is provided below.

2. That the Executive of the Conference should consist of:

   (a) the Immediate Past President;

   (b) the President and Chairperson of the Executive Committee who would serve a term of one year;

   (c) the Vice-President; and

   (d) the Section Chairpersons, who would serve for the length of their individual terms;

and be served by the Executive Secretary of the Conference.

3. The Nominating Committee for the Executive Committee will be the most immediate Past President present who will act as chair and at least four other persons chosen by the chair in consultation with jurisdictional representatives to ensure representation of regional and other interests. The composition of the nominating committee should be reported to the Conference.

Approved Recommendation 6:

That steps be taken to have the Uniform Law Conference and the Law Reform Conference of Canada work with each other to achieve harmonization of laws.

Approved Recommendation 7:

That steps be taken to ensure that the extent to which services and products are provided in both French and English be increased and that even greater emphasis be placed on the simultaneous preparation of draft legislation in both languages taking into account the different linguistic approaches to drafting in each language.

Approved Recommendation 8:

That the Executive Committee examine the need for an enhanced administrative capability and, if necessary, bring forward recommendations.

Approved Recommendation 9:

That the Conference establish a realistic budget in terms of the services required to meet its mandate and the funds that are likely to be available to it.

Approved Recommendation 10:

1. That each of the Criminal Law Section and the Uniform Law Section should have an election process that includes a nominating committee for the position of Chairperson, provision for nominations from the floor and an election.

2. The Nominating Committee for a Section should be composed of:

   (a) the most immediate Past Chairperson of the Section present who would act as chairperson of the Nominating Commitee;

   (b) the President of the Conference; and

   (c) at least three members of the Section who would be selected by the chairperson of the Nominating Committee in consultation with the jurisdictional representatives and reported to the Section.

Approved Recommendation 11:

Jurisdictional votes should continue to be held when requested with the rule being that no more than three votes can be cast by a jurisdiction regardless of the number of delegates from the jurisdiction who are present.

Approved Recommendation 12:

1. That each of the Chairpersons of the Uniform Law Section and the Criminal Law Section invite the constituent jurisdictions to nominate a member of each delegation to each section to be appointed as the section's jurisdictional representative. On the advice of such Chairperson, the Steering Committee shall appoint the person nominated by a jurisdiction as its jurisdictional representative. The duties of the jurisdictional representative should be prescribed in the procedures of the Conference.

2. That the jurisdictional representatives meet at the annual general meeting with the steering committee to which they are attached.

Approved Recommendation 13:

The Steering Committee of the ULS should encompass the following:

(a) the Chairperson of the Section who will be the presiding officer;

(b) the Immediate Past Chairperson of the Section;

(c) at least four delegates to the Section who shall be appointed by the Chairperson taking into account the regional and other interests represented by the Section;

(d) the Chairperson of the Drafting Section or the nominee of that Chairperson.

The Chairperson would be nominated by the Nominating Commitee of the Section and would serve for two years with eligibility for re-election for one additional year. The Executive Secretary would serve as the Secretary to the Steering Committee of the Uniform Law Section.

Approved Recommendation 14:

That the authority of the Steering Committee, subject to the approval of the Uniform Law Section, be increased to encompass substantive and procedural matters concerning the Uniform Law Section.

Approved Recommendation 15:

That the Uniform Law Section through its Steering Committee take steps to ensure a strong, active planning function and that the constituent documents of the Conference recognize this function.

Approved Recommendation 16:

That the use of the broadly based working committees of individuals in connection with ULS projects be continued.

Approved Recommendation 17:

That the Steering Committee for the Criminal Law Section be established composed of the following members:

(a) the Chairperson of the Section who will be the presiding officer;

(b) the Immediate Past Chairperson of the Section;

(c) at least four delegates to the Section who shall be appointed by the Chairperson taking into account the regional and other interests represented in the Section.

The Chairperson will be nominated by the Nominating Committee of the Section and will serve for one year in the office with eligibility for re-

election for one additional year. The Secretary for the Section will be appointed by the Steering Committee from among the members of the Section.

Approved Recommendation 18:

That the authority of the CLS in the context of the Conference be similar to that of the ULS.

Approved Recommendation 19:

1. That the Drafting Section be comprised of legislative drafters who are appointed by the constituent jurisdictions and designated by them to participate in the work of the Uniform Law Section or Criminal Law Section; and that the executive of the Drafting Section consist of a Chairperson, Vice-Chairperson and Secretary who shall be elected by the Section.
2. That the mandate of the Section be generally to provide advice and service to the other Sections in relation to drafting and with respect to raising constitutional questions as appropriate.

SCHEDULE B

UNIFORM LAW CONFERENCE OF CANADA
STATEMENT OF RENEWAL

A. Preamble

WHEREAS the Uniform Law Conference of Canada was established to secure uniformity of legislation throughout Canada, especially for the purpose of facilitating commercial activity;

AND WHEREAS is has been recognized by the Conference and others that the harmonizing of legal principles throughout Canada is a desirable objective in areas of law in addition to that relating to commercial activity;

AND WHEREAS recent developments such as the adoption of the Canadian Charter of Rights and Freedoms, Canada's entry into the Free Trade Agreement with the United States and Canada's more active participation in the work of The Hague Conference on Private International Law and other international bodies have heightened the significance of harmonization of laws as a national objective;

AND WHEREAS the constituent jurisdictions of the Uniform Law Conference being Canada, the Provinces and Territories, deem it desirable that the Conference continue to serve them as an effective vehicle for facilitating and promoting harmonization of laws throughout the courntry;

AND WHEREAS the constituent jurisdictions wish to demonstrate their continuing commitment to the principle of harmonization of laws and to the Conference;

NOW THEREFORE Canada, the Provinces and Territories, through their respective delegates to the Uniform Law Conference of Canada, accept the following Statement of Renewal.

B. Mandate

The mandate of the Uniform Law Conference of Canada is to facilitate and promote the harmonization of laws throughout Canada by developing, at the request of the constituent jurisdictions, Uniform Acts, Model Acts, Statements of Legal Principles and other documents deemed appropriate to meet the demands that are presented to it by the constituent jurisdictions from time to time.

C. Structure

The Conference consists of the Uniform Law Section, the Criminal Law Section and the Drafting Section that shall serve the mandate of the Conference in accordance with their respective areas of expertise.

D. Participation

Canada, the Provinces and Territories, being the constituent jurisdictions of the Conference, may appoint as many delegates as they wish to participate in the work of the Conference with each delegate being assigned to participate in one or more of the Sections. Only persons so appointed are eligible to take part in any vote of the Conference or a Section or to hold office in the Conference or a Section.

E. Governance

The activities of the Conference shall be administered by an Executive Commitee to be established in accordance with Procedures to be adopted by the Conference. The activities of a Section shall be administered by a Steering Committee or an Executive Committee to be established in accordance with Procedures to be adopted by the Conference. Such committees shall be vested by the Procedures with such powers and responsibilities, consistent with this Statement of Renewal, as are appropriate to enable the Conference and the Sections to carry out their mandates.

F. Procedures

The Conference may adopt such Procedures, consistent with this Statement of Renewal, as it considers appropriate to enable it to carry out its mandate. Each Section may adopt such Procedures, consistent with this Statement of Renewal and the Procedures and Statements of Policy of the Conference, as it considers appropriate to enable it to carry out its mandate.

The Procedure of the Conference as of the date of the Statement of Renewal shall be that contained in Annex A.

G. Statements of Policy

The Conference may adopt such Statements of Policy, consistent with this Statement of Renewal, as it considers appropriate to assist the constituent jurisdictions in understanding how the Conference functions and how they may enable the Conference to pursue its mandate most effectively, and for such other purposes as the Conference considers appropriate to enable it to carry out its mandate.

The statements of Policy as of the date of the Statement of Renewal shall be those contained in Annex B.

ANNEX A

PROCEDURE

PART 1. - AUTHORIZATION

Section 1.

This Procedure is made pursuant and subject to the Statement of Renewal approved by the constituent jurisdictions *as of August 17, 1990.*

PART 2. - INTERPRETATION

Section 2.

In this Procedure,

(a) "Conference" means the Uniform Law Conference of Canada;

(b) "constituent jurisdictions" means Canada and the Provinces and Territories of Canada;

(c) "Criminal Law Section" means the Criminal Law Section of the Conference described in Part 3;

(d) "Drafting Section" means the Drafting Section of the Conference described in Part 3;

(e) "Executive Committee" means the Executive Committee of the Conference described in subsection (1) of Section 10;

(f) "jurisdictional representative" means a person appointed under Part 4;

(g) "Uniform Law Section" means the Uniform Law Section of the Conference described in Part 3.

PART 3. - SECTIONS OF THE CONFERENCE

Section 3.

(1) The Uniform Law Section consists of those persons appointed by the constituent jurisdictions and designated by them to participate in the activities of that Section.

(2) The Uniform Law Section shall carry out the mandate of the Conference in relation to matters of law that fall outside the area of criminal law.

(3) The Criminal Law Section consists of those persons appointed by the constituent jurisdictions and designated by them to participate in the activities of that Section.

(4) The Criminal Law Section shall carry out the mandate of the Conference in relation to matters of law within the criminal law area.

(5) The Drafting Section consists of legislative drafters who are appointed by the constituent jurisdictions and designated by them to participate in the activities of the Uniform Law Section or the Criminal Law Section.

Section 4.

(1) The Uniform Law Section and the Criminal Law Section shall each have a Nominating Committee consisting of the following members:

(a) the most immediate Past-Chairperson present at the annual meeting who shall act as chairperson of the committee;

(b) the President of the Conference; and

(c) at least three members of the Section selected by the chairperson of the committee in consultation with the jurisdictional representatives to the Section taking into account the regional and other interests represented in the Section.

(2) The chairperson of the Nominating Committee for a Section shall report to the Section the names of the members of the committee as soon as conveniently possible after the committee is constituted.

Section 5.

(1) A Nominating Committee under Section 4 shall present to the Section concerned its nomination to fill the position of Chairperson of the Section, provided, however, that other nominations may be made from the floor.

(2) The Chairpersons of the Uniform Law Section and the Criminal Law Section shall be elected for terms of two years and one year, respectively, and shall be eligible to be re-elected for one additional year.

(3) The Executive Director shall serve as Secretary of the Uniform Law Section.

(4) The members of the Steering Committee of the Criminal Law Section shall appoint a member of the Section to serve as Secretary of the Section.

Section 6.

(1) There shall be a Steering Committee of the Uniform Law Section consisting of the following members:

(a) the Chairperson of the Section who shall be the presiding officer;

(b) the immediate Past-Chairperson of the Section;

(c) at least four delegates to the Section who shall be appointed by the Chairperson taking into account the regional and other interests represented in the Section; and

(d) the Chairperson of the Drafting Section or the nominee of that Chairperson.

(2) There shall be a Steering Committee of the Criminal Law Section consisting of the following members:

(a) the Chairperson of the Section who shall be the presiding officer;

(b) the immediate Past-Chairperson of the Section; and

(c) at least four delegates to the Section who shall be appointed by the Chairperson taking into account the regional and other interests represented in the Section.

Section 7.

Each of the Steering Committees of the Uniform Law Section and the Criminal Law Section shall have full authority, with the approval of its Section, to do all such things consistent with the Statement of Renewal, this Procedure and the Statements of Policy of the Conference, as it may consider appropriate to carry out the mandate of its Section and, in particular, shall,

(a) set the annual agenda of the Section;

(b) prepare a plan of legislative proposals consistent with the demands of the constituent jurisdictions;

(c) assign projects to jurisdictions;

(d) commission the undertaking of research in accordance with the Statement of Policy concerning use of the research fund;

(e) maintain liaison with the jurisdictions and any relevant committees and organizations concerning the affairs of the Section;

(f) establish such committees, including working committees, as it may consider appropriate;

(g) adopt policies and procedures governing the activities of the Section;

(h) in relation to its Section, amend, where appropriate, Uniform Acts, Model Acts, Statements of Legal Principles or other documents setting forth legislative proposals to remove ambiguities or to correct technical errors to conform to judicial decisions, or for other substantial reason; and

(i) provide instructions to the jurisdictional representatives of the Section.

Section 8.

(1) The executive of the Drafting Section shall consist of the Chairperson, the Vice-Chairperson and the Secretary who shall be elected by the members of the Section for a term of two years and shall be eligible for re-election for one additional year.

(2) The Drafting Section shall, of its own initiative or at the request of the other Sections,

(a) assign drafters to working committees established by the Sections;

(b) consider matters in relation to the preparation of Uniform Acts, Model Acts, Statements of Legal Principles, and other documents by which the work of the Conference and the Sections is to be carried out;

(c) raise questions concerning the constitutional aspects and Charter implications of proposals being considered by the other Sections and seek advice concerning such matters for the benefit of those Sections; and

(d) undertake other projects in relation to legislative drafting as may be designed to advance the work of the Conference and the Sections.

PART 4 - JURISDICTIONAL REPRESENTATIVES

Section 9.

(1) The Chairperson of each of the Uniform Law Section and the Criminal Law Section shall invite each constituent jurisdiction to nominate one of its delegates to each such Section to be appointed as the Section's jurisdictional representative.

(2) On the advice of the Chairpersons the Steering Committees shall appoint the persons nominated under subsection (1) to be their Sections' jurisdictional representatives.

(3) The jurisdictional representatives shall represent and serve the interests of their Sections in their jurisdictions as requested by the Steering Committees which service shall include, among other things,

(a) organizing the jurisdictional delegations to the Sections in preparation for meetings of the Sections;

(b) ensuring that the work of the Sections is brought to the attention of appropriate members of the Cabinet and Deputy Ministers;

(c) promoting, monitoring and advancing the implementation of the Sections' work in the jurisdictions as may appear appropriate to meet the needs of the jurisdictions and the mandate of the Conference; and

(d) providing advice to relevant and interested bodies and individuals in the jurisdictions concerning the work of the Sections.

(4) The jurisdictional representatives shall meet annually with the Steering Committees of their respective Sections.

PART 5 - EXECUTIVE COMMITTEE

Section 10.

(1) The Executive Committee of the Conference shall consist of the President, the Vice-President, the immediate Past-President and the Chairperson of each Section.

(2) The Executive Committee shall administer the affairs of the Conference and for that purpose shall have all of the powers and duties that are not assigned by this Procedure to the Sections.

Section 11.

(1) There shall be a Nominating Committee of the Conference consisting of

(a) the most immediate Past-President of the Conference present at the annual meeting who shall act as chairperson of the committee; and

(b) at least four members of the Conference selected by the chairperson of the committee in consultation with the jurisdictional representatives taking into account the regional and other interests represented in the Conference.

(2) The chairperson of the Nominating Committee shall report to the Conference the names of the members of the committee as soon as conveniently possible after the committee is established.

Section 12.

(1) The Nominating Committee of the Conference shall nominate persons to serve as President and Vice-President, provided, however, that further nominations may be made from the floor.

(2) Only members of the Conference who are present at the annual meeting shall be eligible for election to the offices of President and Vice-President.

(3) The President and Vice-President shall be elected at an annual meeting of the Conference and shall serve for a term of one year.

PART 6 - OFFICE OF PRESIDENT

Section 13.

(1) The President shall be the Chairperson of the Executive Committee and shall preside at meetings of the Executive Committee and at Plenary meetings of the Conference.

(2) In the absence of the President at a duly convened meeting of the Executive Committee or the Conference the Vice-President shall act as chairperson of the meeting.

(3) In the absence of the President and Vice-President at a duly convened meeting of the Executive Committee or the Conference the members present shall elect one of themselves to act as chairperson of the meeting.

(4) The President, or in the absence or inability of the President to act, the Vice-President shall,

(a) report on the work of the Conference annually to the Deputy Attorneys General and to such other groups or bodies as the Executive Committee shall direct;

(b) maintain liaison with the Presidents or Chief Executive Officers of the Canadian Bar Association, the Federation of Law Societies, the Canadian Legal Information Centre, the Association of Canadian Law Deans, the Canadian Association of Law Teachers, the Federation of Law Reform Agencies, the Association of Law Foundations and such other national law related bodies as the Executive Committee shall direct;

(c) represent the Conference at the annual meeting of the National Conference of Commissioners on Uniform State Laws;

(d) convene at least one meeting of the Executive Committee annually other than at the time and place of the annual meeting of the Conference;

(e) supervise the activities of the Executive Director;

(f) seek contributions to any endowment fund as may be established by the Conference;

(g) preside at joint meetings of the Sections; and

(h) carry out such other duties within the mandate of the Executive Committee as may be assigned to the President from time to time.

(4) The President shall be an ex officio member of all committees of the Conference or a Section established by or under this Procedure.

PART 7 – UNEXPIRED TERMS

Section 14.

(1) Where the President is unable for any reason to complete a term the Vice-President shall serve as President for the balance of the unexpired term.

(2) Where there is no Vice-President who can serve in accordance with subsection (1) the Executive Committee shall designate one of themselves to serve as President for the balance of the unexpired term.

(3) Where the Chairperson of the Uniform Law Section or the Criminal Law Section is unable for any reason to complete a term the Steering Committee of the Section shall designate one of themselves to serve the balance of the unexpired term.

(4) Where the Chairperson of the Drafting Section is unable for any reason to complete a term the Vice-Chairperson of the Section shall serve as Chairperson for the balance of the unexpired term.

(5) Service in an office in accordance with this section shall not render a person ineligible for election to that office upon the expiration of the term in question.

PART 8 - OFFICE OF EXECUTIVE DIRECTOR

Section 15.

(1) The Executive Committee shall, consistent with the Conference's finances, appoint an Executive Director and such other staff as shall be required to enable the Conference to carry out its mandate effectively.

(2) The Executive Director shall serve as Secretary-Treasurer of the Conference and shall perform the duties normally associated with those offices.

(3) In particular, the Executive Director shall,

(a) manage the Conference's office and supervise the work of the staff;

(b) assist the Executive Committee, the Section Steering Committees and other committees established by or under this Procedure in carrying out their responsibilities;

(c) keep minutes of meetings of the Executive Committee, plenary sessions of the Conference, joint sessions of the Sections and such other meetings as the Executive Committee shall direct;

(d) handle correspondence by and with the Conference, the Executive Committee and such other committees established by or under this Procedure as the Executive Committee shall direct;

(e) maintain the files and records of the Conference;

(f) manage the financial affairs of the Conference and maintain its financial records and reports;

(g) supervise the publication of the annual Proceedings of the Conference; and

(h) assist the local organizers in preparing for and conducting the annual meeting of the Conference.

PART 9 - FINANCIAL MATTERS

Section 16.

The Executive Committee shall appoint annually a Budget and Finance Committee that shall,

(a) provide advice in relation to the financial aspects of the Conference's operation;

(b) review and report to the Conference on the audited financial statements;

(c) recommend to the Executive Committee with respect to the annual assessments;

(d) prepare a budget to be presented to the Executive Committee concerning the activities of the Conference for the next fiscal year; and

(e) perform such other duties as the Executive Committee shall direct.

Section 17.

(1) The Conference, on the recommendation of the Executive Committee, shall from time to time determine and levy on each jurisdiction the annual assessments required to enable it to meet the financial obligations of carrying out its mandate.

(2) The annual assessments may vary from one jurisdiction to another.

Section 18.

(1) The fiscal year of the Conference shall run from April 1st to March 31st of the following year.

(2) At each annual meeting the Conference shall approve an operating budget for that fiscal year.

Section 19.

The Executive Committee may establish or cause to be established one or more endowment funds in support of the activities of the Conference.

PART 10 – ELIGIBLE PARTICIPANTS

Section 20.

(1) To be eligible to attend a meeting of the Conference or a Section a person must be,

(a) a delegate to the Conference appointed by a constituent jurisdiction;

(b) a member of a committee attending the meeting in connection with the presentation of a report being made by that committee;

(c) a visitor to the Conference attending at the invitation of the Conference; or

(d) a Past-President of the Conference.

(2) The Conference or a Section may invite any person, whether a delegate to the Conference or not, to serve on a committee established by it.

Section 21.

(1) To be eligible to vote at any meeting of the Conference or of a Section a person must be a delegate to the Conference appointed by a constituent jurisdiction.

(2) Each duly appointed delegate shall be entitled to cast one vote on any question at a meeting of the Conference or a Section to which the person is a delegate.

(3) Where so requested by a delegate, voting on any question at a meeting of the Conference or a Section shall be by jurisdiction in which case each constituent jurisdiction represented at the meeting shall be entitled to cast three votes.

PART 11 – PROCEDURES AND POLICIES

Section 22.

(1) The Executive Committee may adopt Procedures and Statements of Policy concerning the Conference from time to time and may amend existing Procedures and Statements of Policy provided, however, that any such Procedure, Statement of Policy or amendment shall cease to have effect if it is not ratified at the next meeting of the Conference.

(2) The Steering Committee or Executive of a Section may adopt procedures and policies concerning the Section from time to time and may amend existing procedures and policies provided, however, that any such procedure, policies or amendment shall cease to have effect if it is not ratified at the next meeting of the Section.

ANNEX B

STATEMENTS OF POLICY

The following Statements of Policy are made pursuant and subject to the Statement of Renewal approved by the constituent jurisdictions as of August 17, 1990, and the Procedures adopted thereunder. They are intended to be of assistance and guidance to the constituent jurisdictions, delegates, Steering Committees and the Executive Committee.

I. JURISDICTIONAL DELEGATIONS

It would be beneficial to the work of the Conference if the jurisdictional delegations were to be comprised of a variety of government lawyers, including legal advisors, legislative policy advisors, legislative drafters and public prosecutors, as well as law reformers, members of the private Bar, both civil and criminal, and members of the academic community. The Conference would welcome, as well, the attendance of members of the judiciary among the delegates.

The work of the Conference would be advanced considerably by the attendance and active participation of the Deputy Attorneys General. Such participation would serve to make the Conference a more effective agent of the jurisdictions.

It is recommended that the jurisdictions permit at least a core of their delegates to participate in the work of the Conference for a minimum period of three years. While it is desirable to have specialists attend on an occasional basis in relation to specific agenda items, there is considerable advantage to be derived from having a significant degree of continuity among the delegates.

In choosing government lawyers, it is recommended that the jurisdictions consider including lawyers from departments in addition to Departments of Justice, particularly where such lawyers have knowledge that relates specifically to current agenda items of the Conference.

II. JURISDICTIONAL REPRESENTATIVES

In choosing delegates to be nominated as jurisdictional representatives, it is recommended that the jurisdictions select persons who are likely to continue as delegates for a number of years and who are apt to have an interest in performing the duties of that office. The role of the jurisdictional representative is viewed as being key to the future success of the Conference.

III. STEERING COMMITTEES

In selecting members for appointment to Steering Commmittees the Section Chairpersons should give consideration to such characteristics of the composition of the Sections as their jurisdictional make-up as well as the areas of professional expertise, including the two legal systems, represented.

IV. EXTERNAL LIAISON

Although the Conference is the only organization in Canada whose sole mandate is the harmonization of laws, there are other national, provincial and territorial bodies that share the Conference's interest in that matter and whose cooperation and advice would assist in the pursuit of the Conference's mandate. It would be in order and advisable for the Conference to identify such bodies and to establish and maintain appropriate relationships with them.

It is recommended, in particular, that the Conference establish, if possible, a formal mechanism with the Committee of Deputy Attorneys General to facilitate the obtaining of advice from that body concerning the Conference's agenda of projects and to advise the Committee of the results of the Conference's work. It would be beneficial if the President of the Conference were permitted to report on a regular basis to that Committee and occasionally, as well, to the Attorneys General in meeting.

In addition, it is recommended that the Conference explore with such organizations as the Canadian Bar Association, the Federation of Law Societies, the Law Reform Conference of Canada, the Canadian Legal Information Centre, the Association of Law Deans, the Canadian Association of Law Teachers, the Canadian Association of Law Librarians, provincial and territorial law associations and any other bodies who share the Conference's interest in the harmonization of laws, appropriate means by which they may make a contribution to the Conference's work. Any such relationships and contributions must, of course, be consistent with the Conference's essential character and status as an agent of the constituent jurisdictions.

V. DUALITY

In the development of legislative vehicles for promoting harmonization of laws, it is important that the Conference give due consideration to the bilingual character of Canada and the fact that two legal systems

are to be served. In the preparation in both official languages of Uniform Acts, Model Acts or other legislative vehicles, the different linguistic approaches to the drafting of such documents should be taken into account.

As well, in those areas of the law where the fact of two legal systems having to be accommodated is important, the form of legislative vehicle best designed to facilitate the attainment of harmonization should be sought and utilized. The traditional reliance on the Uniform Act should be relaxed where appropriate.

It is appropriate, as well, that the extent of the services and documents provided by the Conference in English and French be expanded.

VI. ADMINISTRATIVE SERVICES

If the Conference is to be able to respond to the needs and demands of the constituent jurisdictions in a timely and efficient manner, it may be necessary to enhance its administrative resources. The Executive Committee should study the need for an enhanced administrative capability and, if necessary, bring forward recommendations.

VII. FUNDING

Adequate funding is required to support both the administrative and research activities of the Conference. It is anticipated that the administrative activities will continue to be funded by the annual assessments that are paid by the constituent jurisdictions. The setting of the annual assessments should be based on budgets created with the benefit of the information gathered in connection with the study of administrative services. Proposed increases in the annual assessments should be planned and approved with sufficient notice to the jurisdictions to permit them to be included in their budget processes.

The Conference's only source of research funds to date has been the federal Department of Justice. That has been adequate to date since little of the Conference's research has been done on a contract basis. Most of the research has been provided by the jurisdictions, including the law reform agencies. In addition to that very valuable input, it may be found that more frequent use of commissioned research will be required in the future to enable the Conference to respond in a more timely manner to the needs and demands of the jurisdictions. It is recommended that the Executive Committee identify other potential sources of research funds, such as the Law Foundations, and develop a policy in relation to the pursuit and utilization of such funding.

One of the major advantages of an enhanced and stable source of research funding would be the ability on the part of the Sections to engage in longer term planning regarding the projects to be undertaken. Although all projects should be undertaken in response to demonstrated interest on the part of the jurisdictions, not all of those interests and requests require that a result be produced within a year or less. The agendas may well include matters for which longer-term solutions may be entirely adequate. The freedom that an enhanced and certain research fund would give to the Sections to plan and control their agendas could be very beneficial to all parties concerned.

VIII. TERMS OF REFERENCE OF RESEARCH FUND (CANADA)

The Research Fund was established by a grant from the Government of Canada in the amount of $25,000.00 with an annual commitment of $25,000.00, to a maximum of $75,000.00, with a further commitment of an amount not exceeding $25,000.00 annually to maintain the fund at $75,000.00. The fund and the annual grant are an outright grant to the Conference with the accumulated interest being the property of the Conference and applied to the General Account.

The purpose of the fund is to provide for research projects, as approved by the Executive Committee, with no other approvals required.

The following are the only guidelines applicable to the payment of monies from the fund:

1. all research projects must be approved by the Executive Committee either on the recommendation of a chairperson of one of the Sections of the Conference or on the initiative of the Executive Committee;

2. a project may be approved by the Executive Committee involving research in any area of law including research with respect to an existing or proposed Uniform Act, Model Act, Statement of Legal Principles or other appropriate document;

3. that contracts for research work should be between the Conference and a researcher, to be prepared by the Executive Director and approved by the President, in close consultation with the jurisdiction or committee involved, and signed on behalf of the Conference by either the President or the Vice-President;

4. the Executive Committee may approve the payment of administra-

tive expenses directly associated with a research project including travel, accommodation and meals all at the most economical rates, according to the per diem of the Government of Canada, supplies, secretarial expenses, and other expenses in relation to the project in order to ensure completion of the project, unless the Executive Committee has approved expenses at another rate;

5. the responsibility for supervising the research work, under the direction of the Steering Committee, is placed with the jurisdiction or committee that has the project in hand;
6. *the President and Executive Director* shall pay money out of the research fund upon being satisfied that the requests for money are in respect of an approved project and are at a rate authorized by these terms of reference;
7. it is an appropriate use of the research fund to pay for the printing of any product generated by a Section including the appendices to the Proceedings of the Conference and the production of pamphlet copies of Uniform or Model Acts, Statements of Legal Principles or other approved documents;
8. the Executive Committee may require the chairpersons of the Sections to submit a budget of research each year.

These terms of reference represent all terms of reference of the Research Fund and all previous terms of reference are repealed.

IX. WORKING COMMITTEES

Even if the Statement of Policy in relation to the composition of jurisdictional delegations is fully implemented, it will not be convenient, possible or necessary to include in those delegations all of the areas of expertise that may be relevant to a particular agenda item. In recognition of that fact, it is recommended that the Steering Committees in establishing working committees on specific projects invite participation by whatever persons and organizations are deemed to possess the requisite experience and expertise. Such organizations include, for example, the Canadian Bar Association, The Federation of Law Societies, the Federation of Law Reform Agencies, the Association of Law Deans, The Canadian Association of Law Teachers, The Canadian Association of Law Librarians and the Canadian Legal Information Centre. The invitation to participate in the work of the working committees may be a very effective means of pursuing the policy of external liaison recommended in Statement of Policy IV.

X. PARTICIPATION BY CANADA

Canada has been an active participant in all three Sections of the Conference since they became established. Since criminal law falls within the authority of federal jurisdiction, Canada's interest and involvement in the activities of the Criminal Law Section has been obvious and essential. Canada's participation in the work of the Uniform Law Section has, perhaps, been downplayed somewhat because the subject-matter of that Section's agenda is largely within the authority of the provinces and territories. It should be recognized, however, that the needs which are presented to the Uniform Law Section are sometimes in areas where there is a shared interest, such as environmental and personal property security law. As well, the need for harmonization is sometimes driven by factors or activities in which Canada is a key player. Those include the Canadian Charter of Rights and Freedoms, the Free Trade Agreement with the United States and the International Conventions to which Canada becomes a party.

It is to be anticipated that, in the future, more of the Conference's civil side activity will be generated by proposals originating with Canada and approved by the provinces and territories for reference to the Uniform Law Section. It is to be anticipated, as well, that the participation of the Canadian delegates in the work of that Section and its working committees will be heightened. That is to be encouraged since the objective of the Conference is national in scope and should, therefore, reflect a viable partnership among the constituent jurisdictions.

XI. LIAISON COMMITTEE

The Joint Committee for Cooperation Between the Uniform Law Conference of Canada and the National Conference of Commissioners on Uniform State Laws exists to promote the harmonization of laws between the United States and Canada. That is seen as important to facilitate the international flow of goods, services, funds and people between the two countries. Although this area of activity has not received much attention by the Conference to date it is anticipated that it will become increasingly important. Accordingly, it is recommended that the Liaison Committee be requested to encourage the development of an active agenda and that the Conference seek resources to support such an initiative.

APPENDICE H

(voir page 49)

CONFÉRENCE SUR L'UNIFORMISATION DES LOIS AU CANADA PLAN DE RENOUVELLEMENT APPROUVÉ

Adopté par la
Conférence sur l'uniformisation
des lois au Canada
lors de sa réunion de 1990
tenue à Saint John au
Nouveau-Brunswick

PRÉSENTATION

En 1989, un rapport intitulé «Renouvellement du consensus sur l'harmonisation des lois au Canada» était préposé par la Direction de la Conférence sur l'uniformisation des lois au Canada et distribué aux administrations lors de la réunion annuelle de la Conférence à Yellowknife. Les administrations de même que d'autres personnes et organismes intéressés furent invités à étudier le rapport et à transmettre à la Direction leurs évaluations et leurs recommandations.

La Direction a reçu des commentaires et les a étudiés durant l'hiver. Au printemps de 1990 le rapport fut revisé et distribué aux administrations comme document de travail. Il devait être discuté et faire l'objet d'un débat lors de la réunion annuelle à Saint John. Lors de la réunion, des modifications furent proposées dont plusieurs furent adoptées. Le rapport fut donc adopté avec ces modifications.

Le rapport qui suit sous le titre «Conférence sur l'uniformisation des lois au Canada - plan de renouvellement approuvé» est dans son ensemble le rapport présenté pour fins de discussion à Saint John. Il fut toutefois partiellement réécrit en tenant compte des modifications adoptées lors de cette réunion à Saint John.

APPENDICE H

TABLE DES MATIÈRES

Conference sur l'uniformisation des lois au Canada
Plan de renouvellement approuvé 260

Annexe A
Recommandations approuvées 283

Annexe B
Déclaration de renouvellement 288

Appendice A
Règles de procédure 291

Appendice B
Énoncé de la politique 301

CONFÉRENCE SUR L'UNIFORMISATION DES LOIS AU CANADA PLAN DE RENOUVELLEMENT APPROUVÉ

En octobre 1989, des exemplaires du rapport intitulé «Renouvellement du consensus sur l'harmonisation des lois au Canada» ont été envoyés à chaque administration, aux anciens présidents de la Conférence ainsi qu'à d'autres organismes et particuliers intéressés. Les destinataires ont été invités à étudier le rapport et à y répondre.

À la mi-mars, nous avions reçu vingt réponses, y compris celles de la plupart des administrations.

Nous avons été satisfaits des réponses obtenues; en effet, les répondants acclament l'initiative que constitue le rapport. Bien que les répondants ne s'entendent pas sur la nature et la portée des «lacunes» de la Conférence, ils conviennent, en général, du caractère judicieux et opportun de la décision d'entreprendre l'étude. En outre, la présentation et le contenu du rapport font l'objet d'un consensus général.

Les réponses reçues nous ont beaucoup éclairés à plusieurs points de vue. Ces réponses nous ont appris, notamment, que la Conférence est perçue différemment, selon les répondants, à certains égards, y compris son mandat, son statut et sa méthodologie. Il semble que le rapport n'ait pas précisé suffisamment l'intention de la Direction quant à certaines questions. Il convient donc de préciser davantage ces questions de façon à délimiter la portée des débats qui auront lieu à Saint John cette année.

Il y aurait surtout lieu de clarifier et d'élaborer davantage la nature des relations entre la Conférence et les administrations constituantes. Si l'on s'en tient aux réponses reçues, certains répondants ont eu l'impression que le rapport proposait que la Conférence modifie de façon fondamentale ses relations, en délaissant les administrations et en créant des relations étroites avec des organismes tels la Commission de réforme du droit et l'Association du Barreau canadien. Tel n'est pas le cas.

Bien que la Conférence ait été créée par suite d'une initiative de l'Association du Barreau canadien, elle a été créée par les administrations pour servir leurs intérêts communs. La Conférence n'est donc pas seulement l'oeuvre des administrations, elle est aussi leur agent. Elle est, et se doit de demeurer, leur fidèle serviteur, leur mécanisme mis en place en vue d'atteindre l'objectif national que représente l'harmonisation des lois.

En fait, le rapport ne propose pas de moyens qui permettraient à la

Conférence de délaisser les administrations au profit de d'autres organismes et de la faire accéder à un statut indépendant; au contraire, il tente de déterminer les moyens qui permettraient à la Conférence de fournir aux administrations des services plus efficaces. Voilà l'objectif principal du rapport et, en fait, le but de plusieurs recommandations. Nous tentons de déterminer les moyens qui permettront à la Conférence de mieux accomplir sa mission de façon que les administrations reconnaissent son potentiel et qu'elles recourent plus souvent à ses services. Voilà le cadre dans lequel s'insèrent les recommandations que contient le rapport ainsi que celui dans lequel nous entendons présenter et examiner les réponses reçues.

Le rôle de la Conférence en ce qui a trait à la réforme du droit est une autre question importante qui a suscité des réactions très variées. Le rapport déclare: «La réforme du droit à l'échelle nationale est l'un des objectifs de la Conférence sur l'uniformisation des lois». Certains répondants ont cru que la Conférence cherchait à devenir un organisme national oeuvrant dans le domaine de la réforme du droit en concurrence avec d'autres organismes spécialisés en la matière dans les différentes régions du pays. Étant donné que tel n'est pas notre but, il convient de préciser le sens de cette déclaration. Le message que voulait transmettre la Conférence en faisant cette déclaration est expliqué dans les passages suivants tirés d'une lettre que le président de la Conférence a fait parvenir au sous-ministre de la Justice du Canada le 13 décembre 1989:

> «Les liens qui unissent les objectifs que s'est fixé la Conférence, soit la réforme du droit et l'harmonisation des lois, semblent susciter des inquiétudes chez certains. Ces inquiétudes proviennent de ce que ces objectifs sont vus comme contraires plutôt que complémentaires. Il ne fait aucun doute que l'uniformisation, ou préférablement, l'harmonisation des lois est l'objectif principal de la Conférence et doit continuer de l'être. Nous tentons en fait de trouver les moyens qui nous permettraient d'atteindre notre objectif principal de façon plus efficace.
>
> Dans le document de travail, nous avons défini l'uniformisation comme une réforme du droit à l'échelle nationale de façon à la distinguer de la réforme du droit qui se fait à l'intérieur de chaque administration et dans laquelle les organismes de réforme du droit jouent un rôle prépondérant. Nous l'avons définie ainsi parce qu'en vue d'harmoniser les lois des administrations, il faut convaincre les administrations de modifier leurs lois et, s'il y a lieu, d'adopter les principes que la Conférence estime appropriés.

> En fait, ni l'harmonisation des lois ni la réforme du droit devant mener à cette harmonisation ne sont des fins en soi. L'objectif final est la concrétisation des avantages, au plan national, que l'harmonisation peut offrir. Ces avantages éventuels se feraient sentir dans des domaines nombreux et diversifiés, dont l'économie, les finances, le commerce, la politique, la culture et les programmes sociaux.» (Traduction)

Un autre point à préciser concerne les propositions, dans le rapport, qui visent à améliorer la capacité de la Conférence d'effecteur de la recherche juridique grâce à l'affectation de ressources humaines et financières additionnelles. La Conférence n'entend pas se fixer et suivre un programme de recherche de façon à concurrencer les organismes responsables de l'orientation législative et de la réforme du droit qui oeuvrent au pays ni entreprendre des projets de recherche qui ne suscitent aucun intérêt ou qui ne répondent à aucun besoin. En réalité, la Conférence veut se donner la possibilité de répondre de façon plus opportune aux projets d'harmonisation que lui demandent d'entreprendre les administrations. Si celles-ci ou leurs organismes de réforme du droit sont en mesure d'offrir les ressources requises aux fins de la recherche pour donner suite à de telles demandes, la Conférence tirera avantage de ce qui lui est offert. Mais il s'est avéré, par le passé, que les ressources bénévoles ne sont pas toujours disponibles pour la Conférence en priorité. En pareilles circonstances, la Conférence se trouve dans l'impossibilité de s'acquitter de sa mission de façon satisfaisante parce qu'elle ne dispose pas des fonds nécessaires en matière de recherche.

Ici comme ailleurs, le rapport fait état de la volonté de la Conférence de servir efficacement les administrations constituantes. La possibilité d'améliorer la capacité de recherche n'est pas non plus une fin en soi, mais pourrait s'avérer très utile pour permettre à la Conférence d'atteindre son objectif.

Nous ne saurions passer outre, dans ces remarques d'ordre général, à certains autres aspects qui ont suscité l'unanimité chez les administrations. D'abord, les choix des sujets à l'ordre du jour de la Conférence doivent refléter les programmes actuels des gouvernements des administrations. Pour ce faire, il faut établir des rapports étroits avec les procureurs généraux adjoints, rapports qui seraient facilités par leur présence à la Conférence.

De plus, tous les répondants ont mis un autre facteur-clé en évidence qu'ils ont appelé «mise en marché», «vente», ou «lobbying». Il s'agit de

la nécessité de promouvoir les travaux de la Conférence. Il faudrait mieux rendre compte aux sous-ministres de ce qu'il advient des sujets qu'ils auraient eux-mêmes portés à l'ordre du jour. Enfin ils conviennent de l'importance, pour la Conférence, de produire de façon soutenue des documents de grande qualité.

Toute compte fait, ces trois facteurs forment le fondement sur lequel la Conférence doit reposer. Seulement si nous faisons en sorte que ces trois facteurs caractérisent la Conférence, nous atteindrons, et ce, à bon nombre d'égards, notre objectif qui est de renouveler la volonté d'harmoniser les lois au Canada.

Passons maintenant aux recommandations contenues dans le rapport et à l'analyse des réponses reçues. Les recommandations approuvées sont reproduites à la fin de ce document.

Recommandation 1 originale

1. La Conférence devrait adopter une constitution et des règlements administratifs écrits portant sur toutes les questions intéressant la Conférence.
2. La Direction devrait envisager de recommander l'adoption d'une loi uniforme qui aurait pour effet de mettre à jour les premiers textes de loi concernant la nomination des commissaires.

On s'entend généralement sur le besoin d'officialiser la structure de la Conférence. Outre les raisons invoquées dans le rapport à l'appui de l'adoption d'une constitution et de règlements administratifs écrits, en vue notamment d'établir une structure et un fondement solides de la Conférence, de tels documents écrits ont l'avantage de rendre la Conférence plus visible. Toutefois, certains répondants craignent que la Conférence, du fait de ces documents écrits, s'enlise dans des débats sans fin en ce qui concerne l'interprétation ou la modification de ceux-ci. Afin de fixer par écrit la structure de la Conférence, tout en apaisant ces craintes, il a été convenu que l'adoption d'une Déclaration de renouvellement, de règles de procédure et de lignes directrices écrites pouvait répondre à ce besoin.

Certains répondants ont manifesté leur appui en ce qui a trait à la seconde partie de la recommandation. Mais en raison de la vive opposition qu'elle a suscitée chez deux répondants, nous avons cru bon de la reformuler. En prévoyant la nomination au moyen d'une loi, nous visons d'abord et avant tout à augmenter la visibilité de la Conférence et à confirmer les liens entre les gouvernments et la Conférence. Néanmoins, l'adoption d'une loi de nomination aux États-Unis est loin

d'avoir été un succès retentissant. Seuls douze États ont adopté la loi. Pour certaines administrations au Canada, les restrictions qu'impose une loi de nomination peuvent être inacceptables. Il semble donc qu'en vue d'atteindre notre objectif, qui est d'augmenter la visibilité de la Conférence et de confirmer la participation du gouvernement à la nomination des délégués, il serait sans doute préférable d'élaborer un énoncé de la politique ou des lignes directrices qui traduiraient le point de vue de la Conférence relativement à la nomination des délégués. Par conséquent, nous entendons modifier cette recommandation de façon à proposer que la Direction envisage de recommander l'adoption de lignes directrices concernant la nomination des commissaires.

La recommandation approuvée à Saint John est la suivante:

Recommandation 1 approuvée

> *La Conférence devrait adopter une déclaration de renouvellement, des règles de procèdure écrites et un énoncé de la politique dans les domaines où, si c'était fait, il résulterait une structure et une base bien fondées pour les activités de la Conférence.*

Recommandation 2 originale

> La Conférence devrait chercher à créer un important fonds de recherche en vue de financer des travaux de recherche qui seraient effectuées tant par des employés que des personnes embauchées à contrat.

Comme il a été mentionné plus tôt, l'un des principaux facteurs dont dépend le succès de la Conférence est la production soutenue de document de qualité. La nécessité de répondre rapidement aux besoins signalés par les gouvernements que sert la Conférence est étroitement reliée à ce facteur. Cette recommandation vise ces deux objectifs.

Bien que les répondants conviennent tous que la production opportune et soutenue de documents de qualité soit une nécessité, certains doutent de la nécessité d'une vraie structure pour la recherche parce que le rôle principal de la Conférence est l'harmonisation des lois et non la réforme de droit. Nous estimons avoit déjà cerné ce point à savoir que la principale méthode visant à assurer une démarche uniforme dans un domaine particulier du droit passe par la réforme concertée du droit, qui, à l'occasion, nécessité des fonds de recherche.

Par ailleurs, les répondants sont préoccupés du fait que l'accès au fonds de recherche devrait être limité aux domaines du droit non seulement signalés par les gouvernements à titre de sujets à l'ordre du jour, mais qui sont l'objet d'un accord important sur le fond. Nous souscrivons entièrement, comme il a été mentionné plus haut, à l'idée

que l'ordre du jour de la Conférence ne reprenne que les ordres du jour plus vastes des administrations. Toutefois, nous sommes aussi d'avis que les décisions de principes concernant les lois uniformes proposées et les dispositions de fond que ces dernières contiennent doivent reposer sur une solide recherche de qualité. Comme il est recommandé dans le rapport, la création de groupes de travail semble convenir le mieux pour fournir ce fondement à la recherche.

D'une certain façon, en veillant à ce que les sujets à l'ordre du jour de la Conférence reçoivent l'appui sans réserve de plusieurs gouvernements, nous visons à la fois la recherche de qualité soutenue et la production opportune de documents. En outre, nous augmentons ainsi les probabilités selon lesquelles, projet après projet, des ressources seront de fait allouées à la recherche, tous en nous assurant que le groupe d'étude terminera ses travaux à temps.

De toute évidence, il s'agit là d'un point de vue légitime qui a été appuyé depuis les débuts de la Conférence. Néanmoins, depuis sa création, il est aussi arrivé que la Conférence ait entrepris des projets qui recevaient l'appui de plusieurs gouvernements remplissant ainsi le critère minimal et qu'elle ait été dans l'impossibilité de produire des documents de qualité dans les délais impartis. Le défaut de produire les résultats escomptés dépend souvent de la taille des gouvernements qui participent au projet et de la disponibilité des ressources humaines qui y sont affectées et constitue un argument pour les personnes qui ne croient pas que la Conférence est ou puisse être un organisme efficace. L'existence d'un fonds de recherche n'empêche pas les projets d'être entrepris selon ce qu'on vient de dire, à savoir le premier mode de financement mentionné, qu'aucun fonds de recherche de la Conférence n'est requis si les administrations concernées peuvent en prévoir les dépenses dans leur budget. En fait, ce fonds assurerait que les projets que les administrations proposent à la Conférence ne resteraient pas en plan plusieurs années en raison du manque de ressources. En outre, les retards excessifs qu'accuse l'achèvement des projets minent la confiance dans la Conférence et découragent les gouvernements de faire appel à ses services. La Conférence ne souhaite pas avoir une telle réputation.

Plusieurs répondants ont fait valoir les compressions budgétaires auxquelles les gouvernements font face actuellement. Nous sommes conscients de ce fait et admettons que la création d'un fonds de recherche est un projet à long terme qui exige un examen minutieux. Nous nous attendrions à ce que les contributions au fonds viennent surtout des gouvernements, mais nous ne nous opposerions pas aux dons privés pourvu que ces dons ne soient pas offerts par des organismes ou des particuliers qui laisseraient planer un doute quant à l'intégrité de la

Conférence et donneraient l'impression qu'elle a été détournée de son but premier, c'est-à-dire l'instrument ou l'agent des gouvernements. Toutefois, certains bailleurs de fonds, même parmi les anciens commissaires et les membres actuels de la Conférence, ont dit vouloir appuyer la création d'un tel fonds. Outre les gouvernements, il peut y avoir d'autres bailleurs de fonds qui contribueraient au fonds de recherche sans pour autant qu'il soit porté atteinte aux relations entre la Conférence et les gouvernements.

Lors des discussions à Saint John, on a mentionné que la recommandation était trop précise et limitative en ce qui concerne la demande d'un fonds de recherche. Il fut donc décidé de biffer les mots «qui seraient effectués tant par des employés que des personnes embauchées à contrat». La recommandation approuvée est donc la suivante.

Recommandation 2 approuvée

> *La Conférence devrait chercher á créer un important fonds de recherche en vue de financer des travaux de recherches juridiques.*

Recommandation 3 originale

> La Conférence devrait élaborer et mettre oeuvre un programme d'activités visant à faire mieux connaître et comprendre la nature et l'importance de ses travaux.

À l'unanimité, on convient qu'il est essentiel, pour assurer le succès futur de la Conférence, de renforcer la collaboration avec les administrations et, en particulier, avec les ministres et les sous-ministres de la Justice. En effet, une collaboration plus étroite contribuerait à alimenter le programme de la Conférence et pourrait contribuer à en publiciser les projets. Il a été proposé que la Conférence participe aux travaux des procureurs généraux adjoints au moins à tous les deux ans. Il a aussi été proposé que le président suggère de s'addresser aux procureurs généraux.

La discussion qui a eu lieu à Saint John a insisté sur l'importance des travaux de la Conférence portant sur l'élaboration de mesures du niveau d'intérêt et de volonté politique des administrations quant aux projets de lois uniformes. Ainsi non seulement la pertinence des travaux de la Conférence serait assurée, mais aussi la nature et l'importance des travaux de la Conférence seraient mieux connues et comprises par les administrations participantes. Ainsi la recommandation provenant de Saint John se lit comme suit:

Recommandation 3 approuvée

(1) Pour établir sa pertinence, la Conférence devrait

(a) élaborer des critères et des règles de procédures servant à mesurer le degré d'intérêt des administrations aux sujets portés au projet d'ordre du jour et adoptant comme politique d'entreprendre des projets jusqu'à un certain point prioritaire pour les administrations;

(b) élaborer et mettre en oeuvre des politiques, des règles de procédure et des activités visant à porter les travaux de la Conférence à l'attention des administrations intéressées à ces travaux et à leur mise en oeuvre; et

(c) établir un programme visant à suivre, à évaluer et à juger son efficacité.

Les parties mentionnées à l'alinéa b) devraient inclure, entre autres, les procureurs généraux ou les ministres responsables des programmes législatifs et leurs sous-ministres, les responsables des ministères des gouvernements spécialement visés par les travaux de la Conférence. Elles devraient également comprendre les groupes d'intérêt tels que le Barreau, la magistrature et le monde universitaire.

(2) La Conférence devrait élaborer et mettre oeuvre un programme d'activités visant à faire mieux connaître et comprendre la nature et l'importance de ses travaux.

Recommandation 4 originale

1. On devrait encourager chaque administration à faire en sorte que participent aux travaux de la Conférence des conseillers en matière de politiques, des rédacteurs législatifs, les organismes de réformer du droit ainsi que des praticiens du secteurs privé et des universitaires; chaque commissaire devrait être nommé pour un mandat d'au moins trois ans.

2. La Direction devrait rester en contact avec des organismes tels l'ABC, l'Association des doyens des facultés de droit, l'Association canadienne des professeurs de droit, la Fédération des professions juridiques du Canada, le Conseil canadien de la documentation juridique (CCDJ) et l'Association des bibliothèques de droit en vue de déter-

miner les moyens susceptibles de permettre à ces organisations de participer au processus d'harmonisation des lois sans pour autant porter atteinte à l'autonomie de la Conférence sur l'uniformistion des lois.

La première partie de cette recommandation a suscité des préoccupations chez certains répondants en ce sens qu'ils l'ont interprétée comme si le rapport proposait de modifier le pouvoir des administrations de nommer leurs délégués. Telle n'est pas l'intention du rapport. Nous tentons d'encourager les administrations à servir leurs propres intérêts en leur prodiguant nos conseils quant à la composition de la Conférence que nous estimons la plus efficace pour effectuer ses travaux. Quant aux mandats de trois ans, il a été suggéré que cette recommandation tienne compte du fait qu'une personne nommée pour un projet particulier puisse ne pas être nommée pour un mandat de trois ans. En fait, nous recommandons qu'un noyau central de participants de chaque administration puisse être nommé pour un mandat de trois ans de façon à assurer la continuité de la Conférence.

La seconde partie de cette recommandation a soulevé la question suivante: l'ojbectif visé était-il de modifier le statut actuel de la Conférence en celui d'organisme hors d'un certain contrôle gouvernemental. Il importe de réitérer que cette recommandation ne visait pas un tel objectif; en fait, nous explorons simplement les moyens qui permettraient aux travaux de la Conférence, en sa qualité de serviteur des gouvernements, d'obtenir une reconnaissance et un appui accrus de la part des autres organismes intéressés. La «participation» que met de l'avant cette recommandation ne vise que la présence à la Conférence d'un commissaire nommé par une administration, qui serait, par ailleurs, membre de l'un de ces organismes. Il s'impose de lever cette ambiguïté.

La recommandation 4 approuvée si lit comme suit:

Recommandation 4 approuvée

1. *La Direction devrait préparer un énoncé de la politique concernant la composition des délégations. Les administrations devraient être encouragées par un tel énoncé à nommer un groupe de délégués à la Conférence pour des mandats de trois ans.*

2. *La Direction devrait demeurer en communication avec des organismes tels l'Association du Barreau canadien, l'Association des doyens des facultés de droit, l'Association canadienne des professeurs de droit, la Fédération des professions juridiques du Canada, le Conseil canadien d'information juridique (CCDJ) et l'Association*

des bibliothécaires de droit en vue de déterminer les moyens de travailler ensemble pour faire progresser leur intérêt mutuel dans l'harmonisation des lois sans porter atteinte à l'autonomie de la Conférence sur l'uniformisation des lois.

Recommandation 5 originale

1. Chaque section devrait compter un comité directeur formé d'un président et de représentants régionaux, selon ce qui serait jugé opportun. De plus amples détails sur la composition proposée des comités directeurs sont fournis plus loin.

2. La Direction de la Conférence devrait être formée des personnes suivantes:

   (a) l'ancien président;

   (b) le président de la Direction, qui serait un ancien président de section, serait élu pour un mandat d'un an et pourrait être réélu dans certains cas;

   (c) les présidents de sections, qui resteraient en fonction pendant la durée de leur mandat individuel. La Direction serait desservie par le secrétaire administratif de la Conférence.

Lors des discussions à Saint John, il fut convenu que le rôle des présidents de sections serait élargi au sein de la Conférence. Ainsi le président serait relevé de plusieurs de ses tâches les plus onéreuses. Il fut reconnu que l'expérience d'une personne à titre de président de section serait un atout pour un président, mais ne devrait pas être un pré-requis pour accéder à ce poste. Il fut aussi convenu que le fait d'ajouter un poste de vice-président permettrait à quelqu'un d'acquérir l'expérience et d'assurer une continuité. Donc la recommandation approuvée à Saint John se lit comme suit:

Recommandation 5 approuvée

1. Les Sections du droit criminel et sur l'uniformisation des lois devraient compter chacun un comité directeur formé d'un président et de représentants régionaux et autres ayant un intérêt dans la section. De plus amples détails sur la composition proposée des comités directeurs sont fournis plus loin.

2. La Direction de la Conférence devrait être composée des personnes suivantes:

(a) le président sortant;

(b) le président et président de la Direction serait élu pour un mandat d'un an;

(c) le vice-président; et

(d) les présidents des sections pour la durée de leur mandat particulier;

et la Direction serait desservie par le secrétaire administratif de la Conférence.

3. Le comité de mise en candidature de la Direction serait composé du plus récent ancien président présent qui agit comme président du comité et d'au moins quatre autres membres choisis par le président du comité après consultation auprès des représentants des administrations afin qui soit assuré la représentation des intérêts régionaux et autres. La composition du comité de mise en candidature doit être indiquée à la Conférence.

Recommandation 6 originale

Des démarches devraient être entreprises afin que la Conférence sur l'uniformisation des lois et la Conférence canadienne des organismes de réformes du droit collaborent à l'harmonisation des lois provinciales.

Deux administrations doutent de l'utilité d'officialiser les liens qui unissent les deux conférences étant donné que la Conférence sur la Réforme du droit semble de toute façon jouer un rôle important dans les travaux de la Conférence sur l'uniformisation des lois. Certaines administrations critiquent l'emploi du mot «participation» et auraient préféré le mot «collaboration».

La Conférence sur la Réforme du droit a répondu qu'elle était généralement d'accord avec le rapport et ses buts. Toutefois, elle exprime des réserves quant au rôle de la Conférence sur l'uniformisation des lois en matière de réforme du droit. On s'est tout de même entendu sur le fait que les deux organismes devraient travailler ensemble dans le but d'harmoniser les lois lorsque c'est jugé approprié. La recommandation approuvée se lit comme suit:

Recommandation 6 approuvée

Des démarches devraient être entreprises afin que la Conférence sur l'uniformisation des lois et la Conférence sur la

Réforme du droit travaillent ensemble à l'harmonisation des lois.

Recommandation 7 originale

Des mesures devraient être prises pour accroître la quantité de services et de documents offerts à la fois en français et en anglais pour insister davantage sur la rédaction simultanée de projets de loi dans les deux langues.

L'un des répondants a pressé la Conférence d'étendre le bilinguisme à tous ses services et ses documents. Si la Conférence jouissait d'un bureau et d'un personnel permanent, il lui serait beaucoup plus facile de donner suit à cette demande. Par ailleurs, un autre répondant a insisté pour que la rédaction bilingue tienne compte des exigences linguistiques propres à chacune des deux langues.

Recommandation 7 approuvée

Des mesures devraient être prises pour accroître la quantité de services et de documents offerts à la fois en français et en anglais et pour insister davantage sur la rédaction simultanée de projets de loi dans les deux langues tout en tenant compte des particularités linguistiques de chaque langue.

Recommandation 8 originale

Devrait être formé un comité chargé d'étudier la nécessité d'un bureau permanent qui compterait sur les services à temps plein d'un directeur de l'administration et de la recherche, ainsi que du personnel de soutien nécessaire et, si cela est jugé nécessaire, de recommander les moyens de donner suite à cette décision.

La seule observation faite relativement à cette recommandation indiquait qu'il était prématuré d'amorcer une telle étude avant d'avoir donné un regain de vie à la Conférence.

Recommandation 8 approuvée

La Direction devrait étudier le besoin de développer davantage son administration et, si nécessaire, devrait soumettre des recommandations.

Recommandation 9 originale

Nous recommandons que la Conférence établisse un budget réaliste, tenant compte des services qu'elle est en mesure d'offrir, et qu'elle cherche les moyens d'obtenir les fonds nécessaires à cette fin.

On a admis, à la recommandation 2, qu'il fallait tenir compte de la question des compressions budgétaires. Toute augmentation substantielle devra être justifiée.

Recommandation 9 approuvée

> *La Conférence devrait établir un budget réaliste en tenant compte des services à rendre pour remplir son mandat et des fonds qui pourraient vraisemblablement être disponibles à cette fin.*

Recommandation 10 originale

1. Chaque section devrait appliquer, en vue de l'élection de son président, un processus électoral comportant les éléments suivants : un comité des candidatures, une disposition prévoyant des mises en candidature émanant des membres de la section réunis et, enfin, une élection.

2. Le comité des candidatures de chaque section devrait être régi par les règles suivantes:

   (a) il devrait être formé de cinq commissaires dont l'un serait le président de la Conférence;

   (b) les quatre autres membres du comité des candidatures devraient être d'anciens présidents de la section, le plus récent président agissant comme président du comité des candidatures;

   (c) s'il n'a a pas assez d'anciens présidents pour constituer le comité des candidatures, le président du comité doit en informer la section et nommer des commissaires supplémentaires pour remplir les postes vacants au comité des candidatures; de plus, une disposition devrait autoriser la tenue d'une élection informelle à l'égard de ces postes;

   (d) les commissaires nommés au comité des candidatures devraient avoir été commissaires au cours des quatre années précédentes.

Un répondant doute qu'un tel processus électoral puisse être appliqué, tandis qu'un autre se soucie du fait que seules les personnes connues des présidents de section pourraient devenir dirigeants. La Direction est d'avis qu'il y a lieu de modifier cette recommandation de façon à ce que les membres habiles à siéger au comité de mise en candidature soient en majorité, et non en totalité, commissaires depuis trois ans, et non quatre.

Bien que la partie 1 de cette recommandtion ait été approuvée à Saint John, on pensait fortement que la partie 2 accorderait le contrôle de la section à quelques personnes seulement. Il était donc souhaitble qu'un mécanisme prévoyant une participation plus grande au processus de mise en candidature en consultant les représentants des administrations. La recommandation 10 approuvée se lit comme suit:

Recommandation 10 approuvée

1. *Les Sections du droit criminel et sur l'uniformisation des lois devraient disposer, en vue de l'élection de leur président, d'un processus électoral comportant les éléments suivants: un comité de mise en candidature, une disposition prévoyant des mises en candidature émanant des membres de la section réunis et, enfin, une élection.*

2. *Le comité de mise en candidature d'une section devrait être constitué comme suit:*

   (a) le plus récent ancien président présent qui devrait agir comme président du comité;

   (b) le président de la Conférence; et

   (c) au moins trois autres membres de la section choisis par le président du comité après consultation auprès des représentants des administrations, indiqués à la section.

Recommandation 11 originale

Les votes devraient pouvoir continuer à être pris par administration, en appliquant toutefois la règle selon laquelle chaque administration dispose d'au plus trois voix sans égard au nombre de ses délégués présents.

Cette recommandation n'a soulevé aucune objection des répondants ni des délégués à Saint John.

Recommandation 11 approuvée

Les votes par administration devraient être maintenus, en appliquant toutefois la règle selon laquelle chaque administration dispose d'au plus trois voix sans égard au nombre de ses délégués présents.

Recommandation 12 originale

1. Les représentants des diverses administrations à la SDC et à la SDU devraient être nommés par leurs comités

directeurs respectifs parmi les délégués de l'administration visée, sur recommandation des autorités responsables de leur administration et de concert avec celles-ci. Leurs fonctions sont prévues aux règles régissant la section visée.

2. Les représentants des diverses administrations devraient renconter, à l'occasion de la réunion générale annuelle, les membres du comité directeur auquel ils sont rattachés.

Certains répondants s'inquiètent de ce que la Conférence ait le pouvoir de nommer les représentants des administrateurs, ou s'y opposent carrément, et ce, même si ce sont les administrations qui, à toutes fins utiles, nomment leurs représentants. Il faut se rappeler qu'avant de devenir délégué à la Conférence, une personne doit d'abord y être nommée par une administration; ce n'est que parmi ce groupe que les représentants des administrations seront choisis en consultation avec le gouvernement. Nous croyons que les nominations par la Conférence aideront à la poursuite des travaux de celle-ci. De toute évidence, la décision de la Conférence à cet égard doit tenir compte de l'autorité des administrations en la matière.

La recommandation présentée a été approuvée à Saint John et se lit comme suit:

Recommandation 12 approuvée

1. *Les présidents de la Section du droit criminel et de la Section sur l'uniformisation des lois devraient inviter les administrations participantes à proposer un membre de chaque délégation à chaque section en vue de sa nomination à titre de représentant de l'administration à la section. Lorsqu'il reçoit cet avis du président d'une section, le comité directeur nomme cette personne proposée par une administration à titre de représentant de cette administration. Les fonctions de ce représentant seront celles établies aux Règles de procédure de la Conférence.*
2. *Les représentants des administrations devraient rencontrer lors de la réunion annuelle les membres du comité directeur auquel ils sont rattachés.*

Recommandation 13 originale

Le comité directeur de la Section sur l'uniformisation des lois devrait être formé des personnes suivantes:

(a) le président de la section qui agirait comme président d'assemblée;

(b) l'ancien président de la section;

(c) le président de la Conférence;

(d) au plus trois membres de la Section sur l'uniformistion des lois nommés par le président de la Section sur l'uniformisation des lois de manière à assurer la représentation des régions et dont l'un devrait être un membre du Barreau exerçant dans le secteur privé;

(e) un représentant de la Conférence canadienne des organismes de réforme du droit qui serait nommé par cet organisme et qui serait également délégué à la Conférence sur l'uniformisation des lois;

(f) le président de la SRL.

Le président serait nommé par la comité des candidatures de la section et resterait en poste pendant toute la durée de son mandat, c'est-à-dire deux ans, et il pourrait être réélu. Le secrétaire administratif agirait comme secrétaire du comité directeur.

Certains répondants ont fait observer que le comité directeur, composé tel que recommandé, n'incluait aucun délégué des gouvernements et ont suggéré que cette lacune soit comblée. Ils ont aussi suggéré que les représentants des organismes de réforme du droit et des praticiens du secteur privé soient nommés, à l'instar des autres membres, par voie de mise en candidature, même si aussi leur présence au comité directeur n'était pas nécessairement assurée. La Direction souscrit à cette suggestion et estime que l'on répondrait aux préoccupations soulevées si les membres étaient choisis parmi des personnes qui représentent des intérêts régionaux et autres.

On s'attend à ce que bon nombre de membres du comité directeur, au nombre de huit possiblement, ne sont pas trop nombreux compte tenu qu'ils doivent tous se rencontrer pendant l'année. Étant donné que le président de la section peut assurer la liaison avec le président de la Conférence, on soutient que sa présence n'est pas essentielle. Afin de reconnaître le rôle du président de la Conférence à toutes les activités celle-ci, il y aurait peut-être lieu de prévoir que celui-ci est membre d'office de tous les comités de la Conférence. Quoi qu'il en soit, dans le cas du comité directeur, la question ne se pose que lorsque le président de la Conférence n'est pas le président sortant de la section.

Un délégué a proposé une résolution à Saint John prévoyant que le comité directeur au complet serait élu. Cette résolution fut défaite. Toutefois il fut entendu à Saint John que les mots «au plus trois»

seraient remplacés par «au moins quatre» afin d'assurer une représentation régionale entière. La recommandation rédigée à Saint John dans ce but et comportant la modification se lit comme suit:

Recommandation 13 approuvée

> *Le comité directeur de la Section sur l'uniformistion des lois devrait être formé des personnes suivantes:*
>
> *(a) le président de la section qui agirait comme président;*
>
> *(b) le président sortant de la section;*
>
> *(c)* **au moins** *trois membres membres de la section nommés par le président de la section de manière à assurer la représentation des intérêts régionnaux et autres;*
>
> *(d) le président de la Section de la rédaction législative ou la personne qu'il désigne.*
>
> *Le président serait nommé par le comité de mise en candidature de la section et resterait en poste pendant deux ans, et il pourrait être réélu pour une autre année. Le secrétaire administratif agirait comme secrétaire du comité directeur de la Section sur l'uniformisation des lois.*

Recommandation 14 originale

> Les pouvoirs du comité directeur devraient être accrus afin qu'il puisse examiner les questions de fond et de procédure touchant la Section sur l'uniformisation des lois.

Cette recommandation n'a soulevé aucune objection particulière. Toutefois, la Direction estime que l'exercice du pouvoir du comité directeur devrait être assujetti à l'approbation de la Section sur l'uniformisation des lois. Le point de vue du comité directeur d'établir l'ordre du jour a été maintenu et élargi à Saint John dans le but de faciliter les travaux de la section. Toutefois cette recommandtion a été approuvée telle que présentée.

Recommandation 14 approuvée

> *Les pouvoirs du comité directeur, sous réserve de l'approbation de la Section sur l'uniformisation des lois, devraient être accrus afin qu'il puisse examiner les questions de fond et de procédure touchant la Section sur l'uniformisation des lois.*

Recommandation 15 originale

> La SDU, par l'entremise du comité directeur, devrait prendre des mesures afin de jouer un rôle important et actif en matière de planification et ce rôle devrait être prévu dans les documents constitutifs de la Conférence.

Cette recommandation n'a soulevé aucune opposition. Un répondant a toutefois souligné - et nous en convenons - qu'il importe que les projets et les priorités établis grâce à cette planification reflètent les besoins des administrations. Elle fut aussi acceptés à Saint John.

Recommandation 15 approuvée

> *La Section sur l'uniformisation des lois, par l'entremise du comité directeur, devrait prendre des mesures afin de jouer un rôle important et actif en matière de planification et ce rôle devrait être prévu dans les documents constitutifs de la Conférence.*

Recommandation 16 originale

1. Le recours à des comités assurant une participation élargie devrait se poursuivre.
2. Outre les experts dont les services peuvent être requis par un comité de travail, le comité directeur devrait envisager de demander à l'Association du Barreau canadien de nommer deux représentants à chaque comité de travail.

Il est entendu que le recours à des comités de travail assurant une participation élargie devrait se poursuivre dans le but de faire progresser les travaux de recherche de la Section sur l'uniformisation des lois lorsque c'est opportun.

Il est généralement entendu que l'Association du Barreau canadien en raison de son mandat qui comprend l'harmonisation des lois et aussi en raison de l'expertise de ses membres constitue un organisme qui doit être invité à participer aux groupes de travail de la section. On semblait croire que la mention spéciale de l'Association du Barreau canadien pour indiquer que d'autres organismes tels que l'Association des professeurs de droit, des doyens des facultés de droit et des organismes de réforme en droit ne devraient pas être invités à l'occasion de participer. Il fut donc convenu que la recommandation devrait être reformulée en termes généraux en ce qui concerne les sources d'expertise en souhaitant que l'Association du Barreau canadien et les autres organismes pertinents fassent l'objet d'invitation à participer aux travaux de la Conférence sans frais pour cette dernière.

Recommandation 16 approuvée

Le recours à des comités de travail assurant une participation élargie relativement aux projets de la Section sur l'uniformisation des lois devrait se poursuivre.

Recommandation 17 originale

Devrait être constitué, pour la SDC, un comité directeur formé des membres suivants:

(a) le président de la section, qui agirait comme président d'assemblée;

(b) l'ancien président de la section;

(c) le président de la Conférence ainsi que le président de la Direction;

(d) au plus quatre membres de la Section sur l'uniformistion des lois nommés par le président afin d'assurer la représentation des régions, dont l'un serait un avocat de la défense délégué par une administration.

Le président serait nommé par le comité des candidatures de la section et resterait en poste pendant toute la durée de son mandat, c'est-à-dire deux ans, et il pourrait être réélu.

Tout comme ce fut le cas pour la recommandation 13, le Comité a été taxé d'être trop large au début. Les commentaires relatifs à la recommandation 13 s'appliquent à cette recommandation. Donc il fut décidé de prévoir «au moins quatre membres ...» pour assurer une représentation des intérêts régionaux et autres. Aussi ce comité sera semblable à celui de la Section sur l'uniformisation des lois.

Par ailleurs, on a aussi suggéré que cette recommandation soit modifiée de façon à ce que les procureurs de la Couronne et de la défence puissent être représentés. La Direction souscrit à cette suggestion. Encore une fois, en reformulant cette recommandation de façon à assurer la représentation des intérêts régionaux et autres, nous pouvons répondre à cette préoccupation.

À Saint John, la Section du droit criminel, par vote, a décidé de changer le mandat du président de la section de celui de deux ans avec possibilité de réélection en celui d'un an avec possibilité de réélection. La recommandation ainsi modifiée fut adoptée par la Conférence.

Recommandtion 17 approuvée

Devrait être constitué, pour la Section du droit criminel, un comité directeur formé des membres suivants:

(a) le président de la section, qui agirait comme président;

(b) le président sortant de la section;

(c) au moins quatre délégués de la section nommés par le président afin de tenir compte de la représentation des intérêts régionaux et autres représentés à la section.

Le président serait nommé par le comité de mise en candidature de la section et resterait en poste pendant un an et il pourrait être réélu pour une autre année. Le secrétaire de la section serait nommé par le comité directeur à même les membres de la Section.

Recommandation 18 originale

> La SDC devrait disposer, au sein de la Conférence, d'un pouvoir similaire à celui de la Section sur l'uniformisation des lois.

Règle générale, les répondants souscrivent à cette recommandation. Toutefois, le fontionnement de la Section du droit criminel suscite certaines questions et préoccupations. Par exemple, l'absence de règles de procédure officielles nuit à la qualité des délibérations de la section. Une administration a mentionné que le rôle de la Section du droit criminel est de se pencher sur les problèmes pratiques que soulève l'application du Code criminel et que les questions d'orientation d'importance considérable qui intéressent les gouvernements constituants devraient être abordées dans un forum fédéral-provincial-territorial plus approprié. D'une certaine façon, cette observation concerne la mission de la section et ne touche pas les modifications proposées par le rapport. Toutefois, les mesures recommandées dans le rapport en vue d'officialiser la procédure de la section peuvent éventuellement aller au devant de la question de l'opportunité des points à l'ordre du jour. Aucune modification ne fut apportée à cette recommandation à Saint John.

Recommandation 18 approvée

> *La Section du droit criminel devrait disposer, au sein de la Conférence, d'un pouvoir similaire à celui de la Section sur l'uniformisation des lois.*

LA SECTION DE LA RÉDACTION LÉGISLATIVE

Lors de sa réunion annuelle de 1988, la Section de la rédaction législative a créé un comité en vue d'étudier les buts de la section et de

faire des recommandations quant à son avenir. C'est pourquoi le Rapport passait sous silence la Section de la rédaction législative. La Direction apprit au début de 1990 que ce comité recommanderait que la Section cesse d'exister et que les légistes établissent un organisme indépendant de la Conférence qui poursuivrait les aspects ayant un intérêt et une préoccupation communs aux légistes, lesquels aspects ne sont pas pertinents aux travaux de la Conférence.

Étant consciente du fait que la Conférence continuera d'avoir besoin des légistes à son service, la Direction a recommandé que la Section de la rédaction législatique soit restructurée et que son mandat soit limité aux questions directement pertinentes aux travaux de la Conférence à savoir la rédaction de lois uniformes ou modèles et la possibilité de soulever des questions d'ordre constitutionnelles. Il n'est pas question que ceci empêche les légistes d'établir un organisme indépendant afin de poursuivre d'autres objectifs.

Il est donc souhaité que la Section de la rédaction législative devrait être composée uniquement des délégués des autres sections et qu'elle tiendrait une réunion lors de la réunion annuelle de la Conférence. Une recommandation à cet effet a été approuvée à Saint John et se lit comme suit:

Recommandation 19 approuvée

1. *La section de la rédaction législative devrait être composée de légistes nommés par les administrations participants et désignés par ces dernières pour participer aux travaux de la Section du droit criminel ou de la Section sur l'uniformisation des lois: la Direction de la section serait constituée d'un président, d'un vice-président et d'un secrétaire qui devraient être élus par la section.*

2. *Le mandat de la section devrait constituer généralement à fournir des avis et des services aux autres sections quant à la rédaction et à soulever des questions d'ordre constitutionnel lorsque c'est opportun.*

Observations additionnelles des répondants et de la direction

Les réponses au rapport contenaient par ailleurs les observations et les suggestions qui suivent:

(a) L'harmonisation des lois peut ajouter un complément à l'uniformisation que vise la Conférence, et ce, pour plusieurs raisons, notamment parce qu'elle tient compte de la différence entre les deux systèmes de droit: la common law et le droit civil. L'har-

monisation élargit les horizons de la Section sur l'uniformistion des lois.

(b) Le gouvernement fédéral devrait participer plus activement aux travaux de la Section sur l'uniformisation des lois dans les domaines qui intéressent à la fois le fédéral, les provinces et les territoires, notamment la faillite, les sûretés mobilières et l'environnement.

(c) Les administrations moins riches qui affectent moins de ressources à la recherche juridique et à la réforme du droit ont davantage à gagner en donnant plus de vigueur à la Conférence et devraient, pour cette raison, être encouragées à le faire.

(d) Si, en raison de l'organisation que nécessitent les différentes sections, la direction de la Conférence devenait trop encombrante, il faudrait envisager la possibilité de réorganiser les sections en organismes autonomes distincts.

(e) En vue de promouvoir l'objectif de mieux faire connaître et comprendre la nature et l'importance des travaux de la Conférence, il y aurait lieu de remettre en vigueur la politique voulant qu'une disposition d'interprétation soit incorporée dans les lois uniformes. Cette disposition pourrait être rédigée comme suit: «La présente loi est interprétée de façon à réaliser son objectif général qui est d'uniformiser les lois des provinces qui l'ont adoptée.» Les administrations qui adopteraient des lois uniformes seraient encouragées à mentionner dans leurs lois qu'elles se sont inspirées de lois recommandées par la Conférence sur l'uniformisation des lois au Canada.

(f) Les sections devraient avoir le pouvoir d'adopter des résolutions qui ne touchent pas les autres sections sans devoir en rendre compte en réunion plénière. Les membres des sections devraient être investis du pouvoir d'approuver et d'adopter des propositions au moment où leur président les convoque de façon que les résultats escomptés puissent être atteints plus rapidement.

(g) Les sections devraient être encouragées à se réunir en séances conjointes. A Saint John, les suggestions et remarques mentionnées aux clauses d) et e) n'ont reçu aucun appui. Le reste fut accepté et est contenu sous forme de recommandations supplémentaires à la fin de ce document.

Démarche

Les recommandations remaniées et modifiées en fonction des observations formulées par les répondants figurent à l'annexe A. L'annexe B

contient la Déclaration de renouvellement ainsi que deux appendices, à savoir les Règles de procédure de la Conférence et l'Énoncé de la politique de la Conférence.

La Conférence sur l'uniformisation des lois au Canada

ANNEXE A

Recommandation 1 approuvée

La Conférence devrait adopter une déclaration de renouvellement, des règles de procédure écrites et un énoncé de la politique dans les domaines où, si c'était fait, il résulterait une structure et une base bien fondées pour les activités de la Conférence.

Recommandation 2 approuvée

La Conférence devrait chercher à créer un important fonds de recherche en vue de financer des travaux de recherches juridiques.

Recommandation 3 approuvée

(1) Pour établir sa pertinence, la Conférence devrait

(a) élaborer des critères et des règles de procédures servant à mesurer le degré d'intérêt des administrations aux sujets portés au projet d'ordre du jour et adoptant comme politique d'entreprendre des projets ayant atteint un degré important de priorité pour les administrations;

(b) élaborer et mettre en oeuvre des politiques, des règles de procédure et des activités visant à porter les travaux de la Conférence à l'attention des administrations intéressées à ces et à leur mise en oeuvre; et

(c) établir un programme visant à suivre, à évaluer et juger son efficacité.

Les parties mentionnées à l'alinéa b) devraient inclure, entre autres, les procureurs généraux ou les ministres responsables des programmes législatifs et leurs sous-ministres, les responsables des ministères des gouvernements spécialement visés par les travaux de la Conférence. Elles devraient également comprendre les groupes d'intérêt tels que le Barreau, la magistrature et le monde universitaire.

(2) La Conférence devrait élaborer et mettre oeuvre un programme d'activités visant à faire mieux connaître et comprendre la nature et l'importance de ses travaux.

Recommandation 4 approuvée

1. La Direction devrait préparer un énoncé de la politique concernant la composition des délégations. Les administrations devraient être encourragées par un tel énoncé à nommer un groupe de délégués à la Conférence pour des mandats de trois ans.

2. La Direction devrait de meurer en communication avec des organismes tels l'Association du Barreau canadien, l'Association des doyens des facultés de droit, l'Association canadienne des professeurs de droit, la Fédération des professions juridiques du Canada, le Conseil canadien d'information juridique (CCDJ) et l'Association des bibliothécaires de droit en vue de déterminer les moyens de travailler ensemble pour faire progresser leur intérêt mutuel dans l'harmonisation des lois sans porter atteinte à l'autonomie de la Conférence sur l'uniformisation des lois.

Recommandation 5 approuvée

1. Les Sections du droit criminel et sur l'uniformisation des lois devraient compter un comité directeur formé d'un président et de représentants régionaux et autres ayant un intérêt dans la section. De plus amples détails sur la composition proposée des comités directeurs sont fournis plus loin.

2. La Direction de la Conférence devrait être formée des personnes suivantes:

   (a) le président sortant;

   (b) le président et président de la Direction serait élu pour un mandat d'un an;

   (c) le vice-président; et

   (d) les présidents des sections pour la durée de leur mandat particulier.

et la Direction serait desservie par le secrétaire administratif de la Conference.

3. Le comité de mise en candidature de la Direction serait composé de plus récent ancien président présent qui agit comme président du comité et d'au moins quatre autres membres choisis par le président du comité après consultation auprès des représentants des administrations afin qui soit assuré le représentation des intérêts régionaux et autres. La composition du comité de mise en candidature doit être indiquée à la Conférence.

Recommandation 6 approuvée

Des démarches devraient être entreprises afin que la Conférence sur l'informisation des lois et la Conférence sur la Réforme du droit travaillent ensemble à l'harmonisation des lois.

Recommandation 7 approuvée

Des mesures devraient être prises pour accroître la quantité de services et de documents offerts à la fois en français et en anglais et pour insister davantage sur la rédaction simultanée de projets de loi dans les deux langues tout en tenant compte des particularités linguistiques de chaque langue.

Recommandation 8 approuvée

La Direction devrait étudier le besoin de développer davantage son administration et si nécessaire devrait soumettre des recommandations.

Recommandation 9 approuvée

La Conférence devrait établir un budget réaliste en tenant compte des services à rendre pour remplir son mandat et des fonds qui pourraient vraisemblablement être disponibles à cette fin.

Recommandation 10 approuvée

1. Les Sections du droit criminel et sur l'uniformisation des lois devraient disposer, en vue de l'élection de son président, d'un processus électoral comportant les éléments suivants : un comité de mise en candidature, une disposition prévoyant des mises en candidature émanant des membres de la section réunis et, enfin, une élection.

2. Le comité de mise en candidature d'une section devrait être constitué comme suit:

   (a) l'ancien président le plus récent présent qui devrait agir comme président du comité;

   (b) le président de la Conférence; et

   (c) au moins trois autres membres de la section choisis par le président du comité après consultation auprès des représentants des administrations, indiqués à la section.

Recommandation 11 approuvée

Les votes par administration devraient être maintenus, en appliquant toutefois la règle selon laquelle chaque administration dispose d'au plus trois voix sans égard au nombre de ses délégués présents.

Recommandation 12 approuvée

1. Les présidents de la Section du droit criminel et de la Section sur l'uniformisation des lois devraient inviter les administrations participantes à proposer un membre de chaque délégation à chaque section en vue de sa nomination à titre de représentant de l'administration à

la section. Lorsqu'il reçoit cet avis du président d'une section, le comité directeur nomme cette personne proposée par une administration à titre de représentant de l'administration. Les fonctions de ce représentant seront celles établies aux Règles de procédure de la Conférence.

2. Les représentants des administrations devraient rencontrer lors de la réunion annuelle les membres du comité directeur auquel ils sont rattachés.

Recommandation 13 approuvée

Le comité directeur de la Section sur l'uniformisation des lois devrait être formé des personnes suivantes:

(a) le président de la section qui agirait comme président;

(b) le plus récent ancien président de la section;

(c) au moins trois membres de la section sur l'uniformisation des lois nommés par le président de la section de manière à assurer la représentation des intérêts régionaux et autres;

(d) un représentant de la Conférence canadienne des organismes de réforme du droit qui serait nommé par cet organisme et qui serait également délégué à la Conférence sur l'uniformisation;

(e) le président de la section de la rédaction législative ou la personne qu'il désigne.

Le président serait nommé par le comité de mise en candidature de la section et resterait en poste pendant deux ans, et il pourrait être réélu pour une autre année. Le secrétaire administratif agirait comme secrétaire du comité directeur de la section sur l'uniformistion des lois.

Recommandation 14 approuvée

Les pouvoirs du comité directeur, sous réserve de l'approbation de la Section sur l'uniformistion des lois, devraient être accrus afin qu'il puisse examiner les questions de fond et de procédure touchant la Section sur l'uniformisation des lois.

Recommandation 15 approuvée

La Section sur l'uniformisation des lois, par l'entremise du comité directeur, devrait prendre des mesures afin de jouer un rôle important et actif en matière de planification et ce rôle devrait être prévu dans les documents constitutifs de la Conférence.

Recommandation 16 approuvée

Le recours à des comités de travail assurant une participation élargie relativement aux projets de la Section sur l'uniformisation des lois devrait se poursuivre.

Recommandation 17 approuvée

Devrait être constitué, pour la Section du droit criminel, un comité directeur formé des membres suivants:

(a) le président de la section, qui agirait comme président;

(b) le président sortant de la section;

(c) au moins quatre délégués de la section nommés par le président afin de tenir compte de la présentation des intérêts régionaux et autres représentés à la section.

Le président serait nommé par le comité de mise en candidature de la section et resterait en poste pendant un an et il pourrait être réélu pour une autre année. Le secrétaire de la section serait nommé par le comité directeur à même les membres de la section.

Recommandation 18 approuvée

La Section du droit criminel devrait disposer, au sein de la Conférence, d'un pouvoir similaire à celui de la section sur l'uniformisation des lois.

Recommandation 19 approuvée

1. La Section de la rédaction législative devrait être composée de légistes nommés par les administrations participantes et désignés par ces dernières pour participer aux travaux de la Section de droit criminel ou de la Section sur l'uniformisation des lois: la Direction de la section serait constituée d'un président, d'un vice-président et d'un secrétaire qui devraient être élus par la section.

2. Le mandat de la section devrait constituer généralement à fournir des avis et des services aux autres sections quant à la rédaction et à soulever des questions d'ordre constitutionnel lorsque c'est opportun.

ANNEXE B

CONFÉRENCE SUR L'INFORMISATION DES LOIS AU CANADA DÉCLARATION DE RENOUVELLEMENT

A. Préambule

ATTENDU QUE la Conférence sur l'uniformisation des lois a été créée pour assurer l'uniformité des lois à l'échelle du pays, en vue, notamment, de faciliter les activités de commerce;

ATTENDU QUE la Conférence et d'autres reconnaissent que l'harmonisation des principes juridiques à l'échelle du pays est un objectif souhaitable dans les domaines du droit autres que celui touchant les activités de commerce;

ATTENDU QUE des faits nouveaux tels que l'adoption de la *Charte canadienne des droits et libertés,* la conclusion de l'*Accord de libre-échange* entre le Canada et les États-Unis, la participation accrue du Canada aux travaux de la Conférence de la Haye sur le droit international privé ainsi que d'autres organismes internationaux mettent en évidence l'importance de l'objectif d'harmoniser les lois à l'échelle du pays;

ATTENDU QUE les administrations constituantes de la Conférence sur l'unformisation des lois, soit le Canada, les provinces et les territoires, estiment souhaitable que la Conférence continue de les servir en faisant office de mécanisme efficace visant à faciliter et à promouvoir l'harmonisation des lois à l'échelle du pays;

ATTENDU QUE que les administrations constituantes souhaitent montrer leur engagement soutenu au principe de l'harmonisation des lois et à la Conférence;

PAR CONSÉQUENT, le Canada, les provinces et les territoires, par l'intermédiaire de leurs délégués respectifs à la Conférence sur l'uniformisation des lois au Canada, conviennent de la Déclaration de renouvellement qui suit.

B. Mission

La mission de la Conférence sur l'uniformisation des lois consiste à faciliter et à promouvoir l'harmonisation des lois à l'échelle du Canada au moyen de l'élaboration, à la demande des administrations constituantes, de lois uniformes, de lois modèles, d'énoncés des principes juridiques et autres documents jugés nécessaires pour répondre aux demandes qui lui sont présentées par les administrations constituantes.

C. Structure

La Conférence se compose de la Section sur l'uniformisation des lois uniforme, de la Section du droit criminel et de la Section de la rédaction législative, lesquelles remplissent la mission de la Conférence selon leur spécialité respective.

D. Participation

Les administrations constituantes de la Conférence, soit le Canada, les provinces et les territoires, peuvent désigner autant de délégués qu'elles le souhaitent pour participer aux travaux d'au moins une section. Seules les personnes ainsi désignées auront droit de vote lors des scrutins tenus par la Conférence ou les sections ou accéder à un poste à la Conférence ou aux sections.

E. Direction

Les activités de la Conférence sont gérées par la Direction, qui est constituée conformément aux Règles de procédure adoptées par la Conférence. Les activités de chaque section sont gérées par leur Direction ou comité directeur respectifs, qui sont constitués conformément aux Règles de procédure adoptées par la Conférence. Aux termes des Règles de procédure, ces comités sont investis, en conformité avec la présente Déclaration de renouvellement, des attributions nécessaires pour permettre à la Conférence et aux sections de mener à bien leur mission.

F. Règles de procédure

La Conférence peut, en conformité avec cette Déclaration de renouvellement, adopter les règles de procédure qu'elle estime nécessaires pour remplir sa mission. Chaque section peut, en conformité avec cette Déclaration de renouvellement, avec les Règles de procédure et avec l'Énoncé de la politique de la Conférence, adopter les règles de procédure qu'elle estime nécessaires pour remplir sa mission.

Les Règles de procédure de la Conférence visées à cette Déclaration de renouvellement sont énoncées à l'appendice A.

G. Énoncé de la politique

La Conférence peut, en conformité avec cette Déclaration de renouvellement, adopter l'énoncé de la politique qu'elle estime nécessaire pour aider les administrations constituantes à comprendre le fonctionnement de la Conférence et le rôle qu'elles pourraient assumer pour

lui permettre de remplir sa mission le plus efficacement possible ainsi que pour toute autre fin que la Conférence estime nécessaire pour remplir sa mission.

L'Énoncé de la politique visé à la présente Déclaration de renouvellement figure à l'appendice B.

APPENDICE A
CONFÉRENCE SUR L'INFORMATION DES LOIS AU CANADA

RÉGLES DE PROCÉDURE

PARTIE 1. - AUTORISATION

Article 1.

Les présentes Règles de procédure sont élaborées conformément à la Déclaration de renouvellement approuvée par les administrations constituantes le *17 août 1990.*

PARTIE 2. - DÉFINITIONS

Article 2.

Les définitions qui suivent s'appliquent à ces Règles de procédure:

(a) «administrations constituantes» Le Canada, les provinces et les territoires.

(b) «Conférence» La Conférence sur l'uniformisation des lois du Canada.

(c) «Direction» La Direction de la Conférence visée au paragraphe 10(1).

(d) «Représentant d'une administration» La personne désignée aux termes de la partie 4.

(e) «Section de la rédaction législative» La Section de la rédaction législative visée à la partie 3.

(f) «Section du droit criminel» La Section du droit criminel de la Conférence visée à la partie 3.

(g) «Section sur l'uniformisation des lois» La Section sur l'uniformisation des loi de la Conférence visée à la partie 3.

PARTIE 3. - SECTIONS DE LA CONFÉRENCE

Article 3.

(1) La Section sur l'uniformisation des lois se compose des personnes nommées par les administrations constituantes et désignées par elles pour participer aux travaux de la section.

(2) La Section sur l'uniformisation des lois remplit la mission de la Conférence relativement aux questions qui ne relèvent pas du droit criminel.

(3) La Section du droit criminel se compose des personnes nommées par les administrations constituantes et désignées par elles pour participer aux travaux de la section.

(4) La Section du droit criminel remplit la mission de la Conférence relativement aux questions qui relèvent du droit criminel.

(5) La Section de la rédaction législative se compose de rédacteurs législatifs nommés par les administrations constituantes et désignés par elles pour participer aux travaux de la Section sur l'uniformisation des lois ou de la Section du droit criminel.

Article 4.

(1) La Section sur l'uniformisation des lois et la Section du droit criminel ont chacune leur comité de mise en candidature, qui se compose:

(a) de l'ancien président le plus récent présent à la reunion annuelle qui préside le comité;

(b) du président de la Conférence; et

(c) d'au moins trois membres de la section choisis par le président du comité après consultation auprès des représentants des administrations auprès de la section en tenant compte des intérêts régionaux et autres représentés au sein de la section.

(2) Le président du comité de mise en candidature doit informer la section des noms des membres du comité dès que possible après la formation du comité.

Article 5.

(1) Le comité de mise en candidature visé à l'article 4 présente à la section intéressée la liste des candidats qu'elle propose pour occuper le poste de président de la section. Cette liste peut être augmentée par des candidatures proposées par les membres de la section présents.

(2) Les présidents des Sections du droit criminel et sur l'uniformisation des lois sont élus pour des mandats d'un an et de deux ans respectivement et sont rééligibles pour une période d'un an.

(3) Le secrétaire administratif remplit les fonctions de secrétaire de la Section sur l'uniformisation des lois.

(4) Le comité directeur de la section du droit criminel nomme un membre de la section pour remplir les fonctions de secrétaire de la section.

Article 6.

(1) Le comité directeur de la Section sur l'uniformisation des lois se compose:

(a) du président de la section, qui préside le comité;

(b) du président sortant de la section;

(c) d'au moins quatre délégués à la section, nommés par le président de la section de façon à assurer la représentation des intérêts régionaux et autres au sein de la section.

(d) du président de la Section de la rédaction législative ou de son représentant.

(2) Le comité directeur de la Section du droit criminel se compose:

(a) du président de la section, qui préside le comité;

(b) du président sortant de la section;

(c) d'au moins quatre délégués à la section, nommés par le président de la section, de façon à assurer la représentation des intérêts régionaux et autres au sein de la section.

Article 7.

Les comités directeurs respectifs de la Section sur l'uniformisation des lois et de la Section du droit criminel ont pleine compétence, sous réserve de l'approbation de leur section, pour entreprendre, en conformité avec la Déclaration de renouvellement, avec ces Règles de procédure et avec l'Énoncé de la politique de la Conférence, toutes les activités qu'ils estiment nécessaires pour remplir la mission de leur section respective, notamment:

(a) établir l'ordre du jour annuel de la section;

(b) élaborer des propositions législatives conformément aux demandes des administrations constituantes;

(c) confier des projets aux administrations;

(d) confier l'exécution des travaux de recherche à des personnes compétentes, en confirmité avec la politique relative à l'utilisation du fonds de recherche;

(e) assurer la liaison avec les administrations ainsi que les comités et les organismes compétents en ce qui concerne les activités de la section;

(f) constituer les comités qu'ils estiment nécessaires, notamment, des comités de travail;

(g) adopter des politiques et des règles de procédure régissant les activités de la section;

(h) en ce qui concerne leur section respective, modifier, s'il y a lieu, les lois uniformes, les lois modèles et les énoncés de principes juridiques et autres documents mettant de l'avant des propositions législatives de façon à lever les ambiguïtés, à corriger les erreurs de forme pour rendre ces documents conformes aux décisions judiciaires ou pour toute autre raison valable;

(i) donner des instructions aux représentants des administrations qui font partie de leur section.

Article 8.

(1) La Direction de la Section de la rédaction législative se compose du président, du vice-président et du secrétaire de la Section de la rédaction législative qui sont élus par les membres de la section pour un mandat de deux ans et sont rééligibles pour une période d'un an.

(2) De son propre chef ou à la demande des autres sections, la Section de la rédaction législative:

(a) nomme des rédacteurs aux comités de travail constitués par les sections;

(b) étudie les questions relatives à l'élaboration des lois uniformes, des lois modèles, des énoncés de principes juridiques ou autres documents qui permettent à la Conférence et aux sections de remplir leur mission;

(c) soulève les questions en matière constitutionnelle et celles relatives à la Charte soulevées par les propositions étudiées par les autres sections et obtient des avis relatives à ces questions; et

(d) entreprend tout autre projet touchant la rédaction législative destiné à faire progresser les travaux de la Conférence et des sections.

PARTIE 4 - REPRÉSENTANTS DES ADMINISTRATIONS

Article 9.

(1) Les présidents de la Section sur l'uniformisation des lois uniforme et de la Section du droit criminel invitent chaque ad-

ministration constituante à désigner un de ses délégués à chaque Section à des fins de nomination au poste de représentant de l'administration à la Section.

(2) Suivant l'avis des présidents de Section, les comités directeurs nomment les personnes désignées aux termes du paragraphe (1) représentants des administrations au sein des sections.

(3) Les représentants des administrations représentent et servent les intérêts de leur section dans leur administrations respectives comme le leur demandent les comités directeurs. Ils se chargent notamment de:

(a) préparer la délégation de leur administration en vue des réunions de section;

(b) veiller à ce qui les travaux des sections soient portés à l'attention des membres du Cabinet et des sous-ministres compétents;

(c) promouvoir, suivre et faire progresser la mise en application des travaux des sections dans leur administration selon les besoins de celle-ci et de façon à permettre à la Conférence de remplir sa mission;

(d) conseiller sur les travaux des sections, les particuliers et les organismes compétents et intéressés à l'intérieur de leur administration.

(4) Les représentants des administrations se réunissent une fois l'an avec le comité directeur de leur section respective.

PARTIE 5 - DIRECTION

Article 10.

(1) La Direction de la Conférence se compose du président, du vice-président, du président sortant de la Conférence et des présidents de chacune des sections.

(2) La Direction gère les affaires de la Conférence et, à cette fin, a les attributions que les ces Règles de procédure ne confèrent pas aux sections.

Article 11.

(1) Le comité de mise en candidature de la Conférence se compose

(a) du plus récent ancien président présent à la réunion annuelle qui agit comme président du comité,

(b) d'au moins quatre membres de la Conférence choisis par le président du comité après consultation auprès des représentants des administrations en tenant compte des intérêts régionaux et autres au sein de la Conférence.

(2) Le président du comité en mise en candidature doit informer la Conférence des noms des membres du comité dès que possible après l'établissement du comité.

Article 12.

(1) Le comité de mise en candidature de la Conférence propose des candidats aux postes de président et de vice-président de la Conférence. Il est entendu toutefois que les membres présents à la réunion peuvent aussi proposer des candidats.

(2) Seuls le membres de la Conférence présents à la réunion annuelle peuvent être élus président ou vice-président.

(3) Le président et le vice-président sont élus à la réunion annuelle de la Conférence pour un mandat d'un an.

PARTIE 6 - PRÉSIDENCE

Article 13.

(1) Le président de la Conférence remplit les fonctions de président de la Direction. Il préside les réunions de la Direction et les séances plénières de la Conférence.

(2) En l'absence du président à une réunion dûment convoquée de la Direction ou de la Conférence, le vice-président assure la présidence de la réunion.

(3) En l'absence du président et du vice-président à une réunion dûment convoquée de la Direction ou de la Conférence, les membres présents élisent un des leurs à titre de président de la réunion.

(4) Le président doit notamment:

(a) rendre compte annuellement des travaux de la Conférence aux procureurs généraux adjoints ainsi qu'aux groupes ou organismes auxquels la Direction lui ordonne de rendre compte;

(b) assurer la liaison avec les présidents ou les premiers dirigeants de l'Association du Barreau canadien, de la Fédération des professions juridiques du Canada, du Conseil canadien de la documentation juridique, de l'Association

des doyens des facultés de droit, de l'Association canadienne des professeurs de droit, de la Fédération des organismes de réforme du droit, de l'Association des fondations pour l'avancement du droit et de tout autre organisme national oeuvrant dans le domaine du droit avec lequel la Direction lui demande d'assumer la liaison;

(c) représenter la Conférence à la réunion annuelle de la «National Conference of Commissioners on Uniform State Laws»;

(d) convoquer au moins une fois l'an une réunion de la Direction aux date et lieu différents de la réunion annuelle de la Conférence;

(e) superviser les activités du secrétaire administratif;

(f) chercher à obtenir des contributions pour les fonds de dotation que peut créer la Conférence;

(g) présider les réunions conjointes des sections; et

(h) exécuter toute autre fonction dans le cadre de la mission de la Direction qui peut lui être assignée.

(5) Le président est membre d'office de tous les comités de la Conférence ou des sections constitués aux termes de ces Règles de procédure.

PARTIE 7 - MANDATS NON EXPIRÉS

Article 14.

(1) Si le président est dans l'impossibilité de terminer son mandat, le vice-président le remplace jusqu'à ce que son mandat vienne à expiration.

(2) Lorsque le vice-président ne peut agir conformément au paragraphe (1) la Direction désigne un de ses membres à titre de président jusqu'à la fin du mandat du président.

(3) Si le président de la Section sur l'uniformisation des lois ou de la Section du droit criminel est dans l'impossibilité de terminer son mandat, le comité directeur de la section visée désigne un de ses membres pour le remplacer jusqu'à ce que son mandat vienne à expiration.

(4) Lorsque le président de la Section de la rédaction législative est dans l'impossibilité de terminer son mandat le vice-président de la Section le remplace jusqu'à la fin du mandat du président.

(5) La désignation d'une personne en vertu des paragraphes (1) ou (2) n'a pas pour effet de rendre cette personne non éligible aux élections à la présidence après l'expiration du mandat pour lequel elle a été désignée.

PARTIE 8 - CHARGE DE SECRÉTAIRE ADMINISTRATIF

Article 15.

(1) La Direction nomme, en tenant compte des ressources financières dont dispose la Conférence, un secrétaire administratif ainsi que le personnel nécessaire pour permettre à la Conférence de remplir sa mission efficacement.

(2) Le secrétaire administratif agit à titre de secrétaire-trésorier de la Conférence et exécute les fonctions habituelles reliées à ces charges.

(3) Le secrétaire administratif doit notamment:

(a) gérer le bureau de la Conférence et superviser le travail du personnel;

(b) aider la Direction, les comités directeurs des sections et les autres comités créés aux termes de ces Règles de procédure à remplir leur mission;

(c) conserver les procès-verbaux des réunions de la Direction, des séances plénières de la Conférence, des séances conjointes des sections et des autres réunions mentionnées par la Direction;

(d) s'occuper du courrier de la Conférence, de la Direction et de tout autre comité créé aux termes de ces Règles de procédure conformément aux directives de la Direction;

(e) garder à jour les dossiers de la Conférence;

(f) gérer les finances de la Conférence et, garder à jour ses états et ses bilans financiers;

(g) superviser la publication des délibérations de la Conférence aux réunions annuelles; et

(h) aider les organisateurs locaux à planifier et à organiser la réunion annuelle de la Conférence.

PARTIE 9 – QUESTIONS FINANCIÉRES

Article 16.

Chaque année, la Direction désigne un comité chargé du budget et des finances, lequel:

(a) conseille la Conférence sur les aspects financiers de ses activités;

(b) examine les états financiers vérifiés et en rend compte à la Conférence;

(c) formule des recommandations à la Direction au sujet des cotisations annuelles;

(d) dresse, pour l'exercice à venir, un budget relatif aux activités de la Conférence, qu'il présente à la Direction;

(e) exécute toute autre fonction conformément aux directives de la Direction.

Article 17.

(1) La Conférence, sur la recommandation de la Direction, détermine et perçoit la cotisation annuelle des administrations qui lui permettra de respecter les obligations financières qu'elle doit contracter pour remplir sa mission.

(2) Les cotisations annuelles peuvent varier d'une administration à l'autre.

Article 18.

(1) L'exercice de la Conférence débute le 1er avril et se termine le 31 mars de l'année suivante.

(2) À chacun réunion annuelle, la Conférence approuve un budget de fonctionnement pour l'exercice en cours.

Article 19.

Afin de financer les activités de la Conférence, la Direction peut créer des fonds de dotation, ou en permettre la création.

PARTIE 10 – ADMISSIBILITÉ DES PARTICIPANTS

Article 20.

(1) Les personnes admissibles à assister aux réunions de la Conférence ou des sections, sont les suivantes:

(a) les délégués à la Conférence que nomment les administrations constituantes;

(b) les membres d'un comité qui présentent un rapport préparé par le comité en question à une réunion, pour la présentation du rapport;

(c) les personnes invitées par la Conférence;

(d) les anciens présidents de la Conférence.

(2) La Conférence ou une section peut inviter une personne, déléguée ou non à la Conférence, à faire partie d'un comite qu'elle a créé.

Article 21.

(1) Les personnes qui ont le droit de voter aux réunions de la Conférence ou de l'une des sections sont les délégués à la Conférence que nomment les administrations constituantes.

(2) Lorsqu'à une réunon, la Conférence ou une section tient un scrutin sur une question donnée, les délégués dûment nommés ont chacun une voix.

(3) Si, à la demande d'un délégué, l'expression de l'opinion sur une question donnée à une réunion de la Conférence ou d'une section se fait par administration, chaque administration représentée à la réunion à trois voix.

PARTIE 11 - RÉGLES DE PROCÉDURE ET ÉNONCÉ DE LA POLITIQUE

Article 22.

(1) La Direction peut adopter des règles de procédure et des énoncés de la politique touchant la Conférence et peut modifier les règles de procédure et les énoncés de la politique en vigueur. Ces règles de procédure et énoncés de la politique cessent toutefois d'être en vigueur s'ils ne sont pas ratifiés à la réunon suivante de la Conférence.

(2) Le comité directeur ou la Direction d'une section, selon le cas, peut adopter des règles de procédure et des énoncés de la politique touchant la section et peut modifier les règles de procédure et les énoncés de la politique en vigueur. Ces règles de procédure et énoncés de la politique cessent toutefois d'être en vigueur s'ils ne sont pas ratifiés à la réunion suivante de la section.

APPENDICE B
Conférence sur l'uniformistion des lois

ÉNONCÉ DE LA POLITIQUE

L'énoncé de la politique qui suit est établi aux termes de la Déclaration de renouvellement approuvée par les administrations constituantes le 17 août 1990 et des Règles de procédure adoptées en vertu de celle-ci. Il vise à aider et à guider les administrations constituantes, les délégués, les comités directeurs et la Direction.

I. DÉLÉGATIONS DES ADMINISTRATIONS

Aux fins des travaux de la Conférence, il serait avantageux que les délégations des administrations se composent d'un éventail diversifié d'avocats du gouvernement, y compris des conseillers juridiques, des conseillers en matière de politique législative, des légistes, des procureurs de la Couronne ainsi que des personnes oeuvrant dans le domaine de la réforme du droit, des civilistes et des criminalistes du secteur privé et des représentants du monde universitaire. En outre, la Conférence accepterait volontiers que les membres de la magistrature participent à la Conférence à titre de délégués.

Les travaux de la Conférence seraient grandement facilités par la présence et la participation active des procureurs généraux adjoints. Cette participation permettrait à la Conférence de mieux représenter les administrations.

Il est recommandé que les administrations autorisent une partie des délégués à participer aux travaux de la Conférence pour une période minimale de trois ans. Bien qu'à l'occasion, la présence de spécialistes soit souhaitable pour certains points particuliers au programme, la participation continue de groupes de délégués profite aussi grandement à la Conférence.

Il est recommandé que les administrations, en choisissant leurs délégués, envisagent d'y inclure des avocats de ministères autres que le ministère de la Justice, particulièrement s'ils ont de bonnes connaissances en ce qui concerne des points particuliers a l'ordre du jour de la Conférence.

II. REPRÉSENTANTS DES ADMINISTRATIONS

Il est recommandé que les administrations, en choisissant les délégués qui les représenteront, envisagent de choisir des personnes qui vraisemblablement resteront délégués pendant un certain nombre d'années et qui s'intéressent à cette charge. Le rôle de représentant d'administration est un élément-clé du succès de la Conférence.

III. COMITÉS DIRECTEURS

Il est recommandé que les comités de mise en candidature et les présidents de sections, en choisissant les membres qui seront élus ou nommés aux comités directeurs, tiennent compte des caractéristiques de la composition des sections, c'est-à-dire des représentants des administrations et des spécialistes des deux régimes juridiques.

IV. LIAISON EXTÉRIEURE

Bien que la Conférence soit le seul organisme au Canada dont l'unique mission consiste en l'harmonisation des lois, il existe d'autre organismes nationaux, provinciaux et territoriaux qui partagent les intérêts de la Conférence dans ce domaine et dont la coopération et les conseils aideraient la Conférence à remplir sa mission. Il serait opportun que la Conférence détermine quels sont ces organismes en vue d'établir et de maintenir les rapports nécessaires avec eux.

Il est recommandé, en particulier, que la Conférence établisse, dans la mesure du possible, un mécanisme formel avec le comité des procureurs généraux adjoints de façon à être en mesure d'obtenir les conseils de ce comité sur les projets de la Conférence et pour lui rendre compte des résultats de ses travaux. Il serait profitable que le président de la Conférence puisse régulièrement rendre compte des travaux de la Conférence à ce comité et, à l'occasion, aux procureurs généraux eux-mêmes.

En outre, il est recommandé que la Conférence explore, avec des organismes tels l'Association du Barreau canadien, la Fédération des professions juridiques du Canada, la Conférence canadienne des organismes de réforme du droit du Canada, le Conseil canadien de la documentation juridique, l'Association des doyens des facultés de droit, l'Association canadienne des professeurs de droit, l'Association des bibliothecaires de droit, et toute autre association de droit provinciale ou territoriale qui partagent les intérêts de la Conférence en ce qui a trait à l'hormonisation des lois, les moyens qui leur permettraient de contribuer aux travaux de la Conférence. De toute évidence, une telle collaboration ou contribution devrait être compatible avec la caractère et le statut de la Conférence à titre d'agent des administrations constituantes.

V. DUALITÉ

En élaborant des textes législatifs visant à promouvoir l'unformisation des lois, la Conférence doit prêter toute l'attention nécessaire à la dualité linguistique et juridique au Canada. En rédigeant des lois uniformes, des lois modèles ou d'autres textes législatifs bilingues, la Conférence doit tenir compte de la démarche linguistique propre à chaque langue.

Par ailleurs, dans les domaines du droit où il importe de tenir compte des deux régimes juridiques du Canada, il y a lieu de déterminer et d'utiliser la forme de textes législatifs qui convient le mieux à l'harmonisation. Le recours habituel à de la loi uniforme doit, si besoin est, être mis de côté.

Il y a lieu également d'accroître la quantité de services et de documents que la Conférence offre à la fois en anglais et en français.

VI. SERVICES ADMINISTRATIFS

Dans le but de se donner les moyens nécessaires pour répondre aux besoins et aux demandes des administrations constituantes de façon efficace et opportune, la Conférence devra peut-être augmenter les ressources administratives dont elle dispose. La Direction sera chargée d'étudier la question de savoir s'il y a lieu d'augmenter la capacité administrative et, le cas échéant, de formuler des recommandations à cet égard.

VII. FINANCEMENT

Pour soutenir ses activités en matière d'administration et de recherche, la Conférence doit pouvoir compter sur un financement suffisant. Il est prévu que les activités administratives pourront continuer à être financées à partir des cotisations annuelles des administrations. Ces cotisations sont fixées en fonction des budgets établis à l'aide des renseignements recueillis dans le cadre de l'étude relative aux services administratifs. Toute augmentation proposée des cotisations annuelles doit être planifiée et approuvée, et les administrations doivent en être informées assez rapidement pour leur permettre de les inclure dans leur budget.

Jusqu'à présent, le seul financement que reçoit la Conférence à des fins de recherche provient du ministère fédéral de la Justice. Ce financement a toujours suffit étant donné que très peu de recherche est effectuée par contrat. En effet la majorité de la recherche est effectuée par les administrations, y compris les organismes de reforme du droit. Malgré

cet important apport de la part des administrations, il pourrait s'avérer nécessaire, dans un proche avenir, de faire faire la recherche plus souvent à contrat pour permettre à la Conférence de répondre de façon plus opportune aux besoins et aux demandes des administrations. Il est recommandé que la direction identifie d'autres sources pour le fonds de recherche telles les fondations pour l'avancement du droit, et qu'elle élabore une politique relative à l'administration et de l'utilisation de ce fonds.

L'un des principaux avantages du financement accru et constant serait de donner aux sections la capacité de planifier à plus long terme les projets à entreprendre. Bien que la réalistion de tous les projets dépend de l'intérêt manifesté par les administrations, cet intérêt ne nécessite pas toujours la production de résultats dans l'année qui suit. Les programmes peuvent donc inclure des points pour lesquels des solutions à long terme sont tout à fait indiquées. La souplesse que procure le financement accru et constant de la recherche permettrait aux sections de planifier et de contrôler leurs programmes d'une façon qui profiterait à tous les intéressés.

VIII. MODALITÉS DU FONDS DE RECHERCHE (CANADA)

Le Fonds de recherche a été créé grâce à une subvention fédérale de 25 000 $. Le gouvernement du Canada s'est engagé à contribuer 25 000 $ jusqu'à un montant maximum de 75 000 $ et de maintenir ce fonds à 75 000 $ par des versements annuels maximum de 25 000 $. Le fonds et la subvention annuelle sont une contribution inconditionnelle à la Conférence, et les intérêts courus reviennent à la Conférence et sont appliqués à la comptabilité générale.

Le fonds vise à soutenir les projets de recherche, qui sont assujettis à la seule approbation de la Direction de la Conférence.

Les lignes directrices qui suivent régissent l'octroi de sommes d'argent provenant du fonds de recherche.

1. Sur la recommandation du président de l'une des sections ou de sa propre initiative, la Direction de la Conférence approuve les projets de recherche.

2. Les projets qu'approuve la Direction peuvent nécessiter de la recherche dans n'importe quel domaine du droit, y compris la recherche portant sur les lois uniformes, les lois modèles, les déclarations de principes juridiques et tout autre document existants ou proposés.

3. Les parties aux contrats de recherche sont la Conférence et le

chercheur. Les contrats sont élaborés par la Direction de la Conférence et approuvés par le président, en étroite consultation avec les administrations et les comités concernés, et sont signés, pour la Conférence, par le président ou le vice-président, et par le secrétaire ou le trésorier.

4. La Direction peut approuver le remboursement des frais administratifs directement reliés au projet de recherche, notamment les déplacements, le logement et les repas au taux le plus économique selon les indemnités quotidiennes accordées par le gouvernement du Canada, ainsi que les fournitures, les frais de secrétariat et autres dépenses reliées au projet de façon à assurer la réalisation du projet, à moins que la Direction n'approuve le remboursement des frais selon un autre taux.

5. Il incombe aux administrations concernées ou au comité chargé du projet en question de superviser les travaux de recherche, conformément aux instructions de la Direction de la Conférence.

6. Le directeur général et le trésorier de la Conférence prélèvent les sommes d'argent sur le fonds de recherche s'ils sont convaincus que les demandes d'indemnité sont présentées relativement à un projet approuvé et qu'elles respectent le taux autorisé par les présentes modalités.

7. Le fonds de recherche sert à financer l'impression de tous les documents que produisent les sections, y compris les appendices aux délébérations de la Conférence et la publication, sous forme de brochures, d'exemplaires de lois uniformes ou de lois modèles, de déclarations de principes juridiques ou tout autre document approuvé.

8. Le Direction peut exiger que les présidents des sections lui soumettent un budget annuel relatif à la recherche.

Les présentes modalités du Fonds de recherche annulent et remplacent toutes autres modalités antérieures.

IX. GROUPES DE TRAVAIL

Malgré le pleine application des modalités prescrites par l'Énonce de la politique de la Conférence concernant la composition des délégations des administrations, il peut s'avérer peu pratique, impossible ou inutile d'inclure dans ces délégations tous les domaines du droit touchés par un point particulier au programme. Pour cette raison, il est recommandé que les comités directeurs, en créant des comités d'étude sur des projets particuliers, invitent les personnes jugées compétentes à participer aux

travaux de ces comités. L'invitation à participer aux travaux des comités d'études peut aider à réaliser l'objectif de la liaison extérieure recommandée à l'article IV de l'Énoncé de la politique.

X. PARTICIPATION DU CANADA

Le Canada participe très activement aux travaux des trois sections de la Conférence, et ce, depuis leur création. Étant donné que le droit criminel est un domaine de compétence fédérale, la participation et l'intérêt du Canada aux travaux de la Section du droit criminel sont manifestes et essentiels.

La participation du Canada aux travaux de la Section sur l'uniformisation des lois est quelque peu minimisée du fait que le programme de la section tombe en grande partie dans les champs de compétence des provinces et territoires. Il convient toutefois de rappeler que les demandes présentées à cette section portent parfois sur des demandes d'intérêt à la fois provincial et fédéral, tels que l'environnement et les sûretés mobilières. En outre, le besoin d'harmoniser les lois est parfois tributaire de facteurs ou d'activités dans lesquels le Canada joue un rôle prépondérant. Ces facteurs ou activités comprennent notamment *Charte canadienne des droits et libertés,* l'*Accord de libre-échange* entre le Canada et les États-Unis ainsi que les conventions internationales auxquelles le Canada devient partie.

Il est à prévoir qu'à l'avenir, un plus grand nombre d'activités de la Conférence en matière de droit civil tireront leur source de propositions présentées par le Canada et approuvées par les provinces et territoires pour renvoi à la Section sur l'uniformisation des lois. Il est aussi à prévoir que la participation des délégués du Canada aux travaux de cette section et de ses comités d'étude augmentera, ce qui est à encourager. En effet, la mission de la Conférence est d'envergure nationale et elle doit, part conséquent, se traduire par une collaboration durable entre toutes les administrations constituantes.

XI. COMITÉ DE LIAISON

Le Comité conjoint de collaboration entre la Conférence sur l'uniformisation des lois au Canada et la National Conference of Commissioners on Uniform State Laws vise à promouvoir l'harmonisation des lois entre le Canada et les États-unis. Cette collaboration vise à faciliter la circulation, entre les deux pays, de biens, services et de fonds importés entre ces deux pays et la mobilité des personnes. Bien que la Conférence ne se soit pas penchée sur ces questions à ce jour, elles peuvent devenir plus importantes. Il est donc recommandé que le Comité de liaison encourage l'établissement d'un programme à ce sujet et que la Conférence prenne les moyens de le réaliser.

APPENDIX I

(see page 40)

UNIFORM SALE OF GOODS ACT

1990 Final Report to the Uniform Law Conference of Canada

Submitted by Saskatchewan

BACKGROUND:

In 1981, the Conference passed the following resolution with respect to the Uniform Sale of Goods Act:

> RESOLVED that the report and the draft Uniform Sale of Goods Act (Appendix S, page 185) be received and printed in the Proceedings with comments on the sections; that the draft be referred to the Legislative Drafting Section to review the drafting; that the product be adopted by the Conference as a Uniform Act and recommended for enactment in that form; and that the adopted Uniform Act be printed in the 1982 Proceedings.

It was agreed that Saskatchewan would prepare a draft Act based on the recommendations of the Sale of Goods Committee. The Act was then published in the Conference's 1982 Proceedings.

In 1985, the following resolution was adopted by the Conference:

> RESOLVED that the Sale of Goods Committee be revived, and the Committee be invited, assisted by the members of the Legislative Drafting Committee, to review all the changes made by the Legislative Drafting Committee and to recommend to the Conference what should be done with them.

It was determined that Saskatchewan would review comments made by the Sale of Goods Committee concerning changes to the Uniform Sale of Goods Act. In 1987, a Progress Report recommended amendments to the Act, and in 1989 further amendments were made. All amendments were approved in 1989, and Saskatchewan has been asked to set them out in one document, so that the Uniform Sale of Goods Act may be adopted.

Amendments to the Uniform Sale of Goods Act are set out below.

AMENDMENTS:

1. Amend section 1:

   (a) by adding "means any civil proceeding and" before "includes" in clause (a);

(b) by deleting "including those circumstances described in section 26" in clause (b);

(c) by moving clauses (f) and (g) to the beginning of Part V as definitions applicable to that Part only;

(d) by adding a new subclause (m)(ii.1): "(ii.1) the remedying of a defect in title,";

(e) by moving clause (g) to the beginning of section 51 as a definition applicable to that section only;

(f) by deleting "whether or not documents of title accompany the bill" in clause (s);

(g) by moving clause (t) to the beginning of Part V as a definition applicable to that Part only;

(h) by deleting "tangible personal property" in clause (w) and substituting "movable things";

(i) by deleting "such" in the last line of subclause (bb)(ii) and substituting "the"; and

(j) by deleting clause (11).

2. Amend section 6 by deleting "may only pass" and substituting "may pass only".

3. Amend section 10 by adding ", apart from the land," after "sale" in the first line.

4. Amend section 16 by adding bankruptcy ", bankruptcy" after "mistake" in the second last line.

5. Amend section 18 by deleting clauses (b) and (c) and substituting the following:

"(b) the rights of a holder of a document of title under an Act of the Parliament of Canada or under anAct of this or any other province other than this Act."

6. Amend section 19 by deleting subsection (2) and substituting the following:

"(2) A minor or a person who is incompetent to contract shall pay a reasonable price for necessaries sold and delivered to him".

7. Amend section 21 by deleting "because" in the third line of subsection (1) and substituting "and".

8. Amend section 23 by deleting the comma in the last line of clause (b).

9. Amend section 25 by deleting subsection (8) and substituting the following:

> "(8) Where a seller has not reserved the right to bid at a sale by auction, it is not lawful for the seller or his agent to bid nor for the auctioneer to knowingly take any bid from the seller or his agent."

10. Amend section 36 by deleting "business" where it occurs for the second time in each of clauses (e) and (f) and in each case substituting "residence".

11. Add "at" after "place" in the first line of subsection 40(1).

12. Amend subsection 41(1) by adding "made in good faith and" after "to be" in the fourth line.

13. Amend section 42 by adding the following as a new subsection (1):

> "(1) In this section, "statement" means a statement in any form or language made before or at the time of the contract, whether or not a promise or a representation of fact or opinion and whether or not made fraudulently, negligently or with contractual intention."

14. Add "in" after "goods or" in the fourth line of subsection42(3).

15. Amend section 44:

> (a) by deleting "fair or average" in subclause (1)(b)(ii) and substituting "fair average"; and
>
> (b) by deleting clause (3)(a) and substituting the following:
>
> > "(a) to defects disclosed or actually known to the buyer before the contract was made".

16. Re-letter the second clause 44(3)(b) as (c).

17. Amend section 48 by deleting "section 17" in subsection (1) and substituting "section 31".

18. Correct the spelling of "incorporated" in the last line of clause 50(1)(a).

19. Amend section 50 by deleting the first three lines of subsection (4) and substituting the following:

"(4) The maximum amount of damages recoverable by a subsequent buyer for breach of warranty by a prior seller is the amount of damages that the immediate buyer"...

20. Add "is" after "term" in the first line of clause 51(1)(d).

21. Delete "width" in the second line of clause 52(1)(e) and substitute "with".

22. Amend section 52 by deleting subsection (2).

23. Delete "to" in the last line of subsection 56(3) and substitute "from".

24. Amend section 57 by deleting "on a trial basis" in clause (b) and substituting "consistent with the purpose of trial".

25. Amend section 62:

(a) by deleting the first two lines of subsection (2) and substituting "A person is deemed to have a voidable title even if";

(b) by reversing the order of the subsections in this section.

26. Amend section 63 by deleting "capacity" in subsection (2) and substituting "power".

27. Amend section 64 by deleting subsection (2) and substituting the following:

"A merchant to whom the possession of goods is entrusted who deals in goods of that kind for any purpose connected with sale or promoting sales of goods of that kind has the power to transfer all rights of the entruster to a buyer or lessee in the ordinary course of business".

28. Amend section 66(2) by deleting "any" in the fifth line and substituting "all or any".

29. Amend section 68:

(a) by adding "procure" after "goods or" in clause (3)(a); and

(b) by deleting "contract" in subsection (6) and substituting "tender".

30. Amend section 70 by deleting "to" in the last line of subsection (2) and substituting "the powers of".

31. Amend section 74:

(a) by deleting clause (1)(a) and substituting the following:

"(a) where the contract requires or authorizes the seller to ship the goods by carrier,

(i) the risk passes to the buyer when the goods are delivered to the carrier even though the shipment is under reservation, unless the contract requires the seller to deliver at a particular destination;

(ii) if the contract requires the seller to deliver the goods at a particular destination and they are there tendered while in the possession of the carrier, the risk passes to the buyer when they are tendered there so as to enable the buyer to take delivery, and

(iii) if the seller is a merchant and the buyer is not a merchant, the risk passes to the buyer when the goods are tendered to the buyer at the destination"; and

(b) by deleting "rights", in subsection (2).

32. Amend section 75 by deleting "him" in the last line of subsection (2) and substituting "the seller".

33. Amend section 76 by deleting "acceptable" in subsection (2) and substituting "current".

34. Amend section 84:

(a) by deleting "place" in subsection (1) and substituting "market";

(b) by deleting "are likely" in clause (1) (a) and substituting "threaten"; and

(c) by deleting "a commercially reasonable manner" in subsection (5) and substituting "good faith and with reasonable care".

35. Amend section 85:

(a) by deleting "are likely" in subsection (1) and substituting "threaten"; and

(b) by deleting "taken in good faith" in subsection(2).

36. Delete "duly" in the second line of subsection 86(3) and substitute "unduly".

37. Amend section 90 by deleting "an underlying assumption of" in clause (1)(d) and substituting "a basic assumption underlying".

38. Amend section 98 by deleting "withhold" and substituting "refuse".

39. Amend section 99 by deleting "103" and substituting "101".

40. Delete "manufacturer" in the first line of clause 101(2)(a) and substitute "manufacture".

41. Delete "take" in the first line of subsection 105(5) and substitute "takes".

APPENDIX J

(See page 40)

SEARCH AND SEIZURE UNDER THE CHARTER OF RIGHTS - SOME LEGISLATIVE ASPECTS

INTRODUCTION

One of the most profound effects that the Canadian Charter of Rights and Freedoms has had and will continue to have is its impact on the way in which statutes are drafted. This matter concerns not only legislative drafters but everyone else involved in the law-making process. Charter decisions affect not only actions taken under laws, but also everything from individual provisions of statute law to complete statutory schemes. The phenomenal growth of jurisprudence in this area demonstrates the need for us to be vigilant that our legislation continues to meet the Charter requirements. Unlike other constitutional matters that divide federal and provincial legal thinking, Charter matters usually put all governments on the same side. It is in their interest to have their laws made Charter-proof and it is not in their interest to encourage expensive Charter litigation by putting forward or leaving in effect legislation that will not likely be upheld if it is challenged. It is, moreover, not wise to have a law of one jurisdiction that purports to have the same effect as that of another jurisdiction enacted in such a way that a Charter examination of the laws will produce differing results.

I am presenting this paper today because it is my view that the Uniform Law Conference can serve an extremely useful purpose in bringing together the concerns and ideas of all the jurisdictions on Charter issues. The Conference's prime interest is the advancement of uniform laws and in carrying out this role it can act as a forum for the sharing by all jurisdictions of information on the steps they have taken or are contemplating taking to address Charter issues. There are of course many facets to Charter issues and some of them would have to be dealt with differently than others in the context of this Conference. Some may affect mainly civil law matters, some mainly criminal or quasi-criminal matters. Others may affect equally civil and criminal matters. It may also be that in future years Charter issues will become less of a problem for those of us who are involved in the legislative process and there will be less need to follow what other jurisdictions are doing or proposing to do in this area. But for now, it seems important that all jurisdictions be aware of the issues and share their knowledge and ideas on this subject with others so as to eliminate to the greatest

extent possible the problems that inevitably result when legislation fails Charter scrutiny.

In order to generate some interest in and discussion of Charter issues at this Conference, I am presenting this paper on the subject of search and seizure and some of the Charter implications that arise in relation to the legislative elements that govern this area as seen by the courts.

Time prohibits me from doing anything more than dealing with just a small part of this subject. I will not be dealing with the issues of warrantless searches, the plain view doctrine, demands for information or other similar matters that Charter decisions have highlighted and my comments relate solely to search or seizure by public officials. Also, most of what I have to say is probably of interest mainly to legislative drafters.

I think it is useful first of all to set out an outline of some of the statutory requirements that have been seen by the courts to be necessary for search or seizure. I then will deal with an example of why I think this Conference should get involved in Charter matters as they relate to legislation.

STATUTORY REQUIREMENTS

Section 8 of the Charter states:

> "8. Everyone has the right to be secure against unreasonable search or seizure."

As I am sure you all know, the leading case on search and seizure is *Hunter* v. *Southam*.* That decision of the Supreme Court of Canada laid down basic principles concerning search and seizure,

Canada particularly in relation to the legislative elements that must be present for a search or seizure to be considered reasonable. Essentially what the court said in the case was that search or seizure, in order to meet the requirements of section 8 and to overcome the right of the subject to be left alone by the government, must be supported by a system of prior authorization. Although it was not stated in so many words in the decision, the only place that such a system can be established is by means of legislation.

Since *Hunter* v. *Southam* the Supreme Court has qualified the effect of the decision in particular by its judgment in *R.* v. *McKinlay Transport*

* *all citations for cases referred to in this paper are found in alphabetical order on the last page.*

Ltd. In that case the Court stated that the rigours of the criteria laid down in *Hunter* v *Southam* apply in a criminal or quasi-criminal context and that some lesser standard applies to searches or seizures in an administrative or regulatory context. It seems clear I think that search or seizure in the "criminal or quasi-criminal" context means search or seizure in aid of detecting or obtaining evidence in connection with some crime or offence under an Act. However, as will be discussed later, it is not always very clear when a search or seizure authorization is required in an administrative or regulatory context.

Returning to the decision in *Hunter* v. *Southam,* if any element of the legislative scheme that provides for search or seizure is defective in the opinion of the court, that is to say unreasonable, then any search or seizure made under its authority will be held to be unreasonable. Subsequent cases have also illustrated a number of situations where legislative defects will lead to a search or seizure that is considered unreasonable.

At the outset, the courts will look at the overall reasonableness of the legislation that authorizes the search or seizure and measure its impact on the subject against the rationality of the legislation in furthering some valid government objective (*Hunter* v. *Southam*). In other words, the need for the governmental search or seizure power has to be weighed against the subject's reasonable expectations of privacy. Presumably, if the court determines at the outset that the nature of a legislative scheme does not warrant or necessitate a search or seizure power, the court will find that any search or seizure made thereunder is unreasonable. It is not yet clear what sorts of legislative schemes would be found to be inappropriate for search or seizure powers. It seems unlikely that a court would rule these powers to be unreasonable in a criminal or quasi-criminal context. On the other hand, a court might determine that a power to seize something such as a motor vehicle in relation to minor offences would be unreasonable when weighed against the serious consequences that the seizure can have on the owner of the vehicle and having regard to other possible less devastating ways of enforcing the law.

Legislation authorizing search or seizure will also be defective and consequently unreasonable according to *Hunter* v. *Southam* if it fails to provide for a system of prior authorization by a person who is, in the opinion of the reviewing court, entirely neutral and impartial. The Court stated that although it may be wise to give this authorization power to a judicial officer, this was not absolutely necessary as a precondition for a reasonable search or seizure. But in the *Hunter* case,

the Court did not consider that the Director of Investigation and Research under the *Combines Investigation Act* was neutral or impartial for the purposes of issuing search warrants under that Act. Also, the Court recognized that not every search or seizure must have prior authorization. It stated that in certain circumstances it would not be feasible to obtain prior authorization. On this point, if the legislation setting up the warrant authorization procedure states that a warrant is not necessary for the search or seizure where it is not feasible to obtain it and then the legislation goes on by definition or otherwise to indicate what those non-feasible circumstances are, a court might find the legislation to be unreasonable if it does not agree with the legislator's view of when warrants are not necessary. The safest course would be to leave undefined the non-feasible circumstances when warrantless searches are permitted. Moreover, it would appear that there is in fact no need to include a provision in legislation that specifically authorizes a warrantless search where it is not practicable to obtain the warrant. Most statutes do not contain such a provision and warrantless searches thereunder have nevertheless been held to be reasonable where the court is satisfied that the required warrant could not be obtained because of the practicalities of the situation.

Other types of defective legislation concerning the grounds upon which search or seizure warrants can be issued will also lead to a finding of unreasonableness. For example, if the legislation authorizes the issue of a search warrant where the judge or justice of the peace is satisfied that there are reasonable grounds to believe that there "*may* be found" in any building, receptacle or place, any goods in respect of which the Act has been contravened, the court will find the search to be unreasonable. This is because the word "may" in defining the standard for the issue of the warrant as a mere possibility of finding evidence falls below the minimum standard of a credibly-based probability (*Hunter* v. *Southam*). The words "*will* be found" would overcome this defect. On the same point, if the legislation permits the judge or justice of the peace to issue a warrant where he or she is satisfied that there are reasonable grounds to believe that there will be found in any building, receptacle or place, anything that "*may* afford evidence" in respect of which the Act has been contravened, the court could find the search and seizure to be unreasonable because, again, the words "*may* afford evidence" can be seen as falling below the minimum standard of probability. The words "*will* afford evidence" eliminates this problem.

So much for the necessary legislative elements of searches and seizures that relate solely to the criminal or quasi-criminal context.

I should point out in passing that from a policy point of view, drafters at the federal level are discouraged from including in federal legislation search and seizure provisions relating to offenses because section 487 of the *Criminal Code* applies and authorizes search and seizure in respect of any federally-created offenses and that provision currently appears to be in accordance with the Charter. (*Re Church of Scientology and the Queen (No. 6)*). Some provinces also have provisions such as this in their general Acts relating to provincial offences.

ADMINISTRATIVE OR REGULATORY CONTEXT

Perhaps the most difficult aspect of search and seizure *vis-à-vis* the Charter is to determine, where a legislative context is not clearly criminal or quasi-criminal, when a search or seizure authorization structure must be set out in the statute.

As mentioned earlier, the Supreme Court stated in *R. v. McKinlay Transport Ltd.* that the rigours of the criteria set out in *Hunter* v. *Southam* cannot be expected to apply to an administrative or regulatory context. It seems fairly obvious that legislated powers of inspection and taking of samples in a scheme regulating the affairs of certain persons (i.e. licensees), is the extreme at which the courts will not consider that a prior authorization system for search or seizure is required. This is because the expectation of the subject's privacy seems to be at its lowest in the regulatory context and in some cases that context may connote some notion of implied consent. The difficulty however of distinguishing the criminal or quasi-criminal context from the administrative or regulatory context is not easy in some instances. Quite often a statute that deals with the regulation of a matter such as the licensing of persons and the control of a subject (i.e. fishing and fishery resources), will also provide that certain things may be searched for or seized in relation to offences. Although there were a number of reported cases under federal fisheries legislation that held that warrants were not necessary in relation to searches or seizures in connection with offences under the legislation, all of the legislation has-now been changed by an omnibus bill passed by Parliament in 1985 to require warrants. The case of *Clayton (F.K.) Group Ltd.* v. *M.N.R.* has also held that a seizure of documents in relation to suspected violations of the *Income Tax Act* required warrant authorization. I am therefore of the view that any statute that authorizes search or seizure to obtain evidence pertaining to the commission of an offence should contain warrant authorization provisions. This would be so regardless of whether or not the basic nature of the legislation can be classed as administrative or regulatory.

The courts also seem to have put an extremely high value on the privacy that persons can expect to have in their dwellings or residences. It is my contention, and I raise this for discussion purposes, that where inspection powers are being granted in a purely administrative or regulatory context, warrant authorization provisions should be included in the statute where the inspection is to take place in a dwelling or residence. However, the British Columbia Court of Appeal has held in *R.* v. *Bichel* that the inspection of the premises of a homeowner to ascertain whether the provisions of a zoning bylaw are being observed does not require a warrant. It is really the issues raised by cases such as this that lead me to believe there is a need for Charter matters to be looked at from time to time by all jurisdictions collectively. As a first point, there may be some doubt about whether, if the *Bichel* case had gone to the Supreme Court of Canada, the result would have been the same. The United States Supreme court on similar facts in *Camara* v. *Mun. Ct. of San Francisco* held that a warrant to enter a residence for inspection was required under the American Constitution which also provides a right of persons to be secure against unreasonable searches and seizures. Although the British Columbia Court of Appeal referred to that decision, it preferred not to follow it. However, the Supreme Court of Canada had indicated in *Hunter* v. *Southam* that it prefers the American constitutional construction approach of a broad, purposive analysis which interprets specific provisions of a constitutional document in the light of its larger objects. In view of this preference, the Supreme Court might follow the American decision. Nevertheless, if the *Bichel* case is rightly decided, then it highlights the differences in the reasonable expectation of privacy that individuals in their residences can have depending on where they live in Canada and depending on whose legislation is being used as the authority for the inspection of their residences. In British Columbia and apparently also in some of the other provinces, a municipal inspector can enter and inspect dwellings without a warrant. But if one looks at the planning legislation of some of the other provinces such as Alberta, Manitoba, Ontario and Nova Scotia, no entry for inspection of a dwelling can take place without the consent of the occupant unless a search warrant is first obtained.

The differences that can be found amongst the jurisdictions in this regard relate not only to inspections under zoning or planning legislation but also to other areas (i.e.) public health legislation. There are also differences *within* some jurisdictions depending on the subject-matter of the legislation authorizing the inspection.

At the federal level, the Charter omnibus bill I referred to earlier, *inter alia*, modified all existing federal laws concerning inspection to require

that warrants be obtained wherever inspection of a dwelling without the consent of the occupant is to be carried out. An example of the federal provision is set out in the Appendix. It is also the policy at the federal level to ensure that any new legislation that provides for inspection will, if it is at all possible that the inspection can take place in a dwelling, contain warrant authorization provisions. My feeling is that if the courts discover significant variances among the jurisdictions in the need to obtain warrants to inspect dwellings for whatever reason, the variances may be seen to be intolerable *vis-à-vis* the reasonable expectation of privacy that occupants can have depending on their province of residence and whose legislation is being applied. Certainly with the electronic access to the laws of all jurisdictions which is now available, comparisons can readily be made in areas such as this and it would be in the interests of jurisdictions to consider some measure of uniformity. In *R.* v. *Rao,* the court stated that in determining the reasonableness of search or seizure provisions it would be relevant to consider the legislation of other Commonwealth jurisdictions. Undoubtedly the courts will also increasingly be called upon to compare the legislation of similar purport of all jurisdictions in Canada.

CONCLUSION

I have raised the inspection issue as an example only. There are a multitude of other areas in which legislation of the jurisdictions could be looked at under the Charter by this Conference. The federal government is currently involved in more than 35 lawsuits concerning the Charter, most of which affect federal legislation and involve section 15 of the Charter. What we at the federal level are doing or are proposing to do in Charter matters and what the provinces are doing or considering in this area is of vital interest to us all and it might be useful if this Conference could somehow become a forum for such matters in future years.

APPENDIX

Subsection 26(6) to (9) of the *Electricity and Gas Inspection Act* as enacted by c. 31 (1st Supp.) s. 7 :

"(6) Subject to subsection (7), an inspector may, at all reasonable times, for the purpose of performing any function pursuant to this Act, enter any premises where electricity or gas is being generated, produced, stored, distributed or used.

(7) Where any premises referred to in subsection (6) is a dwelling-house, an inspector may not enter that dwelling-house without

the consent of the occupant except under the authority of a warrant issued under subsection (8).

(8) Where on *ex parte* application a justice of the peace is satisfied by information on oath

(a) that entry to a dwelling-house is necessary for the purpose of performing any function pursuant to this Act, and

(b) that entry to the dwelling-house has been refused or that there are reasonable grounds for believing that entry thereto will be refused, the justice of the peace may issue a warrant under his hand authorizing an inspector to enter that dwelling-house subject to such conditions as may be specified in the warrant.

(9) In executing a warrant issued under subsection (8), the inspector named therein shall not use force unless the inspector is accompanied by a peace officer and the use of force has been specifically authorized in the warrant."

Camara v. *Mun. Ct. of San Francisco* 18 L. Ed. 2d 930, 387 U.S. 87, 523S Ct. 1727 (1967)

Church of Scientology and the Queen (No. 6) (1987) 18 O.A.C. 321, 31 C. C. C. (3d) 449 (Ont. C.A.) ; leave to appeal refused (S. C. C., June 25/87)

Clayton (F.K. Group Ltd. v. *M.N.R.* (1988) 2 F.C. 467 (1988) 1 C.T.C. 353, 88 D.T.C. 6202, 82 N.R. 313 (C.A.)

Hunter v. *Southam* [1984] 2. S.C.R. 145, (1984) 6 W.W.R. 557, 41 C.R. (3d) 97, 14 C.C.C. (3d) 97, 11 D.L.R. (4th) 641

R. v. *Bichel* (1986) 5 W.W.R. 261, 29 C.C.C. (3d) 438, 33 D.L.R. (4th) 254 (B.C.C.A.)

R. v. *McKinlay Transport Ltd.* (S.C.C., Mar 29/90)

R. v. *Rao* (1984) 46 O.R. (2d) 80, 12 C.C.C. (3d) 97, 40 C.R. (3d) 1, 9 D.L.R. (4th) 542 (Ont. C.A.) leave to appeal refused (S.C.C. Oct. 11/84)

APPENDIX K

(See page 40)

REPORT OF THE ALBERTA COMMISSIONERS SUBSTITUTE DECISION MAKING IN HEALTH CARE

Purpose of Report

This report:

1. presents the recommendations of the Alberta Commissioners on substitute decisionmaking in health care for mentally incompetent persons, and

2. gives reasons for the recommendations.

Recommendations of the Alberta Commissioners

The Alberta Commissioners recommend:

1. that the Uniform Law Section direct one or more jurisdictions to prepare an Issues Paper dealing with substitute decisionmaking in health care on behalf of mentally incompetent persons;

2. that the Issues Paper set out the possible models for substitute decisionmaking in health care, the advantages and problems associated with each model, the relationship between the various models, and the major policy issues common to all models of substitute decisionmaking; and

3. that the Uniform Law Section consider the Issues Paper at its 1991 annual meeting and give directions on the policy issues addressed therein.

Reasons for Recommendations

The last decade has seen a growing recognition of the importance of enabling people to plan for their own mental incapacity. This is reflected most clearly in the enduring power of attorney legislation which now exists in almost every Canadian province and which provides for a power of attorney to continue after the grantor's mental incapacity. In some provinces the legislation is based on the Uniform Act adopted by the Conference at its annual meeting in 1978, while in others the legislation addresses a broader range of issues. Nevertheless, there is uniform acceptance of the principle that individuals should be able to plan for their own incapacity by appointing someone to manage their financial affairs after they become incapable of doing so themselves.

These developments have focused on mental incapacity in the context of financial management. However, substitute decision-making is equally important in other areas, particularly in matters concerning health care. The protection and promotion of self-determination and personal dignity, which underlie the concept of an enduring power of attorney, are of critical importance in the health care context.

The present law on substitute decisionmaking in health care varies considerably across Canada. In some provinces such as Alberta, no provision is made for substitute decisionmaking outside the context of the Dependent Adults Act and the Mental Health Act. As a result, health care professionals are often faced with the dilemma of having to treat a patient who is mentally incapable of consenting and who has no guardian to provide substitute consent. In some provinces, such as Ontario, Nova Scotia and Prince Edward Island, the patient's nearest relative is authorized, either by legislation or statutory regulation, to provide substitute consent. Nova Scotia has also recently adopted an agency model in its *Medical Consent Act 1988,* which enables individuals to appoint someone to make health care decisions on their behalf. To date no province has introduced "living will" legislation which would give legal affect to an advance directive, executed by the patient while still competent, withholding consent to specified treatment in certain circurstances.

In addition to the lack of uniformity in this area, considerable uncertainty has arisen as a result of a number of recent court decisions. For example, in *Re Eve* (1986) 31 D.L.R. (4th) 1, the Supreme Court of Canada cast doubt on the validity the statutory regulations which provide for substitute decisions by relatives. The House of Lords in *Re F.* [1989] 2 W.L.R. 1025 hold that if a patient is mentally incompetent, substitute consent in unnecessary, and medical treatment may be performed without consent so long as the treatment is in the patient's best interests. The recent decision of the Ontario court of Appeal in *Malette* v. *Shulman* (1990) 72 O.R. (2d) 417, holding that a "no blood products" card carried by an unconsoious Jehovah's Witness constituted an effective withholding of consent to a blood transfusion, has raised the possibility of "living wills" being effective at common law.

The present position is therefore characterized by a lack of uniformity and a lack of certainty with respect to substitute health care decisionmaking. Moreover, in contrast to the position in the financial management context, the present law offers very little scope for individuals to exercise self-determination over health care decisions after they become mentally incompetent.

Demand for Uniformity and Likelihood of Adoption

At the present time it is difficult to gauge the demand for uniformity and the likelihood of adoption. There does appear to be a growing interest in reform in this particular area, as is evidenced, for example, by the Report of the Fram Committee in Ontario (1987) and by current projects of some provincial law reform agencies. In order to assess whether this is a suitable area for uniform action, the Alberta Commissioners recommend that an Issues Paper be prepared to identify the major policy issues involved in substitute decisionmaking in the health care context.

The Issues Paper should describe the possible models for substitute decisionmaking in health care, including the following:

1. *Agency Model:* Similar to that enduring power of attorney, this model enables individuals to appoint someone to make health care decsions on their behalf after they become mentally incompetent.

2. *Statutory List Model:* As is mentioned above; this model is currently used in some provinces; legislation provides a list of persons who, in descending order, have authority to consent on behalf of the patient.

3. *Living Will Model:* This would enable individuals to execute an advance directive, indicating their wishes as to future medical treatment in the event of their becoming mentally incompetent.

4. *Professional Judgment Model:* This reflects the decision of the House of Lords in *Re F.*, discussed above, in which health care decisions for incompetent patients are left to the professional judgment of the attending physician.

In addition to assessing the advantages and problems associated with these and other possible models, the Issues Paper should examine the relationship between the models, since they are by no means mutually exclusive. Policy issues common to all models of substitute decisionmaking in health care, such as the standard for decisionmaking (best interests vs. substituted judgment) and whether certain matters should fall outside the scope of the proxy's authority, should also be examined.

APPENDIX L

(See page 50)

TRAFFICKING IN CHILDREN

The issue for consideration in this report is the adequacy of provisions in Canadian legislation prohibiting the buying and selling of children. The question was brought before the Uniform Law Conference in 1989 by way of a resolution presented to the Criminal Law Section to amend the *Criminal Code* to deal with the issue. After some discussion the following resolution was passed:

> "That the adequacy of existing Canadian legislation, either federal or provincial, to deal with the sale of children be examined by a working group from the Criminal Law and Uniform Law Sections for reports and further consideration at the 1990 conference."

This report was prepared by commissioners from Saskatchewan and the federal Department of Justice.

A. Present Provincial and Territorial Legislative Provisions

Every province and territory has enacted offences proscribing trafficking in children. The specific provisions are set out in Appendix "A". A breakdown of the various provisions points out the following limitations on their use:

(a) All provinces and territories except Manitoba tie the offence to adoption. The Manitoba provision prohibits payment for "the purported sale of a child for any purpose or procuring or assisting in procuring the purported sale of a child for any purpose".

An example of the other provisions is the Saskatchewan legislation which prohibits payment "to procure or assist in procuring a child for the purposes of adoption". This means that, outside Manitoba, proof that someone has purchased or sold a child is not sufficient to establish an offence. There must be some evidence that the purpose of the transaction is the adoption of the child. In addition, these provisions would not apply where there is proof that the purpose of the transaction was not adoption but some exploitative purpose such as cheap labour, pornography or prostitution.

(b) In most provinces and territories the charge must be laid within six months of the commission of the offence. Some provinces have extended this time limit e.g. Ontario - 2 years; New Brunswick - 6 years; Newfoundland - no time limit. However, in other provinces and territories, the 6 month limit remains a serious impediment to the usefulness of the provisions.

(c) The penalties in most provinces and territories are quite low. The maximum fine varies from $200 to $10,000. Provision for imprisonment ranges from zero to three years. Depending on the facts of the case these penalties could be seen as entirely inadequate.

B. Present Criminal Code Provisions

There is not currently an offence in the Criminal Code that specifically prohibits the trafficking in or buying and selling of children. Furthermore, as the following analysis indicates, the offences of kidnapping, hostage taking and abduction may not always be appropriate charges. The specific provisions of sections 279 to 286 of the Criminal Code are set out in Appendix "B".

Subsection 279(1) (kidnapping) is not limited to the kidnapping of children and requires that a person be held or transported "against his will". The essential element of this offence is the victim's lack of consent. However, in cases of child kidnapping the consent of the minor child is not an issue because the child does not have the capacity to consent. The consent of the parent would be the issue.

There is also an issue with respect to whether this section covers the fraudulent taking or selling of children. The cases of *R.* v. *Brown* (1972), 8 C.C.C. (2d) 13 (Ont. C.A.) and *R.* v. *Metcalfe* (1983), 10 C.C.C. (3d) 114 (B.C.C.A.) indicate that false statements or fraud which induce a victim to enter into custody are included within this provision. Accordingly, false statements or fraud which induce a parent to relinquish custody of his or her child may be included within the kidnapping provision, but the section could be clarified.

Subsection 279(2) (forcible confinement) enacts the common law offence of false imprisonment and refers specifically to the confinement, imprisonment or forcible seizure of a person. Although this may be a possible charge where there has been a forcible abduction of a child it is not clear whether a conviction could be obtained in a case where no force is involved.

Section 279.1 (hostage taking) was enacted in 1985 in response to the increase in international terrorism. It is very similar to the kidnapping offences described above except that it requires both that the hostage be detained and that someone else receive a threat of injury or continued detention of the hostage.

Section 280 (abduction of person under 16) creates an offence for every one who abducts an unmarried person less than 16 years old. The *actus reus* of this offence is the taking or causing to be taken of a person from the possession of the parent, guardian or other person having the lawful care or charge of the child. This would seem to preclude prosecution in cases where a child was abandoned or willingly sold by the parents.

As with the section 280 offence, section 281 (abduction of person under 14) does not cover the situation where the parent abandons or willingly sells a child. The *mens rea* for this offence is the intention to deprive the parent, guardian or any other person who has the lawful care or charge, of possession of the child.

Sections 282 and 283 (parental child abductions) create offences when a parent, guardian or any other person who has the lawful care or charge of a child less than 14 years old, abducts the child. Section 282 applies where there is a contravention of a Canadian custody order and section 283 applies where there is no Canadian custody order. Section 284 provides a defence where it can be established that the taking, enticing away, concealing, detaining, receiving or harbouring of any young person was done with the consent of the natural parent.

C. Discussion

In 1982 the federal government published ''The Criminal Law in Canadian Society''. This document states that the purpose of the criminal law is ... ''to contribute to the maintenance of a just, peaceful and safe society through the establishment of a system of prohibitions, sanctions and procedures to deal fairly and appropriately with culpable conduct that causes or threatens serious harm to individuals and society''.

Where children are taken from their parents, without the consent of the parents, it would seem clear that this would be a kidnapping situation. Where children are taken from their parents, with the consent of the parents, for exploitative purposes such as pornography or prostitution, again, existing *Criminal Code* provisions are available to deal with these cases, *e.g.* procuring, living on the avails of prostitution, corrupting children, etc. Where parents voluntarily give up custody of their children for the purpose of adoption in return for payment the

provincial laws establish offences although there is some issue as to their adequacy. Where a gap may exist is the case where parents voluntarily give up custody of their children in return for payment for purposes other than adoption, pornography or prostitution (*e.g.* slavery), or where the purpose is unknown or where fraud or duress is used to obtain the consent of the parent.

Some parents who give up custody of their children in return for payment may legitimately have the best interests of their children in mind. They may feel they cannot financially support the child and that the person who is prepared to pay for the child will not only provide money to assist them in supporting themselves and their remaining children, but also provide better opportunities for the child in question.

Creating a criminal offence in these situations would send a clear message that selling persons is contrary to our society's values. In addition, the criminal law could extend jurisdiction to acts which occur outside Canada where the offender is present in Canada. It could also apply to offenders who are outside Canada if it was made an extraditable offence.

The concept of payment for a child is, on its face, repugnant to our society. This is because it is a contract against public policy and because it smacks of slavery. However, it may not be easy to draw the line between proper legal intermediary services and the child trafficking practices that should be made illegal. The creation of a criminal offence or the broadening of existing provincial offences will have to contend with this issue with respect to adoption cases and surrogacy arrangements.

A total prohibition on payment could effectively prohibit surrogacy arrangements. Normally there is a payment to the birth mother from the surrogate parents to reimburse her for pecuniary and non-pecuniary costs of the pregnancy. In private adoption cases the adoptive parents will often reimburse the birth mother for expenses such as legal fees. Leaving the offence in provincial/territorial adoption legislation would allow for exceptions to be made to a blanket prohibition against payment in legitimate cases. It should be noted that one of the areas to be examined by the Royal Commission on New Reproductive Technologies is the issues surrounding surrogacy contracts.

The 17th session of the Hague Conference on Private International Law will address the subject of intercountry adoption. Canada is a participant at this Conference and any resulting international convention or recommendations will likely have to be taken into account if and when Canadian legislative amendments regarding child trafficking are

developed. It should be noted, however, that the Conference has stated that it will focus on the civil aspects of international adoption and stay outside the criminal field.

D. Options

There are likely four options available for dealing with this issue:

(a) create a criminal offence;

(b) expand the provincial offences;

(c) use criminal and provincial offences to cover different aspects of the problem;

(d) do nothing.

(a) An indictable criminal offence could be created which would prohibit payment for the sale of a child for any purpose, in terms similar to the Manitoba offence. This course of action would allow for increased penalties and eliminate the time limits with respect to prosecution. The offence could be made extraditable to ensure it would cover the broadest range of offenders possible.

Whether or not a new criminal offence is created, consideration could be given to amending section 279 to clarify that it includes obtaining custody of a child through fraud or false statements.

(b) Rather than enacting a new criminal offence, all of the provinces could adopt a provision which, as in Manitoba:

(i) does not require proof of the purpose for which a child is purchased or sold;

(ii) extends the time limit for prosecutions; and

(iii) increases the penalties.

It has been argued that the Manitoba provision may go beyond what could properly be considered as within the provincial jurisdiction. It may be more appropriate for the provinces to tie their offence to the provincial purpose which they are trying to protect, that is, to prevent the circumvention of the legislated adoption process. Then the criminal law could be used to fill any remaining gap. However, matters of child welfare fall squarely within provincial power. Therefore it is likely that the Manitoba provision is valid, subject only to the doctrine of federal legislative paramountcy if the federal gov-

ernment chose to legislate in this area under its criminal law powers.

(c) Most of the behaviour which should be prohibited is already an offence under provincial legislation and is primarily a provincial responsibility. There could be a constitutional "delegation" problem in attempting to define a *Criminal Code* offence in terms of contravening applicable adoption procedures. It would be possible to allow the provincial offences to deal with buying or selling of children for the purpose of adoption. A criminal offence could then deal with purposes relating to the exploitation of children such as pornography, prostitution or abuse. However, it may be preferable not to link the offences to any purpose so that proof of the purchase or sale of a child was all that would be required to be proved.

(d) It is not clear that there is any urgent problem requiring the creation of a new criminal offence or the expansion of existing provincial/territorial offences. However, in the Report on Intercountry Adoption prepared for the 17th session of the Hague Conference on private international law (Preliminary Document No. 1, April 1990) the writer stated as follows:

> The structural demand for children from industrialized countries and the equally structural availability of many homeless children in developing countries has, in addition to regular and legal intercountry adoptions, led to practices of international child trafficking either for purposes of adoption abroad, or under the cloak of adoption, for other - usually illegal - purposes. As no country allows such practices, they have to take place in the dark. As a result, it is very difficult - if not impossible - to obtain a reliable picture of the overall geographical span, nature and scope of these practices. ...Yet, the documents submitted to the Secretary-General by a number of governments, and by organizations such as Interpol, Defence for Children International, International Federation Terres des Hommes and the International Federation of Human Rights leave no doubt that international trafficking of children does occur - in particular from Asian, Latin American and Eastern European countries to North America and Western Europe. This confirms and broadens the conclusions of a 1987 Report of the Parliamentary Assembly of the Council of Europe."

E. Conclusion

This report does not make any recommendations with respect to the most appropriate resolution of this issue. It was considered to be more appropriate to leave the recommendations to be determined by the Conference after a thorough discussion of the issues at its 1990 meeting.

Annex A

(See page 324)

THE CHILD WELFARE ACT

Statutes of Alberta 1984 c. C-8.1

Payment

71(1) Any person who gives or receives or agrees to give or receive any payment or reward, whether directly or indirectly, to procure or assist in procuring a child for the purposes of adoption is guilty of an offence and liable to a fine of not more than $10,000 and in default of payment to imprisonment for a term not exceeding 6 months.

(2) Subsection (1) does not apply to fees, expenses or disbursements incurred in respect of an adoption or proposed adoption and paid to

(a) a qualified person who prepares a report pursuant to this Part,

(b) a lawyer, or

(c) a physician who examines, treats or immunizes the child.

(3) No prosecution shall be commenced under this section except on the written authority of the Minister.

THE ADOPTION ACT

Revised Statutes of British Columbia 1979, c.4

Offences

15.1 A person who, without authorization of the court or the superintendent

(a) publishes by any means a notice or advertisement for the adoption of a child,

(b) offers money or consideration of any kind to induce a person to amke a child available for adoption, or accepts

(c) offers or accepts money or consideration of any kind in respect of procuring or assisting in procuring a child for adoption,

commits an offence and is liable to a penalty not exceeding $10,000.

1980-36-2, proclaimed effective September 15, 1980; 1982-72-1, proclaimed effective May 19, 1983.

THE CHILD AND FAMILY SERVICES ACT

Statutes of Manitoba 1985-86, c.8

Sale of child offence

84. Any person who gives or receives or agrees to give or to receive any payment or reward either directly or indirectly in consideration for

(a) the purported sale of a child for any purpose; or

(b) procuring or assisting in procuring the purported sale of a child for any purpose;

is guilty of an offence punishable on summary conviction and liable to a fine of not less than $1,000.00 and not more than $10,000.00 or to imprisonment for a term not exceeding 6 months or both.

THE FAMILY SERVICES ACT

Statutes of New Brunswick, 1980, c. F-2. 2

95(1) No person, whether before or after the birth of a child, shall make, give or receive or agree to make, give or receive a payment or reward or favour for or in consideration of or in relation to

(a) the adoption or proposed adoption of a child;

(b) the giving of consent or the signing of an adoption consent to the adoption of a child;

(c) the placement of the child with a view to the adoption of the child; or

(d) the conduct of negotiations or the making of arrangements with a view to the adoption of the child.

95(2) Any person who violates subsection (1) commits an offence.

95(3) An information with respect to an offence committed under this section may be laid at any time within six years of the alleged violation.

95(4) Where the Minister has reasonable ground to suspect that any person has violated subsection (1), the Minister may, in addition to any action he may take with respect to prosecution, require any professional society, association or other organization authorized under the laws of the Province to regulate the professional activities of the person, to cause an investigation to be made into the matter.

138 Any person who commits an offence under this Act is liable on summary conviction to a fine of not more than one thousand dollars or to imprisonment for a term not exceeding six months, or to both fine and imprisonment, and in default of payment of a fine to imprisonment in accordance with subsection 31(3) of the *Summary Convictions Act.*

THE ADOPTION OF CHILDREN ACT, 1972

Statutes of Newfoundland 1972, No. 36

Offences concerning payments in connection with adoptions

5. Any person who gives or receives or agrees to give or to receive any payment or reward, directly or indirectly,

(a) in consideration of the adoption of a child; or

(b) to procure a child for the purpose of adoption

is guilty of an offence and liable on summary conviction to a fine not exceeding two thousand dollars or, in default of payment, to imprisonment for a term not exceeding three years, or to both such fine and such imprisonment.

5A Notwithstanding section 8 of *The Summary Proceedings Act* proceedings in a prosecution for an offence under section 4 or 5 of this Act may be instituted at any time.

THE CHILD WELFARE ORDINANCE

Northwest Territories Revised Ordinances, 1974, c.C-3

Prohibition

99.(1) Any person other than the Superintendent who gives or receives or agrees to give or receive any payment or reward, either directly or indirectly, to procure or assist in procuring a child for the purposes of adoption, is guilty of an offence and liable upon summary conviction to a fine of not more than two hundred dollars and in default of payment to imprisonment for a term not exceeding six months.

Consent

(2) No prosecution shall be commenced under this section except with consent of the Commissioner. 1969(3rd), c.1, s.4 (s."103").

THE CHILDREN'S SERVICES ACT

Revised Statutes of Nova Scotia, 1989, c.68

Offence and penalty

14(3) Any person who gives or receives or agrees to give or to receive any payment or reward directly or indirectly

(a) in consideration of the placement for adoption of a child; or

(b) to procure a child for the purpose of adoption,

is guilty of an offence and on summary conviction is liable to a fine of not more than two thousand dollars or to imprisonment for a term of not more than one year, or to both. 1976, c.8, s. 14; 1978, c.37, s. 18.

THE CHILD AND FAMILY SERVICES ACT, 1984

Statutes of Ontario, 1984, c.55

No payments for adoption

159. No person, whether before or after a child's birth shall give, receive or agree to give or receive a payment or reward of any kind in connection with,

(a) the child's adoption or placement for adoption;

(b) a consent under section 131 to the child's adoption; or

(c) negotiations or arrangements with a view to the child's adoption;

except for,

(d) the prescribed expenses of a licensee, or such greater expenses as are approved by a Director;

(e) proper legal fees and disbursements; and

(f) a subsidy paid by an approved agency or by the Minister to an adopting parent or to a person with whom a child is placed for adoption.

Idem

160.(4) A person who contravenes section 159 and a director, officer or employee of a corporation who authorizes, permits or concurs in such a contravention by the corporation is guilty of an offence and on conviction is liable to a fine of not more than $5,000 or to imprisonment for a term of not more than three years, or to both.

Limitation period

(5) A proceeding under subsection (1), (2), or (4) shall not be commenced after the expiration of two years after the date on which the offence was, or is alleged to have been, committed.

THE ADOPTION ACT

Revised Statutes of Prince Edward Island, 1988 c.A-4

Offence of procuring of adoption for reward

23.(1) Any person, who gives or receives or agrees to give or receive any payment or reward, either directly or indirectly to procure or assist in procuring a child for the purposes of adoption, is guilty of an offence and liable upon summary conviction to a fine of not more than $200 and in default of payment to imprisonment for a term not exceeding six months.

Exception

(2) Subsection (1) does not apply to any "fee for service" charged by a director or an agency, if the director has given his consent for the charging of the fee. R.S.P.E.I. 1974, Cap. A-1, s. 24.

THE YOUTH PROTECTION ACT

Revised statutes of Quebec, 1988 c. P-34.1

Offence and penalty

135.1 Whether the placement or the adoption takes place in Québec or elsewhere and whether or not the child is domiciled in Québec, any person who

(a) gives or receives or agrees to give or receive, directly or indirectly, a payment or a benefit either for finding a placement or contributing to a placement with a view for adoption, or for obtaining the adoption of a child,

(b) contrary to this Act, places, attempts to place or contributes to the placement of a child with a view to his adoption or contributes to his adoption,

(c) contrary to this Act, adopts or attempts to adopt a child,

(d) contrary to the procedure of adoption prescribed in sections 72.3 and 72.3.1 and articles 614.1 and 614.2 of the Civil Code of Québec, brings into Québec or assists in bringing into Québec a child born outside Québec,

is guilty of an offence and liable, on summary proceedings, in addition to costs, to a fine of $2,000 to $5,000, in the case of an individual, and to a fine of $5,000 to $10,000, in the case of a corporation.

Subsequent offence

135.2 For each subsequent offence within two years of a conviction for the same offence, the amounts of the fines provided for in sections 134, 135 and 135.1 are doubled.

Proceedings

136. Penal proceedings under this Act are brought in accordance with the Summary Convictions Act (chapter P-15).

THE FAMILY SERVICES ACT

Revised Statutes of Saskatchewan, 1978, c.F-7

Offences

71.(1) No person shall give or receive or agree to give or receive any payment or reward or other consideration, either directly or indirectly, to procure or assist in procuring a child for the purpose of adoption.

Penalties

72. A person who contravenes section 71 is guilty of an offence and liable on summary conviction to a fine of not more than $5,000 or to imprisonment for a term not exceeding one year, or to both fine and imprisonment, 1973, c.38, s.72.

The Children's Act

Revised Statutes of the Yukon, 1986, c.22

Payments to promote adoption

102.(1) No person shall give or receive a payment or benefit in return for giving up a child or rights in relation to a child so that another person may adopt the child.

(2) No person shall give or receive a payment or benefit in return for inducing a person to give up a child or rights in relation to a child so that another person may adopt the child.

(3) No person shall attempt to do anything that is prohibited by subsection (1) or (2).

(4) A person who breaches subsection (1), (2) or (3) commits an offence and is liable on summary conviction, for a first offence, to a fine of up to $5,000 or to imprisonment for as long as one year, or both and for a subsequent conviction, to a fine of up to $10,000 or to imprisonment for as long as two years, or both.

ANNEX B

(See page 325)

Criminal Code, (1990)

Kidnapping, Hostage Taking and Abduction

KIDNAPPING – Forcible confinement – Non-resistance.

279. (1) Every one who kidnaps a person with intent

(a) to cause him to be confined or imprisoned against his will,

(b) to cause him to be unlawfully sent or transported out of Canada against his will, or

(c) to hold him for ransom or to service against his will,

is guilty of an indictable offence and liable to imprisonment for life.

(2) Every one who, without lawful authority, confines, imprisons or forcibly seizes another person is guilty of an indictable offence and liable to imprisonment for a term not exceeding ten years.

(3) In proceedings under this section, the fact that the person in relation to whom the offence is alleged to have been committed did not resist is not a defence unless the accused proves that failure to resist was not caused by threats, duress, force or exhibition of force.

HOSTAGE TAKING – Punishment – Non-resistance.

279.1(1) Every one who takes a person hostage who

(a) confines, imprisons, forcibly seizes or detains that person, and

(b) in any manner utters, conveys or causes any person to receive a threat that the death of, or bodily harm to, the hostage will be caused or that the confinement, imprisonment or detention of the hostage will be continued

with intent to induce any person, other than the hostage, or any group of persons or any state or international or intergovernmental organization to commit or cause to be committed any act or omission as a condition, whether express or implied, of the release of the hostage.

(2) Every one who takes a person hostage is guilty of indictable offence and liable to a maximum term of imprisonment for life.

(3) Subsection 279(3) applies to proceedings under this section as if the offence under this section were an offence under section 279.

ABDUCTION OF PERSON UNDER SIXTEEN – Definition of "guardian".

280. (1) Every one who, without lawful authority, takes or causes to be taken an unmarried person under the age of sixteen years out of the possession of and against the will of the parent or guardian of that person is guilty of an indictable offence and liable to imprisonment for a term not exceeding five years.

(2) In this section and sections 281 to 283, "guardian" includes any person who has in law or in fact the custody or control of another person.

ABDUCTION OF PERSON UNDER FOURTEEN

281. Every one who, not being the parent, guardian or person having the lawful care or charge of a person under the age of fourteen years, unlawfully takes, entices away, conceals, detains, receives or harbours that person with intent to deprive a parent or guardian, or any otehr person who has the lawful care or charge of that person, of the possession of that person is guilty of an indictable offence and liable to imprisonment for a term not exceeding ten years.

ABDUCTION IN CONTRAVENTION OF CUSTODY ORDER

282. Every one who, being the parent, guardian or person having the lawful care or charge of a person under the age of fourteen years, takes, entices away, conceals, detains, receives or harbours that person, in contravention of the custody provisions of a custody order in relation to that person made by a court anywhere in Canada, with intent to deprive a parent or guardian, or any other person who has the lawful care or charge of that person, of the possession of that person is guilty of

(a) an indictable offence and liable to imprisonment for a term not exceeding ten years; or

(b) an offence punishable on summary conviction.

ABDUCTION WHERE NO CUSTODY ORDER – Consent required.

283.(1) Every one who, being the parent, guardian or person having the lawful care or charge of a person under the age of fourteeen years, takes, entices away, conceals, detains, receives or harbours that person, in relation to whom no custody order has been made by a court anywhere in Canada, with intent to deprive a parent or guardian, or any other person who has the lawful care or charge of that person, of the possession of that person, is guilty of

(a) an indictable offence and liable to imprisonment for a term not exceeding ten years; or

(b) an offence punishable on summary conviction.

(2) No proceedings may be commenced under subsection (1) without the consent of the Attorney General or counsel instructed by him for that purpose.

DEFENCE

284. No one shall be found guilty of an offence under sections 281 to 283 if he establishes that the taking, enticing away, concealing, detaining, receiving or harbouring of any young person was done with the consent of the parent, guardian or other person having lawful possession, care or charge of that young person.

285. No one shall be found guilty of an offence under sections 280 to 283 if the court is satisfied that the taking, enticing away, concealing, detaining, receiving or harbouring of any young person was necessary to protect the young person from danger of imminent harm.

286. In proceeding in respect of an offence under sections 280 to 283, it is not a defence to any charge that a young person consented to or suggested any conduct of the accused.

APPENDICE L

(voir page 50)

TRAFIC D'ENFANTS

Le présent rapport traite de l'efficacité des dispositions de la législation canadienne interdisant l'achat et la vente d'enfants. Une résolution a été présentée à la Section du droit criminel de la Conférence sur l'uniformisation des lois en 1989, proposant la modification du *Code criminel* pour contrer le trafic d'enfants. Après la tenue d'un débat, la résolution suivante a été adoptée:

> «Qu'un groupe de travail de la Section du droit criminel et de la Section du droit uniforme étudie l'efficacité de la législation canadienne actuelle, provinciale ou fédérale, qui traite de la vente d'enfants, et fasse connaître les résultats de son étude en vue d'un examen plus approfondi à la réunion de 1990.»

Le présent rapport a été rédigé par les commissaires de la Saskatchewan et du Canada.

A. Dispositions des lois provinciales et territoriales actuelles

Chaque province et territoire a adopté des dispositions interdisant le trafic d'enfants. Ces dispositions figurent à l'annexe A. L'analyse des dispositions en questions révèle qu'elles sont d'une utilité restreinte:

a) Les infractions prévues par les provinces et territoires, à l'exception du Manitoba, comporte la notion d'adoption. La disposition adoptée par le Manitoba interdit à quiconque «de vendre un enfant, peu importe le motif, ou de faciliter ou d'aider à faciliter la vente d'un enfant, peu importe le motif».

   Par contre, les dispositions des autres administrations, par exemple celle de la Saskatchewan, interdisent tout paiement pour l'obtention ou pour l'aide à l'obtention d'un enfant à des fins d'adoption». Par conséquent, il ne suffit pas d'établir la preuve qu'une personne a acheté ou vendu un enfant pour qu'elle soit condamnée aux termes d'une telle dispostion: il faut aussi prouver que le but le la transaction était l'adoption. En outre, une telle disposition ne s'applique pas si la preuve révèle que le but de la transaction n'était pas l'adoption, mais bien une autre fin abusive telle l'exploitation de la main-d'ouevre enfantine, la pornographie ou la prostitution.

b) Dans la plupart des provinces et territoires, les accusations

doivent être portées dans les six mois suivant la perpétration de l'infraction. Quelques provinces ont prolongé ce délai, par exemple, l'Ontario à 2 ans; le Nouveau-Brunswick, à 6 ans; Terre-Neuve, aucun délai de prescription. Dans les autres provinces et territoires, le délai de prescription de 6 mois fait obstacle à l'utilité de ces dispositions.

c) Dans la majorité des provinces et territoires, les peines infligées sont très légères. Les amendes maximales varient de 200 $ à 10 000 $. Pour ce qui est des peines d'emprisonnement, elles varient de zéro à trois ans. Compte tenu des circonstances particulières de chaque affaire, ces peines peuvent s'avérer tout à fait inadéquate.

B. Dispositions actuelles du Code criminel

Actuellement, il n'existe aucune disposition dans le *Code criminel* qui interdise expressément le trafic, l'achat ou la vente d'enfants. En outre, comme le révèle l'analyse qui suit, les chefs d'accusations prévus aux dispositions relatives à l'enlèvement, à la prise d'otage et au rapt ne semblent pas convenir ou s'appliquer aux cas de pratiques frauduleuses en matière d'adoption. Ces dispositions, soit les articles 279 à 286 du *Code criminel*, figurent à l'annexe B.

Le paragraphe 279(1) [Enlèvement] ne se limite pas à l'enlèvement d'enfants et exige la détention ou le transport d'une personne «contre son gré». L'élément essentiel de cette infraction est l'absence du consentement de la victime. Néanmoins, lorsqu'il s'agit de l'enlèvement d'un enfant mineur, la question du consentement n'est pas pertinente, car l'enfant n'a pas la capacité juridique de consentir; c'est le consentement du père ou de la mère qui serait en cause.

Par ailleurs, il n'est pas clair que cette disposition s'applique effectivement à la prise ou à la vente frauduleuse d'enfants. Les affaires *R. v. Brown*, (1972) 8 C.C.C. (2d) 13 (C.A.de l'Ont.) et *R. v. Metcalfe*, (1983) 10 C.C.C. (3d) 114 (C.A. de la C.-B.) semblent indiquer que les déclarations inexactes et frauduleuses qui poussent la victime à se soumettre à la garde d'une personne entrent dans la portée du paragraphe 279 (1). Par conséquent, les déclarations inexactes ou frauduleuses qui poussent le père ou la mère à renoncer à la garde de son enfant peuvent tomber sous le coup de cette disposition, mais on gagnerait à reformuler cette disposition pour le préciser.

Le paragraphe 279 (2) [Séquestration] incorpore dans le droit positif l'infraction de séquestration de la *common law* et prévoit expressément la séquestration, l'emprisonnement et la prise d'une personne par la

force. Bien que cette disposition puisse s'appliquer aux cas de rapt d'enfants par la force, il n'est pas évident qu'une personne serait condamné si elle n'a pas fait usage de la force.

L'article 279.1 [Prise d'otage] a été adopté en 1985 pour contrer la montée vertigineuse du terrorisme international. Il ressemble beaucoup aux dispositions susmentionnées relatives à l'enlévement, sauf que l'élément matériel de l'infraction prévue à article 279.1 exige la détention de l'otage et la menace que celui-ci soit blessé ou que sa détention se poursuive.

L'article 280 *[Enlèvement d'une personne âgée de moins de 16 ans]* dispose que quiconque enlève une personne non mariée âgée de moins de seize ans commet une infraction. L'élément matériel de cette infraction est l'enlèvement ou le fait de faire enlever une personne de la possession et contre la volonté de son père, ou de sa mère, de son tuteur ou de toute autre personne qui en a la garde ou la charge légale. Cette infraction ne permet pas d'intenter des poursuites lorsque les parents ont abandonné l'enfant ou qu'ils l'ont vendu de plein gré.

À l'instar de l'article 280, l'article 281 *[Enlèvement d'une personne âgée de moins de 14 ans]* ne s'applique pas aux cas où le père, ou la mère, abandonne son enfant ou le vend de son plein gré. L'élément moral de cette infraction est l'intention de priver de la possession de l'enfant le père la mère le tuteur ou toute autre personne en ayant la garde ou la charge légale.

Les articles 282 et 283 *[Enlèvement d'enfants par le père ou la mère]* disposent que le père, la mère, le tuteur ou toute autre personne ayant la garde ou la charge légale d'un enfant de moins de quatorze ans commet une infraction s'il enlève l'enfant en question. L'article 282 s'applique aux enlèvements en contravention avec une ordonnance de garde rendue par un tribunal canadien et l'article 283, aux enlèvements en l'absence d'une ordonnance de garde rendue par un tribunal canadien. L'article 284 prévoit une défense s'il est prouvé que la personne a enlevé, entraîné, retenu, reçu, caché ou hébergé un jeune avec le consentement de son père, de sa mère ou de son tuteur.

C. Discussion

En 1982, le gouvernement fédéral a publié *Le Droit pénal dans la société canadienne*. Ce document déclare que le droit pénal a pour objet «de contribuer à faire régner la justice, la paix et la sécurité dans la société au moyen d'un ensemble de prohibitions, de sanctions et de procédures destinées à réagir de façon équitable et appropriée aux comportements répréhensibles qui causent ou menacent de causer un préjudice grave aux personnes ou à la collectivé».

Lorsque des enfants sont retirés de la garde de leurs parents sans le consentement de ceux-ci, il paraît évident qu'il s'agit alors d'un enlèvement. Lorsque des enfants sont retirés de la garde de leurs parents, avec le consentement de ceux-ci, à des fins abusives telles que la pornographie ou la prostitution, les dispositions actuelles du *Code criminel* s'appliquent à de tels cas (p. ex., le proxénétisme ou la corruption d'enfants). Les lois provinciales s'appliquent, quoique cette application soit d'une efficacité douteuse, aux cas où les parents renoncent, moyennant une contrepartie, de plein gré à la garde de leurs enfants à des fins d'adoption. Mais il existe une lacune lorsque les parents renoncent de plein gré et avec contrepartie à la garde de leurs enfants à des autres que l'adoption, par exemple, la pornographie, la prostitution, l'esclavage ou autres fins inconnues, ou encore s'ils renoncent à la garde de leurs enfants du fait de la fraude ou de la coercition.

Certains parents qui renoncent à la garde de leurs enfants, moyennant une contrepartie, peuvent légitimement avoir l'intérêt de leurs enfants à l'esprit. Ils sont peut-être d'avis qu'ils ne sont pas en mesure de pourvoir financièrement aux besoins de leur enfant et que la personne qui est prête à payer pour l'enfant veut non seulement fournir de l'argent pour aider les parents à subvenir à leurs propres besoins ainsi qu'à ceux de leurs autres enfants, mais aussi offrir de meilleurs horizons à l'enfant en question.

L'adoption d'une disposition interdisant de telles situation indiquerat clairement que la vente de personnes est contraire aux valeurs de notre société. En outre, cette disposition pourrait étendre la compétence des tribunaux canadiens aux cas survenus à l'étranger lorsque le contrevenant se trouve au Canada. Elle pourrait également s'appliquer aux contrevenants à l'étranger s'il est prévu que cette infraction peut donner lieu à l'extradition.

La notion même de paiement pour un enfant répugne à notre société. La raison est qu'il s'agit d'un contrat contraire à l'ordre public qui tient de l'esclavage. Toutefois, il peut ne pas s'avérer facile de faire la distinction entre les services intermédiaires légaux et les pratiques du trafic d'enfants, qui devraient être criminalisées. Il faudra résoudra cette question, de même que la question des contrats de grossesse, avant de créer une infraction ou d'élargir la portée des infractions provinciales actuelles.

L'interdiction totale des paiements pourrait efficacement éliminer les contrats de grossesse. Habituellement, la mère porteuse reçoit du couple demandeur un paiement pour la dédommager des dépenses et des inconvénients de la grossesse. Souvent, dans les cas d'adoption privée,

le couple demandeur rembourse aussi à la mère porteuse les frais, tels les frais juridiques, qu'elle a engagés. L'incorporation de l'infraction aux lois provinciales et territoriales relatives à l'adoption permettrait de prévoir des exceptions, dans les cas légitimes, à l'interdiction générale visant les paiements. Par ailleurs, il est utile de préciser que la Commission royale d'enquête sur les nouvelles techniques de reproduction étudiera la question des contrats de grossesse.

La Dix-septième session de la Conférence de la Haye sur le droit international privé traitera de la question de l'adoption internationale. Le Canada participera à la Conférence, et toute convention internationale ou toute recommandation qui en ressortira devra probablement être prise en considération pour élaborer la modification de la législation canadienne en ce qui concerne le trafic d'enfants. Quoi qu'il en soit, la Conférence a déclaré qu'elle se concentrera sur les aspects civils de l'adoption internationale et ne touchera pas au domaine pénal.

D. Options

Quatre options ont été élaborée pour contrer le trafic d'enfants:

a) créer une infraction;

b) étendre la portée des infractions provinciales;

c) recourir à des infractions, prévues au *Code criminel* et aux lois provinciales, pour couvrir les divers aspects du trafic d'enfants;

d) maintenir le droit actuel;

a) On pourrait prévoir au *Code criminel* un acte criminel qui interdirait à quiconque de payer pour la vente d'un enfant, peu importe le motif, en des termes similaires à la législation manitobaine. Cette mesure prévoirait aussi l'augmentation des peines et éliminerait les délais de prescription touchant les poursuites. En outre, cette infraction pourrait donner lieu à l'extradition de façon à s'appliquer au plus grand nombre possible de contrevenants.

Que l'infraction criminelle soit créée ou non, on pourrait envisager la modification de l'article 279 de façon à préciser qu'il s'applique effectivement aux cas où la garde d'un enfant a été obtenue au moyen de déclarations inexactes ou frauduleuses.

b) Plutôt que de créer une nouvelle infracton criminelle, les provinces pourraient adopter une disposition qui, comme au Manitoba:

(i) n'exige pas de prouver le but de l'achat ou de la vente de l'enfant;

(ii) prolonge le délai de prescription touchant les poursuites;

(iii) augmente la sévérité des peines.

Toutefois, certains, soutiennent que la disposition manitobaine outrepasse la sphère de compétence de la province. Par mesure de prudence constitutionelle, les provinces pourraient incorporer dans leurs dispositions la notion qu'elles tentent de d'interdire, à savoir, l'adoption par des moyens autres que la procédure prévue par la loi. À partir de là, le droit pénal pourrait très bien combler les lacunes. Toutefois, la question de l'aide sociale à l'enfance relève assurément de la compétence des provinces. C'est pourquoi, la disposition manitobaine est vraisemblablement valide, sous réserve de la théorie de la primauté des lois fédérales, si le gouvernement fédéral décidait de légiférer dans ce domaine aux termes de ses pouvoirs en matière criminelle.

c) La plus grande partie de la conduite à interdire relève principalement de la compétence provinciale et est déjà visée par des infractions provinciales. Par conséquent, il pourrait s'avérer difficile, au plan constitutionnel, de définir une infraction au *Code criminel* en termes de contravention aux procédures d'adoption applicables. Les infractions provinciales pourraient traiter de la vente et de l'achat d'enfants à des fins d'adoption; l'infraction criminelle pourrait alors prévoir les fins d'exploitation, par exemple, la prostitution, la pornographie ou autres fins abusives. Toutefois, il conviendrait peut-être mieux de ne pas prévoir l'élément du motif de l'achat ou de la vente d'enfants de façon que celui-ci ne soit pas un point à prouver.

d) Il n'est pas évident que le problème soit urgent au point de nécessiter la création d'une nouvelle infraction criminelle ou l'élargissement de la portée des infractions provinciales et territoriales actuelles. Par contre, dans le *Rapport sur l'adoption d'enfants originaires de l'étranger,* rédigé aux fins de la Dix-septième session de la Conférence de la Haye sur le droit international privé (document prèliminaire n;supo 1, avril 1990), l'auteur déclare:

«La demande structurelle d'enfants dans les pays industrialisé et la disponibilité également structurelle de nombreux enfants sans foyer dans les pays en voie de

développement ont donné naissance non seulement aux adoptions régulières et légales à l'intérieur de chaque pays, mais à des trafics internationaux d'enfants, soit aux fins d'adoption à l'étranger, soit sous le couvert de l'adoption, à d'autres fins habituellement illicites. Aucun pays n'autorisant de telles pratiques, elles doivent nécessairement se dérouler dans l'ombre. Il est donc très difficile sinon impossible - de parvenir à un tableau digne de foi de leur étendue géographique, de leur nature et de leur portée. Ce problème de détermination des faits est évoqué par exemple dans divers rapports et notes établis à ce sujet par le Secrétaire général de l'ONU à l'intention de la Commission des Droits de l'Homme de l'ECOSOC. Et pourtant les documents soumis au Secrétaire général par divers gouvernements et par des organisations telles qu'Interpol, Défense des Enfants - International, la Fédération internationale de Terre des Hommes et la Fédération internationale des droits de l'homme ne permettent pas de douter qu'un trafic international d'enfants se produit, en particulier entre les pays de l'Asie, d'Amérique latine et Europe orientale d'une part et les pays d'Amerique du Nord et d'Europe occidentale d'autre part. Ce qui confirme et élargit les conclusions d'un rapport de l'Assemblée parlementaire du Conseil de l'Europe datant de 1987.

E. Conclusion

Le présent rapport ne met de l'avant aucune recommandation quant la meilleure façon de résoudre la question du trafic d'enfants. Il convient de laisser à la Conférence de formuler les recommandations après débat approfondi de la question à la session de 1990.

Annex A

(See page 341)

THE CHILD WELFARE ACT

Statutes of Alberta 1984 c. C-8.1

Payment

71(1) Any person who gives or receives or agrees to give or receive any payment or reward, whether directly or indirectly, to procure or assist in procuring a child for the purposes of adoption is guilty of an offence and liable to a fine of not more than $10,000 and in default of payment to imprisonment for a term not exceeding 6 months.

(2) Subsection (1) does not apply to fees, expenses or disbursements incurred in respect of an adoption or proposed adoption and paid to

(a) a qualified person who prepares a report pursuant to this Part,

(b) a lawyer, or

(c) a physician who examines, treats or immunizes the child.

(3) No prosecution shall be commenced under this section except on the written authority of the Minister.

THE ADOPTION ACT

Revised Statutes of British Columbia 1979, c.4

Offences

15.1 A person who, without authorization of the court or the superintendent

(a) publishes by any means a notice or advertisement for the adoption of a child,

(b) offers money or consideration of any kind to induce a person to amke a child available for adoption, or accepts

(c) offers money or consideration of any kind in respect of procuring or assisting in procuring a child for adoption,

commits an offence and is liable to a penalty not exceeding $10,000.

1980-36-2, proclaimed effective September 15, 1980; 1982-72-1, proclaimed effective May 19, 1983.

THE CHILD AND FAMILY SERVICES ACT

Statutes of Manitoba 1985-86, c.8

Sale of child offence

84. Any person who gives or receives or agrees to give or to receive any payment or reward either directly or indirectly in consideration for

(a) the purported sale of a child for any purpose; or

(b) procuring or assisting in procuring the purported sale of a child for any purpose;

is guilty of an offence punishable on summary conviction and liable to a fine of not less than $1,000.00 and not more than $10,000.00 or to imprisonment for a term not exceeding 6 months or both.

THE FAMILY SERVICES ACT

Statutes of New Brunswick, 1980, c. F-2. 2

95(1) No person, whether before or after the birth of a child, shall make, give or receive or agree to make, give or receive a payment or reward or favour for or in consideration of or in relation to

(a) the adoption or proposed adoption of a child;

(b) the giving of consent or the signing of an adoption consent to the adoption of a child;

(c) the placement of the child with a view to the adoption of the child; or

(d) the conduct of negotiations or the making of arrangements with a view to the adoption of the child.

95(2) Any person who violates subsection (1) commits an offence.

95(3) An information with respect to an offence committed under this section may be laid at any time within six years of the alleged violation.

95(4) Where the Minister has reasonable ground to suspect that any person has violated subsection (1), the Minister may, in addition to any action he may take with respect to prosecution, require any professional society, association or other organization authorized under the laws of the Province to regulate the professional activities of the person, to cause an investigation to be made into the matter.

138 Any person who commits an offence under this Act is liable on summary conviction to a fine of not more than one thousand dollars or to imprisonment for a term not exceeding six months, or to both fine and imprisonment, and in default of payment of a fine to imprisonment in accordance with subsection 31(3) of the *Summary Convictions Act*.

THE ADOPTION OF CHILDREN ACT, 1972

Statutes of Newfoundland 1972, No. 36

Offences concerning payments in connection with adoptions

5. Any person who gives or receives or agrees to give or to receive any payment or reward, directly or indirectly,

(a) in consideration of the adoption of a child; or

(b) to procure a child for the purpose of adoption

is guilty of an offence and liable on summary conviction to a fine not exceeding two thousand dollars or, in default of payment, to imprisonment for a term not exceeding three years, or to both such fine and such imprisonment.

5A Notwithstanding section 8 of *The Summary Proceedings Act* proceedings in a prosecution for an offence under section 4 or 5 of this Act may be instituted at any time.

THE CHILD WELFARE ORDINANCE

Northwest Territories Revised Ordinances, 1974, c.C-3

Prohibition

99.(1) Any person other than the Superintendent who gives or receives or agrees to give or receive any payment or reward, either directly or indirectly, to procure or assist in procuring a child for the purposes of adoption, is guilty of an offence and liable upon summary conviction to a fine of not more than two hundred dollars and in default of payment to imprisonment for a term not exceeding six months.

Consent

(2) No prosecution shall be commenced under this section except with consent of the Commissioner. 1969(3rd), c.1, s.4 (s."103").

THE CHILDREN'S SERVICES ACT

Revised Statutes of Nova Scotia, 1989, c.68

Offence and penalty

14(3) Any person who gives or receives or agrees to give or to receive any payment or reward directly or indirectly

(a) in consideration of the placement for adoption of a child; or

(b) to procure a child for the purpose of adoption,

is guilty of an offence and on summary conviction is liable to a fine of not more than two thousand dollars or to imprisonment for a term of not more than one year, or to both. 1976, c.8, s. 14; 1978, c.37, s. 18.

THE CHILD AND FAMILY SERVICES ACT, 1984

Statutes of Ontario, 1984, c.55

No payments for adoption

159. No person, whether before or after a child's birth shall give, receive or agree to give or receive a payment or reward of any kind in connection with,

(a) the child's adoption or placement for adoption;

(b) a consent under section 131 to the child's adoption; or

(c) negotiations or arrangements with a view to the child's adoption;

except for,

(d) the prescribed expenses of a licensee, or such greater expenses as are approved by a Director;

(e) proper legal fees and disbursements; and

(f) a subsidy paid by an approved agency or by the Minister to an adopting parent or to a person with whom a child is placed for adoption.

Idem

160.(4) A person who contravenes section 159 and a director, officer or employee of a corporation who authorizes, permits or concurs in such a contravention by the corporation is guilty of an offence and on conviction is liable to a fine of not more than $5,000 or to imprisonment for a term of not more than three years, or to both.

Limitation period

(5) A proceeding under subsection (1), (2), or (4) shall not be commenced after the expiration of two years after the date on which the offence was, or is alleged to have been, committed.

THE ADOPTION ACT

Revised Statutes of Prince Edward Island, 1988 c.A-4

Offence of procuring of adoption for reward

23.(1) Any person, who gives or receives or agrees to give or receive any payment or reward, either directly or indirectly to procure or assist in procuring a child for the purposes of adoption, is guilty of an offence and liable upon summary conviction to a fine of not more than $200 and in default of payment to imprisonment for a term not exceeding six months.

Exception

(2) Subsection (1) does not apply to any "fee for service" charged by a director or an agency, if the director has given his consent for the charging of the fee. R.S.P.E.I. 1974, Cap. A-1, s. 24.

THE YOUTH PROTECTION ACT

Revised statutes of Quebec, 1988 c. P-34.1

Offence and penalty

135.1 Whether the placement or the adoption takes place in Québec or elsewhere and whether or not the child is domiciled in Québec, any person who

(a) gives or receives or agrees to give or receive, directly or indirectly, a payment or a benefit either for finding a placement or contributing to a placement with a view for adoption, or for obtaining the adoption of a child,

(b) contrary to this Act, places, attempts to place or contributes to the placement of a child with a view to his adoption or contributes to his adoption,

(c) contrary to this Act, adopts or attempts to adopt a child,

(d) contrary to the procedure of adoption prescribed in sections 72.3 and 72.3.1 and articles 614.1 and 614.2 of the Civil Code of Québec, brings into Québec or assists in bringing into Québec a child born outside Québec,

is guilty of an offence and liable, on summary proceedings, in addition to costs, to a fine of $2,000 to $5,000, in the case of an individual, and to a fine of $5,000 to $10,000, in the case of a corporation.

Subsequent offence

135.2 For each subsequent offence within two years of a conviction for the same offence, the amounts of the fines provided for in sections 134, 135 and 135.1 are doubled.

Proceedings

136. Penal proceedings under this Act are brought in accordance with the Summary Convictions Act (chapter P-15).

THE FAMILY SERVICES ACT

Revised Statutes of Saskatchewan, 1978, c.F-7

Offences

71.(1) No person shall give or receive or agree to give or receive any payment or reward or other consideration, either directly or indirectly, to procure or assist in procuring a child for the purpose of adoption.

Penalties

72. A person who contravenes section 71 is guilty of an offence and liable on summary conviction to a fine of not more than $5,000 or to imprisonment for a term not exceeding one year, or to both fine and imprisonment, 1973, c.38, s.72.

The Children's Act

Revised Statutes of the Yukon, 1986, c.22

Payments to promote adoption

102.(1) No person shall give or receive a payment or benefit in return for giving up a child or rights in relation to a child so that another person may adopt the child.

(2) No person shall give or receive a payment or benefit in return for inducing a person to give up a child or rights in relation to a child so that another person may adopt the child.

(3) No person shall attempt to do anything that is prohibited by subsection (1) or (2).

(4) A person who breaches subsection (1), (2) or (3) commits an offence and is liable on summary conviction, for a first offence, to a fine of up to $5,000 or to imprisonment for as long as one year, or both and for a subsequent conviction, to a fine of up to $10,000 or to imprisonment for as long as two years, or both.

ANNEXE B

(voir page 342)

Code criminel

Enlèvement, prise d'otage et rapt

279. (1) Est coupable d'un acte criminel et passible de l'emprisonnement à perpétuité quiconque enlève une personne avec l'intention:

(a) soit de la faire séquestrer ou emprisonner contre son gré;

(b) soit de la faire illégalement envoyer ou transporter à l'étranger, contre son gré;

(c) soit de la détenir en vue de rançon ou de service, contre son gré.

(2) Est coupable d'un acte criminel et passible d'un emprisonnement maximal de dix ans quiconque, sans autorisation légitime, séquestre, emprisonne ou saisit de force une autre personne.

(3) Dans les poursuites engagées en vertu du présent article, le fait que la personne à l'égard de laquelle il est allégué que l'infraction a été commise n'a pas offert de résistance, ne constitue une défense que si le prévenu prouve que l'absence de résistance n'a pas été causée par des menaces, la contrainte, la violence ou une manifestation de force. S.R.C. 1970, c. C-34, art. 247; L.R.C. (1985), c. 27 (1er suppl.), art. 39.

279.1(1) Commet une prise d'otage quiconque:

(a) d'une part, séquestre, emprisonne, saisit ou détient de force une personne;

(b) d'autre part, de quelque façon, menace de causer la mort de cette personne ou de la blesser, ou de continue à la séquestrer, l'emprisonner ou la déternir,

dans l'intention d'amener une autre personne, ou un groupe de personnes, un État ou une organisation internationale ou intergouvernementale à faire ou à omettre de faire quelque chose comme condition, expresse ou implicite, de la libération de l'otage.

(2) Quiconque commet une prise d'otage est coupable d'un acte criminel et passible de l'emprisonnement à perpétuité.

(3) Le paragraphe 279(3) s'applique aux poursuites engagées en vertu du présent article comme si l'infraction que ce dernier prévoit était celle que prévoit l'article 279. L.R.C. (1985), c. 27 (1er suppl.), art. 40.

280.(1) Quiconque, sans autorisation légitime, enlève ou fait enlever une personne non mariée, âgée de moins de seize ans, de la possession et contre la volonté de son père ou de sa mère, d'un tuteur ou de toute autre personne qui en a la garde ou la charge légale est coupable d'un acte criminel et passible d'un emprisonnement maximal de cinq ans.

(2) Au présent article et aux articles 281 à 283, «tuteur» s'entend notamment de toute personne qui en droit ou de fait a la garde ou la surveillance d'une autre personne. S.R.C. 1970, c. C-34, art. 249; 1980-81-82-83, c. 125, art. 20.

281. Quiconque, n'étant pas le père, la mère, le tuteur ou une personne ayant la garde ou la charge légale d'une personne âgée de moins de quatorze ans, enlève, entraîne, retient, reçoit, cache ou héberge cette personne avec l'intention de priver de la possession de celle-ci le père, la mère, le tuteur ou une autre personne ayant la garde ou la charge légale de cette personne est coupable d'un acte criminel et passible d'un emprisonnement maximal de dix ans. S.R.C. 1970, c. C-34, art. 250; 1980-81-82-83, c. 125, art. 20.

R. c. Père Jean Grégoire de la Trinité, (1981) 60 C.C.C. (2d) 542 (C.A.Q.).

Une condamnation d'outrage au tribunal dans une instance civile pour avoir refusé de se conformer à une ordonnance de garde d'enfants n'empêche pas une condamnation subséquente pour le rapt des mêmes enfants durant la même période de temps. L'appel à la Cour suprême fut rejeté le 8 octobre 1980.

R. c. Didone, [1982] C.S.P. 1006.

Le jugement d'une court d'une autre juridiction (d'une autre province) confiant la garde d'une enfant à l'un des parents constitue un fondement valide à une accusation d'enlèvement ou rapt d'enfant. Ainsi la décision d'une cour d'Alberta d'accorder la garde de l'enfant à un des parents est suffisante pour confier à ce parent la garde légitime de l'enfant aux termes du présent article. Le défaut de procéder à l'exemplification dans la province de Québec du jugement d'Alberta n'affecte en rien l'essentiel de la décision et n'est pas une défense valide à l'encontre de l'accusation de rapt d'enfant.

282. Quiconque, étant le père, la mère, le tuteur ou une personne ayant la garde ou la charge légale d'une personne âgée de moins de quatorze ans, enlève, entraîne, retient, reçoit, cache ou héberge cette personne contrairement aux dispositions d'une ordonnance rendue par un tribunal au Canada relativement à la garde de cette personne, avec l'intention de priver de la possession de celle-ci le père, la mère, le tuteur

ou une autre personne ayant la garde ou la charge légale de cette personne, est coupable:

(a) soit d'un acte criminel et passible d'un emprisonnement maximal de dix ans;

(b) soit d'une infraction punissable sur déclaration de culpabilité par procédure sommaire. 1980-81-82-83, c. 125, art. 20.

R. c. Taillefer, R.J.P.Q. 85-202 (C.P.Q.).

Un élément essentiel de cette infraction est la connaisssance par l'accusé de l'existence de l'ordonnance. Un jugement de la cour n'étant pas un texte de loi, la règle «nul n'est censé ignorer la loi» ne s'applique pas. Cependant, une fois l'existence de l'ordonnance prouvée, il y a une présomption créée obligeant l'accusé de faire la preuve qu'il l'ignorait.

283.(1) Quiconque, étant le père, la mère, le tuteur ou une personne ayant la garde ou la charge légale d'une personne âgée de moins de quatorze ans, enlève, entraîne, retient, reçoit, cache ou héberge cette personne sans qu'une ordonnance n'ait été rendue par un tribunal au Canada relativement à la garde de cette personne, avec l'intention de priver de la possession de celle-ci le père, la mère, le tuteur ou une autre personne ayant la garde ou la charge légale de cette personne est coupable:

(a) soit d'un acte criminel et passible d'un emprisonnement maximal de dix ans;

(b) soit d'une infraction punissable sur déclaration de culpabilité par procédure sommaire.

(2) Aucune poursuite ne peut être engagée en vertu du paragraphe (1) sans le consentement du procureur général ou d'un avocat qu'il mandate à cette fin. 1980-81-82-83, c. 125, art. 20.

Paragraphe (1)

R. c. Mernier, [1987] R.J.Q. 1648 (C.S.P.).

Ne constitue pas un enlèvement d'enfants au sens du paragraphe (1), le fait d'héberger un enfant alors que le conjoint sait parfaitement où il se trouve. Par cet article, le législateur avant en vue l'acte d'un parent qui refuse de rendre à son conjoint leur enfant et le cache en vue de le soustraire à une reprise.

284. Nul ne peut être déclaré coupable d'une infraction prévue aux articles 281 à 283 s'il démontre que le père, la mère, le tuteur ou l'autre

personne qui avait la garde ou la charge légale de la personne âgée de moins de quatorze ans en question a consenti aux acts reprochés. 1980-81-82-83, c. 125, art 20.

285. Nul ne peut être déclaré coupable d'une infraction prévue aux articles 280 à 283 si le tribunal est convaincu que le actes reprochés étaient nécessaires pour protéger là jeune personne en question d'un danger imminent. 1980-81-82-83, c. 125, art. 20.

286. Dans les procédures portant sur une infraction visée aux articles 280 à 283, ne constitue pas une défense le fait que le jeune personne a consenti aux actes posés pas l'accusé ou les a suggérés. 1980-81-82-83, c. 125, art. 20.

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	
Arbitration Act	1990	
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.
Change of Name Act	1987	
Child Status Act	1980	Rev. '82.
Condominium Insurance Act	1971	Am. '73
Conflict of Laws Rules for Trusts Act	1987	Am. '88
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	Am. '86.
Fatal Accidents Act	1964	
Foreign Arbitral Awards Act	1985	
Foreign Judgments Act	1933	Rev. '64.
Foreign Money Claims Act	1989	
Franchises Act	1984	Rev. '85.
Frustrated Contracts Act	1948	Rev. '74.
Highway Traffic		
— Responsibility of Owner & Driver for Accidents	1962	
Hotelkeepers Act	1962	
Human Tissue Donation Act	1989	
Information Reporting Act	1977	
Inter-Jurisdictional Child Welfare Orders Act	1988	
International Child Abduction Act	1981	
International Commercial Arbitration Act	1986	
International Sale of Goods Act	1985	
International Trusts Act	1987	Am. '88
Interpretation Act	1938	Am. '39; Rev. '41; Am. '48; Rev. '53, '73; Rev. '84.

Title	Year First Adopted and Recommended	Subsequent Amendments and Revisions
Interprovincial Subpoenas Act	1974	
Intestate Succession Act	1925	Am. '26, '50, '55; Rev. '58; Am. '63; Rev. '85.
Judgment Interest Act	1982	
Jurors' Qualifications Act	1976	
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	
Maintenance and Custody Enforcement Act	1985	
Married Women's Property Act	1943	
Medical Consent of Minors Act	1975	
Mental Health Act	1987	
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, '89.
Reciprocal Enforcement of Maintenance Orders Act	1946	Rev. '56, '58; Am. '63, '67, '71; Rev. '73, '79; Am. '82; Rev. '85.
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; Am. '90.
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	
Trade Secrets Act	1987	
Transboundary Pollution Reciprocal Access Act	1982	
Trustee (Investments)	1957	Am. '70.
Trusts, Conflict of Laws	1987	Am. '88
Variation of Trusts Act	1961	
Vital Statistics Act	1949	Am. '50, '60, Rev. '86.
Warehousemen's Lien Act	1921	
Warehouse Receipts Act	1945	
Wills Act		
— General	1953	Am. '66, '74, '82, '86.
— Conflict of Laws	1966	
— International Wills	1974	
— Section 17 revised	1978	
— Substantial Compliance	1987	

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
Human Tissue Gift Act	1970	10	1989	Human Tissue Donation 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.

ˣindicates 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.ˣ *sub nom.* Property Act; Ont. ('66). Total: 2.

Arbitration Act. Total: 0

Assignment of Book Debts Act—Enacted by Man. ('29, '51, '57). Total: 1.

Bills of Sale Act—Enacted by Alta.† ('29); Man. ('29, '57); N.B.° ('52); Nfld.° ('55); N.W.T.° ('48); N.S. ('30); P.E.I.* ('47, '82). Total: 7.

Bulk Sales Act—Enacted by Alta.† ('22); Man. ('51); N.B.† ('27); Nfld.° ('55); N.W.T.† ('48); N.S.ˣ; Yukon ('56). Total: 7.

Child Abduction (Hague Convention) Act—Enacted by B.C. ('82); Man. ('82); N.B.ˣ ('82); Nfld. ('83); N.S. ('82); P.E.I.° ('84) *sub nom.* Custody Jurisdiction and Enforcement Act; Yukon ('81). Total: 7.

Child Status Act—Enacted by N.B. ('80) sub nom. Family Services Act; P.E.I. ('87). Total: 2.

Condominium Insurance Act—Enacted by B.C. ('74) *sub nom.* Strata Titles Act; Man. ('76); Yukon ('81). Total: 3.

Conflict of Laws Rules for Trusts Act

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.ˣ ('78); Sask. ('44); Yukon° ('55). Total: 8.

Criminal Injuries Compensation Act—Enacted by Alta.† ('69); B.C. ('72); N.B.ˣ ('71); Nfld.ˣ ('68); N.W.T. ('73); Ont. ('71); Yukon° ('72, '81). Total: 7.

Custody Jurisdiction and Enforcement Act—Enacted by Man. ('83); N.B.ˣ ('80); Nfld.° ('83); P.E.I.° ('84). Total: 4.

Defamation Act—Enacted by Alta.† ('47); B.C.* *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, '81). Total: 9.

Dependants' Relief Act—Enacted by N.B.ˣ ('59); N.W.T.* ('74); Ont. ('73) *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: 5.

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—Enacted by N.B.ˣ ('80); N.W.T. ('69); P.E.I.ˣ. Total: 3.

Evidence Act—Enacted by Alta. ('47, '52, '58); B.C. ('32, '45, '47, '53, '77); Can. ('42, '43); Man.* ('57, '60); Nfld. ('54); N.W.T.° ('48); N.S. ('45, '46, '52); P.E.I.* ('39); Ont.* ('45, '46, '52, '54); Sask. ('45, '46, '47); Yukon° ('55). Total: 11.

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); Sask.° ('77). Total: 8.

Family Support Act—Enacted by Yukonˣ ('81). Total: 1.

Fatal Accidents Act—Enacted by N.B.* ('69); N.W.T.† ('48); Ont. ('77); *sub nom.* Family Law Reform Act: Part V; P.E.I.ˣ. Total: 4.

Foreign Judgments Act—Enacted by N.B.° ('50); Sask. ('34). Total: 2.

Foreign Money Claims Act.

Frustrated Contracts Act—Enacted by Alta.† ('49); B.C. ('74); N.B. ('49); Nfld. ('56); N.W.T.† ('56); Ont. ('49); Yukon ('81). Total: 7.

Highway Traffic and Vehicles Act, Part III: Responsibility of Owner and Driver for Accidents—0.

Hotelkeepers Act—Enacted by N.B.ˣ. Total: 1.

Human Tissue Donation Act.

Inter-Jurisdictional Child Welfare Orders Act

International Commercial Arbitration Act—Enacted by B.C.° ('86); Can. ('86); N.B. ('86); Nfld. ('86); N.W.T. ('86); N.S. ('86); Ont. ('86); P.E.I. ('86); Sask. ('86); Yukon ('86). Total: 10.

International Trusts Act

Interpretation Act—Enacted by Alta.° ('80); B.C. ('74); N.B.ˣ; 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.° ('79); N.W.T.° ('76); Ont. ('79); P.E.I. ('87); Sask.° ('77); Yukon ('81). Total: 10.

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; P.E.I.* ('39) *sub nom.* Probate Act: Part IV; Sask. ('28); Yukon° ('54). Total: 10.

Judgment Interest Act—Enacted by N.B.ˣ; Nfld. ('83). Total: 2.

Jurors Act (Qualifications and Exemptions)—Enacted by B.C. ('77); *sub nom.* Jury Act; Man. ('77); N.B.[x]; Nfld. ('81); P.E.I.° ('81). Total: 5.

Legitimacy Act—Enacted by Alta. ('28, '60); B.C. ('22, '60); Man. ('28, '62); 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: 9.

Limitation of Actions Act—Enacted by Alta.° ('35); Man.° ('32, '46); N.B.* ('52); N.W.T.* ('48); P.E.I.* ('39); Sask. ('32); Yukon ('54). Total: 7.

Married Women's Property Act—Enacted by Man. ('45); N.B.° ('51); N.W.T. ('52, '77); Yukon° ('54). Total: 4.

Medical Consent of Minors Act—Enacted by N.B.° ('76). Total: 1.

Mental Health Act

Occupiers' Liability Act—Enacted by B.C. ('74); P.E.I.° ('84). Total: 2.

Partnerships Registration Act—Enacted by N.B.° ('51); P.E.I.[x]; Sask.[x] ('41) *sub nom.* Business Names Registration Act. Total: 3.

Pensions Trusts and Plans—Appointment of Beneficiaries—Enacted by Alta. ('58); Man. ('59); N.B. ('55); Nfld. ('58); N.S. ('60); Sask. ('57). Total: 6.

Perpetuities Act—Enacted by Alta. ('72); B.C. ('75); Man. ('59); Nfld. ('55); N.W.T.* ('68); N.S. ('59); Ont. ('66); Yukon ('81). Total: 8.

Personal Property Security Act—Enacted by Man. ('77); Sask.° ('79); Yukon° ('81). Total: 3.

Powers of Attorney Act—Enacted by B.C. ('79); Sask.° ('83). Total: 2.

Presumption of Death Act—Enacted by B.C. ('58, '77) *sub nom.* Survivorship and Presumption of Death Act; Man. ('68); N.B.[x] ('60); N.W.T. ('62, '77); N.S.° ('83); Yukon ('81). Total: 6.

Proceedings Against the Crown Act—Enacted by Alta.° ('59); Man. ('51); N.B.° ('52); Nfld.° ('73); N.S. ('51); Ont.° ('63); P.E.I.* ('73); Sask.° ('52). Total: 8.

Reciprocal Enforcement of Judgments Act—Enacted by Alta. ('25, '58); B.C. ('25, '59); Man. ('50, '61); N.B.[x] ('25, '51); Nfld.° ('60); N.W.T.* ('55); N.S.° ('73); Ont. ('29); P.E.I.° ('74); Sask. ('40); Yukon ('56, '81). Total: 11.

Reciprocal Enforcement of Maintenance Orders Act—Enacted by Alta. ('47, '58); B.C.° ('72); Man. ('46, '61, '83); N.B.† ('52); Nfld.[x] ('51, '61); N.W.T.° ('51); N.S.* ('49, '83); Ont.° ('59); P.E.I.° ('51, '83); Que. ('52); Sask. ('68, '81, '83); Yukon ('81). Total: 12.

Regulations Act—Enacted by Alta.° ('57); B.C. ('83); Can.° ('50); Man.° ('45); N.B.° ('62); Nfld.° ('77); N.W.T.° ('73); Ont.° ('44); Sask.° ('63, '82); Yukon° ('68). Total: 10.

Retirement Plan Beneficiaries Act—Enacted by Alta. ('77, '81); Man. ('76); N.B.° ('82); Ont. ('77) *sub nom.* Law Succession Reform Act: Part V; P.E.I.ˣ; Yukon ('81). Total: 6.

Sale of Goods Act—Enacted by N.B.ˣ. Total: 1.

Service of Process by Mail Act—Enacted by Alta.ˣ; B.C.° ('45); Man.ˣ; Sask.ˣ. Total: 4.

Statutes Act—Enacted by B.C.° ('74); N.B.° ('73); P.E.I.ˣ. Total: 3.

Survival of Actions Act—Enacted by Alta.° ('79); B.C.* *sub nom.* Estate Administration Act; N.B.* ('69); P.E.I.° ('78); Yukon ('81). Total: 5.

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); Sask. ('42, '62); Yukon ('81). Total: 10.

Testamentary Additions to Trusts Act—Enacted by Yukon ('69) *sub nom.* Wills Act,s 29. Total: 1.

Testators Family Maintenance Act—Enacted by 6 jurisdictions before it was superseded by the Dependants Relief Act.

Trade Secrets Act

Transboundary Pollution Reciprocal Access Act—Enacted by Colorado ('84); Man. ('85); Montana ('84); New Jersey ('84); P.E.I. ('85). Total: 5.

Trustee Investments Act—Enacted by B.C. ('59); Man.° ('65); N.B. ('71); N.W.T. ('71); 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.ˣ ('79); 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. ('52); Man. ('23); N.B.ˣ ('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); Nfld. ('76); N.W.T.° ('52); Sask. ('31); Yukon° ('54). Total: 8.

—Conflict of Laws—Enacted by B.C. ('60); Man. ('55); Nfld. ('76); N.W.T. ('52); Ont. ('54). Total: 5.

—(Part 4) International—Enacted by Alta. ('76); Nfld. ('76). Total: 2.

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); Interpretation Act° ('80); 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); Variation of Trusts Act ('64); Vital Statistics Act° ('59); Warehousemen's Lien Act ('22); Warehouse Receipts Act ('49); Wills Act° ('60); International Wills ('76). Total: 31.

British Columbia

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 Officers: 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; International Commercial Arbitration Act° ('86); 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*; 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: 34.

Canada

Evidence—Foreign Affidavits ('43), Photographic Records ('42); International Commercial Arbitration Act ('86); Regulations Act° ('50), superseded by the Statutory Instruments Act, S.C. 1971, c. 38. Total: 4.

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); Transboundary Pollution Reciprocal Access Act ('85); 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: 34.

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; International Commercial Arbitration Act ('86); 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: 37.

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); International Child Abduction Act ('83); International Commercial Arbitration Act ('86); 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); International Commercial Arbitration Act ('86); Interpretation Act°† ('48); Interprovincial Subpoenas Act° ('79); Intestate Succession Act° ('48); Legitimacy Act° ('49, '64); Limitation of Actions Act* ('48); Married Women's Property Act ('52, '77); Perpetuities Act* ('68); Presumption of Death Act ('62, '77); Reciprocal Enforcement of Judgments Act* ('55); Reciprocal Enforcement of Maintenance Orders Act° ('51); Regulations Act° ('71); Survivorship Act ('62); Trustee (Investments) ('71); Variation of Trusts Act ('63); Vital Statistics Act° ('52); Warehousemen's Lien Act° ('48); Wills Act° — General (Part II) ('52), — Conflict of Laws (Part III) ('52) - Supplementary (Part III) ('52). Total: 32.

Nova Scotia

Bills of Sale Act ('30); Bulk Sales Act[x]; 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); International Commercial Arbitration Act ('86); Legitimacy Act[x]; Pension Trusts and Plans — Appointment of Beneficiaries ('60); Perpetuities ('59); Presumption of Death Act° ('63); Proceedings Against the Crown Act ('51); Reciprocal Enforcement of Judgments Act° ('73); Reciprocal Enforcement of Maintenance Orders Act* ('49, '83); Survivorship Act ('41); Trustee Investments* ('57); Variation of Trusts Act ('62); Vital Statistics Act° ('52); Warehousemen's Lien Act ('51); Warehouse Receipts Act ('51). Total: 20.

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); International Commercial Arbitration Act ('86); Interprovincial Subpoenas Act ('79); Intestate Succession Act° ('77) *sub nom.* Succession Law Reform Act: Part II; Legitimacy Act ('21, '62), rep. '77; 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.* Succession Law Reform Act: Part V; Survivorship Act ('40); Variation of Trusts Act ('59); Vital Statistics Act ('48); Warehousemen's Lien Act ('24); Warehouse Receipts Act° ('46); Wills—Conflict of Laws ('54). Total: 28.

Prince Edward Island

Bills of Sale Act*('47, '82); Child Abduction (Hague Convention) *sub nom.* Custody Jurisdiction and Enforcement Act° ('84); Child Status Act ('87); Contributory Negligence Act[x] ('78); 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); Fatal Accidents Act[x]; International Commercial Arbitration Act ('86); Interpretation Act° ('81); Interprovincial Subpoenas Act; Intestate Succession Act *sub nom.* Part IV Probate Act* ('39); Jurors Act (Qualifications and Exemptions)° ('81); Legitimacy Act* ('20) *sub nom.* Part I of Children's Act; Limitation of Actions Act* ('39); Occupiers' Liability Act° ('84); 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]; Transboundary Pollution (Reciprocal Access) Act ('85); Variation of Trusts Act ('63); Vital Statistics Act* ('50); Warehousemen's Lien Act° ('38). Total: 21.

Quebec

The following is a list of 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'interpr§tation 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 d§clarations des compagnies et soci§t§s, 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. ofs. 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

Contributory Negligence Act ('44); Devolution of Real Property Act ('28); Evidence—Foreign Affidavits ('47), Photographic Records ('45), *Russell v. Russell* ('46); Extrajudicial Custody Order Act° ('77); Foreign Judgments Act ('34); International Commercial Arbitration Act ('86); Interpretation Act° ('43); Interprovincial Subpoenas Act° ('77); Intestate Succession Act ('28); Legitimacy Act° ('20, '61); Limitation of Actions Act ('32); Partnership Registration Act* ('41) *sub nom.* Business Names Registration Act; Pension Trusts and Plans—Perpetuities ('57); Personal Property Security Act° ('79); Powers of Attorney Act° ('83); Proceedings Against the Crown Act° ('52); Reciprocal Enforcement of Judgments Act ('40); Reciprocal Enforcement of Maintenance Orders Act ('68, '81, '83); Regulations Act° ('63, '82); Service of

Process by Mail Act[x]; Survivorship Act ('42, '62); Trustee (Investments) ('65); Variation of Trusts Act ('69); Vital Statistics Act ('50); Warehousemen's Lien Act ('21); Wills Act ('31). Total: 27.

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[x] ('81); *sub nom.* Matrimonial Property and Family Support Act; Frustrated Contracts Act ('81); Human Tissue Gift Act ('81); International Commercial Arbitration Act ('86); 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: 38.

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. 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

Accreditation of Members: *See under* Members.
Auditors: '79.
Banking and Signing Officers: '60-'61.
Canadian Intergovernmental Conference Secretariat: '78, '79.
Committees:
- on the Agenda: '22, '87.
- on Finances: '77, '81, '87, '88.
- on Finances and Procedures: '61-'63, '69, '71, '73-'79, '83, '85.
- on Future Business: '32.
- on Law Reform: '56, '57.
- on New Business: '47.
- on Organization and Function: '49, '53, '54, '71.

Constitution: '18, '44, '60, '61, '74.
Copyright: '73.
Cumulative Indexes: '39, '75, '76.
Executive Secretary: '73-'78, '81.
Governance: '90
See Statement of Renewal
Government Contributions: '19, '22, '29, '60, '61, '73, '77, '79, '81, '86.
Honorary Presidents, List of, 1923-1950: '50; 1918-1977: '77.
International Conventions on Private International Law: '71-'90.
See also under UNIFORM LAW SECTION.
Law Reform: '56-'58, '69, '71, '72, '86.
Legal Ethics and Professional Conduct: '73.
Liaison Committee with NCCUSL: '79, '86, '87.
Mandate: '90
See Statement of Renewal
Media Relations: '79, '83.
Members,
Academics as: '60.
Accreditation of: '74, '75, '77.
Defense Counsels as: '59, '60.
List of, 1918-1944: '44; 1918-1977: '77.
Memorials to Deceased Members: '77-'79, '85, '86.
Mid-Winter Meeting: '43.
Officers: '48, '51, '77, '90.
Participation: '90.
See Statement of Renewal
Presentations by Outsiders: '75.
Presidents, List of, 1918-1990.
Press: '43-'49, '61.
Press Representative: '49.
Procedures: '90.
See Statement of Renewal
Public Relations: '49, '79.
Research,
Co-Ordinator: '76.
General: '73, '74, '79.
Interest: '77, '79.
Rules: '74, '75, '88.
Rules of Drafting: '18, '19, '24, '41-'43, '48, '86, '89.
Sales Tax Refunds: '52, '61.
Secretary, list of, 1918-1950: '50; 1918-1977: '77.
office of: '74.

Staff: '28-'30, '53, '59, '61-'63, '69, '73.
Statement of Policy: '90.
See Statement of Renewal
Statement of Renewal: '90.
See Statement of Renewal
Stenographic Service: '37, '42, '43.
Structure: '90.
See Statement of Renewal
Treasurer, as signing officer: '60.
list of, 1918-1950: '50; 1918-1977: '77.
Uniform Acts,
Amendments: '29.
Changes in Drafts to be Indicated: '39.
Consolidation: '39, '41, '48-'52, '58-'60, '62, '72, '74-'78, '89.
Explanatory Notes: '42, '76.
Footnotes: '39, '41.
Form of: '19, '76.
French Language Drafts of Uniform Acts: '85, '89.
Implementation of: '75-'77.
Marginal Notes: '41, '76-'78.
Promotion of: '61-'63, '75-'77.
Revision of: '79.
Uniform Construction (Interpretation) Section: '41, '59, '60, '66-'69.
Vice-Presidents, List of, 1918-1950: '50; 1918-1977: '77.

PART II

DRAFTING SECTION

Bilingual Drafting: '68, '69, '79, '82, '85-'87, '89.
Canadian Law Information Council (CLIC): '74-'79, '85, '86.
Canadian Legislative Drafting Conventions: '74-'79, '86, '87, '89.
See also Drafting Conventions.
Commonwealth Association of Legislative Counsel: '86.
Computers: '68, '69, '75-'78.
Drafting Conventions: '68-'71, '73, '89.
See also Canadian Legislative Drafting Conventions and Rules of Drafting.
Drafting Styles: '68, '76.
Drafting Workshop, Established: '67.
French Language Drafting Conventions: '84, '86, '87, '89.
French Language Drafts of Uniform Acts: '85.
Jurors, Qualifications, Etc.: '75, '76.
Legislative Draftsmen, Training Etc.: '75-'79, '85.

Metric Conversion: '73-'78.
Purposes and Procedures: '77, '78, '82-'88.
Quicklaw Systems: '85.
Regulations, Indexing: '74.
Rules of Drafting: '73.
See also Canadian Legislative Drafting Conventions and Drafting Conventions and under CONFERENCE—GENERAL.
Section, Established: '67.
Name: '74, '75, '90.
Officers: Annual.
Sexist Language: '85, '86.
Statutes, Act: '71-'75.
Automated Printing: '68, '69, '75.
Computerization: '76, '77, '79.
Indexing: '74, '78, '79.
Translation: '78.
Subordinate Legislation: '85.
Transitional Provisions: '85.
Uniform Acts, Style: '76.

PART III

UNIFORM LAW SECTION

Accumulations: '67, '68.
Actions against the Crown: '46, '48, '49.
continued *sub nom.* Proceedings Against the Crown.
Administrative Procedures: '90.
Adoption: '47, '66-'69. *See* Effect of Adoption Act.
Adoption of Uniform Acts, Statement on: '84.
Age for Marriage, Minimum: *See* Marriage.
Age of Consent to Medical, Surgical and Dental Treatment: '72-'75.
Age of Majority: '71.
Amendments to Uniform Acts: '49-'83.
Arbitrations: '30, '31, '86, '89, '90.
Assignment of Book Debts: '26-'28, '30-'36, '39, '41, '42, '47-'55.
Automobile Insurance: *See* Insurance: Automobile.
Bill of Rights: '61.
Bills of Sale, General: '23-'28, '31, '32, '34, '36, '37, '39, '48-'60, '62-'65, '72. Mobile Homes: '73, '74.
Birth Certificates; *See* Evidence, Birth Certificates.
Bulk Sales: '18-'21, '23-'29, '38, '39, '47-'61, '63-'67.
Canada Evidence Act: s. 36: '62, '63.
Canada-U.K. Convention on the Recognition and Enforcement of Judgments: '82.

Cemetery Plots: '49, '50.
Change of Name: '60-'63, '84, '85, '87.
Chattel Mortgages: '23-'26.
Child Abduction: '81, '84.
Child Status: '80, '81, '82, '90.
Children Born Outside Marriage: '74-'77.
Class Actions: '77-'79, '84-'90.
Collection Agencies: '33, '34.
Common Trust Funds: '65-'69.
Commercial Franchises: '79, '80.
Commorientes: '36-'39, '42, '48, '49. *See also under* Survivorship.
Company Law: '19-'28, '32, '33, '38, '42, '43, '45-'47, '50-'66, '73-'79, '82-'85.
Compensation for Victims of Crime: '69, '70.
Conditional Sales: '19-'22, '26-'39, '41-'47, '50-'60, '62.
Condominium Insurance: *See under* Insurance.
Conflict of Laws, Traffic Accidents: '70.
Consumer Credit: '66.
Consumer Protection: '67, '68, '70, '71.
Consumer Sales Contract Form: '72, '73.
Contempt, law of: '89, '90.
Contingency Fees: '85.
Contributory Fault: '82-'84.
See Contributory Negligence
Contributory Negligence: '23, '24, '28-'36, '50-'57.
Last Clear Chance Rule: '66-'69.
Tortfeasors: '66-'77, '79.
See Contributory Fault.
Convention on the Limitation Period in the International Sale of Goods: '75, '76.
Copyright: '73.
Cornea Transplants: '59, '63. *See also* Eye Banks and Human Tissue.
Coroners: '38, '39, '41.
Corporation Securities Registration: '26, '30-'33.
Courts Martial: *See under* Evidence.
Criminal Injuries Compensation: *See* Compensation for Victims of Crime: '83.
Custody Jurisdiction and Enforcement: '86-'90.
See also Interprovincial Child Abduction.
Daylight Saving Time: '46, '52.
Decimal System of Numbering: '66-'68.
Defamation: '44, '47-'49, '62, '63, '79, '83-'90.
See also Libel and Slander.

Dependants Relief: '72-'74. *See also* Family Relief.
Devolution of Estates: '19-'21, '23, '24, '60.
Devolution of Real Estate (Real Property): '24, '26, '27, '54, '56, '57, '61, '62.
Disclosure of Cost of Consumer Credit: '90.
Distribution: '23.
Domicile: '55, '57-'61, '76.
Effect of Adoption: '47, '66-'69, '83-'86.
Enactments of Uniform Acts: Annual since '49.
Evidence,
Courts Martial: '73-'75.
Federal-Provincial Project: '77.
Foreign Affidavits: '38, '39, '45, '51.
General: '35-'39, '41, '42, '45, '47-'53, '59-'65, '69-'81, '85.
Hollington vs. Hewthorne: '71-'77.
Photographic Records: '39, '41-'44, '53, '76.
Proof of Birth Certificates: '48-'50.
Proof of Foreign Documents: '34.
Russell vs. Russell: '43-'45.
Section 6, Uniform Act: '49-'51.
Section 38, Uniform Act: '42-'44.
Section 62, Uniform Act: '57, '60.
Self-Criminating Evidence Before Military Boards of Inquiry: '76.
See also Evidence, Courts Martial.
Taking of Evidence Abroad: '77.
Expropriation: '58-'90.
Extraordinary Remedies: '43-'49.
Extra-Provincial Child Welfare Guardianship and Adoption Orders: '87, '88.
See Inter-Jurisdictional Child Welfare Orders
Extra-Provincial Custody Orders Enforcement: '72, '74, '76-'84.
Eye Banks: '58, '59.
See also Cornea Transplants, Human Tissue, Human Tissue Gifts.
Factors: '20, '32, '33.
Family Dependents: '43-'45. *See also* Family Relief.
Family Relief: '69-'73.
See also Testators Family Maintenance and Dependants Relief.
Family Support Act: '80, '85, '86.
Family Support Obligations: '80.
Fatal Accidents: '59-'64.
Financial Exploitation of Crime: '84-'89.
Fire Insurance: *See under* Insurance.

Foreign Affidavits: *See* Evidence, Proof of Foreign Affidavits.
Foreign Arbitral Awards: '85.
Foreign Documents: *See* Evidence, Proof of Foreign Affidavits.
Foreign Judgments: '23-'25, '27-'33, '59, '61, '62, '82.
See also Foreign Money Judgments and Reciprocal Enforcement of Judgments.
Foreign Money Claims: '89, '90.
Foreign Money Judgments: '63, '64.
Foreign Torts: '56-'70.
Franchises: '83-'85.
Fraudulent Conveyances: '21, '22.
French Version of Consolidation of Uniform Acts: '85-'89.
Frustrated Contracts: '45-'48, '72-'74.
Goods Sold on Consignment: '39, '41-'43.
Hague Conference on Private International Law: '66-'70, '73-'78.
Highway Traffic and Vehicles,
Common Carriers: '48-'52.
Financial Responsibility: '51-'52.
Parking Lots: '65.
Registration of Vehicles and Drivers: '48-'50, '52.
Responsibility for Accidents: '48-'50, '52, '54, '56-'60, '62.
Rules of the Road: '48-'54, '56-'67.
Safety Responsibility: '48-'50.
Title to Motor Vehicles: '51, '52.
Home Owner's Protection: '84, '85.
Hotelkeepers: '69. *See also* Innkeepers.
Human Tissue: '63-'65, '69-'71, '86-'89.
See also Cornea Transplants, Eye Banks.
Identification Cards: '72.
Illegitimates: '73.
Income Tax: '39, '41.
Infants' Trade Contracts: '34.
Innkeepers: '52, '54-'60, '62. *See also* Hotelkeepers.
Installment Buying: '46, '47.
Insurance,
Automobile: '32, '33.
Condominium: '70-'73.
Fire: '18-'24, '33.
Life: '21-'23, '26, '30, '31, '33.
Inter-Jurisdictional Child Welfare Orders: '88-'90.
See Extra-Provincial Child Welfare, Guardianship and Adoption Orders.
International Administration of Estates of Deceased Persons: '77-'79.

International Commercial Arbitration: '86.
International Conventions, Law of Nationality vis-á-vis Law of Domicile: '55.
International Conventions on Private International Law: '73-'83.
See also under PART I, CONFERENCE, General Matters.
International Convention on Travel Agents. *See* Travel Agents.
International Institute for the Unification of Private Law (Unidroit): '66, '69, '71, '72.
International Sale of Goods: '83-'85.
International Trusts Act: '87, '88.
International Wills: *See under* Wills.
Interpretation: '33-'39, '41, '42, '48, '50, '53, '57, '61, '62, '64-'73.
Sections 9-11: '75-'77.
Section 11: '74.
Interprovincial Child Abduction: '85-'88. *See also* Custody Jurisdiction and Enforcement.
Interprovincial Subpoenas: '72-'74.
Intestate Succession: '22-'27, '48-'50, '55-'57, '63, '66, '67, '69, '83-'85.
See also Devolution of Real Property.
Joint Tenancies, Termination of: '64.
Judgments: *See* Reciprocal Enforcement of Judgments, *see also* Foreign Judgments, Foreign Money Judgments, Unsatisfied Judgments.
Judicial Decisions Affecting Uniform Acts: '51-'83.
Judicial Notice, Statutes: '30, '31.
State Documents: '30, '31.
Jurors, Qualifications, Etc.: '74-'76.
Labour Laws: '20.
Land Titles: '57.
Landlord and Tenant: '32-'37, '39, '54.
Law of Contempt: '89, '90.
Law Reform: '56-'58, '69, '71-'80, '86.
Legislative Assembly: '56-'62.
Legislative Titles: '64.
Legitimation: '18-'20, '32, '33, '50, '51, '54-'56, '58, '59.
Libel and Slander: '35-'39, '41-'43. Continued *sub nom.* Defamation.
Limitation of Actions: '26-'32, '34, '35, '42-'44, '54, '55, '66-'79, '82.
Limitation Period in the International Sale of Goods:
See Convention on the Limitation Period in the International Sale of Goods.
Limitations (Enemies and War Prisoners): '45.
Limited Partnerships: *See under* Partnerships.

Lunacy: '62.
Maintenance Orders and Custody Enforcement: '84, '85.
Maintenance Orders: *See* Reciprocal Enforcement of Maintenance Orders.
Majority: *See* Age of Majority.
Marriage, Minimum Age: '70-'74.
Solemnization: '47.
Married Women's Property: '20-'24, '32, '35-'39, '41-'43.
Matrimonial Property: '77-'79, '85-'89.
Mechanics' Liens: '21-'24, '26, '29, '43-'49, '57-'60.
Medical Consent of Minors Act: '72-'75, '89.
Mental Diseases, Etc.: '62.
Mental Health Law Project: '84-'88.
Motor Vehicles, Central Registration of Encumbrances: '38, '39, '41-'44.
New Reproductive Technologies: '89, '90.
Occupiers Liability: '64-'71, '73, '75.
Partnerships, General: '18-'20, '42, '57, '58.
Limited: '32-'34.
Registration: '29-'38, '42-'46.
Pension Trust Funds: *See* Rule Against Perpetuities, Application to Pension Trust Funds.
Pension Trusts and Plans, Appointment of Beneficiaries: '56, '57, '73-'75.
Perpetuities: '65-'72.
Personal Property Security: '63-'71, '82-'86.
Personal Representatives: '23.
Pleasure Boat Owners' Accident Liability: '72-'76.
Powers of Attorney: '42, '75-'78.
Prejudgment Interest on Damage Awards: '75-'79, '82.
Presumption of Death: '47, '58-'60, '70-'76.
Private International Law: '73-'90.
Privileged Information: '38.
Probate Code: '89.
Procedures of the Uniform Law Section: *See* Uniform Law Section.
Proceedings Against the Crown: '50, '52. *See also* Actions Against the Crown.
Products Liability: '80, '82.
Protection of Privacy, General: '70-'77, '79, '85-'90.
Provincial Offences Procedures: '89, '90.
Purposes and Procedures: '83, '85.
Reciprocal Enforcement of Custody Orders: '72-'74.
See also Extra-Provincial Custody Orders Enforcement.

Reciprocal Enforcement of Judgments: '19-'24, '25, '35-'39, '41-'58, '62, '67, '89.
Reciprocal Enforcement of Maintenance Orders: '21, '24, '28, '29, '45, '46, '50-'63, '69-'73, '75-'79, '82-'86.
Reciprocal Enforcement of Tax Judgments: '63-'66.
Regulations, Central Filing and Publication: '42, '43, '63, '82.
Residence: '47-'49, '61.
Revision of Uniform Acts: '79, '80.
Rule Against Perpetuities, Application to Pension Trust Funds: '52-'55. *See also* Perpetuities.
Rules of Drafting: '18, '19, '41-'43, '47, '48, '62, '63, '65, '66, '70, '71, '73. *See also* in Part II.
Sale of Goods, General: '18-'20, '41-'43, '79-'82, '84, '85, '87-'90.
International: *See* Convention on the Limitation Period in the International Sale of Goods.
Sales on Consignment: '28, '29, '38, '39, '41, '42.
Search and Seizure under the Charter of Rights: '90.
Service Abroad of Judicial and Extra-Judicial Documents in Civil and Commercial Matters: '79.
Service of Process by Mail: '42-'45, '82.
Soldiers Divorces: *See* Evidence: *Russell vs Russell.*
State Documents: *See* Judicial Notice.
Statement of Renewal: '90.
Status of Women: '71.
Statute Books, Preparation, Etc.: '19, '20, '35, '36, '39, '47, '48.
Statutes: Act: '71-'74, '75, '82.
Form of: '35, '36, '39.
Judicial Notice of: *See* Judicial Notice.
Proof of, in Evidence: *See* Evidence.
Steering Committee: '87, '88.
Subrogation: '39, '41.
Substitute Decision Making in Health Care: '90.
Succession Duties: '18, '20-'26.
Support Obligations: '74-'79.
Survival of Actions: '60-'63.
Survivorship: '53-'60, '69-'71. *See also* Commorientes.
Taking of Evidence Abroad in Civil or Commercial Matters: '79.
Testators Family Maintenance: '47, '55-'57, '63, '65-'69. *See also* Family Relief.
Time Sharing: '83-'87.
Trades and Businesses Licensing: '75, '76. *See also* Travel Agents.
Trade Secrets: '87, '88.
Traffic Accidents: *See* Conflict of Laws, Traffic Accidents.

Trafficking in Children: '90.
Transboundary Pollution Reciprocal Access Act: '80-'85, '89.
Travel Agents: '71-'75.
Treaties and Conventions, Provincial Implementation: '60, '61.
Trustees, General, '24-'29.
Investments: '46, '47, '51, '54-'57, '65-'70.
Trusts, Conflict of Laws: '86-'88.
Trusts, International Trust Convention: '85-'87.
Trusts, Testamentary Additions: '66-'69.
Variation of: '59-'61, '65, '66.
Unclaimed Goods with Laundries, Dry Cleaners: '46.
Unfair Newspaper Reports: '42.
Uniform Acts:
Amendments to and Enactments of: '49-'83.
Consolidation: '39, '41, '48-'52, '54, '60, '61, '74-'79.
Judicial Decisions Affecting: '51-'83.
Uniform Construction Section: *See under* Uniform Acts in Part I.
Uniform Law Section, Organization, Procedures, Purposes: '54, '73-'79, '83, '85. *See also under* Part I.
Uninsured Pension Plans, Appointment of Beneficiaries: '56, '57.
University of Toronto Law Journal: '56.
Unsatisfied Judgment: '67-'69.
Variation of Trusts: *See* Trusts, Variation of.
Vehicle Safety Code: '66.
Vital Statistics: '47-'50, '58, '60, '76-'78, '83-'86.
Wagering Contracts: '32.
Warehousemen's Liens: '19-'21, '34.
Warehouse Receipts: '38, '39, '41-'45, '54.
Wills, General: '18-'29, '52-'57, '60, '61, '82-'87.
Conflict of Laws: '51, '53, '59, '60, '62-'66.
Execution: '80, '87.
Impact of Divorce on Existing Wills: '77, '78.
International: '74, '75.
Section 5 (re Fiszhaut): '68.
Section 17: '78.
Section 21(2): '72.
Section 33: '65-'67.
Women: *See* Status of Women.
Workmen's Compensation: '21, '22, '82.

PART IV

CRIMINAL LAW SECTION

Subjects considered each year are listed in the minutes of the year and published in the Proceedings of that year.

INDEX

PAGE

Administrative Procedures 36
Arbitration 36
Auditors Report 24
Bibliography 20
Child Status 36
Class Actions 36
Conference,
  Bibliography 20
  Closing Plenary Session 78
  Criminal Law Section 53
  Delegates 5
  Delegates *ex officio* 14
  Future Annual Meetings 80
  Historical Note 15
  Drafting Section 21
  Local Secretaries 4
  Officers 4
  Opening Plenary Session 23
  Past Presidents 2
  Tables of Uniform Acts 359
  Uniform Law Section 35
Contempt, law of 49
Contents 1
Criminal Law Section,
  Attendance 53
  Chairman's Report 53
  Officers, 1990-1991 54
Cumulative Index 373
Custody and Access Jurisdiction and Enforcement 37
Defamation 37
Delegates 1990 5
Delegates ex Officio 14
Disclosure of Cost of Consumer Credit 37
Executive, Members 4
Expropriation 38
Foreign Money Claims 38
Historical Note 15
Inter-jurisdictional Child Welfare Orders 38
Law of Contempt 49
Law Reform Conference 39
Drafting Section 21
  Officers, 1990-1991 21
  Procedure 21
Local Secretaries 4

PAGE

Members of Conference (Delegates)
  Names and Addresses 5
Minutes, Criminal Law Section 53
  Drafting Section 21
  Plenary Session, Closing 78
    Opening 23
  Uniform Law Section 35
New Agenda Items 40
New Reproductive Technologies 36
Nominating Committee, Appointment 24
Officers Report 80
  Conference 80
  Criminal Law Section 54
  Drafting Section 21
  Uniform Law Section 41
Parliamentary Counsel Meetings 22
Past Presidents 2
Plenary Sessions, Closing 78
    Opening 23
President's Report 24
Private International Law 39
Proceedings, Annual Volume, 1988
  1918-1956 .... Inside Front Cover
  Copies .... Inside Front Cover
  Copyright .... Inside Front Cover
Protection of Privacy: Tort 39
Provincial Offences Procedures 49
Quebec 79
Resolutions Committee, Appointment 24
  Report 79
Resolution re NCCUSL 27
Sale of Goods 40
Search and Seizure 40
Statement of Renewal 49
Substitute Decision Making in Health Care 40
Tables Respecting Uniform Acts
  I. Uniform Acts Recommended 359
  II. Uniform Acts Withdrawn 361
  III. Enactments of Uniform Acts 362
  IV. Enactments of Uniform Acts by Jurisdictions 366
Trafficking in Children 50
Uniform Law Section,
  Attendance 35
  Minutes 35
  Officers, 1990-1991 41