15943

UNIFORM LAW CONFERENCE OF CANADA

CONFERENCE SUR L'UNIFORMISATION DES LOIS AU CANADA

PROCEEDINGS

OF THE

SEVENTY-FOURTH ANNUAL MEETING

HELD AT

CORNER BROOK, NEWFOUNDLAND

August, 1992

CONTENTS

PAST PRESIDENTS

SIR JAMES AITKINS, 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
LACHAN 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

PAST PRESIDENTS

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
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, Q.C., Regina 1988-1990
BASIL D. STAPLETON, Q.C., Fredericton 1990-1991
DANIEL C. PRÉFONTAINE, c.r., Ottawa 1991-1992

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1992 Annual Meeting
The following persons (59) attended one or more sections of the Seventy-fourth Meeting of the Conference

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

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1992 Annual Meeting

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Minister of Justice of the Yukon: HON. MARGARET JOE

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HISTORICAL NOTE

Seventy-three 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

HISTORICAL NOTE

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. 31, 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.
1991. Aug. 9-14, Regina.
1992 Aug. 9-14, Corner Brook

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, representation 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 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.

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.

HISTORIQUE

Soixante-treize années se sont écoulées depuis la recommandation de l'Association du barreau canadien que chaque gouvernement provincial prévoit la nomination de commissaires qui seraient présents aux conférences organisées dans le but de promouvoir une législation uniforme dans les provinces.

La recommandation de l'Association du barreau canadien fut basée, en premier lieu, sur la conception nette qu'elle n'est pas organisée de façon à pouvoir préparer des propositions de format législatif qui seraient attrayantes pour les gouvernements provinciaux et, en second lieu, sur leurs observations du National Conference of Commissioners on Uniform State Laws, qui s'étaient réunis annuellement aux État-Unis depuis 1892 (et qui se réunissent encore) pour préparer des statuts modèles et uniformes. L'adoption subséquente par l'assemblée législative de plusieurs États de ces Lois a produit un niveau important d'uniformité de législation à travers les États, surtout dans le domaine du droit commercial.

L'idée de l'Association du barreau canadien fut bientôt mise en oeuvre par la plupart des gouvernements provinciaux et plus tard par les autres. La première réunion des commissaires nommés sous le mandat de statuts provinciaux, ou par action exécutive dans les provinces où aucune disposition ne fut faite par statut, eut lieu à Montréal le 2 septembre 1918 et alors fut organisée la Conference of Commissioners on Uniformity of Laws a travers le Canada. Durant les années suivantes la Conférence a changé son nom a Conference of Commissioners on Uniformity of Legislation in Canada et en 1974 a adopté son nom actuel.

Bien que du travail ait été fait en vue de préparer une constitution pour la Conférence de 1918-19 et de 1944 et fut discutée en 1960-61 et à nouveau en 1974 et 1990, la décision à chaque occasion fut de continuer sans la rigidité et les limites qui auraient été le résultat inévitable de l'adoption d'une constitution écrite formelle.

Depuis la réunion de mise sur pied en 1918 la Conférence s'est réunie, sauf quelques exceptions, durant la semaine précédent la réunion annuelle de l'Association du barreau canadien. Ci'suit est une liste des dates et lieux des réunions de la Conférence :

1918 2-4 sept., Montréal
1919. 26-29 août, Winnipeg
1920. 30 et 31 août, 1-3 sept., Ottawa.
1921. 2, 3, 5-8 sept., Ottawa.
1922. 11, 12 et 14-16 août, Vancouver.
1923. 30 et 31 août, 1 et 3-5 sept., Montréal.
1924. 2-5 juillet, Québec.
1925. 21, 22, 24 et 25 août, Winnipeg
1926 27, 28, 30 et 31 août, Saint-Jean
1927. 19, 20, 22 et 23 août, Toronto
1928. 23-25, 27 et 28 août, Régina
1929. 30, 31 août, 2-4 sept., Québec.
1930. 11-14 août, Toronto.
1931. 27-29 et 31 août, 1 sept., Murray Bay
1932. 25-27 et 29 août, Calgary.
1933. 24-26, 28 et 29 août, Ottawa.
1934. 30 et 31 août, 1-4 sept., Montréal.
1935. 22-24, 26 et 27 août, Winnipeg.
1936. 13-15, 17 et 18 août, Halifax
1937. 12-14, 16 et 17 août, Toronto.
1938. 11-13, 15 et 16 août, Vancouver.
1939. 10-12, 14 et 15 août, Québec.
1941. 5, 6, 8-10 sept. Toronto.
1942. 18-22 août, Windsor.
1943. 19-21, 23 et 24 août, Winnipeg.
1944. 24-26, 28 et 29 août, Chutes du Niagara.
1945. 23-25, 27 et 28 août, Montréal.
1946. 22-24, 26 et 27 août, Winnipeg.

1947. 28-30 août et 1 et 2 sept. Ottawa.
1948. 24-28 août, Montréal.
1949. 23-27 août, Calgary.
1950. 12-16 sept. Washington, D.C.
1951. 4-8 sept. Toronto.
1952. 26-30 août, Victoria.
1953. 1-5 sept., Québec.
1954. 24-28 août, Winnipeg.
1955. 23-27 août, Ottawa.
1956. 28 août-1 sept., Montréal
1957. 27-31 août, Calgary.
1958. 2-6 sept., Chutes du Niagara
1959. 25-29 août, Victoria.
1960. 30 août-3 sept., Québec.
1961. 21-25 août, Régina.
1962. 20-24 août, Saint-Jean.
1963. 26-29 août, Edmonton.
1964. 24-28 août, Montréal.
1965. 23-27 août, Chutes du Niagara.
1966. 22-26 août, Minaki.
1967. 28 août-1 sept., St. John's.
1968. 26-30 août, Vancouver
1969. 25-29 août, Ottawa
1970. 24-28 août, Charlottetown.
1971. 23-27 août, Jasper.
1972. 21-25 août, Lac Beauport.
1973. 20-24 août, Victoria.
1974. 19-23 août, Minaki.
1975. 18-22 août, Halifax.
1976. 19-27 août, Yellowknife.
1977. 18-27 août, St. Andrews.
1978. 17-26 août, St. John's.
1979. 16-25 août, Saskatoon.
1980. 14-23 août, Charlottetown.
1981. 20-29 août, Whitehorse.
1982. 19-28 août, Montebello.
1983. 18-27 août, Québec.
1984. 18-24 août, Calgary.
1985. 9-16 août, Halifax.
1986. 8-15 août, Winnipeg.
1987. 8-14 août, Victoria.
1988. 6-12 août, Toronto.
1989. 12-18 août, Yellowknife.
1990. 11-17 août, Saint John.
1991. 9-14 août, Régina.
1992. 9-14 août, Corner Brook.

'cause des restrictions hôtelières et de voyage due à la guerre, la réunion annuelle de l'Association du barreau canadien prévue à Ottawa en 1940 fut annulée et pour les mêmes raisons aucune réunion de la Conférence n'eut lieu cette année. En 1941 l'Association du barreau canadien et la Conférence tinrent des réunions mais en 1942 l'Association du barreau canadien annula sa réunion prévue à Windsor. La Conférence cependant tint sa réunion. Cette réunion fut significative puisque la National Conference of Commissioners on Uniform State Laws aux États tenait sa réunion annuelle en même temps à Détroit ce qui permit plusieurs réunions communes que tinrent les membres des deux Conférences.

Bien qu'il soit vrai que la Conférence soit une organisation complètement indépendante qui ne répond d'aucun gouvernement ou autre autorité, elle reconnait et en fait nourrit une relation avec l'Association du barreau canadien. Par exemple, une façon de faire inclure un sujet à l'ordre du jour de la Conférence est à la requête de l'Association. Deuxièmement, la Conférence nomme annuellement un membre de son exécutif comme représentant au Conseil e l'Association du barreau. Et troisièmement, le président sortant de la Conférence dépose à chaque année, auprès de l'Association du barreau, un rapport écrit des activités.

Depuis 1935 le Gouvernement du Canada a envoyé des représentants aux réunions de la Conférence et, bien que la province du Québec fut représentée à la réunion d'organisation en 1918, la présence de cette province fut irrégulière jusqu'en

1942. Depuis lors des représentants du Barreau du Québec furent présents chaque année avec en plus, de 1946 à 1990, un ou plusieurs délégués nommés par le Gouvernement du Québec.

En 1950 la nouvelle province de Terre-Neuve se joignit à la Conférence et nomma des délégués qui prirent part au travail de la Conférence.

Depuis la réunion de 1963 la représentation s'est élargie par la venue de représentants des Territoires du Nord-Ouest et du Yukon.

Dans la plupart des provinces, des statuts offrent des provisions pour des octrois envers les dépenses générales de la Conférence et les dépenses des délégués. Dans le cas des juridictions où aucune action législative fut entreprise, les représentants sont nommés, et les dépenses remboursées, par ordre de l'Exécutif. Les membres de la Conférence ne sont pas rémunérés, par ordre de l'Exécutif. Les membres de la Conférence ne sont pas rémunérés pour leurs services. En général, les personnes nommées pour la Conférence sont des représentants de la Cour, des Ministères de la justice des gouvernements, des écoles de droit, des praticiens de la profession et, depuis quelques années, des commissions de réforme du droit et autres agences semblables.

La nomination de délégués par un gouvernement ne grève bien sûr pas les gouvernements, qui pourront, selon leur bon vouloir, agir ou non selon les recommandations de la Conférence.

L'objectif principal de la Conférence est de promouvoir une uniformité législative à travers le Canada et les provinces dans lesquelles l'uniformité peut être vue comme possible et avantageuse. Aux réunions annuelles de la Conférence considération est donnée aux sections du droit dans lesquelles il semble désirable et praticable d'assurer une uniformité. Entre les réunions, le travail de la Conférence se fait par correspondance entre les membres de l'exécutif, les secrétaires locaux et le secrétaire exécutif et entre les membres des comités *ad hoc*. Des sujets à être considéré par la Conférence peuvent être suggérés par les délégués de n'importe quelle juridiction ou par l'Association du barreau canadien.

Bien que le travail principal de la Conférence soit d'essayer d'atteindre une uniformité sur la matière couverte par la législation déjà en existence, la Conférence a cependant été plus loin à divers occasion et a traité de sujets qui ne sont pas encore couverts par la législation au Canada et qui, après préparation, sont recommandés à être promulgués. Des exemples de cette pratique sont la *Uniform Survivorship Act* (loi uniforme portant sur la survie), l'article 39 de la *Uniform Evidence Act* (loi uniforme portant sur la preuve) qui traite des archives photographiques et l'article 5 de la même Loi qui, en effet, abroge l'ordonnance du juge dans *Russell c. Russell*, la *Uniform Regulations Act* (loi uniforme portant sur les règlements), la *Uniform Frustrated Contract Act* (loi uniforme portant sur l'annulation d'un contrat), la *Uniform Proceeding's Against the Crown Act* (loi uniforme portant sur

les poursuites contre la Couronne), la *Uniform International Commercial Arbitration Act* (loi uniforme portant sur l'arbitrage commercial international) et la *Loi uniforme sur le don de tissue humain.* Dans ces cas, la Conférence préférait établir et recommander des lois uniformes avant qu'aucune législature ne s'occupe du sujet et passe des lois et ensuite devoir entreprendre la tâche plus difficile de recommander des changements afin d'établir une uniformité.

Une autre innovation dans le travail de la Conférence fut la mise sur pied d'une section sur le droit criminel et procédures suite à une recommandation de la Section du droit criminel de l'Association du barreau canadien en 1943. Il fut signalé qu'aucune association existait au Canada avec le personnel approprié pour étudier et préparer sous format législatif des recommandations pour modifier le *Code criminel* et autres lois pertinentes pour le Ministère de la justice du Canada. Ceci mena à une résolution de l'Association du barreau canadien qui pressait la Conférence à élargir son champ d'action afin d'inclure ce service. A la réunion de la Conférence en 1944 une Section du droit criminel fut constituée, à laquelle toutes les provinces du Canada nommèrent des représentants.

En 1950 l'Association du barreau canadien a tenue une réunion annuelle commune avec la American Bar Assocation à Washington, D.C. La Conférence s'est aussi réunie à Washington ce qui donna aux membres une deuxième occasion d'observer les procédés de la National Conference of Commissioners on Uniform State Laws qui tenait sa réunion à Washington en même temps. Ceci donna aussi aux Américains l'occasion de participer aux sessions de la Conférence canadienne, ce qu'ils firent de temps à autre.

L'intérêt des Canadiens pour le travail des Américains et *vice versa* c'est depuis manifesté à plusieurs occasions, entre autre en 1965 lorsque le président de la Conférence canadienne assista à la réunion annuelle de la Conférence aux États, en 1975 lorsque les Américains tinrent leur réunion annuelle au Québec et durant les années suivantes lorsque les présidents des deux Conférences ont échangé des visites aux réunions annuelles de l'une et de l'autre.

L'exemple le plus concret de la collaboration continue entre les Conférences américaine et canadienne est la Transboundary Pollution Reciprocal Access Act (loi réciproque portant sur l'entrée de la pollution outre-frontière). Le projet de loi fut rédigé par un comité conjoint Américains-Canadiens et recommandé par les deux Conférences en 1982. C'était la première fois qu'on s'unissait pour ce genre de législation bilatérale.

Un événement d'importance singulière dans la vie de la Conférence eut lieu en 1968. Durant cette année le Canada devint membre de la Hague Conference on Private International Law dont le but est de travailler envers l'unification du droit privé international, surtout dans les secteurs du droit commercial et du droit familial.

En bref, la Hague Conference a les même objectifs généraux au niveau international que ceux de cette Conférence à l'intérieur du Canada.

Le Gouvernement du Canada, en nommant dix délégués pour assister à la réunion en 1968 de la Hague Conference, a grandement honoré notre Conférence en nous demandant de nommer un de nos membres comme membre de la délégation canadienne. Cette façon de faire fut encore suivie lorsqu'on demanda à la Conférence de nommer un de ses membres pour assister à la réunion de la Hague Conference de 1972 et les suivantes comme membre de la délégation canadienne.

Une caractéristique relativement nouvelle de la Conférence est le Legislative Drafting Workshop qui fut mis sur pied en 1968 et qui est maintenant connu comme la Section des révision de la Conférence. Cette Section se réunie en même temps que la réunion annuelle de la Conférence et au même endroit. Les rédacteurs des projets de loi qui assistent à la réunion annuelle de la Conférence assistent aussi à cette réunion. La Section se préoccupe de sujets d'intérêt général dans le secteur de la rédaction parlementaire. La Section s'occupe aussi de la rédaction de documents qui lui sont fourni par la Section de droit uniforme ou par la Section du droit criminel.

Un des handicape avec lequel la Conférence a dû travailler depuis sa conception est le manque de fonds pour la recherche légale, les délégués étant trop occupés avec leur travail régulier pour pouvoir entreprendre des recherches approfondies. Cependant, ce besoin a été heureusement comblé par des octrois bienvenus en 1974 et durant les années suivant du Gouvernement du Canada.

Une nouvelle expérience dans la vie de la Conférence - et une de grande importance eut lieu à la réunion annuelle de 1978 lorsque le Secrétariat des conférences intergouvernementales du Canada a amener d'Ottawa sa première équipe d'interprètes, traducteurs et autres spécialistes et fournirent une ligne complète de services, y inclus une interprétation simultanée du français à l'anglais et de l'anglais au français à chaque session plénière ou sectorielle durant les dix jours que siégeât la Conférence.

En 1989 un rapport intitulé "Renouvellement du consensus sur l'harmonisation des lois au Canada" fut préparé par l'exécutif de la Conférence sur l'uniformisation des lois au Canada et distribué aux juridictions lors de la réunion annuelle de la Conférence à Yellowknife. Les juridictions et autres partis et personnes intéressées furent invités à étudier le rapport et à présenter à l'exécutif leurs évaluations et recommandations.

Des présentations furent reçues et étudiées par l'exécutif durant l'hiver, et au printemps 1990 le rapport fût révisé et distribué aux juridictions comme document à discussion à être examiné et débattu lors de la réunion annuelle à Saint Jean. Au cours de la réunion certaines modifications furent proposées et mises sur table dont plusieurs furent adoptées. Le rapport fut alors accepté tel que modifié.

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OPENING PLENARY SESSION

MINUTES

Opening of Meeting

The meeting opened at 7:45 p.m. on Sunday, August 9, 1992 at the Glynmill Inn in Corner Brook, Newfoundland with Daniel Préfontaine, Q.C. in the chair and Mel Hoyt, Q.C. as secretary.

Address of Welcome

The President extended a warm welcome to all those delegates in attendance. Mr. Christopher Curran, on behalf of the Premier of Newfoundland and Labrador welcomed all delegates to the Province.

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. Dwight A. Hamilton, and his wife, Elizabeth, 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.

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 Executive Director presented the Auditor's Report regarding the Financial Statements of the Conference as at March 31, 1992. It is set out in Appendix A, page 84.

RESOLVED

1. that the Auditor's Report be approved;

2. that the same auditors, Ernst & Young, 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 Director, as signing officers for banking matters.

Appointment of Resolutions Committee

RESOLVED that a Resolutions Committee be constituted, composed of Anne-Marie Trahan, Q.C. as Chairperson, Christopher Curran, Dianne Smith, Susan Amrud and Tim Rattenbury whose report will be presented at the Closing Plenary Session.

Appointment of Nominating Committee

The most immediate Past-President of the Conference, Basil Stapleton, Q.C., shall act as Chairperson of the Nominating Committee, and shall select at least four members of the Conference to constitute the Committee. He shall report to the Conference the names of the members of the Committee as soon as conveniently possible after the Committee is established and shall present their report at the Closing Plenary Session.

N.C.C.U.S.L.

The President reported on his meeting with the N.C.C.U.S.L. in San Francisco earlier in the month. He called on Peter Lown, Chairman of the Joint Liaison Committee to report on the liaison we have had with the United States Commissioners. Peter Lown has met a number of times with Jeremiah Marsh, Co-chairman of the Joint Liaison Committee and, as a result, significant progress has been made in the possibility of a strategy which can be proposed to the Executives in the two Conferences.

Business of the Week

The President called on Carol Snell, Chairperson of the Criminal Law Section and Peter Lown, Chairperson of the Uniform Law Section for a brief summary of what will be dealt with by the two Sections during the week.

President's Report

The President thanked the Executive for the work that has been done during the year. On balance, we did the best we could to cope with the various problems that arose and this was accomplished by the goodwill and good faith on the part of all members of the Executive Committee.

He said he has to be very open and clear about this organization and this institution. We decided that we were going to review this institution; that the time had come for some change to be made if we want this institution to be faithful to its original objectives when it was formed seventy-four years ago. The primary objective was to have knowledgeable and experienced people come together to assist their jurisdictions in bringing about better harmonization of the laws for all the citizens of this country. It has been a difficult two years because change is very difficult to accept. Change is something that means we have to do some things differently, or even maybe we have to change our attitude, or even accept that we may not have been right in the past.

The renewal process goes on; we are not finished. The organization still needs to be revitalized; we have to come to grips with some of the things we are doing and the way we are doing them. Communication is so difficult in trying to get people to listen to what it is that this organization is trying to do, to revitalize itself and at the same time to be faithful to its original objectives.

The Executive Committee has met twice this past year. We were very conscious of the need to maintain a very severe financial control over some of the things that had to be done. We put on the table amongst ourselves a very large number of important questions which we will have to address here as colleagues, as commissioners of the same institution, to try and come to a consensus on where we want this transition to go and finally end.

The renewal process that we agreed to, that we committed ourselves to, and that we are trying to get on with, will involve some change. We have to address how we are going to maintain the financial stability of this institution for the foreseeable future.

One of the resolutions that has been sent to you is to consider the creation of an endowment fund so we can become self-sustaining in large measure, so we do not have to be dependent on governments completely, so that jurisdictions will have an independent broad perspective of what we present as commissioners. Not just commissioners who are members of certain government organizations, but commissioners who are practitioners and commissioners who are of the judicial body and perhaps at some point, a question to consider, some legislators that might be appointed by jurisdictions to get the best product for them, and that includes the thirteen jurisdictions and perhaps the fourteenth in the near future.

There are a number of issues to be addressed. They include the use of our time, our working professional time and the image that we project to our jurisdictions, because in a large measure, they are paying our expenses to be here and to act on their behalf and in their best interests. That includes the length of the meetings of the Conference, the timing of the Conference and the place of the Conference. We need to discuss this among ourselves informally and maybe more formally.

If we are to continue to conduct our affairs as we have in the past, one of the resolutions, as an alternative in helping to defray the expenditures is to impose a registration fee. This is one of the resolutions called for. It is an alternative, there are others. That one is being put on the table for discussion and your consideration as commissioners of this institution. The American Conference does both. They have contributions from all the jurisdictions and they have a registration fee to assist in defraying the cost of organizing the Conference and the activities that are connected therewith. We need to decide what is best for us. I am just using the American Conference to say that it is being done elsewhere. It is a way of doing business.

Their Conference lasts eight full days. Ours usually lasts four working days. Do we need four working days? It will vary perhaps from year to year. Do we want to say in the future the level of the work will determine the length? That's something for discussion. Your Executive has decided nothing in that regard.

Your Executive has said these are the questions that have to be addressed. They are for you to apply your minds to and have sound thoughts on, have good discussion and under-standing on, and then to determine in the form of a consensus what we are going to do.

The financial future includes what we are going to do about research for the coming year and the need for a research plan and a budget. We need to talk about that in the respective sections and here in the Plenary. We need to ask ourselves whether some of us would rather change the way our work is structured during the week, and there are a number of ideas on that. And we need to ask ourselves whether we care enough about this institution to listen to what each of us has to say before we impose our own thoughts, and that is the toughest part.

I am being a little heavy, I don't mean to be, but I am really concerned as your President, and the members of the Executive Committee are also concerned. We have to approach the way we do business a little bit differently, and perhaps quite a bit differently, than we have in the past. We cannot continue, for example, to publish all of the Proceedings, or we are going to be bankrupt in another year or two in terms of both the General Fund and the Research Fund. The Government of Canada, as the financier of our Research Fund, has told us that the annual grant will be reduced. We will not get $25,000 a year any more; we will now get $18,050 a year, and who knows what the future brings. We have to address whether we are going to have some other way of financing our research, not just depend on one

benefactor. The uniformity commissioners in the United States and many other organizations have sought out alternatives. We should ask our American counterparts what they are doing with their foundation and how they sought out private practitioners, previous commissioners, banks and other associations to contribute and become part of the commitment because of the benefits they receive.

Those are the few words I want to put on the table as your President.

Do not forget that the primary purpose of the organization when it was set up was to have the jurisdictions come together and to exchange information and expertise; to try to come together and have some harmonization. The things we are doing together in having a good time as we meet from year to year is incidental. That's great, but that's not the primary purpose. We thank our host for this very, very accommodating social program they have put together. But that is not the primary propose, and our governments and our jurisdictions have to be assured that we are not out for a frolic or a good time. Some of them no doubt think that way where dollars are concerned. They have to be sure that we are serious in representing them. That is my primary concern as your President. We must do what we can to ensure our commitment and to ensure our credibility and to make sure that people take us seriously. That means we must have a product that governments can use and it has to be in accordance with their priorities. We also have to get to those deputy ministers and ministers and ask them again and again what is it we can do for you to achieve the objectives for which you finance and back this organization.

A lot of you have something to say about this because you have talked to me about it and I know you have some real strong feelings about it. I think you should put them on the table, but let's be respectful of each other and remember we are all colleagues and let's be tolerant to each other's point of view because we don't need to have dissension amongst us. We are all here for the same purpose and objective, the same belief that there is something valid and useful here that we have been doing and want to continue to do. If that is not the case, then let's admit it and put this thing to rest. Either we are for this thing and we want it to run properly, and there are different opinions on how to do that, or we are not. So my plea to you is commitment, understanding and consensus to keep the organization moving towards its original objective. Let's discuss this during the course of the week, let's talk about it. Let's not be afraid; there's no conspiracy. We should all be in this together, we will have differences of opinion, but that is good. Let's put them all on the table and let's come to an understanding of how to resolve them.

I thank you and I thank the organizers for the good job they have done to bring this Conference to where it is at.

OPENING PLENARY SESSION

Events of the Week

Mr. Christopher Curran gave 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 14.

L'OUVERTURE DE LA SESSION PLÉNIÈRE

PROCES-VERBAL

L'ouverture de la réunion

La réunion fut ouverte à 19h45 le 9 août 1992 au Glynmill Inn à Corner Brook, Terre-Neuve, avec Daniel Préfontaine, c.r., à la présidence et Mel Hoyt, c.r. comme secrétaire.

Bienvenue

Le président a chaleureusement souhaité la bienvenue à tous les délégués présents. M. Christopher Curran, de la part du Premier Ministre de Terre-Neuve et du Labrador, a accueilli les délégués dans province.

Présentation du Comité exécutif

Le président a présenté chaque dirigeant de la Conférence ainsi que le poste que chacun occupe.

National Conference of Commissioners on Uniform State Laws

La président de la National Conference of Commissioners on Uniform State Laws, M. Dwight A. Hamilton, et son épouse Elizabeth, ont été présentés aux membres de la Conférence.

Le président du Committee on Liaison with Canada and International Organizations, et le vice-président du Joint Committee on Cooperation with the Uniform Law Conference of Canada and the National Conference of Commissioners on Uniform State Laws, M. Jeremiah Marsh, et son épouse Marietta, ont également été présentés aux membres de la Conférence.

Présentation des délégués

Le président a demandé au délégué supérieur de chaque juridiction de s'introduire et de présenter les autres membres de sa délégation.

Rapport de l'expert-comptable

Le directeur exécutif a présenté le rapport de l'expert-comptable en ce qui a trait aux rapports financiers de la Conférence datés du 31 mars 1992. Ces rapports se trouvent à l'annexe A, page 84.

RÉSOLU

1. que le rapport de l'expert-comptable soit approuvé;

2. que les même expert-comptables, Ernst & Young, soient nommés pour l'an prochain; et

3. qu'une décision bancaire soit approuvée, donnant ainsi le pouvoir à deux membres de l'exécutif, ou à un membre et au directeur de devenir signataires pour les transactions bancaires.

Nomination du comité de résolutions

RÉSOLU qu'un comité de résolutions soit formé, dont Anne-Marie Trahan, c.r., à la présidence, Christopher Curran, Dianne Smith, Susan Amrud et Tim Rattenbury qui rédigeront un rapport qui sera présenté lors de la Session plénière finale.

Nomination des membres du comité des nominations

Le président sortant de la Conférence, Basil Stapleton, c.r., agira en tant que président du Comité des nominations, et choisira au moins quatre membres de la Conférence afin de former le comité. Il annoncera à la Conférence les noms des membres du comité aussitôt que possible et présentera leur rapport lors de la session plénière finale.

N.C.C.U.S.L.

Le président a fait un compte rendu de sa réunion avec la N.C.C.U.S.L. à San Francisco au début du mois. Il a invité Peter Lown, président du Joint Liaison Committee, à faire un rapport sur le lien que nous avons eu avec les commissaires des État-unis. Par suite de plusieurs rencontres entre Peter Lown et Jeremiah Marsh, vice-président du Joint Liaison Committee, la possibilité d'une stratégie qui puisse être proposée aux exécutifs des deux Conférences a progressé de façon considérable.

Agenda de la semaine

Le président a invité Carol Snell, présidente de la Section du droit criminel, et Peter Lown, président de la Section de lois uniforme, à présenter un bref aperçu de ce qui sera traité par les deux sections au courant de la semaine.

Rapport du président

Le président a remercié l'exécutif pour le travail qui a été accompli pendant l'année. En général, nous avons fait de notre mieux pour s'occuper des problèmes divers qui se sont présentés, et ce, grâce à la bonne volonté et à la bonne foi des membres du Comité exécutif.

Il a dit qu'il doit être très ouvert et clair en ce qui concerne cet organisme et cette institution. Nous avons décidé que nous allions réviser cette institution. Le temps était venu pour que des changements soient fait si nous voulions que cette institution soit fidèle aux objectifs établis lors de sa formation 74 années passées. L'objectif primaire était d'unir des personnes connaissantes avec de l'expérience pour aider leurs juridictions à mieux harmoniser les lois, pour tous les citoyens de ce pays. Les derniers deux ans ont été difficiles étant donné la difficulté d'accepter des changements. L'évolution signifie que nous devons faire des choses différemment, que nous devons changer notre attitude, ou même que nous devons accepter l'idée que nous n'avons pas toujours raison.

Le processus de renouvellement continu; nous n'avons pas fini. L'organisme a encore besoin d'être vivifié; nous devons examiner certaines des choses que nous faisons ainsi que la façon qu'elles sont faites. C'est si difficile d'essayer de faire comprendre aux gens ce que cet organisme tente de faire, soit de se revitaliser tout en demeurant fidèle à ses objectifs premiers.

Le Comité exécutif s'est réuni à deux reprises cette dernière année. Nous étions très conscients du besoin de maintenir un contrôle financier rigoureux par rapport à certaines choses qui devaient être faites. Un grand nombre de questions furent inscrites à l'agenda dont nous devions discuter en tant que confrères, en tant que commissaires de la même institution, afin d'arriver à un consensus sur la direction finale dans laquelle nous voulons diriger cette transition.

Le processus de renouvellement sur lequel nous nous sommes mis d'accord, envers lequel nous nous sommes engagé, et qu'on essaie de faire avancer, va traverser quelques changements. Nous devons voir comment nous allons maintenir la stabilité financière de cette institution dans l'avenir.

Une des résolution qui vous a été envoyé est de considérer la création d'une caisse de dotation pour subvenir en grande partie à nos propres besoins, afin de pas être obligé de compter complètement sur les gouvernements, et ainsi les juridictions auront une vue d'ensemble indépendantes de ce que nous présentons en tant que commissaires. Non seulement les commissaires qui sont membres de certaines agences gouvernementales mais aussi les commissaires praticiens et commissaires qui font partie d'un corps judiciaire et peut-être, à un certain point, une question à considérer, un législateur qui serait peut-être nommer par des juridictions afin d'obtenir pour elles le meilleur produit, et cela inclus les treize juridictions et peut-être la quatorzième dans un avenir rapproché.

Il y a une certain nombre de sujets à discuter. Il s'agit entre autre l'utilisation de notre temps, notre temps de travail professionnel et l'image que nous projetons à nos juridictions, puisque en grande mesure, ils paient nos dépenses afin d'être ici comme représentant et veiller à leurs intérêts, y compris la durée des réunions de la Conférence, la date de la conférence et le lieu de la conférence. Nous devons discuter de ceci entre nous de façon informelle et peut-être de façon plus formelle.

Si nous voulons continuer la conduite de nos affaires tel que dans le passé, une des résolutions, comme alternative afin de défrayer les coût est l'imposition de frais d'enregistrement. C'est une des résolutions qui fut évoquée. C'est une alternative, il y en a d'autres. Elle est ouverte pour discussion et votre examen en tant que commissaires de cette institution. La Conférence américaine fait les deux. Ils ont des contributions de toutes les juridictions et des frais d'enregistrement afin d'aider à défrayer les coûts de l'organisation de la Conférence et les activités qui y sont rattachés. Nous devons décider ce qui serait le mieux pour nous. J'utilise simplement la Conférence américaine pour illustrer que ceci se fait ailleurs. C'est une façon de faire des affaires.

Leur Conférence dure huit pleine journées. La nôtre dure habituellement quatre jours ouvrables. Avons-nous besoins de quatre jours ouvrables? Cela variera probablement d'année en année. Voulons nous dire que dans l'avenir la quantité de travail déterminera la durée? Nous devrons en discuter. Votre exécutif n'a rien décidé à cet effet.

Votre exécutif a dit que ces questions devaient être débattues. Elles sont là pour que vous y réfléchissiez et que vous ayez des doutes, que vous ayez une bonne discussion et une compréhension du sujet, et qu'ensuite que vous déterminiez, sous forme de consensus, ce que nous allons faire.

L'avenir financier comprend ce que nous allons faire au sujet de la recherche dans les années à venir et le besoin d'avoir un plan de recherche et un budget. Nous devons en discuter dans les sections appropriées ainsi qu'ici à la Session plénière. Nous devons nous demander si nous aimerions mieux changer la façon que notre travail est organisé durant la semaine et il existe plusieurs idées à ce sujet. Et nous devons nous demander si nous cette institution nous tient assez à coeur pour écouter ce que chacun de nous a à dire avant d'imposer nos propre idées, et ceci sera la partie la plus difficile.

Je sonne peut-être un peu accablant, je ne veux pas vraiment l'être, mais je suis réellement inquiet en tant que votre président et les membres du Comité exécutif le sont aussi. Nous devons aborder la manière dons nous faisons affaires de façon un peu différente qu'avant. Nous ne pouvons continuer, par exemple, à publier tous les procès-verbal, ou bien le Fond général et le Fond de recherche feront faillite dans une année ou deux. Le Gouvernement du Canada, en tant que financier de notre Fond de recherche, nous a dit que l'octroie annuel va être réduit. Nous n'allons plus recevoir 25 000 $ par année mais plutôt 18 050 $ par année et qui sait ce que l'avenir

nous réserve. Nous devons examiner si nous allons avoir d'autre façons de financer nos recherches et ne plus dépendre seulement d'un bienfaiteur. Les commissaires aux États et bien d'autres organisations cherchent à nos confrères américains ce qu'ils ont fait avec leur établissement et comment ils ont attiré les praticiens privés, les commissaires antérieurs, banques et autres associations à faire des contributions et à faire partie de notre idéal à cause des bénéfices qui peuvent en découler.

Voilà les quelques sujets sur lesquels je voulais attirer votre attention en tant que président.

N'oubliez pas que le but principal de notre organisation lorsqu'elle fut fondé était de réunir les juridictions et d'échanger de l'information et de l'expertise; essayer de se rapprocher et d'avoir une harmonie. Les choses que nous faisons ensemble pour s'amuser lorsque nous nous rencontrons d'année en année ne sont qu'accessoires. C'est très bien, mais ce n'est pas notre objectif principal. Nous remercions nos hôtes pour ces activités sociales de plus obligeantes qui furent mises sur pied. Mais ce n'est pas notre objectif sociales de plus obligeantes qui furent mises sur pied. Mais ce n'est pas notre objectif principal et nos gouvernements et nos juridictions doivent être assurés que nous ne somme pas la pour la fête et le bon temps. Certains doivent penser de cette façon lorsque l'argent entre en ligne de compte. Ils doivent être assurés que nous sommes de sérieux représentants. C'est ma préoccupation principale en tant que votre président. Nous devons faire notre possible afin d'assurer notre engagement et d'assurer notre crédibilité et d'assurer que les gens nous prennent au sérieux. Ceci veux dire que nous devons avoir un produit que les gouvernements peuvent utiliser et qui concorde avec leur priorités. Nous devons aussi rejoindre les sous-ministres et les ministres et leur demander encore et encore ce que nous pouvons faire afin d'atteindre les objectifs pour lesquels ils financent et appuient cet organisme.

Plusieurs d'entre vous ont quelque chose à dire à ce sujet parce que vous m'en avez parlé et je sais que vous avez des opinions biens ancrés sur ceci. Je pense que vous devriez en discuter, mais veillons à nous respecter les uns les autres et souvenons nous que nous sommes tous confrères et soyons tolérant du point de vue des autres parce que nous n'avons pas besoin de chicane entre nous. Nous sommes tous ici dans le même croyance que nous avons fait quelque chose d'utile et de valable et voulons continuer. Si tel n'est pas le cas et bien avouons-le et finissions-en avec cette affaire. Ou bien nous sommes pour cette organisme et voulons qu'elle fonctionne de façon appropriée, et il y a différente façon de le faire, ou bien nous ne le sommes pas. Alors je vous supplie de vous engager, de vous entendre et d'arriver à un consensus afin de continuer l'avancement de notre objectif originel. Discutons de ceci au cours de la semaine, parlons-en. N'ayons pas peur, il n'y a aucune conspiration. Nous devrions être unis, nous aurons des différences d'opinion mais c'est une bonne chose. Discutons de ces différents et arrivons à une entente sur la façon de les résoudre.

Je vous remercie et je remercie les organisateurs pour leur bon travail afin d'amener la Conférence là où elle est.

Événements de la semaine

M. Christopher Curran a décrit les événements de la semaine.

Ajournement

Entendu qu'il n'y avait plus de matière à considérer, la réunion fut ajourné à 12h et se réunira à nouveau à la Session plénière finale le vendredi 14 août.

JOINT SESSION OF THE UNIFORM LAW AND CRIMINAL LAW SECTIONS

MINUTES

Uniform Court Orders Compliance Act

The Conference received a report from the New Brunswick Commissioners on the proposed Uniform Court Orders Compliance Act. The report responded to several matters which had been raised during discussion in the 1991 Conference. The Conference resolved that the draft Act and commentaries, as amended in accordance with the discussion and instructions of the Conference, be circulated, and if the Act with commentaries is not disapproved by two or more jurisdictions on or before November 30th, 1992, by notice to the Executive Director, the Act be adopted by the Conference as a Uniform Act and recommended for enactment. (See Appendix B, page 90.)

Uniform Regulatory Offences Procedures

The Conference received a report from the Ontario Commissioners which followed up on the 1990 Issues Paper and the draft Act presented to the 1991 meeting.

The Conference resolved 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 November 30th, 1992, by notice to the Executive Director, the Act be adopted by the Conference as a Uniform Act and recommended for enactment. (See Appendix C, page 106.)

UNIFORM LAW SECTION

MINUTES

Attendance

38 delegates were in attendance. For details see the list of delegates on page 5.

Sessions

The section held seven sessions from Monday through Friday as well as two joint sessions with the Criminal Law Section.

Distinguished Visitors

The Section was honoured by the participation of:

(a) Mr. Dwight A. Hamilton, President of the National Conference of Commissioners on Uniform State Laws;

(b) Mr. Jeremiah Marsh, 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.

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 Peter J.M. Lown as Chairman and Mel Hoyt as Secretary.

Hours of Sitting

It was resolved that the Section sit from 9:00 a.m. to 12:00 p.m. and 1:30 p.m. to 5:00 p.m. The sessions on Thursday commenced at 8:30 a.m. and on Friday at 8:00 a.m.

Agenda

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

Advance Directives

The Conference received a report from Manitoba, presented by Mr. Jeff Schnoor, the Executive Director of the Manitoba Law Reform Commission, on the topic of the "Formal Validity and Recognition of Advance Health Care Directives". As a result of that report a drafting committee was established consisting of Messrs. Schnoor, Rattenbury, Richard and Spakowski. That committee took the principles approved by the Conference and produced for approval annotated sections relating to the recognition and formal requirements of advance directives.

RESOLVED

That the section approve the annotated sections and that the annotated sections be published in the proceedings. (See Appendix D, page 245.)

Jurisdiction and Transfer

The Conference received a report from the working group of Messrs. Lown, Close, and the Principal Researcher, Professor Joost Blom. The report set out principles for review by the Conference which principles were amended during the course of the week's deliberations.

RESOLVED

1. That the section adopt the principles for drafting of a statute and that the principles as amended be published in the proceedings. (See Appendix E, page 247.)

2. That the working group continue its activity in preparing an annotated statute for review at the 1993 Conference.

3. That the section record a vote of gratitude to Master John Horn of the Supreme Court of British Columbia for the work that was done in the Study Paper on Jurisdiction and upon which the section placed great reliance.

Cost of Credit

The section received a report from the Alberta Commissioners with Mr. Richard Bowes as the Principal Researcher, setting out 28 principles for the drafting of an annotated draft statute on the topic of Cost of Credit Disclosure.

RESOLVED

1. That the principles be published in the Proceedings of the Conference. (See Appendix F, page 260.)

2. That the section create a review group to assist in preparation of an annotated draft statute, including suggested changes to the Interest Act, for review at the 1993 Conference.

Children's Evidence

The Section received a report from the Ontario Commissioners setting out options for standards to govern the admissibility of evidence of children in civil matters.

RESOLVED

1. That the section adopt the recommendations of the Ontario Commissioners, as elaborated in discussion, with respect to competency of child witnesses and corroboration of the evidence of child witnesses.

2. That the principles, in summary form, be published in the Proceedings. (See Appendix G, page 295.)

Documents of Title

The section received an interim report from the Alberta Commissioners and approved the continuing work for presentation of an annotated draft Act to the 1993 Conference.

Liens

The section received a report from the Alberta Commissioners outlining models for action on the matter of non-possessory liens.

RESOLVED

That the section establish a working group to review the report of the Alberta Commissioners.

Private International Law Report

The section received a report from its Private International Law Committee and from the Department of Justice.

RESOLVED

1. That the section commence work on the necessary legislation arising out of the conventions on factoring and leasing, adoption and evidence.

2. That the report of the Committee and of the Department of Justice be published in the proceedings. (See Appendix H, page 303.)

Trade Marks

The section received a report outlining problems arising from the concurrent operation of corporation statutes relating to corporate names and the Trademark Acts dealing with trademarks adopted by corporate entities.

Nominating Committee's Report

Mr. John Gregory was elected Chairman of the Uniform Law Section for the year 1992-93.

Steering Committee's Report

Peter J.M. Lown gave a report on the activities of the Steering Committee for the year 1991-92. In addition to the items already under consideration by the Committee it was suggested that the topic of Provincial Aspects of Civil Juries be examined.

Canada - U.S. Liaison Committee's Report

The section received a joint report from the co-Chairman of the Liaison Committee, Mr. Marsh and Mr. Lown relating to the activities of the Committee and strategies for closer cooperation between the two Conferences.

Close of Meeting

A special tribute was paid to the Chairman, Professor Peter J.M. Lown, for his outstanding contribution to the research agenda and the meetings of the section. There being no further business, the meeting was declared closed.

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Note re Uniform Enforcement of Canadian Judgments Act:

In the 1991 Proceedings, the version of the Uniform Enforcement of Canadian Judgments Act did not include the commentaries. For convenient reference, the Uniform Act is again being printed in these proceedings including the commentaries. (See Appendix I, page 318.)

CRIMINAL LAW SECTION

MINUTES

Attendance

A total of 27 delegates attended the meetings of the Criminal Law Section of the Uniform Law Conference held in Corner Brook, Newfoundland.

Opening

Carol Snell presided as Chair and Fred Bobiasz acted as Secretary for the Meetings of the Criminal Law Section of the Uniform Law Conference. The Section convened to order on Monday, August 10, 1992. The heads of each delegation introduced the commissioners attending with them.

Report of the Chair

The Section considered 32 resolutions. Thirty one had been submitted in advance and one was proposed from the floor. Of the 32 resolutions considered, 26 were adopted as proposed or as amended, 5 were defeated and 1 was withdrawn.

Two papers submitted by the Department of Justice were discussed. One dealt with the advisability of establishing a repository of DNA identification evidence and the other with Visible Minority Representation on the Criminal Jury.

During the discussion of the DNA paper, the Section was informed that the Uniform Law Section was considering a research project relating to DNA issues in the civil context. It was suggested that an effort be made to have both criminal and civil issues combined in that research project. It was agreed that Michael Dambrot and the next Chair of the Section liaise with the Conference Executive to explore the possibility of a joint project.

During the discussion of the Jury paper, it was proposed that the Uniform Law Section be asked to consider a joint study to develop a set of national standards for the out-of-court selection of potential jurors and the in-court selection of jurors in civil matters.

The senior federal delegate reported on the resolutions adopted in 1991. Of the 30 resolutions, two have been implemented and 22 have been identified for inclusion in anticipated legislative initiatives. The remaining six are under active review.

The Chair reviewed developments in the past year and noted that the Supreme Court of Canada relied on a recent resolution in support of its decision in R. v. Clunas (February, 1992) and that a number of other resolutions were implemented in legislation tabled, or passed, in the past year.

She also identified the few remaining resolutions from 1987-1990 which have either not been implemented or for which there has been no indication of likely implementation. Jurisdictions indicated that they were still interested in their implementation and declined an invitation to consider withdrawing them. During this review, it was noted that a resolution calling for a study on sentences for drug trafficking convictions in relation to offences involving youths should have been directed to Canada's Drug Strategy Secretariat. The Secretary was instructed to do this.

The Chair made available copies of a chart outlining resolutions from 1982 to 1986. Delegations were invited to review unimplemented resolutions with a view to indicating whether or not there was continued interest in them.

Certain matters relating to the Rules of Procedure were discussed. It was agreed that the dates for provision and distribution of agenda items and materials be advanced in order to enable delegates to have sufficient time to prepare. The relevant rule with the changes highlighted now reads:

3. *Agenda and supplementary agenda*

3.1 Senior delegates shall present the agenda items sponsored by their delegations during the deliberations of the Criminal Law Section; a senior delegate moving a resolution shall orally state the resolution or amended resolution before a vote is taken.

3.2 The agenda shall be composed of agenda items submitted with the relevant agenda materials to the secretary on or before May 31.

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

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

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

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

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

It was also agreed that the Rules would be amended to replace the word "chairman" with "chair".

The Chair also reminded delegates of Rule 8 which reads:

8. *Summary*

Delegations which present a resolution which is adopted by the Section shall summarize the debate on the resolution and forward the summary to the Secretary within 60 days of the close of the Conference.

The Section adopted two Special Motions. The first noted with pleasure appointments to the bench of two former members, and requested the Chair to forward congratulations to Judges Ellen Gunn and Gilles Létourneau. The second re-echoed previous motions noting the absence of the Quebec delegation but hoping for its participation in the work of the ULC in the near future.

The Section also wished to record its thanks to Michael Zigayer for his exemplary work as Secretary over the previous 5 years.

Closing

The nominating committee recommended that Robert Murray of New Brunswick be elected Chair for the 1993 meetings. Mr. Murray, upon being elected, thanked the Chair on behalf of all the delegates for her efforts in making this such an enjoyable and worthwhile conference and noted the high standard which would now have to be met.

RESOLUTIONS

I - ALBERTA

Item 1

Driving Prohibition Orders

That section 259 be amended to make it clear that the prohibition commences when the accused is released from prison:

Section 259(1) Where an offender is convicted of an offence committed under section 253 or 254 or discharged under section 736 of an offence committed under section 253 and, at the time of the offence was committed or, in the case of an offence committed under section 254, within the two hours preceding that time, was operating or had the care or control of a motor vehicle, vessel, aircraft or railway equipment or was assisting in the operation of an aircraft or of railway equipment, the court that sentences the offender shall, in addition to any other punishment that may be imposed for that offence, make an order prohibiting the offender, **when**

finally released from imprisonment, from operating a motor vehicle on any street, road, highway or other public place, or from operating a vessel, aircraft or railway equipment, as the case may be,**except in the case of an intermittent sentence in which case the prohibition will commence upon the imposition of sentence, ...**

NOTE: For the purposes of this resolution the phrase "release from imprisonment" has the same meaning as provided in section 100(3).

(Carried: 14-5-4)

Item 2

Jurors

That the Criminal Code be amended to allow in the case of long trials that a properly constituted jury consist of 8 or more members.

That the Criminal Code be amended to allow for the continuation of the jury after selection and before being sworn to try the case where one or two jurors are unable to act after being selected.

PROPOSED AMENDMENTS

1. **Section 644(1) After a jury has been selected but before they are sworn,** and the judge is satisfied that a juror should not, by reason of illness or other reasonable cause, continue to act the judge may discharge the juror.

(Carried 10-8-5)

2. **Section 644(3) Notwithstanding subsection (2), where a trial has continued for more than 30 days the jury shall, unless the judge otherwise directs, and if the number of jurors is not reduced below eight, be deemed to remain properly constituted for all purposes of the trial and the trial shall proceed and a verdict may be given accordingly.**

(Defeated: 5-12-7)

Item 3

The Defence of Duress

That **section 17** be amended to exempt the offence of kidnapping from the application of the defence of duress.

(Carried: 14-0-10)

Item 4

Conditions on Persons Denied Judicial Interim Release

That the Criminal Code be amended to enable a justice, judge or a judge of the court of appeal on application of the Crown, to impose "no-contact" conditions on an accused denied judicial interim release and to provide for a penalty provision for breach of condition.

(Carried: 17-5-1)

II - BRITISH COLUMBIA

Item 1

Reading of a Riot Act Proclamation by a Justice

That section 67 be amended to delete the word "justice".

(Carried: 13-0-6)

Item 2

Appeal Against the Finding of a Trial Judge that that person is a Dangerous Offender

That a provision be incorporated in section 759 permitting a person found to be a dangerous offender, to appeal that finding.

(Carried: 21-0-2)

Item 3

Empowering the Court of Appeal to Remit a Matter Back to a Trial Court for Sentencing

Amend section 687(1) so that clause (b) is renumbered clause (c), and a new clause (b) be incorporated, worded:

(b) set aside the sentence and remit the matter back to the trial court for resentencing;

Amend section 679(7) in order to deal with bail pending resentencing, as follows:

679(7) Where, with respect to any person, the Court of Appeal or the Supreme Court of Canada orders a new trial or new hearing or remits a matter to the trial court for resentencing or the Minister of Justice gives a direction or makes a reference under section 690, this section applies to the release or detention of that person pending the new trial or new hearing or resentencing or the hearing and determination of the reference, as the case may be, as though that person were an appellant in an appeal described in paragraph (1)(a).

(Defeated: 2-16-2)

Item 4

Use of a Forged Credit Card

That section 324(1)(d) be amended to read:

(d) uses a credit card that he knows has been revoked, cancelled, altered or forged...

(Carried: 23-0-0)

III - NEW BRUNSWICK

Item 1

Disclosure of Young Offender Records

That section 45.2 of the Young Offenders Act be amended to allow for disclosure of records in the custody of the Archivist for the purpose of police investigations into criminal allegations involving young persons as victims in a custodial setting.

(Defeated: 2-13-8)

IV - NOVA SCOTIA

Item 1

Improving the Response to Domestic Violence - Redesignation as Dual Offences

Amend section 264.1(1)(a), section 267 and section 279(2) of the Criminal Code by redesignating these offences as dual offences.

(Carried: 17-0-7)

Item 2

In Rem Proceedings Respecting Gaming Machines

Amend the opening words of section 199(1) of the Criminal Code by deleting the words:

"A justice who receives from a peace officer a report in writing that he believes on reasonable grounds".

and substituting:

"A justice who is satisfied by information on oath in Form (__) that there are reasonable grounds to believe".

(Carried: 17-0-7)

Item 3

Consecutive Sentences of Imprisonment

Amend section 717(4) of the Criminal Code to permit an unfettered power in a sentencing judge to impose consecutive sentences where warranted.

(Carried: 18-3-2)

Item 4

Young Offender Statements

Amend section 56 of the Young Offenders Act to provide for either judicial discretion or the removal of the necessity of a written waiver.

(Defeated: 5-10-8)

Item 5

Consecutive Dispositions under the Young Offenders Act

It is recommended that section 20(3), (4) and (4.1) of the Young Offenders Act as well as section 717(4)(a) of the Criminal Code be amended to eliminate the artificial limitations imposed upon judges to carefully analyze the sequence of events to determine whether or not dispositions can be consecutive. It is recommended that any judge imposing disposition after another judge should be in a position to impose a consecutive disposition with the principle of totality being paramount.

(Carried: 18-4-3)

V - ONTARIO

Item 1

The Need for Uniformity in the Definition of "Attorney General" in Various Sections of the Criminal Code

That the Federal Government commence to review all sections in the Criminal Code where an Attorney General's or Solicitor General's consent or permission is required to determine the appropriate phrase that should appear in each of those sections. It is also recommended that a review of the definition of Attorney General, but more particularly the phrase lawful deputy be undertaken to clarify exactly who is encompassed by that phrase. This will avoid unnecessary Court challenges on a matter which is technical in reality, but which could cause a conviction to be set aside if the Court determines that the appropriate person did not consent.

(Carried: 22-0-0)

Item 2

Concurrent/Consecutive Sentences

To amend section 717 of the Criminal Code to provide that any sentence of imprisonment including a sentence in default of payment of a fine is deemed to be a consecutive sentence to any other sentence currently being served or any other sentence imposed at the same time unless the sentencing judge orders that the sentence be concurrent.

(withdrawn)

Item 3

Executing Search Warrants at Night

1. Amend section 487 and section 487.1 to provide that where the applicant seeks to have the warrant executable at night, the information and support thereof shall state the grounds for such request.

2. Amend section 488 of the Criminal Code to provide that a warrant shall be executed by day unless the justice is satisfied that there are reasonable grounds to believe that it is in the public interest to have the warrant executed at night and endorses the warrant to permit its execution by night.

(Carried: 23-0-1)

Floor Amendment:

3. That the previous recommendation be made applicable to searches made under all warrants issued pursuant to federal criminal statutes.

(Carried: 23-0-1)

Item 4

Pre-Conditions of Admissibility for Statements Given by Young Persons

Amend section 56 of the Young Offenders Act to specifically provide that its application is restricted to the admissibility of statements of young persons who are under the age of 18 at the time of the taking of the statement.

(Carried: 11-3-10)

Item 5

Proof of Age

Amend the Criminal Code (or the Canada Evidence Act) to specifically provide that, in the absence of evidence to the contrary, evidence given by a witness as to his or her date of birth is proof of the date of birth of that person.

(withdrawn)

Alternative Recommendation:

Evidence of a witness as to his or her date of birth is admissible as evidence of the date of birth of the witness.

(Carried: 23-1-0)

Alternative Recommendation:

A birth or baptismal certificate or any other reliable record or a copy thereof purporting to be a certified copy of such record is evidence of the date of birth of the person named in the certificate or copy.

(Carried: 20-0-5)

Item 6

Unlawful Entry into a Dwelling House

That section 349 and section 348(1)(e) be made hybrid offences and that the maximum term for section 348(1)(e), when prosecuted by indictment, be 10 years.

(Carried: 19-0-6)

Item 7

Firearms, etc., Prohibition Orders

1. That section 100 be amended to require the clerk of the court to read out a mandatory warning to the effect that upon conviction, the accused party is liable to a firearms ban of a period provided for by the Criminal Code. Such a warning is presently given at the beginning of Impaired Driving/Over 80 trials, alerting the accused that upon conviction his or her licence will be suspended under both the Criminal Code and the Highway Traffic Act of Ontario.

(withdrawn)

2. That section 100 be amended to require an accused who has received a firearms ban to enter into a formal order of prohibition (akin to an accused entering into a probation order).

(Carried: 13-0-11)

3. That section 100(13) be amended to require an accused who received a firearms ban to surrender all requisite materials (i.e., firearms, ammunition, explosives, etc.) within forty-eight hours of the imposition of the order.

(Defeated: 5-15-4)

VI - SASKATCHEWAN

Item 1

Adjournments of Bail Hearings

That section 516 be re-drafted to ensure that the specification of clear days would be construed to mean clear days between the happening of the two events - the date of the adjournment and the date adjourned to.

(Defeated: 6-14-3)

Item 2

Gang Rape

That section 272(d) be repealed and a new section created for the offence of gang rape. The offence should carry a maximum life penalty.

(Defeated: 1-18-3)

Item 3

Intimidation

That section 423(c) and (f) be redrafted to prohibit the activities listed therein, where the person knew or was reckless as to whether his or her actions would harass or cause fear to the complainant.

(Carried: 22-0-0)

Item 4

Limitation Period for Institution of Summary Conviction Proceedings

That section 786 of the Criminal Code be amended so as to allow upon application by the crown with the consent of the accused the crown to proceed summarily (on hybrid offences of a continuing nature) where the subject matter of the proceeding is instituted no more than six months after the time when the subject matter of the proceedings "concluded".

(Carried: 18-0-4)

VII - CANADA

Item 1

Power of a Justice at a Preliminary Inquiry to Order a Change of Venue

It is recommended that the Criminal Code be amended to permit the justice, presiding at a preliminary inquiry, on application of any of the parties, to order the preliminary inquiry to be held in another territorial division when it is in the better interests of justice to do so.

Any change of venue relating to the trial, even after a change of venue of the preliminary inquiry, would continue to be governed by section 599 of the Criminal Code.

(Carried: 24-0-0)

Item 2

Appellate Rights in Criminal Proceedings

To request that the Department of Justice conduct a general review of appellate rights in respect of pretrial, interlocutory and other matters arising in the context of a criminal trial, and make proposals for change, if appropriate, to the existing scheme.

(Carried: 24-0-0)

Item 3

Taking Evidence by Way of Satellite, TV or Other Technical Link

That the Criminal Code be amended to permit, with appropriate safeguards, the granting of orders to hear the evidence of a witness by way of television, satellite, or other technological link.

(Carried: 23-1-0)

Item 4

Making, Having or Dealing in Instruments for Counterfeiting, Altering or Falsifying Credit Cards

Include in section 342 a new subsection or create a new section relating to instruments or materials used in relation to illegitimate credit cards similar to section 458 - making, having or dealing in instruments for counterfeiting.

(Carried: 22-0-0)

Item 5

Trafficking in Computer System Passwords

1. That section 342.1 of the Criminal Code be amended to include a new offence that would prohibit the fraudulently and without colour of right, trafficking in a password or similar information by which a computer system may be accessed without authorization.

(Carried: 23-0-0)

2. That section 342.1 of the Criminal Code be amended to include definitions of a) "password" that would mean "data or information by which a computer system may be accessed"; and, b) "traffic" that would mean "to transfer or otherwise dispose of a password, or to obtain control of a password with intent to transfer or dispose of that password".

(Carried: 18-0-5)

VIII - CRIMINAL LAW SECTION

Item 1

Reference of the Uniform Mental Health Act to the Uniform Law Section, Requesting Reconsideration

That the Criminal Law Section refer the Uniform Mental Health Act to the Uniform Law Section for reconsideration of this legislation in light of Criminal Code amendments enacted by Statutes of Canada, 1991, c.32 and Charter implications.

(Carried: 21-0-1)

IX - PROPOSED FROM THE FLOOR

Item 1

Appearance by Accused

That section 650(2) be amended and section 537(1)(j) be added to permit the court to allow an accused to appear by counsel, where the accused and the prosecutor have consented.

(Carried: 18-1-2)

SECTION DU DROIT CRIMINEL

COMPTE RENDU

Présence

Vingt-sept délégués assistent à la réunion de la Section du droit criminel de la Conférence sur l'uniformisation des lois, qui a lieu à Corner Brook (Terre-Neuve).

Mot D'ouverture

Carol Snell agit comme présidente de la réunion et Fred Bobiasz, comme secrétaire. La Section a entrepris ses travaux lundi, le 10 mai 1992. Le chef de chacune des délégations présentent les personnes qui l'accompagnent.

Rapport du Président

La Section se penche sur 32 résolutions. Trente et une de celles-ci ont été soumises avant la réunion et l'autre est présentée au cours de celle-ci. Vingt-six résolutions sont adoptées dans leur forme originale ou dans une forme modifiée, cinq sont rejetées et une est retirée.

Deux documents présentés par le ministère de la Justice -- l'un sur l'opportunité de créer une banque des données obtenues par l'analyse de la structure de l'ADN, et l'autre, sur la représentation des minorités visibles au sein des jurys dans les procès criminels -- sont examinés.

Au cours des discussions relatives au document portant sur la banque de données, la Section est informée que la Section du droit uniforme examine la possibilité de mener un projet de recherche concernant les questions relatives à l'ADN qui se posent en matière civile. Il est proposé qu'un effort soit fait afin que les questions soulevées en matière civile et en matière pénale soient examinées dans le cadre de ce projet de recherche. Il est convenu que Michael Dambrot et le prochain président de la Section assurent la liaison avec l'exécutif de la Conférence en ce qui concerne la possibilité de mener un projet conjoint.

Il est proposé, au cours des discussions relatives au document sur le jury, que l'on demande à la Section du droit uniforme de se pencher sur la possibilité d'entreprendre une étude conjointe dans le but d'élaborer des normes nationales applicables à la sélection du jury à l'extérieur du tribunal et à la sélection du jury à l'intérieur du tribunal en matière civile.

Le principal délégué du gouvernement fédéral fait le point sur les 30 résolutions adoptées en 1991. Deux de ces résolutions ont été mises en oeuvre et 22 feront l'objet de projets de loi. Les six autres sont encore à l'examen.

La présidente passe en revue les faits nouveaux survenus au cours de la dernière année. Elle souligne que la Cour suprême du Canada s'est fondée sur une récente résolution de la Conférence pour rendre sa décision dans l'affaire R. c. Clunas (février 1992) et que des lois faisant suite à de nombreuses résolutions ont été soit déposées, soit adoptées au cours de la dernière année.

Elle mentionne les quelques autres résolutions de 1987 à 1990 qui n'ont pas encore été mises en oeuvre ou qui ne semblent pas devoir l'être. Certaines administrations soulignent qu'elles souhaitent toujours la mise en oeuvre de ces résolutions et rejettent la possibilité qu'elles soient retirées. Une résolution visant l'examen des peines infligées aux adolescents reconnus coupables de trafic de drogue devrait être portée à l'attention du secrétariat de la Stratégie nationale antidrogue. Le secrétaire reçoit des instructions à ce sujet.

La présidente distribue des exemplaires d'un tableau des résolutions adoptées de 1982 à 1986. Les délégations sont invitées à faire savoir si les résolutions qui n'ont pas encore été mises en oeuvre le seront dans l'avenir.

La Section discute de certaines questions concernant les règles de procédure. Il est convenu d'avancer la date de présentation des points que l'on souhaite voir être mis à l'ordre du jour et la date de distribution de celui-ci de façon à laisser aux délégués suffisamment de temps pour se préparer. La règle applicable se lit maintenant comme suit (les modifications qui y ont été apportées sont soulignées):

3. Ordre du jour et ordre du jour supplémentaire

3.1 Les délégués en chef soumettent les points que leur délégation souhaitent voir être mis à l'ordre du jour des travaux de la Section du droit criminel; un délégué en chef qui propose une résolution doit énoncer oralement cette résolution ou une version modifiée de celle-ci avant qu'un vote puisse avoir lieu.

3.2 Seuls les points qui auront été soumis au secrétaire, avec les documents pertinents, au plus tard le 31 mai peuvent être mis à l'ordre du jour.

3.3 Le secrétaire envoie les documents pertinents aux délégués en chef avant le 1er juillet.

3.4 L'ordre du jour supplémentaire est composé des points soumis au secrétaire, avec les documents pertinents, après le 1er juin mais avant le 1er juillet.

3.5 Le secrétaire peut charger un délégué en chef qui ajoute un point à l'ordre du jour supplémentaire de la distribution, aux autres délégations, des documents pertinents

3.6 Les points mis à l'ordre du jour supplémentaire ne sont discutés que si le vote d'une majorité de délégués l'autorise

3.7 Chaque délégué en chef peut, si le vote d'une majorité de délégués le permet, ajouter des points à l'ordre du jour ou à l'ordre du jour supplémentaire.*

(* Version française non officielle)

La présidente signale également l'article 8 aux délégués :

8. Résumé

Les délégations qui soumettent une résolution adoptée par la Section résument les délibérations portant sur cette résolution et transmettent ce résumé au secrétaire dans les 60 jours suivant la clôture de la réunion.*

(* Version française non officielle)

La Section adopte deux motions spéciales. Par la première, elle accueille avec plaisir la nomination à la magistrature de deux anciens membres, M^me^ Ellen Gunn et M. Gilles Létourneau, et demande à la présidente de leur transmettre ses félicitations. La deuxième reprend une motion déjà adoptée dans le passé signalant l'absence de la délégation du Québec lors des délibérations et espérant qu'elle participera aux travaux de la Conférence dans un proche avenir.

En outre, la Section remercie Michael Zigayer pour son travail exemplaire pendant les cinq ans où il a agi comme secrétaire.

Conclusion

Le comité de mise en candidature recommande que M. Robert Murray, du Nouveau-Brunswick, soit élu président de la réunion de la Section qui aura lieu en 1993. M. Murray remercie la présidente au nom de tous les délégués pour ses efforts en vue de faire de cette réunion une rencontre agréable et utile et souligne le travail de haute qualité qu'il sera maintenant tenu d'accomplir.

RÉSOLUTIONS

I - ALBERTA

Point 1

Ordonnance d'interdiction de conduire

Modifier l'article 259 du Code criminel pour préciser que l'interdiction prend effet au moment où la personne est remise en liberté :

259(1) Lorsqu'un contrevenant est déclaré coupable d'une infraction prévue à l'article 253 ou 254 ou absous sous le régime de l'article 736 d'une infraction prévue à l'article 253 et qu'au moment de l'infraction, ou dans les deux heures qui la précèdent dans le cas d'une infraction prévue à l'article 254, il conduisait ou avait la garde ou le contrôle d'un véhicule à moteur, d'un bateau, d'un aéronef ou de matériel ferroviaire, ou aidait à la conduite d'un aéronef ou de matériel ferroviaire, le tribunal qui lui inflige une peine doit, en plus de toute autre peine applicable à cette infraction, rendre une ordonnance lui interdisant de conduire un véhicule à moteur dans une rue, sur un chemin, une grande route ou dans un autre endroit public, un bateau, un aéronef ou du matériel ferroviaire :

a) [...];
b) [...];
c) [...].

Cette ordonnance entre en vigueur à la libération de l'emprisonnement du contrevenant sauf si une peine discontinue a été infligée, auquel cas elle prend effet au moment de l'infliction de la peine.

REMARQUE : Pour les fins de cette résolution, l'expression «libération de l'emprisonnement» a le sens prévu au paragraphe 100(3) du Code.

(Adoptée : 14-5-4)

Point 2

Jurés

Modifier le Code criminel de façon à prévoir que, pour les longs procès, un jury de huit personnes ou plus est régulièrement constitué.

Modifier le Code criminel de façon à permettre la poursuite du procès devant jury après que celui-ci a été constitué mais avant que les jurés ne prêtent serment, lorsqu'un ou deux jurés ne peuvent plus continuer à siéger.

MODIFICATIONS PROPOSÉES

1. **644(1)** Lorsque, **après que le jury a été constitué mais avant que les jurés ne prêtent serment**, le juge est convaincu qu'un juré ne devrait pas, par suite de maladie ou pour une autre cause raisonnable, continuer à siéger, il peut le libérer.

(Adoptée : 10-8-5)

2. **644(3) Par dérogation au paragraphe (2), lorsqu'un procès s'étend sur plus de 30 jours, le jury est considéré, à toutes les fins du procès, comme demeurant régulièrement constitué, à moins que le juge n'en ordonne autrement et à condition que le nombre des jurés ne soit pas réduit à moins de huit, et le procès se continuera et un verdict pourra être rendu en conséquence.**

(Rejetée : 5-12-7)

Point 3

Défense de contrainte

Modifier **l'article 17** du Code criminel pour exclure l'enlèvement de l'application de la défense de contrainte.

(Adoptée : 14-0-10)

Point 4

Conditions imposées aux personnes auxquelles la mise en liberté provisoire par voie judiciaire est refusée

Modifier le Code criminel pour permettre à un juge de paix, à un juge ou à un juge d'une cour d'appel saisi d'une demande présentée par la Couronne d'imposer des conditions à l'accusé à qui la mise en liberté provisoire par voie judiciaire a été refusée en ce qui concerne les contacts avec certaines personnes et de prévoir une peine en cas de violation de ces conditions.

(Adoptée : 17-5-1)

II - COLOMBIE-BRITANNIQUE

Point 1

Proclamation de l'émeute par un juge de paix

Modifier l'article 67 du Code criminel de façon à supprimer le terme «juge de paix».

(Adoptée : 13-0-6)

Point 2

Appel à l'encontre de la déclaration du juge de première instance selon laquelle le délinquant est dangereux

Insérer, à l'article 759 du Code criminel, une disposition permettant aux personnes déclarées «délinquants dangereux» d'en appeler de la déclaration du juge à cet effet.

(Adoptée : 21-0-2)

Point 3

Habilitation de la cour d'appel de renvoyer une affaire devant le tribunal de première instance pour détermination de la peine

Modifier le paragraphe 687(1) du Code criminel de façon à renuméroter l'actuel alinéa b) en alinéa c) et insérer un nouvel alinéa b), dont le libellé serait le suivant :

b) soit suspendre l'application de la sentence et renvoyer l'affaire devant le tribunal de première instance pour révision de la sentence;

Modifier le paragraphe 679(7) du Code criminel de façon que la question de la mise en liberté puisse être tranchée au moment de la révision de la sentence. La modification serait libellée comme suit :

679(7) Lorsque, relativement à une personne, la cour d'appel ou la Cour suprême du Canada ordonne un nouveau procès ou une nouvelle audition ou renvoie une affaire devant le tribunal de première instance pour révision de la sentence ou que le ministre de la Justice prend une ordonnance ou fait un renvoi, en vertu de l'article 690, le présent article s'applique à la mise en liberté ou à la détention de cette personne en attendant soit le nouveau procès ou la nouvelle audition, soit l'audition du renvoi et la décision y relative, selon le cas, comme si cette personne était un appelant dans un appel visé à l'alinéa (1)a).

(Rejetée : 2-16-2)

Point 4

Utilisation de cartes de crédit falsifiées

Modifier l'alinéa 342(1)d) du Code criminel de façon à ce qu'il prévoit :

d) utilise une carte de crédit qu'il sait annulée ou falsifiée,

(Adoptée : 23-0-0)

II - NOUVEAU-BRUNSWICK

Point 1

Communication des dossiers concernant des jeunes contrevenants

Modifier l'article 45.2 de la Loi sur les jeunes contrevenants de façon à permettre la communication des dossiers se trouvant entre les mains d'archivistes à des fins d'enquêtes policières sur une allégation d'infraction commise à l'égard d'adolescents dans un établissement de garde.

(Rejetée : 2-13-8)

IV - NOUVELLE-ÉCOSSE

Point 1

Amélioration de la réponse à la violence familiale - Reclassification à titre d'infractions mixtes

Modifier l'alinéa 264.1(1)a), l'article 267 et le paragraphe 279(2) du Code criminel de façon à prévoir que les infractions visées sont des infractions mixtes.

(Adoptée : 17-0-7)

Point 2

Procédures *in rem* visant les machines de jeux

Supprimer, au paragraphe 199(1) du Code criminel, les mots suivants :

«Un juge de paix qui reçoit d'un agent de la paix un rapport écrit déclarant qu'il a des motifs raisonnables de croire»

et les remplacer par :

«Un juge de paix qui est convaincu sur la foi d'une dénonciation sous serment selon la formule __ qu'il existe des motifs raisonnables de croire».

(Adoptée : 17-0-7)

Point 3

Peines d'emprisonnement consécutives

Modifier le paragraphe 717(4) du Code criminel de façon à accorder au juge qui détermine la peine le pouvoir inconditionnel d'infliger des peines consécutives lorsque les circonstances le justifient.

(Adoptée : 18-3-2)

Point 4

Déclarations des jeunes contrevenants

Modifier l'article 56 de la Loi sur les jeunes contrevenants de façon à laisser la question de l'admissibilité des déclarations à la discrétion du juge ou à supprimer l'obligation de la renonciation écrite.

(Rejetée : 5-10-8)

Point 5

Décisions consécutives aux termes de la Loi sur les jeunes contrevenants

Modifier les paragraphes 20(3), (4) et (4.1) de la Loi sur les jeunes contrevenants ainsi que l'alinéa 717(4)a) du Code criminel de façon à supprimer les restrictions artificielles auxquelles le juge est soumis lorsqu'il analyse l'ordre chronologique des

événements en vue de déterminer s'il convient d'infliger des peines consécutives ou non. Il est recommandé que le juge qui détermine la peine après qu'une autre peine a été infligée par un autre juge puisse infliger des peines consécutives en se fondant d'abord et avant tout sur le principe de la totalité.

(Adoptée : 18-4-3)

V - ONTARIO

Point 1

La nécessité d'uniformiser la définition de «procureur général» dans les diverses dispositions du Code criminel

Que le gouvernement fédéral commence à revoir toutes les dispositions du Code criminel dans lesquelles le consentement ou la permission d'un procureur général ou d'un solliciteur général est exigé afin d'établir l'expression appropriée qui devrait figurer dans chacune de ces dispositions. Il est en outre recommandé qu'un examen de la définition de «procureur général», et plus particulièrement de l'expression «substitut légitime», soit effectué afin de clarifier qui cette expression vise expressément. Cette démarche évitera des contestations superflues devant les tribunaux sur une question technique, mais qui pourrait entraîner le rejet d'une déclaration de culpabilité si le tribunal décide que ce n'est pas la personne compétente qui a donné son consentement.

(Adoptée : 22-0-0)

Point 2

Peines concurrentes et consécutives

Modifier l'article 717 du Code criminel du Canada de façon à ce qu'il prévoit que toute peine d'emprisonnement, y compris un emprisonnement à défaut de paiement, soit réputée être une peine consécutive à une autre peine actuellement purgée ou une autre peine infligée au même moment, à moins que le juge ayant prononcé la peine ordonne que celle-ci soit concurrente.

(Retirée)

Point 3

Exécution de mandats de perquisition de nuit

1. Modifier les articles 487 et 487.1 du Code criminel pour qu'ils prévoient que si la personne demande l'exécution du mandat de nuit, la dénonciation et les documents justificatifs énoncent les motifs à l'appui d'une telle demande.

2. Modifier l'article 488 du Code criminel afin qu'il prévoit qu'un mandat soit exécuté le jour, à moins que le juge ne soit convaincu qu'il existe des motifs raisonnables de croire qu'il est dans l'intérêt public de l'exécuter de nuit et n'en autorise l'exécution de nuit.

(Adoptée : 23-0-1)

Modification proposée au cours de la réunion:

3. Prévoir que cette résolution s'applique à toutes les perquisitions effectuées aux termes de mandats délivrés conformément à une loi fédérale en matière pénale.

(Adoptée : 23-0-1)

Point 4

Conditions préalables à l'admissibilité des déclarations faites par un adolescent

Modifier l'article 56 de la Loi sur les jeunes contrevenants de façon que son application soit expressément limitée à l'admissibilité des déclarations d'adolescents âgés de moins de 18 ans au moment de la prise de la déclaration.

(Adoptée : 11-3-10)

Point 5

Preuve de l'âge

Modifier le Code criminel (ou la Loi sur la preuve au Canada) afin qu'il soit expressément prévu qu'en l'absence de preuve contraire, la preuve présentée par un témoin relativement à sa date de naissance constitue la preuve de la date de naissance de ce témoin.

(Retirée)

Autre Recommandation Possible:

La preuve présentée par un témoin relativement à sa date de naissance constitue la preuve de la date de naissance de ce témoin.

(Adoptée : 23-1-0)

Autre Recommandation Possible:

Le certificat de naissance ou de baptême ou toute autre mention digne de foi, ou une copie de ces documents censée être une copie certifiée conforme d'une telle mention, constitue une preuve de la date de naissance de la personne nommée dans le certificat ou la copie.

(Adoptée : 20-0-5)

Point 6

Entrée illégale dans une maison d'habitation

Modifier l'article 349 et l'alinéa 348(1)e) du Code criminel pour prévoir que les infractions qu'ils visent sont des infractions mixtes et que, dans le cas de l'alinéa 348(1)e), l'acte criminel est punissable d'un emprisonnement maximal de 10 ans.

(Adoptée : 19-0-6)

Point 7

Armes à feu et ordonnances d'interdiction

1. Modifier l'article 100 du Code criminel afin que le greffier du tribunal soit tenu de lire un avertissement obligatoire selon lequel l'accusé, s'il est reconnu coupable, doit respecter une interdiction de posséder une arme à feu durant une

période prévue dans le Code criminel. Un tel avertissement est actuellement donné au début des procès pour conduite avec facultés affaiblies. En effet, la personne accusée d'avoir conduit alors que son taux d'alcoolémie était supérieur à 80 mg est informée que si elle est reconnue coupable, son permis de conduire sera suspendu en vertu du Code criminel et du Code de la route de l'Ontario.

(Retirée)

2. Modifier l'article 100 du Code criminel afin que l'accusé tenu de respecter une interdiction de posséder des armes à feu doive se soumettre à une ordonnance officielle d'interdiction (situation apparentée à celle d'un accusé qui se soumet à une ordonnance de probation).

(Adoptée : 13-0-11)

3. Modifier le paragraphe 100(13) du Code criminel pour exiger de l'accusé qui s'est vu imposer une interdiction de posséder des armes à feu qu'il remette tout le matériel requis (c'est-à-dire les armes à feu, munitions, explosifs, etc.) au plus tard quarante-huit heures après l'entrée en vigueur de l'ordonnance.

(Rejetée : 5-15-4)

VI - SASKATCHEWAN

Point 1

Ajournements des enquêtes sur le cautionnement

Modifier l'article 516 du Code criminel pour faire en sorte que la mention des jours francs soit interprétée comme signifiant les jours francs qui séparent deux événements, soit la date à laquelle est prononcé l'ajournement et la date à laquelle l'audience doit reprendre.

(Rejetée : 6-14-3)

Point 2

Viol collectif

Abroger l'alinéa 272d) du Code criminel et adopter un nouvel article qui créera l'infraction de viol collectif, dont la peine maximale sera l'emprisonnement à perpétuité.

(Rejetée : 1-18-3)

Point 3

Intimidation

Reformuler les alinéas 423c) et f) du Code criminel de façon à interdire les actes qu'ils visent lorsque la personne sait que ces actes peuvent harceler le plaignant ou lui faire peur, ou lorsqu'elle ne se soucie pas qu'il en soit ainsi.

(Adoptée : 22-0-0)

Point 4

Délai de prescription pour intenter des poursuites par procédure sommaire

Modifier l'article 786 du Code criminel de façon à prévoir que la Couronne, lorsqu'elle le demande et avec le consentement de l'accusé, peut procéder par voie de procédure sommaire (dans les cas d'infractions mixtes continues) dans les six mois suivant la date où le fait en cause «s'est terminé».

(Adoptée : 18-0-4)

VII - CANADA

Point 1

Pouvoir du juge de paix à l'enquête préliminaire d'ordonner le changement de venue

Modifier le Code criminel de façon qu'un juge de paix présidant une enquête préliminaire puisse, sur demande de l'une ou l'autre des parties lorsque la chose paraît utile aux fins de la justice, ordonner la tenue de l'enquête préliminaire dans un autre district judiciaire que celui où l'enquête préliminaire serait autrement tenue.

Tout changement de venue de procès, même lorsque l'enquête préliminaire aura été tenue dans un autre district judiciaire que celui où l'infraction serait autrement jugée, continue d'être régi par l'article 599 du Code.

(Adoptée : 24-0-0)

Point 2

Droit d'appel en matière pénale

Charger le ministère de la Justice de mener un examen général du droit d'appel en ce qui concerne les questions d'avant procès, les questions interlocutoires et d'autres questions qui surgissent dans le cadre d'un procès en matière pénale et de recommander, s'il y a lieu, des modifications au régime actuel.

(Adoptée : 24-0-0)

Point 3

Collecte d'éléments de preuve par satellite, télévision ou autre moyen technique

Modifier le Code criminel de façon à permettre la délivrance d'une ordonnance permettant de recueillir la déposition d'un témoin par communication télévisuelle, satellite ou autre moyen technique et prévoir des mesures de protection adéquates à cet égard.

(Adoptée : 23-1-0)

Point 4

Production, possession ou commerce d'instruments servant à la contrefaçon ou à la falsification de cartes de crédit

Ajouter un nouveau paragraphe à l'article 342 du Code criminel ou créer un nouvel article similaire à l'article 458 de façon à criminaliser la production, la possession et le commerce d'instruments servant à la contrefaçon ou à la falsification de cartes de crédit.

(Adoptée : 22-0-0)

Point 5

Trafic de mots de passe donnant accès à des systèmes informatiques

1. Modifier l'article 342.1 du Code criminel de façon à y inclure une nouvelle infraction qui interdirait le trafic, frauduleux et sans apparence de droit, de mots de passe et d'autres renseignements similaires donnant un accès non autorisé à un système informatique.

(Adoptée : 23-0-0)

2. Modifier l'article 342.1 du Code criminel de façon à y définir : a) «mot de passe» comme étant une donnée ou un renseignement donnant accès à un système informatique; et b) «trafic» comme étant la communication ou la transmission d'un mot de passe ou l'usurpation d'un mot de passe dans l'intention de le communiquer ou d'autrement le transmettre.

(Adoptée : 18-0-5)

VIII - SECTION DU DROIT CRIMINEL

Point 1

Renvoi à la Section du droit uniforme de la Loi uniforme sur la santé mentale pour réexamen

Que la Section du droit criminel renvoie la Loi uniforme sur la santé mentale à la Section du droit uniforme pour réexamen à la lumière de la Charte et des dispositions du Code criminel, tel que modifié par les Lois du Canada de 1991, ch. 32.

(Adoptée : 21-0-1)

IX - RÉSOLUTION PROPOSÉE AU COURS DE LA RÉUNION

Point 1

Comparution de l'accusé

Modifier le paragraphe 650(2) du Code criminel et ajouter l'alinéa 537(1)j) afin de permettre au tribunal d'autoriser un accusé à comparaître par procureur lorsque l'accusé et le poursuivant y consentent.

(Adoptée : 18-1-2)

CLOSING PLENARY SESSION

MINUTES

Opening of Meeting

The meeting opened at 12:15 p.m. on Friday, August 14, with Daniel Préfontaine, Q.C. in the chair and Mel Hoyt, Q.C. as secretary.

Criminal Law Section

The Chairperson, Carol Snell, reported on the work of the Section. The minutes of the Section are set out at page 45.

The Section expressed a) its regret at the absence of the Quebec delegation, and b) its pleasure at the appointment of two of the Criminal Law Section members to the judiciary, Gilles Létourneau to the Federal Court of Appeal and Ellen Gunn to the Saskatchewan Court of Queens Bench.

Robert Murray was elected Chairperson of the Section for 1992-93.

The Section thanked Newfoundland for the great effort put into giving us a most successful and enjoyable week.

Uniform Law Section

The Chairperson, Peter J. M. Lown, reported on the work of the Section. The minutes of that Section are set out at page 41.

The Section was assisted by exceptionally well prepared and comprehensive presentations by Jeff Schnoor, Joost Blom, Richard Bowes and John Gregory.

John Gregory was elected Chairperson of the Section for 1992-94.

Resolutions Committee's Report

Chris Curran, Dianne Smith, Susan Amrud, Tim Rattenbury and Anne-Marie Trahan, Q.C. 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 and Minister of Justice for Newfoundland, Honourable Edward Roberts, Q.C., who spoke at the banquet on Thursday evening.

2. The city and people of Corner Brook, represented by Mayor Ray Pollett, who welcomed us at the opening session.

3. The Department of Justice, Province of Newfoundland which hosted the Conference and:

   (a) provided the refreshments available during the meeting;

   (b) sponsored the outing to and barbecue at Lark Harbour on Monday morning;

   (c) sponsored the buffet and evening of entertainment at the School of Fine Art, Sir Wilfred Grenfell College, Memorial University of Newfoundland on Monday evening;

   (d) made arrangements for and provided refreshments and lunch during the Boat Tour of the Bay of Islands on Tuesday morning;

   (e) sponsored the sports evening and the barbecue at Blomidon Golf and Country Club on Tuesday evening;

   (f) sponsored a full day outing to Gros Morne National Park on Wednesday which included a bus tour to various sites of scenic and historic interest, and refreshments;

   (g) hosted the banquet Thursday evening;

   (h) provided a van to transport companions to events of their choice on various days;

   (i) provided various support services.

4. The Organizing Committee and their many assistants, including Chris Curran, Dianne Smith, Mary Mandville, Tom Mills, Lisa Byrne, Gale Welsh, John Cummings, Lynn Spracklin, Q.C., Lorna Proudfoot, Richard Gosse, Roger Mitchell, Kari-Anne Pike, Diane O'Brien, Margie Linehan, Dorothy Oliver, Shirley Bradley, Rhonda Steward, a contingent of babysitters and various personnel in the Offices of the Queens Printer, Tourism Distribution and Participation Canada 125.

5. David (Smokey) Elliott, Al Pittman, Lorne Pardy, Peter Soucy, Greg Downey, Jim Payne, Wayne Rogers, Vicki Crocker and the Driftwood Band who provided inspiration as well as dramatic, comedic and musical entertainment throughout the week.

6. Pat Pye, Ed Flood and other officials with the City of Corner Brook who assisted with various activities throughout the week, including the sports evening on Tuesday.

7. The City of Corner Brook which provided the wine for the reception following the Opening Plenary Session.

8. The Law Society of Newfoundland and the City of Corner Brook which provided the wine for the banquet on Thursday evening.

9. Joseph Hutchings and Carl Thompson of the law firm of Poole, Althouse, Clark Thompson and Thomas, and Nicholas Avis of the law firm Martin, Avis and King who assisted with planning and various activities throughout the week.

10. Dwight Hamilton, President of the Executive Committee of the National Conference of Commissioners of Uniform State Laws (NCCUSL) who attended the Conference for the second time with his wife, Elizabeth.

11. Jeremiah Marsh, Chairman of the Committee on Liaison with Canada and International Organizations and Co-Chairman of the Joint Committee on Co-operation with Uniform Law Conference of Canada and the NCCUSL who attended the Conference for the third time with his wife, Marietta.

12. Those who provided excellent interpretation services throughout the week, including Nancy Price, Louise Perry, Monique Seng, Daniel Pliquin, Jenny Collier and Hélène Régimbald.

13. Those who provided excellent leadership during the Conference, namely Carol Snell, Chair of the Criminal Law Section, Professor Peter Lown, Chair of the Uniform Law Section, Daniel Préfontaine, President, Basil Stapleton, Past-President and Howard Morton, Vice-President.

Future Meetings

The President announced that our meeting in 1993 will be held in Alberta. The time and place will be announced later.

The President also announced that we have received an invitation from Prince Edward Island for the following year, 1994. The Executive Committee will be asked to follow up on that invitation.

After that, our meeting will be held in either Yukon or Ottawa.

CLOSING PLENARY SESSION

Nominating Committee's Report

The Nominating Committee for the Executive consists of Sydney Horton, Susan Amrud, John Gregory, Richard Mosley, Gérald Tremblay, Richard Hubley and Basil Stapleton, Chairman.

The Nominating Committee presented its report recommending Howard Morton, Q.C. of Toronto be elected President and Professor Peter J.M. Lown of Edmonton as Vice-President for 1992-93.

Basil Stapleton, as Past-President, thanked Daniel Préfontaine, as President, for his interest and efforts in developing and implementing the renewal process.

The New President

The gavel was handed over by Daniel Préfontaine, Q.C. to Howard Morton, Q.C.

The new President said the new Executive will have several difficult decisions to make about the future of the Conference. He hoped it would continue to move forward as it has over the years.

Close of Meeting

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

LA SESSION PLÉNIÈRE FINALE

PROCES-VERBAL

L'ouverture de la réunion

La réunion fut ouverte à 12h15 le vendredi 14 août avec Daniel Préfontaine, c.r., à la présidence et Mel Hoyt, c.r., comme secrétaire.

La Section du droit criminel

La présidente, Carol Snell, a présenté un rapport sur le travail de la Section. Le compte rendu se trouve à la page 45.

La Section a exprimé (a) son regret devant l'absence de la délégation du Québec et (b) son plaisir devant la nomination de deux membres de la Section du droit criminel; il s'agit de Gilles Létourneau à la Cour d'appel fédérale et Ellen Gunn à la Cour du banc de la Reine de Saskatchewan.

Robert Murray fut élu président de la Section pour l'exercice 1992-93.

La Section a remercié Terre-Neuve pour tous les efforts qui furent déployés afin que cette semaine soit couronnée de succès et très agréable pour tous.

La Section de Loi uniforme

Le président, Peter J.M. Lown, a présenté un rapport sur le travail de la Section. Le Compte rendu de la Section se trouve à la page 41.

La Section fut aidée par des présentations exceptionnellement bien préparées et de grande portée données par Jeff Schnoor, Joost Blom, Richard Bowes et John Gregory.

John Gregory fut élu président de la Section pour l'exercice 1992-94.

Rapport du Comité des résolutions

Chris Curran, Dianne Smith, Susan Amrud, Tim Rattenbury et Anne-Marie Trahan, c.r., ont présenté le rapport du Comité des résolutions.

RÉSOLU que la Conférence exprime sa reconnaissance, par voie de lettre du secrétaire, aux personnes et organismes suivants:

1. le procureur général et Ministre de la justice de Terre-Neuve, l'honorable Edward Roberts, c.r., pour l'allocution qu'il a prononcé au banquet jeudi soir.

2. les citoyens de Corner Brook, représentés par le conseiller municipal Ray Pollett, qui nous ont souhaité la bienvenue lors de la séance plénière initiale.

3. le Ministère de la justice de Terre-Neuve pour son hospitalité à l'occasion de la conférence et:

   (a) les rafraîchissements qu'il a fourni au cours de la conférence;

   (b) le repas sur barbecue et l'excursion à Lake Harbour qui ont eu lieu le lundi matin;

   (c) le banquet et la fête qu'il a parrainé le lundi soir au School of Fine Art, Sir Wilfred Grenfell College, Memorial University of Newfoundland;

   (d) les préparatifs qu'il a fait, les rafraîchissements et le dîner qu'il a fourni lors de la randonnée en bateau à Bay of Islands le mardi matin;

   (e) la soirée sportive et le repas sur barbecue qu'il a parrainé au Blomidon Golf and Country Club le mardi soir;

   (f) l'excursion qu'il a parrainé au Gros Morne National Park le mercredi, comprenant des visites en autobus de divers sites d'intérêt visuel et historique ainsi que des rafraîchissements;

   (g) le banquet qu'il a donné jeudi soi;

   (h) la camionnette qu'il a fourni pour le transport des compagnes et compagnons aux activités de leur choix au cours de plusieurs jours;

   (i) les divers services de soutien qu'il a fourni.

4. le Comité organisateur et leurs nombreux aides, dont Chris Curran, Dianne Smith, Mary Mandville, Tom Mills, Lisa Byrne, Gale Welsh, John Cummings, Lynn Spracklin, c.r., Lorna Proudfoot, Richard Gosse, Roger Mitchell, Kari-Anne Pike, Diane O'Brien, Margie Linehan, Dorothy Oliver, Shirley Bradley, Rhonda Steward, les nombreuses personnes qui ont fourni des services de sons d'enfants et divers membres du personnel des bureaux de l'Imprimeur de la Reine, Tourism Distribution et Participation Canada 125.

5. David (Smokey) Elliott, Al Pittman, Lorne Pardy, Peter Soucy, Greg Downey, Jim Payne, Wayne Rogers, Vicki Crocker et le Driftwood Band qui ont fourni de l'inspiration ainsi que des spectacles dramatiques, comiques et musicaux tout au long de la semaine.

6. Pat Pye, Ed Flood et d'autres fonctionnaires de la ville de Corner Brook qui ont offert leur aide lors de diverses activités tout au long de la semaine, dont la soirée d'activité sportive le mardi.

7. la ville de Corner Brook qui a fourni le vin pour la réception qui a eu lieu suite à l'ouverture de la session plénière.

8. l'Association du barreau de Terre-Neuve et la ville de Corner Brook pour le vin qui fut servi au banquet de jeudi soir.

9. Joseph Hutchings et Carl Thompson de la firme d'avocats Poole, Althouse, Clark Thompson et Thomas et Nicholas Avis de la firme d'avocats Martin, Avis and King qui ont assisté à la planification et aux activités diverses tout au long de la semaine.

10. Dwight Hamilton, président du Executive Committee of the National Conference of Commissioners of Uniform State Laws (NCCUSL), qui était présent à la Conférence pour la seconde fois et qui était accompagné de son épouse Elizabeth.

11. Jeremiah Marsh, président du Committee on Liaison with Canada and International Organizations and Co-Chairman of the Joint Committee on Co-operation with Uniform Law Conference of Canada and the NCCUSL, qui a assisté à la Conférence pour la troisième fois et qui était accompagné de son épouse Marietta.

12. ceux qui ont fourni d'excellents services d'interprétation tout au long de la semaine, dont Nancy Price, Louise Perry, Monique Seng, Daniel Pliquin, Jenny Collier et Hélène Régimbald.

13. ceux qui ont agi en qualité de chef durant la Conférence, à savoir, Carol Snell, c.r., présidente de la Section du droit criminel, le professeur Peter J.M. Lown, président de la Section de Loi uniforme, Daniel Préfontaine, président, Basil Stapleton, ancien président et Howard Morton, vice-président.

Réunions futures

Le président a annoncé que la réunion de 1993 aura lieu en Alberta. L'heure et le lieu seront annoncé à une date ultérieure.

Le président a aussi annoncé que nous avons reçu une invitation de l'Ile-du-Prince-Edouard pour l'année suivante, soit 1994. Le Comité exécutif sera chargé de faire le suivi de cette invitation.

Rapport du Comité sur les nominations

L'exécutif du Comité sur les nominations se compose de Sydney Horton, Susan Amrud, John Gregory, Richard Mosley, Gérald Tremblay, Richard Hubley et Basil Stapleton, président.

Le Comité sur les nominations a présenté son rapport et a recommandé Howard Morton, c.r. de Toronto à la présidence et professeur Peter J.M. Lown d'Edmonton à la vice-présidence pour l'exercice 1992-93.

En tant qu'anicien président, Basil Stapleton a remercié Daniel Préfontaine, président, pour son intérêt et ses efforts soutenus en vue du développement et de la mise en oeuvre d'un processus de renouvellement.

Le nouveau président

Le marteau de président a été remis à Howard Morton, c.r., par Daniel Préfontaine, c.r.

Le nouveau président a déclaré que l'exécutif aura plusieurs décisions difficiles à faire en ce qui concerne l'avenir de la Conférence. Il espère qu'elle continuera à progresser aussi bien que les années précédentes.

Levée de la séance

Entendu qu'il n'y avait plus de matière à considérer, la séance fut levée.

APPENDIX A

(see page 28)

AUDITORS' REPORT

APPENDIX A

AUDITORS' REPORT

To the Members of
Uniform Law Conference of Canada

We have audited the General Fund and Research Fund balance sheets of **Uniform Law Conference of Canada** as at March 31, 1992 and the statements of revenue, expenses and equity and cash flow for the year then ended. These financial statements are the responsibility of the organization's management. Our responsibility is to express an opinion on these financial statements based on our audit.

We conducted our audit in accordance with generally accepted auditing standards. Those standards require that we plan and perform an audit to obtain reasonable assurance whether the financial statements are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation.

In our opinion, these financial statements present fairly, in all material respects, the financial position of the Conference as at March 31, 1992 and the results of its operations and the changes in its financial position for the year then ended in accordance with generally accepted accounting principles.

Fredericton, Canada
June 24, 1992

Ernst & Young
Chartered Accountants

UNIFORM LAW CONFERENCE OF CANADA

BALANCE SHEETS

As at March 31

GENERAL FUND

	1992 $	1991 $
ASSETS		
Cash	8,633	21,872
Term deposits, at cost	25,000	—
Accounts receivable	18,463	24,011
	52,096	45,883
LIABILITIES AND EQUITY		
Accounts payable	1,025	900
Equity	51,071	44,983
	52,096	45,883

RESEARCH FUND

ASSETS		
Cash	4,630	4,571
Term deposits, at cost	20,000	50,000
Accounts receivable	22,233	15,938
	46,863	70,509
EQUITY		
Equity	46,863	70,509

See accompanying notes

APPENDIX A

STATEMENT OF REVENUE, EXPENSES AND EQUITY

For the year ended March 31, 1992
(with comparative figures for the 9 months ended March 31, 1991)

	General Fund $	Research Fund $	Total 1992 $	Total 1991 $
Revenue				
Annual contributions	63,000	—	**63,000**	69,000
Interest	2,318	—	**2,318**	3,876
Government of Canada	—	21,550	**21,550**	15,938
	65,318	21,550	**86,868**	88,814
Expenses				
Executive director honorarium	23,834	—	**23,834**	17,550
Annual meeting	10,918	—	**10,918**	14,365
Printing	8,671	16,674	**25,345**	1,595
Executive travel	7,094	—	**7,094**	5,749
Secretarial services	2,611	—	**2,611**	3,149
Stationery	2,000	—	**2,000**	926
Professional fees	1,945	—	**1,945**	1,013
Telephone	1,118	—	**1,118**	831
Postage	583	—	**583**	989
Miscellaneous	456	714	**1,160**	22
Regulatory Offenses Procedures	—	10,780	**10,780**	—
Administrative Procedures	—	6,193	**6,193**	—
Civil Contempt	—	5,706	**5,706**	5,069
Documents of Title	—	3,913	**3,913**	—
Disclosure of Cost of Credit	—	627	**627**	—
Vulnerable Witness	—	589	**589**	—
Uniform Provincial Offences Procedures Act	—	—	—	698
	59,230	45,196	**104,426**	51,956
Excess (deficiency) of revenues over expenses	6,088	(23,646)	**(17,558)**	36,858
Equity, beginning of period	44,983	70,509	**115,492**	78,634
Equity, end of period	51,071	46,863	**97,934**	115,492

See accompanying notes

STATEMENT OF CASH FLOW

For the year ended March 31, 1992
(with comparative figures for the 9 months ended March 31, 1991)

	General Fund $	Research Fund $	Total 1992 $	Total 1991 $
Cash provided by (used in)				
Operating Activities				
Excess (deficiency) of revenues over expenses	6,088	(23,646)	**(17,558)**	36,858
Net change in non-cash working capital balances related to operations				
Accounts receivable	5,548	(6,295)	**(747)**	(30,887)
Accounts payable	125	—	**125**	(3,837)
	11,761	(29,941)	**(18,180)**	2,134
Investing Activities				
Sale (purchase) of term deposits	(25,000)	30,000	**5,000**	15,000
Increase (decrease) in cash	(13,239)	59	**(13,180)**	17,134
Cash, beginning of period	21,872	4,571	**26,443**	9,309
Cash, end of period	8,633	4,630	**13,263**	26,443

See accompanying notes

APPENDIX A

NOTES TO FINANCIAL STATEMENTS

March 31, 1992

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. TAX STATUS

The Conference qualifies as a non-profit organization and is exempt from income taxes.

APPENDIX B

(see page 40)

UNIFORM COURT ORDERS COMPLIANCE ACT

Annotated

Prepared by:

Basil D. Stapleton, Q.C.
Director of Law Reform
Province of New Brunswick
October, 1992

APPENDIX B

UNIFORM COURT ORDERS COMPLIANCE ACT

ANNOTATED

Introduction

The annotated version of the proposed *Uniform Court Orders Compliance Act* prepared by Professor G. L. Bladon, University of New Brunswick Law School, is published in the Proceedings of the Seventy-Third Annual Meeting of the Conference as Appendix E. The annotations set forth in detail the background to the proposed statute as well as an analysis of the content and purpose of each provision.

In the course of the discussion at the 1991 Conference questions were raised as to the appropriateness of some provisions. Those that were not resolved at the table were referred back to the New Brunswick Commissioners for further consideration, consultation and recommendation.

The New Brunswick Commissioners presented several recommendations for changes in the proposed Uniform Act to the 1992 Conference. Agreement was reached on the changes to be effected and the Uniform Act as so amended was approved subject to the November 30th rule. The New Brunswick Commissioners were directed to submit the Act to formal legislative drafting prior to final distribution to the jurisdictions.

Although the formal drafting process has produced some changes for purposes of clarity and conformity with the drafting conventions of the Conference, the final version of the Uniform Act is consistent in substance with the agreements reached at the table.

The annotations which follow identify the corresponding provisions of the original version published in the 1991 Proceedings and those of the final version. They also explain the changes that were effected in the original version. These annotations read together with those published in Appendix E of the 1991 Proceedings provide a complete analysis of the final version of the Uniform Act.

1. Interpretation

1. In this Act,
"compliance order" means an order made by a court for the purpose of imposing a sanction under this Act;

"court order" means an order, judgment, or other determination made by any court in a civil proceeding and includes an order, judgment, or other determination of a non-judicial body that by law may be [filed, entered and recorded in the (appropriate

court in the enacting jurisdiction) and enforced as a judgment of that court], if the order, judgment, or other determination has been [filed, entered and recorded];

"party" means a party to a civil proceeding in which a court order is made.

NOTE: The definitions of "compliance order" and "court order" were altered for purposes of style and clarity without effecting any change in substance. The word "decree" was removed from the definition of "court order" because it was considered to be redundant or inapplicable and to facilitate conformity with the French version.

2. Application of the Act

2.(1) This Act applies to a court order that requires a party to do, or to refrain from doing, a particular act other than the payment of money.

(2) This Act governs the procedure for obtaining a compliance order.

NOTE: (i) Subsection (1) was amended to make it clear that the Act does not apply to court orders for the payment of money.

(ii) Subsection (2) was added as an alternative to the original section 3 by which the common law of contempt of court would have been expressly abolished. The purpose of the Act is to replace the common law procedure for dealing with failure or refusal to comply with a court order. The substantive common law of contempt will also be replaced to the extent that it is inconsistent with the Act. The rules of statute interpretation are relied upon for the latter purpose.

3. Application for Compliance Order

3.(1) A proceeding for the purpose of obtaining a compliance order shall be instituted by a party for whose benefit the court order was made.

(2) A proceeding under this section shall be instituted by a notice of motion.

(3) [The statutes and rules of court of the enacting jurisdiction] in relation to interlocutory motions apply to motions under this section.

(4) An applicant may discontinue a motion at any time prior to the court's determination in relation to it.

(5) A motion under this section shall not be heard by the judge who made the court order in relation to which a compliance order is sought.

(6) A person against whom a compliance order may be issued in a proceeding under this section is not a compellable witness in the proceeding.

NOTE: (i) The original section 3 by which the common law of contempt in relation to court orders would have been expressly abolished has been removed from the Act. It was replaced by subsection 2(2) as explained above. While some vestiges of the common law may remain that should not prevent the Act from accomplishing its principal purpose which is to simplify and render more certain "that area of contempt which addresses non-compliance or 'mere' disobedience of non-monetary court orders".

(ii) The new section 3 is the former section 4 as amended. This section has been revised to remove most of the detail concerning the procedure to be used. It is considered that the procedures in each jurisdiction governing interlocutory motions are adequate to deal with motions under the Act. Consequently, it is not necessary to provide further and, possibly conflicting, procedural rules in the Act. Those provisions of the original section 4 that are unlikely to be contained in the jurisdictions' procedural rules have been retained. Because of the potential severity of the sanctions that may be imposed the Conference decided to add a provision (new subsection (6)) to render a person on whom such a sanction may be imposed a non-compellable witness in the proceeding.

4. Imposition of Sanctions

4.(1) If, on a motion under section 3, the court determines that the respondent has failed or refused to comply with a court order, the court may make a compliance order either to secure compliance with the order or to punish for the failure or refusal, or both.

(2) The court shall not make a compliance order unless it is satisfied on a balance of probabilities that the respondent had knowledge of the court order and failed or refused to comply with it.

(3) The court shall not make a compliance order if it is satisfied on a balance of probabilities that

(a) the respondent acted with reasonable care and due diligence in attempting to comply with the court order, or

(b) the respondent was not reasonably capable of complying with the court order.

(4) The court shall not impose a sanction to secure compliance with a court order if it is satisfied on a balance of probabilities that the imposition of that sanction will be ineffective to secure compliance with the order.

(5) The court shall not impose a sanction to punish the respondent if it is satisfied on a balance of probabilities that the failure or refusal to comply with the court order was attributable to an honest and reasonable failure by the respondent to understand at the relevant time the obligation imposed by the order.

NOTE: (i) The onus of proof "beyond a reasonable doubt" has been removed from this section and has been replaced by the generally applicable onus of "balance of probabilities". However, the new subsection 6(2) will prevent a court from imposing a term of imprisonment unless the criminal standard of proof has been satisfied.

(ii) The original paragraph 3(a) has been deleted. Under that provision one could only apply for a compliance order as a last resort, that is, after all other potentially effective methods of enforcement had been exhausted. The Conference considered that to be an unnecessary restriction.

5. Types of Sanctions

5.(1) For the purpose of punishment, the court may impose a term of imprisonment not exceeding six months or a fine not exceeding [$50,000], or both.

(2) For the purpose of securing compliance with a court order, the court may impose one or more of the following sanctions:

(a) imprisonment for a fixed term, or for a term that is to continue until the order is complied with, not exceeding six months;

(b) a fine in a fixed amount, or in an amount that is to accrue on a daily basis until the order is complied with, not exceeding [$50,000] in total;

(c) an order for sequestration of assets of the respondent that is to remain in effect until the order is complied with;

(d) an order that the respondent provide the court with security to secure compliance with the order; and

(e) an order that the act which the respondent fails or refuses to do may be done at the respondent's expense by the applicant or by any other person appointed by the court.

(3) In addition to the sanctions described in subsections (1) and (2), a compliance order may require the respondent to pay compensation for the loss, injury or damage suffered by the applicant as a result of the respondent's failure or refusal to comply with the court order.

(4) An order made under this Act may include such provision for costs as the court considers just.

NOTE: This is the original section 9. The $50,000 limit contained in subsection (1) and paragraph (2)(b) has been square bracketed to indicate that while such a limit should probably be imposed, its amount should be determined by the enacting jurisdiction.

6. Considerations on Imposition of Sanctions

6.(1) In determining whether a sanction should be imposed to punish a respondent and, if so, the extent of the sanction, the court shall consider, among other things, evidence as to the nature and extent of any physical, mental, emotional or property damage sustained by any person as a result of the respondent's failure or refusal to comply with the court order.

(2) Notwithstanding any other provision of this Act, the court shall not impose a term of imprisonment unless it is satisfied beyond a reasonable doubt of the existence of the grounds on which a sanction may be imposed.

NOTE: This is the original section 10 as amended. The amendment is the addition of subsection (2) by which a court is prohibited from imposing a term of imprisonment unless satisfied beyond a reasonable doubt of the existence of the grounds on which a sanction may be imposed.

7. Body Corporate as Respondent

7.(1) Where the respondent to a motion under section 3 is a body corporate, the court may make a compliance order against a person who is a director or officer of the respondent either to secure compliance by the respondent with the court order or to punish the person, or both.

(2) The court shall not make a compliance order against a person who is a director or officer of a respondent body corporate unless it is satisfied on a balance of probabilities that the court order has not been complied with and the person knowingly prevented such compliance or directed, authorized or assented to the respondent's failure or refusal to comply with the order.

NOTE: This is the original section 7 as amended. The substantive amendment consists of the changing of the onus of proof from "beyond a reasonable doubt" to "on a balance of probabilities" in subsection (2). This is consistent with the changes explained in the notes to sections 4 and 6 above.

8. Absence of Respondent

8. If a person against whom a compliance order has been issued cannot be found the court may, on motion without notice, issue a compliance order against the assets of the person which may be executed in the absence of the person.

NOTE: This is the original section 12 without substantive amendment.

9. Suspension or Revocation of Order

9.(1) When imposing a sanction to secure compliance with a court order the court may suspend application of the compliance order on such terms as it considers just.

(2) Where a sanction has been imposed to secure compliance with a court order the court, on application by the respondent, may suspend application of the compliance order or revoke the compliance order, if it is satisfied that the respondent is willing to comply with the order, or that there is other just cause for doing so.

NOTE: This is the original section 8 without substantive amendment.

10. Compliance Orders

10.(1) A compliance order shall particularize the failure or refusal found and the purpose for which the sanction is imposed.

(2) Unless the court directs otherwise, a copy of a compliance order and any order suspending it shall be served by the applicant on the respondent and any person affected by them.

NOTE: This is the original section 5 without substantive amendment.

11. Appeal

11. A person against whom a compliance order is made may appeal to [the appropriate court in the enacting jurisdiction in accordance with the rules of court or procedures governing criminal appeals].

NOTE: This is the original section 10 without substantive amendment.

12. Referral to Attorney General

12.(1) Where, in a proceeding under section 3, it appears to the court that the respondent has failed or refused to comply with a court order in a manner constituting a public depreciation of the authority of the court tending to bring the administration of justice into disrepute, it may refer that matter to the Attorney General for investigation.

(2) A referral under subsection (1) does not prevent the court from continuing the civil proceeding and imposing a sanction for the purpose of securing compliance with a court order.

(3) The court shall not impose a sanction to punish for failure or refusal to comply with a court order if a referral under subsection (1) is outstanding, or if the person has been prosecuted in respect of that failure or refusal.

NOTE: This is the original section 11 without amendment.

13. Continuation of Proceeding

13. A court may allow a proceeding before it to continue notwithstanding that a party to the proceeding has failed or refused to comply with an order of the court.

NOTE: This is the original section 13 without amendment.

CONFÉRENCE SUR L'UNIFORMISATION DES LOIS AU CANADA

LOI UNIFORME SUR L'OBSERVATION DES ORDONNANCES DE LA COUR

Annotée

Préparé par:

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Province du Nouveau-Brunswick
Octobre, 1992

APPENDICE B

LOI UNIFORME SUR L'OBSERVATION DES ORDONNANCES DE LA COUR

ANNOTÉE

Introduction

La version annotée de la *Loi uniforme sur l'observation des ordonnances de la cour* projetée, préparée par le professeur G.L. Bladon de l'École de droit de l'Université du Nouveau-Brunswick, est publiée dans les Procès-verbaux de la soixante-treizième réunion annuelle de la Conférence comme Annexe E. Dans les annotations, l'on retrouve en détail les éléments de base de la loi projetée ainsi que l'analyse du contenu et de l'objectif de chaque disposition.

Lors des discussions de la Conférence de 1991, des questions furent soulevées quant à la pertinence de certaines dispositions. Celles qui n'ont pas été alors résolues ont été renvoyées aux Commissaires du Nouveau-Brunswick pour plus ample considération, consultation et recommandation.

Les Commissaires du Nouveau-Brunswick ont présenté plusieurs recommandations de changement à la loi uniforme projetée lors de la Conférence de 1992. Il y eut une entente relativement aux changements à effectuer et la loi uniforme ainsi modifiée a été approuvée sous réserve de la règle du 30 novembre. Les Commissaires du Nouveau-Brunswick ont reçu instructions de procéder à la rédaction législative en bonne et due forme de la loi avant de la présenter aux autorités législatives.

Quoique la procédure de rédaction en bonne et due forme ait causé certains changements pour des raisons de clarté et de compatibilité avec le protocole de rédaction de la Conférence, la version définitive de la loi uniforme est en harmonie quant à la substance avec les accords manifestés lors des discussions.

Les annotations qui suivent mentionnent les dispositions qui correspondent à la version initiale publiée dans les Procès-verbaux de 1991 dans la version définitive. Elles donnent aussi des explications au sujet des changements qui ont été effectués à la version initiale. Ces annotations, se lisant avec celles qui sont publiées à l'Annexe E des Procès-verbaux de 1991, présentent une analyse complète de la version définitive de la loi uniforme.

1. Interprétation

1. Dans la présente loi

"ordonnance de la cour" désigne une ordonnance, un jugement ou une autre décision que rend une cour lors d'une procédure civile, et s'entend également d'une ordonnance, d'un jugement ou d'une autre décision d'un organisme non judiciaire

qui en vertu de la loi peut être [déposé, inscrit et enregistré devant (la cour appropriée de la compétence dans laquelle la loi est décrété) et exécuté comme un jugement de cette cour], si l'ordonnance, le jugement ou l'autre décision a été [déposé, inscrit et enregistré];

"ordonnance d'observation" désigne une ordonnance rendue par une cour dans le but d'imposer une sanction en vertu de la présente loi;

"partie" désigne une partie à une procédure civile dans laquelle une ordonnance de la cour est rendue.

NOTE: Les définitions "ordonnance d'observation" et "ordonnance de la cour" ont été retouchées pour les besoins du style et de la clarté, mais il n'y a pas eu de changement relativement à la substance. Le mot "decree" a été enlevé dans la définition "ordonnance de la cour" parce qu'il a été jugé redondant ou inapplicable et pour assurer l'harmonisation avec la version française.

2. Champ d'application

2.(1) La présente loi s'applique à une ordonnance de la cour qui prescrit à une partie d'accomplir, ou de s'abstenir d'accomplir, un acte déterminé autre que le versement d'une somme d'argent.

(2) La présente loi régit la procédure pour obtenir une ordonnance d'observation.

NOTE: (i) Le paragraphe (1) a été modifié afin de clarifier le fait que la loi ne s'applique pas aux ordonnances de la cour pour le versement d'une somme d'argent.

(ii) Le paragraphe (2) a été ajouté comme alternative à l'article 3 initial qui abrogeait l'outrage au tribunal de la common law. L'objectif de la loi est de remplacer la procédure de la common law pour punir le défaut ou le refus de se conformer à une ordonnance de la cour. L'outrage au tribunal de la common law sera aussi remplacé en substance dans la mesure où il est incompatible avec la loi. L'on compte sur les règles de l'interprétation des lois pour ceci.

3. Demande d'une ordonnance d'observation

3.(1) La procédure visant à obtenir une ordonnance d'observation est engagée par la partie au bénéfice de laquelle l'ordonnance de la cour a été rendue.

(2) La procédure visée au présent article est engagée par avis de motion.

(3) [Les Lois et Règles de procédure s'appliquant dans la compétence dans laquelle la loi est décrétée] relativement aux motions interlocutoires s'appliquent aux motions visées au présent article.

(4) Le requérant peut se désister d'une motion en tout temps avant la décision de la cour à son sujet.

(5) Une motion en vertu du présent article ne peut être entendue par le juge qui a rendu l'ordonnance de la cour relativement à laquelle une ordonnance d'observation est demandée.

(6) Une personne contre qui une ordonnance d'observation peut être rendue dans une procédure en vertu du présent article n'est pas un témoin contraignable dans la procédure.

NOTE: (i) L'article 3 initial abrogeant l'outrage au tribunal de la common law relativement aux ordonnances de la cour a été enlevé de la loi. Il a été remplacé par le paragraphe 2(2) tel qu'expliqué ci-dessus. Même si certains vestiges de la common law puissent subsister, cela ne peut empêcher la loi de réaliser son principal objectif qui est de simplifier et de préciser "ce domaine de l'outrage qui concerne l'inobservation ou la 'simple' désobéissance à l'égard des ordonnances de la cour non monétaires".

(ii) Le nouvel article 3 est l'ancien article 4 tel que modifié. Cet article a été révisé pour enlever des détails concernant la procédure. Les règles de procédure de chaque compétence régissant les motions interlocutoires peuvent s'appliquer aux motions en vertu de la loi. En conséquence, il n'est pas nécessaire de prévoir des règles de procédure additionnelles, qui pourraient être conflictuelles, dans la loi. Les dispositions de l'article 4 initial qui ne seront probablement pas dans les règles de procédure des compétences ont été retenues. Parce que les sanctions pourraient être sévères, la Conférence a décidé d'ajouter une disposition (le nouveau paragraphe (6)) pour prévoir que la personne contre qui une sanction peut être imposée ne puisse être un témoin contraignable dans la procédure.

4. Sanctions

4.(1) Si, relativement à une motion en vertu de l'article 3, la cour détermine que l'intimé a fait défaut ou refusé d'observer une ordonnance de la cour, la cour peut rendre une ordonnance d'observation, soit pour assurer l'observation de l'ordonnance, soit pour punir le défaut ou le refus de l'observer

(2) La cour ne peut rendre une ordonnance d'observation sauf si elle est convaincue suivant la prépondérance de la preuve que l'intimé connaissait l'ordonnance de la cour et qu'il a fait défaut ou refusé de l'observer.

(3) La cour ne peut rendre une ordonnance d'observation si elle est convaincue suivant la prépondérance de la preuve

(a) que l'intimé a agi avec le soin raisonnable et la diligence nécessaire en essayant d'observer l'ordonnance de la cour, ou

(b) que l'intimé n'était pas raisonnablement capable d'observer l'ordonnance de la cour.

(4) La cour ne peut imposer une ordonnance pour assurer l'observation d'une ordonnance de la cour si elle est convaincue suivant la prépondérance de la preuve que l'imposition de la sanction sera inefficace pour assurer l'observation de l'ordonnance.

(5) La cour ne peut imposer une sanction pour punir l'intimé si elle est convaincue suivant la prépondérance de la preuve que le défaut ou le refus d'observer l'ordonnance de la cour était attribuable à l'incapacité légitime et raisonnable de l'intimé de comprendre au moment opportun l'obligation qui lui était imposée par l'ordonnance.

NOTE: (i) Le fardeau de la preuve "hors de tout doute raisonnable" a été enlevé à cet article et il a été remplacé par le fardeau applicable généralement de la "prépondérance de la preuve". Cependant, le nouveau paragraphe 6(2) empêchera la cour d'imposer une peine d'emprisonnement sauf si le critère requis relativement à la preuve en matière criminelle est respecté.

(ii) L'alinéa 3a) initial a été supprimé. En vertu de cette disposition, une personne ne pourrait faire la demande d'une ordonnance d'observation que comme mesure de dernier ressort, c'est-à-dire après que tout autre moyen possible d'exécution ne soit épuisé. La Conférence a jugé qu'une telle disposition serait trop restrictive.

5. Genres de sanctions

5.(1) La cour peut imposer, pour punir, l'emprisonnement pour une période maximale de six mois ou une amende maximale de [50 000$], ou les deux.

(2) La cour peut, pour assurer l'observation d'une ordonnance de la cour, imposer une ou plusieurs des sanctions suivantes:

(a) l'emprisonnement pour une période déterminée, ou pour une période devant se continuer jusqu'à ce que l'ordonnance ait été observée, d'au plus six mois;

(b) une amende pour un montant déterminé, ou pour un montant devant s'accumuler quotidiennement jusqu'à ce que l'ordonnance ait été observée, d'au plus [50 000$] au total;

(c) une ordonnance prescrivant la prise de possession des biens de l'intimé devant rester en vigueur jusqu'à ce que l'ordonnance ait été observée;

(d) une ordonnance prescrivant que l'intimé constitue à la cour une sûreté en vue d'assurer l'observation de l'ordonnance; et

(e) une ordonnance prescrivant que l'acte que l'intimé fait défaut ou refuse d'accomplir puisse être accompli aux frais de l'intimé par le requérant ou par toute autre personne nommée par la cour.

(3) En plus des sanctions prévues aux paragraphes (1) et (2), une ordonnance d'observation peut prescrire à l'intimé de verser une indemnité pour la perte, le préjudice ou les dommages subis par le requérant en raison du défaut ou du refus de l'intimé d'observer l'ordonnance de la cour.

(4) Une ordonnance rendue en vertu de la présente loi peut inclure les dispositions relatives aux dépens que la cour estime justes.

NOTE: Il s'agit de l'article 9 initial. La somme maximale de 50 000$ se trouvant au paragraphe (1) et à l'alinéa (2)b) a été mise entre parenthèses pour indiquer que, même si une telle somme maximale pouvait probablement être imposée, la somme devrait être fixée par l'autorité législative qui décrète la loi.

6. Observations au sujet de l'imposition de sanctions

6.(1) En déterminant si une sanction devrait être imposée pour punir l'intimé et, dans l'affirmative, l'ampleur de la sanction, la cour doit considérer, entre autres choses, la preuve relative à la nature et à l'étendue des dommages corporels, mentaux, psychologiques ou matériels subis par toute personne en raison du défaut ou du refus de l'intimé d'observer l'ordonnance de la cour.

(2) Nonobstant toute autre disposition de la présente loi, la cour ne peut imposer une peine d'emprisonnement sauf si elle est convaincue hors de tout doute raisonnable de l'existence des motifs pour lesquels une sanction peut être imposée.

NOTE: Il s'agit de l'article 10 initial tel que modifié. Le paragraphe (2) a été ajouté pour interdire à la cour d'imposer une peine d'emprisonnement à moins qu'elle ne soit convaincue hors de tout doute raisonnable qu'il existe des motifs pour lesquels une sanction puisse être imposée.

7. Corporation intimée

7.(1) Lorsque l'intimée à une motion en vertu de l'article 3 est une corporation, la cour peut rendre une ordonnance d'observation contre une personne qui est un administrateur ou un dirigeant de l'intimée, soit pour assurer l'observation de l'ordonnance de la cour par l'intimée, soit pour punir la personne, soit pour les deux.

(2) La cour ne peut rendre une ordonnance d'observation contre une personne qui est un administrateur ou un dirigeant d'une corporation intimée, sauf si elle est convaincue suivant la prépondérance de la preuve que l'ordonnance de la cour n'a pas été observée et que la personne a sciemment empêché l'observation de l'ordonnance de la cour ou ordonné, autorisé ou approuvé le défaut ou le refus de l'intimée d'observer l'ordonnance.

NOTE: Il s'agit de l'article 7 initial tel que modifié. La modification substantive apportée consiste dans le changement du critère du fardeau de la preuve de "hors de tout doute raisonnable" à celui de "suivant la prépondérance de la preuve" au paragraphe (2). Ceci est compatible avec les changements expliqués aux annotations des articles 4 et 6 ci-dessus.

8. Absence de l'intimé

8. Si la personne contre qui une ordonnance d'observation a été rendue est introuvable, la cour peut, sur motion sans préavis, rendre une ordonnance d'observation à l'égard des biens de la personne, laquelle ordonnance peut être exécutée en l'absence de la personne.

NOTE: Il s'agit de l'article 12 initial sans modification substantive.

9. Suspension ou révocation de l'ordonnance

9.(1) Lorsqu'elle impose une sanction pour assurer l'observation d'une ordonnance de la cour, la cour peut suspendre l'application de l'ordonnance d'observation aux conditions qu'elle estime justes.

(2) Lorsqu'une sanction a été imposée pour assurer l'observation d'une ordonnance de la cour, la cour peut, à la demande de l'intimé, suspendre l'application de l'ordonnance d'observation ou révoquer l'ordonnance d'observation, si elle est convaincue que l'intimé est disposé à observer l'ordonnance, ou s'il y a un autre motif valable pour le faire.

NOTE: Il s'agit de l'article 8 initial sans modification substantive.

10. Ordonnance d'observation

10.(1) Une ordonnance d'observation doit préciser le défaut ou le refus découvert et le motif pour lequel la sanction est imposée.

(2) Sauf si la cour l'ordonne autrement, une copie d'une ordonnance d'observation et de toute ordonnance qui suspend celle-ci doit être signifiée par le requérant à l'intimé et à toute personne concernée par ces ordonnances.

NOTE: Il s'agit de l'article 5 initial sans modification substantive.

11. Appel

11. Une personne contre qui une ordonnance d'observation est rendue peut interjeter appel à [la cour appropriée de la compétence dans laquelle la loi est décrétée, conformément aux Règles de procédure ou aux procédures s'appliquant aux appels en matière criminelle].

NOTE: Il s'agit de l'article 10 initial sans modification substantive.

12. Renvoi au procureur général

12.(1) Lorsque, dans une procédure en vertu de l'article 3, la cour est d'avis que l'intimé a fait défaut ou refusé d'observer une ordonnance d'une manière qui constitue une dévalorisation publique de l'autorité de la cour tendant à déconsidérer l'administration de la justice, la cour peut renvoyer l'affaire au procureur général pour enquête.

(2) Un renvoi en vertu du paragraphe (1) n'empêche pas la cour de continuer la procédure civile et d'imposer une sanction pour assurer l'observation d'une ordonnance de la cour.

(3) La cour ne peut imposer une sanction pour punir le défaut ou le refus d'observer une ordonnance de la cour si un renvoi en vertu du paragraphe (1) n'est pas encore réglé, ou si la personne a été poursuivie à l'égard de ce défaut ou refus.

NOTE: Il s'agit de l'article 11 initial sans modification.

13. Continuation de l'instance

13. La cour peut permettre qu'une procédure devant elle se continue, même si une partie à l'instance a fait défaut ou refusé d'observer une ordonnance de la cour.

NOTE: Il s'agit de l'article 13 initial sans modification.

APPENDIX C

(see page 40)

UNIFORM REGULATORY OFFENCES PROCEDURE ACT

APPENDIX C

August, 1992

UNIFORM REGULATORY OFFENCES PROCEDURE ACT

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APPENDIX C

INTRODUCTION

The purpose of this Act is twofold.

One is to simplify the court procedures for the imposition of penalties for minor offences that are not seen as criminal in nature. This simplification would make a more light-handed procedure for the public's access to justice in the great number of cases that arise from the mere regulation of conduct rather than from conduct that is criminal in itself and would lighten the load on the administration of justice.

The other purpose is to separate the proceedings for conduct that is in itself permissible or even desirable but not done in the manner required from proceedings for genuine criminal conduct. This separation may be reflected in the atmosphere in which a hearing for traffic tickets is conducted when the defendant is on the list with persons charged with robbery, assault etc., or in the procedure where provisions that are appropriate to serious crimes and designed for dangerous conduct and maintaining the peace are applied equally to regulatory offences.

The principal changes from the summary procedure under the Criminal Code are in procedures applying to offences for which a set fine is acceptable and procedures before trial and summary disposition when not contested. When a trial is elected, traditional standards of justice are necessary.

At the same time there are many very serious offences under provincial and territorial statutes and full procedure can be taken at the option of the defendant.

Application

1. This Act applies to proceedings for the prosecution of offences that are created by an Act of the Legislature or under a regulation or by-law that is made under the authority of an Act of the Legislature.

COMMENTARY

Offences created by the statutes of the provinces and territories are, by that fact, not criminal. In the case of statutes of the Federal Government another formula would be needed to describe the offences that are considered regulatory and to which the regulatory offence procedures apply.

Regulatory Offences Officer

2.-(1) A minister of the Crown may designate in writing any person or class of persons as regulatory offences officers for the purpose of all or any class of offences named in the designation.

(2) The council of a municipality may designate by by-law any person or class of persons as regulatory offences officers for the purpose of all or any class of offences under the by-laws of the municipality that are named in the designation.

(3) Police officers are regulatory offences officers.

COMMENTARY

The provision in subsection 2(1) is optional for the purposes of uniformity of laws. The advantage it offers is to enable administrative ministries of government to have their own inspectors lay charges on the spot during inspections and for the enforcement of ministry Acts by their own people. This permits the ministry to implement its own enforcement policy and reduces the non criminal enforcement and prosecution functions of the Attorney General.

Set Fines

[3. The Chief Judge of the (court that is designated for regulatory offences and named in section 4) may by order fix a fine in respect of specific offences, as the Chief Judge considers appropriate, which is the set fine for the purposes of proceedings under this Act.] or

[3. The Lieutenant Governor in Council may, by regulation, fix a fine in respect of specific offences which is the set fine for the purposes of proceedings under this Act.]

COMMENTARY

Set fines are now established in two ways. One is by regulation made by the government and the other is by the judges under the leadership of the chief or senior judge, possibly by committee or general consensus.

APPENDIX C

Section 3 provides an option for the enacting jurisdiction.

COMMENCEMENT OF PROCEEDINGS

Manner of Commencement

4.-(1) A proceeding in respect of a regulatory offence shall be commenced in the (name of court established by the enacting jurisdiction).

COMMENTARY

There are advantages in having, where possible, regulatory offences dealt with in a court that is separate from the criminal summary convictions court. It separates the defendants,and encourages the judges to develop a distinction between the classes of offences and the differences in the procedures. Furthermore, the court would not be operating from one code to the other in succeeding cases. The same bench could be used and assigned to one court or the other. This should not be more costly in large centres, but may be impracticable in areas with a sparse population.

(2) A proceeding in respect of a regulatory offence may be commenced by filing a certificate of offence in the office of the court named in the certificate.

(3) A certificate of offence must be filed in the office of the court named therein as soon as is practicable after service of the offence notice or summons.

Charge

5.-(1) A regulatory offences officer who has reasonable grounds to believe that a person has committed an offence may issue, by completing and signing, a certificate of offence certifying that an offence has been committed, and an offence notice.

COMMENTARY

The swearing and issuing of an information is replaced with a certificate that there are reasonable grounds to believe that the alleged offence has been committed. Where the prosecution is initiated by a person other than the regulatory offences officer, the leave of a judge is required, which approximates the information procedure (See section 14).

(2) Where there is a set fine prescribed for the offence, the regulatory offences officer may, in his or her discretion, issue an offence notice that specifies the set fine for the offence.

Summons

6.-(1) Where the offence notice does not specify a set fine, the regulatory offences officer shall also serve a summons in the prescribed form.

(2) A summons issued under subsection (1) shall be,

(a) directed to the defendant;

(b) set out briefly the offence in respect of which the defendant is charged; and

(c) require the defendant to attend court at a time and place stated in the summons and to attend thereafter as required by the court in order to be dealt with according to law.

Summons for Trial

7. Where an offence notice and a summons are served on a defendant, the charge shall be adjudicated by a hearing.

Set Fine Dispute

8. Where an offence notice in which a set fine is specified is served on a defendant and the defendant wishes to dispute the charge, the defendant shall plead not guilty by signing the not guilty plea on the offence notice and

indicating his or her desire in the form contained on the notice to appear or be represented at a trial, and shall deliver the offence notice to the office of the court that is specified in the notice.

Set Fine Payment

9.-(1) Where an offence notice in which a set fine is specified is served on a defendant and the defendant does not wish to dispute the charge, the defendant shall sign the plea of guilty on the offence notice and deliver the offence notice and the amount of the set fine to the place that is specified in the notice.

(2) Acceptance of the payment under subsection (1) constitutes a plea of guilty whether or not the plea is signed and endorsement of the payment on the certificate of offence constitutes conviction and imposition of the fine in the amount of the set fine for the offence.

(3) Where the place specified in the notice to which payment of the set fine is to be sent under subsection (1) is a place other than the court office, a certificate purporting to be signed by the clerk of the municipality, or a person designated by the clerk,

(a) that payment has not been made under subsection (1);

and

(b) that notice of the defendant's desire to appear or to be represented at trial has not been delivered to the place specified in the notice,

shall be received in evidence and is proof of the facts contained therein in the absence of evidence to the contrary.

Notice of Trial

10. Where an offence notice with a plea of not guilty is delivered to the court office, the clerk of the court shall, as soon as is practicable, give notice to the defendant and prosecutor of the time and place of the trial.

Set Fine on Inaction

11. Where at least fifteen days have elapsed after the defendant was served with the offence notice in which a set fine is specified, and the offence notice has not been delivered in accordance with section 8 or 9 and a plea of guilty has not been accepted, the defendant shall be deemed to not wish to dispute the charge and the court shall examine the certificate of offence and,

(a) where the certificate is complete and regular on its face, the court shall enter a conviction in the defendant's absence and without a hearing and impose the set fine for the offence; or

(b) where the certificate of offence is not complete and regular on its face, the court shall quash the proceeding with written reasons.

Defendant Outside Jurisdiction

12.-(1) Where an offence notice, whether or not it specifies a set fine, is served on a defendant whose address as shown on the certificate of offence is outside the territorial jurisdiction of the court specified in the notice, and the defendant wishes to dispute the charge but does not wish to attend or be represented at a trial, the defendant may do so by signifying his or her intention on the offence notice and delivering the offence notice to the office of the court specified in the notice together with a sworn statement in writing setting out with reasonable particularity the grounds for dispute and any facts on which he or she relies.

(2) Where an offence notice is delivered under subsection (1), the court shall, in the absence of the defendant, consider the dispute and,

(a) where the dispute raises an issue that may constitute a defence, direct a hearing and serve notice of the hearing on the defendant; or

(b) where the dispute does not raise an issue that may constitute a defence, and

(i) the offence notice specifies a set fine,

convict the defendant and impose the set fine, or

(ii) the offence notice does not specify a set

fine, direct a hearing and serve notice of the hearing on the defendant.

(3) Where the court directs a hearing under subsection (2) and the defendant fails to appear, the court may, in the absence of the defendant, consider all the evidence including the issues raised in the dispute, and acquit the defendant or convict the defendant and impose the appropriate penalty.

Failsafe Review

13. Where a defendant is convicted and has not had an opportunity to dispute the charge or to appear or be represented at a hearing for the reason that, through no fault of his or her own, the delivery of a necessary notice or document failed to occur in fact, and where not more than thirty days have elapsed since the conviction first came to the attention of the defendant, the defendant may attend at the court office during regular office hours and may appear before a judge of the court or may submit affidavit evidence in the prescribed form and the judge, upon being satisfied of such facts, shall strike out the conviction and order the proceedings to be reinstituted in the manner prescribed in the order.

Private Prosecution

14.-(1) A person who is not a regulatory offences officer may commence a proceeding if the person has a reasonable belief on grounds in his or her personal knowledge that an offence has been committed and the court gives leave to commence the proceeding.

(2) The evidence upon an application under subsection (1) shall be under oath and the application for leave may be heard without notice to any other person.

(3) A proceeding under this section shall be commenced by filing in the court office a certificate of offence signed by the person who is commencing the proceeding and bearing an endorsement of the leave of the court, and the court office shall serve an offence notice that does not specify a set fine and a summons in the prescribed form on the defendant.

Evidence of Written Plea

15. A signature affixed to the form of a plea of guilty or not guilty on an offence notice, purporting to be that of the defendant, is proof that it is the signature of that person, in the absence of evidence to the contrary.

Service

16.-(1) An offence notice, or a summons and offence notice, shall be served within thirty days after the offence occurred by delivering it personally to the person to whom it is directed or, if that person cannot be found, by leaving it for the person at his or her last known or usual place of abode with an inmate of that place who appears to be at least sixteen years of age.

(2) Where the person to whom the summons or offence notice is directed does not reside in (the enacting jurisdiction), the summons or offence notice shall be deemed to have been duly served seven days after it has been sent by registered mail to the defendant's last known or usual place of abode.

(3) Service of a summons or offence notice on a corporation may be effected by delivering it personally,

(a) in the case of a municipal corporation, to the mayor, warden, reeve or other chief officer of the corporation or to the clerk of the corporation; or

(b) in the case of any other corporation, to the manager, secretary or other executive officer of the corporation or person apparently in charge of a branch office of the corporation,

or by mailing the summons or offence notice by registered mail to the corporation at an address held out by the corporation to be its address, in

which case the summons shall be deemed to have been duly served seven days after the date of mailing.

(4) A judge, upon application and upon being satisfied that service can not be made effectively on a corporation in accordance with subsection (3), may by order authorize another method of service that has a reasonable likelihood of coming to the attention of the corporation.

(5) Service of a summons or notice of offence may be proved by statement under oath, written or oral, of the person who made the service.

(6) A regulatory offences officer may serve a notice of offence for a contravention of (the legislation, regulations or bylaws for parking offences, by which the owner of the vehicle is held responsible) on the owner of the motor vehicle by affixing it to the vehicle in a conspicuous place at the time of the alleged offence, or by delivering it personally to the person who has the care and control of the vehicle at the time of the alleged offence.

COMMENTARY

Subsection (6) would be necessary only if the enacting jurisdiction made the owner of a motor vehicle responsible for a breach of parking by-laws or regulations committed by a driver other than the owner.

(7) Where service of an offence notice or summons is made by the regulatory offences officer who issued the certificate of offence, the officer shall certify on the certificate of offence that he or she personally served the offence notice or summons on the person charged and the date of the service.

(8) The regulatory offences officer who serves an offence notice or summons shall not receive payment of money in respect of a fine, or receive the offence notice for delivery to the court.

TRIAL

General Jurisdiction

17.-(1) The court has jurisdiction in a proceeding commenced under this Act to perform such powers and duties as are set out in this and any other Act, and in addition has the jurisdiction and the duty to complete the proceeding in accordance with principles of justice despite the absence of a statutory provision for any specific step of the proceeding.

(2) The court retains jurisdiction over the certificate of offence notwithstanding the failure of the court to exercise its jurisdiction at any particular time or that the provisions of this Act respecting adjournments are not complied with.

COMMENTARY

Judges of the "superior and county and district courts" have the jurisdiction of the courts of common law and equity in England before confederation. They therefore have an original jurisdiction to dispense justice, subject only to specific direction given by statute. The judges appointed by a province for courts created by the province have only the jurisdiction that is given by provincial statute. It frequently occurs that a court will take the position that it is powerless to act because the statute was not specific enough to cover an unusual situation or that no form has been prescribed for a particular order. Subsection 17 (1) is an attempt to give the necessary statutory direction to enable judges to deal with a case on its merits.

The notion that the judge in a summary conviction case is seized of personal jurisdiction which can be lost if not exercised arose under the Criminal Code as a result of giving jurisdiction to persons (magistrates) to be appointed by the provinces. This obstacle is avoided by giving jurisdiction to the court and the old concept is abolished by subsection 17(2).

Limitations

18.-(1) Proceedings shall not be commenced after the expiration of any limitation period prescribed by or under any Act for the offence or, where no limitation period is prescribed, after six months after the date on which the offence was, or is alleged to have been, committed.

(2) A limitation period may be extended by a judge with the consent of the defendant.

COMMENTARY

The main purpose of subsection (2) is to enable a willing defendant and prosecutor to accept a guilty plea to a lesser offence for which the limitation period has expired.

Presiding Judge

19.-(1) The judge presiding when evidence is first taken at the trial shall preside over the whole of the trial.

(2) Where evidence has been taken at a trial and, before making an adjudication, the presiding judge dies or in the opinion of the judge or of the chief judge is for any reason unable to continue, another judge shall conduct the hearing again as a new trial.

(3) Where evidence has been taken at a trial and, after making an adjudication but before making an order or imposing a sentence the presiding judge dies or in the opinion of the judge or of the chief judge is for any reason unable to continue, another judge may make the order or impose the sentence that is authorized by law.

(4) A judge presiding at a trial may, at any stage of the trial and upon the consent of the prosecutor and the defendant, order that the trial be conducted by another judge and, upon the order being made, subsection (2) applies as if the judge were unable to act.

Prescribed Counts

20. A count in a charge that is described in a manner that is prescribed in the regulations made under section 133 shall be deemed to incorporate all the essential elements of the offence.

Contents of Counts

21.-(1) This section applies to charges made in a certificate of offence that are not prescribed, or that are not made in the manner prescribed, by the regulations made under section 133.

(2) Each offence charged shall be set out in a separate count.

(3) Each count shall in general apply to a single transaction and shall contain, and is sufficient if it contains, in substance a statement that the defendant committed an offence that is specified in the count.

(4) Where in a count an offence is identified but the count fails to set out one or more of the essential elements of the offence, a reference to the provision creating or defining the offence shall be deemed to incorporate all the essential elements of the offence.

(5) The statement referred to in subsection (3) may be,

(a) in popular language without technical averments or allegations of matters that are not essential to be proved;

(b) in the words of the enactment that describes the offence; or

(c) in words that are sufficient to give the defendant notice of the offence with which the defendant is charged.

(6) Any number of counts for any number of offences may be joined in the same charge.

(7) A count shall contain sufficient detail of the circumstances of the alleged offence to give the defendant reasonable information with respect to the act or omission to be proved against the defendant and to identify the transaction referred to.

(8) No count is insufficient by reason of the absence of details where, in the opinion of the court, the count otherwise fulfils the requirements of this section and, without restricting the generality of the foregoing, no count is insufficient by reason only that,

(a) it does not name the person affected by the offence or intended or attempted to be affected;

(b) it does not name the person who owns or has a special property interest in property mentioned in the count;

(c) it charges an intent in relation to another person without naming or describing the other person;

(d) it does not set out any writing that is the subject of the charge;

(e) it does not set out the words used where words that are alleged to have been used are the subject of the charge;

(f) it does not specify the means by which the alleged offence was committed;

(g) it does not name or describe with precision any person place or thing; or

(h) it does not, where the consent of a person, official or authority is required before proceedings may be instituted for an offence, state that the consent has been obtained.

(9) A count is not objectionable for the reason only that,

(a) it charges in the alternative several different matters, acts or omissions that are stated in the alternative in an enactment that describes as an offence the matters, acts or omissions charged in the count; or

(b) it is double or multifarious.

(10) No exception, exemption, proviso, excuse or qualification prescribed by law is required to be set out or negatived, as the case may be, in a charge.

Dividing Counts

22.-(1) A defendant may at any stage of the proceeding apply to the court to amend or to divide a count that,

(a) charges in the alternative different matters, acts or omissions that are stated in the alternative in the enactment that creates or describes the offence; or

(b) is double or multifarious,on the ground that, as framed, it prejudices the defence.

(2) Upon an application under subsection (1), where the court is satisfied that the ends of justice so require, it may order that a count be amended or divided into two or more counts, and thereupon a formal commencement may be inserted before each of the counts into which it is divided.

Included Offences

23. Where the offence as charged includes another offence, the defendant may be convicted of the offence that is included if it is proved, notwithstanding that the whole offence charged is not proved.

Parties to Offence

24.-(1) Every person is a party to an offence who,

(a) actually commits it;

(b) does or omits to do anything for the purpose of aiding any person to commit it; or

(c) abets any person in committing it.

(2) Where two or more persons form an intention in common to carry out an unlawful purpose and to assist each other in it and any one of them, in carrying out the common purpose, commits an offence, each of them who knew or ought to have known that the commission of the offence would be a probable consequence of carrying out the common purpose is a party to the offence.

Counselling and Procuring

25.-(1) Where a person counsels or procures another person to be a party to an offence and that other person is afterwards a party to the offence, the person who counselled or procured is a party to the offence, notwithstanding that the offence was committed in a way different from that which was counselled or procured.

(2) Every person who counsels or procures another person to be a party to an offence is a party to every offence that the other commits in consequence of the counselling or procuring and that the person who counselled or procured knew or ought to have known was likely to be committed in consequence of the counselling or procuring.

Quashing Certificate

26.-(1) An objection to a certificate for a defect apparent on its face shall be taken by motion to quash the certificate before the defendant has pleaded, and thereafter only by leave of the court.

(2) The court shall not quash a certificate unless an amendment or particulars under section 28 would fail to satisfy the ends of justice.

Amending Certificate

27.-(1) The court may, at any stage of the proceeding, amend the certificate as may be necessary if it appears that the certificate,

(a) fails to state or states defectively anything that is requisite to charge the offence;

(b) does not negative an exception that should be negatived; or

(c) is in any way defective in substance or form.

(2) The court may, during the trial, amend the certificate as may be necessary if the matters alleged in the proposed amendment are disclosed by the evidence taken at the trial.

(3) A variance between the certificate and the evidence taken at the trial is not material with respect to,

(a) the time when the offence is alleged to have been committed, if it is proved that the certificate was issued within the prescribed period of limitation; or

(b) the place where the subject-matter of the proceeding is alleged to have arisen, except in an issue as to the jurisdiction of the court.

(4) The court shall, in considering whether or not an amendment should be made, consider,

(a) the evidence taken on the trial, if any;

(b) the circumstances of the case;

(c) whether the defendant has been misled or prejudiced in his or her defence by a variance, error or omission; and

(d) whether, having regard to the merits of the case, the proposed amendment can be made without injustice being done.

(5) The question whether an order to amend a certificate should be granted or refused is a question of law.

(6) An order to amend a certificate shall be endorsed on the certificate as part of the record and the trial shall proceed as if the certificate had been originally laid as amended.

Particulars

28. The court may, before or during trial, if it is satisfied that it is necessary for a fair trial, order that a particular, further describing any matter relevant to the proceedings, be furnished to the defendant.

Costs on Amendment or Particulars

29. Where the certificate is amended or particulars are ordered and as a result an adjournment is necessary, the court may make an order under section 78 for costs resulting from the adjournment.

Stay of Proceeding

30.-(1) In addition to the right of the Attorney General to withdraw a charge, the Attorney General or his or her agent may stay any proceeding at any time before judgment by direction in court to the clerk of the court in which the

proceeding is conducted and thereupon any recognizance relating to the proceeding is vacated.

(2) A proceeding stayed under subsection (1) may be recommenced by direction of the Attorney General, the Deputy Attorney General or a Crown attorney to the clerk of the court in which the proceeding was stayed but a proceeding that is stayed shall not be recommenced,

(a) later than one year after the stay; or

(b) after the expiration of any limitation period applicable, which shall run as if the proceeding had not been commenced until the recommencement,

whichever is the earlier.

Trying Together or Separately

31.-(1) The court may, before trial, where it is satisfied that the ends of justice so require, direct that separate counts or certificates be tried together or that persons who are charged separately be tried together.

(2) The court may, before or during the trial, where it is satisfied that the ends of justice so require direct that separate counts or certificates be tried separately or that persons who are charged jointly or are being tried together be tried separately.

Plea

32.-(1) After being informed of the substance of the certificate, the defendant shall be asked whether he or she pleads guilty or not guilty of the offence charged in the certificate.

(2) Where the defendant pleads guilty, the court may accept the plea and convict the defendant.

(3) Where the defendant refuses to plead or does not answer directly, the court shall enter a plea of not guilty.

(4) Where the defendant pleads not guilty of the offence charged but guilty of any other offence, whether or not it is an included offence, the court may, with the consent of the prosecutor, accept the plea of guilty and accordingly amend the certificate or substitute the offence to which the defendant pleads guilty.

Trial

33.-(1) Where the defendant pleads not guilty, the court shall hold the trial.

(2) The defendant is entitled to make full answer and defence.

(3) The prosecutor and defendant may examine and cross-examine witnesses.

(4) The court may receive and act upon any facts agreed upon by the defendant and prosecutor without proof or evidence.

(5) Notwithstanding section 00 of the Evidence Act, the defendant is not a compellable witness for the prosecution.

COMMENTARY

Provincial and territorial legislation for evidence is designed for civil actions. It is common to have a provision that parties to an action are competent and compellable to give evidence in the action on behalf of themselves or of any party to the action. This is not the criminal law rule which needs to be stated as in subsection (5). This question is not the issue of self incrimination, which is usually equally necessary, and provided for, in respect of civil actions.

Representation

34.-(1) A defendant may appear and act personally or by counsel or agent.

(2) A defendant that is a corporation shall appear and act by counsel or agent.

(3) The court may bar any person from appearing as an agent who is not a barrister and solicitor entitled to practise law in (enacting jurisdiction) if the court finds that the person is not competent properly to represent or advise

the person for whom the agent appears or does not understand and comply with the duties and responsibilities of an agent.

Compelling Personal Appearance

35. Notwithstanding that a defendant appears by counsel or agent, the court may order the defendant to attend personally and, where it appears to be necessary to do so, may issue a summons in the prescribed form.

Non-appearance of Prosecutor

36.-(1) Where the defendant appears for a hearing and the prosecutor, having had due notice, does not appear, the court may dismiss the charge or may adjourn the hearing to another time upon such terms as it considers proper.

(2) Where the prosecutor does not appear at the time and place appointed for the resumption of an adjourned hearing under subsection (1), the court may dismiss the charge.

(3) Where a hearing is adjourned under subsection (1) or a charge is dismissed under subsection (2), the court may make an order under section 77 for the payment of costs.

(4) Where a charge is dismissed under subsection (1) or (2), the court may, if requested by the defendant, draw up an order of dismissal stating the grounds for the dismissal and shall give the defendant a certified copy of the order of dismissal which is, without further proof, a bar to any subsequent proceeding against the defendant in respect of the same cause.

Non-appearance of Defendant

37.-(1) Where a defendant does not appear at the time and place appointed for a hearing and it is proved by the prosecutor, having been given a reasonable opportunity to do so, that a summons was served, a notice of trial was given, an undertaking to appear was given or a recognizance to appear was entered into, or where the defendant does not appear upon the resumption of a hearing that has been adjourned, the court,

(a) may proceed to hear and determine the proceeding in the absence of the defendant;

(b) may, if it thinks fit, adjourn the hearing and issue a summons to appear or issue a warrant in the prescribed form for the arrest of the defendant; or

(c) may, where the defendant does not appear in response to the summons or warrant on the date to which the hearing is adjourned, proceed under clause (a) or (b).

(2) Where the court proceeds to hear and determine the proceeding in the absence of the defendant, no proceeding arising out of the failure of the defendant to appear at the time and place appointed for the hearing or for the resumption of the hearing shall be instituted, or if instituted shall be proceeded with, except with the consent of the Attorney General or the Attorney General's agent.

Liability

38.-(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 used all due diligence to avoid the commission of the offence unless the liability is expressly stated to be absolute.

(4) It is a defence to a sentence of imprisonment that the defendant did not have a gross disregard for the exercise of due diligence to avoid the commission of the offence.

(5) There is a presumption that the defences in subsections (3) and (4) are absent unless there is evidence to the contrary that is sufficient to raise a reasonable doubt.

(6) No civil remedy for an act or omission is suspended or affected for the reason that the act or omission is an offence.

COMMENTARY

Section 38 incorporates the decisions of the Supreme Court of Canada in R v City of Sault Ste Marie (1978), 40 C.C.C.(2d) 353 and of the Ontario Court of Appeal in R v Wholesale Travel Group Inc. (1989), 63 D.L.R. (4th) 325 and, more recently, R v Ellis Don Limited. Subsection (4) was not included in those decisions.

Common Law Defences

39.-(1) Every rule and principle of the common law that renders any circumstance a justification or excuse for an act or a defence to a charge continues in force and applies in respect of offences, except in so far as it is altered by or inconsistent with this or any other Act.

(2) Ignorance of the law by a person who commits an offence is not an excuse for committing the offence.

Adjournments

40.-(1) The court may, from time to time, adjourn a trial or hearing but, where the defendant is in custody, an adjournment shall not be for a period longer than eight days without the consent of the defendant.

(2) A trial or hearing that is adjourned for a period may be resumed before the expiration of the period with the consent of the defendant and the prosecutor.

Fitness to Stand Trial

41.-(1) Where at any time before a defendant is sentenced a court has reason to believe, based on,

(a) the evidence of a legally qualified medical practitioner or, with the consent of the parties, a written report of a legally qualified medical practitioner; or

(b) the conduct of the defendant in the courtroom,

that the defendant suffers from mental disorder, the court may by order suspend the proceedings and direct the trial of the issue as to whether the defendant is, because of mental disorder, unable to conduct his or her defence.

(2) For the purposes of subsection (1), the court may order the defendant to attend to be examined under subsection (6).

(3) Where on the trial of an issue the court finds that the defendant is, because of mental disorder, unable to conduct his or her defence, the court shall order that further proceeding on the charge be suspended.

(4) Where on the trial of an issue the court finds that the defendant is able to conduct his or her defence, the court shall order that the suspended proceeding be continued.

(5) At any time within one year after an order is made under subsection (3), either party may, upon seven days notice to the other party, apply to the court to rehear the trial of the issue and where upon the rehearing the court finds that the defendant is able to conduct his or her defence, the court may order that the suspended proceeding be continued.

(6) For the purposes of subsection (1) or a hearing or rehearing under subsection (3),(4) or (5), the court may order the defendant to attend at such place or before such person and at or within such time as are specified in the order and submit to an examination for the purpose of determining whether the defendant is, because of mental disorder, unable to conduct his or her defence.

(7) Where the defendant fails or refuses to comply with an order under subsection (6) without reasonable excuse or where the person conducting the examination satisfies a judge that it is necessary to do so, the judge may by warrant direct that the defendant be taken into such custody as is necessary for the purpose of the examination and in any event for not longer than seven days and, where it is necessary to detain the defendant in a place, the place shall be, where practicable, a psychiatric facility.

(8) Where an order is made under subsection (3) and one year has elapsed and no further order is made under subsection (4), no further proceeding shall be taken in respect of the charge or any other charge arising out of the same circumstance.

Taking of Evidence

42.-(1) Evidence under this Act shall be taken under oath, except as otherwise provided by law.

(2) Proceedings in which evidence is taken shall be recorded.

(3) Where a certificate as to the content of an official record is, by any Act, made admissible in evidence as proof in the absence of evidence to the contrary, the court may, for the purpose of deciding whether the defendant is the person referred to in the certificate, receive and base its decision upon information it considers credible or trustworthy in the circumstances of each case.

Attendance of Witnesses

43.-(1) Where a judge is satisfied that a person is able to give material evidence in a proceeding under this Act, the judge may issue a subpoena requiring the person to attend to give evidence and bring with him or her any writings or things referred to in the subpoena.

(2) A subpoena shall be served and the service shall be proved in the same manner as a summons under section 16.

(3) A person who is served with a subpoena shall attend at the time and place stated in the subpoena to give evidence and, if required by the subpoena, shall bring any writing or other thing that he or she has in possession or control relating to the subject-matter of the proceeding.

(4) A person who is served with a subpoena shall remain in attendance during the hearing and the hearing as resumed after adjournment from time to time unless the person is excused from attendance by the presiding judge.

Compelling Attendance of Witnesses

44.-(1) Where the court is satisfied upon evidence under oath that a person is able to give material evidence that is necessary in a proceeding under this Act and,

(a) the person will not attend if a subpoena is served;

or

(b) attempts to serve a subpoena have been made and have failed because the person is evading service,

the court may issue a warrant in the prescribed form for the arrest of the person.

(2) Where a person who has been served with a subpoena to attend to give evidence in a proceeding does not attend or remain in attendance, the court may, if it is established,

(a) that the subpoena has been served; and

(b) that the person is able to give material evidence that is necessary,

issue or cause to be issued a warrant in the prescribed form for the arrest of the person.

(3) The police officer who arrests a person under a warrant issued under subsection (1) or (2) shall immediately take the person before a judge.

(4) Unless the judge is satisfied that it is necessary to detain a person in custody to ensure attendance to give evidence, the judge shall order the person released upon condition that the person enter into a recognizance in such amount and with such sureties, if any, as are reasonably necessary to ensure attendance.

(5) Where the judge is satisfied that it is necessary to detain the person in custody to ensure attendance to give evidence, the judge may order that the person be detained in custody to testify at the trial or to have his or her evidence taken by a commissioner under an order made under subsection (10).

(6) Where the judge does not make an order under subsection (5), the judge shall order that the person be released upon condition that the person enter into a recognizance in such amount and with such sureties, if any as are reasonaably necessary to ensure attendance.

(7) A person who is ordered to be detained in custody under subsection (5) or is not released in fact under subsection (6) shall not be detained in custody for a period longer than ten days.

(8) A judge may at any time order the release of a person in custody under this section where the judge is satisfied that the detention is no longer justified.

(9) Where a person who is bound by a recognizance to attend to give evidence in a proceeding does not attend or remain in attendance, the court before which the person is bound to attend may issue a warrant in the prescribed form for the arrest of that person and,

(a) where the person is brought directly before the court, subsections (5) and (6) apply; and

(b) where the person is not brought directly before the court, subsections (3) to (6) apply.

(10) The court may order that the evidence of a person held in custody under this section be taken by a commissioner under section 48, which applies thereto in the same manner as to a witness who is unable to attend by reason of illness.

Order for a Prisoner to Attend

45.-(1) Where a person whose attendance is required in a court to stand trial or to give evidence is confined in a prison, and a judge is satisfied, upon evidence under oath given orally or by affidavit, that the person's attendance is necessary to satisfy the ends of justice, the judge may issue an order in the prescribed form that the person be brought before the court before which attendance is required, from day to day, as may be necessary.

(2) An order under subsection (1) shall be addressed to the person who has custody of the prisoner and on receipt of the order that person shall,

(a) deliver the prisoner to the police officer or other person who is named in the order to receive the prisoner; or

(b) bring the prisoner before the court upon payment of any reasonable charges in respect thereof.

(3) An order made under subsection (1) shall direct the manner in which the person shall be kept in custody and returned to the prison from which the person is brought.

Failure to Attend

46.-(1) Every person who, being required by law to attend or remain in attendance at a hearing, fails without lawful excuse to attend or remain in attendance accordingly is guilty of an offence and on conviction is liable to a fine of not more than $2,000, or to imprisonment for a term of not more than thirty days, or to both.

(2) In a proceeding under subsection (1), a certificate of the clerk or a judge of the court before which the defendant in that proceeding is alleged to have failed to attend stating that the defendant failed to attend is admissible in evidence as proof of the fact, in the absence of evidence to the contrary, without proof of the signature or office of the person appearing to have signed the certificate.

Commission Evidence

47.-(1) Upon the application of the defendant or prosecutor, the court may by order appoint a commissioner to take the evidence of a witness who is out of (the enacting jurisdiction) or is not likely to be able to attend the trial by reason of illness or physical disability or for some other good and sufficient cause.

(2) Evidence taken by a commissioner appointed under subsection (1) may be read in evidence in the proceeding if,

(a) it is proved by oral evidence or by affidavit that the witness is unable to attend for a reason set out in subsection (1);

(b) the transcript of the evidence is signed by the commissioner by or before whom it purports to have been taken; and

(c) it is proved to the satisfaction of the court that reasonable notice of the time and place for taking the evidence was given to the other party, and the party had full opportunity to cross-examine the witness.

(3) An order under subsection (1) may make provision to enable the defendant to be present or represented by counsel or agent when the evidence is taken, but failure of the defendant to be present or to be represented by counsel or agent in accordance with the order does not prevent the reading of the evidence in the proceeding if the evidence has otherwise been taken in accordance with the order and with this section.

Evidence on Another Charge

48. The court may receive and consider evidence taken before the same judge on a different charge against the same defendant, with the consent of the parties.

Evidence of Age

49. In the absence of other evidence, or by way of corroboration of other evidence, the court may infer the age of a person from the appearance of the person.

Exhibits

50.-(1) The court may order that an exhibit be kept in such custody and place as, in the opinion of the court, is appropriate for its preservation.

(2) Where any thing is filed as an exhibit in a proceeding, the clerk may release the exhibit upon the consent of the parties at any time after the trial or, in the absence of consent, may return the exhibit to the party tendering it

after the disposition of any appeal in the proceeding or, where an appeal is not taken, after the expiration of the time for appeal.

Interpreters

51. A judge may authorize a person to act as interpreter in proceedings under this Act where the person swears the prescribed oath and, in the opinion of the judge, is competent and likely to be readily available.

False Statements

52. Every person who makes an assertion of fact in a statement or entry in a document or form for use under this Act knowing that the assertion is false is guilty of an offence and on conviction is liable to a fine of not more than $2,000.

Removal of Defendant

53.-(1) The court may cause the defendant to be removed and to be kept out of court,

(a) when the defendant interrupts the proceedings so that to continue in the defendant's presence would not be feasible; or

(b) where, during the trial of an issue as to whether the defendant is, because of mental disorder, unable to conduct his or her defence, the court is satisfied that failure to do so might have an adverse effect on the mental health of the defendant.

(2) The court may exclude the public or any member of the public from a hearing where, in the opinion of the court, it is necessary to do so for the maintenance of order in the courtroom or to remove an influence that might affect the testimony of a witness.

APPENDIX C

Contempt of Court

54.-(1) Except as otherwise provided by an Act, every person who commits contempt in the face of the court is on conviction liable to a fine of not more than $1,000 or to imprisonment for a term of not more than thirty days, or to both.

(2) Before proceedings are taken for contempt under subsection (1), the court shall inform the offender of the conduct complained of and the nature of the contempt and inform the offender of the right to show cause why he or she should not be punished.

(3) A punishment for contempt in the face of the court shall not be imposed without giving the offender an opportunity to show cause why he or she should not be punished.

(4) Except where, in the opinion of the court, it is necessary to deal with the contempt immediately for the preservation of order and control in the courtroom, the court shall adjourn the contempt proceeding to another day.

(5) Where the court proceeds to deal with a contempt immediately and without adjournment under subsection (4), the court may order the offender arrested and detained in the courtroom for the purpose of the hearing and determination.

(6) Where the offender is appearing before the court as an agent who is not a barrister and solicitor entitled to practise in (enacting jurisdiction), the court may order that he or she be barred from acting as agent in the proceeding in addition to any other punishment to which he or she is liable.

(7) An order of punishment for contempt under this section is appealable in the same manner as if it were a conviction of a regulatory offence.

COMMENTARY

As a court of record and a creation of statute, the regulatory offences court has powers to punish for contempt in the face of the court but not for contempt of its processes or other contempt outside of the courtroom. Section 54 retains that limit on the court's contempt jurisdiction but provides certain regular procedure.

Non-juridical Day

55. Any action authorized or required by this Act is not invalid for the reason only that the action was taken on a non-juridical day.

Irregularity and Validity

56.-(1) The validity of any proceeding is not affected by,

(a) any irregularity or defect in the substance or form of the summons, warrant, offence notice, undertaking to appear or recognizance; or

(b) any variance between the charge set out in the summons, warrant, offence notice, undertaking to appear or recognizance and the charge set out in the certificate.

(2) Where it appears to the court that the defendant has been misled by any irregularity, defect or variance mentioned in subsection (1), the court may adjourn the hearing and may make such order as the court considers appropriate, including an order under section 78 for the payment of costs.

Extension of Time

57. Any time prescribed by this Act or the regulations made thereunder or by the rules of the court for doing any thing other than commencing or recommencing proceedings may be extended by the court, whether or not the prescribed time has expired.

Service

58.-(1) Except where otherwise provided by this Act or the rules of the court, any notice or document required or authorized to be given or delivered under this Act or the rules of the court is sufficiently given or delivered if delivered, whether personally or by mail.

(2) Where a notice or document that is required or authorized to be given or delivered to a person under this Act or the rules of the court is mailed to the person at his or her last known address appearing on the record of the

proceeding in the court, there is a rebuttable presumption that the notice or document is delivered to the person.

SENTENCING

Presentence Report

59.-(1) Where a defendant is convicted of an offence for which the notice of offence does not specify a set fine, the court may, where necessary for the purpose of assisting the court in imposing a sentence, direct a probation officer to prepare and file with the court a report in writing relating to the defendant.

(2) Where a report is filed with the court under subsection (1), the clerk of the court shall cause a copy of the report to be provided to the defendant or the defendant's counsel or agent and to the prosecutor.

Submission as to Sentence

60.-(1) Where a defendant who appears personally is convicted of an offence, the court shall give the prosecutor and the counsel or agent for the defendant an opportunity to make submissions as to sentence and, where the defendant has no counsel or agent, the court shall ask the defendant if he or she has anything to say before sentence is passed.

(2) The omission to comply with subsection (1) does not affect the validity of the proceeding.

(3) Where a defendant is convicted of an offence, the court may make such inquiries, on oath or otherwise, of and concerning the defendant as it considers desirable, including the defendant's economic circumstances, but the defendant shall not be compelled to answer.

(4) A certificate setting out with reasonable particularity the finding of guilt or acquittal or conviction and sentence in Canada of a person signed by,

(a) the person who made the adjudication; or

(b) the clerk of the court in which the adjudication was made,

is, upon the court being satisfied that the defendant is the person referred to in the certificate, admissible in evidence and is, in the absence of evidence to the contrary, proof of the facts stated therein without proof of the signature or the official character of the person appearing to have signed the certificate.

Time Spent in Custody

61. In determining the sentence to be imposed on a person convicted of an offence, the court may take into account any time spent in custody by the person as a result of the offence.

Minute of Disposition

62. Where a court convicts a defendant or dismisses a charge, a minute of the dismissal or conviction and sentence shall be made by the court, and, upon request by the defendant or the prosecutor or by the Attorney General or the Attorney General's agent, the court shall cause a copy of the minute certified by the clerk of the court to be delivered to the person making the request.

Minimum Penalties

63.-(1) No penalty prescribed for an offence is a minimmum penalty unless it is specifically declared to be a minimum.

(2) Notwithstanding that the provision that creates the penalty for an offence prescribes a minimum penalty, where in the opinion of the court exceptional circumstances exist so that to impose the minimum penalty would be unduly oppressive or otherwise not in the interests of justice, the court may impose a penalty that is less than the minimum or suspend the sentence.

(3) Where a minimum penalty is prescribed for an offence and the minimum penalty includes imprisonment, the court may, notwithstanding the prescribed penalty, impose a fine of not more than $5,000 in lieu of imprisonment.

APPENDIX C

COMMENTARY

Minimum penalties are prescribed to force courts to penalize certain offences more severely as a matter of public policy. They always cause a strain because the courts are then compelled to comply despite the judge's conviction that in the particular circumstances of the case before him or her the minimum is not just, although technically there is guilt. The tailoring of the penalty to individual circumstances within the public policy is the function of courts. One consequence of minimum penalties is a tendency for the court to stretch a point in interpreting the law to avoid a finding of guilt when faced with what the judge feels is an obligatory unjust penalty.

The purpose of section 63 is to permit a judge to have more flexibility in special circumstances.

Fines

64.-(1) A fine becomes due and payable [fifteen days or such other period as is determined by the enacting jurisdiction] after its imposition.

(2) Where the defendant is from outside the jurisdiction of the court, the court may order that the fine is due and payable immediately.

(3) Where the court imposes a fine, the court shall ask the defendant if he or she wishes an extension ot the time for payment of the fine.

(4) Where the defendant requests an extension of the time for payment of the fine, the court may make such inquiries, on oath or otherwise, of and concerning the defendant as the court considers desirable, but the defendant shall not be compelled to answer.

(5) Unless the court finds that the request for extension of time is not made in good faith or that the extension would likely be used to evade payment, the court shall extend the time for payment by ordering periodic payments or otherwise.

(6) Where a fine is imposed in the absence of the defendant, the clerk of the court shall give the defendant notice of the fine and its due date and of his or her right to apply for an extension of the time for payment under subsection (7).

(7) The defendant may, at any time by application in the prescribed form filed in the office of the court, request an extension or further extension of time for payment of a fine and the court may grant the request or require a hearing in the same manner as under subsections (4) and (5).

Fine Options

65. The Lieutenant Governor in Council may make regulations establishing a program to permit the payment of fines by means of credits for work performed, and, for the purpose and without restricting the generality of the foregoing, may,

(a) prescribe classes of work and the conditions under which they are to be performed;

(b) prescribe a system of credits;

(c) provide for any matter necessary for the effective administration of the program,

and any regulation may limit its application to any part or parts of (enacting jurisdiction).

Civil Suit on Default of Fine

66.-(1) When the payment of a fine is in default, the clerk of the court may complete a certificate in the prescribed form as to the imposition of the fine and the amount remaining unpaid and file the certificate in a court of competent jurisdiction and, upon filing, the certificate shall be deemed to be an order or judgment of that court for the purposes of enforcement.

(2) A certificate shall not be filed under subsection (1) after two years after the default in respect of which it is issued.

(3) Where a certificate has been filed under subsection (1) and the fine is fully paid, the clerk shall file a certificate of payment upon which the certificate of default is discharged and, where a writ of execution has been filed with the sheriff, the clerk shall file a certificate of payment with the sheriff, upon which the writ is cancelled.

APPENDIX C

Default of Fines

67.-(1) The payment of a fine is in default when any part of the fine is due and unpaid for fifteen days or more.

(2) Where a judge is satisfied that payment of a fine is in default, the judge,

(a) shall order that any permit, licence, registration or privilege in respect of which a suspension is authorized by or under any Act for non-payment of the fine be suspended, not renewed or not issued until the fine is paid; and

(b) may direct the clerk of the court to proceed with civil enforcement under section 66.

(3) A judge may issue a warrant in the prescribed form for the committal of the defendant where,

(a) an order or direction under clause (2) (a) has not resulted in payment within a time that is reasonable in the circumstances;

(b) the defendant has not taken the fine option;

(c) the defendant has made no arrangement for extension of the time for payment or for payment by instalments;

(d) the defendant has not responded to the notice of intent to issue a warrant;

(e) all other reasonable methods of collecting the fine have been tried and failed or, in the opinion of the judge, would not likely result in payment within a reasonable time in the circumstances;

(f) the judge is satisfied that the defendant is able to pay the fine; and

(g) the defendant has been given fifteen days notice of the intent to issue a warrant and has had an opportunity to be heard.

(4) In exceptional circumstances where, in the opinion of the court that imposed the fine, to proceed under subsection (3) would defeat the ends of justice, the court may,

(a) order that no warrant of committal be issued under subsection (3); or

(b) order imprisonment in default of payment of the fine and that no extension of time for payment be granted.

(5) Imprisonment under a warrant issued under subsection (3) or (4) shall be for three days, plus one day for each $50 or part thereof that is in default, subject to a maximum period of ninety days or half of the maximum imprisonment, if any, provided for the offence, whichever is the greater.

(6) Any payment made after a warrant is issued under subsection (3) or (4) shall reduce the term by the number of days that is in the same proportion to the number of days in the term as the amount bears to the amount in default and no amount offered in part payment of a fine shall be accepted unless it is sufficient to secure reduction of sentence of one day, or a multiple thereof.

Suspension of Fine

68. Where an Act provides that a fine may be suspended subject to the performance of a condition,

(a) the period of suspension shall be fixed by the court and shall be for not more than one year;

(b) the court shall provide in its order of suspension the method of proving the performance of the condition;

(c) the suspension is in addition to and not in lieu of any other power of the court in respect of the fine; and

(d) the fine is not in default until fifteen days have elapsed after notice that the period of suspension has expired is given to the defendant.

Custody on Imprisonment

69.-(1) The term of imprisonment imposed by a sentence shall, unless otherwise directed in the sentence, commence on the day on which the

convicted person is taken into custody under the sentence, but no time during which the convicted person is imprisoned or out on bail before sentence shall be reckoned as part of the term of imprisonment to which the person is sentenced.

(2) Where the court imposes imprisonment, the court may order custody to commence on a day not later than thirty days after the day of sentencing.

COMMENTARY

Since regulatory offences do not normally involve dangerous conduct or the need for public protection, continuous custody after conviction is not important. Subsection (2) permits the defendant to make arrangements for his or her absence from family and work.

Sentences Consecutive

70. Where a person is subject to more than one term of imprisonment at the same time, the two terms shall be served consecutively except in so far as the court has ordered a term to be served concurrently with any other term of imprisonment.

Warrant of Committal

71.-(1) A warrant of committal is sufficient authority,

(a) for the conveyance of the prisoner in custody for the purpose of committal under the warrant; and

(b) for the reception and detention of the prisoner by keepers of prisons in accordance with the terms of the warrant.

(2) A person to whom a warrant of committal is directed shall convey the prisoner to the correctional institution named in the warrant.

(3) A sentence of imprisonment shall be served in accordance with the enactments and rules that govern the institution to which the prisoner is sentenced.

Probation Order

72.-(1) Where a defendant is convicted of an offence in a proceeding commenced by the issuance of a summons, the court may, having regard to the age, character and background of the defendant, the nature of the offence and the circumstances surrounding its commission,

(a) suspend the passing of sentence and direct that the defendant comply with the conditions prescribed in a probation order;

(b) in addition to fining the defendant or sentencing the defendant to imprisonment, whether in default of payment of a fine or otherwise, direct that the defendant comply with the conditions prescribed in a probation order; or

(c) where it imposes a sentence of imprisonment on the defendant, whether in default of payment of a fine or otherwise, that does not exceed ninety days, order that the sentence be served intermittently at such times as are specified in the order and direct that the defendant, at all times when not in confinement under the order, comply with the conditions prescribed in a probation order.

(2) A probation order shall be deemed to contain the conditions that,

(a) the defendant not commit the same or any related or similar offence, or any offence under a statute of Canada or (enacting jurisdiction) or any other province or territory of Canada that is punishable by imprisonment;

(b) the defendant appear before the court as and when required; and

(c) the defendant notify the court of any change in his or her address.

(3) In addition to the conditions set out in subsection (2), the court may prescribe the following conditions in a probation order,

(a) that the defendant satisfy any compensation or restitution that is required or authorized by an Act;

(b) with the consent of the defendant and where the conviction is of an offence that is punishable by imprisonment, that the defendant perform a community service as set out in the order;

(c) where the conviction is of an offence that is punishable by imprisonment, such other conditions relating to the circumstances of the offence and of the defendant that contributed to the commission of the offence as the court considers appropriate to prevent similar unlawful conduct or to contribute to the rehabilitation of the defendant; or

(d) where considered necessary for the purpose of implementing the conditions of the probation order, that the defendant report to a responsible person designated by the court and, in addition, where the circumstances warrant it, that the defendant be under the supervision of the person to whom he or she is required to report.

(4) A probation order shall be in the prescribed form and the court that makes the order shall specify therein the period for which it is to remain in force, which shall not be for more than two years from the date when the order takes effect.

(5) Where the court makes a probation order, it shall cause a copy of the order and a copy of section 76 to be given to the defendant.

(6) The Lieutenant Governor in Council may make regulations governing restitution, compensation and community service orders, including their terms and conditions.

Commencement of Probation Order

73. A probation order comes into force,

(a) on the date on which the order is made; or

(b) where the defendant is sentenced to imprisonment other than a sentence to be served intermittently, upon the expiration of that sentence.

Probation Order and Further Conviction

74. Where a defendant who is bound by a probation order is convicted of an offence or is imprisoned in default of payment of a fine, the order continues in force except in so far as the sentence or imprisonment renders it impossible for the defendant to comply for the time being with the order.

Amendment of Probation Order

75. The court may, at any time upon the application of the defendant or prosecutor with notice to the other, after a hearing or, with the consent of the parties, without a hearing,

(a) make any changes in or additions to the conditions prescribed in the order that in the opinion of the court are rendered desirable by a change in circumstances;

(b) relieve the defendant, either absolutely or upon such terms or for such period as the court considers desirable, of compliance with any condition described in any of the clauses in subsection 72(3) that is prescribed in the order; or

(c) terminate the order or decrease the period for which the probation order is to remain in force,

and the court shall thereupon endorse the probation order accordingly and, if it changes or adds to the conditions prescribed in the order, inform the defendant of its action and give the defendant a copy of the order so endorsed.

Breach of Probation Order

76. Where a defendant who is bound by a probation order is convicted of an offence constituting a breach of condition of the order and,

(a) the time within which the defendant may appeal or apply for leave to appeal against that conviction has expired and the defendant has not taken an appeal or applied for leave to appeal;

(b) the defendant has taken an appeal or applied for leave to appeal against the conviction and the appeal or application for leave has been dismissed or abandoned; or

(c) the defendant has given written notice to the court that convicted him or her that he or she elects not to appeal,

or where the defendant otherwise wilfully fails or refuses to comply with the order, the defendant is guilty of an offence and upon conviction the court may,

(d) impose a fine of not more than $1,000 or imprisonment for a term of not more than thirty days, or both, and in lieu of or in addition to the penalty, continue the probation order with such changes or additions and for such extended term, not exceeding an additional year, as the court considers reasonable; or

(e) where the judge presiding is the judge who made the original order, in lieu of imposing the penalty under clause (d), revoke the probation order and impose the sentence the passing of which was suspended upon the making of the probation order.

Costs

77.-(1) Upon conviction, the defendant is liable to pay to the court an amount by way of costs that is fixed by the regulations.

(2) The court may, in its discretion, order costs towards fees and expenses reasonably incurred by or on behalf of witnesses in amounts not exceeding the maximum fixed by the regulations, to be paid to the court or prosecutor by the defendant or to the defendant by the person who issued the certificate.

(3) Costs payable under this section and administration fees in the proceeding that are prescribed by law shall be deemed to be a fine for the purpose of enforcing payment.

General Penalty

78. Except where otherwise expressly provided by law, every person who is convicted of an offence is liable to a fine of not more than $5,000.

COMMENTARY

This section is probably obsolete. It is well established that conduct does not become an offence unless there is a specific statement that it is an offence. If there is still an instance where conduct is created an offence and no penalty is prescribed it is probably in a century old statute and could be better ignored.

YOUNG PERSONS

COMMENTARY

The provisions of the Young Offenders Act (Canada) apply in respect of offences against the Criminal Code. The enacting jurisdiction will require legislation to create the facilities referred to in the Young Offenders Act, probably in its social ministry legislation. Similarly the administrative structure that is necessary will be established in the children's services administration. The special provisions for alternative sentencing belong in that legislation by merely extending its application to regulatory offences. Similarly alternative measures should be provided for by extending the application of existing provisions that deal with the Federal Act. It is, however, necessary to carry out the procedural principles that are contained in the Federal legislation.

Minimum Age

79. No person shall be convicted of an offence committed while under twelve years of age.

Application of ss 81 to 89

80.-(1) Sections 81 to 89 apply to proceedings against a young person who is a person of twelve years of age or more but under sixteen years of age, and includes proceedings against a person of sixteen years of age or more who is charged with having committed an offence while he or she was twelve years of age or more but under sixteen years of age.

(2) The provisions of this Act apply to young persons except insofar as anything in sections 81 to 89 is inconsistent with them.

(3) A reference in sections 81 to 89 to a parent includes a reference to an adult with whom the young person ordinarily resides.

APPENDIX C

COMMENTARY

When determining the upper age of a young offender for the purposes of regulatory offences a major consideration is the age in the statutes of the jurisdiction when young persons can obtain a driving licence, obtain alcohol or engage in other commonly regulated activities. The central purpose of young offender legislation is not directed at purely regulatory minor offences.

Summons

81. A proceeding commenced against a young person shall be by a certificate of offence with an offence notice and summons.

Notice to Parent

82.-(1) Where a summons is served upon a young person or a young person is released on a recognizance under this Act, the regulatory offences officer, in the case of a summons, or the officer in charge, in the case of a recognizance, shall as soon as practicable give notice to a parent of the young person by delivering a copy of the summons or recognizance to the parent.

(2) Where notice has not been given under subsection (1) and no person to whom notice could have been given appears with the young person, the court may adjourn the hearing to another time to permit notice to be given or may dispense with the notice.

(3) Failure to give notice to a parent under subsection (1) does not in itself invalidate the proceedings against the young person.

Trial

83.-(1) Subject to section 37 (ex parte conviction), subsection 53 (1) (removal for misconduct) and subsection (2), a young person shall be present in court during the whole of the trial.

(2) The court may permit a young person to be absent during the whole or any part of the trial, on such conditions as the court considers proper.

(3) Section 46 (penalty for failure to attend) does not apply to a young person who is a defendant.

(4) Where a young person who is a defendant does not appear at the time and place appointed for a hearing and it is proved by the prosecutor, having been given a reasonable opportunity to do so, that a summons was served, an undertaking to appear was given or a recognizance to appear was entered into, as the case may be, or where the young person does not appear upon the resumption of a hearing that has been adjourned, the court may adjourn the hearing and issue a summons to appear or issue a warrant in the prescribed form for the arrest of the young person.

(5) Where a young person does not attend personally in response to a summons issued under section 35 (court summons to attend) and it is proved by the prosecutor, having been given a reasonable opportunity to do so, that the summons was served, the court may adjourn the hearing and issue a further summons or issue a warrant in the prescribed form for the arrest of the young person.

Protection of Identity

84.-(1) No person shall publish by any means a report,

(a) of an offence committed or alleged to have been committed by a young person; or

(b) of a hearing, adjudication, sentence or appeal concerning a young person who committed or is alleged to have committed an offence,

in which the name of or any information serving to identify the young person is disclosed.

(2) Subsection (1) does not prohibit the following:

1. The disclosure of information by the young person concerned.

2. The disclosure of information by the young person's parent or lawyer, for the purpose of protecting the young person's interests.

3. The disclosure of information by a police officer for the purpose of investigating an offence which the young person is suspected of having committed.

4. The disclosure of information to an insurer, to enable the insurer to investigate a claim arising out of an offence committed or alleged to have been committed by the young person.

5. The disclosure of information in the course of the administration of justice, but not for the purpose of making the information known in the community.

6. The disclosure of information by a person or member of a class of persons prescribed by the regulations.

(3) Every person who contravenes subsection (1) and every director, officer or employee of a corporation who authorizes, permits or acquiesces in a contravention of subsection (1) by the corporation is guilty of an offence and is liable on conviction to a fine of not more than $10,000.

Penalties

85.-(1) No young person shall be sentenced to be imprisoned except under clause 76(d) (breach of probation order).

(2) Where a young person is found guilty of an offence in proceedings commenced under this Act, the court may,

(a) convict the young person and,

(i) order the young person to pay a fine not exceeding the maximum prescribed for the offence or $1,000, whichever is less, or

(ii) suspend the passing of sentence and direct that the young person comply with the conditions prescribed in a probation order; or

(b) discharge the young person absolutely.

(3) A probation order made under subclause (2) (a) (ii) shall not remain in force for more than one year from the date when it takes effect.

Imprisonment for Non-payment of Fine

86.-(1) No warrant of committal shall be issued against a young person under section 67 (default of fines).

(2) Where it would be appropriate, but for subsection (1), to issue a warrant against a young person under subsection 67(3) or (4) (imprisonment for non-payment of fine), a judge may direct that the young person comply with the conditions prescribed in a probation order after giving the young person fifteen days notice of the intention to make a probation order and giving the young person an opportunity to be heard.

(3) A probation order made under subsection (2) shall not remain in force for more than ninety days from the date when it takes effect.

Open Custody

87. Where a young person is sentenced to a term of imprisonment for breach of probation under clause 76(d), the term of imprisonment shall be served in a place of open custody designated under section 24 of the Young Offenders Act (Canada).

Arrest Without Warrant

88. No person shall exercise an authority under this or any other Act to arrest a young person without warrant unless the person has reasonable and probable grounds to believe that it is necessary in the public interest to do so in order to,

(a) establish the young person's identity; or

(b) prevent the continuation or repetition of an offence that constitutes a serious danger to the young person or to the person or property of another.

Release after Arrest

89.-(1) Section 121 (bail procedure) does not apply to a young person who has been arrested.

(2) Where a police officer acting under a warrant or other power of arrest arrests a young person, the police officer shall, as soon as is practicable, release the young person from custody unconditionally or after serving the young person with a summons unless the officer has reasonable and probable grounds to believe that it is necessary in the public interest for the young person to be detained in order to establish the young person's identity, or prevent the continuation or repetition of an offence that constitutes a serious danger to the young person or the person or property of another.

(3) Where a young person is not released from custody under subsection (2), the police officer shall deliver the young person to the officer in charge and where the officer in charge is of the opinion that the conditions set out in subsection (2) do not or no longer exist, the officer in charge shall release the young person unconditionally or upon the young person entering into a recognizance in the prescribed form, without sureties, conditioned for appearance in court.

(4) Where the officer in charge does not release the young person under subsection (3), the officer in charge shall as soon as possible notify a parent of the young person by advising the parent, orally or in writing, of the young person's arrest, the reason for the arrest and the place of detention.

(5) Section 122 (prompt appearance in court) applies with necessary modifications to the release of a young person from custody under this section.

(6) No young person who is detained under section 121 shall be detained in any part of a place in which an adult who has been charged with or convicted of an offence is detained unless a judge so authorizes, which the judge may do on being satisfied that,

(a) the young person cannot, having regard to the young person's own safety or the safety of others, be detained in a place of temporary detention for young persons; or

(b) no place of temporary detention for young persons is available within a reasonable distance.

(7) Wherever practicable, a young person who is detained in custody shall be detained in a place of temporary detention designated under subsection 7 (1) of the Young Offenders Act (Canada).

APPEALS AND REVIEW

Appeal Court

90. An appeal lies from the regulatory offences court to the (County or District Court or equivalent lowest trial court of federally appointed judges in the enacting jurisdiction).

Stay

91. The filing of a notice of appeal does not stay the conviction unless a judge of the appeal court so orders.

Fixing Date

92.-(1) Where an appellant is in custody pending the hearing of the appeal and the hearing of the appeal has not commenced within thirty days from the day on which notice of the appeal was given, the person having custody of the appellant shall apply to a judge of the appeal court to fix a date for the hearing of the appeal.

(2) Upon receiving an application under subsection (1), the judge shall, after giving the prosecutor a reasonable opportunity to be heard, fix a date for the hearing of the appeal and give such directions as the judge thinks appropriate for expediting the hearing of the appeal.

Payment of Fine not Waiver

93. The payment of a fine or compliance with an order imposed upon conviction is not a waiver of the right to appeal.

Transmittal of Material

94. Where a notice of appeal has been filed, the clerk of the appeal court shall notify the clerk of the regulatory offences court appealed from of the appeal and, upon receipt of the notification, the clerk of the regulatory offences court shall transmit the order appealed from and transmit or transfer custody of all other material in the clerk's possession or control relevant to the proceedings to the clerk of the appeal court to be kept with the records of the appeal court.

Right of Appeal

95.-(1) A defendant, prosecutor or the Attorney General by way of intervention may appeal from a conviction, dismissal or sentence made by a regulatory offences court or from a finding as to ability, because of mental disorder, to conduct a defence.

(2) The appeal shall be in accordance with the rules of the appeal court.

Powers of Court

96.-(1) The appeal court may, where it considers it to be in the interests of justice,

(a) order the production of any writing, exhibit or other thing relevant to the appeal;

(b) order any witness who would have been a compellable witness at the trial, whether or not called at the trial,

(i) to attend and be examined before the court, or

(ii) to be examined in the manner provided by the rules before a judge of the court, or before any officer of the court or other person appointed by the court for the purpose;

(c) admit, as evidence, an examination that is taken under subclause (b)(ii);

(d) receive the evidence, if tendered, of any witness;

(e) order that any question arising on the appeal that,

(i) involves prolonged examination of writings or accounts, or scientific investigation, and

(ii) cannot in the opinion of the court conveniently be inquired into before the court,

be referred for inquiry and report, in the manner provided by the rules, to a special commissioner appointed by the court; and

(f) act upon the report of a commissioner who is appointed under clause (e) in so far as the court thinks fit to do so.

(2) In proceedings under this section, the parties or their counsel are entitled to examine or cross-examine witnesses and, in an inquiry under clause (1)(e), are entitled to be present during the inquiry and to adduce evidence and to be heard.

Appearance

97.-(1) An appellant or respondent may appear and act personally or by counsel.

(2) An appellant or respondent who is in custody as a result of the decision appealed from is entitled to be present at the hearing of the appeal.

(3) The power of the court to impose sentence may be exercised notwithstanding that the appellant or respondent is not present.

Written Argument

98. An appellant or respondent may present his or her case on appeal and argument in writing instead of orally, and the court shall consider any case or argument so presented.

Powers on Appeal Against Conviction

99.-(1) On the hearing of an appeal against a conviction or against a finding as to ability, because of mental disorder, to conduct a defence, the court by order,

(a) may allow the appeal where it is of the opinion

that,

(i) the finding should be set aside on the ground

that it is unreasonable or cannot be supported by the evidence,

(ii) the judgment of the trial court should be set

aside on the ground of a wrong decision on a question of law, or

(iii) on any ground, there was a miscarriage of

justice; or

(b) may dismiss the appeal where,

(i) the court is of the opinion that the appellant,

although not properly convicted on a count or part of a certificate was properly convicted on another count or part of the certificate,

(ii) the appeal is not decided in favour of the

appellant on any ground mentioned in clause (a), or

(iii) notwithstanding that the court is of the

opinion that on any ground mentioned in subclause (a) (ii) the appeal might be decided in favour of the appellant, it is of the opinion that no substantial wrong or miscarriage of justice has occurred.

(2) Where the court allows an appeal under clause (1) (a), it shall,

(a) where the appeal is from a conviction, direct a

finding of acquittal to be entered or order a new trial; or

(b) where the appeal is from a finding that the

defendant is unable, because of mental disorder, to conduct a defence, order a new trial.

(3) Where the court dismisses an appeal under clause (1) (b), it may substitute the decision that in its opinion should have been made and affirm the sentence passed by the trial court or impose a sentence that is warranted in law.

Powers on Appeal Against Acquittal

100. Where an appeal is from an acquittal, the court may by order,

(a) dismiss the appeal; or

(b) allow the appeal, set aside the finding and,

(i) order a new trial, or

(ii) enter a finding of guilt with respect to the offence of which, in its opinion, the person who has been accused of the offence should have been found guilty, and pass a sentence that is warranted in law.

Appeal Against Sentence

101.-(1) Where an appeal is taken against sentence, the court shall consider the fitness of the sentence appealed from and may, upon such evidence, if any, as it thinks fit to require or receive, by order,

(a) dismiss the appeal; or

(b) vary the sentence within the limits prescribed by law for the offence of which the defendant was convicted,

and, in making any order under clause (b), the court may take into account any time spent in custody by the defendant as a result of offence.

(2) A judgment of a court that varies a sentence has the same force and effect as if it were a sentence passed by the trial court.

One Sentence on More than One Count

102. Where one sentence is passed upon a finding of guilt on two or more counts, the sentence is good if any of the counts would have justified the sentence.

Defect in Certificate or Process

103.-(1) Judgment shall not be given in favour of an appellant based on an alleged defect in the substance or form of a certificate or process or any variance between the certificate or process and the evidence adduced at trial

unless it is shown that objection was taken at the trial and that, in the case of a variance, an adjournment of the trial was refused notwithstanding that the variance had misled the appellant.

(2) Where an appeal is based on a defect in a conviction or an order, judgment shall not be given in favour of the appellant, but the court shall make an order curing the defect.

Additional Orders

104. A court that exercises any of the powers in sections 96 to 103 may make any order in addition that justice requires.

New Trial

105.(1) Where a court orders a new trial, it shall be held in a regulatory offences court presided over by a judge other than the judge who tried the defendant in the first instance unless the appeal court directs that the new trial be held before the judge who tried the defendant in the first instance.

(2) Where a court orders a new trial, it may make such order for the release or detention of the appellant pending the trial as may be made by a judge under subsection 123(2) (order for conditional release of person in custody) and the order may be enforced in the same manner as if it had been made by a judge under that subsection.

Trial de Novo

106.-(1) Where, because of the condition of the record of the trial in the trial court or for any other reason, the court, upon application of the appellant or respondent, is of the opinion that the interests of justice would be better served by hearing and determining the appeal by holding a new trial in the Appeal Court, the court may order that the appeal shall be heard by way of a new trial in the court in accordance with the rules, and for this purpose this Act applies with necessary modifications in the same manner as to a proceeding in a regulatory offences court.

(2) The court may, for the purpose of hearing and determining an appeal under subsection (1), permit the evidence of any witness taken before the trial court to be read if that evidence has been authenticated and if,

(a) the appellant and respondent consent;

(b) the court is satisfied that the attendance of the witness cannot reasonably be obtained; or

(c) by reason of the formal nature of the evidence or otherwise the court is satisfied that the opposite party will not be prejudiced,

and any evidence that is read under the authority of this subsection has the same force and effect as if the witness had given the evidence before the court.

Failure to Comply or Abandonment

107. The court may order that the appeal be dismissed, upon proof that notice of an appeal has been given and that,

(a) the appellant has failed to comply with any order made under section 92 (conditions for release from custody) or with the conditions of any recognizance entered into under that section; or

(b) the appeal has not been proceeded with or has been abandoned.

Costs

108.-(1) Where an appeal is heard and determined or is abandoned or is dismissed for want of prosecution, the court may make any order with respect to costs that it considers just and reasonable.

(2) Where the court orders the appellant or respondent to pay costs, the order shall direct that the costs be paid to the clerk of the trial court, to be paid by him to the person entitled to them, and shall fix the period within which the costs shall be paid.

(3) Costs ordered to be paid under this section by a person other than a prosecutor acting on behalf of the Crown shall be deemed to be a fine for the purpose of enforcing its payment.

Implementation of Order on Appeal

109. An order or judgment of the appeal court shall be implemented or enforced by the trial court and the clerk of the appeal court shall send to the clerk of the trial court the order and all writings relating to the order.

Appeal to the Court of Appeal

110.-(1) A defendant or the prosecutor or the Attorney General by way of intervention may appeal from the judgment of the appeal court to the Court of Appeal, with leave of a justice of appeal on special grounds, upon any question of law alone or as to sentence in accordance with the rules of the Court.

(2) Leave to appeal shall not be granted under subsection (1) unless the justice of appeal considers that in the particular circumstances of the case it is essential in the public interest or for the due administration of justice that leave be granted.

(3) No appeal or review lies from a decision on a motion for leave to appeal under subsection (1).

Custody Pending Appeal

111. A defendant who appeals shall, if in custody, remain in custody, but a judge may order the defendant's release upon any of the conditions set out in subsection 122(2) (order for conditional release of person in custody).

Review in Minor Cases

112.-(1) Where a defendant is convicted of an offence for which the maximum penalty prescribed is a fine of $5,000 or less and no imprisonment, the defendant may elect to appeal by way of a review under this section.

(2) The review shall be conducted in the (provincial or territorial summary conviction court) as an informal review for the purpose of ensuring that the defendant has had due process and the evidence was duly considered.

(3) Upon a review, the court shall give the parties an opportunity to be heard and may,

(a) make such inquiries as are necessary to ensure that the issues are fully and effectively defined;

(b) receive any evidence that the defendant failed to present at the original hearing, notwithstanding that it was available;

(c) hear or rehear the recorded evidence or any part of it and may require any party to provide a transcript of the evidence or any part of it or to produce any further exhibit;

(d) receive the evidence of any witness whether or not the witness gave evidence at the trial;

(e) require the judge presiding at the trial to report in writing on any matter respecting the procedure and due process as is specified in the request;

(f) require the attendance of the regulatory offences officer who issued the certificate or the clerk of the trial court or any other official whose evidence is relevant to the issues raised by the defendant; and

(g) receive and act upon statements of agreed facts or admissions.

(4) Upon a review, the court may affirm, reverse or vary the decision appealed from or where, in the opinion of the court, it is necessary to do so to satisfy the ends of justice, direct a new trial.

(5) Where the court directs a new trial, it shall be held in the regulatory offences court presided over by a judge other than the judge who tried the defendant in the first instance, but the review court may, with the consent of the parties to the review, direct that the new trial be held before the judge who tried the defendant in the first instance.

(6) A decision on a review under this section is final.

COMMENTARY

In the great number of minor offences such as parking, illegal turns, stop signs, speeding and their equivalent in other activities such as jay-walking, smoking and many other similar offences, there is no legal issue that the defendants are interested in. It is much like being billed by a utility. The main questions on which the defendant seeks reassurance are of fact and amount. The principal function of the court is to give the defendant access to someone to ensure that the defendant's version of the facts are taken into consideration.

Unfortunately, the crowded courts and stylized procedure commonly leaves a defendant feeling that his or her story was never gotten across. After the gavel falls and the defendant seeks to continue, the defendant is told "You can appeal if I'm wrong". It is not access to justice in these cases to offer only an expensive formal appeal with a full dress hearing through lawyers on legal points and, of course, no appeal will be taken.

The purpose of section 112 is to review due process and correct any oversight or deficiency in the hearing. Any serious questions of law should go to the regular appeal procedure. The review is an option but, if taken, excludes an appeal.

Judicial Review

113.-(1) Upon an application by way of originating notice, the (name the superior trial court of the enacting jurisdiction) may by order grant any relief in respect of matters arising under this Act that the applicant would be entitled to in proceedings by way of an application for an order in the nature of mandamus, prohibition or certiorari.

(2) Notice of an application under this section shall be served on,

(a) the person whose act or omission gives rise to the application;

(b) any person who is a party to a proceeding that gives rise to the application; and

(c) the Attorney General.

(3) An appeal lies to the Court of Appeal from an order made under this section.

Application for Certiorari

114.-(1) A notice under section 113 in respect of an application for relief in the nature of certiorari shall be given at least seven days and not more than ten days before the date fixed for the hearing of the application and the notice shall be served within thirty days after the occurrence of the act sought to be quashed.

(2) Where a notice referred to in subsection (1) is served on the person making the decision, order or warrant or holding the proceeding giving rise to the application, such person shall forthwith file in the (Court) for use on the application, all material concerning the subject-matter of the application.

(3) No application shall be made to quash a conviction, order or ruling from which an appeal is provided by this Act, whether subject to leave or otherwise.

(4) On an application for relief in the nature of certiorari, the (Court) shall not grant relief unless the court finds that a substantial wrong or miscarriage of justice has occurred, and the court may amend or validate any decision already made, with effect from such time and on such terms as the court considers proper.

(5) Where an application is made to quash a decision, order, warrant or proceeding made or held by a judge on the ground that the judge exceeded his or her jurisdiction, the (Court) may, in quashing the decision, order, warrant or proceeding, order that no civil proceeding shall be taken against the judge or against any officer who acted under the decision, order or warrant or in the proceeding or under any warrant issued to enforce it.

Application for Habeas Corpus

115.-(1) Upon an application by way of originating notice, the (Court) may by order grant any relief in respect of a matter arising under this Act that the applicant would be entitled to in proceedings by way of an application for an order in the nature of habeas corpus.

(2) Notice of an application under subsection (1) for relief in the nature of habeas corpus shall be served upon the person having custody of the person in respect of whom the application is made and upon the Attorney General and on the hearing of the application the presence before the (Court) of the person in respect of whom the application was made may be dispensed with by consent, in which event the (Court) may proceed to dispose of the matter forthwith as the justice of the case requires.

Costs on Judicial Review

116. The (Court) to which an application or appeal is made under section 113 or 115 may make an order with respect to costs that it considers just and reasonable.

ARREST AND BAIL

Power of Arrest

117. There is no general power of arrest in respect of the commission of a regulatory offence unless the arrest is by a police officer who has reasonable and probable grounds to believe that an offence has been committed or is about to be committed and,

(a) an arrest is necessary to identify the defendant;

(b) an arrest is necessary to preserve evidence;

(c) an arrest is necessary to prevent the continuation of the offence; or

(d) the defendant is from out of the jurisdiction and unlikely to respond to the offence notice and a deposit is required by means of the bail procedure.

Execution of Warrant

118.-(1) A warrant for the arrest of a person shall be executed by a police officer by arresting the person against whom the warrant is directed wherever found in (enacting jurisdiction).

(2) A police officer may arrest without warrant a person for whose arrest the officer has reasonable and probable grounds to believe that a warrant is in force in (enacting jurisdiction).

Use of Force

119.-(1) Every police officer, if the officer acts on reasonable and probable grounds, is justified in using as much force as is necessary to do what the officer is required or authorized by law to do.

(2) Every person upon whom a police officer calls for assistance is justified in using as much force as the person believes on reasonable and probable grounds is necessary to render the assistance.

Disclosure on Arrest

120.-(1) It is the duty of every one who executes a process or warrant to produce it when requested to do so.

(2) It is the duty of every one who arrests a person, whether with or without warrant, to give notice to that person of the reason for the arrest.

Release after Arrest

121.-(1) Where a police officer, acting under a warrant or other power of arrest, arrests a person, the police officer shall, as soon as is practicable, release the person from custody after serving the person with a summons or offence notice unless the officer has reasonable and probable grounds to believe that,

(a) it is necessary in the public interest for the person to be detained, having regard to all the circumstances including the need to,

(i) establish the identity of the person,

(ii) secure or preserve evidence of or relating to the offence, or

(iii) prevent the continuation or repetition of the offence or the commission of another offence; or

(b) the person arrested is ordinarily resident outside of (enacting jurisdiction) and will not respond to a summons or offence notice.

(2) Where a defendant is not released from custody under subsection (1), the police officer shall deliver the defendant to the officer in charge of the place where the defendant is held and where, in the opinion of the officer in charge the conditions set out in clauses (1)(a) and (b) do not or no longer exist, the officer in charge shall release the defendant, after serving the defendant with a summons or after the defendant has entered into a recognizance in the prescribed form, without sureties, conditioned for appearance in court.

(3) Where the defendant is held for the reason only that he or she is not ordinarily resident in (enacting jurisdiction) and it is believed that he or she will not respond to a summons, the officer in charge may, in addition to anything required under subsection (2), require the defendant to deposit cash or other satisfactory negotiable security in an amount not to exceed the maximum fine for the offence or $500, whichever is the lesser.

Court Appearance

122.-(1) Where a defendant is not released from custody under section 121, the officer in charge shall, as soon as is practicable but in any event within twenty-four hours, bring the defendant before a judge and the judge shall, unless a plea of guilty is taken, order that the defendant be released upon giving an undertaking to appear unless the prosecutor having been given an opportunity to do so shows cause why the detention of the defendant is

justified to ensure his or her appearance in court or why an order under subsection (2) is justified for the same purpose.

(2) The judge may order the release of the defendant,

(a) upon the defendant entering into a recognizance to appear with such conditions as are appropriate to ensure his or her appearance in court; or

(b) where the offence is one punishable by imprisonment for twelve months or more, or where the defendant is not ordinarily resident in (enacting jurisdiction), upon the defendant entering into a recognizance before a judge with sureties in such amount and with such conditions, if any, as are appropriate to ensure appearance in court or, with the consent of the prosecutor, upon the defendant depositing with the judge such sum of money or other valuable security as the order directs in an amount not exceeding the amount of the maximum fine for the offence or $1,000, whichever is the lesser.

(3) The judge shall not make an order under clause (2)(b) unless the prosecutor shows cause why an order under clause (2)(a) should not be made.

(4) Where the prosecutor shows cause why the detention of the defendant in custody is justified to ensure the defendant's appearance in court, the judge shall order the defendant to be detained in custody until dealt with according to law.

(5) The judge shall include in the record a statement of reasons for the decision under subsection (1), (2) or (4).

(6) In a proceeding under subsection (1), the judge may receive and base his or her decision upon information the judge considers credible or trustworthy in the circumstances of each case except that the defendant shall not be examined or cross-examined in respect of the offence with which he or she is charged.

(7) A proceeding under subsection (1) shall not be adjourned for more than three days without the consent of the defendant.

Expediting of Trial

123.-(1) A defendant who is not released from custody under section 121 or 122 shall be brought before the court forthwith and, in any event, within eight days.

(2) The judge presiding upon any appearance of the defendant in court may, upon the application of the defendant or prosecutor, review any order made under section 122 and make such further or other order under section 122 as to the judge seems appropriate in the circumstances.

Appeal

124. A defendant or the prosecutor may appeal from an order or refusal to make an order under section 122 or 123 and the appeal shall be to the (court designated by the enacting jurisdiction for appeals under section 90) and shall be conducted in accordance with the rules of the court.

Agent for Appearance

125.-(1) Where a defendant from outside the jurisdiction who is released upon making a deposit under subsection 121(3) or clause 122 (2)(b) does not appear to answer the charge, the judge may order the amount deposited to be applied to payment of the fine and costs imposed by the court upon the conviction.

(2) An officer in charge or judge who takes a recognizance, money or security under section 121 or 122 shall make a return of it to the court where the defendant is required to appear.

(3) The clerk of the court shall, upon the conclusion of proceedings, make a financial return to every person who deposited money or security under a recognizance and return the surplus, if any.

Recognizance Binding

126.(1) The recognizance of a person to appear in a proceeding binds the person and sureties in respect of all appearances required in the proceeding at times and places to which the proceeding is adjourned.

(2) A recognizance is binding in respect of appearances for the offence to which it relates and is not vacated upon the arrest, discharge or conviction of the defendant upon another charge.

(3) The principal to a recognizance is bound for the amount of the recognizance that is due upon forfeiture.

(4) The principal and each surety to a recognizance are bound, jointly and severally, for the amount of the recognizance that is due upon forfeiture for non-appearance.

Relieving Surety

127.-(1) A surety to a recognizance may, by application in writing to the court at which the defendant is required to appear, apply to be relieved of the obligation under the recognizance and the court shall thereupon issue a warrant for the arrest of the defendant.

(2) A police officer who arrests the defendant under a warrant issued under subsection (1) shall bring the defendant before a judge under section 122 and certify the arrest by certificate in the prescribed form and deliver the certificate to the court.

(3) The receipt of the certificate by the court under subsection (2) vacates the recognizance and discharges the sureties.

Discharge of Surety

128. A surety to a recognizance may discharge the obligation under the recognizance by delivering the defendant into the custody of the court at which the defendant is required to appear at any time while it is sitting at or before the trial of the defendant.

Forfeiture of Recognizance

129.-(1) Where a person who is bound by a recognizance does not comply with a condition of the recognizance, a judge having knowledge of the facts shall endorse on the recognizance a certificate in the prescribed form setting out,

(a) the nature of the default;

(b) the reason for the default, if it is known;

(c) whether the ends of justice have been defeated or delayed by reason of the default; and

(d) the names and addresses of the principal and sureties.

(2) A certificate that has been endorsed on a recognizance under subsection (1) is evidence of the default to which it relates.

(3) The clerk of the court shall transmit the endorsed recognizance to the clerk of the (County or District Court or equivalent lowest trial court of federally appointed judges in the enacting jurisdiction) and, upon its receipt, the endorsed recognizance constitutes an application for the forfeiture of the recognizance.

(4) A judge of the court shall fix a time and place for the hearing of the application and the clerk of the court shall, not less than ten days before the time fixed for the hearing, deliver notice to the prosecutor and to each principal and, where the application is for forfeiture for non-appearance, each surety named in the recognizance, of the time and place fixed for the hearing and requiring each principal and surety to show cause why the recognizance should not be forfeited.

(5) The court may, after giving the parties an opportunity to be heard, in its discretion grant or refuse the application and make any order in respect of the forfeiture of the recognizance that the court considers proper.

(6) Where an order for forfeiture is made under subsection (5),

(a) any money or security forfeited shall be paid over by the person who has custody of it to the person who is entitled by law to receive it; and

(b) the principal and surety become judgment debtors of the Crown jointly and severally in the amount forfeited under the recognizance and the amount may be collected in the same manner as

money owing under a judgment of the (county or district court or equivalent civil court of the enacting jurisdiction).

SEARCH AND SEIZURE

Warrant

130.-(1) Where a judge is satisfied by information upon oath that there is reasonable ground to believe that there is in any building, receptacle or place,

(a) anything upon or in respect of which an offence has been or is suspected to have been committed; or

(b) anything that there is reasonable ground to believe will afford evidence as to the commission of an offence,

the judge may at any time issue a warrant in the prescribed form authorizing a police officer or person named in the warrant to search the building, receptacle or place for any such thing, and to seize and carry it before the judge issuing the warrant or another judge to be dealt with according to law.

(2) Every search warrant shall name a date upon which it expires, which date shall be not later than fifteen days after its issue.

(3) Every search warrant shall be executed between 6 a.m. and 9 p.m., unless the judge otherwise authorizes by the warrant.

Detention of Things Seized

131.-(1) Where any thing is seized and brought before a judge, the judge shall by order,

(a) detain it or direct it to be detained in the care of a person named in the order; or

(b) direct it to be returned,

and the judge may in the order authorize the examination, testing, inspection or reproduction of the thing seized upon such conditions as are reasonably necessary and directed in the order, and may make any other provision as in the opinion of the judge is necessary for its preservation.

(2) Nothing shall be detained under an order made under subsection (1) for a period of more than three months after the time of seizure unless, before the expiration of that period,

(a) upon application, a judge is satisfied that having regard to the nature of the investigation, its further detention for a specified period is warranted and the judge so orders; or

(b) proceedings are instituted in which the thing detained may be required.

(3) Upon the application of the defendant, prosecutor or person having an interest in a thing detained under subsection (1), a judge may make an order for the examination, testing, inspection or reproduction of any thing detained upon such conditions as are reasonably necessary and directed in the order.

(4) Upon the application of a person having an interest in a thing detained under subsection (1), and upon notice to the defendant, to the person from whom the thing was seized, to the person to whom the search warrant was issued and to any other person who has an apparent interest in the thing detained, a judge may make an order for the release of any thing detained to the person from whom the thing was seized where it appears that the thing detained is no longer necessary for the purpose of the investigation or proceeding.

Solicitor-Client Privilege

132.-(1) Where under a search warrant a person is about to examine or seize a document that is in the possession of a lawyer and a solicitor-client privilege is claimed on behalf of a named client in respect of the document, the person shall, without examining or making copies of the document,

(a) seize the document and place it, together with any other document seized in respect of which the same claim is made on behalf of the same client, in a package and seal and identify the package; and

(b) place the package in the custody of the clerk of the court or, with the consent of the person and the client, in the custody of another person.

(2) No person shall examine or seize a document that is in the possession of a lawyer without giving the lawyer a reasonable opportunity to claim the privilege under subsection (1).

(3) A judge may, upon the application of the lawyer, which may be made without notice, by order authorize the lawyer to examine or make a copy of the document in the presence of its custodian or the judge, and the order shall contain such provisions as are necessary to ensure that the document is repackaged and resealed without alteration or damage.

(4) Where a document has been seized and placed in custody under subsection (1), the client by whom or on whose behalf the claim of solicitor-client privilege is made may apply to a judge for an order sustaining the privilege and for the return of the document.

(5) An application under subsection (4) shall be by notice of motion returnable not later than thirty days after the date on which the document was placed in custody.

(6) The person who seized the document and the Attorney General are parties to an application under subsection (4) and entitled to at least three days notice of the application.

(7) An application under subsection (4) shall be heard in private and, for the purposes of the hearing, the judge may examine the document and, if so, the judge shall cause it to be resealed.

(8) The judge may by order,

(a) declare that the solicitor-client privilege exists or does not exist in respect of the document;

(b) direct that the document be delivered up to the appropriate person.

(9) Where it appears to a judge upon the application of the Attorney General or person who seized the document that no application has been

made under subsection (4) within the time limit prescribed by subsection (5), the judge shall order that the document be delivered to the applicant.

COMMENTARY

Sections 130 to 132 are useful for adoption by reference in other statutes where searches are necessary for other purposes, such as investigations involving consumer or other public protection.

REGULATIONS

Regulations

133.-(1) The Lieutenant Governor in Council may make regulations,

(a) prescribing any matter that is referred to in this Act as prescribed by the regulations;

(b) prescribing the words and expressions to designate particular offences for the purposes of describing charges in certificates of offence, offence notices and summons;

(c) authorizing the use in a form prescribed under clause (a) of any word or expression to designate an offence;

(2) The use on a form prescribed under clause (1)(a) of any word or expression authorized by the regulations to designate an offence is sufficient for all purposes to describe the offence, including sufficient particularity of the charge.

Rules of Court

134.-(1) There shall be a Rules Committee of the (court designated or established for regulatory offences in the enacting jurisdiction) composed of such members as are appointed by the Lieutenant Governor in Council who shall designate one of the members to preside over the Committee.

(2) A majority of the members of the Rules Committee constitutes a quorum.

(3) Subject to the approval of the Lieutenant Governor in Council, the Rules Committee may make rules,

(a) regulating any matters relating to the practice and procedure of the (Court);

(b) prescribing forms that are referred to in this Act as prescribed forms, and such other forms respecting proceedings in the court as are considered necessary;

(c) prescribing and regulating the procedures under any Act that confers jurisdiction on the (Court) or a judge of the court;

(d) prescribing any matter that is referred to in an Act as provided for by the rules of the (Court).

APPENDICE C

août 1992

LOI UNIFORME SUR LES INFRACTIONS RÉGLEMENTAIRES

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INTRODUCTION

La Loi comporte deux objets.

Elle vise d'abord à simplifier la procédure judiciaire d'imposition des peines dans les cas d'infractions mineures qui ne sont pas considérées comme criminelles. Cette procédure simplifiée facilitera l'accès du public à la justice dans un grand nombre de cas qui découlent de la simple réglementation de comportements plutôt que de comportements intrinsèquement criminels. Elle aura également pour effet d'alléger la charge de travail qui pèse sur l'administration de la justice.

La Loi vise également la séparation des instances relatives à des comportements qui, en soi, sont permis, voire souhaitables, mais qui ne se manifestent pas de la manière requise, des instances relatives aux comportements véritablement criminels. Il suffit, pour bien comprendre la nécessité d'une telle séparation, de songer à l'atmosphère dans laquelle se déroulent les audiences portant sur les infractions en matière de circulation routière, lorsque le défendeur se trouve sur le même rôle que des personnes accusées, par exemple, de vol ou de voies de fait. On peut aussi penser, à cet égard, aux règles de procédure conçues pour des crimes graves et des comportements dangereux, dans le but de maintenir la paix, et que l'on applique pourtant sans distinction aux infractions réglementaires.

Les changements apportés par la Loi à la procédure sommaire prévue au Code criminel touchent principalement les domaines suivants : la procédure applicable aux infractions pour lesquelles une amende fixée est suffisante et la procédure préalable au procès et celle relative à la décision sommaire en cas de non-contestation de l'accusation. Lorsque le défendeur choisit de subir un procès, il est nécessaire de respecter les principes traditionnels de justice.

Parallèlement, les lois des provinces et des territoires prévoient de nombreuses infractions très graves pour lesquelles le défendeur peut décider de recourir à toute la gamme des moyens procéduraux.

Champ d'application

1 La présente loi s'applique aux poursuites relatives aux infractions créées par une loi de la Législature ou par un règlement ou un règlement municipal pris en application d'une telle loi.

APPENDICE C

COMMENTAIRE

Les infractions que créent les lois des provinces et des territoires sont, de ce fait même, non criminelles. Dans le cas des lois du gouvernement fédéral, il serait nécessaire d'avoir recours à une autre formule pour décrire les infractions que l'on considère comme réglementaires et auxquelles s'applique la procédure prévue en cas d'infraction réglementaire.

Agent des infractions réglementaires

2 (1) Un ministre de la Couronne peut désigner par écrit des personnes ou des catégories de personnes comme agents des infractions réglementaires aux fins de toutes les infractions énumérées dans la désignation, ou d'une catégorie de celles-ci.

(2) Le conseil d'une municipalité peut désigner par règlement municipal des personnes ou des catégories de personnes comme agents des infractions réglementaires aux fins de toutes les infractions créées par les règlements de la municipalité qui sont énumérées dans la désignation, ou d'une catégorie de celles-ci.

(3) Les agents de police sont des agents des infractions réglementaires.

COMMENTAIRE

Le paragraphe 2 (1) est facultatif en ce qui a trait à l'uniformisation des lois. Il offre cependant l'avantage, du point de vue administratif, de donner aux ministères la possibilité de voir leurs propres inspecteurs déposer des accusations au moment même d'une inspection, et il permet à chaque ministère de confier à ses propres fonctionnaires l'application des lois qui relèvent de lui. Ceci permet à un ministère de mettre en oeuvre ses propres politiques en matière d'application et a pour effet d'alléger les fonctions du procureur général en ce qui concerne les poursuites ou l'application de lois en matière non criminelle.

Amende fixée

[**3** Le juge en chef (du tribunal désigné aux fins des infractions réglementaires et nommé à l'article 4) peut, par voie d'ordonnance et selon ce qu'il estime approprié, fixer pour des infractions particulières une amende qui est l'amende fixée aux fins d'une instance prévue par la présente loi.]

ou

[**3** Le lieutenant-gouverneur en conseil peut, par voie de règlement, fixer pour des infractions particulières une amende qui est l'amende fixée aux fins d'une instance prévue par la présente loi.]

COMMENTAIRE

Actuellement, les amendes fixées sont établies de deux façons : soit par le gouvernement au moyen de règlements, soit par les juges, sous la direction du juge en chef ou du juge principal, éventuellement en comité ou par consensus.

L'article 3 offre une autre possibilité à l'autorité législative.

INTRODUCTION DE L'INSTANCE

Mode d'introduction

4 (1) Une instance relative à une infraction réglementaire est introduite devant (le nom du tribunal créé par l'autorité législative).

COMMENTAIRE

Il est avantageux que, dans la mesure du possible, un tribunal distinct de la cour criminelle compétente en matière d'infractions sommaires soit saisi des infractions réglementaires. Une telle approche permet en effet de séparer les deux types de défendeurs et encourage les juges à établir une distinction entre les catégories d'infractions et à tenir compte des différences procédurales. De plus, le tribunal ne serait pas obligé de passer d'un code à l'autre au gré des causes. Les mêmes juges pourraient par ailleurs siéger à un tribunal ou à l'autre. Une telle séparation des tribunaux ne devrait pas entraîner de dépenses supplémentaires dans les grands centres, mais elle pourrait ne pas être pratique dans les régions peu peuplées.

(2) Une instance relative à une infraction réglementaire peut être introduite au moyen du dépôt d'un procès-verbal d'infraction au greffe du tribunal désigné dans le procès-verbal.

(3) Le procès-verbal d'infraction doit être déposé au greffe du tribunal qui y est désigné aussitôt que possible dans les circonstances, après la signification de l'avis d'infraction ou de l'assignation.

Accusation

5 (1) L'agent des infractions réglementaires qui a des motifs raisonnables de croire qu'une personne a commis une infraction peut délivrer, après les avoir dressés et signés, un procès-verbal d'infraction attestant qu'une infraction a été commise ainsi qu'un avis d'infraction.

COMMENTAIRE

Le dépôt sous serment et la délivrance d'une dénonciation sont remplacés par un procès-verbal délivré par un agent des infractions réglementaires qui croit, en se fondant sur des motifs raisonnables dont il a une connaissance directe, que l'infraction reprochée a été commise. Lorsque la poursuite est intentée par une autre personne, il est nécessaire d'obtenir la permission d'un juge, ce qui s'apparente alors à la procédure de dénonciation (voir l'article 14).

(2) Lorsqu'une amende fixée est prescrite à l'égard de l'infraction, l'agent des infractions réglementaires peut, à sa discrétion, délivrer un avis d'infraction indiquant l'amende fixée à l'égard de l'infraction.

Assignation

6 (1) Lorsque l'avis d'infraction n'indique pas d'amende fixée, l'agent des infractions réglementaires signifie également une assignation rédigée selon la formule prescrite.

(2) L'assignation délivrée en vertu du paragraphe (1) :

a) est adressée au défendeur;

b) énonce brièvement l'infraction dont le défendeur est accusé;

c) ordonne au défendeur de se présenter au tribunal aux date, heure et lieu indiqués dans l'assignation et de s'y présenter par la suite conformément aux exigences du tribunal afin d'être traité selon la loi.

Assignation au procès

7 Lorsqu'un avis d'infraction et une assignation sont signifiés au défendeur, une audience est tenue afin de statuer sur l'accusation.

Contestation de l'amende fixée

8 Le défendeur auquel un avis d'infraction indiquant une amende fixée est signifié et qui désire contester l'accusation plaide non coupable en signant le plaidoyer de non-culpabilité contenu dans l'avis d'infraction et en indiquant sur la formule contenue dans l'avis son désir de comparaître ou de se faire représenter au procès. Il remet l'avis d'infraction au greffe du tribunal qui y est indiqué.

Paiement de l'amende fixée

9 (1) Le défendeur auquel un avis d'infraction indiquant une amende fixée est signifié et qui ne désire pas contester l'accusation signe le plaidoyer de culpabilité contenu dans l'avis d'infraction et remet ce dernier au lieu indiqué dans l'avis en y joignant le montant de l'amende fixée.

(2) L'acceptation du paiement remis aux termes du paragraphe (1) constitue un plaidoyer de culpabilité, que le plaidoyer ait été signé ou non, et l'inscription du paiement apposée au procès-verbal d'infraction constitue la déclaration de culpabilité et l'imposition de l'amende fixée à l'égard de l'infraction.

(3) Si le lieu qui est indiqué dans l'avis et où le paiement de l'amende fixée doit être envoyé aux termes du paragraphe (1) n'est pas le greffe du tribunal, un certificat qui se présente comme étant signé par le secrétaire de la municipalité ou une personne désignée par lui, et attestant :

a) d'une part, que le paiement n'a pas été effectué aux termes du paragraphe (1);

b) d'autre part, que l'avis du défendeur selon lequel il désire comparaître ou se faire représenter au procès n'a pas été remis au lieu indiqué dans l'avis,

est reçu en preuve et fait foi des faits qui y sont contenus jusqu'à preuve du contraire.

Avis de procès

10 Lorsqu'un avis d'infraction accompagné d'un plaidoyer de non-culpabilité est remis au greffe du tribunal, le greffier du tribunal donne au défendeur et au poursuivant, aussitôt que possible dans les circonstances, un avis des date, heure et lieu du procès.

Imposition de l'amende fixée en cas d'inaction du défendeur

11 Si, au moins quinze jours après la signification au défendeur de l'avis d'infraction indiquant une amende fixée, il n'y a eu ni remise de l'avis d'infraction conformément à l'article 8 ou 9 ni acceptation d'un plaidoyer de culpabilité, le défendeur est réputé ne pas désirer contester l'accusation. Dans ce cas, le tribunal examine le procès-verbal d'infraction et :

a) si le procès-verbal est complet et régulier à sa face même, il inscrit une déclaration de culpabilité, en l'absence du défendeur et sans tenir d'audience, et impose au défendeur l'amende fixée à l'égard de l'infraction;

b) si le procès-verbal d'infraction n'est pas complet et régulier à sa face même, il annule l'instance en motivant sa décision par écrit.

Défendeur dont l'adresse est à l'extérieur du ressort

12 (1) Le défendeur auquel un avis d'infraction, indiquant ou non une amende fixée, est signifié et dont l'adresse indiquée dans le procès-verbal d'infraction est à l'extérieur du ressort du tribunal indiqué dans l'avis peut, s'il désire contester l'accusation, mais ne désire pas assister au procès ni s'y faire représenter, signifier son intention sur l'avis d'infraction et remettre celui-ci au greffe du tribunal qui y est indiqué, en y joignant une déclaration sous serment par écrit indiquant de façon suffisamment détaillée les motifs de la contestation et les faits sur lesquels il se fonde.

(2) Lorsqu'un avis d'infraction est remis en vertu du paragraphe (1), le tribunal étudie la contestation en l'absence du défendeur et :

a) si la contestation soulève une question pouvant constituer un moyen de défense, il ordonne la tenue d'une audience et en signifie un avis au défendeur;

b) si la contestation ne soulève aucune question pouvant constituer un moyen de défense :

(i) et si l'avis d'infraction indique une amende fixée, il déclare le défendeur coupable et lui impose l'amende fixée,

(ii) et si l'avis d'infraction n'indique pas d'amende fixée, il ordonne la tenue d'une audience et en signifie un avis au défendeur.

(3) Si le tribunal ordonne la tenue d'une audience aux termes du paragraphe (2) et que le défendeur ne comparaît pas, le tribunal peut, en l'absence du défendeur, examiner l'ensemble de la preuve, notamment les questions soulevées dans la contestation, et acquitter le défendeur, ou le déclarer coupable et lui imposer la peine appropriée.

Révision

13 Si un défendeur est déclaré coupable et qu'il n'a pas eu l'occasion de contester l'accusation ni de comparaître ou de se faire représenter à une audience parce que, sans faute de sa part, il n'a en fait pas reçu un avis ou un document nécessaires, il peut, s'il ne s'est pas écoulé plus de trente jours depuis qu'il a pris connaissance de la déclaration de culpabilité pour la première fois, se présenter au greffe du tribunal pendant les heures d'ouverture et comparaître devant un juge ou remettre un affidavit présenté en preuve selon la formule prescrite. Si le juge est convaincu de ces faits, il annule la déclaration de culpabilité et ordonne la réintroduction de l'instance de la manière qu'il prescrit dans l'ordonnance.

Poursuite privée

14 (1) Une personne autre qu'un agent des infractions réglementaires peut introduire une instance si elle croit, en se fondant sur des motifs raisonnables dont elle a une connaissance directe, qu'une infraction a été commise et si le tribunal autorise l'introduction de l'instance.

(2) Les témoignages à l'appui de la requête présentée en vertu du paragraphe (1) sont rendus sous serment. La requête en autorisation peut être entendue sans préavis à quiconque.

(3) L'instance prévue au présent article est introduite au moyen du dépôt, au greffe du tribunal, d'un procès-verbal d'infraction signé par la personne qui introduit l'instance et portant une inscription qui atteste l'autorisation du tribunal. Le greffe du tribunal signifie au défendeur un avis d'infraction n'indiquant pas d'amende fixée et une assignation rédigée selon la formule prescrite.

Preuve tirée du plaidoyer écrit

15 Une signature qui se présente comme étant celle du défendeur et qui est apposée sur la formule de plaidoyer de culpabilité ou de non-culpabilité contenue dans un avis d'infraction constitue la preuve, en l'absence de preuve contraire, de l'authenticité de la signature.

Signification

16 (1) Un avis d'infraction ou une assignation et un avis d'infraction sont signifiés, dans les trente jours qui suivent la date à laquelle l'infraction a été commise, en les remettant en mains propres à leur destinataire ou, si celui-ci ne peut être trouvé, en les laissant à son intention, à sa dernière résidence connue ou habituelle, entre les mains d'une personne qui l'habite et qui paraît être âgée d'au moins seize ans.

(2) Si le destinataire de l'assignation ou de l'avis d'infraction ne réside pas (indiquer l'autorité législative), l'assignation ou l'avis d'infraction est réputé avoir été dûment signifié sept jours après avoir été envoyé par courrier recommandé à la dernière résidence connue ou habituelle du défendeur.

(3) Une assignation ou un avis d'infraction adressé à une personne morale peut être signifié en étant remis en mains propres :

a) s'il s'agit d'une municipalité, soit au dirigeant principal de celle-ci, notamment au maire, au président du conseil de comté ou au préfet, soit au secrétaire de la municipalité;

b) s'il s'agit d'une autre personne morale, soit à un cadre supérieur de celle-ci, notamment au directeur ou au secrétaire, soit au responsable apparent d'une de ses succursales.

L'assignation ou l'avis d'infraction peut également être signifié par courrier recommandé à la personne morale, à l'adresse qu'elle présente comme étant la sienne. Dans ce cas, la signification est réputée avoir eu lieu sept jours après la date de mise à la poste.

(4) Un juge peut, à la suite d'une requête et s'il est convaincu que l'assignation ou l'avis d'infraction ne peut être signifié d'une manière effective à une personne morale conformément au paragraphe (3), rendre une ordonnance qui autorise un autre mode de signification grâce auquel la personne morale a des chances raisonnables de prendre connaissance de la signification.

(5) La preuve de la signification d'une assignation ou d'un avis d'infraction peut se faire par déclaration sous serment, écrite ou orale, de la personne qui a signifié l'assignation ou l'avis d'infraction.

(6) L'agent des infractions réglementaires peut signifier un avis d'infraction pour une contravention (à des textes législatifs, à des règlements ou à des règlements municipaux pour des infractions relatives au stationnement, aux termes desquels le propriétaire du véhicule est tenu responsable) au propriétaire du véhicule automobile en le fixant au véhicule à un endroit bien en vue au moment de l'infraction reprochée ou en le remettant en mains propres à la personne qui a la garde et le contrôle du véhicule au moment de l'infraction reprochée.

COMMENTAIRE

Le paragraphe (6) ne serait nécessaire que si l'autorité législative rendait le propriétaire d'un véhicule automobile responsable des violations des règlements ou des règlements municipaux régissant le stationnement, par un conducteur qui n'est pas propriétaire du véhicule.

(7) S'il signifie lui-même à la personne accusée l'avis d'infraction ou l'assignation, l'agent des infractions réglementaires qui a délivré le procès-verbal d'infraction y appose une mention à cet effet et y indique la date de la signification.

(8) L'agent des infractions réglementaires qui signifie un avis d'infraction ou une assignation ne doit recevoir aucun montant à l'égard d'une amende, ni recevoir aucun avis d'infraction pour le remettre au tribunal.

PROCÈS

Compétence générale

17 (1) Lorsqu'il est saisi d'une instance introduite en vertu de la présente loi, le tribunal a compétence pour exercer les pouvoirs et fonctions qui lui sont conférés par la présente loi ou par toute autre loi. Il a notamment le devoir de mener l'instance à terme conformément aux principes de justice, malgré l'absence de dispositions législatives concernant une étape donnée de l'instance.

(2) Le tribunal demeure compétent à l'égard du procès-verbal d'infraction même s'il n'exerce pas sa compétence à un moment donné et même si les dispositions de la présente loi concernant les ajournements ne sont pas respectées.

COMMENTAIRE

Les juges des cours supérieures ainsi que des cours de comté ou de district exercent la compétence qu'avaient les cours de common law et d'equity en Angleterre avant la Confédération. Ils possèdent donc une compétence inhérente pour rendre justice, sous réserve seulement de certaines directives spécifiques que l'on retrouve dans les lois. Pour leur part, les juges nommés par les provinces pour siéger aux tribunaux créés par celles-ci n'ont que la compétence que leur confèrent les lois provinciales. Il arrive fréquemment qu'un tribunal déclare être dans l'impossibilité d'agir parce que la loi n'est pas suffisamment précise, à savoir qu'elle ne couvre pas une situation inusitée, ou parce qu'aucune formule n'a été prescrite pour rendre une certaine ordonnance. Le paragraphe 17 (1) vise à donner aux juges la directive législative qui leur est nécessaire pour décider des causes sur le fond.

La notion selon laquelle, en matière d'infraction punissable par déclaration sommaire de culpabilité, le juge est investi d'une compétence personnelle qu'il peut perdre s'il ne l'exerce pas provient du fait que, dans le cadre du Code criminel, la compétence est conférée à certaines personnes (des magistrats) nommées par les provinces. Cet obstacle est toutefois écarté en donnant compétence aux tribunaux, et le paragraphe 17 (2) met un terme à cette vieille notion.

Prescription

18 (1) Aucune instance ne doit être introduite après l'expiration du délai de prescription prescrit par une loi ou en vertu d'une loi relativement à l'infraction ou, si aucun délai de prescription n'est prescrit, plus de six mois après la date réelle de la perpétration de l'infraction ou celle à laquelle l'infraction aurait été commise.

(2) Un juge peut proroger un délai de prescription avec le consentement du défendeur.

COMMENTAIRE

L'objet principal du paragraphe (2) est de permettre à un défendeur consentant et à un poursuivant d'accepter un plaidoyer de culpabilité pour une infraction moins grave pour laquelle le délai de prescription est expiré.

Juge qui préside le procès

19 (1) Le juge qui préside le procès au moment où l'audition de la preuve débute préside tout le procès.

(2) Si, après l'audition d'une preuve et avant la décision, le juge qui préside un procès décède ou que, de l'avis du juge ou du juge en chef, il est dans l'impossibilité de continuer à siéger pour une raison quelconque, un autre juge reprend l'audience en tant que nouveau procès.

(3) Si, après l'audition d'une preuve et la décision mais avant que l'ordonnance ne soit rendue ou la sentence prononcée, le juge qui préside un procès décède ou que, de l'avis du juge ou du juge en chef, il est dans l'impossibilité de continuer à siéger pour une raison quelconque, un autre juge peut rendre l'ordonnance ou prononcer la sentence autorisées par la loi.

(4) Le juge qui préside un procès peut, à toute étape du procès et avec le consentement du poursuivant et du défendeur, ordonner que le procès se déroule devant un autre juge. Une fois l'ordonnance rendue, le paragraphe (2) s'applique comme si le premier juge était incapable d'agir.

Chef d'accusation prescrit

20 Un chef d'accusation qui est décrit dans une accusation d'une manière prescrite par les règlements pris en application de l'article 133 est réputé valoir l'énoncé de tous les éléments essentiels de l'infraction.

Contenu des chefs d'accusation

21 (1) Le présent article s'applique aux accusations énoncées dans un procès-verbal d'infraction qui ne sont pas prescrites par les règlements pris en application de l'article 133 ou qui ne sont pas énoncées de la manière prescrite par ces règlements.

(2) Chaque infraction imputée fait l'objet d'un chef d'accusation distinct.

(3) Chaque chef d'accusation s'applique, en général, à une seule affaire. Il contient en substance une déclaration, et il est suffisant s'il la contient, portant que le défendeur a commis une infraction qui y est indiquée.

(4) Si le chef d'accusation identifie une infraction mais n'en énonce pas un ou plusieurs éléments essentiels, une mention de la disposition qui crée ou définit l'infraction est réputée valoir l'énoncé de tous les éléments essentiels de l'infraction.

(5) La déclaration visée au paragraphe (3) peut être formulée, selon le cas :

a) en langage populaire sans expressions techniques ni allégations de faits dont la preuve n'est pas essentielle;

b) dans les termes mêmes de la disposition qui décrit l'infraction;

c) en des termes suffisants pour aviser le défendeur de l'infraction dont il est accusé.

(6) Il est possible de réunir dans une même accusation un nombre quelconque de chefs d'accusation portant sur un nombre quelconque d'infractions.

(7) Un chef d'accusation contient, à l'égard des circonstances de l'infraction reprochée, des détails suffisants pour renseigner raisonnablement le défendeur sur l'acte ou l'omission à prouver contre lui et pour identifier l'affaire visée.

(8) Aucun chef d'accusation n'est insuffisant en raison de l'absence de détails si, de l'avis du tribunal, le chef d'accusation répond par ailleurs aux exigences du présent article. Aucun chef d'accusation n'est insuffisant, notamment, du seul fait que, selon le cas :

a) il ne nomme pas la personne lésée, ou qu'on a eu l'intention ou tenté de léser;

b) il ne nomme pas la personne qui est propriétaire d'un bien mentionné dans le chef d'accusation ou la personne qui a un intérêt de propriété spécial sur ce bien;

c) il impute une intention à l'égard d'une autre personne sans la nommer ni la décrire;

d) il n'énonce aucun écrit faisant l'objet de l'accusation;

e) il n'énonce pas les mots employés lorsque ceux qui auraient été employés font l'objet de l'accusation;

f) il ne précise pas les moyens par lesquels l'infraction reprochée a été commise;

g) il ne nomme ni ne décrit avec précision aucune personne, aucun endroit ni aucune chose;

h) il ne précise pas que le consentement préalable d'une personne, d'un fonctionnaire ou d'une autorité a été obtenu dans les cas où ce consentement est requis pour l'introduction d'une instance à l'égard d'une infraction.

(9) Un chef d'accusation n'est pas inadmissible du seul fait que, selon le cas :

a) il impute sous forme alternative plusieurs choses, actions ou omissions différentes énoncées sous cette forme dans une disposition qui décrit comme constituant une infraction les choses, actions ou omissions énoncées dans le chef d'accusation;

b) il est double ou multiple.

(10) Dans une accusation, il n'est pas nécessaire d'établir ni de réfuter, selon le cas, les exceptions, exemptions, conditions, excuses ou qualités prescrites par la loi.

Division des chefs d'accusation

22 (1) Le défendeur peut, à toute étape de l'instance, demander au tribunal, par voie de requête, de modifier ou de diviser un chef d'accusation qui, selon le cas :

a) impute, sous forme alternative, des choses, actions ou omissions différentes énoncées sous cette forme dans la disposition qui crée ou décrit l'infraction;

b) est double ou multiple,

pour la raison que, tel qu'il est rédigé, il porte préjudice à la défense.

(2) À la suite de la requête présentée en vertu du paragraphe (1), si le tribunal est convaincu que les fins de la justice l'exigent, il peut ordonner qu'un chef d'accusation soit modifié ou divisé en deux ou plusieurs chefs et, dès lors, un préambule formel peut être inséré avant chacun des chefs en lesquels il est divisé.

Infraction incluse

23 Si l'infraction imputée comprend une autre infraction, le défendeur peut être déclaré coupable de l'infraction ainsi incluse si elle est prouvée bien que ne soit pas prouvée toute l'infraction imputée.

Parties à une infraction

24 (1) Est partie à une infraction quiconque, selon le cas :

a) la commet réellement;

b) fait ou omet de faire quelque chose en vue d'aider une personne à la commettre;

c) encourage une personne à la commettre.

(2) Si deux ou plusieurs personnes forment ensemble l'intention de poursuivre une fin illégale et de s'y entraider et que l'une d'entre elles commet une infraction en réalisant cette fin commune, chacune d'elles qui savait ou aurait dû savoir que la réalisation de la fin commune aurait pour conséquence probable la perpétration de l'infraction est partie à cette infraction.

Conseils ou incitation

25 (1) Si une personne conseille à une autre personne de prendre part à une infraction ou l'y incite et que cette dernière y prend part subséquemment, la personne qui a fourni le conseil ou procédé à l'incitation est partie à l'infraction, bien que l'infraction ait été commise d'une manière différente de celle prévue dans le conseil ou l'incitation.

(2) Quiconque conseille à une autre personne de prendre part à une infraction ou l'y incite est partie à chaque infraction que l'autre commet par suite du conseil ou de l'incitation et qui, d'après ce que savait ou aurait dû savoir la personne qui a fourni le conseil ou procédé à l'incitation, serait vraisemblablement commise par suite du conseil ou de l'incitation.

Annulation d'un procès-verbal

26 (1) Un procès-verbal qui est incorrect à sa face même peut être contesté par voie de motion en annulation avant le plaidoyer du défendeur et, après le plaidoyer, seulement avec l'autorisation du tribunal.

(2) Le tribunal ne doit annuler un procès-verbal que si une modification ou des précisions prévues à l'article 28 ne serviraient pas les fins de la justice.

Modification du procès-verbal

27 (1) Le tribunal peut, à toute étape de l'instance, apporter les modifications nécessaires au procès-verbal s'il appert que celui-ci, selon le cas :

a) n'énonce pas ou énonce incorrectement quelque chose qui est nécessaire pour imputer l'infraction;

b) ne réfute pas une exception qui devrait être réfutée;

c) comporte un vice de fond ou de forme quelconque.

(2) Le tribunal peut, au cours du procès, apporter au procès-verbal les modifications nécessaires si les choses qui doivent être alléguées dans la modification projetée sont révélées par la preuve recueillie au procès.

(3) Une divergence entre le procès-verbal et la preuve recueillie au procès n'est pas essentielle si elle vise :

a) soit la date et l'heure à laquelle l'infraction aurait été commise, s'il est établi que le procès-verbal a été délivré dans le délai de prescription prescrit;

b) soit le lieu où se seraient produits les faits qui font l'objet de l'instance, sauf s'il s'agit d'une question qui porte sur la compétence du tribunal.

(4) Pour déterminer si une modification devrait être apportée, le tribunal étudie :

a) la preuve recueillie au procès, s'il en est;

b) les circonstances de l'espèce;

c) la question de savoir si le défendeur a été induit en erreur ou a subi un préjudice dans sa défense par une divergence, une erreur ou une omission;

d) la question de savoir si, eu égard au fond de la cause, la modification projetée peut être apportée sans entraîner une injustice.

(5) La question de savoir si une ordonnance en vue de modifier un procès-verbal devrait être accordée ou refusée est une question de droit.

(6) Une ordonnance qui modifie un procès-verbal est inscrite sur celui-ci et fait partie du dossier. Le procès se déroule comme si le procès-verbal avait été originairement déposé dans sa version modifiée.

Précisions

28 Le tribunal peut, avant ou pendant le procès, s'il est convaincu que cela est nécessaire pour assurer un procès équitable, ordonner qu'une précision supplémentaire sur un point relatif à l'instance soit fournie au défendeur.

Dépens relatifs à la modification ou aux précisions

29 Le tribunal peut rendre une ordonnance en vertu de l'article 78 concernant les dépens qui découlent d'un ajournement rendu nécessaire par suite d'une modification du procès-verbal ou d'une ordonnance en vue d'obtenir des précisions.

Suspension de l'instance

30 (1) Outre son droit de retirer une accusation, le procureur général ou son représentant peuvent suspendre une instance à n'importe quel moment avant le jugement, en donnant des directives à cet effet au greffier du tribunal devant lequel se déroule l'instance. Dès ce moment, les engagements consentis à l'égard de l'instance sont annulés.

(2) Une instance suspendue en vertu du paragraphe (1) peut être réintroduite au moyen de directives adressées par le procureur général, le sous-procureur général ou un procureur de la Couronne au greffier du tribunal devant lequel l'instance a été suspendue. Toutefois, aucune instance suspendue ne peut être réintroduite après l'expiration du moindre des délais suivants :

a) un an après la suspension;

b) un délai de prescription applicable à l'instance comme si celle-ci n'avait pas été introduite avant la réintroduction.

Procès réunis ou distincts

31 (1) S'il est convaincu que les fins de la justice l'exigent, le tribunal peut, avant le procès, ordonner que des chefs d'accusation ou procès-verbaux distincts fassent l'objet d'un même procès ou que des personnes faisant l'objet d'accusations distinctes soient jugées ensemble.

(2) S'il est convaincu que les fins de la justice l'exigent, le tribunal peut, avant ou pendant le procès, ordonner que des chefs d'accusation ou procès-verbaux distincts fassent l'objet de procès distincts ou que des personnes accusées ou jugées ensemble subissent des procès distincts.

Plaidoyer

32 (1) Après avoir été informé de la substance du procès-verbal, le défendeur se fait demander s'il plaide coupable ou non coupable de l'infraction imputée dans le procès-verbal.

(2) Si le défendeur plaide coupable, le tribunal peut accepter son plaidoyer et le déclarer coupable.

(3) Si le défendeur refuse de plaider ou ne répond pas directement, le tribunal inscrit un plaidoyer de non-culpabilité.

(4) Si le défendeur plaide non coupable à l'égard de l'infraction dont il est accusé, mais coupable à l'égard d'une autre infraction, que celle-ci soit ou non une infraction incluse, le tribunal peut, avec le consentement du poursuivant, accepter le plaidoyer de culpabilité et modifier en conséquence le procès-verbal ou remplacer l'infraction par celle à l'égard de laquelle le défendeur plaide coupable.

Procès

33 (1) Si le défendeur plaide non coupable, le tribunal tient le procès.

(2) Le défendeur a le droit de présenter une défense pleine et entière.

(3) Le poursuivant et le défendeur peuvent interroger et contre-interroger les témoins.

(4) Le tribunal peut recevoir des faits sur lesquels le défendeur et le poursuivant se sont mis d'accord sans autre preuve ni témoignage, et agir en conséquence.

(5) Malgré l'article 00 de la Loi sur la preuve, le défendeur n'est pas un témoin contraignable pour la poursuite.

COMMENTAIRE

Les lois sur la preuve adoptées par les provinces et les territoires sont conçues pour s'appliquer aux instances civiles. Il n'est donc pas rare qu'elles contiennent une disposition prévoyant que les parties à l'action sont habiles et contraignables à témoigner, pour leur propre compte ou à l'appui d'une autre partie. C'est là un principe fort différent de la règle de droit criminel qui, elle, doit être énoncée, comme elle l'est au paragraphe (5). Il n'est cependant pas question ici de l'auto-incrimination, qui est généralement un élément tout autant essentiel, et auquel on pourvoit d'ailleurs, dans le cas des instances civiles.

Représentation

34 (1) Le défendeur peut comparaître et agir en personne ou par l'entremise d'un avocat ou d'un représentant.

(2) Le défendeur qui est une personne morale comparaît et agit par l'entremise d'un avocat ou d'un représentant.

(3) Le tribunal peut interdire à quiconque n'est pas un avocat autorisé à exercer (indiquer l'autorité législative) d'agir comme représentant s'il conclut que le représentant n'a pas la compétence voulue pour représenter ou conseiller la personne qu'il représente, ou ne comprend pas les devoirs et les responsabilités d'un représentant ou ne s'y conforme pas.

Présence personnelle obligatoire

35 Même si le défendeur comparaît par l'entremise d'un avocat ou d'un représentant, le tribunal peut lui ordonner de se présenter en personne et, si cela semble nécessaire, décerner une assignation rédigée selon la formule prescrite.

Défaut de comparaître du poursuivant

36 (1) Si le défendeur comparaît à l'audience et que le poursuivant, ayant été dûment avisé, ne comparaît pas, le tribunal peut rejeter l'accusation ou ajourner l'audience, aux conditions qu'il juge appropriées.

(2) Si le poursuivant ne comparaît pas aux date, heure et lieu fixés pour la reprise d'une audience ajournée en vertu du paragraphe (1), le tribunal peut rejeter l'accusation.

(3) Si une audience est ajournée en vertu du paragraphe (1) ou une accusation rejetée en vertu du paragraphe (2), le tribunal peut rendre une ordonnance en vertu de l'article 77 en vue du paiement des dépens.

(4) Si une accusation est rejetée en vertu du paragraphe (1) ou (2), le tribunal peut, à la demande du défendeur, rédiger une ordonnance motivée de rejet de l'accusation. Il donne au défendeur une copie certifiée de l'ordonnance de rejet qui constitue, sans autre preuve, une fin de non-recevoir à l'égard de toute poursuite subséquente contre le défendeur pour la même affaire.

Défaut de comparaître du défendeur

37 (1) Si le défendeur ne comparaît pas aux date, heure et lieu fixés pour une audience et que le poursuivant, ayant eu une occasion raisonnable de le faire, fait la preuve de la signification d'une assignation, de la remise d'un avis de procès, de l'existence d'une promesse de comparaître ou d'un engagement à comparaître, ou si le défendeur ne comparaît pas au moment de la reprise d'une audience qui a été ajournée, le tribunal peut :

a) procéder à l'instruction et au jugement de l'affaire en l'absence du défendeur;

b) s'il le juge opportun, ajourner l'audience et décerner une assignation à comparaître ou décerner un mandat rédigé selon la formule prescrite pour l'arrestation du défendeur;

c) si le défendeur ne comparaît pas, à la suite de l'assignation ou du mandat, à la date à laquelle l'audience est reprise, procéder en vertu de l'alinéa a) ou b).

(2) Si le tribunal procède à l'instruction et au jugement de l'affaire en l'absence du défendeur, aucune instance résultant de l'omission par le défendeur de comparaître aux date, heure et lieu fixés pour l'audience ou pour la reprise de l'audience ne peut être introduite ou, si elle est introduite, ne peut être continuée sans le consentement du procureur général ou de son représentant.

Responsabilité

38 (1) Chaque élément d'une infraction doit être prouvé au-delà de tout doute raisonnable.

(2) Il n'est pas nécessaire de prouver que le défendeur avait l'intention de commettre l'infraction, à moins qu'il ne soit expressément mentionné que l'intention constitue un élément de l'infraction.

(3) Constitue un moyen de défense contre une accusation relative à une infraction le fait que le défendeur a fait preuve de diligence raisonnable pour éviter la perpétration de l'infraction, à moins qu'il ne soit expressément mentionné qu'il s'agit d'une infraction de responsabilité absolue.

(4) Constitue un moyen de défense contre une sentence d'emprisonnement le fait

que le défendeur n'a pas fait preuve d'insouciance grave dans l'exercice de la diligence raisonnable pour éviter la perpétration de l'infraction.

(5) Il y a présomption que les moyens de défense prévus aux paragraphes (3) et (4) sont inexistants, à moins qu'une preuve contraire ne permette de soulever un doute raisonnable.

(6) Aucun recours civil à l'égard d'un acte ou d'une omission n'est suspendu ni touché du fait que l'acte ou l'omission constitue une infraction.

COMMENTAIRE

L'article 38, à l'exception du paragraphe (4), reflète les décisions de la Cour suprême du Canada dans l'arrêt R. c. Ville de Sault Ste. Marie, *(1978) 40 C.C.C. (2d) 353 et de la Cour d'appel de l'Ontario dans l'arrêt* R. v. Wholesale Travel Group Inc., *(1989) 63 D.L.R. (4th) 325 et, plus récemment, dans l'arrêt* R. v. Ellis Don Limited.

Moyens de défense en common law

39 (1) Les règles et les principes de la common law qui font d'une circonstance une justification ou une excuse pour un acte, ou un moyen de défense contre une accusation, demeurent en vigueur et s'appliquent à l'égard d'infractions, sauf dans la mesure où ils sont modifiés par la présente loi ou une autre loi, ou sont incompatibles avec l'une d'elles.

(2) L'ignorance de la loi chez une personne qui commet une infraction n'excuse pas la perpétration de l'infraction.

Ajournement

40 (1) Le tribunal peut, même à plusieurs reprises, ajourner un procès ou une audience. Toutefois, si le défendeur est détenu sous garde, l'ajournement ne peut être de plus de huit jours sans son consentement.

(2) Un procès ou une audience ajourné pour une période donnée peut reprendre avant l'expiration de la période avec le consentement du défendeur et du poursuivant.

Aptitude du défendeur à subir son procès

41 (1) À n'importe quel moment avant le prononcé de la sentence, si le tribunal est d'avis, en se fondant, selon le cas :

a) sur le témoignage d'un médecin dûment qualifié ou, avec le consentement des parties, le rapport écrit d'un médecin dûment qualifié;

b) sur le comportement du défendeur dans la salle d'audience,

que le défendeur souffre de troubles mentaux, il peut rendre une ordonnance pour suspendre l'instance et ordonner que soit instruite la question de la capacité du

défendeur d'assurer sa défense compte tenu de ses troubles mentaux.

(2) Pour l'application du paragraphe (1), le tribunal peut ordonner au défendeur de se présenter aux fins d'un examen prévu au paragraphe (6).

(3) Le tribunal ordonne la suspension de l'instance portant sur l'accusation s'il conclut, lors de l'instruction d'une question, que le défendeur est incapable d'assurer sa défense en raison de troubles mentaux.

(4) Le tribunal ordonne la reprise de l'instance suspendue s'il conclut, lors de l'instruction d'une question, que le défendeur est capable d'assurer sa défense.

(5) À n'importe quel moment dans l'année qui suit la date de l'ordonnance rendue en vertu du paragraphe (3), l'une ou l'autre des parties peut, en donnant un avis de sept jours à l'autre partie, demander au tribunal, par voie de requête, d'instruire de nouveau la question de la capacité du défendeur. Si, à l'issue de cette nouvelle audience, le tribunal conclut que le défendeur est capable d'assurer sa défense, il peut ordonner la reprise de l'instance suspendue.

(6) Pour l'application du paragraphe (1) ou aux fins d'une audience ou d'une nouvelle audience aux termes du paragraphe (3), (4) ou (5), le tribunal peut ordonner au défendeur de se présenter au lieu ou devant la personne précisés dans l'ordonnance, et à la date et l'heure ou dans le délai précisés dans celle-ci, afin de se soumettre à un examen en vue de déterminer s'il est incapable d'assurer sa défense en raison de troubles mentaux.

(7) Si le défendeur omet ou refuse de se conformer à une ordonnance rendue en vertu du paragraphe (6) sans excuse raisonnable ou si la personne qui examine le défendeur convainc un juge que cela est nécessaire, le juge peut décerner un mandat ordonnant que le défendeur soit placé sous garde selon ce qui est nécessaire aux fins de l'examen et ce, dans tous les cas, pendant au plus sept jours. Lorsqu'il est nécessaire de détenir le défendeur dans un lieu donné, le lieu est, si cela est possible dans les circonstances, un établissement psychiatrique.

(8) Si un an s'est écoulé depuis la date de l'ordonnance rendue en vertu du paragraphe (3) et qu'aucune autre ordonnance n'est rendue en vertu du paragraphe (4), aucune autre instance ne peut être engagée à l'égard de l'accusation ou d'une autre accusation découlant des mêmes faits.

Témoignages

42 (1) Les témoignages recueillis en vertu de la présente loi sont faits sous serment, sauf autre règle de droit.

(2) Sont enregistrées les instances au cours desquelles des témoignages sont recueillis.

(3) Si un certificat attestant le contenu d'un dossier officiel est admissible en preuve, en vertu d'une loi, comme preuve, en l'absence de preuve contraire, le tribunal peut, afin de déterminer si le défendeur est la personne visée dans le certificat, recevoir les renseignements qu'il juge crédibles ou dignes de foi compte tenu des circonstances de chaque espèce, et baser sa décision sur ceux-ci.

Présence des témoins

43 (1) Si un juge est convaincu qu'une personne peut fournir une preuve substantielle dans une instance introduite en vertu de la présente loi, il peut délivrer une assignation lui enjoignant de comparaître pour témoigner et d'apporter avec elle les écrits ou les choses mentionnés dans l'assignation.

(2) L'assignation est signifiée, et la preuve de la signification se fait, de la manière prévue à l'article 16 à l'égard des assignations.

(3) La personne à laquelle une assignation est signifiée se présente pour témoigner aux date, heure et lieu indiqués dans l'assignation et, si l'assignation l'exige, apporte avec elle l'écrit ou la chose qu'elle a en sa possession ou sous son contrôle et qui concerne l'objet de l'instance.

(4) La personne à laquelle une assignation est signifiée doit demeurer présente à l'audience et aux reprises de l'audience après des ajournements, à moins qu'elle n'en soit dispensée par le juge qui préside.

Contraignabilité des témoins

44 (1) Le tribunal peut décerner un mandat rédigé selon la formule prescrite pour l'arrestation d'une personne s'il est convaincu, à la lumière d'une preuve présentée sous serment, que cette personne peut fournir une preuve substantielle nécessaire dans une instance introduite en vertu de la présente loi et :

a) soit qu'elle ne comparaîtra pas si une assignation lui est signifiée;

b) soit que les tentatives de signification de l'assignation ont échoué parce qu'elle se soustrait à la signification.

(2) Si la personne à laquelle une assignation a été signifiée pour qu'elle se présente pour témoigner dans une instance omet de se présenter ou de demeurer présente, le tribunal peut décerner ou faire décerner un mandat rédigé selon la formule prescrite pour son arrestation, s'il est établi :

a) d'une part, que l'assignation a été signifiée;

b) d'autre part, que cette personne peut fournir une preuve substantielle nécessaire.

(3) L'agent de police qui arrête une personne en vertu d'un mandat décerné en vertu du paragraphe (1) ou (2) l'amène immédiatement devant un juge.

(4) À moins qu'il ne soit convaincu qu'il est nécessaire de détenir une personne sous garde pour garantir qu'elle témoignera, le juge ordonne sa mise en liberté à la condition que celle-ci consente un engagement pour le montant et, le cas échéant, avec les cautions raisonnablement nécessaires pour garantir sa présence.

(5) Si le juge est convaincu qu'il est nécessaire de détenir la personne sous garde pour garantir qu'elle témoignera, il peut en ordonner la détention sous garde afin qu'elle témoigne au procès ou devant un commissaire en vertu d'une ordonnance rendue en vertu du paragraphe (10).

(6) Si le juge ne rend pas d'ordonnance en vertu du paragraphe (5), il ordonne la mise en liberté de la personne à la condition que celle-ci consente un engagement pour le montant et, le cas échéant, avec les cautions raisonnablement nécessaires pour garantir sa présence.

(7) Une personne détenue sous garde aux termes d'une ordonnance rendue en vertu du paragraphe (5) ou qui n'est pas libérée de fait en vertu du paragraphe (6) ne peut être détenue pour une période de plus de dix jours.

(8) Un juge peut ordonner à n'importe quel moment la mise en liberté d'une personne détenue sous garde en vertu du présent article s'il est convaincu que la détention n'est plus justifiée.

(9) Si une personne qui a consenti un engagement de se présenter pour témoigner dans une instance omet de se présenter ou de demeurer présente, le tribunal devant lequel la personne est tenue de se présenter peut décerner un mandat rédigé selon la formule prescrite pour son arrestation et :

a) si elle est amenée directement devant le tribunal, les paragraphes (5) et (6) s'appliquent;

b) si elle n'est pas amenée directement devant le tribunal, les paragraphes (3) à (6) s'appliquent.

(10) Le tribunal peut ordonner qu'une personne détenue en vertu du présent article témoigne devant un commissaire en vertu de l'article 48, qui s'applique alors de la même manière que pour un témoin qui est dans l'impossibilité de se présenter pour cause de maladie.

Ordonnance pour obtenir la présence d'un prisonnier

45 (1) Si une personne détenue en prison doit se présenter au tribunal pour subir son procès ou témoigner et qu'un juge est convaincu, sur la foi de témoignages recueillis sous serment, oralement ou par affidavit, que la présence du prisonnier est nécessaire pour servir les fins de la justice, le juge peut rendre une ordonnance rédigée selon la formule prescrite pour que le prisonnier soit amené aussi souvent que nécessaire devant le tribunal devant lequel sa présence est requise.

(2) L'ordonnance rendue en vertu du paragraphe (1) est adressée à la personne qui a la garde du prisonnier et, sur réception de l'ordonnance, cette personne, selon le cas :

a) livre le prisonnier à l'agent de police ou à une autre personne désignée dans l'ordonnance pour le recevoir;

b) amène le prisonnier devant le tribunal sur paiement des frais raisonnables à cet égard.

(3) L'ordonnance rendue en vertu du paragraphe (1) indique la manière dont le prisonnier est tenu sous garde et renvoyé à la prison d'où il est amené.

Défaut d'être présent

46 (1) Quiconque est tenu, aux termes de la loi, de se présenter ou de demeurer présent à une audience et omet, sans excuse légitime, d'être présent ou de le demeurer est coupable d'une infraction et passible, sur déclaration de culpabilité, d'une amende d'au plus 2 000 $ et d'une peine d'emprisonnement d'au plus trente jours, ou d'une seule de ces peines.

(2) Dans une instance visée au paragraphe (1), le certificat du greffier ou d'un juge du tribunal portant que le défendeur a omis de se présenter devant le tribunal, est admissible en preuve comme preuve, en l'absence de preuve contraire, sans qu'il soit nécessaire d'établir l'authenticité de la signature ni la qualité de la personne qui paraît avoir signé le certificat.

Témoignage recueilli par un commissaire

47 (1) Sur requête du défendeur ou du poursuivant, le tribunal peut, par ordonnance, nommer un commissaire pour recueillir le témoignage d'un témoin qui se trouve à l'extérieur (indiquer l'autorité législative) ou qui sera vraisemblablement dans l'impossibilité d'être présent au procès pour un motif valable et suffisant, notamment pour cause de maladie ou d'incapacité physique.

(2) Le témoignage recueilli par un commissaire nommé en vertu du paragraphe (1) peut être consigné comme élément de preuve dans l'instance si les conditions suivantes sont réunies :

a) il est établi par témoignage oral ou par affidavit que le témoin est dans l'impossibilité d'être présent pour un motif énoncé au paragraphe (1);

b) la transcription du témoignage est signée par le commissaire par qui ou devant qui il paraît avoir été recueilli;

c) il est établi à la satisfaction du tribunal qu'un avis raisonnable des lieu, date et heure prévus pour recueillir le témoignage a été donné à l'autre partie et que celle-ci a eu pleinement l'occasion de contre-interroger le témoin.

(3) Une ordonnance rendue en vertu du paragraphe (1) peut permettre au défendeur d'être présent ou de se faire représenter par un avocat ou un représentant au moment où le témoignage est recueilli. Toutefois, le défaut du défendeur d'être présent ou de se faire représenter par un avocat ou un représentant conformément à l'ordonnance ne fait pas obstacle à la consignation du témoignage comme élément de preuve dans l'instance si le témoignage a par ailleurs été recueilli conformément à l'ordonnance et au présent article.

Témoignage à l'égard d'une autre accusation

48 Avec le consentement des parties, le tribunal peut recevoir et étudier les témoignages recueillis devant le même juge à l'égard d'une accusation différente portée contre le même défendeur.

Âge

49 À défaut d'autre preuve, ou afin de corroborer d'autres preuves, le tribunal peut déduire l'âge d'une personne d'après son apparence.

Pièces

50 (1) Le tribunal peut ordonner qu'une pièce soit placée sous la garde de la personne et à l'endroit qu'il juge appropriés pour sa conservation.

(2) Avec le consentement des parties, le greffier peut, n'importe quel moment après le procès, restituer une chose déposée à titre de pièce dans une instance. À défaut de consentement, il peut renvoyer la pièce à la partie qui l'a produite, après la décision en appel ou, à défaut d'appel, après l'expiration du délai d'appel.

APPENDICE C

Interprète

51 Dans les instances introduites en vertu de la présente loi, un juge peut autoriser une personne à agir à titre d'interprète si la personne prête le serment prescrit et si le juge estime qu'elle est compétente et que, vraisemblablement, elle sera facilement disponible.

Fausse déclaration

52 Est coupable d'une infraction et passible, sur déclaration de culpabilité, d'une amende d'au plus 2 000 $, quiconque affirme un fait dans une déclaration ou l'inscrit dans un document ou une formule dont la présente loi prévoit l'usage, et sait que cette affirmation est fausse.

Expulsion du défendeur

53 (1) Le tribunal peut faire expulser le défendeur et l'obliger à demeurer hors de la salle d'audience :

a) si le défendeur interrompt l'instance, faisant en sorte qu'il est impossible de la continuer en sa présence;

b) si le tribunal est convaincu, au cours de l'instruction de la question de l'incapacité du défendeur d'assurer sa défense en raison de troubles mentaux, que le défaut de prendre ces mesures pourrait avoir un effet préjudiciable sur sa santé mentale.

(2) Le tribunal peut exclure le public ou un membre du public de l'audience si, à son avis, cela est nécessaire pour maintenir l'ordre dans la salle d'audience ou pour éviter que le témoin soit influencé dans son témoignage.

Outrage au tribunal

54 (1) Sauf disposition contraire d'une loi, quiconque commet un outrage en présence du tribunal est passible, sur déclaration de culpabilité, d'une amende d'au plus 1 000 $ et d'une peine d'emprisonnement d'au plus trente jours, ou d'une seule de ces peines.

(2) Avant d'introduire une instance pour l'outrage visé au paragraphe (1), le tribunal informe le contrevenant de la conduite faisant l'objet de la plainte et de la nature de l'outrage, et lui fait part de son droit d'exposer les raisons pour lesquelles une peine ne devrait pas lui être imposée.

(3) Aucune peine pour outrage en présence du tribunal ne doit être imposée sans qu'il ne soit donné au contrevenant l'occasion d'exposer les raisons pour lesquelles une peine ne devrait pas lui être imposée.

(4) Sauf lorsque, à son avis, il est nécessaire de régler immédiatement la question de l'outrage afin de maintenir l'ordre et le contrôle dans la salle d'audience, le tribunal remet l'instance pour outrage à un autre jour.

(5) Lorsqu'il décide de traiter de la question de l'outrage immédiatement, sans l'ajournement prévu au paragraphe (4), le tribunal peut ordonner que le contrevenant soit arrêté et détenu dans la salle d'audience en vue d'instruire et de trancher la question.

(6) Lorsque le contrevenant comparaît devant le tribunal à titre de représentant sans être un avocat habilité à exercer sa profession (indiquer l'autorité législative), le tribunal peut, en plus de lui imposer toute autre peine dont il est passible, ordonner qu'il soit empêché d'agir à titre de représentant dans l'instance.

(7) Il peut être interjeté appel d'une ordonnance prévoyant une peine pour outrage rendue aux termes du présent article de la même manière que s'il s'agissait d'une déclaration de culpabilité pour une infraction réglementaire.

COMMENTAIRE

Puisqu'elle est à la fois une cour d'archives et une création législative, la cour des infractions réglementaires a le pouvoir d'infliger une peine en cas d'outrage commis en sa présence, mais non en cas d'outrage commis par suite de la violation d'un de ses actes de procédure ni en cas d'outrage commis hors sa présence. L'article 54 maintient cette restriction en ce qui concerne la compétence en matière d'outrage au tribunal, mais prévoit néanmoins certaines règles de procédure habituelles.

Jour non juridique

55 Une action autorisée ou exigée par la présente loi n'est pas invalide pour le seul motif qu'elle a été faite un jour non juridique.

Irrégularité et validité

56 (1) Ne portent pas atteinte à la validité d'une instance :

a) les irrégularités ou les vices de fond ou de forme dans l'assignation, le mandat, l'avis d'infraction, la promesse de comparaître ou l'engagement;

b) les divergences entre l'accusation énoncée dans l'assignation, le mandat, l'avis d'infraction, la promesse de comparaître ou l'engagement et celle énoncée dans le procès-verbal.

(2) Si le tribunal estime que le défendeur a été induit en erreur par une irrégularité, un vice ou une divergence mentionnés au paragraphe (1), il peut ajourner l'audience et rendre l'ordonnance qu'il juge appropriée, y compris ordonner le paiement de dépens aux termes de l'article 78.

APPENDICE C

Prorogation de délais

57 Les délais prescrits par la présente loi ou les règlements pris en application de celle-ci, ou par les règles de pratique pour l'accomplissement d'une chose autre que l'introduction ou la reprise d'une instance peuvent être prorogés par le tribunal, avant ou après l'expiration du délai prescrit.

Signification

58 (1) Sauf disposition contraire de la présente loi ou des règles de pratique, tout avis ou document qui doit ou peut être donné ou remis en vertu de la présente loi ou des règles de pratique l'est valablement s'il est remis à personne ou envoyé par courrier.

(2) Si un avis ou un document doit ou peut être donné ou remis à une personne aux termes de la présente loi ou des règles de pratique, le fait qu'il lui ait été envoyé par courrier à sa dernière adresse connue figurant au dossier de l'instance qui se déroule devant le tribunal constitue une présomption réfutable qu'il a été remis à cette personne.

PRONONCÉ DE LA SENTENCE

Rapport présentenciel

59 (1) Si un défendeur est déclaré coupable d'une infraction pour laquelle l'avis d'infraction n'indique pas d'amende fixée, le tribunal peut, si cela est nécessaire, ordonner à un agent de probation de préparer et de déposer auprès du tribunal un rapport écrit sur le défendeur afin d'aider le tribunal à imposer la sentence.

(2) Lorsqu'un rapport est déposé auprès du tribunal aux termes du paragraphe (1), le greffier du tribunal en fait transmettre une copie au défendeur ou à son avocat ou représentant ainsi qu'au poursuivant.

Observations sur la sentence

60 (1) Si un défendeur qui comparaît en personne est déclaré coupable d'une infraction, le tribunal donne au poursuivant et à l'avocat ou au représentant du défendeur l'occasion de faire des observations sur la sentence. Si le défendeur n'a ni avocat ni représentant, le tribunal lui demande s'il a quelque chose à dire avant de recevoir sa sentence.

(2) L'omission de se conformer au paragraphe (1) ne porte pas atteinte à la validité de l'instance.

(3) Si un défendeur est déclaré coupable d'une infraction, le tribunal peut demander au défendeur ou à quelqu'un d'autre de lui donner, sous serment ou autrement, les renseignements qu'il juge souhaitables au sujet du défendeur, notamment au sujet de sa situation financière. Toutefois, le défendeur ne peut être contraint à répondre aux questions.

(4) Un certificat énonçant de façon suffisamment détaillée la conclusion de culpabilité ou l'acquittement, ou la déclaration de culpabilité et la sentence à l'endroit d'une personne au Canada, signé :

a) soit par l'auteur de la décision;

b) soit par le greffier du tribunal où la décision a été rendue,

est admissible en preuve et constitue, en l'absence de preuve contraire, une preuve des faits qui y sont énoncés sans qu'il soit nécessaire d'établir l'authenticité de la signature ni la qualité de la personne qui paraît avoir signé le certificat, à condition que le tribunal soit convaincu que le certificat vise effectivement le défendeur.

Détention sous garde

61 Pour fixer la sentence à imposer à une personne déclarée coupable d'une infraction, le tribunal peut tenir compte de toute période que la personne a passée sous garde par suite de l'infraction.

Procès-verbal de la décision

62 Si le tribunal déclare un défendeur coupable ou rejette l'accusation, il dresse un procès-verbal du rejet ou de la déclaration de culpabilité et de la sentence. À la demande du défendeur, du poursuivant ou du procureur général ou de son représentant, le tribunal en fait transmettre une copie certifiée par le greffier du tribunal à la personne qui en fait la demande.

Peine minimale

63 (1) Aucune peine prescrite à l'égard d'une infraction n'est une peine minimale, à moins qu'elle ne soit expressément déclarée telle.

(2) Même si la disposition qui crée la peine relative à une infraction prescrit une peine minimale, le tribunal peut imposer une peine inférieure au minimum ou surseoir au prononcé de la sentence s'il estime qu'en raison de circonstances exceptionnelles, l'imposition de la peine minimale serait trop sévère ou ne servirait pas les intérêts de la justice.

(3) Si une peine minimale est prescrite à l'égard d'une infraction et qu'elle comprend une période d'emprisonnement, le tribunal peut, malgré la peine prescrite, imposer une amende d'au plus 5 000 $ à la place de la peine d'emprisonnement.

COMMENTAIRE

La prescription de peines minimales vise à obliger les tribunaux à punir certaines infractions plus sévèrement pour des motifs d'ordre public. Mais elle est source de contraintes puisque les tribunaux n'ont d'autre choix que de s'y plier quand ils sont pourtant convaincus que, compte tenu des circonstances particulières de la cause qu'ils entendent, la peine minimale ne constitue pas la peine juste,

même si l'accusé est coupable en principe. Or, l'ajustement de la peine aux circonstances particulières, dans le contexte du respect de l'ordre public, constitue le rôle même des tribunaux. La fixation de peines minimales les porte à faire des distinctions qu'ils ne feraient pas autrement dans leur interprétation du droit et ce, afin de ne pas aboutir à une conclusion de culpabilité lorsqu'ils sont confrontés à ce qu'ils estiment être une peine injuste mais obligatoire.

L'objet de l'article 63 est donc de donner aux juges une plus grande latitude dans des circonstances particulières.

Amende

64 (1) Une amende est exigible quinze jours après avoir été imposée ou au moment fixé par l'autorité législative.

(2) Si le défendeur ne relève pas du ressort du tribunal, ce dernier peut, par ordonnance, décréter que l'amende est exigible immédiatement.

(3) Si le tribunal impose une amende, il demande au défendeur s'il désire une prorogation du délai de paiement de l'amende.

(4) Si le défendeur demande une prorogation du délai de paiement de l'amende, le tribunal peut demander au défendeur ou à quelqu'un d'autre de lui donner, sous serment ou autrement, les renseignements qu'il juge souhaitables au sujet du défendeur. Toutefois, le défendeur ne peut être contraint à répondre aux questions.

(5) Le tribunal accorde la prorogation du délai de paiement, notamment en ordonnant que le paiement soit effectué par versements périodiques, à moins qu'il ne conclue que la demande de prorogation du délai n'est pas faite de bonne foi ou que la prorogation servirait vraisemblablement à éluder le paiement.

(6) Si une amende est imposée en l'absence du défendeur, le greffier du tribunal donne au défendeur un avis de l'amende et de sa date d'échéance, et du droit du défendeur de présenter, en vertu du paragraphe (7), une requête pour faire proroger le délai de paiement.

(7) Le défendeur peut demander, à n'importe quel moment, la prorogation ou la prorogation additionnelle du délai de paiement d'une amende en présentant une requête rédigée selon la formule prescrite au greffe du tribunal. Le tribunal peut accéder à la demande ou exiger la tenue d'une audience de la manière prévue aux paragraphes (4) et (5).

Paiement des amendes par le travail

65 Le lieutenant-gouverneur en conseil peut, par règlement, établir un programme qui permet le paiement des amendes au moyen de crédits accordés pour le travail exécuté et, à cette fin, il peut notamment :

a) prescrire des catégories de travail et les conditions d'exécution de ce travail;

b) prescrire un système de crédits;

c) prévoir les mesures nécessaires à l'administration efficace du programme.

Un règlement peut s'appliquer uniquement à une ou à certaines régions (indiquer l'autorité législative).

Poursuite civile par suite du défaut de paiement d'une amende

66 (1) S'il y a défaut de paiement d'une amende, le greffier du tribunal peut remplir un certificat rédigé selon la formule prescrite à l'égard de l'amende imposée et du montant impayé, et déposer ce certificat auprès d'un tribunal compétent. Aux fins d'exécution, le certificat est réputé, dès son dépôt, être une ordonnance ou un jugement de ce tribunal.

(2) Un certificat ne peut être déposé en vertu du paragraphe (1) plus de deux ans après le défaut à l'égard duquel il est délivré.

(3) Si un certificat a été déposé en vertu du paragraphe (1) et que l'amende est entièrement payée, le greffier dépose un certificat de paiement, ce qui annule le certificat de défaut. Si un bref d'exécution a été déposé auprès du shérif, le greffier dépose auprès de ce dernier un certificat de paiement, ce qui annule le bref d'exécution.

Défaut de paiement d'une amende

67 (1) Il y a défaut de paiement d'une amende lorsqu'une partie de celle-ci est exigible et reste impayée depuis au moins quinze jours.

(2) Le juge qui est convaincu qu'il y a défaut de paiement d'une amende :

a) ordonne que le permis, la licence, l'enregistrement ou le privilège à l'égard duquel la suspension est autorisée par ou en vertu d'une loi pour défaut de paiement de l'amende soit suspendu, ne soit pas renouvelé ou ne soit pas délivré jusqu'à ce que l'amende soit payée;

b) peut ordonner au greffier du tribunal de prendre les mesures d'exécution prévues à l'article 66.

(3) Un juge peut décerner un mandat rédigé selon la formule prescrite pour l'incarcération du défendeur si les conditions suivantes sont réunies :

a) une ordonnance ou une directive aux termes de l'alinéa (2) a) n'a pas entraîné le paiement dans un délai qui est raisonnable dans les circonstances;

b) le défendeur n'a pas choisi le mode de paiement des amendes par le travail;

c) le défendeur n'a conclu aucune entente visant la prorogation du délai de paiement ou le paiement en versements périodiques;

d) le défendeur n'a pas répondu à l'avis de l'intention de décerner un mandat;

e) toutes les autres méthodes raisonnables de recouvrement de l'amende ont été employées sans succès ou, de l'avis du juge, elles n'entraîneraient vraisemblablement pas le paiement dans un délai raisonnable dans les circonstances;

f) le juge est convaincu de la capacité du défendeur de payer l'amende;

g) le défendeur a reçu un avis de quinze jours de l'intention de décerner un mandat et a eu l'occasion d'être entendu.

(4) Dans des circonstances exceptionnelles, si le tribunal qui a imposé l'amende estime que la procédure prévue au paragraphe (3) ne servirait pas les fins de la justice, il peut, selon le cas :

a) ordonner qu'aucun mandat de dépôt ne soit décerné en vertu du paragraphe (3);

b) ordonner l'emprisonnement pour défaut de paiement de l'amende et ordonner qu'aucune prorogation du délai de paiement ne soit accordée.

(5) L'emprisonnement aux termes d'un mandat décerné en vertu du paragraphe (3) ou (4) est de trois jours plus un jour pour chaque tranche impayée de 50 $ ou fraction de celle-ci, jusqu'à concurrence de quatre-vingt-dix jours ou de la moitié de la peine maximale d'emprisonnement prévue à l'égard de l'infraction, le cas échéant, selon la plus longue de ces périodes.

(6) Tout paiement effectué après qu'un mandat a été décerné en vertu du paragraphe (3) ou (4) réduit la durée de l'emprisonnement d'un nombre de jours ayant le même rapport avec le nombre de jours de durée d'emprisonnement que le montant versé avec le montant impayé. Aucun montant offert à titre de paiement partiel d'une amende ne doit être accepté à moins qu'il ne soit suffisant pour assurer une réduction de peine d'un jour ou d'un multiple d'un jour.

Suspension du paiement d'une amende

68 Lorsqu'une loi prévoit que le paiement d'une amende peut être suspendu sous réserve de la réalisation d'une condition :

a) la durée de la suspension est fixée par le tribunal et ne dépasse pas un an;

b) l'ordonnance de suspension du tribunal prévoit comment la réalisation de la condition sera prouvée;

c) le pouvoir de suspension ne remplace pas les autres pouvoirs du tribunal à l'égard de l'amende mais s'y ajoute;

d) il n'y a pas défaut de paiement de l'amende tant que quinze jours ne se sont pas écoulés après la remise au défendeur d'un avis l'informant de l'expiration de la suspension.

Période d'emprisonnement

69 (1) Sauf ordre contraire dans la sentence, la période d'emprisonnement imposée par la sentence commence le jour où la personne déclarée coupable est mise sous garde aux termes de la sentence. Toutefois, la période au cours de laquelle la personne déclarée coupable est emprisonnée ou libérée sous caution avant le prononcé de la sentence ne doit pas être considérée comme faisant partie de la période d'emprisonnement à laquelle elle est condamnée.

(2) Si le tribunal impose une peine d'emprisonnement, il peut ordonner que la détention commence au plus tard trente jours après la date du prononcé de la sentence.

COMMENTAIRE

Il est plutôt rare, dans le contexte des infractions réglementaires, qu'il soit question de comportements dangereux ou de la nécessité de protéger le public. Aussi il n'est pas important de prévoir la détention continue après la déclaration de culpabilité. Le paragraphe (2) permet donc au défendeur de prendre les dispositions nécessaires pour la durée de son absence de la maison et du travail.

Peines purgées consécutivement

70 Quiconque se voit imposer plus d'une période d'emprisonnement en même temps les purge l'une après l'autre, sauf dans la mesure où le tribunal a ordonné qu'une période d'emprisonnement soit purgée concurremment avec une autre.

Mandat de dépôt

71 (1) Un mandat de dépôt suffit pour autoriser :

a) le transfèrement du prisonnier au lieu où il sera détenu aux fins de l'incarcération aux termes du mandat;

b) la réception et la détention du prisonnier par les gardiens de prison conformément aux conditions du mandat.

(2) La personne à qui est adressé un mandat de dépôt conduit le prisonnier à l'établissement correctionnel nommé dans le mandat.

(3) La peine d'emprisonnement est purgée conformément aux dispositions législatives et aux règles qui régissent l'établissement où le prisonnier est condamné à purger sa peine.

Ordonnance de probation

72 (1) Si un défendeur est déclaré coupable d'une infraction dans une instance introduite par la délivrance d'une assignation, le tribunal peut, eu égard à l'âge, à la réputation et aux antécédents du défendeur, à la nature de l'infraction et aux circonstances dans lesquelles elle a été commise :

a) surseoir au prononcé de la sentence et ordonner que le défendeur se conforme aux conditions prescrites dans une ordonnance de probation;

b) en plus d'imposer une amende au défendeur ou de le condamner à l'emprisonnement, pour défaut de paiement d'une amende ou pour un autre motif, ordonner que le défendeur se conforme aux conditions prescrites dans une ordonnance de probation;

c) s'il impose au défendeur une peine d'emprisonnement maximale de quatre-vingt-dix jours pour défaut de paiement d'une amende ou pour un autre motif, ordonner que la peine soit purgée de façon discontinue aux moments qui sont spécifiés dans l'ordonnance et ordonner au défendeur de se conformer, pendant tout le temps qu'il ne sera pas en prison conformément à cette ordonnance, aux conditions prescrites dans une ordonnance de probation.

(2) L'ordonnance de probation est réputée contenir les conditions suivantes :

a) que le défendeur ne commette ni la même infraction, ni aucune infraction connexe ou similaire, ni aucune infraction à une loi du Canada, (indiquer l'autorité législative) ou d'une autre province ou d'un autre territoire du Canada qui soit punissable d'emprisonnement;

b) que le défendeur comparaisse devant le tribunal lorsqu'il en est requis;

c) que le défendeur avise le tribunal de tout changement d'adresse.

(3) En plus des conditions prévues au paragraphe (2), le tribunal peut prescrire les conditions suivantes dans une ordonnance de probation :

a) que le défendeur s'acquitte de toute indemnisation ou restitution requise ou autorisée par une loi;

b) avec le consentement du défendeur et si celui-ci est déclaré coupable d'une infraction punissable d'emprisonnement, que le défendeur exécute les services à la communauté tels que les énonce l'ordonnance;

c) si le défendeur est déclaré coupable d'une infraction punissable d'emprisonnement, les autres conditions qui sont relatives aux circonstances de l'infraction et à la situation du défendeur qui ont contribué à la perpétration de l'infraction, et que le tribunal considère comme appropriées soit pour empêcher le défendeur de récidiver, soit pour contribuer à sa réadaptation;

d) lorsqu'il l'estime nécessaire pour que soient remplies les conditions de l'ordonnance de probation, que le défendeur se présente à une personne responsable désignée par le tribunal, et, en outre, si les circonstances le justifient, qu'il soit placé sous la surveillance de cette personne.

(4) L'ordonnance de probation est rédigée selon la formule prescrite. Le tribunal qui la rend y spécifie la période pendant laquelle elle doit demeurer en vigueur, période qui ne peut dépasser deux ans à compter de l'entrée en vigueur de l'ordonnance.

(5) Le tribunal qui rend une ordonnance de probation fait remettre au défendeur une copie de l'ordonnance et de l'article 76.

(6) Le lieutenant-gouverneur en conseil peut, par règlement, régir les ordonnances de restitution, d'indemnisation et de service à la communauté, y compris leurs conditions.

Entrée en vigueur de l'ordonnance de probation

73 L'ordonnance de probation entre en vigueur :

a) soit à la date où elle est rendue;

b) soit à l'expiration de la peine d'emprisonnement, à moins que celle-ci ne doive être purgée de façon discontinue.

Ordonnance de probation et autre déclaration de culpabilité

74 Si un défendeur qui est lié par une ordonnance de probation est déclaré coupable d'une infraction ou est emprisonné pour défaut de paiement d'une amende, l'ordonnance reste en vigueur, sauf dans la mesure où la sentence ou l'emprisonnement met le défendeur dans l'impossibilité de se conformer alors aux dispositions de l'ordonnance.

Modification de l'ordonnance de probation

75 Le tribunal peut, à n'importe quel moment sur requête du défendeur ou du poursuivant avec avis à l'autre partie, après une audience ou, si les parties y consentent, sans audience :

a) apporter aux conditions prescrites dans l'ordonnance tout changement ou supplément qui, de l'avis du tribunal, sont souhaitables en raison d'un changement de circonstances;

b) relever le défendeur, soit complètement, soit selon les modalités ou pour la période que le tribunal estime souhaitables, de l'obligation de se conformer à une condition qui est mentionnée dans un alinéa du paragraphe 72 (3) et qui est prescrite dans l'ordonnance;

c) mettre fin à l'ordonnance ou raccourcir la période durant laquelle elle doit demeurer en vigueur.

Dès lors, le tribunal vise l'ordonnance à cet effet et, s'il apporte des changements ou des suppléments aux conditions prescrites dans l'ordonnance, il en informe le défendeur et lui remet une copie de l'ordonnance ainsi visée.

Violation des conditions de l'ordonnance de probation

76 Si un défendeur qui est soumis à une ordonnance de probation est déclaré coupable d'une infraction qui constitue une violation des conditions de l'ordonnance et que, selon le cas :

a) le délai durant lequel il peut interjeter appel ou présenter une requête en autorisation d'appel de cette déclaration de culpabilité est expiré et il n'a pas interjeté appel ou présenté la requête en autorisation d'appel;

b) il a interjeté appel ou a présenté une requête en autorisation d'appel de la déclaration de culpabilité et l'appel ou la requête en autorisation d'appel a été rejeté ou abandonné;

c) il a donné au tribunal qui l'a déclaré coupable un avis écrit de son choix de ne pas interjeter appel,

ou, si par ailleurs, le défendeur omet ou refuse sciemment de se conformer à l'ordonnance, il est coupable d'une infraction, et le tribunal peut, après l'avoir déclaré coupable :

d) lui imposer une amende d'au plus 1 000 $ et une peine d'emprisonnement d'au plus trente jours ou une seule de ces peines et, au lieu de ces peines ou en plus de celles-ci, maintenir en vigueur l'ordonnance de probation pour une période n'excédant pas une année supplémentaire, en lui apportant les modifications ou les suppléments que le tribunal estime raisonnables;

e) si le juge qui préside est celui qui a rendu l'ordonnance initiale, annuler l'ordonnance de probation et imposer la sentence qui a fait l'objet d'un sursis au moment où a été rendue l'ordonnance de probation au lieu d'imposer la peine prévue à l'alinéa d).

Dépens

77 (1) Le défendeur qui est déclaré coupable est tenu de verser au tribunal, à titre de dépens, le montant fixé par les règlements.

(2) Le tribunal peut, à sa discrétion, ordonner que les dépens au titre des frais et dépenses raisonnablement engagés par les témoins ou pour leur compte ne dépassant pas le maximum fixé par les règlements soient versés, soit au tribunal ou au poursuivant par le défendeur, soit au défendeur par la personne qui a délivré le procès-verbal.

(3) Pour les besoins de l'exécution du paiement, les dépens exigibles en vertu du présent article et les frais d'administration de l'instance prescrits par la loi sont réputés être une amende.

Peine générale

78 Sauf disposition expressément contraire de la loi, toute personne déclarée coupable d'une infraction est passible d'une amende d'au plus 5 000 $.

COMMENTAIRE

Cet article est probablement désuet. Il est bien établi qu'un comportement ne devient une infraction que s'il est expressément édicté qu'il constitue une infraction. Or, s'il existe encore un exemple de comportement qui constitue une infraction pour laquelle n'est prévue aucune peine, il figure sans doute dans une loi du siècle dernier et ne mérite pas, en définitive, d'être pris en considération.

ADOLESCENTS

COMMENTAIRE

Les dispositions de la Loi sur les jeunes contrevenants (Canada) *s'appliquent à l'égard des infractions prévues au Code criminel. L'autorité législative devra donc adopter des lois pour créer les établissements visés par la* Loi sur les jeunes contrevenants, *probablement des lois relevant des ministères à vocation sociale. De même, la structure administrative nécessaire sera intégrée à l'administration des services à l'enfance. Par ailleurs, les dispositions particulières concernant les solutions de rechange à l'égard du prononcé de la sentence doivent faire partie de ces lois, l'application de celles-ci étant tout simplement étendue aux infractions réglementaires. De même, l'autorité législative devrait prévoir des mesures de rechange en étendant l'application des dispositions existantes qui visent la loi fédérale. Il est toutefois essentiel de respecter les principes d'ordre procédural que contient la législation fédérale.*

Âge minimal

79 Nul ne peut être déclaré coupable d'une infraction commise lorsqu'il était âgé de moins de douze ans.

Application des art. 81 à 89

80 (1) Les articles 81 à 89 s'appliquent à l'instance introduite contre un adolescent de douze ans ou plus mais de moins de seize ans, et en outre à l'instance introduite contre une personne de seize ans ou plus accusée d'avoir commis une infraction lorsqu'elle avait douze ans ou plus mais moins de seize ans.

(2) Les dispositions de la présente loi s'appliquent aux adolescents, sauf dans la mesure où elles sont incompatibles avec les articles 81 à 89.

(3) La mention du père ou de la mère aux articles 81 à 89 vise en outre un adulte avec lequel l'adolescent réside ordinairement.

COMMENTAIRE

Pour déterminer l'âge limite auquel un jeune contrevenant est considéré comme un adolescent aux fins des infractions réglementaires, l'un des principaux éléments à prendre en considération est l'âge auquel les différentes lois de l'autorité législative permettent à l'adolescent d'obtenir un permis de conduire, de se procurer de l'alcool ou encore de prendre part à d'autres activités normalement réglementées. L'objet principal de la législation sur les jeunes contrevenants ne vise pas les infractions mineures purement réglementaires.

Assignation

81 Une instance est introduite contre un adolescent au moyen d'un procès-verbal d'infraction accompagné d'un avis d'infraction et d'une assignation.

Avis au père ou à la mère

82 (1) Si une assignation est signifiée à un adolescent ou qu'un adolescent est libéré sur engagement en vertu de la présente loi, l'agent des infractions réglementaires, dans le cas d'une assignation, ou l'agent responsable, dans le cas d'un engagement, en donne avis aussitôt que possible dans les circonstances au père ou à la mère de l'adolescent en lui remettant une copie de l'assignation ou de l'engagement.

(2) À défaut de l'avis prévu au paragraphe (1) et si aucune personne à laquelle l'avis aurait pu être donné ne se présente avec l'adolescent, le tribunal peut reporter l'audience à une date ultérieure pour permettre la remise de l'avis ou passer outre à la signification de l'avis.

(3) Le défaut de donner un avis au père ou à la mère aux termes du paragraphe (1) n'invalide pas en soi l'instance introduite contre l'adolescent.

APPENDICE C

Procès

83 (1) Sous réserve de l'article 37 (déclaration de culpabilité en l'absence du défendeur), du paragraphe 53 (1) (expulsion pour mauvaise conduite) et du paragraphe (2), l'adolescent doit être présent en cour pendant toute la durée du procès.

(2) Le tribunal peut autoriser un adolescent à être absent pendant la totalité ou une partie du procès aux conditions que le tribunal estime appropriées.

(3) L'article 46 (peine pour défaut d'être présent) ne s'applique pas si l'adolescent est défendeur.

(4) Si un adolescent qui est défendeur ne comparaît pas aux date, heure et lieu fixés pour une audience et que le poursuivant prouve, après avoir eu l'occasion raisonnable de le faire, qu'une assignation a été signifiée, qu'une promesse de comparaître a été donnée ou qu'un engagement à comparaître a été consenti, selon le cas, ou si l'adolescent ne comparaît pas à la reprise d'une audience ajournée, le tribunal peut ajourner l'audience et décerner une assignation à comparaître ou un mandat pour l'arrestation de l'adolescent, rédigés selon la formule prescrite.

(5) Si un adolescent ne se présente pas en personne à la suite d'une assignation décernée en vertu de l'article 35 (assignation du tribunal ordonnant au défendeur de se présenter en personne) et que le poursuivant prouve, après avoir eu l'occasion raisonnable de le faire, que l'assignation a été signifiée, le tribunal peut ajourner l'audience et décerner une autre assignation ou un mandat pour l'arrestation de l'adolescent, rédigés selon la formule prescrite.

Protection de l'identité

84 (1) Nul ne doit publier, par quelque moyen que ce soit, le compte rendu :

a) d'une infraction commise par un adolescent ou reprochée à celui-ci;

b) d'une audience, d'une décision, d'une sentence ou d'un appel concernant un adolescent qui a commis une infraction ou à qui une infraction est reprochée,

dans lequel est divulgué le nom de l'adolescent ou un renseignement permettant d'établir son identité.

(2) Le paragraphe (1) n'interdit pas ce qui suit :

1. La divulgation de renseignements par l'adolescent concerné.

2. La divulgation de renseignements par le père ou la mère, ou l'avocat de l'adolescent dans le but de protéger les intérêts de ce dernier.

3. La divulgation de renseignements par un agent de police dans le but de faire une enquête sur une infraction que l'adolescent est soupçonné d'avoir commise.

4. La divulgation de renseignements à un assureur pour lui permettre de faire une enquête sur une réclamation résultant d'une infraction commise par l'adolescent ou reprochée à celui-ci.

5. La divulgation de renseignements dans le cadre de l'administration de la justice, mais non dans le but de les porter à la connaissance de la collectivité.

6. La divulgation de renseignements par une personne ou un membre d'une catégorie de personnes prescrites par les règlements.

(3) Est coupable d'une infraction et passible, sur déclaration de culpabilité, d'une amende d'au plus 10 000 $, quiconque contrevient au paragraphe (1) et tout administrateur, dirigeant ou employé d'une personne morale qui autorise ou permet une contravention au paragraphe (1) par la personne morale ou qui y consent.

Peine

85 (1) Aucun adolescent ne peut être condamné à une peine d'emprisonnement si ce n'est en vertu de l'alinéa 76 d) (violation des conditions de l'ordonnance de probation).

(2) Si un adolescent est déclaré coupable d'une infraction dans une instance introduite en vertu de la présente loi, le tribunal peut :

a) soit déclarer l'adolescent coupable et, selon le cas :

(i) lui ordonner de payer une amende n'excédant pas le maximum prescrit à l'égard de l'infraction ou 1 000 $, selon le montant qui est le moindre,

(ii) surseoir au prononcé de la sentence et ordonner que l'adolescent se conforme aux conditions prescrites dans une ordonnance de probation;

b) soit libérer l'adolescent inconditionnellement.

(3) L'ordonnance de probation rendue en vertu du sous-alinéa (2) a) (ii) ne peut demeurer en vigueur pendant plus d'un an après la date de son entrée en vigueur.

Emprisonnement pour défaut de paiement d'une amende

86 (1) Aucun mandat de dépôt ne peut être décerné contre un adolescent en vertu de l'article 67 (défaut de paiement d'une amende).

(2) Lorsque, si ce n'était le paragraphe (1), il serait approprié de décerner un mandat contre un adolescent en vertu du paragraphe 67 (3) ou (4) (emprisonnement pour défaut de paiement d'une amende), un juge peut ordonner que l'adolescent se conforme aux conditions prescrites dans une ordonnance de probation après lui avoir donné un préavis de quinze jours de son intention de rendre une ordonnance de probation et lui avoir donné l'occasion d'être entendu.

(3) L'ordonnance de probation rendue en vertu du paragraphe (2) ne peut demeurer en vigueur pendant plus de quatre-vingt-dix jours après la date de son entrée en vigueur.

Garde en milieu ouvert

87 Si un adolescent est condamné, en vertu de l'alinéa 76 d), à une peine d'emprisonnement pour violation des conditions de l'ordonnance de probation, la peine d'emprisonnement est purgée dans un lieu de garde en milieu ouvert désigné aux termes de l'article 24 de la Loi sur les jeunes contrevenants (Canada).

Arrestation sans mandat

88 Nul ne doit exercer une autorité que lui confère la présente loi ou une autre loi pour arrêter un adolescent sans mandat, à moins d'avoir des motifs raisonnables et probables de croire que l'arrestation est nécessaire dans l'intérêt public afin, selon le cas :

a) d'établir l'identité de l'adolescent;

b) d'empêcher que se poursuive ou se répète une infraction qui présente un danger grave pour l'adolescent, une autre personne ou les biens d'une autre personne.

Mise en liberté après l'arrestation

89 (1) L'article 121 (cautionnement) ne s'applique pas à un adolescent qui a été arrêté.

(2) Si un agent de police qui agit en vertu d'un mandat ou d'un autre pouvoir d'arrestation arrête un adolescent, il met l'adolescent en liberté, aussitôt que possible dans les circonstances, sans condition ou après lui avoir signifié une assignation, à moins qu'il n'ait des motifs raisonnables et probables de croire que l'adolescent doit être détenu dans l'intérêt public afin d'établir son identité ou d'empêcher que se poursuive ou se répète une infraction qui présente un danger grave pour l'adolescent, une autre personne ou les biens d'une autre personne.

(3) Si un adolescent n'est pas mis en liberté en vertu du paragraphe (2), l'agent de police le remet à l'agent responsable qui, s'il est d'avis que les conditions énoncées au paragraphe (2) n'existent pas ou n'existent plus, met l'adolescent en liberté, soit sans condition, soit après lui avoir fait consentir un engagement sans caution à comparaître devant le tribunal, rédigé selon la formule prescrite.

(4) Si l'agent responsable ne met pas l'adolescent en liberté aux termes du paragraphe (3), il en avise dès que possible le père ou la mère de l'adolescent en l'informant, oralement ou par écrit, de l'arrestation de l'adolescent, de la raison de l'arrestation et du lieu de détention.

(5) L'article 122 (comparution le plus tôt possible devant le tribunal) s'applique, avec les adaptations nécessaires, à la mise en liberté d'un adolescent en vertu du présent article.

(6) Un adolescent détenu aux termes de l'article 121 ne doit pas être détenu dans une partie quelconque d'un lieu où est détenu un adulte accusé ou déclaré coupable d'une infraction, à moins qu'un juge n'autorise cette détention, ce que le juge peut faire dès qu'il est convaincu, selon le cas :

a) que la sécurité de l'adolescent ou celle d'autres personnes n'est pas garantie si l'adolescent est détenu dans un lieu de détention provisoire pour adolescents;

b) qu'aucun lieu de détention provisoire pour adolescents ne se trouve à une distance raisonnable.

(7) Dans la mesure de ce qui est possible dans les circonstances, l'adolescent détenu sous garde est détenu dans un lieu de détention provisoire désigné en vertu du paragraphe 7 (1) de la Loi sur les jeunes contrevenants (Canada).

APPEL ET RÉVISION

Tribunal d'appel

90 Il peut être interjeté appel des décisions de la cour des infractions réglementaires devant (la cour de comté ou de district ou, selon l'autorité législative, le tribunal de première instance équivalent de juridiction inférieure dont les juges sont nommés par le palier fédéral).

Suspension

91 Le dépôt d'un avis d'appel ne suspend pas la déclaration de culpabilité à moins qu'un juge du tribunal d'appel ne l'ordonne.

Fixation d'une date

92 (1) Si un appelant est sous garde en attendant l'audition de l'appel et que l'audition de l'appel n'a pas débuté dans les trente jours qui suivent le jour où l'avis d'appel a été donné, la personne qui a la garde de l'appelant demande, par voie de requête, à un juge du tribunal d'appel de fixer une date pour l'audition de l'appel.

(2) Sur réception de la requête présentée en vertu du paragraphe (1), le juge, après avoir donné au poursuivant une occasion raisonnable d'être entendu, fixe une date pour l'audition de l'appel et donne les directives qu'il juge appropriées pour hâter l'audition de l'appel.

Paiement sans renonciation

93 Le paiement d'une amende ou l'observation d'une ordonnance rendue par suite d'une déclaration de culpabilité ne constitue pas une renonciation au droit d'appel.

Transmission de documents

94 Sur dépôt d'un avis d'appel, le greffier du tribunal d'appel en avise le greffier de la cour des infractions réglementaires dont la décision est portée en appel et, sur réception de la notification, le greffier de la cour des infractions réglementaires transmet l'ordonnance portée en appel et tous les autres documents qu'il a en sa possession et qui concernent l'instance ou transfère la garde de tous les autres documents qu'il a sous son contrôle et qui concernent l'instance au greffier du tribunal d'appel pour qu'il les conserve avec les dossiers du tribunal d'appel.

Droit d'appel

95 (1) Le défendeur ou le poursuivant, ou le procureur général par voie d'intervention, peuvent interjeter appel d'une déclaration de culpabilité, du rejet d'une accusation ou d'une sentence rendue par une cour des infractions réglementaires, ou d'une conclusion quant à l'incapacité de l'accusé d'assurer sa défense en raison de troubles mentaux.

(2) L'appel est interjeté conformément aux règles de pratique du tribunal d'appel.

Pouvoirs du tribunal

96 (1) S'il estime que cela sert les intérêts de la justice, le tribunal d'appel peut :

a) ordonner la production d'écrits, pièces ou autres choses relatifs à l'appel;

b) ordonner qu'un témoin qui aurait été contraignable au procès, qu'il ait ou non été appelé à témoigner au procès :

(i) ou bien se présente et soit interrogé devant le tribunal,

(ii) ou bien soit interrogé de la manière prévue par les règles de pratique devant un juge du tribunal ou devant un officier de justice ou une autre personne nommée par le tribunal à cette fin;

c) admettre à titre de preuve un interrogatoire mené en vertu du sous-alinéa b) (ii);

d) recevoir le témoignage d'un témoin, le cas échéant;

e) ordonner que toute question soulevée en appel qui :

(i) d'une part, demande un examen prolongé d'écrits ou de comptes, ou une enquête scientifique,

(ii) d'autre part, ne peut, de l'avis du tribunal, être examinée commodément devant le tribunal,

soit renvoyée, pour enquête et rapport de la manière prévue par les règles de pratique, à un commissaire spécial nommé par le tribunal;

f) donner suite au rapport du commissaire nommé en vertu de l'alinéa e) dans la mesure où le tribunal estime opportun de le faire.

(2) Dans une instance introduite en vertu du présent article, les parties ou leurs avocats ont le droit d'interroger ou de contre-interroger des témoins et, dans une enquête menée en vertu de l'alinéa (1) e), d'être présents pendant l'enquête, de présenter une preuve et d'être entendus.

Comparution

97 (1) Un appelant ou un intimé peut comparaître et agir en personne ou par l'entremise d'un avocat.

(2) Un appelant ou un intimé qui est sous garde par suite de la décision portée en appel a le droit d'être présent à l'audition de l'appel.

(3) Le pouvoir du tribunal d'imposer une sentence peut être exercé même si l'appelant ou l'intimé n'est pas présent.

Plaidoirie écrite

98 Un appelant ou un intimé peut présenter sa cause en appel et sa plaidoirie par écrit plutôt qu'oralement; le tribunal doit prendre en considération toute cause ou plaidoirie ainsi présentée.

Pouvoirs lors d'un appel d'une déclaration de culpabilité

99 (1) Lors de l'audition d'un appel d'une déclaration de culpabilité ou d'une conclusion quant à l'incapacité de l'appelant d'assurer sa défense en raison de troubles mentaux, le tribunal peut, par ordonnance :

a) accueillir l'appel s'il est d'avis, selon le cas :

(i) que la conclusion devrait être annulée pour le motif qu'elle est déraisonnable ou que la preuve ne l'appuie pas,

(ii) que le jugement du tribunal de première instance devrait être annulé pour le motif qu'il y a eu une décision erronée sur une question de droit,

(iii) que, pour un motif quelconque, il y a eu erreur judiciaire;

b) rejeter l'appel, dans l'un ou l'autre des cas suivants :

(i) le tribunal est d'avis que l'appelant, bien qu'il n'ait pas été régulièrement déclaré coupable à l'égard d'un chef d'accusation ou d'une partie d'un procès-verbal, a été régulièrement déclaré coupable à l'égard d'un autre chef d'accusation ou d'une autre partie du procès-verbal,

(ii) il n'est pas statué sur l'appel en faveur de l'appelant pour un des motifs mentionnés à l'alinéa a),

(iii) bien que le tribunal estime que, pour un motif mentionné au sous-alinéa a) (ii), il pourrait être statué sur l'appel en faveur de l'appelant, il est d'avis qu'aucun préjudice grave ou aucune erreur judiciaire fondamentale ne s'est produit.

(2) S'il accueille l'appel en vertu de l'alinéa (1) a), le tribunal :

a) s'il s'agit d'un appel d'une déclaration de culpabilité, ordonne l'inscription d'un verdict d'acquittement ou ordonne un nouveau procès;

b) s'il s'agit d'un appel d'une conclusion quant à l'incapacité du défendeur d'assurer sa défense en raison de troubles mentaux, ordonne un nouveau procès.

(3) Si le tribunal rejette un appel aux termes de l'alinéa (1) b), il peut substituer la décision qui, à son avis, aurait dû être rendue et confirmer la sentence prononcée par le tribunal de première instance ou imposer une sentence justifiée en droit.

Pouvoirs lors d'un appel d'un acquittement

100 S'il est interjeté appel d'un acquittement, le tribunal peut, par ordonnance :

a) rejeter l'appel;

b) accueillir l'appel, annuler la conclusion et, selon le cas :

(i) ordonner un nouveau procès,

(ii) inscrire une conclusion de culpabilité à l'égard de

l'infraction dont, à son avis, l'accusé aurait dû être déclaré coupable, et prononcer une sentence justifiée en droit.

Appel d'une sentence

101 (1) S'il est interjeté appel d'une sentence, le tribunal considère la justesse de la sentence dont appel est interjeté et peut par ordonnance, d'après la preuve, le cas échéant, qu'il croit utile d'exiger ou de recevoir :

a) soit rejeter l'appel;

b) soit modifier la sentence dans les limites prescrites par la loi pour l'infraction dont le défendeur a été déclaré coupable.

En rendant une ordonnance en vertu de l'alinéa b), le tribunal peut tenir compte du temps que le défendeur a passé en détention par suite de l'infraction.

(2) Un jugement d'un tribunal qui modifie une sentence a la même force probante et le même effet que s'il s'agissait d'une sentence prononcée par le tribunal de première instance.

Sentence unique pour plusieurs chefs d'accusation

102 Lorsqu'une seule sentence est prononcée à la suite d'une conclusion de culpabilité à l'égard de deux ou plusieurs chefs d'accusation, la sentence est valable si l'un des chefs d'accusation l'aurait justifiée.

Vice du procès-verbal ou de l'acte judiciaire

103 (1) Il ne peut être rendu, en faveur de l'appelant, un jugement fondé sur l'allégation d'un vice de fond ou de forme dans le procès-verbal ou l'acte judiciaire, ou sur une divergence entre le procès-verbal ou l'acte judiciaire et la preuve présentée au procès, à moins qu'il ne soit démontré qu'une objection a été soulevée au procès et que, dans le cas d'une divergence, l'ajournement du procès a été refusé à l'appelant même si la divergence l'avait induit en erreur.

(2) Si l'appel est fondé sur un vice dans une déclaration de culpabilité ou une ordonnance, le tribunal ne prononce pas un jugement en faveur de l'appelant, mais rend une ordonnance qui corrige ce vice.

Ordonnances supplémentaires

104 Le tribunal qui exerce des pouvoirs conférés par les articles 96 à 103 peut en outre rendre toute ordonnance que la justice exige.

Nouveau procès

105 (1) Si le tribunal ordonne un nouveau procès, celui-ci se tient devant une cour des infractions réglementaires présidée par un juge autre que celui qui a jugé le défendeur en première instance, à moins que le tribunal d'appel n'ordonne que le nouveau procès se tienne devant le même juge.

(2) Si le tribunal ordonne un nouveau procès, il peut rendre, en attendant le procès, l'ordonnance de mise en liberté ou de détention de l'appelant que peut rendre un juge en vertu du paragraphe 123 (2) (ordonnance de mise en liberté conditionnelle d'un détenu), et l'ordonnance peut être exécutée de la même manière que si elle avait été rendue par un juge en vertu de ce paragraphe.

Procès de novo

106 (1) Si, en raison de l'état du dossier de l'affaire établi par le tribunal de première instance, ou pour tout autre motif, le tribunal, sur requête de l'appelant ou de l'intimé, est d'avis que les intérêts de la justice seraient mieux servis par l'audition et la décision d'un appel sous forme d'un nouveau procès devant le tribunal d'appel, le tribunal peut ordonner que l'appel soit entendu sous forme d'un nouveau procès devant le tribunal conformément aux règles de pratique. À cette fin, la présente loi s'applique, avec les adaptations nécessaires, de la même manière que s'il s'agissait d'une instance devant une cour des infractions réglementaires.

(2) Le tribunal peut, pour l'audition et la décision d'un appel en vertu du paragraphe (1), autoriser que soient lus devant lui les témoignages recueillis par le tribunal de première instance pourvu qu'ils aient été validés et si, selon le cas :

a) l'appelant et l'intimé sont consentants;

b) le tribunal est convaincu que la présence du témoin ne peut pas être obtenue raisonnablement;

c) le tribunal est convaincu, en raison de la nature formelle de la preuve, ou pour tout autre motif, que la partie adverse n'en subira aucun préjudice.

Tout témoignage ainsi lu, en vertu du présent paragraphe, a la même force probante et le même effet que si le témoin avait personnellement témoigné devant le tribunal.

Défaut de se conformer ou abandon

107 Le tribunal peut ordonner que l'appel soit rejeté, sur preuve qu'un avis d'appel a été donné et que, selon le cas :

a) l'appelant a omis de se conformer à une ordonnance rendue en vertu de l'article 92 (conditions nécessaires à la mise en liberté) ou aux conditions de tout engagement consenti ainsi que le prévoit cet article;

b) l'appel n'a pas été poursuivi ou a été abandonné.

Dépens

108 (1) Si un appel est entendu et décidé, ou est abandonné ou est rejeté faute de poursuite, le tribunal peut rendre, relativement aux dépens, une ordonnance qu'il estime juste et raisonnable.

(2) Si le tribunal ordonne que l'appelant ou l'intimé acquitte les dépens, l'ordonnance porte que les dépens doivent être versés au greffier du tribunal de première instance, pour qu'ils soient versés par ce dernier à la personne qui y a droit, et elle fixe le délai dans lequel les dépens doivent être acquittés.

(3) Les dépens qui doivent être payés en vertu du présent article par une personne autre que le poursuivant qui agit au nom de la Couronne sont réputés être une amende aux fins d'exécution du paiement.

Application de l'ordonnance du tribunal d'appel

109 Le tribunal de première instance met en application ou exécute l'ordonnance ou le jugement du tribunal d'appel. Le greffier du tribunal d'appel envoie au greffier du tribunal de première instance l'ordonnance et tous les documents qui s'y rattachent.

Appel devant la Cour d'appel

110 (1) Le défendeur ou le poursuivant, ou le procureur général par voie d'intervention, peuvent interjeter appel du jugement du tribunal d'appel devant la Cour d'appel, avec l'autorisation d'un juge de la Cour d'appel pour des motifs spéciaux, sur une question de droit seulement ou sur la sentence conformément aux règles de pratique de la Cour d'appel.

(2) Aucune autorisation d'appel ne peut être accordée en vertu du paragraphe (1), à moins que le juge de la Cour d'appel n'estime que, compte tenu des circonstances particulières de l'espèce, il est essentiel qu'elle soit accordée dans l'intérêt public ou pour la bonne administration de la justice.

(3) Une décision sur une motion en autorisation d'appel prévue au paragraphe (1) ne peut faire l'objet d'un appel ni d'une révision.

Détention sous garde en attendant l'appel

111 Si le défendeur qui interjette appel est sous garde, il le demeure. Toutefois, un juge peut ordonner sa mise en liberté à l'une ou l'autre des conditions énoncées au paragraphe 122 (2) (ordonnance de mise en liberté conditionnelle d'un détenu).

Révision des affaires mineures

112 (1) Si le défendeur est déclaré coupable d'une infraction pour laquelle la peine maximale prescrite est une amende d'au plus 5 000 $, sans emprisonnement, il peut choisir d'interjeter appel au moyen d'une révision aux termes du présent article.

(2) La révision se déroule devant la (cour des poursuites sommaires de la province ou du territoire) sous forme de révision informelle, afin de s'assurer qu'il y a eu, à l'égard du défendeur, application régulière de la loi et que la preuve a été correctement prise en considération.

(3) Lors d'une révision, le tribunal donne aux parties l'occasion d'être entendues et il peut :

a) poser les questions nécessaires pour faire en sorte que les points en litige sont intégralement et clairement définis;

b) recueillir les témoignages que le défendeur a omis de présenter lors de l'audience initiale, même s'il était alors possible de les faire entendre;

c) entendre ou entendre à nouveau les témoignages enregistrés ou une partie de ceux-ci et exiger d'une partie qu'elle en fournisse la transcription en tout ou en partie, ou qu'elle produise d'autres pièces;

d) recueillir le témoignage d'un témoin, qu'il ait ou non témoigné au procès;

e) exiger que le juge qui a présidé le procès fasse un rapport écrit sur les questions qui sont relatives à la procédure et à l'application régulière de la loi et qui sont précisées dans la demande;

f) exiger la présence de l'agent des infractions réglementaires qui a délivré le procès-verbal, du greffier du tribunal de première instance ou de tout autre fonctionnaire dont le témoignage se rapporte aux points en litige soulevés par le défendeur;

g) recevoir les exposés des faits convenus ou des aveux et agir en conséquence.

(4) Lors d'une révision, le tribunal peut confirmer, infirmer ou modifier la décision portée en appel ou il peut ordonner un nouveau procès s'il est d'avis que cette mesure est nécessaire pour servir les fins de la justice.

(5) Si le tribunal ordonne un nouveau procès, celui-ci se tient devant la cour des infractions réglementaires présidée par un juge autre que celui qui a jugé le défendeur en première instance. Toutefois, le tribunal de révision peut, avec le consentement des parties à la révision, ordonner que le nouveau procès se tienne devant le même juge.

(6) La décision rendue à l'issue d'une révision effectuée en vertu du présent article est définitive.

COMMENTAIRE

Les infractions relatives au stationnement, aux virages illégaux, aux panneaux d'arrêt ou aux excès de vitesse, les infractions équivalentes dans d'autres domaines, comme la traversée illégale des rues ou l'usage du tabac, et bien d'autres infractions mineures de même nature, ne présentent, pour la plupart, aucune question de droit qui intéresse le défendeur. En fait, c'est comme s'il recevait une facture des services publics. Ce sont surtout les faits et le montant de l'amende qui l'intéressent. La fonction première des tribunaux est de permettre au défendeur d'avoir accès auprès de quelqu'un qui veillera à ce que sa version des faits soit prise en considération.

Malheureusement, en raison de l'encombrement des tribunaux et de leur procédure rigide, le défendeur a souvent l'impression que sa version des faits n'a pas reçu l'attention qu'elle méritait. Une fois le verdict rendu, il tente d'intervenir mais se fait dire : «Vous pouvez faire appel si vous pensez que je me suis trompé». Peut-on parler d'accès à la justice lorsque la seule solution envisageable est un appel formel et coûteux, mené par des avocats sur des questions de droit au cours d'une audience se déroulant dans les règles? Il va de soi que le défendeur n'ira pas en appel.

L'objet de l'article 112 est de veiller à l'application régulière de la loi et de corriger toute omission ou tout vice se rapportant à l'audience. La procédure normale d'appel devrait être suivie pour toute question de droit importante. La procédure de révision constitue certes une possibilité mais elle entraîne la perte du droit d'appel.

Révision judiciaire

113 (1) Sur requête présentée au moyen d'un avis introductif d'instance, (le nom de la cour supérieure de première instance de l'autorité législative) peut, par ordonnance, accorder, à l'égard de questions soulevées dans le cadre de la présente loi, les mesures de redressement auxquelles le requérant aurait droit dans une instance introduite par voie de requête pour que soit rendue une ordonnance de la nature d'un bref de mandamus, de prohibition ou de certiorari.

(2) Il est signifié avis de la requête présentée en vertu du présent article aux personnes suivantes :

a) la personne dont l'acte ou l'omission donne lieu à la requête;

b) toute personne qui est partie à une instance qui donne lieu à la requête;

c) le procureur général.

(3) Il peut être interjeté appel devant la Cour d'appel de l'ordonnance rendue en vertu du présent article.

Requête en vue de l'obtention d'un bref de certiorari

114 (1) L'avis prévu à l'article 113 à l'égard d'une requête en vue de l'obtention d'une mesure de redressement de la nature d'un certiorari est donné au moins sept jours et au plus dix jours avant la date fixée pour l'audition de la requête et est signifié dans les trente jours qui suivent la date à laquelle a eu lieu l'acte dont l'annulation est demandée.

(2) Si un avis visé au paragraphe (1) est signifié à la personne qui rend la décision ou l'ordonnance, ou qui décerne le mandat ou tient l'instance qui donnent lieu à la requête, cette personne dépose sans délai (auprès du tribunal), pour usage lors de la requête, toutes les pièces relatives à l'objet de la requête.

(3) Aucune requête ne peut être présentée pour obtenir l'annulation d'une déclaration de culpabilité, d'une ordonnance ou d'une décision qui peut être portée en appel en vertu de la présente loi, que le droit d'appel soit assujetti à une autorisation ou une autre formalité.

(4) Lors d'une requête en vue de l'obtention d'une mesure de redressement de la nature d'un certiorari, (le tribunal) ne peut accorder la mesure de redressement que s'il constate qu'il y a eu préjudice grave ou erreur judiciaire fondamentale. Le tribunal peut modifier ou confirmer une décision déjà rendue et la déclarer exécutoire à compter de la date et aux conditions qu'il juge appropriées.

(5) Si une requête est présentée en vue de l'annulation d'une décision, d'une ordonnance, d'un mandat ou d'une instance rendue, décerné ou tenue par un juge pour le motif que celui-ci a outrepassé sa compétence, (le tribunal) peut, en annulant la décision, l'ordonnance, le mandat ou l'instance, ordonner qu'aucune instance civile ne soit prise contre le juge ou contre un fonctionnaire qui a agi en vertu de la décision, de l'ordonnance ou du mandat ou dans le cadre de l'instance, ou aux termes de tout mandat décerné pour son exécution.

Requête en vue de l'obtention d'un bref d'habeas corpus

115 (1) Sur requête présentée au moyen d'un avis introductif d'instance, (le tribunal) peut, par ordonnance, accorder, à l'égard d'une question soulevée dans le cadre de la présente loi, les mesures de redressement auxquelles le requérant aurait droit dans une instance introduite par voie de requête pour que soit rendue une ordonnance de la nature d'un habeas corpus.

(2) Il est signifié avis de la requête présentée en vertu du paragraphe (1) en vue de l'obtention de mesures de redressement de la nature d'un habeas corpus à la personne qui a la garde de la personne qui fait l'objet de la requête et au procureur général. Lors de l'audition de la requête, il peut y avoir dispense de la présence devant (le tribunal) de la personne qui fait l'objet de la requête, s'il y a consentement et, dans ce cas, (le tribunal) peut régler l'affaire sans délai comme l'exige la justice.

Dépens relatifs à la révision judiciaire

116 (Le tribunal) saisi d'une requête ou d'un appel en vertu de l'article 113 ou 115 peut rendre, relativement aux dépens, toute ordonnance qu'il estime juste et raisonnable.

ARRESTATION ET CAUTIONNEMENT

Pouvoir d'arrestation

117 Il n'existe aucun pouvoir général d'arrestation à l'égard de la perpétration d'une infraction réglementaire, à moins que l'arrestation ne soit faite par un agent de police qui a des motifs raisonnables et probables de croire qu'une infraction a été commise ou est sur le point de l'être et que, selon le cas :

a) l'arrestation est nécessaire afin d'établir l'identité du défendeur;

b) l'arrestation est nécessaire afin de conserver une preuve;

c) l'arrestation est nécessaire afin d'empêcher que l'infraction se poursuive;

d) le défendeur qui habite à l'extérieur du ressort ne se conformera vraisemblablement pas à l'avis d'infraction et la procédure de cautionnement exige un dépôt.

Exécution du mandat

118 (1) Un mandat d'arrestation décerné contre une personne est exécuté par un agent de police qui procède à son arrestation, où qu'elle se trouve (indiquer l'autorité législative).

(2) Un agent de police peut arrêter sans mandat une personne contre laquelle il a des motifs raisonnables et probables de croire qu'un mandat est exécutoire (indiquer l'autorité législative).

Recours à la force

119 (1) S'il agit en s'appuyant sur des motifs raisonnables et probables, l'agent de police est fondé à employer la force nécessaire pour accomplir ce que la loi l'oblige ou l'autorise à faire.

(2) Toute personne à laquelle un agent de police demande de l'aide est fondée à utiliser la force qu'elle croit nécessaire, en s'appuyant sur des motifs raisonnables et probables, pour fournir cette aide.

Motif de l'arrestation

120 (1) Quiconque exécute un acte judiciaire ou un mandat est tenu de le produire lorsque demande lui en est faite.

(2) Quiconque arrête une personne avec ou sans mandat est tenu de donner à cette personne un avis du motif de l'arrestation.

Mise en liberté après l'arrestation

121 (1) Si un agent de police agissant en vertu d'un mandat ou d'un autre pouvoir d'arrestation arrête une personne, il la met en liberté aussitôt que possible dans les circonstances, après lui avoir signifié une assignation ou un avis d'infraction, à moins qu'il n'ait des motifs raisonnables et probables de croire, selon le cas :

a) qu'il est nécessaire, dans l'intérêt public, que cette personne soit détenue, eu égard à toutes les circonstances, y compris la nécessité :

(i) d'établir l'identité de la personne,

(ii) de recueillir ou conserver une preuve de l'infraction ou une preuve qui y est relative,

(iii) d'empêcher que l'infraction se poursuive ou se répète ou qu'une autre infraction soit commise;

b) que la personne arrêtée réside ordinairement à l'extérieur (indiquer l'autorité législative) et qu'elle ne se conformera pas à une assignation ou à un avis d'infraction.

(2) Si un défendeur n'est pas mis en liberté conformément au paragraphe (1), l'agent de police le livre à l'agent qui est responsable du lieu où le défendeur est détenu, et l'agent responsable, s'il est d'avis que les conditions énoncées aux alinéas (1) a) et b) n'existent pas ou n'existent plus, met le défendeur en liberté après lui avoir signifié une assignation ou après que le défendeur a consenti, sans caution, un engagement à comparaître devant le tribunal, rédigé selon la formule prescrite.

(3) Si le défendeur est détenu pour l'unique raison qu'il réside ordinairement à l'extérieur (indiquer l'autorité législative) et qu'il existe des motifs de croire qu'il ne se conformera pas à une assignation, l'agent responsable peut exiger, en plus de ce qui est nécessaire aux termes du paragraphe (2), que le défendeur dépose une somme d'argent ou une autre valeur négociable acceptable ne dépassant pas l'amende maximale à l'égard de l'infraction ou 500 $, selon le montant qui est le moindre.

Comparution devant le tribunal

122 (1) Si un défendeur n'est pas mis en liberté en vertu de l'article 121, l'agent responsable l'amène devant un juge aussitôt que possible dans les circonstances mais, dans tous les cas, au plus tard dans un délai de vingt-quatre heures. À moins d'un plaidoyer de culpabilité, le juge ordonne que le défendeur soit mis en liberté pourvu que celui-ci donne une promesse de comparaître, à moins que le poursuivant, ayant eu l'occasion de le faire, ne fasse valoir des motifs justifiant la détention du défendeur ou une ordonnance aux termes du paragraphe (2) pour garantir sa comparution devant le tribunal.

(2) Le juge peut ordonner la mise en liberté du défendeur dans les cas suivants :

a) le défendeur consent un engagement à comparaître aux conditions appropriées pour garantir sa comparution devant le tribunal;

b) lorsqu'il s'agit d'une infraction punissable d'une peine d'emprisonnement de douze mois ou plus, ou lorsque le défendeur ne réside pas ordinairement (indiquer l'autorité législative), le défendeur consent devant un juge un engagement avec caution pour le montant et, le cas échéant, aux conditions appropriés pour garantir sa comparution devant le tribunal ou, avec le consentement du poursuivant, le défendeur dépose auprès du juge la somme d'argent ou d'autres valeurs prévues par l'ordonnance ne dépassant pas l'amende maximale à l'égard de l'infraction ou 1 000 $, selon le montant qui est le moindre.

(3) Le juge ne doit pas rendre d'ordonnance aux termes de l'alinéa (2) b), à moins que le poursuivant n'expose les raisons pour lesquelles ne doit pas être rendue une ordonnance aux termes de l'alinéa (2) a).

(4) Si le poursuivant expose les raisons qui justifient la détention du défendeur sous garde pour garantir sa comparution devant le tribunal, le juge ordonne que le défendeur soit détenu sous garde jusqu'à ce qu'il soit traité selon la loi.

(5) Le juge porte au dossier les motifs de la décision qu'il a rendue en vertu du paragraphe (1), (2) ou (4).

(6) Dans une instance introduite en vertu du paragraphe (1), le juge peut recevoir toute preuve qu'il juge crédible ou digne de foi dans les circonstances de l'espèce et fonder sa décision sur cette preuve. Toutefois, le défendeur ne doit pas être interrogé ni contre-interrogé quant à l'infraction dont il est accusé.

(7) Une instance introduite en vertu du paragraphe (1) ne doit pas être ajournée pour plus de trois jours sans le consentement du défendeur.

Procès rapide

123 (1) Le défendeur qui n'est pas mis en liberté en vertu de l'article 121 ou 122 est amené devant le tribunal sans tarder et, dans tous les cas, au plus tard dans un délai de huit jours.

(2) Le juge qui préside à une comparution du défendeur devant le tribunal peut, sur requête du défendeur ou du poursuivant, réviser une ordonnance rendue en vertu de l'article 122 et rendre, en vertu de l'article 122, l'ordonnance supplémentaire ou différente qu'il juge appropriée dans les circonstances.

Appel

124 Le défendeur ou le poursuivant peut interjeter appel d'une ordonnance rendue en vertu de l'article 122 ou 123 ou du refus de rendre une telle ordonnance. L'appel est interjeté devant (le tribunal désigné par l'autorité législative pour entendre les appels prévus à l'article 90) et se déroule conformément aux règles de pratique du tribunal d'appel.

Représentant aux fins de la comparution

125 (1) Si un défendeur qui habite à l'extérieur du ressort et qui est mis en liberté après avoir effectué un dépôt aux termes du paragraphe 121 (3) ou de l'alinéa 122 (2) b) ne comparaît pas pour répondre à l'accusation, le juge peut ordonner l'affectation du montant du dépôt au paiement de l'amende et des dépens imposés par le tribunal à la suite de la déclaration de culpabilité.

(2) L'agent responsable ou le juge qui reçoit un engagement, une somme d'argent ou une valeur aux termes de l'article 121 ou 122 en fait rapport au tribunal devant lequel le défendeur est tenu de comparaître.

(3) À la conclusion de l'instance, le greffier du tribunal remet un rapport financier à chaque personne qui a déposé une somme d'argent ou une valeur en vertu d'un engagement et lui rembourse l'excédent, le cas échéant.

Engagement exécutoire

126 (1) L'engagement à comparaître dans une instance lie la personne qui l'a consenti et ses cautions à l'égard de toutes les comparutions exigées au cours de l'instance, aux date, heure et lieu fixés pour la reprise de l'instance après un ajournement.

(2) L'engagement est exécutoire à l'égard des comparutions relatives à l'infraction qu'il vise et n'est pas annulé par l'arrestation, la libération ou la déclaration de culpabilité du défendeur à l'égard d'une autre accusation.

(3) La personne qui consent un engagement est tenue de payer le montant de l'engagement exigible au moment de la réalisation.

(4) La personne qui consent l'engagement et chacune de ses cautions sont tenues solidairement de payer le montant de l'engagement exigible au moment de la réalisation pour défaut de comparaître.

Caution relevée de son obligation

127 (1) La caution à un engagement peut, par voie de requête présentée par écrit au tribunal devant lequel le défendeur est tenu de comparaître, demander à être relevée de son obligation aux termes de l'engagement. Le tribunal décerne dès lors un mandat pour l'arrestation du défendeur.

(2) L'agent de police qui arrête le défendeur aux termes d'un mandat décerné en vertu du paragraphe (1) l'amène devant un juge en vertu de l'article 122 et atteste l'arrestation par un certificat rédigé selon la formule prescrite qu'il remet au tribunal.

(3) La réception du certificat par le tribunal aux termes du paragraphe (2) annule l'engagement et libère les cautions.

Acquittement de l'obligation par la caution

128 Une caution à un engagement peut s'acquitter de son obligation aux termes de l'engagement en remettant le défendeur à la garde du tribunal devant lequel il est tenu de comparaître à n'importe quel moment pendant les sessions du tribunal, soit avant soit pendant le procès du défendeur.

Réalisation de l'engagement

129 (1) Lorsqu'une personne liée par engagement ne se conforme pas à une condition de l'engagement, un juge connaissant les faits inscrit au verso de l'engagement un certificat rédigé selon la formule prescrite, indiquant :

a) la nature du manquement;

b) la raison du manquement, si elle est connue;

c) si les fins de la justice ont été frustrées ou retardées en raison du manquement;

d) les nom et adresse de la personne qui a consenti l'engagement et des cautions.

(2) Un certificat inscrit au verso d'un engagement aux termes du paragraphe (1) constitue une preuve du manquement auquel il se rapporte.

(3) Le greffier du tribunal transmet l'engagement endossé au greffier (de la cour de comté ou de district ou, selon l'autorité législative, du tribunal de première instance équivalent de juridiction inférieure dont les juges sont nommés par le palier fédéral). L'engagement endossé constitue, dès qu'il est reçu, une requête pour la réalisation de l'engagement.

(4) Un juge du tribunal fixe les date, heure et lieu de l'audition de la requête. Au moins dix jours avant la date fixée pour l'audience, le greffier du tribunal remet au poursuivant, à chaque personne qui a consenti l'engagement et, si la requête pour la réalisation découle d'un défaut de comparaître, à chaque caution nommée dans l'engagement, un avis des date, heure et lieu fixés pour l'audience enjoignant à chacun de ceux qui ont consenti l'engagement et à chaque caution d'exposer les raisons pour lesquelles l'engagement ne devrait pas être réalisé.

(5) Le tribunal peut, après avoir donné aux parties l'occasion d'être entendues, à sa discrétion, accueillir ou rejeter la requête et rendre l'ordonnance qu'il juge appropriée en ce qui concerne la réalisation de l'engagement.

(6) Si une ordonnance de réalisation est rendue en vertu du paragraphe (5) :

a) d'une part, les sommes d'argent ou les valeurs réalisées sont remises par la personne qui en a la garde à celle qui, en vertu de la loi, est en droit de les recevoir;

b) d'autre part, la personne qui a consenti l'engagement et la caution deviennent solidairement, à l'égard de la Couronne, débiteurs par jugement pour le montant réalisé aux termes de l'engagement. Ce montant peut être recouvré de la même manière qu'une somme d'argent exigible en vertu d'un jugement (de la cour de district ou de comté ou d'un tribunal civil équivalent de l'autorité législative).

PERQUISITION ET SAISIE

Mandat

130 (1) Le juge qui est convaincu, à la suite d'une dénonciation faite sous serment, qu'il existe des motifs raisonnables de croire que, dans un bâtiment, contenant ou lieu, se trouve, selon le cas :

a) une chose sur laquelle ou concernant laquelle une infraction a été commise ou est soupçonnée avoir été commise;

b) une chose dont on a des motifs raisonnables de croire qu'elle fournira une preuve concernant la perpétration d'une infraction,

peut, à n'importe quel moment, décerner un mandat, rédigé selon la formule prescrite, autorisant un agent de police ou une personne qui y est nommée à faire une perquisition dans le bâtiment, contenant ou lieu pour chercher cette chose, la saisir et l'apporter devant le juge qui a décerné le mandat ou un autre juge afin qu'il en dispose conformément à la loi.

(2) Tout mandat de perquisition porte une date d'expiration qui ne peut être postérieure à quinze jours après la date à laquelle il a été décerné.

(3) Tout mandat de perquisition est exécuté entre 6 h et 21 h, à moins que, dans le mandat, le juge n'en autorise l'exécution à un autre moment.

Rétention des choses saisies

131 (1) Lorsqu'une chose est saisie et apportée devant un juge, celui-ci, par ordonnance :

a) soit retient cette chose ou ordonne qu'elle soit placée sous la garde de la personne nommée dans l'ordonnance;

b) soit ordonne sa remise.

Le juge peut, dans l'ordonnance, autoriser l'examen, l'essai, l'inspection ou la reproduction de la chose saisie, aux conditions raisonnablement nécessaires et indiquées dans l'ordonnance. Il peut également prendre les autres dispositions qu'il estime nécessaires à la conservation de la chose.

(2) Aucune chose ne peut être retenue en vertu d'une ordonnance rendue aux termes du paragraphe (1) pendant plus de trois mois après la saisie à moins que ne se produise, avant l'expiration de cette période, l'un ou l'autre des événements suivants :

a) un juge est convaincu, à la suite d'une requête, que, compte tenu de la nature de l'enquête, la prolongation de sa rétention pendant une période déterminée est justifiée, et il ordonne une telle prolongation;

b) une instance a été engagée au cours de laquelle la chose retenue peut être requise.

(3) Sur requête du défendeur, du poursuivant ou de quiconque a un intérêt sur une chose retenue en vertu du paragraphe (1), un juge peut rendre une ordonnance en vue de l'examen, de l'essai, de l'inspection ou de la reproduction d'une chose retenue, aux conditions raisonnablement nécessaires et indiquées dans l'ordonnance.

(4) Sur requête de quiconque a un intérêt sur une chose retenue en vertu du paragraphe (1) et après en avoir donné avis au défendeur, à la personne qui avait la chose en sa possession lorsqu'elle a été saisie, à celle qui a obtenu le mandat de perquisition et à quiconque a un intérêt apparent sur la chose, un juge peut rendre une ordonnance en vue de restituer la chose à la personne qui en avait la possession au moment de la saisie s'il appert qu'il n'est plus nécessaire de la retenir aux fins de l'enquête ou de l'instance.

Privilège du secret professionnel de l'avocat

132 (1) Si une personne s'apprête, en vertu d'un mandat de perquisition, à examiner ou à saisir un document qui est en la possession d'un avocat et qu'est invoqué le privilège du secret professionnel de l'avocat à l'égard du document au nom d'un client nommé, la personne, sans examiner ni copier le document :

a) saisit le document et le met dans un paquet qu'elle scelle et identifie, avec les autres documents saisis à l'égard desquels le privilège du secret professionnel est également invoqué au nom du même client;

b) met le paquet sous la garde du greffier du tribunal ou, si la personne et le client y consentent, sous la garde d'une autre personne.

(2) Nul ne doit examiner ni saisir un document qui est en la possession d'un avocat sans donner à celui-ci l'occasion raisonnable d'invoquer le privilège prévu au paragraphe (1).

(3) Un juge peut, sur requête que l'avocat peut présenter sans préavis, rendre une ordonnance autorisant l'avocat à examiner ou à copier le document en présence de la personne qui en a la garde ou du juge. L'ordonnance contient les dispositions nécessaires pour garantir que le document est remballé et scellé de nouveau sans être modifié ni endommagé.

(4) Si un document a été saisi et mis sous garde en vertu du paragraphe (1), le client qui invoque ou au nom duquel est invoqué le privilège du secret professionnel de l'avocat peut, par voie de requête, demander à un juge de rendre une ordonnance qui fasse droit au privilège et lui demander que le document soit restitué.

(5) La requête prévue au paragraphe (4) est présentée au moyen d'un avis de motion devant être retourné dans les trente jours qui suivent la date à laquelle le document a été mis sous garde.

(6) La personne qui a saisi le document et le procureur général sont parties à la requête présentée en vertu du paragraphe (4) et ont droit à un préavis d'au moins trois jours.

(7) La requête présentée en vertu du paragraphe (4) est entendue à huis clos et, aux fins de l'audience, le juge peut examiner le document, et, s'il l'examine, il le fait sceller de nouveau.

(8) Le juge peut, par ordonnance :

a) déclarer que le privilège du secret professionnel de l'avocat existe ou n'existe pas à l'égard du document;

b) ordonner que le document soit remis à la personne appropriée.

(9) Si un juge constate, sur requête du procureur général ou de la personne qui a saisi le document, qu'aucune requête n'a été présentée en vertu du paragraphe (4) dans le délai prescrit par le paragraphe (5), il ordonne que le document soit remis au requérant.

COMMENTAIRE

Les articles 130 à 132 peuvent également servir à des fins d'adoption par renvoi dans d'autres lois dans lesquelles des perquisitions sont nécessaires pour effectuer, par exemple, des enquêtes concernant la protection du public, comme en matière de protection du consommateur.

APPENDICE C

RÈGLEMENTS

Règlements

133 (1) Le lieutenant-gouverneur en conseil peut, par règlement :

a) prescrire les questions que la présente loi mentionne comme étant prescrites par les règlements;

b) prescrire les mots et expressions désignant certaines infractions et permettant de décrire les accusations dans les procès-verbaux d'infraction, les avis d'infraction et les assignations;

c) autoriser l'utilisation, dans les formules prescrites en vertu de l'alinéa a), d'un mot ou d'une expression pour désigner une infraction.

(2) L'utilisation, dans une formule prescrite en vertu de l'alinéa (1) a), d'un mot ou d'une expression autorisés par les règlements pour désigner une infraction est suffisante, à toutes fins, pour décrire l'infraction et, notamment, apporter à l'accusation une précision suffisante.

Règles de pratique

134 (1) Est créé le Comité des règles (du tribunal désigné ou créé par l'autorité législative pour connaître des infractions réglementaires) qui se compose des membres nommés par le lieutenant-gouverneur en conseil. Celui-ci en confie la présidence à un des membres.

(2) La majorité des membres du Comité des règles constitue le quorum.

(3) Sous réserve de l'approbation du lieutenant-gouverneur en conseil, le Comité des règles peut établir des règles :

a) régissant les questions relatives à la pratique et à la procédure applicables (au tribunal);

b) prescrivant les formules que la présente loi mentionne comme étant prescrites, ainsi que les autres formules relatives aux instances introduites devant le tribunal qui sont considérées comme nécessaires;

c) prescrivant et régissant la procédure applicable aux termes d'une loi qui confère une compétence (au tribunal) ou à un juge qui y siège;

d) prescrivant les questions qu'une loi mentionne comme étant prévues par les règles de pratique (du tribunal).

APPENDIX D

(see page 42)

ADVANCE DIRECTIVES IN HEALTH CARE

DRAFT TEXT

Part ___
Recognition of foreign health care directives

Definition of health care directive

1. In this Part, "health care directive" means a document that contains,

(a) a direction that relates to the health care of the person making the document and is to take effect when that person is unable to make decisions about his or her own health care; or

(b) an appointment of a person to make decisions relating to the health care of the person making the document when that person is unable to make decisions about his or her own health care

Effect of foreign directives

2 (1) A health care directive, whether it is made in [enacting jurisdiction] or not, has the same effect as though it were made in accordance with this Act if,

(a) it meets the formal requirements of this Act; or

(b) it was made under and meets the formal requirements established by the legislation of,

(i) the jurisdiction where the directive was made; or

(ii) the jurisdiction where the person who made the directive was habitually resident at the time the direct was made

Formal requirements

(2) For the purposes of subsection (1), the formal requirements are the requirements relating to the formalities of execution of health care directives.

Certification by lawyer

(3) A person implementing a health care directive may rely on a certification by a person purporting to be a lawyer [or notary - notaire] in a jurisdiction certifying that the directive meets the formal requirements of the jurisdiction

Formal requirements not met

3. A health care directive that does not meet the formal requirements described in subsection 2(1) has the same effect as a health care directive made in [enacting jurisdiction] but that does not meet the formal requirements of the Act.

Where impractical to determine if requirements met

4. In circumstances in which it is impractical to determine whether or not a health care directive meets the formal requirements described in subsection 2(1), the directive has the same effect as a health care directive that was made in [enacting jurisdiction] but that did not meet the formal requirements of the Act

APPENDIX E

(see page 42)

UNIFORM JURISDICTION STATUTE - PRINCIPLES FOR DRAFTING

UNIFORM LAW CONFERENCE OF CANADA

UNIFORM JURISDICTION STATUTE -- PRINCIPLES FOR DRAFTING

(as adopted by the Uniform Law Conference, 10-13 August 1992)

A. FORM OF A UNIFORM LAW

Proposition 1: statutory form

1. The substantive law of jurisdiction should have statutory form, whereas the procedural law relating to jurisdiction should be in the Rules.

Proposition 2: structure of the statutory provisions on jurisdiction of courts of the provinces and territories, and of the Federal Court -- Trial Division

2. The provisions should distinguish clearly between provisions relating to

   (a) the existence of the court's jurisdiction, based upon,

      (i) in the case of jurisdiction *in personam*,

         (A) the defendant's consent (submission or prior agreement),

         (B) the defendant's personal connection with the province (ordinary residence),

         (C) the connection of the litigation with the province (real and substantial connection); or

         (D) jurisdiction conferred by another statute of the province or of Canada;

      (ii) in the case of jurisdiction *in rem*, the presence of the *res* in the territory over which the court exercises jurisdiction; and

   (b) the court's discretion whether or not to exercise its jurisdiction, based upon the appropriateness of the court as a forum.

[*Note*. For the sake of simplicity, no reference is made in these propositions to the federal jurisdiction, apart from indicating where jurisdiction *in rem* (practically confined to the Federal Court) would fit. The rules for the courts of the provinces could be adapted for the federal jurisdiction with only the obvious drafting changes. For the jurisdiction of the Federal Court a required connection with the province should be read as a connection with Canada.]

B. EXISTENCE OF JURISDICTION

Proposition 3: jurisdiction based upon submission

3. The court has jurisdiction *in personam* over a proceeding where the defendant has

   (a) commenced another proceeding in the court to which the proceeding in question is a counterclaim;

   (b) submitted to the court's jurisdiction during the proceeding, or

   (c) agreed with the plaintiff that the court shall have jurisdiction in the proceeding.

[*Notes.* 1. With respect to proposition 2(a)(i)(A), it is assumed that a court is not bound by the parties' consent to its jurisdiction, but retains a discretion to decline jurisdiction. 2. The rules of court in many provinces provide for service *ex juris* in actions on a contract if the defendant has agreed in the contract that the court shall have jurisdiction (Alta. R. 30(f)(iv); Man. R. 17.02(f)(iii); N.B. R. 19.01(g)(iv); Ont. R. 17.02(f)(iii); Sask. R. 31(1)(f)(iv); N.W.T. R. 38(1)(f)(iv). The suggested proposition is slightly wider in that it covers an agreement on jurisdiction in relation to any dispute, not just one arising out of a contract.]

Proposition 4: jurisdiction based upon the defendant's Ordinary residence

4. The court has jurisdiction *in personam* where, at the time of commencement of the proceeding, the defendant is ordinarily resident in the province.

[*Notes.* 1. Adopting this principle would change the basic rule for jurisdiction from presence in the jurisdiction (i.e. service in the jurisdiction) to ordinary residence. A natural person's mere presence in the province, without any other real and substantial connection between the province and the proceeding, is thought to be an inappropriate and possibly unconstitutional ground of jurisdiction. 2. A corporation would be "ordinarily resident" for the purpose of this principle under much the same conditions as it is "present" now (see below). 3. "Ordinary residence" of the defendant is currently a ground for service ex juris in many provinces: B.C. R. 13(1)(d); Man. R. 17.02(m); N.B. R. 19.01(p); Ont. R. 17.02(p); Sask. R. 31(1)(c); N.W.T. R. 38(1)(c).]

Proposition 4.1: ordinary residence for corporations

4.1. A corporation is ordinarily resident in the province if

   (a) it was formed under the laws of the province;

(b) it has a registered office in the province or has, pursuant to law, registered an address or nominated an agent in the province at which or upon whom process may be served generally;

(c) it has a place of business in the province; or

(d) its central management or control is exercised in the province.

[*Note.* If a corporation carries on business in the province without a fixed place of business, but does not register, it is still subject to jurisdiction as a person carrying on business in the province; see below.]

Proposition 4.2: ordinary residence for partnerships

4.2. A partnership is ordinarily resident in the province if

(a) one of the partners is ordinarily resident in the province; or

(b) the partnership has a place of business in the province.

Proposition 4.3: ordinary residence for unincorporated associations

4.3. An unincorporated association is ordinarily resident in the province if

(a) an officer of the assocation is ordinarily resident in the province; or

(b) the association has a location in the province for the purpose of conducting its activities.

Proposition 4.4: deemed ordinary residence if carrying on business

4.4. A person is deemed to be ordinarily resident in the province

(a) for the purpose of any proceeding, if the person has a place of business in the province; or

(b) for the purpose of a proceeding in respect of a business, if that business is carried on by the person in the province.

[*Note.* The rules of court of several provinces currently allow service *ex juris* on a defendant carrying on business in the province, irrespective of whether the cause of action has anything to do with the business: Man. R. 17.02(m); Ont. R. 17.02(p); Sask. R. 31(1)(c).]

Proposition 5: jurisdiction based upon real and substantial connection (defendant not ordinarily resident)

5. Notwithstanding that the defendant neither has submitted to the court's jurisdiction nor is ordinarily resident in the province, the court has jurisdiction where there is a real and substantial connection between the province and the matters with which the proceeding is concerned.

[*Note.* Basing *in personam* jurisdiction on real and substantial connection should ensure its compliance with the constitutional limitations on provincial authority that are suggested by *Morguard Invts. Ltd.* v. *De Savoye*, [1990] 3 S.C.R. 1077.]

Proposition 5.1: real and substantial connection deemed to exist in certain cases

5.1. A plaintiff who invokes a court's jurisdiction on the basis of a real and substantial connection must show that such a connection exists, except in the following cases, where it shall be presumed to exist:

[*Note.* The following categories of case include most, but not all, of the cases typically found in Rules of Court authorizing service *ex juris*. They are cases in which the connection between the province and the proceeding is likely to (i) be real and substantial, so as to establish jurisdiction, and (ii) make the exercise of jurisdiction appropriate. This proposition states the rebuttable presumption relating to (i) and another proposition (see below) states the rebuttable presumption relating to (ii).]

(a) The proceeding is brought to enforce, assert, declare or determine proprietary or possessory rights or a security interest in immovable or movable property in the province.

[*Note. Cf.* Alta. R. 30(a), (k) and (l); B.C. R. 13(1)(a) and (k); Man. R. 17.02(a) and (e); N.B. R. 19.01(a) and (f); Ont. R. 17.02(a) and (e); Sask. R. 31(1)(a) and (o) (perpetuation of testimony in the province); N.W.T. R. 38(1)(a), (k) and (l). This list includes express rules on foreclosure and other enforcement of mortgagees' rights over land and chattels in the province. It is suggested that paragraph (a) would cover those without further elaboration.]

(b) The proceeding is in respect of the administration of the estate of a deceased person in respect of

(i) immovable property in the province, or

(ii) movable property, wherever situate, where the deceased person at the time of death was ordinarily resident in the province.

[*Note.* Similar to Man. R. 17.02(b) and N.B. R. 19.01(a) and (b) (which use

"resident") and Ont. R. 17.02(b). The rules of many other provinces refer to the deceased's domicile in the province; it is suggested that ordinary residence is a preferable criterion.]

(c) The proceeding is brought to interpret, rectify, set aside, or enforce any deed, will, contract or other instrument in respect of

(i) immovable or movable property in the province, or

(ii) movable property of a deceased person who at the time of death was ordinarily resident in the province.

[*Note.* Similar to Alta. R. 30(b); B.C. R. 13(1)(b) and (c); Man. R. 17.02(c); N.B. R. 19.01(c) and (d); Ont. R. 17.02(c); Sask. R. 31(1)(b); N.W.T. R. 38(1)(b).]

(d) The proceeding is against a trustee in respect of the execution of a trust where

(i) the assets of the trust include immovable or movable property in the province, and the relief claimed is only as to that property;

(ii) the trustee is ordinarily resident in the province;

(iii) the administration of the trust is principally carried on in the province; or

(iv) the trust is by the express terms of a trust document governed by the law of the province.

[*Note.* The existing rules on service *ex juris* in trust matters vary a great deal, especially as to whether the trust must be a written one and whether the trust must be governed by the law of the province: see Alta. R. 30(e); B.C. R. 13(1)(f); Man. R. 17.02(d); N.B. R. 19.01(e); Ont. R. 17.02(d); Sask. R. 31(1)(e); N.W.T. R. 38(1)(e).]

(e) The proceeding is in respect of obligations arising out of a contract and

(i) the obligations were to a substantial extent performed or to be performed in the province;

[*Note.* The current rules of court all refer to breach of contract in the province: Alta. R. 30(g); B.C. R. 13(1)(g); Man. R. 17.02(f)(iv); N.B. R. 19.01(g)(v); Ont. R. 17.02(f)(iv); Sask. R. 31(1)(f)(v); N.W.T. R. 38(1)(g). The principle stated is somewhat narrower because it would exclude breaches, like anticipatory renunciation, that may occur in the province but not necessarily show a real and substantial connection with the province.]

(ii) the contract was made in the province;

[*Note.* Similar to Alta. R. 30(1)(f)(i) and (ii), Man. R. 17.02(f)(i), N.B. R. 19.01(g)(i) and (ii), Ont. R. 17.02(f)(i), Sask. R. 31(1)(f)(i) and (ii), and N.W.T. R. 38(1)(f)(i) and (ii).]

(iii) the contract is by its terms governed by the law of the province; or

[*Note.* Similar to Man. R. 17.02(f)(ii), N.B. R. 19.01(g)(iii), Ont. R. 17.02(f)(ii), and Sask. R. 31(1)(f)(iii). This proposition is narrower than some rules (Alta. R. 30(f)(iii), N.W.T. R. 38(1)(f)(iii)) that refer simply to the contract's being governed, expressly or by implication, by the law of the province.]

(iii) the contract is for the purchase of property or services for use, enjoyment or investment other than in the course of the purchaser's trade or profession, and resulted from a solicitation of business by or on behalf of the seller in the province.

[*Note.* This has no parallel in any existing rules of court. Most cases of non-resident defendants' liability for defective products or for breach of consumer contracts will be covered by the rules dealing with contractual obligations to be performed in the province, or with torts committed in the province. The stated proposition is directed at consumer contracts made with an out-of-province seller and to be performed outside the province, but solicited in the province.]

(f) The proceeding is in respect of restitutionary obligations that to a substantial extent arose in the province.

[*Note.* This has no equivalent in current rules of court.]

(g) The proceeding is in respect of a tort committed in the province.

[*Note.* Identical to Alta. R. 30(h); B.C. R. 13(1)(h); Man. R. 17.02(g); N.B. R. 19.01(h); Ont. R. 17.02(g); Sask. R. 31(1)(g); N.W.T. R. 38(1)(h).]

(h) The proceeding is a claim for an injunction ordering a party to do or refrain from doing anything

(i) in the province, or

(ii) with respect to immovable or movable property in the province.

[*Note.* Similar to Alta. R. 30(i); B.C. R. 13(1)(i); Man. R. 17.02(i); N.B. R. 19.01(j); Ont. R. 17.02(i); Sask. R. 31(1)(i); N.W.T. R. 38(1)(i).]

(i) The proceeding is

(i) an action for support or in respect of another personal family obligation where the plaintiff is ordinarily resident in the province;

(ii) an adoption or custody proceeding where the person bringing the proceeding or the child is ordinarily resident in the province; or

(iii) a proceeding to determine personal status or capacity where the person whose status or capacity is in question is ordinarily resident in the province.

[*Notes.* 1. The Conference adopted this proposition on the understanding that the wording was tentative, and that care would have to be taken to harmonize the uniform jurisdiction act's provisions with those in the other statutes that define jurisdiction in family matters. 2. Another proposition (see below) makes it clear that the uniform jurisdiction act is not intended to narrow or to widen a court's jurisdiction as defined by another statute. 3. Existing rules of court stipulate (with some variations) that service *ex juris* is available in the actions listed, without any restriction on the residence of the plaintiff or the child (Alta. R. 30(h); B.C. R. 13(1)(g); Man. R. 17.02(p); N.B. R. 19.01(k) and (l); Ont. R. 17.02(j); Sask. R. 31(1)(l); N.W.T. r. 38(1)(n).); but such restrictions are often found in the legislation governing the proceeding.]

(j) The proceeding is to enforce a judgment of a court in or outside the province or an arbitral award made in or outside the province.

[*Note.* See Alta. R. 30(m); B.C. R. 13(1)(p); Man. R. 17.02(j); N.B. R. 19.01(m); Ont. R. 17.02(n); Sask. R. 31(1)(j) and (k); N.S.T. R. 38(1)(m) and 39(a). Some of these relate to extraprovincial judgments only. Some (B.C. R. 13(1)(p), Sask. R. 31(1)(j), N.W.T. R. 39(a)) require a showing that the defendant has assets in the province, whereas others do not.]

(k) The proceeding is against a person who is a necessary or proper party to a proceeding against a person ordinarily resident in the province.

[*Note*. Similar to Alta. R. 30(j); B.C. R. 13(1)(j); Man. R. 17.02(l); N.B. R. 19.01(o); Ont. R. 17.02(o); Sask. R. 31(1)(p); N.W.T. R. 38(1)(j).]

(l) The proceeding is brought by the Crown or a municipality to recover money owing for taxes or other debts due to the Crown or the municipality.

[*Note*. See B.C. R. 13(1)(l); Man. R. 17.02(o); N.B. R. 19.01(r); Ont. R. 17.02(r); Sask. R. 31(1)(n).]

Proposition 5.2: real and substantial connection not deemed to exist in certain cases

[*Note*. The following propositions were adopted in order to identify grounds for service *ex juris* that are currently in the rules but will not be included as grounds for presuming a real and substantial connection. This list is intended to be for information only; it is not proposed to include it in the uniform act.]

5.2. The following cases would not be ones in which a real and substantial connection is presumed to exist:

(a) It is not a presumed real and substantial connection that the proceeding is against a defendant domiciled in the province.

[*Note*. This is currently a ground for service *ex juris* under Alta. R. 30(c); B.C. R. 13(1)(d); Sask. R. 31(1)(c); N.W.T. R. 38(1)(c).]

(b) It is not a presumed real and substantial connection that the proceeding is in respect of the administration of the estate of a deceased person who at the time of death was domiciled (but not ordinarily resident) in the province.

[*Note*. This is currently a ground for service *ex juris* under Alta. R. 30(d); B.C. R. 13(1)(e); Sask. R. 31(1)(d); N.W.T. R. 38(1)(d).]

(c) It is not a presumed real and substantial connection that the proceeding is in respect of a contract and

(i) there was an breach of contract in the province, but no substantial part of the obligations under the contract were to be performed in the province; or

[*Note*. Compare proposition 5.1(e)(i) above, and accompanying note.]

(ii) the proper law of the contract, determined by implication or the "closest and most real connection" test, is the law of the province.

[*Note.* An expressly chosen proper law does qualify as a sufficient connection for jurisidiction; see above, proposition 5.1(e)(ii).]

(d) It is not a presumed real and substantial connection that the proceeding is for damage sustained in the province from a tort or breach of contract committed elsewhere.

[*Note.* This is currently Man. R. 17.02(h), N.B. R. 19.01(i), and Ont. R. 17.02(h); see also Sask. R. 31(1)(h) (action by special leave on tort committed outside the province). Its exclusion is on the basis that the mere occurrence of damage in the province cannot be *presumed* to be a real and substantial connection, although it may be such a connection depending on the facts.]

(e) It is not a presumed real and substantial connection that the defendant has assets in the jurisdiction.

[*Notes.* 1. Compare B.C. R. 13(1)(m) (claim on contract where assets in the province)). 2. Proposition 5.1(j) would presume there to be a real and substantial connection in any proceeding to enforce a judgment or an arbitral award in the province, without a requirement that the defendant be shown to have assets in the province.]

(f) It is not a presumed real and substantial connection that the proceeding relates to goods sold or delivered in the jurisdiction.

[*Note.* Other rules relating to contract and tort proceedings would cover almost all such cases. Only B.C. R. 13(1)(o) uses this test.]

Proposition 6: jurisdiction conferred or denied by statute

6. In a case in which another statute of the province or of Canada expressly or impliedly

(a) confers jurisdiction although it is denied by the proposed uniform jurisdiction act, or

(b) denies jurisdiction although it is conferred by the proposed uniform jurisdiction act,

the provisions of that other statute shall prevail.

Proposition 7: existence of jurisdiction *in rem*

7. The court has jurisdiction *in rem* if the *res* is in the territory over which the court exercises jurisdiction.

C. DISCRETION AS TO EXERCISE OF JURISDICTION

Proposition 8: discretion to exercise or not exercise jurisdiction

8. A court that has jurisdiction in a proceeding may decline to exercise its jurisdiction on the ground that it is not the most appropriate forum.

Proposition 8.1: burden of showing that the court is the most appropriate forum

8.1. The burden is on the plaintiff to show that the court is the most appropriate forum, but where

(a) a defendant has invoked, submitted to or agreed to the court's jurisdiction;

(b) a defendant is ordinarily resident in the province;

(c) the case is one in which a real and substantial connection with the province is presumed to exist;

(d) another statute of the province or of Canada confers jurisdiction and does not exclude the discretion contemplated by this rule; or

(e) the court's jurisdiction is *in rem*,

the court may exercise its jurisdiction unless the court is satisfied that there is another forum more appropriate than the court.

[*Note.* The combination of this principle with the jurisdiction rules means that in the great majority of cases, (i) jurisdiction will definitely exist (through submission, ordinary residence, or special statute) or be presumed to exist (in the listed cases of presumed real and substantial connection), and (ii) the court will be presumed to be an appropriate forum. The aim is to keep jurisdictional disputes to a minimum.]

Proposition 9: appropriateness of a forum

9. The appropriateness of a forum is a question of where the proceeding can most suitably be tried, considering the interests of each of the parties and the ends of justice.

Proposition 9.1: factors to be considered

9.1. In deciding on the appropriateness of a forum, the court shall consider all the circumstances of the case, including:

(a) the comparative convenience and expense for the parties and their witnesses in litigating in the court or any alternative forum;

(b) the law to be applied to issues in the case;

(c) the desirability of avoiding multiplicity of legal proceedings or avoiding conflicting decisions in different courts;

(d) the enforcement of an eventual judgment; and

(e) if all the reasonable alternative forums are in Canada, the fair and efficient working of the Canadian legal system as a whole.

D. COURT'S POWERS IF IT CHOOSES NOT TO EXERCISE JURISDICTION

Proposition 10: powers if the court has no jurisdiction

10. If the court finds that it has no jurisdiction it may, in its discretion, request another court, which is a more appropriate forum, to accept a transfer of all or part of the proceeding.

Proposition 11: powers if the court has jurisdiction but chooses not to exercise it

11. If the court finds that it has jurisdiction but decides not to exercise it, the court may

(a) decline jurisdiction, unconditionally or upon terms relating to the plaintiff's bringing the proceeding in another forum; or

(b) request another court, which is a more appropriate forum, to accept a transfer of all or part of the proceeding.

Proposition 12: transfer of litigation

12. (a) In principle, a statutory mechanism should be provided by which a court that decides that it has no jurisdiction or declines to exercise jurisdiction in a proceeding can transfer all or part of the proceeding to another court that is a more appropriate forum.

(b) Such a mechanism should consist of a two-stage process that depends upon the consent of the transferee or receiving court.

[*Note.* The details of such a transfer mechanism remain to be worked out. As a model, the Conference considered the uniform act adopted by the United States National Conference of Commissioners on Uniform State Laws in August 1991. Its principal features, transposed to the Canadian setting, are included here for information only:

(a) The court could order a proceeding transfered to, and receive proceedings from, a court in or outside Canada.
(b) The receiving court would have full power to refuse the transfer in whole or in part on the ground that it has no jurisdiction under its own rules or does not wish to exercise jurisdiction.
(c) The receiving court might accept the transfer notwithstanding that it lacked jurisdiction *in personam* over the proceeding, provided that the transferring court had such jurisdiction.
(d) Reasons would have to be given for an order for transfer and for a refusal to accept a transfer.
(e) A receiving court could
    (i) refuse the transfer on the ground that it has no jurisdiction or disagrees with the reasons for transfer;
    (ii) even after acceptance, order a return of any part of the proceeding over which it had no jurisdiction and the transferring court had jurisdiction;
    (iii) order a return of a proceeding if the transferring court had stipulated for a return on certain conditions, which have been fulfilled; or
    (iv) order a further transfer of an already accepted matter, including a re-transfer to the first transferring court.
(f) A transfer would not change the applicable limitation period (i.e. the limitation period applicable in a transferring court that had jurisdiction would continue to apply; whether or not the transferring court had jurisdiction, the date of commencing proceedings in that jurisdiction would be the effective date for the purposes of the limitations rule applied by the receiving court).
(g) Rights of appeal against orders granting or denying a transfer, receipt or return of a proceeding would be very restricted in the interests of avoiding opportunities for delay.]

APPENDIX F

(see page 43)

INTERIM REPORT

ON

COST OF CREDIT DISCLOSURE

Prepared for the

UNIFORM LAW CONFERENCE OF CANADA

by

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of

THE ALBERTA LAW REFORM INSTITUTE

August 1992

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TIPS FOR READERS IN A HURRY

Readers who do not have time to read the whole report, including the appendices, or who intend to read the whole report but first want to get a quick overview, should read the following:

- Section IIA
- Appendix A
- The suggested principles in the Principles Paper, Appendix B. The suggested principles are not set out in a list but are easy to find. They are in boxes like this one.

UNIFORM LAW CONFERENCE OF CANADA

INTERIM REPORT

COST OF CREDIT DISCLOSURE LEGISLATION

I. PROJECT HISTORY

A. ACTIVITY UP TO 1991 UNIFORM LAW CONFERENCE

At the 1990 annual meeting of the Uniform Law Conference the Alberta Commissioners submitted a Report entitled "Disclosure of Cost of Consumer Credit" [1990 Report]. After consideration of the 1990 Report, the conference adopted a resolution that, subject to a caveat appearing on page 2 of the 1990 Report:

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 transaction,

2. the uniform statutory provisions be compatible with different (ie. 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 provision 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.

At the 1991 Uniform Law Conference the Uniform Law Section considered a paper called **Issues Paper on Cost of Credit Disclosure** ("Issues Paper"). The Issues Paper discussed a number of issues concerning cost of credit disclosure and made

tentative recommendations, which are set out in Appendix A. The Uniform Law Section adopted the recommendations as starting points for further consultation and analysis.

The Issues Paper set out a "performance specification" for uniform cost of credit disclosure legislation ("CCDL") that was intended to define an approach and provide a framework for uniform CCDL. The following extract from the Issues Paper describes the performance specification.

> *It will help to have a standard against which to measure existing Canadian CCDL and suggested improvements. For that purpose, we describe below a "performance specification" for CCDL. The specification first states the objectives CCDL should be designed to achieve. In this, it attempts to keep the objectives within the range of the practicable. Second, the specification describes certain characteristics of the environment in which CCDL must operate.*
>
> ***CCDL OBJECTIVES***
>
> 1. *The first objective of CCDL is to provide consumers with clear, reliable and directly comparable information about the cost of credit from different sources, so they can use this information when deciding where to obtain credit. It is crucial that the information be given to consumers in a form and in circumstances that maximize their opportunity to use it.*
>
> 2. *A secondary objective is to provide consumers with information that will alert them to very high cost sources of credit.*
>
> 3. *It is hoped that consumers will use information given to them as a result of CCDL requirements in deciding whether to use credit, but it is not anticipated that CCDL disclosures will have a major impact on such decisions, except in the case of long term credit transactions involving large principal amounts.*
>
> 4. *CCDL should impose no greater burdens on lenders than are necessary to achieve the preceding objectives. This applies to the requirements themselves, as well as the expression of those requirement in statutory form.*
>
> ***ASSUMPTIONS AND CONSTRAINTS***
>
> 1. *It should be assumed that the target of CCDL is the "average consumer", who is assumed to have the following characteristics:*
>
>   *(a) given a choice between buying a product from a lower cost source and a higher cost source, the consumer will choose the lower cost source, all else being equal;*

(b) *time spent shopping for credit (or anything else) will be proportionate to the consumer's perceptions of the potential savings from doing so;*

(c) *time spent credit shopping is high cost time, especially where it involves visits to lenders' premises.*

2. *CCDL disclosures are not intended to provide consumers with the means of doing sophisticated analyses of potential credit transactions. Consumers who can undertake such analyses do not need CCDL.*

3. *In most consumer credit transactions, to the extent that the cost of credit is thought of at all, it will be thought of as a component of the cost of the product for which the credit is required.*

4. *The significance to consumers of a given shift in APR depends on the size and duration of the credit transaction. The significance of a shift in APR increases with the size and duration of the credit transaction.*

B. RECENT ACTIVITY

1. Circulation of Issues Paper

The Alberta Law Reform Institute ("ALRI") circulated the Issues Paper (in some cases an abridged version) for comment in the fall of 1991 following the Uniform Law Conference. It was sent to individuals in the departments responsible for the relevant legislation in each province and the federal government. It was also sent to organizations representing participants in the consumer credit market.

The ALRI received several written responses to the Issues Paper. A written response was received from one provincial government department and three credit grantors' organizations. Some oral comments were received as well. Though few in number, the responses proved to be helpful and informative. As expected, reaction to the tentative recommendations was mixed.

2. Confirmation of Support of Deputy Ministers

The Issues Paper mentioned that an anticipated meeting of the Federal-Provincial-Territorial Ministers of Consumer and Corporate Affairs had not been held by the time the paper was prepared. A ministerial meeting has still not taken place but federal, provincial and territorial deputy ministers have met. In December

of 1991 Mr. Dave Hudson, Alberta's Deputy Minister of Consumer and Corporate Affairs, advised the ALRI that the deputy ministers had recently "confirmed support for the Uniform Law Conference Project on cost of credit." Mr. Hudson also asked for an update in April of 1992 because another deputy ministers' meeting was scheduled for May.

3. Aborted Empirical Research

The Issues Paper mentioned that one obstacle to evaluating the utility of existing or proposed cost of credit disclosure requirements is the dearth of hard data about consumers' use of cost of credit information. In particular, there is little data about Canadian consumers' use of such information. Such data as there is comes from the United States (or overseas) and, even then, is rather dated. In early 1992 preliminary work was done on a consumer survey that might have gone some way to filling this information gap. This was done in anticipation of funds becoming available to conduct the survey; unfortunately, the anticipated funds did not materialize so the survey was not done.

4. Principles Paper

In May of 1992 the ALRI circulated a document called **Suggested Principles for Uniform Cost of Credit Disclosure Legislation** ("Principles Paper"), which is attached as Appendix B. This paper was sent to individuals in provincial, federal and territorial departments of consumer and corporate affairs whose names had been provided by the deputy ministers following their May meeting. It was also sent to various credit grantors' associations and consumer representatives. The Principles Paper is similar to the Issues Paper in that it makes tentative recommendations (in the form of "suggested principles") regarding the content of possible uniform disclosure legislation. The suggested principles are somewhat more detailed than the recommendations in the Issues Paper. The Principles Paper contains an appendix consisting of a preliminary, incomplete draft of a **Cost of Credit Disclosure Act** ("CCDA"). The draft CCDA, attached as Appendix C, was included with the Principles Paper to indicate how the suggested principles might be implemented in legislation.[1]

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[1] The Principles Paper refers to the draft CCDA as Appendix A, but as noted above, it is Appendix C to this report.

5. Report of the House of Commons Standing Committee on Consumer and Corporate Affairs and Government Operations

In June of this year the House of Commons Standing Committee on Consumer and Corporate Affairs released a report called **Credit Cards in Canada in the Nineties** ("Credit Cards Report"). The investigation leading to the Credit Cards Report was prompted by a perception that rates on credit cards, particularly so-called bank cards, have recently been unjustifiably high. To be more precise, the perception was that the spread between card issuers' cost of funds and the interest rate they charge on credit card balances has recently been excessive. The committee considered whether there is effective competition in the relevant market and whether there should be a legislated, floating cap on credit card rates.[2] Ultimately, a majority of the committee decided against recommending a legislated cap on credit card rates.

Of more direct interest is the report's discussion of and recommendation regarding credit card disclosure.[3] The report refers to the "early disclosure" provisions for credit cards that were added to the American Regulation Z in 1988. The majority report's first recommendation[4] was that the Government introduce credit card disclosure legislation in the form appended to the report. The proposed "Act Respecting the Disclosure of Certain Information Regarding Credit Cards" is notable more for its similarity to than its departures from existing CCDL. It would, however, go beyond existing CCDL in its requirements for early disclosure of cost of credit information.

The Credit Cards Report's recommendations regarding disclosure are interesting not so much because of their content but because they demonstrate continuing concern amongst politicians and the public about the issue of cost of credit disclosure, especially in the area of credit cards. There is a perception that credit

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[2] Whenever rate caps for credit cards are considered, it is assumed that the cap would be indexed to the bank rate or some other objective measure of the cost of funds.

[3] It should be noted that the committee's report makes no mention of existing disclosure legislation, either federal or provincial.

[4] The minority report agreed with this recommendation but also advocated a floating rate cap.

card users need better and more consistent cost of credit disclosure than they are currently getting. This, of course, is the focus of our project.

6. Reform of Federal Financial Institutions Legislation and Regulations

Another recent development is the coming into force of the new federal "financial institutions" legislation. The core legislation includes

- a new *Bank Act*,
- a new *Trust and Loan Companies Act* (which replaces the *Loan Companies Act* and the *Trust Companies Act*),
- a new *Insurance Companies Act* (which replaces the *Canadian and British Insurance Companies Act* and the *Foreign Insurance Companies Act*), and
- a new *Co-operative Credit Associations Act*.

This package makes sweeping changes in the legislative framework under which federally regulated financial institutions operate, but our immediate concern is with its impact on cost of credit disclosure. In this regard the reform package has the following significant features.

a. Banks

The disclosure provisions of the old *Bank Act* and the *Cost of Borrowing Disclosure Regulations* (CBDR) have been carried forward, with some modifications, under the new *Bank Act*. The CBDR has been replaced by the *Cost of Borrowing (Banks) Regulations* (CBBR). The substance of the old disclosure provisions has been preserved but there have been some changes. The changes appear to represent an effort at fine tuning, rather than a conscious departure from policies embodied in the old provisions.

b. Trust, Loan and Insurance Companies

Both the *Trust and Loan Companies Act* and the *Insurance Companies Act* feature cost of borrowing disclosure requirements. As with the *Bank Act*, the general disclosure requirements are set out in the acts and the details are filled in by regulation: the *Cost of Borrowing (Trust and Loan Companies) Regulations* and the *Cost of Borrowing (Canadian Insurance Companies) Regulations*. The disclosure requirements are essentially identical to those which apply to banks. However, unlike banks, federally incorporated trust companies, loan companies and insurance companies were not previously subject to federal cost of credit disclosure requirements (other than those found in the *Interest Act*). Although federally incorporated, these institutions are subject to provincial CCDL, which is similar but not identical to the new federal disclosure requirements. Thus, on the face of it, a federally incorporated trust or loan company would be subject to two sets of slightly different disclosure requirements in each province where it carries on business. Obviously, this is not an ideal situation for the company to be in.

The federal disclosure requirements for trust, loan and insurance companies raise interesting constitutional questions. Of course, the *Bank Act*'s disclosure requirements are firmly grounded in the federal banking power. Unless the disclosure provisions under the *Trust and Loan Companies Act* and *Insurance Companies Act* can similarly be characterized as legislation in relation to banking or, more tenuously, in relation to interest, they could amount to an intrusion into the provincial legislative sphere. However, we are more concerned with the practical than with the constitutional implications of the new federal requirements. Their main practical implication seems to be that the matrix of overlapping federal and provincial disclosure statutes has become more confused than it was before. If anything, the new federal disclosure requirements heighten the need for uniform federal and provincial CCDL.

II. TOPICS FOR DISCUSSION

This part describes substantive issues that should be discussed by the Uniform Law Section. Section A discusses some proposed revisions to positions taken in the Issues Paper. Section B deals with the Principles Paper.

APPENDIX F

A. SUGGESTED DEPARTURES FROM ISSUES PAPER

It will be recalled that all the recommendations in the Issues Paper were tentative. It is now suggested that several of the recommendations be abandoned or substantially modified. The recommendations falling into this category are:

- Recommendation 6(a)
- Recommendation 8
- Recommendation 11
- Recommendation 15(b)

RECOMMENDATION 6(A)

Consideration should be given to including all flow-through expenses charged to consumers in the calculation of APR. At the very least, uniform CCDL should be slow to exclude any type of flow-through expense from the APR calculation.

Revised Position

Uniform CCDL would contemplate two types of charges in connection with consumer credit agreements:

1. interest;
2. permitted non-interest charges.

Permitted non-interest charges would be specified or defined by CCDL; no other non-interest charges would be permitted in connection with a consumer credit agreement.

Permitted non-interest charges would **not** be included in calculation of APR. They would only have to be disclosed as dollar amounts.

Reasons for Revised Position

The responses received to Recommendation 6(a) were unfavourable. After considering the points made in these responses and reviewing the issues involved I am persuaded that the approach suggested in Recommendation 6(a) is not optimal. In theory, the suggested approach does provide a good way of comparing the cost of different credit arrangements that may involve different flow-through expenses (front-

end charges representing fees paid to third parties: e.g. "official fees"). However, the theoretical usefulness of accounting for flow-through expenses in the APR will be greatly diminished in practice.

The practical difficulties with Recommendation 6(a)'s approach arise mainly because of the technical requirements for calculating an APR that accounts for flow-through expenses. In order to calculate such an APR one must know the complete schedule—both the amount and timing—of **all** advances, flow-through charges and payments under a credit arrangement. This has the following implications (among others).

- The effect of a given flow-through charge (e.g. a $25 official fee) on the APR for a credit arrangement depends on many factors: the amount advanced, the timing of advances (if there are multiple advances), and the amount and timing of each payment.

- It follows from the first point that an APR that takes into account a flow-through expense will be very transaction-specific. For example, assuming they have the same interest rate and the same $25 flow-through charge, a 12 month $5000 instalment loan will have a different (higher) APR than a 12 month $6000 instalment loan. And a 12 month $5000 instalment loan would have a higher APR than an 18 month $5000 instalment loan.

- Thus, the earliest point in time at which it would be possible to calculate an APR that accounts for flow-through charges is after the details of the credit arrangement have been settled. By that time the APR information will almost certainly be useless to the consumer for the purposes of "comparison shopping": the credit-purchasing decision will already have been made.

- In many situations—notably open credit (e.g. credit cards)—the schedule of payments and advances is not determined by the credit agreement. Here it would be impossible to calculate an APR that takes flow-through charges into account at any point before the credit arrangement has come to an end.

Another problem with accounting for flow-through charges in APR calculations is that this complicates the procedure for calculating the balance outstanding at any point in time during the credit arrangement. Such a calculation would be necessary

if there were any departure from the predetermined payment schedule (eg. an early or late payment). It would not be especially difficult to program the credit grantor's computer to do the required calculation. However, it would be necessary for the disclosure statement to set out **two different rates**: the APR and the interest rate. The consumer would have to be informed that the APR gives the relative cost of the loan, taking into account the flow-through expenses, while the interest rate is the rate used to calculate the amount outstanding on the loan at any time. Stating two rates in the disclosure statement would probably confuse more consumers than it would enlighten.

All in all, I am persuaded that the marginal benefit of including all flow-through expenses in APR would be outweighed by the complications it would produce. The revised approach suggested above is similar to the approach currently taken by CCDL but would be less coy about what it is doing. Uniform CCDL would explicitly contemplate two types of charges in connection with consumer credit arrangements: interest charges and permitted non-interest charges. Since permitted non-interest charges would not be included in APR, the APR would be synonymous with the interest rate.

As the phrase "permitted non-interest charges" suggests, credit grantors could only impose non-interest charges of a type (and possibly of an amount) identified by the act. Any other charges would have to be in the form of interest. There are several different approaches that could be taken to defining permitted non-interest charges. The Principles Paper suggests a fairly liberal approach that would allow credit grantors to recover some internal costs through non-interest charges. Another approach (closer to the approach of current CCDL) would be to allow credit grantors to recover only certain fees paid to third parties through non-interest charges. They would not be able to recover any internal costs through non-interest charges. Another possibility, which might be combined with another approach, is to place monetary limits on the amount of permitted non-interest charges.

It is possible that the Principles Paper's approach to defining permitted non-interest charges is too liberal. However, it is not necessary to settle upon the exact approach to defining permitted non-interest charges at this time. This can wait until the next phase of the project.

RECOMMENDATION 8

No further consideration should be given to requiring APR to be expressed as an effective rate.

Revised Position

Credit grantors would choose a time unit (such as a day, month or year) as the basic unit of time ("unit period") for doing calculations relating to APR. The finance rate for this period ("periodic rate") would be determined using actuarial principles. The periodic rate would be converted to an annual rate by the nominal rate method (eg. a periodic monthly rate of 1% would translate into an APR of 12%).

Credit grantors should be required to disclose the "compounding period" upon which the APR for an agreement is based. A reference to the compounding period would automatically accompany every reference to the APR.

Reasons for Revised Position

The revised position is not a departure from Recommendation 8. It does, however, go beyond Recommendation 8 in that the latter simply suggests maintaining the *status quo*, while the revised position would involve some changes in currently prescribed calculation methods. The main changes are described briefly below.

The first change concerns calculation of the periodic rate. The Issues Paper referred to two methods of calculating APR: the nominal rate method and the effective rate method. It did not mention that there are different versions of the nominal rate method. For some credit arrangements the APR will be slightly different depending upon which version of the nominal rate method is used. Regulation Z under the U.S. *Truth in Lending Act* allows credit grantors to use either of two versions of the nominal rate method. It calls one the "actuarial method" and the other the "United States Rule method". Canadian CCDL requires credit grantors to use the United States Rule method but does not assign it that or any other label.

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Whatever virtues the United States Rule method may have, simplicity of expression is not one of them. Indeed, Regulation Z does not even attempt to define the method: it just says it can be used. Canadian CCDL does define the method of calculating APR but the definition is not easy to understand. Nor are the algorithms associated with this method especially elegant. Another problem with the United States Rule method is that it does not handle missed or late payments very well. The revised position adopts a version of the nominal rate method that is similar to the actuarial method defined in Regulation Z.

The second change is that under the revised position credit grantors would be able to choose the unit period for APR-related calculations. Under existing CCDL the unit period is determined by the length of time between payments; if payments are monthly the unit period is one month.[5] This means that to calculate the APR for such a loan the credit grantor would first calculate the monthly rate and then convert it to an annual rate by multiplying it by 12: a 1% monthly rate would be a 12% APR. But under the revised position the unit period can be chosen by the credit grantor (or "by the parties"). A credit grantor might use a day as the unit period for the monthly payment loan, in which case the same loan that produced a 12% APR when a month was used as the unit period would result in an 11.95% APR.

The third change is the proposed requirement that the unit period be disclosed to the consumer as the "compounding period" for the loan.[6] At present nothing in a disclosure statement tells the consumer that the APR is a nominal rate. The significance of this information undoubtedly will be lost on many consumers, but it is not difficult to provide and will be useful to some consumers.

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[5] The APR calculation method employed by Canadian CCDL (the United States Rule method) does not actually use unit periods. However, this is a fine point that we can safely ignore here.

[6] "Conversion period" might be a better term because it is more comprehensive. The term "compounding" is often taken to mean the adding of unpaid interest to principal. If all accumulated interest is paid at the end of each unit period, how can it be said that interest has been compounded? This semantic problem does not arise with the term "conversion": at the end of the conversion period one of two things happens: (1) accumulated interest is paid and thus **converted** into cash in the hands of the credit grantor, or (2) accumulated interest is **converted** into principal.

RECOMMENDATION 11

Uniform CCDL should deal separately with advertising for separate types of credit transactions.

Revised Position

- Uniform CCDL's provisions regarding advertising should be flexible enough to accommodate different types of credit transactions.

Reasons for Revised Position

Recommendation 11 is really concerned with a drafting issue: making the legislation as readable and easy to use as possible. It was prompted by a sense that existing CCDL runs into difficulties on this score because it jumbles together too many different types of credit transactions in its provisions relating to advertising. Setting out separate requirements for different kinds of credit arrangements would be one way to overcome this difficulty. But there is perhaps a more effective way to address the "jumbling" problem. The alternative is to build enough flexibility into the advertising requirements that they will easily accommodate different types of credit arrangements. This implies that the advertising requirements would be somewhat less detailed than they are now.

RECOMMENDATION 15(B)

Consideration should be given to prohibiting the advertisement of any rate that would not be fixed for at least six months.

Revised Position

The suggested prohibition should be abandoned.

Uniform CCDL should require credit grantors to provide consumers with information about the effect that a change in APR will have on the payments required under a variable rate credit agreement where it is practical to provide this information.

APPENDIX F

Reasons for Revised Position

Reaction to Recommendation 15(b) was negative. It was suggested that this would restrict consumers' ability to shop comparatively for credit. I am persuaded that Recommendation 15(b) should be abandoned.

One potential problem with variable rates is that they can make it difficult for consumers to gauge the affordability of loans, particularly large loans. Of course, CCDL requires credit grantors to disclose that the rate is variable, but knowing that the finance rate can change is not the same thing as knowing how much or how often they are likely to change and what the effect of a variation will be on your payments. Consumers will be much better equipped to appreciate the significance of a variable rate if they are given information about the effect of changes in rates on their payments. The fact that future rate movements cannot be predicted with anything approaching certainty does not mean that consumers cannot be given useful information.

The American Regulation Z provides an example of how consumers can be informed of the effect of rate changes on one type of credit arrangement: home equity lines of credit. Credit grantors who provide variable rate home equity lines of credit must disclose the minimum payments that would be required at various APRs on a line of credit that starts out with an initial balance of $10,000. The APRs used in the illustration are not picked out of the air; they must be based on historical indices used by the credit grantor over the past 15 years. This sort of disclosure has two benefits. First, it indicates how rates have actually varied over an extended period of time, and thus gives the consumer some idea about how they might vary in the future.[7] Second, it shows the effect of rate variations on payments.This should be more informative to the average consumer than a simple statement that the APR may vary.

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[7] Obviously, though, there is no guarantee that the pattern of future rate movements will conform to the historical pattern.

It seems reasonable that credit grantors who offer variable rate plans should be required to provide consumers with information that lets consumers know what they are getting into. This is especially so where the amounts involved are large.[8] It should not be terribly difficult to provide such information in the form of tables or graphs. The exact nature and format of the information would depend on the nature of the credit arrangement for which it was being provided.

B. PRINCIPLES PAPER

1. Responses

The ALRI received four sets of comments on the Principles Paper prior to the cut-off date for this report: from the Alberta Department of Consumer and Corporate Affairs (Alberta CCA), the Ontario Ministry of Consumer and Commercial Relations (Ontario CCR), the Association of Canadian Financial Corporations (ACFC) and the Trust Companies Association of Canada (TCAC). All of these bodies provided fair and helpful comments regarding the principles paper. As was expected, certain principles attracted unfavourable comments from some commentators. These controversial principles are discussed below.

The responses received indicate support for our underlying premise that there is a need for uniform CCDL. Not surprisingly, credit grantors' organizations, whose members are most directly affected by non-uniformity of existing CCDL, expressed considerable enthusiasm for the project even where they might have had objections to particular principles. The TCAC was particularly supportive of the idea of uniform CCDL:

> Accordingly, the member companies of the Trust Companies Association strongly support the conclusion of the Alberta Law Reform Institute that 'because of the nature of the consumer

[8] The scale of payments is useful primarily as a budget-planning tool. It helps the consumer answer the question "Will I be able to afford this credit arrangement if rates go up"? The larger the outstanding balance, the larger the effect of a given rate increase. A 6% increase in APR will increase the monthly interest payment on a $2000 credit card balance by **$10**. The same increase on a $100,000 mortgage loan will increase the monthly interest payment by **$500**. For budget-planning purposes information about the effect of rate changes is more urgent for the $100,000 loan than for the $2000 loan.

credit industry, harmonization of different provinces' CCDL and of provincial and federal CCDL is particularly desirable'. We welcome the possibility of uniform cost of credit legislation. We believe that this project should be given a high priority by the Uniform Law Conference of Canada and we intend to underline our support for it in our communications with provincial officials across Canada.

2. Controversial Principles

This section reflects comments received on the Principles Paper by the middle of July, 1992. It is concerned with principles to which one or more commentators raised major objections. Not all of the "major objections" discussed below necessarily reflect disagreement with the policy embodied in the principle in question. Some objections reflect a misunderstanding of the principles in question, indicating that those principles were not adequately explained in the Principles Paper. Thus, in some cases the response to an objection is really just a better explanation of the relevant principle.

PRINCIPLE 3 [B-14]

Summary of principle

Uniform CCDL should set out customized disclosure requirements for open credit and fixed credit agreements.

Summary of Alberta CCA objection

The distinction between open credit and fixed credit is largely irrelevant under legislation such as Alberta's CCTA and the federal CBDR.

Response to objection

It is certainly true that one can put too much emphasis on the distinction between open and fixed credit. They are not fundamentally different and it can sometimes be difficult to say whether a particular credit arrangement is better characterized as open credit or fixed credit. Thus, the same general principles should apply to open

and fixed credit. However, there are operational differences between open and fixed credit that should be reflected in the particular disclosure requirements applicable to the two types of credit.

One example of where the differences between open and fixed credit make a practical difference for disclosure purposes is in relation to the total dollar cost of credit. For a typical fixed credit transaction it is possible to calculate in advance and disclose the total dollar cost of credit. But the very nature of an open credit agreement makes it impossible to calculate the total dollar cost of credit in advance. Thus, disclosure of the total dollar cost of credit is one area where the disclosure requirements for fixed and open credit might diverge.

PRINCIPLE 6 [B-19]

Summary of principle

Permitted non-interest charges should not be included in the calculation of APR.

Summary of Alberta CCA objection

Some non-interest charges—i.e. fixed charges imposed at the outset of a credit transaction—should be included in APR. Contingent charges (those that are not known at the outset of the transaction) cannot be included in the APR.

Response to objection

The approach suggested in the CCA comment is similar to the approach suggested in Recommendation 6(a) of last year's Issues Paper. This is one of the recommendations this report suggests be abandoned.[9] Principle 6 embodies the revised approach advocated in the Interim Report.

[9] See above, pp. 8-11.

APPENDIX F

PRINCIPLE 8 [B-21]

Summary of principle

Principle 7 advocates the use of the "present value method" for determining the APR for a credit agreement. Since the present value method admits of variations, Principle 8 explains a little more precisely how the present value method would work. According to Principle 8, the first step would be to determine the rate for a lender-defined "unit period". This periodic rate would then be converted to an annual rate by a simple process of multiplication (giving a "nominal rate"). Since the unit period can be thought of as a compounding period, the unit period used in the calculation would be revealed as the compounding period.

Summary of Alberta CCA objection

The CCA objection to this principle is really an objection to the proposal that credit grantors choose the unit period. CCA proposes that instead of a lender-chosen unit period or a unit period based on the timing of payments (as in the United States), the length of a unit period should be standardized at one month. And if the unit period is standardized at one month for all credit transactions, there would be no need to reveal the length of the unit period.

Response to CCA objection

The CCA proposal can be compared to section 6 of the *Interest Act*, which requires the annual rate for certain mortgage loans to be based on annual or semi-annual calculation (compounding) of interest. The only difference is that the CCA proposal would substitute a month as the "calculation period".

The idea of a standard-length unit period fixed by statute for all APR calculations is attractive. It might well get rid of the need to disclose the unit period and would facilitate comparisons between differently configured loan arrangements. In fact, basing APR calculations on a standard unit period would have the same informational advantages as using the effective rate method. It should be noted that the length of the unit period is not terribly important, so long as it is standard. One could as easily use a day or a year as a month for the standard unit period.

I suspect that some credit grantors would raise the same objections to the use of a standard unit period as have been raised against the effective rate method. It would be objected that the use of a standard unit period does not necessarily provide consumers with superior information about the relative cost of different loans and that it would complicate calculations. My own view is that prescribing a standard unit period upon which to base APR calculations would slightly improve its utility for measuring the relative cost of different loans. Nor would it make the calculations significantly more difficult than they are using creditor-defined unit periods. But I am sure many lenders would argue otherwise, or would at least argue that the transitional costs of going to a standard unit period would outweigh its benefits.

Summary of ACFC objection

"The compounding period is included in the APR calculation. What value is compounding period if APR is disclosed?" I am not sure but I think this objection amounts to the following argument. Under current Canadian CCDL, the compounding period for an APR is determined by the frequency of payments. If payments are weekly, the compounding period is weekly, if payments are monthly, the compounding period is monthly. Since the compounding period is automatically determined by the frequency of payments, and consumers will know the frequency of payments, it would be redundant to disclose the compounding period.

Response to ACFC objection

If I have correctly interpreted the objection, my first response would be that if the unit period is defined by the credit grantor (as suggested by Principle 9) the compounding period will not automatically match the payment period. In that case the information about the compounding period will not be redundant. Secondly, even under the scheme embodied in current Canadian CCDL, while it is true that the frequency of payments determines the frequency of compounding, this will not be obvious to the average consumer. It would not hurt to inform consumers that paying interest weekly amounts to much the same thing as compounding interest weekly.

APPENDIX F

PRINCIPLE 9 [B-22]

Summary of principle

The balance outstanding on a loan at a particular time should be determined by subtracting the future value of all payments up to that time from the future value of all advances, based on the disclosed APR for the loan.

Summary of Alberta CCA objection

Payments should be accounted for as they are made.

Summary of ACFC objection

Most loans are made on an interest bearing basis. It is easy to compute the balance at a given time, but Principle 6 would require the loan to be recalculated as a precomputed loan.

Response to objections

These objections confirm that Principle 9 and its surrounding text did not sufficiently explain the proposed balance calculation method. I think that both objections reflect a misperception of what Principle 9 was supposed to say, a misperception that was probably created by the unexplained references to the "future value" of advances and payments. I will take this opportunity to provide a better explanation of what Principle 9 was intended to say.

Properly explained, Principle 9 is not open to either of the objections mentioned above. It is simply a summary—unfortunately not a very clear summary—of what I think should be some fairly uncontroversial rules for calculating the balance outstanding under a loan. The rules are as follows.

1. The initial balance on a loan (or any credit arrangement) is the amount advanced to the borrower.[10]

2. Payments and advances are deducted from or added to the balance outstanding on the loan as soon as they are made.

3. Between any two transactions (payment or advance) the balance outstanding on a loan grows at a rate determined by the APR,[11] which may change from time to time.

Using the preceding rules, it is easy to calculate the balance outstanding at any time on a loan.[12] The reference in Principle 9 to subtracting the future value of payments from the future value of advances summarizes the effect of these rules. In retrospect, this summary was too cryptic and more confusing than helpful.

PRINCIPLE 10 [B-24]

Summary of principle

Uniform CCDL should prohibit misleading credit advertising and should, in particular, require credit grantors who advertise certain credit terms to disclose any unusual conditions associated with the advertised terms.

Summary of ACFC objection

The Competition Act already governs misleading, unusual advertising.

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[10] For present purposes, I am ignoring the effect of non-interest charges. They will complicate the calculation a little bit, but it is unnecessary to consider these complications at this stage.

[11] This leaves open the technical question of precisely how the APR determines the rate of growth. This question will be dealt with in the next stage of the project.

[12] Conceptually, the calculation is easy; since there are likely to be numerous calculations involved it would be a tedious task to do manually. But the actual number-crunching will be done by a computer or electronic calculator.

Response to objection

It is true that certain provisions of the *Competition Act* might apply to an advertisement that was misleading in the sense contemplated by Principle 10. However, the *Competition Act*'s misleading advertising provisions do not deal specifically with credit advertising, as CCDL would. The proposed prohibition and definition of misleading advertising is intended to complement the more specific provisions contemplated by Principle 11.

PRINCIPLE 11 [B-25]

Summary of principle

This principle sets out requirements for the contents of credit advertisements. Disclosure of any information about payments would trigger a requirement to disclose all relevant cost of credit information. Disclosure of an APR would trigger disclosure of certain complementary information, including the existence and a reasonable estimate of the amount of non-interest charges.

Summary of Alberta CCA objections

1 Advertising is very important in terms of consumers' understanding of a potential transaction and the inducement to commit to an agreement. Subsequent disclosures may come too late to affect consumers' credit-purchasing decisions, so particular attention must be paid to advertising requirements. If there is any mention of credit whatsoever in an advertisement, the following should be disclosed:

- APR
- Amortization period
- Term
- Whether or not the APR is variable.

2 The contingent charges should be required to be disclosed in the agreement or a disclosure memo rather than in the advertising.

Summary of ACFC objection

Appropriate disclosure of non-interest charges is in the contract.

Response to CCA objection 1

The significant point in the first objection is that the full disclosure requirement would be triggered by any mention of credit in an advertisement. This would presumably mean that a statement such as "Credit plan available" would trigger all of the disclosures mentioned above. This would go well beyond existing Canadian CCDL and seems to me to be unnecessarily restrictive. As explained in the principles paper, CCDL's advertising requirements are based on the concept of triggered disclosures. The premise is that certain information about the cost of credit that might be included in an advertisement could be misleading unless presented in its proper context. Hence, including this information in an advertisement triggers a requirement to make complementary disclosures. It would be difficult to justify on this basis the proposal to make any reference to credit a "full disclosure" trigger. But it might be possible to support such a requirement on some other basis. It might be argued, for example, that the benefit to consumers of setting out full cost of credit information in advertisements are so great that any advertisement that mentions credit should contain this information. However, this argument does not seem too plausible.

Response to CCA objection 2 and ACFC objection

On the surface these two objections are nearly identical. It must be kept in mind, however, that they start from different premises. Alberta CCA would require all fixed charges to be included in the APR (see discussion of Principle 7 above). Therefore, the advertised APR would account for these fixed charges. On the other hand, ACFC supported Principle 7's contention that permitted non-interest charges should not be included in APR. So, unlike CCA, they are saying that a significant category of charges that are not accounted for in the APR should not have to be disclosed until the agreement is signed.

I think this point will require further consultation. At the moment I think that, to the extent credit grantors are able to do so, they should be required to disclose in an advertisement the amount of non-interest charges that consumers will have to pay

in connection with credit that is advertised as having a certain APR. This is especially important if there is a fairly liberal definition of permitted non-interest charges, as proposed in Principle 12.

PRINCIPLE 12 [B-26]

Summary of principle

Credit grantors would be permitted to impose non-interest charges to cover direct costs of setting up, documenting or securing a fixed credit agreement, but would have the onus of establishing the necessary relationship between the charge and the cost.

Summary of Alberta CCA objection

If given the opportunity to do so credit grantors will be quite happy to impose all sorts of non-interest charges on consumers. If these are not included in the APR, consumers are unlikely to appreciate their cumulative effect on the cost of credit. It seems impractical and would make CCDL unenforceable to get into a debate about whether or not the non-interest charges are directly related to the costs of administration and so on.

Response to objection

I would have been surprised if this principle did not generate some controversy, especially given its connection to Principle 6, which argues that permitted non-interest charges should not be included in APR. I am certainly not dogmatic about the exact contents of Principle 12, but I think it is important to keep in mind that Principles 6 and 12 raise distinct issues. Principle 6 asserts that permitted non-interest charges should not have to be accounted for in APR. That leaves open the question of what non-interest charges there should be. This is the issue addressed by Principle 12 (for fixed credit agreements). One can disagree with Principle 12 without disagreeing with the principle that permitted non-interest charges (whatever they are) should not be included in APR.

There are many different approaches that could be taken to defining permitted non-interest charges. The approach embodied in Principle 6 is relatively permissive, but I think it is reasonable. I also think it could be made "policeable". Other possible criteria (some of which could be used in combination with each other) for permitted non-interest charges include:

- amounts paid to government bodies for the purpose of securing the loan;
- amounts paid to third parties (government or otherwise) for the purpose of securing a loan;
- a prescribed monetary limit on non-interest charges (eg. $25 plus amounts paid to third parties for the purpose of securing the loan).

PRINCIPLE 13 [B-27]

Summary of principle

CCDL should contain restrictions on non-interest default charges similar to those set out in the CBDR. [As pointed out by TCAC, the text preceding this principle does not reflect the wording of the new regulations under the *Bank Act*: the CBBR. However, the substance of the new provision is substantially the same as the old provision.]

ACFC objection

1 Non deposit-taking institutions pay NSF charges. Why should they not recover?

2 Why should bailiffs' fees and collections fees not be recoverable? The lender suffers loss on default. Why should these costs be paid by the borrowers who pay?

Response to objections

I was not really thinking of NSF charges as a "default charge". In the circumstances contemplated by the objection I think that an NSF charge would be appropriate. I am not sure that I understand the substance of the second objection, since the CBDR provision referred to by the principle allows for collection costs. Perhaps the objection is to the exclusion of internal costs that may be incurred in the collection process. I do not think that the exclusion is unreasonable.

PRINCIPLE 18 [B-30]

Summary of principle

The cash price of goods should not include the amount of any rebate that is available only to customers who pay cash. In other words, the amount of any rebate given to cash customers but not to credit customers is counted as part of the cost of credit.

Summary of Alberta CCA objection

Does this apply to a situation where merchants give a discount to customers who pay cash instead of using a credit card? The amount of the discount usually approximates the fee that would be payable to the card issuer by the merchant.

Response to objection

The CCA comment is not really an objection to Principle 18 but it does raise an interesting issue that is not canvassed in the Principles Paper (or the earlier Issues Paper). The purpose of Principle 18 is to close off one avenue for burying credit charges in the purchase price of goods in order to reduce the APR artificially. Subtracting the amount of the rebate from the nominal price ensures that the APR will account for the fact that the credit purchaser must forego the rebate.

However, credit cards, especially three-party cards, present a somewhat different problem. It is no secret that the merchant who accepts a three-party card typically must pay a fee—a few percentage points of the price of the goods or services purchased with the card—to the card issuer. It is often pointed out that this

arrangement means that cash customers subsidize credit card customers. Another way of putting it is that if the cash customer and the credit card customer both pay the same price for an item, the merchant makes more profit off the cash customer. Moreover, if a particular customer can pay cash or use a credit card on which the merchant pays a fee of, say, 4%, it would be to the advantage of both the customer and the merchant for the latter to give the former a discount of, say, 2% off the price paid by credit card customers.

Here there is some conflict between different policy objectives. There are legitimate policy reasons for encouraging the practice of giving discounts to customers who pay cash instead of using a three party card. It encourages consumers to pay cash, which is generally assumed to be a good thing. On the other hand, the discount forgone by customers who pay with a credit card can certainly be regarded as a cost of credit that increases the effective APR. If the customer who was wavering between paying cash and using a credit card knew that the effect of foregoing the cash payment discount would be to increase the APR by, say, 24%, she might well be more likely to pay cash.

The trouble is that it is impossible for the merchant to say what effect not getting a discount available to cash customers will have on the overall APR for the credit card purchase, much less the APR for the credit card account as a whole. Thus, apart from the "cost of credit" information implied in the very fact that cash customers are entitled to a 2% (or whatever) discount, it is difficult to imagine what cost of credit information could be given about the effect of such discounts. To require more would be, in effect, to prohibit the practice of giving discounts to customers who use cash instead of three-party credit cards. But as noted above, there are legitimate policy reasons in favour of the practice.

Under the U.S. Truth in Lending Act, rebates not available to credit customers are generally treated as a finance charge. However, this does not apply to discounts offered "for the purpose of inducing payment by . . . means not involving the use of an open-end credit plan or a credit card . . . if such discount is offered to all

prospective buyers and its availability is disclosed clearly and conspicuously."[13] The same sort of exception could and probably should be built into uniform CCDL. However, the precise scope of the exception needs careful consideration.[14]

PRINCIPLE 24 [B-37]

Summary of principle

Uniform CCDL should permit fixed periodic charges (e.g. $X per year) and fixed transactions charges (e.g. $X per transaction) for open credit agreements.

Summary of Alberta CCA objection

This would fix the service or activity charges for the length of the agreement, which would be unpopular with credit grantors. We suggest that credit grantors should instead be required to give reasonable notice of changes in these charges.

Response to objection

This is another case of a misunderstanding because of a principle not being clearly expressed. The CCA objection is based on the premise that Principle 24's "fixed charges" are fixed in the sense that they cannot change during the life of a credit agreement. That is certainly not what was intended. By "fixed charges", the principle means charges whose amount is set without reference to the amount of a transaction or the amount outstanding at a particular time under an open credit agreement (e.g. a transaction charge of $1 per transaction, regardless of the amount of the transaction). Principle 24 is not meant to imply either that the amount of the charge would be fixed by statute or that it would be fixed for the life of an open credit agreement.

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[13] 15 USC §1666f(b).

[14] The scope of the U.S. exception seems unnecessarily broad, since it applies to all open-end credit plans, not just to three-party credit cards.

PRINCIPLE 25 [B-37]

Summary of principle

Uniform CCDL should not permit graduated rate structures in open credit agreements.

Summary of Alberta CCA objection

Because fixed non-interest charges should be included in the APR we disagree with this principle. If consumers want to make such an arrangement, let them.

Summary of ACFC objection

Why should the consumer not decide?

Summary of TCAC objection

Graduated rate structures can help credit grantors adjust their pricing to reflect the costs involved. Basic processing costs must be covered and they do not vary with the amount of credit: graduated rate structures reflect the higher relative cost (to the credit grantor) of extending a small amount of open credit. Prohibiting graduated rate structures would help the borrower of small amounts at the expense of borrowers of larger amounts.

Response to objections

The main purpose of Principle 25 is to achieve as much simplicity as possible in (1) the statute, (2) disclosure statements given to consumers and (3) calculations of the balance outstanding under an open credit agreement. Graduated rate structures will inevitably cause additional complexity in all three areas. If graduated rate structures served some significant purpose, this additional complexity could be tolerated, but this purpose is lacking.

True, as the TCAC points outs, graduated rate structures are one way of making the cost of credit to the consumer reflect the proportionately higher cost to the credit grantor of extending small amounts of credit. The reason for this, as pointed out by

the TCAC, is that credit grantors incur processing costs that are fixed in the sense that they do not vary with the amount of credit extended. However, given that these processing costs do not vary with the amount of credit extended, the most logical way to recoup them would seem to be through charges that do not vary with the amount of credit extended ("fixed charges). That is the point of Principle 24, which allows credit grantors wide latitude to impose two types of fixed charges: periodic charges and transaction charges. If credit grantors can cover their processing costs through appropriate fixed charges, it is difficult to see the need for graduated rates.

The Alberta CCA objection is based on its position that fixed non-interest charges should be included in the APR. But as pointed out earlier in this report, it is impossible to include a fixed charge in the APR for an open credit agreement, so the CCA position would effectively prohibit the imposition of fixed charges such as those mentioned in Principle 24. In that case there would indeed be a stronger case for allowing graduated rate structures. However, I think the goals of CCDL would be better served by taking a relatively permissive approach to fixed non-interest charges for open credit agreements while prohibiting graduated rate structures.

III. RECOMMENDATIONS

The following recommendations deal with procedural rather than substantive issues. They deal with the steps to be taken between the 1992 and 1993 meetings of the Uniform Law Conference.

RECOMMENDATION 1 DRAFTING COMMITTEE

The Uniform Law Section should appoint a drafting committee to prepare a draft *Uniform Cost of Credit Disclosure Act* for consideration at the 1993 Uniform Law Conference.

RECOMMENDATION 2 TIMETABLE

- The drafting committee should prepare a preliminary draft of the uniform CCDA (with commentary) by the end of November, 1992.

- The preliminary draft should be circulated to the relevant provincial and federal government departments, credit grantors' organizations and consumer groups for comments. The request for comments should stipulate the end of February 1993 as the deadline for providing comments.

- The drafting committee should prepare a revised draft of the uniform CCDA (with commentary) that takes account of comments received regarding the preliminary draft. The revised draft should be prepared by the end of May, 1993 so that it can be circulated to Uniform Law Section participants in early June.

RECOMMENDATION 3 PRINCIPLES

- Except as otherwise suggested in this report, the drafting committee should take the recommendations from the Issues Paper and the suggested principles from the Principle Paper as the starting point for the draft CCDA.

- The committee should depart from or go beyond the recommendations and principles where this is considered advisable in the light of comments and further reflection. Such departures should be documented.

- On particularly controversial issues, the committee should draft alternative provisions for consideration by the Uniform Law Section, with or without a recommendation as to the alternative that should be selected.

APPENDIX G

(see page 43)

ISSUES AND OPTIONS FOR THE REFORM OF CHILDREN'S EVIDENCE

ISSUES AND OPTIONS FOR THE REFORM OF CHILDREN'S EVIDENCE

A. Introductory Issues

1. The Problem:

Children are frequently called to testify as witnesses in court proceedings, particularly where there are allegations of physical or sexual abuse against the child. However, longstanding rules of evidence in Ontario restrict the ability of a court to find the child to be a competent witness. Other rules downgrade the reliability of any child's evidence that is admitted, and do not accommodate a child's trauma caused by giving live testimony against an adult who is present in the courtroom. Recent psychological research in this area has strongly rebutted this treatment of children's evidence, and has concluded that children are, as a group, as likely to give reliable evidence as are adults. This research has also found that testifying in court is traumatic for many children, and this trauma can impede a child's ability to give complete evidence.

The Criminal Code has been amended to lessen some of these restrictions on children's testimony in criminal cases of sexual assault, in limited circumstances and these reforms have been adopted for provincial evidence rules in British Columbia and Saskatchewan. The rules of evidence now in place in Ontario continue to govern the admissibility and weight to be given to children's evidence in a wide variety of non-Criminal Code proceedings. These include family law custody and access, child welfare hearings, and even non-Criminal Code charges of child abuse under the Ontario Child and Family Services Act.

2. Goals of Reform:

The two goals of reform are to improve the likelihood of truthful and reliable evidence being presented to the court regarding matters observed and experienced by children and to reduce any trauma experienced by the child in the court process including during the giving of testimony.

There are two different directions taken by legislatures and law reformers in reforming the rules of children's evidence. One is the **accommodation movement**, which is aimed at bringing children into courtrooms and having their testimony heard by the judge, while taking steps to accommodate their needs and fears in the court. Children participate in the adversary system, take the witness stand are cross-examined, but these procedures and the courtroom are modified to achieve the two goals set out above. The other direction is taken by the **substitution movement**, which critiques the advocacy system as being an inappropriate and

emotionally harmful method of receiving reliable evidence from children, and seeks to keep the child off the witness stand and instead have the evidence adduced through videotape or third party witnesses.

Most proposed reforms to child evidence rules contain elements of both of these movements. The recommendations set out below are premised on the view that while judges should be given broad discretion in civil proceedings to order that children's evidence be given, for example, through closed circuit television, by means of videotape, or through a third person, measures seeking to accommodate the child witness should be preferred, unless the goals above will be better achieved through substitution measures. This may be a departure in many family law and child welfare proceedings, where children now are rarely called as witnesses. However, the absence of children from the courtroom may also be due to the lack of accommodation measures now available in the civil courts.

3. Scope of Reform

Ontario has the jurisdiction to legislate reforms to the rules regarding children's evidence in a very wide range of proceedings. This raises issues as to whether there should be general reforms, which are applicable to all child witnesses, or whether there should be differences in treatment depending on the type of proceeding (provincial offence prosecution vs. civil proceeding) or the subject matter of the evidence (abuse vs. non-abuse).

The following list illustrates the types of proceedings to which Ontario evidence rules apply and the likely nature of the evidence:

(a) non-Criminal Code provincial prosecutions:

- provincial offences concerning child abuse, i.e. section 79 of the Child and Family Services Act which concerns committing abuse, and other sections of that Act creating offences for permitting abuse, leaving child unattended, permitting loitering, failure to report abuse, disclosure of confidential information concerning child abuse and other similar offences. Most of these offences are punishable by imprisonment, so an accused under these sections is entitled to the full protection of the Charter. There is also an offence created by section 35 of the Children's Law Reform Act for the breach of a restraining order under that Act punishable by imprisonment.

- provincial offences not concerning child abuse in which children happen to be witnesses, e.g. Highway Traffic Act offences

- provincial offences in which children are charged with the offence

(b) child welfare proceedings under the Child and Family Services Act:

- guardianship
- adoption
- wardship proceedings involving or not involving child abuse

(c) family law proceedings:

- custody and access under the Children Law Reform Act
- support
- family and matrimonial property

(d) civil proceedings:

- tort actions including motor vehicle accidents, school yard accidents and medical malpractice
- contract actions or any other proceeding in which a child happens to be a witness

(e) administrative tribunals (rules of evidence may not apply in all circumstances):

- professional discipline regarding treatment of child by physician, educator, therapist
- mental health hearings
- disciplinary proceedings of students in educational institutions

4. Summary of Recent Psychological Findings on Children's Capacity to Testify

There is a vast and expanding body of psychological literature on this subject, fuelled by concerns about the need for effective investigation and prosecution of cases of physical and sexual abuse of children. Child victims were often the only witnesses to the abuse, giving rise to an urgent need to evaluate the reliability of their evidence. As a response to this pressing problem and a perception that the evidence of children was often disbelieved, researchers have studied the testimonial characteristics of children most frequently in the context of allegations

of child abuse. Many of the conclusions may also be applicable to children's evidence about matters other than abuse, but this has to date been less carefully studied.

A summary of the research can be found in the Ontario Law Reform Commission's Report on Child Witnesses (1991) (see Chapter 1) and the sources cited in that Report. No attempt will be made in this paper to provide a comprehensive review of this literature. While there are some divergent findings, the conclusion reached by the body of the research is that children are, as a group, as likely to give reliable evidence as are adults, and that children as young as three can give reliable accounts of what happened to them. However, children's ability to remember, organize and present information does differ in certain ways from adults, and should be accommodated in order to maximize the reliability and helpfulness of their testimony. More specifically:

- Below the age of about 12, children have less "free recall" than adults. This term refers to the ability to recount spontaneously and without prompting an entire memory of a specific event. However, what children do freely recall is more likely to be accurate than the greater amount of information freely recalled by an adult.

- Children will sometimes gradually disclose all memories of an incident over a period of time, and may focus on some details adults would not.

- Younger children have difficulty giving an accurate sequence of events, or the time that an event occurred.

- Children, like adults, may lie about anything, including sexual matters, when they are motivated to do so. The lies of children may, however, be easier to detect because of a lack of the cognitive ability to construct a plausible false statement.

- Children, like all witnesses, are suggestible and may incorporate into a report of a witnessed event information from a variety of sources obtained after the event. There is some evidence to suggest that children in general are particularly prone to suggestibility; this, however, is contradicted by other studies which find no general correlation between age and suggestibility. There is significant support for the position that children are resistant to suggestions regarding core aspects of the events in which they were directly involved, and are more likely to be suggestible to peripheral details. Suggestibility increases, for example, if the child is asked leading questions, is interviewed by someone in authority, is asked to confirm information given by others, or is not advised that he or she doesn't have to

answer. Research has been done to develop guidelines and protocols in the interviewing of children to reduce the risk of suggestibility.

- Some studies have found that children's memories fade more quickly than adult's.

- Children are no more likely than adults to confuse fact with fantasy, in the context of distinguishing real from imagined events. However, one study suggested that children do exhibit some confusion in distinguishing between memories of things they actually did or said from memories of things they only imagined themselves doing or saying. The applicability of this finding to situations where another person was involved in the memory was not explored in this study.

- The literature about the overall false rate of children's testimony is controversial, and is restricted to the context of allegations of sexual abuse. The most commonly cited studies put the false rate at 7-10%, with a majority of those found in the family law custody context. Some studies put the figures much higher, but they have been criticized on the basis of sample and methodology. The literature is much more consistent that the rate of false allegations of abuse is significantly lower both than the rate of false recantations by victims and false denials by abusers.

5. Psychological Evidence about the Trauma Experienced by Children who Testify in Court

Studies have also been conducted to determine whether the child who is a witness in court suffers harm. The harm could be both in the short term, including the child's ability to express evidence effectively while on the witness stand, and in the child's long term emotional development. These studies have been in the context of abuse allegations and have tended to conclude that court involvement is traumatic for many children, although not for all children.

The factors contributing to the trauma are as follows:

- testifying against an abuser who is in the courtroom;
- relating painful memories in open court;
- fear of cross-examination;
- fear of other court personnel, the judge and the lawyers; and
- unfamiliarity with the physical attributes of the courtroom.

Some researchers have suggested that the stressful nature of an adversarial process substantially impedes a child's ability to give complete evidence. As children are less likely than adults to fill in their memories with inferred

information, their testimony given after a long delay may seem more incoherent than an adult's. Children are more likely to be stressed in a courtroom for the reasons outlined above, and short term memory is affected by stress levels. In an unfamiliar or uncomfortable setting, children are also more susceptible to suggestion. Finally, they are more easily confused and less confident than adults, which also undermines their testimonial strength.

There is some evidence that children who testify in court show a slight but significantly higher level of behaviourial and psychological disturbance than those who do not testify. Some commentators, while admitting there is little quantitative evidence of such trauma, have concluded that giving testimony is normally harmful to a child given children's lesser ability to understand the process of interrogation, inability to communicate on an equal footing with adults, and the likelihood that their development will be arrested while forced to recall the subject of their testimony over a period of months or years.

It is widely accepted that children who experience sexual abuse exhibit a collection of symptoms including fear, helplessness, guilt, shame and confusion which has been labelled the "accommodation syndrome", and that this justifies special treatment for such child witnesses. There is also agreement about the effect of requiring a child victim witness to confront an abuser while giving testimony. A recent study in Ontario has supported findings of other studies that the single most traumatic fear children have about testifying in abuse cases is the fear of a face-to-face meeting with the abuser in the courtroom.[1].

Other commentators question whether these conclusions are accurate in the non-abuse context, which has not been subject to similar studies. It is also argued that the conclusions may not be generally applicable to older children, who may be empowered by the ability to participate in a proceeding which affects their lives.

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[1] Reducing the System Induced Trauma for Child Sexual Abuse Victims Through Court Preparation, Assessment and Follow Up, Child Witness Project, Family Court Clinic.

UNIFORM LAW CONFERENCE OF CANADA

Uniform Law Section 1992

Children's Evidence Resolutions

Based on Document 046 and the recommendations beginning on page 7 of that document:

1. Competency

The law should provide a single test of competency, consisting of a simple promise to tell the truth, if the child is able to communicate the evidence and the court is of the view that the child understands what it means to tell the truth. However, if the child is unable to promise to tell the truth but can still communicate the evidence, the jduge should hear the evidence and then decide wheterh it is sufficiently reliable to be admitted.

> NOTE: The meeting noted that the federal government would be publishing an evaluation of its 1988 amendments to the Canada Evidence Act. The drafters should consider the contents of the federal documentation on related points.

2. Presumption of Competency

The law should presume that all witnesses of whatever age are competent. If the competency of a witness is questioned by counsel or by the judge, an inquiry or voir dire can be held to determine the issue.

3. Conduct of the Inquiry on Competency

The inquiry into the competency of the witness should be controlled and directed by the judge, who may permit counsel to question the child directly.

4. Corroboration

The law should not require corroboration for any admissible evidence.

5. Warning re Uncorroborated Evidence

The statute should not require any warning about the danger of accepting uncorroborated evidence, and the common law rule, known as the rule in Kendall v. the Queen, should be abolished by statute. The judge should have the discretion to comment on the weight of the evidence in particular cases.

APPENDIX H

(see page 44)

REPORT OF THE DEPARTMENT OF JUSTICE

TO THE UNIFORM LAW CONFERENCE

UNIFORM LAW CONFERENCE OF CANADA

REPORT OF THE DEPARTMENT OF JUSTICE TO THE UNIFORM LAW CONFERENCE

Corner Brook, August 10-14, 1992

Since the last meeting of the Uniform Law Conference, Canada has participated actively in the activities of The Hague Conference on Private International Law, UNCITRAL and UNIDROIT. Also, the Department of Justice has consulted regularly with the provinces and the territories on various conventions adopted by those organizations as well as instruments being developed under their auspices.

Before referring to those activities, let mention the assistance provided by the Advisory Group on Private International Law and remind you of the Status Chart of Canadian Activities on Private International Law.

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 was reconstituted in 1990, is now composed of five regional representatives: one each from the western provinces, the Atlantic provinces, British Columbia, Ontario and Quebec and, in addition, one private practitioner.

The Group has met on two occasions since last August: in November 1991 and April 1992. The agenda for these meetings was very full and gave rise to a very productive exchange of views on various conventions of The Hague Conference, UNIDROIT and UNCITRAL and the Council of Europe and other related matters in private international law.

STATUS CHART OF CANADIAN ACTIVITIES IN PRIVATE INTERNATIONAL LAW

In an effort to better inform provinces and interested groups on developments in private international law in Canada, the Department of Justice of Canada prepares 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 to which it is currently considering acceding. The Chart's format has been revised in the past year in order to improve its efficiency.

The last Chart was sent in July 1992 to all provinces and territories as well as to bar associations, law societies, and universities.

LATEST DEVELOPMENTS IN PRIVATE INTERNATIONAL LAW

The most significant event of the last year as far as Canada is concerned, is the coming into force of the United Nations Convention on Contracts for the International Sale of Goods on May 1, 1992. Under the auspices of the Hague Conference, Canada has participated also actively in the elaboration of a draft Convention on Intercountry Adoption. It has initiated the process of ratifying the Trusts Convention.

THE HAGUE CONFERENCE ON PRIVATE INTERNATIONAL LAW

The Hague Conference on Private International Law now nas thirty-seven member States, and is preparing to celebrate its 100th anniversary in 1993. Canada, as a member since 1968, has been supportive of its activities.

This year, Canada participated in the Special Commission on the Elaboration of a Convention on Inter-country Adoption from February 3-14, 1992 as well as the Special Commission on General Affairs and Policy from June 1-14, 1992.

Special Commission for the Elaboration of a Convention on Inter-country Adoption

Under the chairmanship of Mr. T.B. Smith the Special Commission has met three times since 1990 and at its last meeting in February 1992, it drew up a Preliminary Draft Convention. This Draft will again be discussed and refined at the Diplomatic Conference to be held in The Hague in May 1993.

The need for a convention on inter-country adoption is so compelling that even States which 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 co-operation and to ensure safeguards in the best interests of the child concerned.

Throughout the negotiation process, we have consulted the appropriate authorities in the provinces and territories in order to develop a convention that will satisfy their concerns as far as possible. This Department has now undertaken a new stage of consultation and has asked the participation of the provincial and territorial Departments of Justice and Social Services as well as interested non-governmental organizations with a view to preparing the Canadian position to be presented at the Diplomatic Conference in May 1993. At the time, it is hoped that the draft convention will be adopted. For that matter, this Department has asked the Uniform Law Conference to consider adding to its work agenda the elaboration of a model law on intercountry adoption.

Special Commission on General Affairs and Policy

This Special Commission met in June to discuss the future work program of the Conference which will be adopted at the Diplomatic Conference in May 1993. The main topics to be proposed are: 1- a review of the 1961 Convention on the law applicable to the protection of minors in relation to its possible extension to majors; 2- the elaboration of a Convention on the law applicable to civil liability for damages caused to the environment. The Commission also decided to mandate a working group in reviewing an American proposal concerning the development of a draft convention on the recognition and enforcement of judgments.

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 all jurisdictions have been amended to comply with it. New modifications to the Rules of the Federal Court in order to better harmonize them with the Service Convention are being drafted.

Convention on the Law Applicable to Trusts and their Recognition

Five provinces, namely, Alberta, British Columbia, New Brunswick, Newfoundland and Prince Edward Island, have enacted legislation based on the

Uniform Act adopted by the Uniform Law Conference in 1987 in order to implement the Convention. The Government of Canada has now started the ratification process of the Convention and its extension to the above-mentioned provinces. The Instrument of Ratification should be deposited by the end of this summer. Hence the Convention should enter into force for those provinces some time in the fall. In addition, consultation with the other jurisdictions on the implementation of the Convention will continue over the year.

Convention on the Taking of Evidence Abroad in Civil or Commercial Matters

We have received so far the support of six governments for the implementation of this Convention. Three jurisdictions have not yet responded to our consultation and one has asked for clarification. Besides, two other provinces are still reviewing the Convention.

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 Legalisation for Foreign Public Documents

A report prepared by Ontario on the necessary implementing measures regarding this Convention was distributed to all jurisdictions in April 1992. We are awaiting replies from the provinces and territories in the coming fall with a view to considering Canada's accession before the end of this year.

Again, 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 on the Law Applicable to the Succession to the Estates of Deceased Persons

By letter of July 10, 1991, the Minister of Justice submitted the Convention to her provincial and territorial counterparts for a review in order to determine whether it should be implemented in Canada.

Four jurisdictions have expressed their support for the implementation of the Convention. Three others are still consulting wit their local Bars. Alberta has raised some questions that would indicate that it is not prepared to support the Convention. Quebec has also recently responded that it would not favourably consider for the time being the implementation of the Convention.

While we are waiting to receive replies from the two remaining provinces, we are continuing the study of the Convention with a view to providing answers to the questions raised by Alberta on the "unity" principle.

Convention on the Civil Aspects of International Child Abduction

The Convention has come into force between Canada and New Zealand and Mexico. The provinces are being consulted respecting the accession of a new State to the Convention (Ecuador) in order to approve such an accession. Twenty-four States are now parties to this Convention.

We will also ask the cooperation of the Central Authorities in all jurisdictions to help prepare for the Special Commission to be convened in January 1993 to review the application of the Convention.

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" whose mandate is 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 currently has three working groups: the Working Group on International Contract Practices, the Working Group on the New International

Economic Order and the Working Group on Electronic Date Interchange (formerly the Working Group on International Payments). Suggestions for future work will be examined at the Commission's 26th session in June 1993.

It is worth noting that at the time of UNCITRAL's 25th session in May 1992, a Conference on Uniform Commercial Law in the 21st Century was held and was very well attended. Participants, who included practising lawyers, government representatives, judges, academics and active a well as former members of the Commission, considered the work accomplished by UNCITRAL over the last 25 years. Individuals and organizations who use uniform texts were able to state their views and discuss uniformization of international trade law with a view to suggesting directions for the Commission's future work. These suggestions will be dealt with by the Commission at its 26th session.

Uncitral's Work of Current Interest

United Nations Convention on Contracts for the International Sale of Goods (Vienna 1980)

The Convention came into force for Canada on May 1, 1992. At that time the Convention extended to all Canadian jurisdictions with the exception of the Yukon, which adopted implementing legislation in June 1992. A declaration extending the Convention to the Yukon has been deposited and will take effect on January 1, 1993. Since British Columbia has amended its implementing legislation to repeal the provision rendering Article 1(1)(b) of the Convention inapplicable there, a declaration withdrawing the declaration concerning Article 1(1)(b), made at the time of Canada's accession to the Convention, has been deposited and will take effect on February 1, 1993. At that time, the Convention will apply uniformly across Canada.

Convention on International Bills of Exchange and International Promissory Notes

The UNCITRAL 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; the United States and the U.S.S.R. (now succeeded by the Russian

Federation) have also done so. Guinea has acceded to it. The Convention will come into force after ten ratifications or accessions. In order to implement it in Canada, federal legislation would be required.

Model Law on International Credit Transfers

At the 25th session in New York in May 1992, the Commission completed its review of and adopted the Model Law on International Credit Transfers (formerly the Model Law on Electronic Funds Transfer) that had been prepared by the Working Group on International Payments.

International Guaranty Letters

A first reading of the Draft Uniform Law on stand-by letters of credit and guarantees was completed at the 17th session of the Working Group on International Contract Practices. Work will continue in Vienna from November 30 to December 11, 1992.

Draft Model Law on Procurement

The Working Group on the New International Economic Order completed its review of the Draft Model Law at its 15th session in June 1992. 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 has participated very actively in the work on international procurement and has consulted the federal and provincial government departments and with industry as the work has progressed. The Model Law will be submitted to the Commission at its 26th session in Vienna in June, 1993 and it is expected that the Commission will adopt it at that time.

Legal Guide on International Countertrade Transactions

At its 25th session in May 1992, the Commission reviewed and adopted a draft Legal Guide on International Countertrade, the draft chapters of which had been examined and revised by the Commission at its 23rd session in 1990 and by the Working Group on International Payments in September 1991.

APPENDIX H

Electronic Data Interchange

The Working Group on Electronic Data Interchange, formerly called the Working Group on International Payments, will commence work on the preparation of detailed legal norms and rules for the use of electronic data interchange in international trade at a session to be held in New York in January 1993.

UNIDROIT

The International Institute for the Unification of Private Law, known as Unidroit, is a 51-member governmental organization based in Rome, of which Canada has been a member since 1969. Current members include 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 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 of International Factoring. Both Conventions were adopted. Thus far, France is the only state to have ratified both Conventions. Eleven other states have signed both Conventions: Belgium, Czechoslovakia, Finland, Ghana, Guinea, Italy, Nigeria, Morocco, the Philippines, Tanzania and the United States. The Federal Republic of Germany and the United Kingdom have signed the Convention on International Factoring, whereas Panama is a signatory of the Convention on International Financial Leasing.

Last year the Department of Justice conducted consultations with the provinces, territories and interested private sector groups and experts on the desirability of Canada becoming a party to the Conventions. The responses received indicated that there is general support for Canada becoming party to both Conventions. The

Department has requested the Uniform Law Conference to prepare draft uniform legislation for adoption by interested jurisdictions.

Uniform Law on the Form of an International Will

The Convention Providing a Uniform Law on the Form of an International Will was acceded to by Canada in 1977 and it has been extended to five provinces: Manitoba, Newfoundland, Ontario, Alberta and Saskatchewan. Other States parties are Eduador, Niger, Yugoslavia, Portugal, Libya, Belgium, Cyprus and Italy. The United States Senate has given its advice and consent for ratification, and implementing legislation is expected in the next few months.

At the suggestion of the Advisory Group on Private International Law the Department will consult with the remaining five provinces (Nova Scotia, Prince Edward Island, New Brunswick, Quebec and British Columbia) and the two territories, to determine the degree of their interest in the adoption of implementing legislation.

Unidroit's Work Program

Unidroit has a number of interesting projects on its current Work Program, some of which include the following:

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.

A Unidroit questionnaire circulated in commercial and financial circles elicited numerous responses demonstrating widespread support for the drawing up of an international convention or set of uniform rules as a means of recognizing security interests in movables at the international level. Unidroit has convened an international group of experts, including Professor Cuming, to proceed with this project.

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, it is 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 work is expected to be completed in 1994.

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-André Crépeau of McGill University, a member of the Group.

International Protection of Cultural Property

The committee of governmental experts studying the preliminary draft Unidroit convention on stolen or illicitly exported cultural property continued its work, meeting in January of this year. Canada is represented on the Committee.

The scope of this preliminary draft comprises demands for the recovery 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 current draft provides 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.

A third session of the committee will take place in November 1992.

The Franchising Contract

Unidroit has pursued its cooperation on this matter with the international franchising committee of the business law section of the International Bar Association. The IBA intends to draft a guide on the franchising contract, which would contain, for instance, examples of key clauses to be inserted in a franchising contract. Unidroit is continuing to examine the feasibility and desirability of drawing up uniform rules on certain aspects of international franchising.

The Hotelkeeper's Contract

Country-wide consultations carried out last year by the Department indicated a firm opposition to the new draft convention on the hotelkeeper's contract. 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. The project also met with opposition in the United States and other Unidroit member States, and the subject has now been removed from the Unidroit Work Programme.

APPENDIX H

WORLD BANK

Convention on the Settlement of Investment Disputes Between States and Nationals of Other States

Almost all the provinces and the territories have responded to the consultation undertaken by the Department of Justice and the Department of External Affairs and International Trade. Most of these jurisdictions favour, in principle, Canada's accession to the Convention. However, certain questions have been raised and further correspondence with the jurisdictions will take place.

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. The Convention is expected to come into force in Alberta in August 1992 on the date of publication of the Order-in-Council by the United Kingdom regarding extension of the Convention to Alberta. The Convention will then be applicable to all the jurisdictions except in Quebec.

After consultation with the provinces and territories, we have prepared a draft convention to be submitted to France. It is expected that negotiations will begin very shortly. Provinces and territories will be kept informed and consulted on the development of the Convention. Somewhat similar to the Canada-UK Convention, the proposed convention with France will also encompass matters concerning recognition and enforcement of maintenance orders.

By letter of September 28, 1990, we submitted to the provinces and territories two Council of Europe conventions on mutual legal assistance: the European Convention on the Services Abroad of Documents Relating to Administrative Matters and the European Convention on the Obtaining Abroad of Information and Evidence in Administrative Matters. Given the limited support of the provinces which replied to us, it was decided after consultation with the Advisory Group to suspend further study on these Convention for the time being.

It is worth noting that the 1990 Morguard decision has been considered in light of its application to cases involving foreign countries. This matter could be fully analyzed within the project now being discussed under the auspices of the Hague Conference on the proposed development of a convention on recognition and enforcement of judgments in civil or commercial matters.

ORGANISATION OF AMERICAN STATES

At the request of the OAS, Canada replied to a questionnaire on commercial contracts. It is expected that the next CIDIP (Conference on Private International Law) to take place in Mexico in 1993 will review this matter.

CONCLUSION

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.

The Advisory Group in Private International Law, which was 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. In particular, 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. We also foresee 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.

This year we are asking the Conference to draft the implementating legislation on the UNIDROIT Conventions on Leasing and Factoring. We are also inviting the Conference to consider beginning to work on a draft model act relating to the proposed Hague Convention on Intercountry Adoption.

APPENDIX I

(see page 44)

UNIFORM ENFORCEMENT OF CANADIAN JUDGMENTS ACT

AND COMMENTARIES

UNIFORM LAW CONFERENCE OF CANADA

UNIFORM ENFORCEMENT OF CANADIAN JUDGMENTS ACT

Contents

Section

Preliminary Comment: Full Faith and Credit

The Uniform Enforcement of Canadian Judgments Act [UECJA] embodies the notion of "full faith and credit" in the enforcement of judgments between the provinces and territories of Canada. It involves rejection of two themes which have, in the past, characterized the machinery for enforcing such judgments.

First it rejects the concept of reciprocity Where the UECJA has been adopted in province "X", a litigant who has taken judgment in province "Y" may enforce that judgment in province "X" under the legislation whether or not the UECJA has been adopted in province "Y." This stands in contrast to the approach of the *Uniform Reciprocal Enforcement of Judgments Act* [UREJA].

Second, the Act rejects a supervisory role for the courts of a province or territory where the enforcement of an out-of-province judgment ["Canadian judgment"] is sought. The common law and the UREJA are preoccupied with the question of whether the court which gave the judgment had the jurisdiction to do so. If a Canadian judgment is flawed, because of some defect in the jurisdiction or process of the body which gave it, the approach of the UECJA is to regard correction of the flaw as a matter to be dealt with in the place where it was made.

As a general rule, a creditor seeking to enforce a Canadian judgment in a province or territory which has enacted the UECJA should face no substantive or procedural barriers except those which govern the enforcement of judgments of the local courts.

APPENDIX I

Definitions

1. In this Act

"Canadian judgment" means

(a) a final judgment or order made in a civil proceeding by a court of a province or territory of Canada other than [enacting province or territory],

(b) a final order that is made in the exercise of a judicial function by a tribunal of a province or territory of Canada other than [enacting province or territory] and that is enforceable as a judgment of the superior court of unlimited trial jurisdiction of the province or territory where the order was made, and

(c) an order that is made under section 725 or 726 of the Criminal Code (Canada) by a court of a province or territory of Canada other than [enacting province or territory] and that is entered as a judgment in the superior court of unlimited trial jurisdiction of the province or territory where the order was made;

"judgment creditor" means a person entitled to enforce a Canadian judgment;

"judgment debtor" means a person liable under a Canadian judgment;

"registered Canadian judgment" means a Canadian judgment that is registered under this Act.

Commentary: A central concept of the UECJA is the "Canadian judgment " The first limb of its definition brings in the "conventional" judgment or order of a court of a Canadian province or territory other than the enacting province The judgment must be final and have been made in a "civil proceeding."

A "Canadian judgment" may also include certain kinds of "deemed judgments" -- claims which provincial statutes permit to be enforced as judgments although they have not been the subject of formal litigation in a court. Only final orders of tribunals which exercise a judicial function qualify for enforcement as "Canadian judgments." The definition does not extend to deemed judgments based on a certificate of an administrator stating that money is owed to an emanation of government.

Orders which are enforceable under the third limb of the definition are those made, in the course of a criminal proceeding, in favour of a victim of crime. These orders are authorized by the *Criminal Code* and are enforceable as civil judgments

Not all judgments which satisfy the definition of "Canadian judgment" may be registered or enforced under the UECJA. Other limitations are imposed in sections 2 and 5. The other definitions in section 1 are self-explanatory.

Right to register judgment

2. (1) Subject to section 5, a Canadian judgment for the payment of money may be registered under this Act for the purpose of enforcing payment of the money unless the judgment is

(a) for maintenance or support, including an order enforceable under the [appropriate Act in the enacting province or territory], or

(b) for the payment of money as a penalty or fine for committing an offence.

(2) A Canadian judgment that contains provisions for the payment of money and also contains other provisions may be registered under this Act in respect of the provisions for the payment of money but may not be registered in respect of the other provisions.

Commentary: Only judgments for the payment of money may be registered. A judgment which also provides for matters other than the payment of money may be registered, but the registration is only effective to the extent that the judgment calls for the payment of money The effect of registration is set out in section 4.

Not all Canadian judgments for the payment of money may be registered under the UECJA. Section 2(1) sets out two kinds of judgments which are excluded from registration

Orders for maintenance and support are excluded. A well-developed scheme for their interjurisdictional enforcement is already in place.

The exclusion of judgments for fines and penalties carries forward the current law. They are not presently enforceable either through an action on the judgment or under reciprocal enforcement of judgment legislation.

Procedure for registering judgment

3. A Canadian judgment is registered under this Act by paying the fee prescribed by regulation and by filing in the registry of the [superior court of unlimited trial jurisdiction in the enacting province or territory]

(a) a copy of the judgment, certified as true by a judge, registrar, clerk or other proper officer of the court or tribunal that made the judgment, and

(b) the additional information or material required by regulation.

Commentary: Section 3 sets out the mechanics of registering a judgment under the UECJA If more detailed guidance is desirable this may be done by regulation See section 10.

Effect of registration

4. Subject to sections 5 and 6, a registered Canadian judgment may be enforced in [enacting province or territory] as if it were a judgment of, and entered in, the [superior court of unlimited trial jurisdiction in the enacting province or territory].

Commentary: Section 4 describes the effect of registration. It embodies the central policy of the UECJA that Canadian judgments from outside the enacting province or territory should be enforceable as if made by a superior court of the enacting province or territory

Time limit for registration and enforcement

5. A Canadian judgment shall not be registered or enforced under this Act

(a) after the time for enforcement has expired in the province or territory where the judgment was made, or

(b) later than [xxx] years after the day on which the judgment became enforceable in the province or territory where it was made.

[xxx ? same number of years as for enforcement of judgments of the superior court of unlimited trial jurisdiction in the enacting province or territory.]

Commentary: The limitation laws of most provinces adopt different limitation period to govern the enforcement of "foreign" judgments than that which governs local judgments. "Foreign" judgments are usually subject to a shorter limitation period. Section 5 embodies the policy that Canadian judgments should be treated no less favourably than local judgments of the enacting province or territory. Thus Canadian judgments should not be subject to any shorter limitation period than local judgments.

In setting a limitation period for the enforcement of judgments under the UECJA section 5 adopts a dual test. First, enforcement proceedings must be brought within the limitation period applicable to local judgments, with time running from when the judgment was made. Second, proceedings on the judgment must not have become statute barred through the operation of a limitation period in the place where it was made.

Power to stay or limit enforcement of registered judgment

6. (1) The [superior court of unlimited trial jurisdiction in the enacting province or territory] may make an order staying or limiting the enforcement of a registered Canadian judgment, subject to any terms and for any period the court considers appropriate in the circumstances, if

(a) such an order could be made in respect of a judgment of the [superior court of unlimited trial jurisdiction in the enacting province or territory] under [the statutes and the rules of court] [any enactment of the enacting province or territory] relating to creditors' remedies and the enforcement of judgments,

(b) the judgment debtor has brought, or intends to bring, in the province or territory where the judgment was made, a proceeding to set aside, vary or obtain other relief in respect of the judgment,

(c) an order staying or limiting enforcement is in effect in the province or territory where the judgment was made, or

(d) the judgment is contrary to public policy in [the enacting province or territory].

(2) The [superior court of unlimited trial jurisdiction in the enacting province or territory] shall not make an order staying or limiting the enforcement of a registered Canadian judgment on the grounds that

(a) the judge, court or tribunal that made the judgment lacked jurisdiction over the subject matter of the proceeding that led to the judgment or over the judgment debtor under

(i) principles of private international law, or

(ii) the domestic law of the province or territory where the judgment was made,

(b) the [superior court of unlimited trial jurisdiction in the enacting province or territory] would have come to a different decision on a finding of fact or law, or on an exercise of discretion from the decision of the judge, court or tribunal that made the judgment, or

(c) a defect existed in the process or proceeding leading to the judgment.

Commentary: Section 6 addresses the issue of the extent to which the courts of the enacting province or territory may intervene to stay or limit the enforcement of a Canadian judgment.

At common law, a local court whose assistance is sought in the enforcement of a foreign judgment may decline to give that assistance where it believes the foreign judgment is somehow flawed. In this context, a flaw might involve a lack of jurisdiction in the foreign court over the defendant or the dispute. It might, in some cases, involve the local court having a different view of the merits of the decision. A flaw might also include some defect in the process by which the foreign judgment was obtained such as a breach of natural justice or where there is a suggestion of fraud.

Allowing the local court to inquire into such matters may be appropriate where the judgment emanates from a truly "foreign" place It is quite inappropriate in Canada as it puts the courts of one province in the position of supervising the actions of the courts of another province. The Common law approach cannot co-exist with the full faith and credit concept.

The UECJA expressly abrogates the common law approach Section 6(2) stipulates that none of the "flaws" described above provide grounds for staying or limiting the enforcement of a Canadian judgment. The proper course of a judgment debtor who alleges that the judgment is flawed is to seek relief in the place where the judgment was made, either through an appeal or a further application to the court or tribunal which made the judgment.

The UECJA does recognize that there are other circumstances which might justify staying or limiting the enforcement, such as where the judgment is truly flawed, and the judgment debtor is taking steps to obtain relief in the place it was made This is provided for in section 6(1)(b) The judgment debtor

is likely to have a stronger claim for a stay if enforcement of the judgment has also been stayed in the place where it was made. See section 6(1)(c).

The policy of assimilating the enforcement of Canadian judgments to that of local judgments requires that the judgment debtor be entitled to take advantage of any limitations which the law of the enacting province or territory may impose with respect to the enforcement of local judgments. This might include, for example, a power in the local court to order payment by instalments. Section 6(1)(a) clarifies the power of the local court to make orders of this character which limit the enforcement of a Canadian judgment.

The court may also order a stay with respect to a judgment which offends the public policy of the enacting province or territory. This exception to enforcement carries forward the policy of the current law.

An order made under section 6(1) staying or limiting enforcement may be made for a temporary period and subject to any terms which may be necessary to protect the judgment creditor's position. If an order is made under paragraph (b), terms might be imposed to ensure that the judgment debtor proceeds expeditiously. The court may, for example, set time limits or require the posting of security

Interest on registered judgment

7. (1) Interest is payable on a registered Canadian judgment as if it were a judgment of the [superior court of unlimited trial jurisdiction in the enacting province or territory].

(2) For the purpose of calculating interest payable under subsection (1), the amount owing on the registered Canadian judgment is the total of

(a) the amount owing on that judgment on the date it is registered under this Act, and

(b) interest that has accrued to that date under the laws applicable to the calculation of interest on that judgment in the province or territory where it was made.

Commentary: Section 7 provides that a registered judgment will earn interest as if it were a local judgment. The principal amount of the judgment is calculated by including post judgment interest that has accrued before registration.

Recovery of registration costs

8. A judgment creditor is entitled to recover, as if they were sums payable under the registered Canadian judgment, all costs, charges and disbursements

(a) reasonably incurred in the registration of a Canadian judgment under this Act, and

(b) taxed, assessed or allowed by [the proper officer] of the [superior court of unlimited trial jurisdiction in the enacting province or territory].

Commentary: Costs and disbursements incurred in the registration of a Canadian judgment are recoverable

Judgment creditor's other rights not affected by registration

9. Neither registering a Canadian judgment nor taking other proceedings under this Act affects a judgment creditor's right

(a) to bring an action on the Canadian judgment or on the original cause of action, or

(b) to register and enforce the Canadian judgment under the [Reciprocal Enforcement of Judgments Act].

Commentary: A judgment creditor is not required to elect irrevocably between options for enforcing a Canadian judgment. Section 9 preserves the right of the judgment creditor to employ the UECJA or to rely on common law methods of enforcement. There is no reason to limit the judgment creditor's options, so long as the judgment is satisfied only once

It is contemplated that the provinces and territories will retain legislation for the reciprocal enforcement of judgments While this legislation will be overtaken by the UECJA with respect to Canadian judgments it will still be necessary as a vehicle for the enforcement of judgments, on a reciprocal basis, with non-Canadian jurisdictions.

Power to make regulations

10. The Lieutenant Governor in Council may make regulations [rules of court]

(a) prescribing the fee payable for the registration of a Canadian judgment under this Act,

(b) respecting additional information or material that is to be filed in relation to the registration of a Canadian judgment under this Act,

(c) respecting forms and their use under this Act, and

(d) to do any matter or thing required to effect or assist the operation of this Act.

Commentary: The regulation making power in section 10 is self-explanatory.

Application of Act

11. This Act applies to

(a) a Canadian judgment made in a proceeding commenced after this Act comes into force, and

(b) a Canadian judgment made in a proceeding commenced before this Act comes into force and in which the judgment debtor took part.

Commentary: The application provision permits the retrospective application of the UECJA to some judgments. It may be unfair to enforce, on a full faith and credit basis, a judgment made in a proceeding commenced before the UECJA came into force. This could occur where a resident of the enacting province relied on well-founded legal advice to not respond to distant litigation since any resulting judgment would not (according to the law in force at the time) be enforceable outside the place where it was made. On the other hand, if that resident took part in the foreign proceeding there is little reason to deny the plaintiff the right to enforce the judgment under the UECJA.

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; Am. '91
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.
Court Orders Compliance Act	1992	
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	
Enforcement of Canadian Judgments Act	1992	
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	

UNIFORM LAW CONFERENCE OF CANADA

Title	Year First Adopted and Recommended	Subsequent Amendments and Revisions
Foreign Arbitral Awards Act	1985	
Foreign Judgments Act	1933	Rev. '64.
Foreign Money Claims Act	1989	
Formal Validation Recognition of Advance Health Care Directives	1992	
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
Interprovincial Subpoenas Act	1974	
Intestate Succession Act	1925	Am. '26, '50, '55; Rev. '58; Am. '63; Rev. '85.
Judgment Interest Act	1982	
Jurors' Qualification 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.

TABLE I

Title	Year First Adopted and Recommended	Subsequent Amendments and Revisions
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.
Regulatory Offences Procedure Act	1992	
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.*

ˣ *indicates that provisions similar in effect are in force.*

† *indicates that the Act has since been revised by the Conference.*

Accumulations Act - Enacted by N.B.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 Yukon[x] ('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.*

ǂ *indicates that provisions similar in effect are in force.*

† *indicates that the Act has since been revised by the Conference.*

Alberta

Bills of Sale Act† ('29); Bulk Sales Act† ('22); Contributory Negligence Act† ('37); Criminal Injuries Compensation Act† ('69); Defamation Act† ('47); Devolution of Real Property Act ('28); Evidence Act - Affidavits before Officers ('58), Foreign Affidavits ('52, '58), Photographic Records ('47), *Russell v. Russell* ('47); Extra-Provincial Custody Orders Enforcement Act ('77); Frustrated Contracts Act† ('49); Interpretation Act° ('80); Interprovincial Subpoena Act ('81); Interstate 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 ('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's 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

TABLE IV

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[x]; 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

Accumulation 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° ('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* ('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° ('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), re. '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); 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 Success 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. 1-6 - quite similar; Evidence Act: Affirmation in lieu of oath: see a. 299 C.P.C. - similar; Judicial Notice of Acts, Proof of State Documents: see a. 1207 C C similar to }Proof of State Documents✓; Human Tissue Gift Act: see a. 20, 21, 22 C C. - similar: Interpretation Act: see Loi d'interprétation L R.Q. (1977) ch I-16 particularly, a 49: cf. a. 6(1)

of the Uniform Act, a. 40: cf. a. 9 of the Uniform Act, a. 39 para. 1: cf a. 7 of the Uniform Act, a. 41: cf a. 11 of the Uniform Act, a. 42 para. 1: cf a. 13 of the Uniform Act - these provisions are similar in both Acts; Partnerships Registration Act: see Loi sur les déclarations des compagnies et sociétés, L.R.Q. (1977) ch. D-1 - similar; Presumption of Death Act: see a. 70, 71 and 72 C.C. - somewhat similar: Service of Process by Mail Act: see a 138 and 140 C.P.C. - s. 2 of the Uniform Act is identical; Trustee Investments: see a 981 a et. sq. C.C. - very similar; Warehouse Receipts Act: see Loi sur les connaissements L.R.Q. (1977) ch. C-53 - s. 23 of the Uniform Act is vaguely similar; Wills Act: see C.C. a. 842 para. 2: cf. s. 7 of the Uniform Act, a. 864 para. 2: cf. s. 15 of the Uniform Act, a. 849: cf. s. 6(1) of the Uniform Act, a. 854 para. 1: cf. of s. 8(3) of the Uniform Act - which are similar.

NOTE:

Many other provisions of the Quebec Civil Code or of other statutes bear resemblance to the Uniform Acts but are not sufficiently identical to justify a reference. Obviously, most of these subject matters are covered one way or another in the laws of Quebec

Saskatchewan

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[x] ('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);

TABLE IV

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

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PART IV
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Subjects considered each year are listed in the minutes of the year and published in the Proceedings of that year.